

# North Pacific Fishery Management Council

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December 30, 2014

Senator Lisa Murkowski  
United State Senate  
709 Hart Senate Building  
Washington, DC 20510

Dear Senator Murkowski:

I am writing to follow up on a request for comments we received from your office this past summer regarding proposed legislation titled the "Improved National Monument Designation Process". At our recent December meeting, our Council was able to discuss your proposed legislation, and our Council agrees that the current process for monument designation does not allow for adequate input, either by the U.S. Congress, affected States, or the public. Your legislation would indeed improve upon the existing process, and would require deliberate consideration of consequences, rather than unilateral Executive action. We recognize the potential for monument designation of certain sites in waters off Alaska, and we believe your legislation would result in a much more robust and appropriate assessment of the veracity of such designation.

Further, we note that the Regional Fishery Management Council process provides an open and transparent forum to consider potential impacts of monument designation relative to fishing and related activities within any proposed monument site. We recommend you consider adding language to this legislation which would explicitly allow for Council input prior to finalizing any monument designation. We also agree with the comments of the Pacific Fishery Management Council that, if an area is designated, any fishing regulations within that area would be accomplished through the authorities of the relevant Regional Fishery Management Council and the processes of the Magnuson-Stevens Act.

We appreciate the opportunity to provide comment on this legislation and stand ready to provide additional input should you determine the need for such. Please have your staff contact me, or the Council's Executive Director Chris Oliver, if you have any questions regarding our Council's comments on this issue.

Sincerely,



Dan Hull  
Chairman

CC: Senator Dan Sullivan  
Congressman Don Young  
RFMC Executive Directors

# North Pacific Fishery Management Council

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January 6, 2015

Dr. Bruce Leaman, Executive Director  
International Pacific Halibut Commission  
2320 West Commodore Way, Suite 300  
Seattle, Washington 98199-1287

Dear Dr. Leaman:

On behalf of our Council, I am submitting our annual management letter which summarizes Council actions, recommendations, or issues which we believe are necessary for IPHC consideration at your upcoming annual meeting.

## 2015 Halibut Charter management measures

In December 2014, following review of the IPHC's preliminary 'blue line' information, analyses provided by Mr. Scott Meyers of ADF&G, and recommendations from its Halibut Charter Management Implementation Committee, the Council voted unanimously to recommend the following management measures for 2015:

### FOR AREA 2C, SOUTHEAST ALASKA:

- one fish daily bag limit, with a reverse slot limit of U40"-O80" (must be less than or equal to 40" or greater than or equal to 80")
- if the final charter allocation is sufficiently higher than the 'blue line' to accommodate a change in the reverse slot limit, adjust the size of the lower limit upward to meet the allocation

### FOR AREA 3A, SOUTHCENTRAL ALASKA:

- two fish daily bag limit
- one fish of any size, and maximum size of one fish is 29"
- one trip per day (limit each vessel to one trip per calendar day)
- one day per week closure (prohibition on halibut charter fishing on Thursdays, from June 15 through August 31)
- 5-fish annual limit
- if the final charter allocation is higher than the 'blue line', adjust the maximum size of the second fish upward to meet the allocation

The Council also discussed the very constrained timeline associated with development of annual management measures, given the need for ADF&G sport fish division to analyze potential management measures based on the IPHC interim meeting results and vet those through our Halibut Charter Committee in the short time between the IPHC interim meeting and the Council's December meeting. We did not resolve this issue, but discussed options including use of the previous year's IPHC 'blue line' as

the basis for the initial ADF&G analysis, and continuing to select annual management measure recommendations through the Committee and Council after the IPHC interim meeting.

#### Status of halibut retention in Area 4A pot gear

Previously the Council recommended that the IPHC approve the proposed allowance of halibut retention in sablefish pot gear in Area 4A . However, prior to approving such allowance, the IPHC requested that the Council develop associated regulatory measures which would result in a coordinated management approach to address some of the IPHC's concerns, most notably maximum retention allowances, or MRAs, which would limit the amount of halibut retention and ostensibly prevent targeting of halibut with pot gear.

Partly due to the press of other priorities, the Council has not yet fully developed those associated regulatory measures, and is currently scheduled to review a preliminary staff analysis in April 2015, at which time they will identify specific alternatives for consideration. We anticipate that the Council's intent with regard to establishment of an MRA, or other regulatory measures, will be available to the IPHC in time for its 2016 annual meeting, thereby providing the IPHC the opportunity to approve halibut retention in Area 4A sablefish pots at that time.

#### Status of GOA sablefish longline pot gear allowance

Due primarily to concerns with significant killer and sperm whale depredation of sablefish longlines in the Gulf of Alaska (GOA), the Council has developed a regulatory package which would potentially allow the use of pot gear in GOA sablefish fisheries. As part of that process, the Council established a Gear Committee comprised of industry representatives which was active in 2014 in assisting the Council with development of alternatives and options. The Council reviewed an initial analysis in December 2014, refined alternatives at that time, and scheduled this for final action at its April 2015 meeting. The Council's goal is to reduce whale depredation while minimizing concerns with gear conflict and grounds preemption. The alternatives under consideration are summarized below:

- allow pot longline gear in any or all of the following Gulf of Alaska areas – western GOA, central GOA, west Yakutat, and southeast outside
- a limit on number of pots per vessel, ranging from 60 to 400 pots
- potential requirement of gear tracking measures such as pot tags and buoy transponders
- potential gear retrieval requirements to reduce the time pots are on the grounds, including development of an electronic database of pots set, retrieved, or lost
- potential allowance of IFQ halibut retention

#### Bering Sea/Aleutian Islands halibut PSC (bycatch) reduction package

At its June 2014 meeting the Council passed a motion outlining several alternatives, elements, and options for reducing halibut bycatch (PSC) in the Bering Sea/Aleutian Islands (BS/AI) groundfish fisheries. Part of that motion requested industry sectors to voluntarily reduce halibut bycatch by 10% from current levels. Based on information presented to the Council by NMFS at our December 2014 meeting, it appears that overall halibut mortality was decreased by 3% overall from the preceding five-year average (with significant variations across sectors). Additional industry sector reports, and Council review of an exempted fishing permit (EFP) application to allow deck sorting in certain fisheries, are scheduled for our February 2015 meeting.

In addition to other voluntary measures, deck sorting in particular appears to have the potential for additional reductions in halibut bycatch mortality in 2015 and beyond. At this time the applicant is working with NMFS to expedite internal agency review and approval so that the EFP could be in place in

time for the majority of the relevant 2015 fisheries. The Council is very supportive of progress with regard to deck sorting, and believes that the iterative processes involved in the proposed EFPs will provide an opportunity to maximize benefits of BS/AI bycatch mortality savings, particularly to directed halibut users in Areas 4C/D/E.

At that upcoming February 2015 meeting the Council will be reviewing the staff analysis of the BSAI halibut PSC reduction package, with the intent of taking final action at its June 2015 meeting. Alternatives being considered in that bycatch reduction package include sector-by-sector PSC limit reductions of up to 35% lower than the caps currently in regulation. Other information requested by the Council as part of this analytical package includes:

- levels of catch and bycatch in the existing IPHC closed area
- whether a halibut PSC limit should be applied to the directed sablefish IFQ fishery
- impacts of halibut PSC reduction efforts on chinook and chum salmon bycatch management measures
- potential approaches to establish a biomass-based halibut PSC limit
- review of current protocols for rolling unused halibut PSC between groundfish sectors
- review of subsistence information in Areas 4C/D/E
- fishing practices that reduce halibut bycatch (mortality) in the directed halibut fisheries

The Council motion also recognized the ongoing development of the IPHC's total mortality accounting approach, noting the possibility of adjustments to the elements and options within this package at its February 2015 meeting (where we will also meet jointly with the IPHC Commissioners on February 5).

#### Observer program improvements

NMFS representatives may provide additional detail to the IPHC on our recently restructured groundfish observer program, but we wanted to highlight a few program improvements in our 2015 annual deployment plan (ADP). These include an overall increase to 24% trip selection probability in the large vessel (partial coverage) trip selection stratum, which is a 50% increase in coverage over the 2014 rate. The small vessel sector (40' to 57.5') will be under a trip selection model as well in 2015, at an overall 12% selection rate. NMFS will not grant conditional releases in the large vessel trip selection pool in 2015, and conditional releases for the small vessel trip selection pool will only be made for life raft capacity situations. These changes in combination increase our overall coverage and improve our data collection efforts relative to bycatch monitoring and other observer program objectives.

#### Gulf of Alaska trawl bycatch management initiative

In addition to recent reductions in the Gulf of Alaska (GOA) halibut bycatch (PSC) limits, the Council is in the process of developing a more comprehensive trawl bycatch management program in the GOA, aimed at further minimizing bycatch to the extent practicable. In October 2014 the Council passed a motion specifying the alternatives, elements, and options for this program, which centered around a fishery cooperative model with allocations of both target groundfish and PSC species. Several aspects of that program are being analyzed by staff before the Council can finalize the full scope of this initiative, including specific alternatives and elements. This issue will likely be reviewed again by the Council at our October 2015 meeting.

#### Joint meeting on February 5

On Wednesday, February 5, the Council and IPHC will meet jointly at the Renaissance Marriot hotel in Seattle, beginning at 10 am. An agenda for that meeting has been developed and published, and includes: discussion of the IPHC total mortality accounting framework, including an SSC review of that

framework; discussion of the Council's BS/AI halibut PSC reduction package, including SSC review of that analysis; improving estimates (and reconciling estimates) of discard mortalities in all fisheries; discussion of potential abundance-based PSC limits; and, identification of areas of mutual interest in research and management. The Council looks forward to meeting with the IPHC on these issues. We also note the availability of our 'Navigating the Council Process' booklet (also posted on our website) which may be of use to those not typically engaged in the Council management process.

Myself, as well as Council Chairman Dan Hull and other Council members will be in attendance at your upcoming annual meeting in Vancouver, B.C., January 26-30. At that time I can provide additional information as necessary on the issues addressed in this letter.

Sincerely,

A handwritten signature in blue ink that reads "Chris Oliver". The signature is fluid and cursive, with the first name "Chris" being more prominent than the last name "Oliver".

Chris Oliver  
Executive Director



## Pacific Fishery Management Council

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Dorothy M. Lowman, Chair | Donald O. McIsaac, Executive Director

December 31, 2014

Mr. Russell Dunn  
National Policy Advisor for Recreational Fisheries  
National Marine Fisheries Service  
1315 East-West Hwy  
Silver Spring, MD 20910-3282

RE: National Recreational Fishing Policy

Dear Mr. <sup>Russ</sup> Dunn:

The Pacific Fishery Management Council (Pacific Council) met November 12-19, 2014 in Costa Mesa, California and reviewed the Public Review Draft of the National Saltwater Recreational Fisheries Policy (draft Policy) of the National Marine Fisheries Service (NMFS). The Pacific Council received written statements from six of its advisory bodies and took public comment on November 19 prior to discussion of formal positions on relevant issues on this important draft Policy initiative. This letter formally transmits the Pacific Council's comments with the request that NMFS consider them as this draft Policy is refined and finalized.

First, we want to thank you and all involved for the effort to release the draft Policy for consideration at our ongoing Pacific Council meeting. Mr. Barry Thom, Mr. Bob Turner, and Mr. Craig Heberer did an excellent job dealing with lack of advance Briefing Book availability issues to optimize consideration of this important matter in the Pacific Council process. There should be no doubt that the comments received from this Pacific Council meeting process will be superior to what would have been generated from a Council staff exercise conducted between Council meetings had the draft Policy not been made available. Its availability at the Council meeting also generated a positive public relations reaction among the few hundred people involved in this Council meeting, as opposed to what would have been a negative reaction if the draft Policy had not been exposed to the Pacific Council process for comment. We view the higher quality and more authoritative comments in this letter as a partnership reward for the work done by NMFS staff working this issue in a timely manner through the public interface of an open Pacific Council meeting, and appreciate the extra effort expended to optimize a good co-management relationship.

In general, we would like to highlight a few points prior to providing specific comments on draft Policy language and additional considerations related to draft Policy adoption.

1. The Pacific Council supports the adoption of a well-articulated national policy that recognizes the cultural and economic importance of marine recreational fishing and advances improved management of recreational fisheries in a fair and equitable manner

consistent with the conservation and management provisions of the Magnuson-Stevens Act.

2. The Pacific Council is concerned that the final Policy statement properly clarifies expectations about allocation or reallocation of quantities of fish to be caught by recreational fisheries and how such allocation decisions would be made. This topic accounted for the majority, by far, of the discussion on the substance of the current draft language.
3. The Pacific Council recommends that there be additional language added to address protection of domestic recreational fishing opportunity that is subject to the vagaries and repercussions of international fishery management decision-making.

### Conceptual Support

The Pacific Council supports the adoption of a national recreational fishery policy that properly recognizes the long standing importance of recreational fishing as a cultural pastime and economic industry of national significance. The Pacific Council has a proud history of considering recreational, tribal, and commercial fisheries together as having common responsibility in the conservation and management of fish stocks, and feel many of the narrative sections in the draft Policy are appropriate as policy statements. If not addressed in this letter, the Pacific Council feels such components in the draft Policy are appropriate and important.

### Fish Allocation and Reallocation Expectation Clarification

As a prerequisite to clarifying allocation expectations, the Pacific Council felt it was important to understand that fisheries on the U.S. West Coast operate somewhat differently than fisheries in other parts of the U.S, and that any national policy language not impair processes that have been broadly viewed as successful. For example, treaty tribal fishing rights, international agreements for species such as halibut and salmon, rationalization and catch share program arrangements create unique governance relationships and allocation formulas. As another example, except for groundfish species that are only available to commercial trawl fishing gear, the Council reviews the allocation between sectors every two years as part of our biennial regulatory process. Therefore, the Pacific Council recommends that final Policy language not act to supersede processes that are currently working well on the U.S. West Coast, and not put into place requirements that complicate existing legal or process activities.

A central topic of concern discussed by the Pacific Council was the portion of Commitment #1 on page two of the draft Policy calling for emphasis in "...encouraging periodic review of fishery allocations;...". There was concern that the term periodic review would mean a regularly scheduled review of all allocation decisions/frameworks would become a categorical mandate. The Pacific Council felt that such an interpretation would be overly prescriptive and recommends either simply deleting "periodic" or adding alternative phraseology that would encourage consideration of allocation issues on an as-needed basis or encouraging evaluation of the need for allocation review(s) prior to actually conducting a review. Such language should be associated with a bottom-up identified need, not a top-down scheduled timetable unassociated with a demonstrable need. We agree that Regional Fishery Management Councils (RFMC) should be responsive to reallocation concerns, and as mentioned above, the Pacific Council process already reviews allocations in a need-driven manner responsive to issues brought

forward as an open invitation during scheduled regulatory consideration processes. As a contemporary example, at this very meeting where the draft national recreational Policy was a scheduled agenda item, the Pacific Council took final or incremental action on four potential reallocation issues that had come up in the normal, open, course of business: a re-allocation of Pacific halibut to the California recreational fishery from Oregon and Washington commercial and recreational fisheries; widow rockfish reallocation within the commercial trawl catch share fishery; blackgill rockfish reallocation between commercial fishery sectors; curtailments for both recreational and commercial fisheries for bluefin tuna without current formal allocations.

In addition to the question of formal periodicity to allocation reviews referred to in Commitment #1 on page 2 of the draft Policy, the Pacific Council recommends clarity in how such allocation reviews are conducted. Please consider adding the following language emphasized by underlining:

- 1) **Promote public access to quality fishing improvements** by supporting consideration of relevant cultural, social, and economic factors in decision-making; encouraging periodic reviews of fishery allocations through the processes and procedures of the Regional Fishery Management Councils; fostering....

We believe it is important that readers of a national recreational fishery policy understand the key co-management partnership between the NMFS and the RFMC under the MSA, as well as where and how a comprehensive allocation review would be initiated. This would also provide non-recreational fishery interests understanding of where and how "...expanded (recreational) fishing opportunities based on conservation gains (e.g. improved release survival, restored habitats, easing of regulatory fishery restrictions when conservation goals are achieved);..." would be expected to be addressed.

#### International Fishery Connections

The Pacific Council recommends additional language be placed in the listing of specifics within Commitment #1 on page 2 to foster support of recreational fisheries nationwide, for the purpose of instituting policy clarity for protection of recreational fishing during international discussions on highly migratory or straddling stocks. The recommendation is to insert as the fourth point of policy emphasis after "...when conservation goals are achieved);..." the following language:

"advocate in international and bilateral relations for the protection of current U.S. recreational fishing opportunities and benefits;"

Examples where this is important on the West Coast include impromptu bilateral meetings with Mexico and scheduled international meetings that include Mexico where there can be discussions about the U.S. recreational fishery currently operating under bilateral agreement along the northern Pacific coast of Mexico; annual negotiations with Canada in the International Pacific Halibut Commission; renegotiation of the US-Canada Pacific Salmon Treaty. There may be additional examples in other RFMC areas.

#### Additional Comments

The Pacific Council suggests the draft Policy acknowledge safety at sea as an objective, and list some law enforcement considerations for enhanced recreational opportunity, such as the effects of derby type fisheries on U.S. Coast Guard, state and federal enforcement agencies. We also



note the importance of adequate fishery monitoring in effectively managing fisheries, and recommended any enhanced opportunity should be contingent on the ability to assess the effects on resources. Perhaps these ideas could be addressed in Commitment #3 on page 2 of the current draft Policy.


We suggest that you consider adding recognition of the boat building and bait-and-tackle sectors in the listing of support businesses and industries in the second paragraph on page 2 of the current draft Policy.

Lastly, the Pacific Council also recommends that NMFS consider developing a commercial fishing policy. Given the adopted aquaculture policy and the impending adoption of a recreational fishery policy, it would seem adopting a commercial fishery policy would complete full relative context. We note the six commitment points in the current draft Policy may be generally applicable to all fisheries managed by the RFMC and NMFS. Providing some clarity as to how implementation of these commitment points would differ between recreational and commercial fisheries in terms of content and priority would help the Pacific Council provide more specific comments, and ultimately, better implement the Policy.

For informational purposes, we attach the six Pacific Council advisory body statements received on this agenda item at our November 2014 Council meeting. These statements do not in themselves represent adopted Pacific Council policy positions, or supersede the comments presented in this letter. However, they provide some context of stakeholder perspectives, for your information.

Thank you for your consideration of these comments and recommendations. Should your staff have any questions on this matter, please contact Mr. Chuck Tracy at the Council office.

Sincerely,



D. O. McIsaac, Ph.D.  
Executive Director

Enclosures (6)

CAT:csp

Attachments

C: Council Members

Eileen Sobeck  
Sam Rauch  
Alan Risenhoover  
Russell Smith  
Barry Thom  
Craig Heberer  
Council Staff  
Coastal Pelagic Species Advisory Subpanel

Enforcement Consultants

Groundfish Advisory Subpanel  
Groundfish Management Team  
Highly Migratory Species Advisory Subpanel  
Salmon Advisory Subpanel

ENFORCEMENT CONSULTANTS REPORT ON  
RECREATIONAL FISHERIES POLICY UPDATE

The Enforcement Consultants (EC) have reviewed Agenda Item C.2.b, National Saltwater Recreational Fisheries Policy of the National Marine Fisheries Service (NMFS), and have the following comments.

Item #3 under the Policy section of Agenda Item C.2.b addresses coordination with state and Federal management partners for purposes including aligning enforcement priorities and strategies, "...in support of stable, predictable, and well monitored recreational fisheries." The EC appreciates NMFS' recognition of the role of enforcement in successful recreational fisheries and we are committed to working with NMFS and other stakeholders to ensure enforcement priorities are aligned for the purposes quoted above as the National Saltwater Recreational Fisheries Policy continues to be developed.

PFMC  
11/18/14

SALMON ADVISORY SUBPANEL REPORT ON  
RECREATIONAL FISHERIES POLICY UPDATE

The Salmon Advisory Subpanel (SAS) met with Ms. Heidi Taylor of the National Marine Fisheries Service regarding the draft National Saltwater Recreational Fisheries Policy (Agenda Item C.2.b, Supplemental NMFS Report). Regarding the periodic review of fishery allocations, the SAS recommends that any such review be conducted through the public and transparent process of the Regional Fisheries Management Councils. To that end, the SAS recommends the following changes to the first bullet point on page 2 of the policy:

- 1) **Promote public access to quality fishing opportunities** by supporting consideration of relevant cultural, social, and economic factors in decision-making; encouraging periodic review of fishery allocations through the processes and procedures of the Regional Fishery Management Councils; fostering expanded fishing opportunities based on conservation gains (e.g., improved release survival, restored habitats, easing of regulatory fishery restrictions when conservation goals are achieved); and understanding factors which affect fishing participation and angler satisfaction (e.g., changing and complex regulations, impediments to fishing) and finding mechanisms to address them.

PFMC  
11/18/14

## HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON RECREATIONAL FISHERIES POLICY UPDATE

There is little doubt that the Recreational Saltwater Fisheries proposed policy is about allocation issues. The Highly Migratory Species Advisory Subpanel (HMSAS) suggests that the Council has been managing allocation issues between commercial and recreational fishermen successfully for years. We need to leave these allocation issues to the Regional Fishery Management Councils (RFMCs) and their advisory committees. The HMSAS would also like to know if there is a national policy for Saltwater Commercial Fisheries.

Another issue focused on the lack of science that was being implemented by the RFMCs. However, the RFMCs already DO use science-based management practices using mortality and bycatch reduction plans (BRPs) to support decisions based on quotas or annual catch limits (ACLs).

There was also a statement in the proposed policy that the RFMCs' advisory groups are mostly agency people, and the recreational fishermen at the conference wanted more representation. They did not mention the HMSAS or any other advisory committees at all. The HMSAS feels that the recreational/commercial/charter representation is fair and equitable on the Advisory Committees, at least as far as this Council is concerned. Also, concerning forage fish – they have just barely begun to be managed, and management should improve over time as the scientific data needed to manage them is collected. The report asks NOAA to pay more attention to the economic benefits of recreational fishing, and HMSAS has no problem with that if the information collected is not used to justify taking quota from the commercial sector.

Many suggestions in this policy are in line with what all commercial and charter representatives have been addressing for years such as “the mismatch between data and fishermen’s experience on the water, the general underfunding of fisheries science and management, promoting the use of recreational Exempted Fishing Permits (EFPs), and improving fishery independent data.” This recreational policy should not be used to divide commercial and recreational fishermen. We have too many issues in common and need to support each other and not create unnecessary allocation battles.

## COASTAL PELAGIC SPECIES ADVISORY SUBPANEL REPORT ON RECREATIONAL FISHERIES POLICY UPDATE

The Coastal Pelagic Species Advisory Subpanel (CPSAS) reviewed the draft National Saltwater Recreational Fisheries Policy of the National Marine Fisheries Service (NMFS) (Agenda Item C.2.b. Supplemental NMFS Report, November 2014).

The CPSAS recognizes the traditional, cultural and economic importance of saltwater recreational fishing in the United States and appreciates the acknowledgement of this importance by NMFS. Given that NMFS has an aquaculture policy and now a recreational fishing policy, we question the lack of a comparable commercial fishing policy. Without such a policy, there is no guidance highlighting the importance of commercial fishing and domestic seafood production, and no objectives and strategies to assist the agency in prioritizing commercial fishing goals and allocating necessary resources (including funding) to those priorities.

The CPSAS provides the following comments and recommended modifications specific to the numbered paragraphs in the POLICY section on page 2 of the document.

### **Item number 1. Promote Public Access to Quality Fishing Opportunities**

There are a number of objectives included under bullet #1 that require further clarification. Specifically, the intention and implication of “encouraging periodic review of fishery allocations” as well as NMFS’ interest in “fostering expanded fishing opportunities based on conservation gains” should be clarified and discussed in the policy. As currently drafted there is concern that the policy may intend to reallocate commercial quotas, or harvest opportunities to the recreational fishing community. While we appreciate the need to share opportunities, conservation gains, such as increased stock biomass resulting from commercial management should not be reallocated to recreational fisheries unless those fisheries are equally accountable for recreational catch and effort; and are subject to a thorough regional Council review and allocation process under present COP’s. Further we mention that these allocation exercises can be exhaustive and drain a large amount of resources from NMFS and Council staff. For these reasons we recommend that each Regional Council should make their own determination as to how often they should occur, as opposed to a nationally mandated time schedule.

### **Item number 3. Coordinate with State and Federal Management Partners**

Commercial interests operate under an umbrella of catch accountability and strict adherence to annual catch limit, annual catch target, and other buffered harvest policies designed to help conserve stocks from overfishing, and we believe that likewise, recreational fishing mortality should be tracked and accounted for in order to achieve the same conservation objectives. We suggest the following additions, in underlined text, to improve this specific objective:

**Coordinate with State and Federal Management Partners and Recreational Interests** to align science, management, and enforcement priorities and strategies in support of stable, predictable, and well-monitored recreational fisheries. Monitoring goals for recreational fisheries should include catch accounting, biological data, regionalized harvest data, and fishing effort to inform scientific and management analysis and policy decisions.

The CPSAS appreciates the opportunity to comment on the draft Recreational Fishing Policy and the outreach NMFS undertook with the fishing community to develop this draft policy. In its efforts to further develop an overarching national recreational fishing policy and to achieve the goals and objectives as stated in the draft policy, the CPSAS encourages NMFS to work collaboratively with the recreational fishing community. Likewise, input from the public and commercial fishing interests are advised to reduce conflict and ensure recreational policy is not inconsistent with MSA and past commercial management objectives for any given fishery.

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11/19/14

## GROUND FISH MANAGEMENT TEAM REPORT ON THE RECREATIONAL SALTWATER FISHERY POLICY

The Groundfish Management Team (GMT) reviewed the 2014 Recreational Saltwater Fishing Summit Summary Report ([Agenda Item C.2.a, Attachment 1](#)) and the Public Comment Draft of the National Saltwater Recreational Policy ([Agenda Item C.2.b, Supplemental NMFS Report](#)) and received a joint briefing with the Groundfish Advisory Subpanel by Mr. Craig Herberer. Given the timing of receiving the draft policy and the other items on the GMT's agenda, the GMT had limited time for discussion. If there is opportunity to comment on future drafts, the GMT may have further comments at that time.

Fisheries on the U.S. West Coast operate somewhat differently than fisheries in other parts of the U.S. For example, treaty tribal fishing rights, international agreements for species such as halibut and salmon, rationalization and quota share programs, etc. create unique governance relationships and allocation formulas. As an example, for groundfish species that are not trawl dominant, the Council reviews the allocation between sectors every two years as part of the biennial process. Therefore, the GMT recommends that this new recreational policy does not supersede processes that are working on the U.S. West Coast, and under the purview of the Pacific Council, or in other areas. The Pacific Council has a history of cooperative management between and within various industry sectors (commercial, recreational, and tribal) and management entities. The GMT suggests that the Council should comment to the National Oceanic and Atmospheric Administration (NOAA) that this policy should not put into place requirements that change what is already working through the Pacific Council or that might complicate existing legal or process requirements.

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11/18/14

## GROUND FISH ADVISORY SUBPANEL REPORT ON RECREATIONAL FISHERIES POLICY UPDATE

The Groundfish Advisory Subpanel (GAP) heard a presentation by Mr. Craig Heberer on the Draft National Recreational Fisheries Policy.

The GAP notes that the goals of this policy, “to promote recreational fishing for the cultural, social, and economic benefit of the nation through science-based conservation and management, and to provide for wide-ranging participation in and enjoyment of recreational fishing for present and future generations...” are consistent and in furtherance of the purposes of the Magnuson-Stevens Act.

However, the GAP wishes to comment on the paragraph stating the following... “This policy recognizes the authorities and responsibilities of natural resource management agencies, **Regional Fishery Management Councils (RFMCs)**, interstate marine fisheries commissions, states, and advisory bodies and seeks partnership in its implementation.” This paragraph is particularly important in that it **clearly recognizes the authority and responsibilities of the RFMCs**.

This recognition of Council authority is crucial for Goal 1, which mentions, “encouraging periodic review of fishery allocations.” The GAP and the Council have been and will be an essential forum for this kind of discussion. Allocation review should be based on need as a transparent regional process, and not set to some sort of automatic timetable. **The GAP does not see any need for an external directive regarding allocations between recreational and commercial sectors. The Pacific Council has addressed allocations within its normal process for years. It has been a successful collaborative effort and the GAP prefers the status quo. Councils have the proper tools for considering allocation questions.**

The GAP supports Goal 2, “Supports ecosystem conservation and enhancement.” This continues to be an important concern of the GAP and the Council as a whole. In addition, it is noted that the policy “encourages development and application of sustainable, safe aquaculture to support recreational fisheries consistent with existing agency policy.” Examples of this are, the white sea-bass hatchery program in Southern California and the proposed redfish and red snapper hatcheries in the Panhandle of Florida.

Goal 3 discusses coordination with state and federal management partners to align science, management, and enforcement priorities and strategies in support of stable, predictable and well-monitored recreational fisheries. This goal is similar to desired outcomes in commercial fisheries and will be a useful way to improve monitoring of recreational fisheries.

Goal 4 addresses innovative solutions using “new tools, methods, data collection techniques (electronic catch reporting), gear technology and management approaches.” Similar to advances in commercial fishery monitoring, these emerging technologies will inform managers and councils to provide for more real time and adaptive management. This also speaks to the need for greater catch accountability in recreational fisheries.



Goal 5 commits to providing “scientifically sound and trusted biological, cultural, social and economic information to enable balanced, well-informed decision-making bolstered by continuing programmatic improvements.” The GAP supports this commitment.

The GAP also underscores the importance of Goal 6 regarding communicating and engaging with the public.

The GAP agrees that good agency-representative communication with the RFMCs is key to success.

GAP members queried Mr. Heberer about NOAA now having a written policy for the recreational fishing sector. This apparently grew out of commitments NOAA made during the Recreational Fishing Summit in Alexandria, Virginia. A member of the GAP, who is also on Marine Fisheries Advisory Committee (MAFAC), reported that there is no national commercial fishing policy. The GAP was concerned by the lack of written policies for commercial sectors. The GAP emphasizes that commercial fishing considerations should not be pushed aside with this new emphasis on recreational fishing and aquaculture.

PFMC

11/18/14

RECEIVED

DEC 29 2014



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
1315 East-West Highway  
Silver Spring, Maryland 20910

THE DIRECTOR

DEC 23 2014

Mr. Dan Hull  
Chairman, North Pacific Fishery  
Management Council  
605 W. 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501

Dear Mr. Hull:

Thank you for your letter which requested additional funding to support the North Pacific Groundfish and Halibut Observer Program in 2015. Your request included \$1.1 million for observer coverage, \$0.4 million for observer program infrastructure, and an unspecified amount for electronic monitoring proposals. I recognize that, while the fishing industry has been a long-time and consistent partner in management of Alaska fisheries and has provided funding to support observer programs for many years, the North Pacific Observer Program faces a shortfall in industry-paid observer fees to fund the program in 2015.

As you aware, the National Marine Fisheries Service (NMFS) continues to face significant challenges with its budget. Observer program budget lines increased only slightly in the FY 2015 Omnibus Appropriations Bill passed Congress earlier this month. NMFS staff are in the process of determining available funds for regional observer programs, as well as available funds for electronic monitoring and electronic reporting to support the development and implementation of these technologies across the country. NMFS also is considering requests for observer program support from other regions. I will be able to respond more specifically to your request once the details surrounding our FY 2015 budget are resolved. I will provide you with an update at our next Council Coordination Committee meeting in February 2015, at which time I look forward to learning the potential course of action the Council may consider to address future shortfalls in observer program funding.

I appreciate your interest in this matter.

Sincerely,

  
for Eileen Sobeck





**Aleutian Pribilof Island Community Development Association (APICDA)**

302 Gold Street, Suite 202 | Juneau, Alaska 99801 | Phone: (907) 586-0161 | Fax: (907) 586-0165  
717 K Street | Anchorage, Alaska 99501 | (907) 929-5273 | Fax: (907) 929-5275 | [www.apicda.com](http://www.apicda.com)

December 23, 2014

Ms. Eileen Sobeck  
Assistant Administrator, NOAA Fisheries  
United States Department of Commerce  
1404 Constitution Avenue, NW  
Room 5128  
Washington, DC 20230

Dear Ms. Sobeck:

The Aleutian Pribilof Island Community Development Association (APICDA) would like to express our support of the request by the Alaska members of North Pacific Fisheries Management Council (NPFMC) to implement Emergency Action to reduce halibut PSC limits in the Bering Sea for the 2015 season. APICDA is one of six community development quota organizations in Alaska whose mission is to build strong fisheries based economies and alleviate poverty by empowering the residents of western Alaska to participate in the Bering Sea/Aleutian Islands (BSAI) ground-fish, halibut and crab fisheries. Communities and participants in the BSAI directed halibut fishery are facing substantial and immediate harm due to the current levels of bycatch permitted in the non-directed fisheries. We respectfully urge that NOAA work with the Department of Commerce to take action to address this issue on behalf of the communities of Western Alaska.

In 2015, the recommended harvest table from the IPHC indicated that 93% of the available quota in management area 4CDE will be allocated to the non-directed fisheries as bycatch. This represents an unchanged regulatory cap, while the quota for the directed fishery will decrease from 1.29 million lbs. to 370,000 lbs. in just one year. APICDA represents two communities in the BSAI that rely on halibut as their primary fishery. For St. George, which is located in Area 4C, this recommendation will translate into a 71% decrease and 12,000 lbs. of halibut in total for all of our small boat fishers. The halibut fishery is the only fishery that our members participate in and represents their only means of income. If actualized, this recommendation will essentially mean that St. George will not have a fishery in 2015, as the small amount of quota will not justify the costs of operations and tender service.

While the vast majority of bycatch is occurring in 4CDE, region wide reductions in the BSAI will also have an impact in Atka, which is located in 4B, a management area that has also witnessed a fixed bycatch allocation while the recommended fishery quota has been reduced by 37% from 2014 levels. APICDA operates a small processing plant in partnership with the Atka Fisherman's Association that provides critical job opportunities for local residents and a means for fishers to remain in their community. The viability of Atka's processing plant due to declining quotas is at serious risk this year.

We believe that we are facing a conservation issue that has rapidly translated into a significant management problem. While 2014 stock assessments showed indications of stabilization, trends over the past ten years have shown continuous declines due to small recruitment strengths and decreasing size at age at a coast-wide level. In response, total removals have been reduced and commercial fishery landings in 2014 were the lowest since 1980. In comparison to coast-wide non-target halibut removals, bycatch in the Bering Sea represents a much higher overall portion and is reaching a point in the very near future where it could comprise all of the removals. We are concerned about the biological implications of a solely based bycatch harvest that results in a greater proportion of smaller size fish taken within a limited biomass and how this growing imbalance between the target and non-target removals will impact the long term health and dynamics of the stock.

As a CDQ group we are invested in many sectors that utilize halibut for bycatch. These fisheries provide critical revenue for investments in infrastructure and social programs in our region. We recognize and appreciate efforts of the Council that have directed industry to voluntarily reduce halibut bycatch. Deck sorting in particular, tested under Experimental Fishing Permits, has proven very effective at reducing handling time and mortality and we support any measures to expedite implementation for the Amendment 80 fleet. However, we agree with the majority members of the NPFMC that immediate action is needed to maintain a viable directed fishery in the BSAI for 2015 and that using the council process and timeline will not have the impact of preventing significant direct economic loss and negative community impacts. We urge the agency to recognize the merits of this request and act to protect the livelihoods of our communities.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lawrence Cotter', with a stylized flourish at the end.

Lawrence Cotter  
Chief Executive Officer, APICDA

Cc: Governor Bill Walker, Alaska  
Congressman Don Young  
Senator Lisa Murkowski  
Senator Dan Sullivan  
Mr. Samuel Rauch, Deputy Assistant Administrator, NOAA  
Mr. Chris Oliver, Executive Director, NPFMC  
Mr. Sam Cotten, Acting Commissioner, ADFG

10/28/14

Dear North Pacific Fishery Council

North Pacific Fishery Management Council  
605 West 4th, Suite 306  
Anchorage, Alaska 99501-2252  
Phone: (907) 271-2809  
Fax: (907) 271-2817

RECEIVED

NOV 29 2014

We are very concerned about the Bering Sea and the animals that live in it. The Bering Sea can be found between the Alaskan and the Russian's Siberian coast.

The Bering Sea produces most of America's seafood. This means that over half of the seafood consumed in the U.S. comes from the Bering Sea. How are we supposed to survive if companies are destroying the food supply? Even though the Bering Sea is about 7,500 square miles, it is still a fragile place. Companies can still cause damage to it.

The destruction of the Bering Sea is caused by unregulated fishing gear. Unregulated fishing gear is ripping apart precious coral reefs, sponge, fish, and marine life habitats. Another problem is that native people from the area around the Bering Sea are running out of food because of overfishing. Overfishing is stripping the salmon population. Generations need to be able to eat and survive.

Another problem is oil spills. Companies have to ship oil in tubes and ships. During the shipment sometimes the oil spills. When this happens it gets all over the animals. When the oil gets on the animals the animals get poisoned. They also get poisoned by drinking/eating the oil. When fish from the food chain die-out other fish die-out too. So all we ask of you is to stop the destruction of this ocean.

My friends and I think you should protect the Bering Sea. We need to stop overfishing and we need to have better regulations on fishing gear.

From,

Four concerned Lehigh Valley Academy Regional Charter School student,  
Joel, Darren, Michael, William,

Bethlehem, PA 18017

*Miss Palayzo*


*\*This was part of a project that the students  
Completed about helping our Biomes*





JAN 7 2015

MEMORANDUM FOR: Council Coordination Committee and MAFAC Members

FROM: Samuel Rauch 

SUBJECT: Approval of Policy and Procedural Directives

Dear Council Coordination Committee and MAFAC Members:

In January 2012, the Council Coordinating Committee (CCC) requested that NMFS: (1) better integrate Councils into the NMFS's ESA section 7 consultation process, and (2) increase transparency in the ESA jeopardy determination process for fisheries management actions.

In May 2012, the CCC and Marine Fisheries Advisory Committee (MAFAC) requested establishment of a joint ESA working group (ESA Working Group) to make recommendations on these topics. MAFAC established an ESA Working Group consisting of four Fishery Management Council Members, four MAFAC Members, and three NMFS staff with a goal of developing recommendations for NMFS consistent with the CCC's requests. In November 2013, following a year of review and deliberation, the working group submitted recommendations to MAFAC for achieving these goals. MAFAC submitted its recommendation to NMFS in December 2013. In February 2014, the CCC agreed that NMFS should accept the MAFAC recommendations.

NOAA Fisheries has now issued this Policy Directive that implements MAFAC's and the CCC's recommendations pertaining to the CCC's first issue of better integrating Councils into the ESA section 7 process. Recommendations pertaining to transparency of jeopardy determinations will be addressed separately.

The policy is based on the conclusion that integrating Councils' fishery management planning processes with the ESA section 7 processes, along with enhanced coordination and collaboration, will result in more efficient development of regulations and policies that accomplish the goals of the ESA, NEPA, and the MSA. To foster this integration, the policy recognizes the unique role of councils, supports existing productive arrangements that are already in place for some region/council pairs, stresses the importance of early communication and coordination, and establishes a process through which councils may request to review draft biological opinions, as well as parameters that apply to an agency decision to release a draft biological opinion.

The policy is based on recommendations of the MAFAC working group that was established to study and make recommendations pertaining to this issue and has been extensively reviewed and refined through discussions with regional leadership including both PR and SF divisions.



***NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE 01-117***  
***January 19, 2015***

***Fisheries Management***

***INTEGRATION OF ENDANGERED SPECIES ACT SECTION 7 WITH  
MAGNUSON-STEVENS ACT PROCESSES***

**NOTICE:** This publication is available at: <http://www.nmfs.noaa.gov/op/pds/>

**OPR:** F/SF (M. Macpherson)

**Certified by:** F/SF (Alan Risenhoover)

**Type of Issuance:** Initial

***SUMMARY OF REVISIONS:***

## **Integration of Endangered Species Act Section 7 with Magnuson-Stevens Act Processes**

### **I. Background and Need**

The Endangered Species Act (ESA), in Section 7(a)(2), requires federal agencies (“action agencies”) to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of threatened or endangered species or adversely modify or destroy such species critical habitat in consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (NMFS) (“consulting agencies”), depending on the species or habitat affected. The consulting agencies’ determinations of whether a proposed action is likely to result in jeopardy or adverse modification is reached through the section 7 consultation process set forth at 50 CFR Part 402. Informal consultation is an optional process in which the action agency and the consulting agency consider the effects to ESA listed species from a proposed action, and it concludes if the relevant consulting agency or agencies concur with an agency’s determination that its planned action may affect, but is not likely to adversely affect listed species or their critical habitat. Formal consultation is required if one or both consulting agencies do not concur with the action agency’s determination or if the action agency determines that its action may affect listed species or their critical habitat.

Formal consultation may be initiated when the action agency provides a written request with sufficient information about the proposed action and its effects on listed species and designated critical habitat. Formal consultation concludes with the consulting agency’s issuance of a biological opinion (BO), which contains the consulting agency’s conclusion as to whether the action is likely to jeopardize listed species or destroy or adversely modify critical habitat. If the BO concludes that the proposed action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, the consulting agency proposes “Reasonable and Prudent Alternatives” (RPAs) that would allow the action to proceed with modifications to avoid jeopardy or adverse modification. In this case, the action agency should either modify the proposed action to bring it into compliance with the ESA, or not take the action. The consulting agency and action agency should work together to avoid jeopardy conclusions and, when this is not possible, work together to develop RPAs. The BO also includes an “incidental take statement” (ITS) that specifies the number of individuals, or extent of a population, of a listed species that will be “taken” – defined broadly under the ESA to include harm and harassment as well as killing, hunting and capture – incidental to the planned action, and exempts that take from the ESA section 9 prohibitions on take. An action agency must reinitiate the consultation process if the specified amount or level of take is exceeded.

In January 2012, the Council Coordinating Committee (CCC) submitted a letter to NOAA’s NMFS requesting: (1) better integration of Councils into the NMFS’s ESA section 7 consultation process, and (2) increased transparency in the ESA jeopardy determination process for fisheries management actions. In May 2012, the CCC and Marine Fisheries Advisory Committee (MAFAC) requested establishment of a joint ESA working group (ESA Working Group) to make recommendations on these topics.

In October 2012, the MAFAC ESA Working Group was established consisting of four Fishery



Management Council (Council) Members, four MAFAC Members, and three NMFS staff with a goal of developing recommendations for NMFS consistent with the CCC's requests. In November 2013, following a year of review and deliberation, the working group submitted recommendations to MAFAC for achieving these goals. MAFAC submitted its recommendation to NMFS in December 2013. In February 2014, the CCC agreed that NMFS should accept the MAFAC recommendations.

This Policy Directive implements MAFAC's and the CCC's recommendations pertaining to the CCC's first issue of better integrating Councils into the ESA section 7 process. Recommendations pertaining to transparency of jeopardy determinations will be addressed separately.

## **II. Applicability**

This policy applies to ESA section 7 consultations that are conducted on fishery management activities that: (1) are governed by fishery management plans developed by the Councils pursuant to the MSA; and (2) may affect endangered or threatened species or designated critical habitat under NMFS' jurisdiction.

This policy does not apply to fisheries managed solely by the Secretary. It does not pertain to consultations on species or critical habitat under the jurisdiction of the U.S. Fish and Wildlife Service. It does not apply in the case of consultations conducted on activities taken by other action agencies.

There are generally three opportunities for collaboration with the Councils when section 7 of the ESA applies. The first occurs when a Council is in the process of developing a new or modified management measure and NMFS determines that the action may affect endangered or threatened species or designated critical habitat. The second opportunity is during formal or informal consultation between the unit of NMFS functioning as the action agency (Sustainable Fisheries (SF)), and the unit of NMFS functioning as the consulting agency (generally Protected Resources (PR)), once a proposed action has been identified. Another opportunity occurs when a change external to the Council process triggers the need for initiation, or reinitiation, of consultation on the fishery action. For example, reinitiation is triggered by a change in species listings, a designation or revision of critical habitat, an exceedance of the amount or level of incidental take specified in an ITS, or if new scientific information becomes available that may affect the findings of an existing BO. NMFS has determined that this policy is applicable to all three situations. NMFS and the Councils are encouraged to use this policy and guidance to foster broad cooperation and communication pertaining to our joint stewardship and management responsibilities.

## **III. Key Terminology**

**Action Agency** – For fishery management actions, the “action agency” is NMFS's Office of Sustainable Fisheries or regional Sustainable Fisheries Division.

**Consulting Agency** - For most marine/anadromous species, the “consulting agency” is NMFS's

Office of Protected Resources or regional Protected Resources Division. However, in some cases, program offices within Sustainable Fisheries may conduct ESA consultations, depending on the species involved (e.g., salmon fisheries in the West Coast Region). This document uses the term “consulting agency” to refer to the office within NMFS that is acting as the consulting agency.

**Section 7 Consultation** – There are generally two types of consultation: informal and formal. An “informal” consultation includes all discussions and correspondence between an action agency and consulting agency to assist in determining the effects of an action or when the action agency determines that a proposed action may affect, but is not likely to adversely affect, ESA-listed species or critical habitat. A “formal” consultation is required when a proposed action may affect listed species and/or adversely modify or destroy critical habitat.

**Biological Opinion** – As part of a formal consultation, the consulting agency prepares a BO. This document states the consulting agency’s opinion on whether the proposed action is likely to jeopardize a listed species or destroy or adversely modify a listed species’ critical habitat. (50 CFR 402.14(h)).

**Biological Assessment** – A Biological Assessment (BA) is a document developed by the action agency to evaluate the potential effects of a proposed action on listed species and critical habitat. (See 50 CFR 402.12.) It can be used to support the action agency’s determination(s) during an informal consultation or can be used to initiate formal consultation. BAs are only required for major construction projects.

**Biological Evaluation** - A generic term used to document analyses and Section 7 determinations when a BA is not required. Biological Evaluations often consist of NEPA documents (Environmental Assessments/Environmental Impact Statements) and other supporting documents. This document accompanies the request for consultation for FMP related actions.

**Jeopardy** – Under the ESA, jeopardy occurs when an action is reasonably expected, directly or indirectly, to diminish a species’ numbers, reproduction, or distribution so that the likelihood of survival and recovery in the wild is appreciably reduced. (See 50 CFR 402.02)

**Incidental Take Statement** – BOs that contain a “no jeopardy” determination include Incidental Take Statements (ITS). The ITS includes a description of the expected amount or extent of take of ESA listed species resulting from the proposed action. The ITS also includes reasonable and prudent measures (RPMs) and terms and conditions that must be carried out by the action agency in order to be exempt from take prohibitions in the ESA.

#### **IV. Policy**

It is NMFS’s policy that integration of Councils’ fisheries management planning processes with the ESA section 7 process, along with enhanced coordination and collaboration, will result in more efficient development of regulations and policies that accomplish the goals of the ESA, National Environmental Policy Act (NEPA), and the Magnuson-Stevens Act (MSA).

##### **A. Recognition of the Unique Roles of Councils**

The MSA establishes the basis for Federal management of United States fisheries and vests primary management responsibility with the Secretary of Commerce. The Secretary has delegated this responsibility to the NMFS. The MSA management system is unique insofar as Congress has established eight regional fishery management councils and given them special responsibilities for recommending fishery management plans (FMPs) and amendments and regulations. FMPs and regulations must comply with all applicable law including the ESA.

Composed of Federal, state, and territorial fishery management officials, participants in commercial and recreational fisheries, and other individuals with experience or training in fishery conservation and management, the Councils' primary responsibility is to develop and recommend fishery management measures and actions for any fishery under their jurisdiction that requires conservation and management. Specifically, MSA section 302(h)(1) requires Councils to prepare and submit FMPs to NMFS for fisheries in need of conservation and management. Section 303(c) of the MSA requires Councils to submit to NMFS proposed regulations that the Councils deem necessary and appropriate to implement the FMP. The MSA mandates an open, public process for the development of fishery management measures and actions through the fisheries management council system. For MSA fishery management actions, NMFS's authority to modify Council-recommended fishery management plans and plan amendments is restricted: NMFS may approve, disapprove, or partially approve a proposed FMP or FMP amendment recommended by the Council, and the sole basis for disapproval of any such recommendation is that it is not consistent with applicable law, including NEPA, the MSA and its national standards, or the ESA. NMFS may not modify regulations in a way that is inconsistent with an underlying FMP or amendment.

In recognition of this unique relationship between NMFS and the Councils, in 2013, NMFS issued a Policy Directive on "National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions under the Magnuson-Stevens Act," that pertains to roles and responsibilities for NEPA compliance. That policy promotes early cooperation and partnership. Recognizing that each Region/Council pair frequently works as a team to achieve the fishery management mission with available resources, the policy fosters continued cooperation and joint prioritization between NMFS and the fisheries management councils. While recognizing that Councils are not Federal action agencies for the purposes of NEPA, the policy also acknowledges that the Councils are indispensable elements in the MSA statutory scheme and as such, are an integral part of the Department of Commerce team. Given the unique relationship between NMFS and the Councils, either NMFS or Council staff may draft the NEPA document as long as NMFS participates early, provides information or advice as needed, conducts appropriate outreach with other agencies and constituents, and independently evaluates each NEPA document's adequacy prior to using it in some fashion to satisfy its NEPA responsibilities.

Similarly, the Councils play a critical role in supporting NMFS's ability to comply with the ESA. For example, in order to initiate the consultation, the Action Agency must submit a written request to the Consulting Agency that includes a description of the action and potential effects on listed species and critical habitats along with a determination of effect. (50 CFR 402.14(c)). This means consultation cannot begin until the Council can sufficiently describe the

proposed action. Additionally, the Action Agency often relies on the analysis of protected species/critical habitats in the NEPA document, which may be prepared by the Council, to support its determinations on effect to ESA-listed species and/or critical habitat. Another example of the Council's critical role in supporting NMFS ability to comply with the ESA occurs during the formal consultation process when a BO concludes that a proposed fishery action *is* likely to jeopardize the continued existence of an ESA-listed species or result in destruction or adverse modification of critical habitat. Alternatives must be developed in these circumstances and, as a result, the Consulting Agency and Action Agency must work together to develop RPAs that will remove jeopardy or adverse modification to the species and/or critical habitat and, therefore, allow the action to proceed. RPAs must:

- Be consistent with the intended purpose of the action;
- Be consistent with the scope of the Federal agency's legal authority;
- Be economically and technologically feasible for the agency to implement;
- Not jeopardize the continued existence of listed species or result in adverse modification of critical habitat

When RPAs are provided, NMFS should either modify the proposed action in order to comply with the ESA or not take the action. However, since NMFS cannot modify council-recommended FMPs or amendments, it is imperative that NMFS work closely with the Councils to accommodate ESA requirements.

## **B. Fostering Council Involvement**

NMFS recognizes that any policy to align Council processes with the ESA section 7 process should be flexible, and should allow for NMFS and a Council to scale Council involvement appropriately depending on the facts and circumstances of the action under review. NMFS offers the following guidelines for enhancing coordination and collaboration among SF, PR, and Councils throughout the ESA section 7 consultation processes:

### **1. Existing Arrangements**

This policy recognizes that some region/council pairs have existing working relationships pertaining to ESA compliance for MSA fishery management actions. This policy does not supersede those agreements. Rather, it offers an additional opportunity for further coordination if the Council requests a more specific role. There is no need to prepare an additional agreement where both NMFS and the Council are satisfied with current arrangements.

### **2. Early Coordination and Cooperation**

This policy fully supports the MAFAC report's conclusion that early collaboration can reduce the likelihood that the preferred alternative will result in jeopardy or destruction or adverse modification. This policy stresses and calls for early involvement between PR, SF and the Councils prior to initiation of consultation. Specifically, early involvement from PR through technical assistance and/or assignments of liaisons is encouraged.

In addition, engaging Consulting Agency staff in reviewing and providing appropriate information for sections of NEPA documents can provide greater certainty that the documents will address effects of the action on ESA-listed species, provide a means for the public to understand the effects through the NEPA public review process, and ensure that the Council has adequate information to make its recommendations.

### **3. “ESA/MSA Integration Agreements”**

NMFS regional offices and Councils may choose to develop written agreements providing for specific types of Council participation in the ESA section 7 process, i.e., “ESA/MSA Integration Agreements.” As stated above, Council involvement will be most effective if based on early and continuous communication and cooperation with the Action Agency and the Consulting Agency. This policy recognizes that there may be cases where the Action Agency and/or Consulting Agency may seek input from a Council during consultation. Additionally, there may be cases when the Regional Administrator (RA) for a NMFS regional office decides to share a draft BO with the Council. According to the ESA regulations, the Action Agency may request a copy of the draft BO for the purpose of reviewing RPAs, and the Consulting Agency shall provide it. (50 CFR 402.14(g)(5)). The Consultation Handbook<sup>1</sup> indicates that, if the action agency supports participation by a party who may not fit the definition of “applicant,” the consulting agency should try to work with that party, although the procedural opportunities afforded to “applicants” would not apply to that party (Consultation Handbook, p. 2-12).

Any ESA/MSA Integration Agreement should provide for early and continuous cooperation and communication between Consulting Agency, Action Agency, and the Councils and may allow for sharing of draft BOs only in accordance with the criteria provided below.

#### **a. On an Action-Specific Basis**

NMFS may request input and participation from Councils during technical assistance and/or consultation phases of ESA section 7 consultation. A Council, through either the Chair or the Executive Director, may also request involvement in an ESA section 7 process by transmitting a letter to the appropriate RA.

When NMFS either requests Council involvement or agrees to a Council’s request for involvement, the agreement may allow the Council to advise the Action Agency throughout the ESA section 7 process as appropriate. Such involvement may include assisting NMFS with any or all of the tasks described in the section 7 consultation regulations including: describing the proposed action for purposes of initiating consultation; identifying feasible alternatives; providing Council views as to the “best scientific information available” on fisheries management practices and potential effects of the proposed action on listed or proposed listings of species and designated or proposed designations of critical habitat; preparing draft biological assessments, biological evaluations, and other ESA section 7 consultation initiation documents;

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<sup>1</sup> U.S. Fish and Wildlife Service and NMFS, “Endangered Species Act Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act,” March 1998 (hereinafter, “Consultation Handbook.”)

and preparing or reviewing additional information requested by the Action Agency or the Consulting Agency during consultation.

If a Council requests an opportunity to review a draft BO during a formal ESA section 7 consultation, the RA may decide to provide an opportunity for Councils to review a draft BO, including reviewing draft RPAs in the case of a jeopardy BO, or draft Reasonable and Prudent Measures (RPMs) to be included in an ITS.

These opportunities for enhanced coordination and communication among Councils, the Action Agency, and the Consulting Agency with regard to ESA section 7 do not require designations of Councils as particular special parties described under the ESA regulations nor do they affect NMFS's authorities pursuant to MSA or NEPA.

NMFS's requests to Councils should specify the level of Council involvement sought by NMFS in the technical assistance, pre-consultation, informal consultation, formal consultation, and/or other process; the designated points of contact at NMFS for coordination purposes; and any other relevant information that will better integrate the ESA consultation process with the Council process and assist NMFS with its responsibilities under the ESA.

In response to Council requests, NMFS will respond in writing to the Council, describing the level of coordination between the Council and NMFS deemed appropriate for the consultation, identifying points of contact at NMFS, and providing any other relevant information that will assist NMFS and the Council in their coordination efforts. It is expected that NMFS generally will grant a Council's request for involvement in an ESA section 7 process. However, NMFS may deny the request in circumstances that include NMFS' determination that the Council's requested level of involvement would violate federal law or the order of a court in ongoing litigation or when existing deadlines do not provide sufficient time for the level of involvement requested.

#### **b. On a Region/Council Basis**

In addition to the steps outlined above pertaining to Council involvement in an individual ESA section 7 consultation process, when requested by a Council, NMFS regions and the requesting Council may develop a generally-applicable, written working agreement (either within the context of, or modifications to, their Regional Operating Agreements, or through another form of formal written documentation such as a Memorandum of Understanding (MOU), outlining roles, responsibilities, and expectations for each Region and Council pair during ESA section 7 consultation process. Such an agreement should be clearly titled as the "ESA/MSA Integration Process," should clarify the circumstances covered by the agreement, and should state that NMFS retains discretion to conduct any individual ESA section 7 consultation differently from the process spelled out in such an agreement. Such a written agreement may be signed by NMFS, and the relevant Council, as appropriate.

#### **c. Criteria**

In developing a written agreement on either an action-specific or a generalized basis, the

regions and Councils should comply with the guidance set forth below.

**i. Roles of NMFS Offices.**

The ESA section 7 regulations specify roles for Action Agencies and Consulting Agencies. To implement this policy, each region must identify which office is acting in which of these roles and the offices must fulfill the roles set forth in the regulations. In most instances, this means that the Action Agency communicates directly with the Council for the purposes of developing initiation documents, collecting scientific information regarding the fishery and interactions with ESA species and critical habitat, and developing alternatives to minimize interactions resulting in take of species.

The Consulting Agency should communicate with the Action Agency, and Councils if appropriate, early and often regarding affected species and critical habitat and fisheries and scientific information needed for the consultation. This can be achieved by making presentations at Council meetings, participating on interdisciplinary teams with the Action Agency and Councils, and providing other forms of early communication and technical assistance. The Action Agency should maintain its role as liaison throughout the section 7 process. During formal consultation, the Action Agency must facilitate direct communication with the Council; determine how to address the Council's concerns on its (the Action Agency's) record, and then communicate issues to the Consulting Agency, which may be the same or different from those communicated by the Council. The Consulting Agency must maintain a record that supports the manner in which it addresses comments submitted by the Action Agency and other decisions during consultation.

**ii. Record Considerations when sharing draft BOs.**

If the RA determines that a draft BO should be shared with a Council, it is likely that the Council will provide comments. While the section 7 regulations specify that the purpose of sharing a draft BO is for analyzing RPAs, it will not be possible to limit the comments that are submitted to specific topics such as RPAs. It is not necessary for NMFS to develop a separate "comment and response" document addressing Council comments on a draft BO. However, both the Action Agency and Consulting Agency should make sure that their records appropriately consider and address any comments received. For the Action Agency, it may be appropriate to respond to Council input orally during a Council-meeting, or in writing in any relevant follow-up report. The Consulting Agency would not be required to respond to each individual comment. However, the final BO should describe any additional considerations that affect the analysis, provide the rationale supporting the final decision, and include any modifications to the document that are appropriate in light of relevant information.

**iii. Information Quality Act (IQA) Compliance for Release of Draft Biological Opinions to Councils.**

Pursuant to the IQA (P.L. 106-554 § 515), NOAA has guidelines regarding the quality, objectivity, utility, and integrity of information that it disseminates. Dissemination means agency initiated or sponsored distribution of information to the public. Dissemination does not

include distribution limited to: government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; or responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to: correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes. ESA section 7 consultation documents that are posted on a public internet website or Public Consultation Tracking System are publicly disseminated.

Release of draft BOs to Councils would constitute dissemination to the public. Therefore, pre-dissemination review and certification including review by NOAA General Counsel and the RA must be completed prior to release. NOAA Information Quality Guidelines are posted on the NOAA Office of the Chief Information Officer Webpage.

[http://www.cio.noaa.gov/services\\_programs/info\\_quality.html](http://www.cio.noaa.gov/services_programs/info_quality.html)

During formal consultation, NMFS may agree to release preliminary drafts of RPAs or RPMs prior to release of the entire draft opinion if otherwise consistent with this policy. However, during formal consultation no other individual components of a BO may be released to the Council out of context of the entire cleared draft.<sup>2</sup> For example, NMFS will not release a draft effects analysis as a stand-alone document.

#### **iv. Staff, Budget, and Timing Considerations.**

In developing these regional agreements, NMFS and the Councils should carefully weigh the costs and benefits of sharing draft BOs that have been cleared in accordance with section IV.B.3.c.iii of this policy. This choice can have workload, budgetary and timing implications. Specific timing considerations are as follows.

To initiate formal consultation, the Action Agency must submit a written request that includes a description of the action and potential effects on ESA-listed species along with a determination of effect for each species and its critical habitat, if present. (50 CFR 402.14(c)). This means the request for consultation cannot begin until the Council can sufficiently describe and therefore, provide the proposed action to the Action Agency. Consultation also cannot begin until the Consulting Agency has received all requested information from the Action Agency. Once all requested information has been received by the Consulting Agency, the ESA requires that the formal consultation be concluded within 90 days (unless mutual agreement between the Consulting Agency and the Action Agency to extend) (ESA section 7(b)(1)(A)), and that a BO documenting the Consulting Agency's opinion about how the action affects the listed species must be provided within 45 days (unless extended) of the conclusion of the consultation (50 CFR 402.14(e)). While the default total time established by the statute and regulations between initiation of consultation and completion of the final BO is 135 days, the Consulting Agency

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<sup>2</sup> This statement does not preclude frontloading activities or the sharing of information between NMFS and council staff to describe the proposed actions. The proposed action should be sufficiently described prior to initiation of the formal consultation clock.



sometimes exceeds this time period due to mutually-agreed extensions.<sup>3</sup>

With respect to timing, the proposed process of having the Council review a draft BO, that has been cleared in accordance with section IV.B.3.c.iii of this policy, would likely prevent the Consulting Agency from completing the consultation and finalizing the BO within 135 days. Thus, the Action Agency and the Consulting Agency should mutually consider whether there is a need to extend the deadline to accommodate Council review. Factoring in the time required for review, clearance, and publication of Council meeting agendas in the Federal Register, a Council would need several weeks advance time in order to place on its agenda review of a draft BO, which has been cleared in accordance with section IV.B.3.c.iii of this policy. The process of Council review could also affect the timing of completion of associated NEPA documents and/or Council actions relying on the outcome of the BO.

Before agreeing to release of a draft BO that has been cleared in accordance with section IV.B.3.c.iii of this policy, the Action Agency and the Consulting Agency must consider and document whether there is a need for an extension of the 135 day period to provide sufficient time for Council review.

#### **v. Freedom of Information Act Considerations**

Sharing a draft BO, that has been cleared in accordance with section IV.B.3.c.iii of this policy, with Councils and the public affects the document's status. Once shared, NMFS no longer considers it an intra-agency memorandum exempt from the disclosure requirements of the Freedom of Information Act (5 USC §552(b)(5)). Because Councils are public bodies, documents shared with them are considered public.



1/5/2015

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Date

<sup>3</sup> According to the Consultation Handbook, "initiation of consultation" for purposes of starting the 90-day time period on formal consultation occurs when the consulting agency determines the information submitted is complete. Consultation Handbook, section 4.4, pp. 4-5 – 4-8.