

(B) Within 30 days after receiving a recommendation under subparagraph (A), a Federal agency shall provide a detailed response in writing to any Council commenting under paragraph (3) and the Secretary regarding the matter. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.

97-453, 101-627, 104-297

**(c) EMERGENCY ACTIONS AND INTERIM MEASURES.--**

(1) If the Secretary finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency<sup>4</sup> regulations or interim measures necessary to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery.

(2) If a Council finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery--

(A) the Secretary shall promulgate emergency<sup>4</sup> regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by unanimous vote of the members who are voting members, requests the taking of such actions; and

(B) the Secretary may promulgate emergency<sup>4</sup> regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by less than a unanimous vote, requests the taking of such action.

(3) Any emergency regulation or interim measure which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation or interim measure promulgated under this subsection--

(A) shall be published in the Federal Register together with the reasons therefor;

(B) shall, except as provided in subparagraph (C), remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 180 days, provided the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Council recommendation for emergency regulations or interim measures, the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis;

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<sup>4</sup> Section 110(b)(2) of Public Law 104-297 appears to insert "or overfishing" after "emergency" each place it appears in section 305(c)(1) and (2). The editors assume Congress did not intend to insert "or overfishing" between the words "emergency" and "regulations".

(C) that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist, *Provided*, That the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary's action; and

(D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations or interim measures<sup>5</sup> promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

Dr. Richard Gierak, Interactive Citizens United, Yreka, California

### **C.6.c. Adopt Draft Amendments for Public Review**

The Council directed the staff to prepare Amendment 14 for public review, taking into account the recommendations of the SSC, STT, SAS, and tribes, and with other recommended additions or changes as provided below. (Motion 10)

Mr. Boydston noted that the proposed conservation alert criteria included options which required no fishing impacts on stocks which were projected to be below, or 50% below, the stock conservation objective. Such criteria could result in large areas of closed fisheries unless an emergency rule were granted to allow incidental harvest impacts. Mr. Robinson noted that this was not too different from the status quo in which you don't violate the spawner floor unless you can justify there are benefits to do so under an emergency rule. Mr. Boydston recommended that Chapter 11 (Schedule and Procedures for FMP Amendment) include reference in its title to the implementation of emergency rules.

Council members proposed the following changes be incorporated in the public review draft:

Page 5-6, change the last sentence in the 6<sup>th</sup> paragraph to: "The Council may deviate from subarea quotas to meet recreational season objectives based on the agreement of representatives of the various affected ports".

Page 5-7 under selective fisheries: Eliminate the last two paragraphs in the section (as recommended by the SAS) and add a criteria specifying that selective fisheries may only occur in August and September (to meet modeling concerns).

In Section 6.5.3, include the tribal recommendation that implementation of selective fisheries for marked or hatchery fish must be in accordance with US v. Washington stipulation and order concerning co-management and mass marking (Case No. 9213, Subproceeding No. 96-3).

Extend EFH to include the entire EEZ as there is no doubt that significant fisheries occur outside the present designation which only extends to 60 KM (37 miles).

Ensure that the areas above all passable dams are included in EFH.

Allow staff the flexibility to modify the conservation alert options to provide more workable criteria to allow incidental harvest, or request specific input from the public on that issue.

### **C.6.d. Adopt Public Hearing Schedule**

The Council reviewed the proposed hearing schedule in Attachment C.6.d. which suggested hearings during the first week of February in Westport, Washington; North Bend, Oregon; and Eureka and Sacramento, California. In view of past low attendance at amendment hearings and other concerns, the Council adopted the schedule with the following changes (Motion 11):

The hearing in Eureka was eliminated due to expected small turnout for amendment issues which have very little local impact.

The hearing proposed for Westport was moved to Olympia where more public could be expected to participate.

Mr. Six referred the Council to Staff Report C.6.b. concerning procedures for announcing and holding public hearings to encourage public participation. He asked the Council to consider the recommendations in that report when establishing public hearings.