

DRAFT SUMMARY OF COMMENTS ON THE PROPOSED FLOWCHART ON FISHING  
REGULATIONS IN NATIONAL MARINE SANCTUARIES  
FROM A JANUARY 30, 2005 CONFERENCE CALL AND COUNCIL STAFF.

A conference call hosted by Mr. Jim Balsiger, National Marine Fisheries Service Acting Deputy Assistant Administrator, and Captain Craig McClean National Ocean Service Acting Deputy Assistant Administrator, was held on January 30, 2005 to answer questions and solicit initial comments from the Regional Fishery Management Councils (RFMCs) regarding proposed processes and draft flowcharts designed to improve coordination and collaboration on the development and implementation of fishing regulations within national marine sanctuaries (Agenda Item I.2.a, Attachment 1. Due to the number of participants and the structure of the call itself, actual attendance is unknown and some participants were unable to voice their comments. However, several members of the Pacific Fishery Management Council (Pacific Council) and Pacific Council staff were in attendance. This document does not represent a record of the call or minutes of the proceedings. Rather, this document is a preliminary summary of Pacific Council staff comments and notes from the call to assist the Council and its advisory bodies develop comments.

The hosts of the call briefly reviewed the memorandum and draft flowcharts and clarified that the purpose of the call was to answer any questions or concerns from the group and to solicit any initial comments. It was noted that written comments are encouraged and were requested by April 30, 2006. The hosts noted that this call represented one of several calls being held, other groups participating in similar calls include National Marine Fisheries Service Regional Offices, National Marine Sanctuaries (NMS) and the National Marine Sanctuary Program (NMSP), treaty tribes, and states.

**Purpose of the Document and Flowchart**

- The group clarified that the memorandum and draft flowcharts represent a proposal for improving the current regulatory mechanisms for national marine sanctuaries, and was not intended to represent a review of current practices.

**NMSA Regulatory Process**

- **Development of NMS Goals and Objectives**
  - Representatives of several RFMCs observed that the key step in the NMSA process of developing NMS fishing regulations was the development of national marine sanctuary goals and objectives: after that point, the steps represent a means to that end. For example, if a goal is established for a no-take area, thereafter, the RFMC-related process is focused on the RFMC providing regulations to achieve the no-take status, not to debated whether no-take status is the appropriate objective.

- It was also noted that the process of establishing NMS goals and objectives involves little or no RFMC input. However, these goals and objectives become "the benchmark by which a RFMC action under the National Marine Sanctuaries Act (NMSA) is assessed" (page 5, first full sentence at top of page).
  - Participants suggested the RFMC be brought formally into the decision-making phases of this process and a scientific rationale for the goals and objectives be included as a precursor, along with the identified RFMC role in steps 1 through 3 on page 4.
  - It is unclear how Sanctuary Advisory Councils (SAC) are established, how Pacific Council representation will function (it was noted there are RFMC seats on some SACs, but no Pacific Council seat on any of the five West Coast SACs), and what role SAC recommendations play in NOAA determination of final sanctuary goals and objectives.
- **Decision Information Packages** - The information referred to as "supporting documentation and analyses" (page 5, step 5ii.) should be the preliminary Draft Environmental Impact Statement (DEIS) elements relevant to fishing regulations, and include all components that will be in the final DEIS.

### **RFMC and NMSP Coordination**

- The Pacific Council supports coordination and is appreciative of NMS staff attendance at meetings of the Pacific Council and its advisory bodies. Recently, funding sources available to both the NMSP and RFMC have been reduced or eliminated making current or future coordination efforts difficult without additional resources. The Pacific Council noted that coordination with the NMSP is well documented in the section entitled "Magnuson-Stevens Act Regulatory Process" beginning on page 9. The proposal requires RFMC action to facilitate NMSP review up to as well as after Council final action. However, an analogous process is not described under the NMSA Regulatory Process. Although indicated in the NMSA flowchart, there is no description of NMSP coordination with RFMCs beyond the NMSA 304(a)(5) process. Further, within the 304(a)(5) process, a critical step involves internal NOAA analysis under which there is no consultation with RFMCs or the NMSP until the NOAA decision is made. The Pacific Council would have benefited from such coordination with NOAA General Council during the recent 304(a)(5) process regarding fishing regulations within the Channel Islands National Marine Sanctuary.

### **Review Periods**

- The RFMCs are afforded a limited response period of 120 days under the NMSA 304(a)(5) process. The Pacific Council notes this review period does not allow thorough Pacific Council review nor adequate public participation as this period rarely encompassed two Pacific Council meetings. The NMSP and NOAA have frequently granted extensions of the response period for this purpose but, requiring the Pacific Council to repeatedly request such extensions does not represent cooperation and collaboration.

### **MSA Regulatory Process**

- **NMSP Input Prior to RFMC Final Action** - Step VI of the MSA Regulatory Process pertaining to RFMC final action states, "The NMSP would be given an opportunity to review any such document for those MSA actions developed from the NMSA 304(a)(5) regulatory process to fulfill sanctuary goals and objectives." (presumably after the final Council vote). The Pacific Council notes that this review, and the resulting NMSP recommendations would better serve the process if provided under step V - RFMC Deliberation and Public Review (prior to the RFMC final vote).

### **MSA Regulatory Streamlining**

- The Pacific Council is encouraged to see the incorporation of Regulatory Streamlining principles within the proposed MSA regulatory process. The Pacific Council is currently working on draft Operational Guidelines and regulatory test cases and encourages similar efficiencies be developed for the NMSA process.