

From: Alan Risenhoover <[Alan.Risenhoover@noaa.gov](mailto:Alan.Risenhoover@noaa.gov)>

Date: Wed, 30 Jul 2008 14:00:01

Dear Council Chairs and Executive Directors ---

Good afternoon - Attached is a memo from the Assistant Administrators of the National Ocean Service and National Marine Fisheries Service, Jack Dunnigan and Jim Balsiger, announcing the completion of the final internal operational guidelines document, NOAA's Regulation of Fishing in National Marine Sanctuaries. The draft document was presented to Regional Fishery Management Councils and Sanctuary Advisory Councils for comment on January 6, 2006 and the final document is attached here. Thank you for your comments on the draft. Each of your comments was considered during the finalization of the document.

The attached document explains the process for deciding under what authority fishing regulations within sanctuaries will be effectuated. NOAA has two statutory authorities, the National Marine Sanctuaries Act (NMSA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA) that can be used to regulate fishing activities. NOAA considers both the NMSA and the MSA as tools that can be used exclusively or in conjunction to meet the goals and objectives of national marine sanctuaries. The attached document graphically traces NMSA and MSA regulatory actions from initial concept to promulgation.

NOAA has been operating pursuant to these procedures for some time, and as such these guidelines do not represent a change in the overall process, just a clarification.

Thank you very much for your continued assistance and we look forward to continuing to work with you to identify potential management actions.

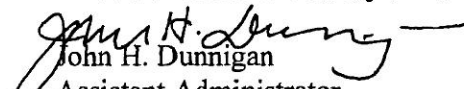


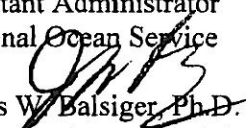
**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

**JUL 30 2008**

**MEMORANDUM FOR:** Regional Fishery Management Council Chairs  
National Marine Sanctuary Advisory Council Chairs

**FROM:**

  
John H. Dunnigan  
Assistant Administrator  
National Ocean Service

  
James W. Balsiger, Ph.D.  
Acting Assistant Administrator  
National Marine Fisheries Service

As you know, past NOAA actions have highlighted the opportunity for improved coordination and collaboration concerning the promulgation of fishing regulations in our Nation's marine sanctuaries. The National Marine Sanctuaries Act (NMSA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are both important pieces of marine resource legislation administered by NOAA.

The attached flowchart graphically traces NMSA and MSA regulatory actions from initial concept to promulgation to clarify the role of Regional Fishery Management Councils, Sanctuary Advisory Councils, Treaty Tribes, National Marine Fisheries Service (NMFS) and the National Marine Sanctuary Program (NMSP) in this process.

As you may recall, this document was presented to you for comment on January 6, 2006. Since then, a working group of NOAA staff from NMSP and NMFS as well as attorneys from the General Counsel for Fisheries and the General Counsel for the Ocean Service, both from headquarters and the field, met to address your comments. Each comment was considered and a consensus was reached regarding the appropriate action to take. Subsequently, changes were made to the document and the final Flowchart updated version was agreed upon by NMFS and NMSP and is enclosed with this package.

Thank you very much for your continued participation in the conservation and management of our Nation's marine resources. We look forward to continuing to work with you to ensure the health of the ocean and coastal ecosystems for the benefit of future generations.



**NOAA'S REGULATION OF FISHING IN NATIONAL MARINE  
SANCTUARIES**

**JULY, 2008**

**This document describes how NOAA will administer the regulation of fishing in National Marine Sanctuaries as mandated by the National Marine Sanctuaries Act and the Magnuson-Stevens Fishery Conservation and Management Act. The regulatory processes under each authority are described in flowcharts followed by detailed text with emphasis on new efforts at integration indicated by italics.**

## Executive Summary

This document details how NOAA will administer the regulation of fishing in National Marine Sanctuaries as mandated by the National Marine Sanctuaries Act (NMSA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The regulatory processes under each act are described in flowcharts followed by detailed text with emphasis on new efforts at integration, collaboration and communication.

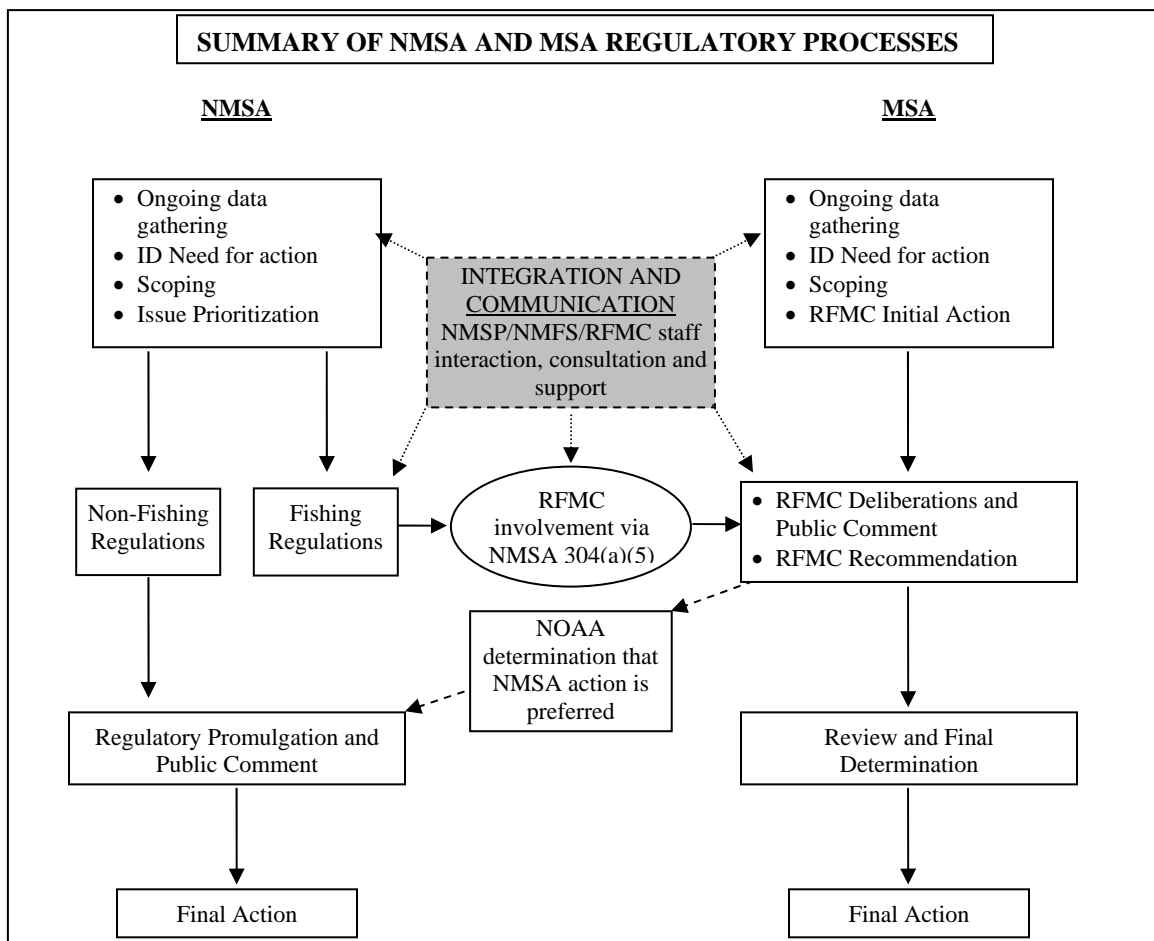
### Parties involved in the processes:

Primary Statutory Participants: NOAA National Marine Sanctuary Program (NMSP)  
Sanctuary Advisory Councils  
NOAA National Marine Fisheries Service (NMFS)  
Regional Fishery Management Councils (RFMC)

Government to

Government consultations: Federally recognized Indian Tribes

Public input/consultations: States  
Other Federal Agencies  
Interested parties



### **Major Sections:**

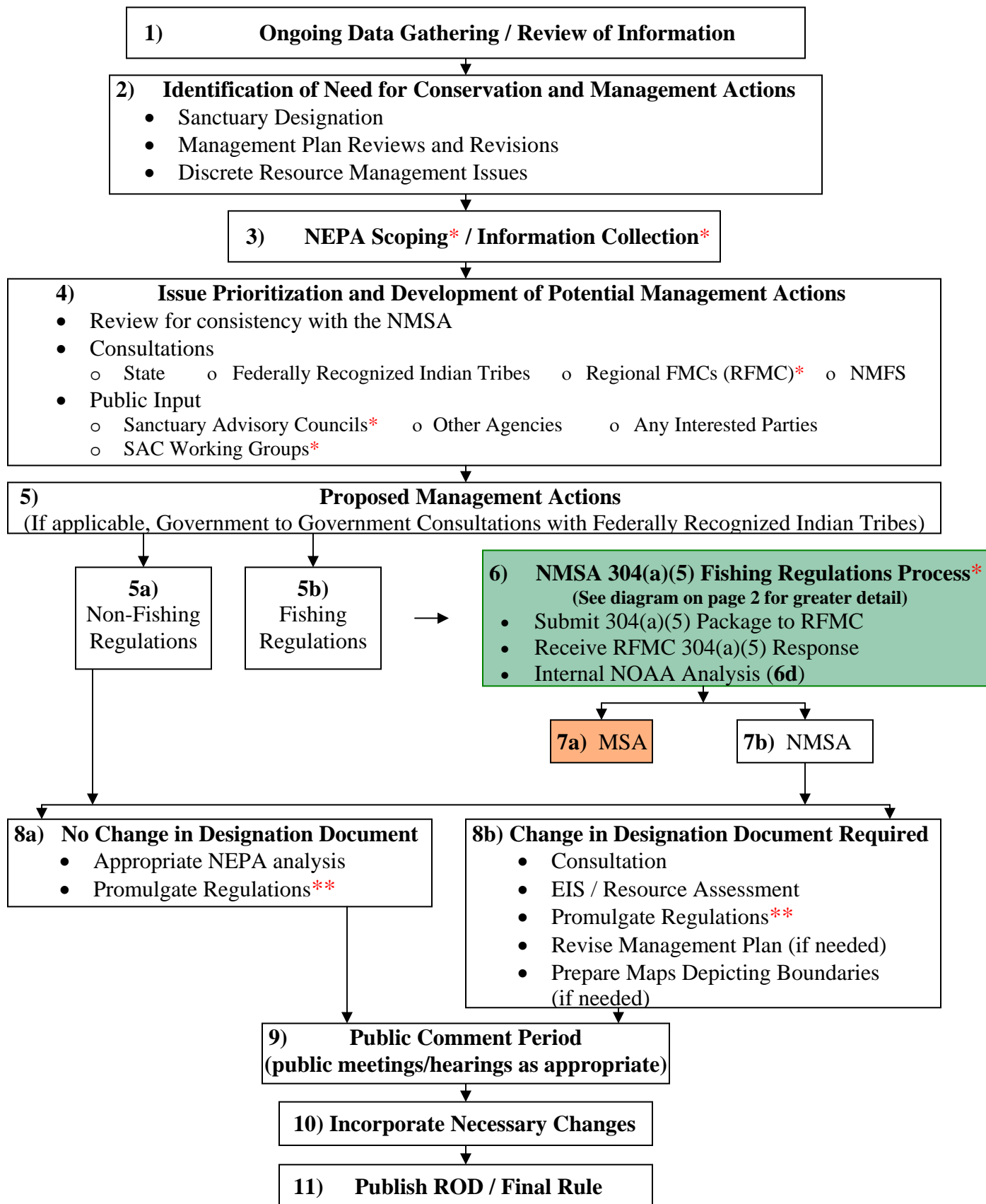
1. pp. 1-8. Flowchart and text describing the National Marine Sanctuaries Act regulatory process for addressing issues in National Marine Sanctuaries, with emphasis on the process for addressing fishing issues from initial concept through implementation.
2. pp. 9-13. Flowchart and text describing the Magnuson-Stevens Act Regulatory process. The flowchart and text traces a fishery management action under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) from initial concept through implementation.

### **Integration and Communication:**

Overall, this document describes the efforts to improve coordination and communication among NMFS, NMSP and RFMCs. The document highlights opportunities for increased coordination, most of which are described below.

1. Frontloading - The first step in each flowchart is entitled, "Ongoing Data Gathering / Review of Information." This describes the concept of communicating in an ongoing fashion between NMFS, NMSP and RFMCs with respect to issues that may arise in a National Marine Sanctuary regarding fishing or issues that may arise before a Regional Fishery Management Council that may affect NMSP resources or sites.
2. Scoping - The third step in each flowchart includes this phase. NMSP will expressly notify and include personnel from NMFS and RFMCs in developing Goals and Objectives for NMSP action where fishing issues exist. RFMCs will expressly notify and include personnel from NMSP in Fishery Management Action Teams, which develop Action plans for fishing issues.
3. Action Development - NMFS/RFMC staff will invite NMSP staff to attend and participate at standing or specially appointed committee meetings regarding potential fishery management considerations that may affect sanctuary resources. Sanctuary Advisory Councils, which are established under the National Marine Sanctuaries Act, often include NMFS or RFMC members.
4. RFMC actions regarding NMSP fishing issues - NMSP staff will ensure that adequate information is provided to the RFMC and will work to coordinate and clarify issues during the RFMC process as needed. Subsequently, NMFS staff will ensure that NMSP staff have received draft analyses for potential management actions that may affect sanctuary resources. The NMSP will also be given an opportunity to review any such documents for those RFMC actions developed to fulfill sanctuary goals and objectives.

# National Marine Sanctuaries Act Regulatory Process

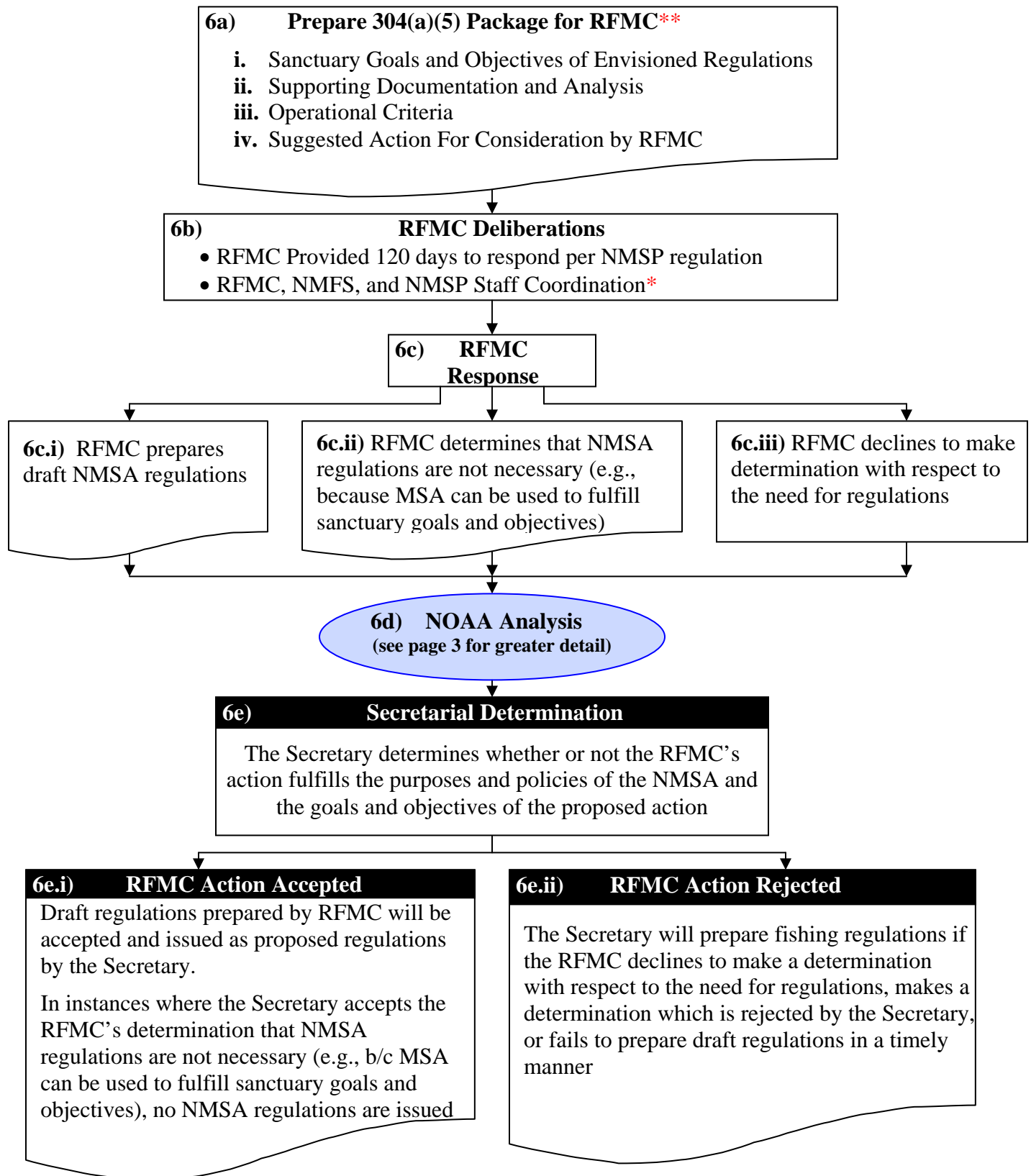


\*These highlighted items represent specific steps in the process by which NOAA will actively engage the appropriate RFMC. Please see accompanying text for more detail.

\*\*During final development of draft fishing regulations, staff of the NMSP, NMFS and RFMCs coordinate as appropriate to ensure that any resulting regulation fulfills sanctuary goals and objectives.

## 6) NMSA §304(a)(5) Fishing Regulations Process

(Expansion of Box 6 on page 1. When this process is complete return to 7a, 7b, or both – p.1)



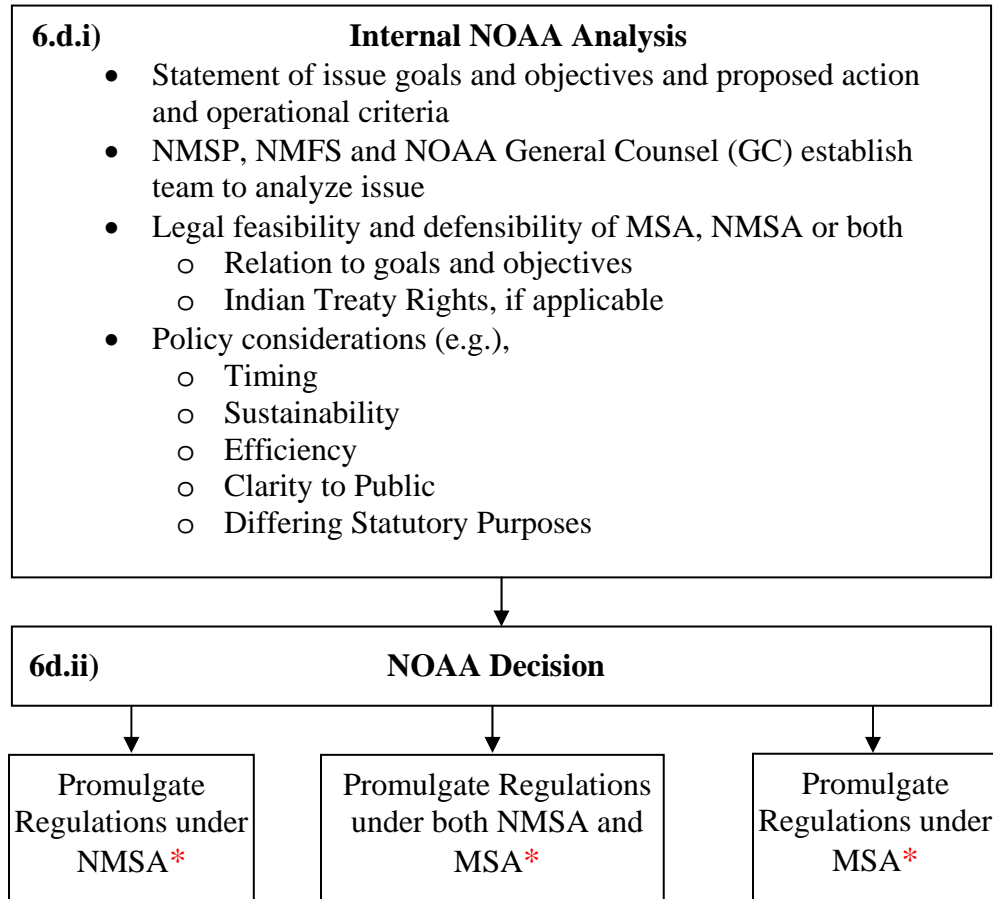
\* This highlighted item is a step in the process by which NOAA will actively engage the RFMC. Please see accompanying text for more detail.

\*\* These materials are developed from the Scoping and Issue Prioritization steps in the process.



## 6d) NOAA Analysis

(Expansion of Box 6d on page 2. When complete, return to 6e – p.2)



\* During promulgation of regulations resulting from the NMSA 304(a)(5) process, staff of the NMSP, NMFS and RFMCs will coordinate as appropriate to ensure the resulting regulation fulfills its intended goals and objectives, regardless of the statute(s) under which it is promulgated. NOAA will ensure that any proposed regulations are consistent with Indian treaty fishing rights.

The flowchart graphically traces a National Marine Sanctuaries Act (NMSA) as well as Magnuson-Stevens Fishery Conservation and Management Act (MSA) action from initial concept through implementation. The following text bullets correspond to the numbered boxes on the flowchart and are intended to more fully explain the contents of the boxes and identify the points of consultation for three players (NOAA National Marine Sanctuary Program (NMSP), NOAA National Marine Fisheries Service (NMFS), Regional Fishery Management Councils (RFMCs)) at the different stages in the generic process of developing fishing regulations, and decision criteria used in moving from one step to the next in the decision making process.

## National Marine Sanctuaries Act Regulatory Process

- 1) **Ongoing Data Gathering / Review of Information.** *The NMSP collects information on an ongoing basis with regard to resource protection, resource use, issues of concern, etc. In an effort to increase “frontloading” with regard to issues involving, fishing, the NMSP will seek out opportunities to engage the appropriate RFMC(s), NMFS Science Centers, NMFS Regional Offices, and other experts in ongoing data gathering and review of information in order to efficiently and effectively further adaptive management approaches through the application of state of the art science and policy.*
- 2) **Identification of Need for Conservation and Management Actions.** This represents the initial concept or idea stage of what may eventually develop into a proposed federal action. Three typical categories of actions are most often taken by NMSP: a proposed sanctuary designation, a sanctuary management plan review and revision, or a regulatory proposal that is developed in response to a discrete Sanctuary resource issue. An Environmental Impact Statement under the National Environmental Policy Act (NEPA) is required when a major federal action significantly affecting the human environment is taken under the NMSA, or when a change in a term of designation for the sanctuary is proposed.
- 3) **NEPA Scoping / Information Collection.** A scoping process is undertaken which includes community outreach, public meetings, and literature review. Scoping provides a framework for identifying environmental issues and coordinating with interested parties. *NMFS, the appropriate RFMC(s) established under the MSA and Federally Recognized Indian Tribes are identified among the interested parties and will be expressly notified at this step because of their role under the NMSA and fisheries expertise. Obtaining best available information, that is both high quality and composed of transparent data and methodology, is a primary goal in this stage of the process. It is here that early goal and objective consideration begins. NMFS and RFMC input in this process are critical to the successful development of final Goals and Objectives in the following step.*
- 4) **Issue Prioritization and Development of Potential Management Actions.** A Sanctuary Advisory Council (SAC) is charged by NOAA under the NMSA to advise throughout the process. Representatives from NMFS and the appropriate RFMCs are invited to be members of SACs or SAC Working Groups. *SACs are appointed to represent multiple stakeholders and provide advice and recommendations to NMSP management. NOAA in turn makes final determinations. The SAC prioritizes issues that may be addressed by the NMSP. The SAC may also form issue specific working groups to assist the SAC. For instance, if there are fishing issues associated with designation or management of a Sanctuary, a fisheries working group could be formed. Such working group could consist of representatives from NMFS (e.g., regional office and /or science center staff), the RFMCs, other agencies, Federally Recognized Indian Tribes, State marine resource management*

*departments, the fishing industry, non-governmental environmental groups, and subject-matter experts and other interested parties. SAC working groups may be charged to develop potential management actions and recommendations to the SAC. The SAC in turn provides NMSP with recommendations. As a result of activities related to NMSP or SAC issue prioritization, an RFMC may pursue actions under the MSA. Refer to the Magnuson-Stevens Act Regulatory Process diagram for further description of the ensuing process. NMSP draft goals and objectives are developed at this step for internal NOAA review, which includes another opportunity for NMFS comment.*

- 5) NMSP Proposed Management Actions.** The recommendations provided by the SAC and interested Indian tribes are considered by the NMSP in its development of draft goals and objectives. The draft goals and objectives are ultimately reviewed within NOAA and become an agency statement of proposed goals and objectives for that sanctuary (“goals and objectives”). Because the draft goals and objectives become a statement of NOAA goals and objectives for that sanctuary, NOAA will conduct government to government consultation with any potentially affected federally recognized Indian tribe(s). These goals and objectives are the benchmark by which a RFMC recommendation under NMSA §304(a)(5) is assessed. Management recommendations normally come about through a SAC deliberative process as described in **4)** above. The potential regulatory actions for a given sanctuary are divided into non-fishing and fishing actions (**5a** and **5b**) by the NMSP prior to proceeding to the next step

## **6) NMSA §304(a)(5) Regulatory Process**

**6)** Section 304(a)(5) of the NMSA requires that the appropriate RFMC(s) be given the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone of a sanctuary’s boundaries. When such regulations appear desirable, NOAA develops and presents a 304(a)(5) package to the appropriate RFMC(s). All of the materials provided to the RFMC(s) as part of the §304(a)(5) package are intended to help the RFMC make a determination of what would best fulfill the sanctuary goals and objectives. The entire package is reviewed and approved by NOAA and provided to the RFMC.

- a. Prepare 304(a)(5) Package for RFMCs.** NOAA develops a §304(a)(5) package (package) and provides it to the appropriate RFMC(s). These materials are developed from the Scoping and Issue Prioritization steps in the process. Copies are made publicly available and given concurrently to the appropriate NMFS regional office(s). The package usually consists of, but is not limited to:
  - i. Sanctuary specific goals and objectives.** (Refer to boxes 3,4 and 5 for the process a sanctuary goes through to develop goals and objectives.)
  - ii. Supporting documentation and analyses** come from a variety of sources including: literature and reports authored by the NOAA Science Centers or interagency and university scientists, notes and reports of the working group and SAC, data and/or analyses obtained via contract from consultants, NMSP assembled socio-economic and biological information, along with NMSP prepared GIS maps and relevant supporting information. *NOAA will ensure that adequate environmental and socioeconomic information is provided to the RFMC to inform them of the consequences of the “requested action”.*
  - iii. Site-specific operational criteria** are developed and approved by NOAA (NMSP and NMFS staff) to better define the goals and objectives.

- iv. Suggested action(s) for consideration by RFMC** is the recommended actions developed throughout the process of **NEPA Scoping / Information Collection (3)** and Issue Prioritization and Development of Potential Management Actions **(4)**.
- b. RFMC Deliberations.** The RFMC is provided 120 days to respond to the 304(a)(5) package (15 CFR 922.22(b)). Extensions to this 120-day time limit may be, and often are, requested and granted to accommodate RFMC agendas and workloads. *During the 120-day period staff of RFMC, NMFS (e.g., regional office and /or science center staff) and NMSP may coordinate as necessary to clarify issues, address questions and provide preliminary feedback.*
- c. RFMC Response.** The RFMC may take any of three actions at this point. The RFMCs will make their determination by following their standard operating procedures and certain MSA procedural requirements. The RFMC could:
- i)** Prepare draft NMSA regulations. If the RFMC determines that regulations should be promulgated under the NMSA, the RFMC may prepare draft NMSA regulations and submit them to the NMSP. If the RFMC determines that regulations should be promulgated under the NMSA and the RFMC chooses not to provide draft regulations, then NOAA will draft the regulations. In either case, the RFMC may conduct such analyses as it considers helpful to making its determination. While the RFMC is not required to comply with all the MSA requirements for developing or amending an FMP (e.g., public notice and comment), it must rely on the MSA national standards as guidance to the extent that the standards are consistent and compatible with the goals and objectives of the proposed sanctuary designation or action. NOAA will develop the required NEPA and other analyses for the NMSA action.
  - ii)** Determine that NMSA regulations are not necessary (e.g., the RFMC could recommend that sanctuary goals and objectives be fulfilled by the MSA or could recommend that no action be taken). *If the RFMC determines that sanctuary goals and objectives could be fulfilled under MSA, an explanation of the specific regulatory mechanisms, FMP changes, legal basis, and projected timeline should accompany its recommendation.*
  - iii)** Decline to make a determination with respect to the need for regulations
- d. NOAA Internal Analysis.** NOAA determines, through the following internal process, whether or not the RFMC's proposed action would fulfill sanctuary goals and objectives.
- i. Analysis.** The internal NOAA analysis consists of NOAA NMSP, NMFS and GC staff examining the RFMC submission and determining whether the submission fulfills the sanctuary goals and objectives. As necessary, this team will analyze the feasibility and legal defensibility of the RFMC's proposed action. The team will also identify any relevant policy considerations (e.g., timeliness, sustainability, efficiency, clarity to the public, monitoring and research needs, and ease of enforcement) of the RFMC's proposed regulation(s).
  - ii. NOAA Decision.** After the team considers all aspects of the analysis, it makes a recommendation regarding acceptance / rejection of the RFMC proposal. If unable to reach consensus, or if the recommendation is to reject a RFMC

proposal, the team would elevate the issue to the Assistant Administrators (AAs) of the National Ocean Service and NMFS for a decision, and to the Administrator of NOAA as appropriate.

- e. **Secretarial Determination**<sup>1</sup>. Once the NOAA decision has been made regarding a RFMC submission, the §304(a)(5) process is concluded.
  - i. **RFMC Action Accepted**. If NOAA determines that draft NMSA regulations prepared by the RFMC fulfill the sanctuary goals and objectives and the purposes and policies of the NMSA, the regulations will be issued as proposed regulations for public comment. If the RFMC determines that NMSA fishing regulations are not necessary because sanctuary goals and objectives can be fulfilled by the MSA, and the Secretary accepts that recommendation, no NMSA regulations are proposed and regulations are pursued through the MSA regulatory process, if appropriate (see accompanying diagram and text).
  - ii. **RFMC Action Rejected**. If NOAA determines that a RFMC submission fails to fulfill the goals and objectives of the sanctuary and the purposes and policies of the NMSA, then NOAA will prepare proposed fishing regulations for the sanctuary. NOAA will communicate the decision to the RFMC and coordinate as appropriate with the RFMC on the development of the fishing regulations.

**7a) Magnuson-Stevens Act Regulatory Process**. If the NOAA analysis of fishing actions (6d) determines the appropriate course of action is to pursue the proposed action fully or partially under the MSA, then the appropriate regulations are pursued under the MSA process.

**7b) NMSA Regulatory Process**. If the NOAA analysis of fishing actions (6d) determines the appropriate course of action is to pursue the proposed action fully or partially under the NMSA, then the appropriate regulations and supporting documentation (e.g., NEPA, APA, Reg. Flex) are prepared by the NMSP, including any change to a sanctuary designation document (per NMSA paragraph 8).

**8) Sanctuary Designation Document**. A designation document is prepared as part of a sanctuary's designation process. The terms of designation are defined by the NMSA as: 1) the geographic area of a sanctuary; 2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational or esthetic value; and 3) the types of activities that will be subject to regulation to protect those characteristics. A sanctuary can only prohibit or restrict an activity listed in its designation document. A sanctuary designation document can, however, be amended if a discrete resource management issue arises or during the routine sanctuary management plan review processes outlined in the NMSA.

- a. **No Change Required in Designation Document**. If proposed regulations do not necessitate a change to the sanctuary's designation document, then the NMSP proceeds to promulgate regulations accompanied by the appropriate level NEPA analysis. *During final development of draft fishing regulations, staff of the NMSP, NMFS and RFMCs coordinate as appropriate to ensure that any resulting regulation fulfills sanctuary goals and objectives.*
- b. **Change Required in Designation Document**. Designation documents are changed following the applicable procedures for designation of a sanctuary (sections 303 and 304 of the NMSA). Some steps (e.g., consultation, draft EIS preparation) can be

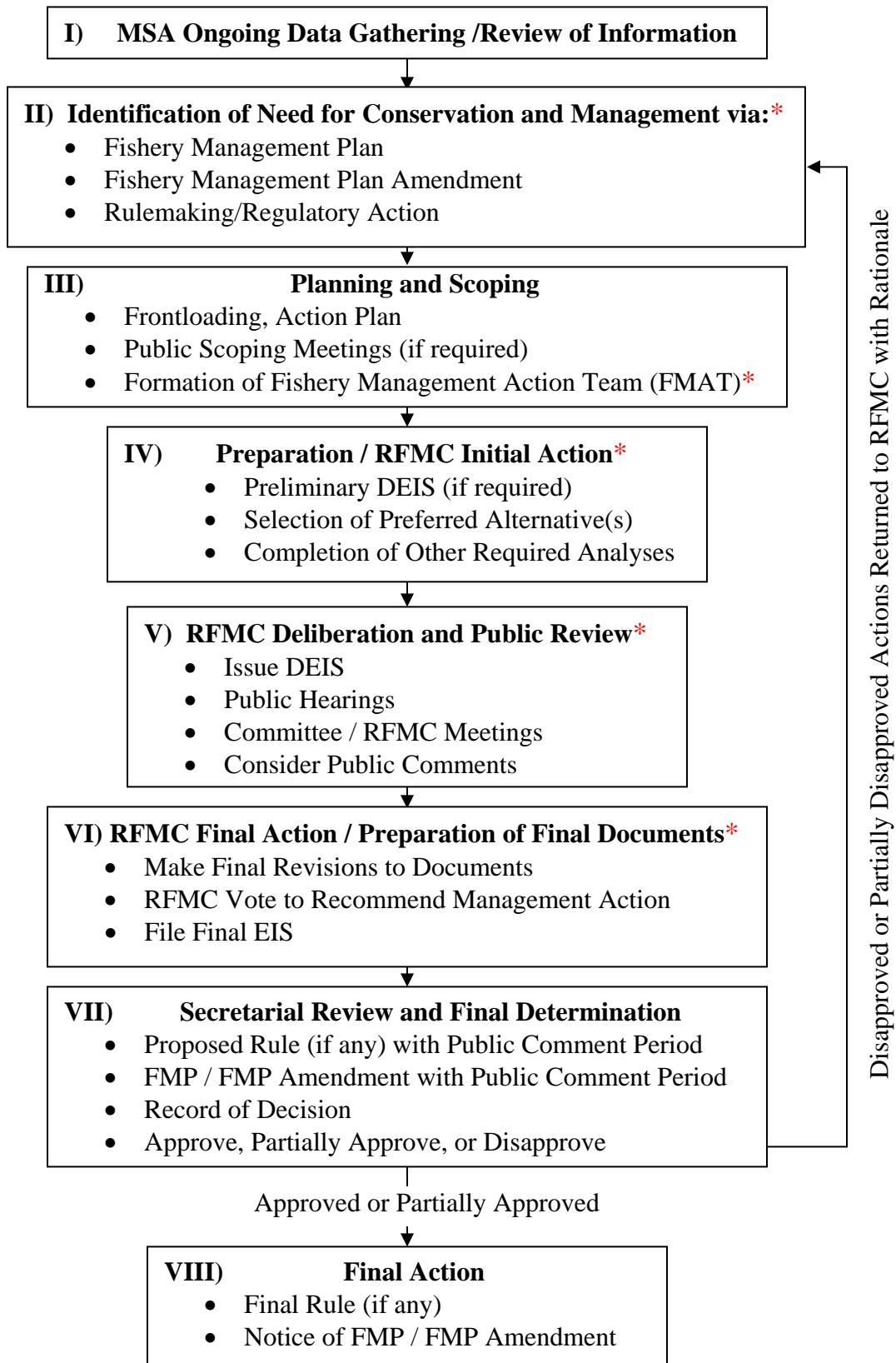
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<sup>1</sup> The Secretary's authority under the MSA and NMSA has been delegated to NOAA.

initiated as part of earlier actions under 4) Issue Prioritization and Development of Potential Management Actions. To issue a regulation prohibiting or restricting a fishing activity in a sanctuary for which a designation document does not have fishing as one of the activities subject to regulation, the sanctuary's designation document must be amended to include fishing as an activity subject to regulation. *During final development of draft fishing regulations, staff of the NMSP, NMFS and RFMCs coordinate as appropriate to ensure that any resulting regulation fulfills sanctuary goals and objectives.*

- 9) **Public Comment Period.** Publish the proposed rule, Notice of Availability of a draft environmental impact statement or environmental analysis, and amended sanctuary designation document (if one is being amended) in the *Federal Register* to start the public comment periods (minimum 45 days DEIS; proposed rules generally have a 60-day review period). Hold public meetings or hearings as appropriate and collect public comments.
- 10) **Incorporate Necessary Changes.** Consider the public comments and revise regulations and analyses as appropriate.
- 11) **Publish Final Rule.** Issue the Record of Decision (ROD) and the final rule. If a final EIS was prepared, the ROD and final rule are issued after the required 30-day wait period from publication of the Notice of Availability of a final EIS. If there is a change to the designation document, the change becomes effective after a period of 45 days of continuous session of Congress (NMSA §304(a)(6)). During this final 45-day review period the Governor (when state waters are included) has the opportunity to certify to NOAA that the change to the terms of designation is unacceptable, in which case the unacceptable change to the term of designation shall not take effect in that part of the sanctuary that is within the boundary of that State.

# Magnuson Stevens Act Regulatory Process



\*These highlighted items are steps in the process by which RFMC and NMFS will actively engage NOS. Please see accompanying text for more detail.



## Magnuson Stevens Act Regulatory Process

**MSA Process for the Magnuson-Stevens Fishery Conservation and Management Act.** This flowchart traces a fishery management action under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) from initial concept through implementation. The following descriptions correspond to the numbered boxes on the flowchart and are intended to more fully explain the contents of the boxes and identify the points of consultation for three players (NOAA National Marine Sanctuary Program (NMSP), NMFS, and RFMCs) at the different stages in the generic process of developing fishery-related regulations.

As part of internal NMFS efforts to manage expectations and outcomes, the agency has developed draft Operational Guidelines<sup>2,3</sup> that emphasize the importance of early involvement of interested parties and identification of issues (“frontloading”). The draft Operational Guidelines identify key phases and steps that apply to all MSA fishery management actions whether the action is a rule, an FMP or an FMP Amendment, and whether it will be supported by an Environmental Assessment (EA), Categorical Exclusion (CE), or Environmental Impact Statement (EIS). The flowchart depicts a summary of these key steps.

The time it takes a proposed fishery management action to be developed varies depending on the complexity of the proposal, resources available to conduct the analyses and draft the documents, and a multitude of other contingencies. Staff resources to prepare FMP/rulemaking activities are pooled between RFMC and NMFS to variable degrees across the six NMFS regions and eight RFMCs.

We note that an RFMC recommendation proceeding from the NMSA 304(a)(5) process would not necessarily follow the steps outlined for full-blown MSA-based rulemaking.

**I) Ongoing Data Gathering / Review of Information:** The MSA requires that RFMCs conduct regular public meetings, and submit periodic reports, and submit recommended management action<sup>4</sup> for any fishery under their jurisdiction that requires conservation and management.

Typical routes of initiating FMP/rulemaking by a RFMC include:

- a) NMFS submits information pertinent to Federal fisheries to the appropriate RFMCs.
- b) Constituents, fishing industry representatives, agency staff, RFMC members, and/or non-governmental organization representatives write or testify to the RFMC of their concern and may request a particular action.
- c) Some actions get on a RFMC agenda due to acts of Congress, which may require specific actions within statutory time frames. NMFS has an intermediate role between the Executive

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<sup>2</sup> Draft Operational Guidelines: For Development and Implementation of Fishery Management Actions. August 23, 2005. [http://www.nmfs.noaa.gov/sfa/domes\\_fish/OperationalGuidelines/DraftOGs\\_082405.pdf](http://www.nmfs.noaa.gov/sfa/domes_fish/OperationalGuidelines/DraftOGs_082405.pdf)

<sup>3</sup> NMFS has requested the Councils implement the Guidelines on a test basis. NOAA will review and consider revising this document as appropriate based on further decisions about implementation of the Guidelines and on other applicable procedures.

<sup>4</sup> The term “fishery management actions” should be interpreted broadly to include a wide range of activities taken pursuant to the MSA, including proposed and final rulemakings, FMPs with no implementing regulations, and other substantive actions by the agency that promulgate or are expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, and advance notices of proposed rulemaking.



Branch and the RFMC, and is ultimately responsible for deadlines and actions required by the Secretary of Commerce as a result of legislation.

*In an effort to increase “frontloading” with regard to issues involving sanctuary resources NMFS will seek out opportunities to engage the appropriate NMSP staff. The NMSP may provide information about potential relevant fishery management considerations that may affect sanctuary resources. Early identification of such issues will permit RFMCs to begin assessing potential management actions for fisheries.*

**II) Identification of Need for Conservation and Management.** This is the point at which a RFMC determines that there may be a need to recommend action and may begin assessing the need for fishery management measures. *NMFS staff and NMSP staff will coordinate on a continuing basis regarding potential management actions that may affect sanctuary resources or the need to regulate fishing within Sanctuaries.*

At this stage ideas are developed for a response to an identified fisheries conservation or management need. The types of major Federal actions typically undertaken by RFMCs include: A new fishery management plan (FMP); an Amendment to an already approved FMP; and regulatory actions developed in response to a discrete marine conservation or management issue. FMPs and FMP Amendments must be consistent with the MSA national standards and other applicable laws, several of which require analysis of alternatives. Although it infrequently begins sooner, in most cases the National Environmental Policy Act (NEPA) process starts here.

### **III) Planning and Scoping.**

The draft Operational Guidelines recommend the development of an “Action Plan” which describes objectives, resources, alternatives and applicable laws, prior to commencement of drafting the initial NEPA document. These Guidelines rely heavily on the concept of frontloading, which means the early involvement of all interested parties to address and resolve issues. The draft Operational Guidelines also recommend formation of a fishery management action team (FMAT) as a project management activity intended to identify and task those necessary to work on a particular action from the beginning. The FMAT will generally include representatives of the RFMC and NMFS, as well as other NOAA components and federal agencies, as necessary. *Draft Operational Guidelines will include “flags” to remind RFMCs that personnel from the NMSP will be invited to participate on FMATs regarding potential fishery management considerations that may affect sanctuary resources. Those regions not using FMATs should also involve the NMSP in early issue identification.*

Through deliberations of the FMAT, NOAA General Counsel, and agency NEPA advisors, determinations are made as to the appropriate MSA type of action (FMP or regulatory) and level of NEPA analysis (CE, EA, or EIS), or whether supplements or amendments to existing NEPA analyses are appropriate for compliance and any action necessary to comply with section 304(d) of the NMSA. *Section 304(d) of the NMSA requires federal agencies to consult on any federal action that is likely to destroy, cause the loss of, or injure any sanctuary resources. (Stellwagen Bank National Marine Sanctuary has a special standard, and consultation is required when a federal action “may affect” a sanctuary resource.)*

**IV) Preparation / RFMC Initial Action.** This step includes actions taken by preparers and the RFMC to complete preparation of the Draft NEPA analysis and all other required analyses.

Regulatory language, analyses and information collection requirements may be examined and preliminary estimates made of the costs and benefits of regulations depending on the nature of the proposed action and associated Federal permits, licenses, or other entitlements, and their respective accompanying analyses that will be required prior to implementation. RFMC standing committees or specially appointed committees may be asked by the RFMC to prepare components of actions for RFMC consideration. All meetings are advertised and open to the public, and public comments are taken each time an aspect of the proposed action appears on the agenda of the respective RFMC or one of its committees. *NMFS/RFMC staff will invite NMSP staff to attend and participate at standing or specially appointed committee meetings regarding potential fishery management considerations that may affect sanctuary resources.*

**Preliminary Draft EIS:** If schedules permit and the RFMC chooses, it may include a summary action, such as “Approve DEIS for Public Review” on the agenda. That would necessitate preparation and presentation of a preliminary DEIS to the RFMC (and public, because every action is open to the public).

**Selection of Preferred Alternative:** Because early identification of a preferred alternative facilitates compliance with the substantive requirements and procedural timelines of the MSA, ESA, and APA and other applicable law, the Draft Operational Guidelines encourage identification of the preferred alternative at the DEIS stage, though this is not always possible. *If consultation on a potential management action is required under §304(d) of the NMSA, it will be initiated at this stage, if it has not already been initiated.*

**V) RFMC Deliberation and Public Review.** Completed draft analyses are circulated for public review. *NMFS staff will ensure that NMSP staff have received draft analyses for potential management actions that may affect sanctuary resources. The NMSP would also be given an opportunity to review any such documents for those MSA actions developed from the NMSA 304(a)(5) regulatory process to fulfill sanctuary goals and objectives.* RFMC meetings or hearings are held to facilitate understanding of the documents, collect public comment and have RFMC deliberations. If deemed necessary, the NMSP shall provide NMFS with reasonable alternatives that will protect sanctuary resources. After public review and comment, the analysis documents are revised as necessary and provided to the RFMC.

**VI) RFMC Final Action / Preparation of Final Documents.** The RFMC holds a vote on the proposed action at a public meeting. After the RFMC votes to submit an action to the Secretary, RFMC and NMFS staff prepare the action document and any accompanying draft regulation and analyses for submission to the Secretary. It is anticipated that some work on the necessary supporting documentation will continue after the RFMC’s vote. However, if NOAA or the Council determines that the supporting analyses have been substantively changed at this point, the model in the Draft Operational Guidelines would call for reconsideration by the RFMC. All parts of a final EIS (FEIS) analysis must be completed and assembled prior to NMFS filing the FEIS with the EPA, who in turn publishes a Notice of Availability (NOA) of the FEIS in the *Federal Register*.

The MSA also requires that NMFS initiate formal public review of the RFMC’s proposed measures by publishing in the *Federal Register* the NOA of an FMP or FMP Amendment and/or the proposed rule to implement the RFMC’s recommendation. The NOA of an FEIS is different from a NOA of an FMP or FMP Amendment and is published in a different part of the *Federal Register*.

**VII) Secretarial Review and Final Determination.** The MSA limits the time for Secretarial review and decision on new FMPs and FMP Amendments to ninety days. NMFS must publish the NOA of the FMP or FMP Amendment immediately (within 5 days) of the transmittal date for a 60-day public comment period. The transmittal date is established by the NMFS Regional Administrator when all of the necessary documentation is determined to be complete.

*The NMSP would be given an opportunity to review any such documents for those MSA actions developed from the NMSA 304(a)(5) regulatory process to fulfill sanctuary goals and objectives*

Within 30 days of the close of the comment period, the agency must approve, partially approve, or disapprove the RFMC's recommendation. A Record of Decision is issued at this time. The determination to approve, partially approve, or disapprove is made by reference to the MSA's National Standards, other provisions of the MSA and other applicable law.

**Approved:** If a FMP or FMP Amendment is found to comply with the ten National Standards, contain all the required FMP components, and otherwise comply with all applicable laws and E.O.s, it is approved and the process is complete but for final publication of the regulations.

**Disapproved or Partially Approved:** If an FMP or FMP Amendment does not comply with the ten National Standards, contain all the required FMP components, and otherwise comply with all applicable law, it is disapproved. The NMFS Regional Administrator must specify in writing to the RFMC the inconsistencies of the FMP or FMP Amendment with the MSA and/or other applicable laws, the nature of inconsistencies, and recommendations for actions to make the FMP or FMP Amendment conform to applicable laws. If the RFMC is not notified within 30 days of the end of the comment period on the FMP or FMP Amendment of the approval, disapproval, or partial approval, such FMP or FMP Amendment shall take effect as if approved. If an FMP or FMP Amendment is disapproved or partially approved, the RFMC may resubmit a revised FMP or FMP Amendment and revised proposed rule, where applicable.

**VIII) Final Action.** For approved actions or partially approved actions a notice of availability of the final FMP or FMP amendment is issued and final regulation (if any) is published.



## Pacific Fishery Management Council

7700 NE Ambassador Place, Suite 101, Portland, OR 97220-138  
Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | [www.pcouncil.or](http://www.pcouncil.or)  
Donald K. Hansen, Chairman Donald O. McIsaac, Executive Director

August 12, 2008

Mr. Alan Risenhoover, Director  
Office of Sustainable Fisheries  
National Marine Fisheries Service  
1315 East-West Highway, SSMC 3  
Silver Spring, MD 20910

Re: Pacific Fishery Management Council Comments on National Marine Fisheries Service Proposed Revisions to Procedures for Complying with the National Environmental Policy Act.

Dear Mr. Risenhoover:

The Pacific Fishery Management Council (Pacific Council) appreciates the opportunity to review and comment on proposed rule (73 *FR* 27998) concerning National Marine Fisheries Service (NMFS) proposed revisions to procedures for complying with the National Environmental Policy Act (NEPA). Particularly, the Pacific Council would also like to thank Mr. Sam Rauch and Mr. Stephen Leathery for their participation at the June 2008 Pacific Council meeting, where the Pacific Council reviewed the proposed rule and tasked me with providing the enclosed comments of the Pacific Council. We are aware of the comment letter submitted by six of the Regional Fishery Management Councils and feel their letter presents numerous noteworthy comments, many of which align with these distinct comments of the Pacific Council.

The Pacific Council notes that continuing under status quo is not an option under Section 304(i)(1) of the reauthorized *Magnuson-Stevens Fishery Conservation and Management Act (MSA)*, which states "The Secretary **shall**, in consultation with the Councils and the Council on Environmental Quality, **revise and update** agency procedures for compliance with the [NEPA]" (emphasis added). Therefore, the Pacific Council recommends NMFS proceed expeditiously with the goal of targeting the important MSA mandate to streamline fishery management rulemaking and make it more timely with regard to use of the best available science. We note the legal requirement for revisions to:

- "(A) conform to the time lines for review and approval of fishery management plans and plan amendments under this section; and*
- (B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public."*


In our recommendation that you proceed expeditiously to complete this action, we note the requirement in MSA Section 304(i)(3)(C) to promulgate final revisions by January 2008.

We wish to highlight a comment relative to the proposed 45-day comment period prior to final Pacific Council action. Strict adherence to this requirement would greatly impair some Pacific Council actions such as our groundfish biennial harvest specification process. We note exceptions are provided for in both existing NEPA procedures and the proposed revisions, however it is not clear they could fit our particular needs. We also note recent mischaracterizations published in the contemporary media claim that an intent of the proposed rule is to diminish public involvement and to reduce public comments to a period of 14 days. In our support of appropriate reductions in the comment period prior to final Pacific Council action to 14 days (see page 4 of the enclosed comments), we note the ample opportunities for public involvement during and after the environmental review process.

In the example of the Pacific Council's groundfish biennial harvest specification process, a fully transparent Pacific Council process provides for public input over an 11 month period encompassing four Pacific Council meetings in advance of Pacific Council final action. The public is afforded the opportunity for participation and comment at each step of this continual process of refining and adopting specific fishery regulatory details. Additionally, under the subsequent Federal rulemaking process and the authority of the Administrative Procedure Act, the public is afforded an additional 30 to 90 days to comment on final Pacific Council recommendations before they are implemented by the U.S. Secretary of Commerce. It is the position of the Pacific Council that this comprehensive environmental review and fishery regulatory process more than adequately addresses the mandate for "effectively involving the public" as called for in MSA Section 304(i).

If you or your staff should have any questions, please contact me or Mr. Mike Burner, the lead Pacific Council Staff Officer on this matter.

Sincerely,



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

Enclosure

MDB:kam

c:

Council Members  
Council Executive Directors  
Mr. Jim Balsiger  
Mr. Sam Rauch  
Mr. Stephen Leathery  
Ms. Marian Macpherson  
Dr. John Coon  
Mr. Kit Dahl  
Mr. Mike Burner

PACIFIC FISHERY MANAGEMENT COUNCIL (PACIFIC COUNCIL) COMMENTS ON  
REVISED MAGNUSON-STEVENSON ACT NEPA PROCEDURES,  
PROPOSED RULE (50 CFR PART 700)

## General Comments

### Applicability of Council on Environmental Quality (CEQ) regulations, 40 CFR 1500-1508

Section 304(i)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) states that these agency procedures “shall be the sole environmental impact procedure for fishery management plans, amendments, regulations, or other action taken or approved pursuant to this Act.” The preamble to the proposed rule (Summary at 73 FR 27998) states that “[t]hese regulations are modeled on the ... procedural provisions of [the National Environmental Policy Act (NEPA)], 40 CFR parts 1500-1508...” It seems apparent that these regulations would replace the CEQ regulations except where specifically referenced in Part 700 (e.g., see 700.3, definitions state that all terms defined in the CEQ regulations, part 1508, still apply where relevant). Furthermore, many parts of the proposed regulations are closely patterned on the language in CEQ regulations.

Pacific Council perspective: The proposed regulations do not explicitly state that the unreferenced parts of the CEQ regulations are not applicable and should not be referenced. This is important for practitioners to the degree that the different sets of regulations serve as a guide for document preparation. Confusion over applicable regulations could complicate effective compliance. **Pacific Council recommends that the new NEPA regulations (or National Marine Fisheries Service (NMFS) guidance) explicitly state that CEQ regulations are no longer applicable, except where referenced in the new NEPA regulations.**

### Familiarization with the new procedures

Pacific Council perspective: NMFS has put considerable effort in training staff to better comply with NEPA under the current CEQ regulations. Regulatory streamlining has changed the relationship between the Regional Fishery Management Councils (FMCs) and the NMFS Regions in that that NMFS Regional Offices carry out many of the functions previously done at the NMFS Headquarters level. It will be important for NMFS to commit sufficient resources to develop detailed guidance documents and train staff on the new procedures. Although the specific comments below touch on some of the main areas where procedures may change, there may be other aspects of the procedures whose implications become apparent only after implementation.

**The Pacific Council recommends that NMFS ensure sufficient training and resources are made available to FMC and NMFS staffs to allow efficient implementation of the new NEPA procedures.**

## Specific Comments

### Major Changes

#### **Subpart C Integrated Fishery and Environmental Management Statement (IFEMS)**

Section 700.203(a) under timing of IFEMS process states "...the FMC must use the draft IFEMS in its deliberations." 700.203(b), IFEMS for fishery management actions developed by an FMC, states "(1) NMFS shall publish a Notice of Availability (NOA) of a draft IFEMS in the Federal Register no later than public release of the FMC's meeting agenda notice. NMFS shall ensure that the draft IFEMS is made available to the public at least 45 days in advance of the FMC meeting (unless this time frame is reduced under § 700.604(b))." Section 700.604, Minimum time periods for agency action, provides criteria NMFS may use, in consultation with the FMC and the Environmental Protection Agency (EPA), to reduce the public comment to period no less than 14 days. Many criteria are enumerated, which must be met to justify shortening the time period, in addition to the need to consult with EPA. This suggests that shortening of the time period would only occur in unusual circumstances. This section also allows the public comment period to commence upon publication by NMFS of a Notice of Availability (NOA) for the draft IFEMS rather than the Notice published by EPA for Environmental Impact Statements (EISs) received the week before.

It is also important to note that the draft IFEMS would not include the Pacific Council's final preferred alternative because this is not determined, or finalized, until the Pacific Council final action meeting. (In some cases, such as Trawl Rationalization, the Pacific Council takes preliminary action to develop a preliminary preferred alternative before taking final action at a subsequent meeting. In these cases an at least partial preferred alternative could be included in the draft IFEMS.) Section 700.203(b)(5) states "In its final vote to recommend an action, an FMC may select combinations of parts of various alternatives analyzed in the draft IFEMS or a new alternative within the scope of those analyzed in the draft IFEMS. NMFS may accept this recommendation without further analysis or supplementation by the FMC." If the Pacific Council develops a preferred alternative that is "not within the range of alternatives analyzed in the draft IFEMS"—that is, substantially different in its elements and anticipated impacts—then the Pacific Council must circulate a supplemental draft IFEMS containing an analysis of the preferred alternative for a second 45-day public comment period before preparing the final IFEMS.

Under section 700.203(b)(6)(i) the Final IFEMS is included with the transmittal package. Section 600.704(c) states that NMFS shall not make the final approval decision less than 90 days after publication of the NOA for the draft IFEMS or 30 days after the NOA for the final IFEMS. (These minimum time periods parallel the CEQ timelines at 40 CFR 1506.10). These time periods may be shortened in extraordinary circumstances. This brings the final IFEMS earlier in the process than is the case for a final EIS. Currently, the final EIS is usually published so that the ROD can be signed concurrently with the Secretarial determination or publication of the Final Rule. Under this section the Final IFEMS would be published at the start of the 95-day MSA clock.

Pacific Council perspective: In many cases the IFEMS process will require a change from how EISs are usually prepared under the current Pacific Council process. Typically, a complete draft EIS is not released for the 45-day public comment process required by CEQ regulations (40 CFR 1506.10(c)) until after the Pacific Council has taken final action. Under the proposed regulations the draft IFEMS would need to be completed and released much earlier than this since the public comment period initiated by NMFS publishing the NOA begins 45 days in advance of the meeting where the Pacific Council takes final action (by finalizing their selection of or a preferred alternative).

In some cases this will conform closely to current practice (the diagram at the end of this document compares the current process with that for an IFEMS). For example, staff currently plan to release a substantially completed draft of the Trawl Rationalization EIS around September 22, 2008, in anticipation of Pacific Council final action at the November 2-7, 2008, meeting. However, this document is not the “final” draft EIS triggering the public comment period in CEQ regulations. For that reason there is some flexibility in how complete the document needs to be. The “statutory” (i.e., submitted to EPA to trigger the public comment periods) draft EIS will be released some time in the first half of 2009. Under the new process, the draft IFEMS would need to be released on September 17 and would have to be a complete document containing all analyses.<sup>1</sup> The Trawl Rationalization project has an extended timeline because of the complexities of the decision to be made. More typically a partially complete, “preliminary” draft EIS is included in the briefing book for the meeting at which the Pacific Council takes final action.

In general, the proposed regulations better integrate public comment time periods into the Pacific Council process. This comes at a cost, however, in that a completed document must be ready well before the Pacific Council meeting at which final action occurs. Currently, it is often a struggle for staff to meet the comparatively shorter deadline of the briefing book and incomplete documents (although sufficient for reasoned decision making) are usually produced at this stage. Greater forethought will be needed to ensure that the range of alternatives likely encompasses what the Pacific Council eventually chooses as its preferred alternative in order to avoid the additional time required for circulation of a supplemental draft IFEMS. As an example, if this process were used for the groundfish harvest specifications (because an EA or Framework Compliance Memorandum could not be used), then in 2008 the draft IFEMS would have to be released (by publication of the NOA) on April 24. This would require the Pacific Council to fully flesh out a range of alternatives at the April meeting, giving staff less than 2 weeks afterwards to complete all the analyses and prepare a complete document. If information became available after this deadline that caused the Pacific Council to formulate a substantially different preferred alternative a supplemental draft IFEMS would have to be prepared. It should also be noted that the amount of time needed after Pacific Council action until implementation (e.g., Secretarial determination, final rule effective date) is unlikely to be substantially shortened, because of the statutory time periods in the MSA and, for regulations, in the APA. For example, even if these procedures shortened the environmental review timeline it still may not be possible

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<sup>1</sup> Note that section 700.217, circulation of the IFEMS, states “NMFS shall ensure that the entire draft and final IFEMS, except for certain appendices as provided in § 700.216 and an unchanged IFEMS as provided in § 700.304, are circulated in a format that is readily accessible to decisionmakers and the public.” This underscores the requirement that the draft IFEMS be a complete document.



to move final action on the groundfish harvest specifications to the September Pacific Council meeting because of time periods required under the APA.<sup>2</sup>

**The Pacific Council views the IFEMS process as an improvement in terms of better-integrating public comment and participation into the Pacific Council process. But the Pacific Council views the overall process in the proposed regulations as worse than the current process under CEQ regulations because 1) a 45-day advance publication of the draft IFEMS before Pacific Council final action would impair many current Pacific Council schedules (the groundfish biennial specifications development process, for example) and 2) it actually lengthens the overall time required for the overall process, because a lot of the IFEMS timeline is before, rather than concurrent with, the MSA and APA timelines.**

**Generally, the Pacific Council recommends that Subpart C in the proposed regulations be changed to shorten the timeline, either on the front end (before Pacific Council final action), or the back end (after Pacific Council final action), or both.**

**Specifically, the new NEPA regulations could be changed in one or more of the following ways as a partial solution:**

- **Reduce the public comment period to 14 days. This would more closely correspond to the current practice of including a preliminary draft EIS in the briefing book for the Pacific Council final action meeting.**
- **Eliminate the requirement for the public comment period to occur before Pacific Council final action. The new NEPA procedures actually reduce flexibility compared to current CEQ regulations, which allow initiating the 45-day public comment period on the draft EIS before Pacific Council final action and also allow it to occur afterwards.**
- **Loosen the criteria under which NMFS would grant a shortened public comment period to allow it to be better matched to circumstances.**

#### **Section 700.104 Utilizing a memorandum of framework compliance pursuant to a framework implementation procedure**

This section would be applicable to harvest specification processes authorized under each of the Pacific Council's four Fishery Management Plans (FMPs). Annual specifications under the Salmon FMP and biennial specifications under the groundfish FMP are the most complex and procedurally demanding. The proposed regulations (700.104(a)) state "An FMP may establish a Framework Implementation Procedure which provides a mechanism to allow actions to be undertaken pursuant to a previously planned and constructed management regime without requiring additional environmental analysis, as provided in this section." The procedure allows determination of whether the anticipated effects of the action fall within a previous environmental analysis and criteria triggering additional analysis in an environmental assessment

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<sup>2</sup> Note also that both the 2007-08 and 2009-10 harvest specifications were combined with FMP amendments to modify rebuilding plans, invoking the 95-day MSA timeline.

(EA) or IFEMS.<sup>3</sup> This implies that an FMP must be amended to include the specifics for these determinations; because of the lack of these specifics any existing framework for harvest specifications described in an FMP would be insufficient for this purpose. If the action falls within the scope of a previous evaluation then a Memorandum of Framework Compliance may be prepared instead of an EA or IFEMS. This Memorandum is “a concise (ordinarily 2 pages) document that briefly summarizes the fishery management action taken pursuant to a Framework Implementation Procedure, identifies the prior analyses that addressed the impacts of the action, and incorporates any other relevant discussion or analysis for the record.” (701.104(c))

Pacific Council perspective: Overall, the Framework Implementation Procedure could provide considerable benefits if the Memorandum of Framework Compliance can be prepared in most circumstances. Alternatively (700.102(a)), an EA may be prepared for “...annual specifications taken pursuant to a fishery management plan and tiered to an IFEMS, EIS, or prior EA that are not covered by a CE or Memorandum of Framework Analysis [*sic*].” A Memorandum of Framework Compliance would be a much briefer exercise than the EAs or EISs currently prepared for harvest specifications, and the regulations support preparing an EA for actions not eligible for a Memorandum.

It seems likely that a broad, programmatic evaluation, covering the range of possible effects of harvest specifications, would be necessary to support the preparation of a Memorandum of Framework Compliance (or an EA) for harvest specifications. Environmental analyses prepared to date, which tend to be action specific rather than programmatic, may be insufficient for this purpose. However, if the FMPs must be amended to incorporate the Framework Implementation Procedure, the accompanying environmental analysis (IFEMS) could include the type of programmatic analysis necessary to support future Memorandums. However, such analyses may need to be periodically updated (5 years seems to be a common benchmark for programmatic evaluations; see, for example, NAO 216-6 Sec. 6.03a).

If the Framework Procedure is not implemented or the anticipated impacts of the action are outside the previously-analyzed range, an IFEMS would have to be prepared for harvest specifications. It may be difficult to meet the new timeline for an IFEMS, as discussed above.<sup>4</sup>

**The Pacific Council thinks that the Framework Compliance Procedure could offer significant benefits, depending on ease of implementation. The Pacific Council recommends that the new NEPA regulations state more explicitly whether or not an FMP amendment is needed to establish a Framework Compliance Procedure. In general, the staff does not favor requiring an FMP amendment in all cases. If an FMP already contains a framework for harvest specifications and previous environmental analyses cover the range of potential impacts, then NEPA compliance procedures should be specified in Council Operating Procedures rather than an FMP amendment. If an FMP amendment is required, the regulations should include a grace period under which current processes are**

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<sup>3</sup> An IFEMS (Integrated Fishery and Environmental Management Statement) would replace the Environmental Impact Statement described in CEQ regulations.

<sup>4</sup> EISs have been prepared for each groundfish harvest specifications since 2003, suggesting the need for an IFEMS in the absence of the Framework Compliance Procedure.

**allowed (i.e., EIS under CEQ regulations) to give time to amend the FMP with the Framework Compliance Procedure.**

### **Minor Changes**

#### **700.108 Scoping**

Section 708.108(a)(1), FMC-initiated actions, states “If scoping is conducted as part of an FMC meeting, a scoping notice must, at a minimum, be included as a component of the appropriate FMC’s next meeting agenda (MSA section 302(i)(2)(C)) and must be titled and formatted in a manner that provides the public with adequate notice of the NEPA-related scoping process.” Furthermore, 708.108(b)(1) states “NMFS, working with the appropriate FMC, shall ensure that affected Federal, State, and local agencies, any affected Indian tribe, the proponents of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds) are invited to participate. NMFS, working with the appropriate FMC, shall ensure that the scoping process meets the purposes of scoping as set forth in 40 CFR 1501.7.” This section then enumerates a range of activities to be included in the scoping process.

Pacific Council perspective: Scoping goes beyond the requirement to allow for public comment; in essence it is the process whereby the agency specifies the action and determines the necessary environmental analysis. In general, the Pacific Council process, through committee and Pacific Council meetings, addresses the public involvement aspect of scoping. However, public comment opportunities at these meetings are usually not specifically identified as a scoping exercise. It would be beneficial if any interpretation of implemented regulations determined that the current public comment procedures used by the Pacific Council are sufficient and that a special scoping meeting or agenda item would not be required during a Council meeting.

**The Pacific Council considers the discussion of scoping in the regulations beneficial because it makes explicit that the Pacific Council process is the principal scoping mechanism for fishery management actions. However, the regulations should not be interpreted in a way that would reduce Pacific Council discretion on how meetings are run and public input solicited.**

#### **700.112 Assignment of tasks**

According to this section an FMC and NMFS must establish which entity will carry the various actions required in the proposed regulations. “This clarification may be established through a Memorandum of Understanding for each environmental document individually or for classes of environmental documents, but in no case should scoping activities be considered complete until such clarification is made.”

Pacific Council perspective: **The Pacific Council considers the requirement to clarify responsibilities beneficial. However, a written statement or MOU should not be required in all cases, if such clarification can be achieved informally. In general, the level of detail and formality of a clarification of responsibilities should be matched to the complexity of the project being undertaken.**

## **Section 700.205 Page limits and Section 700.206 Writing**

An IFEMS “should be less than 150 pages ... but may be up to 300 pages for proposals of unusual scope or complexity.” (Note that CEQ regulations at 40 CFR 1502.7 identify a 150-page limit on EIS length and 40 CFR 1502.2 and 1500.4 speak to writing concise documents.) Section 700.205 also states that NMFS shall consult with CEQ on a programmatic basis if these page limits are regularly exceeded. Section 700.206 states in part “Each IFEMS should use all appropriate techniques to clearly and accurately communicate with the public and with decisionmakers, including plain language, tables, and graphics, with particular emphasis on making complex scientific or technical concepts understandable to the non-expert.”

Pacific Council perspective: **The Pacific Council considers the mandate for concise and clearly written documents beneficial. However, Pacific Council NEPA documents (including EAs) are almost never less than 150 pages, reflecting the difficulty of preparing concise, trenchant evaluations, especially for complex actions. The Pacific Council recommends that NMFS provide assistance to more fully develop techniques, such as incorporation by reference and tiering off programmatic documents, to reduce the length of NEPA documents. Exceeding page limits, by itself, should not be a reason for NMFS (or the courts) to find a NEPA document inadequate.**

### **700.301 Public outreach**

This section lists a wide variety of public outreach methods, including mailing notices to those who express an interest, and for actions of national concern to national organizations reasonably expected to be interested in the matter. Actions with effects of primarily local concern should be noticed through areawide clearinghouses; notice to Indian tribes; using the affected State’s public notice procedures; publication in local newspapers; other media and relevant newsletters; notice to community organizations; direct mailings to affected property owners and occurants; public posting of notices; and outreach via the internet. Section 700.301(c) discusses circumstances in which public hearings are warranted.

Pacific Council perspective: **The Pacific Council considers the mandate for comprehensive public outreach beneficial, but Pacific Council staffing and resources are likely inadequate for a substantially expanded outreach effort as suggested by the regulations. If an action requires extensive outreach, dedicated funding will need to be provided or these efforts should be spearheaded by NMFS.**

### **700.303 Opportunity to comment and 700.305 Response to comments**

Section 700.303(b)(1) states that the public may make comments “...to the FMC during the public comment period on the draft IFEMS by submitting written comments or during the appropriate FMC meeting by providing oral testimony.” Section 700.305 requires written responses to comments to be incorporated into the final IFEMS in a fashion patterned after the requirements in current CEQ regulations for a final EIS (40 CFR 1503.4). This section emphasizes that the Regional Fishery Management Council process is the principal vehicle for

commenting on the action; section 700.305(d) allows comments on the final IFEMS but states “NMFS is not required to respond to comments raised for the first time with respect to a Final IFEMS if such comments were required to be raised with respect to a draft IFEMS pursuant to § 700.302(b).”

Pacific Council perspective: Currently, because the 45-day NEPA comment period occurs after Pacific Council final action, often few comments are received. Integrating formal public comment into the Pacific Council process will make the public comments more influential. This is likely to generate a larger volume of comments requiring formal response. Furthermore, it is not clear how oral comments given at a Pacific Council meeting should be handled. If treated in the same manner as written comments, they will need to be transcribed or summarized in some fashion in order to formulate a formal response in the final IFEMS. As noted above, a special comment period during the Pacific Council meeting might be necessary to accept oral comments in a way that makes it easier to formally address them.

**The Pacific Council finds the response to comments requirements beneficial in terms of public participation, but the commenting process will increase the amount of work needed to complete the final IFEMS. The Pacific Council strongly recommends that the response to comments requirement should not apply to oral public comments made at Pacific Council meetings.**

#### **700.401 Determining the significance of NMFS’s actions and 700.402 Guidance on significance determinations**

Section 700.401 lists factors for assessing significant impacts that are effectively identical to those in CEQ regulations at 40 CFR 1508.27. Section 700.401(d), potentially significant but previously analyzed effects, states “A FONSI may be appropriate for an action that may have significant or unknown effects, as long as the significance and effects have been analyzed previously.” Section 700.402 lists factors for assessing significance previously included in NAO 216-6, section 6.02. Section 700.402(a) states that “NMFS may, as appropriate, develop guidance regarding criteria for determining the significance of effects on a national or regional level for purposes of informing the determination of whether a FONSI is appropriate or an IFEMS must be prepared.”

Pacific Council perspective: **The Pacific Council believes that additional guidance on criteria for determining significant effects would be helpful. Such guidance should focus on methods for identifying case-specific thresholds rather than identifying specific thresholds applicable to all actions. The Pacific Council recommends that the current internal scoping process conducted by NMFS staff, used to decide what kind of NEPA document to prepare, include development of thresholds and allow for early, full participation by Pacific Council staff.**

#### **700.501 Fishery management decisionmaking procedures**

This section states “NMFS and the FMCs shall adopt and maintain procedures, consistent with current or future Statements of Organization, Practices, and Procedures, as described in 50 CFR

600.115, to ensure that fishery management decisions are made in accordance with the policies and purposes of NEPA and the MSA.”

Pacific Council perspective: This requirement will increase workload if the Pacific Council has to adopt and maintain new Council Operating Procedures describing the full decision process. The Pacific Council SOPP document already has a clause indicating compliance with current applicable Federal law. **The Pacific Council recommends that this requirement apply only to the modification of current Council Operating Procedures that would directly conflict with any procedural changes implemented through the regulations.**

### **700.701 Emergencies**

Section 700.701(a) directs NMFS to develop alternative arrangements for NEPA compliance in consultation with CEQ for emergency actions with significant impacts (i.e., requiring an IFEMS). Section 700.701(b) allows promulgation of emergency regulations prior to the completion of an EA and FONSI for emergency actions that will not result in significant impacts.

Pacific Council perspective: Salmon harvest specifications required the promulgation of emergency regulations in 2006 and 2008. This language is an improvement on the current guidance on emergency actions in NAO 216-6, §5.06. **The Pacific Council believes these provisions are beneficial because they clarify how NEPA compliance can be appropriately addressed when emergency regulations must be promulgated. The Pacific Council recommends that the regulations describe how NEPA for emergency regulations can be incorporated into the Framework Compliance Procedure.**

### **700.702 Categorical exclusions**

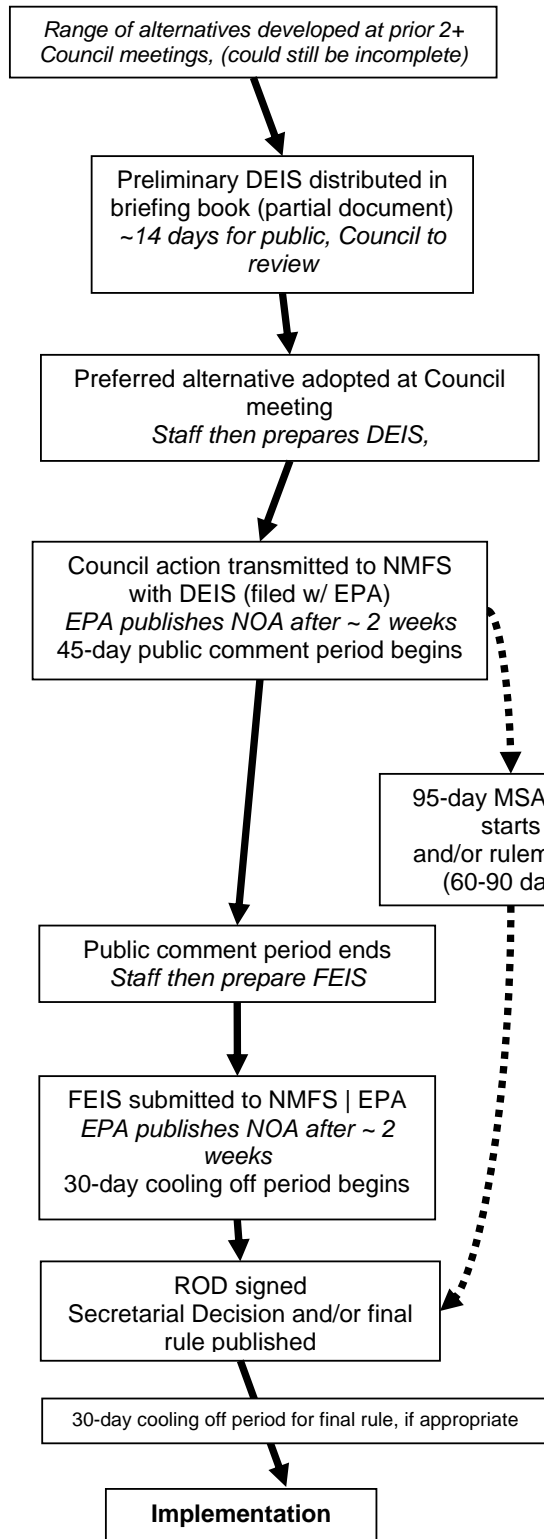
Section 700.702 identifies certain classes of actions eligible for a categorical exclusion (CE).<sup>5</sup> These include ongoing or recurring fisheries actions; minor technical additions corrections, or changes to an FMP or IFEMS; and research activities permitted under an EFP or Letter of Authorization. In all cases the actions cannot have impacts not already assessed or do not have significant impacts. Section 700.702(a)(1) states that “...reallocations of yield within the scope of a previously published IFEMs, FMP or fishery regulation...” can qualify for a CE if, as already stated, the impacts have been previously analyzed and are not significant.

Pacific Council perspective: This language may allow more frequent application of CEs in comparison to current guidance in NAO 216-6, §5.05. **The Pacific Council believes that the language in the new NEPA regulations on CEs is beneficial to the degree it clarifies their use and allows them to be used more frequently.** The Pacific Council recommends working with NMFS to explore whether the alternatives in the NEPA document for groundfish FMP Amendment 22, Inter-sector Allocation, could be structured in such a way so as to allow future changes in formal allocations to qualify for a CE.

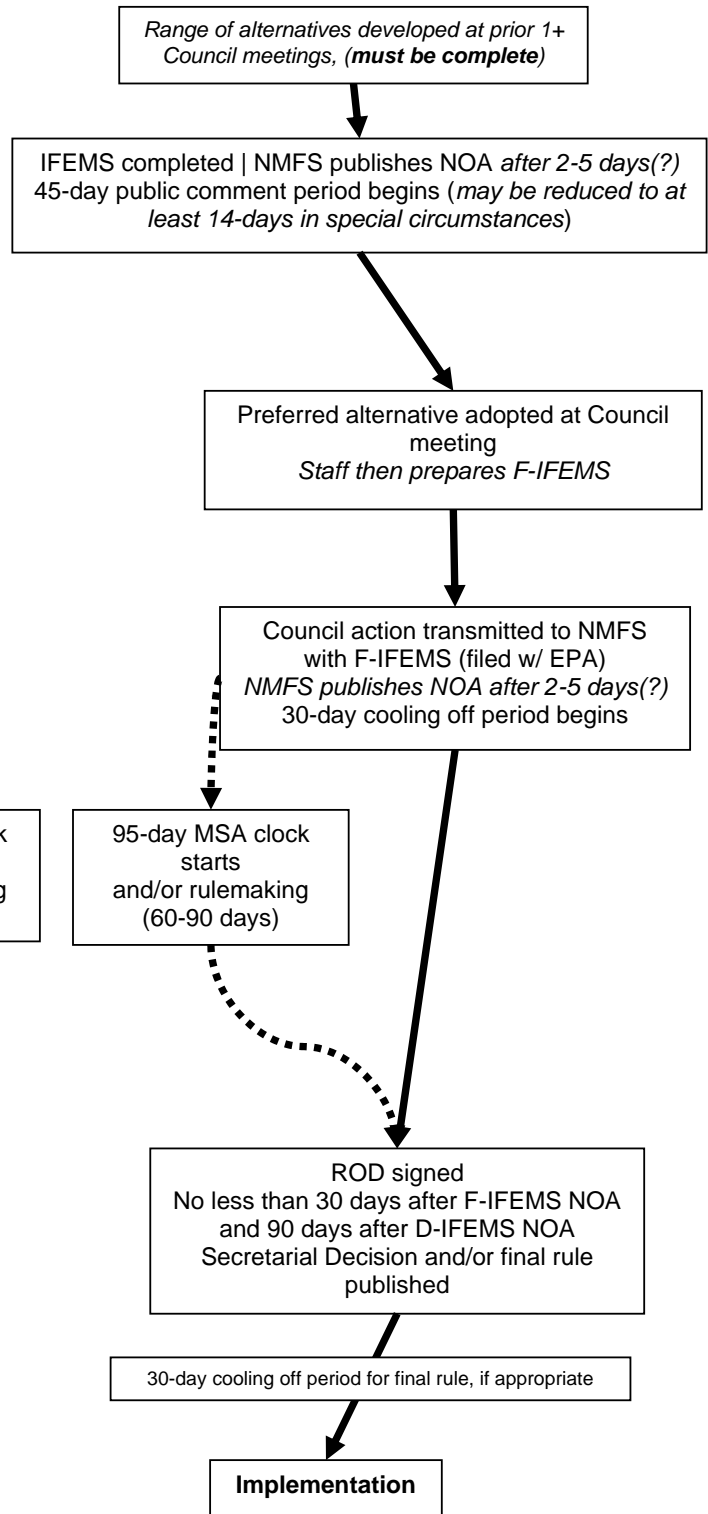
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<sup>5</sup> CEQ regulations at 40 CFR 1508.4 define a categorical exclusion as “a category of actions which do not individually or cumulatively have a significant effect on the human environment ... and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.”

## Current Process



## Proposed Process



Comparison of current and proposed processes for NEPA, decisionmaking, and implementation.

## West Coast Hydrokinetic Energy Projects

|   | Location                                       | Latest news  | Next steps  | Technology description                 | Footprint description  |
|---|--|--|---|--|--|
| <b>California</b>   |  |  |   |  |  |
| <b>Centerville OPT Wave Energy Park</b><br>P-13075 Updated: 8/18/2008<br>Preliminary permit issued 6/27/2008    | Eureka   | FERC sent California Wave Energy Partners details about filing 6-month report (due in November). |   | 40-80 buoys, 20 mW                     | 7.025 square miles, 2.5 miles offshore.  |
| <b>Green Wave Mendocino Wave Park</b><br>P-13053 Updated: 8/18/2008   | Mendocino                                      | FERC said they needed more information; applicant submitted more materials.                      | Waiting for preliminary permit.   | Buoys or other technology, 5 mW        | 2.5 x 6.9 miles (study area), up to 2.6 miles offshore, 120-390 feet deep.                                       |
| <b>Green Wave San Luis Obispo Wave Park</b><br>P-13052 Updated: 8/18/2008                                       | Morro Bay<br><i>Possibly Federal waters</i>    | FERC said they needed more information; applicant submitted more materials.                      | Waiting for preliminary permit.   | Buoys or other technology, 5 mW        | 3.1 x 7.1 miles. 1-3.5 miles from shore, 90-360 feet deep.   |
| <b>Humboldt County Wave Project (PGE)</b><br>P-12753 Updated: 8/18/2008<br>Preliminary permit issued 2/14/2008  | Trinidad                                       | Submitted progress report 7/29/08. Finavera has been conducting meetings, studies, etc.          | Plan to file PAD February 2009.   | Unspecified; 100 mW                    | Research area: 8 square miles; final size between 2-3 square miles. 20-40 fm (120-240 feet). 2-4 miles off shore |
| <b>Humboldt WaveConnect Project (PGE)</b><br>P-12779 Updated: 8/18/2008<br>Preliminary permit issued 3/13/2008  | Eureka/Samoa<br><i>Possibly Federal waters</i> | Requests for late intervention denied. Conducting meetings and studies.                          | Will decide on licensing process (TLP or pilot) by March 2009. Progress report due 8/31/08. | 8-200 buoys or other technology, 40 mW | 8-200 buoys. Research area: 136 square miles. 60-600 feet in depth. 2-10 miles from shore.                       |
| <b>Mendocino WaveConnect Project (PGE)</b><br>P-12781 Updated: 8/18/2008<br>Preliminary permit issued 3/13/2008 | Fort Bragg<br><i>Possibly Federal waters</i>   | Various parties requesting more time to comment.   | Unclear.  | Buoys or other technology, 40 mW       | Research area: 68 square miles. 60-600 feet in depth. 0.5 to 6 miles from shore.                                 |



|   | Location   | Latest news  | Next steps  | Technology description           | Footprint description   |
|---|--|--|---|----------------------------------|---|
| <b>MMS Proposed Lease Area 1 - Marine Sciences Co. &amp; PGE</b><br>Updated: 7/23/2008                              | Humboldt County, Federal waters.<br><i>In Federal waters</i> | Both "Marine Sciences" and PGE are interested in doing data collection at this site for a wave energy project. The Council commented on this call for lease nominations.       | MMS is negotiating with Marine Sciences & PGE to see if they will collaborate in this lease area. MMS proceeding with consultation & analyses. NEPA process required.   | Too early to say                 | 3-14 miles offshore of Humboldt County. Leases are for 5 years.   |
| <b>MMS Proposed Lease Area 2 (PGE)</b><br>Updated: 7/23/2008  | Off Fort Bragg<br><i>In Federal waters</i>                   | PGE is interested in doing data collection at this site for a wave energy project. The Council commented on this call for lease nominations.                                   | MMS will proceed with a noncompetitive leasing process, working with the applicant and local stakeholders to refine the area and scope of proposed activities and to address other local concerns. Planning consultation & analyses. NEPA process required. | Too early to say                 | 3-9 miles offshore of Fort Bragg, Mendocino County. Leases are for 5 years.   |
| <b>San Francisco Bay (Golden Gate Energy)</b><br>P-12585 Updated: 8/18/2008<br>Preliminary permit issued 10/11/2005 | San Francisco Bay  | No specific date given for PAD. Little activity since April.   |   | 60 turbines/square mile, 1000 mW | 60 turbines per square mile, located on sea floor. Footprint not specified.   |
| <b>Oregon</b>   |  |  |   |                                  |   |
| <b>Coos Bay OPT Wave Park</b><br>P-12749 Updated: 8/18/2008<br>Preliminary permit issued 3/9/2007<br>PAD submitted  | Coos bay   | Submitted PAD 3/7/08. Comment period extended to 120 days to allow for meetings with Southern Oregon Ocean Resource Coalition (user group). Filed notice of intent to use TLP. | OPT intends to use the traditional licensing process.   | 200-400 buoys, 100 mW            | 200-400 buoys in 3-6 rows parallel to the beach, 25-40 fm deep. Currently, 1 mile wide by 5 miles long; eventually smaller. 2.5 miles from shore. |

|   | Location   | Latest news   | Next steps  | Technology description                  | Footprint description   |
|---|--|---|---|---|---|
| <b>Douglas County Project (Douglas County)</b><br>P-12743 Updated: 8/18/2008<br>Preliminary permit issued 4/6/2007<br>PAD submitted | Winchester Bay   | Submitted PAD 5/23/08. Much commenting activity. Surfers opposed to project. Tribes want government-to-government consultation process.                     | Will use the traditional licensing process.   | One jetty-based structure               | Varies from other proposed projects in that it is powered by wave-driven air currents created by infrastructure built into existing jetty; installed capacity of 3MW.         |
| <b>Newport OPT Wave Park</b><br>P-12750 Updated: 8/18/2008  | Newport/<br>Waldport<br><i>Possibly Federal waters</i>         | Various comments and motions to intervene, but no major activity since April 2008.  | Waiting for preliminary permit. Looks like this might be a placeholder.   | 200-400 buoys, 100+ mW                  | 200-400 buoys in 3-6 rows parallel to the beach. 3.5 miles wide (e/w) by 5 miles long (n/s); eventually as little as 0.4 miles by 3.1 miles, 20-35 fm, up to 6 miles offshore |
| <b>Oregon Coastal Wave Energy Project (Green Wave)</b><br>P-13047 Updated: 8/18/2008<br><br>Preliminary permit issued 5/23/2008     | Nehalem, Rockaway, Garibaldi, Netarts, Nestucca, and Neskowin. | Submitted preliminary schedule of activities 7/8/08   | First progress report due 10/31/08. Fall 2008: Evaluate Garibaldi and Netarts deployment sites. Spring 2009: Decide which application process to use. Through 2010: Conduct meetings, studies, etc. | Buoys, 20-180 mW (total)                | N/A   |
| <b>Reedsport OPT Wave Park</b><br>P-12713 Updated: 8/18/2008<br>Preliminary permit issued<br>PAD submitted                          | Reedsport  | PFMC submitted comments in Nov 2007. Agencies making informal comments on study plans. No action on FERC site since January 2008 (progress report overdue). | Draft license application has been prepared and is being reviewed; plan to submit it September 2008, and to conduct NEPA process after license app is submitted.                                    | 10 buoys, up to 4.14 mW per year        | Depth: 204-225'. Footprint: 0.25 sq. miles, sandy bottom.   |
| <b>Washington</b>   |  |   |   |   |   |
| <b>Admiralty Inlet (Snohomish PUD)</b><br>P-12690 Updated: 8/18/2008<br>Preliminary permit issued 3/9/2007<br>PAD submitted         | Admiralty Inlet, Puget Sound                                   | Submitted PAD 1/31/08. Will be first pilot Snohomish PUD project. Considered most feasible of Snohomish projects. Issued progress report 7/31/08.           | Plan to submit draft license application in January 2010.   | 1-5 turbines (type unknown), up to 5 mW | Bay/estuary habitat; 60-100 m deep; gravel/sandy bottom; much shipping & commercial traffic   |

|  | Location   | Latest news  | Next steps   | Technology description   | Footprint description  |
|--|--|--|--|--|--|
| <b>Agate Passage (Snohomish PUD)</b><br>P-12691 Updated: 8/18/2008<br>Preliminary permit issued 2/22/2007<br>PAD submitted                       | Agate Passage, Puget Sound                         | Submitted PAD 1/31/08; requested and was granted an extension for filing notice of intent. Issued progress report 7/31/08. | Plan to submit draft license application in January 2010.  | Turbines (type, number unknown), 0.4 mW  | Bay/estuary habitat; 10 m. deep; sand/gravel floor; used by pleasure craft                         |
| <b>Deception Pass (Snohomish PUD)</b><br>P-12687 Updated: 8/18/2008<br>Preliminary permit issued 3/1/2007<br>PAD submitted                       | Deception Pass, Puget Sound                        | Submitted PAD 1/31/08; requested and was granted an extension for filing notice of intent. Issued progress report 7/31/08. | Plan to submit draft license application in January 2010.  | Turbines (type, number unknown), 3 mW  | Bay/estuary habitat; 30 m deep; rocky seafloor; mainly recreational use.                           |
| <b>Grays Harbor Ocean Energy and Coastal Protection (Washington Wave Co.)</b><br>P-13058 Updated: 8/18/2008<br>Preliminary permit issued 7/31/08 | Grays Harbor<br><br><i>Possibly Federal waters</i> | Lots of new comments & motions to intervene. Preliminary permit issued 7/31/08.  | Unclear.   | 12 oscillating water column units, 6MW (Eventually, wind turbines & buoys, 168-418 mW) | Up to 28 square miles. 1-3 miles offshore, 10-70 feet in depth. West of Ocean Shores and Westport. |
| <b>Guemes Channel (Snohomish PUD)</b><br>P-12698 Updated: 8/18/2008<br><br>Preliminary permit issued 2/22/2007<br>PAD submitted                  | Guemes Channel, Puget Sound                        | Submitted PAD 1/31/08; requested and was granted an extension for filing notice of intent. Issued progress report 7/31/08. | Plan to submit draft license application in January 2010.  | Turbines (type, number unknown), 3.5 mW  | Bay/estuary habitat; 15 m. deep; gravel seafloor; commercial shipping traffic.                     |
| <b>Makah Bay Offshore Wave Energy Pilot Project (Finavera)</b><br>DI02-3 Updated:  | Makah Bay (Neah Bay)                               | Five-year license issued December 21, 2007.  | Now involved in lawsuit with State of Washington relatd to environmental permitting. Awaiting outcome. | 1 buoy, 1 mW   | 60x240 feet at ocean surface; 625x450 feet at ocean floor. Sandy bottom with rocky outcroppings.   |
| <b>Rich Passage (Snohomish PUD)</b><br>P-12688 Updated: 8/18/2008<br>Preliminary permit issued 2/22/2007<br>PAD submitted                        | Rich Passage, Puget Sound                          | Submitted PAD 1/31/08; requested and was granted an extension for filing notice of intent. Issued progress report 7/31/08. | Plan to submit draft license application in January 2010.  | Turbines (type, number unknown), 1.4 mW  | Bay/estuary habitat; 15-22 m deep; gravel seafloor; commercial & naval traffic.                    |

|   | Location                      | Latest news   | Next steps  | Technology description                  | Footprint description  |
|---|-------------------------------|---|---|---|--|
| <b>San Juan Channel (Snohomish PUD)</b><br>P-12692 Updated: 8/18/2008<br><br>Preliminary permit issued 2/22/2007<br>PAD submitted                 | San Juan Channel, Puget Sound | Submitted PAD 1/31/08; requested and was granted an extension for filing notice of intent. Issued progress report 7/31/08.  | Plan to submit draft license application in January 2010.   | Turbines (type, number unknown), 6.8 mW | Bay/estuary habitat; 135+ m. deep; gravel seafloor; commercial fishing use (salmon)                                      |
| <b>Spieden Channel (Snohomish PUD)</b><br>P-12689 Updated: 8/18/2008<br><br>Preliminary permit issued 2/22/2007<br>PAD submitted                  | Spieden Channel, Puget Sound  | Submitted PAD 1/31/08; requested and was granted an extension for filing notice of intent. Issued progress report 7/31/08.  | Plan to submit draft license application in January 2010.   | Turbines (type, number unknown), 8.3 mW | Bay/estuary habitat; 80 m. deep; gravel seafloor; commercial fishing use (salmon)  |
| <b>Willapa Bay Tidal Energy Plant Water Power Project (Natural Currents)</b><br>P-12729 Updated: 8/18/2008<br>Preliminary permit issued 3/29/2007 | Willapa Bay                   | Conducting field testing of turbine unit (spring 2008). Meeting with state agencies, NMFS, tribes; gathering environmental, social, economic impact info. Seeking funding. Filed NOI to use pilot licensing process 7/8/08. | Plan to submit draft application for pilot process 3/29/09. Earliest date for approval would be September 2009. | 1-3 turbines (Red Hawk-2), 1-2 mW       | 825 meters SSW of State Road 105, 365 m offshore. Footprint unknown. Estuarine habitat. Aiming for installation in 2010. |

|  | Location             | Latest news  | Next steps | Technology description                     | Footprint description   |
|--|----------------------|--|------------|--|---|
| <b>DEFUNCT PROJECTS</b>  |                      |  |            |  |   |
| <b>California</b>  |                      |  |            |  |   |
| <b>Fairhaven OPT Wave Power Project</b><br>P-12780 Updated: 3/27/2008<br><i>Defunct</i>  | Eureka               | Competing application in same location chosen over this one.   |            | 40-80 buoys, 20+ mW                        | .5 mile wide by 4 miles long (n/s), 22-26 fm  |
| <b>Mendocino Wave Energy Project (Chevron)</b><br>P-12806 Updated: 1/15/2008<br><i>Defunct</i>                                     | Fort Bragg           | Application withdrawn 8/31/07. Apparently the "lengthy approval process" in California led Chevron to pursue an opportunity in Alaska instead. |            | Pelamis machines, 2-60 mW                  | Unknown   |
| <b>Sonoma Coast Hydrokinetic Energy (Sonoma Co.)</b><br>P-13076 Updated:<br><i>Defunct</i>   | Sonoma Co.           | Rejected - area too large, technology not specified.   |            | ?  | N/A   |
| <b>Oregon</b>  |                      |  |            |  |   |
| <b>Columbia River project (Oregon Tidal Energy Co.)</b><br>P-12672 Updated: 3/27/2008<br><i>Defunct</i>                            | Lower Columbia River | Preliminary permit surrendered - "insufficient development potential exists for either a full development or tidal project."                   |            | TISECs                                     | River bottom.   |
| <b>Coos County Wave Project (Finavera)</b><br>P-12752 Updated: 6/2/2008<br><i>Defunct</i> 4/26/2007                                | Bandon               | Permit cancelled 6/26/08 because no progress report or PAD was filed.  |            | Buoys, 100-300 mW                          | 5.5 square mile water footprint, 1.6 miles e/w by 3.4 miles n/s.  |
| <b>Florence Wave Park Project (Energetech)</b><br>P-12793 Updated: 3/27/2008<br><i>Defunct</i>                                     | Florence             | Proposal withdrawn - no reason given.  |            | Oscillating water column technology, 10 mW | Each structure's footprint is 35x15 meters, not counting cables. Structures extend 7 meters above water and 15 below. |
| <b>Lincoln County Wave Energy Research &amp; Demonstration Center (Lincoln Co.)</b><br>P-12727 Updated: 5/5/2008<br><i>Defunct</i> | Lincoln County       | Dismissed by FERC  |            | Various.                                   | Unknown   |

|   | Location                    | Latest news  | Next steps   | Technology description     | Footprint description                 |
|---|-----------------------------|--|--|----------------------------|---------------------------------------|
| <b>DEFUNCT PROJECTS</b>   |                             |  |  |                            |                                       |
| <b>Washington</b>   |                             |  |  |                            |                                       |
| <b>Tacoma Narrows (Tacoma Power)</b><br>P-12612 Updated: 8/18/2008<br><br><i>Probably defunct</i> | Tacoma Narrows, Puget Sound | Doing feasibility studies. Issued progress report 7/30/08. Found that tidal power in Tacoma Narrows may not be economically or technically feasible at this time. Independent analysis underway, but permit will probably expire with no further action. | Prelim permit issued 2/22/06; expressed intent to use pilot process; but now looks unfeasible. | Up to 64 turbines, 1-20 mW | In estuary (HAPC). Footprint unknown. |
|   |                             |  |  |                            |                                       |

|                         | Location | Latest news | Next steps | Technology description | Footprint description |
|-------------------------|----------|-------------|------------|------------------------|-----------------------|
| <b>DEFUNCT PROJECTS</b> |          |             |            |                        |                       |

**REPORT ON THE 2008 PACIFIC HALIBUT FISHERIES IN AREA 2A**  
(8/27/08)

The 2008 Area 2A total allowable catch (TAC) of 1,220,000 lb set by the International Pacific Halibut Commission (IPHC) was allocated as sub-TACs as follows:

|                         |  |
|-------------------------|--|
| Treaty Tribes           | 427,000 lb (35%)                           |
| Non-Tribal Total        | 793,000 lb (65%)                           |
| Non-Tribal Commercial   | 321,381 lb (includes incidental sablefish) |
| Washington Sport        | 220,238 lb                                 |
| Oregon/California Sport | 251,381 lb                                 |

All weights in this report are net weight (gutted, head-off, and without ice and slime.) The structure of each fishery and the resulting harvests are described below.

**NON-TRIBAL COMMERCIAL FISHERIES**

A sub-TAC of 251,381 lb (31.7% of the non-tribal share + 70,000 lb for the incidental sablefish fishery) was allocated to two fishery components: 1) a directed longline fishery targeting on halibut south of Point Chehalis, WA; and 2) an incidental catch fishery during the salmon troll fisheries off Washington, Oregon, and California. An additional 70,000 lb was allocated to an incidental catch fishery for limited entry, sablefish-endorsed vessels operating with longline gear north of Pt. Chehalis, WA. This allowance for the tiered sablefish fishery is only available in years when the overall Area 2A TAC exceeds 900,000 lb.

**Incidental halibut catch in the salmon troll fishery** A quota of 37,707 lb of Pacific halibut (15% of the non-Indian commercial fishery allocation) was allocated to the non-Indian commercial salmon troll fishery in Area 2A as an incidental catch during salmon fisheries. According to the Catch Sharing Plan, the primary management objective for this fishery is to harvest the troll quota as an incidental catch during the May/June salmon troll fishery. If any of the allocation for this fishery remains after June 30, the fishery may continue to retain incidentally caught halibut in the salmon troll fisheries until the quota is taken. The final catch ratio established preseason by the Council at the April meeting was one halibut (minimum 32") per two Chinook landed by a salmon troller, except that one halibut could be landed without meeting the ratio requirement, and no more than 35 halibut could be landed per open period. Fishing with salmon troll gear is prohibited within the Salmon Troll Yelloweye Rockfish Conservation Area (YRCA) off the northern Washington Coast. Additionally, the "C-shaped" North Coast Recreational YRCA off Washington is designated as an area to be avoided (a voluntary closure) by salmon trollers.

- Halibut retention was permitted in the salmon troll fisheries beginning May 1. Of the halibut taken in the salmon troll fisheries through August 13, 7,965 lb were landed in Oregon and 13,384 lb were landed in Washington for a total of 21,349 lb.



**Directed fishery targeting on halibut** A quota of 213,674 lb (85% of the non-tribal commercial fishery allocation) was allocated to the directed longline fishery targeting on halibut in southern Washington, Oregon, and California. The fishery was confined to the area south of Subarea 2A-1 (south of Point Chehalis, WA; 46°53.30' N. lat.). In addition, between 46°53.30' N. lat. and 46°16' N. lat., the fishery was confined to an area seaward of a boundary line approximating the 100-fm depth contour and, between 46°16' N. lat. and 40°10' N. lat., to an area shoreward of a boundary line approximating the 30-fm depth contour and seaward of a boundary line approximating the 100-fm depth contour. One-day fishing periods of 10 hours in duration were scheduled by the IPHC for June 11, June 25, July 9, July 23, August 6, August 20, September 3, and September 17, 2008. A 32" minimum size limit with the head on was in effect for all openings. Vessel landing limits per fishing period based on vessel length were imposed by IPHC during all openings as shown in the following table. Vessels choosing to operate in this fishery could not land halibut in the incidental catch salmon troll fishery, nor operate in the recreational fishery.

**Fishing period limits (dressed weight, head-off without ice and slime in pounds) by vessel size.**

| Vessel Class/Size | 6/11 & 6/25 Openings | 7/9 Opening | 7/23 Opening |
|-------------------|----------------------|-------------|--------------|
| A 0 - 25 ft.      | 755 lb               | 670 lb      | 200 lb       |
| B 26 - 30 ft.     | 945 lb               | 840 lb      | 200 lb       |
| C 31 - 35 ft.     | 1,510 lb             | 1,345 lb    | 200 lb       |
| D 36 - 40 ft.     | 4,165 lb             | 3,705 lb    | 560 lb       |
| E 41 - 45 ft.     | 4,480 lb             | 3,985 lb    | 600 lb       |
| F 46 - 50 ft.     | 5,365 lb             | 4,770 lb    | 715 lb       |
| G 51 - 55 ft.     | 5,985 lb             | 5,320 lb    | 800 lb       |
| H 56+ ft.         | 9,000 lb             | 8,000 lb    | 1,200 lb     |

- The June 11 directed commercial fishery resulted in a catch of about 68,000 lb, leaving 145,674 lb for later openings.
- The June 25 directed commercial fishery resulted in a catch of 73,000 lb, leaving 72,674 lb for later openings.
- The July 9 directed commercial fishery resulted in a catch of 57,000 lb, leaving 16,000 lb for later openings.
- The July 23 directed commercial fishery resulted in a catch of about 21,819 lb, resulting in an approximate 5,000 lb overage. The directed fishery closed on July 23 for the

remainder of 2008.

**Incidental halibut catch in the primary sablefish longline fishery north of Point Chehalis**

A quota of 70,000 lb was allocated to the limited entry primary sablefish fishery in Area 2A as an incidental catch during longline sablefish operations north of Point Chehalis, WA. The primary sablefish season is from April 1 to October 31, although incidental halibut retention was not permitted until May 1. Properly licensed vessels were permitted to retain up to 100 lb of dressed weight (headed-and gutted) halibut per 1,000 lb of dressed weight sablefish, plus up to two additional halibut per fishing trip. The fishery is confined to an area seaward of a boundary line approximating the 100-fm depth contour. Fishing is also prohibited in the North Coast Commercial YRCA, an area off the northern Washington coast. In addition, the "C-shaped" North Coast Recreational YRCA off Washington is designated as an area to be avoided (a voluntary closure) by commercial longline sablefish fishermen.

- Through August 4, 2008 this fishery is estimated to have taken 17,353 lb.

**SPORT FISHERIES (Non-tribal).**

A sub-TAC of 471,619 lb (68.3% of non-tribal share – 70,000 lb for the incidental sablefish fishery) was allocated between sport fisheries in the Washington area (36.6%) and Oregon/California (31.7%). The allocations were further subdivided as quotas among seven geographic subareas as described below.

**Washington Inside Waters Subarea** (Puget Sound and Straits of Juan de Fuca). This area was allocated 59,354 lb (23.5% of the first 130,845 lb allocated to the Washington sport fishery, and 32% of the Washington sport allocation between 130,845 and 224,110 lb). Due to inability to monitor the catch in this area inseason, a fixed season was established preseason based on projected catch per day and number of days to achieve the sub-quota. The Eastern Region (East of Low Point) opened on April 10 and continued through June 13, 5 days per week (Thursday-Monday). The Western Region opened on May 22 and continued through July 21, 5 days per week (Thursday-Monday). The daily bag limit was one halibut of any size per person.

- Landings data from this fishery are not yet available.

**Northern Washington Coastal Waters Subarea** (landings in Neah Bay and La Push). The coastal area off Cape Flattery to Queets River was allocated 109,991 lb (62.2% of the first 130,845 lb allocated to the Washington sport fishery, and 32% of the Washington sport allocation between 130,945 lb and 224,100 lb). The fishery was divided into two seasons with 30,798 lb set aside for the second season. The fishery was to open May 13 and continued 3 days per week (Tuesday, Thursday, and Saturday) until 79,194 lb were estimated to have been taken. The second season was to open on June 17 and 19 in the nearshore area only and on June 21 in all waters. If insufficient quota remains to reopen the entire north coast subarea on June 24, then the nearshore area would reopen on June 24, up to four days per week (Thursday-Sunday), until the overall quota of 109,991 lb are estimated to have been taken, or until September 30, whichever is earlier. The "C-shaped" North Coast Recreational YRCA, southwest of Cape

Flattery, was closed to sport halibut fishing. The daily bag limit was one halibut of any size per person.

- The fishery opened May 13 and continued 3 days a week, through June 14, when 64,747 lb were estimated to have been taken. The remaining quota for the May season, 7,383 lb, was not enough to continue the 3 day per week fishery; this remaining quota was transferred to the June season.
- The initial June season quota of 30,798 lb was revised to 38,181 lb. The season re-opened on June 17 and 19 in nearshore waters and June 21 in the entire subarea, during which 21,516 lb were taken. Because there was enough quota remaining to reopen the entire subarea, the season re-opened on June 28 during which 9,695 lb were taken. Not enough quota remained for an opening in the entire sub-area so the fishery was then re-opened on July 26 in the nearshore area only. Through July 26, Washington North Coast sport fishery's June season is estimated to have taken 34,841 lb, leaving approximately 3,340 lb in the subarea quota.

**Washington South Coast Subarea (landings in Westport).** The area from the Queets River to Leadbetter Point was allocated 44,700 lb (12.3 % of the first 130,845 lb allocated to the Washington sport fishery and 32% of the Washington sport allocation between 130,845 and 224,110) . The fishery was to open on May 1 and continued 2 days per week (Sunday and Thursday) in all waters (primary fishery) the fishery would also be open 4 days per week (Friday, Saturday, Sunday and Tuesday) in waters between the Queets River and 47°25.00' N. lat. south to 46°58.00' N. lat., and east of 124°30.00' W. long. (northern nearshore fishery) during the primary season. The south coast subarea quota will be allocated as follows: 40,230 lb, 90 percent, for the primary fishery, and 4,470 lb, 10 percent, for the northern nearshore fishery, once the primary fishery has closed. The primary fishery will continue from May 1 until 40,230 lb are estimated to have been taken, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining to reopen the primary fishery for another fishing day, then any remaining quota may be used to accommodate incidental catch in the northern nearshore area on Fridays and Saturdays, until the entire subarea quota is projected to be taken. The daily bag limit was one halibut of any size per person.

- The primary season was open from May 1 through June 17 and resulted in the harvest of 40,239 lbs (the nearshore area was also open during that time). There was not sufficient quota for another offshore day after June 17. 158 lbs have been caught in the northern nearshore area from June 23 through August 15 leaving 4,303 lbs remaining in the subarea quota.

**Columbia River Subarea** (Leadbetter Point to Cape Falcon). This sport fishery subarea was allocated 18,762 lb, consisting of 2.0 percent of the first 130,845 lb allocated to the Washington sport fishery, 4.0 percent of the Washington sport allocation between 130,845 lb and 224,110 lb (minus the pounds needed for the incidental sablefish fishery), and 5.0 percent of the Oregon/California sport allocation or an amount equal to the contribution from the Washington sport allocation, whichever is greater. The fishery was to open May 1 and continue 7 days per

week until 13,133 lb is estimated to have been taken or until July 20, whichever is earlier. The fishery was to reopen on August 1 and continue 3 days per week (Friday through Sunday) until the entire subarea quota has been taken or September 30, whichever is earlier. The daily bag limit was one halibut of any size per person.

- This 7 day per week fishery began on May 1 and closed on June 1 with a total catch of 15,005 lb.
- Catch during the early season resulted in 3,757 lbs remaining for the late season, due to the smaller quota the fishery reopened for 2 days, August 1 and 2 when 1,671 lb were estimated to have been taken. With 2,086 lb remaining in the quota, this fishery reopened for 2 days on August 22, 23 and 29.

**Oregon Central Coast Subarea** (Cape Falcon to Humbug Mountain). This sport fishery subarea was allocated 231,271 lb (92% of the Oregon/California sport allocation less any amount needed to contribute to the Oregon portion of the Columbia River subarea quota).

Three seasons were set for this subarea: 1) a restricted depth (inside 40-fm) fishery to commence on May 1 and continue 7 days a week until October 31 or until the nearshore sub-quota of 18,502 lb were estimated to have been taken; 2) a fixed Spring season in all depths that was to open on May 8, 9, 10, May 15, 16, 17, May 22, 23, 24, May 29, 30, 31, and June 12, 13, 14 with a catch allocation of 159,577 lb (the Spring season was to reopen for additional days if quota remains), and; 3) a Summer season in all depths that was to open on July 24, 25, and 26, and which was to continue on as many weekends as possible until the total Spring-Summer quotas of 212,769 lb have been taken or until July 31, whichever is earlier. Additional fishing days may be opened if a certain amount of quota remained after August 1 and September 2, and/or an increase in the bag limit may be considered after September 2. The daily bag limit was one halibut of any size per person, unless otherwise specified.

- The inside 40-fathom fishery opened May 1 and is estimated to have taken 10,870 lb through August 17.
- The fixed Spring all-depth season in May-July, held May 8-10, 15-17, 22-23, 29-31, June 12-14, 26-28, July 10-12 and 24-26, had a total catch of 119,656 lb. The remaining Spring quota of 39,921 lb was added to the pounds available to the Summer all-depth fishery.
- The initial Summer all-depth season quota of 53,192 lb was revised by the 39,921 lb remaining from the Spring fishery. As a result, 93,113 lb was initially available to the Summer all-depth fishery. The Summer all-depth fishery opened on August 1-3 (Friday-Sunday). On August 8, NMFS, ODFW, and IPHC conferred inseason and took action to provide more fishing opportunity for the Summer all-depth fishery. The agencies agreed that because the remaining quota for the combined all-depth and inside 40-fm fishery was 71,961 lb (i.e., greater than 60,000 lb after August 5, as stated in the CSP and regulations), beginning August 8, the Summer all-depth fishery opened every Friday-Sunday. Through August 17, the fishery is estimated to have taken 42,959 lb.

**South of Humbug Mountain, Oregon and off the California Coast Subarea** This sport fishery was allocated 7,541 lb (3.0% of the Oregon/California quota). This area had a pre-set season of 7 days per week from May 1 to October 31 and a daily bag limit of one halibut of any size per person.

- This season is scheduled to remain open through October 31. No catch estimates are available for this fishery, but it is unlikely that this subarea quota will be taken.

### **TRIBAL FISHERIES**

A sub-TAC of 427,000 lb (35% of the Area 2A TAC) was allocated to tribal fisheries. The tribes estimated that 30,000 lb would be used for ceremonial and subsistence (C&S) fisheries and the remaining 397,000 lb were allocated to the commercial fishery. The 2008 management plan was essentially identical to the management plan that the tribes have had in place since 2004. This plan divides the fisheries into “separately managed” fisheries and “joint restricted” fisheries.

For the separately managed fisheries, a tribe or group of tribes was allocated a certain percentage of the TAC that could be harvested any time between noon on March 8 and noon on July 30. Collectively, the separately managed fisheries were allocated 75% of the Tribal Commercial TAC. The fishery closed on June 3, as the separately managed fishery expected catch was attained. The separately managed fisheries landed 326,133 lbs in 385 landings (out of 297,750 lbs expected).

The remaining 25% of the TAC was open to all parties in the “joint restricted” fishery. The joint restricted fishery opened at noon March 17 with a 500-lb/vessel/day limit and closed by mutual agreement on April 15 due to an achievement in total catch in the fishery. In order to try to achieve a 40-day opportunity, the Lummi, Nooksack, Suquamish and Swinomish tribes closed their restricted fisheries on March 27. The restricted fishery was closed by all parties on May 3. The joint restricted fishery had a total catch of 100,746 lbs in 356 landings (out of 99,250 lbs expected).

| Fishery                           | Dates Held          | Pounds Landed | # of Landings |
|-----------------------------------|---------------------|---------------|---------------|
| Separately Managed                | March 8 - June 3    | 326,133 lb    | 385 landings  |
| Restricted, 200-500 lb/vessel/day | March 17 – April 15 | 100,746 lb    | 356 landings  |
| Total                             |                     | 426,879 lb    | 741 landings  |

The C&S fishery will continue through December 31 and tribal estimates of catch will be reported by the tribes in January 2009.

| 2008 Area 2A TAC and Catch (in pounds) |                  |                        |  |            |            |
|--|------------------|------------------------|--|------------|------------|
|  | Quota            | Inseason Revised Quota |  | Catch      | Over/Under |
| TRIBAL INDIAN                          | 427,000          |                        |  | 456,879    | 7%         |
| Commercial                             | 397,000          |                        |  | 426,879    | 7.5%       |
| Ceremonial & Subsistence               | 30,000           |                        |  | 30,000     | --         |
| NON-TRIBAL                             | 793,000          |                        |  | 603,272    | -23.9%     |
| COMMERCIAL                             | 321,381          |                        |  | 258,521 ♠  | -19.5%     |
| Troll                                  | 37,707           |                        |  | 21,349 ♠   | -43.3%     |
| Directed                               | 213,674          |                        |  | 219,819 ♠  | 2.8%       |
| Sablefish Incidental                   | 70,000           |                        |  | 17,353 ♠   | -75.2%     |
| SPORT                                  | 471,619          |                        |  | 344,751 ♠  | -26.9%     |
| WA Sport                               | 220,238          |                        |  | 155,717 ♠  | -29.3%     |
| OR/CA Sport                            | 251,381          |                        |  | 189,034 ♠  | -24.8%     |
| WA Inside Waters                       | 59,354           |                        |  | -- ♠       | --         |
| WA North Coast                         | 109,991          |                        |  | 106,652 ♠  | -3.03%     |
| May season                             | 79,194           |                        |  | 71,811 ♠   | -9.3%      |
| June season                            | 30,798           | 38,181 ♣               |  | 34,841 ♠   | -8.7%      |
| WA South Coast                         | 44,700           |                        |  | 40,397     | -9.6%      |
| Col River Area                         | 18,762           |                        |  | 16,676 ♦ ♠ | -11.1%     |
| Early season                           | 13,133           |                        |  | 15,005     | 14.25%     |
| Late season                            | 5,629            | 3,757 ■                |  | 1,671 ♠    | 55.5%      |
| OR Central Coast                       | 231,271          |                        |  | 173,485 ♠  | -24.9%     |
| Inside 40 fathoms                      | 18,502           |                        |  | 10,870 ♠   | -41.2%     |
| Spring (May-July)                      | 159,577          |                        |  | 119,656 ♠  | 25.01%     |
| Summer (August-October)                | 53,192           | 93,113 ★               |  | 42,959 ♠   | -53.8%     |
| OR S. of Humbug/CA                     | 7,541            |                        |  | 7,541 *    | --         |
| <b>TOTAL</b>                           | <b>1,220,000</b> |                        |  |            |            |

\* Assumed.

♣ Washington's North Coast May season fishery had 7,383 lb remaining after it was closed which was transferred to the June season, increasing the June quota to 38,181 lb.

■ The Columbia River Early season exceeded the quota by 1,972 lb which was deducted from the Late season, decreasing the Late season quota to 3,757 lb.

★ Oregon's Central Coast spring all-depth fishery had 39,921 lb remaining. This amount was transferred to the summer all-depth fishery, increasing that quota to 93,113 lb.

♠ Data from these fisheries not complete at the time of the briefing book deadline. Updates will be provided at the Council meeting, if available.

♦ Columbia River catch= 8,668 lb from WA + 8,008 lb from OR.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

Mr. Donald K. Hansen  
Chair, Pacific Fishery Management Council  
7700 NE Ambassador Place, Ste. 101  
Portland, Oregon 97220-1384

Dear Chairman Hansen:

In November 2007, the Pacific Fishery Management Council (Council) adopted, and the National Marine Fisheries Service (NMFS) approved, an overall Pacific sardine harvest guideline (HG) of 89,093 mt for the 2008 fishing year. This HG was then subdivided into a directed harvest fishery of 80,184 mt and an incidental fishery of 8,909 mt. These harvest amounts were initially divided throughout the year in the following way:

- January 1-June 30, 26,550 mt allocated for directed harvest with an incidental set-aside of 4,633 mt;
- July 1-September 14, 34,568 mt allocated for directed harvest with an incidental set-aside of 1,069 mt; and
- September 15-December 31, 19,066 mt allocated for directed harvest with an incidental set-aside of 3,207 mt.

The set-aside allows for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed. Pacific sardine caught incidental to other fisheries during such a closure are counted against that period's incidental set aside.

On August 8, 2008, NMFS announced the closure of directed fishing for Pacific sardine. This closure was necessary because the adjusted directed fishing harvest total for the second allocation period (July 1 - September 14) was expected to be reached. Although timely data were received by NMFS, updated landing reports reviewed after the closure indicate that the directed catch exceeded the allotted directed harvest allocation for this second period by 1,712 mt. Based upon our interpretation of the November 26, 2007, transmittal letter received from the Council regarding harvest and management recommendations for the 2008 Pacific sardine fishing season, NMFS believes it is appropriate that this discrepancy be subtracted from the following directed fishing allocation period rather than deducted from the second allocation period's incidental fishery set-aside. Therefore, when directed fishing for Pacific Sardine re-opens on September 15 per the allocation scheme, the adjusted directed allocation for the final period (September 15-December 31) will represent the subtraction of this overage along with the addition of any unused portion of the 1,069 mt set-aside from the second allocation period.



Should the Council have any questions regarding the steps taken by NMFS during this closure and reallocation please contact Josh Lindsay of my staff at 562-980-4034.

Sincerely,

A handwritten signature in black ink, reading "Rodney R. McInnis". The signature is written in a cursive style with a large, stylized 'R' at the beginning.

Rodney R. McInnis  
Regional Administrator



STATUS REPORT OF THE 2008 OCEAN SALMON FISHERIES OFF WASHINGTON, OREGON, and CALIFORNIA.

Preliminary Data Through August 31, 2008.

| Fishery and Area                                    | Season<br>Dates | Effort<br>Days Fished | CHINOOK       |           |         | COHO <sup>a/</sup> |        |         |
|---|-----------------|-----------------------|---------------|-----------|---------|--------------------|--------|---------|
|   |                 |                       | Catch         | Quota     | Percent | Catch              | Quota  | Percent |
| COMMERCIAL  |                 |                       |               |           |         |                    |        |         |
| Treaty Indian <sup>b/</sup>                         | 5/1-6/30        | 160                   | 9,424         | 20,000    | 47%     | Non-Retention      |        |         |
|   | 7/1-9/15        | 246                   | 6,309         | 17,500    | 36%     | 3,488              | 20,000 | 17%     |
| Non-Indian North of Cape Falcon <sup>c/</sup>       | 5/3-6/30        | 1,287                 | 11,113        | 11,700    | 95%     | Non-Retention      |        |         |
|   | 7/7-9/16        | 494                   | 2,628         | 8,800     | 30%     | 1,667              | 3,000  | 56%     |
| Cape Falcon - U.S./Mexico Border                    | Closed          | -                     | -             | -         | -       | -                  | -      | -       |
| RECREATIONAL  |                 |                       |               |           |         |                    |        |         |
| U.S./Canada Border - Leadbetter Point <sup>c/</sup> | 6/1-28          | 4,183                 | 1,498         | 8,200     | 18%     | Non-Retention      |        |         |
| U.S./Canada Border - Cape Alava <sup>c/</sup>       | 7/1-9/13        | 5,695                 | 1,063         | 950       | 112%    | 2,060              | 2,060  | 100%    |
| Cape Alava-Queets River <sup>c/</sup>               | 7/1-9/13        | 1,244                 | 543           | 350       | 155%    | 375                | 540    | 69%     |
|   | 9/20-10/5       |                       |               | 100       | 0%      |                    | 50     | 0%      |
| Queets River - Leadbetter Pt. <sup>c/</sup>         | 6/29-9/13       | 14,902                | 8,332         | 5,100     | 163%    | 5,920              | 7,520  | 79%     |
| Leadbetter Pt.-Cape Falcon <sup>c/</sup>            | 6/1-28          | 837                   | 344           | 4,800     | 7%      | Non-Retention      |        |         |
|   | 6/29-8/24       | 13,575                | 3,341         | remainder | 70%     | 10,845             | 11,380 | 95%     |
| Cape Falcon - OR/CA Border                          | 6/22-8/15       | 19,736                | Non-Retention |           |         | 9,883              | 9,000  | 110%    |
| OR/CA Border - U.S./Mexico Border                   | Closed          | -                     | -             | -         | -       | -                  | -      | -       |

| TOTALS TO DATE        | Effort     |            |            | Chinook Catch |                |                | Coho Catch <sup>a/</sup> |                |               |
|-----------------------|------------|------------|------------|---------------|----------------|----------------|--------------------------|----------------|---------------|
|                       | 2008       | 2007       | 2006       | 2008          | 2007           | 2006           | 2008                     | 2007           | 2006          |
| <b>TROLL</b>          |            |            |            |               |                |                |                          |                |               |
| Treaty Indian         | 406        | 615        | 802        | 15,733        | 23,038         | 30,055         | 3,488                    | 39,996         | 31,706        |
| Washington Non-Indian | 1,154      | 1,256      | 1,263      | 8,354         | 14,233         | 14,925         | 1,301                    | 5,726          | 974           |
| Oregon                | 627        | 4,762      | 3,325      | 5,387         | 33,746         | 29,104         | 366                      | 16,408         | 1,192         |
| California            | -          | 9,131      | 5,408      | -             | 101,803        | 45,674         | -                        | -              | -             |
| Total Troll           | 2,187      | 15,764     | 10,798     | 29,474        | 172,820        | 119,758        | 5,155                    | 62,130         | 33,872        |
| <b>RECREATIONAL</b>   |            |            |            |               |                |                |                          |                |               |
| Washington Non-Indian | 36,784     | 66,832     | 59,504     | 14,306        | 8,459          | 9,623          | 17,008                   | 78,678         | 33,973        |
| Oregon                | 23,415     | 75,980     | 39,449     | 815           | 4,917          | 6,553          | 12,075                   | 59,544         | 14,620        |
| California            | -          | 97,918     | 116,374    | -             | 44,627         | 91,167         | -                        | 691            | 1,538         |
| Total Recreational    | 60,199     | 240,730    | 215,327    | 15,121        | 58,003         | 107,343        | 29,083                   | 138,913        | 50,131        |
| <b>PPMC Total</b>     | <b>N/A</b> | <b>N/A</b> | <b>N/A</b> | <b>44,595</b> | <b>230,823</b> | <b>227,101</b> | <b>34,238</b>            | <b>201,043</b> | <b>84,003</b> |

a/ All non-Indian coho fisheries are mark-selective.

b/ Treaty Indian effort is reported as landings.

c/ Numbers shown as Chinook quotas for non-Indian troll and recreational fisheries North of Falcon are guidelines rather than quotas; only the total Chinook allowable catch is a quota.

TABLE IR-5. Sequence of events in ocean salmon fishery management, 2008.<sup>a/</sup> (Page 1 of 4)

| <b>GENERAL MANAGEMENT ACTIONS AND INSEASON CONFERENCES</b> |  |
|--|--|
| Feb. 26  | National Marine Fisheries Service (NMFS) provides the Council with a letter outlining the 2008 management guidance for stocks listed under the Endangered Species Act (ESA).   |
| Mar. 13  | Based on Council recommendations, NMFS takes inseason action to: <ol style="list-style-type: none"> <li>1. delay the opening for the commercial salmon fishery between Cape Falcon, Oregon and the OR/CA border from March 15 to April 15;</li> <li>2. close the commercial salmon fishery from Horse Mt., California to Point Arena effective April 7;</li> <li>3. delay the opening for the recreational salmon fishery between Cape Falcon, Oregon and Humbug Mt., Oregon from March 15 to April 15;</li> <li>4. close the recreational salmon fishery from Horse Mt., California to Point Arena effective April 1;</li> <li>5. close the recreational salmon fishery from Point Arena, California to the U.S./Mexico border effective April 5.</li> </ol> <p>New regulations to take effect May 1, 2008.</p> |
| Mar. 14  | Council adopts three commercial and recreational ocean salmon fishery management options for public review.  |
| Mar. 18  | North of Cape Falcon Salmon Forum meets in Olympia, Washington to initiate consideration of recommendations for treaty Indian and non-Indian salmon management options.  |
| Mar. 31-Apr. 1   | Council holds public hearings on proposed 2008 management options in Westport, Washington, Coos Bay, Oregon, and Eureka, California.   |
| Apr. 1   | North of Cape Falcon Salmon Forum meets in Lynnwood, Washington to further consider recommendations for treaty Indian and non-Indian salmon management options.  |
| Apr. 9   | Based on Council recommendations, NMFS takes inseason action to: <ol style="list-style-type: none"> <li>1. close the commercial salmon fishery between Cape Falcon, Oregon and the OR/CA border effective April 15;</li> <li>2. close the recreational salmon fishery between Cape Falcon, Oregon and Humbug Mt., Oregon effective April 15.</li> </ol> <p>New regulations to take effect May 1, 2008.</p>   |
| Apr. 10  | Council adopts final ocean salmon fishery management recommendations for approval and implementation by the U.S. Secretary of Commerce. The proposed measures comply with the salmon fishery management plan (FMP) and the current biological opinions for listed species except that the Sacramento River fall Chinook spawning escapement is projected to be 59,100, less than the 122,000-180,000 FMP conservation objective; therefore, an emergency rule is required for implementation of fisheries south of Cape Falcon, Oregon.  |
| May 4  | Ocean salmon seasons implemented as recommended by the Council and published in the <i>Federal Register</i> on May 1 (73 FR 23971).  |
| June 19  | NMFS inseason conference number three for the U.S./Canada border to Cape Falcon, non-Indian commercial all-salmon except coho fishery results in: <ol style="list-style-type: none"> <li>1. changing the landing and possession limit to 35 Chinook north of Leadbetter Point or 35 Chinook south of Leadbetter Point, per open period effective June 21;</li> <li>2. closing the fishery effective 11:59 p.m. June 24.</li> </ol>   |
| June 20  | NMFS inseason conference number four results in changing the bag limit to allow retention of two Chinook effective June 21 for the U.S./Canada border to Cape Falcon, non-Indian recreational all-salmon except coho fishery and the all species fishery scheduled to open June 29 in the Columbia River and Westport subareas and July 1 in the La Push and Neah Bay subareas.  |
| July 24  | NMFS inseason conference number three results in changing the U.S./Canada border to Cape Falcon recreational fishery to open seven days per week and to allow retention of two Chinook in the bag limit beginning August 11.   |

TABLE IR-5. Sequence of events in ocean salmon fishery management, 2008.<sup>a/</sup> (Page 2 of 4)

**GENERAL MANAGEMENT ACTIONS AND INSEASON CONFERENCES** (continued)

|         |   |
|---------|---|
| July 30 | NMFS inseason conference number five for the U.S./Canada border to Cape Falcon, non-Indian commercial all-salmon except coho fishery results in changing the landing and possession limit to 50 Chinook north of Leadbetter Point or 50 Chinook south of Leadbetter Point, per open period effective August 2.  |
| Aug.12  | NMFS inseason conference number six results in closing the recreational mark selective coho fishery between Cape Falcon, Oregon and the OR/CA border effective 11:59 p.m. August 14 as the quota was reached.   |
| Aug. 13 | NMFS inseason conference number seven for the U.S./Canada border to Cape Falcon, non-Indian commercial all-species fisheries results in lifting the 6-inch plug only gear restriction effective August 16.  |
| Aug. 15 | NMFS inseason conference number eight for the U.S./Canada border to Cape Falcon, non-Indian commercial and Leadbetter Point to Cape Falcon recreational all-species fisheries results in: <ol style="list-style-type: none"> <li>1. trading 1,000 coho from the commercial fishery quota for 500 Chinook from the recreational fishery quota, resulting in increasing the commercial Chinook quota by 500 to 8,800, and increasing the Columbia River subarea coho quota by 1,200 to 11,380. The coho trade was impact neutral for lower Columbia River natural coho due to lower hook and release mortality in the recreational fishery.</li> <li>2. closing the Columbia River subarea recreational fishery effective 2:00 p.m. August 17 as the coho quota was reached.</li> </ol> |
| Aug. 25 | NMFS inseason conference number nine for the U.S./Canada border to Leadbetter Point, recreational all-species fishery results in: <ol style="list-style-type: none"> <li>1. closing the Neah Bay subarea fishery west of the Bonilla-Tatoosh line effective August 26 as the coho quota was reached. The state waters Area 4B add-on fishery east of the Bonilla-Tatoosh line will occur as planned beginning August 26;</li> <li>2. allowing fishing seven days per week in the La Push and Westport subarea recreational fisheries effective August 26.</li> </ol>  |

**NON-INDIAN COMMERCIAL TROLL SEASONS**

|               |   |
|---------------|---|
| May 1         | <p>Pigeon Point to Point Sur, non-Indian commercial all-salmon-except-coho fishery opens through May 31 with a 75 Chinook per vessel per calendar week landing and possession limit; fish must be landed south of Point Arena; Chinook minimum size limit 27 inches total length.</p> <p>Point Sur to U.S./Mexico border, non-Indian commercial all-salmon-except-coho fishery opens through September 30; fish must be landed south of Pigeon Point; Chinook minimum size limit 27 inches total length in May, June, and September and 28 inches in July and August.</p> |
| May 3-June 17 | U.S./Canada border to Cape Falcon, non-Indian commercial all-salmon-except-coho fishery opens Saturday to Tuesday through June 17 with an 11,700 Chinook quota, and a landing and possession limit of 50 Chinook north of Leadbetter Point or 50 Chinook south of Leadbetter Point., per vessel per open period.  |
| June 21-24    | U.S./Canada border to Cape Falcon, non-Indian commercial all-salmon-except-coho fishery reopens Saturday to Tuesday through June 24 with the remainder of the 11,700 Chinook quota, and a landing and possession limit of 35 Chinook north of Leadbetter Point or 35 Chinook south of Leadbetter Point, per vessel for the final four day open period.  |

TABLE IR-5. Sequence of events in ocean salmon fishery management, 2008.<sup>a/</sup> (Page 3 of 4)

**NON-INDIAN COMMERCIAL TROLL SEASONS** (continued)

|                  |   |
|------------------|---|
| July 1- Sept. 16 | <p>U.S./Canada border to Cape Falcon, non-Indian commercial all-salmon fishery opens through the earlier of September 16 or quotas (post trade) of 8,800 Chinook and 3,000 marked (adipose fin clipped) coho.</p> <p>July 1 through August 12: Saturday to Tuesday, with a 35 Chinook and 25 marked coho north of Leadbetter Point or 35 Chinook and 25 marked coho south of Leadbetter Point, per vessel per open period landing and possession limit. Gear is restricted to plugs six inches or longer.</p> <p>August 16 through September 16: Saturday to Tuesday, with a 35 Chinook and 25 marked coho north of Leadbetter Point or 35 Chinook and 25 marked coho south of Leadbetter Point, per vessel per open period landing and possession limit. No special gear restrictions.</p> |
|------------------|---|

**TREATY INDIAN COMMERCIAL TROLL SEASONS**

|         |   |
|---------|---|
| May 1   | All-salmon-except-coho fisheries open through the earlier of June 30 or a 20,000 Chinook quota.                                   |
| June 30 | All-salmon-except-coho fisheries close as scheduled.  |
| July 1  | All-salmon fisheries open through the earlier of September 15, a 17,500 Chinook quota, or a 20,000 non-mark-selective coho quota. |
| Sep. 15 | Scheduled closure of all-salmon commercial fisheries.   |

**RECREATIONAL SEASONS**

|            |   |
|------------|---|
| Feb. 17    | Horse Mt. to Point Arena, all-salmon-except-coho fishery opens through March 31.  |
| June 1/3   | U.S./Canada border to Leadbetter Point, all-salmon except coho fishery opens through the earlier of June 28 or an 8,200 Chinook quota. Fishery is open Sunday to Friday south of the Queets River and Tuesday to Saturday north of the Queets River; a daily-bag-limit of two fish (no coho), only one of which can be a Chinook, through June 20. Beginning June 21 the bag limit is a two fish (no coho) with no Chinook bag restriction. |
| June 1     | Leadbetter Point to Cape Falcon, all-salmon except coho fishery opens through the earlier of June 28 or a 5,300 Chinook guideline. Fishery is open Sunday to Friday; a daily-bag-limit of two fish (no coho), only one of which can be a Chinook, through June 20. Beginning June 21 the bag limit is a two fish (no coho) with no Chinook bag restriction.   |
| June 22    | Cape Falcon to OR/CA border, all-salmon mark-selective coho fishery opens through the earlier of August 31, or a quota of 9,000 marked coho.  |
| June 26/28 | U.S./Canada border to Leadbetter Point, all-salmon except coho fishery closes as scheduled.   |
| June 28    | Leadbetter Point to Cape Falcon, all-salmon except coho fishery closes as scheduled.  |
| June 29    | Queets River to Leadbetter Point, all-salmon mark-selective coho fishery opens through the earlier of September 13 or a 7,520 marked coho quota, with a 5,100 Chinook guideline. Fishery is open Sunday to Thursday with a daily-bag-limit of two fish through August 21. Beginning August 24 the fishery is open seven days per week. All coho must have a healed adipose fin clip.  |
| June 29    | Leadbetter Point to Cape Falcon, all-salmon mark-selective coho fishery opens through the earlier of September 30 or an 11,380 (post trade) marked coho quota, with the remainder of the 4,600 (post trade) Chinook guideline. Fishery is open Sunday to Thursday with a daily-bag-limit of two fish. All coho must have a healed adipose fin clip.   |

TABLE IR-5. Sequence of events in ocean salmon fishery management, 2008.<sup>a/</sup> (Page 4 of 4)

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| <b>RECREATIONAL SEASONS, (continued)</b> |  |
|--|--|
| July 1                                   | <p>U.S./Canada border to Cape Alava, all-salmon mark-selective coho fishery opens through the earlier of September 13 or a 2,060 coho quota, with a 950 Chinook guideline. Fishery is open Tuesday to Saturday with a daily-bag-limit of two fish. All coho must have a healed adipose fin clip. No chum retention in August and September.</p> <p>Cape Alava to Queets River, all-salmon mark-selective coho fishery opens through the earlier of September 13 or a 540 coho quota, with a 350 Chinook guideline. Fishery is open Tuesday to Saturday with a daily-bag-limit of two fish through August 23. Beginning August 26 the fishery is open seven days per week with a two fish bag limit and no Chinook bag restriction. All coho must have a healed adipose fin clip.</p> |
| Aug. 14                                  | Cape Falcon to OR/CA border, all-salmon mark-selective coho fishery closes as the quota is reached.  |
| Aug. 17                                  | Leadbetter Point to Cape Falcon, all-salmon mark-selective coho fishery closes effective 2 p.m. as the coho quota is reached.  |
| Aug. 23                                  | U.S./Canada border to Cape Alava, all-salmon mark-selective coho fishery closes as the coho quota is reached.  |
| Sep. 13                                  | <p>Scheduled closure of the Cape Alava to Queets River, all-salmon mark-selective coho fishery.</p> <p>Scheduled closure of the Queets River to Leadbetter Point, all-salmon non-mark-selective fishery.</p>   |
| Sep. 20                                  | La Push area (48°00'00" N. Lat. to 47°50'00" N. Lat.), all-salmon mark-selective coho fishery opens through the earlier of October 5, a 100 Chinook quota or a 50 coho quota.  |
| Oct. 5                                   | Scheduled closure of the La Push area, all-salmon mark-selective coho fishery.   |

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a/ Unless stated otherwise, season openings or modifications of restrictions are effective at 0001 hours of the listed date. Closures are effective at 2359 hours of the listed date.



For Immediate Release  
Office of the Press Secretary  
August 15, 2008

## **Personnel Announcement**

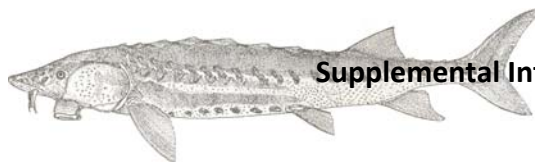
President George W. Bush today announced his intention to designate one individual and appoint five individuals to serve in his Administration.

The President intends to designate Santanu "Sandy" K. Baruah, of Oregon, to be Acting Administrator of the Small Business Administration.

The President intends to appoint the following individuals to be United States Commissioners on the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean:

Rick Gaffney, of Hawaii  
William H. Gibbons-Fly, of Maryland  
Paul M. Krampe, of California  
Jane C. Luxton, of Virginia  
Peter Young, of Hawaii

# # #



## **Proposed Critical Habitat Designation for the Threatened Southern Distinct Population Segment of North American Green Sturgeon**

### **Today's Action.**

NOAA Fisheries has published a proposed rule in the *Federal Register* to designate critical habitat areas in Washington, Oregon, and California for the Southern Distinct Population Segment of North American green sturgeon (Southern DPS of green sturgeon), listed in 2007 as a threatened species under the Endangered Species Act (ESA). The proposed rule includes analyses of the economic and other impacts of this proposed designation, and seeks additional information and comment on the proposed designation. Public hearings will be held in at least 2 locations to receive comments and feedback on the proposal. Details of the public hearings will soon be posted on NOAA Fisheries' website: <http://www.swr.noaa.gov>. Following the public comment period and hearings, the final rule is scheduled to be completed by NOAA Fisheries by June 30, 2009.

The proposed rule and supporting documents can be found at [www.nmfs.noaa.gov/pr](http://www.nmfs.noaa.gov/pr), look under "Recent News and Hot Topics."

### **Background.**

The Endangered Species Act (ESA) requires the federal government to designate "critical habitat" for any species listed under the ESA, in this case, the Southern DPS of green sturgeon. "Critical habitat" is defined as specific areas on which are found physical or biological features essential to the conservation of the species, and which may require special management considerations or protection. Critical habitat designations must take into consideration the economic impact, impact on national security, and any other relevant impact of such designation. Areas may be excluded from critical habitat if a determination is made that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. However, the exclusion of such areas from critical habitat must not result in the extinction of the species.

### **Areas Proposed for Designation.**

The proposed designation looks at certain factors called "primary constituent elements" (PCEs) that are essential to support one or more of the life stages of the Southern DPS. The proposal analyzes areas that will provide the greatest biological benefits for the Southern DPS and balances the economic and other costs for areas proposed for designation. Based on this balancing of benefits and costs, the following specific areas, known to be presently occupied by the listed species, are proposed for designation: coastal U.S. marine waters within 110 meters (m) depth from Monterey Bay, California (including Monterey Bay), north to Cape Flattery, Washington, including the Strait of Juan de Fuca, Washington, to its United States boundary; the Sacramento River, lower Feather River, and lower Yuba River in California; the Sacramento-San Joaquin Delta and Suisun, San Pablo, and San Francisco bays in California; the lower Columbia River estuary; and certain coastal bays and estuaries

in California (Humboldt Bay), Oregon (Coos Bay, Winchester Bay, and Yaquina Bay), and Washington (Willapa Bay and Grays Harbor). The areas proposed for designation comprise approximately 325 miles (524 km) of freshwater river habitat, 1,058 square miles (2,739 sq km) of estuarine habitat, 11,927 square miles (30,890 sq km) of marine habitat, and 136 square miles (352 sq km) of habitat within the Yolo and Sutter bypasses (Sacramento River, CA).

The proposed rule requests additional information regarding the historic, current and potential use of seven presently unoccupied areas in the Central Valley of California by the Southern DPS. These areas are: reaches upstream of Oroville Dam on the Feather River; reaches upstream of Daguerre Dam on the Yuba River; areas on the Pit River upstream of Keswick and Shasta dams; areas on the McCloud River upstream of Keswick and Shasta dams; areas on the upper Sacramento River upstream of Keswick and Shasta dams; reaches on the American River; and reaches on the San Joaquin River. Additional information will inform our consideration of these areas for the final designation as well as future recovery planning for Southern DPS green sturgeon.

The proposed rule also requests additional information on costs incurred by those planning to undertake activities in certain areas, in particular Coos Bay, OR, or other areas along the lower Columbia River estuary, as a result of this proposed critical habitat designation for the Southern DPS of green sturgeon that were not captured in our draft economic report. These activities include, but are not limited to, liquefied natural gas (LNG) projects, hydropower activities, and alternative energy projects. Additional information received will be incorporated into the development of our final determination to designate or exclude areas from critical habitat for the Southern DPS of green sturgeon.

#### **Consideration of Impacts to National Security and Tribal Lands Based on this Designation.**

The proposal includes the potential for exclusion of any military lands or tribal lands that may overlap with areas proposed for designation as critical habitat for the Southern DPS. We request information specifically pertaining to whether the designation for such sites as critical habitat for the Southern DPS would result in national security impacts or impacts to tribal lands that would outweigh the benefits of designation.

#### **Comments**

Comments may be submitted for this proposed rule as listed below. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov>.

- Electronic: Go to the Federal eRulemaking Portal, <http://www.regulations.gov>, and follow instructions for submitting comments.
- Fax to 562-980-4027 Attn: Melissa Neuman
- Mail: Chief, Protected Resources Division, Southwest Region, NOAA's Fisheries Service, 650 Capitol Mall, Sacramento, CA 95814-4706

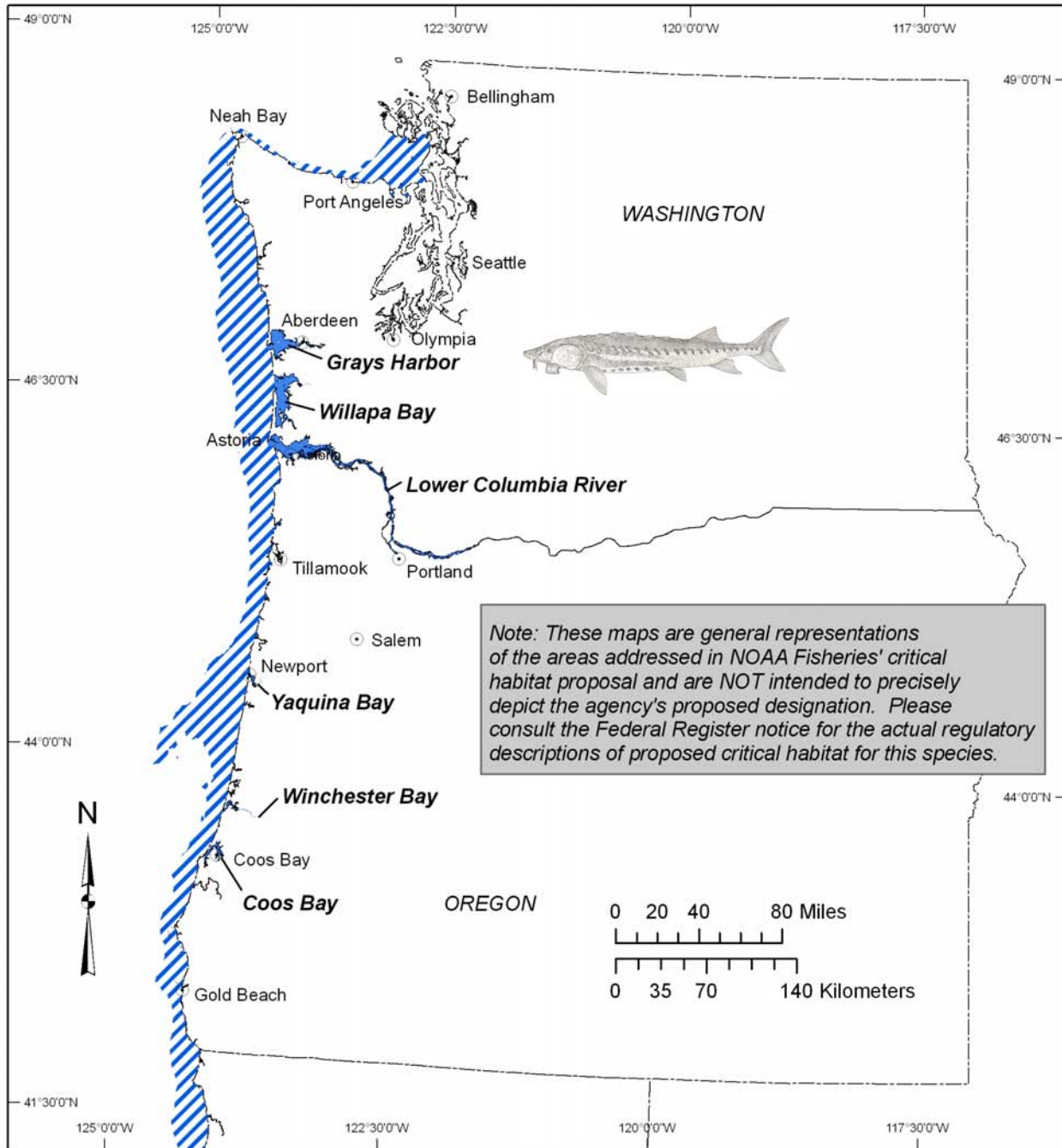
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*NOAA understands and predicts changes in the Earth's environment, from the depths of the ocean to the surface of the sun, and conserves and manages our coastal and marine resources.*





# Proposed Critical Habitat for the Southern DPS of Green Sturgeon

## Washington & Oregon

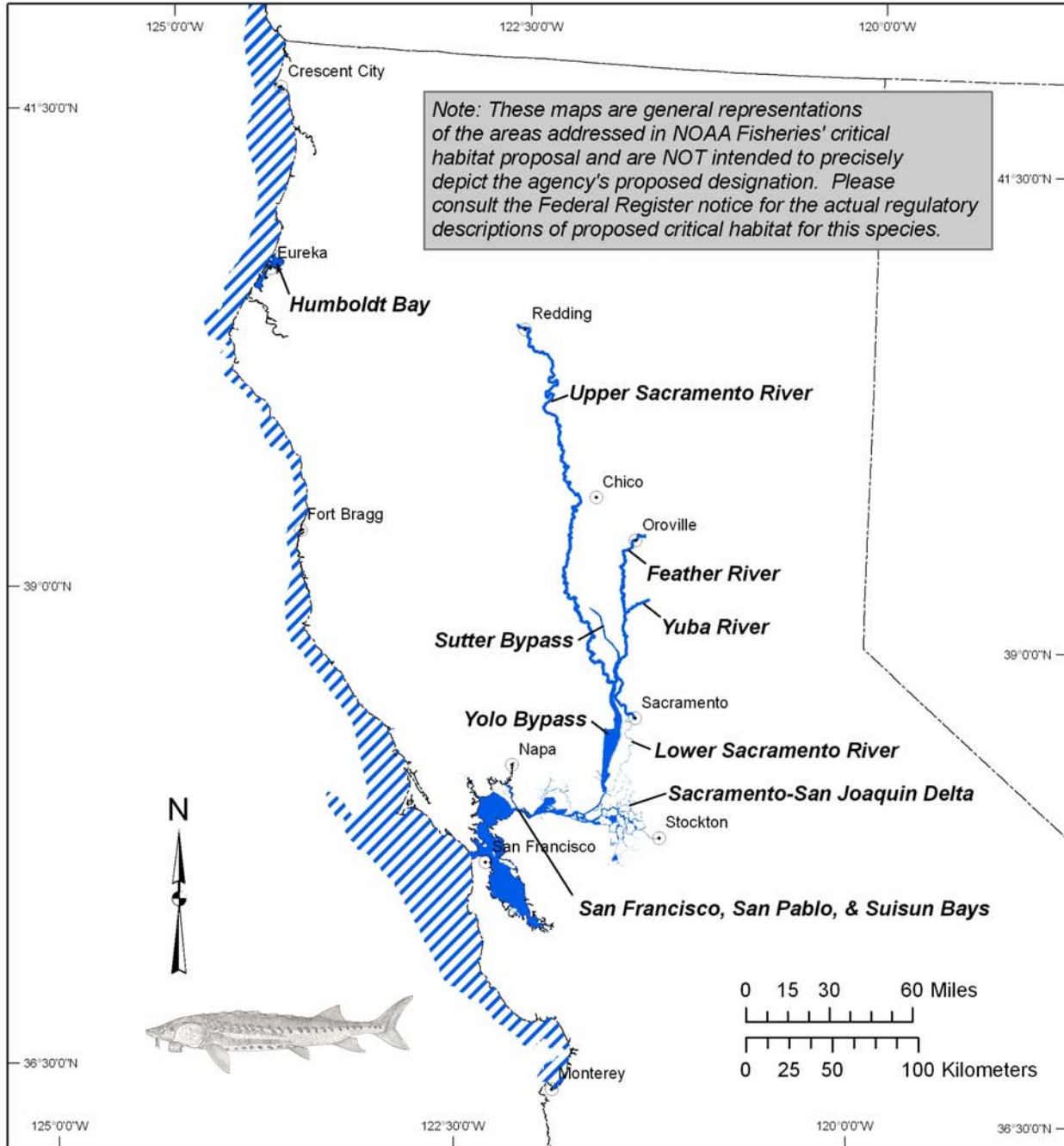


### Legend

- Cities / Towns
- State Boundary
-  Riverine and Estuarine Areas Proposed as Critical Habitat
-  Nearshore Marine Areas Proposed as Critical Habitat (offshore to 110 meters depth)

# Proposed Critical Habitat for the Southern DPS of Green Sturgeon

California



## Legend

- Cities / Towns
- State Boundary
- Riverine and Estuarine Areas Proposed as Critical Habitat
- Nearshore Marine Areas Proposed as Critical Habitat (offshore to 110 meters depth)