

## NATIONAL MARINE FISHERIES SERVICE REPORT ON PROCESS AND WORKLOAD FOR HALIBUT MANAGEMENT TRANSITION

At the April 2019 Pacific Fishery Management Council (Council) meeting, the Council approved a motion that recommended that “National Marine Fisheries Service (NMFS)...provide an initial report at the 2019 November Council meeting describing the process, timeline, and workload associated with transitioning the management of the commercial directed halibut fishery, and to develop recommendations to the International Pacific Halibut Commission (IPHC) for their interim and annual meetings.”

At their June 2019 meeting, the Council refined their approach for the management transition, stating, “[it is] the Council’s intent to not consider any major changes to the fishery management structure for the next few years.”

This NMFS report is in response to both the April 2019 process report request and the June 2019 Council clarification. Given that the Council has indicated to both industry and the IPHC their intent for the transition to proceed without “major changes” to the current fishery, NMFS is describing the process, timeline, and workload under three scenarios that differ only in how fishery participants apply and are registered or permitted:

- 1) A simple web-based application and registration system
  - a) without a physical copy of permit provided to participants
  - b) with physical permit
- 2) Phone-based call-in registration system
- 3) More traditional permitting process, where NMFS staff receive and check applications and supplemental documents, and issue the permit (may be done online).

For scenarios 1 and 2, as long as potential participants complete an application by the deadline, there would not be any other qualification criteria necessary (i.e., the fishery remains “open access”). Vessels would still need to meet registration and safety requirements of the U.S. Coast Guard and states. For scenario 3, after receiving an application, NMFS staff would review the application for compliance with criteria developed through the Council process and NMFS rulemaking. Scenarios 1 and 2 are similar to the current process managed by IPHC, and NMFS expects these scenarios do not constitute a “major change,” while scenario 3 adds a review process that the Council may consider a departure from the current fishery structure.

The three scenarios are not all-inclusive and are only meant to represent potential options, and should not be construed as limiting the Council’s action on this matter.

For all scenarios, NMFS is anticipating the need for a minimum of three Council meetings: the first to choose a purpose & need statement and select a range of alternatives (ROA), the second to review the draft National Environmental Policy Act (NEPA) analysis and choose a preliminary preferred alternative

(PPA), and the third to choose a final preferred alternative (FPA). NMFS is projecting that rulemaking with the associated Paperwork Reduction Act application would require about a year to conclude following selection of an FPA.

#### *Process Overview*

The NEPA analysis will provide the Council with the best available information to choose the preferred alternative for the permitting method, and any delays in drafting will affect the timelines shown in Table 1. After the Council takes final action, NMFS will begin drafting the proposed rule, start the PRA application process, set up the permitting application programming and website, and, if needed, consult on listed species under the ESA.

In addition to transitioning the permitting requirements, NMFS expects the Council will also need to review the regulatory structure for setting initial vessel limits and the inseason management process. NMFS anticipates the current inseason process used by the IPHC cannot be implemented without some adjustments. The current commercial directed fishery generally starts after the June Council meeting and concludes before the September Council meeting, meaning the Council will not have a forum to discuss inseason management. The Council could recommend a formulaic process for determining landing limits and open periods, and other inseason actions. The IPHC currently adjusts the trip limits in the two weeks between the openers, and NMFS does not expect to gather and analyze landings data, adjust trip limits, and provide notice in the *Federal Register* in less than two weeks. The Council will need to allocate sufficient floor time to discuss these management concerns in addition to the permitting structure alternatives.

The difference between the three permitting structures is in the staff resources needed to generate the permits. NMFS estimates the timeline would be similar for rulemaking and implementation under each of the permitting scenarios, and all permitting scenarios could target a 2022 implementation date. Option 1 would be the simplest option and require the least amount of staff time on an annual basis, because no staff time would be needed to process permits. Option 2, a call-in system, would require staff time to answer phones and transcribe the vessel's information into a database or other form to provide to enforcement and inseason managers. Option 3, a full permitting process, would require the most staff time to review applications and supplemental documentation, vet applicants, and issue the permits. NMFS has concerns that Option 3 may not be completed under the status quo application deadlines for the 2A fisheries. Application deadlines may need to be earlier to allow permits staff enough time to process all applications before the start of the fisheries under Option 3. NMFS is also exploring whether a fee would need to be charged for any or all of the permitting options.

For each of the three scenarios, the tables below show a comparison of the timelines and major tasks (Table 1) and staffing (Table 2). Following these tables are some additional details on factors that may affect this action.

Table 1: Timeline and major tasks for 3 scenarios

	<i>Web Registration Only</i>	<i>Phone Call In <sup>1</sup></i>	<i>Traditional Permit Process</i>
March/April 2020	Council Meeting: P&N, ROA	Council Meeting: P&N, ROA	Council Meeting P&N, ROA
May 2020	Start drafting NEPA	Start drafting NEPA	Start drafting NEPA
August/September 2020	Finish drafting NEPA	Finish drafting NEPA	Finish drafting NEPA
September 2020	Council Meeting: PPA	Council Meeting: PPA	Council Meeting: PPA
November 2020	Council Meeting: FPA	Council Meeting: FPA	Council Meeting: FPA <sup>2</sup>
November 2020- January 2021	Start PRA & drafting of proposed rule	Start PRA & drafting of proposed rule	Start PRA & drafting of proposed rule
February 2021	Publish Proposed Rule	Publish Proposed Rule	Publish Proposed Rule
February 2021- March 2021	Begin programming applicant webform	Beginning programming internal form	Begin programming permits database
April 2021	Comment period ends	Comment period ends	Comment period ends
May – August 2021	Review comments Draft Final Rule	Review comments Draft Final Rule	Review comments Draft Final Rule
September 2021	Final Rule Conclude PRA	Final Rule Conclude PRA	Final Rule Conclude PRA
September 2021	Begin stakeholder outreach	Begin stakeholder outreach	Begin stakeholder outreach
October 2021	Final Rule cooling off period ends	Final Rule cooling off period ends	Final Rule cooling off period ends
November 2021	Finish programming webform	Internal form and process for transcription completed	Finish programming permits database
December 2021	Webform testing		Database testing
January 2022	Webform open for applications	Call-in phone line and voice message system operational	Database open for applications

<sup>1</sup> The phone call-in implementation timeline is likely the same as the web registration, however this option will require more staff resources (see Table 2).

<sup>2</sup> FPA for the traditional paper permit includes Council decision on the need for eligibility criteria (e.g. U.S. citizenship, valid Coast Guard decal, etc.)

Table 2: Comparison of staffing needs for three options

<i>Web Registration Only</i>	<i>Phone Call In</i>	<i>Traditional Permit Process</i>
NMFS - 1 rulewriter/PRA/outreach - 1 webform programmer  Council - 1 staff officer/NEPA analyst	NMFS - 1 rulewriter/PRA/outreach - 1 permit staffer - 1 webform programmer  Council - 1 staff officer/NEPA analyst	NMFS - 1 rulewriter/PRA/outreach - 1 permit staffer - 1 webform programmer  Council - 1 staff officer/NEPA analyst

Additional background on factors that affect the scenarios:

*National Environmental Policy Act (NEPA)*

The NEPA analysis is a crucial step in the timeline, and a draft NEPA analysis should support an informed Council decision on both the PPA and FPA. The scenarios anticipate having a complete draft analysis by late summer 2020. Any delay in this phase has the potential to delay all subsequent steps in the schedule. NMFS anticipates the Council will choose alternatives at a Spring 2020 Council meeting, which will serve as the range analyzed for a draft NEPA document. NMFS anticipates the drafting and review of the NEPA analysis will take four months, at minimum. The document will be reviewed by Council and NMFS staff, NMFS NEPA staff, and WCR General Counsel prior to Council final action. The Council will also schedule Council floor time to discuss the NEPA analysis and choose a final preferred alternative.

*Endangered Species Act (ESA)*

NMFS will continue periodic discussions on the need to reinstate consultation on listed species in Area 2A with NMFS Protected Resources Division and U.S. Fish and Wildlife Services as new data becomes available. If effects to listed species or critical habitat are outside of what was previously considered or new information triggers reinitiation of consultation, this may delay the schedule; NMFS estimates a new biological opinion could take four months.

*OLE & Observer Program interaction*

In all scenarios, the Permits Office would provide enforcement personnel and the Observer Program a list of vessels that submitted a complete, timely application to participate in the directed and incidental fisheries. In the physical permit scenarios, participants would also have to carry the permit on board while fishing.

*Paperwork Reduction Act (PRA)*

Each scenario will require a PRA package. The notice of information collection requires that the method and type of information collected be clearly defined, therefore NMFS can only start this process after Council final action, concurrent to the rulemaking process. The PRA process within the federal government has recently changed, and the timeline for completion of a package requires at least 6 months, and recently, sometimes more than a year.

### *Permitting*

All scenarios will require some level of programming, but NMFS anticipates there is not much difference in timing or workload under the different options. Option 3, a more traditional vetting process, would require changes in the status quo application deadlines to provide permits staff enough time to process all applications before the start of the fisheries. As well as permitting the directed commercial fishery, each scenario incorporates permitting incidental salmon and sablefish, and the charter recreational fisheries.

### *Regulations*

In addition to creating a permitting infrastructure, NMFS must draft regulations to implement the management transition for the directed and incidental fisheries, describing deadlines and the process for other management measures (seasons, vessel limits, permit requirements, etc). The Administrative Procedures Act requires that there be enough time in the rulemaking process for public comment and a delay in the effectiveness of the action (“cooling off”). The comment period for the proposed rule will be at least 30 days. After the publication of the final rule, there will be a 30 day cooling off until the regulations take effect.

### *Outreach*

Each permitting process will require substantial outreach to the fishery participants, both in person at Council and IPHC meetings, and via electronic communication. NMFS anticipates creating a new listserv that stakeholders opt in to (similar to the groundfish listserv), including both commercial and recreational notices. NMFS also plans to provide up-to-date information on the website.