

May 18, 2012

Dr. Jane Lubchenco
Under Secretary of Commerce for Oceans and Atmosphere
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW
Room 5128
Washington, DC 20230

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PFMC

Dear Jane:

A panel was convened at the Council Coordination Committee (CCC) Meeting (May 1-3, 2012, Kona Hawaii) to discuss Endangered Species Act (ESA) jeopardy determinations in fisheries management. Interpretation of jeopardy and the methodology of determining jeopardy have been controversial topics, and have led to numerous legal challenges of ESA consultations on fisheries managed by the Regional Fishery Management Councils (RFMCs).

The panel's mission was to review the current state of jeopardy determinations and consider solutions to improving scientific certainty for ESA policy determinations affecting fishery management. Panel presentations included two case studies from the Hawaii longline fishery and Gulf of Mexico bottom longline fishery, a perspective on the realities of litigation, and the role of science in making credible policy determinations.

The CCC concurs with the NOAA Scientific Integrity Policy that calls for achieving a greater level of public confidence and trust in the science used in federal decision making, and especially ESA implementation. The recent Biological Opinion on Lower Columbia River Tule Fall Chinook Salmon has been widely viewed as a great public policy success and represents a model to be used to achieve the objectives of the new Science Policy. This consultation authorized an abundance-based approach to determine incidental take and stemmed from recommendations achieved through the public process of Pacific FMC deliberations.

The process followed in the Chinook salmon case substantially improved understanding of the risk assessment science. This engendered a level of trust that a complete analysis had occurred, and the perception of fair treatment of healthy fishery policy issues, which were all key in the broad support of the Biological Opinion. Such a transparent process, however, is currently more the exception than the rule across all RFMCs. This was demonstrated by the recent consultation processes for the Hawaii longline fishery and Gulf of Mexico reef fish fishery.

The CCC recommended that a RFMC/NMFS/MAFAC Working Group be established to make recommendations to the CCC on a policy and best practices designed to effectively and consistently integrate the RFMCs into the ESA consultation process. This would achieve a high level of transparency and improve stakeholder confidence in the ESA consultation process related to U.S. marine fisheries. This Working Group will identify options that would integrate the RFMCs and their attendant committees and advisory bodies, as appropriate, into the ESA consultation process as a matter of routine and to the maximum



extent practicable under relevant federal law. The Working Group will also identify mechanisms to consistently include RFMC consultation in negotiated settlements resulting from litigation under the ESA.

With respect to jeopardy determinations, the ultimate goal should be to use an abundance-based metric. The CCC requests that National Marine Fisheries Service (NMFS) continue to strive for greater clarity in Biological Opinions by developing models to evaluate fishery impact against absolute population abundance, providing better explanations of the level of scientific uncertainty in the jeopardy determinations, and improving protected species stock assessments.

The RFMCs will work with NMFS and the Marine Fisheries Advisory Committee (MAFAC) to establish the Working Group as recommended by the CCC.

Thank you and we look forward to your support in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Manuel P. Duenas". The signature is fluid and cursive, with a prominent initial "M".

Manuel P. Duenas
Chairman

Enclosure

Cc: Eric Schwaab
Sam Rauch
Keith Rizzardi
RFMC Chairs and Executive Directors

May 18, 2012

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Chairs & Executive Directors**



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