



North Pacific Fishery Management Council

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February 28, 2020

Mr. Edward A. Boling, Associate Director for NEPA
Ms. Victoria Z. Seale, Chief of Staff and General Counsel
Council on Environmental Quality
730 Jackson Place NW
Washington DC 20503
Via Federal eRulemaking Portal

Dear Mr. Boling and Ms. Seale:

On behalf of the North Pacific Fishery Management Council (Council), please consider the following comments on the Proposed Rule to update regulations for implementing the provisions of the National Environmental Policy Act (NEPA). The Council is one of 8 regional fishery management councils established by the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to recommend fishery management plans and regulations for approval by the Secretary of Commerce (delegated to NOAA Fisheries). The North Pacific Council is responsible for preparing management plans for commercial fisheries in the Gulf of Alaska, Bering Sea and Aleutian Islands, and Arctic Ocean outside of state waters, and is responsible for about 62% of the nation's commercial harvest.

The MSA management system is unique because Congress established the regional fishery management councils with specific responsibilities for recommending fishery management plans, plan amendments and regulations to the responsible federal agency, NOAA Fisheries, for implementation consistent with the MSA and all other applicable law. Councils are composed of federal, state, and territorial fishery management officials and individuals with experience, scientific expertise, or training that give them knowledge about fishery conservation and management. Each council's primary responsibility is to develop and recommend fishery management measures for any fishery under its jurisdiction that requires conservation and management. For fishery management actions developed under the MSA, NOAA Fisheries' authority to modify council-recommended actions is restricted and subject to specific process requirements.

In the North Pacific, this unique partnership between the Council and NOAA Fisheries has resulted in a decision-making process that embodies the goals of NEPA and the CEQ procedural regulations to reduce paperwork and delays and promote better decisions. As such, the Council supports the intent of the proposed rule to facilitate more efficient, effective, and timely NEPA reviews of proposed major federal actions. To meet the objectives of efficiency, effectiveness and timeliness, the Council and NOAA Fisheries have developed a process whereby all Council decisions have a well-documented analytical basis, and decision documents are consolidated to meet the requirements of the MSA, NEPA, E.O. 12866, the Regulatory Flexibility Act and other applicable laws. These procedures are detailed in the NOAA Fisheries Policy Directive 30-132 for NEPA compliance and NOAA Fisheries Procedural Directive 01-101-03 for operational guidelines for compliance with NEPA and MSA.

As mandated in the MSA, regulations are developed by the Council using a scientifically based, deliberative, and transparent process, with full stakeholder engagement. This process provides sufficient time to prepare adequate and informative scientific analyses, and receive important feedback from the

public on potential environmental and economic impacts of alternatives, for effective and defensible decision-making by the Council. The public and deliberative Council process on the front-end inevitably saves time during the federal rulemaking process and reduces the potential for unnecessary, costly, and time-consuming litigation. The management changes being analyzed are often complex, with significant potential impacts to fishermen, processors, and fishery-dependent communities. This is why industry and public stakeholders are generally supportive of the deliberative Council decision making process and understand that it takes time to prepare, review, and revise NEPA and related analyses of environmental and economic impacts, and meaningfully consider public comments and recommendations from our Advisory Panel, Scientific and Statistical Committee, and other relevant advisory groups.

Under our current process, the time needed to prepare an analysis, go through our deliberative and public decision-making process, and implement regulations typically takes longer than the mandated one and two-year timelines in section 1501.10 of the proposed rule. While these proposed timelines may be appropriate for the vast majority of federal actions undertaken by federal agencies, we are concerned that they may be inconsistent with the MSA and the integrated analytical and rulemaking process developed by the Council and NOAA Fisheries.

We recommend that NOAA Fisheries' procedures to implement the final CEQ regulations maintain the integrated analytical and rulemaking process for fishery management actions developed under the MSA. In addition, given the proposed time limits to prepare a NEPA analysis and implement resulting regulations, NOAA Fisheries should consider whether the current process meets the requirements of the functional equivalency provisions in §1501.1(a)(5) and §1507.3(b)(6) of the proposed rule.

Under the proposed rule §1507.3(b)(6), agencies may document any agency determination that compliance with the environmental review requirements of other statutes or Executive Orders serves as the functional equivalent of NEPA compliance by identifying that (1) there are substantive and procedural standards that ensure full and adequate consideration of environmental issues; (2) there is public participation before a final alternative is selected; and (3) a purpose of the review that the agency is conducting is to examine environmental issues. Courts have found that EPA need not conduct NEPA analyses under a number of statutes that are "functionally equivalent." CEQ proposes that the concept of functional equivalency be extended to other agencies that conduct analyses to examine environmental issues. **We support this approach and request that NOAA Fisheries fully address and incorporate functional equivalence or a comparable approach to maintain the current MSA analytical and rulemaking process in the NOAA policies and procedures that guide Council operations and compliance with applicable laws.** We believe the use of the functional equivalence provisions or a comparable approach would maintain the benefits of the Council process and be consistent with Section 304(i) of the MSA.

We support maintaining the Council process for NEPA compliance because it is fully consistent with the goals of NEPA and §1501.2(a) of the proposed rule to "integrate the NEPA process with other planning and authorization processes at the earliest reasonable time to ensure that agencies consider environmental impacts in their planning and decisions, to avoid delays later in the process, and to head off potential conflicts." In addition, the MSA requirements and provisions, combined with E.O. 12866, the Regulatory Flexibility Act and other applicable laws, as well as the NOAA Fisheries procedural directives regarding substantive and procedural standards for analysis, provides a full and adequate consideration of environmental and socio-economic impacts. MSA Section 303(a)(9) requires preparation of a fishery impact statement which shall specify and analyze the likely effects including cumulative conservation, economic, and social impacts. The Council process also offers multiple opportunities for the public to

provide oral and written comments at all stages of analytical development prior to selecting a preferred alternative. Additional opportunities for public comment are provided during the rulemaking process.

Thank you for the opportunity to comment on these proposed regulations.

Sincerely,



Simon Kinneen
Chair, NPFMC

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Enclosure(s)

cc: Mr. Chris Oliver, NOAA Fisheries
Ms. Katherine Renshaw, NOAA General Counsel
Regional Fishery Management Councils