



B1 Executive Director's Report

October 2020

Action Memo

Virtual Meeting Changes

We continue to work on developing and improving how Council meetings can be held effectively in a virtual setting. Based on issues we encountered in June, and the feedback we received from Council members and the public, the staff has spent quite a bit of time working to improve the meeting platform, streamline the meeting agenda, and focus the presentations. For example, we have tried to streamline the October meeting by eliminating most B-report presentations (except for the USCG and State Dept. report on recent Russian military activities in the Bering Sea). You will have an opportunity to ask questions on all B-reports, but it means that you will need to review the written B-reports prior to the meeting. We are also planning to reduce the amount of detail provided in the staff presentations for all agenda items, and focus on the critical issues for decision-making.

We have been evaluating and testing different approaches to avoid the problems experienced in June due to limited bandwidth available to some members, but still using the Adobe Connect platform. The changes implemented for this meeting include reducing the number of 'pods' (e.g., file access pod), potentially limiting the video component if there are bandwidth hiccups during the meeting, and providing a lower-bandwidth alternative to follow along with the meeting through a live-stream YouTube feed on our website. We will also continue to evaluate other meeting platforms, including Ring Central, for potential use in the future.

We know that a three-week footprint for Council meetings (like we have for October) is onerous and not preferable, and we have been exploring different ways to host virtual council meetings in the future that reduce the number of meeting days overall, while still providing a public process that engenders good decision-making. We will discuss different approaches during staff tasking.

Alaska Sea Grant Fellow

I am pleased to introduce our new Alaska Sea Grant Fellow, Ms. Angela Moran. Angela recently received her Master's Degree from the University of Washington School of Marine and Environmental Affairs. Her capstone project examined halibut bycatch and observer coverage in the partial coverage fisheries. She has worked for the Seattle Aquarium as an ocean policy assistant, and as a field technician for the Washington Department of Natural Resources. Angela will be working (remotely, for now) on a number of Council projects during her 12-month stint as a Fellow under the guidance of Sara Cleaver and other staff. Welcome aboard Angela!



Financial Disclosure and Recusal Rule

On November 16, 2018, NMFS published a proposed rule that would change regulations that address disclosure of financial interests by, and voting recusal of council members appointed by the Secretary of Commerce. The proposed rule: 1) included the multi-step test NOAA GC uses to determine whether a voting recusal is required, 2) defined the term “close causal link” and provides guidance on determining whether a close causal link exists, 3) included the attribution principles that are applied when calculating a Council member’s financial interests in the fishery, including a “proportional attribution” approach for certain financial interests, and 4) required each region to develop and make publicly available a recusal determination procedure handbook which will explain the procedures typically followed by the region in preparing and issuing recusal determinations. The Council provided a comment letter on the proposed rule: https://www.npfmc.org/wp-content/PDFdocuments/CM/2019/031219/030119_NPFMCcommentsRecusalPR.pdf

On September 10, NMFS issued a final rule that addressed our concerns, including revising the proposed regulations regarding attribution principles when calculating if a voting member has a significant interest in a fishery. The proposed rule had specified that a designated official would fully attribute ALL covered activity if the affected individual is employed by, or owns 50% or more of a company, because this ownership would be considered a controlling interest in the company. The Council disagreed with this threshold as a controlling interest and recommended that proportional attribution apply to at all levels of ownership. The Final Rule incorporated the proportional attribution approach suggested by the Council. Here is the link to the Final Rule: <https://www.govinfo.gov/content/pkg/FR-2020-09-11/pdf/2020-20019.pdf>

Ms. Lauren Smoker (NOAA GC) will provide an overview of the rule and a report on financial disclosures at the December meeting.

NEPA Revisions

On January 10, 2020, the Council on Environmental Quality (CEQ) published a proposed rule to modernize and clarify the NEPA regulations and provided for a 60-day public comment period. CEQ received over 1.1 million comments. The Council’s comment letter can be found here: https://www.npfmc.org/wp-content/PDFdocuments/CM/2020/041720/022820_NPFMCcomments_NEPApr.pdf

On July 16, 2020, CEQ published the final rule to update regulations for the National Environmental Policy Act. The rule is available here: <https://www.govinfo.gov/content/pkg/FR-2020-07-16/pdf/2020-15179.pdf>

The changes are briefly described in an CEQ fact sheet (**attached**) and a NOAA fact sheet (**attached**). The effective date of these regulations is September 14, 2020, and the final rule makes these regulations applicable to NEPA reviews begun after this date.

From my standpoint, the major impacts to our process include:

Time and Page Limits: The rule establishes presumptive time limits of two years for the preparation of environmental impact statements (EISs) and one year for the preparation of environmental assessments (EAs). The time for preparation of an EIS is from the date of notice of intent to date the record of decision is signed. NMFS is reviewing requirements pertaining to the start date for an EA and will address that issue in a forthcoming interim guidance document.

The rule also specifies presumptive page limits for EISs (150-300) and EAs (75). We will need to consult with the agency to determine how to address the page limits specifically, as our current analyses integrate evaluations to meet other laws and executive orders (EO 12866, MSA). The new NEPA rule encourages agencies to combine documents to reduce paperwork, so we may be able to split out the NEPA portion, or just count the page limits for the NEPA portion separately. As a case in point, the integrated Pacific cod CV trawl rationalization analysis will exceed 75 pages in total, but the EA portion of the analysis will likely be much less than 75 pages. We will need to figure out how to package that analysis to meet the new NEPA requirements. NOAA is also considering the possibility of issuing a 1-year waiver on page limits, until the revised procedures are finalized.

Alternatives: The rule directs agencies to analyze only a reasonable range and number of technically and economically feasible alternatives. This change narrows the alternatives that must be evaluated. For example, the Groundfish Programmatic EIS included a “no-fishing” alternative that the Council did not think was a reasonable alternative; such an alternative would no longer be considered.

The rule also notes that the analysis does not need to include a detailed discussion of each alternative in an EA, or any details of alternatives eliminated from further analysis. The focus of the EA should be on the material environmental impacts of the alternatives, rather than on marginal details that may delay the review process.

Functional Equivalency: The rule clarifies that procedures and documents prepared pursuant to other statutory or Executive Order requirements may satisfy one or more requirements of the CEQ NEPA regulations, including potentially all requirements under NEPA. The rule allows agencies to determine that analyses prepared under other authorities (such as EO 12866 or the Magnuson-Stevens Fishery Conservation and Management Act) are functionally equivalent to compliance with NEPA, if the procedure or document satisfies one or more requirements of the NEPA regulations. NMFS has indicated their intent to explore how existing MSA and other legal requirements addressed in our analyses are the functional equivalent of NEPA.

Inclusion of Tribal Governments: The rule adds “Tribal” to the phrase “State and local” throughout the rule to ensure consultation with Tribal entities, such that the NEPA process should more widely and meaningfully include Tribes in decision-making. The rule also requires agencies to summarize all alternatives, information, and analyses submitted by State, Tribal, and local governments and the public during the scoping process in the draft EIS. Although NMFS is the Federal agency (under EO 13175) responsible for conducting formal Tribal Consultations, being more inclusive of Tribes is in line with long-standing Council policy priorities focusing on improving outreach, engagement, and communication with Tribes and rural stakeholders. The Council’s LKTKS Taskforce is working on a conceptual design for Council and Tribal engagement.

Next Steps:

Agencies are directed to review and draft updates to existing agency NEPA procedures; handbooks, manuals, guidance and policies; and all other information and materials on their websites. Proposed revisions must be published within one year. NOAA Fisheries will need to revise the MSA/NEPA Procedures and the Operational Guidelines for the MSA Process. Additionally, the Council and Regional Office need to review the Regional Operating Agreement to ensure it is consistent with the new NEPA procedures. The AK region NEPA coordinator, Ms. Bridget Mansfield, plans to provide training on the new rule requirements to NMFS and Council staff in the coming months.

The regional councils will be able to assist NOAA Fisheries with development of workable solutions to the NEPA procedures and the potential use of Functional Equivalency. The CCC recommended formation of a CCC working group, consisting of CCC members (or designated staff) from the different councils and NMFS staff, to assist in this effort.

Council Member and Staff Activities

Mr. Mezirow and Dr. Stram participated in the North Pacific Research Board and Scientific Advisory Committee meetings, respectively. More information about the NPRB can be found here:

<https://www.nprb.org/>

Mr. Kenny Down represented the Council at the Alaska Ocean Observing System Board meeting in September. More information about AOOS and a draft meeting summary can be found here:

<https://aoos.org/aoos-governance/>

Dr. Haapala, Ms. Cleaver, and Ms. Marrinan took an online course this summer on Alaska Native relations that was organized and offered by the USFWS. The course syllabus is attached. Staff will continue to evaluate cultural awareness training for staff and council members, taking into account the newly issued [Executive Order \(EO\) 13950](#) to Combat Race and Sex Stereotyping. While the E.O. does not ban or inherently discourage Diversity & Inclusion training, it does limit the content of Diversity & Inclusion training that federal contractors and contractors engage or deliver, which suggests we need to consider what this means for any cultural awareness training pursued by the Council. The Community Engagement Committee may be able to assist in defining the purpose of training and building partnerships with Alaska Native communities.

Ms. Campbell provided testimony to the Senate Commerce, Science, and Transportation Committee on July 29th at a hearing titled “Building a Stronger and More Resilient Seafood Sector”. She testified as council member and industry representative relative to impacts of COVID-19 on the seafood industry and the effects of the fish disaster funding provided in the CARES Act. Her testimony is available here:

<https://www.commerce.senate.gov/2020/7/committee-announces-hearing-on-u-s-seafood-industry>

CCC Meeting

The Council Coordination Committee met by webinar on September 23-24. The meeting agenda and materials are posted here: <https://www.fisheries.noaa.gov/event/2020-september-council-coordination-committee-meeting>. I will distribute the press release and meeting report once finalized.