



B1 Executive Director's Report

January 2020

Humpback Whale Critical Habitat

In October, NMFS released a proposed rule (PR) to identify Critical Habitat for three distinct population segments (DPS) of Humpback whales. Critical habitat has been proposed for waters off Alaska for two DPS: the Mexico DPS and the Western North Pacific DPS of humpback whales. Habitat features essential to the conservation of humpback whales were considered and evaluated, including prey, migratory corridors or conditions, and sound/soundscape. The critical habitat review team concluded that a migratory passage feature could not be identified. The team further determined that the best available data could not identify particular sound levels or describe a particular soundscape feature that is essential to the conservation of humpback whales.

The review team did identify prey as an essential biological feature. This prey feature was specifically defined as “*Prey species, primarily euphausiids and small pelagic schooling fishes of sufficient quality, abundance, and accessibility within humpback whale feeding areas to support feeding and population growth.*” The PR identified small pelagic fishes as northern anchovy, Pacific herring, Pacific sardine, and capelin. In the Aleutian Islands area, the PR noted that in addition to targeting euphausiids, humpback whales also consume multiple fish species occurring in this region, such as capelin, Atka mackerel, and walleye pollock.

The PR can be found here: <https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0066>
Comments were originally due December 9, but the comment deadline was extended through January 31. A draft comment letter is **attached** for your review.

Dr. Lisa Manning (NMFS) is here to provide an overview of the PR and is available to answer questions so as to allow the Council as a whole to make fully informed comments on the proposed rule.

RQE Update

In September 2018, NMFS issued regulations that authorize formation of a recreational quota entity (RQE) that could participate in the Pacific Halibut and Sablefish Individual Fishing Quota Program in International Pacific Halibut Commission Regulatory Areas 2C and 3A in the Gulf of Alaska. The RQE is authorized to purchase and hold a limited amount of commercial halibut quota share that will yield additional pounds of recreational fishing quota on an annual basis to augment the amount of halibut available for harvest in the charter halibut fishery. The RQE will provide a mechanism for a compensated reallocation of a portion of commercial halibut quota share to the charter halibut fishery.

The final rule established requirements for the formation of a single RQE that would be eligible to purchase and hold commercial halibut QS for use by the guided halibut sector. The RQE must be a qualified non-profit entity registered under the laws of the State of Alaska and recognized as exempt from Federal income tax by the IRS. To qualify as exempt from Federal income tax, an organization must seek recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code.

The final rule is found here: <https://www.federalregister.gov/documents/2018/09/21/2018-20410/fisheries-of-the-exclusive-economic-zone-off-alaska-authorize-recreational-quota-entity-to>

Mr. Mezirow will provide updated information on RQE formation and other developments.

NEPA Proposed Rule

On January 10 the Council on Environmental Quality (CEQ) issued a proposed rule to update its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA). The objective of the proposed rule is to modernize and clarify the regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies in connection with proposals for agency action. The rule is available here: <https://www.govinfo.gov/content/pkg/FR-2020-01-10/pdf/2019-28106.pdf> The 60 day comment period closes on March 10, 2020.

While I am not suggesting that the Council provide comments on this extensive rule, I did want to alert you to its publication, and note provisions of the rule that may be of importance to the Council process. My initial reading of the rule is that while most of these numerous regulatory changes will affect NMFS and staff internal procedures and analysis (e.g., FONSI determinations, notices, elimination of cumulative impacts analysis, requirement for a summary of alternatives and analysis provided by the public, etc.), there are several proposed revisions that could potentially impact the Council process. For example, the rule would require strict page limits for EAs (75 pages) and EISs (300 pages) with a page being defined as 500 words; longer documents could be allowed if authorized in writing by a senior agency official, defined as an assistant secretary rank or higher. There are also strict time limits to complete an EA (1 year) or an EIS (2 years), unless approved in writing by a senior agency official.

The proposed rule could also reduce the number of alternatives that need to be analyzed, and refine what is considered to be a reasonable alternative. A new definition of reasonable alternative would allow the Council to specifically take into account the technical and economic feasibility of potential alternatives in determining what are reasonable alternatives. Because analyzing numerous alternatives can divert limited agency resources, CEQ is specifically inviting comments on whether the regulations should establish a presumptive maximum number of reasonable alternatives (e.g., a maximum of three alternatives including the no action alternative).

The emphasis of the proposed rule on page limits, limiting the number of alternatives considered, and focusing analysis on close causal relationships between the action and impacts described could lead to documents that do not include the level of detail that the Council has come to expect.

The proposed rule (see section 1507.3(b)(6)) would allow agencies to determine 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. While the courts have found that EPA need not conduct NEPA analyses under a number of statutes that are “functionally equivalent,” including the Clean Air Act and other Acts, CEQ proposes that the concept of functional equivalency be extended to other agencies that conduct analyses to examine environmental issues. Thus, NOAA could make a determination that MSA environmental review requirements are the functional equivalent of NEPA.

The concept of functional equivalence, and integration of NEPA impact analysis into MSA requirements is the essence of Section 304(i) of the MSA, which some argue has never been fully implemented. Prior draft legislation (HR 200) had included language to make this integration more explicit, however this revision created a whole new set of concerns. The CCC Legislative Working Paper includes a consensus statement on NEPA as follows:

“The CCC notes that fishery management involves fairly rapid cycles of adaptive management in which information about changing conditions is addressed through adjustments to the management program and regulations. The necessity for National Environmental Policy Act (NEPA) analysis of these actions results in requirements that duplicate those in the Magnuson-Stevens Act (MSA) and other applicable law, including additional comment periods that delay implementation of these actions, which were developed through the open and transparent MSA process. Ensuring NEPA compliance for marine fishery management actions has been costly and time-consuming for Council and NMFS staff and has limited the Councils’ abilities to pursue other regulatory activities. In addition, the CCC notes that there have been instances where compliance with NEPA has hindered adequate compliance with MSA in terms of providing comprehensive analysis to Councils prior to their taking final action due to the difficulty and time required to complete NEPA analyses. Although the 2007 MSA reauthorization attempted to align the requirements of the two laws more closely through the addition of Section 304(i), the CCC does not believe what has been called for in the Act has been accomplished.”

The CCC Legislative Working Paper also includes a NPFMC perspective statement on NEPA as follows:

Incorporating NEPA requirements into the Magnuson-Stevens Act, and realizing a single guiding statute for fishery management actions, is consistent with long-standing intent of the NPFMC and the CCC generally. The provisions of HR200 accomplish that intent, and represent a unique opportunity to streamline our regulatory process. However, we are concerned that the ultimate result will be contingent upon implementing regulations, and the realized benefit could be marginal relative to creation of new complexities and challenges. These new complexities and challenges include the development of potentially complex and contentious regulations, and creation of a new body of litigation relative to fishery management actions.

The regional council executive directors are seeking to have a teleconference with CEQ representatives in late February to better understand how the proposed rule could impact the Council process.

Recent Council and Staff activities

We have completed our office move and we are starting to settle in. I anticipate having an open house reception sponsored by staff during the April Council meeting so everyone can see the new office space.

Mr. Mezirow has spent several days evaluating and interviewing candidates for the new NPRB Executive Director, to replace Betsy Baker who is retiring.

Ms. Evans and Dr. Stram held a well-attended “Introduction to the Council Process” seminar at the AFSC on Monday January 13, to provide AFSC scientists a better understanding of the Council and how scientific information is incorporated into the process.

Committee Meetings

The Ecosystem Committee will meet all day Tuesday, January 28. A report from the meeting will be discussed under Agenda Items D-3 and E-1.

The Halibut Charter Management Committee met by teleconference to recommend measures for the 2020 season. You will receive a report of the Committee meeting under Agenda Item C-1.

The Partial Coverage Fishery Monitoring Advisory Committee will meet from 1-4 pm on Tuesday January 28, in the Salon A meeting room on the 2nd floor. A report from the meeting will be discussed under Agenda Item D-1.

IPHC Meeting in Anchorage

The Halibut Commission will be meeting in Anchorage next week (February 3-7). The IPHC agenda and other meeting materials can be found here: <https://iphc.int/venues/details/96th-session-of-the-iphc-annual-meeting-am096>

The Council's letter to the U.S. Commissioners on potential impacts of 2020 catch limits to the directed halibut fisheries in Alaska can be found here: https://www.npfmc.org/wp-content/PDFdocuments/CM/2020/010920/123119_USIPHCCommissioners.pdf

I have been informed that the letter may not accurately reflect how U26 and O26 are addressed in the IPHC assessment and new management procedures, so the main message to the U.S. Commissioners regarding concerns about impacts on Alaska fisheries in 2020 may not have been entirely clear. I will continue to work on improving our understanding of the IPHC procedures and maintaining clear communications with IPHC Commissioners and staff.

Events this week

On Wednesday evening from 6 - 9 pm, there will be a reception at the hotel hosted by the Pacific Northwest fishing industry groups.

On Sunday, immediately after the Council meeting adjourns, the Finance Committee is scheduled to meet in Executive Session to review and discuss financial matters.