

## Executive Director's Report

### North Pacific Fisheries Commission

I just returned from Zhoushan, China where I represented the Council as part of the US delegation at the 4<sup>th</sup> Preparatory Conference for the North Pacific Fisheries Commission (NPFC). This newly organizing RFMO is in the process of establishing a Secretariat (office), and much of the meeting was focused on the administrative details of that process (at this time the Secretariat is likely to be housed in either Korea or Japan – contracting parties to the Commission include USA, Russia, China, Japan, Korea, and Canada, with Chinese Taipai (Taiwan) and the Phillipines in attendance). We did also discuss a draft 5-year research plan for the Commission, as well as draft Standards, Rules, and Procedures for data collection and reporting by member countries with vessels fishing in the Commission area. The NPFC was originally established in the interests of monitoring and managing high-seas fisheries on the Emperor Seamounts, but has expanded to include all North Pacific waters south of the US EEZ of the Aleutian Islands. Council member Dan Hull will be taking over as Council representative to this bi-lateral Commission, with the next meeting tentatively scheduled for September in Taiwan.

### MONF3/CCC

In a March 7 ‘Quarterly Update’ I reviewed the results of our February interim meeting of the Council Coordination Committee (CCC), copied here as Item B-1(a). I will not reiterate that information but would be happy to address any questions you might have. Regarding the recent NEPA Policy Directive, and the initial CCC response (Item B-1(b)), our CCC NEPA subcommittee engaged in further discussions with NMFS headquarters in mid-March, and submitted a ‘redline’ version of the Policy Directive for their consideration, which more specifically addresses our primary concerns. We are awaiting their response, in anticipation of further discussions at our upcoming annual CCC meeting (to be held adjacent to the MONF3 conference).

Regarding the MONF3 conference, it is now ‘sold out’ with nearly 600 persons registered. For anyone on the waitlist, there are some seats being held in reserve for potential Congressional attendees which may be released as we get closer to the conference.

### Status of Fisheries Economist Position

During March we held initial (telephone) interviews with six candidates, and will be conducting in-person interviews later this month with two of those applicants. We hope to have someone onboard by this summer. I also intend to solicit for a more general Fisheries Analyst position in the very near future.

### Events this week

The Council’s Observer Committee met on Monday, April 1 and a report from that meeting will be available for Council consideration when we get to this agenda item. The Council’s Enforcement Committee met on Tuesday, April 2 and their report(s) will be available as we consider relevant agenda items during the week.

On Tuesday evening, April 2, at approximately 6 pm the Marine Conservation Alliance will be providing a presentation regarding submersible research in the Bering Sea canyon areas. This is open to all interested persons and will be held in the AP meeting room.

On Wednesday, April 3 the University of Alaska Foundation will host a reception in the Chart Room from 5:30 to 7:00 pm, to recognize the contributions of the fishing industry to the University system. Flyers regarding this event have been distributed.

Council family photo time! Wednesday April 3 in the Fireweed Room. **SSC at 11:55 am, AP at 12:15 pm, Council staff at 12:30 pm, and Council members at 12:45 pm.**

And a reminder to Council, AP, and SSC members – while we compile an initial rooming list for every meeting, we do not know each person's specific travel schedule, and therefore we still need for you to call the hotel well prior to the meeting dates to confirm your room dates and guarantee your room.

# North Pacific Fishery Management Council

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## MEMORANDUM

TO: Council, SSC and AP

FROM: Chris Oliver  
Executive Director *Chris*

DATE: March 7, 2013

SUBJECT: Quarterly Update on Activities

As part of my efforts to keep you updated on various Council activities in between Council meetings (and reduce the length of my B-1 reports at each meeting), please see the following:

Interim CCC meeting and related issues: The Council Coordination Committee met February 20-21 in Washington, D.C., with Eric Olson, John Henderschedt, and myself attending as CCC members for the NPFMC. David Witherell was also in attendance. Due to the continuing budget uncertainty, we did not receive any substantive information in this regard, although we were informed by NOAA that our Council funding in the President's 2014 budget will likely see an improvement over the President's 2013 budget (in which we were slated for a 14% reduction from 2012 levels). We are currently in year four of our five-year award cycle (2010-2014), and we do have carry over funds from 2012 which leave us in pretty good shape for 2013. For these reasons I did not initially believe that the sequester would negatively affect Council operations; however, on March 5 I did receive (along with all NOAA grant recipients) a notice from the Director of the Acquisition and Grants Office that it could affect our funding and/or require a negotiation of a reduction in the scope of our award. Stay tuned.

On March 1 I participated in a conference call of the CCC/MAFAC subcommittee on ESA (our CCC rep on this workgroup is Cora Campbell). That group is continuing to work on development of guidelines for potential Council applicant status under the ESA, consideration of action agency status for the Councils, guidelines for other avenues of explicit Council involvement in the development of Biological Opinions, and guidelines for peer review of Biological Opinions.

The CCC will be forming a subcommittee to provide recommendations and input to the agency as they formulate their 'action plan' response to the first phase of the Inspector General's report on MSA rulemaking. Chairman Olson has volunteered to participate on that CCC subcommittee.

The CCC also received a report from Mark Holliday on the agency's national EM initiative, including the findings of the six 'white papers' on EM. While the white papers contain a very good summary of the state of EM from a national perspective, and can be informative to the development of EM programs in any region, it does not appear that the national initiative will be an immediate factor affecting implementation of our EM strategic plan and our specific, regional effort to get EM on the water asap for the small boat fleet operating in the GOA. As we further discuss our EM effort in April and June Council and NMFS staff can provide more details on any relevant aspects of the national EM initiative. In the meantime, the CCC has established an EM workgroup (specific membership pending) and we will be discussing this issue again at our May CCC meeting.

Other major issues to be further discussed at our May CCC meeting include the next steps in NMFS' consideration of revising NS1 guidelines (ACLs and rebuilding), and NMFS' next steps in their initiative to provide 'guidance' to Councils for revisiting catch share allocations.

**One issue that warrants a bit more detail** - on the eve of the CCC meeting we received a 'Policy Directive' from Acting AA Sam Rauch relative to reconciling NEPA and MSA processes (per the mandate from the 2006 MSA reauthorization). I forwarded this policy directive to you in a previous email message. The collective CCC reaction to this policy directive was quite negative, both in terms of the process used and the content. Those concerns are being captured in a letter from the CCC, which I will forward to you as soon as it is finalized. Based on the initial CCC reaction, NMFS has agreed to further discussions with our CCC NEPA workgroup (myself, Chris Moore, and Bob Mahood), and further discussions at our May CCC meeting, prior to finalizing the policy directive.

**MSA hearings begin:** At our CCC meeting we also had several Congressional staff in attendance, and we had a brief discussion regarding potential Magnuson-Stevens Act (MSA) reauthorization. While there were diverging opinions offered as to the timing of such a reauthorization, the MSA technically expires at the end of FY2013, and there appears to be a desire for reauthorization to occur this year by the House Natural Resources Committee (Chaired by Doc Hastings). In fact, to jump start that process, there is a hearing by that Committee occurring on Wednesday, March 13. I was approached to testify at that hearing, but deferred given that I testified in December 2011 on several pieces of draft legislation at that time, and there are no new, specific legislative proposals 'on the table' at this time.

**MONF3 reminder:** If you intend to attend the Managing our Nation's Fisheries 3 conference May 7-9, you need to get yourself registered so that we can get a better handle on the numbers of participants from our Council family. Total registration is reaching maximum capacity, and the available room block is quickly disappearing. The website is [www.managingfisheries.org](http://www.managingfisheries.org). Several of our staff are working on various aspects of this major conference, including David Witherell who is organizer of one of the three primary sessions (and same for John Henderschedt and his staff at the Fisheries Leadership and Sustainability Forum).

**Status of Council economist position:** We have received a number of applications for the vacant economist position (we miss you already Mark!). I posted this position announcement as a Senior Economist and/or a Staff Economist, to allow some flexibility in that hiring decision, based on the qualifications of the applicants. During the week of March 11-15 we will be conducting initial interviews of five applicants. I also intend to distribute a position announcement for a more general Fisheries Analyst position in the very near future, to get our staff back up closer to full power.

**Recent activities of Council staff/members:** In February, David Witherell and I met with representatives from the National Fish and Wildlife Foundation (NFWF) to discuss their efforts in Alaska, more specifically to assist them with a better understanding of our fisheries management programs and emerging issues. The NFWF provides substantial grants each year around the country for cooperative research and other development projects, and they are looking to reevaluate and reinvigorate their programs in Alaska.

We were requested to testify at a February 19 hearing of the State of Alaska legislature on Chinook salmon bycatch, along with representatives from ADF&G and members of the groundfish industry (House Fisheries Committee, Chaired by Paul Seaton). Diana Stram and Diana Evans prepared the presentation summarizing Council actions in this regard, which was given by Diana Evans.

On Wednesday March 6 I met with representatives from the Alaska Seafood Marketing Institute (ASMI) to discuss their ongoing seafood certification processes and how the Councils management programs affect those certification processes. On Tuesday, March 19 myself and other Council staff will be

meeting with representatives from Global Trust Certification to provide further input to them relative to their ongoing certification efforts for salmon, halibut, crab, and flatfish complexes. We will also be discussing BS/AI pacific cod, as they have deferred certification for that species due to lingering questions regarding the separation of the BS and AI stocks (which the Council will also be discussing further in April).

Also on March 19 I am participating in the annual meeting of the Advisory Board of the Rasmuson Fisheries Research Center, UAF, School of Fisheries and Ocean Sciences. We meet annually to review graduate student progress on thesis and dissertation work, and to review new student proposals for available Rasmuson Fellowships.

During the last week of February, Council member Dan Hull (and Chair of our Observer Advisory Committee) attended an electronic monitoring (EM) workshop hosted by the Pacific Fishery Management Council in Portland, Oregon. This will be one of the topics of discussion at our upcoming OAC meeting on April 1, where the OAC will be reviewing NMFS EM strategic plan outline relative to our restructured observer program implementation.

During the week of March 25-29 the 28<sup>th</sup> annual Lowell Wakefield symposium will take place at the Captain Cook Hotel in Anchorage. This year's topic is "Responses of Arctic Marine Ecosystems to Climate Change and Strategies for Adaptation". SSC member Franz Mueter is Chair of this year's symposium, and Council staff Steve Maclean is among the members of the organizing committee.

During that same week, March 25-29, I will be in Zhoushan, China for the 4<sup>th</sup> Preparatory Conference of the North Pacific Fisheries Commission (NPFC). Council member Dave Benson was previously our Council representative on the State Department led U.S. delegation to this multi-lateral commission. I will be serving as our interim Council representative for this March meeting, and after that Council member Dan Hull (who also serves on the Intergovernmental Consultative Committee (ICC) bi-lateral forum with Russia) will be taking over as our Council representative to the NPFC.

Other issues/committee appointments/etc: Chairman Olson has made two appointments of note during the past two weeks – (1) Ruth Christiansen, formerly with ADF&G and now employed by Alaska Bering Sea Crabbers, will replace Ed Poulson's vacant AP seat for the duration of his term, which is through the end of this year, and (2) Tim Towarak has been appointed to the Council's Ecosystem Committee to replace Caleb Pongowi. Tim currently the Chair of the Federal Subsistence Board and has been active in a variety of boards and commissions in northwest Alaska and statewide. Welcome aboard to both.

Lastly, a huge congrats to Clem! On February 16, at the annual Alaska Marine Gala, Clem Tillion was honored with the Lifetime Achievement Award for his many years and many contributions to fisheries in and off of Alaska. His contributions are too numerous to list, but most of you know them all by now. Congratulations to the Alaska SeaLife Center and other organizers for a truly fine event, and congratulations to Mr. T for a well-deserved award.



## Regional Fishery Management Councils Coordination Committee

March 11, 2013

Mr. Sam Rauch  
National Marine Fisheries Service  
1315 East West Highway  
Silver Spring, MD 20910-3282

Dear Mr. Rauch:

At our recent Council Coordination Committee (CCC) meeting February 20-21, 2013 in Silver Spring, we discussed your February 19, 2013 memorandum regarding a policy directive (PD) on National Environmental Policy Act (NEPA) compliance for Council-initiated fisheries management actions under the Magnuson-Stevens Act (MSA). At that time, the Councils collectively expressed initial reactions and concerns with the PD, including the process by which it was issued, and it was agreed that we would re-engage the CCC NEPA subcommittee to work with your office on this issue and schedule the matter for additional discussion at our May 2013 CCC meeting. During our discussions on February 21 we also assigned CCC member (and NEPA CCC subcommittee member) Chris Oliver to work with the other Council Executive Directors to capture the various concerns in writing, prior to engaging your staff in discussions about the memorandum content. Those comments are captured below.

This letter will refer to specific provisions of the PD, which form the basis for our concerns. However, we first need to express two significant, overarching problems with this extremely important issue. The first is a substance problem, concerning the perspective that this PD accomplishes the Section 304(i)(1)(A) and (B) statutory intent of providing a more timely alignment of MSA and NEPA processes, reducing extraneous paperwork, providing more concise analysis, and generally streamlining the current status quo environmental review process. The second is a process problem: there has been a lack of proper consultation with the Councils as the PD was developed, as envisioned in Section 304(i)(1) and (4) of the MSA and as would normally occur under an operative partnership relationship between the entities primary responsible for implementation of the MSA in the broadest sense. Because of these two serious problems, we do not agree with the assertion in the memorandum that "...this PD satisfies the requirements

*of section 304(i) of the MSA... ”; it appears to us that the PD satisfies neither the letter nor the intent of section 304(i).*

As a matter of substance, the procedures established in the PD seem tilted towards the MSA process complying with NEPA, as opposed to melding the two processes into a single, comprehensive, more concise, and more timely environmental review process, as envisioned in Section 304(i)(1)(A) and (B). We agree that “frontloading” should be our common goal, and much progress has been made in that regard. The PD appears to move towards the application of NEPA as the primary Act for fishery management actions, further subsuming the MSA within the NEPA construct, shifting the burden of NEPA process, analysis, and documentation more squarely on the regional Councils, and providing National Marine Fisheries Service (NMFS) further control of the Council process by expanding its oversight of the Council’s process under MSA. While the MSA legislative mandate does not contain the word ‘streamline’, it was clearly the intent of that legislation to accomplish this. We had hoped the next step in the refinement of a new environmental review procedure would accomplish the goals of 304(i)(1)(A) and(B): a “more timely” (faster), “more concise” (less process), procedure that conformed NEPA requirements to the fishery management action time lines in the MSA. However, it is unclear how the PD accomplishes these goals.

Our second primary concern is the assertion that the PD satisfies the consultation requirement as described in 304(i)(1) and (4). Section 304(i)(1) clearly requires the Secretary to work in consultation with the Councils to promulgate revised procedures. Certainly, receiving a newly-developed, complex PD on the evening prior to our CCC meeting does not constitute consultation. Further, the Section 304(i)(4) directs the Secretary, in cooperation with the Councils, “to involve the affected public in the development of revised procedures, including workshops or other means of public involvement.” In a normal Council process, the affected public are provided draft materials in advance of at least one public meeting where comment is considered, followed by a separately noticed meeting where all involved know final action can be taken. In this case, neither the Councils nor the affected public were involved in any genuine way before this PD came forward in memorandum form. Nor should any association with the previous involvement by our CCC NEPA subcommittee in 2008 be considered consultation. At that time, there was a brief process involving draft proposed regulations which were developed behind closed doors by the National Oceanic and Atmospheric Association (NOAA) and the Council on Environmental Quality (CEQ), and which have been considered either dropped or in abeyance for the past five years. It’s objectionable to now see a new PD, with different features developed without any consultation with the Councils whatsoever, be associated with assertions of compliance with Section 304(i). We do not believe that attempting to resolve an issue of such potential significance through a short-circuited policy directive<sup>1</sup>, delivered with no notice at an interim CCC meeting, is good agency policy or representative of a healthy partnership relationship.

Following is more specific identification of concerns with the PD. They are not listed in priority order; rather they reflect somewhat the order of how fishery management action might typically be taken up in a Council forum. Taken individually, some of these concerns may appear

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<sup>1</sup> This memorandum raises a more general issue of the use of policy directives relative to any number of fishery management issues, and whether and to what extent such policy directives are legally binding on the regional Councils.

innocuous, but taken cumulatively the overall result is to place a greater burden of NEPA compliance on the Councils, with greater control of the Council process by NMFS.

Purpose and Need Statement (page 10). By stating that NMFS determines the purpose and need statement for the NEPA document, the meaning of the phrase "...in coordination with the FMC if appropriate" is unclear, particularly given the consultation concerns expressed above. The "NEPA document" is now actually the integrated document containing the necessary analyses and documentation to satisfy all applicable laws, including the MSA and national standards, as well as NEPA. The purpose and need statement (often referred to as the problem statement) has typically been the purview of the Council process. Purpose and need for the action contains both explicit and implicit policy determinations, and importantly, forms the basis for the appropriate range of alternatives. Thus, one can read this section of the PD as an example of a shift towards greater control by NMFS, and a role of the Councils that is less autonomous than intended in the MSA.

Range of Alternatives (pg 4, second paragraph). It is unclear if this section calls for a proliferation of alternatives and a lengthening of the environmental review process. In some Council arenas, this would be the case, particularly if NMFS makes final determination of the necessary range of alternatives. In this regard, the PD does not appear to streamline the process.

Consolidated Documents (pg. 11, paragraph 5). In most cases the Council prepares nearly all the fishery management action analytical documents through consolidated documents that incorporate NEPA and all other applicable laws under the MSA umbrella process. This is a practice that is encouraged in NOA 216-6. The Directive encourages NMFS and Fishery Management Councils to work together early on process, for which there is nothing wrong in concept. However, the statement on page 8 that "NMFS remains responsible for the scope, objectivity, and content of NEPA documents" in effect provides control oversight on all documentation, not just the NEPA document, thus compromising the autonomous role of the Councils as prescribed in the MSA. While a case can be made that frontloading standardizes timelines, it remains unclear how this proposal streamlines the MSA and NEPA processes.

Determination of NEPA Document Status (page 6). The PD asserts that NMFS determines which level of analysis and which NEPA document is required (Categorical Exclusion, Environmental Assessment, or Environment Impact Statement). In some regions this has typically been a Council determination, based on input and advice from NMFS, while in other regions it has been determined by NMFS. We believe that this decision should, at a minimum, be a joint decision by the Council and the respective regional office of NMFS. Asserting that this decision is solely NMFS' decision is a subtle, but potentially significant, shift in control of the overall fishery management actions process, and is objectionable.

Determination of Adequacy (page 8 and page 12). The early determination of adequacy feature of this new proposal is a very troubling aspect of the PD, if the language is taken literally. The PD asserts that NMFS has the responsibility to ensure adequacy of the NEPA analysis (hence all applicable law because it is a consolidated document) at both the draft and final stages of development. While we recognize that NMFS must determine adequacy of the Secretarial review document prior to Secretarial approval consideration, asserting that NMFS determines adequacy at early draft stages in the Council process is a significant shift in control of the content and timing of Council actions. Attempting to achieve 'perfection' in NEPA documents (i.e.,

bulletproof against litigation), and allowing NMFS to make that determination prior to the document becoming a Secretarial action, has the potential to allow NMFS to completely control the Council process, and concomitantly determine Council priorities. This has been a subject of much discussion at the regional levels, and has been a major factor inhibiting the development of regional operating agreements. In fact, this assertion in the PD would effectively “amend” the process prescribed in the MSA for development of Council actions. Further, it remains unclear if requiring “NEPA completeness” in the early stages of the Council process may actually exacerbate the potential for litigation, and delay implementation of actions, based on the expectations created by this PD.

Record of Decision (page 12 and elsewhere). The PD asserts that in the record of decision (ROD), NMFS may go beyond the MSA provisions to either approve, disapprove, or partially approve a Council recommendation: “*...the ROD may also include a determination as to whether there is a need for additional conservation and management in the fishery.*” This asserted (and open-ended) authority appears to go well beyond what is specified in the MSA relative to NMFS authority over Council decisions, and appears to constitute a very significant change relative to the NMFS’ authority to substitute their policy perspectives for the Councils’ policy decisions. It is unclear whether this PD claims that Secretarial approval can occur on an additional conservation and management alternative added by NMFS to the consolidated analytical document, which the Council has never seen or considered.

Additional NEPA Processes. The PD establishes three new additional processes, with the stated intent that they may be used to increase efficiency and utility of the NEPA process: (1) a NEPA advanced planning procedure (NAPP); (2) a NEPA compliance evaluation (NCE); and (3) a Memorandum of NEPA compliance (MNC). While these processes ostensibly would allow for tiering in fishery management plan/amendment processes (and therefore could potentially reduce the need for additional NEPA analysis), it is unclear from the PD how these three additional processes would result in streamlining, or more importantly, who (NMFS or the Council) makes the relevant determinations of compliance. The addition of new defined processes since the 2008 process, together with the five-year closure of further consideration of the 2008 proposal, clearly break any tie with the 2008 process or any claim that there has been a continuous process.

NMFS Office of Program Planning and Integration Process to Revise AO-216 (page 2 of the cover memo introducing the PD). While not mentioned in the PD itself, this is a critically important aspect relative to the overall end result of the process to align NEPA and MSA. The cover memo references the ongoing efforts (since 2008) of the Office of Program Planning and Integration (PPI) to revise and update NOAA’s policy guidance on NEPA compliance (i.e., revise Administrative Order 216). The memo further states that “*NMFS determined that the NOA revision process would be an appropriate mechanism for addressing the MSA mandate.*” This is disappointing, because since 2008 the Councils have been repeatedly assured that the PPI process to revise AO-216 would not affect fisheries actions under the MSA, as there was a separate legislative mandate relative to that issue. This reversal of position leaves confusion as to the relationship between the PD and the pending revisions of AO-216 by the Office of PPI. The revisions to AO-216 will apparently be subject to a formal public comment period prior to being finalized. Presumably CEQ will be involved in that process, but nowhere is there any provision for “consultation with the Councils,” as is prescribed by section 304(i)(1)and(4) of the MSA. Because the final AO-216 revisions appear to now define NEPA compliance, this leaves

the Councils in the untenable position of not even knowing how the provisions of the PD will be incorporated into those revisions. Whether intentional or not, keeping the Councils in the dark as to the ultimate resolution of this issue seems to be the result of these concurrent activities.

In summary, we have great concerns about the provisions of this PD. We appreciate your introductory remarks during initial discussions at the CCC meeting regarding the status of the PD, in terms of its otherwise appearance as final, particularly since this PD is now posted on the NMFS PD website. We look forward to further discussions with your staff regarding the PD content, and to further discussions at our May CCC meeting regarding a genuine consultation process prior to implementation of this PD.

Sincerely,



Dan Wolford

2013 CCC Chairman

C: Council Chairs, Vice Chairs, and EDs

Dr. Paul Doremus  
Mr. Alan Risenhoover  
Mr. Steve Leathery  
Ms. Emily Menashes  
Mr. William Chappell