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To: _NMFS FMC Exec Directors <nmfs.rfmc@noaa.gov>

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Subject: Climate Governance Follow-up

Council EDs,

I wanted to follow up with you all regarding our project to develop guidance on NMFS's use of MSA section 304(f) (Governance). Recall the focus of this project is to develop clear and transparent guidance on how NMFS, acting on behalf of the Secretary of Commerce, will apply its existing authority under 304(f) in the face of shifting stocks and emerging fisheries.

We believe it is important to continue our work on this project and are mindful of the concerns you raised regarding the ongoing east coast scenario planning project. While NMFS's Governance project will be focused on agency decision-making, we intend to coordinate with the east coast scenario planning project and to inform the guidance we develop as much as possible by the important work being done there.

We have adjusted our proposed timeline so Councils can provide comments after July 30. We have also expanded our timeline to highlight that our monitoring of, and coordination with, the east coast scenario planning project will be as open and ongoing as possible within the constraints of meeting our target for completion. Attached is a conceptual outline to clarify the scope of the project.

If you have thoughts on what could be included in the process and criteria for determining when and how to review and/or adjust management authority, we would welcome your input. Please submit comments to marian.macpherson@noaa.gov.

Cheers,
Kelly

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Conceptual Outline: Fisheries Governance Policy/Guidance pursuant to MSA 304(f)

6/1/2022

I. Overview and Objective

In anticipation of an increasing number of fish stocks shifting in geographic distribution, new fisheries emerging, and other demographic shifts in fisheries, NOAA Fisheries has identified as a top priority a need to develop national policy on assigning, reviewing, and/or revising management authority for newly emerging or unmanaged stocks and currently managed stocks that move across Fishery Management Council (Council) boundaries or occur under the authority of more than one Council. This conceptual outline provides an initial framework for developing a policy for applying Magnuson Stevens Fishery Conservation and Management Act (MSA) § 304(f) in these circumstances.

II. Issue to be addressed

Scientific studies and stock assessments have identified cases of some species distributions shifting within and across Council jurisdictions, driven by climate change and other causes. Many important commercial and recreational fish stocks have already shifted their distributions in response to environmental conditions, biological conditions, and condition of the stock, and more are predicted to follow.

The MSA assigns geographic areas of authority for each of the eight Regional Fishery Management Councils. (§302(a)(1)).¹ In situations where a fishery extends beyond the geographic area of any one Council, the MSA authorizes the Secretary of Commerce to either designate a Council to prepare the FMP, or require the relevant Councils to prepare the FMP jointly. (§304(f)(1)). To date, NOAA Fisheries and the Councils have addressed management of fisheries that span multiple Council jurisdictions on a case by case basis.² However, given that the distributions of species are expected to continue to shift across council jurisdictions in the future, preparing in advance for these situations, and having established processes and criteria in place for addressing them, will give NOAA Fisheries and the Councils a more transparent, orderly, and responsive approach for addressing these changes.

Establishing clear a policy that (1) sets forth criteria for determining when there is a need for a change in governance for a stock/species (i.e., move to a different Council or be jointly managed), and (2) establishes a process for assigning or re-assigning management authority to one or more Councils and for transitioning management to the new governance structure would further this objective.³

¹ Pursuant to MSA §304(f)(2), NMFS has specified these exact geographic boundaries in terms of latitude and longitude at 50 CFR 600.105.

² For a review of NMFS's management of fisheries that span multiple Councils' jurisdictions, see NOAA Technical Memorandum NMFS-OSF-10 September 2021 (Morrison). Link: <https://repository.library.noaa.gov/view/noaa/32347>

³ We note that NMFS has existing guidance pertaining to whether a fishery is in need of conservation and management at 50 CFR 600.305.

III. Proposed Approach and Request for Feedback

A. Framework for Policy Development

Potential sections of the policy are listed below. The outputs of the west coast scenario planning effort and ongoing East Coast scenario planning process⁴ will inform development of the following proposed components:

1. Overview of the 304(f)(1) Secretarial authority.
2. Identification of criteria that NOAA Fisheries would use to trigger a process for assigning shared or revised governance.
3. A process and criteria that NOAA Fisheries will use for recommending Secretarial determination of Council authority (outcome could include no change, shift authority to different Council, or joint management).
4. Issues pertaining to transitioning to a revised governance (e.g., options for adjusting existing regulations and management measures under development such as phase-ins and grandfather periods).

B. Issues to be considered

1. What criteria should trigger a need to revise governance? (e.g., biological, socio-economic, including community access to underdeveloped fisheries off their coasts).
2. What criteria should be used to decide appropriate governance?
 - Possibilities could include stock distribution, level of catch in relevant management areas (e.g., state vs Fed, Council area), level of catch relevant to representation in management bodies (e.g., a substantial portion of the catch is now coming from a state(s) that is not on the current Council), location of processors, community dependence, equity and fairness.
 - What elements (e.g., “Principles of Governance”) would be necessary for Secretarial action to change governance? (e.g., should there be required elements of equity, biology).
3. What process and timelines should be established for NMFS action on revising governance?

C. Timeline and engagement plan for policy development

- May 2022: Presentation to CCC.
- July 30, 2022: Soft deadline for CCC comments – NMFS will initiate drafting, but will continue to accept comments if Councils provide them after this date (comments can be sent to marian.macpherson@noaa.gov)
- Oct 2022: Provide update at CCC meeting
- Winter/Spring 22/23: Ongoing monitoring of Scenario Planning Project with target of reviewing completion of “Application Phase”; incorporate outcomes into draft policy, as appropriate
- Spring 2023: Provide draft policy to CCC
- Fall 2023: Deadline for CCC and Council comments
- Summer 2024: Finalize and rollout Policy to CCC

⁴ For more information – please see <https://www.mafmc.org/climate-change-scenario-planning>