

# ESA Jeopardy Determination in Fisheries Management

## OUTCOME STATEMENT

The CCC agreed that Endangered Species Act (ESA) measures affecting fisheries (including listing, critical habitat designation, Section 7 consultation and development of biological opinions) should be accomplished through a process that includes a much higher level of transparency and public involvement than is typical at present. The CCC believes an enhanced NMFS-RFMC partnership needs to be established to ensure consistent Council involvement in ESA determinations and consultations well before rules and Biological Opinions are published.

1. The CCC recommends that a RFMC/NMFS/MAFAC Working Group be established to make recommendations to the CCC on a policy and best practices designed to effectively and consistently integrate the Councils in the ESA consultation process in order to achieve a high level of transparency and improve stakeholder confidence in the ESA consultation process related to U.S. marine fisheries.

The Working Group should identify options that would integrate the Councils and their attendant committees and advisory bodies, as appropriate, into the ESA consultation process consistently and to the maximum extent practicable under relevant federal law. The Working Group should also identify mechanisms to consistently include Council consultation in negotiated settlements resulting from litigation under the ESA.

2. The CCC recommends sending a letter to NOAA Administrator Jane Lubchenco containing the following:
  - The CCC agrees with the NOAA Scientific Integrity Policy that calls for achieving a greater level of public confidence and trust in the science used in federal decision making, and especially ESA implementation.
  - The recent Biological Opinion on Lower Columbia River Tule Fall Chinook Salmon, authorizing an abundance-based approach to determine incidental take allowances as recommended subsequent to a public process at the Pacific Council, has been widely viewed as a great public policy success and represents a model to be used to achieve the objectives of the new Science Policy. The process followed in this case substantially improved understanding of the risk assessment science, the trust that a complete analysis had occurred, and the perception of fair treatment of healthy fishery policy issues, which were all key in the broad support of the Biological Opinion. Such a transparent process, however, is currently an exception more than a norm across all Councils, as seen in the case of recent consultation processes for the Hawaii longline fishery and Gulf of Mexico reef fish fishery.
  - With respect to jeopardy determinations, the ultimate goal should be to use an abundance-based metric. NMFS should continue to strive for greater clarity in Biological Opinions, by developing models to evaluate fishery impact against absolute population abundance, providing better explanations of the level of scientific certainty in the jeopardy determinations, and improving protected species stock assessments.
  - CCC recommendation for establishing a RFMC/NMFS/MAFAC Working Group