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ESA/MSA Integration

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Presentation Outline

- Takeaways from Regional Meetings
- Overview of CCC ESA Working Group Edits to “*Integration of Endangered Species Act Section 7 with Magnuson-Stevens Act Processes*, Policy Directive (PD-01-117)
- Response to Key CCC ESA WG Comments
- Recommendations
- Next Steps



Takeaways from Regional Meetings

- Early coordination with Councils in the Section 7 process is occurring in all regions, but level of involvement varies from region to region and there is interest in greater involvement by the Council overall.
- Workload was an identified issue in every region. Being proactive and knowing who to communicate with can improve coordination between NMFS and Councils.
- Updates to the PD should set clear expectations on how Councils will engage with NMFS
- The use of Liaisons has fostered improved coordination and work products (i.e., development of BAs, threats avoidance and minimization measures, identifying fishery impacts to protected resources)
- The development of integration agreements has improved coordination and set expectations on how NMFS and Councils will engage in some regions.
- Clarification of some Section 7 processes and terms could be beneficial (e.g., difference between RPAs and RPMs, the requirement to have terms and conditions for RPMs, consultation timeline requirements and process for extensions)

Overview of CCC ESA WG Edits to PD-01-117

- Encourage more early coordination and communication with Councils in the section 7 consultation process;
- Elicit more Council involvement and pre-consultation technical assistance;
- Address the need to work with Councils when Biological Opinions (BOs) will provide recommendations to change Council actions through Reasonable and Prudent Alternatives (RPAs), Reasonable and Prudent Measures (RPMs), and Incidental Take Statements (ITSs) with “terms and conditions”;
- Reach agreement on schedules when Councils request involvement;
- Suggest a dispute resolution process for requests for involvement with a 15-day deadline and elevation process; and
- Require sharing of drafts in certain situations (e.g., where an RPA or RPM would require Council action).



CCC ESA WG Proposed Edits to “Objective” Section of PD

CCC Proposed Revision:

...NMFS will work in close coordination with the Councils through the MSA Council process to address fishery impacts on ESA-listed species, rather than relying solely on RPMs and RPAs resulting from consultations...

NMFS' Response:

- NMFS agrees with the sentiment of the CCC edits, and the importance of working early in the process to reduce adverse fishery impacts on ESA-listed species. We would like the language to align more closely with the intent of the section 7 regulations. We are working on a new section of the PD that will address development of conservation measures (e.g., RPAs, RPMs) in coordination with the Councils.



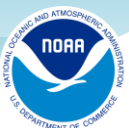
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CCC ESA WG Proposed Edits to “Coordination with Councils” Section of PD

CCC Proposed Revisions:

Similarly, for ITSs that include RPMs and Terms and Conditions requiring Council action to implement, NMFS must work closely with the Councils in their development. Early Council involvement will facilitate a coordinated and streamlined process for developing any mitigation measures necessary as part of RPMs/RPAs, and will also ensure practical and effective measures are developed through a transparent stakeholder-based process that takes into account MSA National Standards.

The Council and NMFS contacts will then agree on a coordinated schedule for Council involvement, input, and coordination for developing RPMs/RPAs, and draft BiOp sharing. The schedule should be agreed upon by both parties early in the consultation process, and should also include considerations for any associated Council action timing. If NMFS independently concludes that existing deadlines do not provide sufficient time for the level of involvement requested, NMFS will consult with the Council on a level of involvement that can be accommodated and may extend the consultation deadline in accordance with 50 CFR 402.14(e).



CCC ESA WG Proposed edits to “Coordination with Councils” Section of PD (cont.)

NMFS’ Response:

- Agree with the sentiment as this speaks to the importance of pre-consultation technical assistance to avoid jeopardy or adverse modification, which aligns with the goals of Section 7.
- Note there may be circumstances for which it is not possible to develop conservation measures with Councils (e.g., due to litigation time constraints).
- Need to clarify distinction between RPAs and RPMs (see next slide), calling out Minor Change Rule in the PD.
- Note all timeline adjustments must comport with ESA regulations.
- Recommend capturing this in the new section we propose to include on RPAs, RPMs, and T/Cs.

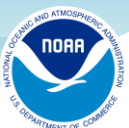


Reasonable and Prudent Measures and the Minor Change Rule

RPM: refer to those actions the Director believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take (50 CFR 402.02)

Minor Change Rule: RPMs cannot alter the basic design, location, scope, duration, or timing of the action (50 CFR 402.14(i)(2)).

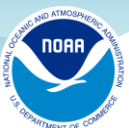
- Suggest including text in PD.



CCC ESA WG Proposed Edits to “Sharing of Drafts” Section of PD

During formal consultation, NMFS will take steps to release preliminary drafts of RPAs or RPMs prior to release of the entire draft opinion, if otherwise consistent with this policy. If the preliminary draft RPAs/RPMs may require Council action, for example, FMP or regulatory amendments, or otherwise affect the management of fisheries under Council jurisdiction (e.g., changes to the level, timing, method, allowable gear, or areas for harvesting management unit species), the release of a preliminary draft shall be required prior to completing the draft BO, in order to allow an opportunity for meaningful Council input and coordination with other management actions.

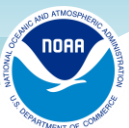
If NMFS is unable to share the draft BO or preliminary draft RPAs or RPMs, NMFS will take steps to meet with Council and/or Council staff as early as possible to discuss potential changes and impacts to fishery management actions and other relevant information.



CCC ESA WG Proposed Edits to “Sharing of Drafts” Section of PD (cont.)

NMFS’ response:

- We do not typically have “preliminary drafts” so will edit this language to reflect “draft.”
- Working through the Council process is advisable, when practicable.
- Considering new section for PD to provide further guidance regarding development of conservation measures (e.g., RPAs).
- Important to set specific timelines for Council involvement to ensure ESA deadlines are met.
- Need to edit to reflect which portions of BO can be shared (e.g., proposed action, RPA)



CCC ESA WG Proposed Edits to “Roles of NMFS Offices” Section of PD

CCC Proposed Revision:

In most instances, this means that the action agency communicated directly with the Council for the purposes of developing initiation documents and a coordinated time frame, collecting scientific information regarding the fishery and interactions with ESA species and critical habitat, and developing alternatives to minimize interactions resulting in take of species.

NMFS' Response:

No concerns, but clarify a coordinated time frame must be in accordance with section 7 regulations.

CCC edits to “Roles of NMFS Offices”

CCC Proposed Revision:

The Consulting Agency should communicate with the Action Agency, and Councils if appropriate or if the Council has requested to be involved, early and often regarding affected species and critical habitat and fisheries and scientific information needed for the consultation.

NMFS’ Response:

Do not accept this suggestion because there could be situations in which a Council requests communication but there are reasons why that is not appropriate.

New Sections To Be Developed in the PD

- Guidance for Coordinating Development of RPAs, RPMs, and Terms and Conditions
- Recommendations for Ongoing Council Engagement
- Section 7 Training Resources

Additional Recommendations for PD

- Edit glossary of terms to align with definitions in Section 7 regulations
- Emphasize importance of pre-consultation technical assistance for Councils and SF ahead of initiating consultation to avoid the likelihood of JAM determinations
- Clarify that sharing the BO requires the completion of NMFS internal review process
- Clarify process for sharing BOs that preserves deliberative process, when necessary

Next Steps

- Complete revisions to PD in conjunction with regions and GC.
- Meet with CCC ESA WG to discuss proposed revised PD.
- Identify opportunities for section 7 consultation training for Councils and Council staff.
- Offer presentation on revised section 7 regulations, once finalized.
- Consider development of ESA/MSA integration agreements in each region, proactively identify key points of contact.



Questions?

