

April 19-22, 2016

Terms of Reference (TOR) for NOAA Fisheries 2016 Protected Species Recovery Program Review

Purpose of the Review

The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) works to conserve, protect, and recover species under the U.S. Endangered Species Act (ESA) and the U.S. Marine Mammal Protection Act. To ensure NOAA Fisheries achieves these mandates, it is appropriate to conduct periodic reviews of the programs supporting protected species conservation and management. The goals of program reviews are to:

- Ensure that program priorities and implementation are aligned with resources and mission mandates.
- Enhance and align strategic management of NOAA Fisheries regulatory programs.
- Provide transparency in the operation of NOAA Fisheries programs.

Objective

The ESA requires NOAA Fisheries to use all methods and procedures to bring listed species to the point where the protections of the ESA are no longer necessary. Section 4(f) of the ESA requires the Secretary to develop and implement recovery plans for the conservation and survival of endangered and threatened species. Those recovery plans must include objective, measurable criteria which, when met, would lead to a determination that the species be removed from the list, site-specific management actions necessary to achieve the plan's goal for the conservation of the species, and estimates of the time and costs to carry out the measures identified in the plan.

The objective for this review is to evaluate the current NOAA Fisheries recovery program to determine if the current recovery planning process results in recovery plans that are effective roadmaps for recovering the species as evidenced by whether the plans are being implemented by NOAA Fisheries and stakeholders, resulting in progress towards meeting the criteria so that the species may be delisted. This review will evaluate, within the context of current budget constraints, the efficacy of the recovery planning process, including the quality of the recovery plans, the implementation of recovery actions, and the monitoring of recovery progress. This review will provide recommendations to improve recovery plans and the recovery planning and implementation process to increase the likelihood of recovering species. In short, each Panelist should make findings and base their recommendations on the program review objectives—does the current NOAA Fisheries recovery program result in progress towards recovery, and going forward, what improvements to the recovery program would increase the likelihood of recovering species.

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Glossary

This program and these terms of reference use multiple terms that have specific meaning in the context of recovery of threatened and endangered species listed under the ESA. Definitions of those terms are provided below.

Conserve, conserving, and conservation:

To use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary...(ESA section 3(3)).

Recovery:

A process by which listed species and their ecosystems are restored and their future is safeguarded to the point that protections under the ESA are no longer needed (NOAA Fisheries 2010 Interim Recovery Planning Guidance Version 1.3). Recovery is also defined in the ESA section 7 implementing regulations (50 CFR 402) as improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.

Recovery Action:

Actions taken to conserve a population or species as called for in a Recovery Plan. In older plans these were called Recovery Tasks.

Recovery Outline:

In the interim between listing a species and recovery plan approval, the *recovery outline* provides a preliminary strategy for conservation. The recovery outline both guides initial recovery actions and ensures that future recovery options are not precluded due to a lack of interim planning. The recovery outline also lays the groundwork for recovery planning by documenting preplanning decisions.

Recovery Plan:

A guidance document to include, to the maximum extent practicable: (i) a description of site-specific management actions necessary to achieve the plan's goal for the conservation and survival of the species; (ii) objective, measurable criteria which, when met, would result in a determination that the species be removed from the ESA; and (iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal.

Recovery Planning:

For the purposes of this review, recovery planning encompasses recovery program activities related to the decision whether or not to develop a recovery plan, setting recovery priorities for recovery plan preparation, and recovery outline and recovery plan development.

Recovery Program:

Agency resources (e.g., program staff, facilities, funding) and activities whose primary purpose is to achieve recovery for listed species as specified in section 4(f) of the ESA. For purposes of this review, it includes recovery plan development and implementation, monitoring recovery progress, and updating recovery plans so they are useful and current. For the purposes of this review, it does not include post-delisting monitoring, and it does not include agency resources whose primary responsibility is other sections of the ESA (e.g., section 7 Interagency Cooperation, section 10 Exceptions/permits) or other program offices (e.g., Habitat Restoration). Although effective integration of other NMFS programs is an evaluation aspect, the point of reference should be those agency resources and actions devoted to recovery planning under ESA section 4(f).

Overarching Questions for Reviewers

The Reviewers will use this information (and any ensuing discussion) to provide advice on how to improve NOAA Fisheries recovery program. In doing this, the Reviewers should consider these overarching questions:

1. Which species should have a recovery plan?

Aspects to consider:

- Effective identification of species that will benefit from the development and implementation of a recovery plan.

2. How effective is NOAA Fisheries at recovery planning?

Aspects to consider:

- Effective use of prioritizing recovery plan preparation—is priority given to those species facing the greatest threats, where biological and ecological limiting factors are understood, and where management actions are known and have a high probability of resulting in recovery?
- Effective use of recovery outlines--Do the outlines enhance the recovery planning process and do they help managers work towards recovery while a plan is under development?
- Effective use of multi-species or ecosystem based recovery plans
- Effective use of existing management plans and strategies (e.g., state wildlife conservation plan, candidate conservation agreement)
- Effective engagement of tribes, states, foreign nations, and other partners in the recovery planning process
- Appropriate use of recovery teams—Does NOAA Fisheries appoint recovery teams when needed and is team composition and size efficient to

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ensure success? Are there times when a recovery plan would be better developed without appointing a recovery team?

- Effective use of peer review process—comprehensive review of draft plan.
- Realistic recovery timelines—Is NOAA Fisheries timeline for completing recovery plans (i.e., draft recovery plan completed within 1.5 years and the final 2.5 years from the time of the listing) realistic or should it be changed? If so, what should be the timelines?

3. How effective are the final recovery plans?

Aspects to consider:

- Clear description of site-specific management actions necessary to achieve recovery.
- Identification of objective, measurable and appropriate recovery criteria that stem from the species' biological needs and threats.
- Effective format—Do current recovery plan formats result in a document that is succinct? Can the public quickly find the salient points and know what actions are needed to be taken and by whom? Is it a document that is likely to be relied upon in implementing a recovery program?
- Timeliness—Are the plans up-to-date? Are the plans revised, updated, or supplemented (addenda) in a timely manner based on new information?

4. How effective is NOAA Fisheries at monitoring and implementing recovery?

Aspects to consider:

- Effective use and reliance on the recovery plans by stakeholders.
- Effective implementation of recovery actions—Does an implementation plan/team help improve successful implementation?
- Effective recovery progress—Is the species responding positively to recovery actions
- Effective monitoring of recovery progress—Use of the information to inform changes to recovery criteria and actions and/or revise and update the recovery plan.
- Effective partnerships—Does NOAA Fisheries continue to maintain partnerships and reach out to stakeholders on recovery planning progress?
- Effective use of current technology (e.g., geographic information system, social media)
- Effective integration of recovery implementation with other NOAA Fisheries programs.

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Information Provided to Reviewers

Staff of the Office of Protected Resources will provide background information and materials to the reviewers that will include the agency's recovery planning policies, guidance, practices, 5-year review guidance, and results of the Marine Fisheries Advisory Committee's retrospective analysis of recovery actions by status category ('not started,' 'ongoing,' 'complete') to identify characteristics that may increase the likelihood of recovery action success and help inform development of future recovery actions.

Staff of NOAA Office of General Counsel will provide background information and materials related to legal requirements for recovery plans, including relevant case law.

Staff of the Office of Protected Resources, with input from the Regional Protected Resources Divisions, will provide summary information based on the overarching questions to the reviewers. For example, the summary information would include total listed species, species with recovery plans, species with recovery plans underdevelopment, species where a recovery plan was determined not to be beneficial and why, total number of recovery outlines, total number of multi-species or ecosystem based plans, recovery plans with teams, size of teams, recovery implementation teams, etc. This information will be compiled into a database and provided to the Panel in advance. Panel reviewers will select case studies based on diverse attributes that encompass the evaluation questions.

Upon selection of case studies, to allow comparison and evaluation across programs, program staff will work with appropriate Science Center staff to provide the following materials and input to the reviewers:

- History of the recovery planning effort, timing, best available scientific and commercial information considered, resources used, to make the determination on whether a recovery plan would benefit the species
- History of the recovery planning effort, timing, best available scientific and commercial information considered, resources used, and stakeholder participation to complete the recovery plan. The content and structure of the recovery outline, recovery plan and implementation work product (e.g., implementation schedule, participation plan)
- Status of recovery actions—what is and is not being accomplished and why. Aspects to consider include, but are not limited to, the accessibility/usability of recovery and implementation work products to internal and external partners who may wish to help achieve recovery goals, key characteristics of successful recovery efforts, major limitations/weaknesses/challenges of current recovery planning and implementation efforts, and monitoring recovery action status and recovery progress.

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Format

The meeting will last for 4 days at the National Oceanic and Atmospheric Administration Science Center in Silver Spring, Maryland. The venue will allow public access to open sessions and have wireless internet access, audio visual capability (e.g. teleconferencing, overhead projector, microphone amplification). The Office of Protected Resources will endeavor to provide access to open sessions of the review by the public who are unable to attend in person and remotely located staff.

Prior to the review, a teleconference between Protected Resources leadership, facilitator, and the review Panel will be held to discuss and clarify the charge to reviewers, the scope of the review, focus questions provided in the scope, background documents provided, and products of the review.

This 4-day review will be structured with presentations that address topics related to the review overarching questions but may be organized differently (e.g., by region or by species). These presentations will draw upon background material as described in the material to be provided by the Office of Protected Resources and Regional Protected Resources Divisions.

- Day 1
 - Presentations about endangered species recovery planning and implementation by Protected Resources leadership
 - Discuss Questions 1 and 2
 - Public comment (varied times)
- Day 2
 - Discuss Question 3
 - Public Comment (varied times)
 - Panel deliberation (Panel-only session, 1 hr.)
- Day 3
 - Discuss Question 4
 - Public comment (varied times)
 - Preparation of the Panelists recommendations (Panel-only session, 1 hr.)
- Day 4
 - Opportunity for Panel-only discussion and initial preparation of report
 - Opportunity for discussion (clarifying questions, guidance, etc.) with Protected Resources Directorate, as needed.

Panelists will be provided, at minimum, a 1-hour closed working session at the end of day 2 and 3. These sessions are intended to give panelists an opportunity to reflect on presentations and public comments. A panel member will report out initial observations from panelists on the following day. Each day, during which informational presentations are made, will also include a specific interval for public comment. Stakeholders are invited to participate as observers and to comment during the daily public comment sessions. Stakeholders are also invited to submit written comments by the end of day 3 for panel member consideration. At

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the close of the review, the Panel and Protected Resources Directorate will discuss the results of the review (clarifying questions, guidance etc.) in the Panel-only session on day 4.

Additional personnel (e.g., recovery staff, program review coordinator) are expected to be available, as needed, to support the Panel during its panelist-only session.

Briefing and Background materials

All background materials will be provided to the Panel electronically no later than 8 weeks prior to the review. Panelists will be asked to review and make suggested changes to the selected case studies no later than 5 weeks prior to the review. All presentations will be provided to the Panel at the beginning of the review. Additional briefing and background materials may be provided at the request of Panel members.

Products

Each Panelist will produce a succinct report detailing his or her observations of and recommendations for the 4 questions provided within the TOR for the Program Review. Each Panelist should make findings and base their recommendations on the program review objectives: Does the current NOAA Fisheries recovery program result in progress towards recovery, and what improvements to the recovery program would increase the chance of recovering species?

Individual reports are required for NOAA to comply with the Federal Advisory Committee Act (FACA, 1972), and will not represent a consensus of Panelist's observations and recommendations. Panelist's draft reports will be submitted to the facilitator and the Office of Protected Resources Director at the close of the review. Final versions will be submitted by the Panelists by April 29, 2016. The facilitator will prepare a draft report by May 13, 2016, which will include workshop notes and a summary of the program review proceedings (e.g., process overview, salient issues, public comments, and recurring themes across individual Panelist reports, etc.). The draft will be submitted to the Panelists and the Office of Protected Resources for review prior to finalizing by May 30, 2016.

Review Team Resources

NOAA Fisheries will pay for the travel cost and per diem for all Panelists external to NOAA Fisheries and a set fee for the services of non-governmental Panelists. Office of Protected Resources staff will assist review panel members in making travel arrangements.

During the review NOAA Fisheries will provide the review panel with wireless broadband services and space to convene closed working sessions. If requested in advance, NOAA Fisheries will, within reason, provide other items (e.g., desktop computers, printers/copiers) to assist the review panel with report preparation. The review Panel will, if needed, be provided 1 full day to write draft review reports at the conclusion of presentations by NOAA Fisheries staff.

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Review Panel

The program review panel will include 5-7 professionals with reasonable familiarity with the Endangered Species Act and species recovery. The Panel should include:

- 1 protected species scientist from NOAA Fisheries
- 1 representative from the NOAA Restoration Center or Habitat Conservation Program
- 1 representative from the U.S. Fish and Wildlife Service
- 1 representative from a partner group that implements recovery actions
- 1 representative from a professional society
- 1 representative from academia
- 1 representative from a state

NOAA Fisheries will hire a facilitator to organize the discussions of the panel. The Facilitator will support the panelists, ensure issues are raised, questions are fully discussed, and review proceeds on time. The Panel will be provided guidance on complying with FACA. The NOAA Fisheries Assistant Administrator or their designee shall approve the Panel selections.

Agency Response

The Office of Protected Resources Director will send the panel members' individual reports to the NOAA Fisheries Deputy Assistant Administrator for Regulatory Programs as soon as the reports are received. The Director of the Office of Protected Resources will also prepare a brief response, including agency actions, to the summary report within 10 weeks of receipt of the review report package. The response can include clarifying information and respond to controversial points within individual reports even if not mentioned in the summary.

The Director of the Office of Protected Resources will send the package on to the NOAA Fisheries Assistant Administrator for clearance.

Ninety days after the close of the review on April 22, 2016, all documents – (a) facilitator's summary of the program review proceedings (e.g., process overview, salient issues, public comments, and recurring themes across individual Panelist reports, etc.); (b) individual Panelist reports; and (c) Director's response, to the individual Panelist reports – will be posted on the Office of Protected Resources website. Authorship of the individual Panelist reports will remain anonymous to the public and the public will not comment on their reports. The public will have opportunity to comment on any policy changes that NMFS may undertake as a result of the review.

Material to be Provided by the Program

The Office of Protected Resources will provide presentations made by staff and background materials in order to facilitate the independent review. All materials (e.g., power point

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presentation, word files, pdfs) will be named such that the file names indicate the main topic the material covers. Materials will be provided in an interactive agenda format (i.e., materials will be linked to the talks listed on the agenda) and will be marked as required primary references (must read) and secondary references (optional for further detailed information).

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Appendix 1. Program Reviewer Report Template

**Reviewer Report on
Protected Species Recovery Program Review**

Name/Affiliation

Address Dates

Background

**General Observations and
Recommendation**

Key (Specific) Findings and Recommendations (as reviewer has comments on)

- **Question 1**
 - Observations
 - Strengths
 - Challenges
 - Recommendations to address issue
- **Question 2**
 - Observations
 - Strengths
 - Challenges
 - Recommendations to address issue
- **Question 3**
 - Observations
 - Strengths
 - Challenges
 - Recommendations to address issue
- **Question 4**
 - Observations
 - Strengths
 - Challenges
 - Recommendations to address issue
- **Other**
 - Observations
 - Strengths
 - Challenges
 - Recommendations to address issue

Conclusions