



# MARINE MAMMAL COMMISSION

6 January 2010

Alan Risenhoover, Ph.D.  
Director, Office of Sustainable Fisheries  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20190

Re: RIN 0648-AW18

Dear Dr. Risenhoover:

On 7 December 2009 the National Marine Fisheries Service proposed changes to the regulations governing the operations and administration of regional fishery management councils (74 Fed. Reg. 64042). The purpose of the proposed changes is to increase the transparency of council operations, as intended by the Magnuson-Stevens Fishery Conservation and Management Act. The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, provides the following recommendations and rationale regarding one particular aspect of the proposed rule.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service—

- require councils to make all background environmental and management-related documents available to the public in a timely fashion, as required under the National Environmental Policy Act and the Magnuson-Stevens Fishery Conservation and Management Act; and
- provide the councils with any necessary technological assistance for posting all pertinent documents on the Internet in cases where lack of technological capacity impedes councils' abilities to post information.

## RATIONALE

The Service's proposed rule has important implications for the availability of environmental and management-related documents. Such documents include, but are not limited to, meeting minutes and summaries, briefing book materials, fishery management plan drafts, proposed regulatory amendments, environmental impact statements and other analyses of council actions, and archival and historical documents. The proposed rule would change 50 CFR Part 600.150 to require that councils post their documents "to the extent practicable."

With today's technology, the Commission sees no reason why the publication of any document would be considered impracticable. Furthermore, failure to make such documents available undermines the value of public participation in fisheries management. On this topic, the Government Accountability Office recently reviewed activities of the Western Pacific Fishery

Management Council (GAO-09-508R Fisheries Management) and recommended that councils maintain current and archived copies of documents available for public inspection. The Commission endorses that recommendation.

Council documents often are very large (in excess of thousands of pages) and, at present, councils may have limited resources (e.g., technology, expertise, staff time) for posting them online. Indeed, the documents often are so large that reviewing them thoroughly in the limited time allowed for that purpose can be difficult, which tends to defeat the purpose of these documents. Most of those large documents are developed to comply with the National Environmental Policy Act (NEPA), which gives clear guidance on this matter. Section 1500.1 of the NEPA regulations describes the purpose of this law and states, among other things, that—

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

This statement points to at least a partial solution for handling such documents; that is, make them succinct by focusing on the significant issues involved. But the statement also clearly conveys that the purpose of NEPA documents is to make environmental information readily available to decision-makers and the public.

The requirements of the Magnuson-Stevens Act also are consistent with that purpose. The functions and procedures described in its section 302 emphasize transparency and accessibility of council activities and documents (section 302(i)(2)(F)). By making documents available to the public, councils have an opportunity to increase public understanding of regulatory actions, reduce demands on staff to respond to information requests, and ensure the accountability of decision-makers. In short, making such documents available is necessary, not only to comply with the law, but also to promote sound fisheries management. For all these reasons, the Marine Mammal Commission recommends that the National Marine Fisheries Service require councils to make all background environmental and management-related documents available to the public in a timely fashion, as required under NEPA and the Magnuson-Stevens Fishery Conservation and Management Act.

The Commission recognizes that councils have different capacities for making all documents available electronically and/or posting all documents on the Internet. In fact, the Service is not proposing the posting of all management-related public documents. However, doing so should be the goal of each council. The technology for posting such documents is now widely available and should not be a limiting factor for the councils. To that end, the Marine Mammal Commission recommends that the National Marine Fisheries Service provide the councils with any necessary technological assistance for posting all pertinent documents in cases where lack of technological capacity impedes councils' abilities to post information.

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Please contact me if you have questions about our recommendations or rationale. Thank you for the opportunity to comment on this issue.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a prominent initial 'T'.

Timothy J. Ragen, Ph.D.  
Executive Director