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Fisheries Management
Fisheries Management Actions, NMFSPD 01-101

PROCEDURES ON PUBLIC COMMENTS ON FISHERY MANAGEMENT PLANS

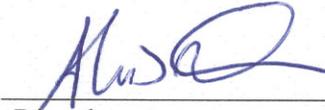
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SUMMARY OF REVISIONS:

This revision moves a 1997 Policy on Public Comments (originally Policy Directive 30-110) to a procedure under the overarching Fishery Management Actions Policy Directive 01-101. This revision maintains the intent and content of the original policy, editing it for clarity and converting it to procedural directive format.

Signed  6/20/14
Alan D. Risenhoover Date
Director, Office of Sustainable Fisheries

1. Introduction. The Sustainable Fisheries Act (SFA), Public Law 104-297, made numerous amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*). The amendments significantly changed the process and schedules under which fishery management plans (FMPs), FMP amendments, and most regulations are reviewed and implemented. Specifically, the SFA decoupled the schedule for approval/disapproval of FMPs and FMP amendments submitted by Regional Fishery Management Councils (Councils) from the schedule for publication of proposed and final rules to implement them. This created timing complications for the publishing of notices requesting public comments and the receipt of those comments, relative to the timing of decision-making on FMPs and FMP amendments.

To address these issues and inform the public of how and when public comment will be considered, the National Marine Fisheries Service (NMFS) developed these procedures.

2. FMPs and FMP amendments.

2.1. A notice of availability (NOA) will publish in the *Federal Register* as soon as possible after the transmittal of an FMP/amendment from a Council, as required in section 304(a) of the Magnuson-Stevens Act.

- 2.2. The NOA will request comments on the FMP/amendment and will alert the public that comments are being solicited on the FMP/amendment through the end of the 60-day comment period stated in the NOA.
- 2.3. NMFS will consider comments received by last day of the comment period stated in the NOA. NMFS will consider in the approval/disapproval decision all comments received by the end of the comment period, whether directed to the FMP/amendment or a proposed rule to implement the FMP/amendment. As a general rule, NMFS must make a decision to approve, disapprove, or partially approve the FMP/amendment within 30 days of the close of the comment period of the NOA.
3. Proposed Rules.
 - 3.1. NMFS reviews a proposed rule prepared under section 303(c) of the Magnuson-Stevens Act to determine whether it is consistent with the relevant FMP/amendment, the Act, and other applicable law (see section 304(b)). If so, NMFS will publish the proposed rule in the *Federal Register* for comment. If not, NMFS takes action per section 304(b).
 - 3.2. When NMFS publishes a proposed rule with a request for comments, the comment period should run between 15 to 60 days. The comment period is normally 45 days or a period of time that coincides with the comment period for the NOA.
 - 3.3. The preamble of the proposed rule will inform the public that public comments are being solicited on the FMP/amendment through the end of the comment period stated in the NOA.
 - 3.4. To be considered in the approval/disapproval decision on the FMP/amendment, as a general rule, public comments on the proposed rule must be received by the last day of the comment period on the FMP/amendment.
4. Final Rules. The preamble of the final rule will contain a summary of all comments considered by NMFS, both on the FMP/amendment and on the proposed rule, and responses to those comments.
5. Timing Issues. NMFS expects that the comment periods for the FMP/amendment (as stated in the NOA) and the proposed rule will end on or about the same date. However, there is a possibility that the comment period ending dates could be significantly different. Commenters must understand that, because the comment period for a proposed rule may end much later than that of the NOA, delaying comments to address both the FMP/amendment and the proposed rule may mean the comments on the proposed rule will arrive too late to be considered in the decision on the FMP/amendment.
6. References. Magnuson-Stevens Act sections 303(c), 304 (a) and (b). The related procedure can be found under Procedure 01-101-01 for Initiating Secretarial Review of FMPs and Amendments at <http://www.nmfs.noaa.gov/op/pds/documents/01/101/01-101-01.pdf>.