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Administration and Operations
POLICY ON PUBLIC COMMENTS
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[Docket No. 970130016-7016-01; I.D. 012797F]

RIN 0648-XX80

Magnuson-Stevens Fishery Conservation and Management Act; Public Comments on Fishery Management Plans and Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Policy statement.

SUMMARY: NMFS notifies the public of how public comments on Fishery Management Plans (FMPs), FMP amendments, and their implementing regulations will be handled under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA). The intent is to ensure that the public has full opportunity for input to the fishery management decision process.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, 301-713-2341.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the President signed into law the SFA (Public Law 104-297), which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 et seq.). The amendments significantly changed the process and schedules under which FMPs, FMP amendments, and most regulations are reviewed and implemented. Because of those changes, NMFS has had to revise its procedures for handling public comments on FMPs, FMP amendments, and their implementing regulations.

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. Because both the notice of availability (NOA) of an FMP/amendment and the proposed rule request public comments, the timing of the receipt of those comments relative to the timing of decisions regarding the FMP/amendment and associated rules has been complicated. To address these issues and to inform the public of how and when public comments will be considered, NMFS will follow the procedures outlined below.

FMPs and FMP Amendments

An NOA will be published in the Federal Register as soon as possible after transmittal of an FMP/amendment from a Council, as required by sec. 304(a) of the Magnuson-Stevens Act. The NOA will request comments on the FMP/amendment and will alert the public that (1) public comments are being solicited on the FMP/amendment through the end of the 60-day comment period stated in the NOA; (2) a proposed rule that would implement the FMP/amendment may be published in the Federal Register for public comment, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act procedures; and (3) public comments on the proposed rule must be received by the end of the comment period on the FMP/amendment to be considered in the approval/disapproval decision on the FMP/amendment. All comments received by the end of the comment period on the FMP/amendment, whether specifically directed to the FMP/amendment or the proposed rule, will be considered in the approval/disapproval decision; comments received after that date will not be considered in the approval/disapproval decision on the FMP/amendment. To be considered, comments must be received by close of business on the last day of the comment period established by the NOA.

Proposed Rules

If NMFS' evaluation of the proposed rule under procedures specified in sec. 304(b) of the Magnuson-Stevens Act determines that it is consistent with the FMP, FMP amendment, the Magnuson-Stevens Act, and other applicable laws, NMFS will publish the proposed rule with a request for public comment; the comment period will normally be 45 days. The preamble of the proposed rule will inform the public that (1) public comments are being solicited on the FMP/amendment through the end of the comment period stated in the NOA; and (2) public comments on the proposed rule must be received by the end of the comment period on the FMP/amendment, as published in the NOA, to be considered in the approval/disapproval decision on the FMP/amendment. To be considered, comments must be received by close of business on the last day of the comment period.

Responses to Comments

All comments received during the public comment periods will be responded to in the final rule. The preamble of the final rule will contain a summary of the comments received, both on the FMP/amendment and on the proposed rule, and responses to those comments.

NMFS expects that the comment periods for the FMP/amendment (as published in the NOA) and the proposed rule will generally end on or about the same date, and NMFS will attempt to achieve that result. However, because there is

the possibility that the comment period ending dates could be significantly different, it is important for commenters to focus their comments on either the FMP/amendment or on the proposed rule, if possible, and to be aware of the decisional timing issues that have resulted from the Magnuson-Stevens Act amendments. By publishing this policy statement, and through language to be included in NOAs and preambles to proposed rules, NMFS is attempting to ensure that the public has full opportunity for input to the decision process.

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to authority at 5 U.S.C. 553(b)(A), prior notice and an opportunity for public comment are not required to be provided for this rule, as this is a rule of procedure. Further, because prior notice and an opportunity for public comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable. Finally, because this rule is not substantive it is not subject to the 30-day delay in effective date required of substantive rules under 5 U.S.C. 553(d).

Dated: February 14, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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