

# North Pacific Fishery Management Council

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April 2, 2011

Mr. William Chappell  
1315 East-West Highway  
SSMC3, SF5, Room 13142  
Silver Spring, MD 20910

RE: Comments on E.O. 13563

Dear Mr. Chappell:

Executive Order 13563, issued on January 18, 2011, states that it is “*supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993*”. E.O. 12866 has been one of the primary guiding laws to which all of our fishery management regulations must adhere. The intent of E.O. 13563 appears to reinforce the provisions of the previous E.O., and appears to have the further intent of reducing complexity of regulations, eliminating unnecessary regulations, and generally streamlining regulations which govern public and private activities. We believe that these are laudable goals, and we also recognize that regulations governing fishing activities are often, by their nature, quite complex. Development of these regulations, through the Regional Fishery Management Council process, is also one of the most robust processes in existence relative to transparency and public participation. Fishery management plans, and their implementing regulations, often require allocation of fisheries resources to various user groups, and these regulatory requirements undergo extensive biological, economic, and social impact analyses pursuant to numerous applicable laws, including E.O. 12866, and are developed consistent with the various objectives stated in E.O. 13563.

We support the intent of minimizing the burden of regulations, and we understand that NOAA, as the agency which promulgates fishery regulations, must develop a preliminary plan to periodically review its significant regulations to determine whether they should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective and less burdensome in achieving the regulatory objectives. We understand that the Regional Fishery Management Councils will be an essential partner in such an evaluation. The primary concern we wish to highlight at this early stage of development is that the review process should be focused on the underlying intent of the E.O., and not be construed to require the Councils or the agency to revisit basic policy or allocation decisions which have been subsequently promulgated through agency regulations.

To highlight this concern, I will point to a specific example of where we believe the intent of the E.O. could be misconstrued. NOAA Fisheries is currently engaged in an initiative to develop a plan and/or policy for reviewing and reassessing fishery allocations developed under ‘catch share’ programs. There are specific statutes and laws governing the requirements for review of such programs (and the allocations arising from those programs), including of course the provisions of the Magnuson-Stevens Act. It has been stated that the recent E.O. 13563 provides a further impetus for NOAA’s development of a plan

and/or policy for reviewing fishery allocations under catch share programs. We believe this is contrary to the basic intent of the E.O., and that the E.O. should in no way be construed to require the reconsideration of basic policy and allocation decisions. This is particularly relevant to catch share programs which establish individual transferable quotas (ITQs), and which have been in place for many years with significant business and investment changes occurring for numerous fishery participants. Revisiting allocations in a catch share programs without identifying specific objectives, or identifying shortcomings of a particular program, could have the unintended result of destabilizing an otherwise successful catch share program. While a Council may wish to revisit such allocations for various good reasons, they should not be compelled to do so as part of a review of regulatory processes, nor does that appear to be the intent of the Executive Order. The Federal Register notice soliciting comment indeed correctly points out that *“retrospective review does not allow NOAA to contravene requirements of its various statutory mandates...as is the case with fishery management plans and regulations developed by Regional Fishery Management Councils...NOAA’s ability to modify, streamline, expand, or repeal regulations is similarly constrained”*.

We believe that current fishery regulations, while often complex, largely adhere to the spirit and intent of the provisions of E.O. 13563. While there is certainly room for improvement per the intent of the E.O., we do not believe it should require a wholesale revision of existing regulations, and certainly should not be construed to require the reassessment of policy and allocation decisions made through the Council process, approved by the Secretary of Commerce pursuant to all applicable law, and promulgated by NOAA Fisheries. We appreciate the opportunity to comment on this important issue.

Sincerely,



Chris Oliver  
Executive Director