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Alan Risenhoover  
Director, Office of Sustainable Fisheries  
National Marine Fisheries Service  
1315 East-West Highway  
SSMC3  
Silver Spring, MD 20901

Dear Mr. Risenhoover:

The Halibut Coalition (“Coalition”) has carefully reviewed the rule proposed by the National Marine Fisheries Service (“NMFS”) to establish new procedures for complying with the National Environmental Policy Act (“NEPA”) in the development of fishery management actions pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”). 73 Fed. Reg. 27998 (May 14, 2008) (“Proposed Rule”). The Halibut Coalition has been deeply involved for many years in the deliberations of the North Pacific Fishery Management Council with respect to MSA issues. The Coalition brings to these comments the perspective of an organization whose members have worked closely with the North Pacific Council in the preparation of fishery management plans (“FMPs”) and whose members have served on that Council.

At the outset, the Coalition wishes to make it clear that it supports the public review and comment process afforded by NEPA. The Coalition is committed to the proposition set forth in NEPA that the environmental advantages and disadvantages of proposed actions should be considered before any decision is made. In that regard, the Coalition believes strongly that the analysis of the environmental advantages and disadvantages should encompass all parts of the human environment including natural resources, people, and coastal communities.

As a core principle, the Coalition also adheres to the view that the MSA establishes a unique process for the development of FMPs. Pursuant to the MSA, Congress has vested authority for the development of FMPs in the Regional Fishery Management Councils (“Councils”). If an action recommended by a Council complies with applicable statutory requirements, the Secretary of Commerce (“Secretary”) has no alternative but to approve the Council recommended action. Given that reality, it is important that a Council have before it NEPA documents that are as complete as is possible at the time of the Council’s decision. To

*Alaska Longline Fishermen’s Association ♦ Cordova District Fishermen United ♦  
Deep Sea Fishermen’s Union ♦ Fishing Vessel Owners Association ♦ Halibut Association of North  
America ♦ Kachemak Bay Fisheries Association ♦ North Pacific Fisheries Association ♦  
Petersburg Vessel Owners Association ♦ Seafood Producers Cooperative ♦ Southeast Alaska  
Fishermen’s Alliance ♦ United Cook Inlet Drift Association ♦ United Fishermen’s Marketing  
Association ♦ United Southeast Alaska Gillnetters Association*

achieve that result means the Councils are preparing the NEPA documents. Indeed, this is the only way to fully integrate NEPA into the MSA decision-making process. The Proposed Rule should be adjusted to fully implement this policy. The Proposed Rule already takes an important step in this direction by wisely providing that the public must provide comments on the purpose and need statement, the range of alternatives, and the evaluation of environmental impacts to the Council. Proposed Rule, § 700.303(b)(1). Such a requirement reflects the purposes and structure of both the MSA and NEPA while also preserving for the Secretary the final decision regarding whether the document prepared by the Council complies with the MSA, NEPA, and other applicable law.

The Coalition believes further clarification is also required with respect to § 700.203(b)(6) of the Proposed Rule. As written, that section provides that a final or supplemental Integrated Fishery Environmental Management Statement (“IFEMS”) shall be transmitted to NMFS along with the Council’s proposed action. There have been unfortunate situations in the past in which NMFS has taken upon itself to hold Council recommendations and documents for extended periods before transmitting the documents and recommendations to the Secretary for review under the MSA. The unfortunate result is that decisions deemed necessary for effective fisheries management have not been reviewed, much less implemented, in a timely fashion. This has been a detriment to effective fisheries conservation management.

The issue of NEPA compliance should not be used as yet another excuse for NMFS to refuse to initiate Secretarial review of Council actions. Therefore, § 700.203(b)(6) should be amended to clarify, consistent with the MSA, that if a Council has reached a final decision on a proposed fishery management action and determines that the supporting documents are both legally adequate and complete, then NMFS cannot refuse to submit the documents for Secretarial review. Whether the decisions made and documents proposed by the Council are complete and adequate and, therefore, ready for review by the Secretary is a determination to be made by the Council, not NMFS. This does not prejudice what decision the Secretary might make after independently reviewing a Council’s recommendation and associated NEPA documents. The Secretary may disapprove the Council’s determinations and decisions. However, it is for the Council, not NMFS, to decide when documents are to be transmitted to the Secretary for review.

The Coalition also recommends that the Proposed Rule be clarified with respect to the development of framework management plans. The Proposed Rule defines the term framework management plan in § 700.3(6). That definition provides that actions can be included in a framework plan if they are “traditional framework actions, annual specifications, and other fishery management actions, as appropriate.” Unfortunately, this definition is circular and provides little clarity. The definition of what constitutes an action eligible for frameworking pursuant to the revised MSA NEPA procedures should be rewritten. An action should be eligible for frameworking and for the framework implementation procedure (“FIP”) set forth in the Proposed Rule if that action falls into one of a number of defined categories. If the action is similar to an annual specification that is determined by a previously analyzed formula, the results of that formula need not be subject to environmental analysis when the formula is applied in the future. A logical and necessary

corollary of this principle is that if a Council, in anticipation of likely events, has established, and analyzed under NEPA, a management program providing that if Event X happens then Management Program Y shall spring into force and effect, then this too should be considered a framework management plan to be approved under the FIP.

The definition of what is eligible for inclusion in a framework management plan and an FIP should be amended to provide that if a future management program has been properly adopted by the Council and has been examined pursuant to NEPA, then it should be considered as a framework plan for fisheries management even though the implementation of the management program will occur in the future and is dependent on a triggering event. Neither the fact that the management action will occur in the future nor that it is triggered by a future event are disqualifying factors with respect to whether an action can be included in a framework management plan and the FIP. The critical decisional elements are that the Council has clearly identified the triggering event and the responsive action and has completed the appropriate NEPA analysis.

The Coalition is pleased to submit these comments and looks forward to working with NMFS as the agency develops its Final Rule.

Sincerely,

A handwritten signature in black ink that reads "Linda Behnken". The signature is fluid and cursive, with the first name "Linda" and last name "Behnken" clearly legible.

Linda Behnken