

From: Michael Weiss - NOAA Federal
To: [Bowman, Randal](#)
Subject: Re: new elements for NW C&S memo
Date: Friday, August 25, 2017 10:20:30 AM

Thanks

On Fri, Aug 25, 2017 at 7:49 AM, Bowman, Randal <randal_bowman@ios.doi.gov> wrote:

Thank you. I will submit your text. We already had an ESA provision, written by our solicitors, which while more wordy than yours, doesn't seem to be in conflict:

Endangered Species Act (enacted in 1973, amended in 1978, 1982, and 1988)

The Endangered Species Act, 16 U.S.C. § 1531 *et seq.* (“ESA”), seeks to protect and recover imperiled species and the ecosystems upon which they depend. Under the ESA, species may be listed as threatened or endangered. 16 U.S.C. § 1533(a)-(c). The ESA protects endangered and threatened species and their habitats by prohibiting the “take”^[1] of listed endangered animals and the interstate or international trade in listed endangered plants and animals without a Federal permit. 16 U.S.C. § 1538(a). In addition, section 7 of the ESA requires Federal agencies to consult with the U.S. Fish & Wildlife Service and National Marine Fisheries Service, as appropriate, to ensure that the effects of actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of such species’ habitat. 16 U.S.C. § 1536(a). Those who are convicted of violating the ESA may be fined up to \$50,000, imprisoned for up to one year, and have their leases, licenses, or permits authorizing the use of Federal lands modified, suspended, or revoked. 16 U.S.C. § 1540(b). Any equipment used in commission of a violation of the ESA will be subject to forfeiture. 16 U.S.C. § 1540(e)(4). In addition, violators may be assessed a civil penalty of up to \$25,000. 16 U.S.C. § 1540(a).

[1] The ESA defines “take” to mean “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19).

On Thu, Aug 24, 2017 at 9:51 PM, Michael Weiss - NOAA Federal
<michael.weiss@noaa.gov> wrote:

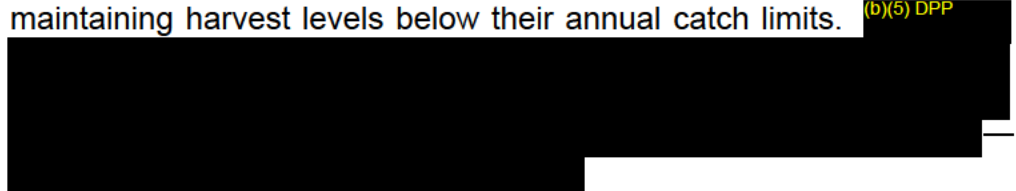
Suggested deletions in strike-through and additions in underline.

Magnuson-Stevens Fishery Conservation Act and Management Act

Commercial fishing in U.S. Federal waters is primarily governed by

the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson-Stevens"), which fosters long-term biological and economic sustainability of our nation's marine fisheries. Magnuson-Stevens established eight regional fishery management councils (Councils) with representation from the coastal states and fishery stakeholders.

The Councils' primary responsibility is the development of fishery management plans ("FMPs"). These FMPs must comply with a number of conservation and management requirements that promote sustainable fisheries management. Using scientific analyses of the abundance and composition of individual fish stocks, Councils set annual catch limits. If these limits are exceeded in a fishing year, accountability measures pre-determine the mechanism to respond. Since 2011, domestic fisheries have had measures in place to meet these requirements, and today, nearly 90 percent of fisheries are maintaining harvest levels below their annual catch limits. (b)(5) DPP



The fishery management council process, guided by the provisions of the Magnuson-Stevens Act and other applicable laws and subject to approval by the Secretary of Commerce, is uniquely positioned to most effectively manage our nation's fisheries, using the best available science with the collaboration and input of affected stakeholders, and affected, adjacent State(s). This process has resulted in the implementation of significant protection areas throughout the U.S., and has done so in a way to minimize potentially adverse impacts to other components of the ecosystem, including region- wide habitat, bycatch encounters, coastal economies, and fishermen.


Marine Mammal Protection Act

The U.S. Marine Mammal Protection Act (MMPA) protects all marine mammals, including whales, dolphins, porpoises, seals, sea lions, walrus, manatees and dugongs, sea otters, and polar bears within the waters of the United States.

The Act makes it illegal to "take" marine mammals without a permit. The term "take" includes actions that harass, feed, hunt, capture, collect, or kill any marine mammal.

The National Oceanic and Atmospheric Administration within the Department of Commerce, is responsible for managing whales, dolphins, porpoises, seals and sea lions. The U.S. Fish and Wildlife Service, within the Department of the Interior, is responsible for managing manatees and dugongs, sea otters, walrus and polar bears.

(b)(5) DPP



Endangered Species Act (ESA)

The purpose of the ESA is to conserve threatened and endangered species and their ecosystems. There are more than 1,900 species listed under the ESA. A species is considered endangered if it is in danger of extinction throughout all or a significant portion of its range. A species is considered threatened if it is likely to become endangered in the future. The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) share responsibility for implementing the ESA.

The listing of a species as endangered makes it illegal to "take" (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to do these things) that species. Similar prohibitions usually extend to threatened species.

On Thu, Aug 24, 2017 at 6:33 PM, Bowman, Randal <randal_bowman@ios.doi.gov> wrote:

yes, as it will start sunaming here in the morning and I can add it as my comment during the process.

On Thu, Aug 24, 2017 at 6:24 PM, Michael Weiss - NOAA Federal <michael.weiss@noaa.gov> wrote:

Hi Randy. Will take a little longer as some folks are unavailable given the time.

First thing tomorrow work, if needed?

On Thu, Aug 24, 2017 at 5:01 PM, Michael Weiss - NOAA Federal
<michael.weiss@noaa.gov> wrote:

Thanks Randy.

Thought the report was completed based on the press release?

Regardless, I have asked NMFS to revise the text you provided and hope to get something to you soon.

On Thu, Aug 24, 2017 at 4:21 PM, Bowman, Randal
<randal_bowman@ios.doi.gov> wrote:

Unexpected complication - the report on one of the terrestrial monuments had a section on laws that protect monument resources, and the Secretary liked that, so we now need to add the same to the NE Canyons and Seamounts memo. This includes Magnuson-Stevens and MMPA.

I created placeholder sections for review here at noon, but since these are your laws (given none of FWS MMPA species are in the NE area) you really need to write these. I took both from the web - M-S a condensation from your web site, and MMPA from several, as yours seemed aimed at fishermen, not the public. I just got the OK to share these for review, and I think Downey plans to send the entire current version to Earl for his review, but I don't know when. The blue underlining here does not show up in the word document. She would like edits by COB today if at all possible.

DRAFT PLACEHOLDERS for NOAA revision:

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(b)(5) DPP



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