



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

September 14, 2021

Dear Council EDs,

Thank you for your July 29, 2021 letter regarding the implementation of Policy Directive 01-117, Integration of Endangered Species Act (ESA) Section 7 with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) Processes (the Policy Directive).

I am committed to working closely with the Fishery Management Councils to enhance our working relationship and improve communication where needed. As such, I have directed the Office of Sustainable Fisheries and the Office of Protected Resources to work with NOAA Fisheries regional staff to identify opportunities to improve existing processes for conducting ESA section 7 consultations on fishery management actions; part of their work will be to review the Policy Directive. I will take the contents of your letter into account when I review their recommendations.

However, I do want to address one suggestion at the outset which was to provide draft Biological Opinions “to Council staff for input in advance of these drafts being made available to the public.” As you are aware, our current policy recognizes the unique interest that the Councils have in an ESA consultation on an MSA action. It also allows for the sharing of draft Biological Opinions with the Councils in certain situations. But it recognizes that such draft documents shared with the Council are public documents. After consulting with our General Counsel, there is no difference between sharing the document with the full Council and sharing the document with selected Council staff. In either instance, the document would be a publically available document and producible under the Freedom of Information Act. Accordingly, we cannot provide Council staff an advance draft of a draft Biological Opinion prior to those drafts being made available to the public.

I appreciate your commitment to work with me to identify the best way forward, and am happy to consider any specific ideas for improvements in the ESA section 7 process that you have.

Sincerely,

Samuel D. Rauch, III
Deputy Assistant Administrator for Regulatory Programs
National Oceanic and Atmospheric Administration
National Marine Fisheries Service

CC: Kelly Denit, Kimberly Damon-Randall, Adam Issenberg

