

Annotated Agenda
MAFAC Meeting – May 22 - May 24, 2012
Seattle, WA

1. Title of Discussion: Fishery Interactions with Sea Turtles and Jeopardy Determinations

2. Presenters: Keith Rizzardi

3. Objective/Purpose: [Informational/Action]:

The Council Coordinating Committee has requested MAFAC involvement in a working group to discuss fishery interactions with sea turtles. The objective is to make recommendations to NOAA related to obtaining improved data, adjusting fishery management measures, or other recommendations related to the implementation of fishery and endangered species laws.

4. Background/Synopsis

Section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. §1536; ESA), requires Federal Agencies to insure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat that has been designated for those species. Federal fisheries actions are subject to Section 7 consultations, as the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that any fishery management plan prepared by the Councils or the Secretary be consistent with any other applicable law, including the ESA.

However, “jeopardy” is not defined in Section 3 of the ESA. In the ESA implementing regulations, “jeopardize the continued existence” is defined as engaging in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, number, or distribution of that species (50 C.F.R. § 402.02).

Interpretation of jeopardy and the methodology of determining jeopardy have been controversial topics that have led to legal challenges of a number of fishery consultations. For example, the Hawaii shallow-set longline fishery targeting swordfish has been through a number of Section 7 consultations since the 1990s. During the 1990s, a series of Biological Opinions (BiOps) concluded that interactions did not jeopardize the continued existence of green and loggerhead sea turtles. However, following litigation regarding sea turtle interactions in the fishery, the 2001 BiOp concluded that the shallow-set fishery, as operated at that time, jeopardized the existence of loggerhead, green and leatherback turtles, subsequently closing the fishery until 2004. With new sea turtle mitigation measures in place, the 2004 BiOp as well as all other BiOps for the Hawaii shallow-set fishery since have resulted in non-jeopardy determinations. Throughout the years, there has not been any indication of how the jeopardy determination has been made relative to the total population of the various sea turtle species.

At its recent May meeting in Hawaii, the CCC organized a panel presentation to review the current state of jeopardy determinations and consider solutions to improving scientific certainty for ESA policy determinations affecting fishery management. An **Outcome Statement** was developed and it included a recommendation to establish a joint Regional Fishery Management Council/NMFS/MAFAC working group.

Additional background material, including the CCC panel presentations on the topic, can be found under the Protected Resources Subcommittee heading on the May meeting webpage.

5. Options listed from 1 to n:

- a) MAFAC can elect not to participate (no action).
- b) MAFAC can engage and assign a single member to work on the initiative and report back to MAFAC.
- c) MAFAC can direct the Protected Resources Committee to work on the initiative and report back to MAFAC.
- d) MAFAC can provide immediate feedback to CCC on the idea, enabling the Chair or Protected Subcommittee Chair to act accordingly.
- e) Some combination of options b, c, or d above.
- f) Other??

6. Preferred Recommendation:

Record of Decision:

Decision, Next Step(s) and/or Action:

Assigned to:

Due Date: