**Endangered Species Act Jeopardy Determinations in Fisheries Management:
Past, Present, and Future**

Panel at the Council Coordination Committee Meeting
8:00 – 10:00 a.m., May 2, 2012
Mauna Lani Bay Hotel
Island of Hawaii

Introduction

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.

Objective

The objective of this panel is to review the current state of jeopardy determinations and consider solutions to improving scientific certainty for ESA policy determinations affecting fishery management.

Structure
1. Introduction and Overview   Kitty Simonds
2. Panel Presentations (10 minutes each)
    a. Case history: Hawaii Longline Fishery and Sea Turtle Interactions   Paul Dalzell
    b. Gulf of Mexico Reef Fish Fishery: ESA Section 7 Case Study   Gina Shultz
    c. Endangered Species & Litigation Realities   Keith Rizzardi
    d. The Role of Science in Making Credible Policy Determination   Kevin Stokes
3. Panel Discussion   Moderator: Sam Pooley