About Us

- Founded in 2002
- Housed at the University of Mississippi School of Law
- Conducts legal research, education, and outreach for Sea Grant Network and stakeholders
- http://nsglc.olemiss.edu/
Coastal Resilience
Request for Proposals

- We are accepting proposals to conduct research on the effectiveness of coastal adaptation laws and policies.
- Full proposals due April 14, 2023.
- Anticipated start date is July 1, 2023.
- http://nsglc.olemiss.edu/funding/index.html
Project Background
Research Request

- TNC approached the NSGLC in 2021 requesting an legal analysis of the "nimbleness" of federal fisheries decision-making.

- Perception that law constrained ability of Fishery Management Councils to act in a timely manner.
Environmental Context

NOAA ties Alaska snow crab population decline to Bering Sea temperature rise
Snow crabs are highly sensitive, only equipped to survive across a narrow range of cold water temperatures
By Undercurrent News | Jan 10, 2023 16:44 GMT

Climate change could end Maine's lobster boom, some fear

Salmon travel deep into the Pacific. As it warms, many ‘don’t come back.’
A research expedition is trying to understand salmon booms and busts in the 'black box' of the high seas
By Joshua Partlow
March 25, 2022 at 7:00 a.m. EDT
Fishery Management Councils

- MSA established 8 regional fishery management councils.
- Responsible for developing and monitoring Fishery Management Plans.
- Each Council has its own procedures and culture.
- FMPs and associated regulations implemented by National Marine Fisheries Service.
Things to Keep in Mind!

- NSGLC did not research individual Council procedures or contextual background.

- Litigation frequency and experiences may be different for different councils leading to different risk analysis.

- A 1993 study found that among the 15 agencies that use the APA rulemaking process the most, NOAA finalizes rules the fastest.
Legal Framework
MSA-Imposed Procedures

**FMPs & Amendments**
Upon receipt from Council:
- NMFS must "immediately" begin review (within 5 days)
- 60-day public comment period
- NMFS has 30 days to act

**Proposed Regulations**
Following review, NMFS must:
- publish for a public comment period of 15-60 days
- publish final regulations within 30 days of end of public comment period
Notice of proposed rule must be published at least 30 days before effective date.

Agency must provide public opportunity to participate, but no minimum time for public comment period.

Notice and comment procedures can be waived by agency "for good cause."

- "impracticable, unnecessary, or contrary to the public interest."
NEPA Compliance

- EIS
  - New FMPs and major amendments

- EA/FONSI
  - Framework adjustments

- Categorical Exclusion
  - Technical corrections; certain management changes; temporary closures
Existing Nimbleness

Amendments

Framework Measures

Notice Actions

Emergency Actions
"Frameworking"

"establishing in an FMP/amendment or regulations a mechanism for implementing recurrent, routine, or foreseeable actions in an expedited manner."
Decision-making Timeline
# Timeline Summary

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<th>NEPA Action</th>
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Concluding Thoughts
Key Takeways

- MSA does not mandate a rigid decision-making process with exception of 60-day public comment period for FMPs and Amendments.

- Councils and NMFS can implement decisions quickly (1) when desired action planned for or (2) in emergency situations.

- Scientific uncertainty, fishery complexity, protected species interactions, public controversy, litigation risk can affect timelines.
Opportunities for Reform

- Amend MSA to shorten public comment period for FMPs/amendments?
- Additional guidance to Councils on use of frameworking?
- Adoption of CE for Framework Measures?
- Broaden interpretation of "emergency" beyond immediate impact?
Questions?

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