

STAFF SUMMARY FOR FEBRUARY 8-9, 2017

36C. OTHER INFORMATIONAL ITEMS – FEDERAL AGENCIES REPORT**Today's Item**Information Action

Standing agenda item to receive reports on any recent federal agency activities of interest not otherwise addressed under other agenda items.

Summary of Previous/Future Actions (N/A)**Background**

New Administration: Pursuant to a Jan 20, 2017 memorandum from White House Chief of Staff Reince Priebus (Exhibit 1), the new administration has placed a freeze on the adoption of new federal regulations until an agency head appointed or designated by the President reviews and approves the regulation. A mechanism was created for exemptions, but it is unclear whether such an exception will be granted for any natural resource management regulations, such as ocean salmon, Pacific halibut, and falconry. As of Jan 30, 2017, no appointments had yet been made for any of the natural resource management agencies, departments or bureaus, including the secretary of commerce, NOAA administrator, assistant administrator for fisheries (National Marine Fisheries Service), secretary of the interior, director of the National Park Service, or director of the U.S. Fish and Wildlife Service.

U.S. Secretary for Commerce: On Jan 18, 2017, the Secretary of Commerce made two determinations (Exhibit 2) that a commercial fishery failure due to a fishery resource disaster under Section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act occurred in California, one for California's Dungeness and rock crab fisheries during 2015-16 and another for the Yurok Tribe's 2016 Klamath River Chinook salmon fishery. If the U.S. Congress appropriates disaster relief funding, the National Marine Fisheries Service will work with the State of California and the Yurok Tribe to develop an economic spending plan to support any activity that would restore the fishery, or prevent a similar failure and assist the affected fishing communities. More information about the fishery disaster declaration process, visit <http://www.nmfs.noaa.gov/sfa/management/disaster/index.html>.

National Oceanic and Atmospheric Administration (NOAA): On Dec 8, 2016, NOAA's National Marine Fisheries Service released its final rule establishing the Seafood Import Monitoring Program (SIMP). SIMP establishes for certain seafood products, reporting and record-keeping requirements needed to prevent illegal, unreported and unregulated caught and/or misrepresented seafood imports from entering the U.S. The regulations for this program were effective Jan 9, 2017, so are not affected by the White House memo. See Exhibit 3 for more details about SIMP.

Significant Public Comments (N/A)**Recommendation (N/A)****Exhibits**

1. [White House memo, dated Jan 20, 2017](#)

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2. [Letters to Governor Brown and Yurok Tribal Chairman Thomas O'Rourke, dated Jan 18, 2017](#)
3. [NOAA Fisheries: U.S. Seafood Import Monitoring Program Fact Sheet, dated Dec 8, 2016](#)

Motion/Direction (N/A)

THE WHITE HOUSE

WASHINGTON

January 20, 2017

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Reince Priebus
Assistant to the President and Chief of Staff

SUBJECT: Regulatory Freeze Pending Review

The President has asked me to communicate to each of you his plan for managing the Federal regulatory process at the outset of his Administration. In order to ensure that the President's appointees or designees have the opportunity to review any new or pending regulations, I ask on behalf of the President that you immediately take the following steps:

1. Subject to any exceptions the Director or Acting Director of the Office of Management and Budget (the "OMB Director") allows for emergency situations or other urgent circumstances relating to health, safety, financial, or national security matters, or otherwise, send no regulation to the Office of the Federal Register (the "OFR") until a department or agency head appointed or designated by the President after noon on January 20, 2017, reviews and approves the regulation. The department or agency head may delegate this power of review and approval to any other person so appointed or designated by the President, consistent with applicable law.

2. With respect to regulations that have been sent to the OFR but not published in the *Federal Register*, immediately withdraw them from the OFR for review and approval as described in paragraph 1, subject to the exceptions described in paragraph 1. This withdrawal must be conducted consistent with OFR procedures.

3. With respect to regulations that have been published in the OFR but have not taken effect, as permitted by applicable

law, temporarily postpone their effective date for 60 days from the date of this memorandum, subject to the exceptions described in paragraph 1, for the purpose of reviewing questions of fact, law, and policy they raise. Where appropriate and as permitted by applicable law, you should consider proposing for notice and comment a rule to delay the effective date for regulations beyond that 60-day period. In cases where the effective date has been delayed in order to review questions of fact, law, or policy, you should consider potentially proposing further notice-and-comment rulemaking. Following the delay in effective date:

(a) for those regulations that raise no substantial questions of law or policy, no further action needs to be taken; and

(b) for those regulations that raise substantial questions of law or policy, agencies should notify the OMB Director and take further appropriate action in consultation with the OMB Director.

4. Exclude from the actions requested in paragraphs 1 through 3 any regulations subject to statutory or judicial deadlines and identify such exclusions to the OMB Director as soon as possible.

5. Notify the OMB Director promptly of any regulations that, in your view, should be excluded from the directives in paragraphs 1 through 3 because those regulations affect critical health, safety, financial, or national security matters, or for some other reason. The OMB Director will review any such notifications and determine whether such exclusion is appropriate under the circumstances.

6. Continue in all circumstances to comply with any applicable Executive Orders concerning regulatory management.

As used in this memorandum, "regulation" has the meaning given to "regulatory action" in section 3(e) of Executive Order 12866, and also includes any "guidance document" as defined in section 3(g) thereof as it existed when Executive Order 13422 was in effect. That is, the requirements of this memorandum apply to "any substantive action by an agency (normally published in the *Federal Register*) that promulgates or is expected to lead to the promulgation of a final rule or

regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking," and also covers any agency statement of general applicability and future effect "that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue."

This regulatory review will be implemented by the OMB Director. Communications regarding any matters pertaining to this review should be addressed to the OMB Director.

The OMB Director is authorized and directed to publish this memorandum in the *Federal Register*.

A large, stylized handwritten signature in black ink, likely belonging to the OMB Director mentioned in the text. The signature is highly cursive and difficult to decipher, but it appears to be a name with a prominent initial.



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

January 18, 2017

The Honorable Edmund G. Brown, Jr.
Governor of California
Sacramento, CA 95814

Dear Governor Brown:

Thank you for your letter requesting a determination of a commercial fishery failure due to a fishery resource disaster. Your request relates to the impacts to the 2015-16 Dungeness crab and rock crab fisheries in California resulting from a massive and persistent toxic harmful algal bloom of phytoplankton that caused the closure of the Dungeness crab and rock crab fisheries to protect human health.

The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) evaluated whether a commercial fishery failure occurred due to a fisheries resource disaster. After reviewing the information provided by the California Department of Fish and Wildlife and the NMFS evaluation, I have found that the request for a determination of a commercial fishery failure due to a fishery resource disaster for the 2015-16 Dungeness crab and rock crab fisheries meets the requirements for such a finding under Section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and a fishery resource disaster under Section 308(d) of the Interjurisdictional Fisheries Act.

This determination provides a basis for Congress to appropriate disaster relief funding under the MSA, Section 312(a), and then for the NMFS to provide assistance to the State of California and the affected communities. If Congress appropriates disaster relief funding, NMFS West Coast Region looks forward to working with the State of California to develop a spend plan that will create a more resilient fishery that can better withstand similar environmental disasters in the future. Section 312(a)(3) requires that the Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75% of the cost of that activity.

If you have any further questions, please contact Jim Schufreider at (202) 482-3663.

Sincerely,

A handwritten signature in black ink that reads "Penny Pritzker".

Penny Pritzker



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

January 18, 2017

Mr. Thomas P. O'Rourke, Sr.
Chairperson
Yurok Tribe
190 Klamath Boulevard
P.O. Box 1027
Klamath, CA 95548

Dear Mr. O'Rourke:

Thank you for your letter requesting a determination of a commercial fishery failure due to a fishery resource disaster. Your request relates to the impacts to the 2016 Klamath River Yurok Tribe fishery as a result of poor ocean conditions and poor Klamath River water quality, drought, and fish disease inhibiting salmon spawning.

The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) evaluated whether a commercial fishery failure occurred due to a fisheries resource disaster. After reviewing the information provided by the Yurok Tribe and the NMFS evaluation, I have found that the request for a determination of a commercial fishery failure due to a fishery resource disaster for the 2016 Klamath River Yurok Tribe fishery meets the requirements for such a finding under Section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

This determination provides a basis for Congress to appropriate disaster relief funding under the MSA, Section 312(a), and then for the NMFS to provide assistance, including to the affected communities. If Congress appropriates disaster relief funding, NMFS West Coast Region looks forward to working with the Yurok Tribe to develop a spend plan that will create a more resilient fishery that can better withstand similar environmental disasters in the future. Section 312(a)(3) requires that the Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75% of the cost of that activity.

If you have any further questions, please contact Jim Schufreider at (202) 482-3663.

Sincerely,

A handwritten signature in black ink, appearing to read "Penny Pritzker".

Penny Pritzker

U.S. Seafood Import Monitoring Program

FACT SHEET

On December 8, 2016, NOAA Fisheries released the final rule establishing the Seafood Import Monitoring Program (SIMP). The Program establishes, for imports of certain seafood products, the reporting and recordkeeping requirements needed to prevent illegal, unreported and unregulated (IUU)-caught and/or misrepresented seafood from entering U.S. commerce, thereby providing additional protections for our national economy, global food security and the sustainability of our shared ocean resources. This is the first-phase of a risk-based traceability program—requiring the importer of record to provide and report key data—from the point of harvest to the point of entry into U.S. commerce—on an initial list of imported fish and fish products identified as particularly vulnerable to IUU fishing and/or seafood fraud.

BACKGROUND

As a global leader in sustainable fisheries and a major market for seafood consumption, the U.S. has a responsibility to combat illegal practices that undermine the sustainability of our shared ocean resources. To that end, in June 2014, a Presidential Task Force comprised of 12 federal agencies was established with the task of working together, coordinating resources and authorities, to develop a comprehensive framework to combat illegal, unreported and unregulated fishing and seafood fraud. In March 2015, the Task Force issued an “Action Plan” outlining 15 recommendations. The Task Force was reorganized into the current standing Committee on IUU Fishing and Seafood Fraud under the National Ocean Council, which continues to implement the 15 recommendations. This final rule implements Recommendations 14 and 15 which called for a risk-based traceability program as a means to combat IUU fishing and seafood fraud by excluding illegal and misrepresented fish products from U.S. commerce.

OVERVIEW

- The final rule reflects and responds to numerous public comments and campaign messages received on the proposed rule (February 2016) and underscores NOAA Fisheries’ extensive efforts to establish an effective program that minimizes the burden of compliance on industry while providing the necessary information to identify illegal and/or misrepresented seafood imports before they enter the U.S. market.
- The Seafood Import Monitoring Program establishes permitting, data reporting and recordkeeping requirements for the importation of certain priority fish and fish products that have been identified as being particularly vulnerable to IUU fishing and/or seafood fraud.



- The data collected will allow these priority species of seafood to be traced from the point of entry into U.S. commerce back to the point of harvest or production to verify whether it was lawfully harvested or produced.
- The collection of catch and landing documentation for these priority seafood species will be accomplished through the International Trade Data System (ITDS), the U.S. government’s single data portal for all import and export reporting.
- The Seafood Import Monitoring Program is not a labeling program, nor is it consumer facing. In keeping with the Magnuson-Stevens Act authority (under which the regulatory program has been promulgated) and the strict information security of the ITDS--the information collected under this program is confidential.
- The importer of record will be required to keep records regarding the chain of custody of the fish or fish product from harvest to point of entry into U.S.

LIST OF PRIORITY SPECIES

Abalone *	Red Snapper
Atlantic Cod	Sea Cucumber
Blue Crab (Atlantic)	Sharks
Dolphinfish (Mahi Mahi)	Shrimp *
Grouper	Swordfish
King Crab (red)	Tunas: <i>Albacore, Bigeye, Skipjack,</i>
Pacific Cod	<i>Yellowfin, and Bluefin</i>

IMPLEMENTATION

January 1, 2018 is the mandatory compliance date for most priority species listed in the rule, with *shrimp and abalone compliance phased in at a later date. The effective date of this rule for all imported shrimp and abalone products – wild capture and aquaculture-raised - will be stayed until commensurate reporting and/or recordkeeping requirements have been established for domestic aquaculture-raised shrimp and abalone production. At such time, NOAA Fisheries will announce a compliance date for shrimp and abalone. To that end, NOAA Fisheries is continuing to work with its Presidential Task Force partner agencies with respect to measures that could be adopted to close the gaps and to ensure comparability between traceability requirements and NOAA Fisheries’ access to traceability information for imported and domestic shrimp and abalone.

For example, FDA, whose parent agency Health & Human Services is also a member of the Presidential Task Force , is currently exploring which of its authorities could fill the gap, including regulations that would require designating high risk foods for certain additional recordkeeping by food processors. As FDA conducts this work, NOAA Fisheries, together with the other Presidential Task Force agencies, would assess the extent to which FDA’s program, or other changes in state or federal law or regulation, have resulted in closing gaps in traceability requirements between domestic and imported shrimp and abalone.



INFORMATION TO BE COLLECTED

Harvesting or Producing Entity

- Name and flag state of harvesting vessel(s)
- Evidence of authorization to fish (permit or license number)
- Unique vessel identifier (when available)
- Type(s) of fishing gear

Note: The fishing area and type of fishing gear should be specified per the reporting convention and codes used by the competent authority exercising jurisdiction over the wild capture operation. If no such reporting requirements exist, the Food and Agriculture Organization fishing area and gear codes should be used.

Fish – What, when and where

- Species of fish—Scientific/Acceptable market name (ASFIS three-alpha code)
- Harvest date(s)
- Product form(s) at time of landing - including quantity and weight of product
- Area(s) of wild-capture or aquaculture harvest
- Point(s) of first landing
- Name of entity(ies) to which the fish was landed or delivered

Note: In cases where entries and products comprise more than one harvest event, each event that is relevant to a shipment must be reported but the importer does not need to link each event to a particular fish or portion of the shipment.

Importer of Record

- Name, affiliation and contact information
- NOAA Fisheries issued international fisheries trade permit (IFTP) number.
- Importer of record is responsible for keeping records regarding the chain of custody detailed above.
- Information on any transshipment of product (declarations by harvesting/carrier vessels, bills of lading)
- Records on processing, re-processing, and commingling of product.

All information and materials about the final rule are posted to www.iuufishing.noaa.gov or www.nmfs.noaa.gov/ia

For questions related to requirements of the SIMP, contact Christopher.Rogers@noaa.gov

For questions related to the use of the ITDS, contact Dale.Jones@noaa.gov

For all other inquiries, contact Laurel.Bryant@noaa.gov