



Nimbleness of Federal Fisheries Decision-making

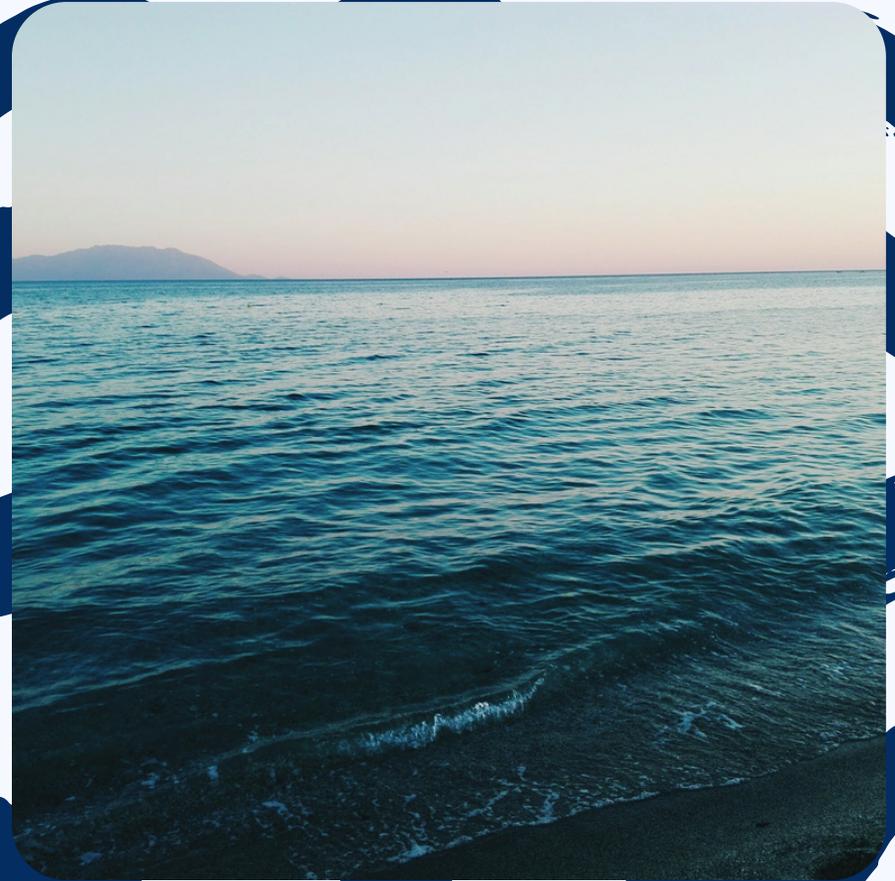
National Sea Grant Law Center
2023 Webinar Series
January 18, 2023

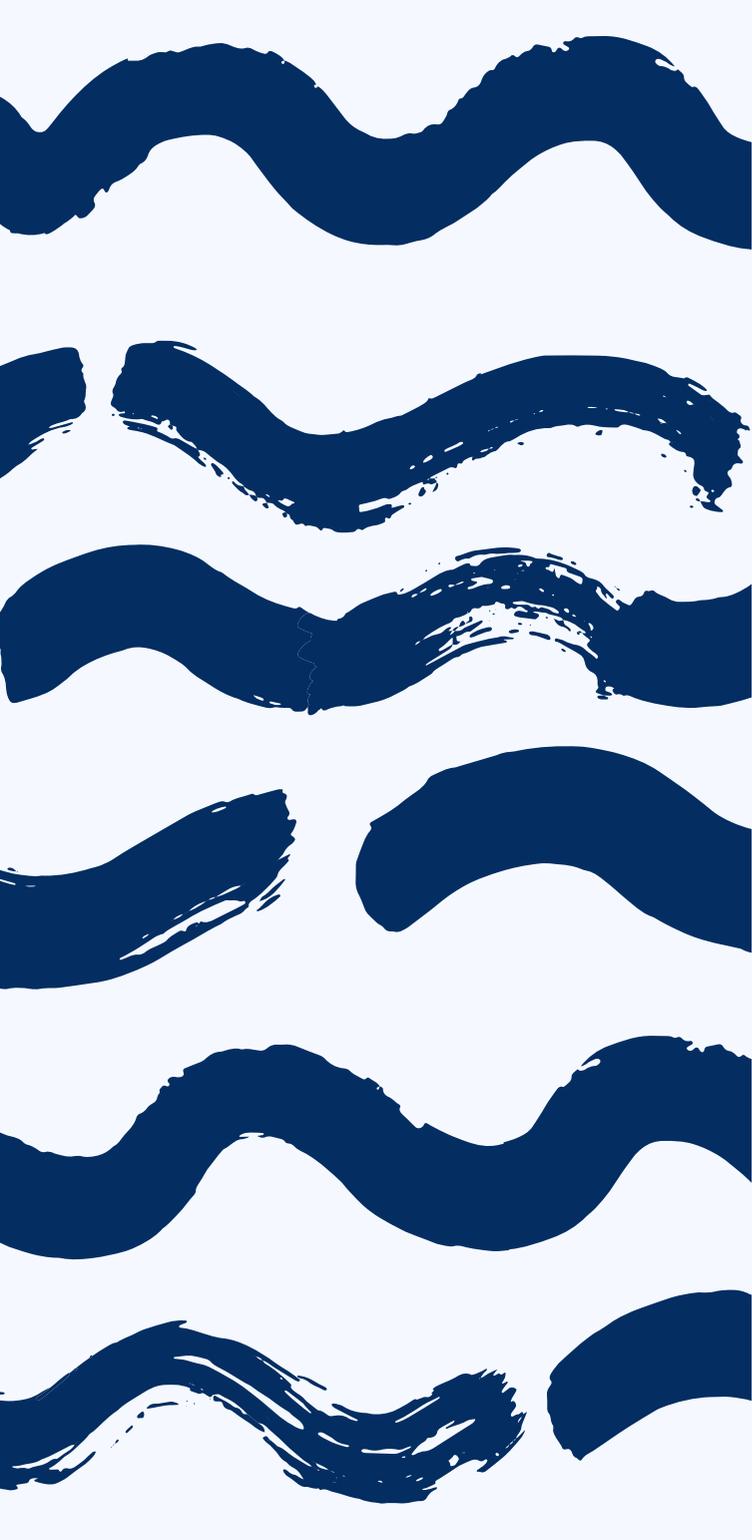




About Us

- 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.
- Letters of Intent due March 1, 2023.
- 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 stenothermic, only equipped to survive across a narrow range of cold water temperatures

By Undercurrent News | Jan. 10, 2023 16:54 GMT

SCIENCE NEWS JAN. 11, 2022 / 2:05 AM

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



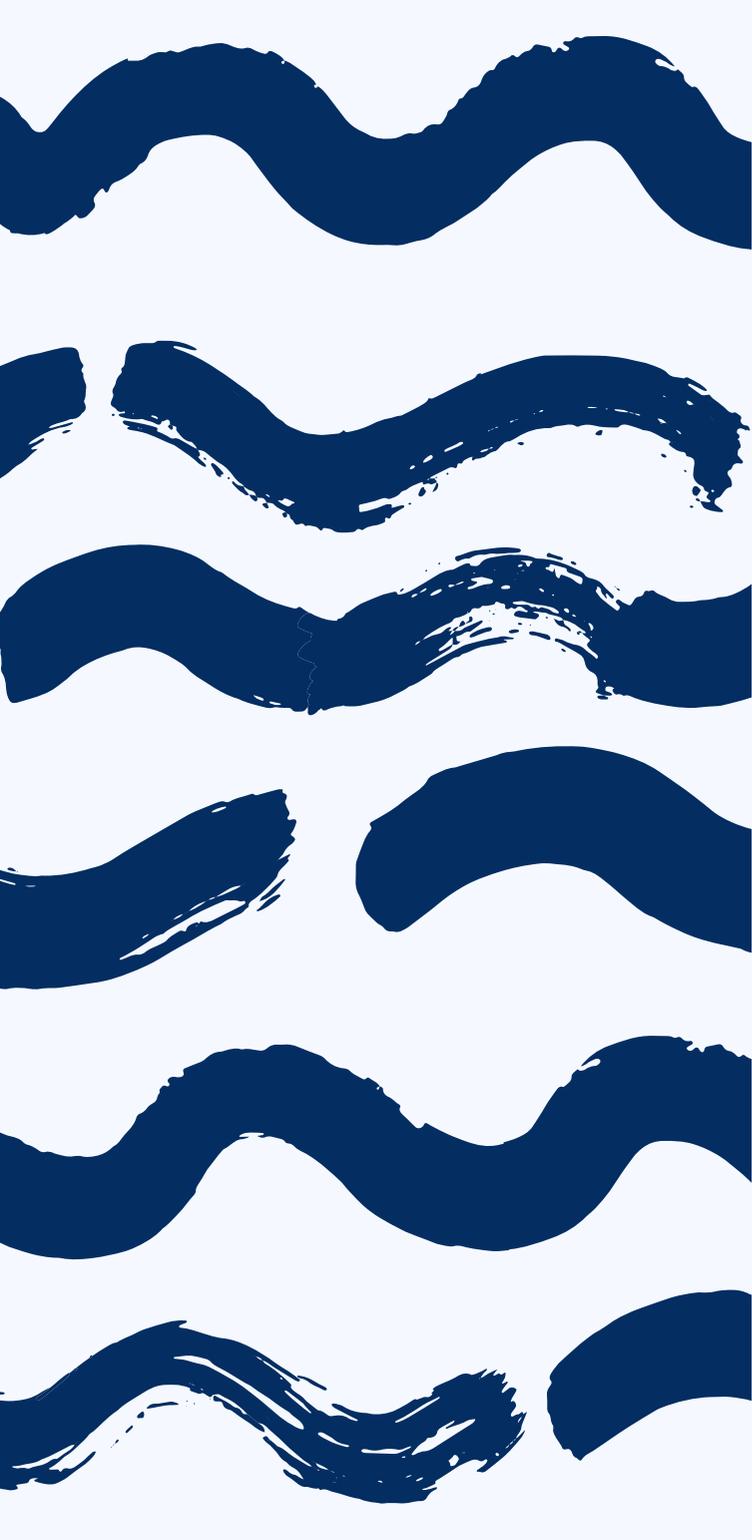
CLIMATE & ENVIRONMENT

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

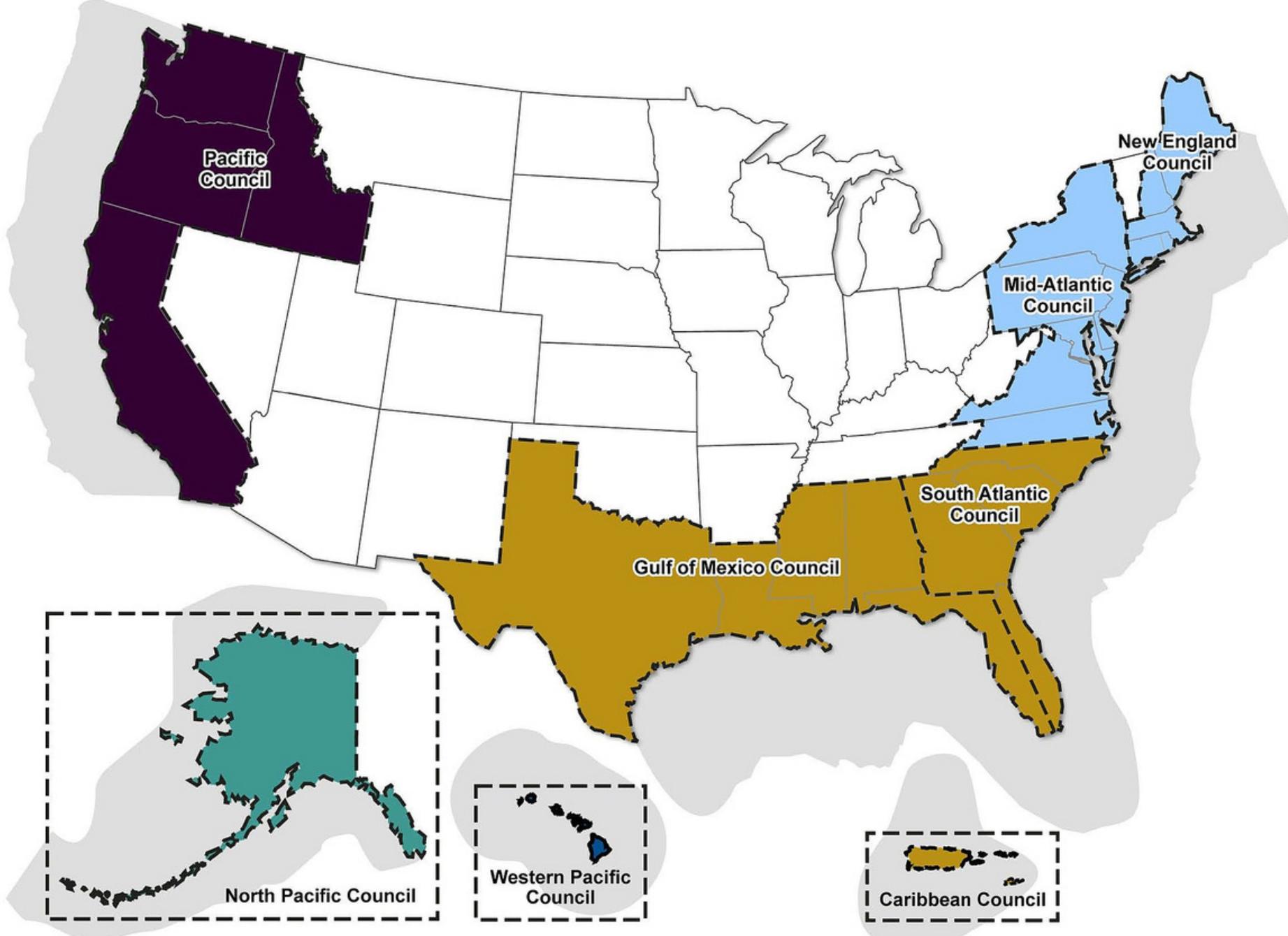
March 29, 2022 at 7:00 a.m. EDT



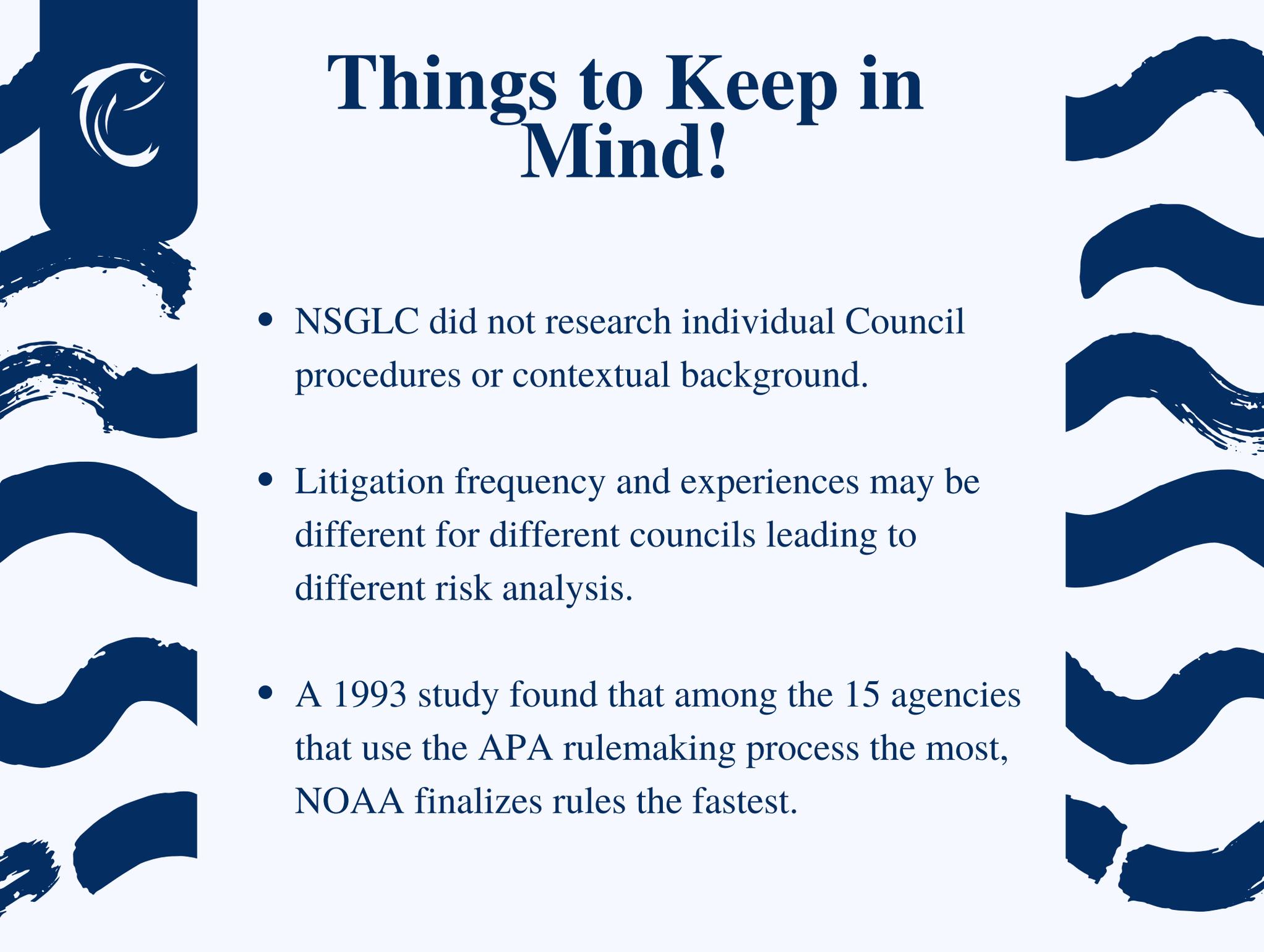
Fishery Management Councils



- 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.



- West Coast region
- Alaska region
- Pacific Islands region
- Southeast region
- Greater Atlantic region
- Federal waters (generally extend from 3 to 200 nautical miles off the coast)



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:

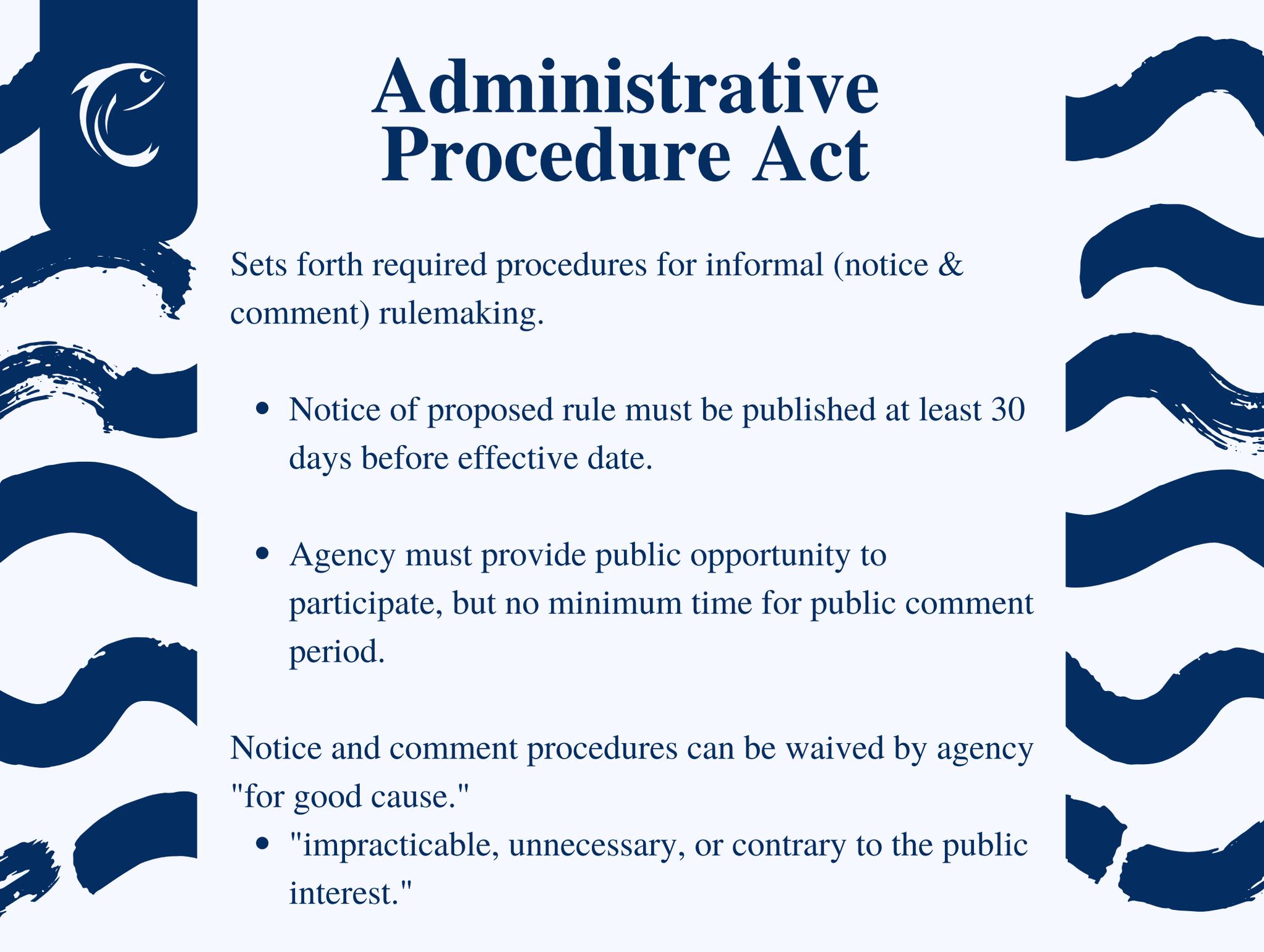
- NMFS must "immediately" begin review (within 5 days)
- 60-day public comment period
- NMFS has 30 days to act



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



Administrative Procedure Act

Sets forth required procedures for informal (notice & comment) rulemaking.

- 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

Action	Council	NEPA Action	Total Time (Days)
Emergency Action	North Pacific	CE*	41
Emergency Action	Pacific	CE*	70
Framework Adjustment	New England	EA	111
Annual Specification Adjustment	Mid-Atlantic	CE*	147
FMP Amendment	New England	CE	172
Emergency Action	Gulf of Mexico	EA/FONSI	265
Emergency Action	Mid-Atlantic	Supplemental Info. Report	270
Framework Adjustment	New England	EA/FONSI	320
FMP Amendment	Gulf of Mexico	EIS	767
FMP Amendment	New England	EIS	2,146

Timeline Summary, Highlights

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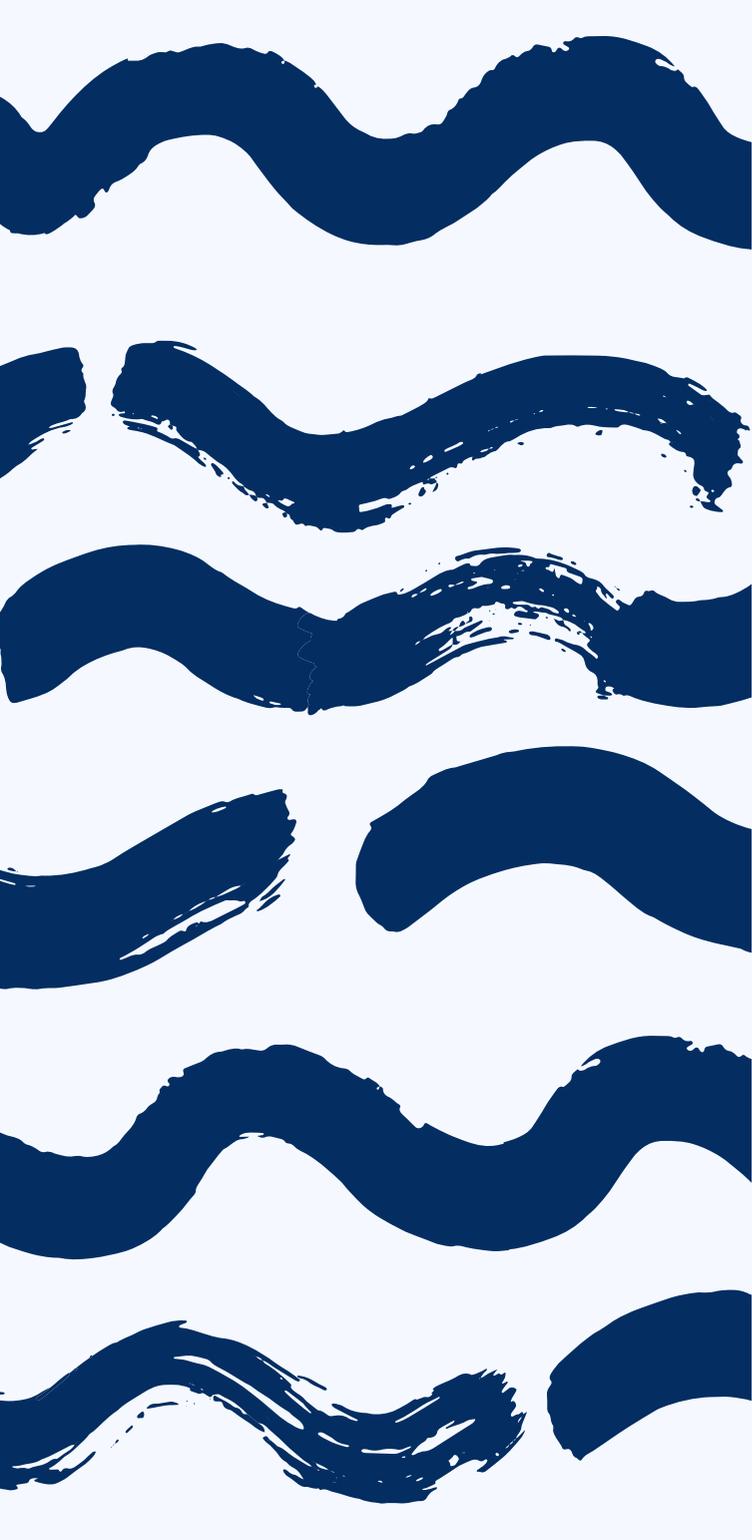
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Concluding Thoughts

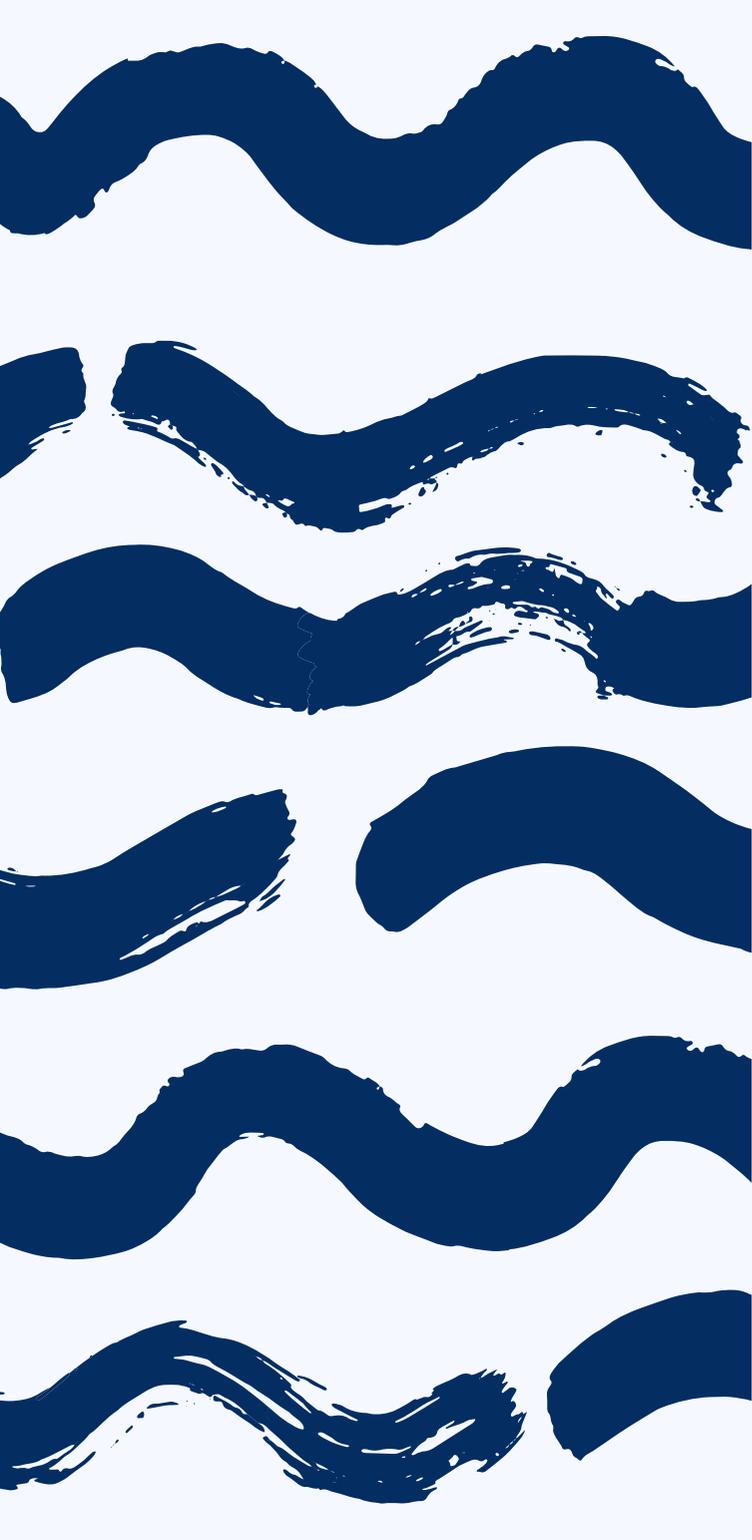




Key Takeaways



- 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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