

MINUTES

Pacific Fishery Management Council

November 1-5, 2004

Embassy Suites Portland Airport

7900 NE 82nd Avenue

Portland, OR 97220

503-460-3000

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A. Call to Order

A.1 Opening Remarks, Introductions

The 176th meeting was called to order at 9:07 am. A closed session was held from 8 to 9 am to discuss litigation and personnel matters. Opening remarks were made by Mr. Donald Hansen, Chairman.

A.2 Roll Call

Dr. Don McIsaac called the roll and the following members were present:

- | | |
|-----------------------------------|----------------------|
| Mr. Bob Alverson | Dr. Patty Burke |
| Mr. Phil Anderson | Mr. Brian Corrigan |
| Mr. Ralph Brown | Mr. Dave Ortmann |
| Mr. Mark Cedergreen | Mr. Tim Roth |
| Dr. Steve Freese | Mr. Roger Thomas |
| Mr. Don Hansen (Chairman) | Mr. Darryl Ticehurst |
| Dr. Dave Hanson (Parliamentarian) | Ms. Marija Vojkovich |
| Mr. Jim Harp | Mr. Frank Warrens |
| Mr. Jerry Mallet | Mr. Gordy Williams |

Mr. Stetson Tinkham was absent.

A.3 Executive Director's Report

Dr. McIsaac provided a brief Executive Directors report, including a summary of the Informational Reports.

A.4 **Council Action:** Approve Agenda

The Council approved the agenda as shown in Agenda Item A.4, Council Meeting Agenda, November 2004. (Motion 1)

B. Administrative Matters

B.1 Approval of Council Meeting Minutes

This agenda item was cancelled (June 2004 minutes will be available at the March 2005 meeting).

B.2 Council Operating Procedures (COP) Document (11/05/04; 1:39 pm)

B.2.a Agenda Item Overview

None.

B.2.b Reports and Comments of Advisory Bodies

Provided as supplemental written reports.

B.2.c Public Comment

None.

B.2.d Council Action: Review and Approve Proposed Updates to COP Document

Mr. Anderson moved (Motion 27) and Mr. Harp seconded a motion to recommend the Council staff review the suggestions in the available advisory body reports and put out a subsequent draft for consideration in March. He also asked, with regard to COP 3, that the changes in that COP be as consistent as possible with current practices relative to roles and responsibilities, highlighting additional workload issues for a particular planning team.

Motion 27 passed.

B.3 Election of Council Chair and Vice Chair (11/05/04; 1:44 pm)

B.3.a Agenda Item Overview

None.

B.3.b Nominations

See B.3.c.

B.3.c Council Action: Elect Council Chair and Vice Chair

Mr. Harp moved (Motion 28) to re-elect Mr. Hansen Council Chairman and Mr. Ortmann Vice Chairman for the 2005 term. Mr. Thomas seconded the motion. Motion 28 passed.

B.4 Legislative Matters (11/05/04; 1:45 pm)

B.4.a Agenda Item Overview

Mr. Waldeck provided the agenda item overview.

B.4.b Legislative Committee Report

Mr. Waldeck read Exhibit B.4.b, Supplemental Legislative Committee Report.

B.4.c Reports and Comments of Advisory Bodies

Mr. Moore provided Agenda Item B.4.c, Supplemental GAP Report.

B.4.d Public Comment

None.

B.4.e Council Action: Consider Recommendations of the Legislative Committee

Mr. Harp moved for adoption of the Legislative Committee report and the recommendations therein. This motion was seconded by Mr. Ortmann, and passed by voice vote.

B.5 Fiscal Matters

B.5.a Agenda Item Overview

Dr. John Coon provided a brief overview.

B.5.b Budget Committee Report

Mr. Jim Harp provided the report of the Budget Committee.

B.5.c Reports and Comments of Advisory Bodies

None.

B.5.d Public Comment

None.

B.5.e **Council Action:** Consider Recommendations of the Budget Committee

The Council approved the report as shown in Agenda Item B.5.b, Supplemental Budget Committee Report. (Motion 30)

B.6 Interim Appointments to Advisory Bodies

B.6.a Agenda Item Overview

None.

B.6.b **Council Action:** Appoint Members to Advisory Bodies

Mr. Anderson moved (Motion 31) that Mr. John Holloway and Mr. Jim Martin fill the Groundfish Advisory Subpanel sport fisheries at-large positions; Mr. Mike Sorenson fill the Salmon Advisory Subpanel Oregon charter boat operator position; the Ad Hoc Allocation Committee Advisor (non-voting) positions be filled by Ms. Michele Longo-Eder (fixed gear), Mr. Pete Leipzig (limited entry trawl), Ms. Kathy Fosmark (open access), Mr. Bob Osborn (sport fisheries) Mr. Rod Moore (processor), and Mr. Mike Weber (conservation group), and the Coastal Pelagic Species Advisory Subpanel conservation group seat be readvertised to include nominees with regional orientation. Mr. Cedergreen seconded the motion. Motion 31 passed.

B.7 Work Load Priorities and Draft March 2005 Council Meeting Agenda (11/05/04; 2 pm)

B.7.a Agenda Item Overview

Dr. McIsaac provided the agendum overview.

B.7.b Reports and Comments of Advisory Bodies

None.

B.7.c Public Comment

None.

B.7.d Council Guidance on Work Load, March Council Agenda, and Priorities for Advisory Body Consideration

Working from the supplemental attachments for this agenda item, Council members worked with staff on setting the March agenda and priorities for advisory bodies.

C. Pacific Halibut Management

C.1 Proposed Changes to the Catch Sharing Plan and Annual Regulations (11/02/04; 9:18 am)

C.1.a Agenda Item Overview

Mr. Chuck Tracy presented the situation summary.

C.1.b State Proposals WDFW/ODFW

Mr. Phil Anderson presented Agenda Item C.1.b, Supplemental WDFW Reports 1 and 2.

Mr. Warrens asked what the difference in average size of the landed catch was in Washington areas with and without the 32 inch minimum size limit. Mr. Anderson replied that the difference was only about one inch different. Mr. Warrens asked if there were any biological implications to doing away with the minimum size limit. Mr. Anderson replied that size at age has changed over time for Pacific halibut, but that the commercial minimum size limit remains at 32 inches and if any disproportional impacts were being incurred, the International Pacific Halibut Commission (IPHC) would likely take swift action. Mr. Anderson was aware of no IPHC proposals, and felt there were no biological implications of either keeping or removing the 32 inch minimum size limit in the recreational fishery.

Dr. Burke presented Agenda Item C.1.b, Supplemental ODFW Reports 1 and 2.

C.1.c Tribal Comments

Mr. Jim Harp presented Agenda Item C.1.c, Tribal Comments.

C.1.d Reports and Comments of Advisory Bodies

Mr. Rod Moore provided Agenda Item C.1.d, Supplemental GAP Report.

C.1.e Public Comment

Mr. Jim Tuggle, sport fisherman, Tumwater, Washington
Mr. Steve Watrous, Columbia Pacific Anglers Association, Vancouver, Washington
Mr. Rod Lee, sport fisherman, Beaverton, Oregon
Mr. Kurt Bergner, Columbia River Sub-Area Oregon Marine Sports Fishing Group, Portland, Oregon
Mr. Dennis Richey, Oregon Anglers, West Linn, Oregon
Mr. Jim Crotts, sport fisherman, Sweet Home, Oregon
Ms. Janice Green, Oregon Anglers, Umpqua, Oregon
Mr. Butch Smith, Ilwaco Charterboat Association, Ilwaco, Washington
Mr. Ron Lethin, charter boat owner/operator, Hammond, Oregon
Mr. Mitchell Buell, Garibaldi Charters, Garibaldi, Oregon
Ms. Linda Mitchell, Garibaldi Charters, Garibaldi, Oregon
Mr. Mike Sorenson, charter boat operator, Toledo, Oregon

C.1.f **Council Action:** Adopt Proposed Regulatory Changes for Implementation in 2005

Dr. Patty Burke moved (Motion 2) to adopt the Oregon proposals for the Pacific Halibut Catch Sharing Plan (CSP) as listed in Agenda Item C.1.b, Supplemental ODFW Report 1, as corrected by Agenda Item C.1.b, Supplemental ODFW Report. Mr. Brown seconded the motion.

Dr. Burke, speaking to the motion, indicated that while Oregon had ample debate of the proposal to divide the Columbia River subarea at the state line, Washington did not, nor was there a collaborative debate involving both states, which should occur before considering such an action. She indicated that the testimony at the Oregon public hearings were clear, that the transfer and additional 2% of quota from the central Oregon subarea to the Columbia River subarea should not occur unless there was a guarantee that those fish were allocated to Oregon ports only; therefore the transfer provision could not occur at this time. She stated her motion included all provisions in Agenda Item C.1.b, Supplemental ODFW Report 1 except the transfer of fish from the Central Oregon subarea to the Columbia River subarea (proposal 6). She recommended the States of Oregon and Washington investigate the problem more over the course of the next year to reach an acceptable solution that includes adequate public input.

Dr. Burke observed that the proposed yelloweye rockfish conservation area was only the high relief portion of Stonewall Bank, not the entire area, and that most halibut are caught outside the high relief area. She feels the Council should take opportunities when available to close areas to protect overfished stocks, then evaluate the effects to see if they merit continuation.

Dr. McIsaac asked for clarification on the motion; Dr. Burke then withdrew Motion 2.

Dr. Burke moved (Motion 3) to adopt the proposals for the catch sharing plan as shown in Agenda Item C.1.b, Supplemental ODFW Report with the deletion of item #6; and incorporate the changes that were listed in ODFW Supplemental Report 2 to correct the language per NMFS recommendations. Mr. Brown seconded the motion.

Mr. Anderson remarked that there was a fair debate of item #6 in the Washington state meetings; but did not have a meeting of the affected constituents along the Columbia River to get this issue resolved. He stated that Washington was willing to work with Oregon over the next year to fully consider the issue.

Ms. Vojkovich indicated she was supportive of the closure for the Stonewall Bank area due to bycatch concerns. Motion 3 passed.

Dr. Burke moved (Motion 4) to adopt Agenda Item C.1.b, Supplemental WDFW Report, WDFW Motion. Mr. Anderson asked for clarifying language to be inserted into the motion indicating the amount specified was to be in pounds. Dr. Burke agreed. Mr. Anderson seconded the motion.

Dr. Burke noted the motion was intended to demonstrate a commitment to addressing the issues of equitable sharing in the Columbia River subarea while a long term solution could be worked out. She stated for the record that Oregon may consider including the Oregon portion of the Columbia River subarea with the rest of the central Oregon subarea in the future.

Ms. Cooney then noted the CSP is a long-term plan and will not change unless amended again.

Motion 4 passed.

Mr. Anderson moved (Motion 5) to make a change to the Pacific Halibut Catch Sharing Plan as reflected in C.1.b, Supplemental WDFW Report 2. Mr. Cedergreen seconded the motion.

Motion 5 passed.

D. Salmon Management

Mr. Dave Ortmann chaired the Salmon Management agenda.

D.1 Inseason Consideration of the 2005 Opening Date for Oregon Commercial and Recreational Fisheries South of Cape Falcon (11/02/04; 11:24 am)

D.1.a Agenda Item Overview

Mr. Chuck Tracy presented the situation summary.

D.1.b Agency and Tribal Reports and Comments

Mr. Curt Melcher, ODFW, noted there was no additional information on age-4 Klamath fall chinook abundance, and will not offer any modifications to the season opening dates, but may consider inseason action in March following release of new forecasts.

D.1.c Reports and Comments of Advisory Bodies

SAS

Mr. Don Stevens, provided Agenda Item D.1.c, Supplemental SAS Report.

D.1.d Public Comment

None.

D.1.e **Council Action:** Consider Modifying the March 15 Opening Date

None.

D.2 Salmon Methodology Review (11/02/04; 11:29 am)

D.2.a Agenda Item Overview

Mr. Tracy presented the situation summary.

D.2.b Scientific and Statistical Committee (SSC) Report

Dr. Pete Lawson presented Agenda Item D.2.b, Supplemental SSC Report.

Mr. Anderson noted that there was a "Catch 22" between having enough information to evaluate the model performance and having a large enough fishery to collect the necessary information. The WDFW approach was to start with small pilot fisheries to gain insight into model performance, then build on that experience. Dr. Lawson responded that the SSC report recognized the Catch 22 and provided some guidelines for expanding fisheries. The SSC requests future reports include a more rigorous statistical analysis.

Mr. Roth asked if there was a catch level or fishery size that the SSC would recommend to facilitate an adequate analysis. Dr. Lawson responded that using coded wire tags for stock composition information may never provide adequate information because of the low tag rates, but that genetic stock identification may provide a more powerful tool in the near future.

Mr. Ortmann asked how far in the future would genetic stock identification be available. Dr. Lawson responded that it was being used now in some areas, but probably within a year for Puget Sound fisheries. He noted that data collection can occur now, pending analysis at a later date after the baseline is established.

Mr. Williams asked what level of cooperation with the Canadian management agencies was required to facilitate use of the Chinook FRAM. Mr. Simmons responded that Canada has ceased electronic sampling due to budget concerns, and although this has raised concerns about double-index tag sampling, it has not compromised the model yet, and there are hopes that Canada can resume electronic sampling again before it becomes a significant problem.

D.2.c Model Evaluation Workgroup Report

Mr. Dell Simmons presented Agenda Item D.2.c, Supplemental MEW Report.

D.2.d Reports and Comments of Advisory Bodies

Mr. Simmons presented Agenda Item D.2.d, Supplemental STT Report.

Mr. Brown asked if it would be possible to develop the necessary tools to evaluate a chinook mark selective fishery before prosecuting one. Mr. Simmons responded that there was a "Catch 22" of needing to have a substantial fishery to collect enough data to adequately develop the model to evaluate such a fishery.

Mr. Anderson noted that the internal structural limitations of the Chinook FRAM affected the models ability to evaluate both non-selective and mark selective fisheries. Mr. Simmons agreed, but stated that the effects were likely to be greater for mark-selective fisheries.

Mr. Jim Harp presented Agenda Item D.2.d, Supplemental Tribal Comments.

D.2.e Public Comment

None.

D.2.f **Council Action:** Adopt Final Methodology Changes for 2005

No additional discussion or guidance.

Mr. Bob Lohn provided information regarding the Columbia River biological opinion under this agenda item.

D.3 Preseason Salmon Management Schedule for 2005 (11/02/04; 1:28 pm)

D.3.a Agenda Item Overview

Mr. Tracy presented the situation summary.

D.3.b Reports and Comments of Advisory Bodies

None.

D.3.c Public Comment

None.

D.3.d Council Action: Approve 2005 Hearing Sites and Management Schedule

Mr. Larson asked if there were contingencies if the information necessary to complete Preseason Report I was not available because the STT meeting dates were moved up to accommodate the Pacific Salmon Commission meeting. Mr. Tracy responded that the STT was consulted and they felt comfortable with the schedule, but the week following the STT meeting was available to complete the document if there were loose ends to wrap up.

Mr. Larson noted the concerns for Klamath River fall chinook may increase interest in the preseason process this year and asked if there would be Council funds available for an additional California public hearing in Eureka, since the single date for Ft. Bragg may be inadequate. Dr. McIsaac responded the Councils 2005 budget is still pending approval, but felt the Council should proceed assuming its priorities would be met. If a second meeting is deemed necessary and budget is available, the Council could discuss and act on the proposal at the March meeting.

Mr. Anderson asked if the hearing site locations listed in the situation summary that were not in bold would be proposed for meetings in 2005. Mr. Tracy responded that those are for reference only and to give an idea of attendance and locations history.

Dr. McIsaac asked what Council and state sponsored meetings were held in 2003. Mr. Tracy responded the Council sponsored meetings in Westport, Washington, Coos Bay, Oregon, and Fort Bragg, California. There were no state sponsored meetings in Washington or Oregon specifically to address the Council ocean fishery options, although the North of Falcon meetings did accommodate some of that process. California did sponsor a meeting to address Klamath in river issues, which also provided some opportunity for feedback on Council options. Mr. Anderson noted the two North of Falcon meetings were well attended and did provide specific sessions to address Council options.

Mr. Anderson was concerned with moving the STT preseason forecast meeting up a week, and increasing the risk of not having all of the preseason forecasts available.

Mr. Larson moved and Mr. Anderson seconded a motion (Motion 6) to adopt the schedule for the 2005 salmon management process as shown in Agenda Item D.3.a, Attachment 1, adding a contingency for another meeting in the Eureka, California area if Council budget allowed and public interest was sufficient.

Motion 6 passed.

D.4 Fishery Management Plan (FMP) Amendment Issues (11/02/04; 1:44 pm)

D.4.a Agenda Item Overview

Mr. Tracy presented the situation summary.

Mr. Brown asked if the amendment process included a scoping session and if this meeting constituted a scoping session. Mr. Tracy responded that the amendment process did require a scoping session to identify issues to be included in the amendment process, but that this meeting was not a formal scoping session. This meeting was just to update the Council on potential subjects and to allow the Council to consider if there were sufficient need to initiate the amendment process.

D.4.b Agency and Tribal Reports and Comments

Dr. Peter Dygert presented Agenda Item D.4.a, Attachment 2; Essential Fish Habitat Five-Year Review for the Pacific Coast Salmon Plan.

D.4.c Reports and Comments of Advisory Bodies

Messrs. Doug Milward and Dell Simmons presented Agenda Item D.4.c, Supplemental STT Report.

Mr. Cedergreen asked if the process suggested by the STT would involve sending out a wide selection of selective and non-selective fishery options based on the Council's request for a particular fishery. Mr. Milward responded that only the options requested by the Council would be sent out for public review, but the STT would model the fishery according to the process outlined.

Mr. Anderson recommended developing a core, or base, non-selective option with allocations based on that option. Options II and III would incorporate selective fisheries based on process outlined in the STT report, which is consistent with the FMP. His intent is to avoid developing three options, all non-selective, then converting each to selective, resulting in essentially six options for public review.

Dr. McIsaac asked if the STT felt the procedures outlined in their report would require an FMP amendment to implement. Mr. Simmons responded no, that the procedures met not only the intent but the requirements of the current FMP.

Mr. Melcher asked what was proposed for the base fishery in terms of south of Cape Falcon fisheries. Mr. Milward responded it would be based on the historical average catch for a given sector, area, and time.

Mr. Warrens asked if a non-selective fishery could be established inseason, if it were contemplated

preseason, providing adequate impacts were available. Mr. Milward responded predicting the change in catch would be difficult, although the impacts could be modeled; however the procedure is a policy issue for the Council to consider.

Mr. Anderson asked if the procedure would be used to analyze the effects of 2004 regulations on 2005 forecast abundance, as used in Preseason Report I. Mr. Milward responded that it would not, because the preseason regulations specify selective fishery quotas, and those are what would be evaluated. That would then help form the base fishery from which the options would be derived.

Mr. Cedergreen asked if the March options would be based on a single impact level and the options would just vary the selective nature of the fisheries, as opposed to selecting three impact levels for public review. Mr. Milward responded it would be possible to have different impact levels and use the base fishery establishing approximate proportional impact levels for the respective sector, area, and time strata. However, the iterative process to determine actual modeled impacts for the strata will slow the final selection process.

Mr. Don Stevens presented Agenda Item D.4.c, Supplemental SAS Report.

Dr. McIsaac asked if the SAS recommendation was to develop a Klamath spring chinook management objective for 2005 management. Mr. Stevens responded that it was not intended for 2005 management, just as a prompt to move the process forward.

Mr. Stuart Ellis presented Agenda Item D.4.c, Supplemental HC Report.

D.4.d Public Comment

Mr. Petey Brucker, Salmon River Restoration Council, Sawyers Bar, California

D.4.e Council Guidance on Salmon FMP Amendment Issues

Mr. Curt Melcher stated ODFW does intend to include the south of Cape Falcon coho allocation issue in the next FMP amendment. Because there is no longer a specific spawning escapement goal for OCN coho, the current FMP allocation formula can not be implemented. The sport and commercial allocation to the OCN harvest rate matrix may be an appropriate alternative. With the low allowable impacts available recently, it has not been an issue, but improving stock status may necessitate action soon. ODFW also anticipates including the revised OCN coho workgroup matrix into the FMP.

Mr. Anderson indicated that issues for consideration as amendment topics include coho allocation north of Cape Falcon as it relates to selective fisheries; updating conservation objectives for some Puget Sound coho stocks; updating Puget Sound chinook conservation objectives to be consistent with the Puget Sound chinook management plan; and pending the outcome of the EFH review, updating salmon EFH, including designating Habitat Areas of Particular Concern (HAPC). Based on the time line, the EFH review is the most time sensitive, unless the coho allocation process is problematic for 2005, in which case its priority would be elevated. The conservation objectives for Puget Sound coho and chinook should not require a great deal of analysis since they have already been approved by co-managers.

Mr. Brown asked if it were possible to develop separate management objectives for Klamath spring chinook if they were not listed as a separate species under the ESA. Mr. Tracy responded that Klamath spring chinook are listed as a separate stock under the FMP so the Council has a responsibility to address the conservation objectives as information becomes available.

Mr. Brown asked what the process is if Klamath spring chinook management conflicts with fall chinook management? Mr. Tracy responded that for ocean fisheries, which the Council manages, there were a number of constraining stocks, and Klamath spring chinook would potentially be one more. Inriver fisheries management is a Klamath Fisheries Management Council issue, the Council would defer to them.

Mr. Anderson directed the STT follow the current FMP process for allocating coho north of Cape Falcon. He recommended maintaining historical catch shares for establishing a base fishery option in March from which to develop options for public review, and minimize the complexity of those options regarding selective and non-selective fisheries.

Dr. Dygert recommended the EFH review continue with an update at the March Council meeting, and perhaps additional recommendations on pursuing an FMP amendment to address any necessary EFH updates or HAPC designation. The Council concurred.

Dr. McIsaac asked what the intended implementation date was for the issues identified by Oregon and Washington. Mr. Anderson responded that although Council workload priorities would influence the decision, there was no particular urgency for the issues Washington identified, as long as the allocation process was acceptable. Mr. Melcher responded ODFW would like to start the process for incorporating the OCN Workgroup matrix into the FMP, depending on Council workload priorities. Mr. Tracy responded the OCN Workgroup matrix could be incorporated via a technical review, pending submission of a technical appendix to the SSC and completion of the methodology review process. The overall amendment process is a three meeting process, including an initial meeting for scoping to identify issues, a second meeting to adopt range of alternatives, and third meeting to adopt final recommendations.

E. Groundfish Management

E.1 NMFS Report (11/02/04; 3:49 pm)

E.1.a Regulatory Activities

Dr. Steve Freese provided an update on regulatory activities. NMFS has published two regulatory items in the *Federal Register*, a proposed rule to implement the 2005-2006 harvest specifications and management measures on September 21, and the final rule to implement Amendment 16-3 on September 28.

Ms. Becky Renko and Mr. Dayna Matthews have begun to coordinate with the states to put together the logistics for public meetings on the proposed expansion of VMS to the open access sector. Tentative dates and locations are as follows:

- California, January 10-12, Morrow Bay, Los Alamitos, Ft. Bragg.
- Oregon, January 31-February 1, Newport, Astoria; February 7-9, Port Orford
- Washington, January 17 or 24, Westport

Relative to progress on the permanent monitoring program for the shore-based whiting fishery, NMFS is waiting for the results from this year's study of the feasibility of monitoring full retention with onboard cameras. NMFS is working on revising the Environmental Assessment and some draft regulatory language. NMFS is hoping to present a revised range of alternatives to the Council in June 2005 with Council final action anticipated in September 2005. Meetings are being organized between state and federal managers to discuss available resources. Industry is very interested in the process and will be included in meetings and/or conference calls to further discuss ways to fund the monitoring program.

At the September meeting, there was considerable discussion about our ability to track and monitor fishery catch data on an inseason basis. The GMT has been discussing ways to modify the QSM portion of the PacFIN system as well as developing new tools that will be needed. There will likely be a more detailed discussion of this issue later in the week. There are several ongoing projects relative to the quality of the data systems in place and what improvements are necessary. The National Academy of Science is reviewing RecFIN data from around the nation to assess the ways the data is collected and to determine if the data is adequate for inseason management or area management. Funding has been provided to PSMFC by the NWFSC to address data issues within both PacFIN and RecFIN. NWFSC is also working with California on ways to improve recreational fishery statistic reporting and projections. Finally, NMFS is working on evaluating and studying practicality, legality, and confidentiality issues on replacing the existing fish ticket system with an electronic data system.

Mr. Alverson asked about the status of regulations to complete the sablefish permit stacking program. Ms. Cooney reported that legal council in Washington D.C. is in the review process.

Dr. Burke referenced the letter in the briefing book regarding Amendment 17. The materials presented seemed to indicate adjustments to OYs could only be reductions when she understood the purpose of the letter was to state that all parties agree that the intent was to allow adjustments in either direction. Dr. Freese stated that NMFS is trying to find the best option for correcting the language currently in place. One option is to go through a notice and comment process with the Council and another is simply to publish revised language in the *Federal Register*. Dr. Burke clarified that the letter in the briefing book has gone to NMFS and the Council may need to draft another letter depending on what process NMFS chooses.

Dr. McIsaac asked about the handout relative to the status of the Pacific whiting fishery. Dr. Freese stated that the handout is merely a tracking sheet for the whiting fleets provided to the Council on an informational basis. The catcher/processor fleet has nearly attained its whiting allocation while staying under the caps adopted by the Council in September.

E.1.b Science Center Activities

Dr. Elizabeth Clarke provided a brief overview of Northwest Fishery Science Center activities. The bottom trawl surveys for 2004 have been completed and were very successful. Dr. Clarke thanked the trawl industry for their continued support in this endeavor. Additionally, NWFSC has completed a habitat and advanced technology cruise to test new integrated mapping techniques over rocky habitat. The hook and line survey is going out in about two weeks out of Long Beach, California. The off-year science workshops have been completed. The recreational fishery workshop was organized by the Southwest Center and the data and modeling workshops were organized by NWFSC. The SSC has the summary report from the data workshop and will be completing a report for the modeling workshop over the winter. The Council should expect these reports at their March meeting. NWFSC is getting a variety of observer data requests and is working to meet the usual January deadline for the next data report summarizing data from September 2003 and August 2004. There has been an interim request for observer data from December 2003 from Coos Bay Trawlers. Dr. Clarke noted she was surprised that one-quarter of the fish tickets from December 2002 are still missing and those data are needed to complete work on the observer program as well as stock assessments. There is a new NRC study reviewing scientific information on the effects of fishing on marine ecosystems. This is a new National Academy of Sciences study that is just getting started and they are asking for nominees. Dr. Clarke felt it was important for nominees from this region as this is a topic of interest on the West Coast.

Dr. Clarke expressed her appreciation for industry participation in cooperative research and in studies such as the cost/earning survey. Dr. Clarke introduced Dr. Carl Lian who presented Agenda Item E.1.b NMFS Science Report summarizing the Commercial Cost-Earnings Survey of the Limited Entry Trawl Fleet.

Dr. Freese commented that the NEFSC has been pursuing similar surveys in recent years allowing a wide range on fishery economic analyses, including models for ITQ programs, area closure impacts, revenue changes, regional management, break even analyses, crew share payments, and bycatch. These are all issues being faced on the West Coast and encouraged this type of research for its benefits to Council decision making and resource management.

E.1.c Reports and Comments of Advisory Bodies

Dr. Kevin Hill provided Agenda Item E.1.c, Supplemental SSC Report.

E.1.d Public Comment

Mr. Mike Hyde, Pacific Whiting Conservation Group, Seattle, Washington

E.1.e Council Discussion on NMFS Report on Groundfish Activities

The Council accepted the SSC recommendation (under Agenda Item E.1.c, Supplemental SSC Report) to delay the assessment of vermilion rockfish until the next biennial cycle due to data quality concerns while providing an information report on the findings of Dr. Alec McCall to the STAR panel and for the SAFE document.

E.2 Terms of Reference for Groundfish Rebuilding Plan Review and Stock Assessment Review (STAR) Panels (11/02/04; 4:54 pm)

E.2.a Agenda Item Overview

Mr. John DeVore provided the situation summary.

E.2.b SSC Report

Dr. Hill provided Agenda Item E.2.b, Supplemental SSC Report.

Mr. Brown noted the SSC recommended the new draft STAR Terms of Reference with three revisions. Does the SSC recommend the language for the number of reviewers in a STAR Panel? Dr. Hill said yes.

Ms. Vojkovich asked if the SSC discussed the GMT recommendation to mandate inclusion of management parameter estimates in the STAR Terms of Reference? Dr. Hill said no, that would require further deliberations. Dr. McIsaac said he thought the SSC report said some management parameters could not be produced in a stock assessment. How can that be? Dr. Hill said he didn't know.

Mr. Anderson asked how would regional stock differences be incorporated in a stock assessment when the GMT indicates this request? Dr. Hill said that process might work.

Dr. Freese said there is a need for a rebuilding plan review Terms of Reference by next March.

E.2.c Reports and Comments of Advisory Bodies

Mr. DeVore read Agenda Item E.2.c, Supplemental GMT Report. Mr. Rod Moore provided Agenda Item E.2.c, Supplemental GAP Report.

E.2.d Public Comment

None.

E.2.e **Council Action:** Adopt Final Terms of Reference for STAR Panels

Mr. Brown moved and Mr. Alverson seconded a motion (Motion 7) to adopt the Groundfish Stock Assessment Terms of Reference as noted in Agenda Item E.2.a, Attachment 1, with the modifications suggested by the SSC (Agenda Item E.2.b, Supplemental SSC Report - Items 1 through 3).

Mr. Anderson said he was concerned with identifying how to incorporate regional stock differences in stock assessments. How and when would the GMT make this request? Is it too late to make this request for 2005 stock assessments? Dr. McIsaac asked if this would be a burden to the GMT? Mr. DeVore answered yes.

Ms. Vojkovich noted the GMT recommendations to mandate summaries of management parameter estimates in stock assessments is still important for providing management advice. These estimates are needed for management decision-making. Dr. Freese said the GAO report also states these management parameters need to be included in Terms of Reference. A standard template helps to develop the NMFS Report to Congress on the state of stocks.

Mr. Brown said regional stock differences are discussed at every STAR Panel. The GMT attends these meetings. Given that ABC/OY projections depend on recruitment assumptions, etc., these projections may not be available for STAR Panels.

Ms. Vojkovich asked for an amendment to include the September 2004 GMT recommendations as shown in Agenda Item E.2.a, Attachment 3 (amendment to motion 7). Mr. Anderson seconded the amendment.

Mr. Anderson said the GMT recommendation is written to include the word “should” not “must”, so it provides discretion for flexibility.

Dr. Burke asked Dr. Clarke about standardizing the approach to include management parameters in executive summaries of stock assessments? Dr. Clarke recommended this be mandatory as recommended by the GAO. It should be relatively straightforward and the NWFSC will be doing it this way.

Vote on amendment to motion 7: passed. Main Motion 7 passed.

Dr. Freese requested a new Terms of Reference for rebuilding plan reviews be done by March 2005.

E.3 Exempted Fishing Permits for 2005 (11/02/04; 5:30 pm)

E.3.a Agenda Item Overview

Mr. Mike Burner provided the agenda item overview.

E.3.b Recommendations of the States, Tribes, and Federal Agencies

Mr. Anderson provided Agenda Item E.3.b, WDFW Report. Dr. Burke provided Agenda Item E.3.b, Supplemental ODFW Report. Ms. Vojkovich summarized Agenda Item E.3.b, CDFG Report 1 and CDFG Report 2.

E.3.c Reports and Comments of Advisory Bodies

Ms. Michele Culver provided Agenda Item E.3.c, Supplemental GMT Report. Mr. Moore provided Agenda Item E.3.c, Supplemental GAP Report.

E.3.d Public Comment

None.

E.3.e **Council Action:** Adopt Final Recommendations for Exempted Fisheries

Dr. Burke spoke to the joint EFP submitted on behalf of all three states relative to the shore-based Pacific whiting fishery. Dr. Burke reminded the Council there are a few outstanding issues that will need to be worked though by NMFS, industry and the states including the use of cameras on vessels. Dr. Burke asked Dr. Freese if it is assumed that there will be expanded shoreside sampling. Dr. Freese said expanded shoreside coverage is up for debate. Dr. Burke also mentioned that the results of the 2004 study of the use of cameras on vessels are not available and asked if the use of trip limits is still something NMFS is considering should the camera results be unfavorable. Dr. Freese reported that the idea behind the trip limit concept was to give vessels an option of not participating in the EFP while fishing under the same regulations as other trawlers, including sorting requirements rather than full retention. This concept is still up for consideration and further discussion. Dr. Burke stated that the state workload for this fishery is increasing under the current informal process and that ODFW welcomes and would help organize meetings with NMFS and industry to move forward on this issue.

Ms. Vojkovich responded to some of the GMT comments by stating the CDFG is planning to work with NMFS to define Scottish seine gear separately from small footrope trawl gear to allow Scottish seine to be regulated as a separate gear type and to end the need for an EFP. However, this is unlikely to occur before 2005. This would also allow the bycatch rates for Scottish seine that are currently being studied to be incorporated into the bycatch model.

Mr. Anderson asked about the purpose of the Scottish seine EFP. Ms. Vojkovich stated the purpose was to allow the use of the gear in the study areas as the gear would otherwise be restricted along with small footrope trawl gear under existing regulations. Mr. Anderson asked if the goal was to legalize a gear type or collect a forth year of data. Ms. Vojkovich felt there is a catch-22 situation where there is existing data suggesting regulatory changes making the EFP unnecessary, but the regulations cannot be implemented for 2005. However, there is value in continuing the EFP into 2005 and collecting additional information on gear specific bycatch rates. Mr. Anderson stated that WDFW was in a similar situation with the longline dogfish EFP where there was no way to get the study areas included in the 2005 regulations, but it was also difficult to justify and EFP because the data had been collected.

Ms. Vojkovich moved and Mr. Thomas seconded a motion (Motion 8) to approve the California selective flatfish trawl gear EFP and the joint state (California, Oregon, and Washington) shore-based Pacific whiting EFP. Ms. Vojkovich clarified for Mr. Anderson and Mr. Alverson that the motion includes two EFPs, one of which covers both selective flatfish trawl gear and Scottish seine gear. Motion 8 passed.

E.4 Initial Consideration of Status of Fisheries and Inseason Adjustments (11/03/04; 8:14 am)

E.4.a Agenda Item Overview

Mr. DeVore provided the situation summary.

E.4.b Groundfish Management Team/Groundfish Advisory Subpanel Comments/Questions

Ms. Culver provided Agenda Item E.4.b, Supplemental GMT Report.

Dr. McIsaac asked if it was true that if the impacts in the whiting fishery came in as projected, the canary overage would be 0.8 mt? Ms. Culver said yes. Dr. McIsaac asked if it was true the darkblotched OY could have been larger than the ABC according to the rebuilding plan? Ms. Culver said yes. Dr. Freese asked if the GMT used a 66% discard rate to calculate canary impacts in the non-whiting trawl fishery? Ms. Culver said yes. Mr. Brown noted we were under last year's darkblotched OY. If the petrale fishery were to open in December, then we might still be under the two-year OY. What was last year's total catch mortality of darkblotched? Dr. Hastie said the landings plus discard of darkblotched in 2003 was 50-60 mt below the OY. Mr. Anderson asked for the total mortality of canary in 2003. Dr. Hastie said he needed to look this up.

Dr. Burke asked if the GMT would be updating the bycatch scorecard? Ms. Culver said there would be no further updates, other than that presented today, unless there is inseason action. Dr. Burke said the GMT might be interested in recreational fishery updates. Ms. Culver said the Washington and Oregon recreational impacts were updated in September and there were no updates for the California recreational fishery. Dr. McIsaac asked for the schedule for receiving 2004 California recreational fishery updates using CRFS estimates. Ms. Vojkovich said the CDFG and PSMFC were working to debug CRFS estimates with the goal of providing these for management use by March 2005. There are still errors in estimation methodology. Comparing CRFS versus salmon program catch estimates shows the CRFS estimates to be high. Comparative effort estimates were reasonable. CDFG has requested MRFSS effort estimates to compare to CRFS to determine effort trends. They have looked at 2001-2004 catch per unit effort (CPUE) estimates and found no red flags. The 2004 CPUE estimates were lower than 2001-2003. Dr. McIsaac asked if there were any qualitative estimates of canary impacts in the 2004 California recreational fishery available? Is there any expectation the impacts are lower than projected? Ms. Vojkovich said they were unable to do this. This year they have concentrated on increasing sampling rates in the field. Dr. Burke stated it was a problem not having an adequate monitoring in place for this fishery. When will CRFS be available for use? Will NMFS take action to get a monitoring system in place? Dr. Freese said they have been talking with PSMFC and expect CRFS will be ready by next March. NMFS will press state and federal folks developing this program to do this. Dr. Burke asked who they could talk to to do this? We need estimates and management measures in March. Dr. Freese said he would start making calls. The CRFS program is a shared responsibility. He will get an answer in a couple of weeks. Mr. Anderson emphasized the need to start the 2005 fishery with a working monitoring system. We don't want surprises next June. There is a risk to other fisheries. Mr. Brown stated there is also a commercial data monitoring problem, Who's in charge of this data tracking system? Losing the petrale season this year was unacceptable.

Dr. Hastie provided a more definitive answer to the earlier questions regarding total mortality of canary and darkblotched in the last two years. Darkblotched impacts in the last two years were estimated to be under the OY as follows: in 2003, total mortality was 50 mt under the OY and, in 2002, total mortality was 42 mt under the OY. The reverse was true for canary impacts with total mortality exceeding the OY in both years. In 2002, total mortality of canary was estimated to be 13 mt over the OY and, in 2003, total mortality was 17 mt over the OY.

Mr. DeVore read Agenda Item E.4.b, Supplemental GAP Report.

E.4.c Reports and Comments of Advisory Bodies

No additional statements.

E.4.d Public Comment

Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, Oregon
Mr. Bill Brooks, Coos Bay Trawlers Association, Coos Bay, Oregon

E.4.e Council Guidance on Initial Consideration of Status of Fisheries and Inseason Adjustments

Mr. Anderson noted the GMT estimates an additional 3-20 mt of darkblotched mortality with a petrale opening in December. He asked if this estimate was based on opening only the petrale areas in December or is it based on moving the seaward line of the northern trawl RCA from 250 fm to 150 fm? Ms. Culver said she believed there were five petrale areas north of 40°10' N latitude. The 3-20 mt darkblotched impact estimate is based on projected impacts during period 6 for depths ≥ 150 fm. Mr. Anderson asked for an explanation of the range and Ms. Culver deferred to Dr. Hastie. Dr. Hastie said he looked at observer data from 2001-2003. The 3 mt impact projection was based on period 6 observations in 2003 and the 20 mt impact was based on 2001 and 2002 data. He noted we did not have petrale areas in place in 2001 or 2002; therefore, the lower end of the impact range was more likely. He added the petrale areas go in to 200 fm. Mr. Anderson asked if there was a 200 fm line defined in the north? Dr. Hastie corrected himself and said the petrale areas go in to 150 fm in five discrete areas. Mr. Anderson asked if the GMT recommendation assumed the RCA would go out to 250 fm in the non-petrale areas? Ms. Culver said the GMT has a modified 250 fm line that accommodates the petrale areas. Mr. Anderson asked if the GMT could model darkblotched impacts with this adjustment? Dr. Hastie said there was much uncertainty. The 2003 darkblotched discard rate during the petrale season was about 2%. He can attempt to identify impacts within the petrale areas. Dr. Burke asked how much darkblotched was left in the whiting catcher-processor cap? Mr. DeVore answered there was 2 kg of darkblotched caught of the 1.39 mt remaining in the cap to date. Mr. Brown asked if the GMT could estimate impacts if there is a limit on effort and a decreased petrale limit? He said he was also interested in mandating excluders in trawls for the rest of the year. Can these things be analyzed? Dr. Hastie said it was difficult to analyze gear change effects, but he could analyze differential effort assumptions. Dr. Burke asked how many trawlers are using selective flatfish trawls this year? Dr. Hastie said that gear was not effective at avoiding darkblotched. Mr. Brown remarked the fleet has been reduced with the buyback program. Dr. Freese asked if the buyback program was put in place the first week of December last year and Mr. Brown answered December 12. Ms. Vojkovich asked if there were defined petrale areas between 36° and 38° N latitude? Ms. Culver said she was not sure. Ms. Vojkovich asked if we have observer data for the south to analyze effects? Dr. Hastie said we were not anticipating darkblotched impacts south of 38° N latitude. Mr. Brown asked why the trawl RCA was moved out to 200 fm between 36° and 38° N latitude? Dr. Hastie said trawl survey distribution data indicated the presence of some darkblotched there, but most of the stock is distributed north of 38° N latitude. Mr. Brown asked if we could do a line change in the north to 200 fm in petrale areas, could this be analyzed? Dr. Hastie said the expected impacts would be less according to trawl survey distribution data.

Mr. Brown asked Mr. Bodnar and Mr. Brooks what additional restrictions they had in mind in their proposals? Mr. Bodnar said they were open and would like to have some petrale opportunity even if it means a reduced trip limit or other restrictions. They simply want to save the fishery and the market and a small supply is better than no supply whatsoever. Mr. Brooks said he thinks this is a darkblotched avoidance problem. Restricting petrale is not needed since fishermen can avoid darkblotched. Mr. Brown noted that petrale are distributed shallower in December. He asked Mr. Brooks if a 200 fm line in petrale areas would work for him? Mr. Brooks said he wouldn't turn it down, but it compromises petrale opportunity. Darkblotched and petrale aggregate in different areas during the winter months. Fishermen know this and can avoid darkblotched. Past landings of darkblotched during petrale fisheries can be explained by fishermen targeting both species in separate tows to improve profits.

Dr. Burke said we created the petrale areas based on the fact that there wasn't darkblotched there. Most of the petrale areas are >180 fm. Exceeding the ABC is taken seriously. However, there is lack of consistency in Council decisions; she cited the September decision to keep the whiting fishery open. She recommended the GMT analyze estimated effort and impacts with the current petrale areas open to 150 fm and 200 fm. She wanted the GMT to also explore differential petrale trip limits to minimize darkblotched impacts. Mr. Brown said he proposes the same type of analysis. He asked Ms. Cooney if an emergency rulemaking could be done to mandate excluders in trawls and allow petrale opportunity to only those trawlers who do not have crab permits? Ms. Cooney said the line change is a routine inseason action, but the excluder devices and crab permit issue would have to be done through an emergency rule. However, there was not enough time to do an emergency action.

Mr. Anderson said there is a difference in the earlier whiting decision and this one. The tools the Council has to manage fisheries include trip limits, gear options, and existing depth-based lines. We can't limit participation or consider new, undefined management lines. The GMT should consider reduced trip limits and the current 250 fm line with petrale areas open in December. Can we include excluders in trawls? Ms. Culver said the GMT could explore a modified line and trip limit changes. However, the GMT will be unable to analyze the effect of differential gears. Perhaps gear modifications can be done on a voluntary basis. Modeling line changes is not sophisticated and the resulting impact estimates will be imprecise. She added the GMT is still seeking guidance for reducing canary impacts. Mr. Anderson said there is a policy question for darkblotched impacts exceeding the ABC. Further impacts will have to be low; therefore, model decreased trip limits. He is recommending no inseason action to reduce canary impacts. Mr. Brown questioned whether there was any darkblotched available given we are over the ABC?

Dr. McIsaac stated that the GMT should discuss improvements in catch monitoring and tracking when inseason actions are revisited under Agenda Item E.8.

Council revisited Agenda Item E.4: 11/03/04; 2:01 pm

Dr. McIsaac stated this session was to inform the public and the Council advisors of the results of a Council closed session that just occurred.

Mr. Anderson thanked Mr. Bodnar and Mr. Brooks for their testimony on the issue of providing petrale fishing opportunity while minimizing further darkblotched impacts. The Council struggled with trying to provide some fishing opportunity given the economic consequences of closing this fishery and made some difficult decisions. The problem is that darkblotched are overfished and consequently we have a rebuilding plan in place. We are also over the ABC. Regardless of how small additional impacts may be, the Council cannot allow overfishing or fishing over the ABC in any one year. Averaging multi-year impacts and/or ABCs/OYs is not an available mechanism. Even if this could occur, we'd still be in violation of the rebuilding plan.

Mr. Anderson explained this is a different situation than the September whiting decision. When the Council capped the whiting fishery, which is 100% observed, we did not add additional darkblotched mortalities. Announcing a whiting fishery closure in September would have resulted in increased effort to attain whiting quota prior to implementing the closure. Rockfish mortalities in that case would have been higher than resulted with deciding bycatch caps and allowing the fishery to proceed. Based on all of those considerations, it is his judgement that we should not proceed with having the GMT evaluate petrale fishing options.

Mr. Alverson complimented Mr. Bodnar and Mr. Brooks for their public testimony. If the circumstances had been different, the Council would have tried to give some more petrale opportunity to the industry.

E.5 Bycatch Programmatic Environmental Impact Statement (EIS) (11/03/04; 4:34 pm)

E.5.a Agenda Item Overview

Dr. Kit Dahl provided the situation summary.

E.5.b Reports and Comments of Advisory Bodies

Dr. Dahl read Agenda Item E.5.b, Supplemental GMT Report. Mr. Moore provided Agenda Item E.5.b, Supplemental GAP Report.

E.5.c Public Comment

Mr. Christ Dorsett, The Ocean Conservancy, San Francisco, California
Ms. Karen Garrison, NRDC, San Francisco, California
Mr. Peter Huhtala, Pacific Marine Conservation Council, Astoria, Oregon
Mr. Kenyon Hensel, Hensel's, Crescent City, California

E.5.d **Council Action:** Determine Next Steps in Implementation of the Bycatch Programmatic Environmental Impact Statement

Ms. Vojkovich referenced Agenda Item E.5.a, Attachment 2 (proposed FMP elements to be addressed by amendment) and sought to clarify the task. She asked if the task is just an FMP amendment that adds a description of current monitoring and mitigation measures, and objectives for future action, or does the task also involve developing options for the implementation of sector and vessel-specific catch caps.

Dr. McIsaac responded by confirming that Ms. Vojkovich's analysis was essentially correct: the FMP amendment is mainly a descriptive and organizational task, along the lines of Attachment 2. The one exception could be suggested changes to FMP Chapter 5, which are related to Amendment 17, not this amendment. He then referenced the six items listed in the situation summary, noting that the first three items are descriptive elements to be added to the FMP by the amendment. Item five, relating to the IFQ program, would not be part of the amendment and item six, having to do with sector and vessel-specific catch caps, represents a new initiative. Issues raised in public testimony also would have to be considered with regard to this last issue. The consideration is whether the Council wants to move forward with the MSA component of the FMP amendment process and what should the amendment address.

Dr. Freese argued there should be a discussion of IFQs in the FMP, which would provide a placeholder and a sense of where the Council is going on this issue, particularly in reference to how IFQs help mitigate bycatch. Later on, if there is a conflict between the IFQ program and the bycatch program those issues can be resolved once there is a better understanding of these programs.

Ms. Vojkovich responded to Dr. Freese's comments by agreeing that the amendment could describe the relation between IFQs and bycatch mitigation. She then asked for further clarification on the use of the term "sector caps program" in Attachment 2 because this is different from what she is familiar with. Dr. Dahl said a "sector caps program" is another way of talking about bycatch caps.

Ms. Cooney said part of this is documenting what we are doing. But in addition, referencing the first item listed in the situation summary, it is incorporating into the FMP current practices, such as setting trip limits and RCAs, as required elements of a bycatch mitigation program. When these measures are implemented you will use information on bycatch and incidental catch to develop them. Developing draft amendment

language is part of the task for the March Council meeting; the other part is developing a work plan describing how to deal with catch caps and IFQs. These two elements are part of the whole package the Council would receive in March.

Mr. Brown asked about Attachment 2. It discusses revising a section on allocation and adding a section on discard caps programs. On the situation summary, item number four, implement a sector-specific bycatch accounting methodology, looks like a required action, which would presumably be a separate section in the FMP. Item number six states “authorize the use of sector-specific total catch cap programs”; that does not appear to require immediate implementation. The Council is setting up the appropriate authority to use them when the tools are available, particularly the sector-specific bycatch accounting methodology referenced in item number four in the situation summary. He asked if this is a correct interpretation. In response, Dr. Dahl confirmed this interpretation, referencing discussion in the situation summary about how the action was characterized in the EIS. The FMP amendment would establish broad program and policy direction. Specific measures would be implemented subsequently through separate regulatory or other actions.

Mr. Brown was still concerned that the FMP language could be too specific about bycatch cap programs. There are a number of other activities and decisions that have to occur, such as allocation decisions related to the IFQ program. FMP language could limit the scope of those decisions if not crafted carefully. These issues are very complicated. He referenced some of the issues related to allocation within the open access sector raised in public testimony by Mr. Hensel. Furthermore, good catch accounting across all these sectors is a prerequisite for any kind of catch cap program. The main concern is not to tie the Council’s hands with respect to future action and create the risk of legal vulnerability if measures cannot be implemented.

Dr. Burke asked Dr. Freese how the sector-specific bycatch accounting methodology referenced in item number four in the situation summary would be implemented, who will be responsible for this program, and when it will be implemented.

Dr. Freese said the FMP amendment will document the current methods for bycatch accounting. A related task is figuring out next steps on improving sector-specific bycatch accounting. The same techniques may not be used for all sectors. From a strategic perspective it is necessary to look at what is in place now, think about what can be implemented on a sector-by-sector basis, and what funding resources are available to implement new programs. The Council should be involved in helping NMFS answer these sorts of questions.

Ms. Cooney said the Council needs to look at Alternative 7, the preferred alternative in the bycatch program EIS. The description states part of Alternative 7 is “the development and adoption of sector-specific caps for overfished and depleted groundfish species where practicable.” This is a tool that we want to use and the intent is to look at using it where practicable. The intent is not to put them in place for all sectors right now, but to see if there are sectors that can be managed in this way, keeping in mind the issue of practicability.

Dr. Burke asked who will be doing the work proposed here. Dr. McIsaac responded that this was a workload item that would have to be dealt with under that administrative agenda item on Friday. Council and NMFS staff have traded off workload responsibilities in the past. With a little direction now on the nature of the task, on Friday the specifics of staff workload and GMT involvement can be discussed.

Dr. McIsaac then asked Dr. Freese about the reference in Attachment 2 to the red light/green light process. He asked if this issue would be better addressed in another process, as had been discussed earlier under Agendum E.1, and whether this should be referenced in any motion under the current agendum.

In response, Dr. Freese agreed that the red light/ green light issue can be taken out of consideration here, based on the earlier discussions.

Dr. Freese then turned to the matter at hand, noting the issues are how to move forward, coordination with other efforts, and work planning. He suggested the two tasks for the March meeting are to conceptualize what we want in the FMP and the second is an actual work plan outlining all the obligations that need to be met under this amendment.

Vice Chair Ortmann asked if that could be put into a motion.

Dr. Freese then stated it as follows: The issue is we have to start working on an FMP [amendment] and we have before us some direction under Attachment 2 agenda item E.5.a. The suggestion is that we start looking at how we would write up some of those issues and the specific amendment language, a quick draft, and what we need to do as a work plan to carry out the full completion of this amendment and use that as a discussion document at the March meeting.

Ms. Vojkovich made and Mr. Thomas seconded a motion (Motion 11) based on Dr. Freese's description.

Mr. Anderson asked about the reference to the IFQ program. In addition to being part of Alternative 7 (the preferred alternative), it is also mentioned in Attachment 2 as an element of the FMP amendment. He stated that successful implementation of the preferred alternative was not contingent on implementing an IFQ program. It could be one of the tools used to minimize bycatch but does not have to be used; and this would not mean that the Council failed in achieving the goals of the amendment. He also noted the use of gear modifications and configurations to reduce bycatch was not clearly stated as one of the FMP amendment elements. The EFPs conducted by the states on different trawl configurations and excluder devices demonstrate some experience with these as bycatch reduction measures. It doesn't show up in the briefing materials and he is interested in having that as one of the elements that would be included in the FMP amendment.

Ms. Vojkovich asked if the reference in Attachment 2 to amendments to FMP Chapter 7 dealing with EFPs was sufficient to address Mr. Anderson's concerns. Mr. Anderson responded that discussion is close to addressing his concern in that what is learned through EFPs opens the potential of gear modifications, but the purpose of bycatch reduction should be clearly stated.

Dr. Burke asked if the amendments to FMP Chapter 5 described in Attachment 2 were excluded from the motion, based on the earlier point made by Dr. McIsaac. The maker and seconder affirmed this change (relating to the Amendment 17 issue) was not part of the motion.

Ms. Vojkovich clarified the motion by saying that issues which should be part of the amendment, such as Mr. Anderson's reference to gear modifications, can be brought up when the amendment is brought up at the March Council meeting.

Mr. Brown referenced Mr. Anderson's comments and said that it is important that bycatch reduction measures already in place and currently being developed should be described in the FMP as part of this amendment, especially fishing gear requirements. He cited a number of measures, such as trawl footrope restrictions, selective flatfish trawl, and Scottish seine net regulations, which were implemented specifically to reduce bycatch.

Motion 11 passed.

E.6 Trawl Individual Quotas (TIQ) - Part I (11/04/04; 8:15 am)

E.6.a Agenda Item Overview

Mr. Jim Seger provided the situation summary.

E.6.b Ad Hoc TIQ Advisory Body Reports

E.6.b.i Independent Experts Panel Report

Mr. Seger read the panel report.

E.6.b.ii Analytical Team Report Kate Quigley

Ms. Kate Quigley provided Agenda Item E.6.b, Supplemental Ad Hoc TIQ Analytical Team PowerPoint Presentation.

E.6.b.iii Enforcement Group Report

Mr. Dayna Matthews provided Agenda Item E.6.b, Ad Hoc TIQ Enforcement Group Report.

E.6.b.iv TIQ Committee Report

Mr. Seger provided Agenda Item E.6.b, Ad Hoc TIQC Report.

E.6.c Reports and Comments of Advisory Bodies

Dr. Hill provided Agenda Item E.6.c, Supplemental SSC Report. Mr. Moore provided Agenda Item E.6.c, Supplemental GAP Report.

E.6.d Public Comment

Dr. Rod Fujita, Environmental Defense, Oakland, California
Mr. Peter Huhtala, Pacific Marine Conservation Council, Astoria, Oregon
Mr. Kenyon Hensel, Hensel's, Crescent City, California
Mr. Rod Moore, West Coast Seafood Processors Association, Portland, Oregon
Mr. Pete Leipzig, Fishermen's Marketing Association, Eureka, California

E.6.e Tentative Refinement of a Range of Alternatives for Preliminary Analysis (11/04/04; 10:17 am)

Mr. Brown indicated his intent to recuse himself on any issue related to the initial allocation of individual fishing quota, over which he might have a conflict of interest. He stated he did not view other aspects of the program, such as who can own and community ownership provisions, to be an issue of direct conflict of interest.

Dr. Hanson noted his agreement with the GAP statement on the need for the TIQC to get back together to complete their discussions. In making this statement he did not want to preclude the Council from giving the TIQC additional direction at this time.

Based on public comment by Mr. Leipzig. Ms. Vojkovich moved and Mr. Thomas seconded a motion (Motion 12) to do the following:

Have the PFMC request an opinion from the U. S. Justice Department's Antitrust Division regarding the advisability and legality of a quota share system that would:

- 1. allow harvesting shares to be held (owned) by fish processors at any time*
- 2. issue harvesting shares to fish processors at the time of initial allocation of shares*
- 3. restrict the sales of fish by fishermen to particular fish processors*
- 4. restrict the sales of fish by fishermen to fish processors that hold (own) matching shares*
- 5. in any way limit or restrict the number of fish processors that may purchase fish from fishermen*

Additionally, advice of the level of any accumulation caps that may be imposed within a quota share system should be requested.

Mr. Anderson asked for flexibility such that other questions might be added to the list as appropriate based on the IFQ package under consideration. Ms. Vojkovich concurred. The letter should also present information on the processing sector on the West Coast to provide situation specific context for the questions and reply. Dr. Freese expressed concern that addressing the questions might be a very complex matter and suggested that rather than providing answers the DOJ might identify issues and questions for the Council to consider in its deliberations. Ms. Vojkovich said the questions are specific to the Anti-Trust Division and, on that basis, thought that the questions might not require the degree of analysis indicated by Dr. Freese. Dr. Burke suggested that the letter be drafted to NOAA GC and that Dr. Hanson craft it with as much specificity as possible. NOAA GC can then advise the Council on what needs to go further. Ms. Vojkovich noted that several of the items in the motion were specific and corresponded to items in Agenda Item E.6.a, Attachment 4; Issue 1 is in Section 4.2, Issue 2 is in Section 13.1, and Issue 5 is in Section 4.7. The others are less formed. Dr. Hanson noted that the drafting of the letter would be a collaborative effort involving himself, the Chairman, and Council staff. After discussion it was agreed that the letter should be addressed to NOAA GC, that NOAA GC be asked to refer issues to the Department of Justice, if appropriate; that the letter be rephrased to ask for "legal advice" rather than "legality and advisability"; and that the letter be developed through the fast track approval process. Motion 12 passed. (Letter to NOAA Fisheries GC).

Dr. Hanson asked for Council concurrence on pursuing in the name of the Council several other information requests covered in committee reports. Mr. Anderson expressed concern about the use of GMT resources. While Washington had committed to tracking the process and committee discussions they had not committed to attendance at every meeting. Dr. Hanson stated he would make it a point involve the GMT only when needed.

Mr. Anderson noted the issue of whether or not the scope of action needs to extend beyond the trawl fishery. That issue is raised on page 2 of the decision step summary (Agenda Item E.6.a, Attachment 3). It is his thinking that current individual quota program development should be just for the trawl fishery; expanding to other sectors would get too complicated and would be ill-advised right now. Dr. Hanson concurred.

Ms. Vojkovich, commented on the IEP recommended revisions Objective 3 of the program. In the suggested change, it seems that the focus is only on the mortality of discards, and not the whole idea of bycatch in general. There was concurrence among Council members that one of the focuses of the IQ program was to reduce bycatch. Mr. Alverson said that a subpart of the objective should be the reduction of mortality of bycatch. Mr. Brown moved and Mr. Warrens seconded a motion (Motion 13) to change the language to say "reduce bycatch and discard mortality". Motion 13 passed.

Mr. Anderson asked what is being asked of the Council with respect to the definition of status quo? Mr. Seger said the idea was to advise the Council on what analysts think status quo might look like and their expectation and characterization of future policy developments under status quo. It is very important to the analytical results that status quo be accurately described. If the Council has any guidance or concern about the assumptions they are making the analysts need to know. In response to questions from Mr. Anderson, Mr. Seger clarified that status quo indicated the existing need and not an anticipated funding level. This interpretation was discussed with respect to enforcement and the observer program.

There was a discussion of whether or not to approve a revised set of objectives. Dr. Hanson noted that the goals and objectives are fluid and suggested that time not be spent word smithing unless there was a vital concern on the part of the Council.

Mr. Anderson noted his opinion that the Council may not be able to successfully implement a program unless there is resolution between fishers and processors. He stated that he would not support continued investment in this program if issues between the fishers and processors could not be resolved. Mr. Brown dissented, noting the complex and contentious issues that had been resolved on the Council floor for the fixed gear fleet. Mr. Alverson concurred with Mr. Brown and expressed concern that the Council not give a false direction that one group may have veto over a system and therefore a reason to not try to reach an agreement. He noted his interest in the discussions and compromises that are offered on the allocation issue. Mr. Anderson acknowledged these comments and restated his view, noting his interest in seeing progress from the current polarized positions.

The next allocation committee meeting to address intersector allocations necessary for an individual quota program will likely occur over the winter. The issue will be discussed in more detail when the allocation committee advisors are appointed on Friday.

Mr. Brown spoke to the potential expediency in developing all other program elements before addressing the initial allocation issue. You cannot expect industry to reach agreement on initial allocation as it is too contentious. The Council should consider pursuing something similar to the Canadian approach by hiring a facilitator to hear each group's position and then give advice to the Council.

E.7 Groundfish Essential Fish Habitat – EIS (11/04/04; 11:15 am)

E.7.a Agenda Item Overview

Dr. Dahl provided the situation summary.

E.7.b NMFS Report

Mr. Steve Copps did not have additional items to add to the materials provided in the briefing book, but was available to address Council questions.

E.7.c Reports and Comments of Advisory Bodies

Dr. Hill provided Agenda Item E.7.c, Supplemental SSC Report. LT. Dave Cleary provided Agenda Item E.7.c, Supplemental EC Report. Dr. Wakefield provided Agenda Item E.7.c, Supplemental HC Report. Ms. Michele Culver provided Agenda Item E.7.c, Supplemental GMT Report. Mr. Moore provided Agenda Item E.7.c, Supplemental GAP Report.

Tribal

Mr. Harp asked Mr. Steve Joner to provide some general comments before he read his statement. Mr. Joner began by reminding everybody that tribal fisheries are place oriented and this is the basis for the usual and accustomed fishing areas. These are described in the federal regulations. As such, tribes are immobile and a closure that would impinge on one of these areas would create a problem because the tribes couldn't move to another area. Second, the tribes were asked to provide a list of measures for protecting and enhancing EFH, but the tribes don't really have this type of list; rather, the tribes manage their fisheries in a conservative manner that by design minimizes EFH impacts, bycatch, and other concerns. Tribes are actively involved in watershed management both on and off reservation; the approach to marine habitat is to use the tribes' philosophy of managing their resources on a long-term sustainable basis. This stems from the old practice where fishing banks were owned by families. These types of claims were ceded, although fishing rights were retained, but this ethic of considering this their fishing grounds has guided the cautious approach to fisheries management. He cited several examples of how this approach has been applied by the Makah tribe. He concluded by pointing out that although measures such as the RCA don't apply to tribal fisheries, the tribes implement their own measures consistent with their own philosophy, which also have a conservation element.

Mr. Anderson asked if it would be correct to say that tribal council and fisheries managers could consider the measures that might come out of this EFH EIS process and implement those that would be considered consistent with the tribal philosophy.

While stating that he is not committing to anything in advance, Mr. Joner said that they would be willing to consider such actions as a tribal decision in consultation with NMFS.

Mr. Harp read Agenda Item E.7.c, Supplemental Tribal Comments.

E.7.d Public Comment

Mr. Chuck Cook, Environmental Defense, San Francisco, California
Ms. Mary Gleason, Environmental Defense, San Francisco, California
Mr. Steve Barrager, Stanford Fisheries Policy Project, Stanford, California
Mr. Peter Huhtula, PMCC, Astoria, Oregon
Mr. George Steinbach, CARE, Ojai, California
Mr. Dan Wolford, Coastside Fishing Club, San Diego, California
Mr. Jim Ayers, Oceana, Juneau, Alaska
Mr. Jon Warrenchuk, Oceana, Juenau, Alaska
Mr. Chris Dorsett, The Ocean Conservancy, San Francisco, California
Ms. Karen Garrison, NRDC, San Francisco, California
Mr. Jeff Boardman, commercial fisherman, Newport, Oregon
Mr. Bob Osborn, United Anglers of Southern California, Huntington Beach, California
Mr. Tom Ghio, Ghio Fish Company, Moss Landing, California
Mr. Rod Moore, West Coast Seafood Processors Association, Portland, Oregon

E.7.e **Council Action:** Adopt Preferred Alternatives for Draft EIS Analysis and, if Appropriate, Further Refine the Range of Alternatives Included in the Draft EIS

Mr. Anderson opened discussion by thanking those that had participated in the process of developing the EIS. He stated he wanted to make a motion in three parts because the issues are complicated.

For the first of these, Mr. Anderson moved and Dr. Burke seconded a motion (Motion 14) to adopt as preliminary preferred alternatives for the EFH EIS, EFH designation alternative 2 and EFH designation alternative 3. He then described those alternatives from the briefing materials.

Mr. Anderson said he looked at the minority report of the GAP, where they proposed a modified alternative 7A, which would use the upper 50% of the HSP to designate EFH for all groundfish. There is very little difference between that and EFH designation alternative 3; therefore there wouldn't be much to gain from an analysis of this alternative. Furthermore, the EFH designation needs to be pretty all-encompassing, so that all essential habitat is included.

Dr. Freese asked if there will be an opportunity to delete alternatives. Chairman Hansen said the Council will consider deletions separately.

Motion 14 passed. Mr. Brown abstained.

Dr. McIsaac said that motions to eliminate alternatives should take up eliminating EFH identification alternatives first and HAPC designation alternatives second.

Dr. Freese moved and Ms. Vojkovich seconded a motion (Motion 15) to remove EFH designation Alternative 4 because it is not consistent with the Magnuson-Stevens Act. Motion 15 passed. Mr. Brown abstained.

Ms. Vojkovich noted that the description of EFH designation Alternative 5 omitted cabezon from the list of "precautionary zone" species. For this reason Ms. Vojkovich made and Mr. Ticehurst seconded a motion (Motion 16) to remove this alternative from consideration. Motion 16 passed. Mr. Brown abstained.

Mr. Anderson moved and Dr. Burke seconded a motion (Motion 17) to adopt the following HAPCs as preliminary preferred alternatives: HAPC designation Alternative 2, HAPC designation Alternative 3, HAPC designation Alternative 4, and HAPC designation Alternative 6. As part of the motion Alternative 6 was modified to also include rocky reef habitat areas occurring deeper than 35 fm and in waters outside 3 nautical miles from shore. Dr. Burke seconded the motion.

Ms. Vojkovich asked if the terms rocky reef and estuary referred to areas specifically identified in the GIS database. Mr. Copps said they are both defined in the GIS database based on information provided by geologists and ecologists. Ms. Vojkovich asked if there was a figure in the document showing the location of these areas. Mr. Copps said there are maps in the draft document showing the extent of each HAPC alternative.

Dr. Burke asked Mr. Copps if the concerns about the analytical methods raised by the SSC could be overcome when the EIS analysis is done. Mr. Copps said they will be addressed, and in fact have been in the risk assessment. However, in terms of the EIS analysis they have not yet been resolved due to a lack of time but can be before the EIS is published.

Ms. Vojkovich asked if ephemeral habitats, such as canopy kelp and seagrass beds, are designated HAPCs as they occur generally over time, rather than as a static area defined at a specific point in time. Mr. Copps replied that the alternative designates areas where kelp has been documented and mapped. Kelp canopy cover is subject to considerable variability in terms of geographic location. There is precedent for defining HAPCs separate from geographic location, but that is not what this alternative does.

Motion 17 passed. Mr. Brown abstained.

Mr. Anderson made and Dr. Burke seconded a motion (Motion 18) , to identify preliminary preferred alternatives to minimize the impacts of fishing gear and to delete an alternative from further consideration. The following alternatives were so identified: include Alternative 4 option 1 (freeze trawl footprint) and option 2 (freeze fixed gear footprint), delete Alternative 6 option 1 (close 25% of representative habitat) and option 2 (close 25% of biogenic habitat), and include Alternative 10 (fishing gear restrictions). Within Alternative 10 the following options are adopted: option 1 (prohibit roller gear larger than 15"), option 3 (prohibit flat trawl doors), option 5 (limit the length of longlines), option 6 (use habitat friendly anchoring, with the deletion of "assess potential" from the description), option 7 (prohibit dredge gear), option 8 (prohibit beam trawl), option 9 (prohibit gillnets with the suboption of deeper than 60 fm), and option 11 (prohibit dingle bar gear). The motion also includes Alternative 11 (central California no-trawl zones), Alternative 12 (relax gear endorsement requirements), and Alternative 13 (Oceana proposal). Under Alternative 13 the following two options are added: 1) the areas identified in Alternative 13 will be closed to all fishing and 2) the areas identified in Alternative 13 will be closed to bottom-contact gear (defined as fixed gear or bottom trawl gear). Mr. Anderson also noted Alternative 13 as originally described closes those areas to bottom trawling only.

Mr. Anderson discussed the rationale for eliminating Alternative 6. He stated that the level of ambiguity in it is more than what we can expect to overcome and it will be difficult to define these areas in the time we have. The Oceana proposal encompasses Alternative 6 in that it defines areas of habitat and overlays existing fishing effort. The resulting closed areas are therefore the least disruptive to fishing, recognizing that there is still a lot of work to be done refining the boundaries of those closed areas. This approach is more definitive, understandable, and workable in comparison to Alternative 6. It is better to spend time analyzing the other, better defined alternatives. Finally, Mr Anderson said this motion provides a broad range of alternatives for analysis. For example, Alternatives 4 and 6 freeze things as they are now; Alternative 13, with the addition of no fishing in specified areas, is at the other end of the spectrum.

Mr. Alverson asked about Alternative 4, which prohibits expansion of fishing beyond those areas fished from 2000 to 2002. For fixed gear he noted that the closures inside 150 fm and 100 fm would affect this calculation and that is not a function of impact on habitat. He stated this will be revealed in the analysis. He asked if that was what was intended. Mr. Anderson recalled that the Council did not put the RCAs (the closures referenced by Mr. Alverson) in place in the year 2000 or 2001 but in August 2002. So the time period used in the calculation includes two years when RCAs were not in place.

Mr. Alverson asked about the inclusion of bottom-tending mobile gear under Alternative 13. Did Mr. Anderson combine this with some other alternative? Mr. Anderson replied that Alternative 13 was based on a proposal developed by Oceana. Under their proposal there are certain areas that are defined and closed to bottom trawling. Mr. Anderson worked from that proposal (Alternative 13) and added two suboptions to it so that either bottom trawling, all gear, or bottom-contacting gear (defined as fixed gear or bottom trawl) would be prohibited in those areas. He then reiterated the point made earlier about the rationale for choosing this alternative and the need for further refinement.

Mr. Alverson then asked how the option under Alternative 10 (gear restrictions), which would assess habitat friendly anchoring systems, would be analyzed. Mr. Anderson said he thinks there would be a limited survey, which would contact fishing organizations, the GAP, and fixed gear representatives to learn what types of anchors are used and determine which types are "habitat friendly."

Mr. Warrens asked Mr. Anderson about the definition of no bottom-contacting gear in the option added to Alternative 13 (the Oceana proposal). Does this include crab pots or just groundfish gear? Mr. Anderson said it would include all fixed gear whether it be groundfish or crab pots.

Ms. Vojkovich asked Mr. Copps if Alternative 12 is specifically focused on the groundfish limited entry gear endorsements? Mr. Anderson replied in the affirmative.

Chairman Hansen asked Mr. Copps, if HAPC Alternative 8 is left out of the motion, is it then not evaluated? Mr. Copps stated that only Alternative 6 was deleted. Mr. McIsaac then followed up for clarification, asking what kind of analysis would be expected for alternatives that are not chosen as preliminary preferred under the motion but are not deleted from the list of alternatives entirely. Mr. Copps was not prepared to answer the question.

Dr. Freese, said in order to satisfy the plaintiffs' request, Alternative 13, the Oceana proposal, needs to be kept as a stand-alone alternative without adding suboptions to it. Mr. Anderson responded by saying it would be fine to identify the two suboptions he described as separate alternatives.

Mr. Ticehurst asked Mr. Anderson why impacts minimization Alternative 5 (krill fishery ban) was not deleted. He was concerned because this food fish are being considered part of the environment. This could open the door for a whole lot of other species to be included in the analysis. Mr. Anderson replied that, while not knowing all the prey species that are important to groundfish, krill is an important forage species that is not included in any Council FMPs. It is important to prevent fisheries in federal waters by vessels that are not under state jurisdiction. As to the inclusion of additional species, he wasn't sure if others could be looked at in the future, but for the purpose of this EIS only krill are considered.

Mr. Warrens asked Mr. Copps about the analysis of economic impacts and the rationale that revenues would be displaced rather than lost. He wanted to know if there will there be a more thorough analysis of economic losses in situations where displacement may not be an option. Mr. Copps stated that the EIS can provide a more detailed analysis of that. In response, Mr. Warrens said it should not be assumed that revenue will be displaced rather than lost entirely.

Motion 18 passed. Mr. Brown abstained.

Mr. Anderson said he purposely did not try to identify preliminary preferred alternatives in the research and monitoring category at this time.

Dr. Dahl asked for clarification relative to the identification of two preliminary preferred alternatives for EFH identification. He wanted to make sure it was understood that these alternatives are mutually exclusive and ultimately the Council would have to choose just one of them. Mr. Anderson replied that this was understood.

Ms. Vojkovich moved and Mr. Ticehurst seconded a motion (Motion 19) to reconsider Motion 17. Ms. Vojkovich wanted to reconsider the motion because she wanted to add an additional HAPC alternative to the original motion. Motion 19 passed. Dr. Burke and Mr. Alverson voted no; Mr. Brown abstained.

Ms. Vojkovich moved and Mr. Ticehurst seconded a motion (Motion 20) to amend Motion 17 to include HAPC Alternative 8 (oil production platforms) as a preliminary preferred alternative.

Dr. Burke was against the motion because Alternative 8 will get some analysis and the Council is considering their preferred alternatives at this time. By identifying Alternative 8 as a preferred alternative the Council is indicating a strong preference for it. She questioned whether a structure which was put in place by humans and then evolved into habitat should be designated a HAPC. By choosing it as a preliminary preferred alternative it will get too much analytical emphasis. She was concerned that the Council is setting a precedent to use a natural resource law to provide options for people involved in the decommissioning

process for manmade objects. She mentioned that, by analogy, sunken fishing vessels and gear could eventually be designated HAPC.

Mr. Alverson agreed with Dr. Burke. HAPCs are natural areas rather than man-made objects. Although oil platforms may be valuable to juvenile rockfish and other species, he has a problem choosing this as a preferred alternative. He also spoke about the possible precedent, leading to the designation of all underwater wreckage as HAPCs.

Mr. Brown reiterated the points just made, asking where the line will be drawn in terms of designating man-made materials as essential habitat. He described man-made objects brought up in his trawl net to make a point about the vast amount of trash in the ocean. By extension one could intentionally place objects in the ocean for the purposes of creating HAPCs.

Chairman Hansen noted that a lot of artificial reefs have been placed in California waters as mitigation; they are considered habitat.

Mr. Warrens said he will be voting against the motion for all the reasons stated by Mr. Alverson, Dr. Burke, and Mr. Brown.

Mr. Anderson asked for clarification of the rationale for the motion. Ms. Vojkovich replied that she wanted to bring it to the table for discussion since it had not been discussed earlier. There is considerable support for this HAPC from different parties in Southern California, as shown in the public comment in the briefing book.

Chairman Hansen again asked whether or not this alternative would be analyzed. Dr. McIsaac then asked Mr. Copps if there is a difference between the analysis of the preliminary preferred alternatives and the other alternatives included in the EIS. Mr. Copps responded that any alternative carried forward would be fully analyzed in the EIS. However, it would be natural to focus a little more on the preliminary preferred alternatives. Dr. McIsaac said this would be a more intensified level of analysis and asked if he could speak to that level of difference. Mr. Copps said the reason for identifying preliminary preferred alternatives is to signal the public what the Council's preferences are. It is not to make a big distinction between the level of analysis for different alternatives.

Roll call vote on Motion 20 (motion to amend Motion 17): Mr. Cedergreen, Mr. Thomas, and Mr. Ticehurst - yes; Mr. Harp, Mr. Mallet, Mr. Warrens, Mr. Ortmann, Mr. Alverson, Dr. Burke, and Mr. Anderson - no; Mr. Brown, Dr. Freese, and Ms. Vojkovich - abstain. Motion 20 failed with 3 yes, 7 no, and 3 abstentions.

The main motion (Motion 17) was then voted on and passed.

Dr. Dahl then asked Mr. Anderson to clarify the intention of not identifying preliminary preferred alternatives for the research and monitoring category. Mr. Anderson replied he did not intend to make a motion identifying preliminary preferred alternatives in that category.

E.8 Final Consideration of 2004 Inseason Adjustments (11/04/04; 4:46 pm)

Mr. Ortmann chaired this agenda item.

E.8.a Agenda Item Overview

Mr. DeVore provided the situation summary.

E.8.b Reports and Comments of Advisory Bodies

Ms. Culver provided Agenda Item E.8.b, Supplemental GMT Report.

Mr. Brown asked if the GMT was recommending a second Council meeting to develop a mechanism for NMFS to take management action between Council meetings if necessary?

Mr. Anderson asked if there could be inseason groundfish management conference calls as is done in salmon and halibut management? Dr. Freese deferred to Ms. Cooney, but added he was concerned about public comment. Ms. Cooney said that triggers for action need to be determined (e.g., the triggers defined for 2004 inseason actions in recreational groundfish fisheries). However, the GMT recommendation is open-ended. This mechanism would require public notice of a meeting or conference call. Mr. Anderson asked if this could be done if a trigger was defined (i.e., impacts are $\geq 10\%$ over expectations for a landing period)? He noted this is done in salmon management. Ms. Cooney said a trigger could be flexible, but there is a need for adequate consultation with the states or whomever. She would need to flesh that out with the folks in Washington, D.C.

Dr. McIsaac remarked the GMT was recommending no liberalization of groundfish fisheries in the first six months of a fishing season except for data corrections. What are considered data corrections? Ms. Culver said data corrections would be modeling based on erroneous data, etc.

Ms. Vojkovich said she was concerned about inseason catch tracking and a management response mechanism between the June and September Council meetings. Why is there a need for a response mechanism? Ms. Culver said the GMT also recommended a response and tracking mechanism in September. Ms. Vojkovich asked when are we considering new data for management use? For instance, is the expected schedule of receiving new observer data allowed in this mechanism? Ms. Culver said the observer data is a contemplated new data feed that would be used in the first six months for fishery adjustments.

Dr. McIsaac wanted to know who would be doing what in the recommended catch monitoring and data tracking mechanism? If the GMT is monitoring new data, who from the GMT would be so tasked? Ms. Culver said the GMT Chair would remind GMT members to check data every month. The GMT identified three state representatives and a NMFS Northwest Region representative who would track ongoing fisheries. A "red flag" could be raised by any GMT member. Ms. Vojkovich asked if all GMT members check the Quota Species Monitoring (QSM) report? Ms. Culver answered yes. The GMT email exchange allows the Team to confer on potential problems or confirm fisheries are proceeding according to expectations. Red flags would trigger a conference call. Council staff could communicate concerns to Council members.

Mr. Moore provided an oral report from the GAP. The GAP likes the tracking mechanism recommended by the GMT. One GAP concern is the response mechanism. The GAP would like the opportunity to comment. The Council might want to task the GMT and GAP to develop a fast-track response mechanism at the March 2005 Council meeting.

If new data in the first six months of the fishing year indicates the ability to increase trip limits, that would be allowed according to the GMT recommendation.

E.8.c Public Comment

Mr. Bob Osborn, United Anglers of Southern California, Huntington Beach, California

E.8.d **Council Action:** Approve Inseason Adjustments in the 2004 Groundfish Fishery

Mr. Brown remarked that tracking catches inseason is complicated since catch trends are not linear. He cautioned that thoughtful consideration should be given to developing a management response mechanism and that industry comment will be needed before taking any inseason action. Industry would prefer more frequent small changes to the fishery rather than infrequent large changes such as unexpected fishery closures. He recommended the Council continue this discussion next year to refine a response mechanism.

Dr. Burke asked how the Council would deal with developing this response mechanism and the red light/green light (mid-course OY change) mechanism? Dr. McIsaac said these are different mechanisms; both could be developed at next year's March meeting. Dr. Burke asked if mid-course OY changes would only be considered at Council meetings? Dr. McIsaac said yes and such changes would only be triggered by a new stock assessment.

Ms. Vojkovich said there is time between now and the next Council meeting to develop inseason management policies. She has alternative management policies she would like to explore and share with the Council.

Ms. Cooney remarked the main time frame we are concerned about is the period between the June and September Council meetings. One thought is to schedule a telephone conference Council meeting for early August with the thought you only use it if you actually need it. There would be notice with maybe four listening posts along the coast. That could be the mechanism to adequately consult with industry on a management response. You can set up a conference call ahead of time and cancel it if it is not necessary.

Vice Chairman Ortmann felt the GMT did a great job in taking this as far as they did. The Council asked the GMT to come back in March with more thoughts to further develop this response mechanism.

F. Highly Migratory Species (HMS) Management

F.1 Highly Migratory Species FMP Implementation Issues (11/03/04; 10:18 am)

F.1.a Agenda Item Overview

Mr. Dan Waldeck provided the agenda item overview.

F.1.b NMFS Report

Mr. Fougner provided an oral update on funding issues. He noted that FY2005 Appropriation legislation was pending in Congress and that the federal government was operating under a continuing resolution. This meant there were no funds for the Council for HMS FMP-related matters. However, NMFS is proceeding with implementation of the HMS FMP. NMFS is preparing regulations and procedures for administering HMS FMP permits, logbooks, and vessel marking requirements. NMFS is also developing an HMS FMP compliance guide for commercial and recreational fishermen. The guide is intended to provide information about the HMS FMP and help fishermen understand and comply with FMP requirements. NMFS intends to work with West Coast states and the Council in distributing the compliance guide. It will also be posted to the NMFS-SWR and Council websites.

Mr. Fougner also described NMFS engagement with industry participants investigating the potential of an exempted fishing permit (EFP) for the use of longline gear on the high seas to target swordfish. If fishing

occurred under an EFP, this information would be useful to future Council work to amend the HMS FMP. Finally, he noted that mitigation measures for enhancing protection of ESA-listed sea turtles were also being explored by NMFS.

Ms. Vojkovich asked if NMFS SWR had received specific funding for HMS FMP activities? Mr. Fougner indicated that SWR was using general funds for the activities he listed.

Ms. Vojkovich asked about the role of the SWFSC in support of the HMS FMP, such as development of the HMS SAFE document? Mr. Fougner stated the SWFSC would be the principal source for data and analyses for management and the SAFE document. He also stated that SWFSC staff would continue to participate on the HMS Management Team. He emphasized that neither SWR nor SWFSC would independently produce a SAFE document.

Mr. Anderson said it appeared that the Council had worked with NMFS to develop the FMP, but now NMFS is implementing only the portions of the FMP that they think necessary (without the Council). He was concerned that, without funding to support Council activities, NMFS would proceed on their own. He was concerned about public participation.

Mr. Fougner stated that NMFS was not acting independently. He clarified that NMFS is administering provisions of the FMP (permits, logbooks, etc.). He emphasized that no policy changes or regulatory changes were occurring or planned.

Mr. Anderson said it sounds like NMFS is independently implementing the FMP. Mr. Fougner stated that these FMP-related activities provide information for managing HMS fisheries.

Mr. Anderson was concerned that the Council would not be able to produce the HMS SAFE document. Mr. Anderson asked, if NMFS was asked to develop the SAFE document together, would they do that? Mr. Fougner responded that NMFS will be collecting information that could be included in the SAFE document, and if the West Coast states wanted to also participate in developing the document, that would be welcome.

Mr. Brown disagreed with Mr. Fougner on the involvement of industry in things like logbooks and other administrative matters. Industry is part of the Council process and he is very skeptical that, if the data showed there needed to be management adjustments and there were no funds for the Council process, the industry would have no input into the process. He was concerned about not having Council and industry involvement in management adjustments.

Mr. Alverson asked if only partial implementation of the FMP occurs does the Pacific Council come become subordinate to the WPFMC in HMS management? Mr. Fougner responded that the Pacific Council would not be subordinate, but it would be difficult if the WPFMC proposed changes to HMS management because the Pacific Council might not be in a position to deal with the proposal.

Chairman Hansen said he had thought the HMS FMP was on hold because there was no funding. Now he hears that NMFS is proceeding with implementation. Mr. Fougner responded that NMFS is implementing the components of the FMP that were approved.

Dr. McIsaac asked for specifics about how much money the SWR and SWFSC were spending on HMS-related matters. Mr. Fougner said he did not know of any particular funds other than base funds for the SWR and SWFSC that are being used for HMS activities. The information is also used for the IATTC and other HMS management forums. He noted that SWR has redirected personnel and resources to the HMS program. He emphasized that SWR-Sustainable Fisheries Division did not get specific HMS funding, nor was there

funds in the SFD account for grants or contracts to fund HMS activities. Mr. Fougner stated they were instructed to spend about 15% of their yearly allowance in the first quarter of the year and basically have no flexibility.

Ms. Vojkovich asked if the newly developing bluefin tuna pen rearing operation off of California was siphoning off HMS funds? She also asked how the HMS FMP relates to those types of activities? Mr. Fougner stated that bluefin tuna operation was a private venture – no NMFS funds are being used. However, NMFS-Habitat Conservation Division is writing a report on potential impacts.

F.1.c Reports and Comments of Advisory Bodies

None.

F.1.d Public Comment

Mr. Bob Osborn, United Anglers of Southern California, Huntington Beach, California

In response to Mr. Osborn's comments, Mr. Fougner noted that \$100,000 was available for cooperative research. He re-iterated that industry was working with NMFS in developing an EFP application for highseas longline fishing, which could evolve into a research project rather than an EFP fishery.

F.1.e Council Guidance on HMS FMP Implementation Issues

Dr. McIsaac spoke to the letter from the WPFMC proposing a joint meeting to discuss HMS-related management and stock status issues. He opined that it was a positive sign towards a more cooperative relationship. He recommended the Council consider responding to the WPFMC request.

Ms. Vojkovich supported Dr. McIsaac's suggestion. She also requested a letter be sent to Dr. Hogarth and Admiral Lautenbacher expressing the Council's dismay at not being able to fund the FMP, if there is to be no funding should the Council consider rescinding the HMS FMP?

Mr. Brown agreed. He stated that NMFS encouraged the Council to develop the HMS FMP, but now they are not providing funds to support the FMP.

Mr. Fougner noted that, personally, he is very disappointed by the current situation. It is frustrating and difficult. He emphasized he was speaking as an individual, not as a NMFS representative.

G. Coastal Pelagic Species Management

G.1 NMFS Report (11/03/04; 10:50 am)

G.1.a Regulatory Activities

None.

G.1.b Science Center Activities

Ms. Tonya Wick provided an update of NMFS SWR and SWFSC activities related to CPS.

G.1.c Reports and Comments of Advisory Bodies

None.

G.1.d Public Comment

None.

G.1.e Council Discussion on NMFS CPS Report

None.

G.2 Pacific Sardine 2005 Stock Assessment and Harvest Guideline (11/03/04; 11 am)

G.2.a Agenda Item Overview

Mr. Waldeck provided the agenda item overview.

Dr. Ray Conser presented a review of the 2004 Pacific sardine stock assessment and the FMP-formula derived harvest guideline. He referred to Agenda Item G.2.a, the 2004 Pacific Sardine Stock Assessment.

Ms. Vojkovich asked about the influence of sea-surface temperature (SST) on sardine recruitment and potential differences in productivity between the northern and southern areas of the fishery.

Dr. Conser responded that incoming recruits are a key factor in supporting a sustainable fishery. The assessment model assumes spawning areas are concentrated in the southern area and the SST is comparable throughout the spawning area. He noted that the Scripp's Pier SST is used because it provided a very long time series (back to the 1920s) and its trends are similar to temperature trends in other areas of the coast.

Ms. Vojkovich asked for information about the estimates of historic biomass and the FMP harvest control rule. Dr. Conser responded that the CPS FMP details the information used to develop the control rule and the process by which the Council selected the control rule (from a suite of alternatives). The harvest guideline control rule aims to achieve a stable fishery, to reduce pulses of high and low abundance, and to prevent stock collapse.

Ms. Vojkovich asked about research and data needs and what would be priority items. Dr. Conser referenced the CPS STAR Panel recommendations for research and data needs.

Mr. Ticehurst asked about the 150,000 mt Cutoff value in the harvest control rule. Dr. Conser responded that this amount is left in reserve for forage and ecosystem needs. It also is a buffer against potential stock collapse, that is, if biomass fell to 150,000 mt (or below) there would be no directed fishery.

Mr. Brown asked about the biomass trend, what is the likelihood sardine is in a downward trend? Dr. Conser responded that there was a clearly increasing trend through 1996, since then the stock appears stable at about 1 million mt. There is not an indication of decline over the later period. Dr. Conser described reasons for the sardine stock collapse that started in the 1940s. The collapse was due to a combination of intense fishing pressure and low stock productivity (because of an unfavorable environmental regime).

G.2.b Reports and Comments of Advisory Bodies

Dr. Sam Herrick provided Agenda Item G.2.b, CPSMT Report. Dr. Kevin Hill provided Agenda Item G.2.b, Supplemental SSC Report. Mr. John Royal and Ms. Heather Munro-Mann provided Agenda Item G.2.b, CASAS Report.

G.2.c Public Comment

None.

G.2.d Council Action: Adopt Harvest Guideline for 2005

Ms. Vojkovich moved and Mr. Thomas seconded a motion (Motion 9) to adopt the harvest guideline of 136,179 mt for the Pacific sardine fishery for 2005. She noted that the allocation framework currently in place will be used to divide the harvest guideline for the 2005 fishery.

Mr. Ticehurst noted concern about the potential for the Mexican fishery to increase their harvest, and the logic for the set aside of 150,000 mt. He was concerned the Council was not looking at this from an ecosystem perspective. Mr. Ticehurst proposed an amendment to Motion 9 (seconded by Mr. Thomas for discussion) to set the Pacific sardine fishery harvest guideline at 95 mt. [Mr. Ticehurst said "95 mt," Council staff believes he intended to say 9,500 mt.]

Mr. Anderson said he believed that when the harvest control rule was established that forage and ecosystem considerations were part of that process. He believes the Council took a very conservative approach in establishing a 15% harvest rate. He noted that the recommended harvest guideline of 136,179 mt is a small fraction of the total biomass and believes it is consistent with other ecosystem needs. He did not consider Mr. Ticehurst's concern to be valid.

Mr. Ticehurst elaborated on his concern and noted that 150,000 mt Cutoff might not be adequate, especially for recovering overfished groundfish stocks. He was also concerned that the combined Mexico, U.S., and Canada fisheries could potentially approach the acceptable biological catch.

Mr. Fougner said the FMP formula is essentially fixed, and if the Council wanted to change the harvest guideline formula for the 2005 fishery that would require emergency action.

Mr. Anderson said he did not disagree with the value of Mr. Ticehurst's argument, philosophically, but did want to make clear we are not bumping up against an ABC.

Chairman Hansen asked for the vote on Amendment 1 to the main motion. The amendment failed.

Mr. Alverson asked if the motion includes an allocation for 2005? Ms. Vojkovich said the next agenda item is for 2006 and beyond and the allocation formula we have for this year is also in place for next season.

Dr. Burke said she thought it was for this year. Mr. Waldeck explained the duration of the interim allocation formula and that it would be in place for 2005.

Chairman Hansen called for vote on motion 9. Motion 9 passed by voice vote.

G.3 FMP Amendment--Sardine Allocation (11/03/04; 2:15 pm)

G.3.a Agenda Item Overview

Mr. Waldeck provided the agenda item overview.

G.3.b Reports and Comments of Advisory Bodies

Mr. Royal and Ms. Munro-Mann provided Agenda Item G.3.b, CPSAS Report.

Mr. Fougner asked about the alternative identified as PNW Option 2, could this result in a derby fishery? Ms. Munro-Mann responded, yes, that could be a possibility. Mr. Fougner expressed his opinion about crafting an allocation that achieves predictability and stability, and that a derby fishery would not achieve these aims.

G.3.c Public Comment

Mr. Ryan Kapp, sardine fisherman, Bellingham, Washington

The Council had numerous questions for Mr. Kapp about how his proposed alternative would work and how it compared to the alternatives forwarded by the CPSAS. The Council was also interested in various modifications to certain aspects of Mr. Kapp's proposal.

Mr. Jerry Thon, Astoria Holdings, Astoria, Oregon

In his testimony, Mr. Thon proposed several criteria that he recommended the Council use to guide the analysis of alternative allocation scenarios. Under Council action, the Council adopted these criteria as guidance to the CPSMT.

Mr. Mike Okoniewski,, Pacific Seafoods, Woodland, Washington
Ms. Heather Munro Mann, Munro Consulting, Inc., Newport, Oregon
Mr. Pete Gugliermo, sardine fisherman, City of Commerce, California
Mr. Vince Torre, Tri-Marine Fish Company, San Pedro, California
Mr. Rick Mayer, Marcus Food Co., Camarillo, California
Ms. Diane Pleschner-Steele, California Wetfish Producers Association, Buellton, California

G.3.d Council Action: Adopt Preliminary Range of Alternatives for Sardine Allocation

Dr. Burke asked several question of Dr. Herrick (CPSMT chair). She wanted to know if the criteria suggested by Mr. Thon would be practicable for the CPSMT analysis. She also asked for the CPSMT perspective about adding an objective that seeks to achieve predictability and stability to the set of objectives proposed by the CPSAS. She asked if the CPSMT would want to be able to combine aspects of the CPSAS alternatives if the analysis revealed such combinations could produce effective alternatives. She also wanted assurance that the CPSMT would not exclude any of the CPSAS alternatives from the analysis.

Dr. Herrick spoke to the assignment for developing an allocation framework for the long-term. He noted that this would, in some ways, be complicated by the cyclic nature of sardine. For this reason, he felt a five-year review process would be prudent. He noted that, to reduce the workload burden, the review process should be part of the CPS FMP framework provisions. This could allow adjustments to the allocation framework without necessitating an FMP amendment.

Dr. Burke asked again about the CPSMT being able to combine aspects of the alternatives. Dr. Herrick concurred that this would be useful guidance.

Mr. Cedergreen asked how much extra work would be involved by adding Mr. Kapp's proposed alternative. Dr. Herrick said he did not see anything in the alternative that would make it extraordinarily difficult to look at. That is, on the face of it, he couldn't rule it out as too complex.

Mr. Fougner asked about another proposed additional alternative, which would involve "setting aside" a portion of the harvest guideline off the top to be held in trust by NMFS. Dr. Herrick responded that the CPSMT had not considered this (or the other alternatives) because the CPSAS had the lead in developing alternatives.

Ms. Vojkovich moved (Mr. Alverson, second) a motion (Motion 10) to adopt all of the options as shown in the CPSAS report, with addition of two new alternatives – the one proposed by Mr. Kapp and the suggested "set-aside" approach Ms. Pleschner spoke about in her public testimony. The objectives recommended by the CPSAS would also be adopted under this motion.

Mr. Fougner asked for a friendly amendment to include additional objectives – (1) one that calls for the allocation framework to achieve a high probability of stability and predictability for the fishery, and (2) a second that seeks to achieve a low risk of economic dislocation or disruption (when the stock declines) from increases in fishery capacity. The maker (and second) of the motion accepted the friendly amendment.

For his latter objective, Mr. Fougner explained his intent was for the CPSMT to assess the risk of having excess capacity in the fishery if the stock declines, notably excess capacity in the Pacific northwest.

Dr. Burke said she was concerned about overburdening the CPSMT by adding an analysis of capacity.

Mr. Fougner expressed his concern about growth in the Pacific Northwest (PNW) fishery and subsequent potential for idle capacity and financial impact when the cyclic sardine resource declines. He felt inclusion of the objective would be a sign to the PNW industry about expansion of capacity in the PNW.

Dr. Burke suggested this objective not be included. If it was included, she was not in favor of the friendly amendment.

Mr. Alverson asked if he could "unaccept" the friendly amendment? Dr. Hanson stated that a formal motion could be made to remove the friendly amendment (or a portion of it) from the main motion.

Mr. Anderson asked to add another alternative, which would be a modification of status quo. He moved to amend motion 10 (Amendment 1) by adding a new alternative as follows: Subarea dividing line at Pt. Arena, California; on January 1, harvest guideline allocated 66% to south, 33% to north; on September 1, remaining harvest guideline pooled and reallocated 50% to south, 50% to north; and on November 1, remaining harvest guideline pooled and available coastwide.

He emphasized that this motion would not change the "status quo" alternative, but would add an additional alternative. Mr. Cedergreen seconded the amendment to motion 10.

Amendment 1 to Motion 10 passed.

Dr. Burke asked for an Amendment (Amendment 2, seconded by Mr. Warrens) as follows:

For the analysis, the CPSMT is to:

- analyze each alternative in a consistent manner;
- review differential impacts on northern and southern sectors for each alternative;
- review effects of high and low catch years by sector for each alternative;
- review resulting effects at various harvest guideline levels ranging from 25,000 - 200,000 mt (at appropriate intervals) for each alternative; and
- at the discretion of the Management Team, combine aspects of the various alternatives to create new alternatives that meet program objectives.

The Chairman called for vote on Amendment 2, which passed by voice vote.

Mr. Anderson asked to have Mr. Fougner repeat his previous friendly amendment. Mr. Fougner repeated the two objectives he asked to add via his friendly amendment.

Mr. Anderson moved to amend the main motion (Amendment 3, second Mr. Cedergreen) to strike the second of the two objectives added by the friendly amendment.

The Council discussed the ramifications of the Mr. Fougner's second objective.

Mr. Anderson explained why he wanted the objective removed, because he objected to certain sectors being labeled as overcapitalized.

Mr. Fougner stated his concern about the further build up in the PNW fishery given the potential for a very sharp drop in the abundance of the stock and harvest guideline. He is concerned that there would be idle capacity in the northwest and did not want the industry to say that the Council had promoted capacity development. Mr. Anderson clarified that he understood Mr. Fougner's intent, but his formal Amendment stands for Council vote.

Mr. Warrens said that industry recognizes there will be a decline in the stock at some time. The industry knows they have to make sound business decisions; and he was wondering if we are delving into business plan decisions that need to be made by the individual business owners. He said the industry acknowledges the fact the stock will decline at some time.

Mr. Brown pointed out he is going to vote for the amendment; he is concerned that adding this objective would create a bias to southern California. Moreover, he agreed with Mr Warrens' comments that the industry recognizes that the stock may decline at some point.

Mr. Anderson agreed that development of capacity in the fishery is a business decision.

Mr. Fougner said this discussion has been helpful and he hopes that the Council and industry recognize that a decline in stock abundance is possible. Removing the objective is fine with him and he supports Amendment 3.

Vote on Amendment 3 to Motion 10, passed by voice vote.

Mr. Harp asked for Dr. McIsaac to re-read the motion. Dr. McIsaac read the amended main motion.

Main motion 10 passed by voice vote.

Mr. Waldeck asked for clarification about Mr. Kapp's alternative because the Council had discussed modification of the alternative. Mr. Anderson said the motion included Mr. Kapp's proposal as presented in the briefing documents. The CPSMT has discretion to clarify the alternative.

Mr. Waldeck also asked for clarification about the "set-aside" alternative, which is not written down. Who would be charged with developing this alternative and when would it be available to the CPSMT? Ms. Munro-Mann and Ms. Pleschner indicated they would develop language for the "set-aside" alternative and provide it to Council staff in time for the Council Newsletter. Council members concurred.

H. Marine Protected Areas

H.1 Federal Waters Portion of the Channel Islands National Marine Sanctuary (11/05/04; 8:05 am)

H.1.a Agenda Item Overview

Mr. Waldeck provided the agenda item overview.

H.1.b Report of the Sanctuary Staff

Mr. Chris Mobley complimented those involved in the Council's review of the CINMS preliminary documents. He explained the process and schedule for going forward, including potential changes to the CINMS designation document and development of NMSA regulations. Ms. Stephanie Campbell (NOAA Fisheries General Counsel) also provided information about the process to modify the designation document.

Mr. Mobley emphasized that the Council would have a role in the designation document review process. Potential changes are expected to be very narrow, limited to only what is necessary to implement the proposed marine reserves and conservation areas. Council participation would be facilitated by synchronizing the review process with the Council meeting schedule.

Mr. Larson asked if CINMS anticipated non-fishing matters to be included in the proposed designation document changes. He pointed to the proposed CBNMS and MBNMS designation document changes. He was concerned about combining changes in regulatory authority with modification to a Sanctuary designation document.

Mr. Mobley assured the Council that CINMS would be mindful of the Council process and work with Council staff to ensure a good fit of CINMS work with the Council process.

H.1.c Report of the Ad Hoc Channel Islands Marine Reserve Committee

Mr. Waldeck read the CIRMC report on Channel Islands National Marine Sanctuary preliminary working draft document and recommendations for a new marine protected area ad hoc committee (Agenda Item H.1.c, CIMRC Report).

H.1.d Reports and Comments of Advisory Bodies

Mr. Waldeck read Agenda Item H.1.d, Supplemental SAS Report. Mr. Michael Osmund provided Agenda Item H.1.d, Supplemental HC Report. Mr. Moore provided Agenda Item H.1.d, Supplemental GAP Report.

H.1.e Public Comment

Ms. Kathy Fosmark, Alliance of Citizens for Sustainable Fisheries, Pebble Beach, California
Mr. Gregg Helms, The Ocean Conservancy, San Francisco, California

H.1.f Council Action: Recommend a Range of Draft EIS Alternatives for Marine Reserves and Conservation Zones within the Sanctuary

Mr. Fougner remarked that, as described in the Ad Hoc CIMRC report, there is a need to provide complete information prior to the Council considering the Draft EIS in March.

Dr. McIsaac noted that the Council might want to consider adding a tribal representative to the Ad Hoc MPA Committee, especially for times when the Committee is addressing issues related to the Olympic Coast National Marine Sanctuary.

Mr. Larson moved and Mr. Ticehurst seconded a motion (Motion 21) to adopt the CIRMC report recommendations as presented in Agenda Item H.1.c, CIRMC report; and to include the modification of the name of the Ad Hoc CIRMC to Ad Hoc Marine Protected Areas Committee, and include the Enforcement Consultants as a non-voting advisory seat to this Committee.

Dr. McIsaac, on the question of Committee composition, would there be discretion to add a tribal representative to the Committee (e.g., if the Olympic Coast National Marine Sanctuary were at issue)? The Council concurred.

Motion 21 passed by voice vote.

H.2 Cordell Bank NMS (11/05/04; 9 am)

H.2.a Agenda Item Overview

Mr. Waldeck provided the agenda item overview.

H.2.b Report of the Cordell Banks NMS Staff

Ms. Anne Walton and Mr. Dan Howard presented an overview of the proposed actions and a video of the project area. Power Point presentation on file at the Council office.

Ms. Walton prefaced her presentation with comments about the National Marine Sanctuary Program letters to the Council requesting Council action to develop NMSA regulations and reviewing/commenting on proposed Sanctuary designation document changes. She noted that the NMSA mandates a 120-day deadline for Regional Fishery Management Councils to respond to requests for preparing NMSA regulations. For the Designation Document review process, Ms. Walton stated that the standard was for a 60-day deadline, but this was not mandated in the NMSA. She noted that these deadlines did not match with the Council meeting

schedule (i.e., the Council does not meet again until March 2005), and stated the NMSP would work with the Council to ensure it had adequate time to respond to the NMSP request. These comments pertained to both CBNMS and MBNMS.

She emphasized that the Council should make a formal request for extension of the deadlines, and the request should detail why there was “good cause” for the extensions.

After the presentation, Mr. Brown asked what harm were they trying to prevent? Mr. Howard responded that an objective was to protect the area on the Bank itself, especially from potential impacts to the benthic environment from current or future fishing gear.

Mr. Brown spoke about a specific type of vertical hook and line gear (“dingle-bar” gear) that could impact the habitat because it employs a weight which bounces along the bottom. Mr. Howard noted that he heard similar comments from the GAP and EC, and that CBNMS would work with the Council to modify the Sanctuary’s proposed action to ensure proper regulations are crafted.

Dr. McIsaac asked about the use of the term “NOAA preferred alternative.” Ms. Walton noted that the use of this term was used in the narrow context of the required consultation document and was meant only to indicate to the Council which of the proposed actions the NMSP and NOAA felt best achieved the sanctuaries’ goals and objectives.

H.2.c Reports and Comments of Advisory Bodies

Mr. Stuart Ellis provided Agenda Item H.2.c, Supplemental HC Report. LT. Dave Cleary provided Agenda Item H.2.c, and H.3.c, Supplemental EC Report. Mr. Moore provided Agenda Item H.2.c, Supplemental GAP Report.

H.2.d Public Comment

Ms. Kathy Fosmark, Alliance for Communities for Sustainable Fisheries, Pebble Beach, California
Mr. Tom Ghio, Ghio Fish Company, Moss Landing, California

H.2.e Council Guidance on a Range of Alternatives to Protect the Benthic Environment within the Cordell Banks Sanctuary

Mr. Larson asked for clarification from Council staff if the Council would be able to address the Sanctuary’s request at the March 2005 meeting.

Dr. McIsaac responded that later in the November agenda the Council would discuss workload and the draft March 2005 agenda. The current matter at hand was how did the Council want to respond to the NMSP request.

Mr. Anderson said the CBNMS proposal has merit; if we are going to hold up our end of the partnership we need to make time on our agenda to consider the proposal. He suggested the Council write a letter to request an extension of the time to allow us to take the proposal through our process and to have the advisory bodies respond at the March 2005 meeting. He suggested that it would be difficult to draft regulations without advisory body input. He suggested that the April 2005 meeting should be the meeting where the Council takes action on draft regulatory language.

The Chairman asked Mr. Anderson if he wanted to make that a motion for Council action. Mr. Anderson responded, yes. (Motion 22). Mr. Ticehurst seconded the motion.

Mr. Larson asked for a friendly amendment to add that the letter to the NMSP should (1) stress the Council's concern about our partnership with the NMSP and (2) request retraction of the term "preferred alternative." He noted the Council has a process to come up with preferred alternatives.

Mr. Anderson agreed with the part about the "NOAA preferred alternative," but not the part suggesting the Council chastise the NMSP for their process. He stated that the NMSP is here listening to the Council's concerns, and this is a relatively new partnership. He did not feel that it needed to be part of the letter. Mr. Larson agreed. The maker and seconder agreed to the friendly amendment requesting retraction of the term "NOAA preferred alternative."

Mr. Brown noted that, given the Council schedule, there would be preliminary action at the March meeting in Sacramento, California; but final action on regulatory language would occur in Tacoma, Washington. He was concerned that stakeholders from the project area (Central California Coast) would be less able to attend the Tacoma meeting and, thus, have less opportunity to participate. He suggested that March/June might be better.

Dr. McIsaac asked if a March/June Council action schedule would disrupt the NMSP process? Ms. Walton stated the NMSP is endeavoring to have a DEIS developed by Spring 2005. If the Council delayed final action until June, that could disrupt their process.

Dr. Hanson asked if the schedule is internally-driven or court-ordered? Ms. Campbell responded the NMSP was operating under an internal schedule.

Relative to the request for retraction of the term "preferred alternative," Ms. Walton said the NMSP would more likely not retract the term, but would better clarify its usage.

Mr. Alverson asked if MPA matters were a funded workload item or if they were drawing funds from the Council base budget. Mr. Hansen replied that there were specific funds for MPA work.

Mr. Anderson clarified that his motion would include in the letter to the NMSP a request that they retract the "preferred alternative" notation because the NMSP identified a preferred alternative before they formally consulted with the Council.

Motion 22 passed by voice vote.

{closed session was held for one hour }

Ms. Cooney clarified some aspects of NMSP consultation with Regional Fishery Management Councils and modification of a Sanctuary's Designation Document. If a designation document is subject to proposed changes it must go through the same process used when the original designation document was developed. This designation document modification process is detailed in the NMSA. For fishing regulations within a sanctuary, the NMSA requires the appropriate Council be given the first opportunity to draft the regulations. The APA and NEPA procedures must be followed by the NMSP. Relative to Council selection of a preferred alternative for a NMSP action, the NMSP has authority to select a preferred alternative. If it differs from the Council's preferred alternative, the Secretary of Commerce ultimately decides. The Council's comments and recommendations are part of the public record and would be included in the decision making process.

Mr. Larson asked Ms. Cooney about MBNMS proposed extension of the Sanctuary's boundary to include Davidson Seamount. It seems out of order to draft fishing regulations under NMSA authority for an area not covered by the NMSA. It seems like a disconnect. Secondly, how does the Secretary of Commerce select a preferred alternative, is he/she made aware of the Council's preferred alternative?

Ms. Cooney responded, in terms of final decision making authority, it is likely that decision making authority is delegated to National Ocean Service or NMSP. However, the final decision could get made farther up the chain of command, especially if it is controversial or involves numerous partner agencies. Relative to consulting on regulations prior to changes to a designation document, the NMSA directs the agency to publish in the *Federal Register* proposed regulations along with the proposal regarding the designation document. However, the regulations could not go into effect before the designation document is formally revised.

Dr. McIsaac noted that under the M-S Act, if the Secretary of Commerce disapproves a Council recommendation, the Secretary must notify the Council and suggest remedies; is there a similar process under the NMSP?

Ms. Cooney responded that she is not aware of a similar statutory requirement in the NMSA, but it is very likely that there would be communication between the NMSP and the Council.

H.3 Monterey Bay NMS (11/05/04; 11:21 am)

H.3.a Agenda Item Overview

Mr. Waldeck provided the agenda item overview.

H.3.b Report of the Monterey Bay Sanctuary Staff

Dr. Holly Price and Mr. Huff McGonigal provided a Power Point presentation, which is on file at Council office.

Dr. Price noted that she concurred with the comments made by Ms. Walton (during Agenda Item H.2) about extension of deadlines to accommodate the Council schedule.

Mr. Brown asked for clarification of what action MBNMS was asking for from the Council. Dr. Price stated that, similar to CBNMS, they are requesting the Council draft fishing regulations and comment on proposed Designation Document changes.

H.3.c Reports and Comments of Advisory Bodies

Mr. Stuart Ellis provided Agenda Item H.3.c, Supplemental HC Report. The GAP and EC comments were already provided under Agenda Item H.2.c.

H.3.d Public Comment

Mr. Tom Ghio, Ghio Fish Company, Moss Landing, California

Ms. Kathy Fosmark, Alliance for Communities for Sustainable Fisheries, Pebble Beach, California

H.3.e Council Guidance on a Range of Alternatives to Protect the Davidson Seamount

This portion of Council discussion with MBNMS occurred between the public testimony of Mr. Ghio and Ms. Fosmark –

Mr. Warrens asked about the extension of the Sanctuary boundary. Would the boundary be extended to include the seamount and waters between it and the sanctuary, or would the seamount be bounded by a “stand-alone box?”

Dr. Price stated the MBNMS and the Sanctuary working group had reviewed various options, which are described in the briefing materials. The proposed action is for a square box around the seamount, not contiguous with the current sanctuary boundary.

Mr. Warrens commented that if the boundary extension was contiguous, it could have significant impacts on existing fisheries. Dr. Price clarified that MBNMS was focused on a boundary around the seamount. Moreover, changes to the Designation Document would be limited to specific restrictions in a specific area. It would not provide for managing fisheries in other areas of MBNMS.

Mr. Larsen asked about the combined fishing regulation boundary extension actions. He suggested that by drafting fishing regulations for the Davidson Seamount area the Council could be seen as assenting to the MBNMS boundary extension.

Dr. Price stated that the Council should consider responding separately to the two requests from MBNMS, one in regard to fishing regulations, a second in regard to the Designation Document.

Mr. Larsen was concerned because the Council had not seen an analysis to determine what action the Council would want to take. He noted that the Council action under groundfish EFH might provide the protections MBNMS was seeking for Davidson Seamount.

Dr. Price responded that the goals and objectives of including the seamount within the MBNMS boundary go beyond groundfish EFH.

The remainder of Council discussion occurred under the Council guidance portion of the agenda.

Mr. Brown asked about MBNMS concerns about potential future threats, and potential “research collection” versus other activities, such as “bio-prospecting.” Dr. Price responded that bio-prospecting is generally considered a commercial venture, whereas research would be regulated differently.

Regarding the MBNMS requests of the Council, Mr. Ticehurst remarked that he thought the logical sequence would be to first consider expansion of the sanctuary boundary to include Davidson Seamount. The second step would be to approach the Council to draft fishing regulations.

Mr. Fougner commented that the two actions are connected, designation document changes are needed to protect the resources of Davidson Seamount and the fishing regulations are needed to achieve the protections deemed necessary. He sees it as a combined process. Dr. Price noted that by doing the Designation Document change and fishing regulations together, the public has opportunity to review and comment on both aspects as a package.

Mr. Ticehurst asked Mr. Fougner if the fishing regulations developed by the Council would be part of the Designation Document changes or separate? Mr. Fougner responded that the proposed changes to the

Designation Document would contain two components – one for expansion of the MBNMS boundary, the second would change the authorization language to provide for fishing controls within the area above the seamount. The regulations would be a separate procedural element that would go through “notice and comment” rulemaking.

Mr. Warrens feels it is important to involve the public. He asked about the MBNMS timeline for action, notably if there would be time to accommodate public testimony about this matter at the June 2005 Council meeting in Foster City, California?

Dr. Price responded that the NMSP had discussed extension of the deadlines to accommodate the March 2005 Council meeting, but waiting until June could compromise their process and create delays for the NMSP Joint Management Plan Review process. She described the various avenues for public input into the Sanctuary’s process.

Mr. Warrens detailed his concerns and stated that, if the MBNMS timeline was not mandated or court-ordered, it would benefit all involved if the process could be extended to include the June 2005 Council meeting.

Mr. Ticehurst stated that no fishing is occurring in the area, and that the fishing public is used to addressing these matters to the Council. He did not feel that the sanctuaries met with the entire fishing community. He did not see a reason to accelerate this and felt that June 2005 would provide a better opportunity for public input.

Mr. Brown asked how do we define fishing and how the concept of bio-prospecting related to the regulation of fishing activity? He was curious about who had authority over such activities?

Ms. Cooney responded that if bio-prospecting involved collection of living organisms then it might be considered fishing. If the MBNMS designation document addresses bio-prospecting, then they could potentially have authority to regulate this activity. Ms. Cooney clarified that bio-prospecting could be considered fishing as fishing is defined under the M-S Act. She was not aware of how the NMSA defined fishing. Ms. Stephanie Campbell said there is no definition of fishing under the NMSA.

Mr. Anderson stated that the motion he made and the Council action under H.2 did not apply to MBNMS. He is not convinced that the designation document changes had to occur simultaneous to development of fishing regulations. He sees it as a two-step process, where extension of the MBNMS boundary is the first step. At this time, he would be inclined to decline the offer to draft fishing regulations, because the offer is to draft regulations under the NMSA for an area that is not included in a Sanctuary. He felt the Council action should be to request an extension from MBNMS of the deadline for commenting on the proposed designation document changes to provide for Council advisory bodies to review and consider the proposed changes prior to Council action.

Ms. Cooney advised the Council to consider the combined action as similar to how the Council does an FMP amendment. As an FMP amendment is developed, regulations to implement proposed measures are developed simultaneously so that the FMP amendment and regulations are published together. She noted that if the Council declined to draft fishing regulations, under the NMSA, the sanctuary could then draft the fishing regulations to go along with the proposed changes to the designation document. She suggested the Council (hypothetically) could respond that they do not support the designation document change, but include in the response if the NMSP proceeded with the action.

She clarified her interpretation of the NMSP request for MBNMS is for the Council to draft regulations to accompany proposed changes to the designation document, as a package.

Mr. Brown asked for clarification about the Council drafting regulations under NMSA authority for an area not in a National Marine Sanctuary.

Ms. Cooney responded that the fishing regulation provisions in the NMSA state that regional fishery management councils will be provided the opportunity to prepare draft regulations for fishing within the U.S. EEZ as the Council may deem necessary to implement the proposed designation. Thus, if fishing regulations had accompanied the original MBNMS designation, the NMSP would have made a similar request of the Council. Currently, MBNMS is seeking expansion of the sanctuary boundary and to add fishing regulations, thus, they are requesting the Council draft fishing regulations to accompany the proposed designation. Therefore, the NMSA does provide for the process as proposed by the NMSP.

Dr. McIsaac suggested the Council could take an action similar to that done under H.2, which would allow the Council to fully consider the issues at the March 2005 Council meeting.

Mr. Larson noted that the consultation package and proposed designation document changes cover much more than just fishing-related matters. He felt that the Council needed more information about the range of matters being contemplated by the Sanctuaries. The Council needs this information to consider the proposed changes for all three sanctuaries in total. Thus, he supports review of the information between now and March 2005, but he would like the Council to request the additional information to support a thorough review.

Mr. Warrens asked if this required use of the Council's "two-meeting" process. Ms. Cooney responded that the two-meeting process is in the groundfish FMP; this is a separate matter, which the Council could address in one meeting.

Mr. Larson moved (seconded by Mr. Anderson) that a letter in response to the NMSP request be sent asking for an extension of the deadlines to provide for advisory body review and possible Council action in March 2005; also request additional information for the full range of proposed designation document changes for the three sanctuaries. The Council would consider drafting regulations at the April 2005 meeting (Motion 23).

Mr. Larson clarified that the CBNMS and MBNMS matters could be addressed in a single letter to the NMSP. However, as noted, he would like more information about the proposed changes for all of the sanctuaries.

Motion 23 passed by voice vote.

Ms. Cooney, to clarify, reviewed NMSA language. She stated that in proposing to designate a National Marine Sanctuary, or to amend designation, the Secretary of Commerce shall issue in the Federal Register a notice of the proposed regulations that may be necessary and reasonable to implement the proposal and a summary of the draft management plan. Thus, the NMSA does provide for doing the actions simultaneously, i.e., designation and draft regulations.

H.4 Krill Harvest Ban (11/05/04; 12:30 pm)

H.4.a Agenda Item Overview

Mr. Waldeck provided the agenda item overview.

H.4.b NMFS Report

In Mr. Fougner's absence, Dr. McIsaac reviewed the NMFS Report (Agenda Item H.4.b, NMFS Report). He noted that NMFS had indicated that option 2, which would incorporate krill as a management unit species in the CPS FMP, was their preferred course of action. Dr. McIsaac also indicated that NMFS had discussed the possibility of taking the lead on developing information and analyses for this action.

H.4.c Reports and Comments of Advisory Bodies

Mr. Waldeck summarized the CPSMT report, read Agenda Item H.4.c, CPSAS Report, and Agenda Item H.4.c, Supplemental SAS Report. Mr. Michael Osmund provided Agenda Item H.4.c, Supplemental HC Report. Mr. Moore provided Agenda Item H.4.c, Supplemental GAP Report.

H.4.d Public Comment

Ms. Kate Wing, NRDC, San Francisco, California

Ms. Kathy Fosmark, Alliance for Communities for Sustainable Fisheries, Pebble Beach, California

H.4.e Council Action: Consider the Next Steps to Protect Krill

Dr. Burke moved and Mr. Brown seconded a motion, Motion 24 (referring to Agenda Item H.4.b, NMFS Report) to adopt Option 2, which would incorporate krill as a management unit species in the CPS FMP.

Mr. Larson noted that the issue of krill fishing was brought to the Council's attention by the NMSP. He asked for a "friendly amendment" to include as an alternative an outright ban on krill fishing within the West Coast National Marine Sanctuaries.

Dr. McIsaac suggested that specific alternatives, such as Mr. Larson's request, would be developed during the next phase. The Council action at this point is to select a process for moving forward.

Mr. Larson appreciated the clarification. He asked if the Council could incorporate his suggested friendly amendment into the CPS FMP action, specifically for consideration in March of a outright ban on the harvest of krill within sanctuary waters?

Dr. Hanson recommended that Mr. Larson bring his issue forward as a separate motion or formal amendment to the main motion.

Mr. Brown did not see that Mr. Larson's issue was necessary at this time. As part of the CPS FMP amendment, a scoping process would occur and specific alternatives would be developed. The range of alternatives could include an outright ban as suggested by Mr. Larson.

Mr. Larson said he felt it was necessary to include this option of an outright ban within the sanctuaries and that he would make it a separate motion.

Mr. Anderson expressed his concern that Option 2 seemed to have the highest amount of workload and cost associated with it. His preference would be for Option 3, which would involve less work for the Council and the CPSMT.

Dr. Burke, in response, did not agree that Option 3 would entail less work. Moreover, the CPS FMP exists as a vehicle to proceed with this action. Whereas, Option 3 is less defined in terms of the scope of the process and how fishing restrictions would be developed.

Mr. Alverson noted that the Council's earlier action for groundfish EFH included an alternative to define krill as groundfish EFH. He suggested that Option 3 could be workload intensive. He asked why the groundfish EFH wasn't sufficient and why a separate action was needed?

Mr. Brown clarified that the groundfish EHF proposal for krill was just that, a proposal. He also noted that it could possibly include other forage species, not just krill. He opined that the CPS FMP approach was the most straightforward way to proceed. He spoke to other forage fish issues.

Mr. Ortmann asked for the motion to be read back to the Council and then called for the question.

Motion 24 passed by voice vote. Messrs. Anderson and Cedergreen voted no.

Mr. Larson moved (Motion 25) to include a specific alternative in the CPS FMP krill fishing amendment that would prohibit harvesting of krill within West Coast National Marine Sanctuaries. Mr. Ticehurst seconded the motion.

Mr. Brown and Ms. Cooney asked for clarification that Mr. Larson was seeking to include a specific alternative in the CPS FMP krill action. Mr. Larson responded, yes.

Motion 25 passed by voice vote.

I. Habitat

I.1 Current Habitat Issues (11/05/04; 1:35 pm)

I.1.a Report of the Habitat Committee

Ms. Jennifer Gilden provided Agenda Item I.1.a, Supplemental HC Report.

I.1.b Reports and Comments of Advisory Bodies

None.

I.1.c Public Comment

None.

I.1.d **Council Action:** Consider HC Recommendations

Mr. Anderson moved to accept the report of the HC (Motion 26) - Mr. Cedergreen seconded the motion. Motion 26 passed. There was no further Council discussion on the matter.

4 P.M. PUBLIC COMMENT PERIOD

Public comments on fishery issues not on the agenda are accepted at this time.

Mr. Peter Huhtula, PMCC, Astoria, Oregon; and Ms. Sara Klain, Ecotrust. Spoke about the Spatial Community Outreach Project (SCOOP). PMCC is working with Ecotrust, to gather information from fishing communities on the impacts of spatial (area-based) management.

Mr. Bill James, commercial fisherman, Salem, Oregon. Testified about the MLPA task force recent meeting. He felt the task force members are not vested in fisheries management. He requested either NMFS or the Council provide a representative to be placed on that task force, or at least offer input to the task force.

Ms. Heather Munro Mann, Munro Consulting, Inc., Newport, Oregon. She provided an update to the cooperative research program. Scientists were hired to come up with alternative ways to study rockfish. She also spoke about the port liaison project which is funded by NMFS and administered by Oregon State University.

Mr. Petey Brucker, Salmon River Restoration Council, Sawyers Bar, California. Testified that the Klamath Task Force (authorized by the Klamath Act) will sunset in 2006. He would like to see that Act reauthorized and asked for Council support on this matter.

ADJOURN, Friday, November 5, 2004 at 2 pm.



Council Chairman

March 8, 2005

Date