

MINUTES  
Pacific Fishery Management Council  
October 31-November 4, 2005  
Hyatt Regency Islandia  
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619-224-1234

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## **A. Call to Order**

### **A.1 Opening Remarks, Introductions (10/31/05; 11:19 am)**

Chairman Donald Hansen called the 181st meeting of the Pacific Fishery Management Council to order at 11:19 am, Monday, October 31, 2005.

### **A.2 Roll Call**

Dr. Donald McIsaac, Council Executive Director, called the roll. The following Council Members were present:

Mr. Bob Alverson  
Mr. Phil Anderson  
Dr. Patty Burke  
Mr. Mark Cedergreen  
Dr. Steve Freese  
Mr. Donald K. Hansen (Chairman)  
Dr. David Hanson (Parliamentarian)  
Mr. Jim Harp  
Mr. Jerry Mallet  
Mr. Rod Moore  
CDR. Fred Myer  
Mr. Dave Ortmann (Vice-Chairman)  
Mr. Tim Roth  
Mr. Roger Thomas  
Mr. Darrell Ticehurst  
Ms. Marija Vojkovich  
Mr. Frank Warrens  
Mr. Gordy Williams

Mr. Stetson Tinkham was absent.

### **A.3 Executive Director's Report**

Dr. McIsaac provided an overview of the informational reports found in the briefing book.

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

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

## **B. Administrative Matters**

### **B.1 Council Operating Procedures (COP)**

#### **B.1.a Agenda Item Overview**

Dr. John Coon provided the agenda item overview. Mr. Moore questioned that the proposed whiting seat on the Groundfish Allocation Committee (GAC) in COP 7 was characterized as “whiting trawl” rather than as representing the “whiting fishery”. Dr. Coon agreed the broader term might be more appropriate.

#### **B.1.b Reports and Comments of Advisory Bodies**

None.

#### **B.1.c Public Comment**

None.

#### **B.1.d Council Action: Adopt Changes to COP 7 (Groundfish Allocation Committee) and COP 14 (Documentation of Outside Agreements)**

Mr. Alverson moved (Motion 2) to adopt the staff’s proposed COP 7 language under “Composition” as provided in Agenda Item B.1. He clarified that both voting and nonvoting members should serve indefinite terms. Mr. Cedergreen seconded the motion. Mr. Moore asked that “whiting fishery” be used instead of “whiting trawl”. He would not want to preclude anybody from being able to serve. The friendly amendment was accepted by the maker and seconder of the motion. Motion 2 passed.

Mr. Anderson moved (Motion 3) to adopt COP 14 as presented in Agenda Item B.1.a, Supplemental Attachment 2. Mr. Cedergreen seconded the motion. Motion 3 passed.

### **B.2 Election of Council Chair and Vice Chair for 2006**

#### **B.2.a Agenda Item Overview**

Dr. McIsaac provided a brief overview of the standard election process.

#### **B.2.b Nomination of Officers**

#### **B.2.c Council Action: Elect Chair and Vice Chair for 2006**

Mr. Harp moved (Motion 4) to suspend COP 1 for 2006 and retain Mr. Hansen as Chairman and Mr. Ortmann as Vice Chair for 2006. Mr. Roger Thomas seconded the motion. Motion 4 passed.

### **B.3 Council Meeting Agenda Planning**

#### **B.3.a Agenda Item Overview**

Dr. McIsaac provided the agenda item overview. (10/31/05; 11:36 am)

#### **B.3.b Reports and Comments of Advisory Bodies**

Dr. Coon read Agenda Item B.3.b, Supplemental HC Report. It recommended the following with regard to the Council’s three meeting plans: address ecosystem management issues; have the HC meet at the Minutes - November 2005 (181<sup>st</sup> Council Meeting)

March Council meeting; be ready to consider HC recommendations on Klamath Project flows in March as they pertain to the Biological Opinion; and consider proposed interim management measures for the Columbia River.

**B.3.c Public Comment**

None.

**B.3.d Council Discussion of Future Council Meeting Agenda Topics**

Mr. Williams said the Pacific Salmon Commission (PSC) convened an expert panel to review the coded-wire-tagging program. He asked that the report be included on the Council's March agenda.

Dr. Patty Burke asked if the HC is going to attend the March 2006 meeting? Dr. McIsaac said they could meet at the Council meeting or separately. He also noted that there are recommendations in the Budget Committee Report with regard to HC meetings that the Council will see on Friday before any final decisions are made.

Mr. Harp noted the Klamath Fishery Management Council (KFMC) will also be meeting during the March Council meeting and that should be listed in the Ancillary meetings.

Mr. Roth noted that at the last meeting of the HC, which was not in conjunction with the Council meeting, the HC was reactive to the current language that they would meet offsite and believed it would be better for them to meet in Seattle.

**B.4. Regulatory Streamlining Briefing (11/04/05; 10:32 am)**

**B.4.a Agenda Item Overview**

Dr. Dahl provided the agenda item overview.

**B.4.b NMFS Report**

Mr. Gaylen Trumble provided a PowerPoint on the Regulatory Streamlining Program Operational Guidelines.

**B.4.c Reports and Comments of Advisory Bodies**

None.

**B.4.d Public Comment**

None.

**B.4.e Council Discussion**

Ms. Vojkovich asked about Council involvement in the finalization of regional operating agreements. Mr. Trumble said the Council has the discretion to decide how to finalize such agreements. Ms. Vojkovich followed up by asking how state agency personnel and Council advisory body members would be involved in these agreements. Mr. Trumble said that the fishery management action team (FMAT) concept is meant to allow participation from those involved in the action. The composition of the FMAT would be addressed in the action plan for a particular action. Therefore, the operational guidelines don't preclude participation by state personnel.

Mr. Anderson said he was concerned about the use of the word agreement. The Council might need the resources of their plan teams and others to fulfill the terms of a regional operating agreement. Thus resources of the Council and the states would be involved. He wondered how enforceable such an agreement would be; he suggested formulating it as a memorandum of agreement would be better because it wouldn't necessarily obligate these resources. Mr. Trumble said the terminology is not supposed to apply to be construed as committing states to do things they don't have resources for, but he would communicate the Council's concerns to NMFS Headquarters. The purpose is only to document how the process works; this helps NMFS report to Congress about improvements that are being made in the process. It also serves as a basis for further improvement by finding out what's working and what isn't. Finally, documentation is a good way for to demonstrate the need for additional resources.

Dr. McIsaac, referring to Mr. Hogarth's letter (Agenda Item B.4.a, Attachment 1), asked Mr. Trumble if he had recommendations for a test case. Mr. Trumble said he could not name a particular action that would make a good test case. He thought, in general, there are two approaches. You could choose an action that would be expected to benefit the most from the Operational Guidelines (OGs), which would be one that is complex and uncertain or involves unique legal or policy issues. However, it might make more sense to chose a much simpler action as the first case to just see how it works and have people get used to it.

Dr. McIsaac said Council staff had in mind to work with NMFS NWR and SWR to develop Regional Operating Agreements (ROAs) and apply them to one or more test cases. Draft material would be brought back to the Council for review. This work would also look at some of the more controversial elements of the OGs, which have to do with the recommendations for NMFS RA review and approval at various steps in the process. He mentioned the future Salmon FMP amendment for the Klamath Fall Chinook conservation objective as a possible test case.

Mr. Anderson said that although the Council has not gone through all 16 steps identified in the OGs, in the last three years or so the Council has begun to more clearly identify the roles and responsibilities of the Council and NMFS. For that reason, it seems like the Council has been moving in the direction this particular initiative (or portions of it) is trying to achieve. Because of that strong relationship and identification of roles and responsibilities, documenting it will not be a difficult task.

Dr. Freese said this week the Council indicated an interested to develop a limited entry program for the open access groundfish fishery. It may be a useful to begin documenting the steps that would be involved and develop a concrete plan, which would be like the groundfish harvest specifications planning schedule, but more fleshed out. Thus it could be a candidate for this regulatory streamlining exercise.

## **B.5. Legislative Matters (11/04/05; 11:06 am)**

### **B.5.a Agenda Item Overview**

Mr. Mike Burner provided the agenda item overview.

### **B.5.b Reports and Comments of Advisory Bodies**

None.

### **B.5.c Public Comment**

None.

### **B.5.d Council Discussion and Guidance for Legislative Committee (LC)**

Dr. McIsaac noted a Senate draft bill on Magnuson-Stevens Act (MSA) reauthorization is anticipated in the very near future. There is the possibility of a Senate hearing on the matter on November 16 in Washington DC, and there have been rumors of West Coast hearings in December. These developments create some urgency for the Legislative Committee to meet soon. Dr. McIsaac stated that due to the timing of a notice in the *Federal Register* for a LC meeting, the Council could consider the first half of December as the earliest and if hearings are scheduled for the West Coast, the Council would want to be represented at those hearings. On behalf of the LC Chairman, Dr. Dave Hansen, Dr. McIsaac urged the Council to schedule the next LC meeting as early as possible.

Mr. Moore suggested members of the LC and Dr. McIsaac communicate by phone or email to reconcile calendars and determine an LC meeting date. Dr. McIsaac said that would be sufficient and appropriate.

Dr. McIsaac noted the Council may want to discuss the mechanism by which the Council could approve statements that come out of the next LC meeting in a timely fashion. Dr. McIsaac reviewed the Council's "fast track" process as a way to review the LC recommendations. Dr. McIsaac requested the Council provide guidance as to whether or not Council review of LC recommendations was required and, if so, what review process should be used to ensure timely review.

Mr. Moore suggested that Council review not be required if there is unanimous agreement by the LC, given that the Council Chairman and three of the four states are represented on the Committee.

Mr. Anderson stated a preference for the fast track method and offered to coordinate with the LC members and Mr. Harp and provide a response on the recommendations of the LC. Mr. Anderson suggested a time limit for five working days for Council response. Vice Chairman Ortmann preferred the fast track as well.

Dr. McIsaac said that time limits do not always work well, particularly if there are disagreements among states that require a lengthy reiterative process to resolve.

Mr. Warrens reminded the Council of the issue of state access to VMS information and the lack of response from NMFS on the issue. Mr. Warrens said that allowing states to have access to VMS information to prosecute cases on a state level is important and should be considered during the MSA reauthorization process.

Chairman Hansen agreed with Mr. Warrens and said he thought the Council is on record in support of state access to VMS. Mr. Burner stated that state access to VMS information has been part of both reports from the RFMC chairs and executives directors and has been included in previous LC reports. The LC will address the issue at its next meeting.

Mr. Gordy Williams stated that people in his office had been advised that the latest Senate draft would not be available until next week.

## **B.6 Fiscal Matters (11/04/05; 11:18 am)**

### **B.6.a Agenda Item Overview**

Dr. McIsaac provided the agenda item overview.

### **B.6.b Budget Committee Report**

Mr. Harp provided Agenda Item B.6.b, Supplemental Budget Committee Report.

### **B.6.c Reports and Comments of Advisory Bodies**

None.

**B.6.d Public Comment**

None.

**B.6.e Council Action: Consider Recommendations of the Budget Committee**

Mr. Anderson asked if the six bullets in Table 1 of the Budget Committee Report are in order of priority? Mr. Harp answered in the affirmative. Mr. Anderson asked for further detail on the activities associated with groundfish management capabilities. Dr. McIsaac said as additional funding became available you could look at these things horizontally, e.g., additional funding of \$150,000 would allow for the addition of another groundfish staff officer so that we could get to some of those matters you could do with an additional staff officer to assist with EIS and management measures – those kinds of things.

Mr. Moore asked, in regard to some of the discussions we have had this week (e.g., the EFPs on HMS, and the open access control issue), where would those fall, what would happen in terms of the priorities? Mr. Harp said the fourth bullet down in Table 1 is to accomplish the full HMS FMP implementation and the EFP falls within that category. Dr. McIsaac agreed. He also noted that our planning assumes the status quo funding and Table 1 shows what would happen with more or less than status quo.

Mr. Anderson expressed his feeling about the priorities. He said 3 or 4 years ago the states were asked to add a second person to the GMT and were provided some funding (he thought about \$10,000 to each state) to assist with that activity. The 2004 level included that additional bump in state funding. Since then, that funding has been reduced in the state contracts. Dr. McIsaac clarified that as new supplemental funding became available there was a 10% increase in the state contracts. As the supplemental funding decreased in 2005, half of the 10% increase to the states was retracted along with about a 50% cut in the Council staff associated with efforts made possible by the supplemental funding.

Dr. Burke moved to change the fifth bullet in Table 1, regarding state contracts, by removing the reference to the 2004 level and to accept the rest of the report as shown in Agenda Item B.6.b, Supplemental Budget Committee Report. Mr. Warrens seconded the motion (Motion 41).

Motion 41 passed.

**B.7. Appointments to Advisory Bodies, Standing Committees, and Other Forums**

**B.7.a Agenda Item Overview (11/04/05;11:34 am)**

Mr. Tracy presented the agenda item overview.

**B.7.b Public Comment**

None.

**B.7.c Council Action: Consider Solicitations, Appointments, and Other Advisory Body Issues as Necessary**

Mr. Alverson moved (Motion 42) to appoint Mr. Dale Myers to the Groundfish Allocation Committee as a non-voting member representing the whiting fishery sector. Mr. Moore seconded the motion. Motion 42 passed.

Mr. Anderson moved (Motion 43) to appoint Mr. Mike Okoniewski to the Coastal Pelagic Species Advisory Subpanel representing the processor sector. Mr. Mallet seconded the motion. Motion 43 passed.

Mr. Mallet moved (Motion 44) to appoint Dr. Charlie Petrosky to the Habitat Committee representing the Idaho Department of Fish and Game. Mr. Ortmann seconded the motion. Motion 44 passed.

Mr. Harp moved (Motion 45) to appoint Mr. Ben Enticknap to the Coastal Pelagic Species Advisory Subpanel representing the conservation sector. Mr. Ticehurst seconded the motion. Motion 45 passed.

## **B.8 Council Three Meeting Outlook, Draft March 2006 Council Meeting Agenda, and Work Load Priorities**

### **B.8.a Agenda Item Overview**

Dr. McIsaac provided a very brief agenda item overview. He noted that the three meeting outlook is the same as looked at earlier in the week except for a few bolded, italicized items in dotted boxes which represent changes. He also noted that the closed session on the draft March Council meeting agenda should start at 1 p.m., not 3 pm as shown in the supplemental handout.

### **B.8.b Reports and Comments of Advisory Bodies**

None.

### **B.8.c Public Comment**

None.

### **B.8.d Council Guidance on Three Meeting Outlook, March Council Agenda, Council Staff Work Load, and Priorities for Advisory Body Consideration**

Council members worked with the Chairman and Executive Director to provide guidance on the March Council meeting agenda and other workload priorities as appropriate. In response to a question from Dr. Freese, Dr. McIsaac noted that Groundfish Amendment 10 should be on the April and June agendas. Dr. Freese agreed, but stated there should be some discussions with the states and industry prior to that time. He suggested a meeting could be held at the March Council meeting. Mr. Harp expressed concern that the role of the KFMC should not be dropped as it sunsets in September. Mr. Helvey advised the Council that the SWR and SWFSC had agreed to change a seat on the HMSMT and would be sending a letter to the Council advising them of that request.

## **C. Enforcement Issues**

### **C.1 State Enforcement Activity Report (1 pm)**

#### **C.1.a Agenda Item Overview**

None.

#### **C.1.b Enforcement Presentation**

Captain Mike Cenci provided a DVD presentation highlighting recent enforcement activities.

#### **C.1.c Public Comment**

None.

#### **C.1.d Council Discussion**

None.

### **D. Coastal Pelagic Species Management**

#### **D.1 Pacific Sardine Stock Assessment and Harvest Guideline for 2006 (10/31/05; 1:54 pm)**

##### **D.1.a Agenda Item Overview**

Mr. Mike Burner provided the agenda item overview.

##### **D.1.b Agency and Tribal Comments**

Dr. Kevin Hill provided NMFS Report and a PowerPoint presentation (on file at the Council office).

Dr. Burke and Mr. Anderson asked Dr. Hill about the possibility of incorporating new research data into the model. Dr. Hill reported that the SWFSC has looked into using alternate sources for sea surface temperature and has collected data in the Pacific Northwest during two research cruises. Dr. Hill reported that many of these new data sources lack the long time series required to calibrate other indices in the model.

Dr. Burke said that Oregon receives many inquiries about existing data and future research plans and would appreciate more details on NMFS-SWFSC plans for sardine research. Dr. Burke pledged to forward questions to the SWFSC and requested a written response at the March 2006 Council meeting.

Mr. Jim Harp provided Agenda Item D.1.b, Tribal Comments. He also noted the Makah Tribe has provided a letter that was originally sent to Dr. Steve Freese (Agenda Item D.1.b, Supplemental Tribal Comments 2). Regarding sardines, the Makah Tribe plans to have two vessels participating in the fishery in 2006. The Makah Tribe noted they are not seeking a specific treaty allocation for 2006 and will fish under the coastwide allocation plan and season established by the Council. The Makah tribe also stated in that letter they will work closely with WDFW in management of the fishery but will not be subject to any specific restrictions that WDFW has in place for the non-tribal sardine fishery. As with other fisheries, the Makah Tribe will work with state and federal agencies on observing, monitoring, and reporting the catch.

##### **D.1.c Reports and Comments of Advisory Bodies**

Mr. John Royal provided Agenda Item D.1.c, CPSAS Report. Dr. Sam Herrick provided Agenda Item D.1.c, CPSMT Report. Dr. Kevin Hill provided Agenda Item D.1.c, Supplemental SSC Report.

##### **D.1.d Public Comment**

Mr. Mike Okoniewski, Pacific Seafood, Woodland, Washington

##### **D.1.e Council Action: Adopt Pacific Sardine Harvest Guideline for 2006**

Ms. Vojkovich asked about recent bilateral meetings between Mexico and the U.S. held in La Jolla. Mr. Helvey said he did not attend the meeting and has not yet been briefed on the results. He was involved with the preparations for the meeting and confirmed that CDFG concerns regarding joint

research efforts and forage species use in netpen operations were on the meeting agenda and in the briefing materials. She asked if the meeting agenda contained an item for discussion of a fishery management plan in Mexico. Mr. Helvey could not recall.

Mr. Moore was concerned about evidence in the NMFS report regarding potential coastwide overharvesting, even though U.S. harvest has been well below the established OY. Mr. Moore related the situation to Pacific whiting harvest levels in the U.S. and Canada prior to treaty agreements. He was wondering how actively NMFS is pursuing an agreement on joint catches between U.S. and Mexico. Mr. Helvey appreciated the comments and thinks Council interest input would help encourage NMFS and the State Department to raise this issue to a higher level.

The Council adopted the harvest guideline of 118,937 mt for Pacific sardine for 2006. (Motion 5) Ms. Vojkovich clarified that the harvest guideline would be allocated in 2006 under the recently adopted long-term allocation plan. Motion 5 passed.

## **D.2. Alternatives Analysis for Krill Management**

### **D.2.a Agenda Item Overview (10/31/05; 3:15 pm)**

Mr. Burner provided the agenda item overview.

### **D.2.b NMFS Report**

Ms. Sue Smith and Mr. Svein Fougner provided PowerPoint presentations (both on file at the Council office). Dr. McIsaac asked if krill essential fish habitat (EFH) is primarily within the water column, so that if the Council were to take action to protect krill EFH, they would be looking at protections to the water column. Ms. Smith confirmed that water column protections would be necessary for krill EFH but in some instances on the continental shelf, krill EFH would have to include both water column and bottom habitats. Mr. Moore asked about suggestions in public comments regarding amending the list of fisheries as a means of banning krill fishing. Mr. Fougner reported that option has not been looked into since the fall of 2004 when krill management issues were first explored. Mr. Fougner's recollection was that the current list contains a category for "commercial trawl" that would encompass likely methods of krill harvest and he was not aware of any efforts to amend the current list. Mr. Anderson asked about the forage designation and questioned the need to amend all of the Council's FMPs when only the CPS FMP has defined gear types that would likely be used to harvest krill. Mr. Fougner stated that at the very least the CPS FMP would need to be amended. Ms. Cooney added that the forage mechanism was rejected in part because only krill, and not all forage species, were being considered under the action. She added that you would not necessarily need to amend all of the FMPs with a krill ban, but in recognizing the forage value of krill across all of the FMPs, the Council could create a stronger factual basis for a management action. Dr. Burke stated the importance of first determining a clear goal for krill harvest before determining the best mechanism for implementation. Mr. Fougner said under the CPS FMP a variety of harvest policies could be developed, but if a harvest ban was desired, the Council could establish an Optimum Yield of zero.

### **D.2.c Reports and Comments of Advisory Bodies**

Mr. John Royal provided Agenda Item D.2.c, CPSAS Report. Dr. Sam Herrick provided Agenda Item D.2.c, CPSMT Report. Dr. Hill provided Agenda Item D.2.c, Supplemental SSC Report. Mr. Stuart Ellis provided Agenda Item D.2.c, Supplemental HC Report.

### **D.2.d Public Comment**

Mr. Dan Wolford, Coastside Fishing Club, Los Gatos, California

Mr. Jim Ayers, Oceana, Juneau, Alaska  
Mr. Ben Enticknap, Oceana, Portland, Oregon  
Mr. Ken Hinman, National Coalition for Marine Conservation, Leesburg, Virginia  
Mr. John Royal, commercial fisherman, San Pedro, California

**D.2.e Council Action: Adopt Public Review Draft of the Range of Management Alternatives and Preferred Management Strategy**

Mr. Anderson shares Mr. Royals frustrations on CPS priorities and workload. He felt the Council started this process with a consensus position for a ban on krill harvest. He reviewed the possibility of including krill as a monitored species under the CPS FMP and asked about the need for management specifications and biological reference points for monitored species. Mr. Anderson also put forward the concept of a prohibited species designation such as the one used in the HMS FMP. Ms. Cooney said that even for monitored species there is a requirement to address biological reference points such as MSY. Mr. Fougner stated that NMFS has not looked at the categorization of prohibited species and perhaps the HMS FMP is the right type of model for this action. Mr. Fougner added that a prohibited species designation could be identified today as a preliminary preferred alternative which would alleviate the burden of identifying MSY for krill.

Mr. Alverson asked Mr. Burner about the Council action. Mr. Burner clarified that final action is in March 2006. At this meeting the Council is tasked with reviewing the range of alternatives presented today and approving a range of alternatives for further analysis and public review between now and March. The Council could identify a preliminary preferred alternative at this meeting, but final action is expected in March 2006.

Mr. Fougner clarified the document lists the alternative mechanisms for regulating krill, alternative harvest strategies, and alternative EFH designations. The Council is tasked with considering these alternatives and determining if any may be removed from future consideration or if additional alternatives need to be added.

Mr. Moore asked if the Council could recommend, as a preferred alternative, including krill under the CPS FMP as a prohibited species, and asked if it could be accomplished in a two meeting process ending in March. Ms. Cooney said based on the record established to date, the Council seems interested in prohibiting krill harvest in the simplest manner possible. Ms. Cooney suggested the Council recommend that NMFS explore that alternative as the preferred option.

Mr. Moore asked if identifying krill as a prohibited species would preclude the SSC and the CPSMT from diverting resources into krill management for the development of biological reference points or management specifications such as MSY. Mr. Fougner said based on the HMS FMP this would be correct.

Ms. Vojkovich stated she is interested in the simplest way to achieve the Council goals and asked about mechanisms outside of an FMP process such as changing the list of fisheries. Mr. Fougner said he was not aware of any event where NMFS has gone back to review and revise the list of fisheries. Mr. Fougner stated that currently the list of fisheries does not prevent someone from going out and using trawl gear to target krill and even if the list of fisheries was changed, a person would only need to give the Council advanced notification of such an intent. The Council would then need to respond with an action similar to the one currently being considered. Changing the list of fisheries could simply defer the decision.

Mr. Anderson, reference the language on page 11 of Agenda Item D.2.a, Attachment 1, and asked if identifying krill in the CPS FMP as a prohibited species would leave any opportunities for people to take advantage of that action in a manner that would allow them to directly harvest krill. Mr. Fougner said listing krill as a prohibited species has not been fully considered but, he is reasonably confident it would

prohibit directed krill harvest in the EEZ. Mr. Anderson agreed that between state and federal regulations there does not appear to be any loopholes, but he requested further investigation prior to the March 2006 Council meeting.

Dr. Burke asked if the Council needs to further consider which krill species to include in this action and noted that the three states do not address this issue consistently. She asked if the states would need to adopt conforming regulations after the Council and NMFS agree to which species of krill are being managed. Mr. Fougner said he was not certain, but he is hearing an interest in prohibiting fishing for all species of krill in the EEZ and he does foresee an inconsistency with state laws prohibiting landings.

Mr. Helvey said that as part of the analysis of the alternative of listing krill as a prohibited species, NMFS will look into the relationship between state and federal law. Mr. Helvey also asked about the potential role of EFPs as a loophole under this alternative. Mr. Fougner stated that the Council may not have to take affirmative action to prevent EFPs at this time as individual EFPs require Council and NMFS approval.

Mr. Moore moved (Motion 6) that the Council adopt a preliminary preferred alternative to include all species of krill in a category of prohibited species under the CPS FMP. Mr. Cedergreen seconded the motion.

Mr. Moore said we heard from our advisory bodies and public about the importance of krill to the ecosystem. He added that the Council heard concerns about the diversion of resources required if krill were to become an actively managed or monitored species. We heard from the SSC about the lack of data available to adequately judge or support putting krill in a monitored species category. Mr. Moore stated that, although he does not favor banning any type of fishery, there appears to be no economic impact as there is currently no directed fishery and protecting krill has a lot of advantages.

Dr. McIsaac asked if the motion includes a range of alternatives. Mr. Moore said he presumed the analysis of the alternatives would address including krill as a management unit species within the CPS FMP, including krill as a forage species, status quo, as well as the preliminary preferred alternative under the motion.

Ms. Vojkovich stated support for the addition of a prohibited species concept, but she expressed concern for the amount of additional work this broad range of alternatives entails. She stated a preference for limiting the range of alternatives to a prohibition in the EEZ and an initial prohibition with provisions for possible consideration of harvest opportunities in the future.

Dr. Hanson recommended a vote on Motion 6 before addressing the full range of alternatives under a separate motion. Motion 6 passed.

Ms. Vojkovich (Motion 7, working from Agenda Item D.2.a, Attachment 1) moved to adopt, for public review, a range of harvest alternatives for krill that includes Option 2.3.1, a complete ban in the EEZ, Option 2.3.9, an initial ban and a mechanism for future harvest considerations, and no action. Mr. Ticehurst seconded the motion.

Dr. Burke asked if it is necessary to consider an option that considers future harvest opportunities when the Council has identified no harvest as a preliminary alternative. Ms. Cooney stated that the analysis would be useful as a means of identifying why harvest opportunities are not being considered and noted that the analysis of the alternative does not have to be as thorough as the analysis of the preferred alternative and would not require a full description of what the potential future management scheme would look like. Mr. Fougner added it would not be a great deal of work to show a fishing alternative was considered.

Ms. Cooney stated that adding krill as a prohibited species in the CPS FMP has not been thoroughly analyzed at this time and requested that the Council action include the provision that if the Council's preferred alternative does not work, that NMFS would attempt to meet the Council's intent in the next simplest way. The Council concurred.

Motion 7 passed.

Mr. Anderson noted that the prospective management objectives are not necessarily consistent with our preferred alternative. He suggested modifying the objectives listing in Agenda Item D.2.a, Attachment 1, Section 2.1. Management Objectives, the first objective should read "Ensure that the stocks of krill species are maintained at maximum levels." He further recommended maintaining objective 2.1.5 while deleting objectives 2.1.2 and 2.1.3.

Dr. Burke noted that Mr. Anderson's suggestions would leave in future research and data collection and presumes that under a harvest ban, no research could be conducted without an EFP. Mr. Anderson agreed. Mr. Fougner outlined historic use of EFPs as a mechanism for researching new bycatch reduction methods or to explore prospective fishing opportunities. Based on the current discussion and the Council's preliminary preferred alternative, Mr. Fougner said it does not appear that an EFP process is needed for krill and asked if the Council wants to include opposition to an EFP process for krill in the preliminary preferred alternative at this time with an opportunity to revisit the issue if conditions change. Mr. Hansen stated that the Council agreed.

Mr. Alverson spoke to Mr. Anderson's suggested language relative to the first management objective and had concerns about maintaining maximum population levels for a species with such large population changes due to environmental factors.

Mr. Moore shared some of the same concerns as Mr. Alverson, and was concerned that the objective under Agenda Item D.2.a, Attachment 1, Section 2.1.5, which has a goal of providing protection for key krill predator foraging areas could lead to an unintended consequence such as an EFH or MPA designation. Dr. McIsaac restated the motions that passed and suggested that Mr. Fougner take the motions and the Council discussion when revising the document because the reduction in the number of alternatives will likely change the document considerably.

Mr. Moore confirmed that Mr. Fougner would revise the document based on the motions passed, including an updated list of management objectives, and provide a draft for final review and approval in March.

Mr. Burner asked if the Council had any comments relative to krill EFH and the HC comments at this time. Mr. Fougner stated that if krill is identified as a prohibited species an EFH designation would not be required but, if NOAA general Council determines an EFH designation is warranted, NMFS will take the HC comments into consideration.

## **E. Pacific Halibut Management**

### **E.1 Proposed Changes to the Catch Sharing Plan and Annual Regulations (10/31/05; 5:32 pm)**

#### **E.1.a Agenda Item Overview**

Mr. Tracy presented the agenda item overview.

#### **E.1.b State Proposals**

Mr. Anderson presented Agenda Item E.1.b, Supplemental WDFW Report, noting only the proposed changes for the Washington North Coast and South Coast subareas. The proposed Columbia River subarea changes were replaced by Agenda Item E.1.b, Supplemental ODFW/WDFW Report, which Mr. Anderson summarized. He noted excess quota from the Washington North Coast subarea could be transferred to either the South Coast or Columbia River subareas.

Mr. Curt Melcher presented Agenda Items E.1.b, Supplemental ODFW Report and Supplemental ODFW Report 2. He noted the proposal for the Columbia River subarea would be replaced by Agenda Item E.1.b, Supplemental ODFW/WDFW Report.

#### **E.1.c Tribal Comments**

Mr. Harp presented Agenda Item E.1.c.

#### **E.1.d Reports and Comments of Advisory Bodies**

Mr. Duncan McLean presented Agenda Item E.1.d, Supplemental SAS Report. Mr. John Holloway presented Agenda Item E.1.d, Supplemental GAP Report.

#### **E.1.e Public Comment**

None.

#### **E.1f Council Action: Adopt Proposed Changes for 2006**

Mr. Anderson moved (Motion 8) to adopt the proposed changes to the Area 2A Pacific Halibut Catch Sharing Plan as presented in Agenda Item E.1.b, Supplemental WDFW Report, for the Washington North Coast and South Coast subareas, and as presented in Agenda Item E.1.b, Supplemental WDFW/ODFW Report, for the Columbia River subarea. Mr. Cedergreen seconded the motion.

Mr. Melcher offered a friendly amendment to add the phrase “or until September 30; whichever comes first” for the ending of Columbia River subarea season beginning the first Friday in August. Mr. Anderson and Mr. Cedergreen accepted the friendly amendment.

Mr. Melcher noted the WDFW/ODFW Columbia River subarea proposal provides opportunity for equal contributions from both states.

Motion 8 passed.

Mr. Melcher moved (Motion 9) to adopt the changes to the Area 2A Pacific Halibut Catch Sharing Plan as presented in Agenda Item E.1.b, Supplemental ODFW Report and Supplemental ODFW Report 2, for the Oregon Central Coast subarea and statewide proposals. Mr. Warrens seconded the motion.

Motion 9 passed.

## **F. Habitat**

### **F.1 Current Habitat Issues**

#### **F.1.a Agenda Item Overview (11/01/05; 8:09 am)**

Mr. Tracy provided the agenda item overview.

#### **F.1.b Report of the Habitat Committee (HC)**

Mr. Ellis highlighted Agenda Item F.1.a, Supplemental Attachment 2, a draft letter to John W. Keyes of the U.S. Bureau of Reclamation (BOR) regarding management of water flows in the Klamath River. He noted that in September the HC discussed a document prepared by the South Atlantic Fishery Management Council (SAFMC) (Agenda Item F.1, Attachment 1) which describes that Council's policies on non-fishery impacts to EFH.

In addition, the HC met on October 25, 2005 to discuss krill management, Groundfish Amendment 19 (EFH), CINMS, and other topics. That report was provided under Agenda item F.1.b.

**F.1.c Reports and Comments of Advisory Bodies**

None.

**F.1.d Public Comment**

None.

**F.1.e Council Action: Consider HC Recommendations**

Dr. McIsaac described the fast track letter policy in regard to Supplemental Attachment 2.

Ms. Vojkovich said the Council asked the HC to draft a response to set the record straight because the letter from the BOR went to legislators and gave the impression the BOR was taking certain action on these issues. She recommended the letter's tone be adapted for staffers and the general public. She also recommended putting all the main points in bulleted form.

Mr. Warrens agreed with Ms. Vojkovich's comments. He said there was a lot of technical language in the letter that might not be understandable. He recommended clarifying and condensing it, making it less technical, and following the fast track procedure.

The Council concurred with these comments and agreed to fast-track the letter.

Dr. McIsaac asked Mr. Tim Roth whether he believed that developing a Council document similar to the SAFMC policy document would be useful. Mr. Roth said there was strong support in the HC for developing such a document, especially from the NMFS staffers. It would be helpful to them in terms of the consultation process. In general the HC is supportive of the document and believes it would help bring these issues to the forefront and help deal with the complex management conflicts we have in the northwest.

Mr. Moore asked about time and effort costs for developing such a document. Dr. McIsaac said the HC could develop an initial draft during their next couple of meetings, and provide it to the Council before it was finalized. In terms of incorporating it into already-funded HC meetings, it would depend on the HC's workload issues. It would not require additional staff time if this were part of the HC's routine workload.

Mr. Anderson asked about the consequences of delaying this project. It would be difficult to tell where to fit this in terms of workload during the next nine months. He did not see any risk in delaying this project. He recommended reconsidering this assignment at the June meeting.

Dr. Dygert noted that the NMFS representatives on the HC see some value in having this product. What is this product, exactly? Is it a Council document that provides guidance? Is there precedence for such a document? Dr. McIsaac said the SAFMC document could be used as a model. In terms of delaying it until June, he asked Dr. Dygert if NMFS could see any problems in delaying it. Dr. Dygert presumes that

the NMFS EFH staff would support it. He thinks it would be fair to delay it if there was a chance to put it back on the table at a later date.

Mr. Moore moved and Mr. Warrens seconded a motion (Motion 10) to delay the issue of assigning the HC with the task of developing a policy model document similar to the SAFMC document until the June Council meeting. Motion 10 passed.

## **G. Salmon Management**

### **G.1 Salmon Methodology Review (11/01/05; 8:35 am)**

#### **G.1.a Agenda Item Overview**

Mr. Tracy presented the agenda item overview.

#### **G.1.c Reports and Comments of Advisory Bodies**

Mr. Dell Simmons presented Agenda Item G.1.c, Supplemental STT Report.

#### **G.1.b Report of the Scientific and Statistical Committee (SSC)**

Mr. Bob Conrad summarized Agenda Item G.1, SSC Report.

Mr. Anderson asked what the advantage of using Columbia River ocean abundance forecast was relative to the current river mouth forecast. Mr. Conrad replied there is bias introduced by backing the river mouth return forecast out to ocean abundance because FRAM was being used to provide input data for FRAM. The ocean abundance forecasts would eliminate that bias.

Dr. McIsaac asked if the SSC was recommending using the current method for estimating Columbia River ocean abundance for 2006. Mr. Conrad responded the new method has not met with SSC approval and use in 2006 would be contingent on completion of additional work by the Columbia River Technical Advisory Committee, and another meeting of the SSC Salmon Subcommittee in January, with Council approval in March.

#### **G.1.d Public Comment**

None.

#### **G.1.e Council Action: Adopt Final Salmon Methodology Changes for 2006**

Mr. Anderson noted the SSC had several recommendations relative to the FRAM documentation that would be contingent on MEW workload. He asked Mr. Rankis and Mr. LaVoy to comment on their ability to address the SSC recommendations. Mr. Rankis stated the MEW would be able to complete the tasks by June 2006 and still accommodate their preseason planning process responsibilities. Mr. LaVoy stated the MEW intends to complete the FRAM documentation project, including the Users Manual, by June 2006. Mr. Anderson recommended the MEW progress with the intent of providing the SSC with a product by the June 2006 briefing book deadline.

Mr. Anderson asked if the Columbia River fall Chinook ocean abundance forecasts project could be completed in time for SSC review in January. Mr. LaVoy replied the STT recommendation of a target implementation in 2007 would provide a better comparison of the various methods and review by the Parties to *U.S. v. Oregon*. Mr. Melcher agreed with Mr. LaVoy based on the Columbia River Technical Minutes - November 2005 (181<sup>st</sup> Council Meeting)

Advisory Committee (TAC) workload. He did not think it was realistic to expect a fully completed process by January 2006. Mr. Roth agreed with Mr. Melcher.

Mr. Harp agreed with Mr. Anderson's guidance for the MEW regarding the FRAM documentation project. He recommended subsequent documentation requests be included as appendices.

Mr. Anderson summarized the Council guidance for the MEW to provide FRAM documentation to the SSC in time for review at the June 2006 Council meeting; and for the Columbia River fall Chinook ocean abundance forecast to look for approval in November 2006 for use in the 2007 season.

## **G.2 Preseason Salmon Management Schedule for 2006 (11/01/05; 9:12 am)**

### **G.2.a Agenda Item Overview**

Mr. Tracy presented the agenda item overview.

### **G.2.b Agency and Tribal Reports and Comments**

Mr. Harp presented Agenda Item G.2.b, Tribal Comments.

### **G.2.c Reports and Comments of Advisory Bodies**

Mr. MacLean reported the SAS recommends the venue for the California public hearing be changed from Fort Bragg to Santa Rosa because Klamath River impacts affect the entire coast, and Santa Rosa would be a more central location to obtain comments.

### **G.2.d Public Comment**

None.

### **G.2.e Council Action: Approve 2006 Preseason Management Schedule and Hearing Sites**

Ms. Vojkovich stated California concurs with the SAS recommendation.

Mr. Melcher noted ODFW will sponsor its annual salmon industry group meeting March 2 in Newport, and the Oregon Fish and Wildlife Commission will meet March 17. No additional state sponsored meetings were planned.

Mr. Melcher asked Ms. Vojkovich to summarize the California process for Klamath inriver allocation. Ms. Vojkovich replied the CFG Commission has not set an agenda yet, but she briefed the Commission on the Council time line and informed them there is a three week window for the Commission to provide guidance to the Council. She noted the Commission will meet in December 2005 and will be reminded of the time line.

Dr. Dygert asked Ms. Vojkovich if the three week time window was prior to the March Council meeting or between March and April meetings. Ms. Vojkovich responded the window is in February, prior to the March Council meeting.

Mr. Anderson noted WDFW has additional state meetings for the preseason process, one meeting in Olympia one week prior to the March Council meeting, and two meetings of the North of Falcon forum after the March Council meeting, one in Olympia and one in Lynwood, Washington. There are also Regional meetings yet to be scheduled for Montesano and Mill Creek.

Ms. Vojkovich moved (Motion 11) that the Council approve the proposed schedule and process for developing 2006 ocean salmon management measures as shown in Agenda Item G.2.a, Attachment 1, November 2005 with the following hearing schedule: March 27 Westport, Washington and Coos Bay, Oregon, and March 28 Santa Rosa, California. Mr. Thomas seconded the motion.

Motion 11 passed.

### **G.3 Klamath River Fall Chinook Conservation Objective (11/01/05; 9:48 am)**

#### **G.3.a Agenda Item Overview**

Mr. Tracy presented the agenda item overview.

#### **G.3.b Report of the SSC**

Mr. Conrad presented Agenda Item G.3.b, SSC Report.

#### **G.3.c NMFS Report on Use of Emergency Rules**

Dr. Dygert presented Agenda Item G.3.c, NMFS Report. He noted there were no substantive changes in the process or criteria for emergency rule implementation as a result of the reauthorization of the Magnuson-Stevens Act in 1996; however there was an increase in the time an emergency rule could be in effect from 90 days to 180 days, and for extensions, an increase from 90 days to 180 days.

Mr. Melcher asked if fisheries north of Cape Falcon and South of Point Sur could also be impacted by the lack of emergency rule flexibility, since impacts in those areas were included in the model as occurring in the Northern Oregon and Central California cells, respectively. Dr. Dygert responded he didn't have a specific answer whether the impacts would be governed by the limitation by the model or broader considerations. He was just attempting to provide context to the impacts if there was a significant failure of the Klamath fall Chinook return.

Dr. McIsaac asked if there were two consecutive years of failure, would the actions to implement an emergency rule in each year be considered separate actions, allowing the implementation of emergency measures to continue into the second year. Dr. Dygert noted use of an emergency rule involved some risk, and the first extension would be contingent on pursuit of a permanent solution, such as a plan amendment. Using an emergency rule in the second year would compound the risk.

Mr. Ortmann asked if the 180 day extension must immediately follow the initial emergency rule period. Ms. Cooney replied it is an immediate extension contingent on pursuit of a permanent solution.

Ms. Vojkovich asked what range of actions were included in pursuing a permanent solution. Dr. Dygert replied initiating a plan amendment.

Mr. Melcher asked if the Council began taking the action prior to the emergency rule, would that facilitate implementation of an emergency rule. Dr. Dygert replied yes.

#### **G.3.d Report of the Klamath Fishery Management Council**

Mr. Melcher presented Agenda Item G.3.d, Supplemental KFMC Report. He emphasized the KFMC proposal for initiating a plan amendment was contingent on inadequate flexibility under the emergency rule procedure.

Dr. Dygert noted the 2005 spawner reduction rate was about 20%, with a conservation objective of <33%-34% spawner reduction rate. As a comparison, a 10% spawner reduction rate would result in

fisheries about half the 2005 level. Mr. Melcher noted that there would have been no relief in 2005 under the KFMC proposal for *de minimis* fishing considerations at returns of less than 39,000, as the predicted natural spawner abundance was about 43,000 in 2005.

Dr. McIsaac asked why the KFMC proposal started *de minimis* fisheries considerations at 39,000. Mr. Melcher replied that at that level, a 10% spawner reduction rate would bring the natural spawner escapement down to 35,000, which is the same as the current spawner escapement floor.

### **G.3.e Agency and Tribal Comments**

Mr. Harp noted the KFMC proposal would not change the 35,000 spawner escapement floor, but was intended to provide flexibility for management during years of low abundance.

### **G.3.f Reports and Comments of Advisory Bodies**

Mr. MacLean presented Agenda Item G.3.f, Supplemental SAS Report.

Dr. McIsaac asked Mr. Tracy if there were any process constraints for initiating scoping at the March Council meeting. Mr. Tracy replied the FMP process required three meetings, the first being a scoping session, but the only process constraint was that the Council needed to take final action by its November meeting in order to implement the amendment the following season.

Mr. Ellis presented Agenda Item G.3.f, Supplemental HC Report.

Ms. Vojkavich asked if the disease issue should be included in the Council's follow-up letter to the Bureau of Reclamation (BOR) regarding Klamath River fall Chinook Essential Fish Habitat addressed in Agenda Item F.1. Mr. Ellis replied it would be appropriate if the topic was addressed in the Council's original letter to the BOR in April, 2005.

### **G.3.g Public Comment**

Mr. Duncan MacLean, PCFFA, El Granada, California

Ms. Vojkavich asked Mr. MacLean to read into the record a letter addressed to Ms. Vojkavich from the Pacific Coast Federation of Fisheries Associations to Ms. Vojkavich. Mr. MacLean read the following into the record:

“As you may be aware, salmon fishermen, including those represented by PCFFA, will be seeking a framework plan amendment to the PFMC salmon plan for the narrow purpose of scoping a change in Klamath fishery management to allow for *de minimis* fisheries in years of low Klamath abundance to allow for harvest rate management consistent with protection of Klamath stocks. I understand there is a concern on the part of the Department that there is not the personnel to staff the analysis for such a framework change. The framework amendment is essential to assure that there will be a salmon fishery in the next few years as we work to fix the daunting problems in the Klamath Basin, including disease, low flows, and water quality. It would be tragic to lose a multi-million dollar fishery because the Department did not have the resources to bring on a biologist part time to conduct such an analysis. The PCFFA wishes to convey to the Department that it will assure funds are available to the Department for the personnel necessary to carry out the necessary analysis should the Pacific Council vote for a framework plan amendment. We will see to it that reasonable funds will be available either through State, Federal, or private sources. Indeed PCFFA will, as a California corporation, guarantee such funds if the State supports and the PFMC agrees to a plan amendment.”

Mr. Moore asked if PCFFA was proposing to supply funds from its treasury. Mr. MacLean replied no, but that they felt they could ensure Mr. Boydston would be available to assist on a framework amendment.

Mr. Dave Bitts, PCFFA, McKinleyville, California

Mr. Bitts addressed Mr. Moore's question stating the PCFFA has longstanding relationships with certain non-governmental organizations that they would approach to supply funds to hire Mr. Boydston.

Mr. Daniel Platt, Salmon Trollers Marketing Association, Fort Bragg, California

**G.3.h Council Action: Consider Issues Relating to the Klamath River Fall Chinook Conservation Objective and Initiating an FMP Amendment**

Mr. Alverson asked if there was any preliminary information on Klamath returns in 2005 or the projected over-escapement of Sacramento Chinook and resultant economic loss. Mr. Tracy responded Informational Report 3 provides a catch update from which economic impacts could be inferred. Mr. Allen Grover replied the Battle Creek Hatchery returns to date were similar to last years escapement, much below the projected return. It appears the Klamath River situation is also similar to last year in terms of adult returns, however age-2 fish are absent in many areas.

Mr. Melcher felt that with regard to the primary management objectives in the Salmon FMP, there was not sufficient information to change the Klamath River fall Chinook conservation objective based on the STT report and the Klamath Technical Team report. He was not inclined to give the STT further assignments to look at factors affecting recruitment. He felt NMFS was not comfortable relying on an emergency rule approach to managing fisheries during years of low Klamath abundance. With regard to a plan amendment, it would be irresponsible not to initiate the process, but he would like to hear from other Council members on that subject.

Dr. Dygert agreed with Mr. Melcher on the use of emergency rules, and was in favor of initiating a plan amendment to address a permanent solution to the issue. Regarding workload considerations, he was interested in discussing the PCFFA proposal to contract with Mr. Boydston.

Ms. Vojkovich moved (Motion 12) to initiate a Salmon FMP amendment specifically restricted to considering *de minimus* fisheries. Mr. Thomas seconded the motion.

Ms. Vojkovich agreed with Mr. Melcher's comments and voiced her appreciation for the salmon industry offering to help with the process and secure funds to possibly contract or hire non-engaged staff so the Council and CDFG can continue with routine salmon management. She spoke with the California members of the STT to see if the process could be done outside of the STT, and was assured it could work as long as there was adequate oversight. She noted CDFG is not interested in taking on additional workload, but is interested in oversight of the scoping process.

Mr. Moore asked if the Council were working towards a long-term solution, and if an emergency presents itself in March and April of 2006, and the criteria in the NMFS report for implementing an emergency rule were met, would it be appropriate for the Council to request an emergency rule for the 2006 fishery? Dr. Dygert replied those actions would be helpful. Ms. Cooney agreed that may justify a request, but she could not speak to whether the Agency would approve such a request.

Mr. Ticehurst recommended acquiring funding from within the Council agencies, because acquiring outside funding could set a precedent leading to favoritism of industry proposed projects.

Motion 12 passed.

Ms. Vojkovich recommended scoping be initiated at the April Council meeting to provide time to investigate unknowns such as outside funding and workload issues for routine salmon management. She asked if Friday's discussion on workload would be an appropriate time to discuss scheduling.

Mr. Moore asked if it would be feasible to combine other public hearings with the scoping process. Dr. McIsaac replied that it would be a possibility. He supported waiting until Friday for the schedule and workload agenda item.

Mr. Melcher noted the scoping meeting required an announcement and supported scoping at the March Council meeting. He would not expect any analysis between the March and April meetings as staffs are otherwise engaged. The second meeting should be in June.

Mr. Warrens agreed with Mr. Melcher noting the June workload was estimated to be about 80% of the normal workload.

Mr. Harp reminded the Council the KFMC is scheduled to sunset September 2006 and will be intact for the February, March, and April meetings. The Council should discuss how fisheries south of Cape Falcon will be handled after that.

Mr. Tracy noted based on the Council Operating Procedures, the scoping session consists of identifying topics to be addressed in the amendment, setting a schedule, and identifying a working group to prepare an initial analysis.

## **H. Groundfish Management**

### **H.1 NMFS Report**

#### **H.1.a Regulatory Activities (11/01/05; 1:03 pm)**

Dr. Steve Freese summarized Agenda Item H.1.a, Supplemental Attachment 4.

#### **H.1.b Science Center Activities**

Dr. Elizabeth Clarke reported that the trawl survey was complete for the year, the hake survey is complete, and planning for the February hake stock assessment review panel is on track. All of the 2005 stock assessments and reviews are complete. Several scientists will be at the deepwater coral meeting in November. The Western Groundfish Conference is scheduled to start on January 31 in Newport, Oregon and will involve most West Coast groundfish scientists. Dr. Clarke also showed a PowerPoint presentation on "Innovative Technologies for Mapping and Surveying". NMFS has been testing new survey and mapping methodologies. They have been testing methods at Daisy Bank, Coquille Bank, and Santa Lucia Bank (areas deemed significant to EFH EIS designations). Dr. Clarke also talked about other automated methods being used to map and sample stocks.

Mr. Moore recommended that future surveys not take place during salmon season and Dr. Clarke said that she had heard complaints from salmon fishers and that the best way to avoid such complaints in the future was to involve fishers at the planning stage. She noted that it was difficult to reserve time for the research equipment.

#### **H.1.c Reports and Comments of Advisory Bodies**

None.

#### **H.1.d Public Comment**

None.

#### **H.1.e Council Discussion**

None.

### **H.2 Stock Assessments and Rebuilding Analyses for 2007-2008 Groundfish Fisheries (11/01/05; 1:24 pm)**

#### **H.2.a Agenda Item Overview**

Mr. John DeVore provided the agenda item overview.

#### **H.2.b SSC Report**

Dr. Martin Dorn provided Agenda Item H.2.b, Supplemental SSC Report.

Mr. Moore noted that the STAR panel forwarded two models for canary that the SSC found equally acceptable. Are they both considered “best available science”? Dr. Dorn said yes and noted the results from both models are blended together in the rebuilding analysis. Mr. Moore asked if the SSC endorsed the new darkblotched rebuilding analysis and Dr. Dorn said yes.

Mr. Alverson, speaking to the recommended canary rockfish and sablefish assessment models, asked how can steepness be higher for canary than for sablefish? Dr. Dorn said those values were estimated by the SS2 model, which included estimates of uncertainty. The level of recruitment is a factor in the steepness. He noted that, for sablefish off the west coast, it could be related to environmental factors or the distribution of the stock. The steepness estimate is weak at this point. Mr. Alverson asked if one needs to verify recruitment to more accurately estimate steepness and Dr. Dorn said yes. He remarked there is a lot of aging work occurring with sablefish to improve recruitment estimation.

Mr. Anderson asked which model in an assessment represents the best available science. Is the base case model considered the most plausible, while alternative models are used to range uncertainty? Dr. Dorn said the SSC generally endorses the science and range of models in the assessment rather than endorsing a particular model. Mr. Anderson noted there is a wide variety in the richness of data in the stock assessments. When data-poor stock assessments form the basis for Council decision-making, can they be used for setting an OY? Dr. Dorn said yes, unless the SSC noted otherwise. Mr. Anderson asked about the status of the yelloweye STAR panel report and Dr. Dorn said it was still in draft form. However, despite the lack of a final STAR panel report, the SSC did endorse the yelloweye assessment. Mr. Anderson noted that the SSC report says that yelloweye rebuilding is behind schedule and that the degree of depletion in the south is greater than in the north. Was there any discussion about these differences from north to south? Dr. Dorn said he wasn't aware of any such discussion.

Mr. Moore asked if alternative assessment models should be used to range OYs and Dr. Dorn yes, this is the reason for developing a decision table.

#### **H.2.c Reports and Comments of Advisory Bodies**

Mr. Kenyon Hensel provided Agenda Item H.2.c, Supplemental GAP Report.

#### **H.2.d Public Comment**

None.

**H.2.e Council Action: Approve Remaining Stock Assessments and Rebuilding Analyses for 2007-2008 Groundfish Fisheries**

Mr. Moore moved and Dr. Burke seconded a motion (Motion 13) to approve the stock assessments for canary rockfish, lingcod, and petrale sole, as well as the rebuilding analyses for bocaccio, canary rockfish, cowcod, darkblotched rockfish, Pacific ocean perch, widow rockfish, and yelloweye rockfish for 2007-2008 groundfish fisheries. Mr. Moore said the SSC has made known its view that these are scientifically sound reports for use in Council action.

Mr. Alverson supported the motion, but said that when this comes up again, he strongly recommends not doing 20+ stock assessments in one cycle. More peer review is needed. He said the sablefish results alone will cost about \$15M to the fleet and about \$30M to processors. He doesn't know if the numbers for yelloweye are right, but he gets the sense they are more rebuilt off Washington. He said he wasn't sure a coastwide OY on yelloweye addressed the needs of that resource, or that these steepness theories are accurate.

Mr. Anderson said he was troubled with moving forward with the yelloweye assessment. There was confusion over whether there was going to be an update or a full assessment, they used a different model and called it an update, and we don't have the STAR panel report in front of us. There are discrepancies as to what we're seeing in the health of that stock, or lack thereof, up and down the coast. He is also uncomfortable with the canary assessment. They had a short period of time to address questions about canary. He agreed with Mr. Alverson that we put a huge burden on a small group of people to turn out a huge amount of work to guide management until 2009. He suggested doing a post-biennial cycle review of this year's assessment process to see if this is really working.

Mr. Moore expressed sympathy with these comments. He agreed too many stock assessments were taken on this year and said we need to rethink how to address this issue in the future. However, we have the SSC to provide us with scientific expertise and they felt it was the best science available. He said if Mr. Anderson wanted to offer a further amendment on the yelloweye rebuilding analysis, he would consider it a friendly amendment.

Dr. Freese asked Dr. Clarke to speak about the issues that had been raised. Dr. Clarke said they would talk more about this during the off-year science agenda item. Twenty-three assessments can be done, but probably shouldn't be done in one cycle. We are not taking full advantage of our reviewers' expertise. They are very capable, but they don't have the time with 23 assessments to really delve in to all the important technical issues. She recommends focusing on a few full assessments in future cycles, with the rest developed as updates.

Mr. Warrens asked for a friendly amendment to remove the yelloweye rebuilding analysis from the motion. The motion maker and seconder accepted the friendly amendment.

Mr. Anderson asked what would happen if we don't approve the yelloweye rebuilding analysis. Where does that leave us? Mr. DeVore said, if we only have the assessment approved without the rebuilding analysis, it would be difficult for the GMT and GAP to recommend OYs. The rebuilding analysis is used to project OYs. This would leave us in limbo. Mr. Anderson said that is why he didn't offer the friendly amendment. Mr. Warrens then withdrew the amendment.

Main motion 13 passed.

Dr. McIsaac noted that, with this action, the Council recommends the coastwide stock of lingcod is rebuilt and can be taken off the overfished list. He noted that no other new species had been added to the list.

Mr. Anderson noted the Council approved the yelloweye rockfish assessment in September in the absence of a STAR panel report. He asked whether that assessment was intended to be an update or a full assessment. Mr. DeVore said the assessment was originally scheduled to be an update, but it used a different model than the past assessment, which is not consistent with an updated assessment. However, unlike a full assessment, the STAR panel would not entertain other changes to the assessment and, in that fashion, treated it as an update. Mr. Anderson asked Mr. Culver to explain, as he was at the STAR panel. Mr. Culver said it was dealt with as if it were an update. For example, area-specific models were disallowed because that was outside the Terms of Reference, even though using a new model would have put it into the “full assessment” category. Mr. Anderson said it sounds like there was picking and choosing of the Terms of Reference. Mr. Culver said it played out as if it were an update. There was recognition that it was a hybrid between an update and a full assessment. He said he pushed heavily to get area-specific differences recognized, but was told that they couldn’t do that because it was an update.

Ms. Cooney introduced Mary Beth Ward and Jennifer Nist.

### **H.3 Management Recommendations for 2007-2008 Groundfish Fisheries—Part I**

#### **H.3.a Agenda Item Overview (11/01/05; 3:06 pm)**

Mr. DeVore provided the agenda item overview.

#### **H.3.b Report of the GMT**

Ms. Susan Ashcraft provided Agenda Item H.3.b, Supplemental GMT Report.

Mr. Moore noted only results from base models in stock assessments were used in GMT recommendations for ABCs and OYs. Why were alternative models not considered? Ms. Ashcraft replied no OY alternatives higher than the ABC were recommended nor were OY alternatives from alternative models recommended given the SSC advice that the base models were the most plausible.

Mr. Moore asked if the chilipepper rockfish OY was reduced from the ABC due to bocaccio bycatch concerns and before the implementation of Rockfish Conservation Areas (RCAs) and Mr. DeVore replied yes.

Mr. Ticehurst asked why the canary ABC is lower than status quo when stock is doing better. Dr. John Field answered the absolute biomass is less though the stock is more productive. The ABC is determined from the exploitable biomass.

Dr. Freese asked if the GMT could recommend a range of Pacific whiting ABCs/OYs for analysis. Ms. Ashcraft said the GMT would need to discuss this further and could come back with a recommended range on Friday.

Mr. Anderson asked for an explanation of the canary OY alternatives and Ms. Culver explained the rebuilding probabilities and median rebuilding times associated with each OY alternative.

Mr. Moore asked for the basis of the widow rockfish OY alternative of 1,352 mt and Ms. Ashcraft replied it was determined under a mortality schedule with a re-estimated rebuilding probability ( $P_{MAX}$ ) of 60%.

Mr. Moore asked if alternative ABCs for sablefish were available and Ms. Ashcraft said yes.

### **H.3.c Reports and Comments of Advisory Bodies**

Ms. Heather Munro provided Agenda Item H.3.d, Supplemental GAP Report.

Ms. Vojkovich asked if the GAP was recommending the higher petrale OY of 4,212 mt in the assessment and Ms. Munro said yes. Mr. DeVore explained that OY was from the higher production model in the assessment. The ABC equals the OY in that scenario since the stock is estimated to be above  $B_{40\%}$ .

Dr. Steve Ralston provided Agenda Item H.3.c, Supplemental GAP Report.

Dr. McIsaac asked if the base model from each assessment represented the best available science and Dr. Ralston replied the base models are the most plausible, while the other assessment models represent alternative states of nature and are less probable. Mr. Moore asked if alternative assessment models can be used to analyze a range of ABCs. Dr. Ralston said yes, but alternative models are risk-prone or risk-averse relative to the base model.

### **H.3.d Public Comment**

Mr. Kelly Barnett, Port of Garibaldi Independent Fish Filleters, Bay City, Oregon

Mr. Bob Fletcher, Sportfishing Association of California, San Diego, California

### **H.3.e Council Action: Adopt a Range of Preliminary Acceptable Biological Catches and Optimum Yields (OYs), and if Possible, Preferred OYs for some Stocks and Stock Complexes**

Mr. Moore asked if the intent was for the Council to adopt all or part of the range of ABCs/OYs. Mr. DeVore said the intent was to adopt the full range of harvest specifications for analysis today. He recommended the Council adopt as much of the range today that they felt comfortable adopting and task the GMT with data requests that would help them complete this task on Friday. Dr. McIsaac added any leftover task for Friday will detract from Friday's Council deliberations regarding a range of 2007-2008 management measures.

Ms. Vojkovich asked about the recommended harvest specifications and noted the lack of a recommended ABC for starry flounder as an example. Ms. Ashcraft said the GMT was aware of some of these omissions and the need to correct or update the tables. She highlighted these data gaps in the GMT tables.

Ms. Vojkovich asked about the basis for the recommended petrale sole Alternative 1 OY. Mr. DeVore explained one of the alternatives incorporated the SSC recommendation for a 25% reduction for the southern substock, which was carried through for the northern substock as well.

Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 14) to adopt the range of ABCs/OYs in Tables 1 and 2 of Agenda Item H.3.b, Supplemental GMT Report and include the following preferred OY alternatives: Alternative 2 for sablefish; Alternative 3 for POP; Alternative 3 for widow rockfish; Alternative 3 for canary rockfish; and Alternatives 2 and 4 for yelloweye rockfish. The motion also includes specifying the corresponding OY alternatives for petrale sole on Table 2 (2008 specifications) depicted in Table 1 (2007 specifications).

Mr. Moore asked to amend Motion 14 to include a chilipepper rockfish OY alternative of 2,700 mt, which equals the ABC. Mr. Warrens seconded the amendment and Mr. Anderson and Mr. Cedergreen accepted it as a friendly amendment.

Mr. Moore asked to amend Motion 14 to have the GMT generate a range of Pacific whiting OYs for analysis. The low OY alternative would equal the 2005 OY and the high OY alternative would be based on consultation with the Canadian government and the Northwest Fisheries Science Center. Mr. Warrens seconded the amendment. Mr. Anderson supported analyzing a range of whiting ABCs/OYs to understand potential bycatch implications, but said he could not support using the 2005 harvest specifications for the low end of the range. He recommended a range  $\pm$  some percentage of the 2005 harvest specifications. Mr. Moore withdrew his amendment.

Mr. Moore moved to amend motion 14 to range whiting harvest specifications for analysis  $\pm$ 25% of the 2005 specifications. Mr. Warrens seconded the amendment. Mr. Anderson, Mr. Cedergreen, Mr. Moore, and Mr. Warrens agreed on  $\pm$ 23% of the 2005 harvest specifications. Amendment passed.

Ms. Vojkovich moved to amend motion 14 to include four OY alternatives for minor rockfish south for 2008 (Table 2) corresponding to the four OY alternatives recommended for 2007 in Table 1. Mr. Anderson and Mr. Cedergreen accepted the amendment as friendly.

Mr. Moore moved to amend motion 14 to adopt a range of ABCs/OYs for sablefish and petrale sole using the entire decision table in each assessment. Mr. Warrens seconded the amendment, but it was not accepted by Mr. Anderson. Mr. Moore said we need to look at the full range of possible harvest specifications for these stocks to allow the Council to make its best judgment given model uncertainty. Mr. Anderson said Dr. Ralston's testimony indicated the alternative model scenarios in assessment decision tables are designed to present the range of critical uncertainty, but the base models are the most plausible. He was worried about the risk of setting higher OYs for these stocks using optimistic models. Management measures for outlying alternatives would be unrealistic

The amendment to Motion 14 failed.

Mr. Alverson asked about the implications of the range of whiting harvest specifications for analysis. Ms. Cooney replied the range needs to be broad enough to encompass the ABC/OY from the new assessment. Ms. Yvonne de Reynier added if the ABC/OY from the new assessment is outside the range analyzed, then a new NEPA analysis would need to be done to consider that harvest specification, which would be a painful process. Mr. Anderson asked if the range in the motion is reasonable. Mr. DeVore said the low end of the range analyzed in the 2005-2006 specifications EIS was 50% of status quo and double the status quo specifications on the high end.

Mr. Moore moved an amendment to reconsider the earlier friendly amendment specifying the range of whiting harvest specifications for analysis. Mr. Warrens seconded. That motion carried.

Mr. Moore moved to amend the main motion to specify a range of whiting harvest specifications for analysis that is  $\pm$ 30% of the 2005 specifications. Mr. Warrens seconded the amendment. That amendment passed.

Dr. Burke asked if the main motion gave staff ability to make non-substantive changes and give them to the GMT and the answer was yes.

Motion 14 passed.

Dr. McIsaac said the Council needs to consider amendment 16-4 and the process and schedule for developing the EIS. Additionally, the Council should decide the dates for the proposed Allocation Committee meeting in early 2006. Lastly, he requested a legal opinion on the need to pursue Amendment 16-4.

Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 15) to adopt the schedule and process as shown in Agenda Item H.3.a, Supplemental Attachment 3, with the following modification: schedule the GMT/Allocation Committee meeting for the week of Feb. 13.

Dr. McIsaac said the problem with scheduling the GMT/Allocation Committee meeting for the week of February 13 is that leaves little time to prepare text and analyses for the April briefing book deadline of March 15.

Ms. Vojkovich asked if the expectation was to consider revising all the groundfish rebuilding plans on the same schedule as the 2007-2008 specifications and management measures. This added burden increases the workload and is difficult to accomplish. Ms. Cooney said the Ninth Circuit ruling mandates we need to rebuild overfished stocks in as short a time as possible while considering the needs of fishing communities. The analyses would be the same as those for deciding future harvest specifications. Rebuilding plans need to be revised by 2007. Ms. Vojkovich stated more resources would be needed to accomplish this task and Dr. McIsaac assured her we would get extra resources.

Dr. Burke said the proposed process and schedule suggests the Allocation Committee would decide 2007-2008 allocations. She asked if that was appropriate and Dr. McIsaac said it is if the Council delegates this chore to the Allocation Committee this week. Ms. Cooney noted a lot of work needs to be done this winter. She envisions the Allocation Committee deciding alternatives for analysis, with their recommendations coming to the Council in April. Mr. Anderson characterized the Allocation's Committee role as further development of alternatives decided this week for analysis.

Mr. Moore asked if the week of January 23 would work for a GMT/Allocation Committee meeting. Given the impasse on the dates for the proposed meeting, Dr. McIsaac recommended deferring this decision until Friday. He asked all to check calendars to be prepared on Friday.

Mr. Moore moved and Mr. Warrens seconded an amendment to Motion 15 to delay a decision on the proposed GMT/Allocation Committee meeting, which was accepted as a friendly amendment to Motion 15.

Motion 15 passed.

#### **H.4 Consideration of Inseason Adjustments in 2005 and 2006 Groundfish Fisheries**

##### **H.4.a Agenda Item Overview (11/03/05; 8:58 am)**

Mr. DeVore provided the agenda item overview.

##### **H.4.b Report of the Groundfish Management Team (GMT)**

Ms. Ashcraft (joined by Merrick Burden) provided Agenda Item H.4.b, Supplemental GMT Report H.4.b.

Mr. Moore asked how annual darkblotched discard rates were incorporated in the trawl bycatch model and Mr. Burden said the most recent years' rates were more heavily weighted.

Mr. Moore asked about the GMT recommendation for a lower chilipepper trip limit in 2006 to protect bocaccio given the current RCA restrictions. Ms. Ashcraft said RCA restrictions reduce, but don't eliminate overfished species' bycatch. Mr. Moore asked how we know bocaccio co-occur with chilipepper seaward of the RCA without at-sea observations and Mr. Burden answered the triennial trawl survey data shows some co-occurrence at those depths.

Mr. Anderson asked about the projected canary impact by selective flatfish trawls. Option 3 shows 8.3 mt of canary mortality? Ms. Ashcraft said the GMT has not finalized the bycatch scorecard yet, but they are projecting 8.3 mt of canary in the selective flatfish trawl fishery next year under Option 3 with a 1.3-1.4 mt reserve. Mr. Anderson asked if new observer data indicates a higher summer impact, would this deplete that reserve and Mr. Burden answered yes.

Dr. Burke asked about 2005 darkblotched total catch estimates. Mr. Burden said those were available in the bycatch scorecard. She asked about the total catch of darkblotched over time and Mr. Burden did not have those estimates readily at hand.

#### **H.4.c Reports and Comments of Advisory Bodies**

##### **GAP Report**

Mr. Tom Ghio provided Agenda Item H.4.c, Supplemental GAP Report.

Ms. Vojkovich asked Mr. Ghio to restate the petrale sole recommendation. Mr. Ghio answered the recommendation was to close fisheries shoreward of the 250 fm line north of 38° N latitude and disallow petrale sole retention.

##### **Tribal Report**

Mr. Harp provided Agenda Item H.4.c, Supplemental Tribal Comments and Agenda Item H.4.c, Supplemental Tribal Comments 2. Mr. Harp indicated verbally that those were two separate reports.

Mr. Anderson asked Ms. Cooney about the process for modifying the darkblotched OY- can we do it at one meeting or by emergency rule? Ms. Cooney said that modification would be done by an emergency or interim rule and could be recommended at this meeting. Mr. Anderson stated, in order to notify the public attending this meeting, he would be considering a change to the 2006 darkblotched OY to a level that would accommodate the impact needs of the fishery with some small buffer. He was not ready to propose the modified OY at this time in the process, but might be able to by Friday.

#### **H.4.d Public Comment**

Mr. Daniel Platt, Salmon Trollers Marketing Association, Fort Bragg, California  
Mr. Kelly Barnett, Port of Garibaldi Independent Fish Filleters, Bay City, Oregon  
Mr. Tom Ghio, Ghio Fisheries, Moss Landing, California

#### **H.4.e Council Action: Adopt Preliminary or Final Inseason Adjustments for 2005 and 2006 Groundfish Fisheries**

Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 26) to adopt, as a preliminary decision, the GMT-recommended inseason adjustments for 2005/2006 as represented in Agenda Item H.4.b, Supplemental GMT Report, with additional guidance to the GMT that they examine an alternative that would result in the distribution of canary between the sectors that would replicate the preseason plan for 2005.

Mr. Anderson remarked on the two options proposed for the 2006 fixed gear sablefish daily trip limit (DTL) fishery. There are significant differences between the northern and southern fisheries. Weather plays a factor in the Pacific NW early in the year in terms of accessing the sablefish grounds located 20 to 35 miles offshore. Higher coastwide limits early in the year may require ratcheting down limits later in the year. Therefore, he recommended GMT option 1.

Dr. Burke asked if the motion was to adopt all the GMT recommendations and Mr. Anderson replied it was to adopt all the GMT recommendations except only option 1 for the DTL fishery. Dr. Burke then asked for a friendly amendment of the GMT-recommended language for Oregon recreational fisheries on page 7 of the GMT report. Specifically, she wanted the second to last sentence struck in the first paragraph under the header entitled, "Oregon Recreational Fisheries in 2006" and a rewording of the last sentence in that paragraph from, "As the federal and state harvest guidelines are approached ..." to "Should federal and state harvest guidelines be approached ...". The friendly amendment was accepted.

Dr. Burke asked if the motion included a request to the GMT to explore a lower 2006 darkblotched OY and Mr. Anderson said he intended to address that with a separate motion.

Mr. Moore asked about the first GMT recommendation on providing guidance for addressing overfishing of petrale sole and Mr. Anderson said he intended to address that with a separate motion.

Mr. Moore moved and Mr. Warrens seconded an amendment to the motion to maintain a single two-month period 1 trawl trip limit in 2006 under trawl option 3.

Mr. Moore said the reason the Council went to two-month cumulative limits was to reduce discards. He understands the GMT recommendation for monthly limits in January and February of 2006 is to provide flexibility for the start of the 2007 season should the 2007-2008 rulemaking process experience delay. However, that induces a high discard cost and therefore recommends the GAP recommendation for a two-month limit. Mr. Anderson asked Ms. Ashcraft to explain the GMT's recommendation and she confirmed the concern was with providing flexibility in modifying trip limits at the start of 2007. Mr. Moore countered flexibility could be gained by recommending a more conservative two-month limit in period 1 of 2007. Mr. Burden questioned the flexibility gained with that strategy without a specified petrale sole OY yet. A reduction of the petrale sole OY from status quo could risk the remainder of the 2007 fishery, although the risk is somewhat averted with conservative trip limits early in the 2007 season. Mr. Anderson recommended specifying a wide range of 2007-2008 overfished species' OYs for analysis. Since the outcome for 2007 is currently unknown, the GMT recommendation is a wise one. Dr. Burke said, given the constraints on this fishery, there is a paramount need to reduce bycatch. Therefore, she supports Mr. Moore's amendment.

Vote on Amendment to Motion 26: Amendment passed.

Ms. Vojkovich asked what is the limiting factor in DTL limits. Can the daily limit be increased in option 1 without changing the weekly or two-month limit? Mr. Burden answered effort is the concern and this is driven by both the daily and weekly limits, but mostly by the daily limit. Mr. Alverson agreed. Mr. Moore asked if the DTL fishery has faced early attainment in the last five years and Mr. Burden answered there was one instance several years ago when the daily limit was raised from 300 to 400 lbs.

Vote on main Motion 26: Motion 26 passed as amended.

Mr. Harp moved and Mr. Warrens seconded a motion (Motion 27) to increase the tribal shortspine and longspine thornyhead limits to match those specified for the non-tribal limited entry trawl fishery. Motion 27 passed.

Mr. Anderson asked if the projected total mortality of darkblotched in 2005 is 185 mt and Ms. Ashcraft said that is correct. He then asked if the projected 2006 total mortality under the GMT-recommended trawl management measures was 164 mt and Ms. Ashcraft said that was also correct. With that basis, Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 28) to recommend to NMFS that they enact an interim rule that would reduce the 2006 darkblotched rockfish OY from 294 mt to 200 mt.

Mr. Anderson said this proposed action was a response to the Ninth Circuit Court decision to rebuild the darkblotched stock in as short a time as possible while considering the needs of fishing communities. Mr. Moore said he supports the motion and noted the recommendation reflects the diligence of the GMT to track and project total catch of overfished species and represents use of the best available science. Dr. Freese said, while he supports the motion, he will vote against it since his agency is a party to the lawsuit.

Motion 28 passed. Dr. Freese voted no.

Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 29) to close fisheries that have impacts on petrale sole for the month of December.

Mr. Harp asked if the motion included all fisheries and Mr. Anderson said the motion pertained only to non-tribal fisheries. However, he would like to have discussion about the impact of tribal fisheries on the petrale sole stock. Ms. Vojkovich asked what fisheries would be closed and Mr. Anderson requested GMT feedback on this question. Ms. Ashcraft said, with the current closure of fisheries shoreward of 250 fm north of 38° N latitude and closure of fisheries shoreward of 200 fm south of 38° N latitude, there remains a continuing impact on petrale sole. She referred to Table 1 of the GMT report indicating a projected petrale sole impact from limited entry trawl bottom fisheries of 5.9 mt and trace amounts of petrale sole projected to be taken in limited entry longline and net and trawl fisheries targeting California halibut. She said the GMT needs to evaluate fisheries south of 34°27' N latitude.

Mr. Anderson then withdrew his motion pending GMT evaluation.

Mr. Anderson said he would like to discuss tribal bottom trawl fisheries planned for December. The Council needs to decide if this is a conservation issue. He noted the Council probably needs to set aside some yield of petrale sole in the future to accommodate tribal fisheries. He recommended the Council consider these questions before deciding tomorrow. Mr. Harp agreed with deferring the decision to allow time for government to government discussions.

## **H.5 Off-Year Science Improvements (11/03/05; 8:06 am)**

### **H.5.a Agenda Item Overview**

Mr. DeVore provided the agenda item overview.

### **H.5.b Northwest Fisheries Science Center Report**

Dr. Elizabeth Clarke provided a PowerPoint presentation as the NWFSC Report.

Mr. Moore asked about a  $B_0/B_{MSY}$  workshop and Dr. Clarke said the SSC would be sponsoring that.

Mr. Anderson noted that NMFS had recommended a more formal report on data sources used in stock assessments. He asked if it might be possible to have authors identify data sources that are available, but aren't used in assessments. Dr. Clarke said that was an excellent recommendation, especially if the reason for not using the data was explained. She thought many of these types of data issues can be fleshed out in a pre-assessment workshop.

Dr. McIsaac asked if the schedule shown on the three-meeting agenda plan relative to planning the next round of assessments for 2009-2010 was consistent with Dr. Clarke's thinking regarding stock assessment planning and she said yes.

### **H.5.c Reports and Comments of Advisory Bodies**

Dr. Kevin Hill provided Agenda Item H.5.c, Supplemental SSC Report. Dr. John Field provided Agenda Item H.5.c, Supplemental GMT Report. Mr. DeVore read Agenda Item H.5.c, Supplemental GAP Report.

#### **H.5.d Public Comment**

Mr. Steve Barrager, Environmental and Natural Resources Policy Program, Stanford, California  
Mr. Daniel Waldeck, Pacific Whiting Conservation Cooperative, Portland, Oregon  
Mr. Russell Porter, Pacific States Marine Fisheries Commission, Portland, Oregon

Dr. Burke asked Mr. Porter if other GMT issues were intended to be discussed in the proposed RecFIN workshop and he said the intent was to cover all RecFIN issues.

Dr. McIsaac asked about the timing of the proposed RecFIN workshop and whether the August-October time period would work? Mr. Porter said that timing would work, but the Council should decide the timing. Dr. McIsaac asked if the Pacific States Marine Fisheries Commission would host the workshop and Mr. Porter said they would be willing to host the workshop and could work out funding details with the Council.

#### **H.5.e Council Action: Plan and Prioritize Science Activities for 2006**

Dr. McIsaac brought up the subject of a post-assessment review workshop. He noted that the Council had heard from several advisory bodies on this matter, and that the Council and many others were very interested in such a workshop. This workshop should occur soon for maximum effectiveness.

Mr. Anderson noted that there was a fair amount of overlap in all the recommendations (NWFSC, SSC, GAP, GMT, and public comment). He asked if all the recommended workshops were doable and suggested the Council should try to prioritize them.

Dr. Clarke recommended that NMFS come to the March Council meeting with a draft list of assessments and updates, as well as a list consolidating all the recommendations, to see if the recommendations are complete and feasible. Potential sponsors should also be listed. She said she believed all of the recommendations were feasible. A list with consolidated recommendations and potential dates would help the Council finalize this in March.

Dr. Burke said the overview that Dr. Clarke did contained a lot of the issues and solutions that people were interested in discussing at the post-assessment review workshop. Dr. Clarke said the post-assessment review workshop should be done before the March meeting, and said she could bring any recommendations to the March meeting in order to move forward on a draft list. She asked if the Council would want the NWFSC to plan a post-assessment review workshop inviting the advisory bodies and a Council member, possibly in coordination with the GIPC.

Dr. Burke asked Dr. McIsaac when the proposed RecFIN workshop would take place. Dr. McIsaac said it would probably take place in the summer. Dr. Burke said the needs in the recreational data process are extremely important. It's been put off, and it's a top priority. She also noted that about two years ago there was an oversight committee for RecFIN consisting of representatives from each of the states and some other representatives. It would be very valuable for a RecFIN oversight process to conclude with a meeting of that oversight committee to look at budgeting, coordination, and implementation. She felt this was urgent, and said she would like such an oversight committee to convene after the RecFIN workshop.

Mr. Moore moved and Mr. Alverson seconded a motion (Motion 25) that the Council follow up on Dr. Clarke's suggestion for a post-assessment review workshop as soon as possible.

Mr. Anderson asked if the motion was that the Council support Dr. Clarke's suggestion for the NWFSC to have a post-assessment review workshop on the recent stock assessment process; that Dr. Clarke bring back the list of items in the four reports with an assessment of what could and could not be accomplished in this off year; that we include the RecFIN workshop as a high priority; and that we have a preliminary draft list of stock assessments for the next cycle provided by the NWFSC at the March meeting. Mr. Moore and Mr. Alverson agreed that that should be included in the motion.

Dr. Burke asked about having the RecFIN Oversight Committee convene after the workshop. Mr. Moore said that was included in the motion. Motion 25 passed.

Mr. Anderson said he had also heard testimony from Dr. Barrager that the Council seek additional research and development opportunities, while remaining cognizant of funding constraints. Dr. Barrager had also suggested looking for a coalition that would result in identifying new funding for high priority research and development activities. Mr. Anderson said he wasn't sure what to do with these suggestions at the moment, but that they were worth serious consideration. Mr. Moore suggested that the NWFSC bring back a response to Dr. Barrager's comments to give the Council an idea of how to approach this. Ms. Vojkovich recommended that Council staff look at grant and funding opportunities that might be available for research, rather than burdening NMFS to look at a strategic research process. Dr. McIsaac said the Council does have a research and data needs process, although it has been some time since it was used. It begins as an SSC initiative, beginning with a March meeting and concluding in November. That might be an element of the report on these scientific matters in March.

Mr. Anderson asked if the Council had covered the SSC recommendations. Mr. Moore said it was in the motion, and Council members agreed.

## **H.6 Amendment 18 (Bycatch) and Work Plan Practicability Analysis (11/02/05; 1:33 pm)**

### **H.6.a Agenda Item Overview**

Dr. Kit Dahl provided the agenda item overview.

Ms. Yvonne deReynier provided a PowerPoint presentation. Ms. Kate Quigley, economist from NWR, joined her at the podium.

### **H.6.b Reports and Comments of Advisory Bodies**

Mr. Dale Myer provided Agenda Item H.6.b, Supplemental GAP Report.

### **H.6.c Public Comment**

Mr. Ben Enticknap, Oceana, Portland, Oregon

### **H.6.d Council Action: Adopt Final FMP Text and Review Work Plan Practicability Analysis**

Dr. Dahl provided an overview of the Council action.

Mr. Moore asked Ms. Cooney if the Council is bound to a specific timeframe to finish this amendment, as a result of a bycatch lawsuit. Ms. Cooney replied there is not a court order of the timing on this, but the FMP amendment is the final step resulting from the lawsuit. So although there is not a timeframe, it needs to get done.

Ms. Vojkovich said that a requirement for permits for the current open access sector is not stated in the FMP amendment but wondered if the text is sufficient to authorize such a program.

Dr. Dahl noted that part of the FMP amendment involves an update and reorganization of existing text in Chapter 6 of the FMP, and the section on permits was brought forward substantially unchanged. He did not think that the description of the preferred alternative from the EIS encompassed the possibility of adding new text about permitting. However, he wondered if the existing text was sufficient to authorize a permit program, which would be implemented through a regulatory amendment. He deferred to Ms. Cooney to answer that. Ms. Cooney said, in relation to bycatch the FMP (as amended) includes both required provisions and discretionary provisions, which could be implemented at a later time. Whether Ms. Vojkovich was speaking to permitting only, or a license limitation program, Ms. Cooney thought that a program could be implemented by a regulatory amendment, and the action would support bycatch reduction.

Ms. Vojkovich said she asked this question because the preferred alternative includes hard catch caps involving inter-sector allocations; permitting the open access fishery would be an important first step. She then asked if permitting open access fisheries should be included in the work plan along with a timeline.

Dr. Dahl followed-up by noting those sections of the FMP amendment language that would authorize such a permit program. He said the purpose of the work plan is to help plan how to implement various initiatives to reduce bycatch. Although the work plan does not implement the program, it would help the Council plan how they want to move forward on this issue.

Ms. Vojkovich asked what do I have to do today to move us forward on embarking on closing the OA fishery for the purposes of minimizing bycatch? Dr. Dahl said the easiest thing to do today would be to direct staff to put it in the work plan with the appropriate specificity as to future Council action to develop such a program.

Ms. Vojkovich asked for confirmation that the work plan document is not part of the materials provided for this meeting and the Council is not adopting it at this time. If so, she asked if the Council would see it at a later time and could the Council start on developing such a program before documenting it in the work plan and formally adopting the work plan. Dr. Dahl said the work plan is to help the Council in its decision-making and planning and the Council should not feel constrained in its ability to take action by the status of the work plan. At the same time, that suggests the Council would not finalize the work plan at this time but could wait until this proposal is incorporated into it.

Mr. Anderson said he is frustrated with this process and the work plan. The Council will not be able to implement sector caps as part of the 2007/08 biennial management cycle because of the constraints on resources, money, and management infrastructure. For that reason he is interested in identifying measures that can be implemented in the next two or three years to accomplish the objective of reducing bycatch. Viewing it from that perspective, Mr. Anderson said the two things the Council might be able to implement are, first, a permitting system for the open access fishery in order to document the number of vessels and track the landings by permit number. This is an important objective even if it doesn't result in capacity reduction. The second item would be to get observer data more frequently than on an annual basis to support bycatch reduction measures. He talked about the value of more timely information to evaluate initiatives such as the selective flatfish trawl requirement. In talking to Dr. Clarke, one of the measures to speed up data processing would be to put permit numbers on fish tickets. Although he felt that implementing the sector bycatch caps was a worthy goal, focusing on that right now would not result in any progress. Instead, the Council should focus on measures that are attainable in the foreseeable future that would result in more timely quantification of bycatch and reducing bycatch.

Mr. Moore suggested a wording change to the FMP amendment: in response to the GAP recommendation, in the first line on page 40, replace “must” with “would have to.” The Council concurred with this guidance.

Mr. Moore asked Dr. Dahl about the public comment by Oceana that the FMP doesn’t include a standardized reporting program. Dr. Dahl said Section 6.4 of the FMP amendment describes the standardized reporting program, including describing and authorizing observer programs and electronic monitoring. Mr. Moore said that answered his question.

Dr. Burke supported implementing bycatch reduction measures, such as sector caps and an ITQ program, while recognizing the previous discussion. But she noted that the practicability analysis presented costs double or triple current expenditures to implement such measures. In light of this she asked Dr. Freese what he thought was practicable. Dr. Freese said we have to be fiscal realists; the practicability analysis makes an assumption that we won’t see increased funding. Given these constraints, implementing an open access permitting system may be the most practicable measure to implement. This is something that could be worked on after next June after the biennial specifications are finished. A second item would be to consider how to improve the monitoring systems. Electronic reporting will be discussed at the PacFIN meeting next week. The opportunities related to that should be explored.

Following up on Mr. Moore’s question about the bycatch reporting program, Ms. Cooney emphasized that an observer program is required by the FMP, but is implemented through the rulemaking process.

Ms. Vojkovich noted that the work plan identifies as an objective integrating the new closed areas for EFH mitigation with the existing GCAs when modeling projected bycatch. She wondered if this is something that could be accomplished in the short term.

Dr. Freese said he was unsure of the answer and Dr. Dahl deferred to Dr. Hastie for an answer, since he developed the bycatch projection model. Dr. Hastie said it should be possible to do that, but he would like to examine that issue and come back to the Council with a response at the next meeting.

Dr. Freese suggested as direction to staff, to incorporate more discussion about the use of depth-based management not only for overfished species but to manage all species—target, bycatch, and overfished species. He noted NMFS had a small change they are proposing in addition to the proposed additional text contained in Attachment 5.

Mr. Moore moved and Mr. Warrens seconded a motion (Motion 20) that the Council adopt the text of Agenda Item H.6.a, Attachment 1, along with the clarifying change on page 40 suggested earlier, the change on page 39, Section 6.5.3 as noted in Agenda Item H.6.a, Supplemental Attachment 5, and the further clarification of depth-based management suggested by NMFS.

Mr. Moore added that the Council should move quickly on the suggestions put forward with respect to permitting the open access sector. Mr. Anderson asked the maker of the motion to make a modification of the language proposed by NMFS: On page 39, Section 6.5.3: on the fourth line where it says “...co-occurrence rates of target stocks...” he would like to change it to read “...co-occurrence rates of all species in the catch, especially those of target stocks...” Mr. Moore asked if Mr. Anderson was referring to groundfish. Mr. Anderson said he was referring to groundfish species. Mr. Moore accepted the change.

Mr. Anderson said he understood that the discussion of permitting the open access sector was included in the motion. Further, he would like to include taking the necessary steps that would lead to more frequent reporting of bycatch information from the observer program. Mr. Moore also accepted this as part of the motion.

Motion 20 passed.

Mr. Alverson moved and Mr. Anderson seconded a motion (Motion 21) to reconsider the previous action under Motion 20.

Motion 21 passed.

Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 22) to amend the motion regarding the previous change to the proposed language in Section 6.5.3. In reference to Agenda Item H.6.a, Supplemental Attachment 5, strike the "... all species in the catch, especially..." and in its place on the fourth line replace "...target stocks *with* overfished stocks..." with "...target stocks *and* overfished stocks...". He noted that based on further discussion with NMFS the previous language was onerous given the 83 species managed by the FMP and that the intent was to focus on the target stocks and overfished stocks.

Motion 22 passed.

## **H.7 Amendment 19 (Essential Fish Habitat)**

### **H.7.a Agenda Item Overview (11/02/05; 3:24 pm)**

Dr. Dahl provided the agenda item overview. For further clarification, he referenced the guidance provided in Agenda Item I.1.a, Attachment 2 with respect to the closure of the water column below 500 fathoms above Davidson Seamount in the Monterey Bay National Marine Sanctuary. The amendment language would be revised to reflect that. He also noted that a revised version of the draft regulations were provided as supplemental material (Agenda Item H.7.a Supplemental Attachment 3) to replace the older version included in the briefing book.

Dr. McIsaac said he wanted to make the Council aware of the matter of whether EFH regulations could be applied to the water column in the Channel Islands area, as discussed in Agenda Item I.1.a, Attachment 2, the letter from Adm. Lautenbacher to the Council.

Dr. Freese said that NMFS was concerned that the amendment included measures applicable outside the area designated as EFH (i.e., deeper than 3,500 meters or 1,914 fathoms) and would use the rulemaking process to seek further public input on this issue. Mr. Moore asked if the problem was that there are HAPCs in areas deeper than the area designated as EFH. Mr. Steve Copps came to the podium to clarify. He said that Mr. Moore is essentially correct but the issue did not pertain to HAPCs but to the management measures prohibiting certain kinds of fishing in waters deeper than 700 fathoms, which included depths greater than 1,914 fathoms, the limit of EFH. Mr. Moore asked if the areas in question are areas deeper than 1000 fathoms (or correctly, 1,914 fathoms) but within the EEZ? Mr Copps said that is correct.

Dr. McIsaac clarified his statement on the linkage between this agenda item and Agenda Item I.1, and specifically the letter from Admiral Lautenbacher stating that regulating activity in the water column in the Channel Islands under EFH was not appropriate. Under Agenda Item I.1 the Council decided to move forward under Magnuson-Stevens Act or other authority as far as regulating fishing in the Channel Islands National Marine Sanctuary and under this agenda item would decide whether to use EFH protection as the mechanism. This could result in a partial disapproval of the FMP amendment. Alternatively, the Council could remove that provision from the FMP amendment.

### **H.7.b Reports and Comments of Advisory Bodies**

Dr. Dahl read Agenda Item H.7.b, Supplemental GMT Report.

Mr. Moore asked Mr. Freese if the same issue relative to regulating activities outside of EFH would apply in state waters, as discussed in the GMT Report. Ms. Cooney said that it is a slightly different issue because inside three miles is still EFH, but it is not the area regulated under the FMP. Regulating in state waters only occurs if the Council/NMFS preempts state regulations because they seriously impair NMFS ability to implement the FMP. For this reason it would be better for the state to implement complementary regulations. Mr. Anderson asked about the fixed gear RCA, which includes state waters. Ms. Cooney said that in some cases the boundaries go back and forth across the three mile limit. In other cases the state waters are covered by state law.

Ms. Heather Mann provided Agenda Item H.7.b, Supplemental GAP Report.

Mr. Moore asked about the definition of stowed (gear) in the draft regulations, he mentioned a definition agreed upon under Agenda Item I.1. Ms. Mann said she was not aware of that but provided a definition agreed upon by the GAP. Mr. Moore then asked about the letter concerning the MBARI project, which would further preclude fishing in the limited area still open to fishing in the Monterey Bay area. Ms. Mann said a more formal response from the Council would make them aware of the issue so they could potentially relocate the project.

Mr. Warrens asked for clarification of the statement in the GAP report with regard to halibut trawl grounds and the boundary of one of the proposed EFH closed area.

Mr. Anderson asked about what group was represented by the the reference in the GAP report to the agreement between stakeholders. Ms. Mann said that referred to all of the participants involved in the development of the closed areas under the EFH EIS process.

Lt. Dave Cleary provided Agenda Item H.7.c, Supplemental EC Report.

Mr. Moore asked if the EC had any comments on some of the issues raised in the GAP statement. His only comment was to clarify that as far as he was aware the EC was not involved in any change to boundaries of closed area affecting halibut fishing grounds.

Dr. Dahl read Agenda Item H.7.b, Supplemental HC Report.

#### **H.7.c Public Comment**

Mr. Scott McMullen, Oregon Fishermen's Cable Committee, Astoria, Oregon  
Mr. Brian Petersen, Shrimp Producers Marketing Association, Astoria, Oregon  
Ms. Anne Walton, Channel Islands National Marine Sanctuary, Santa Barbara, California  
Mr. Duncan MacLean, Half Moon Bay Fishermen's Marketing Association, El Granada, California

#### **H.7.d Council Action: Adopt Final FMP Text and Regulatory Language Recommendations**

Dr. Dahl provided an overview of the actions that Council needs to take.

Mr. Moore moved and Mr. Warrens seconded a motion (Motion 23) to adopt the final FMP text for Amendment 19 as shown in agenda item H.6.a attachment 1, that is not part of Amendment 18 as adopted under the previous agenda item, with the following clarifications: the action with respect to regulating the water column on Davidson Seamount and the Channel Islands with language under this FMP conforms to the previous action under Agenda Item I.1.a and that the clarifying language proposed by the Habitat Committee in their report be incorporated into the amendment as transmitted.

Mr. Moore spoke to his motion: he said the Council has heard from its advisory bodies, reviewed a very detailed EIS, reviewed draft FMP language, previously discussed the issue of regulating fishing in the water column around Davidson seamount, discussed the need to make the language in this FMP amendment conform to the earlier decision on fishing regulations for the Channel Islands language, and heard the HC report on clarifying the amendment text on HAPC designation.

Ms. Vojkovich asked about the HC report with respect to HAPCs. The report referenced the draft regulations but Mr. Moore's motion appeared to only reference the FMP text. Mr. Moore affirmed his motion was on the FMP text, and he understood that the earlier comments from Dr. Dahl clarified that the HC comments also addressed the FMP text. Dr. Dahl said, based on his discussions with the HC, their report was referencing the FMP but there was a mistake in the report in that it identified the regulations rather than the FMP text.

Ms. Cooney asked a clarifying question about the intent of the motion with respect to Davidson Seamount. She referenced the bottom of page 8 in the draft regulations for suitable language that might be incorporated into the FMP amendment. Mr. Moore said that if the draft regulatory language offers clarifying language that could be incorporated into the FMP amendment, that would be a suitable way to handle it. Ms. Cooney then asked about what was meant by the FMP language conforming to Council action on the Channel Islands (Agenda Item I.1); she thought the FMP amendment language was consistent with that action. Mr. Moore said that if that was the case then no further changes to the FMP text are necessary. Ms. Cooney asked further clarifying questions. In saying conforming, does that mean to include the entire Channel Island closure that was adopted at the last Council meeting? Mr. Moore said that the advice provided by counsel earlier was that it was not possible to include the entire Channel Islands closure under just the EFH FMP amendment. To the extent that the EFH FMP amendment would cover the action taken earlier, this helps to cover part of the Council's intended action on the Channel Islands. Ms. Cooney said the earlier guidance showed that there wasn't sufficient nexus to have a water column closure in the Channel Islands; therefore, does Mr. Moore intend to remove that provision from this proposed FMP amendment language? Mr. Moore recollected the action taken previously under Agenda Item I.1: the Council agreed to take necessary action under the Magnuson-Stevens Act to meet the goals and objectives of the Channel Islands NMS. His intent was that the FMP amendment should conform with that earlier intention.

Dr. Dahl suggested reference to the draft text on page 53 of Agenda Item H.6.a, Attachment 1 (amendment package) would help in clarifying the previous discussion. This text enumerates the areas closed to fishing off California for specified gear types and additional areas off of the Channel Islands closed to all fishing. If that description is consistent with the earlier action it would stay in the FMP amendment; if not, then it needs to be modified. Mr. Moore said the text referenced by Dr. Dahl at least partially meets the goals of the sanctuary; to the extent this does that, it would stay in the amendment.

Dr. Freese said he was confused by the motion and so he would be abstaining from the vote.

Mr. Warrens asked Dr. Dahl about section 7.3.2, page 70 in the FMP amendment, referencing a process for modifying existing or new HAPCs; does that exclude EFH? Dr. Dahl said yes, that process is specific to HAPC designations and does not speak to modifying the identification of EFH. Mr. Warrens said he assumed this section refers to the motion he made at the June Council meeting about an oversight committee and his intent was that it address EFH and/or HAPCs. Dr. Dahl noted that Mr. Warrens' earlier motion was addressed in two places in the FMP amendment and if the current motion also included a process for modifying EFH it could be addressed in either place. Chair Hansen recommended that a vote be taken on Mr. Moore's motion before any additional motion speaking to this issue be considered.

Ms. Cooney asked again for clarification from Mr. Moore. She referenced the language in the letter from Adm. Lautenbacher (Agenda Item I.1.a, Attachment 2) discussing the regulation of fishing in the water column in the Channel Islands, which states that there is insufficient factual and scientific basis for such an action under the Magnuson-Stevens Act EFH provisions. If Mr. Moore was trying to be consistent with the statement, would Mr. Moore have the Council forward the FMP amendment as it stands now, accepting that NMFS might disapprove the provisions in the amendment that conflict with the position stated in the Admiral's letter? Or is Mr. Moore proposing that the portion of the FMP amendment referenced earlier be changed to close the Channel Islands area to bottom contact gear only, which would be consistent with the assertion in Admiral Lautenbacher's letter. Mr. Moore said his intent was to forward the language in the FMP amendment text that says "closed to fishing" (in the Channel Islands NMS). He noted that the Council was mindful of the Admiral's letter when it had earlier taken action under Agenda Item I.1 to meet the goals of the Channel Islands through NMFS under the Magnuson-Stevens Act. According to the motion under Agenda Item I.1 as Mr. Moore understood it, that action would occur potentially in several places, Amendment 19 being one of them. If the language in Amendment 19 alone is not sufficient to cover the water column issue, there is additional action that could be taken, for example using the EFH provisions in the CPS FMP, which does cover the water column. Mr. Moore continued, from the standpoint of groundfish FMP the Council is trying to go as far as possible to meet the intent of the motion made under Agenda Item I.1. He said Amendment 19 is a necessary first step to do that. Ms. Cooney then asked if Mr. Moore's motion would forward the Amendment 19 text as it stands. Mr. Moore replied yes.

Dr. Burke proposed an amendment to motion 23 to delete 7.3.1.6 (pages 69 and 70, Agenda Item H.6.a, Attachment 1) from the FMP amendment language. Mr. Warrens seconded the motion to amend.

Dr. Burke said it is important to consider the significant public input about designating oil platforms as HAPCs under this amendment. Dr. Burke asked Ms. Vojkovich if she could describe the mission of California Coastal Commission. Ms. Vojkovich said she could not because she did not know. Dr. Burke asked how it fits into the governmental structure. Ms. Vojkovich replied with a brief description of the Commission: a public process to review and permit development in the coastal management zone.

Dr. Burke, referencing public testimony from Mr. MacLean and others, said the amount of habitat on oil platforms is a very small proportion of the total groundfish habitat available. More research on rocky reef habitat, equivalent to the amount of research on oil platforms, would likely provide evidence to include any spot along the coast in an HAPC designation. As stated in public testimony, she is concerned that the HAPC designation is being used to avoid the legal obligation to decommission an artificial structure. She asked the Council to delete oil platforms from the list of HAPCs, considering their size, scope, and impact and comparative lack of research on other natural areas.

Mr. Ticehurst spoke in favor of the designation of oil platforms as HAPCs (and against Dr. Burke's amendment). He has heard testimony about oil platforms and artificial reefs. He feels they are successful in providing a healthy environment and he supports creating better fish habitat, which is a public benefit. If these structures are removed it will result in more damage to a very rich environment, notwithstanding the environmental impacts of the oil platforms and the legal obligation on the part of oil companies to remove them. But in this case the platforms provide real value.

Mr. Harp referenced Supplemental Public Comment 2 from the CARE program and said on this issue he agreed with Mr. Ticehurst.

Dr. Burke said she appreciated Messrs. Ticehurst's and Harp's comments. She emphasized her comments were not related to the debate between the groups providing comments for or against this provision, but the overall amount of research that has been conducted on oil platforms in comparison to other areas.

Mr. Alverson emphasized that these habitats are artificial and asked the Council to consider the tuna purse seine method of fishing on logs, which act to aggregate fish, drawing them away from their natural habitat. The oil platforms have the same function. For this reason he has a hard time supporting this HAPC designation because he is not convinced they are really increasing fish populations rather than just concentrating them in one area. Furthermore, does this make them more susceptible to being caught?

In response Mr. Ticehurst argued that the fish migrated to the oil platforms because it is good habitat and more fish will recruit to the spot they left with a net gain in productive habitat.

Dr. Freese asked Ms. Hannuksela to come forward and address questions he had about HAPC designation. She described the regulatory criteria for designating HAPCs. Once HAPCs are designated, their effect is limited to the consultation process. Dr. Burke asked how the HAPC designation would affect the decommissioning process as far as consultations are concerned. Ms. Hannuksela replied that it would be closely evaluated.

The Chair called for the vote on amendment to motion 23; according to the roll call there were 4 yes, 8 no; Dr. Freese abstained; the amendment to motion 23 failed.

Dr. McIsaac reviewed the main motion. He had a question about the part of the motion which stated the intent to conform with the action taken under Agenda Item I.1 and asked Mr. Moore to speak to his motion. Mr. Moore said that the earlier action was the Council would act under the Magnuson-Stevens Act to meet the goals and objectives of the Channel Island NMS; to the extent that the language in this FMP text is consistent with that motion, it should go forward. The question is whether the amendment text on page 53 in Agenda Item H.6.a Attachment 1 (amendment text) accomplishes this.

Ms. Vojkovich said she understood that Admiral Lautenbacher's letter supported the portion of the FMP amendment that regulates bottom-tending gear for the purposes of groundfish EFH protection. She understood Mr. Moore's motion as supporting the use of action under the Council's other FMPs to accomplish the prohibition of all fishing in the identified Channel Islands closed areas. Therefore, would Mr. Moore agree to move forward with the bottom-tending gear prohibition under Amendment 19 and use other actions to accomplish the rest of the closure? Mr. Moore agreed that was his intent.

Mr. Anderson noted page 53 in the FMP amendment lists areas off of California closed to all fishing. Ms. Vojkovich's interpretation, and his as well, is that these areas are closed to all bottom-tending gear but not closed to all fishing. Mr. Moore said, as he understands it, the earlier action relevant to the Channel Islands under Agenda Item I.1 recognized the limits to what the Council can do by means of this FMP amendment to establish marine reserves in the Channel Islands. The Council can close those areas to bottom tending gear using this FMP amendment and any accompanying regulatory language. Whatever the Council cannot accomplish in meeting the Channel Islands NMS goals and objectives through this FMP amendment would be addressed through other FMP amendments or regulatory proposals.

To further clarify, Mr. Anderson said he understood Admiral Lautenbacher's letter to say that the Council may only prohibit groundfish fishing using bottom-tending gear and cannot close the identified areas to all fishing. Ms. Cooney said that the letter asserted there is sufficient public record to support closing groundfish habitat to bottom-contact gear whether it is groundfish gear or not; since other parts of the FMP amendment text identify areas closed to bottom-contact gear, it would be possible to include these areas in the same section of the document, which would be responsive to the Admiral's letter. Mr. Anderson asked further, even though these areas have been identified as groundfish EFH, is there insufficient basis for closing these areas to all groundfish fishing? Ms Cooney replied that there is not enough public record to support the prohibition of groundfish fishing farther up in the water column, based on the record examined by the agency at this point.

Mr. Anderson then asked if the current motion would add the 12 areas identified as no fishing areas in the draft text to the list of areas where bottom-contact gear would be prohibited, without reference to target species. Mr. Moore responded affirmatively.

The Chair called for a vote on Motion 23. Dr. Freese abstained. Motion 23 passed.

Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 24) to request NMFS take into consideration the comments from the EC, the GAP, and the GMT on the draft regulations (Revised Supplemental Attachment 3).

Mr. Anderson said that his motion does not enumerate the specific recommendations but rather references the recommendations provided by the advisory bodies. He then made two side notes. First, he hoped that NMFS would consider earlier comments by the EC under Agenda Item I.1 with respect to the definition of stowed recreational gear. Second, he noted that there is precedent for NMFS regulating activities in state waters and recommended that the prohibitions on dredge and beam trawl gear proposed in federal regulations cover state waters, not just the EEZ. For Washington State at least, this would make it much more efficient to implement corresponding state regulations.

Dr. Burke asked for an amendment to Motion 24 to delete the definition of stowed gear as shown in Agenda Item I.1.c, Supplemental EC Report, page 5, and insert the definition as amended and delete “and no fishing gear other than a swivel attached to the line.” It was accepted as a friendly amendment.

Motion 24 passed.

Dr. Freese asked that the Council provide comments to NMFS during the public comment period.

Ms. Cooney asked for further clarification on the changes to the FMP amendment text on page 53 relative to the number of areas that are covered. Mr Anderson referenced 12 areas when discussing Motion 23 but there are actually 13 areas; was it the Council’s intent to have all these areas in the Channel Islands covered by the change in the FMP text? Mr. Anderson answered yes, all these areas should be included in the motion.

Mr. Alverson asked if the action the Council just took would affect midwater trawl gear and any other type of gear in the water column. Ms. Cooney said it took out the prohibition of midwater gear and anything else in the water column. Mr. Alverson said he felt it was a big mistake because of the enforcement issue.

Mr. Anderson said he felt the Council focused on that issue but the problem is that the guidance provided indicated that Council could not take that type of action. This led to additional discussion of taking future action under other FMPs to accomplish that type of action.

Mr. Moore asked that staff forward a brief report about the Council’s action here to the Monterey Bay NMS and MBARI relative to their pending cable project, which could completely prevent fishing in that area. He said a fast track would be acceptable.

Dr. Dahl asked if a fast track letter should be sent with the Council’s recommendations on the proposed rule, as recommended by Dr. Freese. Dr. Freese said that would be great.

## **H.8 Exempted Fishing Permit (EFP) Applications for 2006**

### **H.8.a Agenda Item Overview (11/03/05; 11:14 am)**

Mr. DeVore provided the agenda item overview. He noted there were three EFP applications to consider in the briefing book.

### **H.8.b State Proposals**

Dr. Burke described Oregon's application for a shoreside whiting EFP. She explained this EFP application is being forwarded with no substantive change from previous years' EFPs. She asked Dr. Freese for an update on how the fishery might be conducted and funded. Dr. Freese said that the budget for monitoring the shoreside whiting fishery had not been developed yet. He asked Dr. Clarke for input. Dr. Clarke said NMFS was working on monitoring the fishery at a reasonable cost. Last year and the year before, all vessels in the fleet were monitored with cameras. They are reviewing last year's report with the contractor. NMFS received funds for two years of studies using camera monitoring. However, they will probably not have funds for 100% coverage in the future. Dr. Clarke proposed selecting a percentage of the fleet randomly each year for monitoring, and monitoring vessels that had had a certain number of discarding events. It would be preferable to put cameras on all the boats, if funding is available.

Dr. Burke asked about the timeframe for a decision on this. Dr. Clarke said the Region would have to talk about the timeframe, but that NMFS does have a contract (a multi-year contract from last year). Now they just have to wait for funds to become available. Dr. Freese said he thought the parties involved would need to plan for a meeting in early December to discuss budgeting and planning.

Dr. Burke said she hopes the targeted schedule would prevent another year whereby the earlier California fishery starts out without the same kind of observation program as the fisheries for the rest of the coast. She asked about the schedule for Amendment 10 as a whole. The State of Oregon has obtained funding to continue our administration of the program for a limited time; they are hoping to find a new way to administer the program and keep the fishery on the water. Ms. deReynier said, as far as the regulatory schedule is concerned, for 2007 implementation, we would hope for a final Council decision by the June 2006 meeting.

Mr. Anderson said that Washington does not have any EFPs other than the one it shares with Oregon. Dr. Burke noted that this is a cooperative EFP, not a one-state EFP.

Ms. Vojkovich said that California does not have any state-sponsored EFPs, but has EFP applications from two individuals.

### **H.8.c Reports and Comments of Advisory Bodies**

Ms. Ashcraft provided Agenda Item H.8.c, Supplemental GMT Report.

Mr. Moore asked for an explanation of the GMT recommendation to specify 100% plant sampling coverage and 10-15% biological data sampling for the California whiting EFP. Ms. Ashcraft explained the 100% plant sampling is designed to determine the species composition of shoreside whiting landings and the 10-15% biological data sampling is designed to get biological samples such as otoliths for ageing and lengths/weights.

Ms. Vojkovich asked if the GMT had specific recommendations on bycatch set-asides for each EFP. Ms. Ashcraft said the EFP proposals contain requests for set-asides which the GMT found to be reasonable.

Mr. Ghio provided Agenda Item H.8.c, Supplemental GAP Report.

Mr. Harp asked if the GAP was concerned with potential Klamath fall Chinook and Sacramento winter Chinook impacts in the proposed California whiting EFP. Mr. Ghio responded there were no significant concerns since the EFP application specifies a 50-chinook cap. The GAP recommends this EFP.

#### **H.8.d Public Comment**

Mr. Barry Cohen, Olde Port Fisheries/Del Mar, Aptos, California. Mr. Cohen provided additional justification for his proposed EFP (the California whiting EFP).

Mr. Thomas noted that the EFP application said that it could contribute to a database on Pacific whiting bycatch. He noted the bycatch of salmon needs to be very detailed. He recommended that DNA testing be done on any salmon caught.

Mr. Gerry Richter, Point Conception Fishermen's Association, Santa Barbara, California. Mr. Richter endorsed the spot prawn EFP.

Mr. Mike McCorkle, Southern California Trawlers Association, Santa Barbara, California. Mr. McCorkle endorsed his spot prawn EFP and explained the concept of testing bycatch reduction devices in spot prawn trawls in a certain area south of Pt. Conception.

Mr. Duncan MacLean, Half Moon Bay Fishermen's Marketing Association, El Granada, California. Mr. MacLean expressed concerns about the California shoreside whiting EFP and potential impacts on salmon from opening that fishery earlier.

Mr. Hansen asked if DNA information would help address these concerns. Mr. MacLean said he thought DNA testing should be mandatory. Mr. Moore noted the cap on total chinook in the EFP application is 50 fish; is this too much? Mr. MacLean said yes, when dealing with an endangered species.

#### **H.8.e Council Action: Approve Final EFPs for 2006, Including Caps for Overfished Species**

Dr. Freese asked Dr. Clarke to talk about observer issues and Mr. Dayna Matthews to speak about DNA issues. Dr. Clarke said that funding for observers has not been worked out, and that anything that must be added will slow the data turn-around time. Mr. Moore noted that the applicant for the early start whiting EFP in California said they would pay for the one-month EFP, including observers. Dr. Clarke said that NMFS has to handle the logistics, review the data, and ensure quality control. NMFS uses certified and trained observers and can get additional observers via PSMFC and their contractors. Selecting a certain person who is not properly trained will not work with our guidelines for standardized bycatch reporting. However, there are ways to work this out, though it might be difficult.

Mr. Matthews said that DNA testing can be done by the SWFSC Santa Cruz lab and by the Office of Law Enforcement (OLE) forensics lab at the NWFSC. If the SWFSC lab cannot devote resources to do the testing, the Northwest OLE lab could help.

Dr. Burke moved and Mr. Warrens seconded a motion (Motion 30) to approve the joint-state shoreside whiting fishery EFP for 2006, including the caps indicated in the GMT Report, pending adequate funding for the observer program. Motion 30 passed.

Ms. Vojkovich moved and Mr. Thomas seconded a motion (Motion 31) that the Council approve the early season start date for the California shoreside whiting EFP south of 40°30' N latitude and the

California spot prawn trawl EFP, with the bycatch caps recommended by the GMT, pending logistics and funding for the required observers.

Dr. Burke noted that the California shoreside whiting EFP requires plant samplers and that this one does as well. She asked if the state could provide such staffing at this time. Ms. Vojkovich said there would be a plant sampler at the port already.

Mr. Thomas offered a friendly amendment to include DNA testing in the motion which was accepted by Ms. Vojkovich.

Mr. Harp wondered if the spot prawn EFP should be approved provisionally until the GMT specifications are incorporated into the permit. Ms. Vojkovich clarified that the EFP approval was provisional. Mr. Anderson asked if the motion incorporated the eight recommendations of the GMT on the spot prawn EFP and Ms. Vojkovich said it did. Dr. Freese asked if the EFH closures were honored in the spot prawn EFP and was told yes.

Mr. Ticehurst recalled Mr. MacLean's concern that the 50 Chinook cap was too much. He noted that these salmon have been controlling the California fishery for some time now and the fishery has been closed to protect these fish. These are very critical stocks, and DNA testing is a critical part of the EFP. Mr. Moore said the EFP cap is not actually 50 fish; it is potentially less than that, because there is a cap on the amount of whiting that can be taken, and the salmon are a proportion of that.

Ms. Vojkovich said in the GMT report there are the eight provisions they recommend we include in the spot prawn EFP application. Who verifies these, and would we have to develop a revised agreement? Would NMFS verify that these conditions have been met? Dr. Freese said that NMFS does do the verification. He said these EFPs come to us in various degrees of completeness and it's frustrating that we don't get these things dealt with before they come to the Council. He recommended a change in the process of considering and recommending EFP applications so that these refinements are made earlier in the process.

Mr. Anderson said it should be the applicant's responsibility to make these changes before the EFP goes to NMFS. Dr. Freese said that applicants have a much better chance of getting approval if they come to us with observer expectations in mind.

Ms. Vojkovich noted that the applicant for the spot prawn EFP still has to go before the California Fish and Game Commission to request an experimental gear permit.

Motion 31 passed.

## **H.9 Management Measures for Spiny Dogfish and Pacific Cod for 2006**

### **H.9.a Agenda Item Overview (11/03/05; 1:07 pm)**

Mr. DeVore provided the agenda item overview.

### **H.9.b Reports and Comments of Advisory Bodies**

Ms. Michele Culver provided Agenda Item H.9.b, Supplemental GMT Report.

Mr. Moore asked if proposed Alternative 2 accommodates nearly all the fishing that now occurs. Ms. Culver responded some members of the GAP maintain some vessels are disadvantaged with Alternative 2 for spiny dogfish. The GMT supports the GAP-recommended change to Alternative 2.

Mr. DeVore read Agenda Item H.9.b, Supplemental GAP Report.

Mr. Steve Joner provided Agenda Item H.9.b, Supplemental Tribal Report.

#### **H.9.c Public Comment**

Mr. Michael Deach, longliner, Lopez, Washington. He agrees with the GAP statement and the recommended change to Alternative 2.

#### **H.9.d Council Action: Adopt Final Recommendations for 2006 Management Measures**

Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 32) to adopt Alternative 2 for trip limits for spiny dogfish and Pacific cod for 2006 as indicated in the GMT report, with the GAP-recommended modification.

Ms. Vojkovich said she was trying to understand the effect of going from an unregulated fishery to a managed fishery, and having this separate tracking for this fishery in our scorecard, and making sure there's enough canary for this fishery to be prosecuted. How much influence do these trip limits have on canary impacts? Mr. Anderson said we haven't had any trip limits for these species in the open access or limited entry sectors in the past; yet we have specified an amount of canary and yelloweye bycatch in the scorecard that is consistent with the recent year's practice and landings. If there was a large-scale open access directed longline fishery on dogfish in a manner that had landings in excess of what was historically landed, the corresponding bycatch rates for yelloweye and canary could be more than we provided for in the scorecard. The intent of this action is to limit the fishery to the levels it has been in the last five years and to limit the bycatch associated with the fishery to similar levels as in the past few years. It's a precautionary step to make sure the bycatch levels in the scorecard aren't exceeded.

Ms. Vojkovich asked what the actual take was over the past five years. Mr. Anderson said he wasn't sure, but it was in the analytical document (preliminary draft EA; Agenda Item H.9.a, Supplemental Attachment 2). The reason for the increase in Period 2 is because that is when most of the targeted longline dogfish fishery occurs. We did have landings as high as 234,000 lbs in Period 2; the 200,000 lb trip limit is below that high level, but it is consistent with the upper range of the landings we have seen in that period. Ms. Culver added the increase in the trip limit would accommodate what happened in 2004 when 404 mt of spiny dogfish were landed. By taking action here, we will not add any impacts; they are already accounted for in the tables. She clarified that mortality of spiny dogfish and Pacific cod will not be tracked in the bycatch scorecard. The associated bycatch of overfished species are included in the mortality estimates in the limited entry trawl and limited entry fixed gear rows of the scorecard.

Ms. Vojkovich asked when the trip limits were modeled, were they modeled on 2004 catches or an average of the last five years? What was the basis for the modeling of the trip limits? Ms. Culver said the bycatch model is different than the trawl bycatch model; we don't have a specific OY for spiny dogfish that represents a harvest target, so the model doesn't plug in a number and calculate trip limits to get to the number by the end of the year.

Mr. Anderson said WDFW did have a dogfish experimental fishery for three years, and the incidence of yelloweye rockfish was very small, although it was inside the current RCA boundary. This fishery is subject to the RCA restrictions.

Motion 32 passed.

Later on Friday, the Council revisited this item (11/04/05; 1:04 pm). Mr. Harp moved and Mr. Alverson seconded a motion (Motion 46) to adopt the tribal management measures for spiny dogfish and Pacific  
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cod for 2006 as proposed by the Makah Tribe as shown in Agenda Item H.9.b, Supplemental Tribal Report.

Motion 46 passed.

## **H.10 Expansion of Vessel Monitoring System (VMS) (11/03/05 1:40 pm)**

### **H.10.a Agenda Item Overview**

Mr. Burner provided the agenda item overview.

### **H.10.b NMFS Report**

Mr. Matthews and Ms. Becky Renko provided Agenda Item H.10.b, Supplemental NMFS Presentation. Mr. Joe Albert was available for questions.

### **H.10.c Reports and Comments of Advisory Bodies**

Mr. Burner provided Agenda Item H.10.c, Ad Hoc Vessel Monitoring System Committee Report. Messrs. Dave Cleary and Matthews provided Agenda Item H.10.c Supplemental EC Report. Mr. Burner read Agenda Item H.10.c, Supplemental SAS Report. Mr. Wayne Heikkila provided Agenda Item H.10.c, Supplemental HMSAS Report. Ms. Heather Mann provided Agenda Item H.10.c, Supplemental GAP Report. Mr. Steve Crooke provided Agenda Item H.10.c, HMSMT Report. Mr. Burner provided Agenda Item H.10.c, CPSAS Report. Ms. Culver provided Agenda Item H.10.c, Supplemental GMT Report.

### **H.10.d Public Comment**

Mr. Kenyon Hensel, Hensel's, Crescent City, California  
Mr. Daniel Platt, Salmon Trollers Marketing Association, Fort Bragg, California  
Mr. Scott McMullen, Shrimp Fisherman, Astoria, Oregon  
Mr. Ray Monroe, Oregon Salmon Commission, Pacific City, Oregon  
Mr. Brian Petersen, Shrimp Producers Marketing Association, Astoria, Oregon  
Lt. Dave Cleary, on behalf of himself, Salem, Oregon  
Mr. Tom Ghio, Ghio Fish Company, Moss Landing, California  
Ms. Kathy Fosmark, F/V Seeadler, Pebble Beach, California

### **H.10.e Council Action: Adopt Final Preferred VMS Expansion Alternative**

Following Lt. Cleary's personal testimony that allowing too many exemptions to VMS requirements weakens the system and his request to the Council to include all vessels which commercially harvest groundfish, Ms. Vojkovich asked Mr. Tony Warrington and Captain Mike Cenci to provide enforcement perspectives from California and Washington. She specifically asked Mr. Warrington for his ideas on the best expansion alternative from a California enforcement perspective. Mr. Warrington reiterated the comments of Lt. Cleary and felt that the number of vessels targeting groundfish and complicating factors such as transit from nearshore islands through federal water with catch onboard, makes VMS an important tool for all vessels landing groundfish. Mr. Anderson asked the Council chair to allow Captain Cenci to share his perspective on the same matter with the Council. Captain Cenci echoed the comments of his colleagues and stated the most effective program for enforcement is one where VMS is required for vessels that possess or retain groundfish in federal waters. Mr. Anderson asked Captain Cenci about the EC's two part recommendation on VMS requirements, one for the enforcement of RCAs and the other for the enforcement on areas closed for the protection of EFH, specifically asking if VMS would be an essential tool for the enforcement of both areas. Captain Cenci responded that enforcement of both area closures are important and often overlapping and recommends VMS requirements for vessels which land

groundfish for the enforcement of RCAs and VMS requirements for non-groundfish trawl vessels for enforcement of EFH protective measures.

Ms. Vojkovich moved (Motion 33) that VMS be required for any vessels that take and retain, possess or land groundfish as well as non-groundfish trawl vessels for the enforcement of closed areas for the protection of EFH. The intent is to require VMS for any vessel that commercially harvests groundfish at any time including vessels in southern California that fish in state waters around islands but transit federal waters to and from port. Ms Vojkovich added the motion includes a proposed implementation date of June 2007 with a review by the Council, possibly in March of 2007. The review would be intended to allow the Council to react to any changes under a reauthorized MSA regarding state access to VMS information and the use of VMS information in the prosecution of violations in state courts. Mr. Anderson seconded the motion.

Mr. Anderson referenced page 3 of Agenda Item H.10.c Supplemental EC Report and asked Ms. Vojkovich to clarify that the motion includes VMS and declaration requirements for vessels which take and retain, possess, or land groundfish in federal waters as well as non-groundfish trawl vessels using gear types on page 3 pursuant to the goals and objectives for EFH protection. He also wanted to clarify that the implementation date of June 2007, carries with it an update and review of state enforcement access to real-time VMS information and ability to use VMS information to prosecute intrusions into RCAs and areas closed for EFH protection in state courts.

Ms. Vojkovich agreed with Mr. Anderson's clarifications and added that relative to EFH protection the motion includes the EC recommendation for a modified Alternative 4B to require VMS and declaration reports of all non-groundfish trawl vessels (to include pink shrimp, California halibut, sea cucumber, and ridgeback prawn) as a primary enforcement tool for protecting the integrity of EFH area restrictions and closures.

Mr. Anderson, relative to the implementation date of June date of 2007, expressed concerns that the date falls in the middle of a fishing year and asked if the date could be moved to the beginning of 2007 with the Council review at the September 2006 meeting of the status of VMS access by state enforcement entities. Ms. Vojkovich said the intent of the June 2007 date was to allow Council review of VMS expansion after potential passage of legislation to reauthorize the MSA. Dr. Freese, also recommended the Council consider the implementation of the regulations implementing EFH protective measures when considering an implementation date.

Mr. Moore suggested a friendly amendment to change the implementation date to January 1, 2008 to ensure enough time to accommodate reauthorization efforts and the EFH process while not implementing the requirements in the middle of a fishing year.

Ms. Vojkovich did not accept the friendly amendment.

Dr. McIsaac asked for clarification on the language regarding taking, possessing, or landing. As an example, Dr. McIsaac asked about a salmon troller who caught but released a rockfish. Ms. Vojkovich clarified that the language would not include released fish and should state take and retain, possess, or land groundfish.

Dr. Burke asked for clarification on the intent of the implementation date and the proposed Council review. Specifically, is it the intent that the Council would not implement the expansion of the program until a review of changes in the MSA revealed provisions for access to VMS information by state enforcement entities. Ms. Vojkovich stated the timing of these issues is difficult, but the intent would be to not expand the program if state enforcement entities do not have access to the needed information.

Mr. Warrens asked if the motion would include commercial passenger fishing vessels. Ms. Vojkovich stated the motion is not intended to include any recreational vessels nor commercial passenger fishing vessels.

Mr. Alverson referenced the GAP recommendation on drifting (Agenda Item H.10.c, Supplemental GAP Report) and asked for a friendly amendment to the motion to ask NMFS to investigate a system under which a vessel would be allowed to drift within and RCA as recommended in the VMSC report (Agenda Item H.10.c, Ad Hoc Vessel Monitoring System Committee Report) and report back to the Council at the end of the 2006 fishing season. Ms. Vojkovich and Mr. Anderson accepted the friendly amendment.

Ms. Cooney expressed concern with the proposal to not implement the proposed expansion until June 2007 with the understanding that the expansion may not be done at that time. She clarified that if the Council wishes to reverse this action in the future, the Council would need to establish the record and new recommendation at that time rather than now.

Mr. Anderson said the states are tired of the burden of enforcement of federal regulations without the tools necessary to enforce them. The State of Washington is willing to support the expansion of the program because it is an important tool in managing this fishery but, after two and half years the states cannot get anyone to pay attention to the need for state access to VMS information and the ability to prosecute violations in state or federal courts. Mr. Anderson expressed frustration with the lack of progress and the lack of recognition of the problems associated with allowing only federal access to VMS information. Mr. Anderson stated that the motion is intended to get someone in NMFS-Office of Law Enforcement or NOAA to support the necessary changes to the MSA to provide state access to VMS as an enforcement tool.

Mr. Alverson reminded the Council of his motion at the April meeting on VMS expansion and noted that he did not think it failed due to it having too little VMS coverage. Mr. Alverson stated that the motion on the floor, in his opinion, expands the program too far and is not supported by the analyses of impacts to groundfish and groundfish habitat by some of the fishery sectors. He is sympathetic to the frustrations of the states but felt that including the issue of state access to VMS data in the motion was confounding the issues. Mr. Alverson could not support expanding the VMS program beyond the levels recommended by the GAP and EC and said he will not be voting for the motion.

In response to Mr. Alverson, Dr. Burke said there is something wrong with the EC report if each state representative to the EC testified strongly with a different personal opinion. Mr. Alverson stated that the states have adequate representation on the EC and could have expressed them in the EC statement.

Mr. Anderson said that what he heard from the state representatives on the EC were important ways to enhance the ability to enforce the regulations associated with the RCAs and EFH protection; they did not say they were in opposition to the EC Report.

Mr. Alverson reiterated his position that the motion represents an undue burden on the fleet that is not justified by the analysis.

Dr. Freese stated he understands the position of the states on VMS access and acknowledged the consistent pursuit on the issue by the states at national and regional levels over the last few years. Dr. Freese said he will support the states on the issue to the extent that he can. Relative to the implementation date, NMFS plans to publish a proposed rule on EFH which will include the establishment of closed areas and NMFS recommendation to require VMS on all trawl vessels at the time the final rule is in place. Dr. Freese expressed concern about expanding the program contingent upon MSA reauthorization and was uncertain how he would vote on the matter.

Ms. Vojkovich said the motion is less about state access to VMS and more about finding an enforceable solution to the expanding use of closed areas. The task of identifying vessels by their fishing behavior is not only difficult in California due to the large variety of strategies and target species, it is also becomes unenforceable if too many exemptions were identified. The inclusion of a broad range of vessels is intended to aid in the regulation of groundfish species, not just overfished species, and allows vessels to choose whether to pursue groundfish with VMS or to target other species without VMS.

Mr. Alverson asked the state enforcement representatives on the EC about the enforceability of depth based closures in recreational fisheries where VMS is not required. Capt. Cenci said Washington has experience with the "C" shaped closure for the protection of yelloweye rockfish. Washington has been effective at enforcing the area with 11 cases prosecuted in 2005 for incursions. Mr. Warrington stated that California does have some concerns with the concept and is trying to implement closures bound by straight lines where possible. However, enforcement patrols are on the water and are making cases. Lt. Cleary confirmed that violations of depth restrictions in recreational fisheries are occurring and are being prosecuted but could not state that every violator is caught, that does not occur in any fishery. In Oregon the recreational fishery is constrained to shallow, nearshore waters where state enforcement vessels are effective. The commercial fishery operates in deep water and the state does not have the necessary vessels for offshore enforcement.

Mr. Moore stated his intent to vote for this motion. He recalled many discussions in the GAP where many different exemptions were made for vessels or fishery sectors. The GAP identified vessels subject to an RCA as candidates for VMS which is not very different from what is contained in the current motion. The bottom line, as stated by all three state EC representatives, if a vessel intends to land groundfish under the current regulations, the best way to ensure compliance is to have VMS on that vessel.

Ms. Vojkovich noted that the Council has taken on VMS implementation as a progression, starting with the limited entry fleets and is now moving into open access. Ms. Vojkovich stated that under the current management regime, she felt it would not be long before the Council is considering VMS for recreational sectors.

Mr. Anderson asked Dr. Freese if the implantation of VMS could be tied to the implementation of EFH regulations, effectively providing a quicker timeline for VMS implementation. Dr. Freese said it could and suggested that the proposed rule on VMS expansion also address the issue of state access to VMS as a means of soliciting public comment.

Motion 33 passed. Mr. Alverson voted no.

Ms. Cooney asked if the clarification made by Mr. Anderson and Dr. Freese relative to implementation of the VMS requirement along with the EFH regulations was included in the motion. Mr. Hansen and Mr. Anderson stated it was not.

#### **H.10.e Expansion of Vessel Monitoring System (VMS) (11/03/05 5:27 pm) - REVISITED**

Mr. Anderson made a motion (Motion 35) to reconsider Council action under Agenda Item H.10 (Motion 33). Dr. Burke seconded the motion. Motion 35 passed by voice vote.

Mr. Anderson moved to amend Motion 33 (Motion 36) to make the implementation date for VMS and declaration requirements, necessary to enforce the groundfish RCA and EFH conservation goals and objectives, coincide as close as possible to the implementation of Amendment 19 but no earlier than January 1, 2007. Mr. Anderson further moved to amend the motion to remove any linkage between implementation of the motion and certain changes to the MSA associated with state enforcement access to

VMS data and instead instruct the Executive Director to write a strongly worded letter to Dr. Hogarth emphasizing the need for NOAA's support in changes to the MSA and the NMFS policy, if necessary, that would make such information available to state enforcement personnel including the use of VMS information in state court systems. Seconded by Mr. Alverson.

Mr. Moore asked if the letter would be on the fast track process. Mr. Anderson said yes.

Mr. Anderson stated the rationale for the January 1, 2007 implementation date was to allow time for both the implementation of Amendment 19 and for vessel owners to acquire and install equipment.

Motion 36 passed.

## **H.11 Update on Trawl Individual Quota (TIQ) Process and Community Concerns (11/03/05; 4:12 pm)**

### **H.11.a Agenda Item Overview**

Mr. Jim Seger provided the agenda item overview and a PowerPoint presentation (Supplemental Attachment 6) to summarize some of the possible implications of the options contained in Attachment 3 (community concern options).

### **H.11.b Reports and Comments of Advisory Bodies**

Mr. Jim Seger summarized Agenda Item H.11.b, Supplemental TIQC Report. Ms. Kathy Fosmark provided Agenda Item H.11.b, Supplemental GAP Report. Mr. Burner provided Agenda Item H.11.b, Supplemental SSC Report.

### **H.11.c Public Comment**

Mr. Craig Urness, Pacific Seafoods, Clackamas, Oregon  
Ms. Dorothy Lowman, Environmental Defense, Portland, Oregon  
Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, Oregon  
Mr. Dale Myer, Arctic Storm, Seattle, Washington  
Mr. Allen Hightower, F/V Sea Otter, Port Townsend, Washington  
Mr. Pete Leipzig, Fishermens' Marketing Association, Eureka, California

### **H.11.d Council Action: Refine Options**

Dr. Burke moved to go forward with the TIQC report recommendations, deleting the consideration of the individual processor quotas two pie system alternative. Mr. Warrens seconded the motion. (Motion 34). Dr. Burke felt the process by which the two-pie system was brought before the Council was inadequate, that people were not fully aware of the details of what was being brought forward, and that we should not ignore the process when there are options that are being analyzed to address a broad range of alternatives. As a result of these process concerns, the Council has not had the conversation to know what is being proposed for analysis. She also expressed concerns about the cost of such a program and potential delay. Mr. Moore concurred with the concern about the late introduction of the proposal and the likely delays and their effects on consideration of the TIQ program. He noted, however, that the Council wants allocation decisions made in the Council arena and not in other places. If there is no opportunity for processors to make their case on matters like this, as indicated by public testimony from Mr. Myer and Mr. Leipzig, he is not sure where people are supposed to go. Mr. Alverson noted that an option remains on the table to give processors 50% of the allocation of IFQs, similar to what they are asking. There are options in the suite of alternatives adopted for analysis to protect the communities where processors are. These encompass the issues and many of the aspects of a processor type share. Dr. Hanson informed the

Council that while there had not been lengthy discussion at this meeting, at previous TIQC meetings the 2-pie system had been discussed in detail and at length in a number of meetings.

Motion 34 passed.

## **H.12 Management Recommendations for 2007-2008 Groundfish Fisheries—Part II**

### **H.12.a Agenda Item Overview (11/04/05; 1:07 pm)**

Mr. DeVore provided the agenda item overview.

### **H.12.b Report of the GMT**

Ms. Ashcraft provided Agenda Item H.12.b, Supplemental GMT Report.

Mr. Moore asked if the range of recommended management measures includes a seasonal variation of trip limits, such as front-loading Dover sole and Ms. Ashcraft replied seasonal variation will be considered while striving for a year-round fishery.

Ms. Vojkovich asked for an explanation on the Remaining Rockfish OYs and Ms. Ashcraft said they were added back into the ABC/OY table to show how the Minor Rockfish North and South complex specifications were derived. However, the Remaining Rockfish and Other Rockfish harvest specifications are only informative and not used to limit management (i.e., those are not the OYs used in management).

Ms. Vojkovich asked about the starry flounder recommendation and Ms. Ashcraft said the GMT was recommending that stock be managed using a separate stock-specific ABC and OY.

Ms. Vojkovich asked about averaging 2007 and 2008 OYs to specify a single OY used in both years and Ms. Ashcraft said that was the recommendation, although the ABCs would be year-specific.

### **H.12.c Reports and Comments of Advisory Bodies**

Messrs. Ghio and Richter provided Agenda Item H.12.c, Supplemental GAP Report.

Mr. Hansen recommended a 10-inch size limit alternative for sculpin (California scorpionfish).

Mr. Moore noted the GMT recommendations were more general than the GAP recommendations.

Mr. Harp asked for an explanation of the Washington Troller's Association proposal to allow salmon trollers a landing limit of lingcod and why the GAP was opposed to this. Messrs. Ghio and Richter explained the majority of the GAP believes this will promote targeting of lingcod which will result in an increased bycatch of canary and yelloweye rockfish.

Dr. Burke expressed concern with the range of recommended GAP alternatives. Mr. Anderson said this was an opportunity for the GAP to engage the process before April and noted other alternatives may be added. Dr. Burke said she would prefer these recommendations to be advisory to the states before alternatives are specified and Mr. Anderson agreed. Dr. Burke also expressed concern with the recommended process of specifying alternatives in the Allocation Committee venue.

Dr. McIsaac asked how recompression boxes are used and if they should be voluntary or mandatory. Mr. Ghio explained some of the research conducted by ODFW and briefly described the devices tested. He noted that in California they are considering a mandate for recreational fishermen to use these devices to fish in deeper water. Mr. Cedergreen asked how this would be enforced and Mr. Ghio stated each

vessel fishing in depths  $\geq 40$  fm would be required to have these devices on board. Dr. Burke said ODFW has produced a fact sheet on these rockfish release devices that they will submit for the next briefing book. She added more research is necessary to mandate these devices by regulation. Mr. Thomas volunteered that he has tried some of these devices on his boat and they performed well. Mr. Ticehurst said the Coastside Fishing Club has an Oregon State University grant to test these devices. He recommended Dan Wolford give a report on this research.

#### **H.12.d Public Comment**

Mr. Doug Fricke, Washington Troller's Association, Hoquiam, Washington. He requested a lingcod trip limit for salmon trollers starting in 2007.

#### **H.12.e Council Action: Adopt, or Give Guidance on, a Preliminary Range of Management Measures, Including Initial Allocations**

Mr. DeVore recommended the following three actions be taken up in order:

- 1) Adopt the schedule and process for the 2007-2008 specifications and management measures and Amendment 16-4, including setting an early 2006 GMT/Allocation Committee meeting;
- 2) Adopt a range of management measures for analysis, including guidance on allocations and other aspects of the analysis;
- 3) Delegate decision-making to the Groundfish Allocation Committee for further development of alternatives for analysis.

Mr. Ticehurst asked that the Oregon State University item be included in the briefing book for the next Council meeting.

Dr. McIsaac spoke to the proposed process and schedule (Agenda Item H.3.a, Supplemental Attachment 3) and recommended either the week of January 9 or the week of January 23 for the GMT/Allocation Committee meeting. Ms. Vojkovich said she cannot meet in January since CDFG staff will not have developed a new California recreational impact projection model prior to mid-January and she and her staff need to engage their constituents in the last two weeks of January. Mr. Anderson thought the proposed meeting should occur during the week of February 6, even though this is the week of the whiting STAR panel. Dr. Burke asked not to schedule the Allocation Committee during the Friday of that week since the Oregon Fish and Wildlife Commission will be meeting that day. The Council agreed to this schedule (week of February 6 prior to Friday for the Allocation Committee meeting).

Mr. Anderson expressed his concern that the adopted yelloweye rockfish stock assessment did not represent the best available science. His concerns included the fact the assessment was originally scheduled to be a full assessment, but was treated as an update despite the use of a new model; the STAR panel did not have adequate time for a full review of the assessment; and no STAR panel report was provided. Therefore, he moved and Mr. Cedergreen seconded a motion (Motion 47) to have the Council make a request to WDFW to explore and determine if there are new data sources that would be informative to conduct a new full yelloweye stock assessment. If new informative data sources exist, request WDFW staff to prepare a new full assessment; ask the NWFSC to convene a STAR panel to review the new assessment; direct the SSC to do a final review of a post-STAR assessment and STAR panel report; and provide all these findings, recommendations, and documents to the Council at the March meeting.

Dr. McIsaac asked how a new assessment would affect the range of yelloweye rockfish OYs for analysis specified under agenda item H.3 and Mr. Anderson said he intended to extend the range of yelloweye OYs to 27 mt in a separate motion if this motion carried.

Mr. Anderson said he spoke with WDFW personnel, who said a new assessment could be done, and Dr. Clarke, who indicated a willingness to coordinate a STAR panel, if necessary.

Ms. Vojkovich asked if it is possible to throw out the new assessment and use the old one. Mr. Anderson thought that was not an option given the SSC's September recommendation to use the new assessment. Ms. Cooney said throwing out the new assessment against the SSC's recommendation was not advisable. She said there was no legal impediment to re-doing the assessment. If the new STAR panel and the SCC recommend this new assessment, then it is considered best available science. Dr. McIsaac agreed and stated the lack of a STAR panel report was a serious shortcoming. Capping the OY at 27 mt is a workload safety valve.

Motion 47 passed.

Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 48) to adopt the preliminary range of ABCs/OYs and management measures recommended in Agenda Item H.12.b, Supplemental GMT Report with the following modifications: add an OY alternative of 27 mt for yelloweye rockfish; add an alternative allowing a landing limit of 1 lingcod/10 Chinook for salmon trollers; use bycatch scorecard sectors in analyses; and analyze recreational:commercial allocations of 60:40, 50:50, and 40:60 for canary and yelloweye rockfish. Additionally, add GAP recommendations as an advisory document to the Allocation Committee and the state public processes as they deem appropriate.

Ms. Vojkovich asked if the 2007 and 2008 OYs would be averaged (average specified for each year) under this motion and Mr. Anderson said yes.

Mr. Moore moved and Mr. Warrens seconded an amendment to motion 48 to delete consideration of a lingcod allowance in the salmon troll fishery.

Mr. Moore said this idea has been considered and rejected many times in the past and there is not enough data to analyze this option. Mr. Hansen said they talked about it when he was on the GAP and noted that lingcod are no longer overfished. Mr. Anderson said the Washington troll fleet currently has no lingcod allowance and the proposed alternative deals with a small number of fish. He noted he structured the alternative as a ratio to Chinook since this is where the lingcod bycatch occurs. He just wanted to analyze this option. Mr. Ticehurst asked how many salmon he was talking about and Mr. Anderson said, if there were 30,000 Chinook landed in 2007 and everyone caught the full 10% lingcod bycatch, then that would be 3,000 lingcod. He added that it was unrealistic that every salmon troller would land that many lingcod and thought the impact would be closer to 1,000-1,500 lingcod. Dr. Burke asked if this alternative would affect fisheries in other states and Mr. Anderson said yes.

Vote on Amendment to Motion 48: Amendment failed.

Main motion 48 passed.

## **H.13 Final Consideration of Inseason Adjustments, If Necessary**

### **H.13.a Agenda Item Overview**

None.

### **H.13.b Report of the GMT (11/04/05; 2:38 pm)**

Ms. Ashcraft provided Agenda Item H.13.b, Supplemental GMT Report.

### **H.13.c Reports and Comments of Advisory Bodies**

Mr. Ghio provided Agenda Item H.13.c, Supplemental GAP Report.

Mr. Harp provided Agenda Item H.13.c, Supplemental Tribal Report.

### **H.13.d Public Comment**

None.

### **H.13.e Council Action: If Necessary, Adopt or Confirm Final Inseason Adjustments for the 2005 and 2006 Groundfish Fisheries**

Mr. Moore moved and Mr. Warrens seconded a motion (Motion 49) to adopt the GMT recommendations from Agenda Item H.13.b, Supplemental GMT Report with the following modifications: for the 2006 fishery: adopt option 3 previously shown on Agenda Item H.4.b, Supplemental GMT Report with the change in the RCA line as recommended by the GMT; for December, 2005: close all the limited entry trawl fisheries, except the Dover sole, thornyheads, and sablefish fishery north of 36° N latitude and adopt any cumulative limit changes that go with that.

Ms. Vojkovich asked for a friendly amendment to keep flatfish fisheries south of 36° N latitude open while prohibiting retention of petrale sole and slope rockfish coastwide. This was accepted.

Mr. Alverson asked for an explanation of option 3 and Mr. Moore said it was the trip limits recommended by the GMT in Agenda Item H.4.b, Supplemental GMT Report. He added the motion also is to adopt the latest recommendations by the GMT and GAP in their reports under this agenda item.

Ms. Vojkovich asked if the motion included a canary reserve and Mr. Moore said no.

Mr. Anderson asked if the motion would leave the trawl fishery open outside 250 fm for species other than petrale sole and slope rockfish north of 36° N latitude and Mr. Moore said the motion pertains to trawl fisheries coastwide. Mr. Anderson said the proposed action would turn landed catch into discards, while still being over the ABC. Mr. Moore agreed, but the alternative would be to close fisheries that catch trace amounts of petrale sole. This would create a race for fish before December, which would likely increase petrale sole mortality.

Mr. Anderson asked if the current regulations that went in effect October 1 allow petrale sole retention and Mr. DeVore said there is an allowable 2,000 lb retention, although petrale retention was prohibited during the month of October south of 36° N latitude. He asked if the expected mortality of 5-10 mt of petrale sole, assuming current limits stay in place, includes landings plus discards and Mr. Burden said yes.

Mr. Anderson said he did not understand how we are reducing trawl mortalities with this and Mr. Ghio explained how the race for fish in November would increase petrale sole mortality.

Mr. Moore made clear that his motion also adopts the GMT's bycatch scorecard as shown in Agenda Item H.13.b, Supplemental GMT Report.

Mr. DeVore asked if the motion contains one two-month cumulative limit period or two one-month periods for the start of 2006 and Mr. Moore said it was two one-month periods with the RCA line change in period 3 as recommended by the GMT.

Motion 49 passed. Mr. Anderson and Dr. Freese voted no.

Ms. Vojkovich announced that CDFG will consider liberalizing sculpin harvest opportunities in 2006 in state waters. Under this option, the season will align with those for the rockfish-cabezon-greenling complex. They will review this option and come to the March Council meeting with a recommendation.

Mr. DeVore wanted to know if the preliminary actions taken under Agenda Item H.4 stand with this action. He noted this included the 200 mt darkblotched OY for 2006. He also noted the GMT-recommended canary rockfish reserve would not carry unless a motion is made to do so. He read the list of other GMT recommendations from Agenda Item H.4.b, Supplemental GMT Report.

Mr. Moore moved and Mr. Warrens seconded a motion (Motion 50) to adopt as final the preliminary actions that were taken under Agenda Item H.4., as well as the recommendations shown in page 4 of the Agenda Item H.13.b, Supplemental GMT Report, except as superseded by Motion 49.

Motion 50 passed.

## **I. Marine Protected Areas**

### **I.1 Channel Islands National Marine Sanctuary (CINMS)**

#### **I.1.a Agenda Item Overview (11/02/05; 8:13 am)**

Mr. Mike Burner provided the agenda item overview.

#### **I.1.b Statement of the CINMS Staff**

Mr. Chris Mobley reviewed the letter from Vice Admiral Lautenbacher (Supplemental Attachment 2) and noted the great deal of work by both the Council and NOAA to arrive at the conclusion that both the MSA and the NMSA can work together to achieve the CINMS goals and objectives. The CINMS and the NMSP values the input from the Council and looks forward to further Council comments as the CINMS moves through the NEPA process. Regarding the timeline, Mr. Mobley anticipated a release of a DEIS and accompanying draft regulatory package this winter followed by a comment period with the FEIS completed in the summer or fall of 2006. The CINMS will be looking closely at Council actions regarding Amendment 19 to the groundfish FMP, and, per the Vice Admiral's letter, the CINMS will work to ensure that the combination of MSA regulations under Amendment 19 and those under the NMSA achieve the sanctuary goals and objectives. Mr. Mobley referenced CINMS model regulations (Agenda Item I.1.b, Supplemental CINMS Report, Model Regulations) which have been shared with the GAP and the EC and are only slightly modified from the last version to conform to the Vice Admiral's letter. Staff of the CINMS has been working on regulatory language with the EC and the GAP and the Council is encouraged to consider adopting the model language as a formal response to the 304(a)(5) process.

Ms. Margo Jackson was available for Council questions.

#### **I.1.c Reports and Comments of Advisory Bodies**

Mr. John Royal provided Agenda Item I.1.c CPSAS Report. Mr. Burner read Agenda Item I.1.c, CPSMT Report. Dr. Kevin Hill provided Agenda Item I.1.c, Supplemental SSC Report. Ms. Kathy Fosmark and Mr. Jim Tuttle provided Agenda Item I.1.c, Supplemental GAP Report. Mr. Duncan MacLean provided Agenda Item I.1.c, Supplemental SAS Report. Mr. Burner read Agenda Item I.1.c, Supplemental HC Minutes - November 2005 (181<sup>st</sup> Council Meeting)

Report (the HC's concern are that an appropriate management system be developed to protect habitat within the sanctuary). Lt. Dave Cleary provided Agenda Item I.1.c, Supplemental EC Report.

#### **I.1.d Public Comment**

Mr. Greg Helms, Ocean Conservancy, Santa Barbara, California  
Mr. Duncan MacLean, PCFFA, El Granada, California  
Mr. Gerry Richter, B & G Seafoods, Inc, Santa Barbara, California  
Mr. Daniel Strunk, Pierpoint Sportfishing, Long Beach, California  
Mr. Bob Osborn, United Anglers of Southern California, Huntington Beach, California

Ms. Margo Jackson, Mr. Chris Mobley, and Mr. Sean Hastings were asked to come back to the podium for the three questions posed in Agenda Item I.1.a, Supplemental Attachment 3 (indented and italicized below). Ms. Jackson stated that Ms. Cooney and Mr. Helvey were going to address some of the questions.

1. The July 19, 2005 conference call on this subject of a legal analysis of MSA/State authority versus NMSA authority indicated further legal review was underway and that the analysis requested by the Council would be provided by mid-October. The letter received was just over 2 pages in length and included no attached legal analysis. With the exception of one sentence on California State landing laws, the letter contained only one phrase relative to analytical substance: "Based on our review of existing factual and scientific evidence..." While this phrase was repeated several times, there was no evaluative review with the cover letter. No evidence cited, no legal analysis, no analytical rationale or concepts (again, other than the one California jurisdiction sentence). So, question #1: Can the legal analysis of the two possible avenues be provided to the Pacific Council?

Ms. Cooney informed the Council that NOAA drafted the analysis as an internal legal opinion and NOAA is not interested in releasing it to the public at this point.

Ms. Cooney stated that under the MSA there exists the authority to do many things, however, a record to support those actions has to be established. This record needs to demonstrate why you are taking the action as well as providing a nexus to the desired goals of the action. Under the proposed action, the goal was the protection of groundfish EFH and NOAA examined the record supporting EFH protection regulations under the MSA. NMFS pulled together the factual basis for this specific action as the basis for the internal legal analysis. Dr. McIsaac asked for clarification on whether the legal opinion is intended for some future public release. Ms. Cooney stated the analysis was drafted as an internal legal opinion, not for public release.

2. A "water column" rationale was stated on the phone call for the conclusion that MSA authority would not be appropriate in closing Channel Island waters above the seafloor. However, the letter states the conclusion that closing the 1000 feet of water column above the Davidson Seamount seafloor is appropriately done under MSA. Hence question #2: What is the analysis of the "...factual and scientific evidence..." that concludes legally identified groundfish EFH in 1000 feet of benthic water column can be protected from all fishing gear in one location but not the next?

Mr. Helvey stated that the demonstrated need of the proposed action is the protection of groundfish EFH and in this regard there are unique differences between the Davidson Seamount Area and the Channel Islands area. There is not a demonstrated link between adverse impacts to groundfish habitat and the water column where there is a link between adverse impacts and bottom habitat. At Davidson Seamount, NOAA has concluded that unique conditions exist at large seamounts due to large current systems such as the California Current System interacting with the seamount creating an eddy effect know as a Taylor Column which holds resident larvae in the area and entrains and holds productivity in the adjacent water

column. Due to the pristine nature of the seamount area and the unknown benefits of these eddies, NOAA has taken a precautionary approach by creating a buffer over the Davidson Seamount. These conditions do not exist at the Channel Island sites.

Mr. Moore then asked what the scientific basis is for closing the water column at the Channel Islands location. Mr. Helvey and Ms. Cooney explained that the analysis done by NOAA was looking at the rationale of protecting groundfish EFH under the MSA and did not address the scientific rationale for closing the water column from the perspective of the CINMS or the NMSA. Mr. Helvey stated that the CINMS objective is broader than the MSA and involves goals such as ecosystem protection.

3. The citation of insufficiency of California State landing laws to cover the gap between MSA authority and species/activities not covered by MSA authority seems a distant practical threat at best, and doesn't seem to recognize instances of State reciprocity laws that we see in use in fisheries on the West Coast nor other examples where State laws compliment and allow enforcement of offshore federal fishing regulations. With regard to the practical threat that a boat from another State might fish in one of the closed areas around the Channel Islands and land in another State, the port of Brookings, Oregon is the closest such possibility. It is some 1000 miles from the narrow 3-6 mile patchworked closed areas around the Channel Islands, with any species of interest available much closer to Brookings. At today's fuel prices, a round trip to this nearest port of concern would cost nearly \$10,000 in fuel alone. This threat seems remote and distant as a practical matter, certainly less than routine enforcement concerns associated with the thousands of boats with California home ports near the CINMS. So, question #3: What State laws were reviewed and how did the practical threat of an extra-State boat fishing in these areas and landing outside California rank with the other practical threats evaluated?

Ms. Jackson stated that the CINMS has been working closely in a long and productive manner with the state of California to achieve the goals and objectives of the Sanctuary. Implementation of state laws to fill any gaps in MSA authority would require legislative and California Fish and Game Commission action. The analysis looked at the degree to which California state authority could help create an area of no take and identified items such as the lack of regulation of vessels from other states as potential barriers to a true no-take regulation. The examination did not look at probabilities or a ranking of possible threats to no-take regulations. There was also a question of timely implementation, in addition to two federal statutes, adding state authority adds at least one state process and potentially two additional state regulatory processes if Oregon and Washington reciprocity were needed.

Dr. McIsaac asked about reciprocal state authority and pointed to Oregon and Washington reciprocity laws for salmon fishing as an example and asked Ms. Jackson if NOAA had looked into this type of arrangement in this instance. Ms. Jackson said they did not look at other state laws, the analysis only considered the use of California state law when considering potential deficits in the creation of no-take areas.

Mr. Mobley added that the CINMS is not far from an international border which could bring international regulatory issues to bear and that the CINMS is looking for a timely, efficient, and not overly burdensome method of creating the no-take areas.

Mr. Anderson stated that while the Vice Admiral was clear in his letter regarding NOAA's intent in this matter, he does not understand the concern over vessels coming to the CINMS from Washington or Oregon without a California state license and felt it was an impractical perspective. Mr. Anderson pointed out the precedent and the history of cooperation between the 3 states on Dungeness crab management. Although Mr. Anderson was not certain about authority over foreign vessels, he was confident that there were mechanisms available to the Council to address non-California licensed vessels without going through the NMSA.

Ms. Jackson appreciated Mr. Anderson's perspective and repeated the fact that the analysis did not explore that or discuss such mechanisms. Ms. Jackson stated that it seemed the Council disagreed most with the changes to the CINMS Designation Document, as it appears that such changes will be necessary to completely close an area in an efficient manner under the existing federal statutes.

Mr. Moore asked if the CINMS had looked at the MSA for mechanisms for regulating foreign vessels. Mr. Mobley said the issue was not whether the MSA could address that issue, but rather, what is the most efficient, less complex, and seamless, way to achieve the closure and he felt the NMSA is more appropriate. Ms. Cooney, clarified there is a provision under the MSA that allows some recreational fishing in U.S. waters by foreign vessels. Mr. Moore suggested the CINMS consider Title II of the MSA which already prohibits foreign vessels from fishing in the CINMS.

Mr. Moore asked for the rationale for allowing recreational fishing for pelagic species such as salmon and tuna while prohibiting commercial vessels. Mr. Hastings said it is the extension of the existing state regulations that was the result of long negotiations with California and the CINMS is recommending seamless regulations for state and federal waters.

Mr. Moore asked about the timeline for completing this process. Ms. Jackson said the intent is to release the DEIS in January or February and to respond to public comments and complete the process by late summer or early fall of 2006.

Mr. Moore referenced the model regulations presented by the CINMS and noted that they address issues other than those already addressed under MSA. Chairman Hansen noted that all of the Councils Advisory Bodies requested that the regulation of fishing stay within the MSA, and that in conversations he had with the Vice Admiral, it seemed clear that if the Council develops a way to achieve the CINMS goals and objectives under MSA there would be no need to do it under the NMSA. Ms. Jackson said that is correct but stated that NOAA will still proceed as directed in the Vice Admiral's letter. There will always be times the NMSA will have to cover items like cultural resources and research but, the more fishing regulations in the CINMS can be handled through the MSA the less they will be needed under the NMSA.

Dr. McIsaac asked if the Council was able to develop regulations under MSA prior to completion of the ongoing process, for example regulations to protect EFH for one or more species in the CPS FMP, will changes to the CINMS Designation Document be withdrawn or changed. Ms. Jackson said there is a need either way to amend the Designation Document for other types of take such as for research or educational purposes. Ms. Jackson said it is more a matter of the degree of the changes.

Mr. Moore recalled that under the NMSA, sanctuaries already have the authority to regulate research activities. Ms. Jackson replied that this is not the case and this authority is granted to individual sanctuaries differently as necessary. Mr. Moore asked if the Designation Document changes could then only be limited to research take while not addressing the regulation of commercial or recreational fishing. Ms. Jackson could not confirm that.

Mr. Harp noted the Vice Admiral's letter is silent on the Olympic Coast National Marine Sanctuary. He noted tribal concern regarding changes to Sanctuary Designation Documents. He stated the tribes were promised by the NMSP when the OCNMS was established in the early 1990s that the NMSP would not get involved in treaty fishing rights or activities of the four coastal Washington tribes. He noted the tribes have expressed in a letter to the Vice Admiral their position that the MSA is the best way to regulate fisheries. The tribes have not received a response to their letter to the Vice Admiral, but they feel there is the potential for conflict if the NMSP does not hold to the promise of not regulating fisheries.

Ms. Vojkovich was looking to the future and asked about the process under the NMSA of modifying or expanding the reserves and conservation areas currently being considered.

Ms. Jackson said the NMSP would have to go through the same regulatory process as we are currently in. She continued to clarify that the changes to the Designation Document are proposed to only address the current MPA consideration at the CINMS and would not grant the CINMS authority to change or add closed or restricted areas. At the request of Ms. Vojkovich, Ms. Jackson clarified the various ways a Sanctuary proposal could be brought forward by the public including the Sanctuary Advisory Council, the PFMC, and the California Fish and Game Commission.

**I.1.e Council Action: Adopt Final Recommendations for Proposed Fishing Regulations under National Marine Sanctuaries Act Authority (11/02/05; 10:27 am)**

Mr. Alverson asked Dr. Clarke about the impacts to survey work of the NWFSC as a result of this proposed action at the CINMS. Dr. Clarke said there would likely be a new permitting process and the survey request could be denied. That clearly could happen, but she would try to work with all to make sure that did not happen. Mr. Moore asked if NMFS is in fact conducting surveys in the areas that could potentially be closed. Dr. Clarke said she was not certain at this time but her recollection is that they have had surveys in these areas in the past.

Ms. Vojkovich moved (Motion 16), to use Agenda Item I.1.a, Attachment 1, and I.1.c, Supplemental EC Report, to provide CINMS with the regulations adopted in June 2005 relative to groundfish EFH as proposed under Option 2 of Agenda Item I.1.a, Attachment 1 and to continue to explore achieving the CINMS goals and objectives through MSA and state authorities. Regarding specific regulatory language, include the language on page 4 of Agenda Item I.1.c, Supplemental EC report but remove the language relative to stowed gear under Section 2.3.a (i.e., remove the stowed gear definition on page 5 and direct the regulatory language on stowed gear be worked out between the EC, the fishing community, and the CINMS. Additionally, on page 5, amend the paragraph under Section 2.3.a which begins “Unless already prohibited...”, to be amended in the third line after “cause the loss of any living or dead organism”, add “from the water column” and add a definition of “water column” in the regulation. Seconded by Mr. Ortmann.

Ms. Vojkovich said the CINMS proposed Federal water system of reserves has been developed under a long public process and the state of California has been committed to the goals of the CINMS since the CFGC adopted the proposal in 2003. She added that this has been a learning experience for California and the Council. The Vice Admiral has graciously responded to Council questions and concerns and has given us clear direction. The Vice Admiral also states in the letter the NMSP will move forward with fishing regulations under their authority regardless if the Council provides regulatory language. Therefore, Ms. Vojkovich feels it would be prudent for the Council to provide regulatory language to meet the goals and objectives of the CINMS. Ms. Vojkovich stated that California is interested in maintaining as much state authority as possible and is interested in ecosystem approaches to management and the broader policy implications of the application of MPAs in federal waters that are not part of a NMS. California is not interested in duplicate management processes and bureaucracies.

Mr. Moore stated he was sympathetic to the issues raised and the time spent on protecting areas within the CINMS. Although supportive of efforts to consider protected areas and ecosystem approaches to management, Mr. Moore recalled the testimony of the advisory groups and the tribes and feels the NMSA is not the proper way to do it.

Ms. Vojkovich, recalled Ms. Jackson’s comments and reminded the Council that the proposed changes to the Designation Document are specific to the proposed action and would not include future actions in other areas.

Mr. Ticehurst expressed concern with the motion and stated that he felt that the recreational fishing community would not be supportive of an additional layer of fishing regulatory procedures.

Mr. Anderson expressed concern with the amount of regulatory language proposed for the NMSA under the motion when it appears to him that a great deal of the proposed language could be accomplished under MSA, he felt the motion could be too broad. Ms. Vojkovich stated she was responding to the Vice Admiral's direction and felt it was better to provide the CINMS with proposed language. Ms. Vojkovich was also concerned with the very limited time the Council has to develop regulations and the uncertainty that may exist if the CINMS moves forward with regulations without Council input.

Mr. Anderson, referred to the comments of Mr. Harp and would have concerns if similar actions were proposed for the OCNMS. He stated that the goals and objectives of a sanctuary need to match the goals and objectives of the states and the tribes as well as our FMPs and he stated he will not support the motion because it uses the NMSA to implement regulations that would be more appropriate under state or MSA authority.

Dr. Burke clarified with Ms. Vojkovich that a vessel is only held to California state fishing regulations if it lands in California and said that based on many of the comments made, she too is against the motion.

Mr. Ortmann requested that the items the Council could address prior to the November 23 deadline be separated from those that cannot. Dr. McIsaac stated that the regulations could be tailored to only apply to the water column in the allotted time, but the public process of developing a definition of stowed gear most likely could not.

Motion 16 roll call vote taken. Motion 16 failed.

Mr. Moore moved (Motion 17) to write a letter to Vice Admiral Lautenbacher that is appreciative of his response and notifies him of the Council's intent to use MSA authority to provide appropriate protection for sanctuary resources and habitat, including the water column, and as a result, the Council opposes a change to the Designation Document in regards to the regulation of fishing. Additionally, direct Council staff to prepare draft regulations under the relevant FMPs based on the Agenda Item I.1.c, Supplemental EC report with a new definition of stowed gear, as well as to include the water column in the second paragraph of Section 2.2.a. Mr. Alverson seconded the motion.

Mr. Moore said the difference of opinion on this matter is not what we are trying to achieve and he feels that based on the previous motion and the statements heard today, there is a desire to use MSA authority.

Dr. Burke asked Ms. Vojkovich if she felt the motion should also provide guidance on the issue of anchoring. Ms. Vojkovich stated that she would be fine with the anchoring regulations not matching between the state and federal areas and that she would defer to the EC on matters associated with federal regulations such as those in place in the RCAs.

Ms. Cooney stated the motion should not only speak to the Council staff drafting regulations, but also establishing the record, analysis, and rationale for why the regulations are necessary under each of the FMPs. Mr. Moore said being sensitive to that, he suggested the draft regulations and accompanying analyses come back to the Council for further consideration before they go to NMFS and the Secretary as an established record. Ms. Cooney said the regulations usually grow out of the record and are usually packaged together.

Dr. McIsaac reread the motion and responded to some clarification by Mr. Moore.

Mr. Moore said the Council has heard testimony over the years regarding a desire to provide ecosystem protection not just for fishery resources but to other resources in the Channel Islands by creating a system of marine reserves in specified areas of the CINMS. All of the documentation over the years has been available to Council and public. In order to accomplish ecosystem protection by creating marine reserves, there is the necessity of drafting regulations within the context of our various FMPs. Mr. Moore suggests the rationale for the action for drafting regulations under the FMPs come from the tremendous public record of scientific information and public testimony.

Ms. Burke requested Lt. Cleary come to the podium to discuss the definition of stowed gear in the proposed regulations. Lt. Cleary and the EC suggested you eliminate the stowed gear definitions. From the federal enforcement perspective it would be adequate to state that gear cannot be used while transiting the closed area, similar to the way the issue is currently treated within RCAs. The stowed gear definitions in state waters could remain with no currently perceived conflict. Relative to the anchoring issue, the EC remained silent to the issue and would appreciate some Council guidance. Under state regulation vessels can anchor in no-take areas with fish onboard which is a less restrictive regulation than what would be desired in federal waters. Ms. Vojkovich reported the federal waters being considered are not conducive to anchoring and vessels are far more likely to want to anchor in close to the islands in state waters where anchoring is currently allowed. The EC interest in disallowing anchoring in federal waters would not be an issue and she felt it is really up to the enforcement agents to advise the Council on preferred regulations.

Mr. Anderson thought the solution for stowed gear definition was simple and felt that if we struck the language "and no fishing gear other than a swivel. . ." in Agenda Item 11.c, Supplemental EC Report, we would take care of the problem. Lt. Cleary agreed.

Mr. Anderson said he was uncomfortable with the motion and is not in favor of it. He reference the two year process the Council has been engaged in and much of that effort would be lost if the motion passes. Mr. Anderson felt that of the suite of regulations being discussed there were only two that the Council could not implement under MSA, the no-take marine reserve per the letter from the Vice Admiral, and the recreational lobster fishing regulations as lobster are not included under any of the Council FMPs. Mr. Anderson stated that the Council has determined the no-take marine reserve areas within the CINMS are consistent with our FMPs and he felt the Council should enact those regulations that can be done under MSA and recommend those that cannot be implemented under the NMSA and complete this two year process.

Mr. Moore said we are trying to get to the same end point but he noted that NOAA had only considered the groundfish EFH process when concluding that the MSA could not establish a no-take marine reserve and that is why the motion includes all of the Council FMPs. Mr. Moore felt the Council could create a no-take reserve but it would take action under all of the Council FMPs.

Ms. Cooney reminded the Council of the need for establishing a record in support of a Council action. She stated that MSA does not have direct authority to protect the ecosystem. Ecosystem considerations are appropriate for management actions such as setting OYs but Council regulations need to be tied to our specific management regimes and authority. The record would need to be tailored to the specific authorities of our FMPs.

Roll call vote taken on Motion 17. Motion 17 failed.

Mr. Alverson said the MSA provides the Secretary of Commerce the authority to provide his own regulations. He suggested the Council request that process rather than the Council going through a litany of potentially duplicative actions under each of our FMPs

Ms. Cooney recalled the MSA authority Mr. Alverson referred to is intended as an emergency rule provision or to be used if a Council fails to meet its objectives and is very rarely used.

Mr. Anderson moved (Motion 18) that the Council recommend the Designation Document for the CINMS be changed in a manner to allow the promulgation of regulations presented in Agenda Item I.1.c, Supplemental EC Report with the two modifications: (1) on page 5, under Section 2.3.a relative to stowed gear, on the third line the phrase “and no fishing gear other than a swivel attached to the line...” be struck and (2) clarification that anchoring with fish onboard would not be allowed in the areas designated as no-take areas. Mr. Cedergreen seconded the motion.

Dr. Dave Hanson said his understanding of Motion 18 is that it is identical to Motion 16 made by Ms. Vojkovich and, if it is, it cannot be made without substantially changing it. He asked Mr. Anderson to address the changes.

Mr. Anderson said Motion 16 referenced Option 2 under Agenda Item I.1.a, Attachment 1, recommending fishing regulations implemented under the groundfish FMP be implemented under the NMSP. Mr. Anderson may have misunderstood the intent of Motion 16 but, implementing all of the groundfish EFH regulations under NMSP seemed to go to far and formed the basis for him voting no on Motion 16 and is why he feels the current motion is different.

Dr. Hanson said he is asking because a misunderstanding alone would not be enough to allow reconsideration and the current motion seems to be the same as what has been referred to as Option 2 under Motion 16. Mr. Anderson stated there were two portions of Motion 16 working from two separate documents. Dr. Hanson said the Chairman has to decide if Motion 18 sufficiently differs from Motion 16.

Mr. Anderson said there were shortcomings identified with the groundfish EFH piece in that it did not allow us to promulgate closures in the water column and we only had authority to regulate bottom-contact gear regulations. This is the principal reason that Motion 18 does not reference Agenda Item I.1.a, Attachment 1, and is why this motion is different. Chairman Hansen agreed.

Mr. Moore opposed the motion because in order to implement the proposed regulation under the NMSA, the CINMS Designation Document would need to be changed to promulgate the regulations, and 11 members of this Council voted that proposal down under Motion 16. He reiterated the promises made by the NMSP to the tribes and the fishermen in California to not regulate fishing and concerns about impacts to valuable research programs. Mr. Moore stated opposition to regulating fisheries under the NMSA and expressed concerns for the potential precedent this Council action could set.

Mr. Warrens agreed with Mr. Moore’s comments on potential impacts to research. Mr. Warrens stated that without a guarantee that NMFS survey methods would not be curtailed he cannot support the motion.

Mr. Harp also expressed an interest in continuing survey and research activities and would not be supportive of any action that would complicate research activities. Mr. Harp also asked if the motion included the insertion of language into Agenda Item I.1.c, Supplemental EC Report on page 5, in the paragraph which begins “Unless already prohibited...”, in the third line after “cause the loss of any living or dead organism”, add “from the water column”.

Mr. Anderson, said the motion did not include such language changes, but he would entertain an amendment on his motion. The action being proposed was developed in consultation with the CINMS and is consistent with the objectives of our June action on groundfish EFH and our other FMPs, otherwise, he would not be proposing this motion.

Mr. Helvey asked if we could resolve the research issue and asked the CINMS staff to clarify. Mr. Mobley stated the CINMS is part of NOAA and if there were a permitting process, the CINMS would work with NMFS scientists to figure out how to meet its goals and objectives of research programs. Additionally, the NEPA analyses will consider what research activities are currently underway and how they may be affected by the proposed action. On the broader issue of ecosystem approaches to management and the role of Sanctuaries, the CINMS has been working with California and will continue to conduct an intensive research and monitoring program to address these issues.

Dr. Burke said she is struggling with the motion because it is unclear to her what the Council needs to do to build a record for ecosystem management approaches. Additionally, she plans to vote in opposition to this motion as she feels this motion is the same as Motion 16 that was not supported by the Council.

Ms. Vojkovich asked about the groundfish EFH agenda item that comes before the Council and how this action may affect that agenda item. Dr. McIsaac presumed that if the current motion passes, the Council would remove regulatory elements pertaining to the CINMS and the element of the water column out of the groundfish EFH agenda item.

Mr. Alverson spoke against the motion and the NOAA recommendation to address fishing regulations in the CINMS under two federal statutes and felt that the authority of fishing should remain under MSA.

Voice vote taken, Motion 18 failed.

Mr. Harp moved to adopt (Motion 19) Agenda Item I.1.e, Supplemental Motion in Writing: "The Pacific Fishery Management Council proposes that no fishing regulations be promulgated under the authority of the National Marine Sanctuaries Act. The Council will, as soon as possible, develop regulations and the record to support those regulations, under the Council fishery management plans. These regulations will be written in order to achieve the Channel Islands National Marine Sanctuary goals and objectives.". Mr. Warrens seconded the motion.

Mr. Harp said the motion is clear, it is different than the previous motions, and is similar to Option 1 under Agenda Item I.1.a, Attachment 1.

Voice vote taken on Motion 19, Motion 19 passed.

## **J. Highly Migratory Species (HMS) Management**

### **J.1 NMFS Report (11/03/05; 5:35 pm)**

#### **J.1.a Regulatory Activities**

Mr. Mark Helvey gave an update on regulatory activities based on Agenda Item J.1.a, Attachment 1

He also noted that Agenda Item J.5 could be dropped from the current agenda because the draft FMP document is not yet ready for review. He noted that the HMS SAFE report identified bigeye tuna as overfished according to status determinations made by international bodies. Therefore, additional work is necessary. He also recommended that the Council instruct the HMSMT and SSC further investigate the question of reference points for certain HMS stocks. Based on a question from Dr. McIsaac, Mr. Helvey agreed that the bigeye tuna overfishing FMP amendment should be rescheduled for the March 2006 Council agenda.

### **J.1.b Science Center Activities**

Dr. Gary Sakagawa alerted the Council to three international science meetings coming up. SWFSC will be attending all three of these meetings.

### **J.1.c Reports and Comments of Advisory Bodies**

None.

### **J.1.d Public Comment**

Mr. Peter Flournoy, GAC member to the IATTC, San Diego, California

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

Mr. Doug Fricke, fisherman, Hoquiam, Washington

### **J.1.e Council Discussion**

None.

## **J.2 Proposed Protocol for Reviewing EFPs for Highly Migratory Species**

### **J.2.a Agenda Item Overview (11/04/05; 8:07 am)**

Dr. Kit Dahl provided the agenda item overview. He also noted that an EFP application was received at the Council offices and included under this agenda item as Supplemental Attachment 2. He recommended that the Council take action on adopting the review protocols and then consider the EFP application under Supplemental Attachment 2.

### **J.2.b Reports and Comments of Advisory Bodies**

Mr. Wayne Heikkila provided Agenda Item J.2.b, Supplemental HMSAS Report. Mr. Steve Crooke provided Agenda Item J.2.b, HMSMT Report.

### **J.2.c Public Comment**

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

### **J.2.d Council Action: Adopt Interim and Final EFP Review Protocols**

Ms. Vojkovich noted that observer availability and data quality have become issues with groundfish EFPs. She asked if there would be similar problems with HMS EFPs and whether the protocol should include a step where EFP applicants discuss observer requirements with NMFS before submitting a proposal to the Council.

Mr. Craig Heberer came to the podium and said the observer coverage is a limiting factor and the applicants for the EFPs the Council will review at this meeting have discussed this with NMFS. Data quality is also an issue, although the SWR does not use outside contractors for its observer program at this time. He said the SWR and SWFSC agrees with the comments made by Dr. Clarke about data quality issues.

Mr. Alverson moved and Mr. Moore seconded a motion (Motion 37) to adopt the interim (shown in Agenda Item J.2.a, Attachment 2) and final EFP protocols (shown in Agenda Item J.2.a, Attachment 1) for HMS.

Mr. Alverson read from the HMSMT Report to note the applicability of the two protocols.

Motion 37 passed on a voice vote.

Mr. Alverson moved and Mr. Harp seconded a motion (Motion 38) to adopt for public review the EFP submitted by Mr. Pete Dupuy as shown in Agenda Item J.2.a, Supplemental Attachment 2.

Ms. Vojkovich said she would vote against the motion, noting that the EFP proposal was the same as one submitted to the Council at the June 2005 meeting, which she voted against. This proposal is also for an experimental longline fishery in the EEZ, which is counter to State of California policy.

Mr. Alverson pointed out that Council action is only to adopt the proposal for public review; final action will be taken at the next Council meeting.

Mr. Helvey pointed out that the Mr. Dupuy's EFP proposal is somewhat different than the one he submitted earlier (June 2005). He reviewed elements of the proposal and pointed out that this application has a different intent, focusing on encouraging a switch in gear from drift gillnet to longline, because longline gear results in less bycatch. He also argued that the current proposal more clearly describes the gear and methods, intended to reduce sea turtle bycatch, in comparison to the earlier submission. Although he recognizes the State of California policy on this matter, he noted that CDFG permitted limited experimental longline fishing in 1988. At the time, one of the concerns expressed by CDFG was potential marlin bycatch, yet no marlin were caught in this experimental fishery. He also emphasized that the Council action at this meeting was only to adopt the EFP proposal for public review.

Mr. Ticehurst brought up the point made by Mr. Osborn in public testimony with regard to the depleted status of several HMS stocks. This EFP proposal would allow targeting of those species. He thought it was a waste of Council time to go forward with this proposal considering the Council voted down a similar proposal at an earlier meeting.

Mr. Helvey wanted to clarify that this EFP proposal would target swordfish and mako shark; the depleted tuna species referenced by Mr. Ticehurst will not be targeted.

Motion 38 passed on a voice vote.

### **J.3 Drift Gillnet Management (11/04/05; 8:30 am)**

#### **J.3.a Agenda Item Overview**

Dr. Dahl provided the agenda item overview.

#### **J.3.b Highly Migratory Species Management Team Report**

Mr. Steve Crooke read the HMSMT report. Ms. Elizabeth Petras then gave a PowerPoint presentation.

Mr. Moore asked if the EFP had any additional mitigation measures, such as gear modifications, to reduce sea turtle take. Ms. Petras said no, briefly reviewing gear requirements.

Ms. Vojkovich asked if the HMSMT discussed the use of VMS for the EFP. Mr. Crooke said no, because 100% observer coverage would be required. Ms. Vojkovich then asked whether mitigation measures would apply under option 3d in the HMSMT report. Ms. Petras said no.

Dr. McIsaac asked if leatherback sea turtle distribution changes when El Niño or other environmental conditions occur. Mr. Tomo Eguchi, NMFS SWFSC, said that there was not enough information to determine what effect El Niño conditions have on leatherback distribution, although ongoing tagging projects are trying to gather the necessary information. Dr. McIsaac noted that the biological opinion for this fishery estimated three takes and two mortalities per year, yet observer information indicated no takes since 2000; he asked if this was a contradiction of the information going into the biological opinion. Ms. Petras noted that the observer coverage is at 20%, so there may be unobserved takes. Mr. Jim Carreta, NMFS SWFSC, reviewed the available information. Mr. Crooke noted that it is unlikely to encounter leatherback sea turtles in the current open area. Mr. McIsaac followed up by asking what level of take would be expected from observer data over the past five years. Mr. Carreta pointed out that the encounter rate is so low that it is uncommon for any expected take level to match the actual number of takes.

Mr. Roth asked if any analysis of other protected species has been done. Ms. Petras said that this will be an element of the evaluation of this action. She noted that under the EFP alternatives the amount of effort is small, so an increase in impacts is not expected.

Dr. Dahl noted that Option 5c in the HMSMT report should read 600 sets, not 750.

### **J.3.c Reports and Comments of Advisory Bodies**

Mr. Heikkila provided Agenda Item J.3.c, Supplemental HMSAS Report. He also noted the conservation representative on the HMSAS voted against the recommendations contained in their report.

### **J.3.d Public Comment**

Mr. Chuck Janisse, FISH, Bridgewater Corners, Vermont

Ms. Kathy Fosmark, F/V Seeadler, Pebble Beach, California

Mr. Ben Enticknap, Oceana, Portland, Oregon

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

### **J.3.e Council Action: Adopt Public Review Draft of Proposed Options to Modify the Drift Gillnet Time/Area Closure**

Mr. Moore asked if NMFS has already planned the proposed 100% observer coverage for the EFP included in this action. Mr. Heberer said NMFS has been planning for this EFP and also has the ability to shift observers from the non-EFP fishery. Nonetheless, the observer budget is likely to be limited in 2006 and is likely to be a limiting factor. Mr. Moore then asked, if one of the EFP alternatives were adopted, would participation under the EFP be reduced to maintain 100% observer coverage? Mr. Heberer said there are probably not enough observers to support the upper range of fishing effort in the alternatives given available observer resources at this time.

Mr. Alverson moved (Motion 39) that the Council adopt for public review the list of alternatives in the HMSMT Report. Mr. Warrens seconded the motion. Mr. Alverson said these alternatives are supported by both the HMSMT and HMSAS.

Ms. Vojkovich asked about whether the Council could actually entertain Option 3d or whether it was subject to another legal framework. Ms. Petras responded that the original closure was implemented by regulations under the ESA; when the HMS FMP was implemented those regulations were incorporated into the regulations pursuant to the FMP and they are no longer in the section of the CFR pursuant to the ESA. Therefore, it is up to the Council to take action, keeping in mind that any action would be subject to a section 7 consultation. Ms. Cooney said Option 3d can be one of the alternatives for EA analysis; a determination of its feasibility would be based on that analysis.

Mr. Ticehurst asked whether there is information on the impact of this fishery on sharks, particularly thresher sharks. Ms. Petras said the EA would evaluate the impacts on fish species. Dr. Dahl then noted he believes there is a HG in the FMP covering these sharks, developed on the basis of a stock evaluation; that provides additional management control.

Ms. Vojkovich said she was going to vote in favor of the motion in order to put out the options for public review. However, she is skeptical of the options that allow opening up the closed area without putting in place any mitigation measures, such as the leatherback sea turtle mortality caps. The range of options should include Option 7, which would authorize the development of a limited entry program.

Motion 39 passed.

Mr. Alverson moved and Mr. Warrens seconded a motion (Motion 40) to adopt for public review the EFP contained in Agenda Item J.3.a Attachment 2.

Mr. Alverson noted the team and panel have reviewed the proposal while being mindful of Oceana's testimony on the effects of drift gillnets. Mr. Moore asked if the motion encompasses the need to potentially reduce participation under the EFP in order to achieve 100% observer coverage. Mr. Alverson said yes.

Motion 40 passed.

#### **J.4 Albacore Management Planning (11/04/05; 9:44 am)**

##### **J.4.a Agenda Item Overview**

Dr. Dahl provided the agenda item overview.

##### **J.4.b NMFS Report**

Mr. Helvey recommended the Council direct the HMSMT begin scoping to determine reference points for the North Pacific albacore stock and other HMS stocks known to be in a stressed condition.

He reported NMFS prepared a background document on management of North Pacific albacore (Agenda Item J.4.b, Attachment 1). Mr. Helvey also touched on the Draft Resolution on North Pacific Albacore from the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Agenda Item J.4.b, Supplemental WCPFC Albacore Resolution).

##### **J.4.c Reports and Comments of Advisory Bodies**

Mr. Fricke provided Agenda Item J.4.c, Supplemental HMSAS Report.

##### **J.4.d Public Comment**

Mr. Doug Fricke, Hoquiam, Washington

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

Mr. Peter Flournoy, International Law Offices, San Diego, California

##### **J.4.e Council Discussion and Guidance on Planning Albacore Management Activities**

Ms. Vojkovich supported the recommendation made by Mr. Flournoy in public testimony that the Council write a letter to the WCPFC delegation relative to the North Pacific albacore effort limits. She said the items mentioned in the HMSAS report should be included in the letter along with a discussion of the issue of effort reduction consistent with Council thinking on the matter. She also recommended

sending a letter to NMFS and the Coast Guard about the IUU (illegal, undocumented and unreported fisheries) issue mentioned in the HMSAS report. Third, the HMSMT and SSC should provide advice on the development of biological reference points and thresholds for HMS stocks. Fourth, the question of recreational bag limits for North Pacific albacore should be discussed at future HMSMT and HMSAS meetings and further investigated. They should also begin looking at historical commercial effort in the North Pacific albacore fishery.

Mr. Alverson asked the other Council members if there was consensus to send the letter to the U.S. WCPFC delegation and a letter to the Coast Guard. There was consensus on these recommendations. Chairman Hansen noted the Coast Guard was well aware of what is going on.

Mr. Anderson followed up on the recommendation for further discussion of recreational bag limits for North Pacific albacore. This would be an appropriate topic for the HMSAS, although the representation may need to be broadened since there are no members representing recreational interests in the north. The Council needs to plan a process for decision-making on the development of bag limits with involvement of the states. However, at this time he was not providing a recommendation that the HMSMT work on developing bag limit recommendations.

Ms. Vojkovich agreed she was not saying bag limit recommendations should be developed, but in general terms it is within the scope of a discussion of effort limitation measures. Mr. Anderson followed up by saying the states should all follow the same process for scoping bag limits, if there is a recommendation for the states to begin thinking about this. Ms. Vojkovich noted recreational anglers have approached the State of California about establishing albacore bag limits. Dr. Burke said the State of Oregon is going to have public meetings on the albacore bag limit issue.

Mr. Ticehurst said he supported recommendation #1 in the HMSAS Report; the Council should support adoption of the WCPFC North Pacific albacore resolution.

Mr. Helvey asked for further clarification of Ms. Vojkovich's recommendation on the development of stock reference points. Dr. McIsaac said this task should be put on the SSC and HMSMT agendas. He said he was unsure about putting the issue of albacore bag limits on the advisory body agendas.

Dr. Burke said the states are moving forward on this issue outside the Council process. Mr. Anderson noted WDFW will hold public meetings on this issue soon.

Ms. Vojkovich, asked if SWFSC staff could help the HMSMT and SSC on the development of reference points. Dr. William Fox, Director, SWFSC, said the SWFSC would be glad to work with the HMSMT and SSC. He summarized international efforts to develop North Pacific albacore reference points. They will identify but not set reference points. The Center could report back to the Council in March on these efforts. He hoped the Council would develop recommendations to the IATTC and WCPFC on the types of reference points they might set for these stocks.

Mr. Moore asked if the U.S. is working with Canada on developing effort limitation measures. Mr. Helvey noted the U.S./Canada albacore treaty is coming up for renegotiation in 2006 and the starting point would be the lower level of Canadian fishing activity in U.S. waters in 2005. Mr. Moore said he is aware of these negotiations and hoped the U.S. will work with Canada on this issue.

**4 PM Public Comment Period**

Public comment period for items not on the agenda.

Mr. Ray Monroe, Oregon Salmon Commission, Pacific City, Oregon. Mr. Monroe provided a short DVD to the Council members showing the dory fleet daily operations in Pacific City, Oregon.

ADJOURN

The meeting was adjourned on Friday, November 4, 2005 at 3:16 pm.



April 3, 2006

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**Council Chairman**

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**Date**