

MINUTES
Pacific Fishery Management Council
Crowne Plaza Hotel
1221 Chess Drive
Foster City, CA 94404
September 10-15, 2006

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A. Call to Order

A.1 Opening Remarks, Introductions

Chairman Hansen opened the 185th meeting of the Pacific Fishery Management Council on Monday, September 11, 2006 at 4 pm. Upon opening the meeting, Chairman Hansen called for a moment of silence in commemoration of the September 11, 2001 tragedy.

A.2 Roll Call (09/11/06; 4:07 pm)

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

Mr. Phil Anderson (Washington State Official)
Mr. Mark Cedergreen (Washington Obligatory)
Mr. Kathy Fosmark (California Obligatory)
Mr. Donald Hansen, Chairman (At-Large)
Mr. Frank Lockhart (National Marine Fisheries Service, Northwest Region)
Mr. Jerry Mallet (State of Idaho Official)
CDR Peter Martin (US Coast Guard, non-voting)
Mr. Curt Melcher (State of Oregon Official)
Mr. Rod Moore (At-Large)
Mr. Dale Myer (At- Large)
Mr. Dave Ortmann, Vice Chairman (Idaho Obligatory)
Mr. Roger Thomas (At-Large)
Ms. Marija Vojkovich (State of California Official)
Mr. Frank Warrens (Oregon Obligatory)
Mr. Gordon Williams (State of Alaska Official, non voting)

The following Council members were absent:

Dr. Dave Hanson, Parliamentarian (Pacific States Marine Fisheries Commission, non voting)
Mr. David Hogan (US State Department, non voting)
Mr. Tim Roth (US Fish and Wildlife Service, non voting)
Mr. David Sones (Tribal Obligatory)

A.3 Executive Director's Report

Dr. Don McIsaac, Executive Director highlighted the informational reports.

Mr. Anderson reported that he will be leaving this week on Wednesday, and Ms. Michele Culver will be sitting in the Washington seat this Thursday and Friday.

A.3.a Swearing in of New Council Members (09/11/06; 4:03 pm)

Mr. Joe Scordino, National Marine Fisheries Service (NMFS), swore in newly appointed Council members Ms. Kathy Fosmark and Mr. Dale Myer. Mr. Scordino also presented the reappointment certificates for Chairman Don Hansen and Mr. Frank Warrens.

A.4 Council Action: Approve Agenda

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

B. Administrative Matters

B.1 Future Council Meeting Agenda Planning (09/12/06; 8:08 am)

B.1.a Agenda Item Overview

Dr. Don McIsaac provided the agenda item overview.

B.1.b Reports and Comments of Advisory Bodies

Dr. Bob Conrad provided the SSC report. Ms. Michele Culver provided the HMSMT Report. Dr. John Coon read the HC report.

B.1.c Public Comment

Dr. Rod Fujita, ED, San Francisco, California
Mr. Steve Joner, Makah Fisheries, Neah Bay, Washington

B.1.d Council Discussion of Future Council Meeting Agenda Topics

Chairman Hansen noted that the draft agenda is overloaded and needs prioritization. Mr. Anderson said he recommends getting all of the agenda items identified and put on a list prior to setting priorities.

B.2 Regulatory Streamlining: Initial Development of a Regional Operating Agreement

B.2.a Agenda Item Overview (09/13/06; 11:15 am)

Vice Chairman Ortmann chaired this agenda item. Dr. Kit Dahl provided the agenda item overview. Mr. Moore asked what role the advisory bodies would play in the regional operating agreement (ROA). Mr. Lockhart emphasized the frontloading concept. Dr. Dahl distinguished between advisory body participation in development of the ROA versus their role when and if an ROA is implemented. In the former he said they would have an opportunity to comment as anything developed. For the latter he said he didn't see much change in their role. Mr. Anderson suggested that advisory body responsibilities could be described in the roles and responsibilities section of the ROA. The Council should coordinate and communicate with their advisory bodies in the formation of inter-agency work groups.

Ms. Cooney said the idea that the Regional Administrator would provide advice during Council closed session is not appropriate and should be removed. Second, the draft states that GC will make a determination on the type of NEPA document; this should be a general responsibility of NMFS, with advice from GC. Finally, she concurred with Mr. Anderson's comments on the role of advisory bodies with respect to inter-agency work groups. But this might have implications in terms of public notice of meetings. She said NOAA GC will participate as best it can, but is not staffed to address regulatory streamlining and therefore may not be able to formally sign any regional operating agreement.

B.2.b Reports and Comments of Advisory Bodies

None.

B.2.c Public Comment

None.

B.2.d Council Discussion and Guidance

Vice Chairman Ortmann asked about the draft ROA, and the test case actions. Would the Council finalize an ROA while the test cases are ongoing, or would the Council still be working under a draft ROA until the test cases are completed?

Dr. Dahl said it would be up to the Council when you wanted to finalize the ROA. The groundfish open access licensing test cases may take several years to complete. It might make sense to revise the ROA based on experience gained during that process and decide later when there is sufficient information for the ROA to be finalized. Dr. McIsaac said the mackerel harvest guideline test case is already over. The purpose of these test cases is to see how well the ROA would work under different situations experienced by the Council. He described how the attachments related to the test cases.

Mr. Lockhart said that each NMFS region is approaching this differently. But in general, development of an ROA has to be an iterative process with continued updating based on experience.

Dr. Dahl asked if there were any more specific questions on the concept paper. He thought the document would be developed further and brought back to the Council at a future meeting.

Ms. Vojkovich asked if it would be possible to identify problems to the Council as they arise during a specific (test case) process. She saw this as mainly an agreement between Council and NMFS staffs and was unsure if she needed to involve herself in its development. Dr. McIsaac responded that it would be an agreement between the two NMFS regions and the collective Council, not just the staffs. He pointed to the expedited process for the mackerel harvest guideline as something the Council might want to identify in an agreement as how such an action would be processed. Similarly, he talked about a more extended process as exemplified by the groundfish open access licensing process. He suggested that an ROA could be brought back in a more developed form at a future meeting. He concluded by emphasizing its importance to the Council as a whole because it will identify how they plan to conduct business in a regionally tailored manner.

Mr. Moore asked if a chart could be prepared comparing how an action would play out under an ROA versus current practice. Dr. McIsaac referenced Attachment 4 as an example of what Mr. Moore is asking for and went through the material to demonstrate the comparison. Dr. Dahl emphasized that the way the Council currently conducts its business is generally consistent with the NMFS draft Operational Guidelines and any ROA is not intended to substantially change current practices. Rather, some elements would be made more explicit and formalized.

Ms. Cooney said the primary idea was to get issues fully aired by the agency at an early stage in the process, before the Council takes an action.

Vice Chairman Ortmann said he thought the Council had made improvements in terms of process. Dr. McIsaac followed up by saying that the original purpose for getting involved in the regulatory streamlining process was because there has been a line item in the budget and Dr. Hogarth had asked the Councils to begin to work on it. He said at this point the Council could simply direct staff to further develop the ROA, taking into account comments made today.

Mr. Melcher wondered if having an agreement that needs to be updated or changed over time would generate more work and problems. He asked if that issue was addressed in the concept paper. Dr. Dahl said it was not but that could be another part of the agreement. He agreed that the ROA should have a simple mechanism for changes and updates so another layer of process is not added.

Ms. Vojkovich said she understood from Ms. Cooney's comments that one purpose of the ROA is to allow NMFS to have an early idea of what issues would arise from Council action. Based on this, she wondered about emergency actions. She is concerned that it not lock the Council into a process that would reduce flexibility. Mr. Lockhart said he didn't see this as establishing a set of deadlines. Rather, when issues are identified those people in NMFS who clear the decision have to be involved early on in the process.

B.3 Approval of Council Meeting Minutes (09/14/06; 8:18 am)

B.3.a Council Member Review and Comments

Review and comments.

B.3.b Council Action: Approve April 2006 Minutes

Mr. Dave Ortmann moved (Motion 12) to approve Agenda Item B.3, Draft April 2006 Council Meeting Minutes. Mr. Moore seconded the motion. Mr. Melcher asked for a friendly amendment, on page 12, seventh paragraph down that said "The point of the report was that one of the methods evaluated for estimating the effects of trip limits were judged inadequate" should read "The point of the report was that one of the methods evaluated for estimating the effects of trip limits was judged to be adequate". Both the maker and seconder of the motion accepted the friendly amendment. Motion 12 passed.

B.4 Fiscal Matters

B.4.a Agenda Item Overview

Dr. John Coon provided the agenda item overview.

B.4.b Budget Committee Report (09/14/06; 9:28 am)

Mr. Jerry Mallet provided Agenda Item B.4.b, Supplemental Budget Committee Report.

B.4.c Reports and Comments of Advisory Bodies

None.

B.4.d Public Comment

None.

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

Mr. Mallet moved and Mr. Dave Ortmann seconded a motion (Motion 20) to approve the report of the Budget Committee (Agenda Item B.4.b, Supplemental Budget Committee Report).

B.5 Appointments to Advisory Bodies, Standing Committees, and Other Forums for the 2007-2009 Term, Including any Necessary Changes to Council Operating Procedures (COP)

B.5.a Agenda Item Overview (09/14/06; 8:22 am)

Mr. Chuck Tracy presented the agenda item overview.

B.5.b Reports and Comments of Advisory Bodies

Mr. Bob Conrad presented Agenda Item B.5.b, Supplemental SSC Report.

Dr. McIsaac asked what percentage of the SSC agenda would involve ecosystem management and require expertise in the fisheries oceanography arena. Mr. Conrad replied the link between groundfish populations and environmental factors is becoming more common in SSC discussions. Dr. Liz Clarke recommended expertise in broader ecosystem approaches than fisheries oceanography.

Mr. Melcher asked if the SSC preferred to add seats rather than replace existing seats. Mr. Conrad replied yes.

Mr. Tracy presented Agenda Item B.5.a, Supplemental Attachment 3.

B.5.c Public Comment

None.

B.5.d Council Action: Consider Changes to COP, Appoint New Members as Necessary, and Solicit Nominations for the 2007-2009 Advisory Body Term

Mr. Cedergreen moved (Motion 13) to modify the composition of the HMSAS and 1) add a northern charter boat operator, 2) change the existing charter boat operator to a southern charter boat operator, and 3) eliminate the public at-large position. Mr. Warrens seconded the motion.

Mr. Cedergreen noted the attendance of the public at-large position has poor, and emerging issues for Oregon and Washington charter boats have been handled by one of the commercial representatives. The proposal would not cause any net budget change.

Ms. Fosmark agreed it was important the recreational sector be represented on the HMSAS, but recommended the Council consider appointing an interested person from the Seafood Institute to the public at large position.

Ms. Vojkovich asked for guidance on the at large position.

Mr. Moore said having a neutral party was very helpful in the GAP at times.

Mr. Melcher noted the nature of the northern fisheries were entirely different than the Southern California fisheries, and supported Mr. Cedergreen's motion.

Mr. Warrens offered a friendly amendment to change the sport fishery at-large seat to the northern charter representative, and retain the public-at-large seat. Mr. Cedergreen agreed to the friendly amendment. Motion 13 passed.

Mr. Melcher asked what the cost to the Council was for each SSC member. Dr. Coon gave a rough estimate of about \$800 per meeting, plus STAR panel meetings and other subcommittees, for a total of about \$10,000 per year for non-federal employees.

Mr. Lockhart recommend the two areas of expertise recommended by the SSC, fisheries oceanography and sociology, be part of the 6 at-large positions on the SSC. Dr. McIsaac noted the SSC did state the current membership was fully engaged, and adding more seats is the intent of their proposal.

Mr. Ortmann moved (Motion 14) to adopt the changes to the COPS as shown in Agenda Item B.5.a, Attachment 1, and Agenda Item B.5.a, Supplemental Attachment 3 providing authority for the Chairman to make appointments to the GAC non-voting member seats. Mr. Moore seconded the motion.

Mr. Melcher asked if the new language would allow permanent appointments. Mr. Tracy replied yes, but it would not preclude standard procedure for recruitment.

Mr. Melcher asked for a friendly amendment to change the wording from "...to make appointments..." to "...make interim appointments...".

Dr. McIsaac asked if the non-voting advisors to the GAC were three year terms or indefinite appointments. Mr. Tracy replied indefinite terms.

Both maker and seconder accepted the friendly amendment. Motion 14 passed.

Mr. Helvey moved to change the COP for the CPS Management Team (COP 3) to add an additional seat from SWFSC. (Motion 15) Mr. Thomas seconded the motion. Motion 15 passed.

Mr. Helvey noted that Dr. Squires SWFSC seat would not be filled by the SWFSC. Dr. Stohs will fill the economist role provided by Dr. Squires for the HMSMT.

Mr. Helvey moved (Motion 16) to change COP 3 to convert the vacant SWFSC seat on the HMSMT to provide a seat for an IATTC representative. Ms. Vojkovich seconded the motion. Motion 16 passed.

Mr. Tracy noted Council staff recommended the EFH oversight committee be an ad hoc committee because it is unlikely there would be a continual need to review proposed EFH changes.

Mr. Moore recommended a subset of the SSC, GAP, and Habitat Committee handle those duties as they arise.

Dr. McIsaac noted there was an EFH EIS oversight committee that could be converted to the EFH Oversight Committee, which would be made up of Council members.

Mr. Moore expressed concern with Dr. McIsaac's suggestion because it would be necessary to have the technical expertise to look at potential changes and boundaries of those habitat areas.

Mr. Warrens agreed with Mr. Moore, and recommended the Council leave it up to the Chairman to appoint the committee.

Dr. McIsaac asked what the composition of the technical subcommittee of the EFH EIS oversight committee associated with Groundfish Amendment 19 was. Dr. Dahl replied the purpose of the EFH technical review committee was to provide input into the model to characterize habitat, and included a combination of scientists and fishermen.

Mr. Warrens noted the purpose of the EFH oversight committee was to recommend to the Council any modifications to the EFH areas and should include fishermen from the Oregon/California fishing grounds. He recommended the Council Chairman appoint appropriate personnel to that committee.

Ms. Culver noted the role of the committee would be to review proposed changes to the HAPC and trawl area closures, not to propose changes.

Mr. Moore reiterated that because of the fiscal obligations the review could be given to some subcommittee of the SSC, GAP or other advisory body, and that any technical changes would be provided to the Council.

Dr. McIsaac stated an ad hoc committee to be appointed by the Chairman would suffice to comply with the FMP.

Mr. Moore moved (Motion 17) that the Council establish an ad hoc EFH oversight committee with membership determined by the Council Chairman, but to include appropriate representatives from the GAP, GMT, and SSC. Mr. Warrens seconded the motion. Motion 17 passed.

Mr. Melcher moved (Motion 18) to make the following personnel changes: appoint Mr. Brett Wiedoff to replace Ms. Jean McCrae on the Coastal Pelagic Species Management Team, appoint Ms. Cyreis Schmitt to replace Ms. Jean McCrae on the Highly Migratory Species Management Team, and appoint Ms. Kelly Ames to replace Ms. Gway Kirschner on the Groundfish Management Team. Mr. Warrens seconded the motion. Motion 18 passed.

Ms. Vojkovich moved (Motion 19) to direct staff to solicit nominations to the HC, SSC, CPSAS, GAP, SAS, HMSAS, for the new three-year term beginning in 2007, and the Groundfish Allocation Committee representing the Open Access and Whiting Fishery sectors. Mr. Cedergreen seconded the motion. Motion 19 passed.

Chairman Hansen appointed Mr. Phil Anderson and Mr. Frank Warrens to serve on the Budget Committee; Mr. Dale Myer and Ms. Kathy Fosmark to serve in the Legislative Committee; and Mr. David Sones to serve on the Coastal Pelagic Species Tribal Allocation Committee.

B.6 Updated Research and Data Needs (09/14/06: 9:53 am)

B.6.a Agenda Item Overview

Vice Chairman Dave Ortmann chaired this agenda item. Mr. Mike Burner provided the agenda item overview.

B.6.b Reports and Comments of Advisory Bodies

Dr. Conrad provided Agenda Item B.6.b, Supplemental SSC Report.

Dr. Conrad confirmed for Mr. Moore that STAR Panel reports, including the report on the Pacific whiting assessment, were reviewed for high priority research and data needs when the groundfish chapter was drafted and noted that Council comments on the reports content are welcomed.

Mr. Melcher asked about the addition of Section 3.3 pertaining to emerging issues for salmon and stated that he did not find that section in the document. Mr. Conrad confirmed Section 3.3 has been newly added and will be included in the public review draft after the meeting.

Ms. Fosmark noted that under the Marine Mammal Protection Act there is an advisory body that reviews existing data and research on take of species of concern and that this advisory body includes turtle research in their deliberation. She recommended the SSC consider this group as a possible resource when completing the HMS section of the document.

Dr. Elizabeth Clarke stated the document represents a good start but is lacking in its treatment of bycatch

and observer research needs. She added the groundfish section is also lacking a discussion of ongoing cooperative research and is missing some recommendations from the various STAR Panels. Dr. Clarke noted the NWFSC maintains a running list of research and data issues from STAR Panels and other sources and offered to have the NWFSC staff review and comment on the groundfish section in time for the public review draft.

Ms. Vojkovich asked if needs listed under each section had been prioritized. Dr. Conrad stated that certain sections identified the highest priorities but an effort to rank the overall needs was not done due in part to the amount of time available.

B.6.c Public Comment

Mr. Bob Alverson, Fishing Vessel Owners Association, Seattle, Washington

B.6.d Council Action: Adopt for Public Review

Mr. Moore recommended that the Council take up Dr. Clarke's previous offer to review and comment on the groundfish section.

Ms. Fosmark referenced the listed top priority research needs for marine reserves and noted it mentions nothing of marine reserves as research and control sites. The Council agreed that text on this topic should be added to the public review draft of the document.

Mr. Lockhart noted in several NWR discussions it is a top priority to look a shoreside sampling, particularly in regards to recent developments on the shore-based whiting fishery and the TIQ process. Mr. Lockhart recommend on page 1 of the draft groundfish section under Section 2.2 we add to the first bullet after logbooks, "shoreside sampling."

Chairman Hansen asked Mr. Burner if the SWFSC staff provided any research and data needs for the document and specifically requested that salmon genetic stock identification (GSI) needs be included in the document. Mr. Burner noted that the document was drafted by the SSC and that the forthcoming section on emerging salmon research issues will contain a discussion of GSI research.

Mr. Melcher stated he had not seen Section 3.3 of the salmon chapter and wanted to ensure that Klamath fall Chinook salmon research and data needs are reviewed for potential inclusion in the document. Mr. Burner noted the revised chapter regarding the salmon research and data needs has been distributed to the salmon advisory bodies for review and comment.

Mr. Gordy Williams referenced the salmon sections and specifically mentioned the need to complete a thorough and responsible review of GSI issues. Mr. Williams felt it was important to coordinate recent efforts by the PSC and the PSMFC to look into both GSI and CWT issues. Funding has been identified for workshops to coordinate efforts from Alaska to California on the existing CWT system and the emerging GSI technology.

Mr. Moore moved (Motion 21) to adopt for public review the draft Research and Data Needs document as shown in Agenda Item B.6.a, Attachment 1 with the inclusion of the guidance and suggestions as provided during Council discussion and additional edits made by SSC. Mr. Warrens seconded the motion. Motion 21 passed.

Mr. Burner noted the document will need to make the November Council meeting briefing book deadline, but the goal is to get something on the Council website well before that deadline. Mr. Burner also added

that long-term planning, the next cycle should begin in early 2007 to avoid the time constraints experienced in this cycle and asked that the Council keep the process in mind for the workload planning Agenda Item later in the week.

Ms. Culver asked about Mr. Alverson's request under public testimony that we were explore a mandatory logbook program for the fixed gear fishery and asked Ms. Cooney about making such recommendations outside of the two-year groundfish management cycle. Ms. Cooney said it would likely be a regulatory amendment rather than a plan amendment but could be done through the normal rulemaking process. Ms. Culver then asked for guidance on whether the regulatory amendment process would be better than including the logbook requirement in the biennial specifications process. Mr. Lockhart said that is a workload issue and his first reaction is that he doesn't see it happening anytime soon given the current workload.

Ms. Culver said we do believe that is an important program in light of bycatch and EFH concerns. Trawl logbook data has been very valuable and we lack this information from our fixed gear fleet resulting in compromised analyses of the impacts of closed areas on the fixed-gear sector. Ms. Culver stated that WDFW is willing to assist in developing an EA or NEPA document in support of this action although the agency is also hampered by workload and suggested a separate EA or separate specifications process that could begin in 2009.

Mr. Lockhart stated that a top priority upon returning to the office will be completing a workload analysis including the development of a list of personnel available for specific projects. The NWR will appreciate and will consider offers of assistance and will provide a report to the Council on workload issues and how to address them.

B.7 Council Three-Meeting Outlook, Draft November 2006 Council Meeting Agenda, and Workload Priorities

B.7.a Agenda Item Overview (09/15/06; 4:41 pm)

Dr. McIsaac provided the agenda item overview.

B.7.b Reports and Comments of Advisory Bodies

Dr. McIsaac alerted the Council to Agenda Item B.7.b, Supplemental SSC Informational Report.

B.7.c Public Comment

None.

B.7.d Council Guidance on Three Meeting Outlook, November Council Agenda, and Workload, including Priorities for Advisory Body Consideration

Council members worked with the Executive Director and Council staff to develop the November Council agenda, workload issues, and priorities for advisory body consideration.

C. Groundfish Management

C.1 National Marine Fisheries Service (NMFS) Report

C.1.a Activity Reports

Mr. Lockhart reported on the list of groundfish and Pacific halibut *Federal Register* notices published by the NMFS Northwest Region since the June Council meeting and noted the list was provided in the briefing book. He also noted that since the June meeting they have been able to replace Ms. Carrie Nordeen with Ms. Gretchen Arentzen.

Mr. Moore asked about the *Federal Register* notice for the intersector allocation EIS. How is that going to affect our planned schedule for the IQ program – does it have any effect? Mr. Lockhart said he did not know if it would have an effect. That item will be discussed under agenda item C.7.

Dr. Jim Hastie provided a PowerPoint presentation comparing separate at-sea discard analyses done by Harrington et al. of Marine Resources Assessment Group (MRAG) and the NMFS Northwest Fisheries Science Center. The MRAG analyses were done incorrectly resulting in estimated discard rates roughly twice that estimated to have really occurred.

C.1.b Reports and Comments of Advisory Bodies

None.

C.1.c Public Comment

None.

C.1.d Council Discussion

Mr. Anderson discussed the planned 2007 groundfish stock assessments and a WDFW correspondence to Dr. Elizabeth Clarke regarding the planned black rockfish and yelloweye rockfish assessments. WDFW raised concerns in this correspondence regarding their recommendation to allow some flexibility to incorporate a new CPUE time series in the next yelloweye rockfish assessment, which is scheduled as an update. That matter is being taken up by the SSC this morning consistent with Dr. Clarke's response. The second issue is the black rockfish assessment and whether that assessment should be a coastwide one or one for waters off Oregon and California only. WDFW has invested a lot of time and money over the course of 25 years in managing and researching the black rockfish population off Washington (i.e., tagging projects and data collection). They have serious concerns about doing a coastwide assessment using the SS2 model. That model has a limited ability to incorporate tag data. WDFW manages the northern black rockfish stock with a low harvest rate, which consistently leaves a large portion of the OY unharvested. Given that, they do not believe it necessary to assess that stock and they do not have staff resources to incorporate and model their data into an assessment. That conflicts with Dr. Clarke's response of August 14 to the WDFW letter. WDFW does not have a problem with doing a full assessment of the southern stock, but does have serious concerns with a full assessment in the north. WDFW would want to play a lead role in doing a full assessment of the northern stock, but cannot do this in the next assessment cycle.

Mr. Melcher noted the 2007 assessment plan was adopted in April and asked about the process for dealing with Mr. Anderson's request and changing the plan. Dr. McIsaac said the Council did adopt the assessment plan as part of a two-meeting process. The adopted plan was to do a full coastwide assessment of black rockfish. Mr. Melcher asked if it was possible to do a full assessment of just the southern black rockfish stock. Dr. Hastie said the rationale for a full coastwide assessment was the northern stock had not been assessed in many years (the last northern black rockfish assessment was done in 1999). The intent was to have both done as full assessments at the same time. From an agency

standpoint, the existing northern assessment would be viewed as out of date. Mr. Lockhart asked about the expected status of the northern black rockfish stock and Dr. Hastie replied he thought the northern stock was above B_{MSY} the last time it was assessed. Mr. Anderson said the black rockfish population off the Washington coast was assessed separately and the resulting OY was about 500 mt. Since then, the annual harvest has been consistently less than 300 mt and nearshore commercial fishing is prohibited in Washington state waters. He understands the agency guidelines for updating stock assessments every five years and he did not have a problem with that. However, black rockfish mortality off Washington has been far below the OY every year since the last stock assessment. He did not think it prudent to do an assessment of the northern stock when all of the necessary data is not readily available. Dr. McIsaac said we can put this on the November agenda during the agenda planning discussion on Friday.

C.2 Groundfish Bycatch Work Plan (09/12/06; 9:13 am)

C.2.a Agenda Item Overview

Dr. Kit Dahl provided the agenda item overview.

C.2.b NMFS Report

None.

C.2.c Reports and Comments of Advisory Bodies

Dr. Dahl read Agenda Item C.2.c, Supplemental GAP Report.

Mr. Anderson referenced Agenda Item C.2.a, Attachment 1 (letter to NMFS from WDFW providing comments on the proposed rule to implement Amendment 18).

C.2.d Public Comment

Mr. Peter Hutula, PMCC, Astoria, Oregon
Ms. Karen Garrison, NRDC, San Francisco, California
Ms. Meghan Jeans, The Ocean Conservancy, San Francisco, California
Mr. Ben Enticknap, Oceana, Portland, Oregon

C.2.e Council Action: Adopt Proposed Groundfish Bycatch Work Plan for Public Review

Dr. McIsaac asked for clarification as to whether the current Yelloweye Rockfish Conservation Area (YRCA) was a mandatory or voluntary closed area. Mr. Anderson answered that there has been no change in its status; it is still a mandatory closed area for recreational vessels and a voluntary area to be avoided for commercial vessels.

Ms. Vojkovich said she was sympathetic to public comments made. The workplan should contain more information about timelines and priorities, recognizing that these can change, which would be helpful to staff.

Mr. Anderson said there are at least three programs that are in the plan, the trawl IQ program, the inter-sector allocation program, and the limitation on the open access fishery. In addition, as pointed out by Ms. Garrison, the Trawl IQ plan does not have specific conservation objectives, and these should be identified. Since these three programs are underway, it is possible to identify the timelines for them. The

work plan would be much more meaningful if it identified key decision points towards the final action, which would allow tracking progress.

Mr. Melcher said you could include the whiting fishery action in that list as well. He noted that the GMT hasn't provided comments on the work plan and he would like to get their input.

Ms. Fosmark responded to a public comment on the drift gillnet EFP and pointed out that this work plan focused on groundfish.

Mr. Lockhart asked Dr. Dahl what is meant by sending the work plan out for public review and what is the schedule for doing so. Dr. Dahl said Council staff typically put the document on the PFMC website and sends out a notice of availability through the appropriate mailing list with a request for public comment. It is not common to distribute paper copies except on request. Mr. Lockhart asked if there are any public meetings scheduled. Dr. Dahl said none have been planned, but it is always an option.

Mr. Lockhart said he is torn between getting something out now to get public comment and taking more time on it, but suggested it would be a good idea to respond to public comment and take more time improving the document. He then asked whether the Council could tentatively approve it for public review subject to making some improvements to the document.

Mr. Moore noted, as commented previously, that several elements of the work plan will be discussed later in the week as far as schedules and progress. For that reason it would be advisable to delay a decision.

Dr. McIsaac said that Mr. Lockhart's proposal of approving the document for public review pending further revisions is possible. However, the Council then forfeits the opportunity to review the revised version. He also noted that for an effective public review the document should be released before the briefing book deadline; at a minimum, inclusion in the briefing book is necessary, which would only give a short, week-long public review opportunity.

Mr. Moore asked is it feasible to put something out for public review that takes into account timeframes that are developed after other Council action this week and then have a final document adopted in March as opposed to November? Dr. McIsaac said it would be a possibility. Mr. Lockhart concurred.

Mr. Anderson said he did not support sending out the document for public review. There needs to be a matrix with the different activities, timelines, and deliverables by date. Right now there is nothing in the document that tells the public or the Council what the Council will do and when. He didn't think the document could be revised and made available in time for final action at the November meeting.

Mr. Anderson said there are four pieces involved, including the whiting action, and the Council should have a work plan for each one of those. One of the assignments would be to develop a timeline and deliverables for each one of these programs and then combine them in this bycatch work plan.

Mr. Moore asked if there were any legal time constraints requiring this to be distributed for public review after this meeting. Ms. Cooney said there were no such constraints. Dr. McIsaac said he thought the Council would like to see a more detailed document than the current version. The question is then whether a new draft should be available at the November or the March meeting.

Mr. Lockhart said that if NMFS NWR is going to take the lead on revising the work plan it will be very difficult to get something done for the November meeting, considering workload in the next six weeks.

Mr. Anderson pointed out various planning documents for actions that are available or forthcoming. He said it is a matter of putting these plans together in a matrix, which could be attached to this document so people can see the end points of these four major items of this work plan. He is not saying it is a small project, but not a huge one either.

Mr. Lockhart said Mr. Anderson's proposal was something NMFS NWR could get done for November.

Dr. Dahl wanted to confirm that the work plan would be brought back to the Council at the November meeting. Dr. McIsaac said it might be possible for staff to develop an outline for the Council to look at on Friday just to make sure there are no omissions.

C.3 Consideration of Inseason Adjustments

C.3.a Agenda Item Overview (09/13/06; 9:42 am)

Mr. Myer recused himself from voting on inseason adjustments since his company has a vessel that might possibly be involved in a proposed change to the canary rockfish bycatch cap for the whiting fishery. He reserved the right to participate in the discussion on this matter.

Mr. John DeVore provided the agenda item overview.

C.3.b Report of the Groundfish Management Team

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

Mr. Moore asked if it was correct to say there are two separate sablefish OYs for north and south of 36° N latitude and OY cannot be transferred from south to north. Ms. Ashcraft agreed with that characterization.

Mr. Moore asked if there were updated estimates of canary rockfish bycatch mortality in this year's tribal or recreational fisheries. Ms. Ashcraft said the GMT updated the limited entry non-whiting trawl estimate of canary rockfish bycatch. The GMT also estimates some potential savings in ongoing whiting trawl, tribal, and recreational fisheries. Mr. Moore noted the scorecard showed the need to save an additional 1.2 mt of canary rockfish this year and those needed savings could come from the whiting fishery.

Mr. Anderson asked if the 1.6 mt canary rockfish bycatch projection for the salmon troll fishery was derived from the 2005 bycatch scorecard and Ms. Ashcraft said yes. Mr. Anderson said half that mortality (0.8 mt) was from the Washington salmon troll fishery and that fishery, as well as salmon troll fisheries further south, were significantly reduced this year. Did the GMT consider these changes to the salmon fishery and adjust scorecard estimates accordingly? Ms. Ashcraft conceded the 1.6 mt estimate for salmon troll fisheries was probably an overestimate. The GMT could discuss those impact estimates and consider scorecard adjustments.

Dr. McIsaac asked if the 7.5 mt canary rockfish research catch projection was a current estimate or a projection. Ms. Ashcraft said the actual catch is 7.2 mt and 7.5 mt is projected. Mr. DeVore said that 7.5 mt was the actual catch and was comprised of 7.2 mt in the NMFS trawl survey and an additional 0.3 mt taken in Oregon research activities. Dr. McIsaac asked if this higher than anticipated research catch of canary was good news for the future prospects of the stock and Ms. Ashcraft said it was. Mr. Melcher asked if there were any GMT-recommended actions to reduce canary rockfish take and Ms. Ashcraft said that was the Council's call.

Mr. Myer noted the widow rockfish cap for the 2005 whiting fishery was increased inseason from 200 mt to 212 mt. What was the actual catch of widow rockfish in the 2005 whiting fishery? Ms. Ashcraft responded that it was 155.8 mt.

Mr. Anderson asked if the GMT was revising any projections of canary take in ongoing recreational fisheries. Ms. Ashcraft said the GMT thought about 1.2 mt of canary could be shaved off the combined Oregon-Washington harvest guideline, but no change to the California harvest guideline is recommended at this time.

Mr. Lockhart asked how certain were the research catch projections and Ms. Ashcraft responded they will not likely be reduced. Historically, 90% of research catch of canary has occurred north of 40°10' N latitude. Dr. McIsaac asked how much research survey work remains this year and Ms. Ashcraft said the survey south of 40°10' N latitude has not been completed.

C.3.c Agency and Tribal Comments

None.

C.3.d Reports and Comments of Advisory Bodies

GAP Report

Ms. Heather Mann provided oral comments from the GAP. Referring to the GMT Report, Ms. Mann said the GAP agrees with GMT recommendations for a limited entry trawl trip limit increase, an increased widow rockfish bycatch cap for non-tribal whiting fisheries, closure of the open access daily-trip-limit (DTL) sablefish fishery north of 36° N latitude, an increased daily limit in the limited entry and open access DTL fisheries south of 36° N latitude, and prohibiting retention of vermilion rockfish in the Oregon recreational fishery. The GAP recommends the GMT and GAP work together to determine how to reduce canary rockfish take in ongoing fisheries.

Mr. Myer asked if the GAP had a recommendation for reducing canary take and Ms. Mann said not yet, but they wanted to discuss this with the GMT. Mr. Moore asked if the GAP considered reducing the canary bycatch cap in non-tribal whiting fisheries and Ms. Mann said the GAP focused on reductions to other sectors and they did not want to see all the impact reductions coming out of the whiting fishery

C.3.e Public Comment

Mr. Alan Hightower, F/V Sea Otter, Port Townsend, WA
Mr. Dan Waldeck, Pacific Whiting Conservation Cooperative, Portland, OR
Mr. Karl Haflinger, SeaState, Seattle, WA
Mr. Mike Hyde, American Seafoods, Seattle, WA
Mr. Kenyon Hensel, commercial fisherman, Crescent City, CA
Mr. Daniel Platt, Salmon Trollers Marketing Association, Fort Bragg, CA

C.3.f Council Action: Adopt Preliminary or Final Recommendations for Adjustments to 2006 Fisheries

Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 7) to adopt: 1) the GMT-recommended increases in the period 6 limited entry trawl trip limits for sablefish and petrale sole, 2) an increase in the widow rockfish bycatch cap of 20 mt for the ongoing non-tribal whiting fisheries, and 3) conforming regulations prohibiting retention of vermilion rockfish in the Oregon recreational fishery.

Mr. Anderson said the cumulative impacts on canary rockfish are troublesome and he believes it is the Council's duty to resolve the scorecard such that projected impacts are less than the OY. He thought the 1.6 mt impact projected for the salmon troll fishery may be too high. Given that the Chinook harvest has dropped by about 73%, there could be as little as a 0.4 mt impact. If this impact were doubled as a precaution, then only 0.8 mt might be a reasonable impact estimate in the scorecard. He also thought shaving 1.2 mt of canary rockfish from the northern recreational harvest guideline seemed reasonable. He also thought folks should consider reducing the canary rockfish bycatch cap in the whiting fishery to 4.3 mt. He recommended the GMT and GAP use this guidance when developing final recommendations for inseason adjustments.

Mr. Lockhart said he is roughly supportive of the motion. He wanted to know what the NMFS trawl survey has caught south of Eureka in the past and recommended the GMT consult with the survey team to develop a plausible research catch projection. Dr. Clarke was asked to speak on the issue and she could not presently answer the question with specific numbers, but she knew past survey catches south of Eureka were very low.

Mr. Moore said he was generally supportive of the motion, but he had concerns for the whiting fishery. This has been a strange year for bycatch. There is a history in the whiting fishery where, if the fish move far enough south and the tides are right, you can get some really bad tows of canary. The motion provides guidance to the GAP and the GMT on how to resolve the high canary impact projection. He asked if the GMT and GAP could look at reducing the canary cap in the whiting fishery by a range of 0.4 - 0.7 mt. Mr. Moore said the GMT still has to still explore salmon fishery impacts and projected research catches. He is worried that if the whiting fleet or any other sector has a big catch of canary, we will exceed the OY. Caps have proven to be an incentive/disincentive mechanism for the whiting fleet. While he is not suggesting a reduction in the whiting fishery bycatch cap of 0.7 mt is the right number, there should be a range that the GMT and GAP can consider. Mr. Anderson did not accept this as a friendly amendment; therefore, Mr. Moore moved and Mr. Warrens seconded an amendment to Motion 7 to ask the GMT to decrease the whiting fishery canary bycatch cap by 0.4 mt to 0.7 mt.

Ms. Vojkovich said she is torn with sending this issue back to the GMT and GAP and she did not think the GMT has adequate data to evaluate impacts in the salmon troll fishery. She thought the GMT and GAP should recommend reductions in fishing sectors that can be reduced and generally supported Mr. Anderson's approach.

Mr. Myer said he is recusing himself from voting on this issue, but if he was voting, he would vote against the amendment and vote in favor of Mr. Anderson's motion. In 2005 there was 4.5 mt - 4.6 mt of canary taken in the whiting fishery and he would like to see as much canary left in the whiting fishery as possible.

Mr. Lockhart said he was still torn about how to deal with the GMT statement that more than 90% of the trawl survey canary catch has historically been taken north of Eureka. Given that 10% is 0.7 mt of additional research take of canary, we may potentially have to reduce impacts by 1.9 mt. Therefore, he is in favor of the amendment and would like to see a wider range of reductions explored.

Mr. Anderson explained the main motion was to ask the GMT to verify the canary impact reduction in the salmon troll fishery that he believes has occurred between 2005 and 2006. He thought sending a range of impact reductions for GMT and GAP debate is not a reasonable task for them. Mr. Moore apologized that he misunderstood the original motion. With that, he and the seconder withdrew the amendment.

Mr. Moore moved and Mr. Warrens seconded an amendment to Motion 7 to set the reduction in the whiting fishery canary bycatch cap to 0.7 mt for a total whiting fishery cap of 4 mt.

The amendment to the motion carried on a voice vote (Messrs. Anderson and Cedergreen voted no. Mr. Myer abstained).

The vote on main Motion 7 passed on a voice vote (Mr. Myer abstained).

Ms. Vojkovich moved and Ms. Fosmark seconded a motion (Motion 8) to: 1) close the open access DTL sablefish fishery north of 36° N latitude beginning October 1, and 2) increase the daily limit in the limited entry and open access sablefish DTL fishery south of 36° N latitude beginning October 1 from 350 lbs to 500 lbs.

Ms. Vojkovich said the DTL closure in the north was not unexpected due to lack of salmon fishing opportunity. She also noted the GAP supported the closure.

Motion 8 carried on a voice vote (Mr. Myer abstained).

C.4 Open Access Fishery Limitation: Planning for a Possible Fishery Management Plan (FMP) Amendment

C.4.a Agenda Item Overview (09/13/06; 1:20 pm)

Mr. DeVore provided the agenda item overview.

C.4.b Agency and Tribal Comments

Mr. Lockhart said that NMFS staff and NOAA General Counsel discussed the control date of November 5, 1999 for limiting the open access fishery and they generally believe that date may no longer be effective. Ms. Cooney explained a control date has no regulatory effect, but is simply a notice to the public on a potential federal action. A new control date does not imply an earlier (or later) qualification window for the action. Mr. Anderson asked if this was published as a final rule and Ms. Cooney said no, it is a public notice. Mr. Myer asked if control dates are published in the *Federal Register* and Ms. Cooney said yes, but it is an advance notice of a proposed rulemaking.

C.4.c Reports and Comments of Advisory Bodies

GMT Report

Ms. Ashcraft provided Agenda Item C.4.c, Supplemental GMT Report.

Mr. Moore asked about the workload priorities in the GMT statement and how economic benefits were defined in the workload priorities rankings. Ms. Ashcraft said these benefits were defined based on the economic benefits of fishery participation.

Dr. McIsaac asked why the GMT ranked Amendment 15 so low for conservation benefits and Ms. Ashcraft replied the GMT did not evaluate Amendment 15.

Mr. Lockhart asked if the GMT is recommending reducing the number of participants in the open access sector and Ms. Ashcraft responded yes. Ms. Fosmark asked if the GMT was recommending a federal permit to limit participation and Ms. Ashcraft said yes.

GAP Report

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

Mr. Moore asked what workload issues the GAP prioritized and Mr. Ghio said the GAP prioritized trawl individual quotas, intersector allocation, Amendment 15, open access limitation, and Amendment 10.

EC Report

LT. Dave Cleary provided Agenda Item C.4.c, Supplemental EC Report.

Mr. Melcher asked why a vessel monitoring system (VMS) will not identify all open access participants and LT. Cleary answered because VMS only applies in federal waters. Mr. Moore asked when VMS will be mandated for open access vessels landing groundfish and Mr. Lockhart said it probably won't be implemented on January 1, but soon thereafter.

C.4.d Public Comment

Ms. Laura Deach, longliner, Lopez, WA

Mr. Gerry Richter, Point Conception Groundfishermen's Association, Santa Barbara, CA

Mr. Tom Ghio, Ghio Fish Company, Santa Cruz, CA

Ms. Mary Williamson, commercial fisher, Eureka, CA

Mr. Doug Fricke, Washington Trollers Association, Hoquiam, WA

Mr. Josh Churchman, San Francisco Crab Boat Owners Association, Bolinas, CA

Mr. Kenyon Hensel, commercial fisherman, Crescent City, CA

C.4.e Council Discussion and Guidance

Mr. Moore asked Dr. McIsaac about the workload for completing phase 1 or planning and scoping for developing an open access FMP amendment. Dr. McIsaac explained that it will be a full time job for one staff officer to staff the necessary meetings, coordinate and do the analyses, develop the documents, and other associated tasks.

Ms. Vojkovich said limiting participation in the open access fishery is critically needed. In California, 12% of the groundfish fleet is comprised of limited entry vessels and the rest land groundfish under open access. Given this and the need to control effort in the open access sector, CDFG is volunteering staff to pursue this. She is interested in establishing a new control date. She would also like to see phase 1 of this FMP amendment process come back to the Council in the spring next year, perhaps at the April Council meeting. Mr. Anderson asked if Ms. Vojkovich was envisioning a simple approach of picking a base period and qualification criteria for accomplishing this task. Ms. Vojkovich said she was, but the public input adds complexity to the process. Mr. Melcher said this is a lower priority from Oregon's perspective, but agreed with Ms. Vojkovich to try to keep the process as simple and uncomplicated as possible. He said the Council will have to make some hard decisions on who qualifies for a permit early in the process to do this. Mr. Lockhart agreed with the need to move on this issue and said the West Coast Groundfish Observer Program would work more easily if open access vessels could be more readily identified. He added that, if a control date is decided today, an earlier base period can still be used to develop permit qualifying criteria. Ms. Fosmark said open access participants can be readily identified through landings data. She asked whether deciding this process would require a NEPA analysis. Ms. Cooney said a NEPA analysis would be required, but it may not need to be an environmental impact statement.

Mr. Moore asked Ms. Vojkovich if she was proposing starting the open access phase I process in March 2007 and ending phase I in September 2007. He also thought the scoping process might identify how complex this process might be. Ms. Vojkovich said she could consider that timeframe. Considering the salmon decision-making process in March and April, she thought that would allow a six month period to get this done expeditiously.

Chairman Hansen said we can set today as the control date to put people on notice. Mr. Warrens asked if setting a control date today would still allow the Council to consider an older base period of catches for deciding qualifying criteria and Mr. Lockhart said yes. Ms. Cooney said that the existing 1999 control date is too old. When we announce a control date, it is simply a public notice that we are working on limited entry, and not to expect any new landings to count toward qualification for a permit. It does not mean that everyone currently in the fishery will qualify for a limited entry permit. The criteria the Council uses to decide qualification for a permit may be based on activities that occurred prior to that date. Ms. Fosmark asked if the decision is based on catch from an older base period, it would not necessarily guarantee a permit to fishermen who were active in the open access fishery during that period and Mr. Lockhart said that was correct.

Mr. Warrens moved and Mr. Moore seconded a motion (Motion 9) to establish a control date of December 31, 2005 for open access fishery limitation with the aim to target a fleet size similar to that of 2004-2005 and with the other qualification criteria to be determined later. Furthermore, the process would be started at the April or June 2007 meeting.

Ms. Cooney said that is not what we have done with control dates. In the original groundfish limited entry plan, the control date was 1988, but the goal was to establish a fleet size similar to that in 1984-1985. Mr. Anderson said this is unlike any other action he was familiar with in setting a control date. He did not recall a process whereby a control date was established sometime in the past. Ms. Cooney agreed with Mr. Anderson that setting a control date in the past is not routinely done. Mr. Lockhart reiterated that setting a control date of today does not preclude consideration of an older base period for determining permit qualification or fleet size.

Motion 9 was not voted on.

Mr. Anderson offered a substitute motion (Motion 10) to establish a control date of September 13, 2006, and noted that groundfish landings made by individuals or vessels in the open access sector after today may not be considered for future fishing privileges in the open access sector. Mr. Cedergreen seconded the motion.

Ms. Fosmark said the open access fleet has changed in recent years and new participants are not the same as those who have traditionally relied on the open access fishery. She is in favor of keeping the old control date, but understands the consideration of including the new participants. Ms. Vojkovich said the Council should decide criteria for fleet size later. Ms. Cooney said setting a control date of today is an announcement in the Federal Register that the Council will be taking this action and not to expect any catch after today to count for qualifying for a new limited entry permit. This doesn't mean that everyone who fished before this date gets into the fishery. At this point it is too early to decide the target fleet size. Mr. Anderson said his motion simply sets a control date of today and states any landings after this date may not count in qualifying for a new permit. The motion does not presume what the limited entry program will look like, fleet size, or what any other requirements are going to be specified. Those criteria and objectives will be decided through a public process later.

Motion 10 carried on a voice vote.

Ms. Vojkovich said she has staff to commit to this process. She thinks staff can start planning the process and accumulating relevant data during the winter. Mr. Moore suggested starting the Council process on open access limitation at the April meeting. Mr. Lockhart said he appreciates Ms. Vojkovich's commitment of staff resources on this. He thought further planning discussions on tasks and timelines could occur in the next month.

C.5 FMP Amendment 15 (American Fisheries Act Provisions)

C.5.a Agenda Item Overview (09/13/06; 3 pm)

Mr. Burner provided the agenda item overview.

Mr. Lockhart asked for clarification on what the Council considered 'adverse impacts' to be. Mr. Burner responded he was not aware of a formal definition and requested further input from other Council members regarding Council thoughts on the matter.

Mr. Melcher requested clarification on the Council's action under this agenda item asking specifically if the Council could move expeditiously to adopt a preferred alternative. Mr. Burner responded that the Council did choose a preferred alternative in 2001 which is still on the record and the Council could reaffirm that recommendation at this meeting. Ms. Cooney clarified that the Council at this meeting is charged with reviewing the alternatives from 2001 and is not necessarily held to those alternatives. The purpose is to take a fresh look at the issue and discuss recent developments and recommend a new course of action.

C.5.b Agency and Tribal Comments

Mr. Melcher turned the Council's attention to Agenda Item C.5.b, Supplemental ODFW Report and stated ODFW's support to have this issue resolved fairly expeditiously for reasons ranging from AFA provisions to matters of conservation. Mr. Melcher said he would provide further details later in the agenda under Council discussion.

C.5.c Reports and Comments of Advisory Bodies

Ms. Munro provided Agenda Item C.5.c, Supplemental GAP Report.

Mr. Lockhart asked Ms. Cooney to speak to the control dates associated with this issue. Ms. Cooney stated there has been a lot of questions and discussion regarding the continued validity of the control dates established in 1999 and 2000. Old control dates are always questioned as to not being justified in the record and no longer being useful. She reported that in this instance it is different than other control dates as these are tied to a specific statute (AFA). However, any action or proposal to address these issues needs to be specifically tied to the AFA. In order to recommend a course of action to NMFS, the Council will need to clearly identify what the adverse impacts are and why they are the result of the AFA. Additionally, the Council will need to explain why it was not done earlier and why it is needed now. Basically, the Council will need to develop the record paying particular attention to the requirements of the AFA. The control dates are not too old, but the age of the control dates does create an additional burden to developing a good record for the proposed action.

Dr. McIsaac, noted that in the previous agenda item Ms. Cooney advised the Council that the control date for establishing a limited entry system for the open access sector of the groundfish fishery would not stand but, under this agenda item the determination seems to be based on the administrative record. Dr.

McIsaac asked if previous Council meeting proceedings, documents, alternative development, and established rationale for delay are the kind of administrative records that keep the validity of control dates for AFA an open question. Ms. Cooney replied the AFA control dates are still an open question because it is tied to a specific statute at a specific point in time. The main record is what is the harm and how does the proposed action address that potential harm from the AFA. The second part is the history of the matter, specifically why wasn't action taken earlier and why do you want to take action now. Dr. McIsaac noted that in ODFW's supplemental report (Agenda Item C.5.b, Supplemental ODFW Report), Oregon refers to a temporary or emergency rule for the 2007 fishery and asked Ms. Cooney to speak to the possibilities of such action. Ms. Cooney said the response to an emergency rule request is more about what is the emergency, what is calling for the emergency, what is being done to address the matter, why wasn't action taken earlier, and why is it fair and equitable and a rational thing to do. NMFS approves or disapproves emergency rules and has criteria for an emergency rule.

Mr. Melcher asked Ms. Cooney if the fact that the AFA does not specifically require documentation of adverse impacts, or that adverse impacts even occurred prior to the Council taking action, softens the need for the administrative record. Ms. Cooney said no, any federal action, regardless of what statute they fall under, also falls under the Administrative Procedures Act (APA). The authority to do this is to protect the fisheries from adverse impacts caused by AFA. There has to be a reason and a record supporting that reason. The original Amendment 15 process provides some of the record, but that information needs to be updated.

Mr. Myer asked Ms. Cooney if documentation of adverse harm in the form of exceeding bycatch caps or optimum yields was the kind of justification for using an emergency rule she is referring to. Ms. Cooney stated that is not the only type of action that can be taken under an emergency rule. A drastic conservation concern is perhaps easier to justify, but emergency rules have been used for other reasons. Ms. Cooney clarified the important thing is to fully document why the emergency rule is necessary and why the action needs to be taken in an emergency rule.

Mr. Anderson referred to the second page of Agenda Item C.5.b, Supplemental ODFW Report and asked Mr. Melcher if the phrase "At that time" in the second paragraph beginning "An assessment was not conducted in November 2002..." refers to 2003. In other words did the three vessels mentioned in the paragraph enter the fishery in 2003? Mr. Melcher said the intent of the language was to state the first year of participation for those three vessels was 2006.

Mr. Melcher asked Ms. Cooney to clarify the difference between a temporary rule and an emergency rule. Ms. Cooney stated there really is not a difference, either way you are asking the agency to short circuit the usual amendment and/or rulemaking process. The MSA specific provisions for emergency rules has a 180 day limitation (with ability to extend for an additional 180 days). Under the APA, you are supposed to have a proposed rule, but in some cases you can waive this requirement for good cause. Also a rule that is in place temporarily under the Magnuson Act, while a full rulemaking process is underway is referred to as an emergency rule and lasts for no more than one year.

C.5.d Public Comment

Mr. Gary Winterstein, F/V Nicole, Warrenton, Oregon
Mr. Burton Parker, trawler, Astoria, Oregon
Mr. Mark Cooper, trawler,
Mr. David Richcreek, F/V Raven, Newport, Oregon
Mr. Chris Galgrech, trawler,
Mr. Mike Stone, fishing company, Seattle, Washington
Mr. Brad Ern, trawler, Newport, Oregon

Mr. Walt Henderson, F/V Miss Sue, Newport, Oregon
Mr. Rodney Johnson, F/V Pacific, Newport, Oregon
Mr. Joe Birsch, Supreme Alaska Seafoods, Seattle, Washington
Mr. Mike Rutherford, Astoria, Oregon
Mr. Richard Carroll, Ocean Gold Seafoods, Westport, Washington
Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, Oregon
Mr. Joe Plesche, Trident Seafoods, Newport, Oregon
Mr. Tom Stam, F/V Miss Bertie,
Mr. Mike Story, whiting boat captain,
Mr. David Jincks, Midwater Trawlers Cooperative, Newport, Oregon
Mr. Steve Hughes, United Catcher Boats, Seattle, Washington
Mr. Brent Paine, United Catcher Boats, Seattle, Washington

C.5.e Council Action: Review FMP Amendment 15 Alternatives and Consider Need and Capability for Further Development (5:30 pm)

Ms. Cooney revisited the issue of criteria used by NMFS when evaluating emergency rule requests and reviewed Agenda Item C.5.a, Supplemental Attachment 8, *NOAA Policy Guidelines for the Use of Emergency Rules*. Ms. Cooney highlighted the following points: emergency rules may be promulgated to address conservation, biological, economic, social, and health emergencies; emergency rules may make direct allocations among user groups with strong justification and administrative record; controversial actions with serious economic effects should be done through normal notice-and-comment rulemaking except under extraordinary circumstances, emergency rules should be limited to urgent circumstances where substantial harm to the resource, fishery, or community would be caused in the time it would take to follow the standard rulemaking process. Ms. Cooney also referred the Council to the second page where criteria define an emergency as a situation that; “1) Results from recent, unforeseen events or recently discovered circumstances; and 2) Presents serious conservation or management problems in the fishery; and 3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.”

Mr. Anderson asked about the use of a 365-day temporary rule and whether it requires the normal rulemaking process, NEPA analysis, and a two Council meeting process. Ms. Cooney stated that what is referred to as a temporary rule is a bit different than what is proposed for this action. A temporary rule goes through the normal rulemaking process but, because the action is only being considered for one year, the analytical burden is not as great as you do not have to consider the effects of a long-term action. The general idea is that a temporary rule is in place while a long term solution is being developed and analyzed. Ms. Cooney said the maximum duration of an emergency rule is 365 days under the MS-Act, but there really isn't something called a temporary rule with similar statutory requirement. In the past, some rules were only published in the *Federal Register* and were not codified and those rules were limited by the *Federal Register* process to only one year.

Mr. Melcher said we have heard a lot of good public testimony and he views this issue may be a little different than most issues before the Council because there is an act of Congress directing the Council to take action before 2000, and in response to the AFA, the Council did start work on this issue in recognition of this obligation. The Council rightfully tabled the issue due to workload associated with groundfish fishery management, including the establishment of rebuilding plans, and the lack of any immediate threat to West Coast fisheries from AFA vessels. Given these reasons and the fact that the Council heard testimony on both sides of the issues that AFA vessels have entered the fishery in recent years and more vessels will likely enter the fishery in the future, he thinks it is imperative that the Council act to move the amendment forward. He stated a preference for the amendment to move expeditiously on

a fast track to have it implemented for next year's season but, recognizing the other workload issues before the Council he understands this may not be realistic. In light of the workload issue and the need for action prior to the 2007 fishing season, Oregon has included in Agenda Item C.5.b, Supplemental ODFW Report, a request for an emergency regulation to address this issue for 2007 which would afford NOAA as well as ODFW and Council staff time to do a thorough job and good analysis to complete the amendment. He did not see other alternatives but to move the amendment forward.

Mr. Melcher moved (Motion 11), referring to agenda item C.5.b, Supplemental ODFW Report, that the Council continue working expeditiously on the amendment and to recommend to NMFS that there be an adoption of an emergency rule prior to the 2007 Pacific whiting fishery that would prohibit participation in the shore-based sector of the Pacific whiting fishery by AFA qualified vessels that do not have an historic participation record in the shore-based sector prior to 2006 (participation in the shore-based sector by December 31, 2005 required for participation in the 2007 fishery). Mr. Rod Moore seconded the motion.

Mr. Melcher again referred to Agenda Item C.5.b, Supplemental ODFW Report and stated that it is clear the Council was mandated by the AFA to address this issue and the Council has a history of work on this issue beginning in 1999 and being tabled in 2001. Oregon believes there are four new AFA qualified vessels participating in the fishery with have no prior shore-based whiting fishery participation and notes that this situation is supported by public testimony. These four vessels, of a 37 vessel fleet, accounted for 17.3 percent of the shore-based Pacific whiting landings in 2006. We heard during public testimony this fishery is going to continue to experience a shorter and shorter season and that additional vessels will join the fleet in 2007. We have heard testimony from United Catcher Boats that they could easily foresee a season in the future that could be as short as 15 days long which is exactly why we need to address this issue. Associated with the shortened season, is the tendency to have a "race for fish" creating a disincentive to minimize bycatch while maximizing harvest.

Ms. Vojkovich asked NMFS about the expected timeline to complete Amendment 15 should the Council choose to move forward. Dr. McIsaac responded that the previous effort at Amendment 15 was largely taken on by Council staff, namely Messrs. Jim Seger and Dan Waldeck in consultation with NMFS and the States. Assuming NMFS will not take the lead on future work on this amendment, we heard public testimony that ODFW staff would offer staff time to work on this project. Dr. McIsaac stated that completing the amendment before the 2007 season was not possible but could be possible before the 2008 season with a commitment of help from the State agencies.

Ms. Vojkovich asked if the Council is then expected to add to the existing document and alternatives and provisions contained therein or is this motion simply to proceed with completing what is currently in place. Mr. Melcher stated that the motion is to address the 2007 fishery thru an emergency rule allowing the Council to proceed on a more reasonable schedule for the development and analysis of a revised suite of proposed action alternatives.

Mr. Anderson said he agreed with much of what has been said regarding concerns relative to the new entrants, in particular new AFA qualified entrants into the shore-based sector that don't have fishery history prior to AFA. The Council has established two control dates and did some preliminary work on Amendment 15 that appears to address a broader range of issues in the charge given to us by Congress through the AFA. If the Council wants to move an amendment through quickly, it is important that the alternatives be simplified to respond to just the task at hand. Therefore Mr. Anderson spoke in support of the portion of the motion that carries Amendment 15 forward, with the understanding that we have the ability to create new options, delete some options, and streamline action to address the problem at hand. Regarding the second part of the motion, the request for an emergency rule, he shares Mr. Melcher's concerns about potential new entrants in the fishery that are AFA qualified. At the same time he also

can't support the date that is in the motion, the 2006 date. First of all, there were 9 new boats put into the fleet this year, only 4 are AFA qualified and some of them have historic participation in the shore-based fishery; but not shore-based history prior to 2000. Public testimony from people associated with the *Pacific Challenger* indicate they have been participating in the shore-based sector since 2001. Another individual associated with the vessel *Nordic Fury* testified they had purchased a permit with extensive history in the shore-based fishery. If the Council is retroactive in this action, it would not be fair to people who made investments in the fishery in good faith and under the rules that were in place at the time they entered the fishery. Mr. Anderson likened the action to establishing a retroactive control date. Because he did not think this is a reasonable way to proceed and because he thinks the 2006 date reduces the likelihood of establishing an emergency rule, Mr. Anderson moved to amend the motion to change the date to 2007 resulting in a motion that would prohibit participation of AFA qualified vessels in the shore-based whiting fishery without historic participation prior to 2007. Mr. Dale Myer seconded the proposed amendment to Motion 11.

Ms. Vojkovich, asked for information about the shore-based whiting fleet, specifically she requested data on the size and capacity of the vessels that have historically participated in the fishery compared to the size of the AFA qualified vessels that have entered the fishery in recent years. Her understanding is that the AFA vessels have a greater capacity than the historic fleet and she stated she is not interested in increasing capacity on any Council managed groundfish fishery.

Mr. Myer said he did not have all the data on all of the vessels, but believes that two of the four vessels are 110 and 99 feet which is comparable to the existing fleet. He could not speak for all of the AFA vessels.

Mr. Anderson stated he could not testify to any of the vessels but noted that a significant number of the 37 vessels are AFA qualified and the Council heard during public testimony that there are a total of 112 catcher boats AFA certified indicating there are a lot of additional AFA boats out there, some of which are significant in size and harvesting capabilities.

Mr. Moore referred to a document provided to the Council at the June meeting under open public testimony by Mr. David Jincks of the Midwater Trawlers Cooperative. The vessels listed in this document are vessels participating in 1994-1999, the original qualifying period under the Amendment 15 alternatives. From this source, 11 vessels did not have shore-based landings in 1994-1999 with a combined hold capacity of 5.18 million pounds. Of the 27 vessels that had one or more years of landings during 1994-1999, the hold capacity was 4.67 million pounds. It appears from this data that the AFA qualified vessels without a landing history in 1994-1999 have considerably more capacity than the vessels with a landing history.

Ms. Vojkovich said she is interested in issues relative to community stability. She referred to public testimony that stated that if AFA qualified vessels enter the fishery, the boats currently participating in the fishery will lose out, losing crew jobs and other benefits to their communities. Therefore, she would like to know the characteristics of the existing shore-based fishery relative to those of the newer entrants.

Mr. Anderson said from a very gross perspective he is not aware of any that are over 125 feet. The largest boats are in the 90-120 foot range and represent a small fraction of the fleet with most of the fleet in the 70-85 foot range.

Mr. Myer said Ms. Vojkovich raises a good question which bears witness as to why the Council should be considering a compromise alternative for the 2007 fishery while we take the time to sort out all of the available data and issues. We are not going to be able to get those answers today.

Mr. Moore said of the 11 vessels listed, 3 are new. The smallest is 91 feet in length with a hold capacity of 280,000 pounds and the largest is 150 feet with a hold capacity of 1,000,000 pounds. Mr. Moore reported that at this time it is difficult to determine which of the vessels are new to the fishery.

Mr. Melcher said the intent of AFA was to prevent these vessels from moving into other fisheries irrespective of what their capacity was. He felt most people would agree that the hold capacity on average is much larger for the AFA endorsed vessels than our for traditional non-AFA endorsed vessels.

Mr. Lockhart said since this involves an emergency rule, to preserve the Secretary's flexibility it is an agency policy that he votes no on an emergency rule vote. This applies to the main motion as well as the current consideration of the amendment to the motion. This does not mean the Secretary is going to disapprove the emergency rule.

Dr. McIsaac repeated the motion and the amendment to the motion prior to the vote. (5:58 pm)

Mr. Melcher commented on the motion to amend the main motion. He stated he would oppose the motion to amend because the intent of the AFA approved by Congress was to address AFA qualified vessels. Including 2006 fishery participants, we will not be following the intent of the AFA. In the absence of the AFA and the Council's earlier work on Amendment 15, he would support changing the date to 2007, but because of the AFA and the previous work done by the Council, he felt it was not appropriate to include those vessels that entered the fishery in 2006.

Dr. McIsaac announced the Council will be voting on the amendment with a roll call vote. Messrs. Melcher, Thomas, Moore, and Warrens, and Ms. Fosmark and Ms. Vojkovich voted no. Messrs. Cedergreen, Mallet, Myers, Ortmann, and Anderson voted yes. Mr. Lockhart abstained. The Amendment to Motion 11 failed (5 yes, 6 no, one abstention).

Mr. Myer said we heard testimony from the catcher/processor and mothership sectors. Regarding the motion to request an emergency rule for 365 days, he proposed an amendment to include the mothership and catcher/processor sectors of the Pacific whiting fishery in the motion. Mr. Cedergreen seconded the amendment.

Mr. Moore asked for clarification on the amendment. He asked if the amendment is calling for sector-by-sector approach to limiting participation in the 2007 fishery, for example, only AFA qualified vessels that participated in the mothership sector prior to 2006 could participate in the mothership sector in the 2007 fishery and so on for the other sectors, or is the intent to allow cross-over between sectors. Mr. Myer said the intent of the motion to amend is not to allow cross-over. Mr. Myer stated that the AFA speaks to protection from all AFA qualified vessels and requests that the emergency rule address each sector, not only the shore-based sector as in the current motion.

Mr. Melcher suggested the proposal be put forward as a friendly amendment. Both the seconder and the maker agreed to Mr. Myers friendly amendment.

Mr. Lockhart asked if Mr. Melcher could perhaps go through the criteria listed on the second page of the *Federal Register* notice in Agenda Item C.5.a, Supplemental Attachment 8, defining an emergency situation as one that; "1) Results from recent, unforeseen events or recently discovered circumstances; and 2) Presents serious conservation or management problems in the fishery; and 3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process." Mr. Lockhart said he felt Mr. Melcher has done a

good job of describing how the criteria first is met and asked Mr. Melcher to elaborate on the second criterion.

Mr. Melcher said we heard in testimony here that as the fisheries in each sector become more and more capitalized, as was seen in 2006 and anticipated to a greater extent in 2007, the seasons become shorter and shorter, with more participation resulting in a foreseeable season as short as 15 days. This will have two effects. First, it minimizes an individual's interest in minimizing bycatch due to the large race for fish and it also diminishes fishery management agencies ability to react and adjust to problem situations. This leads to increased opportunities for greater impacts to overfished rockfish species which is a serious risk to the future of the Pacific whiting fishery. Regarding the third criterion, Mr. Melcher said we heard testimony to the impact on the historic participants in the fishery. ODFW published data shows that 17% of the whiting was landed by four AFA qualified vessels with no history in that shore-based whiting fishery. The Council heard public testimony regarding the resulting economic hardships this has placed on members of the fishing community and the communities themselves. The Council heard similar testimony from the at-sea sector which added that the impact of additional vessels could result in the cooperative falling apart with its associated race for fish. Mr. Melcher submitted Agenda Item C.5.b, Supplemental ODFW Report as additional testimony in response the three criteria.

Dr. McIsaac added that the original motion speaks to ODFW's supplemental report.

Mr. Myer said he was going to vote no on the original motion because the issue comes down to a few matters. The first is whether this is an AFA issue, and from public testimony, clearly it is. The second issue is one of the harm caused, a more difficult question to answer and the Council has good testimony on both sides of that question. Mr. Myer stated there is a good chance that the season was shorter because of the availability of fish and an average or above average season, not necessarily harm caused by AFA qualified vessels. Mr. Myer stated that, in his mind, the motion is not going to solve the problem, it is only going to delay it. The processing and fishing capacity in the whiting fishery is there and will be there with or without the AFA vessels. For these reasons he will vote no on the motion.

Mr. Moore referred to Agenda Item C.5.a, Attachment 4, the letter sent by the Council to the U.S. Senate on 03/17/06 responding to the opportunity to comment on legislative proposals that would take the same action we are talking about today, and quoted from that letter,

“Currently, it appears that the owners of a large catcher/processor vessel with no history in the West Coast groundfish fishery is acquiring the permits required to enter the catcher/processor sector of the West Coast whiting fishery. If this were to occur, it could be very disruptive to the existing whiting cooperative that has so responsibly fished cleanly with regard to the incidental catch of depleted rockfish species and salmon; these boats may abandon the cooperative and once again participate in a derby-style race for fish if a new entrant does not join the cooperative. This in turn would almost inevitably lead to higher bycatch of the depleted rockfish that have stringent quotas (canary, widow, and darkblotched rockfish) and salmon, which would consequently shut other fisheries down, including shore based whiting, non-whiting groundfish, and even recreational fisheries. This is a potentially catastrophic scenario that has generated great concern on the West Coast given the razor-thin margins of incidental take of depleted species in the various groundfish fisheries and the recent U. S. Ninth Circuit Court decision on minimizing those incidental takes.”

Mr. Moore felt that the Council, in a way, has already pretty much spoken to this friendly amendment.

Mr. Melcher said the Council has taken action in the past on a similar situation, as listed in the ODFW Supplemental Report, regarding the threat of a large longline vessel pursuing spiny dogfish. One difference here is the existing act of Congress directing the Council to take action.

Mr. Lockhart wasn't sure if it has been resolved that ODFW staff was committed to helping out on this matter. Mr. Melcher confirmed ODFW intent. Mr. Lockhart stated that getting this amendment process done by 2008 will be tough and that getting done by the 2009 season might be more realistic. Mr. Lockhart did not want to leave anyone with a promise that the amendment process will be done for the 2008 season and the effort will require some help from ODFW staff to get it done. Mr. Melcher said ODFW has committed to reprioritize staff time to work on this issue as it is important to Oregon. Mr. Melcher added that in regard to the timeframe for Amendment 15, that through the adoption of the emergency rule for 2007, we will send a clear message regarding the Oregon commitment on this issue and our goal is to have it implemented by the 2008 fishery; recognizing NMFS concerns.

Mr. Lockhart said he wanted to clarify that the Council is considering going forward with Amendment 15 in a more simplified manner. Mr. Melcher agreed.

Ms. Culver (designee for Mr. Anderson) stated her intent to vote against the motion. She supports moving forward with Amendment 15 as quickly as possible and starting from scratch with a full range of alternatives, but she does not support taking action through the proposed emergency rule. The data presented to the GMT indicates the 2006 shore-based non-tribal whiting fishery reduced its bycatch of canary rockfish, widow rockfish and darkblotched rockfish by about 50% over 2005 and with the addition of 9 new vessels. The actual bycatch rates of the four vessels that would be affected by this emergency rule are lower than the average shore-based vessel and include no darkblotched rockfish. The issues need a deliberative process, not an emergency measure.

Ms. Cooney suggested the maker of the motion consider breaking the motion into two parts, separating the emergency rule portion from the Amendment 15 portion. Mr. Melcher said he prefers to let the motion stand as stated and amended.

Mr. Myer urged the Council to not just pick up Amendment 15 where it was left in 2001 but to pick out the best of what is there and add new approaches. He stated he was a part of the original effort and felt that it did get too complicated. He referred to public testimony regarding sideboards established by the NPFMC and would like the Amendment 15 process to be able to consider similar alternatives. Mr. Myer asked for an amendment to the motion that the new Amendment 15 analysis include an alternative to limit all AFA catcher-vessels holding a limited entry groundfish permit to the historical aggregate percentage of harvest of the Pacific whiting OY determined by the harvest of all AFA catcher-vessels during 1994-2000. Mr. Cedergreen seconded the amendment to Motion 11.

Mr. Melcher was not opposed to the option that Mr. Myer is proposing, but rather suggests we do that in our normal Council process rather than adding it as an alternative now. Mr. Melcher would prefer to identify alternatives at a later Council meeting. Mr. Myer heard we were going to pick a preferred alternative out of the existing Amendment 15 alternatives.

Dr. McIsaac clarified the Amendment 15 portion of this motion is to revisit and potentially simplify the alternatives, not to just bring the original alternatives forward. The Council certainly can get into the details at this meeting but that is not required. If the motion passes the Council and Council staff would revisit where Amendment 15 was left off and consider development of a new set of alternatives.

Mr. Myer stated that with that explanation he would like to withdraw his amendment.

Main Motion 11 passed. Ms. Culver, and Messrs. Lockhart, Myer, and Mallet voted no.

(09/14/06; 8:13 am)

Mr. Myer stated that based on the evening discussions regarding Council action under Agenda Item C.5, he would appreciate the opportunity to clarify the intent of the friendly amendment to Motion 11. Mr. Myer requested the motion be restated. Dr. McIsaac stated the first paragraph of the motion was to direct the Council to work expeditiously on Amendment 15 and secondly, recommend to NMFS that an emergency rule be implemented for the 2007 Pacific whiting season that would prohibit participation in the mothership, shore-based, and catcher/processor sectors by AFA-qualified vessels with no history prior to 2006. Dr. McIsaac stated that Agenda Item C.5.b, Supplemental ODFW Report as well as the public testimony were offered as further justification for the recommended action and were included in the motion. Mr. McIsaac clarified the friendly amendment portion of the motion was to expand the prohibition in the proposed emergency rule from only the shore-based sector to the shore-based, mothership, and catcher/processor sectors of the Pacific whiting fishery. Mr. Myer stated he wanted it to be clear that the friendly amendment addressed all AFA qualified vessels, including those in the mothership sector.

C.6 Exempted Fishing Permits for 2007 Fisheries (09/14/06; 10:42 am)

C.6.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

Ms. Fosmark said she would recuse herself from the vote and the discussion on this issue since she is involved with one of the proposed exempted fishing permits (EFPs).

C.6.b Reports and Comments of Advisory Bodies

GMT Report

Ms. Ashcraft provided Agenda Item C.6.b, Supplemental GMT Report.

Mr. Moore asked if the GMT evaluated the EFP proposals with the perspective of their potential effectiveness for managing the fleet. Ms. Ashcraft said the GMT believes all three EFPs vary enough in techniques and gear configurations and they all have the potential for management use.

Ms. Vojkovich asked why the GMT is recommending a vessel-specific cap of 110 lbs of canary rockfish and an overall cap of 110 lbs. Ms. Ashcraft clarified that the GMT recommendation is to specify a per vessel canary rockfish bycatch cap of 110 lbs. In cases where there are multiple vessels associated with an EFP, the overall canary rockfish cap should be expanded to account for that number of vessels.

Ms. Michele Culver noted the GAP is recommending each EFP fishery should fish deeper than 80 fm and the GMT is recommending EFP fisheries be restricted to deeper than 100 fm. What are the bycatch implications for canary rockfish? Ms. Ashcraft answered the canary bycatch in this area will be highest between 70-100 fm.

GAP Report

Mr. Gerry Richter provided Agenda Item C.6.b, Supplemental GAP Report.

Mr. Moore noted that GAP recommendations were more conservative than GMT recommendations. Did the EFP applicants agree with the GAP recommendations? Mr. Richter said yes.

Mr. Myer asked if the GAP was recommending a 100 lb per vessel canary bycatch cap or is that an overall 100 lb cap for each EFP. Mr. Richter said the recommended cap was an overall one for each EFP.

Mr. Lockhart asked if the GAP was recommending all three EFPs and Mr. Richter said yes, but the EFP reports should be standardized. He recommended using the Berkeley EFP application as a model.

EC Report

LT. Cleary provided Agenda Item C.6.b, Supplemental EC Report. Dr. Clarke was also asked to provide a report on behalf of the observer program.

Mr. Moore noted the Berkeley EFP application specified 100% observer coverage while the Kraencke EFP does not. What does the EC recommend? LT. Cleary said the EC recommends 100% observer coverage for all three EFPs. Mr. Lockhart asked Dr. Clarke to speak to the issue of EFP observer coverage. Dr. Clarke explained that two of the three EFP applicants would bear the cost of NMFS-trained observers. The next observer training class is next March; therefore, none of these EFPs can proceed before March. The third EFP application proposes using randomly scheduled observers. Dr. Clarke recommended this EFP not be approved unless 100% observer coverage is borne by the EFP participants. She said that the Northwest Fisheries Science Center (NWFSC) would work with EFP applicants on the recommended data collection and she agrees with the GAP on the need for standardized data collection.

C.6.c Public Comments

Mr. Robert Kraencke, F/V Lady LeBlanc, San Jose, California

Mr. Kraencke explained that his EFP application (Agenda Item C.6.a, Attachment 3) was being modified to specify only one vessel and he agrees to bear the cost of observers.

Mr. Josh Churchman, San Francisco Crab Boat Owners Association, Bolinas, California

Mr. Tom Ghio, Ghio Fish Company, Santa Cruz, California

Mr. Ralph Brown, fisherman, Brookings, Oregon

C.6.d Council Action: Approve for Public Review

Mr. Moore moved and Mr. Warrens seconded a motion (Motion 22) to send out for public comment the three EFP applications as shown in the following documents: Agenda Item C.6.a, Attachment 1, Chilipepper Rockfish EFP Application, Sponsored by Berkeley; Agenda Item C.6.a, Attachment 2, Chilipepper Rockfish EFP Application, Sponsored by Churchman; and Agenda Item C.6.a, Attachment 3, Chilipepper Rockfish EFP Application Sponsored by Kraencke and Pemberton; and with the following conditions: 1) specify the bycatch caps for bocaccio, darkblotched, and widow rockfish shown in Table 2 of Agenda Item C.6.b, Supplemental GMT Report; 2) specify the bycatch caps for cowcod and yelloweye rockfish shown in Table 3 of the same report; 3) specify a 100 lb overall bycatch cap for canary rockfish; 4) require that each of the vessels fishing under the EFP fish seaward of 80 fm as recommended by the GAP; 5) require a standardized reporting format and a landing declaration requirement using the CDFG enforcement office; and 6) require 100% observer coverage for the Kraencke EFP (Agenda Item C.6.a, Attachment 3), with the cost of that observer coverage borne by the participants of that EFP application.

Mr. Moore said it appears all of our advisory bodies have reviewed the EFPs and have no problems with

them. The EC recommended VMS coverage, which is or will be a requirement for these vessels (depending on whether they are limited entry or open access vessels). In the interim period, prior to required VMS on open access vessels, there is little risk given the requirement for full observer coverage. Finally, the canary rockfish caps recommended in his motion are very conservative.

Mr. Myer said the NWFSC had a problem with the Berkeley EFP application (Agenda Item C.6.a, Attachment 1) since it specified Dr. Berkeley as the observer. Mr. Moore said the intent of the motion was to require an appropriately certified observer paid for by the applicant for each EFP. If Dr. Berkeley wants to become certified, he can do that.

Ms. Vojkovich asked why an EFP with four vessels participating would be held to the same overall canary bycatch cap as an EFP with one vessel participating. Mr. Moore said he based that on the GAP recommendation and statement that each EFP applicant agreed with the GAP. Ms. Vojkovich said she was concerned with that element since it might limit EFP activities. She asked for a friendly amendment to the motion to recommend a per vessel canary bycatch cap of 100 lbs for a total cumulative bycatch cap of 800 lbs of canary rockfish for all three EFPs combined (for eight total vessels). The maker and seconder accepted the friendly amendment.

Ms. Vojkovich said she supported the observer requirement and then volunteered CDFG staff to coordinate the standardized EFP data reporting elements with NWFSC observer program staff and the EFP participants. Mr. Lockhart asked the EFP applicants to look at the observer costs and said those costs could be as high as ten thousand + dollars for each EFP participant.

Mr. Melcher asked Ms. Vojkovich if she was confident such small EFP caps can be accurately tracked and she said yes, given the required 100% observer coverage.

Motion 22 passed on a voice vote (Ms. Fosmark abstained; Mr. Myer voted no). Mr. Lockhart voted yes because it is going forward for public review. Regardless of what the Council does, NMFS has the final say, which does not mean these will necessarily be adopted in November.

C.7 Trawl Individual Quotas: Stage I Alternatives and Progress Report on Stage II

C.7.a Agenda Item Overview (09/14/06; 1:35 pm)

Mr. Jim Seger provided the agenda item overview. (PowerPoint Presentation to present the components.)

C.7.b Report of the Trawl Individual Quota Committee

Ms. Dorothy Lowman provided Agenda Item C.7.c, Supplemental TIQC Report.

C.7.c Reports and Comments of Advisory Bodies

Dr. Conrad provided Agenda Item C.7.c, Supplemental SSC Report. Mr. Seger read Agenda Item C.7.c, Supplemental HC Report. Ms. Ashcraft (along with Mr. Merrick Burden to field questions) provided Agenda Item C.7.c, Supplemental GMT Report. Mr. Dan Waldeck (with Mr. Marion Larkin reading the minority statement portion of the report) provided Agenda Item C.7.c, Supplemental GAP Report.

C.7.d Public Comments

Mr. Jan Jacobs, American Seafoods Company, Seattle, Washington
Mr. Craig Urness, Pacific Seafood Group, Clackamas, Oregon

Ms. Dorothy Lowman, Environmental Defense, Portland, Oregon
Ms. Johanna Thomas, Environmental Defense, Portland, Oregon
Mr. Rod Fujita, Environmental Defense, San Francisco, California
Mr. Brad Pettinger, Midwater Trawlers Cooperative, Astoria, Oregon
Mr. Joe Bersch, Supreme Alaska Seafoods, Seattle, Washington
Ms. Ellen Faulkner, North Coast Consumers Alliance, Redwood Valley, California
Mr. Steve Hughes, United Catcher Boats, Seattle, Washington
Mr. Brent Paine, United Catcher Boats, Seattle, Washington
Ms. Laura Pagano, Natural Resources Defense Council, San Francisco, California
Ms. Donna Parker, Arctic Storm, Seattle, Washington
Mr. Mike Storey, F/V Pegasus, Warrenton, Oregon
Mr. Ralph Brown, fisherman, Brookings, Oregon
Mr. Ray Toste, Washington Dungeness Crab Fishermen's Association, Westport, Washington
Mr. David Jincks, Blue Fox Fisheries, Newport, Oregon
Mr. Kent Craford, West Coast Seafood Processors Association, Portland, Oregon
Mr. Mike Okoniewski, Pacific Seafood, Woodland, Washington
Ms. Ann Maurice, Ad Hoc Committee, Occidental, California
Mr. Doug Fricke, Washington Trollers Association, Hoquiam, Washington

C.7.e Council Action: Confirm Stage I Results and Alternatives, and Provide Guidance on Stage II Analysis

Mr. Myer noted that the co-op proposal was brought forward as a follow on from the June 2006 TIQC report. He moved (Motion 23) to include the co-op proposal package as forwarded by the TIQC, into analysis as a separate alternative to ITQs. It should be included as an option for all the whiting sectors (shoreside, mothership, catcherprocessor), recognizing this is to be used as a starting point for the analysis. Mr. Cedergreen seconded the motion.

Mr. Myer indicated the proposed mothership co-op program is an alternative to be considered. This does not mean it has to be the same for all whiting sectors. This co-op structure addresses all the concerns addressed by an ITQ fishery – stopping overcapitalization and the race for fish and providing methods to reduce bycatch. The structure has a proven track record in the Alaska pollock fishery. The GAP report shows it is controversial but it also says it is a good option. If we are to decouple the whiting industry from the nonwhiting groundfish fisheries, then we need to have an option the whiting industry wants. Finally, the NEPA document needs to have all reasonable alternatives. A co-op is a reasonable alternative. In response to a question from Mr. Lockhart, Mr. Myer said we are not making the decision to bifurcate, want to make sure the right tools are in the toolbox. Ms. Culver supported the motion and encouraged other sectors to develop proposals looking at the mothership co-op proposal to see if there are elements that would work for them.

Mr. Moore moved to amend Motion 23 by adding the TIQC recommendations to analyze a whiting IFQ rollover option, a single pool of bycatch in the whiting fishery, and make changes to the community stability program; and also by adding GAP recommendations on the scaling of cumulative limits and the additional option on eligibility criteria. Mr. Myer and Mr. Cedergreen accepted it as a friendly amendment.

Mr. Melcher said he too wants to meet the industry needs but expressed fear about doing so while hearing comments that we need to simplify and streamline the alternatives. He would reluctantly support the motion. Ms. Vojkovich said she would be voting against the motion because it adds more complexity to a complex set of alternatives.

Mr. Lockhart agreed that the alternatives are overly complex. He could see allowing the analysis to go forward; but noted there is one group that has not looked at this document during this process and that is the managers – the agencies. They have not looked at all of it in terms of their ability to actually do it given the resources and the complexity. This needs to be done and he does not believe it would be delaying the process.

Mr. Warrens expressed concern that the Council has overstretched its ability to put forth a groundfish amendment. He thought it would be good to rethink it to see if there is a more direct path to get to the end of the issue. Mr. Moore noted that his motion to add items to the analysis requested by the advisory bodies came after the motion to add something else was already on the floor. He noted the conflict between calls for simplicity and requests to add more.

Ms. Culver offered a substitute motion (Motion 24) to ask that the TIQC review the structure of the alternatives and make some initial policy recommendations relative to major elements on which the TIQC and members of the industry have not been able to make progress and report back to the Council in November on their discussion of alternatives and progress relative to intersector allocation. At that time, all of the recommendations from the TIQC, GMT, and GAP would still be available for Council discussion and potential addition to the Stage I document, and the Council could consider the next steps of the process. Ms. Vojkovich seconded the motion.

Mr. Moore moved to amend Motion 24 by having the TIQC report at the March 2007 Council meeting, rather in November. Mr. Warrens seconded the amendment.

After a discussion of tasking and meeting dates, the Council adjourned and returned to this issue on Friday morning.

Mr. Myer withdrew Motion 23, Ms. Culver withdrew her substitute motion (Motion 24), and Mr. Moore withdrew his amendment to Motion 24.

Ms. Culver moved and Mr. Cedergreen seconded Motion 25:

1. The Allocation Committee meets in October 2006 to discuss Intersector Allocation
2. The Allocation Committee meets again in the December 2006-February 2007 timeframe to develop initial policy recommendations on key elements, such as:
 - a. Initial allocation (Programs A, B, and C)
 - b. Overfished species (e.g., IFQ vs. cumulative limits, individual vs. pool)
 - c. At-sea observers/monitoring
 - d. Area management
3. The Council receives progress reports from the Allocation Committee at the March 2007 Council meeting.
4. At the March meeting, the Council would consider the recommendations of the Allocation Committee and provide guidance on the next steps relative to Stage I.

Ms. Culver then provided the rationale. The intent of the Allocation Committee discussion is not to debate the merits of the different approaches that are supported by one sector or another, but rather to develop a suite of alternatives that address the key elements listed above resulting in a reasonable range of feasible, supported alternatives that can be presented in a clear, concise manner for Council consideration.

Mr. Moore asked about point 2 and whether “such as” means they can add other items if they want to. Ms. Culver agreed. Ms. Vojkovich asked whether the progress report for March is about the GAC

meeting on TIQs or on intersector allocation. Ms. Culver noted that could be discuss at the October GAC meeting.

Motion 25 passed.

Mr. Myer moved (Motion 26) to have the co-op proposal included, as forwarded by the TIQC, in the analysis of rationalization options as an alternative separate from ITQs. It should be included as an option for all the whiting sectors (shoreside, mothership, catcherprocessor), recognizing that this is to be used as a starting point for the analysis. Mr. Cedergreen seconded the motion.

Motion 26 passed. Ms. Vojkovich voted no.

Mr. Lockhart stated that his staff had noted there might be some areas in which progress on the EIS might be made between now and the March meeting. Dr. McIsaac noted this motion allows for continued significant progress.

Council members settled on the week of December 11, 2007 for a GAC meeting.

Ms. Culver stated that the GMT chair had indicated the GMT willingness to work with Council staff to help prepare documents.

C.8 FMP Amendment 10 (Shore-Based Whiting Monitoring) (09/15/06; 8:22 am)

C.8.a Agenda Item Overview

Ms. Laura Bozzi provided the agenda item overview.

C.8.b Joint Agency Report Review

Ms. deReynier provided a powerpoint presentation (available on the Council website, http://www.pccouncil.org/bb/2006/0906/sup_ag_c8b_nmfs.pdf) that outlined the need for new regulations, considerations when developing these regulations, the associated timeline, and areas in which Council guidance was needed, among other issues. Management of the 2007 shore-based whiting fishery would be designed to transition the fishery into Federal regulations, using vessel EFPs with requirements as similar as possible to intended regulations as well as temporary 2007 processor regulations to test converting state requirements to federal regulations. For the temporary processor regulations, a proposed rule would be published in December 2006 because a final rule must be in place by April 1, 2007. Use of electronic logbooks and electronic fish tickets were noted as possible requirements, if recommended by the Council. Dr. Freese explained that PSMFC has been looking for a sector in which to field-test implementation of electronic fish tickets, and that the shore-based whiting fishery could serve as such a sector. An electronic fish ticket pilot project program would not be ready for the 2007 fishery, however. Dr. Freese noted that PSMFC also has expressed some interest in helping further the electronic logbooks, but these are not yet as developed as the electronic fish tickets. Mr. Myer asked if there was a possibility for public input on field testing of cameras for the mothership sector and on electronic logbooks. Ms. deReynier replied that an electronic logbook program is not yet ready for input, however input on design would be helpful.

Relative to data collection in 2007, Ms. Vojkovich asked what was expected from the states under a requirement of full retention and monitoring at the dock. If the states do not have a funding mechanism for such a role, how will this be dealt with? Ms. deReynier said that discussions about this are needed over the following months and that the state/processor agreements need to be looked at. She then called

attention to the Joint Agency Report (Attachment 1, Agenda Item C.8.b) that discussed the declining number of port samplers coastwide. She mentioned the possibility that this issue might be included in the Research and Data Needs document and that the Council request a study on port sampler coverage to possibly get the funding for that program increased.

Asked what the key elements were on which the Council needed to provide guidance, Ms. deReynier replied that the most important would be to provide guidance on the desired level of sampling/monitoring for fish ticket verification for 2007-2008. The selected level would relate to whether the Council wanted bycatch limits for the whiting fishery to be for all non-tribal whiting sectors (as it is now) or to be sector-specific. Ms. deReynier guided the Council to page five of the Joint Agency Report, which lists issues to consider in developing sector specific bycatch limits. Ms. deReynier then confirmed for Ms. Vojkovich that if the Council chose monitoring levels that would support fleetwide bycatch limits, the Council could still revisit the issue in the future and establish a different requirement.

The continued use of cameras for monitoring of the shoreside fleet, as well as the introduction of cameras to catcher vessels delivering to motherships, was also discussed. Dr. Clarke explained that every year NWFSC submits a proposal for bycatch experiment funds for the shore-based sector video monitoring project. This year their proposal is at the bottom of the list of funding applicants and so the likelihood of getting funding this year is very low. Dr. Clarke said that there is a greater chance of getting funding to do analysis of the camera footage, but not enough to cover other costs such as the purchasing of cameras.

C.8.c Reports and Comments of Advisory Bodies

Mr. Platt provided Agenda Item C.8.c, Supplemental GAP Report.

C.8.d Public Comments

Mr. Brent Paine, United Catcher Boats, Seattle, Washington
Mr. Brad Pettinger, Midwater Trawlers Cooperative, Astoria, Oregon
Mr. David Jincks, Midwater Trawlers Cooperative, Newport, Oregon
Mr. Mike Okoniewski, Pacific Seafood, Woodland, Washington

C.8.e Council Action: Assess Current Status and Recommend Future Actions

Mr. Moore made a series of recommendations. Related to the level of sampling needed, for 2007 he recommended continued use of a fleetwide pool of bycatch. He said that there is some willingness among processors to again pay for sampling, as long as they are involved in the process. Funding of cameras can be worked out in the agency/industry meeting. To discuss cameras on mothership catcher vessels he suggested that a separate agency/industry meeting be convened.

Throughout this agenda item Council members and members of the public noted the importance of interaction between the industry and NMFS in development of the shore-based whiting fleet monitoring program. They also spoke strongly in favor of a separate discussion between the mothership sector industry participants and NMFS regarding the application of camera monitoring to that sector's catcher boats. Discussion ensued on the details for setting up these two meetings, such as who would participate. Dr. McIsaac said this does not lead to a motion for an ad hoc committee, but a much broader group. If the meetings occur in a timely enough matter and they are in the briefing book, the advisory bodies would have a chance to provide input on the issue without having to attend the meeting.

Mr. Lockhart provided a summary that concluded the discussion. NMFS would take the lead in setting up the two meetings. One meeting, in Seattle, would allow for discussions with industry on the use of

cameras for monitoring catcher vessels delivering to motherships. A larger meeting with industry, as suggested in the GAP statement, would be organized to discuss the monitoring of the shore-based whiting sector. Regulatory issues could be worked out via phone calls between Federal and state agency personnel. Council members concurred with Mr. Lockhart's conclusions, and Ms. deReynier concurred that she had received enough guidance.

C.9 Final Consideration of Inseason Adjustments, If Necessary

C.9.a Agenda Item Overview (09/15/06; 4:25 pm)

Mr. DeVore provided the agenda item overview.

Mr. Myer had to recuse himself from the vote due to a conflict of interest, but reserved the right to participate in the Council discussions prior to any motion and vote.

C.9.b Reports and Comments of Advisory Bodies

GMT Report

Mr. DeVore summarized Agenda Item C.9.b, Supplemental GMT Report.

GAP Report

Mr. Daniel Platt provided a short verbal report. The GAP had a late-week discussion on the proposed 2007 sablefish DTL fishery and the fact the open access quota was reached early this year. The GAP wants higher DTL limits at the start of next year, but was unsure of how to proceed. Mr. Moore said the Council can consider this as an inseason action in November. Ms. Vojkovich asked, if the proposed rule hasn't been published for the 2007-2008 specifications, how the Council can take an inseason action on these specifications. Ms. Cooney said this has been done before and the Council can recommend an inseason action that may or may not be part of the final rule. While the final rule is not published yet, it is almost ready.

C.9.c Public Comments

None

C.9.d Council Action: Adopt or Confirm Final Recommendations for Adjustments to 2006 Fisheries

Mr. Moore moved and Mr. Melcher seconded a motion (Motion 32) to confirm the inseason adjustments adopted under agenda item C.3, and the scenario 1 bycatch scorecard described in Agenda Item C.9.b, Supplemental GMT Report. Mr. Moore said adopting scenario 1 was the correct action since it was most precautionary.

Motion 31 passed on a voice vote (Mr. Myer abstained).

C.10 Inseason Chinook Bycatch Trigger for the Pacific Whiting Fishery and Technical Correction to the Acceptable Biological Catch (ABC) for Petrale Sole in the 2007-2008 Harvest Specifications and Management Measures

C.10.a Agenda Item Overview (09/15/06; 4:39 pm)

Mr. DeVore provided the agenda item overview.

C.10.b Reports and Comments of Advisory Bodies

None.

C.10.c Public Comments

None.

C.10.d Council Action: Consider Adopting an Inseason Chinook Bycatch Trigger to Implement an Ocean Salmon Conservation Zone in the 2007 and 2008 Pacific Whiting Fishery, and a Technical Correction to the 2007 Petrale Sole ABC

Mr. Lockhart moved and Ms. Vojkovich seconded a motion (Motion 33) to adopt: 1) the inseason trigger mechanism to enact the Ocean Salmon Conservation Zone, if needed, as described in Agenda Item C.10.b, Supplemental NMFS Report; and 2) the correct 2007 petrale sole acceptable biological catch specification of 3,025 mt.

Motion 33 passed on a voice vote.

D. Habitat

D.1 Current Habitat Issues

D.1.a Report of the Habitat Committee

Mr. Chuck Tracy provided the Habitat Committee report. Vice-Chairman Dave Ortmann chaired this agenda item. Mr. Stuart Ellis provided the report of the Habitat Committee (Agenda Item D.1.a, Supplemental HC Report).

D.1.b Reports and Comments of Advisory Bodies

None.

D.1.c Public Comment

Ms. Ellen Faugner, North Coast Consumers Alliance, Redwood Valley, California
Ms. Ann Maurice, Ad Hoc Committee, Occidental, California

D.1.d Council Action: Consider Habitat Committee Recommendations

Mr. Anderson said Ms. Cooney noted that GC would work with Council staff to clarify the HC's first recommendation.

Mr. Ellis said that regarding a joint meeting with the SSC at the November Council meeting, we would probably ask for a day and a half meeting. The HC would meet with a subcommittee of the SSC.

Mr. Anderson said he was unclear on why the two committees were meeting and how the meeting was connected with Council objectives.

Mr. Ortmann said the HC's intent was to discuss where ecosystem management is leading. Ecosystem-based management issues are not going away. A number of other RFMCs are developing ecosystem plans. We thought it would be helpful for a group to meet with the SSC's subcommittee and discuss what, if anything, the Council needs to do on this.

Mr. Helvey agreed this was a good idea. He noted the Council has already done quite a bit in terms of ecosystem management actions, such as EFH and the krill harvest ban. It would be useful for these committees to look at what the Council has already done.

Dr. McIsaac said that four other Councils received a substantial amount of money to begin ecosystem-based management. We did not receive funds and are tracking what other RFMCs have done. The meeting being called for by the HC is based on a previous motion by the Council.

Chairman Hansen said that in that case, we ought to have the two groups meet. The Council concurred.

On the Klamath River issue, the HC recommended a presentation on Klamath habitat in the spring of 2007, when people who are interested in salmon attend the meetings. Mr. Ellis said one of the biggest challenges is explaining how we will be able to engage in any level of ocean fisheries in the foreseeable future. There is clearly room to educate folks on habitat capacity and other habitat issues.

Ms. Fosmark asked how ecosystem monitoring (for example monitoring temperature changes) would be integrated into fishery management. Would it be worthwhile to spend money seeking this information? Mr. Ellis said there is potential to use temperature measurements and other ecosystem indicators in management. We would have more lead time to understand abundance, and possibly have fisheries respond on a more timely or accurate level. He felt that it would be useful to integrate more environmental information into salmon management.

Mr. Melcher said we have Salmon Amendment 15, the Klamath overfishing review, and the preseason process. I don't know if we need a separate presentation on these matters.

Mr. Jerry Mallet said the HC has brought Klamath problems before us many times. He complemented the HC on the job they did of bringing Klamath issues to the Council.

Vice Chairman Ortmann asked about other items in the HC report, such as the liquefied natural gas (LNG) proposal.

Mr. Melcher said we should comment at the appropriate time under the EFH mandate for both LNG and wave energy protocols.

Dr. McIsaac said that the Council would put the HC's proposal for a joint meeting on the agenda for Friday, under the agenda planning item.

Mr. Frank Warrens said the Oregon Ocean Policy Advisory Council has appointed a committee to take a look at wave energy projects. He said he would ask them to copy Mr. Ellis on any correspondence or reports.

E. Highly Migratory Species Management

E.1 Changes to Routine Management Measures

E.1.a Agenda Item Overview (09/12/06; 1:02 pm)

Dr. Dahl provided the agenda item overview.

E.1.b Report of the Highly Migratory Species Management Team

Ms. Michele Culver provided the HMSMT Reports.

E.1.c Agency Comments

Mr. Anderson, referenced Agenda Item E.1.c, WDFW Report. He pointed out the origin of the bag limit proposal was the IATTC resolution relative to albacore fishing effort. He then reviewed WDFW discussions relative to bag limits. They concluded that placing a moratorium on non-salmon charterboat licenses is preferable. This would take action by the Washington State Legislature.

Mr. Melcher said ODFW is interested in the evaluation of the drift gillnet closed area options and has no comments at this time on the bag limit issue.

Mr. Helvey asked Mr. Anderson for clarification of WDFW's approach. He wanted to know how they distinguish between private and charterboat catch. Mr. Anderson said there are only two ports that have recreational activity on albacore and port samplers at these two locations monitor landings. This allows estimates of total catch. Furthermore, starting last year, the charterboats must maintain a logbook. Finally, Washington recently passed a licensing requirement for albacore.

E.1.d Reports and Comments of Advisory Bodies

LT. Dave Cleary provided Agenda Item E.1.d, Supplemental EC Report.

Mr. Doug Fricke asked for a November 2 and 3 HMSMT and HMSAS meeting (if possible), and then to not meet at the November meeting. Dr. Dahl said he would contact the HMSAS to confirm those dates.

E.1.e Public Comment

Mr. Doug Fricke, Washington Trollers Association, Hoquiam, Washington
Ms. Karen Steele, Turtle Island Restoration Project, Forest Knolls, California
Ms. Kate Wing, NRDC, San Francisco, California
Ms. Meghan Jeans, The Ocean Conservancy, San Francisco, California
Mr. Dan Wolford, Coastside Fishing Club, Los Gatos, California
Mr. Bob Ingles, Golden Gate Fishermen's Association, Hayward, California
Mr. Jim Martin, RFA, Fort Bragg, California

E.1.f Council Action: Adopt Proposed Changes to 2007-2008 Routine Management Measures for Public Review

Mr. Melcher moved (Motion 2), with regard to the DGN alternatives shown in HMSMT Report E.1.c, the Council put out for additional analysis and public comments alternatives 1, 2, and 4 as described in the Supplemental HMSMT Report E.1.c, Report 2 with a modification to alternative 4. The modification to

this alternative is to insert the language “require all DGN fishing north of 45° N latitude from August 15 to November 15 to have an at-sea federal observer on the vessel.” Mr. Warrens seconded the motion.

Mr. Melcher said alternative 4 would require observers in the area without involving the EFP, as would be the case under alternative 2. Mr. Moore asked if the revised alternative includes the electronic monitoring option described in Supplemental HMSMT Report E.1.c by the HMSMT. Mr. Melcher said yes.

Ms. Vojkovich noted the HMSMT report states that additional discussions would be needed with NMFS to determine observer availability. She asked if we can expect more information in November on this issue. Mr. Melcher said he hoped that issue would be discussed in the analysis.

Mr. Helvey noted that some drift gillnet vessels cannot carry fishery observers because of size or other reasons and that would have to be taken into account in terms of how this would affect eligibility to fish in this area. Chairman Hansen noted the motion says if you cannot carry an observer you cannot fish. Council members concurred.

Ms. Fosmark said the purpose of the DGN EFP is to gather information and boundary changes were considered in that process but not given a high priority. This proposal appears to increase the regulatory burden. But she said she would support the motion. She also noted that the Pacific Offshore Take Reduction Team originally proposed setting the northern boundary of the conservation area at the OR/CA border.

Ms. Vojkovich emphasized the need for adequate data to be available about fisheries in this area when the Council takes final action.

Mr. Moore said he supports the motion because it includes status quo (no action option), but shares Ms. Fosmark’s concerns.

Motion 2 passed.

Ms. Vojkovich noted that vessels are currently out of compliance with respect to vessel marking. She then asked Mr. Helvey to explain the HMS permit requirement. He described the rationale for the current permit requirements.

Ms. Vojkovich moved (Motion 3) that the vessel marking requirements Options 1 and 2 in Agenda Item E.1.c, HMSMT Report, be put out for public review. Mr. Thomas seconded the motion.

Ms. Vojkovich explained her motion by saying that rather than looking at a variety of options, it would simplify the decision to just consider status quo or exempting the recreational fleet. She didn’t think vessel marking is a big concern as long as there is a permit and tracking.

Mr. Anderson moved to amend motion 3 to add option 3 but eliminate the word “vessels” on the last line so that it only referenced enforcement aircraft. Mr. Cedergreen seconded the amendment to Motion 3. Mr. Anderson said his amendment would give the Council more time to think about the issue of being able to identify vessels from enforcement aircraft. This option would allay charter boat operator’s aesthetic concerns. Charter boats have weather decks out of view of prospective customers and this would allow aircraft monitoring.

Mr. Melcher said he supported Mr. Anderson amendment. Chairman Hanson concurred.

Amendment to motion 3 passed. Main motion 3 passed.

Ms. Vojkovich prefaced making a motion by emphasizing the need to keep the regulatory regime as simple as possible, and CDFG will be looking at these proposals from that perspective. She then moved (Motion 4) adoption of albacore bag limit Options 1, 2, 3 with a change to the boundary to Pt. Conception (34°27'), and Option 4. For the bluefin tuna bag limits, the motion adopts Options 1 and 2, but Option 2 is changed to a statewide bag limit of 5 to 10 fish per angler. This is a range from which the Council would choose the final bag limit number. Mr. Thomas seconded the motion.

Mr. Melcher asked for confirmation that the no action option was included with the bluefin bag limit options. Ms. Vojkovich said yes.

Ms. Vojkovich said this represents a wide range of alternatives in terms of the bag limit numbers. In particular she said she would like to get public comment on the 5 fish bag limit for bluefin.

Mr. Moore asked if alternative 3 includes sub-options for management lines at both Pt. Arena and Pt. Conception. Ms. Vojkovich said yes.

Motion 4 passed.

Dr. Dahl asked for confirmation that the Council is not forwarding the WDFW bag limits. Mr. Anderson said that is correct. He said they will work hard to get the necessary legislation for the license moratorium, but if they are unsuccessful at the state level, then WDFW may come back before the Council on this issue. Mr. Cedergreen said the user groups are going to work very hard to make this happen.

E.2 NMFS Report on Highly Migratory Species

E.2.a Activity Reports (09/12/06; 3:15 pm)

Mr. Mark Helvey provided the NMFS report, including the situation summary and a supplemental NMFS report. He reviewed each.

Dr. McIsaac provided additional rationale for the proposal to take final action on the bigeye tuna FMP amendment at the November meeting, in contrast to the HMSMT's recommendation of completing this action over two additional meetings. In support, he reviewed the previous actions on this issue.

Mr. Anderson said typically the Council has an opportunity to review and approve a range of alternatives for public review, and subsequently the Council takes final action to choose an alternative. However, this process appears to deviate from that process.

There was discussion of what had previously been provided for public review.

Dr. McIsaac said he agreed with seventy-five percent of what Mr. Anderson said but reiterated the rationale for considering final action in November.

Ms. Vojkovich said it would be helpful to explain why it would be preferable to complete this in November rather than waiting until March.

Dr. McIsaac said there is no compelling reason for final action in November; it's just that this issue has been on the agenda several times already and it just seems more expeditious to conclude action in November.

Mr. Helvey said NMFS sees this action as a subset of the action contained in the WPFMC's Amendment 14 to their Pelagics FMP that responds to the original declaration letter from December 2004 and the need for a Pacific-wide response.

Mr. Feder elaborated on this rationale, pointing out that Amendment 14 deals with the obligation to end overfishing Pacific-wide.

In response, Dr. McIsaac asked if there was a need for amendment to respond to the overfishing. Mr. Feder said his opinion was the WPFC's amendment could also serve as the PFMC's amendment. The short answer, then, is no; there could be a single plan amendment that could deal with the issue.

Mr. Anderson asked Mr. Helvey if the management options document (Agenda Item E.2.a, Attachment 1) had been revised in response to HMSMT comments made at the April 2006 meeting and any subsequent review by the Team. Mr. Helvey said the current document is the same. The HMSMT had comments recommending adopting a combination of options 2 and 3 from the document but without the provision for exempting fleets catching less than 1 percent of the total catch. Mr. Anderson reiterated, did the management options document reflect the HMSMT recommendations? Dr. Dahl replied that they were best reflected in the letters provided as Attachment 2 but on further questioning said they were not incorporated in the management options document.

Mr. Helvey clarified that Attachment 1 is the same thing as the document in the April briefing book. Nothing has been done in terms of a formalized document to incorporate the HMSMT's recommendations. NMFS is proposing that the HMSMT recommendations be used as the basis for a plan amendment document.

Dr. McIsaac asked for further clarification from GC, reading from the situation summary "Subsequent to the June Council meeting, consultations between Council and NMFS staff concluded that the HMS FMP does in fact need to be amended in order to comply with the requirements of the Magnuson-Stevens Act." He then asked, does counsel agree with this statement? Mr. Feder said there are other options. The Council could move forward with a plan amendment or the WPFMC amendment could be the document used as the sole FMP amendment to deal with this issue. Therefore, he did not agree with the statement in the situation summary because it is too narrow. Having said that, the PFMC still needs to respond in some form to the original declaration letter. This could be in the form of a concurrence with WPFMC's amendment. This would have to be followed by NMFS explaining that the WPFMC's amendment is the single plan amendment necessary to address this issue.

Ms. Vojkovich asked if in the future would only the WPFMC be involved in actions to address overfishing on other stocks? Mr. Helvey responded that it will depend on the stock that is involved. Bigeye is considered a single Pacific-wide stock, thus the WPFMC role. Ms. Vojkovich asked if future actions related to bigeye would only be addressed by the WPFMC.

Mr. Feder emphasized that this was not a way to give the WPFMC authority to regulate vessels on the West Coast. This particular issue only addresses overfishing by all nations and does not change the jurisdictions or management authority of the two councils.

Mr. Moore asked if the Council should expect to receive a copy of WPFMC's Pelagics FMP Amendment 14 in November to be adopted by this Council.

Dr. McIsaac said clearly under the NMFS report this is not the time to reach resolution on the bigeye issue. The alternatives are that the Council could drop it now because it does not need to do an amendment, or bless a plan adopted by another Council. There is a need to schedule a separate agenda item in November to consider these courses of action.

Mr. Moore asked for further clarification on whether this Council would concur with the WPFMC plan, and whether that would involve some kind of response to NMFS confirming that approach. Mr. Hansen said this was getting into Council discussion and asked to move on to the reports and comments first.

E.2.b Reports and Comments of Advisory Bodies

None.

E.2.c Public Comment

Mr. Chip Bissell, American Albacore Association, Oak View, California
Ms. Kate Wing, NRDC, San Francisco, California

E.2.d Council Discussion including Inter-American Tropical Tuna Commission Report, Council Bigeye Overfishing Response, and Yellowfin Stock Status

Mr. Anderson asked Mr. Helvey if the plan was to revise the management options paper based on HMSMT input as the next step. Mr. Helvey asked staff for clarification. Ms Taylor said that is correct. Mr. Anderson said the revisions are the ones approved by the Council in April in response to the HMSMT recommendations. Mr. Helvey said that is correct. Mr. Anderson then asked when such a document would be available for public review. Ms. Taylor said the document would be made available on October 6th. Mr. Anderson then described three courses of action for clarification: public review of a document with Council final action in November, additional review in November and final action in March, or concurring with the WPFMC's amendment by means of a letter to Dr. Hogarth expressing that.

Mr. Helvey said that is his understanding from what he heard this afternoon.

Ms. Fosmark asked if this action pertains to all tuna, including albacore. Mr. Hansen said it just applies to bigeye.

Mr. Anderson moved (Motion 5) that the Council direct staff to revise the options paper and release it for public review by October 6th; the Council would then take final action at the November meeting. Ms. Vojkovich seconded the motion.

Motion 5 passed.

Mr. Moore asked about getting the State Department to meet with interested parties to discuss and define current capacity. He asked NMFS to communicate with State to coordinate this with the next US/Canada albacore treaty meeting in La Jolla. Mr. Helvey said the meeting is scheduled for December 5-6 and he has been discussing organizing a side meeting for this purpose.

F. Marine Protected Areas

F.1 Fishery Regulations within Channel Islands National Marine Sanctuary (NMS)

F.1.a Agenda Item Overview (09/12/06; 4:10 pm)

Mr. Mike Burner provided the agenda item overview.

F.1.b Reports and Comments of Advisory Bodies

Mr. Burner read Agenda Item F.1.b, CPSMT Report. Mr. Burner read Agenda Item F.1.b, CPSAS Report. Mr. Jim Martin provided Agenda Item F.1.b, Supplemental GAP Report.

F.1.c Public Comment

Mr. Greg Helms, Ocean Conservancy, Santa Barbara, California.

F.1.d Council Action: Consider Further Recommendations to NMFS for Establishing Fishery Regulations in NMS's via the Magnuson-Stevens Act

Ms. Vojkovich said she had questions relative to the timeline of activities within the Council and the timeline of the proposal from the CINMS. Mr. Burner stated that an FMP or regulatory amendment under the Council process would require at least two Council meetings and would also require considerable work to complete the documents and analyses necessary to complete an amendment. Ms. Vojkovich asked if a schedule of November 2006 and March 2007 is a reasonable two meeting schedule. Mr. Burner stated that would be the fastest it could occur, but the schedule is very aggressive given the status of the proposal and the analysis and the short amount of time before the November Council meeting.

Ms. Vojkovich asked about the ongoing process under the National Marine Sanctuaries Act (NMSA), and specifically requested a timeline for implementing the proposed actions, a description of the proposed regulations and Designation Document changes, and clarification on how the National Marine Sanctuary Program (NMSP) intends to follow the NOAA recommendation to rescind the proposed regulations should MSA regulations be adopted by this Council and NMFS. Mr. Chris Mobley, CINMS Superintendent, was asked to come up to the table to respond.

Mr. Mobley stated that the proposed rule for the promulgation of fishery regulations under the NMSA states that all take would be prohibited under the NMSA unless a fishing related take is already prohibited under MSA regulations on the effective date of the final rule. The effective date will initially be the date the proposed rulemaking becomes final, perhaps spring of 2007. As stated in the preamble to the proposed rule, the original intent was to not have the "effective date" language in the rule so that NMSA regulations would contract automatically as MSA regulations were implemented. However, NOAA General Council advised the CINMS staff that such a procedure does not allow for adequate public notice and is not appropriate. Mr. Mobley stated the intent to reduce the scope of NMSA regulations has not diminished as stated in the preamble, but such action would require notice and comment rulemaking to change the date in the NMSA rule.

Ms. Vojkovich asked Mr. Mobley if the effective date in the proposed rule applied to the proposed Designation Document changes. Mr. Mobley stated that it did not, but added that the Designation Document change is limited to allow the CINMS the authority to regulate fishing only within the proposed marine protected areas for this action and that the Designation Document is intended to be more

generic than the implementing regulations and would not necessarily be changed in response to MSA regulations.

Ms. Vojkovich asked if there was a potential to add a mechanism to the Designation Document change, such as a sunset date, whereby those changes would be removed if no longer necessary. Mr. Mobley said he could not answer without conferring with legal council. The CINMS has provided a DEIS and proposed rule to be reviewed under Agenda Item F.2 that outlines the proposed process and the Council is encouraged to address these issues through the public comment period.

Dr. McIsaac thanked Mr. Mobley for attending the meeting and asked if the mechanism for reducing the scope of the NMSA regulations is in the DEIS the Council will be discussing under Agenda Item F.2. Mr. Mobley said the preamble of the proposed rule attempts to describe the goal and intent of the regulation, but does not mention the exact mechanics. If the preamble is unclear in this regard, the NMSP would welcome Council input as to how to improve the language. Mr. Mobley added the goal would be the most expeditious rulemaking process to change the effective date in the regulations and suggested NOAA General Council should be consulted when developing the process.

Ms. Fosmark stated that at the inception of the CINMS promises were made by the CINMS to not regulate fisheries and she asked how the CINMS would explain to industry and the public why this position has changed and why the proposed Designation Document changes are necessary because this change in policy is generating a lot of resistance. She is concerned about moving forward with the proposed regulation and Designation Document changes without a clear sunset clause or other mechanism to replace NMSA regulations with MSA regulations. Mr. Mobley stated that the best place to look for rationale and a description of the purpose and need for the proposed action is in the DEIS and noted that any regulation needs to be well written to ensure the intended results and should a sunset clause be recommended by the Council and included in a final rule, NMSP staff would be willing to work with the Council to ensure a well crafted sunset clause. Ms. Fosmark said she is concerned about closing areas to all fishing because she believes there is not scientific support for closing surface or pelagic fishing.

Ms. Vojkovich first stated that there have been many comments recently about improving coordination between State and Federal agencies and she feels this is an important matter as the Council, NMFS, the NMSP, and the States all have very different and varied expertise, but common goals and a collaborative process would be mutually beneficial. She added that perspectives of both the NMFS and the NMSP on implementing marine protected areas is warranted and Agenda Item F.1.a, Attachment 1 references the importance of a transparent and open process, a statement that could be taken generically to mean the sanctuary process is not open and transparent. Ms. Vojkovich stated that, although the process is different from the Council process, at a local level, the sanctuary process is an open process. Ms. Vojkovich noted there has been a lot of consternation regarding the proposed Designation Document change and the regulation of fisheries within NMSs. Ms. Vojkovich stated the State of California has a primary goal of maintaining fishery management within the authorities of existing fishery management entities and made a motion for the Council to move forward with the development of fishery regulations in MPAs under the MSA (Motion 6) Mr. Moore seconded the motion.

Ms. Vojkovich stated she made the motion because the State of California has repeatedly stated a preference to use MSA authority to regulate fisheries in Federal waters, however, there have been many questions about the timeliness of implementing fishing regulations in the CINMS. Ms. Vojkovich noted the NMSA process is ahead of the MSA process and voiced her support for crafting flexibility into both the NMSA and MSA regulations to ensure a seamless and efficient transition to sole MSA authority in the future.

Motion 6 passed. Mr. Helvey abstained.

F.2 Review of CINMS Draft Environmental Impact Statement (DEIS) Regarding Fishery Closures (09/13/06; 8:11 am)

F.2.a Agenda Item Overview

Mr. Burner provided the agenda item overview.

Mr. Moore referred to the proposed rule and confirmed the proposed change in the Designation Document of the CINMS therein. Mr. Moore stated he did not readily find a description or analysis of alternative Designation Document changes in the DEIS and asked where in the DEIS the impacts of such changes were addressed. Mr. Burner stated the DEIS is not a Council document and CINMS representatives were in attendance and could better explain how the Designation Document changes were treated in the DEIS.

F.2.b Reports and Comments of Advisory Bodies

Mr. Burner read Agenda Item F.2.b, Supplemental HC Report, and Agenda Item F.2.b, Supplemental CPSAS Report.

Mr. Jim Martin provided Agenda Item F.2.b, Supplemental GAP Report.

Mr. Moore requested additional information regarding the first sentence and socioeconomic analyses. Mr. Martin stated the economic impact levels in the document seem to be too low and there was little analysis of biological impacts to other open areas as a result of these closures.

Lt. David Cleary provided Agenda Item F.2.b, Supplemental EC Report. Following the EC report, Cpt. Mike Cenci recognized that this is Lt. Cleary's last Council meeting as an EC representative and presented a shadow box of pictures, enforcement badges, and a plaque to commemorate Lt. Cleary's six-year tenure on the EC.

F.2.c Public Comments

None.

F.2.d Council Discussion and Comments on the DEIS

Messrs. Chris Mobley and Sean Hastings came to the podium for questions.

Mr. Moore stated the DEIS seemed to address the alternative closed areas and associated regulations and their analysis while the Designation Document changes seemed to reside primarily in the proposed rule. Mr. Moore said he did not see an analysis of the impact of the Designation Document and asked if there would be a subsequent DEIS to address those issues. Mr. Mobley said basically this DEIS is the one required for changes to both the regulations and the Designation Document in order to implement the proposed action. The language of the Designation Document change is included in the DEIS as an appendix which mirrors the proposed rule in the *Federal Register* notice. In the background and scoping sections of the document there is considerable discussion of the issue including input from stakeholders concerned about those changes. In terms of a NEPA analysis, the focus of the DEIS is on the actual impacts from implementation of the action itself, that being the establishment of MPAs in federal waters. Implementation of the proposed action requires changes to both the Designation Document and the implementing regulations.

Mr. Moore then said he was confused, because his recollection was that someone from NOS HQ reviewed the stages of this process for the Council which included an EA or an EIS to accompany and analyze any change in the Designation Document. The appendix you referred to appears to only list the changes with no analysis of their impacts. Mr. Moore felt there was a step missing in the process based on his recollection.

Mr. Mobley said there is a section of Appendix I, that summarizes the proposed changes, the determinations required, and the reasons for the changes and we believe that all requirements are satisfied in terms of disclosing the impacts of the changes to Designation Document and regulations.

Mr. Feder said the DEIS does not appear to cover the proposed changes to the Designation Document. He noted that one of the alternatives is status quo which involves no change to the Designation Document. The change in the Designation Document is only the procedural tool that is used, but as far as NEPA is concerned, the focus is impacts to the physical and socioeconomic environments. This DEIS does this even though the alternatives are not phrased in terms of Designation Document changes.

Mr. Moore said he understands the clarifications provided, but still recalls being lectured by a large team from NOS on how this process would work, where there would be opportunity for public comment, and how the analysis would take shape. Mr. Moore recalls there was to be a full NEPA analysis of potential Designation Document changes and he is disappointed with the information from NOS and the resulting analyses.

Mr. Feder said the change in the Designation Document has no actual environmental impact, it would just adjust a policy document. Mr. Feder likened it to focusing a NEPA analysis on the language change in an FMP itself rather than the resulting impacts of that action. Mr. Feder reported that legally under NEPA, this is sufficient to change the Designation Document

Mr. Warrens referred to letters the Council received from Vice Admiral Lautenbacher in the fall of 2005, in essence stating the CINMS would regulate fishing only where such regulations could not be done under the MSA. Mr. Warrens asked if there is anything contained in the DEIS, the proposed rule, or the proposed Designation Document changes that provide the CINMS the authority to regulate fishing beyond the water column in only the specified areas for this current action at this time and no further point in the future.

Mr. Mobley said regarding the specific areas, the proposed Designation Document does cite the California Environmental Quality Act (CEQA) document and limits the CINMS authority to the areas contained in the range of alternatives presented in that document. The authority to regulate fishing would not apply to the entire CINMS but rather the roughly 20% of the sanctuary contained in the areas considered in those CEQA alternatives. On the issue of scope of authority, the Designation Document does provide the CINMS the authority to regulate fishing within those discreet geographic areas. Mr. Mobley added the language does state that unless otherwise already prohibited, any form of take is prohibited under the NMSA within these specific geographic areas. This authority does not just cover fishing, but other extractive activities such as mining and bio-prospecting, with some exceptions for things such as routine anchoring. In other words, if a particular take is not prohibited under the MSA or other law, the NMSA would prohibit any disturbance or take, including the bottom. However, with the existing regulations in place to prohibit bottom contact gear for groundfish EFH protection, the NMSA authority would not cover that activity. Mr. Warrens asked if the intent of the changes to the Designation Document is to only regulate fisheries in the water column in designated areas of the CINMS. Mr. Mobley said the intent of Designation Document change would give the CINMS the general authority to promulgate regulations that could effect fishing and other activities in these specific areas from the surface all the way to the bottom.

Dr. McIsaac asked if there was anything in these documents that could be construed to be giving the CINMS the authority to regulate fishing in the future beyond the specific proposal on the table now. Mr. Mobley said it is his understanding that the Designation Document gives the CINMS the general broad authority to promulgate regulations that effect fishing but, only within the specifically delineated areas that roughly equals 20% of the CINMS. The proposed regulations implement marine reserves in specific locations and the current proposal is basically the strictest possible proposal relative to fishing as it allows no fishing at all; changes in the future could only lessen restrictions on fishing.

Dr. McIsaac asked if this proposed change would allow the Sanctuaries to change from no fishing to some other fishing regulation (such as bag limits, seasons, etc) in those areas in two years time not just in the water column. Mr. Mobley said no, the Designation Document language provided prohibits “within a marine reserve, marine park, or marine conservation area, harvesting, removing, taking, injuring, destroying, possessing, collecting, removing or causing loss of any living or dead organism, historical resource, or any other Sanctuary resource or attempting these activities”; and further down the *Federal Register* Notice states “The regulation of fishing is not authorized under Article 4, except within portions of the Sanctuary designated as marine reserves, marine parks, or marine conservation areas established pursuant to the goals and objectives of the Sanctuary and within the scope of the State of California’s Final Environmental Document “Marine Protected Areas in NOAA’s Channel Islands National Marine Sanctuary” (California Department of Fish and Game, October 2002), certified by the California Fish and Game Commission.” The intent of all this language and tying to the CDFG decision is to make it very clear that the Designation Document only provides limited scope of authority to allow establishing marine reserves, marine parks, and marine conservation areas and that is all. The Designation Document would not give the CINMS the authority to implement fishing regulations such as trip limits, bag limits, or regulations to allow fishing under those items. This is the intent of the proposed regulations and if the language does not ensure that, the CINMS would like to received comments on ways to clarify that intent.

Dr. McIsaac stated the key to the matter lies in the scope of the California Environmental Quality Act (CEQA) document which covers a full range of alternatives from status quo to complete closure in a variety of alternative areas. Dr. McIsaac is left with the impression that this scope would allow the CINMS to consider any fishing regulations from open fishing under status quo to a complete closure in the future, including proposals for species specific fishing proposals and including regulations effecting the water column and the bottom. Dr. McIsaac asked again if there was anything in these proposals that could possibly allow the sanctuaries to regulate fishing activities in the future beyond what is proposed in the preferred alternative because it sounds as if anything within the scope of the CEQA document is possible. Mr. Mobley said he understands the potential for broad interpretation relative to the language referring to the scope of the alternatives within the CEQA document and would recommend the Council submit a comment in this regard because the intent of the Designations Document change is not to provide such broad authority over fishing in the future. The language as written would technically give us authority over the water column to the bottom, however the intent is to only establish these in marine protected areas and defined marine zones as described in several places in the preamble to the proposed rule. This is about establishing marine zones to further the mission, goals, and objectives of the NMSA and any comments to help clarify are welcomed.

Ms. Fosmark stated that she looked in the document with regard to the scope and range of alternatives adopted by California and notes it is a broad range with up to 25% of the total CINMS falling into MPAs. She also requested the economic analyses need to be updated as there have been several comments from various people, including squid fisherman, that the data used has not been updated since 2004. Ms. Fosmark also noted there is a peer review by Drs. Hilborn, Parrish, and Walters that looks at the value of MPAs and the ability of a network of MPAs to achieve management objectives. Ms. Fosmark

thanked the CINMS staff for coming and asked them to clarify the alternatives and the extractive activities contained within.

Mr. Mobley stated there are three alternatives, status quo, and two action alternatives. The two action alternatives both implement no-take marine reserves and limited-take marine conservation areas within areas mapped and described in detail in the document. He added that under NEPA, final action will have to fall within this range of proposed actions.

Ms. Fosmark asked specifically what extractive activities are prohibited and would the prohibitions include surface fishing. Mr. Mobley said that in a marine reserve all fishing would be prohibited including surface fishing and in a conservation area there are some exceptions for fishing such as recreational fishing for pelagic species as listed in the proposed rule which matches the list of species listed in the California State regulations for consistency..

Mr. Warrens stated that according to the advice of Vice Admiral Lautenbacher the CINMS would only regulate fisheries when they could not be regulated under the MSA and asked what the MSA lacks in order to achieve the objectives of the CINMS.

Mr. Mobley referred to the legal analysis in the fall of 2005 regarding what types of take could be regulated under the MSA. Things such as activities of foreign-flagged vessels or vessels conducting research do not fall under the authority of the MSA or the Council. In some cases there may not be an FMP justification for certain activities such as the issues being analyzed currently by Council staff as discussed under Agenda Item F.1. Clearly, non-fishing forms of take, although the Council under EFH has the ability to consult, the Council does not necessarily have the authority to prohibit these activities. There have been concerns about equity where fisherman are prohibited from activities in the area while other users, such as kayakers, can enter and damage CINMS resources through careless contact with the bottom in inter-tidal areas. Therefore, the CINMS set out to provide a broad authority over many types of take or harm to the CINMS resources, take that cannot be regulated under the MSA. If the goal is a true no-take marine reserve, the NMSA will likely have some role in achieving that end along with other laws such as the MSA. The Council has spoken in favor of these goals in the past and our analyses have suggested the best way to achieve these goals is through a combination of the NMSA and MSA, and State law.

Mr. Warrens said he has been involved with the Council a long time and did not recall any situation with regard to a fishery of any kind that this Council did not have the authority to regulate or prohibit most of the fishing activities described in your list. Mr. Warrens stated it was not clear to him that the MSA would not be able to prohibit any of the fishing activities described by the CINMS. He asked if CINMS could point out in the DEIS where this is described he would be happy to reread it.

Mr. Moore asked Mr. Mobley whether non-fishing take of CINMS resources such as damage from sea kayakers can already be regulated by the sanctuary without any change in the Designation Document. Mr. Mobley said he would have to review that, but in general, yes, much of those activities can already be addressed under the existing authority or by other amendments to the documents that do not relate to the authority over fishing. Mr. Moore asked Ms. Vojkovich if the CEQA document covered just the areas encompassed in the alternatives in the DEIS or did it cover more areas. Ms. Vojkovich said Mr. Mobley is correct that there are no different areas than what is proposed in the DEIS, however there are some differently sized areas in the CEQA. The area within the proposed MPAs ranges from 12% to about 25% of the area and the proposed preferred closure areas would roughly cover about 20%. In other words, the sites proposed are the same but there is a range of sizes across the various CEQA alternatives.

Chairman Hansen asked if the issue of MPAs within the CINMS would be open again under California's Marine Life Protection Act (MLPA) when that process looks at Southern California. Mr. Paul Reilly from CDFG stated that this action would likely achieve the MLPA goal for a network of MPAs and these areas would not be reconsidered.

Ms. Vojkovich asked for clarity regarding the *Federal Register*, specifically the section that states "Therefore, if an extractive activity is prohibited by NOAA fishing regulations, it is not prohibited by the proposed regulation. Conversely, all extractive activities not prohibited by NOAA fisheries regulations would be prohibited by the proposed regulations within marine reserves. In the future, if NOAA were to amend the NOAA fisheries regulations to prohibit additional extractive activities for MSA reasons, that rulemaking would also propose for comment those activities that would be no longer within the scope of this NMSA regulation." Mr. Mobley said this issue addresses the discussions from Agenda Item F.1 and is summarized by the following paragraph which states, "Regardless of the specific regulatory mechanism, the intended result of this proposed rule is for all extractive activities to be prohibited within the proposed marine reserves." This net effect is an attempt to address the Vice Admiral's recommendation regarding regulatory authority, but also, to address concerns from Secretary Chrisman regarding duplicate prohibitions, the regulations begin with a clause stating unless prohibited under NOAA fisheries regulations the prohibition on take to establish a complete no take marine reserve or a limited take conservation area would be covered by the NMSA. The intent is that the scope of NMSA regulations would decrease should the scope of the MSA regulations increase so long as the net effect was the establishment of the proposed marine reserves and marine conservation areas.

Ms. Vojkovich, referred to section 922.73 of the proposed rule that states NMSA regulations would be in effect unless the activity is already prohibited by fisheries regulations as of the effective date of the final rule. She noted that this differs from having a sunset date, whereby, if MSA regulations are implemented by a certain date prohibiting all extraction of fishery resources within the sanctuary, then the MSA regulations take effect. There is nothing in this discussion or the *Federal Register* notice that describes the process by which NMSA regulations are rescinded and replaced by future MSA regulations. Mr. Mobley again referred to the phrase in the preamble of the proposed rule that states, "In the future, if NOAA were to amend the NOAA fisheries regulations to prohibit additional extractive activities for MSA reasons, that rulemaking would also propose for comment those activities that would be no longer within the scope of this NMSA regulation." In other words, if MSA regulations are promulgated in the future that prohibit fishing activities in these areas, the NMSA regulations would go through another rulemaking process to update the effective date of the MSA regulations giving the MSA regulations precedent over NMSA regulations.

Ms. Vojkovich asked if in federal regulations the regulatory package is not simply the regulations that become part of the record to be operated on, but includes the preamble language that precedes the regulatory language. Mr. Mobley said preamble is an important part of the rulemaking process, particularly when resolving questions regarding the intent of rule. However, the attorneys' goal when in rulemaking is to have the rule language itself so well crafted that it can stand alone and achieve the goals stated in the preamble. The preamble is useful when rules are not completely clear and the determination of intent is necessary. The CINMS hopes the preamble and rule itself are fully described to show original intent and welcomes comments from the Council, NMFS, and the National Ocean Service to ensure this is achieved.

Chairman Hansen reiterated the Council's task under this agenda item and called for final questions for the staff of the CINMS.

Mr. Moore suggested the Council response include a notice of the Council action under Agenda Item F1 and recommend as a result of that action that proposed changes to the Designation Document in Article 4

and 5 are unnecessary. Additionally, recommend that if the CINMS still chooses to implement fishing regulations under the NMSA, they include the recommended regulatory language changes stated in Agenda Item F.2.b, Supplemental Enforcement Consultant Report.

Ms. Vojkovich said it would be wise for us to respond in a manner that acknowledges that this regulatory action may move forward under the NMSA authority regardless of Council recommendations. The CINMS has provided us the opportunity to help on fishery issues and suggested the letter incorporate as many suggestions heard today as possible, particularly the EC comments. Ms. Vojkovich stated the letter should specifically ask for clarity regarding the scope of CINMS authority under the proposed Designation Document changes regarding the regulation of fishing because the Council, and others, clearly had concerns regarding this authority, including the full range of alternative actions in the CEQA document as referenced. And finally, the flexibility within the proposed rule to accommodate any future rules under MSA needs to be clarified.

Mr. Moore asked Ms. Vojkovich if she agreed the first part of the letter should include a notification of Council intent to achieve these closures through the MSA and a recommendation that the Designation Document not be changed. Ms. Vojkovich said it is appropriate to mention the action taken under Agenda Item F1 and the desire to utilize the MSA for this action.

Mr. Warrens requested the letter include the GAP request in the last paragraph of Agenda Item F.2.b, Supplemental GAP Report, that calls for a 'sunset date' for the proposed NMSA regulations and Designation Document changes, should they be implemented.

Ms. Fosmark suggested the letter incorporate a request for an improved socioeconomic analysis including an update of the total maximum potential loss estimates for fisherman, employment, businesses, and consumptive recreational fisheries. The data used in the DEIS is dated.

Ms. Vojkovich noted a minor editorial correction for the DEIS. On page 80, the DEIS states that CDFG implemented the Cowcod Conservation Area when in fact this area closure was implemented by the Council first, followed by State action.

Dr. McIsaac asked for clarity regarding recommendations by Ms. Vojkovich and asked if her recommendation regarding the flexibility of NMSA regulations to adjust to future actions under the MSA is the same as the concept of a sunset date for NMSA regulations, and with regard to clarity on scope, is her recommendation that the letter clarify the scope of the proposed NMSA authority over fishing be limited to this specific action rather than the full scope of the CEQA document. Ms. Vojkovich said both of those items are included in her recommendation, the fishing regulations and the physical scope of the authority.

Mr. Burner noted Council discussion regarding a sunset date has focused on NMSA regulations and he asked if the concept of a sunset date is also recommended for corresponding Designation Document changes providing CINMS authority to regulate fishing. The Council confirmed the sunset date concept is intended for both proposed regulations and Designation Document changes..

G. Pacific Halibut Management

G.1 Proposed Changes to Catch Sharing Plan and 2007 Annual Regulations

Vice Chair Dave Ortmann chaired this agenda item.

G.1.a Agenda Item Overview (09/15/06; 10:13 am)

Mr. Tracy presented the agenda item overview.

G.1.b Agency and Tribal Recommendations and Comments

Ms. Culver presented Agenda Item G.1.b, Supplemental WDFW Report 1 and Supplemental WDFW Report 2).

Mr. Melcher presented Agenda Item G.1.b, Supplemental ODFW Report, and noted ODFW has no proposed changes to the catch sharing plan.

Mr. Lockhart noted there were no proposed changes to the catch sharing plan from the tribes.

G.1.c Reports and Comments of Advisory Bodies

Mr. Gordon Zumach presented Agenda Item G.1.c, Supplemental GAP Report.

Mr. Butch Smith provided Agenda Item G.1.c, Supplemental SAS Report.

LT. Dave Cleary provided Agenda Item G.1.c, Supplemental EC Report.

G.1.d Public Comment

Mr. Bob Alverson, Fishing Vessel Owners Association, Seattle, Washington, recommended Port Orford Ocean Resources Team (POORT) proposal be considered in a more thorough process because of the substantial reallocation issues involved. A proposal to move the Point Chehalis line separating the directed longline halibut fishery and the incidental halibut catch in the sablefish fishery to the north would hinder the sablefish fishery's ability to access halibut and will increase participation in the directed fishery.

Mr. Melcher asked if the POORT proposal was a legitimate way to utilize the resource, and if Mr. Alverson recommended a declaration process similar to the salmon troll incidental halibut fishery. Mr. Alverson replied yes to the former, and the declaration process provides more sharing of the halibut allocation among fishermen.

Ms. Leesa Cobb, Mr. Lyle Keeler, and Mr. Jim Golden, Port Orford Ocean Resource Team, Port Orford, Oregon presented Agenda Item G.1.d, Supplemental POORT Report.

Mr. Melcher asked if the declaration procedure would allow fishermen to fish in both the directed halibut longline fishery and the POORT proposed longline sablefish incidental halibut fishery. Mr. Golden replied it would not allow them to participate in both fisheries simultaneously. A 72 hour gear lay-up period requirement was part of the proposal, as was a write-in declaration 48 hours in advance and a call-in 24 hours in advance.

Mr. Ralph Brown, fisherman, Brookings, Oregon
Mr. Gordon Zumach, Puget Sound Anglers, Sequim, Washington

G.1.e Council Action: Adopt Proposed Changes for Public Review

Mr. Melcher endorsed the concept of the POORT Report, however it required a broader investigation in light of the sablefish fisheries in other areas and open access issues. He recommended a more comprehensive investigation of utilizing incidental halibut catch in commercial fisheries.

Ms. Culver agreed with Mr. Melcher's comments, and recommended the issue be addressed outside the routine catch sharing plan change process. She also recommended against the proposal to move the directed halibut longline fishery boundary line north of Point Chehalis.

Mr. Moore supported Mr. Melcher's and Ms. Culver's comments.

Ms. Culver noted yelloweye rockfish are not in the Puget Sound or Strait of Juan de Fuca waters, both of which have more restrictive regulations than outer coastal waters, including no retention of canary or yelloweye in any of their state waters. The proposal to close some offshore waters to recreational halibut fishing in exchange for nearshore and Strait of Juan de Fuca waters should reduce yelloweye impacts, as well as halibut catch.

Mr. Warrens encouraged the POORT to continue work and to broaden the scope of the proposal. He supported Mr. Melcher's comments.

Mr. Cedergreen noted there was definitely a problem in the Washington north coast area of leaving halibut allocation uncaught, and thought the proposal for a north coast nearshore fishery may provide a legitimate chance to utilize the allocation and provide significant economic stimulation. He recommended the proposal be sent out for public comment. He also supported the proposal for a 5% set-aside for a nearshore fishery in the south coast subarea.

Ms. Culver moved (Motion 27) to adopt for public review the proposed changes to the 2006 Pacific Halibut Catch Sharing Plan for Area 2A, as shown in Agenda Item G.1.b, Supplemental WDFW Report 2 and Agenda Item G.1.b, Supplemental WDFW Attachment 1. Mr. Cedergreen seconded the motion. Motion 27 passed.

Mr. Melcher stated the Oregon Columbia River recreational halibut fishers are still interested in splitting the fishery into separate Washington and Oregon components, and although no proposal was forwarded, it will be considered in the future. Mr. Melcher was committed to working on the POORT proposal, including issues associated with other fisheries and enforcement concerns.

Ms. Culver agreed with Mr. Melcher's comments regarding Columbia River issues and would be willing to work with ODFW staff on those issues.

G.2 Pacific Halibut Bycatch Estimate for International Pacific Halibut Commission Adoption

G.2.a Agenda Item Overview (09/15/06; 11:06 am)

Mr. Tracy presented the agenda item overview.

G.2.b NMFS Report

Mr. John Wallace presented Agenda Item G.2.b, Supplemental NMFS Report.

G.2.c Reports and Comments of Advisory Bodies

Mr. Bob Conrad provided Agenda Item G.2.c, Supplemental SSC Report.

G.2.d Public Comment

None.

G.2.e Council Review and Guidance

Mr. Moore asked those working on halibut bycatch take into account the comments of the SSC. Council concurred.

Mr. Tracy asked if the Council concurred with forwarding the bycatch report report to the IPHC. The Council concurred.

H. Salmon Management

H.1 Salmon Methodology Review

H.1.a Agenda Item Overview (09/15/06; 11:16 am)

Mr. Tracy presented the agenda item overview.

H.1.b Report of the Model Evaluation Workgroup

Mr. Larrie LaVoy presented Agenda Item H.1.b, Supplemental MEW Report.

H.1.c Agency and Tribal Comments

Dr. Dygert noted NMFS was conducting a review of Lower Columbia River Chinook rebuilding exploitation rates for use in 2007.

Dr. McIsaac asked if there were any methodology review issues involved. Dr. Dygert replied the review was an ESA related issue and it was not anticipated that it would undergo Council review, but would appear in the annual guidance letter.

Mr. Lockhart summarized Agenda Item H.1.a, Attachment 2.

H.1.d Reports and Comments of Advisory Bodies

Mr. Butch Smith presented Agenda Item H.1.d, Supplemental SAS Report.

Mr. Bob Conrad presented Agenda Item H.1.d, Supplemental SSC Report.

Mr. Melcher asked if the changes to the base period years in the KOHM made by the STT in 2006 were presented to the SSC. Mr. Conrad replied no.

Dr. McIsaac asked if the experimental design for near-shore commercial test fisheries in the SSC report and the proposed GSI study in Agenda Item H.1.a, Attachment 2 were related. Mr. Conrad replied yes, the sampling plan refers to collection of GSI data.

Mr. Dell Simmons provided Agenda Item H.1.d, Supplemental STT Report.

Mr. Melcher asked if the changes to the base period years in the KOHM made by the STT in 2006 were to be reviewed in relation to the performance in 2006. Mr. Simmons replied the methodology in the KOHM was a regression, which did not change, only the data points used in the regression changed, and that may not be necessary for SSC review.

Mr. Melcher asked for a report from the STT documenting the changes and how they performed relative to 2006 projections. Mr. Simmons replied such a report would be appropriate, and could be available after Preseason Report I was finished.

Dr. McIsaac asked if the Klamath birthdate issue had been discussed by the STT. Mr. Simmons replied no.

Mr. Melcher asked what would be involved in review of the fall fisheries impacts and birthdate issue. Mr. Simmons replied the date of capture for freshwater CWT recoveries needs to be incorporated into the PSMFC database, which would require going through hard copies of data sheets back through 1994. Prior to 1994 the data is probably unavailable.

H.1.e Public Comment

Mr. Duncan MacLean, F/V Barbara Faye, El Granada, California

Ms. Ellen Faulkner, North Coast Consumers Alliance, Redwood Valley, California

Ms. Ann Maurice, Ad Hoc Committee, Occidental, California

H.1.f Council Action: Establish Final Methodology Review Priorities for 2007 Salmon Season

Mr. Melcher requested the Council staff discuss incorporation of recovery dates into the CWT database with PSMFC, and the effect of the Klamath River fall Chinook birthdate on fall fishery impacts. Dr. McIsaac noted the PSMFC would help with those requests.

Mr. Melcher moved (Motion 28) to forward for SSC Review the Chinook and Coho FRAM documentation, the Columbia River fall Chinook ocean abundance forecast, and the experimental design for near-shore commercial test fisheries; and to direct Council staff to explore with PSMFC updating the CWT database and potential analytical work related to Klamath River fall Chinook birthdate impacts on fall fishery impacts for presentation to the SSC Salmon Subcommittee; and finally to have the STT review the changes made to the KOHM during preseason 2006 process, the performance of the KOHM relative to actual 2006 fisheries, and provide a brief summary for the record. Mr. Moore seconded the motion.

Mr. Lockhart asked if the STT report was for review by the SSC in October 2006. Mr. Melcher said it would not be available in October 2006, but would be important for the record and future reviews.

Motion 28 passed.

Ms. Vojkovich asked the STT to review the list of topics in Agenda Item H.1.d, Supplemental SAS Report, and report to the Council which were appropriate review topics.

Mr. Cedergreen agreed with Ms. Vojkovich's statement

H.2 FMP Amendment 15 (de minimis fisheries)

H.2.a Agenda Item Overview (09/15/06; 1:25 pm)

Mr. Tracy presented the agenda item overview.

H.2.b Salmon Amendment Committee Report

Mr. LB Boydston presented Agenda Item H.2.b, Supplemental SAC Report and Agenda Item H.2.b, Supplemental SAC PowerPoint Presentation.

Mr. Melcher asked if the SAC was recommending a March, 2007 date for selecting a preferred alternative or for final action. Mr. Boydston replied the SAC recommended March, 2007 for final action as that would allow time to develop a more defensible analysis.

Mr. Melcher asked how sensitive the economic analysis was to the high, medium, and low success rate. Ms. Pinkerton replied the medium success rate resulted in economic impacts about 1.5 times the low success rate, and the high success rate was about twice the medium rate.

Mr. Melcher observed there was no long-term decline in economic value as the *de minimis* fishing rate increased. Ms. Pinkerton replied that was based on the assumption that there was no loss of infrastructure and vessels remained in the fishery. Mr. Boydston added there are differences in some of the other criteria.

Mr. Melcher asked why the hindcast model estimated the same probability for the Sliding Scale Alternative as for the 5% Cap Alternative for escapements less than 35,000. Mr. Boydston replied the probabilities were both based on three events in 22 years.

Mr. Thomas asked about the difference in estimated value of the recreational fishery between the SAC analysis and the 2006 NMFS report. Ms. Pinkerton replied the NMFS report has not been analyzed, but the SAC model uses personal income impacts, it is possible the NMFS report uses different metrics and multipliers.

Mr. Cedergreen asked which alternative best reflects the 2006 stock status and impacts. Mr. Boydston confirmed the preseason exploitation rate was about a 13% age-4 ocean impact rate.

Dr. McIsaac asked if the proposed delay of final action was for the Council to consider now, or in November after the list of proposed stochastic stock recruitment model (SSRM) modifications had been addressed. Mr. Boydston replied when the SAC discussed the recommendation there was agreement around the table, and the recommendation was to make that decision now because of the October 25 mailout deadline for a preliminary draft Environmental Assessment. The list of items to address in the SSRM from the STT, SSC, and SAC is long and many are mandatory, which will take substantial time.

Dr. McIsaac asked if the SAC members representing the fishing community were aware of the possible consequences of delaying final action until March, 2007, including an emergency rule not being approved.

and fisheries being closed between Cape Falcon and Point Sur. Mr. Boydston replied there would be public comment from those people which should elaborate on that point.

Dr. McIsaac asked if under the Status Quo Alternative the assumption was no tribal catch allowed. Mr. Boydston replied yes.

H.2.c Reports and Comments of Advisory Bodies

Mr. Simmons presented Agenda Item H.2.c, Supplemental STT Report.

Mr. Melcher disagreed with the statement that the 16% Cap Alternative was functionally the same as the ESA consultation standard for California Coastal Chinook because the latter would allow additional impacts in freshwater fisheries. Mr. Simmons agreed they were not the same, but felt they were similar.

Dr. McIsaac asked for clarification on the difference between the ESA consultation standard and the 16% Cap Alternative. Mr. Simmons replied under the ESA consultation standard, when Klamath stock status was good, the impact rate would be 16%, and under the 16% Cap Alternative, when Klamath stock status was poor, the impact rate would be about 16%.

Mr. Melcher asked if the SSRM tribal allocation scheme was applied to all alternatives and viewed in relative terms, would it matter whether the allocation was based on preseason or post season expectations. Mr. Simmons replied perhaps not, but the exercise would still need to be done to provide a comparison.

Dr. McIsaac asked if the STT recommendation to delay final action was based on the status of the analysis or did the STT consider the possibility of no fishing in 2007. Mr. Simmons replied the STT discussion was based on the adequacy and defensibility of the analysis if final action was taken in November. The STT felt the likelihood of no emergency rule in 2007 was small if there was a good analysis accompanying the Council recommendation.

Messrs. Butch Smith and Duncan MacLean presented Agenda Item H.2.c, Supplemental SAS Report.

Mr. Moore asked for their opinions on delaying final action. Mr. MacLean replied he wanted a high quality analysis and document even if it means fighting for an emergency rule or having a fishery failure declared in 2007. The SAC is capable of producing a high quality document, but they must be given adequate time. Mr. Smith replied the sense he got from the SAS was they did not want something coming out of this process that they would later regret.

Dr. Conrad presented Agenda Item H.2.c, Supplemental SSC Report.

Mr. Melcher asked why the SSC felt the sensitivity analysis was unrealistic. Dr. Conrad replied it was a combination of all pessimistic assumptions.

Mr. Tracy read Agenda Item H.2.c, Supplemental Tribal Comment.

Dr. Dygert advised the Council that the Office of Management and Budget (OMB), under Executive Order 812066, can review proposed rules which could delay implementation of the rule. The Department of Commerce (DOC) notified NMFS their initial screening resulted in a recommendation to OMB that Amendment 15 should be reviewed.

Dr. McIsaac asked if the delay would allow implementation by May 1, 2007. Dr. Dygert replied the review process would take up to 90 days, which would roll the approval process back by that amount.

The review process will have to be addressed regardless of when final action is taken, however, NMFS will work with DOC and/or OMB to streamline the process as much as possible.

Dr. McIsaac asked if the review applies to emergency rules as well. Dr. Dygert replied he did not know.

H.2.d Public Comment

Mr. Duncan MacLean, F/V Barbara Faye, El Granada, California.

Ms. Vojkovich asked if 2006 was not considered a meaningful commercial fishery, was it considered a *de minimis* fishery. Mr. MacLean replied he considered 2006 a failure, and a repeat of 2006 would eliminate him from the fishery.

Mr. Dave Bitts, PCFFA, Eureka, California

Ms. Ellen Faulkner, North Coast Consumers Alliance, Redwood Valley, California

Ms. Ann Maurice, Ad Hoc Committee, Occidental, California

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

Ms. Barbara Emley, self, San Francisco, California

H.2.e Council Action: Adopt Draft Alternatives and Identify Preferred Alternative for Public Review

Mr. Melcher stated he would not be comfortable being in the same sort of uncertain regulatory process as in 2006 and felt it was imperative the Council stay on schedule for final action on Amendment 15 at the November 2006 Council meeting. The current analysis provides adequate information to base a decision on, and is much better than used to pass an emergency rule in 2006. The document the Council receives in November would be no different if the decision was made to delay final action until March, 2007. If critical flaws appear in November, 2006, the Council could reschedule final action at that time.

Mr. Lockhart recognized the desire to move forward, but felt the priority should be on a strong record. The worst case scenario was not failure to complete the approval process by May, 2007 and having no emergency rule, but having a weak record with no emergency rule and no amendment 15.

Ms. Vojkovich agreed with Mr. Melcher's comments about the process and recommended continuing on the schedule for final action at the November, 2006 Council meeting.

Mr. Melcher moved (Motion 29) to continue with the original schedule for final action on Amendment 15 at the November, 2006 Council meeting; eliminate from consideration the Sliding Scale and 16% Cap Alternatives; include a 13% Cap Alternative; and eliminate the final two alternatives dealing with the rebuilding feature and elimination of fall fisheries because the Council currently has authority to implement those measures. Mr. Moore seconded the motion.

Ms. Vojkovich offered a friendly amendment to include the SAC recommendation for a 10% Cap Alternative. Mr. Melcher and Mr. Moore accepted the friendly amendment.

Motion 29 passed.

Mr. Melcher moved (Motion 30) to direct the SAC to review and prioritize the additional requests for improving the SSRM analyses made by the SAS, STT, and SSC. Mr. Warrens seconded the motion.

Ms. Vojkovich asked if the intent was to have the most improvement in the models and analyses given the time allowed. Mr. Melcher replied yes.

Mr. Lockhart offered a friendly amendment to request the SAC to provide a sensitivity analysis for the items not addressed at the November Council meeting. Mr. Melcher and Mr. Warrens accepted the friendly amendment.

Motion 30 passed.

Mr. Boydston asked if the public hearings currently scheduled in advance of the BB could be changed until after release of the preliminary draft EA.

Mr. Warrens suggested moving the Westport, Washington hearing to Newport, Oregon.

Mr. Cedergreen moved (Motion 31) to substitute the Westport, Washington hearing with a hearing in Newport, Oregon. Mr. Moore seconded the motion. Motion 31 passed.

Dr. McIsaac requested administrative flexibility on setting the dates for the public hearings to allow adequate time for distribution of materials prior to the hearings.

Ms. Vojkovich recommended the hearings occur the week of October 30th and volunteered for the California hearing.

Mr. Melcher concurred with Ms. Vojkovich on scheduling.

Mr. Lockhart indicated appropriate NMFS representatives will be at the hearings.

OPEN PUBLIC COMMENT FOR NON-AGENDA ITEMS

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

Messrs. Chuck Cook, Rod Fujita, Steve Fitz, Geoff Bettencourt, and Chris Kubiak spoke about requesting approval for federal A trawl permits owned by the Nature Conservancy to be converted to other gear types with less negative catch and habitat impacts.

Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, Oregon, spoke about the observer program and the need for an independent committee to file grievances about the program and/or the observers themselves. He also spoke about the whiting EFP and felt that the EFP has failed. The whiting EFP was not designed for everyone, but just a few. It does not benefit the small rural coastal communities of Oregon.

Mr. Ben Enticknap, Oceana, Portland, Oregon, presented a PowerPoint on Olympic Coast Coldwater Corals and Sponges. He directed attention to a letter submitted to NOAA Fisheries, and asked the Council to protect the coral and sponge off the Washington coast.

ADJOURN

The 185th meeting of the Pacific Fishery Management Council was adjourned on Friday, September 15, 2006, at 5 pm.



April 4, 2007

Council Chairman

Date