PROPOSED HABITAT STEERING GROUP AGENDA ITEMS FOR THE OCTOBER MEETING

Possible Letters for Action:

- Letter regarding FERC relicensing (Paul Engelmeyer)
- Letter regarding Sacramento Winter Run Chinook Recovery Plan (Mark Helvey, NMFS)

Administrative Action:

- Election of chairperson for 2002

Discussion Items:

- Queets coho stock assessment report (Chuck Tracy/HSG)
- Groundfish rebuilding plans (HSG)
- Groundfish research forum for 2002 (Elizabeth Clarke, NMFS)
- Fishing gear impact research work plan (Elizabeth Clarke, NMFS)
- Development of HAPCs (NMFS/HSG)
- NMFS salmon management update including Columbia River flows (NMFS)
- CINMS process

Updates:

- Status of groundfish EIS (Jim Glock, NMFS)
- NMFS EFH consultations (NMFS)
- San Francisco airport expansion (Mark Helvey, NMFS)
- Sacramento winter run chinook (Mark Helvey, NMFS)
- Klamath flow issue (Michael Rode, CDFG)

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107TH CONGRESS
1ST SESSION

H. R. 2570

To amend the Magnuson-Stevens Fishery Conservation and Management Act to recover depleted fish stocks and promote the long-term sustainability of marine fisheries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 19, 2001

Mr. FARR of California (for himself, Mr. BLUMENAUER, Mr. ENGLISH, Mr. GEORGE MILLER of California, Mr. FALEOMAVAEGA, Mr. GREENWOOD, Ms. WOOLSEY, Ms. MCKINNEY, Mr. MORAN of Virginia, Mr. BORSKI, Mr. LANTOS, Ms. PELOSI, Mr. BOUCHER, Ms. BALDWIN, Mr. ACEVEDO-VILÁ, Ms. LEE, Mr. WEINER, Mr. CLYBURN, Mr. HONDA, Mrs. DAVIS of California, and Ms. ESHOO) introduced the following bill; which was referred to the Committee on Resources

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A BILL

To amend the Magnuson-Stevens Conservation and Management Act to recover depleted fish stocks and promote the long-term sustainability of marine fisheries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fisheries Recovery Act of 2001".

SEC. 2. REFERENCES.

Except as otherwise specifically provided in this Act, any amendment to, repeal of, or reference to a section or other provision of law shall be considered to be made to such provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

SEC. 3. MINIMIZING BYCATCH.

(a) FINDINGS AND POLICY.—

(1) FINDINGS.—Section 2(a) (16 U.S.C. 1801(a)) is further amended by adding at the end the following:

"(10) The magnitude of bycatch and discards of living marine resources in United States marine fisheries can have profound population, ecosystem, and socioeconomic effects on United States fishery resources and the fishing communities that depend on those resources.".

(2) POLICY.—Section 2(c)(3) (16 U.S.C. 1801(c)(3)) is amended by striking "practical measures" and all that follows through "fish;" and inserting the following: "practical measures that avoid bycatch, minimize the mortality of bycatch that cannot be avoided, and minimize waste of fish;".

(b) DEFINITIONS.—Section 3(2) (16 U.S.C. 1802(2)) is amended to read as follows:

"(2) the term 'bycatch' means—

"(A) catch of nontarget fish species and nonfish species;

"(B) economic and regulatory discards including discards of target species; and

"(C) nontarget fish and nonfish species that are otherwise killed or injured as a result of fishing.

Such term does not include target species of fish of a recreational catch and release fishing program that are released alive in accordance with that program.".

(c) NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.—Section 301(a)(9) (16 U.S.C. 1859(a)(9)) is amended by striking ", to the extent practicable, (A) minimize" and insert ", to the maximum extent practicable, (A) avoid".

(d) REQUIRED PROVISIONS OF FISHERY MANAGEMENT PLANS.—Section 303(a) (16 U.S.C. 1853(a)) is amended—

(1) by amending paragraph (11) to read as follows:

"(11) establish and implement an accurate and reliable standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery within 1 year after the date of enactment

of the Fisheries Recovery Act of 2001, specify objective and measurable targets to reduce bycatch on an annual basis by a statistically significant amount from the previous year, for a period of at least 5 years, utilizing conservation and management measures that, in the following priority—

"(A) avoid bycatch; and

"(B) minimize the mortality of bycatch which cannot be avoided;"; and

(2) by striking "and" after the semicolon at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting a semicolon, and by adding at the end the following:

"(15) account for all sources of fishing mortality, including bycatch discard mortality, in determining the maximum sustainable yield for the fishery, in establishing total allowable catch and other catch limits necessary to achieve the optimum yield, and in counting catch;

"(16) include conservation and management measures that provide catch incentives for participants within and among gear categories to employ fishing practices that avoid bycatch or minimize the mortality of bycatch that cannot be avoided;".

(e) REPORT ON IMPLEMENTATION OF STANDARDIZED REPORTING METHODOLOGIES AND BYCATCH REDUCTION TARGETS AND TIMETABLES.—The Secretary of Commerce shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources within one year after the date of enactment of this Act, and annually thereafter for the next 5 years, on the progress made in implementing the requirements of section 303(a)(11) of the Magnuson-Stevens Fishery Conservation and Management Act.

(f) CHARITABLE DONATION OF BYCATCH.—Section 303(b) (16 U.S.C. 1853(b)) is further amended by adding at the end the following:

"(13) allow the retention and donation for charitable purposes of all dead bycatch that cannot otherwise be avoided under terms that ensure, through the use of onboard fishery observers or other means, that—

"(A) such retention and donation do not allow the evasion of vessel trip limits, total allowable catch levels, or other conservation and management measures;

"(B) participants in such program may not deduct the cost of harvesting the donated fish,

the value of such fish, or any lost revenue from harvesting such fish from their individual or corporate income taxes.".

SEC. 4. PROTECTION OF ESSENTIAL FISH HABITAT.

(a) REQUIRED PROVISIONS OF FISHERY MANAGEMENT PLANS.—Section 303(a)(7) (16 U.S.C. 1853(a)(7)) is amended to read as follows:

"(7) describe and identify essential fish habitat based on the guidelines established by the Secretary under section 305(b)(1)(A), and—

"(A) analyze the impacts of fishing on essential fish habitat;

"(B) minimize any adverse impacts on essential fish habitat from fishing;

"(C) close an area to a fishing gear or practice if such fishing gear or practice has been shown to adversely affect essential fish habitat, unless the Council determines based on the best scientific information available that a closure is not necessary to protect such habitat; and

"(D) identify other actions to encourage the conservation and enhancement of such habitats;".

(b) RESTRICTIONS ON FISHING GEAR AND FISHING.—Section 305(b) (16 U.S.C. 1855(b)) is amended by adding at the end the following:

"(5) No person or vessel may—

"(A) employ fishing gear or engage in a fishery in an area closed to that fishing gear or fishery unless the Secretary, after notice and opportunity for public comment, finds that the fishing gear or fishery will have a minimal adverse impact on essential fish habitat and minimal bycatch of nontarget species; or

"(B) use fishing gear in a fishery that is not currently used in the fishery, or that is not included on the list published pursuant to subsection (a)(1), unless the Secretary, after notice and opportunity for public comment, finds that the fishing gear will have a minimal adverse impact on essential fish habitat and result in minimal bycatch of nontarget species.

"(6) The Secretary, in consultation with the appropriate Council or Councils, shall conduct a program to identify and facilitate the introduction of fishing gear or practices that have minimal adverse impact on essential fish habitat and minimal bycatch of nontarget species.".

SEC. 5. REFORM OF THE REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) MEMBERSHIP.—Section 302(b)(2) (16 U.S.C. 1852(b)(2)) is amended—

(1) in subparagraph (B) in the first sentence—

(A) by striking "of the active participants" and inserting "among the active participants"; and

(B) by inserting before the period the following: "and representatives of the public interest in marine fish conservation, including individuals who do not derive any of their annual income from commercial or recreational fishing and who are knowledgeable regarding the conservation and management of the fishery resources of the geographic area concerned";

(2) in subparagraph (B) in the second sentence by striking "Merchant Marine and Fisheries" and insert "Resources"; and

(3) in subparagraph (C) in the second sentence by inserting "and representatives of conservation organizations" after "commercial and recreational fishery interests".

(b) DISCLOSURE OF FINANCIAL INTEREST AND RECUSAL.—Section 302(j) (16 U.S.C. 1852(j)) is amended—

(1) in paragraph (6) by striking "may not" and inserting "shall"; and

(2) in paragraph (7)—

(A) by amending so much as precedes subparagraph (C) to read as follows:

"(7)(A) After the effective date of regulations promulgated under subparagraph (F) of this paragraph, an affected individual required to disclose a financial interest under paragraph (2), or an individual convicted of violating section 309, shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and a significant expected benefit to the financial interest of the affected individual. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

"(B) At the request of an affected individual or a member of the public, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record

whether a Council decision would have a significant and predictable effect on the financial interest of an affected individual";

(B) in subparagraph (C) by inserting "or member of the public" after "Any Council Member";

(C) by amending subparagraph (E) to read as follows:

"(E) If the Council makes a decision before the Secretary has reviewed a determination under subparagraph (C), and the Secretary determines in a review under subparagraph (C) that the Council decision had a significant and predictable effect on the financial interest of an affected individual and the affected individual's vote decided the Council action, then the decision by the Council shall have no force or effect."; and

(D) in subparagraph (F) by striking "Sustainable Fisheries Act" and inserting "Fisheries Recovery Act of 2001".

SEC. 6. CONSERVING ATLANTIC HIGHLY MIGRATORY SPECIES.

(a) MAGNUSON-STEVENS FISHERY CONSERVATION ACT AMENDMENTS.—Section 304 (16 U.S.C. 1854) is amended—

(1) in subsection (e)(1)—

(A) by striking "or international agreement"; and

(B) by striking "or agreement";

(2) in subsection (e)(4)—

(A) in subparagraph (A)(i) by striking ", recommendations by international organizations in which the United States participates,";

(B) in subparagraph (A)(ii) by striking ", or management measures under an international agreement in which the United States participates"; and

(C) by adding "and" after the semicolon at the end of subparagraph (A), striking "; and" at the end of subparagraph (B) and inserting a period, and striking subparagraph (C);

(3) in subsection (g)(1) by redesignating subparagraphs (A) through (G) in order as subparagraphs (B) through (H), and inserting before subparagraph (B) (as so redesignated) the following:

"(A) ensure that all conservation and management measures promulgated under this subsection are consistent with the national standards and other provisions of this Act;";

(4) in subparagraph (D) (as so redesignated) by striking "minimize, to the extent practicable," and inserting "take into account"; and

(5) in subparagraph (E) (as so redesignated) by inserting before the semicolon at the end the following: ", if the Secretary has determined that such harvest prevents overfishing, minimizes bycatch, and is otherwise consistent with the national standards and other provisions of this Act".

(b) ATLANTIC TUNAS CONVENTION ACT OF 1975 AMENDMENTS.—The Atlantic Tunas Convention Act of 1975 is amended in section 6(c)(3) (16 U.S.C. 971d(c)(3)) in the matter following subparagraph (K) by striking "have the effect of increasing or decreasing" and inserting "increase or decrease".

SEC. 7. MANDATORY FISHERY OBSERVER PROGRAM.

(a) FINDING.—Section 2(a)(6) (16 U.S.C. 1801(a)(6)) is amended by inserting ", including a national fisheries observer program," after "United States".

(b) REQUIRED FISHERY MANAGEMENT PLAN PROVISIONS.—

(1) IN GENERAL.—Section 303(a) (16 U.S.C. 1853(a)) is further amended by adding at the end the following:

"(17) to the extent necessary to collect statistically significant and reliable data, require that one or more observers be carried on board a vessel of the United States (other than vessels engaged in charter fishing that are carrying 6 or fewer passengers for hire) engaged in commercial fishing for species that are subject to the plan, for the purpose of collecting statistically significant and reliable data necessary for the conservation and management of the fishery, including monitoring and reporting of bycatch and discards, landings, impacts on essential fish habitat, and other relevant information; except that—

"(A) such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

"(B) such a vessel shall not be required to carry an observer on board if the fishery has demonstrated, through previous observer or other data, that it has avoided and minimized bycatch to the maximum extent practicable; or

"(C) vessels required to carry an observer pursuant to an international agreement are not required to carry an observer under this subsection;

"(18) except for fishing vessels or operators of such vessels required to obtain a permit from a State or international fishery management agency, require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

"(A) any fishing vessel of the United States fishing—

"(i) in the exclusive economic zone or special areas; or

"(ii) for anadromous species of Continental Shelf fishery resources beyond such zone or areas;

"(B) the operator of any such vessel; or

"(C) any United States fish processor who first receives fish that are subject to the plan;

"(19) assess user fees based on the value of fish landings sufficient to fund fishery observer and permit programs for the fisheries under the jurisdiction of the Council established pursuant to paragraphs (17) and (18), and deposit such fees in a dedicated account that shall be available for use by the Sec-

retary exclusively to fund those programs for such Council; except that—

"(A) the total amount of such fees shall be matched dollar-for-dollar with funds transferred pursuant to section 2(a)(5) of the Act of August 11, 1939 (chapter 696; 15 U.S.C. 713c–2), popularly known as the Saltonstall-Kennedy Act; and

"(B) the Secretary may phase in implementation of such a user fee for a fishery that has been declared a disaster;

"(20) shall require that a written receipt be issued by a fish processor to a fishing vessel owner or operator for all commercially caught fish, that records—

"(A) the weight, or number in any case in which regulations are based on numbers of fish, of fish landed for each trip;

"(B) the species of fish or complex of fish taken; and

"(C) the true price per pound paid to the owner or operator of the vessel;".

(2) CONFORMING AMENDMENT.—(A) Section 303(b) (16 U.S.C. 1853(b)) is amended by striking paragraphs (1) and (8).

(B) Section 304(d)(1) (16 U.S.C. 1854(d)(1)) is amended by striking "section 303(b)(1)" and inserting "section 303(a)(18)".

SEC. 8. CONSERVING MARINE ECOSYSTEMS.

(a) FINDINGS, PURPOSES, AND POLICY.—Section 2 (16 U.S.C. 1801) is amended—

(1) in subsection (a) by striking paragraph (7) and redesignating paragraphs (8), (9), and (10) as paragraphs (7), (8), and (9);

(2) in subsection (b) by striking paragraph (6), redesignating paragraph (7) as paragraph (8), and inserting after paragraph (5) the following:

"(6) to assure that development of fisheries by the United States fishing industry takes into consideration the ecosystem needs of target species and the impacts of fishing on other species in the ecosystem;

"(7) to promote management decisions incorporating the precautionary approach, especially in cases in which the effects of fishing are unknown or uncertain, in order to maintain ecosystem health and sustainability; and"; and

(3) in subsection (c)(3)—

(A) by striking "considers efficiency;" and inserting "incorporates and applies ecosystem

principles; considers how fishing affects predator-prey and other important ecological relationships within marine ecosystems;"; and

(B) by striking "avoid unnecessary waste" and inserting "avoid waste".

(b) DEFINITIONS.—Section 3(29) (16 U.S.C. 1802(29)) is amended—

(1) by striking "fishery" and inserting "stock of fish"; and

(2) by inserting before the period the following: "or, through direct or indirect impacts on other species, jeopardizes the ecological integrity and sustainability of marine ecosystems".

(c) NATIONAL STANDARDS.—Section 301(a) (16 U.S.C. 1851(a)) is further amended by adding at the end the following:

"(11) Conservation and management measures shall—

"(A) in any case in which information is uncertain, unreliable, or inadequate, reduce risks by setting reference points for each stock of fish that take into account such uncertainty, unreliability, or inadequacy and the action to be taken if such a reference point is approached or exceeded;

"(B) take into account the direct and indirect impacts of fishing on other species and their habitats and the conservation of those species and their habitats as important components of the ecosystem; and

"(C) allow the expansion of existing fisheries or the development of new fisheries only after measures are in place to prevent adverse impacts on the stocks, associated species, and the ecosystem.".

(d) REQUIRED FISHERY MANAGEMENT PLAN PROVISIONS.—Section 303(a) (16 U.S.C. 1853(a)) is further amended—

(1) in paragraph (1)(A) by inserting before the semicolon the following "and the ecosystem within which the fishery functions"; and

(2) by adding at the end the following:

"(21) include a fishery impact statement for the plan or amendment that shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on other species, including key predator-prey interactions, in the ecosystem, for the purpose of determining consistency with the relevant Fisheries Ecosystem Plan as required under section 305(j).".

(e) FISHERIES ECOSYSTEM PLANS.—Section 305 (16 U.S.C. (1855)) is amended by adding at the end the following:

"(j) FISHERIES ECOSYSTEM PLANS.—(1) No later than 24 months after the date of the enactment of the Fisheries Recovery Act of 2001—

"(A) the Secretary shall prepare, in conjunction with the Councils and other scientific, fisheries, and conservation interests as appropriate, and publish guidance for development of Fisheries Ecosystem Plans under this subsection and provide them to the Councils to facilitate development and implementation of such plans within the time period prescribed by this subsection; and

"(B) the Secretary shall issue regulations that establish a process for preparing and developing such Fisheries Ecosystem Plans that is consistent with the fishery management plan process under section 304.

"(2) To assist in developing the guidance and regulations under paragraph (1), the Secretary shall—

"(A) conduct workshops with the Councils and other scientific, fisheries, and conservation interests;

"(B) identify the major ecosystems within each Council's jurisdiction; and

"(C) develop at least one pilot fisheries ecosystem plan.

"(3) Each Council shall, within 24 months after the publication of the guidance and regulations under paragraph (1) and based on the best scientific information available, prepare and submit to the Secretary a Fisheries Ecosystem Plan for each major marine ecosystem within its jurisdiction. In the case in which significant portions of a major ecosystem are in the jurisdictions of adjacent Councils, the Councils shall jointly prepare a plan for the major ecosystem.

"(4) Each Fisheries Ecosystem Plan shall—

"(A) contain information on the structure and function of the ecosystem in which fishing activities occur, including the geographic extent of the ecosystem and its biological, physical, and chemical dynamics, a description of the significant food web including key predator-prey relationships, and the habitat needs of different life stages of species that make up the significant food web;

"(B) establish indices of ecosystem health and integrity;

"(C) describe how the information on ecosystem structure and function is to be incorporated into the context of fishery-specific management plans;

"(D) include specific recommendations for implementing ecosystem protections in fishery management plans; and

"(E) outline a long-term monitoring program to evaluate fishery-dependent and fishery-independent changes in the ecosystem.

"(5) The Secretary shall review each Fisheries Ecosystem Plan according to the guidance prepared pursuant to paragraph (1) and approve or disapprove the plan, in whole or in part, according to the process described in section 304. If the Secretary disapproves or partially approves a plan, the Council shall revise and resubmit the plan within 9 months after its disapproval.

"(6) If, within the 24-month period after publication of the guidance and regulations required pursuant to paragraph (1), a Council fails to develop and submit to the Secretary a Fisheries Ecosystem Plan as required under this subsection, or if the Secretary disapproves in whole or in part such a plan, the Secretary shall prepare a plan for that ecosystem concerned within 33 months after the publication of the guidance and regulations.

"(7)(A) The Secretary may not approve a fisheries management plan or an amendment to such a plan, and such a plan or amendment shall not be effective after the 30-month period beginning on the date the Secretary ap-

proves or prepares a relevant Fisheries Ecosystem Plan, unless the Secretary determines that the fisheries management plan or amendment is consistent with the principles, goals, policies, and recommendations of each relevant Fisheries Ecosystem Plan approved or prepared by the Secretary.

"(B) Within 30 months after the date the Secretary approves or prepares a final Fisheries Ecosystem Plan, each Council shall submit to the Secretary any fishery management plans or plan amendments required to make all fishery management plans under its jurisdiction consistent with the principles, goals, policies, and recommendations of the Fisheries Ecosystem Plan.

"(C) If a Council fails to submit any fishery management plan or amendment required under subparagraph (A) before the end of the 30-month period beginning on the date of such approval, or if the Secretary disapproves in whole or in part such plan or amendment, the Secretary shall prepare such plan or amendment within 39 months after the date of such approval.".

SEC. 9. COOPERATIVE RESEARCH AND DATA COLLECTION.

Section 305 (16 U.S.C. 1855) is further amended by adding at the end the following:

"(k) COOPERATIVE RESEARCH, DATA COLLECTION, AND GEAR MODIFICATION PROGRAM.—In cooperation

with the Councils, the fishing industry, the conservation community, and interested academics, the Secretary shall establish and conduct a cooperative research, data collection, and gear modification program to—

"(1) conduct conservation engineering projects designed to avoid bycatch, minimize the mortality of unavoidable bycatch, or minimize fishery impacts on essential fish habitat through modifications of fishing gear and practices;

"(2) identify ecosystem effects of fishing, to monitor marine ecosystem trends and dynamics;

"(3) collect information on the status of stocks and the life history of managed species;

"(4) provide financial assistance to fishermen to offset the costs of modifying fishing practices and gear to meet the requirements of this Act; and

"(5) provide financial or other incentives for fishermen to develop and utilize fishing gear and practices that avoid bycatch, the mortality of unavoidable bycatch, and adverse impacts on essential fish habitat.".

SEC. 10. ELIMINATION OF OVERFISHING AND REBUILDING OF OVERFISHED POPULATIONS.

(a) FINDINGS, PURPOSES, AND POLICY.—Section 2 (16 U.S.C. 1801) is further amended—

(1) in subsection (a)(1) by striking "valuable" and inserting "ecologically and economically valuable";

(2) in subsection (b)(3) by striking "promote" and inserting "provide for"; and

(3) in subsection (c)(6) by striking "diversity" and inserting "abundance and diversity".

(b) DEFINITIONS.—Section 3 (16 U.S.C. 1802) is amended—

(1) in paragraph (5) by striking subparagraphs (ii) and (iii) and inserting the following:

"(ii) irreversible, long-term, or significant short-term adverse effects on fishery resources and the marine environment are avoided;

"(iii) there will be a multiplicity of options available with respect to future uses of these resources; and

"(iv) when scientific uncertainty exists, explicit buffers are established to account for such uncertainty to prevent and stop overfishing."; and

(2) in paragraph (37) by inserting before the period the following: "but, does not, in any case, include more than one species of fish".

(c) NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.—Section 301(a) (16 U.S.C. 1851(a)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) Conservation and management measures shall prevent overfishing of each stock of fish while achieving, on a continuing basis, the optimum yield from each fishery for the United States.";

(2) in paragraph (3) by striking "as a unit" the second place it appears;

(3) in paragraph (5) by striking "shall" and inserting "should";

(4) in paragraph (6) by inserting before the period the following: "but no such measures shall allow the overfishing of any stock of fish at any time"; and

(5) by amending paragraph (7) to read as follows:

"(7) Conservation and management measures shall, where practicable, and consistent with needed conservation measures, minimize costs and avoid unnecessary duplication.".

(d) REQUIRED FISHERY MANAGEMENT PLAN PROVISIONS.—Section 303(a) (16 U.S.C. 1853(a)) is amended—

(1) in paragraph (1)(B) by striking "and" after the semicolon;

(2) by striking paragraph (1)(C) and inserting the following:

"(C) consistent with the national standards and the other provisions of this Act, except such consistency is not required if the regulations would likely cause overfishing, allow continued overfishing, or delay the rebuilding of any overfished species or stock of fish managed under this Act; and

"(D) consistent with any other applicable law;";

(3) in paragraph (5) by inserting after "number of hauls," the following: "the number and species of all fish caught in the course of the fishery,"; and

(4) by amending paragraph (10) to read as follows:

"(10)(A) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished;

"(B) for purposes of such criteria, apply a definition of the term 'overfished' that is developed and expressed in terms of a minimum level of spawning biomass and maximum level or rate of fishing mortality, designed to ensure the restoration and maintenance of a fish population's abundance, age structure, sex ratio, and size structure so as to prevent the population from dropping below a level capable of producing maximum sustainable yield and maintain ecological integrity;

"(C) include an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery; and

"(D) in the case of a fishery that the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;".

(e) ACTION BY THE SECRETARY.—Section 304(e) (16 U.S.C. 1854(e)) is amended—

(1) in paragraph (4), by striking "and" after the semicolon at the end of subparagraph (B), striking the period at the end of subparagraph (C) and

inserting "; and", and adding at the end the following:

"(D) incorporate measures to protect essential fish habitat for each overfished stock.";

(2) by amending paragraph (5) to read as follows:

"(5) If, within the one-year period beginning on the date of identification or notification that a fishery is overfished or is approaching an overfished condition, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3), the Secretary shall prepare a fishery management plan or amendment and any accompanying regulations to prevent or stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c)."; and

(3) by striking paragraph (7) and inserting the following:

"(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review or as a result of any information provided to the Secretary that such plan,

amendment, or regulations have not resulted or are not likely to result in ending overfishing and rebuilding affected fish stocks in the timeframe required by subsection (4), the Secretary shall—

"(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to end overfishing and rebuild overfished stocks as required by this section; or

"(B) for all other fisheries, immediately notify the appropriate Council and recommend to the Council further conservation and management measures that the Council should take under paragraph (3).".

SEC. 11. PRECAUTIONARY APPROACH TO FISHERIES MANAGEMENT.

(a) FINDINGS AND POLICY.—Section 2 (16 U.S.C. 1801) is amended—

(1) in subsection (a) by adding at the end the following:

"(11) Fishery management shall be based on the best scientific information available and shall weigh in favor of conservation when data are absent, uncertain, unreliable, or inadequate."; and

(2) in subsection (c)(3) by striking "utilizes, and is based upon," and inserting "utilizes the precautionary approach and is based upon".

(b) PRECAUTIONARY APPROACH DEFINED.—Section 3 (16 U.S.C. 1802) is amended by adding at the end the following:

"(46) The term 'precautionary approach' means—

"(A) exercising additional caution in favor of conservation in any case in which information is absent, uncertain, unreliable, or inadequate as to the effects of any existing or proposed action on fish, essential fish habitat, other marine species, and the marine ecosystem in which a fishery occurs;

"(B) selecting and implementing any action that will be significantly more likely than not to satisfy the conservation objectives of this Act; and

"(C) taking into account past sustainable fishing levels.".

(c) NATIONAL STANDARD FOR FISHERY CONSERVATION AND MANAGEMENT.—Section 301(a) (16 U.S.C. 1851) is amended by adding at the end the following:

"(12) The precautionary approach shall apply to conservation and management measures, in particular, and without limitation, to the application of the national standard set forth in paragraph (1).".

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 4 (16 U.S.C. 1803) is amended to read as follows:

"SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Secretary to carry out this Act the following:

"(1) For information collection and analysis—

"(A) $205,000,000 for fiscal year 2002;

"(B) $215,000,000 for fiscal year 2003;

"(C) $225,000,000 for fiscal year 2004;

"(D) $235,000,000 for fiscal year 2005; and

"(E) $240,000,000 for fiscal year 2006.

"(2) For conservation and management operations—

"(A) $126,000,000 for fiscal year 2002;

"(B) $132,000,000 for fiscal year 2003;

"(C) $139,000,000 for fiscal year 2004;

"(D) $146,000,000 for fiscal year 2005; and

"(E) $151,000,000 for fiscal year 2006.

"(3) For State and industry assistance programs, $3,000,000 for each of fiscal years 2001, 2002, 2003, 2004, 2005, and 2006.

"(4) For the conservation of marine ecosystems under section 305(j)—

"(A) $20,000,000 for fiscal year 2002;

"(B) $25,000,000 for fiscal year 2003;

"(C) $30,000,000 for fiscal year 2004;

"(D) $35,000,000 for fiscal year 2005; and

"(E) $40,000,000 for fiscal year 2006.".

(b) CLERICAL AMENDMENT.—The table of sections at the end of the first section is amended by inserting after the item relating to section 3 the following:

"Sec. 4. Authorization of appropriations.".

SEC. 13. SALTONSTALL-KENNEDY ACT CHANGES.

Section 2 of the Act of August 11, 1939 (chapter 696; 15 U.S.C. 713c–3), popularly known as the Saltonstall-Kennedy Act, is amended—

(1) in subsection (a)—

(A) in paragraph (1) by—

(i) striking subparagraph (B); and

(ii) striking "(1) The Secretary" and inserting "The Secretary";

(B) by striking paragraph (2);

(C) by redesignating clauses (i) through (iv) as paragraphs (1) through (4), and moving such paragraphs 4 ems to the left; and

(D) by adding at the end the following:

"(5) to implement sections 303(a)(19) and 305(k) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(a)(19), 1855(k)).''; and

(2) in subsection (e), by striking so much as precedes paragraph (2) and inserting the following:

"(e) ALLOCATION OF FUND MONEYS.—(1) Notwithstanding any other provision of law, all moneys in the fund shall be used exclusively for the purpose of promoting United States fisheries in accordance with the provisions of this section and such other purposes as are authorized by this Act, and no such moneys shall be transferred from the fund for any other purpose. Allocation of moneys pursuant to this subsection shall be in addition to moneys appropriated for National Marine Fisheries Service operations in a fiscal year. With respect to any fiscal year, all moneys in the fund, including the sum of all unexpended moneys carried over into that fiscal year and all moneys transferred to the fund under subsection (b) of this section or any other provision of law with respect to that fiscal year, shall be allocated as follows:

"(A) The Secretary shall use $5,000,000 to make direct industry assistance grants to develop United States fisheries and to expand domestic and foreign markets for United States fishery products pursuant to subsection (c).

"(B) The Secretary shall use $50,000,000 pursuant to section 2(a)(5).

"(C) The Secretary shall use the balance of the moneys in the fund to finance those activities of the National Marine Fisheries Service that are directly related to implementation of the Magnuson-Stevens Fishery Conservation and Management Act.".

○

MAGNUSON-STEVENS ACT REAUTHORIZATION TASK FORCE

Task Force Recommendations

Summary

The Magnuson-Stevens Act Reauthorization Task Force was created in April 2001, and reviewed more than 60 proposed amendments to the Act during five conference calls in May and June. Proposals came from two sources: last year's recommendations from a similar working group and suggestions offered this year by NOAA General Counsels for Fisheries, and Enforcement and Litigation, and NMFS headquarters and field offices. The Task Force has thus far agreed to 26 of these proposals. Six other proposals have been placed in a second category because they either need more staff work or are new proposals that the Task Force has not yet formally reviewed. In addition, nine other proposals that deal with (1) rights-based management systems (IFQs, CDQs, and cooperatives), (2) disaster relief, (3) the central lien registry, and (4) 10-year rebuilding schedules have not been written up as formal proposals, usually because they involve complicated and/or contentious issue, and may require guidance from the agency's leadership.

In brief, the Task Force accepted 26 proposals; is finalizing another six proposals; and has placed nine others in a special category that require more study and perhaps guidance from the agency's leadership. More than a dozen other proposed Magnuson-Stevens Act amendments were rejected by the Task Force.

Proposals accepted by the Task Force

The most "substantive" proposals that the Task Force agreed to addressed the following broad themes: (1) FMP review and comment procedures, (2) Council operations, (3) statutory definitions of "overfishing" and "overfished", (4) fisheries law enforcement, and (5) the collection and use of economic and social data and confidential information. However, a number of the 25 proposals that the Task Force agreed to may be treated as essentially technical changes, and a few addressed regional issues.

This outcome reflects the view of most Task Force members that, at the present time, it is unnecessary and impractical to propose fundamental changes in the Magnuson-Stevens Act. Notably, the Task Force recommended relatively few proposals that would significantly modify the major 1996 Sustainable Fisheries Act amendments (the revised definitions and new national standards, stock rebuilding; the IFQ moratorium; essential fish habitat; and bycatch reduction). Rather, most members of the Task Force agreed that the Magnuson-Stevens Act does not require fundamental changes, but that the 1996 Act can be strengthened and, so to speak, made to work better.

This document lists the 26 Magnuson-Stevens Act reauthorization proposals that the NMFS Task Force has thus far approved, with a statement of the problem and a proposed solution for each. Obviously, it is likely that the Task Force will make additional proposals in the future.

NOAA/NMFS MAGNUSON-STEVENS ACT REAUTHORIZATION TASK FORCE

F	Clarence Pautzke
F/SF	Bruce Morehead
F/SF5	Richard Surdi
F/SF5	Matt Milazzo
F/SF2	Mike Grable
F/SF3	Val Chambers
NER	George Darcy
SER	Rod Dalton
SWR	Rod McInnis
NWR	Steve Freese
AKR	Kent Lind
F/PR	Tom Eagle
F/HC	Jon Kurland
F/ST	Vicki Cornish
F/ST	Pamela Mace
Fx2	Paul Perra
GCF	Maggie Hayes
GCF	Mariam McCall
GCF	Sam Chi
GCEL	Michele Kuruc
F/LA	Michelle Fox

A. MSA REAUTHORIZATION PROPOSALS AGREED TO BY THE TASK FORCE

Review and Approval of FMP/Amendments and Regulations

1. Issue: Recouple the FMP/amendment and regulatory processes
Submitted by: NMFS MSA Reauthorization task force in 2000

Problem: We have encountered serious problems since the 1996 amendments to Section 304 and 305 that essentially decoupled review and implementation processes for FMPs/amendments and their implementing regulations. The most troublesome of these problems is that the decision to approve/disapprove the FMP/amendment may have to be made before the comment period on the regulation ends. This prevents agency consideration of what could be critical public comment.

Proposed solution: Amend the act to require a parallel process for review of FMPs/amendments and their implementing regulations.

Section 304 of the Act should be amended as follows:

(a) in paragraph (1) by -
adding after "Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment," the words "and any proposed implementing regulations prepared under Section 303(c)(1)".

(b) in paragraph (1)(A) by -
replacing existing paragraph to read "immediately make a preliminary evaluation of the management plan or amendment for purposes of deciding whether it is consistent with the national standards and sufficient in scope and substance to warrant review under this subsection and - (i) if that decision is affirmative, implement subparagraphs (B), (C), and (D) with respect to the plan or amendment, or (ii) if that decision is negative - (I) disapprove the plan or amendment, and (II) notify the Council, in writing, of the disapproval and of those matters specified in subsection (a)(3)(A), (B), and (C) as they relate to the plan or amendment;"

(c) in paragraph (1)(A) by-
renumbering existing paragraph (A) to (B).

(d) in paragraph (1)(B) by-
renumbering existing paragraph (B) to (C) and revising to read "by the 15th" day following transmittal of the plan and proposed implementing regulations, publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 50-day period beginning on the date the notice is published; and also publish in the Federal Register any proposed implementing regulations that are consistent wit the fishery management plan or

amendment, this Act, and any other applicable law, for a comment period of 50 days. The Secretary may make such technical changes to the Council's proposed regulations as may be necessary for clarity, with an explanation of those changes."

(e) in paragraph (b)(1) by-
changing the citation "section 303(c)" to "section 303(c)(2)."

(f) in paragraph (b)(1)(A) by-
replacing the words before ... "publish such regulations in the Federal Register" with the words "If the Secretary determines that the regulations are consistent, the Secretary shall, within 15 days of transmittal,"

(g) in paragraph (b)(1)(B) by-
replacing the words before "notify the Council" with the words "If the Secretary determines that regulations are not consistent, the Secretary shall, within 15 days of transmittal,"

(h) in paragraph (b)(3) by-
adding after "paragraph (1)(A)" the words "and within 45 days after the end of the comment period under subsection (a)91)(C)."

2. Issue: Tighten the language for preliminary Secretarial review of FMPs and amendments
Submitted by: Office of Habitat Conservation

Problem: The draft Administration bill attached to Bruce Morehead's 4/21/00 memo includes language to provide for a preliminary Secretarial review of an FMP or amendment. Under Section 4(c), the language for amending Section 304(1)(A) of the Act would have the Secretary review the FMP or amendment "for purposes of deciding if it is consistent with national standards and sufficient in scope and substance to warrant review under this subsection." Construed narrowly, this preliminary review might not allow for a prompt disapproval if the FMP or amendment is inconsistent with another part of the Act, e.g., Section 303(a) or other applicable law, e.g., NEPA.

Proposed solution: After the words "national standards" add the following language: "the other provisions of this Act, and other applicable law."

3. Issue: Amend the comment period on framework regulations
Submitted by: Office of General Counsel for Fisheries

Problem: Section 304(b)(1)(A), read together with Section 303(c), can be interpreted to require a comment period for <u>all</u> regulations implementing an FMP, even those promulgated under a framework provision allowing issuance without notice-and-comment rulemaking. Many FMPs contain frameworks that substitute notice and public input at the Council level for notice-and-comment through the Federal Register process for certain limited actions. A good portion of our fishery management actions have been done through these framework actions for almost two

decades. We believe it was not Congress' intention, when it revised the procedural sections in 1996, to eliminate these framework actions (see Guide to the SFA, p. 30).

Proposed solution: Amend Section 304(b) to add a subparagraph (4) to read:

> (4) Upon transmittal by the Council to the Secretary of actions prepared under framework provisions of fishery management plans, the Secretary shall follow the procedures of those framework provisions to publish promptly actions that are consistent with the plan, this Act, and other applicable law.

Notes: The amendatory language uses the language "actions" to avoid confusion with "regulations" treated earlier in Section 304. There is precedent for this usage in the judicial review section, 305(f).

This amendment could be a stand-alone proposal, or could be folded into last year's proposed revision of Section 304 to re-couple the amendment and regulatory processes.

4. Issue: Modify Section 305(c) on emergency actions to make them applicable, as required, for one calendar year
Submitted by: Northeast Region

Problem: The current language in section 305(c) allows an emergency or interim action to be effective for 180 days, with the possibility of extension for an additional 180-day period. While this is usually adequate either to address a short-term problem or to allow development of an FMP or FMP amendment to address the issue in a more permanent way, there are circumstances in which this is timing is problematic. Specifically, when there is no FMP in place and the emergency or interim action is implementing a new management regime, the fact that the two sequential 180-day periods fall short of a full calendar year means that quota management and data collection can be compromised. For example, the 2000-2001 specifications for the spiny dogfish fishery were put in place by Secretarial emergency rule. However, the FMP sets specifications on the basis of a calendar year. The consequence was that the fishery was unregulated for several days at the end of April 2001, before the new specifications took effect on May 1. A similar problem could arise with the red crab fishery in 2001-2002.

Proposed solution: Section 305(c)(3)(B) should be amended to allow the total period of effectiveness for an emergency or interim action to be one full calendar year (instead of one 180-day period with the possibility of a second 180-day extension).

The relevant parts of an amended Section 305(c)(3)(B) would read:

(B) shall (referring to an emergency regulation), ... remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the Federal Register for an additional period of not more than ~~180~~ 186 days ...

Council Operations

5. Issue: Facilitate notifications of Council meetings

Problem: Councils are required under Section 302(i)(2)(C) and (i)(3)(B) to spend considerable sums to publish meeting notices in local newspapers in major and/or affected fishing ports in the region, although e-mails, PSAs and notices included in marine weather forecasts are less expensive and more effective in reaching target audiences.

Proposed solution: Eliminate the requirement in these Sections to publish notices of public meetings in newspapers. Accordingly, Section 302(i)(2)(C) would be amended by replacing the phrase "... and such notice may be given by such other means as will result in wide publicity" with "... and such notice will be given by any means that will result in wide publicity." Section 302(i)(3)(B) would be amended by inserting after the words " ... shall notify local newspapers" the phrase "... or through any means that will result in wide publicity".

Magnuson-Stevens Act Definitions

6. Issue: Modify the definitions of "Overfishing" and "Overfished"
Submitted by: Office of Science and Technology

Problem: Currently, the terms "overfishing" and "overfished" are defined as a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

This definition works for "overfishing" but not for "overfished". In essence, Congress has taken a verb and an adjective and defined them both to be the same thing. And, by doing so, they preclude making the useful distinction between the "act of overfishing" (fishing mortality too high) and the "state of being overfished" (stock size too low). It is possible to have an overfished stock but no current overfishing (e.g. for a stock previously depleted by overfishing but now protected), or to have overfishing on a healthy stock (fishing mortality too high but favorable environmental conditions have kept the stock at high abundance – for now....). Of course, the worst combination is overfishing on an already overfished stock.

Proposed solution: The NMFS Guidelines to National Standard 1 point out that despite Definition #29, the Magnuson-Stevens Act uses the terms in the two senses outlined above. Thus, the NS1 Guidelines use the above definition for "overfishing", but use the term "overfished" to refer to a depleted stock status. Therefore F/ST suggests retaining the above definition for "overfishing" and adding a new definition for "overfished", as follows:

"The term "overfishing" means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

(29B) The term "overfished" is used to describe a stock or stock complex whose size is below the natural range of fluctuation associated with the production of maximum sustainable yield.

Fisheries Law Enforcement

7. Issue: Amend the authority for investigatory subpoenas
Submitted by: Office of General Counsel for Enforcement and Litigation

Problem: Currently, the Magnuson-Stevens Act authorizes the Secretary to issue subpoenas only for the purposes of conducting a civil penalty hearing, in Section 308(f). The MSFCMA, as well as every other statute enforced by NOAA other than the Northern Pacific Halibut Act (NPHA), does not contemplate the issuance of subpoenas for the purpose of conducting an investigation initiated under the authority granted in Section 311.

The fact that subpoenas can only be granted for the purpose of conducting a hearing, as under the MSFCMA, can lead to problems during the investigation of alleged violations. This is because the Agency is limited in its ability to fully investigate alleged violations prior to issuance of a Notice of Violation and Assessment (NOVA) and the request from a Respondent for an administrative hearing. It is only after a hearing request has been made by a Respondent that the Agency has the ability to subpoena information it was unable to obtain voluntarily during the course of the initial investigation.

The lack of investigatory subpoena authority is detrimental to both the Agency and Respondents. In some cases, the information sought by way of a subpoena issued following a Respondent's hearing request may have exculpatory value that would directly effect the Agency's decision to issue a NOVA or assess a penalty. In other cases, the information sought may strengthen the Agency's allegations, show aggravating circumstances, or give rise to other violations. In both cases, the problem would be remedied if the Secretary had the authority to issue subpoenas during the course of an investigation.

A short, non-exhaustive, list of information that may be sought by way of an investigatory subpoena includes: landing and receipt/payment records maintained by fish dealers, brokers and settlement houses; business records; bank/financial records; phone records; and records maintained by fishing supply companies on purchases made for particular vessels.

Proposed solution: GCEL and OLE are recommending that Section 308(f) be amended to include the availability of investigatory subpoenas under all marine resource laws enforced by the Secretary. The following text includes the existing language of Section 308(f), and the suggested language to effect the recommended change (redacted language is struck through, suggested language is bold and italicized):

> (f) SUBPOENAS.-- For the purposes of conducting any ***investigation or*** hearing under this ~~section~~ ***Act or of any other marine resource law enforced by the Secretary***, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned ***for the purposes of conducting any hearing*** shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application

by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

8. Issue: Amend the authority for forfeiture of catch when written warnings are issued
Submitted by: Office of General Counsel for Enforcement and Litigation

Problem: Currently, the MSFCMA does not authorize the forfeiture of illegal catch when the agency chooses to handle the violation by a written warning rather than a summary settlement or NOVA.

Proposed solution: GCEL and OLE are recommending that the ban on forfeiture for written warning level violations be amended to allow for the forfeiture of contraband fish as follows:

> Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by Section 307, ~~other than any act for which the issuance of a citation under the Section 311(c) is sufficient sanction)~~ shall be subject to forfeiture to the United States, except that no fishing vessel shall be subject to forfeiture as a result of any act for which issuance of a citation under Section 311(c) is sufficient sanction * ... .

Section 310(a)

*The MSFCMA, and agency practice, interprets written warnings as being "citations".

9. Issue: Prevent a transfer of a permit from extinguishing a permit sanction
Submitted by: Office of General Counsel for Enforcement and Litigation

Problem: Currently, the Magnuson-Stevens Act provides that transfer of ownership of a vessel, by sale or otherwise, does not extinguish permit sanctions that are in effect or pending at the time ownership is transferred. Many permits that are issued by the Agency, however, are not issued to vessels, but rather to persons. For example, in the Alaska groundfish fishery, permits are based on a person's historical catch data and are issued to the person, rather than a vessel.

Proposed solution: Amend Section 308(g)(3) to prevent transfer of any permit, or interest therein, to extinguish any existing or pending permit sanction. It is suggested that the following underlined language amend the first sentence of Section 308(g)(3):

"Transfer of ownership of a vessel, of a permit, or any interest in a permit, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel or of a permit, by sale or otherwise. the owner shall disclose in writing to the prospective transferee the existence of any

permit sanction that will be in effect or pending with respect to the vessel or permit at the time of the transfer."

10. Issue: Increase civil penalties and criminal fines
Submitted by: Office of General Counsel for Enforcement and Litigation

Problem: Civil penalty amounts are too low to be an effective deterrent, and violators consider even the maximum civil penalty an acceptable cost of doing business.

Proposed solution: Increase civil penalties in Section 308 from $100,000 to $200,000.

Criminal fines should be increased proportionally, and Section 309(b) amended, as follows:

> Any offense described in subsection (a)(1) is punishable by a fine of not more than ~~$100,000~~ $200,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any observer described in section 307(1)(L) or any officer authorized to enforce the provisions of this Act (as provided in section 311), or places any such observer or officer in fear of imminent bodily injury; the offense is punishable by a fine of not more than ~~$200,000~~ $400,000, or imprisonment for not more than 10 years or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than ~~$200,000~~ $400,000.

11. Issue: Increase through amendment the maximum penalty
Submitted by: Office of General Counsel for Enforcement and Litigation

Problem: This is a technical amendment that would make the Magnuson-Stevens Act consistent with current law and enforcement practice. Pursuant to the Civil Monetary Penalty Inflations Adjustments of 2000 (65 F.R. 65260 (11/01/00)), the maximum civil penalty for the Magnuson-Stevens Act was increased to $120,000/day. Therefore, Section 308(a) should be amended to reflect the increase in maximum civil penalty from $100,000 to of $120,000, unless the Magnuson-Stevens Act is amended to include even higher civil penalties.

Proposed solution: The maximum civil penalty in Section 308(a) should be increased from $100,000 to $120,000.

12. Issue: Promote Federal-State partnerships in fisheries law enforcement
Submitted by: Office of General Counsel for Enforcement and Litigation

Problem: Recently, Congress appropriated monies for the Secretary to enter into enforcement agreements with States to further the enforcement of Federal and State fisheries laws by the States. Congress's desire to increase the role of States in fisheries enforcement is greatly hindered, however, by the provisions of the Magnuson-Stevens Act that prohibit State employees from gaining access to and disclosing information submitted to the Secretary in compliance with

the Magnuson-Stevens Act for any purpose, including enforcement of State fisheries laws. This concern is heightened if monies continue to be appropriated for cooperative enforcement agreements. Continued appropriations are supported by the Fisheries Management Councils.

Proposed solution: Efforts should made to remove any barriers that may hinder existing and future cooperative enforcement efforts with the States by amending Section 402(b)(B) as follows:

(b) Confidentiality of Information
(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except –

(A) to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;

(B) with respect to States that have entered into a fisheries enforcement agreement with the Secretary, to State employees who are responsible for fishery management plan monitoring;

(C) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person, provided that this subsection shall not apply to State employees responsible for fishery management plan monitoring as provided in section 402(b)(1)(B);

Renumber Section 402(b)(1)(C),(D), and (E) to Section 402(b)(1)(D),(E), and (F), respectively.

13. Issue: Amend the Northern Pacific Halibut Act to provide for permit sanctions
Submitted by: Office of General Counsel for Enforcement and Litigation

Problem: Presently, since sablefish fishing is regulated under the Magnuson-Stevens Act and halibut fishing is regulated under the NPHA, there is a grave disparity between treatment of similarly situated violators under the IFQ regulations. Specifically, an IFQ sablefish fisherman committing a serious violation of the IFQ regulations could be assessed a civil penalty of up to $120,000, and his IFQ permit(s) could also be sanctioned. The identical violation involving halibut under the same IFQ regulations is limited to a monetary penalty of $25,000. There is also no explicit permit sanction authority in the NPHA that would allow modification or revocation of the fisherman's IFQ permit under the NPHA. This amendment would provide for similar treatment of similarly situated violators and would clarify that the NPHA also authorizes the Agency to sanction IFQ halibut permits.

Proposed solution: Amend provisions of the NPHA by means of the MSFCMA reauthorization. Below is draft language for amending the NPHA. These amendments are necessary in order to provide consistent enforcement sanctions between sablefish and halibut fishermen in the Alaska IFQ fisheries.

Amend 16 U.S.C. § 773f(a) of the NPHA to read:

Civil Penalties and Permit Sanctions

(a) Liability; continuing violations; notice; determination of amount; other sanctions

Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of Title 5, to have committed an act prohibited by section 773e of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed ~~$25,000~~ $120,000* for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the ~~violation~~ violator, the degree of culpability, ~~and~~ any history of prior offenses, ~~ability to pay,~~ and such other matters as justice may require. In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, *Provided*, That the information is served on the Secretary at least 30 days prior to an administrative hearing.

Add to 16 U.S.C. § 773f of the NPHA a new subsection: **

(e) Permit Sanctions

(1) In any case in which (A) a vessel has been used in the commission of any act prohibited under section 773e, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 773e, (C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, the Secretary may --
(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;
(ii) suspend or modify such permit for a period of time considered by the Secretary to be appropriate;
(iii) deny such permit; or
(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to any foreign fishing vessel, on the approved application of the foreign nation involved and on any permit issued under that application.

(2) In imposing a sanction under this subsection, the Secretary shall take into account --
(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a vessel, of a permit, or any interest in a permit, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel or of a permit, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel or permit at the time of the transfer.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty, criminal fine or any amount in settlement of a civil forfeiture, the Secretary shall reinstate the permit upon payment of the penalty, fine or settlement amount and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this section unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed either in conjunction with a civil penalty proceeding under this section or otherwise.

(6) For the purposes of this section, the term "permit" means, without limitation, any license, certificate, approval, registration, charter, membership, exemption or other form of permission issued by the Commission or the Secretary, and includes any quota share or other transferable quota issued by the Secretary.

* Civil penalties under the NPHA should be the same as those under the MSFCMA. This proposed increase reflects the current maximum civil penalty under the MSFCMA. If civil penalties are increased under the MSFCMA, that increase should be adopted in these NPHA amendments.

** Section 308(g) of the Magnuson Act (16 U.S.C. § 1858(g)) has been used as the model for this proposed language. Departures from the model are indicated by underlining. Similar amendments to the Magnuson Act permit sanction provision Section 308(g) would provide identical sanction options for the fixed gear IFQ program. The provision relating to sanction for non-payment of observer service fees has not been included because authority for observer coverage does not presently arise under the NPHA.

Social and Economic Data

14. Issue: Amend Section 303(b) to enable NMFS to obtain economic data from processors
Submitted by: Office of Science and Technology

Problem: Section 303(b) DISCRETIONARY PROVISIONS. Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may– ...

(7) - require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery; ...

This provision prevents the agency from obtaining needed economic data from processors, a key body of information to understand the economics of federally managed fisheries. The ability of NMFS to accurately predict the impact of proposed fishery management regulations would be improved while continuing to protect confidential data under existing provisions of the law. In addition, it would eliminate the appearance of a contradiction in the law requiring economic analysis without allowing the collection of necessary data. The explicit inclusion of economic and socio-cultural data in the definition of "best scientific information" in National Standard 2 will improve the information available to fishery managers upon which they can base their decisions and set policies concerning the nation's living marine resources. Removing language such as "(other than economic information)" in the MSFCMA will also strengthen the ability of the NMFS to collect data from processors and harvesters of fishery resources.

Proposed solution: Section 303(b) Discretionary Provisions should be amended.. Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(7) - require fish processors who first receive fish that are subject to the plan to submit data ~~(other than economic data)~~ which are necessary for the conservation and management of the fishery;

15. Issue: Improve the agency's ability to collect social and economic data
Submitted by: Office of Science and Technology

Problem: NMFS and the Councils are increasingly required under the Magnuson-Stevens Act and other laws to conduct regulatory assessments that evaluate the social and economic impacts of management measures. However, these social and economic assessments require considerable data, and the Magnuson-Stevens Act should be amended to require/authorize the collection of this data.

Proposed solution: A two-part proposal was developed in consultations among S&T, SF, and GCF. The first element would amend section 303(a) - - required provisions of FMPs - - and the second would give the Secretary the authority, in an amended section 402, to establish such a data collection program.

Amend Sections 303 and 402 as follows:

Section 303(a)(5) -
specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged, time of fishing, number of hauls, <u>harvest and processing revenues by species, production costs, capital expenditures and other fishing or</u>

processing expenses, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

402(a)(2) Secretarial Determinations. -
If the Secretary determines that additional information is necessary and appropriate for developing, implementing, revising or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may implement an information collection or observer program requiring submission of such data for the fishery.

Confidential Information

16. Issue: Modify Section 402(a) to enable the Councils to obtain proprietary and confidential information
Submitted by: Office of Science and Technology

Problem: The MSA , in Section 402(a), currently exempts proprietary or confidential commercial or financial information on fishing and processing operations from the universe of information that the Councils may request that the Secretary collect. However, the Councils and NMFS need such information to adequately carry out the analyses and regulatory assessments required in the development of FMPs and amendments.

Section 402, INFORMATION COLLECTION, currently states that:

"(a) COUNCIL REQUESTS.– If a Council determines that additional information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) ... the types of information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) ..."

Proposed solution: Section 402, INFORMATION COLLECTION, should be amended as follows:

"(a) COUNCIL REQUESTS.– If a Council determines that additional information ~~(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)~~ ... the types of information ~~(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)~~ ..."

17. Issue: Amend the agency's use of confidential information in limited entry determinations
Submitted by: Office of General Counsel for Fisheries

Problem: Much of the information required by regulation to be submitted in support of applications for limited entry permits qualify as confidential under section 402(b)(1). Although a recent amendment provides an exception for "... information ... used to verify catch under an

individual fishing quota program," the exception is too limited in several ways. First, it applies only to IFQ programs and not to other limited entry programs. Second, it is limited to information relating to catch. Typically, these programs also require ownership history and the possible existence of either written or oral leases. Some programs provide "hardship exemptions" as well. Determination of all these qualifications for limited entry permits or quota shares requires the submission of confidential business and financial information by the applicant, and agency review of such information.

When an applicant refuses to voluntarily waive confidentiality rights, difficulties arise. One situation is where two competing applicants apply for the same permit/quota share. NMFS must determine each of the applicants's eligibility, then grant the contested permit or share to one while denying the other's application. If the confidential information on which the agency based its determination is controlled by the successful applicant, procedural due process requires that the unsuccessful applicant be given notice of the decision and a meaningful opportunity to respond. If the successful applicant won't waive the privilege, NMFS cannot meet its obligations to the unsuccessful applicant.

Even where there is no competition for a permit or quota share, an applicant may appeal NMFS' denial of the application in whole or in part. Judicial review of the agency action is done by review of the administrative record, which is open to the public. The agency has to choose between filing an administrative record containing information protected under section 402(b)(10, refusing to divulge the basis for its action to the District Court, or making determinations without reference to the confidential information.

Proposed solution: Add a new paragraph (G) to section 402(b)(1) to read as follows:

> (G) when such information is required by the National Marine Fisheries Service for any determination under a limited entry program.

Fish Habitat

18. Protection of Fish Habitat
Submitted by: MSA 2000 Reauthorization Task Force

Problem: NMFS and the Councils need more clearly defined authorities to regulate the actions of commercial and recreational vessels, including anchoring, that adversely affect coral reef habitats or other habitats sensitive to disturbance.

Proposed solution: Amend Section 303 of the Magnuson-Stevens Act by adding a new paragraph (b)(13) that reads:

"designate zones encompassing specific coral reef habitats or other habitats sensitive to disturbance and restrict actions of any vessel or motorized watercraft that would adversely affect fishery resources in those zones."

International Fisheries

19. Issue: Amend the Magnuson-Stevens Act to accommodate US-Canadian reciprocal albacore tuna fisheries in each other's zones
Submitted by: Office of General Counsel for Fisheries

Problem: Under the 1981 Treaty with Canada on Pacific Coast Albacore Tuna Vessels, Canadian vessels fish for tuna in the EEZ of the United States and U.S. vessels fish for tuna in the EEZ of Canada. When the United States entered into this treaty, highly migratory species, including tuna, were excluded from the definition of "fish" in the FCMA. Therefore, in 1981 fishing for tuna by Canadian vessels in the EEZ of the United States was not considered "fishing" at all and was not subject to the Act. When the Magnuson Act was amended in 1990, effective 1992, to include tuna as "fish", fishing by Canadian vessels under this Treaty was apparently overlooked. We do not believe Congress intended to abrogate the 1981 Treaty. Based on discussions with staff of the Bureau of Oceans and Environmental and Scientific Affairs, Department of State, that Department concurs with this position.

A related problem is that there is no statutory authority under which a Federal agency can manage Canadian vessels fishing in U.S. waters, or U.S. vessels fishing in Canadian waters, under the Treaty.

Proposed solution: Amend the chapeau of section 201(b) to read as follows:

(b) Foreign fishing described in subsection (a)may be conducted pursuant to the 1981 treat with Canada on Pacific Coast Albacore Tuna vessels, as amended; or pursuant to any other international fishery agreement (subject to the provisions of section 202 (b) or (c)), if such an agreement ...

Propose a stand-alone provision to read as follows:

> The Secretary of Commerce may promulgate regulations necessary to discharge the obligations of the United States under the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges. The proposed rulemaking and public participation requirements of section 553 of title 5, the United States Code, shall not apply to regulations promulgated under this section. The Paperwork Reduction Act, chapter 35 of title 44, United States Code, shall not apply to collection of information or record keeping requirements established by regulations promulgated under this section.

Note: The Administrative Procedures Act and Paperwork Reduction Act exemptions are needed to facilitate the United States' carrying out its obligations under the Treaty.

20. Issue: Amend the requirement for 100 percent observer coverage of foreign vessels operating under Pacific Insular Area fishery agreements
Submitted by: Office of General Counsel for Fisheries

Problem: The current language in section 201(h) appears to require 100 percent coverage for any foreign vessel fishing under a Pacific Insular Area fishery agreement, which is a level of coverage more than is necessary for scientists and managers to adequately monitor harvests and bycatch, or for law enforcement officers to monitor for enforcement purposes. Since the FCMA was passed in 1976, automated vessel monitoring systems (VMS) have become a valuable tool that can complement an observer program. VMS systems are particularly useful for enforcement purposes. Concerns have been expressed that some foreign nations are not interested in commencing negotiations for a PIAFA if their fleets must commit to 100 percent observer coverage. That level of coverage would significantly increase costs to the industry, which costs are passed on to the insular area governments in reduced revenues from the agreements.

Proposed solution: Revise section 201(h)(2)(B) to read as follows:

> (B) in a situation where the foreign fishing vessel is operating under a Pacific Insular Area fishing agreement, the Governor of the applicable Pacific Insular Area, in consultation with the Western Pacific Council, has established an observer coverage program, or other monitoring program, that the Secretary determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement.

Revise section 204(e)(2)(F) to read as follows:

> (F) shall require the foreign fishing nation and its fishing vessels to comply with the requirements for paragraphs (1), (2), (3) and (4)(A) of section 201(c) and section 201(d) ~~and section 201(h).~~

Revise section 204(e)(4)(A)(i) to read as follows;

> (i) ~~establishment of~~ Pacific Insular Area observer programs, or other monitoring programs, that are adequate to monitor the harvest , bycatch, and compliance with the laws of the United States by foreign fishing vessels that would fish under Pacific Insular Area fishery agreements.

Note: Deletion of the reference to section 201(h) in section 204(e)(2)(F) is a technical change consistent with the amendment to section 201(h)(20(B). Deletion of "establishment of" in section 204(e)(4)(A)(i) clarifies that the observer/monitoring programs do not need to be established before a Marine Conservation Plan (MCP) is approved. Most if not all of these island governments need an approved MCP to funnel money toward the projects they are planning. They expect that some of that money, in turn, can assist in the establishment of an observer or other monitoring/VMS program.

Maritime Boundaries

21. Issue: Clarify the inner boundary of the EEZ
Submitted by: Office of General Counsel for Fisheries

Problem: Recent disputes between the Department of the Interior and the Department of Commerce have highlighted the ambiguity inherent in the definition of "exclusive economic zone" in section 3(11). The definition states that, for purposes of the Magnuson-Stevens Act, "the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States." What does that mean for commonwealths, territories, and possessions of the United States? The legislative history of the 1976 Act and the 1986 Act incorporating the Presidential proclamation of the EEZ are discussed in a memorandum by the Congressional Research Service (March 31, 2000). The memo concludes that there are two plausible interpretations of the inner boundary of the EEZ for entities other than States of the Union: the boundaries of those entities (which the author describes as "generally lines close around the islands and their immediate reef areas"), or the outer boundary of the territorial sea.

There is at least one other plausible interpretation. The 1976 Act established a fishery conservation zone "contiguous to the territorial sea of the United States" and set the inner boundary at the seaward boundary of each of the coastal States (section 3(8) and 101 of Public Law 94-265). The legislative history explained that the term "seaward boundary" had the same meaning as in the Submerged Lands Act of 1953, recognizing Florida's and Texas' boundaries of nine nautical miles in the Gulf of Mexico. The definition of "State" included entities other than the States of the Union, and used the term consistently in the 1976 Act, so the intent of the original drafters appeared to be that the inner boundary of the FCZ was the boundary of the entity (e.g., nine nautical miles for Puerto Rico; three nautical miles for American Samoa, the Virgin Islands, and Guam). NOAA implemented the Act in keeping with that intent, giving more weight to the inner boundary definition than t the descriptive reference to the territorial sea. Of course, in 1976, most "States" has seaward boundaries that coincided with the outer limit of the territorial sea, which at that time was three nautical miles.

The Proclamation declaring the EEZ in 1983 specified that it did not change existing U.S. policies concerning fisheries. The 1986 Act's definition, while changing the name of the zone from FCZ to EEZ, retained the original language defining the inner boundary ("a line coterminous with the seaward boundary of each of the coastal States"). NOAA continued to implement that Act as it had done since 1976, recognizing the ability of the inhabited entities with functioning governments to manage adjacent marine fisheries, just as the States of the Union do. For other possessions and territories, NOAA has always considered the EEZ to encompass all marine waters within 200 nautical miles of those entities, to ensure that the Secretary of Commerce and the relevant Councils have authority to manage marine fisheries to the shore. This view is not necessarily shared by everyone outside of NOAA.

Proposed solution: Amend section 3(11) to read as follows:

(11) The term "exclusive economic zone" mans the zone established by proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with each of the <u>several</u> coastal States. <u>For the Commonwealth of Puerto Rico, the inner boundary is nine nautical miles from the baseline. For American Samoa, the Virgin Islands, Guam, and the Commonwealth of the Northern Marianas,</u>

the inner boundary is three nautical miles from the baseline. For all other possessions and territories of the United States, the inner boundary is the baseline.

Note: This amendment could be described as "technical", in that it simply codifies more than 20 years of agency practice. Unless the new leadership at Interior takes a different view than the former of its prerogatives to manage fisheries in waters adjacent to territories and possessions, the proposal is guaranteed to exacerbate interagency jurisdictional disputes. The Western Pacific council would support te proposal, but would want a boundary more inclusive than the baseline, in order to claim authority over the large lagoon at Palmyra.

Note also that this amendment is related to last year's proposal to give the Caribbean Council authority over Navassa Island. Without this clarification, there would be uncertainty as to where the EEZ begins around that uninhabited island (baseline, some other close-in line, or at the edge of the territorial sea, or at least three and probably 12 miles seaward of the island).

Limited Entry

22. Issue: Amend the statute of limitations for limited entry determinations
Submitted by: Alaska Region

Problem: Section 305(f) requires that challenges to actions taken by the Secretary under regulations implementing a fishery management plan be filed within 30 days. NOAA has consistently taken the position that this limitation does not apply to agency determinations (such as eligibility for limited entry permits) because the section refers to actions "published in the Federal Register." We don't publish such determinations, nor should we. Therefore, the general six-year Federal statute of limitations applies (28 U.S.C. 2401(a)).

The problem this presents is that a successful applicant receives a limited entry permit or quota share that is not only valuable, but generally transferable. A losing applicant for the same permit of share has up to six years in which to initiate judicial review. If the plaintiff finally prevails in District Court, the agency will be ordered to issue a permit or quota share to the litigant. But we probably wouldn't be able to revoke the permit/quota share of the previously successful applicant because of intervening transfers to bona fide purchasers for value during the many years that may have elapsed between the original determination and the judicial order. Two permits or quota shares would have to be issued, resulting in the dilution in value of all other permits/quota shares held by other participants in the fishery. This has happened once already, in a case involving a quota share valued at more than $500,000.

Proposed solution: Amend section 305(f) to read as follows:

> (1) regulations promulgated by the Secretary under this Act and actions described in paragraph (2) shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action

is published in the Federal Register or becomes final agency action, as applicable, except that -

(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including but not limited to actions that establish the date of closure of a fishery to commercial or recreational fishing, or agency determinations of eligibility under a limited entry program.

(3) * * * *

(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulation or agency determination that is the subject of the petition.

Note: This solution is preferable to making nontransferable the permit/quota share issued to any applicant in situations where there are competing applicants, since many years could elapse before the successful applicant would be able to transfer his property. Under the proposed solution, NMFS would make all the contested permits/quota shares nontransferable for 30 days after final agency action. If there is no appeal, the permit or share would become transferable. If there is an appeal, the permit or share would remain nontransferable for the duration of the litigation.

Observers

23. Issue: Modify Section 313 and 403 provisions that deal with funding for observers
Submitted by: Office of Science and Technology

Problem: Currently, Section 313 authorizes the preparation of a fisheries research plan that requires the stationing of observers on fishing vessels in the North Pacific and the establishment of a system of fees to pay for the costs of implementing the plan.

Although this provision has been in the Magnuson-Stevens Act since 1991, its full implementation has been stalled. The North Pacific Fishery Management Council approved a system which NMFS then implemented, only to later have that system be rescinded by the Council, forcing NMFS to refund the fees that were collected. The set percentage fee arrangement was the main point of contention with the program on the part of the large vessel and processing plant sectors of the fishery. Basing the fee assessment on a percentage of the retained harvest seemed a reasonable approach, as this corresponds to a proportional measurement of the industry's use of a public resource. However, in practice, this method of fee assessment created significant cost distribution and equity issues.

This system also does not address the need to develop a system for funding observer programs nation-wide.

Proposed solution: Strike the section that provides authorization for a North Pacific Research Plan to be developed, and add a new section that would provide broad discretion to all Fishery Management Councils, or the Secretary, to develop monitoring plans and establish funding mechanisms that would cover the cost of the monitoring plans. The language presented here was developed by consensus by the National Observer Program Advisory Team, comprised of representatives from each region and each headquarters office, in consultation with GCF.

Strike subsection (a) through (e) of section 313. NORTH PACIFIC FISHERIES CONSERVATION.

Add to Section 403. OBSERVERS.

"(d) OBSERVER MONITORING PLANS.–Each Council may prepare, in consultation with the Secretary, or the Secretary may prepare, a fisheries monitoring plan for all fisheries managed under statutes administered by the Department of Commerce, that–

(1) requires one or more observers to be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species managed under statutes administered by the Department of Commerce, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries managed under statutes administered by the Department of Commerce, according to the guidelines for placement of observers developed under this section or section 303(b)(8),

(2) is reasonably calculated to–

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be consistent with applicable provisions of law; and

(C) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(3) establishes funding mechanisms that would cover the cost of a monitoring plan. Councils, and the Secretary, are given broad discretion in developing such funding mechanisms that may include, but not be limited to, a system of fees or other cost recovery mechanisms to pay for the costs of implementing, evaluating, and administering such plans. The monitoring plans shall–

(A) provide that funds collected will be deposited in the Fishery Observer Fund established in subsection 403(e);

(B) provide that funds collected be used only for the monitoring plan from which the funds were collected, except for monies deposited in the Fund designated under the monitoring plans for support of national or multi-region observer program activities; and,

(C) exclude contractual agreements made directly between fishing vessels or fish processors and any non-government observer provider companies. Fishery management plans or regulations that allow for direct contractual agreements between fishing vessels or fish processors and any non-government observer provider companies must have a plan approved or regulations proposed for restructuring these agreements according to the requirements in this section by (insert date 3 years from enactment of this section).

(e) FISHERY OBSERVER FUND.--There is established in the Treasury a Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of subsection 403(d), subject to the restrictions in that subsection. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund, including interest, that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(f) CONTRIBUTIONS.-- For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, contributions, and bequests. Funds collected under this subsection will be deposited in the Fishery Observer Fund established in section 403(e).

Maine Pocket Waters

24. Issue: Fix the mistaken SFA coordinates for Maine pocket waters, thereby solving various legal and enforcement problems.
Submitted by: Northeast Region

Problem: The SFA amended the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) to include a provision to exempt Maine commercial lobster fishing permit holders from Federal permitting requirements in certain areas designated as Federal waters and referred to as the Maine pocket waters. The SFA incorrectly identified the coordinates of these areas. This mistake has been carried forward into ACFCMA and its implementing regulations. As currently written, the coordinates specify a large area of the Atlantic ocean and delineate a line that cuts across land. Some Maine lobstermen are uncertain of where they may legally fish without a Federal permit; others may be taking advantage of the confusion over the coordinates by fishing illegally in Federal waters that were not intended to be part of the Maine pocket waters. There has been at least one occasion in which an enforcement agent cited a fisherman for fishing in Federal waters near the Maine pocket waters without a Federal permit, yet the court dismissed the enforcement action because of the mistakes in the coordinates.

Section 808 of ACFCMA (16 USC 5107a) currently reads as follows:

(1) west of Monhegan Island in the area located north of the line 43 degrees 42' 08" N, 69 degrees 34' 18" W and 43 degrees 42' 15" N, 69 degrees 19' 18" W;

(2) east of Monhegan Island in the area located west of the line 43 degrees 44' 00" N, 69 degrees 15' 05" W and 43 degrees 48' 10" N, 69 degrees 08' 01" W;

(3) south of Vinalhaven in the area located west of the line 43 degrees 52' 21" N, 68 degrees 39' 54" W and 43 degrees 48' 10" N, 69 degrees 08' 01" W; and

(4) south of Bois Bubert Island in the area located north of the line 44 degrees 19' 15" N, 67 degrees 49' 30" W and 44 degrees 23' 45" N, 67 degrees 40' 33" W.

Proposed Solution: Amend § 808(a) by revising (a)(3), redesignating (a)(4) as (a)(5), and adding a new (a)(4) as follows:

(3) southeast of Metinic Island in the area located north of the line 43 degrees 48' 10" N, 69 degrees 08' 01" W and 43 degrees 43' 56.9" N, 68 degrees 51' 46.5" W;

(4) south of Vinalhaven in the area located west of the line 43 degrees 52' 10.5" N, 68 degrees 40' 12.2" W and 43 degrees 57' 49.5" N, 68 degrees 33' 20.4" N; and

(5) south of Bois Bubert Island in the area located north of the line 44 degrees 19' 15" N, 67 degrees 49' 30" W and 44 degrees 23' 45" N, 67 degrees 40' 33" W.

End Result: § 808(a) should contain the follow set of coordinates:

(1) west of Monhegan Island in the area located north of the line 43 degrees 42' 08" N, 69 degrees 34' 18" W and 43 degrees 42' 15" N, 69 degrees 19' 18" W;

(2) east of Monhegan Island in the area located west of the line 43 degrees 44' 00" N, 69 degrees 15' 05" W and 43 degrees 48' 10" N, 69 degrees 08' 01" W;

(3) southeast of Metinic Island in the area located north of the line 43 degrees 48' 10" N, 69 degrees 08' 01" W and 43 degrees 43' 56.9" N, 68 degrees 51' 46.5" W;

(4) south of Vinalhaven in the area located west of the line 43 degrees 52' 10.5" N, 68 degrees 40' 12.2" W and 43 degrees 57' 49.5" N, 68 degrees 33' 20.4" N; and

(5) south of Bois Bubert Island in the area located north of the line 44 degrees 19' 15" N, 67 degrees 49' 30" W and 44 degrees 23' 45" N, 67 degrees 40' 33" W.

Note: A proposal to fix the coordinates was included in the 1999 submission of M-S Act reauthorization proposals.

Caribbean Council Jurisdiction

25. Issue: Expand the jurisdiction of the Caribbean Council to include Navassa Island
Submitted by: NMFS 2000 MSA Reauthorization Task Force

Problem: The Caribbean Council's current jurisdiction is limited to EEZ waters around Puerto Rico and the U.S. Virgin Islands, preventing it from managing fisheries off Navassa Island and other U.S. territories in the Caribbean Sea. This oversight hinders the Council's ability to deal effectively with the conservation of coral reefs, reef fish, queen conch, and spiny lobster in waters around Navassa Island.

Proposed solution: Expand the jurisdiction of the Caribbean Islands by inserting in Section 302(a)(1)(D) after the phrase "... seaward of such States ... " the words "and of the commonwealths, territories, and possessions of the United States in the Caribbean Sea" to Section 302(a)(1)(D).

Western Pacific Demonstration Projects

26. Issue: Amend provisions that apply to grants for Western pacific demonstration projects
Submitted by: Office of General Counsel for Fisheries

Problem: The Secretaries of Commerce and the Interior are authorized to give grant money to communities of indigenous persons for fishery demonstration projects (section 305 note). The Western Pacific Council and the Secretary of Commerce may establish a community development program to provide fisheries access to indigenous communities, presumably by means of fishery management regulations (section 305(i)(2)). By codifying these two programs separately and using different terminology, the Sustainable Fisheries Act clearly distinguished the demonstration grant authority from the community development program authority. The only link between the two appears in the definition of "western Pacific community," which is defined for the grant-based demonstration projects by a cross-reference to the eligibility standards used in the community development program. At the end of those standards is paragraph (v), which requires that communities participating in a development program "develop and submit a Community development Plan to the Western Pacific Council and to the Secretary."

The existing cross-reference to the section 302(i)(2)(B), including subparagraph (b)(v), forces grant applicants to prove eligibility as a "community" for purposes of the grant program by submitting a "community development plan" to the Secretary and the Council. A development plan is logically relevant to a community development program, but not necessarily relevant to a demonstration project grant. Aside from paragraph (a), the other paragraphs of section 305(i)(2)(B), that is paragraphs (i)(2)(B)(i) through (iv), are more logically relevant to generic eligibility as a "community" that could be used for both a regulatory development program and a grant-based demonstration project.

Proposed solution: The proposed revision would remove a hurdle to grant applicants that appears to have been designed for the community development programs, not the grant-based demonstration projects. Revise paragraph (6) of SFA section 111(b) to read:

(b) For purposes of this subsection, "western Pacific community" shall mean a community eligible to participate under section 305(i)(2)(B)(i) through (iv) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by this Act.

DRAFT

Fishery Management Council Executive Directors-NMFS
Session on Magnuson-Stevens Act Reauthorization
July 25, 2001 1-5 PM
Loews L'Enfant Plaza Hotel
Washington, DC

The session was attended by Wayne Swingle, Kay Williams, Bob Mahood, Clarence Pautzke, Dan Furlong, Miguel Rolon, Graciela Garcia-Moliner, Don McIsaac, Kitty Simonds and Kathy Cousins from the Councils. NMFS/NOAA headquarters and field staff included Bruce Morehead, George Darcy, Matt Milazzo, Bill Chappell, Laurie Allen, Mariam McCall, Rod Dalton, Mike MacLemore, Svein Fougner, Bill Robinson, Jay Ginter, Michelle Kuruc, Laurie Allen, Val Chambers, Charles Karnella, Marilyn Luipold, and Michelle Fox.

During this session, the above-named representatives from NMFS and the Councils exchanged views on the respective positions developed to date by NMFS and the Councils on Magnuson-Stevens Act reauthorization issues. The NMFS positions (attached) were contained in a document developed by an internal agency task force and cleared by agency leadership for discussions with NMFS constituencies, but do not represent official agency positions. It was stated that NMFS will be developing positions on other issues e.g., IFQs, over the next few months and will continue to seek Council feedback. The Council positions reviewed (attached) were contained in a May 23, 2001 document that reflected the consensus views of the Council chairmen, but do nor necessarily represent the views of individual councils.

The results of the discussion of each recommendation are summarized below. They represent the general views and comments made by those present on these documents and do not represent official positions by NMFS or any Council. The Executive Directors will share these documents with their Councils to provide a basis for discussion of future Council positions and recommendations back to NMFS on reauthorization issues. NMFS will consider the results of this discussion, along with any additional recommendations of the Councils and Council Chairs in future revisions to the Task Force recommendations.

Discussion of Task Force Recommendations:

1. Recouple the FMP/amendment and regulatory process.

There was general agreement that this recommendation is appropriate. This recommendation is also found in Bullet # 9 of the Council Chairs' document.

2. Tighten the language for preliminary Secretarial review of FMPs and amendments.

This issue is similar to, but not the same as, the recommendation in Bullet #10 of the Council Chairs' document. No one brought up any concerns.

3. Amend the comment period on framework regulations

There was general agreement that this recommendation is appropriate, with no concerns voiced.

4. Modify Section 305(c) on emergency actions to make them applicable, as required, for one calendar year

There was general agreement that this recommendation is appropriate, with no concerns voiced.

5. Facilitate notifications of Council meetings

Everyone agreed that this is an appropriate recommendation. This recommendation is also included in Bullet #22 of the Council Chairs' document.

6. Modify the definitions of "overfishing" and "overfished"

While there was general agreement that separate definitions of the two terms is appropriate, the Council Executive Directors (EDs) expressed concern about the difficulties with the MSY-based definition of overfishing. There were also concerns raised about what happens when a Council does not follow the guidelines, which now define "overfishing" and "overfished". It was also pointed out that definitions using SPRs are no longer acceptable as a proxy for biomass estimates. This recommendation is also addressed in Bullet #2 of the Council Chairs' document.

The following seven issues discuss fisheries law enforcement. After a discussion of the background to the issues, there was general consensus among the group that these recommendations were appropriate. The EDs will present them to their Council members for additional comment and recommendations. The NOAA Regional Counsels will be prepared to answer questions regarding these issues, as will NOAA General Counsel for Enforcement and Litigation.

7. Amend the authority for investigatory subpoenas

8. Amend the authority for forfeiture of catch when written warnings are issued

9. Prevent a transfer of a permit from extinguishing a permit sanction

10. Increase civil penalties and criminal fines

11. Increase through amendment the maximum penalty

12. Promote Federal-State partnerships in fisheries law enforcement

While the Council Chairs and all present support the implementation of cooperative enforcement plans (See Bullet #18 of the Council Chairs' document), there continues to be debate among the states on how to use data for law enforcement purposes. This may make this recommendation problematic for some states and Councils.

13. Amend the Northern Pacific Halibut Act to provide for permit sanctions

14. Amend Section 303(b) to enable NMFS to obtain data from processors

There was general agreement that this recommendation is appropriate, with no concerns voiced. This recommendation is supported by Bullet #15 of the Council Chairs' document.

15. Issue: Improve the agency's ability to collect social and economic data

This recommendation includes two parts; one mandatory and one discretionary. Some participants expressed concern about the mandatory collection of a wide range of social and economic data from many sectors, including commercial and recreational fishermen. For a comparison, see Bullet #15 of the Council Chairs' document.

16. Modify Section 402(a) to enable the Councils to obtain proprietary and confidential information.

There was general consensus that this recommendation is appropriate, as supported by Bullet #15 of the Council Chairs' document.

17. Amend the agency's use of confidential information in limited entry determinations.

There was general discussion, with no concerns voiced. This recommendation came from the Alaska Region.

18. Protection of Fish Habitat

Participants agreed on the need to deal with non-fishing activities of vessels. However, some thought that actions of persons (e.g., divers) should also be regulated if those actions negatively impact habitat. There was general consensus that it was appropriate to include "persons" in the language to allow their actions to be regulated. The precise meaning of the term "motorized watercraft" was also discussed, and the term may have to be revised. This recommendation is substantially supported by Bullet #14 of the Council

Chairs' document.

19. Amend the Magnuson-Stevens Act to accommodate US-Canadian reciprocal albacore tuna fisheries in each other's zones

There was general agreement that this recommendation is appropriate. However, one participant expressed a concern that this recommendation could have the effect of legitimizing Canadian tuna fishing in U.S. Central Pacific waters.

20. Amend the requirement for 100 percent observer coverage of foreign vessels operating under Pacific Insular Area fishery agreements.

There was general agreement that this recommendation is appropriate, with no discussion or concerns voiced. This change is specific to the Western Pacific.

21. Clarify the inner boundary of the EEZ.

This recommendation would formalize current NMFS practice. There were some technical questions regarding the extent of the EEZ off Puerto Rico, which will be discussed between the Caribbean Council and General Counsel for Fisheries.

22. Amend the statute of limitations for limited entry determinations

There was general agreement that this recommendation is appropriate. This recommendation was made by the Alaska Region, but is pertinent to any limited entry program.

23. Modify Section 313 and 403 provisions that deal with funding for observers

The participants agreed that it is necessary to address industry fees to fund observer programs. However, many EDs expressed the view that such fees should remain in the region in which they were paid. See Bullets #7 and #16 of the Council Chairs' document.

The last three Task Force recommendations apply to specific Regions/Councils. There was some clarifying discussion but no objections to the recommendations.

24. Fix the mistaken SFA coordinates for Maine pocket waters, thereby solving various legal and enforcement problems

25. Expand the jurisdiction of the Caribbean Council to include Navassa Island

This recommendation is also addressed under Bullet #22 to the Council Chairs'

document.

26. Amend provisions that apply to grants for Western Pacific demonstration projects

Discussion of Council Chairs Recommendations:

1. NEPA and judicial review

The Chairs' recommendation would restrict judicial review under NEPA to the substance of the analysis or the process used in the analysis without restricting the results of the action. NMFS feels that action can comply with NEPA without changes to the Magnuson-Stevens Act. There is concern about consequences to the fishermen while actions are on hold during judicial review.

2. Redefining overfishing

This recommendation was discussed under Task Force recommendation #6.

3. Essential Fish Habitat

There was general agreement that more emphasis on HAPCs was appropriate, with no concerns voiced.

4. Rebuilding Periods

There was considerable discussion around the current limits in the rebuilding schedule being 10 years or 10 years plus a mean generation. Some species seem to fall between the cracks. NMFS is continuing internal discussion on this problem.

5. Executive Order for MPAs

Several expressed the view that the Councils have been and should continue to be the appropriate entities to manage fishing through MPAs. NMFS noted that the Administration has put the current MPA initiative on hold.

6. Rescinding the Congressional Prohibitions on IFQs and ITQs

NMFS favors expiration of the moratorium on IFQs/ITQs; however, there is considerable concern about the implementation of these programs. There was general agreement that such programs should be a management tool for the Councils, and that maximum flexibility should be afforded the Councils in designing them.

7. Observer Program

This recommendation was discussed under Task Force recommendation #23.

8. Endangered Species Act (ESA)/ Marine Mammal Protection Act(MMPA)

NMFS reiterated the agency's position that the Councils are not Federal action agencies, but that NMFS is taking steps to make the consultation process more open.

9. Coordinated Review and Approval of Plans and their Amendments and Regulations

The Councils want the opportunity to resubmit responsive measures for disapproved sections without going through an entire FMP amendment process. They also want earlier notice of problems discovered in the review process.

10. FMP Review Program

The discussion centered around how NMFS can provide better advice and recommendations to the Council prior to approval/disapproval of the action and how to provide information to correct such deficiencies before NMFS disapproves actions.

11. Council Member Compensation

There was no discussion of this issue.

12. Receipt of Funds From Any State of Federal or Government Organization

Councils could have access to a variety of funding resources, but are constrained to receiving them only through DOC/NOAA/NMFS. NMFS/General Council for Fisheries reaffirmed the position that Council funding must go through DOC/NOAA/NMFS.

13. Review of Research Proposals

Closing meetings for reviewing research proposals because of confidentiality issues has not yet been addressed by NMFS.

14. Regulating Non-Fishing Activities of Vessels

This issue was addressed under Task Force recommendation #18.

15. Collection of Economic Data

This issue was addressed under Task Force recommendations ##14 and 15.

16. Establishment of Fees

Council representatives again emphasized that any fees should be assessed on a Regional basis. The issue was also addressed under Task Force recommendation #23 and the Bullet #7 of the Council Chairs' document.

17. NMFS Regional Administrator Emergency or Interim Action Vote

NMFS' position is that a unanimous vote requiring the Executive Branch to act calls into question the Constitutional separation between the Legislative and Executive branches. Removing the Regional Administrator from the vote would not change this determination.

18. Enforcement

This issue was addressed under Task Force recommendations ##7 through 13. Task Force recommendation 12 specifically discussed cooperative agreements. The executive directors will bring these recommendations to their Councils.

19. Fisheries Disaster Relief

The NMFS Task Force is looking at various disaster relief issues in more depth. It will consider the Chairs' proposal to include closures of a fishery under court order as a reason to provide disaster relief.

20. Confidentiality of Information

It was the consensus of the participants that the Task Force and the Chairs' recommendation was compatible regarding Council access to information (economic information, primarily); however, participants from the Councils were generally not comfortable with adding economic data collection as a requirement of FMPs. This issue was addressed under Task Force recommendations ##14 and 15.

21. Bycatch

The NMFS Task Force will consider the issue of making the definitions of bycatch on the West Coast and East Coast consistent in future versions of its recommendations.

22. Notification of Meetings

This issue was addressed under Task Force recommendation #22.

23. Caribbean Council

This issue was addressed under Task Force recommendation #25.

STATUS OF LEGISLATION

Situation: This discussion agenda item is separated into two components: (1) Magnuson-Stevens Act reauthorization issues and (2) other current legislation.

Regarding of the reauthorization Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), several things have occurred that may warrant the Council considering taking a position on specific issues. Recall that the Briefing Book for the June Council meeting contained a list from the 2001 Council Chairmen's meeting of 23 recommendations for changes to the existing Magnuson-Stevens Act. Since that time, Representative Sam Farr, has introduced a bill with changes to the Magnuson-Stevens Act, a NMFS Task Force has developed draft recommendations for reauthorization changes, and a meeting occurred between Council Executive Directors and selected NMFS staff to compare the two aforementioned sets of recommendations. During this agenda item, the Council should consider how they want to participate in further considerations in the Magnuson-Stevens Act reauthorization process. As an example, the Legislative Overview Committee could be assigned the task of developing recommendations for consideration by the full Council.

Regarding the second item, Dave Hansen is expected to provide an update of other legislation relevant to Council activities.

Council Task:

1. **Discussion of the role, approach, and any positions the Council should take in the Magnuson-Stevens Act reauthorization process, and how to go about organizing achievement of the direction the Council chooses to take.**
2. **Discussion of other current relevant legislation.**

Reference Materials:

1. H.R. 2570, "The Fisheries Recovery Act of 2001" (Exhibit I.1, Attachment 1).
2. NOAA/NMFS Magnuson-Steven Act Reauthorization Task Force Recommendations (Exhibit I.1, Attachment 2).
3. Draft Fishery Management Council Executive Directors-NMFS Session on Magnuson-Steven Act Reauthorization (Exhibit I.1, Attachment 3).

Groundfish Fishery Strategic Plan (GFSP) Consistency Analysis

The Executive Summary of the GFSP states as the first of seven recommendations under Council Process Recommendations (page 12), "Encourage long term thinking so the Council can suggest creative solutions to Congress and NMFS during the Magnuson-Steven Act reauthorization process." Pages 52 and 53 of the GFSP details certain specific ideas for changes in the Magnuson-Stevens Act, as well as ideas for effective Congressional interaction on this issue.

Proceeding no further with Council input opportunities on Magnuson-Stevens Act issues would be inconsistent with the GFSP.

PFMC
08/15/01

4. MS bill info. (Exhibit I.1, supplemental Attachment 4).

To protect the public's ability to fish for sport, and for other purposes. (Introduced in the Senate)

S 1314 IS

107th CONGRESS

1st Session

S. 1314

To protect the public's ability to fish for sport, and for other purposes.

IN THE SENATE OF THE UNITED STATES

August 2, 2001

Mr. BREAUX (for himself and Mrs. HUTCHISON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To protect the public's ability to fish for sport, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This bill may be cited as the `Freedom to Fish Act'.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) Recreational fishing is traditionally one of the most popular outdoor sports with more than 45 million participants of all ages, in all regions of the country.

(2) Recreational fishing makes a substantial contribution to the local, State, and national economies. According to the most recent economic figures, recreational fishing infuses $108 billion annually into the national economy. Nationally, over 1.2 million jobs are related to recreational fishing; this represents approximately 1 percent of the nation's entire civilian work force. For those communities and small businesses that rely on seasonal tourism, the expenditures of recreational fishers result in substantial benefits to the local economies.

(3) Recreational fishers have long demonstrated a conservation ethic. Through catch-and-release fisheries and through the use of non-lethal fishing gear. In addition to payment of Federal excise taxes on fishing equipment, motorboats and fuel, as well as license fees, recreational fishers contribute over $500 million annually to State fisheries conservation management programs and projects.

(4) The single most important element of recreational fishing is open access to places to fish. The open access principle is universally accepted on all Federal lands and waters including wildlife refuges, national parks, wilderness areas, and the exclusive economic zone.

(5) All recreational fishery resources can be maintained through a variety of management measures including take limits, minimum size requirements, and closed seasons without unnecessarily restricting public access to places to fish.

(6) The absence of clear Congressional policy has confused the general public as to how programs within the National Oceanic and Atmospheric Administration complement one another with respect to recreational fishing.

SEC. 3. POLICY.

It is the policy of the Congress in this Act--

(1) to ensure that all Federal regulations promote open access for recreational fishing to the maximum extent practicable;

(2) to ensure that recreational fishers will be actively involved in any regulatory procedures that contemplate restrictions on their access to places to fish; and

(3) To ensure that whenever access to fishing places is restricted, that the restricted areas be as small as are scientifically necessary to provide for the conservation of the fishery resource.

SEC. 4. MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT AMENDMENT.

Section 303(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(a)) is amended--

(1) by striking `and' after the semicolon in paragraph (13);

(2) by striking `fishery.' in paragraph (14) and inserting `fishery; and;' and

(3) by adding at the end the following:

`(15) not establish areas closed to recreational fishing unless--

`(A) there is a clear indication that recreational fishermen are the cause of a specific conservation problem and that less severe conservation measures, such as gear restrictions, quotas, or closed seasons will not adequately provide for conservation and management of the affected stocks of fish;

`(B) the closed area regulation includes specific measurable criteria to determine the conservation benefit of the closed area on the affected stocks of fish and provides a timetable for periodic review of the continued need for the closed area at least once every three years;

`(C) the closed area is no larger than that which is supported by the best available scientific information; or

`(D) provision is made to reopen the closed area to recreational fishing whenever the condition in subparagraph (A), (B), or (C) that was the basis of the closure no longer exists.'.

SEC. 5. NATIONAL MARINE SANCTUARIES ACT AMENDMENT.

Section 304(a)(5) of the National Marine Sanctuaries Act (16 U.S.C. 1434(a)(5)) is amended to read as follows:

`(5) FISHING REGULATIONS- The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to propose, and revise from time to time, all regulations applicable to fishing within designated marine sanctuaries according to the standards and procedures of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.). The regulations, upon approval by the Secretary, shall apply within the exclusive economic zone, and may be applied within the boundaries of a State, with the approval of the Governor of the State, or pursuant to the authority of the Secretary under section 306(b) of that Act (16 U.S.C. 1856(b).'.

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APPOINTMENTS TO ADVISORY BODIES

Situation: The issues outlined below relate to advisory body appointments for Council consideration at the September meeting.

Appointment to the Groundfish Advisory Subpanel

Mr. Bill Haas, Fort Bragg, California, has resigned from the Southern Open Access position on the Groundfish Advisory Subpanel (GAP). The Council staff issued a solicitation for his replacement and received the following nominations (nomination letters contained in Closed Session A, Attachment 1):

Ms. Kathleen A. Fosmark, Pebble Beach, California
Mr. Kurt Solomon, Moss Landing, California

Appointments to the Highly Migratory Species Advisory Subpanel

Mr. Jerry Bates, (Northern Processor), Dr. Michael Domeier (Private Recreational), and Ms. Marciel Klenk (Public At-Large) have resigned from the Highly Migratory Species Advisory Subpanel (HMSAS). The Council staff issued a solicitation for replacement of these positions with a deadline of September 6, 2001. As of August 28, 2001 the following nominations were received at the Council office (nomination letters contained in Closed Session A, Attachment 2):

Northern Processor -	Ms. Heather Munroe, Waldport, Oregon
Private Recreational -	None
Public At-Large -	Mr. Anthony V. Nizetich, San Pedro, California

Vacancies on the Coastal Pelagic Species Advisory Subpanel and Habitat Steering Group

Mr. William Beckett has resigned from the Northern California Charter/Sport position on the Coastal Pelagic Species Advisory Subpanel (CPSAS) and Ms. Margaret Beckett has resigned from the Recreational Fisher position on the Habitat Steering Group (HSG). The Council staff plans to issue a request for nominations to fill the vacant positions and request the Council to appoint new representatives at the November Council meeting.

Other Advisory Body Appointments

1. Announcement and confirmation of the membership of the Ad Hoc Marine Reserves Steering Group (MRSG), established by action at the June 2001 Council meeting (see Exhibit D.1.b, Attachment 1).

2. Formation of an oversight committee to help guide Council input into the development of the environmental impact statement for the groundfish fishery management plan (FMP). This could be accomplished either through the current Ad Hoc Groundfish Strategic Plan Implementation Oversight Committee or some subcommittee thereof.

Council Action:

1. **Review the advisory body appointments listed above and make appointments or consider formation of committees as appropriate to accomplish Council management objectives.**

Reference Materials:

1. Nomination letters for Southern Open Access Position on the GAP (Closed Session A, Attachment 1).
2. Nomination letters for vacancies on the HMSAS (Closed Session A, Attachment 2).
3. Members of Ad Hoc MSRG (Exhibit D.1.b, Attachment 1).
4. (Matrix) Summary of Nominations for Replacements to Advisory Subpanels (Exhibit I.2, Supplemental Attachment 1).

PFMC
08/29/01

PROPOSED QUALIFICATIONS FOR THE HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL PUBLIC- AT-LARGE POSITION

The following criteria are proposed to help clarify the Council's expectations in filling the Public-at-Large position on the Highly Migratory Species (HMS) Advisory Subpanel. These or similar criteria may be useful for other subpanels as well, and could eventually be included in the Council's operating procedures.

- Person has interest in and is knowledgeable about highly migratory species management and fisheries.
- Person is not an appointed, elected, or paid representative of a recreational, commercial, or environmental organization.
- Priority consideration will be given to individuals who represent port districts, coastal community businesses, seafood safety experts, or individuals who have expertise not otherwise represented on the committee and would provide a valuable contribution to the advisory group.
- An individual will not be considered solely on the basis of their participation in the sport or commercial fishery (including processing) or environmental activities.

PFMC
09/13/01

SUMMARY OF NOMINATIONS FOR REPLACEMENTS TO ADVISORY SUBPANELS

motion 27: LB/Anderson

Groundfish Advisory Subpanel- Southern Open Access Position

✓ Ms. Kathleen A. Fosmark, Pebble Beach, CA	Nominated by self
Mr. Kurt Solomon, Moss Landing, CA	Nominated by Mark Powell, The Ocean Conservancy

Highly Migratory Species Advisory Subpanel

Northern Processor (one position)

✓ Ms. Heather Munro, Waldport, OR	Nominated by self and West Coast Seafood Processors

Private Recreational (one position)

Mr. Steve Loo, Seattle, WA	Nominated by Dr. Louis Mascola
✓ Mr. Robert Osborn, Lakewood, CA	Nominated by Dave Elm, Aftco Manufacturing, and Tom Raftican, United Anglers

Public At-Large (one position) readvertise and use the criteria in →

Dr. Louis Mascola, D.D.S., San Pedro, CA	Nominated by self; Gary SooHoo, Ocean Fare Inc., and Bill Beebe
Mr. Anthony V. Nizetich, San Pedro, CA	Nominated by self
Mr. Paul Johnson, San Francisco, CA	Nominated by Kate Wing, Natural Resources Defense Council

PFMC
09/12/01

REPORT OF THE BUDGET COMMITTEE

The Budget Committee received an Executive Director Report by Dr. Donald McIsaac that included six items: (1) a change in venue for the November Council meeting; (2) the financial audit report for calendar year (CY)2000; (3) an update on meeting site selection for 2003; (4) status of supplemental funding; (5) status of the CY2001 budget; and (6) the proposed 2002 grant submission.

The meeting location for the November Council meeting has been moved from the Park Plaza Hotel in Burlingame, California to the Clarion Hotel in Millbrae, California. This change in venue is the result of the on-going renovation at the Park Plaza Hotel.

The Budget Committee received copies of the financial audit report for CY 2000. The audit indicates the Council financial operations for the year ended in conformity with generally accepted accounting principles. There were no questioned financial transactions for CY 2000.

The Budget Committee was presented with an update of the staff efforts to secure meeting site alternatives for 2003. Staff have prepared and distributed a packet of meeting profiles and Requests for Proposals for each meeting to be held in 2003. The Budget Committee will receive another update at the November meeting.

The status of CY 2001 supplemental funding was discussed. Supplemental funding to support activities to develop and complete the highly migratory species (HMS) fishery management plan (FMP) has been approved and $95,428 has been incorporated into the base grant for CY2001. The actual work will continue through the time the FMP is adopted (expected to be March 2002). Council staff will prepare the necessary request for a no-cost extension in December 2001. The grant application covering a two-year period in the amount of $457,500 for work related to National Environmental Policy Act requirements has been submitted to NMFS and is pending final approval.

The status of the CY 2001 budget was discussed by the committee and the staff indicated that overall expenditures and year end projections are near expectations of the original budget. The Budget Committee will receive another update at the November meeting.

The CY 2002 funding base level is unknown at this time; therefore, no proposed grant application has been prepared. A congressional appropriations conference committee will resolve differences between House and Senate amounts for regional councils as the next step. The expectation is the grant application will not be submitted earlier than mid-October. In addition to spending priorities for new funding that have been used to date in 2001, two state agency representatives expressed their concerns for a need to consider, as a minimum, a cost-of-living increase for the state planning and liaison contracts. The Budget Committee approved the following ranked priorities in the event increased funding is received for the 2002 budget: (1) necessities of the current base program without new staff officer positions; (2) a new groundfish staff officer; (3) a new socio-economist staff officer; (4) $150,000 for implementing the HMS FMP; (5) Groundfish Strategic Plan implementation measures; and (6) cost of living increases for state planning and liaison contracts. Depending on the level of increased funding received, a higher priority for cost-of-living adjustments for state contracts could be considered if insufficient funding is available to fully accommodate any of priorities two through five.

PFMC
09/14/01

motion 30

COUNCIL STAFF WORKLOAD PRIORITIES--September 17 through November 2, 2001[1/]

Task	Number of Work Days	Percent of Total Work Days (136)
ADMINISTRATIVE		**9.9%**
Leave (5); Staff Mtgs and other internal coord and planning	13.4	
INFORMATION, EDUCATION, & OUTREACH		**18.7%**
Mail-out in lieu of of Newsletter (halibut & groundfish regulatory options)	3.0	
Routine Info Requests (phone, email, letters)	14.4	
Special and/or Unanticipated Assignments and Coord	8.0	
COUNCIL MEETINGS		**27.6%**
Participation in Meeting (Nov)	25.0	
Briefing Book & associated Council meeting preparation (Nov)	8.0	
Minutes (Sept)	4.5	
GROUNDFISH		**30.9%**
GMT Mtg (prep,att, follow-up)	8.0	
Bycatch and Discard Review Mtg	1.0	
Groundfish Strategic Plan Implementation (multi-year gf mgmt cycle)	0.5	
SAFE Document Prep	4.5	
Annual Specifications & Mgmt Measures - EA (coord mtg w/NMFS)	28.0	
COASTAL PELAGIC SPECIES		**2.2%**
CPS Meetings (Apart from Council Mtgs)	2.0	
Amendment 10 (minimized alternative)	1.0	
HIGHLY MIGRATORY SPECIES (minimized alternative)		**4.4%**
HMS Mtgs (apart from Council mtgs)	0.0	
Liaison and Coordination	3.0	
Draft FMP Preparation	3.0	
SALMON MANAGEMENT		**6.3%**
Queets Coho Overfishing Report	1.0	
Inseason Mgmt	0.5	
SCC Salmon Subcommittee (methodology review)	2.5	
STT Org & Pln (including 2-day mtg)	4.5	
SAS Coord	1.5	
HABITAT (minimized alternative)	1.0	**0.7%**
HALIBUT MGMT	1.0	**0.7%**
MARINE RESERVES		
SSC/CIMS Mtg; misc coordination	3.0	**2.2%**
SSC STAFFING	4.0	**2.9%**
TOTAL	146.3	**107.6%**

1/ Work assignments for four staff officer positions. Council clerical and other support staff generally follow these effort allocations

BELOW THE LINE

ADMINISTRATIVE	
Training (NEPA--4 days)	16.0
INFORMATION, EDUCATION, & OUTREACH	
Additional time for full Newsletter	3.0
GROUNDFISH	
FMP EIS coordination and input	5.0
Rebuilding Plan Amendment - Complete Canary, Cowcod, Bocaccio	30.0
Rebuilding Plan Amendment - Complete POP, Lingcod	21.0
Rebuilding Plan Amendment - Complete Widow	13.5
Rebuilding Plan Amendment - Complete Dark Blotched	13.0
Open Access Permitting	3.0
AFA Draft FMP (final action in March)	12.0
Full Retention Analysis (complete final Committee recom by Nov)	6.0
Buy Back- trawl permit stacking (initial scoping by committe)	4.0
Groundfish Strategic Plan Implementation	3.0
Revise Groundfish Mgmt Process	3.0
COASTAL PELAGIC SPECIES	
Amendment 10 (adequate alternative)	4.0
Update CPS FMP	3.0
HIGHLY MIGRATORY SPECIES (Adequate Alternative)	
HMS Mtgs (apart from Council mtgs)	6.0
Liaison and Coordination	4.0
Draft FMP Preparation	5.0
SALMON	
Update Salmon FMP	0.3
Reformat Data in Salmon Review	10.0
HABITAT (Adequate Alternative)	1.5
COMMUNITY DOC - PROCESSORS, COMM & REC FISHERS	20.0
MARINE RESERVES	
Expanded Processes	5.0

DRAFT

PROPOSED AGENDA

Pacific Fishery Management Council
Clarion Hotel San Francisco Airport
401 East Millbrae Avenue
Millbrae, CA 94030
(650) 692-6363
October 28 - November 2, 2001

NOVEMBER COUNCIL MEETING AGENDA SUMMARY

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<tr><td>Pacific Halibut Management</td><td>Groundfish Management</td><td>Habitat Issues</td><td rowspan="2">Coastal Pelagic Species Management</td><td rowspan="2">Administrative Matters</td></tr>
<tr><td>Closed Executive Session</td><td>4 p.m. Public Comment Period (for items <u>not</u> on the agenda)</td><td>Marine Reserves</td></tr>
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DRAFT -- PROPOSED NOVEMBER COUNCIL MEETING AGENDA -- CLARION HOTEL, MILLBRAE, CALIFORNIA

Agenda Item	Council Task	Lead Person(s) at Meeting	SSC Review?	Other Advisory Body Review: At Meeting	Other Advisory Body Review: Outside Meeting	Proj. Time (hrs)
MONDAY, 10/29: Open Session - 3 pm						
A.1-6 Call to Order, etc.	Approve Agenda & Minutes	Lone/McIsaac		-	-	0.4
B. Pacific Halibut Mgmt						
B.1 Changes to Rec Pac Halibut Pln & Regs State Proposals for Rec Fishery	Adopt appropriate changes to Rec	Tracy; State Reps		None	SAS	0.8
Closed Session - 4 pm	Discussion of Personnel & Litigation	Lone		-	-	1.0
TOTAL TIME FOR MONDAY (10/29)						2.2
TUESDAY, 10/30: Open Session - 8 am						
A.7 Call to Order, etc.	Information	McIsaac		-	-	
C. Salmon Mgmt						
C.1 Salmon - NMFS Report	Information	B. Robinson		None	-	0.2
C.2 Update on Ongoing Fisheries	Information	Tracy/Simmons		None	STT/SAS	0.3
C.3 Results of SSC Methodology Review	Adopt Proposed Changes	Thomson/Lawson	Yes	None	STT/SAS	1.0
C.4 Salmon Option Hearing Sites	Specify Hearing Schedule & Sites	Tracy		None	STT/SAS	0.2
C.5 Sacramento Winter Run Mgmt Strategy	Info, Guidance & Inseason Mgmt	Tracy/NMFS		HSG	STT/SAS	0.5
C.6 Queets Coho Status Rev STT Rpt	Adopt Actions to Prevent Overfishing	Tracy Simmons	Yes	HSG	STT/SAS	1.0
C.7 Review of OCN Coho Mgmt ODFW Report	Consider Amendment Sched (or in Mar)	Tracy Sam Sharr		None	STT/SAS	0.8
D. Groundfish Mgmt						
D.1 Groundfish - NMFS Rpt	Information	B Robinson		-	-	0.3
D.2 MRFSS Update	Information & Discussion	R Porter		GMT/GAP	-	0.5
D.3 GF - Final Harvest Levels for 2002 Bycatch & Discard Rpt	Adopt final Harvest Levels	Hastie/Devore	Yes	GMT/GAP	GMT/SSC	3.0
4pm Public Comment Period	Information			-	-	0.3
TOTAL TIME FOR TUESDAY (10/30)						7.9

DRAFT -- PROPOSED NOVEMBER COUNCIL MEETING AGENDA -- CLARION HOTEL, MILLBRAE, CALIFORNIA

Agenda Item	Council Task	Lead Person(s) at Meeting	SSC Review?	Other Advisory Body Review: At Meeting	Other Advisory Body Review: Outside Meeting	Proj. Time (hrs)
WEDNESDAY, 10/31: General Session 8 am						
A.8 CTO - Commencing Remarks	Information	McIsaac				
D. Groundfish Mgmt Continued						
D.4 2002 Mgmt Measures - Initial Guidance	Direction to GMT & GAP	Devore/Hastie		GMT/GAP		2.0
D.5 Groundfish Strategic Plan Multi-Year Groundfish Mgmt Cycle	Establish Ad Hoc Com, timeline, & Sched	McIsaac/Waldeck		GMT/GAP		0.5
D.6 NMFS Guidance for Rebuilding Plans	Guidance & Planning	Devore/B Robinson		GMT/GAP		1.0
D.7 GF FMP EIS SitSum	Information,Discussion, Guidance	Glock		GAP/GMT/HSG		0.8
D.8 EFP Applications	Action	Devore et al		GMT/GAP		0.5
SitSum		SSC review if new applications				
E. Habitat Issues						
E.1 Habitat Issues	Action	M Robinson/Bloeser		HSG		0.8
SitSum						
Sup HSG Rpt						
F. Marine Reserves						
F.1 MR - Channel Isl Area and Status	Council Recommendations re CIMS	Seger	Yes	GAP/HSG/HMSAS	SAS	1.5
SitSum						
SSC Report		Thomson				
TOTAL TIME FOR WEDNESDAY (10/31)						7.0

DRAFT -- PROPOSED NOVEMBER COUNCIL MEETING AGENDA -- CLARION HOTEL, MILLBRAE, CALIFORNIA

Agenda Item	Council Task	Lead Person(s) at Meeting	SSC Review?	Other Advisory Body Review: At Meeting	Other Advisory Body Review: Outside Meeting	Proj. Time (hrs)
THURSDAY, 11/1: General Session 8 am						
A.9 CTO - Commencing Remarks	Information	McIsaac				
D. Groundfish Mgmt Continued						
D.4 2002 Mgmt Measures - Guidance	GMT/GAP Report & Council Direction	Devore/Hastie		GMT/GAP		0.8
G. Highly Migratory Species Mgmt						
G.1 HMS - NMFS Report	Information & Discussion	Fougner		HMSAS	-	0.3
G.2 Draft HMS FMP	Adopt for Public Review	Waldeck/Squires/Crooke	Yes	HMSAS/HSG	HMSPDT	4.0
G.3 Public Hearings Schedule	Adopt Public Hearing Schedule	Waldeck		HMSAS	-	0.3
H. Coastal Pelagic Species Mgmt						
H.1 CPS - NMFS Report SitSum	Information and Discussion	Fougner		CPSMT/CPSAS		0.2
H.2 Amendment 10 SitSum	Guidance to CPSAS and MT	Waldeck/Hill	Yes	CPSMT/CPSAS		2.0
H.3 Pacific Sardine Harvest Guideline SitSum	Recommend Guideline	Waldeck	Yes	CPSMT/CPSAS		1.5
TOTAL TIME FOR THURSDAY (11/1)						9.0

DRAFT -- PROPOSED NOVEMBER COUNCIL MEETING AGENDA -- CLARION HOTEL, MILLBRAE, CALIFORNIA

Agenda Item	Council Task	Lead Person(s) at Meeting	SSC Review?	Other Advisory Body Review: At Meeting	Other Advisory Body Review: Outside Meeting	Proj. Time (hrs)
FRIDAY, 11/2: General Session 8 am						
A.10 CTO - Commencing Remarks	Information	McIsaac				
D. Groundfish Mgmt Continued						
D.4 Prop Mgmt Measures & EA for 2002 SitSum	Adopt Proposed Regs	Devore		GAP/GMT		3.0
D.7 Status of Fishery & Inseason Adj SitSum	Action	Devore		GAP/GMT		1.0
I. Administrative						
I.1 Legislation	Information & Guidance	D. Hanson				0.2
I.2 Appointments & Elections	Make Appointments & Elect Officers	Lone		None		0.5
a. Replacements - CPSAS, HSG, & HMSAS		Coon				
b. Elect Council Chair & Vice Chair		McIsaac				
c. Council Member appts to KFMC, BC		McIsaac				
I.3 Budget Com Rpt	Adopt Report	Harp				0.2
I.4 Council Staff Workload	Provide Guidance	McIsaac				0.5
I.5 March Draft Agenda	Adopt Draft Agenda	McIsaac				0.5
TOTAL TIME FOR FRIDAY (11/2)						5.9

DRAFT -- PROPOSED NOVEMBER COUNCIL MEETING AGENDA -- CLARION HOTEL, MILLBRAE, CALIFORNIA

Agenda Item		Council Task	Lead Person(s) at Meeting	SSC Review?	Other Advisory Body Review: At Meeting	Other Advisory Body Review: Outside Meeting	Proj. Time (hrs)
Ancillary Meetings							
All Agendas (due by noon of designated day)							
Cover Memos (due by noon of designated day)							
Sunday 10/28	GMT (A)	2 pm; continues 10/29-11/1	Devore				
Monday 10/29	GAP (B)	8 am; continues 10/30-11/1	Devore				
	SSC (C)	8 am; continues thru 10/30	Waldeck				
	HSG (D)	8 am	Tracy				
	Budget Com (E)	10 am	McIsaac/Coon				
Tuesday 10/30	EC (F)	apx 5 pm; continues thru 11/2	Seger				
Wednesday 10/31	HMSAS (G)	8:00 AM	Waldeck/Six				
	CPSAS (H)	10 am	Waldeck				
Non-Agenda Items							
Briefing Book Recipients List							
Agenda and Mtg Notice							
Roster							
Seating Arrangement							
Schedule of Future Mtgs							
Map and Special Info							
Restaurant List							
Chair's Opening Remarks							
BB Cover							
BB Agenda - Final							