

Meeting Record and Summary Minutes
Pacific Fishery Management Council
March 7-12, 2004

The full record of the Pacific Fishery Management Council (Council) March 7-12, 2004 meeting is available at the Council office, and consists of the following:

1. The draft agenda.
2. The approved agenda with notations as to the time each agenda item was addressed, with summary minutes of Council proceedings and key Council documents inserted in the relevant agenda item. The summary minutes consists of a narrative (1) on particularly noteworthy elements of the gavel to gavel components of the Council meeting, including the Call to Order segment at the onset of the Council meeting, and (2) summaries of pertinent Council discussion during each Council Guidance, Discussion, or Action item in the Agenda. The summary narrative of Council Guidance, Discussion, or Action items includes detailed descriptions of rationale leading to a motion (or leading to a consensus to not make a motion) and discussion between the initial motion statement and the final vote.
3. A set of audio recordings of the actual testimony, presentations, and discussion that occurred at the meeting. Recordings are labeled so as to facilitate tape review of a particular agenda item, by cross referencing with the time labeled agenda.
4. All written documents produced for consideration at the Council meeting, including (1) the pre-meeting briefing book materials, (2) all pre-meeting supplemental documents for the briefing book, (3) all supplemental documents produced or received at the Council meeting, validated as labeled by the Council Secretariat and distributed to Council Members, and (4) public comments and miscellaneous visual aids or handout materials used in presentations to Council Members during the open session.
5. A copy of the Council Decision Log, a document distributed immediately after the meeting which contains very brief descriptions of Council decisions.

DRAFT MINUTES
Pacific Fishery Management Council

Sheraton Tacoma Hotel
 1320 Broadway Plaza
 Tacoma, WA 98402
 888-627-7044
 March 7-12, 2004

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A. Call to Order

A.1 Opening Remarks, Introductions

Chairman Donald Hansen called the 172nd meeting of the Pacific Fishery Management Council to order at 9:16 am on Tuesday, March 9, 2004.

A.2 Roll Call

Dr. Donald McIsaac called the roll:

Mr. Bob Alverson
Mr. Phil Anderson
Dr. Patty Burke
Mr. Eric Larson
Mr. Ralph Brown
Mr. Mark Cedergreen
Mr. Donald Hansen (Chairman)
Dr. David Hanson
Mr. Jim Harp
Mr. Jerry Mallet
CDR. Fred Myer
Mr. Dave Ortmann (Vice-Chairman)
Mr. Tim Roth
Mr. Bill Robinson
Mr. Roger Thomas
Mr. Darrell Ticehurst
Mr. Stetson Tinkham (absent)
Mr. Frank Warrens
Mr. Gordy Williams

A.3 Executive Director's Report (03/09/04; 9:19 am)

Dr. McIsaac provided a brief report (mainly on Supplemental Informational Report 4).

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

The Council approved the agenda (Motion 1) as shown in Exhibit A.4, Council Meeting Agenda, March 2004 with the following changes: under Agenda Item B.1b, delay the November 2003 minutes until the April meeting; delete Agenda Item E.4.c; insert C.3 between C.7 and C.8; consider at the end of the day on Wednesday to include a Council discussion on the April agenda; under C.1, add a presentation by Dr. Gary Morishima on FRAM; defer the September minutes approval to Friday; under C.2, between the STT Report and C.2.b, insert a report by Captain Mike Cenci to provide an overview of WDFW overfishing compliance report.

Mr. Brown asked if there will be a more general enforcement report under Agendum D, Enforcement Issues US Coast Guard Report. Dr. McIsaac said there was an additional enforcement issue on the compliance ratios in the groundfish fishery which has been moved to April. Sgt. Dave Cleary talked about compliance of RCAs with non-groundfish fisheries (combination trips) and that it had been added to the EC agenda for

Tuesday night. Dr. McIsaac suggested that agenda E.4 would be the place to discuss that, since advisory bodies can comment then.

Mr. Harp moved and Mr. Larson seconded the motion (Motion 1) to approve the agenda as modified above. Motion 1 passed.

B. Administrative Matters

B.1 Approval of Council Meeting Minutes (03/09/04; 9:57 am)

B.1.a Council Member Review and Comments

See Council Action (B.1.b).

B.1.b Council Action: Approve June, September, and November 2003 Minutes

Mr. Brown moved (Motion 2) to delay the approval of the September minutes until Friday, as they were included in the supplemental material, and approve the June minutes as submitted. Mr. Anderson asked for a friendly amendment to make a correction on page 19. He requested to change the sentence that says "He also expressed concern with using observers as EFP compliance monitors" to "He recognized there are some people that have concerns with using observers as EFP compliance monitors". Mr. Harp seconded the motion. Motion 2 passed with the friendly amendment.

Mr. Brown moved and Mr. Alverson seconded a motion (Motion 11) to approve the September Council meeting minutes as provided in Exhibit B.1, Supplemental Draft September 2003 Council Minutes. Motion 11 passed.

B.2 Legislative Matters (03/12/04; 8:10 am)

B.2.a Agendum Overview

Mr. Dan Waldeck provided the agendum overview and reviewed briefing materials.

B.2.b Legislative Committee Report

Mr. Waldeck read the Legislative Committee report for the record (Exhibit B.2.b, Supplemental Legislative Committee Report).

Dr. Dave Hanson, regarding the Committee's recommendation about reducing the priority of legislative issues relative to other Council workload, noted that indications are that fishery-related legislation is not expected to move through Congress during 2004. The Committee's recommendation is to request staff to continue to track legislative matters, but at a lower priority.

Mr. Alverson noted the current individual quota (IQ) programs (e.g., the sablefish permit stacking program) and IQ programs being developed could potentially be affected by current IQ-related legislation, because some of the bills do not fully consider existing or developing programs. He suggested the Council be prepared to document the current program and development of the trawl IQ program in the event the Council needs to report to Congress.

Mr. Brown noted his desire for the development of the trawl IQ program to go forward on two tracks – (1) program design and (2) allocation process.

The Council Chairman concurred it would be prudent to carefully document program development.

B.2.c Reports and Comments of Advisory Bodies

Exhibit B.2.b, Supplemental Legislative Committee Report

B.2.d Public Comment

None.

B.2.e **Council Action:** Consider Recommendations of the Legislative Committee

Mr. Alverson moved and Mr. Brown seconded a motion (Motion 12) to adopt the report of the Legislative Committee as provided in Exhibit B.2.b, Supplemental Legislative Committee Report. Motion 12 passed unanimously.

B.3 Appointments to Advisory Bodies, Standing Committees, and Other Forums (03/12/04; 8:20 am)

B.3.a Agendum Overview

Mr. Chuck Tracy presented the agendum overview.

B.3.b **Council Action:** Appoint New Members to Advisory Bodies, Standing Committees, and Other Forums as Necessary

Mr. Bill Robinson moved (Motion 13) to appoint Ms. Jamie Goen to replace Ms. Becky Renko as the first NWR designated seat, and Mr. Merrick Burden as the second NWR designated seat on the Groundfish Management Team (GMT). Mr. Ralph Brown seconded the motion. Motion 13 passed.

Mr. Phil Anderson moved and Mr. Mark Cedergreen seconded a motion (Motion 14) to appoint Mr. Hal Weeks to replace Ms. Arlene Merems as the ODFW designated seat on the Habitat Committee (HC); to appoint Mr. Huff McGonigal to fill the new National Marine Sanctuary position on the HC; and to appoint Ms. Teresa Scott to replace Ms. Cindy LeFleur as the WDFW designated seat on the HC. Motion 14 passed.

Ms. Marija Vojkovich moved and Mr. Roger Thomas seconded a motion (Motion 15) to appoint Mr. Stephen G. Fosmark as the commercial gillnet fisheries representative on the Highly Migratory Species Advisory Subpanel (HMSAS). Motion 15 passed.

Mr. Neal Coenen moved and Mr. Ralph Brown seconded a motion (Motion 16) to appoint Mr. Marion Larkin as the Washington trawl fisheries representative on the Groundfish Advisory Subpanel (GAP); Mr. Kelly Smotherman as the Oregon trawl fisheries representative on the GAP; and Mr. Tommy Ancona as the California trawl fisheries representative on the GAP. Motion 16 passed.

Chairman Hanson appointed Mr. Frank Dulcich to the ad-hoc Groundfish Trawl Individual Quota Committee (TIQC) representing California processors, and appointed Mr. Dayna Matthews to replace CAPT Mike Cenci as the Enforcement Consultants representative on the TIQC.

B.4 Draft April 2004 Council Meeting Agenda (03/12/04; 8:28 am)

B.4.a Consider Proposed Final Agenda

On Wednesday, Dr. Donald McIsaac reviewed Exhibit B.4.a, Supplemental Revised Attachment 2, an initial first glance at the draft April agenda to start Council discussion and ask for suggestions. A revised copy will be distributed for the Friday discussion.

B.4.b Identify Priorities for Advisory Body Consideration

Council members held a discussion with the Chairman, Executive Director, and Deputy Director to lay out the priorities for the advisory bodies.

B.4.c Reports and Comments of Advisory Bodies

Ms. Michele Robinson provided Exhibit B.4.c, Supplemental GMT Report 1 and Exhibit B.4.c, Supplemental GMT Report 2.

B.4.d Public Comment

None.

B.4.e **Council Action:** Adopt Final Agenda for the April 2004 Meeting

Council members held a discussion with the Chairman, Executive Director, and Deputy Director to lay out the final agenda for the April 2004 meeting. Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 17) to approve the April 2004 agenda as shown in Exhibit B.4.a, Supplemental Second Revision Attachment 2 with modifications which included adding agenda items for latent permits, trawl individual quotas, and, on Monday, an Allocation Committee report and check-in for the Groundfish Management Team (GMT) regarding inseason actions; and deleting marine protected area issues. Motion 17 passed.

Mr. Frank Warrens moved and Mr. Alverson seconded a motion to remove coastal pelagic species from the April agenda (delay until June Council meeting). Motion 18 passed.

Mr. Alverson asked about the vessel monitoring system (VMS) onboard open access issue and asked staff to put that on the agenda in either June or September for discussion. The Council Chairman concurred and directed staff to take a look at that.

B.5 Regional Council and NMFS Conference: Magnuson-Stevens Act – The First 25 Years (03/12/04; 9:42 am)

B.5.a Agendum Overview

Mr. Dan Waldeck provided a brief overview of the purpose of the conference.

Dr. McIsaac made some brief comments about Pacific Council participation at the conference. He noted how well received the input and presentations from the Pacific Council were received. Overall, the conference was widely perceived as very successful.

B.5.b Comments of Advisory Bodies

None.

B.5.c Public Comment

Mr. Rod Moore, West Coast Seafood Processors Association, Portland, Oregon

B.5.d Council Discussion on Regional Council and NMFS Conference: Magnuson-Stevens Act – The First 25 Years

Mr. Anderson provided his insights about the conference. He too felt it was very successful. He commended staff for their work in preparing for and participating in the conference.

Ms. Vojkovich noted her concern that, while the conference was worthwhile and very informative, there was a notable lack of congressional representatives and staff in attendance. She urged the Council to work to heighten our engagement with congressional representatives.

C. Salmon Management

C.1. Update on Pacific Salmon Commission (PSC) Coho Fishery Regulatory Assessment Model (FRAM) for 2004 Salmon Management (03/09/04; 10 am)

C.1a Agendum Overview

Mr. Chuck Tracy presented the agendum overview.

C.1.b Reports and Comments of Advisory Bodies

STT

Mr. Dell Simmons presented Exhibit C.1.b, STT Report., STT Comments on the PSC Regional Coho Planning Model.

Dr. Gary Morishima provided a PowerPoint presentation on the history and development of Pacific salmon management and the models used to assist in that process.

C.1.c Public Comment

None.

C.1.d Council Discussion of PSC Coho FRAM Status for 2004

Mr. Harp stated that the revised FRAM is acceptable for use.

Mr. Anderson agreed, stating that given our approach to approving the revised coho FRAM identified in November and in view of the STT reports and Mr. Harp's comments, Council approval is in place for the use of this FRAM for this year.

C.2 Review of 2003 Fisheries and Summary of 2004 Stock Abundance Estimates (03/09/04; 10:53 am)

Mr. Tracy presented the situation summary.

C.2.a Report of the Salmon Technical Team

Mr. Simmons briefed the Council on the 2003 Salmon Review and Preseason Report I.

C.2.b Reports and Comments of Advisory Bodies

WDFW

Captain Mike Cenci provided Exhibit C.2.b, Supplemental WDFW Report.

SSC

Dr. Bob Conrad provided Exhibit C.2.b, Supplemental SSC Report.

C.2.c Public Comment

None.

C.2.d Council Discussion on Review of 2003 Fisheries and Summary of 2004 Stock Abundance Estimates

Mr. Anderson noted that the SSC recommendation to the STT (table formatting and providing estimates of variance for stock forecasts) for future documents are not Council recommendations, but should be incorporated if the STT thinks them appropriate. However, he expressed concern regarding the workload associated with those tasks, especially the latter.

Mr. Larson noted the poor forecast for age-3 Klamath fall chinook and suggested the Council attempt to conserve that year class in 2004 fisheries to reduce impacts on 2005 fisheries.

C.3. Inseason Management Recommendations for Seasons Prior to May 1 for the Commercial Fishery Between Horse Mountain and Point Arena (Fort Bragg Area)

This agenda item was dropped on Tuesday, March 9, 2004.

C.4. Identification of Management Objectives and Preliminary Definition of 2004 Salmon Management Options (03/09/04; 1:17 pm)

C.4.a Agendum Overview

Mr. Tracy presented the situation summary.

C.4.b Report from the PSC

Mr. Harp provided Exhibit C.4.b, Supplemental PSC Report.

Mr. Gordy Williams, ADFG, agreed with Mr. Harp's comments on the CTC (chinook issue), and stated that the primary area of concern for ADFG is the effects of chinook mass marking on the integrity of the coded-wire-tag data base. He stated that the U.S. section of the PSC is working on additional definitions for the habitat attachment to the 1999 agreement to bring forward at the bilateral meetings next winter.

C.4.c Report of the Klamath Fishery Management Council (KFMC)

Mr. Dan Viele presented Exhibit C.4.c, Supplemental KFMC Report.

Mr. Alverson asked if the 51%/49% CA/OR troll impact sharing recommendation was different than in the past. Mr. Viele responded that it is very similar to the outcome of the 2003 season. Mr. Larson responded that having the shares specified preseason will help the process significantly this year.

C.4.d NMFS Recommendations

Mr. Bill Robinson presented a summary of Exhibit C.4.d, Supplemental NMFS Recommendations (ESA guidance). Mr. Robinson noted that guidance on Snake River fall chinook is unchanged due to the status of litigation and negotiations on summer spill.

Mr. Anderson noted the Snohomish fall chinook rebuilding exploitation rate (RER) of 18% in the NMFS guidance is different from the rate recommended in the co-manager's resource management plan, which based on conversion of FRAM output of 24%, would be 21%. He asked if the 18% is a new RER or if it comes from new FRAM output. Mr. Robinson responded the 18% is a conversion from the 24% FRAM output, and does not represent a new RER standard, but perhaps there is some technical differences on how the conversion is calculated.

Mr. Anderson asked if NMFS would consider an option with Council area Snake River fall chinook impacts at 2003 preseason projected levels. Mr. Robinson responded that reinitiating of consultation to increase allowable harvest impacts is not appropriate.

C.4.e Tribal Recommendations

Mr. Mike Orcutt (Hoopa Valley Tribe) supported the KFMC concept of full utilization. He requested the STT provide a model run showing the tribal share absent any ESA constraints. He also asked that the STT examine the potential effects on the KOHM of changing to a boat limit.

Mr. Dave Hillemeier (Yurok Tribe) noted the low forecast for age-3 Klamath fall chinook, and recommended the Council consider measures to protect this brood, including increased minimum size limits, and reduced late season fisheries.

Mr. Terry Courtney (Warm Springs Tribe) and Mr. Stuart Ellis (Columbia River Intertribal Fish Commission) presented Exhibit C.4.e (Supplemental Tribal Recommendations 2).

Mr. Harp provided Exhibit C.4.e, Supplemental Preliminary Tribal Recommendations.

C.4.f State Recommendations

WDFW

Mr. Anderson noted some of the management issues in developing 2004 fishery regulations are (1) Interior Fraser (Thompson River) coho, which must be managed for southern U. S. impacts of no more than 10%; (2) obligations under U.S. v. Oregon and U.S. v. Washington to share harvest with the treaty tribes, including providing 50% of the coho originating above Bonneville to that location; (3) OCN coho which must be managed for an exploitation rate of no more than 15% to be consistent with the Salmon FMP; (4) meeting the Snake River fall chinook consultation standard, (5) issues relative to Puget Sound chinook, and (6) managing Columbia River natural tule chinook for a 49% RER.

ODFW

Mr. Coenen summarized Exhibit C.4.f, Attachment 1, stating Columbia River coho, which is listed under the Oregon State ESA, will not constrain ocean fisheries over what is required for OCN coho under the Salmon FMP.

CDFG

Mr. Larson urged the SAS to take into consideration the low age-3 Klamath fall chinook forecast and to consider measures to protect that brood. He also noted there is a difference between state and Federal law regarding boat limits, and asked for reconciliation of the two.

Tribal/State

Mr. Harp presented Exhibit C.4.e, Supplemental WDFW/Tribal Recommendations.

C.4.g Reports and Comments of Advisory Bodies

SAS

The SAS presented exhibit C.4.g, Supplemental SAS Report:.

C.4.h Public Comment

Mr. Don Stevens, Oregon Salmon Commission, Newberg, Oregon
Mr. Duncan MacLean, Humboldt Bay Fisherman's Marketing Association, El Granada, California
Mr. Doug Fricke, Washington Trollers Association, Hoquaim, Washington
Mr. Joel Kawahara, salmon troller, Quilcene, Washington

C.4.i Council Recommendations for Initial Options for STT Collation and Description

Mr. Anderson asked for the following changes to Exhibit C.4.g, Supplemental SAS Report:

- Page 9, Recreational Option I north of Cape Falcon, change the chinook minimum size limit to 24 inches for all subareas to be consistent with historical limits.

- Page 10, Recreational Option III, Queets River to Leadbetter Pt. include “any coho or chinook landed in the Westport subarea from 7/2 thru 7/30 will count against the Westport coho quota or chinook guideline”.

Mr. Coenen recommended the central Oregon recreational fishery coho quota under Option I be reduced if necessary to achieve the OCN exploitation rate objective. He then asked that flexible delivery language for the north of Cape Falcon commercial fishery be included with the STT analysis if such language can be worked out with the SAS and Enforcement Consultants. Mr. Anderson asked if Mr. Coenen was making any specific recommendations for the central Oregon recreational coho quota. Mr. Coenen replied that he was requesting the STT to make the necessary adjustment in Option I to achieve the 15% OCN exploitation rate objective. Mr. Anderson observed that the north of Cape Falcon recreational fisheries reduced coho quotas from 2003 levels to contribute to the OCN impact reduction, and stated that he felt a reduction in the central Oregon fishery options to something like 75,000 would be appropriate to balance impacts between the states. Mr. Coenen responded by suggesting the STT model central Oregon recreational coho quotas of 75,000, 65,000 and 55,000 for Options I, II, and III, respectively.

Mr. Larson asked the STT to model the California troll fishery with a 26 inch chinook size limit for all options. The increase to 27 inches could then be added at a later time to help reduce take on the age-3 Klamath fall chinook. He also asked for clarification from the Enforcement Consultants on the language for the California portion of the KMZ commercial fishery regarding the requirement that all fish caught in the area must be landed in the area. He also asked the EC to recommend a solution to the discrepancy between state and Federal regulations for boat limits.

Mr. Harp presented Exhibit C.4.i , Supplemental Tribal Management Options.

Mr. Robinson asked the EC to determine if the Federal regulations would need to be specific to the adjacent state waters or if a single Federal regulation could cover the entire area.

Mr. Anderson requested NMFS consider possible footnotes for Snake River wild (SRW) fall chinook impacts that will allow realistic, yet flexible, options for public review in light of the uncertainty regarding assumptions of Canadian and Alaskan fisheries. Mr. Robinson replied that NMFS is firm in ensuring SRW conservation objectives are met, but suggested that different assumptions regarding northern fisheries impact rates could be modeled to establish a broader range of options.

C.5 Update on Mitchell Act Hatchery Needs (03/09/04; 5:24 pm)

C.5.a Agendum Overview

Mr. Tracy presented the agendum overview.

C.5.b Report of the Policy Group

Mr. Randy Fisher reported that the Policy group met in August to discuss long and short term funding needs for Mitchell Act facilities. He noted there was a \$3.3 million shortfall for FY2004, but that Norm Dicks and Patty Murray of the Washington Congressional delegation were able to get the money restored to the budget. For 2005 and 2006, the budget request is for \$16.5 million, similar to recent years.

NOAA Grants Office is asking that a NEPA compliance document be developed for Mitchell Act Fisheries, either independently or in combination with other Columbia River hatchery programs. The basin-wide hatchery review has been delayed, so in the interim the strategy developed in August to maintain level

funding should be continued. When the basin-wide review is completed there should be more opportunity to agree on appropriate production levels, which would be the basis for more intense lobbying. In the meantime, the states have directed the PSMFC to continue to lobby for Mitchell Act funding.

Mr. Terry Courtney, Jr provided the following statement:

Good Morning Mr. Chairman and members of the Council. My name is Terry Courtney Jr. I am a member of the Fish and Wildlife Committee of the Warm Springs Tribes. I am here today to present comments on behalf of the four Columbia River treaty tribes; the Yakama, Warm Springs, Umatilla and Nez Perce Tribes.

The Mitchell Act was originally enacted in 1938 to "provide for the conservation of the fishery resources of the Columbia River"1. The Mitchell Act hatchery program originated to mitigate for the production lost due to the construction of dams on the Columbia River. It is important to remember that this mitigation obligation can not go away so long as the dams are in place.

Mitchell Act program funding has been flat in the past few years. Because of increased costs, flat funding for this program has dramatically cut the benefits of program. In 2003, USFWS was forced to eliminate the on-station coho releases at Willard Hatchery because of inadequate funding. Once again, a legislative rider that requires all production from federally funded hatcheries to be mass marked was passed by Congress, but no new funding was included with this mandate. This requires hatchery managers to use Mitchell Act hatchery funding to mass mark fish. This means there will be less money available to actually produce the fish. Past cuts in Mitchell Act programs have resulted in greater losses of above Bonneville production relative to below Bonneville production. This has been discriminatory to the tribes.

The Mitchell Act hatchery program needs to be fully funded, but it also must be reformed by the co-managers. The tribes support funding the hatchery program at 25 million dollars for fiscal year 2005, but only as part of a long term comprehensive reform of the program carried out by the co-managers. The tribes consider this amount a minimum appropriate level of funding. Only agreed to marking programs developed by the co-managers should be conducted as part of the overhaul of Mitchell Act hatchery production. Five million dollars or 20% of enacted funding should be contracted to the tribes for new or expanded supplementation projects, in addition to the programs carried out by the tribes. Additionally the Mitchell Act screening program should be funded at 20.6 million dollars for screens and passage programs as identified in the Federal Caucus Plan. Funding at any amount less than this would be inadequate to meet the needs of treaty and non-treaty fishermen dependent on these programs.

The tribes want Mitchell Act funds to produce fish "In Kind - In Place". By this we mean that funds should not simply be used for lower river programs. Most of the Mitchell Act hatcheries have been built in the lower river. In order to mitigate for lost up-river natural production, fish need to be produced in all parts of the basin. Additionally hatchery operations need to be reformed so that they can aid in restoration and utilize production to supplement natural runs. The last significant changes to the Mitchell Act program have come from tribal coho programs that were included in the Columbia River Fish Management Plan back in 1988. These coho programs have assisted in the restoration of naturally spawning coho in the Yakima, Umatilla, Klickitat, and Clearwater Rivers. These coho provide benefits to treaty and non-treaty fishermen alike.

Mitchell Act funds should be used for conservation and restoration purposes. Funds should not be used to mass mark fish so they can be caught in non-Indian selective fisheries. All fishermen, treaty and non-treaty should be able to benefit from this production.

In closing the tribes hope the Council recognizes the critical importance the Mitchell Act plays in almost all Council area fisheries. By supporting the tribal position on Mitchell Act funding, the Council can help ensure that all fishermen can share in the benefits of the program and the Council can help work towards restoration of salmon populations.

C.5.c Reports and Comments of Advisory Bodies

None.

C.5.d Public Comment

Mr. Duncan MacLean, Humboldt Bay Fisherman's Marketing Association, El Granada, California

C.5.e Council Discussion and Guidance on Mitchell Act Hatchery Needs

Mr. Anderson observed that when different groups were lobbying for different funding levels, it was difficult to be successful. He advocated the strategy of lobbying for level funding for now to reduce the mixed messages congressional staffs were getting.

Mr. Roth reported that due to current funding shortfalls, Willard National Fish Hatchery is scheduled to be mothballed, coho juveniles were released in January rather than April, no eggs were taken, and production has been shifted to Eagle Creek Hatchery, which displaced some Clackamas Economic Development Commission (CEDC) production. The net results are a reduction of 2 million coho smolts, which will begin to effect fisheries in 2007.

C.6 Council Recommendations for 2004 Management Option Analysis (03/10/04; 5:09 pm)

C.6.a Agendum Overview

Mr. Tracy presented the situation summary.

C.6.b Report of the STT

Mr. Simmons provided Exhibit C.6.b, Supplemental STT Report: Collation of Preliminary Salmon Management Options for 2004 Ocean Fisheries.

C.6.c Report of the KFMC

None.

C.6.d Reports and Comments of Advisory Bodies

None.

C.6.e Public Comment

None.

C.6.f Council Direction to the STT and Salmon Advisory Subpanel on Options Development and Analysis

Mr. Coenen stated that ODFW was working on some language for flexible delivery language in the north of Cape Falcon commercial fisheries and will provide that language to the SAS and STT for review prior to inclusion in the option package. He asked the SAS and STT to work together to shape the management measures for the KMZ fisheries so the Klamath fall chinook escapement floor would be met. Finally, he informed the Council that up to 10 wild coho may be taken in the KMZ for genetic sampling, and that mortality would be accounted for in the harvest impact modeling.

Mr. Anderson asked that the flexible delivery language for north of Cape Falcon not be included in all three options. Mr. Coenen agreed.

Mr. Larson reiterated Mr. Coenen's request for the KMZ fisheries to meet the Klamath spawning escapement floor and to also meet the KFMC recommendation of the CA/OR troll share in Option II.

Mr. Anderson requested the STT, SAS, and tribes work on Option II for north of Cape Falcon fisheries to achieve mutual objectives.

Mr. Tracy asked if there was a specific objective at this time. Mr. Anderson did not want to be more specific at this time.

C.7 Salmon Fishery Management Plan Amendment Issues (03/11/04; 3:50 pm)

C.7.a Agendum Overview

Mr. Tracy presented the agendum overview.

C.7.b Report of the Sacramento River Winter/Spring Work Group

Mr. Viele presented Exhibit C.7.b, SRWSC Workgroup Report: Recommendations for developing fishery management plan conservation objectives for Sacramento River winter chinook and Sacramento River spring chinook. He also asked the STT to review the Workgroup report, and to provide the report to the SSC for informational purposes.

Mr. Thomas asked if there were plans to reconvene the steering group, which included industry representatives. Mr. Viele responded that he thought it would be appropriate to reconvene the steering group after the STT review.

C.7.c Proposals of the Agencies and Tribes

Mr. Coenen reported ODFW desires the OCN workgroup matrix be formalized as the Council conservation objective for OCN coho to assist in recovery planning. He also was concerned about future allocation issues south of Cape Falcon if coho recover sufficiently to allow increased exploitation rates. ODFW proposed to begin a scoping process for utilizing coho in the future, and to develop a schedule and set of standards for coho allocation south of Cape Falcon including, potentially, wild fish as they recover.

Mr. Anderson said there are several potential FMP amendment considerations for the state of Washington and the co-managers. The first subject would be to reexamine the process by which fisheries transition from non-selective to selective. The second subject is making conservation objectives for Puget Sound consistent between the Salmon FMP and the Puget Sound resource management plan submitted to NMFS by the co-managers. The third subject is making conservation objectives for Puget Sound coho consistent between the Salmon FMP and those used by the co-managers. And finally, making conservation objectives for Washington coastal coho consistent between the Salmon FMP and those used in the Pacific Salmon Commission process.

Mr. Harp agreed with Mr. Anderson in regards to the Washington coastal coho conservation objectives.

C.7.d Reports and Comments of Advisory Bodies

None.

C.7.e Public Comment

None.

C.7.f Council Discussion and Guidance on Salmon Fishery Management Plan Amendment Issues

Mr. Larson requested the STT review the SRWSC Workgroup Report.

Mr. Anderson requested Mr. Tracy and Mr. Milward discuss procedures relative to transitioning from non-selective to selective fisheries. Council concurred.

C.8 Council Direction for 2004 Management Options (If Necessary) (03/11/04; 4:19 pm)

C.8.a Agendum Overview

Mr. Tracy presented the agendum overview.

C.8.b Report of the STT

Mr. Simmons presented Exhibit C.8.b, Supplemental STT Report.

Mr. Harp asked if Canadian WCVI fisheries are modeled close to their limits. Mr. Simmons responded that they are modeled at 2003 actual levels, which were very close to 2003 limits, but that 2004 limits will not be set until later in March.

Mr. Anderson observed that the effect of reducing the north of Cape Falcon quota in half had a minimal effect on reducing exploitation rates on Puget Sound chinook, and that by reducing the quota to zero, the conservation objectives would still not be met. Therefore, most of the impact reduction necessary to achieve Puget Sound chinook conservation objectives would have to be negotiated in the North of Falcon forum and likely come from Puget Sound fisheries.

C.8.c Reports and Comments of Advisory Bodies

EC

Cpt. Mike Cenci presented Exhibit C.8.c, Supplemental EC Report.

Ms. Cooney noted that there was conflicting language between the EC report and the codified Federal regulations regarding boat limits and bag limits. She suggested the boat limit language be included as an option, with a note stating the process to change Federal regulations may not be complete by May 1, and that state and Federal regulations may conflict in the interim.

Mr. Larson asked if the EC reviewed landing language for the KMZ commercial fishery requiring all fish caught in the area to be landed in the area. The EC informed the Council that the issue was a technical matter which had been resolved within the enforcement community.

C.8.d Public Comment

None.

C.8.e Council Guidance and Direction for 2004 Management Options (If Necessary)

Mr. Anderson recommended no adjustment in Option I to meet the Snake River fall chinook consultation standard at this time because of the current uncertainty in levels of Canadian and Alaskan fisheries, but suggested including a footnote with the options indicating the possibility of needing to reduce Council area fishery impacts if final estimates of northern fisheries result in projected impacts greater than the consultation standards. He also indicated the intent of the co-managers was to achieve the Puget Sound chinook consultation standards, but to achieve that primarily through negotiations on Puget Sound fisheries occurring in the North of Falcon forum. However, he noted that the differences in some exploitation rate standards between the co-manager submitted resource management plan and the NMFS guidance letter would have to be resolved first.

Mr. Robinson concurred with Mr. Anderson's suggestion for Puget Sound chinook. He was not comfortable with any option that did not meet the Snake River fall chinook consultation standard based on the current assumptions for Canadian fisheries and stock forecasts. However, he also indicated that if those assumptions changed such that impacts became available, he was not opposed to shaping management measures in April, prior to final adoption, to utilize those impacts in Council area fisheries.

Mr. Anderson related his understanding of the option process to Mr. Robinson, which is that the range of TAC options adopted for public review represent sideboards, within which the final alternative was to fall. He asked if there was additional flexibility to, for example, increase the north of Cape Falcon chinook TAC in April if Snake River impacts were available. Mr. Robinson replied that he agreed with Mr. Anderson's view, and stated that a footnote associated with the snake River fall chinook impacts as previously described by Mr. Anderson would be acceptable.

Mr. Anderson requested ending dates for the recreational fishery between the Queets River and Leadbetter Pt. be changed to: Option I - September 30; Option II - September 19; and Option III - September 12.

C.9 Adoption of 2004 Management Options for Public Review

C.9.a Agendum Overview

Mr. Tracy provided the agendum overview.

C.9.b Report of the STT

Mr. Dell Simmons presented Exhibit C.9.b, Supplemental STT Report.

Mr. Anderson said he was concerned the language relative to Snake River fall chinook impacts in Option I was not explicit enough. Mr. Robinson agreed, and also stated that item 4 under supplemental management information for the north of Cape Falcon commercial fishery regarding Puget Sound chinook should reference NMFS guidance rather than consultation because the consultation process would not be completed until after a final alternative was selected at the April Council meeting. Mr. Harp noted there will not be additional negotiations in the PSC forum, but additional information will be forthcoming from Canada. Mr. Simmons indicated the STT would work with NMFS and co-manager staffs to incorporate the desired changes.

C.9.c Reports and Comments of Advisory Bodies

None.

C.9.d Public Comment

Mr. Raymond Monroe, Oregon Salmon Commission, Pacific City, Oregon

C.9.e. Council Action: Adopt 2004 Salmon Management Options for Public Review

Mr. Robinson asked if Option I not meeting the U.S. v. Oregon coho allocation objective was a concern. Mr. Coenen replied that the issue would be addressed in the North of Falcon forum, and that the objective would be met during selection of final management measures at the April Council meeting. Mr. Anderson agreed. Mr. Harp also agreed.

Mr. Warrens moved (Motion 19) that the delivery language in Option II for the July to September commercial fishery north of Cape Falcon be included in the May to June fishery for the same area. Mr. Coenen seconded the motion.

Ms. Cooney requested the delivery language in all Options include the statement that this is required by state regulations. Mr. Warrens and Mr. Coenen accepted Ms. Cooney's suggestion as a friendly amendment to Motion 19. Motion 19 passed.

Mr. Anderson moved (Motion 20) that the options, as presented in Exhibit C.9.b, Supplemental STT Report and revised, be adopted for public review. Mr. Alverson seconded the motion. Motion 20 passed.

Mr. Jim Harp moved (Motion 21) that the options for the 2004 treaty ocean troll salmon seasons as provided in C.9.e, Supplemental Revised Treaty Troll Options, March 2004, be adopted for public review. He stated that it is possible that the tribes would request the Council adopt a treaty-Indian troll quota at the April Council meeting lower than the quota options adopted at this time. Mr. Frank Warrens seconded the motion. Motion 21 passed.

C.10 Salmon Hearings Officers (03/12/04; 10:33 am)

C.10.a Agendum Overview

Mr. Tracy presented the agendum overview.

C.10.b. Council Action: Appoint Hearings Officers

The Council appointed and Chairman Donald Hansen confirmed the following officers to the three salmon hearings on salmon season options:

Date/Time/Day	Location	Council
March 29, Monday 7 p.m.	Chateau Westport Beach Room 710 West Hancock Westport, WA 98595	Mark Cedergreen (Hearing Officer) Phil Anderson Jim Harp Peter Dygert (NMFS) US Coast Guard Rep.
March 29, Monday 7 p.m.	Red Lion Hotel South Umpqua Room 1313 N Bayshore Drive Coos Bay, OR 97420	Ralph Brown (Hearing Officer) Neal Coenen Chris Wright (NMFS) US Coast Guard Rep.
March 30, Tuesday 7 p.m.	Tradewinds Lodge & Restaurant Convention Room 400 S Main Street Fort Bragg, CA 95437	Roger Thomas (Officer) Eric Larson Dan Viele (NMFS) US Coast Guard Rep.

D. Enforcement Issues

D.1. U.S. Coast Guard Fishery Enforcement (03/09/04; 3:30 pm)

D.1.a U.S. Coast Guard Report

RADM Garrett provided a powerpoint presentation (hard copy on file at Council office).

D.1.b Reports and Comments of Advisory Bodies

None.

D.1.c Public Comment

None.

D.1.d Council Discussion on U.S. Coast Guard Fishery Enforcement

Mr. Anderson acknowledged and thanked the Coast Guard for their commitment to joint enforcement efforts.

Mr. Larson thanked them for including District 11 information in their presentation.

E. Groundfish Management

E.1 NMFS Report (03/10/04; 8:06 am)

E.1.a Regulatory Activities

Mr. Bill Robinson reported on the regulatory activities published in the *Federal Register* since the November Council meeting. These publications include an EIS Notice of Availability (NOA); a proposed rule and letter of approval for Amendment 16-2; inseason adjustments to 2003 commercial and recreational fisheries to protect lingcod and canary rockfish; results of the trawl buyback program, proposed; emergency, and final rules implementing 2004 management measures and harvest specifications; advanced notice of proposed rulemaking for an individual quota program; approval of the WDFW and ODFW EFPs for 2004; the final rule for Amendment 16-1; and a NOA for the draft Bycatch Programmatic Environmental Impact Statement. Mr. Robinson presented a report on the results of the buyback program (Exhibit E.1.a, Supplemental Buyback Analysis) including the extent of latent permits purchased by individuals who were initially bought out. Mr. Robinson requested Council review of the report and asked the Council to consider the issue as an April agenda item. Mr. Robinson referred the Council to a letter from NMFS relative to individual processor quotas (Exhibit E.1.a Supplement NMFS IPA Letter) providing rationale for the NMFS recommendation that the current IQ program and NEPA analysis not include an alternative for processor quotas. Mr. Robinson also highlighted a change in the 2004 management measures for California recreational fisheries taken by NMFS in consultation with CDFG in response to the substantial overages in lingcod harvest in these fisheries in 2003. Finally, Mr. Robinson referred the Council to a report by NMFS OLE concerning the implementation of the VMS program (Exhibit E.1.a NMFS VMS Report). The report highlights the effectiveness of VMS as a monitoring tool and reports success in the initial phase of implementation.

E.1.b Science Center Activities

Dr. Elizabeth Clarke gave an update on the Northwest Fisheries Science Center Activities since the November Council meeting. The Western Groundfish Conference was hosted by Canada in Victoria and went well, with a great deal of participation. Thanks to the work of ODFW and OSU, the meeting will be hosted in Oregon in 2006. Regarding the observer program, the second report of the trawl observer data is posted on the website at the beginning of February as well as the data summary of the sablefish endorsed fixed gear observer data. The NWFSC is collaborating with the region to develop a pilot program for cameras on shore-based whiting vessels. A search is underway to find a contractor to provide cameras for the entire fleet during this pilot program.

Regarding survey activities, the final planning process for the shelf/slope survey is ongoing, including a request for Alaska class vessels to participate in a project to calibrate the old triennial survey data.

The NWFSC is preparing to train survey personnel in May including safety training. The center will also be hosting a workshop to review safety requirements during research operations and will be requesting industry input in the process.

The NWFSC will not be doing the hydro-acoustic survey for whiting this year but there will be some acoustic work to address the calibration issues brought forward by the STAR panel.

Regarding cooperative research, the budget has not been approved. The center is planning a workshop on writing proposals for cooperative research and will continue to support the Port Liaison Project as it expands from an Oregon program to a coastwide program. Dr. Clarke encouraged researchers to work with the Port Liaison Project if they are considering projects that would benefit from fisherman help. Additionally, there

is a workshop planned for Friday of this week to determine the best plan for a collaborative study to develop a whiting specific survey.

Regarding stock assessments, Dr. Clarke will be meeting with the SSC this week to discuss the details on three workshops planned for this year concerning the use of recreational CPUE indices as well as data needs and modeling methods. Details will be presented under agendum E.3.

Dr. McIsaac asked Dr. Clarke about a recent Department of Labor ruling and its potential effect on the observer program. Dr. Clarke reported that the ruling is being reviewed by NMFS and could effect the way the observer program treats overtime pay. NMFS is still researching the ruling, but early reviews suggest substantial increases in costs if the ruling applies to the observer program. The NPFMC has written a letter requesting further information. Dr. Clarke will provide a copy of the letter to the Council and Chairman Hansen directed Executive Director, Dr. McIsaac to compose and send a similar letter.

E.1.c Regional Bycatch Plans

Ms. Yvonne de Reynier and Dan Viele provided summaries of Northwest Region and Southwest Region Bycatch Plans (Exhibit E.1.c). Mr. Robinson felt these plans complement and add value to work on bycatch that the Council is already doing and NMFS is looking for feedback on these plans, perhaps in April.

E.1.d Reports and Comments of Advisory Bodies

None.

E.1.e Public Comment

None.

E.1.f Council Discussion on NMFS Report

Ms. Vojkovich noted that the NMFS priority on open access groundfish issues in their 2005 planning is something she supports. It looks like at least it is on the agenda to be worked on in 2005.

E.2 Lingcod and Cabezon Stock Assessments for 2005-2006 (03/10/04; 9:21 am)

E.2.a Agendum Overview

Mr. John DeVore provided the agendum overview.

E.2.b Reports and Comments of Advisory Bodies

SSC

Mr. Tom Jagielo provided Exhibit E.2.b, Supplemental SSC Report.

GAP

Mr. DeVore read Exhibit E.2.b, Supplemental GAP Report.

E.2.c Public Comment

Mr. Mike McCorkle, Southern California Trawlers Association, Santa Barbara, California
Mr. Chris Dorsett, The Ocean Conservancy, San Francisco, California

E.2.d **Council Action:** Approve Lingcod and Cabezon Stock Assessments for 2005-2006

Ms. Vojkovich moved (Motion 3) that the Council adopt the lingcod assessment as revised in Exhibit E.2.a, Attachment 2 and adopt the cabezon assessment with the model recommended by the SSC as provided in Exhibit E.2.b, Supplemental SSC report. Mr. Anderson seconded the motion.

In response to a question, Mr. DeVore clarified that the north/south dividing line for lingcod was at the International North Pacific Fisheries Commission (INPFC) boundary between the Columbia and Eureka areas near Cape Blanco. The dividing line for cabezon is at the California/Oregon border (42° N.). Motion 3 passed.

With regard to lingcod, Mr. Anderson suggested that the GMT be given the latitude to modify the range of optimum yields (OYs) adopted in November in a manner consistent with the stock assessments just adopted for lingcod. He wanted to insure that we could look at options for both a coastwide OY as well as northern and southern OYs. He clarified that he would leave the GMT with flexibility to determine where the dividing line is set.

Ms. Vojkovich asked for the GMT to consider the 60/20 projections in their discussions with regard to cabezon.

In response to questions regarding the need for a new assessment if the dividing line is not at the Columbia/Eureka management border, Mr. DeVore said he did not think it would be necessary as the GMT has routinely done this type of action for other stocks without posing a problem.

Ms. Vojkovich wanted to make sure there is no semantic issue relative to OYs or harvest guidelines that would create problems by referring to "regional OYs" in the federal rule arena. Mr. Robinson said the most important thing is that the Council needs to make it clear whether or not they are going to manage the OY separately or coastwide.

E.3 Stock Assessment Planning for 2007-2008 Fishery Management (03/10/04; 10:35 am)

E.3.a Agendum Overview

Mr. DeVore provided the agendum overview as outlined in the situation summary (Exhibit E.3, Situation Summary).

E.3.b NMFS Recommendations

Dr. Elizabeth Clarke provided a powerpoint presentation with recommendations for the stock assessment process for 2007-2008. She stated there could be 22-23 stock assessments divided into species groupings with no more than five species per group.

In response to questions and concerns, Dr. Clarke explained that the workshops would be a time for the authors to get together on similar species and similar data issues and discuss the data sources and produce a list of data sources they plan to use for all of their assessments which could be circulated in the scientific

and Council communities for further review and refinement. Somewhat the same idea of the preassessment workshops that have taken place in the past. The GMT request to add skates and dogfish into the data workshop would probably have to wait for the next cycle. Identifying "data gaps" could be done in a separate workshop to not overload the assessments. On the issues of gopher rockfish and kelp greenling, Dr. Clarke said she would have to review the data inadequacies and report back at the April meeting. She answered further questions with regard to the reasons some assessments would be full assessments and others just updates.

Dr. Burke asked what is different next year that would allow us to do 22 or 23 assessments when so much time and controversy has gone into a few assessments in the last few years? Dr. Clarke said it is because of multi-year management. The only thing that is going to help this next time is some upfront work in the way of workshops to get authors more organized, get the data sources and modeling issues worked out early on in the process rather than at the last minute. She is not sure if it can be done. If it can be done, this timeline is the way to do it. We are pushing the envelope here. This is the process of getting them done and reviewed, but not into the management process at Council meetings. She is not sure how you would do that, having new info on 20 species hitting the Council process on the "same day" basically. She did not have a good idea on how to work that in.

Dr. Burke asked if these were additional staff or resources within the science center? Dr. Clarke said they have one new staff member (a stock assessment coordinator) who will be getting the authors together and the workshops together as well as the star panels. They actually used a stock assessment analyst FTE to do this (Ms. Stacy Miller).

Dr. McIsaac, with regard to the timeline and the GMTs comments in November, noted these stock assessments will be due in November 2005 to the Council. The GMT recommendation is to accelerate that so they are due in September. Dr. Clarke noted it is difficult to meet the schedule and not impact peoples field work if they are not only analysts but field biologists, as well as meet the Council calendar (GMT meetings, summer vacations, Council meetings).

E.3.c Reports and Comments of Advisory Bodies

SSC

Mr. Jagielo provided Exhibit E.3.c, Supplemental SSC Report.

GMT

Mr. Brian Culver provided Exhibit E.3.c, Supplemental GMT Report.

GAP

Mr. Rod Moore provided Exhibit E.3.c, Supplemental GAP Report.

E.3.d Public Comment

Mr. Michael Deach, longliner, Lopez, Washington

E.3.e Council Discussion and Guidance on Stock Assessment Planning for 2007-2008 Fishery Management

Council members discussed the pros and cons of adding or deleting assessments for several different species and how to prioritize the selection. Gopher were suggested as an indicator species for California sport fisheries. Kelp greenling were also suggested as a possible addition as a key indicator species.

Dr. Clarke said they could attempt to prioritize the assessments according to the GAP's list, but the species with updates have to be on the list. She suggested the Council provide further direction for limiting and prioritizing the list and she could provide more information and a refined list in April.

Mr. Anderson, working from the SSC list in Table 1, noted that the SSC deletes arrowtooth, bank rockfish, and chilipepper. He suggested removing yellowtail (update) as we have been harvesting far below the OY for yellowtail. For yelloweye (listed for an update), he noted WDFW and NWFSC would be working on this and would like to provide flexibility to potentially look at some other data sources (such as submersible work) which could result in the need for a full assessment. He is interested in having the flatfishes, including petrale and starry flounder to have assessments because the catches have been higher in the past few years. He did not have an opinion on splitnose and greenling.

Mr. Brown questioned the rationale for assessing shortbelly. He said he understood the rationale for having it was that the species was largely unfished and could be used as an indicator for ocean survival and environmental conditions and its impact on groundfish species. However, there is too much we don't know about the conditions stimulating the recruitment of shortbelly and he suspects we're about 30 years away from that and it could require a great amount of work with very little benefit.

Based on Council comments, Dr. McIsaac summarized the changes to the proposed assessments using the list in Table 1 from Exhibit E.3.c, Supplemental SSC Report: remove yellowtail, add gopher, and add greenling. This brings the list to 23. Mr. Brown asked that a look be taken at the choice between updates or a full assessment. It would seem like we would be able to reduce workload with more updates.

Mr. DeVore noted that there appeared to be agreement that arrowtooth, chilipepper, and yellowtail assessments be deleted. It has been suggested that shortbelly be deleted and that gopher and greenling be added.

Mr. Anderson understood that Dr. Clarke would take a look at the shortbelly issue and report back in April. He was still interested in doing an update for flatfish species such as petrale and English sole, and confirmed that bank rockfish should be deleted.

Dr. McIsaac confirmed that the Council recommends Dr. Clarke review the proposed assessments provided in the SSC report (with deletion of yellowtail, addition of gopher and greenling; and consideration of a full assessment for yelloweye and updates for English and petrale sole), mesh it with available data and workload, and confirm the assessments in April. With regard to cabezon (southern stock), Dr. Clarke stated she believes the SSC would recommend that it be updated in view of questions about the most recent assessment.

Mr. DeVore said that the SSC thought it would be advisable to have the STAR panels help decide on full vs. updated assessments

E.4 Status of Groundfish Fisheries and Inseason Adjustments (03/10/04; 1:23 pm)

E.4.a Agendum Overview

Mr. Mike Burner provided the agendum overview.

E.4.b CDFG Report on California Recreational Fisheries

Ms. Susan Ashcraft and Ms. Debra Aseltine-Nelson provided Exhibit E.4.b, Supplemental CDFG Report and Exhibit E.4.b, Revised Supplemental CDFG Report (*2004 Inseason Changes for California's Recreational Fishery for Presentation at March 2004 Council Meeting*).

Dr. Burke identified the mortality sources listed in the letter from CDFG to NMFS and asked if these sources of mortality, including release mortality and non-compliance are included in the impact analysis or would they need to be considered in a buffer. Ms. Aseltine-Nelson reported they were not included. Dr. Burke stated this would serve as justification for a significant buffer. Ms. Ashcraft stated that the analysis is conservative in other aspects as it assumes a 10 month season where there are two month closures scheduled, but how these factors balance each other cannot be quantified. Several Council members asked about the treatment of release mortality as well as the accounting of illegal retention during fishery closures. Ms. Aseltine-Nelson reported that the base data contains MRFSS estimates of landed catch and catch that was released dead. Additional mortality estimates for fish reported released alive that eventually died were not included. It was clarified that a potential closure in November and December, 2004 would be a closure to lingcod retention and not to groundfish fishing. Hook and release mortality during this proposed closure has not been estimated and could be considered as part of a buffer.

Mr. Robinson requested clarification on the estimated savings based on the described reductions in lingcod opportunity as a means of describing the magnitude of the precautionary buffer. Ms. Robinson clarified that as part of the estimate, the GMT would recommend a release mortality rate of 5%. CDFG agreed to work on the estimate and report back later during this agendum.

E.4.c Report of the Groundfish Management Team

Ms. Michele Robinson provided Exhibit E.4.c, Supplemental GMT Report.

Mr. Brown confirmed with Ms. Robinson that there is no observer data specifically for Cordell Bank but, the habitat type is consistent with known preferences of overfished rockfish. Mr. Brown did not agree that equity in this case should mean the same closed areas, rather equity should be in terms of measured reduction in impacts to overfished species. Ms. Robinson concurred and stated the original intent was to close the Cordell Banks to all commercial fisheries based on potential impacts and the management lines developed through the regulatory process did not accomplish this.

E.4.d Reports and Comments of Advisory Bodies

GAP

Mr. Rod Moore provided Exhibit E.4.d, Supplemental GAP Report.

Mr. Brown asked if the GAP statement implies VMS should be expanded to recreational vessels. Mr. Moore stated that the GAP felt that if the goal is to protect the integrity of the closed areas, then all potential violators should be considered.

Mr. Cedergreen asked if the statements on page one relative to regional management were reflective of a unanimous opinion of the GAP. Mr. Moore recalled that it was.

Mr. Robinson asked if the GAP had the opportunity to discuss the lingcod issues in the California recreational fisheries. Mr. Moore stated the GMT and CDFG were deliberating up to the time of this agenda item and did not have time to discuss the matter with the GAP, therefore, the GAP statement does not include the issue.

EC

Captain Mike Cenci provided Exhibit E.4.d, Supplemental EC Report.

Mr. Warrens asked how option two would be enforced, how would enforcement personnel identify whether groundfish were taken in a legal area. Captain Cenci responded the EC feels there is adequate patrols on the water to enforce recreational fisheries.

E.4.e Public Comment

Mr. Bill James (speaking for Kenyon Hensel), Northern Open Access Fisherman, Crescent City, California
Mr. Darby Dickerson, fisherman, Port Angeles, Washington
Mr. Bob Ingles, Golden Gate Fisherman's Association, Hayward, California
Mr. Charlie Noggle, Fishing Vessel Owner's Association, Snohomish, Washington
Mr. Mellvin de la Motte Jr., Central Coast Fisheries Conservation Coalition, San Luis Obispo, California
Mr. Dan Wolford, Coastside Fishing Club, Los Gatos, California
Mr. Chris Dorsett, The Ocean Conservancy, San Francisco, California
Mr. Randy Frye, Recreational Fishing Alliance, Sacramento, California
Mr. Paul Clampitt, longliner, Fishing Vessel Owner's Association, Edmonds, Washington
Mr. Michael Deach, longliner, Lopez, Washington
Mr. Bob Strickland, United Anglers of California, San Jose, California
Mr. Bob Osborn, United Anglers of Southern California, Huntington Beach, California
Mr. Bill James, commercial fisherman, Keizer, Oregon

E.4.f **Council Action:** Consider Inseason Adjustments in the 2004 Groundfish Fishery

Mr. Anderson, (Motion 4) referring to Exhibit E.4.c, Supplemental GMT Report, page 5, moved to adopt the following GMT Recommendations:

Recommendation number 1 (reword the last phrase to read "and recommend to CA a change in state regulations to conform to federal regulations"), 3, 4, 5, skip 6, and add a seventh to approve Option 2 in Exhibit E.4.d, Supplemental EC Report; also, include recommendation 2 for the GMT report but, modify the Cordell Banks closure descriptions to be consistent with the GAP recommendation.

Mr. Bob Alverson seconded the motion.

Mr. Brown confirmed with Mr. Anderson that GMT recommendation number 6 was not included in the motion.

Mr. Robinson asked for the latitude to work with EC to make sure their language for Option 2 conforms to the federal regulations. Council members concurred.

Ms. Vojkovich and Mr. Robinson agreed to work to ensure regulatory language for the CCAs is correct and in concurrence between state and federal regulations.

Motion 4 passed.

Relative to the recreational issue, Ms. Vojkovich stated that several questions and analyses were requested under E.4.b and perhaps it would be wise to provide the GMT more time and to come back tomorrow.

Mr. Anderson asked to broaden the discussion. He stated he is not envious of California's dilemma and the data they have to work with. However, he is concerned about the implications and jeopardies for Washington fisheries due to early attainment of OYs. In looking at the lingcod question, he understands the GMT has not had an opportunity to review the analysis, but he is also not at all certain they have time to do that given what they have to do for tomorrow's agenda. Mr. Anderson is apprehensive of sending that assignment back to them tonight. He thinks at some point we need to demonstrate some confidence at this juncture that the recommendation coming back from CDFG is going to accomplish the objective relative to lingcod. There is the issue of the buffer and he would be more comfortable if it was larger than what is estimated to be currently provided. Mr. Anderson stated he has also been focused on the other species recognizing the canary catch estimate is over 18 mt and the scorecard has 8.9 or 8.3 mt. Additionally, black rockfish is a matter of concern.

Ms. Vojkovich appreciated Mr. Anderson's comments and concerns. CDFG is taking the new data and rerunning the projections to get a better feel to how those might impact 2004 management for all species of concern. We are starting that process and by the April meeting they will possibly have a better idea of what the situation might be or projected to turn out to be.

Dr. McIsaac noted the California Fish and Game Commission (CFGC) did delay action on lingcod pending review by the PFMC. The GMT has not reviewed or discussed the analysis. The GMT has been looking into efficiencies and he proposed the GMT discuss it and come back to the Council on Friday morning. Perhaps the GMT could break into subgroups to work on tomorrow's agenda as well as inseason issues.

Dr. Burke echoed Mr. Anderson's comments on the other species of concern, including the problem of looking at a solution which may impact canary negatively. As she looks at the projections and actual catch and the MRFSS situation, we don't have an adequate buffer and cannot afford to close the coast. She does not have a lot of confidence that the GMT would have the time or the available data to fully assess the issues between now and Friday.

Mr. Robinson said we have to take action on lingcod and transmit a recommendation to the CFGC because we have federal size and bag limits starting April 1, 2004. We want to avoid having differences between the state and federal regulations regarding lingcod; for the rest of the species there will not be an inconsistency. Mr. Robinson agreed the GMT workload is huge and stated that moving forward with the analyses we have now, he would suggest a conservative (risk-averse) approach.

Mr. Anderson said if he was forced to make a choice today, he would choose an option with a November-December closure to lingcod, with a size limit close to 30 inches. He has considered the issues for all overfished species in California recreational fisheries and if we learn more as we go through the coming weeks and identify a reason to modify the closure at the end of the year we would have time to do that.

Dr. Burke stated that as the analysis stands, the buffer would be about 50 mt and she is hearing that may not be conservative enough.

Mr. Robinson stated the 50 mt figure originated with the original analysis provided by CDFG that led to the federal action to implement the one fish bag limit and 30 inch size limit in federal regulations. There is additional time to analyze and implement the closure at the end of the year.

Dr. Burke said the buffer started at 50 mt and now it is down to 13 mt.

Mr. Robinson expressed concern with the uncertainty in these estimates and would be uncomfortable with a buffer of less than 50 mt. He was in agreement with what Dr. Burke and Mr. Anderson were proposing.

Mr. Burner noted that some of the numbers in the CDFG report in the table under Option 2 are erroneous. If the Council would like to pursue a decision on this issue that is based on these numbers, the Council should revisit those values with CDFG.

Dr. Burke said we have known this problem existed for a long time and argued for a conservative approach until the GMT has had the time to review and perhaps re-analyze the impacts while trying to account for additional fishing pressures addressed today.

Ms. Vojkovich said the reason we looked for an option with size limits less than 30 inches was due to concerns about canary rockfish. More time on the water in pursuit of lingcod means more interaction with other species. Identifying the size of the buffer this early in the season is a dilemma.

Mr. Anderson asked Ms. Vojkovich if she is suggesting that Option 2 would be accomplished with a different size limit than 30 inches. Ms. Vojkovich said yes, and recommended a lower size limit because of potential canary impacts. She would like this discussion to take place in the GMT. However, she does not feel that there is adequate data to assess these types of trade offs.

Mr. Anderson was concerned we don't have any data to tell us what the corresponding consequences are for canary rockfish. He proposed taking an action at this time to match the federal regulations with a 30 inch size limit and a one fish bag limit with the addition of the November-December closure as a placeholder. This allows the GMT, CDFG, and the Council to consider the impacts of these actions to all species of concern and if there is a justification to modify the action in April we could do that.

Ms. Vojkovich asked what are we gaining by closing the end of the season at this time.

Mr. Robinson said there are two things of concern. One is conforming state regulations to federal regulations to eliminate confusion. The second is having confidence that taking all of the sources of mortality into account, the season structure put in place April 1 will keep fisheries within the OY. Mr. Robinson did not feel convinced at this time that these regulatory changes, including the two month closure is even enough.

Mr. Ticehurst, with regard to the two-month closure at the end of the year, those numbers in the table are wrong and we don't know what the buffer amount would be. All of those numbers have an error and are subject to recalculation. It is hard to say what that two-month buffer would be.

Mr. Anderson said that the calculations under Option 2 are in error, not the calculations under Option 1; and if that is correct we can assume that adding a closure to Option 1 will provide us an additional buffer.

Mr. Anderson moved (Motion 5), relative to the California recreational fishery, that effective April 1, modify the size limit for lingcod, increasing it from 24 to 30 inches; change the bag limit from two to one fish; and close the last two months of the year (Nov/Dec) to the retention of lingcod; additionally, request the CFGC to take reciprocal action for state regulations.

Dr. Burke reinforced that we really have not addressed the other rockfish species.

Ms. Vojkovich said her confidence in a smaller buffer is greater than other Council members. She is confident the new recreational data system in California will give better tracking of recreational catches. She hopes that Council members will remain receptive to new information and maintain the flexibility to revisit these issues later in the year.

Mr. Anderson said there is no pleasure in this whatsoever for anybody and is anxious to make decisions in the future based on better information. He urged CDFG to continue to look into impacts to other overfished species and he is hopeful the new data will help the Council in future decisions.

Motion 5 passed. (Messrs. Roger Thomas and Darryl Ticehurst voted no).

Mr. Burner said there is one other request from CDFG in the recommendations on the first page of Exhibit E.4.b, Supplemental CDFG report relative to bag limit changes.

Ms. Vojkovich moved (Motion 6) that the Council recommend to NMFS to change the federal regulations to reflect the changes in bag limits as presented by California. Mr. Roger Thomas seconded the motion. Mr. Robinson asked if the motion was just for the bag limit changes and did not include recommendations on boat limits. Ms. Vojkovich understood there was some discussion under the salmon agenda items relative to boat limits and she did not include boat limits in her motion.

Motion 6 passed.

E.5. Pacific Whiting Management (03/11/04; 8:54 am)

E.5.a Agendum Overview

Mr. DeVore provided the agendum overview from the briefing book exhibit.

E.5.b Perspectives of the Canadian Government

Mr. Robinson read the Canadian statement into the record (E.5.b, Pacific Whiting Management: Perspectives of the Canadian Government Regarding the 2004 Pacific Hake (Whiting) Fishery). Canadian Government officials were not allowed to testify before the Council due to legal constraints within their own government.

E.5.c Reports and Comments of Advisory Bodies

SSC

Mr. Jagielo provided Exhibit E.5.c, Supplemental SSC Report.

GMT

Ms. Michele Robinson provided Exhibit E.5.c, Supplemental GMT Report.

GAP

Mr. Moore provided Exhibit E.5.c, Supplemental GAP Report.

E.5.d Public Comment

Mr. Mike Okeniewski, Pacific Seafoods, Woodland, Washington
Mr. Jan Jacobs, Pacific Whiting Conservation Cooperative, Seattle, Washington
Mr. Mark Cooper, Midwater Trawlers Cooperative, Toledo, Oregon
Mr. Rod Moore, West Coast Seafood Processors Association, Portland, Oregon

Tribal

Mr. Steve Joner provided comments on behalf of the Makah Tribe. He expressed concerns about constraining the Makah whiting harvest for reasons other than whiting conservation. However, the tribe recognizes the need to limit the bycatch of widow and the challenge which that creates. The tribe is encouraged by the commitment from NMFS and the observer program to address the question of bycatch in the Makah fishery and to resolve the differences in bycatch estimates. The tribe is agreeable to the range of whiting allocations presented in the GMT report and will continue to do their best to take their whiting with the least amount of rockfish bycatch.

E.5.e **Council Action:** Adopt Stock Assessment, Final 2004 Acceptable Biological Catch and Optimum Yield, Exempted Fishing Permit, and Management Measures

Dr. McIsaac asked Ms. Cooney to characterize the nature of the action the Council would have to take to constrain the whiting fishery based on bycatch (widow rockfish) impacts—which might include “inseason action” and/or “emergency action”. Ms. Cooney believes this would not be an inseason action, but would fall into the emergency category. The Council would be setting a reasonable whiting level that is believed to be within the allowable widow bycatch number. If this turned out to be insufficient, an emergency rule to close would be required.

Mr. Robinson said the first step in the process is setting the coastwide ABC/TAC. The $q=1.0$ value is status quo. To over ride status quo, there has to be a superior alternative based on scientific advice. There really isn't an alternative to $q=1.0$; everybody realizes it may not be the true state of nature, but there is no indication there is anything else better. It is hard to see a strong reason to move away from that. He noted the SSC comment on “looking forward”, where they say “if management actions are incorrectly based on a $q=0.6$ (and the true state is more like $q=1.0$) there is a greater than 50% chance the stock will decline below the overfished threshold in 2006. In contrast, if management actions are based on a $q=1.0$ model (and that is not the true state of nature), the stock has a greater than even chance of still being above the overfished threshold in 2006. Therefore, he recommends we stay with $q=1.0$.

Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 9) to accept the new whiting stock assessment and establish a U.S. ABC of 514,441 mt; a U.S. OY at 250,000 mt; and strongly encourage industry members participating in the whiting fishery to identify and share widow “hotspots” and avoid those areas when conducting their whiting fishing activities.

Mr. Brown asked the maker of the motion to include writing a letter to NMFS to request that they reconsider the overfishing declaration on whiting. Mr. Anderson did not oppose it, but asked it be under a separate motion.

Before going further on the decision, Mr. DeVore asked Ms. Robinson to make a slight correction to Table 1 in the GMT statement regarding the sector allocations. Ms. Robinson stated the sector allocations and mother processor values are not correct, but the totals relative to the OY are correct - but the split for the at-sea portion is not as depicted in the table. The sector allocations are in federal rule; all other values in the table are correct.

Mr. Anderson spoke to the rationale behind the motion. In terms of setting the ABC and q factor, he echoed Mr. Robinson's previous comments, the statements from the SSC, and the intent of the US/Canada whiting treaty. He noted there has been a lot of debate about what types of bycatch assumptions to use to calculate the whiting OY. In listening and speaking with industry members this week, he believes they have demonstrated their ability to respond to concerns about bycatch (e.g., yellowtail). Using the weighted average and an OY of 250,000 mt of whiting produces a widow bycatch of 211 mt.--an acceptable level of risk and within the available bycatch (220 mt.).

Motion 9 passed.

Based on the new whiting assessment, the Council agreed to formally recommend that NMFS remove whiting from the overfished list. Hindcasting based on the new assessment indicates that perhaps the stock was never overfished in the first place.

Mr. Anderson stated there were some additional recommendations in the GMT report. With regard to #5, we can consider that in April. There was also a brief discussion earlier on item #6 to identify inseason management actions as emergency actions if there was need to close the whiting fishery due to bycatch impacts. If they did need to close and if such an action were contemplated between council meetings, there should be identification of a process for a conference call. He asked Ms. Cooney to provide comments on that later in this meeting or at the April meeting.

Mr. Robinson said we can give some thought to that: two alternatives - emergency rulemaking now to set up the structure to do it later in the year; or proceed with the scorecard and if it appears it will be exceeded inseason, then use emergency rule making at that time to close it later.

Mr. Robinson reminded the Council of the new requirement for the shoreside whiting sector under the Shoreside Whiting Exempted Fishing Permit in 2004.

F. Pacific Halibut Management

F.1. NMFS Report (03/10/04; 5:24 pm)

F.1.a Status of Council Management Measure Recommendations for 2004

Ms. Yvonne deReynier summarized Exhibit F.1.a, Attachment 1: Proposed Changes to the 2004 Pacific Halibut Catch Sharing Plan and Exhibit F.1.a, NMFS Report: NMFS Update on 2004 Pacific Halibut Management.

F.1.b Reports and Comments of Advisory Bodies

None.

F.1.c Public Comment

None.

F.1.d Council Discussion on Status of Council Management Measure Recommendations for 2004

None.

F.2. Report on International Pacific Halibut Commission (IPHC) Annual Meeting (03/10/04; 5:27 pm)

F.2.a Agendum Overview

Mr. Tracy presented the situation summary.

F.2.b Summary of Meeting

Mr. Anderson presented Exhibit F.2.b, Supplemental Meeting Summary.

F.2.c Reports and Comments of Advisory Bodies

None.

F.2.d Public Comment

None.

F.2.e Council Discussion on Report on International Pacific Halibut Commission (IPHC) Annual Meeting

None.

F.3 Public Review Options for the 2004 Incidental Catch Regulations in the Salmon Troll and Fixed Gear Sablefish Fisheries (03/10/04; 5:35 pm)

F.3.a Agendum Overview

Mr. Tracy presented the situation summary overview.

F.3.b State Proposals for the Salmon Troll Fishery

Mr. Anderson supported the proposals as set forth in Exhibit F.3.e, Supplemental SAS Report.

Dr. Burke supported status quo regulations.

Mr. Larson supported the recommendations of Washington and Oregon.

F.3.c State Proposals for the Fixed Gear Sablefish Fishery

Mr. Robinson asked if there was support for a more conservative option because the sablefish tier limits would increase over 2003.

Mr. Anderson suggested perhaps a ratio of 125 pounds of halibut per 1,000 pounds of sablefish.

Mr. Alverson stated the increase in sablefish tier limits would probably be about 18% to 20% higher this year.

F.3.d Tribal Comments

Mr. Harp provided Exhibit F.3.d, Supplemental Tribal Comments.

F.3.e Reports and Comments of Advisory Bodies

SAS

Mr. Jim Olson provided Exhibit F.3.e, Supplemental SAS Report.

Mr. Tracy asked if the SAS still supported the C-shaped yelloweye conservation area as an area to be voluntarily avoided. Mr. Olson responded yes.

GAP

Mr. Chuck Tracy read Exhibit F.3.e, Supplemental GAP Report.

F.3.f Public Comment

None.

F.3.g Council Action: Adopt Public Review Options for 2004 Incidental Halibut Catch Regulations

Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 7) to adopt for public review the proposed 2004 incidental halibut catch regulations for the salmon troll fishery found on SAS Supplemental Report F.3.e, including the designation of the "C-shaped" yelloweye rockfish conservation area in the North Coast subarea off the coast of Washington. Motion 7 passed.

Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 8) to adopt for public review the proposed 2004 incidental catch regulations for the fixed gear sablefish fishery as follows: Option 1 - restrict landing to 150 pounds (dressed weight) of halibut per 1,000 pounds (dressed weight) of sablefish, and allow two additional halibut in excess of 150 pounds per 1,000 pounds ratio per landing; and Option 2 - restrict landings to 100 pounds (dressed weight) of halibut per 1,000 pounds (dressed weight) of sablefish, and allow two additional halibut in excess of the 100 pounds per 1,000 pounds ratio per landing. Motion 8 passed.

G. Habitat

G.1 Current Habitat Issues (03/11/04; 10:32 am)

Ms. Gilden reviewed the situation summary and noted the HC had developed a new letter (Supplemental Attachment 2).

G.1.a Report of the Habitat Committee (HC)

Mr. Stuart Ellis provided Exhibit G.1.a, Supplemental HC Report. He also provided Exhibit G.1, Supplemental Attachment 2 (draft letter addressed to Mr. Bob Lohn, Regional Administrator, NMFS, on Columbia River hydrosystem summer spills.)

Mr. Harp asked Mr. Ellis about the timeframe for sending the letter. Mr. Ellis said he believed the decision might be made on April 5. He said that if the Council wanted to weigh in on this topic, it should do so at this meeting.

Mr. Coenen said the way the letter is characterized, this would be a single decision that would suspend summer spill indefinitely. Is this the case? Mr. Ellis said it seems BPA would prefer to discontinue the summer spill program; but they have also said they would like to evaluate the changes, which implies that this is a temporary measure that would be monitored. Whether or not it is temporarily is part of the negotiation.

Mr. Coenen asked, are the summer spill provisions that the Council responded to in the 2000 Biological Opinion (BO) being reconsidered in the BO remand? Mr. Ellis said that as far as he knows, all of the RPAs, including those related to spill, are up for reevaluation. Mr. Coenen then asked, if BPA and the action agencies suspend summer spill, will that decision occur before the BO remand is completed, and before any reanalysis of the spill would be completed? Mr. Ellis said that for the summer of 2004, that is correct. The remand deadline is around late summer or early fall. The BO rewrite will not be done in time. The remand may refer to summer spill, but for the summer of 2004 the decision will be made soon, and that will happen outside of finishing the BO rewrite.

Dr. McIsaac asked about the "38,000 to 95,000 adult chinook" mentioned in the letter. Was there a technical committee on CBFWA that reviewed these numbers? Mr. Ellis said CBFWA hired a consultant to write the report, and wasn't sure about the review. Dr. McIsaac asked if there is something in writing from the BPA referring to harvest reductions as mitigation. Mr. Ellis said there is a BPA PowerPoint presentation that he could provide that refers to harvest constraints being used as mitigation.

Dr. McIsaac asked, could the Council consider this letter in April (in regard to timing)? Mr. Ellis said he believed it could be too late to wait until the April meeting.

Mr. Larson echoed the same concerns over the accuracy of the numbers and suggested the letter could be sent if some of the numbers were left out. He suggested wording that could be used.

Mr. Mallet agreed on the importance of sending the letter. The implications for upper river stocks are obvious, and there are implications for endangered stocks for the ocean fishery as well. He agreed with changing the wording and removing references to the actual numbers. Do some fine tuning and send it without waiting until April; otherwise we will miss some of the "spill period."

Mr. Ortmann asked if the lower Snake River dams entered into spill considerations here. Mr. Ellis said most of the change would be in the lower mainstem dams. Historically the spill programs for the Snake River dams were dealt with separately. They are managed separately, but the effects are linked.

Mr. Coenen suggested some editorial changes. Mr. Ortmann suggested that before the Council wordsmith the letter, they hear from the advisory bodies and public.

Mr. Larson asked about Klamath Flow issues. Will the HC have a letter out in time for the Council to consider it in April? Mr. Ellis said the HC would provide a letter for the briefing book mailing. Mr. Larson also asked how the operation of PacifiCorp's dams differ from the Iron Gate Dam project, and how the relicensing affects the Iron Gate operation, which is under control of the Bureau of Reclamation. Mr. Ellis said he didn't know. Mr. Larson said this would be important to address in the future. The Iron Gate operation is significant in how it affects water flows on the Klamath, and if we have an opportunity to discuss that in regard to PacifiCorp's relicensing, we should do so.

G.1.b Reports and Comments of Advisory Bodies

SAS

Mr. Duncan MacLean provided Exhibit G.1.b, Supplemental SAS Report.

G.1.c Public Comment

Mr. Joseph Bogaard, Save our Wild Salmon, Seattle, Washington
Mr. Jeff Feagin, Puget Sound Anglers, Fox Island, Washington
Mr. Duncan MacLean, representing PCFFA, El Granada, California
Mr. Joel Kawahara, salmon troller, Quilcene, Washington

Tribal

Mr. Terry Courtney, Jr. and Mr. Stuart Ellis stepped to the podium. Mr. Courtney provided comments on the summer spill program. The BPA and the Power Planning Council have not consulted with the tribes. Also, the rate of smolt stranding is about 2.2 million below McNary Dam; that number is acceptable to the Federal government. The tribes object to unmonitored spill flows and support breaching the dams.

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

Mr. Coenen noted the HC's recommendation that they come back in April with a letter on the BO remand. A letter could be created that restates the Council's 1999 resolution on the BO. The letter would restate the Council's resolution; support a collaborative process between NOAA Fisheries, the action agencies, states and tribes; and suggest how a new BO could express habitat-related concerns such as flow augmentation, spill, etc. Regarding the summer spills letter, Mr. Coenen said he was uncomfortable about the second to last sentence, which makes a blunt statement of the unacceptability of suspending summer spill. If the BPA were to proceed with this plan, and we found it unacceptable, what do we do? He offered an edit to the letter.

The Council discussed wordsmithing changes to the summer spills letter. Dr. McIsaac suggested that Council staff recraft the letter.

Mr. Mallet moved (Motion 10) to approve the letter as shown in Exhibit G.1, Supplemental Attachment 2 as edited for signature and submission. Mr. Alverson seconded the motion. Motion 10 passed.

Mr. Roth said that USFWS supports the letter. It should also go to BPA, the Army Corps of Engineers, the Bureau of Reclamation, and the US Fish and Wildlife Service. A Council member suggested it go to the NW Power Planning Council as well.

Mr. Gordy Williams noted that Alaska has commented on harvest reductions as well. There were six alternative mitigation processes suggested (to summer spills); the Council should consider if they just want to restrict the letter to harvest restrictions as mitigation.

Dr. McIsaac said that editing would include all of the discussion so far. If the Council wanted staff to review the WDFW letter relative to other mitigation actions and consider that in editing this letter, they would do so. Mr. Ortmann agreed. Motion 10 passed. Mr. Robinson abstained.

Ms. Gilden asked about Council comments on the EFH letter. Dr. McIsaac said that if the Council is interested in taking up the EFH letter and the proposed Klamath letter, they should direct the HC now in order to have them in the April briefing book. The Council concurred and directed the HC to pursue those letters for the April meeting.

Mr. Brown asked if the Klamath Water Users Association had asked to give a presentation to the HC at the April meeting. Ms. Gilden said yes.

G.2 Corals and Living Substrate (03/11/04; 11:34 am)

G.2.a Agendum Overview

Ms. Jennifer Gilden provided the agendum overview.

G.2.b NMFS Report

Dr. Elizabeth Clarke updated the Council on research efforts by NOAA on West Coast corals. They hope to develop a research plan for corals, including monitoring and collection of coral information. They are trying to map the existing information they currently have to provide a background and framework to develop a research plan. They are increasing their collection of coral information; all of the scientists in the monitoring program at the Science Center are using the NOAA protocols for collection of coldwater coral information. So, as much as practical, they are moving forward. She referred the Council to the legislation referred to in the briefing book. This legislation may require mapping coral information. When they have a product they will bring it to the Council and the HC.

G.2.c Reports and Comments of Advisory Bodies

HC

Mr. Ellis provided Exhibit G.2.c, Supplemental HC Report.

Mr. Larson asked if the HC wanted to comment on how this item is related to the next item on the agenda, artificial reefs. Mr. Ellis said the HC didn't discuss them as related topics. Mr. Larson pointed out areas with oil platforms have not been trawled in the last three years, and they are in deepwater habitat areas. Some of the corals do occur in those locations. The relationship between the two topics is important.

G.2.d Public Comment

Mr. David Allison, Oceana, Washington, DC
Mr. Phil Kline, Oceana, Washington, DC

Dr. McIsaac asked whether the legislation discusses things like closed areas where oil platforms have been, and where transitory MPAs have been in effect. Mr. Kline said the legislation doesn't get to that level of detail. The Council should provide input to the senators to let them know its concerns. These issues should be brought up in hearings and later in the process as well. Mr. Kline further discussed the legislation. It has a large research component, including authorization for appropriations for research. Participation from everyone is invited.

G.2.e Council Discussion on Corals and Living Substrate

Mr. Brown said that the director of MCBI, which developed the report that Dr. Clark referred to, is strongly against trawling. With regard to legislation, the protection of habitat and corals is important. He noted that the focus is on mobile bottom-tending gear, rather than the protection of corals. A report by someone at the Alaska Science Center found that in many ways, fixed gear was harder on corals than trawls were, because they tended to fish in tough habitat where corals were likely to be found and where trawls couldn't reach. Corals should be protected from everything, not just mobile gears.

Mr. Alverson said studies had been done by NMFS in Juneau estimating the "footprint" or impact on corals of different gears. Pot gear was at 1%, line gear at 3-4%, and trawl mobile gear at 96% of the impact. But the focus needs to be on the degree of damage and what is being done; not just on "there's a coral, let's close it down." The ability of coral to rebuild itself needs to be taken into consideration, along with dependent fishery resources.

G.3 Artificial Reefs in Southern California (03/11/04; 1:20 pm)

G.3.a Agendum Overview

Ms. Gilden provided the agendum overview.

G.3.b Status Report

Mr. George Steinbach, Executive Director of the California Artificial Reef Endorsement Program (CAREP) provided a briefing on the issue.

Mr. Alverson asked whether platforms would be taken down below the navigable water level, or if they would remain above water. Mr. Steinbach said in the Gulf of Mexico the practice has been to sever the platforms below the waterline at a level to provide adequate clearance for boats - usually around 85 feet below the water line. That is a possibility for the California structures. However, there is some environmental value in retaining that portion of the platform, so we advocate a case-by-case examination.

Mr. Fougner asked if studies were made before and after the removal of the four rigs in the Santa Barbara area to study changes in the presence/absence of fish. Mr. Steinbach was not aware of any formal studies done on this. Post-removal studies have been done, but not pre- and post- comparisons. From diving reports, there was prolific life on the structures before removal, and very little after removal. Mr. Fougner then asked, with regard to the regulations, would they set out a systematic methodology for evaluating case-by-case rig removal, or would they be a general authorization of removal subject to NEPA, etc.? Mr. Steinbach said he wasn't sure, because the regulations are under the purview of NOAA; he guesses it would be closer to the latter than the former. Mr. Fougner said he thought the Minerals Management Service was creating the regulations. Mr. Steinbach said the MMS would be involved; it's possible this will become a MMS regulation. If so, there will be consultation with NOAA.

Ms. Wolfe asked about the depths of the four platforms removed in 1996. Mr. Steinbach thought the depths ranged from 60 feet to 120 feet of water.

Dr. McIsaac noted the Keeney letter suggested these regulations fell under the MMS. Mr. Steinbach said the MMS is the agency responsible for regulating the structures currently. As we move into a post-oil operations mode, we're in uncharted waters. The only example we have is the Gulf of Mexico, where the states are involved. The MMS regulations would need to be modified so that offshore California platforms would have the reefing option available to them. New rules would have to be put into place that fall under NOAA as well. Not sure how that regulatory process will be worked out, but both agencies will need to cooperate. The rigs that this rule would apply to are all in federal waters.

Mr. Fougner said that Mr. Keeney's letter suggests regulations may be changed to allow a nonprofit organization to administer a rigs-to-reefs program. Is CARE the kind of organization that would be interested in doing that administration? Mr. Steinbach said that as currently structured, CARE would have an interest, but probably would not have the management oversight to do this. However, with a different board composition, it might be possible.

Ms. Wolfe asked, in the situation summary there's reference to the NMFS and the Council having been mentioned as candidates on the board of directors authorizing research, conservation and management projects. Dr. McIsaac said that when this was placed on the agenda, there was an expectation that we might be in the middle of a proposed rule on this matter. The Chair and Dr. McIsaac had a meeting with Dr. Hogarth, who brought up the idea of a board administering funding. Dr. Hogarth said the board membership was open and there were ideas put forward that NMFS and the Council could be candidates for seats.

Mr. Alverson asked about the decay rate of these structures once they're cut down. Mr. Steinbach said engineers have estimated that if the structure is below the water line, platforms could last 200-300 years.

G.3.c Reports and Comments of Advisory Bodies

HC

Mr. Ellis provided Exhibit G.3.d, Supplemental HC Report.

GAP

Mr. Moore provided Exhibit G.3.d, Supplemental GAP Report.

Ms. Wolfe said she had been told the platforms can't be removed. Is that accurate? Mr. Steinbach said yes, they can. However, nobody has removed a platform that exceeds about 400 feet of water depth. Some platforms off California are in much deeper water than that, up to 1,200 feet. Some of the techniques to remove them still need to be developed. But in the end, they can be removed if necessary. It will be expensive, and will destroy the marine life that live there.

GMT

Ms. Debra Aseltine-Neilson provided Exhibit G.3.d, Supplemental GMT Report.

Dr. McIsaac asked, with regard to the matter of fishing near these rigs, the statement indicates that fishing is not allowed near the platforms. Is that true for all 26, and if so, how far away from the platforms does the

fishing closure extend? Ms. Aseltine-Neilson said she believed it was due to concerns about being within a certain distance of the rigs, and that it applied to all of them; but she wasn't sure how distant from the rigs people had to stay.

G.3.d Public Comment

Mr. Mike McCorkle, Southern California Trawlers Association, Santa Barbara, California
Mr. Chris Dorsett, The Ocean Conservancy, San Francisco, California
Mr. Duncan MacLean, Humboldt Bay Fisherman's Marketing Association, El Granada, California

G.3.e Council Discussion on Artificial Reefs in Southern California

Mr. Warrens wanted to know if the Gulf Council got involved in these projects in the Gulf, and if there was any record of their deliberations or decisions. Mr. Hansen said he thought they were all state issues, not federal. Mr. Steinbach said there is a National Artificial Reef Plan that was originally written in 1985; in 2002 or 2003 it was updated with involvement of the Gulf and Atlantic Councils. They are involved to some extent.

Ms. Wolfe said, what is the feasibility of requesting a study of this, as suggested by the GAP? Mr. Fougner said he didn't know the process for engaging the National Academy of Sciences in requesting a study, but he would try to find out.

Mr. Mallet said he would like to request that Dr. McIsaac contact his peer in the Gulf Council and find out what they can tell us about their experience with these rigs.

Mr. Hansen said he would like Council staff to track the rule being developed.

H. Marine Protected Areas

H.1 Scientific and Statistical Committee (SSC) Review of Marine Reserves Issues (03/11/04; 2:20 pm)

H.1.a Agendum Overview

Mr. Dan Waldeck

H.1.b SSC Report

Ms. Cindy Thomson provided Exhibit H.1.b, Supplemental SSC Report.

H.1.c Reports and Comments of Advisory Bodies

GAP

Mr. Moore provided Exhibit H.1.c, Supplemental GAP Report.

HC

Mr. Ellis provided Exhibit H.1.c, Supplemental HC Report.

H.1.d Public Comment

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

H.1.e Council Discussion: Consider Adopting SSC Recommendations Concerning Review of Marine Reserves Issues

Mr. Fougner asked if the draft SSC white paper had been provided to Channel Islands National Marine Sanctuary (CINMS) staff for their information? Ms. Thomson noted the draft report had been submitted to the Council for the March 2004 briefing book, but not directly to other parties.

Mr. Fougner suggested the draft SSC report be provided to CINMS staff.

Dr. McIsaac noted the document was publically available on the Council website, and that CINMS would be notified the report was available.

H.2 Update on Other Marine Protected Area Activities (03/11/04; 2:40 pm)

H.2.a Agendum Overview

Mr. Waldeck reviewed the situation summary and briefing material. He read for the record Exhibit H.2.a, Supplemental Staff Report – Supplemental Update on Other Marine Protected Area Activities.

H.2.b Report of the Monterey Bay National Marine Sanctuary

Dr. Holly Price, Monterey Bay National Marine Sanctuary (MBNMS) presented information on several action plans under development at MBNMS. Action plans include special MPAs within MBNMS and habitat impact controls, both of these plans will be developed over the next 2-3 years. Action plans for a ban on krill fishing and inclusion of Davidson Seamount within the MBNMS are on a shorter timeline. MBNMS expects to present information to the Council on krill fishing and Davidson Seamount at the June and September 2004 meetings, respectively.

H.2.c Report on NOAA Workshop

Mr. Waldeck briefed the Council on recent preparations for convening a workshop to discuss science issues underlying MPAs and the role of MPAs in fishery management.

H.2.d Reports and Comments of Advisory Bodies

None.

H.2.e Public Comment

Ms. Kathy Fosmark, Alliance of Communities for Sustainable Fisheries, Pebble Beach, California
Mr. Duncan MacLean, Humboldt Bay Fisherman's Marketing Association, El Granada, California

H.2.f Council Discussion on Update on Other Marine Protected Area Activities

Mr. Brown understands the concerns stated by the fishermen and stated that, personally, he was very concerned with proposed changes to jurisdiction over fishery management matters.

Mr. Svein Fougner asked Dr. Price to clarify what the current actions were.

Dr. Price stated that MBNMS is not currently proposing specific MPAs, i.e., there are no lines on the map. As the special MPA action plan is developed, MBNMS will closely coordinate with the Council and the California Department of Fish and Game Commission. Specific to Davidson Seamount, the information she provided is based on recommendations coming out of MBNMS working groups, which include commercial and recreational fishing representatives.

Relative to Council discussion, Mr. Waldeck noted that, unless the Council had more specific guidance for staff, Council staff will continue to track these issues.

Dr. Price affirmed the intent of MBNMS to present information about krill fishing for Council consideration at the June 2004 meeting.

4 PM Public Comment Period

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

Mr. Bill James, nearshore permit holder, California. Talked about cooperative research. He said there seems to be some research going on without federal oversight (who is funding what?). Given the scant resources, he feels it would be good if the federal scientists could weigh in on the projects that are out there; especially those regarding federally-managed groundfish species. Mr. James also talked about socio-economics and how it has taken the "back-burner". He would like to see value added benefits; i.e., restaurants, tourism revenue being generated - not just exvessel prices in our documents. He would also like to see the cumulative effects of our regulations - those do not seem to be written up at all. He would like to see some sort of qualitative statement put in the documents. There are real people out there when these regulations are being done.

Messrs. Gary Richter and Tommy Ghio. Talked about the rockfish situation (the vermilion rockfish). They felt the OA fishery is out of control. They have VMS on their boats. We need to level the playing field, and we need to do it now. Need to have the VMS on the OA boats "yesterday". Mr. Ghio said there is no way to check the vessels and at least with VMS we will all be on the same playing field.

Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, Oregon. Spoke about VMS, many of those units have an indicator light that they are receiving electricity, they have no way to tell it is actually sending out a signal. The enforcement staff do not have call numbers for the vessels and there is no way for them to get into contact with the vessels in question. Spoke to two instances of problems with the VMS units such as the unit not functioning properly and how that can lead to fines and/or tickets from the enforcement. There are problems with the fact there is no communication.

Mr. Gerry Reinholdt, processor, St. Helens, Oregon. Spoke about salmon marketing. Given the strong marketing structure we have right now with farmed salmon, and the Snake River constraints we're going to have this year, we will now have to absorb impacts of fisheries that are to the north. This implication will place severe constraints on salmon fisheries which will relate to a higher price in salmon and will cut down on the supply as well. We are asked to cover the impacts - and the price will increase. We are also asked to cover the impacts of the salmon for regions where they are deemed sustainable fisheries. This seems to be highly inequitable. This directly translates to higher prices to the consumer. Salmon are a very valuable commodity right now (people eating more due to mad cow diseases, problems with farmed salmon, etc).

Ms. Dorothy Lowman, consultant to Environmental Defense. Spoke about IFQ issues. IQ's could help address the concerns for West Coast trawl fisheries. Felt it is important to fully fund activities relating to IQ programs. We need to relay this message to Congress. Continue to show how the Council, NMFS, industry, can work together to find other funding sources in addition to federal sources. She urged the council to reconfirm the commitment to the process and identify resources that could be directed toward this effort and that they be identified before March 22 (deadline); and make the best use of our existing scarce resources to build upon the IQ program progress. Mr. Brown noted the Council has been consistent with the use of ITQ's and in particular for the trawl fisheries and it was one of the center pieces of our strategic plan for groundfish. He asked if the staff could find out about direct appropriations for funding of this item.

Mr. Dan Wolford, Coastside Fishing Club, Los Gatos, California. Provided a Powerpoint presentation about rockfish initiatives: expanding on independent rockfish catch assessment and developing study of rockfish release mortality.

ADJOURN

The 172nd Council meeting was adjourned on Friday, March 12, 2004 at 11:30 am.

DRAFT VOTING LOG
Pacific Fishery Management Council
March 7-12, 2004

Motion 1: Approve the agenda as shown in Exhibit A.4, Council Meeting Agenda, March 2004 with the following changes: under Agenda Item B.1b, delay the November 2003 minutes until the April meeting; delete Agenda Item E.4.c; insert C.3 between C.7 and C.8; consider at the end of the day on Wednesday to include a Council discussion of the April agenda; under C.1, add a presentation by Dr. Gary Morishima on FRAM; defer the September minutes approval to Friday; under C.2, between the STT Report and C.2.b, insert a report by Captain Mike Cenci to provide an overview of WDFW overfishing compliance report.

Moved by: Jim Harp
Motion 1 passed.

Seconded by: Eric Larson

Motion 2: Delay the approval of the September minutes until Friday as they were included in the supplemental material and approve the June minutes as submitted with a correction by Mr. Anderson on page 19—change the sentence that says “He also expressed concern with using observers as EFP compliance monitors” to “He recognized there are some people that have concerns with using observers as EFP compliance monitors”.

Moved by: Ralph Brown
Motion 2 passed.

Seconded by: Jim Harp

Motion 3: Adopt the lingcod assessment as revised in Exhibit E.2.a, Attachment 2 and adopt the cabezon assessment with the model recommended by the SSC as provided in Exhibit E.2.b, Supplemental SSC report.

Moved by: Marija Vojkovich
Motion 3 passed.

Seconded by: Phil Anderson

Motion 4: Utilizing the document Exhibit E.4.c, Supplemental GMT Report, page 5, adopt the following GMT Recommendations:

Recommendation number 1 (reword the last phrase to read “and recommend to CA a change in state regulations to conform to federal regulations”), 3, 4, 5, skip 6, and add a seventh to approve Option 2 in Exhibit E.4.d, Supplemental EC Report; also, include recommendation 2 for the GMT report, but modify the Cordell Banks closure descriptions to be consistent with the GAP recommendation.

Moved by: Phil Anderson
Motion 4 passed.

Seconded by: Bob Alverson

Motion 10: Approve the letter submitted by the Habitat Committee regarding the Columbia River Spill Program as shown in Exhibit G.1, Supplemental Attachment 2 as edited for signature and submission.

Moved by: Jerry Mallet
Motion 10 passed.

Seconded by: Bob Alverson

Motion 11: Approve the September Council meeting minutes as provided in Exhibit B.1, Supplemental Draft September 2003 Council Minutes.

Moved by: Ralph Brown
Motion 11 passed.

Seconded by: Bob Alverson

Motion 12: Adopt the report of the Legislative Committee as provided in Exhibit B.2.b, Supplemental Legislative Committee Report).

Moved by: Bob Alverson
Motion 12 passed.

Seconded by: Ralph Brown

Motion 13: Appoint Ms. Jamie Goen to replace Ms. Becky Renko as the first NWR designated seat, and Mr. Merrick Burden as the second NWR designated seat on the Groundfish Management Team.

Moved by: Bill Robinson
Motion 13 passed.

Seconded by: Ralph Brown

Motion 14: Appoint Mr. Hal Weeks to replace Ms. Arlene Merems as the ODFW designated seat on the Habitat Committee (HC); appoint Mr. Huff McGonigal to fill the new National Marine Sanctuary position on the HC; and appoint Ms. Teresa Scott to replace Ms. Cindy LeFleur as the WDFW designated seat on the HC.

Moved by: Phil Anderson
Motion 14 passed.

Seconded by: Mark Cedergreen

Motion 15: Appoint Mr. Stephen G. Fosmark as the commercial gillnet fisheries representative on the Highly Migratory Species Advisory Subpanel.

Moved by: Marija Vojkovich
Motion 15 passed.

Seconded by: Roger Thomas

Motion 16: Appoint Mr. Marion Larkin as the Washington trawl fisheries representative on the Groundfish Advisory Subpanel (GAP); Mr. Kelly Smotherman as the Oregon trawl fisheries representative on the GAP; and Mr. Tommy Ancona as the California trawl fisheries representative on the GAP.

Moved by: Neal Coenen
Motion 16 passed.

Seconded by: Ralph Brown

Motion 17: Approve the April 2004 agenda as shown in Exhibit B.4.a, Supplemental Second Revision Attachment 2 with the modifications as discussed by the Council members, Executive Director, and Deputy Director.

Moved by: Phil Anderson
Motion 17 passed.

Seconded by: Bob Alverson

Motion 18: Approve the April Agenda as set in Motion 17, but with the **removal** of coastal pelagic species from the agenda (delay until June Council meeting).

Moved by: Frank Warrens
Motion 18 passed.

Seconded by: Bob Alverson

Motion 19: Using Exhibit C.9.b, Supplemental STT Report, the delivery language in Option II for the July to September commercial fishery north of Cape Falcon be included in the May to June fishery for the same area. The delivery language in all Options will also include the statement that this is required by state regulations.

Moved by: Frank Warrens
Motion 19 passed.

Seconded by: Neal Coenen

Motion 20: Adopt for public review the options, as presented in Exhibit C.9.b, Supplemental STT Report as revised by Motion 19.

Moved by: Phil Anderson
Motion 20 passed.

Seconded by: Bob Alverson

Motion 21: Adopt for the 2004 treaty ocean troll salmon season as provided in C.9.e, Supplemental Revised Treaty Troll Options, March 2004.

Moved by: Jim Harp
Motion 21 passed.

Seconded by: Frank Warrens

COUNCIL COMMUNICATION PLAN - PHASE I
(COMMUNICATION DURING COUNCIL SESSION)

Situation: In April 2003, following a presentation based on the publication *An Investment in Trust: Communication in the Commercial Fishing and Fisheries Management Communities*, the Council directed a work group under the guidance of Council staff to develop a communication plan. This group, informally known as the Communications Enhancement Team (CET), includes members of the Council, the Council staff, advisory subpanels, National Marine Fisheries Service, and Oregon Sea Grant.

In order to best address the complex issue of communication, the CET divided the task into three parts, or settings. The first part focuses on communication in the setting of the Council chamber, during Council meetings. The second part will focus on communication between advisory bodies and the Council during Council meeting week, including communication within and between advisory bodies and technical teams. The third part will focus on communication between constituents and Council members and advisory body representatives.

Attachment 1 represents the first part of the plan. This document also includes terms of reference and background about the project.

The goal of enhancing communication through this effort is for all people involved in the Council process to clearly understand how the fisheries management process works; understand how to effectively involve themselves in the process; be able to express their views clearly, and in a timely way, within the process; and feel that their views have been heard and respected.

The CET strongly believes that communication should enhance, not hinder, the management process. The CET provides the suggestions contained in the Action Plan as guidelines, rather than a new level of bureaucracy. Many of the suggestions could require additional staff time and financial resources that may or may not be available. In addition, it is important to note that many of the actions listed here are already being undertaken to some extent by Council staff.

The development of a communications plan is intended to be an open and continuous process; as such, it is a “living document” that may be revised multiple times in the future. Improving communication and creating trust will also require the involvement of many people, including Council and advisory body members, agency staff, representatives of stakeholder groups, and members of the public.

The task for the Council is to consider Phase I recommendations and to provide guidance on refinements, revisions, implementation, and how to proceed with Phase II and III of the Communication Plan.

Council Task:

- 1. Consider Phase I recommendations; provide guidance on refinements, revisions, implementation, and how to proceed with Phase II and III of the Communication Plan.**

Reference Materials:

1. Exhibit B.2.a, Attachment 1: The Council Communication Enhancement Process Action Plan (Table of Contents and Chapters I and II).

Agenda Order:

- a. Agendum Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. Council Guidance on Phase I and Final Communication Plan

Jennifer Gilden

PFMC
06/02/04

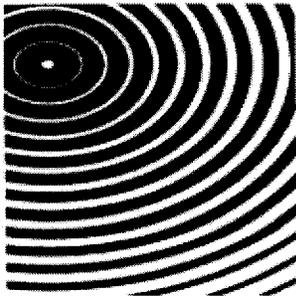
Investing in Trust:

**The Council Communication
Enhancement Process Action Plan**

5/20/04 Version

Table of Contents

Chapter 1:	Terms of Reference / Background
Chapter 2:	Setting One: Communication During Council Proceedings
Chapter 3:	Setting Two: Communication Between Advisory Bodies and the Council during Council meeting week (including communication within and between advisory bodies and technical teams)
Chapter 4:	Setting Three: Communication Between Constituents and Council Members and Advisory Body Representatives.
Chapter 5:	Relationship and Perceptions
Chapter 6:	Summary



Chapter 1: Terms of Reference and Background

Introduction

In April 2003, the Pacific Fishery Management Council directed a group of agency staff to develop a communication plan. This document includes terms of reference, background, and the first chapter of the action plan for enhancing communication in the Council process. The goal of this effort is to create “best practices” for communication in fisheries management.

This effort was inspired by the publication *An Investment in Trust: Communication in the Commercial Fishing and Fisheries Management Communities*, which is based on a study of communications conducted by Jennifer Gilden and Flaxen Conway for Oregon Sea Grant (2002). *An Investment in Trust* describes current communication issues and challenges, and presents a series of recommendations for improving communication in fisheries management.

The current project was spearheaded by an unfunded, informal group of agency and Sea Grant staff. The group has met seven times and has expanded to include representatives from most Council advisory subpanels.

Problem Statement:

Communication Related to Fisheries Management

Many people in the fisheries management and fishing communities feel that communication between the groups needs to be improved. However, improving communication will require effort from both the fishing and management communities. It is neither fair nor realistic to expect one community to single-handedly solve current communication problems.

Challenges to communication, and some potential solutions, were gathered and described in *An Investment in Trust*, which was based on interviews with members of the fishing and fisheries management communities. Chronic and acute crises in fisheries have exacerbated communication problems. Both managers and fishing community members are under stress, increasing their need for clear communication while decreasing their ability to communicate clearly.

In the Council arena, many communication efforts rely on formal methods. Formal communication is the result of procedural mandates, and includes efforts such as environmental impact statements, *Federal Register* notices, public hearings, Council meetings and advisory body meetings. Informal communication includes efforts such as educational outreach materials, websites and newsletters (which do not have Federal mandates), informal meetings and workshops, and person-to-person communication. Both types of communication are suited to particular purposes, and both have pros and cons.

Factors within both the fisheries management community and the fishing community that exacerbate, or are symptoms of, communication problems include the following. (These are generalizations; not all members of either community share these traits.)

- Complex nature of information that must be communicated
- Tendency of the media to simplify and polarize issues
- Distrust and lack of respect for other communities
- Lack of clarity about agency roles regarding informal communication
- Varying levels of awareness about the importance of communication
- Varying levels of personal motivation to communicate
- Fluctuating levels of outreach effort
- Cultural and personal differences that muddle communication

Factors within just the fishing community that exacerbate, or are symptoms of, communication problems include the following:

- Confusion about what federal and state agencies do
- Perception that managers and scientists are not accessible, and/or are not interested in listening
- Beliefs that management wants to shut down the fishing industry
- Need to feel that concerns have been heard, even when management decisions don't fulfill hopes or expectations
- Competition and lack of cohesion, making it difficult to disseminate information or speak with a unified voice
- Economic and social stress, reducing people's capacity or willingness to communicate
- Involvement in management limited to a small, core group of people, while most are disengaged

Factors within the fisheries management community that exacerbate, or are symptoms of, communication problems include the following:

- Overwork and lack of funding, leading to a reactive rather than proactive system
- Low prioritization of informal (person-to-person) communication
- Federal mandates limit available options, resulting in the impression that managers are not listening or reacting to fishing community concerns
- Formal Federal communication methods are not highly successful in reaching average fishing community members
- *Federal Register* notification requirements reduce flexibility in communicating

The people who work and interact with the Council have a wide diversity of expertise and communication styles. This diversity is both a great strength and a great challenge. This project focuses on assuring effective information exchange so these diverse perspectives are heard and considered when final decisions are made.

Composition

As of May 2004, the following people were involved, either directly or as advisors, in the process:

Flaxen Conway	Oregon Sea Grant Extension
Steve Copps	NMFS Northwest Region
Jennifer Gilden	Pacific Council
Fran Recht	Habitat Committee
Suzanne Russell	NMFS Northwest Fisheries Science Center
Janet Sears	NMFS Northwest Region
Don Stevens	Salmon Advisory Subpanel
Dayna Matthews	Enforcement Consultants
Rod Moore	Groundfish Advisory Subpanel
Heather Mann	Coastal Pelagic Species Advisory Subpanel
Kate Wing	Highly Migratory Species Advisory Subpanel

The principal responsibility of this group is to carry out the terms of reference for this process, the purpose of which is to help the Council family understand the communication enhancement process, and to ultimately enhance communication.

Improving communication and creating trust will require the involvement of many people, including Council and advisory body members, agency staff, representatives of stakeholder groups, and members of the public. Involvement will need to take place at many levels, from providing suggestions for improving communications to actively creating and implementing the action plan.

Goals of the process

The goal of enhancing communication through this effort is for all people involved in the Council process to:

- Clearly understand how the fisheries management process works.
- Understand how to effectively involve themselves in the process.
- Be able to express their views clearly, and in a timely way, within the process.
- Feel that their views have been heard and respected.

It will take time for these goals to be realized. While improved communication will not solve all fisheries-related problems, good communication is essential for effective fisheries management. Improvements in communication can lead to a better understanding of the management process, more effective involvement and increased trust by participants, and, ultimately, better management of our fisheries.

However, communication should enhance, not hinder, the management process. The suggestions laid out in the Action Plan are guidelines, and should not represent a new level of bureaucracy. Many of the suggestions could require additional staff time and financial resources that may or may not be available. In addition, it is important to note that many of the actions listed here are already being undertaken to some extent by Council staff.

Objectives

The objectives for reaching these goals are to:

- Use the recommendations set out in *An Investment in Trust* as a springboard for improving communication efforts
- Develop a flexible, organic communications action plan that describes specific ways to improve communication
- Involve advisory body members in developing the action plan
 - Propose choosing a lead person from each advisory body to be the liaison between the communications group and the advisory committee
 - For each Council meeting, develop a place holder on each advisory committee agenda to have regular updates regarding communication
- Address communication on the following levels:
 - actions that can be undertaken on an individual level (by Council staff, Council members, advisory body members, and NMFS staff)
 - actions that can be undertaken by the Council (and NMFS) as a whole
 - actions that can be undertaken by advisory bodies
- Conduct the work in a transparent and inclusive manner
- Update the Council consistently on the progress of these efforts

Structure of the Plan

This plan aims to enhance communication by identifying and describing communication tools and processes. Tools include such items as the Briefing Book and printed materials placed on the back table of the Council chamber. Processes include Council decision making and the process of creating and following the Council agenda.

Each element includes a section providing context and a table that contains the core components of the action plan:

1. A description of one or more issues or problems associated with the element. These are issues that could be addressed to enhance communication and improve trust.
2. A list of potential action(s) that address the issues. (Some actions might address one issue while others address multiple issues.)

Once the Council has approved the action plan, the actions should be taken by the Council in a timely manner.

Communication settings

Communication occurs on many levels. In order to simplify the task of improving communication in the Council process, we have focused on communication in three settings. At present, the document only includes Setting One (communication in the Council chamber, while the actual Council session is taking place). Setting II of the plan will focus on communication between advisory bodies and the Council during Council meeting week, including communication within and between advisory bodies and technical teams. Setting III will focus on communication between constituents and Council members and advisory body representatives.

Some final words

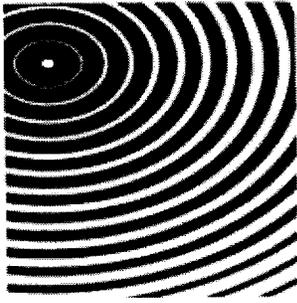
The development of a communications plan is an open and continuous process; therefore, this is a “living document” that may be revised multiple times in the future. Many of the solutions listed here have already been undertaken, or will be undertaken soon by Council staff or others.

Improving communication and creating trust will also require the involvement of many people, including Council and advisory body members, agency staff, representatives of stakeholder groups, and members of the public. Involvement will need to take place at many levels, from providing suggestions for improving communications to actively creating and implementing the action plan. We welcome input from those who participate in and communicate with the Council. Is this effort on track? Are the elements, context, issues/problems, and potential actions described accurately? Should any additional elements or issues/problems be listed? Are the suggested potential actions appropriate or effective? Are there additional potential actions that could help address these problems?

Informing oneself about management is an individual responsibility. However, communicators also need to ensure that their messages are clear and understandable from a wide variety of perspectives.

Definitions

Throughout these documents we use the terms “fisheries management community” and “fishing community.” By “management” we mean the various fisheries management agencies (including, but not limited to National Marine Fisheries Service, the Pacific Fishery Management Council, state fish and wildlife departments, and the Pacific States Marine Fisheries Commission), staff, scientists, Council members, Council advisory body members, and other policymakers. By “fishing community” we mean fishing families, fishing family businesses, fishermen and women, fishermen’s wives groups, industry support groups, processors, and service/suppliers.



Chapter 2: Communication During Council Proceedings

This setting focuses on communication in the Council chamber, while the actual Council session is taking place.

Tools

This section focuses on four major tools:

1. The Briefing Book
2. Presentations and Visual Aids
3. Supplemental Materials
4. Back-Table Materials

1. The Briefing Book

Council members, Council staff and chairs of advisory bodies and committees receive a copy of the Council Briefing Book. The Briefing Book contains summaries of each agenda item (“situation summaries”), reports and materials for each agenda item, and written public comment. Because of the size of the Briefing Book, and the effort required to create it, Briefing Books are not available to the general public, and members of advisory bodies (other than chairs) do not receive them. However, the Council has begun to place Briefing Book materials on its website.

There are two Briefing Book deadlines. The first (and main) deadline is approximately two and a half weeks before the Council meeting (see footnote, page 13). Public comments and reports supplied before this deadline are included in the Briefing Book. The second deadline is known as the “supplemental” deadline. Public comments and reports provided by this deadline are distributed to Council members at the Council meeting.

The Briefing Book is often very large. There is a tradeoff between providing the proper amount of information to advisory body members and providing too much information (in terms of both preparation and information overload). Also, communication needs differ for agency appointees and private citizens serving on the Council. Agency appointees tend to have staff who can conduct research and help the Council members digest the material.

<i>Issue/Problem</i>	<i>Potential Action to Address Issue</i>
The Briefing Book does not include sufficient background information on complex topics.	<ul style="list-style-type: none"> • Continue to prepare information sheets (or backgrounders) on timely topics. • Put relevant fact sheets on the back table, next to related Briefing Book materials.
Some meeting attendees are not aware that Briefing Book materials are available to them.	<ul style="list-style-type: none"> • Publicize the fact that the Briefing Book is available on the web site, and parts may be obtained by calling the Council office. • Post a sign clarifying that Briefing Book materials are available on the back table. • Make one or two bound Briefing Books available to the public for reference.
Others?	<ul style="list-style-type: none"> • Others?

2. Presentations and Visual Aids

The Council often sees presentations by scientists and the public. As with the Briefing Book, presentations face a tradeoff between detail and clarity. The Council and public need enough information to be informed, but not overwhelmed. There are two general types of presentations—those prepared in advance of the meeting (such as presentations by “outside” scientists); and presentations of new information developed during the Council meeting (such as information from advisory bodies such as the Groundfish Advisory Subpanel). In addition, presentations are of varying quality and clarity. Ensure guidelines are not so rigid that they create another level of bureaucracy.

<i>Issue/Problem</i>	<i>Potential Action to Address Issue</i>
Presentations need to be clear to both the Council members and the public.	<ul style="list-style-type: none"> • Create Guidelines for Presenters. Describe a) what the Council needs to know in order to make a decision (such as a summary of the issues, methods, assumptions, and conclusions) and b) formatting suggestions (font size, use of acronyms, number of bullets per page, number of slides, how to match amount of information presented with time allocated, etc.).
Presentation and table text is often too small to read.	<ul style="list-style-type: none"> • Request that presenters follow the Guidelines for Presenters (above). Use handouts in addition to or instead of overheads or PowerPoint presentations when a lot of detailed information needs to be presented.
Others?	<ul style="list-style-type: none"> • Others?

3. Supplemental Materials

Two types of supplemental materials are presented to the Council: those that arrive late in the process, and those created during the Council meeting.

<i>Issue/Problem</i>	<i>Potential Action to Address Issue</i>
The public doesn't know when new supplemental materials are introduced into the Council discussion.	<ul style="list-style-type: none"> The Chair or staff should point out when new supplemental materials have arrived.
The public and advisory body members get confused when there are multiple versions of the same report or document on the back table at once.	<ul style="list-style-type: none"> If possible, do not place multiple versions of the same document on the back table at the same time. When there are multiple versions of a report, post the time and date prominently on them (for example, in the upper-right-hand corner) so readers know what time each version was created.
Council members, advisory body members and/or the public don't have time to evaluate newly introduced supplemental materials.	<ul style="list-style-type: none"> When practical, the Chair or staff could recommend a short break when materials need to be read.
Advisory body chairs sometimes don't get supplemental reports until after the Council has received them.	<ul style="list-style-type: none"> When possible, distribute supplemental materials to the Council and the public as soon as they are available. (This immediate distribution would need to be weighed against the desire not to interrupt the Council process.)
Others?	<ul style="list-style-type: none"> Others?

4. Back-Table Materials

Copies of situation summaries, agendas, reports, and supplemental materials are placed on a table at the back of the Council chamber.

<i>Issue/Problem</i>	<i>Potential Action to Address Issue</i>
The presence of back-table materials in the Council chamber encourages people to talk during the proceedings.	<ul style="list-style-type: none"> When possible, put back-table materials in the hall outside the Council chamber.
People who are not familiar with the system do not understand the codes in the upper right hand corner of the back-table and supplemental materials.	<ul style="list-style-type: none"> Create an information sheet that explains how materials are coded. Clarify labeling. For example, use "Agenda Item" instead of "Exhibit Number" on labeled materials.

Sometimes there are not enough copies of documents available, especially for important issues (trip limits, proposals, and final reports).	<ul style="list-style-type: none"> • Make more copies of handouts for controversial or important issues. (It is Council policy to distribute additional copies of handouts that are likely to be in high demand, but delays can be caused by the limited number of photocopiers.)
Others?	<ul style="list-style-type: none"> • Others?

Processes

This section focuses on five major processes:

1. Following the Agenda
2. Understanding the Council Process
3. Providing Public Testimony
4. Council Decision-Making; Motions and Justification for Decisions
5. Distractions During Council Proceedings

1. Following the Agenda

The Council works off an agenda that is drafted at the previous Council meeting. Agendas are posted on the Council’s website, sent to a large mailing list, and provided on a table at the back of the Council chamber.

Agendas for the next Council meeting are usually discussed on Friday of the Council meeting. During the weeks following the meeting, a draft agenda is developed by Council staff. The agenda is then finalized on the first day of the subsequent Council meeting.

At the Council meeting, each agenda item is addressed by the Council as it comes up in the schedule. First, a Staff Officer presents the Council members with an overview of what to expect during the agenda item. This overview is essentially the same as the “situation summary” which is provided in the Briefing Book. This may be followed by presentations or discussion of the particular topic; by advisory body comments or reports; and by public comment. Finally, the Council discusses the topic and may vote on it.

The agenda is often very full. Overcrowding of the agenda can lead to many problems including schedule changes and limited time for deliberations or public comment.

Keeping the public up to date about the status of the agenda is a challenge. While the Council is making a renewed effort to maintain the agenda schedule, changes are sometimes inevitable and even desired in certain circumstances. Each morning staff are notified about possible agenda changes, and they pass this information along to their advisory bodies. In addition, a sign with the current agenda item is placed in the Council chamber and is updated by staff. When available, the agenda is also posted on an in-house television channel. The availability of this feature depends on the hotel’s facilities.

One challenge in tracking the agenda is that Council staff do not want to either prevent the Council from making necessary schedule changes, or provide a false sense of security to the public regarding the Council's schedule. In other words, there is no way to ensure that the agenda absolutely will not change. This must be kept in mind when providing updates to the public about the status of the agenda.

<i>Issue/Problem</i>	<i>Potential Action to Address Issue</i>
<p>At Council meetings, schedules sometimes slip, so the Council must modify the agenda during the course of the meeting. Such changes to the agenda are not always communicated to the attendees. At times it can be difficult to find out when items are going to show up on the agenda.</p>	<ul style="list-style-type: none"> • Have a white board or some similar system placed <i>outside</i> the Council room door that notes what agenda item the Council is currently addressing, and the estimated time for other agenda items. • When possible, advise advisory body chairs when the Council agenda changes (this is already done to some extent.) • If possible and financially feasible, use an in-house telephone number to provide a voicemail message that provides updates on Council progress and explains when agenda items are likely to be covered. • If possible, post changes to the agenda and updates on the status of the agenda on a closed-circuit hotel TV channel (both in rooms and on a monitor outside of the Council chamber).
<p>Advisory body members don't always know what the Council wants from them in terms of commenting on agenda items.</p>	<ul style="list-style-type: none"> • Have the committee Chair walk through the agenda in advance with the committee's staff person to determine what the Council wants the committee to comment on.
<p>Advisory body members would like more detail about agenda items (and Council action) that they are not specifically requested to comment on by Council staff.</p>	<ul style="list-style-type: none"> • Publicize the fact that Briefing Book materials are posted on the web. • Consider providing a CD with Briefing Book materials to the advisory bodies as part of their committee mailings. • Ensure situation summaries include a clear description of the action to be taken by the Council.
<p>The advisory body/Council agenda often requires people to be in many places at once.</p>	<ul style="list-style-type: none"> • Consider implications for advisory bodies when the Council sets the agenda. • Divide advisory bodies into subcommittees or designate representatives to attend other meetings when possible.
<p>Others?</p>	<ul style="list-style-type: none"> • Others?

2. Understanding the Council Process

Stakeholders have the opportunity to participate in the Council process at virtually every level of fisheries management. The Council meets for four days, Tuesday through Friday, with advisory bodies meeting on Monday. With the exception of a brief closed session in which the Council discusses personnel and litigation issues, the remainder of the meeting is open to all members of the public.

At the start of each day the Chairman reviews the day's agenda and entertains changes that are required in order to meet scheduling conflicts. Next, the Council moves through the agenda as described under "Following the agenda," above.

Although this process is fairly straightforward, it can be confusing for people who are new to Council meetings or who attend only occasionally.

<i>Issue/Problem</i>	<i>Potential Action to Address Issue</i>
<p>New Council members, advisory body members, and the public need to understand how the Council process works.</p> <p>Note: Some orientation materials are already given to new advisory body members.</p>	<ul style="list-style-type: none"> • Conduct orientations or a "Council Process 101" class for all interested parties, with both experienced Council/advisory body members involved. Orientations could be held twice a year on the Sunday of a Council meeting. If it is not possible to schedule such an orientation, create a system where experienced members can orient new members individually. • Create written orientation materials. • Promote the recently-created Guide to the Council Process and print hard copies of the Guide to distribute.
<p>It is unclear how information reaches the Council, and through whom. People need to know when and how to provide input to the Council process in order to be most effective.</p>	<ul style="list-style-type: none"> • Use handouts, orientations, or a guide to explain how the process works. • Clarify which Council meetings are focused on which fisheries, so people know which meetings to attend. • Emphasize the desirability of getting testimony in on time to be included in the Briefing Book. • Emphasize how members of the public can get involved with advisory bodies.
<p>It is difficult for people in the Council audience to understand the context of agenda items and the decision to be made.</p>	<ul style="list-style-type: none"> • Use a handout or orientation session to direct people to the "Situation Summaries." • Place fact sheets on complex topics near the situation summaries.
<p>Others?</p>	<ul style="list-style-type: none"> • Others?

3. Providing Public Testimony

Public comment during Council meetings is an important part of the fisheries management process and is an important opportunity for stakeholder involvement in the process. Public comments are always accepted before any Council action. While this chapter focuses on events that happen within the Council meeting setting, it is important to note that written public comments received by the Council office by the Briefing Book deadline¹ are included in Council members' Briefing Books, which they review before the meeting. This is one of the most effective ways for stakeholders to communicate their positions on important issues. Written comments provided before the meetings, followed by oral testimony at the meetings, provides an optimal level of input to Council members.

There are two settings at Council meetings where it is appropriate to provide oral public comment. If the comment pertains to an issue that is not on the Council's agenda, comments are taken at a prescheduled time, usually 4:00 p.m. on the Tuesday of the meeting. Members of the public may comment on any issue not on the agenda for the current meeting. Comments related to issues on the agenda are generally taken once advisory body reports have been provided, and before Council discussion and action. Members of the public who request the opportunity to provide oral comment or testimony at the meetings are required to complete a "public comment card." Blank cards are located on the staff table near the entrance to the meeting room. Members of the public must complete the information requested on the card and submit the card to the staff person, who gives all completed cards to the Council Chair before the public comment period begins.

Once public comment has begun on an issue, additional cards are not accepted. Council operating procedures state that individuals shall have five minutes each to provide comments and individuals representing groups shall have ten minutes to provide their comments. Once the comment has been provided, the Chairman will invite Council members to question the commenter as appropriate.

Written public comments are also accepted during Council meetings. Interested persons should bring 40 copies of their written public comment and deliver them to the Secretarial Center. Staff there will ensure that the comments are distributed at the appropriate time.

<i>Issue/Problem</i>	<i>Potential Action to Address Issue</i>
Providing public testimony at Council meetings can be uncomfortable and intimidating. People don't always know the procedure for testifying.	<ul style="list-style-type: none"> • Have a sign posted outside the Council room that explains how to give testimony, and a handout/outline available for reference. • When the Chair invites testimony, he or she could explain a) the process and function of testifying effectively, and b) what the Council would like to hear from the public.

¹ The Briefing Book deadline falls 2-3 weeks before the Council meeting. The date is posted on the Council website, listed in the newsletter, and is available by calling the Council office.

Members of the public expect to be given their allotted amount of time to testify, and sometimes they are cut off due to time constraints or for other reasons.	<ul style="list-style-type: none"> Whenever possible, the Chair should allow the allotted time for public testimony stated on the Council's website (5-10 minutes).
Others?	<ul style="list-style-type: none"> Others?

3. Council Decision-Making: Motions and Justification for Decisions

The text of motions is an extremely important part of the Council process, with implications for both natural resources and livelihoods. Motions need to be clear to Council members, advisory bodies, and the public. All parties need to understand what the Council is voting on, assure the motions accurately capture the language in the advisory body suggestions (if so desired), or otherwise clearly articulate policy direction/decisions.

<i>Issue/Problem</i>	<i>Potential Action to Address Issue</i>
It is difficult to keep track of motions and friendly amendments to motions.	<ul style="list-style-type: none"> Place a large screen in the Council chamber to show motion text and have one person whose job it is to update the motion continuously. Require that all major or complex motions be in writing and projected on screen as they are developed.
The justification for the Council's decisions, and a record of how the Council addressed a particular issue, need to be made clear.	<ul style="list-style-type: none"> Having motions in writing would help address this. When possible, explain the rationale for controversial or important motions and votes, either in writing or orally.
Others?	<ul style="list-style-type: none"> Others?

4. Distractions during Council Proceedings

The Council chamber is the center of activity during Council meeting week. People often meet there to discuss issues while keeping track of Council deliberations. However, high noise levels can make it difficult for the audience to hear Council proceedings. While the noise level in the Council chamber is under the control of the Council Chair, some measures may reduce noise before it becomes a problem.

<i>Issue/Problem</i>	<i>Potential Action to Address Issue</i>
People who talk in the back of the Council room distract attention from the Council proceedings. The noise makes it difficult to hear Council proceedings.	<ul style="list-style-type: none"> • Put back-table documents outside the Council chamber when possible. • Place a closed-circuit TV monitor outside the Council chamber to allow people to watch and talk in the hall. • Post a sign requesting silence. • The Chair could remind people to be quiet when necessary.
Others?	<ul style="list-style-type: none"> • Others?

References

Gilden, Jennifer D., and Flaxen D.L. Conway. 2002. *An Investment in Trust: Communication in the Commercial Fishing and Fisheries Management Communities*. Corvallis, Oregon: Oregon Sea Grant publication ORESU-G-01-004.

STATEMENT OF THE GROUND FISH ADVISORY SUBPANEL
ON THE COUNCIL COMMUNICATION PLAN

The Groundfish Advisory Subpanel (GAP) briefly reviewed the report on Phase I of the Council Communication Plan.

Although the GAP did not have time for an in-depth discussion of the plan's recommendations, many GAP members commented on the several useful proposals that are contained in the plan.

The GAP believes that good communication within the Council system and between the Council and its constituents is important, and that efforts to improve communication should continue to be made.

PFMC

06/15/04

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON
COUNCIL COMMUNICATION PLAN - PHASE I (COMMUNICATION DURING COUNCIL
SESSION)

The Scientific and Statistical Committee (SSC) reviewed the Council Communication Plan – Phase I (Exhibit B.2.a, Attachment 1) that focuses on communication in the Council chamber during Council meetings. As noted in the plan, the SSC recognizes that tracking Council motions and decisions can be confusing. The Council’s Decision Document provides helpful information, but often, the text of complicated motions is not included. Measures to clarify the policy decision process outlined in the plan would be beneficial to all parties.

The SSC notes that input from the technical teams and the SSC to the Communication Enhancement Team will be important in Phases II and III of the plan, especially as it relates to the use of scientific and technical information within the Council family.

PFMC
06/14/04

HABITAT COMMITTEE COMMENTS ON
COUNCIL COMMUNICATION PLAN - PHASE I
(COMMUNICATION DURING COUNCIL SESSION)

The Habitat Committee (HC) supports the effort to develop a communications plan, and encourages the Council to support the Communications Enhancement Team in its efforts. The HC's representative, Ms. Fran Recht, participated in the development of the communications plan at a recent meeting in Portland.

PFMC
06/14/04

UPDATE OF COUNCIL OPERATING PROCEDURES

***Note:* THIS AGENDUM HAS BEEN POSTPONED TO THE SEPTEMBER COUNCIL MEETING**

Situation: Since the inception of the Pacific Council, formal written operating procedures have been developed and adopted by the Council to guide various processes associated with the requirements and obligations described in the Magnuson Act and its 1996 reauthorization and amendment, the Magnuson-Stevens Fishery Conservation and Management Act. These Council Operating Procedures (COPs) specify how the Council and its advisory entities conduct meetings, consider public comment, develop fishery management plans and amendments, adopt regulatory measures, and deal with special processes of importance to the Council. As some COPs have not been reviewed for several years and certain changes in procedures had not formally been described in writing, the Council assigned a comprehensive review and update of the full COPs document.

Exhibit B.3.a entails a review of the 19 existing COPs and drafts for three new COPs dealing with (1) the Groundfish Allocation Committee, (2) Ad-Hoc Committees, and (3) the process of consideration of inseason management measures for groundfish. In these COPs, text in ~~strikeout~~ is a suggested deletion, text in underline is a suggested policy-neutral clarification or previously adopted policy change, and [REDACTED] text is a suggested addition or change with potential policy implications.

The Council task is to consider adopting some or all of the revisions, providing guidance on further revisions, or postponing consideration of some or all of the revisions until the next Council meeting. In particular, the draft new COPs have not been viewed in the Council forum before and may be candidates for further consideration at the next Council meeting for reasons of broader public review.

Council Tasks:

Consider Exhibit B.3.a and provide guidance on adoption, further revision, or further process on the COP language contained in the exhibit.

Reference Materials:

1. Exhibit B.3.a, Attachment 1: *Council Operating Procedures As Amended Through June, 2004.*

Agenda Order:

- a. Agendum Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. **Council Action:** Review and Approve Proposed Updates to COPs

Don McIsaac

LEGISLATIVE MATTERS

Situation: The Legislative Committee met Monday, June 14 to review federal legislative issues.

On April 20, the U.S. Commission on Ocean Policy (USCOP) released their preliminary report. The deadline for comment on the preliminary report was June 4, 2004. The Pacific Fishery Management Council (Council) response is in the briefing book (Exhibit B.4.a, Attachment 1). The USCOP Preliminary Report is part of a two-stage process. In the first stage, the report was available for review by the nation's governors and interested stakeholders. Stage two begins when the public comment period closes. At that point, the USCOP will take time for a comprehensive review of the comments received from the governors and others. Once all comments are considered, the USCOP will finalize its report and recommendations, which will be provided to the President and Congress.

Congressman Gilchrest has reiterated his request for input on draft legislation to amend the Magnuson-Stevens Fishery Conservation and Management Act (MSA), Exhibit B.4.a, Attachment 2.

S. 2244, legislation to protect the public's ability to fish for sport, and for other purposes, was introduced by Senator Hutchison (Texas) in March 2004, Exhibit B.4.a, Attachment 3.

S. 2066, legislation to amend and reauthorize the MSA was introduced by Senator Snowe (Maine) on February 11, 2004. The Senate Commerce Committee's Subcommittee on Oceans, Fisheries, and Coast Guard held a hearing related to this bill on June 11, 2004.

The Legislative Committee will provide a summary report to the Council.

Council Action:

1. Consider recommendations of the Legislative Committee.

Reference Materials:

1. Exhibit B.4.a, Attachment 1: Response to US Commission on Ocean Policy.
2. Exhibit B.4.a, Attachment 2: Gilchrest Discussion Draft.
3. Exhibit B.4.a, Attachment 3: S2244 – "Freedom to Fish Act".
4. Exhibit B.4.a, Attachment 4: S2066.
5. Exhibit B.4.b, Supplemental Legislative Committee Report.

Agenda Order:

- a. Agendum Overview
- b. Legislative Committee Report
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. **Council Action:** Consider Recommendations of the Legislative Committee

Dan Waldeck
Dave Hanson

PFMC
05/27/04

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June 1, 2004

Exhibit B.4.a
Attachment 1
June 2004

EXECUTIVE DIRECTOR
Donald O. McIsaac

CHAIRMAN
Donald K. Hansen

Admiral James D. Watkins, USN (Ret.)
U.S. Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, D.C. 20036

Subject: Public Comment on Preliminary Report

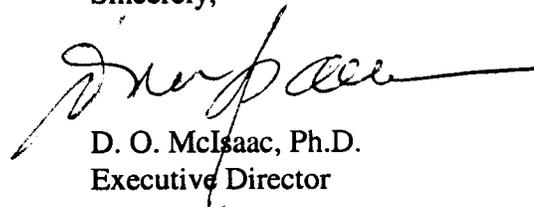
Dear Admiral Watkins:

The Pacific Fishery Management Council thanks you for the opportunity to comment on the Commission's preliminary findings and recommendations for a new, coordinated, and comprehensive national ocean policy. The Pacific Council believe this is an important effort that focuses national attention on the value of our marine resources, the complexity of the associated management issues, and the need to properly support and fund more comprehensive and coordinated initiatives. However, we do not believe the Commission's Preliminary Report has reached an optimal state of refinement yet.

We offer comments in two areas that we believe will improve the current draft. Attached are general comments on ocean governance and the important role of regional fishery management councils. The attachment also specifically responds to recommendations in Chapter 19 – "Achieving Sustainable Fisheries."

Again, the Pacific Council appreciates the opportunity to comment on the Commission's Preliminary Report. We look forward to coordinating further with you and our state partners as we all work toward managing our marine resources for both present and future generations.

Sincerely,



D. O. McIsaac, Ph.D.
Executive Director

DAW:cp
Enclosures

c: Council Members

Pacific Fishery Management Council Response to the U. S. Commission on Ocean Policy Preliminary Report

May 26, 2004

The Pacific Fishery Management Council (Pacific Council) commends the U.S. Commission on Ocean Policy (USCOP) for the comprehensive information presented in its preliminary report. The report brings needed attention to marine issues and highlights the connectedness of humans to our environment. Ocean governance is a multifaceted process that requires a carefully coordinated management system, and the USCOP report emphasizes the complexity of this process and the roles of the many agencies and organizations involved.

The Pacific Council also thanks the USCOP for the opportunity to review the preliminary report and comment on the draft recommendations. We have included below a perspective on ocean governance and the strengths of the existing regional fishery management council (RFMC) system. Specific comments about USCOP recommendations in Chapter 19 – “Achieving Sustainable Fisheries” are also included. As the USCOP finalizes its report, the Pacific Council hopes the information we provide will help to improve the final recommendations and result in a document that leads to clear Congressional guidance, dedicated funding, new scientific research, and improved ocean governance. The Pacific Council is willing to provide more detailed information if it would assist the USCOP in their final deliberations.

Ocean Governance

The Pacific Council agrees with many of the findings of the USCOP, especially the need for increased awareness of and attention to ocean governance. This heightened awareness needs to occur at the highest level of government, within coastal communities dependent upon ocean resources, and throughout the nation if the aims of the USCOP are to be achieved. Dedicated funding for this purpose is a paramount priority.

The RFMC process is unique among natural resource agencies in that those who are most affected by policies have a voice in decision making. The preliminary report recognizes the importance of participatory governance, noting that “governance of ocean uses should ensure widespread participation by all citizens on issues that affect them.” Further, the report states, “many of the nation’s most pressing ocean and coastal issues are regional in nature and require input on planning and management by state and local policy makers and other relevant stakeholders.” The fishery management council process provides a foundation for this much needed regional planning and management.

In this regard, the USCOP report would benefit from greater recognition of the strengths and accomplishments of the RFMC system. Certain regional councils are singled out as positive examples of how fishery management principles should be applied; indeed, these compliments are warranted. However, most regions are implicated as performing poorly, and the take home message is that U.S. fishery management has failed. The Pacific Council believes this an extreme and pessimistic view. This conclusion fails to recognize the professionalism and diligence of regional council staff and the federal, state, and tribal management partnerships that gird the RFMC process, as well as the positive results that have been achieved.

This is not to suggest that fishery management is optimal and that no problems exist. The Pacific Council, as in other regions, is under tremendous pressure to fulfill our congressional mandate to balance resource conservation with fishery sustainability. National Standard 1 requires regional councils to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery. In this regard, the intent of Congress has been interpreted by some to mean that full conservation is paramount and regional councils should take no risks in the face of uncertainty. Others interpret the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as a mandate for maintaining harvest opportunity for commercial fisheries and vibrant recreational fisheries as the highest priority because of the substantial economic benefits provided to the nation. The role of the regional council is to balance these competing interests in a precautionary manner and develop sound management policies that provide the greatest overall benefit over time.

In the face of a crisis in the West Coast groundfish fishery, the Pacific Council has radically restructured commercial and recreational groundfish fisheries along the West Coast. Vast areas have been closed to protect depleted stocks; stringent gear restrictions are in effect; and harvest levels for many species are well below acceptable biological catch (ABC) levels. But these restrictions on harvest opportunity have come at a tremendous cost to recreational and commercial fisheries and fishing communities. Very little of this information is provided in the preliminary report.

Specific comments on Chapter 19 – “Achieving Sustainable Fisheries”

Recommendation 19-1 – would mandate and specify the role of the Scientific and Statistical Committee (SSC) in RFMC decision making, suggests SSC members be required to meet scientific and conflict of interest requirements, and SSC service should be compensated.

The Pacific Council agrees that RFMC decisions should be based on the best available scientific information, and, specifically, follow expert advice on matters of sound science. The SSC of the Pacific Council is an integral part of our management process. The USCOP recommendation to elevate the role of the SSC is consistent with our current standard operating procedure. Moreover, the SSC of the Pacific Council comprises scientists of the highest caliber, including senior level federal, state, and tribal agency scientists and internationally respected academic scientists. The SSC reviews baseline scientific data, ensures that the best available science is used, and provides recommendations from a sound scientific perspective. While the Pacific Council does not disagree that SSC service should be compensated, many SSC members are government or academic employees, and compensation would not necessarily need to be monetary. For example, the Pacific Council actively encourages federal, state, and tribal agencies to recognize SSC service in evaluating employee performance and promotion. The Pacific Council also encourages universities to consider SSC service of academic scientists during tenure review. The Pacific Council disagrees with the conflict of interest requirements as currently drafted in the USCOP report because they are too limited in scope. The Pacific Council does, however, agree SSC objectivity is paramount and assurances to avoid conflict of interest should be considered.

The Pacific Council also disagrees with the recommendation that the NOAA Administrator should make all SSC appointments. Each RFMC has unique needs for their SSC and are fully

qualified to assess those needs, make objective appointments, replace vacancies, and keep a fully functioning SSC seated in a timely manner.

Recommendation 19-2 – would require SSCs develop science information and determine ABC.

As stated, the Pacific Council agrees that RFMC decision making should be based on the best scientific information available, which is currently standard operating procedure for the Pacific Council. However, the Pacific Council disagrees that the SSC should be specifically mandated to develop scientific information. The Pacific Council management process uses scientific information collaboratively developed through the work of federal, state, and tribal agency scientists and academic scientists. This information is reviewed by independent experts and then both products are reviewed by the SSC. In terms of final review of science prior to Council use, the buck stops with the SSC. Specific to ABC values, the SSC reviews ABCs developed through the stock assessment and management specification process, which includes an outside review, but the SSC does not develop stock assessments. If these ABCs pass scientific muster, the SSC recommends their use by the Council. The SSC also describes uncertainty inherent to the ABC values and how this uncertainty should be factored into Council decision making. The Pacific Council does not set harvest levels above ABC.

Recommendation 19-3 – would require harvest levels to be set at or below ABC.

Currently, the Magnuson-Stevens Act requires that harvest levels (optimum yield [OY]) not be set above maximum sustainable yield (MSY). Generally, MSY is viewed as a fixed parameter of a population of fish. ABC values are estimated through an assessment of a stock of fish and, generally, set at or below MSY. OY values are then determined to set a harvest level in accord with scientific and economic information, fishery management needs (e.g., multi-species fishery effects), and socioeconomic needs of the fishery. In setting harvest levels, the Pacific Council heeds the advice of the SSC and does not set OY levels above the ABC. The USCOP recommendation, in its current form, does not account for the complexities and nuances of this science and policy development process. To reiterate, the Pacific Council agrees that harvest level decisions should be based on SSC recommendations. The Pacific Council does not set harvest levels above ABC.

Recommendation 19-4 – would require review of scientific information used by the RFMC.

The Pacific Council agrees that ensuring RFMC decisions are based on the best scientific information available is paramount. In collaboration with NMFS (and with SSC oversight), the Pacific Council established and uses a rigorous stock assessment development and review process, which includes Center For Independent Expert reviewers, prior to final SSC review. We do not believe it is useful to add further independent review of the SSC review, as this would delay the use of current science with little potential for improvements to the scientific information.

Recommendation 19-5 – would require deadlines for establishing ABC values; if deadline not met, regional science director (NMFS) would establish ABC values.

Congress established RFMCs, in part, to set allowable levels of harvest. The Pacific Council performs this fundamental responsibility in partnership with NMFS. The Pacific Council sets harvest levels using the most current and best available information as vetted by the SSC. The Pacific Council has also established strategic benchmarks, schedules, and protocols for developing timely and accurate scientific information. Thus, the Pacific Council process is in accord with the spirit of recommendation 19-5. However, in the Pacific Council context, it is not apparent that benefits would be gained by requiring NMFS to establish ABCs through the process envisaged in the USCOP recommendation. In sum, Congress established RFMCs to set harvest levels, the Pacific Council uses a sound standardized fishery specification setting process, and NMFS already has authority to intercede if an RFMC fails to meet Magnuson-Stevens Act and National Guideline mandates.

Recommendation 19-6 – would suspend a fishery if management specifications were not adopted in a timely and appropriate manner.

In the Pacific Council context, recommendation 19-6 is historically unnecessary, is redundant to the Magnuson-Stevens Act existing intervention authority, and, if adopted, would, in effect, penalize innocent fishery participants for bureaucratic ineptitude. As noted, the Pacific Council uses specific protocols for developing, reviewing, and adopting management specifications for each Council-managed fishery. Generally, these procedures are designed to facilitate the federal rulemaking process for reviewing and implementing fishery management regulations. For example, the Pacific Council adopts groundfish management specifications in June for implementation the following January. This timely process provides six months for NMFS to carry out proposed and final rulemaking prior to NMFS action to consider approval and implementation of the Council-recommended fishery specifications. Moreover, the Secretary of Commerce already has authority to intercede if a RFMC fails to act and/or if an RFMC action could jeopardize fishery conservation goals. The Pacific Council is opposed to this recommendation.

Recommendation 19-7 – would require RFMCs to annually develop prioritized lists of research and information needs.

The Pacific Council agrees with this recommendation. Through the SSC, the Pacific Council has a current protocol for developing a Research and Data Needs document, which outlines research and information priorities for each Council-managed fishery, on a biennial schedule. This document is a recommendation from the Council to NMFS for developing workload priorities and budgeting available resources. Conducting such an exercise on an annual basis is a sound recommendation.

Recommendation 19-9 – urges support for cooperative research.

The Pacific Council fully supports cooperative research efforts and agrees that such efforts offer a promising way to improve science while involving stakeholders in the management process. The Pacific Council supports the fishresearchwest.org website, which promotes cooperative research on the West Coast; and we are involved in other ongoing efforts to study and promote cooperative research.

Recommendation 19-15 – calls for Congress to amend the Magnuson-Stevens Act to affirm that fishery managers are authorized to institute dedicated access privileges.

The Pacific Council concurs with this recommendation.

The Pacific Council is currently early in the process of considering an individual quotas (IQ) program specifically for our limited entry groundfish trawl fishery. In the event, dedicated access privileges, or IQs, are analyzed to be an effective way to solve the problem of bycatch in a way that does not compromise other important fishery or socioeconomic goals, their implementation should be allowed. Also, RFMCs should be involved in development of national guidelines for IQ programs.

Recommendation 19-16 – calls for repealing programs that encourage overcapitalization in fisheries.

Again, the Pacific Council fully supports reducing capitalization and overcapacity. We agree in particular with the recommendation that NOAA monitor capacity reduction programs to ensure they meet their objectives. The Pacific Council has actively encouraged efforts to modify the Capital Construction Fund to create incentives for reducing fishing capacity.

Recommendation 19-17 – encourages Congress to increase funding for the Joint Enforcement Agreement.

The Pacific Council supports the Joint Enforcement Agreement, and we urge Congress to increase state funding for enforcement. A robust enforcement program is necessary to ensure compliance with current fishing regulations, which are very complex.

Recommendation 19-24 – calls for Congress to fully fund existing commitments to international fisheries management.

Such international efforts are vitally important for protecting straddling stocks. RFMCs should be included, along with the U.S. Department of State and NOAA, in these efforts, and RFMC participation in international management efforts should be supported with sufficient funding.



December 30, 2003

Admiral James D. Watkins (Ret.)
Chairman
Commission on Ocean Policy
1120 20th Street NW
Washington, DC 20036

Re: Marine Fishery Governance and the Concept of Separating Science from Management in the Regional Fishery Management Council Process

Dear Admiral Watkins:

Thank you for speaking at the recent national conference *Managing Our Nations Fisheries - Past, Present, and Future*. At the conference during a discussion of the merits of the concept of separating science from allocation and other fishery management activity, you stated there was serious consideration of a recommendation for institutional change from the status quo on this matter, but noted the Ocean Commission's recommendations had not been finalized. We would like to take this opportunity to encourage the Commission take a closer look at the issue of separating science from management in the eight Regional Fishery Management Councils (RFMCs).

Specifically, this letter describes our perspective on three points that we ask the Commission seriously consider prior to making a final recommendation on this important policy topic.

- The stated need for further separation of science from management is faulty.
- There are practical problems with institutionally separating science from management.
- A recommendation to achieve adequate separation within the existing RFMC framework.

The stated need for further separation of science from management is faulty.

A two-pronged argument has been provided as the basis for separating science from management at the RFMC level. The first claims that the Councils have a track record of exceeding the allowable catch determined by a rigorous scientific process, to the detriment of conservation. The second claims that a conflict of interest by voting Council members directly causes the setting of allowable catch levels higher than those recommended by scientific advisors. We

submit that the first reason is false, or at least an exaggeration of fact. With regard to the second reason, we are not aware of any evidence in the voting records showing federally appointed members bloc-voting against the government seats on the Councils to achieve an exceedance of scientifically determined catch levels. These claimed reasons are not only faulty, they also demonstrate a lack of recognition of the separation of science and management that currently characterizes most Council decision making. Further, the existing Magnuson-Stevens Fishery Conservation and Management Act (MSA) details U.S. Secretary of Commerce review safeguards that are entirely capable of preventing the alleged problems.

As an example of the exaggeration aspect of the stated problem, a recent Pew Trust funded report¹ released in November 2003 claimed that Councils "...raise the size of the catch – to the detriment of conservation."² This report uses king mackerel in the Gulf of Mexico Fishery Management Council (GFMC) forum as a general example, and the 1992-1993 king mackerel fishery as a "good example" of how RFMCs compromise conservation goals to set more generous fisheries. While it is true the GFMC adopted catch quotas higher than the mid point of the acceptable biological catch (ABC) range in most years from 1986-1999, they have never set an allowable catch level above the ABC in any year since 1986.³ Further, there is no mention in the Eagle et al. report of the uncertainties in the scientific recommendations, nor the fact that king mackerel populations have shown a steadily increasing trend since the late 1980s and are now above the overfishing and overfished thresholds. The Eagle et al. report also insinuates as proof that such examples are widespread, that (1) there are many stocks that have been designated as overfished across all RFMCs, and (2) that "NOAA does not claim that *any* of these stocks have been rebuilt to a level at which it can produce its MSY."⁴ (emphasis added). The fact that there were 20 stocks that were rebuilt to the MSY level between 1997 and 2002⁵, and an additional 2 in 2003, is in sharp contrast to the claim in the Eagle et al. report that there have

1/ Eagle, J., S. Newkirk, and B. H. Thompson Jr. Taking Stock of the Regional Fishery Management Councils. PEW Trust funded report released November 12, 2003.

2/ Eagle, et al., p. 2 and elsewhere in the report.

3/ Although in 1992-1993, the GFMC added 259,000 pounds to the commercial allocation of its previously set TAC of 7.8 million pounds, the quota was still well within the stock assessment range of 4.0-10.79 million pounds (see Table 1 of the 2002 Mackerel Stock Assessment Panel Report). Moreover, it appears that in Figure A on p. 15 of the Eagle et al. report (for the years 1992 through 1995) the authors erroneously represent the mid point of the ABC range as the ABC high point.

4/ Eagle, et al., p. 18-19.

5/ NOAA report to Congress. *Status of Fisheries in the United States*. April, 2002.

been none. Further, the report skirts the obvious logic gap that there are other reasons than Councils "...ignor(ing) the recommendations of the fishery scientists."⁶ that have caused fish stocks to be classified as overfished. Rather, a common cause in recent years for many overfished determinations has been revisions to the scientific assessment of current stock status and the acknowledgment that scientific advice in prior years lead to overly generous quotas.⁷ Inferences that there is a serious problem – serious enough to warrant congressional action – with Councils chronically setting higher catch levels than scientifically advised, is not true, or *at least* a blunt exaggeration of selected historical examples.

The claim of adverse conflicts of interest of certain seats on RFMCs causing conservation problems is not new, and can be presented in theoretical generalizations and simplistic soundbites such that a naive observer might be led to believe it to be true. However, proof that it causes a RFMC to compromise conservation would be vote logs; that is, a voting record showing Council members with something to personally gain from higher catch levels carrying a successful vote over those with nothing to personally gain that supported a lower harvest level as advised by science advisors. While we have not reviewed every Council vote since 1977, we are not aware of any such activity. The conflict of interest argument is faulty because cause and effect has not been shown.

Several things motivate against such bloc voting actually happening. First, there is a large proportion of government seats in each RFMC, filled by government officials with no direct financial relationship to the fishery. Second, the diversity between and among sport and commercial fishing industry representatives promotes against bloc voting on controversial issues. Also, the federally appointed non-government Council members are respected individuals

6/ Eagle, et al., p. 19

7/ In the case of West Coast groundfish, for example, the recent flurry of overfished designations for six rockfish species, lingcod, and Pacific whiting were generally the result of new scientific assessments that revised stock size and/or productivity downward and also indicated that allowable catches had been too high in earlier years, even though they had been set based on the best scientific information of the day. (Pacific Fishery Management Council. *The Council Family, Managed Fisheries, Current Issues, and Plans for the Future*. Prepared for the Conference *Managing Our Nations Marine Fisheries - Past, Present, and Future*. November 2003.) As another example, the Northwestern Hawaiian Islands lobster stocks have been managed using the best science available. In the 1980s, a dynamic production model developed by NMFS scientists was used to manage the fishery and provide input for a fishery harvest guideline. Unfortunately, the model was too simple and did not account for the effects of lobster recruitment from oceanic regime shifts, and the lobster population was severely depleted. Subsequent harvest models developed by NMFS generated much more conservative harvest guidelines, with only a ten percent risk of overfishing the stock.

nominated by the State Governors and selected by the U.S. Secretary of Commerce, and have shown integrity in voting for the long term sustainability of the fisheries. As a typical example, at the last Pacific Council meeting, federally appointed non-government Council members voted with the government representatives on the Council to close sport and commercial groundfish fisheries coastwide, in response to reaching the catch limit much earlier than expected. An additional reason the stated need for institutionally separating science from management is faulty is the mechanism in the MSA for Department of Commerce review and approval of Council actions. These reviews are comprehensive and lengthy, encompassing legal, policy and technical aspects. In the event there has been a Council action that is improper with regard to following strong scientific advice, or insufficiently precautionary when the science is uncertain, the Department of Commerce has the final say, and should not approve the Council action.

There are practical problems with separating science from management

There are times when hard scientific facts are clear and there are times when a scientific perspective on a key fishery management issue is soft, due to lack of data, inadequacies of analytical tools, and other reasons. In these cases where the science is weak and a decision is needed at that moment in time, completely separating science and policy decisions can be difficult. For example, the scientific advisors to the Pacific Council concluded that an estimate for a discard rate in a West Coast trawl fishery was not calculable based on data, but it was greater than the zero value in use at the time. They recommended that determination of this value was a policy decision best made by Council members based on anecdotal accounts, common sense, and their experience with the fishery. Based on this advice, the Council selected a generic rate that was used until observer data could provide direct estimates. With an institutional separation between science and management, how would that decision have been made? Another example entails situations where the scientific advisors present a broad range of equally probable estimates to be used to manage a fishery (not a point estimate and a probability range, but rather a range of equally probable values). The practical solution to this problem is a policy decision that takes into account the advice of people in the fishery and the general public about the full range of trade-offs involved in such a decision – the exact thing the RFMC were designed to accomplish. There are other examples where scientific input on conservation and allocation decisions seem inseparable from a practical standpoint, such as establishing the boundaries for closed areas or Marine Protected Areas (MPAs) or choosing between various bycatch reduction measures.

If there was a complete separation of science and management, how would recommendations based on weak science be distinguished from those based on strong science? Would such separation be only for stock size estimates and allowable catch quantities, or would it run the full scientific advice gamut through MPA boundaries to seemingly minutia issues such as the use of barbed or barbless hooks and their effect on total allowable catch? Would purely scientific fishery data be used in developing quota estimates, or would other factors be considered? How

would considerations of other factors, such as socioeconomic impacts to fishery dependent communities, be weighted?⁸ Would precautionary adjustments be included in the base science, and if so, to what degree? Would such decision making be conducted in a public forum? How would the historic and local knowledge of fishery participants be heard and considered in the scientific process? Would the final decision maker on such quasi-scientific, quasi-policy matters face the people effected by the decision and be subject to their logical challenges? These are some of the questions that reveal the genuine practical problems associated with an institutional separation of science and management.

A recommendation to achieve adequate separation within the existing RFMC framework.

At the national conference, there was discussion about the pattern of Councils characteristically following the advice of their scientific advisors when given reliable and current scientific information. There was speculation that this was correlated with strong Scientific and Statistical Committees (SSC) that meet in open sessions at the Council Meetings to provide final scientific advice to Councils. There was also speculation that the greatest concerns about separating science from management occurred in situations where there was no functional SSC or one that rarely met and not at Council meetings.

There are many current examples of strong SSC mechanisms that demonstrate successful integration of science and management. For example, the North Pacific Council, with a notably strong SSC and scientific advice development process, has never adopted a quota or catch level higher than the SSC recommendation. There are other examples of strong SSCs and Councils with a track record of following the advice of its scientific advisors.⁹ In these situations, the

8/ The Commission should be advised that scientific information for the social sciences is usually not available or very limited. In the RFMC fora, this has frequently necessitated defining these social issues from Advisory Panel statements, the public testifying before the Council, and the knowledge of the Council members who participate in the fisheries. Despite the fact this is anecdotal information, it is often the best available information.

9/ For example, the Pacific Council, with an SSC constituted of scientists from three Regional Fishery Science Centers, four state governments, tribes, academia, and the private sector, also has four specialized, fishery specific teams of advisory scientists. As another example, the Western Pacific Council's SSC has a strong international membership, including four scientists from Australia, the Secretariat of the Pacific Community in New Caledonia, the IATTC, and French Polynesia. Other members have worked extensively in the international realm of Pacific tuna fishery management, and are recognized experts in their respective fields. These Councils also have a track record of following the recommendations of their scientific advisors.

Admiral Watkins
December 30, 2003
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SSCs meet at Council Meetings, in open meetings that typically have public comment periods. Several of the Councils have three levels of scientific review of important stock assessments: the initial assessment, stock assessment panels that provide an independent scientific peer review function, and a subsequent review by the Council's SSC. Many say these Council structures provide for the proper degree of separation of science and management: strong initial scientific contributions, an independent review, a robust SSC final review, all done in an open, transparent process.

Therefore, we recommend:

- The Ocean Commission not recommend generically separating the scientific considerations in marine fishery management from the RFMC process.
- The Ocean Commission consider recommending strengthening the SSC composition and role in all RFMCs along the lines of the successful Council models that currently exist.
- We are opposed to a mechanism whereby all SSC members would be appointed by a National Marine Fisheries Service central authority.

In closing, we urge the Ocean Commission to make recommendations on this matter that do not throw the baby out with the bath water. If, in the past, there has been a problem with one or two Councils, once in a while, a significant revamping of the whole system is not called for. Overfished stocks have been rebuilt. Rebuilding plans are showing progress for others still listed as overfished. Healthy fish stocks are being managed wisely. The vagaries of nature and our understanding of it will always result in some level of uncertainty, no matter what system is in place. While the RFMC process may not be perfect and there is still considerable progress to be made, the process and the management results are improving. We feel the call to separate science from management in the RFMCs is unwise and should not be included in the Ocean Commission final recommendations.

Should you or the Ocean Commission staff have any questions on this matter, please don't hesitate to contact any of us. Dr. Donald McIsaac at the Pacific Council has been designated as the lead contact on these issues.

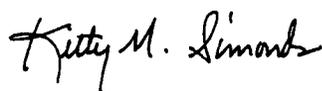
Sincerely,



D. O. McIsaac, Ph.D.
Executive Director, Pacific Council



Chris Oliver
Executive Director, North Pacific Council



Kitty Simonds
Executive Director, Western Pacific Council



Wayne Swingle
Executive Director, Gulf Council



for Miguel Rolon
Executive Director, Caribbean Council



Paul Howard
Executive Director, New England Council



Daniel Furlong
Executive Director, Mid-Atlantic Council



Robert Mahood
Executive Director, South Atlantic Council

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DOM:rdd

c: Council Chairs and Vice Chairs
Dr. Bill Hogarth
Dr. Rebecca Lent
Mr. Jack Dunnigan
Dr. Michael Sissenwine
Ocean Commission Members
Regional Administrators
Regional Science Center Directors
Representative Wayne Gilchrest
Senator John McCain
Representative Richard Pombo
Senator Olympia Snowe

[DISCUSSION DRAFT]

108TH CONGRESS
1ST SESSION

H. R. _____

To reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GILCREST introduced the following bill; which was referred to the Committee on _____

A BILL

To reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMEND-**
4 **MENT REFERENCES.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Magnuson-Stevens Act Amendments of 2003”.



1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title; table of contents; amendment references.
- Sec. 2. Technical corrections to definitions.
- Sec. 3. Report on over capitalization.
- Sec. 4. Buyout provisions.
- Sec. 5. Data collection.
- Sec. 6. Ecosystem-based management.
- Sec. 7. Observers.
- Sec. 8. Overfishing.
- Sec. 9. Bycatch and seabird interactions.
- Sec. 10. Fish habitat research and protection.
- Sec. 11. Demonstration program for oyster sanctuaries and reserves.
- Sec. 12. Individual quota limited access programs.
- Sec. 13. Cooperative education and research.
- Sec. 14. Report on highly migratory species.
- Sec. 15. Prohibited acts.
- Sec. 16. Membership of fishery management councils.
- Sec. 17. Miscellaneous amendments to purposes and policy.
- Sec. 18. Foreign fishing.
- Sec. 19. Driftnets.
- Sec. 20. Sources for data in fisheries research.
- Sec. 21. Miscellaneous fishery protections in fishery management plans.
- Sec. 22. Cooperative marine education and research program.
- Sec. 23. Assessment of cumulative impacts of conservation and management
measures for a fishery.
- Sec. 24. Regional stock assessments.
- Sec. 25. National Academy of Sciences guidance and standards regarding best
scientific information available.
- Sec. 26. National Academy of Sciences definition of maximum sustainable yield.
- Sec. 27. Administration of Pacific Insular Area fishery agreements.
- Sec. 28. Highly migratory species bycatch mortality reduction research pro-
gram.
- Sec. 29. Authorization of appropriations.

3 (c) AMENDMENT OF MAGNUSON-STEVENS FISHERY
4 CONSERVATION AND MANAGEMENT ACT.—Except as oth-
5 erwise expressly provided, whenever in this Act an amend-
6 ment or repeal is expressed in terms of an amendment
7 to, or repeal of, a section or other provision, the reference
8 shall be considered to be made to a section or other provi-
9 sion of the Magnuson-Stevens Fishery Conservation and
10 Management Act (16 U.S.C. 1801 et seq.).



1 **SEC. 2. TECHNICAL CORRECTIONS TO DEFINITIONS.**

2 (a) EXECUTION OF PRIOR AMENDMENTS.—

3 (1) CONTINENTAL SHELF FISHERY RE-
4 SOURCES.—Section 102(2) of the Sustainable Fish-
5 eries Act (Public Law 104–297; 110 Stat. 3561) is
6 amended—

7 (A) by striking “COELENTERATA” and
8 inserting “Coelenterata”;

9 (B) by striking “CNIDARIA” and insert-
10 ing “Cnidaria”; and

11 (C) by striking “CRUSTACEA” and in-
12 serting “Crustacea”.

13 (2) UNITED STATES HARVESTED FISH.—Sec-
14 tion 102(11) of the Sustainable Fisheries Act (Pub-
15 lic Law 104–297; 110 Stat. 3563) is amended by
16 striking “(42)” and inserting “(43)”.

17 (3) EFFECTIVE DATE.—This subsection shall
18 take effect on the effective date of section 102 of
19 Public Law 104–297.

20 (b) CORRECTIONS RELATING TO SPECIAL AREAS.—

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

22 (1) by striking paragraphs (35) and (36);

23 (2) by redesignating paragraphs (37) through
24 the last paragraph (relating to the definition of “wa-
25 ters of a foreign nation”) in order as paragraphs
26 (35) through (44);



1 (3) by inserting “(a) General Definitions.—”
2 before “As used in this Act”; and

3 (4) by adding at the end the following:

4 “(b) TERMS RELATING TO AGREEMENT WITH THE
5 FORMER SOVIET UNION.—As used in this Act the term
6 ‘special areas’ means the areas referred to as eastern spe-
7 cial areas in Article 3(1) of the Agreement between the
8 United States of America and the Union of Soviet Social-
9 ist Republics on the Maritime Boundary, signed June 1,
10 1990. In particular, the term refers to those areas east
11 of the maritime boundary, as defined in that Agreement,
12 that lie within 200 nautical miles of the baselines from
13 which the breadth of the territorial sea of Russia is meas-
14 ured but beyond 200 nautical miles of the baselines from
15 which the breadth of the territorial sea of the United
16 States is measured.”.

17 **SEC. 3. REPORT ON OVER CAPITALIZATION.**

18 (a) IN GENERAL.—The Secretary shall, within 12
19 months after the date of the enactment of this Act, submit
20 to the Congress a report—

21 (1) identifying and describing the 20 fisheries
22 in United States waters with the most severe exam-
23 ples of excess harvesting capacity in the fisheries,
24 based on value of each fishery and the amount of ex-



1 excess harvesting capacity as determined by the Sec-
2 retary;

3 (2) recommending measures for reducing such
4 excess harvesting capacity, including the retirement
5 of any latent fishing permits that could contribute to
6 further excess harvesting capacity in those fisheries;
7 and

8 (3) potential sources of funding for such meas-
9 ures.

10 (b) BASIS FOR RECOMMENDATIONS.—The Secretary
11 shall base the recommendations made with respect to a
12 fishery on—

13 (1) the most cost effective means of achieving
14 voluntary reduction in capacity for the fishery using
15 the potential for industry financing; and

16 (2) including measures to prevent the capacity
17 that is being removed from the fishery from moving
18 to other fisheries in the United States, in the waters
19 of a foreign nation, or in the high seas.

20 **SEC. 4. BUYOUT PROVISIONS.**

21 (a) DISCRETION OF SECRETARY TO CONDUCT FISH-
22 ING CAPACITY REDUCTION PROGRAM.—Section 312(b)
23 (16 U.S.C. 1861a(b)) is amended—

24 (1) in paragraph (1) by striking “, at the re-
25 quest of the appropriate Council for fisheries under



1 the authority of such Council, or the Governor of a
2 State for fisheries under State authority,”;

3 (2) in paragraph (1), by inserting “that is man-
4 aged under a limited access system authorized by
5 section 303(b)(6),” after “in a fishery”; and

6 (3) by redesignating paragraph (4) as para-
7 graph (5), and by inserting after paragraph (3) the
8 following:

9 “(4) The Council, or the Governor of a State, having
10 authority over a fishery may request the Secretary to con-
11 duct a fishing capacity reduction program in the fishery
12 under this subsection.”.

13 (b) REQUIREMENT TO SURRENDER ALL PERMITS.—
14 Section 312(b)(2) (16 U.S.C. 1861a(b)(2)) is amended to
15 read as follows:

16 “(2)(A) The objective of the program shall be to ob-
17 tain the maximum sustained reduction in fishing capacity
18 at the least cost and in a minimum period of time.

19 “(B) To achieve that objective, the Secretary is au-
20 thorized to pay an amount to the owner of a fishing vessel,
21 if—

22 “(i) such vessel is scrapped, or through the Sec-
23 retary of the department in which the Coast Guard
24 is operating, subjected to title restrictions that per-



1 manently prohibit and effectively prevent its use in
2 fishing;

3 “(ii) all permits authorizing the participation of
4 the vessel in any fishery under the jurisdiction of the
5 United States are surrendered for permanent revoca-
6 tion; and

7 “(iii) the owner of the vessel and such permits
8 relinquishes any claim associated with the vessel and
9 such permits that could qualify such owner for any
10 present or future limited access system permit in the
11 fishery for which the program is established.”.

12 (c) ENSURING VESSELS DO NOT ENTER FOREIGN OR
13 HIGH SEAS FISHERIES.—Section 312(b) (16 U.S.C.
14 1861a(b)) is further amended by adding at the end the
15 following:

16 “(6) The Secretary may not make a payment under
17 paragraph (2) with respect to a vessel that will not be
18 scrapped, unless the Secretary certifies that the vessel will
19 not be used for any fishing, including fishing in the waters
20 of a foreign nation and fishing on the high seas.”.

21 **SEC. 5. DATA COLLECTION.**

22 (a) COLLECTION OF RECREATIONAL CATCH DATA.—
23 Section 402 (16 U.S.C. 1881a) is amended by adding at
24 the end the following:



1 “(f) COLLECTION OF RECREATIONAL CATCH
2 DATA.—(1) The Secretary shall develop and implement a
3 program for the sharing of recreational catch data for all
4 federally managed fisheries through the use of information
5 gathered from State-licensed recreational fishermen.

6 “(2) The Secretary shall conduct the program in con-
7 sultation with the principal State officials having marine
8 fishery management responsibility and expertise.

9 “(3) The Secretary shall report to the Congress with-
10 in three years after the effective date of this subsection,
11 on—

12 “(A) the progress made in developing such a
13 program; and

14 “(B) whether the program has resulted in sig-
15 nificantly better data collection for the recreational
16 fishing sector.”.

17 (b) REPORT.—Not later than 6 months after the date
18 of the enactment of this Act, the Secretary of Commerce
19 shall submit to the Congress a report describing the fol-
20 lowing:

21 (1) Economic data from United States proc-
22 essors that is necessary to conduct fishing commu-
23 nity and economic analysis determinations required
24 under chapter 6 of title 5, United States Code, pop-
25 ularly known as the Regulatory Flexibility Act.



1 (2) The reasons why such information is not
2 available through other sources such as tax returns,
3 the Bureau of Labor Statistics, and State labor de-
4 partments.

5 (3) The steps the Secretary would take under
6 section 402 of the Magnuson-Stevens Fishery Con-
7 servation and Management Act (16 U.S.C. 1881a)
8 to ensure the confidentiality of such information (es-
9 pecially proprietary information), if the information
10 were obtained by the Secretary.

11 **SEC. 6. ECOSYSTEM-BASED MANAGEMENT.**

12 (a) POLICY.—Section 2(c) (16 U.S.C. 1851(c)) by
13 striking “and” after the semicolon at the end of paragraph
14 (6), by striking the period at the end of paragraph (7)
15 and inserting “; and”, and by adding at the end the fol-
16 lowing:

17 “(8) to support and encourage efforts to under-
18 stand the interactions of species in the marine envi-
19 ronment and the development of ecosystem-based
20 approaches to fisheries conservation and manage-
21 ment that will lead to better stewardship and sus-
22 tainability of the Nation’s coastal fishery resources
23 and fishing communities.”.



1 (b) AUTHORIZATION OF RESEARCH.—Section 404(e)
2 (16 U.S.C. 1881c(e)) is amended by adding at the end
3 the following:

4 “(5) The interaction of species in the marine
5 environment, and the development of ecosystem-
6 based approaches to fishery conservation and man-
7 agement that will lead to better stewardship and
8 sustainability of coastal fishery resources.”.

9 (c) DEFINITIONS AND CRITERIA FOR MANAGEMENT
10 PLANS.—

11 (1) IN GENERAL.—The Secretary shall, in con-
12 junction with the Councils—

13 (A) create a definition for “ecosystem” and
14 for “marine ecosystem”; and

15 (B) establish criteria for the development
16 of ecosystem-based management plans by each
17 regional fishery management council based on
18 the recommendations of the Ecosystems Prin-
19 ciples Advisory Panel.

20 (2) REPORT.—The Secretary shall report to the
21 Congress within 2 years after the date of the enact-
22 ment of this Act on the criteria, including an identi-
23 fication and description of those criteria for which
24 sufficient data is not available.



1 (d) IDENTIFICATION OF MARINE ECOSYSTEMS; RE-
2 SEARCH PLAN.—

3 (1) IN GENERAL.—Within one year after the
4 date of the submission of the report under sub-
5 section (c)(2) to the Congress, the Secretary, in con-
6 junction with the regional science centers and the re-
7 gional fishery management councils, shall—

8 (A) identify specific marine ecosystems
9 within each region; and

10 (B) also develop and begin to implement
11 regional research plans to meet the information
12 deficit identified in the report.

13 (2) RESEARCH PLANS.—The research plans
14 shall suggest reasonable timelines and cost estimates
15 for the collection of the required information.

16 (3) REPORTS.—The Secretary shall report to
17 the Congress annually on the progress of the re-
18 gional research plans.

19 (e) ECOSYSTEM-BASED FISHERY MANAGEMENT
20 PLAN PILOT PROGRAM.—

21 (1) IN GENERAL.—Upon the completion of de-
22 velopment of regional research plans under sub-
23 section (d)(1), the Secretary of Commerce shall es-
24 tablish and begin implementing a pilot program for
25 the management of one fishery on the east coast of



1 the United States and one fishery on the west coast
 2 of the United States under an ecosystem-based fish-
 3 ery management plan under the Magnuson-Stevens
 4 Fishery Conservation and Management Act.

5 (2) CONSULTATION.—The Secretary shall de-
 6 velop and implement ecosystem-based fishery man-
 7 agement plans under this subsection in consultation
 8 with the appropriate Regional Fishery Management
 9 Councils.

10 (f) DISCRETIONARY PROVISION IN FISHERY MAN-
 11 AGEMENT PLANS.—Section 303(b)(12) (16 U.S.C.
 12 1853(b)(12)) is amended by inserting before the period
 13 the following: “or for the health or stability of the marine
 14 ecosystem”.

15 **SEC. 7. OBSERVERS.**

16 (a) IN GENERAL.—Not later than one year after the
 17 date of the enactment of this Act, the Secretary shall re-
 18 port to the Congress on the needs for a national observer
 19 program.

20 (b) RECOMMENDATIONS.—The report shall make rec-
 21 ommendations on observation options, including electronic
 22 data collection technologies and on-board observers.

23 (c) OTHER CONTENTS.—The Secretary, in the re-
 24 port, shall include the following:



1 (1) A determination of whether the data collec-
2 tion needs are for management or enforcement pur-
3 poses.

4 (2) A statement of the level of observer cov-
5 erage necessary in various types of fisheries to pro-
6 vide statistically reliable information.

7 (3) Cost estimates for various levels of observer
8 coverage.

9 (4) Options for the funding of observer cov-
10 erage.

11 (5) The types of vessels and fisheries for which
12 observer coverage cannot be required due to safety
13 concerns.

14 (6) Recommendations for the use of the data
15 gathered by the observing systems.

16 (7) Recommendations for the confidentiality of
17 proprietary information collected through the pro-
18 gram.

19 **SEC. 8. OVERFISHING.**

20 (a) CLARIFICATION OF DEFINITION.—Section 3 (16
21 U.S.C. 1802) is further amended by amending paragraph
22 (29) of subsection (a) to read as follows:

23 “(29)(A) The term ‘overfished’ means, with re-
24 spect to a stock of fish, that the stock is of a size
25 that is below the natural range of fluctuation associ-



1 ated with the production of maximum sustainable
2 yield.

3 “(B) The term ‘overfishing’ means a rate or
4 level of fishing mortality that jeopardizes the capac-
5 ity of a fishery to produce the maximum sustainable
6 yield on a continuing basis.”.

7 (b) DISTINGUISHING IN REPORTS.—Section
8 304(e)(1) (16 U.S.C. 1854(e)(1)) is amended by adding
9 at the end the following: “The report shall distinguish be-
10 tween fisheries that are overfished (or approaching that
11 condition) as a result of fishing and fisheries that are over-
12 fished (or approaching that condition) as a result of fac-
13 tors other than fishing. The report shall state, for each
14 fishery identified as overfished or approaching that condi-
15 tion, whether the fishery is the target of directed fishing.”.

16 (c) NATIONAL ACADEMY OF SCIENCES DEFINITION
17 OF OVERFISHED.—

18 (1) IN GENERAL.—The Secretary of Commerce
19 shall enter into an arrangement with the National
20 Academy of Sciences under which the Academy shall
21 develop a definition of “overfished” for purposes of
22 the Magnuson-Stevens Fishery Conservation and
23 Management Act (16 U.S.C. 1801 et seq.). The
24 Academy shall consider the definition of the term in
25 that Act (as amended by this Act) and the National



1 Marine Fisheries Service operational definition of
2 the term. The Academy shall also consider environ-
3 mental variability and other factors that contribute
4 to low abundance of fish stocks.

5 (2) PUBLICATION AND OPPORTUNITY FOR COM-
6 MENT.—The Secretary shall publish the results of
7 the activities of the Academy under paragraph (1)
8 and provide an opportunity for the submission of
9 comments regarding the definition developed under
10 paragraph (1).

11 **SEC. 9. BYCATCH AND SEABIRD INTERACTIONS.**

12 (a) BYCATCH REPORTING.—

13 (1) REPEAL OF STANDARDIZED BYCATCH RE-
14 PORTING METHODOLOGY REQUIREMENT.—Section
15 303(a)(11) (16 U.S.C. 1853(a)(11)) is amended in
16 the matter preceding subparagraph (A) by striking
17 “establish” and all that follows through “fishery,
18 and”.

19 (2) DEVELOPMENT OF BYCATCH REPORTING
20 METHODOLOGIES.—Section 304 (16 U.S.C. 1854) is
21 amended by adding at the end the following:

22 “(i) DEVELOPMENT OF BYCATCH REPORTING METH-
23 ODOLOGIES.—The Secretary shall, in cooperation with the
24 Councils, develop bycatch reporting methodologies to as-



1 sess the amount and type of bycatch occurring in United
2 States fisheries.”.

3 (3) REPORT.—The Secretary of Commerce shall
4 report to the Congress within one year after the date
5 of the enactment of this Act on progress the Sec-
6 retary has made in developing bycatch reporting
7 methodologies pursuant to the amendment made by
8 paragraph (2).

9 (b) CHARITABLE DONATION OF BYCATCH.—Section
10 303(b) (16 U.S.C. 1853(b)) is amended by striking “and”
11 after the semicolon at the end of paragraph (11), by strik-
12 ing the period at the end of paragraph (12) and inserting
13 a semicolon, and by adding at the end the following:

14 “(13) allow the retention and donation for char-
15 itable purposes of all dead bycatch that cannot oth-
16 erwise be avoided under terms that ensure, through
17 the use of onboard fishery observers or other equally
18 effective means, that such retention and donation do
19 not allow the evasion of vessel trip limits, total al-
20 lowable catch levels, or other conservation and man-
21 agement measures;”.

22 (c) BYCATCH REDUCTION GEAR DEVELOPMENT.—

23 (1) IN GENERAL.—Title IV (1 U.S.C. 1881 et
24 seq.) is amended by adding at the end the following:



1 **“SEC. 408. GEAR DEVELOPMENT.**

2 “(a) IDENTIFICATION OF FISHERIES WITH SIGNIFI-
3 CANT BYCATCH AND SEABIRD INTERACTION PROB-
4 LEMS.—(1) The Secretary, in conjunction with the Coun-
5 cils, shall identify and publish in the Federal Register a
6 list of fisheries with significant bycatch problems or
7 seabird interaction problems, as determined under criteria
8 developed by the Secretary.

9 “(2) The list shall contain, for each fishery identified,
10 information on—

11 “(A) the number of participants in the fishery;

12 “(B) the types of gears used in the fishery;

13 “(C) the bycatch species and species of seabirds
14 that interact with fishing gear;

15 “(D) the amount of bycatch, and the percent-
16 age of total catch that is bycatch; and

17 “(E) any other relevant information.

18 “(3) The Secretary shall solicit comments on each list
19 published under this subsection.

20 “(b) IDENTIFICATION OF FISHERIES WITH MOST
21 URGENT PROBLEMS.—The Secretary shall—

22 “(1) identify those fisheries included in a list
23 under paragraph (1) that have the most urgent by-
24 catch problems or seabird interaction problems,
25 based on comments received regarding the list; and



1 “(2) work in conjunction with the Councils and
2 fishing industry participants to develop new fishing
3 gear, or modifications to existing fishing gear, that
4 will help minimize bycatch and seabird interactions
5 to the extent practicable.

6 “(c) GRANT AUTHORITY.—The Secretary shall, sub-
7 ject to the availability of appropriations, make grants for
8 the development of fishing gear and modifications to exist-
9 ing fishing gear that will help—

10 “(1) minimize bycatch and seabird interactions;
11 and

12 “(2) minimize adverse fishing gear impacts on
13 habitat areas of particular concern.

14 “(d) REPORT.—The Secretary shall report to the
15 Congress annually on—

16 “(1) the amount expended to implement this
17 section in the preceding year;

18 “(2) developments in gear technology achieved
19 under this section;

20 “(3) the reductions in bycatch associated with
21 implementation of this section; and

22 “(4) any other relevant information.

23 “(e) AUTHORIZATION OF APPROPRIATIONS.—To
24 carry out this section there is authorized to be appro-



1 priated to the Secretary \$10,000,000 for each of fiscal
2 years 2003 through 2007.”.

3 (2) CLERICAL AMENDMENT.—The table of con-
4 tents in the first section is amended by adding at
5 the end of the items relating to title IV the fol-
6 lowing:

“408. Gear development.”.

7 (d) REPORT.—The Secretary of Commerce shall re-
8 port to the Congress within one year after the date of the
9 enactment of this Act on—

10 (1) the extent of the problem of seabird inter-
11 action with fisheries of the United States;

12 (2) efforts by the fishing industry and Regional
13 Fishery Management Councils to address that prob-
14 lem; and

15 (3) the extent of the problem of seabird inter-
16 action with fisheries other than the fisheries of the
17 United States.

18 (e) INTERNATIONAL ACTION.—The Secretary of
19 Commerce shall take appropriate action at appropriate
20 international fisheries management bodies to reduce
21 seabird interactions in fisheries.

22 **SEC. 10. FISH HABITAT RESEARCH AND PROTECTION.**

23 (a) PRIORITY RESEARCH.—Section 404 (16 U.S.C.
24 1881c) is amended by adding at the end the following:



1 “(e) PRIORITY FOR RESEARCH REGARDING OVER-
2 FISHED FISHERIES.—In carrying out or funding fisheries
3 research under this and other laws regarding essential fish
4 habitat, the Secretary shall give priority to research to
5 identify such habitat for fisheries that are overfished or
6 approaching an overfished condition.”.

7 (b) REQUIRED PROVISION IN FISHERY MANAGE-
8 MENT PLANS.—Section 303(a)(7) (16 U.S.C. 1853(a)(7))
9 is amended to read as follows:

10 “(7)(A) describe and identify essential fish
11 habitat for the fishery based on the guidelines estab-
12 lished by the Secretary under section 305(b)(1)(A);

13 “(B) minimize to the extent practicable adverse
14 effects on such habitat caused by fishing for those
15 fisheries identified by the Council as having available
16 information on the growth, reproduction, or survival
17 rates within habitats or production rates by habitat,
18 or for those fisheries that the Council determines the
19 specific fishing activity effects on the essential fish
20 habitat jeopardize the ability of the fishery to
21 produce maximum sustained yield on a continuing
22 basis;

23 “(C) minimize to the extent practicable adverse
24 effects on habitat areas of particular concern caused
25 by fishing; and



1 “(D) identify other actions to encourage the
2 conservation and enhancement of such habitat;”.

3 (c) DISCRETIONARY PROVISION IN FISHERY MAN-
4 AGEMENT PLANS.—Section 303(b) (16 U.S.C. 1853(b))
5 is further amended by adding after paragraph (13) the
6 following:

7 “(14) minimize to the extent practicable ad-
8 verse effects caused by fishing, on essential fish
9 habitat described and identified under section
10 303(a)(7)(A);”.

11 (d) HABITAT AREA OF PARTICULAR CONCERN DE-
12 FINED.—Section 3 (16 U.S.C. 1802) is further amended
13 in subsection (a) by redesignating paragraphs (19)
14 through (44) in order as paragraphs (20) through (45),
15 and by inserting after paragraph (18) the following:

16 “(19) The term ‘habitat area of particular con-
17 cern’ means a discrete habitat area that is essential
18 fish habitat and that—

19 “(A) provides important ecological func-
20 tions;

21 “(B) is sensitive to human-induced envi-
22 ronmental degradation; or

23 “(C) is a rare habitat type.”.



1 **SEC. 11. DEMONSTRATION PROGRAM FOR OYSTER SANC-**
2 **TUARIES AND RESERVES.**

3 (a) IN GENERAL.—The Secretary of Commerce,
4 through the National Oceanic and Atmospheric Adminis-
5 tration Chesapeake Bay Office, shall develop a program
6 for the design, construction, and placement of oyster sanc-
7 tuaries or reserves consistent with the agreement known
8 as the Chesapeake 2000 Agreement. The program shall
9 be developed in conjunction with the Corps of Engineers,
10 the Coast Guard, the Environmental Protection Agency,
11 the United States Fish and Wildlife Service, the State of
12 Maryland, the Commonwealth of Virginia, the Oyster Re-
13 covery Partnership, the Chesapeake Bay Foundation, the
14 Oyster Heritage Foundation, local commercial and rec-
15 reational fishing organizations, the Port of Baltimore, the
16 Port of Hampton Roads, the University of Maryland, the
17 Virginia Institute of Marine Sciences, and other users of
18 the waters of the Chesapeake Bay, as appropriate.

19 (b) STRUCTURES.—The program shall include the de-
20 sign, construction, placement, and restoration of struc-
21 tures, including reefs and bars, to act as beds for oyster
22 production. The structures should be designed to maxi-
23 mize the production of oysters while minimizing conflicts
24 with existing uses such as fishing or navigation. The struc-
25 tures shall be placed in areas in which they will not be
26 hazards to navigation. The Secretary shall work with in-



1 terested parties to ensure that all sites are adequately
2 marked on navigation charts as appropriate.

3 (c) RESEARCH PLAN.—The Secretary shall develop
4 a research plan, consistent with efforts to implement the
5 Chesapeake 2000 Agreement, for the placement of struc-
6 tures under the program, including measurable goals and
7 a monitoring program to determine the effectiveness of the
8 structures in recovering native oyster populations.

9 (d) FISHING REGULATIONS.—The Secretary shall
10 recommend State regulations restricting fishing in the wa-
11 ters surrounding structures placed under this section as
12 necessary to ensure the reproduction of oysters on the
13 structures. The restrictions may be seasonal in nature,
14 and shall not apply in any area that is located more than
15 100 meters from such a structure.

16 (e) RESTORATION OF NATIVE OYSTERS.—The pro-
17 gram shall use only native oyster species.

18 (f) REPORT.—The Secretary of Commerce shall sub-
19 mit to the Congress annual reports on the program under
20 this section.

21 (g) AUTHORIZATION OF APPROPRIATIONS.—

22 (1) IN GENERAL.—To carry out this section
23 there is authorized to be appropriated to the Sec-
24 retary \$5,000,000 for each of fiscal years 2004
25 through 2009.



1 (2) LIMITATION.—Not more than 5 percent of
2 amounts appropriated under this section may be
3 available for administrative expenses.

4 **SEC. 12. INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS.**

5 (a) AUTHORITY TO ESTABLISH INDIVIDUAL QUOTA
6 SYSTEMS.—Section 303(b)(6) (16 U.S.C. 1853(b)(6)) is
7 amended to read as follows:

8 “(6) establish a limited access system for the
9 fishery in order to achieve optimum yields, if—

10 “(A) in developing such system, the Coun-
11 cils and the Secretary take into account—

12 “(i) the need to promote conservation,

13 “(ii) present participation in the fish-
14 ery,

15 “(iii) historical fishing practices in,
16 and dependence on, the fishery,

17 “(iv) the economics of the fishery,

18 “(v) the capability of fishing vessels
19 used in the fishery to engage in other fish-
20 eries,

21 “(vi) the cultural and social frame-
22 work relevant to the fishery and fishing
23 communities, and

24 “(vii) any other relevant consider-
25 ations; and



1 “(B) in the case of such a system that pro-
2 vides for the allocation and issuance of indi-
3 vidual quotas (as that term is defined in sub-
4 section (d)), the system complies with sub-
5 section (d).”.

6 (b) REQUIREMENTS.—Section 303(d) (16 U.S.C.
7 1853(d)) is amended—

8 (1) by redesignating paragraphs (2), (3), (4),
9 and (5) in order as paragraphs (10), (11), (12), and
10 (13), and by moving such paragraphs 2 ems to the
11 left;

12 (2) in paragraph (11)(B), as so redesignated,
13 by inserting “, including as a result of a violation of
14 this Act or any regulation prescribed under this
15 Act” before the semicolon;

16 (3) by adding at the end the following:

17 “(14) As used in this subsection:

18 “(A) The term ‘individual quota system’ means
19 a system that limits access to a fishery in order to
20 achieve optimum yields, through the allocation and
21 issuance of individual quotas.

22 “(B) The term ‘individual quota’ means a grant
23 of permission to harvest a quantity of fish in a fish-
24 ery or process such fish which are under the juris-
25 diction of the North Pacific Management Council,



1 during each fishing season for which the permission
2 is granted, equal to a stated percentage of the total
3 allowable catch for the fishery.”; and

4 (4) by striking so much as precedes paragraph
5 (10), as so redesignated, and inserting the following:

6 “(d) SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA
7 SYSTEMS.—(1) A fishery management plan for a fishery
8 that is managed under a limited access system authorized
9 by subsection (b)(6) may establish an individual quota sys-
10 tem for the fishery in accordance with this subsection.

11 “(2) A fishery management plan that establishes an
12 individual quota system for a fishery—

13 “(A) shall provide for administration of the sys-
14 tem by the Secretary in accordance with the terms
15 of the plan;

16 “(B) shall include provisions that establish pro-
17 cedures and requirements for each Council having
18 authority over the fishery, for—

19 “(i) reviewing and revising the terms of
20 the plan that establish the system; and

21 “(ii) renewing, reallocating, and reissuing
22 individual quotas if determined appropriate by
23 each Council;

24 “(C) shall include provisions to—



1 “(i) provide for fair and equitable alloca-
2 tion of individual quotas under the system, and
3 minimize negative social and economic impacts
4 of the system on fishing communities;

5 “(ii) ensure adequate enforcement of the
6 system, including the use of observers where
7 appropriate; and

8 “(iii) provide for monitoring the temporary
9 or permanent transfer of individual quotas
10 under the system;

11 “(D) shall include provisions that prevent any
12 person from acquiring an excessive share of indi-
13 vidual quotas issued for a fishery; and

14 “(E) shall include measurable conservation
15 goals.

16 “(3) An individual quota issued under an individual
17 quota system established by a fishery management plan
18 may be received, held, or transferred in accordance with
19 regulations prescribed by the Secretary under this Act.

20 “(4)(A) Except as otherwise provided in this para-
21 graph, any fishery management plan that establishes an
22 individual quota system for a fishery may authorize indi-
23 vidual quotas to be held by or issued under the system
24 to fishing vessel owners, fishermen, crew members, fishing
25 communities, other persons as specified by the Council



1 and United States fish processors under the jurisdiction
2 of the North Pacific Fishery Management Council.

3 “(B) An individual who is not a citizen of the United
4 States may not hold an individual quota issued under a
5 fishery management plan.

6 “(C) A Federal agency or official may not hold, ad-
7 minister, or reallocate an individual quota issued under
8 a fishery management plan, other than the Secretary and
9 the Council having authority over the fishery for which
10 the individual quota is issued.

11 “(D)(i) A fishing community may not hold individual
12 quotas under an individual quota system established under
13 this subsection for a fishery that authorize harvest of more
14 than the lesser of—

15 “(I) 1 percent of the total authorized harvest in
16 the fishery; or

17 “(II) a percentage of such total authorized har-
18 vest established by the Council having jurisdiction
19 over the fishery.

20 “(ii) This subparagraph does not apply to a commu-
21 nity that is eligible to participate in the western Alaska
22 community development program or the western Pacific
23 community development program, under section 305(i).



1 “(5) Any fishery management plan that establishes
2 an individual quota system for a fishery may include provi-
3 sions that—

4 “(A) allocate individual quotas under the sys-
5 tem among categories of vessels; and

6 “(B) provide a portion of the annual harvest in
7 the fishery for entry-level fishermen, small vessel
8 owners, or crew members who do not hold or qualify
9 for individual quotas.

10 “(6) An individual quota system established for a
11 fishery may be limited or terminated at any time by the
12 Secretary or through a fishery management plan or
13 amendment developed by the Council having authority
14 over the fishery for which it is established, if necessary
15 for the conservation and management of the fishery.

16 “(7)(A) A fishery management plan that establishes
17 an individual quota system for a fishery—

18 “(i) must include measurable conservation
19 goals; and

20 “(ii) to monitor achievement of such goals, may
21 require greater observer coverage or electronic data
22 collection technology on any vessel fishing under an
23 individual quota issued under the system.

24 “(B) Not later than 5 years after the date of the es-
25 tablishment of an individual quota system for a fishery



1 under this section by a Council or the Secretary, and every
2 5 years thereafter, the Council or Secretary, respectively,
3 shall review the effectiveness of the system in achieving
4 the conservation goals required under this paragraph.

5 “(8)(A) The Secretary or a Council—

6 “(i) may not develop a proposal to establish an
7 individual quota system for a fishery, unless develop-
8 ment of the proposal has been approved by a ref-
9 erendum conducted in accordance with this para-
10 graph; and

11 “(ii) may not issue a proposed fishery manage-
12 ment plan or amendment to such a plan to establish
13 such a system unless the proposed plan or amend-
14 ment, respectively, has been approved by a ref-
15 erendum conducted in accordance with this para-
16 graph.

17 “(B) The Secretary, at the request of a Council, shall
18 conduct the referenda required by subparagraph (A). Each
19 referendum with respect to a fishery shall be decided by
20 a 60-percent majority of the votes cast by persons who
21 are determined by the Council, based on guidelines devel-
22 oped by the Secretary, to be eligible to vote in the ref-
23 erendum.

24 “(C) The Secretary shall develop guidelines to deter-
25 mine procedures and voting eligibility requirements for



1 referenda and to conduct such referenda in a fair and eq-
2 uitable manner.

3 “(9) Any individual quota system established under
4 section 303(b)(6) after the date of enactment of the Mag-
5 nuson-Stevens Act Amendments of 2003, and any indi-
6 vidual quota issued under such a system, shall not apply
7 after the end of the 10-year period beginning on the date
8 the system is established, or after the end of any 10-year
9 period thereafter, unless the Council has reviewed and
10 taken affirmative action to continue the system before the
11 end of each such 10-year period.”.

12 (c) FEES.—Section 304(d) is amended—

13 (1) in paragraph (2)(A) by striking “any” and
14 all that follows through “(ii)” and inserting “any”;
15 and

16 (2) by adding at the end the following:

17 “(3)(A) Notwithstanding paragraph (1), the Sec-
18 retary shall collect from a person that holds or transfers
19 an individual quota issued under a limited access system
20 established under section 303(b)(6) fees established by the
21 Secretary in accordance with this section and section
22 9701(b) of title 31, United States Code.

23 “(B) The fees required to be established and collected
24 by the Secretary under this paragraph are the following:



1 “(i) With respect to any initial allocation under
2 a limited access system established after the date of
3 the enactment of the Magnuson-Stevens Act Amend-
4 ments of 2003, an initial allocation fee in an
5 amount, determined by the Secretary, equal to 1
6 percent of the ex-vessel value of fish authorized in
7 one year under an individual quota, that shall be col-
8 lected from the person to whom the individual quota
9 is first issued.

10 “(ii) An annual fee in an amount, determined
11 by the Secretary, not to exceed 3 percent of the ex-
12 vessel value of fish authorized each year under an
13 individual quota share, that shall be collected from
14 the holder of the individual quota share.

15 “(iii) A transfer fee in an amount, determined
16 by the Secretary, equal to 1 percent of the ex-vessel
17 value of fish authorized each year under an indi-
18 vidual quota share, that shall be collected from a
19 person who permanently transfers the individual
20 quota share to another person.

21 “(C) In determining the amount of a fee under this
22 paragraph, the Secretary shall ensure that the amount is
23 commensurate with the cost of managing the fishery with
24 respect to which the fee is collected, including reasonable



1 costs for salaries, data analysis, and other costs directly
2 related to fishery management and enforcement.

3 “(D) The Secretary, in consultation with the Coun-
4 cils, shall promulgate regulations prescribing the method
5 of determining under this paragraph the ex-vessel value
6 of fish authorized under an individual quota share, the
7 amount of fees, and the method of collecting fees.

8 “(E) Fees collected under this paragraph from hold-
9 ers of individual quotas in a fishery shall be an offsetting
10 collection and shall be available to the Secretary only for
11 the purposes of administering and implementing this Act
12 with respect to that fishery.”.

13 (d) APPROVAL OF FISHERY MANAGEMENT PLANS
14 ESTABLISHING INDIVIDUAL QUOTA SYSTEMS.—Section
15 304 (16 U.S.C. 1854) is further amended by adding at
16 the end the following:

17 “(j) ACTION ON LIMITED ACCESS SYSTEMS.—(1) In
18 addition to the other requirements of this Act, after the
19 date of the enactment of the Magnuson-Stevens Act
20 Amendments of 2003 the Secretary may not approve a
21 fishery management plan that establishes a limited access
22 system that provides for the allocation of individual quotas
23 (in this subsection referred to as an ‘individual quota sys-
24 tem’) unless the plan complies with section 303(d).



1 “(2) The Secretary shall issue regulations that estab-
2 lish requirements for establishing an individual quota sys-
3 tem. The regulations shall—

4 “(A) specify factors that shall be considered by
5 a Council in determining whether a fishery should be
6 managed under an individual quota system;

7 “(B) ensure that any individual quota system is
8 consistent with the requirements of sections 303(a)
9 and 303(d), and require the collection of fees in ac-
10 cordance with subsection (d)(3) of this section;

11 “(C) provide for appropriate penalties for viola-
12 tions of individual quotas systems, including the sus-
13 pension or revocation of individual quotas for such
14 violations;

15 “(D) include recommendations for potential
16 management options related to individual quotas, in-
17 cluding the authorization of individual quotas that
18 may not be transferred by the holder, and the use
19 of leases or auctions by the Federal Government in
20 the establishment or allocation of individual quotas;
21 and

22 “(E) establish a central lien registry system for
23 the identification, perfection, and determination of
24 lien priorities, and nonjudicial foreclosure of encum-
25 brances, on individual quotas.”.



1 (e) RESTRICTION ON NEW INDIVIDUAL QUOTA SYS-
2 TEMS PENDING REGULATIONS.—

3 (1) RESTRICTION.—The Secretary of Commerce
4 may not approve any covered quota system plan, and
5 no covered quota system plan shall take effect,
6 under title III of the Magnuson-Stevens Fishery
7 Conservation and Management Act, before the effec-
8 tive date of regulations issued by the Secretary
9 under section 304(j) of that Act, as added by sub-
10 section (d) of this section.

11 (2) COVERED QUOTA SYSTEM PLAN DE-
12 FINED.—In this subsection, the term “covered quota
13 system plan” means a fishery management plan or
14 amendment to a fishery management plan, that—

15 (A) proposes establishment of an individual
16 quota system (as that term is used in section
17 303(d) of the Magnuson-Stevens Fishery Con-
18 servation and Management Act, as amended by
19 this section); and

20 (B) is not approved by the Secretary be-
21 fore May 1, 2002.

22 (f) EXISTING QUOTA PLANS.—Nothing in this Act
23 or the amendments made by this Act shall be construed
24 to require a reallocation of individual fishing quotas under



1 any individual fishing quota program approved by the Sec-
2 retary of Commerce before May 1, 2002.

3 **SEC. 13. COOPERATIVE EDUCATION AND RESEARCH.**

4 (a) DISCRETIONARY PROVISIONS IN FISHERY MAN-
5 AGEMENT PLANS.—Section 303(b) (16 U.S.C. 1853(b))
6 is further amended by adding after paragraph (14) the
7 following:

8 “(15) include provisions to create a cooperative
9 research component including the use of commercial
10 or charter vessels for the gathering of data on stock
11 abundance, composition, distribution, or other rel-
12 evant information important for the implementation
13 of the plan; and”.

14 (b) BLACK SEA BASS.—Section 404 (16 U.S.C.
15 1881c) is further amended by adding at the end the fol-
16 lowing:

17 “(f) BLACK SEA BASS COOPERATIVE RESEARCH
18 PROGRAM.—The Secretary, through the New England
19 Fisheries Science Center, shall develop and implement a
20 cooperative stock assessment program, using vessels from
21 the commercial black sea bass fishing industry if appro-
22 priate and available. This cooperative program shall in-
23 clude research on the range of the stock, a determination
24 as to whether there is more than one stock, and a black
25 sea bass genetic study to determine whether there is more



1 than one stock of such species requiring different manage-
2 ment regimes.”.

3 **SEC. 14. REPORT ON HIGHLY MIGRATORY SPECIES.**

4 (a) ANNUAL REPORT.—Section 102 (16 U.S.C.
5 1812) is amended—

6 (1) by inserting “(a) In General.—” before
7 “The United States”; and

8 (2) by adding at the end the following:

9 “(b) ANNUAL REPORT.—The Secretary shall, within
10 one year after the date of the enactment of this subsection
11 and annually thereafter, report to the Congress on—

12 “(1) any nation that is fishing for Atlantic
13 highly migratory species and is not in compliance
14 with the fishery conservation and management provi-
15 sions or any rebuilding recommendations or provi-
16 sions enacted by the international body charged with
17 developing such measures; and

18 “(2) any recommendations for addressing those
19 nations identified under paragraph (1) and actions
20 the United States might take to ensure such compli-
21 ance by such nations.”.

22 (b) NATIONAL ACADEMY OF SCIENCES REVIEW.—

23 (1) IN GENERAL.—The Secretary of Commerce
24 shall enter into an arrangement with the National



1 Academy of Sciences under which the Academy
2 shall—

3 (A) review the adequacy of existing meas-
4 ures (including closures) to protect Atlantic
5 white marlin; and

6 (B) make recommendations to the Con-
7 gress and the Secretary, regarding future con-
8 servation measures for Atlantic white marlin, if
9 warranted.

10 (2) FISHING IN MID-ATLANTIC BIGHT.—The re-
11 view shall examine, in particular, the effects of fish-
12 ing in the Mid-Atlantic Bight.

13 (3) REPORT.—The Academy shall report to the
14 Congress and the Secretary regarding the review
15 and recommendations under this subsection within 2
16 years after the date of the enactment of this Act.

17 **SEC. 15. PROHIBITED ACTS.**

18 Section 307 (16 U.S.C. 1857) is amended by striking
19 “and” after the semicolon at the end of paragraph (4),
20 by striking the period at the end of paragraph (5) and
21 inserting “; and”, and by adding at the end the following:

22 “(6) to sell or purchase any fish caught in rec-
23 reational fishing.”.



1 **SEC. 16. MEMBERSHIP OF FISHERY MANAGEMENT COUN-**
2 **CILS.**

3 (a) NEW ENGLAND COUNCIL.—Section 302(a)(1)(A)
4 (16 U.S.C. 1852(a)(1)(A)) is amended by—

5 (1) inserting “New York,” after “Massachu-
6 setts,”; and

7 (2) striking “18” and inserting “19”.

8 (b) ADDITIONAL MEMBER OF EACH COUNCIL.—Sec-
9 tion 302 (16 U.S.C. 1852) is further amended as follows:

10 (1) In the last sentence of subsection
11 (a)(1)(A)—

12 (A) by striking “19” and inserting “20”;

13 (B) by striking “12” and inserting “13”;

14 and

15 (C) by inserting before the period the fol-
16 lowing: “and including one appointed by the
17 Secretary in accordance with subsection
18 (b)(6)”.

19 (2) In the last sentence of subsection
20 (a)(1)(B)—

21 (A) by striking “21” and inserting “22”;

22 (B) by striking “13” and inserting “14”;

23 and

24 (C) by inserting before the period the fol-
25 lowing: “and including one appointed by the



1 Secretary in accordance with subsection
2 (b)(6)”.

3 (3) In the last sentence of subsection
4 (a)(1)(C)—

- 5 (A) by striking “13” and inserting “14”;
- 6 (B) by striking “8” and inserting “9”; and
- 7 (C) by inserting before the period the fol-
8 lowing: “and including one appointed by the
9 Secretary in accordance with subsection
10 (b)(6)”.

11 (4) In the last sentence of subsection
12 (a)(1)(D)—

- 13 (A) by striking “7” and inserting “8”;
- 14 (B) by striking “4” and inserting “5”; and
- 15 (C) by inserting before the period the fol-
16 lowing: “and including one appointed by the
17 Secretary in accordance with subsection
18 (b)(6)”.

19 (5) In the last sentence of subsection
20 (a)(1)(E)—

- 21 (A) by striking “17” and inserting “18”;
- 22 (B) by striking “11” and inserting “12”;
- 23 and
- 24 (C) by inserting before the period the fol-
25 lowing: “and including one appointed by the



1 Secretary in accordance with subsection
2 (b)(6)”.

3 (6) In the last sentence of subsection
4 (a)(1)(F)—

5 (A) by striking “14” and inserting “15”;

6 (B) by striking “8” and inserting “9”;

7 (C) by inserting “by the Secretary” after
8 “including one appointed”; and

9 (D) by inserting before the period the fol-
10 lowing: “and one appointed by the Secretary in
11 accordance with subsection (b)(6)”.

12 (7) In the last sentence of subsection
13 (a)(1)(H)—

14 (A) by striking “13” and inserting “14”;

15 (B) by striking “8” and inserting “9”; and

16 (C) by inserting before the period the fol-
17 lowing: “and including one appointed by the
18 Secretary in accordance with subsection
19 (b)(6)”.

20 (8) In subsection (b)—

21 (A) by redesignating paragraph (6) as
22 paragraph (7);

23 (B) in paragraph (7), as so redesignated,
24 by striking “paragraphs (2) or (5)” and insert-
25 ing “paragraph (2), (5), or (6)”;



1 (C) by inserting after paragraph (5) the
2 following:

3 “(6) The member of each Council who is required to
4 be appointed in accordance with this paragraph—

5 “(A) shall not be an individual who is directly
6 employed by, or receives a majority of his or her
7 livelihood from, the commercial, charter, or rec-
8 reational fishing community; and

9 “(B) shall be appointed without regard to sub-
10 paragraphs (B) and (C) of paragraph (2).”.

11 **SEC. 17. MISCELLANEOUS AMENDMENTS TO PURPOSES**
12 **AND POLICY.**

13 Section 2 (16 U.S.C. 1801) is amended—

14 (1) in subsection (b)(6) by inserting “eco-
15 logically sound” after “to encourage the”; and

16 (2) in subsection (c)(6) by inserting “, restore,”
17 after “to foster”.

18 **SEC. 18. FOREIGN FISHING.**

19 Section 201(e)(1)(E) (16 U.S.C. 1821(e)(1)(E)) is
20 amended—

21 (1) in clause (iii) by inserting “and compliance
22 with and enforcement of international fishing agree-
23 ments and treaties” after “fishing regulations”; and

24 (2) in clause (vii) by inserting “, conservation,”
25 after “fishery research”.



1 **SEC. 19. DRIFTNETS.**

2 Section 206(c)(1) (16 U.S.C. 1826(c)(1)) is amended
3 by inserting before the semicolon at the end the following:
4 “and comply with any further action or resolution adopted
5 by the United Nations on large-scale driftnet fishing to
6 which the United States is a signatory”.

7 **SEC. 20. SOURCES FOR DATA IN FISHERIES RESEARCH.**

8 Section 404(a) (16 U.S.C. 1881c(a)) is amended by
9 adding at the end the following: “The program shall ac-
10 quire such knowledge and data using both fishery-depend-
11 ent and fishery-independent data sources.”.

12 **SEC. 21. MISCELLANEOUS FISHERY PROTECTIONS IN FISH-**
13 **ERY MANAGEMENT PLANS.**

14 Section 303(b) (16 U.S.C. 1853(b)) is further
15 amended by adding after paragraph (15) the following:

16 “(16) designate closed areas, seasonal closures,
17 time/area closures, gear restrictions, or other meth-
18 ods for limiting impacts on habitat, limiting bycatch
19 impacts of gear, or limiting fishing impact on
20 spawning congregations in specific geographic
21 areas.”.

22 **SEC. 22. COOPERATIVE MARINE EDUCATION AND RE-**
23 **SEARCH PROGRAM.**

24 (a) PROGRAM.—The Secretary of Commerce may
25 enter into cooperative agreements with universities and in-
26 stitutions of higher learning in order to conduct research



1 in areas that support conservation and management of liv-
2 ing marine resources.

3 (b) INCLUDED RESEARCH.—Research conducted
4 under the program may include biological research
5 concerning—

6 (1) the abundance and life history parameters
7 of stocks of fish;

8 (2) the interdependence of fisheries or stocks of
9 fish and other ecosystem components; and

10 (3) the linkages between fish habitat and fish
11 production and abundance.

12 **SEC. 23. ASSESSMENT OF CUMULATIVE IMPACTS OF CON-**
13 **SERVATION AND MANAGEMENT MEASURES**
14 **FOR A FISHERY.**

15 Section 303(a)(9)(A) (16 U.S.C. 1853(a)(9)(A)) is
16 amended by inserting before the semicolon the following:
17 “, as well as the cumulative impacts on such participants
18 and communities of conservation and management meas-
19 ures for that fishery under other fishery management
20 plans and regulations”.

21 **SEC. 24. REGIONAL STOCK ASSESSMENTS.**

22 (a) IN GENERAL.—Title IV (16 U.S.C. 1881 et seq.)
23 is further amended by adding at the end the following:



1 **“SEC. 409. REGIONAL STOCK ASSESSMENTS.**

2 “(a) IN GENERAL.—The Secretary shall conduct
3 periodic regional assessments of stocks of fish.

4 “(b) INDEPENDENT REVIEW.—The Secretary shall
5 ensure that each periodic assessment under this section
6 is independently reviewed in a manner that—

7 “(1) will not delay the process of providing to
8 Regional Fishery Management Councils current as-
9 sessments for use in managing fisheries; and

10 “(2) is as transparent as possible, so that the
11 regulated community can provide input during the
12 review process.”.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 in the first section is further amended by adding at the
15 end of the items relating to title IV the following:

“409. Regional stock assessments.”.

16 **SEC. 25. NATIONAL ACADEMY OF SCIENCES GUIDANCE AND**
17 **STANDARDS REGARDING BEST SCIENTIFIC**
18 **INFORMATION AVAILABLE.**

19 (a) IN GENERAL.—The Secretary of Commerce shall
20 enter into an arrangement with the National Academy of
21 Sciences under which the Academy shall by not later than
22 1 year after the date of the enactment of this Act, develop
23 guidance and standards for determining what should be
24 considered the best scientific information available for
25 purposes of sections 2(c)(3) and 301(a)(2) of the Magnu-



1 son-Stevens Fishery Conservation and Management Act
2 (16 U.S.C. 1801(e)(3), 1851(a)(2)).

3 (b) FACTORS CONSIDERED.—Guidance and stand-
4 ards developed under subsection (a) shall take into
5 consideration—

6 (1) the need for relevance and timeliness of in-
7 formation; and

8 (2) how to treat the use of gray literature and
9 anecdotal information.

10 (c) PUBLICATION AND OPPORTUNITY FOR COM-
11 MENT.—The Secretary shall publish the results of the ac-
12 tivities of the Academy under subsection (a) and provide
13 an opportunity for the submission of comments regarding
14 the definition developed under subsection (a)(1).

15 **SEC. 26. NATIONAL ACADEMY OF SCIENCES DEFINITION OF**
16 **MAXIMUM SUSTAINABLE YIELD.**

17 (a) IN GENERAL.—The Secretary of Commerce shall
18 enter into an arrangement with the National Academy of
19 Sciences under which the Academy shall—

20 (1) develop a definition of the term “maximum
21 sustainable yield” for purposes of the Magnuson-Ste-
22 vens Fishery Conservation and Management Act (16
23 U.S.C. 1801 et seq.), that considers environmental
24 variability; and



1 (2) examine the use of alternatives for calcu-
 2 lating sustainable harvest levels in cases in which
 3 maximum sustainable yield cannot be calculated or
 4 is not appropriate.

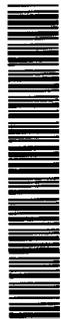
5 (b) PUBLICATION AND OPPORTUNITY FOR COM-
 6 MENT.—The Secretary shall publish the results of the ac-
 7 tivities of the Academy under subsection (a) and provide
 8 an opportunity for the submission of comments regarding
 9 the definition developed under subsection (a)(1).

10 **SEC. 27. ADMINISTRATION OF PACIFIC INSULAR AREA**
 11 **FISHERY AGREEMENTS.**

12 Section 204(e)(6) (16 U.S.C. 1824(e)(6)) is amended
 13 in the matter preceding subparagraph (A) by striking
 14 “into” and all that follows through “to the” the first place
 15 it appears and inserting “into the”.

16 **SEC. 28. HIGHLY MIGRATORY SPECIES BYCATCH MOR-**
 17 **TALITY REDUCTION RESEARCH PROGRAM.**

18 (a) ESTABLISHMENT OF A PROGRAM.—(1) There is
 19 established within the National Marine Fisheries Service
 20 a pelagic longline highly migratory species bycatch and
 21 mortality reduction research program. The Program shall
 22 be developed by a design team established by the Secretary
 23 of Commerce. The Program design shall be submitted to
 24 the Secretary no later than 120 days after the first meet-
 25 ing of the design team and shall include a statistically sig-



1 nificant recommendation for the level of observer coverage
2 on pelagic longline fishing vessels that is necessary to
3 monitor the fishery effectively and participate in the re-
4 search program. The design team shall be available as a
5 resource to the Secretary throughout the research and the
6 development of the recommendations.

7 (2) The program shall identify and test a variety of
8 pelagic longline fishing gear configurations and uses and
9 determine which of those configurations and uses are the
10 most effective in reducing highly migratory species mor-
11 tality. The program shall place an emphasis on deter-
12 mining the gear configurations and uses that are the most
13 effective in reducing blue and white marlin mortality in
14 the exclusive economic zone of the United States in the
15 Atlantic Ocean. The program shall also include a provision
16 for observers to be placed on pelagic longline fishing ves-
17 sels for the purposes of monitoring the fishery and partici-
18 pating in the research program.

19 (3) The highly migratory species program shall con-
20 duct research to determine the impact of existing time and
21 area closures designed to reduce the bycatch of longline
22 vessels. The program shall focus on whether existing clo-
23 sures should be modified to decrease bycatch by longline
24 vessels and shall determine what adjustments to the exist-
25 ing boundaries and temporal constraints should be made



1 as a result of any research. Any vessel participating in
2 the program shall be provided an observer by the National
3 Marine Fisheries Service. The full cost of the observer and
4 any incidental costs to the vessel as a result of being in-
5 cluded in the research program shall be paid for by the
6 National Marine Fisheries Service. The National Marine
7 Fisheries Service may authorize, without notice and com-
8 ment, scientific research permits authorizing a vessel to
9 enter and fish in any closed area in the Atlantic Ocean
10 so long as there is 100 percent observer coverage and the
11 activities of the vessel are in furtherance of the research
12 program. Access to any closed area may be granted only
13 after consideration of the scientific need for access.

14 (b) DESIGN TEAM.—(1) Knowledgeable members of
15 the pelagic longline fishing sector, the recreational billfish
16 and tuna sector, and the conservation community, along
17 with scientists associated with each such entity, shall be
18 appointed by the Secretary to the program design team.
19 Each of the sectors shall to the extent practicable be fairly
20 represented on the design team. The design team shall not
21 exceed nine members only one of which may be an em-
22 ployee of the Federal Government. The design team shall
23 select a chairman and establish its own rules of operation.
24 Each member of the design team who is not employed by
25 the Federal Government shall be compensated in the man-



1 ner provided for members of a Fishery Management Coun-
2 cil under section 302(d) of the Magnuson-Stevens Fishery
3 Conservation and Management Act (16 U.S.C. 1852(d)).

4 (2) The design team shall not be considered to be
5 an advisory committee for the purposes of the Federal Ad-
6 visory Committee Act (5 U.S.C. App.), but shall hold its
7 deliberations in meetings for which prior noticed is pub-
8 lished in the Federal Register and that are open to the
9 public.

10 (c) MID-ATLANTIC CONSERVATION ZONE FOR HIGH-
11 LY MIGRATORY SPECIES.—Section 304(g) (16 U.S.C.
12 1854(g)) is amended by adding at the end the following:

13 “(3) MID-ATLANTIC CONSERVATION ZONE FOR
14 HIGHLY MIGRATORY SPECIES.—

15 “(A) No person shall engage in pelagic
16 longline fishing—

17 “(i) in the lower mid-Atlantic Con-
18 servation Zone in the period beginning Au-
19 gust 15 and ending October 1 each year;
20 or

21 “(ii) in the upper mid-Atlantic Con-
22 servation Zone in the period beginning
23 July 15 and ending September 1 each
24 year.



1 “(B) In this paragraph the term ‘lower
2 mid-Atlantic Conservation Zone’ means the
3 area that is enclosed by a series of geodesics
4 connecting in succession the points at the fol-
5 lowing coordinates:

6 “(i) 36 degrees 30 minutes north lati-
7 tude, 75 degrees 0 minutes west longitude.

8 “(ii) 37 degrees 0 minutes north lati-
9 tude, 75 degrees 0 minutes west longitude.

10 “(iii) 38 degrees 0 minutes north lati-
11 tude, 74 degrees 0 minutes west longitude.

12 “(iv) 38 degrees 0 minutes north lati-
13 tude, 73 degrees 0 minutes west longitude.

14 “(v) 37 degrees 0 minutes north lati-
15 tude, 74 degrees 0 minutes west longitude.

16 “(vi) 36 degrees 30 minutes north
17 latitude, 75 degrees 0 minutes west lon-
18 gitude.

19 “(C) In this paragraph the term ‘upper
20 mid-Atlantic Conservation Zone’ means the
21 area that is enclosed by a series of geodesics
22 connecting in succession the points at the fol-
23 lowing coordinates:

24 “(i) 38 degrees 0 minutes north lati-
25 tude, 74 degrees 0 minutes west longitude.



1 “(ii) 40 degrees 0 minutes north lati-
2 tude, 72 degrees 0 minutes west longitude.

3 “(iii) 39 degrees 0 minutes north lati-
4 tude, 72 degrees 0 minutes west longitude.

5 “(iv) 38 degrees 0 minutes north lati-
6 tude, 73 degrees 0 minutes west longitude.

7 “(v) 38 degrees 0 minutes north lati-
8 tude, 74 degrees 0 minutes west longitude.

9 “(D) This paragraph shall not apply after
10 the end of the 4-year period beginning on the
11 date of the enactment of this paragraph.”.

12 (d) REPORT TO CONGRESS.—The Secretary of Com-
13 merce shall submit to the Committee on Resources of the
14 House of Representatives and the Committee on Com-
15 merce, Science, and Transportation of the Senate—

16 (1) an interim report of the findings of the re-
17 search conducted under this section within two years
18 after the date of enactment of this Act; and

19 (2) a final report with the necessary regulatory
20 documents to initiate implementation of any adjust-
21 ments to time and area closures, gear configura-
22 tions, or fishing techniques warranted as a result of
23 the research.

24 (e) AUTHORIZATION OF APPROPRIATIONS.—For re-
25 search under this section there is authorized to be appro-



1 priated to the Secretary of Commerce \$5,000,000 for fis-
2 cal years 2003 through 2007.

3 **SEC. 29. AUTHORIZATION OF APPROPRIATIONS.**

4 Section 4 (16 U.S.C. 1893) is amended to read as
5 follows:

6 **“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

7 “There are authorized to be appropriated to the Sec-
8 retary for the purposes of carrying out the provisions of
9 this Act, not to exceed the following:

10 “(1) \$200,500,000 for fiscal year 2003;

11 “(2) \$214,000,000 for fiscal year 2004;

12 “(3) \$222,000,000 for fiscal year 2005;

13 “(4) \$230,000,000 for fiscal year 2006; and

14 “(5) \$238,000,000 for fiscal year 2007.”.



108TH CONGRESS
2^D SESSION

S. 2244

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

IN THE SENATE OF THE UNITED STATES

MARCH 26, 2004

Mrs. HUTCHISON (for herself and Mr. BREAUX) 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This bill may be cited as the "Freedom to Fish Act".

5 **SEC. 2. FINDINGS.**

6 Congress makes the following findings:

7 (1) Recreational fishing is traditionally the
8 most popular outdoor sport with more than
9 50,000,000 participants of all ages, in all regions of
10 the country.

1 (2) Recreational anglers makes a substantial
2 contribution to local, State, and national economies
3 and infuse \$116,000,000,000 annually into the na-
4 tional economy.

5 (3) In the United States, more than 1,200,000
6 jobs are related to recreational fishing, a number
7 that is approximately 1 percent of the entire civilian
8 workforce in the United States. In communities that
9 rely on seasonal tourism, the expenditures of rec-
10 reational anglers result in substantial benefits to the
11 local economies and small businesses in those com-
12 munities.

13 (4) Recreational anglers have long dem-
14 onstrated a conservation ethic. In addition to pay-
15 ment of Federal excise taxes on fishing equipment,
16 motorboats and fuel, as well as license fees, rec-
17 reational anglers contribute more than \$500,000,000
18 annually to State fisheries conservation management
19 programs and projects.

20 (5) It is a long standing policy of the Federal
21 Government to allow public access to public lands
22 and waters for recreational purposes in a manner
23 that is consistent with principals of sound conserva-
24 tion. This policy is reflected in the National Forest
25 Management Act of 1976, the Wilderness Act, the

1 Wild and Scenic Rivers Act, and the National Parks
2 and Recreation Act of 1978.

3 (6) In most instances, recreational fishery re-
4 sources can be maintained without restricting public
5 access to fishing areas through a variety of manage-
6 ment measures including take limits, minimum size
7 requirements, catch and release requirements, gear
8 adaptations, and closed seasons.

9 (7) A clear policy is required to demonstrate to
10 recreational anglers that recreational fishing can be
11 managed without unnecessarily prohibiting such
12 fishing.

13 (8) A comprehensive policy on the implementa-
14 tion, use, and monitoring of marine protected areas
15 is required to maintain the optimum balance be-
16 tween recreational fishing and sustaining rec-
17 reational fishery resources.

18 **SEC. 3. POLICY.**

19 It is the policy of the United States to promote sound
20 conservation of fishery resources by ensuring that—

21 (1) Federal regulations promote access to fish-
22 ing areas by recreational anglers to the maximum
23 extent practicable;

24 (2) recreational anglers are actively involved in
25 the formulation of any regulatory procedure that

1 contemplates imposing restrictions on access to a
2 fishing area; and

3 (3) limitations on access to fishing areas by rec-
4 reational anglers are not imposed unless such limita-
5 tions are scientifically necessary to provide for the
6 conservation of a fishery resource.

7 **SEC. 4. MAGNUSON-STEVENSON FISHERY CONSERVATION AND**
8 **MANAGEMENT ACT AMENDMENTS.**

9 (a) **LIMITATION ON CLOSURES.**—Section 303(a) of
10 the Magnuson-Stevens Fishery Conservation and Manage-
11 ment Act (16 U.S.C. 1853(a)) is amended by adding at
12 the end the following:

13 “(15) not establish geographic areas where rec-
14 reational fishing is prohibited unless—

15 “(A) clear indication exists that rec-
16 reational fishing in such area is the cause of a
17 specific conservation problem in the fishery;

18 “(B) no alternative conservation measures
19 related to recreational fishing, such as gear re-
20 strictions, quotas, or closed seasons will ade-
21 quately provide for conservation and manage-
22 ment of the fishery;

23 “(C) the management plan—

24 “(i) provides for specific measurable
25 criteria to assess whether the prohibition

1 provides conservation benefits to the fish-
2 ery; and

3 “(ii) requires a periodic review to as-
4 sess the continued need for the prohibition
5 not less than once every 3 years;

6 “(D) the best available scientific informa-
7 tion supports the need to close the area to rec-
8 reational fishing; and

9 “(E) the prohibition is terminated as soon
10 as the condition in subparagraph (A) that was
11 the basis of the prohibition no longer exists.”.

12 (b) TECHNICAL AMENDMENTS.—Such section is fur-
13 ther amended—

14 (1) in paragraph (13), by striking “and” after
15 the semicolon; and

16 (2) in paragraph (14), by striking “fishery.”
17 and inserting “fishery; and”.

18 **SEC. 5. NATIONAL MARINE SANCTUARIES ACT AMEND-**
19 **MENT.**

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

22 “(5) FISHING REGULATIONS.—

23 “(A) IN GENERAL.—The Secretary shall
24 provide the appropriate Regional Fishery Man-
25 agement Council with the opportunity to pre-

1 pare, and to revise from time to time, draft reg-
2 ulations for fishing within the exclusive eco-
3 nomic zone as the Council may deem necessary
4 to implement the proposed designation.

5 “(B) RELATIONSHIP TO MAGNUSON.—

6 Draft regulations prepared by the Council
7 under subparagraph (A) shall be made in ac-
8 cordance with the standards and procedures of
9 the Magnuson Act.

10 “(C) REGULATION WITHIN A STATE.—

11 Such regulations may regulate a fishery within
12 the boundaries of a State (other than the
13 State’s internal waters) if—

14 “(i) the Governor of the State ap-
15 proves such regulation; or

16 “(ii) the Secretary determines, after
17 notice and an opportunity for a hearing in
18 accordance with section 554 of title 5,
19 United States Code, that the State has
20 taken any action, or omitted to take any
21 action, the results of which will substan-
22 tially and adversely affect the fulfillment of
23 the purposes and policies of this Act and
24 the goals and objectives of the proposed
25 designation.

1 “(D) NOTIFICATION AND HEARING.—If
2 the Secretary makes a determination under
3 subparagraph (C)(ii) to regulate a fishery with-
4 in the boundaries of such State (other than
5 State’s internal waters)—

6 “(i) the Secretary shall promptly no-
7 tify the State and the appropriate Council
8 of such determination;

9 “(ii) the State may request that a
10 hearing be held pursuant to section 554 of
11 title 5, United States Code; and

12 “(iii) the Secretary shall conduct a
13 hearing requested under clause (ii) prior to
14 taking any action to regulate a fishery
15 within the boundaries of such State (other
16 than the State’s internal waters) under
17 subparagraph (C)(ii).

18 “(E) TERMINATION OF REGULATION
19 WITHIN A STATE.—If the Secretary, pursuant
20 to a determination under subparagraph (C)(ii),
21 assumes responsibility for the regulation of any
22 fishery, the State involved may at any time
23 thereafter apply to the Secretary for reinstatement
24 of its authority over such fishery. If the
25 Secretary finds that the reasons for which the

1 Secretary assumed such regulation no longer
2 prevail, the Secretary shall promptly terminate
3 such regulation.”.

○

108TH CONGRESS
2D SESSION

S. 2066

To authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2004, 2005, 2006, 2007, and 2008, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2004

Ms. SNOWE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2004, 2005, 2006, 2007, and 2008, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Fishery Conservation and Management Amendments Act
6 of 2004”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Amendment of Magnuson-Stevens Fishery Conservation and Management Act.
- Sec. 3. Definitions.
- Sec. 4. Authorization of appropriations.
- Sec. 5. Treaty on Pacific Coast albacore tuna.
- Sec. 6. Monitoring of Pacific insular area fisheries.
- Sec. 7. Caribbean Council jurisdiction.
- Sec. 8. Notice of council meetings.
- Sec. 9. Fishery management plan requirements.
- Sec. 10. Submission of economic data.
- Sec. 11. Individual fishing quotas.
- Sec. 12. Gulf of Mexico fishing quota systems.
- Sec. 13. Action by the secretary.
- Sec. 14. Rebuilding depleted fisheries.
- Sec. 15. Steaming time.
- Sec. 16. Emergency regulations.
- Sec. 17. Fishing capacity reduction program.
- Sec. 18. Collection of information.
- Sec. 19. Access to certain information.
- Sec. 20. Maine pocket waters.
- Sec. 21. Western Pacific fishery demonstration projects.
- Sec. 22. Cooperative research and management.
- Sec. 23. Independent peer review of data collection procedures.
- Sec. 24. Advisory committee reform and peer review.
- Sec. 25. Cumulative impacts.
- Sec. 26. Essential fish habitat.
- Sec. 27. Cooperative enforcement agreements.
- Sec. 28. Scientific and statistical committees report on ecosystem research priorities; pilot program for fishery ecosystem plans.

1 **SEC. 2. AMENDMENT OF MAGNUSON-STEVEN'S FISHERY**
 2 **CONSERVATION AND MANAGEMENT ACT.**

3 Except as otherwise expressly provided, whenever in
 4 this Act an amendment or repeal is expressed in terms
 5 of an amendment to, or repeal of, a section or other provi-
 6 sion, the reference shall be considered to be made to a
 7 section or other provision of the Magnuson-Stevens Fish-
 8 ery Conservation and Management Act (16 U.S.C. 1801
 9 et seq.).

1 **SEC. 3. DEFINITIONS.**

2 (a) IN GENERAL.—Section 3 (16 U.S.C. 1802) is
3 amended—

4 (1) by inserting after paragraph (8), the fol-
5 lowing:

6 “(8A) The term ‘depleted’ when used with re-
7 spect to a stock of fish, means that the stock is of
8 a size that is below the natural range of fluctuation
9 associated with the production of maximum sustain-
10 able yield.”;

11 (2) by inserting after paragraph (18) the fol-
12 lowing:

13 “(18A) The term ‘habitat area of particular
14 concern’ means those waters and submerged sub-
15 strate that form a discrete vulnerable subunit of es-
16 sential fish habitat that is required for a stock to
17 sustain itself and which is designated through a
18 specified set of national criteria which includes, at a
19 minimum, a requirement that designation be based
20 on the best scientific information available regarding
21 habitat-specific density of that fish stock, growth, re-
22 production, and survival rates of that stock within
23 the designated area.”;

24 (3) by inserting “and” after the semicolon in
25 paragraph (28)(A);

1 (4) by striking “factor; and” in paragraph
2 (28)(B) and inserting “factor.”;

3 (5) by striking subparagraph (C) of paragraph
4 (28); and

5 (6) by striking paragraph (29) and inserting
6 the following:

7 “(29) The term ‘overfishing’ means a rate or
8 level of fishing mortality that jeopardizes the capac-
9 ity of a fishery to produce the maximum sustainable
10 yield on a continuing basis.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) The Act is amended by striking “over-
13 fished” each place it appears and inserting “de-
14 pleted”.

15 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

16 Section 4 (16 U.S.C. 1803) is amended to read as
17 follows:

18 **“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

19 “There are authorized to be appropriated to the Sec-
20 retary for the purposes of carrying out this Act—

21 “(1) \$400,000,000 for fiscal year 2004;

22 “(2) \$415,000,000 for fiscal year 2005;

23 “(3) \$430,000,000 for fiscal year 2006;

24 “(4) \$445,000,000 for fiscal year 2007; and

25 “(5) \$460,000,000 for fiscal year 2008.”.

1 **SEC. 5. TREATY ON PACIFIC COAST ALBACORE TUNA.**

2 (a) FOREIGN FISHING UNDER TREATY; IMPLEMEN-
3 TATION.—Section 202(e) (16 U.S.C. 1822(e)) is amended
4 by adding at the end the following:

5 “(6) TREATY ON PACIFIC COAST ALBACORE
6 TUNA VESSELS.—

7 “(A) Notwithstanding section 201, foreign
8 fishing may be conducted pursuant to the Trea-
9 ty between the Government of the United
10 States of America and the Government of Can-
11 ada on Pacific Coast Albacore Tuna Vessels
12 and Port Privileges, signed at Washington May
13 26, 1981, including its Annexes and any
14 amendments thereto.

15 “(B) The Secretary of Commerce, with the
16 concurrence of the Secretary of State, may pro-
17 mulgate regulations necessary to discharge the
18 obligations of the United States of America
19 under the Treaty between the Government of
20 the United States of America and the Govern-
21 ment of Canada on Pacific Coast Albacore
22 Tuna Vessels and Port Privileges, signed at
23 Washington May 26, 1981, including its An-
24 nexes and any amendments thereto.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Paragraph (1) of section 201(a)(1) (16
2 U.S.C. 1821(a)) is amended by striking “or (c)” and
3 inserting “or (c), section 202(e)(6),”.

4 (2) Section 204(a) (16 U.S.C. 1824 (a)) is
5 amended by striking “vessel.” and inserting “vessel
6 or the fishing is authorized under section
7 202(e)(6).”.

8 (3) Section 307(2)(B) (16 U.S.C. 1857(2)(B))
9 is amended by striking “section 201(i),” and insert-
10 ing “section 201(i) and foreign fishing permitted
11 under section 202(e)(6),”.

12 **SEC. 6. MONITORING OF PACIFIC INSULAR AREA FISH-**
13 **ERIES.**

14 (a) **WAIVER AUTHORITY.**—Section 201(h)(2)(B) (16
15 U.S.C. 1821(h)(2)(B)) is amended by striking “that is at
16 least equal in effectiveness to the program established by
17 the Secretary;” and inserting “or other monitoring pro-
18 gram that the Secretary determines is adequate to monitor
19 harvest, bycatch, and compliance with the laws of the
20 United States by vessels fishing under the agreement;”.

21 (b) **MARINE CONSERVATION PLANS.**—Section
22 204(e)(4)(A)(i) (16 U.S.C. 1824(e)(4)(A)(i)) is amended
23 to read as follows:

24 “(i) Pacific Insular Area observer programs, or
25 other monitoring programs, that the Secretary deter-

1 mines are adequate to monitor the harvest, bycatch,
2 and compliance with the laws of the United States
3 by foreign fishing vessels that fish under Pacific In-
4 sular Area fishing agreements;”.

5 **SEC. 7. CARIBBEAN COUNCIL JURISDICTION.**

6 Section 302(a)(1)(D) (16 U.S.C. 1852(a)(1)(D)) is
7 amended by inserting “and of commonwealths, territories,
8 and possessions of the United States in the Caribbean
9 Sea” after “seaward of such States”.

10 **SEC. 8. NOTICE OF COUNCIL MEETINGS.**

11 (a) **REGULAR AND EMERGENCY MEETINGS.**—The
12 first sentence of section 302(i)(2)(C) (16 U.S.C.
13 1852(i)(2)(C)) is amended to read as follows: “Timely
14 public notice of each regular meeting and each emergency
15 meeting, including the time, place, and agenda of the
16 meeting shall be provided by any means that will result
17 in wide publicity in the major fishing ports of the region
18 (and in other major fishing ports having a direct interest
19 in the affected fishery).”

20 (b) **CLOSED MEETINGS.**—Section 302(i)(3)(B) (16
21 U.S.C. 1852(i)(3)(B)) is amended by striking “notify local
22 newspapers” and inserting “provide notice by any means
23 that will result in wide publicity”.

1 **SEC. 9. FISHERY MANAGEMENT PLAN REQUIREMENTS.**

2 Section 303(a)(5) (16 U.S.C. 1853(a)(5)) is amended
3 by inserting “harvest and processing revenues (by spe-
4 cies), production costs, capital expenditures, and other
5 fishing or processing expenses”, after “number of hauls,”.

6 **SEC. 10. SUBMISSION OF ECONOMIC DATA.**

7 Section 303(b)(7) (16 U.S.C. 1853(b)(7)) is amended
8 by striking “(other than economic data)”.

9 **SEC. 11. INDIVIDUAL FISHING QUOTAS**

10 (a) IN GENERAL.—Section 303 (16 U.S.C. 1853) is
11 amended—

12 (1) by striking subsection (b)(6) and inserting
13 the following:

14 “(6) establish a limited access system for the
15 fishery in order to achieve optimum yield if, in devel-
16 oping such system, the Council and the Secretary
17 take into account—

18 “(A) the conservation requirements of this
19 Act with respect to the fishery;

20 “(B) present participation in the fishery;

21 “(C) historical fishing practices in, and de-
22 pendence on, the fishery;

23 “(D) the economics of the fishery;

24 “(E) the capability of fishing vessels used
25 in the fishery to engage in other fisheries;

1 “(F) the cultural and social framework rel-
2 evant to the fishery and any affected fishing
3 communities;

4 “(G) the fair and equitable distribution of
5 a public resource; and

6 “(H) any other relevant considerations;”;

7 (2) by striking subsection (d) and inserting the
8 following:

9 “(d) FISHING QUOTA SYSTEMS.—

10 “(1) ESTABLISHMENT.—Any fishery manage-
11 ment plan or amendment that is prepared by any
12 Council, or by the Secretary, with respect to any
13 fishery, may establish a fishing quota system con-
14 sistent with the provisions of subsection (b)(6).

15 “(2) IN GENERAL.—The Councils and Sec-
16 retary shall ensure that any such fishing quota sys-
17 tem submitted and approved after September 30,
18 2004, complies with the requirements of this section
19 and—

20 “(A) shall prevent any person from acquir-
21 ing an excessive share of the fishing quotas
22 issued, as appropriate for the fishery, and es-
23 tablish any other limits or measures necessary
24 to prevent inequitable concentration of quota
25 share;

1 “(B) shall provide for the fair and equi-
2 table initial allocation of quota share and in
3 such allocation—

4 “(i) shall take into account present
5 and historic participation in the fishery;

6 “(ii) shall consider allocating a por-
7 tion of the annual harvest to entry-level
8 fishermen, small vessel owners, skippers,
9 crew members, and fishing communities;
10 and

11 “(iii) may allocate shares among cat-
12 egories of vessels or gear types;

13 “(C) shall contain provisions for the reg-
14 ular review and evaluation of the system, in-
15 cluding timetables and criteria for evaluating
16 performance, and actions to be taken for failure
17 to meet the criteria;

18 “(D) shall contain criteria that would gov-
19 ern limitation, revocation, renewal, reallocation,
20 or reissuance of fishing quota, including:

21 “(i) reallocation or reissuance of
22 quota revoked pursuant to section 308 of
23 this Act;

24 “(ii) revocation and reissuance of fish-
25 ing quota if the owner of the quota cease

1 to substantially participate in the fishery;
2 and

3 “(iii) exceptions to revocation or limi-
4 tation in cases of death, disablement,
5 undue hardship, or in any case in which
6 fishing is prohibited by the Secretary;

7 “(E) shall provide a process for appeals of
8 decisions on—

9 “(i) eligibility of a person to receive or
10 bid for an allocation of quota shares; and

11 “(ii) limitations, restrictions and rev-
12 ocations of quota held by a person;

13 “(F) shall promote management measures
14 to improve the conservation and management of
15 the fishery, including reduction of bycatch;

16 “(G) shall provide for effective enforce-
17 ment, monitoring, management of such system,
18 including adequate data collection and use of
19 observers at least at a level of coverage that
20 should yield statistically significant results;

21 “(H) may provide for the sale, lease or
22 transfer of quota shares and limitations thereto;

23 “(I) shall provide a mechanism, such as
24 fees as authorized by section 304(d)(2), includ-
25 ing fees payable on quota transfers to recover

1 costs related to administering and implementing
2 the program, including enforcement, manage-
3 ment and data collection (including adequate
4 observer coverage), if the assessment of such
5 fees is proportional to the amount of quota held
6 and fished by each quota holder and if such
7 fees are used only for that fishing quota sys-
8 tem;

9 “(J) shall consider the use of community
10 or area-based approaches and strategies in de-
11 veloping fishing quota systems and consider
12 other management measures, including meas-
13 ures to facilitate formation of fishery coopera-
14 tive arrangements, taking into account prox-
15 imity to and dependence on the resource, con-
16 tribution of fishing to the social and economic
17 status of the community, and historic participa-
18 tion in the fishery; and

19 “(K) shall include procedures and require-
20 ments necessary to carry out subparagraphs
21 (A) through (J).

22 “(3) NO CREATION OF RIGHT, TITLE, OR IN-
23 TEREST.—A fishing quota or other limited access
24 system authorization—

1 “(A) shall be considered a permit for the
2 purposes of sections 307, 308, and 309;

3 “(B) may be revoked or limited at any
4 time in accordance with this Act, including for
5 failure to comply with the terms of the plan or
6 if the system is found to have jeopardized the
7 sustainability of the stock or the safety of fish-
8 ermen;

9 “(C) shall not confer any right of com-
10 pensation to the holder of such fishing quota or
11 other such limited access system authorization
12 if it is revoked or limited;

13 “(D) shall not create, or be construed to
14 create, any right, title, or interest in or to any
15 fish before the fish is harvested; and

16 “(E) shall be considered a grant of permis-
17 sion to the holder of the fishing quota to engage
18 in activities permitted by the fishing quota sys-
19 tem.

20 “(4) ELIGIBILITY.—Persons eligible to hold
21 fishing quota shares are persons who are United
22 States citizens, or who are United States nationals
23 or permanent resident aliens qualified by Federal
24 law to participate in the fishery.

1 “(5) DURATION.—Any fishing quota system es-
2 tablished under this section after the date of enact-
3 ment of the Fishery Conservation and Management
4 Amendments Act of 2004 shall expire at the end of
5 a 10-year period beginning on the date the system
6 is established, or at the end of successive 10 year pe-
7 riods thereafter, unless extended by a fishery man-
8 agement plan amendment in accordance with this
9 Act, for successive periods not to exceed 10 years.

10 “(6) REFERENDUM PROCEDURES.—

11 “(A) Except as provided in subparagraph
12 (C) for the Gulf of Mexico commercial red
13 snapper fishery, a Council may not submit, and
14 the Secretary not approve or implement a fish-
15 ery management plan or amendment that cre-
16 ates a fishing quota system, including a secre-
17 tarial plan, unless such a system, as ultimately
18 developed, has been approved by more than
19 two-thirds of those voting in a referendum
20 among eligible permit holders. If a fishing
21 quota system fails to be approved by the req-
22 uisite number of those voting, it may be revised
23 and submitted for approval in a subsequent ref-
24 erendum.

1 “(B) The Secretary shall conduct the ref-
2 erendum referred to in this paragraph, includ-
3 ing notifying all persons eligible to participate
4 in the referendum and making available to
5 them information concerning the schedule, pro-
6 cedures and eligibility requirements for the ref-
7 erendum process and the proposed fishing
8 quota system. The Secretary shall within one
9 year of enactment of the Fishing Quota Act of
10 2003 publish guidelines and procedures to de-
11 termine procedures and voting eligibility re-
12 quirements for referenda and to conduct such
13 referenda in a fair and equitable manner.

14 “(C) The provisions of section 407(c) shall
15 apply in lieu of this paragraph for any fishing
16 quota system for the Gulf of Mexico commercial
17 red snapper fishery.

18 “(D) Chapter 35 of title 44, United States
19 Code, (commonly known as the ‘Paperwork Re-
20 duction Act’) does not apply to the referenda
21 conducted under this paragraph.

22 “(7)(A) No provision of law shall be construed
23 to limit the authority of a Council to submit, or the
24 Secretary to approve, the termination or limitation,
25 without compensation to holders of any limited ac-

1 cess system permits, of a fishery management plan,
2 plan amendment, or regulation that provides for a
3 limited access system, including a fishing quota sys-
4 tem.

5 “(B) This subsection shall not apply to, or be
6 construed to prohibit a Council from submitting, or
7 the Secretary from approving and implementing,
8 amendments to the North Pacific halibut and sable-
9 fish, South Atlantic wreckfish, or Mid-Atlantic surf
10 clam and ocean (including mahogany) quahog indi-
11 vidual fishing quota programs.

12 “(8)(A) A Council may submit, and the Sec-
13 retary may approve and implement, a program
14 which reserves up to 25 percent of any fees collected
15 from a fishery under section 304(d)(2) to be used,
16 pursuant to section 1104A(a)(7) of the Merchant
17 Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to
18 issue obligations that aid in financing the—

19 “(i) purchase of fishing quotas in that fish-
20 ery by fishermen who fish from small vessels;
21 and

22 “(ii) first-time purchase of fishing quotas
23 in that fishery by entry level fishermen.

24 “(B) A Council making a submission under
25 subparagraph (A) shall recommend criteria, con-

1 sistent with the provisions of this Act, that a fisher-
2 man must meet to qualify for guarantees under
3 clauses (i) and (ii) of subparagraph (A) and the por-
4 tion of funds to be allocated for guarantees under
5 each clause.”.

6 (b) INDEPENDENT REVIEW.—Section 303 (16 U.S.C.
7 1853) is further amended by adding at the end the fol-
8 lowing:

9 “(e) INDEPENDENT REVIEW OF EFFECTIVENESS.—

10 “(1) Within 5 years after the date of enactment
11 of the Fishery Conservation and Management
12 Amendments Act of 2004, and every 5 years there-
13 after, the National Research Council shall provide
14 an independent review of the effectiveness of fishing
15 quota systems conducted in Federal fisheries.

16 “(2) The review shall be conducted by an inde-
17 pendent panel of individuals who have knowledge
18 and experience in fisheries conservation and manage-
19 ment, in the implementation of fishing quota sys-
20 tems, or in the social or economic characteristics of
21 fisheries. The National Research Council shall en-
22 sure that members of the panel are qualified for ap-
23 pointment, are not active quota share holders, and
24 provide fair representation to interests affected by
25 such programs.

1 “(3) The independent review of fishing quota
2 systems shall include—

3 “(A) a determination of how fishing quota
4 systems affect fisheries management and con-
5 tribute to improved management, conservation
6 (including bycatch reduction) and safety in the
7 fishery;

8 “(B) formal input in the form of testimony
9 from quota holders relative to the effectiveness
10 of the fishing quota system;

11 “(C) an evaluation of the social, economic
12 and biological consequences of the quota sys-
13 tem, including the economic effects of the sys-
14 tem on fishing communities;

15 “(D) an evaluation of the costs of imple-
16 menting, monitoring and enforcing the systems
17 and the methods used to establish or allocate
18 individual quota shares; and

19 “(E) recommendations to the Councils and
20 the Secretary to ensure that quota systems
21 meet the requirements of this Act and the goals
22 of the plans, and recommendations to the Sec-
23 retary for any changes to regulations issued
24 under section 304(i).

1 “(4) The Secretary shall submit the report to
2 the Congress and any appropriate Councils within
3 60 days after the review is completed.”.

4 (c) ACTION ON LIMITED ACCESS SYSTEMS.—Section
5 304 (16 U.S.C. 1854) is amended by adding at the end
6 the following:

7 “(i) ACTION ON LIMITED ACCESS SYSTEMS.—Within
8 1 year after the date of enactment of the Fishery Con-
9 servation and Management Amendments Act of 2004, the
10 Secretary shall issue regulations which establish require-
11 ments for establishing a fishing quota system. Nothing in
12 this paragraph prohibits a Council or the Secretary from
13 initiating development of a fishing quota system consistent
14 with the provisions of this Act pending publication of the
15 final regulations.”.

16 (d) DEFINITIONS.—Section (16 U.S.C. 1802) is
17 amended by—

18 (1) adding at the end the following:

19 “(46) The term ‘United States Citizen’ means
20 an individual who is a citizen of the United States
21 or a corporation, partnership, association, or other
22 entity that qualifies to document a fishing vessel as
23 a vessel of the United States under chapter 121 of
24 title 46, United States Code.’; and

1 (2) striking “‘individual fishing quota’” in
 2 paragraph (21) and inserting “‘fishing quota sys-
 3 tem’”.

4 (e) CONFORMING AMENDMENTS.—

5 (1) The following provisions are each amended
 6 by striking “‘individual fishing quota’” and inserting
 7 “‘fishing quota’”:

8 (A) Section 304(c)(3) (16
 9 U.S.C.1854(c)(3)).

10 (B) Section 304(d)(2)(A)(i) (16
 11 U.S.C.1854(d)(2)(A)(i)).

12 (C) Section 402(b)(1)(D) (16 U.S.C.
 13 1881a(b)(1)(D)).

14 (D) Section 407(a)(1)(D), (c)(1), and
 15 (c)(2)(B) (16 U.S.C. 1883(a)(1)(D), (c)(1), and
 16 (c)(2)(B)).

17 (2) Section 305(h)(1) (16 U.S.C. 1855(h)(1)) is
 18 amended by striking “‘individual’”.

19 **SEC. 12. GULF OF MEXICO FISHING QUOTA SYSTEMS.**

20 Section 407(c) (16 U.S.C. 1883) is amended by add-
 21 ing at the end the following:

22 “(3) The initial referendum described in paragraph
 23 (1) shall be used to determine support for whether the
 24 sale, transfer, or lease of quota shares shall be allowed.”.

1 **SEC. 13. ACTION BY THE SECRETARY.**

2 (a) REVIEW OF PLANS AND INITIAL REGULA-
3 TIONS.— Section 304(a)(1) (16 U.S.C. 1854(a)(1)) is
4 amended—

5 (1) by striking “amendment,” before subpara-
6 graph (A) and inserting “amendment and any pro-
7 posed implementing regulations prepared under sec-
8 tion 303(e)(1),”;

9 (2) by redesignating subparagraphs (A) and
10 (B) as subparagraphs (B) and (C), respectively;

11 (3) by inserting before subparagraph (B), as so
12 redesignated, the following:

13 “(A)(i) immediately make a preliminary
14 evaluation of the management plan or amend-
15 ment for purposes of deciding whether it is—

16 “(I) consistent with the national
17 standards, the other provisions of this Act,
18 and other applicable law; and

19 “(II) sufficient in scope and substance
20 to warrant review under this subsection;

21 “(ii) if that decision is affirmative with re-
22 spect to both subclauses (I) and (II) of clause
23 (i), implement subparagraphs (B) and (C) with
24 respect to the plan or amendment; and

25 “(iii) if that decision is negative with re-
26 spect to either subclause (I) or (II) of clause

1 (i), disapprove the plan or amendment and no-
2 tify the Council in writing of the disapproval
3 and of those matters specified under paragraph
4 (3)(A), (B), and (C) with respect to the plan or
5 amendment;” and

6 (4) by amending subparagraph (C), as so redes-
7 ignated, to read as follows:

8 “(C) by the 15th day following transmittal
9 of the plan or amendment, and proposed imple-
10 menting regulations, publish in the Federal
11 Register—

12 “(i) a notice stating that the plan or
13 amendment is available and that written
14 data, views, or comments of interested per-
15 sons on the plan or amendment may be
16 submitted to the Secretary during the 50-
17 day period beginning on the date the notice
18 is published; and

19 “(ii) any proposed implementing regu-
20 lations that are consistent with the fishery
21 management plan or amendment, this Act,
22 and any other applicable law, for a com-
23 ment period of 50 days, except that the
24 Secretary may include such technical
25 changes to the Council’s proposed regula-

1 tions as may be necessary for clarity, along
2 with an explanation of those changes.”.

3 (b) REVIEW OF PROPOSED MODIFICATIONS.—

4 (1) Paragraph (1) of section 304(b) (16 U.S.C.
5 1854(b)) is amended to read as follows:

6 “(1)(A) Upon transmittal by the Council to the
7 Secretary of regulations proposed under section
8 303(c)(2), the Secretary shall immediately initiate
9 an evaluation of the proposed regulations to deter-
10 mine whether they are consistent with the fishery
11 management plan, plan amendment, this Act, and
12 other applicable law.

13 “(B) If the Secretary determines that the regu-
14 lations are consistent, the Secretary shall, within 15
15 days of transmittal, publish such regulations in the
16 Federal Register, with such technical changes as
17 may be necessary for clarity and an explanation of
18 those changes, for a public comment period of 15 to
19 60 days, unless the Secretary finds good cause not
20 to publish a notice of proposed rulemaking in ac-
21 cordance with section 553 of title 5, United States
22 Code.

23 “(C) If the Secretary determines that the regu-
24 lations are not consistent, the Secretary shall, within
25 15 days of transmittal, notify the Council in writing

1 of the inconsistencies and provide recommendations
2 on revisions that would make the proposed regula-
3 tions consistent with the fishery management plan,
4 plan amendment, this Act, and other applicable
5 law.”.

6 (2) Section 304(b)(2) (16 U.S.C. 1854(b)(2)) is
7 amended by striking “paragraph (1)(B),” and in-
8 serting “paragraph (1)(C),”.

9 (3) Section 304(b)(3) (16 U.S.C. 1854(b)(3)) is
10 amended by striking “paragraph (1)(A).” and in-
11 serting “paragraph (1)(B), and within 45 days after
12 the end of the comment period under subsection
13 (a)(1)(C).”.

14 (4) Section 304(b)(16 U.S.C. 1854(b)) is
15 amended by adding at the end the following:

16 “(4) For regulatory actions, other than those
17 proposed by a Council under section 303(c), that are
18 taken in accordance with a fishery management
19 plan, the Secretary shall process the actions in ac-
20 cordance with the plan. If the Secretary determines
21 that the actions are consistent with the plan, this
22 Act, and other applicable law, the Secretary shall
23 publish in the Federal Register a notice of the ac-
24 tions. The Secretary may find good cause not to
25 publish a notice of proposed rulemaking in accord-

1 ance with section 553 of title 5, United States
2 Code.”.

3 **SEC. 14. REBUILDING DEPLETED FISHERIES.**

4 (a) IN GENERAL.—Section 304(e)(4) (16 U.S.C.
5 1854) is amended to read as follows:

6 “(4) The Secretary shall promulgate regulations to
7 govern fishing after January 1, 2008, that—

8 “(A) limit fishing mortality to a rate not great-
9 er than the rate that would be expected to produce
10 maximum sustainable yield, except—

11 “(i) in cases where management measures
12 under an international agreement in which the
13 United States participates dictate otherwise;
14 and

15 “(ii) as provided in subparagraph (B);

16 “(B) for stocks that are depleted, limit fishing
17 mortality to 80 percent of the fishing mortality rate
18 that would be expected to produce maximum sus-
19 tainable yield, except in cases where management
20 measures under an international agreement in which
21 the United States participates dictate otherwise; and

22 “(C) allocate both fishing restrictions and re-
23 covery benefits fairly and equitably among gear sec-
24 tors and communities in the fishery, taking into ac-

1 count long term historical participation in the fish-
2 ery.”.

3 (b) Section 304(e)(3) (16 U.S.C. 1854(e)(3)) is
4 amended by striking “Within one year of an identification
5 under paragraph (1)” and inserting “Within 1 year after
6 a fishery is identified as depleted or approaching a condi-
7 tion of being depleted,”.

8 (c) Section 303(a) (16 U.S.C. 1853(a)) is amended—

9 (1) by redesignating paragraphs (2) through
10 (14) as paragraphs (3) through (15), respectively;
11 and

12 (2) by inserting after paragraph (1) the fol-
13 lowing:

14 “(2) specify a biomass limit below which the
15 stock should not be allowed to fall and a threshold
16 below which the fishing mortality rate must be re-
17 duced;”.

18 **SEC. 15. STEAMING TIME.**

19 Section 301(a)(4) (16 U.S.C. 1851(a)(4)) is amended
20 by striking “privileges.” and inserting “privileges, and
21 shall take into account the differences in distances to fish-
22 ing grounds from different States.”.

23 **SEC. 16. EMERGENCY REGULATIONS.**

24 (a) LENGTHENING OF SECOND EMERGENCY PE-
25 RIOD.—Section 305(c)(3)(B) (16 U.S.C. 1855(c)(3)(B))

1 is amended by striking “180 days,” and inserting “186
2 days,”.

3 (b) TECHNICAL AMENDMENT.—Section 305(c)(3)(D)
4 (16 U.S.C. 1855(c)(3)(D)) is amended by inserting “or
5 interim measures” after “emergency regulations”.

6 **SEC. 17. FISHING CAPACITY REDUCTION PROGRAM.**

7 Section 312 (16 U.S.C. 1861(a)) is amended by strik-
8 ing subsections (b) through (e) and inserting the following:

9 “(b) FISHING CAPACITY REDUCTION PROGRAM.—

10 “(1) The Secretary may conduct a fishing ca-
11 pacity reduction program in a fishery under the au-
12 thority of the Secretary, a Council or a State if the
13 Secretary determines that the program—

14 “(A) is necessary to improve either the
15 fishery’s conservation and management or the
16 fishery’s economic efficiency, stability, safety,
17 well being, organizational effectiveness, or sub-
18 sequent rationalization;

19 “(B) is consistent with the Federal or
20 State fishery management plan or program in
21 effect for such fishery, as appropriate, and that
22 the fishery management plan—

23 “(i) will prevent replacement of the
24 fishing capacity that the program removes
25 through a moratorium on new entrants,

1 practicable restrictions on vessel upgrades,
2 and measures that take into account any
3 latent fishing capacity in the fishery’s fleet;
4 and

5 “(ii) establishes a specified or target
6 total allowable catch or other measures
7 that trigger fishery closure or adjustments;

8 “(C) is cost-effective and, in the instance
9 of a program involving an industry-fee system,
10 prospectively capable of repaying any debt obli-
11 gation incurred under section 1111 of the Mer-
12 chant Marine Act, 1936 (46 U.S.C. App.
13 1279d); and

14 “(D) all participants in the capacity reduc-
15 tion program participate on a voluntary basis,
16 but the Secretary is authorized to ensure com-
17 pliance with the program by those who choose
18 to participate.

19 “(2) The objective of the program shall be to
20 obtain the maximum sustained reduction in fishing
21 capacity at the least cost and in a minimum period
22 of time. To achieve that objective, the Secretary is
23 authorized to pay—

24 “(A) the owner of a fishing vessel, if the
25 permit authorizing the participation of the ves-

1 sel in the fishery is surrendered for permanent
2 revocation and the vessel owner and permit
3 holder relinquish any claim associated with the
4 vessel or permit that could qualify such owner
5 or holder for any present or future limited ac-
6 cess system permit in the fishery for which the
7 program is established and such vessel is—

8 “(i) scrapped; or

9 “(ii) subjected to title restrictions (in-
10 cluding, but not limited to, loss of the ves-
11 sel’s fisheries endorsement) by the Sec-
12 retary of the department in which the
13 Coast Guard is operating, that perma-
14 nently prohibit and effectively prevent its
15 use in domestic fishing; or

16 “(B) the holder of a permit authorizing
17 participation in the fishery, if such permit is
18 surrendered for permanent revocation, and such
19 holder relinquishes any claim associated with
20 the permit and vessel used to harvest fishery re-
21 sources under the permit that could qualify
22 such holder for any present or future limited
23 access system permit in the fishery for which
24 the program is established.

1 “(3) The Secretary shall consult, as appro-
2 priate, with Councils, Federal agencies, State and
3 regional authorities, affected fishing communities,
4 participants in the fishery, conservation organiza-
5 tions, and other interested parties throughout the
6 development and implementation of the program
7 under this section.

8 “(c) PROGRAM FUNDING.—

9 “(1) The program may be funded by any com-
10 bination of amounts—

11 “(A) available under clause (iv) of section
12 2(b)(1)(A) of the Act of August 11, 1939 (15
13 U.S.C. 713c-3(b)(1)(A); the Saltonstall-Ken-
14 nedy Act);

15 “(B) appropriated for the purposes of this
16 section;

17 “(C) provided under an industry fee sys-
18 tem established under subsection (d) and in ac-
19 cordance with section 1111 of the Merchant
20 Marine Act, 1936 (46 U.S.C. App. 1279d); or

21 “(D) provided by any State or other public
22 or private or non-profit organization.

23 “(2) All funds for the program, including any
24 fees established under subsection (d), shall be paid
25 into the fishing capacity reduction funds established

1 under section 1111 of the Merchant Marine Act,
2 1936 (46 U.S.C. App. 1279d).

3 “(d) INDUSTRY FEE SYSTEM.—

4 “(1)(A) If an industry fee system is necessary
5 to fund the program, the Secretary shall conduct a
6 referendum on such system. Prior to the ref-
7 erendum, the Secretary shall—

8 “(i) identify, to the extent, practicable, and
9 notify all permit or vessel owners who would be
10 affected by the program; and

11 “(ii) make available to such owners infor-
12 mation about the industry fee system describing
13 the schedule, procedures, and eligibility require-
14 ments for the referendum; the proposed pro-
15 gram; and the amount and duration and any
16 other terms and conditions of the proposed fee
17 system.

18 “(B) The industry fee system shall be approved
19 if the referendum votes which are cast in favor of
20 the proposed system constitute a two-thirds majority
21 of the participants voting.

22 “(2) Notwithstanding section 304(d) and con-
23 sistent with an approved industry fee system, the
24 Secretary is authorized to establish such a system to
25 fund the program and repay debt obligations in-

1 curred pursuant to section 1111 of the Merchant
2 Marine Act, 1936 (46 U.S.C. App. 1279d). The fees
3 for a program established under this section shall—

4 “(A) be determined by the Secretary and
5 adjusted from time to time as the Secretary
6 considers necessary to ensure the availability of
7 sufficient funds to repay such debt obligations;

8 “(B) not exceed 5 percent of the ex-vessel
9 value of all fish involved in the program har-
10 vested from the fishery for which the program
11 is established;

12 “(C) be deducted by the first ex-vessel pur-
13 chaser from the proceeds otherwise payable to
14 the seller and accounted for and forwarded by
15 such fish purchasers to the Secretary in such a
16 manner as the Secretary may establish unless
17 the Secretary determines that such fees should
18 be collected from the seller; and

19 “(D) be in effect only until such time as
20 the debt obligation has been fully paid.

21 “(e) PROGRAM IMPLEMENTATION.—

22 “(1) The Secretary shall propose and adopt
23 framework regulations applicable to implementing all
24 programs under this section.

1 “(2) The Secretary shall implement each pro-
2 gram under this section by proposing and adopting
3 regulations that shall, together with the framework
4 regulations, establish each program and control its
5 implementation.

6 “(3) The harvester proponents of each program
7 shall, before the Secretary proposes such regulation,
8 provide to the Secretary a proposed implementation
9 plan that—

10 “(A) proposes the types and numbers of
11 vessels or permits that are eligible to participate
12 in the program and the manner in which the
13 program shall proceed, taking into account—

14 “(i) the requirements of this section;

15 “(ii) the requirements of the frame-
16 work regulations;

17 “(iii) the characteristics of the fishery;

18 “(iv) the requirements of the applica-
19 ble fishery management plan and any
20 amendment that such plan may require to
21 support the proposed program;

22 “(v) the general needs and desires of
23 harvesters in the fishery;

24 “(vi) the need to minimize program
25 costs; and

1 “(vii) other matters, including the
2 manner in which such proponents propose
3 to fund the program to ensure its cost ef-
4 fectiveness, as well as any relevant factors
5 demonstrating the potential for, or nec-
6 essary to obtain, the support and general
7 cooperation of a substantial number of af-
8 fected harvesters in the fishery (or portion
9 of the fishery) for which the program is in-
10 tended; and

11 “(B) suggests proposed procedures for pro-
12 gram participation (such as submission of
13 owner bids under an auction system or fair
14 market-value assessment), including any terms
15 and condition for participation, that the har-
16 vester proponents deem to be reasonably nec-
17 essary to meet the program’s proposed objec-
18 tives.

19 “(4) The Secretary shall contract with each
20 person participating in a program, and each such
21 contract shall, in addition to including such other
22 matters as the Secretary deems necessary and ap-
23 propriate to effectively implement each program (in-
24 cluding penalties for contract non-performance) be

1 consistent with the framework and implementing
2 regulations and all other applicable law.

3 “(5) Each program not involving fair market
4 assessment shall involve a reduction auction that
5 scores the reduction price of each bid offer by the
6 data relevant to each bidder under an appropriate
7 fisheries productivity factor. If the Secretary accepts
8 bids, the Secretary shall accept each bid in the rank
9 order of its bid score, with each bid whose reduction
10 price is the lowest percentage of the productivity fac-
11 tor being first accepted over each bid whose reduc-
12 tion factor is the next lowest percentage of the pro-
13 ductivity factor.

14 “(6) Each program shall proceed by the Sec-
15 retary issuing invitations to bid setting out the
16 terms and conditions for participation consistent
17 with the framework and implementing regulations.
18 Each bid that the Secretary receives in response to
19 the invitation to bid shall constitute an irrevocable
20 offer from the bidder.”.

21 **SEC. 18. COLLECTION OF INFORMATION.**

22 (a) PROGRAMS INITIATED BY SECRETARY.—Section
23 402 (16 U.S.C. 1881a) is amended—

1 (1) by redesignating subsection (a) as para-
2 graph (1) and moving the left margin 2 ems to the
3 right;

4 (2) by inserting “(a) COLLECTION PRO-
5 GRAMS.—” before paragraph (1), as redesignated;

6 (3) by striking “subsection” in the last sentence
7 of paragraph (1), as redesignated, and inserting
8 “paragraph”; and

9 (4) by adding inserting after paragraph (1), as
10 redesignated, the following:

11 “(2) SECRETARIAL INITIATION.—If the Sec-
12 retary determines that additional information is nec-
13 essary for developing, implementing, revising, or
14 monitoring a fishery management plan, or for deter-
15 mining whether a fishery is in need of management,
16 the Secretary may, by regulation, implement an in-
17 formation collection or observer program requiring
18 submission of such additional information for the
19 fishery.”.

20 (5) by striking “under this Act shall be con-
21 fidential and shall not be disclosed,” in subsection
22 (b)(1) and inserting “under this Act, and that would
23 disclose proprietary or confidential commercial or fi-
24 nancial information regarding fishing operations or
25 fish processing operations, shall be kept confidential

1 and not disclosed for a period of 20 years following
2 the year of submission to the Secretary,”; and

3 (6) by striking “under this Act,” in subsection
4 (b)(2) and inserting “under this Act, and that would
5 disclose proprietary or confidential commercial or fi-
6 nancial information regarding fishing operations or
7 fish processing operations,”.

8 (b) **COLLECTION OF CERTAIN INFORMATION RE-**
9 **GARDING BUSINESS OPERATIONS.**—Paragraph (1) of sec-
10 tion 402(a) (16 U.S.C. 1881a(a)), as redesignated by sub-
11 section (a) of this section, is amended by striking “(other
12 than information that would disclose proprietary or con-
13 fidential commercial or financial information regarding
14 fishing operations or fish processing operations)” each
15 place it appears.

16 **SEC. 19. ACCESS TO CERTAIN INFORMATION.**

17 (a) **CERTAIN STATE EMPLOYEES.**—Section
18 402(b)(1) (16 U.S.C. 1881a(b)(1)) is amended—

19 (1) by redesignating subparagraphs (B)
20 through (F) as subparagraphs (C) through (G), re-
21 spectively; and

22 (2) by inserting after subparagraph (A) the fol-
23 lowing:

24 “(B) to State employees who are responsible for
25 fishery management plan monitoring, if the States

1 employing those employees have entered into a fish-
 2 ery enforcement agreement with the Secretary and
 3 the agreement is in effect;”.

4 (b) DETERMINATIONS UNDER LIMITED ACCESS SYS-
 5 TEM.—Section 402(b)(1) (16 U.S.C. 1881a(b)(1)) is
 6 amended—

7 (1) by striking “or” after the semicolon in sub-
 8 paragraph (F), as redesignated by subsection (a) of
 9 this section;

10 (2) by striking “Act.” in subparagraph (G), as
 11 redesignated by subsection (a), and inserting “Act;
 12 or”; and

13 (3) by adding at the end the following:

14 “(H) when such information is required by the
 15 Secretary for any determination under a limited ac-
 16 cess system.”.

17 **SEC. 20. MAINE POCKET WATERS.**

18 Section 808(a) of the Atlantic Coastal Fisheries Co-
 19 operative Management Act (16 U.S.C. 5107a(a)) is
 20 amended by striking paragraphs (1) through (4) and in-
 21 serting the following:

22 “(1) west of Monhegan Island in the area north
 23 of the line 43 degrees 42’10.0”N, 69 degrees
 24 34’16.0”W and 43 degrees 42’15.0”N, 69 degrees
 25 19’18.0”W;

1 “(2) east of Monhegan Island in the area lo-
 2 cated north of the line 43 degrees 44’0.0” N, 69 de-
 3 grees 15’05.0” W and 43 degrees 48’10.0” N, 69 de-
 4 grees 08’01.0” W;

5 “(3) southeast of Matinic Island in the area lo-
 6 cated north of the line 43 degrees 48’10.0” N, 69 de-
 7 grees 08’01.0” W and 43 degrees 44’08.0” N, 69 de-
 8 grees 53’01.0” W;

9 “(4) south of Vinalhaven Island in the area lo-
 10 cated west of the line 43 degrees 52’18.5” N, 68 de-
 11 grees 40’0.0” W, and 43 degrees 58’10.5” N, 68 de-
 12 grees 32’57.0” W;

13 “(5) south of Bois Bubert Island in the area lo-
 14 cated northwest of the line 44 degrees 19’16.5” N,
 15 67 degrees 49’30.0” W, and 44 degrees 23’40.0” N
 16 and 67 degrees 40’30.0” W.”.

17 **SEC. 21. WESTERN PACIFIC FISHERY DEMONSTRATION**
 18 **PROJECTS.**

19 Section 111(b)(6) of the Sustainable Fisheries Act
 20 (16 U.S.C. 1855 note) is amended to read as follows:

21 “(6) For purposes of this subsection, ‘Western
 22 Pacific community’ shall mean a community eligible
 23 to participate under section 305(i)(2)(B)(i) through
 24 (iv) of the Magnuson-Stevens Fishery Conservation

1 and Management Act (16 U.S.C. 1855(i)(2)(B)(i)
2 through (iv)).”.

3 **SEC. 22. COOPERATIVE RESEARCH AND MANAGEMENT.**

4 The Act is amended by adding at the end the fol-
5 lowing:

6 **“TITLE V—COOPERATIVE**
7 **RESEARCH AND MANAGEMENT**

8 **“SEC. 501. ESTABLISHMENT OF PROGRAM.**

9 “(a) IN GENERAL.—The Secretary shall establish a
10 national cooperative research and management program
11 to be administered by the National Marine Fisheries Serv-
12 ice, based on recommendations by the Councils. The pro-
13 gram shall consist of cooperative research and manage-
14 ment activities between fishing industry participants, the
15 affected States, and the Service.

16 “(b) RESEARCH AWARDS.—Each research project
17 under this program shall be awarded on a standard com-
18 petitive basis established by the Service, in consultation
19 with the Councils. Each Council shall establish a research
20 steering committee to carry out this subsection.

21 “(c) GUIDELINES.—The Secretary, in consultation
22 with the appropriate Council and the fishing industry,
23 shall create guidelines so that participants in this program
24 are not penalized for loss of catch history or unexpended
25 days-at-sea as part of a limited entry system.

1 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated to the National Marine
 3 Fisheries Service, in addition to amounts otherwise au-
 4 thorized by this Act, the following amounts, to remain
 5 available until expended, for the conduct of this program:

6 “(1) \$25,000,000 for fiscal year 2004.

7 “(2) \$30,000,000 for fiscal year 2005.

8 “(3) \$35,000,000 for fiscal year 2006.

9 “(4) \$40,000,000 for fiscal year 2007.

10 “(5) \$45,000,000 for fiscal year 2008.

11 “(e) NEW ENGLAND TRAWL SURVEY.—Of the funds
 12 authorized in subsection (d) \$3,000,000 shall be author-
 13 ized for the purpose of cooperative comparative trawl re-
 14 search between the National Marine Fisheries Service and
 15 fishing industry participants for the Northeast multispe-
 16 cies groundfish fishery, which the Secretary shall design
 17 and administer with input from fishing industry partici-
 18 pants and other interested stakeholders.”.

19 **SEC. 23. INDEPENDENT PEER REVIEW OF DATA COLLEC-**
 20 **TION PROCEDURES.**

21 The Act is amended by adding at the end of title IV
 22 (16 U.S.C. 1881 et seq.) the following:

23 **“SEC. 408. PEER REVIEW.**

24 “(a) IN GENERAL.—The National Academy of
 25 Sciences shall review and recommend measures for im-

1 proving National Marine Fisheries Service’s procedures
 2 for ensuring data quality in the data collection phase of
 3 the stock assessment program.

4 “(b) SUBJECT MATTER.—The review shall address—

5 “(1) the quality control protocols through which
 6 stock assessment equipment is calibrated, operated,
 7 inspected, and maintained;

8 “(2) the frequency and financial cost of these
 9 quality control checks;

10 “(3) how the accuracy and validity of data col-
 11 lected with sampling equipment is verified; and

12 “(4) how measurement error is accounted for in
 13 stock assessment modeling and analysis based on
 14 these data.

15 “(c) SCOPE.—The review shall apply to all activities
 16 that affect stock assessment data quality, whether con-
 17 ducted by the National Marine Fisheries Service or by Na-
 18 tional Marine Fisheries Service contractors.”.

19 **SEC. 24. ADVISORY COMMITTEE REFORM AND PEER RE-**
 20 **VIEW.**

21 (a) COMMITTEE AND COUNCIL PROCEDURE RE-
 22 FORMS.—Section 302(g) (16 U.S.C. 1852(g)) is amend-
 23 ed—

24 (1) by adding at the end of paragraph (3) the
 25 following:

1 “(C) For each committee established under sub-
2 paragraph (A), each Council shall establish standard
3 operating procedures relating to time, place, public
4 participation, and frequency of meetings, a descrip-
5 tion of the type and format of information to be pro-
6 vided under subparagraph (A), a description of how
7 recommendations under subparagraph (A) will be
8 used, and other relevant factors.”;

9 (2) by redesignating paragraph (5) as para-
10 graph (6); and

11 (3) by inserting after paragraph (4) the fol-
12 lowing:

13 “(5) Each Council shall establish standard op-
14 erating procedures relating to the relevant scientific
15 review committee or committees that are responsible
16 for conducting peer reviews of all stock assessments
17 and economic and social analyses prepared for fish-
18 eries under the Council’s jurisdiction. Committees
19 under this paragraph shall consist of members from
20 the committee established under paragraph (1) of
21 this subsection and, to the extent practicable, inde-
22 pendent scientists qualified to peer review such as-
23 sessments and analyses.”.

24 (b) PEER REVIEW.—Section 302(h) (16 U.S.C.
25 1852(h)) is amended—

1 (1) by striking “and” at the end of paragraph
2 (5);

3 (2) by redesignating paragraph (6) as para-
4 graph (7); and

5 (3) by inserting after paragraph (5) the fol-
6 lowing:

7 “(6) to the extent practicable conduct a peer re-
8 view of any stock assessments and economic and so-
9 cial analyses prepared for a fishery under its juris-
10 diction, utilizing the procedures established under
11 subsection (g)(5); and”.

12 **SEC. 25. CUMULATIVE IMPACTS.**

13 (a) NATIONAL STANDARDS.—Section 301(a)(8) (16
14 U.S.C. 1851(a)(8)) is amended to read as follows:

15 “(8) Conservation and management measures
16 shall, consistent with the conservation requirements
17 of this Act (including the prevention of overfishing
18 and rebuilding of overfished stocks), Utilize eco-
19 nomic and social data and assessment methods of
20 the highest analytical standards when taking into ac-
21 count the importance of fishery resources to fishing
22 communities, and the individual and cumulative eco-
23 nomic and social impacts of fishery conservation and
24 management measures on such communities, in
25 order to—

1 “(A) provide for the sustained participa-
2 tion of such communities; and

3 “(B) to the extent practicable, minimize
4 adverse social and economic impacts on such
5 communities.”.

6 (b) CONTENTS OF PLANS.—Section 303(a)(9) (16
7 U.S.C. 1853(a)(9)) is amended by striking “describe the
8 likely effects, if any, of the conservation and management
9 measures on—” and inserting “describe in detail the likely
10 effects, including the individual and cumulative economic
11 and social impacts, of the conservation and management
12 measures on and possible mitigation measures for—”.

13 **SEC. 26. ESSENTIAL FISH HABITAT.**

14 (a) FISHERY MANAGEMENT PLANS.—Section
15 303(a)(7) (16 U.S.C. 1853(a)(7)) is amended to read as
16 follows:

17 “(7) describe and identify essential fish habitat
18 and habitat areas of particular concern for the fish-
19 ery based on the guidelines established by the Sec-
20 retary under section 305(b)(1)(A), and give priority
21 to minimizing to the extent practicable adverse ef-
22 fects on habitat areas of particular concern caused
23 by fishing and identify other actions to encourage
24 the conservation and enhancement of such habitat;”.

1 (b) FISH HABITAT REQUIREMENT.—Section
2 305(b)(1) (16 U.S.C. 1855(b)(1)) is amended by inserting
3 “and habitat areas of particular concern” after “essential
4 fish habitat” each place it appears in subparagraphs (A)
5 and (B).

6 **SEC. 27. COOPERATIVE ENFORCEMENT AGREEMENTS.**

7 Title III (16 U.S.C. 1851 et seq.) is amended by add-
8 ing at the end thereof the following:

9 **“SEC. 315. COOPERATIVE ENFORCEMENT USES.**

10 “(a) IN GENERAL.—The Governor of a State rep-
11 resented on an Interstate Fisheries Commission may apply
12 to the Secretary for execution of a cooperative enforce-
13 ment agreement with the Secretary that will authorize the
14 deputization of State law enforcement officers with marine
15 law enforcement responsibilities to perform duties of the
16 Secretary relating to law enforcement provisions under
17 this Act or any other marine resource laws enforced by
18 the Secretary. Upon receiving an application meeting the
19 requirements of this section, the Secretary shall enter into
20 the cooperative enforcement agreement with the request-
21 ing State.

22 “(b) REQUIREMENTS.—Cooperative enforcement
23 agreements executed under subsection (a)—

1 “(1) shall be consistent with the purposes and
2 intent of section 311(a) of this Act, to the extent ap-
3 plicable to the regulated activities; and

4 “(2) may include specifications for joint man-
5 agement responsibilities as provided by the first sec-
6 tion of Public Law 91–412 (15 U.S.C. 1525).

7 “(c) AUTHORIZATION AND ALLOCATION OF
8 FUNDS.—There are authorized to be appropriated to the
9 Secretary for the purposes of carrying out this section
10 \$10,000,000 in each of fiscal years 2004 through 2008.
11 The Secretary shall include in each cooperative enforce-
12 ment agreement an allocation of funds to assist in man-
13 agement of the agreement. The allocation shall be equi-
14 tably distributed among all States participating in cooper-
15 ative enforcement agreements under this subsection, based
16 upon consideration of the specific marine conservation en-
17 forcement needs of each participating State. Such agree-
18 ment may provide for amounts to be withheld by the Sec-
19 retary for the cost of any technical or other assistance pro-
20 vided to the State by the Secretary under the agreement.”.

1 **SEC. 28. SCIENTIFIC AND STATISTICAL COMMITTEES RE-**
2 **PORT ON ECOSYSTEM RESEARCH PRIOR-**
3 **ITIES; PILOT PROGRAM FOR FISHERY ECO-**
4 **SYSTEM PLANS.**

5 Section 406 (16 U.S.C. 1882) is amended by adding
6 at the end thereof the following:

7 “(f) RESEARCH.—

8 “(1) REPORT REQUIRED.—Within 12 months
9 after the date of enactment of the Fishery Conserva-
10 tion and Management Amendments Act of 2004 the
11 Scientific and Statistical Committees of each re-
12 gional fishery management council shall identify and
13 submit a report to the Secretary outlining prioritized
14 information or research needs to support ecosystem
15 based management of the fisheries within its juris-
16 diction. In determining what factors to consider, the
17 Committees may consider the recommendations out-
18 lined in the report under section (d).

19 “(2) ASSISTANCE.—The Secretary shall provide
20 assistance to the regional councils to obtain the
21 prioritized information and conduct research identi-
22 fied in the reports under paragraph (1). These ef-
23 forts shall not displace existing research efforts and
24 priorities identified by the regional councils or the
25 Secretary.

26 “(g) PILOT PROGRAM.—

1 “(1) IN GENERAL.—Within 18 months after the
2 date of enactment of the Fishery Conservation and
3 Management Amendments Act of 2004 the Sec-
4 retary, in consultation with the 8 regional fishery
5 management council Chairs and affected stake-
6 holders, shall identify at least one fishery or complex
7 of interacting fisheries suitable for the development
8 of a pilot Fishery Ecosystem Plan. The Secretary
9 shall consider the reports submitted under sub-
10 section (f) when selecting the pilot program.

11 “(2) COORDINATION WITH APPROPRIATE COUN-
12 CIL.—After identifying the pilot Fishery Ecosystem
13 Plan, the Secretary shall coordinate with the appro-
14 priate regional fishery management council to iden-
15 tify any information or conduct any research that
16 may be needed to complete such a plan including a
17 model of the food web, habitat needs of organisms
18 identified in the food web, rates of mortality, identi-
19 fication of indicator species, and any other relevant
20 data and monitoring needs.

21 “(3) FISHERY ECOSYSTEM PLAN.—Within 30
22 months after identification of the pilot fishery or
23 complex of interacting fisheries, the appropriate re-
24 gional fishery management council shall submit to
25 the Secretary for approval a Fishery Ecosystem

1 Plan. In creating such plan, the council may con-
2 sider the recommendations outlined in the report
3 under section (d).”.

○

LEGISLATIVE COMMITTEE REPORT

The Legislative Committee met June 14, 2004. The Committee reviewed several congressional bills and legislative-related matters, including the Pacific Fishery Management Council (Council) response to the U.S. Commission on Ocean Policy (Ocean Commission) about the Ocean Commission's preliminary report.

Relative to the Ocean Commission preliminary report, the Committee commends Council staff for their response letter (Exhibit B.4.a, Attachment 1). The Committee emphasizes that many of the fishery management recommendations in the preliminary report (notably those pertaining to development and use of the best available science) are already standard procedures for the Pacific Council. The Committee suggests that, as the Ocean Commission report is finalized, Council staff should be directed to work with Commission staff to provide information, as appropriate. The Committee also recommends that when the Ocean Commission's final recommendations move toward implementation, the Council should work with National Marine Fisheries Service to pursue a significant role for regional fishery management councils (RFMC) in this process.

The Committee discussed two bills related to reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) -- Congressman Gilchrest's discussion draft (Exhibit B.4.a, Attachment 2) and Senate Bill 2066 (Exhibit B.4.a, Attachment 4). Congressman Gilchrest has requested input from RFMCs on his discussion draft and, more generally, on legislative-related fishery management matters. The Committee recommends staff be directed to provide information to Congressman Gilchrest, including:

- summarize recent Council comments related to fishery-related legislation;
- request consideration of "grand fathering" in existing individual quota (IQ) programs and IQ-like programs (e.g., the permit stacking program in the fixed-gear sablefish fishery);
- describe current Council work on development of an IQ program for the limited entry groundfish trawl fishery;
- provide information about the Council process for developing and using science in Council decision making, specifically, the role of the SSC and peer-review protocols that gird the Council's science development process; and
- convey funding concerns, for example, Council base funding is not adequate for current program areas required under the current Magnuson-Stevens Act and other mandates.

The Committee also emphasizes the need to prevent unfunded mandates and

unrealistic schedules, notably because of the potential increased vulnerability to lawsuits if the requirements are not achieved within the mandated time frames.

Magnuson-Stevens Act amendments proposed in S. 2066 are, generally, in accord with past input from the Pacific Council. Moreover, some aspects of S. 2066 (for example, IQ program standards) are preferred over similar provisions in the Gilchrest discussion draft.

As reported to the Committee, state legislation pending in California could affect Council-managed fisheries. The California legislation relates to planning for implementation of the Marine Life Management Act and Marine Life Protection Act. Another bill would revise the current state landing tax program in California. The Committee appreciates the update about California legislative matters and requests further updates as warranted.

The Committee was also informed that the Oregon State legislature will start their next legislative session in January 2005. Planning for their legislative calendar is underway.

If fishery-related legislation that could affect Council-managed fisheries is proposed, the Council should be informed of these matters.

At the national level, as noted previously, indications are that fishery-related legislation will not move through Congress during 2004. This is due, in part, to competing legislative priorities and pending changes in Senate committee leadership. Hence, the Legislative Committee recommends the Council direct staff to continue tracking legislative issues, but as a low priority relative to other workload.

PFMC
06/17/04

GROUND FISH ADVISORY SUBPANEL STATEMENT ON
LEGISLATIVE MATTERS

The Groundfish Advisory Subpanel (GAP) had previously suggested in its comments under agenda item C.6 that the Council, when communicating with Congress regarding amendments to the Magnuson Stevens Fishery Conservation and Management Act (MSA), support changes in the law that will allow control by the Council and/or the National Marine Fisheries Service over scientific research catches involving overfished species.

The GAP notes that the Council's Legislative Committee is recommending that Council staff be authorized to provide certain information to Congress on various issues involving re-authorization of the MSA. The GAP requests that the issue of obtaining permit authority, or at the very least establishing a reporting requirement on research catch of overfished species, be added to the list of information to be provided. At a time when we are managing to the tenth of a ton of certain species, we cannot afford to have random researchers running free in the exclusive economic zone with no attention paid to the effect of their activities on overfished species.

PFMC
06/18/04

REPORT OF THE BUDGET COMMITTEE

The Budget Committee received an Executive Director's Budget Report by Dr. Donald McIsaac that included: status of grants, annual audit, and contracts.

Status of Grants, Annual Audit, and Contracts:

The Calendar Year 2003 Base Grant and Audit is in the process of closing and the funds have been obligated. The field work portion of the audit on this grant was completed in early May, and no material findings of concern were identified during the initial financial data review. The final exit audit briefing is scheduled for July 6th.

The Calendar Year 2004 Base Grant funding level has been established. As of April 30, 2004 (33% of the year), approximately 35% of the amended grant had been expended (exclusive of the state and Pacific States Marine Fisheries Commission [PSMFC] liaison contracts). This rate of expenditure appears reasonably on target given the projections of the remaining calendar year expenditures.

The Operational Enhancement Grant is being amended to extend through 2005 with additional funds to help continue support the Council's efforts to meet National Environmental Policy Act (NEPA) requirements, support development of the dedicated access privilege program (trawl IQ) environmental impact statement (EIS), assist in completion of the essential fish habitat (EFH) EIS, and provide for two meetings of the highly migratory species (HMS) advisory bodies. Dr. McIsaac reviewed the details of the trawl IQ budget with the committee. Since 2002, the Operational Enhancement grant has helped support salaries and activities of the Council staff NEPA Specialist, two Fishery Economists, Groundfish Management Coordinator, Communications Specialist, and participation in and support of the Groundfish Programmatic and EFH EIS's.

The PSMFC contract has assisted in completion of Amendment 16 (Rebuilding Plans) and additional funding to enhance development of the groundfish EIS's.

The Congressional funding for HMS was not repeated in 2004, and requests for HMS funding from NMFS to fill the gap has not been successful. This funding shortfall will be resolved by a programmatic response to eliminate the planned HMS staffing, meetings, travel, and goods and services supported by this lost funding.

The Status of State and PSMFC Liaison Contracts for 2004

The Budget Committee was informed that nearly all of the contracts have been signed by the states and PSMFC for 2004 funding. Individual state agency representatives indicated their need for increased funds to continue activities within the Council-managed fisheries.

APPOINTMENTS TO ADVISORY BODIES, STANDING COMMITTEES,
AND OTHER FORUMS

Situation: This agendum includes an appointment to the California Department of Fish and Game (CDFG) designated agency seat on the Groundfish Management Team (GMT). The CDFG has requested Ms. Susan Ashcraft replace Mr. Dave Thomas, who has retired, as one of the CDFG designated seats on the GMT.

Council Action:

1. Appoint new members to the GMT.

Reference Material:

1. Closed Session Exhibit A.1.a, Attachment 1: GMT Nomination and *curriculum vitae*.

Agenda Order:

- a. Agendum Overview
- b. **Council Action**: Appoint members as necessary

Don McIsaac

PFMC
05/26/04

Proposed Preliminary Three Meeting Outlook for the Pacific Council
 (All Candidate Agenda Items Listed; Shaded Items are Contingent)

September San Diego, CA; 09/13/04	November Portland, OR; 11/01/04	March Sacramento, CA 3/7/05
<u>Coastal Pelagic Species</u> STAR Panel Report FMP Amendment: Sardine Allocation Review CPS FMP Related Issues	<u>Coastal Pelagic Species</u> CPS Fishery Update FMP Amendment: Consider Prelim Range of Alts. Pacific Sardine Stock Assessment and Harvest Guidelines for 2005	<u>Coastal Pelagic Species</u> FMP Amendment: Adopt Range of Alts. for public review (may delay to April)
<u>Enforcement Issues</u> Contact-to-Violation Ratio in GF Rec Fishery	Contact-to-Violation Ratio in GF Commercial Fishery	<u>Enforcement Issues</u> U.S. Coast Guard Fishery Enforcement Report
<u>Groundfish</u> 2004 Inseason Management IQ EIS Update "Off Year" Science Improvements Update	<u>Groundfish</u> 2004 Inseason Management IQ EIS Update -- scoping results Open Access Limitation Update Alternative Management Approaches: Planning VMS: Adopt Final OA Alternative Red Light - Green Light Threshold Adoption	<u>Groundfish</u> IQ EIS Update Open Access Limitation Issues Whiting: Adopt final 2005 ABC, OY, and Management Measures
VMS: Adopt Preferred OA Alts. For Public Rev Red Light - Green Light Threshold: Initial Consideration Shoreside Whiting EA: Final Action Terms of Reference including STAR & Rebuilding Plans Review: Initial Consideration	Terms of Reference including STAR & Rebuilding Plans Review: Final Consideration Bycatch Programmatic EIS Implementation Final Approval of EFPs for 2005 Consideration of GIPC Recommendations Terms of Reference for STAR Panels Strategic Plan Review in Off Cycle--Planning EFH EIS: Approve Final Preferred Alternatives	Bycatch Programmatic EIS Implementation (may delay to April) Final Consideration of GIPC Recommendations
<u>Habitat Issues</u> Habitat Committee Report Artificial Reefs in Southern California	<u>Habitat Issues</u> Habitat Committee Report	<u>Habitat Issues</u> Habitat Committee Report

Exhibit B.7.a
Supplemental Attachment 1
June 2004

Proposed Preliminary Three Meeting Outlook for the Pacific Council
 (All Candidate Agenda Items Listed; Shaded Items are Contingent)

September San Diego, CA; 09/13/04	November Portland, OR; 11/01/04	March Sacramento, CA 3/7/05
<u>Highly Migratory Species</u> High Seas Longline Amendment (Turtle Protection, Limited Entry) Albacore & Blue Fin Tuna Stock Assmnt	<u>Highly Migratory Species</u> High Seas Longline Amendment (Turtle Protection, Limited Entry)	<u>Highly Migratory Species</u>
<u>Marine Protected Areas</u> (CINMS: Adv. develop input for Ad Hoc MR Only) Update on other MPA Issues, including MBS Davidson Seamount Proposal Krill Ban Proposal--further consideration	<u>Marine Protected Areas</u> CINMS: Adopt Preferred Alternative Olympic Marine Sanctuary Status Rpt. Update on other MPA Issues	<u>Marine Protected Areas</u> CINMS: ? Update on other MPA Issues
<u>Pacific Halibut</u> Fishery Update Proposed Changes for 2005: for Public Review Review & Approval of Trawl Bycatch Estimate	<u>Pacific Halibut</u> Fishery Update 2005 Changes: Final Action	<u>Pacific Halibut</u> Report on IPHC Annual Meeting Adopt Incidental Catch Regs for Public Review
<u>Salmon</u> Fishery Update 2004 Methodology Review: Final Priorities FMP Amendments: Process Update	<u>Salmon</u> Fishery Update Consider Modification of 3/15 Opening for OR Troll & Rec. S. of Cape Falcon Methodology Review: Final Action 2005 Preseason Schedule Review of Exp. Fisheries Proposals	<u>Salmon</u> 2005 Management Options: Adopt for Public Review Appoint Hearings Officers Final Approval of Experimental Fisheries Proposals (If Necessary)
<u>Administrative</u> Legislative Committee Report (If Necessary) Budget Committee Report Interim Appointments Workload Planning and Draft November Agenda (especially planning for Bycatch PEIS) Update of Council Operating Procedures Communication Plan --Implement Phase I; Plan Phases II & III Regulatory Steamlining Program Update	<u>Administrative</u> Legislative Committee Report (If Necessary) Budget Committee Report Interim Appointments Workload Planning and Draft March Agenda	<u>Administrative</u> Legislative Committee Report (If Necessary) Interim Appointments Workload Planning and Draft April Agenda

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, SEPTEMBER 13-17, 2004, SAN DIEGO, CA

AG#	TIME	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY PRIORITY 1/	ANCILLARY MEETING SCHEDULE		
					Day/Group	Start Time	Continuing Through
SUNDAY, SEP 12					SUNDAY:		
					None		
MONDAY, SEP 13 - 8:00 am					MONDAY:		
		<i>Ancillary Meetings - see Ancillary Schedule</i>			A. GAP	8:00 AM	Fri.
					B. GMT	8:00 AM	Fri.
					C. SSC	8:00 AM	Tue.
					D. HC	9:00 AM	Mon.
					E. Legislative	11:00 AM	Mon.
					F. Budget	2:00 PM	Mon.
					G. EC	4:00 PM	Fri.
TUESDAY, SEP 14 - 8:00 am					TUESDAY: GAP, GMT, SSC, EC continue		
	1.00	Closed Session Agenda: Personnel & Litigation			(WEDNESDAY: HMSAS 10 AM)		
		Advisory Body Issues - Interim Appointments	Info				
		Litigation Status (E. Cooney)	Info				
A.	0.25	General Session Call to Order - 9:00 am					
1-3		Opening, Roll Call, ED Rpt	Info				
4		Approve Agenda	Decision				
B.		Administrative Matters					
1	0.10	Approve Minutes - April	Decision				
C.		Groundfish Mgmt					
1	1.00	Initial Consideration of Inseason Adjustments (If Necessary)	Guidance	GMT; GAP			
D.		Salmon Mgmt					
1	0.25	Salmon Fishery Update (Adv. rpts & cmnts; Pub cmnt; Dell)	Info				
2	0.50	Methodology Review: Determine Priorities for 2005 Mgmt Use	Guidance	SSC; STT; SAS			
3	0.50	FMP Amendments: Process Update	Guidance	STT; SAS			
E.		Pacific Halibut Mgmt					
1	0.25	Fishery Update	Info				
2	0.75	Adopt Proposed Catch Sharing Pln Changes for 2005 for Pub Rev	Decision				
3	0.50	Review of Trawl Bycatch Estimate	Info	SSC			
F.		Enforcement Issues					
1	0.75	Rpt on Contact-to-Violation Ratio in GF Rec Fishery	Guidance	GMT; GAP; SSC			
G.		Habitat Issues					
1	0.50	Habitat Committee Rpt	Decision	HC			
2	1.00	Artificial Reefs in Southern CA	Action	GAP; HC			
	0.50	4 pm Public Comment Period	Info				
	7.85						

ANCILLARY MEETING SCHEDULE

AG#	TIME	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY PRIORITY 1/	Day/Group	Start Time	Continuing Through
WEDNESDAY, SEP 15 - 8 am					WEDNESDAY: GMT, GAP, EC continue		
H.		Marine Protected Areas			H. HMSAS	10:00 AM	Wed.
2	0.75	SSC Marine Reserves White Paper: Adopt Final	Decision	SSC; GAP; HC			
3	0.75	Update on Misc.MPA Issues (e.g., MBS Davidson Seamount Prop.)	Info	SSC; GAP; HC			
4	0.75	Krill Harvest Ban Proposal - further consideration	Guidance	SSC; GAP			
C. Groundfish Mgmt (continued)							
2	0.50	NMFS Rpt, including Science Centers	Info				
3	1.50	EFH EIS: Adopt Preliminary Alternatives for DEIS Analysis	Decision	SSC;GAP; HC			
4	1.00	"Off Year" Science Improvements Rpt	Guidance	GMT; GAP; SSC			
5	1.00	Shore-based Whiting Fishery: Adopt Final Monitoring Program	Action	GMT; GAP, EC, SSC			
6	2.00	IQ EIS Update	Guidance	GAP; SSC?			
	8.25						
Council Chairman's Reception -- 6:00-7:30 pm							
THURSDAY - SEP 16					THURSDAY: GAP, GMT, EC continue		
C.		Groundfish Mgmt (continued)					
7	2.00	2004 Inseason Mgmt - Final Action	Action	GMT; GAP; EC			
8	1.50	Red Light/Green Light Threshold: Initial Consideration	Guidance	GMT; GAP; SSC			
9	1.00	EFPs: Final Approval for 2005 Fisheries	Action	GMT; GAP, EC, SSC			
I. Highly Migratory Species Management							
1	0.25	NMFS Rpt, including Science Center Rpt	Info	HMSAS; HMSMT			
2	1.00	FMP Amendment for Limited Entry in the High Seas Pelagic Longline Fishery	Guidance	HMSAS; HMSMT			
3	0.75	Albacore & Blue Fin Tuna Stock Assesments	Info	HMSAS; HMSMT			
J. Coastal Pelagic Species Mgmt							
1	0.25	NMFS Rpt, including Science Center Rpt	Info				
2	1.00	STAR Panel Rpt	Guidance	SSC			
3	1.00	Scoping of FMP Amendment, including sardine allocation et al (final approval for sardine allocation 6/2005)	Guidance				
	8.75						

ANCILLARY MEETING SCHEDULE

AG#	TIME	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY PRIORITY 1/	ANCILLARY MEETING SCHEDULE	
					Day/Group	Continuing Start Time Through
FRIDAY - SEP 17					FRIDAY: none	
C. Groundfish Mgmt (continued)						
10	1.00	Terms of Reference, including STAR & Rebuilding Plan review: Initial Consideration	Decision	GMT; GAP		
11	1.00	VMS: Adopt Preferred Open Access Alts for Public Review	Decision	GMT; GAP, EC		
B. Administrative Matters (Continued)						
2	0.50	Regulatory Streamlining Project Update	Info	GMT		
3	0.75	Feasibility, Cost, & Timing to Implement Phase I of Communication Plan & Timetable for Phases II & III	Guidance	All		
4	0.50	Legislative Matters	Guidance			
5	0.30	Fiscal Matters	Decision			
6	0.25	Interim Appointments & Replacements to Advisory Bodies, Standing Com., & Other Forums	Decision			
7	1.25	Updates to Council Operating Procedures	Guidance	All		
8	1.00	Workload Priorities and Draft Nov 2004 Agenda (including Schedule for Implementing Bycatch PEIS)	Guidance			
	6.55					

1/ Anticipates each advisory subpanel will review agenda items for its particular FMP.

Informational Reports (available in Briefing Book, but no time scheduled on Agenda):

1		
2		
3		

Other Possible Agenda Items:

- **Key for Council Task: Info=briefing; Guidance=formal or informal direction on issue; Decision=formal determination; Action=directly results in implementation by NMFS.**

Due Dates:

Meeting Invitation Memo Distributed:	8/6
Public Meeting Notice Mailed:	8/18
FR Meeting Notice transmitted:	8/20
Final day to receive public comments for placement in BB:	COB 8/25
Final deadline to submit all BB materials:	COB 8/25
Final deadline to submit cover memos for Ancillary Meetings:	COB 8/27
Briefing Book Mailing:	COB 9/2
Final deadline to receive public comments for distribution to Council on first day of mtg:	COB 9/7

COUNCIL WORKLOAD PRIORITIES JUNE 21, 2004 THROUGH SEPTEMBER 17, 2004
(Bolded tasks represent a Core Program Responsibility)

	Salmon	Groundfish	CPS	HMS	Other
ACTIVE	Inseason Management	2005-06 Mgmt Specs--finalize DEIS		FMP Amendment:	Admin Necessities
	Model Eval Work Group	Inseason Mgmt	Pln & Coord. 2004 STAR review	(HMS advisory	(Briefing Book, minutes,
	Sacramento River Workgroup (Winter & Spring Chinook)	SAFE 2002-2004: Volume II	FMP Amendment: sardine	body reports)	Advisory Body coord,
		Amendment 16-3: respond to comments	allocation		Newsletter, etc.)
		and submission of FEIS	Review of CPS FMP related		Pacific Halibut Mgmt
		Redlight/Greenlight Threshold initial	matters:		Inseason Mgmt
		consideration	mackerel assmnt		Proposed Changes for 05
		Terms of Ref including STAR & review of	squid overfishing		Marine Protected Areas coord
		rebuilding plns--initial consideration	bycatch		CINMS MR Matters
		Trawl IQ Program EIS Development	EFH update		NMFS Integration Projects
	EFH EIS--Oversight Committee mtg	PEIS		Central CA Sanctuary coord	
	Stock Assmnt Analytical Methods Workshops			SSC Mar. Resrv. White Paper	
	Shoreside Whiting EA: Prepare for final action			PacFIN/RecFIN/EFIN issues	
	Current Litigation response			Communication Plan	
	Final EFPs			Central Valley Water	
				(fast track letter)	
				COP Edits	
CONTINGENT	Update Historic DataSets	Ad Hoc Groundfish Data Policy Committee	Update FMP w/ Amendment 9	FMP Amendment:	Nat'l Standard 1 review
	Future NEPA process		International Mgmt	Longline Limited	Research & Data Needs
	Amendments:	Programmatic Bycatch EIS--consideration		Entry Program	
	Sacramento River Chinook	of FMP Amendment		& other matters	
	OCN Coho Matrix	GF Strategic Plan Formal Review			
	SOF Coho Allocation	Open Access Limitations			
	Puget S. Chinook & Coho	VMS Committee Meeting			
Cons. Objectives					
Selective Fishery Process					
DELAYED		Permit Stacking Implementation:			
		Fixed-Gear Issues			
		SSC B ₀ & MSY Workshop			
	SSC Bycatch Workshop II				

PACIFIC FISHERY MANAGEMENT COUNCIL

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EXECUTIVE DIRECTOR
Donald O. McIsaac

CHAIRMAN
Donald Hansen

June 1, 2004

Dr. William T. Hogarth
Assistant Administrator for Fisheries
United States Department of Commerce
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Re: Essential Fish Habitat Five-Year Review

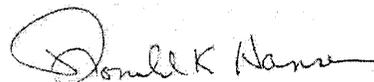
Dear Dr. Hogarth:

Thank you for your letter of April 30, 2004 regarding review of the essential fish habitat (EFH) sections of our fishery management plans (FMPs).

As you know, the Pacific Fishery Management Council (Council) has FMPs for Pacific Coast groundfish, salmon, highly migratory species, and coastal pelagic species. Of these, only the EFH section of the coastal pelagic species FMP is due for review at this time. The EFH section of the Pacific Coast groundfish FMP was recently the subject of a litigation settlement, and National Marine Fisheries Service is currently developing an environmental impact statement that addresses EFH for groundfish. The salmon FMP was amended to include EFH less than five years ago, and the highly migratory species FMP was approved last year.

I will provide your letter to the Council when it meets later this month. At that time, the Council will discuss review of the EFH provisions of the coastal pelagic species FMP during its consideration of future workload planning.

Sincerely,



Donald K. Hansen
Chairman

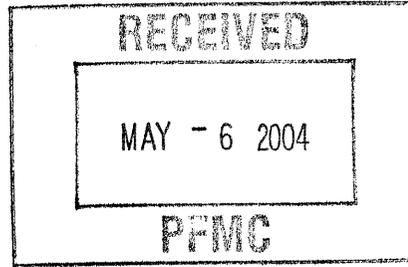
JDG:
cc: Regional administrators



~~RG. EFH~~

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 1315 East-West Highway
 Silver Spring, Maryland 20910
 THE DIRECTOR

APR 30 2004



Mr. Donald K. Hansen
 Chairman, Pacific Fishery Management Council
 7700 NE Ambassador Place
 Portland, Oregon 97220-1384

Dear ^{Don} Mr. Hansen:

Many of the Fishery Management Plans (FMPs) and FMP amendments completed in 1998 and 1999 to comply with the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are due for review. In some cases, this review has begun (i.e., through the development of EFH environmental impact statements [EIS] for those fisheries subject to the Joint Stipulation and Order in *American Oceans Campaign v. Evans*). In others, work has yet to begin. Provided below is information, presented as a series of questions and answers, on the EFH five-year review process. Appended is a list of all the EFH amendments and their status relative to the five-year review.

Why does the review need to be conducted every five years?

As you are aware, Section 305(b)(1) of the MSA requires the Secretary to develop a schedule to review the EFH portions of FMPs. The agency, through the EFH regulatory guidelines, (50 CFR 600.815 (a)(10)), has determined that such reviews should be conducted at least once every five years.

Specifically, the EFH regulatory guidelines state:

Councils and NMFS should periodically review the EFH provisions of FMPs and revise or amend EFH provisions as warranted based on available information. FMPs should outline the procedures the Council will follow to review and update EFH information. The review of information should include, but not be limited to, evaluating published scientific literature and unpublished scientific reports; soliciting information from interested parties; and searching for previously unavailable or inaccessible data. Councils should report on their review of EFH information as part of the annual Stock Assessment and Fishery Evaluation (SAFE) report prepared pursuant to 600.315(e). A complete review of all EFH information should be conducted as recommended by the Secretary, but at least once every five years.

In addition, National Standard 2 of the MSA requires that conservation measures, including those for EFH, be based on the "best scientific information available" (16 U.S.C. §1851(a)(2)). Clearly, since 1998, NOAA and others have conducted considerable research, management analysis, and mapping that provide new information about the distribution of fish and their habitats, the ecological relationships between managed species and their habitats, and the effects of fishing on those habitats. We also have obtained new information about habitat types, such as deep sea corals, for which we had very little knowledge when many of the original EFH FMP

THE ASSISTANT ADMINISTRATOR
 FOR FISHERIES



amendments were approved. The information used to develop the original EFH FMP amendments will need to be reviewed to ensure new data is accounted for in accordance with National Standard 2.

Regulations and policies under the National Environmental Policy Act (NEPA) also supports the regular review of information supporting agency action. In interpreting the NEPA regulations (40 CFR Parts 1500-1508), the Council on Environmental Quality (CEQ) indicates that if an EIS is more than five years old, or if there is significant new circumstances or information relevant to environmental concerns, the EIS should be reexamined to determine if preparation of an EIS supplement is necessary (*Forty Most Asked Questions Concerning CEQ's NEPA Regulations*).

Similarly, NOAA's NEPA policy states that "where an EIS has been completed on a previous management plan or plan amendment and that EIS or SEIS is more than five (5) years old, the RPM [Responsible Program Manager] should review the EIS to determine if a new EIS or SEIS should be prepared (NAO 216-6)." As indicated by CEQ and NOAA, reviews of prior environmental analyses should be conducted regularly to ensure current information is being considered when making agency decisions. This rationale also applies to the information used to support EFH management decisions in our FMPs.

What benefit does the five-year review provide?

The primary benefit of the five-year review is to ensure EFH management decisions continue to be based on sound science and law. A periodic review of the supporting analyses and data of EFH management measures will determine whether our decisions are consistent with current knowledge or need to be amended to reflect advances in the field. The review will allow species' distributions and habitat associations to be updated with new data and will provide an opportunity to further refine EFH descriptions. Improvements in mapping and modeling capabilities show promise for being powerful tools in refining EFH descriptions and improving EFH consultations. By incorporating new scientific data and methods into EFH management, our decisions will be consistent with MSA mandates and other legal standards of review that often are used to evaluate our decisions.

What do the five-year reviews need to include, and what process should be used?

The five-year reviews should include a review of the information used to support Council and agency decisions in FMPs that: 1) identify and describe EFH, 2) minimize adverse effects of fishing, 3) identify Habitat Areas of Particular Concern, and 4) take any other action to encourage the conservation and enhancement of EFH. Please use the procedures described in the EFH regulatory guidelines on how to conduct five-year reviews (50 CFR 600.815 (a)(10)). If necessary, NMFS' Office of Habitat Conservation, in coordination with Fishery Management Council staff, will develop additional technical guidance on how to conduct the five-year reviews. The results of your review will determine whether amending the NEPA document(s) or FMP(s) will be necessary to ensure the best available science is used to support EFH management decisions.

Whom do I contact for additional information?

If you or your staff has questions or concerns about how to proceed, please contact Karen Abrams, the National EFH Coordinator, at (301) 713-4300 ext. 149. In addition, the Habitat Conservation Division within the Regional Office will be available to answer questions

related specifically to your FMPs.

I recognize that undertaking any major review of fisheries policy is time-consuming and staff intensive. In the case of EFH reviews, not only will we be responding to both statutory and regulatory requirements, but we will be producing a product that ensures our management decisions are supported by the best scientific information available. I urge you to begin the five-year review process, if you have not done so already. By May 30, 2004, please review the enclosed list and provide a status report on your progress and plans for completing the five-year EFH review.

I appreciate your support for the EFH process and look forward to working with the Pacific Fishery Management Council during the five-year review.

Sincerely,



William T. Hogarth, Ph.D.
Assistant Administrator
for Fisheries

Enclosure

cc: Regional Administrators

Schedule for Review of EFH Amendments

Fishery Management Council	FMP and Amendments	Secretarial Decision and Date	Estimated 5 Year Secretarial Review Date	Status of 5 Year Review
Highly Migratory Species (HMS)	Atlantic Billfish	approved 4/15/1999	4/15/2004	Review has begun
	Atlantic HMS	approved 4/15/1999	4/15/2004	Review has begun
New England FMC	Atlantic Salmon	approved 3/8/1999	3/8/2004	Partially through 5/31/2004 regulations that may develop from an EIS resulting from the <i>AOC v Evans</i> lawsuit, partially through Omnibus amendment in 2004/2005
	Northeast Multi-species	approved 3/8/1999	3/8/2004	(see above)
	Sea Scallop	approved 3/8/1999	3/8/2004	(see above)
	Atlantic Herring	approved 10/27/1999	10/27/2004	(see above)
	Monkfish	approved 4/22/1999	4/22/2004	(see above)
Mid-Atlantic FMC	Atlantic Bluefish	approved EFH designations 7/29/99; disapproved "fishing impacts on EFH"	Must approve minimization of fishing gear impacts section; EFH designation review 7/29/2004	Remedied as part of Amendment 2, amendment recently initiated

	Atlantic Surfclam and Ocean Quahog	approved EFH designations 4/28/1999; disapproved "fishing impacts on EFH"	Must approve minimization of fishing gear impacts section; EFH designation review 4/28/2004	Remedied as part of Amendment 13 for Surf Clams and Ocean Quahogs, FEIS will soon be completed
	Atlantic Mackerel, Squid, and Butterfish	approved EFH designations 4/28/1999; disapproved "fishing impacts on EFH"	Must approve minimization of fishing gear impacts section; EFH designation review 4/28/2004	Remedied as part of Amendment 9 for Squid, Mackerel, and Butterfish, DEIS to be completed this summer
	Atlantic Flounder, Scup, and Black Seabass (BSB)	approved EFH designations 4/28/1999; disapproved "fishing impacts on EFH"	Must approve minimization of fishing gear impacts section; EFH designation review 4/28/2004	Remedied as part of Amendment 13 for flounder, Scup, and BSB, currently under secretarial review
	Spiny Dogfish	approved 9/29/1999	9/29/2004	To be determined
	Tilefish	approved 5/10/2001	5/10/2006	Future additional work will be determined by outcome of pending lawsuit regarding lack of EFH protection measures
South-Atlantic FMC	Snapper-Grouper	approved 6/3/1999 (amendment 10)	6/3/2004	Review underway
	Atlantic Coast Red Drum	approved 6/3/1999 (amendment 1)	6/3/2004	Review underway
	Atlantic Shrimp Fishery	approved 6/3/1999 (amendment 3)	6/3/2004	Review underway
	Atlantic Coral, Coral Reefs, and Live/Hard Bottom Habitats	approved 6/3/1999 (amendment 4)	6/3/2004	Review underway
	Atlantic Golden Crab	approved 6/3/1999 (amendment 1)	6/3/2004	Review underway

SAFMC / GMEMC	Coastal Migratory Pelagic Resources	approved 6/3/1999 (amendment 5)	6/3/2004	Review underway
Gulf of Mexico FMC	Coral and Coral Reefs	approved EFH designations for 26 selected species and coral complex, and gear impacts for three gears 2/8/99; disapproved remaining species and gear impacts of other fishing gears	Review approved EFH designations and gear impacts 2/8/2004; Must approve other EFH designations and gear impacts	Through 6/25/2005 regulations that may develop from an EIS resulting from <i>AOC v Evans</i> lawsuit
	Gulf of Mexico Red Drum	(see above)	(see above)	(see above)
	Gulf of Mexico Stone Crab	(see above)	(see above)	(see above)
	Gulf of Mexico Shrimp Fishery	(see above)	(see above)	(see above)
	Reef Fish Resources	(see above)	(see above)	(see above)
Caribbean FMC	Spiny Lobster	approved 17 selected species and corals for Caribbean EFH Amendment 2/18/1999; disapproved EFH sections of all other species.	Review approved EFH designations 2/18/2004; Must approve EFH sections for all other species.	Through 6/25/2005 regulations that may develop from an EIS resulting from the <i>AOC v Evans</i> lawsuit
	Shallow Water Reeffish	(see above)	(see above)	(see above)
	Queen Conch	(see above)	(see above)	(see above)
	Corals and Reef Associated Invertebrates	(see above)	(see above)	(see above)
Pacific FMC	Commercial and Recreational West Coast Salmon Fisheries	approved 9/27/2000 (amendment 14)	9/27/2005	To be determined

	Northern Anchovy / Coastal Pelagics	approved 6/10/1999 (amendment 8)	6/10/2004	To be determined
	Pacific Coast Groundfish	approved 3/3/1999 (amendment 11)	3/3/2004	Through 5/2006 regulations that may develop from an EIS resulting from the <i>AOC v Evans</i> lawsuit
Western Pacific FMC	Western Pacific Crustaceans	approved 2/3/1999 (amendment 10)	2/3/2004	To be determined
	Western Pacific Precious Corals	approved 2/3/1999 (amendment 4)	2/3/2004	To be determined
	Bottomfish and Seamount Groundfish	approved 2/3/1999 (amendment 6)	2/3/2004	To be determined
	Western Pacific Pelagics	approved 2/3/1999 (amendment 8)	2/3/2004	To be determined
	Coral Reef Ecosystems	approved 6/14/2002	6/14/2007	To be determined
North Pacific FMC	Groundfish of the Gulf of Alaska	approved 1/20/1999 (amendment 55)	1/20/2004	Through 8/13/2006 regulations that may develop from an EIS resulting from the <i>AOC v Evans</i> lawsuit
	Salmon Fishery in the EEZ off the Coast of Alaska	approved 1/20/1999 (amendment 5)	1/20/2004	(see above)
	Groundfish Fishery of the Bering Sea and Aleutian Islands Area	approved 1/20/1999 (amendment 55)	1/20/2004	(see above)

	Bering Sea/Aleutian Islands King and Tanner Crab	approved 1/20/1999 (amendment 8)	1/20/2004	(see above)
	Scallop Fishery off Alaska	approved 1/20/1999 (amendment 5)	1/20/2004	(see above)