

COUNCIL CHAIRS AND EXECUTIVE DIRECTORS' MEETING

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APRIL 13-15, 2004

DRAFT (VERSION 28TH JUNE 2004)
SUMMARY OF SIGNIFICANT RESULTS

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A. Introduction

Following a Hawaiian chant and introductions, Roy Morioka (Chair) opened the meeting with welcoming remarks. He set the scene, by detailing the distinguished presenters, and using Hawaiian terms he expressed the wish that we would move onward and forward (Hawaiian: imua), in a spirit of cooperation (Hawaiian: laulima).

Bill Hogarth continued the introduction, thanking the Western Pacific Regional Fishery Management Council for hosting the meeting, and remarked that he has been visiting Hawaii frequently of late, in relation to the re-opening of the longline swordfish fishery after a 3 year closure. He hoped that this meeting of the Council Chairs and Executive Directors would be a positive one, giving a different message from that put out by the 'doom and gloom' merchants dominating the current press. In a paper which he is producing for Earth Day, he states that the negative perception of the condition of our ocean resources is wrong. The draft of this paper will be available very soon and copies will be made available for participants of this meeting.

Dr Hogarth recognized the importance of Congressman Gilchrest and Senator Inouye, who both have been, and are, staunch supporters of US fisheries and their management. The current budget was described as good, but tough. Restructuring of the budget means that some items which should have been funded have been missed, and as a consequence there has had to be some reprogramming. This has involved removing monies from base programs and applying it elsewhere, and so the budget has become very confused. The impact on the Councils will be discussed in detail during the meeting.

In Dr Hogarth's view, National Environment Policy Act (NEPA) is the prime reason why litigation is less of a problem now. Therefore more NEPA funding should be directed to the Councils. Other issues marked for focused discussion in the upcoming meeting are Magnuson-Stevens Act (MSA) reauthorization, the Ocean Commission Report, Enforcement, especially Vessel Monitoring Systems (VMS) which is seen as a great tool for enforcement, management and safety. Outreach is seen as a means of promoting the agency, and is realized partly through constituency meetings and conferences, hence the need for another National Fisheries Conference later this year. There appear to be less negative comments on fishery issues made to the legislature this year, and it is felt that part of the reason for that is better outreach, and explanations of fishery management processes and decisions to the public.

There have been notable successes, for example in the field of gear technology, where excellent work has been done in Pascagoula, throughout the regions and by industry. Work to reduce turtle takes in the NE distant fishery has enabled the opening of the Hawaii longline swordfish fishery, with moves afoot to transfer this technology to other nations. The Admirals' initiative to develop a matrix management and budget process is bringing NOAA closer together.

Dr Hogarth stated that there is no bigger supporter of the Council process than himself, and that this is the way to manage fisheries, even though there is room for improvement. In conclusion, the meeting was informed that decisions about local Regional Administrator (RA) and Assistant Regional Administrator (ARA) posts were going to be made by the end of the week, and that Bill Fox would be moving to the West Coast, and Doug DeMaster would be working at headquarters to focus on the issues of observers and Marine Recreational Surveys.

Deputy Assistant Administrator for the National Ocean Service (NOS), Jamie Hawkins, added a few words, indicating that this was a good opportunity to move forward in a spirit of 'laulima', saying that he was witnessing at this time the greatest degree of open communication between the Directors of Fisheries and the Directors of the Ocean Service.

B. Regional Highlights

Mr Borden of the New England Council noted that the Council has had significant success over the last few years in rebuilding groundfish resources. Resource availability has quadrupled since 1994, and out of the 19 stocks in the complex eight now fall under the category of not overfished. No overfishing is taking place. Another two stocks will be added to that list this year. The largest ever year class ever for haddock was recorded this year, and should recruit to the fishery in about three years. Another significant success is with the Atlantic Sea Scallop Plan, which involves two stocks. In the last few years landing have increased from 17 million up to about 53 million, an increase from \$84 million to \$202 million in income for the fishing communities. The Atlantic herring stock is in excellent condition, however there is a very active transboundary issue under discussion with Canadian counterparts. The New England Council has already reached agreement with the Canadians with regard to sharing three specific stocks in that groundfish complex.

Dr Hogarth commented that Amendment 13 will be in the Federal Register probably tomorrow.

Mr Savage announced that the Mid Atlantic Fishery Council is working on Amendment 13 for the surfclam, ocean quahog fishery. The EIS has been updated, resolving SFA disapproval on gear impacts to the fishery. This successful fishery was worth \$60 million last year with zero enforcement costs. Enforcement is not considered a problem for the fishery. The Council established a multi-year quota setting mechanism which allows fishermen to plan for the processors in advance. The Council has set a minimum size limit from year to year, and size is not a current issue for the fishery. VMS has been authorized for all the plan boats following an initiative from the industry, which is keen to take it up as soon as it is technologically and economically feasible.

With regard to Amendment 13 to the summer flounder, squid and black sea bass plan, this year has seen the largest quota for summer flounder, scup and black sea bass since they have been under management. The EIS has been updated for the plan, and SFA disapproval on gear impacts

on EFH have been resolved. A coastal quota allocation system was implemented in lieu of a quarterly quota system that they had before.

Framework 3 to summer flounder, squid and black sea bass authorizes a rollover of Winter 1 quota into the Winter 2 session. Framework 4 for summer flounder, scup and black sea bass authorizes the transfer at sea of up to 10,000 pounds of fish from one boat to another. In this fishery one boat fishing on a 15,000-pound trip limit can catch 25 - 30,000 pounds in one tow. They would be authorized to transfer the excess catch at sea to reduce discards. This action should proceed when enforcement issues have been settled. Framework 5 is for squid, mackerel and butterfish. A moratorium on Illex squid will be extended to June of 2005, allowing Amendment 9 to be finalized prior to the lapse of the limited entry system. All of the above have been implemented by the Secretary.

In 2005 the Council will be working on Amendment 9 for squid, mackerel and butterfish, Amendment 1 for dogfish, Framework 5 for summer flounder, squid and black sea bass, and considering the initiation of Amendment 1 to tilefish. They will also develop specifications for 2005 fishing gear. The council approved fishing gear of '04 specifications for the following plans: surfclam, ocean quahog, squid, mackerel, butterfish, summer flounder, scup and black sea bass, bluefish, dogfish, monkfish and also recreational measures for summer flounder, squid and black sea bass.

Mid Atlantic Council staff were involved in the National Conference last year. Last year was also the Councils turn to support ICCAT. Five other Atlantic Coast Councils were consulted and representatives were sent to ICCAT.

Mr Cupka of the South Atlantic Council described two FMPs which are in development and have been in the review pipeline for a number of years, the Sargassum FMP and the Dolphin Wahoo FMP, both of which have now been approved. The Sargassum Fishery Management Plan provides long-term protection of Pelagic Fish Habitat, protecting sargassum from extensive commercial harvest. The management plan for dolphin and wahoo was developed by the South Atlantic Council in cooperation with the Mid Atlantic and New England Councils and sets limits on catches of dolphin and wahoo for commercial and recreational fishermen in federal waters along the entire Atlantic Coast. This precautionary management plan also establishes a framework for the long-term management of both fish species.

The snapper/grouper Amendment 13A is the Councils most recent action. In contrast with the Sargassum and Dolphin and Wahoo FMPs, this amendment was their first action under the regulatory streamlining process. The council and staff worked very closely with NOAA Fisheries and NOAA General Counsel at both the regional and national levels to frontload the FMP amendment development and approval process. It was a success, taking six months from the start to the finish of implementing this amendment.

The Southeast Region has developed the SEDAR (Southeast Data Assessment and Review) process. This was initiated to improve the quality and reliability of stock assessments for

fisheries resources in the Southeastern U.S., including the South Atlantic, Gulf of Mexico and Caribbean. The process is managed by the three regional fishery management councils in close coordination with NOAA Fisheries and the two interstate fishery commissions, the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission. An emphasis is placed on increasing constituent and stakeholder participation in assessment development and ensuring a rigorous and independent scientific review of completed stock assessments.

The Council habitat plan is being developed using an ecosystem-based approach to resource management. During the latter part of last year 15 workshops were held to integrate and update habitat information and begin development of the South Atlantic Fishery Ecosystem Plan. The workshops brought together Habitat and Coral Advisory Panel members and the coral group for resource and habitat experts from cooperating federal, state and academic institutions, as well as conservation organizations, that participated directly in the development of a habitat plan. Updated life history of stock status information on managed species and the characteristics of their food webs, plus social and economic research needs, will be incorporated, with a view to fully addressing ecosystem-based management. Additional workshops will be held this year on topics including artificial reefs, deep-water habitat and coral and marine zoning and impact of fishing on habitat. It is anticipated that a regional workshop to identify research and monitoring needs to support ecosystem-based management and further development of the FEP in the South Atlantic region will be held this year too. A preliminary South Atlantic Ecopath model has been developed cooperatively between the University of British Columbia and Roger Pulier (Council Staff) as part of the Sea Around Us Project funded through the Pew Charitable Trust Foundation. This model is being developed to cover the area between Cape Hatteras, North Carolina to the Florida Keys and extends from the upper wetlands to the 1,000 meter isobath.

The South Atlantic Council is developing their Snapper/Grouper Amendment 14, to address the rebuilding of some of deep-water snapper and some grouper species; specifically snowy grouper and tilefish. A possible mechanism is the development of MPAs. There are ten areas proposed as MPAs. Eight of them are Type 2 MPA, that allow no bottomfishing, but do allow fishing for pelagics. The remaining two MPAs do not allow any type of fishing. The latter two MPAs would incorporate artificial reefs. There will be a second round of public meetings this fall to debate the amendment. There is increased buy-in from some of the fishing groups who support the concept, especially if there is a periodic evaluation of the efficacy of these MPAs.

Mr Morioka asked what unanticipated changes were made to the Mahimahi Wahoo FMP during its development.

Mr Cupka replied that there were two changes. Firstly the requirement to qualify to obtain a permit, which would have excluded some fishermen, was dropped. Now fishermen can obtain a permit to fish if they are participating or have participated in the fishery. The second change was a decision to set a trip limit for dolphin, because longline fishermen impacted by HMS closures were expected to shift from HMS species over into dolphin. Fishing effort did not shift to dolphin. At the start of planning, 87 % of the catch was recreational, whereas now it's up to about

93 %. Growth has been in the recreational sector rather than the commercial sector, and so that part of the plan was rejected. However a framework provision remains in case there is a need to address any allocation issues between the recreational and commercial fisheries.

The Caribbean Council was represented by Mr Pineiro, who announced the submission of their EFH EIS document for Secretarial approval in compliance with the court order as scheduled. The document should be published and available on April 16th. Their SFA document is expected to be finished this year. With approval of the SFA Amendment, plans to rebuild overfished species will be developed and implemented. The Council announced a partnership with the UN FAO to continue planning for Caribbean management of the Queen conch and the White Water to Blue Water Initiative of Miami.

An outreach and educational program has started in cooperation with local governments and NOAA to explain the new regulations to local fishers and the general public. The program will include new federal and local fishery laws which were approved in Puerto Rico. The Council has a Coral Reef Protection Plan, with ecosystem-based management concepts and limited entry proposals, incorporating MPAs as management tools.

Ms Walker of the Gulf Council commented that a recreational charter boat moratorium was implemented in December of 2003. It was thought that this would cap effort from 2001 onwards. However the number of recreational charter boats, which was listed at 3300 in 2001, has reduced to about 1700 following the moratorium. Permits are required for the shrimp fishery, with a deadline set for December 2003. There are now approximately 2700 permits in the Gulf. A sunset was extended on two closed areas for the protection of gag grouper in their spawning grounds. The Council is developing an extension of their limited entry on commercial reef and mackerel permits and an extension of the charter boat moratorium. In July 2002 Secretarial Amendment 1 was submitted. The Council is awaiting a decision on that amendment, which addresses overfished and overfishing of red grouper.

The first referendum for a commercial IFQ program for red snapper passed and the Council is developing an IFQ FMP for our commercial red snapper fishery. The approximately 1,000-page generic EFH Amendment has been submitted for agency and public comment. The Gulf Council has adopted the SEDAR process in the Gulf of Mexico for stock assessments, and is developing a generic aquaculture FMP that will regulate aquaculture in the Gulf of Mexico.

Mr Hansen representing the Pacific Council, said that salmon management is finished for the year on the West Coast; and they have completed the second meeting of a three-meeting process for the first-ever, two-year groundfish cycle which will begin in 2005. The Council has started the largest EIS for groundfish trawl fisheries. This EIS is expected to lead to bycatch reduction.

The HMS FMP has been approved by NMFS. If funds are available, the Council will proceed with amendments for the high seas longline fishery and turtle protection, in similar way to the WPRFMC. Pacific Council staff completed three major EIS and three EA's, including rebuilding plans under court order, and dealing with previous lawsuits. It was noted that one of

the NEPA documents prepared by the Council staff in 2001, was challenged by NRDC as deficient, but the judge of a District Court of Northern California ruled in favor of NMFS on all counts. This case is now under appeal in the Ninth Circuit.

Pacific whiting stocks have been fully rebuilt and this species will be delisted from the from the overfishing species list. In addition, the Council approved recommendations from their SSC on lingcod, which is now 99 % rebuilt. This recovery is 7 years ahead of schedule. A successful buyback in the limited entry trawl fleet has been completed. Permits, four of which were latent, were discussed at the last Council meeting. The Council also has a CPS for sardines.

The North Pacific Council, represented by Ms. Madsen, has finalized their preferred alternative on their Programmatic SEIS, which is a 7,000-page document. The Councils EFH document is out for public review, and will be presented to the Council again in February 2005 for final action; linked to that, a HAPC process was initiated. Following a limited call for proposals, 23 were received and reviewed by the Council and plan team, and of those, 15 or 16 were selected for reexamination in June, when boundaries may be reassessed to enable the analysis to advance.

The Council has a large rationalization program, a multi-species, multi-gear program for the Gulf of Alaska fisheries. This is moving forward, albeit slowly. There is also a crab rationalization program which will go to the Council for final action in June. Congress approved the authority for the Council to move ahead and implement the program. The Council continues to review the exploitation strategy in their management of rockfish species and non-target species, which they believe to be very critical.

Mr Morioka of the WPRFMC indicated that the Coral Reef Ecosystem Fishery Management Plan and the American Samoa Limited Entry Fishery Management Plan are being adopted. The swordfish fishery, which was closed for 3 years is reopening.

Mr Morioka discussed the importance of the regional FMC system, and detailed some of the differences between councils. The Western Pacific Council is probably the most diffuse council, and the island economies are more closely tied to the Asian economy than to the US economy. The islands have a diverse cultural background, with representatives from the CNMI, American Samoa and Guam with their indigenous populations, plus Hawaii with Hawaiians and a wide variety of immigrants.

The pacific islands don't have a continental shelf, and so there is a greater dependence in this region upon tuna and tuna-like species than groundfish, which may be predominant in other Fishery Council jurisdictions. International management of these species is via Inter-American Tropical Tuna Commission and more recently, the Western and Central Pacific Fishery Management Commission.

The WPRFMC created the first ecosystem based management plan, the Coral Reef Ecosystem FMP. This Council was also the first to be sued for non-fishing elements such as the MMPA, ESA, focusing the attention of the Council on how birds and turtles affect fishermen and fishing.

C. Report on Managing the Nation's Fisheries Conference – and proposed Sequel Conference in March 2005

Chris Oliver reported that pre-publication copies of the report on the 2003 Nation's Fisheries Conference were available at the meeting. 2000 hard copies published in the initial run went to attendees, the Councils and NMFS Regional Offices. The remaining spare copies will be held at the NPFMC office. The timing of the release of the report is opportune given that the Ocean Commission Report is coming out at about the same time. PFMC staff prepared a draft press release, which will be distributed to the Councils to ensure that all Councils are on the same page regarding the Ocean Commission Report, and are prepared to respond to the media informatively on key issues.

The Councils agreed to a follow-up conference, scheduled for Spring 2005 - "Managing Our Nations Fisheries 2, a Focus on MSA Reauthorization". The agenda for the conference would depend upon the timing of MSA Reauthorization. The conference is intended to be small, focusing on a few MSA Reauthorization issues, so there would be fewer, smaller panels than at the 2003 conference. Although scheduled for a year hence, it is considered important to nominate a very small dedicated organizing committee of Council and NMFS leadership and create a subcommittee to handle media and access to congressional members and their staff.

Six topic areas are suggested for consideration:

- Science vs Management
- Ecosystem Planning
- Rights-based Management Programs
- Resolving the Guiding Act for Fisheries Management - MSA or NEPA
- Best Available Information/Peer Review
- Other US Ocean Commission Recommendations

NOAA offers support for this conference and pledges financial assistance.

D. The Future of the Nation's Living Marine Resources and Ecosystem Approaches, October 18-21, 2004

This conference was proposed as a means of responding at a single venue to the issues raised at a series of constituent meetings held by Dr. Hogarth (detailed later). Four topics were nominated for the conference:

1. Managing Fisheries, Managing Ecosystems
2. Angling for the Future - the Recreational Sector
3. Fishing for the Future - the Commercial Sector
4. Farming for the Future

This choice of topics reflects the issues which dominated the constituency meetings. It was proposed to have small panels of 4 to 6 people including a chair. There would be four daylong breakout sessions with the chairs and invited domestic and international speakers to brainstorm and develop papers. The meeting would be sited close to the White House and participation by legislators and politicians, up to and including the president was anticipated.

The final product would be plans. However, at this point in time it isn't clear who would adopt the plans. Some plans would be forwarded to Congress, others would be for federal action, perhaps in relation to MSA reauthorization, other plans may be destined for state level consideration.

Dr. Hogarth requested that the Council Chairs and Executive Directors suggest panelists and chairs for the meeting and also assist in writing the four papers noted above.

E. Remarks - The Honorable Wayne T Gilchrest

Congressman Gilchrest stated that he supports the Council process; which is a democratic process depending upon diversity of thought, and a tolerance of differing opinions. Given that the reauthorization of the MSA will be debated in the 109th Congress, the proposed Conference (See B above) in spring of 2005 is perfectly timed to inform Congress. The Pew Commission Report, parts of which are supported by many in Congress, will also be part of that debate, as will the Ocean Commission Report. The draft copy of the MSA reauthorization is considered a good working document, but it is simply the beginning - the final document will be different.

Funding is an issue within NOAA. NMFS should have the same funding status as NASA. As a member of the Science Committee, the Congressman believes that it is time for a new national focus on the oceans rather than space, and the Ocean Commission will help to draw attention to marine issues. Currently there are many committees in the House of Representatives which deal with ocean issues. This fragmented approach makes it difficult to produce clean integrated legislation. Although it isn't in the Ocean Commissions Report, the Congressman is pushing for the creation of a Standing Ocean Committee in the House of Representatives.

The sort of topics under MSA that the proposed Standing Ocean Committee would be concerned with include: observers, definitions of overfishing, bycatch (fish and seabirds), essential fish habitat, habitat areas of particular concern, IFQs, overcapitalization and buy outs in different areas, (quality of) data collection for fishery management, ecosystem based management, violations of international conservation agreements. Some of the long-term issues will be on a time frame of perhaps 5 or 6 years. The reauthorized MSA would recognize that these are long-term actions and the language of the reauthorization will reflect that view. Congressman Gilchrest invited the Councils to provide comment, information and advice regarding MSA reauthorization at any time and, of course, when they next meet in Washington.

Congress wants to move forward with a cooperative research program that will fully utilize fishermen knowledge together with science based research.

Councils were asked to delay implementation of any IFQ management actions whilst Congress was developing standards. Congressman Gilchrest would however welcome ideas from the Councils on IFQs. The Councils were also invited to offer suggestions regarding the application of IFQs in fishery management. In conclusion the Congressman will do his best to visit each of the Councils before the National Fishery Conference scheduled for October 2004.

F. Ocean Commission Report

The Council Chairs and Executive Directors suggested that following the release of the Ocean Commission Report, the Councils develop press releases with a common theme, and provide regional examples of success stories.

G. Federal Advisory Committee Act (FACA): Proceedings for CCED meetings

Alice McKenna from the Department of Commerce outlined the FACA requirements and stated that she has concerns that the meeting may be subject to, but not in compliance with, these requirements. She stated that meetings of individual Councils or their subcommittees were exempt from FACA under the MSA, but that because the Chairs and Executive Directors' meetings were supra-Council meetings that seek to provide recommendations directly to the government, they are not included in that exemption. She explained that recommendations from single Councils would be acceptable, but if the group discussed items and made consensus recommendations it would be more likely to be subject to FACA requirements. One solution proposed was the passage of legislation to exempt the Chairs and Executive Directors' meetings from FACA requirements. Based on sample text provided, the New England Council suggested that language limiting the group to no more than two meetings per year to be held at the request of the Secretary be softened.

Congressman Wayne T. Gilchrest indicated he would propose legislation to amend the Magnuson-Stevens Act that would exempt the Chairs and Executive Directors' meetings from FACA requirements. Both Mr. Gilchrest and Mr. Dave Whaley again invited and encouraged the Regional Councils to contact them with their concerns or questions.

H. Budget

The Pacific Council highlighted the growing gap between the increases in NMFS budget and Council base operating budgets. The current funding level does not cover the Councils' base operating expenses. Supplemental funds have been received to address new obligations, such as NEPA, Corals, Protected Resources, etc., but an increase of about \$6 million is needed to adequately support all of the Councils' base operations. Additional funding should continue to be provided for activities such as NEPA, coral reefs and protected species. Issues were also discussed regarding delays in receiving funds through Council grants and cooperative agreements.

Many of the attendees agreed with the Pacific Council's following comments about the Council budget:

- Funding for Councils needs to be increased to \$21 million to cover basic administrative requirements and operational capabilities. New obligations placed on Councils need to come with additional funds.
- Councils should be identified as a priority in NOAA's new planning and budgeting system.
- NMFS should review the budget to identify budget line items associated with Council obligations where funds can be shared with Councils to support the additional \$6 million.
- The issue of Council base funding should be addressed at the upcoming budgeting and grants workshop, July 20 - 22, and Admiral Lautenbacher's staff should participate in this workshop.
- The Council Executive Directors would like to review and comment on the draft agenda for the workshop.
- NEPA funds should continue to be provided to Councils to meet NEPA requirements and support NEPA specialist staff positions.

NMFS also reported on their new planning and budgeting program (PPBES). It was highlighted that this program is based on documentation of requirements, such as NMFS' stock assessment plan, bycatch plan and strategic plan. Councils were encouraged to draft similar planning documents as this will assist in documenting their financial requirements. Dr. Hogarth noted that the Western Pacific Council's Strategic Plan is an excellent example of such an approach. Dr. Hogarth suggested that NMFS work with the Councils to quickly identify and document their budget requirements in order to meet this summer's deadline for the 2007 budget. The New England Council noted that the need for documentation should not hold up requests for increases in base funding to cover existing costs, the need for which is already well known.

Dr. Hogarth stated that he will work to build the Councils into the budgeting process through the creation of 3-year plans. He also reported that he will look into what can be done to help the Councils with their 2005 and 2006 budgets. Jack Dunnigan said that he would have his staff determine a date for a working group to meet to work on the identification and documentation of 2007 budget requirements.

I. National Constituent Meetings: Continuing the Dialogue

Mary Katsuros reported on the 2003 National Constituents' Meetings, saying that the greatest accomplishment was a sense of true communication, without the restriction of a tight agenda. The output from the meetings is nine reports which are expected to be posted on the NOAA website shortly. There were thirteen meetings in total, involving over 1,200 people, of whom approximately 600 provided input. There was consensus among the participants on certain issues, including the need for more science, more observers, more cooperative research and better enforcement. An additional 15 issues were identified by constituents. One issue which was raised at every venue was that there was too much paperwork for fishermen to complete.

It was noted that constituents are good at identifying the main issues of the day, but do not usually know who is responsible, nor are they familiar with performance measures. The focus of most constituents was not long-range, but rather for a period of two to three years. Location and timing are two crucial factors in a successful constituents meeting. For those constituents who are unable to attend the meetings, NOAA Fisheries established a website to allow electronic input. However, sometimes the system was abused, e.g. by multiple submissions of identical text, purporting to come from 22 independent individuals.

In conclusion it is recommended that the constituent process should be institutionalized, and beyond organized formal and semi-formal meetings, it would be beneficial if lines of communication could be maintained between various interested parties as a matter of routine. The Councils are considered the best venue for such informal dialogue.

J. Senator Inouye's remarks

Senator Inouye observed that the various agencies involved in marine management need to find a balance between protecting and utilizing marine resources. He noted that some groups are opposed to any use of natural resources and courtroom actions are of more interest than what is actually happening in the ocean. Other groups have a legitimate concern for their livelihoods. There is a middle way, allowing fishermen to make a living without depleting our natural resources.

New regulations allowing the re-opening of the swordfish long-line fishery demonstrate how fishing can go ahead whilst endangered seabirds and turtles are not placed at undue risk. These

regulations were developed through the Council process, involving a variety of agencies and under public scrutiny. This is a model for successful fishery management.

The US fisheries account for about 2% of turtle takes worldwide. Federal agencies should take the example of US fishermen and conservationists to their international counterparts, and encourage other countries to take up similar measures to help reduce protected species bycatch. Tuna and turtles aren't restricted by political boundaries, they don't belong to any one country, and standards of resource use have to be adopted globally for the sake of future generations.

K. Enforcement:

K1. US Coast Guard Report

Rear Admiral David Belz reported that the CG is committed to carrying out their mission of fisheries enforcement and that now, as opposed to the last couple years, more USCG resources and assets (e.g. high endurance cutters) could be dedicated towards fisheries enforcement due to the acquisition of assets (e.g. smaller patrol boats) better equipped for Homeland Security.

K2. NOAA Fisheries Office of Law Enforcement

Dr. Hogarth gave an overview of the general OLE program in addition to reporting the various enforcement priorities for each region.

K3. NOAA Fisheries VMS Policy

Dr. Hogarth reported that the VMS program is becoming stronger and getting more funding (\$ 4 mil for FY04). He stated that there are 1607 vessels with VMS currently, with 500 more coming on line soon, and 3,000-5,000 vessels with VMS anticipated in 2-3 yrs. When asked about a National VMS Policy and the role of the Councils in helping developing that policy, he stated that collaboration between the Agency and the Councils would be beneficial.

Several Council Chairs and Executive Directors stated that NOAA OLE should consult with the Councils and industry when developing a National VMS Policy. Specifically, they requested that all Councils have the opportunity to review and submit comments on a draft national policy.

L. Management

L.1 Marine Protected Areas, National Sanctuaries and Coastal Zone Management NOS

Jamie Hawkins, Dan Basta and Joe Uravitch each made presentations which emphasized the transparency of the process of establishing protected areas, and indicated that they wanted to work as closely as possible with FMCs, especially in the area of crafting fishery regulations. There was however a concern that special interest groups were using the National MPA process and the Sanctuaries Act as a means of sidestepping MSA, with the ultimate goal of creating no-take MPAs for perpetuity. The Councils heard that the current strict MPA definition was under review and that de-facto MPAs, including Department of Defense sites and areas protected for homeland security, would be considered in any National MPA strategy and would be included in the inventory of Marine Managed Areas (MMA). The Fishery Management Councils (FMC) were invited to send observers to the National MPA Advisory Committee meetings, the next being in Hawaii in September. Concerning the designation of new sanctuaries, the New England Council stated that the current 120 day time limit for Councils to write sanctuary fishery regulations was unrealistic given the necessary analyses and public reviews. Dan Basta responded that he would waive that limit if more time was needed. Dan Basta said he would write a letter to the Council Chairs and Executive Directors confirming that he has the statutory authority to waive the 120 day deadline.

Kitty Simonds asked for clarification of the Sanctuary policy in voting and non-voting membership of Reserve Advisory Councils(RAC) and Sanctuary Advisory Councils (SAC).

L.2 Ecosystem Based Management

Mike Sissenwine presented an update on NMFS Ecosystem-based Fisheries Management activities and noted that the concept of ecosystem based management essentially places emphasis on the inclusiveness of the approach or process rather than the end product. He stated that ecosystem approaches require consideration of items such as bycatch, trophic linkages as well as setting biological reference points in varying climatic regime changes. He also noted that many of the Councils are already incorporating ecosystem approaches in their FMPs.

Dr. Sissenwine reported that the more we study trophic linkages, the more complex it becomes to predict effects and changes, and long-term studies to monitor changes in productivity, need to be established, especially at lower trophic levels. Therefore, models based on this information will have to be developed so that we can test various management options and identify which ones work the best under uncertainty.

He also stated that NMFS is drafting technical guidelines for developing Fishery Ecosystem Plans as recommended by the NMFS Ecosystem Principles Advisory Committee in its 1999 report to Congress. He reported the draft guidelines will be completed within a few weeks and the next step will be to validate these guidelines thorough pilot projects. An important part of these guidelines will be to note that ecosystem-based management needs to be implemented incrementally as we learn more and gain new management tools.

Four Councils, New England, Mid Atlantic, South Atlantic and the Gulf are to receive finding in support of ecosystem based management.

Councils commented that NMFS should provide the Regional Fishery Management Councils with the draft Technical Guidelines for Developing Fishery Ecosystem Plans for review as soon as possible and consider Council input prior to finalizing the document; and further, NMFS should provide adequate funding and resources to assist Regional Fishery Management Councils in compiling and synthesizing all available data (i.e. biological, oceanographic, physical and chemical) needed to begin developing FEPs, including development of models to test management options and identify those that may result in best outcomes under climatic uncertainties.

L.3 National Standard 1

Paul Howard provided comments on the way NMFS is planning to amend the Guidelines for Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) National Standard 1 (NS1) (Overfishing/(Maximum Sustainable Yieild (MSY) Control Rule). This includes Stocks, Fisheries & Species Assemblages; Fishing Mortality Thresholds; Stock Size Thresholds; Rebuilding Stocks, OY Control Rules etc. The suggested changes were the result of a NMFS Working Group which met in 2003 to consider NS1 Guideline revisions.

One of the major changes to the NS1 guidelines will be more emphasis on controlling fishing mortality, treating the minimum stock size threshold more as a second line of defense. If new NS1 Guidelines are issued, existing rebuilding plans will be grandfathered in and that NMFS and the Council be given three years to complete necessary amendments for other aspects. The Working Group recommended clarifying and simplify the guidelines to allow each FMP to classify stocks into two categories: "core" stocks and stock "assemblages," and provide specific conditions for cases in which a mixed stock exemption may be applied to core stocks.

The Guidelines would have lower tolerance for overfishing - for example, by allowing phase-in periods to reduce fishing mortality to the MFMT only in cases where two specific conditions are met. At the same time, the Guidelines would be simplified to define the default MSST to be $0.5 B_{MSY}$. Also, provide for specific cases in which an MSST or proxy need not be specified. The discontinuity in the current definition of maximum rebuilding time horizon would be removed.

If $T_{\min} + \text{one generation time}$ exceeds 10 years, then $T_{\max} = T_{\min} + \text{one generation time}$; otherwise $T_{\max}$ can be up to 10 years.

If inadequate data are available to estimate biomass-based reference points (e.g., B_{MSY} and MSST) reliably, the Guidelines would make it permissible to use appropriate fishing mortality proxies in certain situations. The Guidelines would provide procedures to follow when rebuilding plans require revision after initiation - for example, allow in certain situations the modification of either the sequence of rebuilding fishing mortalities or the time horizon, but not both. The Guidelines would also change the current language that OY control rules "may" be specified to say they "must" be specified.

It is noted that NMFS will publish a proposed rule in the near future for comment. The Councils are asked to ensure they provide comments by July 1. It was also noted that outreach to fishermen about National Standard 1, and possible changes thereto, was extremely important.

L.4 Stock Assessments

The South Atlantic Council provided an overview of their South East Data Assessment and Review (SEDAR). SEDAR places emphasis on constituent participation and independent scientific review. Independent reviews were important to offset the problems of institutional bias where the same individuals were generating stock assessments. Problems could arise, however, if the peer review concluded that two conflicting scenarios were deemed to be feasible by the peer review. In such a case the model assumptions used in stock assessments need to be reviewed. The importance of the SSCs for reviewing stock assessments was noted by the meeting.

The SEDAR process might be used as a model for other Councils in conducting their stock assessments. The Western Pacific Council noted that the NMFS Honolulu needs additional funding to conduct stock assessments required in the Western Pacific Region.

L.5 Regulatory Streamlining: Multi-year versus Annual Actions, NEPA Umbrella etc

Jack Dunnigan discussed at length the process of regulatory streamlining and front loading being developed by NMFS to improve the rule-making and management process. He reviewed the June 8, 2004 strawman document including a 16-point procedural check-list. Mr. Dunnigan stated that because both the Councils and NMFS need analytical documents on which to base their decisions, it is important that available documents (whether FMPs or accompanying NEPA analyses) provide complete information on which to base these decisions. One objective of regulatory streamlining is to ensure that complete and defensible documentation is included in regulatory packages transmitted to NMFS for approval and implementation. Having NMFS input throughout the process is seen as one way to achieve this.

One participant gave an example where two people looking at the same data could reach differing conclusions and asked what would happen in this situation - which viewpoint would go forward, or would the process have to stop until agreement was reached? Mr. Dunnigan answered that the process would not have to stop but the Council would be fully informed of NMFS' perspective and could reconsider their action if they thought it appropriate to do so. Another participant commented that the document appears to centralize authority to NMFS' Headquarters (as in reality no Regional Administrator or regional General Council (GC) would sign off on advisory statements without approval from HQ). This would diminish the authority of the regions, which would be a real loss as they are the ones who understand local conditions and the history and logic behind Council actions. It would also result in special interest groups sending lobbyists to D.C. to intervene with HQ to influence decision making. Dr. Hogarth responded that because the MSA gives final authority to the Secretary of Commerce (delegated to Dr. Hogarth), HQ will always be lobbied. However HQ has delegated 99.9% of decision making to the regions and HQ (and the Department of Commerce) now rarely make changes to what is transmitted to them from the regions. He went on to say that the intent of regulatory streamlining is in fact to further move authority to the regions by ensuring that what is finally transmitted to HQ has been completely reviewed and will not encounter legal or political obstacles. This will be achieved by the involvement of HQ, NOAA GC and the Office of Management and Budget (OMB) early in the process. One participant responded that in the past NMFS' role has been to approve or disapprove, not to participate in plan development and that many creative management measures that were criticized by NMFS in their development stage have proven to be highly successful. Therefore procedures that would stifle this type of creative thinking would be inappropriate and detrimental to the management process and also contrary to the Councils' democratic and innovative process praised by Mr. Gilchrest in his remarks. A constructive tension between NMFS and the Councils is deliberately inherent in the MSA, and NMFS should not seek to overpower the Council's decision making process and activities.

Other participants noted that the strawman document has an over-emphasis on NEPA when it is the MSA that is most relevant and applicable to fishery management. It was also noted that some Councils have received conflicting advice on NEPA analyses, especially on the number and range of alternatives to be analyzed. Although recent NEPA guidance seems to indicate that large numbers of alternatives are not necessary, some NOAA attorneys feel otherwise and have forced Councils to include non-viable and irrelevant alternatives. Dr. Hogarth commented that NEPA analyses of 1,000 pages seem overblown and that the Army Corp of Engineers seems to get by with 50 page analyses despite the fact that their projects often cause permanent destruction. In response to discussion of whether there are gaps between the two acts, Dr. Hogarth responded that NMFS is working on a comparison table to answer this question. Further discussion included the need for quick turn-arounds for management actions such as annual harvest specifications. Several participants commented that they would like the requirement for NMFS to sign off at critical control points to be revised to a requirement for NMFS to provide feedback rather than indicating approval or disapproval. Others stated that they would like to see timelines attached to these reviews (whether for approval or feedback) as it is sometimes difficult to get reviewers' attention on a timely basis. Concerning multi-year actions, Dr. Hogarth stated that he encourages multi-year regulations as they allow industry to better plan for the future.

Dr. Hogarth suggested that a working group be established with the Councils and NMFS to facilitate the implementation of the regulatory streamlining process. He also agreed to quickly complete a matrix of NEPA and MSFCMA to identify the overlaps and gaps between the two statutes.

L.6 Essential Fish Habitat

Dan Furlong made a presentation on how the Essential Fish Habitat (EFH) mandate in the 1996 Sustainable Fisheries Act (SFA) and MSFCMA had been interpreted by NMFS in a way that seems to go beyond what the statute discussed. Rebecca Lent gave a short presentation on a proposed rule making for EFH, including the five year review of EFH implementation. The Mid-Atlantic Council commented that their EFH concerns are very different from those in other areas and that there should not be a "one size fits all" approach. Several other Councils commented that non-fishing impacts to EFH are much larger than fishing impacts and that this should be addressed. Rebecca Lent stated that NMFS is reviewing the documentation requirements for both NEPA and EFH reviews with the objective of providing complete yet concise documents.

The Mid-Atlantic Council asked NMFS to look at the EFH reviews and see how much of these are devoted to fishery versus non-fishery related impacts to EFH. NMFS asked the Councils to provide comments on the EFH proposed rule.

L.7 Research

Paul Howard summarized the success of NMFS Cooperative Research Program in New England, and how this provided information required for fishery management. This success happened because they established a steering committee with broad participation including industry, scientists, Non-Government Organizations (NGO) and other stakeholders. The Mid-Atlantic Council recommended that Councils use part of the Cooperative Research funds to establish a steering committee to advise NMFS on priority research areas.

The Gulf Council expressed dissatisfaction with a study conducted on charter vessels in the Gulf of Mexico, and had not received a satisfactory answer thereon from the author of the study, or from NMFS. Dr. Hogarth indicated he had received a communication from the Gulf Council and would follow up on the concerns expressed therein about the charter vessel study.

L.8 Fish Consumption and Health Issues

John Kaneko and Paul Bartram reviewed health and safety issues associated with fish. These included histamine poisoning, ciguatera poisoning, and methyl mercury. The presentation was

introduced with a discussion about Hazard Analysis Critical Control Point (HACCP) regulations, referring to a variety of capture methods, fish species, processing technologies and products. This large range of supply processes means that there is no single standard system of checking for safety, checking designs are custom designed, often depending upon local knowledge.

Some fish safety concerns are real, others are perceived. An example of a perceived concern was given, that of parasites in sashimi tuna. Prior to 1997 the FDA believed that fresh sashimi tuna harbored parasites which were significant in terms of public health. Following intensive research by Kaneko and Bartram, it was found that there was absolutely no evidence to support the FDA's belief regarding large tuna species. The FDA accepted the research and there is a new definition of tuna - separating the large and small tuna species. However even for smaller tuna - eg skipjack which are eaten around the Pacific, including Hawaii, there doesn't appear to be any evidence to support the FDA's position.

The biggest real issue in the region is histamine poisoning, caused by a certain type of bacterial spoilage of some fish species. It causes one of the commonest seafood-related illnesses in the USA. The Hawaii tuna industry is currently out of compliance with FDA guidance for histamine controls - this is because FDA inspectors say that Hawaii does not comply with either of two alternative approaches to control histamines better in the FDA guidelines. But the guidelines are not regulations even though the inspectors treat them as such. The FDA guidance is not practical, nor is it achievable in Hawaii. The guidelines depend upon knowing the time that the fish died, and freezing the fish to below 50 degrees within 6 hours of death. Operations on the longliners are usually on a 20 hour cycle, and it is not possible to bring down the core temperature of some of the larger species, eg a 600lb bluefin tuna in less than 24 hours. To mitigate against this problem Hawaii has developed its own HACCP principles and conducted research to determine what constitutes safe handling.

There is a discrepancy in the way that foreign or import producers and US producers are treated regarding HACCP. Foreign imports, which represent 70% of the seafood supplied in the USA, are accompanied by a letter of assurance that a HACCP plan (provided) has been followed - a similar assurance from a US producer or fisherman will not be accepted by the FDA.

Scare stories are spreading in the media regarding the perceived risks of eating methylmercury contaminated fish. Inorganic mercury is present in the oceans, but there is little information on how it is methylated in the open ocean. Much of what is known is gleaned from museum specimens of tuna and swordfish of up to 100 years ago, and these show similar levels of methylmercury to tuna and swordfish caught today.

Paul Bartram explained that recent notices appearing in the media are not regulations, they are advisories, which originate from the EPA, not to protect the average person, but rather, to protect fetuses and babies in the first 2 years when the brain is developing.

Research into the impacts of methylmercury in the diet is shown to be flawed, based on poor science related to ingestion of large amounts of pilot whale as opposed to routine consumption of

fish. Other studied communities which routinely consume large amounts of fish including tuna – e.g. in the Seychelles, are not found to have the same symptoms demonstrated by the whale eating communities of the Faroes. Comparative studies of tuna tested in 1971 and in 1998 showed no increase in the levels of methylated mercury in the tissues. Their hypothesis is that methylation of mercury occurs in the deep ocean, below 1000 metres, and changes would not be expected to be detected in tunas. It is noted that studies to date have not been co-variate, they have failed to bring in confounding factors, e.g. in the Seychelles, a new study is looking at the potential detoxifying effects of selenium on methylmercury. It is also noted that the very real benefits of a fish diet should be balanced against exposure to very low levels of methylmercury. For example omega-3 fatty acids are needed by babies to allow their brains to develop properly.

When queried about reports of elevated levels of methylmercury in swordfish and albacore, it was explained that the levels are elevated only in respect to the reference dose derived from the flawed Faroes Island study. They would not be elevated if referenced against the more realistic Seychelles study.

Mr Morris indicated that he and Bill Hogarth have had discussions about how to promote the positive aspects of US fish products, especially from a human health perspective. Dr Hogarth continued, saying that they are in the process of signing MOUs with the FDA to get involved in more testing, especially of imports. Doug DeMaster will work with the National Academy of Science to have their medical group assess fish as a whole, benefits and possible risks. Roger Berkowitz of Legal Seafood, a company on the east coast has set up a laboratory to test seafood sold to the market - this is intended to alleviate public concern.

Dan Furlong gave another example of an inappropriate extrapolation by the FDA. Tilefish are described as having high levels of methylmercury, but that was based on a study of a single incident in the Gulf of Mexico where high mercury levels were attributed to a slide of mud which was associated with oil rigs. The industry and the FDA have new studies demonstrating that levels have declined over the 25 years since the mud-slide, but the FDA has not changed its position.

The application of carbon monoxide and/or tasteless smoke treatment were briefly discussed. This treatment makes fish look fresher than it really is and so there are very real concerns for public health if old fish is misrepresented at the point of sale. However at this time, use of this technique is expanding in the US, and has been extended to other species with a blood line that can be made to look red and fresh, e.g. swordfish.

L.9 Litigation – NOAA Fisheries

Sam Rauch reviewed the recent litigation against NMFS brought by the fishing industry and environmental groups concerning various fishery management measures. NMFS had won about 75% of the cases. However, some outstanding cases could have long-term implications for the

way NMFS interprets fishery management and related statutes. Following comments by Council staff, Rauch resisted the idea that cases should be separated out into procedural versus substantive losses. The only distinction on those grounds was that the most common issue in cases in 2003 was procedural notice and comment claims. He did not believe that a procedural loss was less serious because it is more easily cured. Some of the biggest and most controversial injunctions recently have been "procedural" losses for failure to conduct NEPA or to consult on the proper action, e.g., stellar sea lions and the closure of the Hawaii longline fishery. Any loss was a bad thing because it had the potential to take regulatory control away from the Councils and the Secretary.

Rauch detailed three cases or issues to which NMFS and the Councils should pay close attention;

a) A 9th Circuit case on rebuilding time-frames (Natural Resources Defense Council versus Evans) where NMFS won in the district court and which NRDC has appealed. If the case is lost on appeal, it could have broad implications for how NMFS crafts rebuilding plans.

b) American Oceans Campaign versus Daley, the case challenging the EFH amendments of a number of FMPs around the country. NMFS won on Magnuson but lost on NEPA and entered into a consent decree to redo the NEPA analysis. As those EISs are finalized in the next year, NMFS can expect new substantive challenges to the EFH amendments.

c.) The rebuilding plans that NMFS is preparing for NE Multispecies and Pacific Groundfish. Both of these have been the subject of recent lawsuits. As the rebuilding plans are finalized, NMFS can expect new lawsuits.

L.10 Bycatch

Wayne Swingle gave a presentation on a national approach to standardized bycatch monitoring, as required under the Magnuson Act. He reviewed the various federal fisheries managed by the Councils, including the logbook reporting requirements and which fisheries were monitored by observer programs. He also presented an assessment of the various federally managed fisheries and their "vulnerability" to bycatch of fish, marine mammals and other protected species. Bycatch management measures for demersal and pelagic longlines in the Gulf of Mexico were reviewed, which included the use of circle hooks and time/area closures.

Mr. Swingle also gave an overview of the cooperative gear research projects being conducted in the US by NMFS in partnership with the fishing industry. This included improving TEDs in shrimp trawls, finfish reduction in shrimp trawls and other trawls, pelagic longline-sea turtle mitigation, and reduction of habitat impacts of trawl gears.

Bobbi Walker gave a brief presentation of ongoing work on shrimp bycatch in the Gulf of Mexico shrimp trawl fishery. Apart from turtles, shrimp trawl bycatch also includes a substantial

volume of fish. Over time the fishery has reduced the ratio of fish bycatch to shrimp from 10:1 to about 4:1. However, the trawl fishery continues to take juvenile red snapper, which are the focus of a rebuilding plan to recover this species from overfishing. Research was still ongoing to find an effective method that eliminated the bycatch of juvenile red snapper while retaining the shrimp catch.

Paul Dalzell reviewed the measures in place to monitor and reduce bycatch in the Western Pacific Region. He noted that the vast majority of fishing vessels in the Western Pacific were too small to accommodate observers and thus novel solutions were required, including high-tech electronic observers, or fishermen trained to be observers. Mr. Dalzell also indicated that bycatch in the Western Pacific had cultural dimensions, including preferences for fish and disposition towards live release, which was not well regarded by Pacific Islanders.

Councils commented that including incidental catch in the definition of bycatch would reduce clarity and lead to confusion as to what catches are undesirable. It is not undesirable to catch and utilize an incidental/non-target species from a healthy stock but it is undesirable to discard any fish. Jack Dunnigan commented that NMFS wants to take a broad approach to this subject in response to the Oceana petition on bycatch. Several Councils questioned whether it is NMFS' intention to reduce incidental catch and stated that a redefinition may lead to increased expectations by NGOs that this happens.

Dr. Hogarth stated that he will look again at the issue of redefining bycatch.

L.11 Latent Effort/Overcapacity

Dr. Hogarth reported that there have been problems when latent permits become active following buyouts to reduce capacity. He urged the Councils to consider this, possibly by putting permits that have been inactive for 2-3 years on an "inactive" list. These permits would then be prohibited from being used until stock conditions improve. He went on to say that NMFS is looking at legislation to get more funding for buybacks in 2005. He also suggested that more fisheries need limited entry programs (with or without IFQs) to control fishing capacity. Dr. Hogarth also mentioned that there is a GAO report that directs him to identify criteria for IFQs but that he feels the Councils should be the ones to do this. He has also received a number of other GAO reports on the budget, safety, enforcement, the need for less complex regulations and other issues to which he needs to respond. He suggests that these be discussed at the next meeting.

The Western Pacific Council asked several questions about NMFS' capacity estimation project. Dr. Hogarth responded that they are still working on the quantitative estimates and that there is no specific timeline, although there is money available and a lot of interest downtown. In response to a question about MSA reauthorization text directing NMFS to identify the top 20 fisheries with excess capacity, he stated that NMFS has identified the top 5 over-capitalized

fisheries and will send that to the group. Regarding recreational fisheries, Dr. Hogarth stated that NMFS is no longer looking at capacity control but will instead continue to rely on traditional measures such as size and bag limits.

Dr. Hogarth recommended that a small working group be established to examine this issue.

L.12 International Issues

Paul Dalzell reviewed issues of concern to the Councils regarding international fishery management. There were some clarifications made about responsibilities for Pacific halibut management through the International Pacific Halibut Commission, which conducts stock assessments and establishes quotas for Canada and the US. The North Pacific Council allocates the US quota among US fisheries.

In the Caribbean, there is also a fishery treaty between the US and United Kingdom concerning fishery resources shared between the US and British Virgin Islands.

Bill Hogarth mentioned that there will be a Congressional hearing on international fishery management, concerned primarily with bycatch.

L.13 Protected Resources

Paul Dalzell reviewed issues relating to protected species management by the Councils. Rebecca Lent noted that the sign off on Section 7 consultations was now delegated to the Regional Administrators. Lent also added that Council representatives were also involved in the take on each take reduction team for marine mammals. She added that with respect to the MMPA List of Fisheries and the Hawaii longline fishery, there would be a workshop in the near future about this issue. Lent asked the Councils to send in comments in on the proposed list of fisheries.

Bill Hogarth reported that NMFS is preparing an aquaculture business plan which will cover offshore aquaculture. This will be circulated to the Councils for comment, and Dr Hogarth will also provide the Councils with copies of the proposed legislation on aquaculture.

M. Summary of Meeting

Meeting participants expressed general enthusiasm and support for the meeting and associated events and thanked the chair, executive director, and staff for their hospitality and hard work. The North Pacific Council stated that Kitty is our *kumu*, and a *nani wahine*, and said *mahalo nui loa*.

N. Next meeting

The Pacific Council will host next year's meeting and anticipate it being held at Dana Point, in the last two weeks of April. The New England Council suggested that the meeting format be revised to allow more substantive discussions of problems and solutions. Specifically, it was suggested that the number or length of informational presentations be reduced, and an ending day be added for determining specific actions to be taken, tasking of assignments to groups, and setting timelines for completion of tasks.

O. Other business

The North Pacific Council reported that they will soon be distributing the proceedings of this year's National Council Conference and they will also make it available on their website and in libraries. They are continuing to seek other venues for its roll-out that will attract attention. They will also create and distribute a template press release to be customized and released by each Council. The next step is to determine a tentative date for next year's meeting.

PACIFIC FISHERY MANAGEMENT COUNCIL

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August 13, 2004

Mr. Roland A. Schmitten
Director, Office of Habitat Conservation
National Marine Fisheries Service, F/HC
1315 East-West Highway
Silver Spring, MD 20901

Dear Mr. Schmitten:

The Pacific Fishery Management Council (Council) appreciates the opportunity to comment on the Oceana petition to protect deep sea coral and sponge habitat. Because the Council's authority covers only West Coast fisheries, our comments will focus on the effects of implementing Oceana's proposals on West Coast fisheries.

The *Federal Register* notice lists eight specific requests for rule making. Of these, two (requests 2 and 5) involve designating areas as Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC). Amendment 11 of the *Pacific Coast Groundfish Fishery Management Plan* (Groundfish FMP) designated the entire U.S. Exclusive Economic Zone (EEZ) off Washington, Oregon, and California as EFH for groundfish; therefore, all deep sea coral and sponge habitat within the West Coast EEZ was protected as such. Subsequent to a September 14, 2000 U.S. District Court order (No 99-982) in the *America Oceans Campaign* (now Oceana) v. *Daley* case, the National Marine Fisheries Service (NMFS) was enjoined from implementing the EFH provisions of the Groundfish FMP until a new Environmental Assessment (EA) or Environmental Impact Statement (EIS) on groundfish EFH was completed. NMFS is in the process of completing an EIS, which will address how West Coast groundfish EFH and HAPC are designated and protected. Therefore, it seems premature, if not a violation of the court order, to designate any EFH at this time.

Two requests (4 and 6) involve bycatch monitoring and observer programs to set limits on deep sea coral and sponge habitat bycatch. A Programmatic Bycatch EIS is also being completed by NMFS to address bycatch issues in the West Coast groundfish fishery. Again, it seems premature to regulate these aspects of fisheries prior to completion of this EIS effort.

Two requests (1 and 8) involve identification and mapping of deep sea coral and sponge habitat and increasing the funding associated with such efforts. The Pacific Council believes research and mapping are useful tools for better managing our nation's oceans and supports increased funding to achieve these objectives.

One request (7) involves increasing enforcement and penalties for fishery violations. The Council supports the objective of increased enforcement as it applies to all aspects of fishery management.

One request (3) involves a ban on bottom trawling gear in areas that have been closed to such gear for three years. This request goes beyond the stated objective of protecting deep sea coral and sponge habitat. On the West Coast, Rockfish Conservation Areas (RCAs) have been closed to bottom trawling for three years; however, they are comprised of approximately 92% soft bottom areas, which would likely not support high concentrations of deep water coral and sponges. These areas will likely be closed at least through 2006, but for a stated purpose of reducing rockfish catches, not protecting deep sea coral and sponge habitat. It would not be appropriate to unilaterally close them now to protect habitat, since their status can be reviewed with adequate time for notice and comment subsequent to the completion of the EFH and bycatch EIS process.

The request to permanently close all areas not fished within the last three years by bottom-tending mobile gear to bottom trawling is excessive and unnecessary. It appears to be a direct attempt to eliminate one fishery sector without any mitigation or alternatives for participants or the processor component of the industry, something the Council has consistently opposed.

To summarize, much of what is requested in the petition is either already in effect, contrary to the spirit of a court order (to which Oceana is a party), and/or being addressed in the EFH EIS and the Programmatic Bycatch EIS. For NMFS to act unilaterally to designate EFH and HAPC prior to completion of the EIS process would violate those processes. In any event, if NMFS was to take such actions, they would clearly need to complete a separate EIS in order to comply with the National Environmental Policy Act, which would be redundant and wasteful. In addition, current management restrictions prohibiting the use of large footrope trawl gear have eliminated a substantial portion of trawl impacts on hard bottom substrates where coral and sponges generally occur. The trawl RCA has also put much of the West Coast EEZ off limits to bottom trawl gear, providing extensive habitat protection. We agree that deep sea coral and sponge habitat is valuable in its own right, as well as for its ecological function, and that some areas of high concentration may deserve designation as HAPC. Because it is likely the RCA will remain in effect through at least 2006, there should be adequate time to address HAPCs subsequent to completion of the EIS process.

With the exception of the requests for additional research, mapping, and enforcement, we find little merit in the petition, and urge NMFS to reject the petition, based on the arguments above. Thank you again for providing the Council with the opportunity to comment on this petition.

Sincerely,



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

CAT:kla

c: Mr. Steve Copps
Council Members
Groundfish Advisory Subpanel
Groundfish Management Team
Habitat Committee

North Pacific Fishery Management Council

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August 10, 2004

Dr. William Hogarth
Assistant Administrator for Fisheries, NMFS
1315 East-West Highway
Silver Spring, MD 20910

RE: Oceana petition for rulemaking on deep-sea coral and sponge habitat

Dear Dr. Hogarth:

Thank you for the opportunity to provide our comments regarding the most recent rulemaking petition submitted to the Secretary of Commerce by Oceana. As with the national bycatch petition in 2002, we strongly believe this is another inappropriate attempt to implement a sweeping array of fishery management regulations, through an abbreviated rulemaking process which circumvents the deliberative, public process mandated by the Magnuson-Stevens Act and the National Environmental Policy Act. In this case, we are further perplexed that Oceana petitioned NMFS to take this action when everything they are requesting is being considered through the regular process, and on a schedule mutually agreed upon by NOAA Fisheries, the Council, and Oceana. The North Pacific Council and NOAA Fisheries have prepared a Draft EIS for essential fish habitat (EFH), as required by the Court's ruling in *AOC v. Daley*, and pursuant to the schedule set forth in the Joint Stipulation, signed by Silvia Liu of Oceana on behalf of the plaintiffs. This petition appears to violate at least the spirit of that Joint Stipulation. I believe the comprehensive approach we are undertaking covers all aspects of the petition, so rather than address them point by point I will offer the following general comments.

The alternatives considered in the North Pacific's EFH EIS, including one proposed by Oceana, were developed through a very deliberative and transparent public process. The alternative proposed by Oceana and analyzed in the Draft EIS was designed specifically to protect deep-sea coral and sponge habitats in the Aleutian Islands, and contains most of the provisions outlined in their rulemaking petition: mapping of corals and sponge areas, prohibition on bottom trawling in areas of coral and sponge communities, prohibition on bottom trawling in relatively unfished areas, bycatch limits for corals and sponges, a research and monitoring plan, and 100% observer coverage for all vessels fishing for groundfish. Concurrent with the EFH EIS, and also consistent with the Joint Stipulation, the Council has also initiated an environmental assessment of alternatives to identify and protect habitat areas of particular concern (HAPC) from potential impacts due to fishing. Specifically, the Council will consider designating hard coral beds, along with seamounts, as HAPC, and implementing very conservative measures (e.g., prohibit all bottom contact gear) to protect these areas. The Council is scheduled to take final action on the EFH EIS and the HAPC EA in February 2005.

To quote from our comments on the bycatch petition, which we believe apply equally in this case: "*We believe that NMFS should deny the Oceana petition, and clarify that the appropriate avenue for such rulemaking is through the deliberative, public Council process under the Magnuson-Stevens Act...that the*

agency appears to be embracing this petition process, by publishing the petition in the FEDERAL REGISTER and soliciting comment, sends an inappropriate message to the fishing industry and the public, denigrates the public process, and encourages the pursuit of rulemaking by petition, the results of which could be similar to rulemaking by litigation. If particular U.S. fisheries are not being managed responsibly with regard to coral and sponge protection or habitat conservation issues, those particular fisheries should be addressed through the existing process, including development of Secretarial amendments where necessary. However, we do not believe that an abbreviated, national level rulemaking approach is necessary or appropriate".

We appreciate your serious consideration of these comments.

Sincerely,



Stephanie D. Madsen
Chair

cc: Jim Balsiger, Alaska Regional Administer, NOAA Fisheries



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The Oregonian

A tidal change for fish councils

Congress must rewrite the law that has left ocean policy in the hands of councils dominated by fishing interests

Monday, August 02, 2004

I imagine the outcry if groups of self-interested loggers and sawmill operators were allowed to decide how many trees would be cut on federal forests every year, and who would be permitted to harvest them. The public would never stand for it.

Yet that's more or less how this country manages its ocean fisheries. Eight councils stacked with fishing interests determine the number of fish that can be caught and apportion fishing rights.

This system of management driven by fishing interests made sense when ocean fisheries still seemed limitless, and when the primary concern was getting enough American boats on the water to help keep foreign fishing fleets out of U.S. waters.

It doesn't anymore. A full one-third of the nation's known coastal fish stocks are overfished and in danger of collapsing under the pressure. Two major recent studies of the oceans, one conducted by the U.S. Commission on Ocean Policy and the other by the Pew Oceans Commission, both argue strongly for the reform of the regional fishery councils.

A number of significant changes are necessary. Membership on the councils must be broadened to include more members of the public who do not have a financial interest in fishing. As it stands, commercial and recreational fishing interests now hold 80 percent to 90 percent of council seats. There ought to be at least equal representation among commercial fishermen, recreational fishermen and the public.

Too, councils should be required to adhere more closely to scientific recommendations on sustainable levels of fish harvest and habitat protection measures. Political pressure and concerns about coastal economies now often prompt councils to increase fish quotas beyond prudent conservation levels.

Finally, council members should be prevented from participating in any council deliberation or vote on any issue where they have a direct financial interest.

Some members of Congress are proposing these and other changes in the existing Magnuson-Stevens Act that created the council system in 1976. Any reform will encounter fierce opposition -- the status quo on the councils is firmly entrenched and well connected in Congress. So far, the Oregon delegation in Congress has been mum on the issue of

council reform.

Yet it's time for change. The overwhelmingly self-interested fish management system is hurting the nation's oceans. The councils have not proven they will make enough tough decisions to rebuild fish stocks hammered by overfishing. They have done little about the so-called bycatch, the waste of tens of millions of dollars of species caught, killed and thrown back by fishermen. They are resisting the promising idea of marine reserves, ocean wilderness areas where fish species could rebound and reseed larger areas of the sea.

The councils dominated by fishing interests have run ocean policy for 30 years. It's a different world now. The oceans have changed. The management challenges have changed. Now the councils must change, too.

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Pacific Fishery Management Council OP-ED
In Response to the August 2, 2004 Editorial in the *Oregonian* Newspaper

The Pacific Fishery Management Council would like to respond to the misrepresentations contained in the *Oregonian* editorial of August 2 ("A Tidal Change for Fish Councils"). Such an inaccurate and incomplete representation of marine fisheries management does a disservice to the *Oregonian's* readers.

The Pacific Fishery Management Council is one of eight regional fishery management councils created by the Magnuson Act in 1976. The Council recommends management measures for fisheries in federal waters off Washington, Oregon, and California. A major goal of the Magnuson Act was to allow local, regional representation in fisheries management decisions. Congress wanted a system whereby those who are most affected by policies have a voice in decision making, a concept reaffirmed when the Act was reauthorized in 1996.

The editorial claims that "councils stacked with fishing interests determine the number of fish that can be caught and apportion fishing rights," analogous to "loggers being allowed to decide how many trees to cut." *This is inaccurate.* The Regional Fishery Management Councils develop and recommend management measures to the National Marine Fisheries Service (NMFS), which may or may not approve them. The U.S. Secretary of Commerce is ultimately responsible for approving or disapproving recommendations and thereby "determining" fishing rules. Recommendations made by the Councils are not rubberstamped.

Perhaps to substantiate claims of a "stacked" Council composition, the editorial states that "commercial and recreational fishing interests now hold 80 percent to 90 percent of council seats." *This is inaccurate.* The Pacific Council has 14 voting members, including six government representatives (four state agencies, one tribal government, and NMFS). The remaining eight members (or 57% of the Council) are nominated by the governors of their respective states and selected by the Secretary of Commerce. At present, there are two commercial fishery seats on the Council. Four members represent sport charterboat interests, and two are recreational anglers.

The editorial states that one third of fish stocks are overfished and in danger of collapse. *This is inaccurate on the West Coast, and probably nationally.* The Pacific Council manages dozens of stocks of salmon (none designated as overfished); four coastal pelagic species (sardines, mackerels, anchovies, and squid, none of which are overfished); 13 highly migratory species (including certain tunas, billfish, and sharks, none of which are overfished); and 82 species of groundfish. Eight groundfish species have been designated as overfished, but are under strict rebuilding plans. One species, lingcod, was within 1% of its rebuilding target at the onset of 2004.

The editorial notes that councils "are resisting the promising idea of marine reserves." *This is inaccurate, particularly on the West Coast.* The Pacific Council has created large *de facto* marine reserves that are specifically designed to protect overfished rockfish

species. Examples include the 4,300-square mile cowcod conservation areas off California, where all sport and commercial bottom fishing is prohibited; the large depth-based rockfish conservation areas along the continental shelf (seasonally ranging from 13,518 to 19,796 square miles in 2003) closed to trawling, and the 36,000 square miles closed to non-trawl groundfish fisheries. The Council is also working closely with National Marine Sanctuaries in California to consider marine reserves in federal waters of the Channel Islands National Marine Sanctuary and, potentially, other California sanctuaries.

The *Oregonian* claims that Councils are subject to “overwhelming control by self-interests” that “often increase quotas beyond prudent conservation levels.” If this were the case, one might expect the Pacific Council record to show frequent votes to harvest more fish than recommended by scientists. *This is not the case.* We are not aware of any examples of the Pacific Council voting for a total catch limit exceeding that recommended by scientists, nor any cases of fishery representatives block-voting against the government seats. Further, the Pacific Council *has* made the “tough decisions” the *Oregonian* claims have not been made—decisions to follow the science stringently, to close areas and seasons when needed, and to be precautionary and conservative in order to ensure the long-term health of the fish stocks and steady, sustainable catches in the future.

The editorial states that fishery management councils “have done little about the so-called bycatch...” *This is inaccurate and misleading.* The Pacific Council has radically restructured commercial and recreational groundfish fisheries along the West Coast. Beginning in 2000, vast areas were closed to protect depleted stocks; strict gear restrictions are in effect; and harvest levels for many species are well below acceptable biological catch levels. These restrictions have reduced bycatch at a tremendous cost to recreational and commercial fisheries and fishing communities. However, the Council voted to implement the restrictions because they valued the future of the resource. In addition, the Council has worked with NMFS to develop an environmental impact statement that suggests new ways to address bycatch issues.

Participatory decisionmaking—the involvement of the people who understand the resource and who are affected by the decisions made—is an important part of effective natural resource management. The U.S. Ocean Commissions report referred to in the editorial 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, and provides the regional voice—but not the ultimate decision making authority—that Congress correctly envisioned.

The *Oregonian* editorial calls for three changes in the Regional Fishery Management system. However, opinions on changes need to be based on facts and accurate

characterizations. The Pacific Council invites all those interested in improved marine fishery management to attend one of the five-day meetings held five times per year, investigate the true situation, and develop informed opinions on this important issue. For more information on the next meeting and other matters, please see our website, www.pcouncil.org.

Fish councils ensure local representation in ocean management

The Oregonian's editorial about the Pacific Fishery Management Council ("A Tidal Change for Fish Councils," Aug. 2) offered an inaccurate and incomplete representation of marine fisheries management.

The Pacific Fishery Management Council is one of eight regional councils, created by the Magnuson Act in 1976, to manage fisheries in federal waters off Washington, Oregon and California. A major goal of the act was to allow local representation in fisheries decisions. Congress wanted a system whereby those most affected by policies have a voice in decision-making, a concept reaffirmed when the act was reauthorized in 1996.

The editorial claims that "councils elected with fishing interests determine

the number of fish that can be caught and apportion fishing rights," analogous to "loggers being allowed to decide how many trees to cut." This is inaccurate. The regional councils develop and recommend management measures to the National Marine Fisheries Service,



IN RESPONSE

Donald O. McIsaac

not rubber-stamped.

The editorial also claims that "commercial and recreational fishing interests now hold 80 percent to 90 percent of council seats." This is inaccurate. The Pacific council has 14 voting members, including six government representatives (from four

state agencies, one tribal government and the national fisheries service). Among the remaining eight members (or 57 percent of the council) are two representing commercial fisheries, four representing sport charter boat interests and two recreational anglers.

The editorial states that one-third of national fish stocks are overfished and in danger of collapse. This is inaccurate on the West Coast, and probably nationally. The Pacific council manages dozens of stocks of salmon (none designated as overfished), four coastal pelagic species (sardines, mackerels, anchovies and squid, none of which are overfished), 13 highly migratory species (including certain tunas, billfish and sharks, none of which are overfished) and 82 species of groundfish. Eight groundfish species have been designated as overfished, but they are under strict rebuilding plans. One species was within 1 percent of its rebuilding target at the onset of 2004.

The editorial notes that councils "are resisting the promising idea of marine reserves." This is inaccurate, particularly on the West Coast. The Pacific council has created large de facto marine reserves that are specifically designed to protect overfished rockfish species.

The Oregonian claims that councils are subject to control by self-interests that "often increase quotas beyond prudent conservation levels." If this were the case, one might expect the Pacific council record to show frequent votes to harvest more fish than recommended by scientists. In fact, there has not been a single such vote to our knowledge.

Further, the Pacific council has made the "tough decisions." The Oregonian claims have not been made: decisions to close areas and seasons when needed, and to be precautionary and conservative to ensure the long-term health of the fish

stocks and steady, sustainable catches in the future.

Participatory decision-making — involving the people who understand the resource and who are affected by the decisions — is an important part of effective management of natural resources. The U.S. ocean commission's report referred to in the editorial recognizes the importance of participatory governance, noting that "governance of ocean uses should ensure widespread participation by all citizens on issues that affect them."

The fishery management council process provides a foundation for this much-needed regional planning and provides the voice, but not the ultimate decision-making authority, that Congress correctly envisioned.



Donald O. McIsaac is executive director of the Pacific Fishery Management Council. Information on the council can be found on the Web at www.pcouncil.org.

August 3, 2004

To The Editor, The Oregonian:

In response to your editorial, 'A tidal change for fish councils,' August 2, 2004, I am surprised at your lack of knowledge and comprehension of the fishery management council process. This opinion is based on my participation as an advisor and voting member of the Pacific Fishery Management Council (PFMC) process since 1984.

First of all, the members from the commercial fishing industry or recreational fishermen do not determine the number of fish which may be harvested by any sector. The total population of each fish stock is estimated by a panel of scientists. These estimates are then peer reviewed by independent federal and state scientists, and finally reviewed again by two other panels made up of state and federal scientists and biologists before harvest levels are narrowed down to a very conservative level often referred to as optimum yield. That level is also subjected to multiple layers of conservatism particularly on depleted stocks. When the councils select a harvest level of any stock of fish, that decision is subject to approval or disapproval ultimately by the Secretary of Commerce. Finally, the council decisions are subject to several federal laws including NEPA, ESA, and strict guidelines spelled out in the National Standards governing the councils.

Your contention that the councils are 'stacked' with self serving industry members is grossly inaccurate. Over forty percent of the council voting membership is made up of federal, state and tribal representatives in addition to the members of the fishing community. Currently, out of the 14 voting members on the PFMC, there are only two industry members representing the commercial groundfish industry and only one of those owns a fishing vessel. Contrary to your implication that councils inflate allowable harvest numbers, the PFMC has not determined allowable harvest numbers higher than those recommended by the scientists. To replace knowledgeable council members with members of the general public who do not have considerable fisheries experience would create a literal disaster when it comes to making informed decisions regarding all the nuances and technical aspects of each fishery. Your mention of recusal from voting when a member has a direct financial interest is all ready required and practiced.

Your allegation that the councils have failed to make tough decisions is totally unfounded. The PFMC just over two years ago implemented a 27,000 square mile off-shore closure zone which runs from Canada to Mexico which excludes all fishing by both commercial and recreational fishermen in order to protect depleted rock fish. On that subject, there are 90 species of commercial and recreational fish harvested off the Pacific coast. Of those there are only 8 considered overfished and soon there will be only seven.

In order to correct your perception of the council process and the diligent work by advisory panel members, council members and staff, I would invite you to spend a week during one of the 5 annual meetings of the council and listen to testimony of the fishermen, technical reports and council debate on these vital issues concerning the health of our marine resources. Maybe then you would be more well informed of the facts regarding the responsible stewardship of our fisheries performed by our Pacific council as well as the others.

Frank R. Warrens, Oregon Obligatory Member
Pacific Fishery Management Council
50 NW 20th Ave.
Portland, OR 97209
(503) 228-6607

> >>> "kmdiesel" <kmdiesel@charter.net> 08/02/04 09:04PM >>>

> In reading your editorial about fish councils, it is obvious that
> the Oregonian has gotten caught up in the Chicken Little line of
> reasoning. Here's another perspective on the issue.

> I have been attending Pacific Fisheries Management Council meetings
> for almost twenty years now. I discovered early on that the council
> welcomes attendance by anyone, and that there is a forum for both
> written and verbal testimony on every topic that the council deals with.
> Through the years I have witnessed public testimony on hundreds of
> fishery related topics, and council votes swayed by public testimony
> from every side of a position. Every interested party has a voice in
> the council process if they so desire. For the past ten years I have
> attended PFMC meetings representing the pink shrimp fishery. I also
> currently hold a position on one of the council advisory subcommittees.

> The article states that economic impacts on coastal communities
> plays a part in the council's decisions. I wish that there were some
> truth to that. Groundfish quotas have been cut so drastically in the
> last five years that one third of the groundfish trawl fleet is now gone
> from the west coast fishery forever. The council has closed massive
> areas to trawling, cut recreational seasons and bag limits for some
> fisheries drastically, and regulated some open access fisheries into
> extinction. Does any of this sound like a benefit to coastal
> economies?

> The bycatch statement really chaps me. The pink shrimp fishery
> developed a fish excluder that eliminates almost all of the groundfish
> bycatch, making pink shrimp trawling a very species selective fishery.
> That fishery alone is now saving tons of ground fish. The inshore trawl
> fishery developed, and is now fishing with a net that is very selective
> reducing the amount of bycatch in that fishery drastically. With one
> third of the trawl fishery gone, bycatch is lower as the result of less
> catch effort.

> As a member of the industry, I have witnessed the advances that
> have been made to reduce bycatch in every fishery. Recent stock surveys
> have indicated that some of the species on rebuilding plans are
> exceeding the goals set for their rebuilding schedules. The Pacific
> Ocean is very healthy with an abundance of juvenile fish showing up all
> along the west coast.

> The environmental groups that need a crisis to feed upon, and keep
> the money flowing into their pockets are feeding the negative news to
> the public. They exist solely on the perception that there is indeed
> devastation taking place in the ocean, and unless they intervene, the
> oceans will be fished to extinction. Contrary to the article, it is
> the environmental groups that are controlling the council decisions
> through lawsuits filed against the National Marine Fisheries Service.
> The council never takes action on any issue without first consulting
> with their legal advisors. Instead of spending time and energy on
> fisheries research, NMFS has to spend much of its resources in
> litigation, defending its actions against lawsuits filed by
> environmental groups. It's a great gig for environmentalist because it
> is costly, and takes a long time to resolve, (job security.)

> Before drawing a conclusion about the council process I would
> encourage anyone interested to take some time and become educated about
> local fisheries management. Look up the PFMC web site at
> www.pcouncil.org, and read the newsletters and information found on

- > the site. Attend the PFMC meeting in Portland on October 31 through
- > November 5, 2004 to see first hand how the process works. I think that
- > it will become evident that the sky is not falling.
- >
- > Brian Petersen

GUEST COLUMNS ONLINE

Excerpts from additional guest columns online at www.oregonlive.com/public_commentary/oregonian/

Fish councils deserve support

"The Oregonian's recent editorial on regional fish management councils ('A tidal change for fish councils,' Aug. 2) states that economic impacts on coastal communities play a part in the council's decisions. I wish there were some truth to that," writes **Brian Petersen**, a commercial fisherman from Astoria. "Groundfish quotas have been cut so drastically in the last five years that one-third of the groundfish trawl fleet is now gone from the West Coast fishery forever.



IN MY OPINION

Brian Petersen

The council has closed massive areas to trawling, drastically cut recreational seasons and bag limits for some fisheries, and regulated some open-access fisheries into extinction. Does any of this sound like a benefit to coastal economies?...

"Before drawing a conclusion about the council process, I would encourage anyone interested to take some time and become educated about local fisheries management. Look up the Pacific Fishery Management Council Web site at www.pcouncil.org, and read the newsletters and information found on the site. Attend the PFMC meeting in Portland on Oct. 31 through Nov. 5 to see firsthand how the process works.

"I think that it will become evident that the sky is not falling."

Fish council's response in full of inaccuracies

Monday, August 30, 2004

HANS D. RADTKE

Donald McIsaac's recent defense of the Pacific Fishery Management Council ("Fish councils ensure local representation in ocean management," Aug. 10) is filled with inaccuracies and disregards the recommendations of the blue-ribbon U.S. Commission on Ocean Policy.

The ocean policy commission was a Bush administration-appointed panel created to recommend measures to address the serious problems our oceans face. Those problems include pollution, coastal development, habitat destruction, overfishing and wasteful fishing practices.

First, McIsaac asserts that the National Marine Fisheries Service does not rubber-stamp council recommendations. True, a fisheries service representative sits on the council and provides guidance in the decision-making process. But, according to a recent examination of council management actions nationally between 1980 and 2000, the fisheries service disapproved only 0.4 percent of council actions.

Second, McIsaac misrepresents the numbers to dispute The Oregonian's correct contention that the fish councils are dominated by industry. Ocean fisheries decisions off Oregon's coast are made by 14 voting members. Six are designated government representatives and eight are appointees. Between 1986 and 1996, 86 percent of these appointments were fishing industry representatives; between 1997 and 2003 (after adding a tribal seat) that figure was 78 percent. Nationally, since 1985, the percentage of appointed council members who directly work in or represent the fishing industry has ranged as high as 88 percent and has never fallen below 78 percent. Since its inception, no representative of a conservation group has held a seat on the Pacific Council.

McIsaac also fails to address the critical point that the fish councils enjoy a unique exemption from federal advisory committee conflict-of-interest laws. In short, the regional fishery management councils are the industry sitting down with a few government regulators to decide how to regulate their own fishing.

Third, McIsaac claims that fish populations on the West Coast are in better shape than The Oregonian detailed. The council manages 83 identified species of groundfish. Only 20 of these species have been assessed. Of these, eight species (40 percent) are listed as overfished.

It's surprising that McIsaac claims that Pacific salmon are not overfished. In the past, several stocks have been listed as overfished. Those stocks and other salmon stocks have now been listed as threatened or in danger of extinction under the Endangered Species Act, which supersedes the act governing ocean fisheries. As for the highly migratory species (tunas and sharks), there is little information in the form of population assessments to determine whether these species are overfished.

Fourth, McIsaac claims that the Pacific Council has created de facto marine reserves. Nothing could be further from the truth. "De facto" is the operative term. The boundaries of the closed areas McIsaac refers to change, and the areas are intended primarily to protect rockfish from net trawling. We have little information on fishing impacts from other gears in these areas. The council has declared marine reserves to be part of the management process, but in reality has done nothing except set up an ad hoc committee and discuss the concept for the past six years.

Fifth, McIsaac claims that the Pacific Council has never elected to catch more fish than scientists recommend. This is a deceptive description. Fishery scientists rarely give a point estimate. Instead, they provide a range of alternatives. The less we know about a fish population, the greater the range.

The Pacific Council has almost always chosen the most optimistic fishing level. As the optimism turns out to be false, the existing fish population gets fished at unsustainable levels.

For example, throughout the 1980s, the Pacific Council heard warnings from scientists that they were setting the fishing rate optimistically for rockfish species such as bocaccio and widow rockfish, species that can live up to 60 years.

The council instead chose the optimistic level. Now, these species and six other groundfish species are listed as overfished and will take decades to recover.

In 2000, the federal government declared the groundfish fishery a disaster, cut back on allowed fishing levels and closed some areas. These drastic measures could have been avoided by more conservative catch decisions.

McIsaac's reference to participatory decision-making leads to my final point. Indeed, involving people who understand the resource is an important part of effective natural resource management. The U.S. Commission on Ocean Policy agreed but made it clear that changes need to be made to the fishery management system.

These changes include provisions to ensure that an independent committee of scientists determines the sustainable fishing levels and that councils include members who do not have direct financial interest in managed fisheries.

Hans Radtke held an at-large seat for Oregon on the Pacific Council from 1997-2003, was chair during 2001-2003 and is currently a member of the Council's Science and Statistical Committee.

PACIFIC FISHERY MANAGEMENT COUNCIL

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EXECUTIVE DIRECTOR
Donald O. McIsaac

August 18, 2004

Mr. Mark Walker
Director of Public Affairs
Northwest Power and Conservation Council
851 SW Sixth Avenue, Ste 1100
Portland, OR 97204-1348

Dear Mr. Walker:

The Pacific Fishery Management Council (Council) staff appreciates the opportunity to comment on the draft Artificial Production Review and Evaluation Issue Paper.

The Pacific Fishery Management Council is one of eight regional fishery management councils created by the Magnuson Act in 1976. The Council recommends management measures for fisheries in federal waters off Washington, Oregon, and California. In addition to the non-Indian commercial and recreational fisheries, treaty Indian fisheries also occur within Council waters; thus the Council has treaty trust responsibilities. The ocean salmon fisheries rely substantially on hatchery-produced stocks, including those from the Columbia River basin. The Council's responsibilities, as mandated by the Magnuson Act, include ensuring management and conservation measures provide for sustained participation of coastal communities. It is in this spirit these comments are provided.

The Council is cognizant of the need to reevaluate hatchery programs for compliance with new mandates and priorities such as the Endangered Species Act (ESA) and the Artificial Production Review process. The Council also believes it is important to respect longstanding requirements for mitigation such as the Mitchell Act and John Day Mitigation Agreement. The Council has a great interest, particularly in Mitchell Act programs, and has encouraged stakeholders to develop priorities for those programs so that funds can be allocated in a systematic manner. This will allow the Council to anticipate contribution of certain stocks to Council area fisheries. The National Marine Fisheries Service (NMFS) plans on conducting a National Environmental Policy Act (NEPA) analysis for Mitchell Act hatchery programs to cover requirements for ESA consultation and fund disbursement. The Council staff recommends the Northwest Power and Conservation Council integrate its hatchery review process with the NMFS NEPA process, so common issues can be resolved in a compatible manner.

The Issue Paper states "*one of the greatest challenges in effecting change is that most hatchery programs were created under legal mandates and requirements that stress different priorities than exist today.*" The Council staff believes there may be additional priorities today, but they are not necessarily different than when the hatchery programs were instituted, particularly in regards to mitigation responsibilities. The Council is concerned that future mitigation for hydrosystem development not be diverted to fixing problems caused by other development

Mr. Mark Walker

August 19, 2004

Page 2 of 3

activities (e.g., substituting wetland restoration resulting from a ditch and drain activity for fish production required in a mitigation agreement).

The Issue Paper focuses the need to address priorities on the Columbia River basin and its component subbasins with no mention of the ocean fisheries and coastal communities which depend on Columbia Basin hatchery production. For Example, at the top of page 4, the Issue Paper states: "*Stock-specific priorities must take into account conservation mandates (including ESA), treaty and trust responsibilities, the Council's Fish and Wildlife Program, and subbasin plans.*" This and similar statements should acknowledge the needs and priorities of coastal communities and tribes outside the Columbia Basin. The Council staff recommends that any analysis of impacts from the alternatives considered for setting hatchery policy and priorities include these important components.

Thank you again for providing this opportunity to comment on these important issues. If you have any questions, please contact Mr. Chuck Tracy, the Council Staff Officer for salmon and Pacific halibut at (503) 820-2280.

Sincerely,

A handwritten signature in dark ink, appearing to read "D.O. McIsaac", with a long horizontal flourish extending to the right.

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

CAT:kla

c: Council Members
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Salmon Advisory Subpanel

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ARTIFICIAL PRODUCTION REVIEW AND EVALUATION

ISSUE PAPER

Northwest Power Planning and Conservation Council

July 15, 2004

I. A Vision for the Basin

In 1997, Congress requested that the Northwest Power and Conservation Council review all federally funded hatchery programs in the Columbia River Basin and develop a set of coordinated policies to guide the future use of artificial production. The Council set a deliberate course to respond to this major initiative, beginning with the Artificial Production Review (APR). With the help of the Independent Scientific Advisory Board, the APR conducted a scientific review on the state of artificial production in the basin and produced a set of guidelines for hatchery practices, ecological interactions and genetics. The APR also engaged regional stakeholders and hatchery operators in a series of workshops where hatchery reform recommendations and policies were discussed and developed. At the end of the process the APR concluded that “[t]he region needs action and leadership to implement new artificial production policies, to decide whether and where to use artificial production, and to ensure that future artificial production funding is contingent on reforms being made. These decisions need to be made for each subbasin and implemented as part of a broader strategy to meet regional fish recovery goals.”

While the APR concluded that an updated and comprehensive hatchery policy framework was critically needed, it recognized that significant changes would be possible only after a deliberate and thorough examination and evaluation of the current system. This evaluation was completed in the second phase of the Council’s response to Congress -- Artificial Production Review and Evaluation (APRE) (Council Document 2003-17). As part of the effort the APRE examined 227 individual salmonid hatchery programs within the U.S. portion of the basin. The process reviewed each program’s stated purpose, evaluated how well the program met its intended objectives and outlined potential risks in operating the program. The APRE then compiled the program information into comprehensive provincial and basinwide overviews of artificial production. From this broader perspective several conclusions emerged. The APRE concluded that:

- Hatcheries are limited in what they can accomplish.
- The social, economic, and ecological purposes on which the current hatchery programs were established have changed and will continue to change.
- Hatcheries will continue to play a part in recovery and management of fish in the Columbia River and elsewhere.
- Hatcheries require reform to align their policies and practices with current social priorities and scientific knowledge, to determine hatchery performance, and to operate in a business-like fashion.

In recent years many efforts have been made by hatchery operators to improve and update their programs to meet current conservation objectives. These efforts have included implementing a variety of operational changes and facility modifications. While this work should be applauded, much more needs to be done. In fairness, one of the greatest challenges in effecting change is that most hatchery programs were created under legal mandates and requirements that stress

different priorities than exist today. In many cases this has produced conflicting objectives, i.e. harvest versus conservation, and has resulted in creating imperfect solutions to the inevitable problems that arise. The legal mandates and agreements that helped to create the existing hatchery system must be reviewed to determine how much flexibility they contain to meet today's regional priorities.

The review and evaluation efforts of the APR and APRE demonstrate that artificial production programs need to be viewed in a new way. Many of the basin's hatchery programs were developed decades ago under a different set of needs, social conditions and mandates. Most of today's hatchery production still seeks to produce fish for out-of-basin and mainstem harvest goals. While these remain legitimate goals they need to be better balanced with current priorities. More recently, conservation of the environment, ecosystems and species has become important national and local priorities. Indian spiritual and cultural values have been legally recognized. Fishery economics have changed due to rising costs, conflicts with conservation goals and competing sources of salmon such as aquaculture. Finally, the emphasis on locally led and supported fish and wildlife planning efforts have broadened the base of stakeholders in fish and wildlife restoration, and in doing so, created a new constituency for hatcheries that is very different from before.

A new paradigm for hatchery usage must be considered. The new paradigm within which artificial production must fit requires that species and population diversity are emphasized and local needs are considered. Salmonid populations should be returned as closely as possible to their historic range, distribution, and diversity through a variety of means including habitat protection and restoration and the appropriate use of hatcheries.

The policy development for the use of artificial production in the basin must be guided by the Council's basinwide vision statement that appeared in the 2000 Columbia River Basin Fish and Wildlife Program. The statement, which follows, establishes the context for salmon recovery and encompasses hydropower, harvest, and habitat, as well as hatcheries. The Council's vision is echoed in watershed-level mission and vision statements throughout the basin including the Oregon Plan for Salmon and Watersheds and the Washington Salmon Recovery Plan.

The vision for this program is a Columbia River ecosystem that sustains an abundant, productive, and diverse community of fish and wildlife, mitigating across the basin for the adverse effects to fish and wildlife caused by the development and operation of the hydrosystem and providing benefits from fish and wildlife valued by the people of the region. This ecosystem provides abundant opportunities for tribal trust and treaty right harvest and for non-tribal harvest and the conditions that allow for the recovery of the fish and wildlife affected by the operation of the hydrosystem and listed under the Endangered Species Act.

This issue paper is based on the concept that all activities must proceed from a clearly articulated vision leading to identification of issues and attendant recommendations. The paper delineates hatchery related issues and recommendations derived from the fish and wildlife program's vision, and will be followed by the development of strategies and a strategic plan, definition of goals and objectives, and finally, formulation of fundable tasks.

Many processes and mechanisms are already in place that can be used to move toward the re-alignment of and change to hatchery programs. These existing mechanisms include federal programs such as NOAA Fisheries' Hatchery Genetics Management Plans (HGMP) and the National Environmental Policy Act responsibilities of both NOAA Fisheries and the U.S. Fish and Wildlife Service. It is the Council's intent to pursue hatchery reform in cooperation with the federal agencies, fish and wildlife co-managers and regional stakeholders.

Many of the issues and recommendations described below are not new. They have been highlighted in previous hatchery reviews and many were primary findings and recommendations of the APR process. The difference now is that through the APRE there is more detailed information on individual hatchery programs and basinwide hatchery practices. The new information gives us the tools to make better decisions and a greater ability to make specific changes and a better basis for prioritizing actions. Likewise with the recent completion of subbasin plans, the region now has an opportunity to develop meaningful provincial and basinwide goals through the aggregation of subbasin plans and other regional objectives. Finally it should be noted that this issue paper does not describe how specific recommendations will be carried out. Once APRE recommendations are finalized, a plan to implement the recommendations will be developed jointly by the Council, NOAA Fisheries, Bonneville, co-managers and other regional stakeholders.

II. Issues and Recommendations

Issue 1: In order to meet the harvest and conservation needs reflected in the vision, major changes to many hatchery programs are required.

Today's hatchery programs must:

- Be integrated with habitat restoration and enhancement efforts articulated through new locally developed subbasin plans.
- Emphasize within Columbia Basin and subbasin harvest objectives to a much greater degree.
- Align with a sustainable recovery strategy at the province/ESU and basin scales that meets legal mandates and ensures benefits to local communities.
- Be consistent with sound science while appropriately balancing acceptable risks with intended benefits.

The changes above are required to shift hatchery policy toward consistency with the overall vision for fish and wildlife in the Columbia Basin. Discrepancies between the Council's vision statement and current hatchery goals and objectives can be analyzed by comparing existing hatchery goals and operations with these requirements. Attention can then be turned to addressing the disparities between the sets of goals.

Regional priorities addressing both risk reduction and increases in benefits need to be established. Subbasin plans will be a primary source of regional goals and objectives. These goals and objectives will be analyzed to determine regional priorities that have been based on how well a species or population is performing in terms of abundance, productivity, distribution,

and diversity. Stock-specific priorities must take into account conservation mandates (including ESA), treaty and trust responsibilities, the Council's Fish and Wildlife Program, and subbasin plans. Key stocks at risk need to be identified and treaty/trust harvest opportunities by species and subbasin must be reviewed in order to determine in which subbasin and for which species treaty harvest opportunities are declining, limited, or non-existent. The ultimate goal, of course, would be to have all stocks healthy enough to provide harvest opportunities for all users of the Columbia River and the subbasins.

Recommendations

- 1.1 The Council, NOAA Fisheries, and the Bonneville Power Administration should facilitate a regional discussion that clearly identifies basinwide goals and priorities for salmon and steelhead.
 - 1.1.1 Clearly articulate measurable goals consistent with the basinwide vision.
 - 1.1.2 Identify the disparities between the current status of stocks and harvest levels and the basinwide goals by examining the basin, the ecological provinces, the subbasins, the stocks and species at risk.
 - 1.1.3 Establish priorities at the subbasin level to close the gap between the current situation within the basin and the basinwide vision.
 - 1.1.4 Assure that goals are consistent with legal mandates and a sustainable recovery strategy.
- 1.2 Use the regional subbasin planning effort to design and implement long-term strategies (consistent with the basinwide vision) to reduce disparities among production policies of existing hatcheries
 - 1.2.1 Determine the role of hatcheries in subbasin planning.
 - 1.2.2 Determine the priority hatchery actions needed to reduce the disparities.

Issue 2: Promptly implement hatchery reforms.

The identification of hatchery reform actions delineated under Issue 1 will result in both short- and long-term priorities. Some priorities must be accomplished immediately and their implementation should not be delayed. While these short-term reforms are being accomplished, work should continue on setting the stage for achieving long-term priorities.

Prioritization criteria for hatchery reform must be tied closely to the vision statement and must be based on a determination of the greatest cost-effectiveness and certainty of biological benefits. Areas of need would be prioritized based on populations in greatest jeopardy or those slowest in recovery. Prioritization can occur through the subbasin process and can draw on NOAA

Fisheries' latest hatchery status review. The criteria should emphasize improvement of hatchery broodstocks and their relationship to natural spawning populations. It must be applied to at-risk, natural spawning populations most in need of improved performance, as defined by ESA. Targeting immediate hatchery reforms on the most at-risk natural populations will benefit all socio-economic sectors in the basin. Effort would continue to be focused on the immediate and short-term actions until the long-term actions are identified, prioritized, and ready for implementation

The prioritization process and outcome should undergo scientific and policy scrutiny and should be reviewed on a periodic basis to assure that it reflects the most current research findings, cost benefits, and implementation methods. The review should result in a list of hatchery reforms that could be refined and implemented as budgets allow. Whatever short-term reforms are proposed, however, should maintain a clear connection to natural populations and habitat.

Recommendations:

- 2.1 Adopt prioritization criteria to immediately reduce hatchery risk to weak, natural stocks.
 - 2.1.1 Reduce risks through broodstock management, i.e. using local broodstocks, integrating natural-origin fish into broodstocks and/or reducing excessive straying.
 - 2.1.2 Reduce risks through addressing acute needs at facilities, such as fish passage, disease, and water quality problems.
- 2.2 Develop and implement an action plan reviewed by the stakeholders and derived from recommended subbasin plan and Hatchery Genetics Management Plan actions.

Issue 3: Establish a results-oriented, performance-based management system to guide hatchery reforms.

Hatchery reforms aimed at reducing ecological and biological risks and maximizing benefits can be accomplished through a results-oriented, performance-based management system. A results-oriented, performance-based system will result in improvement of population viability where it is most needed. This type of system requires that the desired results be defined and must be consistent with the vision statement and legal mandates. Performance management that is oriented to achieving mandated results is a way of assuring success and accountability. It is accomplished through development of a strategic plan that describes goals and objectives, performance standards, and how the standards relate to the goals and objectives. The plan will also describe factors outside its influence that may impact its application and/or outcome.

The standards established under the strategic plan define the level of performance to be achieved by program activities. Application of the standards must be objective and measurable.

Measurement of success will likely be defined through performance indicators that are characteristics such as trends in abundance and harvest.

The results-oriented, performance-based management system will rely upon hatchery program reviews. The APR document recommended formation of an *ad hoc* “oversight team to oversee the implementation of artificial production reform.” The Council recommends that the oversight team be expanded into a panel that would have the responsibility to review the performance of hatchery programs on a periodic basis. The panel should include scientists, the hatchery manager, agency representatives, the funding entity, and the operating entity. Reviews can be conducted at the provincial and basinwide levels as well as the subbasin level, and can be coordinated with other on-going reviews.

The goal is to create a transparent and self-governing regional decision-making process, facilitated by the Council, which can serve more than one need. Panel deliberations would be tied to decisions that need to be made in any program, such as funding or operational changes, and would aid in recognizing and facilitating changes. Effort would be focused on changes that are needed to meet program goals. The periodic review could assure that hatchery programs meet the requirements of the Council’s fish and wildlife program, ensure that progress is being made toward ESA goals, allow the public to understand the benefits and risks of individual hatchery programs, and assure funding entities that their investments are being used to meet mitigation obligations cost-effectively.

Data and information flowing to and from the review process would be gathered on a website available to all interested parties and linked to future regional databases. This would result in more efficient record-keeping, assuring that data and information is current and accessible. It also would assure that the type of data collected is timely and addresses both benefits and risks. The system would allow planners and managers to communicate with one another as well as with the public and would contribute to the transparency and self-governance of the process.

Recommendations:

- 3.1 Establish periodic hatchery program reviews for all subbasins where progress toward resource goals is evaluated and program changes are directed.
- 3.2 Structure the program review process as a results-oriented, performance-based management system.
 - 3.2.1 Formulate a set of questions, linked to measurable performance indicators and standards, whose answers will determine the success of hatchery programs.
 - 3.2.2 Establish a panel of experts, representatives of which would attend the periodic reviews, whose role would be to provide advice, contribute to the subbasin reports, ensure consistency across the basin, and identify research needs.

- 3.2.3 Create an internet-based system for efficiently and effectively disseminating data and information needed for the review process and to generate the subbasin review report.

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RECEIVED

AUG 31 2004

SAVE THE DATE! PFMC

FOR IMMEDIATE RELEASE
August 20, 2004

Contacts: David Witherell (907) 271-2809
Sheela McLean (907) 586-7221

Nation's Federal Marine Fisheries Managers to Host Fisheries Conference in March

Mark your calendar to save **March 24-26, 2005**, for the second national fisheries management conference, co-sponsored by the eight Regional Fishery Management Councils, the three Interstate Marine Fisheries Commissions, and the National Marine Fisheries Service (NOAA Fisheries). The conference will be held in Washington, D.C. and will be open to the public.

Managing Our Nation's Fisheries II – Focus on the Future, promises pertinent and informative discussions that will interest members of the public, fishery participants, environmental advocates, policymakers, and reporters on the fisheries beat. The conference will focus on key issues raised by the U.S. Commission on Ocean Policy, and issues surrounding re-authorization of the Magnuson-Stevens Fishery Conservation and Management Act, which governs management of our nation's marine fisheries.

The conference will provide a forum for information exchange and for participants to examine a wide range of perspectives on potential legislation that would impact future fisheries management.

Primary focus will be on implementing an ecosystem-based approach for fisheries, strengthening scientific advice for fishery management decisions, addressing the various statutes governing our nation's fishery management process, and design of IFQ programs for fisheries.

The conference will provide an opportunity to meet with the nation's fisheries managers and others involved in living marine resource management.

Conference Logistics

When: March 24-26, 2005
Where: Omni-Shoreham Hotel and Conference Center,
2500 Calvert Street, Washington D.C.
Registration: Advance registration will be required.

Don't miss this opportunity! More information will be available soon on the conference web site:
www.managingfisheries.org

**CURRENT ISSUES IN IMPLEMENTING THE MAGNUSON-STEVEN'S FISHERY
CONSERVATION AND MANAGEMENT ACT**

A Workshop for Members of the Regional Fishery Management Councils

Radisson Lord Baltimore Hotel
Baltimore, Maryland
October 19-20, 2004

DRAFT AGENDA

Purpose of the Workshop: To inform Council members regarding a variety of topics relevant to fishery managers today, including policy issues and MSFCMA processes. The main purpose is informational, while stimulating discussion to help clarify items for the Council member participants.

Format of the Workshop: 1-hour to 2-hour presentations on a variety of topics. Each presentation will have a focus presentation, normally by somebody from NOAA Fisheries (15-20 minutes). Each presentation will also be accompanied by 3 to 4 panelists/commenters, which would include NOAA Fisheries staff and Council representatives. After the presentation, the commenters will be given a few minutes to suggest particular points of interest in the presentation, or questions others (2-4 minutes each, total 10 minutes). The floor will then be opened up for Council member questions and further clarification (20-30 minutes).

MONDAY, OCTOBER 18

Evening: Informal Welcoming Reception

TUESDAY, OCTOBER 19

9:00 – 10:00 Welcoming/Introductions

10:00 – 10:15 Coffee Break

10:15 – 12:00 Presentations on Ecosystems (3)

1. Ecosystem Approaches to Management: What are They?
2. Guidelines for Ecosystem Approaches to Management
3. Review of Pilot programs

12:00 – 1:30 Lunch (informal)

1:30 – 3:30 Presentations on Science Issues

1. Fisheries Management and the Best Available Science

	2.Cooperative Research
3:30 – 3:45	Coffee Break
3:45 – 5:00	Presentations on the Economic Performance of Fisheries: ITQs, Capacity, Buybacks
5:00 – 6:00	Prospects for Magnuson-Stevens Reauthorization (Invited Hill Panelists)
6:00 – 8:00	Reception

WEDNESDAY, OCTOBER 20

8:00 – 9:00	Improving Fisheries Regulations: Regulatory Streamlining and Performance Measure for Fisheries Management
9:00 – 10:00	Revising the Guideline for National Standard 1
10:00 – 10:15	Coffee Break
10:15 – 11:15	Protected Species Issues
11:15 – 12:00	MPAs and Marine Sanctuaries
12:00 – 1:30	Formal Lunch (Invited Speaker)
1:30 – 2:30	Future Plans for Council Member Training and Orientation
2:30 – 3:00	Current Legal Issues
3:00 – 3:15	Coffee Break
3:15 – 4:00	Council Operational Issues
4:00 – 5:30	Open Discussion: “Our Shared Vision for the Future of U.S. Fisheries, and What We Can Do to Make it Happen” (W. Hogarth)
5:30	Wrap-Up and Adjourn



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Office for Law Enforcement
7600 Sand Point Way NE, F/EN5
Seattle, WA 98115-0070

September 13, 2004

Mr. Donald K. Hansen
Pacific Fishery Management Council
7700 NE Ambassador Place, Ste 200
Portland, OR 97220

Dear Mr. Hansen:

Enclosed is the National Marine Fisheries Service, Northwest Enforcement Division report which highlights enforcement activity during the third quarter of FY04. This report includes a brief description of NOAA Fisheries Enforcement actions. The investigative summaries were modified for Council distribution to protect the privacy of subjects involved in on-going cases, with identifying information removed from cases not yet adjudicated.

Please feel free to disseminate this information as you see fit and do not hesitate to contact me if you have any questions about our activities.

Sincerely,

Vicki L. Nomura
Special Agent in Charge

Enclosure

National Marine Fisheries Service
Office of Enforcement

NORTHWEST REGION ENFORCEMENT DIVISION

QUARTERLY REPORT

MODIFIED FOR COUNCIL DISTRIBUTION



Third Quarter FY2004
April 1, 2004 - June 30, 2004

To report fisheries violations, please
call our National Hotline at 1-800-853-1964.

NORTHWEST REGION ENFORCEMENT DIVISION

Quarterly Report
April 1, 2004 - June 30, 2004

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Significant Actions

Complex Cases

Case Number Withheld

In February 2004, a fisherman on the Sauk River near Darrington, WA observed an alteration of the river channel by mechanical equipment. According to NOAA Habitat biologists, listed Puget Sound Chinook salmon utilizes this area for spawning and rearing. Approximately 1,000 yards of the riverbed was altered by heavy equipment. According to the Washington Department of Fish and Wildlife (WDFW), NOAA Habitat and the Army Corps of Engineers (COE), no permits for this in-stream work were issued. WDFW initiated this investigation and is the lead agency along with other multiple agencies. WDFW is in the process of interviewing several landowners in the vicinity of the illegal work, but currently no one has provided information to assist in the investigation. The state is exploring investigative options to encourage cooperation from the adjacent landowners. NW OLE is working with the NOAA Habitat office in developing a "take" statement.

Case Number Withheld

This case involves the body of sea lion found along Multnomah Channel on Sauvie Island, Oregon near Portland. The sea lion's head was removed from the carcass by NOAA personnel and taken to the USFWS forensic laboratory in Ashland for analysis. A relatively new caliber (17mm) bullet was removed from the head and NW OLE is attempting to interview a person of interest in the case.

Case Number Withheld

This case involves a conspiracy to submit false statements and reports. A vessel owner worked with at least three other vessel captains to land overages of sablefish harvested by his vessel. An interview was conducted which confirmed that multiple landings were involved in the conspiracy. The total value of suspicious landings could exceed \$100,000. The vessel owner also faces multiple state charges. Witnesses and co-conspirators have been interviewed and this case continues to be investigated.

COPPS

The NW OLE ESA Coordinator, along with representatives from Washington State University (WSU) and The Western Regional Institute for Community Oriented Public Safety (WRICOPS), attended the Columbia River Intertribal Fisheries Commission meeting to propose a joint training partnership with the Commission and the Tribes in association with the Natural Resource Leadership Academy. The proposal was met with a favorable response. The next step is to meet with individual tribes and seek a funding match through WSU and WRICOPS.

The NW OLE ESA Coordinator chaired the Trawl Individual Quota (TIQ) Enforcement Work Group meeting held in Long Beach, California. Representatives from the state and NW OLE met with PFMC staff for 2 days to evaluate enforcement needs of a proposed TIQ program. The group will meet again in September in preparation for a November Council decision relative to moving forward with a TIQ Environmental Impact Study.

The NW OLE ESA Coordinator attended the DOJ COPPS conference held in Washington D.C. representing NW OLE and WRICOPS. The conference, which is in its third year, is an annual event held in mid June in the Washington D.C. area. The conference is an excellent opportunity for NW OLE staff to share and learn of COPPS activities and strategies underway throughout the country.

PARTNERSHIPS

NW OLE conducted six joint at sea patrols with Customs and Border Protection (CBP), the US Coast Guard (USCG), WDFW and the Seattle Police Harbor Unit. Recreational and commercial fishing vessels returning to the U.S. from foreign waters were targeted for boarding. Two drug arrests were made and three state fishery violations were cited.

NW OLE has conducted several joint 'orca protection patrols' in the San Juan Islands with WDFW in response to the listing of orcas as a depleted species. NW OLE receives many complaints of orca harassment from the public. By the end of this summer thirty patrols to initiate marine mammal harassment cases will have been completed.

NW OLE conducted restaurant checks in a joint operation with the OSP. During these checks, NW OLE took time to talk with restaurant owners about the negative impact that black market seafood has on their business. Specifically, unfair competition, health concerns and negative impact to the resource were discussed. NW OLE provided copies of the record keeping and reporting regulations pertaining to seafood kept and sold in restaurants. These checks were met with an overwhelming positive response from restaurant owners who offered to help identify those who solicit to sell illegal seafood.

NW OLE attended the Oregon/Washington Sardine Industry Meeting at the Seafood Consumer Center in Astoria, OR. Participants in this meeting included local fishermen, state fisheries managers and sardine processors. The agenda of the gathering was to share information on 2004 harvest guidelines, north/south allocations, the 2004 opening date and the 2003 harvest results. There was heated discussion about when to open the 2004 season.

NW OLE talked with a "career planning class" at Warrenton High School about careers in law enforcement. In particular, the Magnuson-Stevens Fishery Conservation and Management Act, the Lacey Act, the Marine Mammal Protection Act, the Endangered Species Act and our responsibilities as criminal investigators were highlighted.

Community Relations

Marine Mammal Protection Act

Oregon

Current community concerns

NW OLE has investigated numerous complaints regarding negative interactions between recreational fishermen and pinnipeds in Rogue River estuary.

Potential problems that affect law enforcement activities

There have been two California sea lions fatally shot at close range by a shotgun. Recreational fishermen are likely suspects, due to the high concentrations of both during the fall salmon season. Typically, pinnipeds grab hooked salmon resulting in angry fishermen. The problem is further compounded by fish cleaning stations at several private and public facilities that allow fish entrails to be dumped directly in the water near the docks. This creates an additional attractant for pinnipeds into an area they would not naturally concentrate due to high human presence.

Recommended action

Coordinate with state and local agencies to have fish entrails waste transported off-site for disposal. An interagency meeting occurred on July 15, 2004, in Central Point with personnel from the Oregon State Police and Department of Environmental Quality, to map a long-term solution, list alternatives and identify any funding sources.

Progress Updates

NW OLE receives numerous complaints regarding alleged marine mammal harassment of seals, sea lions and orca whales during the spring, summer and fall months each year. Many of these complaints are centered on whale watching activities conducted by commercial and non-commercial vessels that are reported to get too close to the whales. Over the past few years, efforts have been made to educate boaters with reference to viewing marine mammals responsibly in the wild. Handing out brochures and participating in public speaking venues have accomplished this. A project is in full swing using freeway billboards to spread information about responsibly viewing these animals in the wild. The current "Be Whale Wise" brochures have been posted on billboards in Tacoma, West Seattle, Ballard, Downtown Seattle, Anacortes and Blaine. Additionally, brochures have been posted at public boat launches in Anacortes, Friday Harbor, Bellingham and Blaine (Semihamoo). Plans for expansion of the project through signs on public busses and during pre-movie projections at various Regal Cinema movie theaters are underway.

VMS

Effectiveness of Completed or On-going Programs

Vessel Monitoring System (VMS)

Since the rollout of VMS for the West Coast Groundfish Fishery NW OLE has received consistent position reports from most Mobile Transceiver Units (MTUs). However, NW OLE observed and encountered the following issues and/or anomalies regarding some type approved MTU's.

The MTU that we have experienced the majority of issues with is the Skymate / Stellar 2500 G because they account for 83% of all new MTU's sold for the West Coast Groundfish Fishery. Even when accounting for Argos units that have been "grand fathered" in for vessels from Alaska, Skymate accounts for over 70% of all MTU's in the fleet.

Skymate has provided us with the following breakdown for all MTU issues that they have encountered.

- Approximately 85% of all issues encountered by Skymate are a result of MTU self installs. Skymate indicates that the most common self install issues are:
 1. Poor placement of MTU hardware. Placement of antennas is especially critical, so that the MTU can properly "see" the satellite. Installing an antenna that is blocked by an obstruction, or is installed too close to like frequency antennas (VHF) can interfere with the proper functioning of the MTU antenna.
 2. Cables that have been damaged or kinked during installation.
- Approximately 15% of issues encountered by Skymate are a result of firmware anomalies (i.e., computer programming issues) on the MTU. One issue concerned vessels that did not have computers connected to the Skymate MTU. As Skymate messaging to and from the MTU is sent in the form of an email message, vessels that did not have a computer connected to the MTU experienced an inbox overflow error. The immediate solution was to reboot these units when errors were encountered, clearing the inbox. The permanent solution is to re-program the MTU firmware to eliminate the error. Re-programming of the MTU firmware has been accomplished and has been installed on test vessels. The upgraded firmware will be installed on all Skymate units in the fleet (at no cost to vessel owners) by July 1, 2004.

Other day-to-day issues encountered are more basic, including:

- Vessel owners have purchased and installed units, but have failed to activate them.
- Vessel owners fail to make new declarations when they change fisheries.
- Interpretation of ground fish regulations

Currently NW OLE VMS system has 289 activated units out of a potential pool of approximately 360 platforms. Position reports currently exceed 1 million.

Declaration System:

Running in tandem with the VMS system is the Pacific Coast Groundfish declaration system. The declaration system was established in conjunction with the VMS regulation, in order to provide vessel owners with a method to declare their intentions to fish in a conservation area. This fulfills the requirements of the regulations, and prompts the vessel owners to specify the gear type that they intend to use. The declaration system is a complimentary tool to VMS and assists Law Enforcement personnel in determining if a fishing vessel is in a proper location relative to a conservation area.

Currently, NW OLE has received 847 declarations reports. The predominant numbers of declaration reports have fallen into the following categories; crab or lobster gear, limited entry bottom trawl gear and limited entry fixed gear.

Future Projects:

The MTU's type approved for the Pacific Coast Groundfish Fishery are two way messaging capable, that is, the units are able to send and receive messages. Two-way messaging capability will enable future fisheries projects to be undertaken in addition to vessel position reporting. Future projects may include; catch and effort reporting and at sea declarations via e-mail.

Expansion:

At the recently completed Pacific Fisheries Management Council (PFMC) meeting held in Foster City, California, the PFMC placed consideration of VMS expansion on their September meeting agenda. At this meeting the Council will consider the Ad Hoc VMS Committee recommendation to expand VMS to the West Coast Directed Groundfish Open Access Fishery comprised of a fleet of approximately 1,400 vessels.

In the third quarter of 2004, the Vessel Monitoring System (VMS) program continued normal operations. As the third quarter progressed, vessels registered with limited entry permits, continued to activate Mobile Transceiver Units in order to comply with regulations for the Pacific Coast Ground fish Fishery.

The last count of VMS data showed that:

- 289 vessels had active VMS units installed
- Over 1.6 million position reports have been sent via VMS
- 847 ground fish declarations had been made for vessels fishing in the Rockfish

Conservation Area.

Cases:

The NW and SW Divisions of OLE, along with the Coast Guard are investigating potential fisheries violations with the assistance of VMS. Since January 1, 2004 the VMS and declaration system have been used to assist OLE agents in identifying and referring potential violations, such as incursion into the RCA, failure to carry/use VMS equipment and permit violations.

See table on page 10 for breakdown of VMS initiated cases.

NUMBER OF CASES OPENED BY INVESTIGATION TYPE
FY03 and FY04

Investigation Type	FY03 3rd Quarter	FY03 Total	FY04 3rd Quarter	FY04 Total
ESA	23	151	4	46
Lacey Act	4	7	2	3
Magnuson Act	57	91	16	74
MMPA	23	73	26	58
Marine Sanctuaries	1	2	1	1
Intl. Pac. Halibut Conv.	3	5	1	5
Other Fisheries Invest.	1	1	0	1
Non-Fisheries Federal Reg.	4	8	4	5
State Regulations	7	13	2	6
Tribal Regulations	0	2	0	0
Tuna Conventions Act	0	1	0	0
TOTAL	123	454	57	200

NW / SW OLE VESSELS and RCA Cases

January 1, 2004 - September 10, 2004

<u>Case Number</u>	<u>Vessel</u>	<u>Regulation</u>	<u>Violation Description</u>	<u>Status</u>	<u>Location</u>	
WTTHELD	WTTHELD	660.306(o)	MAKE FALSE STATEMENT ON LEP	300 - Referred to SW OLE	District 1	GENERATED BY NOAA FISHERIES
WTTHELD	WTTHELD	660.306(bb)	FISH IN RCA W/LIMITED ENTRY TRAWL	44 - Dismissed by F/EN (No Violation)	District 1	
WTTHELD	WTTHELD	600.725(a)	FISH IN TRAWL RCA	10 - Currently Under Investigation	District 1	
WTTHELD	WTTHELD	600.725(a)	FISH IN TRAWL RCA	10 - Currently Under Investigation	District 2	
WTTHELD	WTTHELD	600.725(a)	FISH IN TRAWL RCA	10 - Currently Under Investigation	District 2	
WTTHELD	WTTHELD	600.725(a)	FISH IN TRAWL RCA	10 - Currently Under Investigation	District 2	
WTTHELD	WTTHELD	600.725(a)	FISH IN TRAWL RCA	10 - Currently Under Investigation	District 2	
WTTHELD	WTTHELD	600.725(a)	FISH IN TRAWL RCA	10 - Currently Under Investigation	District 2	
WTTHELD	WTTHELD	600.725(b)	CHANGING GEAR TYPE W/OUT DEC	44 - Dismissed by F/EN (No Violation)	District 2	
WTTHELD	WTTHELD	600.725(b)	PARTICIPATE IN 2 FISHERIES W/IN ONE TRIP	44 - Dismissed by F/EN (No Violation)	District 2	
WTTHELD	WTTHELD	660.306(z)	WOC GROUNDFISH VMS	10 - Currently Under Investigation	SW	
WTTHELD	WTTHELD	660.306(z)	VMS UNIT NOT ACTIVATED	44 - Dismissed by F/EN (No Violation)	SW	
WTTHELD	WTTHELD	660.306(aa)	FISH IN RCA W/OUT DECLARATION	44 - Dismissed by F/EN (No Violation)	SW	
WTTHELD	WTTHELD	660.306(aa)	FISH IN RCA W/OUT DECLARATION	10 - Currently Under Investigation	SW	
WTTHELD	WTTHELD	600.725(a)	FISH IN TRAWL RCA	10 - Currently Under Investigation	District 1	GENERATED BY USCG
WTTHELD	WTTHELD	600.725(a)	FISH IN RCA	55 - Verbal Warning Issued	District 2	
WTTHELD	WTTHELD	660.359(b)	FAIL TO CARRY/USE VMS	44 - Dismissed by F/EN (No Violation)	District 2	
WTTHELD	WTTHELD	660.359(b)	FAIL TO CARRY/USE VMS	44 - Dismissed by F/EN (No Violation)	District 2	
WTTHELD	WTTHELD	660.359(b)	FAIL TO CARRY/USE VMS	44 - Dismissed by F/EN (No Violation)	District 2	
WTTHELD	WTTHELD	660.359(b)	FAIL TO CARRY/USE VMS	44 - Dismissed by F/EN (No Violation)	District 2	
WTTHELD	WTTHELD	600.725(a)	FISH IN RCA	40 - Written Warning Issued by F/EN	District 2	
WTTHELD	WTTHELD	660.359(b)	FAIL TO CARRY/USE VMS	44 - Dismissed by F/EN (No Violation)	District 2	
WTTHELD	WTTHELD	660.306(bb)	FISH W/ BOTTOM TRAWL IN A TRAWL RCA	46 - Closed due to Lack of Evidence	District 2	
WTTHELD	WTTHELD	660.306(cc)	FISH W/LONGLINE GEAR IN NON-TRAWL RCA	10 - Currently Under Investigation	District 2	