

Brown Warrens

Motion # 24

Motion 24 passed

Agenda Item B.1.a
Draft March 2005 Council Minutes
June 2005

Meeting Record and Summary Minutes
Pacific Fishery Management Council
March 6-11, 2005

The full record of the Pacific Fishery Management Council (Council) March 6-11, 2005 meeting is available at the Council office, and consists of the following:

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

DRAFT MINUTES

Pacific Fishery Management Council
Doubletree Hotel
2001 Point West Way
Sacramento, CA 95815
916-929-8855
March 6-11, 2005

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A. Call to Order

A.1 Opening Remarks, Introductions

Mr. Don Hansen, Chairman opened the meeting of the Pacific Fishery Management Council on Tuesday, March 8, 2005 at 9 am.

A.2. Roll Call

Dr. Donald McIsaac, Executive Director called the roll:

Mr. Alverson
Mr. Phil Anderson
Mr. Ralph Brown
Mr. Mark Cedergreen
Dr. Steve Freese
Mr. Donald K. Hansen (Chairman)
Dr. David Hanson (Parliamentarian)
Mr. Jim Harp
Dr. Patty Burke

Mr. Jerry Mallet
Mr. Brian Corrigan
Mr. Dave Ortmann (Vice-Chairman)
Mr. Tim Roth
Mr. Roger Thomas
Mr. Daryl Ticehurst
Mr. Eric Larson
Mr. Frank Warrens
Mr. Gordy Williams

Mr. Stetson Tinkham was absent.

A.3. Executive Director's Report

Dr. McIsaac reviewed the four informational reports provided in the briefing book, with particular attention to Informational Report 2, which provided the current status of California Recreational Fishery Statistics (CERFS) estimates for 2004. He also highlighted Informational Report 4 which provided information on the Monterey Bay Aquarium's Seafood Watch program.

A.4 Council Action: Approve Agenda

The Council approved the agenda as provided in Agenda Item A.4 with the following changes: addition of a selective salmon fisheries report from Captain Mike Cenci, WDFW, under item C.1; deletion of item C.4; deletion of the NMFS Report under item F.5; and an addition of a NMFS report under item I.1. (Motion 1)

Mr. Eric Larson commented that he felt Agenda Items H.2 and H.3 are not MPA issues and that some other heading should be used. He also noted the Gulf of Farallones letter is not reflected in this agenda.

Dr. McIsaac, on the Gulf of Farallones, said he would look into the matter and include it as appropriate to the agenda item.

B. Administrative Matters

B.1 Approval of Council Meeting Minutes

B.1.a Council Member Review and Comments

Dr. Burke, wanted to verify that the Council Operating Procedures (COP) for the Allocation Committee are in the packet, as stated in the June 2004 minutes. Dr. McIsaac confirmed they are.

B.1.b Council Action: Approve June, September, and November 2004 Minutes

The Council approved the June, September, and November minutes as shown in Exhibit B.1.a, Draft June 2004 Council Minutes; Exhibit B.1.a, Draft September 2004 Council Minutes; and Exhibit B.1.a, Draft November 2004 Council Minutes (Motion 2).

B.2 Initial Consideration of April Council Meeting Agenda (03/09/05; 4:25 pm)

B.2.a Agenda Item Overview

Dr. McIsaac provided the agenda overview and worked the Council through Agenda Item B.2.a, Supplemental Attachment 1.

B.2.b Reports and Comments of Advisory Bodies

Dr. Hill provided Agenda Item B.2.b, Supplemental SSC Report.

Ms. Ashcraft, for the GMT, noted that final inseason action is scheduled for Wednesday. The GMT asked it be taken on Thursday (with a two step process). Since the GMT wasn't starting until Monday morning, this would make it difficult to provide information to the GAP unless the GMT began meeting Sunday.

B.2.c Public Comment

None.

B.2.d Council Guidance

Mr. Anderson, spoke to Agenda Item B.7.b, the WDFW proposal concerning the spiny dogfish fishery. Instead of moving forward with trying to put a management change into regulations in 2006, WDFW is looking at doing this in 2007/2008, coupled with setting a separate ABC/OY for dogfish and removing it from the other fish category. He would like to replace the proposed agenda item with one of setting a control date for the longline dogfish fishery. It likely would not take more than a half hour.

Mr. Anderson reported that there have been some additional discussions, activities and communications between the states, industry, and stakeholders concerning the essential fish habitat (EFH) EIS and he would like to add an update on those discussions to the June agenda. There will also be new maps available on corals and sponges as he understands. It would also provide an opportunity for the public to comment on the Oceana proposal for areas closed to trawling. One alternative would be to start the Council on Monday to make room for this item.

Ms. Vojkovich said one of the difficulties in this meeting is in helping the public separate MPA issues from sanctuary issues.

Mr. Brown supported Mr. Anderson in asking for an update on the EFH EIS. He also asked about including the potential for disaster relief for salmon, and the denial of a limited entry permit transfer requested by Mr. Kujala. He did not feel the permit issue was a very urgent topic for the Council, but could be deferred to the GAP.

Mr. Williams suggested an overview on the issue of mass marking (the coded-wire-tag database) would be appropriate for the May or June meeting. The Pacific Salmon Commission is investing a lot of time on this issue and it could be of great interest to the Council, as well as the issue of Mitchell Act activities and funding. Mr. Roth said it would be more appropriate for the April agenda since more stakeholders will be attending the April meeting than the June meeting.

Mr. Brown noted the need for a discussion about the potential for changes in the floor (escapement level) for Klamath River fall chinook. Dr. McIsaac said it would be under the salmon methodology review.

Dr. Freese spoke to the issue of clarifying that the Council's control date for trawl individual quotas (IQ), published in the January 9, 2004 *Federal Register*, included processors and other eligible persons. He proposed that the Council could write NMFS a letter requesting clarification and NMFS would respond. In this way there would not be a need to have this issue on the April agenda. The Council concurred.

Mr. Anderson suggested if the Council wants an update on the coded-wire-tag (CWT) system, WDFW could do that in April or June.

B.3 Council Operating Procedures (COP) Document (03/11/05; 9:42 am)

B.3.a Agenda Item Overview

Dr. McIsaac provided the agenda item overview.

B.3.b Reports and Comments of Advisory Bodies

Mr. Moore provided Agenda Item B.3.b, Supplemental GAP Report. LT. Dave Cleary provided Agenda Item B.3.b, Supplemental EC Report. In response to questions, Ms. Cooney agreed, pending further consultation with NOAA GC that any taping/recording of a subpanel meeting could be at the discretion of the subpanel chair.

Dr. McIsaac noted other advisory body statements from the November meeting were provided in the briefing book. He asked the current and former GMT chairs to be available for questions. Dr. McIsaac asked about the number of seats on the GMT (item #6 on page 3 of the GMT statement). He noted that COP 3 lists two seats for the Northwest Fishery Science Center (NWFSC). This has been historically the case, though currently one seat is vacant, and the GMT appears to be recommending that vacancy be made permanent. He asked the GMT about the rationale. Ms. Ashcraft said they were attempting to capture status quo at the time of the review (one NWFSC seat). If the Council wished to make a change, they could add another seat.

Dr. McIsaac also noted that #3 on page 2 of the November GMT report states that the GMT should not be involved in drafting the regulatory language for National Marine Sanctuaries Act provisions. Does this mean the GMT does not want to be involved in developing these regulations when necessary? Ms. Ashcraft and Ms. Culver clarified that it was primarily a semantic clarification that NMFS staff craft the actual regulatory language while the GMT provides alternatives and guidance for the actual regulations.

B.3.c Public Comment

None.

B.3.d Council Action: Review and Approve Proposed Updates to COP Document

Mr. Anderson moved (Motion 20) to adopt the Draft Council Operating Procedures, Agenda Item B.3.a, Attachment 1, as written with the following changes. For COP 1, on page 6 under SSC Reviews for Scientific Merit, add at the end of the fourth sentence, "unless otherwise approved by the Executive Director". For COP 2, (1) on page 2 under Termination of Members, remove item #4 ("engage in disreputable or criminal behavior"), (2) on page 4 under Staff Responsibilities, replace "necessary" with "assigned", and (3) on page 7 under Coastal Pelagic Subpanel, increase Oregon and Washington commercial fishery representatives from the current one per each state to three, at least one from each state. [COP 3 will be addressed in a subsequent amendment] For COP 4, on page 2 under SSC Reviews

for Scientific Merit, make the same change as in COP 1 (i.e., add “unless otherwise approved by the Executive Director”). [COP 5 will be addressed in a subsequent amendment] Adopt COP 6 and former COP 7, as written (removes old COP 7 for the Groundfish Permit Review Board). [New COP 7 will be addressed in a subsequent amendment] Adopt former COP 8 as recommended (deletes old COP 8 for the Council Performance Select Group). For the New COP 8, which documents the new ad hoc Allocation Committee, at the top of page 2 under Officers, strike the second sentence and everything in the first sentence after “shall be” and complete the sentence with “appointed by the Council chair.” For COP 9, amend it with the recommendations of the GMT on page 3 of their November 2004 report. Adopt COP 10 as amended by the MEW in its November 2004 report (two words under “Purpose”). Adopt COP 11, 12, and 13 as presented. [COP 14 is not included in the motion, Mr. Anderson has issues with numbers 3 and 4 under “Required Documentation”, but has not had time to deal with them.]. For COP 15, in the third paragraph under “Objectives and Duties”, strike “The role of the SSC is primarily one of oversight.” Adopt COP 16, 17, 18, and 19 as presented. Finally, authorize the Executive Director to make any needed edits for consistency and grammar. Mr. Mark Cedergreen seconded the motion.

Dr. Burke asked for a friendly amendment to Mr. Anderson’s motion. She stated that Mr. Anderson has primarily provided original edits to the proposed COP document, a few of which include some advisory body comments. Her purpose is to have reviewed the advisory body comments and her friendly amendment incorporates the desired parts of the advisory body comments consistent with the intent of Mr. Anderson’s motion. Her friendly amendment would be to adopt Agenda Item B.3.a, Attachment 1, as modified by Mr. Anderson, with the following additional changes: (1) modify COP 3 as recommended on pages 1-3 of the November 2004 GMT report, which includes one member from the NWFSC (Dr. Burke suggested Dr. Freese might wish to amend the membership in a later motion); (2) for COP 5, adopt the comments of the EC in its supplemental March 10, 2005 report; (3) for COP 1 and 2, adopt the GAP comments as provided in its November 2004 report as modified by the March Supplemental GAP Report; (4) adopt the SAS comments (September report); (5) adopt the SSC September comments for COP 4; (6) adopt the CPSAS November report for COP 2, consistent with Mr. Anderson’s inclusion of an additional member, but not including the minority report recommendations; and (7) in new COP 7 (Allocation Committee), delete the “General Allocation Principles” (items 1-9) and items 10-12 under “Area Management as Related to Allocation” as this type of specification goes beyond the usual procedural specifications provided in COP. Both the maker of the motion and the seconder agreed to the friendly amendment.

Dr. McIsaac noted that adopting the SAS comments, which supported all the staff changes, would be in conflict with Mr. Anderson’s motion. Dr. Burke clarified that Mr. Anderson’s motion would supersede the SAS recommendations. Mr. Anderson clarified that this would also be the case with regard to his added language to the SSC recommendation on page 6 of COP 1.

Mr. Ortmann proposed a friendly amendment for COP 1, page 7, to delete the fourth bullet under “Structure of Agenda” which states, “Proceed without agency philosophical comments prior to salmon actions.” He questioned how you could separate philosophical comments from other comments and why this should only apply to salmon when it was probably unrealistic for any FMP. Mr. Anderson and Mr. Cedergreen agreed to the friendly amendment.

Mr. Anderson noted two issues he did not include that might warrant some thought. In COP 1, page 8, the Council chair and vice chair terms are limited to two consecutive one-year terms. He thought the Council might want to consider more flexibility in the terms. In COP 2, page 3, there is no limit on the terms of officers for our advisory bodies. He did not propose any changes.

Dr. Burke stated that she did not include the CPSMT in her friendly amendment as that report recommends an additional NMFS representative.

Ms. Vojkovich noted there were budget implications to the membership changes and how

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would those be considered. Dr. Burke noted that there were reductions as well as additions and that we need to first see what the final result is before considering the budget implications..

Dr. Freese proposed an amendment to Motion 20 as follows: in COP 3, page 6, (1) allow the GMT to have the ability to have one or two representatives from the NWR; and (2) on the HMSMT, change the five SWFSC representatives to four SWFSC representatives and one NMFS SWR member. Mr. Harp seconded the amendment to the motion.

In support of his amendment, Dr. Freese stated that there are currently two NWR representatives on the GMT primarily because of the transition of duties from Dr. Hastie to Mr. Merrick Burden. He thought that historically there has only been one NWR member. However, with the current heavy workload there is a need for two and to incorporate both analytical type people and regulatory type people. At some point this may not be the case and it would be beneficial to have the flexibility to use the second member in some other capacity, especially in the future if more work falls on NWR for groundfish due to the Council funding shortfalls.

Mr. Anderson stated the prospect that the groundfish workload will get easier will be far later. There is a huge workload and it seems imperative that NMFS would have a staff member be a part of the GMT as well as having a member with analytical capability. He argued that the number ought to be two and does not believe that takes away from Dr. Freese's flexibility to accomplish other tasks since both members would not have to go to the meetings if there is no need for that.

Dr. McIsaac gave a brief history of the GMT membership and the commitment by the states and the NWR for two members each beginning in 2001.

Dr. Freese acknowledged Dr. McIsaac's explanation of the membership history which he had not been fully aware of and withdrew his amendment. Mr. Harp agreed.

Dr. Freese made a friendly amendment to Motion 20 to change the five SWFSC representatives on the HMSMT to four SWFSC representatives and one NMFS SWR member. The amendment was accepted by Mr. Anderson and Mr. Cedergreen.

Ms. Vojkovich asked the states of Oregon and Washington why the addition of a northwest member to the CPSAS (COP 2, page 7).

Dr. Burke and Mr. Anderson said the intent for the advisors was to have equal representation in the allocation discussions and votes. On a separate issue, Dr. Burke noted that with the Council budget cuts, the states would be subsidizing a larger part of the GMT member travel and thought some consideration should be given to that.

Ms. Vojkovich said she was having a difficult time reconciling the recommendations coming from the CPSAS with the need to put more northwest people on it. California already feels they are at a disadvantage. She did not see where the state of California is monopolizing the things that come out of that committee and cannot vote for the change.

Mr. Brown suggested removing the part of the motion that added the seat on the CPSAS since it was so controversial and dealing with it separately. Mr. Anderson noted it is part of the main motion and asked if he could change the motion. Dr. Hansen noted that the maker of the motion cannot amend the motion.

Mr. Brown made a friendly amendment to Motion 20 to strike the addition of a northwest commercial fishery seat to the CPSAS. Mr. Anderson and Mr. Cedergreen agreed and Motion 20 passed.

B.4 Legislative Matters (03/11/05; 10:47 am)

B.4.a Agenda Item Overview

Mr. Mike Burner provided the agenda item overview.

B.4.b Legislative Committee Report

Mr. Burner provided Exhibit B.4.b, Supplemental Legislative Committee Report.

Dr. Hanson said the Capitol Construction Fund bill is moving and the Council should consider providing feedback. The Committee would have benefited from industry input at their Monday meeting. Mr. Brown suggested Mr. Pete Leipzig might be a good contact for further information on this issue. The Council could request additional language in the law to specify potential uses of vessels forfeited under the CCF.

Dr. McIsaac reviewed Attachment 1 of the report, stating that the worksheet is intended to foster thinking on MSA Reauthorization issues for stronger Council input at the April meeting. A comprehensive Council position on this matter will be useful at the upcoming Council Chairs and Executive Directors meeting. Staff will put together an historical record of Council positions on this matter.

Mr. Anderson mentioned an oversight group that was organized by the Pacific States Marine Fisheries Commission and asked if there has been any new activity of this group. Dr. Hanson stated the group has the direction to follow this issue and may start up again this spring.

B.4.c Reports and Comments of Advisory Bodies

None.

B.4.d Public Comment

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

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

Ms. Vojkovich moved and Mr. Warrens seconded a motion (Motion 21) to approve the report of the Legislative Committee. Motion 21 passed.

B.5 Fiscal Matters (03/11/05; 11:41 am)

B.5.a Agenda Item Overview

Dr. John Coon provided the agenda item overview.

B.5.b Budget Committee Report

Dr. Coon provided Agenda Item B.5.b, Supplemental Budget Committee Report.

B.5.c Reports and Comments of Advisory Bodies

None.

B.5.d Public Comment

None.

B.5.e Council Action: Consider Recommendations of the Budget Committee

Mr. Brown asked for clarification about any reconsideration of the apportionment of additional monies provided the regional councils in January. Dr. McIsaac stated there was no change and the \$200,000 from the regions was an entirely different matter.

Mr. Warrens moved and Mr. Brown seconded a motion (Motion 22) to approve the report of the Budget Committee. Motion 22 passed.

Ms. Vojkovich requested information on the timing for developing the 2006 budget and Dr. McIsaac recapped the process. Ms. Vojkovich asked how she might provide input. Dr. McIsaac stated that input at the Budget Committee meetings would be appropriate.

Mr. Anderson expressed dissatisfaction with the budget process and the difficulty of following the issues. He felt the Council as a whole needs to set priorities, especially if we will be seeing these huge budget shortfalls. He felt the Council needs to establish its base priorities and then look at what is still available to use beyond those.

Dr. Hanson said he was uncomfortable not having the Budget Committee meeting be in executive session when the discussion of personnel being laid off occurred. He recommended a closed executive session be used in the future.

Dr. Freese agreed we need to do better planning on who does what, where, when, and how, especially due to the staffing shortage on the Council side.

Mr. Anderson agreed with Dr. Freese's comments and warned that with these cuts it is not going to be business as usual. Some things won't get done.

B.6 Appointments to Advisory Bodies, Standing Committees, and Other Forums (03/11/05; 11:50 am)

B.6.a Agenda Item Overview

Dr. Coon presented the agenda overview.

B.6.b Council Action: Appoint New Members as Necessary

Mr. Melcher moved (Motion 23) to appoint Ms. Gway Rogers-Kirchner to replace Ms. Cyreis Schmitt on the GMT. Mr. Brown seconded the motion. Motion 23 passed.

Dr. Steve Freese moved (Motion 24) to appoint Ms. Carrie Nordeen to replace Ms. Jamie Goen as the NMFS Northwest Region representative on the GMT; appoint Dr. John Field to replace Dr. Xi He as the NMFS Southwest Fisheries Science Center representative on the GMT; and appoint Ms. Elizabeth Petras to replace Ms. Susan Smith on the HMSMT; this last appointment representing a change of the NMFS seat from the Southwest Fisheries Science Center to the Southwest Region. Mr. Harp seconded the motion; Motion 24 passed.

B.7 April 2005 Council Meeting Agenda and Three-Meeting Plan (03/11/05; 1:30pm)

B.7.a Agenda Item Overview

Dr. McIsaac provided the agenda item overview.

B.7.b Reports and Comments of Advisory Bodies

None.

B.7.c Public Comment

None.

B.7.d Council Action: Adopt Final Agenda for the April 2005 Meeting

The Council members worked with the Executive Director to finalize the April 2005 meeting agenda.

Mr. Roth and Mr. Williams noted the need to have a report on salmon mass marking. Mr. Roth and Mr. Anderson agreed to provide informational reports on mass marking for the April briefing book.

Ms. Vojkovich asked for a clearer interpretation of what the Council action is for each agenda item. She also expressed a desire to use a different more general term than MPA for marine sanctuary issues. Dr. McIsaac responded that we could change the term, but also explained some of the complexities of changing the category, including website set-up, etc.

Mr. Anderson and Mr. Brown brought up the issue of using EFH to protect species that we don't manage in regard to meeting National Marine Sanctuary protection objectives and asked Ms. Cooney to explore this issue and some possible language that could be used. Ms. Cooney said she would work with Council staff to see how far we can go on the EFH issue.

C. Salmon Management

Mr. Ortmann chaired the salmon agenda items.

C.1 Review of 2004 Fisheries and Summary of 2005 Stock Abundance Estimates (9:20 am)

C.1.a Report of the Salmon Technical Team (STT)

Mr. Simmons, STT Chair, presented a summary of the Review of 2004 Ocean Salmon Fisheries and Preseason Report I: Stock Abundance Analysis of 2005 Ocean Salmon Fisheries.

Mr. Melcher asked if the STT has reviewed the estimate of 52% age-4 harvest rate for Klamath River fall chinook. Mr. Simmons responded that the STT is confident the methodology used is sound and although there may be some update in the data used, it is unlikely to change the final estimate significantly. The data for contact rates were primarily responsible for the estimate so greatly exceeding the prediction; in many areas, the observed values for 2004 were near the high end of observed contact rates, and in some areas exceeded previously observed contact rates.

Mr. Roth asked if the Central Valley Index prediction was based on jack counts that were outside the historical range and if that would affect the reliability of the prediction. Mr. Simmons responded that the STT had looked at the predictor and agreed with Mr. Roth's assessment.

Mr. Anderson observed that Washington coast coho forecasts not using jack counts to predict future abundance did not show the same decline in predicted abundance that the Columbia River late coho stock has shown, and asked if there was concern that the coastal stocks may be over-predicted. Mr. Simmons noted that the STT had not considered that outcome, but agreed that it was possible.

Mr. Anderson noted the Grays Harbor fall chinook forecast was low and would be a focus of both ocean and inside fishery development in 2005.

CPT Mike Cenci gave a PowerPoint presentation on selective fisheries enforcement off the coast of Washington.

C.1.b Reports and Comments of Advisory Bodies

Dr. Peter Lawson presented the report of the SSC (Agenda Item C.1.b, Supplemental SSC Report).

Dr. McIsaac asked if the recommendation is for a methodological review or a review of the input data. Dr. Lawson responded that a data input review is not being suggested, but the KOHM appears to be performing poorly in this aspect.

Mr. Brown asked if it was appropriate to include outliers in data sets. Dr. Lawson responded that it should if it was a true event and could reasonably be expected to be repeated. Furthermore, confidence intervals or some measure of variability should also be reported, which was not being done at this time.

C.1.c Public Comment

Mr. Duncan MacLean, troller, El Granada, California

Mr. Don Stevens, Oregon Salmon Commission, Newberg, Oregon

C.1.d Council Discussion on Review of 2004 Fisheries and Summary of 2005 Stock Abundance Estimates

None.

C.2. Identification of Management Objectives and Preliminary Definition of 2005 Salmon Management Options (03/08/05; 11:09 am)

C.2.a Agenda Item Overview

Mr. Chuck Tracy presented the agendum overview.

C.2.b Report of the Pacific Salmon Commission (PSC)

Mr. Jim Harp presented Agenda Item C.2.b, Supplemental PSC Report.

C.2.c Report of the Klamath Fishery Management Council (KFMC)

Mr. Curt Melcher reported the KFMC met Sunday and Monday. He noted the Klamath Act is due to expire September 2006. The KFMC will cease at that time if that Act is not reauthorized, however, the technical work will continue on an ad-hoc basis. The KFMC discussed 2004 age-4 ocean harvest rate, which was under-predicted; the Klamath River Technical Advisory Team (KRTAT) did not find errors in their analysis. The 2004 spawning escapement level, which was less than the 35,000 floor for the first time since 1999, was discussed. The KFMC did not have consensus recommendation for specific allocation among the sectors, primarily because of the potential for the California Fish and Game Commission to change the in-river allocation percentage. The KFMC asked the KRTAT for several modeling assignments to frame 2005 seasons using the 2004 allocation structure for all sectors, then modifying ocean fisheries based on arbitrary rules to meet the spawning escapement floor; the reductions to meet the floor were draconian. The KRTAT was then directed to use that as a base to produce model runs for larger in-river allocation scenarios, maintaining the tribal share, and reducing California ocean fisheries to meet the spawning escapement floor. The increase to the in-river quotas were modest, on the order of a few hundred fish. The KFMC also asked for a cost-benefit analysis associated with shifting the effort to the in-river recreational fishery. Additional model runs were made to assess how far escapement would be below the floor in order to meet tribal subsistence needs. Finally, the KFMC initiated a review of the 35,000 spawning escapement goal relative to the biology of the stock.

Mr. Larson reiterated the regulatory authority of the CFGC to manage in-river fisheries and state allocations (Agenda Item C.2.a, Supplemental Attachment 3). He recommended the KFMC and the Council include a range of in-river allocations in the ocean fishery management options.

Mr. Harp noted that increasing the in-river allocation from 15% to 17% is significant in terms of ocean fishery impacts. He recommended the KFMC proceed with a review of the 35,000 spawning escapement floor.

Mr. Brown asked if the KFMC was close to consensus on deviating from the 35,000 floor for 2005. Mr. Melcher responded there were at least two individuals adamantly against deviating from the floor in 2005, and a motion was not made.

Mr. Hansen asked what the trade-off between ocean catch and in-river catch was. Mr. Melcher responded 100 to 200 fish foregone in ocean harvest translated to one fish for in-river recreational allocation.

C.2.d NMFS Recommendations

Dr. Peter Dygert presented Agenda Item C.2.d, Supplemental NMFS Report. Dr. Dygert further reported that the observed ocean harvest rate on age-4 Klamath fall chinook has been greater than predicted by the KOHM in each of the three years since its last revision. The observed harvest rate has exceeded the ESA consultation standard for California coastal chinook the past two years, and NMFS will therefore reinitiate consultation on the ESU. The consultation will examine the use of Klamath fall chinook as a surrogate for the ESU, as well as reviewing the KOHM to ensure the ESA consultation standard can be met in the future. Other subjects may include the role of forecasting error in meeting the management objectives. For the immediate future, NMFS recommends the STT review the deviation in recent years and propose an appropriate buffer to ensure the standard is not exceeded again in 2005. Dr. Dygert advised the Council that pending the outcome of the reinitiated consultation; it is possible that inseason action may be necessary to achieve compliance with a new standard, if one is set; however the likelihood of such action can be reduced by use of an appropriate buffer during the preseason process.

Mr. Roth asked about the timeframe for reinitiation of consultation. Dr. Dygert replied it would not be completed by May 1, thus the advice relative to the possibility of inseason action if an adequate buffer were not adopted.

Mr. Melcher asked if OCN would be used as a surrogate for LCR coho in establishing acceptable harvest rates or if LCR FRAM stocks would be used. Dr. Dygert replied that although NMFS is aware that there may be potential utility in using the LCR FRAM stocks, for now, OCN will be used as the indicator stock for ocean harvest rates.

Mr. Anderson asked what the process would be to take inseason action subsequent to reinitiated consultation, and noted it may be advantageous to develop a plan, analogous to the groundfish information policy committee strategy. Dr. Dygert replied there is no current strategy to modify the preseason plan, but NMFS would be seeking advice from legal council and others on that issue.

Dr. McIsaac asked if the reinitiation of consultation had begun or would be contingent on further development of technical information by the STT or others. Dr. Dygert replied there are a number of events that lead to reinitiation, including exceeding the standard, or new information. He believes both of those criteria have been met, and the process has been triggered.

Dr. McIsaac then asked if the criteria was reached last year when the consultation standard was exceeded. Dr. Dygert replied consultation was not reinitiated last year, although perhaps it should have been, but there may have been some debate as to what constitutes "new information" However, when the objective

is no more than 16% and the result is 52%, the threshold has clearly been reached

C.2.e Tribal Recommendations

Mr. Anderson presented Agenda Item C.2.e,f, Supplemental WDFW/Tribal Recommendations.

Mr. George Kautsky, Hoopa Valley Tribal Fisheries, observed the harvest allocation objective of 50%-50% sharing between tribal and non-tribal fisheries was 16%-48% in 2004, and has averaged 30%-70% over the last five years. Despite this, the Hoopa Valley Tribe does not support fishing below the spawning escapement floor. The Tribe also supports use of the KOHM to manage the stock, but agrees with the SSC that a review of some model components may be warranted. The tribe believes reducing the spawning escapement floor because the habitat can no longer support that production is an inappropriate strategy, and plays into the hands of those who would trade fishery resources for other water uses. He noted the recent success in reestablishing flows in the Trinity River.

Mr. Bruce Jim presented testimony of the Columbia River treaty tribes (Agenda Item C.2.e, Tribal recommendations).

Messrs. Ed Johnstone and Mel Moon presented Agenda Item C.2.e, Supplemental Quinault/Quileute/Hoh Recommendation.

Messrs. Russell Svec, Dave Somes, and Hap Leon provided Agenda Item C.2.e, Supplemental Revised Makah Recommendations.

Mr. Harp presented Agenda Item C.2.e, Supplemental Tribal Recommendations, with the following changes: the quotas for chinook under Option II would be 40,000 and under Option III would be 24,000.

C.2.f State Recommendations

Mr. Anderson, WDFW, observed Snake River fall chinook impacts will be the primary constraint in fisheries north of Cape Falcon and a potential change in the Canadian catch ceiling will not be known until the April meeting. The Council options will include size limit changes to help reduce those impacts; however, fisheries south of Cape Falcon will also play a role. Puget Sound chinook stocks are impacted at low rates in Council area fisheries, but there is not much room for error, and the State of Washington is approaching 2005 management with the intent of not increasing impacts on Puget Sound chinook stocks of concern. The Grays Harbor fall chinook stock is at or below the escapement objective, and although Council fisheries do not impact this stock at significant levels, some measures can be taken to further reduce impacts. The Columbia River late coho forecast is a concern and balancing inside and ocean needs will be a challenge.

Mr. Melcher noted Klamath fall chinook will constrain fisheries south of Cape Falcon. The Oregon Fish and Wildlife Commission will likely provide guidance for ODFW to be conservative with regards to Lower Columbia River coho, which are listed as endangered under the Oregon State ESA, and proposed for listing under the Federal ESA. However, given constraints associated with Columbia River late coho, chinook fisheries, and other coho stocks, it is unlikely additional measures will have to be taken. Mr. Melcher also brought the Council's attention to Agenda Item C.2.f, Supplemental ODFW Report on the Integration of Management in Ocean and Columbia River Fisheries.

Mr. Larson, CDFG, asked if it would be appropriate to include in one option, an increased allocation to Klamath in-river recreational fisheries to cover the contingency of possible California Fish and Game Commission action. Ms. Cooney replied that would be appropriate. He noted that most of the impacts for California fisheries would fall on the commercial fishery, and to a lesser extent, the KMZ recreational fishery. He requested the SAS consider constraining other recreational ocean fisheries as well to offset some of those impacts.

C.2.g Reports and Comments of Advisory Bodies

SAS members presented Agenda Item C.2.g, Supplemental SAS Report.

Mr. Olson (SAS) noted:

Pg. 2, Option III should be seven days per week.

Pg. 3, Option III, the sentence *All fish caught north...*, should be stricken, also the phrase *South of Ledbetter Point*, in the next sentence.

Mr. Melcher noted the proposed closure of April 15 for the Cape Falcon to OR/CA border commercial fishery would require inseason action, and asked what the proper process would be to take that action. Mr. Tracy replied that the Council could make a recommendation to NMFS under this agenda item since the proposal was included in the SAS report and there was an opportunity for public comment under this agenda item.

Mr. MacLean (SAS) noted:

Pg. 5, Option III for the OR/CA border to Humboldt South Jetty should read closed;

Pg. 5, Option III for Horse Mt. to Navarro Head, the areas should be Bruhel Point to Navarro Head, and no fish caught in other areas could be landed in the area;

Pg. 5, Option II for Horse Mt. to Pt. Arena. should be Sept. 1-30 with a 27 inch total length chinook minimum size limit;

Pg. 5, Option II for Pt. Arena to Pigeon Pt. and Pigeon Pt. to Pt. Sur, the minimum size limit should be 26 inches;

Pg. 5, Option I for Fort Ross to Pt. Reyes, there should be a 6,000 fish quota;

Pg 6, Option II for Pt. Sur to U.S. Mexico border, the minimum size limit should be 26 inches total length.

Mr. Larson observed that the proposed change of a 6,000 quota for the Fort Ross to Pt. Reyes area would have to be modeled as if the entire area from Point Arena to Pigeon Pt. were open, and likewise the Bruhel Pt. to Navarro Head area would have to be modeled as if the entire Horse Mt. to Pt. Arena area were open. Mr. Larson observed the Pt. Reyes fishery is proposed for October 3-21; however, the NMFS Biological Opinion for Sacramento winter chinook prohibits fisheries later than October 15. Mr. MacLean replied the intent was to have two weeks fishing time to target on Sacramento stocks.

Mr. Watrous (SAS) noted:

Pg. 11, Option III for the Neah Bay subarea, add a provision for an inseason call no later than July 27 to consider opening seven-days-per-week.

Mr. Melcher asked if the intent was that if an inseason call was not made prior to July 27 that a seven-day-per-week fishery would be precluded. Mr. Watrous replied no; just that initial consideration shall take place prior to July 27.

Mr. Sorenson (SAS) noted:

Pg. 14, Option III for the selective coho fishery, the start date should be July 5;

Pg. 14, Option I for the Cape Falcon to Humbug Mt. area, add when fishing for salmon in the Stonewall Bank groundfish conservation area during all-depth halibut days, only trolling will be allowed.

Mr. Larson asked if any of the options allowed for additional allocation to Klamath in-river recreational fisheries. Mr. Welter replied no, that the proposed seasons already represented a substantial reduction from 2004.

Mr. Stone (SAS) noted:

Pg. 14, Option II for the Fort Bragg area was closed in mid July except for the weekend of July 16-17.

Mr. Larson asked if the Fort Bragg closures in options II and III were to provide additional commercial opportunity. Mr. Stone replied that the closures were to provide both commercial and recreational opportunity.

Mr. Larson then asked if the chinook minimum size limits for both the San Francisco and Monterey areas should be 20 inches total length. Mr. Stone replied yes.

C.2.h Public Comment

Mr. David Bitts, Eureka, California

Mr. Duncan MacLean, Half Moon Bay Fishermen's Association, El Granada, California

C.2.i Council Recommendations for Initial Options for STT Collation and Description (03/08/05; 3:40 pm)

Mr. Melcher moved (Motion 3) to recommend the SAS proposed March and April 2005 season structure for the Cape Falcon to Florence South Jetty, the Florence South Jetty to Humbug Mt., and the Humbug Mt. to Oregon/California border areas, including the landing restrictions requiring fish caught in Oregon to be landed in Oregon, or in the case of the latter area, in the ports of Gold Beach, Port Orford, or Brookings, Oregon (Agenda Item C.2.g, Supplemental SAS Report), as an inseason action to be taken by NMFS. Mr. Brown seconded the motion.

Mr. Anderson asked if the landing restrictions were because there was no sampling of catches that are landed in Crescent City. Mr. Larson replied sampling does not normally occur during periods when the California fishery is closed, but sampling could be arranged if necessary.

Mr. Melcher stated significant landings from Oregon did occur in 2004, which were not sampled.

Motion 3 passed.

Mr. Anderson moved (Motion 4) the entire SAS proposed package for the non-Indian fisheries contained in Agenda Item C.2.g, Supplemental SAS Report, with the changes noted above, be adopted for tentative analysis by the STT. Mr. Donald Hansen seconded the motion.

Mr. Larson made a friendly amendment to delete the Fort Ross to Pt. Reyes commercial fishery in Option I; change the boundaries of the Horse Mt. (or Bruhel Pt.) to Navarro Head commercial fishery to Horse Mt. to Pt. Arena; and to include in at least one of the options, an assumed Klamath in-river recreational allocation of 20%, with necessary modification to season dates. Mr. Anderson and Mr. Hansen agreed to the friendly amendment.

Mr. Melcher made a friendly amendment that all modifications to accommodate the proposed 20% Klamath in-river recreational allocation option be made in California fisheries. He added it may be difficult to distinguish between modifications to meet existing constraints and those to meet an alternative allocation proposal. It may be more instructive to have the STT and SAS first develop the former, then proceed with the latter.

Dr. McIsaac asked Mr. Larson if his friendly amendment was to include a forth option to address the alternative allocation proposal, or if that was to replace one of the options. Mr. Larson replied his intent was to address Mr. Melcher's concern by first developing three options that meet existing constraints, and then develop a subset of options to address the allocation issue.

Vice Chairman Ortmann noted that Mr. Larson's amendment was accepted as a friendly amendment. Mr. Melcher's amendment was seconded by Mr. Brown.

Mr. Melcher's amendment was accepted as a friendly amendment.

Mr. Tracy noted consideration of including additional options could impact the STT workload, and suggested the Council consider developing the third option with a 20% in-river allocation assumption based on Option II, after modification by the SAS and STT to meet existing constraints.

Mr. Larson moved to amend the motion to restrict the recreational 20% inriver allocation to a sub-option of Option III, essentially resulting in four options for the STT to model. Mr. Anderson and Mr. Hansen accepted Mr. Larson's amendment as a "friendly" amendment.

Mr. Anderson noted the four options could be narrowed to three later.

Motion 4, as amended by the friendly amendments, passed.

Mr. Harp moved (Motion 5) the initial treaty-Indian troll options be modeled as follows:

Option I - 60,000 coho and 60,000 chinook;

Option II - 55,000 coho and 40,000 chinook;

Option III - 40,000 coho and 24,000 chinook.

All options would have 50% of the chinook allocated to the May/June chinook directed fishery and 50% to the July/August/September all-species fishery, and that the management trigger for Interior Fraser coho impacts in Area 4/4B be included as recommended by the STT.

Mr. Anderson seconded the motion; Motion 5 passed.

C.3 Council Recommendations for 2005 Management Option Analysis (03/09/05; 4:53 pm)

C.3.a Agenda Item Overview

None.

C.3.b Report of the STT

Mr. Simmons presented Agenda Item C.3.b, Supplemental STT Report. He noted there was no option for the 20% Klamath in-river recreational fishery because the STT was unable to get the 15% allocation options to meet constraints.

C.3.c Report of the KFMC

None.

C.3.d Reports and Comments of Advisory Bodies

None.

C.3.e Public Comment

Mr. Jerry McGahan, salmon fisherman, Chico, California

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

Mr. Dean Estep, salmon troller, Fort Bragg, California

Mr. Keith Olson, salmon troller, Fort Bragg, California

C.3.f Council Direction to the STT and SAS on Options Development and Analysis

Mr. Melcher recommended the STT and SAS work toward structuring fisheries to meet the floor and a 50%/50% California/Oregon troll share of Klamath fall chinook impacts.

Mr. Larson agreed with Mr. Melcher's recommendation and gave further direction to extend the analysis with a 20% Klamath in-river recreational allocation based on Option III by reducing California commercial and recreational fisheries as necessary.

Mr. Anderson (referencing Agenda Item C.3.b, Supplemental STT Report) noted language was added for north of Cape Falcon commercial fisheries requiring vessels to report catch on state fishery tickets. He directed the STT to delete the requirement that only one coho may be kept in north of Cape Falcon recreational fisheries for Option III on pages 10 and 11. He noted Snake River fall chinook had not met the NMFS ESA consultation standard yet, but would address that over the course of negotiation in the North of Falcon forum as per footnote e/ on page 21. There is an analogous situation for Interior Fraser coho. Finally, ODFW and WDFW will be meeting with Columbia in-river parties to discuss late coho escapement issues the following week and felt any changes to ocean quotas could be discussed at that time. He also directed the STT to change on page 2, Option III, the language "south Of Leadbetter Point" to "within the area", and to change on page 3, Option II, the date for potential non-mark-selective coho retention from August 1 to September 1. Mr. Anderson noted for Ms. Cooney, the STT has changed the modeling approach for selective fisheries to be consistent with the Salmon FMP.

Mr. Larson asked for a legal opinion on the issue of restricting landings to the state in which they were caught relative to interstate commerce rules. Ms. Cooney replied that in the past the restrictions were made for a rational management system, however, she would like to consult with others before giving a definitive answer.

Mr. Simmons requested clarification on the 50%/50% California/Oregon troll share of Klamath fall chinook impacts. Mr. Larson replied within a percentage point either way for now, given that California would need to make the initial cuts to meet that objective. Mr. Melcher recommended a stepwise approach beginning with reducing California fisheries to achieve the Klamath River fall chinook spawning escapement floor, then addressing the 50%/50% California/Oregon troll share, which may require adjusting both California and Oregon fisheries.

Mr. Larson noted the large abundance of Central Valley chinook and expressed the desire to see those fish utilized and not wasted. Mr. Brown replied that perhaps an option of a 10% in-river recreational allocation would help address Mr. Larson's desire.

C.4 Update on Essential Fish Habitat (EFH) Review Process

This item was removed from the agenda (see Motion 1).

C.5 Council Direction for 2005 Management Options (03/10/05; 7:11 pm)

C.5.a Agenda Item Overview

Mr. Chuck Tracy presented the agenda item overview.

C.5.b Report of the STT

Mr. Allen Grover, STT Vice Chair presented Agenda Item C.5.b, Supplemental STT Report, noting changes from Agenda Item C.3.b. He also noted Options IIIa and IIIb were derived from Option II by first increasing the Klamath in-river recreational allocation to 20%, then restricting California ocean recreational fisheries only (Option IIIa) or commercial and recreational fisheries (Option IIIb) to meet other constraints.

Mr. Warrens asked if the STT could model an option with a 10% in-river allocation option to display the economic trade-off between ocean and in-river fisheries to the public and the California Fish and Game Commission. Mr. Grover replied the STT could model that scenario.

Mr. Anderson (referencing Agenda Item C.5.b, Supplemental STT Report) noted for the purpose of allowing public comment, he will recommend changing page 3, Option IIIa to add the language "Beginning August 11 vessels fishing south of Leadbetter Point may use all legal gear limited to no more than four spreads per line." following the sentence stating "Gear restricted to plugs 6 inches or longer..."

Mr. Melcher noted for the purpose of allowing public comment he will recommend inseason action to again modify the dates of the March and April portion of the Cape Falcon to Oregon/California border commercial fisheries to be open Marcy 15 to 25 and April 1 to 15 for all areas. The purpose of the modification being allowing some additional opportunity in May and June.

Mr. Brown noted a discrepancy in Table 2, page 16, Options I and II, for the selective coho fishery for the days closed south of Humbug Mt. Mr. Tracy replied the dates should be July 5-11 rather than July 11-20 or July 11-29.

C.5.c Reports and Comments of Advisory Bodies

None.

C.5.d Public Comment

Mr. Joel Kawahara, troller, Seattle, Washington
Mr. Steve Wilson, troller, Federal Way, Washington
Mr. Don Stevens, Oregon Salmon Commission, Newberg, Oregon
Mr. Mark Newell, Oregon Salmon Commission, Toledo, Oregon
Ms. Kathy Fosmark, representing her family, Pebble Beach, California
Mr. Dave Bitts, PCFFA, Eureka, California

C.5.e Council Guidance and Direction

Mr. Melcher moved (Motion 17) to recommend inseason action changing the Cape Falcon to Oregon/California border commercial fishery open dates in March and April to March 15-25 and April 1-15. Mr. Warrens seconded the motion; Motion 17 passed.

Mr. Anderson moved (Motion 18) to change page 3, Option IIIa following the sentence stating "Gear restricted to plugs 6 inches or longer", to add the language "Beginning August 11 for the area between Leadbetter Point and Cape Falcon, a subarea quota of 5,000 coho will be established. Vessels fishing in the area will be subject to a 75 coho per open period landing limit and may use all legal gear limited to no more than four spreads per line". Mr. Cedergreen seconded the motion; Motion 18 passed.

Mr. Warrens moved (Motion 19) to have the STT model an option with a 10% Klamath in-river recreational allocation. Mr. Thomas seconded the motion.

Mr. Larson stated his appreciation for Mr. Warrens' efforts to improve ocean fisheries, but noted the issue was a California issue, which Mr. Larson needed to handle with the California Fish and Game Commission (CFGF), and that modeling a 10% allocation would not be helpful, and did not represent a realistic approach to the problem. Mr. Larson's main concern was that at a 15% allocation, there was sufficient fish for the in-river fishery to survive, but a 10% allocation would destroy the fishery and that economy for 2005. He noted he would communicate the position of the Council to the CFGF, but did not support the motion

Mr. Thomas disagreed with Mr. Larson's position and stated the CFGC needed to understand the economic impacts of their decision on the coastal economies. Increasing the allocation of Klamath fall chinook to the ocean fisheries would be a bigger stimulus to the state economy than if the small number of guides on the Klamath River received the allocation.

Mr. Ticehurst stated his support for the motion, and noted that most of the benefit of increasing the ocean allocation would fall to the commercial fleet since at a 15% inriver allocation; most of the coast would have a full recreational season

Mr. Warrens expressed appreciation of Mr. Larson's position, but felt the economic cost/benefit ratio of the choice would be in favor of reducing the in-river allocation. He also noted the analysis would be for the Council's benefit in adopting a final package of options to go out for public review the following day.

Mr. Larson asked how the allocation would be applied. Mr. Warrens recommended the STT determine how best to display it, but requested a comparison from high to low.

Motion 19 passed 9 to 4.

Mr. Simmons requested guidance on which option to modify for the 10% in-river allocation assumption. He suggested a continued modification of Option III.

Mr. Warrens suggested a substitute for Option IIIa.

Dr. McIsaac recommend the STT follow the north of Cape Falcon arrangement with Option I being the most liberal and assuming the 10% in-river allocation, Option II with the 15% allocation, and Option III with the 20% allocation. He noted that the Council would still have the opportunity to mix and match components of any of the Options at the April Council meeting.

Mr. Larson recommended eliminating Option IIIa and modeling Option I with the 10% inriver allocation.

Mr. Brown noted the purpose was for comparison, and unless all proposed regulations north of the Oregon/California border were identical, the comparison would be less instructive.

Mr. Tracy noted that Options IIIa and IIIb were based on Option II with modification of only California fisheries to accommodate the 20% in-river allocation. He recommended replacing Option IIIa with the 10% option so Option II, IIIa and IIIb would all have identical proposed regulations north of California.

Mr. Larson accepted Mr. Tracy's advice. The Council concurred.

Mr. Melcher directed the Oregon SAS members to increase days in May and June to utilize the impacts freed up as a result of Motion 18. The Council concurred.

C.6 Adoption of 2005 Management Options for Public Review (03/11/05: 3:30pm)

C.6.a Agenda Item Overview

None.

C.6.b Report of the STT

Mr. Dell Simmons presented Agenda Item C.6.b, Supplemental STT Report. He noted the assumptions

for the Klamath in-river recreational allocation on pages 4 (Table 1) and 16 (Table 2) were in error for Options III and IV; Option III should be 20% and Option IV should be 10%.

Dr. Dygert stated his approval of the STT analysis regarding an appropriate buffer for the California Coastal chinook ESA consultation standard.

C.6.c Reports and Comments of Advisory Bodies

None.

C.6.d Public Comment

Mr. Dave Bitts, salmon troller, Eureka, California

C.6.e Council Action: Adopt Management Options for Public Review

Mr. Anderson, referencing Agenda Item C.6.b, Supplemental STT Report, March 2005, moved (Motion 25) to adopt for public review non-Indian commercial and recreational options for the areas north of Cape Falcon with the following changes:

Page 2-3, all options, add "if required by state law" to the requirement that landings be recorded on a state fish receiving ticket;

Page 12, Option II for the Neah Bay subarea, change the start date to July 1, and for Option III to July 5;

Page 12-15, Option III, for all subareas strike the requirement of no more than one chinook in the bag limit.

Mr. Cedergreen seconded the motion

Mr. Melcher asked for a friendly amendment to add the May-June north of Cape Falcon commercial fishery notice requirement for Oregon vessels landing south of Cape Falcon to the July-September commercial fishery in Option III

Mr. Anderson and Mr. Cedergreen accepted the friendly amendment.

Mr. Larson asked if adopting four options was acceptable, and noted his recollection of Council direction to the STT was for only three options. Mr. Tracy responded his interpretation of Council direction was to model Option I plus three versions of Option II, each with a different in-river allocation, to facilitate comparison, and as a contingency for the outcome of the ESA consultation standard buffer issue. He stated his preference for a final adoption of three options for public review, as recommended in the Council Operating Procedure (COP).

Mr. Anderson noted that there are only three options for the area north of Cape Falcon, and that guidance for release of three options is contained in the COP before the Council.

Motion 25 passed.

Mr. Melcher, referencing Agenda Item C.6.b, Supplemental STT Report, March 2005, moved (Motion 26) to adopt for public review the non-Indian commercial and recreational options in the areas Cape Falcon to Humbug Mt. as shown; recognizing Option IV is identical to Option III in all three areas. Mr. Brown seconded the motion.

Motion 26 passed.

Mr. Warrens, referencing Agenda Item C.6.b, Supplemental STT Report, March 2005, moved (Motion 27) to adopt for public review, all four options in the area south of Humbug Mountain.

Mr. Ticehurst seconded the motion.

Mr. Ticehurst supported providing the full range of analyses for the CFGC to facilitate their decision making process, and allow the public to make informed recommendations at the upcoming CFGC meeting. This would also not artificially constrain the Council's process

Dr. Dygert asked if there is a firm mandate for adopting only three options. Ms. Cooney replied there is a strong recommendation for good operations, but there are no legal requirements.

Mr. Brown noted COP 10 requires release of no more than three options which meet all of the Salmon FMP conservation and allocation objectives, and that only Options II, III, and IV meet the latter requirement.

Motion 27 passed, with Mr. Larson abstaining.

Mr. Larson, referencing Agenda Item C.6.b, Supplemental STT Report, March 2005, moved (Motion 28) to adopt for public review the, non-Indian commercial options in the area from OR/CA border to the U.S./Mexico border, and recreational options from Humbug Mt. to the U.S./Mexico border, with the following corrections:

Page 4 and 16, Option III; Supplemental Management Information, the Klamath River recreational fishery allocation should be 20%, and for Option IV it should be 10%.

Mr. Thomas seconded the motion (Motion 28)

Mr. Melcher asked for a friendly amendment to include the area between Humbug Mountain to the Oregon/California Border for the commercial fishery. Mr. Larson and Mr. Thomas accepted the friendly amendment.

Motion 28 passed.

Mr. Harp, referencing Agenda Item C.6.e, Supplemental Tribal Motion, March 2005, moved (Motion 29), to adopt the treaty Indian options for public review as presented with Option IV being the same as Option III. Mr. Anderson seconded the motion.

Mr. Tracy asked if Mr. Harp intended to include in his motion the management triggers for Thompson coho on page 21, Table 3 in Agenda Item C.6.b, Supplemental STT Report, March 2005. Mr. Harp stated that he did intend to include those in his motion.

Motion 29 passed.

C.7 Salmon Hearings Officers (03/11/05; 11:55 am)

C.7.a Agenda Item Overview

Dr. Coon presented the agenda item overview.

C.7.b Council Action: Appoint Hearings Officers

The following Hearings officers were appointed by consensus:
Westport, Washington, March 28, 2005 – Mark Cedergreen,
Coos Bay, Oregon, March 28, 2005 – Ralph Brown,
Fort Bragg, California, March 29, 2005 – Roger Thomas.

The Coast guard representative indicated staff will be assigned at a later date.

Dr Freese indicated NMFS staff will also be assigned at a later date.

D. Pacific Halibut Management

D.1 Groundfish Retention in the Columbia River Subarea Recreational Halibut Fishery (03/8/05; 5:05 pm)

D.1.a Agenda Item Overview

Mr. Tracy presented the agenda overview.

D.1.b Agency and Tribal Reports and Comments

Mr. Anderson stated a preference that vessels originating trips out of Columbia River ports operate under concurrent regulations as much as possible.

D.1.c Reports and Comments of Advisory Bodies

LT Cleary presented Agenda Item D.1c, Supplemental EC Report.

D.1.d Public Comment

None.

D.1.e Council Action: Clarify Recommendations for Groundfish Retention Regulations in the Columbia River Subarea Recreational Halibut Fishery

Dr. Burke moved (Motion 6) to adopt the retention regulations in the Columbia River subarea recreational halibut fishery as shown in Agenda Item D.1.e, Supplemental Motion. Mr. Anderson seconded the motion

Dr. Burke noted the difference between a groundfish retention and a groundfish landing restriction would not comply with the EC request, and result in different regulations north and south of Cape Falcon, but the compromise was reached to address Washington's needs.

Mr. Anderson recognized the action was not an ideal enforcement situation, but was an interim solution, which WDFW and ODFW will discuss again during the next catch sharing plan revision cycle in the fall. The use of a groundfish landing restriction would allow vessels fishing out of Westport but south of Leadbetter Point to retain true cod and return to Westport, while not normally intermixing with the fleet fishing out of Columbia River ports.

Ms. Cooney asked if the language for "when halibut are onboard" was included. Dr. Burke replied the language was directly out the catch sharing plan, but including the language may add clarity.

Motion 6 passed.

D.2 Report on International Pacific Halibut Commission (IPHC) Annual Meeting (03/08/05; 5:21 pm)

D.2.a Agenda Item Overview

None.

D.2.b Summary of Meeting

Mr. Anderson reported the IPHC adopted the recommended changes to the Area 2A Catch Sharing Plan. The reduction of Area 2A quota from 2004 levels was slight, and still represented near record high levels. There were three reasons for the reduction: 1) the Area 2A/2B split was reduced from 12% to 11% based on the IPHC setline survey; 2) Area 2A halibut bycatch estimates in the groundfish fishery was slightly higher; and 3) the allowable halibut harvest rate was reduced from 25% to 22.5%. The season starting date was set at February 27, which will affect only tribal fisheries in Area 2A. The setline survey in 2005 for Area 2A is in jeopardy due to funding constraints. The IPHC also confirmed that halibut fillets are not allowed aboard a commercial vessel fishing for halibut.

D.2.c Reports and Comments of Advisory Bodies

None.

D.2.d Public Comment

None.

D.2.e Council Discussion on IPHC Annual Meeting

None.

D.3. Public Review Options for the 2005 Incidental Catch Regulations in the Salmon Troll and Fixed Gear Sablefish Fisheries

D.3.a Agenda Item Overview

Mr. Tracy presented the agenda overview.

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

Mr. Anderson recommend Option 1a be status quo and Option 1b be the same except the landing limit would be 40 instead of 35.

Dr. Burke stated Oregon supports the status quo option.

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

Mr. Anderson recommend Option 1 be status quo and Option 2 be the same except the landing limit would be 150 lbs (dressed weight) halibut per 1,000 lbs (dressed weight) sablefish instead of 100 lbs (dressed weight) halibut per 1,000 lbs (dressed weight) sablefish.

D.3.d Tribal Comments

Mr. Harp presented Agenda Item D.3.d, Supplemental Tribal Comments.

D.3.e. Reports and Comments of Advisory Bodies

Mr. Jim Olson, SAS, recommended status quo for the salmon troll fishery regulation.

D.3.f Public Comment

Mr. Steve Wilson, salmon troller, Federal Way, Washington

Mr. Joel Kawahara, salmon troller, Seattle, Washington

D.3.g Council Action: Adopt Public Review Options for 2005

Mr. Anderson moved (Motion7) to adopt for public review options for the 2005 incidental halibut catch in both the salmon troll fishery and the fixed gear sablefish fishery as follows.

Salmon Troll Fishery

Option 1a Beginning May 1, 2005, allow license holders one halibut per three chinook landed, allow one additional halibut to be landed without meeting the 1:3 ratio, and limit each landing to 35 halibut.

Option 1b Beginning May 1, 2005, allow license holders one halibut per three chinook landed, allow one additional halibut to be landed without meeting the 1:3 ratio, and limit each landing to 40 halibut.

Option 2 Designate the "C-shaped" yelloweye rockfish conservation area in the North Coast subarea (Washington Marine Area 3) as an area to be voluntarily avoided for salmon troll fishing to protect yelloweye rockfish.

NOTE: Option 2 may be combined with either Option 1a or 1b.

Fixed Gear Sablefish Fishery

Option 1 Beginning May 1, 2005, allow license holders 100 pounds (dressed weight) of halibut per 1,000 pounds (dressed weight) of sablefish, and allow two additional halibut in excess of the 100 pounds per 1,000 pounds ratio per landing.

Option 2 Beginning May 1, 2005, allow license holders 150 pounds (dressed weight) of halibut per 1,000 pounds (dressed weight) of sablefish, and allow two additional halibut in excess of the 150 pounds per 1,000 pounds ratio per landing.

Mr. Alverson seconded the motion; Motion 7 passed.

E. Habitat

E.1 Current Habitat Issues (03/08/05; 5:37 pm)

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

Mr. Stuart Ellis provided the report of the Habitat Committee.

E.1.b Reports and Comments of Advisory Bodies

Mr. Jim Tuggle provided the SAS report.

E.1.c Public Comment

None.

E.1.d Council Action: Consider HC Recommendations

The Habitat Committee report was accepted by the Council.

F. Groundfish Management

F.1 Inseason Management Response Policy (03/09/05; 9:17 am)

F.1.a Agenda Item Overview

Mr. John DeVore provided the agenda overview.

F.1.b Ad Hoc Groundfish Information Policy Committee (GIPC) Report

Mr. DeVore highlighted the recommendation of the GIPC from their January 25-26 meeting (Agenda Item F.1.b, Attachment 1):

Management measures should not be liberalized until the June Council meeting at the earliest unless data or model errors warrant earlier consideration.

F.1.c Reports and Comments of Advisory Bodies

Mr. DeVore reported the GMT comments are the same as last November 2004: The GMT recommends the Council adopt a policy such that, in general, inseason adjustments which would relax regulations not be considered prior to the June Council meeting. The GMT believes inseason adjustments should remain on every Council agenda, so the Council has the opportunity to adopt more restrictive measures, if necessary. As such, the Council would have the opportunity to consider liberalizing regulations in March and April, if there are exceptions to this policy which would warrant consideration (for example, in response to a data correction).

Mr. Rod Moore provided the comments of the GAP (Agenda Item F.1.c, Supplemental GAP Report). The primary GAP recommendation is to allow inseason adjustments in April.

Mr. Brown asked about the timing of 2004 inseason adjustments that led to over-attainment of darkblotched rockfish. Mr. Moore explained there was a liberalization of minor slope rockfish trip limits in April, an inadequate review of the fishery in June, and discovery of the problem at the September meeting where trip limits were significantly decreased and the RCA extended. Mr. Brown asked if the timing of a management adjustment was not as important as adequate monitoring of the fishery. Mr. Moore said yes, but thought adjustments should not be considered in March.

Mr. Alverson noted the GMT and GIPC recommended the first inseason adjustment should occur in June. Did the GAP consider different timing for adjusting deep-water vs. shallow-water fisheries? Mr. Moore said the GMT has tried to develop responsible deep-water and shallow-water seasonal trip limits. There may be a future need to decrease summer shallow species' trip limits in April. The GMT believes a June adjustment is better because there is more data available. Dr. Burke noted the GMT could still review fishery data in April, but not act until June. Mr. Moore said there may be a need for an initial adjustment in April to slow down the fishery to prevent over-attainment. Mr. Brown said waiting until June could be too late to slow down the fishery. Mr. Anderson stated the GIPC recommendation is to not liberalize management until June. The policy recommendation does not prevent decreasing management measures in April. Mr. Moore said the GAP may have misunderstood. However, the GAP may want to liberalize some measures in April.

F.1.d Public Comment

Mr. Kenyon Hensel, Hensel's, Crescent City, California

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

Mr. Jim Bassler, nearshore fisherman, California

F.1.e Council Action: Adopt Inseason Management Response Alternatives/Draft Policy for Public Review

Mr. Brown said Mr. Anderson's clarification was helpful. This would be a fairly flexible policy, but still would not fit all situations. He wants to allow for exceptions in this policy.

Ms. Vojkovich asked when June inseason adjustments could be implemented. Dr. Freese deferred to Yvonne de Reynier. Ms. de Reynier said liberalizing a new trip limit typically occurs by the second month of the following management period. However, a trip limit cannot be effectively decreased by the second month of the following period since the fleet tends to attain their trip limits in the first month upon hearing of an intended decrease. Dr. McIsaac asked Ms. de Reynier, given the June Council meeting is the 13th-17th, could inseason changes be in effect on July 1? Ms. de Reynier said, depending on the complexity of an inseason adjustment, they might be able to implement it by July 1, although this is a challenging schedule.

Ms. Vojkovich asked about new data and models, specifically the California Recreational Fishery Survey (CRFS), and when California recreational management measures might be liberalized? Since this is a new program, we may want to include CRFS as an exception to the policy for this year and next.

Mr. Ticehurst thought this policy could compel some to start the season with a more liberal suite of management measures.

Dr. Freese said we need to better understand the new GMT inseason tracking tools. Mr. DeVore said the GMT will be providing their report on inseason tracking tools under agenda item F.7 at this meeting.

Mr. Anderson asked how much information we need to decide a liberal management action. In April, we only have catch monitoring information for January and February. Many believe this is not enough information to depart from preseason expectations. Only downward adjustments should be considered in April. By June, there is time to effectively liberalize management measures. Mr. Anderson thought Ms. Vojkovich issue of new catch projection methodologies is a different question. He recommended against confusing these two issues when developing this policy.

Mr. Ticehurst asked if this policy would preclude consideration for liberalizing California recreational management measures earlier than June. Mr. Anderson said not necessarily. He said we should have a separate discussion on whether or not we are going to use CRFS data before June to consider more liberal measures for this fishery.

Ms. Vojkovich thought the recommended policy deals with a threshold of data before considering an adjustment. This thinking makes the policy clearer.

Mr. Brown noted the data has gotten better in groundfish management, but it is more difficult to use the data to the extent we do. There is no stability in the fishery or the management regime. We need to redesign the fishery and go to ITQs to rectify this problem.

Ms. Vojkovich asked if adjustments to management measures for the following year can be considered in November. Mr. Anderson asked if this is allowed in the FMP. Mr. DeVore said the FMP does not preclude an inseason adjustment in November for the following season.

Mr. Brown moved and Mr. Warrens seconded a motion (Motion 8) to adopt the recommendation of the GIPC, with the following change (in italics): "Management measures should not be liberalized until the

June Council meeting at the earliest unless data *errors* or model errors warrant earlier consideration.”

Dr. Freese asked if the draft policy recommended in the motion excludes data updates. Mr. Brown’s assumption and intention is that it would not respond to updated projections, only data errors. Ms. Vojkovich asked if the intent of the policy is to address the fact we don’t have enough data in the system to make a decision, where does the concept of data error or model error come in? Mr. Brown said the problem in this is, for example, if you don’t have correctly specified sablefish tier limits in April, you will have a hard time correcting them in June since the primary sablefish season is then underway.

Motion 8 passed.

F.2 NMFS Report (03/09/05; 10:14 AM)

F.2.a Regulatory Activities

Dr. Freese noted the following notices were published in the *Federal Register* since the last Council meeting: closure of the 2004 catcher-processor fishery for Pacific whiting; proposed rule to implement an industry fee system for repaying a Federal loan partially financing a fishing capacity reduction program in the Pacific Coast groundfish fishery; notice of intent to consider expansion of VMS; final rule on biennial specifications and management measures for the Pacific Coast groundfish fishery; proposed rule to approve and implement changes to the Pacific Halibut Catch Sharing Plan; final rule on annual management measures for Pacific halibut fisheries; and a Notice of Availability for the Essential Fish Habitat EIS. He explained that the Northwest Region was actively working on expansion of VMS and implementation of the shoreside whiting EFP. There was a February 22 planning meeting in Portland for the shoreside whiting EFP involving camera monitoring and sampling issues. Dr. Elizabeth Clarke will speak to the camera monitoring project. The Northwest Fishery Science Center (NWFSC) did find funds to place cameras onboard shoreside whiting vessels this year and to analyze that data. NMFS is still discussing how to sample this year’s shoreside whiting fishery, who pays for the sampling, and how these data will be presented.

Dr. Burke requested a summary of the proposed trawl buyback rule. Dr. Freese said one of the remaining issues to resolve is how to collect fees for the loan repayment. Processors have commented, which may engender another proposed rule. Given this delay, we may not start collecting fees until late 2005. Dr. Burke asked if NMFS would be pursuing retroactive fees and Dr. Freese said no.

Mr. Alverson asked about IFQ fees for the sablefish tier program and resolution of remaining Amendment 14 issues. Dr. Freese said he did not consider the sablefish tier program an IFQ. Mr. Alverson said there is a 3% fee for the permit. Dr. Freese said NMFS is developing a policy on permit fees at the national level. He added that NMFS still needs to consult with the states to get fish permit numbers recorded on fish receiving tickets to implement the outstanding portions of Amendment 14. Ms. Cooney explained that the permit stacking provisions of Amendment 14 are a de facto IFQ.

Mr. Anderson asked about the proposal for collecting trawl buyback fees and fees for state permits? Are there any state obligations for collecting these fees? Dr. Freese said there is no state obligation to collect these fees. They will work with processors to get this done. Mr. Anderson asked if processors were expected to collect fees on Dungeness crab permits and Dr. Freese said yes. He will provide a better overview of this issue in April.

Ms. Vojkovich asked for a projection of when the Amendment 10 provisions would be implemented. Dr. Freese said the shoreside whiting fishery will likely be operating under an EFP in 2005 and 2006. NMFS needs to analyze the experimental camera system. They still haven’t found the funds for cameras in 2006. They may require fishermen to fund this. Dr. Burke asked if California fishermen will have

cameras in 2006 and Dr. Freese said yes. Mr. Alverson asked about the costs of camera systems and noted the Archipelago systems are expensive. Dr. Freese said he doesn't know the costs, but Dr. Clarke might. He added that he would like to convene a meeting with industry on the shoreside whiting EFP at the April Council meeting. Dr. Burke stated the states have a problem with the evolving nature of these regulations. ODFW is particularly stressed with continuing the EFP. Who will do this work when it is a federally-managed system? She noted that states can't afford to fund the program. Dr. Freese agreed with Dr. Burke and said money is hard to find. We need a careful analysis of costs and who will fund the system. Mr. Brown added that we need to understand how much monitoring is adequate and noted that exact (100%) monitoring is expensive.

Mr. Dayna Matthews spoke about the VMS meetings held in January and February. They were not well attended with the exception of Astoria, Port Orford, and the California Small Boat Owners Swap Meet. Comments received from the public came from representatives for three gear sectors: HMS, salmon trollers, and Dungeness crab. These sectors have a history of landing groundfish. While landing groundfish is illegal in the Washington and Oregon crab fisheries, it is allowed in California. How to expand VMS to the salmon troll fleet will be an issue at the April Council meeting. The VMS Committee recommended VMS for the salmon troll fleet in their alternatives. He noted there is confusion with the drifting issue as it pertains to VMS alternatives. Currently, there is a prohibition for drifting in the RCA for the limited entry trawl and limited entry fixed gear sectors that are restricted by RCAs. This prohibition does not apply to the salmon troll, HMS, and other fleets not under an RCA restriction. Therefore, the drifting prohibition is not part of the proposal if they are required to use VMS. The issue of a preferred alternative from the Council also came up during the VMS hearings. It was determined there was not a specific preferred alternative that came from the September 2004 meeting. The most focus at the public meetings was on the three alternatives recommended by the advisory bodies.

Mr. Cedergreen asked how the hearings were noticed. Mr. Matthews said they relied upon the states.

Dr. Burke first thanked NMFS for setting up the meetings and encouraged more public outreach of this sort. She stated, although there was not a preferred alternative decided by the Council, there was a specific set of options set out by the Council not fully captured in the Council's Newsletter or in the Council's meeting minutes.

Mr. Brown believed one problem in the VMS expansion process is that open access fisheries are small and those fishermen are not as engaged in the Council process. Mr. Matthews agreed.

Ms. Vojkovich echoed Dr. Burke's compliments to NMFS regarding their efforts to engage the fishing public on VMS. She asked for feedback on the possibility of California Dungeness crab fishermen being required to carry VMS. Mr. Matthews said it may come down to a choice for these fishermen to either carry VMS or not land federally-managed groundfish. Mr. Alverson asked what groundfish species they typically land and Mr. Matthews said lingcod and some rockfish. Mr. Brown said it used to be legal for trawlers to catch up to 500 lbs. of crab. Is that part of the problem? Mr. Matthews said no. Mr. Brown thought it was still legal for limited entry trawlers to land some crab in California and that it tends to occur around the San Francisco area.

F.2.b Science Center Activities

Dr. Clarke discussed observer program issues and reiterated observers are used to count bycatch and discard and are not part of the VMS issue. She has asked her observers to watch for and record previously discarded fish (i.e., fish that were discarded and caught in trawls a second time). The limited entry trawl, fixed gear sablefish, and non-sablefish observer data reports are now posted on the NWFSC website.

The report on the electronic monitoring camera project will be discussed in depth at the April meeting. The project was fairly successful with most of the discarding observed on the last tow and by a minority of vessels in the fleet. They have requested funds for one more year for this project from Headquarters, but she did not expect these funds would be available. She expects costs for camera monitoring will come down with increased competition. She recommended any analysis of costs focus on the Canadian fleet where cameras are required.

Dr. Clarke said reviewers for most of the scheduled Stock Assessment Review (STAR) Panels have been selected. She extended thanks to the Southeast and Northeast Fishery Science Centers for providing independent reviewers. The first STAR panel to meet was hake in February and the next one is in April to review three flatfish stock assessments. The report from the data workshop is in the briefing book.

Personnel at the NWFSC have also been busy planning this year's surveys. The annual bottom trawl survey will commence soon. The biggest concern is rising fuel costs, which will dramatically impact the fixed survey budget.

Dr. Burke asked Dr. Clarke about the camera monitoring project. She would like to discuss this with the NWFSC and the Northwest Region. Is the camera project still a state project? She said we need to think creatively about doing this project next year given the bleak state and federal funding outlook. Dr. Clarke said they have most of the answers they need now, but there are a few outstanding questions that need to be researched next year. The research component of this project is not holding up Amendment 10 rule-making. Dr. Burke hopes the goal could be met to move this out of an EFP process. Dr. Freese apologized for not factoring this into the planning process; we should be talking with the states on this project. Dr. Clarke said typing of cameras may take time, but this process can commence immediately.

Mr. Brown asked if the Rogers paper on estimated groundfish species catch composition by foreign vessels on the west coast has been reviewed and published. Dr. Clarke said the document has been thoroughly reviewed and has been published as a NMFS technical memorandum.

Dr. John Field provided a brief overview of Humboldt squid presence off the west coast. There are large numbers of Humboldt squid now off the central and northern California coast. This has occurred in the past, most recently in the 1930s. He has been collecting squid stomach samples from charter fishermen and finding some rockfish (shortbelly and smaller slope rockfish), hake, ratfish, and other Humboldt squid. They usually eat other forage. They are capable of eating larger fish (i.e., 4-5 year-old hake). He roughly estimates a 7-10 million mt biomass of Humboldt squid off the coast. They typically live one to two years and they grow fast with a high consumption diet. Mr. Ticehurst asked if their distribution is temperature-driven. Dr. Field said they prefer warmer waters and appear to invade northern waters during mild El Niño events.

F.2.c Reports and Comments of Advisory Bodies

None.

F.2.d Public Comment

Ms. Kathy Fosmark, Alliance of Communities for Sustainable Fisheries, Pebble Beach, California
Mr. David Jincks, Midwater Trawlers Cooperative, Newport, Oregon

F.2.e Council Discussion on NMFS Report

Dr. Burke referred to the letter from Mr. Scott McMullen to NMFS in the briefing book. The letter recommends the use of the port liaison project to obtain better EFH data. Dr. Burke said this is a great example of cooperative research and recommended CDFG review these data.

F.3 Terms of Reference for Groundfish Rebuilding Plan Review (03/09/05; 1:04pm)

F.3.a Agenda Item Overview

Mr. DeVore provided the overview for this agenda item. First order of business is to discuss the terms of reference as the analytical tool.

F.3.b Scientific and Statistical Committee Report

Dr. Kevin Hill provided Agenda Item F.3.b, Supplemental SSC Report.

Mr. Brown asked Dr. Hill to elaborate on the SSC evaluation of the $B_{25\%}$ overfished criterion. Dr. Hill said the SSC discussed the interpretation of rebuilding simulation results. Using mode, median, or mean statistics leads to different conclusions. Mr. Brown asked if the SSC discussed whether $B_{25\%}$ is an appropriate criterion and Dr. Hill said no.

Mr. Brown asked if the Management Strategy Evaluation (MSE) simulation is overly simplified and Dr. Hill said yes. Mr. Brown asked how this could be inconsistent with modified National Standard 1 guidelines. Dr. Hill said the SSC needs to discuss whether there is a wide enough range of alternatives for rebuilding revision rules and consistency with modified National Standard 1 guidelines. Ms. Vojkovich asked if new National Standard 1 guidelines would be available prior to June and Dr. Hill said no. Ms. Vojkovich asked when the SSC needs guidance on rebuilding revision rules. Dr. Hill anticipated this would be an iterative process between the Council, SSC, and other advisors starting in April.

Ms. Vojkovich asked why waiting to June to adopt a rebuilding analysis Terms of Reference would not hamper the stock assessment process. Dr. Hill said the SSC will not review rebuilding analyses prior to June. However, he acknowledged additional guidance could be given to rebuilding analysis authors earlier. Dr. Freese asked if the Council could finalize a rebuilding analysis Terms of Reference with the MSE evaluation tool by June. Dr. Hill said the MSE tool won't be finalized by June since it is being developed by scientists who are busy working on assessments and STAR Panels. Dr. McIsaac asked if the delay was due to the effort to revise National Standard 1 guidelines and Dr. Hill said no. Other competing work is the cause for the delay. Dr. McIsaac asked if the analytical tool for evaluating rebuilding progress is separate from the policy elements (i.e., revision rules). Dr. Hill said he doesn't anticipate a problem with delaying the Terms of Reference since only minor changes are expected. He thought the SSC could have a supplemental draft Terms of Reference before the Council in April.

Dr. McIsaac asked if the $B_{25\%}$ criterion discussion could lead to different overfished thresholds and Dr. Hill said no. The issue is how the rebuilding simulation results are interpreted. Dr. McIsaac stated that the November Council meeting is when a range of OYs is decided. It might be better to resolve this issue by September. Wouldn't waiting until after the November Council meeting to resolve this issue be problematic? Dr. Hill said the timing of STAR Panel meetings this year is problematic. Some of the final assessments and rebuilding analyses won't be available until late this year. This is a workload issue.

F.3.c Reports and Comments of Advisory Bodies

Ms. Susan Ashcraft provided Agenda Item F.3.c, Supplemental GMT Report.

Mr. Moore provided Agenda Item F.3.c, Supplemental GAP Report.

Mr. Brown asked if the GAP recommendation is to not adopt a single P_{MAX} (rebuilding probability within the maximum allowable time period) for all species and Mr. Moore said yes. Dr. McIsaac asked if the GAP had reviewed the SSC's statement and Mr. Moore said no.

F.3.d Public Comment

None.

F.3.e Council Action: Adopt Terms of Reference for Groundfish Rebuilding Plan for Public Review

Dr. Freese asked to hear from the NWFSC if they have any thoughts on the issues raised by SSC, GAP, and GMT. Dr. Clarke said specifying rebuilding revision rules is a policy decision that can be delayed. However, the Terms of Reference and the evaluation tool are needed by the stock assessment authors by June at the latest. She suggested a revised Terms of Reference be provided in a supplemental packet for the April Council meeting.

Dr. McIsaac asked how that proposed schedule would affect assessments scheduled for review at the April and May STAR panels. Dr. Clarke said the SSC reviews rebuilding analyses, not the STAR panels.

Mr. Brown asked how much review Dr. Punt's rebuilding simulation model has received? Dr. Hill said the SSC has reviewed and endorsed the rebuilding simulation program and a number of the SSC members have used this model. Mr. Brown thought it might be appropriate to have a STAR panel review the rebuilding simulation model. Dr. Clarke said she and some of her NWFSC colleagues initially discussed the concept of a STAR panel reviewing both stock assessments and rebuilding analyses. However, this idea was dismissed since a rebuilding analysis is developed from a final assessment base model. She felt this would be an excellent exercise for an off year planning activity. Mr. DeVore noted that documentation of Dr. Punt's rebuilding simulation program was published in the NMFS Fishery Bulletin and incorporated in the March briefing book as Agenda Item F.3.a, Attachment 3. This publication could be considered a vehicle for a national peer review of this model.

Mr. Anderson asked how delaying the Rebuilding Analysis Terms of Reference would impact the GMT and SSC workload. Ms. Ashcraft said the GMT was planning to review new stock assessments and rebuilding analyses at their May meeting. Mr. Anderson asked if the GMT meeting could be rescheduled from May to July. Ms. Ashcraft said they do not have a July meeting scheduled, but this could be done.

Mr. DeVore said the appropriate action is to decide when the modified Terms of Reference should be brought to the Council. The SSC recommended June and Dr. Clarke recommended April (supplemental to the April briefing book). Dr. Hill said the SSC did talk about the April supplemental deadline. He would have to consult with the current groundfish subcommittee chair and others to see if they could meet the deadline. Dr. McIsaac noted supplemental submission is not the best way to present material to the SSC and the Council. Dr. Hill agreed with Dr. McIsaac and stated the SSC generally does not like receiving and reviewing supplemental materials.

Ms. Vojkovich said she is supportive of what Dr. Hill said about the GMT-requested items, as well as a joint session on Monday of the April Council meeting. However, she believes the joint session should be devoted to a Terms of Reference discussion rather than a discussion about rebuilding revision rules. Rebuilding revision rules can be discussed later in the year. Mr. Anderson agreed with Ms. Vojkovich's priorities. Although it is not ideal, we need to approve a new rebuilding analysis Terms of Reference at the April meeting.

Ms. Vojkovich moved and Mr. Anderson seconded a motion (Motion 9) to provide the GMT recommendations to the SSC for incorporation in the Terms of Reference.

Motion 9 passed.

F.4 Mid-term Optimum Yield (OY) Adjustments Policy (03/09/05; 2:11 pm)

F.4.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

F.4.b GIPC Report

Mr. DeVore provided highlights of the Groundfish Information Policy Committee (GIPC) Report (Agenda Item F.1.b, Attachment 1). He noted there were some comments and edits to this report made by Ms. Eileen Cooney, which were inadvertently not incorporated into the report.

F.4.c Reports and Comments of Advisory Bodies

Mr. DeVore reported the GMT endorsed the GIPC recommendations as noted in the GIPC report, but did not have a written statement.

Mr. Moore provided Agenda Item F.4.c, Supplemental GAP Report.

Dr. McIsaac asked about the GAP statement regarding jeopardized rebuilding targets that would require a mid-term OY change. Mr. Moore said the GAP was essentially supporting the GIPC recommendation.

F.4.d Public Comment

Mr. Kenyon Hensel, Hensel's, Crescent City, California

F.4.e Council Action: Adopt a Mid-Term OY Adjustment Policy for Public Review

Ms. Vojkovich asked Ms. Cooney how an OY adjustment can be legally made. Ms. Cooney said such an adjustment would need to be analyzed ahead of time during the biennial specifications and management measures decision process. She noted it is hard to consider all permutations beforehand.

Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 10) to adopt, for public review, a mid-term optimum yield policy as described in Agenda Item F.4.a, Attachment 1 (FMP excerpt) with the following modification: change the sentence, "If the Council determines that any of the ABCs or OYs set in the prior management process ..." to read, "If the Council determines that any of the ABCs or OYs set for the current biennial management cycle ...".

Ms. Cooney said the modified language in the motion means the same thing as the existing language in the approved FMP. Mr. Anderson asked if the Council desires to adopt the GIPC recommendations, then a motion is not required? Ms. Cooney said yes, if you want to change any of the amendatory language, she recommends this be pursued in the next amendment (Amendment 18).

Dr. McIsaac recommended the Council needs to determine what change is significant and what would trigger an OY change.

Mr. Anderson considered Ms. Cooney's comments and withdrew his motion (Motion 10). The existing FMP language gives us the flexibility to determine whether or not new rebuilding specifications would suggest a mid-cycle OY correction. He felt we don't need to take any action at all, since the FMP gives us the flexibility to react inseason should that need arise.

Mr. DeVore pointed out the significance of the next steps and triggers are part of the revision rules policy discussion under Agenda Item F.3. Developing policies for revising rebuilding plans may be the best way for specifying triggers for mid-term OY changes for overfished species.

F.5 FMP Amendment 18–Bycatch (03/09/05; 3:04 pm)

F.5.a Agenda Item Overview

Dr. Kit Dahl provided the agenda item overview. Referring to Attachment 1, he advised the Council to focus on sections 6.4 and 6.5, particularly section 6.5.3.2, which describes the sector and individual vessel total catch limit program. The definition of total catch limits is given beginning on the bottom of page 41 and continuing on to page 42.

Attachment 2 extracts Chapters 6 and 11 of the current FMP for reference purposes.

Attachment 3 is a straw man work plan put together by Council staff. The first two sections are an enumeration of what has been going in to-date. He advised the Council to focus on section 3.1.1.

F.5.b NMFS Report Yvonne de Reynier

This agenda item was cancelled.

F.5.c Reports and Comments of Advisory Bodies

Ms. Ashcraft provided Agenda Item F.5.c, Supplemental GMT Report.

Mr. Moore provided Agenda Item F.5.c, Supplemental GAP Report.

F.5.d Public Comment

Mr. Chris Dorsett, The Ocean Conservancy, San Francisco, California

Ms. Karen Garrison, NRDC, San Francisco, California

F.5.e Council Guidance on Preliminary Draft Amendment Language and Draft Work Plan

Mr. Harp provided comments as shown in Agenda Item F.5.e, Supplemental Tribal Comments. It was noted in his statement that treaty fisheries would not be an appropriate sector for total catch limits on overfished or other bycatch species.

Mr. Alverson said he was confused on this work product, is this to establish authority to do sector splits, or to actually define specific sector splits?

Dr. Dahl said that the amendatory language provides the broad guidance to the Council as to what types of management tools are available, while specific management measures would be implemented through federal regulations. Biennial harvest specifications are one rulemaking process that could be used to implement such regulations.

Ms. Cooney noted that the FMP amendment would also describe ongoing Council activities related to bycatch monitoring and mitigation.

Dr. Burke asked, if the FMP language only references overfished species, does that prevent the Council from using other available tools to mitigate bycatch of non-overfished species? Dr. Dahl replied that if the amendatory language specifically refers to overfished species it would be more difficult to use these tools for non-overfished species.

Mr. Brown, on the last point, emphasized that Chris Dorsett and Karen Garrison (public comment) were correct in stating that bycatch is not just an overfished species issue. Also it seems that the language proposed by the GMT would fit in very well when the Council implements things like ITQ programs.

Therefore, it seems the Council needs to have the ability to use these measures for all species, not just overfished species, or the Council will be lacking in the tools they need. Donald Hansen agreed.

Mr. Anderson, reviewing the Allocation Committee minutes, the GAP and GMT reports, and public testimony, made the following recommendations: the FMP amendment should provide the authority to use total catch limits for all species; the definition for the term total catch limit should be included in the list of definitions in Chapter 2; the 10 sectors identified by the Allocation Committee and listed in the amendatory language should be used; and as to the issue of whether vessel catch limits should be tradable, he has no recommendation.

As to the workplan, he concurred with the GMT recommendation to add darkblotched rockfish to the list under the limited entry trawl subsectors; establish separate catch limits for the trawl sector subsectors for canary and widow rockfish; include the non-sablefish endorsed fleet either separately or in combination with the sablefish endorsed fleet for canary and yelloweye rockfish catch limits; and provide more flexibility in defining the recreational fishery subsectors. He also recommended that in terms of the work plan overfished species should be prioritized first, recognizing the Council would want to address other species at some point.

Ms. Vojkovich referenced the GMT report as to the number of sectors and asked Mr. Anderson about the flexibility the Council would have in defining other subsectors, as he suggested would be done for the recreational sector. Mr. Anderson responded by stating if the Council did an initial allocation of bycatch for overfished species according to the sectors described in the Allocation Committee report, there would be the option for the Council to break them up into different sectors at a later time. But it needn't be done at this time. However, as recommended by the GMT, the non-sablefish-endorsed limited entry fixed gear subsector should either be identified or included with the sablefish-endorsed limited entry subsector.

Dr. Dahl noted that the draft amendatory language provides authority for the Council to further subdivide the 10 sectors identified there. Mr. Anderson said that the flexibility provided by the draft language pointed out by Dr. Dahl provides what is necessary to address what he was thinking about.

Mr. Brown referenced the description of the sectors on pages 37-38 of Agenda Item F.5.a., Attachment 1 (draft amendatory language) in relation to the GAP recommendations about the at-sea whiting, mothership, and other trawl sectors. Further consideration is needed of the definitions of sectors and how this all works among trawl portions of those sectors. Catcher boats delivering to motherships and shore-based whiting vessels also participate in the general limited entry trawl sector. Furthermore, any limited entry trawl vessel outside of the whiting sector can land whiting as part of the overall trawl fishery. Could a vessel participating under a cap for a whiting fishery sector potentially take a portion of that cap into the general limited entry trawl fishery for use there? This needs further discussion. In reference to the possibility that individual vessel total catch limits be tradable, he recommended that the amendatory language be carefully crafted to allow either circumstance at both the vessel and sector level.

Mr. Alverson asked Mr. Anderson if his guidance was that the Council has the authority to do sector splits, which would be specified during the biennial process. Mr. Anderson said yes.

Dr. Burke recapitulated Mr. Anderson's recommendations as follows: use the GMT recommendations in Agenda Item F.5.c., Supplemental GMT Report; the Allocation Committee recommendations in their minutes (Agenda Item F.5.c, Attachment 1, page 15); items 1 and 2, but not 3 on page 1 of Agenda Item F.5.c, Supplemental GAP Report, taking into consideration the comments just made by Mr. Brown about transferability (tradability); and the first recommendation on page 2 of the GAP Report, which references the workplan, noting that the second recommendation is more of a comment rather than guidance.

In reference to the issue of tradability, Dr. Dahl noted that the description of individual vessel caps on page 36 of Agenda Item F.5.a, Attachment 1 (draft amendatory language) (read by Dr. Dahl) could be modified, based on Mr. Brown's comments, to make it more ambiguous as to the issue of tradability. Mr. Brown then said he would prefer inserting a definition of total catch limits in the definitions section of the FMP that would state that they may be sector or individual and may be tradable or non-tradable.

Dr. Burke reviewed the recommendations as she stated them previously, which was confirmed as the Council's consensus. She then asked, in reference to the last line in the GMT Report about adding black rockfish and cabezon as specific recreational cap species, if it makes sense to leave the authority to deal with nonoverfished species for later and not try to name these species now?

Mr. Alverson said, in reference to developing the Council's authority to use catch limits, he thought the GMT cautioned that there is an issue of how to deal with catch reporting in real time. He wondered if that would be discussed in the future.

Mr. Anderson referenced the work plan (Agenda Item F.5.a, Attachment 3) in terms of recommendations: the first bullet at the top of page 5, we talked about adding darkblotched rockfish to that; under the second bullet we talked about adding all limited entry fixed gear to that; and under the third bullet we have not yet talked about adding lingcod to the proposed canary and yelloweye rockfish limits. Turning to the issue raised by Dr. Burke in reference to black rockfish and cabezon, he said it seems that on targeted species we have made ad hoc allocation decisions through the use of the "scorecard." The Council should keep separate the allocation of targeted species from the establishment of catch limits for non-target (bycatch) species.

Ms. Vojkovich asked, in reference to Mr. Anderson's last comment: whether cowcod fit, as an overfished species and should they be included in the work plan as part of the recreational subsector limits? Mr. Anderson said it can be added to the work plan. Ms. Vojkovich said she might add it at a different time after the work plan is developed a little bit more fully.

Chairman Hansen asked Dr. Dahl if he had enough guidance and he said yes.

F.6 Pacific Whiting Management (03/10/05; 9 am)

F.6.a. Agenda Item Overview

Mr. DeVore provided the Agenda Item overview. The Pacific whiting assessment model has not changed from last year's assessment. The new assessment (Agenda Item F.6.a, Attachment 1) is an update from last year's assessment.

F.6.b Perspectives of the Canadian Government

Mr. DeVore read the perspectives of the Canadian government (Agenda Item F.6.b, Supplemental Canadian Government Report) into the record.

F.6.c Reports and Comments of Advisory Bodies

Dr. Jim Hastie provided Agenda Item F.6.c, Supplemental GMT Report. Dr. Kevin Hill provided Agenda Item F.6.c, Supplemental SSC Report.

Mr. Brown asked for clarification of the SSC statement regarding the 50:50 chance in the assessment decision tables. Dr. Hill explained the results in the decision tables are median estimates.

Mr. Alverson asked about SSC concerns with age 3+ biomass trends. Dr. Hill said the SSC was

concerned with the potential danger of future decline until there is evidence of strong recruitment.

Dr. McIsaac asked if it was the SSC conclusion that model scenarios with $q < 0.6$ are unlikely and Dr. Hill said yes. Mr. Anderson asked how long have whiting assessments had a $q = 1.0$ assumption. Dr. Hill said many years. Mr. Anderson asked if a $q = 0.8$ model produces a higher harvest rate than a $q = 1.0$ model and Dr. Hill said yes.

Mr. Rod Moore provided Agenda Item F.6.c, Supplemental GAP Report.

Dr. McIsaac noted the GMT said there would be an incentive to race for fish if a higher OY is specified and caps are established. Did the GAP discuss this? Mr. Moore said that markets and fleet logistics will not contribute to a race for fish. Participants know the consequences of exceeding a cap and therefore won't race for fish.

Dr. Burke asked how many processing plants have 100% sampling coverage of shoreside whiting landings. Mr. Moore said he would expound on this during the public comment period.

Dr. McIsaac asked if there was an incentive to minimize bycatch. Mr. Moore said yes. A low whiting OY will contribute to a race for whiting. A higher OY will ease the pressure to race for whiting. There is a potential to race for fish with the thought that a bycatch cap may be attained early regardless of the whiting OY. Mr. Brown asked if there was any incentive to the fleet with a lower bycatch-based whiting OY and Mr. Moore said no.

F.6.d Public Comment

Mr. Mike Hyde, American Seafoods, Seattle, Washington
Mr. Dan Waldeck, Pacific Whiting Conservation Cooperative, Portland, Oregon
Mr. Barry Cohen, Olde Port Fisheries/Del Mar, Cambria, California
Mr. Rod Moore, West Coast Seafood Processors Association, Portland, Oregon
Mr. David Jincks, MidWater Trawlers Cooperative, Newport, Oregon
Mr. Dave Wright, Pacific Seafood, Newport, Oregon
Mr. Joe Bursch, Supreme Alaska Seafoods, Seattle, Washington

F.6.e Council Action: Adopt Stock Assessment, Final 2005 ABC and OY, and Management Measures

Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 11) to adopt the stock assessment for Pacific whiting as shown in Agenda Item F.6.a., Attachment 1.

Motion 11 passed.

Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 12) to set the coastwide ABC and OY consistent with the $q = 1.0$ model and an $F_{40\%}$ harvest rate; coastwide ABC = 364,842 mt (U.S. ABC = 269,545 mt) and U.S. OY = 269,069 mt.

Mr. Anderson said setting specifications based on the $q = 1.0$ model is the most risk adverse strategy according to the decision tables in the assessment. Less conservative harvest specifications risk future decline of the whiting stock.

Dr. Burke was not in favor of the motion. Page 26 of the assessment suggests the $q = 1.0$ model is not realistic. The whiting fleets are well monitored which reduces the risk of bycatch problems. Now we have close to real-time reporting of the shoreside catch and an expectation of increased sampling in

shoreside plants. Despite last year's disaster tow, we have observed less than 7.3 mt of canary rockfish bycatch in the fishery. The choice of models that range between $q = 0.6$ and 1.0 is now a policy call. Logbooks are now mandatory for the at-sea and shoreside fleets. She also wanted to hear from Mr. Harp to get the tribal perspective. Mr. Anderson said the proposed harvest specifications in his motion are still higher than bycatch-based specifications. These are two separate issues.

Mr. Brown moved and Mr. Warrens seconded an amendment to motion 12 to use the $q = 0.8$ (coastwide ABC = 432,100 mt, U.S. ABC = 319,235 mt, and U.S. OY = 316,904 mt). Mr. Warrens was in favor of the amended motion since it was consistent with the Canadian and GAP recommendations. Dr. Freese spoke against the amendment and expressed concern it could risk the future status of the whiting stock.

Dr. Burke requested elaboration of the shoreside whiting video monitoring program from Dr. Clarke. Dr. Clarke explained there were 26 vessels equipped with cameras, of which 24 fished. They monitored 1,730 tows, 327 of which had an estimated discard of >100 lbs. There was no indication of selective dumping of nets. Of the 327 discard events observed on video, 320 were on the last tow. Some vessels were discarding 40% of the time, while others were discarding <5% of the time. She said we still need to define full retention and determine the ability to use video monitoring as an enforcement tool. Dr. Burke asked what percentage of the total poundage were discards. Dr. Clarke said she did not have that figure in hand, but knew it was a small percentage.

Dr. Burke noted the mothership sector has been voluntarily observed, but is that now mandatory? Dr. Clarke said yes. Dr. Burke asked if logbooks are required. Dr. Clarke said no, the logbook program is voluntary, but there is a 90% compliance rate with the request to fill out logbooks.

Mr. Alverson said he was against the amendment and supports the main motion. He did not have a bycatch-based concern with the mothership sector, but was concerned about the future health of the whiting resource.

Dr. Burke asked Mr. Moore, as a member of the STAR Panel, if he had concerns with future whiting recruitment. Mr. Moore said the whiting stock exhibits highly variable recruitment. Whiting biomass is driven by infrequent strong recruitment. Dr. Burke asked whether he shared Mr. Alverson's concern with the projected downward trend in whiting biomass. Mr. Moore said this issue was not fully explored since this was an updated assessment. Results of the updated assessment were sensitive to assumptions of q . The STAR Panel and the SSC concluded all q values between 0.6 and 1.0 were equally plausible.

Ms. Vojkovich asked about salmon interactions in this fishery. She assumes some of this fishery impacts Klamath River salmon and would like to know the projected impacts. Dr. Burke said the expected salmon impacts are almost insignificant with about 400 salmon caught in the shoreside fishery. Mr. Warrens added the impacts in the whiting fishery are mostly to juvenile salmon. Salmon impacts in this year's whiting fishery won't affect this year's salmon fishery and does not raise a problem this year with Klamath River salmon stocks. Dr. Burke said Agenda Item F.2.a., Supplemental NMFS Report shows a 0.04% salmon impact in the 2004 whiting fishery. This is insignificant, especially considering the small difference in whiting OY this year relative to last year. Mr. Brown added that there were 295 salmon caught in the Eureka area in last year's whiting fishery, of which only a small proportion were of Klamath origin.

Ms. Vojkovich said she was not sure if she would vote for the amendment or the main motion. She was encouraged by the enhanced monitoring in the whiting fishery and the relatively healthy biomass. However, she was nervous about departing from the $q = 1.0$ assumption as has been past practice.

Mr. Anderson noted, on the issue of salmon, Agenda Item F.2.a., Supplemental NMFS Report shows

8,802 total salmon caught by all sectors of the 2004 whiting fishery. Mr. Brown said he stands corrected. Ms. Vojkovich asked about inter-annual variability in salmon interaction rates in the whiting fishery. Is the 2004 impact rate considered average, high, or low? Dr. Freese said the allowable threshold established for the whiting fishery in ESA consultation is 11,000 salmon, which has been exceeded a couple of times. Ms. Vojkovich asked what the expected take of Klamath chinook would be in this year's whiting fishery and Dr. Freese said he did not know.

Dr. Burke asked Ms. Carrie Nordeen what conditions might be imposed on the shoreside whiting EFP this year? Ms. Nordeen said they might modify the full retention regulation to require a vessel to return to port if discarding occurs. One idea was to set aside some whiting OY to account for dumping at sea. However, modifying the full retention definition is the current focus.

Dr. Burke asked Mr. Harp how tribal discards are accounted. Mr. Harp called Mr. Joner to the podium. Mr. Joner said the tribes have their own bycatch caps. Dr. Burke asked how tracking of tribal bycatch is done. Mr. Joner explained tribal whiting vessels deliver to a mothership in early June through August and otherwise make shoreside deliveries. The mothership has two observers on board. He felt the bycatch has decreased due to better accounting, higher densities of whiting, and shorter tow times. Shoreside deliveries occurred last year from May 15 to June 15, with a wrap-up after the mothership season ends. The Makah tribe had four whiting vessels that landed shoreside last year in Westport. He observes shoreside deliveries for the tribe and WDFW helps sample the catch (sample rate >10%). The tribal mothership catcher vessels deliver cod ends to the mothership; the cod ends never come aboard the catcher vessel. One of the four tribal whiting vessels also makes shoreside deliveries to a tender in similar fashion as a mothership catcher vessel. The Makah Tribe has a full retention program. Mr. Harp asked about salmon impacts in the tribal whiting fishery. Mr. Joner said the vast majority of salmon caught in the tribal whiting fishery are juveniles. The 2004 tribal whiting fishery impact was 3,740 chinook. Mr. Harp asked if basing management decisions on either a $q = 0.6$ or 1.0 model scenario would result in the same tribal whiting allocation and Mr. Joner said yes. The tribes would be allocated 35,000 mt of whiting under either scenario.

Mr. Ticehurst said he is persuaded the industry is responsibly avoiding bycatch. The issue is whiting conservation. He thought there may be a compromise by setting the OY somewhere between those calculated using a $q = 0.6$ and 1.0 model scenario. Mr. Brown thought the Council should honor the Canadian perspective by setting an OY based on a $q = 0.8$ model. If the U.S. goes with a $q = 1.0$ modeled OY, can the Canadians use a $q = 0.8$ model? Mr. Anderson noted both motions assume an OY above a bycatch-based OY of 208,000 mt. Both proposals rely on bycatch caps. Therefore, the issue is risk to the whiting stock and an OY using a $q = 1.0$ model is less risky. He doesn't believe the whiting OY decision should be based on the Canadian perspective, but by risks to the whiting stock. Mr. Brown agreed with most of Mr. Anderson's comments, but noted the assessment authors did give advice that q was between 0.6 and 1.0. He feels $q = 0.8$ is a good compromise. Mr. Anderson asked if q can go higher than 1.0 and Mr. Brown said yes.

Chairman Hansen called for a roll call vote on the amendment to the main motion (Motion 12): 6 yes, 7 no. The amendment failed.

Mr. Hansen then called for a roll call vote on the main motion (Motion 12): 10 yes, 3 no. Motion 12 passed.

Mr. DeVore said deciding 2005 whiting management measures is the next action for this agenda item.

Mr. Anderson said the Council may want to consider splitting out the estimated tribal impacts from the specified bycatch caps and setting bycatch caps solely for the non-tribal whiting sectors. An alternate

approach would be to keep a canary OY reserve for the whiting fishery beyond the established cap. He also wants to understand the legal constraints on cameras and logbooks with a goal to ensure real-time reporting of total catch. Are shoreside deliveries sampled robustly? How is this tracked? He also wanted affirmation that camera monitoring would occur this year. Ms. Vojkovich asked if he was considering changes only to the canary rockfish cap and Mr. Anderson said he was contemplating a change in the canary and widow rockfish caps.

Mr. DeVore reviewed the Council discussion up to this point and described the impact estimates used to calculate the current canary and widow rockfish bycatch caps.

Ms. Cooney said NMFS cannot currently mandate camera monitoring, but it can be a condition of the shoreside whiting EFP. Dr. Burke asked if the Council can recommend mandating logbooks. Ms. Cooney said yes, although she said we should take a little time to figure out what we are trying to do and recommend it at another meeting. Dr. Burke said she wants to initiate that process. Dr. Freese asked if she wanted mandatory logbooks on catcher-processor vessels or catcher vessels that participate in the mothership sector. Dr. Burke said she wanted logbooks mandated for catcher vessels delivering to motherships as well as vessels in the catcher-processor fleet. Dr. Freese asked if a better motion would be to suggest we explore expanding the voluntary logbook program and have NMFS bring back more information at the next council meeting. Dr. Burke said that would be fine.

Mr. Anderson moved and Mr. Cedergreen seconded a motion to set the widow bycatch cap in the non-treaty whiting fishery at 200 mt (Motion 13). Motion 13 passed.

Mr. Anderson moved and Mr. Cedergreen seconded a motion to set the canary bycatch cap in the non-treaty whiting fishery at 4.7 mt (Motion 14).

Mr. Brown noted that 5.2 mt of canary were taken in last year's non-tribal whiting fisheries according to Agenda Item F.2.a, Supplemental NMFS Report. He questioned whether a tribal bycatch cap should be considered as well. Mr. Anderson said the tribal number in the scorecard is not a cap, but an estimated impact. Mr. Brown said the primary difference is that last year we were able to allow the sectors to go over their estimated take of these species a bit, but there is a cap specified for this year's fishery. Mr. DeVore said that changing the cap inseason is a routine management measure and noted deciding measures to minimize canary bycatch will always be a balancing act.

Motion 14 passed.

Dr. Burke moved and Mr. Warrens seconded a motion (Motion 15) to ask NMFS to pursue information regarding the best approach for a mandatory logbook program for catcher vessels in the mothership sector, and report back at the next meeting. Motion 15 passed.

Ms. Vojkovich said she wanted a June agenda item to discuss the possibility of a season change in the California shoreside whiting fishery. Dr. McIsaac said that should be taken up under Agenda Item B.7.

F.7 Consideration of Inseason Adjustments (03/10/05; 1:59 pm)

F.7.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

F.7.b Reports and Comments of Advisory Bodies

Ms. Ashcraft and Dr. Hastie provided Agenda Item F.7.b, Supplemental GMT Report.

Mr. Alverson asked if there were any size estimates available for sablefish discards. Dr. Hastie said there was some average weight data available, but it has not been analyzed yet.

Mr. Anderson asked if it was the GMT's recommendation to specify the groundfish retention regulations adopted under Agenda Item D.1 or those recommended in the GMT report. Ms. Ashcraft said the GMT report recommends the same retention regulations adopted under Agenda Item D.1.

Mr. Rod Moore provided Agenda Item F.7.b, Supplemental GAP Report.

Mr. Brown asked Mr. Moore to expand on the GAP comment that the GMT, EC, and GAP take different approaches to recommending trip limits. Mr. Moore said the GMT approaches the issue by how impacts can be modeled, the EC is concerned with enforceability, and the GAP is concerned with what works on the water. The GAP is simply recommending greater GMT-EC-GAP coordination.

F.7.c Public Comment

Mr. Bob Ingles, Golden Gate Fishermen's Association, Hayward, California

Mr. Kenyon Hensel, representing Crescent City Harbor, Crescent City, California

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

F.7.d Council Action: Adopt Appropriate Adjustments for 2005 Fisheries

Ms. Vojkovich briefly reviewed the new California Recreational Fishery Survey (CRFS) program and referred to Informational Report #2, CDFG 2004 Recreational Fisheries Data. She noted this program was established to provide more accurate catch and effort estimates than the old Marine Recreational Fisheries Statistical Survey (MRFSS). The largest changes made in the CRFS program are: 1) effort in the private boat fleet is estimated from a direct count (similar to salmon effort estimation methodology) instead of a phone survey method; 2) all sampling and reporting is stratified by the target species in the recreational trip; 3) data is collected on a finer geographic scale; 4) an angler license database was established for low-effort modes (i.e., beach/bank, private ramps, etc.), CDFG will establish an electronic angler license database to be implemented in January 2007; and 5) a 300% increase in angler sample rate. Table 1 of the report gives statistics of the sampling and Table 3 depicts catch estimates by mode and species. She explained the 2004 lingcod catch was low due to the 30-inch size limit. The widow rockfish estimate may be revised, but the higher than expected estimate was due to some CPFV targeting which has since been curtailed. The yelloweye estimate is incorrect (too high) because one sample was incorrectly assigned to the wrong fishing mode. This year CDFG will refine the angler license database and the random dialing survey methodology.

Ms. Vojkovich noted the CFGC will meet next week to consider changes to the California recreational groundfish fishery. The CDFG director now has authority to adjust sport fisheries inseason. She intends to bring the Council's feedback to the CFGC and will ask them not to act on groundfish seasons until after the April Council meeting. In the meantime, CDFG will revisit the 2003 MRFSS estimates, review the 2004 CRFS and Coastside Fishing Club data, and consider the 2004 and 2005 season structures.

Mr. Brown asked if differences in MRFSS and CRFS will affect CPUE trends used in stock assessments. Ms. Vojkovich said she was not clear yet whether new CRFS estimates can be calibrated to past MRFSS estimates. Mr. Brown said recreational catches are often used to track removals in stock assessments.

Dr. Burke asked how long it might take CDFG to do the analyses. Ms. Vojkovich said some of these analyses are ongoing while calibration of estimates is more of a long-term process. CDFG is asking the RecFIN Data Committee to analyze and calibrate these estimates. She is hoping this will be done in time

to use in the analysis of 2007-2008 specifications and management measures.

Dr. Burke asked what species comprise the Other Nearshore Rockfish group in the north. Ms. Vojkovich replied blue rockfish plus an assortment of a few other species. Dr. Burke asked if the 6.6 mt harvest target is a state-specified one and Ms. Vojkovich said yes. This was an allocation decision for California recreational fisheries north and south of 40°10' N latitude. Mr. Cedergreen asked what is "number of fish measured" in Table 1 and Ms. Vojkovich replied length measurements. Mr. Cedergreen asked about the 14.6 mt of widow estimated in the 2004 California recreational fishery. Ms. Vojkovich said the estimate was based on one vessel targeting widow rockfish in southern California; that sample expands to a fleet-wide impact estimate of 14.6 mt.

Mr. Ticehurst explained there is a 20-40 fm open depth zone in central California and kayakers are asking for an exemption to allow them to fish in the 0-20 fm zone.

Ms. Vojkovich asked if the Council would consider adjusting 2005 California recreational seasons and, if so, could this occur in April? Dr. Burke said she was enthused by these preliminary CRFS estimates, but recommended a deliberate approach to adjusting California recreational seasons. Mr. Anderson said the consideration would be based on the magnitude of recommended changes. He stated he now has more confidence in California recreational estimates. Mr. Alverson said he thought the new inseason management policy was to not liberalize management measures until June. Ms. Vojkovich said the policy will be revisited in April when it will be considered for final adoption. Mr. Ticehurst thought minor adjustment in season length can be made given monthly catch updates. Mr. Anderson explained the new recommended policy was based on the concept of not acting with only a couple of months of catch data. Using CRFS estimates for considering inseason adjustments is notably different since it represents a year of data.

Mr. DeVore pointed out the GMT recommendations for inseason adjustments are on page 9 of the GMT Report.

Dr. Burke moved and Mr. Anderson seconded a motion (Motion 16) to adopt the GMT recommendations as shown on page 9 in Agenda Item F.7.b, Supplemental GMT Report.

Ms. Cooney asked if we can assume the halibut recommendations from Agenda Item D.1. apply? Mr. Anderson said yes. The Oregon halibut regulations apply to fisheries south of Leadbetter Point.

Motion 16 passed.

G. Coastal Pelagic Species Management

G.1 NMFS Report (03/09/05; 8:10 am)

G.1.a Regulatory Activities

Working from Agenda Item G.1.a, NMFS Southwest Regional Office Report, Ms. Tonya Wick provided an update on 2004 Pacific sardine landings, 2004-2005 Pacific mackerel landings, Pacific sardine 2005 harvest guideline, salmon bycatch and biological assessment, CPS observer program, and the EFH five-year review.

G.1.b Reports and Comments of Advisory Bodies

None.

G.1.c Public Comment

None.

G.1.d Council Discussion on NMFS Report

Ms. Vojkovich asked about NMFS plans for a synoptic cruise which has not been done for several years. The CPSAS has been requesting such research. Mr. Helvey stated that there is a vessel in the Pacific Northwest currently. The SWFSC is considering using two vessels next year to complete a comprehensive survey from Canada to Mexico.

Mr. Thomas asked if there were plans to expand the observer program from Morro Bay to San Diego to include squid vessels in the San Francisco area. He was concerned about striped bass and salmon interceptions in these fisheries.

Ms. Wick stated that NMFS has an observer in Monterey for this purpose but nothing for north of that. NMFS is aware of these incidental catch issues and is interested in increased observations in California.

Ms. Vojkovich reported that the California Fish and Game Commission recently adopted the squid fishery FMP. The decision included a prohibition on squid fishing in the Gulf of the Farallones NMS, therefore, problems with vessels fishing in this area have been resolved. This action was not in response to salmon bycatch issues. Mr. Thomas reiterated his request for observers as squid boats still operate in the area outside the NMS.

Mr. Anderson asked if the detailed analyses currently underway for sardine fisheries in the Pacific Northwest were being conducted for fisheries in California. Ms. Wick stated NMFS is equally concerned about salmon interactions in the south and was reviewing what data is available. With limited observer data in California, NMFS focused on dockside sampling and found no incidence of salmon bycatch in the southern fisheries. The ongoing ESA consultation is limited to the northern fisheries; however, NMFS intends to increase observations in California. Mr. Anderson reminded the Council that WDFW started its own observer program for sardine fisheries as using dockside sampling to determine the bycatch of a prohibited species like salmon is not effective. He was supportive of efforts by NMFS to increase at-sea observations in California. Ms. Wick spoke in support of the WDFW program stating that NMFS is not only looking at the design of the program but is nearly solely reliant on the data in this latest consultation. Ms. Wick stated that the sardine fishery is a volumetric fishery making observation difficult as catch is pumped directly into the hold. A complete sampling program needs to include both at-sea and dockside observations.

Responding to Mr. Anderson, Ms. Wick reported that California sardine fisheries in January and February, 2005 are considerably lower when compared to 2004. Mr. Hansen reported the reduced landings are largely driven by the bad weather in California.

Ms. Wick and Ms. Petras reported to Ms. Burke and the rest of the Council that the NMFS Biological Opinion on the 2005 sardine fishery relative to salmon bycatch is not yet available and could be available for the April meeting.

Mr. Brown requested that fishermen need to be put on notice about reducing bycatch. Ms. Wick stated that NMFS has been and will continue to work with industry as the pilot program in California is expanded into a full program.

Mr. Alverson asked about funding for the pilot project and Ms. Wick replied there were difficult decisions about what observer programs to fund with limited resources but, the CPS program will continue until

February 2006.

Dr. McIsaac asked for further definition of sea bird "interaction" in the observer data. Ms. Wick stated the observers have been trained to limit interactions in many categories, but generally includes instances when a bird has entered the purse seine but is not necessarily caught in the net. Dr. McIsaac stated that this could be a favorable interaction for the sea bird and yet is grouped with all interactions. Ms. Wick reported that there were no fatalities and the report will provide more detailed descriptions of the various interactions.

Mr. Brown requested better use of the term bycatch, noting that the sardine fishery would be more appropriately referred to as an incidental catch fishery.

G.2 Fishery Management Plan (FMP) Amendment –Krill Management Update (03/09/05; 8:38 am)

G.2.a Agenda Item Overview

Mr. Mark Helvey referred the Council to Agenda Item G.2.a, Attachment 1 and reviewed the status of krill management.

G.2.b NMFS Report

Mr. Helvey highlighted the three broad alternatives as part of the analysis (Phase I). Based on guidance from the Council, NOAA Fisheries would launch Phase II which would incorporate public comments, draft regulations for Council's final adoption, and complete the required environmental compliance/economic analyses.

Mr. Helvey also briefed the Council on the draft outline of an Alternatives Analysis for the krill regulatory amendment and noted there has been some funding support from the National Marine Sanctuaries.

G.2.c Reports and Comments of Advisory Bodies

None.

G.2.d Public Comment

None.

G.2.e Council Discussion and Guidance on Progress of Analysis

Dr. McIsaac asked about the presented schedule. The options as presented refer to the overall process of how to address krill harvest rather than specific analyses of whether or not krill should be harvested and in what areas. Mr. Helvey reported that the actual analyses of different levels of harvest will come at a later stage and will be presented to the Council. Dr. McIsaac stated a Council preference for relatively quick action on krill while the three schedule options show various completions in 2006. Mr. Helvey stated that the options are presented due to consideration of the ongoing sardine allocation process and a desire by NMFS to allow for CPSMT and CPSAS review of krill issues without delaying ongoing efforts.

Ms. Vojkovich asked about the MSA requirement for and MSY determination for managed species and asked about an MSY or proxy for krill. She noted that this process for squid took two years and would be surprised if this requirement can be addressed in the schedule presented.

Mr. Helvey stated that the contractor for this work does not feel that this will be a large delay and that additional information will be forthcoming in April.

Mr. Brown expressed concern about proceeding with krill management and characterized the effort as a low priority when you consider the Council's limited budget situation. There are no major plans to start a krill fishery anywhere and the Council has many other large tasks competing for time and funds.

Mr. Helvey replied that funding is coming from the National Marine Sanctuary Program and is anticipated to cover the majority of the necessary funds for this project. NMFS has not taken CPSMT involvement into account at this time, but considers the CPSMT role as one of review.

Dr. Burke asked about Council direction in November 2004 regarding a CPS FMP amendment for krill.

Dr. McIsaac asked Mr. Burner to review Council action in November relative to this issue. Dr. McIsaac noted what the minutes reflect. Mr. Burner reviewed the motion from November where the Council, working from Agenda Item H.4.b, NMFS Report, voted to adopt 'Option 2', which would incorporate krill as a management unit species in the CPS FMP. Dr. McIsaac stated that the Council choice for the CPS FMP route was based on the commitment of NMFS and the Council anticipated a minor role from the CPSMT in the development of the amendment.

Mr. Alverson asked if the Council is also addressing krill issues through the groundfish EFH process. Dr. McIsaac said there was initial consideration of krill under the EFH process and that krill are included in the range of EFH alternatives under analyses. Seeking a shorter implementation of krill management, the Council adopted the position of pursuing krill management through the CPS FMP process.

Dr. Dahl added that the draft EIS for groundfish EFH includes a discussion of what the Council considered. It notes that the Council chose to use the CPS FMP as the vehicle for krill management and that krill was not chosen as a preliminary preferred alternative. The Council will identify a final preferred alternative in June.

Dr. Burke noted the lack of CPSAS or CPSMT attendance and input at this meeting and asked what minimal guidance NMFS would need at this time.

Mr. Helvey noted that all three options have the same scheduled update for the April meeting and that the Council could readdress this issue at that time as necessary. Mr. Burner noted the CPSAS and CPSMT are scheduled to attend the April Council meeting.

H. Marine Protected Areas (MPA)

H.1 Federal Waters Portion of the Channel Islands National Marine Sanctuary (NMS) (03/10/05; 3:26 pm)

H.1.a Agenda Item Overview

Mr. Burner provided the agenda item overview.

H.1.b Report of the Sanctuary Staff

Sean Hastings provided an overview of the designation letter (Agenda Item H.1.b. CINMS Letter).

Mr. Anderson asked if one of the reasons for the proposed changes to the CINMS Designation Document was a lack of confidence in bringing proposed regulations to the Council for regulatory action and achieving the goals of the Sanctuary. If adopted, this proposed change would still require the Sanctuary to provide the Council the opportunity to draft fishing regulations, but if those regulations are deemed to not meet the goals and objectives of the Sanctuary, the Sanctuary could implement regulations under the

NMSA.

Mr. Hastings reported that the Sanctuary feels that the authority under the MSA is not broad enough to protect all species but the NMSA does. The Sanctuary feels the cooperation of the Council and the Sanctuary under the NMSA would provide a broader authority. A DEIS is being drafted currently that will weigh the benefits and limits of MSA and the NMSA. The change to the Designation Document would not go into effect until the completion of this NEPA process. Mr. Hastings reminded the Council that the NMSA requires coordination with the Council, preventing the Sanctuary from going forward with future MPAs or fishing regulations without working with the Council.

Mr. Larson asked about the Council's specific recommendations on the DEIS, including a requested analysis of the various management mechanisms regarding MSA and NMSA, and that the Council will have a chance to review and comment on the DEIS prior to any changes to the Designation Document being implemented.

Dr. McIsaac asked if the NEPA process will include an array of alternate Designation Document changes that would correspond to the range of alternatives proposed by the Council. The letter before the Council now only proposed one change. Mr. Hastings responded that there are three possible outcomes that will be analyzed in the DEIS. Based on the three alternative MPA proposals, there will need to be a Designation Document change. All of the other alternatives will require no changes to the Designation Document.

Mr. Helvey conveyed concerns from both the Southwest and Northwest Fisheries Science Centers regarding the effect of these actions on future research activities. Mr. Hastings stated that the types of activities allowed in the Sanctuary would be specified in regulations and would likely be patterned under existing language developed under the State of California MPA process that would allow scientific activity if properly permitted.

Mr. Larson expressed appreciation for the efforts of the Sanctuary staff in working with the State of California and the Council on these matters.

H.1.c Reports and Comments of Advisory Bodies

Mr. Moore provided Agenda Item H.1.c, Supplemental GAP Report. Mr. Ellis provided Agenda Item H.1.c., Supplemental HC Report. Mr. Don Stevens provided Agenda Items H.1.c, H.2.c, and H.3.c, SAS Report. See agenda item H.2.c for additional advisory body comments.

H.1.d Public Comment

Ms. Kathy Fosmark, Alliance for Communities for Sustainable Fisheries, Pebble Beach, California
Mr. Craig Helms, The Ocean Conservancy, San Francisco, California
Dr. Liz Clarke, Northwest Fisheries Science Center, Seattle, Washington

H.1.e Council Discussion and Guidance on Channel Islands NMS Process

Mr. Larson asked the Council members what they would like to achieve at this time. He suggested the Council staff summarize the comments heard that will ultimately result in a response letter. Dr. McIsaac said the Cordell Bank and Monterey Bank NMS process was set in November and clearly indicated a March and April 2005 process. The Channel Islands matter was not on the agenda in November. The Council has received the consultation letter which began the 60-day comment period. Under the tasks listed for the Council at this meeting is one to consider drafting a response or treat it like the other two sanctuaries with a two meeting process with final recommendations approved in April.

Mr. Larson said the State of California has been working cooperatively with CINMS on the same letter from the Sanctuary and has similar concerns. California is eager to keep the process moving forward as the MPAs are considered for federal waters. California anticipates additional information on this issue in the DEIS and expects the Council and the state will have the opportunity to review and comment. The State of CA will be commenting on this letter.

Mr. Anderson said his interest in this is primarily the result of the fact we have a large sanctuary area off the Washington Coast and what we do here will likely set a precedent in the future. First, relative to the Olympic NMS, a number of fisheries, including salmon, groundfish, and shrimp fisheries, take place within the Sanctuary boundaries. He cannot speak directly to the Channel Islands issue, but he knows that the support for creation of the Olympic NMS received by fishing communities was predicated on the understanding that the Sanctuary would not get into the fishery management business. He is sensitive to the issues brought forward by Mr. Hastings and understands the concern for species not directly under state or federal authority. One option would be to provide the authority to regulate species not in state waters or under Council authority. That type of an intermediate option might preserve the Council's authority to manage the fisheries under its FMPs; would provide the opportunity to react to Sanctuaries' proposals, while giving the Sanctuary the authority to manage species not covered by a state or federal FMP.

Mr. Brown wasn't sure if the Council did or did not have the full ability to implement marine reserves. Ms. Cooney said we have never fully explored in detail how we would do a marine reserve under the MSA. She stated that we would need to tie the need to a federally managed species while considering state authorities. The NEPA process is looking at the factual-based information when addressing these types of questions and she is hoping someone from her office or GCF could work with the Sanctuaries on the documents.

Messrs. Brown and Thomas were in agreement with Mr. Anderson's comments and both feel that support for NMS included the understanding that the Sanctuaries will not manage fisheries.

Mr. Harp stated that the tribes continue to make every effort to hold the Olympic NMS to promises of Sanctuaries not getting into the fishery management business.

Mr. Warrens supported Dr. Clarke's comments and stressed the importance of NMS not being any impediment to research surveys. He reiterated and agreed with many of the comments previously made by Council members and he is not interested in changing any of the Designation Documents at this time. Mr. Cedergreen and Mr. Alverson concurred.

Mr. Larson said we seem to be debating the Designation Document change when we are being asked to comment on the letter. The state is interested in getting the evaluation for marine reserves completed so that we can all make a reasoned decision on how MPAs should be implemented in federal waters at the CINMS. He would like us to go forward with a whole suite of options for evaluation without limiting future potential.

Mr. Brown said the public and advisory bodies have spoken to not change the Designation Document; and that is what the response should be.

Mr. Burner summarized the range of options that have been voiced today and asked if the Council would like Council staff to summarize these options in preparation of a final recommendation in April. Dr. McIsaac reviewed the recommendations he has heard so far. Dr. McIsaac recommended that the Council at least determine if they intend to respond, and if so, should the comments heard today be summarized for public review in April.

Mr. Anderson said he thinks we should respond, we talked about the potential elements that would be contained in the response. The deadline for a response is April 15 and we should ask Council staff to summarize the alternatives for us to look at in the April meeting where the Council will look at putting together a final response.

Mr. Larson said he would like to get a better understanding of how the sanctuary would respond to our comment letter containing any of our alternatives discussed today. He reiterated CDFG would like the Council to encourage this process to go forward.

Mr. Brown said the comments from this Council seem focused on giving up as little authority as possible, which was the commonality of all of the comments today. The question of how to proceed and under what authority needs to be addressed and he would like to see an answer to that question in April.

Dr. McIsaac said we will prepare the materials with the range of possibilities discussed here and bring it to the April meeting.

H.2 Cordell Bank NMS (03/10/05; 4:52 pm)

H.2.a Agenda Item Overview

Mr. Burner provided the agenda item overview.

H.2.b Report of the Sanctuary Staff

Mr. Dan Howard and Ms. Anne Walton, Sanctuary staff, reviewed the schedule and the proposed actions.

Mr. Larson thanked the Sanctuary staff for their work with the State of California.

H.2.c Reports and Comments of Advisory Bodies

Mr. Ellis provided Agenda Item H.2.c, Supplemental HC Report. After hearing the information today, the Habitat Committee was under the impression that the Designation Document changes were the best way to achieve habitat protection. However, the HC is not as concerned with the mechanism for this protection.

Mr. Roth, as an HC member, reiterated that the HC is supportive of protecting the bottom habitat, but does not at this time have a preference on how you get there.

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

Mr. Merrick Burden and Ms. Michele Culver provided Agenda Item H.1.c, H.2.c, and H.3.c, Supplemental GMT Report.

Lt. Dave Cleary provided Agenda Item H.1.c, H.2.c, and H.3.c, Supplemental EC Report.

See agenda item H.1.c for additional advisory body comments.

H.2.d Public Comment

Ms. Kaitilin Gaffney, The Ocean Conservancy, Santa Cruz, California

Ms. Kathy Fosmark, Alliance of Communities for Sustainable Fisheries, Pebble Beach, California

H.2.e Council Action: Consider Adopting Draft Designation Document Comments and Proposed

Cordell Bank NMS Fishery Regulations

Mr. Larson stated that the State of California concurs with the Cordell Bank NMS on the need for protection of habitat on Cordell Bank. We have not made a determination on the best way to achieve this. He reported that California awaits the analysis of the various regulatory mechanisms for protecting the habitat before making a determination of a favored approach.

Mr. Brown asked if gear like purse seine and vertical hook and line gear that does not touch the bottom would be prohibited. Ms. Walton said the intent was to prohibit gear that directly target and impact bottom habitats. The Sanctuary does not have a complete understanding of all the gear types and appreciates the efforts of the Council and the EC in understanding what gears to specifically address.

Mr. Brown asked Ms. Cooney if the Council can clearly prohibit the use of groundfish bottom trawls and longlines because they are in our FMP as we have done with the RCAs. He assumes we cannot prohibit the use of something like pink shrimp gear or other gear not targeting non-FMP species. Ms. Cooney said that through the EFH process, bottom tending gears could be considered for prohibition, regardless of target.

Mr. Alverson voiced his support for pursuing the necessary habitat protections through the ongoing groundfish EFH approach as this would keep the Council involved with the process and would maintain the Council's authority for the regulation of fishing.

Dr. McIsaac reviewed the potential schedules for addressing EFH through the MSA and asked what the schedule would look like under the NMSA. Ms. Walton said it is difficult to predict exactly, but a DEIS is planned to be released in late summer and the federal rulemaking process could take up to an entire year after that.

Mr. Larson said it is not in the interest of the State of California to delay the Council's process or authority. It would seem the overwhelming opinion of the Council is to not look at a Designation Document change as an option which limits the opportunities during the NEPA process just mentioned. California would prefer to move forward with a full suite of options, including those being considered here today.

Mr. Anderson added he thinks we need to be responsive to what the Sanctuary is asking to achieve with their objectives. He would like our EFH process to continue and upon completion, he would favor reviewing any additional needs of the NMS rather than take several separate actions at this time. He recognizes the time to complete this process and he is willing to commit to maintain the current restrictions inside the 50 fm area on Cordell Bank. This approach would show we are responding and cooperating with the Sanctuary in a matter that is consistent with our goals and objectives. He referred to the GMT report as a proposed timeline.

Mr. Burner stated that continuing the closures at Cordell Bank under MSA until the EFH process is completed is a good approach, but if the GMT is recommending any additional alternatives in conjunction with the EFH DEIS there could be a requirement to circulate the revised document with an ensuing 45-day comment period jeopardizing the court ordered timeline.

Ms. Cooney clarified that some of the proposals are covered in the current range of alternatives and doing supplemental analyses may not hold up the current EFH process.

Mr. Anderson said Ms. Culver of the GMT went over this with Mr. Copps and he said this was doable.

Dr. McIsaac said the Council has the opportunity to include this question into the summary of comments at this meeting for review and resolution in April.

H.3 Monterey Bay NMS (03/10/05; 6:17 pm)

H.3.a Agenda Item Overview

Mr. Burner provided the agenda item overview.

H.3.b Report of the Sanctuary Staff

Mr. Bill Duoros, and Mr. Huff McGonigal provided the Sanctuary report.

Mr. Larson confirmed that a Designation Document change is necessary for extending the Sanctuary boundary to include Davidson Seamount. He then asked if inclusion of the Davidson Seamount through a change in the Sanctuary Designation Document coupled with Council regulatory action to prohibit fishing in that area would meet the goals and objectives. Mr. Douros stated the Sanctuary has concerns about accomplishing comprehensive protection of the habitat through Council action under MSA authority, but the Sanctuary is open to these mechanisms should the analyses of this option result in a finding of adequate protection.

Dr. McIsaac asked for further clarification on the Sanctuary position on protecting Davidson Seamount through MSA authority under the Council's FMPs. Mr. Douros stated that the Sanctuary understands that not all of the species living at the seamount fall under the jurisdiction of the FMPs.

H.3.c Reports and Comments of Advisory Bodies

Mr. Stuart Ellis provided Agenda Item H.3.c, Supplemental HC Report.

Mr. Larson asked if the HC considered aquaculture species when discussing introduced species. Mr. Ellis responded that the HC did not discuss aquaculture and did not feel that aquaculture was the concern of the HC. Rather the HC was focused on invasive species.

Mr. Rod Moore provided Agenda Item H.3.c, Supplemental GAP Report.

Mr. Merrick Burden provided the portion of Agenda Item H.1.c, H.2.c, H.3.c, Supplemental GMT Report that pertained to the MBNMS.

Sgt. Dave Cleary reiterated the Enforcement Consultants position from November 2004.

See agenda item H.1.c for additional advisory body comments.

H.3.d Public Comment

Ms. Kaitilin Gaffney, The Ocean Conservancy, Santa Cruz, California

Mr. David Bitts, PCFFA, Eureka, California

Mr. Bob Strickland, United Anglers of California, San Jose, California

Ms. Kathy Fosmark, Alliance of Communities for Sustainable Fisheries, Pebble Beach, California

H.3.e Council Action: Consider Adopting Draft Designation Document Comments and Proposed Monterey Bay NMS Fishery Regulations

Mr. Brown asked how far the Council's authority can go to protect habitat through the EFH process would it include things such as oil and gas mining? Ms. Cooney said no, our authority is just for fishing, but we can comment on other matters. Mr. Brown stated that at this time it looks like Sanctuary requests may go beyond MSA authority. He also addressed the public comments relative to legal take of species within the Sanctuary that could become illegal if the possession language in the Designation Document was included.

Mr. Douros clarified that the Designation Document changes regarding the possession of Sanctuary resources is specific to those resources that were taken in violation of the law.

Mr. Ticehurst said it seems the Council is being consulted about the fishing regulatory language within the Designation Documents. We can regulate fishing within any of the areas being discussed and Council comments on the consultation letter should state that.

Mr. Larson said the State of California does not have an opinion on this item at this time but supports the protection of habitat of the Davidson Seamount. The State of California will be having a meeting in late-March to develop a recommendation that can be shared with the Council in April.

Mr. Anderson asked Ms. Cooney if the Sanctuary has the ability to control the collection of corals and sponges and other habitat structures within the Sanctuary boundaries. Ms. Cooney said she did not know. Mr. Douros said the MBNMS has the authority to regulate the collection of corals and sponges, but not collection of corals and sponges during routine fishing.

Dr. McIsaac stated the staff can put together a summary of Designation Document recommendations for the April meeting. Dr. McIsaac reviewed the Council's November recommendation to not address fishing regulations for the Davidson Seamount until the issue of inclusion of this area within the MBNMS is resolved. It would be useful for the Council to revisit this position at this time.

Mr. Anderson stated it was his understanding the Designation Document changes needed accompanying regulation proposals to go along with the proposed expansion of the Sanctuary. Dr. McIsaac said that has been the position of the Sanctuary staff as presented at the November 2004 meeting. The Council's position in November was contrary to this.

Mr. Anderson said he thinks there are benefits to fisheries resources by offering protection to habitats that are included in this discussion. He is not opposed to incorporating these into the MBNMS provided the fishery resources continue to be managed by the State of California or the Council under MSA.

Ms. Cooney clarified that the NMSA requires the consideration of both the extension of the boundary and any proposed fishing regulation concurrently.

Mr. Anderson recommended not making final Council recommendations at this time and requested the Council staff summarize the options discussed today.

Mr. Burner said he will include such a summary in the next briefing book and the Council is scheduled to address this matter again in April.

I. Highly Migratory Species (HMS) Management

I.1 Council Response to Bigeye Tuna Overfishing (03/11/05; 8:00 am)

I.1.a Agenda Item Overview

Dr. Kit Dahl read the situation summary. He noted that although the NMFS Report was shown on the situation summary, it had been omitted from the proposed agenda. When adopting the agenda, the Council added this item. (The agenda order shown here reflects the revised agenda.)

I.1.b NMFS Report

Mr. Mark Helvey presented the NMFS proposal for how the Council could address the requirement in the Magnuson-Stevens Act (MSA) to respond to overfishing. He said the Council could either undergo a plan amendment or develop proposed regulations; NMFS' view is that a plan amendment is the best way to proceed. Based on discussions with NMFS Pacific Island Regional Office (PIRO) and Headquarters, NMFS determined that the MSA requirement could be satisfied by amendments to both the WPFMC Pelagics FMP and the PFMH HMS FMP. Those actions would contain two things. First, an FMP amendment would contain a plan for the development of U.S. proposals to multilateral organizations; for the PFMH this would be the Inter-American Tropical Tuna Commission (IATTC) and for the WPFMC it would be the Western and Central Pacific Fisheries Commission (WCPFC). He noted that this is a Pacific-wide issue, thus the mention of both councils and multilateral bodies. Second, the Council would recommend conservation and management proposals for the domestic fishery consistent with the proposals of these multilateral organizations. This would be a collaborative process working with the State Department, the PIRO, and the two international forums. He offered the help of the SWR in preparing any such amendment. Initial consideration could occur at the June meeting with final adoption at either the September or November meeting. GC has not yet come to a conclusion on the proposed process, but he felt this type of amendment would be viable. NMFS has a draft document titled "Strategy to End Overfishing of Bigeye Tuna in the Pacific Ocean," which they are internally reviewing. Eventually it will be shared with the Department of State and after that NMFS would share it with the Council.

Ms. Vojkovich asked if the plan amendment he is proposing is one that would strictly establish a process to collaborate with the WPFMC to engage with the international organizations in the Pacific. Mr. Helvey said she was correct; it was a strategy or action plan that focuses on process. Ms. Vojkovich then asked if any management measures that might have to be established would occur through the normal process, involving the HMSMT, HMSAS, and rulemaking. Mr. Helvey replied in the affirmative. Finally, Ms. Vojkovich asked if NMFS was working out how specifically the Councils might be involved in this process, such as which person or committee would be involved. Mr. Helvey said the strategy is not at that level of detail; that would be left up to the councils.

Mr. Craig Heberer summarized Agenda Item I.1.b Supplemental Attachment 2, the NMFS Report on HMS FMP activities.

Mr. Anderson said he was trying to figure out what role the Council has in implementing the plan. In reference to the report he asked how the HMSMT would be involved in the various implementation activities. He felt that no role had been identified for them with respect to these activities. He hoped this reflected the past shortfall in funding limiting team activities and not how things would be conducted in the future. Mr. Helvey replied that NMFS needed advisory body input now that they are active; there was no intent to leave them out. Mr. Anderson thought that the way of doing business had to be changed: NMFS should not implement the FMP on their own but should work in partnership with the Council to do this.

Ms. Vojkovich said she had been asking NMFS to provide the necessary funding for Council implementation of the HMS FMP. She suggested at the June meeting the Council could have a work plan describing HMSAS and HMSMT involvement. Mr. Helvey responded he thought such an activity should occur even sooner. He mentioned that the General Advisory Committee (GAC) to the U.S. IATTC delegation would be meeting on May 12 and getting input from the advisory bodies would be useful. NMFS recommended the advisory bodies begin developing some recommendations or negotiating positions for presentation at the May 12 meeting.

Dr. McIsaac noted that very recently there had been a resumption of some funding for HMS activities. Having not seen this proposal, he thought the Council's understanding was that the HMS advisory bodies' roles would be very similar to the role played by advisory bodies under the other FMPs. He thought putting an item on the April agenda for planning FMP implementation would be appropriate. The FMP has a management cycle, developing a SAFE report, adopting amendments, etc., very similar to all the other FMPs.

I.1.b.c Reports and Comments of Advisory Bodies

None.

I.1.ed Public Comment

Mr. Pete Dupuy, Federation of Independent Seafood Harvesters, Tarzana, California
Mr. Wayne Heikkila, Western Fishboat Owners Association, Redding, California
Mr. Doug Fricke, fisherman, Hoquiam, Washington
Mr. Joel Kawahara, troller, Seattle, Washington

I.1.e Council Discussion and Guidance

Mr. Anderson said there is fair amount of work to deal with bigeye overfishing this next year. Furthermore, with respect to reacting to the potential for albacore overfishing, an issue brought forward by Mr. Fricke in public comment, he was concerned that we use our available resources prudently and plan to have enough resources to deal with the albacore issue if it comes forward later on.

Referencing the November 9, 2004, letter from Ms. Kitty Simonds, Executive Director of the WPFMC (Agenda Item I.1.a, Attachment 3), Mr. Anderson said the last line of that letter references a joint meeting of the Councils in 2005. He asked for further information on this.

Dr. McIsaac said there had been some communication between the two councils about addressing issues of common interest, such as international cooperation. He had responded to Ms. Simonds that PFMC funding was uncertain and our response would depend on that funding. Referencing the budget committee report, he said there will be some funds for HMS, but they are not sufficient to fund a joint meeting. He said he will be meeting with Ms. Simonds in a couple of weeks and will provide an update at the April meeting if there is a way to do it.

Dr. Burke, talking to Mr. Helvey, noted that the Council had received information at the April or June meeting last year about albacore, suggesting a need to limit fishing effort because of overfishing concerns. Since then the Council hasn't heard a lot about this, she asked for an update in April or June about what is in process with regard to this issue. This could allay some concerns about what could happen to fisheries.

Mr. Helvey said the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC) is meetings in a few weeks to report on the current stock status of tuna species,

including albacore. It may be part of the NMFS report in April. Getting back to Dr. Burke's comment on albacore, if the advisory bodies are once again active, they could begin addressing concerns about albacore in a proactive manner.

In reference to advisory body recommendations in advance of the May GAC meeting, Mr. Brown said any such response should cover more than just the bigeye overfishing issue as a way to leverage more funding for dealing with how to deal with overfishing of HMS species, anticipating a similar situation for albacore. However, a May deadline for a response doesn't give us an option of when that occurs.

Ms. Vojkovich asked for regular updates of what is going on in terms of research or generally about meetings and other activities, such as junctures where the Council may be asked to be involved.

Dr. McIsaac asked Mr. Helvey about the timing of a Council response to the bigeye overfishing notification. The notification letter identifies a June 14 deadline for Council action, but the Council meeting starts on June 12. Would an HMS item on the June agenda be sufficient to satisfy the response deadline and how does that relate to the May deadline he mentioned? Mr. Helvey said the May date is reference to the GAC's May 12 meeting. If the HMSMT or HMSAS could meet early and present the information to the Council in April that would be a way to get this process started early. In regard to the June 14 date, Mr. Helvey noted the MSA language says the Council "shall prepare" a plan amendment, so it's a matter of interpreting that term.

Ms. Cooney said it's a matter of dealing with reality and the Council should start working on this based on the proposal put forward by NMFS in June. The statute says take action by the deadline, which the Council will do, and then move along on development at a reasonable pace.

Dr. McIsaac said, in relation to the IATTC matter, Council members could provide comments in April, but there could also be some discussion of how Council members could be involved between the April and June meetings.

Mr. Brown said his understanding of the MSA was that the Council had to develop a plan within two years unless some international activity superseded it. Therefore, it's imperative to get involved with the international forums for both bigeye and albacore tuna. Otherwise we may end up having to take unilateral action.

Dr. Dahl summarized by saying the Council would like an agenda item in April to do intermediate scale planning on HMS activities including the advisory body. Another recommendation was to have the advisory bodies to meet. They probably can't come to the April meeting, but could come to the June meeting. They could also meet prior to the May 12 date mentioned earlier.

4 PM Public Comment Period

4 PM public comment period, March 8, 2005 for items not on the agenda.

Mr. Joel Kawahara, Seattle, Washington. Spoke on the Columbia River 2004 biological opinion. He had strong opinions against the biological opinion.

Mr. Zeke Grader, Pacific Coast Federation of Fishermen's Associations, San Francisco, California. Mr. Grader made a request for disaster assistance for Pacific coastal and tribal communities resulting from 2002 Klamath River salmon kills. Dr. Steve Freese said he would review the situation and would come back with a report at the Council's April meeting.

Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, Oregon. Spoke about increasing encounters of previously discarded fish and how they are being accounted for. He talked about observers not pulling their own weight (personality conflicts, observer not tending to housekeeping duties). He also spoke about wild fish being the safest food source in the US and how it is not being promoted.

Mr. Paul Kujala, Oregon Ocean Seafoods, Warrenton, Oregon. Mr. Kujala owns a small fishing business in Warrenton and put in a request to NMFS to transfer their groundfish LE permit based on keel length which was denied by NMFS. Mr. Kujala came before the Council to ask for their approval based on financial and safety reasons as described in his public testimony labeled 4 P.M. Public Comment, March 2005.

Mr. Brown spoke to the issue; he originally took part in the discussions for the lengths. He did not know the condition of the boat, we do know that overcapacity is an issue and would hate to see that overcapacity program erode and become undone. Mr. Kujala said that limits to individual boats are in place, and did not believe that capacity issue affects it. Mr. Brown said the capacity does have to do with it. Mr. Brown said we should get our ITQs done first, that would be the ultimate solution to the problem. Dr. McIsaac said this could be put on the April agenda for the GAP to take on as an appeals process.

Mr. Don Stevens, Oregon Salmon Commission, Newberg, Oregon. Mr. Stevens spoke about VMS. He mentioned that the affected salmon vessels were not notified of the public meetings on VMS. He said NMFS failed to inform the affected parties of the public meetings or the Council preferred alternative. Mr. Stevens requested that VMS not be talked about, but to renote and rehold the public meetings with the written information in plain English.

Mr. Joseph Bogarth, Save our Wild Salmon Coalition, Portland, Oregon. Mr. Bogarth urged the Council to more publicly and actively insert itself regarding the direction of Federal salmon policies. He talked about the new policies – EFH designation rule, Columbia river policy decisions, Columbia River Biological Opinion, etc.

Mr. Jim Harris, Oceana, Juneau, Alaska. Mr. Harris reported that at the request of Council members and advisory bodies from the last meeting, they are meeting with those folks during this week.

Mr. Duncan MacLean, salmon troller, El Granada, California. Mr. MacLean spoke on the subject of VMS. He has not seen a cost-benefit analysis of the program. The safety factor he feels is a little bit on the bogus side as well. His problem with VMS is that the enforcement consultants did not even have the decency to come to the SAS and answer their questions and give a presentation on the use of VMS.

ADJOURN, March 11. 2005 at 4:18 pm

DRAFT VOTING LOG
Pacific Fishery Management Council
March 6-11, 2005

Motion 1: Approve the agenda as provided in Agenda Item A.4 with the following changes: addition of a selective salmon fisheries report from Captain Mike Cenci, WDFW, under item C.1; deletion of item C.4, deletion of the NMFS Report under item F.5, and an addition of NMFS report under item I.1.

Moved by: Eric Larson
Motion 1 passed.

Seconded by: Bob Alverson

Motion 2: Approve the June, September, and November minutes as shown in Exhibit B.1.a, Draft June 2004 Council Minutes, Exhibit B.1.a, Draft September 2004 Council Minutes, Exhibit B.1.a, Draft November 2004 Council Minutes.

Moved by: Frank Warrens
Motion 2 passed.

Seconded by: Ralph Brown

Motion 3: Recommend the SAS proposed March and April 2005 season structure for the Cape Falcon to Florence South Jetty, the Florence South Jetty to Humbug Mt., and the Humbug Mt. to Oregon/California border areas, including the landing restrictions requiring fish caught in Oregon to be landed in Oregon, or in the case of the latter area, in the ports of Gold Beach, Port Orford, or Brookings, Oregon (Agenda Item C.2.g, Supplemental SAS Report), as an inseason action to be taken by NMFS.

Moved by: Curt Melcher
Motion 3 passed.

Seconded by: Ralph Brown

Motion 4: Adopt the entire SAS proposed package for the non-Indian fisheries contained in Agenda Item C.2.g, Supplemental SAS Report, with the changes noted above, be adopted for tentative analysis by the STT. Include the following friendly amendments: delete the Fort Ross to Pt. Reyes commercial fishery in Option I; change the boundaries of the Horse Mt. (or Bruhel Pt.) to Navarro Head commercial fishery to Horse Mt. to Pt. Arena; and to include in at least one of the options, an assumed Klamath in-river recreational allocation of 20%, with necessary modification to season dates; all modifications to accommodate the proposed 20% Klamath in-river recreational allocation option be made in California fisheries; develop three options that meet existing constraints, restrict the

recreational 20% inriver allocation to a sub-option of Option III, essentially resulting in four options for the STT to model.

Moved by: Phil Anderson
Motion 4 passed.

Seconded by: Donald Hansen

Motion 5: Adopt the initial treaty-Indian troll options to be modeled as follows:
Option I - 60,000 coho and 60,000 chinook;
Option II - 55,000 coho and 40,000 chinook;
Option III - 40,000 coho and 24,000 chinook.
All options would have 50% of the chinook allocated to the May/June chinook directed fishery and 50% to the July/August/September all-species fishery, and that the management trigger for Interior Fraser coho impacts in Area 4/4B be included as recommended by the STT.

Moved by: Jim Harp
Motion 5 passed.

Seconded by: Phil Anderson

Motion 6: Adopt the retention regulations in the Columbia River subarea recreational halibut fishery as shown in Agenda Item D.1.e, Supplemental Motion.

Moved by: Patty Burke
Motion 6 passed.

Seconded by: Phil Anderson

Motion 7: Adopt for public review options for the 2005 incidental halibut catch in both the salmon troll fishery and the fixed gear sablefish fishery as follows.

Salmon Troll Fishery

Option 1a Beginning May 1, 2005, allow license holders one halibut per three chinook landed, allow one additional halibut to be landed without meeting the 1:3 ratio, and limit each landing to 35 halibut.

Option 1b Beginning May 1, 2005, allow license holders one halibut per three chinook landed, allow one additional halibut to be landed without meeting the 1:3 ratio, and limit each landing to 40 halibut.

Option 2 Designate the "C-shaped" yelloweye rockfish conservation area in the North Coast subarea (Washington Marine Area 3) as an area to be voluntarily avoided for salmon troll fishing to protect yelloweye rockfish.

NOTE: Option 2 may be combined with either Option 1a or 1b.

Fixed Gear Sablefish Fishery

Option 1 Beginning May 1, 2005, allow license holders 100 pounds (dressed weight) of halibut per 1,000 pounds (dressed weight) of sablefish, and allow two additional halibut in excess of the 100 pounds per 1,000 pounds ratio per landing.

Option 2 Beginning May 1, 2005, allow license holders 150 pounds (dressed weight) of halibut per 1,000 pounds (dressed weight) of sablefish, and allow two additional halibut in excess of the 150 pounds per 1,000 pounds ratio per landing.

Moved by: Phil Anderson
Motion 7 passed.

Seconded by: Bob Alverson

Motion 8: Adopt the recommendation of the GIPC, with the following change: "...data errors or model errors warrant...". The adopted recommendation now reads: *Management measures should not be liberalized until the June Council meeting at the earliest unless data errors or model errors warrant earlier consideration.*

Moved by: Ralph Brown
Motion 8 passed.

Seconded by: Frank Warrens

Motion 9: Provide the GMT recommendations to the SSC for incorporation in the Terms of Reference.

Moved by: Marija Vojkovich
Motion 9 passed.

Seconded by: Phil Anderson

Motion 10: For inseason adjustments, adopt for public review, a mid-term optimum yield policy as described in Agenda Item F.4.a, Attachment 1 (FMP excerpt) with the following modification: change the sentence, "If the Council determines that any of the ABCs or OYs set in the prior management process ..." to read, "If the Council determines that any of the ABCs or OYs set for the current biennial management cycle ...".

Moved by: Phil Anderson
Motion withdrawn, not voted on.

Seconded by: Bob Alverson

Motion 11: Adopt the stock assessment for Pacific whiting as shown in Agenda Item F.6.a. Attachment 1.

Moved by: Phil Anderson
Motion 11 passed.

Seconded by: Mark Cedergreen

Motion 12: For Pacific Whiting 2005 management, set the coastwide ABC and OY consistent with the $q = 1.0$ model and an $F_{40\%}$ harvest rate; coastwide ABC = 364,842 mt (U.S. ABC = 269,545 mt) and U.S. OY = 269,069 mt.

Moved by: Phil Anderson

Seconded by: Bob Alverson

Amndmt to

Motion 12: Use the $q = 0.8$ (coastwide ABC = 432,100 mt, U.S. ABC = 319,235 mt, and U.S. OY = 316,904 mt).

Moved by: Ralph Brown
Amendment to Motion 12 failed.
Main Motion 12 passed.

Seconded by: Frank Warrens

Motion 13: Set the widow bycatch cap in the non-treaty whiting fishery at 200 mt.

Moved by: Phil Anderson
Motion 13 passed.

Seconded by: Mark Cedergreen

Motion 14: Set the canary bycatch cap in the non-treaty whiting fishery at 4.7 mt.

Moved by: Phil Anderson
Motion 14 passed.

Seconded by: Mark Cedergreen

Motion 15: Request that NMFS pursue information regarding the logbook status and the best approach for a mandatory logbook for the mothership and catcherboats and report back at the next meeting.

Moved by: Patty Burke
Motion 15 passed.

Seconded by: Frank Warrens

Motion 16: Adopt the GMT recommendations as shown in Agenda Item F.7.b, Supplemental GMT Report, page 9.

Moved by: Patty Burke
Motion 16 passed.

Seconded by: Phil Anderson

Motion 17: Recommend inseason action changing the Cape Falcon to Oregon/California border commercial fishery open dates in March and April to March 15-25 and April 1-15.

Moved by: Curt Melcher
Motion 17 passed.

Seconded by: Frank Warrens

Motion 18: Change page 3, Option IIIa following the sentence stating “Gear restricted to plugs 6 inches or longer”, to add the language “Beginning August 11 for the area between Leadbetter Point and Cape Falcon, a subarea quota of 5,000 coho will be established. Vessels fishing in the area will be subject to a 75 coho per open period landing limit and may use all legal gear limited to no more than four spreads per line”.

Moved by: Phil Anderson
Motion 18 passed.

Seconded by: Mark Cedergreen

Motion 19: Have the STT model an option with a 10% Klamath in-river recreational allocation.

Moved by: Frank Warrens
Roll call vote, 9 yes, 4 no.
Motion 19 passed

Seconded by: Roger Thomas

Motion 20: Adopt the Draft Council Operating Procedures, Agenda Item B.3.a, Attachment 1, as written with the following changes. For COP 1, on page 6 under SSC Reviews for Scientific Merit, add at the end of the fourth sentence, “unless otherwise approved by the Executive Director”. For COP 2, (1) on page 2 under Termination of Members, remove item #4 (“engage in disreputable or criminal behavior”), (2) on page 4 under Staff Responsibilities, replace “necessary” with “assigned”, and (3) on page 7 under Coastal Pelagic Subpanel, increase Oregon and Washington commercial fishery representatives from the current one per each state to three, at least one from each state. [COP 3 will be addressed in a subsequent amendment] For COP 4, on page 2 under SSC Reviews for Scientific Merit, make the same change as in COP 1 (i.e., add “unless otherwise approved by the Executive Director”). [COP 5 will be addressed in a subsequent amendment] Adopt COP 6 and former COP 7, as written (removes old COP 7 for the Groundfish Permit Review Board). [New COP 7 will be addressed in a subsequent amendment] Adopt former COP 8 as recommended (deletes old COP 8 for the Council Performance Select Group). For the New COP 8, which documents the new ad hoc Allocation Committee, at the top of page 2 under Officers, strike the second sentence and everything in the first sentence after “shall be” and complete the sentence with “appointed by the Council chair.” For COP 9, amend it with the recommendations of the GMT on page 3 of their November 2004 report. Adopt COP 10 as amended by the MEW in its November 2004 report (two words under “Purpose”). Adopt COP 11, 12, and 13 as presented. [COP 14 is not included in the motion, Mr. Anderson has issues with numbers 3 and 4 under “Required Documentation”, but has not had time to deal with them.]. For COP 15, in the third paragraph under “Objectives and Duties”, strike “The role of the SSC is primarily one of oversight.” Adopt COP 16, 17, 18, and 19 as presented. Finally, authorize the Executive Director to make any needed edits for consistency and grammar.

Moved by: Phil Anderson
Motion 20 passed.

Seconded by: Mark Cedergreen

Motion 21: Approve the report of the Legislative Committee.

Moved by: Marija Vojkovich
Motion 21 passed.

Seconded by: Frank Warrens

Motion 22: Approve the report of the Budget Committee.

Moved by: Frank Warrens
Motion 22 passed. (Mr. Anderson voted no on Motion 22.)

Seconded by: Ralph Brown

Motion 23: Appoint Ms. Gway Rogers-Kirchner to replace Ms. Cyreis Schmitt on the GMT.

Moved by: Curt Melcher
Motion 23 passed.

Seconded by: Ralph Brown

Motion 24: Appoint Ms. Carrie Nordeen to replace Ms. Jamie Goen on the GMT; appoint Dr. John Field to replace Dr. Xi He on the GMT; and appoint Ms. Elizabeth Petras to replace Ms. Susan Smith on the HMSMT.

Moved by: Steve Freese
Motion 24 passed.

Seconded by: Jim Harp

Motion 25 through 28 were made utilizing Agenda Item C.6.b, Supplemental STT Report.

Motion 25: Adopt for public review non-Indian commercial and recreational options for the areas north of Cape Falcon with the following changes:

Page 2-3, all options, add "if required by state law" to the requirement that landings be recorded on a state fish receiving ticket;

Page 12, Option II for the Neah Bay subarea, change the start date to July 1, and for Option III to July 5;

Page 12-15, Option III, for all subareas strike the requirement of no more than one chinook in the bag limit.

Add the May-June north of Cape Falcon commercial fishery notice requirement for Oregon vessels landing south of Cape Falcon to the July-September commercial fishery in Option III

Moved by: Phil Anderson
Motion 25 passed.

Seconded by: Mark Cedergreen

Motion 26: Adopt for public review the non-Indian commercial and recreational options in the areas Cape Falcon to Humbug Mt. as shown; recognizing Option IV is identical to Option III in all three areas.

Moved by: Curt Melcher
Motion 26 passed.

Seconded by: Ralph Brown

Motion 27: Adopt for public review, all four options in the area south of Humbug Mountain.

Moved by: Frank Warrens

Seconded by: Daryl Ticehurst

Motion 27 passed. Mr. Larson abstained.

Motion 28: Adopt for public review the, non-Indian commercial options in the area from the OR/CA border to the U.S./Mexico border (also include the area between Humbug Mountain to the OR/CA border), and recreational options from Humbug Mt. to the U.S./Mexico border, with the following corrections:

Page 4 and 16, Option III; Supplemental Management Information, the Klamath River recreational fishery allocation should be 20%, and for Option IV it should be 10%.

Moved by: Eric Larson

Seconded by: Roger Thomas

Motion 28 passed.

Motion 29: Referencing Agenda Item C.6.e, Supplemental Tribal Motion, March 2005, moved (Motion 29), to adopt the treaty Indian options for public review as presented with Option IV being the same as Option III. Also include the management triggers for Thompson coho on page 21, Table 3 in Agenda Item C.6.b, Supplemental STT Report, March 2005.

Moved by: Jim Harp

Seconded by: Phil Anderson

Motion 29 passed.

MAGNUSON - STEVENS ACT REAUTHORIZATION ISSUES

***PRELIMINARY DRAFT OF WORKING CONSIDERATIONS FOR AN
ADMINISTRATION POSITION***

APRIL 15, 2005

Primary issues:

- 1. Ecosystem Approaches to Management (EAM) and the MSA.** What is the most appropriate and effective way to incorporate EAM in the MSA? Through regional ecosystem plans that address more than just fisheries, through fishery ecosystem plans that “upgrade” the current fishery management plans, or through something in between? What role should FMPs play in ecosystem-based management of marine fisheries? Do we even need any fundamental changes to the MSA to accomplish the goals of EAM?
- 2. Dedicated Access Privileges (Individual Fishing Quotas, Community Quotas, Area-based Quotas, and Fishing Cooperatives).** Should the MSA be amended to authorize all types of DAPs (and not just IFQs), and, if the answer is in the affirmative, what provisions of the MSA would have to be changed?
- 3. Governor’s nomination of Council members.** Are the Councils sufficiently representative and should the MSA be amended to require Governors to submit more broadly representative slates of Council member nominees?
- 4. MSA and NEPA objectives.** Does the MSA effectively apply the same or reasonably similar procedural requirements as NEPA, and, if so, should the MSA be somehow amended to reflect that fact?
- 5. NS1: Rebuilding Time Frame.** Is the current 10-year rebuilding time frame excessively strict (or ambiguous), and should it be amended?
- 6. NS2: Separation of Science from Allocation (NS2 and Best Available Science)** Should the MSA be amended to somehow separate the science (TAC determination) and allocation functions? Should the role of the Scientific and Statistical Committee be revised?
- 7. The MSA Does Not Expressly Recognize Framework Actions.** Should the MSA be amended to expressly recognize all, or some subset of, framework management actions?
- 8. NS9 (Bycatch).** Do we need a revised and more precise-worded national standard 9 that better addresses bycatch reduction and the minimization of bycatch mortality?

9. **EFH in the MSA - Secs. 303(a)(7) and 305(b).** Should the MSA be amended to revise the EFH designation requirement, including the description of habitat areas of particular concern? Should the MSA be amended to authorize Secretarial designation of EFH for species managed by interstate fishery commissions and individual states?
 10. **FACA and Council Chairs meetings.** Are there genuine FACA issues that need to be legislatively addressed? Are there any other outstanding FACA issues?
-

Secondary issues:

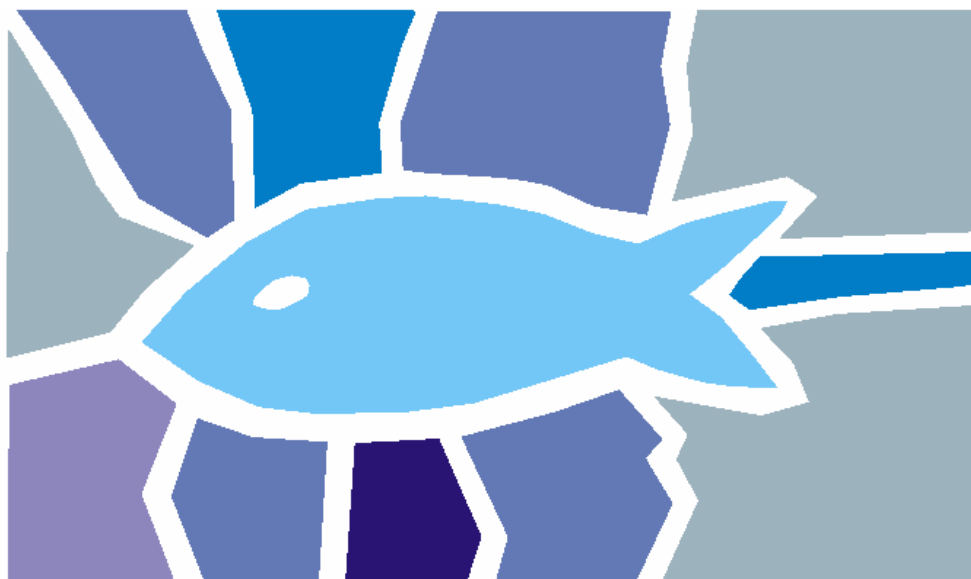
11. **Marine and Coastal Habitat Restoration.** Should the MSA be amended to expressly include the agency's habitat restoration activities?
12. **Fishing Capacity Reduction Program: MSA Section 312(b)-(e).** Given the heightened interest in capacity reduction programs, should the MSA be amended to streamline and strengthen and/or relocate this activity?
13. **Cost Recovery in Section 304(d)(2).** Cost recovery currently applies solely to IFQ and CDQ programs. Should this provision be amended to apply more broadly to other types of DAPs, and are there other technical issues that should also be addressed?
14. **Central Lien Registry.** The central lien registry, section 305(h) of the MSA, is an unfulfilled mandate, and, therefore, some suggest that this provision should be deleted or amended.
15. **Payment of Attorney Fees from DOJ Judgment Fund.** In some lawsuits, courts may order NOAA to pay the attorneys' fees for the opposing party. An MSA change that addresses this situation may be warranted.
16. **Judicial Review of MSA Actions.** Should the MSA be amended to apply judicial review to all final agency actions, and not just some?
17. **Idaho County Codification (of EFH).** Should the MSA be amended to state more precisely what actions are subject to the notice and public comment provisions of the Administrative Procedure Act?
18. **APA Waiver for Emergency Rules.** Should the MSA be amended to exempt emergency rules from the notice and public comment requirements of the Administrative Procedure Act?
19. **Sections 303 and 402 preclude the collection of sufficient social and economic data.** Should the MSA be amended to improve access to social and economic data?

- 20. The Use of Other Agencies' Data to Meet NMFS' Needs.** Should the MSA be amended to facilitate NMFS access to confidential data collected by other Federal agencies?
- 21. National Commercial Fishing Permit System.** Should the MSA be amended to give the Secretary the right to require permits and charge fees in any federally managed fishery?
- 22. Single SSN/TIN Permit Identifier.** Should the MSA be amended to require the use of a single identifier, probably a Social Security Number or Tax Identification Number, in all fishing permit programs in federally managed fisheries?
- 23. Fees for Permits - Section 303(b)(1).** Should the MSA be amended to require the collection of fees in all permit programs and to address the disposition of those fees?
- 24. National Saltwater Recreational License.** Should the MSA be amended to establish a national saltwater recreational license requirement?
- 25. Confidentiality of observer data.** Clarification is needed regarding the confidentiality of observer data to reconcile inconsistencies between agency policy and practice. Such clarification may require an MSA amendment.
- 26. Authorization and funding of observer programs.** Should NMFS and the Administration revisit its 2003 MSA proposal to authorize observer programs and establish funding mechanisms for these programs, bearing in mind that the quality of observer data is a higher priority issue than it was a few years ago?
- 27. MSA definition of an “observer”.** Observers operate both on-board fishing vessels and in shore-side stations, but the current MSA definition is restricted to observers on vessels. Should the MSA definition be amended to address this discrepancy?
- 28. Annual Report to Congress on the Status of U.S. Fisheries - Sec. 304(e)(1).** Should the MSA be amended to improve the usefulness of the annual status of stocks report, especially with respect to (1) the confusion between “overfishing” and “overfished” and (2) the current negative bias in the MSA provisions addressing this report.
- 29. Sec. 401 of MSA - Standardized Fishing Vessel Registration and Information System.** Should the MSA be amended to update the report to Congress on a “Standardized Fishing Vessel Registration and Information System” and to project upcoming needs over the next 10 years?
- 30. Western Alaska Community Development Quota (CDQ) Program - Eligible Communities - Sec. 305(i)(1)(A).** Should the MSA be amended to address discrepancies between the 1996 MSA and the subsequent NMFS regulations regarding eligibility of communities for the CDQ program?

- 31. Western Alaska Community Development Quota Program – Allowing Allocations to the State of Alaska Sec. 305(i)(1).** Should the MSA be amended to authorize the Secretarial allocation of CDQ quota directly to the State of Alaska, who will further allocate said quota among eligible communities?
- 32. Aquaculture and the MSA.** Should the MSA be amended to expressly be compatible with the Administration’s offshore aquaculture initiative?
- 33. The roles of NMFS and the Councils for regulating high seas fisheries.** Should the MSA be amended to expressly address the Councils and Secretary’s management authority beyond 200 miles, especially with respect to high seas corals/sponges and seamounts?
- 34. State jurisdiction in Section 306(a)(C): Jurisdiction over Alaska salmon and certain crab fisheries.** Should the MSA be amended to transfer management authority over salmon and certain crab species to the State of Alaska?
- 35. State jurisdiction over Dungeness crab.** Should the MSA be amended to make permanent the transfer of management authority over Dungeness crab to the States of California, Oregon, and Washington?
- 36. Fisheries Disaster Relief: MSA Section 312(a).** Should the MSA be amended to somehow improve this program, or delete it?
- 37. Funding of the Regional Fishery Management Councils.** Should the MSA be amended to change the Councils’ annual funding from a “grant” to some other legal basis?

Positions of the Regional Fishery Management Council Chairs on Reauthorization of the Magnuson-Stevens Fishery Management and Conservation Act

April 28, 2005



Preface

The 109th Session of Congress is currently underway and it is anticipated that reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) will be addressed during this Congress. Regional Fishery Management Council (RFMC) input on MSA reauthorization has been requested by U.S. Senators Ted Stevens (R, Alaska), Daniel Inouye (D, Hawaii), Gordon Smith (R, Oregon), and Olympia Snowe (R, Maine), as well as U.S. Representative Wayne Gilchrist (R, Maryland). At the annual meeting of the RFMC Chairs and Executive Directors in Dana Point, California on April 27 – 28, 2005, the collective RFMC Chairs considered various issues associated with MSA reauthorization towards the purpose of developing consensus positions, including previous positions developed in 2001 and 2002.

This document describes the RFMC Chairs' positions on the nine issues developed at the referenced meeting. This document also contains the Council Chairs' positions from 2001 and 2002, as updated on the basis of a review for relevance and consistency with the 2005 positions to insure that any 2005 positions supercede and take precedence over any potential conflicts with prior positions. The Chairs adopted these positions, with the understanding that positions on outstanding relevant issues would be forthcoming at some point in the future.

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Issue 1: Dedicated Access Privileges (Individual Fishing Quotas, Community Quotas, Area-Based Quotas, and Fishing Cooperatives)

Preamble

A reauthorized MSA shall include comprehensive authority to develop dedicated access privilege programs, generally referred to as individual quotas (IQs), but also referred to as area-based quotas, community quotas, fishing cooperatives, allocation systems, or share-based programs.

No later than 18 months after reauthorization, the Secretary of Commerce (Secretary), in consultation with RFMCs, should develop National Guidelines consistent with the recommendations in this document for the establishment of allocation systems, including, but not limited to, IQs, community quotas, and cooperatives. However, the development of these National Guidelines shall not prevent the adoption of a new IQ program or compromise existing IQ programs while the guidelines are under development. Guidelines shall not be applied retroactively, although existing programs may be subject to periodic review and revision by RFMCs as appropriate.

Criteria for Allocation

The initial allocation of interests under an IQ program shall be consistent with existing National Standard 4. The RFMCs shall consider the interests of those who rely on the fishery, including vessel owners, processors, communities, and fishing crews. An IQ program may include provisions to protect these interests. However, goals of the IQ program should also be to create market-based programs and conserve the resource.

Conservation

IQ programs should include incentives to reduce bycatch and discards and to promote conservation wherever possible, consistent with existing National Standard 9.

Limitation on Interests and the Duration of IQ Programs

Shares under an IQ program must have tenure sufficient to support and facilitate reasonable capital investment in the fishery; however, any shares allocated under the program shall be a privilege, which may be revoked without compensation to the holder.

IQ program duration shall be at the individual RFMC's discretion without required sunset.

IQ Program Review

Periodic, comprehensive review of IQ programs shall be required to assess the extent to which the program is meeting original goals and objectives and to assess the social and economic ramifications to program beneficiaries.

Quota Transfers

Appropriate provisions governing transferability, which may include permanent and temporary transfers, shall be subject to limitations consistent with the social objectives of the program and shall be determined by individual RFMCs.

Excessive IQ Shares and Quota Accumulation Limits

The IQ program allowance should include limits on shares, including caps on holdings of a person or use of shares by a person or a single vessel. However, such limitations shall be determined on a program-by-program basis by the individual RFMCs.

Referenda of IQ Programs

Referenda shall not be a mandatory requirement for Secretarial approval of an IQ program. RFMCs may, however, establish requirements for referenda for individually tailored IQ programs.

IQ Program Cost Recovery Fees

IQ programs should include an allowance for the collection of fees to offset management and monitoring costs, including state costs. However, the collection of fees should not exceed 3% of the exvessel value and should take into consideration existing industry-born costs for observers.

Enforcement, Monitoring, and Data Collection

IQ programs should include provisions for effective monitoring and enforcement of the goals and objectives under the program.

Issue 2: Competing Statutes

MSA and National Environmental Policy Act

Following the addition of critical provisions to MSA sections 302, 303, and 305, thereby making MSA fully compliant with the essential intent of National Environmental Policy Act (NEPA), reauthorized legislation should specify MSA as the functional equivalent of NEPA and exempt from NEPA in the same manner as the MSA is exempt from the Federal Advisory Committee Act (FACA). Areas to be addressed include analyzing a full assessment of environmental impacts, a range of reasonable alternatives, cumulative effects, and the extent of analysis on effects to the human environment, as well as a comprehensive public participation process. The specific proposed amendment language is as follows:

SEC. 302 [16 U.S.C. § 1852] REGIONAL FISHERY MANAGEMENT COUNCILS CONTENTS OF FISHERY MANAGEMENT PLANS

(i) PROCEDURAL MATTERS.

(7) Prior to a Council submitting a fishery management plan, plan amendment or proposed regulations to the Secretary as described in Section 303, a Council shall prepare a fishery impact statement that shall

(a) include a range of reasonable alternatives;

(b) specify and assess likely direct and cumulative effects of each alternative on the physical, biological and human environment, including

(i) participants in the fisheries and fishing communities affected by the plan, amendment, or regulation and

(ii) participants in fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council representatives of those participants;

(c) be considered in draft forms during at least two Council meetings; and

(d) be made available to the public in draft form at least 10 days prior to the date of final Council action.

A final fishery impact statement shall be submitted to the Secretary coincident with a final recommendation.

SEC. 303 [16 U.S.C. § 1853] CONTENTS OF FISHERY MANAGEMENT PLANS

(a) REQUIRED PROVISIONS.

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

...

(9) include a fishery impact statement of the plan or amendment (in the case of a plan or amendment thereto submitted to ~~or prepared by~~ the Secretary after October 1, 1990~~2005~~) which will assess, specify, and describe the likely effects, ~~if any~~, of the conservation and management measures ~~on~~ **as described in Section 302 (i) 7. Fishery management plans prepared by the Secretary shall conform to the requirements of Section 302 (i) 7.**

~~(A) participants in the fisheries and fishing communities affected by the plan or amendment; and~~

~~(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council representatives of those participants;~~

SEC. 305 [16 U.S.C. § 1855] OTHER REQUIREMENTS AND AUTHORITY

...

(e) EFFECT OF CERTAIN LAWS.—

(1) The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive Order Numbered 12866, dated September 30, 1993, shall be complied with within the time limitations specified in subsections (a), (b), and (c) of section 304 as they apply to the functions of the Secretary under such provisions.

(2) Any plan or amendment or regulation developed under sections 302, 303, and 304 of this act, is deemed to be in compliance with the National Environmental Policy Act.

MSA and National Marine Sanctuary Act

Fishery management authority in national marine sanctuaries (NMS), for all species of fish as defined in the current MSA, shall be under the jurisdiction of the RFMCs and the Secretarial approval process described in the current MSA. This authority shall not be limited to species of fish covered by approved fishery management plans (FMPs), but shall include all species of fish as defined in the current MSA and shall cover the full range of the species in the marine environment. Prior to reaching decisions on the management regulations affecting fishing in NMS waters, a RFMC shall give full consideration of the responsibilities, goals, and objectives of individual NMS and any specific recommendations of the NMS.

In addition to the proposed changes in the MSA above, the RFMCs also recommend the National Marine Sanctuaries Act be amended to achieve jurisdictional clarity as follows:

NATIONAL MARINE SANCTUARIES ACT

SEC. 302. [16 U.S.C. § 1432] DEFINITIONS

As used in this chapter, the term-

...

(8)"sanctuary resource" means any living or nonliving resource of a national marine sanctuary, **excluding fish and Continental Shelf fishery resources under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1811)**, that contributes to the conservation, recreational, ecological, historical, education, cultural, archaeological, scientific, or aesthetic value of the sanctuary; and

SEC. 304. [16 U.S.C. § 1434] PROCEDURES FOR DESIGNATION AND IMPLEMENTATION

(a) Sanctuary Proposal

...

(5) FISHING REGULATIONS-**The appropriate Regional Fishery Management Council shall prepare fishing regulations for any fish and Continental Shelf fishery resources within a sanctuary in accordance with section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1852). The Secretary shall review the proposed fishing regulations in accordance with section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1854), and other applicable statutes. Regional Fishery Management Councils shall cooperate with the Secretary and other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practical stage in drafting any sanctuary fishing regulations. Preparation of fishing regulations under this section shall constitute compliance with section 304(d) of this Act. Fishing in compliance with regulations prepared under this section shall not constitute a violation of this Act.**

MSA and Freedom of Information Act

The MSA should be amended to clarify the confidentiality of observer data relative to the Freedom of Information Act (FOIA); i.e., unless otherwise authorized (as in 402(b)(1)(E) for example), prohibit the release of non-aggregated observer data. Other information such as that generated by electronic monitoring devices (VMS or video cameras, for example) should be afforded similar protection.

State law enforcement officials under a cooperative enforcement agreement with NOAA should be provided access to information and data gathered by the vessel monitoring system (VMS) operated by the National Marine Fisheries Service (NMFS) Office of Law Enforcement, and such information should be allowed for use in prosecutions of state and federal law violations.

The U.S. Coast Guard should be provided access to VMS data for enforcement and homeland security purposes unless otherwise arranged by agreement between agencies for enforcement, homeland security, and maritime domain awareness programs.

Issue 3: Integration of Science in the Fishery Management Process

Separation of Conservation and Allocation Processes

Final determinations of necessary scientific fishery parameters should be made within the RFMC management process and not in separate, distinct bureaucracies.

Councils shall adopt acceptable biological catches (ABCs) within limits determined by their Scientific and Statistical Committees (SSCs) (or appropriate scientific body) and shall set total allowable catches (TACs) and/or management measures, such that catch would be at or below ABC.

Structure and Function of SSCs

The specific structure of the SSC should be based on the policy of each Council consistent with the overall guidance of the MSA.

RFMCs should retain appointment authority for SSCs and establish terms to meet their standard administrative processes.

SSC members should not be subject to any limit to the number of terms they may serve.

When possible, the SSC should meet concurrently with Council meetings and at the same locale.

Opportunity should be provided for regional or national SSC meetings where members from different regions could discuss best practices and seek to identify analytical and research needs.

Best Scientific Information Available

Each Council's SSC shall peer review fundamental analyses needed for fishery management, including such matters as stock assessments, fishery impact models, and projection methodologies. For purposes of compliance with the Data (Information) Quality Act and attendant Office of Management and Budget guidelines, the MSA shall constitute the SSCs as an appropriate alternative review mechanism for influential and highly influential information. The SSC shall make a determination of the best available scientific information prior to Council decision-making and provide the Council with an assessment of the soundness of the scientific conclusions and the uncertainty of the science. The Council will consider the soundness of the data, levels of certainty, and socioeconomic factors when developing catch limits and/or management measures.

Best scientific information available determinations include the social and economic sciences, as well as the physical and biological sciences.

Need for Independent Review

There should be an independent peer review of scientific information and processes used by each Council at appropriate intervals determined by the Council. Such reviews should not be limited to stock assessments, but could also extend to socioeconomic and other types of models and analyses used by the Council.

Use of Default Mechanisms

Default measures that close fisheries entirely until science and management integration standards are met should not be used. Emergency and interim rules may be extended as necessary to address delays in the use of best available science, miscellaneous violations of National Standard 1, or other such potential concerns.

Making Research Relevant

SSCs should develop research priorities and identify data and model needs for effective management.

Other

NMFS should be provided with the support to dedicate more resources to stock assessments and socioeconomic impacts.

Issue 4: Ecosystem Approaches to Management

Overall Conclusions for Ecosystem Approaches

Ecosystem-based management is an important tool for enhancing fisheries and the ecosystems on which they depend.

The RFMCs and NMFS should work collaboratively to pursue an ecosystem approach to fisheries involving all stakeholders, managers, and scientists.

The RFMCs endorse a preference for the use of currently available tools in implementing ecosystem-based management and the resources and funding necessary to better engage those tools.

RFMCs and NMFS regions need to maintain the flexibility to manage regional fisheries. The concept of “national standardization” is incompatible with the need for ecosystem approaches to reflect regional differences.

A holistic approach is a realistic approach only with collaboration among RFMCs and NMFS, partner agencies, and stakeholders.

Regional Ecosystem Planning and the Role of Regional Ocean or Ecosystem Councils

The RFMCs do not support separate ecosystem councils, but do support establishment of regional coordinating bodies comprised of regional authorities/jurisdictions and public expertise to address non-fisheries management issues.

Technical Requirements for an Ecosystem Approach to Fisheries

The RFMCs and NMFS should (1) identify, prioritize, and develop weighting for ecosystem characteristics as recommended by the SSC at the *Managing Our Nation’s Fisheries II* conference (including human characteristics and reference points and performance indicators to measure progress, future monitoring, and research) and (2) inventory current ecosystem projects.

To develop successful ecosystem management, the approach must progress in a deliberate, evolutionary, and iterative process.

Science Limitations

A lack of data should not limit our ability to adopt a realistic ecosystem management approach.

Additional funding is needed to enhance ecosystem data collection and model development. The goals and objectives of any ecosystem management approach must match the reality of available information, the reality of budget limitations, and the evolutionary nature of the process.

The first priority should be to focus on improvements that can realistically be accomplished in the short term, using and improving on our current management tools, existing data sets, and knowledge, recognizing models and available data will differ by region.

Incorporating Ecosystem Planning in FMPs

Councils should develop ecosystem-based management documents for fisheries.

Ecosystem-based FMPs should be a fundamental, first order goal for each Council or region.

If an overarching fishery ecosystem plan is developed, it should provide general guidance to FMP development.

Process for Developing Ecosystem-Based Goals and Objectives

Broadly defined national level objectives should be developed, followed by regionally defined goals and objectives.

A steering committee comprised of Council and NOAA participants in each region or large marine ecosystem should provide recommendations on the process of developing goals and objectives.

Development of National Guidelines for an Ecosystem Approach to Fisheries

National Guidelines should provide general guidance, recognizing the diversity of ecosystems, and not be technical in nature. It is noted that many of the pitfalls in the development of national guidelines for essential fish habitat [EFH] and the complexities of overfishing can be avoided.

Guidance should help Councils and NMFS to use tools available under MSA and other mandates, to evaluate the potential for ecosystem-based management in each region, and address differences among regions.

Elements of an Ecosystem Approach to Fisheries that should be Codified in the MSA

Great caution should be applied in considering amendments to the MSA that include any specific requirements. More specifically, the RFMC are wary of strict regulations and guidelines that will require Councils to produce new FMP amendments across the board (as occurred with new elements in the 1996 Sustainable Fisheries Act), rather than building an ecosystem approach into existing management practices.

Noting the current MSA allows for ecosystem-based management, the RFMCs do not believe it is necessary to amend the MSA to address ecosystem management. Instead, it is recommended that

regional guidance be developed to help Councils move forward with an increased level of sophistication.

Issue 5: Rebuilding Time Frame

The RFMCs recommend MSA Section 104-297 (e)(4)(A)(ii) be deleted as follows to address the problems associated with the arbitrary 10-year rebuilding time boundary:

- (2) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—
 - (A) end overfishing within one year, and specify a rebuilding period that shall—
 - (i) be as short as possible, taking into account the status, mean generation time, and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; ~~and~~
 - (ii) ~~not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;~~
 - (B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and
 - (C) for fisheries managed under an international agreement, reflect traditional participation in the fishery relative to other nations, by fishermen of the United States.

Issue 6: Governor's Nomination of Council Members

The RFMCs recommend no change in the process for nominating Council members.

Issue 7: FACA and Council Chairs Meetings

The RFMCs recommend amending § 302 of the MSA (16 U.S.C. § 1852) by adding subsection (k) as follows.

SEC. 302 [16 U.S.C. § 1852] REGIONAL FISHERY MANAGEMENT COUNCILS

(k) COMMITTEE OF COUNCIL CHAIRS.

- (1) There shall be established a Fishery Management Council Committee of Chairs, consisting of the Chairs, Vice Chairs and Executive Directors of each of the Regional Fishery Management Councils identified in subsection (a)(1), and, in each case, selected under subsection (e)(2), of this section.**
- (2) The Committee of Chairs shall meet at a minimum annually, to discuss national policies and issues related to, and the effectiveness of implementation of, this Act and the relationship of these matters to other applicable laws.**
- (3) Council Members authorized to receive compensation and expenses under subsection (d)**

of this section shall also receive such for meetings of the Committee.

(4) The requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2) shall not apply to the Committee of Chairs, however, the requirements for Councils under subsection (i)(2) of this section shall apply to the Committee of Chairs.

Issue 8: Bycatch Reporting Requirements

The RFMCs recommend the following revision to section 303 (a) (11):

to the extent practicable establish a standardized-reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, ~~to the extent practicable and~~ in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided.

Issue 9: National Saltwater Recreational License

There should be no federal saltwater recreational license. States should be encouraged to maintain or institute licenses.

APPENDIX A

Recommendations of the 2001 Regional Fishery Management Council Chairs Regarding Magnuson-Stevens Fishery and Conservation and Management Act Reauthorization Issues

Originally adopted May 23, 2001. Revised and readopted April 28, 2005 May 3, 2005

At the 2005 Council Chairs and Executive Directors (CCED) meeting, the Regional Fishery Management Council (RFMC) Chairs reaffirmed a number of positions associated with reauthorizing the Magnuson-Stevens Fishery Conservation and Management Act (MSA) that were originally developed at the 2001 CCED meeting. Other 2001 positions were either updated or deleted as obsolete. The 2001 recommendations are listed below, first as a group of “Highest Priority Issues” and then as “Other Significant Issues.” Other than these two groupings, no relative priorities were assigned.

Highest Priority Issues

- Section 3(29) and Section 304(e)...Redefine Overfishing
The Council Chairs believe that there are a number of problems related to maximum sustainable yield (MSY)-based definitions of overfishing. For example, data deficiencies may lead to inappropriate calculations of MSY, that in turn skew overfishing definitions. Ultimately, this could lead to unnecessary social and economic dislocation for fishermen who are subject to measures that are tied to stock rebuilding schedules skewed by unrealistic overfishing definitions. We would like to work with the Congress in seeking solutions to our concerns as the re-authorization process proceeds.
- Section 303(a)(7)...Essential Fish Habitat
The Sustainable Fisheries Act (SFA) required Councils to identify and describe essential fish habitat (EFH), but gave little direction on how to designate EFH. The EFH definition, i.e., “those waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity,” allows for a broad interpretation. The EFH Interim Final Rule encouraged Councils to interpret data on relative abundance and distribution for the life history stages of each species in a risk-averse manner. This led to EFH designations that were criticized by some as too far-reaching. “If everything is designated as essential then nothing is essential,” was a common criticism. The Council Chairs believe that the current definition and descriptions of EFH serve a very useful purpose in the consultation process between NMFS and agencies that are responsible for permitting or carrying out proposed development projects in the marine environment. Those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity are all habitats of importance to each fishery stock, and the range of each stock from egg to maturity is overlapped by the ranges of hundreds of other stocks. The Council Chairs do, however, endorse the concept of using habitat areas of particular concern (HAPCs) as the next step in describing areas of EFH critical to certain life history stages for each stock, as proposed in the two Senate bills drafted in 2000. For years

a number of Councils have established HAPCs to protect pristine coral reef habitats and spawning aggregation sites.

- Section 313(a): see also Section 403...Observer Program
The Council Chairs reaffirm their support for discretionary authority to the Councils to establish fees to help fund observer programs. This authority would be the same as granted to the North Pacific Council under Section 313 for observers, but not necessarily limited to use of ex-vessel value as the basis in setting fees.
- Endangered Species Act (ESA)/Marine Mammal Protection Act (MMPA)
The Council Chairs recommend that the Councils be identified, for purposes of consultation, as being action agencies under the ESA and the MMPA, thereby being able to participate in the development of biological opinions.

ESA and MMPA considerations are playing an increasingly significant role in Council fishery management activities. The NMFS has stated that Councils “have a critical role in management of federal fisheries” and “must be aware of effects of proposed fishery management actions on listed species”. However, NMFS and NOAA/GC have determined that the Councils are not federal action agencies; therefore, they are not included in the consultation process.

By foreclosing the opportunity to participate in the consultation process, NMFS and NOAA/GC have made it virtually impossible for Councils to meaningfully address their responsibilities under MSA, ESA, and MMPA.

Therefore, the Council Chairs recommend that the MSA be modified to specify that the Councils are deemed to be action agencies for purposes of formal consultation under ESA and MMPA.

- Section 304(a) and (b)...Coordinated Review and Approval of Plans and their Amendments and Regulations
The SFA amended Sections 304(a) and (b) of the MSA to create separate sections for the review and approval of fishery management plans (FMPs) and amendments, and for the review and approval of regulations. Accordingly, the approval process for these two actions now proceeds on separate tracks, rather than concurrently. The SFA also deleted the 304(a) provision allowing disapproval or partial disapproval of an amendment within the first 15 days of transmission. The Council Chairs recommend modification of these provisions to include the original language allowing concurrent approval of FMPs, amendments and regulations, and providing for the initial 15-day disapproval process. The Councils would also like the ability to resubmit responsive measures rather than having to submit a complete FMP or amendment as is now required by subsection (4) of Section 304(a).

Other Significant Issues

- Section 302(d)...Council Member Compensation
The MSA should specify that Council-member compensation be based on the General Schedule that includes locality pay associated with the geographic locations of the Councils’

offices. This action would provide for a more equitable salary compensation. Salaries of members serving in Alaska, the Caribbean, and Western Pacific are adjusted by a COLA. The salary of the federal members of the Councils includes locality pay.

- Section 302(f)(4) and (7)...Receipt of Funds from any State or Federal Government Organization

Currently Councils can receive funds only from the Department of Commerce, NOAA or NMFS. The Councils routinely work with other governmental and non-governmental organizations to support research, workshops, conferences, or to procure contractual services. In a number of cases, complex dual contacts, timely pass-throughs, and unnecessary administrative or grant oversight are required to complete the task. The Councils request a change that would give them authority to receive funds or support from local, state, and other federal government agencies and non-profit organizations. This would be consistent with Section 302(f)(4) that requires the Administrator of General Services to provide support to the Councils.

- Section 302(i)(3)(A)(ii)...Review of Research Proposals

The MSA should be amended to include a provision for the Councils to close meetings to the public for the purposes of reviewing research proposals. Some of the Councils now provide and administer funding to researchers and fishermen for data collection and other research purposes. The proposals submitted to the Councils for funding may contain proprietary information that the submitters do not want to make public for various reasons. It will be in the best interests of this process for the Councils to have the ability to close meetings to consider these proposals.

- Section 303(b)...Regulating Non-Fishing Activities of Vessels

The Council Chairs recommend that Section 303(b) of the MSA be amended to provide authority to Councils to regulate non-fishing activities by vessels that could adversely impact fisheries or EFH. One of the most damaging activities to such habitat is the anchoring of large vessels near HAPCs and other EFH (e.g., coral reefs, etc.). When these ships swing on the anchor chain deployed in 100 feet of water, 10 to 20 acres of bottom may be plowed up by the chain dragging over the bottom. Regulation of this type of activity by the Councils should be authorized.

- Section 303(b)(7)...Collection of Economic Data

The MSA specifies the collection of biological, economic, and socio-cultural data to meet specific objectives of the MSA, and requires the fishery management councils to consider this information in their deliberations. However, Section 303(b)(7) specifically excludes the collection of economic data, and Section 402(a) precludes Councils from collecting "proprietary or confidential commercial or financial information." The NMFS should not be precluded from collecting such proprietary information so long as it is treated as confidential information under Section 402. Without this economic data, multi-disciplinary analyses of fishery management regulations are not possible, preventing NMFS and the Councils from satisfying National Standard 2: "...conservation and management measures shall be based upon the best scientific information...", National Standard 8: "...to the extent practicable, minimize adverse economic impacts...", and other requirements of the MSA and the Regulatory Flexibility Act (RFA).

The Council Chairs recommend resolution of these inconsistencies by amending the MSA to eliminate the restrictions on the collection of economic data. Amending Section 303(b)(7) by removing “other than economic data” would allow NMFS to require fish processors who first receive fish that are subject to a federal FMP to submit economic data. Removing this current restriction will strengthen the ability of NMFS to collect necessary data, and eliminate the appearance of a contradiction in the law requiring economic analyses while simultaneously prohibiting the collection of economic data necessary for such analyses.

- Section 303(d)(5) and Section 304(d)(2)...Establishment of Fees
The Council Chairs are opposed to the imposition of fees that are not regional in nature and established by the Councils. However, we do support the National Academy of Science’s recommendation that Congressional action allow the Councils maximum flexibility in designing IFQ systems and allow flexibility in setting the fees to be charged for initial allocations, first sale and leasing of IFQs.
- Section 305(c)(2)(A)...NMFS Regional Administrator Emergency or Interim Action Vote
For the purpose of preserving the Secretary’s authority to reject a Council’s request for emergency or interim action, each NMFS Regional Administrator currently instructed to cast a negative vote even if he/she supports the action. While we recognize the extreme sensitivity in recommending a change to the voting responsibilities of our partners in the NMFS, we certainly do not wish to appear to be disparaging the Regional Administrator in any way. However, the Council Chairs believe that Congressional intent is being violated by this policy. We suggest a modification to the MSA as follows (new language in bold):

(A) the Secretary shall promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by unanimous vote of the members (**excluding the NMFS Regional Administrator**) who are voting members, requests the taking of such action; and ...
- Section 312 (a)...Fisheries Disaster Relief
Purpose: to make available fishery disaster relief funds for fisheries being closed, or severely curtailed as a result of judicial decisions.

Amendment: We suggest modifying Section 312 of the Act as follows (new language in bold):

(a)...

(1) At the discretion of the Secretary or at the request of the Governor of an affected state or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of

(A)...

(B)...

(C)...

(2) or closures imposed by a court to a fishery [Redesignate paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5)]

Revise new paragraph (3) as follows (new language in bold): Upon the determination under paragraph (1) **or (2)** that there is a commercial fishery failure, **or a judicial closure of the fishery** the Secretary...

- Section 402(b)(1) and (2)...Confidentiality of Information
Section 402 replaced and modified former Sections 303(b) and (e). The SFA replaced the word “statistics” with the word “information”, expanded confidential protection for information submitted in compliance with the requirements of an FMP to information submitted in compliance with any requirement of the MSA, and broadened the exceptions to confidentiality by allowing for disclosure in several new circumstances.

The following draft language clarifies the word “information” in 402(b)(1) and (2) by adding the same parenthetical used in (a), and deletes the provision about observer information. The revised section would read as follows (additions in bold);

(b) CONFIDENTIALITY OF INFORMATION -

- (1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act **that would disclose proprietary or confidential commercial or financial information regarding fishing operations, or fish processing operations** shall be confidential information and shall not be disclosed, except...
 - (2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement under this Act **that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations**, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).
- Bycatch Issues
There appears to be an inconsistent definition of bycatch, depending on geography. In the Atlantic, highly migratory species harvested in “catch and release fisheries” managed by the Secretary under 304(g) of the MSA or the Atlantic Tunas Convention Act are not considered bycatch, but in the Pacific they are. We suggest that highly migratory species in the Pacific, managed under a Western Pacific Council FMP and tagged and released alive under a scientific or recreational fishery tag and release program, should not be considered bycatch. Note that there also is an inconsistency between the MSA definitions of bycatch and the NMFS Bycatch Plan. The NMFS definition is much broader and includes marine mammals and birds as well as retention of non-target species. The Council Chairs prefer the MSA definition.
 - Section 302(i)(2)(c)...Notification of Meetings
The Council Chairs recommend that this section be modified to read: “notice of meetings be submitted for publication in local newspapers in the major fishing ports, or by other means that will result in wide publicity”. Other means such as press releases, direct mailings, newsletters, e-mail broadcasts, and web page updates of activities and events, including Council meetings are far more effective in communicating with our target audience than a legal notice in a local newspaper.

- Section 302(a)(1)(D) Caribbean Council
The Council Chairs request that Section 302(a)(1)(D) of the MSA be amended by inserting “Navassa Island,” before “the Virgin Islands”.

APPENDIX B

RECOMMENDATIONS OF THE REGIONAL FISHERY MANAGEMENT COUNCIL CHAIRMEN ON THE REAUTHORIZATION OF THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

(Based on draft Bill H.R. 4749 dated May 16, 2002, 12:30pm)

Originally adopted May 31, 2002. Revised and re-adopted April 28, 2005

The following is a description of proposed changes to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) under H.R. 4749 and the positions agreed upon by the Chairmen of the eight Regional Fishery Management Councils during their annual meeting May 28-31, 2002, in Sitka, Alaska.

SECTION 3: REPORT ON OVERCAPITALIZATION

Recommendations: This section should be revised to require Secretarial consultation with the Councils in preparation of the overcapitalization report. Also, in subsection (b) page 3, line 6, after the word “financing” add “, government-funded buybacks or other available means.”

SECTION 4: BUYOUT PROVISIONS

(Page 3, line 12 through page 4, line 4). Current language provides that the Secretary can only embark on a buyout program if a Council or “the Governor of a State for fisheries under State authority” requests such a program. The proposed language changes the provision so that the Secretary can engage in a program without the request of a Council or Governor, but the Council or Governor may request such a program if they so wish.

Recommend that current language of the MSA be retained. The Chairmen believe that the Secretary should have the concurrence of the Council or a Governor in order to develop a buyout program.

Page 4, line 5 through page 5, line 11. The current language of the Act means that a vessel being bought out must surrender the applicable permit for which the buyout is intended. The proposed language means that all permits authorizing participation in any U. S. fishery must be permanently surrendered and the holder of a permit that does not currently own a fishing vessel shall be prohibited from engaging in a buyout program (eliminates old section 312(b)(2)(B)).

Recommend support for the proposed language. The proposed language seems to better reflect the intent that all capacity be removed, without being shifted into another fishery. The Chairmen believe that buyouts should apply to all fisheries, whether or not they have been identified as overcapitalized.

SECTION 5: DATA COLLECTION

(Page 5, lines 17-20). The Secretary shall develop a recreational catch data program “...through the use of information gathered from State-licensed recreational fishermen.”

The Chairmen recommend that data from recreational fishermen be included even if a State does not have a marine recreational fishing license.

The Chairmen strongly support better, more timely, collection of data to better meet current management needs, e. g. real time data for implementation of fishery management plan provisions.

Economic Data from processors. Page 6, line 9 through Page 7, line 2. Proposes the Secretary prepare a report to Congress regarding economic data from processors.

Recommendation: The Chairmen do not feel that the requirement for a report, alone, should be all that is adopted in this reauthorization. Councils cannot meet current needs under NEPA, Magnuson, etc. without access to data that describes the full range of the fisheries. The current prohibition prevents councils from being able to evaluate processor sector involvement in the fisheries. **In 2001, the Chairmen recommended the elimination of prohibitions on collecting economic data from processors. The Chairmen reaffirm their support for this position.** *[See attached Chairmen's recommendations for the 2001 CCED meeting]*

SECTION 6: ECOSYSTEM-BASED MANAGEMENT

The Chairmen agree that management based on ecosystem principles and ecosystem-wide information will be an important component of future fisheries management planning but sufficient information does not exist to embark on development of such plans at this time. Councils now include ecosystem-based information and ecosystem management principles and considerations in fishery management plans, to the extent they can do so. The effect of management on fishery-based communities is extremely important and ecosystem-based management should consider this factor. Improvements in science and the plan development process are clearly warranted and will come with time but adoption of ecosystem-based management now or in the near future is problematic given our current state of knowledge. The councils should lead in the effort to integrate ecosystem management principles into fishery management plans through the existing FMP amendment process..

For the current reauthorization, the Chairmen recommend that only subsection (b) "Authorization of Research" and subsection (c) "Definitions and Criteria for Management" should be included in this reauthorization and the other subsections should be deferred to a future reauthorization process. The Chairmen believe that subsection (a) is redundant to other provisions of the Act, and that it is premature to develop pilot programs (subsection (e)) because of the current lack of data. The Chairmen further recommend that subsection (c) be revised (Page 8, lines 1-2, "In General") to state:

"The Secretary **and the Councils** shall—(A) create a definition for "ecosystem" and for "marine ecosystem"; and..."

Unlike the SFA amendments for such things as EFH, where NMFS only consulted with the Councils in the promulgation of implementing rules, this will emphasize that the Councils must be full and equal partners in developing definitions and criteria for management based on ecosystem management principles and ecosystem-wide information.

Recommend that subsections (a), (d), (e) and (f) not be adopted in the current reauthorization.

Recommend that subsection (b) “Authorization of Research” be included in the current reauthorization.

Recommend that subsection (c) be included in the current reauthorization with the revision in (1) stating “The Secretary and the Councils shall—(A) create a definition for “ecosystem” and for “marine ecosystem”; and”

Recommend that subsections (b) and (c) of Section 6 “Ecosystem-Based Management” be enacted only if Congress provides substantive new funding to NMFS, the Councils and the States to engage in the research and development of an ecosystem-based management system.

SECTION 7: OBSERVERS

Recommend support (workload problems notwithstanding).

SECTION 8: OVERFISHING

(Page 11, lines 12-16). This proposal raises a substantive concern. Currently, definition 3(29) of the Act aggregates “overfishing” and “overfished” within the same definition. In attempting to clarify two different (although related) words, the proposal substantively changes the current interpretation of the word “overfished” with respect to the national standard guidelines adopted by the NMFS.

The proposed language would define an overfished stock as one with a size “below the natural range of fluctuation associated with the production of maximum sustainable yield.” It is unclear what the “natural range of fluctuation” would be or who would decide that term. Arguably, depending on the level of precision (confidence) one wished to achieve, the “natural range” could produce virtually any number. Conservative individuals could push for a small confidence interval around the estimate meaning “overfished” would be almost equal to Bmsy. A more liberal interpretation would produce a larger confidence interval and a lower “low end” of the natural range (i. e. “overfished” would represent a biomass level much lower than Bmsy). One can just imagine the arguments over this distinction, and therefore this definition should be based on the observed range of fluctuations rather than the natural (i.e., theoretical) range of fluctuations.

The NSGs appear to define an overfished stock as one for which the stock size is less than ½ of the Bmsy “minimum biomass threshold.” This is less subjective than the proposed language although still rather constraining on the councils’ flexibility to adopt regionally-specific reference points.

Recommend: The Council Chairs support separating ‘overfishing’ and ‘overfished’ definitions, but have no further specific recommendation at this time.

The proposed addition of the words “due to overfishing” means that a stock that is not building biomass due to environmental factors but is being exploited at a level of mortality that does not jeopardize the capacity of the fishery “to produce the maximum sustainable yield on a continuing basis” would not be considered overfished. Effectively, managers would have done everything possible (maintaining an appropriately low fishing mortality rate) but the stock has not responded due to environmental factors.

Page 11, line 21 through Page 12, line 5. This provision separates, as a reportable distinction, whether a stock is “overfished” due to fishing, or due to other causes. **Recommend support:** Consistent with the proposed language (Page 11, line 21-Page 12, line 5), we believe the definition of ‘overfished, however it is eventually determined, clarifies that that condition is ‘due to overfishing,’ consistent with that section.

Additionally, the Chairmen are concerned about interpretations by some parties of the current language regarding rebuilding requirements [Sec. 304(e)(4)(B)]. For example, in recent litigation on the east West Coast regarding groundfish, plaintiffs are focusing on both the terms both the terms ‘as short as possible,’ and ‘not to exceed 10-years’ as required mandates, regardless of the conditional language or the interpretive NSCs in place. The Chairmen’s concern is that ten years may not be appropriate for some species, and respectfully request that language be included in the Act reinforcing the conditional language in Sect. 304(e)(4)(B)(i) and a firm boundary to the maximum allowable rebuilding time frame, such as currently contained in the NSG on this matter.

SECTION 9: BYCATCH

Subsection (a) (Page 12, line 7) proposes to add the word “seabirds” to the definition of regulatory discards. We do recognize the need to protect seabirds and reduce mortality, but question whether placement of seabirds at this place in the definitions actually serves the purpose intended. **Therefore, until clarity is gained on this proposal, the Chairmen recommend against the proposed change.**

Subsection (b), page 12, lines 10-22. Mandates a time-certain establishment of (and the beginning of implementation of) a standardized bycatch reporting methodology. Also provides an exception in the event such a method cannot be established or implemented within the year. H. R. 4749 modifies this exception by adding “...and the Secretary shall take appropriate action to address those reasons.” The general section seems to be an appropriate inducement to proceed, while not locking the Councils or NMFS into another impossible mandate. However, the new clause in the exception means the Secretary alone is responsible for reconciling the deficiencies obstructing establishment and implementation. The Chairmen believe the Councils should play an equal role in this reconciliation.

Recommend support, with the following added language. The Chairmen believe the new exception should be revised at subsection (b)(2), page 12, lines 21-22 to state that;

“...the reasons why, and the Secretary **and the Council** must reconcile...”

Charitable Donations. Page 12, line 23. Provides for charitable donations of dead bycatch that, under specified conditions, cannot otherwise be avoided. The Chairmen recognize the advantage of such a proposal but also acknowledge the enforcement and administrative burdens the concept may create. **The Chairmen offer no opinion at this time.**

New Section 408, “Gear Development” Page 13, line 14. This creates a new Section 408 titled **“Bycatch Reduction Gear Development”** in the early Gilchrest Draft but changed to **“Gear Development”** in H. R. 4749. Two differences between the Gilchrest draft and H. R. 4749 are that the language for Grant Authority has changed slightly (“...subject to available appropriations...”) and in addition to grant funding being used to minimize bycatch, it can also be used to minimize adverse fishing gear impacts on habitat areas of particular concern. While this

change seems beneficial in Section 408, note the ramifications later when considering the newly-proposed definition of ‘habitat area of particular concern.’

This section must be viewed carefully. It is an attractive proposal but the activity must be properly funded. New subsection (e) adds “Authorization of Appropriations” in the amount of \$10,000,000 per year. This is much appreciated by the Chairmen but, of course, the funding has to get through the appropriations approval process and the proposal appears to be intended to fund only grants to entities other than NMFS, the Councils and the States. NMFS, Councils and the States need to be funded in this work if the program is to provide useful products.

Recommend: The Chairmen recommend that new Section 408 be enacted only if the Congress provides substantive new funding to NMFS, the Councils and the States and for research and development grants to engage in the research necessary to develop, or justify modifications to, fishing gear that will help minimize bycatch to the extent practicable.

SECTION 10: FISH HABITAT RESEARCH AND PROTECTION

Page 16, lines 7-21. Focuses conservation on those habitats for which sufficient information exists to be effective, or fishing activities for which the Council determines that the effects jeopardize the ability of the fishery to produce MSY on a continuing basis. This appears to be a useful attempt to direct limited resources towards the most important aspects of the EFH issue. H.R. 4749 adds to the required provisions of FMPs a provision to “minimize to the extent practicable adverse effects on habitat areas of particular concern caused by fishing.” This seems acceptable until one reads the newly-proposed definition of ‘habitat area of particular concern’ in H.R. 4749.

H.R 4749 adds a new definition of habitat area of particular concern as follows:

(46) The term ‘habitat area of particular concern’ means any discrete habitat area that is essential fish habitat and that—

- (A) provides important ecological functions;
- (B) is sensitive to human-induced environmental degradation; or
- (C) is a rare habitat type.

This seems to mean that, once a discrete area is identified as essential fish habitat, any area that meets the tests in (A), (B) or (C) is automatically defined as a habitat area of particular concern, invoking some of the other mandatory measures that councils believe should be discretionary. The Chairmen wonder who decides whether an area meets the criteria in (A), (B) and (C)?

The Chairmen do not believe that such a specific definition is warranted. Effectively, it creates the same concerns that surfaced after passage and implementation of the SFA, e.g., EFH, in practical application (although not original intent), was defined as “everywhere.”

The Chairmen recommend support of Section 10 only if the definition of habitat area of particular concern is modified as follows, or deleted.

(46) The term ‘habitat area of particular concern’ means any discrete habitat area that is a subset of essential fish habitat critical to spawning, breeding, feeding or growth to maturity and that a Council, or the Secretary for any plan developed by the Secretary, has so designated in a fishery management plan or plan amendment.

The Chairmen support authority for the Councils to determine what constitutes an ‘adverse impact.’

SECTION 11: DEMONSTRATION PROGRAM FOR OYSTER SANCTUARIES AND RESERVES

The Chairmen have no comment on this issue.

SECTION 12: INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS

The Chairmen have a number of recommendations to offer on this section but will depart from line-by-line analysis in favor of several broad recommendations. **The Chairmen recommend lifting the moratorium [see attached previous recommendations], with the following comments and recommendations:**

- 1. Any IFQ developed by a Council should only be able to be terminated by that Council through a fishery management plan or plan amendment.**
- 2. There should be no mandatory referenda to approve initiation of, or to ratify final approval of, a plan or plan amendment containing an IFQ. Essentially, the Chairmen believe that the existing council process is the appropriate forum for consideration, development and approval of such plans.**
- 3. The issue of processor shares of individual quotas should be determined by the Council developing the plan. The implications of this issue will vary by region.**
- 4. The ten-year sunset/review provision should be eliminated. The Councils do not support statutory sunset dates, but do support periodic review. The Councils can change or eliminate their IFQ plans as necessary by plan amendment.**
- 5. On the issue of fees, the Council developing the plan should establish the fees, the NMFS should collect the fees, and use of the fees should be only for the FMP for which the fees were collected.**
- 6. The Councils reaffirm their position that IFQs are not property rights and termination of a program does not constitute a taking.**

SECTION 13: COOPERATIVE EDUCATION & RESEARCH.

The Council Chairmen have no comment on this issue.

NOTE: On page 32, lines 10-11, "New England Fisheries Science Center" SHOULD read, "Northeast Fisheries Science Center."

SECTION 14: HIGHLY MIGRATORY SPECIES.

The Council Chairmen have no comment on this issue.

SECTION 15: PROHIBITED ACTS.

The Council Chairmen have no comment on this issue.

SECTION 16: MEMBERSHIP OF FISHERY MANAGEMENT COUNCILS

Page 33, line 23. This proposal would add New York to the member states of the New England Council. This is a regional issue on which the Chairmen have chosen not to offer a collective

opinion. The Mid-Atlantic Council supports the proposal. The New England Council believes there is a better way to address the issue. Both Councils are encouraged to pursue their views individually.

Page 34, Line 4. Additional Secretarial member. The Chairmen are uncertain what has prompted this proposal and note a technical error. H.R. 4749 makes substantive changes to the Gilchrest draft. The Gilchrest draft stated such member could not be directly employed or substantively compensated by the commercial, charter, or recreational fisheries. This seemed to leave open choices from academia, environmental organizations, or government. H.R. 4749 removes these qualification criteria, changes numbers of members, and cites an incorrect subsection as the authorizing subsection for how the appointments shall be made. (Section 302(b)(6) is the subsection that authorizes the Secretary to remove an appointed council member for just cause).

Recommend that this provision not be adopted because it unnecessarily adds to membership without a clear purpose. This adversely impacts both organizational efficiency and administrative costs.

The Chairmen believe that the appropriate way for knowledgeable and experienced citizens to become members of a Regional Fishery Management Council continues to be to have the Governors of the States include them on their nomination lists.

SECTION 17: MISCELLANEOUS AMENDMENTS

The Chairmen believe the proposed language does not substantively add to the effectiveness of the Act and respectfully request that such language changes not be adopted.

SECTION 18: FOREIGN FISHING

The Council Chairmen have no comment on this issue.

SECTION 19: DRIFTNETS

The Council Chairmen have no comment on this issue.

SECTION 20: SOURCES FOR DATA IN FISHERIES RESEARCH

Recommend support. Adds clarity that fishery-dependent as well as fishery-independent data sources should be used.

SECTION 21: MISCELLANEOUS FISHERY PROTECTIONS IN FISHERY MANAGEMENT PLANS

The Chairmen believe the proposed addition of a new paragraph (13) to section 303(b) is redundant [see section 303(b)(2)] and furthermore does not substantively add to the effectiveness of the Act. As alluded to in Section 17, such language may assist those who seek reinforcement in litigation. Again, believing that this is counterproductive to effective fishery management, the **Chairmen respectfully request that such language not be adopted.**

SECTION 22: COOPERATIVE MARINE EDUCATION AND RESEARCH PROGRAM

While the Chairmen believe support and funding for marine education and research is worthwhile, The Secretary can enter into such cooperative agreements without this section being passed. The Chairmen believe the list of included research items is too limiting and may constrain the funding of other appropriate areas of research. **Consequently, the Chairmen oppose Section 22 in its current limited form.**

SECTION 23. AUTHORIZATION OF APPROPRIATIONS

Recommend that the requirements of the SFA in 1996, and any new mandates under a 2002 reauthorization bill be adequately funded by the Congress. The Chairmen respectfully request that, if the Congress wishes to require more attention be paid to these issues, then the Congress must provide sufficient funding. Staffs within State and Federal agencies and the regional Councils are “fully exploited.” There is no “free time” to fill with new mandates; in fact, we need funding to cover the “old mandates” enacted in 1996.

SUMMARY OF SUBSTANTIVE DIFFERENCES BETWEEN PACIFIC COUNCIL AND
COUNCIL CHAIRS AND EXECUTIVE DIRECTORS POSITIONS FOR
REAUTHORIZATION OF THE MAGNUSON-STEVENSON FISHERY CONSERVATION AND
MANAGEMENT ACT

Issue 1: Dedicated Access Privileges (Individual Fishing Quotas, Community Quotas, Area-Based Quotas, and Fishing Cooperatives)

Preamble

A time limit of 18 months after reauthorization was placed on the Secretarial guideline development process.

Issue 2: Competing Statutes

MSA and National Environmental Policy Act

Specific language changes were suggested for amending Sections 302, 303, and 305 of the MSA, which meets the intent of the Pacific Council's position.

MSA and National Marine Sanctuary Act

1. Specific language changes were suggested for amending Sections 302 and 304 of the National Marine Sanctuaries (NMS) Act.
2. Language was added indicating: *Prior to reaching decisions on the management regulations affecting fishing in NMS waters, a RFMC shall give full consideration of the responsibilities, goals, and objectives of individual NMS and any specific recommendations of the NMS.*

MSA and Freedom of Information Act

Language was added to clarify specific protection for non-aggregated observer data and Vessel Monitoring System data.

Issue 3: Integration of Science in the Fishery Management Process

Best Scientific Information Available

The following sentence addressing the relationship of Scientific and Statistical Committees (SSCs) to the requirements in the Data Quality Act was added: *For purposes of compliance with the Data (Information) Quality Act and attendant Office of Management and Budget guidelines, the MSA shall constitute the SSCs as an appropriate alternative review mechanism for influential and highly influential information.*

Use of Default Mechanisms

The use of interim rules (as well as emergency rules) was added to extend as necessary to address delays in the use of best available science, miscellaneous violations of National Standard 1, or other such potential concerns.

Issue 4: Ecosystem Approaches to Management

Regional Ecosystem Planning and the Role of Regional Ocean or Ecosystem Councils

The RFMCs deleted the word *voluntary* from support of regional coordinating bodies to ensure agency and other professionals could be represented.

Science Limitations

A lack of data **should not** ~~could~~ limit our ability to adopt a realistic ecosystem management approach.

The first priority should be to focus on improvements that can realistically be accomplished in the short term, using and improving on our current management tools, existing data sets, and knowledge, **recognizing models and available data will differ by region.**

Incorporating Ecosystem Planning in FMPs

Ecosystem-based FMPs should be a fundamental, first order goal ~~relative to Fishery Ecosystem Plans~~ for each Council or region.

There was a fair amount of discussion regarding the concept of an Ecosystem Management Approach as opposed to Fishery Ecosystem Plans, with the general feeling the latter was more prescriptive and not necessarily desired as an overarching requirement, while the former was not only appropriate, but could probably be achieved without amending the MSA.

Process for Developing Ecosystem-Based Goals and Objectives

Broadly defined national level objectives should be developed, followed by regionally defined goals and objectives ~~(using SSC guidance)~~.

The RFMCs recommend a steering committee provide recommendations on, rather than guide, the process of developing goals and objectives.

Elements of an Ecosystem Approach to Fisheries that should be Codified in the MSA

Noting the current MSA allows for ecosystem-based management, **the RFMCs do not believe it is necessary to amend the MSA to address ecosystem management.** Instead, it is recommended that regional guidance be developed to help Councils move forward with an increased level of sophistication.

**REGIONAL FISHERY MANAGEMENT COUNCIL CHAIRS
AND EXECUTIVE DIRECTORS MEETING
APRIL 26-29, 2005**

DECISIONS SUMMARY

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT (MSA) REAUTHORIZATION AND ASSOCIATED LEGISLATION

The Council Chairs developed new positions on nine issues relative to potential reauthorization of the MSA. The Council Chairs also reviewed positions developed at the 2001 Council Chairs and Executive Directors (CCED) meeting and eliminated those that were either superseded by the current positions or have become obsolete. Positions developed at the 2002 CCED meeting were reaffirmed, noting that while they were specifically directed at reauthorization legislation proposed in 2001 in H.R. 4749, the position concepts are still valid. A composite, separate document details MSA reauthorization positions developed at this meeting and the positions that stand from prior CCED meetings.

BUDGET ISSUES

The Council Chairs and the National Marine Fisheries Service (NMFS) scheduled two interim CCED meetings with a principal purpose of discussing budget planning issues. The first meeting is scheduled for October 25-26, 2005 to include a discussion of the fiscal year (FY) 2007 Administration Request budget. The second meeting is scheduled for January 25-26, 2006 with a primary purpose of discussion the FY 2006 Regional Fishery Management Council (RFMC) line item and supplemental funding from other line items. Both meetings are to be held in the Washington, DC area and hosted by NMFS, as has been the case for interim CCED meetings in recent years.

The RFMCs will participate in another NOAA Planning, Programming, Budgeting, and Execution System (PPBES) budget development process for the FY 2008–2012 period. Mr. Galen Tromble will be the lead contact for NMFS and will coordinate process details in the near future.

OCEAN COMMISSION REPORT: PRESIDENT'S U.S. OCEAN ACTION PLAN

The RFMCs will receive an update on the U.S. Ocean Action plan during the October 25-26, 2005 interim CCED meeting.

ECOSYSTEM MANAGEMENT APPROACHES

The RFMC Chairs and NMFS agreed to continue participation in the workgroup consisting of representatives from four RFMCs and NMFS that have been charged with developing guidelines to ecosystem approaches to management. The work to date was received as a significant advancement, but there was no consensus among RFMC Chairs for specific recommendations for guidelines at this time.

COUNCIL MEMBER TRAINING

The RFMC Chairs recommend pursuing a modified Option 3 as presented in Agenda Item G, Attachment 2, which included (1) initial orientation for new Council members by individual Councils and a two-day NMFS orientation program (both to occur within one month of the August 11 initial appointment date for new Council members), and (2) continued training from a rotating curriculum of current topics, which would be modified annually.

NEXT CCED MEETING

The Mid-Atlantic Fishery Management Council will host the next CCED meeting during the week of May 22, 2006 in New York City, New York or other appropriate venue.

PFMC
05/12/05

Bush urges U.S. Senate to ratify Pacific tuna, swordfish treaty

By The Wave

May. 17 2005.- The Wave News Network - (The following is a message to the U.S. Senate from President Bush regarding his wishes that the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean be ratified. The message was posted Monday on the White House Web site.)

"With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, with Annexes (the "WCPF Convention"), which was adopted at Honolulu on September 5, 2000, by the Multilateral High Level Conference on the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. The United States signed the Convention on that date.

I also transmit, for the information of the Senate, the report of the Secretary of State with respect to the WCPF Convention.

The WCPF Convention sets forth legal obligations and establishes cooperative mechanisms that are needed in order to ensure the long term conservation and sustainable use of highly migratory fish stocks (such as tuna, swordfish, and marlin) that range across extensive areas of the high seas as well as through waters under the fisheries jurisdiction of numerous coastal States.

These constitute resources of worldwide importance, with the fisheries for tuna in the Western and Central Pacific being the largest and most valuable in the world. Implementation of the WCPF Convention will offer the opportunity to conserve and manage these resources responsibly before they become subject to the pressures of overfishing and over capacity that are so evident elsewhere in the world's oceans.

The WCPF Convention builds upon the 1982 United Nations Convention on the Law of the Sea and the 1995 United Nations Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The WCPF Convention gives effect to the provisions of these two instruments, which recognize cooperation to conserve highly migratory fish stocks as essential, and require those with direct interests in them -- coastal states with authority to manage fishing in waters under their jurisdiction and nations whose vessels fish for these stocks -- to engage in such cooperation through regional fishery management organizations.

The WCPF Convention balances in an equitable fashion the interests of coastal States, notably the island States that comprise the Forum Fisheries Agency (FFA), in protecting important fishery resources off their shores, and the interests of distant water fishing states, notably Asian fishing nations and entities (Japan, Republic of Korea, China, and Taiwan), whose fishing vessels range far from their own shores.

The United States, which played an instrumental role in achieving this balance, has direct and important interests in the WCPF Convention and its early and effective implementation. The United States is both a major distant water fishing nation (with the fourth-largest catch in the region) and an important coastal State with significant Exclusive Economic Zone waters in the region (including the waters around Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

United States fishing concerns, including the U.S. tuna industry, U.S. conservation organizations, and U.S. consumers, as well as those residents of Hawaii and the U.S. Flag Pacific island areas of Guam, American Samoa, and the Northern Mariana Islands, all have a crucial stake in the health of the oceans and their resources as promoted by the WCPF Convention.

I recommend that the Senate give early and favorable consideration to the WCPF Convention and give its advice and consent to its ratification.

GEORGE W. BUSH
THE WHITE HOUSE,
May 16, 2005.

A BILL

To provide the necessary authority to the Secretary of Commerce for the establishment and implementation of a regulatory system for offshore aquaculture in the United States Exclusive Economic Zone, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Offshore Aquaculture Act of 2005”.

SEC. 2. FINDINGS

(a) It is the policy of the United States to:

(1) Support an offshore aquaculture industry that will produce food and other valuable products, protect wild stocks and the quality of marine ecosystems, and be compatible with other uses of the Exclusive Economic Zone.

(2) Encourage the development of responsible marine aquaculture in the Exclusive Economic Zone by providing the necessary authorities and procedures for offshore marine aquaculture operations, demonstrations, and research, through public-private partnerships.

(3) Establish a permitting process for aquaculture in the Exclusive Economic Zone to encourage private investment in aquaculture operations, demonstrations, and research.

(4) Promote research and development in marine aquaculture science, technology, and related social, economic, legal, and environmental management disciplines that will enable marine aquaculture operations and demonstrations to achieve operational objectives while protecting marine ecosystem quality.

(b) Offshore aquaculture activities within the Exclusive Economic Zone of the United States constitute activities with respect to which the United States has proclaimed sovereign rights and jurisdiction under Presidential Proclamation 5030 of March 10, 1983.

SEC. 3. DEFINITIONS

As used in this Act –

(a) The term “demonstration” means pilot-scale testing of aquaculture science and technologies, or farm-scale research.

(b) The term “Exclusive Economic Zone” means, unless otherwise specified by the President in the public interest in a writing published in the *Federal Register*, a zone, the outer boundary of which is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, except as established by a maritime boundary treaty in force for the United States, or in the absence of such a treaty where the distance between the coastal State and another State is less than 400 nautical miles, an equidistance line between the two States. The inner boundary of that zone is

(1) a line coterminous with the seaward boundary of each of the several coastal States, as defined in 43 U.S.C. §§ 1312 and 1301(b);

(2) a line three marine leagues from the coastline of the Commonwealth of Puerto Rico;

(3) a line three geographical miles from the coastlines of American Samoa, the Virgin Islands, and Guam, respectively; and

(4) for any other Commonwealth (including the Commonwealth of the Northern Marianas), territory, or possession of the United States not referred to in subparagraph (2) or (3), the outer boundary of the 12 mile territorial sea. For the purposes of applying this Act to any

such commonwealth, territory, or possession, that zone shall also include the area within the territorial sea.

(c) The term “Indian Tribe and Alaska Native organization” has the same meaning as the term “Indian Tribe” in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. § 479a).

(d) The term “lessee” means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce leased deposits of oil, gas, or sulphur pursuant to 43 U.S.C. § 1441 et seq.

(e) The term “marine species” means finfish, mollusks, crustaceans, marine algae, and all other forms of marine life, excluding marine mammals and birds.

(f) The term “offshore aquaculture” means all activities, including the operation of offshore aquaculture facilities, involved in the propagation and rearing, or attempted propagation and rearing, of marine species in the United States Exclusive Economic Zone.

(g) The term “offshore aquaculture facility” means: 1) an installation or structure used for offshore aquaculture; or 2) an area of the seabed or the subsoil used for offshore aquaculture of living organisms belonging to sedentary species.

(h) The term “operating permit” means an authorization issued under section 4(c) to raise specified marine species in a specific offshore aquaculture facility within the area described in an offshore aquaculture site permit.

(i) The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other non-governmental entity (whether or not organized or existing under the laws of any State), and State, local or tribal

government or entity thereof, and, except as otherwise specified by the President in writing, the Federal Government or an entity thereof, and, to the extent specified by the President in writing, a foreign government or an entity thereof.

(j) The term “Secretary” means the Secretary of Commerce.

(k) The term “site permit” means an authorization issued under section 4(b) to use a specified area of the U.S. Exclusive Economic Zone for a specified period of time for purposes of offshore aquaculture.

(l) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

SEC. 4. OFFSHORE AQUACULTURE PERMITS

(a) GENERAL

(1) The Secretary is authorized to establish, in consultation as appropriate with other relevant Federal agencies, a process to make areas of the Exclusive Economic Zone available to eligible persons for the development and operation of offshore aquaculture facilities, which shall include:

(A) The development of procedures necessary to implement a permitting process under this Act, the form and manner in which applications for permits may be made, and the inclusion of any special conditions that may apply to a permit and

(B) The coordination of the offshore aquaculture permitting process, together with the regulations for siting criteria, environmental protection, monitoring and

enforcement, research, and economic and social development, with similar activities administered by other Federal agencies and States.

(2) Permits for offshore aquaculture located on leases or easements authorized or for which a permit has been issued under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. § 1331, et seq.), or within 1 mile of any other facility for which a permit has been issued under the Outer Continental Shelf Lands Act, shall require the concurrence of the Secretary of the Interior.

(3) It shall be unlawful to engage in offshore aquaculture except in accordance with the terms of a valid site permit and a valid operating permit issued by the Secretary under this Act.

(4) An offshore aquaculture permit holder must (i) be a resident of the United States, (ii) be a corporation, partnership or other entity organized and existing under the laws of a State or the United States, or (iii) to the extent required by the Secretary of Commerce by regulation after coordination with the Secretary of State, waive any immunity, and consent to the jurisdiction of the United States and its courts, for matters arising in relation to such permit and appoint and maintain agents within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such permit holder.

(5) Applications for site permits and operating permits may be submitted and reviewed concurrently.

(6) Within 120 days after determining that a permit application is complete and has satisfied all applicable statutory and regulatory requirements, the Secretary shall render a permit decision. If the Secretary is unable to render a permit decision within this time period, the

Secretary shall provide written notice to the applicant indicating the reasons for the delay and establishing a reasonable timeline for a permit decision.

(7) Permits issued under this Act do not supersede or substitute for any other authorization required under applicable federal or State law or regulation and shall authorize the permit holder to conduct activities consistent with the provisions of this Act, regulations issued under this Act, and any specific terms, conditions and restrictions applied to the permit by the Secretary.

(8) Vessels owned or used by any offshore aquaculture permit holder shall be exempt from the requirement for documentation or a fishery endorsement under sections 12102 and 12108 of Title 46, United States Code, for only so long as the vessel is owned or used in support of activities under the permit. All other sections of that Title will apply as if the exempted vessel was documented.

(b) SITE PERMITS – The Secretary is authorized to issue an offshore aquaculture site permit to any person meeting the eligibility criteria in subsection 4(a)(4) under such terms and conditions as the Secretary shall prescribe.

(1) The Secretary shall establish the terms, conditions, and restrictions applicable to such permit, and shall specify in the site permit the duration, size, and location of the offshore aquaculture facility.

(2) Except for demonstration projects and offshore aquaculture permits requiring concurrence of the Secretary of the Interior under subsection 4(a)(2), the site permit shall have a duration of 10 years, renewable thereafter at the discretion of the Secretary in 5-year increments. The duration of permits subject to the provisions of subsection 4(a)(2) shall be developed in consultation as appropriate with the Secretary of the Interior, except that each such permit shall

expire no later than the date that the oil and gas lessee, or the lessee's operator, submits to the Secretary of the Interior a final application for the removal of the facility upon which the offshore aquaculture facility is located.

(3) At the expiration or termination of a site permit for any reason, the site permit holder shall remove all structures, gear, and other property from the site, and take other measures to restore the site as may be prescribed by the Secretary.

(4) For offshore aquaculture located on facilities authorized or for which a permit has been issued under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. § 1331, et seq.), the aquaculture permit holder and all parties that are or were lessees of the lease on which the facilities are located during the term of the site permit shall be jointly and severally liable for the removal of any construction or modifications related to aquaculture operations if the aquaculture permit holder fails to do so and bonds established under this Act for aquaculture operations prove insufficient to cover those obligations. This subsection does not affect obligations to decommission facilities under the Outer Continental Shelf Lands Act.

(c) **OPERATING PERMITS** – The Secretary is authorized to issue operating permits, under terms and conditions as the Secretary shall prescribe, to site permit holders.

(1) The holder of, or applicant for, a site permit under section 4(b) shall submit an application to the Secretary specifying the marine species to be propagated or reared, or both, at the offshore aquaculture facility, and other design, construction, and operational details and information, as specified by regulation, to facilitate review.

(2) Failure to apply for and obtain an operating permit within a reasonable period of time, as specified by the Secretary under the terms and conditions of the offshore aquaculture site permit, may result in the revocation of the site permit.

(d) CRITERIA FOR ISSUING PERMITS

(1) The Secretary shall consult as appropriate with other federal agencies to ensure that offshore aquaculture for which a permit has been issued under this section meets the environmental requirements established under section 5(a) and is compatible with the use of the Exclusive Economic Zone for navigation, fishing, resource protection, recreation, national defense (including military readiness), mineral exploration and development, and other activities.

(2) The Secretary shall consider risks to and impacts on natural fish stocks, marine ecosystems, biological, chemical and physical features of water quality, habitat, marine mammals, other forms of marine life, birds, endangered species, and other features of the environment, as identified by the Secretary in consultation as appropriate with other Federal agencies.

(3) Federal agencies implementing this Act, persons subject to this Act, and coastal States seeking to review permit applications under this Act shall comply with the applicable section of the Coastal Zone Management Act (i.e., 16 U.S.C. §§ 1456(c)(1), (c)(3)(A), (c)(3)(B) or (d)) and the corresponding federal regulations.

(4) When an aquaculture facility is proposed to be associated with an offshore oil and gas platform licensed under the Outer Continental Shelf Lands Act, and if the offshore aquaculture applicant is required to submit to a coastal State a consistency certification for its aquaculture application under subsection 307(c)(3)(A) of the Coastal Zone Management Act (16 U.S.C. § 1456(c)(3)(A)), the coastal State's review under the Coastal Zone Management Act and corresponding federal regulations shall also include any modification to an offshore oil or gas or mineral lessee's development and production plan or development operations coordination document for which a consistency certification would otherwise be required under applicable

federal regulations, including changes to its plan for decommissioning any facilities, resulting from or necessary for the issuance of the offshore aquaculture permit, provided that information related to such modifications or changes are received by the coastal State at the time the coastal State receives the offshore aquaculture permit applicant's consistency certification. In this case, offshore oil and gas or mineral lessees are not required to submit a separate consistency certification for any such modification or change under 16 U.S.C. § 1456(c)(3)(B) and the coastal State's concurrence or objection, or presumed concurrence, under 16 U.S.C. § 1456(c)(3)(A) shall apply to both the offshore aquaculture permit and to any related modifications or changes to offshore oil and gas or mineral plans requiring approval by the Department of the Interior.

(5) If a coastal State is not authorized by 16 U.S.C. § 1456(c)(3)(A) and corresponding federal regulations to review an offshore aquaculture project proposed under this Act, then any modifications or changes to offshore oil and gas or mineral development and production plans or development operations coordination documents requiring approval from the Department of the Interior, shall be subject to coastal State review pursuant to the requirements of 16 U.S.C. § 1456(c)(3)(B), if a consistency certification for those modifications or changes is required under applicable federal regulations.

(6) The Secretary shall periodically review the criteria for issuance of site and operating permits for offshore aquaculture and modify them as appropriate, in consultation as appropriate with other Federal agencies, based on the best available science.

(e) EXCLUSION FROM PROVISIONS OF MAGNUSON-STEVEN'S FISHERY
CONSERVATION AND MANAGEMENT ACT –

(1) Offshore aquaculture conducted in accordance with permits issued pursuant to section 4 of this Act is excluded from the definition of “fishing” in the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1802(15).

(2) The Secretary shall ensure, to the extent practicable, that offshore aquaculture does not interfere with conservation and management measures promulgated under the Magnuson-Stevens Fishery Conservation and Management Act.

(3) The Secretary shall consult with the appropriate Regional Fishery Management Council(s) before issuing a permit.

(4) The Secretary may require permit holders to track, mark, or otherwise identify fish or other marine species in the offshore aquaculture facility or harvested from such facility.

(f) FEES AND OTHER PAYMENTS

(1) The Secretary is authorized to establish, through regulation, a schedule of application fees and annual permit fees.

(2) The Secretary shall require the site permit holder to post a bond or other form of financial guarantee, in an amount to be determined by the Secretary as sufficient to cover any unpaid fees, the cost of removing an offshore aquaculture facility at the expiration or termination of a site permit, and other financial risks as identified by the Secretary.

(3) The Secretary may reduce or waive applicable fees or other payments established under this section for facilities used primarily for research or for raising cultured stock for the replenishment of wild fisheries.

(4) The Secretary shall deposit all fees collected under this Act in accordance with section 3302(b) of Title 31, United States Code.

(g) AUTHORITY TO MODIFY OR SUSPEND PERMITS

(1) Subject to paragraph (2), if the Secretary, after consultation with Federal agencies as appropriate and after affording the permit holder notice and an opportunity to be heard, determines that suspension of, or modification of, a permit is in the national interest, the Secretary may suspend or modify such permit.

(2) If the Secretary determines that an emergency exists that poses a risk to the safety of humans, to the marine environment or marine resources, or to the security of the United States and that requires suspension or modification of a permit, the Secretary may suspend or modify the permit for such time as the Secretary may determine necessary to meet the emergency. The Secretary shall afford the permit holder a prompt post-suspension or post-modification opportunity to be heard regarding the suspension or modification.

(h) ACTIONS AFFECTING THE OUTER CONTINENTAL SHELF –

(1) For aquaculture projects or operations located on facilities subject to the Outer Continental Shelf Lands Act, the Secretary of the Interior is authorized to:

(A) Enforce all requirements contained in federal mineral leases and regulations issued pursuant to the Outer Continental Shelf Lands Act;

(B) Require and enforce such additional terms or conditions as the Secretary of the Interior deems necessary to protect the marine environment, property, or human life or health to ensure the compatibility of aquaculture operations with all activities for which permits have been issued under the Outer Continental Shelf Lands Act; and

(C) Issue orders to any offshore aquaculture permit holder to take any action the Secretary of the Interior deems necessary to ensure safe oil and gas or other mineral operations on any facility to protect the marine environment, property, or human life or health. Failure to comply with the Secretary of the Interior's orders will be deemed to constitute a violation of the Outer Continental Shelf Lands Act.

(2) The Secretary of the Interior shall review and approve any agreement between an operator of a facility for which a permit has been issued under the Outer Continental Shelf Lands Act and a prospective aquaculture operator to ensure that it is consistent with the federal mineral lease terms, Department of the Interior regulations, and the Secretary of the Interior's role in the protection of the marine environment, property, or human life or health. An agreement under this subsection shall be part of the information reviewed pursuant to the Coastal Zone Management Act review process described in subsection 4(d)(4) of this Act and shall not be subject to a separate CZMA review.

(3) No offshore aquaculture may be located on facilities authorized or for which a permit has been issued under the Outer Continental Shelf Lands Act without the prior consent of the owner of the facility.

(4) The Secretary of the Interior shall promulgate such rules and regulations as are necessary and appropriate to carry out the provisions of this subsection.

(i) TRANSFERABILITY OF PERMITS – The Secretary is authorized to establish procedures for transferring permits from the original permit holder to any person meeting the eligibility criteria in subsection 4(a)(4) and able to satisfy the requirements for bonds or other guarantees prescribed under subsection 4(f)(2) hereof.

SEC. 5. ENVIRONMENTAL REQUIREMENTS

(a) ENVIRONMENTAL REQUIREMENTS – The Secretary shall consult as appropriate with other Federal agencies to identify the environmental requirements applicable to offshore aquaculture under existing laws and regulations. The Secretary may establish additional environmental requirements for offshore aquaculture facilities, if deemed necessary, in consultation with appropriate Federal agencies, coastal States, and the public. Environmental requirements may include, but are not limited to, environmental monitoring, data archiving, and reporting by the permit holder, as deemed necessary or prudent by the Secretary. The environmental requirements shall consider risks to and impacts on:

- (1) natural fish stocks,
- (2) marine ecosystems
- (3) biological, chemical and physical features of water quality and habitat,
- (4) marine mammals, other forms of marine life, birds, and endangered species,

and

- (5) other features of the environment

as identified by the Secretary, in consultation as appropriate with other Federal agencies.

(b) SITING, MONITORING AND EVALUATION

(1) The Secretary is authorized to collect information needed to evaluate the suitability of sites for offshore aquaculture.

(2) The Secretary is authorized to promulgate regulations regarding monitoring and evaluation of compliance with the provisions of site and operating permits, including the collection of biological, chemical and physical oceanographic data, and social, production, and economic data.

(3) The Secretary is authorized to monitor the effects of offshore aquaculture on marine ecosystems and implement such measures as may be necessary to protect the environment. Measures may include, but are not limited to, temporary or permanent relocation of offshore aquaculture sites, a moratorium on additional sites within a prescribed area, and other appropriate measures as determined by the Secretary.

(4) The Secretary is authorized to establish monitoring and evaluation protocols.

SEC. 6. RESEARCH AND DEVELOPMENT

(a) In consultation as appropriate with other Federal agencies, the Secretary is authorized to establish an integrated, multidisciplinary, scientific research and development program to further offshore aquaculture technologies that are compatible with the protection of marine ecosystems.

(b) The Secretary is authorized to conduct research and development, in partnership with site permit holders.

SEC. 7. ADMINISTRATION

(a) The Secretary shall promulgate such rules and regulations as are necessary and appropriate to carry out the provisions of this Act. The Secretary may at any time prescribe and amend such rules and regulations as the Secretary determines to be necessary and proper, and such rules and regulations shall, as of their effective date, apply to all operations conducted under permits issued under the provisions of this Act.

(b) (1) The Secretary may promulgate rules that the Secretary finds to be reasonable and necessary to protect offshore aquaculture facilities, and, where appropriate, shall request that the

Secretary of the department in which the Coast Guard is operating establish navigational safety zones around such facilities.

(2) After consultation with the Secretary of Commerce, the Secretary of State, and the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating may designate a zone of appropriate size around and including any offshore aquaculture facility for the purpose of navigational safety. In such zone, no installations, structures, or uses will be allowed that are incompatible with the operation of the offshore aquaculture facility. The Secretary of the department in which the Coast Guard is operating may by regulation define activities that are allowed within such zone.

(c) The Secretary shall consult as appropriate with Federal agencies that are authorized to issue permits within the Exclusive Economic Zone to develop a coordinated and streamlined permitting process for offshore aquaculture. This process shall factor in the needs, requirements, and authorities of each Agency, including the need to consult with State agencies and the requirement for public review and involvement.

(d) The Secretary may enter into memoranda of agreement, memoranda of understanding, or other agreements with heads of Federal agencies, as appropriate, to implement this Act, and the Secretary and the heads of such agencies may issue such regulations as may be necessary to ensure coordination of Federal activities to implement this Act.

(e) The Secretary may, with or without reimbursement, utilize in the performance of functions under this Act the personnel, services, equipment (including aircraft and vessels), and facilities of –

(1) any Federal agency under a written agreement with the head of that agency;
and

(2) any agency of a State under a written agreement with the head of that agency, to the extent allowed by the law of that State.

(f) Nothing in this Act shall be construed to displace, supersede, limit, or modify the jurisdiction, responsibilities or rights of any Federal or State agency, or Indian Tribe or Alaska Native organization, under any Federal law or treaty.

(g) In addition to this Act and other statutes of the United States that apply in the Exclusive Economic Zone, the following shall apply with respect to offshore aquaculture facilities in the Exclusive Economic Zone for which a permit has been issued under this Act and to activities in the Exclusive Economic Zone connected, associated, or potentially interfering with the use or operation of such facilities: (1) Titles 18 and 28, United States Code, (2) provisions of any other statute of the United States, when the Secretary has determined that it is in the public interest that such provision so apply and has published that determination in the *Federal Register* and until the Secretary determines to the contrary and publishes a notice in the *Federal Register* to the contrary, and (3) jurisdiction of the Federal courts with respect to the foregoing. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by an applicable Federal law, treaty, or regulation. Nothing in this Act shall be construed to confer citizenship to a person by birth or through naturalization or to entitle a person to avail himself of any law pertaining to immigration, naturalization, or nationality.

(h) The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any offshore aquaculture facility for which a permit has been issued pursuant to this Act, to the extent applicable and not inconsistent with any provision or regulation under this Act or other

Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 miles, would encompass the site of the offshore aquaculture facility. State taxation laws shall not apply in the Exclusive Economic Zone.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to the Secretary such sums as may be necessary for purposes of carrying out the provisions of this Act.

SEC. 9. UNLAWFUL ACTIVITIES

It is unlawful for any person-

(a) to falsify any information required to be reported, communicated, or recorded pursuant to this Act or any regulation or permit issued under this Act, or to fail to submit in a timely fashion any required information, or to fail to report to the Secretary immediately any change in circumstances that has the effect of rendering any such information false, incomplete, or misleading;

(b) to engage in offshore aquaculture within the Exclusive Economic Zone of the United States except in full compliance with this Act, any regulations promulgated under this Act, and the terms and conditions of any permit issued by the Secretary under this Act;

(c) to refuse to permit an authorized officer to conduct any lawful search or lawful inspection in connection with the enforcement of this Act or any regulation or permit issued under this Act;

(d) to forcibly assault, resist, oppose, impede, intimidate, or interfere with an authorized officer in the conduct of any search or inspection in connection with the enforcement of this Act or any regulation or permit issued under this Act;

(e) to resist a lawful arrest or detention for any act prohibited by this section;

(f) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this section;

(g) to violate any provision of this Act or any regulation or permit issued under this Act;
or

(h) to attempt to commit any act described in subsections (a), (b), (f) or (g).

SEC. 10. ENFORCEMENT PROVISIONS

(a) DUTIES OF SECRETARIES – This Act shall be enforced by the Secretary and the Secretary of the Department in which the Coast Guard is operating. The Secretaries each may exercise for this purpose the same authority as is granted to the Secretary by section 7(e) of this Act.

(b) DISTRICT COURT JURISDICTION – The several district courts of the United States shall have jurisdiction over any actions arising under this Act. The venue provisions of Title 18 and Title 28 shall apply to any actions arising under this Act. The judges of the district courts of the United States and the United States magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act, or any regulation or permit issued under this Act.

(c) POWERS OF ENFORCEMENT

(1) Any officer who is authorized pursuant to the first sentence of subsection (a) of this section by the Secretary or the Secretary of the Department in which the Coast Guard is operating to enforce the provisions of this Act may -

(A) with or without a warrant or other process -

(i) arrest any person, if the officer has reasonable cause to believe that such person has committed or is committing an act prohibited by section 9 of this Act;

(ii) search or inspect any offshore aquaculture facility;

(iii) seize any offshore aquaculture facility (together with its equipment, furniture, appurtenances, stores, and cargo) used or employed in aid of, or with respect to which it reasonably appears that such offshore aquaculture facility was used or employed in aid of, the violation of any provision of this Act or any regulation or permit issued under this Act;

(iv) seize any living marine resource (wherever found) retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 9 of this Act;

(v) seize any evidence related to any violation of any provision of this Act or any regulation or permit issued under this Act;

(B) execute any warrant or other process issued by any court of competent jurisdiction; and

(C) exercise any other lawful authority.

(2) Any officer who is authorized pursuant to the first sentence of subsection (a) of this section by the Secretary or the Secretary of the department in which the Coast Guard is

operating to enforce the provisions of this Act may make an arrest without a warrant for (i) an offense against the United States committed in his presence, or (ii) for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. Any such authorized person may execute and serve a subpoena, arrest warrant or search warrant issued in accordance with Rule 41 of the Federal Rules of Criminal Procedure, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of the Act, or any regulation or permit issued under this Act.

(d) **ISSUANCE OF CITATIONS** - If any authorized officer finds that a person is engaging in or has engaged in offshore aquaculture in violation of any provision of this Act, such officer may issue a citation to that person.

(e) **LIABILITY FOR COSTS** - Any person who violates this Act, or a regulation or permit issued under this Act, shall be liable for the cost incurred in storage, care, and maintenance of any living marine resource or other property seized in connection with the violation.

(f) Upon the request of the Secretary, the Attorney General of the United States may seek to enjoin any person who is alleged to be in violation of any provision of this Act, or regulation or permit issued under this Act.

SEC. 11. CIVIL ENFORCEMENT AND PERMIT SANCTIONS

(a) CIVIL PENALTIES

(1) Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of Title 5, United States Code, to have violated this Act, or a regulation or permit issued under this Act, shall be liable to the United States for a civil

penalty. The amount of the civil penalty under this paragraph shall not exceed \$120,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior violations, and such other matters as justice may require.

(2) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty under paragraph 1 that is subject to imposition or that has been imposed under this section.

(b) CIVIL JUDICIAL PENALTIES - Any person who violates any provision of this Act, or any regulation or permit issued thereunder, shall be subject to a civil penalty not to exceed \$240,000 for each such violation. Each day of a continuing violation shall constitute a separate violation. The Attorney General, upon the request of the Secretary, may commence a civil action in an appropriate district court of the United States, and such court shall have jurisdiction to award civil penalties and such other relief as justice may require. In determining the amount of a civil penalty, the court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior violations and such other matters as justice may require.

(c) PERMIT SANCTIONS

(1) In any case in which -

(A) an offshore aquaculture facility has been used in the commission of an act prohibited under section 9 of this Act;

(B) the owner or operator of an offshore aquaculture facility or any other person who has been issued or has applied for a permit under section 4 of this Act has acted in violation of section 9 of this Act; or

(C) any amount in settlement of a civil forfeiture imposed on an offshore aquaculture facility or other property, or any civil penalty or criminal fine imposed under this Act or imposed on any other person who has been issued or has applied for a permit under any fishery resource statute enforced by the Secretary, has not been paid and is overdue, the Secretary may -

(i) revoke any permit issued with respect to such offshore aquaculture facility or applied for by such a person under this Act, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on such permit.

(2) In imposing a sanction under this subsection, the Secretary shall take into account -

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

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

(3) Transfer of ownership of an offshore aquaculture facility, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of

ownership. Before executing the transfer of ownership of an offshore aquaculture facility, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the offshore aquaculture facility at the time of the transfer. The Secretary may waive or compromise a sanction in the case of a transfer pursuant to court order.

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

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

(d) HEARING - For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) JUDICIAL REVIEW - Any person against whom a civil penalty is assessed under subsection (a)(1) of this section or against whose offshore aquaculture facility a permit sanction is imposed under subsection (c) of this section (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such penalty or sanction. The Secretary shall promptly file in such court a certified copy of the record upon which such penalty or sanction was imposed, as provided in section 2112 of Title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of Title 5, United States Code.

(f) COLLECTION - If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the matter may be referred to the Attorney General, who may recover the amount (plus interest at currently prevailing rates from the date of the final order). In such action the validity, amount and appropriateness of the final order imposing the civil penalty shall not be subject to review. Any person who fails to pay, on a timely basis, the amount of an assessment of a civil penalty shall be required to pay, in addition to such amount and interest, attorney's fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

SEC. 12. CRIMINAL OFFENSES

Any person who knowingly violates subsections 4(a)(3), 4(b)(3), or 9(a), (b) or (g) of the Act, upon conviction, shall be imprisoned for not more than five years and shall be fined not more than \$500,000 for individuals or \$1,000,000 for an organization. Any person who knowingly violates any other provision of section 9 or a measure issued pursuant to subsection 5(b)(3) commits a Class C felony subject to the penalties of Title 18. The several district courts of the United States shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law. Any offenses not committed in any district are subject to the venue provisions of Title 18, section 3238.

SEC. 13. FORFEITURES

(a) IN GENERAL - Any offshore aquaculture facility (including its structure, equipment, furniture, appurtenances, stores, and cargo) used in aid of and any living marine resources (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the violation of any provision of section 9 or subsections 4(a)(3) or 4(b)(3) of this Act shall be subject to forfeiture to the United States. All or part of such offshore aquaculture facility may, and all such living marine resources (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) JURISDICTION OF THE COURTS - Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to

order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

(c) JUDGMENT - If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained. The provisions of the customs laws relating to -

(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(2) the disposition of such property or the proceeds from the sale thereof; and

(3) the remission or mitigation of any such forfeiture;

- shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act.

(d) PROCEDURE

(1) Any officer authorized to serve any process that is issued by a court under subsection 10(b) of this Act shall -

(A) stay the execution of such process; or

(B) discharge any living marine resources seized pursuant to such process;

- upon receipt of a satisfactory bond or other security from any person claiming such property.

Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be

recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any living marine resources seized pursuant to this Act may be sold, subject to the approval of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) REBUTTABLE PRESUMPTION - For purposes of this section, all living marine resources found within an offshore aquaculture facility, and which are seized in connection with an act prohibited by section 9 of this Act, are presumed to have been taken or retained in violation of this Act, but the presumption can be rebutted by an appropriate showing of evidence to the contrary.

SECTION-BY-SECTION ANALYSIS

National Offshore Aquaculture Act of 2005

SUMMARY

The overall purpose of this Act is to provide the necessary authorities to the Secretary of Commerce for the establishment and implementation of a regulatory system for offshore aquaculture in the U.S. Exclusive Economic Zone (EEZ). Specifically, the Act:

- Authorizes the Secretary of Commerce to issue offshore aquaculture permits and to establish environmental requirements where existing requirements under current law are inadequate
- Exempts permitted offshore aquaculture from provisions of the Magnuson-Stevens Fishery Conservation and Management Act
- Authorizes the establishment of a research and development program in support of offshore aquaculture
- Requires the Secretary of Commerce to work with other federal agencies to develop and implement a streamlined and coordinated permitting process for aquaculture in the EEZ
- Authorizes to be appropriated “such sums as may be necessary” to carry out this Act
- Provides for enforcement of the Act.

While the Act provides the Secretary of Commerce with the authority to permit and oversee offshore aquaculture, it also preserves the existing authorities of other federal agencies, States, and Indian tribes and Alaska Native organizations, and requires concurrence from the Secretary of the Interior for aquaculture located on leases or easements authorized or for which a permit has been issued under the Outer Continental Shelf Lands Act (OCSLA), or within one mile of any facility for which a permit has been issued under the OCSLA.

Implementation of this Act will create an enabling environment for the offshore aquaculture industry in the United States in two ways:

- It provides for the establishment of an efficient regulatory process.
- It provides for a research program specifically dedicated to the development of environmentally responsible offshore aquaculture technologies.

SECTION 1. SHORT TITLE

Section 1 designates this Act as the “National Offshore Aquaculture Act of 2005.”

SECTION 2. FINDINGS

Section 2 proclaims that it is the policy of the United States to support an offshore aquaculture industry compatible with other uses of the EEZ, encourage the development of responsible marine aquaculture in the EEZ, establish a permitting process for aquaculture in the EEZ, and promote research and development in marine aquaculture. This section also states that U.S. jurisdiction over offshore aquaculture is established under Presidential Proclamation 5030 of March 10, 1983, which declared that the U.S. EEZ extends 200 nautical miles from the coast.

The National Aquaculture Act of 1980 declared aquaculture development to be in the national interest, and included requirements for federal agencies to address barriers to such development. Both the Department of Commerce (in 1999) and, within the Department, the National Oceanic and Atmospheric Administration (NOAA) (in 1998) have endorsed aquaculture policies in support of the National Aquaculture Act, but additional statutory authority is needed in order to establish an enabling regulatory environment for aquaculture in the EEZ. This Act would provide the Secretary of Commerce with the necessary regulatory authority to establish and implement a permitting system, in consultation with other federal agencies, to create such an environment.

SECTION 3. DEFINITIONS

Section 3 defines key terms used in the Act. “Exclusive Economic Zone” is the area extending from the seaward boundary of State/Territorial jurisdiction out to 200 nautical miles from the baseline. The geographic extent of this area is identical to the Exclusive Economic Zone as defined under the Magnuson-Stevens Fishery Conservation and Management Act. “Offshore aquaculture” means all activities involved in the propagation and rearing (or attempted propagation and rearing) of marine species in the EEZ (i.e., beyond State or Territory jurisdiction). “Secretary” means the Secretary of Commerce.

Two types of permits for which the Secretary is given authority under this Act are defined. “Site permits” refer to a specified area of the EEZ that could be used for offshore aquaculture for a specified period of time, while “operating permits” refer to the specified marine species that would be permitted to be raised in a specific offshore aquaculture facility within the area described in the site permit.

Other terms defined include “demonstration”, “Indian tribe and Alaska Native organization”, “lessee”, “marine species”, “offshore aquaculture facility”, “person”, and “State.” “Offshore aquaculture facility” includes areas of the seabed or subsoil used for growing sedentary species, in addition to installations and structures located in the water column or on the surface. “Marine species” excludes birds and mammals. “Person” includes non-U.S. individuals and corporations. “State” includes U.S. Territories and possessions.

SECTION 4. OFFSHORE AQUACULTURE PERMITS

Section 4 authorizes the Secretary of Commerce to establish a process to allow use of the EEZ for offshore aquaculture, gives the Secretary authority to issue site permits and operating permits, establishes criteria for issuing permits under this section, excludes offshore aquaculture from certain provisions of the Magnuson-Stevens Fishery Conservation and Management Act, grants the Secretary of Commerce authority to set fees and to modify or suspend permits issued under this section, and provides certain authorities to the Secretary of the Interior with respect to actions affecting the Outer Continental Shelf.

This section provides the basis for a new federal regulatory system for the offshore aquaculture industry. Many of the details of this system will be developed through rulemaking following enactment of this legislation. The rulemaking process, which will be conducted with stakeholder input, will provide a more appropriate forum for such fine-tuning adjustments than can be accommodated in legislation.

This section outlines the specific authorities granted to the Secretary of Commerce and to the Secretary of the Interior, and establishes specific requirements that must be met in implementing this new regulatory system. The language provides sufficient authority and flexibility to address the full range of anticipated issues through the rulemaking process, and also makes plain that permits issued under the Act do not supersede or substitute for any other required authorizations under other applicable federal or State law (e.g., NPDES permits under the Clean Water Act).

Section 4(a) - General

Section 4(a) contains provisions that apply to the overall permitting system authorized in the Act.

Overall process - In establishing a process for making areas of the EEZ available for development and operation of offshore aquaculture, the Secretary of Commerce is authorized to develop necessary procedures and to coordinate the permitting process and associated regulations with other federal agencies and States. The Secretary's authority includes the authority to establish how applications for permits will be made and to include special conditions on individual permits. The latter provision ensures the ability of the Secretary to address whatever future concerns are identified with particular aquaculture sites or operations.

Coordination with other federal agencies and States is an important element of the regulatory system established in this Act. Specific agencies are not listed so as to not inadvertently preclude coordination with an agency not listed, and to prevent having to amend this Act in response to future reorganizations or new or amended statutes governing other agencies. Multiple federal agencies have regulatory authority over aspects of offshore aquaculture operations in the EEZ. The U.S. Army Corps of Engineers has been the *de facto* lead permitting agency for offshore aquaculture permits, by virtue of its authority under the Rivers and Harbors Act of 1899 to require a section 10 permit certifying that an offshore aquaculture facility will not interfere with navigation. District Corps offices have coordinated interagency reviews of offshore aquaculture facility applications for section 10 permits and prepared environmental assessments for proposed facilities, with NOAA, EPA, and other federal agency participation in such reviews. The Act establishes specific offshore aquaculture permitting authority for the Department of Commerce and makes the Secretary of Commerce responsible for coordinating offshore aquaculture permitting activities. This will not preempt the authority of other federal agencies, such as EPA's authority under the Clean Water Act to require offshore aquaculture facilities that engage in the discharge of pollutants to obtain a permit, meet ocean discharge criteria, and comply with effluent guidelines.

For offshore aquaculture located on leases or easements authorized or for which permits have been issued under the Outer Continental Shelf Lands Act (OCSLA), or within one mile of facilities for which a permit has been issued under the OCSLA, the concurrence of the Secretary of the Interior is required. Offshore oil and gas platforms are being investigated as potential sites for offshore aquaculture facilities, so the Secretary of the Interior is also given specific authority with respect to offshore aquaculture located on such facilities.

Permits required - Section 4(a) makes it unlawful to engage in offshore aquaculture in the EEZ without two valid permits issued by the Secretary of Commerce: a site permit and an operating permit. The reason for two permits is to establish a general right to use an area of the EEZ for offshore aquaculture (site permit) and a more specific right to locate and operate specific types of aquaculture facilities to grow specific marine species on that site (operating permit). The site permit would establish where the permit holder may operate an offshore aquaculture facility, but the holder would not be allowed to install and operate the facility without an accompanying operating permit. The requirement for permits under this Act does not obviate the requirement for permits under other applicable authorities, such as the Clean Water Act.

Eligibility for permits - Section 4(a) establishes who is eligible to apply for offshore aquaculture permits. Eligibility extends to individuals who are residents of the United States (regardless of citizenship) as well as to corporations, partnerships, and other entities that are organized and exist under the laws of a State or the United States. This does not preclude applications by foreign companies or investors, provided they appoint and maintain agents within the United States who are authorized to receive and respond to any legal process issued in the United States, and, in some cases, waive immunity so as to be subject to U.S. jurisdiction.

Timely decisions - Section 4(a) provides for timely decisions on permit applications in two ways—first, by allowing concurrent submission and review of applications for site and operating permits, and second, by requiring the Secretary of Commerce to render a decision on each permit application within 120 days after determining that a permit application is complete and has satisfied all applicable statutory and regulatory requirements. These provisions are needed to ensure an efficient permitting process in which applicants receive decisions on proposed operations within a reasonable time frame. A prolonged application process is one of the chief criticisms of the current regulatory system for offshore aquaculture. The 120-day requirement will not jeopardize the ability of NOAA or other agencies to satisfy environmental and other review requirements, since the 120-day period would not begin until these requirements have been satisfied. In the event that the 120-day requirement cannot be met, the Secretary is required to provide written notice to the applicant indicating the reasons for the delay and a reasonable timeline for a permit decision.

Section 4(b) - Site Permits

Section 4(b) gives the Secretary of Commerce authority to issue site permits to eligible persons and requires the Secretary to specify the duration, size, and location of the marine aquaculture facility. The Secretary is given broad latitude to establish whatever specific terms and conditions are deemed necessary for any given site permit; however, the duration of the permit must be for a period of 10 years, renewable at the Secretary's discretion in 5-year increments. This provision is important to an offshore aquaculture business, which requires reasonable assurance of being able to occupy a particular site long enough to return a profit. It is also important to have a sufficiently long permit duration to satisfy financial institutions considering making loans to the aquaculture business. Many coastal States provide such security of tenure for aquaculture in State waters by offering leases.

Two exceptions to the 10-year site permit duration are demonstration projects, and offshore aquaculture located on leases or easements authorized or for which a permit has been issued by

the Department of the Interior under the Outer Continental Shelf Lands Act (OCSLA). In the latter case, the duration of the permit will be developed in consultation with the Secretary of the Interior. For aquaculture located on platforms or other facilities permitted under OCSLA, the permit cannot extend beyond the date on which an oil and gas lessee, or the lessee's operator, submits a final application to the Department of the Interior for removal of the facility upon which the offshore aquaculture facility is located. This is because the OCSLA requires removal of all facilities once production ceases, and it is not anticipated that the aquaculture industry would be interested in assuming liability for removing platforms, given the large costs associated with such an endeavor.

Upon termination of the site permit, the permit holders would be required to remove all structures, gear, and property from the site. The Secretary may also require the permit holder to take other measures to restore the site. For offshore aquaculture located on facilities authorized or for which a permit has been issued by the Department of the Interior under the OCSLA, the current and former OCSLA lessees, as well as the aquaculture permit holder, are liable for removal of any construction or modifications related to aquaculture operations if the aquaculture permit holder fails to do so and bonds posted for the aquaculture facility are insufficient to cover those obligations.

Section 4(c) - Operating Permits

Section 4(c) authorizes the Secretary of Commerce to issue operating permits to site permit holders. The specific design, construction, and operational details and other information to be provided in the permit application will be determined in the rulemaking process; however, the site permit holder must specify the marine species to be propagated and/or reared at the site. Failure to apply for an operating permit within a reasonable time could result in revocation of a site permit. This requirement is intended to prevent a speculation market for site permits, and to allow the Secretary to revoke the site permit of anyone who for whatever reason is not yet ready, willing, or able to pursue the necessary operating permit for the installation and start-up of an offshore aquaculture facility at the site.

Section 4(d) - Criteria for Issuing Permits

Section 4(d) requires that the Secretary ensure that aquaculture permitted under the previous sections meets environmental requirements established under other federal and State law and is compatible with other uses of the EEZ, specifically navigation, fishing, resource protection, recreation, national defense (including military readiness), and mineral exploration and development. This section also requires the Secretary to consider risks to and impacts on natural fish stocks, marine ecosystems, water quality, habitat, marine mammals, other forms of marine life, birds and endangered species, and other features of the environment, as identified by the Secretary in consultation with other federal agencies. It also requires compliance with applicable sections of the Coastal Zone Management Act, which requires federal actions to be consistent with approved State coastal management programs, and includes a provision for coordination of any additional consistency certifications required when offshore aquaculture takes place on facilities for which permits have been issued under the OCSLA. The Secretary is required to periodically review and modify the criteria for site and operating permits, as appropriate. This must be done in consultation with other federal agencies and must be based on the best available science.

The intent of these provisions is to provide a degree of predictability as to the types of aquaculture that are more likely to be approved for the EEZ and to provide a way for the concerns of other federal agencies and States to be considered in the decision process.

Section 4(e) - Exclusion from Provisions of Magnuson-Stevens Fishery Conservation and Management Act

Section 4(e) specifically excludes aquaculture conducted in the EEZ from the definition of “fishing” under the Magnuson-Stevens Act (MSA). This is a very important provision for the offshore aquaculture industry, as MSA provisions that restrict the size, season, harvesting methods, and other aspects relating to the possession of species managed under fishery management plans would render everyday aspects of aquaculture operations illegal. To safeguard wild fisheries, the Secretary is required to ensure, to the extent practicable, that offshore aquaculture does not interfere with MSA conservation and management measures for wild stocks and to consult with the appropriate Fishery Management Councils before issuing a permit under this Act. To facilitate enforcement, the Secretary is also given authority to require permit holders to track, mark, or otherwise identify fish or other marine species from the marine aquaculture facility so as to distinguish them from wild stock.

It should be noted that NOAA has always understood aquaculture to constitute “fishing” for both domestic and international law purposes. It is, therefore, necessary specifically to exclude aquaculture from MSA coverage.

Section 4(f) - Fees and Other Payments

Fees – Section 4(f) authorizes the Secretary to establish a schedule of application and annual permit fees.

Bonds – Section 4(f) requires the applicant to post a bond or other form of financial guarantee in a sufficient amount (to be established by the Secretary) to cover unpaid fees, the cost of removing a facility, and any other financial risks identified by the Secretary. This requirement reduces the financial risk to the Government of allowing aquaculture development in the EEZ, and provides a vehicle by which the Secretary can set bond requirements commensurate with the risk associated with specific aquaculture operations.

Right to waive fees – Section 4(f) allows the Secretary to waive fees for research facilities, or for facilities raising stock for purposes of stock enhancement. This provision acknowledges that the fee structure may discourage certain aquaculture operations or investments that are in the national interest. Offshore aquaculture is a new industry with significant start-up costs and most new businesses in all types of industries require at least several years of operation before they realize a profit.

Deposit of fees – All fees collected under the authority of this section must be deposited in the Treasury in accordance with the existing miscellaneous receipts statute.

Section 4(g) – Authority to Modify or Suspend Permits

Section 4(g) grants the Secretary authority to modify or suspend permits issued under the Act if the modification or suspension is found to be in the national interest, after consulting with other agencies as appropriate and giving the permit holder notice and an opportunity to respond. However, if the Secretary determines immediate suspension or modification is necessary, an emergency order may be issued if there are risks to human safety, the marine environment or marine resources, or the security of the United States. In the case of an emergency order, the permit holder would have an opportunity to be heard after the emergency modification or suspension.

Section 4(h) –Actions Affecting the Outer Continental Shelf

Section 4(h) gives the Secretary of the Interior authority with respect to aquaculture projects and operations located on facilities subject to the OCSLA. This includes the authority to enforce requirements contained in federal mineral leases and OCSLA regulations; require and enforce additional permit terms or conditions; issue emergency orders to permit holders; and promulgate any necessary rules and regulations to implement this section. The Department of the Interior needs this authority in order to meet its health, safety, and other responsibilities on facilities such as oil and gas platforms that may be used for offshore aquaculture. This section also includes provisions relating to agreements between aquaculture and OCSLA operators.

Section 4(i) – Transferability of Permits

The Secretary is authorized to establish a process for transferring permits from the original permit holder to another person meeting the eligibility requirements and able to satisfy the requirements for bonds or other guarantees.

SECTION 5. ENVIRONMENTAL REQUIREMENTS

Section 5 contains provisions for the establishment of environmental requirements and the monitoring and evaluation of compliance with permit conditions.

These provisions are important not only to environmental nongovernmental organizations (NGOs) and other stakeholders concerned about the potential negative impacts of aquaculture, but also to the aquaculture industry, since they will establish expectations for the aquaculture operations and provide a scientific basis for measuring compliance.

Section 5(a) – Environmental Requirements

Section 5(a) requires the Secretary to consult as appropriate with other federal agencies to identify environmental requirements under existing laws that are applicable to offshore aquaculture. Although not specifically named, these agencies would include the Environmental Protection Agency, the U.S. Army Corps of Engineers, and others. If necessary, additional requirements may be established by the Secretary of Commerce in consultation with appropriate federal agencies, coastal States and the public. Environmental requirements may include environmental monitoring, data archiving, and reporting. In setting environmental requirements, the Secretary is required to consider risks to and impacts on a range of concerns to be identified in consultation with other federal agencies. These include natural fish stocks, marine ecosystems, biological, chemical, and physical features of water quality and habitat, marine

mammals, other forms of marine life, birds, endangered species, and other features of the environment.

This provision preserves the roles and responsibilities of other federal agencies in establishing environmental requirements under current law (e.g., the Clean Water Act), while giving the Secretary of Commerce authority to impose additional requirements specifically relating to offshore aquaculture activities for which permits are issued under this Act. The intent is to avoid duplicative and/or conflicting requirements, allow the Secretary to fill in any gaps or deficiencies in such environmental requirements, and facilitate the identification of all requirements that apply to an offshore aquaculture operation regardless of which federal agency has primary responsibility.

Section 5(b) – Siting, Monitoring and Evaluation

Section 5(b) authorizes the Secretary to collect information to evaluate the suitability of sites for offshore aquaculture, and to promulgate regulations to facilitate monitoring and evaluation of compliance with permits (including the collection of biological, chemical, and physical oceanographic data as well as social, production, and economic data). This section also authorizes the Secretary to monitor the effects of aquaculture on marine ecosystems, implement measures to ensure compliance with environmental requirements, and establish monitoring and evaluation protocols. Remedial measures may include the temporary or permanent relocation of sites or a moratorium on additional sites within an area. The intent of this provision is to ensure monitoring of the cumulative impacts of all offshore aquaculture as well as the impacts of individual operations in the EEZ according to a common set of monitoring and evaluation protocols.

SECTION 6. RESEARCH AND DEVELOPMENT

Section 6(a) authorizes the Secretary of Commerce, in consultation with other federal agencies, to establish an integrated, multidisciplinary, scientific research and development program to further offshore aquaculture technologies compatible with the protection of marine ecosystems. Although not specified in the legislation, eligible areas of research would include scientific, social, legal, and environmental management issues.

Section 6(b) authorizes the Secretary to conduct research and development in partnership with site permit holders.

This section preserves the roles and responsibilities of other federal agencies with respect to aquaculture, as well as acknowledging the need to cooperate with industry for purposes of data collection as well as research and development.

SECTION 7. ADMINISTRATION

Sections 7(a) and 7(b) require the Secretary to promulgate, prescribe, and amend rules and regulations to carry out this Act, including authorization to protect offshore aquaculture facilities and, where appropriate, to request the Coast Guard to establish navigational safety zones. Section 7(b) also includes language specifying the authority of the Coast Guard to establish such zones.

Section 7(c) requires the Secretary to consult as appropriate with other federal agencies that are authorized to issue permits within the EEZ to promulgate regulations to establish and implement a coordinated and streamlined permitting process. This section requires that the process factor in the needs, requirements, and authorities of other federal agencies, including the need for consultation with State agencies and for public review and involvement. Although not specifically named, relevant agencies would include the Environmental Protection Agency, Minerals Management Service, the Army Corps of Engineers, and others.

Section 7(d) specifically authorizes the Secretary to establish agreements with other agencies (i.e., memoranda of understanding, memoranda of agreement, etc.) to implement this Act. It also authorizes the Secretary and other agencies to issue regulations to ensure coordination of federal activities to implement this Act.

Section 7(e) authorizes the Secretary to enter into agreements with other federal agencies and with State agencies relating to the use of personnel, services, equipment, and facilities, with or without reimbursement, for purposes of this Act.

Section 7(f) specifies that this Act is not intended to preempt the jurisdiction, responsibility or rights of other federal agencies, State agencies, or Indian tribes or Alaska Native organizations under any federal law or treaty. The intent of this provision is to eliminate the need to reference each and every statute or treaty that applies in the EEZ by stating that this Act will not preempt any existing authorities.

Sections 7(g) and 7(h) provide extraterritorial jurisdiction to protect offshore aquaculture facilities under U.S. law. It is not intended to supersede this Act or any other federal laws and regulations that apply in the EEZ - e.g., the Clean Water Act. Specifically, this section does not extend States' Clean Water Act jurisdiction beyond their current boundaries.

SECTION 8. AUTHORIZATION OF APPROPRIATIONS

Section 8 authorizes to be appropriated to the Department of Commerce "such sums as may be necessary for purposes of carrying out the provisions of this Act." Implementation of the Act will require funding to cover the costs of developing and implementing a regulatory and administrative system for offshore aquaculture, supporting internal and external R&D, developing environmental requirements, and monitoring, compliance, and enforcement.

SECTION 9. UNLAWFUL ACTIVITIES

Section 9 outlines activities that are unlawful under the Act. Unlawful activities include, but are not limited to, falsification of information; engaging in offshore aquaculture except in full compliance with this Act; obstruction of lawful enforcement activities such as search or inspection; interference with lawful search or inspection by an enforcement officer; resisting or interfering with an arrest; or violation of any provisions, regulations, or permits under this Act.

SECTION 10. ENFORCEMENT PROVISIONS

Section 10 grants enforcement authority under the Act to the Secretary of Commerce and the Secretary of the Department in which the Coast Guard is operating, and authorizes agreements for the use of personnel, services, equipment and facilities of other federal and State agencies in

enforcing this Act. It is not intended to be used to extend arrest powers to additional personnel or components. Section 10 also grants exclusive jurisdiction over cases arising under the Act to U.S. district courts, specifies the powers of enforcement officers, provides for the issuance of citations (that is, written warnings), holds violators subject to certain costs associated with the storage, care, and maintenance of seized property, and includes an injunctive relief provision.

SECTION 11. CIVIL ENFORCEMENT AND PERMIT SANCTIONS

Section 11 provides for both civil administrative and civil judicial penalties. Section 11 also grants the Secretary the authority to revoke, suspend, deny, and impose additional conditions or restrictions on a permit holder found to be committing or to have committed an unlawful activity under the Act. This section also contains provisions relating to hearings, judicial review, and the collection of civil penalties. Civil administrative penalties assessed by the Secretary may not exceed \$120,000 per violation, with each day of a continuing violation considered a separate offense. Civil judicial penalties may not exceed \$240,000 per violation, with each day of a continuing violation considered a separate offense.

SECTION 12. CRIMINAL OFFENSES

Section 12 identifies criminal offenses and associated maximum fines and prison terms, specifies violations that are Class C felonies, and establishes federal jurisdiction over these offenses.

SECTION 13. FORFEITURES

Section 13 provides for the forfeiture of property seized in the enforcement of this Act, and specifies the jurisdiction with respect to such forfeitures as any district court of the United States. The section includes provisions on judgments and procedures, and a rebuttable presumption.

Jun-10-05 11:22am From-ROBERTSON, MONAGLE & EASTAUGH

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**SECTION-BY-SECTION SUMMARY OF DRAFT "COOPERATIVE HAKE
IMPROVEMENT AND CONSERVATION ACT"**

**SECTION 1 – Short Title – “COOPERATIVE HAKE IMPROVEMENT AND
CONSERVATION ACT”**

SECTION 2 - Findings, Purposes, and Policy – Provide the reasons for the bill (establish a rationalized management system for the domestic Pacific whiting fishery; promote conservation; make clear that this fishery is unique).

SECTION 3 – Definitions – Contains definitions for terms used in the bill.

SECTION 4 – Authorizations – Authorizes appropriations to the Secretary of Commerce to carry out responsibilities under the Act.

SECTION 5 – General – Provides a specific time frame for final regulations to be promulgated to implement the Act, including regulations for monitoring the fishery, and direction to the Pacific Fishery Management Council to amend fishery management plans to conform with the title.

SECTION 6 – Rationalization of the Pacific Whiting Fishery – Provides the means to identify participants eligible for allocation; allocates the on-shore portion of the fishery among participants after providing for incidental harvest of whiting in other fisheries; establishes the mechanism under which cooperative harvesting will occur; imposes certain restrictions on transfer; requires agreements between fishermen and processors; sets the level of fees, uses of the money, and provides for pass-through transfers to States to offset costs incurred by the States in managing the fishery.

SECTION 7 – Conservation of Pacific Whiting – Provides for Council recommended limits on incidental catch of other groundfish species by whiting fishermen; establishes a goal of minimizing, to the extent practicable, the discard of other groundfish and Pacific whiting; provides for monitoring; directs the Council to recommend: limits on incidental catch, monitoring, and transfer of incidental catch limits; provides for expedited regulatory approval if certain conservation standards are met.

SECTION 8 – Enforcement and Penalties – Links violations to the enforcement provisions of the Magnuson-Stevens Act; prohibits ownership or control of cooperative harvesting shares in violation of the Sherman Anti-Trust Act.

SECTION 9 – Report to Congress – Requires the Secretary of Commerce to report every five years on the implementation of the Act and any recommendations for changes.

SECTION 10 – Savings Clause – Makes clear that unless otherwise provided, the Act makes no changes to the Magnuson-Stevens Act or to the prohibition on establishing a processor quota system as contained in the Consolidated Appropriations Act of 2004.

HOW IT ALL WORKS

Under the Agreement on Pacific Hake/Whiting between the U.S. and Canada, a mechanism is in place to annually determine the coast-wide catch level of Pacific whiting. A formula for sharing

the catch between the two countries is also included in the Agreement.

Within the U.S., the catch level has already been divided among sectors. The tribal fishery amount (set by agreement between the U.S. government and the treaty tribes) is taken off the top, as is a certain amount to account for scientific research catch. Of the remainder, 34% has been allocated to the catcher-processor fishery, 24% to the mothership fishery, and 42% to the shore-based fishery, all under the Pacific Groundfish Fishery Management Plan.

The catcher-processor fishery has already been rationalized through a system of private contracts approved by the Department of Justice and thus is not considered here. Participants in the mothership fishery are still discussing rationalization proposals so at the moment they are also not included. The bill thus deals just with the shore-based fishery.

The bill proposes to establish cooperative harvest shares based on catch and processing history. Once those shares are established, they will be applied each year to the 42% of the U.S. catch level of Pacific whiting allocated to the shore-based fishery, after first making an allowance for whiting incidentally taken in other fisheries. The shares are of two types: fisherman and processor. Unlike the "two-pie" systems that have been discussed in other fisheries, all of the shares apply to harvesting. However, similar to the system for pollock under the American Fisheries Act, an agreement must be reached between a fisherman and a processor on using the shares. Once that agreement is reached, the fisherman catches whiting using his own shares *plus* an equal amount of the processor's share. Thus, a fisherman who has shares equivalent to 100,000 pounds of whiting in one year will actually be able to harvest 200,000 pounds of whiting utilizing his shares and the equivalent amount of processor cooperative share.

Since neither set of shares can be used on their own, processors and fishermen are forced to work cooperatively if they want to participate in the fishery. Fishermen are free to negotiate prices and to shop around among processors. Processors will have confidence in how much fish they will have landed at their docks and be able to prepare processing crews, packaging, and marketing accordingly. The end to the derby fishery should lead to better recovery rates and less wastage of whiting, and reduced incidental catch of other species. Conservation and management costs will be no higher than they would be if no rationalization plan was in effect, but there will now be some level of cost recovery through fees.

Through a system of scientifically-based bycatch limits that are transferable among participants in the fishery, there will no longer be a "race for bycatch" in order to prevent one individual or group from shutting down another. While incidental catch is unpredictable, this should generally lead to greater care being taken to avoid known bycatch hot spots.

Finally, through firm application of the anti-trust laws and a savings clause protecting Congressional action on certain quota systems, the bill makes clear that we are dealing with the unique circumstances of a unique fishery and that massive consolidation will not be taking place.

In sum, the bill provides market-based conservation while preserving a fishery that was developed from the water up through the hard work and investment of American fishermen and processors.

SECTION 1. SHORT TITLE

This Act may be cited as the "Cooperative Hake Improvement and Conservation Act".

SEC.2. FINDINGS, PURPOSES, AND POLICY.

(a) **FINDINGS.**—The Congress finds and declares the following:

(1) The Governments of the United States and Canada have entered into an agreement to cooperate in the conservation and management of shared stocks of Pacific hake/whiting, signed in Seattle, Washington, on November 21, 2003.

(2) The United States has a further obligation to ensure to the extent practicable in accordance with existing law that Pacific whiting stocks are conserved and managed in a sustainable manner so as to prevent overfishing while providing economic opportunities for the United States fishing industry, including commercial fishermen and seafood processors, and coastal communities.

(3) In order to meet these obligations, a regional program of market-based incentives for conservation and management should be established.

(4) The Pacific whiting fishery is uniquely suited to the establishment of a distinct market-based program due to the relatively small and easily identifiable numbers of fishermen and processors involved, and to the existence of a management system that clearly allocates harvest among discrete sectors of the fishery.

(5) Because actions taken to reduce excess capacity in fisheries can have adverse impacts on fishermen, processors, and local coastal communities, a market-based program should be designed, to the extent practicable, to avoid such impacts.

(b) **PURPOSE.**— It is therefore declared to be the purpose of the Congress in this Act to facilitate the continued economic viability of the Pacific whiting for the benefit of the nation through establishment of a market-based cooperative system for the harvesting and processing of Pacific whiting.

(c) POLICY.—It is further declared to be the policy of the Congress in this Act to demonstrate the conservation and economic benefits of a market-based cooperative system by using the shore-based vessels and processors of the Pacific whiting fishery in a pilot project.

SEC.3.DEFINITIONS.

As used in this Act—

(1) The term “aggregate catch” means the total amount of Pacific whiting harvested and delivered on shore in California, Oregon, and Washington without further processing during the benchmark period in any of the years 1994 to 2004 inclusive, excluding any such Pacific whiting harvested pursuant to a treaty between the United States and a treaty tribe.

(2) The term “aggregate landed catch” means the total amount of Pacific whiting processed on shore in California, Oregon and Washington during the benchmark period in any of the years 1999 to 2004 inclusive.

(3) The term “benchmark period” means the period between April 1st and September 30th, inclusive.

(4) The term “catch” means all fishery removals from the offshore whiting resource, including landings, discards, and bycatch in other fisheries.

(5) The term “cooperative share” means the percentage of allowable Pacific whiting harvest assigned to each qualified fisherman or qualified processor based on the formula established in section 6 of this Act.

(6) The term “Council” means the Pacific Fishery Management Council established under section 302(a)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(F)).

(7) The term “Magnuson-Stevens Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(8) The term “offshore whiting resource” means the transboundary stock of *Merluccius productus* that is located in the offshore waters of the United States and Canada but does not include any fish of that species located in Puget Sound or the Strait of Georgia.

(9) The term "on-shore allocation" means that amount of the United States catch level required under a Plan to be delivered to processors located on shore in the States of California, Oregon, or Washington.

(10) The term "Pacific whiting" means that portion of the offshore whiting resource the harvest of which is under the jurisdiction of the United States.

(11) The term "Plan" means a fishery management plan prepared by the Council and approved by the Secretary under the Magnuson-Stevens Act.

(12) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State).

(13) The term "processing" means the preparation or packaging of Pacific whiting to render it suitable for human consumption, retail sale, industrial uses, or long term storage by cooking, filleting, freezing, conversion to fish protein compounds, mincing, or heading and gutting.

(14) The term "processor" means a person that engages in processing of Pacific whiting harvested as part of an on-shore allocation.

(15) The term "qualified fisherman" means the current owner of a trawl-endorsed Pacific groundfish limited entry permit issued under regulations implementing the Pacific Coast Groundfish Fishery Management Plan which during any two years between 1994 and 2004, inclusive, delivered a minimum of 500 metric tons of Pacific whiting each year to a processor during the benchmark period.

(16) The term "qualified processor" means a processor that operated in any year between 1999 and 2004, inclusive, and processed at least 1,000,000 pounds of whiting in that year, or any successor in ownership.

(17) The term "Secretary" means the Secretary of Commerce.

(18) The term "share-holder" means the current owner of cooperative shares.

(19) The term "treaty tribe" means any Indian tribe determined by the United States courts to have rights to harvest Pacific whiting within specified areas.

(20) The term "United States catch level" means that portion of the offshore whiting resource which may be harvested by persons subject to the jurisdiction of the United States.

SEC.4.AUTHORIZATIONS.

There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the provisions of this Act.

SEC.5.IN GENERAL.

(a) Not later than six months after the date of enactment of this Act, the Secretary shall issue final regulations to implement the program for Pacific whiting conservation and management created in this Act. In developing regulations, the Secretary shall allow the Council the opportunity to propose draft regulations.

(b) The Council shall amend a Plan to conform with this Act or regulations issued under this Act. Failure of the Council to amend a Plan shall not delay the obligations of the Secretary under subsection (a).

SEC.6.RATIONALIZATION OF THE PACIFIC WHITING FISHERY.

(a) IDENTIFICATION OF QUALIFIED PARTICIPANTS.--(1) The Secretary shall issue a permit to--

(A) any person who demonstrates by appropriate records that he or she is a qualified fisherman; and

(B) any person who demonstrates by appropriate records that he or she is a qualified processor.

(2) Permits issued under this subsection will be clearly designated as qualified fisherman or qualified processor permits, are not interchangeable, and shall not confer ownership in any stock of fish over which the United States exercises sovereign jurisdiction.

(3) Permits may be transferred through sale, lease, barter, gift, inheritance or any other legal means. A permit which is transferred may not be redesignated and may only be used in accordance with this Act and any regulations under this Act.

(4) The Secretary may charge a fee to issue a permit under this subsection which shall not exceed the administrative costs incurred in issuing the permit.

(5) For the purposes of subparagraph (1)(A), the permit issued by the Secretary shall be an appropriate permanent endorsement of a Pacific groundfish trawl limited entry permit issued under the Pacific Coast Groundfish Fishery Management Plan.

(b) **ALLOCATION OF RESOURCE.**—Prior to March 1st of the calendar year following the issuance of final regulations under this Act, the Secretary shall make an initial allocation of cooperative shares as follows—

(1) Each qualified fisherman who currently owns a Pacific groundfish trawl limited entry permit issued under the Pacific Coast Groundfish Fishery Management Plan that has been endorsed under subsection (a) shall be assigned a percentage of cooperative share using the following formula:

(A) for each permit, the amount of Pacific whiting harvested by any vessel to which the permit was assigned during the benchmark period in each of the years 1994 to 2004 inclusive will be divided by the aggregate catch for each of those years. The 9 highest percentages will be averaged and the result will be considered the permit's catch history. Each permit's catch history will be divided by the sum of all catch histories to determine the fisherman's cooperative share.

(2) Each qualified processor who has been issued a permit under subsection (a) shall be assigned a percentage of cooperative share using the following formula:

(A) for each qualified processor, the amount of Pacific whiting purchased by that processor during the benchmark period in each of the years 1999 to 2004 inclusive will be divided by the aggregate landed catch for each of those years. The 4 highest percentages will be averaged and the result will be considered the processor's processing history. Each processor's processing history will be divided by the sum of all processing histories to determine the processor's cooperative share.

(3) The percentages assigned to qualifying fishermen shall be designated fishermen's cooperative share and the percentages assigned to qualifying processors shall be designated processors' cooperative share. Except as provided in subsection (d), cooperative shares may be transferred in whole or in part through sale, lease, barter, gift, inheritance or any other legal means but will retain their original designation.

(c) COOPERATIVE HARVEST OF PACIFIC WHITING.—(1) In each calendar year, the on-shore allocation shall be divided as follows-

(A) an amount sufficient to account for the incidental commercial or recreational catch of Pacific whiting in fisheries other than the Pacific whiting fishery, but not to exceed 1% of the on-shore allocation, will be available for harvest by any person legally eligible to harvest Pacific whiting, and

(B) after subtracting the amounts described in subparagraph (A), fifty percent of the remainder will be available for harvest using fishermen's cooperative shares and fifty percent of the remainder will be available for harvest using processors' cooperative shares.

(2) At any time during a calendar year, a holder of fisherman's cooperative shares may enter into one or more agreements with holders of processor's cooperative shares to use all or a portion of those processors' cooperative shares. Agreements shall be registered with the Secretary prior to the time the cooperative shares are used to harvest Pacific whiting. No Pacific whiting may be harvested using fishermen's cooperative shares or processors' cooperative shares without a registered agreement. Each agreement shall require an equal amount of fisherman's cooperative share and processor's cooperative share be used. An agreement will not be valid if-

(A) it does not require the use of an equal amount of fishermen's cooperative shares and processors' cooperative shares, or

(B) it is not registered with the Secretary.

(d) **RESTRICTIONS ON TRANSFER.**-- Fishermen's cooperative shares may only be transferred to a person holding a trawl limited entry groundfish permit issued under the Pacific Coast Groundfish Fishery Management Plan.

(e) **CONTRIBUTION TO RESEARCH AND MANAGEMENT.**--(1) In addition to any fee which may be collected under subsection (a), the Secretary is authorized and shall collect a fee equally from share-holders to recover the costs of carrying out this section (including costs associated with section 7) and of conducting scientific research on the offshore whiting resource.

(2) Each share-holder will be liable for a fee up to 3 per cent of the ex-vessel value of the whiting that was harvested in a calendar year using fishermen's cooperative shares owned by that share-holder and up to 3 per cent of the ex-vessel value of the whiting that was harvested in a calendar year using processors' cooperative shares owned by that share-holder. The fee shall be payable thirty days after the end of the calendar year in which the Pacific whiting was harvested.

(3) Fees collected under this subsection shall be available to the Secretary without fiscal year limitation and may only be used to carry out the Secretary's obligations under this Act except as provided in paragraph (4).

(4) Upon application from the States of Washington, Oregon, or California, the Secretary may transfer up to 33 per cent of the fees collected under this subsection in any calendar year to one or more of those States to offset costs incurred by the States in the conservation and management of Pacific whiting.

SEC. 7. CONSERVATION OF PACIFIC WHITING.

(a) **LIMITS ON INCIDENTAL CATCH.**--(1) The Council shall recommend to the Secretary appropriate amounts of any species of Pacific groundfish other than Pacific whiting that may be harvested incidentally to the harvest of Pacific whiting under this Act and any other Act.

(2) The recommendations by the Council may be made annually or in such other time increment that facilitates conservation and management of the Pacific groundfish fishery.

(3) The recommendations by the Council shall be based on the best scientific information available, shall be reasonably calculated to promote conservation, shall be fair and equitable to holders of cooperative shares and others who harvest Pacific groundfish, shall be based on the percentage of Pacific whiting available for harvest by holders of cooperative shares relative to the percentage of Pacific whiting available for harvest by others, and shall have as their goal minimizing, to the extent practicable, the discard of Pacific whiting and other species of Pacific groundfish.

(4) The amounts recommended under paragraph (1) shall include specific sub-amounts by species or species group which shall be available only to holders of cooperative shares and which may be transferred among holders of cooperative shares who are harvesting Pacific whiting under a valid agreement under section 6.

(5) Upon receiving the recommendations of the Council, the Secretary shall publish a proposed rule which applies the aggregate limits to the Pacific whiting fishery and allow thirty days for public comment before publishing a final rule.

(b) MONITORING.—The Secretary shall issue regulations providing for the statistically reliable monitoring of harvesting and processing of Pacific whiting to determine compliance with this Act and to collect necessary biological samples for the conservation and management of the Pacific whiting fishery and the offshore whiting resource.

(c) ACTION BY THE COUNCIL.—(1) The Council shall recommend amendments to the Pacific Coast Groundfish Fishery Management Plan which provide for limits on incidental catch of species other than Pacific whiting, monitoring of the Pacific whiting fishery, and a system allowing transfer of incidental catch amounts among persons harvesting Pacific whiting under a valid agreement under section 6. Amendments recommended under this paragraph shall meet the requirements of subsection (a)(3) of this section.

(2) Regulations issued by the Secretary under subsections (a) or (b) shall be superseded by regulations issued to implement Plan amendments recommended under paragraph (1).

(d) **COMPLIANCE WITH ENVIRONMENTAL STANDARDS.**— Amendments to the Pacific Coast Groundfish Fishery Management Plan and regulations implementing those amendments which are prepared in accordance with applicable provisions of the Magnuson-Stevens Act and regulations implementing this Act are deemed to have been prepared in compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

SEC.8.ENFORCEMENT AND PENALTIES.

(a) It is unlawful for any person to violate any provision of this Act or any regulation issued under this Act.

(b) It is unlawful for any person to harvest Pacific whiting using cooperative shares without having a valid agreement registered with the Secretary under section 6(c)(2).

(c) Any person who commits an action that is unlawful under subsections (a) or (b) of this section shall be liable to the United States for a civil penalty or permit sanction as provided by section 308 of the Magnuson-Stevens Act.

(d) No person may own or control cooperative shares in an amount or manner that violates the Sherman Anti-Trust Act (15 U.S.C. 1 et seq.).

SEC.9.REPORT TO CONGRESS

(a) Not later than five years after the issuance of final regulations under section 5(a) and each five-year period thereafter, the Secretary, after consultation with the Council, shall issue a report to the United States House of Representatives and the United States Senate on the implementation of this Act, with special regard to the conservation and management of the Pacific whiting fishery, including the extent to which bycatch (including discard) of Pacific groundfish has been minimized, the number of active fishing vessels and processing facilities remaining in the fishery, the economic impact on local coastal communities, and whether the amounts specified in section 6(c)(1)(A) continue to be appropriate.

(b) The Secretary may include in the report any recommendations for changes in this Act, along with a justification for those recommendations.

SEC.10.SAVINGS CLAUSE.

Except as otherwise provided in this Act, nothing in this Act shall be deemed to amend section 804 of the Consolidated Appropriations Act, 2004 (P.L. 108-99) or the Magnuson-Stevens Act.

LEGISLATIVE COMMITTEE REPORT

The Legislative Committee (LC) met June 13, 2005. The Committee discussed the positions of the Regional Fishery Management Council Chairs on reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the draft administration positions on reauthorization, and some proposed legislation to rationalize the shore-based whiting industry.

The LC discussed the differences in Council and Regional Council Chairs positions, and noted the following:

There is nothing in the proposal which would provide exclusive fishery resource management authority in the MSA and exclude such authority from the National Marine Sanctuaries Act. Much of the discussion centered around management for maximum sustainable yield (MSY), while there is no definition of MSY in the MSA. Developing estimates of MSY for species like coral and non-managed species, such as biogenic substrate, would be problematic. It was noted that there is no reference to MSY management in the Sanctuaries Act at the present time. The LC supported the Regional Council Chairs position, but recommended clarification of the issues.

The LC noted the terms “interim rules” and “emergency rules” in the Council Chairs positions document appear to be addressing the same procedure to put a rule in effect for a period of 180 days, with the ability to extend for an additional 180 days, if the Council is acting to prepare an FMP, FMP amendment, or a proposed regulations.

The LC noted NOAA General Council had advised against new framework actions and recommended specific language permitting such actions be included in MSA reauthorization.

The LC heard a brief report on developing legislation to establish a dedicated access privilege program for the shore-based whiting fishery from Mr. Dave Jincks. There was concern expressed for the implications of a legislative mandate on Council and NMFS regional staff, and a suggestion that a request for funds be included in the potential legislation to allow some of the work to be contracted out. There was also concern expressed for the lack of analysis that would normally occur if such a program occurred through the Council process.

The LC indicated it would need a longer meeting in September to more fully address reauthorization of the MSA.

Committee Recommendations:

- 1. Include provisions for framework actions in reauthorization of the Magnuson-Stevens Act.**

PFMC
06/17/05

LEGISLATIVE MATTERS

The Legislative Committee (Committee) will meet Monday, June 13 with a primary objective to review federal legislative issues.

The 109th Congress is currently in session. It is anticipated that reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) will be addressed in this Congress in 2005.

Reauthorization of the MSA was discussed at length at the *2005 Council Chairs and Executive Directors (CCED) Meeting* in Dana Point, California, April 26-29, 2005. The National Marine Fisheries Service (NMFS) presented a list of 37 items that were potential topics to be addressed in the reauthorization process; the list was divided into primary and secondary priorities (Agenda Item B.2.a, Attachment 1). The CCEDs addressed nine of those issues at this year's meeting (Agenda Item B.2.a, Attachment 2). The CCEDs reaffirmed and updated their positions on a number of the remaining issues, which were addressed at the 2001 and 2002 CCED meetings (Agenda Item B.2.a, Attachment 2, Appendices A and B). The CCEDs used the positions developed at the April Pacific Council meeting as a basis for their discussions, and although some modifications were made to address the needs of other Regional Councils, the Pacific Council positions were generally accepted. A summary of changes to Pacific Council positions resulting from the CCED meeting is included in Agenda Item B.2.a, Attachment 3.

Other subjects covered at the CCED meeting included ecosystem management approaches, the U.S. Ocean Action Plan, Council member training, budget issues, and future CCED meetings (Agenda Item B.2.a, Attachment 4)

The Council and its Legislative Committee will review the positions on MSA reauthorization developed at the CCED meeting, discuss any conflicting positions, and address any outstanding issues. If a draft reauthorization bill is available at the Legislative Committee meeting, additional guidance on specific provisions will be requested.

Council Action:

Consider recommendations of the Legislative Committee.

Reference Materials:

1. Agenda Item B.2.a, Attachment 1: Magnuson-Stevens Act Reauthorization Issues Preliminary Draft of Working Considerations for an Administration Position.
2. Agenda Item B.2.a, Attachment 2: Positions of the Regional Fishery Management Council Chairs on Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act.
3. Agenda Item B.2.a, Attachment 3: Summary Of Substantive Differences Between Pacific Council And Council Chairs And Executive Directors Positions For Reauthorization Of The Magnuson-Stevens Fishery Conservation And Management Act.

4. Agenda Item B.2.a, Attachment 4: Regional Fishery Management Council Chairs and Executive Directors Meeting April 26-29, 2005 Decisions Summary.
5. Agenda Item B.2.a, Attachment 5: News article, "Bush Urges U.S. Senate to Ratify Pacific Tuna, Swordfish Treaty.

Agenda Order:

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

Chuck Tracy
Dave Hanson

PFMC
05/26/05

APPOINTMENTS TO ADVISORY BODIES, STANDING COMMITTEES,
AND OTHER FORUMS

As of the briefing book deadline, there were no advisory body nominations received. If any nominations on advisory body issues are received in supplemental material, the Council will consider them in this agendum.

Council Action:

- 1. Appoint new members as appropriate.**
- 2. Provide direction for remaining vacancies.**

Reference Materials: None.

Agenda Order:

- a. Agenda Item Overview
- b. **Council Action:** Appoint New Members As Necessary

Chuck Tracy

PFMC
05/27/05

Proposed Preliminary Three Meeting Outlook for the Pacific Council

(All Candidate Agenda Items Listed; Shaded Items are Contingent)

September Portland, OR 9/12-16/05	November San Diego, CA 10/31-11/4/05	March NW Meeting Place To be Determined; 3/6-3/10/06
<u>Coastal Pelagic Species</u>	<u>Coastal Pelagic Species</u>	<u>Coastal Pelagic Species</u>
Krill Amendment: Adopt Prelim Alt. For Analysis	NMFS Rpt Pac. Sardine Stock Assmnt. & HG for 2006 Krill Amendment: Adopt Preferred Alternatives (Final Action in March 2006)	NMFS Report Krill Amendment: Adopt Final for Implementation Review of Pacific Mackerel Fishery--Consider need for mop-up fishery
<u>Enforcement Issues</u>	<u>Enforcement Issues</u>	<u>Enforcement Issues</u>
State Activity Report		
<u>Groundfish</u>	<u>Groundfish</u>	<u>Groundfish</u>
NMFS Report 2005 Inseason Mgmt (2 Sessions) VMS: Adopt Preferred Expansion Alternative EFPs: Prelim. Council Approval & Adopt Prelim. EFP Caps for Overfished Species (Includes Early Opening of Shorebased Whiting off CA) Amendment 18 (Bycatch): Adopt Draft FMP Amendment Language for Pub Rev Amendment 19 (EFH): Adopt Draft FMP Amendment & Reg. Language for Pub Rev Amendment 10 (Shore-based Whiting Fishery Monitoring): Adopt Alts. For Pub. Rev. Stock Assessment (SA) Review: Approve SA's for 23 Species Biennial Mgmt Sched: Adopt For 2007-08 Rebuilding Plan Revision Rules: Adopt Policy TIQ EIS: Clarification of Analysis, if necessary Amendment 14B Regs. Prop. Rule: Council Comments	NMFS Report 2005 Inseason Management (2 Sessions) EFPs for 2006: Final Approval Amendment 18 (Bycatch): Approve Final FMP Amendment Language for Implementation Amendment 19 (EFH): Adopt Final FMP Amendment Language for Implementation Amendment 10 (Shore-based Whiting Fishery Monitoring): Adopt Final Approve any remaining Stock Assessments & Rebuilding Analyses Mgmt Specifications for 2007-08: Adopt Prelim. ABC/OY Levels & Range of Mgmt Measures Spiny Dogfish Endorsement FMP Amendment Intersector Allocation EIS: Next Steps TIQ EIS: Update Planning of "Off Year" Science Activities	NMFS Report 2006 Inseason Management (1 Session) 2007-2008 Mgmt Measures: Guidance & Refinement Pac. Whiting: Adopt Final 2006 Spx & Mgmt Measures
<u>Habitat Issues</u>	<u>Habitat Issues</u>	<u>Habitat Issues</u>
Habitat Committee Report	Habitat Committee Report	Habitat Committee Report

Agenda Item B.4.a
 Supplemental Attachment 1
 June 2005

Proposed Preliminary Three Meeting Outlook for the Pacific Council

(All Candidate Agenda Items Listed; Shaded Items are Contingent)

September Portland, OR 9/12-16/05	November San Diego, CA 10/31-11/4/05	March NW Meeting Place To be Determined; 3/6-3/10/06
<u>Highly Migratory Species</u> NMFS Rpt Final SAFE Rpt (propose harvest levels & mgmt measures (DGN, etc)--final action in Nov Bigeye Tuna OF Response: FMP Amend. Update Mgmt Regime for HS Longline Fishery: Identify & Plan FMP Amendment HMS EFP COP: Adopt EFP COP for Pub Rev. PFMC Representation in IATTC Process	<u>Highly Migratory Species</u> NMFS Rpt Prop. Mgmt Actions: Adopt Final for 2006 Bigeye Tuna OF Response: Adopt Prelim Draft FMP Amendment for Pub. Rev. Mgmt Regime for HS Longline Fishery: Next Steps HMS EFP COP: Adopt Final EFP COP Albacore Mgmt Considerations	<u>Highly Migratory Species</u> NMFS Rpt
<u>Marine Protected Areas</u> CINMS: Initial Consideration of Fishing Regs Under NMSA Olympic NMS Update	<u>Marine Protected Areas</u> CINMS: Adopt Preferred Alt. & Final Recommended Fishing Regs Under NMSA	<u>Marine Protected Areas</u>
<u>Pacific Halibut</u> Fishery Update--Info Rpt Proposed Changes to CSP in 2006 for Pub Rev Review Halibut Bycatch Estimate	<u>Pacific Halibut</u> Fishery Update--Info Rpt Proposed Changes to CSP in 2006: Adopt Final	<u>Pacific Halibut</u> Rpt on IPHC Annual Mtg 2006 Mgmt Options: Adopt for Public Rev
<u>Salmon</u> Fishery Update--Info Rpt Methodology Review: Establish Final Priorities and Schedule for 2005 Klamath Fall Chinook Conservation Objective: Consider Initiating FMP Amendment (Scoping) EFH Review Process: Next Steps	<u>Salmon</u> Fishery Update--Info Rpt Methodology Review: Approve Changes for Use in 2006 Preseas'n Plan for 2006: Approve Mgmt Sched. Klamath Fall Chinook Conservation Objective: Next Steps EFH Review Process: Next Steps Industry Prop. Experimental Fisheries: Initial Rev	<u>Salmon</u> 2006 Mgmt Options: Adopt for Public Rev Appt. Hearings Officers Ft. Bragg Commercial Fishery Opening Mar 15: Consider Modifying Opening/Closing Date & Quota Klamath Fall Chinook Conservation Objective: Next Steps
<u>Administrative</u> Legislative Committee Report Budget Committee Report Interim Appointments 3 Mtg Outlook, Draft November Agenda, Workload Regulatory Steamlining Program Update	<u>Administrative</u> Legislative Committee Report Budget Committee Report Interim Appointments 3 Mtg Outlook, Draft Mar. Agenda, Workload-Apr 7	<u>Administrative</u> Legislative Committee Report Interim Appointments 3 Mtg Outlook, Final April Agenda
<u>Special Monday Joint Sessions</u> Common Ground Marine Environment Documentary GF Stock Assessment Review	<u>Special Monday Joint Sessions</u>	<u>Special Monday Joint Sessions</u>

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, SEPTEMBER 18-23, 2005, PORTLAND, OR

			ANCILLARY MEETING SCHEDULE		
AG#	Hours	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY PRIORITY 1/	Day/Group Start Time Continuing Through
MONDAY, SEPTEMBER 19 - 8:00 am					MONDAY:
		<i>Ancillary Meetings - see Ancillary Schedule</i>			A. & B. GAP & GMT 8:00AM Thur.
					C. SSC 8:00 AM Wed.
		SPECIAL SESSIONS			D. HMSAS 8:00 AM Mon.
					E. HMSMT 8:00 AM Mon.
		9:00 am -- Stock Assessment Review Briefing	Info	SSC; GAP; GMT	Chair's Briefing 8:30 AM Mon.
		1:00 pm -- Common Ground OR Marine Habitat Documentary (28 min)	Info	All	F. HC 9:00 AM Mon.
					G. Legislative 9:30 AM Mon.
CLS	1.00	Closed Session Agenda: Personnel & Litigation--3:00 pm			H. Budget 1:00 PM Mon.
		Adv. Body Issues - Appointments	Info	None	
		Litigation Status (E. Cooney)	Info	None	I. EC 5:00 PM Fri.
A.	0.25	General Session Call to Order - 4:00 pm			
1-3		Opening, Roll Call, ED Rpt	Info		
4		Approve Agenda	Decision		
B.		Administrative Matters			
1	0.20	Approve Minutes - March and April 2005	Decision		
	0.50	4 pm Public Comment Period	Info		
C.		Enforcement Issues			
1	0.50	State Activity Reports	Info	EC	
	2.45				
TUESDAY, SEPTEMBER 20 - 8:00 am					TUESDAY:
		<i>Ancillary Meetings - see Ancillary Schedule</i>			GAP; GMT; SSC; EC continue
D.		Salmon Mgmt			
1	1.50	Klamath Fall Chinook Conservation Obj.: Scoping for FMP Amendment	Info/Guid.	SSC; STT; SAS	
2	0.50	Methodology Review: Establish Final Priorities & Schedule for 2005	Info	MEW; STT; SAS; SSC	
3	0.75	Update on EFH Review Process	Decision	HC; STT; SAS	
E.		Highly Migratory Species Management			
1	1.00	NMFS Rpt--Region & Science Ctr	Info	HMSAS; HMSMT	
2	1.50	Final SAFE Rpt: 2006-07 Harv. Levels & Mgt. Measures (DGN, etc.)	Action	HMSAS; HMSMT	
3	0.50	Bigeye Tuna Overfishing Response: FMP Amendment Update	Info	HMSAS; HMSMT	
4	1.50	Mgmt Regime for High Seas Longline Fishery: Identify & Plan FMP Amendment	Decision	HMSAS; HMSMT; EC	
5	0.50	EFP Process COP: Adopt Proposed EFP Process COP for Pub. Rev.	Decision	HMSAS; HMSMT	
6	0.50	PFMC Representation in the Inter-American Tropical Tuna Commission Process	Decision	HMSAS; HMSMT	
F.		Habitat			
1	0.50	Habitat Committee Rpt	Decision	HC	
G.		Groundfish Mgmt			
1	2.00	Inseason Adjustments: Preliminary or Final Adoption of Appropriate Changes	Action	GMT; GAP; EC	
	10.75				

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, SEPTEMBER 18-23, 2005, PORTLAND, OR

				ANCILLARY MEETING SCHEDULE		
AG#	Hours	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY PRIORITY 1/	Day/Group	Continuing Start Time Through
WEDNESDAY, SEPTEMBER 21 - 8 am					WEDNESDAY:	
		<i>Ancillary Meetings - see Ancillary Schedule</i>				GAP; GMT; SSC; EC continue
H.		Pacific Halibut Mgmt				
1	1.00	Catch Sharing Plan & Ann. Regs.: Proposed 2006 Changes for Pub Rev	Action	GAP; SAS		
2	0.50	Bycatch Estimates: Review Estimates Prepared for use by the IPHC		GAP; SAS		
G.		Groundfish Mgmt (continued)				
2	0.75	NMFS Rpt (Region & Science Center)	Info	GMT; GAP; EC		
3	2.00	VMS: Adopt Final Preferred Program Expansion Alt.	Action	GMT; GAP, EC; SAS		
4	1.50	Amendment 18 (Bycatch): Adopt Draft FMP Text & Regulatory Recommendations for Public Review	Decision	GMT; GAP; EC		
5	2.00	Amendment 19 (EFH): Adopt Draft FMP Text & Regulatory Recommendations for Public Review	Decision	SSC;GMT; GAP; HC		
6	1.50	Inseason Adjustments: Adopt or Confirm Final Changes, If Necessary	Action	GMT; GAP; EC		
I.		Marine Protected Areas				
1	2.00	Channel Islands NMS: Initial Consideration of Fishing Regs. Under NMSA	Decision	All		
2	0.50	Olympic NMS Mgmt. Plan Review Update	Info	GAP; GMT; SAS		
	11.75					
THURSDAY, SEPTEMBER 22 - 8 am					THURSDAY:	
		<i>Ancillary Meetings - see Ancillary Schedule</i>				GAP, GMT, EC continue
J.		Coastal Pelagic Species Mgmt				
1	1.50	FMP Krill Amendment: Adopt Prelim. Alts. For Analysis	Decision	CPSAS; CPSMT; Others		
G.		Groundfish Mgmt (continued)				
7	2.00	Amendment 10--Shore-based Whiting Fishery EA: Adopt Draft 2006 Monitoring Alternatives for Public Review	Action	GMT; GAP; EC		
8	1.50	Amendment 14B Regs. Proposed Rule: Provide Council Comments	Action	GMT; GAP; EC		
9	2.00	EFP Applications for 2006: Preliminary Approval & Adopt Preliminary EFP Caps for Overfished Species (includes early opening of shore-based fishery off CA)	Action			
10	1.00	Schedule for Adopting Biennial Mgmt Spx: Adopt Schedule for 2007-08	Decision	GMT; GAP; EC		
11	1.50	Stock Assessment Review: Approve for 2007-2008 Mgmt	Action	SSC; GMT; GAP		
	9.50					

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, SEPTEMBER 18-23, 2005, PORTLAND, OR

				ANCILLARY MEETING SCHEDULE		
AG#	Hours	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY PRIORITY 1/	Day/Group	Continuing Start Time Through
FRIDAY, SEPTEMBER 23 - 8 am					FRIDAY:	
		Ancillary Meetings - see Ancillary Schedule				EC as nec.
G.		Groundfish Mgmt (continued)				
12	2.00	Rebuilding Plan Revision Rules: Adopt Final Policy	Action	SSC; GMT; GAP		
13	1.00	TIQ EIS: Clarification of Analysis Assignment, If Necessary	Guidance	GMT; GAP, EC, SSC		
B.		Administrative Matters				
2	0.75	Legislative Matters	Guidance			
3	0.50	Fiscal Matters	Decision			
4	0.20	Interim Appointments to Adv. Bodies, Standing Com., & Other Forums	Decision	None		
5	1.00	3 Mtg Outlook, Draft September Agenda, & Workload Priorities	Guidance	GMT; GAP; & as nec		
	5.45					

1/ Anticipates each advisory subpanel will review agenda items for its particular FMP.

- **Key for Council Task:** Info=briefing; Guidance=formal or informal direction on issue; Decision=formal determination; Action=directly results in implementation by NMFS.

IR. Informational Reports (available in Briefing Book, but no time scheduled on Agenda):

1	Salmon Fishery Update	Info	STT; SAS	
2	Pac. Halibut Fishery Update	Info	SAS, GAP	
3	Regulatory Streamlining Project Update	Info	all	
4	Letter from 4 tribes to Dan Basta	Info		

Due Dates:

Meeting Invitation Memo Distributed:	8/12
Public Meeting Notice Mailed:	8/19
FR Meeting Notice transmitted:	8/19
Final day to receive public comments for placement in BB:	COB 8/31
Final deadline to submit all BB materials:	COB 8/31
Final deadline to submit cover memos for Ancillary Meetings:	COB 9/2
Briefing Book Mailing:	COB 9/8
Final deadline to receive public comments for distribution to Council on first day of mtg:	COB 9/13

COUNCIL WORK LOAD PRIORITIES JUNE 20, 2005 THROUGH SEPTEMBER 23, 2005
(Bolded tasks represent a Core Program Responsibility)

	Salmon	Groundfish	CPS	HMS	Other
ACTIVE	Inseason Mgmt	SAFE 2002-2004: Volume II (review info)	CPS SAFE Doc.	Final SAFE Doc	Admin Necessities
		SAFE 2005: Volume I		(Including Mgmt	(Briefing Book, minutes,
	Fishery Update	Inseason Mgmt		Measures for DGN)	Newsletter, COP; convert
	Model Eval Work Group Mtg				Safe Docs to WORD; etc.)
	EFH Update (5 year review)	Trawl IQ Program: Follow-up from June Action	FMP Amendment 11: sardine allocation follow-up CPS EFH EIS 5 year review	Bigeye Overfishing Response Amend.	Pacific Halibut Mgmt
	Klamath Fall Chinook				Proposed Changes for 06
	Conservation Obj.- Update	Stock Assesments		FMP Amendment:	
	Recruit Data; Scope	Rebuilding Plan Revision Rules Policy	Amendment 12: Krill	Mgmt Regime for	
	FMP Amendment	Amendment 19 (EFH) Amendment 18 (Bycatch)		HS Longline Fishery	CINMS MR Matters
	Update Historic DataSets	2007-2008 Specification Tasks EFPs for 2006: Review GMT Mtg in Aug GAP Mtg at Sept Council Mtg GMT Mtg at Sept Council Mtg VMS: Complete Council Action	CPSMT Mtg in Aug. CPSAS MTG in Aug.	HMSAS Mtg in Aug. HMSMT Mtg in Aug.	MSA Reauthorization
CONTINGENT		Spiny Dogfish Endorsement FMP Amend. Trawl IQ EIS Completion Contingent on Funding Intersector Allocation Analyses Progress contingent on Funding Amendment 14B (FG Permit Stacking)		EFP COP Joint WPFMC- PFMC Mtg International HMS Forum Participation	PacFIN/RecFIN/EFIN issues Research & Data Needs Economic Data Collection Program
		GF Strategic Plan Formal Review Amendment 10 (Monitor Shore-based Whiting)			
	Amendments:	Open Access Limitations			
	OCN Coho Matrix	Alternative Mgmt Approaches	International Mgmt		MPA coordination
	SOF Coho Allocation				
DELAYED	Cons. Objectives:	SSC B ₀ & MSY Workshop			Communication Plan
	Puget S. Chinook & Coho	SSC Bycatch Workshop II			
	LCR Coho				
	Sacramento River Chinook				

GROUND FISH MANAGEMENT TEAM REPORT ON THE
WORK LOAD PRIORITIES AND DRAFT SEPTEMBER 2005 COUNCIL MEETING
AGENDA

The Groundfish Management Team (GMT) discussed items for the Council's September agenda and the three-meeting outlook, and has the following recommendations and comments. The GMT notes that the items described below require a full rulemaking (i.e., two-meeting) process and an Environmental Assessment(s) tiered from the 2005-06 Management Measures and Specifications EIS, and requests that these items be added to the Council's September and November meetings.

ABC and OY and Trip Limits for Spiny Dogfish

As mentioned in April, spiny dogfish are currently included in the optimum yield (OY) for "Other Fish" in the management specifications for the Pacific Coast groundfish fishery. Given the life history characteristics of dogfish and their status in other areas, the GMT recommends the Council consider adopting a separate ABC and OY for dogfish along with harvest control regulations (i.e., trip limits) to be implemented beginning in 2006.

Targeted fishing for spiny dogfish currently occurs by limited entry trawl, fixed gear, and open access vessels. The fixed gear and open access fisheries are prosecuted primarily during the winter and early spring months when dogfish occur in fishable concentrations off the northern coast, while trawl fishing for dogfish usually occurs in the spring and summer months. Additionally, dogfish are encountered in directed groundfish recreational fisheries coastwide.

Earlier this spring, the National Marine Fisheries Service (NMFS) was contacted by a freezer longline vessel that anticipated participating in the open access dogfish fishery, beginning in May. In response to bycatch concerns for canary and yelloweye rockfish, NMFS implemented an emergency rule to set bycatch limits for canary and yelloweye rockfish for the directed open access fishery. Using the GMT's estimated total catch amounts for the directed open access fishery as described in the GMT's bycatch scorecard, NMFS implemented a bycatch limit of 1.0 mt of canary rockfish and 0.6 mt of yelloweye rockfish. Because the action taken by NMFS was through an emergency rule, there is a limited duration of 180 days for the action, and these bycatch limits would not apply in 2006. However, the GMT initially recommends setting dogfish trip limits to reflect the pace of dogfish harvest in the traditional dogfish fishery, rather than continuing the bycatch limits for canary and yelloweye rockfish for the open access fishery in 2006. Maintaining the traditional harvest pace is anticipated to protect both dogfish and associated overfished species.

A formal stock assessment for west coast dogfish has not yet been conducted, but one is anticipated for the next assessment cycle (2007). However, even in the absence of a formal assessment, life history information indicates that characteristics of the spiny dogfish (slow growing, late maturing, low fecundity) make it susceptible to overfishing. Dogfish populations have been depressed as a result of fishing in areas of Puget Sound and have been declared overfished on the East Coast.

The Groundfish Fishery Management Plan specifies a process to set ABCs and OYs for species that have not been formally assessed. The GMT anticipates using this process to determine the appropriate ABC and OY for dogfish. The GMT notes that the portion of the “Other Fish” OY that had originally been included for dogfish would also need to be removed from the “Other Fish” OY for 2006.

Trip Limits for Pacific Cod

In April 2004, the Council applied a precautionary reduction of 50% (from 3,200 mt to 1,600 mt) to the OY for Pacific cod, as it is an unassessed stock, as part of the 2005-2006 biennial management process. However, Pacific cod have not been subject to harvest control regulations, such as trip limits. Pacific cod have increasingly been targeted in the trawl fishery in recent years and catches have been approaching the OY.

While no stock assessment efforts or management measures have been directed toward Pacific cod in the Council management arena, they have been very actively managed by Canada off of British Columbia. Stocks in this area were determined to be stressed and Canada has implemented a number of management measures in recent years to recover the stock (the Canadian quota for Pacific cod off the west coast of Vancouver Island was 500 mt for 2004-2005 season). Canadian catch and abundance information can serve to inform Council management of this trans-boundary species.

Also, Pacific cod can be targeted with trawl, fixed gear, and open access gear, and the potential for a freezer longline vessel to participate in the open access fishery (similar to the situation described above for dogfish) also exists for Pacific cod, with similar concerns for bycatch of overfished species.

As Pacific cod is distributed north of 40 deg, 10 min., the GMT would recommend that trip limits for Pacific cod apply to fisheries north of 40 deg, 10 min. for 2006. The GMT notes that while changing trip limits is a routine management measure, our understanding is that the creation of trip limits for a new species would require full rulemaking.

Limited Entry Trawl Gear Requirements

The GMT has received requests to evaluate several aspects of limited entry trawl gear requirements. One request was to consider modifying the selective flatfish trawl gear requirements to allow a four seam codend as well as the two seam codend that is already specified in regulations. This change would allow industry to make use of the four seam codends that they already have and not require them to purchase two seam codends.

The second request was to consider allowing chafing gear to encircle 75% instead of 50% of the net’s circumference to better protect the codend, especially selective flatfish trawl gear, and reduce wear and tear on the net.

The last request was to allow midwater trawl gear to be used before and after the primary whiting fishery for a targeted bait fishery during the primary sablefish season.

Additionally, the GMT notes that there are problems associated with tracking and modeling fishing effort and catch, as well as enforcing footrope restrictions, for vessels fishing both shoreward and seaward of the RCA during a cumulative limit period. In order to reduce these

problems, potential regulatory changes to consider are: prohibiting multiple trawl gears onboard a vessel during a cumulative limit period, or requiring large footrope gear to be stowed when the vessel is fishing shoreward of the RCA.

The GMT discussed these gear issues with the Enforcement Consultants and they agreed to meet with the GMT at our August meeting to through these issues.

Other September Meeting Agenda Items

In addition to those items listed above which require full rulemaking, the GMT also requests that the Council schedule an EFH EIS implementation update for the September meeting. The GMT plans to begin drafting regulatory language to implement the EFH EIS decisions beginning at our August meeting, and would like to have joint meetings with the GAP and Enforcement Consultants in September. We would like to provide the Council with an update on our progress, and would like the opportunity to highlight any issues for the Council which may arise and request guidance, if needed.

GMT Recommendations

The GMT recommends that the following items be scheduled on the Council's upcoming agendas:

September

- Preliminary action on a new ABC and OY for spiny dogfish and a revised ABC and OY for "Other Fish" for implementation in 2006
- Preliminary action to create new trip limits for spiny dogfish and Pacific cod for implementation in 2006 for public review
- Preliminary action to modify limited entry trawl gear requirements for implementation in 2006
- Update on EFH EIS implementing regulations (Council provide guidance, if needed)

November

- Final action on a new ABC and OY for spiny dogfish and a revised ABC and OY for "Other Fish" for implementation in 2006
- Final action to create new trip limits for spiny dogfish and Pacific cod for implementation in 2006
- Final action on limited entry trawl gear requirements for implementation in 2006

The GMT recommends that the actions for spiny dogfish and Pacific cod be addressed in one Environmental Assessment (EA), and that the gear issues be addressed in a separate EA.

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON
WORK LOAD PRIORITIES AND DRAFT SEPTEMBER 2005 COUNCIL MEETING

During a special session on Monday, Dr. Jacquelynne King presented a North Pacific Marine Science Organization (PICES) report to Council advisory bodies on recent changes in the North Pacific. This report was a response to a request from NMFS for scientific advice concerning the state of the North Pacific ecosystem. The report indicated that a climatic regime shift occurred in 1998, and the California Current ecosystem has been strongly affected by that shift. Following this session, the Scientific and Statistical Committee (SSC) discussed whether timely information on ecosystem status would be helpful to the Council process. For example, it is widely recognized that recent increases in salmon returns and improved rockfish recruitment are a result of more favorable ocean conditions. Yet Council advisory bodies do not receive information on the conditions that led to improved ocean survival, nor an evaluation of whether these conditions are likely to persist into the future.

Scientists within NMFS and in academic institutions along the West Coast have been among the leaders in research on the effects of climate on marine ecosystems. The California Cooperative Oceanic Fisheries Investigations (CalCOFI) organization traditionally includes a 'Status of the California Current' report in its annual *CalCOFI Reports* publication, and PICES and other organizations in the North Pacific are in the process of developing ecosystem status reports. The SSC recommends the Council consider an annual report on the status of the California Current ecosystem. With Council approval, the SSC is willing to convene a meeting of fisheries biologists, marine biologists, and biological and physical oceanographers to consider the form and content of an annual ecosystem report to Council. The SSC notes that this is only one of the potential off-year activities that could involve SSC participation.

PPMC
06/16/05



*Conserving Ocean Fish and Their Environment
Since 1973*

June 6, 2005

Mr. Mike Burner
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

RECEIVED

JUN - 6 2005

PFMC

Dear Mr. Burner,

In accordance with our conversation at a recent Coastal Pelagic Species Committee meeting, I am writing to request that the Committee consider an agenda item for discussion at a future meeting. Specifically, we are interested in working with the Council to begin developing pro-active ways to address ecosystem-based issues and concerns within the framework of the FMP for Coastal Pelagic Species.

We appreciate that the Council has managed these species conservatively, and that, from a single-species perspective, they are being sustainably fished. However, we also recognize that catches of prey species may impact predator species in (so far) unknown and unpredictable ways. We recommend considering new measures to ensure sustainable fisheries targeting forage fish for the long-term, while preserving an adequate population of forage fish to support healthy populations of predators, including valuable commercial and recreational fish.

The National Coalition for Marine Conservation respectfully submits the attached "blueprint" in hopes of beginning the dialogue on how best to develop a defined process for harmonizing management objectives and synchronizing management regulations for sardines, mackerel, squid and anchovy with those for related predator species under the Council's jurisdiction, such as swordfish, striped marlin, salmon, and rockfish.

We believe that now is the time to begin this dialogue. The prospects for providing enduring protection for stocks of forage fish are good, because these resources are not currently "overfished" and precautionary measures can be implemented without causing any dislocation and economic sacrifice in the existing fisheries. It would be, in other words, a win-win situation for all concerned.

We look forward to working with the Council on this issue, and I hope a future meeting will provide an opportunity to more fully discuss it. Thank you for your consideration.

Sincerely,

Ken Hinman
President

03/23/2000 10:00

A BLUEPRINT FOR AMENDING FMPs FOR KEY FORAGE SPECIES

- 1st. **Explicitly feature protecting and maintaining the species' ecological role, including preservation of an adequate supply as forage for predators, as the principal plan objective.ⁱⁱ**

Elevating protection of the species' ecological role to a plan priority would facilitate adoption of specific management objectives in the allocation of fish as a harvestable resource and as prey for other species.

- 2nd. **Expand the FMP's information base to fully describe and comprehend the links among associated species, incorporating available information on ecosystem health and integrity.ⁱⁱⁱ**

An expanded database would help provide scientists with a comprehensive analysis for use in making an ecosystem-based assessment of the status of the population, and assist managers in making decisions on allocating the standing stock among predators (including humans).

- 3rd. **Add a definition of "ecosystem overfishing" as a complement to traditional overfishing criteria, including ecologically-relevant reference points (targets and thresholds).^{iv}**

Generally speaking, ecosystem overfishing occurs when reducing one component of the food web adversely impacts another, or precipitates (often unknown or unpredictable) changes in the environment. This new definition would facilitate setting an Optimum Yield that properly takes into account ecological factors (the "optimum ecological yield"), as the Magnuson-Stevens Act requires, while establishing measurable criteria for achieving OY. The technical guidelines for implementing an ecosystem overfishing definition should account for ecological linkages and include calculable reference points and triggers for action.

- 4th. **Establish an interim, precautionary total allowable catch (TAC) that provides a suitable buffer against ecosystem overfishing.^v**

Collecting, synthesizing and analyzing ecologically-relevant data and developing ecological reference points to guide management decisions will take time and may always contain a degree of uncertainty. Conserving fishing mortality targets and thresholds, as interim measures, would minimize risk to other components of the food web as our knowledge and understanding of the ecosystem improves.

ⁱ The NMFS Ecosystems Principles Advisory Panel (EPAP), in its 1999 Report to Congress, encourages the Regional Fishery Management Councils to apply ecosystem principles, goals and policies to the conservation and management measures of existing FMPs. Three actions are particularly important, the panel says. First among these, "each FMP's conservation and management measures should consider predator-prey interactions affected by fishing allowed under the FMP.

ⁱⁱ The Washington State Forage Fish Management Plan emphasizes the role of forage fish in the ecosystem and considers catch on a secondary basis. "The ability of forage fish to provide a source of food for salmon, other fish, marine birds and marine mammals will be a primary consideration."

The recently completed NOAA Chesapeake Bay Fishery Ecosystem Plan recommends: "Consider explicitly strong linkages between predators and prey in allocating fishery resources. Be precautionary by determining the needs of predators before allocating forage species to fisheries."

ⁱⁱⁱ Most FMPs contain only a superficial portrait of the species' ecological role. This information should be expanded and enhanced to describe the significant food web with quantitative and qualitative assessments of interspecies relationships, temporally and spatially, as well as at different life stages.

^{iv} After passage of the Sustainable Fisheries Act in 1996, a team of scientists was assembled to standardize criteria for the overfishing definitions required in every FMP. As the Councils move toward an ecosystem-based approach to fisheries management, including eventual development of Fishery Ecosystem Plans, it would be useful now to convene a similar panel to develop ecological reference points (benchmarks and thresholds) for defining ecosystem overfishing in FMPs.

^v The NMFS EPAP advises that "(i)n practice, changing the burden of proof will mean that, when the effects of fishing on either the target fish population, associated species, or the ecosystem are poorly known, fishery managers should not expand existing fisheries by increasing allowable catch levels or permitting the introduction of new effort.

WORK LOAD PRIORITIES AND DRAFT SEPTEMBER 2005
COUNCIL MEETING AGENDA

This agenda item requests guidance from the Council on the following three matters:

1. The Council three-meeting outlook (September, November, and March).
2. The draft agenda for the September Council meeting.
3. Council staff work load priorities for June 20, 2005 through September 23, 2005.

The Executive Director will review proposed drafts of the three items listed above and discuss any other matters with the Council relevant to this agenda item. After hearing any reports and comments from advisory bodies and public, the Council will provide its guidance to the staff. The Council should also identify priorities for advisory body consideration for the September Council meeting.

Council Tasks:

- 1. Provide guidance on potential agenda topics for the next three Council meetings.**
- 2. Provide guidance on the draft agenda for the September 2005 Council meeting.**
- 3. Provide guidance on priorities for Council work load management between the June and September Council meetings.**
- 4. Identify priorities for advisory body consideration at the September Council meeting.**

Reference Materials:

1. Agenda Item B.4.a, Supplemental Attachment 1: Proposed Preliminary Three-Meeting Outlook for the Pacific Council.
2. Agenda Item B.4.a, Supplemental Attachment 2: Preliminary Draft Council Meeting Agenda, September 19-23, Portland, Oregon.
3. Agenda Item B.4.a, Supplemental Attachment 3: Council Work Load Priorities June 20, 2005 through September 23, 2005.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. Council Guidance on Work Load, September Council Agenda, and Priorities for Advisory Body Consideration

Don McIsaac

PPMC
05/25/05