

The full record of the Pacific Fishery Management Council (Council) June 12-17, 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.

Mallet/Thomas

motion 19

both

sets of minutes
passed

DRAFT MINUTES
Pacific Fishery Management Council
June 12-17, 2005
Crowne Plaza Hotel
1221 Chess Drive
Foster City, CA 94404
650-570-5700

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A. Call to Order

A.1 Opening Remarks, Introductions (06/13/05; 2:01 pm)

Chairman Donald K. Hansen opened the 179th meeting of the Pacific Fishery Management Council.

A.2 Roll Call

Mr. Bob Alverson
Mr. Phil Anderson
Mr. Ralph Brown
Dr. Patty Burke
Mr. Mark Cedergreen
Dr. Steve Freese
Mr. Donald K. Hansen (Chairman)
Dr. David Hanson (Parliamentarian)
Mr. Jim Harp
Mr. Jerry Mallet
CDR. Fred Myer
Mr. Dave Ortmann (Vice-Chairman)
Mr. Tim Roth
Mr. Roger Thomas
Mr. Darrell Ticehurst
Ms. Marija Vojkovich
Mr. Frank Warrens
Mr. Gordy Williams

Mr. Stetson Tinkham was absent.

A.3 Executive Director's Report

Dr. McIsaac briefly reviewed the Informational Reports provided in the Briefing Book. He referred the Council to Informational Report #5 in which Channel Island National Marine Sanctuary (CINMS) was asking for a response from the Council. Chairman Hansen said the Council would respond to the CINMS statements.

Ms. Marija Vojkovich moved and Mr. Roger Thomas seconded a motion (Motion 1), to have the Council draft a response to the letter from the National Marine Sanctuary Program (Informational Report 5, NMFS Report on CINMS) responding to the items identified by Dr. McIsaac, including the comment extension time after the November meeting, and any comments or information that the Council would like to give following any action taken on Wednesday at this meeting. Motion 1 passed.

A.4 Council Action: Approve Agenda

The Council approved the agenda as shown in Agenda Item A.4, June Council Meeting Agenda, with the addition of adding a report from the Coast Guard on Tuesday morning prior to agenda item D.1. (Motion 2)

B. Administrative Matters

B.1 Approval of Council Meeting Minutes (06/17/05; 10:13 am)

B.1.a Council Member Review and Comments

None.

B.1.b Council Action: Approve March Minutes

Mr. Brown moved and Mr. Warrens seconded a motion (Motion 23) to approve the March minutes as shown in Agenda Item B.1.a, Draft March 2005 Council Minutes. Motion 23 passed.

B.2 Legislative Matters (06/17/05; 10:14 am)

B.2.a Agenda Item Overview

Mr. Tracy presented the agenda item overview.

B.2.b Legislative Committee Report

Mr. Tracy presented Agenda Item B.2.b, Supplemental Legislative Committee Report.

Mr. Anderson noted at least one of the positions, specifically Issue 7 - meetings of the Council Chairs, supported by the Council Chairs in Agenda Item B.2.a, Attachment 2, was not discussed by the Pacific Council, and he was concerned that positions were being forwarded without discussion or approval of the full Council. He asked if there was a recommendation from the Legislative Committee (LC) to adopt the recommendations of the Council Chairs on reauthorization of the Magnuson Act. Dr. Hanson noted there was inadequate time in the LC meeting to thoroughly discuss the issues, and the LC did not have such a recommendation. Dr. McIsaac clarified the issue was related to the Federal Advisory Committee Act (FACA) and the desire to have the eight regional Council Chairs and Executive Directors meet in open public meetings to develop recommendations while being in compliance with the FACA. The recommendation was not related to increasing the scope or authority of those meetings, but to legal advice relative to vulnerability to potential FACA violations.

Dr. McIsaac noted the title on Agenda Item B.2.a, Attachment 3, referring to positions of the Council Chairs and Executive Directors, inadvertently included the Executive Directors, and that the positions referred to were only of the Council Chairs.

B.2.c Reports and Comments of Advisory Bodies

None.

B.2.d Public Comment

None.

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

Mr. Brown moved (Motion 24) to accept the report of the Legislative Committee. Mr. Warrens seconded the motion.

Motion 24 passed.

B.3. Appointments to Advisory Bodies, Standing Committees, and Other Forums (06/17/05;10:35 am)

B.3.a Agenda Item Overview

Mr. Tracy presented the agenda item overview.

B.3.b Council Action: Appoint New Members as Necessary

Dr. Freese moved (Motion 26) that the Council appoint Dr. Owen Hamel to replace Dr. Han-Lin Lai on the Scientific and Statistical Committee as a representative of NMFS Northwest Fisheries Science Center. Mr. Harp seconded the motion.

Motion 26 passed.

Dr. Burke moved (Motion 27) to readvertise for the conservation representative on the Coastal Pelagic Species Advisory Subpanel vacancy. Mr. Brown seconded the motion.

Motion 27 passed.

The Council directed Council staff to continue recruitment for the vacant Washington Coastal Tribal representative on the Salmon Advisory Subpanel and begin recruitment for the processor representative on the Groundfish Advisory Subpanel, as Mr. Rod Moore was appointed to an at-large seat on the Council.

Mr. Hansen recommended delaying consideration of changing the composition of the HMSMT to include a representative of the Inter-American Tropical Tuna Commission (IATTC) until the September Council meeting.

Mr. Anderson asked if his recommendation was then to follow the Council Operating Procedures (COPs) and provide notice of a potential change in the COPs to redesignate one of the Highly Migratory Species Management Team Southwest Science Center seats for the IATTC. Mr. Hansen replied yes.

Mr. Hansen established a new ad hoc coastal pelagic species tribal allocation committee consisting of Mr. Jim Harp, Mr. Phil Anderson, Dr. Patty Burke, Ms. Marija Vojkovich, and Mr. Mark Helvey/Dr. Steve Freese. Ms Cooney clarified the role of the committee was to have State representatives consult with NMFS and the Tribal representative on allocation issues.

B.4 Work Load Priorities and Draft September 2005 Council Meeting Agenda (06/17/05; 10:41 am)

B.4.a Agenda Item Overview

Dr. McIsaac provided the agenda item overview.

B.4.b Reports and Comments of Advisory Bodies

Mr. Burner read Agenda Item B.4.b, Supplemental SSC Report.

Ms. Ashcraft read Agenda Item B.4.b, Supplemental GMT Report

Lt. Dave Cleary, speaking for the Enforcement Consultants, reported that some of the regular EC members would not be at the September meeting due to a conflicting national meeting with NMFS Enforcement concerning joint enforcement agreements. Therefore, there would not be an enforcement report on the September agenda.

B.4.c Public Comment

Ms. Kathy Fosmark, Alliance of Communities for Sustainable Fisheries, Pebble Beach, California
Mr. Chris Dorsett, The Ocean Conservancy, San Francisco, California

B.4.d Council Guidance on Work Load, September Council Agenda, and Priorities for Advisory Body Consideration

Ms. Vojkovich asked about who would fund the symposium the SSC is proposing regarding the status of the California current. Dr. McIsaac indicated that this would be an off-year science activity and that the Council could consider it in November when planning for off-year science activities is on the Council agenda.

Dr. McIsaac indicated that the September agenda is extremely loaded and several items are shaded to indicate they may be deleted, including the stock assessment briefing on Monday. The SSC will be working an extra day to cover the stock assessments and will not have time to provide a briefing. To the degree possible, we will schedule agenda items on Monday, but there are still several shaded issues that need to be deleted to make the agenda workable.

Dr. Burke stated that while the September agenda is very full and the SSC is tied up with the stock assessment reviews, she believes it is a unique situation this year and would like to have a briefing on Monday that at least covers the controversial assessments. Ms. Vojkovich suggested that the NWFSC provide a briefing. Dr. Hastie agreed to consider this request.

After further agenda discussion, Dr. Freese, with reservations, agreed to delay Groundfish Amendment 10 to November if a session could be held one evening during the September meeting with the states and industry to work on any outstanding issues on the whiting monitoring. Dr. Burke expressed her concurrence. Dr. Freese also agreed to move expansion of the vessel monitoring system (VMS) to November. However, the briefing materials and EA would be provided to the advisors for review at the September meeting. Mr. Helvey suggested delaying the Krill amendment issue. Mr. Anderson stated that the spiny dogfish and Pacific cod management issues must be on the September agenda. Council members agreed to delay consideration of the high seas longline fishery, postpone the salmon EFH review and enforcement report, postpone the Olympic NMS report, and put groundfish experimental fishing permit applications in the Informational Report section (advisors could review the reports at the September meeting and provide statements in November).

Dr. Freese indicated that he would find some money to fund VMS meetings prior to the November Council meeting.

Ms. Vojkovich expressed her frustration with the GMT workload created by all of the groundfish agenda items. Dr. McIsaac acknowledge the frustration with so many issues and suggested setting priorities for which items the GMT should make statements on and those which they need not. Mr. Anderson recommended the GMT make no statement on the stock assessments. Ms. Ashcraft, speaking for the GMT, identified the following issues the GMT would not develop statements for: the CINMS, Amendment 14b, and the TIQ EIS. The GMT would plan to start meeting at 1 P.M. on Sunday. The Council expressed an expectation that the GMT would not work consistently beyond eight hours a day during the Council meeting.

To more efficiently handle HMS issues, the Council directed the chairman to appoint an Ad Hoc HMS Management Committee of Council members to work with the HMST, particularly concerning the high seas longline fishery. The Chairman appointed himself, Ms. Vojkovich, Mr. Anderson, and Mr. Helvey to the subcommittee.

C. Groundfish Management

C.1 Preparatory Informational Briefing on Trawl Individual Quota (TIQ) Program Development (06/13/05; 2:31 pm)

C.1.a Agenda Item Overview and Informational Briefing

Mr. Jim Seger provided the agenda item overview.

C.1.b Questions of Clarification from Council Members

Mr. Seger held a question and answer period with Council members. Discussion was kept to the orientation briefing (powerpoint presentation and preliminary TIQC report) given by Mr. Seger.

C.1.c Public Comment

None.

C.1.d Council Discussion

None.

Also at this time Cdr. Fred Myer introduced Admiral Eldridge, 11th Coast Guard District, who gave a brief report on the district's activities. Cdr. Myer presented information on proposed vessel safety initiatives.

C.2 Initial Consideration of Opening Date of California Shore-based Whiting Fishery (06/15/05; 8:16 am)

C.2.a Agenda Item Overview

Dr. McIsaac provided the agenda item overview.

C.2.b Reports and Comments of Advisory Bodies

Mr. DeVore read Agenda Item C.2b, Supplemental GAP Report.

Ms. Michele Culver provided Agenda Item C.2.b, Supplemental GMT Report.

Ms Ashcraft, the GMT chair, arrived while the statement was being read into the record. She fielded questions on behalf of the GMT.

Mr. Thomas asked if there was a greater abundance of Sacramento winter run chinook south of Pt. Arena than north. He stated a test fishery indicated this was so. Ms. Ashcraft responded the GMT only analyzed salmon bycatch in the whiting fishery, not bycatch in other fisheries.

Dr. Freese remarked the GMT recommended an analysis of 2006 EFP results before making a permanent whiting season change south of 40°30' N latitude. Aren't whiting more variable in their abundance and distribution, thus necessitating more than one year of observations? Ms. Ashcraft said the GMT was recommending a 2006 EFP as a starting point for analysis. Dr. Freese asked if the GMT discussed whether to use state or federal observers in the EFP. Ms. Ashcraft said yes, but the availability of federal observers was limited. She noted that Mr. Cohen, the proponent of a season change, offered to pay for observers. The GMT could not comment on the effectiveness of camera monitoring without an available analysis.

Ms. Vojkovich asked about the GMT workload associated with this request. Is this workload analysis of a 2006 EFP, tracking the fishery, or what? Ms. Ashcraft said the GMT would work to set up the EFP, set up observers, and analysis of EFP results. She added the NMFS workload could be considerable. Ms. Vojkovich stated the additional workload comes if this is a separate EFP with enhanced observer coverage. Ms. Culver clarified that the GMT currently relies on ODFW for the shoreside whiting EFP. The states have a workload associated with tracking and monitoring the shoreside fishery. It is still uncertain who will do the EFP.

Dr. McIsaac asked Dr. Freese when the Amendment 10 rulemaking would be completed. Dr. Freese deferred to Ms. Yvonne de Reynier who responded that it depends on the Council process to narrow the range of alternatives. There is still a need for two Council meetings before rulemaking can proceed.

Dr. Burke said that ODFW has difficulty addressing the earlier California whiting season in the existing shoreside whiting EFP. Did the GMT discuss this? Ms. Ashcraft deferred to Ms. Carrie Nordeen who responded that the challenge is to do this by April 1 or March 15 of next year. These are the alternative season start dates discussed by the GMT. Dr. Burke said this EFP work needs to be done by CDFG.

C.2.c Public Comment

Mr. Rick Harris, Pacific Choice Seafood, Eureka, California
Mr. Barry Cohen, Olde Port Fisheries/Del Mar, Cambria, California

C.2.d Council Action: Consider and Recommend Opening Date for 2006 for Public Review

Ms. Vojkovich moved and Mr. Ticehurst seconded a motion (Motion 5) to adopt for public review an earlier start date of March 15 for the shoreside whiting fishery south of 40°30' N latitude. The motion includes the GMT recommendations contained in Agenda Item C.2.b, Supplemental GMT Report relative to a need for a salmon bycatch cap, depth restrictions, and an alternative start date of April 1. The motion also instructs the GMT to further analyze salmon interactions in this fishery and in other fisheries operating in this area (i.e., analyze the availability of salmon by time and area as mentioned by Mr. Thomas). Ms. Vojkovich stated this was an opportunity to explore a new sustainable fishery. If whiting do move north as the season progresses, the earlier start date of March 15 makes sense. However, if salmon bycatch or other issues make this earlier start date untenable, then go with an April 1 season start date.

Dr. Burke asked if this motion proposes a separate EFP from the current shoreside whiting EFP. Ms. Vojkovich said no; the intent is to change the season start date in this area in the current EFP.

Dr. Burke stated we have been developing an observer strategy for this fishery. She asked Dr. Clarke to discuss observer issues and camera monitoring with respect to this request. Dr. Clarke said the camera monitoring project is designed to only validate full retention requirements in the fishery.

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Camera monitoring does not supplant the need for at-sea observers and shore-based samplers to determine species composition of the catch. There is a high administrative cost associated with training observers, deploying them, and analyzing the data collected. These costs take funds away from other activities. Incorporating real-time observer data into the management system complicates the existing EFP.

Mr. Alverson asked Ms. Vojkovich what happens if the salmon bycatch cap is reached. Does the fishery close until April 15? Ms. Vojkovich said she did not know, but she wanted to explore the potential actions if a salmon bycatch is reached.

Ms. Cooney said this proposal has additional considerations than those under the existing EFP. This EFP needs to have different terms and conditions.

Dr. Freese asked Ms. Vojkovich whether the motion anticipates analysis prior to September, and Ms. Vojkovich said yes.

Dr. McIsaac asked about public review vs. GMT/scientific review. Mr. DeVore said the Council does need to signal where they want to go with this request so the public can provide informed comments prior to a final decision. The issue of who does the analysis and when that should occur needs to be sorted out. Ms. Cooney said the Council needs to decide whether this is a regulation and an EA or an EFP. Each pathway entails a different process. Ms. Vojkovich said she intends for this to be an EFP. Dr. Burke asked whether this should be a stand-alone EFP separate from the existing shoreside whiting EFP and Ms. Cooney said yes, since there are different issues to be explored. Mr. Anderson hoped the motion would include this being a separate EFP and Ms. Vojkovich and Mr. Ticehurst said yes.

Motion 5 passed.

C.3 Groundfish Essential Fish Habitat (EFH) Environmental Impact Statement (EIS) – Final Preferred Alternative (06/15/05; 9:25 am)

C.3.a Agenda Item Overview

Dr. Dahl provided the agenda item overview, including a summary of the alternatives in the groundfish EFH DEIS.

C.3.b Agency and Tribal Comments

It was noted that comments from the EPA and NMSP were in the briefing book.

Dr. Freese said he has witnessed a lot of different groups getting together to work on this issue and everyone has been working very hard to minimize impacts on groundfish EFH. He highlighted the GAP conversations, which were civil and very organized.

Mr. Anderson said he appreciated opportunity to participate in this action and thought it was long overdue. He was pleased that folks worked together and felt this effort connects very well with the recommendations of the US Commission on Ocean Policy. He also noted how attitudes about habitat have changed among Council participants, such as the GAP, how much agreement participants in the process have in terms of taking important steps supporting Council deliberations on the EFH EIS action. He recognized the work done by a lot of people in different agencies and the industry, both in terms presenting the information and support for Council decisions. He briefly reviewed Agenda

Item C.3.b, WDFW Report and Agenda Item C.3.b, Supplemental WDFW Report 2.

Mr. Jim Harp read Agenda Item C.3.b, Supplemental Tribal Comments.

Dr. Burke spoke about the process leading up to the EFH EIS decision. She said that ODFW has a report that was being completed at the moment and would be available in the afternoon. She expressed appreciation for NMFS participation in the public meetings ODFW organized. She said the Council is trying to develop criteria for this process and hopes we view this as a first step and not the end of the process. She hoped the input by the public and industry will supplement the decisions the Council will make today.

Ms. Vojkovich agreed with the comments relative to collaboration and involvement. She said California will have a report to hand out in the afternoon. California views this action as a beginning and as a flexible process that will continue.

C.3.c Reports and Comments of Advisory Bodies

Ms. Susan Ashcraft reviewed Agenda Item C.3.c, Supplemental GMT Report. Ms. Ashcraft also read into the record a new paragraph to replace one in the written report.

Dr. Steve Berkeley summarized Agenda Item C.3.c, SSC Report.

Dr. Burke said the SSC statement focused on Alternative C.12 and asked, did the SSC look at any of the other options or analyze how they were approached? Dr. Berkeley replied that their charge was to analyze the Oceana methodology. Dr. Burke asked where that charge came from and Dr. Berkeley said he assumed Council staff. Dr. Burke then asked if the SSC had a discussion about an assessment process for fine tuning designations or making future ones. Dr. Berkeley said the SSC did not.

Mr. Rod Moore read Agenda Item C.3.c, Supplemental GAP Report.

Mr. Brown asked, referring to discussion in the GAP Report about review of various measures, such as gear restrictions and closed areas, whether the GAP discussed having the EFH Technical Review Committee perform this function. Mr. Moore replied that the GAP had a long discussion, saying the principle they were trying to adopt was that some of the proposed measures need to be refined. Originally they wanted to come up with a straightforward process for doing that. But what they discovered during discussion was that the TRC would be great for some functions, such as identifying new HAPCs, but would not have the capability for making other recommendations, such as specific gear restrictions. In response they recommended the TRC make more specific recommendations related to HAPCs and the boundaries of closed areas in consultation with fishermen. But other items should go through the Council with comment from advisory bodies.

Dr. Burke noted the GAP statement was silent on the issue of restricting dingle bar gear and beam trawl gear and asked if they had a perspective on that. Mr. Moore replied the GAP felt there needs to be some sort of decision process with more analysis rather than inserting blanket provisions by means of the EFH EIS. Gear restrictions should be implemented through normal Council processes. As a follow-up, Dr. Burke said that those other processes are for dealing with fishery management issues rather than habitat protection, thus her concern. Mr. Moore replied that in many cases the line blurs between fishery management and habitat protection. He offered several examples. Following up again Dr. Burke noted that dingle bar gear can actually be relatively less harmful to habitat. She then asked about roller gear size and asked for elaboration. Mr. Moore said the GAP has consistently commented that the 15-inch roller gear limit made no sense and reiterates it now. Second, he thought

there was no difference between the habitat impact from 15-inch rollers versus 18-inch rollers. Furthermore, closing off habitat will be a more effective approach to protecting high relief habitat. Finally, several of the fishermen have testified that they use 18-inch roller gear, and the gear comes in even sizes, but there can be differences in the actual size due to manufacturing. The GAP thought that 19 or 20 inches would be the appropriate size limit if the Council were to implement a blanket limit, which the GAP does not agree with.

Mr. Anderson asked about the GAP statement with respect to tribal fishing under Alternative C.12, asking whether the GAP meant that tribal concurrence would be necessary to prohibit nontribal fishing in the tribal U & As or whether such an exception should only apply to tribal fishing. Mr. Moore replied that since the purpose of closing an area was to protect habitat and if the tribal fishermen were exempted only some habitat protection would be afforded, it would be better to work with the tribes to get concurrence on a closure applying to all fishermen.

Mr. Brown asked a question about the 15-inch roller gear size and Mr. Moore's previous response. He noted that roller gear limits prevent access to high relieve or biogenic habitat, therefore limiting the amount of habitat contact. The areas that would be protected through closed areas have to be rather large for enforcement reasons while a gear restriction prevents access to smaller areas. Furthermore, in other areas "street sweeper" gear with large rollers has been used and these measures would prevent the introduction of those gear types. He asked if the GAP had any discussion of that possibility. Mr. Moore replied that the initial discussion occurred about two years ago before Oceana had submitted their proposal for closed areas. At that time the GAP was looking at the issue in the context of gear alone and not specific area closures and agreed that restricting "street sweeper" gear would be a good idea. But the discussion in the last couple of days centered on the area closures and the GAP concluded that the closed areas pretty well cover the areas that might be of concern in terms of habitat protection, calling into question the need for further gear restrictions, which might require purchase of new gear.

Dr. McIsaac asked about a sentence at the bottom of page 3 in the GAP report discussing the possibility of parties meeting to develop a combined option in time for final Council action in September. Mr. Moore said that the GAP presumed that the Council would put out a preferred alternative at this meeting and adopt it finally in September, based on the timeline they were given. Dr. McIsaac then asked Dr. Dahl if this is the final Council action today and the September action would be a follow-up to develop the FMP amendment language. Dr. Dahl said that was correct. Mr. Moore replied if that is so, even if the EIS is adopted today, the FMP amendment could accommodate any future changes based on discussions between the trawl industry and Oceana if a review process is included in the FMP amendment.

Ms. Teresa Scott summarized Agenda Item C.3.c, HC Report through a PowerPoint presentation.

Mr. Brown asked why a canyon as a whole is considered a vulnerable habitat. Ms. Scott said the organisms in the canyon would be vulnerable. Mr. Brown then asked, if the committee concluded that areas that have been destroyed by fishing are permanently destroyed, why would there be any need to further protect those areas? Ms. Scott said the committee did not discuss that question. She also said the HC endorsed use of currently closed areas for habitat recovery. Mr. Brown then asked, if there is significant rebuilding occurring within those closed areas, doesn't that indicate the habitat impacts are relatively minor and recovery occurs rapidly? Ms. Scott said the information is not available to answer that question.

Dr. Burke noted the HC could not convene at this meeting due to budget restrictions and expressed appreciation for the HC report. Dr. Burke asked whether the HC discussed the use of trawl survey

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data on biogenic habitat as did the SSC. Ms. Scott said the issue is poorly understood and the current information is not sufficient. Dr. McIsaac amplified Dr. Burke's thanks for Ms. Scott providing the PowerPoint presentation and taking the time to come down to give this report.

Mr. Anderson asked a question about jurisdiction, which was raised in the HC report and others. He directed the question at Ms. Cooney. He asked, if the Council wanted to exclude specific areas of EFH, for example in state waters, from the gear prohibitions identified in Alternative C.9, would the Council have to explicitly exclude those areas? Ms. Cooney said EFH can be designated in both state and federal waters, but the authority to implement fishing regulations applies only outside the three-mile state waters boundary. The states would then have to implement conforming regulations for the area from 0 to 3 miles. The Council should make a clear recommendation to the states about what type of measures they would want to see enacted in state waters. Mr. Anderson then asked if the Council has the authority to pre-empt state authority if state action is inconsistent with an FMP. Therefore, if the Council designated an area in state waters EFH and HAPC and restricted certain activities in those areas, would there be a risk of the state being pre-empted? Ms. Cooney said the preemption authority only applies 0 to 3 miles, not in internal waters such as Puget Sound. The issue would be how severe is the impact of state action on federal management. If the state action seriously interferes with fishery management in federal waters, NMFS may pre-empt state law. But there is a process established to review any such action. Mr. Anderson then asked, if an area is designated as EFH, and then if the state takes an action, what, if any, obligation is there to consult with NMFS prior to taking that action? For clarification, he used oyster dredge as an example. If the state were to allow this gear type in an EFH area, would there be any requirement on the part of the state to consult? Ms. Cooney said the state did not have a requirement to consult with NMFS on EFH; if NMFS is aware of state action, then NMFS and the Council could provide comments. In response to a further clarifying question, Ms. Cooney said there is no requirement to notify the federal government.

Lt. Dave Cleary read Agenda Item C.3.c, Supplemental EC Report.

Dr. Burke said she understood from the EC report there were significant implementation issues and asked Lt. Cleary to speak further on the issue of closed areas. He provided examples to highlight some of the enforcement issues related to closed areas. She asked if the EC talked about any kind of minimum size for closed areas that is unenforceable. He replied it would depend on whether the VMS units could be programmed to create some geo-fencing around the closed areas. If that's not available, then the closed area would have to be wide enough so the vessel could be detected inside the area with the standard once-an-hour ping rate.

Mr. Alverson followed up Dr. Burke's comments, noting that, in Alaska, enforcement said thousands of boats would have to be equipped with VMS to comply with the EFH decision there; for the Channel Islands it may be necessary to have VMS on all vessel types. Lt. Cleary said that in the Channel Islands area there are many different enforcement agencies monitoring, so there may not be a need for VMS. In another area, such as Cape Blanco, Oregon, where there is not much enforcement presence it would be a different story. More information will be needed to make these types of decisions on a case-by-case basis. Mr. Alverson noted that at the last Council meeting, a VMS issue was voted down and it is supposed to come back again for review by the Council in September. Lt. Cleary said the EC is charged with providing advice and he wanted to make clear that if the Council establishes a lot of closed areas and the tools are not available for enforcement, the confidence of the EC that the closed areas could accomplish their purpose would be diminished.

Dr. McIsaac noted that at the April meeting the EC helped with some language for protection of Cordell Bank and Davidson seamount. He asked if the problem of defining certain gear types

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described in the EC statement is a solvable problem. Lt. Cleary said he thought it was. He added that the EC could provide advice on how to describe a particular gear if it is brought to the EC in a specific form.

Mr. Brown asked if the EC has any problem with the current restriction on footrope size. Lt. Cleary said he didn't think that type of regulation was problematic.

Mr. Brown called upon Mr. Moore to answer further questions about footrope size. He said that the current regulations restrict footrope on the shelf to eight inches and there is evidence that this has changed fishing patterns. This has been one of the most successful habitat protection measures, but no one has identified this measure as a habitat protection measure that would be part of this EFH EIS action. He asked if the GAP had discussed this, and second, if the GAP would find adding this measure to the action acceptable. Mr. Moore said the GAP did not discuss the restriction as a habitat protection measure, reiterating the GAP feels the gear restrictions need to be better evaluated. He said the GAP would not recommend including the eight inch restriction as part of the current action.

Dr. Burke noted ODFW's statement on final preferred alternatives was handed out during the lunch break (Agenda Item C.3.b, Supplemental ODFW Report).

Ms. Cooney made some comments on the process. She said the Council needs to adopt final recommendations for the final EIS at this time, because the FEIS needs to be released in December under the timeline in the court-approved settlement. That means if the final recommendations are not adopted now, it can't be accomplished in time for the December deadline. Cleaning up things or identifying specific boundaries of closed areas can be done later, but anything new would need new analysis in the FEIS, which could not be done in this time frame. Coming out of the FEIS is the FMP amendment, but that flows from the recommendations in the FEIS. The Council would be dealing with the amendatory language in September and November with the regulatory language coming out in May 2006. Some sort of adaptive management mechanism can be added to the FMP to change regulations in the future, but that is not pertinent to the decisions to be made now.

Dr. Burke noted the Supplemental ODFW Report presented options, rather than reflecting decisions taken.

Mr. Anderson, noting that the situation summary described the action as selecting final preferred alternatives asked, is that the action we need to take today? Ms. Cooney replied, yes the action is to choose the final preferred alternative for the final EIS.

Ms. Vojkovich discussed their written report, which was not yet available, and said she could provide a general overview in oral form. She said the state of California did not have the opportunity to hold meetings like Washington and Oregon had to obtain information. Instead they used the Council process and also information in state databases to assess the options the Council was considering. Current state considerations were option A.2, including seamounts for EFH designation. For HAPC designation she enumerated the following areas: seamounts, Monterey Canyon, several areas of the Cowcod Conservation Area (CCA), Cordell Bank, Mendocino Ridge, several of the oil platforms in southern California, and specific federal water areas at the Channel Islands that have been agreed upon by the state and the CINMS. For impact mitigation measures she listed using the 700 fm depth contour north of Pt. Conception and 300 fm depth contour south of Pt. Conception as a boundary for a trawl closure. Proposed gear restrictions included limits on roller gear, dredge gear, beam trawl except for an established fishery in San Francisco Bay, and discussion of a prohibition on dingle bar gear. They would propose closed areas. These include the Central California no-trawl zones, including Davidson Seamount. There would also be closure of areas where there has been agreement

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between Oceana and industry; but there are a couple of spots where the state is planning to revise the boundary because the state thinks that the protected area should be extended. In the southern California area the state proposes preventing any fishing gear in those areas of the Channel Islands that would be previously designated as HAPCs; but one of these areas would exempt certain surface gears from the closure. She also listed the Oceana proposed closures at Catalina Island. At the CCA West there are four areas the state proposes as no-trawl areas and also the CCA East. There would be a no bottom contact gear prohibition at Davidson Seamount and Cordell bank in water depths shallower than 50 fathoms; this supports the Cordell Banks Sanctuary proposal. (This information was subsequently provided in more detail in Agenda Item C.3.b, Supplemental CDFG Report.)

C.3.d Public Comment (06/15/05; 1:19 pm)

Mr. Chuck Cook, California Nature Conservancy, Ojai, California
Mr. Chris Kubiak, Morro Bay Fishermen's Association, Los Osos, California
Mr. Rod Fujita, Environmental Defense, Oakland, California
Mr. Daniel Waldeck, Pacific Whiting Conservation Cooperative, Portland, Oregon
Mr. Dale Myer, Arctic Storm Inc., Seattle, Washington
Mr. George Steinbach, CARE, Sacramento, California
Mr. Don Kent, CARE, Sacramento, California
Mr. Jim Bassler, STMA, Fort Bragg, California
Mr. Bill James, fisherman, Keizer, Oregon
Mr. Rob Cozens, Ocean Wilderness Network, Manchester, California
Mr. Kenyon Hensel, Hensel's, Crescent City, California
Mr. Daniel Platt, STMA, Fort Bragg, California
Ms. Kathy Fosmark, Alliance of Communities for Sustainable Fisheries, Pebble Beach, California
Mr. Greg Helms,
Mr. Bob Osborn, United Anglers of Southern California, Huntington Beach, California
Ms. Janis Searles, Counsel for Oceana, Portland, Oregon
Mr. Jim Ayers, Oceana, Juneau, Alaska
Mr. Peter Huhtala, PMCC, Astoria, Oregon
Ms. Karen Garrison, NRDC, San Francisco, California
Mr. Chris Dorsett, The Ocean Conservancy, San Francisco, California
Mr. Marion Larkin, trawler, Mt. Vernon, Washington
Mr. Brad Pettinger, Oregon Trawl Commission, Astoria, Oregon
Mr. Peter Leipzig, Fishermen's Marketing Association, Eureka, California
Mr. Tom Raftican, United Anglers of Southern California, Huntington Beach, California
Mr. Mike McCorkle, Southern California Trawlers Association, Santa Barbara, California
Mr. Allen Hightower, F/V Sea Otter, Port Townsend, Washington
Mr. Scott McMullen, Oregon Fishermen's Cable Committee, Astoria, Oregon
Mr. Gerry Richter, Point Conception Groundfish Fishermen's Association, Santa Barbara, California
Mr. Rod Moore, West Coast Seafood Processors Association, Portland, Oregon

C.3.e Council Action: Adopt a Final Preferred Alternative

Dr. Dahl provided a briefing on what the Council task is at this point.

Ms. Cooney talked about some of the key provisions of the EFH regulations. She read from the regulations on minimizing the effects of fishing, focusing on the concepts of more than minimal and not temporary effects. She also discussed the concept of practicability.

Ms. Vojkovich asked Ms. Cooney about closing the area outside the "trawl footprint," referencing the area from the 1,000 fm depth contour to the EEZ boundary. She asked, if the EFH designation does

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not encompass the entire EEZ would the footprint action truly close the whole area or just the area designated EFH? Ms. Cooney replied that the action could be taken if it represents a precautionary step while trying to determine whether the area outside of designated EFH merits such designation in the future.

Mr. Anderson suggested moving through each of the four categories one at a time. He said he had some motions prepared but they are not intended to be all-encompassing and other Council members may want to make amendments to the motions.

Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 6) to adopt the following preferred alternatives to identify and describe EFH for West Coast groundfish. The following written motion, which Mr. Anderson referenced in discussion, was provided:

The following alternatives would be adopted as preferred

Alternatives to Identify and Describe EFH

A.2 Depths less than 3,500 m (DEIS p. 2-5)

Results – Designate 187,741 square miles in the EEZ, and to the mean higher high water line and upriver extent of salt water, as EFH. The deepest observation of groundfish is 3,400 m. By including areas out to the 3,500 m depth curve, this alternative includes all habitats where groundfish have been observed with the addition of 100 m depth as a precautionary adjustment in case of non-observed species.

A.3 100% HSP Area (DEIS p. 2-6)

Results – Designate 100% of the area where the habitat suitability probability (HSP) is greater than zero for all species based on the scientific rationale presented in the DEIS, Section 2.3.1 (DEIS p. 2-2). This area includes 87,160 square miles as EFH, all of which is within the area that would be designated by Alternative A.2. The intent of including this area is to secure the ability to add areas in the future which meet this criterion, as more information becomes available.

Mr. Brown asked if seamounts would be included under Alternative A.2. Mr. Anderson said it wasn't, but he recognized that it may have come up during public comment and that he forgot it from his motion but recognized there would be omissions and expected other Council members to add to the motion. The inclusion of seamounts was accepted as a friendly amendment to the motion. Dr. Burke mentioned that the situation summary noted subsequently adopted HAPCs could be outside adopted EFH and offered another friendly amendment that any HAPCs designated shall also be included in EFH. Mr. Anderson asked Dr. Burke for a clarifying example; Dr. Burke referred the question to Dr. Dahl. He offered as an example related to designating seamounts as HAPCs. Dr. Burke said she didn't have a specific example in mind, but thought it wise to include this amendment to cover all bases. The friendly amendment was accepted.

Ms. Vojkovich raised the issue about oil platforms being HAPCs. She noted that they would be contained within EFH as moved, asking whether they would be separate EFH. Mr. Anderson said this first step was to identify and describe EFH in a broad sense. If an area was not by default contained within EFH it would be included subsequently if designated a HAPC. Notwithstanding, he understood that the oil platforms would be included in the description of EFH as moved, but the decision as to whether they are HAPCs would be a separate decision.

Motion 6 passed.

Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 7) to adopt the following alternatives to designate HAPCs for West Coast groundfish. The following written motion was provided:

Alternatives to Designate HAPC

B.2 Estuaries (DEIS p. 2-7)

Results – For many fish species, estuaries provide important habitats for marine organisms, including groundfish. These important ecological functions are vulnerable to damage from a wide range of human activities because estuaries receive runoff from adjacent land areas and are often close to human population centers. Anthropogenic impacts to estuaries may include nutrient loading, introduction of non-native species, and changes in water temperature, increased turbidity, etc.

B.3 Canopy Kelp (DEIS p. 2-7)

Results – Kelp forests are of primary importance to the ecosystem and serve as important groundfish habitat. The stands provide nurseries, feeding grounds and shelter to a variety of groundfish species and their prey. Giant kelp communities are highly productive relative to other habitats, including wetlands, shallow and deep sand bottoms, and rock bottom artificial reefs. Their net primary production is an important component to the energy flow within food webs.

B.4 Seagrass (DEIS p. 2-8)

Results – Seagrasses provide habitat for many invertebrates and epiphytes and provide many crustaceans, fish, and birds with protection and food. Studies have shown seagrass beds to be extremely high primary productivity areas.

B.6 Rocky Reefs (DEIS p. 2-9)

Results – Managed species known to use nearshore hard bottom habitat in the coastal zone include black rockfish, black-and-yellow rockfish, brown rockfish, cabezon, calico rockfish, California scorpionfish, chilipepper, copper rockfish, gopher rockfish, kelp greenling, leopard shark, lingcod, olive rockfish, quillback rockfish, redstripe rockfish, rosethorn rockfish, shortbelly rockfish, silvergray rockfish, and spotted ratfish.

Add Washington coastal state waters (shoreline to 3 miles)

Results – The habitats within Washington's coastal state waters are ecologically important and are particularly sensitive to human-induced environmental degradation. The bays and estuaries provide important habitats to juvenile flatfish and the oceanic waters provide habitat for adult nearshore rockfish, juvenile rockfish, lingcod, and adult flatfish. The addition of this area would include specific areas not covered under Alternatives B.2, B.3, B.4, and B.6 as designated Habitat Areas of Particular Concern.

Mr. Brown asked to include in Motion 7 Alternative B.9 – Process for New HAPC Designations as part of the motion. The maker of the motion said he was happy to formulate the motion as the designation of the above areas and the description of a process to consider addition or deletion of HAPCs by future Council action. The seconder agreed.

Mr. Warrens noted he had a motion he would introduce later on this topic.

Dr. Burke asked to include in Motion 7 the area of Daisy Banks, which is identified under alternative B.7 in the DEIS. Maker and seconder agreed.

Ms. Vojkovich asked to include in Motion 7 under B.7 the following areas: seamounts within DRAFT Minutes (June 2005 - 179th Council Meeting)

California state borders, Monterey Canyon, four specific areas of the eastern CCAs identified by CDFG, the proposed areas in the Channels Islands NMS under C.14 that California has identified as potential MPA sites, Cordell Bank, and Mendocino Ridge. She also asked to include alternative B.8, oil production platforms, noting that only a portion of those identified in alternative B.8, 13 structures, would be designated.

The maker and the seconder agreed to add the items under B.7, but not to add alternative B.8. Dr. McIsaac provided clarification on the status of the motion.

Dr. Burke then interjected to add the Thompson and President Jackson seamounts as identified in Alternative B.7 in the DEIS to the motion. The maker and seconder agreed.

Ms. Vojkovich brought up the oil production platforms issue again. Ms. Vojkovich moved and Mr. Thomas seconded an amendment to Motion 7 to include a modification of Alternative B.8, designating 13 specified oil production platforms as HAPCs, as identified by CDFG.

Dr. Burke spoke against the amendment. She was concerned about setting a precedent of identifying manmade structures as HAPCs when there are so many other natural places and items that could be designated as HAPCs. Second, she had environmental concerns, such as release of oil and other containments.

Mr. Brown spoke against the amendment because he felt there would be a problem with a designation that gives special treatment to an area. He asked whether this would lead to designating sunken boats. He discussed the problems associated with creating artificial reefs in Oregon waters.

Mr. Ticehurst spoke in favor of the amendment. He thought the Council could identify HAPCs that offer quality habitat and distinguish them from spurious designations. The reality is that oil platforms are habitat for fish. Artificial reefs on the east coast provide a lot of important habitat. In the future we might want to designate an artificial reef on the West Coast as a HAPC. If it's important habitat it doesn't matter whether it is natural or man-made.

Mr. Anderson asked Ms. Vojkovich what special protections would be afforded oil platforms if they were designated HAPCs. She responded HAPCs are just a focus on particular habitat types that would receive more consideration through the federal process when some activity might be planned that would have some impact in that area. There is no real protection itself, it's only promotes discussion of the importance of the habitat. She noted the proponents provided written documentation discussing how HAPC designation would require an elevated level of scrutiny during any decommissioning process.

Dr. Freese said he was struggling with the vote and discussed the pros and cons of designating oil platforms as HAPCs. He cited discussion in the EPA comment letter on this point.

Dr. Burke mentioned that we already have identified several other habitat types with likely positive benefits. She felt that the decision was not entirely related to the protection of groundfish habitat but was meant to influence a future decision that is outside this process. Mr. Brown agreed, providing another example of how human activities can increase a certain biological community while damaging habitat overall.

Ms. Vojkovich said oil platforms provide unique vertical habitat; there are various ages of fish at different depths along the platforms.

Vice Chairman Ortmann spoke against the amendment, saying he didn't see the oil platforms as essential fish habitat.

Chairman Hansen called for a roll call vote on the amendment to Motion 7: 7 yes, 6 no. The amendment passed. The main motion, Motion 7, passed. Dr. McIsaac asked for clarification that the friendly amendments were included in Motion 7 when it passed.

Mr. Warrens moved and Mr. Harp seconded a motion (Motion 8). He provided a written motion, which read as follows:

1. Draft the Groundfish FMP Amendment to include language for implementation of an EFH Review Committee and an adaptive management process. The Council should consider using the existing Ad Hoc Groundfish Habitat Technical Review Committee, with any necessary changes in membership, for this purpose. This committee would meet as appropriate to:
 - review specific areas included as HAPCs,
 - review the scientific basis of any area designated as a non-bottom trawl area; and,
 - consider additional HAPCs or other protective measures.
2. If this committee determines an area designated as a non-bottom trawl area is not supported by scientific data, the committee by majority vote, may recommend the Council modify, move, or eliminate that area.
3. The Council may initiate an action through a framework process to be included in the fishery management plan amendment to modify management measures through a rulemaking.

Mr. Warrens said he made the motion based on comments he heard from the public testimony, the GAP, GMT, and SSC Reports. The elements of the motion would be included in the FEIS preferred alternative with more detail as appropriate.

Ms. Cooney said she understood this to be a basic concept, and different versions of it may be developed for the draft FMP amendment itself.

Dr. Burke said ODFW supports this process concept and pointed out several parts of the Supplemental ODFW Report that put forward similar concepts.

Mr. Brown then asked for a friendly amendment to change part of the motion to read as follows:

(2) Unless the Committee determines an area designated as a non-bottom trawl area is supported by scientific data, the committee will recommend the Council modify, move, or eliminate that area.

He asked for this because it provides a sunset provision so that mitigation measures don't stay in place forever for no reason.

The friendly amendment was accepted by the maker and seconder.

Mr. Brown spoke to his amendment, providing an example of a situation where there would be little legal basis for a mitigation measure.

For clarification, Ms. Vojkovich asked if this process would apply to all actions proposed in the EIS

document. Would this cause all of the measures to expire if no action is taken? Mr. Brown provided clarification, saying it would not automatically cause them to be rescinded. Ms. Vojkovich asked if the committee would begin reviewing all actions proposed by the Council today.

Mr. Warrens, responding to Ms. Vojkovich, said the intent of his motion was to allow a body to bring problems and concerns to the Council, so it wouldn't actually cause all actions to be reviewed, only those brought before the Committee. Mr. Brown said you have to have someone else legally reviewing these items anyway, so basically it is in there.

Mr. Anderson asked Mr. Warrens, in reference to the Alternative B.9 process for HAPC designations, would the process he is proposing also include the process for designating new HAPCs? Mr. Warrens answered yes, referencing the third bullet under item #1 in the motion.

Mr. Anderson then said he felt the friendly amendment is a mistake, causing him to vote against the motion. He thinks predetermining what a committee will or won't do in terms of a recommendation to the Council, particularly in this matter, will send a bad signal to the people who have been involved in the process thus far. Furthermore, if there is no scientific basis for a closed area, he hopes the Committee would bring it to the Council's attention and the Council can take action.

Mr. Brown then withdrew his suggestion as a friendly amendment and offered the same language as an amendment, Mr. Warrens seconded the amendment, as above: (2) Unless the Committee determines an area designated as a non-bottom trawl area is supported by scientific data, the committee will recommend the Council modify, move, or eliminate that area.

Mr. Anderson said since EFH measures are reviewed every five years anyway, he wasn't sure why the amendment was necessary. He felt a review every four years would be best to match the biennial management process.

Mr. Brown said his original intention for the amendment was to require a sunset provision and force a review. Mr. Alverson asked how Mr. Brown's language was different from what was in the original motion. Mr. Brown reiterated that the committee would have to provide scientific justification for maintaining a closed area.

Dr. Burke said the key word seems to be "may;" that does not predetermine the vote. She said she was supportive of Mr. Warrens' original motion. Dr. Hanson asked about the time frame. Mr. Warrens responded that once the FMP was amended, the committee would act on requests from industry. Dr. Hanson asked about the effect of the amendment. Mr. Brown said if the committee did not meet to review the measures the measures would expire.

Dr. Freese spoke to the main motion about how to create a practical process from the proposal.

With that said, Mr. Brown withdrew his amendment and it was not voted on.

Mr. Anderson pointed out Alternative B.9 and asked if Mr. Warrens had examined that process and whether his motion included any of those elements. Mr. Warrens said that it was certainly his intent to address what Mr. Anderson said in his comments. Mr. Anderson made a friendly amendment to the motion to include the process elements described in Alternative B.9; he summarized the four components of the process described in the DEIS. He said he thought that that process coupled with Mr. Warrens' proposal would allow consideration of new HAPCs as well as existing HAPCs.

Mr. Warrens said his intent was to streamline the process through rulemaking.

Ms. Cooney said Alternative B.9 talks about HAPCs while Mr. Warrens' proposal talks about both HAPCs and management measures. Furthermore, Alternative B.9 talks about modifying HAPCs through a plan amendment while Mr. Warrens' proposal talks about modifying management measures through a regulatory amendment. Both would require similar processes. Mr. Warrens said he was proposing a more direct process rather than having to go through a whole plan amendment process.

Mr. Anderson withdrew his friendly amendment.

Ms. Cooney asked if Mr. Warrens intended to keep the HAPC process as an amendment process as under Alternative B.9 and his motion would just address management measures. Mr. Warrens said the process in his motion was to address challenges to the designated nontrawl areas in addition to HAPCs, to determine if the nontrawl areas were scientifically supported. HAPCs would be addressed to the degree they fall under regulations.

Mr. Anderson asked if the HAPCs would fall under a plan amendment and whether the Council is suggesting it wouldn't take a plan amendment to remove one? Ms. Cooney said it would take a plan amendment to remove one. The motion talks about reviewing HAPCs but the last bullet talks about changing management measures, which are under regulations, through rulemaking.

The Council voted and Motion 8 passed.

Mr. Anderson moved and Dr. Burke seconded a motion (Motion 9) to adopt the following measures to minimize adverse impacts to essential fish habitat for West Coast groundfish. The following written motion was provided:

Alternative C.4.1: Prohibit expansion of trawl fishing (DEIS p. 2-20)

For waters within the EEZ, freeze the bottom trawl footprint on the western side only, at a depth contour approximating 700 fms. (i.e., bottom trawl gear would be prohibited in depths greater than 700 fms).

Results – The amount of habitat that would be protected where the sensitivity value is greater than 1.0 and recovery is in excess of 1 year is 89%

Alternative C.9 Gear restrictions (DEIS p. 2-22)

For waters within 0-200 miles offshore coastwide, the following gear restrictions would apply:

- Prohibit bottom trawl roller gear with a footrope diameter greater than 19 inches
- Prohibit dredge gear
- Prohibit beam trawl gear

Mr. Anderson modified this portion of the motion as written, to read as shown above.

Alternative C.12

Close ecologically important areas to bottom trawl

Mr. Anderson identified the areas described in Agenda Item C.3.b, Supplemental WDFW Report 2: Olympic 2, Biogenic 1, Biogenic 2, Biogenic 3, and WDFW Grays Canyon. Relative to Grays Canyon WDFW would provide a description of the boundary through latitude-longitude waypoints.

Mr. Anderson spoke to the rationale for the areas proposed to be closed to bottom trawl.

Ms. Vojkovich made a friendly amendment, based on Agenda Item C.3.b Supplemental CDFG Report, specifically measures to minimize adverse impacts to EFH due to fishing.

The friendly amendment as presented is as follows:

Under Alternative C.10: Central California no-trawl zones as follows: Adopt the trawl closures contained in current The Nature Conservancy/Environmental Defense proposal for areas 1, 2, and 3 off central California between Pt. Sur and Pt. Conception, including Davidson Seamount.

Under Alternative C. 12 as modified through agreement between Oceana and trawl industry representatives with modifications to some areas by CDFG as noted below. Ecologically important areas are closed to bottom trawl adopted:

Note: The numeric identifiers refer to the supplemental EFH Decision Map provided under Council discussion.

Crescent City Deep Biogenic Area (32) in the CDFG Supplemental Report is removed from the motion because almost all of it is in depths greater than 700 fm, which would be closed under the provisions of the main motion.

Eel River Canyon (34) with state modification
Blunts Reef (35)
Mendocino Ridge (36)
Tolo Bank (labeled 0 as an addition to Alternative C.12 as presented)
Point Arena Offshore (39)
Biogenic Area 12 (40)
Cordell Bank (41)
Farallon Is./Fanny Shoal (42)
Half Moon Bay (43) with state modification
Monterey Bay/Canyon (45) with state modification
Point Sur Deep (44)
TNC/ED areas between Pt. Sur and Pt. Conception
CCA West Sub-Areas (from 50):
Potato Bank (50-1 as subarea to the area labeled 50)
Cherry Bank (50-2 as subarea to the area labeled 50)
Hidden Reef/Kidney Bank (50-3 as subarea to the area labeled 50)
Catalina Island (51)
CCA East (52)

For all areas closed to bottom trawl there is an exemption for Scottish seine gear, which would not be considered bottom trawl gear for this purpose.

Under Alternative C.13: Close Ecologically Important Areas to Bottom-Contacting Gear as follows:

Davidson Seamount
Cordell Bank – waters shallower than 50 fathoms with exemption for vertical hook-and-line

Under Alternative C.14, Close ecologically important areas to fishing:

The Federal waters portion of the proposed Channel Islands MPA project

Ms. Vojkovich then referenced maps provided by CDFG during Council discussion for further explanation of the state modifications to certain areas as described above. These modifications are described on page 5 of the CDFG Supplemental Report.

She then described the areas south of Pt. Conception. First she described the subareas in the CCA, providing the rationale for identifying those specific areas. She said that, first, these areas meet the goals of mitigating impacts to EFH, and second, California is interested in discussing boundary changes for the CCA at the September Council meeting. This proposal focuses on the areas of highest biogenic habitat within the CCA to ensure they are protected after any new CCA boundaries are implemented.

She discussed the areas to be closed to fishing in federal waters around the Channel Islands. She reviewed the rationale as presented in the CDFG Supplemental Report. She also noted there was one "footprint" area that is not contiguous to an existing state MPA and is totally in federal waters by itself. She enumerated the goals of the CINMS and stated they were consistent with the EFH conservation goals. These federal waters MPAs would be implemented under provisions of EFH which allow for the designation of zones for use as MPAs to limit impacts to vulnerable resources in those areas designated as HAPC. The levels of protection in these MPAs would be the same as those for the corresponding state MPAs. This will result in the seamless area of easily understood protection from the outer federal water boundaries to the shore for each area. Enforcement effort would also be facilitated by this geographic simplicity. She referenced the process used to identify the proposed areas and stressed the need for continued involvement by all parties, as well as the need for continued research and monitoring. She noted two Council members sit on the Sanctuary Advisory Council, which played a major role in selection of these sites and stressed continued cooperation.

She then noted that Rod Fujita asked for the Council to consider the concept employed off the central coast to identify new areas, which has been a productive relationship. The concept that was employed in that case should be supported and used in the future.

Dr. Burke then proposed a friendly amendment to Motion 9. She said she would work from Agenda Item C.3.b, Supplemental ODFW Report, which also includes maps representing the areas to be proposed in the motion. She referenced the criteria discussed in the report used to determine the choice of sites.

She then enumerated the sites listed on page 4 of Agenda Item C.3.b, Supplemental ODFW Report, which are proposed to be closed to bottom trawl. The following changes are made as part of the motion: the addition of the areas as described by the Oregon Fishermen's Cable Commission map provided under public comment, and the removal of the Siletz Bay nearshore area (T-7).

She then provided the rationale for not including other sites identified by Oceana but not in the motion.

She then reviewed the gear-type prohibitions listed on page 4 of Agenda Item C.3.b, Supplemental ODFW Report, which are part of the motion: bottom trawl roller gear larger than 19 inches and beam trawl gear.

She then added a closure of Thompson Seamount and President Jackson Seamount to all bottom-contact gear. The closed area will be based on the map included in the DEIS.

Mr. Anderson agreed to accept it as a friendly amendment.

Mr. Brown proposed as a friendly amendment a prohibition of footrope larger than 8 inches eastward of a line approximating 100 fathoms. The friendly amendment was accepted by the maker and seconder.

Ms. Vojkovich asked how Mr. Brown's amendment would reconcile with the proposed measure to prohibit footropes larger than 19 inches. Mr. Anderson described how it would work. Mr. Brown said the purpose of this is to memorialize what is already in regulations, which probably will not be changed in the near future. Although implemented for bycatch avoidance, it has been effective in keeping bottom trawl out of rocky habitats.

Mr. Ticehurst, for protecting rocky habitat, asked whether the Council should consider including dinglebar as a prohibited gear type.

Ms. Vojkovich said, relative to the last amendment, she needs to talk to participants in state-managed fisheries before the Council votes.

Ms. Vojkovich's then clarified the part of her friendly amendment related to the closure of Davidson seamount (under Alternative C.13). In addition to prohibiting bottom contact gear, some amount off the bottom would also be closed, consistent with what the NMSP asked the Council to do to address their management goals.

Mr. Brown asked for an amendment to Motion 9: make the boundary of the trawl footprint closed area 1000 fm, instead of 700 fm. Mr. Warrens seconded the amendment. Mr. Brown spoke to the rationale for the motion, noting the possibility of drifting past the 700 fm contour even if the net stays in shallower depths.

Ms. Vojkovich commented that CDFG has very little data showing trawl tracks outside the 700 fm area. She was concerned a lot of area would be opened up if the boundary was moved to 1,000 fm. Mr. Brown said he did not know the area down south but in the areas he was familiar with the horizontal distance between 1,000 and 700 fm was small.

Mr. Anderson said the same issues apply to the RCA boundaries, so he said he would not support the motion. He also said in Washington there were very few trawl tracks outside of 600 fm; 700 fm gave a 100 fm buffer.

A roll call vote on the amendment to Motion 9 resulted in: 5 yes, 8 no. The amendment failed.

Dr. Burke asked Lt. Cleary to talk about shrimp vessels. Lt. Cleary spoke to the issue of VMS; currently there are some bottom trawl gear types that do not have to carry VMS and this could cause an enforcement problem. He talked about procedural aspects of considering this issue. Dr. Burke suggested this be a management measure issue to be taken up later and hopefully not cause problems with implementing the EFH.

Mr. Anderson asked if consideration of VMS on all bottom trawl vessels could be put on the September agenda. Dr. McIsaac noted that the current motion covered mitigation measures and there was another part of the action to consider, research and monitoring, where expanded VMS is considered. Therefore, this issue could be considered under a future motion rather than the current one.

Mr. Brown asked if the main motion specified that the identified closed areas applied to bottom trawl rather than all trawl gear types. The Chair made clear that it did.

Mr. Brown asked Ms. Vojkovich about the configuration of the proposed area closure relating to the Eel River Canyon area (identified as a combination of areas #34 and T-15 on page 4 of the supplemental agenda item EFH Decision Maps). Ms. Vojkovich clarified the configuration of the closure was the one that had been previously agreed upon in developing the proposal.

Next, Mr. Brown asked about the Monterey Canyon area (identified as T-23 on page 5 of the supplemental agenda item EFH Decision Maps). Ms. Vojkovich clarified what areas would be included in the closed area, as modified by CDFG.

The Council voted on the main motion, Motion 9, which was passed.

Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 10) to adopt a preferred alternative regarding research and monitoring with the following elements: (1) consider requirement of VMS on all bottom trawl vessels, (2) expansion of logbooks to non-trawl vessels to the extent it is feasible with existing resources, and (3) make a priority of focusing research on the impacts and results of the trawl closures.

Ms. Vojkovich asked for clarification on the portion of the motion related to VMS, would it be to consider expansion of VMS to all bottom trawl? Mr. Anderson said yes. She then said she assumed there would be a process for doing that at a later date. She then said she would have a difficult time voting for the portion of the motion expanding the logbook program, because of the difficulty of implementing it in California. While she appreciated the value of logbooks, she said she was concerned about embarking on another unfunded mandate. Mr. Anderson clarified the motion, saying the motion was to consider expansion of logbook systems to nontrawl gear to the extent feasible and as resources become available. Ms. Vojkovich was satisfied with this clarification.

Ms. Vojkovich said she supported Mr. Anderson's motion on research and monitoring areas, looking for a way to evaluate them, and encouraging needed research. She noted the SSC will be updating the research and data needs document relative to habitat, which can be used to get funding for this research. She also reminded everyone there is a research plan for the Channel Islands MPAs that will provide information on the value of fished versus non-fished areas.

Dr. Burke asked Mr. Anderson to re-read the part of the motion related to research. Mr. Anderson restated it. Dr. Burke then asked Dr. McIsaac about the timing and process for establishing VMS for all bottom trawl vessels. Dr. McIsaac said that would be a potential September agenda item. If this motion passes it is a more direct instruction that VMS be considered in the immediate future; but without this motion future consideration of this issue was planned anyway.

Dr. Burke took the opportunity to thank the staff who prepared the EIS and also recognized that this was Mr. Brown's last meeting as a Council member and expressed gratitude for his contributions.

Ms. Vojkovich clarified that the non-fishing portion of the Channel Islands reserves adopted under the previous motion was the first step and the CINMS would take complementary action to make them totally no-take reserves. Today's action was made under the authority the Council has.

Motion 10 passed.

Mr. Anderson asked that the Council allow the EC to work with Mr. Copps and NWR staff to describe the closed areas adopted earlier in such a way as to make them enforceable.

Mr. Harp moved and Mr. Warrens seconded a motion (Motion 11) that no closure be established in any tribal U&A area without consultation and agreement by the affected tribe(s) pursuant to Executive Order 13175 and that assessment and monitoring programs be developed by NOAA in conjunction with the tribes to measure the appropriateness and effectiveness of habitat protections within U&A areas.

Mr. Anderson asked for clarification of the motion: did it mean that closures north of Grays Harbor, adopted under Motion 9, would not be enacted even if they were not applicable to tribal fisheries? Mr. Harp said that was the intent of the motion, which was made at the request of the tribes. Mr. Anderson said he was opposed to the motion. He supported the idea of consultation but not the aspect which would prevent implementation of the closed areas without tribal agreement.

Dr. Hanson clarified parliamentary procedure, since the Council already voted on the motion adopting the closed areas (Motion 9), there would need to be a vote to reconsider the main motion and then amend that motion.

After the explanation by Dr. Hanson, Motion 11 was withdrawn by the maker, and seconder agreed.

After a Council break, Ms. Cooney asked Mr. Harp if the consultation process could take place at the meeting to see if this could get resolved this week. Mr. Harp said the Tribes agreed they would try.

Mr. Harp moved and Mr. Warrens seconded a motion (Motion 12) to reconsider Motion 9. Motion 12 failed; 5 yes, 8 no.

The Council adjourned for the day.

Mr. Anderson reopened the discussion on EFH where it left off the previous evening with respect to the applicability of the closed areas identified in the Council motions to tribal fisheries north of Grays Harbor in the Tribal U&As. He referenced a statement in the draft EIS on page 2-2 that speaks to that matter. It makes clear that any closed areas for specific types of fishing gear would not apply to tribal fisheries and that in the event that those closures were to apply to tribal fisheries that would be a decision made under the individual tribal jurisdictions and restrictions. In thinking about the context of the motion, it was not specifically spelled out that those closures would not apply to those four Tribes. He asked Dr. Hanson about the proper parliamentary procedure and he said that a motion to amend something previously adopted by the Council would have to be made.

Mr. Anderson moved (Motion 13), seconded by Mr. Cedergreen, to amend Motion 9 to specify that the closed areas adopted as part of that motion do not apply to tribal fisheries in the U&As described in 50 CFR 660.324(c). The Chairman asked for discussion. There was none. The Council voted and Motion 13 passed.

C.4 Status of 2005 Groundfish Fisheries and Consideration of Inseason Adjustments (06/16/05; 8:20 am)

C.4.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

C.4.b Report of the Groundfish Management Team

Ms. Susan Ashcraft provided Agenda Item C.4.b, Supplemental GMT Report. Mr. Merrick Burden joined her at the podium to field any questions. He corrected impact estimates provided on page 4 of the GMT report.

Mr. Anderson asked about the higher landings of yellowtail rockfish in this year's limited entry trawl fishery and noted they appear to be made by a small number of vessels. Are there larger landing of canary rockfish on these fish tickets? Mr. Burden said yes, there is an association of canary rockfish with yellowtail rockfish. Dr. Burke asked if the yellowtail rockfish limit is lowered, wouldn't that increase discards. Mr. Burden said yes. The GMT looked at the EFP results to determine an appropriate trip limit for yellowtail rockfish. However, it is still believed this action will increase discards. Mr. Anderson noted there are seasonal differences in yellowtail rockfish availability. Would a 1,000 pound trip limit accommodate most of the vessels in the fleet? Mr. Burden said yes, only a few vessels attain $\geq 1,000$ pounds of yellowtail rockfish.

Ms. Vojkovich asked about the variability of June total catch projections and actual annual catch. Mr. Burden said he did not know explicitly, but the summer is a high catch period.

Ms. Vojkovich asked about darkblotched rockfish total catch projections. Ms. Ashcraft said there is no concern for darkblotched since total catch is projected to be well below the OY. However, there is a concern about canary rockfish total catch.

Mr. Alverson asked if the GMT was aware of selective flatfish trawl gear modifications designed to more efficiently catch yellowtail rockfish. Ms. Ashcraft said there was anecdotal evidence of a small number of vessels modifying their gear, but this is not supported by empirical evidence.

Dr. Burke asked how the potential trawl effort shift was modeled. Mr. Burden said he assumed 90% of the total effort would shift inshore of the RCA.

C.4.c Reports and Comments of Advisory Bodies

Dr. Kevin Hill provided Agenda Item C.4.c, Supplemental SSC Report. Mr. Rod Moore provided Agenda Item C.4.c, Supplemental GAP Report.

Although there was no written report from the Enforcement Consultants, Lt. Cleary provided an oral report in response to concerns raised in the GMT report. He noted a concern with a proposed trigger mechanism to move the RCA boundaries inseason. He explained there would be serious enforcement difficulties with a line change in the middle of a management period. He also spoke to the issue of selective flatfish trawl gear modifications to catch yellowtail more effectively. There was an enforcement effort to patrol and educate fishermen on this new gear. No violations were detected.

Cdr. Fred Myer asked Lt. Cleary if the EC helped to coordinate the specification of the 180 fm line. Is the line perfectly straight? Lt. Cleary said the EC did provide input and the line is as straight as they could make it.

Ms. Cooney responded to the EC concern of a trigger mechanism to change the RCA line. She said it is difficult to do a monthly RCA change in the middle of a management period.

C.4.d Public Comment

None.

C.4.e Council Action: Adopt Preliminary or Final Inseason Adjustments for the 2005 Groundfish Fishery

Dr. Burke asked Mr. Burden if there were more yellowtail rockfish expected to be caught in the summer. Mr. Burden said he could look into the seasonal distribution of landings and report back to the Council. Dr. Burke also requested the GMT look more closely at the yellowtail trip limit. While the selective flatfish trawl is designed to avoid rockfish, a much higher abundance of yellowtail rockfish may be causing these higher landings. She is concerned about creating a discard problem by decreasing the trip limit. Mr. Anderson said he agreed with these concerns, but he was also concerned with canary rockfish bycatch. He asked the GMT to analyze fish tickets with high landings of yellowtail to determine whether these landings are correlated with increased landings of flatfish. If this is correlated, then higher landings of yellowtail rockfish truly represents bycatch. Mr. Burden said he would do this analysis.

Mr. Alverson, asked what action was taken to prohibit modification of the selective flatfish trawl. Lt. Cleary said there was action taken to prohibit floats on the trawl panel.

Mr. Anderson said the Council needs to understand the proposed trigger for moving the RCA line. What is the potential of triggering this option by July? Mr. Burden said current projections show this is unlikely. The GMT is proposing the trigger mechanism to be precautionary. Mr. Anderson asked the GMT to consider other options given the difficulty in moving the RCA line during the middle of a management period.

Dr. Freese asked the GMT to provide a scenario of how catch would be monitored inseason and actions taken in time to move the RCA line via the proposed trigger mechanism.

The Council decided to defer any final action on inseason adjustments until Friday under Agenda Item C.7.

C.5 TIQ Program Development (06/16/05; 1:30 pm)

C.5.a Agenda Item Overview

Mr. Jim Seger provided the agenda item overview.

C.5.b Report of the Ad Hoc Groundfish TIQ Committee

Mr. Seger provided a summary of the recommendations of the TIQ report as contained in Agenda Item C.5.b, TIQC Report.

C.5.c Reports and Comments of Advisory Bodies

Mr. DeVore provided a summary of the recommendations of the Ad Hoc Allocation Committee as provided in Agenda Item C.5.c, Ad Hoc Allocation Committee Minutes. Dr. Hill answered questions regarding Agenda Item C.5.c, SSC Report. Ms. Ashcraft provided a summary of the recommendations as shown in Agenda Item C.5.c, GMT Report. Mr. Moore provided Agenda Item C.5.c, Supplemental GAP Report.

C.5.d Public Comment

Mr. Alan Hightower, F/V Sea Otter, Port Townsend, California
Mr. Marion Larkin, trawler, Mt. Vernon, Washington
Mr. Pete Leipzig, Fishermen's Marketing Association, Eureka, California
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Dr. Ray Hilborn, WWF, Seattle, Washington
Mr. Frank Dulcich, Pacific Seafood Group, Clackamas, Oregon
Mr. Bob Osborn, United Anglers of Southern California, Huntington Beach, California
Ms. Leesa Cobb, Port Orford Ocean Resource Team, Port Orford, Oregon
Mr. Peter Huhtala, PMCC, Astoria, Oregon
Mr. Brent Paine, United Catcher Boats, Seattle, Washington
Mr. Rod Fujita, Environmental Defense, Oakland, California
Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, Oregon
Mr. Jay Bornstein, Bornstein Seafoods, Bellingham, Washington

C.5.e Council Action: Approve a Range of Alternatives for Analysis and Public Review

Mr. Alverson moved and Mr. Cedergreen seconded a motion (Motion 19) to authorize for analysis the West Coast trawl rationalization options that are found in the TIQC report, June 2005 (Agenda Item C.5.b) with the following three changes: (1) on page 14 (Option Table C-1, Section B.1.1), add a suboption that would provide 10% of the quota shares to the processors (so that the analysis would include 10%, 25% and 50% to processors) and a second suboption would allocate up to 50% of the IFQ for whiting to processors but no nonwhiting species; (2) on the bottoms of page 8 and 9 (Decision Table A) drop the ITQ for halibut; (3) analyze the alternatives against the stated goals and objectives but add to the objectives #9, Quality for the Consumer, and #10, Safety (page 2 of C.5.a, Attachment 1). Also, include from the GMT report recommendations 1 a, b, and d. Direct council staff to publish notice of the Council intent to develop an EIS for the necessary intersector allocations as soon as possible.

Mr. Alverson then spoke to his motion. Adding the option to provide processors with 10% of the initial allocation fills out the range of options to address concerns among the states and processors about product flow. He stated that in other ITQ programs attempts are made to control a fishery either through limits on directed catch or limits on bycatch. He thought it difficult enough to develop an IFQ program on directed species, let alone a restraining species, and that it would be better to get the industry to respond to the positive incentive provided by the IFQ program for the directed species. The objectives were added because safety was a national standard and the consumer objective has not gotten too much attention.

Dr. Burke asked to eliminate analysis of the use-or-lose option (Section B.2.2.3 of Option Table C-1) (amendment #1 to Motion 19, seconded by Mr. Anderson) because of anticipated implementation complexities and difficulties. Analysis should be restricted to those things that are more likely to be adopted. Mr. Brown noted that such provisions also provide a disincentive for independent conservation actions by fishermen. Mr. Alverson concurred with the motion but noted that in the Alaskan halibut/sablefish program some quota share had gone unused for a decade for reasons that may have to do with fish migration patterns. Amendment #1 to Motion 19 passed.

Dr. Burke moved (amendment #2 to Motion 19, seconded by Mr. Cedergreen) that the analytical team, in consultation with the SSC, draft a range of appropriate alternatives for community involvement in ITQ systems for Council consideration at the November 2005 PFMC meeting. Sources of information for such an analysis may include the TIQ Analytical Team Report (October 2004 page H-100), a review of relevant state and international programs, and the Government Accounting Office report on Community Protections within rationalized fisheries (GAO-04-277, February 2004). Dr. Burke stated that she had spoken with NMFS staff and that this approach was one that they felt would be an appropriate approach and one that they could staff and accomplish by the November Council meeting. Mr. Anderson asked whether that would infer a higher priority for communities already receiving groundfish. Dr. Burke indicated that this was not a predetermined

aspect of her motion. The terminology was selected to provide broad latitude in pursuing its intent. Part of the task might be to develop criteria to identify the types of community to be benefited. While supporting the motion, Mr. Brown noted that one community's gain would be at the loss of some other community. Dr. Freese supported the motion because it would add balance to the analysis by having an alternative that emphasized communities. The issue of whether the IFQ species would be processed shoreside or at-sea should be covered under this issue. Amendment #2 to Motion 19 passed.

Mr. Ticehurst moved (Amendment 3 to Motion 19) to analyze the mechanisms and the impact of the IFQ alternatives on transferring quota to other fisheries not participating in the IQ program. Mr. Mallet seconded the motion. As we go forward, Mr. Ticehurst wanted to be sure that we don't preclude the idea that other fisheries would have access to this quota under some mechanism. Mr. Ticehurst acknowledged that there would not be a mechanism to transfer from the recreational fishery to the trawl fishery. Mr. Anderson said this initiative started as a trawl IQ program, and while he was not opposed to transferring IQ's to other sectors in the future, this proposal would weigh the current process down. We have a fishery that is in trouble and needs help. Once a good solid trawl IQ program is in place, consideration can be given to the additional features such as those proposed in this motion. Mr. Brown, Dr. Freese, Mr. Alverson and Mr. Warrens concurred, though Mr. Warrens agreed philosophically with Mr. Ticehurst. Dr. Freese suggested that the long-term view of the fishery be discussed in the Allocation Committee, including the trawl IFQ program and the expansion into other sectors. Mr. Ticehurst said he was not proposing inclusion of the mechanisms at this time but rather analysis of the proposed programs to ensure future intersector transfers are not being precluded. Amendment #3 to Motion 19 failed.

Mr. Anderson asked for a friendly amendment to Motion 19, that would modify the goals and objectives on page 2 of C.5.a, Attachment 1 as follows: change Goal 1 to read "and attainment of fishery management objectives" and remove the words "to the extent practicable" under Objective 7. The motion was accepted as a friendly amendment.

Mr. Anderson asked for another friendly amendment to include both Process Options 1 and 2 as reported in TIQC report, page 9 (Decision Table B). The motion was accepted as a friendly amendment. Mr. Seger received clarification that by adopting both process options the Council was differing action until a later time, such as when we come back with the draft EIS.

Mr. Anderson moved (Amendment #4 to Motion 19) to add to the package for analysis recommendation C from the GMT report (IFQs for overfished species only). Mr. Mallet seconded. Mr. Anderson said this is not his preferred alternative, but we don't know the expense involved in implementing an IFQ program for all species, don't know if it is doable yet and do not yet have the analysis. Therefore, he felt it prudent to include the alternative. Dr. Hanson disagreed because this adds to the analysis and complexity and cost of the program without achieving the benefits expected from a full IFQ program. Mr. Brown concurred with Dr. Hanson. Mr. Anderson indicated that his motion was consistent with implementing bycatch caps for overfished species as discussed in the strategic plan. The overfished species IFQ would provide more opportunity for fishers to access healthy stocks if they could avoid bycatch of overfished species. Dr. Freese stated that while the alternative may not seem realistic, the resulting analysis will inform us of ways to provide incentives and provide information on bycatch sector caps. Amendment #4 passed.

In response to a question from Dr. Freese, Mr. Seger indicated that for Section B.1.3, Program A (Option Table C-1), it was expected that catch-processors would provide an allocation schedule in advance of the DEIS and that this schedule would be part of the public review process. In response to another question, Mr. Seger indicated that options would be analyzed that would require a vessel to

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have some amount of quota pounds prior to leaving port.

Dr. Freese moved (amendment #5 to Motion 19) (1) allow NMFS to develop a proposal for an internal appeals process and bring it back to the Council for consideration and (2) to include an option that would prohibit the transfer of quota shares during the last two months of the year, for purposes of identifying the least cost way of implementing the program. Mr. Harp seconded the motion. Mr. Brown expressed concern that all costs associated with a quota share transfer prohibitions be considered, including private costs. In response to a question from Ms. Vojkovich, Dr. Freese indicated that appeals involving NMFS decisions on implementation of the regulations and that a change to the fish tickets would have to go to the states as the issuers of the tickets. Amendment #5 passed.

The main motion passed (Motion 19).

Mr. Alverson moved (Motion 20) that the Council draft a letter to the Secretary of Commerce explaining in detail what the Council and advisory entities have done and the supporting evidence they have brought to the Council at this time under Agenda Item C.5.a. The letter should indicate our intentions, the scope of the options, and that should Congress ask the Secretary of Commerce, the Council does not want to be usurped in any fashion in developing our IFQ options. Mr. Brown seconded the motion.

Motion 20 passed. Dr. Freese abstained.

Mr. Seger noted that the scope of actions had not included any additions to the list of impacts already identified and from that he inferred that the Council had no such additions (Task V of Attachment 1).

Dr. Hanson recommends the council send a letter to Ginny Goblirsch who was drafted for this process to fill a hole in the TIQC. She did a great job, she was not on anybody's payroll, she held meetings and traveled, all out of her own pocket and should be thanked for her efforts. His recommendation was agreed to by consensus of the Council.

C.6 Rebuilding Plan Revision Rules (06/17/05; 8:07 am)

C.6.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

C.6.b SSC Report

Dr. Steve Ralston provided Agenda Item C.6.b, Supplemental SSC Report.

Dr. McIsaac complimented the work done by Dr. Ralston and the SSC on rebuilding revision rules. He remarked that he had heard the proposed rule to modify National Standard 1 guidelines was published yesterday. He also understood the proposed rule does not mandate retroactive modifications of adopted rebuilding plans. Is this true? Dr. Freese said he had not read the proposed rule yet, but believes this is the case.

Mr. Anderson asked Dr. Ralston to explain the concept of P_{CRIT} . Dr. Ralston said P_{CRIT} is a rebuilding probability threshold for revising the harvest rate.

C.6.c Reports and Comments of Advisory Bodies

Ms. Ashcraft provided Agenda Item C.6.c, Supplemental GMT Report. Mr. Brown asked about GMT option 3. If P_{CRIT} is 0.6 and P_{CURRENT} is 0.59, would the rebuilding plan need to be revised? Ms. Ashcraft said no, just the harvest rate.

Mr. Moore provided Agenda Item C.6.c, Supplemental GAP Report. Mr. Anderson sought clarification of the GAP proposal. The 7.5% buffer is not 7.5% of the P_0 , but added to P_0 ? Mr. Moore said if P_0 is 70% and P_{CURRENT} is 79%, the harvest rate should be increased to attain a rebuilding probability of 77.5%. Mr. Brown asked what is done if the rebuilding probability drops within 7.5% of P_0 . Mr. Moore responded nothing is changed unless P_{CURRENT} drops below 50%. Mr. Brown asked what is the desired result of a buffer. Mr. Moore said the desire is not to revise rebuilding plans unless needed. A buffer is needed due to fluctuations in stock size, assessment uncertainty, etc.

C.6.d Public Comment

Mr. Chris Dorsett, The Ocean Conservancy, San Francisco, California
Ms. Karen Garrison, NRDC, San Francisco, California

C.6.e Council Action: Adopt Policy Alternatives for Public Review

Utilizing Agenda Item C.6.c, Supplemental GMT Report:

Mr. Anderson moved and Mr. Brown seconded a motion (Motion 21) to analyze the following alternative rebuilding revision rules: GMT option 1 (5% buffer for stocks with a $P_0 < 0.7$ and a 10% buffer for stocks with a $P_0 > 0.7$), GMT option 3 (same as GMT option 1 except with a P_{CRIT} of 0.6), GMT option 6 (attain P_0), GMT option 7 (10% buffer), GMT option 9 (in cases where rebuilding is progressing faster than expected, split the difference between P_{CURRENT} and P_0 , such that half of the increased probability of rebuilding would be applied to an accelerated rebuilding rate and half could be considered for harvest rate liberalization), the GAP option (7.5% buffer), The Ocean Conservancy option (10% buffer for stocks with a $P_0 \geq 0.9$, $P_{\text{CRIT}} = 0.6$), and the default option of amending the rebuilding plan if rebuilding cannot occur with at least a 50% rebuilding probability even when $F = 0$).

Mr. DeVore noted the SSC raised concerns with the work load associated with analyzing many alternatives. He recommended the Council discuss this with Dr. Ralston. Dr. Ralston said the person who is going to do these analyses is Dr. Andre Punt and he will be out of the country in August. Dr. Ralston said the fewer alternatives to be analyzed, the better. He recommended picking the most extreme alternatives of interest and two or three intermediate alternatives. After some discussion, Dr. Ralston thought the suite of alternatives to be analyzed seemed sufficiently pared down. Mr. Brown said the Council should discuss revising harvest rates rather than revising rebuilding plans. Ms. Cooney agreed there are distinctions between changing a harvest rate and revising a rebuilding plan as these processes are laid out in the FMP and in regulations. She thought both situations are being addressed in Mr. Anderson's motion. Mr. Brown said this should be a discussion item in the document rather than a topic of lengthy discussion here and now.

Motion 21 passed.

C.7 Final Consideration of Inseason Adjustments, If Necessary (06/17/05; 9:42 am)

C.7.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

C.7.b Report of the GMT

Ms. Ashcraft provided Agenda Item C.7.b, Supplemental GMT Report. She noted there are 1.6 mt of unused canary rockfish in the scorecard. The GMT recommends this be used as a general buffer.

Mr. Brown asked about GMT recommendation #4. Is the black rockfish trip limit change for north of 40°10' N latitude or for the area between 40°10' and 42° N latitude? Ms. Ashcraft said the recommendation was for north of 40°10' N latitude.

Dr. Burke asked how the GMT concluded a higher catch of yellowtail rockfish in selective flatfish trawl gear means this gear is not as effective in excluding rockfish as shown in the EFP? Ms. Ashcraft said this was a concern expressed by the GMT. Dr. Burke said expressing a concern is reasonable, but expressing a conclusion without analysis is not reasonable. She added the trip limits for this gear are significantly constrained. Ms. Ashcraft explained the bycatch rate of yellowtail rockfish was higher than projected in the model. Nothing in the catch data suggests the bycatch of overfished species is higher than projected. Dr. Burke said observer data will ultimately judge the effectiveness of the selective flatfish trawl. Her concern was over the perception of a conclusion with the GMT statement.

C.7.c Reports and Comments of Advisory Bodies

Mr. Moore provided Agenda Item C.7.c, Supplemental GAP Report. He added the increase in limited entry trawl trip limits for slope rockfish and splitnose in the area between 38° and 40°10' N latitude should be extended beyond one period.

C.7.d Public Comment

None.

C.7.e Council Action: If Necessary, Adopt or Confirm Final Inseason Adjustments for the 2005 Groundfish Fishery

Dr. Burke asked Ms. Ashcraft to come to the podium for questions. She noted there is a management line specified at 42° N latitude. Can we make the black rockfish trip limit change for the area between 40°10' and 42° N latitude? Ms. Ashcraft said this was the GMT's original intent, but it was thought that line was not available. Now that it is available, the GMT can recommend this. Mr. Brown asked if the change were made for all the areas north of 40°10' N latitude, will a higher harvest rate risk the OY? Ms. Ashcraft said no, since Washington has its own black rockfish OY and ODFW specifies more restrictive trip limits in their nearshore fishery.

Mr. Brown moved and Mr. Warrens seconded a motion (Motion 22) to adjust trip limits inseason as recommended by the GMT in Agenda Item C.7.b, Supplemental GMT Report, with the following change: only increase the minor nearshore rockfish and black rockfish trip limits in the area between 40°10' and 42° N latitude.

Motion 22 passed.

Dr McIsaac said the motion that passed did not address the directed open access bycatch issue. Therefore, the Council reconsidered inseason adjustments.

Ms. Vojkovich moved and Mr. Thomas seconded a motion (Motion 25) to change the canary and yelloweye rockfish bycatch caps in the directed open access fishery from, 1.0 mt and 0.6 mt,

respectively, to 3.0 mt for canary rockfish and 3.0 mt for yelloweye rockfish as shown in the updated scorecard on page 7 in Agenda Item C.7.b, Supplemental GMT Report.

Mr. Anderson asked if there was a connection in this motion with the longline dogfish factory ship catches anticipated earlier this year and was told no.

Motion 25 passed.

D. Salmon Management

D.1 Technical Basis for the Klamath River Fall Chinook Conservation Objective (06/14/05; 8:39 am)

D.1.a Agenda Item Overview

Mr. Chuck Tracy presented the agenda item overview.

D.1.b Report of the Salmon Technical Team

Mr. Allen Grover presented Agenda Item D.1.b, STT Report.

Dr. McIsaac asked what the maximum sustainable yield (MSY) stock size was based on the graph from Agenda Item D.1.a, Supplemental Attachment 1. Mr. Grover responded the MSY stock size could not be determined from that specific representation due to the complication of a multiple age class population structure. The graph displayed maximum expected recruits in age three adult equivalents at a spawning stock size of about 43,000.

Dr. McIsaac noted an objective of Salmon FMP Amendment 9 was to provide a wide range of spawning escapements to develop an estimate of MSY. He asked if there was an effort to identify an MSY point in the 1999 Klamath River Technical Advisory Team report. Mr. Grover responded yes, it identified an MSY proxy spawning escapement of between 30,000 and 35,000 producing the greatest long term average yield. It was not possible to directly generate an MSY estimate using the model simulation.

Mr. Ticehurst asked if there was a relationship between the spawning escapement and the water level in the river, and what water level supported optimum yield from a spawning escapement of 35,000. Mr. Grover responded that the spawner recruit data used in the report represents a range of water flows, but there was no direct answer.

Mr. Ticehurst asked if river flows would not support optimal production at a spawning escapement of 35,000, would greater production be obtained by reducing the number of spawners. Mr. Grover responded a different analysis would be required to answer that question, but it was unlikely production could be boosted if the productivity of a system had declined.

Mr. Melcher noted the Ricker alpha value estimated in the 1999 report was 8.4 and the estimate from the 1986 report was 7.0. He asked if a stock with a higher alpha value was more productive and could sustain higher harvest (or a lower escapement floor) than a stock with a lower alpha value. Mr. Grover responded yes.

Mr. Melcher noted the 1999 report indicated simulation modeling produced greater yields with a spawning escapement up to 30,000 to 35,000. Mr. Grover clarified there was no significant

difference in yield between an escapement floor of 30,000 and 35,000.

Mr. Cedergreen asked what percentage of the natural spawning escapement were of natural origin. Mr. Grover responded about 60%.

Mr. Ortmann asked if the range of years in the graph (Agenda Item D.1.a, Supplemental Attachment 1) would smooth the multiple age class problem for estimating MSY. Mr. Grover responded MSY could not be obtained from that graph.

Dr. Dygert asked what the recent spawning stock sizes were and if they would provide a greater range for determining MSY. Mr. Grover responded there would be information from about 7 additional broods since the 1999 report, and some of those were in the higher range, although the 2004 escapement was only about 25,000.

D.1.c Reports and Comments of Advisory Bodies

None.

D.1.d Public Comment

Mr. Russell Miller, Half Moon Bay Fishermen's Marketing Association, Bayside, California
Mr. Duncan MacLean, Half Moon Bay Fishermen's Marketing Association, El Granada, California

Dr. McIsaac asked for clarification on Mr. MacLean's recommendation to review the spawning escapement floor. Mr. MacLean responded he recommended an analysis of the effects of river flow on the spawning escapement objective, but noted the STT may not be the appropriate body.

Mr. Dave Bitts, PCFFA, McKinleyville, California

Mr. Brown asked if Mr. Bitts' comment relating to Klamath chinook contributions was referring to the contribution of the Klamath stock relative to other stocks in the Klamath Ocean Harvest Model (KOHM). Mr. Bitts responded no, he was referring to a cost benefit analysis of Klamath stocks in providing access to more abundant stocks like Sacramento River stocks.

Dr. McIsaac noted Mr. Bitts recommendation for a Salmon FMP amendment to re-evaluate the Klamath conservation objective, and asked Mr. Tracy to clarify the Council's process for FMP amendments. Mr. Tracy responded the Council Operating Procedures (COPs) identify a three meeting process beginning with a scoping meeting to identify issues and a body to prepare the amendment, a second meeting to adopt a range of alternatives for public review via a draft NEPA document, and a third meeting to take final action. The final meeting should be no later than November in order to implement the amendment for the following season; however it may be possible to take final action in March as has been done with some salmon methodology issues that face the same COP requirement. Ms. Cooney clarified if final action were taken in March, there would be insufficient time to accommodate the 60 day comment period and some subsequent period to respond to comments and complete the final rule by May 1.

Mr. Melcher asked if Mr. Bitts was proposing to consider a matrix like approach to the Klamath conservation objective where the spawning escapement floor could vary according to the abundance of other stocks. Mr. Bitts replied he was suggesting variation according to river conditions, but noted variation in combination with both river conditions and other stock abundance would be an improvement if it were possible to do.

Mr. Zeke Grader, PCFFA, San Francisco, California
Mr. Aaron Newman, Humboldt Fishermen's Marketing Association, Eureka, California
Mr. David Yarger, Fishermen's Marketing Association Bodega Bay, Sebastopol, California
Mr. Daniel Platt, Salmon Troller's Marketing Association, Fort Bragg, California

D.1.e Council Guidance on Further Review and Consideration for the Klamath River Fall Chinook Conservation Objective

Mr. Melcher noted at its April meeting the Council chose to uphold the current Klamath spawning escapement floor for the 2005 season. He also noted the STT identified an additional seven complete broods that could be incorporated into an updated analysis, and recommended the STT conduct a simple Ricker stock recruitment analysis to compare with the earlier KRTAT analyses, including the estimate of 30,000 to 35,000 spawning escapement floor producing the greatest long term average yield. The STT would then report back to the Council at the September meeting and the Council could then decide if pursuing a Salmon FMP amendment was appropriate.

Mr. Harp supported Mr. Melcher's proposal.

Dr. Dygert supported Mr. Melcher's proposal. He felt the Council may want to ultimately look at management alternatives for Klamath River fall chinook other than those currently in use.

Mr. Ticehurst agreed with Mr. Melcher's proposal, but was concerned there was no information on the ability of the Klamath system to support a given spawning escapement in terms of optimal juvenile production. He recommended the STT also investigate other factors affecting recruitment such as river flow in their report to the Council in September.

Dr. Dygert noted spawner/recruit analyses generally assume productivity is constant, and that the 1999 report mentioned a flow variable had been dropped out of the earlier spawner/recruit analysis because it was no longer a significant variable. He recommended the STT investigate reintroducing the flow variable to see if it was significant again.

Mr. Melcher agreed with Mr. Ticehurst's comments, and supported investigating additional variables in the stock/recruitment analysis, but because of the time constraint between the June and September Council meetings, he recommended only doing the simple Ricker stock/recruitment analysis, which could lead to additional analysis if a Salmon FMP amendment process was pursued.

Mr. Tracy summarized the Council guidance for the stock/recruitment analysis and noted the STT concern for available personnel and time. Dr. McIsaac noted the flow data sets were available and suggested the STT conduct correlation analyses of spawning flows/recruitment and juvenile migration flows/recruitment to address Mr. Ticehurst's comments.

D.2 Status Report on Reinitiation of Consultation for California Coastal Chinook (06/14/05; 10:26 am)

D.2.a Agenda Item Overview

Mr. Tracy provided the agenda item overview.

D.2.b National Marine Fisheries Service (NMFS) Report

Dr. Dygert presented Agenda Item D.2.b, Supplemental NMFS Report

Ms. Vojkovich asked if NMFS planned to reevaluate an alternative to using Klamath fall chinook as a surrogate for California coastal chinook. Dr. Dygert replied the use of genetic information would be contingent on results of the feasibility study in 2006 and some additional years of data collection. NMFS hopes to develop a more direct method of determining stock composition in fisheries, but in the interim intends to use the Klamath stock as an indicator.

D.2.c Reports and Comments of Advisory Bodies

None.

D.2.d Public Comment

Mr. Duncan MacLean, Half Moon Bay Fishermen's Marketing Association, El Granada, California
Mr. Dave Bitts, PCFFA, McKinleyville, California

D.2.e Council Discussion and Guidance

Mr. Melcher asked if the STT would be involved in developing the genetic identification study. Dr. Dygert replied he would discuss the issue with the Southwest Science Center and ask for a report to the Council at an appropriate time to engage the Council's advisory bodies.

E. Highly Migratory Species (HMS) Management

E.1 NMFS Report (06/14/05; 10:51 am)

E.1.a Regulatory Activities

Mr. Mark Helvey, NMFS SWR, provided a brief summary of recent activities.

E.1.b Science Center Activities

Mr. Gary Sakagawa provided a PowerPoint presentation.

E.1.c Reports and Comments of Advisory Bodies

Mr. Wayne Heikkila provided Agenda Item E.1.c, Supplemental HMSAS Report. Dr. Dale Squires and Mr. Steve Crooke provided Agenda Item E.1.c, HMSMT Report, and Agenda Item E.1.c, Supplemental HMSMT Report 2. Mr. Craig Heberer joined them at the podium to answer questions about implementation of the observer program.

E.1.d Public Comment

Ms. Kate Wing, NRDC, San Francisco, California

E.1.e Council Discussion

Mr. Anderson spoke to the Observer Plan (Exhibit E.1.a, Attachment 2), asking about coverage levels and what fishing vessels can expect in terms of carrying observers aboard. Mr. Heberer responded by acknowledging that because of funding limitations actual coverage levels are below the recommended levels in the Plan. He also said that NMFS is working with the states and industry to make sure observer placement goes smoothly. Mr. Anderson then asked about how state cooperation would work. Mr. Heberer said right now they are working with contractors to place observers and did not anticipate additional contracts being let in the near term in order to meet the coverage goals identified

in the Plan. Placement would be based on working with cooperative (voluntary) vessels for observer placement.

Dr. McIsaac asked Mr. Helvey about the many items covered under the NMFS report, some of which could warrant their own agenda item. Mr. Helvey responded by saying a lot of the items are presented mainly for informational purposes. For example, the Observer Plan was included to provide an update of current program status. Similarly, the IATTC resolution on VMS was included to let the Council know that NMFS is looking at how many vessels would meet the criterion for VMS coverage and the necessary technology to implement such a program. Dr. McIsaac then asked if NMFS was expecting a response from the Council on these items. Mr. Helvey said these items were presented to the HMSAS/HMSMT and NMFS wants to work with these committees to get some feedback.

Mr. Anderson expressed frustration about how the HMS FMP was being implemented. Unlike other Council FMPs, the Council has not been a real partner in implementing the HMS FMP. He acknowledged that funding shortfalls contributed to the problem and this prompted NMFS to take on some implementation activities without any comprehensive review by the Council. Nonetheless he was frustrated that this information was being presented to the Council about what NMFS is doing without the Council being provided the opportunity to give advice on these implementation issues. He said he hoped that continued HMS FMP implementation will occur with more Council involvement in decision-making. Mr. Helvey said Mr. Anderson's concerns were understandable. Part of the problem was the funding hiatus, during which the agency felt it needed to move ahead on some implementation issues. He thought perhaps it was time for NMFS slow down and allow the Council to catch up. Chairman Hansen concurred with Mr. Anderson's comments.

Ms. Vojkovich also said she supported Mr. Anderson's frustrations. Furthermore, the Council needs to provide advice on issues at the international level.

Mr. Alverson asked when the Council would comment on a statement in the Observer Plan relative to funding sources. Mr. Heberer replied that many observer programs were already in place under other authorities and there is likely few new funding sources. Mr. Alverson then followed up by noting that in the groundfish fishery, fishermen are notified in the fall before the year in question about whether to expect observer coverage and the HMS program might consider that approach.

E.2 Draft Inter-American Tropical Tuna Commission Resolution on Albacore Tuna (06/14/05; 1:18 pm)

E.2.a Agenda Item Overview

Dr. Dahl provided the agenda item overview.

E.2.b Reports and Comments of Advisory Bodies

Mr. Heikkila provided Agenda Item E.2.b, Supplemental HMSAS Report.

E.2.c Public Comment

Mr. Doug Fricke, Boat Seafoods, Hoquiam, Washington

Mr. Wayne Heikkila, Western Fishboat Owner's Association, Redding, California

Ms. Kate Wing, NRDC, San Francisco, California

E.2.d Council Discussion

Mr. Alverson asked if a limited entry program implemented in response to the IATTC resolution would only apply to vessels fishing inside the EEZ and how would vessels operating outside the EEZ be dealt with. Ms. Cooney responded that our FMP governs vessels that land fish on the West Coast. Both the Pacific and Western Pacific Councils would have to act to cover the vessels in their areas and both Council's FMPs would allow management of vessels beyond the EEZ.

Mr. Anderson asked when the IATTC would take action on this resolution and how their decision is made. Mr. Helvey said that all members of the IATTC would have to agree to and adopt the resolution. Once the IATTC adopts the resolution NMFS would then have to decide how they would implement U.S. obligations under the resolution.

Mr. Anderson asked if the WPFMC has taken a position on this resolution or plans to. Mr. Helvey said he didn't know, but noted they are not a member of the IATTC and are more involved with fisheries in the Western and Central Pacific region. Mr. Anderson followed up by asking when this issue would come back to the Council and whether there would be an opportunity for the Council to make recommendations. Mr. Helvey responded that it would depend on whether the IATTC adopts the resolution. If so, it would be decided whether future Council action would be necessary.

Ms. Vojkovich said it would be helpful to have a graphic to show the authorities in the Pacific for HMS. She is especially interested in the part of the Pacific where it appears there is no organization with responsibility. This would help the Council understand what agency or group they need to track and respond to. She also said she is unsure whether there is any control over Canadian effort by the IATTC and what kind of discussions have taken place relative to Canadian participation.

Mr. Helvey, in response to the request for a graphic, said NMFS might be able to present something like that at the September Council meeting. Regarding the Canadians, the State Department did provide it to them and there was a favorable reaction. There are also discussions with Canada on the albacore tuna treaty, which comes up for renewal next year.

Ms. Vojkovich, relative to the HMSAS meeting minutes (Agenda Item E.2.a, Attachment 2), asked when the Council would take up their recommendations laid out on pages 10 and 11 of the summary, especially the recommendation for a Council member to sit on the General Advisory Committee.

Dr. McIsaac said now is the time to consider the recommendations of the HMSAS. Council action might not be possible at this time, but discussion could focus on what the Council should do in the future. Ms. Vojkovich then asked if the Council could get some more information on the GAC at a future meeting.

Mr. Helvey requested Mr. Peter Flournoy, who is on the GAC, to speak to the membership of the GAC. Mr. Flournoy explained the role of the GAC; it is formed by statute to help the U.S. meet its obligations under the IATTC. The U.S. has a four-member section for the IATTC, or four commissioners. The purpose of the GAC is to advise the U.S. section. In that respect its role is similar to that of the HMSAS with respect to the Council. It was recently re-chartered and its members need to be reappointed every two years. DOS and NMFS determine who will be members of the GAC. As Chairman of the GAC, he was concerned that the GAC have Council representatives. He noted that the WPFMC sent two representatives to the last meeting and was surprised that the PFMC didn't send any representatives. Since the meetings are public, it's not so important for you to be a member because you can participate in the meetings.

Ms. Vojkovich asked whether Mr. Flournoy thought it was necessary for Council members to be on GAC or just attend the meetings. He said he thought someone from the Council should participate, DRAFT Minutes (June 2005 - 179th Council Meeting)

but it doesn't have to be Council member. It could be the chairman of the HMSAS, for example. Ms. Vojkovich asked how large the GAC is and whether it has a statutorily-defined membership. Mr. Flournoy said the GAC has between five and 15 members and is created by statute. He also noted it has a scientific subcommittee and the Council might consider getting a member of its SSC on the subcommittee.

Dr. McIsaac suggested that the Council consider designating a specific person to interact with the GAC or IATTC. That way, it is clear that the person is representing the Council in any proceedings of these organizations.

E.3 Status of Fisheries and Preliminary Stock Assessment and Fishery Evaluation (SAFE) Report (06/14/05; 1:56 pm)

E.3.a Agenda Item Overview

Dr. Dahl provided the agenda item overview.

E.3.b Reports and Comments of Advisory Bodies

None.

E.3.c Public Comment

None.

E.3.d Council Discussion and Guidance

Ms. Vojkovich said she found Dr. Sakagawa's report on catches informative and liked that it showed where we fit in to Pacific-wide catches. In looking at the outline, it appears that the focus is Oregon, Washington, and California, and maybe we should go beyond that and report on how we relate to the international arena. In addition, issues in the international arena should be presented so that the Council can manage FMP fisheries in light of what is going on elsewhere.

E.4 Response to Overfishing of Bigeye Tuna (06/14/05; 2 pm)

E.4.a Agenda Item Overview

Dr. Dahl provided the agenda item overview.

E.4.b Reports and Comments of Advisory Bodies

Mr. Heikkila provided Agenda Item E.4.b, Supplemental HMSAS Report.

E.4.c Public Comment

Mr. Svein Fougner, Hawaii Longline Association, Long Beach, California
Mr. Pete Dupuy, Federation of Independent Seafood Harvesters, Tarzana, California
Mr. Doug Fricke, Boat Seafoods, Hoquiam, Washington
Mr. Peter Flournoy, International Law Offices, San Diego, California
Mr. August Felando, commercial purse seiner, San Diego, California

E.4.d Council Action: Determine Necessary Response, Including Consideration of a Fishery Management Plan (FMP) Amendment or Regulations

Mr. Helvey said NMFS believes a plan amendment is the most efficient way to proceed and urged the Council to get started on the amendment, taking into account the bigeye strategy (Agenda Item E.4.a, Attachment 1) and the information about what the WPFMC is proposing (Agenda Item E.4.a, Attachment 3). There is a need for collaboration during this development with the WPFMC. It also may be useful for the Council to identify specific goals. The amendment can be framed in terms of what this Council is recommending at the international level to reduce fishing mortality on bigeye stocks.

Mr. Helvey moved (Motion 3) to adopt efforts to begin an HMS FMP Amendment to address the bigeye tuna overfishing issue. Ms. Vojkovich seconded the motion for discussion purposes.

Ms. Vojkovich asked what would happen if the Council does not do anything today? Ms. Cooney said the MSA requires, if the Council does not take action, for NMFS to take action within eight months. If the Council started working on an amendment, and the process goes forward, that would satisfy the deadline requirement.

Mr. Alverson asked what the amendment would do. Ms. Cooney said the amendment would help the Council to push actions in the international forum because these overfishing problems need to be addressed at that level.

Ms. Vojkovich said there are two approaches shown in the attachments, one by NMFS and one by the WPFMC. She asked if NMFS recommends we move forward with their strategy and consider some of the ideas in the WPFMC package. Mr. Helvey said yes.

Mr. Anderson asked if the HMS FMP spells out how we do a plan amendment; for example, is it subject to NEPA? He further asked about the role of the HMSMT and whether we have funding to develop an amendment if we pass this motion. He wondered whether the HMSMT had reviewed the WPFMC proposal (Attachment 3). He thought there is also a fair amount of coordination needed between the PPMC and WPFMC. Given all these questions, he questioned whether this is a priority and asked for clarification of what would occur if the Council did not take action. Mr. Helvey reiterated Ms. Cooney's previous statement: if the Council does not take action, then the Secretary of Commerce does. In terms of the funding, NMFS is prepared to assist in preparing the plan amendment with the clear intention of working with the Council, HMSAS, and HMSMT. He said, even though the U.S. bigeye landings are small relative to the international total, the amendment is important in that it will serve as a template for how overfishing concerns will be addressed in the future (e.g., albacore).

Mr. Alverson asked whether the motion would address the IATCC bigeye quota issue and allocation between the WPFMC and the PPMC. Chairman Hansen said that should be discussed after the motion is voted on.

Dr. McIsaac re-read the motion at the Chairman's request.

Mr. Alverson asked whether Council or NMFS staff will initiate work on the amendment. Mr. Helvey said they would take the lead and work with Council staff and the advisory bodies and come back to the Council at the September meeting to give a status report.

Ms. Vojkovich said she understands the necessity for the Council to take action, but she is troubled by the growing list of priorities for the team and Council relative to HMS issues. She said all of these issues seem to be immediate, high-priority issues and asked if there is any real commitment on the part of NMFS to hire the staff needed to complete the necessary work.

Mr. Helvey said NMFS doesn't have the resources at this time to add extra people, but NMFS can at least address the bigeye issue, and NMFS will provide assistance where possible on other issues. Ms. Vojkovich said, if you are committed to the bigeye response and you have a limited staff, does that mean they will be committed to this bigeye task to the detriment of other priorities? Mr. Helvey said they are adding another staff person in another six weeks that will take this on.

Mr. Hansen asked Dr. McIsaac if the Council received the funding necessary to complete these tasks. Dr. McIsaac reviewed the HMS funding received by the Council and what it can be used for. He noted there is always a balance between the Council and NMFS in terms of work load and NMFS will likely carry more of the burden for this FMP amendment.

Dr. Burke asked, in reference to the FMP amendment being a template for other fisheries, if NMFS developed the amendment without Council involvement (because the motion failed) would that preclude Council options for the same type of situation for other species in the future? Mr. Helvey stressed the importance of Council involvement and said in developing this amendment, these other fisheries need to be taken into account.

Ms. Vojkovich asked Mr. Helvey if NMFS has determined whether the work the WPFMC has already done on developing an amendment could be applied to this task in order to lessen the workload. Mr. Helvey replied that he had only just seen the WPFMC document in the briefing book.

Mr. Anderson asked if Mr. Helvey viewed the HMSMT as more of an oversight committee for this effort rather than actually drafting the amendment. Mr. Helvey said he thought so.

Dr. Burke returned to the point she had raised earlier, asking specifically if Mr. Helvey could provide an example of how this amendment for bigeye could affect a future action for albacore. Mr. Helvey said he didn't have a specific answer, but many people would be viewing the development of this amendment. Also, it is important to consider all of the species in the FMP in this context. Dr. Burke followed up by noting she found this is hard to understand. For example, would some international agreement made with respect to bigeye affect the management of albacore? Mr. Helvey responded by saying he saw the elements of this FMP as more of a process rather than a specific set of actions.

Dr. Dahl, responding to Dr. Burke's question, emphasized how the NMFS and WPFMC proposals deal with process issues, which could be applicable to similar situations in the future.

Mr. Anderson said the Council made a decision to develop the HMS FMP covering identified species. Almost all of those species have issues associated with other jurisdictions, and the impacts on those species occurring in the EEZ varies. Given these circumstances, he said the Council made the first choice of implementing the HMS FMP and we now have to decide how involved the Council will become in management issues for each of the FMP species. Therefore, the Council would devote more resources and broadened scope of management to those species that have the highest priority. That doesn't mean that the Council wouldn't become more involved in regional issues by interacting with the WPFMC and the IATTC. The level of involvement will vary by species. Nonetheless, the Council is obligated to react to the base requirements for an FMP species, which he believes is the situation with bigeye. This is his rationale for supporting the motion.

Chairman Hansen noted how it's clear the Council needs to stay involved in these issues, as reflected by the earlier discussion of NMFS activities.

Dr. McIsaac said that if there are Council members who are concerned about the workload burden

falling on the HMSMT he would provide some examples from the groundfish arena to demonstrate how the workload is shared between Council and NMFS staff, depending on the specific task. He understood Mr. Helvey had said that NMFS would prepare the draft documents and make the presentations to the Council, reflecting one end of the spectrum of Council versus NMFS workload.

Motion 3 passed.

Mr. Alverson asked who should be informed of the Council's interest in having an allocation of the IATTC bigeye quota. Mr. Helvey said that element could go into the plan amendment in terms of increased collaboration with the WPFMC.

E.5 Exempted Fishing Permits (EFP) (06/14/05; 3:28 pm)

E.5.a Agenda Item Overview

Dr. Dahl provided the agenda item overview.

E.5.b Reports and Comments of Advisory Bodies

Dr. Squires and Mr. Crooke provided Agenda Item E.5.b, Supplemental HMSMT Report. Mr. Heikkila provided Agenda Item E.5.b, Supplemental HMSAS Report.

E.5.c Public Comment

Mr. Bob Osborn, United Anglers of Southern California, Huntington Beach, California
Mr. August Felando, commercial purse seiner, San Diego, California
Mr. Pete Dupuy, Federation of Independent Seafood Harvesters, Tarzana, California
Mr. Russ Nelson, The Billfish Foundation, Oakland Park, Florida
Ms. April Wakeman, United Anglers of Southern California, Huntington Beach, California
Mr. Tom Raftican, United Anglers of Southern California, Huntington Beach, California

E.5.d Council Action: Review and Make Recommendations on EFPs

Mr. Helvey recommended the Council adopt an interim protocol with a modified timeline for use when considering this EFP since the FMP requires a protocol but one has not yet been adopted by the Council. He pointed to the draft protocol provided as an attachment to the HMSMT Report.

Mr. Brown moved and Mr. Warrens seconded a motion (Motion 4) to adopt the EFP protocol as stated in Agenda Item E.5.b, Supplemental HMSMT Report, and recommend approval to NMFS of the EFP with the conditions also outlined in the HMSMT report.

Mr. Brown reviewed the relevant history of FMP development with respect to this issue, noting the FMP anticipated this would be the process for trying to improve the longline fishery. The EFP proposed by Mr. Dupuy would test various techniques, which would be monitored by the observers he is requesting. If the Council doesn't grant an EFP, it is essentially telling this fishery it has to die.

Ms. Cooney asked for clarification as to whether Mr. Brown's motion also included the use of the draft protocol as an interim protocol (as discussed by Mr. Helvey). Mr. Brown responded it was his intention to include that in the motion.

Ms. Vojkovich stated, personally, she respects fishermen who try to put food on our tables, especially those fishermen who try to find ways to deal with problems raised by fisheries management and in

their operations. However, as a state representative, she has to respect the broader interests represented by the citizens of the state of California. She noted the state did not allow the use of longline gear in the EEZ when they managed the fishery, even though the issue was raised several times. That continues to be the State's position. Concerns are raised by the public and recreational fishermen, particularly with respect to bycatch of striped marlin and shark species. Because of that she cannot support the EFP.

Dr. Burke, confirming that there is a gillnet fishery in the EEZ off of California, asked if the intention of this EFP was as a way to develop a fishery that people in that fishery could begin shifting into. Ms. Vojkovich did not know if there was a clear idea of who would fish in this fishery if the EFP eventually led to a fishery allowed by regulations.

Dr. Burke said in the past she has been unsupportive of a fishery that only benefits one or two people, especially if there are bycatch issues. In some ways this EFP looks like that situation, but in some ways it looks like a way to facilitate effort shift to reduce bycatch. She asked for more clarification of this issue.

Mr. Ticehurst spoke against the EFP because the Council examined this issue some time ago and recognized there were bycatch problems. Problems related with it have only gotten worse, for example with the declaration of bigeye overfishing. Furthermore, from the standpoint of getting scientific information, longline vessels can fish outside of the EEZ right now. Finally, he thought this type of proposal should be subject to a more extensive review, done in a more orderly fashion.

Mr. Anderson said he respected Mr. Dupuy's efforts. But he was concerned that if the experiment were successful it could lead to an expansion of this fishery. However, there are bycatch concerns that this EFP doesn't address. The information gathered would not be sufficient to determine whether this fishery could offer an alternative to the drift gillnet fishery with lower bycatch rates. Second, he raised the concern of work priorities and whether the workload associated with this EFP could be justified.

Mr. Brown responded to Mr. Anderson's comments about the value of the information that would be gained by this EFP by noting that it would certainly be more information than what we have now. Without gathering any information it's not possible to move forward at all.

Mr. Alverson asked Mr. Helvey, if Mr. Dupuy's operation operates outside 200 miles, would the SWR provide an observer in that situation? Mr. Helvey said yes, observers would be placed onboard. However, Mr. Helvey noted the EFP is focused on fishing inside the EEZ.

Motion 4: roll call vote, 4 yes and 8 no. Mr. Helvey abstained. Motion 4 failed.

Mr. Anderson asked about the adoption of the EFP protocol and when it would come before the Council again. Mr. Helvey said it hasn't been adopted yet and would come up at a future meeting. That would be a consideration on Friday under the Administrative Matters agenda item having to do with the September Council meeting agenda.

Dr. Dahl clarified that the protocol is to be adopted as a COP, and asked whether it should come up under an administrative item or under HMS. Dr. McIsaac said it could come up either under administrative matters or under an HMS agenda item, but putting it under HMS would be preferable to get public comment.

E.6 Management Regime for High Seas Longline Fishery (06/14/05; 5:40 pm)

E.6.a Agenda Item Overview

Dr. Dahl provided the agenda item overview.

E.6.b Reports and Comments of Advisory Bodies

Mr. Fricke provided Agenda Item E.6.b, Supplemental HMSAS Report.

Mr. Crooke and Dr. Squires summarized Agenda Item E.6.b, HMSMT Report.

Mr. Anderson asked Mr. Crooke if the HMSMT would favor an approach under which the WPFMC would retain most responsibility for managing the pelagic longline fishery with some sort of mechanism to allow PFMC consultation and coordination on their management decisions. Mr. Crooke replied by saying the team discussed the possibility of working with the WPFMC but didn't come to any formal conclusions. Dr. Squires provided some ideas, such as appointing a Council liaison officer and including information in the SAFE report along with a formal review process. Mr. Anderson followed up by asking whether a separate biological opinion would be necessary. Dr. Squires said this process would facilitate any new biological opinion.

Mr. Brown asked if there had been any discussion about the WPFMC's interest in working with the PFMC on this issue. Dr. Squires replied that he was not aware of any beyond discussions at the team level. He did suggest there could be some advantages to the Hawaii fishery of cooperating on these issues.

E.6.c Public Comment

Mr. Lillo Augello, Western Fish Company, Terminal Island, California

Mr. Russ Nelson, The Billfish Foundation, Oakland Park, Florida

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

Mr. Bob Osborn, United Anglers of Southern California, Huntington Beach, California

Mr. John LaGrange, longliner, Solana Beach, California

Father Michael Adams, Mary Star of the Sea Parish, San Pedro, California

E.6.d Council Action: Identify and Plan Appropriate FMP Amendment or Regulatory Actions to Resolve Management Issues

Chairman Hansen asked Dr. Dahl to clarify the Council decision. Dr. Dahl said there are two options on how to proceed with some sort of regulatory action to facilitate a high seas longline fishery on the West Coast. First, this could be done by asking Hawaii to reinitiate section 7 consultations considering the area east of 140° west longitude and see how that would affect the limits imposed on the fishery. Second, an opportunity could be created east of 140° west longitude under the HMS FMP. The Council would also need to consider the timing of their decision-making.

Ms. Vojkovich asked for further clarification. First, she asked how the drift gillnet fishery would fit into any consideration of sea turtle take and how it affects the management of these different fisheries. Dr. Dahl said the Council could engage in a separate process to examine the drift gillnet fishery as far as the current closed area without considering any action to create a longline fishery opportunity. That course of action would not really allow considering the two fisheries together, for example shifting between gear types.

Ms. Vojkovich asked if there was the opportunity of drift gillnet fishermen changing gears, and

allowing targeting swordfish with longline gear, then the recommendation is to keep it within our FMP and deal with both fisheries together? Dr. Dahl said that would be the sensible approach. Alternatively, a drift gillnet fisherman could purchase a Hawaii pelagics limited entry permit, which allows fishing from the West Coast. This might not be very feasible considering the cost of the permit and the current effort restrictions in that fishery.

Ms. Vojkovich asked about what types of procedural issues are relevant to the swordfish fishery and the drift gillnet fishery: regulatory action, re-examination of turtle take, or FMP action? Dr. Dahl said neither of these actions would require an amendment to the FMP, but both would require a regulatory amendment subject to a section 7 consultation. There could be a joint consultation on those actions depending on the schedule.

Ms. Vojkovich asked if regulatory actions relative to the swordfish longline issue would just be a matter of adopting regulations based on work that has already been completed. Dr. Dahl said yes, presumably we could follow the model the WPFMC used and set up a parallel regulatory structure involving the concepts of having a hard limit on turtle takes and, if necessary, a restriction on effort. He also said the gear modifications are key elements of the Hawaii fishery, which have reduced the incidental take and mortality of sea turtles.

Ms. Vojkovich then asked Mr. Helvey about the issues surrounding possibly having dual permits. She asked if that can be dealt with through a regulatory process. Mr. Helvey deferred to Ms. Cooney. Ms. Cooney said she was not familiar with a lot of the details but thought a regulatory process could deal with all these issues.

Mr. Alverson asked Mr. Helvey, if we approve the HMSMT recommendations in their report (Agenda Item E.6.b, HMSMT Report), does that trigger a section 7 consultation? If so, would that take place before November 2005? Mr. Helvey asked Ms. Petras to answer.

Ms. Elizabeth Petras, NMFS SWR, said the Hawaii pelagic FMP covers the area from 180° to 140° West longitude and the equator to 40° N latitude. That is what is analyzed in the biological opinion and that is the management area defined in their FMP. Therefore considering the area east of that area would not be appropriate. Considering an action under the HMS FMP, once a preferred alternative is chosen, would initiate formal consultation with the NMFS Protected Resources Division.

Mr. Anderson raised the possibility of some kind of joint consultation of actions under both the WPFMC and the PFMFC. He thought it might be worthwhile to have a subgroup meet during the August HMSMT meeting to scope out a strawman proposal that could be taken to WPFMC for discussion purposes. There was some discussion of a meeting between the two Council's during the August PSMFC meeting. He is not certain as to whether or not that would be a worthwhile endeavor but that could be an opportunity to flesh out those ideas. Whether or not that is a worthwhile endeavor, he thought the Council needs to develop a working relationship with the WPFMC.

Ms. Vojkovich said Mr. Anderson's approach is a great idea. But she also wanted to know what would happen to the drift gillnet fishery operating in California, which has turtle interactions, if the Council takes that approach. She does not want that piece to get lost in the discussion.

Mr. Anderson said he did not want to get that piece lost either and that is why he suggested some sort of scoping opportunity at the HMSMT meeting.

Mr. Helvey understands the gillnet boats are too small to be on the high seas and are staying closer to

the shore. In reference to any joint discussion, what is the common denominator for the two fisheries? He thought the turtle take was a common denominator but the fisheries don't all overlap. We need some experts to sort that out.

Ms. Petras answered questions about the section 7 consultation and turtle take issues. She also spoke about turtle take limits currently part of the regulations for the WPFMC pelagic longline fishery. Any consultation would look at the different turtle populations affected by the action.

Mr. Alverson asked Ms. Petras if the section 7 consultation also takes into consideration the foreign vessels operating in this area. She said yes, it is considered a part of the environmental baseline.

Ms. Vojkovich asked if the request for emergency action could be addressed. Ms. Cooney said the most constraining issue is the ESA. You would have to figure out what your action is relative to emergency under the MSA, and then what sort of ESA consultation would be necessary. Ms. Petras said the HMSMT and PRD have been looking at how to use the analyses in the NEPA process to facilitate the ESA consultation.

Ms. Vojkovich asked for clarification by asking if the answer is that nothing can happen at the very least before 130 days after the Council makes a decision and gets it to NOAA. Ms. Petrus said that is the amount of time allowed for a consultation under the regulations.

The Council adjourned for the day. The next morning under Agenda Item A.6 Dr. McIsaac recognized the longline and drift gillnet issues are interlinked but suggested it is easier to consider them separately as Council decisions. He also mentioned Mr. Anderson's idea of forming a subcommittee to pursue the longline issue. He proposed discussing these issues on Friday, under B.4, work load and September agenda planning. HMSMT and HMSAS assignments would then flow from that discussion. The Council agreed by consensus.

F. Coastal Pelagic Species Management

F.1 Pacific Mackerel Harvest Guideline for 2005/2006 Fishery (06/16/05; 9:32 am)

F.1.a Agenda Item Overview

Mr. Burner provided the agenda item overview.

F.1.b NMFS Report

Dr. Kevin Hill provided a powerpoint presentation.

F.1.c Reports and Comments of Advisory Bodies

Dr. Kevin Hill provided Agenda Item F.1.c, Supplemental SSC Report. Dr. Sam Herrick provided Agenda Item F.1.c, Supplemental CPSMT Report. Mr. John Royal and Ms. Heather Munro Mann provided Agenda Item F.1.c, Supplemental CPSAS Report. Ms. Vojkovich asked about the set-aside provision in the CPSAS statement. Ms. Munro Mann clarified that the set-aside would be considered for release to the directed fishery in March of 2006 if the directed fishery harvest guideline is unlikely to be attained.

F.1.d Public Comment

None.

F.1.e Council Action: Adopt Pacific Mackerel Harvest Guideline for 2005/2006 Fishery

Ms. Vojkovich moved and Mr. Thomas seconded a motion (Motion 14) to adopt a Pacific mackerel harvest guideline for the 2005/2006 fishery of 17,419 mt with a directed fishery for 13,419 mt to begin on July 1, 2005. If the directed fishery quota is reached, the fishery would revert to an incidental-catch-only fishery with the remaining 4,000 mt as a set aside. Establish a 40% incidental catch rate when Pacific mackerel are landed with other coastal pelagic species (CPS), except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS. The Council will review the mackerel season at the March 2006 Council meeting to consider releasing the set-aside to the directed fishery if sufficient amount of the harvest guideline remains.

Motion 14 passed.

F.2 FMP Amendment 11--Sardine Allocation (06/16/05; 9:57 am)

F.2.a Agenda Item Overview

Mr. Burner provided the agenda item overview.

F.2.b CPSMT Report

Dr. Herrick provided the CPSMT Report.

Mr. Ticehurst asked if the analysis calculated the value of sardine as a forage species if left unharvested. Dr. Herrick explained the analysis does not address those types of calculations as the role of sardine as a forage species is recognized in the calculation of the harvest guideline in the form of a set-aside. This analysis only considers the portion of the harvest guideline that was recommended for direct harvest after allowances for forage were made. Dr. Herrick added the ecological role of sardine and other forage fish is the subject of current debate and research.

F.2.c Reports and Comments of Advisory Bodies

Dr. Kevin Hill provided Agenda Item F.2.c, Supplemental SSC Report. Dr. McIsaac asked if the SSC felt that the analysis of salmon bycatch represented the best available science. Dr. Hill responded that the SSC had some concerns about parts of the methodology such as the use of Washington observer data to predict salmon interaction in the Oregon fishery. The SSC felt the application of the data for this exercise was adequate and SSC comments are intended to provide ways to improve analysis and the available data in the future.

Dr. Burke asked if the analysis of salmon bycatch that was reviewed by the SSC took into account the fact that the Oregon fishery requires the use of grates. Ms. Elizabeth Petras clarified that the Biological Opinion for the 2005 fishery and the draft Environmental Assessment took this into consideration as a potential mortality reduction mechanism.

Mr. Anderson briefly walked the Council through graphics provided under Agenda Item F.2.c, Supplemental WDFW Report.

Mr. Harp provided a review of the adoption of a placeholder in the CPS FMP to recognize treaty rights for tribes to participate in that fishery. Since then, the tribes have not participated. Mr. Harp

introduced Mr. Steve Joner who explained the intent of the Makah Tribe to enter the Pacific Sardine fishery in the established usual and accustomed tribal areas as described in Agenda Item F.2.c, Supplemental Tribal Comment. A processor has been identified and the tribe hopes to operate vessels in the 2006 fishery. Dr. McIsaac asked Mr. Joner to describe the usual and accustomed areas and if this proposal includes tribes other than Makah. Mr. Joner explained that the usual and accustomed area is consistent for all of the tribes across all species and includes the area from the U.S./Canada border to Point Chehalis, Washington and out approximately 40 miles to 125° 44' W. longitude. The Quinault tribe has expressed an interest in the fishery but have not acted formally at this time. Ms. Cooney explained the tribal request process for treaty harvest of sardines in 2006 is detailed in a framework in the CPS FMP that was modeled after the groundfish FMP. The Secretary of Commerce will implement treaty rights after considering comments from the tribes, the Council, and the public. Treaty rights will be established either by an allocation to the tribe alone, or with specific fishery regulations. The public comment will occur through the annual specifications and regulations process. The framework also specifies that the treaty fishery would not be subject to other provisions in the CPS FMP that pertain to non-tribal fisheries. In the past the Council has established a committee of state and federal representatives to work with NMFS and the tribes on allocation matters. Dr. McIsaac asked about the timing of the establishment of this committee. Ms. Cooney recommended the committee be established at this meeting under Agenda Item B.3. Dr. McIsaac clarified that the action before the Council under this agenda item would only cover the non-tribal portion of the fishery.

Mr. Royal and Ms. Munro Mann provided Agenda Item F.2.c, Supplemental CPSAS Report.

Dr. McIsaac asked if the CPSAS considered the letter in Agenda Item F.2.c, Supplemental Tribal Comment when deliberating long-term sardine allocation. Mr. Royal responded they had not.

Dr. Burke pointed out the annual review of the allocation formula under the annual specification process and asked what the requested review would entail. Ms. Munro Mann explained the review mechanism was agreed to as means of reaching consensus and was intended as a thorough review of the allocation formula with the potential of starting a process of considering revision.

Mr. Royal applauded the efforts of the CPSAS to reach this consensus opinion. Chairmen Hansen thanked the team as well.

Dr. Herrick provided Agenda Item F.2.c, Supplemental CPSMT Report.

Ms. Vojkovich asked about the CPSMT recommendation on review of the allocation formula. Dr. Herrick said the CPSMT did not recommend specific criteria of the review and comments were intended to recognize the uncertainties in the Pacific sardine resource. Chairmen Hansen asked if the acoustical survey would factor into the review. Dr. Herrick responded that any new information would likely be part of the review. Mr. Helvey asked if the CPSMT would be the group conducting the review and would the review become part of the SAFE document. Dr. Herrick stated that the CPSMT would likely take a lead role and the annual SAFE process could serve as documentation.

F.2.d Public Comment

Mr. Heather Mann, West Coast Seafood Processors Association, Siletz, Oregon
Mr. Mike Okoniewski, Pacific Seafood, Woodland, Washington
Mr. John DeLuca, State Fish Company, San Pedro, California
Mr. Vince Torre, Tri-Marine Fish Company, San Pedro, California
Ms. Kristina Bui, State Fish Company, San Pedro, California

Ms. Dianne Pleschner Steele, California Wetfish Producers Association, Buellton, California

F.2.e Council Action: Adopt a Final Preferred Alternative for Sardine Allocation

Mr. Anderson expressed appreciation on behalf of the Council for the hard work of the CPSAS and industry representatives on this matter. Mr. Anderson also recognized the overnight work of the CPSMT to provide additional analyses which brackets the proposal brought forward by the CPSAS relative to the range of analyzed impacts. Mr. Anderson moved and Ms. Vojkovich seconded a motion (Motion 15) to adopt the sardine allocation regime as described in Agenda Item F.2.c, Supplemental CPSAS Report, June 2005 for the West Coast sardine fishery excluding any Treaty Indian fishery promulgated and pursuant to *US v. Washington*,: January 1: 35% of harvest guideline to be allocated on a coastwide basis, July 1: 40% of the HG plus any rollover (unharvested quota) from the first period is made available on a coastwide basis, and on September 15: 25% of the harvest guideline plus any rollover (unharvested quota) from the second period is made available on a coastwide basis.

This sardine allocation regime will be subject to a formal performance review by the Council in June of 2008. This review will compare the performance of the fishery to the projections used to evaluate the adopted regime including but not limited to: catch projections, catch shortages by sector, economic benefit analysis, and the utilization of the harvest guideline.

Ms. Vojkovich asked for the review to consider all scientific and biological information collected between now and the review to assess any changes to the resource. Mr. Anderson accepted the friendly amendment.

Mr. Anderson considered the amount of time that went into the current analysis, the benefit of having two years under the new regime, and the fact that the Council will be reviewing the allocation formula in some capacity annually when recommending 2008 rather than 2007 as the review year. He added that in reviewing the analyses, particularly those under a low harvest guideline, this alternative appears to share both the available harvest and the burden of conservation between fisheries in the north and south.

Motion 15 Passed.

Dr. Burke asked for an update on the current sardine research planning at the September Council meeting from NMFS-SWFSC. Mr. Helvey said there are surveys proposed for next month in the Northwest and there are coastwide surveys planned for next year. Dr. Bill Fox and the SWFSC have requested Council input on the importance of the synoptic survey and the use of the Miller-Freeman research vessel in this endeavor. There are uncertainties around the use of this vessel at this time. Mr. Helvey also noted the need to improve coordination and dialogue on how to get information on fisheries in Mexico.

Dr. Hill reported there are genetic and otolith microchemistry studies ongoing to get a better understanding of sardine stock structure. Additionally, as mentioned, there is a synoptic survey planned for 2006. NMFS is working with Mexico and Canada to improve coordination.

Dr. Burke moved and Ms. Vojkovich seconded a motion (Motion 16) for the Council to urge and support the synoptic survey including the use of the Miller-Freeman research vessel and requested the SWFSC come back in September for either a written or verbal update on sardine research. Ms. Vojkovich asked if the motion includes a request to the SWFSC on what research is planned, the objective of the research, and when and how that information will be available for management.

Dr. Burke accepted the suggestions as a friendly clarification. Motion 16 passed.

Ms. Vojkovich moved (Motion 17) and Mr. Thomas seconded a motion to craft a letter to NMFS to request the need to work with Mexico on the sharing data on both Pacific mackerel and Pacific sardines. This issue was brought up by the CPSMT. There is growing concern over aquaculture practices in Northern Baja California. The letter should recommend these issues be brought up in bilateral discussion including the Nexus Pacifico discussions. Mr. Brown said it would be more appropriate to ask for all fishery data, not just CPS. Ms. Vojkovich agreed to expand the letter to include transboundary fish species. Mr. Warrens said the letter of concern should also go to the State Department. The maker and second agreed. Motion 17 passed.

F.3 SAFE Document and Five-Year EFH Review (06/16/05: 1:17 pm)

F.3.a Agenda Item Overview

Mr. Burner provided the agenda item overview.

F.3.b Reports and Comments of Advisory Bodies

Dr. Sam Herrick provided Agenda Item F.3.b, Supplemental CPSMT Report.

F.3.c Public Comment

None.

F.3.d Council Action: Approve the SAFE Document, Including the EFH Review

Mr. Alverson moved and Mr. Brown seconded a motion (Motion 18) to approve the CPS SAFE document including the five-year review of CPS EFH. Motion 18 passed.

Mr. Brown clarified and Mr. Alverson confirmed that the CPSMT recommendation that the definition of EFH remain unchanged is part of the motion.

Mr. Burner clarified that Council staff will follow Council action with a final published version of the SAFE and requested the latitude to correct any errors as the document goes through the proof and editing process.

Dr. McIsaac recounted Council action on groundfish EFH and the concept of no take areas and asked, relative to EFH for CPS, if the Council should consider future action under CPS EFH towards this goal of a no take marine reserve. Ms. Cooney said she did not have a full answer at this time. NMFS needs to pull together all of the information from yesterday's groundfish EFH motion and develop a plan. Dr. McIsaac stated there have been discussions about whether EFH definitions under other, non-groundfish FMPs would need to be modified, or if adequate protections can be achieved under the groundfish process alone.

4 PM Public Comment for items NOT on the agenda

Ms. Kate Wing, NRDC, San Francisco, California. Spoke about their letter in the briefing book. Both NRDC and the Ocean Conservancy requested that the Council take timely action to draft the fishing regulations necessary to complete the designation of marine protected areas at the Channel Islands National Marine Sanctuary.

Mr. August Felando, commercial purse seiner, San Diego, California. Talked about the sea lion and seal problems. He suggested that the Council ask NOAA to report to the Council what the impacts are of sea lions and seals. We need to get that answer of what the impacts are to fisheries regulated by this Council.

Ms. Jennifer Bloeser, PMCC, California. Spoke about the SCOOP project (described in Supplemental 4 PM Public Comment 3).

Messrs. Chris Dorsett, Ocean Conservancy, San Francisco, and Peter Huhtala, PMCC, Astoria, Oregon. Voiced their concerns of not having Amendment 18 on the agenda. They asked that this issue stay high on the Council's agenda. It was noted by Vice Chairman Ortmann this item would be scheduled for September.

Ms. Kathy Fosmark, Alliance of Communities for Sustainable Fisheries, Pebble Beach, California. Spoke about the drift gillnet issue work and that it get started in time for use in next seasons fishery. She also commented that her group has worked with the sanctuary staff and urged the management of fisheries stay under NOAA and not under NMS.

Mr. Kenyon Hensel, Hensels, Crescent City, California. Raised the issue of permitting in the open access fishery. He felt the time is right to take action. New management trends call for a revision in the open access system.

Mr. Stephen Taufman, Groundswell Fisheries Movement, Seattle, Washington. Testified on fisheries sustainability and economic issues.

Mr. Daniel Platt and Ms. Heather Serles, Salmon Trollers Marketing Association, Fort Bragg, California. Voiced opinion on the salmon fisheries this year. They could have been fishing this year if we would have taken into account the differences between 30,000 and 35,000 fish returning to the Klamath River; felt 5,000 fish could have made a huge difference this year.

Ms. Heather Munro Mann, Munro Consulting, Newport, Oregon. Provided a preliminary report on the Canary Rockfish Project that began last July. Two public workshops with fishers were held (in Newport, OR and Westport, OR) to discuss how we might develop a survey method for canary rockfish that would supplement the information provided by the NMFS triennial bottom trawl survey of the shelf.

ADJOURN

The Council meeting was adjourned on Friday, June 17, 2005 at 2:30 pm.

DRAFT

DRAFT

Council Chairman

Date

DRAFT VOTING LOG
Pacific Fishery Management Council
June 12-17, 2005

Motion 1: Draft a response to the letter from the National Marine Sanctuary Program (Informational Report 5, NMFS Report on CINMS) responding to the items identified by Dr. McIsaac, including the comment extension time after the November meeting, and any comments or information that the Council would like to give following any action taken on Wednesday at this meeting.

Moved by: Marija Vojkovich
Motion 1 passed.

Seconded by: Roger Thomas

Motion 2: Approve the agenda as shown in Agenda Item A.4, June Council Meeting Agenda, with the addition of adding a report from the Coast Guard on Tuesday morning prior to Agenda Item D.1.

Moved by: Ralph Brown
Motion 2 passed.

Seconded by: Frank Warrens

Motion 3: Adopt efforts to begin an HMS FMP Amendment to address the bigeye tuna overfishing issue.

Moved by: Mark Helvey
Motion 3 passed.

Seconded by: Marija Vojkovich

Motion 4: Adopt the protocol as stated in Agenda Item E.5., Supplemental HMSMT Report, and recommend approval to NMFS of the efp with the conditions also outlined in the HMSMT report.

Moved by: Ralph Brown
Motion 4 failed: 4 yes, 8 no. Mr. Helvey abstained.

Seconded by: Frank Warrens

Motion 5: Adopt for public review an earlier start date of March 15 for the shoreside whiting fishery south of 40°30' N latitude. The motion includes the GMT recommendations contained in Agenda Item C.2.b, Supplemental GMT Report relative to a need for a salmon bycatch cap, depth restrictions, and an alternative start date of April 1. The motion also instructs the GMT to further analyze salmon interactions in this fishery and in other fisheries operating in this area (i.e., analyze the availability of salmon by time and area as mentioned by Mr. Thomas). The motion anticipates analysis prior to September and would include this being a separate EFP.

Moved by: Marija Vojkovich
Motion 5 passed.

Seconded by: Darrell Ticehurst

Motion 6: Adopt the following alternatives as preferred to identify and describe essential fish habitat for West Coast groundfish:

Alternative A.2 Depths less than 3,500 m (DEIS p. 2-5)

Results – Designate 187,741 square miles in the EEZ, and to the mean higher high water line and upriver extent of salt water, as EFH. The deepest observation of groundfish is 3,400 m. By including areas out to the 3,500 m depth curve, this alternative includes all habitats where groundfish have been observed with the addition of 100 m depth as a precautionary adjustment in case of non-observed species.

Alternative A.3 100% HSP Area (DEIS p. 2-6)

Results – Designate 100% of the area where the habitat suitability probability is greater than zero for all species based on the scientific rationale presented in the DEIS, Section 2.3.1 (DEIS p. 2-2). This area includes 87,160 square miles as EFH, all of which is within the area that would be designated by Alternative A.2. The intent of including this area is to secure the ability to add areas in the future which meet this criterion, as more information becomes available.

The motion also included seamount areas and to include the designation of HAPCs.

Moved by: Phil Anderson
Motion 6 passed.

Seconded by: Bob Alverson

Motion 7: Adopt the following alternatives to designate Habitat Areas of Particular Concern for West Coast groundfish:

Alternative B.2 Estuaries (DEIS p. 2-7)

Results – For many fish species, estuaries provide important habitats for marine organisms, including groundfish. These important ecological functions are vulnerable to damage from a wide range of human activities because estuaries receive runoff from adjacent land areas and are often close to human population centers. Anthropogenic impacts to estuaries may include nutrient loading, introduction of non-native species, and changes in water temperature, increased turbidity, etc.

Alternative B.3 Canopy Kelp (DEIS p. 2-7)

Results – Kelp forests are of primary importance to the ecosystem and serve as important groundfish habitat. The stands provide nurseries, feeding grounds and shelter to a variety of groundfish species and their prey. Giant kelp communities are highly productive relative to other habitats, including wetlands, shallow and deep sand bottoms, and rock bottom artificial reefs. Their net primary production is an important component to the energy flow within food webs.

Alternative B.4 Seagrass (DEIS p. 2-8)

Results – Seagrasses provide habitat for many invertebrates and epiphytes and provide many crustaceans, fish, and birds with protection and food. Studies have shown seagrass beds to be extremely high primary productivity areas.

B.6 Rocky Reefs (DEIS p. 2-9)

Results – Managed species known to use nearshore hard bottom habitat in the coastal zone include black rockfish, black-and-yellow rockfish, brown rockfish, cabezon, calico rockfish, California scorpionfish, chilipepper, copper rockfish, gopher rockfish, kelp greenling, leopard shark, lingcod, olive rockfish, quillback rockfish, redstripe rockfish, rosethorn rockfish, shortbelly rockfish, silvergray rockfish, and spotted ratfish.

Add Washington coastal state waters (shoreline to 3 miles)

Results – The habitats within Washington's coastal state waters are ecologically important and are particularly sensitive to human-induced environmental degradation. The bays and estuaries provide important habitats to juvenile flatfish and the oceanic waters provide habitat for adult nearshore rockfish, juvenile rockfish, lingcod, and adult flatfish. The addition of this area would include specific areas not covered under Alternatives B.2, B.3, B.4, and B.6 as designated Habitat Areas of Particular Concern.

Include seamounts within California state borders, Monterey Canyon, four specific areas of the eastern CCAs identified by CDFG, the proposed areas in the Channels Islands NMS under C.14 that California has identified as potential MPA sites, Cordell Bank, and Mendocino Ridge. Also add the Thompson and President Jackson seamounts.

Amndmt: Include a modification of Alternative B.8, designating 13 specified oil production platforms as HAPCs, as identified by CDFG.

Moved by: Marija Vojkovich

Seconded by: Roger Thomas

Roll call vote on Amendment: 7 yes, 6 no. Amendment passed.

Main Motion #7 passed.

Motion 8: Adopt the following: (1) Draft the groundfish FMP to include language for implementation of an EFH Review Committee and an adaptive management process. The Council should consider using the existing Ad Hoc Groundfish Habitat Technical Review Committee, with any necessary changes in membership, for this purpose. This committee would meet as appropriate to: review specific areas included as HAPCs, review the scientific basis of any area designated as a non-bottom trawl area; and to consider additional HAPCs or other protective measures. (2) If this committee determines an area designated as a non-bottom trawl area is not supported by scientific data, the committee by majority vote, may recommend the Council modify, move, or eliminate that area. (3) The Council may initiate an action through a framework process to be included in the fishery management plan amendment to modify management measures through a rulemaking.

Moved by: Frank Warrens

Seconded by: Jim Harp

Amndmt: Change the motion to read as follows: (2) Unless this Committee determines an area designated as a non-bottom trawl is support by scientific data, the committee by majority vote, will recommend the Council modify, move, or eliminate that area.

Moved by: Ralph Brown

Seconded by: Frank Warrens

Amendment was withdrawn, not voted on.

Motion 8 passed.

Motion 9: Adopt the following measures to minimize adverse impacts to essential fish habitat for West Coast groundfish:

Alternative C.4.1 Prohibit expansion of trawl fishing (DEIS p. 2-20)

For waters within the EEZ, freeze the bottom trawl footprint on the western side only, at a depth contour approximating 700 fms. (i.e., bottom trawl gear would be prohibited in depths greater than 700 fms).

Results – The amount of habitat that would be protected where the sensitivity value is greater than 1.0 and recovery is in excess of 1 year is 89%

Alternative C.9 Gear restrictions (DEIS p. 2-22)

For waters within 0-200 miles offshore coastwide, the following gear restrictions would apply:

Prohibit bottom trawl roller gear with a footrope diameter greater than 19 inches

Prohibit dredge gear

Prohibit beam trawl gear

Alternative C.12

Close ecologically important areas to bottom trawl (WDFW proposal as described in Agenda Item C.3.b, Supplemental WDFW Report).

Adopt the following proposals to Minimize Adverse Impacts to EFH Due to Fishing:

Under Alternative C.10: Central California no-trawl zones as follows: Adopt the trawl closures contained in current The Nature Conservancy/Environmental Defense proposal for areas 1,2,and 3 off central California between Pt. Sur and Pt. Conception, including Davidson Seamount.

Under Alternative C. 12: Close Ecologically Important Areas to Bottom Trawl as follows:

Eel River Canyon (34) with state modification

Blunts Reef (35)

Mendocino Ridge (36)

Tolo Bank (0)

Point Arena Offshore (39)

Biogenic Area 12 (40)

Cordell Bank (41)

Farallon Is./Fanny Shoal (42)

Half Moon Bay (43) with state modification

Monterey Bay/Canyon (45) with state modification

Point Sur Deep (44)

TNC/ED areas between Pt. Sur and Pt. Conception

CCA West Sub-Areas (from 50):

Potato Bank (50-1)

Cherry Bank (50-2)

Hidden Reef/Kidney Bank (50-3)

Catalina Island (51)

CCA East (52)

Exemptions for Scottish seine gear

Under Alternative C.13: Close Ecologically Important Areas to Bottom-Contacting Gear as follows:

Davidson Seamount

Cordell Bank – waters shallower than 50 fathoms with exemption for vertical hook-and-line

Under Alternative C.14: Close Ecologically Important Areas to Fishing:
Federal waters portion of the proposed Channel Islands MPA project

Include the sites listed on page 4 of Agenda Item C.3.b, Supplemental ODFW Report with the following changes: the addition of the areas as described by the Oregon Fishermen's Cable Commission provided under public comment, removing of the Siletz Bay nearshore area (T-7). Add a closure of Thompson Seamount and President Jackson Seamount to all bottom-contact gear. Include a prohibition of footrope larger than 8 inches eastward of a line approximating 100 fathoms.

Moved by: Phil Anderson

Seconded by: Patty Burke

Amdmnt: Make the boundary of the trawl footprint area 1000 fm, instead of 700 fm.

Moved by: Ralph Brown

Seconded by: Frank Warrens

Vote on amendment to motion 10. roll call vote: 5 yes, 8 no. Amendment failed.

Motion 9 passed.

Motion 10: Adopt a preferred alternative for research and monitoring with the following elements: (1) consider requirement of VMS on all bottom trawl vessels, (2) expansion of logbooks to non-trawl vessels to the extent it is feasible with existing resources, and (3) make a priority of focusing research on the impacts and results of the trawl closures.

Moved by: Phil Anderson

Seconded by: Bob Alverson

Motion 10 passed.

Motion 11: Move that no closure be established in any tribal U&A area without consultation and agreement by the affected tribe(s) pursuant to Executive Order 13175 and that assessment and monitoring programs be developed by NOAA in conjunction with the tribes to measure the appropriateness and effectiveness of habitat protections within U&A areas.

Moved by: Jim Harp

Seconded by: Frank Warrens

Motion 11 was withdrawn, not voted on.

Motion 12: Reconsider Motion 9.

Moved by: Jim Harp

Seconded by: Frank Warrens

Roll call vote: 5 yes, 8 no.

Motion 12 failed.

Motion 13: Amend Motion 9 to specify that the closed areas adopted as part of that motion do not apply to tribal fisheries in the U&As described in 50 CFR 660.324(c)

Moved by: Phil Anderson
Motion 13 passed.

Seconded by: Mark Cedergreen

Motion 14: Adopt a Pacific mackerel harvest guideline for the 2005/2006 fishery of 17,419 mt with a directed fishery for 13,419 mt to begin on July 1, 2005. If the directed fishery quota is reached, the fishery would revert to an incidental-catch-only fishery with the remaining 4,000 mt as a set aside. Establish a 40% incidental catch rate when Pacific mackerel are landed with other coastal pelagic species (CPS), except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS. The Council will review the mackerel season at the March 2006 Council meeting to consider releasing the set-aside to the directed fishery if sufficient amount of the harvest guideline remains.

Moved by: Marija Vojkovich
Motion 14 passed.

Seconded by: Roger Thomas

Motion 15: Adopt the sardine allocation regime as described in Agenda Item F.2.c, Supplemental CPSAS Report, June 2005 for the West Coast sardine fishery excluding any Treaty Indian fishery promulgated and pursuant to *US v. Washington*,: January 1: 35% of harvest guideline to be allocated on a coastwide basis, July 1: 40% of the HG plus any rollover (unharvested quota) from the first period is made available on a coastwide basis, and on September 15: 25% of the harvest guideline plus any rollover (unharvested quota) from the second period is made available on a coastwide basis.

This sardine allocation regime will be subject to a formal performance review by the Council in June of 2008. This review will compare the performance of the fishery to the projections used to evaluate the adopted regime including but not limited to: catch projections, catch shortages by sector, economic benefit analysis, and the utilization of the harvest guideline. This review will also consider all scientific and biological information collected between now and the review to assess any changes to the resource.

Moved by: Phil Anderson
Motion 15 Passed.

Seconded by: Marija Vojkovich

Motion 16: Urge and support the synoptic survey including the use of the Miller-Freeman research vessel and requested the SWFSC come back in September for either a written or verbal update on sardine research. The motion also includes a request to the SWFSC on what research is planned, the objective of the research, and when and how that information will be available for management.

Moved by: Patty Burke
Motion 16 passed.

Seconded by: Marija Vojkovich

Motion 17: Craft a letter to NMFS to request the need to work with Mexico on sharing data on both Pacific mackerel and Pacific sardines. The letter should recommend these issues be

brought up in bi-lateral discussion including the Nexus Pacifico discussions. The letter would also be expanded to include transboundary fish species. This letter of concern will also go to the State Department.

Moved by: Marija Vojkovich
Motion 17 passed.

Seconded by: Roger Thomas

Motion 18: Approve the CPS SAFE document including the five-year review of CPS EFH.

Moved by: Bob Alverson
Motion 18 passed.

Seconded by: Ralph Brown

Motion 19: Authorize for analysis the West Coast trawl rationalization options that are found in the TIQC report June 2005 (Agenda Item C.5.b) with the following three changes: (1) On page 14 (Option Table C-1, Section B.1.1), add a suboption that would provide 10% of the quota shares to the processors (so that the analysis would include 10%, 25% and 50% to processors) and a second suboption would allocate up to 50% of the IFQ for whiting to processors but no nonwhiting species. (2) On the bottoms of page 8 and 9 (Decision Table A) drop the ITQ for halibut. (3) Analyze the alternatives against the stated goals and objectives but change Goal 1 to read "and attainment of fishery management objectives;" remove the words "to the extent practicable" under Objective 7, and add to the objectives "9. quality for the consumer" and "10. Safety" (page 2 of C.5.a, Attachment 1). Also, include from the GMT report recommendations 1 a, b, and d, and both Process Options 1 and 2 as reported in TIQC report, page 9 (Decision Table B) Direct council staff to publish notice of the Council intent to develop an EIS for the necessary intersector allocations as soon as possible. Modify the goals and objectives of page 2 of C.5.a, Attachment 1 as follows: change Goal 1 to read "and attainment of fishery management objectives" and remove the words "to the extent practicable" under Objective 7. Include both Process Options 1 and 2 as reported in the TIQC Report, page 9 (Decision Table B).

Moved by: Bob Alverson

Seconded by: Mark Cedergreen

Amdmt #1: Eliminate analysis of the use-or-lose option (Section B.2.2.3 of Option Table C-1).

Moved by: Patty Burke
Amendment #1 passed

Seconded by: Mr. Anderson

Amdmt #2 Direct the analytical team in consultation with the SSC, to draft a range of appropriate alternatives for community involvement in ITQ systems for Council consideration at the November 2005 PFMC meeting. Sources of information for such an analysis may include the TIQ Analytical Team Report (October 2004 page H-100), a review of relevant state and international programs, and the Government Accounting Office report on Community Protections within rationalized fisheries (GAO-04-277, February 2004).

Moved by: Patty Burke
Amendment #2 passed

Seconded by: Mark Cedargreen

Amdmt #3 Analyze the mechanisms and the impact of the IFQ alternatives on transferring quota to other fisheries not participating in the IQ program.

Moved by: Darrell Ticehurst
Amendment #3 failed.

Seconded by: Jerry Mallet

Amdmt #4 Add to the package, for analysis, recommendation C from the GMT report (IFQs for overfished species only).

Moved by: Phil Anderson
Amendment #4 passed

Seconded by: Jerry Mallet

Amdmt #5 (1) Allow NMFS to develop a proposal for an internal appeals process and bring it back to the Council for consideration, and (2) to include an option that would prohibit the transfer of quota shares during the last two months of the year, for purposes of identifying the least cost way of implementing the program.

Moved by: Steve Freese
Amendment #5 passed
Motion 19 passed.

Seconded by: Jim Harp

Motion 20: Have the Council draft a letter to the Secretary of Commerce explaining in detail what the Council and advisory entities have done and the supporting evidence they have brought to the Council at this time under Agenda Item C.5.a. The letter should indicate our intentions, the scope of the options, and that should Congress ask the Secretary of Commerce, the Council does not want to be usurped in any fashion in developing our IFQ options.

Moved by: Bob Alverson
Motion 20 passed, Steve Freese Abstained

Seconded by: Ralph Brown

Motion 21: Analyze the following alternative rebuilding revision rules: GMT option 1 (5% buffer for stocks with a $P_0 < 0.7$ and a 10% buffer for stocks with a $P_0 > 0.7$), GMT option 3 (same as GMT option 1 except with a P_{CRIT} of 0.6), GMT option 6 (attain P_0), GMT option 7 (10% buffer), GMT option 9 (in cases where rebuilding is progressing faster than expected, split the difference between $P_{CURRENT}$ and P_0 , such that half of the increased probability of rebuilding would be applied to an accelerated rebuilding rate and half could be considered for harvest rate liberalization), the GAP option (7.5% buffer), The Ocean Conservancy option (10% buffer for stocks with a $P_0 \geq 0.9$, $P_{CRIT} = 0.6$), and the default option of amending the rebuilding plan if rebuilding cannot occur with at least a 50% rebuilding probability even when $F = 0$).

Moved by: Phil Anderson
Motion 21 passed.

Seconded by: Ralph Brown

Motion 22: Adjust trip limits inseason as recommended by the GMT in Agenda Item C.7.b, Supplemental GMT Report, with the following change: only increase the minor nearshore rockfish and black rockfish trip limits in the area between 40°10' and 42° N latitude.

Moved by: Ralph Brown
Motion 22 passed.

Seconded by: Frank Warrens

Motion 23: Approve the March minutes as shown in Agenda Item B.1.a, Draft March 2005 Council Minutes.

Moved by: Ralph Brown
Motion 23 passed.

Seconded by: Frank Warrens

Motion 24: Accept the report of the Legislative Committee.

Moved by: Ralph Brown
Motion 24 passed.

Seconded by: Frank Warrens

Motion 25: For groundfish inseason adjustments, change the canary and yelloweye rockfish bycatch caps in the directed open access fishery from 1.0 mt and 0.6 mt, respectively, to 3.0 mt for canary rockfish and 3.0 mt for yelloweye rockfish as shown in the updated scorecard on page 7 in Agenda Item C.7.b, Supplemental GMT Report.

Moved by: Marija Vojkovich
Motion 25 passed.

Seconded by: Roger Thomas

Motion 26: Appoint Dr. Owen Hamel to replace Dr. Han-Lin Lai on the Scientific and Statistical Committee as a representative of NMFS Northwest Fisheries Science Center.

Moved by: Steve Freese
Motion 26 passed.

Seconded by: Jim Harp

Motion 27: Readvertise for nominations for the vacancy for the conservation representative on the Coastal Pelagic Species Advisory Subpanel.

Moved by: Patty Burke
Motion 27 passed.

Seconded by: Ralph Brown

The full record of the Pacific Fishery Management Council (Council) April 3-8, 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
Sheraton Tacoma Hotel
1320 Broadway Plaza
Tacoma, WA 98402
April 3-8, 2005

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A. Call to Order

A.1 Opening Remarks, Introductions

Mr. Don Hansen, Chairman, call the meeting of the Pacific Fishery Management Council to order on Monday, April 4, 2005 at 4:30 P.M.

A.2 Roll Call

Dr. Donald McIsaac, Executive Director, called the roll:

Mr. Bob Alverson
Mr. Ralph Brown
Dr. Patty Burke
Mr. Mark Cedergreen
Mr. Brian Corrigan
Dr. Steve Freese
Mr. Donald K. Hansen, (Chairman)
Dr. Dave Hanson, (Parliamentarian)
Mr. Jim Harp
Mr. Jerry Mallet
Mr. Dave Ortmann, (Vice-Chairman)
Mr. Tim Roth
Mr. Roger Thomas
Mr. Darrell Ticehurst
Mr. Bill Tweit
Ms. Marija Vojkovich
Mr. Frank Warrens
Mr. Gordy Williams

Mr. Stetson Tinkham was absent.

A.3 Executive Director's Report

Dr. McIsaac provided an overview of the two informational reports on the topic of mass marking. Messrs. Tim Roth and Bill Tweit provided further explanation of the reports.

A.4 Council Action: Approve Agenda

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

B. Groundfish Management

B.1 Vermilion Rockfish Stock Assessment Status

B.1.a Agenda Item Overview (04/04/05; 4:40 pm)

Mr. John DeVore provided the agenda item overview.

B.1.b Reports and Comments of Advisory Bodies

Dr. Steve Ralston provided Agenda Item B.1.b, Supplemental SSC Report. Mr. DeVore read Agenda Item B.1.b, Supplemental GMT Report.

B.1.c Public Comment

None.

B.1.d Council Action: Consider Scheduling of Stock Assessment

Ms. Vojkovich moved and Mr. Ticehurst seconded a motion (Motion 2) to approve conducting a full vermilion rockfish stock assessment this year.

Mr. Brown asked if a vermilion assessment review has been scheduled in the existing Stock Assessment Review (STAR) process.

Mr. Alverson said he was confused about the GMT statement. Is the vermilion assessment data incomplete? Mr. DeVore said the GMT recognized there was uncertainty regarding the available assessment data. Their recommendation was to let the STAR Panel decide whether there was sufficient data.

Mr. Brown asked if the contemplated vermilion rockfish assessment was coastwide. Dr. Ralston answered the assessment was for the California coast south of 40°10' N latitude and further divided into two subregions.

Mr. Alverson asked if the vermilion assessment is on the list of the current 22 assessments that have been approved and Dr. McIsaac said adding vermilion would now make 23. Originally, vermilion was on the list, taken off, and is now being considered again. Dr. Clarke noted at the previous Council meeting that a vermilion assessment review has already been scheduled for a STAR Panel; therefore, adding this assessment is doable.

Motion 2 passed.

B.2 Inseason Management Response Policy

B.2.a Agenda Item Overview (04/05/05; 3:18 pm)

Mr. DeVore provided the agenda item overview.

B.2.b Reports and Comments of Advisory Bodies

Mr. Rod Moore provided Agenda Item B.2.b, Supplemental GAP Report.

Mr. Brown noted an inseason management response policy was being considered in response to the darkblotched issue last year. He thought this policy may be an overreaction. Did the GAP address the need for a policy? Mr. Moore responded the GAP did discuss this in March and agreed March is too early to make inseason adjustments. The GAP believes the policy may be unnecessary, but, if the Council disagrees, there should at least be a sensible policy. The GAP believes adjusting management measures in April and thereafter is sensible.

Dr. McIsaac asked Mr. Moore to elaborate on last year's slope rockfish data problem. Mr. Moore said landings of darkblotched two years ago between 38° and 40°10' N latitude resulted in different trip limits in this area. Now we realize those catches were made north of 40°10' N latitude and landed illegally south of 40°10' N latitude. The GMT agrees this mistake needs to be rectified.

Mr. Ticehurst asked about inseason adjustments in March of the second year of a biennial management cycle. Couldn't we consider inseason adjustments then? Mr. Moore said no, since two 1-year OYs is the standard adopted under Amendment 17.

Ms. Susan Ashcraft provided Agenda Item B.2.b, Supplemental GMT Report.

Dr. Burke asked if the GMT discussed how the recommended policy would work in practical terms. Much analysis could occur before determining there was a data or model error. Ms. Ashcraft said the GMT did discuss this and determined there were two issues to consider in policy development: 1) uncertainty in data and models, and 2) time management for the GMT and the Council. Dr. Burke asked if it was the GMT's intent to scope issues in March before making recommendations to the Council in April. Ms. Ashcraft said the GMT does not scope these issues during their meeting. Typically, the GAP recommends inseason adjustments to the GMT during a Council meeting. The GMT then analyzes these adjustments and works with the GAP before both bodies report to the Council. Alternatively, the GAP could propose adjustments directly to the Council and then the Council could task the GMT with analysis of potential adjustments they want to consider. This could potentially lighten the GMT's workload.

Mr. Alverson asked what information is available to make an inseason adjustment in April. How long does it take to recognize a problem? Ms. Ashcraft answered we have quota species monitoring (QSM) data through May in June. Mr. Brown stated the problem last year wasn't the decision in April, but a lack of adequate tracking. He thought there would be a process set up to respond outside the regular Council meeting schedule. Wasn't the problem a lack of tracking? Ms. Ashcraft answered the GMT was tracking QSM landings, but not adequately tracking the discard modeling.

Ms. Vojkovich asked if any changes have been implemented to lessen the workload for inseason considerations. Ms. Ashcraft responded that tracking mechanisms have improved. Discard estimates are now embedded in the commercial QSM reports and a recreational QSM tracking system is being developed. This information is being disseminated earlier to the GMT and GAP.

Dr. Freese asked if the GMT was recommending the GAP go to the Council first with inseason options, then the Council would direct the GMT what work would be done? Ms. Ashcraft said the GMT and GAP would deliberate prior to going to the Council.

Dr. Freese asked about the recreational QSM reporting system. Ms. Ashcraft explained the states would provide monthly estimates to RecFIN which would be reported. Dr. Freese asked if those reports would be available to the public and Ms. Ashcraft answered yes.

B.2.c Public Comment

Mr. Kenyon Hensel, Hensel's, Crescent City, California
Mr. Danny Strunk, Pierpoint Sportfishing, Long Beach, California
Mr. Dan Wolford, Coastside Fishing Club, Los Gatos, California

B.2.d Council Action: Adopt Inseason Management Response Policy for Implementation

Mr. Brown felt developing an inseason management response policy is an overreaction to the darkblotched early OY attainment problem from last year. That problem is being addressed in other ways. Therefore, he recommends the Council not adopt a formal policy. Mr. Anderson said the policy consideration is not solely driven by last year's darkblotched problem. This issue was discussed at length by the Groundfish Information Policy Committee (GIPC) and other issues emerged that recommend the policy. These other issues are: 1) the advisability of deciding inseason adjustments based on a small amount of fishery monitoring data (only two months of data available in April), and 2) an intense GMT workload exacerbated by lengthy inseason management deliberations. He advised caution in changing trip limits early in the year. The Council has time after April to change trip limits. The GIPC recommendation is, "...management measures should not be liberalized before June..." not, "management measure shall not be liberalized before June...". Nothing in the policy prohibits April consideration of more liberal management measures. The policy represents a general desire to not liberalize management measures before June.

Dr. Burke asked Dr. McIsaac if this would be a Council Operating Procedure (COP) if passed and Dr. McIsaac presumed so. She thought a very formal policy (i.e., an FMP mandate), would be counter productive. As long as everyone understands the Council's goal in setting this policy and there is an allowance for exceptions to the policy, this could attain the objective of less risky inseason actions.

Ms. Vojkovich explained the intent of the policy was to manage workload better and reduce risk in inseason management decision-making. She has difficulty reconciling inseason proposals that come into the process during and before a Council meeting. The former is harder to prepare for. She would prefer waiting a year to see how these issues are resolved with the new inseason catch

tracking mechanisms in place. Dr. Burke said one problem is the GMT and GAP cannot resolve whether an inseason adjustment is ripe for consideration. Should the GMT and GAP establish a protocol? Dr. Freese asked how we filter out key requests for inseason consideration. Mr. Anderson said he felt it was not appropriate for states to filter out key requests without the input from other Council members. Mr. Hansen said the GAP could do that.

There was general concern expressed regarding the amount of time it has taken to consider an inseason management response policy that now appears to be dead. There was general consensus that a formal policy may be too difficult to implement. Therefore, no action was taken to adopt a new inseason management response policy.

B.3 NMFS Report

B.3.a Regulatory Activities (04/05/05; 4:30 pm)

Dr. Freese briefed the Council on the groundfish regulatory activities of the NMFS Northwest Region since the last Council meeting. NMFS published the 2005 whiting ABC/OY final rule; the halibut final rule; and coordinated development of the shoreside whiting EFP, which will be discussed this evening. NMFS also published a new proposed rule for the trawl buyback program, which recommends processors, not states, will collect the fees to pay back the government loan. They may start collecting fees this fall.

Dr. Freese also spoke about the issue of catcher vessel logbooks that provide whiting to the mothership vessels and provided an example of the logbook (Agenda Item B.3.a, Supplemental NMFS Report). Currently, this is a voluntary logbook program. There are two ways to make this a mandatory program: 1) through a formal rulemaking or regulatory amendment, and 2) through an FMP amendment. It would take approximately five months to make this change. Dr. Burke asked if the voluntary logbook program was adequate. Dr. Freese stated there are two observers on each mothership. The question is what information are we missing from the catcher vessel operations. Are there better ways to get this information if camera monitoring isn't practicable? Dr. Burke urged NMFS to move forward on this and Dr. Freese said they are meeting with the at-sea whiting industry tomorrow. NMFS could solicit their ideas on how to improve at-sea monitoring. The Council could mandate logbooks for catcher vessels. He noted the Office of Management and Budget asks policy questions on such issues. Dr. Burke stated the industry will say mandatory logbooks are not needed.

Mr. Anderson stated that shoreside whiting deliveries that are trucked interstate are monitored at the point of landing and again at the processing plant. He noted that CDFG cannot monitor whiting at the point of delivery. He wants all states on the same page on this issue and recommended a discussion at tonight's whiting EFP meeting.

Mr. Anderson asked Dr. Freese about collecting buyback fees from state-managed fishery landings like the Dungeness crab fishery. Dr. Freese said the same processor fee collection mechanism would also apply.

Mr. Alverson inquired about the status of Amendment 14 and the approximately six amendments concerning the permit stacking program. Dr. Freese said the states need to amend their fish

tickets to be able to track landings by stacked permit. Mr. Alverson asked if this was holding up the process. Ms. Yvonne de Reynier said the coordination of state fish tickets is not holding up the proposed rule. There are two management options in the proposed rule, one of which is more restrictive if state fish tickets cannot be amended. She recommended a September Council agenda item for the Council to consider a proposed rule. The rule will be published such that the public comment period is open during the September Council meeting.

Mr. Brown said the states were initially instructed to collect fees from state-permitted fisheries to pay back the trawl buyback loan, but he wasn't sure of the final rule on this. Mr. Anderson said it was state legislation that authorized the states to collect fees on Dungeness crab and pink shrimp landings to pay back the federal loan. Mr. Brown recalled that was the situation and the statutes were identical in all three states. Ms. Vojkovich said there were three bills considered in advance of the trawl industry referendum on the buyback program to explore whether it was feasible for the states to collect fees for state-permitted fisheries. After the referendum passed, it was determined there were different state systems for collecting information and fees. The states were not interested in changing their systems to accommodate the federal buyback program and told NMFS to come up with their own system.

Dr. Burke requested feedback from NMFS in June whether there is adequate monitoring of catcher vessels in the mothership whiting fishery and Dr. Freese agreed.

B.3.b Science Center Activities

Dr. Elizabeth Clarke provided Agenda Item B.3.b, Attachment 1. The Northwest Fisheries Science Center (NWFSC) is currently planning for this year's Pacific hake acoustic survey and bottom trawl survey. The NWFSC is also collaborating with industry to develop an acoustic survey for widow rockfish. They have been testing different widow rockfish acoustic survey techniques in the last two weeks. They will have a meeting with researchers and industry participants on this collaborative research tomorrow night. Dr. Clarke also reported the NWFSC is working with the at-sea hake fleet to improve bycatch sampling and a suite of groundfish Stock Assessment Review (STAR) Panels will be convening soon. The next STAR Panel is scheduled for the week of April 18.

Mr. Jon Cusick gave a brief update on electronic monitoring of the shoreside hake fleet. They have been experimenting with camera monitoring systems as previously reported. In addition to video monitoring, they are collecting GPS data, as well as wind and pressure data electronically. Mr. Cusick then reported details of the shoreside hake camera monitoring project. They monitored a total of 1,003 trips and 1,030 sets and observed high video quality. Non-retention was observed in 19% of sets observed. Most of this non-retention was from fish bled from the codend of the trawl, although some discard occurred from fish dumped off the deck. Most of the observed discards occurred during the last haul of the trip and most discards were < 45 kg total estimated weight. There is a need to improve the technology to estimate the amount of discard and to minimize data loss from loss of power to the camera system. They noted a cost savings from electronic monitoring technology, but there is still a need for on-board observers for more accurate discard estimation and biological sampling.

B.3.c Reports and Comments of Advisory Bodies

None.

B.3.d Public Comment

None.

B.3.e Council Discussion on NMFS Report

None.

B.4 Terms of Reference for Groundfish Rebuilding Plan Analytical Review

B.4.a Agenda Item Overview (04/06/05; 9:45 am)

Mr. DeVore provided the agenda item overview.

B.4.b SSC Report

Mr. Bob Conrad provided Agenda Item B.4.b, Supplemental SSC Report.

Dr. Burke asked for an explanation of the SSC recommendation to delete section 9 in the draft Terms of Reference regarding spatial structure and the recommendation to review GMT methods for partitioning OYs.

B.4.c Reports and Comments of Advisory Bodies

None.

B.4.d Public Comment

None.

B.4.e Council Action: Adopt Final Terms of Reference for Groundfish Rebuilding Plan Analytical Review

Ms. Vojkovich moved and Mr. Thomas seconded a motion (Motion 10) to adopt the Terms of Reference as shown in Agenda Item B.4.a, Supplemental SSC Terms of Reference and as altered by Agenda Item B.4.b, Supplemental SSC Report. Motion 10 passed.

Mr. DeVore said Council staff and members of the SSC are tasked to distribute the Terms of Reference as soon as possible.

Mr. Anderson said there was a previous GMT report on this document, and asked if their recommendations were incorporated? Mr. DeVore assured the Council this was the case.

B.5 Implementation of an Expanded Vessel Monitoring System (VMS)

B.5.a Agenda Item Overview (04/06/05; 10:03 am)

Mr. Mike Burner provided the agenda item overview.

B.5.b NMFS Report

Mr. Dayna Matthews provided explanation of Agenda Item B.5.b, NMFS Report, Draft EA, RIR/RFA for VMS; Agenda Item B.5.b, Supplemental NMFS Report 2, Errata sheet for the Draft EA; and Supplemental NMFS Report 3.

B.5.c Reports and Comments of Advisory Bodies

Mr. Rod Moore provided Agenda Item B.5.c. Supplemental GAP Report.

Mr. Brown noted vessels catching less than \$1,000 of groundfish would likely drop out of the open access fishery due to economics. This represents a fair number of vessels.

Mr. Moore stated that the GAP did not discuss the numbers of vessels specifically due to the materials being unavailable due to copying limitations. Mr. Matthews indicated that many of the vessels in this category are recreational vessels that purchase commercial licenses. The GAP has some questions regarding the accuracy of the revenue values as presented.

Ms. Susan Ashcraft provided Agenda Item B.5.c Supplemental GMT Report. Lt. Dave Cleary provided Agenda Item B.5.c Supplemental EC Report. Mr. Don Stevens provided Agenda Item B.5.c, Supplemental SAS Report.

B.5.d Public Comment

Mr. Duncan MacLean, salmon troller, El Granada, California

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

Mr. Mark Richards, Richards Marine Marketing, Battle Ground, Washington

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

B.5.e Council Action: Adopt a Preferred Expansion Alternative

Ms. Vojkovich referred to the scorecard on page 32 of the NMFS report, and asked if all of the open access users chose not to buy a VMS unit, would the numbers in the table represent discards. Ms. Renko said these numbers present projected catch (total catch). Ms. Vojkovich said if people who are fishing in non directed groundfish fisheries under Alternative 6b, what is the total catch normally retained that would have to be discarded. Ms. Renko said that has not been projected.

Mr. Alverson asked about HMS and CPS vessels and noted that it appears that we are putting a lot of VMS units in place to monitor a small amount of groundfish.

Mr. Anderson expressed an interest in working towards an allowable incidental landing amount (maybe 100 pounds) that would not trigger the VMS requirements. Mr. Matthews said there are complications when the gear for HMS species fall within the legal gear description of open access groundfish fisheries, more refined gear definitions should be considered.

Mr. Anderson then asked about the number of incursions there have been in the existing VMS program. Mr. Matthews said the VMS has proven itself as a useful tool and very for incursions exist. Vessels have demonstrated the ability to stay right along a boundary line without crossing into the RCA. There are about 30 open cases; with some violations involving fishing without VMS activated. Overall, there is a good compliance rate. Mr. Matthews stated he was uncertain of the number of incursions that have occurred but are not being investigated, but enforcement is not concerned with the circumstances that lead to some incursions.

Mr. Alverson moved (Motion 11) that the Council adopt Alternative 6b on page 12 of Agenda Item B.5.b, NMFS Report, except the motion would exclude HMS and CPS vessels from the VMS requirements. Mr. Anderson seconded the motion for sake of discussion.

Ms. Vojkovich asked if the VMS issue has ever been an agenda item for the CPS or HMS advisory groups. Mr. Burner responded that it had not.

Mr. Alverson said this motion would cover a growing aspect of the fishery, open access fisheries, including the daily-trip-limit fishery. He could not see extending the requirement for HMS and CPS as they appear to catch a de minimus amount of groundfish.

Mr. Brown stated he intends to vote against the motion, and favors status quo. The costs of the expensive monitoring program outweigh the benefits for the small amounts of fish landed by these sectors.

Mr. Ticehurst agreed with Mr. Brown. Technology will eventually progress to less expensive and better monitoring equipment. He felt the timing of this proposed action was too early and supported status quo.

Ms. Vojkovich did not know if CPS and HMS fisheries are the only fisheries that warrant an exception to VMS requirements. RCAs were established to protect overfished rockfish primarily and the VMS considerations are being applied to all groundfish. She expressed concern about requiring VMS for a state managed fishery in federal waters that was merely supplementing their income with incidental non-rockfish species. Ms. Vojkovich expressed support for VMS units on groundfish directed fisheries and is interested in spending the time to find all of the reasonable exceptions. She also noted that she does not believe addressing open access capacity reduction with this mechanism is the way to go; preferring a permitted system to reduce the overcapacity issue.

Mr. Warrens spoke in favor of the comments of Ms. Vojkovich. Dr. Freese said he agreed with Ms. Vojkovich and suggested starting with those sectors that target groundfish and phase in those other sectors in the future.

Mr. Brown noted that the bulk of open access vessels targeting groundfish either target nearshore black rockfish for the live-fish fishery inside state waters which would not be subject to VMS under this motion; and the other is the open access sablefish fishery with existing catch restrictions.

Mr. Anderson said RCAs are an extremely important management tool for us to achieve conservation objectives and without them there would be a lot less fishing. We cannot afford to step away from an enforcement tool that has proved itself in its use. He thinks we need to focus on covering those vessels that are targeting groundfish and that the Council is unlikely to achieve this today. However, we should minimize delays. We need to expand the use of this enforcement tool on vessels that are targeting groundfish subject to the RCA provisions. We need to review the available landings further and find a solution and bring this back to the Council; maybe there is a small amount of allowable groundfish landings without VMS requirement.

Mr. Warrens agreed with Mr. Anderson, and would not propose putting it off until the end of this year and some of the issues could be resolved between now and the fall Council meetings.

Mr. Anderson said the next thing we need to do is give direction to staff as to what we want to do in September.

Dr. Freese agreed with the statements of Mr. Anderson and recommended further analysis of the proposed regulations and the potential fisheries that would be impacted and develop a refined recommendation for expansion of the program. Dr. Freese said his staff and enforcement groups have done a lot of work on this matter and can provide additional support.

Motion 11 failed (all opposed).

Mr. Anderson recommended a reconsideration of this issue at the September meeting and encouraged the VMS committee to take a look at those recommendations. He also recommended soliciting input from the advisory bodies representing all of gear types being considered.

Dr. Burke noted that when we put together regulatory mechanisms to allow folks to fish they can be extremely expensive to put in place. We have created an infrastructure that we cannot afford to enforce in order to allow people to fish. We need to take a hard look at the regulations when the outcome of enforcing them is uneconomical.

Mr. Brown had these same concerns as Dr. Burke, and stated that if the cost of managing and enforcing the fishery is more costly than having the fishery, then the public may want us to shut the fisheries down.

B.6 Status of 2005 Groundfish Fisheries and Initial Consideration of Inseason Adjustments

B.6.a Agenda Item Overview (04/06/05; 1:45 pm)

Mr. DeVore provided the agenda item overview.

B.6.b Report of the Groundfish Management Team

Ms. Ashcraft and Dr. Hastie first presented Agenda Item B.6.b, Supplemental GMT Report 2.

Dr. Hastie explained the updates to the trawl bycatch model. He had made an effort assumption due to a lack of depth-based information in the 2004 Oregon trawl logbooks and the unavailability of the last six months of California logbooks. Therefore, he assumed more effort shoreward of the RCA in the north in his trawl impact projections. Dr. Burke agreed with this assumption.

Ms. Ashcraft then presented Agenda Item B.6.b, Supplemental GMT Report 1. Mr. Merrick Burden provided some corrections to the table depicting trawl total mortality estimates under option 2B on page 3.

Mr. Brown asked about the chafing gear issue and Ms. Ashcraft deferred to Mr. Rod Moore. Ms. Vojkovich asked if the 2.5 mt canary rockfish buffer was going to be larger and Mr. Burden said yes.

Dr. Burke asked if California recreational catches are projected higher later in the year, can depths, bag limits and other management measures be changed? Ms. Vojkovich said yes. Dr. Burke asked if derby fishing behavior had been factored into a closure later if necessary given the 10-day notice standard in California? Ms. Vojkovich said yes. Dr. Burke noted the MRFSS-CRFS calibration may take three years if this can occur at all. Is there an alternative calibration mechanism? Ms. Ashcraft answered there are no other statistically valid calibration methods. Ms. Debbie Aseltine-Neilson agreed with Ms. Ashcraft, but added CDFG will attempt to analyze an alternative calibration methodology and present this to the GMT in September. Dr. Burke asked how this will work with assessments. Ms. Aseltine-Neilson answered that 2004 CRFS estimates will not be used in a CPUE index in 2005 assessments. It remains to be seen how these data will be used in 2007 assessments. Some of this is covered in Agenda Item B.6.b, Supplemental CDFG Report 2.

B.6.c Reports and Comments of Advisory Bodies

Mr. Rod Moore presented Agenda Item B.6.c, Supplemental GAP Report.

Mr. Moore stated the chafing gear change simply combines existing regulatory language in one paragraph. Otherwise, this recommendation has no substantive change to regulatory language. The GAP recommends amending this language for 2007-2008.

Lt. Cleary provided an oral report for the Enforcement Consultants. The EC worked with the GMT and GAP on gear changes and supports their recommendations. He stated any California recreational management lines deeper than 30 fm need to be defined with latitude and longitude waypoints (which has been done). He recommended minimizing inseason line changes to avoid confusion.

B.6.d Public Comment

Mr. Bob Fletcher, Sportfishing Association of California, San Diego, California

B.6.e Council Action: Initial Consideration of Inseason Adjustments in the 2005 Groundfish Fishery

Ms. Vojkovich thanked the Council for considering California recreational changes at this meeting. The California Fish and Game Commission (CFGC) granted the authority to the CDFG Director to liberalize recreational management measures without CFGC action. The CFGC want to consider the 2004 season and estimated impacts as "the base". Agenda Item B.6.c, Supplemental CDFG Report 2 has the proposed action. Agenda Item B.6.c, Supplemental CDFG Report 1 is a press release of the CDFG Director's decision to liberalize recreational management measures within state waters, with the intent to stay within adopted harvest guidelines. The CDFG is now asking the Council to adopt these changes for federal waters. The Southern Management Area (south of 34°27' N latitude) is the only management area with significant changes recommended for federal waters.

Dr. Burke asked if the Council was just providing guidance to the GMT and GAP now and Chairman Hansen said yes. She said she appreciates the challenge to change the California recreational management system and the good job done by staff. Mr. Brown asked if the Council can adopt final inseason changes now and Dr. McIsaac said yes. Mr. Brown then asked if the GAP and GMT were done discussing inseason items this week and Ms. Ashcraft and Mr. Moore said yes. Dr. Burke asked if the GMT needed to review the revised tables and verify corrections? Ms. Ashcraft said the GMT was confident with the information provided. She added that the total canary rockfish impact for the limited entry trawl sector was projected to be 5.6 mt with a harvest guideline of 8.0 mt. The GMT intends to provide an updated scorecard Friday under Agenda Item B.7. Mr. Brown stated this is a done deal, but the chafing gear issue needs more work. Mr. DeVore said the GAP recommendation was to consider chafing gear regulation changes during the 2007-2008 annual specifications process. Mr. Brown felt it would be helpful if the discussions started now, rather than wait until the September meeting.

The Council deferred final inseason action until Friday under Agenda Item B.7.

B.7 Final Consideration of Inseason Adjustments

B.7.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

B.7.b Report of the GMT

Ms. Susan Ashcraft provided Agenda Item B.7.b, Supplemental GMT Report.

Dr. Freese remarked the inseason management process is improving and thanked the states and the GMT. He added the scorecard is an essential tool and asked if it was available to the public. Mr. DeVore answered yes; it is in the specifications EIS and in versions of various GMT reports.

B.7.c Reports and Comments of Advisory Bodies

Lt. Dave Cleary provided Agenda Item B.7.c, Supplemental EC Report. Mr. Moore presented a verbal statement on behalf of the GAP. The GAP supports the GMT's recommendations.

B.7.d Public Comment

None.

B.7.e Council Action: Make Inseason Adjustments as Appropriate in the 2005 Groundfish Fishery

Mr. Anderson moved and Mr. Alverson seconded a motion (Motion 25) to adopt limited entry trip limits, gear changes, and California recreational changes as recommended in Agenda Item B.7.b, Supplemental GMT Report.

Ms. Vojkovich stated the California recreational changes are expected to be implemented in state waters on April 16 and asked when these changes could be implemented in federal waters. Ms. Cooney replied probably May 1.

Dr. Burke asked if the recommendation to modify chafing gear regulations was part of the motion and Mr. Anderson advised that should be handled with a separate motion.

Ms. Cooney asked if the motion included the GMT recommendation in Agenda Item B.6.b, Supplemental GMT Report 1 to grant NMFS authority to make California recreational changes consistent with state actions outside the Council process and was told yes.

Motion 25 passed.

Dr. Burke moved and Mr. Brown seconded a motion (Motion 26) that the Council consider modifying the existing chafing gear regulations during the 2007-2008 annual management specifications process.

Motion 26 passed.

B.8 Control Date for the Longline Spiny Dogfish Fishery (04/08/05; 11:01 am)

B.8.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

B.8.b Report and Recommendations of Washington Department of Fish and Wildlife

Mr. Anderson said the reasons the Washington Department of Fish and Wildlife (WDFW) was recommending a control date to limit future participation in the longline spiny dogfish fishery were dogfish are subject to overfishing with low reproductive rates and this is an important

fishery off the Washington coast. According to PacFIN, 95+% of all dogfish landings are from the U.S.-Vancouver INPFC area off the Washington coast. WDFW had an EFP to explore canary and yelloweye rockfish bycatch rates in the longline dogfish fishery. Results indicated this was a clean fishery, especially in two discrete areas off the Washington coast where bycatch was minimal. WDFW attempted to regulate this fishery, but there were problems with the lack of a spiny dogfish assessment, their overfished status in Puget Sound and on the East Coast, and their life history, which dictates a cautious management approach. This is a proactive proposal to create a sustainable fishery. WDFW will be recommending a dogfish ABC and OY for the 2007-2008 management period, as well as a new stock assessment during the next cycle. Therefore, WDFW is recommending the Council set a control date to minimize a derby fishery inspired by a desire to accumulate a landings history. WDFW intends to do the work on this with consultation from NMFS and Council staff.

Dr. Burke asked Mr. Anderson to explain the processing and marketing of dogfish in the Washington longline fishery. Mr. Anderson said most of the dogfish catch is sold to and processed by a Bellingham, Washington fish processor. Spiny dogfish markets include fins used in Japan, back straps used in Japan and Europe, and belly flesh used in Europe for fish and chips. Dr. Burke asked what the fishing effort has been in this fishery. Mr. Anderson said there are four longline vessels that consistently target spiny dogfish and several trawl vessels. There has been a relatively small number of vessels historically participating in this fishery.

Dr. Freese asked Mr. Anderson about the bycatch in this fishery. Mr. Anderson said the spiny dogfish EFP results from 2003 and 2004 demonstrated an extremely low bycatch of rockfish species associated with target dogfish efforts off the northern coast of Washington.

Mr. Brown asked how allocation would be done for dogfish-directed fisheries vs. those that incidentally take dogfish. Mr. Anderson urged the Council not to design the program today. Allocations are always difficult. It is probable that there would be an initial allocation for incidental take of dogfish with the remainder allocated to dogfish target fisheries. He did not know if limited entry or an endorsement would be necessary. He makes no prejudgment of the outcome, he is simply requesting a control date. This is an opportunity for us to be proactive to avoid overcapacity in this fishery.

B.8.c Reports and Comments of Advisory Bodies

Ms. Ashcraft provided Agenda Item B.8.c, Supplemental GMT Report.

Mr. Brown noted the Washington proposal, as described in Agenda Item B.8.b, Attachment 1, shows a process and timeline for implementing a potential longline endorsement program for dogfish. He asked how much of the workload would fall on the GMT. What other tasks would this effort displace? Ms. Ashcraft said the work would be done as part of the 2007-2008 decision-making process. The GMT would ultimately need to track catches of this species.

Mr. Brown said setting a dogfish ABC and OY without an assessment entails, by policy, setting an allowable catch that is half of recent year catches. Has the GMT discussed this? Ms. Ashcraft said the GMT did this for recommending an OY for English sole and rex sole. A similar process is anticipated for dogfish.

Mr. Moore provided Agenda Item B.8.c, Supplemental GAP Report.

Mr. Brown asked if the Washington fisheries representatives on the GAP were in support of the WDFW proposal and Mr. Moore stated they were split.

Dr. Burke asked how the GAP concluded setting a control date would lead to increased effort. Mr. Moore responded some GAP members said setting control dates has, in some circumstances, led to increased effort. New entrants to the fishery may emerge on speculation that the control date would subsequently change.

Mr. Alverson asked how the GAP members voted on setting a control date. Mr. Moore said the GAP vote was six for setting a control date and nine against.

Dr. Burke asked how long it would take before the effectiveness of an established control date would erode. Mr. Moore said it depends on challenges. In some cases, such as establishing a limited entry system on the West Coast, the control date was effective despite the lengthy time it took to design and implement the new system. However, a five year period subsequent to setting a control date in Alaska was challenged in court. Mr. Brown thought there was a possibility of structuring the control date language to say, "no landings prior to the control date will keep you out of the fishery." Ms. Cooney said a control date is not a regulation. The strongest language in a notice setting a control date is landings subsequent to the control date will not be considered in the design of a new program limiting entry to the fishery. Dr. McIsaac asked what is a legitimate reason for abandoning or challenging a control date? Ms. Cooney said a control date simply sets up a reasonable expectation of what is to be considered in a future decision. Enacting subsequent regulations needs to be justified legally. How long a period between a control date and implementation of a new regulation is too long is uncertain. There is a need to advance the process after setting a control date to maintain the integrity of that control date.

Dr. Freese asked if the GAP discussed this request in the context of the Trawl Individual Quota project? Mr. Moore said yes, as well as in the context of open access permitting and current limited entry system interactions. There is general concern that a dogfish permit process might only involve limited entry vessels. Other sectors are concerned with their incidental catches of dogfish and dogfish conservation. There is lingering concern about where this process is going despite WDFW explanations that subsequent actions are open.

B.8.d Public Comment

Mr. Brad Balderson, limited entry fisheries vessel, Neah Bay, Washington
Mr. Michael Deach, fisherman, Lopez, Washington

B.8.e Council Action: Consider Establishing Control Date

Mr. Brown stated there is an implication to establishing an OY relative to a limited entry-open access allocation. Groundfish Amendment 6 states for fisheries where the catch is not reaching an ABC or an OY, there is no allocation between limited entry and open access. However, as soon as catch does reach an ABC or an OY, the allocation is established based on catches during the window period. Mr. Anderson said we are caught in a catch-22. When RCAs were

established, the majority of the grounds where dogfish were caught were cut off. Therefore, WDFW developed and implemented an EFP to determine how to continue a dogfish target fishery without creating a rockfish bycatch problem. Based on EFP results, WDFW tried to open two discrete areas within the RCA in a regulatory amendment, but NMFS rejected this idea. Now WDFW is supporting specifying a separate dogfish ABC/OY and a new dogfish stock assessment. NMFS advised WDFW to pursue establishing a control date to keep from expanding effort in this fishery, and now there appears to be reluctance to do that.

Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 27) to establish a control date for the spiny dogfish fishery, as shown in Agenda Item B.8.e, Supplemental WDFW Motion.

Mr. Anderson said he is not trying to design a new program today and there may not be a program ultimately. He is simply trying to keep effort speculation from happening. He can't imagine a process where an allocation to accommodate incidental catches won't happen. The WDFW intends to do most of the work on pursuing a limited entry program for dogfish. Tracking dogfish catches makes sense for this stock regardless of the management system. He said WDFW will persist with a regulatory amendment to put a sustainable dogfish fishery in place and will continue to recommend a dogfish assessment regardless of the Council vote on establishing a control date.

Mr. Brown said he will vote in favor of the motion, but he is concerned with the proposed process and timeline given other workload. Other Council initiatives, such as developing a Trawl Individual Quota program, are more important.

Mr. Alverson said he is in favor of the motion. The Council designs many "cameo fisheries" in the salmon management process. He noted control dates are less of a problem if work proceeds right away. He also noted the control date for Alaska halibut fisheries was upheld in the court challenge mentioned previously. Control dates provide a mechanism to control effort, even when work and implementation are delayed.

Dr. Burke asked Dr. Freese or Dr. Hastie if there was enough data to do a dogfish assessment? Dr. Hastie replied it is their hope to do a dogfish assessment. There is currently a University of Washington student working on this for his dissertation.

Dr. Burke said she would vote against the motion because of the need to look forward and anticipate the consequences of this action. The GAP is concerned that effort will escalate after setting a control date. The potential fishery is a small one and she doesn't want to establish a precedent of managing small fisheries. She is not sure if setting a control date protects fishermen.

Cdr. Fred Myer noted that opening small discrete areas in the RCA is an enforcement headache.

Dr. Freese said he has heard too many pros and cons in this discussion. Setting a control date is simply a signal of an intended action. While the stock may be in a conservation status, he is intrigued with the concept of a small group of fishermen designing a sustainable fishery. He is leaning towards voting for the motion. The enforcement concerns can be addressed later.

Ms. Vojkovich will vote against the motion since she is concerned with controlling this small fishery when there is still a need to limit entry in a 1,400-vessel open access fishery.

Mr. Harp asked if the motion establishes a control date of April 8 for the entire West Coast? Mr. Anderson said yes the control date is for the entire West Coast, but the program may not include the whole West Coast.

Roll call on Motion 27: 9 yes, 4 no. Motion 26 passed.

C. Salmon Management

Mr. Dave Ortmann chaired the salmon management agenda items.

C.1 Identification of Stocks Not Meeting Conservation Objectives (04/05/05; 8:08 am)

C.1.a Agenda Item Overview

Mr. Chuck Tracy presented the agenda item overview.

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

Mr. Dell Simmons presented Agenda Item C.1.b, Supplemental STT Report.

C.1.c Reports and Comments of Advisory Bodies

Mr. Tracy read Agenda Item C.1.c, Supplemental SSC Report.

C.1.d Public Comment

None.

C.1.e Council Action: Identify Any Actions Necessary Under the Council Overfishing Review Procedure

Mr. Harp noted the Queets and Quillayute spring/summer chinook is a far north migrating stock and Council area fisheries have no measurable impact on those stocks.

Mr. Larson asked if a Council recommendation to fish below the Klamath River fall chinook spawning escapement floor, as discussed by the Salmon Advisory Subpanel, would constitute a second year of failing to meet the conservation objective, as related to triggering an overfishing concern. Secondly is there a protocol if the Council decides to recommend fishing below the floor.

Mr. Tracy replied an overfishing concern is triggered by a postseason evaluation. A recommendation to fish below the floor would be a projection, and no further progress toward triggering an overfishing concern would be made until a postseason evaluation confirmed the

conservation objective was not met; if confirmed in this case, it would be the second year of three necessary to trigger an overfishing concern. As the SSC noted, even if the Council recommends meeting the conservation objective, because it is a point estimate, there is a 50/50 chance of not meeting the conservation objective. However, if the stock is projected not to meet its conservation objective, a conservation alert would be triggered. According to the Salmon FMP, a conservation alert requires the Council to close fisheries that impact that stock, unless NMFS implements the regulations by emergency action.

Ms. Cooney followed up stating that fishing below the floor would require an emergency rule by NMFS. Standard procedure for the Council would be to identify such a request in March to allow time for public comment and public input. NMFS needs a strong record of why such an action should be taken. The overfishing prohibition in the FMP would also need to comport with the terms of the Magnuson-Stevens Act, and would make such an action more difficult. The latter issue would require additional investigation.

Mr. Brown stated his belief that if the Council recommended fishing below the floor, it would constitute overfishing as defined in the MSA. However, National Standard 1 Guideline permitted overfishing if it would result in national benefit and would not result in an ESA listing.

Ms. Cooney responded that Mr. Brown was referring to the mixed stock exception, which required certain standards be met, in addition to implementation by emergency rule.

Dr. Dygert noted there are provisions to change the conservation objectives for most stocks by technical amendment to the Salmon FMP, however, the 35,000 natural spawner escapement floor for Klamath fall chinook is an exception; the FMP specifies that objective can only be changed through a full plan amendment. This was discussed at the March Council meeting and given consideration by the Council, but was not included as part of the options package adopted by the Council for public review. At this time, the Council would be revisiting a previous decision if this came up again and doing it on short notice.

Mr. Brown stated he is not proposing anything at this time but just trying to ensure the legal framework is understood if such proposals were to be made.

Mr. Tracy summarized the STT and SSC reports and noted no stocks have triggered an overfishing concern and therefore no action by the Council is necessary at this time on that issue. No proposals have been received by the Council for fishing to occur that would result in a stock failing to meet its conservation objective for 2005, so there is no action necessary to address a conservation alert under this agenda item; however, if such a proposal does come before the Council, the Council will have to respond to the criteria in the FMP and/or the MSA.

C.2. Tentative Adoption of 2005 Ocean Salmon Management Measures for Analysis

C.2.a Agenda Item Overview (04/05/05; 8:29 am)

Mr. Tracy presented the agenda item overview.

C.2.b Update on Estimated Impacts of March 2005 Options

Mr. Simmons reviewed Preseason Report II and noted the final calibration of the Pacific Salmon Commission (PSC) Chinook Model was completed yesterday (April 4, 2005), which resulted in estimated Southeast Alaska (SEAK) Total Allowable Catch (TAC) of 416,400 chinook, up from the 383,500 chinook assumed in March; Northern British Columbia (BC) TAC of 246,558 chinook, up from 243,600 chinook assumed in March; West Coast Vancouver Island (WCVI) TAC of 188,243 chinook, up from 168,800 chinook assumed in March.

C.2.c Summary of Public Hearings

Mr. Cedergreen presented Agenda Item C.2.c, Supplemental Public Hearing Report 1.

Mr. Brown presented Agenda Item C.2.c, Supplemental Public Hearing Report 2.

Mr. Thomas presented Agenda Item C.2.c, Supplemental Public Hearing Report 3.

C.2.d Recommendations of the U.S. Section of the Pacific Salmon Commission

Mr. Jim Harp presented Agenda Item C.2.d, Supplemental PSC Report. He observed that receiving estimated Canadian and Alaskan impacts late in the planning process made domestic fisheries planning difficult, and encouraged the Canadians to be more engaged in the future.

Mr. Melcher agreed with Mr. Harp's comments, and noted that without more timely estimates, Council area fishery options released for public review in March could be very inaccurate.

C.2.e Recommendations of the North of Cape Falcon Forum

Mr. Anderson briefed the Council on the north of Cape Falcon issues. He noted the estimated chinook impacts from Canadian and Alaskan fisheries has complicated and slowed the process of State and Tribal negotiations. No recommendations were available at the time, and Mr. Anderson requested additional time before the Council adopted tentative 2005 management measures for analysis to complete work within the North of Falcon forum relative to chinook. For coho, the process has been completed such that conservation objectives would be met for Thompson River (BC) coho, lower Columbia River hatchery coho and inside fishery needs.

Vice Chair Ortmann recommended proceeding with the agenda as scheduled for south of Cape Falcon issues and returning to north of Cape Falcon issues after they were resolved. Mr. Melcher and Mr. Harp agreed with that approach.

Dr. Dygert was encouraged that Mr. Anderson was hopeful the negotiations would be completed in time. He noted that if a package for inside fisheries was not complete by the conclusion of the Council process, NMFS could disapprove the Council recommended ocean fishery management measures, in which case 2004 regulations would be in effect according to the Salmon FMP, and NMFS would have to take emergency action to ensure ESA consultation standards were met. Another option would be for NMFS to implement the Council recommended ocean fishery

management measures and then allow the inside fisheries to finish negotiation with little flexibility in the ocean seasons.

Mr. Anderson clarified the intent of the co-managers is to have recommendations that will meet coho and Snake River fall chinook objectives this day. Additional work will be necessary to complete negotiations for a recommendation that will meet objectives for three outstanding Puget Sound chinook stocks, but they intend to complete those negotiations by Thursday, April 7, 2005.

Mr. Brown asked Dr. Dygert if the process of disapproving Council recommended ocean salmon management measures involved rejecting the package in its entirety and reverting to 2004 regulations; and to prevent such an occurrence, NMFS would implement an emergency rule. If such was the case, Mr. Brown felt that process was in conflict with the discussion under C.1 indicating a two meeting process was required to implement an emergency rule. Dr. Dygert responded that the discussion with Mr. Anderson was relative to a decision on ESA listed stocks, but that implementation of regulations by emergency rule would be difficult in either case (ESA or the Klamath fall chinook) given there was no earlier consideration or preparation for such a situation.

(This portion of discussion happened on 04/05/05; 10:49 am.)

Mr. Anderson stated the North of Falcon recommendation was similar to that developed by the SAS in agenda item C.2.j, Supplemental SAS Report, with one exception for the non-Indian fisheries; the overall non-Indian TAC should be 86,500 chinook.

Mr. Harp noted agreement on the treaty-Indian chinook and coho TAC and they would be provided at the appropriate time.

Mr. Bruce Jim offered comments on behalf of the four Columbia River treaty tribes, the Yakama, Warm Springs, Umatilla, and Nez Perce. The tribes support achieving conservation objectives for all managed stocks including a Snake River wild fall chinook index of 0.70 for ocean salmon fisheries. They do not support a mark-selective recreational chinook fishery in the Strait of Juan de Fuca because of the risk to the coded-wire-tag (CWT) data base. The tribes were concerned about the Columbia Basin water supply situation for 2005 and the Federal water management programs. They recommended higher flows and additional spill during the juvenile outmigration season.

C.2.f Recommendations of the Klamath Fishery Management (KFMC)

Mr. Curt Melcher reported the KFMC met twice this week. The KFMC received a letter from the Shasta Valley Resource Conservation District requesting no fisheries impact to Klamath River fall Chinook; the KFMC drafted a letter explaining the policies and protocols of fisheries management and that the Council is responsible for ocean fishery management, not the KFMC. The Council will receive a copy of the KFMC response. Mr. Melcher also noted that the Klamath Basin Restoration Act will be sunseting in September 2006 and after that the KFMC anticipates an ad hoc process to perform technical duties. The KFMC passed a motion expressing concern for the Klamath Ocean Harvest Model (KOHM) prediction of age-4 harvest

rates, and endorsing a technical review of the KOHM by NMFS with the assistance of the Klamath River Technical Advisory Team (KRTAT). He noted the focus of the NMFS review was associated with ESA consultation standards for California coastal chinook, but that the KRTAT would also be looking at projected age-3 harvest rates and escapement as they affect tribal/non-tribal sharing. The KFMC also passed a motion recommending a 15% inriver recreational fishery allocation consistent with the CDFG action and a 17% KMZ recreational allocation.

Mr. Harp reported Mr. Melcher was re-elected Chair of the KFMC.

Mr. Larson reported Mr. Harp was re-elected Vice Chair. Mr. Larson recommended the Council also respond to the Shasta Valley Resource Conservation District.

Dr. McIsaac noted that the PFMC also received that same letter in their written public comments and inquired about the NEPA issue brought up in the letter. Ms. Cooney replied that there is current NEPA coverage for the salmon management process.

C.2.g NMFS Recommendations

Dr. Dygert restated the NMFS intent to review the KOHM in regards to the ESA consultation standard for the California coastal chinook ESU and report back to the Council at the June 2005 meeting.

Dr. Freese provided a handout (C.2.g, Supplemental NMFS Report) which outlined disaster relief information associated with the interjurisdictional fisheries act and the MSA. He noted that NMFS will respond to a letter from Mr. Zeke Grader to President Bush requesting declaration of a commercial fishery failure due to a fishery resource disaster. He also noted that the Governors of both Oregon and California were being encouraged to write letters requesting relief assistance.

Mr. Brown observed that the process can be a long one and even if a disaster is declared, obtaining funds requires competition with other U.S. disaster programs.

C.2.h Tribal Recommendations

Mr. Mike Orcutt, Hoopa Valley Tribe, noted Trinity River water has been secured and hydrological concerns are somewhat better this year, and the co-managers were putting effort into improving hydrologic conditions in the Klamath Basin. The Hoopa Valley Tribe supported maintaining the 35,000 natural spawner escapement floor, although the tribal harvest necessary to achieve the floor would be the second lowest on record. The tribe supported review of the KOHM referenced by Mr. Melcher. The tribe supported a comprehensive approach to management including harvest and habitat issues.

Mr. Harp asked if the tribal allocation of less than the identified emergency subsistence needs of 12,000 fish would be a hardship on the tribes. Mr. Orcutt replied it would be a hardship, but that harvesting the 12,000 would exacerbate problems the Council was dealing with.

C.2.i State Recommendations

Mr. Melcher deferred to the SAS for fisheries south of Cape Falcon. Mr. Larson concurred with Mr. Melcher.

Mr. Anderson noted WDFW recommendations were encapsulated in the north of Cape Falcon forum agenda item.

C.2.j Reports and Comments of Advisory Bodies

The SAS presented Agenda Item C.2.j, Supplemental SAS Report. Mr. Stevens noted there were a few changes from the March options in commercial season structure, which were impact neutral, including:

- 1) Page 1 Cape Falcon to Florence South Jetty - three days on- four days off in May to keep the markets supplied;
- 2) Page 2 Florence South Jetty to Humbug Mt. – May 31 was closed in order to provide three days in May north of Florence;
- 3) Page 2 Humbug Mt. to OR/CA border – The landing limit during the September quota fishery was reduced to 30 fish per vessel per day.

Mr. MacLean noted there were several changes from the March options in the California commercial season proposals as a result of public testimony at the hearings in Coos Bay and Fort Bragg. In addition, the proposed Pt. Reyes to Pigeon Point commercial season on page 2 should start June 7 not June 1. He noted that the proposed seasons would not meet the Klamath River fall chinook conservation objective of an escapement floor of 35,000 natural spawners. Mr. MacLean believed a Council recommendation for such a season would require implementation by emergency rule, but that the season was consistent with the mandates of the MSA and with the criteria outlined in the Council Operating Procedures requiring an emergency rule:

- 1) The issue was not anticipated in the Salmon FMP – The age-4 abundance was the result of juvenile mortality associated with low flows in the Klamath River during 2002.
- 2) Waiting for a plan amendment would have adverse biological and ecological impacts – A salmon FMP amendment was not being requested, but a reduction from 23 weeks of fishing time in 2004 to 10 weeks of fishing time in 2005 would represent an ex-vessel revenue loss of over \$9 million at 2004 abundance levels, and significantly more at projected 2005 abundance levels for Central Valley chinook. A die off of over escapement from the Central Valley stocks could have both biological and health concerns.
- 3) Allocation issues – The request was for an escapement of 3,000 fish below the floor level of 35,000 Klamath River fall chinook. The request was developed using standard allocation guidelines such that all KHOM affected fisheries would receive modest harvest opportunity increases. A management line was also proposed for Pt. Reyes to reduce the impacts on Klamath stocks in areas north of the line, although the fishery would be modeled as the full area up to Point Arena, which would provide a buffer for uncertainty in impacts on Klamath stocks. The OR/CA troll impacts would be kept at about 50%/50% sharing, the tribes would be closer to their

minimum subsistence needs, the inriver recreational fishery would receive about a 17% allocation, and the ocean recreational fishery would receive some needed benefit.

4) Management plan objectives – Optimum yield, most benefit to the nation, and guarding against uncertainties are all addressed in the proposal. The proposal would prevent marketing campaigns in Oregon and California from being compromised by market interruptions.

5) Long term yield would not be decreased – The proposal results in a 3% increase in harvest rate to the range of about 10%, which is a technically acceptable level. Allowing an escapement rate of 97% would likely have more negative effects than harvesting an additional 3%.

Dr. Dygert asked which option from those sent out for public review the proposal was based on. Mr. MacLean replied it was a combination from all the options.

Dr. Dygert asked for clarification on the estimate of lost opportunity and the increase associated with the proposal. Mr. MacLean replied in terms of time, eight of the 13 lost weeks would be restored. The area lost by establishing a management line at Point Reyes would be substantial, but would provide additional protection for Klamath stocks.

Mr. Melcher asked if the proposal was an SAS recommendation. Mr. MacLean replied it was the California troll option, but that the SAS had not voted on the proposal. The proposal would include an increase that is the equivalent to the month of June and 17 days in July for Oregon commercial fishery, an additional 10 days in the KMZ recreational fishery, and an estimated 11,000 catch in the inriver tribal fishery

Mr. Melcher asked if compared to the options adopted for public review in March, the proposal represented a shift of commercial seasons from May to the summer time frame in areas south of Point Arena. Mr. MacLean responded the intent of the proposal was to move management lines farther south to avoid Klamath impacts.

Mr. Sorenson stated the Oregon recreational proposal was the same as Option I from those adopted for public review in March.

Mr. Welter stated the KMZ recreational proposal was the same as Option I from those adopted for public review in March. He recommended review of the Klamath fall chinook escapement floor.

Mr. Stone stated the California recreational proposal between Horse Mt. and Point Arena was the same as Option II from those adopted for public review in March; for Point Arena to the U.S./Mexico border it was the same as Option I from those adopted for public review in March.

Mr. Watrous noted the following changes in agenda Item C.2.j for the U.S./Canada border to Cape Falcon recreational fisheries:

- 1) the chinook TAC and catch guidelines would change to reflect the recommendations developed in the North of Falcon forum;
- 2) the recreational coho quota for the Neah Bay area should be 12,667;
- 3) the recreational coho quota for the La Push area should be 3,167;
- 4) the recreational coho quota for the Westport area should be 45,066;

5) the recreational coho quota for the Columbia River area should be 60,900;

Mr. Tracy asked if the five day per week fishery for Neah Bay and La Push was represented in one of the options adopted for public review in March. Mr. Watrous replied March Option III contained that season structure.

Mr. Olson stated the U.S./Canada border to Cape Falcon non-Indian commercial fishery proposals were a combination of the options adopted in March for public review. He noted the following changes on page 1 of Agenda Item C.2.j, supplemental SAS report:

- 1) The chinook TAC and catch guidelines would change to reflect the recommendations developed in the North of Falcon forum;
- 2) For both the May-June and July-September fisheries, the landing restrictions should read: *"All vessels fishing north of Leadbetter Point must land their fish north of Leadbetter Point. All vessels fishing between Leadbetter Point and Cape Falcon must land their fish in the area, except Oregon permitted vessels may also land their fish in Garibaldi, Oregon."*

Mr. Melcher asked if the May season openings were designed to coincide with the central Oregon openings. Mr. Olson confirmed they were.

Mr. Brown asked if the Oregon Klamath Management Zone (KMZ) commercial fishery proposal for a 30 fish per vessel per day would affect modeling of the fisheries for 2005. Mr. Stevens replied the landing restriction is in effect for the September fishery and would not affect 2005 escapement estimates.

C.2.k Summary of Written Public Comment

Mr. Tracy presented Agenda Item C.2.k, Supplemental Summary of Written Public Comment.

C.2.l Public Comment

Mr. Bill Houston, Point Arena Salmon Trollers Association, California
Mr. Wesley King, salmon troller, Brookings, Oregon
Mr. Dave Bitts, PCFFA, Eureka, California
Mr. Bob Crouch, Klamath Coalition Port of Brookings, Brookings, Oregon
Mr. Darby Dickerson, commercial fisherman, Port Angeles, Washington
Mr. Chad Dalberg, commercial salmon fisherman, California
Mr. Steve Fosmark, Moss Landing Commercial Fishermen's Association, Moss Landing, CA
Mr. Allan Lorritz, commercial salmon troller, California
Mr. Gerald Reinholdt, Reinholdt Fisheries, St. Helens, Oregon
Mr. Bob Lake, gillnet fisherman, Grayland, Washington
Mr. Bruce Holmgren, gillnet fisherman, Willapa Bay, Washington
Mr. Andre Rauganow, commercial fisherman, San Francisco, California

Mr. Jeff Christiansen, commercial salmon fisherman
Mr. Lucas Eddey, commercial salmon fisherman, San Francisco, California

C.2.m Council Action: Tentatively Adopt Management Measures for 2005 Ocean Salmon Fisheries

Mr. Larson recommended the Council respond to the letter from the Shasta Valley Resource Conservation District. Mr. Harp supported Mr. Larson's suggestion, the Council concurred.

Mr. Anderson, referencing Agenda Item C.2.j, supplemental SAS Report, moved (Motion 3) for non-Indian fisheries in the area from Cape Falcon north to U.S./Canada border, to adopt as tentative measures for STT analysis the commercial and recreational measures with the following changes:

- 1) The overall non-Indian chinook TAC would be 86,500;
 - 2) Page 1 Table 1 – for both the May-June and July-September commercial fisheries: replace the reporting requirements with the following language from Option I of the March options: *“Under state law, vessels must report their catch on a state fish receiving ticket;*
 - 3) Page 1 Table 1 – include SAS proposed revision to the language that pertains to the May-June and July-September commercial fisheries landing restrictions as follows: *“All vessels fishing north of Leadbetter Point must land their fish north of Leadbetter Point. All vessels fishing between Leadbetter Point and Cape Falcon must land their fish in the area, except Oregon permitted vessels may also land their fish in Garibaldi, Oregon”;*
 - 4) Page 5 Table 2 - Include the corrections to the recreational subarea coho quotas as follows: Neah Bay 12,667, La Push 3,167, Westport 45,066, and Columbia River 60,900.
- Mr. Cedergreen seconded the motion.

Mr. Brown asked if the non-Indian troll TAC would be adjusted according to standard allocation formulas. Mr. Anderson replied yes.

LTCDR Casad expressed concern for the safety of the fleet associated with the proposed shortened seasons, which may result in fishermen sailing during marginal conditions to pursue their limited opportunity.

Mr. Anderson asked if the concern was specific to any one area. LTCDR Casad replied it was a general comment for the development of season structures.

Motion 3 passed.

Mr. Melcher moved (Motion 4) to adopt for STT analysis the commercial troll seasons as described in Agenda Item C.2.j, Supplemental SAS Report for the area between Cape Falcon and the Oregon/California border; and the recreational seasons as described for the area between Cape Falcon and Horse Mt., California. Mr. Warrens seconded the motion.

Mr. Larson asked if the motion included the recreational KMZ fishery as recommended in the California troll proposal, which would result in a projected escapement below floor level for Klamath River fall chinook. Mr. Melcher replied the STT analysis would determine if the proposal would meet the Klamath escapement floor, but the motion referenced the proposal put forth by the SAS, which reflected Option I from the March options and approximated achieving the escapement floor.

Mr. Brown asked if the STT could investigate a flexible season structure to accommodate weather related concerns such as those LTCDR Casad spoke of.

Ms. Cooney requested the halibut hotline number and a citation for the recreational halibut regulations be included in the recreational fisheries language for the central Oregon area where salmon regulations are tied to the all depth halibut fishery. Mr. Melcher responded the necessary language would be addressed.

Motion 4 passed.

Mr. Larson stated his sympathy for the plight ocean salmon fishermen are facing in 2005 as a result of low Klamath River fall chinook abundance, but noted the position of the State of California was not to fish below the escapement floor. The Council's management of the Klamath River fall chinook harvest stands as a model for the Department of the Interior and others with regards to sustainable practices, and he invited them to join in restoring the Klamath River to its potential for salmon production. He requested NMFS comment on the Council's ability to move toward a recommendation to fish below the floor.

Dr. Dygert responded that the issue was a balance between the marginal benefit of increasing harvest versus the consequences and action necessary to enact such a recommendation. Managing below the floor could result in overfishing and would require emergency rule. Such an action would require a consensus or at least a majority of opinion from the Council to proceed, and compelling justification to support the decision. In March the Council vetted the issue and decided not to adopt options for public review that resulted in managing below the floor, however, the issue did come up at the public hearings. Regarding a consensus on the issue, the KFMC did not support managing below the floor. The Hoopa Tribe did not support managing below the floor at the expense of meeting their minimum subsistence needs, and articulated the policy debate upon which their decision was made, including negotiations in the water management arena. Although there were opinions in favor of the proposal by Mr. MacLean, there was no clear statement of support from the SAS. There were arguments that more fishing would provide benefits to fish, particularly Central Valley stocks, which were likely to be over escaped regardless of the level of ocean fishing; however, that was primarily a consequence of wild stock management rather than hatchery stocks. If fishing in 2005 resulted in not meeting the escapement floor, it would be the second year in a row, and put the stock one year away from triggering an overfishing concern. It should be noted the 2004 escapement was a result of predicting a 15% age-4 ocean harvest rate, but achieving a 52% harvest rate. NMFS will be reviewing the KOHM to determine if the cause of the under predicted harvest rates lie in the model itself. Increasing the harvest rate in 2005 would increase the probability of exceeding the NMFS ESA consultation standard for California coastal chinook of no more than a 16% ocean harvest rate on age-4 Klamath Fall chinook. For all of the above reasons, NMFS Northwest and Southwest Regions would not support fishing below the floor in 2005. If the Council was to recommend fishing below the floor, the Regions would be required to notify and consult with NMFS headquarters, which was unaware of the proposal. Therefore the Regions recommended selecting from among the March options as sent out for review in Preseason Report II.

Mr. Brown stated that although a motion had not been made, he supported consideration of a proposal to fish 3,000 fish below the Klamath River fall chinook spawning escapement objective

of 35,000 naturally spawning adults to investigate what the potential benefits are to fishing communities. He noted over escapement can occur to the detriment of the stock, and recalled a management strategy on the Columbia River to increase gillnet fisheries with the intent of increasing the productivity of surviving fish in years of low flows and high water temperatures. He believed that 2005 would be a low flow year for the Klamath River and that 35,000 natural spawners may not be appropriate, and the risk of reducing the escapement by 3,000 fish was minimal.

Mr. Melcher reaffirmed the KFMC did consider several options in March, including options that resulted in escapement below the floor. He was interested in having such options be available for public review. However, there was no motion to support fishing below the floor by the KFMC, and therefore the default position of the KFMC was to maintain the spawning escapement floor as required by the Councils Salmon FMP.

Dr. Dygert responded to Mr. Brown's comments, stating that terminal fisheries would be a more appropriate method to address over escapement of Central Valley stocks than increasing ocean fisheries that impact Klamath stocks. Mr. Brown replied he was in favor of a discussion of terminal fisheries in the Sacramento

Mr. Ticehurst agreed with Mr. Brown's comments and felt the risk of not achieving the spawning escapement floor with a target of 32,000 natural spawners was worth the potential economic benefit to the fisheries.

Mr. Thomas agreed with Mr. Brown's comments and felt the potential economic benefit to California and Oregon fisheries was an overriding factor.

Mr. Larson noted the management doctrine for the Klamath system was based on the Council's Salmon FMP. He felt confident the problems with the Klamath River were not associated with ocean or inriver harvest policies. Regardless of the impacts to fisheries and the problems with flows and disease, 2005 was not a time to move away from the FMP; the Council was not considering *deminimus* fisheries, or faced with a situation like 1992 when the escapement objective could not be met even without fishery impacts. The Council could encourage other interests to help recover the Klamath stocks and restore the fishery; however, if the Council moved away from its mandates, it would contribute to the problems in the Klamath system, which was not in the long-term interest of the Council and the fishermen. Mr. MacLean's proposal provided an understanding of what the short term effects on the fishery would be, but there is no analysis of what the long term impacts would be.

Mr. Ticehurst moved (Motion 5) to consider the impact of lowering the Klamath River fall chinook escapement floor to 32,000 naturally spawning adults. Mr. Thomas seconded the motion.

Mr. Warrens stated fishing 3,000 below the escapement floor was a calculable risk and one he was willing to take when weighed against the cost to the fisheries. The analysis should be presented so the Council could make a final decision later in the week. He supported the motion so the risks and benefits could be evaluated.

Mr. Larson pointed out the SAS proposal had been analyzed with the KOHM, which met the objectives Mr. MacLean presented. The SAS and STT should craft a season to meet the 35,000 escapement floor.

Dr. McIsaac reminded the Council its decision was for a tentative adoption of management options, with additional opportunity on Wednesday and Thursday to develop final recommendations. There was also time available Friday if necessary for clarification.

Mr. Warrens asked for clarification on the motion; was it to model Mr. MacLean's proposal? Mr. Ticehurst responded yes.

Motion 5 failed seven to seven.

Mr. Larson moved (Motion 6) to instruct the SAS to work with March Options I and II for California commercial and recreational fisheries in combination with the rest of Agenda Item 2.C.j, Supplemental SAS Report, to develop a set of management measures that would meet the Klamath River fall chinook conservation objectives. Mr. Ticehurst seconded the motion.

Motion 6 passed.

Mr. Harp presented Agenda Item C.2.h, Supplemental Tribal Comments. He moved (Motion 7) to adopt for tentative STT analysis the Treaty Indian measures as presented. Mr. Anderson seconded the motion.

Motion 7 passed.

C.3 Methodology Review Process and Preliminary Topic Selection for 2005

C.3.a Agenda Item Overview (04/06/05; 8:10 am)

Mr. Tracy presented the agenda item overview.

C.3.b Report of the Scientific and Statistical Committee (SSC)

Dr. Bob Conrad presented Agenda Item C.3.b, Supplemental SSC Report.

Mr. Melcher noted the Klamath River Technical Advisory Team would be reviewing the KOHM and the Klamath River fall chinook escapement goal this summer and asked if that timing would fit into the SSC salmon methodology review schedule. Mr. Conrad responded yes.

C.3.c Recommendations of the States, Tribes, and Federal Agencies

Mr. Melcher stated ODFW agreed with the SSC priorities, and noted ODFW expects to have the technical appendix to the OCS workgroup matrix sufficiently complete for review. He requested the issues identified by the KFMC also be considered.

Mr. Larson stated CDFG agreed with the SSC priorities and Mr. Melcher's request that the issues identified by the KFMC be included.

Mr. Harp concurred with the list of SSC priorities.

Mr. Dygert noted NMFS is in the process of reviewing the KOHM and should have a report at the June meeting.

Mr. Roth, USFWS, agreed with the SSC priorities.

C.3.d Reports and Comments of Advisory Bodies

Mr. Dell Simmons presented Agenda Item C.3.d, Supplemental STT Report, and noted the items were not listed in priority order.

Mr. Brown asked if the STT could look at the Klamath escapement objective and stock/recruitment function. Mr. Simmons replied it would probably be more appropriate for the KRTAT.

Mr. Harp asked how much progress was made on the Fishery Regulation Assessment Model (FRAM). Mr. Simmons replied the Model Evaluation Workgroup (MEW) completed an overview document and was making progress on the detailed documentation and users manual until the preseason process took priority this winter. Work would resume May 1, 2005.

Mr. Harp asked if the FRAM calibration/validation issue would include modeling size limit changes for the West Coast Vancouver Island fishery and the Canadian genetic sampling. Mr. Simmons replied the size limits were currently incorporated in the FRAM, and that the new calibration would attempt to incorporate the recent changes in Canadian fishery timing and locations. Combining the genetic and CWT data would be explored during the recalibration process.

Mr. Larson asked if the review of the Klamath River fall chinook spawner escapement floor of 35,000 naturally spawning adults was appropriate under the salmon methodology review process or if it was appropriate as a biological review that NMFS should undertake. Mr. Simmons responded the goal assessment is normally initiated by the local management agencies, and the STT or SSC would review the assessment.

Mr. Brown noted the review of the Klamath River fall chinook conservation objective should be based on the need to accurately reflect biology of the stock, not on the politics associated with water management in the Klamath Basin.

Dr. Dygert stated NMFS' support for review of the conservation objective, which was basically a stock/recruitment analysis. Some technical body should conduct the analysis and the STT and SSC could review the analysis.

Dr. McIsaac asked if the process would need to be completed by November 2005 in order for any changes to be implemented for 2006 fisheries. Mr. Tracy responded the Salmon FMP

required a plan amendment to change the 35,000 escapement floor, unlike other conservation objectives, which can be changed through a technical review and the salmon methodology review process. The plan amendment process requires a three meeting process and so the earliest it could be implemented without emergency rule would be 2007.

Mr. Harp suggested the Council may want to consider involving other parties, both internal and external to the Council advisory bodies, to conduct the review because the Klamath Act is scheduled to sunset in September 2006, and if the KRTAT has not completed the review by that time, the process would be set back substantially.

C.3.e Public Comment

Mr. Dave Bitts, PCFFA, Eureka, California

Mr. Joel Kawahara, salmon troller, Quilcene, Washington

C.3.f Council Guidance on Potential Methodologies to be Reviewed in 2005

Mr. Brown agreed with Mr. Harp's comments regarding the Klamath Act. He suggested the Council start planning on developing a process to replace the technical functions of the KRTAT if the Klamath Act sunsets.

Mr. Ortmann concurred with the SSC list of methodology review topics and received concurrence from the rest of the Council, then requested the Council address the issue of the Klamath River spawner escapement floor.

Mr. Melcher identified two potential assignments regarding the Klamath escapement floor; one was review of the most current stock/recruitment information, and the second a clarification of the technical basis for the 35,000 spawner escapement floor. He asked Ms. Cooney if a more appropriate goal was identified after reviewing the stock/recruitment information, would there be sufficient justification for an emergency rule pending completion of a plan amendment. Ms. Cooney could not say if the agency would or would not do an emergency rule, but stated a broader analysis and movement toward a plan amendment would make an emergency rule easier to implement.

Mr. Brown noted a review of the escapement objective would be the only way to know if the stock was being managed at an optimal level and the politics of water management in the Klamath Basin should not dictate the decision to undertake a review.

Mr. Hansen asked if the Council would consider sending a letter requesting continued funding of the Klamath Act, which would support the technical functions of the KFMC. Mr. Larson supported Mr. Hansen's suggestion.

Dr. Dygert noted the North of Falcon forum performed a similar function as the KFMC and was funded by the individual states and tribes.

Mr. Harp noted the KFMC was funded by the U.S. Department of Interior at about \$50,000 a year, so it is not a costly forum. He noted the North of Falcon process was keyed on two things: a network of people working together cooperatively and good leadership.

Mr. Roth noted the small amount of funding the KFMC receives was for the facilitation provided by the USFWS, and the technical bodies are not funded.

Mr. Melcher stated the entire Klamath Act budget was actually over \$1 million annually, with only a small portion going to the KFMC. The remainder funded inriver restoration and monitoring, including fisheries monitoring.

Dr. McIsaac recommended the Council consider a separate agenda item to address the Klamath Act issue, recognizing the Council is prohibited from lobbying for particular legislation. He also encouraged the Council to provide guidance on assignments relative to the review of the Klamath River conservation objective.

Mr. Larson recommended the SSC and STT review the 35,000 escapement floor issue and make a recommendation on pursuing a change in the floor.

Mr. Brown recommended Mr. Harp and Mr. Melcher report to the Council a summary of Klamath Act activities, including what would be lost if funding was not available.

Mr. Tracy asked Mr. Larson for clarification whether he proposed to have the SSC and STT review an analysis of the spawning escapement floor or to recommend an appropriate objective. Mr. Larson replied it was to review the basis for the floor, and recommend either a new analysis or to retain the existing analysis based on the supporting documentation.

Dr. McIsaac suggested the STT report back to the Council on the technical basis for the existing spawner escapement floor, and if there were sufficient documentation for a methodology review.

Mr. Tweit asked if the escapement floor was separate from the SSC's issues, and asked the STT chair what could be accomplished by the June Council meeting. Mr. Simmons replied the STT could provide a report on the technical basis of the spawning escapement floor.

Dr. McIsaac noted three components to his suggestion: first, an STT statement on the technical basis for the 35,000 spawner escapement floor; second, an answer to whether there is sufficient information to conduct a spawner/recruit analysis; and third, a report on whether the KRTAT has been assigned to review the escapement floor. This would be a status report, not an analysis of available information. Mr. Simmons responded the STT could accomplish those tasks by the June Council meeting.

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

This agenda item was postponed until a later date.

C.5 Clarify Council Direction on 2005 Management Measures (If Necessary)

C.5.a Agenda Item Overview (04/06/05; 3:38 pm)

Mr. Tracy presented the agenda item overview.

C.5.b Reports and Comments of Advisory Bodies

Mr. Simmons presented Agenda Item C.5.b, Supplemental STT Report. He noted fisheries south of Cape Falcon were structured in coordination with the SAS as per Council direction. He indicated Table 5 on page 11 now includes Puget Sound chinook impacts and noted Mid-Hood Canal summer fall chinook did not currently meet the NMFS ESA consultation standard, and that the KFMC recommended a 17% KMZ sport fishery share of Klamath fall chinook impacts.

Dr. McIsaac asked if STT analyzed the effect of a 24 inch chinook minimum size limit in recreational fisheries north of Cape Falcon on attaining the chinook quota prior to the coho quota. Mr. Simmons responded the chinook guidelines are matched to the coho quotas, but no probability analysis was conducted.

Mr. Larson noted there was Council guidance to approximate a 50%/50% sharing between California and Oregon of KMZ troll impacts in 2005. He noted his concern for restricting landing locations, and requested clarification on the Oregon position from Mr. Melcher, and the technical merits of such restrictions from the STT. Mr. Melcher responded California fisheries were closed during the early portion of the season while Oregon fisheries were open. Oregon wanted to ensure all catch was sampled, and also to minimize effort shift during a very restrictive season. The performance of the KOHM in 2004 regarding contact rates and effort prediction, and those effects on estimating Klamath age-4 harvest rates were of particular concern in developing the landing restriction policy. Mr. Simmons responded there was potential for effort shifts to result in greater model prediction errors during years of extensive closures such as those anticipated for 2005.

LT Cleary presented Agenda Item C.5.b, Supplemental EC Report.

C.5.c Council Guidance and Direction on Clarification of 2005 Management Measures

Mr. Tweit, referring to Agenda Item C.5.b, Supplemental STT Report, requested the STT:

- 1) add language on page 1 to both the May-June and July-September non-Indian commercial fisheries specifying vessels fishing north of Leadbetter Point must land their fish *within the area and* north of Leadbetter Point; and
- 2) on page 5 for the La Push area recreational fishery, indicate the September 24 through October 9 fishery would be seven days per week, and that an inseason call may occur to allow retention of all coho beginning no earlier than September 24, and include a reference on Page 8, section C.5 noting that possibility.

Mr. Melcher referring to Agenda Item C.5.b, Supplemental STT Report, recommended the Humbug Mt. to OR/CA border commercial fishery September 1-30 dates be changed to September 3-6, 9-12, and 15-30, and the landing limit be changed to 45 fish per day per vessel. He noted some additional language regarding state requirements for call in will be incorporated in the final regulation package as it becomes available.

C.6 Final Action on 2005 Salmon Management Measures

C.6.a Agenda Item Overview (04/07/05; 5:01 pm)

Mr. Tracy presented the agenda item overview.

C.6.b STT Analysis of Impacts

Mr. Simmons provided Agenda Item C.6.b, Supplemental STT Report. He noted that all conservation objectives were met, and that the Individual Stock Based Management (ISBM) indices were included in Table 5 as required by the Pacific Salmon Commission. If an ISBM stock was projected to meet its escapement goal, the ISMB index did not apply, otherwise, the U.S. was required to reduce impacts to meet the ISBM index.

C.6.c Comments of the KFMC

None.

C.6.d Recommendations of the States, Tribes, and Federal Agencies

Mr. Melcher, referring to Agenda Item C.6.b, Supplemental STT report, recommended on page 2, Humbug Mt. to OR/CA border commercial fishery, to change the September dates to September 3 through September 30.

Mr. Larson, referring to Agenda Item C.6.b, Supplemental STT report, recommended on page 2, Humbug Mt. to OR/CA border commercial fishery, to change the September dates to September 3 through September 30; and for the Pt. Reyes to Pt. San Pedro commercial fishery, to change the minimum size limit from 27 inches total length to 26 inches total length.

Mr. Stuart Ellis and Mr. Raphaell Bill presented Agenda Item C.6.d, Supplemental Columbia River Tribal Report.

Mr. Harp presented Agenda Item C.6.d, Supplemental Tribal Report.

C.6.e Reports and Comments of Advisory Bodies

None.

C.6.f Public Comment

Mr. Jim Martin, Recreational Fishing Alliance, Fort Bragg, California

C.6.g Council Action: Adopt Final 2005 Salmon Management Measures

Motions 17, 18, and 19 were made utilizing the document as contained in Agenda Item C.6.b, Supplemental STT Report, April 7, 2005, Salmon Technical Team Analysis of Tentative 2005 Ocean Salmon Fishery Management Measures.

Mr. Anderson moved (Motion 17) the Council adopt the salmon management measures for the non-Indian commercial troll and recreational fisheries as shown for the area between the U.S./Canada border and Cape Falcon, Oregon with one change on page 8: under item C.5.d, change “in the area from the Cape Alava to Queets River...” to read “in the area north of Cape Falcon...”. Mr. Cedergreen seconded the motion.

Motion 17 passed

Mr. Melcher moved (Motion 18) the Council adopt the salmon management measures for non-Indian commercial troll fishery for the area between Cape Falcon to the OR/CA border, and the recreational fishery for the area between Cape Falcon and Horse Mt., California as shown with one change: for the Oregon KMZ commercial fishery strike “September 3-6; 9-12, 15-30” and replace it with “September 3-30”. Mr. Brown seconded the motion.

Motion 18 passed.

Mr. Larson moved (Motion 19) the Council adopt the salmon management measures for the non-Indian commercial troll fishery between the OR/CA border and the U.S./Mexico border and the recreational fishery between Horse Mt. and the U.S. Mexico border as shown with two changes: in the California KMZ commercial fishery change September 1-30 to September 3-30, and in the Pt. Reyes to Pt. San Pedro commercial fishery change the minimum chinook size limit from 27 inches total length to 26 inches total length. Mr. Thomas seconded the motion.

Motion 19 passed.

Mr. Harp moved (Motion 20) the Council adopt treaty Indian ocean troll salmon fishery management measures as shown in Agenda Item C.6.g, Supplemental Tribal Motion, with the following edit: in the last line, change “April 6, 2005 – Agenda Item C.5.b” to “April 7, 2005 – Agenda Item C.6.b”; and on page 9 of Agenda Item C.6.b, Supplemental STT Report, delete footnote 2. Mr. Anderson seconded the motion.

Motion 20 passed.

D. Pacific Halibut Management

D.1. Adopt Final 2005 Incidental Catch Regulations for the Salmon Troll and Fixed Gear Sablefish Fisheries

D.1.a Agenda Item Overview

Mr. Tracy presented the agenda item overview. He noted on page two for the commercial sablefish fishery the third line under Option 1 should read 100 pounds rather than 150 pounds, and under Option 2, the third line should read 125 pounds rather than 100 pounds.

D.1.b Recommendations of the States, Tribes, and Federal Agencies

Mr. Anderson supported Option 1a and Option 2 for Pacific halibut incidental landing restrictions in the salmon troll fishery, which represents status quo. For the sablefish fishery, he recommended Option 1, also status quo.

Dr. Burke and Mr. Larson also supported status quo for the salmon troll regulations.

Mr. Harp presented Agenda Item D.1.b, Supplemental Tribal Comments.

D.1.c Reports and Comments of Advisory Bodies

Mr. Tracy presented Agenda Item D.1.c, Supplemental GAP Report.

Mr. Stevens, reported the SAS supported status quo for the salmon troll fishery.

D.1.d Public Comment

Mr. Darby Dickerson, fisherman, Port Angeles, Washington
Mr. Joel Kawahara, salmon troller, Quilcene, Washington

D.1.e Council Action: Adopt Final Annual Incidental Halibut Harvest Restrictions

Mr. Alverson, referencing Agenda Item D.1., Situation Summary, April 2005, moved (Motion 8) the Council adopt the incidental landing restrictions for the salmon troll fishery in Options 1a and 2, or status quo; and for the commercial sablefish fishery the landing restrictions in Option 1, corrected as noted above. Mr. Cedergreen seconded the motion.

Motion 8 passed.

E. Habitat

E.1 Current Habitat Issues

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

Mr. Ellis provided Agenda Item E.1.a. Supplemental HC Report and Agenda Item E.1, Revised Supplemental Attachment 1 (revised Klamath flows letter).

E.1.b Reports and Comments of Advisory Bodies

None.

E.1.c Public Comment

Mr. Joel Kawahara, salmon troller, Quilcene, Washington

E.1.d Council Action: Consider HC Recommendations

Mr. Larson moved and Mr. Ticehurst seconded a motion (Motion 9) to adopt the letter (Agenda Item E.1, Revised Supplemental Attachment 1) regarding low 2005 Klamath River flows impacts on salmon EFH and instruct Council staff to initiate the process for sending a letter to the Army Corps of Engineers and other federal managers regarding Columbia River water flow needed for salmon under the current drought conditions (Agenda Item E.1.a, Supplemental Attachment 2). Motion 9 passed. Dr. Freese abstained.

Mr. Brown noted that the Klamath Act will expire if not reauthorized and that water users want reauthorization blocked but are willing to entertain discussions about its reauthorization. He commented that if reauthorization is viewed as important, these discussions should be started and offered to assist in the effort. This also involves the lower river tribes and other users.

F. Coastal Pelagic Species Management

F.1 NMFS Report

F.1.a Regulatory Activities (04/07/05; 8:09 am)

Mr. Mark Helvey provided Agenda Item F.1.a, NMFS Report 1. Mr. Helvey stated that Pacific mackerel landings are tracking well below the harvest guideline and therefore, NMFS is taking automatic action to release the portion set aside for incidental landings as it appears the directed fishery will not be restricted this season.

The 2005 sardine harvest guideline has been set at 136,179 mt. The final rule implementing the harvest guideline has been delayed for a Section 7 consultation under the Endangered Species Act, a process which is nearly complete.

Mr. Helvey also touched on progress towards krill management. He reviewed the species to be included in the program and stated that these plans were consistent with the goals of the National Marine Sanctuary Program. He also reviewed Agenda Item F.1.a, Supplemental NMFS Report and noted the contractors have added to the draft outline to include a new section to provide for how krill could be managed. He also noted NMFS has included a schedule for developing a krill regulatory amendment (Agenda Item F.1.a, NMFS Report 2, last page). NMFS is more looking at Option 2. The contractors are also planning to convene a panel of experts on krill to develop a method for assessing the biomass of krill.

Mr. Helvey reviewed the SWR pilot observer program for California purse seine vessels. As of March 31, NMFS has placed observers on 53 trips. A detailed report on bycatch interactions will be provided to the Council at their November meeting.

Mr. Helvey also reported that California Sea Grant is implementing a pilot program to profile commercial fisheries in four southern California harbors. The projects will identify factors that affect current fisheries and assess infrastructure needs and for the various commercial fisheries.

F.1.b Science Center Activities

Dr. Roger Hewitt provided a PowerPoint presentation.

Ms. Vojkovich asked how these data will be used in the next round of sardine assessment. Dr. Hewitt stated that the time series in this dataset is not long enough for that type of application. This work is focused on a preliminary estimate of what portion of the biomass is currently residing in the Pacific Northwest. Dr. Hewitt stated that is the intent of NMFS to expand the egg survey to the north to better understand coastwide spawning to support stock assessment methods.

F.1.c Reports and Comments of Advisory Bodies

Ms. Heather Munro Mann and Mr. John Royal provided Agenda Item F.1.c, Supplemental CPSAS Report. Mr. Royal recognized the hard work of Dr. Sam Herrick.

F.1.d Public Comment

None.

F.1.e Council Discussion on NMFS Report

Ms. Vojkovich asked NMFS about the mechanism for creating a third category within the CPS FMP. Ms. Cooney said she did not know enough about this specific proposal or fishery to be certain, but the FMP already has the concepts of actively managed or monitored species. Ms. Vojkovich asked if a new category within the CPS would be subject to the existing MSA requirements. Ms. Cooney said the basic MSA requirements will apply and that additional legal interpretation would be necessary.

Ms. Vojkovich, on the krill regulatory amendment schedule, noted Mr. Helvey mentioned Option 2 as the most realistic and asked where we are in the process. Mr. Helvey said we are somewhat on schedule on Step 3. He said the NMFS proposal to go with Option 2 would provide a report to the Council at their September meeting. She said she did not hear the CPSMT comment on the outline and the CPSAS did not have time to review the outline and she asked when those two advisory bodies would be able to provide input. Mr. Helvey said he is working with Council staff to facilitate their input.

Dr. McIsaac said the Council expressed workload impacts to the CPSMT with the understanding that the heavy lifting is done by NMFS and the CPSMT would be more in a review mode of the

documents. Mr. Helvey said the CPSMT encouraged moving forward on this issue and expressed interest in being involved through Mr. Dale Sweetnam. In terms of additional work put on the team, that was not raised as an issue.

Dr. McIsaac focused the discussion on the schedule for the krill regulatory amendment and noted that the Council will need to consider the krill schedule along with the other Council priorities under administrative matters later in the week.

Mr. Anderson asked if there was thought about how much time would be used in taking up that fourth council action item under the proposed schedule. Dr. McIsaac said that on the 3 meeting outlook we did have this plugged in for June 2005, but that schedule did not account for time for the contractor to prepare or the CPSMT to review. We do expect about 1.5 hours of Council meeting time when that step comes before the Council.

F.2 Fishery Management Plan (FMP) Amendment 11--Sardine Allocation

F.2.a Agenda Item Overview (04/07/05)

Mr. Mike Burner provided the agenda item overview.

F.2.b NMFS Report

Dr. Sam Herrick provided a powerpoint presentation.

F.2.c Reports and Comments of Advisory Bodies

Mr. Bob Conrad provided Agenda Item F.2.c, Supplemental SSC Report. Dr. Herrick provided Agenda Item F.2.c, Supplemental CPSMT Report. Ms. Heather Munro Mann and Mr. John Royal provided Agenda Item F.2.c, Supplemental CPSAS Report.

F.2.d Public Comment

Mr. Ryan Kapp, sardine fisherman, Bellingham, Washington.
Mr. Pete Gugliamo, Southern California Seafoods
Mr. Dayna Ferguson, Westbay Marketing, California
Mr. Mike Okoniewski, Pacific Seafoods, Woodland, Washington
Mr. Vince Torre, Tri-Marine Fish Company, San Pedro, California
Mr. Neil Gugliamo, sardine fisherman, California.
Mr. Sam , CPS fisherman, Monterrey, California
Mr. Jerry Thom, Astoria Holdings, Astoria, Oregon
Ms. Diane Pleschner-Steele, California Wetfish Producers Association, Buellton, CA
Ms. Heather Munro Mann, Munro Consulting, Newport, Oregon

F.2.e Council Action: Adopt a Range of Sardine Allocation Alternatives for Public Review

Dr. Burke moved (Motion 12) to adopt the alternatives listed in Agenda Item F.2.b, Supplemental NMFS Report, excluding alternatives 2 and 5; proceed with a sensitivity analysis and growth assumptions of at least 0, 5, and 10 percent for all sectors; and include the recommendations in the last paragraph of the SSC Report. Mr. Brown seconded the motion.

Mr. Harp asked about the schedule between now and June. Mr. Burner said the CPSMT will meet in late May to complete the analysis and the CPSMT at the June Council meeting to review the results of the analysis. Mr. Harp encouraged the CPS advisory bodies to consider the implications of projected salmon bycatch. Mr. Burner stated considerable work on this issue is anticipated between now and the June meeting.

Dr. Burke asked if the CPS advisory bodies would have the flexibility to add to the range of alternatives adopted today. Ms. Cooney said it would work if that is what the Council wants and the analyses can be completed by June.

Mr. Anderson said the coastal tribes could enter the sardine fishery and currently, the alternatives in front of us don't speak to that issue. He asked if the treaty fishery needs to be addressed in the options prior to June. Ms. Cooney said it would be good to consider how that would be dealt with and the basis is that the tribes have treaty rights in their U&A area. She said the CPS FMP has a process where the tribes are required to bring in a recommendation 120 days before the season starts. It is difficult to predict the size and the implications of any proposed tribal fishery. Mr. Anderson clarified that a tribal fishery would not have to be accommodated under these alternatives prior to negotiations with the tribes.

Mr. Harp said when the first allocation of sardine came up between north and south, he recalled the CPS FMP was updated with a placeholder for a tribal fishery. Mr. Anderson said it just occurred to him in the last few minutes and apologized for not discussing it earlier. Mr. Anderson suggested the negotiations could start with an approach similar to what we take in whiting and sablefish and is hesitant to add it as part of the motion because he has not heard of the certainty and their intention and we could use the 120 day plan mechanism. Mr. Harp agreed with that idea and said he and Mr. Anderson could meet with the tribes and report back at the June meeting.

Mr. Alverson stated support for dropping two alternatives because Alternative 2 would generate too much competition and Alternative 5 would probably not release a critical amount of fish for the fishery to operate in a reasonable fashion.

Mr. Burner reaffirmed the motion includes the corrections noted in the errata sheet. Dr. Burke confirmed this to be.

Dr. Burke clarified that intent of the Council is that the CPS advisory bodies work with this range to develop alternatives that best address the goals.

Motion 12 passed.

Mr. Brown said the CPSAS made a recommendation to incorporate a review of the allocation scheme at some time in the future. Dr. Herrick said that personally he likes the idea of

shortening the timeline on this matter due to uncertainty around the landings, growth, market conditions and other uncertainties. He recommends moving forward with creating a long-term allocation regime without locking ourselves into one of these alternatives for many years. He would like to see us take a look at what is happening at least within 3 years. He also said that a market-based allocation scenario where fish are traded and utilized where they are most needed and most valued is worthy of future consideration.

Mr. Brown moved to add provisions for review of the allocation scheme in 3, 5, or 7 years for final consideration in June (Motion 13). Mr. Warrens seconded the motion.

Mr. Brown said if the Council took no action to change the allocation following such a review, the allocation would remain in place (no sunset). Mr. Burner said the CPSMT could add this provision to the draft EA by June for public review.

Ms. Vojkovich added that the Council may want the CPSMT to discuss the allocation alternatives under dramatically different harvest guidelines and suggested that as a mechanism to trigger a review and potential change to the allocation formula.

Mr. Brown said that is an entirely different discussion from his motion and suggested addressing it under a separate motion.

Mr. Anderson felt 7 years is just too long under any circumstances given Dr. Herrick's comments, and recommended the motion be changed to only include a 3 and a 5 year review period. Mr. Brown said the intent of the motion is to provide a variety of review times and gives the Council flexibility.

Motion 13 passed.

Ms. Vojkovich moved to include a trigger based on a harvest guideline of 75,000 to 100,000 mt as a trigger for review of allocation (Motion 14). Mr. Thomas seconded the motion.

Dr. Burke asked Ms. Vojkovich if she thought that 100,000 mt was a "bankruptcy" trigger, why go down to 75,000 mt. Ms. Vojkovich said the range was intended to only trigger a review under very low harvest guideline scenarios.

Mr. Anderson said he understood that if it falls either below 100,000 mt or 75,000 mt, each triggers a review. Ms. Vojkovich confirmed this is correct.

Motion 14 passed.

G. Marine Protected Areas

G.1 Channel Islands National Marine Sanctuary (NMS)

G.1.a Agenda Item Overview (04/07/05; 1:03 pm)

Mr. Burner provided the agenda item overview.

G.1.b Report of the Sanctuary Staff

Mr. Sean Hastings and Mr. Chris Mobley.

G.1.c Reports and Comments of Advisory Bodies

Lt. Dave Cleary provided Agenda Item G.1.c, Supplemental EC Report. Mr. Don Stevens presented Agenda Item G.1.c, Supplemental SAS Report. Mr. Mike Burner read Agenda Item G.1.c, Supplemental CPSAS Report. Mr. Stuart Ellis provided Agenda Item G.1.c, Supplemental HC Report.

G.1.d Public Comment

Mr. Bob Crouch, Klamath Coalition Port of Brookings, Brookings, Oregon
Mr. Bob Fletcher, Sportfishing Association of California, San Diego, California
Ms. Kathy Fosmark, Alliance for Community for Sustainable Fisheries, Pebble Beach, California
Mr. Joel Kawahara, salmon troller, Quilcene, Washington
Mr. Jim Martin, Recreational Fishing Alliance, Ft. Bragg, California

G.1.e Council Action: Final Recommendations on the Designation Document Consultation Letter for Cordell Bank, Gulf of Farallones, and Monterey Bay NMS

Mr. Larson moved (Motion 15) to adopt Agenda Item G.1.e, Supplemental CDFG Motion, April 2005. Mr. Thomas seconded the motion.

Mr. Larson referenced the letter under Agenda Item G.1.c, Supplemental CDFG Report.

Mr. Anderson asked what entity has the authority to make a designation of a marine area, marine reserve, or marine park in federal waters. Ms. Cooney said the Sanctuary program could achieve this if their designation document allows and the Council has authority under its FMPs. Mr. Anderson asked if the Council has the authority to designate an area closed to all fishing. Ms. Cooney said it could if it had the record to do so, including a rationale for tying it to an FMP.

Mr. Larson clarified, at Mr. Warren's request, that the state of California would only be supportive of Designation Document changes if they are necessary to achieve the marine protected areas discussed under this proposal, not any future actions.

Ms. Cooney stated that California is recommending that the NMSP go forward with analyses of Council and state authority to determine if the goals and objectives of the CINMS could be achieved through existing authority in a timely manner. If it is determined that this cannot be achieved, California is stating a willingness to then consider Designation Document changes limited to this action only.

Mr. Warrens is concerned with any language in a Council motion that pertains to Sanctuary authority over fishing regulations, particularly after considering the public testimony on this matter.

Dr. McIsaac clarified that the NMSP is working on the question of whether the combination of MSA and state authority can fulfill the goals of the NMSP and dependent on those results, California recommends considering changes to the Designation Document. If the analysis concludes that the goals of the CINMS can be reached through MSA and state authority, California would recommend no changes to the Designation Document. Mr. Larson concurred.

Mr. Brown moved to amend the motion (Amendment #1 to Motion 15) to keep the first sentence of the written motion, and remove the rest of the motion. Mr. Warrens seconded the amendment to Motion 15.

Mr. Helvey said the NMSP is asking for recommendations from the Council and that simply recommending no changes to the Designation Document is not enough and he recommends a furtherance of Mr. Larson's letter that includes specifics of how this can be achieved under the MSA.

Mr. Alverson asked why California hasn't simply asked for these actions under Council authority. There is a large sanctuary in Washington, and this seems to be a reasonable approach.

Mr. Larson explained California has been involved in a long partnership with the federal government to achieve marine protected areas and wants to explore all options, including the mechanism suggested by Mr. Alverson under the authority of the MSA. Dr. McIsaac added that the Council did consider taking on this task under its authority and chose to let the CINMS take the lead on the matter.

Mr. Larson understands the ideas behind Mr. Brown's amendment but does not agree with it because it eliminates an important option for achieving marine protected areas. He urged Council to reject the motion because the analysis is incomplete and the Council should not close the door on any options until the facts are known.

Mr. Ticehurst and Mr. Warrens agreed with Mr. Brown's proposal. Mr. Warrens does not want this Council to lose authority as the Council process is the best forum for addressing these matters.

Mr. Larson said if we approve the amendment, we will be sending something to the sanctuaries that says not to work with the Sanctuary to answer the questions regarding MSA authority and Sanctuary goals. The Sanctuary could move forward to promulgate their own regulations.

Mr. Anderson said he felt the overlap of the MSA and NMSA act was done on purpose to ensure adequate protection and public input. This coordination between the Council and the Sanctuary is a necessary and intentional mechanism. He thinks the amendment to the motion sends a message that he cannot support. If we are going to be successful in these endeavors, the Council needs to consider all proposals and it is premature to close opportunities. We have to keep this

partnership if we are going to be successful. A statement that we don't support the Designation Document as written is going to send the wrong message of coordinating the two processes.

Mr. Brown understands Mr. Anderson's statement, but the original motion states to change the Designation Document, a situation that does not appear to be a partnership. He said there was no reason to include fisheries management in the original Designation Document because the promise was they were never going to regulate fisheries.

Amendment #1 to Motion 15: roll call vote. Mr. Mark Helvey abstained. Amendment #1 to motion 15 failed: 8 No, 4 Yes.

Mr. Brown moved an amendment that deletes the final sentence of the motion (Amendment #2 to Motion 15). Mr. Warrens seconded the amendment. Mr. Brown said that last sentence gives the signal that the process of implementing marine protected areas under the MSA would fail.

Mr. Larson said there is an ongoing NEPA process right now by the NMSP. The state of California has a commitment to see this process through in a timely fashion that may not be found feasible through the existing authorities. The last sentence doesn't say we would do it, it says we would "consider" it, if necessary.

Amendment #2 to Motion 15: roll call vote. Mr. Mark Helvey abstained. Amendment #2 to Motion 15 passed.

Mr. Anderson is still struggling with the main motion because we are trying to write a letter in a motion and he doesn't like the second to the last sentence either. Essentially, if we pass the motion as amended, he assumes the council staff would write a letter that reflects the motion. He would prefer that additional language be added that would say the Council is willing to continue to work with the CINMS and California in a constructive way. He would like the letter to come back for Council review.

Mr. Larson said this letter needs to be sent by April 22.

Dr. McIsaac stated that the motion on the floor is the main motion as amended to remove the last sentence. He also stated the Council staff will review the tapes and include any discussions that seemed to have Council consensus and distribute a draft as normal practice.

Mr. Anderson said he feels just as strongly as many Council members that the regulations that pertain to the species under our FMPs need to stay under this Council's authority. He does feel it is important for us to coordinate with the NMSP to fully consider all of the management implications of the proposed action to ensure the goals of the program are met.

Mr. Brown was not in opposition to Mr. Anderson's comments and is supportive of the recommended concluding statements.

Mr. Ticehurst asked for Amendment #3 to the motion to incorporate the suggestions by Mr. Anderson and to include a recommendation to review and approve the letter through the Council's fast track process. Mr. Thomas seconded amendment #3 to Motion 15.

Mr. Alverson asked Mr. Larson if the proposal to use existing authority is talking about FMP amendments. Mr. Larson confirmed. Mr. Alverson said the letter should include such specifics.

Mr. Helvey agreed with Mr. Alverson and thinks it would help NOAA to include such specifics.

Mr. Larson and Mr. Thomas supported Mr. Ticehurst's amendment.

Amendment #3 to Motion 15 passed. Mr. Helvey abstained.

Dr. McIsaac asked if the maker and seconder of motion would like the Council staff to include the specifics on the anticipated analysis. Mr. Larson said he encourages staff to craft language that discusses the EFH FMP process and other available avenues. Maker and seconder accepted the recommendation.

Main motion 15 vote: Motion 15 passed.

G.2Cordell Bank, Gulf of Farallones, and Monterey Bay NMS

G.2.a Agenda Item Overview (04/07/05; 3:01 pm)

Mr. Burner provided the agenda overview.

G.2.b Report of the Sanctuary Staffs

Mr. Dan Howard and Ms. Ann Walton, Cordell Bank NMS, gave a report and presented Agenda Item G.2.b, Supplemental NMSP Letter.

Ms. Ann Walton also presented the options for the Gulf of Farallones NMS.

Messrs. Bill Duoros and Huff McGonigal presented a report of the Monterey Bay NMS.

G.2.c Reports and Comments of Advisory Bodies

Lt. Cleary provided Agenda Item G.2.c, Supplemental EC Report. Mr. Stevens provided Agenda Item G.2.c, Supplemental SAS Report. Ms. Ashcraft provided Agenda Item G.2.c, Supplemental GMT Report. Mr. Burner provided Agenda Item G.2.c, Supplemental CPSAS Report. Mr. Stuart Ellis provided Agenda Item G.2.c, Supplemental HC Report. Mr. Moore read Agenda Item G.2.c, Supplemental GAP Report.

G.2.d Public Comment

Mr. Mike Sorensen, charter boat operator, Toledo, Oregon

Ms. Kathy Fosmark, Alliance for Community for Sustainable Fisheries, Pebble Beach, CA

Mr. Joel Kawahara, salmon troller, Quilcene, Washington

G.2.e Council Action: Final Recommendations on Proposed Designation
Document Changes and NMS Fishery Regulations for each NMS

Mr. Larson moved (Motion 16) to adopt the recommendations as provided in Agenda Item G.2.e, Supplemental CDFG Motion, April 2005, Cordell Bank). Mr. Larson stated that this motion is not meant to be exclusive to the comments made earlier by Mr. Anderson, and added that there needs to be an exemption within these provisions to allow for research activity in the Cordell Bank area. Mr. Ticehurst seconded the motion.

Mr. Helvey asked if there could be provision in the motion to specify timelines. Mr. Larson added to the motion the analysis by the GMT to open it up for the Council staff to use that guidance as the letter is drafted.

Mr. Anderson asked if we could build into the letter something on the positive note as an affirmation of our support for the goals and objectives of the NMSP associated with this proposed management measure. Mr. Larson said that is the intent.

Mr. Brown agreed with the comments made so far and asked if the motion also includes the scope of prohibiting new gears unless specifically authorized? He requested that this matter be included in the letter and offered this suggestion as a friendly amendment. Mr. Larson and Mr. Ticehurst agreed .

Motion 16 passed. Mr. Helvey abstained.

Mr. Larson (Motion 17) to adopt the paragraph under Agenda Item, G.2.e, Supplemental CDFG Motion, April 2005, Monterey Bay National Marine Sanctuary, with the addition of the GMT recommendations (same as motion 16). Mr. Ticehurst seconded the motion.

Motion 17 passed. Mr. Helvey abstained.

Mr. Larson recommended that the Council not provide comments at this time for the Gulf of the Farallones NMS. California has reached a satisfactory agreement with the Sanctuary and feels the matter has been addressed relative to fishing regulations.

Mr. Brown suggested that they have been good about coming to us and discussing their plans and thinks as a courtesy we should state our position and appreciate their efforts.

Mr. Helvey asked Mr. Larson if what the State of California is doing right now would achieve the objectives of the Sanctuary. Mr. Larson said yes and stated that a Memorandum of Understanding with the Sanctuary has specified proposed regulations regarding introduced species and aquaculture and has satisfied the concerns of the Sanctuary.

Mr. Brown would like to see the Council take a position in support of the regulation of introduction of species. Mr. Larson said he was supportive of the recommendation while being cognizant of California's lead on this matter and the agreements that have been made.

H. Enforcement Issues

H.1 Fishery Enforcement Report (04/08/05; 8 am)

H.1.a Agenda Item Overview

None.

H.1.b Annual U.S. Coast Guard Report

Captain Rob Parker, chief of staff for and representing Admiral Garret of the 13th district, opened the presentation and noted that this annual report would cover both the 13th and 11th USCG districts. Cdr. Fred Myer provided a Powerpoint presentation.

H.1.c Reports and Comments of Advisory Bodies

None.

H.1.d Public Comment

Mr. Doug Fricke, troller, Hoquiam, Washington

H.1.e Council Discussion on Fishery Enforcement Report

Council members expressed appreciation for the presentation and the work of the USCG.

I. Highly Migratory Species (HMS) Management

I.1 NMFS Report

I.1.a Regulatory Activities (04/08/05; 9:10 am)

Mr. Craig Heberer, NMFS SWR, gave the NMFS report based on Agenda Item E.1.a Attachment 1.

Mr. Mark Cedergreen asked if NMFS had set up methods to communicate with advisory bodies and others about HMS activities. Mr. Heberer described current ideas NMFS has in this regard.

Ms. Vojkovich asked about NMFS involvement the AIDCP meetings occurring in April as listed Agenda Item E.2.a Attachment 1. Mr. Helvey replied that they were involved and reiterated NMFS' intent to facilitate communication between the Council and the other organizations and processes.

Dr. McIsaac asked about the April 26-27 U.S.-Canada Albacore Treaty Meeting. Mr. Helvey noted a recent email describing the meeting agenda. Dr. McIsaac asked that Dr. Kit Dahl be included on the email distribution list for that.

I.1.b Reports and Comments of Advisory Bodies

None.

I.1.c Public Comment

Mr. Doug Fricke, fisherman, Hoquiam, Washington

I.1.d Council Discussion on NMFS Report

Mr. Alverson asked for a briefing at the June Council meeting on the US position on albacore tuna in terms of stock status and potential measures such as quotas and allocations, which the Council needs to be involved in.

Mr. Helvey said he hopes to have the draft resolution on albacore to be presented to the Inter-American Tropical Tuna Commission (IATTC) available at the upcoming meetings of the Highly Migratory Species Advisory Subpanel (HMSAS) and Highly Migratory Species Management Team (HMSMT) and also provide it to the Council at the June meeting. He also emphasized the need for NMFS to help coordinate Council processes with other HMS management initiatives.

Mr. Alverson asked if NMFS or DOS will have a user group or advisory group participating in discussions related to the development of a strategy. Mr Helvey said, in reference to the draft resolution on albacore tuna, that the resolution was an outcome of the Tokyo meetings referred to by Mr. Fricke in his public comment. He said the resolution was still being reviewed internally and would be released soon, hopefully before the HMSAS meeting on April 21.

Mr. Fletcher, HMSAS chairman, said the panel will meet on April 21. He discussed the development of a letter communicating Council concerns to the General Advisory Committee to the U.S. Section of the Inter-American Tropical Tuna Commission (GAC), which will meet on May 12. He noted that the IATTC annual meeting will occur the week after the June Council meeting and he said he didn't think they would take up any specific measures related to albacore tuna. He also noted that he will be attending the IATTC annual meeting as a U.S. Commissioner and would be happy to provide a report to the HMSAS on what occurred there.

Mr. Helvey then noted Mr. McInnis is also a U.S. Commissioner. Between him and Mr. Fletcher it will be possible to rapidly get a report on the meeting back to the Council.

Dr. McIsaac noted that the next agenda item will cover a lot of these items.

I.2 Planning for FMP Implementation

I.2.a Agenda Item Overview (04/08/05; 9:32 am)

Dr. Dahl provided the agenda item overview.

Dr. McIsaac drew the Council's attention to the upcoming GAC and IATTC meetings listed in Attachment 1. He mentioned that a joint meeting with the Western Pacific Fishery Management Council (WPFMC) would be constrained by the availability of funding. He suggested a meeting of a subset of the members of two Councils could be a possibility at some point in the next few months.

I.2.b Reports and Comments of Advisory Bodies

Chairman Hansen asked both Dr. Dale Squires and Mr. Fletcher to come to the podium.

In response to Mr. McIsaac's comment, Mr. Fletcher suggested that the Pacific States Marine Fisheries Commission (PSMFC) annual meeting could be a venue for a joint PFMC-WPFMC meeting, taking advantage of an existing meeting.

Dr. Squires said the HMSMT should look at the closed areas in the drift gillnet (DGN) fishery, an item not listed in the situation summary. He thought it might be possible to increase DGN fishing effort while not exceeding the incidental take limits for sea turtles. Other high priority items the team needs to focus on are the observer coverage plan and SAFE report. Limited entry and turtle bycatch mitigation measures could be tackled fairly expeditiously. He also mentioned the bigeye tuna overfishing and logbooks as tasks the team needs to take up.

Mr. Fletcher discussed the plans for the upcoming HMSAS meeting. He said he understands NNMFS will provide the Council with a comprehensive presentation at their June meeting. The one item that was not clear at this point was the albacore resolution; something he hoped the HMSAS could take up at their meeting.

Ms. Vojkovich asked Mr. Squires if he agreed with the proposal in the situation summary for the team to provide an outline of the SAFE report at the June Council meeting and a full report in September. He replied affirmatively.

Dr. Burke noted the proposal for an additional member of the HMSMT and a request in public comments for an addition to the HMSAS and asked if this was the right time to consider additions to the two committees. Mr. Fletcher said he would defer to Dr. McIsaac and the Council. He didn't see it as a high enough priority to waive the normal Council process for considering changes to committee composition. Dr. McIsaac added that funding is an issue, although a minor one for the proposal for the HMSMT. He said there would be a need to modify the Council Operating Procedure for HMSMT composition and coordinate any change with the existing policy of three-year appointments. Dr. Burke then asked what would trigger decision-making on this issue. Dr. McIsaac replied it would be a matter of soliciting a nomination from the organization (IATTC) and then following Council procedures for vetting the nominee. Dr. Burke followed up by asking about the request from the Oregon Anglers organization for a seat on the HMSAS. Mr. Fletcher replied that he is concerned about the potential number of organizations expressing interest in a seat on the HMSAS and deciding when to draw the line on membership. He felt it was a decision the Council has to make rather than the HMSAS. Adding

a seat versus restructuring the membership would create additional costs. Dr. Burke said it would help to get some advice from the committees on whether the current composition of the HMSAS and HMSMT is appropriate to the tasks ahead. She also said the Council should take up this issue in the near future.

I.2.c Public Comment

Mr. Doug Fricke, fisherman, Hoquiam, Washington

Mr. Bob Osborn, United Anglers of Southern California, Huntington Beach, California

Mr. Bob Fletcher, Sportfishing Association of California, San Diego, California

I.2.d Council Discussion and Guidance on Planning for FMP Implementation

Ms. Vojkovich asked Dr. McIsaac if the Department of State (DOS) had been attending WPFMC meetings and it was only the PFMC that they were not paying attention to. Dr. McIsaac said he didn't know their attendance record although he heard the WPFMC mention Mr. William Gibbons-Fly (DOS, Office of Marine Conservation) frequently.

Ms. Vojkovich said, in response to previous comments and discussion, she thought the situation summary captured the issues the team and panel will be discussing at their upcoming meetings, including the DGN issue mentioned by Dr. Squires and the fast track letter mentioned by Mr. Fletcher. She thought that there did not appear to be much disagreement with the prioritization as presented in the situation summary, but the HMSMT will need to further prioritize given the large number of items listed. In addition, the HMSAS should also develop a list of items they think they should address in the near future, given the large number of issues. Chairman Hansen agreed.

Mr. Brown said the Council should insist that the DOS representatives show up at future Council meetings and talk to us about the albacore tuna issue. This wouldn't cost anything and DOS should be part of the process.

Mr. Anderson, noting the list of issues in the situation summary, said he thought the HMSMT needs to focus on the bigeye tuna overfishing item. The groundfish EFP protocol described in COP #19 can be used on an interim basis for HMS EFP reviews. Other issues for priority attention are completion of the SAFE report, the DGN issue mentioned by Dr. Squires, and the albacore IATTC resolution. He concurred with Mr. Brown that the Council needs to get directly involved because albacore tuna are of importance to Council managed fisheries. He also noted the \$5,000 in discretionary travel funds mentioned in the situation summary, wondering if this was in addition to funds dedicated to HMSAS and HMSMT meetings, saying the Council should be careful in spending this money. The idea Mr. Fletcher had of using the PSMFC annual meeting as a venue for a joint PFMC-WPFMC meeting would effectively leverage these limited funds.

J. Administrative Matters

J.1 Report on "Managing Our Nation's Fisheries II"

J.1.a Agenda Item Overview (04/08/05; 7:40 am)

Dr. McIsaac provided a brief overview of the conference and offered that pertinent Council members that participated in the conference provide their perspective. Mr. Brown noted that a big issue for ecosystem management is that there is not a really good definition of what it is. The conclusion of his group is that there needs to be more understanding of the processes and balances and in truth we are starting some of that ecosystem work now.

J.1.b Reports and Comments of Advisory Bodies

None.

J.1.c Public Comment

Mr. Bob Fletcher provided comments as a member of MAFAC who had attended many of the panels as part of the audience. He spoke about Oceana's, belief that the Council process is in need of much improvement. However, he believes this Council has taken on the role of conservation well.

J.1.d Council Discussion and Guidance

The panel Mr. Alverson was part of dealt with individual fishing quotas (IFQs) and looked at necessary criteria as well as broad concepts, suggesting that IFQs be accomplished without constraints from the federal government. It was suggested the duration of an IFQ system be left up to the individual council's.

Mr. Ortmann spoke to discussions about council member training. He agreed that it was important, but hoped that it not be overdone and made into an intensive indoctrination on scientific aspects. It did appear that NMFS would proceed and look over the orientation and training procedure and refine it.

Mr. Hansen stated the makeup of the SSC is a concern to the folks in DC, they thought the SSC should be paid and should be appointed by DC; but the members disagreed. Mr. Hansen said it is okay if they are paid, but not by the Councils.

Mr. Anderson was impressed with the usefulness of the conference and the opportunity for the regional councils to display how they operate and solidify in a common way where we, as a group, stand on the issues and how we answer the criticisms. Because of the conference, we are in a much better position as a national group of peers to defend our process and gain the attention of people that are going to be influential in the upcoming decisions in reauthorizing the MSA. He thinks we have made a strong case that science and management can exist under a common process. He felt that was the real benefit of this conference.

J.2 Legislative Matters

J.2.a Agenda Item Overview (04/08/05; 12:18 pm)

Mr. Burner provided the agenda item overview.

J.2.b Legislative Committee Report

Mr. Burner provided Agenda Item J.2.b, Supplemental Legislative Committee Report.

Mr. Alverson thanked Council staff for their efforts in preparing the report. He noted that the Committee did not have time to address all of the issues at this meeting and intends to take up MSA reauthorization in June.

Mr. Brown and Mr. Thomas provided clarification on the difference between a low priority item and one that could be eliminated. Mr. Brown stated that for the first two items the Committee was in fact in favor of no change, but that the recommendation was a high priority. Mr. Alverson agreed with the comments.

Ms. Vojkovich asked about the access to VMS data issue. There needs to be consideration of this issue under the MSA reauthorization. Mr. Alverson reported that Ms. Vojkovich is correct on this matter and the Committee will track the matter and report more fully in June.

Dr. McIsaac stated that one of the purposes of this discussion is to prepare the Chair for the CCED meeting and any feedback the Council provides will be conveyed at that forum at the end of this month.

J.2.c Reports and Comments of Advisory Bodies

None.

J.2.d Public Comment

None.

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

Mr. Alverson moved (Motion 28) adopt the Legislative Committee Report and Agenda Item J.2.b Attachment 1 including the recommendation that the states have access to VMS data. Mr. Cedergreen seconded the motion.

Motion 28 passed.

J.3 Appointments to Advisory Bodies, Standing Committees, and Other Forums

J.3.a Agenda Item Overview (04/08/05; 7:36 am)

Mr. Tracy provided the agenda item overview.

J.3.b Council Action: Appoint New Members as Necessary

Mr. Brown moved (Motion 22) to appoint Mr. Burr Heneman to represent the conservation community as a non-voting advisor to the Groundfish Allocation Committee. Mr. Warrens seconded the motion.

Motion 22 passed.

Mr. Helvey moved (Motion 23) to appoint Mr. Brian Chesney to the Habitat Committee representing NMFS Southwest Region and designated Ms. Korie Schaeffer as the alternate. Mr. Harp seconded the motion.

Motion 23 passed.

Chairman Hansen moved (Motion 24) to make the following appointments to the ad hoc regional council chairs and executive director committee:

| | |
|-----------------------|--|
| Frank Blount | New England Council Chair |
| Louis Daniel | South Atlantic Council Chair |
| Daniel T. Furlong | Mid-Atlantic Council Chair |
| Donald K. Hansen | Pacific Council Chair |
| Paul J. Howard | New England Council Chair |
| Stephanie Madsen | North Pacific Council Chair |
| Robert K. Mahood | South Atlantic Council Chair |
| Donald O. McIsaac | Pacific Council Executive Director |
| Roy Morioka | Western Pacific Council Chair |
| Julie Morris | Gulf of Mexico Council Chair |
| Chris Oliver | North Pacific Council Executive Director |
| Eugenio Pineiro-Soler | Caribbean Council Chair |
| Miguel A. Rolon | Caribbean Council Executive Director |
| Ricks Savage | Mid-Atlantic Council Chair |
| Kitty M. Simonds | Western Pacific Council Executive Director |
| Wayne Swingle | Gulf of Mexico Council Executive Director |

Vice Chairman Ortmann seconded the motion.

Motion 24 passed.

J.4 Work Load Priorities and Draft June 2005 Council Meeting Agenda (04/08/05; 12:41 pm)

J.4.a Agenda Item Overview

Dr. McIsaac provided the agenda item overview, reviewing the three-meeting outlook, proposed June agenda, and workload.

J.4.b Reports and Comments of Advisory Bodies

None.

J.4.c Public Comment

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

J.4.d Council Guidance on Work Load, June Council Agenda, and Priorities for Advisory Body Consideration

Council members provided suggestions and comments to the Council staff regarding the workload and June agenda which were both very full and needed some paring down.

Mr. Alverson requested Dave Hanson provide a report in September on observer issues.

Mr. Anderson asked if it were necessary to have the HC meet at every Council meeting. Dr. McIsaac agreed that it might be possible to skip the June meeting. Mr. Anderson also suggested the MEW report could be an informational report, as could the salmon agenda items on Klamath and EFH review. Mr. Ortmann, agreed with regard to the Klamath conservation objective issue.

Mr. Alverson asked if the sardine and EFH issues scheduled for Thursday could be taken up on Monday to provide more room on the agenda. Dr. McIsaac noted that we did start on Monday this meeting, however, a Monday start makes it difficult for advisory bodies to meet and develop their comments. He noted the budget report could be removed and agreed that we would consider moving some items to Monday.

Dr. Freese said the NMFS Reports could be put in the informational reports section with the exception of a salmon item for ESA consultation. He also noted the need to try to streamline the EFH discussion. Dr. McIsaac noted that the Council deliberations on EFH would be lengthy and public comment was a big variable. He noted that we have arranged for most of our advisory bodies to comment on this early enough to be put into the advance briefing book that is mailed out.

Ms. Vojkovich asked about timing of the Pacific Whiting EA. Dr. Freese said we should move that issue to the September meeting.

Several Council members expressed concern about the complexity of the issues and timing of the briefing book distribution, wondering if some information could be sent out earlier.

4 pm Public Comment Period

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

Mr. John Holloway, Portland, Oregon. Spoke on HMS (comments found under 4 PM Public Comment).

Mr. Barry Cohen, asked for the whiting season opening be changed to March 15 in the south.

Mr. Steve Fosmark, spoke on the Klamath River problems. He asked what the Council and NMFS can do to correct the situation and if there was a plan in place.

Mr. Don Stevens, salmon troller, Newberg, Oregon. Handed out a documentary video.

Mr. Pierre Marchan, Jessie's Ilwaco Fish Company, Ilwaco, Washington. Spoke about Pacific whiting, and that CFGC would not allow them to get Pacific whiting in and out of the state of California.

ADJOURN, April 8, 2005 at 1:35 pm.

DRAFT

DRAFT

Council Chairman

Date

DRAFT VOTING LOG
Pacific Fishery Management Council
April 3-8, 2005

Motion 1: Approve the agenda as shown in Agenda Item A.4, April Council Meeting Agenda.

Moved by: Ralph Brown
Motion 1 passed.

Seconded by: Bob Alverson

Motion 2: Approve conducting a full vermilion rockfish stock assessment this year.

Moved by: Marija Vojkovich
Motion 2 passed.

Seconded by: Darrell Ticehurst

Motions 3 through 6 were based on the document: Agenda Item C.2.j, Supplemental SAS Report, April 2005.

Motion 3: For non-Indian fisheries in the area from Cape Falcon north to U.S./Canada border, to adopt as tentative measures for STT analysis the commercial and recreational measures with the following changes:

- 1) The overall non-Indian chinook TAC would be 86,500;
- 2) Page 1 Table 1 – for both the May-June and July-September commercial fisheries: replace the reporting requirements with the following language from Option I of the March options: “Under state law, vessels must report their catch on a state fish receiving ticket;
- 3) Page 1 Table 1 – include SAS proposed revision to the language that pertains to the May-June and July-September commercial fisheries landing restrictions as follows: “All vessels fishing north of Leadbetter Point must land their fish north of Leadbetter Point. All vessels fishing between Leadbetter Point and Cape Falcon must land their fish in the area, except Oregon permitted vessels may also land their fish in Garibaldi, Oregon”;
- 4) Page 5 Table 2 - Include the corrections to the recreational subarea coho quotas as follows: Neah Bay 12,667, La Push 3,167, Westport 45,066, and Columbia River 60,900.

Moved by: Phil Anderson
Motion 3 passed.

Seconded by: Mark Cedergreen

Motion 4: Adopt for STT analysis the commercial troll seasons as described in the SAS Report for the area Cape Falcon to the Oregon/California border; and the recreational seasons as described for the area Cape Falcon thru the KMZ.

Moved by: Curt Melcher
Motion 4 passed.

Seconded by: Frank Warrens

Moved by: Bob Alverson
Motion 11 failed (all voting no).

Seconded by: Phil Anderson

Motion 12: Adopt the alternatives listed in Agenda Item F.2.b, Supplemental NMFS Report, excluding alternatives 2 and 5; proceed with a sensitivity analysis at least 0, 5, and 10% for all sectors; and include the last paragraph of the SSC Report.

Moved by: Patty Burke
Motion 12 passed.

Seconded by: Ralph Brown

Motion 13: As part of the sardine allocation alternatives, add a provision which would require a review of the allocation at 3, 5, and 7 years.

Moved by: Ralph Brown
Motion 13 passed.

Seconded by: Frank Warrens

Motion 14: Include a trigger based on a harvest guideline of 75,000 to 100,000 mt as a trigger for review of allocation.

Moved by: Marija Vojkovich
Motion 14 passed.

Seconded by: Roger Thomas

Motion 15: Adopt Agenda Item G.1.e, Supplemental CDFG Motion, April 2005.

Moved by: Eric Larson

Seconded by: Roger Thomas

Amend #1: Adopt the motion as shown in Agenda Item G.1.e, Supplemental CDFG Motion, April 2005, with the exception of keeping the first sentence of the written motion, and removing the rest of the motion.

Moved by: Ralph Brown
Amendment #1 failed. 8 no, 4 yes. Mark Helvey abstained.

Seconded by: Frank Warrens

Amend #2: Adopt the motion as shown in Agenda Item G.1.e, Supplemental CDFG Motion, April 2005, with the exception of removing the final sentence.

Moved by: Ralph Brown
Amendment #2 passed. Mark Helvey abstained.

Seconded by: Frank Warrens

Amend #3: Adopt the motion as shown in Agenda Item G.1.e, Supplemental CDFG Motion, April 2005, with the addition of incorporating the suggestions of Mr. Anderson (give Council staff rights to edit and provide additional explanation in the letter where necessary and put it through the Council's fast track process for finalization).

Moved by: Darrell Ticehurst
Amendment #3 passed.
Main motion 15 passed as amended. Mark Helvey abstained.

Seconded by: Roger Thomas

Motion 16: Adopt the first paragraph under the heading Cordell Bank National Marine Sanctuary contained in Agenda Item G.2.e, Supplemental CDFG Motion, April 2005) and include the GMT recommendations for a timeline proposal.

Moved by: Eric Larson

Seconded by: Darrell Ticehurst

Motion 16 passed. Mark Helvey abstained.

Motion 17: Adopt the paragraph under the heading Monterey Bay National Marine Sanctuary contained in Agenda Item, G.2.e, Supplemental CDFG Motion, April 2005. Add inclusionary statements and research activity (same as motion 16) and include the GMT timeline proposal.

Moved by: Eric Larson

Seconded by: Darrell Ticehurst

Motion 17 passed. Mark Helvey abstained.

Motions 18 thru 20 were made utilizing the document as contained in Agenda Item C.6.b, Supplemental STT Report, April 7, 2005, Salmon Technical Team Analysis of Tentative 2005 Ocean Salmon Fishery Management Measures.

Motion 18: Adopt the salmon management measures for non-Indian commercial troll as shown for the area US/Canada border to Cape Falcon and the recreational measures for the area US/Canada border to the area Leadbetter Point to Cape Falcon as shown with one change on page 8: under item C.5.d, change "from the area Cape Alava to Queets River...." to read "from the area north of Cape Falcon....".

Moved by: Phil Anderson

Seconded by: Mark Cedergreen

Motion 18 passed.

Motion 19: Adopt the salmon management measures for non-Indian commercial troll for the area south of Falcon to the OR/CA border as shown with one change in the area Oregon KMZ: strike the "September 3-6; 9-12, 15-30" and replace it with "September 3-30"; and the recreational measures for the area south of Cape Falcon to Horse Mt. California as shown.

Moved by: Curt Melcher

Seconded by: Ralph Brown

Motion 19 passed.

Motion 20: Adopt the salmon management measures for the non-Indian commercial troll for the area Horse Mt., California to the US/Mexico border as shown, except change the size limit from 27 to 26 inches in the area Pt. Reyes to Pt. San Pedro, and in the area OR/CA border to Humoldt South Jetty replace "September 1 through earlier of September 30" with "September 3 through earlier of September 30"; and the recreational measures for the area Horse Mt., California, to the US/Mexico border as shown.

Moved by: Eric Larson

Seconded by: Roger Thomas

Motion 20 passed.

Motion 21: Adopt the ocean treaty troll salmon fishery management measures as shown in Agenda Item C.6.g, with the following edits: change the "April 6, 2005 – Agenda Item C.5.b" to "April 7, 2005 – Agenda Item C.6.b"; and on page 9 of Agenda Item C.6.b, Supplemental STT Report, April 7, 2005, Salmon Technical Team Analysis of Tentative 2005 Ocean Salmon Fishery Management Measures, delete footnote 2 on page 9.

Moved by: Jim Harp
Motion 21 passed.

Seconded by: Phil Anderson

Motion 22: Appoint Mr. Burr Heneman to the Groundfish Allocation Committee non-voting advisor seat.

Moved by: Ralph Brown
Motion 22 passed.

Seconded by: Frank Warrens

Motion 23: Appoint Mr. Brian Chesney to the Habitat Committee NMFS Southwest Region representative (replacing Mr. Helvey); and designated Ms. Korie Schaeffer as the alternate.

Moved by: Mark Helvey
Motion 23 passed.

Seconded by: Jim Harp

Motion 24: Make the following appointments to the ad hoc regional council chairs and executive director committee:

| | |
|-----------------------|--|
| Frank Blount | New England Council Chair |
| Louis Daniel | South Atlantic Council Chair |
| Daniel T. Furlong | Mid-Atlantic Council Chair |
| Donald K. Hansen | Pacific Council Chair |
| Paul J. Howard | New England Council Chair |
| Stephanie Madsen | North Pacific Council Chair |
| Robert K. Mahood | South Atlantic Council Chair |
| Donald O. McIsaac | Pacific Council Executive Director |
| Roy Morioka | Western Pacific Council Chair |
| Julie Morris | Gulf of Mexico Council Chair |
| Chris Oliver | North Pacific Council Executive Director |
| Eugenio Pineiro-Soler | Caribbean Council Chair |
| Miguel A. Rolon | Caribbean Council Executive Director |
| Rick Savage | Mid-Atlantic Council Chair |
| Kitty M. Simonds | Western Pacific Council Executive Director |
| Wayne Swingle | Gulf of Mexico Council Executive Director |

Moved by: Donald K. Hansen
Motion 24 passed.

Seconded by: Dave Ortmann

Motion 25: For groundfish inseason management, adopt limited entry trip limits, gear changes, and California recreational changes as recommended in Agenda Item B.7.b, Supplemental

GMT Report. The motion includes the GMT recommendation in Agenda Item B.6.b, Supplemental GMT Report 1 to grant NMFS authority to make California recreational changes consistent with state actions outside the Council process.

Moved by: Phil Anderson
Motion 25 passed.

Seconded by: Bob Alverson

Motion 26: Consider modifying the existing chafing gear regulations during the 2007-2008 annual management specifications process.

Moved by: Patty Burke
Motion 26 passed.

Seconded by: Ralph Brown

Motion 27: Establish a control date for the spiny dogfish fishery, as shown in Agenda Item B.8.e, Supplemental WDFW Motion, April 2005.

Moved by: Phil Anderson
Roll call on Motion 26. 9 yes, 4 no.
Motion 27 passed.

Seconded by: Mark Cedergreen

Motion 28: Adopt the Legislative Committee Report and Agenda Item J.2.b Attachment 1 including the recommendation that the states have access to VMS data.

Moved by: Bob Alverson
Motion 28 passed.

Seconded by: Mark Cedergreen

Preliminary Draft Three Meeting Outlook for the Pacific Council

(All Candidate Agenda Items Listed; Shaded Items are Contingent)

| November San Diego, CA 10/31-11/4/05 Floor Time Estimate = 110% of Standard | March Seattle, WA 3/6-3/10/06 Floor Time Estimate = 83% of Standard | April Sacramento, CA 4/3-4/7/06 Floor Time Estimate = 90% of Standard |
|---|---|--|
| <u>Coastal Pelagic Species</u> NMFS Rpt Pac. Sardine Stock Assmnt. & HG for 2006 Krill Amendment: Adopt Alts. For Pub Rev. | <u>Coastal Pelagic Species</u> NMFS Report Pac. Mackerel: Consider Need for Mop-up Fishery Krill Amendment: Adopt Final for Implementation | <u>Coastal Pelagic Species</u> |
| <u>Enforcement Issues</u> State Activity Rpt | <u>Enforcement Issues</u> State Activity Rpt | <u>Enforcement Issues</u> USCG Annual Fishery Enforcement Rpt. |
| <u>Groundfish</u> NMFS Report 2005 Inseason Management (2 Sessions) VMS: Adopt Preferred Expansion Alternative 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 Stock Assessments (SA): Approve Remaining SA (petrale & ling cod) & Rebuilding Analyses Mgmt Specs. for 2007-08: Part I: Adopt Range of ABCs & Oys Part II: Adopt Prelim. Range of Mgmt Meas. "Off Year" Science Activities: Plan Activities Spiny Dogfish & Pac. Cod: Adopt Final Reg. Amendment to set OY & ABC for 2006 TIQ EIS: Update (Community Involvement, etc.) Amendment 10 (Shore-based Whiting Fishery Monitoring): Adopt Alts. For Pub. Rev. Intersector Allocation EIS: Plan Next Steps Open Access Limitation: Planning | <u>Groundfish</u> NMFS Report 2006 Inseason Management (1 Session) Pac. Whiting: Adopt Final 2006 Spx & Mgmt Meas. SA: Proposed Plan for 2009-2010 2007-2008 Mgmt Measures: Guidance & Refinement Amendment 10 (Shore-based Whiting Fishery Monitoring): Adopt Final | <u>Groundfish</u> NMFS Report 2006 Inseason Mgmt (2 Sessions) SA: Adopt Final Plan for 2009-2010 2007-2008 Mgmt Measures: Adopt 1) Preferred ABC/OY Levels 2) Mgmt Alternatives for Public Review, Including Preferred Alt. For June Agenda: Spiny Dogfish Longline Endorsement: Adopt FMP Amendment Alts. For Public Review |
| <u>Habitat Issues</u> Habitat Committee Report | <u>Habitat Issues</u> Habitat Committee Report | <u>Habitat Issues</u> Habitat Committee Report |

Agenda Item B.2.a
 Attachment 1
 September 2005

Preliminary Draft Three Meeting Outlook for the Pacific Council

(All Candidate Agenda Items Listed; Shaded Items are Contingent)

| November San Diego, CA 10/31-11/4/05 Floor Time Estimate = 110% of Standard | March Seattle, WA 3/6-3/10/06 Floor Time Estimate = 83% of Standard | April Sacramento, CA 4/3-4/7/06 Floor Time Estimate = 90% of Standard |
|--|--|--|
| <u>Highly Migratory Species</u> NMFS Rpt Bigeye Tuna OF Response: Adopt Prelim Draft FMP Amendment for Pub. Rev. Drift Gillnet Mgmt: Adopt Proposed Regulatory Amendment to Closed Area for Pub. Rev. HMS EFP COP: Adopt Final EFP COP Albacore Mgmt Considerations Mgmt Regime for HS Longline Fishery: Adopt FMP Amendment Alts. For Public Rev. | <u>Highly Migratory Species</u> NMFS Rpt Bigeye Tuna OF Response: Adopt Final Preferred FMP Amendment Alt. Drift Gillnet Mgmt: Adopt Final Regulatory Amendment Modifying Closed Area Mgmt Regime for HS Longline Fishery: Adopt Final FMP Amendment Preferred Alternative | <u>Highly Migratory Species</u> PFMC Representation in IATTC Process--to June |
| <u>Marine Protected Areas</u> CINMS: Adopt Preferred Alt. & Final Recommended Fishing Regs Under NMSA | <u>Marine Protected Areas</u> | <u>Marine Protected Areas</u> |
| <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 Incidental Catch Regs for 2006: Adopt Options for Public Rev | <u>Pacific Halibut</u> Incidental Catch Regs for 2006: Adopt Final |
| <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 Range for Public Rev Appt. Hearings Officers Ft. Bragg Commercial Fishery Opening Mar 15: Consider Opening/Closing Date & Quota Klamath Fall Chinook Conservation Objective: Next Steps Industry Prop. Exper. Fisheries: Final Approval | <u>Salmon</u> 2005 Management Options: Final Adoption 2005 Methodology Review: Establish Process & Preliminary Priorities Identify Stocks not Meeting Conserv. Objectives Klamath Fall Chinook Conservation Objective: Next Steps |
| <u>Administrative</u> Legislative Committee Report Budget Committee Report Interim Appointments--Including Council Officers 3 Mtg Outlook, Draft Mar. Agenda, Workload COPs 1 & 14 Reconsideration | <u>Administrative</u> Legislative Committee Report Budget Committee Report Interim Appointments 3 Mtg Outlook, Final April Agenda | <u>Administrative</u> Legislative Committee Report Interim Appointments 3 Mtg Outlook, Draft June Agenda, Workload |
| <u>Special Monday Joint Sessions</u> | <u>Special Monday Joint Sessions</u> | <u>Special Monday Joint Sessions</u> |

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, OCTOBER 30-NOVEMBER 4, 2005, SAN DIEGO, CA

| | | | ANCILLARY MEETING SCHEDULE | | |
|--|-------------|--|-----------------------------------|---------------------------|---|
| AG# | Hours | AGENDA TOPICS/COMMENTS | COUNCIL TASK | ADVISORY BODY PRIORITY 1/ | Day/Group Start Time Continuing Through |
| SUNDAY, OCTOBER 30 - See Ancillary Schedule | | | | | SUNDAY: |
| | | | | | A. GMT 1:00 PM Fri. |
| | | | | | B. GAP 1:00 PM Fri. |
| | | | | | C. TIQC 3:30 PM Sun |
| | | | | | Chair's Briefing 3:30 PM Sun |
| MONDAY, OCTOBER 31 - 8:00 am | | | | | MONDAY: |
| | | <i>Ancillary Meetings - see Ancillary Schedule</i> | | | A. GMT 8:00 AM Fri. |
| | | | | | B. GAP 8:00 AM Fri. |
| | | SPECIAL SESSIONS | | | D. SSC 8:00 AM Tue. |
| | | | | | E. STT 8:00 AM Mon. |
| | | | | | F. Budget 8:30 AM Mon. |
| | | | | | G. HC 9:00 AM Mon. |
| | | | | | H. Legislative 10:30 AM Mon. |
| | | | | | I. EC 5:00 PM Fri. |
| CLS | 1.00 | Closed Session Agenda: Personnel & Litigation--1:00 pm | | | |
| | | Adv. Body Issues - Appointments, including Council Chair & Vice Chair | Info | None | [Note: SAS conf call prior to mtg week] |
| | | Litigation Status (E. Cooney) | Info | None | |
| A. | 0.50 | General Session Call to Order - 2:00 pm | | | |
| 1-3 | | Opening, Roll Call, ED Rpt; Summary of Information Rpts | Info | | |
| 4 | | Approve Agenda | Decision | | |
| B. | | Administrative Matters | | | |
| 1 | 0.30 | Reconsideration of COPs 1 & 14 | Decision | | |
| 2 | 0.20 | Election of Council Chair and Vice Chair | Decision | | |
| 3 | 0.30 | Council Meeting Agenda Planning: Review Preliminary 3 Mtg Outlook & Draft March Agenda | Guidance | All | |
| C. | | Coastal Pelagic Species Mgmt | | | |
| 1 | 0.50 | Pacific Sardine Stock Assessment & Harvest Guideline: Adopt Final for 2006 Season | Action | CPSAS; CPSMT | |
| 2 | 1.00 | FMP Krill Amendment: Adopt Alternatives For Public Review | Decision | CPSAS; CPSMT; Others | |
| | 0.50 | Public Comment Period on Non-Agenda Items | Info | | |
| | 4.30 | | | | |

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, OCTOBER 30-NOVEMBER 4, 2005, SAN DIEGO, CA

| | | | | ANCILLARY MEETING SCHEDULE | | |
|--------------------------------------|-------|---|--------------|----------------------------|----------------------------|-------------------------------|
| AG# | Hours | AGENDA TOPICS/COMMENTS | COUNCIL TASK | ADVISORY BODY PRIORITY 1/ | Day/Group | Continuing Start Time Through |
| TUESDAY, NOVEMBER 1 - 8:00 am | | | | | TUESDAY: | |
| | | <i>Ancillary Meetings - see Ancillary Schedule</i> | | | GAP; GMT; SSC; EC continue | |
| D. | | Pacific Halibut Mgmt | | | | |
| 1 | 1.00 | Catch Sharing Plan & Annual. Regs.: Adopt Final Changes for 2006 | Action | GAP; SAS; EC | | |
| E. | | Salmon Mgmt | | | | |
| 1 | 0.75 | Methodology Review: Approve Changes for Use in 2006 | Decision | MEW; STT; SAS; SSC | | |
| 2 | 0.25 | Preseason Mgmt Schedule for 2006: Approve Schedule | Decision | STT; SAS | | |
| 3 | 1.00 | Klamath Fall Chinook Conservation Obj.: Scope Amendment Issues | Decision | SSC; STT; SAS | | |
| F. | | Habitat | | | | |
| 1 | 0.50 | Habitat Committee Rpt | Decision | HC | | |
| G. | | Groundfish Mgmt | | | | |
| 1 | 0.50 | NMFS Rpt (Region & Science Center) | Info | GMT; GAP; EC | | |
| 2 | 1.00 | Stock Assessment Review & Rebuilding Analyses: Approve Remaining Assessments & Rebuilding Analyses for 2007-2008 Mgmt | Action | SSC; GMT; GAP | | |
| 3 | 1.50 | Part I of Mgmt Specifications for 2007-08: Adopt a Range of ABCs & OYs | Action | GMT; GAP; EC | | |
| 4 | 2.00 | Inseason Adjustments: Preliminary or Final Adoption of Appropriate Changes | Action | GMT; GAP; EC | | |
| | 8.50 | | | | | |
| WEDNESDAY, NOVEMBER 2 - 8 am | | | | | WEDNESDAY: | |
| | | <i>Ancillary Meetings - see Ancillary Schedule</i> | | | J. HMSAS 8:00 AM Fri. | |
| | | | | | K. HMSMT 8:00 AM Fri. | |
| H. | | Marine Protected Areas | | | GAP, GMT, EC continue | |
| 1 | 1.50 | Channel Islands NMS: Adopt Final Preferred Alt. & Fishing Regs. Under NMSA | Decision | PSAS, GAP, HC, SAS, EC | | |
| G. | | Groundfish Mgmt (continued) | | | | |
| 5 | 1.00 | "Off Year" Science Improvements: Prioritize & Plan Activities | Guidance | GMT; GAP; SSC | | |
| 6 | 1.00 | Amendment 18 (Bycatch): Adopt Final FMP Text & Regulatory Language | Decision | GMT; GAP; EC | | |
| 7 | 2.00 | Amendment 19 (EFH): Adopt Final FMP Text & Regulatory Language | Decision | GMT; GAP; EC; HC | | |
| 8 | 1.00 | Spiny Dogfish & Pacific Cod: Adopt Final OY, ABC & Mgmt Measures for 2006 Fishery | Decision | GMT; GAP | | |
| 9 | 1.25 | EFP Applications for 2006: Final Approval, Including Caps for OF Species | Action | GMT; GAP | | |
| | 7.75 | | | | | |
| | | Council Annual Banquet--6 pm. | | | | |

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, OCTOBER 30-NOVEMBER 4, 2005, SAN DIEGO, CA

| | | | | ANCILLARY MEETING SCHEDULE | | |
|------------------------------------|-------------|--|---------------|-----------------------------------|------------------|-------------------------------------|
| AG# | Hours | AGENDA TOPICS/COMMENTS | COUNCIL TASK | ADVISORY BODY PRIORITY 1/ | Day/Group | Continuing Start Time Through |
| THURSDAY, NOVEMBER 3 - 8 am | | | | | THURSDAY: | |
| | | <i>Ancillary Meetings - see Ancillary Schedule</i> | | ➔ | | HMSAS; HMSMT, GAP, GMT, EC continue |
| G. | | Groundfish Mgmt (continued) | | | | |
| 10 | 2.00 | VMS: Adopt Final Preferred Program Expansion Alt. | Action | GMT; GAP, EC; SAS | | |
| 11 | 1.50 | TIQ EIS: Update and Consideration of Community Involvement | Guidance | GAP; EC; SSC | | |
| I. | | Highly Migratory Species Management | | | | |
| 1 | 0.50 | NMFS Rpt--Region & Science Ctr | Info | HMSAS; HMSMT | | |
| 2 | 0.50 | COP for EFP Process: Adopt Final for Public Rev. | Decision | HMSAS; HMSMT; SSC | | |
| 3 | 1.50 | Bigeye Tuna Overfishing Response: Adopt Draft FMP Amendment for Pub. Rev. | Decision | HMSAS; HMSMT | | |
| 4 | 2.00 | Drift Gillnet Mgmt: Adopt Proposed Regulatory Amendment to Closed Area for Public Review | Decision | HMSAS; HMSMT; EC | | |
| | 8.00 | | | | | |
| FRIDAY, NOVEMBER 4 - 8 am | | | | | FRIDAY: | |
| | | <i>Ancillary Meetings - see Ancillary Schedule</i> | | ➔ | | EC; HMSAS; HMSMT as nec. |
| I. | | Highly Migratory Species Management (continued) | | | | |
| 5 | 1.00 | Albacore Mgmt: Consider Possible Actions | Guidance | HMSAS; HMSMT | | |
| G. | | Groundfish Mgmt (continued) | | | | |
| 12 | 1.50 | Part II of Mgmt Specifications for 2007-08: Adopt Prelim Range of Mgmt Measures | Action | GMT; GAP, EC; SAS | | |
| 13 | 1.50 | Inseason Adjustments: Adopt or Confirm Final Changes, If Necessary | Action | GMT; GAP; EC | | |
| B. | | Administrative Matters (continued) | | | | |
| 4 | 0.50 | Legislative Matters | Guidance | | | |
| 5 | 0.40 | Fiscal Matters | Decision | | | |
| 6 | 0.20 | Interim Appointments to Adv. Bodies, Standing Com., & Other Forums | Decision | None | | |
| 7 | 0.50 | 3 Mtg Outlook, Draft March Agenda, & Workload Priorities (thru Apr Mtg) | Guidance | GMT; GAP; & as nec | | |
| | 5.60 | | | | | |

1/ Anticipates each advisory subpanel will review agenda items for its particular FMP.

• **Key to Council Task:** Info=briefing; Guidance=formal or informal direction on issue; Decision=formal determination; Action=results in implementation by NMFS.

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, OCTOBER 30-NOVEMBER 4, 2005, SAN DIEGO, CA

| | | | | ANCILLARY MEETING SCHEDULE | | |
|---|-------|--|--------------|-----------------------------------|-----------|-------------------------------|
| AG# | Hours | AGENDA TOPICS/COMMENTS | COUNCIL TASK | ADVISORY BODY PRIORITY 1/ | Day/Group | Continuing Start Time Through |
| Candidate Agenda Items Not Scheduled | | | | | | |
| 1.00 | | Open Access Limitation: Update and Planning | Guidance | GMT; GAP, EC | | |
| 1.00 | | Intersector Allocation EIS: Next Steps | Guidance | GAP, GMT, EC | | |
| 1.50 | | Mgmt Regime for High Seas Longline Fishery: Adopt FMP Amendment Alternatives for Public Review | Decision | HMSAS; HMSMT; EC | | |
| 2.00 | | Amendment 10--Shore-based Whiting Fishery EA: Adopt Draft 2006 Monitoring Alternatives for Public Review | Action | GMT; GAP; EC | | |
| 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 | | NMFS CPS Rpt | Info | CPSAS; CPSMT | | |
| 4 | | Salmon EFH Review Process | Info | STT; SAS; HC | | |
| 5 | | | | | | |
| | | | | | | |
| | | | | | | |

Due Dates:

| | |
|---|-----------|
| Meeting Invitation Memo Distributed: | 9/15 |
| Public Meeting Notice Mailed: | 9/26 |
| FR Meeting Notice transmitted: | 9/29 |
| Final day to receive public comments for mailing in BB: | COB 10/12 |
| Final deadline to submit all nonsupplemental BB materials: | COB 10/12 |
| Final deadline to submit cover memos for Ancillary Meetings: | COB 10/14 |
| Mail Situation Summaries to Council Members | COB 10/14 |
| Briefing Book Mailing: | COB 10/20 |
| Final deadline to receive public comments for distribution to Council on first day of mtg (supplemental materials): | COB 10/25 |

COUNCIL MEETING AGENDA PLANNING

The purpose of this agenda item is to provide initial information to Council Members early in the Council meeting to facilitate planning for future Council meeting agendas.

On Friday, September 23, under agenda item B.6, the Council is scheduled to provide guidance on the Council three-meeting outlook (September, November, and March), the draft agenda for the November Council meeting, and Council staff work load priorities for September 26, 2005 through November 4, 2005.

Under this agenda item, the Executive Director will review initial drafts of the three-meeting outlook and the November Council meeting agenda and respond to any questions the Council may have regarding these initial planning documents. While this agenda item is essentially informational in nature, after hearing any reports and comments from advisory bodies or the public, the Council may wish to provide guidance to the staff on any preparations for agenda item B.6.

Council Tasks:

- 1. Receive information on potential agenda topics for the next three Council meetings.**
- 2. Receive information on an initial draft agenda for the November 2005 Council meeting.**
- 3. Consider providing guidance on the development of materials for agenda item B.6.**

Reference Materials:

1. Agenda Item B.2.a, Attachment 1: Preliminary Draft Three-Meeting Outlook for the Pacific Council.
2. Agenda Item B.2.a, Attachment 2: Preliminary Draft November Council Meeting Agenda, October 31, 2005 through November 4, 2005 in San Diego, California.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. Council Discussion

Don McIsaac

PFMC
08/31/05

PACIFIC FISHERY MANAGEMENT COUNCIL

7700 NE Ambassador Place, Suite 200
Portland, Oregon 97220-1384

CHAIRMAN
Donald K. Hansen

EXECUTIVE DIRECTOR
Donald O. McIsaac

Telephone: 503-820-2280
Toll Free: 866-806-7204
Fax: 503-820-2299
www.pcouncil.org

June 23, 2005

Secretary Carlos M. Gutierrez
U.S. Department of Commerce
14th Street Between Constitution and Pennsylvania Avenues NW
Washington, DC 20230

Dear Secretary Gutierrez:

The Pacific Fishery Management Council (Pacific Council) tasked me with informing you of an important, recent decision they believe will advance the Administration's priority on dedicated access privileges for commercial fisheries, as emphasized in the President's action plan to the U.S. Ocean Commission's report. At its just completed June 2005 meeting, the Pacific Council voted unanimously to send forward a number of trawl individual quota (TIQ) alternatives covering the harvest of West Coast groundfish, including Pacific whiting, for analysis in a draft environmental impact statement (EIS). This action was also unanimously requested by our Ad Hoc Trawl Individual Quota Committee, which includes representation of whiting and nonwhiting sectors, shoreside and at-sea processors, communities, and conservation advocacy groups.

The Pacific Council's action culminated a one-and-a-half year scoping process and substantial work by a variety of Pacific Council committees. Our Ad Hoc TIQ Committee met five times, the Ad Hoc TIQ Enforcement Group met twice, the Ad Hoc TIQ Independent Experts Panel met twice, the Ad Hoc TIQ Analytical Team met four times, and three special public hearings were held. In addition, there were numerous National Marine Fisheries Service/Pacific Council work group meetings to plan this process. The result is a series of alternatives that present an integrated approach for managing the entire trawl fishery, including the whiting fishery. The alternatives take into account the complexities of the interactions among whiting and nonwhiting segments of the trawl fishery, interactions between the trawl fishery and other segments of the groundfish fishery, and the particular needs of each of these fisheries. The analysis of these alternatives will be completed in the context of a comprehensive EIS that also takes into account regional specifics such as fish delivery patterns and distributions between states, fisheries, and ports.

These alternatives were developed in the context of existing national standards for marine fishery management and a careful review of the recommendations of the National Resources Council report "Sharing the Fish." A good-faith effort was made to take into account every consideration

Secretary Gutierrez
June 23, 2005
Page 2 of 2

identified in this report, as well as sections of the Magnuson-Stevens Fishery Conservation and Management Act pertaining to factors to be considered in developing an individual fishing quota (IFQ) program.

As part of its action last week, the Pacific Council also passed a motion, in case Congress should ask, stating the Pacific Council opposes any Congressional action pre-empting the cooperative process and progress made to date or otherwise usurping in any fashion the Pacific Council's development of an IFQ program via a comprehensive EIS. The Pacific Council will strongly urge that the deliberative process it has undertaken continue in a normal course of action, accomplished at the regional level.

We appreciate the support of the U.S. Department of Commerce in the Pacific Council's work on this important matter to date. Should you or your staff have any questions about design details covered in the adopted alternatives, or any other elements of their consideration to further rationalize the West Coast commercial trawl groundfish fishery, please don't hesitate to contact me at the Pacific Council office.

Sincerely,

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

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

JLS:kla

c: Pacific Council Members
Dr. William T. Hogarth
Ad Hoc Groundfish TIQ Committee
Ad Hoc TIQ Analytical Team
Ad Hoc TIQ Enforcement Group
Ad Hoc TIQ Independent Experts Panel
Groundfish Advisory Subpanel
Groundfish Allocation Committee
Groundfish Management Team



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910

THE DIRECTOR

AUG - 2 2005

RECEIVED

AUG 4 2005

PFMC

Donald O. McIsaac, Ph.D.
Executive Director
Pacific Fishery Management Council
7700 NE Ambassador Place
Portland, Oregon 97220-1384

Dear Dr. ~~McIsaac~~ *Don*:

Thank you for your letter to Carlos M. Gutierrez, Secretary of Commerce, regarding the Pacific Fishery Management Council's (Council) decision to send forward a number of Trawl Individual Quota (TIQ) alternatives for the harvest of West Coast Groundfish and Pacific whiting for analysis in a Draft Environmental Impact Statement.

The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) is aware of, and the Northwest regional staff have participated in, the Council's efforts over the past several years to develop TIQs for West Coast Groundfish and Pacific whiting. As a general matter, we support programs to rationalize federally managed fisheries through dedicated access privileges, including individual fishing quotas. The Administration made an explicit pledge of this support in the December 2004 U.S. Ocean Action Plan. Any option proposed by the Council must comply with the Magnuson-Stevens Fishery Conservation and Management Act. NMFS will comment more specifically on the TIQ alternatives and the accompanying regulatory assessments when they are received from the Council.

We appreciate the efforts of the Council in managing these valuable resources.

Sincerely,

William T. Hogarth, Ph.D.



GORDON H. SMITH
OREGON

United States Senate
WASHINGTON, DC 20510-3704

COMMITTEES:
FINANCE
COMMERCE, SCIENCE, AND TRANSPORTATION
ENERGY AND NATURAL RESOURCES
INDIAN AFFAIRS
CHAIRMAN, SPECIAL COMMITTEE ON AGING

August 2, 2005

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

RECEIVED
AUG 8 2005
FMC

Dear Mr. Hansen:

Last week, I introduced S. 1549, a bill which would rationalize the shore-based Pacific whiting fishery by providing cooperative shares to fishermen and processors who have historically participated in that fishery.

I believe that when enacted, S. 1549 will complement the efforts being made by the Council to conserve and manage the Pacific groundfish fishery through a trawl quota program and restrictions on bycatch. Further, a whiting cooperative plan holds great promise for our coastal communities by improving the economics of the fishery. Most recently, the need for such a plan was highlighted by the unexpected change in salmon bycatch patterns that resulted in new restrictions on the whiting fleet.

In order to ensure that the Council's views on this bill are brought to the attention of the Senate, I ask that you have the Council review the legislation during its September 2005 meeting and provide my staff with any substantive comments on the text. If you have any questions or need further information on the bill, please contact Betsy McDonnell at 202-224-3753.

I look forward to continuing to work with you and the Council as we consider important fisheries legislation in the 109th Congress.

Sincerely,



Gordon H. Smith
United States Senate

109TH CONGRESS
1ST SESSION

S. 1549

To improve the conservation and management of Pacific whiting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2005

Mr. SMITH introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To improve the conservation and management of Pacific whiting, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cooperative Hake Im-
5 provement and Conservation Act”.

6 **SEC. 2. FINDINGS, SENSE OF CONGRESS, PURPOSES, AND**
7 **POLICY.**

8 (a) FINDINGS.—Congress makes the following find-
9 ings:

1 (1) The United States has an obligation to en-
2 sure that, to the extent practicable in accordance
3 with applicable law, stocks of Pacific whiting are
4 conserved and managed in a sustainable manner so
5 as to prevent overfishing while providing economic
6 opportunities for the United States fishing industry,
7 including commercial fishermen and seafood proc-
8 essors, and coastal communities.

9 (2) The Pacific whiting fishery is uniquely suit-
10 ed to the establishment of a distinct market-based
11 program due to the relatively small and easily identi-
12 fiable numbers of fishermen and processors involved,
13 and to the existence of a management system that
14 clearly allocates harvest among discrete sectors of
15 the fishery.

16 (b) SENSE OF CONGRESS.—It is the sense of Con-
17 gress that—

18 (1) a regional program of market-based incen-
19 tives for management and conservation should be es-
20 tablished in order to meet the obligation described in
21 subsection (a)(1); and

22 (2) as actions taken to reduce excess capacity
23 in fisheries may result in adverse impacts on fisher-
24 men, processors, and local coastal communities, any

1 such program should be designed, to the extent
2 practicable, to avoid such impacts.

3 (c) PURPOSE.—The purpose of this Act is to facili-
4 tate the continued economic viability of the Pacific whiting
5 fishery for the benefit of the United States through the
6 establishment of a market-based cooperative system for
7 the harvesting and processing of Pacific whiting.

8 (d) POLICY.—It is the policy of the United States to
9 demonstrate the conservation and economic benefits of a
10 market-based cooperative system by using the shore-based
11 vessels and processors of the Pacific whiting in a fishery
12 management program without disrupting other sectors of
13 the whiting fishery or other fisheries.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) AGGREGATE CATCH.—The term “aggregate
17 catch” means the total amount of Pacific whiting
18 harvested and delivered on shore in California, Or-
19 egon, and Washington without further processing
20 during the benchmark period during a year from
21 1994 through 2004, excluding any such Pacific whit-
22 ing harvested pursuant to a treaty between the
23 United States and a treaty tribe.

24 (2) AGGREGATE LANDED CATCH.—The term
25 “aggregate landed catch” means the total amount of

1 Pacific whiting processed on shore in California, Or-
2 egon, and Washington during the benchmark period
3 during a year from 1999 through 2004.

4 (3) BENCHMARK PERIOD.—The term “bench-
5 mark period” means for a year, the period from
6 April 1 through September 30 of such year.

7 (4) CATCH.—The term “catch” means all fish-
8 ery removals from the offshore whiting resource, in-
9 cluding landings, discards, and bycatch in fisheries
10 other than the Pacific whiting fishery.

11 (5) COOPERATIVE SHARE.—The term “coopera-
12 tive share” means the percentage of allowable Pa-
13 cific whiting harvest assigned to each qualified fish-
14 erman or qualified processor based on the formula
15 established in section 4.

16 (6) COUNCIL.—The term “Council” means the
17 Pacific Fishery Management Council established
18 under section 302(a)(1)(F) of the Magnuson-Stevens
19 Act (16 U.S.C. 1852(a)(1)(F)).

20 (7) MAGNUSON-STEVENSON ACT.—The term
21 “Magnuson-Stevens Act” means the Magnuson-Ste-
22 venson Fishery Conservation and Management Act (16
23 U.S.C. 1801 et seq.).

24 (8) OFFSHORE WHITING RESOURCE.—The term
25 “offshore whiting resource” means the

1 transboundary stock of fish of the species *Merluccius*
2 productus that—

3 (A) is located in the offshore waters of the
4 United States and Canada; and

5 (B) does not include any fish of that spe-
6 cies located in Puget Sound or the Strait of
7 Georgia.

8 (9) ON-SHORE ALLOCATION.—The term “on-
9 shore allocation” means that amount of the United
10 States catch level required under a Plan to be deliv-
11 ered to processors located on shore in the States of
12 California, Oregon, or Washington.

13 (10) PACIFIC COAST GROUND FISH FISHERY
14 MANAGEMENT PLAN.—The term “Pacific Coast
15 Groundfish Fishery Management Plan” means the
16 Pacific Coast Groundfish Fishery Management Plan
17 and Environmental Impact Statement for the Cali-
18 fornia, Oregon, and Washington groundfish fishery
19 approved by the Secretary on January 4, 1982, and
20 all subsequent approved amendments to that plan.

21 (11) PACIFIC GROUND FISH.—The term “Pacific
22 groundfish” means all species of fish included in the
23 Pacific Coast Groundfish Fishery Management Plan.

24 (12) PACIFIC WHITING.—The term “Pacific
25 whiting” means that portion of the harvest of the

1 offshore whiting resource that is under the jurisdic-
2 tion of the United States.

3 (13) PLAN.—The term “Plan” means a fishery
4 management plan prepared by the Council and ap-
5 proved by the Secretary under the Magnuson-Ste-
6 vens Act.

7 (14) PERSON.—The term “person” means any
8 individual (whether or not a citizen or national of
9 the United States), any corporation, partnership, as-
10 sociation, or other entity (whether or not organized
11 or existing under the laws of any State).

12 (15) PROCESSING.—The term “processing”
13 means the preparation or packaging of Pacific whit-
14 ing to render it suitable for human consumption, re-
15 tail sale, industrial uses, or long-term storage by
16 cooking, filleting, freezing, conversion to fish protein
17 compounds, mincing, or heading and gutting.

18 (16) PROCESSOR.—The term “processor”
19 means a person that engages in processing of Pacific
20 whiting harvested as part of an on-shore allocation.

21 (17) QUALIFIED FISHERMAN.—The term
22 “qualified fisherman” means the current owner of a
23 trawl-endorsed Pacific groundfish limited entry per-
24 mit issued under regulations implementing the Pa-
25 cific Coast Groundfish Fishery Management Plan

1 which during any two years from 1994 through
2 2004 delivered not less than of 500 metric tons of
3 Pacific whiting during each such year to a processor
4 during the benchmark period.

5 (18) QUALIFIED PROCESSOR.—The term
6 “qualified processor” means—

7 (A) a processor that operated in any year
8 from 1999 through 2004, and processed at
9 least 1,000,000 pounds of whiting during such
10 year; or

11 (B) a successor in ownership of a processor
12 described in subparagraph (A).

13 (19) SECRETARY.—The term “Secretary”
14 means the Secretary of Commerce.

15 (20) SHARE-HOLDER.—The term “share-hold-
16 er” means the current owner of cooperative shares.

17 (21) TREATY TRIBE.—The term “treaty tribe”
18 means any Indian tribe determined by the United
19 States courts to have rights to harvest Pacific whit-
20 ing within specified areas.

21 (22) UNITED STATES CATCH LEVEL.—The term
22 “United States catch level” means that portion of
23 the offshore whiting resource which may be har-
24 vested by persons subject to the jurisdiction of the
25 United States.

1 **SEC. 4. RATIONALIZATION OF THE PACIFIC WHITING FISH-**
2 **ERY.**

3 (a) IDENTIFICATION OF QUALIFIED PARTICI-
4 PANTS.—

5 (1) REQUIREMENT FOR PERMITS.—The Sec-
6 retary shall issue a permit to—

7 (A) any person who demonstrates by ap-
8 propriate records that such person is a qualified
9 fisherman; and

10 (B) any person who demonstrates by ap-
11 propriate records that such person is a qualified
12 processor.

13 (2) LIMITATIONS.—Permits issued under this
14 subsection will be clearly designated as qualified
15 fisherman or qualified processor permits, are not
16 interchangeable, and shall not confer ownership in
17 any stock of fish over which the United States exer-
18 cises sovereign jurisdiction.

19 (3) TRANSFER OF PERMITS.—Permits may be
20 transferred through sale, lease, barter, gift, inherit-
21 ance, or any other legal means. A permit which is
22 transferred may not be redesignated and may only
23 be used in accordance with this Act and any regula-
24 tions issued pursuant to this Act.

25 (4) FEE.—The Secretary may charge a fee to
26 issue a permit under this subsection which shall not

1 exceed the administrative costs incurred in issuing
2 the permit.

3 (5) ENDORSEMENT.—For the purposes of para-
4 graph (1)(A), the permit issued by the Secretary
5 shall be an appropriate permanent endorsement of a
6 Pacific groundfish trawl limited entry permit issued
7 under the Pacific Coast Groundfish Fishery Manage-
8 ment Plan.

9 (b) ALLOCATION OF RESOURCE.—Prior to March 1
10 of the calendar year following the issuance of final regula-
11 tions as required by section 6, the Secretary shall make
12 an initial allocation of cooperative shares as follows:

13 (1) Each qualified fisherman who currently
14 owns a Pacific groundfish trawl limited entry permit
15 issued under the Pacific Coast Groundfish Fishery
16 Management Plan that has been endorsed under
17 subsection (a) shall be assigned a percentage of co-
18 operative share using the following formula:

19 (A) For each permit, the amount of Pacific
20 whiting harvested by any vessel to which the
21 permit was assigned during the benchmark pe-
22 riod in each of the years from 1994 through
23 2004 shall be divided by the aggregate catch for
24 each of those years.

1 (B) The 9 highest percentages shall be
2 averaged and the result shall be considered the
3 permit's catch history.

4 (C) Each permit's catch history shall be di-
5 vided by the sum of all catch histories to deter-
6 mine the qualified fisherman's cooperative
7 share.

8 (2) Each qualified processor who has been
9 issued a permit under subsection (a) shall be as-
10 signed a percentage of cooperative share using the
11 following formula:

12 (A) For each qualified processor, the
13 amount of Pacific whiting purchased by that
14 processor during the benchmark period in each
15 of the years from 1999 through 2004 shall be
16 divided by the aggregate landed catch for each
17 of those years.

18 (B) The 4 highest percentages shall be
19 averaged and the result shall be considered the
20 qualified processor's processing history.

21 (C) Each qualified processor's processing
22 history shall be divided by the sum of all proc-
23 essing histories to determine the qualified proc-
24 essor's cooperative share.

1 (3) The percentages assigned to qualifying fish-
2 ermen shall be designated fishermen's cooperative
3 share and the percentages assigned to qualifying
4 processors shall be designated processors' coopera-
5 tive share. Except as provided in subsection (d), co-
6 operative shares may be transferred, in whole or in
7 part, through sale, lease, barter, gift, inheritance or
8 any other legal means but will retain their original
9 designation.

10 (c) COOPERATIVE HARVEST OF PACIFIC WHITING.—

11 (1) In each calendar year, the on-shore alloca-
12 tion shall be divided so that—

13 (A) an amount sufficient to account for the
14 incidental commercial or recreational catch of
15 Pacific whiting in fisheries other than the Pa-
16 cific whiting fishery, but not to exceed 1 per-
17 cent of the on-shore allocation, shall be avail-
18 able for harvest by any person legally eligible to
19 harvest Pacific whiting; and

20 (B) after subtracting the amounts de-
21 scribed in subparagraph (A), 50 percent of the
22 remainder shall be available for harvest using
23 fishermen's cooperative shares and 50 percent
24 of the remainder shall be available for harvest
25 using processors' cooperative shares.

1 (2) At any time during a calendar year, a hold-
2 er of fisherman's cooperative shares may enter into
3 one or more agreements with holders of processor's
4 cooperative shares to use all or a portion of those
5 processors' cooperative shares. No Pacific whiting
6 may be harvested using fishermen's cooperative
7 shares or processors' cooperative shares without a
8 registered agreement. Such an agreement shall not
9 be valid if—

10 (A) it does not require the use of an equal
11 amount of fishermen's cooperative shares and
12 processors' cooperative shares; or

13 (B) it is not registered with the Secretary
14 prior to the time the cooperative shares covered
15 by the agreement are used to harvest Pacific
16 whiting.

17 (d) RESTRICTIONS ON TRANSFER.—Fishermen's co-
18 operative shares may only be transferred to a person hold-
19 ing a Pacific groundfish trawl limited entry permit issued
20 under the Pacific Coast Groundfish Fishery Management
21 Plan.

22 (e) CONTRIBUTION TO RESEARCH AND MANAGE-
23 MENT.—

24 (1) FEE.—In addition to any fee which may be
25 collected under subsection (a), the Secretary is au-

1 thorized and shall collect a fee equally from share-
2 holders to recover the costs of carrying out this sec-
3 tion (including costs associated with carrying out ac-
4 tivities under section 5) and of conducting scientific
5 research on the offshore whiting resource.

6 (2) DETERMINATION OF FEE.—

7 (A) IN GENERAL.—Each share-holder will
8 be liable for a fee up to 3 percent of the ex-ves-
9 sel value of the Pacific whiting that was har-
10 vested in a calendar year using fishermen's co-
11 operative shares owned by that share-holder
12 and up to 3 percent of the ex-vessel value of the
13 Pacific whiting that was harvested in a calendar
14 year using processors' cooperative shares owned
15 by that share-holder.

16 (B) SCHEDULE OF PAYMENT.—The fee re-
17 ferred to in subparagraph (A) shall be payable
18 not later than 30 days after the end of the cal-
19 endar year during which the Pacific whiting on
20 which the fee is imposed was harvested.

21 (3) AVAILABILITY OF FEES.—Fees collected
22 under this subsection shall be available to the Sec-
23 retary without fiscal year limitation and may only be
24 used to carry out the Secretary's obligations under
25 this Act, except as provided in paragraph (4).

1 (4) USE BY STATES.—Upon application from
 2 the States of Washington, Oregon, or California, the
 3 Secretary may transfer up to 33 percent of the fees
 4 collected under this subsection in any calendar year
 5 to 1 or more of such States to offset costs incurred
 6 by such States in the conservation and management
 7 of Pacific whiting.

8 **SEC. 5. CONSERVATION OF PACIFIC WHITING.**

9 (a) LIMITS ON INCIDENTAL CATCH.—

10 (1) RECOMMENDATION OF INCIDENTAL CATCH
 11 LIMITATIONS.—The Council may recommend to the
 12 Secretary appropriate amounts of any species of Pa-
 13 cific groundfish, other than Pacific whiting, that
 14 may be harvested incidentally to the harvest of Pa-
 15 cific whiting under this Act and any other Act.

16 (2) SCHEDULE FOR RECOMMENDATIONS.—The
 17 Council may make recommendations annually or in
 18 such other time increment that facilitates conserva-
 19 tion and management of the Pacific groundfish fish-
 20 ery.

21 (3) RECOMMENDATIONS.—

22 (A) BASIS FOR RECOMMENDATIONS.—

23 Such recommendations shall be—

24 (i) based on the best scientific infor-
 25 mation available;

1 (ii) reasonably calculated to promote
2 conservation;

3 (iii) fair and equitable to holders of
4 cooperative shares and others who harvest
5 Pacific groundfish; and

6 (iv) to the extent practicable, designed
7 to minimize the discard of Pacific whiting
8 and other species of Pacific groundfish.

9 (4) CONSIDERATIONS.—The Council shall, in
10 making such recommendations, consider the percent-
11 age of Pacific whiting available for harvest by hold-
12 ers of cooperative shares relative to the percentage
13 of Pacific whiting available for harvest by others.

14 (5) USE OF FUNDS.—The amounts rec-
15 ommended under paragraph (1) shall include specific
16 subamounts by species or species group which shall
17 be available only to holders of cooperative shares and
18 which may be transferred among holders of coopera-
19 tive shares who are harvesting Pacific whiting under
20 a valid agreement under section 4.

21 (6) PUBLICATION.—Not later than 45 days
22 after receiving the recommendations of the Council,
23 the Secretary shall publish a proposed rule which
24 applies the aggregate limits to the Pacific whiting

1 fishery and allow 30 days for public comment before
2 publishing a final rule.

3 (b) MONITORING.—The Secretary shall issue regula-
4 tions providing for the statistically reliable monitoring of
5 harvesting and processing of Pacific whiting to determine
6 compliance with this Act and to collect necessary biological
7 samples for the conservation and management of the Pa-
8 cific whiting fishery and the offshore whiting resource.

9 (c) ACTION BY THE COUNCIL.—

10 (1) RECOMMENDATIONS OF OTHER INCIDENTAL
11 CATCH LIMITATIONS.—The Council may recommend
12 amendments to the Pacific Coast Groundfish Fish-
13 ery Management Plan which provide for limits on in-
14 cidental catch of species other than Pacific whiting,
15 monitoring of the Pacific whiting fishery, and a sys-
16 tem allowing transfer of incidental catch amounts
17 among persons harvesting Pacific whiting under a
18 valid agreement under section 4. Amendments rec-
19 ommended under this paragraph shall meet the re-
20 quirements of subsection (a)(3).

21 (2) ADDITIONAL REGULATIONS.—Regulations
22 issued by the Secretary under subsections (a) or (b)
23 shall be superseded by any regulations issued by the
24 Secretary to implement Plan amendments rec-
25 ommended under paragraph (1).

1 (d) COMPLIANCE WITH ENVIRONMENTAL STAND-
2 ARDS.—Amendments to the Pacific Coast Groundfish
3 Fishery Management Plan and regulations implementing
4 those amendments which are prepared in accordance with
5 applicable provisions of the Magnuson-Stevens Act and
6 regulations implementing this Act are deemed to have
7 been prepared in compliance with the requirements of sec-
8 tion 102(2)(C) of the National Environmental Policy Act
9 of 1969 (42 U.S.C. 4332(2)(C)).

10 **SEC. 6. PROGRAM IMPLEMENTATION.**

11 (a) REQUIREMENT.—Not later than 6 months after
12 the date of enactment of this Act, the Secretary shall issue
13 final regulations to implement the program for Pacific
14 whiting conservation and management described in this
15 Act. In developing such regulations, the Secretary shall
16 allow the Council the opportunity to propose draft regula-
17 tions.

18 (b) PLAN AMENDMENT.—The Council may amend
19 the appropriate Plan to conform with this Act or regula-
20 tions issued under this Act. Failure of the Council to
21 amend a Plan shall not delay the obligations of the Sec-
22 retary under subsection (a).

1 SEC. 7. ENFORCEMENT AND PENALTIES.

2 (a) IN GENERAL.—It is unlawful for any person to
3 violate any provision of this Act or any regulation issued
4 under this Act.

5 (b) UNLAWFUL HARVEST.—It is unlawful for any
6 person to harvest Pacific whiting using cooperative shares
7 without having a valid agreement registered with the Sec-
8 retary under section 4(c)(2).

9 (c) PENALTY.—Any person who commits an action
10 that is unlawful under subsection (a) or (b) may be liable
11 for a civil penalty under subsection (a) of section 308 of
12 the Magnuson-Stevens Act (16 U.S.C. 1858) or permit
13 sanction imposed by subsection (g) of such section 308,
14 as if such person had committed an act prohibited by sec-
15 tion 307 of such Act (16 U.S.C. 1857).

16 (d) REVIEW.—Any person against whom a civil pen-
17 alty is assessed or against whom a permit sanction is im-
18 posed as described in subsection (c) may obtain review
19 thereof as described in subsection (b) of section 308 of
20 the Magnuson-Stevens Act.

21 (e) SHERMAN ACT.—No person may own or control
22 cooperative shares in an amount or manner that violates
23 the Sherman Act (15 U.S.C. 1 et seq.).

24 SEC. 8. REPORTS TO CONGRESS.

25 (a) REQUIREMENT.—Not later than 5 years after the
26 issuance of final regulations under section 6(a), and dur-

1 ing each 5-year period thereafter, the Secretary, after con-
2 sultation with the Council, shall submit to Congress a re-
3 port on the implementation of this Act.

4 (b) CONTENTS.—Such reports shall include—

5 (1) a description of the conservation and man-
6 agement actions carried out for the Pacific whiting
7 fishery, including the extent to which bycatch (in-
8 cluding discard) of Pacific groundfish has been mini-
9 mized;

10 (2) the number of active fishing vessels and
11 processing facilities remaining in such fishery;

12 (3) the economic impact of such fishery on local
13 coastal communities;

14 (4) whether the amounts specified in section
15 4(c)(1)(A) continue to be appropriate; and

16 (5) any recommendations of the Secretary for
17 changes to this Act, along with a justification for
18 such recommendations.

19 **SEC. 9. CONSTRUCTION.**

20 The provisions of this Act shall be deemed not to vio-
21 late section 804 of the Departments of Commerce, Justice,
22 and State, the Judiciary, and Related Agencies Appropria-
23 tions Act, 2004 (division B of Public Law 108–199; 118
24 Stat. 111) or any provision of the Magnuson-Stevens Act

1 and may not be construed to have any effect on the appli-
2 cation of such section 804.

3 **SEC. 10. AUTHORIZATIONS.**

4 There is authorized to be appropriated to the Sec-
5 retary \$750,000 for each of fiscal years 2006 and 2007
6 to carry out the provisions of this Act, of which \$250,000
7 may be made available to the Council each fiscal year.

○

[STAFF WORKING DRAFT]

AUGUST 4, 2005

109TH CONGRESS
1ST SESSION

S. ———

To authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2006 through 2012, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER —, 2005

Mr. ——— (for himself, Mr. ———, and Mr. ———) introduced the following bill; which was read twice and referred to the Committee on ———

A BILL

To authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2006 through 2012, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Magnuson-Stevens Fishery Conservation and Manage-
4 ment Reauthorization Act of 2005”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment of Magnuson-Stevens Fishery Conservation and Manage-
ment Act.
- Sec. 3. Changes in definitions.
- Sec. 4. Total allowable foreign fishing.
- Sec. 5. Authorization of appropriations.

TITLE I—CONSERVATION AND MANAGEMENT

- Sec. 101. Caribbean Council jurisdiction.
- Sec. 102. Regional fishery management councils.
- Sec. 103. Environmental review process.
- Sec. 104. Limited access systems.
- Sec. 105. Fishery management plan requirements.
- Sec. 106. Fishery management plan discretionary provisions.
- Sec. 107. Limited access privilege programs.
- Sec. 108. Emergency regulations.
- Sec. 109. Prohibited acts.
- Sec. 110. Cooperative enforcement agreements.
- Sec. 111. Bycatch reduction program.
- Sec. 112. Western Alaska Community Development Quota Program.

TITLE II—INFORMATION AND RESEARCH

- Sec. 201. Collection of information.
- Sec. 202. Access to certain information.
- Sec. 203. Cooperative research and management program.
- Sec. 204. Western Pacific fishery demonstration projects.

TITLE III—OTHER FISHERIES STATUTES

- Sec. 301. Amendments to Northern Pacific Halibut Act.
- Sec. 302. Maine pocket waters.
- Sec. 303. Reauthorization of other fishing Acts.

TITLE IV—INTERNATIONAL

- Sec. 401. International monitoring and compliance.
- Sec. 402. Finding with respect to illegal, unreported, and unregulated fishing.
- Sec. 403. Illegal, unreported, or unregulated fishing.
- Sec. 404. Conservation of protected living marine resources.
- Sec. 405. Monitoring of Pacific insular area fisheries.

1 **SEC. 2. AMENDMENT OF MAGNUSON-STEVEN'S FISHERY**
2 **CONSERVATION AND MANAGEMENT ACT.**

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of the Magnuson-Stevens Fish-
8 ery Conservation and Management Act (16 U.S.C. 1801
9 et seq.).

10 **SEC. 3. CHANGES IN DEFINITIONS.**

11 (a) IN GENERAL.—Section 3 (16 U.S.C. 1802) is
12 amended—

13 (1) by inserting after paragraph (18) the fol-
14 lowing:

15 “(18A) The term ‘foreign law or regulation’
16 means a treaty, law, or regulation of another nation
17 that—

18 “(A) regulates the taking, possession, im-
19 portation, exportation, transportation, or sale of
20 fish; and

21 “(B) has fishery resource protection, con-
22 servation, or management as one of its pur-
23 poses.”;

24 (2) by inserting after paragraph (20) the fol-
25 lowing:

1 “(20A) The term ‘import’ means to land on,
2 bring into or introduce into, or attempt to land on,
3 bring into, or introduce into, any place subject to the
4 jurisdiction of the United States, whether or not
5 such landing, bringing, or introduction constitutes
6 an importation within the meaning of the customs
7 laws of the United States.”;

8 (3) by inserting after paragraph (23) the fol-
9 lowing:

10 “(23A) The term ‘limited access privilege’
11 means a Federal permit, issued as part of a limited
12 access system under section 303A, to harvest or
13 process a quantity of fish that may be received or
14 held for exclusive use by a person. The term does
15 not include community development quotas as de-
16 scribed in section 305(i).”;

17 (4) by inserting after paragraph (27) the fol-
18 lowing:

19 “(27A) The term ‘observer information’ means
20 any information collected, observed, retrieved, or cre-
21 ated by an observer pursuant to authorization by the
22 Secretary, including fish harvest or processing obser-
23 vations, fish sampling or weighing data, vessel log-
24 book data, vessel or processor-specific information
25 (including any safety, location, or operating condi-

1 tion observations), and video, audio, photographic,
2 or written documents.”; and

3 (5) by inserting after paragraph (40) the fol-
4 lowing:

5 “(40A) The term ‘United States citizen’
6 means—

7 “(A) an individual who is a citizen of the
8 United States; or

9 “(B) a corporation, partnership, associa-
10 tion, or any other entity that meets the owner-
11 ship requirements contained in section
12 12102(c)(1) and (2) of title 46, United States
13 Code.”.

14 (b) REDESIGNATION.—Paragraphs (1) through (45)
15 of section 3 (16 U.S.C. 1802), as amended by subsection
16 (a), are redesignated as paragraphs (1) thorough (49), re-
17 spectively.

18 (b) CONFORMING AMENDMENTS.—

19 (1) The following provisions of the Act are
20 amended by striking “individual fishing quota” and
21 inserting “limited access privilege”:

22 (A) Section 304(c)(3) (16
23 U.S.C.1854(c)(3)).

24 (B) Section 304(d)(2)(A)(i) (16
25 U.S.C.1854(d)(2)(A)(i)).

1 (C) Section 402(b)(1)(D) (16 U.S.C.
2 1881a(b)(1)(D)).

3 (D) Section 407(a)(1)(D), (c)(1), and
4 (c)(2)(B) (16 U.S.C. 1883(a)(1)(D), (c)(1), and
5 (c)(2)(B)).

6 (2) Section 305(h)(1) (16 U.S.C. 1855(h)(1)) is
7 amended by striking “individual fishing quotas,”
8 and inserting “limited access privileges.”

9 **SEC. 4. TOTAL ALLOWABLE FOREIGN FISHING.**

10 Section 201(d) (16 U.S.C. 1821(d)) is amended—

11 (1) by striking “shall be” and inserting “is”;

12 (2) by striking “will not” and inserting “can-
13 not, or will not,”;

14 (3) by inserting after “Act.” the following: “Al-
15 locations of total allowable foreign fishing are discre-
16 tionary.”

17 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

18 Section 4 (16 U.S.C. 1803) is amended to read as
19 follows:

20 **“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

21 “There are authorized to be appropriated to the Sec-
22 retary to carry out the provisions of this Act—

23 “(1) \$———,000,000 for fiscal year 2006;

24 “(2) \$———,000,000 for fiscal year 2007;

25 “(3) \$———,000,000 for fiscal year 2008;

1 “(4) \$———,000,000 for fiscal year 2009;
2 “(5) \$———,000,000 for fiscal year 2010.
3 “(4) \$———,000,000 for fiscal year 2011; and
4 “(4) \$———,000,000 for fiscal year 2012.”.

5 **TITLE I—CONSERVATION AND**
6 **MANAGEMENT**

7 **SEC. 101. CARIBBEAN COUNCIL JURISDICTION.**

8 Section 302(a)(1)(D) (16 U.S.C. 852(a)(1)(D)) is
9 amended by inserting “and of commonwealths, territories,
10 and possessions of the United States in the Caribbean
11 Sea” after “seaward of such States”.

12 **SEC. 102. REGIONAL FISHERY MANAGEMENT COUNCILS.**

13 (a) SCIENTIFIC AND STATISTICAL COMMITTEES.—
14 Section 302 (16 U.S.C. 1852) is amended—

15 (1) by striking so much of subsection (g) as
16 precedes paragraph (2) and inserting the following:

17 “(g) COMMITTEES AND ADVISORY PANELS.—”

18 “(1) SCIENTIFIC AND STATISTICAL COMMIT-
19 TEES.—

20 “(A) Each Council shall establish, main-
21 tain, and appoint the members of, a scientific
22 and statistical committee to assist it in the de-
23 velopment, collection, and evaluation of such
24 statistical, biological, economic, social, and
25 other scientific information as is relevant to

1 such Council's development and amendment of
2 any fishery management plan.

3 “(B) Each scientific and statistical com-
4 mittee shall provide its Council scientific advice
5 for fishery management decisions, which may
6 include reports on stock status and health, de-
7 termination of allowable biological catch, socio-
8 economic impacts of management measures,
9 and sustainability of fishing practices.

10 “(C) Members nominated for appointment
11 by the Councils to the scientific and statistical
12 committees shall have strong technical creden-
13 tials and experience.

14 “(D) The Secretary and each council may
15 formalize a peer review process, developed in
16 consultation with the Council coordination com-
17 mittee established under this section, for sci-
18 entific information used to advise the Council
19 about the conservation and management of the
20 fishery. The review process is deemed to satisfy
21 the requirements of the guidelines issued pursu-
22 ant to section 515 of the Treasury and General
23 Government Appropriations Act for Fiscal year
24 2001 (Public Law 106-554—Appendix C; 114
25 Stat. 2763A-153).

1 “(E) In addition to the provisions of sec-
2 tion 302(f)(7), the Secretary may pay a stipend
3 to members of the scientific and statistical com-
4 mittees who are not employed by the Federal
5 government or a State marine fisheries agen-
6 cy.”; and

7 (2) by striking “other” in paragraph (2); and

8 (3) by resetting the left margin of paragraphs
9 (2) through (5) 2 ems from the left.

10 (b) COUNCIL FUNCTIONS.—Section 302(h) (16
11 U.S.C. 1852(h)) is amended—

12 (1) by striking “and” after the semicolon in
13 paragraph (5); and

14 (2) by redesignating paragraph (6) as para-
15 graph (7) and inserting after paragraph (5) the fol-
16 lowing:

17 “(6) establish, after considering the rec-
18 ommendations of the Council’s Scientific and Statis-
19 tical Committee, total allowable catch limits that
20 shall not be exceeded by a fishery; and”.

21 (c) REGULAR AND EMERGENCY MEETINGS.—The
22 first sentence of section 302(i)(2)(C) (16 U.S.C.
23 1852(i)(2)(C)) is amended—

1 (1) by striking “published in local newspapers”
2 and inserting “provided by any means that will re-
3 sult in wide publicity”; and

4 (2) by striking “fishery) and such notice may
5 be given by such other means as will result in wide
6 publicity.” and inserting “fishery).”.

7 (d) CLOSED MEETINGS.—Section 302(i)(3)(B) (16
8 U.S.C. 1852(i)(3)(B)) is amended by striking “notify local
9 newspapers” and inserting “provide notice by any means
10 that will result in wide publicity”.

11 (e) TRAINING.—Section 302 (16 U.S.C. 1852) is
12 amended by adding at the end the following:

13 “(k) COUNCIL TRAINING PROGRAM.—

14 “(1) TRAINING COURSE.—Within 6 months
15 after the date of enactment of the Magnuson-Ste-
16 vens Fishery Conservation and Management Reau-
17 thorization Act of 2005, the Secretary, in consulta-
18 tion with the Councils, shall develop a training
19 course for newly appointed Council members. The
20 course may cover a variety of topics relevant to mat-
21 ters before the Councils, including—

22 “(A) fishery science and basic stock assess-
23 ment methods;

24 “(B) fishery management techniques, data
25 needs, and Council procedures;

1 “(C) social science and fishery economics;

2 “(D) tribal treaty rights;

3 “(E) legal requirements of this Act, includ-
4 ing conflict of interest and disclosure provisions
5 of this section and related policies;

6 “(F) other relevant legal and regulatory
7 requirements, including chapter 5 of title 5,
8 United States Code, and the National Environ-
9 mental Policy Act (42 U.S.C. 4321 et seq.);

10 “(G) public process for development of
11 fishery management plans; and

12 “(H) other topics suggested by the Coun-
13 cil.

14 “(2) MEMBER TRAINING.—The training course
15 shall be available to both new and existing Council
16 members, and may be made available to committee
17 or advisory panel members as resources allow.

18 “(1) COUNCIL COORDINATION COMMITTEE.—The
19 Councils may establish a Council coordination committee
20 consisting of the chairs, vice chairs, and executive direc-
21 tors of each of the 8 Councils described in subsection
22 (a)(1), or other Council members or staff, in order to dis-
23 cuss issues of relevance to all Councils, including issues
24 related to the implementation of this Act.”.

1 (e) CONFLICTS OF INTEREST.—Section 302(j) (16
2 U.S.C. 1852(j)) is amended—

3 (1) by striking “in harvesting” in paragraph
4 (2) and inserting “in, or with respect to any person
5 with a financial interest in, harvesting”;

6 (2) by inserting “on the Internet or” after “in-
7 spection” in subparagraphs (B) and (C) of para-
8 graph (5); and

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

10 “(9) On January 1, 2008, and annually thereafter,
11 the Secretary shall submit a report to the Senate Com-
12 mittee on Commerce, Science, and Transportation and the
13 House of Representatives Committee on Resources on ac-
14 tion taken by the Secretary and the Councils to implement
15 the disclosure of financial interest and recusal require-
16 ments of this subsection.”.

17 (f) PROCEDURAL MATTERS.—Section 302(i) (16
18 U.S.C. 1852(i)) is amended—

19 (1) in paragraph (1) by striking “to the Coun-
20 cils or to the scientific and statistical committees or
21 advisory panels established under subsection (g)”
22 and inserting, “to the Councils, the Council coordi-
23 nation committee established under subsection (l), or
24 to the scientific and statistical committees or other

1 committees or advisory panels established under sub-
2 section (g)”; and

3 (2) in paragraph (2) by striking “of a Council,
4 and of the scientific and statistical committee and
5 advisory panels established under subsection (g)”
6 and inserting, “of a Council, of the Council coordi-
7 nation committee established under subsection (l),
8 and of the scientific and statistical committees or
9 other committees or advisory panels established
10 under subsection (g)”.

11 **SEC. 103. ENVIRONMENTAL REVIEW PROCESS.**

12 Section 304 (16 U.S.C. 1854) is amended by adding
13 at the end the following:

14 “(h) ENVIRONMENTAL REVIEW PROCESS.—

15 “(1) IN GENERAL.—Within 18 months after
16 the date of enactment of the Magnuson-Stevens
17 Fishery Conservation and Management Reauthoriza-
18 tion Act of 2005, the Secretary, after consultation
19 with the Council on Environmental Quality and the
20 Environmental Protection Agency, shall issue regula-
21 tions establishing an integrated Council process, or
22 process for any plan or amendment prepared by the
23 Secretary, to comply with the National Environ-
24 mental Policy Act (42 U.S.C. 4321 et seq.).

1 “(2) CEQ APPROVAL.—The Secretary may pro-
2 mulgate the process only after it has been reviewed
3 and approved by the Council on Environmental
4 Quality for consistency with the National Environ-
5 mental Policy Act.

6 “(3) CRITERIA.—The process shall—

7 “(A) conform to the timelines for review
8 and approval of fishery management plans and
9 plan amendments under this section;

10 “(B) provide an adequate opportunity for
11 public participation;

12 “(C) document and consider—

13 “(i) the effects of the proposed action
14 on the marine environment;

15 “(ii) the cumulative effects of the pro-
16 posed action; and

17 “(iii) reasonable alternatives to the
18 proposed action;

19 “(D) integrate any applicable environ-
20 mental analytical process, including the time-
21 frames for public input, with the process for the
22 preparation and dissemination of fishery man-
23 agement plans, plan amendments, and other ac-
24 tions taken or approved pursuant to this Act;
25 and

1 “(E) reduce extraneous paperwork and
2 provide for timely, clear and concise analysis
3 that is useful to decisionmakers and the public.

4 “(3) USAGE.—Any process promulgated in ac-
5 cordance with this section may be used by the Coun-
6 cils or the Secretary and shall supersede the regula-
7 tions of the Council on Environmental Quality im-
8 plementing the procedural provisions of the National
9 Environmental Policy Act, to the extent applicable to
10 a fishery management plan, amendment, regulation
11 or other action taken or approved pursuant to this
12 Act.”.

13 **SEC. 104. LIMITED ACCESS SYSTEMS.**

14 (a) IN GENERAL.—Section 303 (16 U.S.C. 1853) is
15 amended by striking subsection (b)(6) and inserting the
16 following:

17 “(6) establish a limited access system for the
18 fishery in order to achieve optimum yield if, in devel-
19 oping such system, the Council and the Secretary
20 take into account—

21 “(A) the conservation requirements of this
22 Act with respect to the fishery;

23 “(B) present participation in the fishery;

24 “(C) historical fishing practices in, and de-
25 pendence on, the fishery;

1 “(D) the economics of the fishery;

2 “(E) the capability of fishing vessels used
3 in the fishery to engage in other fisheries;

4 “(F) the cultural and social framework rel-
5 evant to the fishery and any affected fishing
6 communities;

7 “(G) the fair and equitable distribution of
8 a public resource; and

9 “(H) any other relevant considerations;”.

10 **SEC. 105. FISHERY MANAGEMENT PLAN REQUIREMENTS.**

11 Section 303(a)(5) (16 U.S.C. 1853(a)(5)) is amended
12 by inserting “harvest and processing revenues (by spe-
13 cies), production costs, capital expenditures, and other
14 fishing or processing expenses”, after “number of hauls,”.

15 **SEC. 106. FISHERY MANAGEMENT PLAN DISCRETIONARY**
16 **PROVISIONS.**

17 Section 303(b) (16 U.S.C. 1853(b)) is amended—

18 (1) by striking “(other than economic data)” in
19 paragraph (7);

20 (2) by striking “and” after the semicolon in
21 paragraph (11); and

22 (3) redesignating paragraph (12) as paragraph
23 (13) and inserting after paragraph (11) the fol-
24 lowing:

1 “(12) establish a process for complying with the
2 National Environmental Policy Act (42 U.S.C. 4321
3 et seq.); and”.

4 **SEC. 107. LIMITED ACCESS PRIVILEGE PROGRAMS.**

5 (a) IN GENERAL.—Title III (16 U.S.C. 1851 et seq.)
6 is amended by inserting after section 303 the following:

7 **“SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.**

8 “(a) IN GENERAL.—Subject to the requirements set
9 forth in this section, a Council may submit, and the Sec-
10 retary may approve, a limited access privilege program for
11 a fishery under a limited access system—

12 “(1) to harvest fish, if it meets the require-
13 ments of subsection (b) and subsections (d) through
14 (f); or

15 “(2) to process fish, if it meets the require-
16 ments of subsections (c) through (f).

17 “(b) LIMITED ACCESS PRIVILEGES TO HARVEST
18 FISH.—

19 “(1) IN GENERAL.—In addition to complying
20 with the other requirements of this Act, any limited
21 access privilege program to harvest fish submitted
22 by a Council under this section that is approved
23 after the date of enactment of the Magnuson-Ste-
24 vens Fishery Conservation and Management Reau-
25 thorization Act of 2005—

1 “(A) shall provide for administration of the
2 program by the Secretary in accordance with
3 the terms of the plan;

4 “(B) shall—

5 “(i) if established in a fishery that is
6 overfished or subject to a rebuilding plan,
7 assist in its rebuilding; and

8 “(ii) if established in a fishery that is
9 determined by the Secretary or the Council
10 to have excess capacity, contribute to re-
11 ducing capacity;

12 “(C) shall contribute to improved safety
13 and bycatch and waste reduction;

14 “(D) shall promote the conservation and
15 management of the fishery; and

16 “(E) shall prohibit any person other than
17 a United States citizen, a permanent resident
18 alien, or a fishing community, from acquiring a
19 privilege to harvest fish.

20 “(2) FISHING COMMUNITIES.—

21 “(A) IN GENERAL.—To be eligible to par-
22 ticipate in a limited access privilege program, a
23 fishing community shall—

24 “(i) be located within the management
25 area of the relevant Council;

1 “(ii) meet criteria developed by that
2 Council that have been approved by the
3 Secretary and published in the Federal
4 Register;

5 “(iii) consist of residents who conduct
6 commercial or subsistence fishing within
7 the Council’s management area; and

8 “(iv) develop and submit a community
9 sustainability plan to the Council and the
10 Secretary.

11 “(B) PARTICIPATION CRITERIA.—In devel-
12 oping participation criteria for eligible commu-
13 nities under this paragraph, a Council shall
14 base the criteria on traditional fishing or proc-
15 essing practices in, and dependence on, the fish-
16 ery, the cultural and social framework relevant
17 to the fishery, and economic barriers to access
18 to the fishery.

19 “(3) ALLOCATION.—In developing a limited ac-
20 cess privilege program for fish harvesters a Council
21 or the Secretary shall—

22 “(A) establish procedures to ensure fair
23 and equitable initial allocations, including con-
24 sideration of—

25 “(i) current and historical harvests;

1 “(ii) employment in the harvesting
2 and processing sectors;

3 “(iii) investments in, and dependence
4 upon, the fishery; and

5 “(iv) the historic participation of fish-
6 ing communities;

7 “(B) provide to the extent practicable that
8 initial allocations maintain the basic cultural
9 and social framework of the fishery, especially
10 the roles of small owner-operator fishermen and
11 the sustained participation of fishing commu-
12 nities that depend on these fisheries;

13 “(C) include measures to assist, when nec-
14 essary and appropriate, entry-level and small-
15 scale fishermen, captains, crew, and fishing
16 communities through set-asides of initial and
17 secondary harvesting allocations, and including
18 where appropriate a recommendation for the
19 provision of economic assistance in the purchase
20 of limited access privileges;

21 “(D) ensure that limited access privilege
22 holders do not acquire an excessive share of the
23 total limited access privileges in the program
24 by—

1 “(i) establishing a maximum share,
2 expressed as a percentage of the total lim-
3 ited access privileges, that a limited access
4 privilege holder is permitted to own; and

5 “(ii) establishing any other limitations
6 or measures necessary to prevent an in-
7 equitable concentration of limited access
8 privileges;

9 “(E) minimize geographic consolidation of
10 the fishery, including processing facilities; and

11 “(F) authorize limited access privileges to
12 harvest fish to be held by or issued under the
13 system to fishing vessel owners, fishermen, crew
14 members, fishing communities, and other per-
15 sons who substantially participate in the fish-
16 ery, as specified by the Council.

17 “(4) PROGRAM APPROVAL, REVIEW, AND AD-
18 MINISTRATION.—

19 “(A) IN GENERAL.—After the date of en-
20 actment of the Magnuson-Stevens Fishery Con-
21 servaion and Management Reauthorization Act
22 of 2005, a Council may initiate a fishery man-
23 agement plan or amendment to establish a lim-
24 ited access privilege program for a fishery and
25 submit the program to the Secretary for ap-

1 proval only in accordance with the provisions of
2 this section.

3 “(B) IMPLEMENTATION CONDITIONS.—

4 The Secretary may not approve and implement
5 such a limited access privilege program under
6 this section unless the program meets the re-
7 quirements of this subsection and subsections
8 (e) and (f) of this section.

9 “(C) PROCEDURE.—A limited access privi-
10 lege program shall be developed by a Council in
11 a manner that is consistent with that Council’s
12 procedures and rules under section 302(i) and
13 provide for public comment.

14 “(D) INITIATION REQUEST.—Any group of
15 fishermen, constituting at least a third of those
16 actively engaged in participation in a fishery for
17 which a limited access privilege program is
18 sought, may submit a petition to the Secretary
19 requesting that the relevant Council or Councils
20 with authority over the fishery be authorized to
21 initiate the development of a limited access
22 privilege program for that fishery. Any such pe-
23 tition shall clearly state the fishery to which the
24 limited access privilege program would apply.

1 “(E) Upon the receipt of any such petition,
2 the Secretary shall review all of the signatures
3 on the petition and, if he determines that the
4 signatures on the petition represent at least a
5 third of the active participants in the fishery,
6 the Secretary shall certify the petition to the
7 appropriate Council or Councils.

8 “(F) CERTIFICATION REQUIREMENT.—A
9 Council may not initiate a fishery management
10 plan or amendment to establish a limited access
11 privilege program for a fishery unless the Sec-
12 retary has certified an appropriate petition.

13 “(G) PROGRAM REQUIREMENTS.—Any
14 such limited access privilege program shall—

15 “(i) include provisions for the regular
16 monitoring and review of the operations of
17 the program, with a formal and detailed
18 review required 5 years after the establish-
19 ment of the program and every 5 years
20 thereafter, which reviews shall be reported
21 to the Secretary within 90 days after the
22 review has been completed;

23 “(ii) include an effective system for
24 enforcement, monitoring, and management

1 of the program, including the use of ob-
2 servers; and

3 “(iii) include an appeals process for
4 administrative review of determinations
5 with respect to the Secretary’s decisions
6 regarding administration of the limited ac-
7 cess privilege program.

8 “(4) TRANSFERABILITY.—In establishing a lim-
9 ited access privilege program, a Council shall—

10 “(A) establish a policy on the transfer-
11 ability of limited access privilege shares
12 (through sale or lease), including a policy on
13 any conditions that apply to the transferability
14 of limited access privilege shares; and

15 “(B) establish a program to monitor trans-
16 fers (including sales and leases) of limited ac-
17 cess privilege shares.

18 “(5) NO CREATION OF RIGHT, TITLE, OR IN-
19 TEREST.—A limited access privilege, quota share, or
20 other limited access system authorization estab-
21 lished, implemented, or managed under this Act—

22 “(A) shall be considered a permit for the
23 purposes of sections 307, 308, and 309;

24 “(B) may be revoked or limited at any
25 time in accordance with this Act, including rev-

1 ocation for failure to comply with the terms of
2 the plan or if the system is found to have jeop-
3 ardized the sustainability of the stock or the
4 safety of fishermen;

5 “(C) shall not confer any right of com-
6 pensation to the holder of such limited access
7 privilege, quota share, or other such limited ac-
8 cess system authorization if it is revoked or lim-
9 ited;

10 “(D) shall not create, or be construed to
11 create, any right, title, or interest in or to any
12 fish before the fish is harvested; and

13 “(E) shall be considered a grant of permis-
14 sion to the holder of the limited access privilege
15 or quota share to engage in activities permitted
16 by such limited access privilege or quota share.

17 “(6) PREPARATION AND IMPLEMENTATION OF
18 SECRETARIAL PLANS.—This subsection applies to a
19 plan prepared and implemented by the Secretary
20 under section 304(g). For the purpose of applying
21 this subsection to such a plan—

22 “(A) the term ‘Secretary’ shall be sub-
23 stituted for the term ‘Council’; and

24 “(B) paragraphs (2)(A), (4)(A), and
25 (4)(C) do not apply.

1 “(c) LIMITED ACCESS PRIVILEGES FOR UNITED
2 STATES FISH PROCESSORS.—

3 “(1) IN GENERAL.—A Council may allocate lim-
4 ited access privileges to United States processors, in-
5 cluding geographic delivery requirements and fishery
6 associations, in a limited access privilege program
7 approved after the date of enactment of the Magnu-
8 son-Stevens Fishery Conservation and Management
9 Reauthorization Act of 2005 if—

10 “(A) the plan meets the other require-
11 ments of this Act;

12 “(B) the Council determines that—

13 “(i) the economic value of the fishery
14 is substantially dependent upon primary
15 processing prior to first sale;

16 “(ii) the allocation of limited access
17 privileges to processors is necessary to pro-
18 tect fishing communities, maintain historic
19 harvester and processor balance in the
20 fishery, and ensure economic stability in
21 the harvesting and processing sectors;

22 “(iii) the allocation of limited access
23 privileges to United States fish processors
24 will not result in price-fixing or any other
25 anticompetitive practices and will not re-

1 sult in a decrease in ex-vessel value in the
2 fishery;

3 “(iv) there is sufficient economic and
4 other data to develop such a program; and

5 “(v) the program is necessary to ad-
6 dress impacts to the processing sector that
7 cannot be mitigated by other means.

8 “(C) the program provides for administra-
9 tion of the program by the Secretary in accord-
10 ance with the terms of the plan;

11 “(D) the program provides for the protec-
12 tion of fishing communities;

13 “(E) the program maintains the historic
14 harvester and processor balance in the fishery
15 and ensures economic stability in the fishing
16 and processing sectors;

17 “(F) the program prevents economic dis-
18 ruption that may be associated with allocation
19 of limited access privileges to harvesters;

20 “(G) the program provides for greater
21 waste reduction and full utilization of the fish-
22 ery; and

23 “(H) the program is narrowly tailored to
24 achieve the requirements of subparagraphs (D)
25 through (G) of this paragraph.

1 “(3) ALLOCATION.—In developing a limited ac-
2 cess privilege program to process fish, a Council or
3 the Secretary shall—

4 “(A) establish procedures to ensure fair
5 and equitable initial allocations, including con-
6 sideration of—

7 “(i) historical participation, historical
8 delivery patterns between harvesters and
9 processors, and capital investments of the
10 harvesting and processing sectors in such
11 fishery; and

12 “(ii) the historical relationship and
13 dependence of communities in such fishery,
14 including levels of employment, tax reve-
15 nues, and investments in fishery-related in-
16 frastructure by Federal, State, and local
17 governments, and the private sector,
18 among other considerations;

19 “(B) provide to the extent practicable that
20 initial allocations maintain the basic cultural
21 and social framework of the fishing community,
22 especially the roles of small owner-operators
23 and the sustained participation of fishing com-
24 munities that depend on these fisheries;

1 “(C) include measures to assist, when nec-
2 essary and appropriate, entry-level and small-
3 scale operators and fishing communities
4 through set-asides of initial and secondary allo-
5 cations, and including where appropriate a rec-
6 ommendation for economic assistance in the
7 purchase of limited access privilege shares;

8 “(D) ensure that limited access privilege
9 holders do not acquire an excessive share of the
10 total limited access privileges in the program
11 by—

12 “(i) establishing a maximum share,
13 expressed as a percentage of the total lim-
14 ited access privileges, that a limited access
15 privilege holder is permitted to own; and

16 “(ii) establishing any other limitations
17 or measures necessary to prevent an in-
18 equitable concentration of limited access
19 privileges;

20 “(E) authorize limited access privileges to
21 be held by or issued under the system to fishing
22 communities, processors, and other persons who
23 substantially participate in the fishing and
24 processing sectors, as specified by the Council;
25 and

1 “(F) prohibit any person other than a
2 United States citizen or a fishing community
3 from acquiring a privilege to process fish.

4 “(4) NO CREATION OF RIGHT, TITLE, OR IN-
5 TEREST.—A limited access privilege, quota share, or
6 other limited access system authorization issued to a
7 United States fish processor and established, imple-
8 mented, or managed under this Act—

9 “(A) shall be considered a permit for the
10 purposes of sections 307, 308, and 309;

11 “(B) may be revoked or limited at any
12 time in accordance with this Act, including for
13 failure to comply with the terms of the plan or
14 if the system is found to have jeopardized the
15 sustainability of the stock or the safety of fish-
16 ermen;

17 “(C) shall not confer any right of com-
18 pensation to the holder of such limited access
19 privilege, quota share, or other such limited ac-
20 cess system authorization if it is revoked or lim-
21 ited;

22 “(D) shall not create, or be construed to
23 create, any right, title, or interest in or to any
24 fish before the fish is purchased by the holder;
25 and

1 “(E) shall be considered a grant of permis-
2 sion to the holder of the limited access privilege
3 or quota share to engage in activities permitted
4 by such limited access privilege or quota share.

5 “(5) PREPARATION AND IMPLEMENTATION OF
6 SECRETARIAL PLANS.—This subsection applies to a
7 plan prepared and implemented by the Secretary
8 under section 304(g). For the purpose of applying
9 this subsection to such a plan the term ‘Secretary’
10 shall be substituted for the term ‘Council’.

11 “(6) PROGRAM AND ANTITRUST REVIEW.— Any
12 such limited access privilege program that includes
13 United States fish processors shall—

14 “(A) include provisions for the regular
15 monitoring and review of the operations of the
16 program, with a formal and detailed review re-
17 quired 5 years after the establishment of the
18 program and every 5 years thereafter, which re-
19 views shall be reported to the Secretary within
20 90 days after the review has been completed;

21 “(B) include an effective system for en-
22 forcement, monitoring, and management of the
23 program, including the use of observers;

24 “(C) include an appeals process for admin-
25 istrative review of determinations with respect

1 to the Secretary's decisions regarding adminis-
2 tration of the limited access privilege program;
3 and

4 “(D) provide for the establishment by the
5 Secretary, in consultation with the Department
6 of Justice and the Federal Trade Commission,
7 for a mandatory information collection and re-
8 view process to provide any and all information
9 necessary for the Department of Justice and
10 the Federal Trade Commission to determine
11 whether any illegal acts of anti-competition,
12 anti-trust, or price collusion have occurred
13 among persons receiving individual processing
14 quotas under the program. The Secretary may
15 revoke any individual processing quota held by
16 any person found to have violated a provision of
17 the antitrust laws of the United States.

18 “(7) INFORMATION COLLECTION.—The restric-
19 tion on the collection of economic data in section
20 303 shall not apply with respect to any United
21 States fish processor who is eligible for, or who has
22 received, individual processing quota under the pro-
23 gram. The restriction on the disclosure of informa-
24 tion in section 402(b)(1) shall not apply when the
25 information is used to determine eligibility for or

1 compliance with an individual processing quota pro-
2 gram.

3 “(8) ENFORCEMENT.—The provisions of sec-
4 tions 308, 310, and 311 shall apply to the proc-
5 essing facilities and fish products of any person
6 holding limited access privileges to process fish.

7 “(9) PROHIBITIONS.—The provisions of sub-
8 paragraphs (D), (E), and (L) of section 307(l) shall
9 apply to any facility owned or controlled by a person
10 holding individual processing quota.

11 “(10) NO WAIVER.—Nothing in this Act shall
12 constitute a waiver, either express or implied, of the
13 antitrust laws of the United States.

14 “(d) AUCTION AND OTHER PROGRAMS.—In estab-
15 lishing a limited access privilege program, a Council may
16 consider, and provide for if appropriate, an auction system
17 or other program to collect royalties for the initial dis-
18 tribution of allocations in a limited access privilege pro-
19 gram if—

20 “(i) the system or program is admin-
21 istered in such a way that the resulting
22 distribution of limited access privilege
23 shares conforms with the biological, social,
24 and economic goals of the program; and

1 “(ii) revenues generated through such
2 a royalty program are deposited in the
3 Limited Access System Administration
4 Fund established by section 305(h)(5)(B)
5 and available subject to annual appropria-
6 tions.

7 “(e) COST RECOVERY.—In establishing a limited ac-
8 cess privilege program, a Council shall—

9 “(1) develop a methodology and the means to
10 identify and assess the management, science, data
11 collection, observer coverage, and enforcement pro-
12 grams that are directly related to and in support of
13 the program; and

14 “(2) provide, under section 304(d)(2), for a
15 program of fees paid by limited access privilege hold-
16 ers that will cover the costs of management, science,
17 data collection and analysis, observer coverage, and
18 enforcement activities.

19 “(f) EFFECT ON CERTAIN EXISTING SHARES AND
20 PROGRAMS.—Nothing in this Act, or the amendments by
21 this Act, shall be construed to require a reallocation of
22 individual quota shares or processor quota shares or other
23 quota programs approved by the Secretary or Congres-
24 sional action before the date of enactment of the Magnu-

1 son-Stevens Fishery Conservation and Management Reau-
2 thorization Act of 2005.”.

3 (b) FEES.—Section 304(d)(2)(A) (16 U.S.C.
4 1854(d)(2)(A)) is amended—

5 (1) by striking “management and enforcement”
6 and inserting “management, science, data collection,
7 observer coverage, and enforcement”; and

8 (2) by striking “individual fishing quota pro-
9 gram;” in clause (i) and inserting “limited access
10 privilege program;”.

11 (c) CONFORMING AMENDMENT.—Section
12 304(d)(2)(C)(i) (16 U.S.C. 1854(d)(2)(C)(i)) is amended
13 by striking “section 305(h)(5)(B)” and all that follows
14 and inserting “section 305(h)(5)(B).”.

15 **SEC. 108. EMERGENCY REGULATIONS.**

16 (a) LENGTHENING OF SECOND EMERGENCY PE-
17 RIOD.—Section 305(c)(3)(B) (16 U.S.C. 1855(c)(3)(B))
18 is amended by striking “180 days,” and inserting “186
19 days,”.

20 (b) TECHNICAL AMENDMENT.—Section 305(c)(3)(D)
21 (16 U.S.C. 1855(c)(3)(D)) is amended by inserting “or
22 interim measures” after “emergency regulations”.

23 **SEC. 109. PROHIBITED ACTS.**

24 Section 307(1) (16 U.S.C. 1857) is amended—

1 (1) by striking “or” after the semicolon in sub-
2 paragraph (O);

3 (2) by striking “board.” in subparagraph (P)
4 and inserting “board;”; and

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

6 “(Q) to import, export, transport, sell, re-
7 ceive, acquire, or purchase in interstate or for-
8 eign commerce any fish taken, possessed, trans-
9 ported, or sold in violation of any foreign law
10 or regulation; or

11 “(R) to use any fishing vessel to engage in
12 fishing in Federal or State waters, or on the
13 high seas or the waters of another country,
14 after the Secretary has made a payment to the
15 owner of that fishing vessel under section
16 312(b)(2).”.

17 **SEC. 110. COOPERATIVE ENFORCEMENT AGREEMENTS.**

18 (a) IN GENERAL.—Section 311 (16 U.S.C. 1861) is
19 amended—

20 (1) by striking “Act” in the first sentence of
21 subsection (a) and inserting “Act, and the provisions
22 of any marine resource law administered by the Sec-
23 retary,”;

24 (2) by striking “and” after the semicolon in
25 subsection (b)(1)(A)(iv);

1 (3) by inserting “and” after the semicolon in
2 subsection (b)(1)(A)(v);

3 (4) by inserting after clause (v) of subsection
4 (b)(1)(A) the following:

5 “(vi) access, directly or indirectly, for
6 enforcement purposes any data or informa-
7 tion required to be provided under this
8 title or regulations under this title, includ-
9 ing data from Global Maritime Distress
10 and Safety Systems or any similar sys-
11 tem;”;

12 (5) by redesignating subsection (h) as sub-
13 section (j); and

14 (3) by inserting after subsection (g) the fol-
15 lowing:

16 “(h) JOINT ENFORCEMENT AGREEMENTS.—

17 “(1) IN GENERAL.—The Governor of an eligible
18 State may apply to the Secretary for execution of a
19 joint enforcement agreement with the Secretary that
20 will authorize the deputization and funding of State
21 law enforcement officers with marine law enforce-
22 ment responsibilities to perform duties of the Sec-
23 retary relating to law enforcement provisions under
24 this title or any other marine resource laws enforced
25 by the Secretary. Upon receiving an application

1 meeting the requirements of this section, the Sec-
2 retary may enter into a joint enforcement agreement
3 with the requesting State.

4 “(2) ELIGIBLE STATE.—A State is eligible to
5 participate in the cooperative enforcement agree-
6 ments under this section if it is in, or bordering on,
7 the Atlantic Ocean (including the Caribbean Sea),
8 Pacific Ocean, or Arctic Ocean, the Gulf of Mexico,
9 Long Island Sound, or 1 or more of the Great
10 Lakes.

11 “(3) REQUIREMENTS.—Joint enforcement
12 agreements executed under paragraph (1)—

13 “(A) shall be consistent with the purposes
14 and intent of this section to the extent applica-
15 ble to the regulated activities; and

16 “(B) may include specifications for joint
17 management responsibilities as provided by the
18 first section of Public Law 91-412 (15 U.S.C.
19 1525).

20 “(4) ALLOCATION OF FUNDS.—The Secretary
21 shall include in each joint enforcement agreement an
22 allocation of funds to assist in management of the
23 agreement. The allocation shall be fairly distributed
24 among all eligible States participating in cooperative
25 enforcement agreements under this subsection, based

1 upon consideration of Federal marine enforcement
2 needs, the specific marine conservation enforcement
3 needs of each participating eligible State, and the
4 capacity of the State to undertake the marine en-
5 forcement mission and assist with enforcement
6 needs. The agreement may provide for amounts to
7 be withheld by the Secretary for the cost of any
8 technical or other assistance provided to the State
9 by the Secretary under the agreement.

10 “(i) IMPROVED DATA SHARING.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of this title, as soon as practicable but no
13 later than 21 months after the date of enactment of
14 the Magnuson-Stevens Fishery Conservation and
15 Management Reauthorization Act of 2005, the Sec-
16 retary shall implement data-sharing measures to
17 make any data required to be provided by this title
18 from Global Maritime Distress and Safety Systems
19 or similar systems—

20 “(A) directly accessible by State enforce-
21 ment officers authorized under subsection (a) of
22 this section; and

23 “(B) available to a State management
24 agency involved in, or affected by, management
25 of a fishery if the State has entered into an

1 agreement with the Secretary under section
2 402(b)(1)(B) of this Act.

3 “(2) AGREEMENT REQUIRED.—The Secretary
4 shall promptly enter into an agreement with a State
5 under section 402(b)(1)(B) of this Act if—

6 “(A) the Attorney General or highest rank-
7 ing legal officer of the State provides a written
8 opinion or certification that State law allows
9 the State to maintain the confidentiality of in-
10 formation required by Federal law to be kept
11 confidential; or

12 “(B) the Secretary is provided other rea-
13 sonable assurance that the State can and will
14 protect the identity or business of any person to
15 which such information relates.”.

16 (b) REPORT ON USING GMDSS FOR FISHERY PUR-
17 POSES.—Within 15 months after the date of enactment
18 of this Act, the National Marine Fisheries Service and the
19 United States Coast Guard shall transmit a joint report
20 to the Senate Committee on Commerce, Science, and
21 Transportation and the House of Representatives Com-
22 mittee on Resources containing—

23 (1) a cost-to-benefit analysis of the feasibility,
24 value, and cost of using the Global Maritime Dis-
25 tress and Safety Systems or similar systems for fish-

1 cry management, conservation, enforcement, and
2 safety purposes with the Federal government bear-
3 ing the capital costs of any such system;

4 (2) an examination of the cumulative impact of
5 existing requirements for commercial vessels;

6 (3) an examination of whether the Global Mari-
7 time Distress and Safety Systems or similar require-
8 ments would overlap existing requirements or render
9 them redundant;

10 (4) an examination of how data integration
11 from such systems could be addressed;

12 (5) an examination of how to maximize the
13 data-sharing opportunities between relevant State
14 and Federal agencies and provide specific informa-
15 tion on how to develop these opportunities, including
16 the provision of direct access to the Global Maritime
17 Distress and Safety Systems or similar system data
18 to State enforcement officers, while considering the
19 need to maintain or provide an appropriate level of
20 individual vessel confidentiality where practicable;
21 and

22 (6) an assessment of how the Global Maritime
23 Distress and Safety Systems or similar systems
24 could be developed, purchased, and distributed to
25 regulated vessels.

1 **SEC. 111. BYCATCH REDUCTION PROGRAM.**

2 Title III (16 U.S.C. 1851 et seq.) is amended by add-
3 ing at the end the following:

4 **“SEC. 316. BYCATCH REDUCTION PROGRAM.**

5 “(a) BYCATCH REDUCTION PROGRAM.—Not later
6 than 6 months after the date of enactment of the Magnu-
7 son-Stevens Fishery Conservation and Management Reau-
8 thorization Act of 2005, the Secretary, in cooperation with
9 the councils and other affected interests, and based upon
10 the best scientific information available, shall establish a
11 bycatch reduction program to develop technological devices
12 and other conservation engineering changes that will mini-
13 mize bycatch mortality in Federally managed fisheries.
14 The program shall—

15 “(1) be regionally based;

16 “(2) be coordinated with projects conducted
17 under the cooperative research and management
18 program established under this Act;

19 “(3) provide information and outreach to fish-
20 ery participants that will encourage adoption and
21 use of technologies developed under the program;
22 and

23 “(4) provide for routine consultation with the
24 Councils in order to maximize opportunities to incor-
25 porate results of the program in Council actions and
26 provide incentives for adoption of methods developed

1 under the program in fishery management plans de-
2 veloped by the Councils.

3 “(b) INCENTIVES.—Each Council may submit, and
4 the Secretary may approve, consistent with the provisions
5 of this Act, a system of incentives to reduce total bycatch
6 amounts and bycatch rates in fisheries under its jurisdic-
7 tion, including—

8 “(1) measures to incorporate bycatch into
9 quotas and limited access privilege programs, includ-
10 ing the establishment of collective or individual by-
11 catch quotas; or

12 “(2) measures to promote the use of gear with
13 verifiable and monitored low bycatch rates, including
14 allocation preferences for harvesters who adopt the
15 use of such gear.”.

16 **SEC. 112. WESTERN ALASKA COMMUNITY DEVELOPMENT**
17 **QUOTA PROGRAM.**

18 Section 305(i)(1) (16 U.S.C. 1855(i)(1)) is amend-
19 ed—

20 (1) by striking “To” in subparagraph (B) and
21 inserting “Except as provided in subparagraph (E),
22 to”; and

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

24 “(E) A community shall be eligible to par-
25 ticipate in the western Alaska community devel-

1 opment quota program under subparagraph (A)
2 if the community was—

3 “(i) listed in table 7 to part 679 of
4 title 50, Code of Federal Regulations, as in
5 effect on January 1, 2004; or

6 “(ii) approved by the National Marine
7 Fisheries Service on April 19, 1999.”.

8 **TITLE II—INFORMATION AND**
9 **RESEARCH**

10 **SEC. 201. COLLECTION OF INFORMATION.**

11 Section 402(a) (16 U.S.C. 1881a(a)) is amended—

12 (1) by striking “COUNCIL REQUESTS.—” in the
13 subsection heading and inserting “COLLECTION
14 PROGRAMS.—”;

15 (2) by redesignating the existing text as para-
16 graph (1) and resetting it 2 ems from the left mar-
17 gin;

18 (3) by inserting “(1) COUNCIL REQUESTS.—”
19 before “If a Council”;

20 (4) by striking “subsection” in the last sentence
21 and inserting “paragraph”;

22 (5) by striking “(other than information that
23 would disclose proprietary or confidential commercial
24 or financial information regarding fishing operations

1 or fish processing operations)” each place it appears;

2 and

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

4 “(2) SECRETARIAL INITIATION.—If the Sec-
5 retary determines that additional information is nec-
6 essary for developing, implementing, revising, or
7 monitoring a fishery management plan, or for deter-
8 mining whether a fishery is in need of management,
9 the Secretary may, by regulation, implement an in-
10 formation collection or observer program requiring
11 submission of such additional information for the
12 fishery.”.

13 **SEC. 202. ACCESS TO CERTAIN INFORMATION.**

14 (a) STATE ENFORCEMENT AGENTS.—Section
15 402(b)(1) (16 U.S.C. 1881a(b)(1)) is amended—

16 (1) by redesignating subparagraphs (B)
17 through (F) as subparagraphs (C) through (G), re-
18 spectively; and

19 (2) by inserting after subparagraph (A) the fol-
20 lowing:

21 “(B) to State employees who are responsible for
22 fishery management plan monitoring, if the States
23 employing those employees have entered into a joint
24 enforcement agreement with the Secretary and the
25 agreement is in effect;”.

1 (b) DETERMINATIONS UNDER LIMITED ACCESS SYS-
2 TEM.—Section 402(b)(1) (16 U.S.C. 1881a(b)(1)) is
3 amended—

4 (1) by striking “or” in subparagraph (F), as re-
5 designated by subsection (a);

6 (2) by striking “Act.” in subparagraph (G), as
7 so redesignated, and inserting “Act; or”; and

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

9 “(H) when such information is required by the
10 Secretary for any determination under a limited ac-
11 cess system or by a Council for making rec-
12 ommendations with respect to any existing or pro-
13 posed limited access privilege program.”.

14 **SEC. 203. COOPERATIVE RESEARCH AND MANAGEMENT**
15 **PROGRAM.**

16 Title III (16 U.S.C. 1851 et seq.), as amended by
17 section 111, is further amended by adding at the end the
18 following:

19 **“SEC. 317. COOPERATIVE RESEARCH AND MANAGEMENT**
20 **PROGRAM.**

21 “(a) IN GENERAL.—The Secretary of Commerce, in
22 consultation with the Councils, shall establish a national
23 cooperative research and management program to address
24 needs identified under this Act and under any other ma-
25 rine resource laws enforced by the Secretary. The program

1 shall make funds available for cooperative research and
2 management activities that are developed and conducted
3 through partnerships among Federal and State managers
4 and scientists, fishing industry participants, and edu-
5 cational institutions.

6 “(b) ELIGIBLE PROJECTS.—The Secretary shall
7 make funds available under the program for the support
8 of projects to address critical needs identified by the Sec-
9 retary in consultation with the Councils. The program
10 shall promote and encourage efforts to utilize sources of
11 data maintained by other Federal agencies, State agen-
12 cies, or academia for use in such projects.

13 “(c) FUNDING.—In making funds available the Sec-
14 retary shall award funding on a competitive basis, select
15 programs that form part of a coherent program of re-
16 search focused on solving priority issues identified by the
17 Councils, and shall give priority to the following projects:

18 “(1) Projects to collect data to improve, supple-
19 ment, or enhance stock assessments, including the
20 use of fishing vessels or acoustic or other marine
21 technology.

22 “(2) Projects to assess the amount and type of
23 bycatch occurring in a fishery.

1 “(3) Conservation engineering projects designed
2 to reduce bycatch, including reduction of bycatch in
3 high seas fisheries.

4 “(4) Projects for the identification of habitat
5 areas of particular concern.

6 “(5) Projects designed to collect and compile
7 economic and social data.

8 “(d) EXPERIMENTAL PERMITTING PROCESS.—The
9 Secretary, in consultation with the regional fishery man-
10 agement councils, shall establish an expedited permitting
11 process for projects approved under this section.

12 “(e) GUIDELINES.—The Secretary, in consultation
13 with the Councils, shall establish guidelines to ensure that
14 participation in a research project funded under this sec-
15 tion does not result in loss of a participant’s catch history
16 or unexpended days-at-sea as part of a limited entry sys-
17 tem.”.

18 **SEC. 204. WESTERN PACIFIC FISHERY DEMONSTRATION**
19 **PROJECTS.**

20 Section 111(b)(6) of the Sustainable Fisheries Act
21 (16 U.S.C. 1855 note) is amended to read as follows:

22 “(6) For purposes of this subsection, ‘Western
23 Pacific community’ shall mean a community eligible
24 to participate under section 305(i)(2)(B)(i) through
25 (iv) of the Magnuson-Stevens Fishery Conservation

1 and Management Act (16 U.S.C. 1855(i)(2)(B)(i)
2 through (iv)).”.

3 **TITLE III—OTHER FISHERIES**
4 **STATUTES**

5 **SEC. 301. AMENDMENTS TO NORTHERN PACIFIC HALIBUT**
6 **ACT.**

7 (a) CIVIL PENALTIES.—Section 8(a) of the Northern
8 Pacific Halibut Act of 1982 (16 U.S.C. 773f(a)) is amend-
9 ed—

10 (1) by striking “\$25,000” and inserting
11 “\$200,000”;

12 (2) by striking “violation, the degree of culpa-
13 bility, and history of prior offenses, ability to pay,”
14 and inserting “violation, the degree of culpability, any
15 history of prior offenses,” in the fifth sentence; and

16 (3) by adding at the end the following: “In as-
17 sessing such penalty, the Secretary may also con-
18 sider any information provided by the violator relat-
19 ing to the ability of the violator to pay, if the infor-
20 mation is provided to the Secretary at least 30 days
21 prior to an administrative hearing.”.

22 (b) PERMIT SANCTIONS.—Section 8 of the Northern
23 Pacific Halibut Act of 1982 (16 U.S.C. 773f) is amended
24 by adding at the end the following:

25 “(e) REVOCATION OR SUSPENSION OF PERMIT.—

1 “(1) IN GENERAL.—The Secretary may take
2 any action described in paragraph (2) in any case in
3 which—

4 “(A) a vessel has been used in the commis-
5 sion of any act prohibited under section 7;

6 “(B) the owner or operator of a vessel or
7 any other person who has been issued or has
8 applied for a permit under this Act has acted
9 in violation of section 7; or

10 “(C) any amount in settlement of a civil
11 forfeiture imposed on a vessel or other property,
12 or any civil penalty or criminal fine imposed on
13 a vessel or owner or operator of a vessel or any
14 other person who has been issued or has ap-
15 plied for a permit under any marine resource
16 law enforced by the Secretary has not been paid
17 and is overdue.

18 “(2) PERMIT-RELATED ACTIONS.—Under the
19 circumstances described in paragraph (1) the Sec-
20 retary may—

21 “(A) revoke any permit issued with respect
22 to such vessel or person, with or without preju-
23 dice to the issuance of subsequent permits;

1 “(B) suspend such permit for a period of
2 time considered by the Secretary to be appro-
3 priate;

4 “(C) deny such permit; or

5 “(D) impose additional conditions and re-
6 strictions on any permit issued to or applied for
7 by such vessel or person under this Act and,
8 with respect to any foreign fishing vessel, on
9 the approved application of the foreign nation
10 involved and on any permit issued under that
11 application.

12 “(3) FACTORS TO BE CONSIDERED.—In impos-
13 ing a sanction under this subsection, the Secretary
14 shall take into account—

15 “(A) the nature, circumstances, extent,
16 and gravity of the prohibited acts for which the
17 sanction is imposed; and

18 “(B) with respect to the violator, the de-
19 gree of culpability, any history of prior offenses,
20 and such other matters as justice may require.

21 “(4) TRANSFERS OF OWNERSHIP.—Transfer of
22 ownership of a vessel, a permit, or any interest in
23 a permit, by sale or otherwise, shall not extinguish
24 any permit sanction that is in effect or is pending
25 at the time of transfer of ownership. Before exe-

1 cuting the transfer of ownership of a vessel, permit,
2 or interest in a permit, by sale or otherwise, the
3 owner shall disclose in writing to the prospective
4 transferee the existence of any permit sanction that
5 will be in effect or pending with respect to the ves-
6 sel, permit, or interest at the time of the transfer.

7 “(5) REINSTATEMENT.—In the case of any per-
8 mit that is suspended under this subsection for non-
9 payment of a civil penalty, criminal fine, or any
10 amount in settlement of a civil forfeiture, the Sec-
11 retary shall reinstate the permit upon payment of
12 the penalty, fine, or settlement amount and interest
13 thereon at the prevailing rate.

14 “(6) HEARING.—No sanction shall be imposed
15 under this subsection unless there has been prior op-
16 portunity for a hearing on the facts underlying the
17 violation for which the sanction is imposed either in
18 conjunction with a civil penalty proceeding under
19 this section or otherwise.

20 “(7) PERMIT DEFINED.—In this subsection, the
21 term ‘permit’ means, without limitation, any license,
22 certificate, approval, registration, charter, member-
23 ship, exemption, or other form of permission issued
24 by the Commission or the Secretary, and includes

1 any quota share or other transferable quota issued
2 by the Secretary.”.

3 (c) CRIMINAL PENALTIES.—Section 9(b) of the
4 Northern Pacific Halibut Act of 1982 (16 U.S.C. 773g(b))
5 is amended—

6 (1) by striking “\$50,000” and inserting
7 “\$200,000”; and

8 (2) by striking “\$100,000,” and inserting
9 “\$400,000,”.

10 **SEC. 302. MAINE POCKET WATERS.**

11 Section 808(a) of the Atlantic Coastal Fisheries Co-
12 operative Management Act (16 U.S.C. 5107a(a)) is
13 amended by striking paragraphs (1) through (4) and in-
14 serting the following:

15 “(1) west of Monhegan Island in the area north
16 of the line 43 degrees 42’ 10.0’’N, 69 degrees 34’
17 16.0’’W and 43 degrees 42’ 15.0’’N, 69 degrees 19’
18 18.0’’W;

19 “(2) east of Monhegan Island in the area lo-
20 cated north of the line 43 degrees 44’ 0.0’’N, 69 de-
21 grees 15’ 05.0’’W and 43 degrees 48’ 10.0’’N, 69
22 degrees 08’ 01.0’’W;

23 “(3) southeast of Matinic Island in the area lo-
24 cated north of the line 43 degrees 48’ 10.0’’N, 69

1 degrees 08' 01.0''W and 43 degrees 44' 08.0''N, 69
2 degrees 53' 01.0''W;

3 “(4) south of Vinalhaven Island in the area lo-
4 cated west of the line 43 degrees 52' 18.5''N, 68 de-
5 grees 40' 0.0''W, and 43 degrees 58' 10.5''N, 68 de-
6 grees 32' 57.0''W;

7 “(5) south of Bois Bubert Island in the area lo-
8 cated northwest of the line 44 degrees 19' 16.5''N,
9 67 degrees 49' 30.0'' W, and 44 degrees 23' 40.0''N
10 and 67 degrees 40' 30.0''W.”.

11 **SEC. 303. REAUTHORIZATION OF OTHER FISHERIES ACTS.**

12 (a) ATLANTIC STRIPED BASS CONSERVATION ACT.—
13 Section 7(a) of the Atlantic Striped Bass Conservation Act
14 (16 U.S.C. 5156(a)) is amended to read as follows:

15 “(a) AUTHORIZATION.—For each of fiscal years
16 2006, 2007, 2008, 2009, and 2010, there are authorized
17 to be appropriated to carry out this Act—

18 “(1) \$—,—00,000 to the Secretary of Com-
19 merce; and

20 “(2) \$———,000 to the Secretary of the Inte-
21 rior.”.

22 (b) YUKON RIVER SALMON ACT OF 2000.—Section
23 208 of the Yukon River Salmon Act of 2000 (16 U.S.C.
24 5727) is amended by striking out “\$4,000,000 for each

1 of fiscal years 2004 through 2008,” and inserting
2 “\$4,000,000 for each of fiscal years 2006 through 2010”.

3 (c) SHARK FINNING PROHIBITION ACT.—Section 10
4 of the Shark Finning Prohibition Act (16 U.S.C. 1822
5 note) is amended by striking “fiscal years 2001 through
6 2005” and inserting “fiscal years 2006 through 2010”.

7 (d) PACIFIC SALMON TREATY ACT.—

8 (1) TRANSFER OF SECTION TO ACT.—The text
9 of section 623 of title VI of H.R. 3421 (113 Stat.
10 1501A-56), as introduced on November 17, 1999,
11 enacted into law by section 1000(a)(1) of the Act of
12 November 29, 1999 (Pub. L. 106-113)—

13 (A) is transferred to the Pacific Salmon
14 Treaty Act (16 U.S.C. 3631 et seq.) and in-
15 serted after section 15; and

16 (B) amended—

17 (i) by striking “SEC. 623.”; and

18 (ii) inserting before “(a) NORTHERN
19 FUND AND SOUTHERN FUND.—” the fol-
20 lowing:

21 **“SEC. 16. NORTHERN AND SOUTHERN FUNDS; TREATY IM-**
22 **PLEMENTATION; ADDITIONAL AUTHORIZA-**
23 **TION OF APPROPRIATIONS.”.**

24 (2) TECHNICAL CORRECTION.—The amendment
25 made by the Department of Commerce and Related

1 Agencies Appropriations Act, 2005 under the head-
2 ing “PACIFIC COASTAL SALMON RECOVERY” (118
3 Stat. 2881), to section 628(2)(A) of the Depart-
4 ments of Commerce, Justice, and State, the Judici-
5 ary, and Related Agencies Appropriations Act, 2001
6 is deemed to have been made to section
7 623(d)(2)(A) of title VI of H.R. 3421 (113 Stat.
8 1501A-56), as introduced on November 17, 1999,
9 enacted into law by section 1000(a)(1) of the Act of
10 November 29, 1999 (Pub. L. 106-113) instead of to
11 such section 628(2)(A), as of the date of enactment
12 of the Department of Commerce and Related Agen-
13 cies Appropriations Act, 2005.

14 (3) REAUTHORIZATION.—Section 16(d)(2)(A)
15 of the Pacific Salmon Treaty Act, as transferred by
16 subsection (a), is amended by inserting “2006,
17 2007, 2008, 2009, and 2010,” after “2005,”.

18 【(e) OTHER FISHERY STATUTE REAUTHORIZA-
19 TIONS.—】

20 **TITLE IV—INTERNATIONAL**

21 **SEC. 401. INTERNATIONAL MONITORING AND COMPLIANCE.**

22 Title II (16 U.S.C. 1821 et seq.) is amended by add-
23 ing at the end the following:

1 **“SEC. 207. INTERNATIONAL MONITORING AND COMPLI-**
2 **ANCE.**

3 “(a) IN GENERAL.—The Secretary may undertake
4 activities to promote improved monitoring and compliance
5 for high seas fisheries, or fisheries governed by inter-
6 national or regional fishery management agreements, and
7 to implement the requirements of this title.

8 “(b) SPECIFIC AUTHORITIES.—In carrying out sub-
9 section (a), the Secretary may—

10 “(1) share information on harvesting and proc-
11 essing capacity and illegal, unreported and unregu-
12 lated fishing on the high seas, in areas covered by
13 international or regional fishery management agree-
14 ments, and by vessels of other nations within the
15 United States exclusive economic zone, with relevant
16 law enforcement organizations of foreign nations;

17 “(2) further develop real time information shar-
18 ing capabilities, particularly on harvesting and proc-
19 essing capacity and illegal, unreported and unregu-
20 lated fishing;

21 “(3) participate in global and regional efforts to
22 build an international network for monitoring, con-
23 trol, and surveillance of high seas fishing and fishing
24 under regional or global agreements;

25 “(4) support efforts to create an international
26 registry or database of fishing vessels, including by

1 building on or enhancing registries developed by re-
2 gional fishery management organizations;

3 “(5) provide technical assistance to developing
4 countries to improve their monitoring, control, and
5 surveillance capabilities; and

6 “(6) support international efforts to require
7 that all large-scale fishing vessels operating on the
8 high seas are required by their flag State to be fitted
9 with vessel monitoring systems no later than Decem-
10 ber 31, 2008, or earlier if so decided by the relevant
11 flag State or any relevant regional fishery manage-
12 ment organization.”.

13 **SEC. 402. FINDING WITH RESPECT TO ILLEGAL, UNRE-**
14 **PORTED, AND UNREGULATED FISHING.**

15 Section 2(a) (16 U.S.C. 1802(a)) is amended by add-
16 ing at the end the following:

17 “(11) International cooperation is necessary to
18 address illegal, unreported, and unregulated fishing,
19 which may harm the sustainability of living marine
20 resources and disadvantage the United States fish-
21 ing industry.”.

1 **SEC. 403. ILLEGAL, UNREPORTED, OR UNREGULATED FISH-**
2 **ING.**

3 (a) IN GENERAL.—The High Seas Driftnet Fishing
4 Moratorium Protection Act (16 U.S.C. 1801 note, 1826d
5 et seq.), is amended by adding at the end the following:

6 **“SEC. 607. ILLEGAL, UNREPORTED, OR UNREGULATED**
7 **FISHING.**

8 “(a) IN GENERAL.—The Secretary, in consultation
9 with the Secretary of State, shall provide to Congress, by
10 not later than 1 year after the date of enactment of the
11 Magnuson-Stevens Fishery Conservation and Manage-
12 ment Reauthorization Act of 2005, and every year there-
13 after, a report that includes:

14 “(1) a list of nations whose vessels have been
15 identified under subsection (b) as conducting illegal,
16 unreported, or unregulated fishing, including the
17 specific offending activities and any subsequent ac-
18 tions under subsections (d) and (e); and

19 “(2) a list of all stocks of fish classified as over-
20 fished or over-exploited by any regional fishery man-
21 agement organization to which the United States is
22 a party.

23 “(b) IDENTIFICATION.—A nation shall be identified
24 and listed in the report under subsection (a) if—

1 “(1) fishing vessels of that nation are engaged,
2 or have been engaged during the preceding calendar
3 year in illegal, unreported, or unregulated fishing—

4 “(A) in high seas areas not governed by an
5 international or regional fishery management
6 agreement;

7 “(B) in an area governed by an inter-
8 national or regional fishery management agree-
9 ment to which the United States is a party; or

10 “(C) within the exclusive economic zone of
11 the United States;

12 “(2) the nation—

13 “(A) is not a party to, or does not main-
14 tain cooperating status with, the applicable re-
15 gional fishery management organization (if one
16 exists for the stock at issue); or

17 “(B) has exported to the United States in
18 the previous year more than 100 percent of
19 such nation’s annual quota for that stock, as
20 established for that year by the appropriate re-
21 gional fishery management organization; and

22 “(3) the relevant international or regional fish-
23 ery management organization, or the relevant na-
24 tion, has failed to implement effective measures to

1 end the illegal unreported, or unregulated fishing ac-
2 tivity by vessels of that nation.

3 “(c) NOTIFICATION.—An identification under sub-
4 section (b) is deemed to be an identification under section
5 101(b)(1)(A) of the High Seas Driftnet Fisheries Enforce-
6 ment Act (16 U.S.C. 1826a(b)(1)(A)), and the Secretary
7 shall notify the President and that nation of such identi-
8 fication.

9 “(d) CONSULTATION.—No later than 60 days after
10 submitting the report to Congress under subsection (a),
11 the Secretary, in consultation with the Secretary of State,
12 shall—

13 “(1) notify nations listed in the report of the
14 requirements of this section;

15 “(2) initiate consultations for the purpose of
16 encouraging such nations to take the appropriate
17 corrective action with respect to the offending activi-
18 ties of their fishing vessels identified in the report;
19 and

20 “(3) notify the relevant regional fishery man-
21 agement organization of the actions taken by the
22 United States under this section.

23 “(e) CERTIFICATION.—

24 “(1) IN GENERAL.—The Secretary shall estab-
25 lish a procedure, consistent with the provisions of

1 subchapter II of chapter 5 of title 5, United States
2 Code, and including notice and an opportunity for
3 comment by the governments of nations listed by the
4 Secretary under subsection (b), for determining if
5 governments have taken appropriate corrective ac-
6 tion with respect to the offending activities of their
7 fishing vessels identified in the report under sub-
8 section (a).

9 “(2) CERTIFICATION.—The Secretary shall de-
10 termine, on the basis of the procedure, and certify
11 to the Congress no later than 90 days after the date
12 on which the Secretary promulgates a final rule con-
13 taining the procedure, and annually thereafter in the
14 report under subsection (a)—

15 “(A) whether the government of each na-
16 tion identified under subsection (b) has pro-
17 vided documentary evidence that it has taken
18 corrective action with respect to the offending
19 activities of their fishing vessels identified in
20 the report; or

21 “(B) whether the relevant regional fishery
22 management organization has implemented
23 measures that are effective in ending the illegal
24 unreported, or unregulated fishing activity by
25 vessels of that nation.

1 “(3) ALTERNATIVE PROCEDURE.—The Sec-
2 retary may establish a procedure for certification, on
3 a shipment-by-shipment, shipper-by-shipper, or other
4 basis of fish or fish products from a vessel of a har-
5 vesting nation not certified under paragraph (2) if
6 the Secretary determines that—

7 “(A) the vessel has not engaged in illegal,
8 unreported, or unregulated fishing under a re-
9 gional fishery management organization to
10 which the United States is a party; or

11 “(B) the vessel is not identified by a re-
12 gional fishery management organization or the
13 Food and Agriculture Organization as partici-
14 pating in illegal, unreported, or unregulated
15 fishing activities.

16 “(4) EFFECT OF CERTIFICATION.—The provi-
17 sions of section 101(a) and section 101(b)(3) and
18 (4) of the High Seas Driftnet Fisheries Enforcement
19 Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4)) shall
20 apply to any nation identified under subsection (b)
21 that has not been certified by the Secretary under
22 this subsection, or for which the Secretary has
23 issued a negative certification under this subsection,
24 but shall not apply to any nation identified under

1 subsection (b) for which the Secretary has issued a
2 positive certification under this subsection.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) DENIAL OF PORT PRIVILEGES.—Section
5 101(b) of the High Seas Driftnet Fisheries Enforce-
6 ment Act (16 U.S.C. 1826a(b)) is amended by in-
7 serting “or illegal, unreported, or unregulated fish-
8 ing” after “fishing” in paragraph (1)(A)(i), para-
9 graph (1)(B), paragraph (2), and paragraph (4)(A).

10 (2) DURATION OF DENIAL.—Section 102 of the
11 High Seas Driftnet Fisheries Enforcement Act (16
12 U.S.C. 1826b) is amended by inserting “or illegal,
13 unreported, or unregulated fishing” after “fishing”.

14 **SEC. 404. CONSERVATION OF PROTECTED LIVING MARINE**
15 **RESOURCES.**

16 Title II (16 U.S.C. 1821 et seq.), as amended by sec-
17 tion 401, is further amended by adding at the end the
18 following:

19 **“SEC. 208. CONSERVATION OF PROTECTED LIVING MARINE**
20 **RESOURCES.**

21 “(a) IN GENERAL.—The Secretary, in consultation
22 with the Secretary of State, shall provide to Congress, by
23 not later than 1 year after the date of enactment of Mag-
24 nuson-Stevens Fishery Conservation and Management Re-

1 authorization Act of 2005, and every year thereafter, a
2 full report which—

3 “(1) includes a list of nations identified by the
4 Secretary under subsection (b);

5 “(2) describes the efforts taken by nations on
6 that list to comply with the provisions of this title,
7 and evaluates the progress of those efforts;

8 “(3) includes a determination as to whether the
9 importation into the United States of fish or fish
10 products from any nation on that list is undermining
11 the effectiveness of national and international meas-
12 ures for the conservation of any protected living ma-
13 rine resource or poses a threat to such resource;

14 “(4) sets forth a plan of action for ensuring the
15 conclusion and entry into force of international
16 measures for the conservation of protected living
17 marine resources for which no agreement exists; and

18 “(5) includes recommendations for measures to
19 ensure that United States actions are consistent
20 with national, international, and regional obligations
21 relating to populations of protected living marine re-
22 sources, including those listed under the Convention
23 on International Trade in Endangered Species of
24 Wild Flora and Fauna.

1 “(b) IDENTIFICATION.—The Secretary shall identify
2 a nation under this subsection if—

3 “(1) fishing vessels of that nation are engaged,
4 or have been engaged during the preceding calendar
5 year in fishing activities that pose a threat to pro-
6 tected living marine resource, particularly through
7 the use of destructive or wasteful fishing practices—

8 “(A) in high seas areas not governed by an
9 international or regional agreement for the con-
10 servation and protection of such protected living
11 marine resource;

12 “(B) in an area governed by an agreement
13 for the conservation and management of such
14 protected living marine resource, to which the
15 United States is a party (if such an agreement
16 exists); or

17 “(C) within the exclusive economic zone of
18 the United States;

19 “(2) the nation is not a party to, or does not
20 maintain cooperating status with, the applicable
21 international or regional organization for the con-
22 servation and protection of such species (if such an
23 agreement exists); and

24 “(3) the relevant international or regional fish-
25 ery organization for the conservation and protection

1 of such species, or the nation, has failed to imple-
2 ment effective measures to end or reduce the im-
3 pacts of the fishing practices of the nations vessels
4 on such species.

5 “(c) NOTIFICATION.—An identification of a nation by
6 the Secretary under subsection (b) is deemed to be an
7 identification under section 101(b)(1)(A) of the High Seas
8 Driftnet Fisheries Enforcement Act (16 U.S.C.
9 1826a(b)(1)(A)), and the Secretary shall notify the Presi-
10 dent and that nation of such identification.

11 “(d) CONSULATION AND NEGOTIATION.—The Sec-
12 retary, acting through the Secretary of State, shall—

13 “(1) notify other nations whose vessels engage
14 in fishing that adversely affects protected living ma-
15 rine resources, as soon as possible, about the re-
16 quirements of this section and the High Seas
17 Driftnet Fishing Moratorium Protection Act (16
18 U.S.C. 1801 note, 1826d et seq.);

19 “(2) initiate discussions as soon as possible for
20 purpose of developing bilateral or multilateral agree-
21 ments with other nations for the conservation of pro-
22 tected living marine resources;

23 “(3) initiate discussions as soon as possible
24 with all foreign governments which are engaged in,
25 or which have persons or companies engaged in,

1 commercial fishing operations or other activities that
2 the Secretary determines may pose a threat to pro-
3 tected living marine resources, for the purpose of en-
4 tering into bilateral and multilateral treaties with
5 such countries to protect such species;

6 “(4) seek agreements calling for international
7 restrictions on fishing practices and other activities
8 posing threats to protected living marine resources
9 through the United Nations, the Food and Agri-
10 culture Organization’s Committee on Fisheries, and
11 appropriate regional fishery management bodies; and

12 “(5) initiate the amendment of any existing
13 international treaty for the protection and conserva-
14 tion of such species to which the United States is a
15 party in order to make such treaty consistent with
16 the purposes and policies of this section.

17 “(e) CONSERVATION CERTIFICATION.—

18 “(1) IN GENERAL.—The Secretary shall estab-
19 lish a procedure, consistent with the provisions of
20 subchapter II of chapter 5 of title 5, United States
21 Code, and including notice and an opportunity for
22 comment by the governments of nations identified by
23 the Secretary under subsection (b), for determining
24 whether governments—

1 “(A) have adopted regulatory programs
2 governing harvesting practices and other prac-
3 tices adversely affecting protected living marine
4 resources that are comparable, taking into ac-
5 count different conditions, to those of the
6 United States;

7 “(B) have established management plans
8 governing release of protected living marine re-
9 sources caught but not retained by fishing ves-
10 sels that ensure maximum probability of sur-
11 vival after release and that are comparable, tak-
12 ing into account different conditions than those
13 in the United States; and

14 “(C) have established a management plan
15 containing requirements that will assist in gath-
16 ering species-specific data to support inter-
17 national and regional stock assessments and
18 conservation enforcement efforts for protected
19 living marine resources.

20 “(2) CERTIFICATION PROCEDURE.—

21 “(A) IN GENERAL.—The Secretary shall
22 determine, on the basis of the procedure under
23 subsection (a), and certify to the Congress by
24 January 31, 2007, and annually thereafter

1 whether the government of each harvesting na-
2 tion—

3 “(i) has provided documentary evi-
4 dence of the adoption of a regulatory pro-
5 gram governing the conservation of pro-
6 tected living marine resources that is com-
7 parable, taking into account different con-
8 ditions, to that of the United States;

9 “(ii) has established a management
10 plan governing release of protected living
11 marine resources caught but not retained
12 by a fishing vessel that will ensure max-
13 imum probability of survival of after re-
14 lease and that are comparable, taking into
15 account different conditions than those in
16 the United States; and

17 “(iii) has established a management
18 plan containing requirements that will as-
19 sist in gathering species-specific data to
20 support international and regional stock
21 assessments and conservation enforcement
22 efforts for protected living marine re-
23 sources.

24 “(B) ALTERNATIVE PROCEDURE.—The
25 Secretary shall establish a procedure for certifi-

1 cation, on a shipment-by-shipment, shipper-by-
2 shipper, or other basis of fish or fish products
3 from a vessel of a harvesting nation not cer-
4 tified under paragraph (1) if the Secretary de-
5 termines that such imports were harvested by
6 practices that—

7 “(i) do not adversely affect protected
8 living marine resources;

9 “(ii) include release of protected living
10 marine resources caught but not retained
11 by such vessel in a manner that ensures
12 maximum probability of survival after re-
13 lease;

14 “(iii) include the gathering of species-
15 specific data that can be used to support
16 international and regional stock assess-
17 ments and conservation efforts for pro-
18 tected living marine resources; or

19 “(iv) are consistent with harvesting
20 practices comparable, taking into account
21 the circumstances, to those of the United
22 States.

23 “(3) EFFECT OF CERTIFICATION.—The provi-
24 sions of section 101(a) and section 101(b)(3) and
25 (4) of the High Seas Driftnet Fisheries Enforcement

1 Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4)) shall
2 apply to any nation identified under subsection (b)
3 that has not been certified by the Secretary under
4 this subsection, or for which the Secretary has
5 issued a negative certification under this subsection,
6 but shall not apply to any nation identified under
7 subsection (b) for which the Secretary has issued a
8 positive certification under this subsection.”.

9 “(f) INTERNATIONAL COOPERATION AND ASSIST-
10 ANCE.—To the greatest extent possible consistent with ex-
11 isting authority and the availability of funds, the Secretary
12 shall—

13 “(1) provide appropriate technological and
14 other assistance to nations identified by the Sec-
15 retary under subsection (b) and regional or inter-
16 national organizations of which those nations are
17 members to assist those nations in qualifying for
18 certification under subsection (c);

19 “(2) undertake, where appropriate, cooperative
20 research activities on species statistics and improved
21 harvesting techniques, with those nations or organi-
22 zations;

23 “(3) encourage and facilitate the transfer of ap-
24 propriate technology to those nations or organiza-

1 tions to assist those nations in qualifying for certifi-
2 cation under subsection (e); and

3 “(4) provide assistance to those nations or or-
4 ganizations in designing and implementing appro-
5 priate fish harvesting plans.

6 “(g) **PROTECTED LIVING MARINE RESOURCES DE-**
7 **FINED.**—In this section the term ‘protected living marine
8 resources’ means non-target fish, sea turtles, marine
9 mammals, seabirds, and other waterfowl protected under
10 United States law or international agreement, including
11 the Marine Mammal Protection Act, the Endangered Spe-
12 cies Act, the Shark Finning Prohibition Act, and the Con-
13 vention on International Trade in Endangered Species of
14 Wild Flora and Fauna.

15 “(h) **AUTHORIZATION OF APPROPRIATIONS.**—There
16 are authorized to be appropriated to the Secretary for fis-
17 cal years 2006 through 2010 such sums as are necessary
18 to carry out this section.”.

19 **SEC. 405. MONITORING OF PACIFIC INSULAR AREA FISH-**
20 **ERIES.**

21 (a) **WAIVER AUTHORITY.**—Section 201(h)(2)(B) (16
22 U.S.C. 1821(h)(2)(B)) is amended by striking “that is at
23 least equal in effectiveness to the program established by
24 the Secretary;” and inserting “or other monitoring pro-
25 gram that the Secretary determines is adequate to monitor

1 harvest, bycatch, and compliance with the laws of the
2 United States by vessels fishing under the agreement;”.

3 (b) MARINE CONSERVATION PLANS.—Section
4 204(e)(4)(A)(i) (16 U.S.C. 1824(e)(4)(A)(i)) is amended
5 to read as follows:

6 “(i) Pacific Insular Area observer programs, or
7 other monitoring programs, that the Secretary deter-
8 mines are adequate to monitor the harvest, bycatch,
9 and compliance with the laws of the United States
10 by foreign fishing vessels that fish under Pacific In-
11 sular Area fishing agreements;”.

○

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATURAL RESOURCES DEFENSE
COUNCIL, INC.; OCEANA, INC.,
Plaintiffs-Appellants,

v.

NATIONAL MARINE FISHERIES
SERVICE; DONALD EVANS, Secretary
of Commerce; NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION,

Defendants-Appellees,

and

WEST COAST SEAFOOD PROCESSORS
ASSOCIATION; FISHERMEN'S
MARKETING ASSOCIATION,
*Defendants-intervenors-
Appellees.*

No. 03-16842

D.C. No.
CV-02-01650-CRB

OPINION

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Argued and Submitted
February 15, 2005—San Francisco, California

Filed August 24, 2005

Before: Dorothy W. Nelson, William A. Fletcher and
Raymond C. Fisher, Circuit Judges.

Opinion by Judge Fisher

COUNSEL

Andrew P. Caputo, Natural Resources Defense Counsel, San Francisco, California; Sylvia F. Liu, Oceana, Washington, D.C., and Janis Searles, Oceana, Portland, Oregon, for the plaintiffs-appellants.

David C. Shilton, Environment and Natural Resources Division, United States Department of Justice, Washington, D.C., for the defendants-appellees.

James P. Walsh, Davis Wright Tremaine, LLP, San Francisco, California, for the defendants-intervenors-appellees.

OPINION

FISHER, Circuit Judge:

Appellee National Marine Fisheries Service ("the Agency") set 2002 fishing limits for four species of Pacific groundfish that are commonly sold as "red snapper." Appellant Natural Resources Defense Council ("NRDC"), an environmental organization, brought suit in federal district court challenging the four limits as violating the Magnuson-Stevens Fishery Conservation and Management Act ("the Magnuson Act" or "the Act"), 16 U.S.C. §§ 1801 *et seq.*, which directs that the Agency prevent overfishing; the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 501 *et seq.*, which directs agencies

to consider relevant factors in setting such limits; and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, which directs agencies to prepare adequate environmental analyses when undertaking such actions. The district court granted summary judgment to the Agency and intervenor-appellees Fishermen's Marketing Association and West Coast Seafood Processors Association ("Intervenors"). Because we conclude that the 2002 darkblotched rockfish limit was based on an impermissible construction of the Act, we reverse and remand; we affirm the limits as to the other three species.

I. Background

A. The National Marine Fisheries Service, the Magnuson Act, Section 1854 and the National Standards Guidelines

Congress enacted the Magnuson Act to "conserve and manage the fishery resources found off the coasts of the United States." 16 U.S.C. § 1801(b)(1).¹ The Agency is charged with developing and implementing rebuilding plans for overfished fish species. § 1854.² In 1996, Congress amended the Act by passing the Sustainable Fisheries Act ("SFA"). Pub. L. No. 104-297, 110 Stat. 3559 (1996). The SFA added new requirements to the Act to accelerate the rebuilding of overfished species.

The Act, as amended by the SFA, contains a provision the proper interpretation of which is the main subject of this

¹Hereinafter, all statutory citations are to 16 U.S.C. unless otherwise indicated.

²The Act vests this responsibility with the Secretary of Commerce, but "[t]he Secretary carries out his management and conservation duties through the [Agency] and eight Regional Fishery Management Councils established by the [Act]." *Yakutat, Inc. v. Gutierrez*, 407 F.3d 1054, 1058 (9th Cir. 2005); *see* § 1852(a).

appeal. Section 1854 of the Act provides in part that when any species is found to be overfished, the Agency must approve a rebuilding plan that:

(A) specif[ies] a time period for ending overfishing and rebuilding the fishery that shall —

(i) be as short as possible, taking into account the status and biology of any overfished stock of fish, the needs of fishing communities, . . . 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, [or] other environmental conditions . . . dictate otherwise.

§ 1854(e)(4).

The Act also sets forth a series of “national standards” with which any rebuilding plans must be “consistent,” and provides for the establishment of National Standards Guidelines (“NSGs”) that must be “based on the national standards” for use in “assist[ing] in the development of fishery management plans.” §§ 1851(a), (b). The Act provides that NSGs “shall not have the force and effect of law.” *Id.*

There is some ambiguity to § 1854(e)(4). Section 1854(e)(4)(i) specifies that the rebuilding time period be as “short as possible,” but also directs that the Agency “tak[e] into account the status and biology of [the] . . . overfished stock” and “the needs of fishing communities.” Section 1854(e)(4)(ii) in turn plainly mandates that the rebuilding plan be no longer than 10 years, so long as biologically or environmentally possible.³ However, if it is not possible to rebuild

³A separate provision allowing for a longer period if necessary to comply with the terms of an international agreement is not relevant here. *See* § 1854(e)(4)(A)(ii).

within 10 years, the Act is not clear as to the exact limits on the length of the rebuilding period.

Seeking to clarify the proper interpretation of § 1854(e)(4), the Agency in 1997 sought “comment on whether or not it is correct in its interpretation that the duration of rebuilding programs should not be unspecified and, if so, what factors should be considered in determining that duration.” *See* 62 Fed. Reg. 67,610 (Dec. 29, 1997). The Agency propounded two alternate interpretations for public comment: that whenever it would take longer than 10 years to rebuild an overfished species, either (1) all fishing of that species would be banned until the rebuilding was complete or (2) the Agency would set a ceiling on the rebuilding duration that would be reached by adding the shortest possible time to rebuild plus “one mean generation time . . . based on the species’ life-history characteristics.” *Id.* at 67,609-10. A “mean generation time” is a scientific term, not mentioned in the Act itself, measuring how long it will take for an average mature fish to be replaced by its offspring. After notice and comment, the Agency adopted the second interpretation in a NSG (“the 1998 NSG”). *See* 50 C.F.R. § 600.310(e)(4)(ii)(B). The Agency reasoned that:

[f]or stocks that will take more than 10 years to rebuild, the guidelines [adopted] impose an outside limit that is objective, measurable, and linked to the biology of the particular species The guidelines strike a balance between the Congressional directive to rebuild stocks as quickly as possible, and the desire . . . to minimize adverse economic effects on fishing communities. For stocks that cannot be rebuilt within 10 years, the guideline allows flexibility in setting the rebuilding schedule beyond the no-fishing mortality period, but places a reasonable, species-specific cap on that flexibility by limiting the extension to one mean generation time.

63 Fed. Reg. 24,217 (May 1, 1998).

B. The 2001 and 2002 Limits for Darkblotched Rockfish

The Pacific Coast Groundfish Fishery is one of the fisheries the Agency oversees, covering the bottom-feeding fish species dwelling in the waters off the coasts of California, Oregon and Washington. In 2000, the Agency assessed the status of one species of Pacific groundfish within the fishery — darkblotched rockfish. It found that the species was at 22% of its unfished population level (its predicted level absent any fishing), and therefore concluded that the species was “overfished” within the meaning of the Act. 66 Fed. Reg. 2,347, 2349-50 (Jan. 11, 2001). The Agency further concluded that the species could be rebuilt in 10 years or less, triggering § 1854(e)(4)(ii)’s mandatory requirement that the rebuilding take place within 10 years. The Agency then set a 130 metric ton “fishing harvest level,” or quota, i.e., a set limit of darkblotched rockfish that could be fished in 2001.

In 2001, the Agency updated its assessment of darkblotched rockfish and concluded that it had significantly overestimated the health of the species. The Agency now estimated that the species was almost twice as depleted as previously thought — it was at only 12% of its unfished population level. In the Agency’s calculations, rebuilding therefore could not be accomplished within 10 years; the minimum period for rebuilding was now 14 years.

This increased rebuilding time meant, by necessity, that the rebuilding plan was no longer limited by § 1854(e)(4)(ii)’s mandatory 10-year cap; instead, the only applicable statutory time limit was § 1854(e)(4)(i)’s command that the rebuilding period be “as short as possible.” Further, according to the interpretation of the Act set forth in the 1998 NSG, the revised minimum rebuilding period triggered a new ceiling that was the 14-year period *plus* “one mean generation time,”

which in the case of the long-lived darkblotched rockfish was 33 years. The Agency, in short, switched from operating under the statutory constraint of *10 years* rebuilding time to a new constraint, dictated by the 1998 NSG, of *47 years*. The Agency then set a “target” rebuilding time of 34 years, and in accordance with this target, *raised* the fishing level harvest for 2002 from the previous year’s 130 metric tons to 168 metric tons.⁴

NRDC brought suit alleging that the new quota violated the Act, the Administrative Procedure Act and the National Environmental Policy Act. The district court concluded that the quota violated none of these statutes and granted summary judgment for the Agency. *Natural Res. Def. Council, Inc. v. Nat’l Marine Fisheries Serv.*, 280 F.Supp. 2d 1007, 1014-15 (N.D. Cal. 2003).

C. The Agency’s 2002 Specifications for Three Other Groundfish Species

The Agency also set 2002 quotas for three other overfished groundfish species — bocaccio, cowcod and canary rockfish — that were identical to the levels set in 2001, despite evidence that fishing of these overfished species in the prior two years had been significantly higher than that allowed by the previous year’s quotas. The Agency reasoned that because it did not have newly available data as to the status of these species (owing to its policy of conducting stock assessments every three years), its response to the evidence of overfishing would be to put in place interim measures (such as establishing no-fishing zones in certain areas), and then to set new quotas once the next assessment was completed.

NRDC charged that the Agency’s failure to adjust the quo-

⁴The new quota meant only that the “target rebuilding time” had even odds of being reached; it had a 70% chance of being reached within the outer limit of 47 years. 67 Fed. Reg. 10,491 (Mar. 7, 2002).

tas violated the Act, APA and NEPA. The district court also granted the Agency summary judgment on these claims. 280 F.Supp. 2d at 1017-1018.

II. Standard of Review

We review de novo the district court's grant of summary judgment. *Turtle Island Restoration Network v. Nat'l Marine Fisheries Serv.*, 340 F.3d 969, 973 (9th Cir. 2003). "De novo review of a district court's judgment concerning a decision of an administrative agency means the court views the case from the same position as the district court." *Id.*

The Administrative Procedure Act dictates that we should "hold unlawful and set aside agency action . . . [that is] arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *see also* § 1855(f)(1)(B); *Midwater Trawlers Co-op v. Dep't of Commerce*, 282 F.3d 710, 716 (9th Cir. 2002) (recognizing that the Magnuson Act adopts APA's standard of review). We must also "determine whether the agency articulated a rational connection between the facts found and the choice made." *Ariz. Cattle Growers' Ass'n v. United States Fish & Wildlife Serv.*, 273 F.3d 1229, 1236 (9th Cir. 2001) (citation omitted).

We should not defer to an agency's interpretation of a statute if Congress' intent can be clearly ascertained through analysis of the language, purpose and structure of the statute. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). If, however, Congress' intent is not clear, and if "Congress delegated authority to the agency generally to make rules carrying the force of law, and [] the agency interpretation claiming deference was promulgated in the exercise of that authority," *United States v. Mead Corp.*, 533 U.S. 218, 226-27 (2001), then we must defer to the agency's construction of the statute so long as "the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843. If the *Mead* requirements for *Chev-*

ron deference are not met, we review the agency's interpretation under the *Skidmore* standard, whereby the interpretation is "entitled not to deference but to a lesser 'respect' based on the persuasiveness of the agency decision." *Wilderness Soc'y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1067 (9th Cir. 2003); *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

III. Discussion

A. The 2002 Darkblotched Rockfish Quota

1. *Chevron* Deference

The Agency arrived at its increased 2002 darkblotched rockfish quota by applying its interpretation of § 1854(e)(4) of the Magnuson Act as set forth in the 1998 NSG. NRDC argues that this interpretation of the Act is not entitled to *Chevron* deference for two separate reasons.

First, NRDC argues that Congress' intent in this section of the Act is clear, thereby precluding the need for any deference to the Agency's interpretation of the statute. We disagree. As we noted above, § 1854(e)(4)(ii) is explicit that *if* a species can be rebuilt within 10 years, it must be. But § 1854(e)(4)(i), which states that the rebuilding period must be as "short as possible, taking into account the status and biology of any overfished stock of fish [and] the needs of fishing communities," introduces an ambiguity into the calculus. When it is not biologically possible to rebuild within 10 years, may the Agency extend the rebuilding period beyond the shortest possible rebuilding time to account for the needs of fishing communities? It would be possible to resolve the ambiguity by concluding that the Act as a whole makes it clear that the needs of fishing communities are perfectly aligned with the environmental goal of rebuilding fish stocks in as short a time as possible. But if this were the case, the language "the needs of fishing communities" would be redundant (as these needs would be no different than the need to rebuild stocks in as

short a time as possible). *But see Natural Res. Def. Council, Inc. v. Daley*, 209 F.3d 747, 753 (D.C. Cir. 2000) (“[W]e reject the District Court’s suggestion that there is a conflict between the [Act’s] expressed commitments to conservation and to mitigating adverse economic impacts.”).⁵ There is therefore an ambiguity in this part of the statute, requiring interpretation. *See Chevron*, 467 U.S. at 843 (holding that “[if] Congress has not directly addressed the precise question at issue,” it is necessary to move to the second step of the *Chevron* analysis).

NRDC next argues that because the Act explicitly provides that NSGs do not have the force of law, *Chevron* deference is not appropriate. *See Mead*, 533 U.S. at 226-27 (holding *Chevron* deference to be appropriate only if “Congress delegated authority to the agency generally to make rules carrying the force of law, and [] the agency interpretation claiming deference was promulgated in the exercise of that authority”). The Agency responds that although the 1998 NSG does not have the force of law, the 2002 darkblotched rockfish quota itself — which is what is actually being challenged here — is a binding regulation that does have the force of law, requiring *Chevron* deference, and that to hold otherwise would mean punishing the Agency for taking the additional step of setting out the interpretation in an NSG.

We need not resolve this question here, because even under the *Chevron* standard of review, the 2002 quota was based on an impermissible construction of the Act. We therefore will assume that *Chevron* review is appropriate even as to the 1998 NSG’s statutory interpretation that was applied to reach the quota, without deciding the issue.

⁵*Daley* may be correct as to the long-term needs of fishing communities, but undoubtedly the short-term economic interests of fishing communities diverge in some respects from the needs of fish species.

2. The 2002 Quota Is Based on an Impermissible Construction of the Act

Under *Chevron*, we must determine whether “the agency’s [quota] is based on a permissible construction of the statute.” *Chevron*, 467 U.S. at 843. *Chevron* review is also described as determining whether the quota reflects “a reasonable interpretation” of the statute. *Id.* at 844.

The interpretation of § 1854(e)(4) stated in the 1998 NSG, as applied in the 2002 quota, is not a permissible (or reasonable) construction of the statute; it is directly at odds with the text and purpose of the Act.⁶ Section 1801 of the Act contains its “Findings, purposes and policy.” The “Findings” section states that the nation’s fishery resources “constitute valuable and renewable natural resources,” that many of these species’ “survival is threatened” and that others’ survival will soon be threatened by “increased fishing pressure, . . . the inadequacy of fishery resource conservation and management practices and controls.” §§ 1801(a)(1), (2). The next subsection recognizes “commercial and recreational fishing” as a “major source of employment” that “contributes significantly to the economy of the Nation.” § 1801(a)(3). But even here, the Act urges that the economies of many coastal areas “have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade.” *Id.* The Act goes on to explain that “[i]f placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.” § 1801(a)(5). These observations lead to the conclusion that “[a] national program for the

⁶NRDC counsel confirmed at oral argument that its appeal is as applied; it challenges only this particular application of the Act. We also note that because the Act explicitly states that NSGs do not have the force of law, there would be no way for us to review the 1998 NSG facially; as discussed above, it gains the force of law (and hence becomes reviewable) only through specific applications, such as the 2002 darkblotched rockfish quota.

conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources." § 1801(a)(6). The "purposes" section adds that "[i]t is therefore declared to be the purposes of the Congress in this chapter . . . to take immediate action to conserve and manage the fishery resources" § 1801(b)(1).

[1] The purpose of the Act is clearly to give conservation of fisheries priority over short-term economic interests. *See Daley*, 209 F.3d at 753 ("[U]nder the [Act], the [Agency] must give priority to conservation measures."). The Act sets this priority in part because the longer-term economic interests of fishing communities are aligned with the conservation goals set forth in the Act. Without immediate efforts at rebuilding depleted fisheries, the very long-term survival of those fishing communities is in doubt. *See id.* This background provides helpful context for interpreting § 1854. However, even if we turn to the plain language of § 1854(e)(4) and, without such context, ask how its two subsections interact, we still must reject the interpretation of the Act contained in the 1998 NSG as it was applied to this species.

[2] Section 1854 contains two significant mandates that constrain the Agency's options in adopting a rebuilding plan for an overfished species. First, the time period must be "*as short as possible*," although the Agency may take into account the status and biology of the overfished species and the needs of fishing communities. *See* § 1854(e)(4)(i). Subsection (i)'s commands apply to *all* rebuilding periods, whatever their length. Second, Congress specified a presumptive *cap of 10 years* on any rebuilding period, subject to exceptional circumstances beyond the Agency's control — such as an international treaty or, relevant here, "the biology of the stock of fish." *See* § 1854(e)(4)(ii).

[3] We have noted some ambiguity in subsection (i)'s mandate to rebuild a species in "as short [a time period] as possible" while giving consideration to "the needs of fishing communities." The natural reading of this language, however, is that Congress intended to ensure that overfished species were rebuilt as quickly as possible, but wanted to leave some leeway to avoid disastrous short-term consequences for fishing communities. To use an example relevant here, even if a fishing community is actively seeking not to fish for a certain species, it will inevitably catch some of the overfished species in the process of fishing for other, more plentiful fish — what is known as "bycatch." Because almost no groundfish that are caught as bycatch survive even if they are thrown back into the ocean, an absolute ban on catching any of a species of groundfish could mean a total moratorium on all fishing in the parts of the fishery containing groundfish, with obvious adverse consequences for fishing communities. Section 1854(e)(4)(i), then, allows the Agency to set limited quotas that would account for the short-term needs of fishing communities (for example, to allow for some fishing of plentiful species despite the inevitability of bycatch), even though this would mean that the rebuilding period would take longer than it would under a total fishing ban.⁷

[4] Reading subsection (i) in this light, it is apparent that Congress intended subsection (ii) as a limit on the Agency's discretion. The Agency may consider the short-term economic needs of fishing communities in establishing rebuilding periods, but may not use those needs to go beyond the 10-year cap set by subsection (ii). To breach this cap, the Agency may only consider circumstances that "dictate" doing so. One such circumstance, albeit not relevant here, would be an international agreement. Another that *is* relevant is "the biology of

⁷This appears to explain the 2001 quota. The Agency determined that the darkblotched rockfish stock could be rebuilt within 10 years, but it still had the flexibility under the statute to set a fishing quota of 130 million tons for 2001 rather than ban fishing entirely.

the stock of fish” — that is, when the current number of fish in the fishery and the amount of time required for the species to regenerate make it impossible to rebuild the stock within 10 years, even with a total moratorium on fishing. In such cases, subsection (ii) recognizes that the presumptive 10-year cap cannot apply. That said, it is manifestly unreasonable to conclude, as the Agency apparently has, that Congress intended in such circumstances to relieve the Agency of its continuing obligation to rebuild the species in a time frame that is “as short as possible.”

[5] The 2002 quota was not based on a permissible construction of the Act, because the Agency altered dramatically the balance between the needs of a species and of fishing communities with no statutorily grounded justification.⁸ NRDC argues that if the rebuilding period must exceed 10 years, the Act mandates a total moratorium on all fishing — the alternative interpretation of § 1854 that the Agency rejected when it adopted the 1998 NSG. Although NRDC’s interpretation of the statute is reasonable, it is not the only reasonable one. It is also reasonable to conclude that the needs of fishing communities may still be taken into account even when the biology of the fish dictates exceeding the 10-year cap — so long as the weight given is proportionate to the weight the Agency might give to such needs in rebuilding periods under 10 years. This interpretation would allow the Agency’s rebuilding periods to account for short-term concerns such as bycatch in the same manner whether the rebuilding period exceeds 10 years or not.

⁸In cases of species with much shorter mean generation times, the 1998 NSG might dictate a quota that limits the Agency’s discretion in a way that appropriately reflects congressional intent. It is no answer to the irrationality of the interpretation as applied to this species, however, that it may be rational as applied to some other species. As the Agency itself has noted, it is the 2002 darkblotched rockfish quota that is being challenged here.

[6] The 2002 darkblotched rockfish quota is patently unreasonable, however, and reflects no such measured proportionality. Freed from the 10-year cap because of the biology of the rockfish (its long regeneration time and its dire condition), the Agency simply applied the 1998 NSG's formulaic approach and *increased* the annual take. In 2001, the Agency set a quota of 130 million tons of darkblotched rockfish because it believed the species had been reduced to only 22% of its unfished population. When its revised estimate revealed that the species was doing much worse, the Agency expanded the fishing of the species from 130 million tons to 168 million tons, a 29% increase. Whatever the outer limits of the range of permissible constructions of the Act, we are certain that what lies beyond them is an interpretation allowing the Agency, upon discovering that a species is in significantly worse shape than previously thought, to increase dramatically the fishing pressure on that species. Increasing the annual take in these circumstances is simply incompatible with making the rebuilding period as short as possible.

We are not prepared to accept NRDC's argument that once the 10-year cap is lifted because the biology of the fish dictates it, the Act in turn dictates that the Agency can no longer consider the short-term economic needs of fishing communities at all. Such an argument, although plausible, does not appear to give due consideration to the continuing operation of subsection (i)'s command to take the needs of fishing communities into account. But neither are we prepared to accept the Agency's interpretation, which would ignore the primary mandate of subsection (i) — that the rebuilding period be "as short as possible." At least as applied here, the Agency's interpretation not only increased the fishing take by almost 30% but extended the maximum rebuilding period from less than 10 years to 47 years. Plainly, the Act does not contemplate that the Agency grant the least protection to the fish species in the worst shape.

The arguments of the Agency and Intervenor regarding potentially dire consequences for fishing communities seem

persuasive at all only because they assume that the sole alternative is NRDC's strict moratorium. The district court made this same flawed assumption:

Faced with a choice between an interpretation of the [Act] that requires a moratorium on harvesting of fish species that take more than ten years to regenerate naturally, and an interpretation that permits limited harvesting over the course of a longer rebuilding period, [the Agency] selected . . . the latter interpretation. In light of [the Act's] dual conservationist and commercial objectives, an interpretation that accommodates both objectives, rather than selecting one to the exclusion of the other, is permissible.

280 F.Supp. 2d at 1014. The Agency was "faced with [this] choice" only because it proposed these two extreme interpretations, and no others.⁹

[7] Our rejection of the Agency's interpretation is compelled by the language of § 1854, which requires that rebuilding take place in "as short [a time] as possible" and, if biologically possible, in less than 10 years. § 1854(e)(4). That simple command cannot be reconciled with a rebuilding period that is from 20 to 33 years longer than the biologically shortest possible rebuilding period (and that increases the annual take in the meanwhile). We hold that even granting the Agency some leeway in extending rebuilding periods when the 10-year cap is not applicable, the 2002 darkblotched rockfish quota was based on an impermissible construction of the Act.¹⁰

⁹The closest any party came to explaining the Agency's justification for its decision to increase the quota was Intervenor's counsel's assertion that the Act was "not written by biologists," apparently a criticism of the stringency of its rebuilding commands, and in particular of the presumptive 10-year cap.

¹⁰We therefore do not reach NRDC's alternative arguments that the Agency violated the APA by failing to consider relevant biological factors and the NEPA by failing to do the required environmental analysis.

B. The 2002 Limits for Three Other Groundfish Species Do Not Violate the APA or the NEPA

NRDC additionally argues that the 2002 levels for three other groundfish species violate the APA and the NEPA. The Administrative Procedure Act requires that courts determine if agency actions are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). The National Environmental Policy Act requires agencies to consider the environmental consequences of an action before taking it. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). A reviewing court’s ultimate NEPA inquiry is whether an agency has taken the required “hard look” at the environmental consequences of its action. *See Greenpeace Action v. Franklin*, 14 F.3d 1324, 1332 (9th Cir. 1993).

Bocaccio, cowcod and canary rockfish are three additional Pacific groundfish species that have been found to be overfished. When it set 2002 levels for these fish, the Agency simply carried over the levels from the previous year. The Agency concluded that there was no new information on these stocks to warrant changing the quotas. NRDC argues that because the Agency was aware that the actual amount of these fish that had been caught in previous years far exceeded the set quotas, the Agency should have reduced the 2002 quotas to compensate — and that its failure to do so was arbitrary and capricious in violation of the APA, and reflected a failure to take the NEPA’s “hard look.” The Agency argues that over- or under-harvests for a single year are accounted for through alternate mechanisms. Assessments are conducted only every three years because of budgetary constraints, so quota revisions likewise take place every three years. In the meantime, however, additional “management measures” are undertaken, such as restrictions on fishing in specific areas within the fishery, or on fishing during certain parts of the year when there is a greater chance of bycatch.

The district court concluded that:

[The Agency's] decision to maintain harvest limits at their 2001 levels was reasonably connected to — indeed, was dictated by — the agency's policy of resetting harvest limits only after conducting a stock reassessment. In turn, that policy, which is a product of limited resources available to the agency to manage eighty-two different fish species, was neither an abuse of discretion nor contrary to law [T]he Court [also] finds that the EA's analysis was adequate to permit informed decision-making under the circumstances.

280 F.Supp. 2d at 1017 & n.4.

[8] We agree. Even if there are other reasonable approaches to dealing with the problem of exceeding quotas, we cannot say that the Agency's actions were "arbitrary, capricious," "contrary to law" or that they did not reflect a sufficiently "hard look." We therefore affirm the district court on these claims.

IV. Conclusion

We reverse the district court's holding that the Agency did not violate the Magnuson Act in setting its 2002 fishing quota for darkblotched rockfish. We remand to the district court for any further proceedings consistent with this opinion. *See Ocean Advocates v. United States Army Corps of Engineers*, 402 F.3d 846, 871 (9th Cir. 2005) (remanding to district court to consider remedy in first instance).

We affirm the district court's holding as to the 2002 limits for the other three species of groundfish. The parties shall bear their own costs.

AFFIRMED in part, REVERSED in part and REMANDED.

Detailed Comments from the North Pacific Fishery Management Council on the Commerce Committee MSA draft:

Section 102 – Regional Fishery Management Councils

p. 7-9: We support the additional language regarding the use of SSCs, and making the SSC process satisfy the requirements of the Information (Data) Quality Act. It would be very helpful to clarify that federal employees (some of whom are critical members of the NPFMC SSC) can participate in this SSC review process (contrary to some provisions of the Data Quality Act).

Regarding the establishment of TACs, it is probably more appropriate to reference ABCs as the limit point (we often set TACs below ABC, in some cases equal to ABC, but at times the TAC may be slightly exceeded due to management realities, such as estimation of amounts of a particular species necessary as bycatch in other directed fisheries).

Regarding pay for SSC members, there remain concerns that (1) fairness with regard to agency SSC members, and (2) overall perception possibly created by paying SSC members for scientific advice. Also, it is unclear who makes the determination as to whether such a stipend will be paid.

Regarding Council training, we generally support development of a more specific Council training program, but not as a condition of voting.

p. 10: Regarding notice of meetings, we support the proposed changes (notification of meetings via means that will result in wide publicity, not newspaper), but also encourage language that will no longer require publication in the Federal Register of meeting notices (very few people read the Federal Register for notice of Council and committee meetings – our web-site and newsletters are the primary source for public to track council meeting notices and other council related information).

p. 11-13: Council coordination committee – looks great, but please make sure the language allows that coordination committee to close portions of their meetings (as each Council can now do individually) to discuss administrative or legal (litigation) matters. That is found in part 3 of section 302(i).

Section 103 – Environmental review

The proposed language, under which the Secretary and CEQ would establish an integrated process for NEPA compliance, may allow for an improvement in the current process; however, it may not. If this approach is taken, it is critical that the Councils also be involved in developing this process. **We believe this is one of the most critical aspects of the pending MSA reauthorization, and we continue to strongly support**

the language as adopted by the 2005 national fisheries conference and by all eight of the Regional Councils, which adds critical NEPA aspects to the MSA, and thereby makes the MSA serve as the functional equivalent with regard to NEPA requirements. Suggested language in this regard has been previously provided.

Section 104 - Provisions affecting limited access privileges

Generally, the Council believes this is a necessary tool for fisheries management, including the authority to allocate privileges to a wide variety of stakeholders. We further believe many of the specifics (including initial allocations and other key program elements) need to be left to the discretion of the regional councils to address unique aspects of the fisheries and regions in which the fisheries occur. More specific comments, section by section, follow:

p. 16 – Sec. 106(1) – although this provision deletes the provision that expressly prohibits collection of economic data from processors, those data may only be collected for conservation and management purposes, which is typically a limited purpose (not usually including the social issues that the Council is interested in). **Generally we support collection of economic and other information, but stress the need for clear confidentiality restrictions on that information.**

p. 19 – Sec. 303(b)(2) – this provision and others authorize community participation (suggesting the community government) – nothing is provided for an *entity that represents* one or more communities (see more detailed comments in community section below).

p. 19 – Sec. 303(b)(2)(A)(iii) – this seems to require current subsistence or commercial fishing to be eligible as a fishing community (see more detailed comments in community section below).

pp. 18-19 – Sec. 303(b)(2)(A)(ii) – requires submission of a community sustainability plan – *probably need more definition on what is a sustainability plan.*

p. 19 – Sec. 303(b)(2)(B) – This suggests that historic participation is what is important in including communities in the program – *not clear if it is current or historic participation or both that matter when including communities in programs.*

p. 20 – Sec. 303(b)(3)(A) – One issue with this section is whether harvest shares can be allocated to processors - allocation of fishing privileges needs to consider processing employment, historic harvesting, investments in and dependence on the fishery, and historic community participation. *Should be clear as to whether harvest shares can be allocated to processors.*

p. 20 – Sec. 303(b)(3)(B) – set asides of initial and secondary allocations for “entry level” and small scale fishing permitted – *need to clarify definition of “secondary allocation”.*

p. 21 – Sec. 303(b)(3)(D)(i) – caps must be set as percent of “total limited access privileges” under the program – *this appears to be a bit different from what we do in most cases (often is percent of sector or percent of the species), though it is not entirely clear what is meant by ‘total access privileges’, and we would rather maintain our current practice of setting caps with greater Council flexibility.*

p. 21 – Sec. 303(b)(3)(E) – a program is required to “minimize geographic consolidation of processing” – *at an extreme, this could imply many more locations for processing than is practicable.*

p. 21 – Sec. 303(b)(3)(F) – according to this all programs must authorize “vessels owners, fishermen, crewmembers, communities and others that substantially participate in the fishery” to hold or be issued privileges” – ***Two critical issues here (a) difficult to determine what is meant by ‘substantially participate’, and (b) Councils should have discretion to allocate to all these sectors – suggest changing ‘must’ to ‘may’.***

p. 22-3 – Sec. 303(b)(4)(D) – these provisions require a petition of “a group of fishermen, constituting at least a third of those actively engaged in participation in fishery” for the Council to initiate a plan amendment for a rationalization program – *this is a pretty steep standard, especially considering that “fishermen,” “actively engaged in participation in,” and “fishery” would need to be specifically defined. In any case, we do not support requirement for petition, or referendum, for Council to initiate a limited access program.*

p. 26– Sec. 303(c)(1) – *it is not clear what is authorized here – using the definition of limited access privilege, it appears to authorize only programs that create privilege to process specific poundages of fish – this is different from the associations created by the Gulf of Alaska rockfish program and Gulf rationalization program. Also, fishery associations are not defined – it is assumed these are AFA and rockfish type processor/cooperative associations, but it is not clear.*

p. 26-7 – Sec. 303(c)(1)(B) – *to establish processor privileges we must meet a very high threshold – the privileges must (under (ii)) be “necessary to protect fishing communities, maintain historic harvester and processor balance in the fishery, and ensure economic stability in the harvesting and processing sectors. Also, (under (iii)) the privileges must not result in “price-fixing or any other anticompetitive practices” – by their nature these privileges may be construed as anticompetitive – they reduce competition for landings. We must also have (under (iv)) sufficient economic data to develop such a program”. The hurdle we may never be able to get over is that (under (v)) the program must be “necessary to address impacts to the processing sector that cannot be mitigated by other means.” This could be very difficult to ‘prove’.*

p. 27 - Sec. 303(c)(1)(G) – *a requirement for inclusion of waste reduction and increased utilization could be problematic, particularly if fisheries have already been addressed with previous requirements.*

p. 29 - Sec. 303(c)(3)(E) - all programs must authorize “communities, processors and others that substantially participate in the fishing and processing sectors” to hold or be issued privileges – *again, this is a broad list of recipients, will be difficult to define, and Councils should be given the option to allocate to each of these sectors.*

p. 30 - Sec. 303(c)(3)(F) – this provision excludes foreign processors from holding privileges – uses AFA ownership and control standard. *This could be a problem in fisheries where major, long-standing processing capacity has foreign ownership.*

P. 34 – Cost Recovery – we support cost recovery for limited access programs; *however, the current language in the draft is very open-ended and we recommend consideration of some cap level (currently it is 3%).*

Provisions specifically related to community aspects

Throughout, the Act references that access privileges can be acquired by ‘fishing communities’. It may be necessary to specify that privileges can be allocated to ‘an entity representing a fishing community’. All of our current and proposed programs allocate to an entity representing a community that is specified in regulation. Language in the draft could be construed such that the privileges can only be given to the community itself—which could be interpreted as limited to the ‘government’ of that community, and not a non-profit or fishing association, etc. set up for that specific program purpose. Adding ‘entity’ broadens it sufficiently. There are several places where this occurs in the draft.

P. 19 - Provisions (i) – (iv) seem to specify minimum criteria for communities participating in a limited access privilege program, and then (ii) allows the Councils to develop even more restrictive criteria. But my interpretation is that communities would at LEAST have to meet (i) – (iv). In specific, (ii) appears to limit the Councils to create criteria for eligible communities—you could not just pick community X and Y and Z to be part of a program.

(iii) appears to mean Councils could only allow communities in a program that had commercial or subsistence fishing within the Council’s management area. It doesn’t seem to limit it to communities with commercial fishing in the management area relevant to the specific limited access privilege program being created, however, you would just have to have some fishing in the BSAI or GOA.

Subsistence fishing is not defined; in the Act or in Federal regulations, with the exception of the halibut subsistence definition in 50 CFR 300.61.¹ Subsistence fishing is commonly defined differently from ‘personal use’ fishing (as defined in salmon) and definitely from ‘recreational’ fishing. So I would make sure that the intent was to constrict the Council to create programs for only those communities with commercial or subsistence fishing. (e.g., If we create a charter halibut IFQ program and include a community set-aside program – to be eligible a community would have to have commercial or subsistence fishing?)

¹ *Subsistence halibut* means halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade.

In addition, under (iii), it says 'consist of residents who conduct commercial or subsistence fishing.' It seems this could be interpreted as communities with residents who are currently conducting fishing operations as of the date of the program....This may be limiting to very small communities in AK whose resident fishing activity is dependent on 2 or 3 people, weather, an open processor—they may not have any residents fishing this year, but they fished the last ten.

As far as (iv)—probably need to define what a 'community sustainability plan' is. It doesn't seem to necessarily have to be about fishing. I would interpret this as a plan that must be submitted by a community, after it has been determined eligible for some specific program at final action. It would be another part of an entity's 'application for qualification' that is submitted to NMFS to represent a specific community.

(B) mandates what the participation criteria for communities can be based on. On one hand, it seems broad enough that the Council could justify almost any set of criteria used. We consider all those things when we develop a program in general. On the other hand, NMFS encourages the use of objective criteria as much as possible, in order to be able to apply it correctly and have it hold up to appeals. Thus, we commonly use population and proximity to the fishery as our main, if not only criteria, with some landings threshold to show 'dependence' or 'use' of the fishery at issue. The criteria above is mandated, and yet very subjective. Even NOAA HQ social science program has spent years and hasn't yet defined what 'dependence on the fishery' means and how to determine it in each region. I'm not sure we could create objective criteria that would meet (B). We took this out of several analyses (most recently, Gulf rationalization) because of this issue.

P. 20 – It is unclear what is meant by a 'secondary harvesting privilege'.

Section 107: The provisions in Section 107 could be construed as very broad and not requiring more than we currently do. Generally, these provisions give more weight to communities to receive initial allocations, and emphasize 'historic participation', 'sustained participation', and 'dependence on the fishery' by eligible communities to a much greater extent than the current MSA. This could be narrowly construed as limiting Councils to only making communities eligible that have historic and sustained participation in the same (usually recent) time period that is being used to make the initial allocations to individuals. However, I think that there continues to be room for interpretation, and that the time period considered to determine 'historic participation', 'sustained participation', and 'dependence on the fishery' could legitimately be a longer duration and meet the letter of the Act. For instance, to some, historic participation for a community could mean they harvested cod heavily 50 years ago, even if more recently they've harvested only salmon and halibut. The time period considered continues to drive the meaning and effect of all of the limited access privilege programs.

Section 112, P. 43 – Western Alaska CDQ Program: While the recently passed transportation bill (*Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for User, H.R.3, 109th Cong., Title X, Subtitle B, Sec. 10206 (2005) (enacted)*) included provisions clarifying the communities eligible for the CDQ Program that are effectively the same as the language under (i) and (ii) above, I think there are reasons to include a specific MSA amendment to add this clarification. Otherwise it won't be obvious when reading the MSA, since it would only be in a stand alone transportation bill.

However, the language above seems to only ADD the clarifying language, and does not remove the eligibility criteria currently in the MSA under 305 (i)(1)(B)(i) – (vi). I don't know why we wouldn't want to be as clear as possible, by striking the eligibility criteria currently in the MSA and using only (i) and (ii) above to designate eligible communities. By

continuing to have the eligibility criteria in the MSA, it looks as if you could be eligible by meeting the criteria OR by being on the lists identified in (i) and (ii). **This is not consistent with the transportation bill, which said that you are only eligible if you are on the lists; effectively, no new communities could enter the program at a later date.**

Other sections of the draft bill:

We have no specific comments on other sections of the draft bill at this time.

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1st Session

H. R. 3278

To amend the Magnuson-Stevens Fishery Conservation and Management Act to establish requirements for fishing quota systems, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES**July 14, 2005**

Mr. ALLEN (for himself, Mr. SIMMONS, and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to establish requirements for fishing quota systems, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Fishing Quota Standards Act of 2005'.

SEC. 2. AMENDMENT REFERENCES.

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

SEC. 3. DEFINITIONS.

Section 3 (16 U.S.C. 1802) is amended by adding at the end the following:

'(48) The term 'fishing quota system'--

'(A) means any limited access system that requires a person to acquire a permit under this Act to harvest fish in a fishery, that specifies a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by the person or a definable group of persons, during each fishing season for which the permission is granted; and

'(B) includes any area or community quota program, sector quota program, fishing cooperative program, or individual fishing quota program.

'(49) The term 'quota share' means a permit under a fishing quota system to harvest a quantity of fish, expressed as a percentage of the total allowable catch of a fishery that may be received or held for

exclusive use by a person, during each fishing season for which the permission is granted.'

SEC. 4. GENERAL REQUIREMENTS FOR LIMITED ACCESS SYSTEMS FOR FISHERIES.

(a) Conditions for Authority to Establish Limited Access Systems- Section 303(b)(6) (16 U.S.C. 1853(b)(6)) is amended by striking subparagraphs (A) through (F) and inserting the following:

- `(A) the conservation requirements of this Act with respect to the fishery;
- `(B) the breadth of the present and historic participation in the fishery;
- `(C) the economics of the fishery;
- `(D) the cultural and social framework relevant to the fishery and any affected fishing communities;
- `(E) the fair and equitable distribution of a fishery as a public trust resource; and
- `(F) any other relevant considerations.'

(b) Requirements for the Fishery- Section 303(d) (16 U.S.C. 1853(d)) is amended--

- (1) by striking paragraph (5);
- (2) by redesignating paragraphs (2), (3), and (4) as paragraphs (7), (8), and (9), respectively;
- (3) by striking so much as precedes paragraph (7), as so redesignated, and inserting the following:

`(d) Fishing Quota Systems-

`(1) IN GENERAL- A fishery management plan or plan amendment that establishes a fishing quota system for a fishery after the date of the enactment of the Fishing Quota Standards Act of 2005 shall--

- `(A) include management measures designed to ensure the sustainability of the fishery and provide additional and substantial conservation benefits, social benefits, and economic benefits to the fishery and fishing communities;
- `(B) be effective for a period of a fixed duration, not to exceed 7 years;
- `(C) provide for administration of the system by the Secretary in accordance with the terms of the plan;
- `(D) establish procedures for the Council having authority over the fishery, or the Secretary in the case of a fishery management plan developed by the Secretary, to review the quota system at least 1 year prior to the end of the effective period of the plan;
- `(E) allocate, review, and limit or terminate quota shares in accordance with this subsection;
- `(F) provide a fair and equitable process to appeal to the Secretary decisions made by a Council on--
 - `(i) eligibility to participate in the referendum required under this subsection and eligibility to receive an allocation of quota shares; and
 - `(ii) limitations, restrictions, and revocations of quota shares;

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(G) minimize, to the maximum extent practicable, negative social and economic impacts of the system on local coastal communities including historic fishing communities;

(H) minimize geographic consolidation of the fishery, including processing facilities;

(I) ensure adequate enforcement, management, and data collection, including the use of observers where appropriate at a level of coverage that yields statistically significant results; and

(J) not require that quota shares be held by a person engaged in personal-use fishing, including any recreational or subsistence fishing, if the fishery management plan designates a separate portion of the total allowable catch for personal-use fishing.

(2) ALLOCATION OF QUOTA SHARES-

(A) IN GENERAL- The Council having authority over the fishery shall make a fair and equitable allocation of all, or a portion, of the total allowable catch limit as quota shares among categories of vessels and among fishing gear types or other appropriate qualifiers. In allocating quota shares for a fishery, the Council shall--

(i) take into account present and historic participation in the fishery;

(ii) ensure that each quota share is held only by individuals who are citizens of the United States or permanent resident aliens;

(iii) to the maximum extent practicable, preserve the percentage of the total quota shares available at the inception of the program to vessels for which the quota share holder is onboard during fishing operations;

(iv) establish a mechanism to allow new entrants into the fishery;

(v) prevent any person from controlling an excessive share of quota shares under a fishing quota system and establish any other limits, measures, or financial reporting requirements necessary to prevent inequitable concentration of quota shares and to prevent significant adverse impacts on any person that holds a permit authorizing fishing in the fishery or fishing community; and

(vi) create incentives in successive allocations for fishermen who increase their use of gear that more selectively captures target species or increase protection of essential fish habitat, by increasing the allocation for those fishermen.

(B) TRANSFER TO FAMILY MEMBERS- (i) The Secretary may allow the transfer of a quota share allocated under subparagraph (A), on a case-by-case basis, from the holder of the quota share to a member of the holder's immediate family who would otherwise not be eligible for quota share under the program, due to death or disablement of the holder.

(ii) The Secretary shall establish a simple and expeditious process for such a transfer.

(iii) The Secretary may allow such a transfer only within the same category of vessel, fishing gear type, or other appropriate qualifier to maintain a fair and equitable allocation of quota shares.

(C) COMMUNITIES HOLDING QUOTAS- The Council having authority over the fishery may authorize geographically discrete communities to hold quota shares.

(3) TERMINATION OR LIMITATION OF FISHING QUOTA SYSTEM-

`(A) IN GENERAL- A fishing quota system established for a fishery may be limited or terminated at any time in accordance with this paragraph if necessary for the conservation and management of the fishery, including if the quota system has been found to have jeopardized the sustainability of the stock.

`(B) PROCEDURE- A fishing quota system may be limited or terminated under this paragraph by--

`(i) the Council that has authority over the fishery for which the system is established, through a fishery management plan or amendment;

`(ii) the Secretary, through repeal or revocation in accordance with section 304(h) of the fishery management plan that established the system;

`(iii) the Secretary, in the case of any fishing quota system established by a fishery management plan developed or approved by the Secretary; or

`(iv) the Secretary, if--

`(I) the Secretary finds that the system is not meeting or exceeding the requirements of the Act, including the requirement under paragraph (1)(A) to provide additional and substantial conservation benefits; and

`(II) the Council or Secretary does not make the changes necessary to ensure compliance with this subsection.

`(C) OTHER AUTHORITY OF SECRETARY NOT DIMINISHED- This paragraph does not diminish the authority of the Secretary under any other provision of this Act.

`(4) TERMINATION, RENEWAL, OR LIMITATION OF QUOTA SHARES- A quota share issued under a fishing quota system--

`(A) shall expire not later than 7 years after the date it is issued;

`(B) may be renewed in accordance with the terms of the plan and regulations issued by the Secretary or the Council having authority over the fishery for which it is issued, if, based on a review by the committee established under paragraph (6), the fishing quota system is meeting or exceeding the requirements of this Act and the conservation and management requirements of the fishery; and

`(C) may be modified, revoked, limited, or reallocated if necessary for the fishing quota system to meet or exceed the requirements of this Act and the conservation and management requirements of the fishery.

`(5) REFERENDUM PROCEDURE-

`(A) IN GENERAL- (i) A Council may submit a fishery management plan or plan amendment that establishes a fishing quota system only if the submission of such plan or plan amendment is approved in a referendum conducted in accordance with this paragraph.

`(ii) The Secretary may prepare a fishery management plan or plan amendment that establishes a fishing quota system only if the development and approval of such plan or plan amendment is approved in a referendum conducted in accordance with this paragraph.

`(B) CONDUCT- The Secretary shall conduct the referendum required under subparagraph (A). The Secretary shall develop guidelines to determine procedures to conduct such referendum in a fair and equitable manner. Prior to the referendum, the Secretary shall identify and notify all persons who are

eligible to vote in the referendum, and make available to all such persons information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed fishing quota system.

`(C) REQUIRED VOTE- Each referendum shall be decided by the affirmative vote of a two-thirds majority of the votes cast by persons who the Secretary determines are eligible to vote in the referendum.

`(D) ELIGIBILITY TO PARTICIPATE- A person shall be eligible to participate in a referendum under this paragraph with respect to a fishery only if the person--

 `(i) holds a permit to fish in the fishery; or

 `(ii) is a crew member on a fishing vessel who derives at least 30 percent of their annual income from the fishery that would be subject to the proposed fishing quota system and at least 60 percent of their total annual income from fishing.

`(6) COUNCIL PROGRAM REVIEW COMMITTEE-

`(A) IN GENERAL- Each Council, upon deciding to develop a fishing quota system for a fishery, shall establish, maintain, and appoint members of a review committee to make recommendations to the Council and the Secretary for development, evaluation, and necessary changes to such system to ensure that it meets the requirements of this subsection.

`(B) GUIDELINES FOR MEMBERS- The Council, in consultation with the Secretary, shall develop guidelines that will ensure that review committee members are qualified for appointment and are subject to conflict of interest rules.

`(C) SELECTION OF MEMBERS- The Council shall select the members of each review committee from a list of individuals submitted by the Secretary. The Secretary may not submit the names of individuals to the Council for appointment unless the Secretary has determined that each such individual is qualified under the guidelines developed under with subparagraph (B).

`(D) APPOINTMENTS- The members of a review committee established by a Council under this paragraph shall be appointed by the Council in such a manner as to provide fair representation to all groups that would be affected by a fishing quota system for a fishery, including commercial, recreational, and subsistence fishing interests, fishing communities, scientists, and conservation organizations and other public interest groups.

`(E) RESTRICTION ON VOTING- A member of a review committee established under this paragraph shall not vote on any decision pertaining to a fishing quota system under which the member holds a quota share or will hold a quota share in the subsequent 5-year period.

`(F) REVIEWS AND RECOMMENDATIONS REGARDING SYSTEMS- Each review committee shall, every 7 years, review fishing quota systems, determine whether such systems meet the requirements of this Act, and evaluate whether each such system has improved management, conservation, and safety in the fishery to which it applies. Pursuant to such review, the committee shall recommend to the Secretary and the Council any changes to a fishing quota system necessary to ensure it meets those requirements and standards of improvement including revoking, limiting, or reallocating quota shares.

`(G) REPORTS- The Council shall transmit to the Congress a report containing the results of each review under subparagraph (F) within 90 days after the review is completed.;

(4) in paragraph (7)(A) (as so redesignated) by striking 'individual fishing quota programs' and inserting 'a

fishing quota system';

(5) in paragraph (7)(B) by striking 'individual fishing quota programs' and inserting 'fishing quota systems'; and

(6) by adding at the end the following:

'(11) DEFINITIONS- For the purposes of this subsection--

'(A) the term 'additional and substantial conservation benefits to the fishery'--

'(i) except as provided in clause (ii), means scientifically measurable conservation benefits to the fishery at the time of establishment of a fishing quota system, that substantially--

'(I) avoid bycatch and minimize the mortality of unavoidable bycatch;

'(II) prevent highgrading;

'(III) reduce overfishing (including localized depletions) and rebuild overfished stocks; and

'(IV) protect essential fish habitat; or

'(ii) if it is not possible to directly measure conservation benefits, means actions taken under a fishing quota system that are considered necessary to provide such benefits;

'(B) the term 'control' means owns, leases, or otherwise directs fishing operations under a fishing quota system;

'(C) the term 'excessive share' means more than 1 percent of the total allowable catch in a fishery, except that a Council may increase such percentage--

'(i) to no more than 5 percent, if the Council can demonstrate that such an increase will not be detrimental to other individual holders of quota shares under a fishing quota system;

'(ii) to no more than 15 percent, if there are an average of 20 or fewer participants in the fishery during the 3-year period prior to the implementation of the control date for the fishing quota system or, if there is no control date, from the date of implementation of the fishing quota system, and the Council can demonstrate that such an increase will not be detrimental to other individual holders of quota shares under the system; or

'(iii) to greater than 15 percent, if there are an average of less than 7 participants in the fishery during the 3-year period prior to the implementation of the control date for the fishing quota system or, if there is no control date, from the date of implementation of the fishing quota system, and the Council can demonstrate that such an increase will not be detrimental to other individual holders of quota shares under the system; and

'(D) the term 'fair and equitable allocation' means initial and subsequent allocation of quota shares based on multiple criteria that provide for consideration of--

'(i) conservation performance, including the use of selective fishing practices that have minimal bycatch, prevent highgrading, and have minimal adverse impacts on essential fish habitat;

'(ii) owner-operators of fishing vessels; and

(iii) long-term participation in the fishery.'

SEC. 5. ACTION BY SECRETARY.

(a) Establishment of Fees- Section 304 (16 U.S.C. 1854) is amended--

(1) in subsection (c)(3) by striking 'individual fishing quota program' and inserting 'fishing quota system';

(2) in subsection (d)(2)--

(A) by striking '(A)';

(B) by striking 'of any--' and all that follows through 'community' and inserting 'of any community'; and

(C) by striking subparagraph (B);

(3) by adding at the end of subsection (d) the following:

(3)(A) Notwithstanding paragraph (1), the Secretary shall establish and collect from a person that holds or transfers a quota share issued under section 303(d)(2) fees established by the Secretary in accordance with this section and section 9701(b) of title 31, United States Code.

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

(i) With respect to any initial allocation under a limited access system established after the date of the enactment of the Fishing Quota Standards Act of 2005, an initial allocation fee that shall be collected from the person to whom the quota share is first issued.

(ii) An annual fee that shall be collected from the holder of the quota share, and that is a percentage of the ex-vessel value of fish authorized to be landed in one year under the quota share.

(iii) A transfer fee that shall be collected from a person who transfers the quota share to another person.

(C) In determining the amount of a fee under subparagraph (B), the Secretary shall ensure that the total amount collected from all holders of quota shares in a fishery subject to a fishing quota system is sufficient to recover direct costs related to administering and implementing the fishing quota system, including enforcement, management, and collection of ecological and socio-economic data (including adequate observer coverage).

(D) The Secretary, in consultation with the Councils, shall promulgate regulations prescribing the method of determining under this paragraph the ex-vessel value of fish authorized to be landed under a quota share, the amount of fees, and the method of collecting fees.

(E) Fees collected under subparagraph (B)(ii) from holders of quota shares in a fishery shall be an offsetting collection and shall be available to the Secretary only for the purposes of administering and implementing this Act with respect to that fishery.'

(b) Action on Limited Access Systems- Section 304 (16 U.S.C. 1854) is amended by adding at the end the following:

(i) Action on Limited Access Systems-

(1) REQUIREMENT FOR APPROVAL OF PLAN- The Secretary may not approve a fishery management plan that establishes a fishing quota system unless the plan complies with section 303(d).

`(2) REGULATIONS- The Secretary shall issue regulations that establish requirements for establishing a fishing quota system. The regulations shall--

`(A) specify factors that shall be considered by a Council in determining whether a fishery should be managed under a fishing quota system;

`(B) ensure that any fishing quota system is consistent with the requirements of section 303(d);

`(C) require the collection of fees in accordance with subsection (d)(3) of this section;

`(D) provide for appropriate penalties for violations of regulations governing fishing quota systems, including the revocation of quota shares for such violations; and

`(E) establish a central lien registry system for the identification, perfection, and determination of lien priorities, and nonjudicial foreclosure of encumbrances, on fishing quotas.'.

SEC. 6. MISCELLANEOUS CONFORMING AMENDMENTS.

(a) Section 305- Section 305(h)(1) (16 U.S.C. 1855(h)(1)) is amended by striking `individual'.

(b) Section 402- Section 402(b)(1)(D) (16 U.S.C. 1881a(b)(1)(D)) is amended by striking `individual fishing quota program' and inserting `fishing quota system'.

(c) Section 407- Section 407 (16 U.S.C. 1883) is amended--

(1) in subsection (a)(1)(D) by striking `individual fishing quota program' and inserting `fishing quota system'; and

(2) in subsection (c)(1) by striking `individual fishing quota program' and inserting `fishing quota system'.

END

PACIFIC STATES MARINE FISHERIES COMMISSION
58th Annual Meeting - Alaska

ISSUES/QUESTIONS 2005

9/14/2005

1. Does the Commission support the Science & Statistical Committee (SSC) recommendations outlined in the Stevens Staff Working Draft ? Those include, SSC appointed by the Council (Commission has supported this in the past); that SSC set "not to be exceeded total allowable catch"; SSC formal peer review options.

PSMFC Commission approved the recommendations.

2. Does the Commission support training for Council Members as outlined in the Stevens Staff Draft?

PSMFC Commission approves the training, approves as mandatory BUT would not stop a member from voting if training was unavailable.

3. Does the Commission support the NEPA sufficient process as outlined in the Stevens Staff Draft?

PSMFC Commission supports the Council Chair's position under NEPA.
(CA voted No)

4. Does the Commission support the concept of Ecosystem Management, but like the Council Chairs, does not think the Act should be amended to specifically include it?

PSMFC Commission supports the Councils in recognizing Eco-based Management, but it should not be in the Act.

5. Does the Commission support the Cooperative Research Program as outlined in the Stevens Staff Draft?

PSMFC Commission supports the Draft and seeks clarification with the inclusion of NGO's and treaty Tribes and that these funds should focus on fishing industry participation.

6. Does the Commission support the Bycatch Reduction Program as outlined in the Stevens Staff Draft?

PSMFC Commission supports the program, but only with a 12 month timeframe.

7. Does the Commission support the Cooperative Enforcement Program elements as outlined in the Stevens Staff Draft?

PSMFC Commission supports the Stevens Draft and wants to include "treaty tribal" and ALL (Idaho) regulators who set on regional management councils.

8. Does the Commission support the Council Chair's recommendation on overfishing and rebuilding? (End overfishing in one year and rebuilding period should be as short as possible and delete the "not to exceed 10 years")
PSMFC Commission supports the Council Chair's position. Rebuilding plans should be part of the plan to end overfishing in one year.

9. Does the Commission support the Stevens Staff Draft on Limited Access Programs?

PSMFC Commission supports the authority in the Stevens Draft but the details to be worked out at regional council levels - want authorization of a tool box without being told how they are to use the tools. Oregon votes NO.

10. Does the Commission support the *Stevens Staff Draft* on Data Reporting, Confidentiality Standards and Protection for Specific Data Types?

PSMFC Commission supports increase in data protection and supports authorization of collection of data and implementation at a regional level.
CONFIDENTIALITY - Commission recommends STRONG SUPPORT for strong confidential protections.

11. Does the Commission continue to support proposed amendments to the MMPA that include research for non-lethal deterrents and gear development grants?

PSMFC Commission supports.

12. Does the Commission agree with the Council Chair's position on amending the MSA and National Marine Sanctuary Act to insure that management authority for fish shall be under the jurisdiction of the RFMC (regional fishery management councils)?

PSMFC Commission supports.

13. Does the Commission continue to support it's position on continuation of authority provided to the states to manage Dungeness Crab?

PSMFC Commission supports.

14. Does the Commission support the Administration's Aquaculture Bill?

PSMFC Commission does NOT support the current version of the bill.

15. Should the Commission seek to clarify State vs. Federal jurisdiction under "state management authority" for Dungeness Crab in the Magnuson-Stevens Act Reauthorization?

PSMFC Commission supports.

16. Should the Commission support West Coast "Robust Marine Mammal Species/Predation Monitoring" program funding restoration (status quo = \$750,000)?

PSMFC Commission supports.

17. Should the Commission support Fish Passage Center at full funding and functions level?

PSMFC Commission supports. PSMFC Staff to write letter of support.

18. Should the Commission seek increases in PacFIN and RecFIN program funding due to serious erosion through same-level funding over the past 10 years? (Level funding is a cut. Adequate data collection and management funding is not adequate for current needs.) Should the Commission seek reconciliation of the MSA, NEPA, APA, etc., in the interest of a more efficient process?

PSMFC Commission wants AKFIN added, and then supports.

19. Should the Commission seek to change the definition of "overfishing" to acknowledge natural impacts?

PSMFC Commission supports.

20. Should the Commission support federal funding of VMS or GMDSS deployment requirements, as necessary and improved data sharing with State management and enforcement authorities?

PSMFC Commission supports the Alaska position: "Yes for Federal funding and data sharing requirements. RFMC should maintain control of implementing VMS requirements, which includes a Cost/Benefit analysis."

21. Should the Commission send a letter to the Northwest Region of the Fish and Wildlife Service requesting the agency's plan for implementing mass marking, an estimation of the costs of the program, and the agency's priorities for using available resources to best meet the objectives for mass marking?

PSMFC Commission agreed that each State should write their own letter and the issue should be a topic of next year's Annual meeting.

22. Should the Commission work to prevent Data Quality Act infringement on RFMC use of science for management?

PSMFC Commission supports.

I-1 – Should the Commission support adding language to Section 110h(2) to allow Idaho to be eligible in the cooperative enforcement agreement?

Issue resolved under vote on #7.

I-2 – Should the Commission support clarifying the language that section 16(2) ensures that any technical correction made retains current state eligibility for funding under the PCSRF?

PSMFC Commission request that IDAHO be recognized as a participant and approved by unanimous vote.

C-1 – Continue supporting the Capital Construction Fund reform.
PSMFC Commission approved.

W-1 – Mitchell Act Funding.
PSMFC Commission supports prior Commission position.

LEGISLATIVE COMMITTEE REPORT

The Legislative Committee (LC) met September 19, 2005. The LC discussed a draft “Staff Working Draft” bill for the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) distributed by staff of the U.S. Senate Committee on Commerce, Science, and Transportation (Agenda Item B.3.a., Attachment 5). Additionally, at the request of Oregon Senator Gordon Smith, the LC reviewed S. 1549, the *Cooperative Hake Improvement and Conservation Act of 2005* (Agenda Item B.3.a, Attachment 4).

The LC noted the small amount of time to address two substantial agenda items and recommends consideration of a longer meeting in the future for situations such as this one. Further, the LC noted only three appointed members were in attendance at the meeting and requested the Council Chairman address the current membership of the LC at this meeting.

MSA Reauthorization

Staff of the U.S. Senate Committee on Commerce, Science, and Transportation requested Council comments on the content of the Staff Working Draft and on any additional national or regionally-specific issues the Council would like to be considered for inclusion in an introduced bill. Based on time management considerations for the two agenda tasks, the LC elected to consider primarily the subject of matters omitted from the Staff Working Draft, and schedule a thorough review of the entire draft bill at a later meeting. The LC focused their discussion on the following three significant omissions with the understanding there was also insufficient time:

1. MSA and National Marine Sanctuaries Act

The LC discussed fishery management authority in national marine sanctuaries and recommends highlighting the Council’s June 2005 decision to support the position adopted by the Regional Fishery Management Council Chairs in April 2005. This position is as follows:

Fishery management authority in national marine sanctuaries, 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.

(The proposed amendments to the National Marine Sanctuaries Act are available in the June 2005 Council meeting record and available for reference at this meeting, but is not included in this statement.)

2. Rebuilding Requirements

The LC recommends highlighting to the U.S. Senate Committee on Commerce, Science, and Transportation staff the Council's decision to support removal of the arbitrary ten-year rebuilding time frame for overfished species and recommends subsequent draft bills on MSA reauthorization include the position adopted by the Regional Fishery Management Chairs. There was discussion of referencing the recent opinion from the U.S. Court of Appeals for the Ninth Circuit regarding darkblotched rockfish and the ten-year rebuilding boundary.

3. Use of VMS Data for Science and Management

The LC was encouraged by the draft bill's language on cooperative enforcement agreements between federal and state marine enforcement agencies, including the sharing of data from satellite based vessel tracking systems. The LC recommends extending the use of data collected using a vessel monitoring systems to state and federal scientific and management applications. The LC discussed the need to ensure adequate confidentiality protections.

S. 1549 Cooperative Hake Improvement and Conservation Act of 2005

The LC:

- Reviewed key components of S. 1549.
- Initially considered general complications between the bill and the West Coast groundfish trawl individual quota program (TIQ) considered in and Environmental Impact Statement.
- Considered specific individual matters associated with bill language.
- Passed a motion reaffirming the Council's June 2005 position on legislation that could preempt the Council's development of a trawl IQ program.

The LC reviewed major provisions of the bill and developed the following specific recommendations in no order of priority:

1. The LC characterized their input as driven by a timely response to Senator Smith, but notes that a thorough review by the Council's TIQ advisory bodies could provide a more comprehensive response. The LC also noted that data was not available at this meeting to assess the appropriateness of provisions such as landing requirements and window periods for identifying qualified participants.
2. The LC requests clarification on the definition of processor in the bill. For example, would it include fish reduction plants? The LC also notes that fish may be landed at one facility and subsequently trucked to another facility and it was not clear to the LC as to which processor would receive the privilege under these conditions.
3. Under this bill, fisherman's cooperative shares may be transferred to persons holding limited entry trawl permits, and processor cooperative shares can be transferred to anyone. This flexibility creates the potential for vertical integration of the industry and the transfer of shares to foreign interests. The LC recommended consideration of third

party oversight of price negotiations, review of the current limitations on acquiring a limited entry trawl permit, and addition of United States ownership requirements.

4. The bill provides 1% of the Pacific whiting allocation to the shore-based sector for the incidental catch of Pacific whiting in other fisheries. The LC questioned whether this was an adequate value for incidental fisheries and notes that this leaves little or no room for open access fisheries. The LC recommends reviewing the current set-aside level for incidental catch and providing a small allotment for open access fisheries with a set-aside cap of no more than 6% of the Pacific whiting allocation which would be deducted from the shore-based sector.
5. The LC agrees with the 3% fee on exvessel revenue to fund the program and the provision for state access to these funds.
6. To avoid a conflict with Council and NMFS work on Amendment 18 to the Groundfish Fishery Management Plan, the LC recommends that, if this bill passes, the Secretary of Commerce establish temporary caps on the bycatch of non-whiting species until such time as bycatch caps under Amendment 18 are implemented.
7. The bill requires NMFS to implement the required regulations within six months of the bill becoming law and states that the program would not be delayed by failure to amend the Council's groundfish FMP. The LC notes that six months is not an adequate time frame for implementing regulations and estimated a 12 to 18 month expectation is more realistic.
8. The LC noted discomfort with what is essentially a Congressionally mandated change to a Council FMP and had concerns about the Council's future flexibility to change provisions of the program if the bill becomes law.
9. The funding needed for initial implementation of S. 1549 includes what is required to complete the intersector allocation and an analysis of the share program for whiting and incidental catch. At this point, the additional amount needed for analysis of the share program is anticipated to be similar to that required for the TIQ program. The analysis needed will include consideration of the interactions between the program contained in S. 1549 and the TIQ alternatives the Council has already developed for analysis. The additional amount needed to complete this work and support implementation actions is estimated at \$1.5 million.
10. The LC notes that, if passed into law, this bill would change the way in which markets for shore-based Pacific whiting are created and recommends close review of the program by an outside entity such as the U.S. Department of Justice. The LC was encouraged by the requirement for program review by the Secretary of Commerce every five years. However, it is not clear what provisions could be changed if a review determines changes are appropriate.
11. Mindful of confidentiality issues, the LC recommends the program would be strengthened by a requirement for the collection of economic data from processors associated with this program. The collection of economic data would greatly improve the ability of the Secretary of Commerce and the Council to review the program.

Lastly, the LC reiterated concerns regarding a legislative mandate on Council staff and passed a motion reaffirming the Council's expressed opposition (June 23, 2005 letter to U.S. Secretary of Commerce Carlos M. Gutierrez, Agenda Item B.3.a, Attachment 1) to any Congressional action that could pre-empt the Council's development of an individual fishing quota program. Given the time constraints, it was expected that further discussion of the basis for this recommendation would occur when the Council takes up Agenda Item B.3.

LC Recommendations:

- 1. Provide Council recommendations on the discussion draft bill on MSA reauthorization, to the U.S. Senate Committee on Commerce, Science, and Transportation, as recommended in this report.**
- 2. Provide Council recommendations on Senate Bill 1549, Cooperative Hake Improvement and Conservation Act of 2005, to Senator Smith's office, as recommended in this report.**
- 3. Direct Council staff to track amendments to Senate Bill 1195, the National Offshore Aquaculture Act of 2005, for discussion at the November 2005 LC meeting.**
- 4. Schedule further review of MSA at the November Council meeting.**

PFMC

09/22/05

ENFORCEMENT CONSULTANTS REPORT ON LEGISLATIVE MATTERS

The Enforcement Consultants request that the following comments related to the Magnuson-Stevens Fishery Conservation and Management Act reauthorization be added to any letter forwarded by the Council.

1. Provide language allowing the full access by State Officers to vessel monitoring system (VMS) information along with the ability to use VMS for the detection and prosecution of State law violations.
2. Allow access by State Officers to VMS information if a cooperative enforcement agreement is in place, deputizing the State Officers, versus a Joint Enforcement Agreement.
3. Specifically identify VMS as a tool available to State enforcement entities.

GENERAL COMMENTS REGARDING MAGNUSON-STEVEN'S FISHERY
CONSERVATION AND MANAGEMENT ACT REAUTHORIZATION (MSA)

The Enforcement Consultants (EC) seek the support of the Council in writing a letter to National Oceanic and Atmospheric Administration (NOAA), Senator Stevens and other appropriate interests addressing enforcement issues related to the MSA reauthorization.

The EC has two concerns regarding the current administration of the vessel monitoring system (VMS) Program: full access and application of VMS when pursuing violations of state law. The States have been attempting to gain equal access (defined as real time live terminal access) to the VMS data since the program first became an enforcement tool in the West Coast. Due to a restriction in the MSA, NOAA cannot allow the States full access to VMS information and that information cannot be used to support state violations.

Two drafts of the MSA are currently circulating - one out of Senator Stevens' Office and the Administration's version. Both versions make an effort to address the issue of state access by allowing access if the State maintains a current Joint Enforcement Agreement (JEA). The issue of application is not specifically addressed.

The EC believes that full access should be provided to the states. Currently, a State Officer can contact NOAA and gain information through him; but, only where there is a violation of federal law in progress. State Officers are not allowed to view the system or obtain information in "real time". NOAA agents may not be available when a State Officer is working and requires the information. While both drafts make some general reference to "data systems", it is our recommendation that access to the "VMS" be specifically spelled out.

To authorize full access, cross deputization should be all that is required. The Western Coastal States have had cross deputization agreements with National Marine Fisheries Service (NMFS) Office for Law Enforcement for about 20 years. Requiring a JEA for access could become problematic. What if a JEA, which is the current vehicle for getting money to the States for federal fisheries enforcement work, is not possible due to lack of funding, or the program simply goes away? It is our view that a cross deputization program should be sufficient, since this is what gives the state enforcement programs the authority to enforce federal regulations, and thus provides the nexus.

The Council, NMFS, and the Coastal States have worked extremely hard since the inception of the Council to make enforcement of the regulations proposed by this body and ultimately promulgated by both NMFS and the states, seamless in their application. The EC believes that VMS tracking information should be available for the detection and prosecution of violations of state law. Neither version appears to allow specifically for this to occur. Many fisheries violations occur near and across state/federal water boundaries. Federal regulations are adopted by the West Coast States, and additional, more restrictive state regulations are often implemented to further protect species with a federal management plan. The use of VMS for prosecution of state violations further capitalizes on the monetary investment(s) made by industry, the states, and the Federal Government.

The EC is also concerned about language in the Administrations' draft that expands federal enforcement authority and compensation to agencies outside of primary state fish and wildlife entities with marine natural resource law enforcement responsibilities. New examples could include County Sheriff's Offices and Municipal Police. The West Coast States compete each year with the other States in the Nation that border the Oceans, the Gulf, and the Great Lakes for finite federal funding through JEA. Protection responsibilities continue to increase for us, such as monitoring landings, imports and exports, compliance with the Endangered Species Act, selective fishing strategies or closed or restricted areas like essential fish habitat, marine protected areas and fish conservation areas.

Considering the continuous increases in protection responsibilities, any expansion of eligibility for funding, beyond marine natural resource law enforcement entities currently receiving funding, will result in the dilution of our ability to provide the needed services. The West Coast States already exhaust available funding before the need for presence expires.

The sections in both drafts that address VMS are as follows:

Senator Stevens Draft – Page 45; SEC. 202 ACCESS TO CERTAIN INFORMATION

Administrations Draft – Page 19 (C)

The section in the Administrations' draft that pertains to funding and enforcement authority is:

Page 44 (2,f)

GROUND FISH ADVISORY SUBPANEL REPORT ON LEGISLATIVE MATTERS

The Groundfish Advisory Subpanel (GAP) received a copy of SB 1549 the “Cooperative Hake Improvement and Conservation Act,” as introduced by Senator Smith, and Mr. Jim Seger of the Council staff gave the panel a verbal summary of the bill. The panel members and public attending the meeting discussed the bill at great length. During this discussion, everyone that wished to express their opinion was given the opportunity to do so. Two strongly conflicting views were expressed: characterized here as those in opposition to SB 1549 (Opponent’s View) and those in support of SB 1549 (Proponent’s View).

Proponents’ View

The proponents of SB1549 on the GAP were disappointed that the group was unable to provide substantive comments on SB1549 as requested by the Council and Senator Smith. Unfortunately, due to philosophical opposition to processor recognition in an individual quota (IQ) program, several GAP members refused to even discuss the plan outlined in the legislation. Hence, no substantive comments were provided.

The proponents on the GAP and the majority of shoreside whiting fishermen and processors support the passage of some form of SB1549 that implements a program which recognizes harvesters and processors. We continue to believe that the partnerships between fishermen and processors should be recognized and protected. We support the bill because:

- it represents a cooperative agreement between the majority of trawl fishermen and processors involved in the shoreside whiting industry;
- it recognizes and includes historic participants of both the harvesting and processing sectors;
- it allows for the development of a market based management program that provides fishery participants with long term economic stability;
- it allows for fisheries participants to better conserve and manage bycatch allocations as specified by the Council;
- it does not alter how the Council manages groundfish in terms of established seasons, species managed, legal gear, sector allocations, rollover of unused allocation, and setting of bycatch levels; and
- it allows the Council, with a minimum of burden, to progressively address the conservation and management of whiting using an allocation system that cannot be legally recommended by the Council at this time.

This legislation is not an “end-run” attempt to circumvent the Council process. A majority of the rationalization plans currently in place around the country were implemented through Congress, not councils. In fact, the Council is currently prohibited from even considering the type of plan proposed in the legislation. In an effort to make the program more palatable, the proponents on the GAP would have been interested in hearing suggestions that could improve the proposed legislation and make the program more accessible. These comments could have made their way through the Council process and ultimately have been provided to Senator Smith as originally

requested. This is an opportunity for direct Council involvement in the evolution of the legislation. The refusal of some GAP members to even consider the possible benefits of the proposal has prevented the GAP and perhaps even the Council from providing direct input into the legislation. Instead of providing constructive comments to influence the legislation, some GAP members have clouded the issue and tried to force the Council's hand on taking a stand against processor recognition within individual quota programs.

The proponents on the GAP remind the Council that one sector of the whiting fishery – the catcher-processors – have already rationalized, which occurred after the Council formally allocated the whiting optimum yield. The voluntary catcher-processor cooperative formed outside the Council process has benefited through improved production and decreased bycatch. By working with the Council and the Congress, the shorebased sector is also trying to rationalize to achieve similar benefits.

Processors make up less than 16% of the GAP membership. Due to a vacancy and an absence, only one processor was present during the discussion. The GAP Chair made sure to include comments from processors and fishermen present in the audience. Remember, the shore-based whiting industry, both harvesters and processors, are supporting the passage of this legislation. The proponents on the GAP encourage the Council to consider providing substantive comments on the draft legislation as requested by Senator Smith, not simply echoing the mantra of “no processor recognition” being espoused by opponents on the GAP who aren't even part of the whiting industry!

Opponent's View

The opposition on the GAP, in concert with other participants in the audience, expressed great concern and opposition to SB 1549, the “Cooperative Hake Improvement and Conservation Act”. The first issue that troubled the panel was that this legislation would disregard the authority of the Council to develop a fishery management plan for a quota share system that includes Pacific whiting. This type of “end-run” would implement a management system without the normal analysis and review that the industry has come to expect and within which they wish to participate.

The second issue for these panel members, and perhaps the greatest, was the great deal of opposition to the establishment of a “two-pie” quota system. Fishermen would only be allowed to sell their catch of whiting to companies that had matching shares. Currently, this type of system is illegal. According to the Justice Department these types of systems are anti-competitive and restrain trade.

Thirdly, were these panel members oppose any legislative or management action which would grant resource shares of any kind to the processor sector. They are the fishermen's customer. A free market outcome which facilitates competition and development of markets and products is most beneficial to all. There are a great deal of conservation and fishery management benefits that come from a properly designed quota share system; however, a restriction on to whom a fisherman may sell his catch does nothing to advance conservation or fisheries management.

The panel touched on a few of the issues that opponents viewed as short comings in the legislation, in addition to the fatal issue of processor shares. But, opponents to SB 1549 were

hesitant in discussing these at any length, out of concern that such dialog would be viewed as giving credence to an ill conceived approach to a quota share system. The opposition believes that this bill would be precedent setting and fear that actions such as this would undermine the prerogative of the Council in developing a trawl individual fishing quota (IFQ) program. Proponents of the bill state that this bill will not be precedent setting and cite the American Fisheries Act (AFA) and North Pacific crab rationalization as examples. The opponent view holds that both of those programs were precedent setting, as evidenced in this bill with creation of cooperatives and processor shares.

Those with the opposition view on the GAP, not wishing to be labeled “obstructionist” or viewed as not being responsive to Senator Smith’s request for substantive comments on his bill that would improve the legislation and make it more acceptable to the West Coast commercial fishing industry, including those whiting fishermen that oppose the legislation, suggested that the bill would be acceptable if the bill were to simply establish an IFQ system for whiting fishermen. This change would include the removal of all references to processor shares, cooperatives, matching quota, etc. The amount of “set asides” for non-directed whiting would need to be addressed. This program would need to be structured to mesh well with the Pacific Council’s IFQ program for trawl groundfish, currently under development, so that bycatch, inter-whiting sector allocations, accumulation caps, and all other provisions of the Groundfish trawl IFQ program would appear seamless.

This constructive comment should not detract from the opposition’s preferred approach of developing the IFQ program through the Council.

PPMC

09/22/05

GROUND FISH MANAGEMENT TEAM REPORT ON
LEGISLATIVE MATTERS

The Groundfish Management Team (GMT) has not had sufficient time to comprehensively evaluate the proposed whiting bill. However, in preliminary discussions, numerous concerns have been voiced by GMT members. The GMT and other Council advisors have devoted considerable time and effort to developing a comprehensive Trawl IQ program, and the GMT questions whether the Council's goals and objectives for a Trawl IQ program would be met by a separate program crafted outside the Council process. The GMT is also concerned about the process that would be required for modifying a legislatively mandated program in order to address inevitable post-implementation operational problems.

If the Council wishes to have the GMT provide additional specific feedback, this can be accomplished by the November Council meeting.

PFMC
09/22/05



August 10, 2005

RECEIVED

Pacific Fisheries Management Council
Mr. Donald K. Hansen, Chairman
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

AUG 12 2005

PFMC

RE: S. 1549 – COOPERATIVE HAKE IMPROVEMENT AND CONSERVATION ACT

Dear Chairman Hansen:

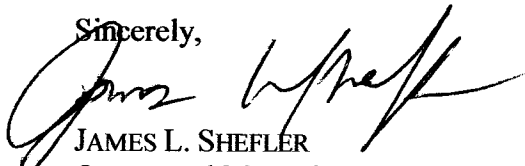
High Tide Seafoods is a wholesale processor of salmon, black cod, halibut, Dungeness crab and assorted groundfish caught in the waters off the Washington Coast and in Puget Sound. We have been in operation for nearly 30 years. Last year, we processed over 5,000,000 pounds of product.

Recently, we have been exploring the possibility of adding hake (whiting) to our production. We have potential investors and other financial resources and we have met with the local Port authority concerning facility and other support. From our research, expansion into hake production is viable and feasible – it appears there are currently insufficient processing facilities in Washington to meet the demand for these fish.

S. 1549 would prohibit us from expanding into this market. This bill defines a “qualified processor” as one who has operated from 1999 through 2004 and processed at least 1,000,000 pound of whiting during each year. Obviously, High Tide Seafoods does not meet the standard as a “qualified processor.” The intent and effect of S. 1549 appears to provide current processors a market advantage and effectively eliminate any potential competition, such as High Tide Seafoods.

Please do not support S. 1549. A careful reading of the proposed legislation reveals that it does little to protect or truly manage the resource, but does protect the economic interests of those currently involved in fishing or processing whiting. This kind of special interest, restraint of trade, legislation should not be endorsed.

Sincerely,



JAMES L. SHEFLER
Owner and Managing Partner



June 28, 2005

RECEIVED

AUG 11 2005

PFMC

Mr. Don Hansen, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220

Dr. William T. Hogarth
Assistant Administrator for Fisheries
NOAA/NMFS
1315 East-West Highway, Room 14555
Silver Springs, MD 20910

Re: Trawl Groundfish/Whiting Quota Share Program

Dear Chairman Hansen, Dr. Hogarth and PFMC Family:

United Catcher Boats (UCB), a trade association of trawl catcher boat owners, strongly supports the development and implementation of a comprehensive whiting quota share program. UCB does not support a single industry sector quota share program by federal legislation that excludes inclusion of the remaining two industry sectors and excludes the active involvement of the Pacific Fishery Management Council (PFMC) in formation of a rationalization program. We support a three-industry sector (shoreside/catcher boat, mothership/catcher boat and catcher processors) whiting quota program developed by a combination of industry cooperative efforts together with the PFMC and appropriate federal legislation. The added federal legislation would, in our view, serve two roles. First, it would facilitate needed actions which cannot be accomplished by the PFMC, and second, it could serve as a funding mechanism for the more complex and longer term development of a quota share rationalization program for traditional West Coast groundfish--trawl fisheries for groundfish other than whiting. We further believe that a cooperative three industry

sector/PFMC/legislative approach developed in concert with MSFCMA National Standards will generate quota share programs not only for whiting, but will be followed by traditional groundfish, that will best serve the West Coast fishing industry and communities over the long-term. We offer the following details.

Proposed Legislation "Cooperative Hake Improvement and Conservation Act"

Efforts by the "inshore whiting sector" to advance the rationalization of the West Coast whiting fishery are commendable but should, in our view, be re-directed. We have met with inshore sector leaders (MTC and processors), discussed a more comprehensive whiting rationalization approach and requested that their proposed legislation be retracted.

A Better Map To Rationalization

Taken as a whole, the process of developing a quota share rationalization program for West Coast trawl groundfish is a huge job and one that could take several years to develop and implement. While large in volume, whiting rationalization is a much simpler task. UCB supports bifurcation and a faster track development of whiting rationalization.

We believe that whiting rationalization should be approached as a comprehensive program. The program would include the three sectors: inshore catcher vessels/processing plants, offshore catcher vessels/motherships, and catcher processors. In addition to whiting allocations and quota share management, the whiting rationalization program must include a comprehensive bycatch management system for each of these sectors.

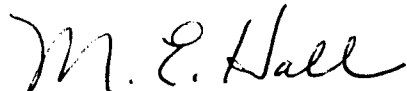
The development roadmap that would be most efficient and cost effective while transparent and open to all stakeholders, may well be a combination of PFMC actions and legislative actions. The Council may wish to follow a template similar to that followed by the North Pacific Fishery Management Council (NPFMC) in the "crab rationalization program" which utilized both Fishery Management Plan (FMP) and coordinated federal legislation. Industry leaders in all three whiting sectors already have considerable experience in quota share/rationalization programs. Moreover, these sectors have also completed work on whiting rationalization concepts and options that could be piped into the PFMC process for further review and analysis. Cooperative efforts and tools would save time and money.

Mr. Don Hansen
Dr. William Hogarth
June 28, 2005
Page 3

These comments are provided in hopes of re-shaping a process in motion. UCB stands ready to continue working with other industry members, with the PFMC and with our legislatures to secure a rationalized whiting fishery for all sectors.

Respectively,

UNITED CATCHER BOATS

A handwritten signature in black ink, appearing to read "M. E. Hall". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Margaret E. Hall
President

cc: Mr. Donald McIsaac, PFMC
Mr. Phil Anderson, WDFW
Mr. Bob Alverson, FVOA

James M. Seavers
1075 SE Spruce Way
Newport, OR 97365

RECEIVED

AUG 2 2005

PFMC

August 24, 2005

Mr. Donald Hansen
Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Ste. 200
Portland, OR 97220
Fax: 503-820-2299

Dr. William Hogarth
Administrator
NOAA Fisheries Service
1315 East West Highway
Silver Spring, MD 20910
Fax: 301-713-1940

Dear Dr. Hogarth and Mr. Hansen:

I am writing to request your support and the support of the Pacific Fishery Management Council for US Senate Bill 1549 recently introduced by Oregon Senator Gordon Smith to establish cooperative harvest management for Pacific whiting.

I have been involved in the Pacific whiting fishery for nearly 20 years, and was one of the original fishermen to deliver shore-side when that sector was established. I now own and operate two vessels in the whiting fishery, the F/V Seeker and F/V Miss Sue, and manage a third, the F/V Pacific. These three boats employ ten full time crew members between them.

Cooperative management of Pacific whiting is long overdue. Coops will improve management of the whiting fishery, allow vessels to avoid bycatch of non-targeted species, and offer our industry—fishermen, processors, supporting businesses—greater economic opportunities and economic certainty.

Most importantly, cooperative management as outlined in the draft legislation will offer consistent monitoring and scientific study of the whiting fishery. This way we can take the guesswork out of whiting management, and better plan for the next season using near-real-time information instead of data that is months or even years old. We can do better- a lot better.

I look forward to working with the Council to build upon the plan outlined in the federal legislation. Together, I believe the Council, NOAA, the whiting industry and Congress can develop a plan that will dramatically improve the way we manage this fishery.

Sincerely,


James M. Seavers
Newport, Oregon

Senate Staff Draft

Sections Approved by Council (No Objection To)

| | |
|---|---------------------|
| • Defn: Limited Access Privileges | Page 4, Lines 10-16 |
| • SEC 302(g) SSC | Pages 7-9 |
| • Council Functions SSC Sets TAC | Page 9, Lines 17-20 |
| • Council Functions Notice of Mtgs | Page 10, Lines 1-12 |
| • Council Training Program | Pages 10-11 |
| • Council Coordinating Committee | Pages 11-12 |
| • Environmental Review | Pages 13-15 |
| • Limited Access System | Pages 15-16 |
| • <u>Did Not Review – Fishing Communities</u> | Page 19-21 |
| • Limited Access System (Continued) | Pages 21-25 |
| • <u>Did Not Review – Processors</u> | Pages 26-31 |
| • Information Collection | Page 32 |
| • Auction Programs | Pages 33-34 |
| • Cost Recovery & Effect on Share | Pages 34-35 |
| • Cooperative Enforcement Agent | Pages 36-41 |
| • Bycatch Reduction | Pages 42-43 |
| • Collection of Information | Pages 44-45 |
| • Access to Certain Information | Pages 45-46 |
| • Cooperative Research Agreements | Pages 46-48 |

Sec 304(e) retain 10 yrs – failed

PACIFIC FISHERY MANAGEMENT COUNCIL

7700 NE Ambassador Place, Suite 200
Portland, Oregon 97220-1384

CHAIRMAN
Donald K. Hansen

EXECUTIVE DIRECTOR
Donald O. McIsaac

Telephone: 503-820-2280
Toll Free: 866-806-7204
Fax: 503-820-2299
www.pcouncil.org

August 31, 2005

Ms. Margaret Hall
United Catcher Boats Association
4005-20th Avenue West, Suite 116
Seattle, WA 98199-1290

Dear Ms. Hall:

We received your letter supporting development of a comprehensive three-sector whiting individual quota program, with Council involvement and supported by appropriate federal legislation. Your letter also requested a bifurcation of the process for considering individual quotas for the trawl fishery, with the placement of whiting rationalization on a faster track.

Your letter will be provided to the Council for its consideration under legislative matters at the September 2005 Council meeting. This topic will come up during the Legislative Committee meeting on Monday, September 19 and on the Council floor on Friday, September 23 (Agenda Item B.3), at which time you may provide verbal testimony. Additionally, an agenda item on individual quotas for the trawl fishery has been tentatively scheduled for the November 2005 Council meeting. This may provide you with another opportunity to provide additional testimony to the Council on this topic.

Sincerely,



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

JLS:rdd

c: Dr. William Hogarth
Mr. Robert Lohn
Council Members

Board Of Directors

Edward Backus
Charleston, OR
Community Economic
Development

Ken Culver
Westport, WA
Charter Skipper

Bob Francis
Seattle, WA
Marine Scientist

Dave French
Bodega Bay, CA
Recreational Fisherman

Charlie Hanson
Port Townsend, WA
Commercial Fisherman

Jim Hie
Napa, CA
Research Fisherman

Mark Hixon
Corvallis, OR
Marine Scientist

Mary Hudson
Oakland, CA
Environmental & Ocean
Resource Attorney

Milton Love
Santa Barbara, CA
Marine Scientist

Danny Parker
Astoria, OR
Commercial Fisherman

Karen Reyna
San Francisco, CA
Environmental Activist

Astrid Scholz
Portland, OR
Economist

Staff

Jennifer Bloeser
Science Director

Heidi Eisenhour
Development Coordinator

Caroline Gibson
Communications Director

Peter Huhtala
Senior Policy Director

Deborah McEuen
Director of Operations

Pacific Marine Conservation Council

*Linking science, policy, and community to benefit the marine environment
and the people and livelihoods connected to the sea*

August 31, 2005

Mr. Donald K. Hansen
Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, Oregon 97220-1384

Re: S.1549

Dear Chairman Hansen,

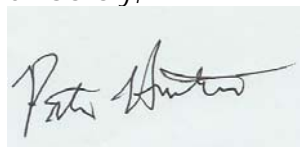
On behalf of the staff and board of directors of Pacific Marine Conservation Council (PMCC), I am writing to strongly encourage the Pacific Fishery Management Council to reiterate Council support for full and inclusive public process in the development of systems of dedicated access privileges. We are particularly disturbed at the introduction by Senator Gordon Smith (R-Oregon) of S.1549, which would establish an individual fishing quota system, coupled with a processor quota system, for a sector of the Pacific whiting fishery. This legislation would deliberately bypass aspects of both the Magnuson-Stevens Act and the National Environmental Policy Act (NEPA).

PMCC has not hesitated to criticize Council's development of an IFQ system for the groundfish trawl fishery. Nonetheless, we very much appreciate the opportunities the Council provides for consideration of our views. We also value the analysis and accountability offered by NEPA.

In a June 23 letter to Secretary of Commerce Carlos M. Gutierrez, the Council's executive director Dr. Donald McIsaac stated, "the Pacific Council opposes any Congressional action pre-empting the cooperative process and progress made to date or otherwise usurping in any fashion the Pacific Council's development of an IFQ program via a comprehensive EIS." Even though PMCC argued against going forward with this EIS, we fully support the Council's preference for this process over a Congressional action that would impose major changes to a regional fishery.

Please make it clear that S.1549 is not a welcome addition to west coast fisheries management.

Sincerely,



Peter Huhtala
Senior Policy Director
Pacific Marine Conservation Council

BLUE FOX FISHERIES

P.O Box 1434, Newport, Oregon 97365
Phone 541-265-8694 Fax 541-574-6428 e-mail jincks@pioneer.net

September 5, 2005

Mr. Donald Hansen
Chairman
Pacific Fisheries Management Council
7700 NE Ambassador Place, Ste. 200
Portland, OR 97220
Fax: 503-820-2299

RECEIVED

SEP 08 2005

PFMC

Dr. William Hogarth
Administrator
NOAA Fisheries Service
1315 East West Highway
Silver Spring, MD 20910
Fax: 301-713-1940

Dear Dr. Hogarth and Mr. Hansen:

I am writing to request your support and the support of the Pacific Fisheries management Council for US Senate Bill 1549 recently introduced by Oregon Senator Gordon Smith to establish cooperative harvest management for Pacific whiting.

I have participated in West Coast, Gulf of Alaska, and Bering Sea fisheries for 40 years. The F/V Blue Fox was one of the early participants in the whiting J/V (Joint Venture) with several foreign countries, and one of the first trawlers to bring whiting to shore for processing.

Shore side whiting began in 1990 and has become a major West Coast fishery in fifteen years, bringing direct benefits to the coastal fishing communities of Oregon, Washington, and California. Pacific whiting under the management of the Pacific Fisheries Management Council has been managed differently than other West coast fisheries. This management style has several labels, Olympic, derby, pulse, all meaning that fishermen must drive their vessels and crew as hard as they can for a short period of time to try and capture a share of the resource.

There is a better way to manage, harvest, and process Pacific whiting than the wasteful management style being used today. It's time to give harvesters and processors the ability to form cooperatives and harvest this resource in a responsible manner.

Fishermen and processor cooperatives have proven to be an effective management style in the Bering Sea pollock fishery under the American Fishery Act. Cooperatives have now moved into the Alaskan crab fishery and the new rock fish pilot program in the Gulf of Alaska. Cooperatives using rights based management gives harvesters and processors the ability to utilize the target species when recovery yield is highest, and incidental catch level is lowest.

The whiting fishery is a unique fish, soft fleshed and spoils rapidly unless handled in a cooperative manner between harvesters and processors. The cooperative nature in which this fishery is conducted makes it a perfect candidate for a rights based cooperative managed fishery. By eliminating the rush for fish and the haste and waste of having to process at a rapid pace, gives both fishermen and processors a chance to manage this fishery with economics, conservation and efficiency which will bring direct benefits to fishing communities and to the Nation.

September 6, 2005

The at-sea factory trawler whiting fleet has been fishing in a cooperative style fishery for several years now with great success. Their incidental takes of non target species has dropped drastically, and their ability to fund their own monitoring system using Sea State as a means to collect fishery data has given them near real time reporting.

The three West coast states are now having difficulty in funding the management of their marine fishery divisions due to budget constraints.

Whiting is a fishery that by going to cooperative management would eliminate the majority of these costs, placing the cost of management at the participant level.

The largest volume of Pacific whiting is harvested by members of Midwater Trawlers Cooperative, this cooperative was formed in 1982 by Barry Fisher, all members were whiting fishermen looking for ways to better utilize the whiting resource. After Barry's death, I took his place as Director of M.T.C, and yes, like Barry I also dislike the waste of a National resource when I know it can be corrected. I have tremendous respect for the Council process and the men and women that put their time into it. I have also spent years attending and participating in this process, and will continue to do so in the future.

I know that with Council support and the support of NOAA we can make this legislation into a management tool that will show what cooperation between harvesters, processors, and management can accomplish when working together to eliminate the largest West coast derby fishery.

Please don't hesitate to contact me if further information is required.

Sincerely,

A handwritten signature in black ink, appearing to read "David Jincks", with a stylized flourish at the end.

David Jincks
Midwater Trawlers Cooperative

August 30, 2005

Mr. Donald Hansen, Chairman
Pacific Fishery Management Council
7700 N. E. Ambassador Place, Ste. 200
Portland, OR 97220

Dr. William Hogarth, Admin.
NOAA Fisheries Service
1315 East West Highway
Silver Springs, MD 20910

Dear Dr. Hogarth and Mr. Hansen:

I am writing to request your support of U.S. Senate Bill 1549. This bill would establish cooperatives for shore-side whiting. I would think you would be in favor of this bill because it would rationalize the shore-side sector. You have already one cooperative in the whiting fishery, the catcher-processor sector and it is working quite well.

I am the owner of two shore-side whiting vessels. They have been involved in the shore-side whiting fishery from 1992 to the present. It has not always been easy to find markets and make it pay. I believe that his legislation will help smooth the bumps in the road that we have experienced in the past.

Rationalization of the whiting fishery is way overdue. We need to put an end to the race for fish, which causes waste, encourages bycatch of nontargeted species. Coops will be able to keep track of catch on a real-time basis and be able to implement plans to reduce bycatch and use their bycatch that is now wasted. Coops in the Alaska pollock fishery have been able to solve problems the council could not tackle.

Cooperatives will allow businesses to do a better job of managing their resources allowing them to be more profitable.

I look forward to working with the council to get this legislation implemented. I would look forward to discussing this with you. My phone number is 541-336-0244.

Sincerely,

Mark Cooper, Pres.
Cooper Fishing, Inc.
Patience Fisheries, Inc.
1119 Olalla Rd.
Toledo, OR 97391

Cc: Congresswoman Darlene Hooley, Senator Ron Wyden, Senator Gordon Smith

Mr. Chairman, Council, Ladies and Gentlemen:

Last summer U.S Senator Gordon Smith of Oregon, introduced Senate Bill S.1549. This Bill is to rationalize the shore-based Pacific whiting fishery by providing cooperative shares only to specific processors and fishermen. Senator Smith has asked for the Council to provide his staff with substantive comments.

One obviously needed comment in the proposed Bill, is that it allows for only 1% of the total non-tribal allocation of Pacific whiting to be set aside for an a non –cooperative shareholder component of the Pacific whiting fishery. One percent is insufficient to accommodate the incidentally caught Pacific whiting in other fisheries, to accommodate the smaller operations processing Pacific whiting, and to accommodate new entrants (on both the processing and fishing side).

To actually accommodate the non-cooperative shareholder component of the Pacific whiting fishery, a set aside of between 6% and 9% of the total non-tribal allocation of Pacific whiting is more appropriate to meet the needs. If you look at the crab rationalization program in Alaska, the American Fisheries Act Pollock Cooperatives, and the draft of the Alaska Rockfish rationalization, (all of which involve processors). All have some amount set aside for this sort of a non-cooperative shareholder feature. They have all recognized the small operation's needs; and therefore it would make sense to have it here too, to accommodate our non-cooperative shareholder needs of the Pacific whiting fishery. With this change of the non-cooperative shareholder component, I support this Bill.

Thank you!

Barry Cohen

Agenda Item B.3.d
Supp Public Comments
September 2005

Muir Milach, Inc. Recommendation on S-1549

Our company has operated the FV Muir Milach and fished whiting since 1979, and currently deliver in Illwaco.

- **We support the position put forward to the Council by the majority of the GAP.**
- **We encourage the Council to maintain the position it took at the June meeting.**
- **We support the TIQC process for rationalizing whiting and trawl groundfish.**

If an analogy can be made to TIQC committee process, it is like designing a new car. The request for input on S-1549 is akin to a salesman interrupting your consideration of Consumer Reports with a cold call, trying to sell you a particular vehicle.

The checklist of questions presented to the legislative committee is akin to that salesman asking you a series of questions about peripheral features such as:

- Upholstery - Paint colour - Air conditioning - Brand of CD player

While trying to distract you from looking under the hood at the most important feature:

- The Engine

The most important single feature of S-1549 is the 'share-matching' or two pie allocation. It is the only aspect of rationalizing whiting that can't be done by the Council.

For all the reasons cited in the GAP majority position, we think this is a bad idea and that S-1549 should not go forward.

However – IF AND ONLY IF – the Senate proceeds with S-1549 against the recommendation of the Council, and without the quality of analysis that Congress demands of the Council - then we would hope the Council comments focus on the most important issue:

- The allocation of share-matching quota to processors.

In those circumstances, we would ask the Council to recommend the following modification of the share matching allocation:

- **Harvesters would receive 50% of the allocation as traditional IFQ**
- **Harvesters would receive 25% of the allocation as "share-matching" IFQ**
- **Processors would receive 25% of the allocation as "share-matching" IFQ**

Though our 1st preference remains that the Council control the process and do the appropriate analysis, IF the process is being taken out of the Council arena, then the foregoing alternative is akin to ordering a hybrid engine, rather than going with a 100% experimental technology.

This hybrid proposal lacks analysis, just as the draft S-1549 lacks analysis. But if we are being forced to buy a vehicle in this manner, we would believe that it is necessary to moderate the anti-competitive nature of the draft proposal.

Thank you,

dave fraser
FV Muir Milach
PO Box 771
Port Townsend WA 98368

Clearing Up Obfuscations About S-1549 and Its Precedents

AFA Pollock

- Processors are not guaranteed any fixed amount of quota between years.
- Harvesters are allowed to sell 10% of their pollock on the 'free market' annually
- Harvesters are only required to make a one year commitment to a processor.

Bering Sea Crab

- Harvesters are allowed to sell 10% of their crab on the 'free market' annually.
- Binding Arbitration exists as a "safety net" against the lack of a competitive price.
- The Council is free to increase the percentage of 'free market' crab.
- Processors are required to submit economic data to allow DOJ and Council oversight.
- This experimental program was developed by the Council with Congressional oversight.
- It was authorized together with a prohibition on other processing quota programs.
- The prohibition should be maintained until the results of the experiment are known.

Processing Quotas are not supported by:

- The National Academy of Science "Sharing the Fish" study requested by Congress
- The Department of Justice Anti-trust division letter to NOAA about the crab plan
- The Administration's draft MS_FCMA re-authorization bill

The senate draft MS_FCMA re-authorization bill does authorize processing quota programs, but ONLY under strict guidelines with standards both for findings of pre-requisite conditions and for feature to be included in the program.

S-1549 doesn't meet the standards of the Senate draft MS_FCMA for:

Pre-requisite findings based on analysis:

- Are they are necessary to protect fishing communities?
- Are they are necessary to maintain balance between processors and harvesters?
- Will they result in anti-competitive practices?
- Will they result in a reduction of ex-vessel prices
- Is there sufficient economic data from the processing sector to even make these judgments?
- Do they address impacts that couldn't be addressed by other means?

Legislative provisions of the S-1549 program

- DO NOT contain - Excessive Share Caps
- DO NOT contain - US Ownership Requirements
- DO NOT provide - Dept. Of Justice Oversight
- DO NOT require - Mandatory Economic Data Collection
- DO NOT contain - A Waiver of Confidentiality on Processor Economic Data

S-1549 is a "two-pie" program with processing quotas.

- The harvester allocation determines who will harvest and how much they can harvest.
- The processor allocation determines who will process and how much they can process.
- Section 9 of S1549, stating "The provisions of this Act shall be deemed not to violate section 804" would be un-necessary if it didn't violate the Congressional prohibition on "two-pie" programs.

MOTION BY BOB ALVERSON ON LEGISLATIVE MATTERS

I move that the Council adopt the recommendations of the Legislative Committee regarding Magnuson-Stevens Fishery Conservation and Management Act (MSA) as presented in Agenda Item B.3.b, Supplemental Legislative Committee Report, September 2005. In addition, I move the Council send a letter to the Secretary of Commerce requesting his support for the three items contained in the Legislative Committee's report and request his support to protect existing individual fishing quotas (IFQ) programs and IFQ programs currently under development by a Regional Council from new standards that may be enacted under the reauthorization of the MSA.

****THIS MOTION May or may not have been modified by amendments. The Final Adopted motion is available in the Final September 2005 Council Meeting Minutes and Voting Log.****

MOTION BY BOB ALVERSON ON LEGISLATIVE MATTERS

I move that the Council respond to Senator Gordon Smith's request for comment on Senate Bill 1549, Cooperative Hake Improvement and Conservation Act 2005, by directing the Executive Director to write a response that incorporates the following points:

- Thanks the Senator for providing the Council an opportunity to comment on the legislation.
- Reaffirms the Council's belief that rationalization programs should be developed within the regional Council process.
- Unlike S 1549, the Bering Sea crab rationalization program was developed by the North Pacific Fishery Management Council with Congressional oversight. The Pacific Council wants to be afforded the opportunity to work with members of the industry in crafting a comprehensive rationalization program for the West Coast Pacific Hake Fishery.
- The Council is currently in the process of developing an individual quota (IQ) program for the West Coast trawl fishery, including the hake fishery. The requirement for National Marine Fisheries Service (NMFS) to implement the provisions of the Bill within six months of becoming law is an unrealistic time frame and will likely impede efforts to develop a more comprehensive program in a timely manner.
- There are no provisions to protect against unreasonable accumulation of quota shares by individuals and/or corporations, a feature that must be part of a rationalization program to preserve and protect the unique characteristics of West Coast fishing communities.
- Collection of critical economic data must be mandated.
- Tracking of catches is currently done using paper documents processed by state fish and wildlife agencies. Creation, funding, and maintenance of an electronic tracking system would need to be part of an implementation plan, including the tracking of bycatch allowances required under the bill.
- The issue of U.S. ownership of quota shares needs to be addressed through a regional public process.

****THIS MOTION May or may not have been modified by amendments. The Final Adopted motion is available in the Final September 2005 Council Meeting Minutes and Voting Log.****

LEGISLATIVE MATTERS

The Legislative Committee (Committee) will meet Monday, September 19 with a primary objective to review federal legislative issues.

In June, the Committee heard a brief report on developing legislation to establish a dedicated access privilege program for the shore-based whiting fishery from Mr. Dave Jincks. The Committee expressed concerns regarding the implications of a legislative mandate on Council and NMFS regional staff and the lack of analysis that would normally occur if such a program occurred through the Council process. In a June 23, 2005 letter to U.S. Secretary of Commerce Carlos M. Gutierrez (Agenda Item B.3.a, Attachment 1), the Council conveyed the recent Council decision on trawl individual quota alternatives and expressed opposition to any Congressional action that could pre-empt the Council's development of an individual fishing quota program. In response, Dr. Hogarth sent a letter dated August 2, 2005 (Agenda Item B.3.a, Attachment 2) expressing support for the Council process and an intent to comment specifically when the Trawl Individual Quota alternatives and accompanying regulations are completed.

On August 2, 2005, Council Chairman, Don Hansen, received a letter from Oregon Senator, Gordon H. Smith, (Agenda Item B.3.a, Attachment 3) requesting Council consideration of S. 1549, the *Cooperative Hake Improvement and Conservation Act of 2005* (Agenda Item B.3.a, Attachment 4). This is the legislative proposal reported on by Mr. Jincks at the Committee's June meeting. The Committee is scheduled to review the legislation Monday, September 19 and provide recommendations for a Council response to Senator Smith.

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. On August 4, 2005, staff of the U.S. Senate Committee on Commerce, Science, and Transportation distributed a discussion draft bill for the reauthorization of the MSA (Agenda Item B.3.a., Attachment 5). The discussion draft bill considers issues raised by the public and by conferences such as the *2005 Council Chairs and Executive Directors (CCED) Meeting*, but is not intended to be a comprehensive proposal. The U.S. Senate Committee on Commerce, Science, and Transportation would appreciate Council comments on the national issues presented in this draft and on national or regionally-specific issues the Council would like to be considered for inclusion in an introduced bill.

The Council is tasked with considering its Legislative Committee recommendations on these and other legislative matters and responding, as appropriate.

Council Action: Consider recommendations of the Legislative Committee.

Reference Materials:

1. Agenda Item B.3.a, Attachment 1: June 23, 2005 letter from Dr. McIsaac to Secretary Gutierrez regarding Council decisions on Trawl Individual Quota Alternatives.
2. Agenda Item B.3.a, Attachment 2: August 2, 2005 letter from Dr. Hogarth to Dr. McIsaac in response to the Council letter on Trawl Individual Quota Alternatives.
3. Agenda Item B.3.a, Attachment 3: August 2, 2005 letter from Senator Smith to Council Chairman Hansen regarding the introduction of the *Cooperative Hake Improvement and Conservation Act*, S.1549
4. Agenda Item B.3.a, Attachment 4: *Cooperative Hake Improvement and Conservation Act*, S.1549.
5. Agenda Item B.3.a, Attachment 5: *Discussion Draft Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005*.
6. Agenda Item B.3.d, Public Comment.

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

Mike Burner
Dave Hanson

PFCM
08/30/05

REPORT OF THE BUDGET COMMITTEE

The Budget Committee met on September 19, 2005 and received the Executive Director's Budget Report from Dr. Donald McIsaac. The report included the closure of the Calendar Year (CY) 2004 Base Grant and 2004 audit, status of the 2005 budget and expenditures, and preliminary observations on funding for 2006. The following Budget Committee members were present:

Mr. James Harp, Chairman
Mr. Donald K. Hansen
Dr. David Hanson

Mr. Jerry Mallet
Dr. Steve Freese
Mr. Mark Helvey

Closure of CY 2004 Base Grant and Final 2004 Audit Report

The CY 2004 Base Grant was fully expended in accordance with the overall directions provided by the Budget Committee in its November 2004 report to the Council.

The final audit for 2004 revenues and expenditures was completed in June and copies distributed to the committee members with the September briefing book materials. The auditors' findings for the Council's financial affairs were an unqualified approval with no reportable conditions or material weaknesses. The audit covered the 2004 Base Grant and 2004 expenditures under all supplemental funding.

Status of 2005 Budget and Expenditures

Dr. McIsaac reported that the expenditure of funds from the Council's total 2005 budget (consisting of the 2005 Base Grant and supplemental funding primarily committed by the time of the March Budget Committee meeting) is proceeding within normal expectations. As of July 31, 2005, expenditures totaled 45% of the budget. This compares with 47% for the same time period in 2004 and reflects a normal lag in receipt of travel, state contract, and other expenses that is typical for the January through July period. Current projections indicate the possibility of a small positive balance at year's end.

Dr. McIsaac noted that in July, the National Marine Fisheries Service (NMFS) Headquarters committed to provide an additional \$250,000 to the Council's 2005 grant to allow continued progress on the development and analysis of the trawl individual quota program environmental impact statement. This funding will be added to the Council grant by November 1, 2005.

Funding for 2006

Dr. McIsaac reported that it is too early to have any definitive idea of the Council's total funding for 2006. The Fiscal Year (FY) 2006 Congressional budget process has currently progressed to the stage of completing the Senate and House appropriation bill marks, but the conference committee has not met yet. There have been rumors of an early finality to the FY 2006 budget process, but there is also a possibility of lengthy continuing resolutions beyond October 1, 2005, as in recent years. The Council budget since 2001 has been comprised of funding from the Regional Fishery Management Council line item (about 2/3s of the total) and supplemental

funding from NMFS (about 1/3 of the total). Given the current Senate and House appropriation bill marks, it appears such a combination will be needed in 2006 to maintain recent year operational capabilities. The regional council chairs and executive directors will meet with NMFS in late October to deal with budget issues.

Budget Committee Recommendations

The Budget Committee recognizes the current uncertainties in the 2006 Council funding and recommends the following preparations by the Executive Director and staff for the November Budget Committee meeting:

1. Report on the results of the October budget meeting in Washington, D.C.
2. Based on the October budget meeting and knowledge of the Congressional appropriation status, provide some potential 2006 budget scenarios and other information for a discussion of potential Council operational priorities.

PFMC
09/22/05

FISCAL MATTERS

The Council's Budget Committee will meet on Monday, September 19, 2005 at 1 P.M. to consider budget issues as outlined in Ancillary G, Budget Committee Agenda.

The Budget Committee's report will be provided to the Council for review and approval on Friday, September 23.

Council Action:

1. Consider recommendations of the Budget Committee.

Reference Materials:

1. Agenda Item B.4.b, Supplemental Budget Committee Report.

Agenda Order:

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

John Coon
Jim Harp

PFMC
08/30/05

COUNCIL OPERATING PROCEDURE

Groundfish Allocation Committee

7

Approved by Council: **03/11/05**

PURPOSE

The purpose of this Council Operating Procedure is to specify the role, responsibilities, and function of the Groundfish Allocation Committee.

OBJECTIVES

Per the Groundfish Fishery Management Plan, direct allocation decisions must be made through a Council process over the course of at least two meetings to allow the Council to fully consider the alternatives and comments from its advisory entities and the public.

The Groundfish Allocation Committee is charged with developing options for allocating certain groundfish species (e.g., “overfished” species) among the commercial and recreational sectors, and among gear groups within the commercial sector.

The purpose of the Groundfish Allocation Committee is to distribute the harvestable surplus among competing interests in a way that resolves allocation issues on a short or long-term basis.

National Standard 4 of the Magnuson-Stevens Fishery Conservation and Management Act (50CFR600.325) requires that “allocations shall be: (1) fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.” Moreover, National Standard 4 states “conservation and management measures shall not discriminate between residents of different states.”

COMPOSITION

The Groundfish Allocation Committee will be composed of the Council Chair, and one representative each from the state management agencies, National Marine Fisheries Service, and Pacific States Marine Fisheries Commission. NOAA General Counsel will provide legal advice.

Member Terms

Groundfish Allocation Committee members serve indefinite terms. However, a Committee member may be replaced at the Council's discretion if the members; 1) transfer employment or moves to a different location, 2) is absent from two or more consecutive meetings without giving adequate notification to the Committee Chair or Council Executive Director, or 3) appears unable to fulfill their obligations as an Committee member.

Alternate Members

Upon advance notice to the Council Chair or Executive Director, Committee members may designate alternates to serve in their absence. Such designees may participate in committee deliberations as a regular member and shall be reimbursed for expenses per the Council travel rules.

Officers

The Council Chair will act as Chair of the Groundfish Allocation Committee.

MEETINGS

The Groundfish Allocation Committee shall meet at the request of the Council Chair as often as necessary to fulfill its responsibilities. Committee members may request the Council Chair to convene a Committee meeting, but the Council Chair ultimately decides whether a meeting is necessary. The Council will reimburse travel costs for nonfederal Committee members while on official Council travel as per the *Council Travel Rules* document.

Public Participation

The public will be permitted to comment on items relative to the agenda at a time to be announced in the *Federal Register* and a Council news release. Comments may be limited if deemed necessary by the Committee Chair. Written statements also may be submitted during the public comment period. The public will not be permitted to interject comments during the meeting at any time other than the established comment period unless asked to do so by the Chair or a Committee member. Members of the public may be asked to leave the meeting at the Chair's discretion if their conduct is impeding the orderly progress of the meeting.

The granting of permission for the public to tape all or any part of the meeting is at the discretion of the Committee Chair and such permission shall be obtained in advance of the meeting.

Copies of this operating procedure shall be available upon request from the Council office.

Public Notification of Meetings

Timely public notice of each Groundfish Allocation Committee meeting, including the time, place, and agenda topics for the meeting, shall be widely distributed via facsimile machine, electronically (e-mail and Council website), and/or U.S. Postal Service to individuals on mailing lists maintained by the Council and to local media. The notice also may be announced by such other means as will result in wide publicity. For purposes of this notice, the term "timely" will be defined as two weeks prior to the actual meeting. However, the Council recognizes that due to the expediency of some Council actions and/or other reasons deemed valid, such two-week advance notice may not always be possible.

Timely notice of each regular meeting, emergency meeting, and hearing also shall be published in the *Federal Register*. Council staff shall prepare this notice in coordination with the appropriate NMFS regional office. In this context, the term "timely" shall denote submission (at least 23 calendar days prior to the meeting) of the notice to NMFS for publication in the Federal Register.

Minutes and Reports

A Council staff member shall attend and draft minutes of each committee meeting. Such minutes shall be submitted for approval by the majority of committee members prior to or at the next committee meeting.

The Groundfish Allocation Committee shall report to the Council as directed by the Council Chair or Executive Director.

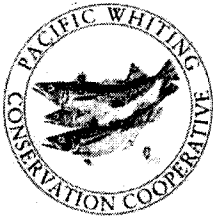
Reports will describe both areas of consensus and differences. If necessary, majority and minority reports may be drafted to present the divergent views of the Committee. The Committee Chair will present both majority and minority reports to the Council.

Draft reports or statements prepared and discussed at these meetings will be available to the public in final form after submission to the Council. They will not be distributed to the public during the meeting unless authorized by the Chair.

STAFF RESPONSIBILITIES

In addition to drafting meeting minutes, a Council staff member shall be assigned to assist the committee with coordination, organization, and meeting logistics (e.g., *Federal Register* and meeting notices), and to provide other expertise needed by the Committee on a case-by-case basis.

September 2005



Pacific Whiting Conservation Cooperative

Alaska Ocean Seafoods • American Seafoods • Glacier Fish Co. • Trident Seafoods

A Partnership to Promote Responsible Fishing

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

Re: Allocation Committee Non-Voting Advisory Member Composition

Dear Chairman Hansen:

The Pacific Whiting Conservation Cooperative (PWCC) requests that the Pacific Fishery Management Council (PFMC) consider amending the Allocation Committee's Council Operating Procedure by adding a Whiting Fishery seat to the Committee's non-voting advisory membership. We recognize that the non-voting advisors were impaneled to specifically advise the Allocation Committee about development of the trawl individual quota (IQ) program. However, it appears very likely that the role of the advisors will expand beyond trawl IQ to other allocation-related matters, such as sectoral bycatch caps under Amendment 18.

The whiting fishery is unique among the West Coast groundfish fisheries, notably most participants specialize solely in the whiting fishery. We believe that the current Allocation Committee provides only limited representation for the whiting fishery and that the Committee and the whiting industry would both strongly benefit from a member from the whiting industry. We feel it is important the PFMC consider this request at its September 2005 meeting to ensure that, if the PFMC concurs with our request, an appointment can be made in time for the Allocation Committee meeting in November 2005.

Thank you for considering our request.

Sincerely,

Daniel A. Waldeck
Executive Director

REPRESENTATION ON THE GROUND FISH ALLOCATION COMMITTEE

| Affiliation or Representation | Member |
|--|------------------------|
| Voting Members | |
| Council Chair | Mr. Donald Hansen |
| Washington Fish and Wildlife | Mr. Phil Anderson |
| Oregon Fish and Wildlife | Dr. Patty Burke |
| California Fish and Game | Ms. Marija Vojkovich |
| National Marine Fisheries Service | Dr. Steve Freese |
| Pacific States Marine Fisheries Commission | Dr. Dave Hanson |
| NOAA General Council | Ms. Eileen Cooney |
| Non-Voting Members | |
| Open Access Fisheries | Ms. Kathy Fosmark |
| Trawl Fisheries | Mr. Pete Leipzig |
| Fixed Gear Fisheries | Ms. Michele Longo Eder |
| Recreational Fisheries | Mr. Bob Osborne |
| Processors | Vacant |
| Conservation Community | Mr. Burr Heneman |

PFMC
09/01/05

APPOINTMENTS TO ADVISORY BODIES, STANDING COMMITTEES,
AND OTHER FORUMS

This agenda item includes two subjects; the first includes proposed changes to the Council Operating Procedures (COPs) affecting advisory bodies, the second includes appointments to vacant seats on advisory bodies.

COPs

In order to change a COP, the Council should observe the following procedures as indicated in the COP introduction:

“...revisions to a COP may occur through Council review (including advisory body and public input) and adoption. This may occur with proper notice before a Council meeting, or may occur over the course of two Council meetings, with preliminary action at the first meeting and final action at the second. After final Council action the revised COP would enter into effect.”

COP 7 lists membership in the Groundfish Allocation Committee (GAC) as the Council Chair, and one representative each from the state management agencies, National Marine Fisheries Service, and Pacific States Marine Fisheries Commission, with NOAA General Counsel providing legal advice (Agenda Item B.5.a, Attachment 1). The Council also established and filled seven non-voting seats to advise the GAC on intersector allocation issues relating to development of a trawl individual quota program. The non-voting seats were appointed on an ad hoc basis prior to establishing the GAC as a standing committee, and the advisors were expected to serve as needed without specified appointment terms. However, when COP 7 was adopted in March 2005 establishing the GAC as a standing committee, the non-voting advisors were not listed in the GAC membership. The Council should consider an appropriate resolution of the membership issue, and Staff has developed some options for consideration:

- 1) Include the non-voting members in the membership list of COP 7.
- 2) Modify COP 7 to allow appointment of non-voting members for selected topics.
- 3) Establish the non-voting members as an ad hoc committee to advise the GAC.

Depending on how the issue is resolved, the Council should also consider establish guidelines for such membership, including appointment terms.

A request has also been made to add a whiting fishery representative to the GAC non-voting advisors, (Agenda Item B.5.a, Attachment 2). The current representation on the GAC is displayed in Agenda Item B.5.a, Attachment 3. If the Council recommends adding a non-voting advisor representing the whiting sector, the vacancy should be filled at the November meeting after Council staff solicits nominations between the September and November meetings.

Appointments

The following advisory body vacancies are scheduled to be filled:

- One vacancy on the Groundfish Allocation Committee (GAC) for a non-voting advisor to represent the processor sector to be selected from the following list of nominees:
 - Ms. Heather Munro Mann, Siletz, OR
 - Mr. Dale Myer, Seattle, WA
 - Mr. Charlie Hanson, Port Townsend, WA
- One vacancy on the Groundfish Advisory Subpanel (GAP) representing the processor sector to be selected from the following list of nominees:
 - Ms. Heather Munro Mann, Siletz, OR
- One vacancy on the Coastal Pelagic Species Advisory Subpanel (CPSAS) representing the California commercial fishery sector to be selected from the following list of nominees:
 - Mr. Anthony Nizetich, San Pedro, CA.
 - Mr. Neil Guglielmo, Camarillo, CA
 - Mr. Warren Stanton, San Pedro, CA
- The NMFS Southwest Fisheries Science Center has requested Dr. Stephen Stohs replace Dr. Sam Herrick on the Highly Migratory Species Management Team.

Appointments to existing ad hoc and standing committees to replace members that have had a change in status, or establishing new committees may also occur at this time.

Council staff advertised for the following Advisory Body vacancies, but received no nominees as of the briefing book deadline:

- One vacancy for the Washington Coast Tribal representative on the Salmon Advisory Subpanel.
- One vacancy for the Conservation Group representative on the Coastal Pelagic Species Advisory Subpanel.

Council Action:

- 1. Consider changes to COP 7.**
- 2. Direct staff to solicit nominations for vacant or newly established advisory body vacancies as necessary.**
- 3. Appoint new members as necessary.**

Reference Materials:

1. Agenda Item B.5.a, Attachment 1: COP 7 Groundfish Allocation Committee.
2. Agenda Item B.5.a, Attachment 2: Pacific Whiting Conservation Cooperative Request.
3. Agenda Item B.5.a, Attachment 3: Representation on the Groundfish Allocation Committee.

Agenda Order:

- a. Agenda Item Overview
- b. Agency and Tribal Comments
- c. Report and Comments of Advisory Bodies
- d. Public Comment
- e. **Council Action:** Consider Changes to COPs, Appoint New Members, and Solicit Nominations as Necessary

Chuck Tracy

PFMC
09/01/05

Preliminary Three Meeting Outlook for the Pacific Council

(All Candidate Agenda Items Listed; Shaded Items are Contingent)

| November San Diego, CA 10/31-11/4/05 Floor Time Estimate = 121% of Standard | March Seattle, WA 3/6-3/10/06 Floor Time Estimate = 90% of Standard | April Sacramento, CA 4/3-4/7/06 Floor Time Estimate = 90% of Standard |
|--|---|---|
| <u>Coastal Pelagic Species</u> NMFS Rpt Pac. Sardine Stock Assmnt. & HG for 2006 Krill Amendment: Adopt Alts. For Pub Rev. | <u>Coastal Pelagic Species</u> NMFS Report Pac. Mackerel: Consider Need for Mop-up Fishery Krill Amendment: Adopt Final for Implementation | <u>Coastal Pelagic Species</u> |
| <u>Enforcement Issues</u> State Activity Rpt | <u>Enforcement Issues</u> State Activity Rpt | <u>Enforcement Issues</u> USCG Annual Fishery Enforcement Rpt. |
| <u>Groundfish</u> NMFS Report 2005 Inseason Management (2 Sessions) VMS: Adopt Preferred Expansion Alternative 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 Stock Assessments (SA): Approve Remaining SA (petrale & ling cod) & Rebuilding Analyses Mgmt Specs. & Measures for 2007-08: Part I: Adopt Range of ABC's & OY's Part II: Adopt Prelim. Range of Mgmt Meas. "Off Year" Science Activities: Plan & Prioritize Activities Spiny Dogfish & Pac. Cod: Adopt Final Reg. Amendment to set OY & ABC for 2006 TIQ EIS: Update & Community Concerns Amendment 10 (Shore-based Whiting Fishery Monitoring EA): Alts. For Pub. Rev.-Info Rpt Intersector Allocation EIS: Plan Next Steps Open Access Limitation: Planning | <u>Groundfish</u> NMFS Report 2006 Inseason Management (1 Session) Pac. Whiting: Adopt Final 2006 Spx & Mgmt Meas. SA: Proposed Plan for 2009-2010 2007-2008 Mgmt Measures: Guidance & Refinement Amendment 10 (Shore-based Whiting Fishery Monitoring): Adopt Alts. For Public Rev. | <u>Groundfish</u> NMFS Report 2006 Inseason Mgmt (2 Sessions) SA: Adopt Final Plan for 2009-2010 2007-2008 Mgmt Measures: Adopt 1) Preferred ABC/OY Levels 2) Mgmt Alternatives for Public Review, Including, if possible, Preferred Alt. |
| <u>Habitat Issues</u> Habitat Committee Report (Including <i>C. shasta</i>) | <u>Habitat Issues</u> Habitat Committee Report | For June Agenda: Spiny Dogfish Longline Endorsement: Adopt FMP Amendment Alts. For Public Review <u>Habitat Issues</u> Habitat Committee Report |

Agenda Item B.6.a
Supplemental Attachment 1
September 2005

Preliminary Three Meeting Outlook for the Pacific Council
(All Candidate Agenda Items Listed; Shaded Items are Contingent)

| November San Diego, CA 10/31-11/4/05 Floor Time Estimate = 121% of Standard | March Seattle, WA 3/6-3/10/06 Floor Time Estimate = 90% of Standard | April Sacramento, CA 4/3-4/7/06 Floor Time Estimate = 90% of Standard |
|---|--|--|
| <u>Highly Migratory Species</u> NMFS Rpt Bigeye Tuna OF Response: Adopt Prelim Draft FMP Amendment for Pub. Rev. Drift Gillnet Mgmt: Adopt Proposed Options for Fishing in Turtle Protection Area for Pub. Rev. HMS EFP COP: Adopt Final & Interim EFP COP Albacore Mgmt Considerations Mgmt Regime for HS Longline Fishery: Adopt FMP Amendment Alts. For Public Rev. <u>Marine Protected Areas</u> CINMS: Adopt Preferred Alt. & Final Recommended Fishing Regs Under NMSA <u>Pacific Halibut</u> Fishery Update--Info Rpt Proposed Changes to CSP in 2006: Adopt Final <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--Info Rpt Industry Prop. Experimental Fisheries: Initial Rev <u>Administrative</u> Legislative Committee Report Budget Committee Report Interim Appointments--Including Council Officers 3 Mtg Outlook, Draft Mar. Agenda, Workload COPs 7 & 14 Reconsideration Regulatory Streamlining: Briefing <u>Special Monday Joint Sessions</u> | <u>Highly Migratory Species</u> NMFS Rpt Bigeye Tuna OF Response: Adopt Final Preferred FMP Amendment Alt. Drift Gillnet Mgmt: Adopt Preferred Option for Fishing in Turtle Protection Area Mgmt Regime for HS Longline Fishery: Adopt Final FMP Amendment Preferred Alternative <u>Marine Protected Areas</u> <u>Pacific Halibut</u> Rpt on IPHC Annual Mtg Incidental Catch Regs for 2006: Adopt Options for Public Rev <u>Salmon</u> 2006 Mgmt Options: Adopt Range for Public Rev Appt. Hearings Officers Ft. Bragg Commercial Fishery Opening Mar 15: Consider Opening/Closing Date & Quota Klamath Fall Chinook Conservation Objective: Next Steps Mass Marking & Selective Fishery Rpt Industry Prop. Exper.Fisheries: Final Approval <u>Administrative</u> Legislative Committee Report Budget Committee Report Interim Appointments 3 Mtg Outlook, Final April Agenda <u>Special Monday Joint Sessions</u> | <u>Highly Migratory Species</u> PFMC Representation in IATTC Process--to June <u>Marine Protected Areas</u> <u>Pacific Halibut</u> Incidental Catch Regs for 2006: Adopt Final <u>Salmon</u> 2005 Management Options: Final Adoption 2005 Methodology Review: Establish Process & Preliminary Priorities Identify Stocks not Meeting Conserv. Objectives Klamath Fall Chinook Conservation Objective: Next Steps <u>Administrative</u> Legislative Committee Report Interim Appointments 3 Mtg Outlook, Draft June Agenda, Workload <u>Special Monday Joint Sessions</u> Salmon Genetics Research Rpt |

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, OCTOBER 30-NOVEMBER 4, 2005, SAN DIEGO, CA

| AG# | Hours | AGENDA TOPICS/COMMENTS | COUNCIL TASK | ADVISORY BODY PRIORITY 1/ | Day/Group | Start Time | Continuing Through |
|---|-------|--|--------------|---------------------------|---|------------|--------------------|
| SUNDAY, OCTOBER 30 - See Ancillary Schedule | | | | | | | |
| | | | | | SUNDAY: | | |
| | | | | | A. GMT | 1:00 PM | Fri. |
| | | | | | B. GAP | 1:00 PM | Fri. |
| | | | | | C. TIQC | 3:30 PM | Sun |
| | | | | | D. Budget | 3:30 PM | Sun |
| MONDAY, OCTOBER 31 - 8:00 am | | | | | | | |
| | | Ancillary Meetings - see Ancillary Schedule | | | MONDAY: | | |
| | | | | | A. GMT | 8:00 AM | Fri. |
| | | | | | B. GAP | 8:00 AM | Fri. |
| | | | | | E. SSC | 8:00 AM | Tue. |
| | | | | | F. STT | 8:00 AM | Mon. |
| | | | | | Chair's Briefing | 8:30 AM | Mon. |
| | | | | | G. EC | 5:00 PM | Fri. |
| | | | | | | | |
| Note - Week Prior to Council Mtg: | | | | | | | |
| CLS | 1.00 | Closed Session Agenda: Personnel & Litigation--10:00 am | | | HC mtg in PDX (Offshore Oil Dev., C. Shas | | |
| | | Adv. Body Issues - Appointments, including Council Chair & Vice Chair | Info | None | SAS conf call (Salmon & Halibut Agendas) | | |
| | | Litigation Status (E. Cooney) | Info | None | After Nov Council Mtg: | | |
| | | | | | Legislative Com. Meets | | |
| | | | | | | | |
| A. | 0.50 | General Session Call to Order - 11:00 pm | | | | | |
| 1-3 | | Opening, Roll Call, ED Rpt; Summary of Information Rpts | Info | | | | |
| 4 | | Approve Agenda | Decision | | | | |
| | | | | | | | |
| B. | | Administrative Matters | | | | | |
| 1 | 0.40 | Reconsideration of COP 7 & 14 | Decision | | | | |
| 2 | 0.30 | Election of Council Chair and Vice Chair | Decision | | | | |
| 3 | 0.20 | Council Meeting Agenda Planning: Review Preliminary 3 Mtg Outlook & Draft March Agenda | Guidance | All | | | |
| | | | | | | | |
| C. | | Coastal Pelagic Species Mgmt | | | | | |
| 1 | 0.50 | Pacific Sardine Stock Assessment & Harvest Guideline: Adopt Final for 2006 Season | Action | CPSAS; CPSMT | | | |
| 2 | 1.00 | FMP Krill Amendment: Adopt Alternatives For Public Review | Decision | CPSAS; CPSMT; Others | | | |
| | | | | | | | |
| D. | | Pacific Halibut Mgmt | | | | | |
| 1 | 1.00 | Catch Sharing Plan & Annual. Regs.: Adopt Final Changes for 2006 | Action | GAP; SAS; EC | | | |
| | | | | | | | |
| | 0.50 | Public Comment Period on Non-Agenda Items | Info | | | | |
| | 5.40 | | | | | | |

| AG# Hours | | | AGENDA TOPICS/COMMENTS | | COUNCIL TASK | ADVISORY BODY PRIORITY 1/ | ANCILLARY MEETING SCHEDULE | | |
|---|------|---|---|--|--------------------|---------------------------|--|--|--|
| Day/Group | | | Start Time | | Continuing Through | | | | |
| TUESDAY, NOVEMBER 1 - 8:00 am | | | Ancillary Meetings - see Ancillary Schedule | | | | TUESDAY: GAP; GMT; SSC; EC continue | | |
| E. Salmon Mgmt | | | | | | | | | |
| 1 | 0.75 | Methodology Review: Approve Changes for Use in 2006 | | | Decision | MEW; STT; SAS; SSC | | | |
| 2 | 0.25 | Preseason Mgmt Schedule for 2006: Approve Schedule | | | Decision | STT; SAS | | | |
| 3 | 1.00 | Klamath Fall Chinook Management: Further Consideration of Amending the Conservation Goal & Related Issues (C. shasta) | | | Decision | SSC; STT; SAS | | | |
| F. Habitat | | | | | | | | | |
| 1 | 0.50 | Habitat Committee Rpt | | | Decision | HC | | | |
| G. Groundfish Mgmt | | | | | | | | | |
| 1 | 0.50 | NMFS Rpt (Region & Science Center) | | | Info | GMT; GAP; EC | | | |
| 2 | 1.50 | Stock Assessment Review & Rebuilding Analyses: Approve Remaining Assessments & Rebuilding Analyses for 2007-2008 Mgmt | | | Action | SSC; GMT; GAP | | | |
| 3 | 1.50 | Part I of Mgmt Specifications for 2007-08: Adopt a Range of ABCs & OYs | | | Action | GMT; GAP; EC | | | |
| 4 | 2.50 | Inseason Adjustments: Preliminary or Final Adoption of Appropriate Changes | | | Action | GMT; GAP; EC | | | |
| | 8.50 | | | | | | | | |
| WEDNESDAY, NOVEMBER 2 - 8 am | | | | | | | WEDNESDAY: | | |
| Ancillary Meetings - see Ancillary Schedule | | | | | | | J. HMSAS 8:00 AM Fri. K. HMSMT 8:00 AM Fri. | | |
| H. Marine Protected Areas | | | | | | | GAP, GMT, EC continue | | |
| 1 | 1.50 | Channel Islands NMS: Adopt Final Preferred Alt. & Fishing Regs. Under NMMA | | | Decision | SPSAS, GAP, HC, SAS, EC | | | |
| G. Groundfish Mgmt (continued) | | | | | | | | | |
| 5 | 1.25 | "Off Year" Science Improvements in 2006: Prioritize & Plan Activities | | | Guidance | GMT; GAP; SSC | | | |
| 6 | 1.00 | Amendment 18 (Bycatch): Adopt Final FMP Text & Regulatory Language | | | Decision | GMT; GAP; EC | | | |
| 7 | 2.00 | Amendment 19 (EFH): Adopt Final FMP Text & Regulatory Language, & Review Practicability Analysis of Work Plan | | | Decision | GMT; GAP; EC; HC | | | |
| 8 | 1.00 | Spiny Dogfish & Pacific Cod: Adopt Final OY, ABC & Mgmt Measures for 2006 Fishery | | | Decision | GMT; GAP | | | |
| 9 | 1.25 | EFP Applications for 2006: Final Approval, Including Caps for OF Species | | | Action | GMT; GAP | | | |
| | 8.00 | | | | | | | | |
| Council Annual Banquet--6 pm. | | | | | | | | | |

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, OCTOBER 30-NOVEMBER 4, 2005, SAN DIEGO, CA

| AG# Hours | | | AGENDA TOPICS/COMMENTS | | COUNCIL TASK | ADVISORY BODY PRIORITY 1/ | ANCILLARY MEETING SCHEDULE | | |
|-----------------------------|--|--|---|--|--------------|---------------------------|-------------------------------------|------------|--------------------|
| | | | | | | | Day/Group | Start Time | Continuing Through |
| THURSDAY, NOVEMBER 3 - 8 am | | | | | | | THURSDAY: | | |
| | | | Ancillary Meetings - see Ancillary Schedule | | | | HMSAS; HMSMT, GAP, GMT, EC continue | | |
| G. | | | | | | | | | |
| 10 | | | 2.00 Groundfish Mgmt (continued) | | | | | | |
| | | | VMS: Adopt Final Preferred Program Expansion Alt. | | Action | GMT; GAP, EC; SAS | | | |
| 11 | | | 1.50 TIQ Program: Update and Consideration of Community Concerns | | Guidance | GAP, EC; SSC | | | |
| I. | | | | | | | | | |
| 1 | | | 0.50 Highly Migratory Species Management | | Info | HMSAS; HMSMT | | | |
| 2 | | | 0.50 NMFS Rpt.-Region & Science Ctr | | Decision | HMSAS; HMSMT: SSC | | | |
| 4 | | | 2.00 COP for EFP Process: Adopt Interim and Final COP | | Decision | HMSAS; HMSMT: EC | | | |
| | | | Drift Gillnet Mgmt: Adopt Public Review Draft of Proposed Options for Fishing in Turtle Protection Area | | | | | | |
| 5 | | | 1.50 Albacore Mgmt: Consider Possible Actions | | Guidance | HMSAS; HMSMT | | | |
| | | | | | | | | | |
| | | | 8.00 | | | | | | |
| FRIDAY, NOVEMBER 4 - 8 am | | | | | | | FRIDAY: | | |
| | | | Ancillary Meetings - see Ancillary Schedule | | | | EC; HMSAS; HMSMT as nec. | | |
| I. | | | | | | | | | |
| 5 | | | 1.00 Highly Migratory Species Management (continued) | | Decision | HMSAS; HMSMT | | | |
| | | | Bigeye Tuna Overfishing Response: Adopt Draft FMP Amendment for Pub. Rev. | | | | | | |
| G. | | | | | | | | | |
| 12 | | | 2.00 Groundfish Mgmt (continued) | | Action | GMT; GAP, EC; SAS | | | |
| | | | Part II of Mgmt Specifications for 2007-08: Adopt Prelim Range of Mgmt Measures | | | | | | |
| 13 | | | 2.00 Inseason Adjustments: Adopt or Confirm Final Changes, If Necessary | | Action | GMT; GAP, EC | | | |
| B. | | | | | | | | | |
| 4 | | | 0.50 Administrative Matters (continued) | | Guidance | | | | |
| 5 | | | 0.40 Legislative Matters | | Decision | | | | |
| 6 | | | 0.20 Fiscal Matters | | Decision | None | | | |
| 7 | | | 0.50 Interim Appointments to Adv. Bodies, Standing Com., & Other Forums | | Guidance | GMT; GAP; & as nec | | | |
| 8 | | | 1.00 3 Mtg Outlook, Draft March Agenda, & Workload Priorities (thru Apr Mtg) | | Guidance | All | | | |
| | | | Regulatory Streamlining: Briefing | | | | | | |
| | | | 7.60 | | | | | | |

1/ Anticipates each advisory subpanel will review agenda items for its particular FMP.

• **Key to Council Task: Info=briefing; Guidance=formal or informal direction on issue; Decision=formal determination; Action=results in implementation by NMFS.**

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, OCTOBER 30-NOVEMBER 4, 2005, SAN DIEGO, CA

| AG# | Hours | AGENDA TOPICS/COMMENTS | COUNCIL TASK | ADVISORY BODY PRIORITY 1/ | ANCILLARY MEETING SCHEDULE | | |
|-----|-------|------------------------|--------------|---------------------------|----------------------------|------------|--------------------|
| | | | | | Day/Group | Start Time | Continuing Through |

Candidate Agenda Items Not Scheduled

| | | | | | | | |
|------|--|--|----------|--------------|--|--|--|
| 1.00 | | Open Access Limitation: Update and Planning | Guidance | GMT; GAP, EC | | | |
| 1.00 | | Intersector Allocation EIS: Next Steps | Guidance | GAP, GMT, EC | | | |
| 0.75 | | Fishery Overcapacity Policy: Briefing by Joe Terry | Info | All | | | |
| 0.75 | | State Enforcement Activity Rpt | Info | GMT; GAP | | | |

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 | | NMFS CPS Rpt | Info | CPSAS; CPSMT | | | |
| 4 | | Salmon EFH Review Process | Info | STT; SAS; HC | | | |
| 5 | | Amendment 10--Shore-based Whiting Fishery EA: Draft Monitoring Alternatives for Public Review | Info | GAP; GMT | | | |

Due Dates:

| | |
|---|-----------|
| Meeting Invitation Memo Distributed: | 9/15 |
| Public Meeting Notice Mailed: | 9/26 |
| FR Meeting Notice transmitted: | 9/29 |
| Final day to receive public comments for mailing in BB: | COB 10/12 |
| Final deadline to submit all nonsupplemental BB materials: | COB 10/12 |
| Final deadline to submit cover memos for Ancillary Meetings: | COB 10/14 |
| Mail Situation Summaries to Council Members | COB 10/14 |
| Briefing Book Mailing: | COB 10/20 |
| Final deadline to receive public comments for distribution to Council on first day of mtg (supplemental materials): | COB 10/25 |

COUNCIL WORK LOAD PRIORITIES SEPTEMBER 26, 2005 THROUGH NOVEMBER 4, 2005
(Bolded tasks represent a Core Program Responsibility)

| | Salmon | Groundfish | CPS | HMS | Other |
|-------------------|----------------------------|---|--------------------------------|---|---|
| ACTIVE | Inseason Mgmt | SAFE 2005: Volume I | 2006 Pac. Sardine Stock | Final SAFE Doc | Admin Necessities |
| | | Inseason Mgmt | Assessment & HG | COP for EFPs | (Briefing Book, minutes, Newsletter, COP; convert Safe Docs to WORD; etc.) |
| | Fishery Update | 2007-08 Biennial Specification Tasks | | Drift Gillnet Fishery | |
| | Methodology Review Mtg | Trawl IQ Program: Coordinate Analyses | Amendment 12: Krill | Mgmt Options | Pacific Halibut Mgmt |
| | EFH Update (5 year review) | & Drafting of Program Structure & Intersector Allocation EISs | | <i>Bigeye Overfishing Response Amend.</i> | Proposed Changes for 06 |
| | Klamath Fall Chinook | Rev. Stock Assessments & Rebuilding Analyses | | FMP Amendment: | MPA: CINMS NMS Process |
| | FMP Amendment Scoping | <i>VMS: Final Action on Expansion</i> | | Mgmt Regime for HS Longline Fishery | MSA Reauthorization |
| | | <i>Amendment 19 (EFH)</i> | | EFP COP | |
| | | <i>Amendment 18 (Bycatch)</i> | | | |
| | | <i>Spiny Dogfish & Pac Cod 2006 Spx EA</i> | | | |
| CONTINGENT | Update Historic DataSets | EFPs for 2006: Review | | | |
| | | Off Year Science Planning | | | |
| | | SSC GF Subcom Wrap-up & Reblgd. | CPSMT Mtg in Oct. | HMSMC Mtg in Oct. | |
| | | VMS: Mtg in Sep. | CPSAS MTG in Oct. | HMSMT Mtg in Oct. | |
| | | GMT Mtg in Oct | | | |
| | | GAP Mtg at Nov Council Mtg | | | |
| | | GMT Mtg at Nov Council Mtg | | | |
| | | | | | |
| | | <i>Amendment 10 (Monitor Shore-based Whiting)</i> | | Joint WPFMC-PFMC Mtg | PacFIN/RecFIN/EFIN issues |
| | | Amendment 14B (FG Permit Stacking) | | | MPA Coordination |
| DELAYED | | <i>Spiny Dogfish Endorsement FMP Amend.</i> | | | |
| | Amendments: | SAFE 2002-2004: Volume II (review info) | | | |
| | OCN Coho Matrix | (to complete in April for EIS) | International Mgmt | International HMS | Research & Data Needs |
| | SOF Coho Allocation | Open Access Limitations | | Forum Participation | Economic Data |
| | Cons. Objectives: | Alternative Mgmt Approaches | | | Collection Program |
| | Puget S. Chinook & Coho | GF Strategic Plan Formal Review | | | |
| | LCR Coho | SSC B ₀ & MSY Workshop | | | Communication Plan |
| | Sacramento River Chinook | SSC Bycatch Workshop II | | | |

GROUND FISH MANAGEMENT TEAM REPORT ON
COUNCIL THREE MEETING OUTLOOK, DRAFT NOVEMBER 2005 COUNCIL
MEETING AGENDA, AND WORK LOAD PRIORITIES

The Groundfish Management Team (GMT) reviewed the preliminary draft Council meeting agenda for the October Council meeting and has the following comments.

Draft November Council Meeting Agenda

Agenda Items G.2., Approve remaining stock assessments and rebuilding analyses, and G.3., adopt a range of acceptable biological catches and optimum yields, are scheduled back-to-back for Tuesday. If the Scientific and Statistical Committee is unable to come to final conclusions on remaining assessments and rebuilding analyses at the mop-up Stock Assessment Review Panel meeting, the GMT recommends that they consider meeting earlier than currently scheduled (i.e., Sunday rather than Monday) in order to resolve any remaining issues. This would provide the GMT with sufficient time to prepare recommendations on harvest specifications for the Council to consider on Tuesday.

Work Load Priorities

At the June Council meeting, the Council provided the GMT with specific guidance regarding September agenda items for which the Council considered GMT feedback important, and agenda items for which the Council considered GMT input to be of low priority. This guidance provided the GMT with greater clarity when identifying how to focus GMT discussion and work on specific topics. The GMT would appreciate similar guidance from the Council regarding prioritization of our workload for the November Council meeting.

COUNCIL THREE MEETING OUTLOOK, DRAFT NOVEMBER 2005
COUNCIL MEETING AGENDA, AND WORK LOAD PRIORITIES

This agenda item requests guidance from the Council on the following three matters:

1. The Council three-meeting outlook (November, March, and April).
2. The draft agenda for the November Council meeting.
3. Council staff work load priorities for September 26, 2005 through November 4, 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 considering any reports and comments from advisory bodies and public, the Council is scheduled to provide guidance as appropriate. The Council also has the opportunity to identify priorities for advisory body consideration for the November 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 November 2005 Council meeting.**
- 3. Provide guidance on priorities for Council workload management between the September and November Council meetings.**
- 4. Identify priorities for advisory body consideration at the November Council meeting.**

Reference Materials:

1. Agenda Item B.6.a, Supplemental Attachment 1: Preliminary Three-Meeting Outlook for the Pacific Council.
2. Agenda Item B.6.a, Supplemental Attachment 2: Preliminary Draft Council Meeting Agenda, October 30 through November 4, 2005, San Diego, California.
3. Agenda Item B.6.a, Supplemental Attachment 3: Council Work Load Priorities September 26, 2005 through November 4, 2005.

Agenda Order:

- a. Agenda Item Overview
 - b. Reports and Comments of Advisory Bodies
 - c. Public Comment
 - d. Council Guidance on Council Three Meeting Outlook, November Council Agenda, Council Staff Work Load, and Priorities for Advisory Body Consideration
- Don McIsaac

PFCM
08/31/05