

The full record of the Pacific Fishery Management Council (Council) September 18-23, 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 or CD-ROM 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
September 18-23, 2005
Embassy Suites Portland Airport
7900 NE 82nd Avenue
Portland, OR 97220

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A closed session was held on Monday, September 19, 2005 to discuss personnel and litigation matters.

A. Call to Order

A.1 Opening Remarks, Introductions

Chairman Donald Hansen called the 180th meeting of the Pacific Fishery Management Council to order at 8 am, Tuesday, September 20, 2005.

Newly appointed Council member Mr. Rod Moore was sworn into office by Dr. Steve Freese, National Marine Fisheries Service (NMFS).

A.2 Roll Call

Dr. Donald McIsaac, Council Executive Director, called the roll. The following Council Members were present:

Mr. Bob Alverson
Mr. Phil Anderson
Dr. Patty Burke
Mr. Mark Cedergreen
Dr. Steve Freese
Mr. Donald K. Hansen (Chairman)
Dr. David Hanson (Parliamentarian)
Mr. Jim Harp
Mr. Jerry Mallet
Mr. Rod Moore
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. David Hogan (representing the State Department in place of Mr. Stetson Tinkham)

A short video provided by Mr. Bob Alverson was shown as tribute to the late Mr. Jack Crowley.

A.3 Executive Director's Report

Dr. McIsaac provided an overview of the 12 informational reports found in the briefing book. Supplemental Informational reports 11 and 12 were highlighted.

A.4 Council Action: Approve Agenda

Chairman Hansen asked for approval of the agenda. The Council approved the agenda as shown in DRAFT Minutes - September 2005 (180th Council Meeting)

Agenda Item A.4, September Council Meeting Agenda. (Motion 1)

B. Administrative Matters

B.1 Approval of Council Meeting Minutes

B.1.a Council Member Review and Comments

Chairman Hansen called for comments. Council members agreed to delay the approval of the April and June minutes until Friday. (Motion 2)

B.1.b Council Action: Approve April and June Minutes

Mr. Jerry Mallet moved and Mr. Roger Thomas seconded a motion (Motion 21) to approve the April minutes as shown in Agenda Item B.1.b, Draft April 2005 Minutes, and the June minutes as shown in Agenda Item B.1.a, Draft June 2005 Minutes. Motion 21 passed.

B.2 Council Meeting Agenda Planning

B.2.a Agenda Item Overview

Dr. McIsaac provided the agenda item overview. He referred the Council to the preliminary draft three meeting outlook and preliminary November agenda, suggesting they review the drafts over the week and be prepared to provide their comments on Friday.

B.2.b Reports and Comments of Advisory Bodies

None.

B.2.c Public Comment

None.

B.2.d Council Discussion

Mr. Moore asked if the GAP and GMT were involved in the scheduling discussions. Dr. McIsaac answered yes and additional opportunity for the finalization of the November agenda will be taken up on Friday.

B.3 Legislative Matters (09/23/05; 8:38 am)

B.3.a Agenda Item Overview

Mr. Mike Burner provided the agenda item overview.

B.3.b Legislative Committee Report

Mr. Mike Burner highlighted the key points of Agenda Item B.3.b, Supplemental Legislative Committee Report.

B.3.c Reports and Comments of Advisory Bodies

Ms. Ashcraft provided Agenda Item B.3.c, Supplemental GMT Report. Lt. Dave Cleary provided Agenda Item B.3.c, Supplemental EC Report. Messrs Gerry Richter and Tom Ghio provided Agenda Item B.3.c, Supplemental GAP Report.

B.3.d Public Comment

Mr. Brent Paine, United Catcher Boats, Seattle, Washington
Mr. Richard Carroll, Ocean Gold Seafoods, Westport, Washington
Mr. Dave Fraser, F/V Muir Milach, Port Townsend, Washington
Mr. Mark Cooper, Midwater Trawlers Cooperative, Toledo, Oregon
Mr. Craig Cochran, F/V Bay Islander, Newport, Oregon
Mr. Steve Bodner, Coos Bay Trawlers Association, Coos Bay, Oregon
Mr. Mike Storey, F/V Pegasus, Warrenton, Oregon
Mr. Jim Seavers, Midwater Trawlers Cooperative, Newport, Oregon
Mr. Craig Urness, Pacific Seafood Group, Clackamas, Oregon

B.3.e Council Action: Consider Recommendations of the Legislative Committee

Mr. Tommy Ghio provided a correction to the GAP statement, in the third paragraph on page 2, third sentence, it should say "Remember, the shoreside whiting industry...".

Mr. Alverson moved and Mr. Warrens seconded a motion (Motion 22) to accept the reports of the Legislative Committee and the Enforcement Consultants. Motion 22 passed. Mr. Moore abstained from the vote on Motion 22.

Mr. Alverson moved and Mr. Cedergreen seconded a motion (Motion 23) to 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, have the Council send a letter to the Secretary of Commerce requesting his support for the three omissions from the draft reauthorization bill contained in the Legislative Committee's report and for the protection of existing individual fishing quota (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. Mr. Alverson spoke in favor of protecting existing IFQ programs such as the sablefish tier program as well as protecting developing programs such as the trawl IQ program.

Mr. Moore asked the maker of the motion whether the motion is intended to protect the existing development of IFQ programs from things such as revised national standards or future determinations on community or processor shares. Mr. Alverson said the intent is that the Council would be held to the IFQ standards in place now and would not be held to any new IFQ development requirements such as a referendum. Mr. Alverson continued to say that if processor shares are authorized, it is not the intent of the motion to prevent their use in the future.

Dr. Freese commented he would be abstaining from any votes regarding this matter of legislative bills and/or direction to Congress unless otherwise instructed by the Department of Commerce.

Mr. Harp noted the EC report had 3 recommendations and asked if those recommendations are included in the motion. Mr. Alverson said the original motion did not but he would accept that recommendation as a friendly amendment. Approved by the maker and seconder of the motion.

Motion 23 passed. Dr. Freese abstained from the vote on Motion 23.

Mr. Alverson moved and Mr. Cedergreen seconded a motion (Motion 24) 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.

Mr. Alverson said the motion intends to complement the actions of the Council at its June meeting regarding the development of the trawl IQ program. Mr. Alverson noted that the Legislative Committee report spoke to eleven different issues regarding S. 1549, but he felt there are more than eleven shortcomings in the existing bill. Many potential impacts of the bill, such as excessive accumulation of shares and community hardships, cannot be known until a complete economic analysis. These analyses need to be completed in an open peer reviewed process and discussed in the Council forum. Similar IQ plans in Australia, New Zealand, and the U.S. mid-Atlantic region have quickly become vertically integrated, an undesirable result for our Pacific whiting fishery or our communities. Without the Council process, we will not know the effects of this IQ program before the program is implemented. Mr. Anderson reminded the Council of the importance of open and public deliberations during the allocation negotiations leading to the American Fisheries Act.

Dr. McIsaac and Ms. Vojkovich asked similar questions regarding the motion and providing comments to Senator Smith's office. Dr. McIsaac noted the current motion seems to duplicate or coincide with recommendations in the adopted Legislative Report, and asked if this motion and the previous motion would supersede the first two recommendations in the Legislative Report. Mr. Alverson said the answer to that would be 'yes'.

Mr. Moore stated he would abstain from the vote. This is more for personal reasons and not due to any

conflict of interest. However, he stated that if he were to vote, he would vote in opposition because the LC report has responded to Senator Smith's request for specific recommendations on the bill and should be forwarded to the Senator. He agreed that the LC did not have enough time to go thru all the details of the bill and that he does not agree with all of the LC recommendations but, he still feels that forwarding the LC report would be the best response to Senator Smith this Council could give. Additionally, the Council has heard testimony for and against the bill, but the testimony heard from the people directly involved in the shore-based whiting industry was in favor of the bill. It would be unfortunate to adopt the motion and ignore the work by the LC.

Mr. Ticehurst voiced reluctant support for the motion. He continued to say that a good IQ program is one that is beneficial to all participants in the fishery and this bill could go a long way in that regard. However, he felt that any IQ program should be developed within the Council process.

Dr. Burke opposed the motion for reasons of content. The LC met for short period of time relative to the importance of the issues discussed. Due to these constraints, people were asked to testify prior to LC deliberations. Given the short time, it is impressive that the content of the LC report more than adequately covers key issues. Mr. Alverson's motion has a lot of issues, some of which are well worded and could be supported. However, there has not been time to review the specifics in writing and Dr. Burke had concerns about preempting the first motion on this matter (motion 23). Mr. Warrens stated support for Dr. Burkes arguments.

Mr. Anderson moved to amend Motion 24, to have the comments of the LC included in the proposed letter to Senator Smith along with one additional point, "The issue of what the appropriate division of harvester and processors shares, if any, in a dedicated access system needs to be part of a debate within the regional Council process." Ms. Vojkovich seconded the amendment.

Mr. Anderson, stated that based on some of the public comment he felt the Council needs to address not only the issue of if there should be harvester and processor shares but, also, what is the appropriate division of shares. This needs to be done in an open and deliberative public process. Mr. Anderson felt the points in Mr. Alverson's motions were good and were not necessarily addressed in the LC report and stated that he would expect that where overlap existed between the main motion and the LC report, the LC report would take precedent.

Mr. Moore said the Council acted in June to send out preferred alternatives on the trawl IQ program. Assuming the MSA is amended next year to allow consideration of processors as part of an IQ program, and the Council has adopted preferred alternatives based on work by the TIQC, would the Council action on trawl IQs need to be retracted or revisited to complete the Council process.

Dr. McIsaac said the Council did not adopt a preferred alternative in June but rather, a range of alternatives for analysis including a recommendation that processor shares be analyzed. Mr. Moore then asked Ms. Cooney about the NMFS interpretation of the prohibition on the Council considering processor shares as contained in an appropriation bill. Specifically, does the prohibition end at the end of the fiscal year? Ms. Cooney stated that her understanding is that the ban on considering processor shares did end with the fiscal year, but the Council still does not have the authority to implement processor shares.

Dr. Hanson, while not taking a position on the motion or the amendment, clarified that the Council adopted alternatives, as developed by the TIQC, include provisions like S. 1549 which allows processors to hold fishing quota. What is not included in the IQ alternatives is the concept of processor quotas.

Mr. Moore added, the cooperative shares for processors in S.1549 cannot be fished by processors. Dr. McIsaac said his recollection is the same as NOAA GC's, that being the appropriation bill for fiscal year 2004 contained the prohibition on considering processor shares and it expired on September 30, 2005. The appropriation bill for fiscal year 2005 contained no such prohibition.

Chairman Hanson asked for vote on Mr. Andersons' amendment.

Mr. Warrens asked for Phil's motion to amend be restated. Dr. McIsaac repeated the amendment.

Voice vote on the amendment to Motion 24 passed, Mr. Moore and Dr. Freese abstained from the vote on the amendment to Motion 24. Voice vote on main Motion 24 passed.

Dr. Hanson stated that the LC did not have time at this meeting and should anticipate a full agenda for November, including the possibility of a new draft of S. 1549 as well as new bills regarding MSA reauthorization. It would be helpful to have the Council convey specific MSA reauthorization issues to the Council staff two weeks prior to the next LC meeting to help focus the discussions on the most important matters.

B.4 Fiscal Matters (09/23/05; 11:47 am)

B.4.a Agenda Item Overview

Dr. John Coon provided the agenda item overview.

B.4.b Budget Committee Report

Mr. Jim Harp provided the Budget Committee Report.

B.4.c Reports and Comments of Advisory Bodies

None.

B.4.d Public Comment

None.

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

The Council approved the report of the Budget Committee as shown in Agenda Item B.4.b, Supplemental Budget Committee Report. (Motion 25)

B.5 Appointments to Advisory Bodies, Standing Committees, and Other Forums (09/23/05; 11:52 am)

B.5.a Agenda Item Overview

Mr. Chuck Tracy presented the agenda item overview.

B.5.b Agency and Tribal Comments

None.

B.5.c Report and Comments of Advisory Bodies

None.

B.5.d Public Comment

None.

B.5.e Council Action: Consider Changes to COPs, Appoint New Members, and Solicit Nominations as Necessary

Mr. Anderson moved (Motion 26) to modify Council Operating Procedure (COP) 7 to include the following non-voting advisors to the Groundfish Allocation Committee as formal members: Ms. Kathy Fosmark, Open Access Fisheries; Mr. Peter Leipzig, Non-Whiting Trawl Fisheries; Ms. Michele Longo-Eder, Fixed Gear Fisheries; Mr. Bob Osborn, Recreational Fisheries; Mr. Burr Heneman, Conservation; and a vacant seat for the Processor Representative. Mr. Cedergreen seconded the motion. Motion 26 passed.

Mr. Anderson moved (Motion 27) to add to the November agenda the consideration of further modifying COP 7 to add a 7th non-voting member to the Groundfish Allocation Committee representing the Whiting Fishery Sector, and in anticipation of that action, request staff to seek nominations for that seat. Mr. Cedergreen seconded the motion. Motion 27 passed.

The Council made the following appointments:

- Dr. Stephen Stohs to replace Dr. Sam Herrick on the Highly Migratory Species Management Team (Motion 28)
- Ms. Heather Munro Mann to fill the processor sector vacancy on the Groundfish Advisory Subpanel (Motion 29)
- Ms. Heather Munro Mann to fill the vacancy on the Groundfish Allocation Committee for a non-voting advisor to represent the processor sector (Motion 30)
- Mr. Neil Guglielmo to fill the vacancy on the Coastal Pelagic Species Advisory Subpanel representing the California commercial fishery sector (Motion 31)
- Mr. Calvin Frank to fill the vacancy on the Salmon Advisory Subpanel to represent the Washington Coast Tribal seat (Motion 32)

Chairman Hanson announced the following appointments to standing and ad hoc committees:

- Mr. Rod Moore to replace Mr. Ralph Brown on the Legislative Committee.
- Mr. Donald Hansen as a new member on the Legislative Committee.
- Ms. Marija Vojkovich to replace Mr. Ralph Brown on the Groundfish Strategic Plan Implementation Oversight Committee.
- Ms. Diane Pleschner-Steele to replace Mr. Orlando Amoroso on the Marine Protected Areas Committee (non-voting advisor).
- Mr. Brian Corrigan to replace LT Gregg Casad and Mr. Tony Warrenton to replace Ms. Nancy Foley on the Trawl Individual Quota Enforcement Group.
- Mr. Donald Hansen as a new member on the Coastal Pelagic Species Tribal Allocation Committee.
- Mr. Brian Corrigan to replace LT Gregg Casad and Ms. Heather Munro Mann to replace Mr. Rod Moore on the Vessel Monitoring System Committee.

The Council directed staff to continue to solicit nomination for the conservation group seat on the CPSAS. Ms. Vojkovich suggested that the solicitation be posted on the Council's website only, as this nomination has been advertised in the past. Council Members concurred. Mr. Tracy suggested this vacancy not be put on the Council's agenda until a nomination(s) was received; the Council concurred.

B.6 Council Three Meeting Outlook, Draft November 2005 Council Meeting Agenda, and Work Load Priorities (09/23/05; 12:09 pm)

B.6.a Agenda Item Overview

Dr. McIsaac provided the agenda item overview.

B.6.b Reports and Comments of Advisory Bodies

Ms. Ashcraft provided Agenda Item B.6.b, Supplemental GMT Report. Mr. Ghio provided comments for the GAP with regard to the timing of agenda items G.2, G.3, and G.4 on Tuesday. He believes the inseason item (G.4) will be a big issue and needs to be delayed till Wednesday. This would allow more interaction and time to run the models.

B.6.c Public Comment

None.

B.6.d Council Guidance on Council Three Meeting Outlook, November Council Agenda, Council Staff Work Load, and Priorities for Advisory Body Consideration

Council members worked with Council staff, the Chairman and the Executive Director to provide guidance to set the November agenda, staff work load, and advisory body priorities. Council members also provided their relative priorities for GMT workload and review. The Council agreed that the Legislative Committee might need to meet after the November meeting rather than during it.

In revisiting the schedule for development of the groundfish specifications EIS, the Council clarified their preference for a GMT meeting the week of January 9 and an Allocation Committee meeting in February which would include attendance by the GAP chair at the February meeting.

C. Highly Migratory Species (HMS) Management

C.1.NMFS Report

C.1.a Regulatory Activities (09/20/05; 8:45 am)

Mr. Craig Heberer provided an overview of regulatory activities. Council members asked questions about vessel marking requirements, activity under a recent permit for transporting live bluefin tuna, and implementation of logbook requirements. Mr. Mark Helvey reported on the 2005 Inter-American Tropical Tuna Commission (IATTC) annual meeting. He highlighted the 2004-2005 resolutions (Agenda Item C.1, Attachment 2), in particular the albacore resolution (Agenda Item C.1 Attachment 3) and bigeye tuna conservation measures, which will expire in 2006. He said the Council has an opportunity to comment on these resolutions.

Mr. David Hogan, Department of State, discussed the albacore resolution and the need to follow up with the Western and Central and Pacific Fisheries Commission. He also described the Antigua Convention, which is a renegotiation of the agreement establishing the IATTC. Mr. Ticehurst asked whether the albacore discussion included recreational fishing. Mr. Hogan said they have not touched specifically on recreational fishing, but focused only on commercial fisheries. Mr. Alverson, referencing the letter from Rod McInnis (see Agenda Item C.1 Attachment 3), asked about the provision in the albacore resolution on the development of albacore fisheries in countries where such fisheries are currently undeveloped. Mr. Hogan said a strategy was being negotiated and any such development would be very small and limited, and could be revisited in future negotiations. Mr. Alverson then asked if there are any specific benchmarks for what is considered small scale. Mr. Hogan said the provision allows for, but does not encourage, development of albacore fisheries. Ms. Vojkovich, also referring to the McInnis letter, asked about whether the limit on bigeye tuna would be revisited at a future date. Mr. Hogan said it is a multi-year resolution that expires in 2006. In 2006 the resolution is up for renegotiation. The limits can be reconsidered along with other components, such as measures applicable to the purse seine fishery.

Mr. Anderson asked Mr. Helvey to describe the current boundaries of the convention area and those under the Antigua Convention. Mr. Helvey responded that the Convention would expand the boundaries from 40° latitude N and S to 50° N and S.

Ms. Vojkovich asked Mr. Helvey whether the data used for the annual report to the IATTC under the shark resolution come from the PacFIN database. Mr. Helvey said all the data comes from PacFIN. She then asked whether there is need to discuss PacFIN funding issues, given this use of the data. Mr. Helvey said that was a good idea.

Mr. Anderson asked Mr. Helvey to characterize the Council's role with respect to the albacore resolution in terms of implementing measures to limit fishing effort. Mr. Helvey referenced the resolution, noting it was somewhat ambiguous. He said the Council could help NMFS decide how this should be interpreted in terms of accomplishing the purpose of the resolution while maintaining long-term sustainability for West Coast albacore fishermen.

Mr. Helvey referred the Council to Agenda Item C.1.a., Supplemental NMFS Report, which is a summary of an informal meeting of the Northern Committee of the WCPFC. There is an opportunity for the Council to provide comments to the U.S. delegation to the WCPFC.

Mr. Alverson asked if NMFS is handling implementation of the IATTC resolution on VMS. Mr. Helvey said NMFS would handle it under the Tuna Conventions Act, but NMFS did have a question about its applicability to recreational charter vessels and asked if the Ad Hoc VMS Committee could discuss this at their upcoming meeting.

Dr. Burke asked if NMFS was planning informational meetings in Oregon with respect to HMS issues. Mr. Helvey said yes, such meetings are being planned to gain input on some of the issues discussed here.

Mr. Moore asked if the International Committee for Tuna and Tuna-like Species in the North Pacific (ISC) stock assessment for albacore has been transmitted to relevant Council advisory bodies. Mr. Helvey said he believed it had not yet been finalized.

C.1.b Science Center Activities

Dr. Gary Sakagawa gave a brief overview of SWFSC activities.

Ms. Robin LeRoux gave a presentation on sea turtles. A copy of the slides was handed out to Council members.

C.1.c Reports and Comments of Advisory Bodies

None.

C.1.d Public Comment

Mr. Wayne Heikkila, Western Fishboat Owners Association, Redding, California

C.1.e Council Discussion

Mr. Anderson said he had four comments. First he said he was not aware of planned meetings between NMFS and Washington State with respect to observer coverage, as mentioned in the NMFS report. Second, with respect to the resolution there was a provision to report catches every six months. He said he assumed that data would come from PacFIN. He noted the funding problems for the PacFIN system. Mr. Helvey said PacFIN is a supplemental data source, with albacore logbooks to be the main source. Mr. Anderson asked if that the logbook data would be compiled by NMFS. Mr. Helvey said yes, the SWFSC does that. Third and fourth, Mr. Anderson asked for clarification on the request for Council advice on two issues raised in the observer report, coverage and funding levels.

Ms. Vojkovich followed-up with respect to advice on funding for the observer program. She wondered if it would be appropriate to provide direction to the team to identify funding needs. She asked Mr. Hogan about the U.S. strategy with respect to foreign fishery impacts to sea turtles. He reviewed U.S. efforts in terms of negotiating agreements for sea turtle conservation and the development on advice for the reduction of sea turtle mortalities in fisheries. However, he said the same sea turtle conservation measures adopted by the U.S. have not been adopted by regional fishery management organizations, but hoped there would be progress in this direction. He also mentioned other potential measures related to trade and socioeconomic issues with respect to sea turtles.

Ms. Vojkovich then said it was unclear who has authority over the management of recreational fisheries for tunas, referencing issues related to the IATTC resolutions, such as albacore effort limitation and the applicability of VMS. Mr. Hogan responded in the context of the albacore resolution. He said the text of the resolution did not speak to this issue, but the intent was for it to apply to commercial fisheries. The U.S. would continue to talk to other IATTC members about the applicability issue, but regardless, it is NMFS' responsibility for domestic implementation of regulations. The Council has been asked to provide input with NMFS to the IATTC on these issues.

Ms. Vojkovich asked Mr. Helvey how the current level of albacore effort would be defined for the purposes of implementing the resolution. Mr. Helvey said NMFS would seek advice from the Council, HMSAS, and HMSMT about how to define the current level of effort. Ms. Vojkovich asked the Council members if this question should be pursued now or at a future Council meeting under a specific HMS agenda item.

In order to address Ms. Vojkovich's question, Mr. Moore said it would be helpful to know the time frame for developing management recommendations. Mr. Helvey said there is no time frame as he understands it. Mr. Hogan said that the IATTC members did not think it was productive or helpful to specify a time frame. The U.S. has a general obligation to tell the IATTC at the next meeting (June 2006) that effort has

not increased beyond the level at the time the resolution was adopted.

Mr. Anderson said he was puzzled about what is expected of the Council. He heard Mr. Helvey say the resolution is not a call to action; but he does not want to sit back and let someone else decide how to define effort.

Dr. McIsaac said this discussion should occur under the agenda item on albacore management scheduled for the November Council meeting. This would provide advance notice to the public and advisory bodies on this topic.

Mr. Helvey said the intent of the McInnis letter (Agenda Item C.1, Attachment 3) to the Council was to provide an opportunity for the Council to be involved in developing the measures. These concerns can then be forwarded to the IATTC. He then discuss the need for both this Council and the Western Pacific Fishery Management Council to work together in looking at what is the amount of albacore and other species that their respective fishing industries represent.

Dr. Burke asked at what point would albacore be declared overfished. Mr. Helvey said there is concern that the albacore stock is approaching the overfishing level, but they are not overfished. It would be the same situation as is being done for bigeye tuna, developing an FMP amendment.

Following up on Ms. Vojkovich's first point on the observer plan, Dr. Dahl said the HMSMT reviewed the report at their May meeting and provided recommendations to the Council at the June Council meeting. If the Council wants to revisit the observer plan and any adoption of the HMSMT recommendations, the Council might consider that as a separate agenda item for the November meeting.

As a follow-up to Dr. Burke's question, Mr. Moore noted that Mr. Helvey said that since we might be approaching overfishing on albacore, the Council's appropriate response would be to limit it further. But he also heard Mr. Helvey say that fishing effort has dropped and the Council does not need to take action at this point. This needs to be discussed in greater depth at the November meeting.

C.2 Bigeye Tuna Overfishing Response Update (9/20/05; 10:46 am)

C.2.a Agenda Item Overview

Dr. Kit Dahl provided the agenda item overview.

C.2.b NMFS Report

Mr. Helvey, NMFS, provided a brief report, noting that there was no new information available at this time.

C.2.c Reports and Comments of Advisory Bodies

None.

C.2.d Public Comment

None.

C.2.e Council Discussion and Guidance on Response to Overfishing of Bigeye Tuna

None.

C.3 Proposed Council Operating Procedure (COP) for Approving Exempted Fishing Permits for Highly Migratory Species

C.3.a Agenda Item Overview

Dr. Dahl provided the agenda item overview.

C.3.b Reports and Comments of Advisory Bodies

Ms. Michele Culver and Dr. Dale Squires from the HMSMT provided Agenda Item C.3.b, Supplemental Revised HMSMT Report. Mr. Alan Byrne provided the SSC report.

C.3.c Public Comment

Dr. Robert Ovetz, Sea Turtle Restoration Project, Forest Knolls, California
Ms. Kathy Fosmark, fishing community, Pebble Beach, California

C.3.d Council Action: Adopt a Draft COP for Public Review

Mr. Moore moved and Mr. Warrens seconded a motion (Motion 3) that the Council adopt the recommendations from the HMSMT as shown in Agenda Item C.3.b, Supplemental Revised HMSMT Report, incorporating the SSC recommendations, and in both the interim and permanent protocol add the HMSAS to the Review and Approval section.

Mr. Moore said based on experience with how the GAP, GMT, and SSC handle EFPs, he feels the HMSMT has proposed a good process. This does not in any way prejudice any EFPs that could come before the Council in the future or in the interim period.

Dr. McIsaac asked about the public testimony stating that adopting an interim COP or a COP could be a violation of NEPA. Ms. Cooney said adopting the COP is not in violation of NEPA; it is procedural and is called for in the FMP. When a specific EFP proposal is considered NEPA, ESA, and other procedural requirements will be met at that time. Motion 3 passed.

D. Pacific Halibut Management

D.1 Proposed Changes to the Catch Sharing Plan and Annual Regulations (09/20/05; 11:21 am)

D.1.a Agenda Item Overview

Mr. Chuck Tracy presented the agenda item overview.

D.1.b State Proposals

Mr. Anderson presented Agenda Item D.1.b, WDFW Report.

Dr. Burke presented Agenda Item D.1.b, Supplemental ODFW Report and Supplemental ODFW Report 2.

Ms. Cooney asked if the closing date listed on page 3 of Supplemental ODFW Report 2, paragraph C should be by October 31 rather than July 31. Ms. Burke replied yes.

Ms. Cooney asked that the language regarding the Halibut Hotline be restored to the Catch Sharing Plan language recommended in Supplemental ODFW Report 2.

D.1.c Tribal Comments

Mr. Jim Harp presented Agenda Item D.1.c, Supplemental Tribal Comments

D.1.d Reports and Comments of Advisory Bodies

Messrs. John Holloway and Wayne Butler presented Agenda Item D.1.d, Supplemental GAP Report.

Dr. Burke asked why the GAP preferred a date trigger to consider raising the bag limit to two fish daily in the Central Oregon subarea rather than the ODFW proposal of a poundage trigger. Mr. Holloway replied the GAP proposal provided more flexibility and would not be tied to the precision of an inseason estimate.

D.1.e Public Comment

Mr. Mick Buell, Garibaldi Charters, Garibaldi, Oregon

Mr. Al Barney, Holiday Charters, Nehalem, Oregon

Mr. Mike Sorenson, charterboat operator, Toledo, Oregon

Dr. Burke asked if Mr. Sorenson had an opinion on the GAP proposal to split the Columbia River subarea and match the three days per week in the second season to the Central Oregon subarea. Mr. Sorenson replied he was not in favor of splitting the Columbia River subarea at the state line, but felt the GAP proposal would provide a good test of putting additional Oregon quota into the subarea in August.

D.1.f Council Action: Adopt Proposed Changes for Public Review

Mr. Anderson moved (Motion 4) to adopt for public review, the proposed changes to the Halibut Catch Sharing Plan for 2006, as outlined in Agenda Item D.1.b, WDFW Report. Mr. Cedergreen seconded the motion. Motion 4 passed.

Dr. Burke moved (Motion 5) to adopt for public review, the proposed changes to the Halibut Catch Sharing Plan for 2006, as outlined in Agenda Item D.1.b, ODFW Report, September 2005, and Agenda Item D.1.d, Supplemental ODFW Report, September 2005 with the language changes by Eileen Cooney. Mr. Warrens seconded the motion. Motion 5 passed.

Dr. Burke moved (Motion 6) to adopt for public review, the proposed changes to the Halibut Catch Sharing Plan for 2006 in the Central Oregon subarea, as displayed on the screen:

After the Labor Day weekend the IPHC, NMFS, and ODFW will consult to determine whether increasing the central Oregon coast Pacific halibut bag limit is warranted with the intent that the quota for the subarea is taken by September 30. If the quota is not attained by September 30, the season will remain open, maintaining the bag limit in effect at that time, through October 31 or quota attainment, whichever occurs first.

Mr. Warrens seconded the motion.

Dr. Burke noted the motion addresses the intent of the GAP statement regarding increasing the bag limit to two fish in September for the Central Oregon subarea.

Motion 6 passed.

Dr. Burke moved (Motion 7) to adopt for public review, the proposed changes to the Halibut Catch Sharing Plan for 2006 in the Columbia River subarea, as displayed on the screen:

The sport fishery in this subarea will have a primary and secondary season structure. The allocation for this subarea is 2.0 percent of the first 130,845 lbs (59.4 mt) allocated to the Washington sport fishery, and 4.0 percent of the Washington sport allocation between 130,845 lbs (59.4 mt) and 224,110 lbs (101.7 mt) (except as provided in section (e)(3) of this Plan), and 5.0 percent of the Oregon/California sport allocation. The primary season is allocated the full amount of the Washington contribution and, from the Oregon/California sport allocation, the number of pounds equal to the Washington contribution. This subarea is defined as waters south of Leadbetter Point, WA (46 deg, 38.17' N. lat.) and north of Cape Falcon, OR (45 deg, 46.00' N. lat.). The primary season will take place beginning on May 1, and continue 7 days per week until the allocation for the primary season is estimated to have been taken, or July 31, whichever is earlier. The secondary season will reopen on Friday of the following week by NMFS via an update to the recreational halibut hotline, and will be managed under two, individual state subquotas. The ports in the area from Cape Falcon north to the Washington/Oregon border (46 deg, 16.00' N. lat.) will be allocated 50 percent of the remaining allocation from the primary season, plus the difference between the Oregon contribution to the primary season and 5.0 percent of the Oregon/California sport allocation. These ports south of the border will remain open three days per week (Friday, Saturday, and Sunday) until the secondary season allocation is estimated to have been taken, or September 30, whichever is earlier. The ports in the area from the Washington/Oregon border north to Leadbetter Point would be managed not to exceed 50 percent of the remaining allocation from the primary season, plus additional quota transferred from other Washington subareas, if any. These ports north of the border will remain open three days per week (Friday, Saturday, and Sunday) until the secondary season allocation is estimated to have been taken, or September 30, whichever is earlier. Subsequent to the closure of the secondary season, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution. The daily bag limit is one halibut per person, with no size limit. No rockfish may be landed, if halibut are on board the vessel.

Mr. Warrens seconded the motion.

Motion 7 passed.

D.2 Pacific Halibut Bycatch Estimate for the International Pacific Halibut Commission

D.2.a Agenda Item Overview

Mr. Tracy presented the agenda item overview.

D.2.b NMFS Report

Dr. Jim Hastie gave a powerpoint presentation summarizing the information included in Agenda Item D.2.a, Supplemental Attachment 1.

Mr. Anderson asked if the trawl fishery estimates included tribal trawl fisheries. Dr. Hastie replied the estimate only included non-Tribal fisheries, which have a log book program.

D.2.c Reports and Comments of Advisory Bodies

Mr. Bob Conrad presented Agenda Item D.2.c, Supplemental SSC Report.

D.2.d Public Comment

None.

D.2.e Council Guidance on Bycatch Estimation

Mr. Anderson recommended the Council accept the report, and forward the report and estimates derived in the report to the IPHC for the 2006 management year.

E. Habitat

E.1 Current Habitat Issues

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

Mr. Stuart Ellis presented Agenda Item E.1.a, Supplemental HC Report.

Mr. Hansen asked if the cause of the algae bloom in the Klamath Basin was known. Mr. Ellis believed it was a byproduct of river management and elevated temperatures.

Ms. Vojkavich asked if the Klamath water bank issue has been brought up to the Bureau of Reclamation (BOR) in previous Council letters. Mr. Ellis replied the Council letters have not specifically addressed the current water bank program, but have requested a transparent and open accounting system. The State of California and the Klamath tribes have made BOR aware of the issues.

Ms. Vojkavich asked if the HC was recommending including the water bank issue in a response letter. Mr. Ellis replied the topic was included primarily for informational purposes, and the Council could decide the level of technical issues taken up with the BOR. The HC was concerned with the courtesy copy list in the BOR letter, as it included numerous Congressional members, and the impression their letter gave indicating everything was acceptable in the Klamath Basin because of the water bank program. The HC felt it was important for the BOR and the Congressional members to understand there were numerous issues brought up by the Council, in addition to the structure and administration of the water bank program, which the BOR failed to respond to in its letter to the Council.

Ms. Vojkavich asked if there was a priority inferred in regard to the list of potential non-fishing activities affecting EFH to be addressed in the proposed policy document for marine water development projects. Mr. Ellis replied no, it was just a list of examples, and was not meant to be all inclusive or prioritized.

Mr. Warrens asked if the Columbia River fingerling survival results included barged fish. Mr. Ellis replied no, only in-river migrants were evaluated.

Mr. Warrens asked if the barging program in 2005 was expanded. Mr. Ellis replied the program was operated as in the past, but because of the increased spill, the proportion of fish collected for barging was lower in 2005.

Dr. McIsaac asked if the HC reviewed the South Atlantic Fishery Management Council (SAFMC) guidance document on energy development. Mr. Ellis replied no, not all of the HC had the document, and no one had read the entire document, but a brief overview indicated there may be some analogous situations in the Pacific Council region.

E.1.b Reports and Comments of Advisory Bodies

Mr. Don Stevens and Mr. Richard Heep (for Mr. Jim Welter, SAS) presented Agenda Item E.1.b, Supplemental SAS Report.

Ms. Vojkavich asked what the SAS recommendations were. Mr. Heep replied the SAS shared the same concerns as the HC, and endorsed the HC recommendation relative to the response letter to BOR.

Dr. McIsaac asked if the SAS recommended abandoning the water bank. Mr. Heep replied the water bank program should be modified to permanently acquire water rights and retire them rather than renting them.

E.1.c Public Comment

None.

E.1.d Council Action: Consider HC Recommendations

Ms. Vojkovich noted the back and forth letter campaign with BOR may not be productive and questioned its importance.

Mr. Melcher agreed with Ms. Vojkavich, but feels the Magnuson Act requires the Council to comment on these issues.

Mr. Roth noted the Council has written many letters to the BOR and Department of Interior, and this is one of the few responses received. However, based on the courtesy copy list, it is important that the Council set the record straight.

Dr. McIsaac noted the HC recommended the Council write a response to the BOR letter for approval at the November Council meeting. Mr. Hansen directed the HC to proceed with the response letter.

Mr. Tracy noted the HC also requested guidance on prioritizing review of the SAFMC energy development document. Ms. Vojkovich recommended the HC review the document and report to the Council on the applicability and utility of a similar document for the Pacific Council.

F. Groundfish Management

F.1 Status of 2005 Groundfish Fisheries and Consideration of Inseason Adjustments (09/20/05; 2:52 pm)

F.1.a Agenda Item Overview

Mr. John DeVore provided the agenda item overview.

F.1.b Report of the GMT

Ms. Susan Ashcraft provided Agenda Item F.1.b, Supplemental GMT Report. Mr. Merrick Burden joined her at the podium.

Mr. Anderson addressed the GMT recommendation to increase the widow rockfish bycatch cap in the whiting fishery and asked if only the catcher-processor sector remained open to fishing. Mr. Burden said yes, the mothership sector was not expected to resume fishing. Mr. Anderson asked what level of widow rockfish cap increase was recommended and Ms. Ashcraft said something less than 26.8 mt, maybe less than or equal to 25 mt. Mr. Anderson asked if 10 mt of widow were added to the cap, would there be 16.8 mt of widow in reserve and Ms. Ashcraft said yes.

Mr. Alverson asked if there was a change in the fleet or in delivery patterns for the daily trip limit (DTL) fishery this year. Ms. Ashcraft said quota attainments and deliveries are down this year relative to recent years.

Mr. Moore asked if trawl Option B failed due to canary rockfish concerns and Ms. Ashcraft said yes. About 2 mt of canary would be taken under Option B, but there are only 0.2 mt in reserve. Mr. Moore asked about the 35,000 pound trip limit in period 5 north of 40°10' N lat. and Mr. Burden said that proposed trip limit was designed to allow selective flatfish trawl gear seaward of the RCA. Mr. Moore asked why the GMT was not recommending slope rockfish trip limit increases with petrale sole trip limit decreases. Ms. Ashcraft said the GMT's evaluation indicated the darkblotched rockfish and petrale sole take would be too high. She said the GMT would re-evaluate this in November. Mr. Moore said processors put petrale sole landing limits into effect after the NMFS warning of a high petrale sole take.

F.1.c Reports and Comments of Advisory Bodies

Mr. Dale Myer provided Agenda Item F.1.c, Supplemental GAP Report.

Mr. Anderson asked if the mothership sector was done fishing whiting this year and Mr. Myer said there may be one vessel coming back to fish. Mr. Anderson asked if a 10 mt widow rockfish cap increase would be sufficient and Mr. Myer said they were going to recommend a 12-13 mt increase.

F.1.d Public Comment

Mr. Dan Waldeck, Pacific Whiting Conservation Cooperative, Portland, Oregon

F.1.e Council Action: Adopt Preliminary or Final Inseason Adjustments for the 2005 Groundfish Fishery

Mr. Moore moved and Mr. Anderson seconded a motion (Motion 8) to adopt the recommendations of the GMT, as shown in Agenda Item F.1.b, Supplemental GMT Report for groundfish inseason adjustments, DRAFT Minutes - September 2005 (180th Council Meeting)

with an increase in the whiting fishery bycatch cap for widow rockfish from 200 mt to 212 mt.

Mr. Moore felt this goes along with the achievement of National Standard 1. He regretted the Council could not accommodate the nearshore trawl fishery. He felt the team did a good job.

Dr. Burke asked if the bycatch scorecard was updated yet with the inseason adjustments and Mr. DeVore said the GMT's intent was to provide an updated scorecard under agenda item F.5.

Ms. Vojkovich asked about the salmon take in the whiting fishery and whether increased bycatch is likely with the increase in the widow rockfish cap. Dr. Peter Dygert said they are reinitiating consultation to consider Chinook bycatch, and have taken emergency action to close the whiting fishery inseason in depths less than 100 fm. That has reduced bycatch. With those reductions, they are still under 12,000 Chinook. In conjunction with the inshore closure of the fishery, they anticipate 12,000 to 14,000 Chinook will be taken this year in that fishery. Mr. Moore thought the whiting fishery had exceeded the 11,000 Chinook cap two or three times in the past. Dr. Dygert said yes, the cap was exceeded in 1995 and 2000. This is the third time in 15 years. Overall the fishery has been within the conservation trigger. Mr. Anderson asked when Columbia/Snake River fall Chinook were listed under the ESA and Dr. Dygert said 1992.

Dr. McIsaac asked Mr. Moore if the proposed DTL increase was for north of 36° N lat. only and Mr. Moore said yes. Motion 8 passed.

F.2. NMFS Report (09/21/05; 10:57 am)

F.2.a Regulatory Activities

Dr. Freese referred the Council to supplemental Attachment F.2.a, a list of *Federal Register* notices published between June and September. He noted that the Amendment 14(b) regulations are being reviewed by the Department of Commerce prior to publication in the *Federal Register*. A draft VMS EA was handed out at this meeting. It will be updated for the November briefing book. Regarding Amendment 18 (bycatch), NMFS is developing a practicability analysis to discuss the cost of implementing the amendment. In addition, a report on the whiting fishery will be available on the NMFS website. Dr. Freese briefly summarized the report. In November, NMFS will provide a shore-based whiting full retention monitoring program draft EA for the Council to review.

Dr. Freese then discussed Informational Report #9, which indicates that black rockfish was overfished. This report is a 2004 report based on 2002-2003 data. NMFS NWR analyzed total fishing mortality on all species using 2002-2003 data. The reported conclusion that the black rockfish stock was subject to overfishing in 2003 was based on analysis of recreational and tribal catch data. Our initial estimate assigned the recreational catch of black rockfish off of California to the Eureka area, so we had an indication of overfishing. The GMT looked at the data in 2005, and found that Monterey and Conception recreational catches had been assigned to the Eureka area. The mistake was not noticed in time for corrections to be made to the report. NMFS is moving to a new process where quarterly updates on overfished and non-overfished species will be posted on the NMFS website. The black rockfish numbers will be corrected in October when the website is updated. This new quarterly reporting system will allow NMFS and the Council to avoid the December/January rush and will allow the Council to work with the Region to develop a more formal process to deal with rebuilding plan requirements for overfished species. Dr. Freese apologized for the series of mistakes made in the computations and said that NMFS seeks the Council's help in developing ways to ensure these mistakes don't happen again.

Mr. Moore asked if the EA for VMS had been handed out. Dr. Freese said it was given to the advisory bodies so they could prepare for the next meeting, and that he would be more than glad to provide it to the Council.

Ms. Vojkovich asked if shortspine thornyhead was on the list of stocks subject to overfishing in 2003 in the NMFS report. Dr. Freese said it was. Ms. Vojkovich asked for clarification regarding shortspine. Dr. Freese referred the question to Ms. deReynier, who said there is confusion regarding the terms "overfished" and "overfishing." Overfishing is harvest at a rate that is unsustainable in a given year or period of years. In the case of shortspine thornyhead, "overfishing" had occurred, but the stock was not "overfished." Mr. Moore asked if the overfishing had occurred only in one specific year, and had not reoccurred. Ms. deReynier said yes, overfishing occurs when ABC is exceeded for any one given year. For shortspine, overfishing occurred for just one year, 2003. Ms. deReynier noted that due to the regional deadline in January 2005, NMFS did not have complete information on the 2004 fishery, so it was reporting on 2003. Unfortunately, the catches were reported incorrectly as occurring in 2004.

Mr. Anderson asked if the black rockfish overfishing in the 2005 report occurred in 2003. Ms. deReynier said that was correct.

Ms. Cooney reported on an August decision by the Ninth Circuit Court of Appeals on a lawsuit challenging the 2002 groundfish management measures specifications. The decision is not final since it can be appealed. The lawsuit addressed darkblotched rebuilding, and there were two main issues. The first was that in the first year, the rebuilding analysis said darkblotched could be rebuilt within 10 years, and the OY was set at 130 mt. The next assessment showed it was in worse shape and couldn't be rebuilt in 10 years. In that case, the National Standard Guidelines allow for rebuilding in the minimum time to rebuild plus one mean generation time. The time period was lengthened and the OY was raised. The ruling on the second issue, which was favorable to NMFS, had to do with catch overages from year to year. In 2002, there were three stocks without stock assessments, so we used the most current rebuilding analysis to set the OY. The challenge was to account for overages from prior years. Typically, we deal with overages when we do stock assessments. In addition, if there is an overage one year, we adjust management measures the following year in order to avoid another overage. The District Court and the Court of Appeals found that was a reasonable approach. However, the Court disagreed with how the darkblotched rebuilding time was set, saying the interpretation of the National Standard Guidelines here was not permissible. Ms. Cooney went on to describe the case in detail, and said the court had a strong argument. This case specifically talked about darkblotched, but the underlying law will be used by the courts in this region. Ms. Cooney said that NOAA GC's initial guidance to the Council is that this decision needs to be taken into account in developing the 2007-2008 harvest specifications and management measures. The court's discussion of the "shortest time possible, taking into account the biology of the stocks and needs of fishing communities" needs to be considered as the rebuilding standards and specifications are developed. NMFS and NOAA GC will consult on more specific guidance to the Council. The guidance will emphasize what is the shortest time possible for rebuilding, and what are the needs of fishing communities. Very specific information will need to be developed about that for the upcoming record.

F.2.b Science Center Activities

Drs. Elizabeth Clarke and Jim Hastie provided a PowerPoint presentation. The report summarized new assessment results for 23 species, including species under rebuilding. Dr. Clarke noted that although much had been accomplished this year, doing 18 full and 5 updated assessments in one year was not a

sustainable workload. There were also too many assessments reviewed at each STAR Panel. The canary rockfish, lingcod, and petrale sole assessments will be going to the "mop-up" STAR Panel at the end of the month.

Dr. Clarke noted that bottom trawl surveys are ongoing; the hake acoustic survey has been completed, despite the transducer gear falling off the ship; and NMFS will begin mapping proposed EFH areas in October, primarily Coquille and Daisy Bank off Oregon and Santa Lucia bank off California. She reported on a meeting with an industry/NMFS collaborative group designing a widow rockfish acoustic survey, which will be tested this winter. Observer reports, a report on salmon bycatch, and a report on California halibut bycatch have been posted on the NMFS website. A sablefish workshop is being planned for 2006, and the Western Groundfish meeting will be in Newport in February.

Mr. Moore asked if the current whiting stock was below $B_{40\%}$. Dr. Hastie said it was just slightly below.

Dr. McIsaac recognized the SSC, the STAR panels, the data workshops, stock assessment authors, and others involved in preparing the assessments and getting the biennial management schedule on track. Chairman Hansen agreed.

F.2.c Reports and Comments of Advisory Bodies

None.

F.2.d Public Comment

None.

F.2.e Council Discussion

Ms. Vojkovich asked if there would be a discussion of widow rockfish under this item. Dr. McIsaac said this would be discussed under agenda item F.8. The current stock assessment for widow indicates it had not previously dipped below the overfishing threshold, but the previous stock assessment says it had, and that was the basis for the declaration of it being overfished. The question now is whether there is a policy for situations when new scientific information retrospectively changes the history of whether or not a stock has been at an overfished threshold.

Ms. Cooney said the science needs to inform the law, and that NOAA GC is planning to discuss this more internally. Dr. Freese said this issue had not been thoroughly covered in the Act and related policies. Retrospective analysis has been used before in whiting and widow situations. Dr. Freese recommended that the Council send a letter to NMFS requesting guidance. A letter from the Council would trigger NMFS to think about this and inform NMFS about these situations.

Mr. Moore asked when the Council should address such a letter. Chairman Hansen said this would be discussed under F.8.

F.3 Amendment 18 (Bycatch)) (09/21/05; 1:05 pm)

Dr. Bob Lohn complimented Council members for their time and energy and level of devotion to the process. He also presented a certificate of reappointment to Council member Mark Cedergreen and a certificate of appointment to new Council member Rod Moore.

F.3.a Agenda Item Overview

Dr. Dahl provided the agenda item overview.

F.3.b Reports and Comments of Advisory Bodies

Ms. Susan Ashcraft provided Agenda Item F.3.b, Supplemental GMT Report. Mr. Kenyon Hensel provided Agenda Item F.3.b, Supplemental GAP Report.

F.3.c Public Comment

Mr. Pete Huhtula, Pacific Marine Conservation Council, Astoria, Oregon

Ms. Megan Mackey, Pacific Marine Conservation Council, Astoria, Oregon

Mr. Ed Johnston, fisherman, Toledo, Oregon

F.3.d Council Action: Adopt Fishery Management Plan (FMP) Text and Regulatory Recommendations for Public Review

Ms. Vojkovich asked about the discussion on page two of the Draft Bycatch Mitigation Program Work Plan (Agenda Item F.3.a Attachment 2), about bycatch mitigation measures and programs currently in place or under development. She said the last time the Council discussed this we were concerned that we have not documented the type of bycatch or mitigation measures we currently have in place. Is this discussion just to make sure we have all of the tools and actions contained in the amendment document as general tools? She did not see specifics in any document.

Dr. Dahl said this is just to document what the Council has done to date in terms of bycatch mitigation; there is not a parallel accounting in the proposed FMP amendment language. Because it is a framework plan, the intent is to talk in more broad terms about the types of monitoring and mitigation measures are available to the Council.

Ms. Cooney said a lot of this stuff gets lost in different places; some of these things are described in the FMP itself; some of the things are required by the FMP but implemented in regulations. This is just an overall summary.

Mr. Dave Colpo was asked to brief the Council on the PSMFC's electronic fish ticket data information program. Mr. Colpo said that as a program manager for PacFIN he is involved in projects both in Alaska and for the Pacific Coast. The program in Alaska is currently being implemented. He said he would like to take advantage of what PSMFC has learned in Alaska to implement a similar program on the West Coast. It is a web-based program. Right now he is working with contractors to gather information from processors about the best way to implement such a program from their perspective. He said he would like to build a system they would like to use rather than a mandatory system they are forced to use. He is also talking to the states. Their main issue is that any such system has to be compatible with their existing fish ticket systems.

Dr. McIsaac asked Mr. Colpo to comment on a feasible time frame for implementation. Mr. Colpo said, if there is sufficient funding now, we could do it in two years. In Alaska it took about \$750,000 and five years to get the program in place, but it could have been done for somewhat less money and in a shorter time period. With sufficient funding he thought it could be implemented on the West Coast in two years. However, right now he doesn't see sufficient funding to be able to get the program implemented. Their current efforts working with industry and the states are pretty low cost. A lot of processors have taken it

upon themselves to develop their own electronic systems. He is not looking to build the most sophisticated system, just to get something working, like the processors have done. With that objective, two years is a feasible time frame, if there is sufficient funding.

Mr. Alverson asked Dr. Freese about the term "frameworking." He was concerned about setting up any type of observer program for a sector of the industry and asked if it would have to go through the normal rulemaking process. He also asked if, after adoption of these bycatch rules, would any decision on application of an observer program come back to the Council. Ms. Cooney said yes, any of these programs, as they get fleshed out, would require a rulemaking process.

Mr. Anderson asked Dr. Dahl about the process with respect to the relationship between the amendment language for Amendment 18 and the language for Amendment 19, both of which are in a single document. He wanted clarification on whether the action under this agenda item would be only for the Amendment 18 language. Second, he asked about the Draft Bycatch Mitigation Work Plan (Agenda Item F.3.a Attachment 2). Dr. Dahl said the Work Plan explains how the tools available through the amendment could be used by the Council in future actions. Ms. Cooney followed up by saying that one aspect of the FMP amendment was to require current bycatch reduction measures. The other part of the preferred alternative was for the Council to look at sector and vessel bycatch caps; the work plan is a way of determining which of those measures are feasible to implement at the current time or at some point in the future. Mr. Anderson asked about the standing of the Work Plan if the Council takes action on the FMP amendment. Dr. Dahl said it is a bit ambiguous; we don't have a formal process for how the Council would finalize it. He suggested the Council had the discretion to use the same type of process as used for an FMP amendment to finalize the Work Plan. It would then stand as a statement as to how the Council plans to implement the tools described in the FMP. Mr. Anderson said he is comfortable with moving forward on the amendment, but wanted to be clear that the work plan is a separate item under a separate action. There was agreement on his interpretation.

Ms. Vojkovich said there was not an EC report about Amendment 18 and asked about some of the operational definitions of gear types and other items. She asked whether these definitions were put together with EC advice or were standard definitions from some federal document. Dr. Dahl said that Amendment 18 also reorganizes some of the material in the FMP and updates the FMP by, for example, dropping sections that are no longer applicable. The majority of the information regarding gear definitions is already in the FMP and is being brought forward unchanged, with perhaps some editing.

Ms. Vojkovich asked whether the definition of bottom contact gear is a new definition incorporated under Amendment 19. Dr. Dahl said it is a new definition but best addressed under the next agenda item, which has to do with Amendment 19. There would then be an opportunity for the Council to provide guidance on that definition.

Dr. Freese, in response to Mr. Anderson's comments, stressed that the Bycatch Work Plan is a planning document. NMFS will be completing a practicability analysis for the November Council meeting, covering bycatch issues. Therefore, it might be advisable to delay further consideration of this document (Agenda Item F.3.a, Attachment 2) until NMFS comes back with that report.

Mr. Moore moved and Mr. Warrens seconded a motion (Motion 10) to modify Draft Amendment 18 (Agenda Item F.3.a, Attachment 1--bycatch) as follows: On page 6, Objective 9, restore the struck-out first sentence and amend it to add "in accordance with conservation goals" after the parentheses; on page 26, amend the fourth paragraph by striking "the GMT's report" and inserting "comments from its advisory bodies"; and include the language changes in section 6.4.1.1 as identified in Agenda Item F.3.b, DRAFT Minutes - September 2005 (180th Council Meeting)

Supplemental GMT Report.

Mr. Moore said the proposed change to objective 9 moved the Council away from the intent of National Standard 1 and the National Standards Guidelines. That was the purpose of his proposal to restore the struck out sentence under objective 9 with addition of the phrase "in accordance with conservation goals." The part of the motion relevant to page 26 is just housekeeping. The third part (GMT's recommendations for section 6.4.1.1) is self explanatory. The GMT gave us evidence as to why the changes need to be made to that particular section and the GAP fully agreed with them.

Dr. Burke asked why the sentence under Objective 9 was deleted in the first place. Dr. Dahl said the intent was to update this objective based on what was in the Council's groundfish strategic plan. Dr. Burke followed up by asking if the intent was to make it more consistent with National Standard 1. Dr. Dahl said yes, that was the intent.

Mr. Anderson requested a friendly amendment relating the proposal for the change on page 26 so it would read "the GMT's reports, and comments from its advisory bodies." Both the maker and the seconder agreed.

Mr. Anderson said the restored first sentence under objective 9 (page 6 of the amendment) and the second sentence did not fit together very well. They should be stand-alone objectives.

Mr. Moore said he agreed with Mr. Anderson, and said he would accept the two sentences being broken up as objective 9 and (a new) objective 10. Both the maker and seconder agreed to Mr. Anderson's proposal.

Dr. Dahl then suggested moving the first sentence under objective 9 (previously struck out) to become the second sentence of objective 2.

Mr. Moore did not agree with Dr. Dahl's suggestion.

Mr. Anderson suggested moving the second sentence in objective 9 (now proposed as objective 10) to be the second sentence under objective #2.

Mr. Moore said he agreed with Mr. Anderson's proposal as did the seconder.

Motion 10 passed.

Dr. Dahl said he heard Dr. Freese suggest that further action on the Bycatch Mitigation Program Work Plan would be delayed until NMFS comes back with their report on bycatch practicability.

Mr. Anderson said there was a suggestion from the GMT to look at and consider pilot programs for the 2007/2008 management cycle that would have individual vessel bycatch caps. He directed the state representatives on the GMT to give that some thought, and if they had likely candidates for a pilot program, they should report back to the Council at the next meeting.

Ms. Vojkovich agreed with Mr. Anderson but was concerned with the workload implications and said those workload issues should be clarified.

Dr. Burke asked Dr. Freese to elaborate on the detail of the practicability study. Would it only consider

practicability with respect to the federal government or all entities involved? Dr. Freese said all entities involved with managing the fisheries (states, tribes, federal) will be considered. Dr. Freese also responded affirmatively that the practicability analysis would be considered in November. Dr. Burke asked that the practicability analysis be available first before further consideration of the Work Plan.

In summing up this item, Dr. Dahl then said there was some editorial clean up and modest technical changes that need to be made and asked permission for staff to make these changes.

Mr. Moore moved and Mr. Alverson seconded a motion (Motion 11) to adopt for public review the amended version of proposed Amendment 18, with the permission given to staff to correct typos, and make editorial changes. Motion 11 passed.

F.4 Amendment 19 (Essential Fish Habitat) (09/21/05; 2:40 pm)

F.4.a Agenda Item Overview

Dr. Dahl provided the agenda item overview.

F.4.b Reports and Comments of Advisory Bodies

Ms. Ashcraft provided Agenda Item F.4.b, Supplemental GMT Report. Lt. Dave Cleary provided Agenda Item F.4.b, Supplemental EC Report. Mr. Stuart Ellis provided Agenda Item F.4.b, Supplemental HC Report. Mr. Kenyon Hensel provided Agenda Item F.4.b, Supplemental GAP Report.

F.4.c Public Comment

Mr. Rob Cozens, Mendonoma, Marine Life Conservancy, Manchester, California
Mr. Bob Osborn, United Anglers of Southern California, Huntington Beach, California
Mr. Ed Johnston, fisherman, Toledo, Oregon
Mr. Mike McCorkle, commercial fishermen, Santa Barbara, California

F.4.d Council Action: Adopt FMP Text for Public Review

Dr. Dahl reviewed the Council action. Dr. McIsaac elaborated on the review of the draft regulatory language. He said some members of the public have an expectation to see the draft regulatory language and have an opportunity to comment on it at the November meeting.

Dr. Burke asked Dr. Freese if the draft regulatory language would be published in the Federal Register before the November meeting. Dr. Freese said he expected a proposed rule to be published around the middle of November. Dr. Burke noted that implementing VMS was a component of the action and asked Dr. Freese how and when the public would have an opportunity to comment on the VMS proposals.

Dr. Freese said there are three opportunities to comment: (1) at the November Council meeting under the VMS agenda item, (2) at the November Council meeting under the EFH agenda item, and (3) written comment on the EFH proposed rule.

Mr. Alverson asked about the status of the action taken under EFH. He noted final action occurred in June; does that mean the action has to be re-opened to include these clarifications? Dr. McIsaac said the Council action in June was a final action on a preferred alternative for the EFH EIS. The follow-up to that is to put the changes in an FMP amendment and then implement regulations to make various

components of the action effective. The current action can be characterized as the implementation stage of the preferred alternative adopted in June.

Ms. Vojkovich sought to clarify an issue brought up by the GAP with respect to recreational fishing in an area in the Channel Islands and the definition of recreational gear. The intent of the June motion was to have the federal regulations mirror the existing state regulations in that same area. She would expect the federal regulations to reflect that.

Mr. Warrens moved (Motion 12) and Dr. Burke seconded a motion to amend Agenda Item F.3.a, Attachment 1, as follows:

On Page 28, in section 6.2.4, delete, "The Habitat Committee, or another committee designated by the Council," and insert: "The Essential Fish Habitat Oversight Committee, which shall be composed of at least representation from the National Marine Fisheries Service, the Groundfish Management Team, the Groundfish Advisory Subpanel, the Enforcement Consultants, and the Habitat Committee," and be established by the Council Operating Procedures as a standing committee. And, on page 29 – Strike the last sentence beginning with "Any such changes. . . ."

Mr. Warrens, referencing his motion made in June said he did not intend for the HC to be burdened with this responsibility; instead, he meant to establish a new standing committee that would bring issues to the attention of the Council and then the Council would direct them to take action, or be petitioned directly by members of the public.

Mr. Anderson said he objected to the way the amendatory language was written to give the committee the discretion to determine what requests from the public or agencies would be considered. He thought it would be more appropriate for the Council to have that role and then direct the committee to consider the request, if deemed appropriate. For this reason, although he supported the change to establish a new standing committee, he would also like to modify the language to make clear that the Council would decide which requests from the public or agencies would be given to the committee. He said he would support the motion with this understanding.

Mr. Warrens accepted Mr. Anderson's suggestion as a friendly amendment. Mr. Anderson said the Council staff came up with the language here and the language in Section 6.2.4 of the amendment would need to be modified so that it would state the Council would make the assignments to the committee, and the Council would decide what modifications and/or changes to the closed areas should be made. If that was the intent of the motion, then he supported it. Mr. Warrens suggested a change to the language in the motion to address Mr. Anderson's concerns, but other problems with the current language were identified. Mr. Warrens then requested that Dr. Dahl make changes to this section of the amendment consistent with the intent of the motion as discussed here and asked if he understood the concerns.

Dr. Dahl said he understood the concerns and could draft appropriate language.

Dr. Hanson suggested that the motion be withdrawn, and the Council take a short break to redraft the language and then come back to vote on it. The Council did so.

Motion 12 was withdrawn, and it was not voted on.

Motion 13 was moved by Frank Warrens and seconded by Patty Burke:

6.2.4 The Habitat Conservation Framework

In order to protect EFH from the adverse effects of fishing, the Council has identified areas that are closed to bottom trawling (see sections 6.8 and 7.4). These areas are described in federal regulations and may be modified through the full rulemaking process as described under Section 6.2 D. The Council shall establish an EFH Oversight Committee. At the request of the Council, the EFH OC would review the areas currently closed to bottom trawling and recommend to the Council the elimination of existing areas or the addition of new areas, or modification of the extent and location of existing areas. In making its recommendation . . .

Mr. Anderson asked if this motion also included deleting the last sentence in this section as proposed in the previous, withdrawn motion. Mr. Warrens said yes. Mr. Anderson emphasized that this motion does not change the intent of the Council action in June but merely clarifies it. Mr. Moore asked about the description of the various representatives on the Committee in the previous, withdrawn motion. He asked if the composition of the committee would be specified when, at a later time, the COPs are amended to establish this committee. Mr. Warrens said yes. Dr. Burke noted that the withdrawn motion also authorized the committee to consider HAPCs or other protective measures and the current motion as worded creates a committee that will only look at the designation of areas but not regulatory actions associated with those areas. Mr. Anderson clarified how the section would read as changed by the motion, and asked if that addressed Dr. Burke's concern. She said yes.

Motion 13 passed.

Mr. Warrens moved and Dr. Burke seconded a motion (Motion 14) to replace "HC" with "EFH Oversight Committee" in bullets 3 and 4 on page 68 (Section 7.3.2). Motion 14 passed.

Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 15): Adopt the FMP text as amended by Motions 12 and 13 for public review with the following additions: include recommendations 2 and 3 of the HC as found in Agenda Item F.4.b, Supplemental HC Report, and the three recommendations of the GMT as found in Agenda Item F.4.b, Supplemental GMT Report; and recommendation #3 from the GAP, relative to recreational fishing gear, as found in Agenda Item F.4.b, Supplemental GAP Report.

Mr. Moore asked for a friendly amendment with two purposes: first to also include recommendation #2 from the GAP report and second, direct Council staff to review the operational definition of bottom contact gear in the amendment and make sure it is consistent with other definitions of bottom contact gear. Maker and seconder agreed.

Ms. Vojkovich asked about GAP recommendation #3, recreational fishing gear. The intent was to make the regulations in the federal waters the same as the state waters in those areas. The key point is that spears are allowed under state regulations and would therefore be allowed under the federal regulations. She then asked about GAP recommendation #2 and whether it was added to the motion. Mr. Anderson said that GAP recommendation #2 was added as a friendly amendment.

Mr. Anderson, referring to the recreational fishing gear, is there a problem? Ms. Vojkovich said she only wanted to make clear the disposition of spear as recreational gear under the draft regulations.

Ms. Cooney said, regarding GAP recommendation #3, which is a comment on the regulations, keep in mind that these regulations might be changed before the next meeting in response to these comments. As a comment on regulations, it is a recommendation to NMFS. Mr. Anderson said that is understood.

Motion 15 passed.

Dr. McIsaac asked whether the motion included putting out the draft regulations for public review. Mr. Anderson said no. Dr. McIsaac asked the Council whether they wanted to do that. Mr. Moore said he understood the Council was being afforded an opportunity to look at the initial regulatory language and comment on it to NMFS, and there would be further discussions with the EC on some aspects of the exact language. Another revised draft could be available to the Council in November. After the November Council meeting it would be published as a proposed rule and be available for public review. For that reason he didn't see the need to send it out to the public in its current form.

Dr. McIsaac said Mr. Moore described the typical arrangement. This other alternative was designed to facilitate public comment during the Council process as well. Mr. Moore said he didn't think a Council motion was necessary, given the draft document before us now. He said he didn't want to limit the opportunity for comment but questioned the need for a motion. Mr. Hansen asked what the Council wanted to do. Dr. Freese said the process Mr. Moore described is one NFMS is contemplating. He asked if there would be any added benefit to putting something out now that would be further changed. It might result in confusion if multiple drafts are available to the public. Mr. Anderson said the Council should wait until the next draft is available. Dr. McIsaac asked when the next draft would be available. Dr. Freese said the next draft will probably not make the briefing book deadline, but would be available for the first day of the November Council meeting.

Ms. Vojkovich said she wanted to make sure we have the EC at the GMT meeting in October so they can work together on this issue.

Mr. Anderson asked if we gave staff flexibility to make editorial changes. The Chair said yes and Dr. Dahl said he assumed this instruction was covered by the authorization under the previous agenda item.

F.5 Final Consideration of Inseason Adjustments, If Necessary (09/21/05; 4:39 pm)

F.5.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

F.5.b Report of the GMT

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

F.5.c Reports and Comments of Advisory Bodies

None.

F.5.d Public Comment

Mr. Ed Johnston, fisherman, Toledo, Oregon

F.5.e Council Action: If Necessary, Adopt or Confirm Final Inseason Adjustments for the 2005 Groundfish Fishery

Mr. DeVore said no further Council action is needed unless there are errors in the bycatch scorecard or trip limit tables.

Ms. Vojkovich said that on the scorecard (under EFP, page 14, flatfish trawl), there is a line indicating the predicted take of overfished species under nearshore California flatfish trawl EFP. The state of California will not be conducting this EFP, so those reserved amounts could be removed and put into reserve. Ms. Vojkovich also announced that as part of the CDFG inseason action, the commercial cabezon fishery will be closed at 00:01 on October 1. CDFG has projected that the commercial allocation for cabezon will have been taken by that date.

F.6 Process and Schedule for 2007-2008 Biennial Management Specifications Adoption (09/21/05; 9:56 am)

F.6.a Agenda Item Overview

Mr. DeVore provided the agenda item overview and reviewed the proposed process and schedule for developing the 2007-2008 harvest specifications and management measures (Agenda Item F.6.a, Attachment 1).

F.6.b Reports and Comments of Advisory Bodies

GMT Report

Ms. Ashcraft provided Agenda Item F.6.b, Supplemental GMT Report.

Mr. Moore asked if the GMT intended to analyze sector allocations according to Attachment 1 of the GMT report absent Council guidance. Ms. Ashcraft said no, the Council or the Allocation Committee needs to provide guidance. The list of sectors in Attachment 1 of the GMT report was from the Amendment 18 implementation work plan. Mr. Moore asked if the Council does not ultimately recommend sector bycatch caps, then the GMT intends to do no work on this and Ms. Ashcraft answered yes. Mr. Alverson noted the only sectors with real-time observer monitoring are the at-sea whiting sectors. If the Council does not decide sector bycatch caps, is this a fatal flaw? Ms. Cooney said no. There will be internal NMFS discussion regarding the practicability of bycatch caps.

GAP Report

Mr. Gerry Richter provided Agenda Item F.6.b, Supplemental GAP Report.

F.6.c Public Comment

Mr. Ed Johnston, fisherman, Toledo, Oregon

F.6.d Council Action: Adopt the Process and Schedule for Consideration of 2007-2008 Groundfish Fishery Management Specifications

Dr. Burke noted the proposed schedule conflicts with the salmon decision-making schedule as well as
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staff time dedicated to managing fisheries under state jurisdiction. We have nine public meetings between now and December in Oregon, and we have a committed community of people who want to provide input. This schedule is not feasible from the state of Oregon's perspective.

Ms. Vojkovich asked what happens if new regulations are not in place by January 1? Ms. Cooney said the old regulations would remain in place. If trip limits are too high, this could compromise fishing opportunities during the rest of the year. Dr. Freese asked if old period 6 regulations apply for period 1 of the new year in this case or the old period 1 regulations. Ms. Cooney said the old period 1 regulations would apply.

Mr. Anderson understands that the NPFMC has a similar process where the old January-February regulations are implemented for the first two months of the new year. This works if the OYs don't change dramatically. He is interested in exploring options other than the proposed process and schedule for all the reasons stated by Dr. Burke. Therefore, he wants the GMT to analyze different period 1 regulations for the start of 2006 that could also be implemented at the start of 2007 if needed. Mr. DeVore said the GMT could analyze and recommend different period 1 regulations for 2006, which would serve as default regulations for period 1 in 2007, as part of the inseason actions at the next Council meeting in November.

Dr. Freese said NMFS and NOAA General Counsel would like to explore the possibility of waiving the 30-day APA cooling off period for rulemaking. This may relax the schedule enough to allow the Council to decide a final preferred alternative next June without compromising EIS development.

Ms. Vojkovich explained California recreational measures are much more complex than those in Washington, for example. Also the California Fish and Game Commission schedule is not synchronous with the Council's schedule. The Commission schedule can't conform to get a final preferred alternative in April. Ms. Cooney asked if the main state concern regarding a final decision in April or June is the time needed for state public meetings. Mr. Anderson said there is an obligation to engage constituents for both salmon and groundfish decision-making. Washington also needs time to consult tribal co-managers. The overlap in these two processes is untenable with an April decision. Ms. Cooney asked if the April to June timeframe is needed for deciding groundfish management measures and Mr. Anderson and Dr. Burke responded yes. Ms. Vojkovich said California may be able to derive preferred recreational management measures with the requisite analysis by March 15, 2006. Dr. Freese asked if the goal was to have a final preferred alternative decided in June and the state Council representatives responded yes.

Mr. Moore asked if the GMT was planning to evaluate period 1 2006 inseason adjustments in November and Ms. Ashcraft said yes. The GMT was also going to consider reduced petrale sole trip limits then as well. Mr. Moore recommended the GMT also consider period 1 2007 management measures when designing period 1 2006 measures.

Mr. Anderson said we need to resolve the schedule today. He would like the Council to consider using period 1 2006 management measures as a fallback only for starting the 2007 season.

Chairman Hanson asked for this item to be tabled.

F.6.d revisited: 09/22/05; 4:05 pm

Ms. Ashcraft explained the GMT strongly recommends having new implementing regulations by January 1, 2007. The GMT will consider period 1 2006 management measures as a default for period 1 in 2007.

The GMT recommends monthly management measures for period 1 in 2006 with more conservative measures for January 2006. This will provide more management flexibility in 2007 and avoid the early petrale sole OY attainment problem observed this year. Mr. Moore asked if the GMT, GAP, and Council will consider this as an inseason action in November and Ms. Ashcraft said yes.

Ms. Cooney said NOAA General Counsel is still recommending the Council decide a final preferred alternative in April with some minor refinement in June. If the Council can't decide a preferred alternative in April and/or there is a major change in June, then she recommends NMFS waive the 30-day APA cooling off period. This is a better process than planning to use period 1 2006 management measures as a default for 2007. Dr. McIsaac characterized the process as, "adopt a range of refined management measures and, if possible, adopt a tentative preferred alternative in April". State constituent meetings can go beyond December 31 to accomplish this objective. Mr. Moore asked about making progress at the March meeting and Dr. McIsaac suggested the Council could refine measures recommended by the Allocation Committee then, but reserve the April meeting for major action.

Mr. Anderson thought the workload may be largely predicated on the canary rockfish assessment result. Much of the task will be defined by the recommendations of the mop-up STAR panel regarding the canary assessment and rebuilding analyses.

Ms. Vojkovich asked about the objectives of the two Allocation Committee meetings in November and early next year. Dr. McIsaac explained the objective would be to decide species' allocation alternatives for analysis and refinement of the range of other management measure alternatives decided by the Council in November.

Mr. Anderson asked if the GMT and Council staff needed more guidance on sector catch limits. Mr. DeVore thought the GMT had guidance from the Amendment 18 implementation work plan and a motion was not necessary. The Council discussion provided enough guidance for most of the process and schedule. Chairman Hansen and Dr. Hanson, the Council's parliamentarian, agreed.

F.7 Rebuilding Plan Revision Policy

F.7.a Agenda Item Overview (09/22/05; 1:12 pm)

Mr. DeVore provided the agenda item overview.

F.7.b Scientific and Statistical Committee (SSC) Report

Dr. Kevin Hill provided Agenda Item F.7.b, Supplemental SSC Report.

Mr. Moore asked if the SSC had read the GMT's report on this item and Dr. Hill said no.

F.7.c Reports and Comments of Advisory Bodies

GMT Report

Dr. John Field provided Agenda Item F.7.c, Supplemental GMT Report.

Mr. Moore complimented the GMT on the quality of their report. He asked for clarification on what to do in the case when P_{TARGET} (the probability of successful rebuilding by the target rebuilding year) is less than 45%. Dr. Field explained this is a gray area, representing a case when rebuilding is not progressing

adequately. The GMT recommends the Council should resolve a management/policy response on a case-specific basis in this circumstance.

GAP Report

Mr. Gerry Richter provided Agenda Item F.7.c, Supplemental GAP Report.

Mr. Moore stated the GAP agrees with GMT alternative 5. Does the GAP agree with the second GMT recommendation to suspend revision rules at the end of the rebuilding period? Mr. Richter said yes.

F.7.d Public Comment

Mr. Tony DeFalco, presenting the comments of Karen Garrison, NRDC, San Francisco, California

F.7.e Council Action: Adopt Final Policy

Mr. Moore moved and Dr. Burke seconded a motion, (Motion 17) to adopt Alternative #5 as a stated policy for responding to new building analyses, while maintaining the flexibility to consider alternative rebuilding strategies on a case-specific basis as recommended in Agenda Item F.7.c, Supplemental GMT Report.

Mr. Moore explained this is a general policy where decisions can be made on a case-specific basis. There is scientific evidence supporting a rebuilding probability of about 80% resulting in the shortest rebuilding periods without frequent changes resulting from assessment uncertainty or "noise". This policy is responsive to the Ninth Circuit Court of Appeals ruling on the darkblotched rebuilding plan as well as the proposed rule revising the National Standard 1 guidelines. Ms. Cooney commented that NMFS and NOAA General Counsel will be sorting out a response to the darkblotched lawsuit and coming back to the Council in November with guidance on the 2007-2008 specifications and management measures process as well as this policy. Mr. Moore agreed that would be appropriate, but the Council also needs to meet other deadlines.

Mr. Anderson said he supported of motion because the Council needs to have a policy to respond to new assessments and decide biennial harvest specifications.

Dr. McIsaac asked if it was Mr. Moore's intent to incorporate this policy as a Council Operating Procedure (COP) and Mr. Moore said he would defer to the wishes of the Council. Ms. Cooney recommended waiting to formalize this policy in a COP until they could provide guidance to the Council in November.

Motion 17 passed.

F.8 Stock Assessments for 2007-2008 Groundfish Fisheries (09/22/05; 1:49 pm)

F.8.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

F.8.b SSC Report

Dr. Hill provided Agenda Item F.8.b, Supplemental SSC Report.

Dr. Hill highlighted the SSC's recommendations to not approve the vermilion rockfish assessment, to use only the portion of the kelp greenling assessment concerning the Oregon substock, and approve all the other assessments except those for petrale sole, canary rockfish, and lingcod since they will be further reviewed at the mop-up STAR panel.

Mr. Moore noted the absence of STAR panel reports for the yelloweye and yellowtail rockfish assessment reviews. Is the SSC recommending deferring adoption of these assessments pending delivery of the reports? Dr. Hill said the STAR chair for these assessment reviews was present at the SSC meeting and provided the STAR panel recommendations in an oral report to the SSC. The SSC is recommending adoption of these two assessments on that basis.

Mr. Moore asked if the SSC is waiting for the southern petrale sole assessment before recommending adoption of the assessment and Dr. Hill said yes.

Dr. Burke asked about the estimated survey catchability (q) in the canary assessment. Dr. Hill explained a typical survey q for rockfish is about 0.02 and the estimated q in the canary assessment is 0.06. The SSC wants the mop-up STAR panel to further explore the q sensitivity question for canary. Dr. Burke asked if there was time to do this at the mop-up panel and Dr. Hill said he wasn't sure. The SSC has already contacted Dr. Richard Methot, the assessment author, who will be available to explore the assessment at the mop-up STAR panel meeting next week. Mr. Anderson asked if the Santa Cruz juvenile survey was considered by Dr. Methot for use in the canary assessment. Dr. Hill said the survey was considered by Dr. Methot, but not by the original STAR panel. Alternative model runs using the Santa Cruz survey index were not provided. Mr. Anderson asked, in the event additional canary model runs are not provided at next week's mop-up STAR panel, what would the SSC recommend as the scientific basis for managing canary rockfish in 2007-2008? Dr. Hill said the SSC is not recommending the current assessment without these additional runs. Mr. Anderson noted the protocol is to have the completed post-STAR assessment provided two week's in advance of the SSC's November meeting and Dr. Hill said next week's STAR panel review may have to suffice.

Mr. Alverson asked how steepness (h) is derived in the canary assessment and Dr. Hill explained it is estimated by the model. Mr. Alverson asked if more age data would help and Dr. Hill said that would presumably help. Mr. Alverson asked if the CPUE index in the canary assessment uses new observer data and Dr. Hill said he didn't know.

Ms. Vojkovich asked if the SSC recommends the vermilion assessment for management decision-making and Dr. Hill explained it might be useful for determining the stock's relative depletion rate, but not for setting an OY. Ms. Vojkovich asked if all the other assessments can be used to set OYs and Dr. Hill said yes, except for vermilion rockfish and kelp greenling.

Mr. Anderson pointed out the discrepancy brought up in the GMT's report in September 2004 regarding the estimated total catch of canary. Could this effect a change in the assessment result? Dr. Hill presumed so. Mr. Anderson recommended this be brought to Dr. Methot's attention and Mr. DeVore said he will do that. Dr. McIsaac asked Dr. Hill if he thought the canary rockfish stock should respond like the other *Sebastes* stocks, which experienced recent increases in recruitment? Dr. Hill said yes- there is a correlation between the Santa Cruz survey results and *Sebastes* spawning abundance. The Santa Cruz survey has indicated a general increase in *Sebastes* abundance in recent years.

F.8.c Reports and Comments of Advisory Bodies

None.

F.8.d Public Comment

Mr. Scott Hartzell, sablefish fisherman, Florence, Oregon

Mr. Kelly Barnett, fish filleter, Bay City, Oregon

Mr. Ed Johnston, fisherman, Toledo, Oregon

F.8.e Council Action: Approve Stock Assessments for 2007-2008 Groundfish Fisheries

Mr. Moore asked Dr. Hill about Scott Hartzell's testimony regarding the discrepancy between his sablefish landings and those used in the assessment. Should the Council adopt the new sablefish assessment given this discrepancy? Dr. Hill, said his personal opinion is accurate catch data is critical in an assessment. However, he was not sure there was adequate time to update the assessment with new/corrected catch data and schedule a scientific review by the SSC. Dr. Freese asked Dr. Hastie to speak on this issue. Dr. Hastie explained that Scott was referring to fish ticket data to characterize the fishery, but the quantitative data used in the assessment are size/age distributions and total removals. He recommended the state of Oregon should investigate landings discrepancies, but landings are not used in the assessment. Mr. Moore asked if differential landings would not affect the assessment result and Dr. Hastie explained it would affect the estimate of total removals, but not the size or age distribution of the population. The results could shift if the magnitude of discrepancies is large. Dr. Burke asked if it was possible to apply a conversion factor to correct deficiencies in the assessment and Dr. Hastie responded no such conversion factors exist in the SS2 modeling framework. Mr. Alverson asked how it was possible that large landings of large sablefish earlier in the catch history not result in a conclusion there were large year classes prior to 1999. Dr. Hastie said he did not know, but there is a lot of effort to obtain good age information and otolith sample sizes to more accurately estimate recruitment. Mr. Alverson countered that otolith collection is compromised by heading and gutting sablefish at sea and recommended on-board samplers should collect otoliths at sea. Dr. Hastie agreed that would improve sablefish ageing and accuracy of age data and NMFS will investigate this issue further.

Mr. Moore asked about the legal implications of the widow rockfish assessment result implying the stock was never overfished. What is the NMFS policy in this case? Dr. Freese said there is no existing policy. He recommended the Council draft a letter to NMFS asking for a policy call on cases such as widow, whiting, and petrale sole. Ms. Cooney agreed a letter laying out the facts would focus the discussions.

Mr. Anderson moved (Motion 18) the Council approve the stock assessments recommended by the SSC as providing the best available science as indicated in Agenda Item F.8.b, Supplemental SSC Report for use in 2007-2008 groundfish fisheries management decision-making. Mr. Cedergreen seconded the motion.

Mr. Anderson said the motion includes all the recommendations of the SSC.

Mr. Moore moved an amendment to Motion 18 to drop sablefish from the list of stock assessments for approval with the intent that additional work on sablefish be done to correct any potential catch discrepancies and brought to the Council at the November meeting. Mr. Warrens seconded the amendment to motion 18.

Mr. Moore believes additional work would have been requested by the STAR panel if data discrepancies were revealed then. He requests the NWFSC or SSC double-check these data. Ms. Vojkovich thought the sablefish catch data issue was to be resolved by Oregon and Dr. Burke said they will investigate both

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PacFIN landings and sampling data.

Mr. Alverson said he was not sure the amendment is the right vehicle to accomplish what needs to be done. He thought the Council could adopt the assessment now and still investigate catch data discrepancies. He did not agree with challenging the assessment or the process at this time. Dr. Freese asked Dr. Clarke on how they could respond to the amendment if passed. Dr. Clarke said they could have Dr. Schirripa, the sablefish assessment author, investigate the catch data in coordination with ODFW. She was unsure of how this process would work in time for the November Council meeting given Dr. Schirripa's schedule and the lack of a scheduled STAR panel. Dr. Hill concurred and added next week's mop-up STAR panel is fully booked and he was not sure corrected landings in the assessment would require STAR panel review. He recommended Council adoption of the assessment now, even if landings data are to be corrected.

Mr. Moore said it was not his intent to have the entire assessment reviewed again in a STAR panel. He just wanted to investigate a potential data error. Mr. Moore then withdrew his amendment to the motion.

Mr. Anderson recommended the NWFSC contact Dr. Schirripa and request he investigate these landings discrepancies. Any necessary correction can then be made to the assessment and reviewed by the SSC Groundfish Subcommittee before being used in the management decision-making.

Ms. Vojkovich asked if these assessments would be used to set OYs and Mr. DeVore answered yes, for those assessments recommended by the SSC for setting OYs. She then said she was not supportive of the motion because the state of California may not want to set a separate OY for California scorpionfish. Mr. Anderson said the Council can decide later how to manage fisheries using these assessments.

Dr. Burke sought clarification of the SSC recommendations relative to the kelp greenling and vermilion rockfish assessments. These assessments should not be used for setting OYs? Dr. Hill said that was true for the vermilion assessment and the California substock in the kelp greenling assessment. However, the kelp greenling assessment can be used to set OYs for the Oregon substock. Dr. Burke said Oregon has a separate harvest cap for kelp greenling which is more conservative. She wanted some assurance that ODFW could continue with status quo management for kelp greenling. Mr. DeVore explained the Oregon substock of kelp greenling resides solely in state waters and only affects fisheries under state jurisdiction. Oregon is free to manage these fisheries more conservatively.

Chairman Hanson asked for decision on Motion 18. Motion 18 passed.

Mr. Moore moved and Mr. Warrens seconded a motion (Motion 19) to have the Council send a letter to NMFS to resolve policy on whether widow rockfish should be managed under a rebuilding plan given the retrospective analysis indicating the stock was never overfished.

Mr. Anderson urged the Council to step back and consider the larger implications of this request. The FMP requires the widow rockfish stock to be managed to rebuild the stock to the target biomass. He would like to understand any existing policy NMFS might have to cover this situation, but he doesn't want NMFS to invent a policy. Mr. Moore said his motion is not intended to get more fish. Two species on the West Coast have been declared overfished only to have subsequent analyses indicate they never were overfished. This is a legal problem we need to resolve during this era of intense litigation. A Council letter is the best vehicle for understanding policy. Dr. Burke spoke against the motion because the question can cut both ways. One would need to also ask such questions for assessments just above B25%, the overfished threshold. This could get us into a legal quagmire.

Dr. Freese asked Dr. Field, a co-author on the widow assessment, to speak to the quality of the assessment. Dr. Field stated the widow state of nature has not essentially changed with this new assessment. Unfortunately, the point estimates of biomass in this and previous widow assessments straddled the B25% threshold.

Mr. Moore said it is important to understand the legal implications of such assessments; however, sensing the reluctance of the Council to pursue this, he withdrew Motion 19.

F.9 Management Specifications for Spiny Dogfish and Pacific Cod for 2006 (09/23/05; 8:05 am)

F.9.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

F.9.b Reports and Comments of Advisory Bodies

GMT Report

Ms. Ashcraft provided Exhibit F.9.b, Supplemental GMT Report.

Mr. Moore asked if the proposed spiny dogfish limits are the same for all commercial gears and Ms. Ashcraft said yes. Mr. Moore asked if the period 5 limited entry trawl trip limits for Pacific cod were the only difference between alternatives 2 and 3 and Ms. Ashcraft answered yes.

GAP Report

Mr. Tommy Ghio provided Exhibit F.9.b, Supplemental GAP Report.

F.9.c Public Comment

Mr. Michael Deach, F/V Bernice, Lopez, Washington

F.9.d Council Action: Adopt 2006 Harvest Specifications (Optimum Yield and Acceptable Biological Catch) and Management Measures for Public Review

Mr. Anderson noted that these species are important to the tribes and to the states of Washington and Oregon. Spiny dogfish didn't get much attention until May of this year, when Washington realized a proposed fishery by a factory longliner targeting dogfish under the open access limits could lead to problems related to bycatch of overfished species. Mr. Anderson made the following motion:

Motion 20: Adopt the recommendations of the GMT (Supplemental GMT Report, Exhibit F.9.b) for spiny dogfish and Pacific cod for public review. The motion was seconded by Rod Moore.

Ms. Vojkovich noted that people had done a lot of work on this matter, but said that if the Council had taken more action on open access fisheries, it would not have to deal with this. Ms. Vojkovich expressed support for closing open access and finding time to work on open access issues.

Mr. Harp noted that there is a small tribal fishery on the north Washington coast. The Makah tribe will

work with NMFS to develop appropriate trip limits for the tribal fishery and will come back to the Council with those in November.

Motion 20 passed.

G. Salmon Management

G.1 Klamath River Fall Chinook Conservation Objective (09/21/05; 8:01 am)

G.1.a Agenda Item Overview

Mr. Tracy presented the agenda item overview.

G.1.b Report of the Salmon Technical Team

Mr. Dell Simmons presented a summary of Agenda Item G.1.b, STT Report.

Dr. McIsaac asked if the stock/recruitment Model 3 took into account flows or just watershed area. Mr. Simmons replied only watershed area, and that such things as interbasin export of water was not considered.

Mr. Melcher asked if using Model 2 with a prediction of relatively high marine survival, would the stock be able to withstand a corresponding increase in fishing mortality. Mr. Simmons replied yes, but only during the period of high marine survival, as opposed to Model 1, which assumes constant average marine survival.

Mr. Ortmann asked if Model 2 was more of a planning tool as opposed to Models 1 and 3, which would be better for explaining past stock dynamics. Mr. Simmons replied that Model 3 was more dissimilar than Models 1 and 2, and should be considered separately, and with less certainty. Model 2 was probably the preferred model by most of the STT because it corrected some of the bias in Model 1. Model 2 has been used for Columbia River, Washington, and Alaskan stocks.

Dr. McIsaac asked if the marine survival variable used in Model 2 would mask any compensatory survival effects in the estuary. Mr. Simmons replied that it could, but that the assumption was that Klamath River fall Chinook did not congregate in the estuary long enough to induce compensatory effects.

G.1.c Reports and Comments of Advisory Bodies

Mr. Simmons presented Agenda Item G.1.c, Supplemental STT Report.

Dr. Dygert asked if the flow variable used to investigate the relationship between flow and juvenile outmigrants was adequate to characterize water quality factors. Mr. Simmons replied the only data available to develop a statistical relationship were flow data; other variables such as water temperature and dissolved oxygen had inadequate data available.

Mr. Ticehurst asked if the toxic conditions associated with an algae bloom in the upper basin were considered in the STT analyses. Mr. Simmons replied no, that the analyses used historical data and not current conditions.

Mr. Roth asked if hatchery juveniles used as a surrogate for naturally produced fish would adequately represent conditions experienced by fish spawned and reared in the river. Mr. Simmons replied hatchery juveniles were likely not good surrogates, especially for representing factors affecting such things as overwintering survival. Mr. Melcher noted the analysis based on residuals from the spawner/recruit relationship would better represent naturally produced juvenile survival.

Mr. Melcher asked if the hydropower regulated environment provided an adequate range of flows to assess the effects of flow on juvenile survival. Mr. Grover replied probably not, that the natural flow regime was flattened considerably and likely reduced the ability of the model to characterize the relationship.

Mr. Tracy asked if the STT conclusion that there was not sufficient new information to warrant any changes in the current FMP objective was because a longer data set was required or if the data used in the analysis was not appropriate to adequately describe Klamath Basin population dynamics. Mr. Simmons replied that the STT did not have the type of data best suited to analyzing the Klamath Basin, which would include a long time series of natural juvenile outmigrant abundance estimates and adult returns in the Klamath and Trinity systems separately. Genetic sampling may be required to separate the stocks in the lower river.

Dr. Dygert asked if the STT recommendation was to maintain the current conservation objective. Mr. Simmons replied the STT attempted to answer two questions: 1) was there any flaw in the 33-34% adult escapement objective, and 2) was there sufficient data of the appropriate type to change the conservation objective to an MSY escapement objective. The answer to both questions was no.

Mr. Don Stevens provided Agenda Item G.1.c, Supplemental SAS Report.

Mr. Ellis provided Agenda Item G.1.c, Supplemental HC Report.

Mr. George Kautsky, Hoopa Valley Tribe presented Agenda Item G.1.d, supplemental Public Comment. He noted the STT stock/recruitment analysis included only three points with stock sizes over 100,000. He also stated the Hoopa Valley Tribe felt there was sufficient flexibility in the existing management process and that an FMP amendment was unnecessary.

Mr. Harp asked if the Hoopa Valley Tribe would consider addressing some of the sampling issues mentioned by the STT, including juvenile monitoring and genetic stock identification. Mr. Kautsky replied the Hoopa Valley Tribe has an ongoing juvenile monitoring program that includes abundance estimates in the Trinity system. The Yurok Tribe is working in the Klamath Basin. The separation of stocks using genetic information would be useful, and the tribes would support funding proposals through Pacific States Marine Fisheries Commission.

G.1.d Public Comment

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

Mr. Duncan MacLean, troller, El Granada, California

Mr. Dave Bitts, PCFFA, McKinleyville, California

Ms. Cooney noted the discretion to implement emergency rules was not lost in the 1996 reauthorization of the Magnuson-Stevens Act. Dr. Dygert noted the language in the Salmon Fishery Management Plan

provides a process for implementing emergency regulations.

G.1.e Council Guidance on Further Consideration of Amending the Conservation Objective

Mr. Melcher noted the Klamath Fishery Management Council (KFMC) will meet October 18 in Klamath Falls, Oregon and has directed the KRTAT to review the STT report. He recommended deferring a decision on initiating an FMP amendment until after the KFMC has a chance to meet and the SSC has reviewed the STT analysis. The emergency flexibility issue also should be clarified. The issue should be put on the November 2005 Council agenda for consideration at that time.

Mr. Harp agreed with Mr. Melcher's comments. He requested the SSC salmon subcommittee review the STT Report at the Methodology Review meeting and bring their comments to the November Council meeting. He noted the KFMC will bring a report to the next PFMC meeting.

Dr. Dygert concurred with Mr. Melcher and Mr. Harp, and requested the KFMC provide some feedback on both substance and criteria for adding language to the FMP allowing flexibility around the Klamath River fall Chinook conservation objective.

Mr. Ticehurst felt disease effects should be incorporated into the stock/recruitment analyses. Mr. Ortmann recommended beginning that process by following up on Mr. Bitts' suggestion to have the Council briefed on the *Ceratomyxa shasta* problem in the Klamath Basin.

Mr. Roth said he would make contact with USFWS fish health expert Dr. Scott Foott and request a briefing for the Council.

Mr. Anderson asked for clarification on assignments to report on the existing flexibility within the emergency rule procedure and any changes since it was last used in 1992 relative to salmon management. Dr. Dygert replied that NMFS and legal council would report to the Council at the November meeting.

G.2 Salmon Methodology Review

G.2.a Agenda Item Overview (09/21/05; 10:05 am)

Mr. Tracy presented the agenda item overview.

G.2.b Agency and Tribal Reports and Comments

None.

G.2.c Model Evaluation Workgroup Report

Mr. Simmons presented Agenda Item G.2.c, Supplemental MEW Report.

Mr. Melcher asked how the proposed Columbia River ocean abundance estimates will interface with the Pacific Salmon Commission (PSC) process. Mr. Simmons replied the PSC Chinook model uses terminal run forecasts and not ocean abundance estimates, so it would continue to use the Joint Staff terminal run forecasts. Mr. Melcher asked if the PSC would require a review of the ocean abundance estimates for their process. Mr. Simmons replied the Joint Staff would continue to generate the terminal run forecasts, which the PSC would use. The PSC does not generally require approval of domestic methodology issues.

G.2.d Reports and Comments of Advisory Bodies

Mr. Simmons presented Agenda Item G.2.d, Supplemental STT Report.

Mr. Roth noted additional work on the Columbia River ocean abundance forecasts will be required before they are ready for implementation, and they will also be subject to review by the Columbia River Technical Advisory Committee.

Dr. Dygert noted the KOHM will be reviewed relative to performance of the model for predicting age-4 ocean harvest rates, which is the basis for the ESA consultation standard for California Coastal Chinook, pending results of 2005 fisheries, but prior to the 2006 season. The review of any proposed changes may not fall within the usual methodology review process. Mr. Melcher asked if NMFS anticipated changes to the KOHM or changes to the consultation standard. Dr. Dygert replied the standard would not likely change, but use of the model may, for example using a shorter time series to estimate harvest rates.

Mr. Melcher asked if changing base period data is something the STT would do without review. Mr. Simmons replied the example used would be a change of the input data, not the model structure, but if the need to modify something like the base period arose during the preseason process the STT would bring it to the attention of the Council and ask for approval.

Mr. Anderson asked when the contact rate data would be discussed by the STT. Mr. Simmons replied during the Preseason Report I meeting in early February, with a report to the Council in March if necessary.

Dr. Pete Lawson provided Agenda Item G.2.d, Supplemental SSC Report. He noted the SSC was also being asked to review the STT Klamath River fall Chinook stock-recruitment analyses, and asked the Council what questions were to be answered by the SSC review.

Dr. Dygert replied the SSC review should include review of the datasets and the mechanics of the stock-recruitment analyses, and assess its relevance to the conservation objective. Comments on the flow-recruitment analyses would also be appropriate.

Mr. Melcher agreed with Dr. Dygert's guidance, and added the use of the marine survival index in Model 2 deserves particular focus.

G.2.e Public Comment

Mr. Ed Johnston, fisherman, Toledo, Oregon

G.2.f Council Action: Final Prioritization and Scheduling of the Review of Salmon Methodology Changes for the 2006 Season

Mr. Anderson moved (Motion 9) to direct the Salmon Subcommittee of the SSC to review the four items contained in Agenda Item G.2.d, Supplemental SSC Report; and the STT's Klamath River fall Chinook stock-recruitment analyses and report back to the Council. Mr. Alverson seconded the motion. Motion 9 passed.

H. Marine Protected Areas

H.1 Channel Islands National Marine Sanctuary (CINMS) (09/22/05; 8:04 am)

H.1.a Agenda Item Overview

Mr. Mike Burner provided the agenda item overview.

H.1.b Statement of the CINMS Staff

Mr. Sean Hastings, CINMS staff, stated the primary purpose of his attendance was to be available to answer questions. The CINMS is appreciative of the extensive amount of time spent by the Council advisory bodies on issues related to the CINMS. The CINMS at this time is proceeding with the request to the Council to draft fishing regulations as outlined in a letter from Vice Admiral Lautenbacher. To be clear, this process does not presuppose that regulations for the federal waters of the CINMS will be promulgated under the NMSA. The CINMS appreciates that the process under the NMSA is different from the Council process. The CINMS is requesting regulations from the Council which will be included in a DEIS for analysis. If regulations under the NMSA are chosen as the preferred alternative, the proposed action could also include potential amendments to the CINMS designation document. The DEIS could be available in early 2006 for thorough public and Council review, including proposed regulations and designation document changes. The CINMS is looking to the Council for recommendations as to how to move forward under the NMSA understanding the Council's earlier recommendation that no changes be made to the CINMS designation document. We are all waiting for a NOAA determination on the use of MSA or NMSA authority with the expectation such a determination will be available in November.

Ms. Vojkovich, relative to the proposed designation document changes, asked if Mr. Hastings could speak to specify the scope of authorities proposed for the designation document. Mr. Hastings said the CINMS completed a public scoping process and provided potential language in the spring of 2005. The language proposed CINMS authority to regulate fisheries in discreet zones which is effectively an acknowledgement that there is no intent to regulate waters throughout the sanctuary. Additionally, the changes would build on the process that was started in 1999 and is limited to areas discussed through that process.

Mr. Moore asked if there was a timeline anticipated for release of the DEIS itself rather than the supporting materials the Council has been provided. Mr. Hastings said if we are to proceed with regulations under the NMSA, the CINMS would be looking for the Council response following the November Council meeting. Following Council response the CINMS would complete the document and submit it for internal review with an anticipated release sometime in the spring of 2006 with the required public review periods and public meetings. The document will likely be released with the Council meeting schedule in mind. Mr. Moore asked if the decision is made to move forward with fishing regulations under the NMSA, would the DEIS also include the necessary changes to the CINMS designation document. Mr. Hastings said it would include a draft proposed rule and any draft amendment language to the designation document. He reiterated that these would be draft and not final until publication of the final rule.

Dr. McIsaac asked about a forthcoming technical analysis in the DEIS. He stated the Council has been concerned about not having the same information available as will be made available to other decision makers when the full DEIS is complete. He noted the response letter from Mr. Basta (H.1.a Attachment 4)

says "we believe the analyses and information provided so far are fully sufficient to support the Council's deliberations." Dr. McIsaac asked Mr. Hastings if additional technical analysis of potential fishing regulations will be made available after the Council considers the matter. Mr. Hastings stated CINMS is required to provide the Council with its goals and objectives and the available information on ecological and economical impact. This information has been provided to the Council in the supporting materials. The DEIS will have more data available on the ecological and economical parameters. The Council has everything that the CINMS currently has. The DEIS will have to meet many legal requirements and will therefore contain more detail. Dr. McIsaac asked if there will be new technical analysis of the impacts of fishing regulations after today that the Sanctuary will consider but the Council won't be able to. Mr. Hastings replied, "No."

Ms. Vojkovich asked about public comment opportunities outside of the Council process leading up to the final rule. Mr. Hastings said that for drafting fishing regulations the public process is entirely within the Council process but, for the entire process, the CINMS has the Sanctuary Advisory Council, a local public venue to provide access to schedules and information which meets every other month. Additionally, if the DEIS is released, there will be appropriate public scoping periods and hearings and the release will be timed to coincide with Sanctuary Advisory Council and Council meetings. The Sanctuary Advisory Council is very interested in this Council and has been tracking the groundfish EFH process and hopes to work closely with this Council in the future.

Mr. Moore asked if the CINMS is looking into establishing regulations beyond the current marine reserve areas under consideration. Mr. Hastings said the CINMS is not, and that waters outside of the marine reserve areas are proposed to remain under Council or state jurisdiction. He said the CINMS is only interested in the designation document authority to regulate fisheries within discreet zones. This action is not intended to usurp Council authority, and regardless of the outcome, the Council, NMFS, and the CINMS will need to continue to coordinate on matters of monitoring and regulating the CINMS into the future.

Mr. Alverson asked if Mr. Hastings was aware of the SSC's statement. Mr. Hastings said yes he is aware of the statement and the SSC request for additional information and documentation. Mr. Hastings stated he will make sure that, between now and November meeting, the SSC and Council have the materials they need to provide informed input. One of the documents was incorrectly cited in the materials as it should have been clear the document was still being drafted.

H.1.c Reports and Comments of Advisory Bodies

Dr. Kevin Hill provided Agenda Item H.1.c, Supplemental SSC Report.

Mr. Burner read Agenda Item H.1.c, Supplemental GAP Report. Mr. Ghio was asked to come to the podium, there was confusion about what the phrase "majority of the GAP" means and whether there was a minority. It was clarified that this represents a consensus statement, not a "majority". This typo, along with an incorrect reference to the MSA was corrected on the Council floor.

Mr. Burner read Agenda Item H.1.c, Supplemental SAS Report.

Mr. Ellis provided Agenda Item H.1.c, Supplemental HC Report.

Messrs. Russ Svec, Mel Moon, Alvin Penn, and James Delacruz provided Agenda Item H.1, Supplemental Tribal Comment.

H.1.d Public Comment

Mr. Ed Johnston, fisherman, Toledo, Oregon

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

Ms. Kate Wing, NRDC, San Francisco, California

Mr. Tommy Ghio, (read Ms. Kathy Fosmark's testimony on her behalf), Moss Landing, California

H.1.e Council Action: Consider Proposed Draft Fishing Regulations under National Marine Sanctuaries Act Authority for Public Review

Mr. Harp referenced Informational Report 2 and requested that this letter be part of the Council record for this agenda item.

Ms. Vojkovich moved, and Mr. Thomas seconded a motion (Motion 16) to adopt the following range of options designed to maintain the Council's cooperative and responsive relationship with the National Marine Sanctuary Program:

Option 1: Not to propose fishing regulations for the CINMS under National Marine Sanctuaries Act authority.

Option 2: Recommend fishing regulations to implement Alternative 2 in Agenda Item H.1.a, Attachment 1 under NMSA authority. Requires designation document changes.

Option 3: Recommend fishing regulations to implement Alternative 3 in Agenda Item H.1.a, Attachment 1 under NMSA authority. Requires designation document changes.

Direct Council staff to develop the proposed regulatory language for the options above.

Direct Council staff to send the SSC comments to the CINMS and ask for a response to those comments by October 12, 2005 in time for the November Briefing Book deadline.

Ms. Vojkovich felt the motion represents a range of options that acknowledges the range of public comment. Ms. Vojkovich stressed the importance of the anticipated NOAA determination on fishery management authority when the Council chooses a final option in November and clarified that the issue of potential designation document changes are imbedded in Option 2 and Option 3 for public considerations. Ms. Vojkovich chose not to include Alternative 1 in Agenda Item H.1.a, Attachment 1 because that alternative does not utilize National Marine Sanctuary Act authority. Ms. Vojkovich added that the proposed regulatory language for groundfish EFH under Agenda Item F.4 could serve as a template for developing regulations and expects that final regulatory language would likely be drafted by the staff of the CINMS. Regulations developed by the Council staff should serve to convey Council intent to both the CINMS staff and the public.

Mr. Moore said he supports the motion as it reflects the comments of the public and the SSC and other advisory bodies. He then asked Dr. McIsaac about the reality of having the Council staff write the draft language given the short time period between now and the November Briefing book deadline.

Dr. McIsaac stated this task can be accomplished because there is already a strong start given the draft language for groundfish EFH under Agenda Item F.4 and the coordinates and regulatory language provided by the CINMS. Dr. McIsaac then requested NMFS SWR staff provide a review of the Council staff draft language prior to public review. Mr. Helvey responded that NMFS SWR is willing to provide comments and assistance in the drafting of the language and thanked Ms. Vojkovich and the State of California for this motion which provides options under both MSA and NMSA authority prior to the NOAA determination.

Motion 16 passed.

4 P.M. PUBLIC COMMENT PERIOD

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

Mr. Ed Johnston, Toledo, Oregon. Spoke on closure of groundfish fisheries in Oregon. Spoke on OR Senate bills 803 and 805, to prohibit ODFW to close fisheries on major holidays. Urged Senator Smith (OR) to consider his proposed ideas and asked the Council to consider a rule change to make it so sports fisheries could not be closed on holidays.

Mr. Scott Boley, Gold Beach, Oregon. Testimony concerning the troll salmon fishery; he asked the Council to consider implementing management measures to spread the fishery out and slow it down. He suggested the Council consider measures such as landing limits by delivery; open/closed periods; weekly vessel landing limits or trip limits; or catch levels of trigger points where the above measures might be implemented.

Mr. Dan Mark Wichar, Vancouver, Washington. Spoke about sea turtles issue. He felt sea turtles are important to the environment/ecology. He felt drift nets should not be allowed at all, as they drag up the ocean floor. Voiced his concerns for the need for conservation of the sea turtles.

ADJOURN

The Council meeting was adjourned on Friday, September 23, 2005 at 1:32 pm.

DRAFT

DRAFT

Council Chairman

Date

DRAFT VOTING LOG
Pacific Fishery Management Council
September 18-23, 2005

Motion 1: Approve the agenda as shown in Agenda Item A.4, September Council Meeting Agenda.

Moved by: Bob Alverson
Motion 1 passed.

Seconded by: Rod Moore

Motion 2: Delay the approval of the minutes until Friday.

Moved by: Rod Moore
Motion 2 passed.

Seconded by: Patty Burke

Motion 3: For the proposed Council Operating Procedure (COP) for approving exempted fishing permits for highly migratory species (HMS), adopt the recommendations from the HMSMT as shown in Agenda Item C.3.b, Supplemental Revised HMSMT Report, incorporating the SSC recommendations, and in both the interim and permanent protocol add the HMSAS to the Review and Approval section.

Moved by: Rod Moore
Motion 3 passed.

Seconded by: Frank Warrens

Motion 4: Adopt for public review, the proposed changes to the Halibut Catch Sharing Plan for 2006, as outlined in Agenda Item D.1.b, WDFW Report, September 2005.

Moved by: Phil Anderson
Motion 4 passed.

Seconded by: Mark Cedergreen

Motion 5: Adopt for public review, the proposed changes to the Halibut Catch Sharing Plan for 2006, as outlined in Agenda Item D.1.b, ODFW Report, September 2005, and Agenda Item D.1.d, Supplemental ODFW Report, September 2005 with the language changes by Eileen Cooney.

Moved by: Patty Burke
Motion 5 passed.

Seconded by: Frank Warrens

Motion 6: Adopt for public review, the proposed changes to the Halibut Catch Sharing Plan for 2006 in the Central Oregon subarea, as displayed on the screen:

“After the Labor Day weekend the IPHC, NMFS, and ODFW will consult to determine whether increasing the central Oregon coast Pacific halibut bag limit is warranted with the intent that the quota for the subarea is taken by September 30. If the quota is not attained

by September 30, the season will remain open, maintaining the bag limit in effect at that time, through October 31 or quota attainment, whichever occurs first."

Moved by: Patty Burke
Motion 6 passed.

Seconded by: Frank Warrens

Motion 7: Adopt for public review, the proposed changes to the Halibut Catch Sharing Plan for 2006 as follows:

(iv) Columbia River subarea.

The sport fishery in this subarea will have a primary and secondary season structure. The allocation for this subarea is 2.0 percent of the first 130,845 lbs (59.4 mt) allocated to the Washington sport fishery, and 4.0 percent of the Washington sport allocation between 130,845 lbs (59.4 mt) and 224,110 lbs (101.7 mt) (except as provided in section (e)(3) of this Plan), and 5.0 percent of the Oregon/California sport allocation. The primary season is allocated the full amount of the Washington contribution and, from the Oregon/California sport allocation, the number of pounds equal to the Washington contribution. This subarea is defined as waters south of Leadbetter Point, WA (46 deg, 38.17' N. lat.) and north of Cape Falcon, OR (45 deg, 46.00' N. lat.). The primary season will take place beginning on May 1, and continue 7 days per week until the allocation for the primary season is estimated to have been taken, or July 31, whichever is earlier. The secondary season will reopen on Friday of the following week by NMFS via an update to the recreational halibut hotline, and will be managed under two, individual state subquotas. The ports in the area from Cape Falcon north to the Washington/Oregon border (46 deg, 16.00' N. lat.) will be allocated 50 percent of the remaining allocation from the primary season, plus the difference between the Oregon contribution to the primary season and 5.0 percent of the Oregon/California sport allocation. These ports south of the border will remain open three days per week (Friday, Saturday, and Sunday) until the secondary season allocation is estimated to have been taken, or September 30, whichever is earlier. The ports in the area from the Washington/Oregon border north to Leadbetter Point would be managed not to exceed 50 percent of the remaining allocation from the primary season, plus additional quota transferred from other Washington subareas, if any. These ports north of the border will remain open three days per week (Friday, Saturday, and Sunday) until the secondary season allocation is estimated to have been taken, or September 30, whichever is earlier. Subsequent to the closure of the secondary season, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution. The daily bag limit is one halibut per person, with no size limit. No rockfish may be landed, if halibut are on board the vessel.

Moved by: Patty Burke
Motion 7 passed.

Seconded by: Frank Warrens

Motion 8: Adopt the recommendations of the GMT, as shown in Agenda Item F.1.b, Supplemental GMT Report for groundfish inseason adjustments, with an increase in the whiting fishery bycatch cap for widow rockfish from 200 mt to 212 mt.

Moved by: Rod Moore
Motion 8 passed.

Seconded by: Phil Anderson

Motion 9: Ask the Salmon Subcommittee of the SSC to review the four items contained in Agenda Item G.2.d, Supplemental SSC Report; and the STT's Klamath River conservation objective as outlined in the STT report and report back to the Council.

Moved by: Phil Anderson
Motion 9 passed.

Seconded by: Bob Alverson

Motion 10: Modify Draft Amendment 18 (Agenda Item F.3.a, Attachment 1--bycatch) as follows: On page 6, Objective 9, restore the struck-out first sentence and amend it to add "in accordance with conservation goals" after the parentheses; move the second sentence in Objective 9 to be the second sentence in Objective 2; on page 26, amend the fourth paragraph by striking "the GMT's report" and inserting "comments from its advisory bodies"; and include the language changes in section 6.4.1.1 as identified in Agenda Item F.3.b, Supplemental GMT Report.

Moved by: Rod Moore
Motion 10 passed.

Seconded by: Frank Warrens

Motion 11: Adopt for public review the amended version of proposed Groundfish Amendment 18; with the permission given to staff to correct typos, and make editorial changes.

Moved by: Rod Moore
Motion 11 passed.

Seconded by: Bob Alverson

Motion 12: Amend Agenda Item F.3.a, Attachment 1, as follows::

On Page 28, in section 6.2.4, delete, "The Habitat Committee, or another committee designated by the Council," and insert: "The Essential Fish Habitat Oversight Committee, which shall be composed of at least representation from the National Marine Fisheries Service, the Groundfish Management Team, the Groundfish Advisory Subpanel, the Enforcement Consultants, and the Habitat Committee," and be established by the Council Operating Procedures as a standing committee. And, on page 29 – Strike the last sentence beginning with "Any such changes. . . ."

Moved by: Frank Warrens
Motion 12 Withdrawn, Not Voted On.

Seconded by: Patty Burke

Motion 13: Adopt the following FMP text (Amendment 19) for public review:

6.2.4 The Habitat Conservation Framework

In order to protect EFH from the adverse effects of fishing, the Council has identified areas that are closed to bottom trawling (see sections 6.8 and 7.4). These areas are described in federal regulations and may be modified through the full rulemaking process as described under Section 6.2 D. The Council shall establish an EFH Oversight Committee. At the request of the council, the EFH OC would review the areas currently closed to bottom trawling and recommend to the Council the elimination of existing areas or the addition of new areas, or modification of the extent and location of existing areas. In making its recommendation. . .

Moved by: Frank Warrens
Motion 13 passed.

Seconded by: Patty Burke

Motion 14: Replace "HC" with "EFH Oversight Committee" in bullets 3 and 4 on page 68 (Section 7.3.2 of Agenda Item F.3.a, Attachment 1).

Moved by: Frank Warrens
Motion 14 passed.

Seconded by: Patty Burke

Motion 15: Adopt the FMP text as amended by Motions 12 and 13 for public review with the following additions: include recommendations 2 and 3 of the HC as found in Agenda Item F.4.b, Supplemental HC Report, and the three recommendations of the GMT as found in Agenda Item F.4.b, Supplemental GMT Report; and recommendations #2 and #3 from the GAP, relative to recreational fishing gear, as found in Agenda Item F.4.b, Supplemental GAP Report. Direct Council staff to review the operational definition of bottom contact gear in the amendment and make sure it is consistent with other definitions of bottom contact gear.

Moved by: Phil Anderson
Motion 15 passed.

Seconded by: Mark Cedergreen

Motion 16: For proposed draft fishing regulations under National Marine Sanctuaries Act Authority for public review, adopt the following:

Option 1: Not to propose fishing regulations for the CINMS under National Marine Sanctuaries Act authority.

Option 2: Recommend fishing regulations to implement Alternative 2 in Agenda Item H.1.a, Attachment 1 under NMSA authority. Requires designation document changes.

Option 3: Recommend fishing regulations to implement Alternative 3 in Agenda Item H.1.a, Attachment 1 under NMSA authority. Requires designation document changes.

Direct Council staff to develop the proposed regulatory language for the options above.

Direct Council staff to send the SSC comments to the CINMS and ask for a response to those comments by October 12, 2005 in time for the November Briefing Book deadline.

Moved by: Marija Vojkovich

Seconded by: Roger Thomas

Motion 16 passed.

Motion 17: Adopt Alternative #5 as a stated policy for responding to new building analyses, while maintaining the flexibility to consider alternative rebuilding strategies on a case-specific basis as recommended in Agenda Item F.7.c, Supplemental GMT Report.

Moved by: Rod Moore

Seconded by: Patty Burke

Motion 17 passed.

Motion 18: Approve the stock assessments for use in 2007/2008 groundfish fisheries management that have been indicated by the SSC as providing the best available science as found in Agenda Item F.8.b, Supplemental SSC Report. The motion included the SSC recommendations to not use the stock assessments for vermilion rockfish and kelp greenling in California.

Moved by: Phil Anderson

Seconded by: Mark Cedergreen

Amendment: Drop sablefish from the list of stock assessments with the intent that additional work on sablefish be done and brought up to the Council at the November meeting

Moved by: Rod Moore

Seconded by: Frank Warrens

Amendment withdrawn, not voted on.

Main Motion 18 passed, no amendments.

Motion 19: Have the Council send a letter to NMFS to resolve policy on whether widow rockfish should be managed under a rebuilding plan given the retrospective analysis indicating the stock was never overfished.

Moved by: Rod Moore

Seconded by: Frank Warrens

Motion 19 withdrawn, not voted on.

Motion 20: Adopt the recommendations of the GMT (Supplemental GMT Report, Exhibit F.9.b) for spiny dogfish and Pacific cod for public review.

Moved by: Phil Anderson

Seconded by: Rod Moore

Motion 20 passed.

Motion 21: Approve the April minutes as shown in Agenda Item B.1.b, Draft April 2005 Minutes, and the June minutes as shown in Agenda Item B.1.a, Draft June 2005 Minutes.

Moved by: Jerry Mallet

Seconded by: Roger Thomas

Motion 21 passed.

Motion 22: Accept the reports of the Legislative Committee and the Enforcement Consultants.

Moved by: Bob Alverson

Seconded by: Frank Warrens

Motion 22 passed. Mr. Moore abstained from the vote on Motion 22.

Motion 23: Adopt the recommendations of the EC and the Legislative Committee regarding Magnuson-Stevens Fishery Conservation and Management Act (MSA) as presented in Agenda Items B.3.c, Supplemental EC Report and B.3.b, Supplemental Legislative Committee Report, September 2005. In addition, have the Council send a letter to the Secretary of Commerce requesting his support for the three omissions from the draft reauthorization bill contained in the Legislative Committee's report and for the protection of 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.

Moved by: Bob Alverson

Seconded by: Mark Cedergreen

Motion 23 passed. Dr. Freese abstained from the vote on Motion 23.

Motion 24: Have 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.

Moved by: Bob Alverson

Seconded by: Mark Cedergreen

Amendment: Amend motion 24, to have the comments of the LC included in the proposed letter to Senator Smith along with one additional point, "The issue of what the appropriate division of harvester and processors shares, if any in a dedicated access system needs to be part of a debate within the regional Council process."

Moved by: Phil Anderson

Seconded by: Marija Vojkovich

Amendment passed. Mr. Moore and Dr. Freese abstained from the vote on the amendment to Motion 24.

Main Motion 24 passed. Dr. Burke voted no, Dr. Freese and Mr. Moore abstained.

Motion 25: Approve the report of the Budget Committee as shown in Agenda Item B.4.b, Supplemental Budget Committee Report.

Moved by: Jerry Mallet

Seconded by: Dave Ortmann

Motion 25 passed.

Motion 26: Modify COP 7 to include the non-voting advisors to the Groundfish Allocation Committee, whose members are: These changes are contingent on the passage of COP 7 at the November Council meeting.

Moved by: Phil Anderson

Seconded by: Mark Cedergreen

Motion 26 passed.

Motion 27: Add to the November agenda the consideration to add a 7th non voting member of the groundfish Allocation Committee to represent the whiting fishery and in anticipation of that action, request staff to seek nominations.

Moved by: Phil Anderson

Seconded by: Mark Cedergreen

Motion 27 passed.

Motion 28: Appoint Dr. Stephen Stohs to replace Dr. Sam Herrick on the Highly Migratory Species Management Team.

Moved by: Steve Freese

Seconded by: Jim Harp

Motion 28 passed.

Motion 29: Appoint Ms. Heather Munro Mann to fill the processor sector vacancy on the Groundfish Advisory Subpanel

Moved by: Patty Burke

Seconded by: Frank Warrens

Motion 29 passed.

Motion 30: Appoint Ms. Heather Munro Mann to fill the non-voting advisor vacancy on the Groundfish Allocation Committee.

Moved by: Patty Burke
Motion 30 passed.

Seconded by: Phil Anderson

Motion 31: Appoint Mr. Neil Guglielmo to fill the commercial fishery sector vacancy on the Coastal Pelagic Species Advisory Subpanel.

Moved by: Marija Vojkovich
Motion 31 passed.

Seconded by: Roger Thomas

Motion 32: Appoint Mr. Calvin Frank to fill the Washington Coast Tribal vacancy on the Salmon Advisory Subpanel.

Moved by: Jim Harp
Motion 32 passed.

Seconded by: Phil Anderson

FUTURE COUNCIL MEETING AGENDA PLANNING

The primary 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. It is especially important at the March meeting since, due to the very short time between the March and April Council meetings, the April Council meeting agenda must be finalized no later than Friday of the March meeting.

Under this agenda item, the Executive Director will review initial drafts of the three-meeting outlook and the April 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.5 at which time final action on the agenda planning items is scheduled.

During a Council staff planning session in January, one goal that emerged was to work to optimize the productivity of Council meeting floor time. This goal includes (1) exploring alternatives to insure adequate review and statement preparation time by advisory bodies, as opposed to expanding Council floor time into the early part of the Council meeting week typically needed by the advisors to do their jobs; (2) developing a longer term, more strategic planning document for future Council agendas which includes recognition of core management cycles for each fishery management plan and necessary routine management actions; and (3) potential changes in protocols for advisory body input to the Council, including such things as the characterization of majority and minority reports. Staff solicits Council and advisor comments on staff's further pursuit of these floor time management objectives.

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 April 2006 Council meeting.**
- 3. Provide guidance on the development of materials for Agenda Item B.5 (April agenda and three meeting outlook), especially with regard to the final April Council meeting agenda.**
- 4. Consider further staff efforts toward optimizing Council meeting productivity.**

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 April Council Meeting Agenda, April 2-7, 2006 in Sacramento, California.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. Council Discussion of Future Council Meeting Agenda Topics

Don McIsaac

PFMC
02/16/06

Preliminary Three Meeting Outlook for the Pacific Council (Shaded Items are Contingent and Counted in Time Estimate)

April Sacramento, CA 4/2-4/7/06 Estimated Percent of Standard Floor Time = 110%	June Foster City, CA 6/11-6/16/06 Estimated Percent of Standard Floor Time = 98%	September Foster City, CA 9/10-9/15/06 Estimated Percent of Standard Floor Time = 95%
<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Interim Appointments Agenda Planning 3 Mtg Outlook, Draft June Agenda, Workload Public Comment on Non-Agenda Items Initiate Research & Data Needs Regulatory Streamlining & Regional Operating Agreements: Status Rpt	<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Fiscal Matters Interim Appointments 3 Mtg Outlook, Draft Sept. Agenda, Workload Public Comment on Non-Agenda Items	<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Fiscal Matters Appointments to Adv. Bodies for 2007-2009 Term: Consider Composition & Solicit Nominations 3 Mtg Outlook, Final November Agenda, Workload Public Comment on Non-Agenda Items
<u>Coastal Pelagic Species</u>	<u>Coastal Pelagic Species</u> NMFS Rpt Pacific Mackerel Harvest Guideline for 2006/07 [SAFE doc provided to Council]	<u>Coastal Pelagic Species</u>
<u>Enforcement Issues</u> USCG Rpt on AIS & VMS	<u>Enforcement Issues</u> State Activity Rpt	<u>Enforcement Issues</u> State Activity Rpt
<u>Groundfish</u> NMFS Report 2006 Inseason Mgmt (2 Sessions) 2007-2008 Mgmt Recommendations: Adopt 1) Final Harvest Specs. (ABC/OY Levels) 2) Range of Refined Mgmt Measures for Public Review, &, if possible, a Preferred Alt. 3) <i>Amendment 16-4 (Revised Rebuilding Plans)</i> <i>Adopt For Public Review</i> A) Preferred Alternatives for 7 Rebuilding Plans B) Draft Amendatory Language Stock Assmnts.: Adopt Final Plan for 2009-2010	<u>Groundfish</u> NMFS Report 2006 Inseason Management (2 Sessions) EFPs for 2007: Submit for Initial Adv. Bod. Review 2007-2008 Mgmt Recommendations: Adopt Final Groundfish Bycatch Workplan: Approve for Pub Rev. Amendment 16-4 (Revised Rebuilding Plans): Adopt Final Amendatory Language IQ EIS: Status Report on Phase I Intersector Allocation EIS: Plan Next Steps Open Access Limitation: Amendment Planning Spiny Dogfish Longline Endorsement: Adopt FMP Amendment Alts. For Public Review	<u>Groundfish</u> NMFS Report 2006 Inseason Management (2 Sessions) <i>Groundfish Bycatch Workplan: Approve Final</i>

Agenda Item B.2.a
 Attachment 1
 March 2006

Preliminary Three Meeting Outlook for the Pacific Council

(Shaded Items are Contingent and Counted in Time Estimate)

April	June	September
Sacramento, CA 4/2-4/7/06 Estimated Percent of Standard Floor Time = 110%	Foster City, CA 6/11-6/16/06 Estimated Percent of Standard Floor Time = 98%	Foster City, CA 9/10-9/15/06 Estimated Percent of Standard Floor Time = 95%

Habitat Issues

Habitat Committee Report

Highly Migratory Species

NMFS Rpt
Bigeye Tuna OF Response: Adopt Final
Recommendations to IATTC
Albacore Mgmt.: Recommendations for IATTC and
for US-Canada Treaty Issues

Marine Protected Areas

Regulation Issue (Placeholder)

Pacific Halibut

Incidental Catch Regs for 2006: Adopt Final

Salmon

2006 Management Options: Final Adoption
2006 Methodology Review: Establish Process
& Preliminary Priorities
Identify Stocks not Meeting Conserv. Objectives
Selective Fisheries Briefing (or Information Rpt)
Role of KFMC: Consider Recommendations

Habitat Issues

Habitat Committee Report

Highly Migratory Species

NMFS Rpt
Routine Mgmt Measures: Prelim Proposals for any
Changes by HMSMT
[Prelim SAFE Doc--Info Rpt]

Marine Protected Areas

Pacific Halibut

Salmon

Fishery Update--Info Rpt
EFH Review Process: Next Steps
FRAM Update
De Minimus Fisheries FMP Amendment Associated with
Klamath Fall Chinook: Review Preliminary Alternatives

Special Joint Sessions

Special Joint Sessions

Salmon Genetics Research Rpt

Habitat Issues

Habitat Committee Report

Highly Migratory Species

NMFS Rpt
Routine Mgmt Measures: Adopt Proposed Changes for
Public Review

Mgmt Regime for HS Longline Fishery: Consider
Adopting FMP Amendment Alts. For Public Rev.

Marine Protected Areas

Pacific Halibut

Proposed Changes to CSP & Ann. Regs.: Adopt for
Public Review
Bycatch Est. for IPHC Adoption: Review

Salmon

Fishery Update--Info Rpt
Methodology Review: Establish Priorities for 2007 Season
De Minimus Fisheries FMP Amendment Associated with
Klamath Fall Chinook: Adopt Alts. For Public Review

Special Joint Sessions

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, APRIL 2-7, 2006, SACRAMENTO, CA

			ANCILLARY MEETING SCHEDULE		
AG#	Hours	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY MAILINGS 1/	Continuing
					Day/Group Start Time Through
SUNDAY, APRIL 2 - See Ancillary Schedule					SUNDAY:
					A. GAP 1:00 PM Fri.
					B. GMT 1:00 PM Fri.
					KFMC 3:00 PM Fri.
MONDAY, APRIL 3 - 8:00 am					MONDAY:
		<i>Ancillary Meetings - see Ancillary Schedule</i>			C. SAS 8:00 AM Fri.
					D. STT 8:00 AM Fri.
					E. SSC 8:00 AM Tue.
		SPECIAL SESSIONS			F. Legislative 9:30 AM Mon.
		Salmon Genetics Research Presentation (SWFSC)--Wed 10 am		SAS; STT	G. HC 10:00 AM Mon.
					Chair's Briefing 1:30 PM Mon.
					I. EC 5:30 PM Fri.
CLS	1.00	Closed Session Agenda: Personnel & Litigation--3:00 pm			
		Adv. Body Issues - Appointments	Info	SSC	
		Litigation Status (E. Cooney)	Info	None	
A.	0.30	General Session Call to Order - 4:00 pm			
1-3		Opening, Roll Call, ED Rpt	Info		
4		Approve Agenda	Decision		
B.		Administrative Matters			
1	0.20	Approve Minutes - November 2005	Decision		
2	0.20	Council Meeting Agenda Planning	Guidance	All	
	0.50	Public Comment Period for Non-Agenda Items	Info		
	2.20				
			0		
TUESDAY, APRIL 4 - 8:00 am					TUESDAY:
		<i>Ancillary Meetings - see Ancillary Schedule</i>			EC; GAP; GMT; SAS; STT; SSC;
					continue
C.		Habitat			
1	0.50	Habitat Committee Rpt	Decision	HC; SAS; GAP; CPSAS	
D.		Pacific Halibut Mgmt			
1	0.50	Incidental Catch Regs in Salmon Troll & Sablefish Fisheries: Adopt Final Restrictions	Action	GAP; GMT; SAS	
E.		Salmon Mgmt			
1	0.50	Identify Stocks not meeting Conservation Objectives	Decision	STT; SAS; SSC	
2	2.50	Tentative Adoption of 2006 Ocean Salmon Mgmt Measures for Analysis	Action	SAS; STT; EC	
F.		Groundfish Mgmt			
1	3.00	Mgmt Specifications for 2007-08: Adopt Final ABCs & OYs, & Preliminary Revised Rebuilding Plans	Action	GMT; GAP; EC; SSC	
2	0.75	NMFS Rpt (Region & Science Center)	Info	GMT; GAP; EC	
	7.75				
		Council Chair's Reception--6 pm			

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, APRIL 2-7, 2006, SACRAMENTO, CA

				ANCILLARY MEETING SCHEDULE		
AG#	Hours	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY MAILINGS 1/	Day/Group	Continuing Start Time Through
WEDNESDAY, MARCH 8 - 8 am					WEDNESDAY:	
<i>Ancillary Meetings - see Ancillary Schedule</i>				→		EC; GAP; GMT; SAS; STT continue
G. Highly Migratory Species Management						
1	0.50	Bigeye Tuna Overfishing Response: Adopt Final Recommendations to IATTC	Decision	HMSAS; HMSMT		
2	1.00	Albacore Mgmt: Adopt Recommendations for IATTC & for US-Canada Treaty Issues	Decision	HMSAS; HMSMT; EC		
3	0.50	NMFS Rpt--Region & Science Ctr	Info	HMSAS; HMSMT		
					10 am Special Session:	Salmon Genetics Research Rpt
F. Groundfish Mgmt (continued)						
3	1.00	Stock Assessments: Adopt final TOR, List of Stocks to be Assessed, & Review Schedule for 2009-2010 Season	Decision	GMT; GAP; SSC		
4	2.00	Inseason Adjustments: Preliminary or Final Adoption of Appropriate Changes	Action	GMT; GAP; EC		
E. Salmon Mgmt (continued)						
3	0.75	Methodology Review Process: Adopt Potential Methodologies to be Reviewed In 2006	Decision	MEW; SSC; STT; SAS		
4	1.00	Selective Fisheries Briefing	Info	SAS; STT		
5	0.75	Role of KFMC: Consider Recommendations	Guidance	STT; SAS		
6	1.00	Clarify Council direction on 2006 Mgmt Measures (If Nec.)	Guidance	STT; SAS		
	8.50					
THURSDAY, MARCH 9 - 8 am					THURSDAY:	
<i>Ancillary Meetings - see Ancillary Schedule</i>				→		GAP; GMT; EC; SAS; STT continue
H. Enforcement Issues						
1	0.75	USCG Rpt on AIS & VMS	Info	All Adv. except SSC & HC		
F. Groundfish Mgmt (continued)						
5	3.00	Part I of Mgmt Specifications for 2007-08: Adopt a Prelim Range of Refined Mgmt Measures	Action	GMT; GAP, EC; SAS		
B. Administrative Matters (continued)						
3	0.50	Research & Data Needs: Plan Reinitiation of Council Process	Guidance	All		
4	0.50	Regulatory Streamlining & Regional Operating Agreements: Status Rpt	Info	All		
E. Salmon Mgmt (continued)						
7	3.00	Management Measures for 2006: Final Adoption	Action	STT; SAS; EC		
	7.75					

PRELIMINARY DRAFT COUNCIL MEETING AGENDA, APRIL 2-7, 2006, SACRAMENTO, CA

				ANCILLARY MEETING SCHEDULE		
AG#	Hours	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY MAILINGS 1/	Day/Group	Continuing Start Time Through
FRIDAY, MARCH 10 - 8 am					FRIDAY:	
<i>Ancillary Meetings - see Ancillary Schedule</i>				→		GAP; GMT; SAS; STT; EC as nec.
E. Salmon Mgmt (continued)						
8	0.50	Clarify Final Action on Salmon Mgmt Measures (If Nec.)	Action	STT; SAS; EC		
I. Marine Protected Areas						
1	1.50	Regulation Issue (Placeholder)	Decision	All		
B. Administrative Matters (continued)						
5	0.50	Legislative Matters	Guidance			
6	0.20	Interim Appointments to Adv. Bodies, Standing Com., & Other Forums	Decision	None		
7	0.80	3 Mtg Outlook & April Agenda: Final Guidance & Adopt April Agenda	Guidance	All		
F. Groundfish Mgmt (continued)						
6	3.00	Part II of Mgmt Specifications for 2007-08: Adopt a Range of Refined Mgmt Measures, &, if Possible, a Tentative Preferred Alt.	Action	GMT; GAP, EC; SAS		
7	1.50	Inseason Adjustments: Adopt or Confirm Final Changes, If Necessary	Action	GMT; GAP; EC		
	8.00					

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.

IR. Informational Reports (available in Briefing Book, but no time scheduled on Agenda):

1	Info	All	
2	Info		
3	Info		

Candidate Agenda Items Not Scheduled

Due Dates (all dates COB):

Meeting Invitation Memo Distributed:	2/24
Public Meeting Notice Mailed:	3/13
FR Meeting Notice transmitted:	3/10
Final day to receive public comments for placement in BB:	3/15
Final deadline to submit all BB materials:	3/15
Final deadline to submit cover memos for Ancillary Meetings:	3/17
Briefing Book Mailing:	3/23
Final deadline for distribution of public comments on first day of mtg:	3/28

34.20	110%
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LEGISLATIVE MATTERS

The Legislative Committee (Committee) will meet Monday, March 6 at 8:30 a.m. with a primary objective to review federal legislative issues.

The Committee meeting will focus on recent efforts in Congress to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The Committee last met on December 1, 2005 in a full day session. This full day meeting was scheduled by the Council in November 2005 at the request of the Committee primarily to allow adequate time for Committee deliberation of S. 2012, the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005* introduced in the U. S. Senate by Senator Ted Stevens (R-Alaska). The resulting Committee Report (Agenda Item B.3.a, Attachment 1) includes a detailed, section-by-section review of S. 2012 as well as preliminary recommendations and alternative position statements on S. 1195, the *National Offshore Aquaculture Act of 2005*.

The December 2005 Committee Report was approved by the Council via the between-meeting approval protocol and was sent to Senator Stevens and the cosponsors of S. 2012, U.S. Congressman Richard Pombo (R-California), U.S. Congressman Wayne Gilchrest (R-Maryland), as well as staff members of the U. S. Senate Committee on Commerce, Science, and Transportation and the U.S. House Subcommittee for Fisheries, Conservation, Wildlife, and Oceans. The U.S. Senate Committee on Commerce, Science, and Transportation met on December 15, 2005 where S. 2012 was revised by committee amendment. A staff working draft of the revised S. 2012 is included in the reference materials as Agenda Item B.3.a, Attachment 2. The Committee may review the revised draft bill and report to the Council. It is anticipated that a U.S. House of Representatives bill addressing reauthorization of MSA will be introduced soon but was unavailable in time for the March Council briefing book.

There has been discussion recently regarding amendment of the American Fisheries Act (AFA) via the U.S. Coast Guard Authorization Bill. The potential change to a nuance of the AFA may be considered by the Committee.

Informational Report 1, a letter and U.S. ocean policy report card to President George W. Bush, cosigned by the Chairs of the U.S. Commission on Ocean Policy and the Pew Oceans Commission, is included in the March briefing book as an important matter relating to federal ocean policy and may be a topic for Committee discussion.

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: December 12, 2005 letter from Dr. McIsaac to U.S. Senator Stevens including the December 2005 Legislative Committee Report.
2. Agenda Item B.3.a, Attachment 2: S2012 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, Committee Amendment, Staff Working Draft.
3. Agenda Item B.3.d, Public Comment.

Agenda Order:

- | | |
|---|-------------|
| a. Agenda Item Overview | Mike Burner |
| b. Legislative Committee Report | Dave Hanson |
| c. Reports and Comments of Advisory Bodies | |
| d. Public Comment | |
| e. Council Action: Consider Recommendations of the Legislative Committee | |

PFMC
02/15/06

PACIFIC FISHERY MANAGEMENT COUNCIL

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December 12, 2005

The Honorable Ted Stevens
United States Senate
522 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Stevens:

The Pacific Fishery Management Council (Council) appreciates your request for Council review of S. 2012, the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005* and S. 1195, the *National Offshore Aquaculture Act of 2005*. To facilitate thorough review, the Council convened a full-day session of its Legislative Committee devoted largely to a section-by-section review of S. 2012. The enclosed report of the Legislative Committee was reviewed by the full Council and approved by the Council Chairman for your consideration.

Of note, the Council emphasizes two omissions from S. 2012, a removal of the arbitrary ten-year rebuilding time frame for overfished species and clarification on fishery management authority in national marine sanctuaries. The Council would like to reiterate its recommendation that the positions on these matters adopted by Regional Fishery Management Council (RFMC) Chairs in April 2005 be included in Magnuson-Stevens Fishery Conservation and Management Act reauthorization legislation.

Thank you again for providing the Council an opportunity to provide comments on these important matters. If you or your staff have any questions about this letter, please contact me or Mr. Mike Burner, the lead Staff Officer on this matter at 503-820-2280.

Sincerely,



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

MDB:ckc
Enclosure

The Honorable Ted Stevens

December 12, 2005

Page 2

c: U.S. Senator Daniel Inouye
U.S. Senator Olympia J. Snowe
U.S. Senator Maria Cantwell
U.S. Senator David Vitter
U.S. Congressman Richard Pombo
U.S. Congressman Wayne Gilchrest
Pacific Fishery Management Council Members
Regional Fishery Management Council Executive Directors
Ms. Margaret Spring, Senate Committee on Commerce, Science and Transportation
Mr. Matthew Paxton, Senate Committee on Commerce, Science and Transportation
Mr. Drew Minkiewicz, Senate Committee on Commerce, Science and Transportation
Mr. Dave Whaley, House Subcommittee for Fisheries Conservation, Wildlife, and Oceans

LEGISLATIVE COMMITTEE REPORT

The Legislative Committee (LC) met December 1, 2005 at the office of the Pacific Fishery Management Council (Council) in Portland, Oregon. The LC focused discussions on proposed legislation pertaining to the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and S. 1195, the *National Offshore Aquaculture Act of 2005*. The following LC recommendations have been reviewed by the Council, including the members of the LC, and have been approved by the Council Chair as formal Council input on these important legislative matters.

Members Present:

Mr. Robert Alverson, Council Member, Fishing Vessel Owner's Association
Dr. David Hanson, LC Chair, Council Parliamentarian, Pacific States Marine Fisheries Commission
Mr. Rod Moore, Council Member, West Coast Seafood Processors Association
Mr. Roger Thomas, Council Member, Golden Gate Fisherman's Association

Members Absent:

Mr. Don Hansen, Council Chairman, Dana Wharf Sportfishing

Others Present:

Dr. Donald McIsaac, Executive Director, Pacific Fishery Management Council
Dr. John Coon, Deputy Director, Pacific Fishery Management Council
Mr. Mike Burner, Staff Officer, Pacific Fishery Management Council
Mr. Ben Enticknap, Pacific Project Manager, Oceana
Ms. Dorothy Lowman, Natural Resource Consultant, Environmental Defense
Mr. Dan Waldeck, Executive Director, Pacific Whiting Conservation Cooperative

Opening Remarks

Dr. Hanson opened the meeting and reviewed the agenda. Relative to MSA reauthorization legislation, the LC reviewed the Administration Bill and a Senate Bill. The LC opted to focus the majority of the meeting on S. 2012, the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005* introduced in the U.S. Senate by Senator Stevens, cosponsored by Senators Boxer, Cantwell, Inouye, Snowe, and Vitter. Additionally, the LC anticipates introduction of an MSA reauthorization bill in the U.S. House of Representatives sponsored by Representative Pombo. The LC recommends this full report be provided to both the Senate and the House for full congressional consideration.

Relative to other federal legislative matters, the LC planned to conclude the meeting with a thorough discussion of S. 1195, the *National Offshore Aquaculture Act of 2005*. The LC opted not to discuss S. 1549, the *Cooperative Hake Improvement and Conservation Act of 2005* as no new information has been made available since the LC's last review.

MSA Reauthorization

S. 2012 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005.

The LC spent considerable time conducting a section-by-section review of S 2012. Generally, this report is silent on sections of the bill where the LC was in agreement with the text of the bill or on sections of the bill dedicated to areas or issues outside the jurisdiction of the Council.

Detailed comments on the text of the bill:

S. 2012 Section 101 - Cumulative Impacts.

(b) Contents of Plans

The LC agrees the proposed change to include analyses of likely cumulative economic and social impacts represents a laudable goal, one the Council currently pursues to the extent practicable; however, the LC noted adequate economic and social data, or the funding to collect and analyze such data, does not currently exist. Although the LC noted the proposed language refers to use of the “best available social and economic data,” requiring social and economic analyses in the development of fishery management plans, plan amendments or management measures could be problematic if only poor data sources are available.

S. 2012 Section 103 - Regional Fishery Management Councils.

(a) Tribal Alternate on Pacific Council

The LC strongly supports this language providing for a tribal alternate on the Council.

(b) Scientific and Statistical Committees

The LC was receptive to the concept of a peer review process for the review of scientific information but recommends the first sentence proposed for MSA Section 302(g)(1)(D) (16 U.S.C. 1852 (g)(1)(D)) be changed to read “Each Council may establish a peer review process for that Council, developed in consultation with the Secretary for scientific information used to advise the Council about the conservation and management of the fishery.” The LC believes the Pacific Council currently has a strong scientific review process and felt that consultation with the Secretary rather than the Council coordination committee was appropriate.

The LC was not in favor of providing stipends to members of the Scientific and Statistical Committee (SSC) and recommends removing language proposed under MSA Section 302 (g)(1)(E) (16 U.S.C. 1852 (g)(1)(E)) from the bill. The LC agreed the SSC should preserve its independent status and noted that the Council has not experienced any difficulty in attracting qualified candidates in the absence of stipends. Further, the LC stressed that if stipends are ultimately approved, funds for those stipends should not come from Council appropriations.

(f) Training

The LC recommends mandatory training for new Council members and agreed that the lack of such training should not prevent a Council member from voting in cases where the training may

be delayed after appointments have been made. To clarify that training for existing members is available but not required, the LC recommends the proposed language for MSA Section 302 (k)(2) (16 U.S.C. 1852 (k)(2)) should be changed to read “MEMBER TRAINING - The training course shall be available to new Council members, and may be made available to existing Council, committee, or advisory panel members as resources allow.”

(i) Procedural Matters

The LC endorses the proposed exemption from the Federal Advisory Committee Act for the Council coordination committee, thereby preserving the ability of this effective group to meet as is currently done.

(h) Conflict of Interest

The LC strongly recommends Section 103(h)(1) and Section 103(h)(2) be removed from S. 2012. The proposed language would require affected Council members to disclose the financial interests of the *members* of associations the Council member is employed by or contracted with. The LC believes the existing MSA language is adequate and the new requirements are overly burdensome as many associations may have hundreds of members to track and reliable information is unattainable.

S. 2012 Section 104 - Fishery Management Plan Requirements.

The LC is supportive of the additional requirements included in this section for the collection of additional fishery data, particularly fish processing data and economic information.

The LC notes it has not been the practice of the Council to deduct or increase annual catch limits in the following year in response to the previous year’s harvest. Council-managed groundfish fisheries operate under a biennial management process that is not amenable to such a mechanism. Additionally, catch data is often not timely enough for such a management response. The LC recommends striking the language in Section 104 (a)(5) proposed for MSA Section 303(a)(15) after “optimum yield”.

S. 2012 Section 106 - Limited Access Privilege Programs.

The Council is currently in the process of developing an individual quota program for the trawl sector of the groundfish fishery. The LC notes that the authority to amend existing limited access privilege programs was dropped from the previous MSA draft and it is unclear where that authority now exists. The LC strongly recommends that nothing in S. 2012 or any other MSA reauthorization legislation apply to, or disrupt the ongoing development of potential future amendment of the Council’s groundfish trawl individual quota program. Therefore, the LC recommends amending the proposed language under MSA Title III Section 303A(g) (U.S.C. 1851 et seq.) as follows:

“(g) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—

Nothing in this Act, or the amendments by this Act, shall be construed to—

(1) require a reallocation of individual quota shares or processor quota shares or other quota programs, including sector allocation, submitted by a Council or approved by the Secretary or Congressional action before the date of enactment of

the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005; or

(2) prohibit the Pacific Fishery Management Council from completing and submitting, or the Secretary from approving and implementing, sector allocations in the West Coast groundfish fishery and the Groundfish Trawl Individual Quota Program or future amendments to the Groundfish Trawl Individual Quota Program.”

The LC finds the requirement for a fishery to be managed under a limited access program for one year prior to submission of a limited access privilege program would add an additional three to five years to program implementation, would be costly, and would be redundant as limited access would need to be considered in conjunction with the development of a limited access privilege program of necessity. The LC recommends striking the phrase “for a fishery that has been managed under a limited access system for at least 1 year” from the language proposed for MSA Section 303A(a).

Regarding proposed language for MSA Section 303A(c)(1)(D) (16 U.S.C. 1851 (c)(1)(D)) requiring fish processing by U.S. vessels or on U.S. soil, the LC felt this requirement, along with other provisions of S. 2012, should not apply to existing individual quota programs or individual quota programs currently under development. Additionally, the LC recommends the definition of processing be clarified (i.e. does a fish with the head and gut removed qualify as processed for export?). The definition of processing in this context is different from that under existing law defining processing and non-processing vessels (46 U.S.C. 2101 (11)(b)).

For clarity, the LC recommends the language proposed for MSA Section 303A(c)(2)(A)(iii) (16 U.S.C. 1851 (c)(2)(A)(iii)) be changed to read “consist of residents, some of whom conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council’s management area; and....”

The LC is supportive of measures to prevent limited access privilege holders from attaining excessive shares but, the LC also notes that some consolidation within fishery sectors is beneficial and recommends the language proposed for MSA Section 303A(c)(3)(E) (16 U.S.C. 1851 (c)(3)(E)) be changed to read “establish procedures to minimize, to the extent practicable, geographic or other consolidation in both the harvesting and processing sectors of the fishery; and....”

During the LC discussion of MSA Section 303A(c)(3)(F) (16 U.S.C. 1851 (c)(3)(F)) regarding the allocation of limited access privileges only to persons who substantially participate in the fishery, the LC noted this restriction seemingly prohibits organizations such as environmental groups from attaining privileges.

Regarding language proposed for MSA Section 303A(c)(4) (16 U.S.C. 1851 (c)(4)) on the matter of initiating a limited access privilege program, the LC felt strongly that Regional Fishery Management Councils (RFMCs) have been charged by Congress and the authority of MSA to best manage the fishery. If a Council, with its extensive public process, deems a limited access privilege as a viable and useful tool for fishery management, the Council should be allowed to initiate a limited access privilege program without the proposed petition process.

As an editorial comment, the LC noted Section 303A(c)(5)(E) (16 U.S.C. 1851 (c)(5)(E)) appears to have a typographical error and recommends the addition of the word “or” after the word “associations”.

S. 2012 Section 107- Environmental Review Process.

The LC was appreciative of efforts under S. 2012 to address environmental review under MSA and the National Environmental Policy Act (NEPA) but, the LC felt the proposed language is inconclusive and delays needed clarification on these competing statutes. The LC continues to be supportive of the language recommended by the Regional Fishery Management Council Chairs as reported in their April 2005 report as follows:

MSA and National Environmental Policy Act

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

SEC. 302 [16 U.S.C. § 1852] REGIONAL FISHERY MANAGEMENT COUNCILS CONTENTS OF FISHERY MANAGEMENT PLANS
(i) PROCEDURAL MATTERS.

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

(a) include a range of reasonable alternatives;

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

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

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

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

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

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

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

(a) REQUIRED PROVISIONS.

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

...

(9) include a fishery impact statement of the plan or amendment (in the case of a plan or amendment thereto submitted to ~~or prepared by~~ the Secretary after October 4, 1990~~2005~~) which will assess, specify, and describe the likely effects, ~~if any~~, of the conservation and management measures ~~on~~ **as described in Section 302 (i) 7. Fishery management plans prepared by the Secretary shall conform to the requirements of Section 302 (i) 7.**

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

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

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

...

(e) EFFECT OF CERTAIN LAWS.—

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

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

S. 2012 Section 112 - Joint Enforcement Agreements.

The LC is supportive of efforts to provide data from enforcement tools such as Global Maritime Distress and Safety Systems and vessel monitoring systems (VMS) to law enforcement entities under a Joint Enforcement Agreement. State enforcement representatives to the Council process have repeatedly stated the importance of VMS as a tool for the enforcement of closed areas along the West Coast. To further assist state law enforcement efforts, the LC recommends any MSA reauthorization bill include provisions to allow the use of VMS data in the prosecution of state laws in state courts.

To clarify which states are eligible for Joint Enforcement Agreements, the LC recommends the proposed language for MSA Section 311(h)(2) (16 U.S.C. 1861 (h)(2)) be changed to read “(2) ELIGIBLE STATE - A State is eligible to participate in the cooperative enforcement agreements under this section if it has a voting seat on a Regional Fishery Management Council.”

To clarify allowable uses of VMS data in law enforcement, the LC recommends Section 311(i) (16 U.S.C. 1861 (i)) specifically name vessel monitoring systems along with Global Maritime

Distress and Safety Systems and that MSA Section 311(i)(A) (16 U.S.C. 1861 (i)(A)) be changed to read “directly accessible on a real-time basis and available for the prosecution of State laws in State courts involving federally managed species, by State enforcement officers authorized under subsection (a) of this section.”

S. 2012 Section 113 - Transition to Sustainable Fisheries.

Regarding fishing capacity reduction programs the LC focused their discussion on the collection of industry fees. The LC felt the collection of such fees should not necessarily be the responsibility of the fish purchaser by inserting the word “may” at the beginning of MSA Section 312 (d)(2)(C) (16 U.S.C. 1861a (d)(2)(C)). Additionally, the LC recommends MSA Section 312 (b)(1)(C) (16 U.S.C. 1861a (b)(1)(C)) read “is cost-efficient and, in the instance of a program involving an industry fee system, capable of repaying any debt obligation incurred under section 111 of title XI of the Merchant Marine Act, 1936.”

S. 2012 Section 203 - Access to Certain Information.

This section makes provisions for the use of confidential information by State employees but, it is unclear whether confidential information could also be made available to State contractors.

S. 2012 Section 204 - Cooperative Research and Management Program.

Under the proposed new section of the MSA being proposed for this program, the LC recommends that critical needs for project funding be first identified by the Regional Fishery Management Councils and suggests that Section 317 (b) (16 U.S.C. 1851 (b)) read “The Secretary shall make funds available under the program for the support of projects to address critical needs identified by the Council in consultation with the Secretary. The program....”

S. 2012 Section 208 - Fisheries Conservation and Management Fund.

The LC is generally in favor of the fund but recommends focusing the use of the funds on immediate needs for fishery management, not on improving the quality or marketing of fish products. Therefore, the LC recommends striking S. 2012 Section 208 (b)(3), Section 208 (b)(4), and Section 208 (b)(5) and replacing them with a new Section 208 (b)(3) which reads “the analysis and development of new conservation and management initiatives by a Council.”

S. 2012 Section 209 - Use of Fishery Finance Program and Capital Construction Fund for Sustainable Purposes.

The LC recommends this section be removed from the bill for procedural reasons. The LC agreed improvements to the Capital Construction Fund are best addressed under separate legislation.

S. 2012 Section 302 - Reauthorization of Other Fisheries Acts.

Regarding S. 2012 Section 302 (f) State Authority for Dungeness Crab Fishery Management, the LC believes the current management and assessment of the Dungeness crab resource is adequate and notes stock status and trend forecasts for this species are unattainable. Additionally, the LC recommends removing the sunset clause as the law already contains provisions for the

termination of State authority upon completion of a fishery management plan under MSA. Therefore, the LC recommends striking S. 2012 Section 302 (f)(2) and Section 302 (f)(3) and changing Section 302 (f)(1) to read “by striking subsection (i).”

S. 2012 Section 403 - Action to End Illegal, Unreported, or Unregulated Fishing and Reduce Bycatch of Protected Marine Species.

The LC is supportive of the proposed language in this section but did not see the need to specifically mention bottom trawling and recommends removing the phrase “including bottom-trawling” from the proposed changes to the High Seas Driftnet Fishing Moratorium Protection Act language under Section 609 (e)(3)(C).

S. 2012 Section 406 - International Overfishing and Domestic Equity.

The LC agreed that developing recommendations to address the impacts of U.S. vessels on stocks experiencing excessive international fishing pressure within one year of the Secretary’s determination is reasonable. However, the LC notes that amending a fishery management plan (FMP) and implementing regulations will require more time.

Important Omissions from S. 2012.

The LC would like to highlight two key omissions from S. 2012. The LC and the Council continue to request that reauthorization of MSA address fishery management authority in national marine sanctuaries and rebuilding requirements for depleted stocks. The LC recommends the Council’s June 2005 decision to support the April 2005 positions of the Regional Fishery Management Council Chairs on these matters be submitted for consideration under S. 2012, as follows:

MSA and National Marine Sanctuary Act

Fishery management authority in national marine sanctuaries (NMS), for all species of fish as defined in the current MSA, shall be under the jurisdiction of the RFMCs and the Secretarial approval process described in the current MSA. This authority shall not be limited to species of fish covered by approved 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, an RFMC shall give full consideration of the responsibilities, goals, and objectives of individual NMS and any specific recommendations of the NMS.

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

NATIONAL MARINE SANCTUARIES ACT

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

As used in this chapter, the term-

...

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

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

(a) Sanctuary Proposal

...

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

Rebuilding Time Frame

The Regional Fishery Management Councils recommend MSA Section 304 (e)(4)(A)(ii) be deleted as follows to address the problems associated with the arbitrary ten-year rebuilding time boundary:

- (2) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—
 - (A) end overfishing within one year, and specify a rebuilding period that shall—
 - (i) be as short as possible, taking into account the status, mean generation time, and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in

which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

~~(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;~~

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery relative to other nations, by fishermen of the United States.

MSA Reauthorization Bills in the U.S. House of Representatives

The LC discussed anticipated legislation in the U.S. House of Representatives regarding reauthorization of MSA but did not have a draft bill for consideration at this meeting. The LC agreed to forward this report to the House Committee on Resources with a cover letter stressing the importance of issues not addressed in S. 2012.

National Offshore Aquaculture Act of 2005

The LC discussed the following three alternative positions on S. 1195 and stated a preference for Alternative 3 at this time.

Alternative 1) Support a ban or moratorium on offshore aquaculture operations in federal waters until significant issues such as pollution, waste management, disease control, genetic impacts, food safety, and socioeconomic impacts are fully addressed.

Alternative 2) Oppose S. 1195 as written and attempt to develop acceptable amendatory language.

Alternative 3) Oppose S. 1195 on the grounds that the legislation is incomplete and is not ready for implementation for the following reasons.

- The process of locating sites that do not unduly overlap with productive fishing areas is not addressed. U.S. Coast Guard enforcement of aquaculture sites could be in conflict with active fishing practices and could divert limited enforcement resources away from the enforcement of fishing regulations.
- The LC is concerned that under S. 1195, aquaculture would be under the sole jurisdiction of U.S. federal courts. This could leave the States with a limited ability to enforce and prosecute state laws, such as landing requirements, in state courts.
- There needs to be parity between aquaculture and traditional fishing and fish processing operations on issues like environmental laws (NEPA), worker protective laws (Jones Act, OSHA), and Health safety standards (HACCP).

- The role of Councils in permitting aquaculture activities needs to be strengthened beyond the current consultation requirement. Secretarial approval of aquaculture activity should be contingent upon approval by the appropriate RFMC.
- Provisions must be made to allow a state to opt out of aquaculture in federal waters off their state.

PFMC
12/09/05

COMMITTEE AMENDMENT

[STAFF WORKING DRAFT]

December 13, 2005

Purpose: To revise the bill as introduced to incorporate comments received from Federal agencies and others.

**IN THE COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION—109TH Cong., 1ST Sess.**

S. 2012, 109TH Congress, 1ST Session

DECEMBER 15, 2005

INTENDED to be proposed by Mr. STEVENS (for himself,
Mr. INOUE, and Mr. LOTT)

Viz: Strike out all after the enacting clause and insert the
following:

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 findings and definitions.
- Sec. 4. Highly migratory species.
- Sec. 5. Total allowable level of foreign fishing.
- Sec. 6. Western Pacific Sustainable Fisheries Fund.
- Sec. 7. Authorization of appropriations.

TITLE I—CONSERVATION AND MANAGEMENT

- Sec. 101. Cumulative impacts.
- Sec. 102. Caribbean Council jurisdiction.

2

- Sec. 103. Regional fishery management councils.
- Sec. 104. Fishery management plan requirements.
- Sec. 105. Fishery management plan discretionary provisions.
- Sec. 106. Limited access privilege programs.
- Sec. 107. Environmental review process.
- Sec. 108. Emergency regulations.
- Sec. 109. Western Pacific community development.
- Sec. 110. Western Alaska Community Development Quota Program.
- Sec. 111. Secretarial action on State groundfish fishing.
- Sec. 112. Joint enforcement agreements.
- Sec. 113. Transition to sustainable fisheries.
- Sec. 114. Regional coastal disaster assistance, transition, and recovery program.
- Sec. 115. Fishery finance program hurricane assistance.
- Sec. 116. Shrimp fisheries hurricane assistance program.
- Sec. 117. Bycatch reduction engineering program.
- Sec. 118. Community-based restoration program for fishery and coastal habitats.
- Sec. 119. Prohibited acts.
- Sec. 120. Enforcement.

TITLE II—INFORMATION AND RESEARCH

- Sec. 201. Recreational fisheries information.
- Sec. 202. Collection of information.
- Sec. 203. Access to certain information.
- Sec. 204. Cooperative research and management program.
- Sec. 205. Herring study.
- Sec. 206. Restoration study.
- Sec. 207. Western Pacific fishery demonstration projects.
- Sec. 208. Fisheries Conservation and Management Fund.
- Sec. 209. Use of fishery finance program and capital construction fund for sustainable purposes.
- Sec. 210. Regional ecosystem research.
- Sec. 211. Deep sea coral research and technology program.
- Sec. 212. Impact of turtle excluder devices on shrimping.
- Sec. 213. Shrimp and oyster fisheries and habitats.

TITLE III—OTHER FISHERIES STATUTES

- Sec. 301. Amendments to Northern Pacific Halibut Act.
- Sec. 302. Reauthorization of other fisheries acts.

TITLE IV—INTERNATIONAL

- Sec. 401. International monitoring and compliance.
- Sec. 402. Finding with respect to illegal, unreported, and unregulated fishing.
- Sec. 403. Action to end illegal, unreported, or unregulated fishing and reduce bycatch of protected marine species.
- Sec. 404. Monitoring of Pacific insular area fisheries.
- Sec. 405. Reauthorization of Atlantic Tunas Convention Act.
- Sec. 406. International overfishing and domestic equity.

TITLE V—IMPLEMENTATION OF WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION

- Sec. 501. Short title.

- Sec. 502. Definitions.
- Sec. 503. Appointment of United States commissioners.
- Sec. 504. Authority and responsibility of the Secretary of State.
- Sec. 505. Rulemaking authority of the Secretary of Commerce.
- Sec. 506. Enforcement.
- Sec. 507. Penalties.
- Sec. 508. Cooperation in carrying out convention.
- Sec. 509. Territorial participation.
- Sec. 510. Authorization of appropriations.

TITLE VI—PACIFIC WHITING

- Sec. 601. Short title.
- Sec. 602. Definitions.
- Sec. 603. United States representation on joint management committee.
- Sec. 604. United States representation on the scientific review group.
- Sec. 605. United States representation on joint technical committee.
- Sec. 606. United States representation on advisory panel.
- Sec. 607. Responsibilities of the Secretary.
- Sec. 608. Rulemaking.
- Sec. 609. Administrative matters.
- Sec. 610. Enforcement.
- Sec. 611. Authorization of appropriations.

1 **SEC. 2. AMENDMENT OF MAGNUSON-STEVENSON 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 FINDINGS AND DEFINITIONS.**

11 (a) ECOSYSTEMS.—Section 2(a) (16 U.S.C. 1801(a))
12 is amended by adding at the end the following:

13 “(11) A number of the Fishery Management
14 Councils have demonstrated significant progress in
15 integrating ecosystem considerations in fisheries

1 management using the existing authorities provided
2 under this Act.”.

3 (b) IN GENERAL.—Section 3 (16 U.S.C. 1802) is
4 amended—

5 (1) by inserting after paragraph (6) the fol-
6 lowing:

7 “(6A) The term ‘confidential information’
8 means—

9 “(A) trade secrets; or

10 “(B) commercial or financial information
11 the disclosure of which is likely to result in sub-
12 stantial harm to the competitive position of the
13 person who submitted the information to the
14 Secretary.”;

15 (2) by inserting after paragraph (13) the fol-
16 lowing:

17 “(13B) the term ‘regional fishery association’
18 means an association formed for the mutual benefit
19 of members—

20 “(A) to meet social and economic needs in
21 a region or subregion; and

22 “(B) comprised of persons engaging in the
23 harvest or processing of fishery resources in
24 that specific region or subregion or who other-

1 wise own or operate businesses substantially de-
2 pendent upon a fishery.”;

3 (3) by inserting after paragraph (20) the fol-
4 lowing:

5 “(20A) The term ‘import’—

6 “(A) means to land on, bring into, or in-
7 troduce into, or attempt to land on, bring into,
8 or introduce into, any place subject to the juris-
9 diction of the United States, whether or not
10 such landing, bringing, or introduction con-
11 stitutes an importation within the meaning of
12 the customs laws of the United States; but

13 “(B) does not include any activity de-
14 scribed in subparagraph (A) with respect to fish
15 caught in the exclusive economic zone or by a
16 vessel of the United States.”;

17 (4) by inserting after paragraph (23) the fol-
18 lowing:

19 “(23A) The term ‘limited access privilege’—

20 “(A) means a Federal permit, issued as
21 part of a limited access system under section
22 303A to harvest a quantity of fish that may be
23 received or held for exclusive use by a person;
24 and

1 “(B) includes an individual fishing quota;

2 but

3 “(C) does not include community develop-

4 ment quotas as described in section 305(i).”;

5 and

6 (5) by inserting after paragraph (27) the fol-

7 lowing:

8 “(27A) The term ‘observer information’ means

9 any information collected, observed, retrieved, or cre-

10 ated by an observer or electronic monitoring system

11 pursuant to authorization by the Secretary, or col-

12 lected as part of a cooperative research initiative, in-

13 cluding fish harvest or processing observations, fish

14 sampling or weighing data, vessel logbook data, ves-

15 sel or processor-specific information (including any

16 safety, location, or operating condition observations),

17 and video, audio, photographic, or written docu-

18 ments.”.

19 (c) REDESIGNATION.—Paragraphs (1) through (45)

20 of section 3 (16 U.S.C. 1802), as amended by subsection

21 (a), are redesignated as paragraphs (1) thorough (50), re-

22 spectively.

23 (d) CONFORMING AMENDMENTS.—

1 (1) The following provisions of the Act are
2 amended by striking “an individual fishing quota”
3 and inserting “a limited access privilege”:

4 (A) Section 304(c)(3) (16
5 U.S.C.1854(c)(3)).

6 (B) Section 304(d)(2)(A)(i) (16
7 U.S.C.1854(d)(2)(A)(i)).

8 (C) Section 402(b)(1)(D) (16 U.S.C.
9 1881a(b)(1)(D)).

10 (D) Section 407(a)(1)(D), (c)(1), and
11 (c)(2)(B) (16 U.S.C. 1883(a)(1)(D), (c)(1), and
12 (c)(2)(B)).

13 (2) Section 305(h)(1) (16 U.S.C. 1855(h)(1)) is
14 amended by striking “individual fishing quotas,”
15 and inserting “limited access privileges,”.

16 **SEC. 4. HIGHLY MIGRATORY SPECIES.**

17 Section 102 (16 U.S.C. 1912) is amended—

18 (1) by inserting “(a) IN GENERAL.—” before
19 “The”; and

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

21 “(b) TRADITIONAL PARTICIPATION.—For fisheries
22 being managed under an international fisheries agreement
23 to which the United States is a party, Council or Secre-
24 tarial action, if any, shall reflect traditional participation

1 in the fishery, relative to other Nations, by fishermen of
2 the United States on fishing vessels of the United States.

3 “(c) PROMOTION OF STOCK MANAGEMENT.—If a rel-
4 evant international fisheries organization does not have a
5 process for developing a formal plan to rebuild a depleted
6 stock, an overfished stock, or a stock that is approaching
7 a condition of being overfished, the provisions of this Act
8 in this regard shall be communicated to and promoted by
9 the United States in the international or regional fisheries
10 organization.”.

11 **SEC. 5. TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.**

12 Section 201(d) (16 U.S.C. 1821(d)) is amended—

13 (1) by striking “shall be” and inserting “is”;

14 (2) by striking “will not” and inserting “can-
15 not, or will not,”;

16 (3) by inserting after “Act.” the following: “Al-
17 locations of the total allowable level of foreign fish-
18 ing are discretionary, except that the total allowable
19 level shall be zero for fisheries determined by the
20 Secretary to have adequate or excess harvest capac-
21 ity.”

22 **SEC. 6. WESTERN PACIFIC SUSTAINABLE FISHERIES FUND.**

23 Section 204(e) (16 U.S.C. 1824(e)(7)) is amended—

24 (1) by inserting “and any funds or contribu-
25 tions received in support of conservation and man-

1 agement objectives under a marine conservation
2 plan” after “agreement” in paragraph (7);

3 (2) by striking “authority, after payment of di-
4 rect costs of the enforcement action to all entities in-
5 volved in such action,” in paragraph (8); and

6 (3) by inserting after “paragraph (4).” in para-
7 graph (8) the following: “In the case of violations by
8 foreign vessels occurring within the exclusive eco-
9 nomic zones off Midway Atoll, Johnston Atoll, King-
10 man Reef, Palmyra Atoll, Jarvis, Howland, Baker,
11 and Wake Islands, amounts received by the Sec-
12 retary attributable to fines and penalties imposed
13 under this Act, shall be deposited into the Western
14 Pacific Sustainable Fisheries Fund established
15 under paragraph (7) of this subsection.”.

16 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

17 Section 4 (16 U.S.C. 1803) is amended to read as
18 follows:

19 **“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

20 “There are authorized to be appropriated to the Sec-
21 retary to carry out the provisions of this Act—

22 “(1) \$328,004,000 for fiscal year 2006; and

23 “(2) such sums as may be necessary for fiscal
24 years 2007 through 2012.”.

1 **TITLE I—CONSERVATION AND**
2 **MANAGEMENT**

3 **SEC. 101. CUMULATIVE IMPACTS.**

4 (a) NATIONAL STANDARDS.—Section 301(a)(8) (16
5 U.S.C. 1851(a)(8)) is amended by inserting “by utilizing
6 economic and social data and assessment methods based
7 on the best economic and social information available,”
8 after “fishing communities”.

9 (b) CONTENTS OF PLANS.—Section 303(a)(9) (16
10 U.S.C. 1853(a)(9)) is amended by striking “describe the
11 likely effects, if any, of the conservation and management
12 measures on—” and inserting “analyze the likely effects,
13 if any, including the cumulative economic and social im-
14 pacts, of the conservation and management measures on,
15 and possible mitigation measures for—”.

16 **SEC. 102. CARIBBEAN COUNCIL JURISDICTION.**

17 Section 302(a)(1)(D) (16 U.S.C. 852(a)(1)(D)) is
18 amended by inserting “and of commonwealths, territories,
19 and possessions of the United States in the Caribbean
20 Sea” after “seaward of such States”.

21 **SEC. 103. REGIONAL FISHERY MANAGEMENT COUNCILS.**

22 (a) TRIBAL ALTERNATE ON PACIFIC COUNCIL.—Sec-
23 tion 302(b)(5) (16 U.S.C. 1852(b)(5)) is amended by add-
24 ing at the end thereof the following:

1 “(D) The tribal representative appointed under sub-
2 paragraph (A) may designate as an alternate, during the
3 period of the representative’s term, an individual knowl-
4 edgeable concerning tribal rights, tribal law, and the fish-
5 ery resources of the geographical area concerned.”.

6 (b) SCIENTIFIC AND STATISTICAL COMMITTEES.—
7 Section 302 (16 U.S.C. 1852) is amended—

8 (1) by striking so much of subsection (g) as
9 precedes paragraph (2) and inserting the following:
10 “(g) COMMITTEES AND ADVISORY PANELS.—

11 “(1)(A) Each Council shall establish, maintain,
12 and appoint the members of a scientific and statis-
13 tical committee to assist it in the development, col-
14 lection, evaluation, and peer review of such statis-
15 tical, biological, economic, social, and other scientific
16 information as is relevant to such Council’s develop-
17 ment and amendment of any fishery management
18 plan.

19 “(B) Each scientific and statistical committee
20 shall provide its Council ongoing scientific advice for
21 fishery management decisions, including rec-
22 ommendations for acceptable biological catch or
23 maximum sustainable yield, and reports on stock
24 status and health, bycatch, habitat status, socio-eco-

1 nomic impacts of management measures, and sus-
2 tainability of fishing practices.

3 “(C) Members appointed by the Councils to the
4 scientific and statistical committees shall be Federal
5 employees, State employees, academicians, or inde-
6 pendent experts with strong scientific or technical
7 credentials and experience.

8 “(D) The Secretary and each Council may es-
9 tablish a peer review process for that Council for sci-
10 entific information used to advise the Council about
11 the conservation and management of the fishery.
12 The review process, which may include existing com-
13 mittees or panels, is deemed to satisfy the require-
14 ments of the guidelines issued pursuant to section
15 515 of the Treasury and General Government Ap-
16 propriations Act for Fiscal year 2001 (Public Law
17 106–554—Appendix C; 114 Stat. 2763A-153).

18 “(E) In addition to the provisions of sec-
19 tion 302(f)(7), the Secretary may pay a stipend
20 to members of the scientific and statistical com-
21 mittees or advisory panels who are not em-
22 ployed by the Federal government or a State
23 marine fisheries agency.”;

24 (2) by striking “other” in paragraph (2); and

1 (3) by resetting the left margin of paragraphs
2 (2) through (5) 2 ems from the left.

3 (c) COUNCIL FUNCTIONS.—Section 302(h) (16
4 U.S.C. 1852(h)) is amended—

5 (1) by striking “and” after the semicolon in
6 paragraph (5);

7 (2) by redesignating paragraph (6) as para-
8 graph (7); and

9 (3) by inserting after paragraph (5) the fol-
10 lowing:

11 “(6) adopt annual catch limits for each of its
12 managed fisheries after considering the rec-
13 ommendations of its scientific and statistical com-
14 mittee or the peer review process established under
15 subsection (g); and”.

16 (d) REGULAR AND EMERGENCY MEETINGS.—The
17 first sentence of section 302(i)(2)(C) (16 U.S.C.
18 1852(i)(2)(C)) is amended—

19 (1) by striking “published in local newspapers”
20 and inserting “provided by any means that will re-
21 sult in wide publicity (except that e-mail notification
22 and website postings alone are not sufficient)”; and

23 (2) by striking “fishery) and such notice may
24 be given by such other means as will result in wide
25 publicity.” and inserting “fishery).”.

1 (e) CLOSED MEETINGS.—Section 302(i)(3)(B) (16
2 U.S.C. 1852(i)(3)(B)) is amended by striking “notify local
3 newspapers” and inserting “provide notice by any means
4 that will result in wide publicity”.

5 (f) TRAINING.—Section 302 (16 U.S.C. 1852) is
6 amended by adding at the end the following:

7 “(k) COUNCIL TRAINING PROGRAM.—

8 “(1) TRAINING COURSE.—Within 6 months
9 after the date of enactment of the Magnuson-Ste-
10 vens Fishery Conservation and Management Reau-
11 thorization Act of 2005, the Secretary, in consulta-
12 tion with the Councils and the National Sea Grant
13 College Program, shall develop a training course for
14 newly appointed Council members. The course may
15 cover a variety of topics relevant to matters before
16 the Councils, including—

17 “(A) fishery science and basic stock assess-
18 ment methods;

19 “(B) fishery management techniques, data
20 needs, and Council procedures;

21 “(C) social science and fishery economics;

22 “(D) tribal treaty rights and native cus-
23 toms, access, and other rights related to West-
24 ern Pacific indigenous communities;

1 “(E) legal requirements of this Act, includ-
2 ing conflict of interest and disclosure provisions
3 of this section and related policies;

4 “(F) other relevant legal and regulatory
5 requirements, including the National Environ-
6 mental Policy Act (42 U.S.C. 4321 et seq.);

7 “(G) public process for development of
8 fishery management plans; and

9 “(H) other topics suggested by the Coun-
10 cil.

11 “(2) MEMBER TRAINING.—The training course
12 shall be available to both new and existing Council
13 members, and may be made available to committee
14 or advisory panel members as resources allow.

15 “(I) COUNCIL COORDINATION COMMITTEE.—The
16 Councils may establish a Council coordination committee
17 consisting of the chairs, vice chairs, and executive direc-
18 tors of each of the 8 Councils described in subsection
19 (a)(1), or other Council members or staff, in order to dis-
20 cuss issues of relevance to all Councils, including issues
21 related to the implementation of this Act.”.

22 (g) PROCEDURAL MATTERS.—Section 302(i) (16
23 U.S.C. 1852(i)) is amended—

24 (1) by striking “to the Councils or to the sci-
25 entific and statistical committees or advisory panels

1 established under subsection (g)” in paragraph (1)
2 and inserting “to the Councils, the Council coordina-
3 tion committee established under subsection (l), or
4 to the scientific and statistical committees or other
5 committees or advisory panels established under sub-
6 section (g)”;

7 (2) by striking “of a Council, and of the sci-
8 entific and statistical committee and advisory panels
9 established under subsection (g)” in paragraph (2)
10 and inserting “of a Council, of the Council coordina-
11 tion committee established under subsection (l), and
12 of the scientific and statistical committees or other
13 committees or advisory panels established under sub-
14 section (g)”;

15 (3) by inserting “the Council Coordination
16 Committee established under subsection (1),” in
17 paragraph (3)(A) after “Council”; and

18 (4) by inserting “other committee,” in para-
19 graph (3)(A) after “committee.”

20 (h) CONFLICTS OF INTEREST.—Section 302(j) (16
21 U.S.C. 1852(j)) is amended—

22 (1) by inserting “lobbying, advocacy,” after
23 “processing,” in paragraph (2);

24 (2) by striking “jurisdiction.” in paragraph (2)
25 and inserting “jurisdiction, or with respect to any

1 other individual or organization with a financial in-
2 terest in such activity.”;

3 (3) by striking subparagraph (B) of paragraph
4 (5) and inserting the following:

5 “(B) be kept on file by the Council and made
6 available on the Internet and for public inspection at
7 the Council offices during reasonable times; and”;
8 and

9 (4) 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 (i) GULF OF MEXICO FISHERIES MANAGEMENT
18 COUNCIL.—Section 302(b)(2) (16 U.S.C. 1852(b)(2)) is
19 amended—

20 (1) by redesignating subparagraph (D) as sub-
21 paragraph (E); and

22 (2) by inserting after subparagraph (C) the fol-
23 lowing:

24 “(D)(i) The Secretary shall appoint to the Gulf of
25 Mexico Fisheries Management Council—

1 “(I) 5 representatives of the commercial fishing
2 sector;

3 “(II) 5 representatives of the recreational fish-
4 ing and charter fishing sectors; and

5 “(III) 1 other individual who is knowledgeable
6 regarding the conservation and management of fish-
7 eries resources in the jurisdiction of the Council.

8 “(ii) The Governor of a State submitting a list of
9 names of individuals for appointment by the Secretary of
10 Commerce to the Gulf of Mexico Fisheries Management
11 Council under subparagraph (C) shall include—

12 “(I) at least 1 nominee each from the commer-
13 cial, recreational, and charter fishing sectors; and

14 “(II) at least 1 other individual who is knowl-
15 edgeable regarding the conservation and manage-
16 ment of fisheries resources in the jurisdiction of the
17 Council.

18 “(iii) If the Secretary determines that the list of
19 names submitted by the Governor does not meet the re-
20 quirements of clause (ii), the Secretary shall—

21 “(I) publish a notice in the Federal Register
22 asking the residents of that State to submit the
23 names and pertinent biographical data of individuals
24 who would meet the requirement not met for ap-
25 pointment to the Council; and

1 “(II) add the name of any qualified individual
2 submitted by the public who meets the unmet re-
3 quirement to the list of names submitted by the
4 Governor.

5 “(iv) For purposes of clause (ii), an individual who
6 owns or operates a fish farm outside of the Unites States
7 shall not be considered to be a representative of the com-
8 mercial fishing sector.”.

9 (j) REPORT AND RECOMMENDATIONS ON GULF
10 COUNCIL AMENDMENT.—

11 (1) IN GENERAL.—Before August, 2011, the
12 Secretary of Commerce, in consultation with the
13 Gulf of Mexico Fisheries Management Council, shall
14 analyze the impact of the amendment made by sub-
15 section (i) and determine whether section
16 302(b)(2)(D) of the Magnuson-Stevens Fishery Con-
17 servation and Management Act (16 U.S.C.
18 1852(b)(2)(D)) has resulted in a fair and balanced
19 apportionment of the active participants in the com-
20 mercial and recreational fisheries under the jurisdic-
21 tion of the Council.

22 (2) REPORT.—By no later than August, 2011,
23 the Secretary shall transmit a report to the Senate
24 Committee on Commerce, Science, and Transpor-
25 tation and the House of Representatives Committee

1 on Resources setting forth the Secretary's findings
2 and determination, including any recommendations
3 for legislative or other changes that may be nec-
4 essary to achieve such a fair and balanced appor-
5 tionment, including whether to renew the authority.

6 **SEC. 104. FISHERY MANAGEMENT PLAN REQUIREMENTS.**

7 (a) IN GENERAL.—Section 303(a) (16 U.S.C.
8 1853(a)) is amended—

9 (1) striking “and charter fishing” in paragraph
10 (5) and inserting “charter fishing, and fish proc-
11 essing”;

12 (2) by inserting “economic information nec-
13 essary to meet the requirements of this Act,” in
14 paragraph (5) after “number of hauls,”;

15 (3) by striking “fishery” the first place it ap-
16 pears and inserting “fishery, including their eco-
17 nomic impact,”;

18 (4) by striking “and” after the semicolon in
19 paragraph (13);

20 (5) by striking “allocate” in paragraph (14)
21 and inserting “allocate, taking into consideration the
22 economic impact of the harvest restrictions or recov-
23 ery benefits on the fishery participants in each sec-
24 tor,”;

1 (6) by striking “fishery.” in paragraph (14)
2 and inserting “fishery; and”; and

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

4 “(15) provide a mechanism for specifying an-
5 nual catch limits in the plan (including a multiyear
6 plan), the implementing regulations, or the annual
7 specifications that shall be established by the Coun-
8 cil or Secretary based on the best scientific informa-
9 tion available at a level that does not exceed opti-
10 mum yield, and, for purposes of which harvests ex-
11 ceeding the specified annual catch limit (including
12 the specified annual catch limit for a sector) shall ei-
13 ther be deducted from the following year’s annual
14 catch limit (including the annual catch limit for that
15 sector), or by adjusting other management measures
16 and input controls such that the fishing mortality
17 rate for the following year is reduced to account for
18 the overage to achieve the overfishing and rebuilding
19 objectives of the plan for that sector;”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 subsection (a)(5) shall take effect 2 years after the date
22 of enactment of this Act.

23 **SEC. 105. FISHERY MANAGEMENT PLAN DISCRETIONARY**
24 **PROVISIONS.**

25 Section 303(b) (16 U.S.C. 1853(b)) is amended—

1 (1) by inserting “(A)” after “(2)” in paragraph
2 (2);

3 (2) by inserting after paragraph (2) the fol-
4 lowing:

5 “(B) designate such zones in areas where deep
6 sea corals are identified under section 408, to pro-
7 tect deep sea corals from physical damage from fish-
8 ing gear or to prevent loss or damage to such fishing
9 gear from interactions with deep sea corals, after
10 considering long-term sustainable uses of fishery re-
11 sources in such areas; and

12 “(C) with respect to any closure of an area to
13 all fisheries managed under this Act, ensure that
14 such closure—

15 “(i) is based on the best scientific informa-
16 tion available;

17 “(ii) includes criteria to assess the con-
18 servation benefit of the closed area;

19 “(iii) establishes a timetable for review of
20 the closed area’s performance that is consistent
21 with the purposes of the closed area; and

22 “(iv) is based on an assessment of the ben-
23 efits and impacts of the closure, including its
24 size, in relation to other management measures
25 (either alone or in combination with such meas-

1 ures), including the benefits and impacts of lim-
2 iting access to: users of the area, overall fishing
3 activity, fishery science, and fishery and marine
4 conservation;”;

5 (2) by striking “fishery;” in paragraph (5) and
6 inserting “fishery and take into account the dif-
7 ferent circumstances affecting fisheries from dif-
8 ferent States and port, including distances to fishing
9 grounds and proximity to time and area closures;”;

10 (3) by striking paragraph (6) and inserting the
11 following:

12 “(6) establish a limited access system for the
13 fishery in order to achieve optimum yield if, in devel-
14 oping such system, the Council and the Secretary
15 take into account—

16 “(A) the conservation requirements of this
17 Act with respect to the fishery;

18 “(B) present participation in the fishery;

19 “(C) historical fishing practices in, and de-
20 pendence on, the fishery;

21 “(D) the economics of the fishery;

22 “(E) the capability of fishing vessels used
23 in the fishery to engage in other fisheries;

1 “(F) the cultural and social framework rel-
2 evant to the fishery and any affected fishing
3 communities;

4 “(G) the fair and equitable distribution of
5 access privileges to a public resource; and

6 “(H) any other relevant considerations;”;

7 (4) by striking “(other than economic data)” in
8 paragraph (7);

9 (5) by striking “and” after the semicolon in
10 paragraph (11); and

11 (6) by redesignating paragraph (12) as para-
12 graph (14) and inserting after paragraph (11) the
13 following:

14 “(12) establish a process for complying with the
15 National Environmental Policy Act (42 U.S.C. 4321
16 et seq.) pursuant to section 304(h) of this Act;

17 “(13) include management measures in the
18 plan to conserve target and non-target species and
19 habitats, considering the variety of ecological factors
20 affecting fishery populations; and”.

21 **SEC. 106. LIMITED ACCESS PRIVILEGE PROGRAMS.**

22 (a) IN GENERAL.—Title III (16 U.S.C. 1851 et seq.)
23 is amended—

24 (1) by striking section 303(d); and

25 (2) by inserting after section 303 the following:

1 **“SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.**

2 “(a) IN GENERAL.—After the date of enactment of
3 the Magnuson-Stevens Fishery Conservation and Manage-
4 ment Reauthorization Act of 2005, a Council may submit,
5 and the Secretary may approve, for a fishery that is man-
6 aged under a limited access system, a limited access privi-
7 lege program to harvest fish if the program meets the re-
8 quirements of this section.

9 “(b) NO CREATION OF RIGHT, TITLE, OR INTER-
10 EST.—A limited access system, limited access privilege,
11 quota share, or other authorization established, imple-
12 mented, or managed under this Act—

13 “(1) shall be considered a permit for the pur-
14 poses of sections 307, 308, and 309;

15 “(2) may be revoked, limited, or modified at
16 any time in accordance with this Act, including rev-
17 ocation for failure to comply with the terms of the
18 plan or if the system is found to have jeopardized
19 the sustainability of the stock or the safety of fisher-
20 men;

21 “(3) shall not confer any right of compensation
22 to the holder of such limited access privilege, quota
23 share, or other such limited access system authoriza-
24 tion if it is revoked, limited, or modified;

1 “(4) shall not create, or be construed to create,
2 any right, title, or interest in or to any fish before
3 the fish is harvested by the holder; and

4 “(5) shall be considered a grant of permission
5 to the holder of the limited access privilege or quota
6 share to engage in activities permitted by such lim-
7 ited access privilege or quota share.

8 “(c) REQUIREMENTS FOR LIMITED ACCESS PRIVI-
9 LEGES.—

10 “(1) IN GENERAL.—In addition to complying
11 with the other requirements of this Act, any limited
12 access privilege program to harvest fish submitted
13 by a Council or approved by the Secretary under
14 this section shall—

15 “(A) if established in a fishery that is over-
16 fished or subject to a rebuilding plan, assist in
17 its rebuilding; and

18 “(B) if established in a fishery that is de-
19 termined by the Secretary or the Council to
20 have over-capacity, contribute to reducing ca-
21 pacity;

22 “(C) promote—

23 “(i) the safety of human life at sea;
24 and

1 “(ii) the conservation and manage-
2 ment of the fishery;

3 “(D) prohibit any person other than a
4 United States citizen, a corporation, partner-
5 ship, or other entity established under the laws
6 of the United States or any State, or a perma-
7 nent resident alien, that meets the eligibility
8 and participation requirements established in
9 the program from acquiring a privilege to har-
10 vest fish;

11 “(E) require that all fish harvested under
12 a limited access privilege program be processed
13 by vessels of the United States, in United
14 States waters, or on United States soil (includ-
15 ing any territory of the United States).

16 “(F) specify the goals of the program;

17 “(G) include provisions for the regular
18 monitoring and review by the Council and the
19 Secretary of the operations of the program, in-
20 cluding determining progress in meeting the
21 goals of the program and this Act, and any nec-
22 essary modification of the program to meet
23 those goals, with a formal and detailed review
24 5 years after the establishment of the program
25 and every 5 years thereafter;

1 “(H) include an effective system for en-
2 forcement, monitoring, and management of the
3 program, including the use of observers;

4 “(I) include an appeals process for admin-
5 istrative review of determinations with respect
6 to the Secretary’s decisions regarding adminis-
7 tration of the limited access privilege program;

8 “(J) provide for the establishment by the
9 Secretary, in consultation with the Department
10 of Justice and the Federal Trade Commission,
11 for an information collection and review process
12 to provide any additional information needed by
13 the Department of Justice and the Federal
14 Trade Commission to determine whether any il-
15 legal acts of anti-competition, anti-trust, price
16 collusion, or price fixing have occurred among
17 regional fishery associations or persons receiv-
18 ing limited access privileges under the program;
19 and

20 “(K) provide for the revocation by the Sec-
21 retary of limited access privileges held by any
22 person found to have violated the antitrust laws
23 of the United States.

1 “(2) WAIVER.—The Secretary may waive the
2 requirement of paragraph (1)(E) if the Secretary de-
3 termines that—

4 “(A) the fishery has historically processed
5 the fish outside of the United States; and

6 “(B) the United States has a seafood safe-
7 ty equivalency agreement with the country
8 where processing will occur (or other assurance
9 that seafood safety procedures to be used in
10 such processing are equivalent or superior to
11 the applicable United States seafood safety
12 standards).

13 “(3) FISHING COMMUNITIES.—

14 “(A) IN GENERAL.—

15 “(i) ELIGIBILITY.—To be eligible to
16 participate in a limited access privilege
17 program to harvest fish, a fishing commu-
18 nity shall—

19 “(I) be located within the man-
20 agement area of the relevant Council;

21 “(II) meet criteria developed by
22 the relevant Council, approved by the
23 Secretary, and published in the Fed-
24 eral Register;

1 “(III) consist of residents who
2 conduct commercial or recreational
3 fishing, processing, or fishery-depend-
4 ent support businesses within the
5 Council’s management area; and

6 “(IV) develop and submit a com-
7 munity sustainability plan to the
8 Council and the Secretary that dem-
9 onstrates how the plan will address
10 the social and economic development
11 needs of fishing communities, includ-
12 ing those that have not historically
13 had the resources to participate in the
14 fishery, for approval based on criteria
15 developed by the Council that have
16 been approved by the Secretary and
17 published in the Federal Register.

18 “(ii) FAILURE TO COMPLY WITH
19 PLAN.—The Secretary shall deny limited
20 access privileges granted under this section
21 for any person who fails to comply with the
22 requirements of the plan.

23 “(B) PARTICIPATION CRITERIA.—In devel-
24 oping participation criteria for eligible commu-

1 nities under this paragraph, a Council shall
2 consider—

3 “(i) traditional fishing or processing
4 practices in, and dependence on, the fish-
5 ery;

6 “(ii) the cultural and social frame-
7 work relevant to the fishery;

8 “(iii) economic barriers to access to
9 fishery;

10 “(iv) the existence and severity of pro-
11 jected economic and social impacts associ-
12 ated with implementation of limited access
13 privilege programs on harvesters, captains,
14 crew, processors, and other businesses sub-
15 stantially dependent upon the fishery in
16 the region or subregion;

17 “(v) the expected effectiveness, oper-
18 ational transparency, and equitability of
19 the community sustainability plan; and

20 “(vi) the potential for improving eco-
21 nomic conditions in remote coastal commu-
22 nities lacking resources to participate in
23 harvesting or processing activities in the
24 fishery.

25 “(4) REGIONAL FISHERY ASSOCIATIONS.—

1 “(A) IN GENERAL.—To be eligible to par-
2 ticipate in a limited access privilege program to
3 harvest fish, a regional fishery association
4 shall—

5 “(i) be located within the management
6 area of the relevant Council;

7 “(ii) meet criteria developed by the
8 relevant Council, approved by the Sec-
9 retary, and published in the Federal Reg-
10 ister;

11 “(iii) be a voluntary association with
12 established by-laws and operating proce-
13 dures consisting of participants in the fish-
14 ery, including commercial or recreational
15 fishing, processing, fishery-dependent sup-
16 port businesses, or fishing communities;
17 and

18 “(iv) develop and submit a regional
19 fishery association plan to the Council and
20 the Secretary for approval based on cri-
21 teria developed by the Council that have
22 been approved by the Secretary and pub-
23 lished in the Federal Register.

24 “(B) FAILURE TO COMPLY WITH PLAN.—
25 The Secretary shall deny limited access privi-

1 leges granted under this section for any person
2 who fails to comply with the requirements of
3 the plan.

4 “(C) PARTICIPATION CRITERIA.—In devel-
5 oping participation criteria for eligible regional
6 fishery associations under this paragraph, a
7 Council shall consider—

8 “(i) traditional fishing or processing
9 practices in, and dependence on, the fish-
10 ery;

11 “(ii) the cultural and social frame-
12 work relevant to the fishery;

13 “(iii) economic barriers to access to
14 fishery;

15 “(iv) the existence and severity of pro-
16 jected economic and social impacts associ-
17 ated with implementation of limited access
18 privilege programs on harvesters, captains,
19 crew, processors, and other businesses sub-
20 stantially dependent upon the fishery in
21 the region or subregion, upon the adminis-
22 trative and fiduciary soundness of the as-
23 sociation and its by-laws; and

1 “(v) the expected effectiveness, oper-
2 ational transparency, and equitability of
3 the fishery association plan.

4 “(5) ALLOCATION.—In developing a limited ac-
5 cess privilege program to harvest fish a Council or
6 the Secretary shall—

7 “(A) establish procedures to ensure fair
8 and equitable initial allocations, including con-
9 sideration of—

10 “(i) current and historical harvests;

11 “(ii) employment in the harvesting
12 and processing sectors;

13 “(iii) investments in, and dependence
14 upon, the fishery; and

15 “(iv) the current and historical par-
16 ticipation of fishing communities;

17 “(B) to the extent practicable, consider the
18 basic cultural and social framework of the fish-
19 ery, especially through the development of poli-
20 cies to promote the sustained participation of
21 small owner-operated fishing vessels and fishing
22 communities that depend on the fisheries, in-
23 cluding regional or port-specific landing or de-
24 livery requirements;

1 “(C) include measures to assist, when nec-
2 essary and appropriate, entry-level and small
3 vessel operators, captains, crew, and fishing
4 communities through set-asides of harvesting
5 allocations, including providing privileges and,
6 where appropriate, recommending the provision
7 of economic assistance in the purchase of lim-
8 ited access privileges to harvest fish;

9 “(D) ensure that limited access privilege
10 holders do not acquire an excessive share of the
11 total limited access privileges in the program
12 by—

13 “(i) establishing a maximum share,
14 expressed as a percentage of the total lim-
15 ited access privileges, that a limited access
16 privilege holder is permitted to hold, ac-
17 quired, or use; and

18 “(ii) establishing any other limitations
19 or measures necessary to prevent an in-
20 equitable concentration of limited access
21 privileges;

22 “(E) establish procedures to address geo-
23 graphic or other consolidation in both the har-
24 vesting and processing sectors of the fishery;
25 and

1 “(F) authorize limited access privileges to
2 harvest fish to be held, acquired, or used by or
3 issued under the system to persons who sub-
4 stantially participate in the fishery, as specified
5 by the Council, including, as appropriate, fish-
6 ing vessel owners, vessel captains, vessel crew
7 members, fishing communities, and regional
8 fishery associations.

9 “(6) PROGRAM INITIATION.—

10 “(A) LIMITATION.—Except as provided in
11 subparagraph (D), a Council may initiate a
12 fishery management plan or amendment to es-
13 tablish a limited access privilege program to
14 harvest fish on its own initiative or if the Sec-
15 retary has certified an appropriate petition.

16 “(B) PETITION.—A group of fishermen
17 constituting more than 50 percent of the permit
18 holders, or holding more than 50 percent of the
19 allocation, in the fishery for which a limited ac-
20 cess privilege program to harvest fish is sought,
21 may submit a petition to the Secretary request-
22 ing that the relevant Council or Councils with
23 authority over the fishery be authorized to ini-
24 tiate the development of the program. Any such
25 petition shall clearly state the fishery to which

1 the limited access privilege program would
2 apply. For multispecies permits in the Gulf,
3 only those participants who have substantially
4 fished the species proposed to be included in the
5 limited access program shall be eligible to sign
6 a petition for such a program and shall serve
7 as the basis for determining the percentage de-
8 scribed in the first sentence of this subpara-
9 graph.

10 “(C) CERTIFICATION BY SECRETARY.—
11 Upon the receipt of any such petition, the Sec-
12 retary shall review all of the signatures on the
13 petition and, if the Secretary determines that
14 the signatures on the petition represent more
15 than 50 percent of the permit holders, or hold-
16 ers of more than 50 percent of the allocation in
17 the fishery, as described by subparagraph (B),
18 the Secretary shall certify the petition to the
19 appropriate Council or Councils.

20 “(D) NEW ENGLAND AND GULF REF-
21 ERENDUM.—

22 “(i) Except as provided in clause (iii)
23 for the Gulf of Mexico commercial red
24 snapper fishery, the New England and
25 Gulf Councils may not submit, and the

1 Secretary may not approve or implement, a
2 fishery management plan or amendment
3 that creates an individual fishing quota
4 program, including a Secretarial plan, un-
5 less such a system, as ultimately developed,
6 has been approved by more than $\frac{2}{3}$ of
7 those voting in a referendum among eligi-
8 ble permit holders with respect to the New
9 England Council, and by a majority of
10 those voting in the referendum among eli-
11 gible permit holders with respect to the
12 Gulf Council. For multispecies permits in
13 the Gulf, only those participants who have
14 substantially fished the species proposed to
15 be included in the individual fishing quota
16 program shall be eligible to vote in such a
17 referendum. If an individual fishing quota
18 program fails to be approved by the req-
19 uisite number of those voting, it may be
20 revised and submitted for approval in a
21 subsequent referendum.

22 “(ii) The Secretary shall conduct a
23 referendum under this subparagraph, in-
24 cluding notifying all persons eligible to
25 participate in the referendum and making

1 available to them information concerning
2 the schedule, procedures, and eligibility re-
3 quirements for the referendum process and
4 the proposed individual fishing quota pro-
5 gram. Within 1 year after the date of en-
6 actment of the Magnuson-Stevens Fishery
7 Conservation and Management Reauthor-
8 ization Act of 2005, the Secretary shall
9 publish guidelines and procedures to deter-
10 mine procedures and voting eligibility re-
11 quirements for referenda and to conduct
12 such referenda in a fair and equitable
13 manner.

14 “(iii) The provisions of section 407(c)
15 of this Act shall apply in lieu of this sub-
16 paragraph for an individual fishing quota
17 program for the Gulf of Mexico commercial
18 red snapper fishery.

19 “(iv) Chapter 35 of title 44, United
20 States Code, (commonly known as the Pa-
21 perwork Reduction Act) does not apply to
22 the referenda conducted under this sub-
23 paragraph.

24 “(7) TRANSFERABILITY.—In establishing a lim-
25 ited access privilege program, a Council shall—

1 “(A) establish a policy on the transfer-
2 ability of limited access privilege shares
3 (through sale or lease), including a policy on
4 any conditions that apply to the transferability
5 of limited access privilege shares that is con-
6 sistent with the policies adopted by the Council
7 for the fishery under paragraph (3); and

8 “(B) establish criteria for the approval and
9 monitoring of transfers (including sales and
10 leases) of limited access privilege shares.

11 “(8) PREPARATION AND IMPLEMENTATION OF
12 SECRETARIAL PLANS.—This subsection also applies
13 to a plan prepared and implemented by the Sec-
14 retary under section 304(g).

15 “(9) ANTITRUST SAVINGS CLAUSE.—Nothing in
16 this Act shall be construed to modify, impair, or su-
17 persede the operation of any of the antitrust laws.
18 For purposes of the preceding sentence, the term
19 ‘antitrust laws’ has the meaning given such term in
20 subsection (a) of the first section of the Clayton Act,
21 except that such term includes section 5 of the Fed-
22 eral Trade Commission Act to the extent that such
23 section 5 applies to unfair methods of competition.

24 “(d) AUCTION AND OTHER PROGRAMS.—In estab-
25 lishing a limited access privilege program, a Council may

1 consider, and provide for, if appropriate, an auction sys-
2 tem or other program to collect royalties for the initial,
3 or any subsequent, distribution of allocations in a limited
4 access privilege program if—

5 “(1) the system or program is administered in
6 such a way that the resulting distribution of limited
7 access privilege shares meets the program require-
8 ments of subsection (c)(3)(A); and

9 “(2) revenues generated through such a royalty
10 program are deposited in the Limited Access System
11 Administration Fund established by section
12 305(h)(5)(B) and available subject to annual appro-
13 priations.

14 “(e) COST RECOVERY.—In establishing a limited ac-
15 cess privilege program, a Council shall—

16 “(1) develop a methodology and the means to
17 identify and assess the management, data collection
18 and analysis, and enforcement programs that are di-
19 rectly related to and in support of the program; and

20 “(2) provide, under section 304(d)(2), for a
21 program of fees paid by limited access privilege hold-
22 ers that will cover the costs of management, data
23 collection and analysis, and enforcement activities.

24 “(f) LIMITED DURATION.—In establishing a limited
25 access privilege program after the date of enactment of

1 the Magnuson-Stevens Fishery Conservation and Manage-
2 ment Reauthorization Act of 2005, a Council may estab-
3 lish—

4 “(1) a set term after which any initial or subse-
5 quent allocation of a limited access privilege shall ex-
6 pire;

7 “(2) different set terms within a fishery if the
8 Council determines that variation of terms will fur-
9 ther management goals; and

10 “(3) a mechanism under which participants in
11 and entrants to the program may acquire or reac-
12 quire allocations.

13 “(g) LIMITED ACCESS PRIVILEGE ASSISTED PUR-
14 CHASE PROGRAM.—

15 “(1) IN GENERAL.—A Council may submit, and
16 the Secretary may approve and implement, a pro-
17 gram which reserves up to 25 percent of any fees
18 collected from a fishery under section 304(d)(2) to
19 be used, pursuant to section 1104A(a)(7) of the
20 Merchant Marine Act, 1936 (46 U.S.C. App.
21 1274(a)(7)), to issue obligations that aid in financ-
22 ing—

23 “(A) the purchase of limited access privi-
24 leges in that fishery by fishermen who fish from
25 small vessels; and

1 “(B) the first-time purchase of limited ac-
2 cess privileges in that fishery by entry level
3 fishermen.

4 “(2) ELIGIBILITY CRITERIA.—A Council mak-
5 ing a submission under paragraph (1) shall rec-
6 ommend criteria, consistent with the provisions of
7 this Act, that a fisherman must meet to qualify for
8 guarantees under subparagraphs (A) and (B) of
9 paragraph (1) and the portion of funds to be allo-
10 cated for guarantees under each subparagraph.

11 “(g) EFFECT ON CERTAIN EXISTING SHARES AND
12 PROGRAMS.—Nothing in this Act, or the amendments
13 made by the Magnuson-Stevens Fishery Conservation and
14 Management Reauthorization Act of 2005, shall be con-
15 strued to require a reallocation of individual quota shares,
16 processor quota shares, cooperative programs, or other
17 quota programs, including sector allocation, under devel-
18 opment or submitted by a Council or approved by the Sec-
19 retary or by Congressional action before the date of enact-
20 ment of the Magnuson-Stevens Fishery Conservation and
21 Management Reauthorization Act of 2005.”.

22 (b) FEES.—Section 304(d)(2)(A) (16 U.S.C.
23 1854(d)(2)(A)) is amended by striking “management and
24 enforcement” and inserting “management, data collection,
25 and enforcement”.

1 (c) INVESTMENT IN UNITED STATES SEAFOOD
2 PROCESSING FACILITIES.—The Secretary of Commerce
3 shall work with the Small Business Administration and
4 other Federal agencies to develop financial and other
5 mechanisms to encourage United States investment in sea-
6 food processing facilities in the United States for fisheries
7 that lack capacity needed to process fish harvested by
8 United States vessels in compliance with the Magnuson—
9 Stevens Fishery Conservation and Management Act (16
10 U.S.c. 1801 et seq.).

11 (d) 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 (e) APPLICATION WITH AMERICAN FISHERIES
16 ACT.—Nothing in section 303A of the Magnuson-Stevens
17 Fishery Conservation and Management Act (16 U.S.C.
18 1801 et seq.), as added by subsection (a), shall be con-
19 strued to modify or supersede any provision of the Amer-
20 ican Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851
21 note; et alia).

22 **SEC. 107. ENVIRONMENTAL REVIEW PROCESS.**

23 Section 304 (16 U.S.C. 1854) is amended by adding
24 at the end the following:

25 “(h) ENVIRONMENTAL REVIEW PROCESS.—

1 “(1) PROCEDURES.—The Secretary shall, in
2 consultation with the Councils and the Council on
3 Environmental Quality, revise and update agency
4 procedures for compliance with the National Envi-
5 ronmental Policy Act (42 U.S.C. 4231 et seq.). The
6 procedures shall—

7 “(A) conform to the time lines for review
8 and approval of fishery management plans and
9 plan amendments under this section; and

10 “(B) integrate applicable environmental
11 analytical procedures, including the time frames
12 for public input, with the procedure for the
13 preparation and dissemination of fishery man-
14 agement plans, plan amendments, and other ac-
15 tions taken or approved pursuant to this Act in
16 order to provide for timely, clear and concise
17 analysis that is useful to decision makers and
18 the public, reduce extraneous paperwork, and
19 effectively involve the public.

20 “(2) USAGE.—The updated agency procedures
21 promulgated in accordance with this section used by
22 the Councils or the Secretary shall be the sole envi-
23 ronmental impact assessment procedure for fishery
24 management plans, amendments, regulations, or

1 other actions taken or approved pursuant to this
2 Act.

3 “(3) SCHEDULE FOR PROMULGATION OF FINAL
4 PROCEDURES.—The Secretary shall—

5 “(A) propose revised procedures within 12
6 months after the date of enactment of the Mag-
7 nuson-Stevens Fishery Conservation and Man-
8 agement Reauthorization Act of 2005;

9 “(B) provide 90 days for public review and
10 comments; and

11 “(C) promulgate final procedures no later
12 than 18 months after the date of enactment of
13 that Act.

14 “(4) PUBLIC PARTICIPATION.—The Secretary is
15 authorized and directed, in cooperation with the
16 Council on Environmental Quality and the Councils,
17 to involve the affected public in the development of
18 revised procedures, including workshops or other ap-
19 propriate means of public involvement.”.

20 **SEC. 108. EMERGENCY REGULATIONS.**

21 (a) LENGTHENING OF SECOND EMERGENCY PE-
22 RIOD.—Section 305(c)(3)(B) (16 U.S.C. 1855(c)(3)(B))
23 is amended by striking “180 days,” and inserting “186
24 days,”.

1 (b) TECHNICAL AMENDMENT.—Section 305(c)(3)(D)
2 (16 U.S.C. 1855(c)(3)(D)) is amended by inserting “or
3 interim measures” after “emergency regulations”.

4 **SEC. 109. WESTERN PACIFIC COMMUNITY DEVELOPMENT.**

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

7 “(j) WESTERN PACIFIC REGIONAL MARINE EDU-
8 CATION AND TRAINING.—

9 “(1) IN GENERAL.—The Secretary shall estab-
10 lish a pilot program for regionally-based marine edu-
11 cation and training programs in the Western Pacific
12 to foster understanding, practical use of knowledge
13 (including native Hawaiian and other Pacific Is-
14 lander-based knowledge), and technical expertise rel-
15 evant to stewardship of living marine resources. The
16 Secretary shall, in cooperation with the Western Pa-
17 cific Regional Fishery Management Council, regional
18 educational institutions, and local Western Pacific
19 community training entities, establish programs or
20 projects that will improve communication, education,
21 and training on marine resource issues throughout
22 the region and increase scientific education for ma-
23 rine-related professions among coastal community
24 residents, including indigenous Pacific islanders, Na-

1 tive Hawaiians and other underrepresented groups
2 in the region.

3 “(2) PROGRAM COMPONENTS.—The program
4 shall—

5 “(A) include marine science and technology
6 education and training programs focused on
7 preparing community residents for employment
8 in marine related professions, including marine
9 resource conservation and management, marine
10 science, marine technology, and maritime oper-
11 ations;

12 “(B) include fisheries and seafood-related
13 training programs, including programs for fish-
14 ery observers, seafood safety and seafood mar-
15 keting, focused on increasing the involvement of
16 coastal community residents in fishing, fishery
17 management, and seafood-related operations;

18 “(C) include outreach programs and mate-
19 rials to educate and inform consumers about
20 the quality and sustainability of wild fish or
21 fish products farmed through responsible aqua-
22 culture, particularly in Hawaii and the Western
23 Pacific;

24 “(D) include programs to identify, with the
25 fishing industry, methods and technologies that

1 will improve the data collection, quality, and re-
2 porting and increase the sustainability of fish-
3 ing practices, and to transfer such methods and
4 technologies among fisheries sectors and to
5 other nations in the Western and Central Pa-
6 cific;

7 “(E) develop means by which local and
8 traditional knowledge (including Pacific islander
9 and Native Hawaiian knowledge) can enhance
10 science-based management of fishery resources
11 of the region; and

12 “(F) develop partnerships with other West-
13 ern Pacific Island agencies, academic institu-
14 tions, and other entities to meet the purposes of
15 this section.”.

16 **SEC. 110. 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 **SEC. 111. SECRETARIAL ACTION ON STATE GROUND FISH**
9 **FISHING.**

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

12 “(k) **MULTISPECIES GROUND FISH.**—Within 60 days
13 after the date of enactment of the Magnuson-Stevens
14 Fishery Conservation and Management Reauthorization
15 Act of 2005, the Secretary of Commerce shall determine
16 whether fishing in State waters without a New England
17 multispecies groundfish fishery permit on regulated spe-
18 cies within the multispecies complex is not consistent with
19 the applicable Federal fishery management plan. If the
20 Secretary makes a determination that such actions are not
21 consistent with the plan, the Secretary shall, in consulta-
22 tion with the Council, and after notifying the affected
23 State, develop and implement measures to cure the incon-
24 sistency.”.

1 **SEC. 112. JOINT ENFORCEMENT AGREEMENTS.**

2 (a) IN GENERAL.—Section 311 (16 U.S.C. 1861) is
3 amended—

4 (1) by striking “and” after the semicolon in
5 subsection (b)(1)(A)(iv);

6 (2) by inserting “and” after the semicolon in
7 subsection (b)(1)(A)(v);

8 (3) by inserting after clause (v) of subsection
9 (b)(1)(A) the following:

10 “(vi) access, directly or indirectly, for
11 enforcement purposes any data or informa-
12 tion required to be provided under this
13 title or regulations under this title, includ-
14 ing data from Global Maritime Distress
15 and Safety Systems, vessel monitoring sys-
16 tems, or any similar system, subject to the
17 confidentiality provisions of section 402;”;

18 (4) by redesignating subsection (h) as sub-
19 section (j); and

20 (5) by inserting after subsection (g) the fol-
21 lowing:

22 “(h) JOINT ENFORCEMENT AGREEMENTS.—

23 “(1) IN GENERAL.—The Governor of an eligible
24 State may apply to the Secretary for execution of a
25 joint enforcement agreement with the Secretary that
26 will authorize the deputization and funding of State

1 law enforcement officers with marine law enforce-
2 ment responsibilities to perform duties of the Sec-
3 retary relating to law enforcement provisions under
4 this title or any other marine resource law enforced
5 by the Secretary. Upon receiving an application
6 meeting the requirements of this subsection, the Sec-
7 retary may enter into a joint enforcement agreement
8 with the requesting State.

9 “(2) ELIGIBLE STATE.—A State is eligible to
10 participate in the cooperative enforcement agree-
11 ments under this section if it is in, or bordering on,
12 the Atlantic Ocean (including the Caribbean Sea),
13 the Pacific Ocean, the Arctic Ocean, the Gulf of
14 Mexico, Long Island Sound, or 1 or more of the
15 Great Lakes.

16 “(3) REQUIREMENTS.—Joint enforcement
17 agreements executed under paragraph (1)—

18 “(A) shall be consistent with the purposes
19 and intent of this section to the extent applica-
20 ble to the regulated activities;

21 “(B) may include specifications for joint
22 management responsibilities as provided by the
23 first section of Public Law 91–412 (15 U.S.C.
24 1525); and

1 “(C) shall provide for confidentiality of
2 data and information submitted to the State
3 under section 402.

4 “(4) ALLOCATION OF FUNDS.—The Secretary
5 shall include in each joint enforcement agreement an
6 allocation of funds to assist in management of the
7 agreement. The allocation shall be fairly distributed
8 among all eligible States participating in cooperative
9 enforcement agreements under this subsection, based
10 upon consideration of Federal marine enforcement
11 needs, the specific marine conservation enforcement
12 needs of each participating eligible State, and the
13 capacity of the State to undertake the marine en-
14 forcement mission and assist with enforcement
15 needs. The agreement may provide for amounts to
16 be withheld by the Secretary for the cost of any
17 technical or other assistance provided to the State
18 by the Secretary under the agreement.

19 “(i) IMPROVED DATA SHARING.—

20 “(1) IN GENERAL.—Notwithstanding any other
21 provision of this Act, as soon as practicable but no
22 later than 21 months after the date of enactment of
23 the Magnuson-Stevens Fishery Conservation and
24 Management Reauthorization Act of 2005, the Sec-
25 retary shall implement data-sharing measures to

1 make any data required to be provided by this Act
2 from Global Maritime Distress and Safety Systems,
3 vessel monitoring systems, or similar systems—

4 “(A) directly accessible by State enforce-
5 ment officers authorized under subsection (a) of
6 this section; and

7 “(B) available to a State management
8 agency involved in, or affected by, management
9 of a fishery if the State has entered into an
10 agreement with the Secretary under section
11 402(b)(1)(B) of this Act.

12 “(2) AGREEMENT REQUIRED.—The Secretary
13 shall promptly enter into an agreement with a State
14 under section 402(b)(1)(B) of this Act if—

15 “(A) the Attorney General or highest rank-
16 ing legal officer of the State provides a written
17 opinion or certification that State law allows
18 the State to maintain the confidentiality of in-
19 formation required by Federal law to be kept
20 confidential; or

21 “(B) the Secretary is provided other rea-
22 sonable assurance that the State can and will
23 protect the identity or business of any person to
24 which such information relates.”.

1 (b) REPORT ON USING GMDSS FOR FISHERY PUR-
2 POSES.—Within 15 months after the date of enactment
3 of this Act, the National Marine Fisheries Service and the
4 United States Coast Guard shall transmit a joint report
5 to the Senate Committee on Commerce, Science, and
6 Transportation and the House of Representatives Com-
7 mittee on Resources containing—

8 (1) a cost-to-benefit analysis of the feasibility,
9 value, and cost of using the Global Maritime Dis-
10 tress and Safety Systems, vessel monitoring systems,
11 or similar systems for fishery management, con-
12 servation, enforcement, and safety purposes with the
13 Federal government bearing the capital costs of any
14 such system;

15 (2) an examination of the cumulative impact of
16 existing requirements for commercial vessels;

17 (3) an examination of whether the Global Mari-
18 time Distress and Safety Systems or similar require-
19 ments would overlap existing requirements or render
20 them redundant;

21 (4) an examination of how data integration
22 from such systems could be addressed;

23 (5) an examination of how to maximize the
24 data-sharing opportunities between relevant State
25 and Federal agencies and provide specific informa-

1 tion on how to develop these opportunities, including
2 the provision of direct access to the Global Maritime
3 Distress and Safety Systems or similar system data
4 to State enforcement officers, while considering the
5 need to maintain or provide an appropriate level of
6 individual vessel confidentiality where practicable;
7 and

8 (6) an assessment of how the Global Maritime
9 Distress and Safety Systems or similar systems
10 could be developed, purchased, and distributed to
11 regulated vessels.

12 **SEC. 113. TRANSITION TO SUSTAINABLE FISHERIES.**

13 (a) IN GENERAL.—Section 312 (16 U.S.C. 1861a)
14 is amended—

15 (1) by striking “measures;” in subsection
16 (a)(1)(B) and inserting “measures, including regu-
17 latory restrictions imposed to protect human health
18 or the marine environment and judicially imposed
19 harvest restrictions;”;

20 (2) by striking “1996, 1997, 1998, and 1999.”
21 in subsection (a)(4) and inserting “2006 through
22 2012.”;

23 (3) by striking “or the Governor of a State for
24 fisheries under State authority, may conduct a fish-
25 ing” in subsection (b)(1) and inserting “the Gov-

1 error of a State for fisheries under State authority,
2 or a majority of permit holders in the fishery, may
3 conduct a voluntary fishing”;

4 (4) by inserting “practicable” after “entrants,”
5 in subsection (b)(1)(B)(i);

6 (5) by striking “cost-effective and” in sub-
7 section (b)(1)C) and inserting “cost-effective and, in
8 the instance of a program involving an industry fee
9 system, prospectively,”;

10 (6) by striking subparagraph (A) of subsection
11 (b)(2) and inserting the following:

12 “(A) the owner of a fishing vessel, if the permit
13 authorizing the participation of the vessel in the
14 fishery is surrendered for permanent revocation and
15 the vessel owner and permit holder relinquish any
16 claim associated with the vessel or permit that could
17 qualify such owner or holder for any present or fu-
18 ture limited access system permit in the fishery for
19 which the program is established and such vessel is
20 (i) scrapped, or (ii) through the Secretary of the de-
21 partment in which the Coast Guard is operating,
22 subjected to title restrictions (including loss of the
23 vessel’s fisheries endorsement) that permanently
24 prohibit and effectively prevent its use in fishing in

1 federal or state waters, or fishing on the high seas
2 or in the waters of a foreign nation ; or”;

3 (7) by striking “The Secretary shall consult, as
4 appropriate, with Councils,” in subsection (b)(4) and
5 inserting “The harvester proponents of each pro-
6 gram and the Secretary shall consult, as appropriate
7 and practicable, with Councils,”;

8 (8) by striking “Secretary, at the request of the
9 appropriate Council,” in subsection (d)(1)(A) and
10 inserting “Secretary”;

11 (9) by striking “Secretary, in consultation with
12 the Council,” in subsection (d)(1)(A) and inserting
13 “Secretary”;

14 (10) by striking “a two-thirds majority of the
15 participants voting.” in subsection (d)(1)(B) and in-
16 serting “at least a majority of the permit holders in
17 the fishery, or 50 percent of the permitted allocation
18 of the fishery, who participated in the fishery.”;

19 (11) by striking “establish;” in subsection
20 (d)(2)((C) and inserting “establish, unless the Sec-
21 retary determines that such fees should be collected
22 from the seller;” and

23 (12) striking subsection (e) and inserting the
24 following:

25 “(e) IMPLEMENTATION PLAN.—

1 “(1) FRAMEWORK REGULATIONS.—The Sec-
2 retary shall propose and adopt framework regula-
3 tions applicable to the implementation of all pro-
4 grams under this section.

5 “(2) PROGRAM REGULATIONS.—The Secretary
6 shall implement each program under this section by
7 promulgating regulations that, together with the
8 framework regulations, establish each program and
9 control its implementation.

10 “(3) HARVESTER PROPONENTS’ IMPLEMENTA-
11 TION PLAN.—The Secretary may not propose imple-
12 mentation regulations for a program to be paid for
13 by an industry fee system until the harvester pro-
14 ponents of the program provide to the Secretary a
15 proposed implementation plan that, among other
16 matters—

17 “(A) proposes the types and numbers of
18 vessels or permits that are eligible to participate
19 in the program and the manner in which the
20 program shall proceed, taking into account—

21 “(i) the requirements of this section;

22 “(ii) the requirements of the frame-
23 work regulations;

24 “(iii) the characteristics of the fishery;

1 “(iv) the requirements of the applica-
2 ble fishery management plan and any
3 amendment that such plan may require to
4 support the proposed program;

5 “(v) the general needs and desires of
6 harvesters in the fishery;

7 “(vi) the need to minimize program
8 costs; and

9 “(vii) other matters, including the
10 manner in which such proponents propose
11 to fund the program to ensure its cost ef-
12 fectiveness, as well as any relevant factors
13 demonstrating the potential for, or nec-
14 essary to obtain, the support and general
15 cooperation of a substantial number of af-
16 fected harvesters in the fishery (or portion
17 of the fishery) for which the program is in-
18 tended; and

19 “(B) proposes procedures for program par-
20 ticipation (such as submission of owner bids
21 under an auction system or fair market-value
22 assessment), including any terms and condi-
23 tions for participation, that the harvester pro-
24 ponents deem to be reasonably necessary to
25 meet the program’s proposed objectives.

1 “(4) PARTICIPATION CONTRACTS.—The Sec-
2 retary shall contract with each person participating
3 in a program, and each such contract shall, in addi-
4 tion to including such other matters as the Secretary
5 deems necessary and appropriate to effectively im-
6 plement each program (including penalties for con-
7 tract non-performance) be consistent with the frame-
8 work and implementing regulations and all other ap-
9 plicable law.

10 “(5) REDUCTION AUCTIONS.—Each program
11 not involving fair market assessment shall involve a
12 reduction auction that scores the reduction price of
13 each bid offer by the data relevant to each bidder
14 under an appropriate fisheries productivity factor. If
15 the Secretary accepts bids, the Secretary shall ac-
16 cept responsive bids in the rank order of their bid
17 scores, starting with the bid whose reduction price is
18 the lowest percentage of the productivity factor, and
19 successively accepting each additional responsive bid
20 in rank order until either there are no more respon-
21 sive bids or acceptance of the next bid would cause
22 the total value of bids accepted to exceed the amount
23 of funds available for the program.

24 “(6) BID INVITATIONS.—Each program shall
25 proceed by the Secretary issuing invitations to bid

1 setting out the terms and conditions for participa-
2 tion consistent with the framework and imple-
3 menting regulations. Each bid that the Secretary re-
4 ceives in response to the invitation to bid shall con-
5 stitute an irrevocable offer from the bidder.”.

(b) TECHNICAL AMENDMENT.—Sections 116, 203, 204, 205, and 206 of the Sustainable Fisheries Act are deemed to have added sections 312, 402, 403, 404, and 405, respectively to the Act as of the date of enactment of the Sustainable Fisheries Act.

11 SEC. 114. REGIONAL COASTAL DISASTER ASSISTANCE,
12 TRANSITION, AND RECOVERY PROGRAM.

13 Title III (16 U.S.C. 1851 et seq.) is amended by add-
14 ing at the end the following:

15 "SEC. 315. REGIONAL COASTAL DISASTER ASSISTANCE,
16 TRANSITION, AND RECOVERY PROGRAM.

“(a) IN GENERAL.—When there is a catastrophic regional fishery disaster the Secretary may, upon the request of, and in consultation with, the Governors of affected States, establish a regional economic transition program to provide immediate disaster relief assistance to the fishermen, charter fishing operators, United States fish processors, and owners of related fishery infrastructure affected by the disaster.

25 “(b) PROGRAM COMPONENTS.—

1 “(1) IN GENERAL.—Subject to the availability
2 of appropriations, the program shall provide funds
3 or other economic assistance to affected entities, or
4 to governmental entities for disbursement to affected
5 entities, for—

6 “(A) meeting immediate regional shoreside
7 fishery infrastructure needs, including proc-
8 essing facilities, cold storage facilities, ice
9 houses, docks, including temporary docks and
10 storage facilities, and other related shoreside
11 fishery support facilities and infrastructure;

12 “(B) financial assistance and job training
13 assistance for fishermen who wish to remain in
14 a fishery in the region that may be temporarily
15 closed as a result of environmental or other ef-
16 fects associated with the disaster;

17 “(C) funding, pursuant to the require-
18 ments of section 312(b), to fishermen who are
19 willing to scrap a fishing vessel and perma-
20 nently surrender permits for fisheries named on
21 that vessel; and

22 “(D) any other activities authorized under
23 section 312(a) of this Act or section 308(d) of
24 the Interjurisdictional Fisheries Act of 1986
25 (16 U.S.C. 4107(d)).

1 “(2) JOB TRAINING.—Any fisherman who de-
2 cides to scrap a fishing vessel under the program
3 shall be eligible for job training assistance.

4 “(3) STATE PARTICIPATION OBLIGATION.—The
5 participation by a State in the program shall be con-
6 ditioned upon a commitment by the appropriate
7 State entity to ensure that the relevant State fishery
8 meets the requirements of section 312(b) of this Act
9 to ensure excess capacity does not re-enter the fish-
10 ery.

11 “(4) NO MATCHING REQUIRED.—The Secretary
12 may waive the matching requirements of section 312
13 of this Act, section 308 of the Interjurisdictional
14 Fisheries Act of 1986 (16 U.S.C. 4107), and any
15 other provision of law under which the Federal share
16 of the cost of any activity is limited to less than 100
17 percent if the Secretary determines that—

18 “(A) no reasonable means are available
19 through which applicants can meet the match-
20 ing requirement; and

21 “(B) the probable benefit of 100 percent
22 Federal financing outweighs the public interest
23 in imposition of the matching requirement.

24 “(5) NET REVENUE LIMIT INAPPLICABLE.—
25 Section 308(d)(3) of the Interjurisdictional Fisheries

1 Act (16 U.S.C. 4107(d)(3)) shall not apply to assist-
2 ance under this section.

3 “(c) REGIONAL IMPACT EVALUATION.—Within 2
4 months after a catastrophic regional fishery disaster the
5 Secretary shall provide the Governor of each State partici-
6 pating in the program a comprehensive economic and
7 socio-economic evaluation of the affected region’s fisheries
8 to assist the Governor in assessing the current and future
9 economic viability of affected fisheries, including the eco-
10 nomic impact of foreign fish imports and the direct, indi-
11 rect, or environmental impact of the disaster on the fish-
12 ery and coastal communities.

13 “(d) CATASTROPHIC REGIONAL FISHERY DISASTER
14 DEFINED.—In this section the term ‘catastrophic regional
15 fishery disaster’ means a natural disaster, including a hur-
16 ricane or tsunami, or a judicial or regulatory closure to
17 protect human health or the marine environment, that—

18 “(1) results in economic losses to coastal or
19 fishing communities;

20 “(2) affects more than 1 State or a major fish-
21 ery managed by a Council or interstate fishery com-
22 mission; and

23 “(3) is determined by the Secretary to be a
24 commercial fishery failure under section 312(a) of
25 this Act or a fishery resource disaster or section

1 308(d) of the Interjurisdictional Fisheries Act of
2 1986 (16 U.S.C. 4107(d)).”.

3 **SEC. 115. FISHERY FINANCE PROGRAM HURRICANE ASSIST-**
4 **ANCE.**

5 (a) LOAN ASSISTANCE.—Subject to availability of ap-
6 propriations, the Secretary of Commerce shall provide as-
7 sistance to eligible holders of fishery finance program
8 loans and allocate such assistance among eligible holders
9 based upon their outstanding principal balances as of De-
10 cember 2, 2005, for any of the following purposes:

11 (1) To defer principal payments on the debt for
12 1 year and re-amortize the debt over the remaining
13 term of the loan.

14 (2) To allow for an extension of the term of the
15 loan for up to 1 year beyond the remaining term of
16 the loan, or September 30, 2013, whichever is later.

17 (3) To pay the interest costs for such loans over
18 fiscal years 2006 through 2012, not to exceed
19 amounts authorized under subsection (d).

20 (4) To provide opportunities for loan forgive-
21 ness, as specified in subsection (c).

22 (b) LOAN FORGIVENESS.—

23 (1) IN GENERAL.—Upon application made by
24 an eligible holder of a fishery finance program loan,
25 made at such time, in such manner, and containing

1 such information as the Secretary may require, the
2 Secretary, on a calendar year basis beginning in
3 2005, may—

4 (A) offset against the outstanding balance
5 on the loan an amount equal to the sum of the
6 amounts expended by the holder during the cal-
7 endar year to repair or replace covered vessels
8 or facilities, or to invest in new fisheries infra-
9 structure within or for use within the declared
10 fisheries disaster area; or

11 (B) cancel the amount of debt equal to
12 100 hundred percent of actual expenditures on
13 eligible repairs, reinvestment, expansion, or new
14 investment in fisheries infrastructure in the dis-
15 aster region, or repairs to, or replacement of,
16 eligible fishing vessels.

17 (c) DEFINITIONS.—In this section:

18 (1) DECLARED FISHERIES DISASTER AREA.—
19 The term “declared fisheries disaster area” means
20 fisheries located in the major disaster area des-
21 ignated by the President under the Robert T. Staf-
22 ford Disaster Relief and Emergency Assistance Act
23 (42 U.S.C. 5121 et seq.) as a result of Hurricane
24 Katrina or Hurricane Rita.

1 (2) ELIGIBLE HOLDER.—The term “eligible
2 holder” means the holder of a fishery finance pro-
3 gram loan if—

4 (A) that loan is used to guarantee or fi-
5 nance any fishing vessel or fish processing facil-
6 ity home-ported or located within the declared
7 fisheries disaster area; and

8 (B) the holder makes expenditures to re-
9 pair or replace such covered vessels or facilities,
10 or invests in new fisheries infrastructure within
11 or for use within the declared fisheries disaster
12 area, to restore such facilities following the dis-
13 aster.

14 (3) FISHERY FINANCE PROGRAM LOAN.—The
15 term “fishery finance program loan” means a loan
16 made or guaranteed under the fishery finance pro-
17 gram under title XI of the Merchant Marine Act,
18 1936, (46 U.S.C. App. 1271 et seq.).

19 (d) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to the Secretary of Com-
21 merce for the purposes of this section not more than
22 \$15,000,000 for each eligible holder for the period begin-
23 ning with fiscal year 2006 through fiscal year 2012.

1 **SEC. 116. SHRIMP FISHERIES HURRICANE ASSISTANCE**
2 **PROGRAM.**

3 (a) IN GENERAL.—The Secretary of Commerce shall
4 establish an assistance program for the Gulf of Mexico
5 shrimp fishing industry.

6 (b) ALLOCATION OF FUNDS.—Under the program,
7 the Secretary shall allocate funds appropriated to carry
8 out the program among the States of Alabama, Louisiana,
9 Florida, Mississippi, and Texas in proportion to the per-
10 centage of the shrimp catch landed by each State, except
11 that the amount allocated to Florida shall be based exclu-
12 sively on the proportion of such catch landed by the Flor-
13 ida Gulf Coast fishery.

14 (c) USE OF FUNDS.—Of the amounts made available
15 to each State under the program—

16 (1) 2 percent shall be retained by the State to
17 be used for the distribution of additional payments
18 to fishermen with a demonstrated record of compli-
19 ance with turtle excluder and bycatch reduction de-
20 vice regulations; and

21 (2) the remainder of the amounts shall be used
22 for—

23 (A) personal assistance, with priority given
24 to food, energy needs, housing assistance,
25 transportation fuel, and other urgent needs;

1 (B) assistance for small businesses, includ-
2 ing fishermen, fish processors, and related busi-
3 nesses serving the fishing industry;

4 (C) domestic product marketing and sea-
5 food promotion;

6 (D) State seafood testing programs;

7 (E) the development of limited entry pro-
8 grams for the fishery;

9 (F) funding or other incentives to ensure
10 widespread and proper use of turtle excluder
11 devices and bycatch reduction devices in the
12 fishery; and

13 (G) voluntary capacity reduction programs
14 for shrimp fisheries under limited access pro-
15 grams.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated to the Secretary of Com-
18 merce \$17,500,000 for fiscal years 2006 through 2011 to
19 carry out this section.

20 **SEC. 117. BYCATCH REDUCTION ENGINEERING PROGRAM.**

21 Title III (16 U.S.C. 1851 et seq.), as amended by
22 section 114 of this Act, is further amended by adding at
23 the end the following:

1 **“SEC. 316. BYCATCH REDUCTION ENGINEERING PROGRAM.**

2 “(a) BYCATCH REDUCTION ENGINEERING PRO-
3 GRAM.—Not later than 1 year after the date of enactment
4 of the Magnuson-Stevens Fishery Conservation and Man-
5 agement Reauthorization Act of 2005, the Secretary, in
6 cooperation with the Councils and other affected interests,
7 and based upon the best scientific information available,
8 shall establish a bycatch reduction program to develop
9 technological devices and other conservation engineering
10 changes designed to minimize bycatch, seabird bycatch,
11 bycatch mortality, and post-release mortality in Federally
12 managed fisheries. The program shall—

13 “(1) be regionally based;

14 “(2) be coordinated with projects conducted
15 under the cooperative research and management
16 program established under this Act;

17 “(3) provide information and outreach to fish-
18 ery participants that will encourage adoption and
19 use of technologies developed under the program;
20 and

21 “(4) provide for routine consultation with the
22 Councils in order to maximize opportunities to incor-
23 porate results of the program in Council actions and
24 provide incentives for adoption of methods developed
25 under the program in fishery management plans de-
26 veloped by the Councils.

1 “(b) INCENTIVES.—Any fishery management plan
2 prepared by a Council or by the Secretary may establish
3 a system of incentives to reduce total bycatch and seabird
4 bycatch amounts, bycatch rates, and post-release mortality
5 in fisheries under the Council’s or Secretary’s jurisdiction,
6 including—

7 “(1) measures to incorporate bycatch into
8 quotas, including the establishment of collective or
9 individual bycatch quotas;

10 “(2) measures to promote the use of gear with
11 verifiable and monitored low bycatch and seabird by-
12 catch rates; and

13 “(3) measures that, based on the best scientific
14 information available, will reduce bycatch and
15 seabird bycatch, bycatch mortality, post-release mor-
16 tality, or regulatory discards in the fishery.”.

17 **SEC. 118. COMMUNITY-BASED RESTORATION PROGRAM**
18 **FOR FISHERY AND COASTAL HABITATS.**

19 (a) IN GENERAL.—The Secretary of Commerce shall
20 establish a community-based fishery and coastal habitat
21 restoration program to implement and support the res-
22 toration of fishery and coastal habitats.

23 (b) AUTHORIZED ACTIVITIES.—In carrying out the
24 program, the Secretary may—

1 (1) provide funding and technical expertise to
2 fishery and coastal communities to assist them in re-
3 storing fishery and coastal habitat;

4 (2) advance the science and monitoring of
5 coastal habitat restoration;

6 (3) transfer restoration technologies to the pri-
7 vate sector, the public, and other governmental
8 agencies;

9 (4) develop public-private partnerships to ac-
10 complish sound coastal restoration projects;

11 (5) promote significant community support and
12 volunteer participation in fishery and coastal habitat
13 restoration;

14 (6) promote stewardship of fishery and coastal
15 habitats; and

16 (7) leverage resources through national, re-
17 gional, and local public-private partnerships.

18 **SEC. 119. PROHIBITED ACTS.**

19 Section 307(1) (16 U.S.C. 1857(1)) is amended—

20 (1) by striking “or” after the semicolon in sub-
21 paragraph (O);

22 (2) by striking “board.” in subparagraph (P)
23 and inserting “board;”; and

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

1 “(Q) to import, export, transport, sell, re-
2 ceive, acquire, or purchase in interstate or for-
3 eign commerce any fish taken, possessed, trans-
4 ported, or sold in violation of any foreign law
5 or regulation; or

6 “(R) to use any fishing vessel to engage in
7 fishing in Federal or State waters, or on the
8 high seas or the waters of another country,
9 after the Secretary has made a payment to the
10 owner of that fishing vessel under section
11 312(b)(2).”.

12 **SEC. 120. ENFORCEMENT.**

13 (a) CIVIL ENFORCEMENT.—Section 308 (16 U.S.C.
14 1858) is amended—

15 (1) by striking “\$100,000” in subsection (a)
16 and inserting “\$240,000”;

17 (2) by striking “this section,” in subsection (f)
18 and inserting “this Act (or any other marine re-
19 source law enforced by the Secretary),”;

20 (3) by inserting “a permit, or any interest in a
21 permit,” in subsection (g)(3) after “vessel,” each
22 place it appears;

23 (4) by striking “the vessel” in subsection (g)(3)
24 and inserting “the vessel, permit, or interest”;

1 (5) by inserting “or any amount in settlement
2 of a civil forfeiture,” after “criminal fine,” in sub-
3 section (g)(4); and

4 (6) by striking “penalty or fine” in subsection
5 (g)(4) and inserting “penalty, fine, or settlement
6 amount”.

7 (b) CRIMINAL PENALTIES.—Section 309 (16 U.S.C.
8 1859) is amended to read as follows:

9 **“SEC. 309. CRIMINAL PENALTIES.**

10 **“(a) FINES AND IMPRISONMENT.—**

11 “(1) IN GENERAL.—Any person (other than a
12 foreign government or entity thereof) who knowingly
13 violates subparagraph (D), (E), (F), (H), (I), or (L)
14 of paragraph (1) of section 307, or paragraph (2) of
15 section 307, shall be imprisoned for not more than
16 5 years and fined—

17 “(A) not more than \$500,000 if such per-
18 son is an individual; or

19 “(B) not more than \$1,000,000 if such
20 person is a corporation or other legal entity
21 other than an individual.

22 **“(2) AGGRAVATED OFFENSES.—**Notwith-
23 standing paragraph (1), the maximum term of im-
24 prisonment shall be for not more than 10 years if—

25 “(A) the violator is an individual; and

1 “(B) in the commission of a violation de-
2 scribed in paragraph (1), that individual—

3 “(A) used a dangerous weapon;

4 “(B) engaged in conduct that caused bod-
5 ily injury to any observer described in section
6 307, any officer authorized to enforce the provi-
7 sions of this Act under section 311, or any
8 Council member or staff; or

9 “(C) placed any such observer, officer,
10 Council member, or staff in fear of imminent
11 bodily injury.

12 “(b) OTHER VIOLATIONS.—Any person (other than
13 a foreign government or entity thereof) who knowingly vio-
14 lates any other provision of section 307 shall be fined
15 under title 18, United States Code, imprisoned for not
16 more than 5 years, or both.

17 “(c) JURISDICTION.—

18 “(1) IN GENERAL.—The district courts of the
19 United States shall have jurisdiction over any action
20 arising under this Act.

21 “(2) VENUE.—For purposes of this Act—

22 “(A) each violation of this Act shall con-
23 stitute a separate offense and the offense shall
24 be deemed to have been committed not only in

1 the district where it first occurred, but also in
2 any other district as authorized by law;

3 “(B) any offense not committed within a
4 judicial district of the United States is subject
5 to the venue provisions of section 3238 of title
6 18, United States Code; and

7 “(C) American Samoa shall be included
8 within the judicial district of the United States
9 District Court for the District of Hawaii.”.

10 (c) CIVIL FORFEITURES.—Section 310(a) (16 U.S.C.
11 1860(a)) is amended—

12 (1) by striking “(other than any act for which
13 the issuance of a citation under section 311(a) is
14 sufficient sanction)”; and

15 (2) by striking “States.” and inserting “, except
16 that no fishing vessel shall be subject to forfeiture
17 under this section as the result of any act for which
18 the issuance of a citation under section 311(a) is
19 sufficient sanction.”.

20 (d) ENFORCEMENT RESPONSIBILITY.—Section
21 311(a) (16 U.S.C. 1861(a)) is amended—

22 (1) by striking “Act” and inserting “Act, and
23 the provisions of any marine resource law adminis-
24 tered by the Secretary,”; and

1 (2) by striking “State agency,” and inserting
2 “agency of any State, Territory, Commonwealth, or
3 Tribe,”.

4 (e) POWERS OF AUTHORIZED OFFICERS.—Section
5 311(b) (16 U.S.C. 1861(b)) is amended by striking “Fed-
6 eral or State”.

7 (f) PAYMENT OF STORAGE, CARE, AND OTHER
8 COSTS.—Section 311(e)(1)(B) (16 U.S.C. 1861(e)(1)(B))
9 is amended to read as follows:

10 “(B) a reward to any person who furnishes in-
11 formation which leads to an arrest, conviction, civil
12 penalty assessment, or forfeiture of property for any
13 violation of any provision of this Act or any other
14 marine resource law enforced by the Secretary of up
15 to the lesser of—

16 “(i) 20 percent of the penalty or fine col-
17 lected; or

18 “(ii) \$20,000;”.

19 **TITLE II—INFORMATION AND** 20 **RESEARCH**

21 **SEC. 201. RECREATIONAL FISHERIES INFORMATION.**

22 Section 401 (16 U.S.C. 1881) is amended by striking
23 subsection (g) and inserting the following:

24 “(g) RECREATIONAL FISHERIES.—

1 “(1) FEDERAL PROGRAM.—The Secretary shall
2 establish and implement a regionally based registry
3 program for recreational fishermen in each of the 8
4 fishery management regions. The program shall pro-
5 vide for—

6 “(A) the registration (including identifica-
7 tion and contact information) of individuals
8 who engage in recreational fishing—

9 “(i) in the Exclusive Economic Zone;

10 “(ii) for anadromous species; or

11 “(iii) for Continental Shelf fishery re-
12 sources beyond the Exclusive Economic
13 Zone; and

14 “(B) if appropriate, the registration (in-
15 cluding the ownership, operator, and identifica-
16 tion of the vessel) of vessels used in such fish-
17 ing.

18 “(2) STATE PROGRAMS.—The Secretary shall
19 exempt from registration under the program rec-
20 reational fishermen and charter fishing vessels li-
21 censed, permitted, or registered under the laws of a
22 State if the Secretary determines that information
23 from the State program is suitable for the Sec-
24 retary’s use or is used to assist in completing marine
25 recreational fisheries statistical surveys, or evalu-

1 ating the effects of proposed conservation and man-
2 agement measures for marine recreational fisheries.

3 “(3) DATA COLLECTION.—Within 24 months
4 after the date of enactment of the Magnuson-Ste-
5 vens Fishery conservation and Management Reau-
6 thorization Act of 2005, the Secretary shall establish
7 a program to improve the quality and accuracy of
8 information generated by the Marine Recreational
9 Fishery Statistics Survey, with a goal of achieving
10 acceptable accuracy and utility for each individual
11 fishery. Unless the Secretary determines that alter-
12 nate methods will achieve this goal more efficiently
13 and effectively, the program shall, to the extent pos-
14 sible, include—

15 “(A) an adequate number of dockside
16 interviews to accurately estimate recreational
17 catch and effort;

18 “(B) use of surveys that target anglers
19 registered or licensed at the State or Federal
20 level to collect participation and effort data;

21 “(C) collection and analysis of vessel trip
22 report data from charter fishing vessels; and

23 “(D) development of a weather corrective
24 factor that can be applied to recreational catch
25 and effort estimates.

1 “(4) REPORT.—Within 24 months after estab-
2 lishment of the program, the Secretary shall submit
3 a report to Congress that describes the progress
4 made toward achieving the goals and objectives of
5 the program.”.

6 **SEC. 202. COLLECTION OF INFORMATION.**

7 Section 402(a) (16 U.S.C. 1881a(a)) is amended—
8 (1) by striking “(a) COUNCIL REQUESTS.—” in
9 the subsection heading and inserting “(a) COLLEC-
10 TION PROGRAMS.—”;

11 (2) by resetting the text following “(a) COLLEC-
12 TION PROGRAMS.—” as a new paragraph 2 ems
13 from the left margin;

14 (3) by inserting “(1) COUNCIL REQUESTS.—”
15 before “If a Council”;

16 (4) by striking “subsection” in the last sentence
17 and inserting “paragraph”;

18 (5) by striking “(other than information that
19 would disclose proprietary or confidential commercial
20 or financial information regarding fishing operations
21 or fish processing operations)” each place it appears;
22 and

23 (6) by adding at the end the following:

24 “(2) SECRETARIAL INITIATION.—If the Sec-
25 retary determines that additional information is nec-

1 essary for developing, implementing, revising, or
2 monitoring a fishery management plan, or for deter-
3 mining whether a fishery is in need of management,
4 the Secretary may, by regulation, implement an in-
5 formation collection or observer program requiring
6 submission of such additional information for the
7 fishery.”.

8 **SEC. 203. ACCESS TO CERTAIN INFORMATION.**

9 (a) IN GENERAL.—Section 402(b) (16 U.S.C.
10 1881a(b)) is amended—

11 (1) by redesignating paragraph (2) as para-
12 graph (3) and resetting it 2 ems from the left mar-
13 gin;

14 (2) by striking all preceding paragraph (3), as
15 redesignated, and inserting the following:

16 “(b) CONFIDENTIALITY OF INFORMATION.—

17 “(1) Any information submitted to the Sec-
18 retary, a state fishery management agency, or a ma-
19 rine fisheries commission by any person in compli-
20 ance with the requirements of this Act that contains
21 confidential information shall be confidential and
22 shall be exempt from disclosure under section
23 552(h)(3) of title 5, United States Code, except—

24 “(A) to Federal employees and Council em-
25 ployees who are responsible for fishery manage-

1 ment plan development, monitoring, or enforce-
2 ment;

3 “(B) to State or Marine Fisheries Commis-
4 sion employees as necessary to further the De-
5 partment’s mission, subject to a confidentiality
6 agreement that prohibits public disclosure of
7 confidential information relating to any person;

8 “(C) to State employees who are respon-
9 sible for fishery management plan enforcement,
10 if the States employing those employees have
11 entered into a fishery enforcement agreement
12 with the Secretary and the agreement is in ef-
13 fect;

14 “(D) when such information is used by
15 State, Council, or Marine Fisheries Commission
16 employees to verify catch under a limited access
17 program, but only to the extent that such use
18 is consistent with subparagraph (B);

19 “(E) when the Secretary has obtained
20 written authorization from the person submit-
21 ting such information to release such informa-
22 tion to persons for reasons not otherwise pro-
23 vided for in this subsection, and such release
24 does not violate other requirements of this Act;

1 “(F) when such information is required to
2 be submitted to the Secretary for any deter-
3 mination under a limited access program; or

4 “(G) in support of homeland and national
5 security activities, including the Coast Guard’s
6 homeland security missions as defined in sec-
7 tion 888(a)(2) of the Homeland Security Act of
8 2002 (6 U.S.C. 468(a)(2)).

9 “(2) Any observer information shall be con-
10 fidential and shall not be disclosed, except in accord-
11 ance with the requirements of subparagraphs (A)
12 through (G) of paragraph (1), or—

13 “(A) as authorized by a fishery manage-
14 ment plan or regulations under the authority of
15 the North Pacific Council to allow disclosure to
16 the public of weekly summary bycatch informa-
17 tion identified by vessel or for haul-specific by-
18 catch information without vessel identification;

19 “(B) when such information is necessary
20 in proceedings to adjudicate observer certifi-
21 cations; or

22 “(C) as authorized by any regulations
23 issued under paragraph (3) allowing the collec-
24 tion of observer information, pursuant to a con-
25 fidentiality agreement between the observers,

1 observer employers, and the Secretary prohib-
2 iting disclosure of the information by the ob-
3 servers or observer employers, in order—

4 “(i) to allow the sharing of observer
5 information among observers and between
6 observers and observer employers as nec-
7 essary to train and prepare observers for
8 deployments on specific vessels; or

9 “(ii) to validate the accuracy of the
10 observer information collected.”; and

11 (3) by striking “(1)(E).” in paragraph (3), as
12 redesignated, and inserting “(2)(A).”.

13 (b) CONFORMING AMENDMENT.—Section 404(c)(4)
14 (16 U.S.C. 1881c(c)(4)) is amended by striking “under
15 section 401”.

16 **SEC. 204. COOPERATIVE RESEARCH AND MANAGEMENT**
17 **PROGRAM.**

18 Title III (16 U.S.C. 1851 et seq.), as amended by
19 section 115, is further amended by adding at the end the
20 following:

21 **“SEC. 317. COOPERATIVE RESEARCH AND MANAGEMENT**
22 **PROGRAM.**

23 “(a) IN GENERAL.—The Secretary of Commerce, in
24 consultation with the Councils, shall establish a coopera-
25 tive research and management program to address needs

1 identified under this Act and under any other marine re-
2 source laws enforced by the Secretary. The program shall
3 be implemented on a regional basis and shall be developed
4 and conducted through partnerships among Federal,
5 State, and Tribal managers and scientists (including inter-
6 state fishery commissions), fishing industry participants,
7 and educational institutions.

8 “(b) ELIGIBLE PROJECTS.—The Secretary shall
9 make funds available under the program for the support
10 of projects to address critical needs identified by the Coun-
11 cils in consultation with the Secretary. The program shall
12 promote and encourage efforts to utilize sources of data
13 maintained by other Federal agencies, State agencies, or
14 academia for use in such projects.

15 “(c) FUNDING.—In making funds available the Sec-
16 retary shall award funding on a competitive basis and
17 based on regional fishery management needs, select pro-
18 grams that form part of a coherent program of research
19 focused on solving priority issues identified by the Coun-
20 cils, and shall give priority to the following projects:

21 “(1) Projects to collect data to improve, supple-
22 ment, or enhance stock assessments, including the
23 use of fishing vessels or acoustic or other marine
24 technology.

1 “(2) Projects to assess the amount and type of
2 bycatch or post-release mortality occurring in a fish-
3 ery.

4 “(3) Conservation engineering projects designed
5 to reduce bycatch, including avoidance of post-re-
6 lease mortality, reduction of bycatch in high seas
7 fisheries, and transfer of such fishing technologies to
8 other nations.

9 “(4) Projects for the identification of habitat
10 areas of particular concern and for habitat conserva-
11 tion.

12 “(5) Projects designed to collect and compile
13 economic and social data.

14 “(d) EXPERIMENTAL PERMITTING PROCESS.—Not
15 later than 180 days after the date of enactment of the
16 Magnuson-Stevens Fishery Conservation and Manage-
17 ment Reauthorization Act of 2005, the Secretary, in con-
18 sultation with the Councils, shall promulgate regulations
19 that create an expedited, uniform, and regionally-based
20 process to promote issuance, where practicable, of experi-
21 mental fishing permits.

22 “(e) GUIDELINES.—The Secretary, in consultation
23 with the Councils, shall establish guidelines to ensure that
24 participation in a research project funded under this sec-
25 tion does not result in loss of a participant’s catch history

1 or unexpended days-at-sea as part of a limited entry sys-
2 tem.

3 “(f) EXEMPTED PROJECTS.—The procedures of this
4 section shall not apply to research funded by quota set-
5 asides in a fishery.”.

6 **SEC. 205. HERRING STUDY.**

7 Title III (16 U.S.C. 1851 et seq.), as amended by
8 section 204, is further amended by adding at the end the
9 following:

10 **“SEC. 318. HERRING STUDY.**

11 “(a) IN GENERAL.—The Secretary may conduct a co-
12 operative research program to study the issues of abun-
13 dance, distribution and the role of herring as forage fish
14 for other commercially important fish stocks in the North-
15 west Atlantic, and the potential for local scale depletion
16 from herring harvesting and how it relates to other fish-
17 eries in the Northwest Atlantic. In planning, designing,
18 and implementing this program, the Secretary shall en-
19 gage multiple fisheries sectors and stakeholder groups
20 concerned with herring management.

21 “(b) REPORT.—The Secretary shall present the final
22 results of this study to Congress within 3 months following
23 the completion of the study, and an interim report at the
24 end of fiscal year 2008.

1 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated \$2,000,000 for fiscal
3 year 2007 through fiscal year 2009 to conduct this
4 study.”.

5 **SEC. 206. RESTORATION STUDY.**

6 Title III (16 U.S.C. 1851 et seq.), as amended by
7 section 205, is further amended by adding at the end the
8 following:

9 **“SEC. 319. RESTORATION STUDY.**

10 “(a) IN GENERAL.—The Secretary may conduct a
11 study to update scientific information and protocols need-
12 ed to improve restoration techniques for a variety of coast
13 habitat types and synthesize the results in a format easily
14 understandable by restoration practitioners and local com-
15 munities.

16 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated \$500,000 for fiscal year
18 2007 to conduct this study.”.

19 **SEC. 207. WESTERN PACIFIC FISHERY DEMONSTRATION**
20 **PROJECTS.**

21 Section 111(b) of the Sustainable Fisheries Act (16
22 U.S.C. 1855 note) is amended—

23 (1) by striking “and the Secretary of the Inte-
24 rior are” in paragraph (1) and inserting “is”;

1 (2) by striking “not less than three and not
2 more than five” in paragraph (1); and

3 (3) by striking paragraph (6) and inserting the
4 following:

5 “(6) In this subsection the term ‘Western Pa-
6 cific community’ means a community eligible to par-
7 ticipate under section 305(i)(2)(B)(i) through (iv) of
8 the Magnuson-Stevens Fishery Conservation and
9 Management Act (16 U.S.C. 1855(i)(2)(B)(i)
10 through (iv)).”.

11 **SEC. 208. FISHERIES CONSERVATION AND MANAGEMENT**
12 **FUND.**

13 (a) IN GENERAL.—The Secretary shall establish and
14 maintain a fund, to be known as the “Fisheries Conserva-
15 tion and Management Fund”, which shall consist of
16 amounts retained and deposited into the Fund under sub-
17 section (c).

18 (b) PURPOSES.—Subject to the allocation of funds
19 described in subsection (d), amounts in the Fund shall be
20 available to the Secretary of Commerce, without appro-
21 priation or fiscal year limitation, to disburse as described
22 in subsection (e) for—

23 (1) efforts to improve fishery harvest data col-
24 lection including—

1 (A) expanding the use of electronic catch
2 reporting programs and technology; and

3 (B) improvement of monitoring and ob-
4 server coverage through the expanded use of
5 electronic monitoring devices and satellite track-
6 ing systems such as VMS on small vessels;

7 (2) cooperative fishery research and analysis, in
8 collaboration with fishery participants, academic in-
9 stitutions, community residents, and other interested
10 parties;

11 (3) development of methods or new technologies
12 to improve the quality, health safety, and value of
13 fish landed;

14 (4) conducting analysis of fish and seafood for
15 health benefits and risks, including levels of con-
16 taminants and, where feasible, the source of such
17 contaminants;

18 (5) marketing of sustainable United States fish-
19 ery products, including consumer education regard-
20 ing the health or other benefits of wild fishery prod-
21 ucts harvested by vessels of the United States; and

22 (6) providing financial assistance to fishermen
23 to offset the costs of modifying fishing practices and
24 gear to meet the requirements of this Act, the Mag-
25 nuson-Stevens Fishery Conservation and Manage-

1 ment Act (16 U.S.C. 1801 et seq.), and other Fed-
2 eral laws in pari materia.

3 (c) DEPOSITS TO THE FUND.—

4 (1) QUOTA SET-ASIDES.—Any amount gen-
5 erated through quota set-asides established by a
6 Council under the Magnuson-Stevens Fishery Con-
7 servation and Management Act (16 U.S.C. 1801 et
8 seq.) and designated by the Council for inclusion in
9 the Fishery Conservation and Management Fund,
10 may be deposited in the Fund.

11 (2) OTHER FUNDS.—In addition to amounts re-
12 ceived under sections 311(e)(1)(G) of the Magnuson-
13 Stevens Fishery Conservation and Management Act
14 (16 U.S.C. 1861(e)(1)(G), and amounts received
15 pursuant to paragraph (1) of this subsection, the
16 Fishery Conservation and Management Fund may
17 also receive funds from—

18 (A) appropriations for the purposes of this
19 section; and

20 (B) States or other public sources or pri-
21 vate or non-profit organizations for purposes of
22 this section.

23 (d) REGIONAL ALLOCATION.—The Secretary shall,
24 every 2 years, apportion monies from the Fund among the
25 eight Council regions according to consensus recommenda-

1 tions of the Councils, based on regional priorities identi-
2 fied through the Council process, except that no region
3 shall receive less than 5 percent of the Fund in each allo-
4 cation period.

5 (e) LIMITATION ON THE USE OF THE FUND.—No
6 amount made available from the Fund may be used to de-
7 fray the costs of carrying out other requirements of this
8 Act or the Magnuson-Stevens Fishery Conservation and
9 Management Act (16 U.S.C. 1801 et seq.).

10 **SEC. 209. USE OF FISHERY FINANCE PROGRAM AND CAP-**
11 **ITAL CONSTRUCTION FUND FOR SUSTAIN-**
12 **ABLE PURPOSES.**

13 (a) PURPOSE OF OBLIGATIONS.—Section
14 1104A(a)(7) of the Merchant Marine Act, 1936 (46
15 U.S.C. App. 1274(a)(7)) is amended to read as follows:

16 “(7) financing or refinancing including,

17 “(A) the reimbursement of obligors for ex-
18 penditures previously made, for the purchase of
19 individual fishing quotas in accordance with
20 section 303(d)(4) of the Magnuson-Stevens
21 Fishery Conservation and Management Act;

22 “(B) activities that assist in the transition
23 to reduced fishing capacity; or

24 “(C) technologies or upgrades designed to
25 improve collection and reporting of fishery-de-

1 pendent data, to reduce bycatch, to improve se-
2 lectivity or reduce adverse impacts of fishing
3 gear, or to improve safety.”.

4 (b) EXPANSION OF PURPOSES FOR QUALIFIED
5 WITHDRAWALS.—Section 607(f)(1) of the Merchant Ma-
6 rine Act, 1936 (46 U.S.C. App. 1177(f)(1)) is amended—
7 (1) by striking “for:” and inserting “for—”;
8 (B) by striking “vessel,” in subparagraph (A)
9 and inserting “vessel;”;
10 (C) by striking “vessel, or” in subparagraph
11 (B) and inserting “vessel;”;
12 (D) by striking “vessel.” in subparagraph (C)
13 and inserting “vessel;” and
14 (E) by inserting after subparagraph (C) the fol-
15 lowing:

16 “(D) in the case of any person for whose
17 benefit the fund was established and who par-
18 ticipates in the fishing capacity reduction pro-
19 gram under section 312 of the Magnuson-Ste-
20 vens Fishery Conservation and Management
21 Act (16 U.S.C. 1861a)—

22 “(i) if such person remains in the
23 fishery, the satisfaction of any debt obliga-
24 tion undertaken pursuant to such program;
25 and

1 “(ii) if such person withdraws 1 or
2 more vessels from the fishery, the substi-
3 tution of amounts the person would other-
4 wise receive under such program for such
5 person’s vessel or permit to engage in the
6 fishery;

7 “(E) the repair, maintenance, or upgrade
8 of an eligible vessel or its equipment for the
9 purpose of—

10 “(i) making conservation engineering
11 changes to reduce bycatch, improve selec-
12 tivity of fishing gear, or reduce adverse im-
13 pacts of fishing gear;

14 “(ii) improving vessel safety; or

15 “(iii) acquiring, installing, or upgrad-
16 ing equipment to improve collection, re-
17 porting, or accuracy of fishery data; or

18 “(F) the acquisition, construction, recon-
19 struction, upgrading, or investment in shoreside
20 fishery-related facilities or infrastructure in the
21 United States for the purpose of promoting
22 United States ownership of fishery-related fa-
23 cilities in the United States without contrib-
24 uting to overcapacity in the sector.”.

1 **SEC. 210. REGIONAL ECOSYSTEM RESEARCH.**

2 Section 406 (16 U.S.C. 1882) is amended by adding
3 at the end the following:

4 “(f) REGIONAL ECOSYSTEM RESEARCH.—

5 “(1) STUDY.—Within 180 days after the date
6 of enactment of the Magnuson-Stevens Fishery Con-
7 servation and Management Reauthorization Act of
8 2005, the Secretary, in consultation with the Coun-
9 cils, shall undertake and complete a study on the
10 state of the science for advancing the concepts and
11 integration of ecosystem considerations in regional
12 fishery management. The study should build upon
13 the recommendations of the advisory panel and in-
14 clude—

15 “(A) recommendations for scientific data,
16 information and technology requirements for
17 understanding ecosystem processes, and meth-
18 ods for integrating such information from a va-
19 riety of federal, state, and regional sources;

20 “(B) recommendations for processes for in-
21 corporating broad stake holder participation;

22 “(C) recommendations for processes to ac-
23 count for effects of environmental variation on
24 fish stocks and fisheries; and

25 “(D) a description of existing and devel-
26 oping council efforts to implement ecosystem

1 approaches, including lessons learned by the
2 councils.

3 “(2) AGENCY TECHNICAL ADVICE AND ASSIST-
4 ANCE, REGIONAL PILOT PROGRAMS.—The Secretary
5 is authorized to provide necessary technical advice
6 and assistance, including grants, to the Councils for
7 the development and design of regional pilot pro-
8 grams that build upon the recommendations of the
9 advisory panel and, when completed, the study.”.

10 **SEC. 211. DEEP SEA CORAL RESEARCH AND TECHNOLOGY**
11 **PROGRAM.**

12 Title IV (16 U.S.C. 1881 et seq.) is amended by add-
13 ing at the end the following:

14 **“SEC. 408. DEEP SEA CORAL RESEARCH AND TECHNOLOGY**
15 **PROGRAM.**

16 “(a) IN GENERAL.—The Secretary, in consultation
17 with appropriate regional fishery management councils
18 and in coordination with other federal agencies and edu-
19 cational institutions, shall establish a program—

20 “(1) to identify existing research on, and known
21 locations of, deep sea corals and submit such infor-
22 mation to the appropriate Councils;

23 “(2) to locate and map locations of deep sea
24 corals and submit such information to the Councils;

1 “(3) to monitor activity in locations where deep
2 sea corals are known or likely to occur, based on
3 best scientific information available, including
4 through underwater or remote sensing technologies
5 and submit such information to the appropriate
6 Councils;

7 “(4) to conduct research, including cooperative
8 research with fishing industry participants, on deep
9 sea corals and related species, and on survey meth-
10 ods;

11 “(5) to develop technologies or methods de-
12 signed to assist fishing industry participants in re-
13 ducing interactions between fishing gear and deep
14 sea corals; and

15 “(6) to prioritize program activities in areas
16 where deep sea corals are known to occur, and in
17 areas where scientific modeling or other methods
18 predict deep sea corals are likely to be present.

19 “(b) REPORTING.—Beginning 1 year after the date
20 of enactment of the Magnuson-Stevens Fishery Conserva-
21 tion and Management Reauthorization Act of 2005, the
22 Secretary, in consultation with the Councils, shall submit
23 biennial reports to Congress and the public on steps taken
24 by the Secretary to identify and monitor, and the Councils
25 to protect, deep sea coral areas, including summaries of

1 the results of mapping, research, and data collection per-
2 formed under the program.”.

3 **SEC. 212. IMPACT OF TURTLE EXCLUDER DEVICES ON**
4 **SHRIMPING.**

5 (a) IN GENERAL.—The Undersecretary of Commerce
6 for Oceans and Atmosphere shall execute an agreement
7 with the National Academy of Sciences to conduct, jointly,
8 a multi-year, comprehensive in-water study designed—

9 (1) to measure accurately the efforts and ef-
10 fects of shrimp fishery efforts to utilize turtle ex-
11 cluder devices;

12 (2) to analyze the impact of those efforts on sea
13 turtle mortality, including interaction between tur-
14 tles and shrimp trawlers in the inshore, nearshore,
15 and offshore waters of the Gulf of Mexico and simi-
16 lar geographical locations in the waters of the
17 Southeastern United States; and

18 (3) to evaluate innovative technologies to in-
19 crease shrimp retention in turtle excluder devices
20 while ensuring the protection of endangered and
21 threatened sea turtles.

22 (b) OBSERVERS.—In conducting the study, the Un-
23 dersecretary shall ensure that observers are placed on-
24 board commercial shrimp fishing vessels where appro-
25 priate or necessary.

1 (c) INTERIM REPORTS.—During the course of the
2 study and until a final report is submitted to the Senate
3 Committee on Commerce, Science, and Transportation
4 and the House of Representatives Committee on Re-
5 sources, the National Academy of Sciences shall transmit
6 interim reports to the Committees biannually containing
7 a summary of preliminary findings and conclusions from
8 the study.

9 **SEC. 213. HURRICANE EFFECTS ON SHRIMP AND OYSTER**
10 **FISHERIES AND HABITATS.**

11 (a) FISHERIES REPORT.—Within 180 days after the
12 date of enactment of this Act, the Secretary of Commerce
13 shall transmit a report to the Senate Committee on Com-
14 merce, Science, and Transportation and the House of Rep-
15 resentatives Committee on Resources on the impact of
16 Hurricane Katrina, Hurricane Rita, and Hurricane Wilma
17 on—

18 (1) commercial and recreational fisheries in the
19 States of Alabama, Louisiana, Florida, Mississippi,
20 and Texas;

21 (2) shrimp fishing vessels in those States; and

22 (3) the oyster industry in those States.

23 (b) HABITAT REPORT.—Within 180 days after the
24 date of enactment of this Act, the Secretary of Commerce
25 shall transmit a report to the Senate Committee on Com-

1 merce, Science, and Transportation and the House of Rep-
2 resentatives Committee on Resources on the impact of
3 Hurricane Katrina, Hurricane Rita, and Hurricane Wilma
4 on habitat, including the habitat of shrimp and oysters
5 in those States.

6 (c) HABITAT RESTORATION.—The Secretary shall
7 carry out activities to restore fishery habitats, including
8 the shrimp and oyster habitats in Louisiana and Mis-
9 sissippi.

10 **TITLE III—OTHER FISHERIES** 11 **STATUTES**

12 **SEC. 301. AMENDMENTS TO NORTHERN PACIFIC HALIBUT** 13 **ACT.**

14 (a) CIVIL PENALTIES.—Section 8(a) of the Northern
15 Pacific Halibut Act of 1982 (16 U.S.C. 773f(a)) is amend-
16 ed—

17 (1) by striking “\$25,000” and inserting
18 “\$200,000”;

19 (2) by striking “violation, the degree of culpa-
20 bility, and history of prior offenses, ability to pay,”
21 in the fifth sentence and inserting “violation, the de-
22 gree of culpability, any history of prior offenses,”;
23 and

24 (3) by adding at the end the following: “In as-
25 sessing such penalty, the Secretary may also con-

1 sider any information provided by the violator relat-
2 ing to the ability of the violator to pay if the infor-
3 mation is provided to the Secretary at least 30 days
4 prior to an administrative hearing.”.

5 (b) PERMIT SANCTIONS.—Section 8 of the Northern
6 Pacific Halibut Act of 1982 (16 U.S.C. 773f) is amended
7 by adding at the end the following:

8 “(e) REVOCATION OR SUSPENSION OF PERMIT.—

9 “(1) IN GENERAL.—The Secretary may take
10 any action described in paragraph (2) in any case in
11 which—

12 “(A) a vessel has been used in the commis-
13 sion of any act prohibited under section 7;

14 “(B) the owner or operator of a vessel or
15 any other person who has been issued or has
16 applied for a permit under this Act has acted
17 in violation of section 7; or

18 “(C) any amount in settlement of a civil
19 forfeiture imposed on a vessel or other property,
20 or any civil penalty or criminal fine imposed on
21 a vessel or owner or operator of a vessel or any
22 other person who has been issued or has ap-
23 plied for a permit under any marine resource
24 law enforced by the Secretary has not been paid
25 and is overdue.

1 “(2) PERMIT-RELATED ACTIONS.—Under the
2 circumstances described in paragraph (1) the Sec-
3 retary may—

4 “(A) revoke any permit issued with respect
5 to such vessel or person, with or without preju-
6 dice to the issuance of subsequent permits;

7 “(B) suspend such permit for a period of
8 time considered by the Secretary to be appro-
9 priate;

10 “(C) deny such permit; or

11 “(D) impose additional conditions and re-
12 strictions on any permit issued to or applied for
13 by such vessel or person under this Act and,
14 with respect to any foreign fishing vessel, on
15 the approved application of the foreign nation
16 involved and on any permit issued under that
17 application.

18 “(3) FACTORS TO BE CONSIDERED.—In impos-
19 ing a sanction under this subsection, the Secretary
20 shall take into account—

21 “(A) the nature, circumstances, extent,
22 and gravity of the prohibited acts for which the
23 sanction is imposed; and

1 “(B) with respect to the violator, the de-
2 gree of culpability, any history of prior offenses,
3 and such other matters as justice may require.

4 “(4) TRANSFERS OF OWNERSHIP.—Transfer of
5 ownership of a vessel, a permit, or any interest in
6 a permit, by sale or otherwise, shall not extinguish
7 any permit sanction that is in effect or is pending
8 at the time of transfer of ownership. Before exe-
9 cuting the transfer of ownership of a vessel, permit,
10 or interest in a permit, by sale or otherwise, the
11 owner shall disclose in writing to the prospective
12 transferee the existence of any permit sanction that
13 will be in effect or pending with respect to the ves-
14 sel, permit, or interest at the time of the transfer.

15 “(5) REINSTATEMENT.—In the case of any per-
16 mit that is suspended under this subsection for non-
17 payment of a civil penalty, criminal fine, or any
18 amount in settlement of a civil forfeiture, the Sec-
19 retary shall reinstate the permit upon payment of
20 the penalty, fine, or settlement amount and interest
21 thereon at the prevailing rate.

22 “(6) HEARING.—No sanction shall be imposed
23 under this subsection unless there has been prior op-
24 portunity for a hearing on the facts underlying the
25 violation for which the sanction is imposed either in

1 conjunction with a civil penalty proceeding under
2 this section or otherwise.

3 “(7) PERMIT DEFINED.—In this subsection, the
4 term ‘permit’ means any license, certificate, ap-
5 proval, registration, charter, membership, exemption,
6 or other form of permission issued by the Commis-
7 sion or the Secretary, and includes any quota share
8 or other transferable quota issued by the Sec-
9 retary.”.

10 (c) CRIMINAL PENALTIES.—Section 9(b) of the
11 Northern Pacific Halibut Act of 1982 (16 U.S.C. 773g(b))
12 is amended—

13 (1) by striking “\$50,000” and inserting
14 “\$200,000”; and

15 (2) by striking “\$100,000,” and inserting
16 “\$400,000,”.

17 **SEC. 302. REAUTHORIZATION OF OTHER FISHERIES ACTS.**

18 (a) ATLANTIC STRIPED BASS CONSERVATION ACT.—
19 Section 7(a) of the Atlantic Striped Bass Conservation Act
20 (16 U.S.C. 5156(a)) is amended to read as follows:

21 “(a) AUTHORIZATION.—For each of fiscal years
22 2006, 2007, 2008, 2009, and 2010, there are authorized
23 to be appropriated to carry out this Act—

24 “(1) \$1,000,000 to the Secretary of Commerce;
25 and

1 “(2) \$250,000 to the Secretary of the Inte-
2 rior.”.

3 (b) YUKON RIVER SALMON ACT OF 2000.—Section
4 208 of the Yukon River Salmon Act of 2000 (16 U.S.C.
5 5727) is amended by striking “\$4,000,000 for each of fis-
6 cal years 2004 through 2008,” and inserting “\$4,000,000
7 for each of fiscal years 2006 through 2010,”.

8 (c) SHARK FINNING PROHIBITION ACT.—Section 10
9 of the Shark Finning Prohibition Act (16 U.S.C. 1822
10 note) is amended by striking “fiscal years 2001 through
11 2005” and inserting “fiscal years 2006 through 2010”.

12 (d) PACIFIC SALMON TREATY ACT.—

13 (1) TRANSFER OF SECTION TO ACT.—The text
14 of section 623 of title VI of H.R. 3421 (113 Stat.
15 1501A-56), as introduced on November 17, 1999,
16 and enacted into law by section 1000(a)(1) of the
17 Act of November 29, 1999 (Public Law 106–113)—

18 (A) is transferred to the Pacific Salmon
19 Treaty Act (16 U.S.C. 3631 et seq.) and in-
20 serted after section 15; and

21 (B) amended—

22 (i) by striking “SEC. 623.”; and

23 (ii) inserting before “(a) NORTHERN
24 FUND AND SOUTHERN FUND.—” the fol-
25 lowing:

1 **“SEC. 16. NORTHERN AND SOUTHERN FUNDS; TREATY IM-**
2 **PLEMENTATION; ADDITIONAL AUTHORIZA-**
3 **TION OF APPROPRIATIONS.”.**

4 (2) TECHNICAL CORRECTION.—The amendment
5 made by the Department of Commerce and Related
6 Agencies Appropriations Act, 2005 under the head-
7 ing “PACIFIC COASTAL SALMON RECOVERY” (118
8 Stat. 2881), to section 628(2)(A) of the Depart-
9 ments of Commerce, Justice, and State, the Judici-
10 ary, and Related Agencies Appropriations Act, 2001
11 is deemed to have been made to section
12 623(d)(2)(A) of title VI of H.R. 3421 (113 Stat.
13 1501A-56), as introduced on November 17, 1999,
14 enacted into law by section 1000(a)(1) of the Act of
15 November 29, 1999 (Public Law 106–113) instead
16 of to such section 628(2)(A), as of the date of enact-
17 ment of the Department of Commerce and Related
18 Agencies Appropriations Act, 2005.

19 (3) REAUTHORIZATION.—Section 16(d)(2)(A)
20 of the Pacific Salmon Treaty Act, as transferred by
21 subsection (a), is amended—

22 (1) by inserting “sustainable salmon fisheries,”
23 after “enhancement,”; and

24 (2) by inserting “2006, 2007, 2008, and 2009,”
25 after “2005,”.

1 (e) STATE AUTHORITY FOR DUNGENESS CRAB FISH-
2 ERY MANAGEMENT.—Section 203 of Public Law 105–384
3 (16 U.S.C. 1856 note) is amended—

4 (1) by striking “September 30, 2006.” in sub-
5 section (i) and inserting “September 30, 2016.”;

6 (2) by striking “health” in subsection (j) and
7 inserting “status”; and

8 (3) by striking “California.” in subsection (j)
9 and inserting “California, including—
10 “(1) stock status and trends throughout its
11 range;

12 “(2) a description of applicable research and
13 scientific review processes used to determine stock
14 status and trends; and

15 “(3) measures implemented or planned that are
16 designed to prevent or end overfishing in the fish-
17 ery.”.

18 **TITLE IV—INTERNATIONAL**

19 **SEC. 401. INTERNATIONAL MONITORING AND COMPLIANCE.**

20 Title II (16 U.S.C. 1821 et seq.) is amended by add-
21 ing at the end the following:

22 **“SEC. 207. INTERNATIONAL MONITORING AND COMPLI-** 23 **ANCE.**

24 “(a) IN GENERAL.—The Secretary may undertake
25 activities to promote improved monitoring and compliance

1 for high seas fisheries, or fisheries governed by inter-
2 national fishery management agreements, and to imple-
3 ment the requirements of this title.

4 “(b) SPECIFIC AUTHORITIES.—In carrying out sub-
5 section (a), the Secretary may—

6 “(1) share information on harvesting and proc-
7 essing capacity and illegal, unreported and unregu-
8 lated fishing on the high seas, in areas covered by
9 international fishery management agreements, and
10 by vessels of other nations within the United States
11 exclusive economic zone, with relevant law enforce-
12 ment organizations of foreign nations and relevant
13 international organizations;

14 “(2) further develop real time information shar-
15 ing capabilities, particularly on harvesting and proc-
16 essing capacity and illegal, unreported and unregu-
17 lated fishing;

18 “(3) participate in global and regional efforts to
19 build an international network for monitoring, con-
20 trol, and surveillance of high seas fishing and fishing
21 under regional or global agreements;

22 “(4) support efforts to create an international
23 registry or database of fishing vessels, including by
24 building on or enhancing registries developed by
25 international fishery management organizations;

1 “(5) enhance enforcement capabilities through
2 the application of commercial or governmental re-
3 mote sensing technology to locate or identify vessels
4 engaged in illegal, unreported, or unregulated fish-
5 ing on the high seas, including encroachments into
6 the exclusive economic zone by fishing vessels of
7 other nations;

8 “(6) provide technical or other assistance to de-
9 veloping countries to improve their monitoring, con-
10 trol, and surveillance capabilities; and

11 “(7) support coordinated international efforts
12 to ensure that all large-scale fishing vessels oper-
13 ating on the high seas are required by their flag
14 State to be fitted with vessel monitoring systems no
15 later than December 31, 2008, or earlier if so de-
16 cided by the relevant flag State or any relevant
17 international fishery management organization.”.

18 **SEC. 402. FINDING WITH RESPECT TO ILLEGAL, UNRE-**
19 **PORTED, AND UNREGULATED FISHING.**

20 Section 2(a) (16 U.S.C. 1802(a)) is amended by add-
21 ing at the end the following:

22 “(11) International cooperation is necessary to
23 address illegal, unreported, and unregulated fishing
24 and other fishing practices which may harm the sus-

1 tainability of living marine resources and disadvan-
2 tage the United States fishing industry.”.

3 **SEC. 403. ACTION TO END ILLEGAL, UNREPORTED, OR UN-**
4 **REGULATED FISHING AND REDUCE BYCATCH**
5 **OF PROTECTED MARINE SPECIES.**

6 (a) IN GENERAL.—The High Seas Driftnet Fishing
7 Moratorium Protection Act (16 U.S.C. 1826d et seq.), is
8 amended by adding at the end the following:

9 **“SEC. 607. BIENNIAL REPORT ON INTERNATIONAL COMPLI-**
10 **ANCE.**

11 “The Secretary, in consultation with the Secretary of
12 State, shall provide to Congress, by not later than 2 years
13 after the date of enactment of the Magnuson-Stevens
14 Fishery Conservation and Management Reauthorization
15 Act of 2005, and every 2 years thereafter, a report that
16 includes—

17 “(1) the state of knowledge on the status of
18 international living marine resources, including a list
19 of all fish stocks classified as overfished, over-
20 exploited, depleted, endangered, or threatened with
21 extinction by any international or other authority
22 charged with management or conservation of living
23 marine resources;

24 “(2) a list of nations whose vessels have been
25 identified under sections 609(a) or 610(a), including

1 the specific offending activities and any subsequent
2 actions taken pursuant to section 609 or 610;

3 “(3) a description of efforts taken by nations on
4 those lists to comply with the provisions of sections
5 609 and 610, and an evaluation of the progress of
6 those efforts, including steps taken by the United
7 States to implement those sections and to improve
8 international compliance;

9 “(4) progress at the international level, pursu-
10 ant to section 608, to strengthen the efforts of inter-
11 national fishery management organizations to end il-
12 legal, unreported, or unregulated fishing; and

13 “(5) a plan of action for ensuring the conclu-
14 sion and entry into force of international measures
15 comparable to those of the United States to reduce
16 impacts of fishing and other practices on protected
17 living marine resources, if no international agree-
18 ment to achieve such goal exists, or if the relevant
19 international fishery or conservation organization
20 has failed to implement effective measures to end or
21 reduce the adverse impacts of fishing practices on
22 such species.

1 **“SEC. 608. ACTION TO STRENGTHEN INTERNATIONAL FISH-**
2 **ERY MANAGEMENT ORGANIZATIONS.**

3 “The Secretary, in consultation with the Secretary of
4 State, and in cooperation with relevant fishery manage-
5 ment councils, shall take actions to improve the effective-
6 ness of international fishery management organizations in
7 conserving and managing fish stocks under their jurisdic-
8 tion. These actions shall include—

9 “(1) urging international fishery management
10 organizations to which the United States is a mem-
11 ber—

12 “(A) to incorporate multilateral sanctions
13 against member or nonmember governments
14 whose vessels engage in illegal, unreported, or
15 unregulated fishing;

16 “(B) to seek adoption of lists that identify
17 fishing vessels engaged in illegal, unreported, or
18 unregulated fishing, including authorized
19 (green) and unauthorized (red) vessel lists, that
20 can be shared among all members and other
21 international fishery management organizations;

22 “(C) to seek international adoption of a
23 centralized vessel monitoring system with an
24 independent secretariat in order to monitor and
25 document capacity in fleets of all nations in-
26 volved in fishing in areas under the an inter-

1 national fishery management organization's ju-
2 risdiction;

3 “(D) to increase use of observers and tech-
4 nologies needed to monitor compliance with con-
5 servation and management measures estab-
6 lished by the organization, including vessel
7 monitoring systems and automatic identification
8 systems; and

9 “(E) to seek adoption of greater port state
10 controls in all nations, particularly those na-
11 tions whose vessels engage in illegal, unre-
12 ported, or unregulated fishing;

13 “(2) urging international fishery management
14 organizations to which the United States is a mem-
15 ber, as well as all members of those organizations,
16 to adopt and expand the use of market-related meas-
17 ures to combat illegal, unreported, or unregulated
18 fishing, including—

19 “(A) import prohibitions, landing restric-
20 tions, or other market-based measures needed
21 to enforce compliance with international fishery
22 management organization measures, such as
23 quotas and catch limits;

24 “(B) import restrictions or other market-
25 based measures to prevent the trade or impor-

1 tation of fish caught by vessels identified multi-
2 laterally as engaging in illegal, unreported, or
3 unregulated fishing; and

4 “(C) catch documentation and certification
5 schemes to improve tracking and identification
6 of catch of vessels engaged in illegal, unre-
7 ported, or unregulated fishing, including ad-
8 vance transmission of catch documents to ports
9 of entry; and

10 “(3) urging other nations at bilateral, regional,
11 and international levels, including the Convention on
12 International Trade in Endangered Species of
13 Fauna and Flora and the World Trade Organization
14 to take all steps necessary, consistent with inter-
15 national law, to adopt measures and policies that
16 will prevent fish or other living marine resources
17 harvested by vessels engaged in illegal, unreported,
18 or unregulated fishing from being traded or im-
19 ported into their nation or territories.

20 **“SEC. 609. ILLEGAL, UNREPORTED, OR UNREGULATED**
21 **FISHING.**

22 “(a) IDENTIFICATION.—The Secretary shall identify,
23 and list in the report under section 607, a nation if—

24 “(1) fishing vessels of that nation are engaged,
25 or have been engaged during the preceding calendar

1 year in illegal, unreported, or unregulated fishing;
2 and

3 “(2) the relevant international fishery manage-
4 ment organization has failed to implement effective
5 measures to end the illegal unreported, or unregu-
6 lated fishing activity by vessels of that nation or the
7 nation is not a party to, or does not maintain co-
8 operating status with, such organization, or where
9 no international fishery management organization
10 exists.

11 “(b) NOTIFICATION.—An identification under sub-
12 section (a) or section 610(a) is deemed to be an identifica-
13 tion under section 101(b)(1)(A) of the High Seas Driftnet
14 Fisheries Enforcement Act (16 U.S.C. 1826a(b)(1)(A)),
15 and the Secretary shall notify the President and that na-
16 tion of such identification.

17 “(c) CONSULTATION.—No later than 60 days after
18 submitting a report to Congress under section 607, the
19 Secretary, in consultation with the Secretary of State,
20 shall—

21 “(1) notify nations listed in the report of the
22 requirements of this section;

23 “(2) initiate consultations for the purpose of
24 encouraging such nations to take the appropriate
25 corrective action with respect to the offending activi-

1 ties of their fishing vessels identified in the report;
2 and

3 “(3) notify any relevant international fishery
4 management organization of the actions taken by
5 the United States under this section.

6 “(d) IUU CERTIFICATION PROCEDURE.—

7 “(1) CERTIFICATION.—The Secretary shall es-
8 tablish a procedure, consistent with the provisions of
9 subchapter II of chapter 5 of title 5, United States
10 Code, and including notice and an opportunity for
11 comment by the governments of any nation listed by
12 the Secretary under subsection (a), for determining
13 if that government has taken appropriate corrective
14 action with respect to the offending activities of its
15 fishing vessels identified in the report under section
16 607. The Secretary shall determine, on the basis of
17 the procedure, and certify to the Congress no later
18 than 90 days after the date on which the Secretary
19 promulgates a final rule containing the procedure,
20 and biennially thereafter in the report under section
21 607—

22 “(A) whether the government of each na-
23 tion identified under subsection (b) has pro-
24 vided documentary evidence that it has taken
25 corrective action with respect to the offending

1 activities of its fishing vessels identified in the
2 report; or

3 “(B) whether the relevant international
4 fishery management organization has imple-
5 mented measures that are effective in ending
6 the illegal, unreported, or unregulated fishing
7 activity by vessels of that nation.

8 “(2) ALTERNATIVE PROCEDURE.—The Sec-
9 retary may establish a procedure for certification, on
10 a shipment-by-shipment, shipper-by-shipper, or other
11 basis of fish or fish products from a vessel of a har-
12 vesting nation not certified under paragraph (1) if
13 the Secretary determines that—

14 “(A) the vessel has not engaged in illegal,
15 unreported, or unregulated fishing under an
16 international fishery management agreement to
17 which the United States is a party; or

18 “(B) the vessel is not identified by an
19 international fishery management organization
20 as participating in illegal, unreported, or un-
21 regulated fishing activities.

22 “(3) EFFECT OF CERTIFICATION.—The provi-
23 sions of section 101(a) and section 101(b)(3) and
24 (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and
25 (b)(4)) shall apply to any nation identified under

1 subsection (a) that has not been certified by the Sec-
2 retary under this subsection, or for which the Sec-
3 retary has issued a negative certification under this
4 subsection, but shall not apply to any nation identi-
5 fied under subsection (a) for which the Secretary
6 has issued a positive certification under this sub-
7 section.

8 “(e) ILLEGAL, UNREPORTED, OR UNREGULATED
9 FISHING DEFINED.—

10 “(1) IN GENERAL.—In this Act the term ‘ille-
11 gal, unreported, or unregulated fishing’ has the
12 meaning established under paragraph (2).

13 “(2) SECRETARY TO DEFINE TERM WITHIN
14 LEGISLATIVE GUIDELINES.—Within 3 months after
15 the date of enactment of the Magnuson-Stevens
16 Fishery Conservation and Management Reauthoriza-
17 tion Act of 2005, the Secretary shall publish a defi-
18 nition of the term ‘illegal, unreported, or unregu-
19 lated fishing’ for purposes of this Act.

20 “(3) GUIDELINES.—The Secretary shall include
21 in the definition, at a minimum—

22 “(A) fishing activities that violate con-
23 servation and management measures required
24 under an international fishery management
25 agreement to which the United States is a

1 party, including catch limits or quotas, capacity
2 restrictions, and bycatch reduction require-
3 ments;

4 “(B) overfishing of fish stocks shared by
5 the United States, for which there are no appli-
6 cable international conservation or management
7 measures or in areas with no applicable inter-
8 national fishery management organization or
9 agreement, that has adverse impacts on such
10 stocks; and

11 “(C) fishing activity, including bottom
12 trawling, that have adverse impacts on
13 seamounts, hydrothermal vents, and cold water
14 corals located beyond national jurisdiction, for
15 which there are no applicable conservation or
16 management measures or in areas with no ap-
17 plicable international fishery management orga-
18 nization or agreement.

19 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to the Secretary for fis-
21 cal years 2006 through 2012 such sums as are necessary
22 to carry out this section.

23 **“SEC. 610. EQUIVALENT CONSERVATION MEASURES.**

24 “(a) IDENTIFICATION.—The Secretary shall identify,
25 and list in the report under section 607, a nation if—

1 “(A) fishing vessels of that nation are en-
2 gaged, or have been engaged during the pre-
3 ceding calendar year in fishing activities or
4 practices beyond the exclusive economic zone
5 that result in bycatch of a protected living ma-
6 rine resource;

7 “(2) the relevant international organization
8 for the conservation and protection of such spe-
9 cies or the relevant international or regional
10 fishery organization has failed to implement ef-
11 fective measures to end or reduce the impacts
12 of the fishing practices of the nation’s vessels
13 on such species, or the nation is not a party to,
14 or does not maintain cooperating status with,
15 such organization; and

16 “(3) the nation has not adopted a regu-
17 latory program governing such fishing practices
18 and associated bycatch of protected living ma-
19 rine resources that are comparable to those of
20 the United States, taking into account different
21 conditions.

22 “(b) CONSULTATION AND NEGOTIATION.—The Sec-
23 retary, acting through the Secretary of State, shall—

24 “(1) notify, as soon as possible, other nations
25 whose vessels engage in fishing activities or practices

1 described in subsection (a), about the requirements
2 of this section and this Act;

3 “(2) initiate discussions as soon as possible
4 with all foreign governments which are engaged in,
5 or which have persons or companies engaged in,
6 fishing activities or practices described in subsection
7 (a), for the purpose of entering into bilateral and
8 multilateral treaties with such countries to protect
9 such species;

10 “(3) seek agreements calling for international
11 restrictions on fishing activities or practices de-
12 scribed in subsection (a) through the United Na-
13 tions, the Food and Agriculture Organization’s Com-
14 mittee on Fisheries, and appropriate international
15 fishery management bodies; and

16 “(4) initiate the amendment of any existing
17 international treaty for the protection and conserva-
18 tion of such species to which the United States is a
19 party in order to make such treaty consistent with
20 the purposes and policies of this section.

21 “(c) CONSERVATION CERTIFICATION PROCEDURE.—

22 “(1) CERTIFICATION.—The Secretary shall de-
23 termine, on the basis of a procedure consistent with
24 the provisions of subchapter II of chapter 5 of title
25 5, United States Code, and including notice and an

1 opportunity for comment by the governments of any
2 nation identified by the Secretary under subsection
3 (a). The Secretary shall certify to the Congress by
4 January 31, 2007, and annually thereafter whether
5 the government of each harvesting nation—

6 “(A) has provided documentary evidence of
7 the adoption of a regulatory program governing
8 the conservation of the protected living marine
9 resource, including measures to ensure max-
10 imum probability for survival after release, that
11 is comparable to that of the United States, tak-
12 ing into account different conditions, and
13 which, in the case of pelagic longline fishing, in-
14 cludes mandatory use of circle hooks, careful
15 handling and release equipment, and training
16 and observer programs; and

17 “(B) has established a management plan
18 containing requirements that will assist in gath-
19 ering species-specific data to support inter-
20 national stock assessments and conservation en-
21 forcement efforts for protected living marine re-
22 sources.

23 “(2) ALTERNATIVE PROCEDURE.—The Sec-
24 retary shall establish a procedure for certification,
25 on a shipment-by-shipment, shipper-by-shipper, or

1 other basis of fish or fish products from a vessel of
2 a harvesting nation not certified under paragraph
3 (1) if the Secretary determines that such imports
4 were harvested by practices that do not result in by-
5 catch of a protected marine species, or were har-
6 vested by practices that—

7 “(A) are comparable to those of the United
8 States, taking into account different conditions,
9 and which, in the case of pelagic longline fish-
10 ing, includes mandatory use of circle hooks,
11 careful handling and release equipment, and
12 training and observer programs; and

13 “(B) include the gathering of species spe-
14 cific data that can be used to support inter-
15 national and regional stock assessments and
16 conservation efforts for protected living marine
17 resources.

18 “(3) EFFECT OF CERTIFICATION.—The provi-
19 sions of section 101(a) and section 101(b)(3) and
20 (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and
21 (b)(4)) shall apply to any nation identified under
22 subsection (a) that has not been certified by the Sec-
23 retary under this subsection, or for which the Sec-
24 retary has issued a negative certification under this
25 subsection, but shall not apply to any nation identi-

1 fied under subsection (a) for which the Secretary
2 has issued a positive certification under this sub-
3 section.

4 “(d) INTERNATIONAL COOPERATION AND ASSIST-
5 ANCE.—To the greatest extent possible consistent with ex-
6 isting authority and the availability of funds, the Secretary
7 shall—

8 “(1) provide appropriate assistance to nations
9 identified by the Secretary under subsection (a) and
10 international organizations of which those nations
11 are members to assist those nations in qualifying for
12 certification under subsection (c);

13 “(2) undertake, where appropriate, cooperative
14 research activities on species statistics and improved
15 harvesting techniques, with those nations or organi-
16 zations;

17 “(3) encourage and facilitate the transfer of ap-
18 propriate technology to those nations or organiza-
19 tions to assist those nations in qualifying for certifi-
20 cation under subsection (c); and

21 “(4) provide assistance to those nations or or-
22 ganizations in designing and implementing appro-
23 priate fish harvesting plans.

1 “(e) PROTECTED LIVING MARINE RESOURCE DE-
2 FINED.—In this section the term ‘protected living marine
3 resource’—

4 “(1) means non-target fish, sea turtles, or ma-
5 rine mammals occurring in areas beyond United
6 States jurisdiction that are protected under United
7 States law or international agreement, including the
8 Marine Mammal Protection Act, the Endangered
9 Species Act, the Shark Finning Prohibition Act, and
10 the Convention on International Trade in Endan-
11 gered Species of Wild Flora and Fauna; but

12 “(2) does not include species, except sharks,
13 managed under the Magnuson-Stevens Fishery Con-
14 servation and Management Act, the Atlantic Tunas
15 Convention Act, or any international fishery man-
16 agement agreement.

17 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to the Secretary for fis-
19 cal years 2006 through 2012 such sums as are necessary
20 to carry out this section.“.

21 (b) CONFORMING AMENDMENTS.—

22 (1) DENIAL OF PORT PRIVILEGES.—Section
23 101(b) of the High Seas Driftnet Fisheries Enforce-
24 ment Act (16 U.S.C. 1826a(b)) is amended by in-
25 serting “or illegal, unreported, or unregulated

1 fishing“ after “fishing“ in paragraph (1)(A)(i),
2 paragraph (1)(B), paragraph (2), and paragraph
3 (4)(A)(i).

4 (2) DURATION OF DENIAL.—Section 102 of the
5 High Seas Driftnet Fisheries Enforcement Act (16
6 U.S.C. 1826b) is amended by inserting “or illegal,
7 unreported , or unregulated fishing“ after “fishing“.

8 **SEC. 404. MONITORING OF PACIFIC INSULAR AREA FISH-**
9 **ERIES.**

10 (a) WAIVER AUTHORITY.—Section 201(h)(2)(B) (16
11 U.S.C. 1821(h)(2)(B)) is amended by striking “that is at
12 least equal in effectiveness to the program established by
13 the Secretary;” and inserting “or other monitoring pro-
14 gram that the Secretary, in consultation with the Western
15 Pacific Management Council, determines is adequate to
16 monitor harvest, bycatch, and compliance with the laws
17 of the United States by vessels fishing under the agree-
18 ment;”.

19 (b) MARINE CONSERVATION PLANS.—Section
20 204(e)(4)(A)(i) (16 U.S.C. 1824(e)(4)(A)(i)) is amended
21 to read as follows:

22 “(i) Pacific Insular Area observer programs, or
23 other monitoring programs, that the Secretary deter-
24 mines are adequate to monitor the harvest, bycatch,
25 and compliance with the laws of the United States

1 by foreign fishing vessels that fish under Pacific In-
2 sular Area fishing agreements;”.

3 **SEC. 405. REAUTHORIZATION OF ATLANTIC TUNAS CON-**
4 **VENTION ACT.**

5 (a) IN GENERAL.—Section 10 of the Atlantic Tunas
6 Convention Act of 1975 (16 U.S.C. 971h) is amended to
7 read as follows:

8 **“SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

9 “(a) IN GENERAL.—There are authorized to be ap-
10 propriated to the Secretary to carry out this Act, including
11 use for payment of the United States share of the joint
12 expenses of the Commission as provided in Article X of
13 the Convention—

14 “(1) \$5,495,000 for fiscal year 2006;

15 “(2) \$5,770,000 for each of fiscal years 2007
16 and 2008;

17 “(3) \$6,058,000 for each of fiscal years 2009
18 and 2010; and

19 “(4) \$6,631,000 for each of fiscal years 2011
20 and 2012.

21 “(b) ALLOCATION.—Of the amounts made available
22 under subsection (a) for each fiscal year—

23 “(1) \$160,000 are authorized for the advisory
24 committee established under section 4 of this Act

1 and the species working groups established under
2 section 4A of this Act; and

3 “(2) \$7,500,000 are authorized for research ac-
4 tivities under this Act and section 3 of Public Law
5 94–339 (16 U.S.C. 971i), of which \$3,000,000 shall
6 be for the cooperative research program under sec-
7 tion 3(b)(2)(H) of that section (16 U.S.C.
8 971i(b)(2)(H)).”.

9 (b) ATLANTIC BILLFISH COOPERATIVE RESEARCH
10 PROGRAM.—Section 3(b)(2) of the Atlantic Tunas Con-
11 vention Act of 1975 (16 U.S.C. 971i(b)(2)) is amended—

12 (1) by striking “and” after the semicolon in
13 subparagraph (G);

14 (2) by redesignating subparagraph (H) as sub-
15 paragraph (I); and

16 (3) by inserting after subparagraph (G) the fol-
17 lowing:

18 “(H) include a cooperative research pro-
19 gram on Atlantic billfish based on the South-
20 east Fisheries Science Center Atlantic Billfish
21 Research Plan of 2002; and”.

1 **SEC. 406. INTERNATIONAL OVERFISHING AND DOMESTIC**
2 **EQUITY.**

3 (a) REBUILDING OVERFISHED FISHERIES.—Section
4 304(e) (16 U.S.C. 1854(e)) is amended by adding at the
5 end thereof the following:

6 “(8) The provisions of this paragraph shall
7 apply in lieu of paragraphs (2) through (7) of this
8 subsection to a fishery that the Secretary determines
9 is overfished or approaching a condition of being
10 overfished due to excessive international fishing
11 pressure, and for which there are no management
12 measures to end overfishing under an international
13 agreement to which the United States is a party.
14 For such fisheries—

15 “(A) the Secretary, in cooperation with the
16 Secretary of State, immediately take appro-
17 priate action at the international level to end
18 the overfishing; and

19 “(B) within 1 year after the Secretary’s
20 determination, the appropriate Council, or Sec-
21 retary, for fisheries under section 302(a)(3)
22 shall—

23 “(i) develop recommendations for do-
24 mestic regulations to address the relative
25 impact of fishing vessels of the United
26 States on the stock and, if developed by a

1 Council, the Council shall submit such rec-
2 ommendations to the Secretary; and

3 “(ii) develop and submit recommenda-
4 tions to the Secretary of State, and to the
5 Congress, for international actions that
6 will end overfishing in the fishery and re-
7 build the affected stocks, taking into ac-
8 count the relative impact of vessels of
9 other nations and vessels of the United
10 States on the relevant stock.”.

11 (b) HIGHLY MIGRATORY SPECIES TAGGING RE-
12 SEARCH.—Section 304(g)(2) (16 U.S.C. 1854(g)(2)) is
13 amended by striking “(16 U.S.C. 971d)” and inserting
14 “(16 U.S.C. 971d), or highly migratory species harvested
15 in a commercial fishery managed by a Council under this
16 Act or the Western and Central Pacific Fisheries Conven-
17 tion Implementation Act,”.

18 **TITLE V—IMPLEMENTATION OF**
19 **WESTERN AND CENTRAL PA-**
20 **CIFIC FISHERIES CONVEN-**
21 **TION**

22 **SEC. 501. SHORT TITLE.**

23 This title may be cited as the “Western and Central
24 Pacific Fisheries Convention Implementation Act”.

1 **SEC. 502. DEFINITIONS.**

2 In this title:

3 (1) 1982 CONVENTION.—The term “1982 Con-
4 vention” means the United Nations Convention on
5 the Law of the Sea of 10 December 1982.

6 (2) AGREEMENT.—The term “Agreement”
7 means the Agreement for the Implementation of the
8 Provisions of the United Nations Convention on the
9 Law of the Sea of 10 December 1982 relating to the
10 Conservation and Management of Straddling Fish
11 Stocks and Highly Migratory Fish Stocks.

12 (3) COMMISSION.—The term “Commission”
13 means the Commission for the Conservation and
14 Management of Highly Migratory Fish Stocks in the
15 Western and Central Pacific Ocean established in
16 accordance with this Convention.

17 (4) CONVENTION AREA.—The term “convention
18 area” means all waters of the Pacific Ocean bounded
19 to the south and to the east by the following line:
20 From the south coast of Australia due south along
21 the 141th meridian of east longitude to its intersec-
22 tion with the 55th parallel of south latitude; thence
23 due east along the 55th parallel of south latitude to
24 its intersection with the 150th meridian of east lon-
25 gitude; thence due south along the 150th meridian
26 of east longitude to its intersection with the 60th

1 parallel of south latitude; thence due east along the
2 60th parallel of south latitude to its intersection
3 with the 130th meridian of west longitude; thence
4 due north along the 130th meridian of west lon-
5 gitude to its intersection with the 4th parallel of
6 south latitude; thence due west along the 4th par-
7 allel of south latitude to its intersection with the
8 150th meridian of west longitude; thence due north
9 along the 150th meridian of west longitude.

10 (5) EXCLUSIVE ECONOMIC ZONE.—The term
11 “exclusive economic zone” means the zone estab-
12 lished by Presidential Proclamation Numbered 5030
13 of March 10, 1983.

14 (6) FISHING.—The term “fishing” means:

15 (A) searching for, catching, taking, or har-
16 vesting fish.

17 (B) attempting to search for, catch, take,
18 or harvest fish.

19 (C) engaging in any other activity which
20 can reasonably be expected to result in the lo-
21 cating, catching, taking, or harvesting of fish
22 for any purpose.

23 (D) placing, searching for, or recovering
24 fish aggregating devices or associated electronic
25 equipment such as radio beacons.

1 (E) any operations at sea directly in sup-
2 port of, or in preparation for, any activity de-
3 scribed in subparagraphs (A) through (D), in-
4 cluding transshipment.

5 (F) use of any other vessel, vehicle, air-
6 craft, or hovercraft, for any activity described
7 in subparagraphs (A) through (E) except for
8 emergencies involving the health and safety of
9 the crew or the safety of a vessel.

10 (7) FISHING VESSEL.—The term “fishing ves-
11 sel” means any vessel used or intended for use for
12 the purpose of fishing, including support ships, car-
13 rier vessels, and any other vessel directly involved in
14 such fishing operations.

15 (8) HIGHLY MIGRATORY FISH STOCKS.—The
16 term “highly migratory fish stocks” means all fish
17 stocks of the species listed in Annex 1 of the 1982
18 Convention occurring in the Convention Area, and
19 such other species of fish as the Commission may
20 determine.

21 (9) SECRETARY.—The term “Secretary” means
22 the Secretary of Commerce.

23 (10) STATE.—The term “State” means each of
24 the several States of the United States, the District
25 of Columbia, the Commonwealth of the Northern

1 Mariana Islands, American Samoa, Guam, and any
2 other commonwealth, territory, or possession of the
3 United States.

4 (11) TRANSHIPMENT.—The term “trans-
5 shipment” means the unloading of all or any of the
6 fish on board a fishing vessel to another fishing ves-
7 sel either at sea or in port.

8 (12) WCPCF CONVENTION; WESTERN AND
9 CENTRAL PACIFIC CONVENTION.—The terms
10 “WCPCF Convention” and “Western and Central
11 Pacific Convention” means the Convention on the
12 Conservation and Management of the Highly Migra-
13 tory Fish Stocks in the Western and Central Pacific
14 Ocean, with Annexes, which was adopted at Hono-
15 lulu, Hawaii, on September 5, 2000, by the Multilat-
16 eral High Level Conference on the Highly Migratory
17 Fish Stocks in the Western and Central Pacific
18 Ocean.

19 **SEC. 503. APPOINTMENT OF UNITED STATES COMMIS-**
20 **SIONERS.**

21 (a) IN GENERAL.—The United States shall be rep-
22 resented on the Commission by 5 United States Commis-
23 sioners. The President shall appoint individuals to serve
24 on the Commission at the pleasure of the President. In
25 making the appointments, the President shall select Com-

1 missioners from among individuals who are knowledgeable
2 or experienced concerning highly migratory fish stocks in
3 the Western and Central Pacific Ocean, one of whom shall
4 be an officer or employee of the Department of Commerce,
5 and one of whom shall be the chairman or a member of
6 the Western Pacific Fishery Management Council. The
7 Commissioners shall be entitled to adopt such rules of pro-
8 cedures as they find necessary and to select a chairman
9 from among members who are officers or employees of the
10 United States Government.

11 (b) ALTERNATE COMMISSIONERS.—The Secretary of
12 State, in consultation with the Secretary, may designate
13 from time to time and for periods of time deemed appro-
14 priate Alternate United States Commissioners to the Com-
15 mission. Any Alternate United States Commissioner may
16 exercise at any meeting of the Commission, Council, any
17 Panel, or the advisory committee established pursuant to
18 subsection (d), all powers and duties of a United States
19 Commissioner in the absence of any Commissioner ap-
20 pointed pursuant to subsection (a) of this section for what-
21 ever reason. The number of such Alternate United States
22 Commissioners that may be designated for any such meet-
23 ing shall be limited to the number of United States Com-
24 missioners appointed pursuant to subsection (a) of this
25 section who will not be present at such meeting.

1 (c) ADMINISTRATIVE MATTERS.—

2 (1) EMPLOYMENT STATUS.—Individuals serving
3 as such Commissioners, other than officers or em-
4 ployees of the United States Government, shall be
5 considered to be Federal employees while performing
6 such service, only for purposes of—

7 (A) injury compensation under chapter 81
8 of title 5, United States Code;

9 (B) tort claims liability as provided under
10 chapter 171 of title 28 United States Code;

11 (C) requirements concerning ethics, con-
12 flicts of interest, and corruption as provided
13 under title 18, United States Code; and

14 (D) any other criminal or civil statute or
15 regulation governing the conduct of Federal em-
16 ployees.

17 (2) COMPENSATION.—The United States Com-
18 missioners or Alternate Commissioners, although of-
19 ficers of the United States while so serving, shall re-
20 ceive no compensation for their services as such
21 Commissioners or Alternate Commissioners.

22 (3) TRAVEL EXPENSES.—

23 (A) The Secretary of State shall pay the
24 necessary travel expenses of United States
25 Commissioners and Alternate United States

1 Commissioners in accordance with the Federal
2 Travel Regulations and sections 5701, 5702,
3 5704 through 5708, and 5731 of title 5, United
4 States Code.

5 (B) The Secretary may reimburse the Sec-
6 retary of State for amounts expended by the
7 Secretary of State under this subsection.

8 (d) ADVISORY COMMITTEES.—

9 (1) ESTABLISHMENT OF PERMANENT ADVISORY
10 COMMITTEE.—

11 (A) MEMBERSHIP.—There is established
12 an advisory committee which shall be composed
13 of—

14 (i) not less than 15 nor more than 20
15 individuals appointed by the United States
16 Commissioners who shall select such indi-
17 viduals from the various groups concerned
18 with the fisheries covered by the WCPFC
19 Convention, providing, to the maximum ex-
20 tent practicable, an equitable balance
21 among such groups;

22 (ii) the chair of the Western Pacific
23 Fishery Management Council's Advisory
24 Committee or the chair's designee; and

1 (iii) officials of the fisheries manage-
2 ment authorities of American Samoa,
3 Guam, and the Northern Mariana Islands
4 (or their designees).

5 (B) TERMS AND PRIVILEGES.—Each mem-
6 ber of the advisory committee appointed under
7 subparagraph (A) shall serve for a term of 2
8 years and shall be eligible for reappointment.
9 Members of the advisory committee may attend
10 all public meetings of the Commission, Council,
11 or any Panel and any other meetings to which
12 they are invited by the Commission, Council, or
13 any Panel. The advisory committee shall be in-
14 vited to attend all non-executive meetings of the
15 United States Commissioners and at such meet-
16 ings shall be given opportunity to examine and
17 to be heard on all proposed programs of inves-
18 tigation, reports, recommendations, and regula-
19 tions of the Commission.

20 (C) PROCEDURES.—The advisory com-
21 mittee established by subparagraph (A) shall
22 determine its organization, and prescribe its
23 practices and procedures for carrying out its
24 functions under this chapter, the Magnuson-
25 Stevens Fishery Conservation and Management

1 Act (16 U.S.C. 1801 et seq.), and the WCPFC
2 Convention. The advisory committee shall pub-
3 lish and make available to the public a state-
4 ment of its organization, practices, and proce-
5 dures. A majority of the members of the advi-
6 sory committee shall constitute a quorum, but
7 one or more such members designated by the
8 advisory committee may hold meetings to pro-
9 vide for public participation and to discuss
10 measures relating to the United States imple-
11 mentation of Commission recommendations.
12 Meetings of the advisory committee, except
13 when in executive session, shall be open to the
14 public, and prior notice of meetings shall be
15 made public in a timely fashion. and the advi-
16 sory committee shall not be subject to the Fed-
17 eral Advisory Committee Act (5 U.S.C. App.).

18 (D) PROVISION OF INFORMATION.—The
19 Secretary and the Secretary of State shall fur-
20 nish the advisory committee with relevant infor-
21 mation concerning fisheries and international
22 fishery agreements.

23 (2) ADMINISTRATIVE MATTERS.—

24 (A) SUPPORT SERVICES.—The Secretary
25 shall provide to advisory committees in a timely

1 manner such administrative and technical sup-
2 port services as are necessary for their effective
3 functioning.

4 (B) COMPENSATION; STATUS; EX-
5 PENSES.—Individuals appointed to serve as a
6 member of an advisory committee—

7 (i) shall serve without pay, but while
8 away from their homes or regular places of
9 business in the performance of services for
10 the advisory committee shall be allowed
11 travel expenses, including per diem in lieu
12 of subsistence, in the same manner as per-
13 sons employed intermittently in the Gov-
14 ernment service are allowed expenses under
15 section 5703 of title 5, United States
16 Code; and

17 (ii) shall not be considered Federal
18 employees by reason of their service as
19 members of an advisory committee, except
20 for purposes of injury compensation or tort
21 claims liability as provided in chapter 81 of
22 title 5, United States Code, and chapter
23 171 of title 28, United States Code.

24 (f) MEMORANDUM OF UNDERSTANDING.—For highly
25 migratory species in the Pacific, the Secretary, in coordi-

1 nation with the Secretary of State, shall develop a memo-
2 randum of understanding with the Western Pacific, Pa-
3 cific, and North Pacific Fishery Management Councils,
4 that specifies the role of the relevant Council or Councils
5 with respect to—

6 (1) participation in United States delegations to
7 international fishery organizations in the Pacific
8 Ocean, including government-to-government con-
9 sultations;

10 (2) providing formal recommendations to the
11 Secretary and the Secretary of State regarding nec-
12 essary measures for both domestic and foreign ves-
13 sels fishing for these species;

14 (3) coordinating positions with the United
15 States delegation for presentation to the appropriate
16 international fishery organization; and

17 (4) recommending those domestic fishing regu-
18 lations that are consistent with the actions of the
19 international fishery organization, for approval and
20 implementation under the Magnuson-Stevens Fish-
21 ery Conservation and Management Act (16 U.S.C.
22 1801 et seq.)

23 **SEC. 504. AUTHORITY AND RESPONSIBILITY OF THE SEC-**
24 **RETARY OF STATE.**

25 The Secretary of State may—

1 (1) receive and transmit, on behalf of the
2 United States, reports, requests, recommendations,
3 proposals, decisions, and other communications of
4 and to the Commission;

5 (2) in consultation with the Secretary and the
6 United States Commissioners, approve, disapprove,
7 object to, or withdraw objections to bylaws and
8 rules, or amendments thereof, adopted by the
9 WCPFC Commission, and, with the concurrence of
10 the Secretary to approve or disapprove the general
11 annual program of the WCPFC Commission with re-
12 spect to conservation and management measures
13 and other measures proposed or adopted in accord-
14 ance with the WCPFC Convention; and

15 (3) act upon, or refer to other appropriate au-
16 thority, any communication referred to in paragraph
17 (1).

18 **SEC. 505. RULEMAKING AUTHORITY OF THE SECRETARY OF**
19 **COMMERCE.**

20 (a) PROMULGATION OF REGULATIONS.—The Sec-
21 retary, in consultation with the Secretary of the Depart-
22 ment in which the Coast Guard is operating and the ap-
23 propriate Regional Fishery Management Council, shall
24 promulgate such regulations as may be necessary to carry
25 out the United States international obligations under the

1 WCPFC Convention and this title. The Secretary shall
2 promulgate such regulations in accordance with the proce-
3 dures established by the Magnuson-Stevens Fishery Con-
4 servation and Management Act (16 U.S.C. 1801 et seq.).

5 (b) ADDITIONS TO FISHERY REGIMES AND REGULA-
6 TIONS.—The Secretary may promulgate regulations appli-
7 cable to nationals or vessels of the United States, or both,
8 which are in addition to, and not in conflict with, fishery
9 conservation and management measures and regulations
10 adopted under the WCPFC Convention.

11 **SEC. 506. ENFORCEMENT.**

12 (a) IN GENERAL.—The Secretary may—

13 (1) administer and enforce this title and any
14 regulations issued under this title, including enforce-
15 ment of any such regulations within the boundaries
16 of any State bordering on the convention area;

17 (2) request and utilize on a reimbursed or non-
18 reimbursed basis the assistance, services, personnel,
19 equipment, and facilities of other Federal depart-
20 ments and agencies in—

21 (A) the administration and enforcement of
22 this title; and

23 (B) the conduct of scientific, research, and
24 other programs under this title;

1 (3) conduct fishing operations and biological ex-
2 periments for purposes of scientific investigation or
3 other purposes necessary to implement the WCPFC
4 Convention;

5 (4) collect, utilize, and disclose such informa-
6 tion as may be necessary to implement the WCPFC
7 Convention, subject to sections 552 and 552a of title
8 5, United States Code, and section 402(b) of the
9 Magnuson-Stevens Fishery Conservation and Man-
10 agement Act (16 U.S.C. 1881a(b));

11 (5) assess and collect fees to recover the costs
12 of implementing and enforcing this title, policy and
13 rulemaking activities, user information services,
14 international activities under this title, and the costs
15 to the United States of enforcing the WCPFC Con-
16 vention, which shall be deposited as an offsetting
17 collection in, and credited to, the account providing
18 appropriations to carry out the functions of the Sec-
19 retary under this title; and

20 (6) issue permits to owners and operators of
21 United States vessels to fish in the convention area
22 seaward of the United States Exclusive Economic
23 Zone.

1 (b) PROHIBITED ACTS.—It is unlawful for any per-
2 son to violate any provision of this title or the regulations
3 promulgated under this title.

4 (c) ACTIONS BY THE SECRETARY.—The Secretary
5 shall prevent any person from violating this title in the
6 same manner, by the same means, and with the same ju-
7 risdiction, powers, and duties as though all applicable
8 terms and provisions of the Magnuson-Stevens Fishery
9 Conservation and Management Act (16 U.S.C. 1857) were
10 incorporated into and made a part of this title. Any person
11 that violates any provision of this title is subject to the
12 penalties and entitled to the privileges and immunities
13 provided in the Magnuson-Stevens Fishery Conservation
14 and Management Act in the same manner, by the same
15 means, and with the same jurisdiction, power, and duties
16 as though all applicable terms and provisions of that Act
17 were incorporated into and made a part of this title.

18 **SEC. 507. PENALTIES.**

19 This title shall be enforced by the Secretary as if a
20 violation of this title or of any regulation promulgated by
21 the Commission under this title were a violation of section
22 307 of the Magnuson-Stevens Fishery Conservation and
23 Management Act (16 U.S.C. 1857).

1 **SEC. 508. COOPERATION IN CARRYING OUT CONVENTION.**

2 (a) FEDERAL AND STATE AGENCIES; PRIVATE INSTI-
3 TUTIONS AND ORGANIZATIONS.—The United States Com-
4 missioners, through the Secretary of State and with the
5 concurrence of the Secretary, institution, or organization
6 concerned, may arrange for the cooperation of Federal
7 agencies and of State and private institutions and organi-
8 zations in carrying out responsibilities under the WCPFC
9 Convention.

10 (b) SCIENTIFIC AND OTHER PROGRAMS; FACILITIES
11 AND PERSONNEL.—All Federal agencies are authorized,
12 upon the request of the Secretary of Commerce Commis-
13 sion, to cooperate in the conduct of scientific and other
14 programs and to furnish facilities and personnel for the
15 purpose of assisting the Commission in carrying out its
16 duties under the WCPFC Convention.

17 **SEC. 509. TERRITORIAL PARTICIPATION.**

18 The Secretary of State shall ensure participation in
19 the Commission and its subsidiary bodies by American
20 Samoa, Guam, and the Northern Mariana Islands to the
21 same extent provided to the territories of other nations.

22 **SEC. 510. AUTHORIZATION OF APPROPRIATIONS.**

23 There are authorized to be appropriated to the Sec-
24 retary of Commerce such sums as may be necessary to
25 carry out this title and to pay the United States' contribu-

1 tion to the Commission under section 5 of part III of the
2 WCPFC Convention.

3 **TITLE VI—PACIFIC WHITING**

4 **SEC. 601. SHORT TITLE.**

5 This title may be cited as the “Pacific Whiting Act
6 of 2005”.

7 **SEC. 602. DEFINITIONS.**

8 In this title:

9 (1) **ADVISORY PANEL.**—The term “advisory
10 panel” means the Advisory Panel on Pacific Hake/
11 Whiting established by the Agreement.

12 (2) **AGREEMENT.**—The term “Agreement”
13 means the Agreement between the Government of
14 the United States and the Government of Canada on
15 Pacific Hake/Whiting, signed at Seattle, Wash-
16 ington, on November 21, 2003.

17 (3) **CATCH.**—The term “catch” means all fish-
18 ery removals from the offshore whiting resource, in-
19 cluding landings, discards, and bycatch in other fish-
20 eries.

21 (4) **JOINT MANAGEMENT COMMITTEE.**—The
22 term “joint management committee” means the
23 joint management committee established by the
24 Agreement.

1 (5) JOINT TECHNICAL COMMITTEE.—The term
2 “joint technical committee” means the joint tech-
3 nical committee established by the Agreement.

4 (6) OFFSHORE WHITING RESOURCE.—The term
5 “offshore whiting resource” means the
6 transboundary stock of *Merluccius productus* that is
7 located in the offshore waters of the United States
8 and Canada except in Puget Sound and the Strait
9 of Georgia.

10 (7) SCIENTIFIC REVIEW GROUP.—The term
11 “scientific review group” means the scientific review
12 group established by the Agreement.

13 (8) SECRETARY.—The term “Secretary” means
14 the Secretary of Commerce.

15 (9) UNITED STATES SECTION.—The term
16 “United States Section” means the United States
17 representatives on the joint management committee.

18 **SEC. 603. UNITED STATES REPRESENTATION ON JOINT**
19 **MANAGEMENT COMMITTEE.**

20 (a) REPRESENTATIVES.—

21 (1) IN GENERAL.—The Secretary, in consulta-
22 tion with the Secretary of State, shall appoint 4 in-
23 dividuals to represent the United States as the
24 United States Section on the joint management com-
25 mittee. In making the appointments, the Secretary

1 shall select representatives from among individuals
2 who are knowledgeable or experienced concerning
3 the offshore whiting resource. Of these—

4 (A) 1 shall be an official of the National
5 Oceanic and Atmospheric Administration;

6 (B) 1 shall be a member of the Pacific
7 Fishery Management Council, appointed with
8 consideration given to any recommendation pro-
9 vided by that Council;

10 (C) 1 shall be appointed from a list sub-
11 mitted by the treaty Indian tribes with treaty
12 fishing rights to the offshore whiting resource;
13 and

14 (D) 1 shall be appointed from the commer-
15 cial sector of the whiting fishing industry con-
16 cerned with the offshore whiting resource.

17 (2) TERM OF OFFICE.—Each representative ap-
18 pointed under paragraph (1) shall be appointed for
19 a term not to exceed 4 years, except that, of the ini-
20 tial appointments, 2 representatives shall be ap-
21 pointed for terms of 2 years. Any individual ap-
22 pointed to fill a vacancy occurring prior to the expi-
23 ration of the term of office of that individual's pred-
24 ecessor shall be appointed for the remainder of that
25 term. A representative may be appointed for a term

1 of less than 4 years if such term is necessary to en-
2 sure that the term of office of not more than 2 rep-
3 resentatives will expire in any single year. An indi-
4 vidual appointed to serve as a representative is eligi-
5 ble for reappointment.

6 (3) CHAIR.—Unless otherwise agreed by all of
7 the 4 representatives, the chair shall rotate annually
8 among the 4 members, with the order of rotation de-
9 termined by lot at the first meeting.

10 (b) ALTERNATE REPRESENTATIVES.—The Secretary,
11 in consultation with the Secretary of State, may designate
12 alternate representatives of the United States to serve on
13 the joint management committee. An alternative rep-
14 resentative may exercise, at any meeting of the committee,
15 all the powers and duties of a representative in the ab-
16 sence of a duly designated representative for whatever rea-
17 son.

18 **SEC. 604. UNITED STATES REPRESENTATION ON THE SCI-**
19 **ENTIFIC REVIEW GROUP.**

20 (a) IN GENERAL.—The Secretary, in consultation
21 with the Secretary of State, shall appoint no more than
22 2 scientific experts to serve on the scientific review group.
23 An individual shall not be eligible to serve on the scientific
24 review group while serving on the joint technical com-
25 mittee.

1 (b) TERM.—An individual appointed under sub-
2 section (a) shall be appointed for a term of not to exceed
3 4 years, but shall be eligible for reappointment. An indi-
4 vidual appointed to fill a vacancy occurring prior to the
5 expiration of a term of office of that individual's prede-
6 cessor shall be appointed to serve for the remainder of that
7 term.

8 (c) JOINT APPOINTMENTS.—In addition to individ-
9 uals appointed under subsection (a), the Secretary, jointly
10 with the Government of Canada, may appoint to the sci-
11 entific review group, from a list of names provided by the
12 advisory panel —

13 (1) up to 2 independent members of the sci-
14 entific review group; and

15 (2) 2 public advisors.

16 **SEC. 605. UNITED STATES REPRESENTATION ON JOINT**
17 **TECHNICAL COMMITTEE.**

18 (a) SCIENTIFIC EXPERTS.—

19 (1) IN GENERAL.—The Secretary, in consulta-
20 tion with the Secretary of State, shall appoint at
21 least 6 but not more than 12 individuals to serve as
22 scientific experts on the joint technical committee, at
23 least 1 of whom shall be an official of the National
24 Oceanic and Atmospheric Administration.

1 (2) TERM OF OFFICE.—An individual appointed
2 under paragraph (1) shall be appointed for a term
3 of not to exceed 4 years, but shall be eligible for re-
4 appointment. An individual appointed to fill a va-
5 cancy occurring prior to the expiration of the term
6 of office of that individual's predecessor shall be ap-
7 pointed for the remainder of that term.

8 (b) INDEPENDENT MEMBER.—In addition to individ-
9 uals appointed under subsection (a), the Secretary, jointly
10 with the Government of Canada, shall appoint 1 inde-
11 pendent member to the joint technical committee selected
12 from a list of names provided by the advisory panel.

13 **SEC. 606. UNITED STATES REPRESENTATION ON ADVISORY**
14 **PANEL.**

15 (a) IN GENERAL.—

16 (1) APPOINTMENT.—The Secretary, in con-
17 sultation with the Secretary of State, shall appoint
18 at least 6 but not more than 12 individuals to serve
19 as members of the advisory panel, selected from
20 among individuals who are—

21 (A) knowledgeable or experienced in the
22 harvesting, processing, marketing, management,
23 conservation, or research of the offshore whiting
24 resource; and

25 (B) not employees of the United States.

1 (2) TERM OF OFFICE.—An individual appointed
2 under paragraph (1) shall be appointed for a term
3 of not to exceed 4 years, but shall be eligible for re-
4 appointment. An individual appointed to fill a va-
5 cancy occurring prior to the expiration of the term
6 of office of that individual's predecessor shall be ap-
7 pointed for the remainder of that term.

8 **SEC. 607. RESPONSIBILITIES OF THE SECRETARY.**

9 (a) IN GENERAL.—The Secretary is responsible for
10 carrying out the Agreement and this title, including the
11 authority, to be exercised in consultation with the Sec-
12 retary of State, to accept or reject, on behalf of the United
13 States, recommendations made by the joint management
14 committee.

15 (b) REGULATIONS; COOPERATION WITH CANADIAN
16 OFFICIALS.—In exercising responsibilities under this title,
17 the Secretary—

18 (1) may promulgate such regulations as may be
19 necessary to carry out the purposes and objectives of
20 the Agreement and this title; and

21 (2) with the concurrence of the Secretary of
22 State, may cooperate with officials of the Canadian
23 Government duly authorized to carry out the Agree-
24 ment.

1 **SEC. 608. RULEMAKING.**

2 (a) APPLICATION WITH MAGNUSON-STEVENSON ACT.—

3 The Secretary shall establish the United States catch level
4 for Pacific whiting according to the standards and proce-
5 dures of the Agreement and this title rather than under
6 the standards and procedures of the Magnuson-Stevens
7 Fishery Conservation and Management Act (16 U.S.C.
8 1801 et seq.), except to the extent necessary to address
9 the rebuilding needs of other species. Except for estab-
10 lishing the catch level, all other aspects of Pacific whiting
11 management shall be—

12 (1) subject to the Magnuson-Stevens Fishery
13 Conservation and Management Act; and

14 (2) consistent with this title.

15 (b) JOINT MANAGEMENT COMMITTEE REC-
16 COMMENDATIONS.—For any year in which both parties to
17 the Agreement approve recommendations made by the
18 joint management committee with respect to the catch
19 level, the Secretary shall implement the approved rec-
20 ommendations. Any regulation promulgated by the Sec-
21 retary to implement any such recommendation shall apply,
22 as necessary, to all persons and all vessels subject to the
23 jurisdiction of the United States wherever located.

24 (c) YEARS WITH NO APPROVED CATCH REC-
25 COMMENDATIONS.—If the parties to the Agreement do not
26 approve the joint management committee's recommenda-

1 tion with respect to the catch level for any year, the Sec-
2 retary shall establish the total allowable catch for Pacific
3 whiting for the United States catch. In establishing the
4 total allowable catch under this subsection, the Secretary
5 shall—

6 (1) take into account any recommendations
7 from the Pacific Fishery Management Council, the
8 joint management committee, the joint technical
9 committee, the scientific review group, and the advi-
10 sory panel;

11 (2) base the total allowable catch on the best
12 scientific information available;

13 (3) use the default harvest rate set out in para-
14 graph 1 of Article III of the Agreement unless the
15 Secretary determines that the scientific evidence
16 demonstrates that a different rate is necessary to
17 sustain the offshore whiting resource; and

18 (4) establish the United State's share of the
19 total allowable catch based on paragraph 2 of Article
20 III of the Agreement and make any adjustments
21 necessary under section 5 of Article II of the Agree-
22 ment.

23 **SEC. 609. ADMINISTRATIVE MATTERS.**

24 (a) **EMPLOYMENT STATUS.**—Individuals serving as
25 such Commissioners, other than officers or employees of

1 the United States Government, shall be considered to be
2 Federal employees while performing such service, only for
3 purposes of—

4 (1) injury compensation under chapter 81 of
5 title 5, United States Code;

6 (2) tort claims liability as provided under chap-
7 ter 171 of title 28 United States Code;

8 (3) requirements concerning ethics, conflicts of
9 interest, and corruption as provided under title 18,
10 United States Code; and

11 (4) any other criminal or civil statute or regula-
12 tion governing the conduct of Federal employees.

13 (b) COMPENSATION.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), an individual appointed under this title
16 shall receive no compensation for the individual's
17 service as a representative, alternate representative,
18 scientific expert, or advisory panel member under
19 this title.

20 (2) SCIENTIFIC REVIEW GROUP.—Notwith-
21 standing paragraph (1), the Secretary may employ
22 and fix the compensation of an individual appointed
23 under section 604(a) to serve as a scientific expert
24 on the scientific review group who is not employed
25 by the United States government, a State govern-

1 ment, or an Indian tribal government in accordance
2 with section 3109 of title 5, United States Code.

3 (c) TRAVEL EXPENSES.—Except as provided in sub-
4 section (d), the Secretary shall pay the necessary travel
5 expenses of individuals appointed under this title in ac-
6 cordance with the Federal Travel Regulations and sections
7 5701, 5702, 5704 through 5708, and 5731 of title 5,
8 United States Code.

9 (d) JOINT APPOINTEES.—With respect to the 2 inde-
10 pendent members of the scientific review group and the
11 2 public advisors to the scientific review group jointly ap-
12 pointed under section 604(c), and the 1 independent mem-
13 ber to the joint technical committee jointly appointed
14 under section 605(b), the Secretary may pay up to 50 per-
15 cent of—

16 (1) any compensation paid to such individuals;
17 and

18 (2) the necessary travel expenses of such indi-
19 viduals.

20 **SEC. 610. ENFORCEMENT.**

21 (a) IN GENERAL.—The Secretary may—

22 (1) administer and enforce this title and any
23 regulations issued under this title;

24 (2) request and utilize on a reimbursed or non-
25 reimbursed basis the assistance, services, personnel,

1 equipment, and facilities of other Federal depart-
2 ments and agencies in the administration and en-
3 forcement of this title; and

4 (3) collect, utilize, and disclose such informa-
5 tion as may be necessary to implement the Agree-
6 ment and this title, subject to sections 552 and 552a
7 of title 5, United States Code.

8 (b) PROHIBITED ACTS.—It is unlawful for any per-
9 son to violate any provision of this title or the regulations
10 promulgated under this title.

11 (c) ACTIONS BY THE SECRETARY.—The Secretary
12 shall prevent any person from violating this title in the
13 same manner, by the same means, and with the same ju-
14 risdiction, powers, and duties as though all applicable
15 terms and provisions of the Magnuson-Stevens Fishery
16 Conservation and Management Act (16 U.S.C. 1857) were
17 incorporated into and made a part of this title. Any person
18 that violates any provision of this title is subject to the
19 penalties and entitled to the privileges and immunities
20 provided in the Magnuson-Stevens Fishery Conservation
21 and Management Act in the same manner, by the same
22 means, and with the same jurisdiction, power, and duties
23 as though all applicable terms and provisions of that Act
24 were incorporated into and made a part of this title.

1 (d) PENALTIES.—This title shall be enforced by the
2 Secretary as if a violation of this title or of any regulation
3 promulgated by the Secretary under this title were a viola-
4 tion of section 307 of the Magnuson-Stevens Fishery Con-
5 servation and Management Act (16 U.S.C. 1857).

6 **SEC. 611. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated to the Sec-
8 retary such sums as may be necessary to carry out the
9 obligations of the United States under the Agreement and
10 this title.



SUMMARY OF CHANGES TO S. 2012 IN SUBSTITUTE (MGR6)

- SEC. 103 -- COUNCILS
 - Specifies 5-5-1 balance for Gulf Council appointments through 2012, and requires report and recommendations.
 - Conflict of Interest – Simplify language to ensure disclose financial interests in other persons/organizations with business before Council, including lobbying and advocacy activity.
- SEC. 103 – SCIENCE
 - Councils must consider information provided by SSC or peer review process (instead of “SSC or other scientific advice”)
 - Remove Council Coordination Committee from involvement in establishing regional peer review process between Secretary and Councils.
- SEC. 104 – MANDATORY FMP REQUIREMENTS
 - Added language to existing economic impact analysis to require consideration of economic impacts on each sector in setting allocations.
 - Annual Catch Limits – modified language, including reference to multi year plans and managing with fishing mortality rates, adopted with the understanding that discussions will continue on the floor.
- SEC. 105 – DISCRETIONARY FMP REQUIREMENTS
 - Allows Councils to take into account in FMPs the different circumstances affecting fisheries from different states and ports, including distances to fishing grounds and proximity to time and area closures;
 - Sets forth procedures for Councils to follow if they establish zones closed to all fishing.
 - Deep sea corals – Authorize Councils to designate deep sea coral protection zones upon the advice of a new Deep Sea Coral Research and Technology Program, also established in new section 211 of the bill.
 - Ecosystems – Recognizing Council progress in integrating ecosystem concepts in fishery management, authorizes Councils to include measures in FMPs to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations. The bill also amends section 406 of the MSA to require a study on the state of ecosystem science and authorize NMFS to provide Councils technical advice and assistance in conducting regional ecosystem pilot projects building upon the study.

SEC. 106 – LIMITED ACCESS PRIVILEGE PROGRAMS

- Clarified differences between Community Sustainability Quotas and Regional Fishery Associations
- Conforming changes to Antitrust review of RFAs per Administration comments
- Petition for initiation of process voluntary, not mandatory. If Council does not act to initiate, it must initiate upon petition of over 50% of permittees or quota (with a special rule for multispecies fisheries in Gulf).
- Clarify 2/3 NE referendum is only for IFQs (not other forms of LAPPs)
- Change Gulf referendum to majority (with multispecies language), and also limit to IFQs.
- Specified that revisions to program will be to make changes to meet the goals of the program
- Removed “science” and “observers” from cost recovery provisions, conforming cost recovery to those of non-LAPP programs (direct costs of management, data collection, enforcement).
- Allow for limited duration of LAPPs, at Council discretion, as well as auctions to be used for subsequent reallocations.
- Clarify that only U.S. citizens and US corporations (etc..) who *also* meet Council participation criteria for the program are eligible to hold or use LAPPs.
- Provided AFA savings clause to ensure changes are not read to erode existing US ownership requirements for US fishing vessels under AFA.
- Provided a waiver for the processing in US requirement, if can show historic practice of processing outside of US and that fish will be processed in country with comparable seafood safety standards (e.g., seafood safety equivalency).
- Direct Secy of Commerce to work with SBA and other federal assistance agencies to facilitate US investment in processing where a lack of processing capacity is responsible for moving processing overseas.
- Clarify that new provisions do not apply to programs under development in a Council before the date of enactment.

• SEC. 107 – ENVIRONMENTAL REVIEW

- Fixed minor typos; used term “procedures” uniformly to avoid confusion (vs. “process”)

• SEC. 113 – TRANSITION TO SUSTAINABLE FISHERIES

- Minor technical refinements based on Administration drafting assistance

• SEC. 114 – REGIONAL COASTAL DISASTERS

- Minor technical refinements based on Administration drafting assistance

- SEC. 117 – BYCATCH REDUCTION
 - Allow bycatch reduction program to also develop techniques for reducing seabird bycatch.
- SEC. 120 – ENFORCEMENT
 - Adds increased administrative civil penalties from Administration bill.
 - Adds provisions of Administration bill that: (1) increase criminal penalties; (2) make knowing violations of “prohibited acts” subject to criminal enforcement; (3) extended assault prohibitions now applicable to observers and law enforcement officials to Council members and staff.
 - Provides same authorities provided to NMFS under Lacey Act through the MSA for enforcement against fish imports that were taken in violation of foreign fisheries conservation and management law.
- SEC. 201 – RECREATIONAL FISHERIES
 - Provision now silent with respect to fee, responding to requests of state managers, and some members and recreational groups.
- SEC. 203 – COOPERATIVE RESEARCH
 - Clarified that cooperative research process would not apply to research conducted under a quota set-aside (e.g., as done in scallop fishery).
 - Distribution of funds based on regional needs as identified by the Councils, through consensus process.
- SEC. 208 – FISHERY MANAGEMENT FUND
 - Removed inputs to fund from penalties.
- SEC. 209 – CHANGES TO FFP AND CCF
 - Eliminated unintentional inclusion of provisions that would extend uses of FFP and CCF to sustainable fisheries marketing plans.
 - New Section 115 (“Fishery Disaster Assistance”) to authorize loan assistance, including extension of repayment periods and loan forgiveness, for eligible Fishery Finance Program loan holders whose fishing-related facilities were adversely affected by hurricanes Katrina and Rita.

- SEC. 301 – OTHER FISHERY REAUTHORIZATIONS
 - Reauthorize Pacific Salmon Treaty only to 2009 (not 2012)
 - Extend multistate management authority for Dungeness Crab management 10 years to allow for stability in developing capacity reduction plans in the fishery.
- SEC. 402—IUU FISHING
 - Clarify that IUU fishing includes fishing in areas not covered by international conservation and management measures or not covered by an international agreement only where overfishing is having adverse impacts on a stock shared by the United States.
- TITLE V – WESTERN AND CENTRAL PACIFIC TREATY
 - Changes to conform implementing legislation to similar legislation for other fisheries treaties.
- OTHER PROVISIONS
 - Creates a new section 116 of the bill that would authorize \$17.5 million for FY 2006-2011 to the Secretary of Commerce to carry out a shrimp fisheries disaster assistance program in the States bordering the Gulf of Mexico.
 - Creates a new section 118 of the bill to authorize the NMFS Community-based habitat grant program.
 - Creates a new section 212 that would direct the Undersecretary of Commerce for Oceans and Atmosphere to establish an agreement with the National Academy of Sciences to conduct a study on the effect of turtle excluder devices on the shrimping industry and effects of shrimping on sea turtles.
 - Creates a new section 213 would direct the Secretary of Commerce to complete two reports, within six months after enactment, detailing the effects of Hurricanes Katrina and Rita on commercial and recreational fisheries and fishery habitat in States bordering the Gulf of Mexico.

Date: Thu, 02 Feb 2006 22:09:50 -0800

From: Don McIsaac donald.mcisaac@noaa.gov

To: Spring, Margaret (Commerce) Margaret_Spring@commerce.senate.gov

Subject: Re: FW: final language--AFA vessel rebuild/replacement

Margaret-

This email contains a response to your request for a perspective from the Pacific Council on the referenced language in the Coast Guard authorization bill. Given the time constraint that does not offer the optimal development of a response via our Council meeting process, I offer the following perspective that I feel reflects what the full Council would say on this matter. I have contacted a number of Council Members to get to this opinion, including the Chairman and Vice-Chairman.

Let me start with a little background, then describe a current concern that prompts a recommendation for an additional concept beyond those contained in the current bill.

Background

- When Congress passed the American Fisheries Act in 1998, Congress directed the Pacific Council to develop conservation and management measures to protect west coast groundfish fisheries from potential harm caused by the AFA.
- In September 1999, the Pacific Council initiated Amendment 15 to the groundfish FMP to address this concern.
- However, because of competing workload and because of no threatened imminent harm, the Pacific Council tabled action on Amendment 15 in 2001 or 2002 until an undefined later time.

Current Concern

- Currently, it appears that the owners of a large catcher/processor vessel with no history in the West Coast groundfish fishery may be intending to acquire the permits required to enter the catcher/processor sector of the West Coast whiting fishery.
- If this were to occur, it would be very disruptive to the existing whiting cooperative that has so responsibly fished cleanly with regard to the incidental catch of depleted rockfish species and salmon; these boats would likely abandon the cooperative and once again participate in a derby-style race for fish.
- This in turn would almost inevitably lead to higher bycatch of the depleted rockfish that have stringent quotas (canary, widow, and darkblotched rockfish) and salmon, which would consequently shut other fisheries down, including shore based whiting, non-whiting groundfish, and even recreational fisheries.
- This is a catastrophic scenario that has generated great concern on the West Coast given the razor-thin margins of incidental take of depleted species in the various groundfish fisheries and the recent Ninth Circuit Court decision on minimizing those incidental takes.

Recommendation for an Additional Legislative Concept

- If there is to be serious consideration for the proposed AFA language as part of the Coast Guard authorization, the Pacific Council feels that there should also be an inclusion of a provision to protect West Coast groundfish fisheries from the impacts of AFA-privileged vessels moving south.
- This recommendation is consistent with the original AFA intent in 1998 that called for such protective measures to be developed by the Pacific Council; the timing of the current urgent concern unfortunately now mandates direct legislative action.
- The concept would be to prohibit AFA qualified catcher/processor vessels (original or replacement vessels) without West Coast landing history prior to June 29, 2000 from participating in the West Coast Pacific Whiting fishery.
 - June 29, 2000 is a control date adopted by the Pacific Council when deliberating AFA impact protection under Amendment 15; see Federal Register Vol. 65, No. 178, September 13, 2000.

Please don't hesitate to contact me if you have any questions on this matter. Should this matter still be ripe for consideration for Pacific Council input after our March Council meeting, please let me know.

Thanks,
Don

SEC. ____. **VESSEL SIZE LIMITS.**

(a) **LENGTH, TONNAGE AND HORSEPOWER.** -- Section 12102 (c)(5) of title 46, United States Code, is amended by –

(1) striking the period at the end of paragraph (B) and inserting “; or”;

(2) inserting the following new paragraph at the end thereof:

“(C) the vessel is either a rebuilt vessel or a replacement vessel under Section 208 (g) of the American Fisheries Act and is eligible for a fishery endorsement under section 12108 of this title.”;

(3) inserting “and” at the end of paragraph (A)(i);

(4) striking “and” at the end of paragraph (A)(ii) and inserting “or”; and

(5) striking paragraph (A)(iii).

(b) **CONFORMING AMENDMENTS.** –

(1) Section 208(g) of Title II of Division C of Public Law 105-277 is amended to read as follows:

“(g) **VESSEL REBUILDING AND REPLACEMENT.** – (1) For purposes of improving vessel safety, enhancing utilization of the fishery resource, and increasing operational efficiencies, including fuel efficiency, and except as provided in paragraph (4) of this subsection, the owner of a vessel eligible under subsections (a), (b), (c), (d), or (e) may rebuild or replace that vessel with a vessel documented with a fishery endorsement under section 12108 of title 46, United States Code, which shall be eligible in the same manner under that subsection as the eligible vessel, and shall not be subject to any limitations

on lengthening contained in Part 679 of title 50 of the Code of Federal Regulations.

(2) The North Pacific Council may recommend for approval by the Secretary such conservation and management measures in accordance with the Magnuson-Stevens Act as it may deem necessary to ensure that provisions of this subsection do not diminish the effectiveness of fishery management plans of the Bering Sea and Aleutian Islands Management Area or the Gulf of Alaska.

(3) Notwithstanding the requirements of section 12102 (c) (1), (2) and (3) of title 46, United States Code, a vessel that is eligible under paragraph (1) of this subsection and that qualifies to be documented with a fishery endorsement pursuant to Section 203(g) or Section 213(g) of Title II of Division C of Public Law 105-277 may be replaced with a replacement vessel under paragraph (1), provided that the vessel that is replaced is validly documented with a fishery endorsement pursuant to Section 203(g) or Section 213(g) of Title II of Division C of Public Law 105-277 before the replacement vessel is documented with a fishery endorsement under section 12108 of title 46, United States Code, and provided further that the replacement vessel and its owner and mortgagee are subject to the same limitations under Section 203 (g) or Section 213 (g) of Title II of Division C of Public Law 105-277 applicable to the vessel that has been replaced and that vessel's owner or mortgagee.

(4) A replacement vessel for a catcher vessel eligible under subsections (a), (b) or (c) of this subsection that exceeds the registered length, gross tonnage or shaft horsepower of that catcher vessel, or a catcher vessel eligible under subsections (a), (b) or (c) of this subsection that is rebuilt to increase its registered length, gross tonnage or shaft horsepower, shall be prohibited from harvesting fish in any fishery under the authority of any regional fishery management council established under section 302(a) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)) other than the North Pacific Council, except for the Pacific whiting fishery.

(5) Any vessel that is replaced under the authority of this subsection shall thereafter be ineligible for a fishery endorsement under section 12108 of title 46, United States Code, unless that vessel is also a replacement vessel under paragraph (1) of this subsection.”.

(2) Section 203 (g) of Title II of Division C of Public Law 105-277 is amended by striking “with paragraphs (2), (5), and (6) of”.

(3) Section 210(b) of Title II of Division C of Public Law 105-277 is amended by adding paragraph (b)(7) below:

“(b)(7) FISHERY COOPERATIVE EXIT PROVISIONS – The owner of a catcher vessel eligible under section 208(a), which is participating in a fishery cooperative, may elect to retire the eligible catcher vessel from the fisheries, consistent with the terms and conditions of its fishery cooperative contract. For purposes of determining aggregate percentage of directed fishing allowances under paragraph (1), the retiring vessel’s harvest totals during 1995,

1996, and 1997 as reflected in current regulation shall be assigned for all purposes under this title, in the manner specified by the owner of the retiring vessel, to or among other catcher vessel(s) participating in the fishery cooperative provided that such vessel or vessels remain in the fishery cooperative for at least one year after the retiring vessel has left the directed pollock fishery. A vessel that is retired pursuant to this paragraph shall be permanently ineligible for a fishery endorsement and, other than as specified in this paragraph, any claim (including relating to catch history) associated with such vessel that could qualify any owner of such vessel for any present or future permit in any fishery within the exclusive economic zone of the United States shall be extinguished, unless such retired vessel is thereafter designated to replace a vessel to be retired pursuant to this paragraph – PROVIDED that nothing in this paragraph shall cause a retiring vessel that has participated, as determined by the Secretary, during either 2002, 2003, or 2004 in a federal fishery not under the authority of the North Pacific Council, to be ineligible for a fishery endorsement or any permit necessary to continue to participate in such fishery.”

* * *

1/24/06

SECTION –BY-SECTION ANALYSIS OF AMENDMENT RE: VESSEL SIZE LIMITS FOR FISHING INDUSTRY VESSELS

The proposed amendment modifies the vessel documentation laws to allow certain fishing industry vessels that are rebuilt, or that replace existing vessels, to be documented with a fishery endorsement notwithstanding current limits on vessel size. The changes allow vessel owners in the rationalized Bering Sea/Aleutian Islands (BS/AI) pollock fishery to build a new replacement vessel, or rebuild an existing vessel, at the owner's discretion, that exceed the limitations on length, tonnage and horsepower for new fishing industry vessels contained in the vessel documentation laws or the limitations on vessel lengthening contained in the License Limitation Program.

Current Vessel Size Limitations

The vessel documentation laws were amended in 1998 by the American Fisheries Act (AFA) to prohibit a new vessel from receiving a fishery endorsement if it is greater than 165 feet in registered length, of more than 750 gross tons under regulatory measurement (or 1,900 gross tons under international measurement), or if it has engines capable of producing a total of more than 3000 shaft horsepower. The size limitations were intended to provide a mechanism to limit fishing power, particularly in open access fisheries. Vessels were allowed to exceed these thresholds if they were properly documented on September 25, 1997.

Uncertain whether a buyback program and the formation of fishing cooperatives also authorized by the AFA to address then-chronic overcapitalization in the BS/AI pollock fishery would succeed, Congress included an additional measure that limited the ability to replace these vessels if they exceeded the size limits. The AFA has proven to be an unqualified success having resolved overcapitalization and having rationalized the fishery. This success has made the limitations on replacement vessels unnecessary and counterproductive as they prevent improvements in vessel safety and efficiency.

Proposed Amendment Subsection (a) – Length, Tonnage and Horsepower

Paragraphs (1) and (2) of the proposed amendment add a new exception to the length, tonnage and horsepower limitations in the documentation laws to allow those vessels that are in the limited access fisheries under the AFA to be replaced or rebuilt for the purpose of improving vessel safety, enhancing utilization of the resource and increasing fuel efficiency and other operational efficiencies.

Paragraphs (3) – (5) of the proposed amendment delete a troublesome provision in the documentation laws that read literally could result in the permanent loss of a vessel's fishery privileges for even the most technical documentation invalidity, including clerical errors by the Coast Guard.

Proposed Amendment Subsection (b) – Conforming Amendments

Paragraph (1) includes a conforming amendment to the American Fisheries Act that replaces current paragraph (g) of AFA Section 208 with a new paragraph (g).

- ***Paragraph (1) of new Sec. 208(g)*** confirms that for purposes of improving vessel safety, enhancing utilization of the fishery resource, and increasing fuel and other operational efficiencies, a rebuilt or replacement vessel may continue to participate in BS/AI pollock fishery in the same manner as the original vessel notwithstanding the vessel size thresholds in the vessel documentation laws or under the license limitation program.
- ***Paragraph (2) of new Sec. 208(g)*** expressly authorizes the North Pacific Council to recommend for approval by the Secretary such conservation and management measures as it may deem necessary to ensure that the provisions of this subsection do not diminish the effectiveness of the fishery management plans for the BS/AI or Gulf of Alaska management areas.
- ***Paragraph (3) of new Sec. 208(g) --*** Under current law, vessels that are documented under the ownership grandfather provisions of the AFA may be rebuilt without loss of the grandfather. This paragraph provides that a replacement vessel for the originally grandfathered vessel enjoys the same grandfather protections and limitations as the vessel it replaced.
- ***Paragraph (4) of new Sec. 208(g)*** provides that AFA catcher vessels that are replaced by a new vessel exceeding the length, tonnage or horsepower size thresholds of the vessel it replaces, or that is rebuilt in such a manner as to exceed those size thresholds, is prohibited from harvesting fish in any fishery under the authority of any regional fishery management council other than the North Pacific Council, except for the Pacific whiting fishery.
- ***Paragraph (5) of new Sec. 208(g)*** provides that any vessel that is replaced by a different vessel under this authority becomes ineligible for a fishery endorsement, unless the vessel itself is also a replacement vessel.

Paragraph (2) contains a technical conforming change to Section 203(g) of the AFA in order to eliminate certain cross cites to paragraphs of the original Section 208 (g) that are no longer in the new amended Section 208(g).

Paragraph (3) amends Section 210(b) of the AFA relating to catcher vessels delivering onshore to provide a mechanism for a vessel in a fishery cooperative to retire from the fishery and to assign its harvest totals to or among other catcher vessels in the same cooperative. Vessels ultimately retired under this authority are permanently ineligible for a fishery endorsement, except for those that may have participated in a federal fishery under the authority of a council other than the North Pacific Council during 2002, 2003 or 2004.

LEGISLATIVE COMMITTEE REPORT

The Legislative Committee (LC) met March 6, 2006. The LC briefly reviewed their December 2005 report (Agenda Item B.3.a, Attachment 1) and a subsequent staff working draft of S. 2012, the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005* (Agenda item B.3.a, Attachment 2) but focused on solicited input on proposed amendments to the American Fisheries Act (AFA).

Magnuson-Stevens Fishery Conservation and Management Act (MSA) Reauthorization

The LC noted that some Council recommendations regarding omissions highlighted in the December 1, 2005 LC Report were not addressed in the December 13 staff working draft of S.2012. Notably, the current draft of S. 2012 does not address Council requests for clarification on fishery management authority in national marine sanctuaries or removal of the ten-year rebuilding time frame for overfished species.

The LC discussed the Tribal Obligatory seat on the Council, acknowledged the vital role tribal representation has played in an effective Council process, and noted that the tribal seat functions in a similar capacity as the official Washington, Oregon, and California state representatives. The LC recommends that, like the State government seats, the Tribal Obligatory seat should not be limited by term limits.

The LC recommends Council staff draft a letter to be sent to key Congressional members and contacts in the U.S. Senate and U.S House of Representatives who have previously requested Council input regarding remaining omissions in S.2012 and recommended changes to MSA Section 302(b)(3) (16 U.S.C. 1852(b)(3)) to remove term limits for the Council Tribal Obligatory seat.

The LC understands that a U.S. House of Representatives bill on MSA reauthorization is due out in the foreseeable future. The LC requests Council staff track the release of this bill. The LC anticipates holding preliminary discussions regarding such a bill at the April Council meeting. This may not be possible due to the lack of a bill not being introduced and/or the logistical constraints of the April Council meeting. The LC requests scheduling a full day LC meeting in late-April or another appropriate time if the bill is introduced prior to the June Council meeting, for a more thorough review.

American Fisheries Act Amendment

Ms. Margaret Spring, staff member of the U.S. Senate Committee on Commerce, Science, and Transportation, recently requested Council input regarding draft AFA amendatory language to modify vessel restrictions under AFA. Congress is interested in Council input on potential amendment of the AFA.

The LC heard public testimony confirming that owners of a large catcher/processor vessel with no history in the West Coast groundfish fishery is acquiring the permits required to enter the catcher/processor sector of the West Coast whiting fishery. The LC understands this action could be disruptive to West Coast fishery management, including not only the whiting fleet, but also possible ramifications to other commercial and recreational fisheries if bycatch of overfished species increases.

When Congress passed the American Fisheries Act in 1998, Congress directed the Council to develop conservation and management measures to protect west coast groundfish fisheries from potential harm caused by the AFA. This concern was to be addressed under Amendment 15 to the groundfish Fishery Management Plan, but because of competing workload and no imminent threat, the Council tabled action on Amendment 15.

To address this new potential threat to West Coast fisheries, the LC recommends the Council review and approve the attached draft letter to be sent to the U.S. Senate Committee on Commerce, Science and Transportation recommending that the AFA amendatory language include provisions to prohibit all AFA qualified vessels (original or replacement vessels) without West Coast landing history prior to a Council adopted control date of June 29, 2000 from participating in the West Coast Pacific whiting fishery.

Other Legislative Matters

It was reported to the LC that U.S. Representative Richard Pombo (R-CA) has introduced a bill to change the provisions governing withdrawals from Capital Construction Funds. The LC requests that Council staff track this bill and plan for LC discussion on the matter in April.

LC Recommendations:

- 1. Direct Council staff to draft a letter to key Congressional delegates and contacts in the U.S. Senate and U.S House of Representatives regarding remaining omissions in S.2012 and recommended changes to MSA Section 302(b)(3) (16 U.S.C. 1852(b)(3)) to remove the term limits for the Council Tribal Obligatory seat.**
- 2. Approve the attached draft letter to the U.S. Senate Committee on Commerce, Science, and Transportation regarding potential amendment of the American Fisheries Act.**
- 3. Direct Council staff to track legislation regarding MSA reauthorization and the Capitol Construction Fund.**
- 4. Direct Council staff to begin plans for an April 26, 2005 meeting of the LC at the Council office in Portland, Oregon.**

PFMC
03/09/06

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
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March XX, 2006

DRAFT

Ms. Margaret Spring

Address Block

Re: Pacific Fishery Management Council recommendations on potential amendment of the American Fisheries Act.

Dear Ms. Spring:

The Pacific Fishery Management Council (Council) appreciates being given the opportunity to comment on legislative proposals regarding modifications of the American Fisheries Act (AFA). The Council Executive Director provided some initial comments to Senate staff on February 2, 2006 in order to meet the presumed deadline on conference committee action on the Coast Guard authorization bill. Because of the timing, however, these comments were made without the full Council having the opportunity to review them. Please take the content of this letter as a supplementation of the prior comments provided on the behalf of the Council.

On March 6, 2006, the Council's Legislative Committee undertook a formal review of proposed AFA amendments and how they might affect fisheries under the Council's jurisdiction. The Committee's primary focus was on the effect of new entry into the Pacific whiting fishery by AFA vessels. After public comment and Committee discussion, the Committee recommended to the Council that our initial comments be amended to request that all AFA qualified vessels (original or replacement) - not just catcher/processor vessels - without West Coast landing history prior to June 29, 2000 be prohibited from participating in the Pacific whiting fishery. This would conform with the statutory obligations of the Council to prevent increasing capacity as a result of enactment of the AFA and would be consistent with the control date adopted by the Council in 2000. The Committee's recommendation was adopted by the Council on March ____ by a vote of -----.

Currently, it appears that the owners of a large catcher/processor vessel with no history in the West Coast groundfish fishery is acquiring the permits required to enter the catcher/processor sector of the West Coast whiting fishery. If this were to occur, it could be very disruptive to the existing whiting cooperative that has so responsibly fished cleanly with regard to the incidental catch of depleted rockfish species and salmon; these boats may abandon the cooperative and once again participate in a derby-style race for fish if a new entrant does not join the cooperative. This in turn would almost inevitably lead to higher bycatch of the depleted rockfish that have stringent quotas (canary, widow, and darkblotched rockfish) and salmon, which would consequently shut other fisheries down, including shore based whiting, non-whiting groundfish,

and even recreational fisheries. This is a potential catastrophic scenario that has generated great concern on the West Coast given the razor-thin margins of incidental take of depleted species in the various groundfish fisheries and the recent Ninth Circuit Court decision on minimizing those incidental takes.

Please let me know if you have any questions regarding the Council's actions on this matter or if there are other issues on which you desire Council comment.

Sincerely,

DRAFT

D. O. McIsaac, Ph.D.

Executive Director

GROUND FISH ADVISORY SUBPANEL REPORT ON
LEGISLATIVE MATTERS

The Groundfish Advisory Subpanel supports the Council Chairs Report and the Council position that addresses the need to modify the Magnuson-Stevens Fishery Conservation and Management Act and the National Marine Sanctuaries Act to clarify regulatory authority over fisheries within national marine sanctuaries.

PFMC
03/08/06



GREATER NEWPORT CHAMBER OF COMMERCE

555 S.W. Coast Highway • Newport, Oregon 97365-4934
(541) 265-8801 • FAX: (541) 265-5589 • 1-800-262-7844
website: <http://www.newportchamber.org>
e-mail: chamber@newportnet.com

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JAN 03 2006

PFMC

December 27, 2005

Dr. William Hogarth, Administrator
NOAA Fisheries Service
1315 East West Highway
Silver Spring, MD 20910

Dear Dr. Hogarth,

I'm sure you are aware of efforts on behalf of the Pacific Whiting industry to formalize the partnership between fishermen and processors. In that spirit, Senator Gordon Smith's bill, S.1549, the Cooperative Hake Improvement and Conservation Act, offers an innovative solution to the industry's complex issues of balance and fairness.

The Pacific Whiting fishery has become one of the most successful and highest-volume fisheries in our state. Newport and other coastal communities with whiting vessels and/or processing facilities have shared in this success via significant economic stimulus. Unfortunately however, the industry has at the same time suffered from a lack of stability caused by fluctuating fish stocks and bureaucratic mismanagement. Add to the mix the traditional Olympic "race for fish" allocation system which increases the hazard to fishermen and results in a substantial waste and/or underutilization of resources and you have a recipe for disaster.

It is totally appropriate therefore to reward the unprecedented cooperation between whiting fishermen and processors with legislation to effectively stabilize the industry. Eliminating the perpetual guesswork with regard to whiting management will result in enhanced scientific knowledge and informed conservation policies and will literally maximize the value of every fish caught. S.1549 is truly a win-win solution for everyone involved and I encourage your support for this measure.

Thank you for your consideration. Have a great new year!

Sincerely,

Philip K. Hutchinson
Executive Director

APPOINTMENTS TO ADVISORY BODIES, STANDING COMMITTEES,
AND OTHER FORUMS

The following advisory body vacancies are scheduled to be filled:

The NMFS Northwest Fisheries Science Center has requested Mr. John Wallace replace Dr. Jim Hastie on the Groundfish Management Team (GMT) (Closed Session Agenda Item A.1.a, Attachment 1).

The CDFG has requested Mr. Stephen Wertz replace Mr. Stephen Crooke on the Highly Migratory Species Management Team (HMSMT) (Closed Session Agenda Item A.1.a, Attachment 2).

The following Advisory Body vacancies remain:

- One vacancy on the GMT for the NMFS Northwest Fisheries Science Center, formerly occupied by Dr. Kevin Piner.
- One vacancy on the Habitat Committee for the CDFG, formally occupied by Mr. Michael Rode.
- One vacancy on the HMSMT for the NMFS Southwest Fisheries Science Center, formerly occupied by Dr. Norm Bartoo. Both the NMFS Southwest Region and Southwest Science Center have requested the Council consider modifying Council Operating Procedure 3 to change the composition of the HMSMT and replace the vacant Southwest Science Center Seat with a seat for the Southwest Region.

Council Action:

Appoint New Members as Necessary.

Reference Materials:

1. Closed Session Agenda Item A.1.a, Attachment 1: GMT nomination.
2. Closed Session Agenda Item A.1.a, Attachment 2: HMSMT nomination.

Agenda Order:

- a. Agenda Item Overview
- b. **Council Action:** Appoint New Members as Necessary

Chuck Tracy

PFMC
02/16/06

APRIL 2006 COUNCIL MEETING AGENDA
AND THREE-MEETING PLAN

This agenda item requests Council guidance on the following two matters:

1. The Council three-meeting outlook.
2. The draft agenda for the next Council meeting.

Because of the short period of time between the March and April Council meetings, there is no discussion of Council staff workload priorities in this meeting. Workload priorities for the period November 7, 2005 through April 7, 2006 were set at the November 2005 Council meeting.

Under Agenda Item B.2, the Council was briefed on proposed agenda topics for the next three Council meetings and a draft agenda for the April 2006 Council meeting in Sacramento, California. Under this agenda item, the Council will hear reports and comments from advisory bodies, consider public comment, and provide guidance on potential agenda items for the next three Council meetings and advisory body review priorities for April. As the *Federal Register* notice for the April Council meeting must be filed on March 10, 2006, the Council will also need to adopt a final April Council meeting agenda.

Council Action:

- 1. Provide guidance on potential agenda topics for the next three Council meetings.**
- 2. Adopt a final agenda for the April 2006 Council meeting.**
- 3. Identify priorities for advisory body consideration at the April Council meeting.**

Reference Materials:

1. Agenda Item B.5.a, Supplemental Attachment 1: Proposed Preliminary Three-Meeting Outlook for the Pacific Council.
2. Agenda Item B.5.a, Supplemental Attachment 2: Draft Council Meeting Agenda, April 2-7, Sacramento, California.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. **Council Action:** Adopt Final Agenda for the April 2006 Meeting

Don McIsaac

PFMC
02/16/06

Preliminary Three Meeting Outlook for the Pacific Council

(Shaded Items Contingent, but Counted in Time Estimate; Changes from B.2.a, Att. 1 are in Dashed Boxes)

April Sacramento, CA 4/2-4/7/06 Estimated Percent of Standard Floor Time = 110%	June Foster City, CA 6/11-6/16/06 Estimated Percent of Standard Floor Time = 105%	September Foster City, CA 9/10-9/15/06 Estimated Percent of Standard Floor Time = 103%
<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Interim Appointments Agenda Planning 3 Mtg Outlook, Draft June Agenda, Workload Public Comment on Non-Agenda Items Initiate Research & Data Needs Draft Regional Operating Agreements for Regulatory Steamlining: Status Report	<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Fiscal Matters Interim Appointments 3 Mtg Outlook, Draft Sept. Agenda, Workload Public Comment on Non-Agenda Items Research & Data Needs: Adopt Draft Recommendations for Public Review	<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Fiscal Matters Appointments to Adv. Bodies for 2007-2009 Term: Consider Composition & Solicit Nominations 3 Mtg Outlook, Final November Agenda, Workload Public Comment on Non-Agenda Items
<u>Coastal Pelagic Species</u>	<u>Coastal Pelagic Species</u> NMFS Rpt Pacific Mackerel Harvest Guideline for 2006/07 [SAFE doc provided to Council]	<u>Coastal Pelagic Species</u>
<u>Enforcement Issues</u> USCG Rpt on AIS & VMS	<u>Enforcement Issues</u> State Activity Rpt	<u>Enforcement Issues</u> State Activity Rpt
<u>Groundfish</u> NMFS Report 2006 Inseason Mgmt (2 Sessions) 2007-2008 Mgmt Recommendations: Adopt 1) Final Harvest Specs. (ABC/OY Levels) 2) Range of Refined Mgmt Measures for Public Review, &, if possible, a Preferred Alt. 3) Amendment 16-4 (Revised Rebuilding Plans) Adopt For Public Review A) Preferred Alternatives for 7 Rebuilding Plans B) Draft Amendatory Language Stock Assmnts.: Adopt Final Plan for 2009-2010	<u>Groundfish</u> NMFS Report 2006 Inseason Management (2 Sessions) EFPs for 2007: Submit for Initial Adv. Bod. Review 2007-2008 Mgmt Recommendations: Adopt Final Groundfish Bycatch Workplan: Approve for Pub Rev. Amendment 16-4 (Revised Rebuilding Plans): Adopt Final Amendatory Language IQ EIS: Status Report on Phase I Intersector Allocation EIS: Plan Next Steps Open Access Limitation: Amendment Planning Spiny Dogfish Longline Endorsement: Adopt FMP Amendment Alts. For Public Review Whiting Monitoring EA: Adopt Alts. for Public Review	<u>Groundfish</u> NMFS Report 2006 Inseason Management (2 Sessions) Groundfish Bycatch Workplan: Approve Final Whiting Monitoring EA: Adopt Final Preferred Alt.

Agenda Item B.5.a
 Supplemental Attachment 1
 March 2006

Preliminary Three Meeting Outlook for the Pacific Council

(Shaded Items Contingent, but Counted in Time Estimate; Changes from B.2.a, Att. 1 are in Dashed Boxes)

April Sacramento, CA 4/2-4/7/06 Estimated Percent of Standard Floor Time = 110%	June Foster City, CA 6/11-6/16/06 Estimated Percent of Standard Floor Time = 105%	September Foster City, CA 9/10-9/15/06 Estimated Percent of Standard Floor Time = 103%
<u>Habitat Issues</u> Habitat Committee Report	<u>Habitat Issues</u> Habitat Committee Report	<u>Habitat Issues</u> Habitat Committee Report
<u>Highly Migratory Species</u> NMFS Rpt Bigeye Tuna OF Response: Adopt Final Recommendations to IATTC Albacore Mgmt.: Recommendations for IATTC and for US-Canada Treaty Issues	<u>Highly Migratory Species</u> NMFS Rpt Routine Mgmt Measures: Prelim Proposals for any Changes by HMSMT [Prelim SAFE Doc--Info Rpt] EFPs for 2007: Submit for Initial Review	<u>Highly Migratory Species</u> NMFS Rpt Routine Mgmt Measures: Adopt Proposed Changes for Public Review EFPs for 2007: Final Approval Mgmt Regime for HS Longline Fishery: Consider Adopting FMP Amendment Alts. For Public Rev.
<u>Marine Protected Areas</u> CINMS: Fishing Regulations within CINMS Consulation Proc. For Fishing Regs. In NMS's: Adopt Final Council Recommendations	<u>Marine Protected Areas</u>	<u>Marine Protected Areas</u>
<u>Pacific Halibut</u> Incidental Catch Regs for 2006: Adopt Final	<u>Pacific Halibut</u>	<u>Pacific Halibut</u> Proposed Changes to CSP & Ann. Regs.: Adopt for Public Review Bycatch Est. for IPHC Adoption: Review
<u>Salmon</u> 2006 Management Options: Final Adoption 2006 Methodology Review: Establish Process & Preliminary Priorities Identify Stocks not Meeting Conserv. Objectives Selective Fisheries Briefing Role of KPMC: Consider Recommendations	<u>Salmon</u> Fishery Update--Info Rpt EFH Review Process: Next Steps FRAM Update De Minimis Fisheries FMP Amendment Associated with Klamath Fall Chinook: Review Preliminary Alternatives	<u>Salmon</u> Fishery Update--Info Rpt Methodology Review: Establish Priorities for 2007 Season De Minimis Fisheries FMP Amendment Associated with Klamath Fall Chinook: Adopt Alts. For Public Review
<u>Information Reports</u> Selective Fishery Briefing	<u>Information Reports</u>	<u>Information Reports</u>
<u>Special Joint Sessions</u> Briefing on GF Spx & Rebuilding Revisions--Sun 1:30 or 6:30 pm? Salmon Genetics Research Rpt--Wed 10 am	<u>Special Joint Sessions</u>	<u>Special Joint Sessions</u>

DRAFT COUNCIL MEETING AGENDA, APRIL 2-7, 2006, SACRAMENTO, CA

				ANCILLARY MEETING SCHEDULE		
AG#	Hours	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY MAILINGS 1/	Day/Group	Continuing Start Time Through
SUNDAY, APRIL 2 - See Ancillary Schedule				→	SUNDAY:	
		SPECIAL SESSION			A. GAP	1:00 PM Fri.
		Briefing on Groundfish Mgmt Specifications & Rebuilding Revisions--1:30 or 6:30 pm?			B. GMT	1:00 PM Fri.
					KFMC	3:00 PM Fri.
MONDAY, APRIL 3 - 8:00 am					MONDAY:	
		Ancillary Meetings - see Ancillary Schedule		→	C. SAS	8:00 AM Fri.
					D. STT	8:00 AM Fri.
					E. SSC	8:00 AM Tue.
					F. Legislative	9:30 AM Mon.
					F. HC	10:00 AM Mon.
					Chair's Briefing	1:30 PM Mon.
					G. EC	5:30 PM Fri.
CLS	1.00	Closed Session Agenda: Personnel & Litigation--3:00 pm				
		Adv. Body Issues - Appointments	Info	SSC		
		Litigation Status (E. Cooney)	Info	None		
A.	0.30	General Session Call to Order - 4:00 pm				
1-3		Opening, Roll Call, ED Rpt	Info			
4		Approve Agenda	Decision			
B.		Administrative Matters				
1	0.20	Approve Minutes - November 2005	Decision			
2	0.20	Council Meeting Agenda Planning	Guidance	All		
	0.50	Public Comment Period for Non-Agenda Items	Info			
	2.20					
			0			
TUESDAY, APRIL 4 - 8:00 am					TUESDAY:	
		Ancillary Meetings - see Ancillary Schedule		→	EC; GAP; GMT; SAS; STT; SSC; continue	
C.		Habitat				
1	0.50	Habitat Committee Rpt	Decision	HC; SAS; GAP; CPSAS		
D.		Pacific Halibut Mgmt				
1	0.50	Incidental Catch Regs in Salmon Troll & Sablefish Fisheries: Adopt Final Restrictions	Action	GAP; GMT; SAS		
E.		Salmon Mgmt				
1	0.50	Identify Stocks not meeting Conservation Objectives	Decision	STT; SAS; SSC		
2	3.50	Tentative Adoption of 2006 Ocean Salmon Mgmt Measures for Analysis	Action	SAS; STT; EC		
F.		Groundfish Mgmt				
1	3.00	Mgmt Specifications for 2007-08: Adopt Final ABCs & OYs, & Preliminary Revised Rebuilding Plans	Action	GMT; GAP; EC; SSC		
2	0.50	NMFS Rpt (Region & Science Center)	Info	GMT; GAP; EC		
	8.50					
		Council Chair's Reception--6 pm				

Agenda Item B.5.a
Supplemental Attachment 2
March 2006

DRAFT COUNCIL MEETING AGENDA, APRIL 2-7, 2006, SACRAMENTO, CA

				ANCILLARY MEETING SCHEDULE		
AG#	Hours	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY MAILINGS 1/	Day/Group	Continuing Start Time Through
WEDNESDAY, APRIL 5 - 8 am					WEDNESDAY:	
		<i>Ancillary Meetings - see Ancillary Schedule</i>				EC; GAP; GMT; SAS; STT continue
		SPECIAL SESSIONS				
		Salmon Genetics Research Presentation (SWFSC)-- 10 am		SAS; STT		
G.		Highly Migratory Species Management				
1	0.75	Bigeye Tuna Overfishing Response: Adopt Final Recommendations to IATTC	Decision	HMSAS; HMSMT		
2	1.50	Albacore Mgmt: Adopt Recommendations for IATTC & for US-Canada Treaty Issues	Decision	HMSAS; HMSMT; EC		
3	0.50	NMFS Rpt--Region & Science Ctr	Info	HMSAS; HMSMT		
F.		Groundfish Mgmt (continued)			10 am Special Session:	Salmon Genetics Research Rpt
3	1.00	Stock Assessments: Adopt final TOR, List of Stocks to be Assessed, & Review Schedule for 2009-2010 Season	Decision	GMT; GAP; SSC		
4	2.00	Inseason Adjustments: Preliminary or Final Adoption of Appropriate Changes	Action	GMT; GAP; EC		
E.		Salmon Mgmt (continued)				
3	0.75	Methodology Review Process: Adopt Potential Methodologies to be Reviewed In 2006	Decision	MEW; SSC; STT; SAS		
4	0.00	Selective Fisheries Briefing	Info	SAS; STT		
5	0.75	Role of KPMC: Consider Recommendations	Guidance	STT; SAS		
6	1.00	Clarify Council direction on 2006 Mgmt Measures (If Nec.)	Guidance	STT; SAS; EC		
	8.25					
THURSDAY, APRIL 6 - 8 am					THURSDAY:	
		<i>Ancillary Meetings - see Ancillary Schedule</i>				GAP; GMT; EC; SAS; STT continue
H.		Enforcement Issues				
1	0.75	USCG Rpt on AIS & VMS	Info	All Adv. except SSC & HC		
F.		Groundfish Mgmt (continued)				
5	3.00	Part I of Mgmt Measures for 2007-08: Adopt a Prelim Range of Refined Mgmt Measures	Action	GMT; GAP, EC; SAS		
B.		Administrative Matters (continued)				
3	0.00	Research & Data Needs: Plan Reinitiation of Council Process	Guidance	All		
4	0.50	Draft Regional Operating Agreements for Regulatory Streamlining: Status Rpt	Info	All		
I.		Marine Protected Areas				
1	1.00	CINMS: Fishing Regs. Within the CINMS	Guidance	All		
2	1.00	Consultation Procedures for Fishing Regs. in NMS's: Adopt Final Council Recommendations	Decision	All		
E.		Salmon Mgmt (continued)				
7	3.00	Management Measures for 2006: Final Adoption	Action	STT; SAS; EC		
	9.25					

DRAFT COUNCIL MEETING AGENDA, APRIL 2-7, 2006, SACRAMENTO, CA

				ANCILLARY MEETING SCHEDULE		
AG#	Hours	AGENDA TOPICS/COMMENTS	COUNCIL TASK	ADVISORY BODY MAILINGS 1/	Day/Group	Continuing Start Time Through
FRIDAY, APRIL 7 - 8 am					FRIDAY:	
<i>Ancillary Meetings - see Ancillary Schedule</i>				→	GAP; GMT; SAS; STT; EC as nec.	
E. Salmon Mgmt (continued)						
8	0.50	Clarify Final Action on Salmon Mgmt Measures (If Nec.)	Action	STT; SAS; EC		
B. Administrative Matters (continued)						
5	0.00	Legislative Matters	Guidance			
6	0.20	Interim Appointments to Adv. Bodies, Standing Com., & Other Forums	Decision	None		
7	0.80	3 Mtg Outlook & April Agenda: Final Guidance & Adopt April Agenda	Guidance	All		
F. Groundfish Mgmt (continued)						
6	3.00	Part II of Mgmt Measures for 2007-08: Adopt a Range of Refined Mgmt Measures, &, if Possible, a Tentative Preferred Alt.	Action	GMT; GAP, EC; SAS		
7	1.50	Inseason Adjustments: Adopt or Confirm Final Changes, If Necessary	Action	GMT; GAP; EC		
	6.00					

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.

IR. Informational Reports (available in Briefing Book, but no time scheduled on Agenda):

1	Selective Fisheries Rpt	Info	All	
2		Info		
3		Info		

Candidate Agenda Items Not Scheduled

Due Dates (all dates COB):

Meeting Invitation Memo Distributed:	2/24
Public Meeting Notice Mailed:	3/13
FR Meeting Notice transmitted:	3/10
Final day to receive public comments for placement in BB:	3/15
Final deadline to submit all BB materials:	3/15
Final deadline to submit cover memos for Ancillary Meetings:	3/17
Briefing Book Mailing:	3/23
Final deadline for distribution of public comments on first day of mtg:	3/28

34.20	110%
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HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON
APRIL 2006 COUNCIL MEETING AGENDA AND THREE-MEETING OUTLOOK

The Highly Migratory Species Management Team (HMSMT) would like to point out that our next HMSMT meeting is scheduled for mid-May; therefore, we would like to offer the following comments on the Council's April 2006 meeting agenda:

G.1. Bigeye Tuna Overfishing Revised Analysis

The HMSMT would like to request that the National Marine Fisheries Service submit the revised analysis to the Council for the April briefing book and that Council staff distribute the revised analysis to the HMSMT (via e-mail) as soon as it is received. This would allow the HMSMT time to review the document, communicate via e-mail, and develop a report prior to the April Council meeting.

G.2. Recommendations to IATTC and U.S./Canada Treaty

The HMSMT would like to request that the final resolution of the U.S./Canada Treaty portion of this agenda item be reached via the fast-track process after the Team's meeting on May 8-9. The HMSMT did not discuss the U.S./Canada albacore treaty at our meeting this week, but we will discuss this issue in May and will be able to review the available data and make a recommendation that could be circulated through the Council via e-mail (e.g., on May 10). In May, we are also planning to review the available albacore landings data for both U.S. and Canadian vessels fishing under the treaty; these data would then be included in our next Stock Assessment and Fishery Evaluation (SAFE) document—we will have a draft SAFE to present to the Council in June and a final for September.