

FUTURE COUNCIL MEETING AGENDA PLANNING

The primary purpose of this agenda item is to provide initial information to Council Members early in the meeting to facilitate planning for future Council meeting agendas.

The Executive Director will review initial drafts of the three-meeting outlook and the November Council meeting agenda, and respond to any questions the Council may have regarding these initial planning documents. This agenda item is essentially informational in nature; however, after hearing any reports and comments from advisory bodies or the public, the Council may wish to provide guidance to the staff to help prepare for Agenda Item B.8, at which time final consideration of the three-meeting outlook and draft November agenda are scheduled.

The Highly Migratory Species Management Team (HMSMT) has identified two agenda topics for future meetings (Agenda Item B.1.b, HMSMT Report): (1) unresolved problems with the coding of HMS gear types in the Pacific Coast Fisheries Information Network (PacFIN) database, and (2) modifying Council Operating Procedure 20, Protocol for Consideration of Exempted Fishing Permits for HMS Fisheries, to make the timing work with the actual fisheries.

Council Tasks:

- 1. Receive information on potential agenda topics for the next three Council meetings.**
- 2. Receive information on an initial draft agenda for the November 2007 Council meeting.**
- 3. Provide guidance on the development of materials for Agenda Item B.8 (November agenda and three-meeting outlook).**

Reference Materials:

1. Agenda Item B.1.a, Attachment 1: Preliminary Draft Three-Meeting Outlook for the Pacific Council.
2. Agenda Item B.1.a, Attachment 2: Preliminary Draft November Council Meeting Agenda, November 4-9, 2007, San Diego, California.
3. Agenda Item B.1.b, HMSMT Report: HMSMT Report on Future Council Meeting Agenda Planning.

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
08/24/07

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

November San Diego, CA (11/4-11/9/2007) Estimated Percent of Standard Floor Time = 146%	March Sacramento, CA (3/10-14/2008) Estimated Percent of Standard Floor Time = 92%	April Seattle, WA (4/6-11/2008) Estimated Percent of Standard Floor Time = 124%
<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Fiscal Matters Interim Appointments to Advisory Bodies MSA Reauthorization Implementation 3 Mtg Outlook, Drft Mar Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items	<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Interim Appt. to Advisory Bodies MSA Reauthorization Implementation 3 Mtg Outlook, Apr Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items	<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Interim Appointments to Advisory Bodies MSA Reauthorization Implementation 3 Mtg Outlook, Drft Nov Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items
<u>Coastal Pelagic Species</u> Pac. Sardine Stk Assmnt & Mackerel Stk Assmnt Methods: Approve Sardine Assmnt & Mackerel Assmnt Methods	<u>Coastal Pelagic Species</u>	<u>Coastal Pelagic Species</u>
<u>Enforcement Issues</u>	<u>Enforcement Issues</u>	<u>Enforcement Issues</u> US Coast Guard Annual Fishery Enforcement Report
<u>Groundfish</u> NMFS Report 2007 Inseason Management (2 Sessions) Trawl IQ: Adopt Alts. to Analyze for DEIS Intersector Allocation: Adopt Preferred Alt for Pub Rev Stock Assessments: Adopt New Assmnts & RB Analyses (including Mop-up) Open Access Limitation: Adopt Preferred Alts for Pub Rev Mgmt Spx for 2009-10: Adopt Prelim Range of ABCs & OYs, & Range of Mgmt Measures (Parts I & II) EFPs for 2008: Final Recommendations	<u>Groundfish</u> NMFS Report 2007 Inseason Mgmt (2 Sessions) Stock Assessment Planning for 2011-2012 Seasons Pac. Whiting: Adopt Final 2008 Spx & Mgmt Measures, including periodic bycatch limits	<u>Groundfish</u> NMFS Report 2007 Inseason Management (2 Sessions) Intersector Allocation: Adopt Final Preferred Alt Stock Assessments: Adopt Final TOR, List of Stocks to be Assessed, & Review Schedule Open Access Limitation: Adopt Final Preferred Alt 2009-2010 Mgmt Recommendations: Adopt 1) Preferred ABCs & OYs, & Prelim Revised RB Plns 2) Range of Refined Mgmt Meas. for Pub Rev, & if possible, a Preferred Alt. (Parts I & II)
<u>Habitat Issues</u> No HC Meeting	<u>Habitat Issues</u> Habitat Committee Report	<u>Habitat Issues</u> Habitat Committee Report

Agenda Item B.1.a
Attachment 1
September 2007

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

November San Diego, CA (11/4-11/9/2007) Estimated Percent of Standard Floor Time = 146%	March Sacramento, CA (3/10-14/2008) Estimated Percent of Standard Floor Time = 92%	April Seattle, WA (4/6-11/2008) Estimated Percent of Standard Floor Time = 124%
<u>Highly Migratory Species</u> WCPFC Recommendations	<u>Highly Migratory Species</u> NMFS Rpt New EFPs for 2008: Adopt for Pub Rev Yellowfin Overfishing Response: Final Action	<u>Highly Migratory Species</u> NMFS Rpt New EFPs for 2008: Adopt Final IATTC Recommendations
<u>Marine Protected Areas</u>	<u>Marine Protected Areas</u>	<u>Marine Protected Areas</u>
<u>Pacific Halibut</u> Changes to 2008 CSP & Regs: Adopt Final Pacific Halibut Abundance Estimate: Review & Comment	<u>Pacific Halibut</u> Rpt on IPHC Annual Mtg Incidental Catch Regs for 2008: Adopt Options for Public Rev	<u>Pacific Halibut</u> Incidental Catch Regs for 2008: Adopt Final
<u>Salmon</u> Preseason Salmon Mgmt Sched for 2008: Approve 2007 Methodology Review: Adopt Final Changes Mitchell Act EIS: Provide Council Comments	<u>Salmon</u> 2008 Mgmt Measures: Adopt Options for Public Rev & Appt. Hearings Officers KRFC Escapement Shortfall Report: Final Identify Stocks not Meeting Conserv. Objectives Mass Marking & CWT Information Briefing	<u>Salmon</u> 2008 Mgmt Measures: Adopt Final 2008 Methods Review: Process & Prelimin Topics
<u>Information Reports</u> Salmon Fishery Update	<u>Information Reports</u>	<u>Information Reports</u>
<u>Special Sessions</u> Joint Session Mon Night on Groundfish Intersector Allocation Joint Session Tue Night--Trawl Rationalization 1 hr =3%	<u>Special Sessions</u>	<u>Special Sessions</u>

PRELIMINARY DRAFT NOVEMBER COUNCIL MEETING AGENDA, NOVEMBER 4-9, 2007, SAN DIEGO, CALIFORNIA

	Sun, Nov 4	Mon, Nov 5	Tues, Nov 6	Wed, Nov 7	Thurs, Nov 8	Fri, Nov 9
Day-Time Council Floor Matters	<u>Unscheduled Candidate Items</u> 1) Mitchell Act EIS: Comments (2 hr) 2) Pac Halibut Stock Assessment (1.5 hr)	<u>CLOSED SESSION (9 AM)</u> <u>CALL TO ORDER (10 AM)</u> A.1 Opening (15 min) <u>OPEN PUBLIC COMMENT</u> B.1 Comments on Non-Agenda Items (30 min) <u>ADMINISTRATIVE</u> C.1 Future Agenda Planning (15 min) <u>HIGHLY MIGRATORY SPECIES</u> D.1 WCPFC Recom (1 hr) <u>GROUNDFISH</u> E.1 NMFS Rpt (45 min) <u>PACIFIC HALIBUT</u> F.1 Changes to CSP: Adopt Final (45 min) <u>SALMON</u> G.1. Preseason Mgmt Sched for 2008: Adopt (15 min) G.2 2007 Methods Rev: Adopt Changes for 2008 (1 hr)	<u>GROUNDFISH</u> E.2 Stock Assmnts: Adopt Remaining & Mop-up, & RB Analyses (2 hr) E.3 Mgmt Recommendations Part 1: Adopt Range of ABC's & OY's for 2009-10 (2 hr) E.4 Open Access Limitation: Adopt Alts. for Pub Rev (4 hr)	<u>GROUNDFISH</u> E.5 EFPs: Adopt Final for 2008 (2 hr) E.6 Intersector Alloc.: Adopt Alts. for Pub Rev (4 hr) E.7 Inseason Adjustments (2 hr)	<u>GROUNDFISH</u> E.8 Trawl Rationalization: Adopt Alts for Analysis (8 hr)	<u>COASTAL PELAGIC SPECIES</u> H.1 Pac Sardine Assmnt & HG & Mackerel Assmnt Methods: Approve (1 hr) <u>GROUNDFISH</u> E.9 Final Inseason Adjustments (1 hr) E.10 Mgmt Recomd. Part II: Adopt Concepts & Prelim Range of Mgmt Meas. (3 hr) <u>ADMINISTRATIVE</u> C.2 MSA Reauthorization Implementation (3 hr) C.3 Fiscal Matters (30 min) C.4 Interim Appts (15 min) C.5 Minutes (15 min) C.6 3-Mtg Outlook, Mar Agenda, Workload (30 min)
	3 hr 30 min	5 hr 45 min plus 2 hr in Evening	8 hr plus 2 hr in Evening	8 hr	8 hr	9 hr 30 min
Committees	1:00 pm GAP 1:00 pm GMT 1:00 pm TIQC 4:00 pm BC 7:30 pm Chr B	8:00 am GAP 8:00 am GMT 8:00 am SSC 4:30 pm EC	8:00 am EC 8:00 am GAP 8:00 am GMT 8:00 am SSC	8:00 am CPSAS 8:00 am CPSMT 8:00 am EC 8:00 am GAP 8:00 am GMT	8:00 am CPSAS 8:00 am CPSMT 8:00 am EC 8:00 am GAP 8:00 am GMT	8:00 am EC

Council-sponsored evening sessions: Monday Evening 7:00 pm Intersector Allocation Presentation
 Tuesday Evening 7:00 pm Trawl Rationalization Presentation
 Wednesday Evening 6:00 pm Council Reception & Banquet

8/27/2007 3:54 PM

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON FUTURE COUNCIL MEETING AGENDA PLANNING

Pacific Coast Fisheries Information Network (PacFIN) Data Issues

The Highly Migratory Species Management Team (HMSMT) would like to alert the Council to unresolved problems with coding of HMS gear types in the PacFIN database, which were discussed at their August 16, 2007 meeting in La Jolla, California. Working around the gear coding problems entails special programming to generate PacFIN reports by HMS management unit fishery as defined in the fishery management plan (FMP). It was noted two of the coding problems generally result in an understatement of drift gillnet effort and overstatement of pelagic longline effort. There are additional gear code issues, which concern the reporting of the albacore surface hook-and-line and purse-seine fisheries. Until these gear code issues are resolved, summary reports by HMS FMP fishery that would otherwise be posted on the PacFIN website cannot be automatically generated. Some HMSMT members noted that ideally, PacFIN records would be coded to associate each record with an HMS FMP fishery, or to otherwise indicate a non-HMS FMP fishery record.

The HMSMT requests the Council schedule this issue as an agenda item at a future Council meeting to fully air the problems outlined above. In the interim, the HMSMT requests the Council to send a letter to PacFIN decision makers detailing the gear coding problems and emphasizing the importance of resolving them; the HMSMT could provide the explanation of why we had to go this route.

Council Operating Procedure 20, Protocol for Consideration of Exempted Fishing Permits for Highly Migratory Species Fisheries

The HMSMT notes that the schedule for Council decision making with respect to HMS exempted fishing permits, as identified in Council Operating Procedure (COP) 20, has not been followed to date. This schedule outlines preliminary Council action at the June meeting and final action at the September meeting. Because of the timing of fisheries in proposals thus far submitted, this schedule has not worked. The HMSMT recommends next time the Council schedules consideration of revision to the COPs, it takes up this matter. One option would be for the Council to simply strike language in the COP identifying the June and September meetings. Alternatively, language could be added to the COP allowing deviation from this schedule as circumstances warrant.

PPMC
8/24/07

SALMON TECHNICAL TEAM REPORT ON FUTURE COUNCIL MEETING AGENDA
PLANNING

The STT anticipates that the Pacific Salmon Commission's (PSC) Coded Wire Tag (CWT) Workgroup report on the effects of mass marking on the CWT database will be released this fall. It is likely that representatives from the PSC CWT workgroup would be available to provide an informational briefing at the March Council meeting.

PFMC
9/6/07

WEST COAST GOVERNORS' AGREEMENT (WCGA) ON OCEAN HEALTH

The primary purpose of this agenda item is to provide initial information to Council Members about the West Coast Governors' Agreement on Ocean Health.

In 2004, the U.S. Commission on Ocean Policy Report recommended a regional or ecosystem approach to ocean and coastal issues starting with improved coordination between federal and state agencies. In September 2006, the Governors of Washington, Oregon, and California took up this recommendation and agreed to work initially on seven regional priorities in the California Current Large Marine Ecosystem, which includes the marine areas off of Washington, Oregon, and California. These seven priorities are:

1. Ensuring clean coastal waters and beaches (water quality);
2. Protecting and restoring healthy ocean and coastal habitats (habitat);
3. Promoting the effective implementation of ecosystem-based management of our ocean and coastal resources (ecosystems);
4. Reducing adverse impacts of off-shore development (oil, wind, & wave energy);
5. Increasing ocean awareness and literacy among our citizens (education);
6. Expanding ocean and coastal scientific information, research, and monitoring (research); and
7. Fostering sustainable economic development throughout our diverse coastal communities (economic development).

An Action Plan is currently being formulated with input from public meetings in the three states. The Action Plan is expected to be released to the public in autumn 2007.

The Pacific Fishery Management Council may wish to stay apprised of the West Coast Governors' Agreement activities through briefings from NOAA Fisheries (one of three lead federal agencies identified by the President's Committee on Environmental Quality). The Council may also wish to comment on the Action Plan, when it becomes available, and specifically on those priorities which involve fisheries, fish habitat, ecosystems, off-shore development, research and monitoring priorities and needs, and economic development of coastal communities. The Council's 2006-2008 Research and Data Needs document was submitted to the Governors as part of the public comment period in July 2007.

Council Tasks:

- 1. Receive information on West Coast Governors' Agreement (WCGA) on Ocean Health.**
- 2. Provide guidance on future Council involvement and/or monitoring of the WCGA activities.**

Reference Materials:

1. Agenda Item B.2.a, Attachment 1: Draft Discussion Paper Regarding the Seven Priority Areas; Assessment of Possible Actions (March 15, 2007).

Agenda Order:

- a. Agenda Item Overview
- b. WCGA Report and Comments
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. Council Discussion

Heather Brandon

Usha Varanasi/Jessica Hamilton/Kathleen Drew

PFMC

08/10/07

West Coast Governors' Agreement on Ocean Health
Discussion Paper Regarding the Seven Priority Areas
Assessment of Possible Actions

Draft developed by staff in California, Oregon, and Washington

March 15, 2007

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INTRODUCTION:

On September 18, 2006 the Governors of California, Oregon and Washington announced the “West Coast Governors’ Agreement on Ocean Health” at the California and the World Ocean Conference in Long Beach California. The West Coast Governors’ Agreement sets forth a new proactive approach for regional collaboration to protect and manage the ocean and coastal resources throughout the entire west coast. This agreement is in direct response to the recommendations of the U.S. Commission on Ocean Policy and the Pew Oceans Commission. The West Coast Governors’ Agreement on Ocean Health is included in its entirety in Appendix A of this discussion paper.

The agreement calls for four immediate actions to be complete within six months. Those actions include:

1. Send a joint message to the President and Congress reinforcing our opposition to oil and gas leasing, exploration and development off our coasts.
Status: Letter was sent to the President and Congress on September 29, 2006. These letters are included in Appendix B of this discussion paper.
2. Call upon the President and Congress to provide secure funding to address threat of nonpoint source pollution along our coasts.
Status: A letter is currently being drafted to fulfill this action.
3. Development of a regional research plan for the west coast in coordination with The National Sea Grant office, academia, and other research institutions.
Status: The development of this plan is currently underway and public workshops are being held in all three states to receive input.
4. Request the White House Council on Environmental Quality to facilitate the implementation of the U.S. Ocean Action Plan, to assist the three states in requesting and receiving technical assistance from federal agencies to address issues of regional significance.
Status: Letter to the White House Council on Environmental Quality is in process.

The Governors’ Agreement also directed the development of a more extensive set of specific regional recommendations and initiatives for action by the fall of 2007 centered around seven priority areas. These initiatives are designed to be developed and implemented in conjunction with representatives of business, environmental, governmental, educational, and academic communities. The seven priority areas identified in the Governors’ Agreement include:

1. Ensuring clean coastal waters and beaches;
2. Protecting and restoring healthy ocean and coastal habitats;
3. Promoting the effective implementation of ecosystem-based management of our ocean and coastal resources;
4. Reducing adverse impacts of offshore development;
5. Increasing ocean awareness and literacy among our citizens;
6. Expanding ocean and coastal scientific information, research, and monitoring; and

7. Fostering sustainable economic development throughout our diverse coastal communities.

This discussion paper is intended to guide public input to help determine the actions for consideration during development of the regional plan.

PROCESS FOR DEVELOPING THE REGIONAL ACTION PLAN

Using the seven priority action issues agreed upon by the Governors, the states seek to engage all stakeholders in the entire region on how to implement the regional action plan. This discussion paper provides one page summaries of the seven priority issues and possible actions that the Governors may consider for inclusion in the final action plan. The seven summaries are designed to stimulate discussion among user groups and stakeholders throughout the region to guide the creation of a robust and dynamic regional action plan.

The staffs from California, Oregon, and Washington held an initial meeting with the White House Council on Environmental Quality and other federal agency representatives on January 30, 2007 and another meeting is planned for March 19, 2007, in Monterey. Public outreach opportunities will include the following public workshops:

State of California:

- California Ocean Protection Council meeting, Monterey, California
 - April, 17, 2007 at 12:00 p.m.
 - Monterey Beach Resort
- 2600 Sand Dunes Dr., Monterey, CA

State of Oregon:

- During the Coastal Zone Management Conference 2007, Portland, Oregon
 - July 22-26, 2007 (Specific time to be determined)
 - Hilton Portland and Executive Tower
- 921 SW Sixth Avenue, Portland, Oregon 97204

State of Washington:

- To be determined

These workshops will provide a forum for public comment on the seven priority issues. In addition, we welcome written comments on the discussion paper. The written comments will be combined with verbal comments received at workshops to be held in California, Oregon and Washington. All written comments or questions regarding this document or about participating in the workshops should be submitted to WCGAcomments@resources.ca.gov. Phone inquiries should be directed to: Amy Boone at 916-653-9416 or Valerie Termini at 916-653-7895. Comments to be included in the packet of material distributed to the California Ocean Protection Council members at the first public workshop, must be received by April 5th. Comments received after that time will be distributed at the meeting, if possible. Similar procedures will be used for subsequent workshops in Oregon and Washington. Additional information will be distributed in advance of these workshops.

1. Ensure Clean Coastal Waters and Beaches

Vision: *Clean coastal waters and beaches where marine life thrives and where people can safely enjoy swimming, fishing and other activities without the detrimental effects of pollution and marine debris.*

Issue: Ocean water quality along the Pacific Coast is critical to both the health of marine and coastal ecosystems as well as human uses for recreation, food, and commerce. Recent human activities on land and in the marine environment increasingly jeopardize the quality of the Pacific Ocean. Invasive species, pollutants, sediments, and debris flushed by storm water from coastal landscapes as well as chemicals in treated waste are discharged into rivers, estuaries, and the ocean. Ocean currents can carry these pollutants and harmful species far from their sources.

Local, state, and federal water quality monitoring programs along the west coast are not well coordinated; many are episodic rather than continuous, most are chronically under-funded, and can often be slow to report data and synthesize findings. Resource managers and public health officials often lack a clear and timely picture of water quality and other conditions as the basis for local, state, and federal actions to protect these resources and to protect human health.

Key Points:

- National water quality standards apply to the entire west coast but are implemented by separate programs in the three states.
- Region-scale monitoring programs conducted by federal agencies for west coast marine waters are sporadic and inconsistent.
- State coastal water monitoring efforts vary widely in scope, scale, and duration, and are not integrated at a regional scale.
- Marine debris reduction and removal programs are operated primarily at the state, local, and tribal levels and are not organized regionally.
- Opportunities exist for the states to collaborate with each other and with federal agencies to develop and carry out pollution reduction strategies, research, and environmental monitoring across the entire region, in order to minimize human health impacts.

Possible Actions:

1. Develop cooperative agreements among the three states and federal agencies to: 1) compile and publish a single report for the public and policy makers on the status and trends of coastal and marine water quality along the west coast; 2) to support and improve regional programs to monitor and improve coastal water quality; and 3) explore opportunities for collaboration on monitoring harmful algal blooms.
2. Secure adequate state and federal funding to support coastal water quality programs.
3. Establish region-wide goals for marine debris reduction in all marine waters.
4. Develop a regional plan to address aquatic invasive species transport by ocean vessels.

2. Protect and Restore Ocean and Coastal Habitats

***Vision:** Estuarine, marine, and associated coastal habitats are ecologically healthy and allow for public enjoyment and sustainable use.*

Issue: The waters along the Pacific Coast contain many unique habitats, such as the rocky intertidal zone, estuaries, and near shore reefs, which support a diverse array of marine life. Populations that live in these important habitats are linked through the California Current. Features such as upwelling zones, freshwater plumes, off-shore jets, and circulation eddies all affect movement of the California Current.

These distinct marine features and habitats contribute to the overall resiliency of ocean ecosystems. Over the years, some of the marine habitats have provided high economic as well as ecological values. Human exploitation of these resources has often led to habitat and ecological degradation. These human impacts coupled with continually increasing human presence on the coast and in the ocean mean that coastal and marine habitats remain vulnerable to further degradation or loss. In addition, habitats are threatened by the spread of invasive, non-native marine species many of which thrive in degraded environments without natural limitations. Restoration and protection of coastal and marine habitats is essential to maintaining the ecological integrity and economic well being of the region.

Key Points:

- No comprehensive regional strategy exists to coordinate the restoration, protection, or management programs of the three states or to integrate state and federal efforts.
- No comprehensive region-scale inventory and assessment of coastal and marine habitats exists.
- Global warming is likely to have significant effects on habitat conditions across the entire region. Climate change could increase the spread of non-native marine species, alter the productivity of key habitats, create more acidic ocean environments, and change the abundance and distribution of key marine species.
- Several academic, federal, and non-governmental organizations (NGO) habitat research and monitoring programs exist at a regional scale that can provide a substantial basis for a regional assessments and action.

Possible Actions:

1. Assess existing state and federal restoration and management programs for coastal and marine habitats in the three states, and survey challenges and opportunities for region-scale approaches to habitat restoration and protection efforts, such as invasive species.
2. Identify mapping, information sharing, data synthesis, and other technical services that could enhance a region-wide ecosystem based management effort, and support widespread availability of such data.
3. Address beach erosion and sediment issues and restoration of littoral processes as a part of habitat restoration. Share common approaches to managing sediment and support regional sediment planning.
4. Identify important ecological areas within the California Current Large Marine Ecosystem, identify threats to those marine areas, and establish measures to ensure effective habitat protection.

3. Promote the Effective Implementation of Ecosystem-based Management

***Vision:** A healthy, thriving, and resilient marine and coastal ecosystem along the entire west coast that supports a range of human activities.*

Issue: Ecosystem-based management (EBM) is a process for: 1) integrating ecological, social, and economic goals; 2) recognizing humans as key components of the ecosystem; 3) considering ecological rather than political boundaries; 4) accounting for complexity and uncertainty of natural processes and social systems; and 5) using an adaptive management approach in the face of uncertainties. EBM requires engaging multiple stakeholders to define problems and goals as well as find solutions and to incorporate scientific understanding of ecosystem processes and responses to environmental changes into governmental actions.

Implementing EBM will be challenging on the west coast, which is dominated by the California Current Large Marine Ecosystem and is affected by large scale atmospheric and ocean conditions of the northeast Pacific Ocean. Transitioning to EBM is further complicated by the existing fragmented single-issue approach to ocean management, budget constraints on state and federal agencies, and a lack of timely connections between research and management needs. EBM will require a sustained effort to integrate numerous state and federal programs and authorities and to acquire information at an appropriate ecosystem scale for management decisions.

Key Points:

- There is no accepted strategy by the three states or federal agencies for promoting a comprehensive EBM program for the coastal and marine ecosystems of the Pacific Coast.
- Regional management mechanisms exist or are in development for resources or issues such as salmon restoration, tanker safety, and oil spill response but are not necessarily being implemented using EBM.
- State resource management agencies are substantially limited to the state they serve and the issues for which they are charged. Many agency authorities pre-date the concept of EBM and are not configured to address ecosystem-scale issues or resources. Financial constraints and lack of program capacity further complicate state implementation of EBM.
- Ecosystem-based management will require significant participation from all levels of government, NGOs, academia, industry, and the public.
- Ecosystem-based management will require a regional research and monitoring program to anticipate and support timely data collection and dissemination.

Possible Actions:

1. In cooperation with representatives from all levels of government, NGOs, academia, industry, and the public, adopt a strategy for implementing EBM for coastal and marine resources along the West Coast.
2. Identify barriers and consider proposals to support state participation in coastal and ocean EBM strategies.
3. Identify watersheds that influence marine ecosystem health, such as in the Klamath River and the Columbia River, and improve coordinate and management of those areas.

4. Reduce Adverse Impacts of Offshore Development

Vision: *No new offshore oil and gas leasing and development occur in state tidelands or within the federal Outer Continental Shelf. States and federal agencies work from a shared strategy to appropriately and safely develop the energy potential of wave and tidal currents in ocean waters along the west coast.*

Issue: The three states have determined that oil and gas development in ocean waters along their coasts is unacceptable due to the harmful impacts to the marine and coastal environment and local economies. The three states are committed to developing renewable energy sources, in an environmentally sustainable manner.

Recent advances in wave and tidal energy conversion technologies have improved the economic viability of these technologies. There is a high degree of interest within the private sector to develop electricity utilizing wave energy and tidal flow. Specific energy development proposals have been filed with the Federal Energy Regulatory Commission. Agencies in all three states and federal government are working to develop effective regulatory and permitting frameworks. Currently, no coordinated effort exists among the three states to address this potential resource on a regional basis.

Key Points:

- A variety of wave and tidal energy conversion technologies exist or are in development; private sector interest is high for commercial deployment.
- Not all parts of the coast or nearshore environment meet commercial production requirements. Other areas are inappropriate because of conflicts with other users or resources.
- The cumulative effects on marine resources and other ocean users from multiple energy development facilities at a regional scale are not yet known.
- Wave energy conversion will likely involve sites that lie in both state and federal waters. The Minerals Management Service has authority under the Energy Policy Act of 2005 for renewable ocean energy resources in federal waters and thereby has a programmatic interest in assisting all three states in developing ocean energy resources. Tidal energy devices will likely involve sites within state waters, which fall under authority of the Federal Energy Regulatory Commission (FERC).

Possible Actions:

1. Continue opposition to new oil and gas leasing, development, and production in ocean waters of the Pacific Coast.
2. Collaborate with the federal Department of the Interior Minerals Management Service and the Department of Energy in federal waters and FERC in state waters to provide a regional coordination mechanism and forum for renewable ocean energy development.

5. Increase Ocean Awareness and Literacy Among Citizens

Vision: *An informed and aware public that values ocean and coastal resources, processes, and ecosystems.*

Issue: The U.S. Commission on Ocean Policy noted that an interested and engaged public will be needed to successfully address complex coastal and ocean issues that balance use with conservation. However, the Commission pointed out that the American public does not understand the importance of the ocean to their lives or to our quality of life on Earth. The Commission also noted a national interest in promoting science literacy, particularly with respect to marine sciences.

Many marine science education and awareness programs exist on the west coast. Some, such as those operated by Sea Grant and other academic programs, involve curricula in the region's schools. Others are local interpretive programs that protect specific coastal sites such as at those at Año Nuevo in California and Haystack Rock in Oregon. A few programs, such as COASST (Coastal Observation and Seabird Survey Team) in Washington, train the public to collect and report data that add to an understanding of the marine environment. Visitor centers and aquariums provide focal points for public education. However, no overall state-level or regional strategy exists to link these programs into a strong network that can support stewardship and management objectives of various state and federal agencies.

Key Points:

- Many coastal and marine education and awareness programs operate with a high level of financial uncertainty and are therefore unable to achieve full potential or meet public needs.
- Coastal and marine education and awareness programs tend to operate independently rather than as a network of programs or educational opportunities.
- Coastal and marine education and science programs are needed to serve ethnic and inner-city or remote rural communities that do not have easy access to such programs.
- Significant untapped opportunities for partnerships exist among all levels of government, the private sector, public interest groups, and academia to coordinate programs, technical expertise, and fiscal resources. Broad marketing and advertising techniques, such as California's 'Thank You Ocean' campaign, can be used to increase public awareness on ocean issues.

Possible Actions:

1. Prepare an assessment of needs and opportunities for expanded education and awareness programs throughout the region.
2. Develop a regional strategic plan to link existing education and awareness programs and promote partnerships between major universities, public organizations, local, state and federal governments, education centers and communities.
3. Promote a coordinated network of coastal and marine interpretive centers along the Pacific coast, including existing centers as well as new ones, to expand opportunities for public awareness and appreciation, ocean education, and citizen science activities.

6. Expand Ocean and Coastal Scientific Information, Research, and Monitoring

***Vision:** A long-term research and monitoring program for the entire west coast that provides timely information to support coastal and ocean management programs and that is financially supported by each coastal state and federal agencies.*

Issue: The West Coast Governors' Agreement on Ocean Health calls for the development of a long-term regional research plan. The Sea Grant programs in the three states are already working on the development of this plan and are collaborating with a variety of agencies and stakeholders.

Development of such a plan will be challenging for three basic reasons: 1) managers need information in the near term to make decisions, but the time required to provide research results can be substantial due to the traditional scientific research processes; 2) ecosystem-based management will inherently be complex and often will require information synthesized from many disciplines that traditionally have not been integrated; 3) management decisions require a high level of certainty from supporting information, while scientists are often unable or unwilling to ascribe the needed level of certainty to their results.

In addition, monitoring will be required to acquire long time-series data in order to detect changes over time. Scientists and managers alike increasingly appreciate the value of long-term monitoring data. New monitoring programs are being deployed utilizing new technologies in computers, remote sensing, robotics, and communications. Linked through integrated ocean observing systems, these new monitoring techniques offer the capability to monitor dynamic ocean conditions in near real time.

Key Points:

- Marine research and monitoring programs are expensive and, to be effective, will require sustained financial support from state and federal agencies over many decades.
- The management issues identified by the governors will require an integrated, sustained, long-term research plan program to acquire needed scientific information.
- Ecosystem-based management will require monitoring programs sustained over the long term in order to detect and respond to ecosystem changes that operate over long durations and broad spatial scales.
- Over the past decade, significant progress has been made in understanding the dynamics and variability of the California Current Large Marine Ecosystem, its response to larger ocean and climate variability, and its influence on near-shore and estuarine conditions.

Possible Actions:

1. Develop and implement a regional research and monitoring plan for the entire west coast to provide a framework for addressing the key management issues raised by the governors' agreement.
2. Upon completion of the plan, the governors will seek partnerships with federal, tribal, academic, industry, and philanthropic interests to achieve the research goals included in the plan.
3. Establish science advisory bodies to enhance individual state efforts to address ocean health.

7. Foster Sustainable Economic Development

***Vision:** Economic activities along the west coast and offshore which are environmentally and economically sustainable.*

Issue: The economies of the three west coast states have significant sectors related to the ocean and coast. For many coastal communities, most of their economic base is directly related to the quality and sustainability of the coastal and ocean environment, whether through fishing, recreation, tourism, transportation and ports. Seaside communities have increasingly become desirable places for retirees and families to relocate. All of these economic sectors depend on the coast and ocean to continuously provide value over the long term.

A principal challenge to states and local communities lies in accommodating increased development in the coastal zone and uses of ocean and coastal areas without degrading, diminishing, or destroying the environmental goods and services offered by the coastal location. Of particular concern is accommodating increased demands for municipal water supply. Another challenge along many parts of the Pacific Coast is geographic isolation and the resulting critical reliance on highway transportation and port infrastructure to support the local economy.

Key points:

- The states need to provide critical transportation and other infrastructure for economic activity, while maintaining important ocean and coastal habitats.
- Many coastal communities lack resources and capacity to plan for or to identify and recruit economic activities that support sustainable uses of ocean and coastal resources.

Possible Actions:

1. Develop a regional assessment of the opportunities and constraints to foster sustainable economic development of coastal and ocean resources.
2. Identify and support new opportunities and strategies to maintain working waterfronts, small ports and support sustainable fisheries.
3. Explore new market-based approaches that enhance sustainable fisheries.

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Appendix A: West Coast Governors' Agreement on Ocean Health

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CHRISTINE
GREGOIRE
Washington



THEODORE R.
KULONGOSKI
Oregon



ARNOLD A.
SCHWARZENEGGER
California

West Coast Governors' Agreement on Ocean Health September 18, 2006

A Call to Action

Washington, Oregon, and California share a rich and diverse bounty of ocean and coastal resources that provide enormous economic, environmental, and social benefits to our states. Yet our citizens' continued use and enjoyment of coastal and ocean resources are at risk. Polluted waters, declining populations of fish and other marine life, degraded nearshore habitats, risks of severe storms and tsunamis, and impacts related to climate change are but a few examples of serious threats to the continued vitality of our ocean-dependent states. Recently, two national ocean commissions concluded that our oceans are in trouble and called for immediate, meaningful action at all levels of government to restore and maintain their health.

Charting a New Course

Washington, Oregon, and California recognize these challenges and are taking action to address the declining health of our shared ocean. Each of our three states has developed world class expertise in ocean sciences and academics, and established a track record of innovation and leadership on ocean and coastal issues domestically and internationally. Our growing understanding of our relationship with the marine environment and its living and nonliving natural resources is leading us to explore ecosystem-based approaches to managing our coasts and oceans. Washington's Puget Sound Partnership and Ocean Policy Working Group, Oregon's Ocean Policy Advisory Council, and California's Ocean Protection Council are forums where these important discussions are occurring today. Each of these bodies maintains an innovative framework in which government and tribal officials, managers, scientists, citizens, and other stakeholders employ an integrated approach to protecting and restoring our coastal watersheds, shorelines, estuaries, nearshore waters, and open ocean.

Just as ocean and coastal conservation strategies benefit from coordination between state and local governments, so too can they be enhanced by greater coordination among our three West Coast states, among our state, tribal, and federal governments, as well as with our sovereign neighbors to the north and south. We need look no further than the offshore California Current to illustrate this need, as it transcends political boundaries, sustaining marine wildlife populations, regulating climate, and providing myriad other ecosystem services relied on by our states, the nation, and the world.

Forging a West Coast Governors' Agreement on Ocean Health

As the U.S. Commission on Ocean Policy and the Pew Oceans Commission acknowledged in their reports on the status of the ocean, improved coordination among governing bodies is needed, and oceans should be managed on an ecosystem level. While there are numerous organizations striving to implement these and other recommendations of the two commissions, we believe that more can be done. Therefore, we, the Governors of Washington, Oregon, and California, are launching a coordinated West Coast ocean and

Agreement

coastal collaboration to address critical ocean and coastal protection and management issues facing all three states. With this agreement, we are directing our staffs to work together during the next year to identify measures to address these concerns at the West Coast regional level and to develop a coordinated set of actions in response. Through this agreement we seek to advance our mutual interests in the following priority areas:

- Ensuring clean coastal waters and beaches;
- Protecting and restoring healthy ocean and coastal habitats;
- Promoting the effective implementation of ecosystem-based management of our ocean and coastal resources;
- Reducing adverse impacts of offshore development;
- Increasing ocean awareness and literacy among our citizens;
- Expanding ocean and coastal scientific information, research, and monitoring; and
- Fostering sustainable economic development throughout our diverse coastal communities.

We anticipate that the opportunities for collaboration will include:

- Supporting and enhancing existing governance, management, and planning structures to address issues of regional significance where needed;
- Creating mechanisms to share lessons related to issues of regional significance learned from local, urban, county, and statewide conservation and restoration programs, as well as the work of non-governmental organizations;
- Expanding cooperative scientific and educational efforts to address issues of regional significance;
- Coordinating management strategies and approaches for those shared coastal and marine resources of regional significance; and
- Jointly engaging the federal executive and legislative branches on significant regional ocean and coastal issues that warrant national-level attention and support.

Within the six months of our collaborative effort, the three states will implement the following actions, at a minimum:

1. Call upon the President and Congress to provide sufficient funding to address the threat of nonpoint source pollution along our coasts, thought to be the number one water pollution control issue for coastal states. Successful implementation of the federal Coastal Nonpoint Source Pollution Control Program by the states will require a commitment of federal dollars beyond current levels.
2. Send a joint message to the President and Congress reinforcing our opposition to oil and gas leasing, exploration, and development off our coasts.
3. Support development of a regional research plan for the West Coast in coordination with the National Sea Grant Office, academia, and other research institutions. Request funding and technical assistance to support key efforts, such as ocean observation programs, and sea floor and habitat mapping, which will be critical tools to address issues of regional significance.
4. Request the White House Council on Environmental Quality, in its role to facilitate the implementation of the U.S. Ocean Action Plan, to assist the three states in requesting and receiving technical assistance from federal agencies to address issues of regional significance.

We are directing our agencies and staffs to work throughout Fall 2006 with representatives of business, environmental, governmental, educational, and academic communities to develop further recommendations for enhanced regional collaboration on our shared priorities. We look forward to implementing the initial actions listed above within six months, and to announcing a more extensive set of specific regional recommendations and initiatives for action by Fall 2007, working in conjunction with our respective working groups, ocean councils, state legislatures, and the newly convened 110th Congress.



Governor of Washington



Governor of Oregon



Governor of California

Washington Highlights: Recent Accomplishments Related to Ocean and Coastal Health

The residents of Washington State have had close ties to the ocean for thousands of years. First nations continue to rely on the ocean and the marine waters of the Strait of Juan de Fuca and Puget Sound for transportation, food, and other resources. The deep protected waters of Puget Sound have attracted intensive urban development, while the outer coast has extensive beaches with limited natural harbors. As a result of this diversity, Washington has addressed its two coasts differently.

Ocean Policy Work Group

In mid-2005, the Governor's Office convened the Washington Ocean Policy Work Group with special funding earmarked by the legislature to review the recommendations of the U.S. Commission on Ocean Policy, summarize the conditions of the state's ocean resources, and make recommendations, including those related to legislation and funding, to improve coordination among state and local jurisdictions, and to better protect and manage ocean resources.

The Work Group is drafting recommendations on: Coastal Economic Development; Marine Resource Stewardship; Coastal Hazards, Erosion and Climate Change; Ocean Research, Observation and Education; and Ocean Governance. The final report will be issued in December 2006. The University of Washington's School of Marine Affairs is providing supporting research. Additional information is available at: courses.washington.edu/oceangov/OPWG.html.

Puget Sound Initiative

In December 2005, Washington Governor Christine Gregoire announced a new initiative to protect and restore Puget Sound. The 2006 supplemental budget included over \$50 million for initial clean-up activities. The state legislature also passed two bills related to Puget Sound, including on-site sewage system management changes and provisions to prevent spills during oil transfers.

The Puget Sound Partnership, which consists of community and business leaders and four state legislators, will recommend a set of key actions to recover Puget Sound by 2020, engage stakeholders and the general public in increasing efforts to recover the Sound, recommend organizational structures and approaches to nurture the Sound back to health, review funding sources and set priorities for protection and restoration, and recommend how broad-based scientific knowledge should inform policies. The Partnership will present recommendations to the Governor this fall. Partnership materials are available at: www.pugetsoundpartnership.org.

Puget Sound Action Team

In 1985, Washington established the Puget Sound Water Quality Authority to develop and implement a comprehensive plan to protect and restore Puget Sound. The plan became part of the National Estuary Program under the Federal Clean Water Act and was later approved by the Environmental Protection Agency as the Comprehensive Conservation and Management Plan for Puget Sound. In 1996, the Puget Sound Action Team was formed to maintain the management plan. It is governed by a Council, which includes federal, state, tribal, and community stakeholders. The Puget Sound Action Team coordinates state agency activities, manages a monitoring program, publishes periodic State of the Sound reports, co-hosts transboundary research conferences, and provides environmental education and technical assistance. More information is available at: www.psat.wa.gov.

Lower Columbia River Estuary Partnership

Washington is a participant in the Lower Columbia River Estuary Partnership, the National Estuary Program under the Federal Clean Water Act for the Columbia River estuary. The Partnership has developed a comprehensive management plan for the estuary and coordinates a range of protection and restoration activities, including monitoring and education. Information on the program is available at: www.lcrep.org.

Northwest Straits Initiative

The Northwest Straits Marine Conservation Initiative, authorized by Congress in 1998, works to protect and restore the marine resources of the Strait of Juan de Fuca, the Strait of Georgia, and northern Puget Sound. The Northwest Straits Commission supports and coordinates the work of seven Marine Resource Committees and consists of volunteers appointed by their county governments. State and federal agencies provide scientific and technical support. Information on the Initiative is available at: www.nwstraits.org.

Recovery of Endangered Species

Washington is home to a number of anadromous fish species listed as threatened or endangered under the federal Endangered Species Act. To assist in the recovery of these stocks and coordinate local, state, and federal recovery efforts, the state has organized watershed and regional salmon recovery structures and has submitted several draft recovery plans to the National Oceanic and Atmospheric Administration. Documents outlining the state's efforts on salmon recovery are available through the Governor's Salmon Recovery Office at: www.governor.wa.gov/gfro/.

Washington is also the home of the summer resident orca population that is listed as endangered by Washington, the United States, and Canada. Washington is actively engaged in planning for the recovery of the orca and recently designated the orca the official state marine mammal. Washington has also completed a recovery plan for sea otters.

Other Washington Programs

- Washington manages coastal development through the state's Shoreline Management Act and Growth Management Act (GMA). Local governments manage development through a special permit system that encourages water-dependent uses, promotes public access, and protects natural resources. All coastal counties and cities adopt critical areas ordinances under the GMA to designate and protect those areas that frequently flood; are geologically hazardous; or include wetlands, aquifer recharge areas, and fish and wildlife habitat areas.
- Washington has a comprehensive state program to prevent and respond to spills of oil and hazardous substances. Recently, the state adopted a zero-spill strategy and works with the Oil Spills Advisory Council to implement it. The state also participates in the Pacific States/British Columbia Oil Spill Task Force.
- Washington has adopted legislation designed to prevent the introduction of invasive species from discharges of ballast water and currently has a ballast water work group reviewing options for ballast water control.
- Washington has an active program to prevent and control aquatic nuisance species that is backed by state legislation and the Washington State Aquatic Nuisance Species Management Plan.

Oregon Highlights: Recent Accomplishments Related to Ocean and Coastal Health

For over three decades, Oregon has been a national leader in managing its ocean resources for the benefit of future generations. The roots of Oregon's Ocean Resources Management Program reach back to the early 1970s, when concerns were raised over effects from potential drilling for oil and gas in federal waters and foreign fishing fleets working to within three miles of shore. In 1991, a council was created to give coordinated policy advice to the Governor, state agencies, and others and to prepare a plan for Oregon's Territorial Sea. This Ocean Policy Advisory Council (OPAC) is comprised of ocean users, local governments, other interested parties, seven state agencies, Oregon Sea Grant, and other non-voting members, and continues to advise the Governor on numerous marine issues today.

Statewide Planning Goal 19, Ocean Resources

Oregon's vision for its ocean and coastal health was articulated in 1973 by Statewide Planning Goal 19, Ocean Resources, which is "conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations."

Goal 19 requires that "all actions by local, state, and federal agencies that are likely to affect the ocean resources and uses of Oregon's territorial sea shall be developed and conducted to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social values and benefits and to give higher priority to the protection of renewable marine resources, i.e., living marine organisms, than to the development of non-renewable ocean resources."

The goal also asserts that the "State of Oregon has interests in the conservation of ocean resources in an Ocean Stewardship Area, an ocean area where natural phenomena and human uses can affect uses and resources of Oregon's territorial sea." The 15,000 square mile Ocean Stewardship Area includes the state's territorial sea, the continental margin seaward to the toe of the continental slope, and adjacent ocean areas.

Ensuring Clean Coastal Waters and Beaches

The Oregon Beach Monitoring Program (OBMP) monitors selected Oregon coastal recreation waters for the presence of fecal bacteria, and reports elevated levels to the public. The OBMP is funded by a grant from the Environmental Protection Agency, is administered by the Department of Human Services, and collaborates with the Oregon Department of Environmental Quality and the Oregon Parks and Recreation Department.

Protecting and Restoring Healthy Ocean and Coastal Habitats

Adopted in 1994, Oregon's Territorial Sea Plan (TSP) provides a framework for protecting rocky shore habitats, which include a diverse assemblage of habitats in rocky intertidal, submerged reef, and associated rocks and cliff sites. The TSP guides the activities of state, local, and federal agencies. A central objective of the TSP is to "implement a management program that allows for enjoyment and use of Oregon's rocky shores while protecting them from overuse, degradation, and loss."

Promoting Effective Implementation of Ecosystem-Based Management of Ocean and Coastal Resources

In 2006, the Oregon Department of Fish and Wildlife (ODFW) adopted a Nearshore Marine Resources Management Strategy with a mission to "promote actions that will conserve ecological functions

Appendix

and nearshore marine resources to provide long-term ecological, economic, and social benefits for current and future generations of Oregonians.” The ODFW will implement the strategic plan through a variety of programs, including the Nearshore Habitat Project, to map and assess the distribution and ecological function of nearshore habitats.

Governor Ted Kulongoski asked OPAC to take two important steps toward managing ocean resources as an ecosystem. First, Governor Kulongoski directed OPAC to implement its 2002 recommendation that the state designate a limited network of marine reserves for ecological purposes. Second, the Governor asked that OPAC advise him regarding the establishment of a National Marine Sanctuary off Oregon’s coast to help coordinate state and federal management of the marine environment and uses such as fisheries, energy development, water quality, and recreation, and to increase Oregon’s competitive advantage for federal ocean research funds.

Increasing Ocean Awareness and Literacy among Citizens

Designated in 1974, the South Slough National Estuarine Research Reserve (South Slough NERR) is a 4,771 acre natural area on the south coast of Oregon. South Slough NERR is affiliated with both the National Oceanic and Atmospheric Administration and the Oregon Department of State Lands. The reserve encompasses a mixture of open water channels, tidal and freshwater wetlands, riparian areas, and forested uplands. South Slough NERR actively supports and coordinates research, education, and stewardship programs that serve to enhance a scientific and public understanding of estuaries and contribute to improved estuarine management.

Expanding Ocean and Coastal Scientific Information, Research, and Monitoring

Oregon has the potential to be a global leader in developing viable technologies to convert ocean wave energy into electricity. Oregon State University and the Oregon Department of Energy are working with a broad coalition to create a center of excellence for ocean wave energy technology with demonstration sites on the Oregon coast. Oregon is also an active participant in the Northwest Area Network of Ocean Observation Systems, which will provide real-time information on waves, storm events, and multiple measures of ocean conditions.

Fostering Sustainable Economic Development throughout Our Diverse Coastal Communities

Oregon’s land use planning program, as carried out through the Coastal Zone Management Program, seeks to maintain and promote sustainable economic development in coastal communities. These actions are carried out primarily by cities, counties, and port districts with support from the Department of Land Conservation and Development and the Economic and Community Development Department.

California Highlights: Recent Accomplishments Related to Ocean and Coastal Health

Protecting the ocean and coast has long been a high priority for California. Californians showed their commitment when they passed the California Coastal Act in 1972 that established high standards for regulating coastal development. Other landmark laws include the California Ocean Resources Management Act, Marine Life Protection Act, Marine Life Management Act, and the California Ocean Protection Act. These laws require the state to implement ecosystem-based management using the best available scientific information. The work of the Pew Oceans Commission and the U.S. Commission on Ocean Policy inspired a renewed dedication to ocean protection in California.

In response to the Commission reports, Governor Arnold Schwarzenegger released his Ocean Action Plan in October 2004. The plan includes specific actions to enhance the protection and management of California's ocean and coastal resources. Significant progress has already been made in implementing the plan, which focuses on the four topic areas, summarized below.

Governance

California called on the federal government to implement the major recommendations of the U.S. and Pew Ocean Commission reports. California officials have sent letters and met with members of the White House Council on Environmental Quality and Congress. Priority issues include:

- Maintaining California's moratorium on offshore oil and gas leasing
- Ratification of the United Nations Convention on Law of the Sea
- Supporting California's ocean observing systems
- Reauthorizing a strong Coastal Zone Management Act
- Sponsoring the Western Governors Association Ocean Protection Resolution

Regional-level: California is working with Oregon and Washington to coordinate ocean management along the West Coast. Key actions include:

- Developing the West Coast Governors' Agreement on Ocean Health
- Coordinating ocean research priorities by developing a regional research plan with the West Coast Sea Grant programs

State-level: Governor Schwarzenegger signed a comprehensive package of ocean legislation into law, including:

- Establishing the California Ocean Protection Council
- Minimizing impacts of bottom trawling
- Reducing pollution from cruise ships
- Increasing water quality monitoring
- Establishing standards for offshore aquaculture

California Ocean Protection Council: The Ocean Protection Council, established by state law in 2005, is a cabinet-level body charged with improving the management of California's ocean and coastal resources. Major council actions include:

- Adopting policies to protect California's moratorium on offshore oil and gas leasing, promote research and monitoring, reduce environmental impacts of coastal power plants, and establish a marine protected area monitoring program

Appendix

- Approving \$17 million in projects that address coastal water quality, river restoration, research and monitoring, sea floor mapping, ecosystem-based management, derelict fishing gear, invasive species, and fisheries management

Research and Education

In September 2005, the California Ocean Protection Council adopted the *California Ocean and Coastal Information, Research and Outreach Strategy* that sets clear goals for California on research and education.

Key actions of the plan include:

- Committing \$1 million to ocean and coastal research
- Including state priorities in the national ocean research plan
- Launching a media campaign to educate the public about the ocean
- Organizing the California and the World Ocean '06 Conference to be held September 2006 in Long Beach, California

Stewardship

In September 2004, Governor Schwarzenegger launched the California Marine Life Protection Act (MLPA) Initiative to develop a network of marine protected areas off the coast of California. The MLPA Blue Ribbon Task Force, composed of prominent state policy makers, was assembled to guide this Initiative. The Task Force has developed a Master Plan Framework for MLPA implementation statewide and has recommended several alternative packages of marine protected areas to the state.

The California Watershed Management Memorandum of Understanding was signed in November 2004. An action plan to protect priority watersheds is currently being implemented.

California is developing the Coastal Sediment Management Plan to address coastal erosion and port sediment management issues with a work group of federal and state government agencies. This plan will help the state more effectively manage coastal sediments by evaluating major sections of the coast and inland watersheds, instead of merely focusing on localized case-by-case issues.

Economics and Funding

The Schwarzenegger Administration has committed \$33.2 million in new state funds for ocean protection, which includes \$26.2 million for the California Ocean Protection Council and \$7 million for the California Ocean Currents Monitoring System.

California's Ocean Economy report, released in July 2005, identified nearly \$43 billion in ocean dependent revenues. In July 2005, the state held the first ever Ocean Economic Summit to examine the implications of the report for ocean protection and management.

Appendix B: Letters to the President and Congress opposing offshore oil and gas development

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OFFICES OF THE GOVERNORS

ARNOLD SCHWARZENEGGER
CALIFORNIA

THEODORE R. KULONGOSKI
OREGON

CHRISTINE O. GREGOIRE
WASHINGTON

September 29, 2006

The Honorable George W. Bush
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

As Governors of California, Oregon and Washington, we continue to oppose any actions by the federal government that would weaken the national oil and gas leasing moratorium off our shores. For the last 25 years, Congress has protected our coasts with the moratorium and we believe it should remain in place in perpetuity.

On September 18, 2006 our three states entered into an historic partnership to address critical ocean and coastal protection and management issues. The "West Coast Governors' Agreement on Ocean Health" represents our commitment to work together to reduce offshore energy impacts, ensure clean coastal waters, restore ocean and coastal habitats, promote ecosystem-based management, increase ocean awareness, expand scientific information and foster sustainable economic development throughout our diverse coastal communities. This letter is the first of many actions we will be taking, not only to implement this joint agreement, but to demonstrate that this is a partnership with purpose. We stand united to protect our ocean and coasts.

Our states have committed to alternative energy sources instead of increasing our dependence on fossil fuels. We also continue to take significant steps to increase energy efficiency to help meet the energy needs of our states and the nation. These commitments are critical to protecting our quality of life for future generations.

We are dedicated to working with you and Congress to develop positive solutions to our energy needs that do not involve the unacceptable impacts of offshore drilling. We would be happy to meet with you to discuss our position and propose positive actions to move forward.

Sincerely,

Arnold Schwarzenegger
Governor of California

Theodore R. Kulongoski
Governor of Oregon

Christine O. Gregoire
Governor of Washington

TRK:jh:ab
c: Chairman James L. Connaughton

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OFFICES OF THE GOVERNORS

ARNOLD SCHWARZENEGGER
CALIFORNIA

THEODORE R. KULONGOSKI
OREGON

CHRISTINE O. GREGOIRE
WASHINGTON

September 29, 2006

California, Oregon and Washington Congressional Delegations
United States Congress
Washington, DC

Dear Members of the California, Oregon and Washington Congressional Delegations:

As Governors of California, Oregon and Washington, we continue to oppose any actions by the federal government that would weaken the national oil and gas leasing moratorium off our shores. For the last 25 years, Congress has protected our coasts with the moratorium and we believe it should remain in place in perpetuity.

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Sincerely,

Arnold Schwarzenegger
Governor of California

Theodore R. Kulongoski
Governor of Oregon

Christine O. Gregoire
Governor of Washington

TRK:jh:ab

c: Senate Majority Leader Bill Frist
Senate Minority Leader Harry Reid
Speaker of the House Dennis Hastert
House Minority Leader Nancy Pelosi

GROUND FISH ADVISORY SUBPANEL REPORT ON WEST COAST GOVERNOR'S AGREEMENT (WCGA) ON OCEAN HEALTH

The Groundfish Advisory Subpanel (GAP) believes the West Coast Governor's Agreement on ocean health is a positive attempt to coordinate regional management efforts. It appears to be an effort to emulate what has already been occurring with fishery management for many years. We are hopeful that it is not an attempt to usurp a collaborative process that has been successfully prosecuted for a long period of time. Fishery management has long been a cooperative effort involving the public, industry, state, federal, and congressional entities.

The GAP believes that fishery management groups and processes should be an integral part of this approach to addressing ocean health. Statements that reflect this sentiment should be included in this agreement. This process should maintain the political transparency and scientific scrutiny required within fishery management. It is vitally important for all stakeholders to be intimately involved in shaping these policy issues.

We have specific comments on the following priority areas within the Governors' Agreement:

Protecting and restoring healthy ocean and coastal habitats.

A strict definition of the term 'healthy' must be established.

Promoting the effective implementation of ecosystem-based management of our ocean and coastal resources.

Promote funding for the existing ecosystem based management activities that are underway at state and federal fishery management agencies. All proposed new activities (aquaculture, wave energy, etc.) should be required to comply with all federal and state environmental regulations.

Increasing awareness and literacy among our citizens.

The public has a right to receive information about the processes involved with the sustainable harvest of ocean resources. Objective discussions about this issue are often missing from public outreach efforts relating to marine resources.

Expanding ocean and coastal scientific information, research, and monitoring.

This is critical for rational and sustainable (Magnuson-Stevens Fishery Conservation and Management Act [MSA]) use of ocean resources. Uncertainty with data comprises a major hurdle in ensuring sustainable (MSA) fisheries. A complete inventory of all existing ocean activities must be compiled in order to assess the true impacts of any new proposals.

Fostering sustainable economic development throughout our diverse coastal communities.

Fisheries should be a top priority as should any economic activity that is already in place. This would be an excellent opportunity to change the focus from one of funding fishery constraints to one of investing in fishery economic health and opportunity.

There are continuing and future concerns regarding jurisdictional conflicts that exist in state and federal waters. The GAP recommends that this agreement address these issues. Example: Coastal Zone Management Act, National Marine Sanctuaries Act vs. MSA. It is recommended that NOAA General Counsel should review this agreement and provide clarification on this issue.

PFMC
09/10/07

MAGNUSON-STEVENSON ACT REAUTHORIZATION IMPLEMENTATION

The Council has been working closely with the National Marine Fisheries Service (NMFS) and the other seven Regional Fishery Management Councils on implementing new provisions in the Magnuson-Stevens Act (MSA) as amended by the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006* (MSRA). Agenda Item B.3.a, Attachment 1, is a summary of new provisions in the reauthorized MSA which may be of particular interest to the Council; the summary includes updates on the status of implementation of these new provisions.

At this Council meeting, it was expected the Council would focus on four matters: (1) a draft Environmental Impact Statement (DEIS) from NMFS regarding the process for establishing annual catch limits (ACL) and accountability measures (AM) that insure catch limits are not exceeded, (2) a proposed rule for a new environmental review process for fishery management actions, (3) a proposed rule for expedited, uniform, and regionally-based experimental fishing permits (EFP), and (4) draft revisions to the Council Operating Procedure (COP) for the Scientific and Statistical Committee (SSC) that reflects new MSRA provisions and current practices. Following the April Council meeting, the Council provided scoping comments on the first two of these matters; Council staff participated in an all-Councils conference call on the third matter in mid-summer and provided NMFS the Council's existing EFP policies and practices with the initial input that ultimate consistency with these policies and practices was desired.

There were July expectation dates for the release of the first three of these matters, but no review materials were available by the deadline for the advance September Briefing Book. It is now anticipated that a DEIS analyzing alternate NMFS guidance on ACL and AM will be published with a public comment period that spans the November 2007 Council meeting. The proposed rule for a new EFP process is anticipated in the near future. Council staff will continue to work with NMFS on the new EFP regulations and should a proposed rule become available, it will be distributed as supplemental material at the September Council meeting.

Regarding the fourth matter, Council staff has provided a draft updated COP 4, which governs the function of the SSC, to facilitate review by the Council process (Agenda Item B.3.a, Attachment 2). Draft new items include revisions and updates to the SSC's scientific review responsibilities, clarification on the separation of policy versus best available science determinations, a clarification of the independent review process, a description of financial disclosure requirements for SSC members, and provisions for stipends. The draft also contains document organizational consolidations.

For additional information on the full suite of new MSRA implementation elements, NMFS maintains a web site focused on MSA reauthorization (www.nmfs.noaa.gov/msa2007/) including a regularly updated tracking sheet on the status of implementation of many new provisions and summaries of comments received on various aspects of the reauthorization.

Council Action:

Direct Planning and Action on New MSA Requirements as needed and consider adopting revisions to Council Operating Procedure 4.

Reference Materials:

1. Agenda Item B.3.a, Attachment 1: Summary of selected new provisions in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) as Amended in January 2006 with an emphasis on matters associated with Pacific Fishery Management Council Activities.
2. Agenda Item B.3.a, Attachment 2: Draft Revisions to Council Operating Procedure 4 – Scientific and Statistical Committee.

Agenda Order:

- | | |
|--|----------------|
| a. Agenda Item Overview | Mike Burner |
| b. NMFS Report | Frank Lockhart |
| c. Reports and Comments of Advisory Bodies | |
| d. Public Comment | |
| e. Council Action: Direct Planning and Action on New Requirements as Needed for Timely Implementation | |

PFMC
08/24/07

Summary of selected new provisions in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) as Amended in January 2006 with an emphasis on matters associated with Pacific Fishery Management Council Activities.

Topic	Provision	MSA Section	Effective Date	Status of Implementation
Establishing Annual Catch Limits	The Council shall establish annual catch limits for each managed fishery that may not exceed the fishing level recommendations of its SSC.	302(h)(6) Page 68	Immediately upon final NMFS guidance.	Council Scoping Comments submitted. DEIS anticipated by November Council mtg.
Scientific and Statistical Committee (SSC) Function	Councils shall maintain an SSC to assist in the development, collection, evaluation, and peer review of statistical, biological, economic, social, and other scientific information relevant to development and amendment of any FMP. The SSC shall provide recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.	302(g) Page 66	Immediate	Draft Revised Council Operating Procedure for the SSC considered at the September 2007 Council meeting.
Environmental Review Process	The Secretary shall, in consultation with the Councils revise agency procedures to integrate applicable environmental analytical procedures with procedures for preparation or amendment of FMPs to provide clear and concise analyses for decision makers, reduce paperwork, and maintain time frames for effective public involvement.	304(i) Page 95	Initial concepts presented at April Council meeting, proposed revised procedures in six months and final procedures in one year.	Delayed. No new procedures available for September 2007 Council review.
Rebuilding Provisions	For stocks designated as overfished, Councils shall end overfishing <u>immediately</u> and implement rebuilding plans within two years (formerly one year). If not accomplished by the Council the Secretary shall submit a plan within nine months.	304(e) Page 92	Within 30 days	Currently effective. NMFS to develop implementing regulations.

Agenda Item B.3.a
Attachment 1
September 2007

Topic	Provision	MSA Section	Effective Date	Status of Implementation
Individual Quota Programs	Adds a new term intended to replace the term Individual Quota - Limited Access Privilege (LAP) defined as “ <i>a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person; and (B) includes an individual fishing quota; but (C) does not include community development quotas as described in section 305(i).</i> ”	Sec.3 Definitions (26) Page 9	NA	NMFS currently soliciting comments on the interpretation and applications of this section. Comments are due by September 30, 2007.
Limited Access Privilege Programs	Establishes national guidelines for LAP Programs which include IQ programs and allows allocation of harvest privileges to fisheries currently under a limited access system, fishing communities or regional fishery associations. Does not establish a separate processor quotas but processors could be eligible to hold LAPs per Council allocation process.	Sec. 303A Page 79;	Proposal and analysis due to Congress on rationalization of groundfish trawl and Pacific whiting fisheries by January 2009.	Council on track for Congressional submission. Final Alternatives due for adoption in Nov. '07. Council preferred alternative selection scheduled for June 2008
Required FMP Provisions	An FMP prepared by the Council or the Secretary shall “ <i>establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.</i> ”	303(a)(15) Page 76	FMP amendments and regulations in place by fishing year 2010 for fisheries experiencing overfishing and 2011 for all others.	Council Scoping Comments submitted. DEIS anticipated by November Council mtg
Ecosystem-Based Fishery Management	A number of the Fishery Management Councils have demonstrated significant progress in integrating ecosystem considerations in fisheries management using the existing authorities provided under this Act	Sec. 2 (11)- Findings, Purposes, and Policy	NA	Council working on funding of Ecosystem FMP initiation.

Topic	Provision	MSA Section	Effective Date	Status of Implementation
Regional Ecosystem Research	The Secretary with the Councils shall complete a study on the state of the science for advancing the concepts and integration of ecosystem considerations in regional fishery management.	406(f) Page 158	Report within 180 days (July 2007)	Delayed, NMFS scheduling a workshop for Nov. 2007.
Stipends for the SSC or Advisory Bodies	<i>“The Secretary shall, <u>subject to the availability of appropriations</u>, pay a stipend to members of the SSC or advisory panels who are not employed by the Federal Govt. or a State marine fisheries agency.”</i>	302(g)(1) (F) Page 66	TBD, no funds identified to date.	Council staff reported number of work days to NMFS in February '07. Subject to available funds.
Council Member Training Program	Requires training course for members appointed after January 2007 and acknowledges training received in the last two years.	302(k) Page 73	Revised training Course developed within six months	Done, New Council member training sched. for week of Oct. 22, 2007
Tribal representative alternate	<i>“The tribal representative appointed under subparagraph (A) may designate as an alternate, during the period of the representative’s term, an individual knowledgeable concerning tribal rights, tribal law, and the fishery resources of the geographical area concerned.”</i>	302(b)(5)(D) Page 63	Immediate	Currently effective.
Council Coordination Committee (CCC)	Establishes the CCC made up of Chairs, Vice-Chairs and Executive Directors of the eight Regional Councils and exempts CCC meetings from requirements of the Federal Advisory Committee Act.	302(l) Page 73	Immediate	Currently effective
Joint Enforcement Agreements and Data Sharing	A State management agency or officer authorized by agreement with the Secretary may “ <i>access, directly or indirectly, for enforcement purposes any data or information required to be provided under this title or regulations under this title, including data from vessel monitoring systems, satellite-based maritime distress and safety systems, or any similar system, subject to the confidentiality provisions of section 402</i> ”	311(b)(1)(A)(vi) Page 124	As soon as practicable but no later than 21 months.	On track for implementation by Oct. 12, 2009.

Topic	Provision	MSA Section	Effective Date	Status of Implementation
Recovery Plan for Klamath River Coho	The Secretary shall complete a recovery plan for Klamath River coho and report on activities to achieve coho recovery, restore habitat, and improve other Klamath River anadromous stocks, including chinook.	MSRA Appendix (uncodified text) Page 132	Recovery Plan developed in six months with first report in two years and annually thereafter.	Draft reviewed by Council in April '07. Final published in July 2007. Available on NMFS website.
Disclosure of Financial Interest and Recusal	Broadens financial disclosure requirements for to include advocacy or lobbying organizations for which a Council member is an officer, director, trustee , partner of employee of, requires. Includes new disclosure provisions for SSCs. Requires Secretary to report to Congress on activities to meet disclosure and recusal requirements and to report any conflict of interest problems with respect to Council and SSCs.	302(j) Pages 70	Immediate requirement. Report to Congress due January 1, 2008 and annually thereafter.	NMFS to develop format for annual report. Draft Revised Pacific Council Operating Procedure for the SSC includes proposed language and forms for consideration at Sept. Council meeting.
Availability of Financial Disclosure on Council Web Site	The financial interest disclosures shall be kept on file by the Council and made available on the Internet and for public inspection at the Council offices during reasonable hours. Internet publication not required for SSC disclosures.	302(5)(j) (5)(B) Page 71	Immediate	On Pacific Council web site by September 30, 2007.
Bycatch Reduction Engineering program	<i>“The Secretary, in cooperation with the Councils and other affected interests, and based upon the best scientific information available, shall establish a bycatch reduction program, including grants, to develop technological devices and other conservation engineering changes designed to minimize bycatch, seabird interactions, bycatch mortality, and post-release mortality in Federally managed fisheries.”</i>	Sec. 316 Page 144	Within one year.	On track, NMFS scheduling workshops. Council has not commented.

Topic	Provision	MSA Section	Effective Date	Status of Implementation
Exempted Fishing Permits and Cooperative Research and Management Program	Establishes regional cooperative research programs and prioritizes funding for projects which improve stock assessment science, assess and reduce bycatch and post-release mortality, assess and protect habitat, and collect economic and social data.	Sec. 318 Page 145.	Regulations to create a expedited, uniform, and regionally-based process for experimental fishing permits in 180 days (July 2007).	Delayed, Council staff provided comments via conference call. Proposed rule anticipated for Council review in Nov. 2007.
Deep Sea Coral Protection	An FMP may designate zones to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure is based on the best scientific information available; includes criteria to assess the conservation benefit of the closed area; establishes a timetable for review of the closed area's performance; and is based on an assessment of the benefits and impacts of the closure, including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;	303(b)(2)(B) Page 76 and 408 Page 161	Immediate for protective measures, MSA Section 408 requires the Secretary in consultation with the Council and in coordination with other federal agencies and education institutions, to establish a program for deep sea coral research and monitoring with a report due to Congress in one year and biennially thereafter.	Report on track for January 2008.
Illegal, Unregulated, and Unreported Fishing (IUUF).	The Secretary shall define IUUF, promote improved monitoring, compliance, and surveillance of high seas fisheries, provide a biennial report on the status of stocks and nations whose vessels are engaged in IUUF, and include IUUF as justification for sanctions such as prohibition of imports of fish from nations engaged in IUUF.	Section 403 of the MSRA and MSA Section 206 Page 38	Definition of IUUF in six months and biennial reporting requirements.	Definition of IUUF published in the Federal Register on April 12, 2007. Reporting on track.

Topic	Provision	MSA Section	Effective Date	Status of Implementation
Appointment of U.S. Commissioners	Specifies 5 U.S. seats on the Commission for the Conservation and Management of Highly Migratory Fish Stocks of the Western and Central Pacific Ocean - including an employee of the Dept. of Commerce, the chair or member of the Western Pacific Fishery Management Council and <u>the chair or member of the PFMC.</u>	NA Title V of the MSRA	Immediate	Council has nominated Ms. Marija Vojkovich nominated to serve as PFMC representative. Presidential appointment pending.
Memorandum of Understanding (MOU)	For highly migratory species in the Pacific, the Secretary shall develop a memorandum of understanding with the Western Pacific, Pacific, and North Pacific Fishery Management Councils, that clarifies the role of the relevant Councils with respect to coordination and participation in U.S. delegations to international fishery organizations, providing formal recommendations regarding necessary measures for both domestic and foreign vessels, and recommending domestic fishing regulations that are consistent with the actions of the international fishery organization, for approval and implementation under MSA.	NA Title V of the MSRA	Immediate	Development of MOU on track. Direct negotiations scheduled for the week after the September 2007 Council meeting.

Topic	Provision	MSA Section	Effective Date	Status of Implementation
International Overfishing	For a fishery that the Secretary determines is overfished due to excessive international fishing pressure for which there are no measures to end overfishing under an international agreement the Secretary shall immediately take appropriate action at the international level to end the overfishing; and within 1 year the appropriate Council, or Secretary, <u>shall develop recommendations for domestic regulations</u> to address the relative impact of fishing vessels of the US on the stock and, if developed by a Council, the Council shall submit such recommendations to the Secretary; and develop and submit recommendations international actions that end overfishing and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States.	304(i) Page 96	Immediate	Currently effective.
Promotion of Stock Management-Rebuilding	<i>“If a relevant international fisheries organization does not have a process for developing a formal plan to rebuild a depleted stock, an overfished stock, or a stock that is approaching a condition of being overfished, the provisions of this Act in this regard shall be communicated to and promoted by the United States in the international or regional fisheries organization.”</i>	Sec. 102(c) Page 13	Immediate	Currently effective.
Implementation of the U.S.-Canada Pacific Whiting Treaty	Specifies U.S. Representation on various management and scientific committees and establishes rulemaking and enforcement requirements for the international management of Pacific whiting.	Title VI of the MSRA	Immediate	NMFS considering U.S representation. Mr. Phil Anderson nominated to serve in PFMCR rep. Commissioner seat. Treaty ratification delayed in Canadian federal process.

COUNCIL OPERATING PROCEDURE

Scientific and Statistical Committee

Approved by Council: 07/20/83

Revised: 07/10/85, 09/16/87, 04/06/95, 09/18/98, 09/15/00, 06/18/02, 03/11/05

DRAFT REVISION - NOT APPROVED BY COUNCIL - DO NOT CITE

Proposed additions underlined. ~~Proposed deletions in strikethrough text.~~

*{Text in italics and brackets represents explanatory narrative /
that is not intended for the final draft.}*

*{Unless otherwise noted, the majority of the of the proposed additions
are directly related to new provisions in the
Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006}*

PURPOSE

~~To establish procedures for~~ The purpose of this Council Operating Procedure is to specify the role, responsibilities, and function of the Scientific and Statistical Committee (SSC).

OBJECTIVES AND DUTIES

When requested by the Council Chair or Executive Director, the SSC shall:

1. Provide independent expert scientific and technical advice to the Council on the development of fishery management policy. ~~establishing the goals and objectives of fishery management plans (FMP) and amendments, and the preparation of such FMPs and amendments.~~ *{Deletion recommended due to redundancy with new #2}* SSC scientific and technical advice is intended to inform rather than supplant policy decisions by the Council. SSC review shall focus on the scientific merit of a proposed action and remain separate and independent from Council policy decisions such as determining allocations or the setting of annual catch limits, quotas, and harvest guidelines within acceptable biological catch levels, or determining the best available science when multiple equally probable estimates exist.
2. Assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to the Council's development and amendment of any Fishery Management Plan in accordance with the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the National Standards as amended through January 12, 2007.

3. Provide the Council ongoing scientific advice for active fishery management decisions other than FMPs or FMP amendments, including evaluations and recommendations on acceptable biological catch, stock status assessments, stock status forecasts, proposed regulations, measures to prevent overfishing, defining and achieving maximum sustainable yield, achieving rebuilding targets for overfished species, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. Such advice shall be based on the review and evaluation of statistical, biological, economic, social, and other scientific information, analyses, analytical methodologies, literature, research, and other information relevant to Council decision-making. Such advice, shall be provided in written statements to the Council that include recommendations as appropriate on scientific quality of available information, both in terms of status as the best available science and soundness of science for use in fishery management decision-making, uncertainty, and risk management. {Clarification of current procedure}.
- a. The SSC requires good documentation and ample review time in order to provide the best possible scientific advice to the Council on scientific merit. Analysis or report authors should be responsible for ensuring materials submitted to the SSC are technically comprehensive, clearly documented, and complete. If there is any uncertainty on the part of authors regarding SSC expectations, authors should clarify assignments and expectations of materials to be reviewed with the SSC Chair. In order that there be adequate time for careful review, documents and materials destined for review by the SSC or any of its subcommittees must be received at the Council office at least two weeks prior to the meeting at which they will be discussed and reviewed, unless otherwise approved by the Executive Director. The Council staff will then provide copies to appropriate SSC members. If this deadline cannot be met, it is the responsibility of the author to contact the SSC Chair prior to the two-week deadline, so appropriate arrangements, rescheduling, and cancellations can be made in a timely and cost-effective manner. This deadline applies to all official SSC activities and meetings.
- b. SSC reviews, evaluations, analyses, and recommendations are intended to provide an independent peer-review process. SSC members directly involved in the development of reviewed materials, such as stock assessments, fishery or habitat models, fishery or ecosystems analyses, shall recuse themselves from SSC review and deliberation of such items.
- ~~2. Assist the Council in the evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to the Council's development and amendment of any FMP. {Updated and consolidated with the newly proposed #3}~~
4. ~~Assist the Council in determining what statistical, biological, economic, social, or other scientific information is needed for the development of an FMP or amendment that meets the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and advise the Council as to the best way of obtaining this information, including identifying statistical, biological, economic, social, or other~~

scientific research needs and recommend entities with ongoing research programs that may be able to develop needed information for the optimal execution of Council obligations under the Magnuson-Stevens Act. (See Council Operating Procedure Number 12 entitled Update and Communication of Research and Data Needs and West Coast Economic Data Plan.) *{Deleted portion is redundant with new #2}*

5. Advise the Council on preparing comments on any application for foreign fishing transmitted to the Council by the U.S. Department of State.
- ~~6. Review and evaluate FMPs and amendments to determine if they meet the National Standards of the Magnuson-Stevens Act and other applicable laws. *{Redundant to newly proposed #2}*~~
- ~~7 6. Advise—~~Provide scientific advice to the Council on preparing comments on any FMP or amendment prepared by the U.S. Secretary of Commerce (Secretary) or the Secretary's delegate which are transmitted to the Council pursuant to Section 304(c) of the Magnuson-Stevens Act.
- ~~8. Provide advice on the scientific basis of any proposed regulations under consideration by the Council to implement any FMP or amendment. *{Redundant to newly proposed #3}*~~
- ~~9. Assist the Council in establishing criteria for judging the effectiveness of an FMP or amendment. *{Redundant to newly proposed #3}*~~
- ~~10 7. Attempt to resolve scientific or technical disputes within or between Plan, Technical, or Management Teams, assessment review bodies (e.g., groundfish Stock Assessment Review, salmon Methodology Evaluation Workgroup). or organization perspectives before the issues come before the Council. *{Phrase origination and purpose unknown by Council staff; possible schedule issues with Council priorities}*~~
- ~~11. Review, evaluate, recommend improvements, and provide findings of scientific quality, soundness, uncertainty of stock assessments, fishery or habitat models and analysis of fishery ecosystems or marine protected areas under consideration by the Council. *{Redundant to newly proposed #3}*~~
- ~~12 8. Review qualifications of Plan Team and SSC nominees and present recommendations to the Council.~~
- ~~13 9. Perform such other necessary and appropriate duties as may be required by the Council to carry out its functions under the Magnuson-Stevens Act and other applicable laws.~~

COMPOSITION

Committee members shall be appointed for each category listed below (16 members). The Council shall strive to include on the committee three social scientists, of which at least two shall have economic sciences expertise.

1. State fishery management agencies (4)
 - Washington Department of Fish and Wildlife
 - Oregon Department of Fish and Wildlife
 - California Department of Fish and Game
 - Idaho Department of Fish and Game
2. National Marine Fisheries Service (5)
 - Alaska Fisheries Science Center (1)
 - Northwest Fisheries Science Center (2—one with expertise in groundfish stock assessment)
 - Southwest Fisheries Science Center (2)
3. West Coast Indian tribal agency with fishery management responsibility (1)
4. At-large positions (6)

MEMBERSHIP

Term of Members

Non at-large federal, state, and tribal agency members shall be appointed by the Council to serve indefinite terms. At-large members shall be appointed by the Council for three-year terms commencing on January 1 and expiring December 31 three years thereafter, and may be reappointed at the pleasure of the Council. At-large vacancy appointments shall be for the remainder of the unexpired term of the vacancy.

Compensation

~~All members~~ Federal employees on the SSC shall serve without compensation. However, non-federal employees will be reimbursed for expenses while traveling to and participating at meetings of official Council business, as per the *Council Travel Rules* document. Subject to the availability of appropriations, a stipend may be paid to members who are not employed by the Federal Government or a State marine fisheries agency. {MSRA Provision}

Termination of Membership

An SSC member may be replaced at the Council's discretion if a member; 1) transfers employment or moves to a different location, 2) is absent from two or more consecutive meetings or has excessive non-consecutive absences without giving adequate notification to the SSC Chair or Council Executive Director, 3) appears unable to fulfill their obligations as an SSC member, or 4) violates the *Rules of Conduct for Employees and Advisors and Contractors of Regional Fishery Management Councils, U. S. Department of Commerce.*

Replacement of Members

Upon receipt of a letter of resignation, from either the individual in an at-large position or the sponsoring fishery management agency for an agency seat, expiration of three-year terms, or after Council action to remove a member, the Executive Director shall; 1) contact the agency which the former member represented for a nominee or 2) for an at-large member, advertise for a replacement. Announcements for nominations for at-large members shall be distributed widely and be specific about the duties and responsibilities.

Alternate Members

When an appointed member representing a federal, state, or tribal agency (categories 1, 2, and 3) will not be able to attend a meeting, a designee may be appointed if the Executive Director is notified in advance and in writing. Such designees may participate in committee deliberations as a regular member and shall be reimbursed for expenses per the Council travel rules. Designees for at-large committee members are not authorized.

Officers

The Chair and Vice Chair of the SSC shall be elected by majority vote of SSC members present and voting. Such officers shall be confirmed by the Council Chair and shall serve one-year terms. There is no limit as to the number of terms that individuals may serve as officers. However, general practice has been for officers to serve two consecutive one-year terms. The presiding officer has the responsibility and authority to ensure that meetings are conducted in an orderly and business-like manner.

Subcommittees

The committee may establish such subcommittees as it deems necessary to facilitate its duties. In addition, a socioeconomic subcommittee will be formed to work closely with team or staff economists and sociologists. Subcommittee reports will not be considered final until approved by the full SSC.

Disclosure of Financial Interest

Within 45 days of appointment to the SSC, each member must disclose any financial interest held by, financial gain or debt with, or any financial relationship of –

(A) that individual member,

(B) their spouse, minor child, or partner of that individual,

(C) and any organization (other than the Council) in which that member is serving as an officer, director, trustee, partner, or employee; in any harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Pacific Council has jurisdiction, or with respect to an individual or organization with a financial interest in such activity.

Members are required to complete the *Pacific Fishery Management Council Statement of Financial Interest for the Scientific and Statistical Committee* (attached to this COP as Addendum A) and/or and Department of Commerce form required by Federal law. Such forms will be kept on file by the Council and the Assistant Administrator for Fisheries, on behalf of the Secretary of Commerce. Financial disclosure forms must include the period three years prior to signing and members must update his or her disclosure form at any time any such financial interest is acquired or substantially changed. {MRSA Provision}

MEETINGS

The committee shall meet at the request of the committee Chair, with the approval of the Council Executive Director, as often as necessary to fulfill its responsibilities. Generally, the SSC will meet Monday and Tuesday during the week of each Council meeting.

Public Participation

The public will be permitted to comment on items relative to the agenda at a time to be announced in the *Federal Register* and in a Council news release. Comments may be limited if deemed necessary by the committee Chair. Written statements also may be submitted during the public comment period. The public will not be permitted to interject comments during the meeting at any time other than the established comment period unless asked to do so by the Chair or a committee member. Members of the public may be asked to leave the meeting at the Chair's discretion if their conduct is impeding the orderly progress of the meeting.

The granting of permission for the public to tape all or any part of the meeting is at the discretion of the committee Chair and such permission must be obtained in advance.

Draft work products, reports, or statements prepared and discussed at these meetings will be available in final form after submission to the Council. Distribution prior to submission to the Council will be limited to SSC members, unless authorized by the Chair.

Copies of this operating procedure shall be available upon request from the Council office.

SSC Closed Sessions

At the discretion of the SSC Chair, SSC closed sessions may be scheduled in advance of or initiated during an SSC meeting. Closed sessions are closed to all except SSC members, Council members, Council staff, and others designated by the SSC Chair to discuss litigation, advisory body appointments, and other personnel matters. {Addition of current procedure}

Public Notification of Meetings

Timely public notice of each SSC meeting, including the time, place, and agenda topics for the meeting, shall be widely distributed via facsimile machine, electronically (e-mail and Council website), and/or U.S. Postal Service to individuals on mailing lists maintained by the Council and to local media. The notice also may be announced by such other means as will result in wide

publicity. For purposes of this notice, the term "timely" will be defined as two weeks prior to the actual meeting. However, the Council recognizes that due to the expediency of some Council actions and/or other reasons deemed valid, such two-week advance notice may not always be possible.

Timely notice of each regular meeting, emergency meeting, and hearing also shall be published in the *Federal Register*. Council staff shall prepare this notice in coordination with the appropriate National Marine Fisheries Service (NMFS) regional office. In this context, the term "timely" shall denote submission (at least 23 calendar days prior to the meeting) of the notice to NMFS for publication in the *Federal Register*.

MINUTES

As workload permits, a Council staff member shall attend and draft minutes of each committee meeting. Such minutes shall be submitted for approval by a majority of committee members at the next committee meeting.

STAFF RESPONSIBILITIES

In addition to drafting meeting minutes, a Council staff member shall be assigned to assist the committee with coordination, organization, and meeting logistics, and to provide other expertise needed by the committee on a case-by-case basis.

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON MAGNUSON-STEVENSON ACT REAUTHORIZATION IMPLEMENTATION

The Scientific and Statistical Committee (SSC) reviewed the draft revision to Council Operating Procedure (COP) 4. The revision generally reflects current practice regarding SSC roles and responsibilities. The SSC notes that the COP – particularly paragraph 1 under “Objectives and Duties” – may need to be revisited once guidance is received from NMFS regarding the process for establishing annual catch limits.

The SSC suggests the following editorial changes to the COP:

Topic – “Objectives and Duties”

Paragraph 1, first sentence: The term “independent” was inserted to characterize SSC advice to the Council. Paragraph 3b defines “independent” in terms of ensuring that SSC advice is not unduly influenced by SSC members directly involved in producing reviewed materials. Use of the term “independent” in paragraph 1 should be similarly clarified in terms of other types of influences SSC members are expected to avoid (e.g., fishery management policy by the Council and agencies, constituent pressure).

Paragraph 1, second sentence: The SSC has long supported the Council’s practice of separating science and policy as highly beneficial to the credibility of the SSC’s scientific advice. The phrase “rather than supplant” provides some discomfort to the SSC, as it appears to suggest a need to safeguard against SSC intrusion into policy decisions. Given the extent to which the technical nature of the SSC’s role is circumscribed in other portions of the COP, the SSC considers the phrase unnecessary and requests that it be deleted from the paragraph.

Paragraph 1, third sentence: For general clarity and to remove ambiguity regarding Council and SSC roles in dealing with equally probable estimates, replace “determining allocations or the setting of annual catch limits, quotas, and harvest guidelines within acceptable biological catch levels, or determining the best available science when multiple equally probable estimates exist” with “determining allocations; setting annual catch limits, quotas and harvest guidelines within acceptable biological catch levels; and deciding between estimates deemed equally probable by the SSC.”

Paragraph 2, first sentence: For clarity, replace “Assist in the development, ...” with “Provide advice regarding the development, ...”

Paragraph 3, first sentence: For clarity, replace “proposed regulations, measures to prevent overfishing” with “proposed management measures”.

Paragraph 3b, second sentence: For clarity, replace “SSC review and deliberation of such items” to “SSC deliberation and conclusions regarding such items”.

Paragraph 4, first sentence: For clarity, replace “recommend entities with ongoing research programs” with “identify ongoing research programs”. Also replace “optimal execution” with “implementation”.

Topic – “Composition”

To more fully address the issue of SSC expertise, add a third sentence to the first paragraph as follows: “More generally, the Council shall strive to ensure that SSC members reflect the range of expertise needed for all Council FMPs.”

Second sub-bullet under bullet 2. Delete “one with expertise in groundfish stock assessment”. It is not clear why expertise is specified for one but not all agencies. Such decisions may be better left to agency discretion rather than mandated in a COP.

Topic - “Officers”

To reflect the current practice of two-year terms for the SSC chair, replace “one-year terms” with “a two-year term” in the second sentence. Also delete the fourth sentence.

PFMC

09/11/07

LEGISLATIVE MATTERS

The Legislative Committee (Committee) is scheduled to meet Monday, September 10th at 10:00 a.m. with a primary objective to review H.R. 21 the *Oceans Conservation, Education, and National Strategy for the 21st Century Act*. The Committee is also scheduled review two versions of the *National Offshore Aquaculture Act of 2007*.

In January 2007 at the start of the 110th U.S. Congress, U.S. Representative Sam Farr (D-CA) introduced H.R. 21 the *Oceans Conservation, Education, and National Strategy for the 21st Century Act* (Agenda Item B.4.a, Attachment 1). The bill currently has 62 cosponsors. H.R. 21 was introduced as a means of implementing new national ocean governance policies recommended by the U.S. Commission on Ocean Policy and the Pew Trust's Pew Ocean Commission. On August 22, 2007, U.S. Representative Don Young (R-AK), Ranking Republican Member of the Committee on Natural Resources, sent Council Chairman Donald Hansen a letter requesting Pacific Fishery Management Council (Council) comments on H.R. 21 (Agenda Item B.4.a., Attachment 2). Among its new provisions, H.R. 21:

- Codifies the National Oceanic and Atmospheric Administration and its leadership through the NOAA Organic Act;
- Establishes a National Oceans Policy, a National Oceans Advisor in the Executive Office of the President, a Committee on Ocean Policy, and a Council of Advisors on Oceans Policy;
- Designates ocean regions for ecosystem-based management and establishes a Regional Ocean Partnership for each region; and
- Establishes an Ocean and Great Lakes Conservation Trust Fund which would administer funds to coastal states for development and implementation of Regional Ocean Strategic Plans.

On March 12, 2007, U.S. Commerce Secretary Carlos M. Gutierrez (Secretary) announced that the National Oceanic and Atmospheric Administration's *National Offshore Aquaculture Act of 2007* had been sent to Congress. Since this announcement, versions of the bill have been introduced in the U.S. House of Representatives as H.R. 2010 by U.S. Representative Rahall (D-WV) and Congresswoman Madeleine Bordallo (D-GU) (Agenda Item, B.4.a, Attachment 3) and in the U.S. Senate as S. 1609 by Senators Ted Stevens (R-AK) and Daniel Inouye (D-HI) (Agenda Item B.4.a, Attachment 4). Each bill proposes a Federal regulatory framework for fish and shellfish aquaculture within the U.S. Exclusive Economic Zone (3-200 miles offshore).

The Council and the Committee had reviewed previous versions of the bill as introduced in the 109th Congress and recommended provisions in the bill to allow coastal states to opt-out of offshore aquaculture and to strengthen environmental review requirements. Included in both bills are provisions which require the Secretary to establish environmental requirements for offshore aquaculture activities and to allow coastal states to opt-out of offshore aquaculture within 12 miles of their coastline. Additionally, the South Atlantic Fishery Management Council has provided a white paper detailing their policies on protecting essential fish habitat from marine aquaculture activities (Agenda Item B.4.a, Attachment 5).

Committee comments on these matters will be provided in a report to the Council under this agenda item on Friday, September 14. 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.4.a, Attachment 1, H.R. 21 the *Oceans Conservation, Education, and National Strategy for the 21st Century Act*.
2. Agenda Item B.4.a, Attachment 2, August 20, 2007 letter from U.S. Representative Young to Council Chairman Hansen regarding Council comments on H.R. 21.
3. Agenda Item B.4.a, Attachment 3, H.R. 2010 the *National Offshore Aquaculture Act of 2007*.
4. Agenda Item B.4.a, Attachment 4, S. 1609 the *National Offshore Aquaculture Act of 2007*.
5. Agenda Item B.4.a, Attachment 5, South Atlantic Fishery Management Council White Paper, *Policies for the protection and Restoration of Essential Fish Habitats from Marine Aquaculture*.
6. Agenda Item B.4.b, Supplemental Legislative Committee Report.

Agenda Order:

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

Mike Burner
Dave Hanson

PFMC
08/23/07

110TH CONGRESS
1ST SESSION

H. R. 21

To establish a national policy for our oceans, to strengthen the National Oceanic and Atmospheric Administration, to establish a national and regional ocean governance structure, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2007

Mr. FARR (for himself, Mr. ALLEN, Mr. GILCHREST, and Mr. SAXTON) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Science and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a national policy for our oceans, to strengthen the National Oceanic and Atmospheric Administration, to establish a national and regional ocean governance structure, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Oceans Conservation, Education, and National Strategy
6 for the 21st Century Act”.

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

Sec. 1. Short title; table of contents.
 Sec. 2. Findings.
 Sec. 3. Purpose.
 Sec. 4. Definitions.

TITLE I—ESTABLISHMENT OF A NATIONAL OCEANS POLICY

Sec. 101. National oceans policy.

TITLE II—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ORGANIC ACT

Sec. 201. National Oceanic and Atmospheric Administration.
 Sec. 202. Administration leadership.
 Sec. 203. National Weather Service.
 Sec. 204. Resource management.
 Sec. 205. Operations and services.
 Sec. 206. Research and technology development.
 Sec. 207. Education and outreach.
 Sec. 208. Science Advisory Board.
 Sec. 209. Reports.
 Sec. 210. Public-private partnerships.
 Sec. 211. Reorganization plan.
 Sec. 212. Facility evaluation process.
 Sec. 213. Administration budget.
 Sec. 214. Baselines and cost controls.
 Sec. 215. Offshore performance of contracts for the procurement of goods and
 services.

TITLE III—NATIONAL OCEAN LEADERSHIP AND COORDINATION

Sec. 301. National Oceans Advisor.
 Sec. 302. Committee on Ocean Policy.
 Sec. 303. Establishing a coordinated management regime for activities in Fed-
 eral waters.
 Sec. 304. Council of Advisors on Oceans Policy.

TITLE IV—REGIONAL COORDINATION AND ECOSYSTEM PLANNING

Sec. 401. Findings.
 Sec. 402. Regional Ocean Partnerships.
 Sec. 403. Regional Ocean Strategic Plans.
 Sec. 404. National Academy of Sciences study of regional oceans governance.
 Sec. 405. Ocean ecosystem resource information systems.
 Sec. 406. Regulations.
 Sec. 407. Other authority.
 Sec. 408. Authorization of appropriations.

TITLE V—OCEAN AND GREAT LAKES CONSERVATION TRUST FUND

Sec. 501. Establishment of fund.

Sec. 502. Limitation on use of available amounts for administration.
 Sec. 503. Recordkeeping requirements.
 Sec. 504. Maintenance of effort and matching funding.
 Sec. 505. Community assistance formula and payments.
 Sec. 506. Approval of State funding and spending plans.
 Sec. 507. Special postage stamp.

TITLE VI—ADMINISTRATION FUNDING

Sec. 601. Authorization of appropriations.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) United States ocean waters and the ocean
 4 resources they contain are vital for the national se-
 5 curity, environment, economy, and culture of the
 6 United States.

7 (2) The National Oceanic and Atmospheric Ad-
 8 ministration is the lead ocean agency in the United
 9 States, performing critical services and activities for
 10 the nation and its citizens.

11 (3) Recent reports by the United States Com-
 12 mission on Ocean Policy and the Pew Oceans Com-
 13 mission call for, among other things—

14 (A) a more comprehensive and integrated
 15 ecosystem-based management approach to ad-
 16 dress current and future ocean and coastal
 17 challenges;

18 (B) coordination and increased efficiency
 19 of ocean governance;

1 (C) a strengthened National Oceanic and
2 Atmospheric Administration to enhance its abil-
3 ity to fulfill its core missions; and

4 (D) the need for a dedicated source of
5 funds for improved management and under-
6 standing of ocean and coastal resources.

7 (4) Consistent with customary international
8 law, the United States exercises sovereign rights
9 over ocean resources within United States ocean wa-
10 ters.

11 (5) These ocean resources are the property of
12 the people of the United States, are held in trust for
13 them by Federal, State, local, and tribal govern-
14 ments, and should be managed to preserve the full
15 range of their benefits for present and future gen-
16 erations.

17 (6) Knowledge of the world's oceans is critically
18 important to the operations of the United States
19 Armed Forces, particularly the Navy and Coast
20 Guard operations, and therefore to the national se-
21 curity of the United States.

22 (7) Marine, terrestrial, and atmospheric sys-
23 tems are interdependent, requiring that policy, infor-
24 mation transfer, and the management of human ac-
25 tivities be coordinated across systems.

1 (8) Healthy and productive coastal and marine
2 ecosystems are the keys to securing the full range of
3 benefits from ocean resources, including important
4 economic uses such as productive fisheries, for the
5 people of the United States.

6 (9) A variety of threats and practices have
7 caused dramatic declines in the health and produc-
8 tivity of coastal and marine ecosystems of the
9 United States. Among the major threats to marine
10 ecosystem health are—

11 (A) global climate change;

12 (B) chemical, nutrient, and biological pol-
13 lution;

14 (C) unwise land use and coastal develop-
15 ment;

16 (D) habitat damage;

17 (E) overfishing;

18 (F) bycatch; and

19 (G) invasive species.

20 (10) These threats are exacerbated by the legal
21 and geographic fragmentation of authority over
22 ocean space and ocean resources.

23 (11) Activities harming coastal and marine eco-
24 systems jeopardize the economies and social struc-

1 ture of coastal communities dependent on these re-
2 sources.

3 (12) Healthy marine ecosystems provide more
4 goods and services, such as seafood and tourism op-
5 portunities, than degraded marine ecosystems.

6 (13) While there is a plethora of laws, govern-
7 ment agencies, and programs dealing with coastal
8 resources and ocean resources, activities thereunder
9 are poorly coordinated and do not constitute a uni-
10 fied and comprehensive public policy toward the
11 ocean waters and resources.

12 (14) To better enable the various levels of gov-
13 ernment with authority over coastal and ocean wa-
14 ters, habitats, and resources, and ocean resources to
15 fulfill their public trust responsibilities, a unified na-
16 tional oceans policy is needed to govern the range of
17 human activities affecting the health and produc-
18 tivity of marine ecosystems.

19 **SEC. 3. PURPOSE.**

20 The purpose of this Act is to secure, for present and
21 future generations of people of the United States, the full
22 range of ecological, economic, educational, social, cultural,
23 nutritional, and recreational benefits of healthy marine
24 ecosystems, by—

1 (1) establishing a comprehensive national
2 oceans policy regarding all covered actions that may
3 significantly affect United States ocean waters and
4 ocean resources;

5 (2) requiring covered actions to be consistent
6 with the policies and standards of this Act;

7 (3) setting clear standards against which com-
8 pliance with the national oceans policy can be meas-
9 ured;

10 (4) providing standards through which compli-
11 ance with this Act can be assured;

12 (5) promoting ecologically sustainable ocean re-
13 source use and management by strengthening and
14 empowering ocean governance on regional and Fed-
15 eral levels;

16 (6) promoting ecosystem-based approaches to
17 management of ocean waters and resources;

18 (7) enhancing responsible ocean stewardship
19 through education, information collection, and cit-
20 izen involvement; and

21 (8) establishing a ocean and great lakes con-
22 servation trust fund to support the purposes and
23 policies of this Act.

24 **SEC. 4. DEFINITIONS.**

25 In this Act:

1 (1) UNITED STATES OCEAN WATERS OR
2 OCEANS.—The term “United States ocean waters”
3 or “oceans” means the zone extending from the
4 baseline from which the breadth of the United
5 States territorial sea is measured to the extent of
6 the Exclusive Economic Zone as specified in Presi-
7 dential Proclamation Number 5030, dated March
8 10, 1983, including the territorial waters of the
9 Great Lakes and the waters of the continental shelf
10 to which the United States is granted sovereign
11 rights under international law.

12 (2) COASTAL WATERS.—The term “coastal wa-
13 ters” means the waters within the coastal zone as
14 defined in section 304 of the Coastal Zone Manage-
15 ment Act of 1972 (16 U.S.C. 1453), which includes
16 such waters as bays and estuaries.

17 (3) OCEAN RESOURCES OR COASTAL RE-
18 SOURCES.—The term “ocean resources” or “coastal
19 resources” means any living, nonliving, or cultural
20 amenity in United States ocean waters or coastal
21 waters.

22 (4) COVERED ACTION.—The term “covered ac-
23 tion” means any activity affecting United States
24 ocean or coastal waters or resources, that is author-

1 ized (including the issuance of a Federal license or
2 permit), carried out, or funded by a Federal agency.

3 (5) ADMINISTRATION.—The term “Administra-
4 tion” means the National Oceanic and Atmospheric
5 Administration provided for in section 201.

6 (6) ADMINISTRATOR.—The term “Adminis-
7 trator” means the Administrator of the National
8 Oceanic and Atmospheric Administration.

9 (7) ADVISOR.—The term “Advisor” means the
10 National Oceans Advisor appointed under section
11 301.

12 (8) FUNCTION.—The term “function”, when
13 used in reference to a function of a government
14 agency or official, includes authorities, powers,
15 rights, privileges, immunities, programs, projects,
16 activities, duties, and responsibilities.

17 (9) BIOLOGICAL DIVERSITY.—The term “bio-
18 logical diversity” means a collection of genomes, spe-
19 cies, and ecosystems occurring in a geographically
20 defined region.

21 (10) ECOLOGICALLY SUSTAINABLE.—The term
22 “ecologically sustainable” means capable of main-
23 taining biological diversity and ecosystem structure
24 and functioning from one human generation to the

1 next, so as not to deny future generations the goods
2 and services that healthy marine ecosystems provide.

3 (11) MARINE.—The term “marine” includes of
4 or relating to United States ocean and coastal wa-
5 ters.

6 (12) MARINE ECOSYSTEM HEALTH AND
7 HEALTH OF MARINE ECOSYSTEMS.—Each of the
8 terms “marine ecosystem health” and “health of
9 marine ecosystems” means the ability of a marine
10 ecosystem to support and maintain a productive and
11 resilient community of organisms, having a species
12 composition, diversity, and functional organization
13 resulting from the natural habitat of the region,
14 such that it provides a complete range of ecological
15 benefits, including—

16 (A) a complete diversity of native species
17 and habitats wherein each native species is able
18 to maintain an abundance, population struc-
19 ture, and distribution supporting its ecological
20 and evolutionary functions and processes; and

21 (B) a physical, chemical, geological, and
22 microbial environment that is supportive of the
23 requirements of this paragraph.

24 (13) HEALTHY MARINE ECOSYSTEM.—The term
25 “healthy marine ecosystem” means a marine eco-

1 system with the ability to support and maintain a
2 productive and resilient community of organisms,
3 having a species composition, diversity, and func-
4 tional organization resulting from the natural habi-
5 tat of the region, such that it provides a complete
6 range of ecological benefits, including—

7 (A) a complete diversity of native species
8 and habitats wherein each native species is able
9 to maintain an abundance, population struc-
10 ture, and distribution supporting its ecological
11 and evolutionary functions and processes; and

12 (B) a physical, chemical, geological, and
13 microbial environment that is supportive of the
14 requirements of this paragraph.

15 (14) ECOSYSTEM-BASED MANAGEMENT.—The
16 term “ecosystem-based management” means an inte-
17 grated approach to management that—

18 (A) considers the entire ecosystem, includ-
19 ing humans;

20 (B) has as its goal the maintenance of eco-
21 systems in a healthy, productive, and resilient
22 condition so that they can provide the services
23 humans want and need;

24 (C) accounts for the interactions among
25 species, activities, and sectors of management;

1 (D) considers the cumulative impacts of
2 different sectors;

3 (E) emphasizes the protection of ecosystem
4 structure, functioning, and key processes;

5 (F) is place-based in focusing on a specific
6 ecosystem and the range of activities affecting
7 it;

8 (G) explicitly accounts for the inter-
9 connectedness within systems, recognizing the
10 importance of interactions between many target
11 species or key services and other non-target
12 species;

13 (H) acknowledges interconnectedness
14 among systems, such as between air, land, and
15 sea; and

16 (I) integrates ecological, social, economic,
17 and institutional perspectives, recognizing their
18 strong interdependences.

19 (15) IMPORTANT ECOLOGICAL AREA.—The term
20 “Important Ecological Area” means an area that
21 contributes significantly to the health of the local or
22 larger marine ecosystem, such as areas that are crit-
23 ical habitats because they are breeding, feeding,
24 spawning or nursery grounds for one or more species

1 and/or are especially unique or sensitive marine eco-
2 systems.

3 (16) FEDERAL AGENCY.—The term “Federal
4 agency” means any department, agency, or instru-
5 mentality of the United States.

6 (17) REGIONAL OCEAN PARTNERSHIPS.—The
7 term “Regional Ocean Partnerships” means such a
8 council established by the Administrator under sec-
9 tion 402.

10 (18) OCEAN REGION.—The term “ocean re-
11 gion” means such a region designated under section
12 402(b).

13 (19) COASTAL STATE.—The term “coastal
14 State”—

15 (A) means a State of the United States in,
16 or bordering on, the Atlantic, Pacific, or Arctic
17 Ocean, the Gulf of Mexico, Long Island Sound,
18 or one or more of the Great Lakes; and

19 (B) includes Puerto Rico, the Virgin Is-
20 lands, Guam, the Commonwealth of the North-
21 ern Mariana Islands, and the Trust Territories
22 of the Pacific Islands, and American Samoa.

23 (20) COASTAL POLITICAL SUBDIVISION.—The
24 term “coastal political subdivision” means a political
25 subdivision of a coastal State all or part of which

1 political subdivision is within the coastal zone (as de-
2 fined in section 304 of the Coastal Zone Manage-
3 ment Act of 1972 (16 U.S.C. 1453)).

4 (21) COASTAL POPULATION DENSITY.—The
5 term “coastal population density” means the popu-
6 lation as determined by the most recent census data
7 in the State’s coastal zone as determined pursuant
8 to the Coastal Zone Management Act of 1972 (16
9 U.S.C. 1451 et seq.).

10 (22) OCEAN STEWARDSHIP.—The term “ocean
11 stewardship” means the careful and responsible
12 management of coastal and ocean resources by cur-
13 rent generations such that it ensures future genera-
14 tions can obtain the full range of benefits from those
15 resources.

16 (23) PRECAUTIONARY APPROACH.—The term
17 “precautionary approach” means the approach used
18 to ensure the health and sustainability of marine
19 ecosystems for the benefit of current and future gen-
20 erations, in which lack of full scientific certainty
21 shall not be used as a justification for postponing
22 action to prevent environmental degradation.

1 **TITLE I—ESTABLISHMENT OF A**
2 **NATIONAL OCEANS POLICY**

3 **SEC. 101. NATIONAL OCEANS POLICY.**

4 (a) POLICY.—It is the continuing policy of the United
5 States to protect, maintain, and restore the health of ma-
6 rine ecosystems in order to fulfill the ecological, economic,
7 educational, social, cultural, nutritional, recreational and
8 other requirements of current and future generations of
9 Americans.

10 (b) NATIONAL STANDARDS.—

11 (1) IN GENERAL.—To the fullest extent pos-
12 sible, the policies, regulations, and Public Laws of
13 the United States shall be interpreted and adminis-
14 tered by any Federal agency in accordance with the
15 policy in subsection (a) for any covered actions.

16 (2) COVERED ACTIONS.—

17 (A) Covered actions affecting United
18 States ocean waters or ocean resources must be
19 conducted in a manner that is consistent with
20 the protection, maintenance, and restoration of
21 healthy ecosystems.

22 (B) Any covered action that may signifi-
23 cantly affect United States ocean waters or
24 ocean resources may proceed only if the covered

1 action, individually and in combination with
2 other covered actions—

3 (i) is not likely to significantly harm
4 the health of any marine ecosystem; and

5 (ii) is not likely to significantly im-
6 pede the restoration of the health of any
7 marine ecosystem.

8 (C) In the case of incomplete or inconclu-
9 sive information as to the effects of a covered
10 action on United States ocean waters or ocean
11 resources, decisions shall be made using the
12 precautionary approach to ensure protection,
13 maintenance, and restoration of healthy marine
14 ecosystems.

15 (D) Adverse social and economic impacts
16 on communities that are significantly resource
17 dependent shall be minimized to the extent
18 practicable, while remaining consistent with
19 other provisions of this Act that include the
20 other national standards under this subsection.
21 Consideration of impacts on resource dependent
22 communities shall include, but not be limited to,
23 cumulative impacts.

24 (c) REGULATIONS.—Within 1 year after the date of
25 enactment of this Act, the Administrator, in consultation

1 with the Committee on Ocean Policy, shall issue such reg-
2 ulations as are necessary to implement this section of the
3 Act.

4 (d) IMPLEMENTATION.—Each Federal agency that
5 undertakes, authorizes, or funds a covered action shall en-
6 sure, in consultation with and with the assistance of the
7 Administrator, that any covered action by such agency
8 complies with the policy and national standards in sub-
9 section (a) and (b) of this section, in accordance with the
10 following schedule:

11 (1) Not less than 180 days prior to taking final
12 agency action on a covered action, the head of each
13 Federal agency shall certify whether the action com-
14 plies with the policy and national standards, and
15 submit the certification to the Administrator for re-
16 view.

17 (2) Not later than 90 days after receipt of the
18 agency's certification under subparagraph (a), the
19 administrator shall determine whether he concurs
20 with the agency's finding and provide the head of
21 such agency a written analysis documenting the
22 basis for the administrator's determination. this
23 analysis shall include—

1 (A) a summary of the information on
2 which the Administrator's determination is
3 based;

4 (B) a detailed assessment of the effects the
5 covered action has on marine ecosystem health;
6 and

7 (C) recommendations to remedy any iden-
8 tified deficiencies.

9 (e) SAVINGS CLAUSE.—Nothing in this Act shall be
10 construed to supersede or diminish the authority and re-
11 sponsibility, under any other provision of law, of any Fed-
12 eral agency or State, or any political subdivision thereof,
13 to establish or implement more stringent requirements to
14 conserve ocean resources.

15 (f) JUDICIAL REVIEW.—Regulations promulgated by
16 the Administrator and determinations on covered actions,
17 under this section of the Act, shall be subject to judicial
18 review to the extent authorized by, and in accordance with,
19 chapter 7 of title 5, United States Code.

1 **TITLE II—NATIONAL OCEANIC**
2 **AND ATMOSPHERIC ADMINIS-**
3 **TRATION ORGANIC ACT**

4 **SEC. 201. NATIONAL OCEANIC AND ATMOSPHERIC ADMIN-**
5 **ISTRATION.**

6 (a) IN GENERAL.—There shall be an agency known
7 as the National Oceanic and Atmospheric Administration.
8 Reorganization Plan No. 4 of 1970 shall have no further
9 force or effect.

10 (b) MISSION.—The mission of the administration is
11 to—

12 (1) act as the nonmilitary Federal agency with
13 responsibility for providing oversight of all United
14 States coastal, ocean, and Great Lakes waters and
15 resources;

16 (2) understand the systems of the Earth's
17 oceans and atmosphere and predict changes in the
18 Earth's oceans and atmosphere and the effects of
19 such changes on the land environment;

20 (3) conserve and manage coastal, ocean, and
21 Great Lakes resources and ecosystems to meet na-
22 tional economic, social, and environmental needs,
23 and promote the ecologically sustainable use of these
24 resources so such future needs of the nation can be
25 met;

1 (4) protect, maintain, and restore the health of
2 coastal, ocean, and Great Lakes ecosystems; and

3 (5) educate the public about these topics.

4 (c) FUNCTIONS.—The functions of the Administra-
5 tion, through which it shall carry out the policy and stand-
6 ards set forth in section 101, shall include—

7 (1) conducting and supporting basic and ap-
8 plied research, development, and technology transfer
9 as may be necessary to carry out the mission de-
10 scribed in subsection (b);

11 (2) protecting, restoring, and maintaining the
12 health and sustainability of the coasts, oceans, and
13 Great Lakes through ecosystem-based research, de-
14 velopment, demonstration, and management;

15 (3) collecting, through observation and other
16 means, communicating, analyzing, processing, and
17 disseminating comprehensive scientific data and in-
18 formation about weather and climate, solar and geo-
19 physical events on the Sun and in the space environ-
20 ment, and about the coasts, oceans, Great Lakes,
21 upper reaches of estuaries, and hydrologic systems;

22 (4) operating and maintaining a system for the
23 storage, retrieval, and dissemination of data relating
24 to weather and climate, solar and geophysical events
25 on the Sun and in the space environment, and about

1 the coasts, oceans, Great Lakes, upper reaches of es-
2 tuaries, and hydrologic systems;

3 (5) using observational data and technologies
4 developed by other Federal agencies to improve the
5 Administration's operations;

6 (6) coordinating efforts of Federal agencies
7 with respect to meteorological and oceanic services,
8 and acting as a focal point regarding oceans re-
9 search and management;

10 (7) using the best available technology to ex-
11 plore and map the coastal, ocean, and Great Lakes
12 waters of the United States, and work collabo-
13 ratively with other countries to use the best available
14 technology to explore and map their coastal and
15 ocean waters and other significant water bodies, in
16 order to better understand ocean dynamics;

17 (8) issuing weather, water, climate, space
18 weather, tsunami, and other forecasts and warnings
19 related to Earth's oceans and atmosphere as to en-
20 hance society's preparedness for responding to such
21 weather-related conditions;

22 (9) working with other Federal agencies, State,
23 tribal, and local governments, and the public to im-
24 prove regional coordination and integration and pro-

1 mote ecosystem-based management of coasts,
2 oceans, and Great Lakes;

3 (10) understanding the science of Earth's cli-
4 mate and the impact of related systems on climate
5 variability and change, and undertaking research
6 and development to enhance society's ability to plan
7 for and respond to climate variability and change;

8 (11) administering public outreach and edu-
9 cation programs and services to increase scientific
10 and environmental literacy about—

11 (A) coasts, oceans, Great Lakes, upper
12 reaches of estuaries, and hydrologic systems;

13 (B) weather and climate;

14 (C) solar and geophysical events on the
15 Sun and in the space environment; and

16 (D) direct and indirect human impacts on
17 the systems of Earth's oceans, atmosphere, and
18 related systems;

19 (12) providing, as appropriate and in coopera-
20 tion with the Secretary of State, representation at
21 all international meetings and conferences relating
22 to the mission of the Administration, including mete-
23 orological, climate, and Earth and ocean observing
24 issues;

1 (13) any other function assigned to the Admin-
2 istration by law; and

3 (14) such other functions as are necessary to
4 accomplish the mission described in subsection (b).

5 **SEC. 202. ADMINISTRATION LEADERSHIP.**

6 (a) UNDER SECRETARY OF COMMERCE FOR OCEANS
7 AND ATMOSPHERE AND ADMINISTRATOR.—

8 (1) IN GENERAL.—There shall be, as the Ad-
9 ministrator of the Administration, an Under Sec-
10 retary of Commerce for Oceans and Atmosphere.
11 The Administrator shall be appointed by the Presi-
12 dent, by and with the advice and consent of the Sen-
13 ate. The term of office of any individual appointed
14 after the date of enactment of this Act to serve as
15 Administrator shall be 6 years, with eligibility for re-
16 appointment.

17 (2) FUNCTIONS.—The Administrator, as head
18 of the Administration, shall be responsible for—

19 (A) ensuring that the functions of the Ad-
20 ministration under section 201(c) are fulfilled;

21 (B) general management and supervision
22 of the operations of the Administration;

23 (C) policy development and guidance;

24 (D) formulation, guidance, and execution
25 of budget for the Administration, including sub-

mission of annual budget requests to the Director of the Office of Management and Budget;

(E) serving as the Department of Commerce official for all ocean and atmosphere issues with other elements of the Department of Commerce and with other Federal agencies, State, tribal, and local governments, and the public; and

(F) such other duties with respect to the Administration as the Secretary may prescribe.

(3) DELEGATION OF AUTHORITY.—The Administrator may, except as otherwise prohibited by law—

(A) delegate any functions, powers, or duties of the Administrator to such officers and employees of the Administration as the Administrator may designate; and

(B) authorize such successive redelegations of such functions, powers, or duties within the Administration as the Administrator considers necessary or appropriate.

(4) PAY.—The Administrator shall be paid at the rate of basic pay for level III of the Executive Schedule under section 5314 of title 5, United States Code.

1 (5) AUTHORITIES.—

2 (A) IN GENERAL.—As may be necessary or
3 proper to carry out the Administration’s func-
4 tions under this Act or as otherwise provided by
5 law, the Administrator may—

6 (i) promulgate rules and regulations;

7 (ii) hire personnel, including the selec-
8 tion, appointment, distribution, super-
9 vision, compensation, and separation of
10 personnel;

11 (iii) enter into and perform contracts,
12 leases, grants, and cooperative agreements
13 with Federal agencies, State and local gov-
14 ernments, regional and interstate agencies,
15 Indian tribes, international organizations,
16 foreign governments, educational institu-
17 tions, research institutions, nonprofit orga-
18 nizations, and commercial organizations;

19 (iv) use, with their consent, and with
20 or without reimbursement, the services,
21 equipment, personnel, and facilities of
22 other departments, agencies, and instru-
23 mentalities of the Federal Government;

1 (v) conduct education and outreach in
2 direct support of the mission described in
3 section 201(b);

4 (vi) take reasonable steps to ensure
5 that information systems and databases of
6 the Administration are compatible with
7 each other and with appropriate databases
8 of other agencies;

9 (vii) procure services of experts and
10 consultants in accordance with section
11 3109 of title 5, United States Code; and

12 (viii) prescribe external affairs, includ-
13 ing legal, legislative, and public affairs.

14 (B) EXCEPTION.—The authorities con-
15 ferred on the Administrator by this paragraph
16 do not include the authority to contract for
17 services that are an inherently governmental
18 function as defined in section 5 of the Federal
19 Activities Inventory Reform Act of 1998 (31
20 U.S.C. 501 note).

21 (b) ASSISTANT SECRETARY FOR OCEANS AND AT-
22 MOSPHERE AND DEPUTY ADMINISTRATOR.—

23 (1) IN GENERAL.—There shall be, as Deputy
24 Administrator of the Administration, an Assistant
25 Secretary of Commerce for Oceans and Atmosphere.

1 The Deputy Administrator shall be appointed by the
2 President, by and with the advice and consent of the
3 Senate. The Deputy Administrator shall be the Ad-
4 ministrator's first assistant for purposes of sub-
5 chapter III of chapter 33 of title 5, United States
6 Code.

7 (2) FUNCTIONS.—The deputy administrator
8 shall—

9 (A) serve as an advisor to the Adminis-
10 trator on all program and policy issues;

11 (B) perform such functions and exercise
12 such powers as the Administrator may pre-
13 scribe; and

14 (C) act as Administrator during the ab-
15 sence or disability of the Administrator or in
16 the event of a vacancy in the office of Adminis-
17 trator.

18 (3) PAY.—The Assistant Secretary shall be
19 paid at the rate of basic pay for level IV of the Ex-
20 ecutive Schedule.

21 (c) DEPUTY UNDER SECRETARY FOR OCEANS AND
22 ATMOSPHERE AND CHIEF OPERATING OFFICER.—

23 (1) IN GENERAL.—There shall, be as the Chief
24 Operating Officer of the Administration, a Deputy
25 Under Secretary of Commerce for Oceans and At-

1 mosphere. The Deputy Under Secretary shall be ap-
 2 pointed by the Secretary. The position of Deputy
 3 Under Secretary shall be a Senior Executive Service
 4 position authorized under section 3133 of title 5,
 5 United States Code.

6 (2) FUNCTIONS.—The Deputy Under Secretary
 7 shall—

8 (A) ensure the timely and effective imple-
 9 mentation of Administration policies and objec-
 10 tives;

11 (B) be responsible for all aspects of the
 12 Administration's operations and management,
 13 including budget, financial operations, informa-
 14 tion services, facilities, human resources, pro-
 15 curements, and associated services;

16 (C) act as Assistant Secretary during the
 17 absence or disability of the Assistant Secretary
 18 or in the event of a vacancy in such position;
 19 and

20 (D) perform such other duties as the Ad-
 21 ministrator shall prescribe.

22 (d) DEPUTY ASSISTANT SECRETARIES.—

23 (1) IN GENERAL.—There may be in the Admin-
 24 istration no more than three Deputy Assistant Sec-
 25 retaries.

1 (2) FUNCTIONS.—The functions of the Deputy
2 Assistant Secretaries shall be designated by the Sec-
3 retary and must be consistent with at least one of
4 the three primary functions of the Administration—

5 (A) assessment, prediction, and operations;

6 (B) management, especially ecosystem-
7 based; and

8 (C) research and education.

9 (3) QUALIFICATIONS.—The Deputy Assistant
10 Secretaries shall be appointed by the Secretary from
11 among individuals who are qualified by reason of
12 background and experience to direct the implementa-
13 tion and administration of the functions for which
14 they are responsible. The positions of Deputy Assist-
15 ant Secretaries shall be Senior Executive Service po-
16 sitions authorized under section 3133 of title 5,
17 United States Code.

18 (e) ASSISTANT ADMINISTRATORS.—

19 (1) IN GENERAL.—There shall be in the Admin-
20 istration no more than five Assistant Administrators
21 who shall head one of each of the operating offices
22 of the Administration, overseeing the programs and
23 activities of each such office.

24 (2) FUNCTIONS.—The functions of the Assist-
25 ant Administrators shall be specified by the Admin-

1 istrator to fulfill the duties of the offices they over-
2 see and must be consistent with at least one of the
3 three primary functions of the Administration, while
4 minimizing overlap of such functions between them,
5 including—

6 (A) assessment, prediction, and operations;

7 (B) management, especially ecosystem-
8 based; and

9 (C) research and education.

10 (3) QUALIFICATIONS.—Each Assistant Admin-
11 istrator shall be appointed by the Administrator
12 from among individuals who are qualified by reason
13 of background and experience to direct the imple-
14 mentation and administration of the functions for
15 which they are responsible shall be designated by the
16 Secretary and must be consistent with at least one
17 of the three primary functions of the Administra-
18 tion—

19 (A) assessment, prediction, and operations;

20 (B) management, especially ecosystem-
21 based; and

22 (C) research and education.

23 (f) GENERAL COUNSEL.—

24 (1) IN GENERAL.—There shall be in the Admin-
25 istration a General Counsel. The General Counsel

1 shall be appointed by the Secretary. The General
2 Counsel shall be paid at the rate of basic pay for
3 level V of the Executive Schedule.

4 (2) FUNCTIONS.—The General Counsel shall—

5 (A) serve as the chief legal officer of the
6 Administration for all legal matters that arise
7 in connection with the conduct of the functions
8 of the Administration; and

9 (B) perform such other functions and exer-
10 cise such powers as the Administrator may pre-
11 scribe.

12 (g) CONTINUATION OF SERVICE.—Any individual
13 serving on the effective date of this Act in a position pro-
14 vided for in this Act may continue to serve in that position
15 until a successor is appointed under this Act. Nothing in
16 this Act shall be construed to require the appointment of
17 a successor under this Act sooner than would have been
18 required under law as in effect before the effective date
19 of this Act.

20 **SEC. 203. NATIONAL WEATHER SERVICE.**

21 (a) IN GENERAL.—The Secretary shall maintain
22 within the Administration the National Weather Service.

23 (b) MISSION.—The mission of the National Weather
24 Service is to provide weather, water, climate, tsunami, and
25 space weather forecasts and warnings for the United

1 States, its territories, adjacent waters, and ocean areas for
2 the protection of life and property and the enhancement
3 of the national economy. In carrying out the mission of
4 the National Weather Service, the Administrator shall en-
5 sure that the National Weather Service—

6 (1) provides timely and accurate weather,
7 water, climate, tsunami, and space weather fore-
8 casts; and

9 (2) provides timely and accurate warnings of
10 natural hazards related to weather, water, climate,
11 and tsunamis, and of space weather hazards.

12 (c) FUNCTIONS.—To accomplish the mission de-
13 scribed in section 201(b), and in addition to the functions
14 described in section 201(e), the functions of the National
15 Weather Service shall include—

16 (1) maintaining a network of local weather fore-
17 cast offices;

18 (2) maintaining a network of observation sys-
19 tems to collect weather and climate data;

20 (3) operating national centers to deliver guid-
21 ance, forecasts, warnings, and analysis about weath-
22 er, water, climate, tsunami, and space weather phe-
23 nomena for the Administration and the public;

1 (4) providing information to Federal agencies
2 and other organizations responsible for emergency
3 preparedness and response as required by law;

4 (5) conducting and supporting applied research
5 to facilitate the rapid incorporation of weather and
6 climate science advances into operational tools; and

7 (6) other functions to serve the mission of the
8 National Weather Service described in subsection
9 (b).

10 **SEC. 204. RESOURCE MANAGEMENT.**

11 (a) IN GENERAL.—The Secretary shall maintain
12 within the Administration programs to protect, maintain
13 and restore the health and sustainability of coastal, ocean,
14 and Great Lakes resources through ecosystem-based man-
15 agement.

16 (b) FUNCTIONS.—To accomplish the mission de-
17 scribed in section 201(b), and in addition to the functions
18 described in section 201(c), the resource management as-
19 pects of the Administration shall take an ecosystem-based
20 approach to fulfilling its responsibilities with respect to—

21 (1) management of domestic and international
22 fisheries for increased sustainability;

23 (2) conservation of marine mammals, protected
24 species, coral reefs, and other living marine re-
25 sources;

1 (3) protection and management of ocean and
2 coastal areas, including areas designated under the
3 National Marine Sanctuary, National Estuarine Re-
4 search Reserve, and National Monument systems,
5 other managed areas, areas considered essential fish
6 habitat, and other important ecological areas as ap-
7 propriate;

8 (4) management of coastal zones and water-
9 sheds;

10 (5) response to, mitigation of, and adequate
11 compensation for pollution events, including oil and
12 other hazardous waste spills;

13 (6) restoration of degraded coastal and ocean
14 areas, including through a community-based ap-
15 proach;

16 (7) partnerships with other Federal agencies
17 and with States and communities to address the
18 issues of land-based activities and their impact on
19 the ocean environment;

20 (8) mitigation of the impacts of natural and
21 manmade hazards;

22 (9) control and minimization of invasive species
23 proliferation and marine debris;

24 (10) assessment, monitoring, and promotion of
25 the long-term health, productivity, and diversity of

1 the coasts, oceans, and Great Lakes, and their nat-
2 ural resources; and

3 (11) such other ecosystem-based resource man-
4 agement functions to serve the mission of the Ad-
5 ministration as the Administrator may prescribe.

6 **SEC. 205. OPERATIONS AND SERVICES.**

7 (a) IN GENERAL.—The Secretary shall maintain
8 within the Administration programs to support efforts, on
9 a continuing basis, to collect data and provide information
10 and products regarding satellites, observations, and coast-
11 al, ocean and Great Lakes information.

12 (b) FUNCTIONS.—To accomplish the mission de-
13 scribed in section 201(b), and in addition to the functions
14 described in section 201(c), the operations and service
15 functions of the Administration include—

16 (1) acquiring, managing, and operating coastal,
17 ocean, and Great Lakes observing systems;

18 (2) contributing to the operation of a global
19 Earth-observing system;

20 (3) integrating Administration remote sensing
21 and in situ assets that provide critical data needed
22 to support the mission of the Administration, and
23 providing that data to decision-makers and the pub-
24 lic;

1 (4) developing, acquiring, and managing oper-
2 ational environmental satellite programs and associ-
3 ated ground control and data acquisition and deliv-
4 ery facilities to support the mission of the Adminis-
5 tration;

6 (5) managing and distributing atmospheric,
7 geophysical, and marine data and data products for
8 the Administration through national environmental
9 data centers;

10 (6) providing for long-term stewardship of envi-
11 ronmental data, products, and information via data
12 processing, storage, reanalysis, reprocessing, and ar-
13 chive facilities;

14 (7) issuing licenses for private remote sensing
15 space systems under the Land Remote Sensing Pol-
16 icy Act of 1992;

17 (8) administering a national water level obser-
18 vation network, which shall include monitoring of
19 the Great Lakes;

20 (9) providing charts and other information for
21 safe navigation of the oceans and inland waters, as
22 provided by law;

23 (10) maintaining a fleet of ships and aircraft to
24 support the mission of the Administration; and

1 (11) such other operations and services func-
2 tions to serve the mission of the Administration as
3 the Administrator may prescribe.

4 **SEC. 206. RESEARCH AND TECHNOLOGY DEVELOPMENT.**

5 (a) IN GENERAL.—The Secretary shall maintain
6 within the Administration programs to conduct and sup-
7 port research and the development of technologies relating
8 to weather, climate, and the coasts, oceans, and Great
9 Lakes.

10 (b) FUNCTIONS.—To accomplish the mission de-
11 scribed in section 201(b), and in addition to the functions
12 described in section 201(c), the research and development
13 functions of the Administration shall include—

14 (1) conducting and supporting research and
15 technology development to improve the Administra-
16 tion’s capabilities to collect, through observation and
17 otherwise, communicate, analyze, process, and dis-
18 seminate comprehensive scientific data and informa-
19 tion about weather, climate, and the coasts, oceans,
20 and Great Lakes;

21 (2) improving ecological prediction and manage-
22 ment capabilities through ecosystem-based research
23 and technology development;

24 (3) contributing information on the Earth’s cli-
25 mate and related systems, obtained through research

1 and observation, that addresses questions con-
2 fronting policymakers, resources managers, and
3 other users;

4 (4) reducing uncertainty in projections of how
5 the Earth's climate and related systems may change
6 in the future;

7 (5) conducting and supporting research and de-
8 velopment of technology for exploration of the
9 oceans;

10 (6) maintaining a system of laboratories to per-
11 form the functions described in this subsection;

12 (7) supporting extramural peer-reviewed com-
13 petitive grant programs to assist the Administration
14 in performing the functions described in this sub-
15 section; and

16 (8) such other research and technology develop-
17 ment functions to serve the mission of the Adminis-
18 tration as the Administrator may prescribe.

19 **SEC. 207. EDUCATION AND OUTREACH.**

20 (a) IN GENERAL.—The Secretary shall maintain
21 within the Administration the Office of Education.

22 (b) MISSION.—The mission of the Office of Edu-
23 cation is to conduct and support education programs and
24 outreach activities related to oceans and atmosphere, and
25 to provide interagency and intra-agency coordination of

1 such programs and activities on the national, regional,
2 State, and local levels.

3 (c) FUNCTIONS.—To accomplish the mission de-
4 scribed in section 201(b), and in addition to the functions
5 described in section 201(c), the education and outreach
6 functions of the Administration, through the Office of
7 Education, shall include—

8 (1) fostering the public’s ability to understand
9 and integrate scientific information into consider-
10 ations of national environmental issues through edu-
11 cation and public outreach activities;

12 (2) informing the public about how the Earth’s
13 climate and related systems may change in the fu-
14 ture, based on the best available science;

15 (3) supporting and partnering with educational
16 institutions to foster ocean literacy and promote the
17 ocean workforce, especially minority-serving institu-
18 tions;

19 (4) support professional development and a pro-
20 gram for certification of individuals engaged in com-
21 mercial uses of ocean waters;

22 (5) create and implement effective approaches
23 to disseminate agency products and ocean informa-
24 tion to the general public, including improving ac-

1 cess to the Administration's educational resources;
2 and

3 (6) such other education and outreach functions
4 to serve the mission of the Administration as the
5 Administrator may prescribe.

6 **SEC. 208. SCIENCE ADVISORY BOARD.**

7 (a) IN GENERAL.—There shall be within the Admin-
8 istration a Science Advisory Board, which shall provide
9 such scientific advice as may be requested by the Adminis-
10 trator, the Committee on Commerce, Science, and Trans-
11 portation of the Senate, or the Committee on Science or
12 on Resources of the House of Representatives.

13 (b) PURPOSE.—The purpose of the Science Advisory
14 Board is to advise the Administrator and Congress on
15 long-range and short-range strategies for research, edu-
16 cation, and the application of science to coastal, ocean,
17 and Great Lakes resource management and environmental
18 assessment and prediction.

19 (c) MEMBERS.—

20 (1) IN GENERAL.—The Science Advisory board
21 shall be composed of at least 15 members appointed
22 by the administrator. Each member of the board
23 shall—

24 (A) be qualified by education, training, and
25 experience to evaluate scientific and technical

1 information on matters referred to the Board
2 under this section; and

3 (B) collectively represent a balanced group
4 of experts reflecting the full breadth of the Ad-
5 ministration's areas of responsibility.

6 (2) TERMS OF SERVICE.—Members shall be ap-
7 pointed for 3-year terms, renewable once, and shall
8 serve at the discretion of the Administrator. An indi-
9 vidual serving a term as a member of the Science
10 Advisory Board on the date of enactment of this Act
11 may complete that term, and may be reappointed
12 once for another term of 3 years unless the term
13 being served on such date of enactment is the second
14 term served by that individual. Vacancy appoint-
15 ments shall be for the remainder of the unexpired
16 term of the vacancy, and an individual so appointed
17 may subsequently be appointed for 2 full 3-year
18 terms if the remainder of the unexpired term is less
19 than one year.

20 (3) CHAIRPERSON.—The Administrator shall
21 designate a chairperson from among the members of
22 the Board.

23 (4) APPOINTMENT.—Members of the Science
24 Advisory Board shall be appointed as special Gov-
25 ernment employees, within the meaning given such

1 term in section 202(a) of title 18, United States
2 Code, and subject to the ethical standards therein.

3 (d) ADMINISTRATIVE PROVISIONS.—

4 (1) REPORTING.—The Science Advisory Board
5 shall report to the Administrator and the appro-
6 priate requesting party.

7 (2) ADMINISTRATIVE SUPPORT.—The Adminis-
8 trator shall provide administrative support to the
9 Science Advisory Board.

10 (3) MEETINGS.—The Science Advisory Board
11 shall meet at least twice each year, and at other
12 times at the call of the Administrator or the Chair-
13 person.

14 (4) COMPENSATION AND EXPENSES.—A mem-
15 ber of the Science Advisory Board shall not be com-
16 pensated for service on such board, but may be al-
17 lowed travel expenses, including per diem in lieu of
18 subsistence, in accordance with subchapter I of
19 chapter 57 of title 5, United States Code.

20 (5) SUBCOMMITTEES.—The Science Advisory
21 Board may establish such subcommittees of its
22 members as may be necessary. The Science Advisory
23 Board may establish task forces and working groups
24 consisting of Board members and outside experts as
25 may be necessary.

1 (e) FEDERAL ADVISORY COMMITTEE ACT.—

2 (1) IN GENERAL.—The Federal Advisory Com-
3 mittee Act (5 App. U.S.C.) shall not apply to the
4 Science Advisory Board.

5 (2) COMPLIANCE.—Notwithstanding paragraph
6 (1), the Science Advisory Board shall be appointed
7 and operate in a manner consistent with all provi-
8 sions of the Federal Advisory Committee Act with
9 respect to—

10 (A) the balance of its membership;

11 (B) provision of public notice regarding its
12 activities;

13 (C) open meetings; and

14 (D) public access to documents created by
15 Science Advisory Board.

16 **SEC. 209. REPORTS.**

17 (a) REPORT ON STATUS OF OCEAN ECOSYSTEMS
18 AND RESOURCES.—

19 (1) CONTENTS.—Not later than 2 years after
20 the date of enactment of this Act, the Administrator
21 shall develop a baseline report on the status and
22 condition of the ocean ecosystems and resources
23 under United States jurisdiction. Once every 3 years
24 thereafter, there shall be updates to the report. In
25 preparing the report, the Administrator shall consult

1 with the heads of other departments and agencies as
2 appropriate. The plan shall include—

3 (A) a description of the related activities of
4 the Administration to perform its functions
5 under section 201(c) during the period covered
6 by the report;

7 (B) an assessment of the status and condi-
8 tion of the health of ecosystems in United
9 States coastal, ocean, and Great Lakes waters;

10 (C) an analysis of past, current, and pro-
11 jected trends in the quality, management, and
12 utilization of United States coastal, ocean, and
13 Great Lakes waters and the effects of those
14 trends on the economic, social, educational, eco-
15 logical, and other needs of the United States;

16 (D) a review of the programs and covered
17 actions (including regulatory activities) of the
18 Federal Government, State and local govern-
19 ments, and nongovernmental entities or individ-
20 uals with particular reference to their effect on
21 coastal, ocean, and Great Lakes waters and on
22 the conservation, development, and utilization
23 of coastal, ocean, and Great Lakes resources;

24 (E) an analysis of whether the programs
25 and activities (including regulatory activities) of

1 the Administration fully implemented the na-
2 tional oceans policy under section 3 during the
3 period covered by the report; and

4 (F) a program for remedying the defi-
5 ciencies of existing programs and activities, in-
6 cluding recommendations for legislation and
7 funding priorities.

8 (2) TRANSMITTAL TO CONGRESS.—The Admin-
9 istrator shall transmit to the Committee on Com-
10 merce, Science, and Transportation of the Senate
11 and the Committee on Resources of the House of
12 Representatives the report, and subsequent reports,
13 as outlined in paragraph (1) upon completion.

14 (b) REPORT ON DATA MANAGEMENT, ARCHIVAL,
15 AND DISTRIBUTION.—

16 (1) CONTENTS.—Not later than 1 year after
17 the date of enactment of this Act, and once every 5
18 years thereafter, the Administrator shall do the fol-
19 lowing:

20 (A) Enter into an arrangement with the
21 National Academy of Sciences to review the en-
22 vironmental data and information systems of
23 the Administration and to provide recommenda-
24 tions to address any inadequacies identified by
25 the review. The review shall assess the ade-

quacy of the environmental data and information systems of the Administration to—

(i) provide adequate capacity to manage, archive and disseminate environmental information collected and processed, or expected to be collected and processed, by the Administration, including data gathered by other agencies that is processed or stored by the Administration;

(ii) establish, develop, and maintain information bases, including necessary management systems, which will provide for consistent, efficient, and compatible transfer and use of data;

(iii) develop effective interfaces among the environmental data and information systems of the Administration and other appropriate departments and agencies;

(iv) develop and use nationally accepted formats and standards for data collected by various national and international sources;

(v) integrate and interpret data from different sources to produce information that can be used by decision-makers in de-

1 veloping policies that effectively respond to
2 national and global environmental con-
3 cerns; and

4 (vi) reanalyze and reprocess the
5 archived data as better science is developed
6 to integrate diverse data sources.

7 (B) Develop a strategic plan, with respect
8 to the environmental data and information sys-
9 tems of the Administration, to—

10 (i) respond to each of the rec-
11 ommendations in the review conducted
12 under subparagraph (A);

13 (ii) set forth modernization and im-
14 provement objectives for an integrated na-
15 tional environmental data access and ar-
16 chive system for the 10-year period begin-
17 ning with the year in which the plan is
18 transmitted, including facility requirements
19 and critical new technology components
20 that would be necessary to meet the objec-
21 tives set forth;

22 (iii) propose specific Administration
23 programs and activities for implementing
24 the plan;

1 (iv) identify the data and information
2 management, reanalysis, reprocessing, ar-
3 chival, and distribution responsibilities of
4 the Administration with respect to other
5 Federal departments and agencies and
6 international organizations; and

7 (v) provide an implementation sched-
8 ule and estimate funding levels necessary
9 to achieve modernization and improvement
10 objectives.

11 (2) TRANSMITTAL TO CONGRESS.—Not later
12 than 18 months after the date of enactment of this
13 Act, the Administrator shall transmit to the Com-
14 mittee on Commerce, Science, and Transportation of
15 the Senate and the Committee on Science of the
16 House of Representatives the initial review and stra-
17 tegic plan developed under paragraph (1). Subse-
18 quent reviews and strategic plans developed under
19 paragraph (1) shall also be transmitted to those
20 committees upon completion.

21 (c) STRATEGIC PLAN FOR RESEARCH AND DEVELOP-
22 MENT.—

23 (1) CONTENTS.—Not later than 1 year after
24 the date of enactment of this Act, and once every 5
25 years thereafter, the Administrator shall develop a

1 strategic plan for research and development at the
2 Administration. The plan shall include—

3 (A) an assessment of the science and tech-
4 nology needs of the Administration based on
5 the Administration's operational requirements
6 and on input provided by external stakeholders
7 at the national, regional, State, and local levels;
8 and

9 (B) a strategic plan that assigns specific
10 programs within the administration the respon-
11 sibility to meet each need identified under sub-
12 paragraph (A) and that describes the extent to
13 which each need identified in subparagraph (A)
14 will be addressed through—

15 (i) intramural research;

16 (ii) extramural, peer-reviewed, com-
17 petitive grant programs; and

18 (iii) work done in cooperation with
19 other Federal agencies.

20 (2) NATIONAL ACADEMY OF SCIENCES RE-
21 VIEW.—The Administrator shall enter into an ar-
22 rangement with the National Academy of Sciences
23 for a review of the plan developed under paragraph
24 (1).

1 (3) TRANSMITTAL TO CONGRESS.—Not later
2 than 18 months after the date of enactment of this
3 Act, the Administrator shall transmit to the Com-
4 mittee on Commerce, Science, and Transportation of
5 the Senate and the Committee on Science of the
6 House of Representatives the initial strategic plan
7 developed under paragraph (1) and the review pre-
8 pared pursuant to paragraph (2). Subsequent stra-
9 tegic plans developed under paragraph (1) shall also
10 be transmitted to those committees upon completion.

11 (d) OTHER REPORTS.—

12 (1) The Administrator shall submit to Congress
13 other reports and written notifications as explicitly
14 described elsewhere in this Act.

15 (2) Nothing in this section shall be construed to
16 waive any other reporting required of the Adminis-
17 trator prior to enactment of this Act.

18 **SEC. 210. PUBLIC-PRIVATE PARTNERSHIPS.**

19 Not less than once every 5 years, the Secretary shall
20 develop and submit to Congress a policy that defines proc-
21 esses for making decisions about the roles of the Adminis-
22 tration, the private sector, and the academic community
23 in providing environmental information, products, tech-
24 nologies, and services. The first such submission shall be
25 completed not less than 3 years after the date of enact-

1 ment of this Act. At least 90 days before each submission
2 of the policy to Congress, the Secretary shall publish the
3 policy in the Federal Register for a public comment period
4 of not less than 60 days. Nothing in this section shall be
5 construed to require changes in the policy in effect on the
6 date of enactment of this Act.

7 **SEC. 211. REORGANIZATION PLAN.**

8 (a) IN GENERAL.—The Administrator shall develop
9 a reorganization plan for the Administration as described
10 in this section, and in accordance with section 101. In de-
11 veloping the plan, the Administrator shall consult with in-
12 terested parties, including the States, academia, industry,
13 conservation organizations, and Administration employees.

14 (b) CONTENT.—The plan, to the greatest extent prac-
15 ticable, shall—

16 (1) consider aspects of the administration, such
17 as—

18 (A) leadership positions and roles;

19 (B) program offices and duties;

20 (C) regional and ecosystem-wide ap-
21 proaches to management;

22 (D) coordination with outside entities, both
23 nationally and internationally; and

24 (E) needs to expand or downsize employees
25 and/or facilities.

1 (2) consistent with section 201 and the other
2 provisions of this Act, maximize the efficiency with
3 which the Administration carries out and assures the
4 effectiveness of the functions of—

5 (A) operations and services;

6 (B) research and education; and

7 (C) resource management;

8 (3) improve the sharing of research and other
9 information that is of use across programmatic
10 themes; and

11 (4) eliminate duplication of effort or overlap-
12 ping efforts among offices.

13 (c) SCHEDULE.—

14 (1) Not later than 18 months after the date of
15 enactment of this Act, the Administrator shall de-
16 velop the plan and shall publish the plan in the Fed-
17 eral Register.

18 (2) The Federal Register notice shall solicit
19 comments for a period of 60 days.

20 (3) Not later than 120 days after the expiration
21 date of the comment period described in paragraph
22 (2), the Administrator shall complete a revised
23 version of the plan that takes into account the com-
24 ments received.

1 (4) Upon completing the revision, along with an
2 explanation of how the administrator addressed each
3 issue raised by the public comments received, the ad-
4 ministrator shall—

5 (A) transmit the revised plan and expla-
6 nation to the National Oceans Advisor, estab-
7 lished in section 301 for review;

8 (B) transmit the revised plan and expla-
9 nation to the Committee on Commerce, Science,
10 and Transportation of the Senate and the Com-
11 mittees on Science and on Resources of the
12 House of Representatives for review; and

13 (C) publish the revised plan and expla-
14 nation in the Federal Register.

15 (d) IMPLEMENTATION.—If no objections are received
16 from the National Oceans Advisor or Congress within 90
17 days of transmittal of the revised plan, the Administrator
18 shall implement the such plan.

19 (e) REPORTING.—

20 (1) ADMINISTRATION INTERNAL REVIEW.—
21 Once every 3 years after implementation of the reor-
22 ganization plan, the Administrator shall transmit a
23 report to Congress assessing the effectiveness and
24 efficiency of the Administration in carrying out its

1 functions and fulfilling its mission, as set forth in
 2 sections 201(b) and 201(c), respectively;

3 (2) GOVERNMENT ACCOUNTABILITY OFFICE RE-
 4 VIEW.—Not later than 5 years after the Administra-
 5 tion implements the reorganization plan, and every
 6 5 years thereafter, the Government Accountability
 7 Office shall conduct an independent review of the ef-
 8 fectiveness and efficiency of the Administration in
 9 carrying out its functions and fulfilling its mission,
 10 as set forth in sections 201(b) and 201(c), respec-
 11 tively. Upon completing the review, the Government
 12 Accountability Office shall transmit a report to Con-
 13 gress with its findings.

14 **SEC. 212. FACILITY EVALUATION PROCESS.**

15 (a) DEFINITION.—For purposes of this section—

16 (1) the term “facility” means a laboratory, op-
 17 erations office, administrative service center, or
 18 other establishment of the Administration; and

19 (2) the term “field office” has the same mean-
 20 ing given that term in section 702 of the Weather
 21 Service Modernization Act.

22 (b) PUBLIC NOTIFICATION AND ASSESSMENT PROC-
 23 ESS.—

24 (1) IN GENERAL.—The Administrator shall not
 25 close, consolidate, relocate, subdivide, or establish a

1 facility of the Administration, unless and until the
2 Administrator has followed the procedures required
3 by this section.

4 (2) REVIEW PROCESS.—The Administrator
5 shall not close, consolidate, relocate, subdivide, or es-
6 tablish a facility of the Administration with an an-
7 nual operating budget of \$5,000,000 or greater, or
8 a National Weather Service field office, unless and
9 until—

10 (A) the Administrator has published in the
11 Federal Register the proposed action and a de-
12 scription of the offices, personnel, and activities
13 of the Administration that would be affected by
14 the proposed change, and has provided for a
15 minimum of 60 days for public comment;

16 (B) if the proposed change involves a
17 science facility of the Administration, the
18 Science Advisory Board has reviewed the pro-
19 posed change and provided to the Administrator
20 written findings regarding the proposed change;

21 (C) if the proposed change involves a Na-
22 tional Weather Service field office, the Adminis-
23 trator has prepared a report including—

24 (i) a description of local weather char-
25 acteristics and weather-related concerns

1 which affect the weather services provided
2 within the service area;

3 (ii) a detailed comparison of the serv-
4 ices provided within the service area and
5 the services to be provided after the pro-
6 posed change;

7 (iii) a description of any recent or ex-
8 pected modernization of National Weather
9 Service operations which will enhance serv-
10 ices in the service area;

11 (iv) an identification of any area with-
12 in any State which would not receive cov-
13 erage (at an elevation of 10,000 feet) due
14 to the proposed change; and

15 (v) evidence, based on operational
16 demonstration of National Weather Service
17 operations, which was considered in reach-
18 ing the conclusion that no degradation in
19 service will result from the proposed
20 change;

21 (D) the Administrator has prepared an
22 analysis of the anticipated costs and savings as-
23 sociated with the proposed facility change, in-
24 cluding both costs and savings in the first fiscal
25 year following the change, and changes in oper-

1 ations and maintenance costs and savings over
2 a ten-year period; and

3 (E) the Administrator has prepared an
4 analysis of the effects of the facility change on
5 operations and research of the Administration,
6 and the potential impacts on cooperative insti-
7 tutes, other external Administration partner-
8 ships, partnerships with other Federal agencies,
9 and any State and local partnerships.

10 (3) NOTICE TO CONGRESS.—

11 (A) The Administrator shall provide to
12 Congress, at least 90 days before any closure,
13 consolidation, relocation, subdivision, or estab-
14 lishment of a facility of the Administration with
15 an annual budget of \$5,000,000 or greater, or
16 any National Weather Service field office, a
17 summary of the public comments received pur-
18 suant to paragraph (2)(A), any written findings
19 prepared under paragraph (2)(B), any report
20 prepared under paragraph (2)(C), and the anal-
21 yses prepared under paragraph (2)(D) and (E).

22 (B) The Administrator shall provide to
23 Congress, at least 90 days before any closure,
24 consolidation, relocation, subdivision, or estab-
25 lishment of a facility of the Administration not

1 described in subparagraph (A), written notifica-
2 tion of the planned closure, consolidation, relo-
3 cation, subdivision, or establishment.

4 (c) NATIONAL WEATHER SERVICE MODERNIZA-
5 TION.—Nothing in this Act shall be construed to alter the
6 Weather Service Modernization Act (15 U.S.C. 313 note).

7 **SEC. 213. ADMINISTRATION BUDGET.**

8 (a) EXAMINATION.—When the Administrator sub-
9 mits the annual budget request for the Administration and
10 its programs to the Director of the Office of Management
11 and Budget, examination shall take place within natural
12 resource programs.

13 (b) REPROGRAMMING.—Whenever the Administrator
14 transmits a budget reprogramming request to the Appro-
15 priations Committees of the House of Representatives and
16 the Senate, the Administrator shall simultaneously submit
17 a copy of the request to the Committee on Science and
18 the Committee on Resources of the House of Representa-
19 tives and the Committee on Commerce, Science, and
20 Transportation of the Senate.

21 **SEC. 214. BASELINES AND COST CONTROLS.**

22 (a) DEFINITIONS.—For the purposes of this sec-
23 tion—

24 (1) the term “development” means the phase of
25 a program following the formulation phase and be-

1 ginning with the approval to proceed to implementa-
2 tion;

3 (2) the term “development cost” means the
4 total of all costs, including construction of facilities
5 and civil servant costs, from the period beginning
6 with the approval to proceed to implementation
7 through the achievement of operational readiness,
8 without regard to funding source or management
9 control, for the life of the program;

10 (3) the term “life-cycle cost” means the total of
11 the direct, indirect, recurring, and nonrecurring
12 costs, including the construction of facilities and civil
13 servant costs, and other related expenses incurred or
14 estimated to be incurred in the design, development,
15 verification, production, operation, maintenance,
16 support, and retirement of a program over its
17 planned lifespan, without regard to funding source
18 or management control; and

19 (4) the term “major program” means an activ-
20 ity approved to proceed to implementation that has
21 an estimated life-cycle cost of more than
22 \$250,000,000.

23 (b) CONDITIONS FOR DEVELOPMENT.—

24 (1) IN GENERAL.—The Administration shall
25 not enter into a contract for the development of a

1 major program unless the Administrator determines
2 that—

3 (A) the technical, cost, and schedule risks
4 of the program are clearly identified and the
5 program has developed a plan to minimize those
6 risks;

7 (B) the technologies required for the pro-
8 gram have been demonstrated in a relevant lab-
9 oratory or test environment; and

10 (C) the program complies with all relevant
11 policies, regulations, and directives of the Ad-
12 ministration.

13 (2) REPORT.—The Administrator shall trans-
14 mit a report describing the basis for the determina-
15 tion required under paragraph (1) to the Committee
16 on Science of the House of Representatives and the
17 Committee on Commerce, Science, and Transpor-
18 tation of the Senate at least 30 days before entering
19 into a contract for development under a major pro-
20 gram.

21 (3) NON-DELEGATION.—The Administrator
22 may not delegate the determination requirement
23 under this subsection, except in cases in which the
24 Administrator has a conflict of interest.

25 (c) MAJOR PROGRAM ANNUAL REPORTS.—

1 (1) REQUIREMENT.—Annually, at the same
2 time as the President’s annual budget submission to
3 the Congress, the Administrator shall transmit to
4 the Committee on Science of the House of Rep-
5 resentatives and the Committee on Commerce,
6 Science, and Transportation of the Senate a report
7 that includes the information required by this sec-
8 tion for each major program for which the Adminis-
9 tration proposes to expend funds in the subsequent
10 fiscal year. Reports under this paragraph shall be
11 known as Major Program Annual Reports.

12 (2) BASELINE REPORT.—The first Major Pro-
13 gram Annual Report for each major program shall
14 include a Baseline Report that shall, at a minimum,
15 include—

16 (A) the purposes of the program and key
17 technical characteristics necessary to fulfill
18 those purposes;

19 (B) an estimate of the life-cycle cost for
20 the program, with a detailed breakout of the
21 development cost, program reserves, and an es-
22 timate of the annual costs until development is
23 completed;

24 (C) the schedule for development, including
25 key program milestones;

1 (D) the plan for mitigating technical, cost,
2 and schedule risks identified in accordance with
3 subsection (b)(1)(A); and

4 (E) the name of the person responsible for
5 making notifications under subsection (d), who
6 shall be an individual whose primary responsi-
7 bility is overseeing the program.

8 (3) INFORMATION UPDATES.—For major pro-
9 grams for which a Baseline Report has been sub-
10 mitted, each subsequent Major Program Annual Re-
11 port shall describe any changes to the information
12 that had been provided in the Baseline Report, and
13 the reasons for those changes.

14 (d) NOTIFICATION.—

15 (1) REQUIREMENT.—The individual identified
16 under subsection (c)(2)(E) shall immediately notify
17 the Administrator any time that individual has rea-
18 sonable cause to believe that, for the major program
19 for which he or she is responsible—

20 (A) the development cost of the program is
21 likely to exceed the estimate provided in the
22 Baseline Report of the program by 15 percent
23 or more; or

24 (B) a milestone of the program is likely to
25 be delayed by 6 months or more from the date

1 provided for it in the Baseline Report of the
2 program.

3 (2) REASONS.—Not later than 30 days after
4 the notification required under paragraph (1), the
5 individual identified under subsection (c)(2)(E) shall
6 transmit to the Administrator a written notification
7 explaining the reasons for the change in the cost or
8 milestone of the program for which notification was
9 provided under paragraph (1).

10 (3) NOTIFICATION OF CONGRESS.—Not later
11 than 15 days after the Administrator receives a writ-
12 ten notification under paragraph (2), the Adminis-
13 trator shall transmit the notification to the Com-
14 mittee on Science of the House of Representatives
15 and the Committee on Commerce, Science, and
16 Transportation of the Senate.

17 (e) FIFTEEN PERCENT, SIX-MONTH THRESHOLD.—
18 Not later than 30 days after receiving a written notifica-
19 tion under subsection (d)(2), the Administrator shall de-
20 termine whether the development cost of the program is
21 likely to exceed the estimate provided in the Baseline Re-
22 port of the program by 15 percent or more, or whether
23 a milestone is likely to be delayed by 6 months or more.
24 If the determination is affirmative, the Administrator
25 shall—

1 (1) transmit to the Committee on Science of the
2 House of Representatives and the Committee on
3 Commerce, Science, and Transportation of the Sen-
4 ate, not later than 15 days after making the deter-
5 mination, a report that includes—

6 (A) a description of the increase in cost or
7 delay in schedule and a detailed explanation for
8 the increase or delay;

9 (B) a description of actions taken or pro-
10 posed to be taken in response to the cost in-
11 crease or delay; and

12 (C) a description of any impacts the cost
13 increase or schedule delay, or the actions de-
14 scribed under subparagraph (B), will have on
15 any other program within the Administration;
16 and

17 (2) if the Administrator intends to continue
18 with the program, promptly initiate an analysis of
19 the program, which shall include, at a minimum—

20 (A) the projected cost and schedule for
21 completing the program if current requirements
22 of the program are not modified;

23 (B) the projected cost and the schedule for
24 completing the program after instituting the ac-
25 tions described under paragraph (1)(B); and

1 (C) a description of, and the projected cost
2 and schedule for, a broad range of alternatives
3 to the program.

4 The Administration shall complete an analysis initi-
5 ated under paragraph (2) not later than 3 months
6 after the Administrator makes a determination
7 under this subsection. The Administrator shall
8 transmit the analysis to the Committee on Science
9 of the House of Representatives and Committee on
10 Commerce, Science, and Transportation of the Sen-
11 ate not later than 30 days after its completion.

12 (f) THIRTY PERCENT THRESHOLD.—If the Adminis-
13 trator determines under subsection (d) that the develop-
14 ment cost of a program will exceed the estimate provided
15 in the Baseline Report of the program by more than 30
16 percent, then, beginning 18 months after the date the Ad-
17 ministrator transmits a report under section (e)(1), the
18 Administrator shall not expend any additional funds on
19 the program, other than termination costs, unless the Con-
20 gress has subsequently authorized continuation of the pro-
21 gram by law. An appropriation for the specific program
22 enacted subsequent to a report being transmitted shall be
23 considered an authorization for purposes of this sub-
24 section. If the program is continued, the Administrator
25 shall submit a new Baseline Report for the program no

1 later than 90 days after the date of enactment of the Act
2 under which Congress has authorized continuation of the
3 program.

4 **SEC. 215. OFFSHORE PERFORMANCE OF CONTRACTS FOR**
5 **THE PROCUREMENT OF GOODS AND SERV-**
6 **ICES.**

7 (a) LIMITATIONS.—

8 (1) CONVERSIONS TO CONTRACTOR PERFORM-
9 ANCE OF ADMINISTRATION ACTIVITIES.—Except as
10 provided in paragraph (3), an activity or function of
11 the Administration that is converted to contractor
12 performance under Office of Management and Budg-
13 et Circular A-76 may not be performed by the con-
14 tractor or any subcontractor at a location outside
15 the United States.

16 (2) CONTRACTS FOR THE PROCUREMENT OF
17 SERVICES.—

18 (A) Except as provided in paragraph (3),
19 a contract for the procurement of goods or serv-
20 ices that is entered into by the Administrator
21 may not be performed outside the United
22 States unless it is to meet a requirement of the
23 Administration for goods or services specifically
24 at a location outside the United States.

1 (B) The President may waive the prohibi-
2 tion in subparagraph (A) in the case of any
3 contract for which the President determines in
4 writing that it is necessary in the national secu-
5 rity interests of the United States for goods or
6 services under the contract to be performed out-
7 side the United States.

8 (C) The Administrator may waive the pro-
9 hibition in subparagraph (A) in the case of any
10 contract for which the Administrator deter-
11 mines in writing that essential goods or services
12 under the contract are only available from a
13 source outside the United States.

14 (3) EXCEPTION.—Paragraphs (1) and (2)(A)
15 shall not apply to the extent that the activity or
16 function under the contract was previously per-
17 formed by Federal Government employees outside
18 the United States.

19 (4) CONSISTENCY WITH INTERNATIONAL
20 AGREEMENTS.—The provisions of this section shall
21 not apply to the extent that they are inconsistent
22 with obligations of the United States under inter-
23 national agreements.

24 (b) RECORDKEEPING AND REPORTING REQUIRE-
25 MENT.—The Administrator shall transmit to Congress,

1 not later than 120 days after the end of each fiscal year
2 beginning with the first fiscal year after the date of enact-
3 ment of this Act, a report on the contracts and sub-
4 contracts performed overseas and the amount of purchases
5 directly or indirectly by the Administration from foreign
6 entities in that fiscal year. The report shall separately in-
7 dicate—

8 (1) the contracts and subcontracts and their
9 dollar values for which the Administrator determines
10 that essential goods or services under the contract
11 are available only from a source outside the United
12 States; and

13 (2) the items and their dollar values for which
14 the Buy American Act was waived pursuant to obli-
15 gations of the United States under international
16 agreements.

17 **TITLE III—NATIONAL OCEAN**
18 **LEADERSHIP AND COORDINA-**
19 **TION**

20 **SEC. 301. NATIONAL OCEANS ADVISOR.**

21 (a) ESTABLISHMENT.—

22 (1) IN GENERAL.—There is established in the
23 Executive Office of the President a National Oceans
24 Advisor, who shall be appointed by the President, by
25 and with the advice and consent of the Senate.

1 (2) COMPENSATION.—The Advisor shall be paid
2 at a rate specified by the President not to exceed the
3 rate payable for Level V of the Executive Schedule
4 under section 5136 of title 5, United States Code.

5 (b) FUNCTIONS.—The Advisor shall—

6 (1) advise the President on implementation of
7 this Act, activities of the Committee on Ocean Pol-
8 icy, section 302, and other covered actions relating
9 to United States ocean and coastal waters and ma-
10 rine ecosystem health;

11 (2) serve as the Executive Director and Chair
12 of the Committee on Ocean Policy established by
13 section 302; and

14 (3) in consultation with the Administrator, co-
15 ordinate Federal agency covered actions related to
16 United States ocean waters and marine ecosystem
17 health.

18 (c) STAFFING.—

19 (1) The Advisor, without regard to the civil
20 service laws and regulations governing employment
21 in the competitive service, may employ such officers
22 and employees as may be necessary to carry out the
23 functions of the National Oceans Advisor under this
24 Act.

1 (2) The Advisor may accept, employ, and termi-
2 nate voluntary and uncompensated services in fur-
3 therance of the purposes of the Advisor.

4 **SEC. 302. COMMITTEE ON OCEAN POLICY.**

5 (a) ESTABLISHMENT.—There is established in the
6 Executive Office of the President a Committee on Ocean
7 Policy (in this title referred to as the “Committee”), which
8 succeeds the Committee on Ocean Policy established on
9 December 17, 2004, by Executive Order 13366 and shall
10 continue the activities of that committee as it was in exist-
11 ence on the day before the date of enactment of this Act.

12 (b) FUNCTIONS.—The Committee shall—

13 (1) facilitate interagency coordination on Fed-
14 eral agency covered actions related to United States
15 ocean waters and marine ecosystem health and the
16 implementation of this Act;

17 (2) review and appraise the various programs
18 and activities of the Federal Government for consist-
19 ency with the policy and standards set forth in sec-
20 tion 101 and make recommendations to the Presi-
21 dent with respect thereto no later than 18 months
22 after the date of enactment of this Act;

23 (3) resolve interagency disputes regarding ma-
24 rine ecosystem health and in particular the imple-
25 mentation of this Act;

1 (4) coordinate and certify agency ocean budgets
2 regarding their sufficiency to achieve the policy and
3 standards set forth in section 101;

4 (5) in coordination with the Administrator, sub-
5 mit to the President and publish at least once every
6 3 years a report on the condition of United States
7 ocean waters; and

8 (6) obtain and provide information to facilitate
9 and advance ecosystem-based management of Re-
10 gional Ocean Partnerships in accordance with title
11 IV.

12 (c) CHAIR.—The National Oceans Advisor shall be a
13 non-voting member and the chair of the committee as set
14 forth in section 301(b)(2), and shall, in this capacity, be
15 responsible for—

16 (1) regularly convening and presiding at meet-
17 ings of the Committee;

18 (2) directing the work of the Committee; and

19 (3) establishing and directing subcommittees of
20 the Committee, as appropriate.

21 (d) MEMBERSHIP.—

22 (1) IN GENERAL.—The Committee shall have
23 the following voting members:

24 (A) The Secretary of Commerce.

25 (B) The Secretary of State.

- 1 (C) The Secretary of the Interior.
- 2 (D) The Secretary of Defense.
- 3 (E) The Secretary of Agriculture.
- 4 (F) The Secretary of Transportation.
- 5 (G) The Secretary of Homeland Security.
- 6 (H) The Secretary of Education.
- 7 (I) The Secretary of Energy.
- 8 (J) The Secretary of Health and Human
- 9 Services.
- 10 (K) The Secretary of Labor
- 11 (L) The Attorney General
- 12 (M) The Administrator of the Environ-
- 13 mental Protection Agency.
- 14 (N) The Director of the Office of Manage-
- 15 ment and Budget.
- 16 (O) The Director of the National Science
- 17 Foundation.
- 18 (P) Six State Governors appointed by the
- 19 National Governors Association, who shall rep-
- 20 resent State and local interests.
- 21 (Q) The Administrator of the National
- 22 Aeronautics and Space Administration.
- 23 (R) The Chair of the National Research
- 24 Council Governing Board.

1 (S) The Chair of the Council on Environ-
2 mental Quality.

3 (2) DELEGATION.—A member of the Com-
4 mittee may designate, to perform the Committee or
5 subcommittee functions of the member, any person
6 who is within such member's department, agency, or
7 office and who is—

8 (A) an officer of the United States ap-
9 pointed by the President;

10 (B) a member of the Senior Executive
11 Service; or

12 (C) an officer or employee within the Exec-
13 utive Office of the President.

14 (3) STATE GOVERNOR MEMBERS.—

15 (A) TERMS.—Of the members appointed
16 under paragraph (1)(P)—

17 (i) their term as a member shall be 4
18 years, with eligibility for reappointment;

19 (ii) at least 4 shall be Governors of
20 coastal States; and

21 (iii) any that cannot serve the full
22 length of their term shall be replaced by
23 the new Governor or acting Governor of
24 that State to carry out the remainder of
25 that term.

1 (B) LIMITATION ON APPOINTMENT.—A
2 Governor of a State may not be appointed
3 under paragraph (1)(P) to a term on the Com-
4 mittee that begins before the end of the 4-year
5 period that begins upon the expiration of a
6 prior term on the Committee served by the Gov-
7 ernor.

8 (e) SUBCOMMITTEES.—The Chair of the Committee,
9 with consultation with the Administrator, has the author-
10 ity to create such subcommittees of the Committee as nec-
11 essary to help carry out the functions of the Committee.

12 (f) COORDINATION.—The Chair of the Council on
13 Environmental Quality and the National Oceans Advisor
14 shall ensure appropriate coordination of the activities of
15 the Committee and other policy coordination structures re-
16 lating to ocean or maritime issues.

17 (g) FUNDING.—Consistent with applicable law and
18 subject to the availability of appropriations, the Council
19 on Environmental Quality shall provide the funding, in-
20 cluding through the Office of Environmental Quality and
21 administrative support for the Committee necessary to im-
22 plement this section.

23 (h) STAFF.—

24 (1) IN GENERAL.—The Chair, without regard
25 to the civil service laws and regulations, may employ

1 and terminate such employees as may be necessary
2 to carry out its function under this Act.

3 (2) VOLUNTARY AND UNCOMPENSATED SERV-
4 ICES.—The Chair may accept, employ, and termi-
5 nate voluntary and uncompensated services in fur-
6 therance of the purposes of the Committee.

7 (i) RESOURCES.—In carrying out its functions under
8 this Act, the Committee may secure directly from any
9 Federal agency or department any information it con-
10 siders to be necessary to carry out its functions under this
11 Act. Each such agency or department may cooperate with
12 the Committee and, to the extent permitted by law, shall
13 furnish such information (other than information de-
14 scribed in section 552(b)(1)(A) of title 5, United States
15 Code) to the Committee, upon request of the Committee.

16 (j) FEDERAL ADVISORY COMMITTEE ACT.—

17 (1) IN GENERAL.—The Federal Advisory Com-
18 mittee Act (5 App. U.S.C.) shall not apply to the
19 Committee on Ocean Policy, or any of its sub-
20 committees formed in accordance with section
21 302(e).

22 (2) COMPLIANCE.—Notwithstanding paragraph
23 (1), the Committee and its subcommittees shall be
24 appointed and operate in a manner consistent with

1 all provisions of the Federal Advisory Committee Act
2 with respect to—

3 (A) the balance of its of the Committee;

4 (B) provision of public notice regarding its
5 activities;

6 (C) open meetings; and

7 (D) public access to documents created by
8 the Committee.

9 **SEC. 303. ESTABLISHING A COORDINATED MANAGEMENT**
10 **REGIME FOR ACTIVITIES IN FEDERAL WA-**
11 **TERS.**

12 The Committee shall submit to the Congress by not
13 later than 2 years after the date of the enactment of this
14 Act recommendations with justifications, a plan, and pro-
15 posed schedule for creating a balanced, efficient, and effec-
16 tive ecosystem-based management regime for activities in
17 Federal waters that—

18 (1) consider the use of ocean zoning and cumu-
19 lative impacts of multiple uses;

20 (2) designate a lead Federal agency for each ex-
21 isting activity and new activity in Federal waters;

22 (3) ensure that each such lead Federal agency
23 coordinates with other applicable authorities, includ-
24 ing States and Regional Ocean Partnerships estab-
25 lished under title IV of this Act;

1 (4) consider possible consolidation of oceanic or
2 atmospheric programs, functions, services, or re-
3 sources within or among Federal agencies, if their
4 consolidation would not undermine policy goals set
5 forth in this Act;

6 (5) fully consider the public interest; and

7 (6) are consistent with the national ocean policy
8 and standards as set forth in section 101 of this
9 Act.

10 **SEC. 304. COUNCIL OF ADVISORS ON OCEANS POLICY.**

11 (a) ESTABLISHMENT.—There is established the
12 Council of Advisors on Oceans Policy (in this section re-
13 ferred to as the “Council”), which shall advise the Presi-
14 dent, the National Oceans Advisor, and the Committee on
15 Ocean Policy on policies to protect, maintain, and restore
16 the health of marine ecosystems on a regional and national
17 basis.

18 (b) MEMBERSHIP.—The Council shall have at least
19 15 members appointed by the president, in consultation
20 with the National Ocean Advisor established in section
21 301. Members of the Council shall—

22 (1) be appointed based on their knowledge and
23 experience in coastal, ocean, and atmospheric
24 science, policy, and other related areas; and

1 (2) include at least 1 representative of each of
2 the following:

3 (A) State governments;

4 (B) Local governments;

5 (C) Indian tribes;

6 (D) The marine science research commu-
7 nity;

8 (E) The marine science education commu-
9 nity;

10 (F) Fisheries;

11 (G) Non-fishing marine activities;

12 (H) Agriculture, which may include timber;

13 (I) Watershed organizations (other than
14 organizations represented under subparagraph
15 (J)), which may include resource conservation
16 districts; and

17 (J) Nongovernmental organizations (other
18 than organizations represented under subpara-
19 graph (I)), including groups interested in ma-
20 rine conservation.

21 (c) TERMS OF MEMBERSHIP.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), the term of a member of the Council shall
24 be 4 years.

1 (2) INITIAL APPOINTEES.—Of the members ini-
2 tially appointed to the Council—

3 (A) at least one-half shall be appointed to
4 a 4-year term that ends in a Federal election
5 year in which there occurs an election of the
6 President; and

7 (B) at least one-half shall be appointed to
8 a 4-year term that ends in a Federal election
9 year in which there does not occur an election
10 of the President.

11 (3) VACANCIES.—Any member appointed to fill
12 a vacancy occurring before the expiration of the
13 term for which the member's predecessor was ap-
14 pointed shall be appointed only for the remainder of
15 that term.

16 (4) LIMITATION.—An individual may not serve
17 more than 2 terms as a member of the Council.

18 (d) MEETINGS.—The Council shall meet at least 2
19 times each year and more often at the President's discre-
20 tion.

21 (e) COMPENSATION AND EXPENSES.—A member of
22 the Council shall not receive compensation for service on
23 the Council, but upon request by the member may be al-
24 lowed travel expenses, including per diem in lieu of sub-

1 sistence, in accordance with subchapter I of chapter 57
 2 of title 5, United States Code.

3 (f) FEDERAL ADVISORY COMMITTEE ACT.—

4 (1) IN GENERAL.—The Federal Advisory Com-
 5 mittee Act (5 App. U.S.C.) shall not apply to the
 6 Council of Advisors on Oceans Policy.

7 (2) COMPLIANCE.—Notwithstanding paragraph
 8 (1), the Council shall be appointed and operate in a
 9 manner consistent with all provisions of the Federal
 10 Advisory Committee Act with respect to

11 (A) the balance of its membership;

12 (B) provision of public notice regarding its
 13 activities;

14 (C) open meetings; and

15 (D) public access to documents created by
 16 the Council.

17 **TITLE IV—REGIONAL COORDI-** 18 **NATION AND ECOSYSTEM** 19 **PLANNING**

20 **SEC. 401. FINDINGS.**

21 The Congress finds the following:

22 (1) Establishing a national network of govern-
 23 ance planning bodies at the regional level is essential
 24 for solving many pressing United States ocean and
 25 coastal issues.

1 (2) Several States and regions have developed
2 ocean management strategies that can be used as
3 templates for coordinating among various govern-
4 ment entities. A new national framework is needed
5 to extend, integrate, and support these efforts.

6 (3) Large marine ecosystems are biogeographi-
7 cally distinct ecosystem units and provide an appro-
8 priate spatial scale for ecosystem-based regional
9 ocean governance.

10 (4) Because ecosystems do not align with polit-
11 ical jurisdictions, regional ocean governance mecha-
12 nisms must provide for cooperation and collaboration
13 within and among multiple levels of government, in-
14 cluding local, State, tribal, and Federal govern-
15 ments.

16 (5) Effective regional ocean governance requires
17 transparency and must include ample opportunities
18 for input and participation by stakeholders and the
19 public.

20 (6) Important ecological areas within each large
21 marine ecosystem need to be identified and mon-
22 itored.

23 (7) Additional funding and other resources are
24 necessary to promote regional coordination and col-
25 laboration and to implement regional solutions to

1 current and future ocean and coastal management
2 challenges.

3 **SEC. 402. REGIONAL OCEAN PARTNERSHIPS.**

4 (a) IN GENERAL.—Within 1 year after the date of
5 the enactment of this Act, the Administrator and appro-
6 priate States, in consultation with the Committee on
7 Ocean Policy, shall establish a Regional Ocean Partner-
8 ship (in this title referred to as “Partnership”) for each
9 of the ocean regions established by this section, and in
10 accordance with the policies and standards in section 101,
11 in order to—

12 (1) provide for more systematic communication,
13 collaboration, and integration of Federal and State
14 coastal and ocean environmental and resource man-
15 agement efforts;

16 (2) provide for regional ecosystem assessment
17 and information programs to guide management de-
18 cisions;

19 (3) provide for the identification and moni-
20 toring of important ecological areas;

21 (4) provide for the creation of a strategic plan
22 for and implement adaptive, ecosystem-based man-
23 agement of coastal and ocean resources within ocean
24 regions, building on and complementing local, State,
25 and regional efforts; and

1 (5) provide for improved citizen and community
2 stewardship of coastal and ocean resources.

3 (b) REGIONS.—

4 (1) IN GENERAL.—There are hereby designated
5 the following ocean regions:

6 (A) NORTH PACIFIC OCEAN REGION.—The
7 North Pacific Ocean Region, which shall consist
8 of the coastal zone (as defined in section 304
9 of the Coastal Zone Management Act of 1972
10 (16 U.S.C. 1453)) and watershed areas of the
11 State of Alaska that have a significant impact
12 on coastal waters of the State of Alaska sea-
13 ward to the extent of the Exclusive Economic
14 Zone as specified in Presidential Proclamation
15 Number 5030, dated March 10, 1983.

16 (B) PACIFIC OCEAN REGION.—The Pacific
17 Ocean Region, which shall consist of the coastal
18 zone (as defined in section 304 of the Coastal
19 Zone Management Act of 1972 (16 U.S.C.
20 1453)) and watershed areas of the States that
21 have a significant impact on coastal waters of
22 the States of Washington, Oregon, and Cali-
23 fornia seaward to the extent of the Exclusive
24 Economic Zone as specified in Presidential

1 Proclamation Number 5030, dated March 10,
2 1983.

3 (C) WESTERN PACIFIC OCEAN REGION.—

4 The Western Pacific Ocean Region, which shall
5 consist of the coastal zone (as defined in section
6 304 of the Coastal Zone Management Act of
7 1972 (16 U.S.C. 1453)) and watershed areas of
8 the States that have a significant impact on
9 coastal waters of the States of Hawaii, Guam,
10 American Samoa, and the Northern Mariana
11 Islands seaward to the extent of the Exclusive
12 Economic Zone as specified in Presidential
13 Proclamation Number 5030, dated March 10,
14 1983, including the territorial waters of the
15 Commonwealths, territories, and possessions of
16 the United States in the Pacific Ocean.

17 (D) GULF OF MEXICO OCEAN REGION.—

18 The Gulf of Mexico Ocean Region, which shall
19 consist of the coastal zone (as defined in section
20 304 of the Coastal Zone Management Act of
21 1972 (16 U.S.C. 1453)) and watershed areas of
22 the States that have a significant impact on
23 coastal waters of the States of Texas, Lou-
24 isiana, Mississippi, Alabama, and Florida sea-
25 ward to the extent of the Exclusive Economic

1 Zone as specified in Presidential Proclamation
2 Number 5030, dated March 10, 1983.

3 (E) CARIBBEAN OCEAN REGION.—The
4 Caribbean Ocean Region, which shall consist of
5 the coastal zone (as defined in section 304 of
6 the Coastal Zone Management Act of 1972 (16
7 U.S.C. 1453)) and watershed areas of the
8 States that have a significant impact on coastal
9 waters of the Virgin Islands and the Common-
10 wealth of Puerto Rico seaward to the extent of
11 the Exclusive Economic Zone as specified in
12 Presidential Proclamation Number 5030, dated
13 March 10, 1983, including the territorial waters
14 of the Caribbean Sea and Atlantic Ocean.

15 (F) SOUTHEAST ATLANTIC OCEAN RE-
16 GION.—The Southeast Atlantic Ocean Region,
17 which shall consist of the coastal zone (as de-
18 fined in section 304 of the Coastal Zone Man-
19 agement Act of 1972 (16 U.S.C. 1453)) and
20 watershed areas of the States that have a sig-
21 nificant impact on coastal waters of the States
22 of Florida, Georgia, South Carolina, and North
23 Carolina seaward to the extent of the Exclusive
24 Economic Zone as specified in Presidential

1 Proclamation Number 5030, dated March 10,
2 1983.

3 (G) NORTHEAST ATLANTIC OCEAN RE-
4 GION.—The Northeast Atlantic Ocean Region,
5 which shall consist of the coastal zone (as de-
6 fined in section 304 of the Coastal Zone Man-
7 agement Act of 1972 (16 U.S.C. 1453)) and
8 watershed areas of the States that have a sig-
9 nificant impact on coastal waters of the States
10 of Maine, New Hampshire, Massachusetts,
11 Rhode Island, and Connecticut seaward to the
12 extent of the Exclusive Economic Zone as speci-
13 fied in Presidential Proclamation Number
14 5030, dated March 10, 1983.

15 (H) MID-ATLANTIC OCEAN REGION.—The
16 Mid-Atlantic Ocean Region, which shall consist
17 of the coastal zone (as defined in section 304
18 of the Coastal Zone Management Act of 1972
19 (16 U.S.C. 1453)) and watershed areas of the
20 States that have a significant impact on coastal
21 waters of the States of New York, New Jersey,
22 Delaware, Maryland, Pennsylvania, and Vir-
23 ginia seaward to the extent of the Exclusive
24 Economic Zone as specified in Presidential

1 Proclamation Number 5030, dated March 10,
2 1983.

3 (I) GREAT LAKES REGION.—The Great
4 Lakes Region, which shall consist of the coastal
5 zone (as defined in section 304 of the Coastal
6 Zone Management Act of 1972 (16 U.S.C.
7 1453)) and watershed areas of the States that
8 have a significant impact on coastal waters of
9 the States of Wisconsin, Minnesota, Michigan,
10 Illinois, Indiana, Ohio, New York, and Pennsyl-
11 vania to the extent of the territorial waters of
12 the United States in the Great Lakes.

13 (2) SUBREGIONS.—Each Partnership may es-
14 tablish such subregions, or geographically specified
15 management areas, as necessary for efficient and ef-
16 fective management of region-specific ecosystem
17 issues.

18 (c) MEMBERSHIP.—

19 (1) FEDERAL REPRESENTATIVES.—

20 (A) IN GENERAL.—Within 90 days after
21 the date of the enactment of this Act, the Ad-
22 ministrator, in consultation with the Committee
23 on Ocean Policy, shall coordinate representa-
24 tives of the Federal Government to form each
25 Partnership. Such representatives shall be offi-

1 cers or employees of Federal agencies and de-
2 partments that have expertise in and oversee
3 ocean and coastal policy or resource manage-
4 ment. Each Federal agency or department shall
5 select and appoint their representatives to each
6 Partnership. The Administrator, or his or her
7 designated representative, shall serve as the
8 chairperson of each Partnership.

9 (B) INCLUDED ENTITIES.—The represent-
10 atives appointed to each Partnership under this
11 paragraph shall include one or more officers or
12 employees of the Administration, the Depart-
13 ment of the Interior, the Environmental Protec-
14 tion Agency, the Department of Agriculture, the
15 Army Corps of Engineers, the Department of
16 Defense, the Department of Homeland Secu-
17 rity, the Department of Commerce, and other
18 Federal agencies and departments as necessary.

19 (2) STATE AND TRIBAL REPRESENTATIVES.—

20 (A) COASTAL STATE APPOINTMENTS.—The
21 Governor of each Coastal State within the
22 ocean region of a Partnership shall appoint an
23 officer or employee of the State agency with
24 primary responsibility for overseeing ocean and

1 coastal policy or resource management to that
2 Partnership.

3 (B) INLAND STATE APPOINTMENT.—

4 Where appropriate, the Administrator shall re-
5 ceive nominations and select one representative
6 from each of two of the inland States that, ac-
7 cording to maps and data of the United States
8 Geological Survey, have jurisdiction over waters
9 that feed into the ocean region for which a
10 Partnership must prepare a Regional Ocean
11 Strategic Plan.

12 (C) WESTERN PACIFIC AND CARIBBEAN

13 REGIONAL OCEAN PARTNERSHIPS.—The Gov-
14 ernors of American Samoa, Guam, and the
15 Northern Mariana Islands shall each appoint an
16 officer or employee of the agency with primary
17 responsibility for overseeing ocean and coastal
18 policy or resource management to the Western
19 Pacific Regional Ocean Partnership. The Gov-
20 ernors of the Virgin Islands and the Common-
21 wealth of Puerto Rico shall each appoint an of-
22 ficer or employee of the agency with primary re-
23 sponsibility for overseeing ocean and coastal
24 policy or resource management to the Carib-
25 bean Regional Ocean Partnership.

1 (D) NORTH PACIFIC REGIONAL OCEAN
2 PARTNERSHIP.—The Governor of the State of
3 Washington shall appoint an officer or employee
4 of the Washington State agency with primary
5 responsibility for overseeing ocean and coastal
6 policy or resource management to the North
7 Pacific Regional Ocean Partnership.

8 (3) INTERNATIONAL REPRESENTATIVES.—
9 Where appropriate, each Partnership shall foster
10 nonbinding relationships with foreign governments,
11 agencies, States, provinces, and other entities as ap-
12 propriate, at scales appropriate to the region under
13 the authority of a Partnership, including by pro-
14 viding opportunities for nonvoting participation by
15 foreign representatives at meetings of the Partner-
16 ship, its advisory committees, and other working
17 groups.

18 (4) REGIONAL FISHERIES MANAGEMENT COUN-
19 CIL REPRESENTATIVE.—The executive director of
20 each Regional Fishery Management Council having
21 jurisdiction over the ocean region of a Partnership
22 shall serve as a voting member of the Partnership,
23 and shall be considered a non-federal representative
24 for the purposes of section 402(c)(6)(A).

1 (5) LOCAL GOVERNMENT REPRESENTATIVE.—

2 Where appropriate, the Administrator will receive
3 nominations and select one representative from a
4 coastal political subdivision to represent the interests
5 of local and county governments on the Partnership.

6 (6) ADDITIONAL APPOINTMENTS.—

7 (A) TOTALS.—The Administrator shall de-
8 termine the total number of additional rep-
9 resentatives of Indian tribes, Coastal States,
10 and local governments within an ocean region
11 of a Partnership as is necessary to ensure that
12 the combined number of non-Federal voting
13 representatives equals the number of Federal
14 voting representatives on each Partnership.

15 (B) SOLICITING NOMINATIONS.—The Ad-
16 ministrator shall solicit nominations for quali-
17 fied governmental officers or employees from
18 Indian tribes, States, Commonwealths, terri-
19 tories, and possessions of the United States
20 within an ocean region of a Partnership and se-
21 lect nominees to fill any vacant seats on that
22 Partnership.

23 (C) SELECTING NOMINEES.—In selecting
24 among nominees to serve on each Regional
25 Ocean Partnership, the Administrator shall

1 strive to ensure a balanced representation
2 among these governmental entities.

3 (d) ADVISORY COMMITTEES.—

4 (1) AUTHORITY.—Each Partnership may estab-
5 lish and appoint members of advisory committees
6 and working groups as necessary for preparation of
7 a Regional Ocean Strategic Plan under this title.

8 (2) CITIZENS ADVISORY COMMITTEE.—Each
9 Partnership shall establish and appoint members of
10 a Citizens Advisory Committee comprised of non-
11 governmental members of the public, including a
12 wide range of citizens interested in multiple uses of
13 United States ocean waters and ocean resources.

14 (3) ADVICE AND INPUT.—Each Partnership
15 shall take the advice and input of any Advisory
16 Committee into consideration in the development of
17 a Regional Ocean Strategic Plan.

18 (e) COORDINATION.—

19 (1) IN GENERAL.—Immediately following the
20 appointment of representatives to each Partnership,
21 the representatives shall take steps to identify oppor-
22 tunities and better coordinate and integrate existing
23 programs or activities with the other governmental
24 entities in the ocean region of the Partnership.

1 (2) EXISTING PROGRAMS.—Each Partnership
2 shall not supplant the functions or authorities of ex-
3 isting regional entities and shall, to the maximum
4 extent possible, build upon current State, multi-
5 state, and regional capacity and governance and in-
6 stitutional mechanisms to manage ocean and coastal
7 resources. This shall include mechanisms to—

8 (A) conduct coastal and ocean monitoring,
9 mapping, assessment, and observations;

10 (B) provide for ecologically sustainable
11 growth;

12 (C) restore and conserve habitat;

13 (D) manage State and Federal fisheries;

14 (E) maintain and improve the quality of
15 coastal and ocean waters; and

16 (F) protect and restore the resources of
17 the Nation’s coastal zone.

18 (3) INLAND REGIONS.—Each Partnership shall
19 collaborate and coordinate as necessary and appro-
20 priate with inland States that may significantly im-
21 pact the health of marine ecosystems in the ocean
22 region.

23 (f) PROCEDURES.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), each Partnership shall operate in accord-

1 ance with procedures established by the Partnership
2 and approved by the Administrator.

3 (2) INTERIM PROCEDURES.—Each Partnership
4 shall operate in accordance with interim procedures
5 prescribed by the Administrator until such time as
6 the Administrator approves procedures established
7 by the Partnership under paragraph (1).

8 (3) REQUIRED PROCEDURES.—The Adminis-
9 trator shall prescribe requirements for approval of
10 procedures under paragraph (1), and interim proce-
11 dures for purposes of paragraph (2), including such
12 requirements and interim procedures that provide
13 for—

14 (A) transparency in decision-making;

15 (B) opportunities for public input and par-
16 ticipation; and

17 (C) the use of science, local government,
18 and citizen advisory committees.

19 (g) STAFF.—

20 (1) HIRING AUTHORITY.—Each Partnership
21 may hire such staff as is necessary to perform the
22 functions of the Partnership.

23 (2) TREATMENT.—Staff hired by a Partnership
24 shall be treated as employees of the Administration.

25 (h) FEDERAL ADVISORY COMMITTEE ACT.—

1 (1) IN GENERAL.—The Federal Advisory Com-
2 mittee Act (5 U.S.C. App.) shall not apply to the
3 Regional Ocean Partnerships or to any advisory
4 committees established under this title.

5 (2) COMPLIANCE.—Notwithstanding paragraph
6 (1), the Partnerships and any advisory committees
7 of the Partnerships shall be appointed and operate
8 in a manner consistent with all provisions of the
9 Federal Advisory Committee Act with respect to—

10 (A) the balance of their membership;

11 (B) provision of public notice regarding
12 their activities;

13 (C) open meetings; and

14 (D) public access to documents created by
15 the Partnerships or advisory committees of the
16 Partnerships.

17 **SEC. 403. REGIONAL OCEAN STRATEGIC PLANS.**

18 (a) REQUIREMENT.—Each Regional Ocean Partner-
19 ship shall, within 3 years after establishment of the Part-
20 nership, prepare and submit to the Administrator and the
21 Committee on Ocean Policy for review and consultation
22 and approval by the Administration, pursuant to this sec-
23 tion, a Regional Ocean Strategic Plan (referred to in this
24 title as “Plan”) for the ocean region of the Partnership.

1 (b) CONTENTS.—Each Plan prepared by a Partner-
2 ship shall include such information as the following:

3 (1) An assessment of the ocean region in order
4 to guide management decisions, including consider-
5 ation of ecological, economic, educational, social, cul-
6 tural nutritional, and recreational factors.

7 (2) Identification of multiple indicators that
8 measure ecosystem health and the effectiveness of
9 current management efforts, and an analysis of their
10 current status.

11 (3) Identification of important ecological areas
12 within the region and recommendations for a long-
13 term monitoring plan of such areas.

14 (4) Determination of priority issues within the
15 region and adjoining inland regions and an assess-
16 ment of the capacity of existing governance mecha-
17 nisms to address those issues.

18 (5) Determination of solutions and specific poli-
19 cies to address the priority problems that take an
20 adaptive, ecosystem-based approach.

21 (6) Identification of short and long-term eco-
22 system goals, responsibilities for taking actions to
23 implement solutions to priority problems and to
24 achieve those ecosystem goals, and the necessary re-
25 sources.

1 (7) An analysis of the gaps in authority, coordi-
2 nation, and resources, including funding, that must
3 be filled in order to fully achieve the Plan's goals.

4 (8) Identification of model programs whose ex-
5 isting infrastructure aid in implementation of the
6 Plan.

7 (c) MEETINGS.—Each Partnership shall meet—

8 (1) at least twice each year—

9 (A) during the development of the Plan;
10 and

11 (B) after completion of such plan to mon-
12 itor the implementation of the plan's goals and
13 objectives and develop strategies for adaptive
14 management; and

15 (2) at other times at the call of the Adminis-
16 trator.

17 (d) AMENDING PLANS.—Each approved Plan shall be
18 reviewed and revised by the relevant Partnership at least
19 once every four years. Any proposed amendments to the
20 plan shall be transmitted to the Administrator for review
21 pursuant to this section.

22 (e) ACTION BY ADMINISTRATOR.—

23 (1) REVIEW OF PLANS.—

24 (A) COMMENCEMENT OF REVIEW.—Within
25 10 days after transmittal of a Plan by a Part-

1 nership to the Administrator and the Com-
2 mittee on Ocean Policy, or any amendment to
3 such a Plan, the Administrator in consultation
4 with the Committee on Ocean Policy shall com-
5 mence a review of the Plan or amendment.

6 (B) PUBLIC NOTICE AND COMMENT.—Im-
7 mediately after receipt of such a Plan, the Ad-
8 ministrator shall publish in the Federal Reg-
9 ister a notice stating that the plan or amend-
10 ment is available and that public comments
11 may be submitted to the Administrator within
12 60 days after the date the notice is published.

13 (C) REQUIREMENTS FOR APPROVAL.—Be-
14 fore approving a Regional Ocean Strategic
15 Plan, or any amendments to such a Plan, sub-
16 mitted by a Regional Ocean Partnership, the
17 Administrator, in consultation with the Com-
18 mittee on Ocean Policy, must find that the
19 Plan—

20 (i) is consistent with the policy and
21 standards set forth in section 101, and

22 (ii) adequately addresses the required
23 elements under subsection (a) of this sec-
24 tion.

1 (D) DEADLINE FOR REVIEW.—Within 120
2 days after transmittal by the Partnership to the
3 Administrator of a Regional Ocean Strategic
4 Plan, or an amendment to such a Plan, the Ad-
5 ministrator in consultation with the Committee
6 on Ocean Policy shall approve or disapprove the
7 plan by written notice. If the Administrator dis-
8 approves a Plan or amendment, the Adminis-
9 trator in consultation with the Committee on
10 Ocean Policy shall make conforming rec-
11 ommendations to the Partnership. Within 60
12 days of receiving the recommendations, the
13 Partnership shall submit a revised Plan or
14 amendment(s) to the Administrator and the
15 Committee on Ocean Policy for review under
16 this title.

17 (2) GRANTS.—The Administrator, subject to
18 the availability of funds in the Ocean and Great
19 Lakes Conservation Trust Fund established in sec-
20 tion 501, may award grants to members of a Part-
21 nership, other than representatives of the Federal
22 Government, to cover appropriate expenses incurred
23 in developing a draft Ocean Strategic plan or to im-
24 plement an approved plan.

25 (f) IMPLEMENTATION.—

1 (1) IN GENERAL.—Indian tribes, States, Com-
 2 monwealths, territories and possessions of the
 3 United States with a representative on a Regional
 4 Ocean Partnership, and the Federal Government
 5 shall, to the maximum extent practicable, implement
 6 an approved Regional Ocean Strategic Plan con-
 7 sistent with existing legal authorities.

8 (2) RECOMMENDATIONS FOR MORE RE-
 9 SOURCES.—If existing legal authority is inadequate
 10 or other resources are needed to successfully imple-
 11 ment an approved Regional Ocean Strategic Plan in
 12 consultation with the Committee on Ocean Policy,
 13 the representatives of Indian tribes, States, Com-
 14 monwealths, territories and possessions of the
 15 United States, and of the Federal Government serv-
 16 ing on a Regional Ocean Partnership shall make rec-
 17 ommendations to the Congress and States regarding
 18 necessary changes.

19 **SEC. 404. NATIONAL ACADEMY OF SCIENCES STUDY OF RE-**
 20 **GIONAL OCEANS GOVERNANCE.**

21 (a) STUDY REQUIRED.—Not later than 1 year after
 22 enactment of this Act, the Administrator and the Com-
 23 mittee on Ocean Policy shall enter into an arrangement
 24 with the National Research Council of the National Acad-
 25 emy of Sciences to carry out a study of existing regional

1 and ecosystem-based approaches to coastal and ocean gov-
2 ernance.

3 (b) MATTERS INCLUDED.—The study required by
4 subsection (a) shall evaluate—

5 (1) current coastal and oceans approaches to
6 ecosystem-based management and their effectiveness
7 at maintaining healthy marine ecosystems;

8 (2) approaches to regional governance currently
9 in use in the United States; and

10 (3) mechanisms for engaging Federal, State,
11 and local governments, special interest groups, and
12 the general public in the management process.

13 (c) RECOMMENDATIONS.—In carrying out the study
14 required by subsection (a), the National Research Council
15 may develop recommendations it considers appropriate
16 and directly related to the subject matter of the study.
17 It is the sense of the Congress that the National Research
18 Council should develop recommendations on the best
19 methods of creating governance structures, specific to
20 each of the Regional Ocean Partnerships created in sec-
21 tion 402, that include ecosystem-based management strat-
22 egies and broad participation.

23 (d) REPORTS.—The National Research Council shall
24 submit to the Administrator, the Committee on Ocean Pol-
25 icy, and each of the Regional Ocean Partnerships created

1 in section 402 by not later than one year after entering
2 into the arrangement required by subsection (a), a final
3 report on the study that includes all findings, conclusions,
4 and recommendations. Upon receipt of the final report,
5 each of the Regional Ocean Partnerships shall consider
6 and integrate recommendations of the National Research
7 Council to improve regional governance structures.

8 (e) PROVISION OF INFORMATION.—The Adminis-
9 trator and the Regional Ocean Partnerships shall, in a
10 timely manner, make available to the National Research
11 Council all information that the National Research Coun-
12 cil considers necessary to carry out its responsibilities
13 under this section.

14 (f) RULE OF CONSTRUCTION.—This section shall not
15 be construed to affect section 402, except to advise on effi-
16 cient structure and operation of the partnerships for the
17 most effective ecosystem-based management of resources
18 as practicable.

19 (g) FUNDING.—Of the amounts made available to the
20 National Oceanic and Atmospheric Administration pursu-
21 ant to the authorization of appropriations, an appropriate
22 amount shall be available for carrying out the study re-
23 quired by this section.

1 **SEC. 405. OCEAN ECOSYSTEM RESOURCE INFORMATION**
2 **SYSTEMS.**

3 (a) FINDINGS.—The Congress finds the following:

4 (1) Ecosystem-based management will require
5 development of an ocean information systems com-
6 prised of a set of information management tools and
7 products capable of integrating and disseminating
8 information essential for informed decision-making.

9 (2) Information generated by ocean monitoring
10 systems, including the National Environmental Ob-
11 servatory Network, will be more useful if fully inte-
12 grated into resource information systems developed
13 for ecosystem-based management applications. Data
14 from these offshore monitoring programs, coupled
15 with other information on ocean and aquatic eco-
16 systems, will provide a basis for understanding nat-
17 ural and anthropogenic environmental variability, in-
18 cluding climate change and the resulting impacts on
19 living marine resources.

20 (3) Natural resource information systems have
21 been developed and are presently a successful man-
22 agement tool for onshore uses, including some Pa-
23 cific Coast watersheds, and they should now be ap-
24 plied to the ocean environment to facilitate eco-
25 system-based management of the United States
26 oceans waters.

1 (b) ESTABLISHMENT.—

2 (1) REQUIREMENT.—The Administrator shall,
3 within 90 days after the date of the enactment of
4 this Act, establish a network of regional ocean eco-
5 system resource information systems to act as an or-
6 ganized repository of geophysical, atmospheric,
7 oceanographic, and marine biological data, including
8 genetic research, studies, data, maps, and analyses
9 necessary to the understanding of the ocean eco-
10 system, and from which to draw information for the
11 establishment of national policies and priorities re-
12 lated to the conservation, use, and management of
13 United States ocean waters and the marine re-
14 sources therein.

15 (2) INCLUDED INFORMATION.—Information
16 maintained in each regional ocean ecosystem re-
17 source information system may include—

18 (A) relevant historic or social science infor-
19 mation that may aid in the understanding of
20 ocean ecosystems or their management; and

21 (B) published and unpublished research,
22 data, and scientifically peer-reviewed analysis,
23 developed by State agencies, academic or sci-
24 entific institutions, fishermen’s collaborative re-

1 search programs, and other reliable and rel-
2 evant information sources.

3 (3) REVIEW OF INCLUDED ANALYSES AND IN-
4 TERPRETATIONS.—Each draft analysis and interpre-
5 tation of data to explain ecosystem relationships that
6 is included in a regional ocean ecosystem resource
7 information system shall be reviewed by qualified ex-
8 perts before being broadly disseminated through the
9 system to the public.

10 (4) CONTRACTS AND OTHER AGREEMENTS.—

11 (A) AUTHORITY.—The Administrator, sub-
12 ject to the availability of appropriations, may
13 enter into contracts and other agreements with
14 other Federal agencies, State agencies, non-gov-
15 ernmental organizations, universities, and pri-
16 vate academic institutions for development of
17 portions of each regional ocean ecosystem re-
18 source information system.

19 (B) OPEN-SOURCE SOFTWARE AND THE
20 END-PRODUCT LICENSES.—The Administrator
21 shall include in such agreements appropriate
22 provisions requiring use of general public li-
23 cense open-source software and licensing of
24 end-products to the Administration or to any

1 joint authority considered appropriate by the
2 Administrator for efficient regional operations.

3 (5) ACCESS TO INFORMATION.—The Adminis-
4 trator shall ensure that information in each regional
5 ocean ecosystem resource information system estab-
6 lished under this section shall be readily accessible
7 at no cost, or at nominal cost, to the Congress, all
8 Federal agencies, States, academic and scientific in-
9 stitutions, and the public through the Internet, li-
10 braries, and such other mediums as may be appro-
11 priate and practical.

12 (c) INCLUDED REGIONS AND WATERS; SCHEDULE.—

13 (1) OCEAN REGIONS.—The Administrator shall
14 establish by not later than 5 years after the enact-
15 ment of the Act, a regional ocean ecosystem resource
16 information system for each ocean region.

17 (2) OTHER WATERS.—The Administrator, in
18 cooperation with the affected States, shall establish
19 by not later than 10 years after the enactment of
20 this Act, a regional ocean ecosystem resource infor-
21 mation system for each of the following bodies of
22 water:

23 (A) The United States territorial waters of
24 each of the Great Lakes.

25 (B) Long Island Sound.

1 (C) The Gulf of Maine.

2 (D) Chesapeake Bay.

3 (E) The Mississippi River Delta.

4 (F) San Francisco Bay and Delta.

5 (G) The United States territorial waters of
6 Puget Sound.

7 (3) MODIFICATION OF REGIONS AND WA-
8 TERS.—The Administrator, with respect to the es-
9 tablishment of regional ocean ecosystem resource in-
10 formation systems, and for purposes of administra-
11 tive convenience and to ensure the timely completion
12 of such systems, may divide the regions and waters
13 referred to in paragraphs (1) and (2) or include
14 other waters not listed in those paragraphs.

15 (d) COORDINATION.—

16 (1) OBTAINING INFORMATION.—In establishing
17 regional ocean ecosystem resource information sys-
18 tems, the Administrator—

19 (A) shall cooperate and coordinate with the
20 United States Geological Survey, the United
21 States Fish and Wildlife Service, the Minerals
22 Management Service, the Environmental Pro-
23 tection Agency, the Coast Guard, and the Navy,
24 and all Administration offices, including the
25 National Marine Sanctuaries program and Re-

1 gional Fishery Management Councils, in order
2 to obtain from such agencies and offices and
3 use all unclassified information necessary for
4 the development and operation of the systems;
5 and

6 (B) may seek to enter into cooperative
7 agreements with States, local governments, uni-
8 versities, or private academic institutions in
9 order to obtain access to information necessary
10 or useful for the development and operation of
11 the systems.

12 (2) AVOIDANCE OF DUPLICATION.—To avoid
13 duplication, in establishing regional ocean ecosystem
14 resource information systems the Administrator
15 shall coordinate with other ocean data acquisition
16 and distribution systems, including the National
17 Geospatial Data Clearinghouse and the Sanctuary
18 Integrated Monitoring Network program of the Ad-
19 ministration.

20 (3) INTEGRATION OF WATERSHED, BAY, AND
21 ESTUARINE INFORMATION SYSTEMS.—The Adminis-
22 trator, in recognition of the effects of land-based and
23 watershed uses on ocean ecosystems, shall facilitate
24 to the extent practical the integration of watershed,
25 bay, and estuarine information systems with the ap-

1 appropriate regional ocean ecosystem resource informa-
2 tion system.

3 (4) INTERNATIONAL AGREEMENTS.—The Ad-
4 ministrator may, in consultation with the Secretary
5 of State, enter into agreements with the Govern-
6 ments of Canada, Mexico, and the Russian Federa-
7 tion with respect to establishment of a regional
8 ocean ecosystem resource information system for
9 United States coastal waters that abut the territorial
10 waters of any of those countries, for purposes of in-
11 clusion in such a system of any information or data
12 that may be necessary or useful in the development
13 and operation of such system.

14 (e) AUTHORIZATION OF APPROPRIATIONS.—For de-
15 velopment and implementation of the ocean ecosystem re-
16 source information systems for ocean regions and other
17 waters under this section, there is authorized to be appro-
18 priated to the Administrator \$12,000,000 for each of the
19 fiscal years 2009 through 2018.

20 **SEC. 406. REGULATIONS.**

21 The Administrator shall issue such regulations as the
22 Administrator considers necessary to ensure proper ad-
23 ministration of this title.

1 **SEC. 407. OTHER AUTHORITY.**

2 This title shall not be construed as superseding or
3 diminishing the authorities and responsibilities, under any
4 other provision of law, of the Administrator or any other
5 Federal, State, or tribal officer, employee, department, or
6 agency.

7 **SEC. 408. AUTHORIZATION OF APPROPRIATIONS.**

8 There is authorized to be appropriated to the Admin-
9 istrator for carrying out this title, including development,
10 implementation, and monitoring of approved Regional
11 Ocean Strategic Plans, \$25,000,000 for each of fiscal
12 years 2009 through 2013.

13 **TITLE V—OCEAN AND GREAT**
14 **LAKES CONSERVATION**
15 **TRUST FUND**

16 **SEC. 501. ESTABLISHMENT OF FUND.**

17 (a) **ESTABLISHMENT OF FUND.**—There is estab-
18 lished in the Treasury of the United States a fund which
19 shall be known as the “Ocean and Great Lakes Conserva-
20 tion Trust Fund”, in this title referred to as the “Fund”.
21 In each fiscal year after fiscal year 2007, the Secretary
22 of the Treasury shall deposit into the Fund the following
23 amounts:

24 (1) **GENERAL REVENUE.**—An amount in each
25 such fiscal year equal to the difference between

1 \$1,300,000,000 and the amounts deposited in the
2 Fund under paragraphs (2), (3), and (4).

3 (2) HEALTHY OCEAN STAMP.—Amounts gen-
4 erated from the sale of a Healthy Oceans Stamp
5 under section 507.

6 (3) AMOUNTS NOT DISBURSED.—All allocated
7 but undisbursed amounts returned to the Fund
8 under section 505(a)(2).

9 (4) INTEREST.—All interest earned under sub-
10 section (d).

11 (b) TRANSFER FOR EXPENDITURE.—The Secretary
12 of the Treasury shall transfer amounts deposited into the
13 Fund as follows:

14 (1) To the Administrator of the National Oce-
15 anic and Atmospheric Administration for purposes
16 of making payments to coastal States only for car-
17 rying out their responsibilities for developing and
18 implementing Regional Ocean Strategic Plans under
19 title IV—

20 (A) \$350,000,000 for fiscal year 2008;

21 (B) \$700,000,000 for fiscal year 2009; and

22 (C) \$1,000,000,000 for fiscal year 2010

23 and each fiscal year thereafter.

24 (2) To the Administrator for allocation, with
25 concurrence of the Committee on Ocean Policy, only

1 for carrying out responsibilities of the Federal Gov-
2 ernment for development and implementation of Re-
3 gional Ocean Strategic Plans required under title
4 IV—

5 (A) \$50,000,000 for fiscal year 2008;

6 (B) \$100,000,000 for fiscal year 2009; and

7 (C) \$300,000,000 for fiscal year 2010 and
8 each fiscal year thereafter.

9 (c) SHORTFALL.—If amounts referred to in para-
10 graphs (1) through (3) of subsection (a) in any fiscal year
11 after fiscal year 2007 are less than \$1,300,000,000, the
12 amounts transferred under paragraphs (1) and (2) of sub-
13 section (b) for that fiscal year shall each be reduced pro-
14 portionately.

15 (d) INTEREST.—The Secretary of the Treasury shall
16 invest monies in the Fund (including interest), and in any
17 fund or account to which monies are transferred pursuant
18 to subsection (b) of this section, in public debt securities
19 with maturities suitable to the needs of the Fund, as de-
20 termined by the Secretary of the Treasury, and bearing
21 interest at rates determined by the Secretary of the Treas-
22 ury, taking into consideration current market yields on
23 outstanding marketable obligations of the United States
24 of comparable maturity. Such invested monies shall re-

1 main invested until needed to meet requirements for dis-
2 bursement for the programs financed under this Act.

3 (e) INTENT OF CONGRESS TO SUPPLEMENT ANNUAL
4 APPROPRIATIONS FOR FEDERAL AGENCIES.—Amounts
5 made available by this Act are intended by the Congress
6 to supplement, and not detract from, annual appropria-
7 tions for Federal agencies receiving funding under this
8 title.

9 **SEC. 502. LIMITATION ON USE OF AVAILABLE AMOUNTS**
10 **FOR ADMINISTRATION.**

11 Notwithstanding any other provision of law, of
12 amounts made available by this title (including the amend-
13 ments made by this title) for a particular activity, not
14 more than 2 percent may be used for administrative ex-
15 penses of that activity.

16 **SEC. 503. RECORDKEEPING REQUIREMENTS.**

17 The Administrator, in consultation with the Com-
18 mittee on Ocean Policy, shall establish such rules regard-
19 ing recordkeeping by State and local governments and the
20 auditing of expenditures made by State and local govern-
21 ments from funds made available under this Act as may
22 be necessary. Such rules shall be in addition to other re-
23 quirements established regarding recordkeeping and the
24 auditing of such expenditures under other authority of
25 law.

1 **SEC. 504. MAINTENANCE OF EFFORT AND MATCHING FUND-**
2 **ING.**

3 (a) IN GENERAL.—It is the intent of the Congress
4 in this Act that States not use this Act as an opportunity
5 to reduce State or local resources for the programs funded
6 by this Act. Except as provided in subsection (b), no State
7 or local government shall receive any funds under this Act
8 during any fiscal year in which its expenditures of non-
9 Federal funds for recurrent expenditures for programs for
10 which funding is provided under this Act will be less than
11 its expenditures were for such programs during the pre-
12 ceding fiscal year. No State or local government shall re-
13 ceive funding under this Act with respect to a program
14 unless the Administrator is satisfied that such a grant will
15 be so used to supplement and, to the extent practicable,
16 increase the level of State, local, or other non-Federal
17 funds available for such program.

18 (b) EXCEPTION.—The Administrator may provide
19 funding under this Act to a State or local government not
20 meeting the requirements of subsection (a) if the Adminis-
21 trator determines that a reduction in expenditures—

22 (1) is attributable to a nonselective reduction in
23 expenditures for the programs of all executive
24 branch agencies of the State or local government; or

25 (2) is a result of reductions in State or local
26 revenue as a result of a downturn in the economy.

1 (c) USE OF FUND TO MEET MATCHING REQUIRE-
2 MENTS.—All funds received by a State or local govern-
3 ment under this Act shall be treated as Federal funds for
4 purposes of compliance with any provision in effect under
5 any other law requiring that non-Federal funds be used
6 to provide a portion of the funding for any program or
7 project.

8 **SEC. 505. COMMUNITY ASSISTANCE FORMULA AND PAY-**
9 **MENTS.**

10 (a) CONSERVATION PAYMENTS TO COASTAL
11 STATES.—

12 (1) GRANT PROGRAM.—Amounts transferred to
13 the Administrator from the Fund under section
14 501(b)(1) for purposes of making payments to coast-
15 al States under this title in any fiscal year shall be
16 allocated by the Administrator among coastal States
17 as provided in this section each such fiscal year. In
18 each such fiscal year, the Administrator shall, with-
19 out further appropriation, disburse such allocated
20 funds to those coastal States for which the Adminis-
21 trator has approved a spending plan under section
22 506 and that have met all other requirements of this
23 title. Payments for all projects shall be made by the
24 Administrator to the Governor of the State or to the
25 State official or agency designated by the Governor

1 or by State law as having authority and responsi-
2 bility to accept and to administer funds paid here-
3 under. No payment shall be made to any State until
4 the State has agreed to provide such reports to the
5 Administrator, in such form and containing such in-
6 formation, as may be reasonably necessary to enable
7 the Administrator to perform the duties of the Ad-
8 ministrator under this title, and provide such fiscal
9 control and fund accounting procedures as may be
10 necessary to assure proper disbursement and ac-
11 counting for Federal revenues paid to the State
12 under this title.

13 (2) FAILURE TO MAKE SUFFICIENT PROGRESS
14 AT DEVELOPING OR IMPLEMENTING A REGIONAL
15 OCEAN STRATEGIC PLAN.—At the end of each fiscal
16 year, the Administrator shall return to the Fund any
17 amount that the Administrator allocated, but did not
18 disburse, in that fiscal year to a coastal State that,
19 in the judgment of the Administrator, has failed to
20 make sufficient progress in developing or imple-
21 menting a Regional Ocean Strategic Plan under title
22 IV before the end of the fiscal year in which such
23 grant is allocated, except that the Administrator
24 shall hold in escrow until the final resolution of the
25 appeal any amount allocated, but not disbursed, to

1 a coastal State that has appealed the disapproval of
2 such funding.

3 (b) ALLOCATION AMONG COASTAL STATES.—

4 (1) ALLOCABLE SHARE FOR EACH STATE.—For
5 each coastal State, the Administrator shall deter-
6 mine the State's allocable share of the total amount
7 transferred from the Fund under section 501(b)(1)
8 for each fiscal year using the following weighted for-
9 mula:

10 (A) Thirty-five percent of such amount
11 shall be allocated to each coastal State based on
12 the ratio of each State's shoreline miles to the
13 shoreline miles of all coastal States.

14 (B) Sixty-five percent of such amount shall
15 be allocated to each coastal State based on the
16 ratio of each State's coastal population to the
17 coastal population of all coastal States.

18 (2) MINIMUM STATE SHARE.—

19 (A) IN GENERAL.—The allocable share de-
20 termined by the Administrator under this sub-
21 section for each coastal State with a manage-
22 ment program approved by the Secretary of
23 Commerce under the Coastal Zone Management
24 Act of 1972 (16 U.S.C. 1451 et seq.), or that
25 is making satisfactory progress toward one,

1 shall not be less in any fiscal year than 0.50
2 percent of the total amount transferred by the
3 Secretary of the Treasury to the Administrator
4 for that fiscal year under section 501(b)(1).
5 For any other coastal State the allocable share
6 shall not be less than 0.25 percent of such
7 transferred amount.

8 (B) RECOMPUTATION.—If 1 or more coast-
9 al States' allocable shares, as computed under
10 paragraphs (1) and (2), are increased by any
11 amount under this paragraph, the allocable
12 share for all other coastal States shall be re-
13 computed and reduced by the same amount so
14 that not more than 100 percent of the amount
15 transferred by the Secretary of the Treasury to
16 the Administrator for that fiscal year under
17 section 501(b)(1) is allocated to all coastal
18 States. The reduction shall be divided pro rata
19 among such other coastal States.

20 (c) PAYMENTS TO POLITICAL SUBDIVISIONS.—In the
21 case of a coastal State, the Governor of the State shall
22 hold 50 percent of the State's allocable share, as deter-
23 mined under subsection (b), in a State ocean grants fund.
24 The Governor or his designee shall award, on a competi-
25 tive basis, grants to coastal political subdivisions of the

1 State from the State ocean grants fund only for activities
2 relating to the development and implementation of feder-
3 ally approved Regional Ocean Strategic Plans that are
4 consistent with the standard set forth in subsection
5 506(b).

6 (d) TIME OF PAYMENT.—Payments to coastal States
7 and coastal political subdivisions under this section shall
8 be made not later than December 31 of each year from
9 revenues received during the immediately preceding fiscal
10 year.

11 **SEC. 506. APPROVAL OF STATE FUNDING AND SPENDING**
12 **PLANS.**

13 (a) DEVELOPMENT AND SUBMISSION OF REGIONAL
14 OCEAN STRATEGIC PLANS.—Each coastal State seeking
15 to receive grants under this title shall participate in the
16 development and implementation of Regional Ocean Stra-
17 tegic Plans under title IV.

18 (b) STANDARD GOVERNING THE EXPENDITURE OF
19 FUNDS.—All Funds disbursed to coastal States and polit-
20 ical subdivisions shall only be used for activities that—

21 (1) develop or implement federally approved Re-
22 gional Ocean Strategic Plans, and

23 (2) are consistent with the national standards
24 set forth in section 101(b).

1 (c) SUBMISSION OF SPENDING PLAN.—Each coastal
2 State seeking funding under this title shall submit annu-
3 ally to the Administrator a spending plan for funds pro-
4 vided under this title. In addition to such other require-
5 ments as the Administrator by regulation shall prescribe,
6 each State spending plan shall include—

7 (1) The name of the State agency that will have
8 the authority to represent and act for the State in
9 dealing with the Administrator for purposes of this
10 title.

11 (2) A description of how funds provided under
12 this title will be used to meet the State’s responsibil-
13 ities to develop and implement the applicable Re-
14 gional Ocean Strategic Plan.

15 (3) A description of how the funds provided
16 under this title will be used by coastal political sub-
17 divisions to develop and implement the applicable
18 Regional Ocean Strategic Plan.

19 (4) An analysis of how the funds provided
20 under this title to both coastal States and coastal
21 political subdivisions will be consistent with the
22 standard set forth in subsection 506(b).

23 (5) Certification by the Governor of the coastal
24 State that all the funds provided under this title to
25 coastal political subdivisions will be used to develop

1 and implement a Regional Ocean Strategic Plan in
2 a manner that is consistent with the standard set
3 forth in subsection 506(b).

4 (d) APPROVAL OR DISAPPROVAL.—

5 (1) REQUIREMENTS.—A coastal State shall re-
6 ceive funding under this title if, in consultation with
7 the Committee on Ocean Policy, the Adminis-
8 trator—

9 (A) certifies that such coastal State is par-
10 ticipating actively and sufficiently in the devel-
11 opment and implementation of a Regional
12 Ocean Strategic Plan under title IV;

13 (B) approves a spending plan submitted by
14 such State that specifies how funds provided
15 under this title will be used to meet the State's
16 obligations and responsibilities in developing
17 and implementing a Regional Ocean Strategic
18 Plan under title IV; and

19 (C) ensures any payments under this title
20 to coastal States and political subdivisions are
21 used to develop and implement an approved Re-
22 gional Ocean Strategic Plan in a manner that
23 is consistent with the standard set forth in sub-
24 section 506(b).

1 (2) PROCEDURE AND TIMING; REVISIONS.—The
2 Administrator shall approve or disapprove each
3 spending plan submitted in accordance with this sec-
4 tion. If a State first submits a plan by not later
5 than 90 days before the beginning of the first fiscal
6 year to which the plan applies, the Administrator
7 shall approve or disapprove the plan by not later
8 than 30 days before the beginning of that fiscal
9 year.

10 (3) AMENDMENT OR REVISION.—Any amend-
11 ment to or revision of the plan shall be prepared in
12 accordance with the requirements of this subsection
13 and shall be submitted to the Administrator for ap-
14 proval or disapproval. Any such amendment or revi-
15 sion shall take effect only for fiscal years after the
16 fiscal year in which the amendment or revision is ap-
17 proved by the Administrator.

18 (4) PUBLIC COMMENT.—Before approving or
19 disapproving a spending plan of a State, amend-
20 ment, or revision to a plan, the Administrator shall
21 provide for public comment on the State's proposed
22 expenditures for the forthcoming year.

23 **SEC. 507. SPECIAL POSTAGE STAMP.**

24 (a) IN GENERAL.—In order to afford a convenient
25 way for members of the public to support efforts to pro-

1 tect, maintain, and restore marine ecosystems, the United
2 States Postal Service shall provide for a special postage
3 stamp in accordance with this section.

4 (b) TERMS AND CONDITIONS.—The issuance and sale
5 of the stamp referred to in subsection (a) shall be gov-
6 erned by section 416 of title 39, United States Code, and
7 regulations under such section, subject to the following:

8 (1) TRANSFERS.—All amounts becoming avail-
9 able from the sale of such stamp shall be transferred
10 to the Ocean and Great Lakes Conservation Trust
11 Fund (as established by section 501) through pay-
12 ments which shall be made, at least twice a year, in
13 the manner required by subsection (d)(1) of section
14 416 of such title 39.

15 (2) NUMERICAL LIMITATION.—For purposes of
16 applying any numerical limitation referred to in sub-
17 section (e)(1)(C) of section 416 of such title 39,
18 such stamp shall not be taken into account.

19 (3) DURATION.—Such stamp shall be made
20 available to the public over such period of time as
21 the Postal Service may determine, except that such
22 period—

23 (A) shall commence not later than 12
24 months after the date of the enactment of this
25 Act; and

1 (B) shall terminate not later than the close
2 of the period referred to in section 416(g) of
3 title 39, United States Code.

4 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
5 tion shall be considered to permit or require that any de-
6 termination of the amounts becoming available from the
7 sale of the stamp referred to in subsection (a) be made
8 in a manner inconsistent with the requirements of section
9 416(d) of title 39, United States Code.

10 **TITLE VI—ADMINISTRATION** 11 **FUNDING**

12 **SEC. 601. AUTHORIZATION OF APPROPRIATIONS.**

13 There is authorized to be appropriated to the Admin-
14 istrator such sums as necessary for the functions and ac-
15 tivities carried out by the Administration in accordance
16 with this Act. Sums appropriated under this section shall
17 remain available until expended.

○

DON YOUNG
RANKING REPUBLICAN MEMBER



Agenda Item B.4.a
Attachment 2
September 2007

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

August 20, 2007

Mr. Donald K. Hansen
Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

RECEIVED

AUG 22 2007

PFMC

Dear Mr. Hansen:

Congressman Sam Farr introduced H.R. 21, the Oceans Conservation, Education, and National Strategy for the 21st Century Act, on January 4, 2007. The Subcommittee on Fisheries, Wildlife and Oceans held a hearing on the bill on April 26, 2007. The Subcommittee heard testimony from the National Oceanic and Atmospheric Administration, a former member of the U.S. Commission on Ocean Policy, the Coastal States Organization, the Natural Resources Defense Council, the Pacific Coast Federation of Fishermen's Association, and the Marine Conservation Alliance.

The Subcommittee may be scheduling a mark up on H.R. 21 in September. It would be helpful for the Committee to hear from the Council regarding the new authorities in H.R. 21. I am interested in the Council's view on whether or not the new authorities in H.R. 21 could effect Council actions under existing statutes such as the Magnuson-Stevens Fishery Conservation and Management Act. In addition, if there are any other comments or concerns the Council may have with the legislation please include them in your response.

I realize the Council is very busy working on its regular business. However, if it is possible, I would appreciate receiving the Council's comments on and concerns with H.R. 21 in September. Thank you for your assistance in this matter. I look forward to your response.

Sincerely,

Don Young
Ranking Republican Member
Committee on Natural Resources

110TH CONGRESS
1ST SESSION

H. R. 2010

To provide the necessary authority to the Secretary of Commerce for the establishment and implementation of a regulatory system for offshore aquaculture in the United States Exclusive Economic Zone, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2007

Mr. RAHALL (for himself and Ms. BORDALLO) (both by request): introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on Ways and Means and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide the necessary authority to the Secretary of Commerce for the establishment and implementation of a regulatory system for offshore aquaculture in the United States Exclusive Economic Zone, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Offshore
5 Aquaculture Act of 2007”.

1 **SEC. 2. FINDINGS.**

2 (a) It is the policy of the United States to:

3 (1) Support an offshore aquaculture industry
4 that will produce food and other valuable products,
5 protect wild stocks and the quality of marine eco-
6 systems, and be compatible with other uses of the
7 Exclusive Economic Zone;

8 (2) Encourage the development of environ-
9 mentally responsible offshore aquaculture by author-
10 izing offshore aquaculture operations and research;

11 (3) Establish a permitting process for offshore
12 aquaculture that encourages private investment in
13 aquaculture operations and research, provides oppor-
14 tunity for public comment, and addresses the poten-
15 tial risks to and impacts (including cumulative im-
16 pacts) on marine ecosystems, human health and
17 safety, other ocean uses, and coastal communities
18 from offshore aquaculture;

19 (4) Promote, through public-private partner-
20 ships, research and development in marine aqua-
21 culture science, technology, and related social, eco-
22 nomic, legal, and environmental management dis-
23 ciplines that will enable marine aquaculture oper-
24 ations to achieve operational objectives while pro-
25 tecting marine ecosystem quality.

1 (b) Offshore aquaculture activities within the Exclu-
2 sive Economic Zone of the United States constitute activi-
3 ties with respect to which the United States has pro-
4 claimed sovereign rights and jurisdiction under Presi-
5 dential Proclamation 5030 of March 10, 1983.

6 **SEC. 3. DEFINITIONS.**

7 As used in this Act—

8 (a) The term “coastal State” means a state of the
9 United States in, or bordering on, the Atlantic, Pacific,
10 or Arctic Ocean, the Gulf of Mexico, or Long Island
11 Sound. The term also includes Puerto Rico, the Virgin Is-
12 lands, Guam, the Commonwealth of the Northern Mariana
13 Islands, the Trust Territories of the Pacific Islands, and
14 American Samoa.

15 (b) The term “coastline” means the line of ordinary
16 low water along that portion of the coast that is in direct
17 contact with the open sea and the line marking the sea-
18 ward limit of inland waters.

19 (c) The term “Exclusive Economic Zone” means, un-
20 less otherwise specified by the President in the public in-
21 terest in a writing published in the Federal Register, a
22 zone, the outer boundary of which is 200 nautical miles
23 from the baseline from which the breadth of the territorial
24 sea is measured, except as established by a maritime
25 boundary treaty in force, or being provisionally applied by

1 the United States or, in the absence of such a treaty where
2 the distance between the United States and another nation
3 is less than 400 nautical miles, a line equidistant between
4 the United States and the other nation. Without affecting
5 any Presidential Proclamation with regard to the estab-
6 lishment of the United States territorial sea or Exclusive
7 Economic Zone, the inner boundary of that zone is—

8 (1) a line coterminous with the seaward bound-
9 ary of each of the several coastal States, as defined
10 in 43 U.S.C. 1312;

11 (2) a line three marine leagues from the coast-
12 line of the Commonwealth of Puerto Rico;

13 (3) a line three geographical miles from the
14 coastlines of American Samoa, the United States
15 Virgin Islands, and Guam;

16 (4) for the Commonwealth of the Northern
17 Mariana Islands—

18 (A) its coastline, until such time as the
19 Commonwealth of the Northern Mariana Is-
20 lands is granted authority by the United States
21 to regulate all fishing to a line seaward of its
22 coastline, and

23 (B) upon the United States' grant of such
24 authority, the line established by such grant of
25 authority; and

1 (5) for any possession of the United States not
2 referred to in subparagraph (2), (3), or (4), the
3 coastline of such possession.

4 Nothing in this definition shall be construed as dimin-
5 ishing the authority of the Department of Defense, the
6 Department of the Interior or any other Federal depart-
7 ment or agency.

8 (d) The term “lessee” means any party to a lease,
9 right-of-use and easement, or right-of-way, or an approved
10 assignment thereof, issued pursuant to the Outer Conti-
11 nental Shelf Lands Act, 43 U.S.C. 1331 et seq.

12 (e) The term “marine species” means finfish, mol-
13 lusks, crustaceans, marine algae, and all other forms of
14 marine life, excluding marine mammals and birds.

15 (f) The term “offshore aquaculture” means all activi-
16 ties, including the operation of offshore aquaculture facili-
17 ties, involved in the propagation and rearing, or attempted
18 propagation and rearing, of marine species in the United
19 States Exclusive Economic Zone.

20 (g) The term “offshore aquaculture facility” means:
21 1) an installation or structure used, in whole or in part,
22 for offshore aquaculture; or 2) an area of the seabed or
23 the subsoil used for offshore aquaculture of living orga-
24 nisms belonging to sedentary species.

1 (h) The term “offshore aquaculture permit” means
2 an authorization issued under section 4(b) to raise speci-
3 fied marine species in a specific offshore aquaculture facil-
4 ity within a specified area of the Exclusive Economic
5 Zone.

6 (i) The term “person” means any individual (whether
7 or not a citizen or national of the United States), any cor-
8 poration, partnership, association, or other non-govern-
9 mental entity (whether or not organized or existing under
10 the laws of any State), and State, local or tribal govern-
11 ment or entity thereof, and, except as otherwise specified
12 by the President in writing, the Federal Government or
13 an entity thereof, and, to the extent specified by the Presi-
14 dent in writing, a foreign government or an entity thereof.

15 (j) The term “Secretary” means the Secretary of
16 Commerce.

17 **SEC. 4. OFFSHORE AQUACULTURE PERMITS.**

18 (a) GENERAL.—

19 (1) The Secretary shall establish, through rule-
20 making, in consultation as appropriate with other
21 relevant Federal agencies, coastal States, and re-
22 gional fishery management councils established
23 under section 302 of the Magnuson-Stevens Fishery
24 Conservation and Management Act (16 U.S.C.
25 1852), a process to make areas of the Exclusive

1 Economic Zone available to eligible persons for the
2 development and operation of offshore aquaculture
3 facilities, which shall include:

4 (A) Procedures and criteria necessary to
5 issue and modify permits under this Act;

6 (B) Procedures to coordinate the offshore
7 aquaculture permitting process, and related
8 siting, operations, environmental protection,
9 monitoring, enforcement, research, and eco-
10 nomic and social activities, with similar activi-
11 ties administered by other Federal agencies and
12 coastal States;

13 (C) Consideration of the potential environ-
14 mental, social, economic, and cultural impacts
15 of offshore aquaculture and inclusion, where ap-
16 propriate, of permit conditions to address nega-
17 tive impacts;

18 (D) Public notice and opportunity for pub-
19 lic comment prior to issuance of offshore aqua-
20 culture permits;

21 (E) Procedures to monitor and evaluate
22 compliance with the provisions of offshore aqua-
23 culture permits, including the collection of bio-
24 logical, chemical and physical oceanographic

1 data, and social, production, and economic data;
2 and

3 (F) Procedures for transferring permits
4 from the original permit holder to a person
5 meeting the eligibility criteria in section
6 4(b)(2)(A) and able to satisfy the requirements
7 for bonds or other guarantees prescribed under
8 section 4(c)(3).

9 (2) The Secretary shall prepare an analysis
10 under the National Environmental Policy Act of
11 1969 (42 U.S.C. 4321 et seq.) with respect to the
12 process for issuing permits.

13 (3) The Secretary shall periodically review the
14 procedures and criteria for issuance of offshore
15 aquaculture permits and modify them as appro-
16 priate, in consultation as appropriate with other
17 Federal agencies, the coastal States, and regional
18 fishery management councils, based on the best
19 available science.

20 (4) The Secretary shall consult as appropriate
21 with other Federal agencies and coastal States to
22 identify the environmental requirements that apply
23 to offshore aquaculture under existing laws and reg-
24 ulations. The Secretary shall establish through rule-
25 making, in consultation with appropriate Federal

1 agencies, coastal States, and regional fishery man-
2 agement councils established under section 302 of
3 the Magnuson-Stevens Fishery Conservation and
4 Management Act (16 U.S.C. 1852), additional envi-
5 ronmental requirements to address environmental
6 risks and impacts associated with offshore aqua-
7 culture, to the extent necessary. The environmental
8 requirements shall address, but are not limited to:

9 (A) risks to and impacts on natural fish
10 stocks and fisheries, including safeguards need-
11 ed to conserve genetic resources, to prevent or
12 minimize the transmission of disease or
13 parasites to wild stocks, and to prevent the es-
14 cape of marine species that may cause signifi-
15 cant environmental harm;

16 (B) risks to and impacts on marine eco-
17 systems; biological, chemical and physical fea-
18 tures of water quality and habitat; marine spe-
19 cies, marine mammals and birds;

20 (C) cumulative effects of the aquaculture
21 operation and other aquaculture operations in
22 the vicinity of the proposed site;

23 (D) environmental monitoring, data
24 archiving, and reporting by the permit holder;

1 (E) requirements that marine species prop-
2 agated and reared through offshore aquaculture
3 be species native to the geographic region un-
4 less a scientific risk analysis shows that the risk
5 of harm to the marine environment from the
6 offshore culture of non-indigenous or genetically
7 modified marine species is negligible or can be
8 effectively mitigated; and

9 (F) maintaining record systems to track
10 inventory and movement of fish or other marine
11 species in the offshore aquaculture facility or
12 harvested from such facility, and, if necessary,
13 tagging, marking, or otherwise identifying fish
14 or other marine species in the offshore aqua-
15 culture facility or harvested from such facility.

16 (5) The Secretary, in cooperation with other
17 Federal agencies, shall:

18 (A) Collect information needed to evaluate
19 the suitability of sites for offshore aquaculture;
20 and

21 (B) Monitor the effects of offshore aqua-
22 culture on marine ecosystems and implement
23 such measures as may be necessary to protect
24 the environment. Measures may include, but are
25 not limited to, temporary or permanent reloca-

tion of offshore aquaculture sites, a moratorium on additional sites within a prescribed area, and other appropriate measures as determined by the Secretary.

(b) PERMITS.—Subject to the provisions of subsection (e), the Secretary may issue offshore aquaculture permits under such terms and conditions as the Secretary shall prescribe. Permits issued under this Act authorize the permit holder to conduct offshore aquaculture consistent with the provisions of this Act, regulations issued under this Act, any specific terms, conditions and restrictions applied to the permit by the Secretary, and other applicable law.

(1) PROCEDURES FOR ISSUANCE OF PERMITS.—

(A) The applicant for an offshore aquaculture permit shall submit an application to the Secretary specifying the proposed location and type of operation, the marine species to be propagated or reared, or both, at the offshore aquaculture facility, and other design, construction, and operational information, as specified by regulation.

(B) Within 120 days after determining that a permit application is complete and has

1 satisfied all applicable statutory and regulatory
2 requirements, as specified by regulation, the
3 Secretary shall issue or deny the permit. If the
4 Secretary is unable to issue or deny a permit
5 within this time period, the Secretary shall pro-
6 vide written notice to the applicant indicating
7 the reasons for the delay and establishing a rea-
8 sonable timeline for issuing or denying the per-
9 mit.

10 (2) PERMIT CONDITIONS.—

11 (A) An offshore aquaculture permit holder
12 must (i) be a resident of the United States, (ii)
13 be a corporation, partnership or other entity or-
14 ganized and existing under the laws of a State
15 or the United States, or (iii) if neither (i) or (ii)
16 applies, to the extent required by the Secretary
17 by regulation after coordination with the Sec-
18 retary of State, waive any immunity, and con-
19 sent to the jurisdiction of the United States and
20 its courts, for matters arising in relation to
21 such permit, and appoint and maintain agents
22 within the United States who are authorized to
23 receive and respond to any legal process issued
24 in the United States with respect to such per-
25 mit holder.

1 (B) Subject to the provisions of subsection
2 (e), the Secretary shall establish the terms, con-
3 ditions, and restrictions that apply to offshore
4 aquaculture permits, and shall specify in the
5 permits the duration, size, and location of the
6 offshore aquaculture facility.

7 (C) Except for projects involving pilot-scale
8 testing or farm-scale research on aquaculture
9 science and technologies and offshore aqua-
10 culture permits requiring concurrence of the
11 Secretary of the Interior under subsection
12 4(e)(1), the permit shall have a duration of 20
13 years, renewable thereafter at the discretion of
14 the Secretary in up to 20-year increments. The
15 duration of permits requiring concurrence of
16 the Secretary of the Interior under subsection
17 4(e)(1) shall be developed in consultation as ap-
18 propriate with the Secretary of the Interior, ex-
19 cept that any such permit shall expire no later
20 than the date that the lessee, or the lessee's op-
21 erator, submits to the Secretary of the Interior
22 a final application for the decommissioning and
23 removal of an existing facility upon which an
24 offshore aquaculture facility is located.

1 (D) At the expiration or termination of an
2 offshore aquaculture permit for any reason, the
3 permit holder shall remove all structures, gear,
4 and other property from the site, and take
5 other measures to restore the site as may be
6 prescribed by the Secretary.

7 (E) Failure to begin offshore aquaculture
8 operations within a reasonable period of time,
9 or prolonged interruption of offshore aqua-
10 culture operations, may result in the revocation
11 of the permit.

12 (3) If the Secretary determines that issuance of
13 a permit is not in the national interest, the Sec-
14 retary may decline to issue such a permit or may
15 impose such conditions as necessary to address such
16 concerns.

17 (c) FEES AND OTHER PAYMENTS.—

18 (1) The Secretary is authorized to establish,
19 through regulations, application fees and annual per-
20 mit fees. Such fees shall be deposited as offsetting
21 collections in the Operations, Research, and Facili-
22 ties (ORF) account. Fees may be collected and made
23 available only to the extent provided in advance in
24 appropriation Acts.

1 (2) The Secretary may reduce or waive applica-
2 ble fees or other payments established under this
3 section for facilities used primarily for research.

4 (3) The Secretary shall require the permit hold-
5 er to post a bond or other form of financial guar-
6 antee, in an amount to be determined by the Sec-
7 retary as sufficient to cover any unpaid fees, the
8 cost of removing an offshore aquaculture facility at
9 the expiration or termination of an offshore aqua-
10 culture permit, and other financial risks as identified
11 by the Secretary.

12 (d) COMPATIBILITY WITH OTHER USES.—

13 (1) The Secretary shall consult as appropriate
14 with other Federal agencies, coastal States, and re-
15 gional fishery management councils to ensure that
16 offshore aquaculture for which a permit is issued
17 under this section is compatible with the use of the
18 Exclusive Economic Zone for navigation, fishing, re-
19 source protection, recreation, national defense (in-
20 cluding military readiness), mineral exploration and
21 development, and other activities.

22 (2) The Secretary shall not authorize permits
23 for new offshore aquaculture facilities within 12
24 miles of the coastline of a coastal State if that coast-
25 al State has submitted a written notice to the Sec-

1 retary that the coastal State opposes such activities.
2 This provision will not apply to permit applications
3 received by the Secretary prior to the date the notice
4 is received from a coastal State. A coastal State that
5 transmitted such notice to the Secretary under this
6 paragraph may revoke that notice in writing at any
7 time.

8 (3) Federal agencies implementing this Act,
9 persons subject to this Act, and coastal States seek-
10 ing to review permit applications under this Act
11 shall comply with the applicable section of the Coast-
12 al Zone Management Act (i.e., 16 U.S.C.
13 1456(c)(1), (c)(3)(A), (c)(3)(B) or (d)) and its cor-
14 responding Federal regulations.

15 (4) Offshore aquaculture conducted in accord-
16 ance with permits issued pursuant to this Act is ex-
17 cluded from the definition of “fishing” in the Mag-
18 nuson-Stevens Fishery Conservation and Manage-
19 ment Act (16 U.S.C. 1802(15)). The Secretary shall
20 ensure, to the extent practicable, that offshore aqua-
21 culture does not interfere with conservation and
22 management measures promulgated under the Mag-
23 nuson-Stevens Fishery Conservation and Manage-
24 ment Act.

1 (5) The Secretary may promulgate regulations
2 that the Secretary finds to be reasonable and nec-
3 essary to protect offshore aquaculture facilities, and,
4 where appropriate, shall request that the Secretary
5 of the department in which the Coast Guard is oper-
6 ating establish navigational safety zones around such
7 facilities. In addition, in the case of any offshore
8 aquaculture facility described in section 4(e)(1), the
9 Secretary of the department in which the Coast
10 Guard is operating shall consult with the Secretary
11 of the Interior before designating such a zone.

12 (6) After consultation with the Secretary, the
13 Secretary of State, and the Secretary of Defense,
14 the Secretary of the department in which the Coast
15 Guard is operating may designate a zone of appro-
16 priate size around and including any offshore aqua-
17 culture facility for the purpose of navigational safe-
18 ty. In such a zone, no installations, structures, or
19 uses will be allowed that are incompatible with the
20 operation of the offshore aquaculture facility. The
21 Secretary of the department in which the Coast
22 Guard is operating may define, by rulemaking, ac-
23 tivities that are allowed within such a zone.

24 (7)(A) Subject to paragraph (B), if the Sec-
25 retary, after consultation with Federal agencies as

1 appropriate and after affording the permit holder
2 notice and an opportunity to be heard, determines
3 that suspension, modification, or revocation of a per-
4 mit is in the national interest, the Secretary may
5 suspend, modify, or revoke such permit.

6 (B) If the Secretary determines that
7 an emergency exists that poses a risk to
8 the safety of humans, to the marine envi-
9 ronment or marine species, or to the secu-
10 rity of the United States and that requires
11 suspension, modification, or revocation of a
12 permit, the Secretary may suspend, mod-
13 ify, or revoke the permit for such time as
14 the Secretary may determine necessary to
15 meet the emergency. The Secretary shall
16 afford the permit holder a prompt post-
17 suspension or post-modification oppor-
18 tunity to be heard regarding the suspen-
19 sion, modification, or revocation.

20 (8) Permits issued under this Act do not super-
21 sede or substitute for any other authorization re-
22 quired under applicable Federal or State law or reg-
23 ulation.

24 (e) ACTIONS AFFECTING THE OUTER CONTINENTAL

25 SHELF.—

1 (1) The Secretary shall obtain the concurrence
2 of the Secretary of the Interior on permits for off-
3 shore aquaculture facilities located:

4 (A) on leases, right-of-use and easements,
5 or rights of way authorized or permitted under
6 the Outer Continental Shelf Lands Act, as
7 amended (43 U.S.C. 1331, et seq.), or

8 (B) within 1 mile of any other facility per-
9 mitted or for which a plan has been approved
10 under the Outer Continental Shelf Lands Act.

11 (2) Offshore aquaculture may not be located on
12 facilities subject to section 4(e)(1)(A) without the
13 prior consent of the lessee, its designated operator,
14 and owner of the facility.

15 (3) The Secretary of the Interior shall review
16 and approve any agreement between a lessee, des-
17 ignated operator, and owner of a facility subject to
18 this subsection and a prospective aquaculture oper-
19 ator to ensure that it is consistent with the Federal
20 lease terms, Department of the Interior regulations,
21 and the Secretary of the Interior's role in the protec-
22 tion of the marine environment, property, or human
23 life or health. An agreement under this subsection
24 shall be part of the information reviewed pursuant
25 to the Coastal Zone Management Act review process

1 described in subsection 4(e)(4) and shall not be sub-
2 ject to a separate Coastal Zone Management Act re-
3 view.

4 (4) Coordinated Coastal Zone Management Act
5 review

6 (A) If the applicant for an offshore aqua-
7 culture facility that will utilize a facility subject
8 to this subsection is required to submit to a
9 coastal State a consistency certification for its
10 aquaculture application under section
11 307(c)(3)(A) of the Coastal Zone Management
12 Act (16 U.S.C. 1456(c)(3)(A)), the coastal
13 State's review under the Coastal Zone Manage-
14 ment Act and corresponding Federal regula-
15 tions shall also include any modification to a
16 lessee's approved plan or other document for
17 which a consistency certification would other-
18 wise be required under applicable Federal regu-
19 lations, including changes to its plan for decom-
20 missioning any facilities, resulting from or nec-
21 essary for the issuance of the offshore aqua-
22 culture permit, provided that information re-
23 lated to such modifications or changes is re-
24 ceived by the coastal State at the time the
25 coastal State receives the offshore aquaculture

1 permit applicant's consistency certification. In
2 this case, lessees are not required to submit a
3 separate consistency certification for any such
4 modification or change under section
5 307(c)(3)(B) of the Coastal Zone Management
6 Act (16 U.S.C. 1456(c)(3)(B)) and the coastal
7 State's concurrence or objection, or presumed
8 concurrence, under section 307(c)(3)(A) of the
9 Coastal Zone Management Act (16 U.S.C.
10 1456(c)(3)(A)) in a consistency determination
11 for the offshore aquaculture permit, shall apply
12 to both the offshore aquaculture permit and to
13 any related modifications or changes to a les-
14 see's plan approved under the Outer Conti-
15 nental Shelf Lands Act.

16 (B) If a coastal State is not authorized by
17 section 307(c)(3)(A) of the Coastal Zone Man-
18 agement Act (16 U.S.C. 1456(c)(3)(A)) and
19 corresponding Federal regulations to review an
20 offshore aquaculture application submitted
21 under this Act, then any modifications or
22 changes to a lessee's approved plan or other
23 document requiring approval from the Depart-
24 ment of the Interior, shall be subject to coastal
25 State review pursuant to the requirements of

1 section 307(c)(3)(B) of the Coastal Zone Man-
2 agement Act (16 U.S.C. 1456(c)(3)(B)), if a
3 consistency certification for those modifications
4 or changes is required under applicable Federal
5 regulations.

6 (5) For offshore aquaculture located on facili-
7 ties subject to this subsection, the aquaculture per-
8 mit holder and all parties that are or were lessees
9 of the lease on which the facilities are located during
10 the term of the offshore aquaculture permit shall be
11 jointly and severally liable for the removal of any
12 construction or modifications related to aquaculture
13 operations if the aquaculture permit holder fails to
14 do so and bonds established under this Act for aqua-
15 culture operations prove insufficient to cover those
16 obligations. This subsection does not affect obliga-
17 tions to decommission facilities under the Outer
18 Continental Shelf Lands Act.

19 (6) For aquaculture projects or operations sub-
20 ject to this subsection, the Secretary of the Interior
21 is authorized to:

22 (A) Promulgate such rules and regulations
23 as are necessary and appropriate to carry out
24 the provisions of this subsection;

1 (B) Require and enforce such additional
2 terms or conditions as the Secretary of the In-
3 terior deems necessary to protect the marine
4 environment, property, or human life or health
5 to ensure the compatibility of aquaculture oper-
6 ations with all activities for which permits have
7 been issued under the Outer Continental Shelf
8 Lands Act;

9 (C) Issue orders to the offshore aqua-
10 culture permit holder to take any action the
11 Secretary of the Interior deems necessary to en-
12 sure safe operations on the facility to protect
13 the marine environment, property, or human
14 life or health. Failure to comply with the Sec-
15 retary of the Interior's orders will be deemed to
16 constitute a violation of the Outer Continental
17 Shelf Lands Act; and

18 (D) Enforce all requirements contained in
19 such regulations, lease terms and conditions
20 and orders pursuant to the Outer Continental
21 Shelf Lands Act.

22 **SEC. 5. RESEARCH AND DEVELOPMENT.**

23 (a) In consultation as appropriate with other Federal
24 agencies, the Secretary may establish and conduct an inte-
25 grated, multidisciplinary, scientific research and develop-

1 ment program to further marine aquaculture technologies
2 that are compatible with the protection of marine eco-
3 systems.

4 (b) The Secretary is authorized to conduct research
5 and development in partnership with offshore aquaculture
6 permit holders.

7 (c) The Secretary, in collaboration with the Secretary
8 of Agriculture, shall conduct research to reduce the use
9 of wild fish in aquaculture feeds, including but not limited
10 to the substitution of seafood processing wastes, cultured
11 marine algae and microbial sources of nutrients important
12 for human health and nutrition, agricultural crops, and
13 other products.

14 **SEC. 6. ADMINISTRATION.**

15 (a) The Secretary shall promulgate such regulations
16 as are necessary and appropriate to carry out the provi-
17 sions of this Act. The Secretary may at any time amend
18 such regulations, and such regulations shall, as of their
19 effective date, apply to all operations conducted pursuant
20 to permits issued under the provisions of this Act, regard-
21 less of the date of the issuance of such permit.

22 (b) The Secretary shall have the authority to enter
23 into and perform such contracts, leases, grants, or cooper-
24 ative agreements as may be necessary to carry out the
25 purposes of this Act and on such terms as the Adminis-

1 trator of the National Oceanic and Atmospheric Adminis-
2 tration deems appropriate.

3 (c) For purposes related to the enforcement of this
4 Act, the Secretary is authorized to use, with their consent
5 and with or without reimbursement, the land, services,
6 equipment, personnel, and facilities of any department,
7 agency or instrumentality of the United States, or of any
8 state, local government, Indian tribal government, Terri-
9 tory or possession, or of any political subdivision thereof,
10 or of any foreign government or international organiza-
11 tion.

12 (d) Authority to Utilize Grant Funds

13 (1) Except as provided in paragraph (2), the
14 Secretary is authorized to apply for, accept, and ob-
15 ligate research grant funding from any Federal
16 source operating competitive grant programs where
17 such funding furthers the purpose of this Act.

18 (2) The Secretary may not apply for, accept, or
19 obligate any grant funding under paragraph (1) for
20 which the granting agency lacks authority to grant
21 funds to Federal agencies, or for any purpose or
22 subject to conditions that are prohibited by law or
23 regulation.

24 (3) Appropriated funds may be used to satisfy
25 a requirement to match grant funds with recipient

1 agency funds, except that no grant may be accepted
2 that requires a commitment in advance of appropria-
3 tions.

4 (4) Funds received from grants shall be depos-
5 ited in the National Oceanic and Atmospheric Ad-
6 ministration account that serves to accomplish the
7 purpose for which the grant was awarded.

8 (e) Nothing in this Act shall be construed to displace,
9 supersede, or limit the jurisdiction, responsibilities or
10 rights of any Federal or State agency, or Indian Tribe
11 or Alaska Native organization, under any Federal law or
12 treaty.

13 (f) The Constitution, laws, and treaties of the United
14 States shall apply to an offshore aquaculture facility lo-
15 cated in the Exclusive Economic Zone for which a permit
16 has been issued or is required under this Act and to activi-
17 ties in the Exclusive Economic Zone connected, associated,
18 or potentially interfering with the use or operation of such
19 facility, in the same manner as if such facility were an
20 area of exclusive Federal jurisdiction located within a
21 State. Nothing in this Act shall be construed to relieve,
22 exempt, or immunize any person from any other require-
23 ment imposed by an applicable Federal law, regulation,
24 or treaty. Nothing in this Act shall be construed to confer
25 citizenship to a person by birth or through naturalization

1 or to entitle a person to avail himself of any law pertaining
2 to immigration, naturalization, or nationality.

3 (g) The law of the nearest adjacent coastal State,
4 now in effect or hereafter adopted, amended, or repealed,
5 is declared to be the law of the United States, and shall
6 apply to any offshore aquaculture facility for which a per-
7 mit has been issued pursuant to this Act, to the extent
8 applicable and not inconsistent with any provision or regu-
9 lation under this Act or other Federal laws and regula-
10 tions now in effect or hereafter adopted, amended, or re-
11 pealed. All such applicable laws shall be administered and
12 enforced by the appropriate officers and courts of the
13 United States. For purposes of this subsection, the nearest
14 adjacent coastal State shall be that State whose seaward
15 boundaries, if extended beyond 3 nautical miles, would en-
16 compass the site of the offshore aquaculture facility. State
17 taxation laws shall not apply to offshore aquaculture facili-
18 ties in the Exclusive Economic Zone.

19 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated to the Sec-
21 retary \$4,052,000 in fiscal year 2008 and thereafter such
22 sums as may be necessary for purposes of carrying out
23 the provisions of this Act.

24 **SEC. 8. UNLAWFUL ACTIVITIES.**

25 It is unlawful for any person—

1 (a) to falsify any information required to be reported,
2 communicated, or recorded pursuant to this Act or any
3 regulation or permit issued under this Act, or to fail to
4 submit in a timely fashion any required information, or
5 to fail to report to the Secretary immediately any change
6 in circumstances that has the effect of rendering any such
7 information false, incomplete, or misleading;

8 (b) to engage in offshore aquaculture within the Ex-
9 clusive Economic Zone of the United States or operate an
10 offshore aquaculture facility within the Exclusive Eco-
11 nomic Zone of the United States, except pursuant to a
12 valid permit issued under this Act;

13 (c) to refuse to permit an authorized officer to con-
14 duct any lawful search or lawful inspection in connection
15 with the enforcement of this Act or any regulation or per-
16 mit issued under this Act;

17 (d) to forcibly assault, resist, oppose, impede, intimi-
18 date, or interfere with an authorized officer in the conduct
19 of any search or inspection in connection with the enforce-
20 ment of this Act or any regulation or permit issued under
21 this Act;

22 (e) to resist a lawful arrest or detention for any act
23 prohibited by this section;

24 (f) to interfere with, delay, or prevent, by any means,
25 the apprehension, arrest, or detection of another person,

1 knowing that such person has committed any act prohib-
 2 ited by this section;

3 (g) to import, export, sell, receive, acquire or pur-
 4 chase in interstate or foreign commerce any marine spe-
 5 cies in violation of this Act or any regulation or permit
 6 issued under this Act;

7 (h) upon the expiration or termination of any aqua-
 8 culture permit for any reason, fail to remove all structures,
 9 gear, and other property from the site, or take other meas-
 10 ures, as prescribed by the Secretary, to restore the site;

11 (i) to violate any provision of this Act, any regulation
 12 promulgated under this Act, or any term or condition of
 13 any permit issued under this Act; or

14 (j) to attempt to commit any act described in sub-
 15 sections (a), (b), (g), (h) or (i).

16 **SEC. 9. ENFORCEMENT PROVISIONS.**

17 (a) DUTIES OF SECRETARIES.—Subject to sections
 18 4(e)(6)(B) and (D), this Act shall be enforced by the Sec-
 19 retary and the Secretary of the department in which the
 20 Coast Guard is operating.

21 (b) POWERS OF ENFORCEMENT.—

22 (1) Any officer who is authorized pursuant to
 23 subsection (a) of this section by the Secretary or the
 24 Secretary of the department in which the Coast

1 Guard is operating to enforce the provisions of this
2 Act may—

3 (A) with or without a warrant or other
4 process—

5 (i) arrest any person, if the officer has
6 reasonable cause to believe that such per-
7 son has committed or is committing an act
8 prohibited by section 8 of this Act;

9 (ii) search or inspect any offshore
10 aquaculture facility and any related land-
11 based facility;

12 (iii) seize any offshore aquaculture fa-
13 cility (together with its equipment, records,
14 furniture, appurtenances, stores, and
15 cargo), and any vessel or vehicle, used or
16 employed in aid of, or with respect to
17 which it reasonably appears that such off-
18 shore aquaculture facility was used or em-
19 ployed in aid of, the violation of any provi-
20 sion of this Act or any regulation or permit
21 issued under this Act;

22 (iv) seize any marine species (wher-
23 ever found) retained, in any manner, in
24 connection with or as a result of the com-

1 mission of any act prohibited by section 8
2 of this Act;

3 (v) seize any evidence related to any
4 violation of any provision of this Act or
5 any regulation or permit issued under this
6 Act;

7 (B) execute any warrant or other process
8 issued by any court of competent jurisdiction;
9 and

10 (C) exercise any other lawful authority.

11 (2) Any officer who is authorized pursuant to
12 subsection (a) of this section by the Secretary or the
13 Secretary of the department in which the Coast
14 Guard is operating to enforce the provisions of this
15 Act may make an arrest without a warrant for (i)
16 an offense against the United States committed in
17 his presence, or (ii) for a felony cognizable under the
18 laws of the United States, if he has reasonable
19 grounds to believe that the person to be arrested has
20 committed or is committing a felony. Any such au-
21 thorized person may execute and serve a subpoena,
22 arrest warrant or search warrant issued in accord-
23 ance with Rule 41 of the Federal Rules of Criminal
24 Procedure, or other warrant of civil or criminal proc-
25 ess issued by any officer or court of competent juris-

1 diction for enforcement of the Act, or any regulation
2 or permit issued under this Act.

3 (c) ISSUANCE OF CITATIONS.—If any authorized offi-
4 cer finds that a person is engaging in or has engaged in
5 offshore aquaculture in violation of any provision of this
6 Act, such officer may issue a citation to that person.

7 (d) LIABILITY FOR COSTS.—Any person who violates
8 this Act, or a regulation or permit issued under this Act,
9 shall be liable for the cost incurred in storage, care, and
10 maintenance of any marine species or other property
11 seized in connection with the violation.

12 **SEC. 10. CIVIL ENFORCEMENT AND PERMIT SANCTIONS.**

13 (a) CIVIL ADMINISTRATIVE PENALTIES.—

14 (1) Any person who is found by the Secretary,
15 after notice and opportunity for a hearing in accord-
16 ance with section 554 of Title 5, United States
17 Code, to have violated this Act, or a regulation or
18 permit issued under this Act, shall be liable to the
19 United States for a civil penalty. The amount of the
20 civil penalty under this paragraph shall not exceed
21 \$200,000 for each violation. Each day of a con-
22 tinuing violation shall constitute a separate violation.

23 (2) COMPROMISE OR OTHER ACTION BY THE
24 SECRETARY.—The Secretary may compromise, mod-
25 ify, or remit, with or without conditions, any civil

1 administrative penalty which is or may be imposed
2 under this section and that has not been referred to
3 the Attorney General for further enforcement action.

4 (b) CIVIL JUDICIAL PENALTIES.—Any person who
5 violates any provision of this Act, or any regulation or per-
6 mit issued thereunder, shall be subject to a civil penalty
7 not to exceed \$250,000 for each such violation. Each day
8 of a continuing violation shall constitute a separate viola-
9 tion. The Attorney General, upon the request of the Sec-
10 retary, may commence a civil action in an appropriate dis-
11 trict court of the United States, and such court shall have
12 jurisdiction to award civil penalties and such other relief
13 as justice may require. In determining the amount of a
14 civil penalty, the court shall take into account the nature,
15 circumstances, extent, and gravity of the prohibited acts
16 committed and, with respect to the violator, the degree
17 of culpability, any history of prior violations and such
18 other matters as justice may require. In imposing such
19 penalty, the district court may also consider information
20 related to the ability of the violator to pay.

21 (c) PERMIT SANCTIONS.—

22 (1) In any case in which—

23 (A) an offshore aquaculture facility has
24 been used in the commission of an act prohib-
25 ited under section 8 of this Act;

1 (B) the owner or operator of an offshore
2 aquaculture facility or any other person who
3 has been issued or has applied for a permit
4 under section 4 of this Act has acted in viola-
5 tion of section 8 of this Act; or

6 (C) any amount in settlement of a civil for-
7 feiture imposed on an offshore aquaculture fa-
8 cility or other property, or any civil penalty or
9 criminal fine imposed under this Act or imposed
10 on any other person who has been issued or has
11 applied for a permit under any fishery resource
12 statute enforced by the Secretary, has not been
13 paid and is overdue, the Secretary may—

14 (i) revoke any permit issued with re-
15 spect to such offshore aquaculture facility
16 or applied for by such a person under this
17 Act, with or without prejudice to the
18 issuance of subsequent permits;

19 (ii) suspend such permit for a period
20 of time considered by the Secretary to be
21 appropriate;

22 (iii) deny such permit; or

23 (iv) impose additional conditions and
24 restrictions on such permit.

1 (2) In imposing a sanction under this sub-
2 section, the Secretary shall take into account—

3 (A) the nature, circumstances, extent, and
4 gravity of the prohibited acts for which the
5 sanction is imposed; and

6 (B) with respect to the violator, the degree
7 of culpability, any history of prior violations,
8 and such other matters as justice may require.

9 (3) Transfer of ownership of an offshore aqua-
10 culture facility, by sale or otherwise, shall not extin-
11 guish any permit sanction that is in effect or is
12 pending at the time of transfer of ownership. Before
13 executing the transfer of ownership of an offshore
14 aquaculture facility, by sale or otherwise, the owner
15 shall disclose in writing to the prospective transferee
16 the existence of any permit sanction that will be in
17 effect or pending with respect to the offshore aqua-
18 culture facility at the time of the transfer. The Sec-
19 retary may waive or compromise a sanction in the
20 case of a transfer pursuant to court order.

21 (4) In the case of any permit that is suspended
22 under this subsection for nonpayment of a civil pen-
23 alty or criminal fine, the Secretary shall reinstate
24 the permit upon payment of the penalty or fine and
25 interest thereon at the prevailing rate.

1 (5) No sanctions shall be imposed under this
2 subsection unless there has been prior opportunity
3 for a hearing on the facts underlying the violation
4 for which the sanction is imposed, either in conjunc-
5 tion with a civil penalty proceeding under this sec-
6 tion or otherwise.

7 (d) INJUNCTIVE RELIEF.—Upon the request of the
8 Secretary, the Attorney General of the United States is
9 authorized to commence a civil action for appropriate re-
10 lief, including a permanent or temporary injunction, for
11 any violation of any provision of this Act, or regulation
12 or permit issued under this Act.

13 (e) HEARING.—For the purposes of conducting any
14 investigation or hearing under this section or any other
15 statute administered by the National Oceanic and Atmos-
16 pheric Administration which is determined on the record
17 in accordance with the procedures provided for under sec-
18 tion 554 of Title 5, the Secretary may issue subpoenas
19 for the attendance and testimony of witnesses and the pro-
20 duction of relevant papers, books, and documents, and
21 may administer oaths. Witnesses summoned shall be paid
22 the same fees and mileage that are paid to witnesses in
23 the courts of the United States. In case of contempt or
24 refusal to obey a subpoena served upon any person pursu-
25 ant to this subsection, the district court of the United

1 States for any district in which such person is found, re-
2 sides, or transacts business, upon application by the
3 United States and after notice to such person, shall have
4 jurisdiction to issue an order requiring such person to ap-
5 pear and give testimony before the Secretary or to appear
6 and produce documents before the Secretary, or both, and
7 any failure to obey such order of the court may be pun-
8 ished by such court as a contempt thereof. Nothing in this
9 Act shall be construed to grant jurisdiction to a district
10 court to entertain an application for an order to enforce
11 a subpoena issued by the Secretary of Commerce to the
12 Federal Government or any entity thereof.

13 (f) JURISDICTION.—The United States district courts
14 shall have original jurisdiction of any action under this
15 section arising out of or in connection with the construc-
16 tion or operation of aquaculture facilities, and proceedings
17 with respect to any such action may be instituted in the
18 judicial district in which any defendant resides or may be
19 found, or in the judicial district of the adjacent coastal
20 State nearest the place where the cause of action arose.
21 For the purpose of this section, American Samoa shall be
22 included within the judicial district of the District Court
23 of the United States for the District of Hawaii. Each vio-
24 lation shall be a separate offense and the offense shall be
25 deemed to have been committed not only in the district

1 where the violation first occurred, but also in any other
2 district as authorized by law.

3 (g) COLLECTION.—If any person fails to pay an as-
4 sessment of a civil penalty after it has become a final and
5 unappealable order, or after the appropriate court has en-
6 tered final judgment in favor of the Secretary, the matter
7 may be referred to the Attorney General, who may recover
8 the amount (plus interest at currently prevailing rates
9 from the date of the final order). In such action the valid-
10 ity, amount and appropriateness of the final order impos-
11 ing the civil penalty shall not be subject to review. Any
12 person who fails to pay, on a timely basis, the amount
13 of an assessment of a civil penalty shall be required to
14 pay, in addition to such amount and interest, attorney's
15 fees and costs for collection proceedings and a quarterly
16 nonpayment penalty for each quarter during which such
17 failure to pay persists. Such nonpayment penalty shall be
18 in an amount equal to 20 percent of the aggregate amount
19 of such persons penalties and nonpayment penalties which
20 are unpaid as of the beginning of such quarter.

21 (h) NATIONWIDE SERVICE OF PROCESS.—In any ac-
22 tion by the United States under this title, process may
23 be served in any district where the defendant is found,
24 resides, transacts business or has appointed an agent for
25 the service of process, and for civil cases may also be

1 served in a place not within the United States in accord-
2 ance with Rule 4 of the Federal Rules of Civil Procedure.

3 **SEC. 11. CRIMINAL OFFENSES.**

4 (a) Any person (other than a foreign government or
5 any entity of such government) who knowingly commits
6 an act prohibited by subsections 8(c), (d), (e), or (f) of
7 the Act, shall be imprisoned for not more than five years
8 or shall be fined not more than \$500,000 for individuals
9 or \$1,000,000 for an organization, or both; except that
10 if in the commission of any such offense the individual
11 uses a dangerous weapon, engages in conduct that causes
12 bodily injury to any officer authorized to enforce the provi-
13 sions of this title, or places any such officer in fear of
14 imminent bodily injury, the maximum term of imprison-
15 ment is not more than ten years.

16 (b) Any person (other than a foreign government or
17 any entity of such government) who knowingly violates
18 any other provision of section 8, except subsections 8(c),
19 (d), (e) or (f), of the Act, or any provision of any regula-
20 tion promulgated pursuant to this title or any permit
21 issued under this title, shall be imprisoned for not more
22 than five years, or shall be fined not more than \$500,000
23 for an individual or \$1,000,000 for an organization, or
24 both.

1 (c) The United States district courts shall have origi-
2 nal jurisdiction of any action arising under this section
3 out of or in connection with the construction or operation
4 of aquaculture facilities, and proceedings with respect to
5 any such action may be instituted in the judicial district
6 in which any defendant resides or may be found. For the
7 purpose of this section, American Samoa shall be included
8 within the judicial district of the District Court of the
9 United States for the District of Hawaii. Each violation
10 shall be a separate offense and the offense shall be deemed
11 to have been committed not only in the district where the
12 violation first occurred, but also in any other district as
13 authorized under law.

14 **SEC. 12. FORFEITURES.**

15 (a) CRIMINAL FORFEITURE.—A person who is con-
16 victed of an offense in violation of section 11 of this Act
17 shall forfeit to the United States—

18 (1) any property, real or personal, constituting
19 or traceable to the gross proceeds obtained, or re-
20 tained, as a result of the offense including, without
21 limitation, any marine species (or the fair market
22 value thereof) taken or retained in connection with
23 or as a result of the offense; and

24 (2) any property, real or personal, used or in-
25 tended to be used to commit or to facilitate the com-

1 mission of the offense, including, without limitation,
2 any offshore aquaculture facility or vessel, including
3 its structure, equipment, furniture, appurtenances,
4 stores, and cargo, and any vehicle or aircraft.

5 Pursuant to title 28, United States Code, section 2461(c),
6 the provisions of section 413 of the Controlled Substances
7 Act (21 U.S.C. 853) with the exception of subsection (d)
8 of that section, shall apply to criminal forfeitures under
9 this section.

10 (b) CIVIL FORFEITURE.—The following shall be sub-
11 ject to forfeiture to the United States and no property
12 right shall exist in them:

13 (1) any property, real or personal, constituting
14 or traceable to the gross proceeds obtained, or re-
15 tained, as a result of a violation of any provision of
16 section 8 or subsection 4(b)(2)(D) of this Act, in-
17 cluding, without limitation, any marine species (or
18 the fair market value thereof) taken or retained in
19 connection with or as a result of the violation; and

20 (2) any property, real or personal, used or in-
21 tended to be used to commit or to facilitate the com-
22 mission of any such violation, including, without lim-
23 itation, any offshore aquaculture facility or vessel,
24 including its structure, equipment, furniture, appur-

1 tenances, stores, and cargo, and any vehicle or air-
2 craft.

3 Civil forfeitures under this section shall be governed by
4 the procedures set forth in title 18, United States Code,
5 Chapter 46.

6 (c) REBUTTABLE PRESUMPTION.—In any criminal or
7 civil forfeiture proceeding under this section, there is a
8 rebuttable presumption that all marine species found with-
9 in an offshore aquaculture facility and seized in connection
10 with a violation of section 8 of this Act were taken or re-
11 tained in violation of this Act.

12 **SEC. 13. SEVERABILITY AND JUDICIAL REVIEW.**

13 (a) SEVERABILITY.—If any provision of this chapter
14 or the application thereof to any person or circumstances
15 is held invalid, the validity of the remainder of this chapter
16 and of the application of such provision to other persons
17 and circumstances shall not be affected thereby.

18 (b) JUDICIAL REVIEW.—

19 (1) IN GENERAL.—Judicial review of any action
20 taken by the Secretary under this chapter shall be
21 in accordance with sections 701 through 706 of Title
22 5, except that—

23 (A) review of any final agency action of the
24 Secretary taken pursuant to section 11(a) or (c)
25 of this title may be had only by the filing of a

1 complaint by an interested person in the United
2 States District Court for the appropriate dis-
3 trict; any such complaint must be filed within
4 30 days of the date such final agency action is
5 taken; and

6 (B) review of all other final agency actions
7 of the Secretary under this chapter may be had
8 only by the filing of a petition for review by an
9 interested person in the Circuit Court of Ap-
10 peals of the United States for the Federal judi-
11 cial district in which such person resides or
12 transacts business which is directly affected by
13 the action taken; such petition shall be filed
14 within 120 days from the date such final action
15 is taken.

16 (2) LIMITATION OF JUDICIAL REVIEW.—Final
17 agency action with respect to which review could
18 have been obtained under paragraph (1)(B) of this
19 subsection shall not be subject to judicial review in
20 any civil or criminal proceeding for enforcement.

21 (3) AWARDS OF LITIGATION COSTS.—In any ju-
22 dicial proceeding under paragraph (1) of this sub-
23 section, the court may award costs of litigation (in-
24 cluding reasonable attorney and expert witness fees)

- 1 to any prevailing party whenever it determines that
- 2 such award is appropriate.

○

110TH CONGRESS
1ST SESSION

S. 1609

To provide the necessary authority to the Secretary of Commerce for the establishment and implementation of a regulatory system for offshore aquaculture in the United States Exclusive Economic Zone, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 13, 2007

Mr. INOUE (for himself and Mr. STEVENS) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide the necessary authority to the Secretary of Commerce for the establishment and implementation of a regulatory system for offshore aquaculture in the United States Exclusive Economic Zone, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Offshore
5 Aquaculture Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) It is the policy of the United States—

2 (A) to support an offshore aquaculture in-
3 dustry that will produce food and other valuable
4 products, protect wild stocks and the quality of
5 marine ecosystems, and be compatible with
6 other uses of the Exclusive Economic Zone;

7 (B) to encourage the development of envi-
8 ronmentally responsible offshore aquaculture by
9 authorizing offshore aquaculture operations and
10 research;

11 (C) to establish a permitting process for
12 offshore aquaculture that encourages private in-
13 vestment in aquaculture operations and re-
14 search, provides opportunity for public com-
15 ment, and addresses the potential risks to and
16 impacts (including cumulative impacts) on ma-
17 rine ecosystems, human health and safety, other
18 ocean uses, and coastal communities from off-
19 shore aquaculture; and

20 (D) to promote, through public-private
21 partnerships, research and development in ma-
22 rine aquaculture science, technology, and re-
23 lated social, economic, legal, and environmental
24 management disciplines that will enable marine
25 aquaculture operations to achieve operational

1 objectives while protecting marine ecosystem
2 quality.

3 (2) Offshore aquaculture activities within the
4 Exclusive Economic Zone of the United States con-
5 stitute activities with respect to which the United
6 States has proclaimed sovereign rights and jurisdic-
7 tion under Presidential Proclamation 5030 of March
8 10, 1983.

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) COASTAL STATE.—The term “coastal
12 State” means—

13 (A) a State in, or bordering on, the Atlan-
14 tic, Pacific, or Arctic Ocean, the Gulf of Mex-
15 ico, or Long Island Sound; and

16 (B) Puerto Rico, the Virgin Islands,
17 Guam, the Commonwealth of the Northern
18 Mariana Islands, the Trust Territories of the
19 Pacific Islands, and American Samoa.

20 (2) COASTLINE.—The term “coastline” means
21 the line of ordinary low water along that portion of
22 the coast that is in direct contact with the open sea
23 and the line marking the seaward limit of inland wa-
24 ters.

1 (3) EXCLUSIVE ECONOMIC ZONE.—The term
2 “Exclusive Economic Zone” means, unless otherwise
3 specified by the President in the public interest in
4 a writing published in the Federal Register, a zone,
5 the outer boundary of which is 200 nautical miles
6 from the baseline from which the breadth of the ter-
7 ritorial sea is measured, except as established by a
8 maritime boundary treaty in force, or being provi-
9 sionally applied by the United States or, in the ab-
10 sence of such a treaty where the distance between
11 the United States and another nation is less than
12 400 nautical miles, a line equidistant between the
13 United States and the other nation. Without affect-
14 ing any Presidential Proclamation with regard to the
15 establishment of the United States territorial sea or
16 Exclusive Economic Zone, the inner boundary of
17 that zone is—

18 (A) a line coterminous with the seaward
19 boundary (as defined in section 4 of the Outer
20 Continental Shelf Lands Act (43 U.S.C. 1312))
21 of each of the several coastal States;

22 (B) a line 3 marine leagues from the coast-
23 line of the Commonwealth of Puerto Rico;

1 (C) a line 3 geographical miles from the
2 coastlines of American Samoa, the United
3 States Virgin Islands, and Guam;

4 (D) for the Commonwealth of the North-
5 ern Mariana Islands—

6 (i) its coastline, until such time as the
7 Commonwealth of the Northern Mariana
8 Islands is granted authority by the United
9 States to regulate all fishing to a line sea-
10 ward of its coastline, and

11 (ii) upon the United States' grant of
12 such authority, the line established by such
13 grant of authority; and

14 (E) for any possession of the United
15 States not described in subparagraph (B), (C),
16 or (D), the coastline of such possession.

17 Nothing in this paragraph shall be construed as di-
18 minishing the authority of the Department of De-
19 fense, the Department of the Interior, or any other
20 Federal department or agency.

21 (4) LESSEE.—The term “lessee” means any
22 party to a lease, right-of-use and easement, or right-
23 of-way, or an approved assignment thereof, issued
24 pursuant to the Outer Continental Shelf Lands Act
25 (43 U.S.C. 1331 et seq.).

1 (5) MARINE SPECIES.—The term “marine spe-
2 cies” means finfish, mollusks, crustaceans, marine
3 algae, and all other forms of marine life other than
4 marine mammals and birds.

5 (6) OFFSHORE AQUACULTURE.—The term “off-
6 shore aquaculture” means all activities, including
7 the operation of offshore aquaculture facilities, in-
8 volved in the propagation and rearing, or attempted
9 propagation and rearing, of marine species in the
10 United States Exclusive Economic Zone.

11 (7) OFFSHORE AQUACULTURE FACILITY.—The
12 term “offshore aquaculture facility” means—

13 (A) an installation or structure used, in
14 whole or in part, for offshore aquaculture; or

15 (B) an area of the seabed or the subsoil
16 used for offshore aquaculture of living orga-
17 nisms belonging to sedentary species.

18 (8) OFFSHORE AQUACULTURE PERMIT.—The
19 term “offshore aquaculture permit” means an au-
20 thorization issued under section 4(b) to raise speci-
21 fied marine species in a specific offshore aquaculture
22 facility within a specified area of the Exclusive Eco-
23 nomic Zone.

24 (9) PERSON.—The term “person” means any
25 individual (whether or not a citizen or national of

the United States), any corporation, partnership, association, or other non-governmental entity (whether or not organized or existing under the laws of any State), and State, local or tribal government or entity thereof, and, except as otherwise specified by the President in writing, the Federal Government or an entity thereof, and, to the extent specified by the President in writing, a foreign government, or an entity thereof.

(10) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

SEC. 4. OFFSHORE AQUACULTURE PERMITS.

(a) IN GENERAL.—

(1) The Secretary shall establish, through rule-making, in consultation as appropriate with other relevant Federal agencies, coastal States, and regional fishery management councils established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852), a process to make areas of the Exclusive Economic Zone available to eligible persons for the development and operation of offshore aquaculture facilities. The process shall include—

(A) procedures and criteria necessary to issue and modify permits under this Act;

1 (B) procedures to coordinate the offshore
2 aquaculture permitting process, and related
3 siting, operations, environmental protection,
4 monitoring, enforcement, research, and eco-
5 nomic and social activities, with similar activi-
6 ties administered by other Federal agencies and
7 coastal States;

8 (C) consideration of the potential environ-
9 mental, social, economic, and cultural impacts
10 of offshore aquaculture and inclusion, where ap-
11 propriate, of permit conditions to address nega-
12 tive impacts;

13 (D) public notice and opportunity for pub-
14 lic comment prior to issuance of offshore aqua-
15 culture permits;

16 (E) procedures to monitor and evaluate
17 compliance with the provisions of offshore aqua-
18 culture permits, including the collection of bio-
19 logical, chemical and physical oceanographic
20 data, and social, production, and economic data;
21 and

22 (F) procedures for transferring permits
23 from the original permit holder to a person
24 that—

1 (i) meets the eligibility criteria in sub-
2 section (b)(2)(A); and

3 (ii) satisfies the requirements for
4 bonds or other guarantees prescribed
5 under subsection (c)(3).

6 (2) The Secretary shall prepare an analysis
7 under the National Environmental Policy Act of
8 1969 (42 U.S.C. 4321 et seq.) with respect to the
9 process for issuing permits.

10 (3) The Secretary shall periodically review the
11 procedures and criteria for issuance of offshore
12 aquaculture permits and modify them as appro-
13 priate, in consultation as appropriate with other
14 Federal agencies, the coastal States, and regional
15 fishery management councils, based on the best
16 available science.

17 (4) The Secretary shall consult as appropriate
18 with other Federal agencies and coastal States to
19 identify the environmental requirements that apply
20 to offshore aquaculture under existing laws and reg-
21 ulations. The Secretary shall establish through rule-
22 making, in consultation with appropriate Federal
23 agencies, coastal States, and regional fishery man-
24 agement councils established under section 302 of
25 the Magnuson-Stevens Fishery Conservation and

1 Management Act (16 U.S.C. 1852), additional envi-
2 ronmental requirements to address environmental
3 risks and impacts associated with offshore aqua-
4 culture, to the extent necessary. The environmental
5 requirements shall address, at a minimum—

6 (A) risks to and impacts on natural fish
7 stocks and fisheries, including safeguards need-
8 ed to conserve genetic resources, to prevent or
9 minimize the transmission of disease or
10 parasites to wild stocks, and to prevent the es-
11 cape of marine species that may cause signifi-
12 cant environmental harm;

13 (B) risks to and impacts on marine eco-
14 systems; biological, chemical and physical fea-
15 tures of water quality and habitat; marine spe-
16 cies, marine mammals and birds;

17 (C) cumulative effects of the aquaculture
18 operation and other aquaculture operations in
19 the vicinity of the proposed site;

20 (D) environmental monitoring, data
21 archiving, and reporting by the permit holder;

22 (E) requirements that marine species prop-
23 agated and reared through offshore aquaculture
24 be species native to the geographic region un-
25 less a scientific risk analysis shows that the risk

1 of harm to the marine environment from the
2 offshore culture of non-indigenous or genetically
3 modified marine species is negligible or can be
4 effectively mitigated; and

5 (F) maintaining record systems to track
6 inventory and movement of fish or other marine
7 species in the offshore aquaculture facility or
8 harvested from such facility, and, if necessary,
9 tagging, marking, or otherwise identifying fish
10 or other marine species in the offshore aqua-
11 culture facility or harvested from such facility.

12 (5) The Secretary, in cooperation with other
13 Federal agencies, shall—

14 (A) collect information needed to evaluate
15 the suitability of sites for offshore aquaculture;
16 and

17 (B) monitor the effects of offshore aqua-
18 culture on marine ecosystems and implement
19 such measures as may be necessary to protect
20 the environment, including temporary or perma-
21 nent relocation of offshore aquaculture sites, a
22 moratorium on additional sites within a pre-
23 scribed area, and other appropriate measures as
24 determined by the Secretary.

1 (b) PERMITS.—Subject to the provisions of sub-
2 section (e), the Secretary may issue offshore aquaculture
3 permits under such terms and conditions as the Secretary
4 shall prescribe. Permits issued under this Act shall author-
5 ize the permit holder to conduct offshore aquaculture con-
6 sistent with the provisions of this Act, regulations issued
7 under this Act, any specific terms, conditions and restric-
8 tions applied to the permit by the Secretary, and other
9 applicable law.

10 (1) PROCEDURE FOR ISSUANCE OF PERMITS.—

11 (A) An applicant for an offshore aqua-
12 culture permit shall submit an application to
13 the Secretary specifying the proposed location
14 and type of operation, the marine species to be
15 propagated or reared, or both, at the offshore
16 aquaculture facility, and other design, construc-
17 tion, and operational information, as specified
18 by regulation.

19 (B) Within 120 days after determining
20 that a permit application is complete and has
21 satisfied all applicable statutory and regulatory
22 requirements, as specified by regulation, the
23 Secretary shall issue or deny the permit. If the
24 Secretary is unable to issue or deny a permit
25 within this time period, the Secretary shall pro-

1 vide written notice to the applicant indicating
2 the reasons for the delay and establishing a rea-
3 sonable timeline for issuing or denying the per-
4 mit.

5 (2) PERMIT CONDITIONS.—

6 (A) An offshore aquaculture permit holder
7 shall—

8 (i) be a resident of the United States;

9 (ii) be a corporation, partnership, or
10 other entity organized and existing under
11 the laws of a State or the United States;
12 or

13 (iii) if the holder does not meet the
14 requirements of clause (i) or (ii), to the ex-
15 tent required by the Secretary by regula-
16 tion after coordination with the Secretary
17 of State, waive any immunity, and consent
18 to the jurisdiction of the United States and
19 its courts, for matters arising in relation to
20 such permit, and appoint and maintain
21 agents within the United States who are
22 authorized to receive and respond to any
23 legal process issued in the United States
24 with respect to such permit holder.

1 (B) Subject to the provisions of subsection
2 (e), the Secretary shall establish the terms, con-
3 ditions, and restrictions that apply to offshore
4 aquaculture permits, and shall specify in the
5 permits the duration, size, and location of the
6 offshore aquaculture facility.

7 (C) Except for projects involving pilot-scale
8 testing or farm-scale research on aquaculture
9 science and technologies and offshore aqua-
10 culture permits requiring concurrence of the
11 Secretary of the Interior under subsection
12 (e)(1), the permit shall have a duration of 20
13 years, renewable thereafter at the discretion of
14 the Secretary in up to 20-year increments. The
15 duration of permits requiring concurrence of
16 the Secretary of the Interior under subsection
17 (e)(1) shall be developed in consultation as ap-
18 propriate with the Secretary of the Interior, ex-
19 cept that any such permit shall expire no later
20 than the date that the lessee, or the lessee's op-
21 erator, submits to the Secretary of the Interior
22 a final application for the decommissioning and
23 removal of an existing facility upon which an
24 offshore aquaculture facility is located.

1 (D) At the expiration or termination of an
2 offshore aquaculture permit for any reason, the
3 permit holder shall remove all structures, gear,
4 and other property from the site, and take
5 other measures to restore the site as may be
6 prescribed by the Secretary.

7 (E) The Secretary may revoke a permit for
8 failure to begin offshore aquaculture operations
9 within a reasonable period of time, or prolonged
10 interruption of offshore aquaculture operations.

11 (3) NATIONAL INTEREST DETERMINATION.—If
12 the Secretary determines that issuance of a permit
13 is not in the national interest, the Secretary may de-
14 cline to issue such a permit or may impose such con-
15 ditions as necessary to address such concerns.

16 (c) FEES AND OTHER PAYMENTS.—

17 (1) The Secretary may establish, through regu-
18 lations, application fees and annual permit fees.
19 Such fees shall be deposited as offsetting collections
20 in the Operations, Research, and Facilities account.
21 Fees may be collected and made available only to the
22 extent provided in advance in appropriation Acts.

23 (2) The Secretary may reduce or waive applica-
24 ble fees or other payments established under this
25 section for facilities used primarily for research.

1 (3) The Secretary shall require the permit hold-
2 er to post a bond or other form of financial guar-
3 antee, in an amount to be determined by the Sec-
4 retary as sufficient to cover any unpaid fees, the
5 cost of removing an offshore aquaculture facility at
6 the expiration or termination of an offshore aqua-
7 culture permit, and other financial risks as identified
8 by the Secretary.

9 (d) COMPATIBILITY WITH OTHER USES.—

10 (1) The Secretary shall consult as appropriate
11 with other Federal agencies, coastal States, and re-
12 gional fishery management councils to ensure that
13 offshore aquaculture for which a permit is issued
14 under this section is compatible with the use of the
15 Exclusive Economic Zone for navigation, fishing, re-
16 source protection, recreation, national defense (in-
17 cluding military readiness), mineral exploration and
18 development, and other activities.

19 (2) The Secretary shall not authorize permits
20 for new offshore aquaculture facilities within 12
21 miles of the coastline of a coastal State if that coast-
22 al State has submitted a written notice to the Sec-
23 retary that the coastal State opposes such activities.
24 This paragraph does not apply to permit applica-
25 tions received by the Secretary prior to the date the

1 notice is received from a coastal State. A coastal
2 State that transmits such a notice to the Secretary
3 may revoke that notice in writing at any time.

4 (3) Federal agencies implementing this Act,
5 persons subject to this Act, and coastal States seek-
6 ing to review permit applications under this Act
7 shall comply with the applicable provisions of the
8 Coastal Zone Management Act of 1972 (16 U.S.C.
9 1451 et seq.) and regulations promulgated there-
10 under.

11 (4) Notwithstanding the definition of the term
12 “fishing” in section 3(16) of the Magnuson-Stevens
13 Fishery Conservation and Management Act (16
14 U.S.C. 1802(16)), the conduct of offshore aqua-
15 culture in accordance with permits issued under this
16 Act shall not be considered “fishing” for purposes of
17 that Act. The Secretary shall ensure, to the extent
18 practicable, that offshore aquaculture does not inter-
19 fere with conservation and management measures
20 promulgated under the Magnuson-Stevens Fishery
21 Conservation and Management Act.

22 (5) The Secretary may promulgate regulations
23 that the Secretary finds to be reasonable and nec-
24 essary to protect offshore aquaculture facilities, and,
25 where appropriate, shall request that the Secretary

1 of the department in which the Coast Guard is oper-
2 ating establish navigational safety zones around such
3 facilities. In addition, in the case of any offshore
4 aquaculture facility described in subsection (e)(1),
5 the Secretary of the department in which the Coast
6 Guard is operating shall consult with the Secretary
7 of the Interior before designating such a zone.

8 (6) After consultation with the Secretary, the
9 Secretary of State, and the Secretary of Defense,
10 the Secretary of the department in which the Coast
11 Guard is operating may designate a zone of appro-
12 priate size around and including any offshore aqua-
13 culture facility for the purpose of navigational safe-
14 ty. In such a zone, no installations, structures, or
15 uses will be allowed that are incompatible with the
16 operation of the offshore aquaculture facility. The
17 Secretary of the department in which the Coast
18 Guard is operating may define, by rulemaking, ac-
19 tivities that are allowed within such a zone.

20 (7)(A) Subject to subparagraph (B), if the Sec-
21 retary, after consultation with Federal agencies as
22 appropriate and after affording the permit holder
23 notice and an opportunity to be heard, determines
24 that suspension, modification, or revocation of a per-

1 mit is in the national interest, the Secretary may
2 suspend, modify, or revoke such permit.

3 (B) If the Secretary determines that an emer-
4 gency exists that poses a risk to the safety of hu-
5 mans, to the marine environment, to marine species,
6 or to the security of the United States and that re-
7 quires suspension, modification, or revocation of a
8 permit, the Secretary may suspend, modify, or re-
9 voke the permit for such time as the Secretary may
10 determine necessary to meet the emergency. The
11 Secretary shall afford the permit holder a prompt
12 post-suspension or post-modification opportunity to
13 be heard regarding the suspension, modification, or
14 revocation.

15 (8) Permits issued under this Act do not super-
16 sede or substitute for any other authorization re-
17 quired under applicable Federal or State law or reg-
18 ulation.

19 (e) ACTIONS AFFECTING THE OUTER CONTINENTAL
20 SHELF.—

21 (1) CONCURRENCE OF SECRETARY OF INTE-
22 RIOR REQUIRED.—The Secretary shall obtain the
23 concurrence of the Secretary of the Interior for per-
24 mits for offshore aquaculture facilities located—

1 (A) on leases, right-of-use and easements,
2 or rights of way authorized or permitted under
3 the Outer Continental Shelf Lands Act (43
4 U.S.C. 1331 et seq.), or

5 (B) within 1 mile of any other facility per-
6 mitted or for which a plan has been approved
7 under that Act.

8 (2) PRIOR CONSENT REQUIRED.—Offshore
9 aquaculture may not be located on facilities de-
10 scribed in paragraph (1)(A) without the prior con-
11 sent of the lessee, its designated operator, and the
12 owner of the facility.

13 (3) REVIEW FOR LEASE, ETC., COMPLIANCE.—
14 The Secretary of the Interior shall review and ap-
15 prove any agreement between a lessee, designated
16 operator, and owner of a facility described in para-
17 graph (1) and a prospective aquaculture operator to
18 ensure that it is consistent with the Federal lease
19 terms, Department of the Interior regulations, and
20 the Secretary of the Interior's role in the protection
21 of the marine environment, property, or human life
22 or health. An agreement under this subsection shall
23 be part of the information reviewed pursuant to the
24 Coastal Zone Management Act review process de-

scribed in paragraph (4) and shall not be subject to
a separate Coastal Zone Management Act review.

(4) COORDINATED COASTAL ZONE MANAGEMENT ACT REVIEW.—

(A) If the applicant for an offshore aquaculture facility that will utilize a facility described in paragraph (1) is required to submit to a coastal State a consistency certification for its aquaculture application under section 307(c)(3)(A) of the Coastal Zone Management Act (16 U.S.C. 1456(c)(3)(A)), the coastal State's review under the Coastal Zone Management Act and corresponding Federal regulations shall also include any modification to a lessee's approved plan or other document for which a consistency certification would otherwise be required under applicable Federal regulations, including changes to its plan for decommissioning any facilities, resulting from or necessary for the issuance of the offshore aquaculture permit, if information related to such modifications or changes is received by the coastal State at the time the coastal State receives the offshore aquaculture permit applicant's consistency certification. If the informa-

tion related to such modifications or changes is received by the coastal State at the time the coastal State receives the offshore aquaculture permit applicant's consistency certification, a lessee is not required to submit a separate consistency certification for any such modification or change under section 307(c)(3)(B) of the Coastal Zone Management Act (16 U.S.C. 1456(c)(3)(B)) and the coastal State's concurrence or objection, or presumed concurrence, under section 307(c)(3)(A) of that Act (16 U.S.C. 1456(c)(3)(A)) in a consistency determination for the offshore aquaculture permit, shall apply to both the offshore aquaculture permit and to any related modifications or changes to a lessee's plan approved under the Outer Continental Shelf Lands Act.

(B) If a coastal State is not authorized by section 307(c)(3)(A) of the Coastal Zone Management Act (16 U.S.C. 1456(c)(3)(A)) and corresponding Federal regulations to review an offshore aquaculture application submitted under this Act, then any modifications or changes to a lessee's approved plan or other document requiring approval from the Depart-

1 ment of the Interior, shall be subject to coastal
2 State review pursuant to the requirements of
3 section 307(c)(3)(B) of the Coastal Zone Man-
4 agement Act (16 U.S.C. 1456(c)(3)(B)), if a
5 consistency certification for those modifications
6 or changes is required under applicable Federal
7 regulations.

8 (5) JOINT AND SEVERAL LIABILITY.—For off-
9 shore aquaculture located on facilities described in
10 paragraph (1), the aquaculture permit holder and all
11 parties that are or were lessees of the lease on which
12 the facilities are located during the term of the off-
13 shore aquaculture permit shall be jointly and sever-
14 ally liable for the removal of any construction or
15 modifications related to aquaculture operations if the
16 aquaculture permit holder fails to do so and bonds
17 established under this Act for aquaculture oper-
18 ations prove insufficient to cover those obligations.
19 This paragraph does not affect obligations to decom-
20 mission facilities under the Outer Continental Shelf
21 Lands Act.

22 (6) ADDITIONAL AUTHORITY.—For aquaculture
23 projects or operations described in paragraph (1),
24 the Secretary of the Interior may—

1 (A) promulgate such rules and regulations
2 as are necessary and appropriate to carry out
3 the provisions of this subsection;

4 (B) require and enforce such additional
5 terms or conditions as the Secretary of the In-
6 terior deems necessary to protect the marine
7 environment, property, or human life or health
8 to ensure the compatibility of aquaculture oper-
9 ations with all activities for which permits have
10 been issued under the Outer Continental Shelf
11 Lands Act;

12 (C) issue orders to the offshore aqua-
13 culture permit holder to take any action the
14 Secretary of the Interior deems necessary to en-
15 sure safe operations on the facility to protect
16 the marine environment, property, or human
17 life or health. Failure to comply with the Sec-
18 retary of the Interior's orders will be deemed to
19 constitute a violation of the Outer Continental
20 Shelf Lands Act; and

21 (D) enforce all requirements contained in
22 such regulations, lease terms and conditions
23 and orders pursuant to the Outer Continental
24 Shelf Lands Act.

1 **SEC. 5. RESEARCH AND DEVELOPMENT.**

2 (a) IN GENERAL.—In consultation as appropriate
3 with other Federal agencies, the Secretary may establish
4 and conduct an integrated, multidisciplinary, scientific re-
5 search and development program to further marine aqua-
6 culture technologies that are compatible with the protec-
7 tion of marine ecosystems.

8 (b) PARTNERSHIPS.—The Secretary may conduct re-
9 search and development in partnership with offshore aqua-
10 culture permit holders.

11 (c) REDUCTION OF WILD FISH AS FOOD.—The Sec-
12 retary, in collaboration with the Secretary of Agriculture,
13 shall conduct research to reduce the use of wild fish in
14 aquaculture feeds, including the substitution of seafood
15 processing wastes, cultured marine algae, and microbial
16 sources of nutrients important for human health and nu-
17 trition, agricultural crops, and other products.

18 **SEC. 6. ADMINISTRATION.**

19 (a) IN GENERAL.—The Secretary shall promulgate
20 such regulations as are necessary and appropriate to carry
21 out the provisions of this Act. The Secretary may at any
22 time amend such regulations, and such regulations shall,
23 as of their effective date, apply to all operations conducted
24 pursuant to permits issued under this Act, regardless of
25 the date of the issuance of such permit.

1 (b) CONTRACT, ETC., AUTHORITY.—The Secretary
2 may enter into and perform such contracts, leases, grants,
3 or cooperative agreements as may be necessary to carry
4 out the purposes of this Act and on such terms as the
5 Administrator of the National Oceanic and Atmospheric
6 Administration deems appropriate.

7 (c) USE OF CONTRIBUTED GOVERNMENTAL RE-
8 SOURCES.—For purposes related to the enforcement of
9 this Act, the Secretary may use, with their consent and
10 with or without reimbursement, the land, services, equip-
11 ment, personnel, and facilities of any department, agency
12 or instrumentality of the United States, or of any State,
13 local government, Indian tribal government, Territory or
14 possession, or of any political subdivision thereof, or of
15 any foreign government or international organization.

16 (d) AUTHORITY TO UTILIZE GRANT FUNDS.—

17 (1) Except as provided in paragraph (2), the
18 Secretary may apply for, accept, and obligate re-
19 search grant funding from any Federal source oper-
20 ating competitive grant programs where such fund-
21 ing furthers the purpose of this Act.

22 (2) The Secretary may not apply for, accept, or
23 obligate any grant funding under paragraph (1) for
24 which the granting agency lacks authority to grant
25 funds to Federal agencies, or for any purpose or

1 subject to conditions that are prohibited by law or
2 regulation.

3 (3) Appropriated funds may be used to satisfy
4 a requirement to match grant funds with recipient
5 agency funds, except that no grant may be accepted
6 that requires a commitment in advance of appropria-
7 tions.

8 (4) Funds received from grants shall be depos-
9 ited in the National Oceanic and Atmospheric Ad-
10 ministration account that serves to accomplish the
11 purpose for which the grant was awarded.

12 (e) RESERVATION OF AUTHORITY.—Nothing in this
13 Act shall be construed to displace, supersede, or limit the
14 jurisdiction, responsibilities, or rights of any Federal or
15 State agency, or Indian Tribe or Alaska Native organiza-
16 tion, under any Federal law or treaty.

17 (f) APPLICATION OF LAWS TO FACILITIES IN THE
18 EEZ.—The Constitution, laws, and treaties of the United
19 States shall apply to an offshore aquaculture facility lo-
20 cated in the Exclusive Economic Zone for which a permit
21 has been issued or is required under this Act and to activi-
22 ties in the Exclusive Economic Zone connected, associated,
23 or potentially interfering with the use or operation of such
24 facility, in the same manner as if such facility were an
25 area of exclusive Federal jurisdiction located within a

1 State. Nothing in this Act shall be construed to relieve,
2 exempt, or immunize any person from any other require-
3 ment imposed by an applicable Federal law, regulation,
4 or treaty. Nothing in this Act shall be construed to confer
5 citizenship to a person by birth or through naturalization
6 or to entitle a person to avail himself of any law pertaining
7 to immigration, naturalization, or nationality.

8 (g) APPLICATION OF CERTAIN STATE LAWS.—The
9 law of the nearest adjacent coastal State, now in effect
10 or hereafter adopted, amended, or repealed, is declared to
11 be the law of the United States, and shall apply to any
12 offshore aquaculture facility for which a permit has been
13 issued pursuant to this Act, to the extent applicable and
14 not inconsistent with any provision or regulation under
15 this Act or other Federal laws and regulations now in ef-
16 fect or hereafter adopted, amended, or repealed. All such
17 applicable laws shall be administered and enforced by the
18 appropriate officers and courts of the United States. For
19 purposes of this subsection, the nearest adjacent coastal
20 State shall be that State whose seaward boundaries, if ex-
21 tended beyond 3 nautical miles, would encompass the site
22 of the offshore aquaculture facility. State taxation laws
23 shall not apply to offshore aquaculture facilities in the Ex-
24 clusive Economic Zone.

1 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Sec-
3 retary \$4,052,000 in fiscal year 2008 and thereafter such
4 sums as may be necessary for purposes of carrying out
5 the provisions of this Act.

6 **SEC. 8. UNLAWFUL ACTIVITIES.**

7 It is unlawful for any person—

8 (1) to falsify any information required to be re-
9 ported, communicated, or recorded pursuant to this
10 Act or any regulation or permit issued under this
11 Act, or to fail to submit in a timely fashion any re-
12 quired information, or to fail to report to the Sec-
13 retary immediately any change in circumstances that
14 has the effect of rendering any such information
15 false, incomplete, or misleading;

16 (2) to engage in offshore aquaculture within the
17 Exclusive Economic Zone of the United States or
18 operate an offshore aquaculture facility within the
19 Exclusive Economic Zone of the United States, ex-
20 cept pursuant to a valid permit issued under this
21 Act;

22 (3) to refuse to permit an authorized officer to
23 conduct any lawful search or lawful inspection in
24 connection with the enforcement of this Act or any
25 regulation or permit issued under this Act;

1 (4) to forcibly assault, resist, oppose, impede,
2 intimidate, or interfere with an authorized officer in
3 the conduct of any search or inspection in connec-
4 tion with the enforcement of this Act or any regula-
5 tion or permit issued under this Act;

6 (5) to resist a lawful arrest or detention for any
7 act prohibited by this section;

8 (6) to interfere with, delay, or prevent, by any
9 means, the apprehension, arrest, or detection of an-
10 other person, knowing that such person has com-
11 mitted any act prohibited by this section;

12 (7) to import, export, sell, receive, acquire or
13 purchase in interstate or foreign commerce any ma-
14 rine species in violation of this Act or any regulation
15 or permit issued under this Act;

16 (8) upon the expiration or termination of any
17 aquaculture permit for any reason, to fail to remove
18 all structures, gear, and other property from the
19 site, or take other measures, as prescribed by the
20 Secretary, to restore the site;

21 (9) to violate any provision of this Act, any reg-
22 ulation promulgated under this Act, or any term or
23 condition of any permit issued under this Act; or

24 (10) to attempt to commit any act described in
25 paragraph (1), (2), (7), (8) or (9).

1 **SEC. 9. ENFORCEMENT PROVISIONS.**

2 (a) DUTIES OF SECRETARIES.—Subject to subpara-
3 graphs (B) and (D) of section 4(e)(6), this Act shall be
4 enforced by the Secretary and the Secretary of the depart-
5 ment in which the Coast Guard is operating.

6 (b) POWERS OF ENFORCEMENT.—

7 (1) Any officer who is authorized pursuant to
8 subsection (a) of this section by the Secretary or the
9 Secretary of the department in which the Coast
10 Guard is operating to enforce the provisions of this
11 Act may—

12 (A) with or without a warrant or other
13 process—

14 (i) arrest any person, if the officer has
15 reasonable cause to believe that such per-
16 son has committed or is committing an act
17 prohibited by section 8 of this Act;

18 (ii) search or inspect any offshore
19 aquaculture facility and any related land-
20 based facility;

21 (iii) seize any offshore aquaculture fa-
22 cility (together with its equipment, records,
23 furniture, appurtenances, stores, and
24 cargo), and any vessel or vehicle, used or
25 employed in aid of, or with respect to
26 which it reasonably appears that such off-

1 shore aquaculture facility was used or em-
2 ployed in aid of, the violation of any provi-
3 sion of this Act or any regulation or permit
4 issued under this Act;

5 (iv) seize any marine species (wher-
6 ever found) retained, in any manner, in
7 connection with or as a result of the com-
8 mission of any act prohibited by section 8
9 of this Act; and

10 (v) seize any evidence related to any
11 violation of any provision of this Act or
12 any regulation or permit issued under this
13 Act;

14 (B) execute any warrant or other process
15 issued by any court of competent jurisdiction;
16 and

17 (C) exercise any other lawful authority.

18 (2) Any officer who is authorized pursuant to
19 subsection (a) of this section by the Secretary or the
20 Secretary of the department in which the Coast
21 Guard is operating to enforce the provisions of this
22 Act may make an arrest without a warrant for (A)
23 an offense against the United States committed in
24 his presence, or (B) for a felony cognizable under
25 the laws of the United States, if he has reasonable

1 grounds to believe that the person to be arrested has
2 committed or is committing a felony. Any such au-
3 thorized person may execute and serve a subpoena,
4 arrest warrant or search warrant issued in accord-
5 ance with Rule 41 of the Federal Rules of Criminal
6 Procedure, or other warrant of civil or criminal proc-
7 ess issued by any officer or court of competent juris-
8 diction for enforcement of the Act, or any regulation
9 or permit issued under this Act.

10 (c) ISSUANCE OF CITATIONS.—If any authorized offi-
11 cer finds that a person is engaging in or has engaged in
12 offshore aquaculture in violation of any provision of this
13 Act, such officer may issue a citation to that person.

14 (d) LIABILITY FOR COSTS.—Any person who violates
15 this Act, or a regulation or permit issued under this Act,
16 shall be liable for the cost incurred in storage, care, and
17 maintenance of any marine species or other property
18 seized in connection with the violation.

19 **SEC. 10. CIVIL ENFORCEMENT AND PERMIT SANCTIONS.**

20 (a) CIVIL ADMINISTRATIVE PENALTIES.—

21 (1) Any person who is found by the Secretary,
22 after notice and opportunity for a hearing in accord-
23 ance with section 554 of title 5, United States Code,
24 to have violated this Act, or a regulation or permit
25 issued under this Act, shall be liable to the United

1 States for a civil penalty. The amount of the civil
2 penalty under this paragraph shall not exceed
3 \$200,000 for each violation. Each day of a con-
4 tinuing violation shall constitute a separate violation.

5 (2) COMPROMISE OR OTHER ACTION BY THE
6 SECRETARY.—The Secretary may compromise, mod-
7 ify, or remit, with or without conditions, any civil
8 administrative penalty which is or may be imposed
9 under this section and that has not been referred to
10 the Attorney General for further enforcement action.

11 (b) CIVIL JUDICIAL PENALTIES.—Any person who
12 violates any provision of this Act, or any regulation or per-
13 mit issued thereunder, shall be subject to a civil penalty
14 not to exceed \$250,000 for each such violation. Each day
15 of a continuing violation shall constitute a separate viola-
16 tion. The Attorney General, upon the request of the Sec-
17 retary, may commence a civil action in an appropriate dis-
18 trict court of the United States, and such court shall have
19 jurisdiction to award civil penalties and such other relief
20 as justice may require. In determining the amount of a
21 civil penalty, the court shall take into account the nature,
22 circumstances, extent, and gravity of the prohibited acts
23 committed and, with respect to the violator, the degree
24 of culpability, any history of prior violations and such
25 other matters as justice may require. In imposing such

1 penalty, the district court may also consider information
2 related to the ability of the violator to pay.

3 (c) PERMIT SANCTIONS.—

4 (1) In any case in which—

5 (A) an offshore aquaculture facility has
6 been used in the commission of an act prohib-
7 ited under section 8 of this Act;

8 (B) the owner or operator of an offshore
9 aquaculture facility or any other person who
10 has been issued or has applied for a permit
11 under section 4 of this Act has acted in viola-
12 tion of section 8 of this Act; or

13 (C) any amount in settlement of a civil for-
14 feiture imposed on an offshore aquaculture fa-
15 cility or other property, or any civil penalty or
16 criminal fine imposed under this Act or imposed
17 on any other person who has been issued or has
18 applied for a permit under any fishery resource
19 statute enforced by the Secretary, has not been
20 paid and is overdue, the Secretary may—

21 (i) revoke any permit issued with re-
22 spect to such offshore aquaculture facility
23 or applied for by such a person under this
24 Act, with or without prejudice to the
25 issuance of subsequent permits;

1 (ii) suspend such permit for a period
2 of time considered by the Secretary to be
3 appropriate;

4 (iii) deny such permit; or

5 (iv) impose additional conditions and
6 restrictions on such permit.

7 (2) In imposing a sanction under this sub-
8 section, the Secretary shall take into account—

9 (A) the nature, circumstances, extent, and
10 gravity of the prohibited acts for which the
11 sanction is imposed; and

12 (B) with respect to the violator, the degree
13 of culpability, any history of prior violations,
14 and such other matters as justice may require.

15 (3) Transfer of ownership of an offshore aqua-
16 culture facility, by sale or otherwise, shall not extin-
17 guish any permit sanction that is in effect or is
18 pending at the time of transfer of ownership. Before
19 executing the transfer of ownership of an offshore
20 aquaculture facility, by sale or otherwise, the owner
21 shall disclose in writing to the prospective transferee
22 the existence of any permit sanction that will be in
23 effect or pending with respect to the offshore aqua-
24 culture facility at the time of the transfer. The Sec-

1 retary may waive or compromise a sanction in the
2 case of a transfer pursuant to court order.

3 (4) In the case of any permit that is suspended
4 under this subsection for nonpayment of a civil pen-
5 alty or criminal fine, the Secretary shall reinstate
6 the permit upon payment of the penalty or fine and
7 interest thereon at the prevailing rate.

8 (5) No sanctions shall be imposed under this
9 subsection unless there has been prior opportunity
10 for a hearing on the facts underlying the violation
11 for which the sanction is imposed, either in conjunc-
12 tion with a civil penalty proceeding under this sec-
13 tion or otherwise.

14 (d) INJUNCTIVE RELIEF.—Upon the request of the
15 Secretary, the Attorney General of the United States may
16 commence a civil action for appropriate relief, including
17 a permanent or temporary injunction, for any violation of
18 any provision of this Act, or regulation or permit issued
19 under this Act.

20 (e) HEARING.—For the purposes of conducting any
21 investigation or hearing under this section or any other
22 statute administered by the National Oceanic and Atmos-
23 pheric Administration which is determined on the record
24 in accordance with the procedures provided for under sec-
25 tion 554 of title 5, United States Code, the Secretary may

1 issue subpoenas for the attendance and testimony of wit-
2 nesses and the production of relevant papers, books, and
3 documents, and may administer oaths. Witnesses sum-
4 moned shall be paid the same fees and mileage that are
5 paid to witnesses in the courts of the United States. In
6 case of contempt or refusal to obey a subpoena served
7 upon any person pursuant to this subsection, the district
8 court of the United States for any district in which such
9 person is found, resides, or transacts business, upon appli-
10 cation by the United States and after notice to such per-
11 son, shall have jurisdiction to issue an order requiring
12 such person to appear and give testimony before the Sec-
13 retary or to appear and produce documents before the Sec-
14 retary, or both, and any failure to obey such order of the
15 court may be punished by such court as a contempt there-
16 of. Nothing in this Act shall be construed to grant juris-
17 diction to a district court to entertain an application for
18 an order to enforce a subpoena issued by the Secretary
19 of Commerce to the Federal Government or any entity
20 thereof.

21 (f) JURISDICTION.—The United States district courts
22 shall have original jurisdiction of any action under this
23 section arising out of or in connection with the construc-
24 tion or operation of aquaculture facilities, and proceedings
25 with respect to any such action may be instituted in the

1 judicial district in which any defendant resides or may be
2 found, or in the judicial district of the adjacent coastal
3 State nearest the place where the cause of action arose.
4 For the purpose of this section, American Samoa shall be
5 included within the judicial district of the District Court
6 of the United States for the District of Hawaii. Each vio-
7 lation shall be a separate offense and the offense shall be
8 deemed to have been committed not only in the district
9 where the violation first occurred, but also in any other
10 district as authorized by law.

11 (g) COLLECTION.—If any person fails to pay an as-
12 sessment of a civil penalty after it has become a final and
13 unappealable order, or after the appropriate court has en-
14 tered final judgment in favor of the Secretary, the matter
15 may be referred to the Attorney General, who may recover
16 the amount (plus interest at currently prevailing rates
17 from the date of the final order). In such action the valid-
18 ity, amount and appropriateness of the final order impos-
19 ing the civil penalty shall not be subject to review. Any
20 person who fails to pay, on a timely basis, the amount
21 of an assessment of a civil penalty shall be required to
22 pay, in addition to such amount and interest, attorney's
23 fees and costs for collection proceedings and a quarterly
24 nonpayment penalty for each quarter during which such
25 failure to pay persists. Such nonpayment penalty shall be

1 in an amount equal to 20 percent of the aggregate amount
2 of such persons penalties and nonpayment penalties which
3 are unpaid as of the beginning of such quarter.

4 (h) NATIONWIDE SERVICE OF PROCESS.—In any ac-
5 tion by the United States under this Act, process may be
6 served in any district where the defendant is found, re-
7 sides, transacts business or has appointed an agent for
8 the service of process, and for civil cases may also be
9 served in a place not within the United States in accord-
10 ance with Rule 4 of the Federal Rules of Civil Procedure.

11 **SEC. 11. CRIMINAL OFFENSES.**

12 (a) IN GENERAL.—Any person (other than a foreign
13 government or any entity of such government) who know-
14 ingly commits an act prohibited by subsection (c), (d), (e),
15 or (f) of section 8, shall be imprisoned for not more than
16 5 years or shall be fined not more than \$500,000 for indi-
17 viduals or \$1,000,000 for an organization, or both; except
18 that if in the commission of any such offense the indi-
19 vidual uses a dangerous weapon, engages in conduct that
20 causes bodily injury to any officer authorized to enforce
21 the provisions of this Act, or places any such officer in
22 fear of imminent bodily injury, the maximum term of im-
23 prisonment is not more than 10 years.

24 (b) OTHER OFFENSES.—Any person (other than a
25 foreign government or any entity of such government) who

1 knowingly violates any provision of section 8 other than
2 subsection (c), (d), (e) or (f), any provision of any regula-
3 tion promulgated pursuant to this Act, or any permit
4 issued under this Act, shall be imprisoned for not more
5 than 5 years, or shall be fined not more than \$500,000
6 for an individual or \$1,000,000 for an organization, or
7 both.

8 (c) JURISDICTION OF DISTRICT COURTS.—The
9 United States district courts shall have original jurisdic-
10 tion of any action arising under this section out of or in
11 connection with the construction or operation of aqua-
12 culture facilities, and proceedings with respect to any such
13 action may be instituted in the judicial district in which
14 any defendant resides or may be found. For the purpose
15 of this section, American Samoa shall be included within
16 the judicial district of the District Court of the United
17 States for the District of Hawaii. Each violation shall be
18 a separate offense and the offense shall be deemed to have
19 been committed not only in the district where the violation
20 first occurred, but also in any other district as authorized
21 under law.

22 **SEC. 12. FORFEITURES.**

23 (a) CRIMINAL FORFEITURE.—A person who is con-
24 victed of an offense under section 11 of this Act shall for-
25 feit to the United States—

1 (1) any property, real or personal, constituting
2 or traceable to the gross proceeds obtained, or re-
3 tained, as a result of the offense including, without
4 limitation, any marine species (or the fair market
5 value thereof) taken or retained in connection with
6 or as a result of the offense; and

7 (2) any property, real or personal, used or in-
8 tended to be used to commit or to facilitate the com-
9 mission of the offense, including, without limitation,
10 any offshore aquaculture facility or vessel, including
11 its structure, equipment, furniture, appurtenances,
12 stores, and cargo, and any vehicle or aircraft.

13 Pursuant to section 2461(c) of title 28, United States
14 Code, the provisions of section 413 of the Controlled Sub-
15 stances Act (21 U.S.C. 853), other than subsection (d),
16 shall apply to criminal forfeitures under this section.

17 (b) CIVIL FORFEITURE.—The following shall be sub-
18 ject to forfeiture to the United States and no property
19 right shall exist in them:

20 (1) Any property, real or personal, constituting
21 or traceable to the gross proceeds obtained, or re-
22 tained, as a result of a violation of any provision of
23 section 8 or section 4(b)(2)(D) of this Act, includ-
24 ing, without limitation, any marine species (or the

1 fair market value thereof) taken or retained in con-
 2 nection with or as a result of the violation.

3 (2) Any property, real or personal, used or in-
 4 tended to be used to commit or to facilitate the com-
 5 mission of any such violation, including, without lim-
 6 itation, any offshore aquaculture facility or vessel,
 7 including its structure, equipment, furniture, appur-
 8 tenances, stores, and cargo, and any vehicle or air-
 9 craft.

10 Civil forfeitures under this section shall be governed by
 11 the procedures set forth in chapter 46 of title 18, United
 12 States Code.

13 (c) REBUTTABLE PRESUMPTION.—In any criminal or
 14 civil forfeiture proceeding under this section, there is a
 15 rebuttable presumption that all marine species found with-
 16 in an offshore aquaculture facility and seized in connection
 17 with a violation of section 8 of this Act were taken or re-
 18 tained in violation of this Act.

19 **SEC. 13. SEVERABILITY AND JUDICIAL REVIEW.**

20 (a) SEVERABILITY.—If any provision of this chapter
 21 or the application thereof to any person or circumstances
 22 is held invalid, the validity of the remainder of this chapter
 23 and of the application of such provision to other persons
 24 and circumstances shall not be affected thereby.

25 (b) JUDICIAL REVIEW.—

1 (1) IN GENERAL.—Judicial review of any action
2 taken by the Secretary under this chapter shall be
3 in accordance with sections 701 through 706 of title
4 5, United States Code, except that—

5 (A) review of any final agency action of the
6 Secretary taken pursuant to subsection (a) or
7 (c) of section 11 may be had only by the filing
8 of a complaint by an interested person in the
9 United States District Court for the appro-
10 priate district; any such complaint must be filed
11 within 30 days of the date such final agency ac-
12 tion is taken; and

13 (B) review of all other final agency actions
14 of the Secretary under this chapter may be had
15 only by the filing of a petition for review by an
16 interested person in the Circuit Court of Ap-
17 peals of the United States for the Federal judi-
18 cial district in which such person resides or
19 transacts business which is directly affected by
20 the action taken; such petition shall be filed
21 within 120 days from the date such final action
22 is taken.

23 (2) LIMITATION OF JUDICIAL REVIEW.—Final
24 agency action with respect to which review could
25 have been obtained under paragraph (1)(B) of this

1 subsection shall not be subject to judicial review in
2 any civil or criminal proceeding for enforcement.

3 (3) AWARDS OF LITIGATION COSTS.—In any ju-
4 dicial proceeding under paragraph (1) of this sub-
5 section, the court may award costs of litigation (in-
6 cluding reasonable attorney and expert witness fees)
7 to any prevailing party whenever it determines that
8 such award is appropriate.

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POLICIES FOR THE PROTECTION AND RESTORATION OF ESSENTIAL FISH HABITATS FROM MARINE AQUACULTURE

(June, 2007)

Policy Context

This document establishes the policies of the South Atlantic Fishery Management Council (SAFMC) regarding protection of Essential Fish Habitat (EFH) and Essential Fish Habitat - Habitat Areas of Particular Concern (EFH-HAPCs) from potential impacts associated with marine aquaculture. The policies are designed to be consistent with the overall habitat protection policies of the SAFMC as formulated in the Habitat Plan (SAFMC 1998a) and adopted in the Comprehensive EFH Amendment (SAFMC 1998b) and the various Fishery Management Plans (FMPs) of the Council.

The findings presented below assess potential impacts, negative and positive to EFH and EFH-HAPCs posed by activities related to marine aquaculture in offshore and coastal waters, riverine systems and adjacent wetland habitats, and the processes which could place those resources at risk. The policies and recommendations established in this document are designed to avoid, minimize, and offset potential impacts from these activities, in accordance with the general habitat policies of the SAFMC as mandated by law. To address any future marine aquaculture projects in the South Atlantic region, or as legislation is developed to provide additional guidelines, the SAFMC will revise this policy when more information becomes available.

The recommendations presented here should be applied to aquaculture facilities in reasonable proximity to EFH and EFH-HAPCs, however managed. Current laws, regulations and policies differ for offshore aquaculture, and for aquaculture activities in nearshore and inshore waters managed by the various states. As the federal FMPs in the region are amended to address offshore aquaculture as "fishing" activities, then these recommendations should be factored into those FMPs. Where aquaculture remains outside federal FMP-based management, then EFH protection mechanisms for "non-fishing" activities should be used to protect EFH, wherever possible.

EFH Potentially At Risk from Marine Aquaculture Activities

The SAFMC finds that:

1. Properly sited, designed and managed marine aquaculture operations can have beneficial economic and environmental outcomes. However, marine aquaculture activities or associated support facilities can have the potential to cause adverse impacts to a variety of habitats across the shelf and to nearshore systems including:
 - a) waters and benthic habitats in or near marine aquaculture sites,
 - b) exposed hardbottom (e.g. reefs and live bottom) in shallow and deep waters,
 - c) submerged aquatic vegetation beds,
 - d) shellfish beds,
 - e) spawning and nursery areas,
 - f) coastal wetlands, and
 - g) riverine systems and associated wetlands.
2. Certain offshore, nearshore and riverine habitats are particularly important to the long-term viability of commercial and recreational fisheries under SAFMC management, and are potentially threatened by marine offshore aquaculture activities, including:
 - a) coral, coral reef and live/hardbottom habitat, including deepwater coral communities;
 - b) marine and estuarine waters;
 - c) estuarine wetlands, including mangroves and marshes;
 - d) submerged aquatic vegetation;
 - e) waters that support diadromous fishes, and their spawning and nursery habitats; and
 - f) waters hydrologically and ecologically connected to waters that support EFH.
3. Construction and operation of poorly sited and/or designed aquaculture support facilities could adversely impact wetlands, other EFH and protected species' habitats.
4. Sections of South Atlantic waters potentially affected by these projects, both individually and collectively, have been identified as EFH or EFH-HAPC by the SAFMC. Potentially affected species and their EFH under federal management include (SAFMC, 1998b):
 - a) summer flounder (various nearshore waters; certain offshore waters);
 - b) bluefish (various nearshore waters);
 - c) red drum (unconsolidated bottoms in the nearshore);
 - d) many snapper and grouper species (live hardbottom from shore to 600 feet, and – for estuarine-dependent species (e.g., gag grouper and gray snapper) – unconsolidated bottoms and live hardbottoms to the 100 foot contour);
 - e) black sea bass (various nearshore waters, including unconsolidated bottom and live hardbottom to 100 feet, and hardbottoms to 600 feet);
 - f) penaeid shrimp (offshore habitats used for spawning and growth to maturity, and waters connecting to inshore nursery areas);

- g) coastal migratory pelagics (e.g., king mackerel, Spanish mackerel) (sandy shoals of capes and bars, barrier island ocean-side waters from the surf zone to the shelf break inshore of the Gulf Stream);
- h) corals of various types and associated organisms (on hard substrates in shallow, midshelf, and deep water);
- i) muddy, silt bottoms from the subtidal to the shelf break, deepwater corals and associated communities; and
- j) areas identified as EFH for Highly Migratory Species managed by the Secretary of Commerce (e.g., sharks: inlets and nearshore waters, including pupping and nursery grounds).

5. Many of the habitats potentially affected by these activities have been identified as EFH-HAPCs by the SAFMC. Each habitat and FMP is provided as follows:

- a) all hardbottom areas (SAFMC snapper grouper);
- b) nearshore spawning and nursery sites (SAFMC penaeid shrimps and red drum);
- c) benthic Sargassum (SAFMC snapper grouper);
- d) from shore to the ends of the sandy shoals of Cape Lookout, Cape Fear, and Cape Hatteras, North Carolina; Hurl Rocks, South Carolina; and *Phragmatopoma* (worm reefs) reefs off the central coast of Florida and near shore hardbottom south of Cape Canaveral (SAFMC coastal migratory pelagics);
- e) Hurl Rocks (South Carolina); the *Phragmatopoma* (worm reefs) off central east coast of Florida; nearshore (0-4 meters; 0-12 feet) hardbottom off the east coast of Florida from Cape Canaveral to Broward County; offshore (5-30 meters; 15-90 feet) hardbottom off the east coast of Florida from Palm Beach County to Fowey Rocks; Biscayne Bay, Florida; Biscayne National Park, Florida; and the Florida Keys National Marine Sanctuary (SAFMC Coral, Coral Reefs and Live Hardbottom Habitat);
- f) EFH-HAPCs designated for HMS species (e.g., sharks) in the South Atlantic region (NMFS Highly Migratory Species);
- g) *Oculina* Bank HAPC and proposed deepwater coral HAPCs (SAFMC Coral, Coral Reefs and Live Hardbottom Habitat); and
- h) HAPCs for diadromous species adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

6. Habitats likely to be affected by marine aquaculture activities include many recognized in state-level fishery management plans and interstate fishery management plans of the ASMFC. Examples of these habitats include state-designated Critical Habitat Areas (CHAs) or Strategic Habitat Areas (SHAs) established by the North Carolina Marine Fisheries Commission, either in FMPs or in Coastal Habitat Protection Plans. Many state-managed and interstate-managed species serve as key prey for SAFMC-managed species.

7. Scientists have documented exceptionally important habitat values for East coast Florida nearshore hardbottom used by over 500 species of fishes and invertebrates, including juveniles of many reef fishes. Equivalent scientific work is just beginning in other South Atlantic states, but life histories suggest that similar habitat use patterns will be found.

Threats to EFH from Marine Aquaculture Activities

Aquaculture-related development without adequate safeguards may threaten wild stocks and the habitats that support them. The future of some aquaculture sectors is inextricably intertwined with fisheries and the health of marine ecosystems. Some coastal forms of aquaculture are known to degrade marine ecosystems, and may result in a net loss of fish. Finfish netpens in offshore waters may pose risks similar to netpens in inshore waters, where several potential environmental issues have been documented (summarized in Naylor et al., 2000; and Nash, ed, 2005).

Experimental or small-scale commercial fish farms are unlikely to have major environmental effects. However, if marine aquaculture booms, and becomes a major means of food production, the potential impacts on marine ecosystems and wild fisheries – and the communities that depend upon them – could be significant. An analysis of the potential cumulative impacts of aquaculture development in the Southeast region is essential prior to any large-scale expansion, onshore or offshore.

The SAFMC finds the following to constitute potential threats to EFH:

1) *Escapement*: Ecological damage caused by escaped organisms has been documented, including the introduction of non-native species, and reduced fitness of wild stocks as a result of interbreeding with escapees of the same species. The likelihood of escapes from farms may be high, if cages are sited in storm-prone areas, either offshore or nearshore.

Moreover, species potentially targeted for offshore or nearshore production may spawn in netpens. Ocean fish cages are incapable of containing fish eggs. The impacts of fertilized egg releases on the health of wild fisheries could be significant if farmed fish are genetically less well adapted to the ocean environment, as a result of selective breeding, genetic engineering, or simply because animals being farmed were taken from a geographic area with different ecological conditions

2) *Spread of pathogens and use of antibiotics and other drugs*: Concentration of large numbers of animals in a small area can facilitate outbreaks of disease and parasites, potentially jeopardizing wild stocks. Disease and parasite outbreaks can also lead producers to administer antibiotics and other drugs, usually via feed. Drugs can end up in marine ecosystems where they can select for resistant bacteria, sometimes in species targeted by fisheries (Ervik et al., 1994). Note that the U.S. Food and Drug Administration regulates the use of drugs in aquaculture and there are only a very few drugs approved for controlled and limited use.

3) *Water pollution*: Concentrated animal production operations use substantial amounts of feeds. Even very efficient operations may lose a portion of the nutrients in feeds through uneaten food and through oxygen-demanding wastes, which are transmitted to surrounding waters.

Nitrogen is the nutrient primarily responsible for eutrophication in marine waters in the U.S. southeast, resulting in algal blooms and deoxygenation. In inshore waters, both nitrogen and phosphorus are nutrients of concern.

Nutrient impacts can be considerable in oligotrophic oceanic systems at levels significantly below those used as benchmarks for pollution in inshore and estuarine waters. The importance of the surface microlayer to larval ecology and its vulnerability to perturbations from airborne or locally-sourced excess nutrients cannot be overstated. Standards and criteria for nutrient-related water quality impacts on these oceanic ecological functions do not yet exist, and compliance with state-based water quality standards and national water quality criteria for nutrients may not prevent loading-based impacts.

Fish farms may cluster geographically near infrastructure such as processing plants and transportation, like terrestrial hog farms, concentrating potential impacts. However, widely-spaced marine farms sited in areas with strong currents and strong mixing would have less localized impact.

Finally, other feed additives, including metals and persistent organic pollutants, may contribute to longer-term bioaccumulation.

SAFMC Policies for Marine Aquaculture Projects

The SAFMC establishes the following general policies related to marine aquaculture projects, to clarify and augment the general policies already adopted in the Habitat Plan and Comprehensive Habitat Amendment (SAFMC 1998a; SAFMC 1998b):

1. The Council strongly supports thorough public review and effective regulation of marine aquaculture activities in the South Atlantic EEZ. South Atlantic fisheries are exceptionally dependent upon healthy habitat already under attack from many sources.
2. Permits should be for at least a ten-year duration with annual reporting requirements (activity reports) and a five-year comprehensive operational review with the option for revocation at any time in the event there is no prolonged activity or there is documented adverse impacts to marine resources. Given the changes underway in coastal ecosystems in response to storm events, rising seas and introduced species, such a review cycle is essential.
3. Environmental review and performance expectation are paramount. This is a new and totally optional class of private uses being imposed on already at-risk ecosystems where unacceptable ecological cascades could occur. The Council is committed to ensuring that marine aquaculture activities are held to the same level of EFH conservation protections as are other non-fishing* activities.

*The reference to non-fishing activities is meant to clarify that the Council's role is to comment on aquaculture activities similar to process the Council uses for non-fishing activities. The MSA currently defines aquaculture as a fishing activity. However, the proposed Aquaculture Bill would remove aquaculture as a fishing activity. The Council applies the same EFH standards to both fishing and non-fishing impacts.

4. The Council approves of use of therapeutic agents and feed additives, that have been approved by the FDA specifically for use in offshore open-water or net pen aquaculture.
5. The use of genetically modified and non-native species should be prohibited.
6. Given the critical nature of proper siting, the applicant should provide all needed information to evaluate in full the suitability of potential sites. If sufficient information is not provided in the application review time allotted by existing processes, the permit should be denied or held in abeyance until required information is available.
7. Monitoring plans should be developed by the applicant/permit holder and approved by NOAA Fisheries with input from the Council. Monitoring plans should be reviewed, approved, and funded prior to implementation.
8. Permittees must have adequate resources legally committed to ensure proper decommissioning of obsolete or storm-damaged facilities.
9. The issuing agency should have clear authority to repeal or condition permits in order to prevent environmental damage and exercise its authority to repeal permits if it becomes evident that environmental damage is occurring or if permit conditions are not met.

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DRAFT - Proposed for distribution on September 14, 2007

Honorable Don Young

Dear Congressman Young,

Per your August 20, 2007 letter of request, we offer the following comments relative to proposed H.R. 21 the *Oceans Conservation, Education, and National Strategy for the 21st Century Act*. Rather than a Title-by-Title assessment, we believe that stating our comments generally may be a more useful response. While this legislation appears well-intended, and contains some potentially positive provisions (such as an organic act to formalize the structure of the National Oceanic and Atmospheric Administration (NOAA), and a funding mechanism for marine resource management), we cannot support H.R. 21 in its current form. In general the proposed bill would create several additional layers of bureaucracies and possibly conflicting authorities, which in fact could lead to decreased efficiencies in ocean governance, deterioration of current initiatives towards ecosystem-based management, and exacerbation of litigation-based resource management. We further believe that the primary provisions of H.R. 21 run directly counter to some of the key provisions of the recently amended Magnuson-Stevens Fishery Conservation and Management Act (MSA), which was the result of several years of discussion and debate around many of the same issues being addressed in H.R. 21.

The Regional Fishery Management Councils (Councils), authorized under the MSA, currently engage in managing not only fisheries, but habitat, marine mammal and seabird interactions, coastal community development, and numerous other aspects of the marine environment that collectively equate to an ecosystem-based management approach. Several of the Councils have developed, are or developing, Fishery Ecosystem Plans (FEPs) for the areas under their jurisdiction, and there are also initiatives for regional collaboration across federal and state agencies (such as the Alaska Marine Ecosystem Forum, which is a voluntary association of primary federal and state agencies involved in marine resource, or related, management activities). The recently amended MSA contains several provisions based on the recommendations of the U.S. Commission on Ocean Policy, including a requirement for an assessment of the state of science for integration of ecosystem considerations in our management process, as well as establishment of a long-term fund to support progress towards ecosystem-based management.



At the same time, and in coordination with the Councils, NOAA has vigorously pursued the concept of ecosystem-based management, as is evidenced by the numerous initiatives centered on the ecosystem-based management concept, as were detailed in the April 2007 testimony of Mr. Jack Dunnigan, NOAA Assistant Administrator for the National Ocean Service. Collectively, these initiatives seem to constitute the general intent of H.R. 21 relative to ecosystem-based management, but do so in deliberate, step-wise manner that recognizes the realities of our state of scientific knowledge, and which recognizes the myriad Acts and other applicable laws relative to marine resource management. H.R. 21 would seem to largely subsume the recently reauthorized MSA, which was the result of years of debate and hearings on many of these same issues, and which took a practical approach to ecosystem-based management.

The essential problems we see with H.R. 21 can be summarized as follows:

1. The proposed legislation creates several additional layers of bureaucracies and authorities, which could conflict with existing authorities and existing statutes. The recently reauthorized MSA and the National Environmental Policy Act are two primary examples. The bill also contains requirements for numerous redundant reports (at the Administrator level, the Committee level, and at the regional ocean partnership level) to be finalized in very short and unrealistic time frames.
2. The primary purpose of H.R. 21 is already being affected, through efforts of NOAA and the regional fishery management Councils to embrace a broader ecosystem approach to marine resource management. H.R. 21 could diffuse and delay ongoing efforts in this regard, by redirecting funds and personnel to largely redundant exercises.
3. The requirements to establish new regulations for which every federal action must comply will significantly redirect numerous agency resources, thereby thwarting and delaying the positive initiatives currently underway; further, the establishment of such regulation could conflict significantly with existing regulations, statutes, and National Standards.
4. While the legislation states in section....that “it is not intended to replace existing authorities”, other sections of the bill contains provisions for the development and implementation (through regulations) of strategic plans at both the national and regional levels, which would appear to carry the force of law and thereby subsume long-standing, successful management processes. Specifically relative to fisheries, the regional ocean partnerships and attendant regional ocean strategic plans would appear to be vested with regulatory authority over fisheries management decisions, in direct conflict with the Regional Fishery Management Councils and the MSA. The addition of the term “important ecological area’ further confuses the issue of management authorities, given its relationship to essential fish habitat and attendant requirements of the Magnuson-Stevens Act.

5. Ecosystem-based management, and marine ecosystem health, while ostensibly defined in H.R. 21, remain subjective concepts. While the proposed legislation speaks to the establishment of “clear standards against which compliance can be assured”, the bill does not in fact establish such clear standards. A major concern is that this legislation could be way ahead of our available scientific understanding, and set us up for management by litigation, or create total gridlock in management processes.

Notwithstanding our concerns, there are some potentially positive aspects of H.R. 21. We believe, for example, that the focal point of the bill should be on those provisions which elevate the importance of oceans and coastal protection within the federal government and coordinates federal authorities and programs. Further, codifying NOAA’s program authorities and setting forth the agency’s policy goals and missions in a single statute is a positive step but, it should be done so in a manner which strengthens the agency while avoiding reorganization efforts that would be disruptive to ongoing missions. A new position in the Executive Office of the President for a National Oceans Advisor and codifying the Committee on Ocean Policy, which currently operates under an Executive Order may be a positive step, but only if the scope of the proposed coordinated management regime for activities in federal waters is clarified to ensure that NOAA Fisheries’, and Councils’, authority to manage living marine resources will not be diminished under such plan. Finally, provisions of the bill which promote ecological prediction and management capabilities, and make commitments to funding such activities, are certainly a positive step. However, this generally positive intent must be reconciled against the significant concerns outlined in this letter.

In summary, we strongly support the concept of ecosystem-based management and believe that we are currently embracing that concept in realistic, step-wise approach which is based on a vigorously expanded NOAA and Council mission to understand the state of our ecosystems and respond accordingly in our management actions. The provisions of H.R. 21 have the potential to seriously divert both focus and resources from this mission, and create a tangle of bureaucracies and authorities which will actually impede the implementation of a realistic ecosystem-based management approach. Again, we appreciate the opportunity to comment on this important piece of legislation. Please contact us if we can be of further assistance.

Sincerely,

DRAFT - Proposed for signature by each of the eight Regional Fishery Management Council Chairs

cc: Honorable Ted Stevens
Honorable Lisa Murkowski
Vice Admiral Conrad C. Lautenbacher
William Hogarth
Others?

REPORT OF THE LEGISLATIVE COMMITTEE

The Legislative Committee (Committee) convened at 10 a.m. on Monday, September 10, 2007. In attendance were Committee members Dr. David Hanson (chair), Ms. Kathy Fosmark, Mr. Don Hansen, and Mr. Dale Myer. Also present were Council members Mr. Mark Helvey, Mr. Phil Anderson, Mr. Mark Cedergreen, Mr. Curt Melcher, Mr. David Ortmann, Mr. Frank Warrens, and Mr. Gordy Williams; Council staff Dr. Don McIsaac, Dr. John Coon, Mr. Mike Burner, and Ms. Heather Brandon; and Mr. Judson Feder, General Counsel with the National Marine Fisheries Service, Southwest Regional Office.

The Committee focused the majority of the meeting on H.R. 21 the *Oceans Conservation, Education, and National Strategy for the 21st Century Act*. Specifically, the Council considered ways to respond to the formal request from U.S. Representative Don Young (R-AK) (Agenda Item B.4.a, Attachment 2) for Regional Fishery Management Council (RFMC) review of the bill. The Committee recommends the Council respond to Congressman Young in two ways:

1. The Committee recommends the Council approve for Pacific Fishery Management Council (Council) Chairman Don Hansen's signature, the draft letter proposed for signature by all eight chairs of the RFMCs by Chris Oliver, Executive Director of the North Pacific Fishery Management Council (Agenda Item B.4.a, Supplemental Attachment 6) with some recommended adjustments. The Committee recommends the following improvements to the letter:
 - Add an introductory paragraph stressing the fact that the positions expressed in the letter carry the full support of all eight RFMCs should such support develop.
 - The phrase "primary provisions" in the last sentence of the first paragraph could be replaced with a specific reference to the five provisions of concern in the letter as it is not clear the portions of H.R. 21 with potential fishery management duplication represent the primary provisions of the bill. Provisions calling for ecosystem-based approaches to management and Title II, the National Oceanic and Atmospheric Administration Organic Act are not counter to the Reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSA).
 - Modify the first sentence of the second paragraph to describe the limitations on the management of habitat and community development allowed under the MSA and therefore, the limitations of a full ecosystem-based management approach.
 - Delete the phrase "important piece of" in the second to last sentence of the last paragraph of the letter to avoid this phrase being taken out of the context of the letter's criticism of the bill.
 - Add West Coast members of the U.S. Senate and U.S. House of Representatives to the distribution list.

2. The Committee recommends the Council direct the Executive Director send a letter to principle sponsors of H.R. 21 which conveys additional or unique Council comments on H.R. 21 including:
 - A discussion on the Council's effort to implement an ecosystem-based fishery management plan as well as efforts noted by the Pacific States Marine Fisheries Commission report to improve the role of science in the application of ecosystem-based principles on the West Coast and the North Pacific.
 - A statement that H.R. 21, like the MSA, imposes higher standards on the conservation and management of Pacific highly migratory species than many foreign fisheries are held to,
 - a recommendation to fully fund existing mandates under the MSA before identifying funding for provisions in H.R. 21 that have been identified as potential conflicts with MSA, and
 - a mention of Council support for the letter to Congressman Young proposed for signature by the eight RFMC chairs.

The Committee also reviewed the *National Offshore Aquaculture Act of 2007* as introduced in both the U.S. House of Representatives and the U.S. Senate. The Committee discussed the Council's previous position recommending that States have the ability to opt out of aquaculture activities in Federal waters off their coasts, as well as the proposed amendment to the bill by U.S. Senator Ted Stevens (R-AK) which would prohibit finfish aquaculture in State or Federal waters off Alaska. The Committee recommends the Council direct the Executive Director to send a letter to U.S. Senator Gordon Smith and the principle aquaculture bill sponsors recommending the bills be modified to require States to "opt in" to offshore aquaculture within the Exclusive Economic Zone off their coasts before Federal permits could be issued.

The Committee adjourned at 11:15 a.m.

PFMC
09/13/07

FISCAL MATTERS

The Council's Budget Committee will meet on Monday, September 10, 2007, at 8:30 A.M. to consider budget issues as outlined in Ancillary E, Budget Committee Agenda.

The Budget Committee's report will be provided to the Council for review and approval on Friday, September 14.

Council Action:

Consider the report and recommendations of the Budget Committee.

Reference Materials:

1. Agenda Item B.5.b, Supplemental Budget Committee Report.

Agenda Order:

- | | |
|---|--------------|
| a. Agenda Item Overview | John Coon |
| b. Budget Committee Report | Jerry Mallet |
| c. Reports and Comments of Advisory Bodies | |
| d. Public Comment | |
| e. Council Action: Consider the Report and Recommendations of the Budget Committee | |

PFMC
08/13/07

REPORT OF THE BUDGET COMMITTEE

The Budget Committee (BC) met on Monday, September 10, 2007 and received the Executive Director's Budget Report on the calendar year (CY) 2006 audit, current status of funding and expenditures for CY 2007, groundfish trawl rationalization (TR) and intersector allocation (IA) spending plan, and expectations for future funding. The following BC members were present:

Mr. Jerry Mallet, Chairman
Mr. Phil Anderson
Dr. Dave Hanson

Mr. Donald K. Hansen
Mr. Mark Helvey/Mr. Frank Lockhart
Mr. Frank Warrens

Absent: None

CY 2006 Audit Report

Dr. John Coon provided a brief overview of the audit report for CY 2006. The auditor's findings for the Council's financial affairs were an unqualified approval with no reportable conditions or material weaknesses.

Current Status of CY 2007 Base Funding and Expenditures

Dr. McIsaac reviewed the receipt of 2007 funding available to the Council. As of August 29, 2007, the Council has received or obtained access to all but about \$200,000 of the expected funding.

In June, the Council approved the recommendation of the BC establishing a CY 2007 budget of \$3,255,454. Since that time, the Council received another \$11,000 to fund travel to the September 25-26 workshop on issues involved with the reauthorization of the Magnuson-Stevens Act. This would raise the CY budget to \$3,266,454. In addition, Dr. McIsaac recommended that the BC add \$5,000 to the CY 2007 budget to fund contract work on Groundfish Amendment 15, bringing the total recommended CY 2007 budget to \$3,271,454. This action would reduce the January-February 2008 contingency funds by \$5,000.

Dr. McIsaac reviewed the 2007 budget and expenditures by major category as of July 31, 2007. He reported that expenditures are proceeding within normal expectations for the first seven months of the year. A more detailed assessment of expenditures through year-end will be provided at the November BC meeting.

Groundfish Trawl Rationalization and Intersector Allocation Funding

In May, the Council received \$1.4 million to complete the necessities for final Council recommendations regarding a limited access privilege program for the groundfish trawl fishery, including the IA Environmental Impact Statement (EIS) and the TR EIS. This amount, combined with funds remaining from \$300,000 in dedicated funds received late in 2006, provides a total of a little less than \$1.65 million to support the program for 2007 through 2009.

Dr. McIsaac provided the BC with proposed annual TR/IA spending plans for 2007-2009, with the proviso that they be reviewed annually when the Council base budgets are determined. The funding is to be used to support meetings, contractors, and Council staff working on TR and IA issues.

Preliminary Expectations for Future Funding

For 2008, Dr. McIsaac reported that the President's budget includes \$19 million for the regional councils' line item while the Senate and House marks are at \$15 million, last year's funding level. To continue at the current level of regional council operations, which have only been possible through the receipt of additional and uncertain soft funding, a line-item mark of about \$25-30 million would be necessary. Dr. McIsaac speculated that there is a high likelihood of uncertainty in Council base funding for 2008 beyond October 1, 2007, which may not be resolved until the first quarter of 2008.

Budget Committee Action and Recommendations

The BC recommends the Council approve:

1. The slightly revised 2007 CY base budget proposed by Dr. McIsaac of \$3,271,454; and
2. With the understanding the annual budgets for 2008 and 2009 are considered tentative and that changes may be necessary when final 2008 and 2009 base funding is known, the annual budgets for 2007-2009 for the IQ and IA programs of:

\$333,559 in 2007

\$809,245 in 2008

\$504,000 in 2009.

PPMC

09/13/07

APPOINTMENTS TO ADVISORY BODIES, STANDING COMMITTEES,
AND OTHER FORUMS, AND CHANGES TO COUNCIL OPERATING PROCEDURES
(COP) AS NEEDED

During this agenda item, the Council will be asked to consider changes in advisory body membership, appointments to other forums, and changes in Council Operating Procedures.

Advisory Body Appointments

Groundfish Management Team (GMT)

The California Department of Fish and Game (CDFG) proposes that Mr. John Budrick replace Ms. Deborah Aseltine-Neilsen as one of the two CDFG members on the GMT (Closed Session A.1.a, Attachment 1).

Habitat Committee (HC)

The Council has been notified of the resignation of Mr. Dennis Bedford as the CDFG First Alternate to the HC. The CDFG is in the process of finding a replacement for Mr. Bedford.

The Idaho Department of Fish and Game (IDFG) has notified the Council of the resignation of their HC member, Dr. Charles Petrosky. This action is necessary as the IDFG is nominating Dr. Petrosky to fill their SSC position (see below under Scientific and Statistical Committee). The IDFG is not proposing a replacement for their HC vacancy.

Highly Migratory Species Management Team (HMSMT)

The Washington Department of Fish and Wildlife (WDFW) proposes that Mr. Corey Niles fill the current WDFW vacancy on the HMSMT (Closed Session A.1.a, Attachment 2).

Mr. Robin Allen, Director of the Inter-American Tropical Tuna Commission (IATTC) has notified us that Mr. Brian Hallman of his staff will no longer be able to serve on the HMSMT representing the IATTC. Workload and staff is such that the IATTC cannot provide a member to our HMSMT (Closed Session A.1.a, Attachment 3).

Salmon Advisory Subpanel (SAS)

In response to our solicitation for nominations to the California Sport Fisheries position on the SAS, we have received one nomination for Mr. Paul Pierce of San Leandro, California who is a member of the Coastside Fishing Club (Closed Session A.1.a, Attachment 4).

Scientific and Statistical Committee (SSC)

In response to our solicitation, the Council received one nomination for the two at-large vacancies on the SSC. The Quinault Indian Nation has nominated Dr. Shizhen Wang (Closed Session A.1.a, Attachment 5).

The Idaho Department of Fish and Game (IDFG) has nominated Dr. Charles Petrosky to the vacant IDFG position on the SSC (Closed Session A.1.a, Attachment 6).

Remaining Advisory Body Vacancies

The following advisory body positions are vacant with no nominations:

- SSC -- One At-large Position
- HC --
 - 1) IDFG Position (Council has received notice of the resignation for Dr. Petrosky and an indication that no replacement will be named)
 - 2) Oregon Department of Fish and Wildlife (ODFW) Position (First Designee Arlene Merems is filling the position for ODFW on an interim basis; no permanent member has been nominated)
- HMSMT -- IATTC Position (IATTC has stated that they cannot provide a replacement)

Unfortunately, it should also be noted that Ms. Gayle Parker from Astoria, Oregon, who was selected for the Processor North of Cape Mendocino seat on the Highly Migratory Species Advisory Subpanel (HMSAS), suffered a debilitating stroke earlier this year and is not able to serve or expected to recover soon. Staff recommends nominations be solicited for this position.

Appointments to Other Forums

U.S.-Canada Pacific Hake/Whiting Commission

The Secretary of Commerce has acknowledged our Council's recommendation for Mr. Phil Anderson to serve on the U.S. Section of the Joint Management Committee of the U.S.-Canada Pacific Hake/Whiting Commission (Closed Session A.1.a, Attachment 7).

Western and Central Pacific Fisheries Commission (WCPFC) Advisory Committee

The Council is involved in the completion of a Memorandum of Understanding (MOU), regarding Regional Council participation in the international organizations governing highly migratory species. The MOU is with the Department of Commerce, Department of State, and the three West Coast Regional Councils. Part V.C of the Regional Councils' proposed draft MOU establishes 15 specific Advisory Committee (AC) positions, including representatives from the Pacific Council area. The federal agency counter proposal received July 18, is for only one Pacific Council seat designation on the AC. Further, on July 11, NMFS published a *Federal Register* notice soliciting nominations for all 15-20 seats of the AC with a closing date of September 10, 2007. This notice, the final negotiation of the MOU, and the timing of the first meeting AC representatives could attend (early December) all make Council consideration of AC appointments rather problematic.

Pacific Council area AC positions in the Regional Councils' proposed Draft MOU (which could change in the final MOU) are:

- 1) Pacific Council area commercial fishery representatives (3);
- 2) Pacific Council area commercial fish processor;
- 3) Pacific Council area conservation group representative;
- 4) Pacific Council area recreational fishery representative; and
- 5) A staff officer of the Pacific Council.

The Council should consider how best to provide input into the selection of AC representatives from our area, including the naming of candidates at this meeting. There isn't time to go through the normal process of calling for nominations and then recommending members at the November meeting if they are to attend the WCPFC meeting in early December. Alternatively, the Council could wait for final resolution of the MOU and name or recommend AC members at that time for participation at future WCPFC meetings.

The HMSAS has provided a statement concerning the AC appointment situation in which they urge the Council to make its views known with regard to membership to the AC (Agenda Item B.6.b, HMSAS Report).

Changes to COP

For this meeting, a clarification of COP 19, Protocol for Consideration of Exempted Fishing Permits for Groundfish Fisheries, is proposed for consideration under Agenda Item B.6 on Friday. The proposed changes are editorial in nature and intended to make Section C.1 consistent with Section C.5 with regard to the review roles and procedures followed by the Groundfish Management Team and the Scientific and Statistical Committee (Closed Session A.1.a, Attachment 8).

Council Action:

- 1. Confirm appointments or provide guidance for handling appointments to the GMT, HC, HMSMT, HMSAS, SAS, SSC, and WCPFC.**
- 2. Approve editorial changes to COP 19.**
- 3. Provide other guidance as appropriate for appointment or COP issues.**

Reference Materials:

1. Closed Session A.1.a, Attachment 1: CDFG Resignation and Nomination to GMT.
2. Closed Session A.1.a, Attachment 2: WDFW Nomination to HMSMT.
3. Closed Session A.1.a, Attachment 3: Resignation of IATTC Representative to HMSMT.
4. Closed Session A.1.a, Attachment 4: Nomination to SAS California Sport Fisheries Position.
5. Closed Session A.1.a, Attachment 5: Nomination to At-Large Position on SSC.
6. Closed Session A.1.a, Attachment 6: Nomination to IDFG Position on SSC.
7. Closed Session A.1.a, Attachment 7: Letter from Carlos Gutierrez acknowledging Council's recommendation for Mr. Phil Anderson to serve on the U.S. Section of the Joint Management Committee of the U.S.-Canada Pacific Hake/Whiting Agreement.

8. Agenda Item B.6.b, HMSAS Report: Appointments to the WCPFC AC.
9. Closed Session A.1.a, Attachment 8: Proposed Change to COP 19.

Agenda Order:

- a. Agenda Item Overview John Coon
- b. Reports and Comments of Advisory Bodies
- c. Council Discussion of Personnel Issues
- d. **Council Action:** Consider Changes to COP and Appoint New Advisory Body Members as Needed

PFMC
08/23/07

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON APPOINTMENTS
TO ADVISORY BODIES, STANDING COMMITTEES, AND OTHER FORUMS, AND
CHANGES TO THE COP AS NEEDED

The Highly Migratory Species Advisory Subpanel (HMSAS) believes it is critical that the Council makes its views known with regard to the membership it recommends for the Advisory Committee to the WCPFC. The present situation is that the negotiation of the MOU called for by the 2006 amendments to the Magnuson-Stevens Act, which could be a vehicle for the Council to express its views has stalled. In the meantime there has been a Federal Register notice published that is an open call for nominations to the WCPFC Advisory Committee with a deadline of September 11, 2007, for nominations. Given the present meeting schedule of the Council (not meeting until the week beginning September 10th) it is not possible for the Council to put forth Council "recommended" members of the Advisory Committee. The HMSAS is also aware that there are several individuals who have or will be putting in applications to sit on the Advisory Committee from the different stakeholders involved in the WCPFC treaty area.

At the same time, the HMSAS is mindful that the language of the implementing legislation only specifically mentions the Chair of the Western Pacific Fishery Management Council Advisory Committee, and the officials from the fisheries agencies of American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam as being members of the WCPFC Advisory Committee. While not in any way seeking to limit the Secretary's discretion in appointing members of the Advisory Committee, the HMSAS believes that the interest of the Pacific Council's constituents in the fisheries of the western and central Pacific make it critical that the Council write to the Secretaries of Commerce and State and express its views.

In this regard, the HMSAS recommends to the Council that it request the Secretaries and WCPFC Commissioners to be sure that appointments to the Committee include representatives from the West Coast commercial fishermen who represent the principal gear types, an highly migratory species buyer and/or processor, a charter/sport fishermen, a recreational fishermen, a conservation non-governmental organization representative, and a member to represent the West Coast consuming public. It might be advisable to also mention the presence of fisheries officials from the three territories probably should be balanced by the presence of fisheries officials from California, Oregon, and Washington, and Hawaii.

PFMC
08/23/07

The PFMC should send a letter to William Robinson, Regional Administrator, NMFS Pacific Island Region, making the following points:

- Considering that the MOU dealing with the appointments to the Advisory Committee for the Western and Central Pacific Fisheries Commission has not been completed;
- Considering that the nominations for appointments were published in the Federal Register on July 4, 2007, with a cutoff date of September 10, 2007;
- Considering that the PFMC is not equipped to nominate specific individuals in a timely manner;
- Considering the importance that the U.S. West Coast highly migratory species issues and fisheries are represented on the Advisory Committee;

Therefore, the PFMC requests representation for West Coast based advisors on the WCPFC Advisory Committee at a level equal to that of the WPFMC.

Doug Fricke

The full record of the Pacific Fishery Management Council (Council) June 9-15, 2007 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.
6. A copy of Council News Winter 2006-2007 • Volume 30, No. 4.

DRAFT MINUTES

Pacific Fishery Management Council

Crowne Plaza Hotel
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June 9-15, 2007

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A. Call to Order

A.1 Opening Remarks, Introductions

Mr. Don Hansen, Chair, called the 189th meeting of the Pacific Fishery Management Council to order on Monday, June 11, 2007 at 3 pm. A closed session was held from 1 pm to 2 pm to discuss personnel matters and status of litigation.

A.2 Roll Call

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

Mr. Mark Cedergreen (Washington Obligatory)
Ms. Michele Culver (Washington State Official)
Ms. Kathy Fosmark (California Obligatory)
Mr. Donald Hansen, Chairman (At-Large)
Dr. Dave Hanson, Parliamentarian (Pacific States Marine Fisheries Commission, non voting)
Mr. Frank Lockhart (National Marine Fisheries Service, Northwest Region)
Mr. Jerry Mallet (State of Idaho Official)
CDR Peter Martin (US Coast Guard, non-voting)
Mr. Curt Melcher (State of Oregon Official)
Mr. Rod Moore (At-Large)
Mr. Dale Myer (At-Large)
Mr. Dave Ortmann, Vice Chairman (Idaho Obligatory)
Mr. Tim Roth (US Fish and Wildlife Service, non voting)
Mr. David Sones (Tribal Obligatory)
Mr. Roger Thomas (At-Large)
Ms. Marija Vojkovich (State of California Official)
Mr. Frank Warrens (Oregon Obligatory)

The following Council members were absent on Monday and Tuesday of the meeting:

Mr. Phil Anderson (Washington State Official). Please note Ms. Michele Culver, Washington State Official designee was present in Mr. Anderson's absence. Dr. Dave Hanson, PSMFC.

The following Council members were absent from the entire meeting:

Mr. David Hogan (US State Department, non voting)
Mr. Gordy Williams (State of Alaska Official)

A.3 Executive Director's Report

Dr. Don McIsaac made a few brief remarks on the week's agenda and explained the information reports in the Briefing Book. He then introduced Mr. Merrick Burden and Ms. Heather Brandon as new Council staff members. Mr. Melcher and Dr. McIsaac made some comments honoring the memory of Mr. Scott Boley; Mr. Melcher noted that Mr. Boley wrote the original KOHM. The Council held a moment of silence. Mr. Boley's public memorial service will be held July 3.

A.4 Council Action: Approve Agenda

The Council approved the agenda as shown in Agenda Item A.4, Council Meeting Agenda, with the cancellation of the legislative item (Motion 1).

B. Administrative Matters

B.1 Future Council Meeting Agenda Planning (06/11/07; 3:17 pm)

B.1.a Agenda Item Overview

Dr. McIsaac provided the agenda item overview.

B.1.b Reports and Comments of Advisory Bodies

None.

B.1.c Public Comment

Dr. John Coon summarized the public comment received from Mr. Chuck Janisse (Agenda Item B.1.c, Public Comment) regarding scheduling of an exempted fishing permit (EFP) review for a long-line fishery for highly migratory species (HMS).

The following group asked for consideration of sector bycatch allocations for the Pacific whiting fishery to be put on the Council agenda as soon as possible (September) to allow implementation in 2008: Messrs. Tom Libby, Dan Waldeck, and Mike Okoniewski.

B.1.d Council Discussion of Future Council Meeting Agenda Topics

Ms. Culver spoke about Mr. Janisse' EFP comments and suggested that having a preliminary report of the first year activities available in March 2008, while potentially deviating from the current schedule, would work to allow review for the 2008 request. Mr. Helvey agreed.

Ms. Vojkovich, regarding the three-meeting outlook, asked what was meant by including the high seas longline consideration as an agenda item under HMS in September? Dr. Coon replied it was part of the original FMP that the Council would consider a limited entry high seas longline fishery and this proposed agenda item follows up on that.

Mr. Rod Moore requested Council staff look at having something on the September agenda for consideration of sector bycatch allocations for the Pacific whiting fishery. This would be the first part of a two-meeting process. One sector or another has had a problem with bycatch in the past several years and this would be a way to get out of some potential problems.

Mr. Lockhart, in consultation with NOAA Fisheries GC, thought it was possible to achieve the bycatch allocation in a two-meeting process; but he is not exactly sure what this would entail and will bring that information forward on Friday.

Mr. Dale Myer proposed that if the Council goes forward with this, he encouraged the Council to broaden the consideration to include variations in the starting date of May 15 which may be a big part of the problem. Mr. Moore said, given the Council's workload, we would not have time to do both an allocation and modification to the start date time in time for the 2008 season. He didn't care what the Council chose, just something needs to be done.

Mr. Lockhart said he would speak to the proposed agenda item in more detail during the Groundfish agenda item for Pacific whiting. He noted the region has a new regulatory process that they have to follow and he would have to talk with NOAA Fisheries GC about it.

Ms. Fosmark asked to add discussion for the drift gillnet EFP since it was denied by NMFS, after being voted in favor of twice by this Council.

B.2 Council Operating Procedure (COP) for Providing Highly Migratory Species Management Recommendations to Regional Fishery Management Organizations

B.2.a Agenda Item Overview (06/11/07; 3:38 pm)

Dr. Kit Dahl provided the agenda item overview. He pointed out some of the scheduling conflicts between Council and RFMO meetings that the Council might want to consider in any further revisions to the COP. Dr. McIsaac discussed the draft memorandum of understanding (MOU) that was presented at the April 2007 Council meeting and the schedule for further negotiations.

B.2.b Reports and Comments of Advisory Bodies

None.

B.2.c Public Comment

None.

B.2.d Council Action: Adopt Final COP

Ms. Culver, referencing language in the COP (Agenda Item B.2.a, Attachment 1, pages 2 and 3) which states the HMSMT will solicit input from the WPFMC's Pelagics Plan Team, said she would be more comfortable if the language emphasized coordination and communication without requiring input from the Pelagics Team. Mr. Melcher followed up, recommending that the language state the HMSMT "will confer" with the Pelagics Team.

Mr. Helvey reviewed some suggested changes that had been given to staff for incorporation. Principally, this was to change the discussion of recommendations to the IATTC to emphasize that the NMFS SWR Regional Administrator has traditionally been one of the Commissioners.

Mr. Moore moved (Motion 2) and Mr. Warrens seconded that the Council approve the draft COP (HMS Recommendations to Regional Fishery Management Organizations) as shown in Agenda Item B.2.a, Attachment 1, with the following changes: page 2—first paragraph for recommendations to IATTC—strike "will solicit input from" and insert "will confer with the WPMFC's Pelagic team"; page 4—final paragraph—strike "commercial troll fishery for North Pacific albacore tuna" and insert "West Coast commercial fisheries for HMS species."

Ms. Vojkovich asked if this change to the COP would affect the proposed designation of seats in the MOU, in terms of an equal division of seats between representatives from the PPMC and the WPFMC. Mr. Moore pointed out that the COP language does not speak to the number of seats, which would be covered in the MOU, so there would not be a conflict.

Mr. Melcher noted that the "will solicit input from the WPFMC's Pelagics Plan Team" language also appears on page 3 and made the friendly amendment to include the "will confer with" language there also. Both the maker and seconder agreed.

Mr. Helvey offered a friendly amendment to revise language on page 2, second paragraph under Recommendation to the IATTC, consistent with revisions provided to staff, which would add language noting that the NMFS SWR Regional Administrator serves as an IATTC Commissioner. Also in the

following paragraph his amendment changes the language “inviting the U.S. Commissioners to the June Council meeting” to “forwarding to the U.S. Section through the NMFS SWR Regional Administrator, who usually serves as a Commissioner to the IATTC.” He said this change clarifies the Regional Administrator’s role. Maker and seconder agreed.

Mr. Moore added that the motion includes allowing Council staff to make editorial amendments/changes. Motion 2 passed.

Dr. Dahl said there is the second action item of providing further direction on the MOU. Dr. McIsaac said a motion was passed in April, and asked if the Council had any other suggestions to offer.

Ms. Vojkovich asked if there is a need to consider a recreational angling seat, recognizing that the WCPFC deals mainly with commercial fisheries. Dr. McIsaac said designation of such a seat simply recognizes the recreational albacore fishery on the West Coast and the possibility that in the future some recreational fishery management measures at the WCPFC may be necessary.

B.3 Recreational Fishery Information Network Data and Sampling Refinements

B.3.a Agenda Item Overview (06/13/07; 8:10 am)

Mr. John DeVore provided the agenda item overview.

B.3.b Pacific States Marine Fisheries Commission Report

Mr. Russell Porter provided a PowerPoint presentation, available on the Council’s website at: http://www.pcouncil.org/bb/2007/0607/B3b_RecFINPPT_Sup.pdf

Ms. Vojkovich asked if the RecFIN proposal is to apply mortality rates for every species in the RecFIN database, not just groundfish and Mr. Porter said that was correct. If a mortality rate is not available for a given species then RecFIN staff may need to develop one. Mr. Thomas noted in the case of salmon, various mortality rates are used depending on the fishing strategy (i.e., mooching vs. trolling). Mr. Porter said that PSMFC uses the mortality rates used in the Council process. However, the states tend to manage recreational salmon catch outside the RecFIN system.

Mr. Anderson asked for an explanation of pooling rules and recommendations for improvement. Mr. Porter said Appendix B in the PSMFC Report depicts the pooling rules currently used. Improvements have been discussed and pooling rules are likely to change based on those deliberations. Mr. Anderson asked if it is expected the states will seek improvements of pooling rules through RecFIN committees and Mr. Porter said yes, unless Council advisory bodies have recommendations through this process.

Dr. McIsaac asked for an explanation of the current state of groundfish final catch estimates. Mr. Porter said the goal is to have catch estimates with a one-month delay. The states sign off on these estimates at the end of the year. CRFS estimates are still in flux and improvements in catch estimation methodologies are being considered now. For instance, reducing the number of trip types in the CRFS estimates are expected to produce more robust estimates. CDFG and PSMFC have agreed to reduce the number of trip types from 17 to 7. Revised California recreational catch estimates for 2004 and 2005 are expected by the end of the year and 2006 catch estimates should be available soon.

Mr. Melcher asked if we take action on item 3 (managing recreational catches by numbers of fish), does item 2 (average weight procedures) become moot? Mr. Porter replied no. If we manage recreational fisheries by numbers of fish, we still need to work on pooling rules for determining average weights. Weights are needed for stock assessment and that data will still be collected and available for assessment.

Mr. Anderson noted action item 2 is attempting to align our management with the same average weights used in assessment. He agreed we need to get away from inseason changes to average weight, which causes instability. He thought the goal should be to establish a policy where average weights are adjusted only when an assessment is updated. Mr. Porter agreed this is a reasonable goal. Mr. Anderson asked if those average weights used to manage the recreational catch during a management cycle would be used to estimate annual total catch and Mr. Porter said that was part of the recommendation.

Ms. Vojkovich asked if the Council and Council advisory body recommendations will be considered in the development of the new MRFSS system, which will now be called the Marine Recreational Information Report and Mr. Porter replied there are few re-development issues concerning the Pacific Council.

Dr. McIsaac asked, now that the side-by-side CRFS and MRFSS estimate assessment will not produce a calibration between MRFSS and CRFS, will the historical MRFSS estimates now stand as the best estimates? Mr. Porter replied yes, unless there is bias determined in the MRFSS system at the national level. However, there may be some annual or wave estimates flagged that are not considered in line with other information. Dr. McIsaac asked if there will be continued funding for CRFS phone surveys since MRFSS has been discontinued Mr. Porter said they still expect to receive NMFS funding for CRFS phone surveys. The current level of NMFS funding is ~\$2.2M. The states fund RecFIN to cover about 2/3 of the annual budget. PSMFC needs greater NMFS funding support to set up an annual angler registry and fill sampling shortfalls. Mr. Hansen explained this is an MSA mandate and Mr. Porter added this will cost about \$30M nationally.

Mr. Helvey noted the SSC presented a data needs analysis for the RecFIN workshop last August. The SSC expressed a need for data access. Has anything been done to address those data access needs? Mr. Porter replied we have catch, effort, and biological data housed in RecFIN. We are working with the states to provide all the sample data from the three states that are needed for assessment. These data are confidential, but accessible to assessment scientists. Mr. Helvey asked if there will be economic data made available and Mr. Porter replied that is our intent. We are working with technical teams to provide these data in a useful format.

B.3.c Reports and Comments of Advisory Bodies

HMSMT Report

Mr. DeVore read the HMSMT Report. Dr. Kit Dahl was called to the podium to field questions.

Mr. Mark Helvey said he was concerned about the HMSMT recommendation for producing a tonnage table on RecFIN for sharks. Should we not proceed cautiously producing that table given shark total catch uncertainty? Dr. Dahl said that was discussed by the HMSMT and they agree that catch resolution is needed before catch tables are produced and distributed. There is no particular timeline recommended by the HMSMT for producing these tables. Mr. Hansen said those tournaments are high profile and catches from those tournaments should be easily attained. However, shark tournaments may be ill-advised and this may be an issue for Council consideration in the future. Dr. Dahl said the HMSMT will grapple with that issue.

SSC Report

Dr. Robert Conrad provided Agenda Item B.3.c, Supplemental SSC Report 2.

Ms. Vojkovich noted the SSC refers to information needed on the RecFIN web site and asked if they were referring to data for the public or confidential data for assessment scientists and other analysts.

Dr. Conrad said it was the latter.

Ms. Vojkovich asked if the SSC was proposing who should determine the best available recreational data and Mr. Conrad said no, a decision needs to be made who resolves which data are the best available. Ms. Vojkovich asked if that statement spoke to the respective roles of the SSC and the RecFIN Technical Committee and Mr. Conrad said yes.

Dr. McIsaac asked if the SSC explored whether different states and RecFIN are using different methodologies for determining recreational catches and Mr. Conrad said nothing has been brought to the SSC for review.

Mr. Melcher noted the SSC statement that managing recreational catch by numbers will not affect assessments and asked if the SSC supports that change. Mr. Conrad said the SSC does support managing recreational catches by numbers.

Ms. Vojkovich noted the three PSMFC proposals to refine RecFIN seem simple, but at least one of them, discard mortality rates, has multiple steps and decisions. Did the SSC discuss discard mortality rates in detail? Mr. Conrad said no, the SSC focused on the overarching issues brought forward during the RecFIN workshop last August.

Mr. Helvey asked if there was discussion regarding the interaction of the SSC and the RecFIN Technical Committee. Mr. Conrad said he was not sure if a formal process is needed for regular interactions, but the SSC can be used to resolve outstanding issues.

GMT Report

Mr. Brian Culver provided Agenda Item B.3.c, Supplemental GMT Report.

Ms. Vojkovich asked, relative to discard mortality rates, does the GMT have a recommendation on how to establish mortality rates for lesser encountered species and Mr. Culver explained the GMT intends to do a literature survey, use life history and physiology characteristics of species, and may rely on professional judgment to develop mortality rates. As new information is developed, those rates may change.

Mr. Melcher asked what issues are outstanding in considering recreational catch management by numbers and Mr. Culver said we need to look at how total catch is accounted when recreational catches are managed by numbers and commercial catches by weight. The GMT also needs to decide how to regionally stratify average weights when converting catch in numbers back to weight to compare total mortalities to specified OYs.

Dr. McIsaac noted the SSC alludes to differential catch reporting by states and RecFIN as does the GMT. Beside differential pooling rules and discard mortality rates, what other differential methods account for these differences? Mr. Culver said the states and RecFIN are coming closer together. However, we still need to resolve competing historical catch streams and have a standard used in assessment and management.

GAP Report

Mr. Mike Hansen provided Agenda Item B.3.c, Supplemental GAP Report. Mr. Jim Martin was on hand to help answer questions.

B.3.d Public Comment

Mr. Dan Wolford, Coastside Fishing Club, CA.

B.3.e Council Action: Provide Recommendations for Making Appropriate Refinements

Mr. Anderson said there are four issues raised by RecFIN staff and Council advisors. Discard rate procedures seemed a simple decision, but there are more subtle complications. He agrees with a standardized process and continued discussions are needed to resolve this issue. Average weight computation and pooling rules are issues he thought could be resolved today. Managing recreational catches by numbers needs further deliberation to resolve. Managing to harvest guidelines that are specified by weight can use a standardized average weight, but he doesn't see the advantage of managing recreational catch by numbers. Resolving historical catch estimates should be further discussed by the SSC, GMT, and others. He said there is certainly a need for standardized estimates for management and assessment. He endorsed the concept of average weight pooling rules and using the same average weights through a management cycle. Stock assessments use a standard average weight, which needs to be used in management.

Ms. Vojkovich said she agrees with those comments. Reconciling MRFSS vs. state estimates needs to be decided once and for all. The SSC should take the lead with input from the RecFIN Technical Committee. The GMT may not have the expertise to resolve this. The discard issue has several component issues. She supports standardized reporting methodologies. She does not want to lose finer scale data elements in the CRFS sampling database recorded in RecFIN. The GMT should work on standardized discard mortality rates and not ask RecFIN to determine these rates now. She supports documentation of data collection methodologies as recommended by the SSC. The need still exists for using the best data. The SSC and HMSMT recommend a revamping of the RecFIN web site. Can end-of-year NMFS funds be used to hire a web site designer? This needs attention since there is a need to fill catch sampling data gaps (i.e., private sites, night time catches, etc.).

Mr. Melcher asked if CDFG supported the proposal to have discards going into a single category. What data elements do you not want to lose? Ms. Vojkovich said she supports a standard reporting format, but wants the multiple discard disposition codes recorded in the database.

Ms. Fosmark said the HMSMT recommendation to include HMS data sampling and reporting needs to be addressed.

Mr. Anderson noted there has been Council guidance with no objections to his initial observations. The only specific motion he thought we would need would be one for the average weight computation. To that end, Mr. Anderson moved and Mr. Cedergreen seconded a motion (Motion 6) that the Council endorse a standard average weight computation methodology, with state-specific pooling rules, that result in an average weight that would be used on an annual or biennial basis in recreational catch management.

Mr. Warrens asked if the motion included criteria for determining regional differences in determining average weights and Mr. Anderson said yes.

Motion 6 passed on a voice vote.

Mr. DeVore said the SSC wanted guidance on the respective oversight roles of the SSC and the RecFIN Technical Committee. Dr. McIsaac asked if there was also Council guidance on how to resolve competing historical catch estimates and Mr. Anderson thought the best approach would be to assign the SSC the task of evaluating historical catch estimates and give them authority to consult with RecFIN and other entities to resolve these estimates. Ms. Vojkovich thought the SSC should contact the RecFIN Technical Committee to establish a process for cross communication to keep SSC issues and needs alive.

and on the RecFIN radar. Mr. Anderson agreed with that intent, but didn't like the procedure. The SSC is advisory to the Council and therefore needs to go through the Council. The SSC should identify concerns to the Council and the Council should then direct the SSC on how they should resolve those issues. Ms. Vojkovich said she was fine with that guidance.

Mr. Melcher said he would like the issue of managing recreational catches by numbers to be studied more for a later resolution. Mr. Anderson said he would like to task the GMT with this. Mr. DeVore said this has been identified as a potential 2009-2010 specifications and management measures' issue. Ms. Vojkovich said the HMSMT also needs to work on this issue for HMS species. Mr. Anderson concurred.

B.4 COP for Reviewing Proposed Changes to Groundfish Essential Fish Habitat (EFH) and Establishing a Groundfish EFH Oversight Committee

B.4.a Agenda Item Overview (06/13/07; 10:41 am)

Dr. John Coon provided the agenda item overview.

B.4.b Reports and Comments of Advisory Bodies

Mr. John Holloway provided Agenda Item B.4.b, Supplemental GAP Report. Mr. Tim Roth provided Agenda Item B.4.b, Supplemental HC Report, and Mr. Tony Warrington provided Agenda Item B.4.b, Supplemental EC Report.

B.4.c Public Comment

None.

B.4.d Council Action: Adopt a Final COP

Mr. Warrens moved and Mr. Jerry Mallet seconded a motion (Motion 7) to adopt a final COP for the Groundfish Essential Fish Habitat Oversight Committee as shown in Agenda Item B.4.a, Attachment 1 with the following modifications: include the changes suggested by the HC to delete reference to EFH in the first sentence under "Short-Term EFH Reviews" on page 4; and include an enforcement consultant representative under the "General" subsection under "Composition" on page 2.

Mr. Anderson expressed concern that while the committee membership could change with different EFH proposals, there should be some consistency and that could be a consideration by the Chair when we make appointments.

Mr. Roth was supportive of the motion with some arrangement to have a level of stability for at least a few of the committee members. Dr. Coon stated he believes the original committee was 8 people. He was afraid to have too many static positions which could end up with folks who don't fit the issues under review and the potential of the committee to get larger comes into play.

To address Council member concerns over having some consistency in representatives on the ad hoc review committee, Dr. Coon suggested the COP would state that when selecting ad hoc committee members, the Chairman would consider the need for maintaining some consistency from ad hoc committee to ad hoc committee. Mr. Anderson, suggested that adding the language that the Chair would consider consistency in establishing ad hoc committees could be a friendly amendment. Both maker and seconder of the motion agreed. Motion 7 passed.

Dr. Coon said there may be some more discussion on when the committee will meet during Agenda Item B.10.

B.5 Magnuson-Stevens Act Reauthorization Implementation

Dr. McIsaac noted this item was postponed until the September meeting due to time constraints and no action was deemed necessary. However, there was an SSC statement provided.

B.6 Legislative Matters

This agenda item was cancelled.

B.7 Fiscal Matters

B.7.a Agenda Item Overview (06/15/07; 12:30 pm)

Dr. Coon provided the agenda item overview.

B.7.b Budget Committee Report

Mr. Jerry Mallet provided Agenda Item B.7.b, Supplemental Budget Committee Report.

B.7.c Reports and Comments of Advisory Bodies

None.

B.7.d Public Comment

None.

B.7.e Council Action: Consider Budget Committee Recommendations

Mr. Thomas moved and Ms. Vojkovich seconded a motion (Motion 18) to approve the report of the BC as shown in Agenda Item B.7.b, Supplemental Budget Committee Report, including adoption of the two recommendations on page 2 of that report (the 2007 operational base budget proposed by Dr. McIsaac of \$3,255,454; and a carry over of savings from the 2006 budget year to protect the operational continuity and capacity of the Council in 2008). Motion 18 passed.

B.8 Appointment to Advisory Bodies, Standing Committees, and Other Forums, and Changes to COP as Needed

B.8.a Agenda Item Overview (06/15/07; 12:34 pm)

Dr. Coon provided the agenda item overview.

B.8.b Reports and Comments of Advisory Bodies

None.

B.8.c Public Comment

None.

B.8.d Council Action: Consider Changes to COP and Appoint New Advisory Body Members as Needed

Ms. Vojkovich moved and Mr. Thomas seconded a motion (Motion 19) to appoint Ms. Leeanne Laughlin to replace Mr. Steve Wertz on the HMSMT and Ms. Briana Brady to replace Ms. Laughlin on the CPSMT. Motion 19 passed.

Chairman Hansen recommended the Council task Dr. McIsaac with transmitting a recommendation to the Secretary of Commerce to appoint Mr. Phil Anderson to the Council representative seat on the U.S.-Canada Pacific Whiting Commission. The Council agreed.

Chairman Hansen appointed Mr. Bruce Buckmaster as the Community Representative on the Ad Hoc Groundfish Trawl Individual Quota Committee.

Dr. Coon noted that since Dr. Lyman McDonald has notified the Council of his intent to resign from an at-large position on the SSC, the Council staff will advertise to fill the vacancy so a new member may be selected at the September meeting.

B.9 Approval of Council Meeting Minutes

B.9.a Council Member Review and Comments

See B.9.b, Council Action.

B.9.b Council Action: Approve Council Meeting Minutes

Mr. Thomas moved and Mr. Melcher seconded a motion (Motion 20) to approve the November, March, and April minutes as shown in Agenda Item B.9, Draft November 2006 Council Meeting Minutes; Agenda Item B.9, Draft March 2007 Minutes; and Agenda Item B.9, Draft April 2007 Minutes.

Mr. Rod Moore asked for a friendly amendment to make the following change to the March 2007 Minutes. On page 20, the phrase "Mr. Moore said he intended to vote against the main motion, not out of disrespect, but because of his strong belief the whiting resource is in better shape," should read "Mr. Moore said he intended to vote against the main motion because of his strong belief the whiting resource is in better shape."

Mr. Moore also asked for a friendly amendment to make the following change to the April 2007 Minutes regarding Motion 10 on page 22. The portion that says "Mr. Moore moved and Mr. Melcher seconded a motion (Motion 10) to adopt a preliminary range of alternatives for Amendment 15 to the Pacific Groundfish FMP as follows. . ."; should read "Mr. Melcher moved and Mr. Moore seconded a motion (Motion 10) to adopt a preliminary range of alternatives for Amendment 15 to the Pacific Groundfish FMP as follows. . .".

Both the maker and seconder approved the friendly amendment. Motion 20 passed as amended by the friendly amendment.

B.10 Council Three-Meeting Outlook, September 2007 Council Meeting Agenda, and Workload Priorities

B.10.a Agenda Item Overview

Dr. McIsaac provided the agenda item overview. He started with the September agenda and stated that it was similar to what the Council had seen on Monday with the following changes: (1) a potential agenda

item for the first of a two meeting process for considering sector bycatch allocation and modifying the start date for the Pacific whiting fishery, (2) a potential agenda item for considering changes to bottom closures in groundfish essential fish habitat, (3) reconsideration of the drift gill net EFP, and (4) postponing open access limitation in line with the schedule proposed at this meeting. Dr. McIsaac also noted that due to the extremely overcrowded November agenda (175% of normal in the three meeting outlook), Attachment 4 contains a proposed November agenda which may require the Council to consider extending the meeting to Saturday. He walked the Council through a detailed description of the November agenda.

B.10.b Reports and Comments of Advisory Bodies

Mr. Tim Roth provided Agenda Item B.10.b, Supplemental HC Report. Mr. Tommy Ancona provided Agenda Item B.10.b, Supplemental GAP Report.

B.10.c Public Comment

Mr. Allen Kimball, Trident Seafoods, Seattle, WA
Mr. Mike Oknoniewski, Pacific Seafood, Woodland, WA
Mr. Mike Hyde, American Seafoods, Seattle, WA
Mr. Daniel Waldeck, Pacific Whiting Conservation Cooperative, Portland, OR

The public listed above all spoke to a request that the Council initiate work on establishing sector bycatch allocations for the Pacific Whiting fishery in 2008 and beyond.

B.10.d Council Guidance on Three Meeting Outlook, September 2007 Council Agenda, Council Staff Workload, and Priorities for Advisory Body Consideration

Council members had an extensive discussion of the proposal to begin work on sector bycatch allocation in the whiting fishery. However, the Council chose not to begin this two meeting agenda item in September in view of other priorities (e.g., trawl rationalization, intersector allocation, open access limitation, etc.) that totally utilize available staffing, the lack of agenda time in November, and advice that a final recommendation in March would likely not be timely for 2008 implementation. The Council agreed this issue could be raised again at a future Council meeting during the regular agenda planning items. Council members also did not see a need to add the proposal to consider changes to groundfish bottom closures to the September agenda.

The Council's discussion of the whiting sector bycatch allocation also included consideration of using private source funding to help accomplish the process of sector bycatch allocation. It was concluded that this would not be a good idea and could set a bad precedent. Mr. Dave Hanson reported that the North Pacific Council has dealt with this issue and has a policy against using private funds to support work necessary to implement Council actions.

Council members provided further thoughts with regard to the September 2007 Council agenda, staff workload and priorities for advisory body consideration, and guidance on the November 2007 agenda. The discussion included concern about the HMS EFP schedule and the process of getting Council comments to the Western and Central Pacific Fisheries Commission. With regard to the November meeting, Council members made several suggestions for adjusting the agenda items, including a need to have open access on the November agenda and favoring an earlier start on Monday, if possible. Council members were not in favor of extending the November Council meeting into Saturday and Dr. McIsaac stated he would not ask for hotel space for Saturday.

Chairman Hansen and the Council recognized Mr. Roger Thomas for his years of service as a Council member in serving three consecutive terms.

C. Open Public Comment

C.1 Comments on Non-Agenda Items

C.1.a Public Comment

Mr. Dave Ortmann chaired this agenda item.

Mr. William Daspit, Seattle, Washington. He spoke to estimation procedures for discards with regard to assessing overfishing and computation of discard rates and how the methods are done by only one employee. He believes there needs to be another review of the statistical method since January 2003 and suggested that a team of scientists should review the method in the same fashion as STAR panels. This would involve allowing the reviewers to have access to the confidential discard data.

C.1.b Council Discussion of Non-Agenda Items Comments as Appropriate

None.

D. Habitat

D.1 Current Habitat Issues (06/12/07; 8:11 am)

D.1.a Report of the Habitat Committee

Ms. Jennifer Gilden provided the Agenda Item overview. Mr. Stuart Ellis, HC Chair, provided Agenda Item D.1.a, Supplemental HC Report.

D.1.b Reports and Comments of Advisory Bodies

None.

D.1.c Public Comment

None.

D.1.d Council Action: Consider Habitat Committee Recommendations

Mr. Melcher asked about wave energy projects in Washington and California. Did the HC discuss those projects? Mr. Ellis said the HC mainly focused on Oregon due to the question of who permits the process in Oregon; there is also a project underway in Makah Bay, and applications for tidal energy projects in Puget Sound. The Makah Bay proposal has not been on a fast track, and is quite small. There are also proposals in California, but the HC was not aware of the details. Mr. Melcher also asked who would promulgate regulations to close these areas to all entry. Mr. Feder said he wasn't sure. Mr. Ellis explained broadly how wave energy buoys work, how they are attached to the sea floor, and the fact that project areas would need to be closed for safety reasons. He guessed that the closure might be done by the Coast Guard. Another Council member asked about the spacing of buoys. Mr. Ellis said they would be spaced fairly close together. Mr. Moore said that wave facilities might be put in salmon EFH, and that the Council would be required to comment if this were the case. He asked if the HC had suggestions for following comment requirements. Mr. Ellis said this was a conundrum and one reason for bringing it to the Council's attention. The HC is uncertain of the effects of these projects on fish species and habitat,

and is also puzzled about how and when to comment on EFH issues.

Mr. Cedergreen asked about the effects of electromagnetic radiation. Mr. Ellis said that this is one issue to be analyzed. He discussed mitigation measures and their possible effects.

Ms. Culver said that most of the projects have been proposed in state waters, and because of that, most of the fisheries affected (in Washington) were state-permitted fisheries. She wondered about ODFW's stance on this. Mr. Ellis said that the Washington project has been going on for a long time and that ODFW has not had the time to comment yet.

Mr. Ortmann asked about FERC's use of a "settlement agreement" with one of the wave energy projects. Mr. Ellis said it's just one process under FERC that gives the applicants a different set of rules for applying. He said it requires entities who want to be interested parties (primarily NGOs) to declare early that they want to be involved. It wouldn't necessarily affect the Council's role as far as commenting on EFH. Mr. Ortmann observed that maintenance will have to take place with these facilities and that there was potential for further impacts.

A Council member asked if there was an EIS process associated with these projects. He noted that raising the money to do an EIS was a stumbling block for some companies. The NEPA process would provide opportunities for comment. Mr. Ellis said he thought the projects would have to go through the NEPA process, but it was confusing. The expedited permit process allows some buoys to go in before the full NEPA process is complete, as a test of their effects. It was unclear how this worked.

Dr. McIsaac said that when FERC licenses dams on land, they typically have a no-trespassing area around the project; is the HC aware of any additional radius around the projects that have been proposed? Mr. Ellis said the HC was unaware of any security zone requirements. However, the applicants may not have determined how large an area they would need to close. Dr. McIsaac also asked, regarding the "lessons learned" document resulting from the MLPA, if the HC had discussed any interface with the Council process. Mr. Ellis said the HC had not discussed that, but was more focused on the stakeholder process within the MLPA itself. Dr. McIsaac asked if displacement of fishing effort had come up in the "lessons learned" document. Mr. Ellis said the HC did not discuss that, but he would look into it.

Mr. Helvey asked if the HC had talked about how to keep track of wave energy proposals between Council meetings. Mr. Ellis said that individual HC members would track this for their states and agencies and would keep the HC informed by email.

Mr. Ortmann asked if the HC discussed Columbia River salmon fish spills. Mr. Ellis said the HC discussed this briefly. He said there is an increasing body of data demonstrating that proper spill and flow for these fish is helping generate good survival. For example, we now have the second highest ever return of spring and summer Chinook jacks (primarily Snake River). We had good natural runoff and a court-ordered spill last year when these migrated to the ocean. We hope to look more into this in September. Mr. Ortmann said he would appreciate the HC keeping this on the agenda.

Mr. Warrens said that OPAC has an active working group on wave energy; also he has heard that applicants are working closely with the Oregon Salmon & Oregon Crab Commissions. There is a lot of activity in the OPAC process. These wave parks are primarily sited within state waters in Oregon; not sure if any straddle the EEZ.

E. Groundfish Management

E.1 National Marine Fisheries Service (NMFS) Report on Groundfish Management

E.1.a Regulatory Activities (06/12/07; 8:43 am)

Mr. Frank Lockhart spoke to the status of implementing the U.S.-Canada whiting treaty. About 10 days ago they heard the Canadian government has a new process for ratifying treaties. All treaties have to sit in front of the parliament for 21 days for review and comment. If any comments are received that are negative or opposed to the treaty, they have to be discussed on an "opposition day". He thinks the next one that is scheduled is in November. If there is Canadian opposition to the whiting treaty, then it is very unlikely the whiting treaty will be in force for the 2008 season. The two state departments are having a conference call on Monday and Mr. Lockhart said he will be able to provide an update at the next Council meeting. This came up at the last second, and just prior to release of the Federal Register notice on the whiting advisory panel (the state department asked for a delay in publishing the FR notice).

He then briefed the Council on the following documents: Agenda Item E.1.a, Attachment 1: FR Notices from the Northwest Region (03/14/07-05/30/07); Agenda Item E.1.a, Attachment 2: NMFS Report on New NEPA Processes; Agenda Item E.1.a, Attachment 3: FR Notice, Temporary Rule (Pacific Whiting Fishery); and Agenda Item E.1.a, Attachment 4: NMFS Report on Vessel Ownership Interest in the LE Fleet for Vessels Registered with Sablefish Endorsements.

A new internal NEPA process has been decided by NMFS, as described in Agenda Item E.1.a, Attachment 2, where most of the early scoping for a NEPA document is done by the Northwest Region (NWR). They have implemented this new process by doing the early scoping on the open access process (Amendment 22) and Amendment 15. This is a new process, where much of the authority for scoping and coordinating the NEPA process has been given to the regions, at least for EAs; it is uncertain how much authority regions will have on EISs. The NWR will continue to coordinate these processes closely with the Council to find the best way to implement this new NMFS NEPA policy.

Mr. Moore asked if Mr. Lockhart could send an email to Council members stating the results of Monday's conference call and Mr. Lockhart said he would.

Ms. Culver asked if there were a set of key questions or criteria that NMFS staff uses during early scoping of a NEPA action. Mr. Lockhart said the key questions are outlined in bullet points in Agenda Item E.1.a, Attachment 2. These questions follow the NEPA rules which require determination of the significance of projected impacts from a contemplated federal action on key resources (i.e., biological, socioeconomic, and physical habitats). Ms. Culver asked how the need for an EIS vs. an EA is decided. Are projected impacts on resources rated low, medium, and high with medium and high impacts determining the need for an EIS? Mr. Lockhart said that is essentially how it is done. Key NMFS staff, their NEPA coordinator, and anyone else who needs to be part of the discussion collectively rate the severity of potential impacts and decide the need for an EIS vs. an EA by these ratings. At the end, this can be a judgment call. If there are mostly low impacts and no high impacts in the score, then an EA is generally decided to be sufficient. At this extreme, the action could even be under a categorical exclusion, requiring no NEPA analysis. Mr. Melcher asked why the internal scoping process under the Endangered Species Act (ESA) is easier to do than for actions subject to the Magnuson Stevens Act (MSA). Mr. Lockhart said the internal scoping process under ESA is more straightforward since the contemplated action is known because entities bring the contemplated action to NMFS for approval under an ESA consultation. Conversely, final MSA actions are unknown until the Council acts. Therefore, NMFS staff has to make a determination of what the Council may ultimately decide to determine if impacts are potentially significant.

Mr. Lockhart then discussed the whiting emergency rule. The final rule required that you had to have participation in the sector prior to January 1, 2007 in order to participate this year. NMFS added a front end date of January 1, 1997, meaning that you had to have participated in a particular sector of the whiting fishery between January 1, 1997 and January 1, 2007 to be able to participate in that sector this year. This was done because in the emergency rule discussion we had to determine what the Council

meant by sector-specific participation. The first time the three sectors were in place by regulation was January 1, 1997. That was his call to make the decision on the front end date. After publication of the emergency rule, the NWR received a significant amount of comment, including from Council members. Based on the comments received and reviewing the Council record, the NWR concluded the front end date is counter to the Council intent. The proper front end date for the shoreside whiting sector should have been January 1, 1994. There were two vessels that would have been excluded due to the January 1, 1997 date. The NWR could have gone through another emergency rule to correct the issue, but it was decided that would take too long. Therefore, the NWR decided to modify the shoreside whiting EFPs for these two vessels to allow them to fish in the shorebased fishery this year. The additional date was done through the EFP process and not by additional rulemaking.

Mr. Lockhart then addressed Agenda Item E.1.a, Attachment 4: NMFS Report on Vessel Ownership Interest in the Limited Entry Fleet for Vessels Registered to Permits with Sablefish Endorsements. This review was requested by Mr. Alverson at the April meeting, who had explained how FVOA vessel owners divide their vessel and permit ownership interests in Alaska fisheries. Mr. Alverson specifically requested a revision of the Amendment 14 "owner on board" regulations such that if a person has 20% or less ownership interest in a vessel participating in the limited entry primary sablefish fishery, that person should not be considered to have responsibility for or control of the permits attached to that vessel. The NWR staff determined the Council would have to consider the implementing regulations for Amendment 14, consider the prior public record on the reasons for limiting vessel ownership interests, and provide rationale for and the effect of revising those ownership limits. He explained that the 20% ownership interest threshold comes from Alaska halibut and sablefish IFQ regulations. They require any vessel owner, with at least a 20% ownership interest in the vessel who was initially issued halibut or sablefish quota share, be subject to an owner on board requirement. He then thanked Ms. de Reynier for putting the Attachment 4 document together and stated she could answer any further questions on this issue. Ms. Culver asked Ms. de Reynier to summarize the rationale for the existing Amendment 14 rule. Ms. de Reynier provided background information on amendments 6, 9, and 14. Amendment 6 created the link between the vessel owner and the associated limited entry permit assigned to that vessel. Amendment 9 continued that link of responsibility by tying the vessel owner to the sablefish endorsement and Amendment 14 established the permit ownership limit and owner on board restriction. The rationale for these regulations was to keep the limited entry fixed gear sablefish permits and fleet within the West Coast fishing communities.

Mr. Lockhart also reported that the open access VMS rule will be going to NMFS Headquarters very soon.

Mr. Lockhart stated that emergency rules are difficult for NMFS. If there is uncertainty in a motion for an emergency rule, NMFS has to make the interpretation. If there is any indication for the need for an emergency rule, it would be nice to be able to have one day to review the motion and look at it more closely before it gets voted on. This would be similar to how most groundfish inseason adjustments are decided in two sessions during a Council meeting.

Mr. Moore asked about the shoreside whiting monitoring regulations for this season and where they might be in the process. Mr. Lockhart said the final regulations have not been published yet. Ms. de Reynier added they expect the final rule will be published imminently; the regulations are currently in the Department of Commerce.

Dr. McIsaac agreed with Mr. Lockhart's recommended two-session process for requesting emergency rules. He felt that is a good process to implement if we can. On the interpretation, Mr. Lockhart mentioned that NMFS cannot contact the Council, why is that the case? In the motion for the whiting emergency rule, there was nothing about a date. Why couldn't NMFS staff contact Council staff or the Chairman? Mr. Lockhart said once they get the request for emergency rule, they cannot ask for an interpretation unless they have a public process to do it. If there is anything unclear in an emergency rule,

NMFS makes the final decision. Ms. MacCall said that is the case. NMFS staff could have contacted Council members, the staff, or the chair, but no one can speak for the Council other than the Council itself. She endorsed Mr. Lockhart's process recommendations to schedule an initial adoption of an emergency rule motion, then a final adoption in order to clear up any questions and uncertainties regarding the emergency rule motion.

E.1.b Science Center Activities

Dr. Elizabeth Clarke, NWFSC, provided an update on science center activities. The hake acoustic survey is starting this Friday. The bottom trawl survey is proceeding successfully. The *David Starr Jordan* has completed the southern juvenile groundfish survey and the PWCC and NWFSC has just completed the northern juvenile groundfish survey.

Mr. Moore asked to clarify results from Council requests at the April meeting. Specifically, there were requests to analyze West Coast Groundfish Observer Program (WCGOP) data to understand crab bycatch in trawl fisheries and another request to look at bocaccio bycatch in fisheries attempting to target chilipepper rockfish south of 40°10' N latitude. His understanding is that the NWFSC did look at bocaccio bycatch in chilipepper fisheries and concluded that there is not enough data to determine whether we can target chilipepper free of bocaccio. Yes, said Dr. Clarke, there is no data to analyze since there have been no targeted chilipepper trips since the inception of the WCGOP. Mr. Moore said this is why there needs to be a trawl EFP to investigate bycatch in chilipepper target fisheries. Dr. Clarke agreed that an EFP may be needed since there are no other sources of data. Dr. Clarke said that NWFSC staff will present the analysis of crab bycatch in trawl fisheries this fall.

Dr. McIsaac thanked Dr. Clarke for facilitating a smooth stock assessment process.

E.1.c Reports and Comments of Advisory Bodies

None.

E.1.d Public Comment

Mr. Bob Alverson, Seattle FVOA, Seattle, WA

E.1.e Council Discussion on NMFS Report on Groundfish Management

Mr. Melcher asked about changing the number of permits that could be controlled vs. changing the level, does that come under the annual regulatory process, or is that an amendment issue. Ms. de Reynier said she did not know. She would have to check the FMP because the FMP might specify the three permit limit. Mr. Moore thought the three permit limit might be an FMP issue. He asked Ms. de Reynier if we were able to make a regulatory change in a normal two-meeting process, would it be easier to do that in the context of deciding annual specifications and management measures rather than set up a separate regulatory process? Ms. de Reynier said she personally thought this is a permit ownership issue; and, as such, we have not dealt with this type of issue as part of the annual specifications and management measures process in the past. However, there are ways we can use the completed specifications and management measures EIS to provide the needed background information that would normally go into an EA for a permit ownership action. This could help the NEPA process, as an assortment of divergent issues can be analyzed in a single NEPA document. Mr. Moore was just trying to lighten the workload and not have to do double duty on things.

E.2 Proposed Process and Schedule for Developing Biennial (2009-2010) Harvest Specifications and Management Measures (06/12/07; 9:49 am)

E.2.a Agenda Item Overview

Mr. John DeVore provided the agenda item overview.

E.2.b Agency and Tribal Comments

NMFS Comments

Mr. Lockhart said a determination of the potential significance of the biennial specifications and management measures action and the need for an EIS or EA will be determined later. If we do end up going with an EA, that means that NMFS determined an EA was an appropriate level of analysis to support our decision. Mr. Lockhart agreed with Mr. DeVore that, at this time, it appears that an EA may be appropriate in this case.

Mr. Moore asked if a stock being declared rebuilt would cause a level of significance needing an EIS and Mr. DeVore said that all depends on the implications of changing the management regime. In most cases, Mr. DeVore felt that this would not require an EIS, unlike the converse when a stock is first declared overfished.

E.2.c Reports and Comments of Advisory Bodies

Mr. DeVore read Agenda Item E.2.c, Supplemental GMT Report.

E.2.d Public Comment

None.

E.2.e Council Action: Adopt a Process and Schedule for Developing Biennial (2009-2010) Harvest Specifications and Management Measures

Dr. McIsaac noted the placeholder in the process and schedule in Agenda Item E.2.a, Attachment 1 that was set up for a mop-up stock assessment review panel in early October. Later this week, the Council will hear about some assessments already recommended for the mop-up panel. The SSC was advised this week to set up a summer mop-up panel, if necessary. Mr. Lockhart said any acceleration of assessment reviews is problematic since the limiting factor in scheduling reviews is the availability of Center for Independent Experts (CIE) reviewers. There is no chance in getting a CIE reviewer earlier than what is already scheduled.

Mr. Melcher requested clarification on the GMT's concern regarding new West Coast Groundfish Observer Program (WCGOP) data delivered in June 2008 at the same time we are to take final action on the 2009-2010 management measures. Is the concern the new observer data could confuse the Council's decision on final management measures if it comes in very late? Mr. DeVore said yes, new observer data could change the analyses in the June briefing book that are designed to inform the Council's final decision on biennial management measures. This schedule also exacerbates the workload required to produce and submit a NEPA document on time following the Council's decision. This can delay the entire process scheduled for timely implementation of new regulations. Mr. Melcher asked if the new data delivered in June would be data collected through the end of the preceding year. Mr. DeVore asked the Council to turn to Supplemental Informational Report 4 for the data completeness report, which shows June data delivery is for data through the end of the previous year. Dr. Clarke and Mr. Jon Cusick came to the podium to answer questions on a potentially different WCGOP data feed. Dr. Clarke said

Supplemental Information Report 4 was developed as a response to Council requests for more frequent WCGOP data delivery. Mr. Cusick referred to Table 2 in Supplemental Information Report 4 and explained that frequent data delivery is compromised by the availability of state fish tickets. Table 2 shows an alternative to the current delivery schedule (annually in November). This alternative is delivery of WCGOP data twice a year, in June and November. Dr. Clarke said delivering the data earlier than June is constrained by when we get the data. This alternative schedule is the best we can do to get the data integrated into the system more frequently. Ms. Culver clarified that the scheduled action today is to adopt the process and schedule for deciding 2009-2010 specifications and management measures, which is independent of a WCGOP data delivery schedule. The GMT included this issue in their report just as an FYI; but we are really focused on the Council meeting process. Dr. McIsaac said the NWFSC report was responsive to the canary inseason issue that came up in March. In response to Mr. Melcher's question regarding the "June problem", Dr. McIsaac explained if new science comes in on the eve of making the final decision, it can tie up the process in a knot. There can be a conflict with frequent release of new science timed with its use in management. That tension has always been there.

Ms. Vojkovich, said she did not have any changes to the schedule outlined, but she wanted to bring up GMT workload issues. She noted there is a four-day GMT meeting scheduled in October. She wondered if the GMT could do their work with fewer face to face meetings rather than place demands for face to face meetings and travel time.

Ms. Vojkovich moved and Mr. Thomas seconded a motion (Motion 3) to adopt the process and schedule shown in Agenda Item E.2.a, Attachment 1: *Pacific Fishery Management Council and National Marine Fisheries Service Schedule and Process for Developing 2009-2010 Groundfish Harvest Specifications and Management Measures*.

Motion 3 passed on a voice vote.

E.3 Shore-Based Pacific Whiting Monitoring Program (06/12/07; 10:14 am)

E.3.a Agenda Item Overview

Mr. Dave Ortmann, Vice-Chair, chaired this agenda item. Mr. DeVore provided the agenda item overview.

E.3.b NMFS Report

Ms. Yvonne de Reynier provided Agenda Item E.3.b, Supplemental PowerPoint Presentation. She started by explaining attachments 1 and 2 in the briefing book concern the whiting processor rule. This information, which is closely linked to the action considered today, is provided for informational purposes. Attachment 3 is the draft EA which will be used to inform today's decision.

Mr. Moore asked, regarding record keeping and reporting, do the daily processor reports required every 24 hours under alternatives 3 and 4 obviate the need for a daily bycatch report, since those catches are provided? Ms. de Reynier said yes.

Ms. Vojkovich asked if the definition of a whiting trip is changed to 4,000 lbs delivered, would that still allow vessels to catch whiting and sort their catch at sea because that is still the allowable landing limit outside the primary season. Ms. de Reynier said we will have to wait and see how that turns out. Ms. Vojkovich asked if fixing the sorting at-sea problem would require a separate regulatory process than the one contemplated today and Ms. de Reynier said yes.

Ms. Vojkovich asked, regarding shoreside whiting vessel monitoring, is there an option not to use at-sea observers or will Electronic Monitoring System (EMS) coverage under alternative 4 suffice? Ms. de

Reynier answered NMFS would still have authority to place observers on vessels under alternative 4, but would have to explain the rationale for doing so. Ms. Vojkovich asked about the need for 100% monitoring of the shoreside whiting fleet under alternative 4. Ms. de Reynier said that meant that 100% monitoring with either EMS or human observers.

Mr. Melcher asked if the Council could address sorting at sea in the primary whiting fishery under this action and Ms. de Reynier responded this is an emerging fishing behavior that cannot be addressed under this action. Ms. Culver asked if the whiting endorsement under alternatives 3, 4, and 5 would be needed by vessels sorting at sea in the whiting fishery and Ms. de Reynier said no, this is not part of this action. Ms. Culver asked if a fisherman wanted to land more than 4,000 lbs of whiting would they need to have a whiting endorsement and Ms. de Reynier said yes. Ms. de Reynier further explained that if the vessel targeting whiting and sorting catch at sea were processing their whiting, they would be considered catcher-processors and would be required to carry an observer. If the Council wants observers on vessels sorting at sea, this can be done with extra analysis in the 2007 EA.

Ms. Vojkovich asked for an explanation of the data quality control monitor concept in the alternative for monitoring whiting catches. Ms. de Reynier explained all first receivers of whiting catches would require a data quality monitor.

Ms. Culver asked if there is a way to not allow vessels sorting at sea during the primary whiting fishery as part of a potential required whiting endorsement. Ms. de Reynier said it might be possible to only allow midwater trawl vessels targeting whiting to fish in the RCA if they had a whiting endorsement. Mr. Lockhart asked if the original RCA exemption was just for the whiting fleet and Ms. de Reynier said yes.

Mr. Moore asked if it was correct that heading and gutting alone is not processing and Ms. de Reynier said that was correct, but if tailing (i.e., cutting off the tail), then it is processing.

Mr. Moore said the processor permit idea was originally recommended during discussions with the Shoreside Whiting Advisory Group (SWAG) as a way to ensure all processors abide with the catch monitoring, sampling, and reporting requirements. Will this be an extended requirement? Ms. de Reynier explained this is an experiment to understand whether it will be needed in the long term.

E.3.c Agency and Tribal Comments

None.

E.3.d Reports and Comments of Advisory Bodies

SWAG Report

Mr. Moore summarized Agenda Item E.3.d, SWAG Report. The NMFS alternatives contain most if not all the recommendations of the SWAG.

GMT Report

Ms. Kelly Ames provided Agenda Item E.3.d, Supplemental GMT Report.

Mr. Melcher asked if there were elements of the NMFS preferred alternative not recommended by the GMT and Ms. Ames said no, all elements are recommended.

Ms. Culver asked how bycatch is accounted for and incorporated in the GMT's bycatch scorecard for whiting vessels sorting at sea and Ms. Ames responded this bycatch is not accounted for in the GMT's scorecard. Ms. Culver asked if the GMT discussed if some estimate of bycatch using this fishing strategy

should be included in the scorecard and Ms. Ames responded the GMT did discuss this, but without any monitoring information available, the GMT could not figure out a way to estimate that vessel's bycatch. Mr. Moore asked if a bycatch rate from observed vessels not sorting at sea that was fishing near a vessel sorting at sea could be used to estimate bycatch and Ms. Ames said there was no consensus by the GMT to use this methodology. Ms. Culver asked if the GMT discussed whether the bycatch from vessels targeting whiting and sorting catch at sea should count against the bycatch caps specified for the non-tribal whiting fleet and Ms. Ames said the GMT did not reach a conclusion or recommendation on this issue.

GAP Report

Ms. Heather Mann provided Agenda Item E.3.d, Supplemental GAP Report.

Ms. Vojkovich noted the GAP recommends alternative 4 with adjustments, but there is no recommendation for monitoring shoreside vessels at sea. Ms. Mann said the GAP recommends alternative 4 for that element, which specifies 100% EMS monitoring. Mr. Moore noted that alternative 4 provides 100% EMS coverage with vessel owners paying. There would still be authority by NMFS to place observers on vessels under alternative 4. He asked if the GAP recommends this and Ms. Mann said yes.

Mr. Lockhart asked if the GAP recommends one person do plant sampling, data quality monitoring, and catch verification and Ms. Mann said yes. Mr. Melcher asked if the NMFS recommendation was to have three separate people do data quality monitoring, compliance monitoring (catch verification), and plant sampling and Mr. Lockhart said the data quality monitor would be a NMFS-trained individual who does not do any biological sampling. Plant sampling could be done by a state port sampler or an individual hired by the plant. Ms. de Reynier added biological data sampling under alternative 4 would be done by state port samplers. Data quality monitors are separate NMFS-trained individuals that verify the accuracy of delivered catch. Ms. Mann added the GAP still recommends one person do this. Mr. Lockhart noted these are big tasks and divergent, which require more than one person. Ms. Mann said scales for weighing the catch are digital requiring someone to view a computer screen in the plant. Therefore, that same person should also be able to do biological sampling. Mr. Moore said the SWAG discussed this and NMFS did not want a plant employee verifying fish tickets. In summary of the NMFS-preferred alternative, Ms. Culver said state port samplers would sample whiting catch in Washington and California with a third person verifying catch reporting accuracy. Oregon uses plant employees to sample whiting catch.

EC Report

Mr. Tony Warrington provided Agenda Item E.3.d, Supplemental EC Report.

Mr. Lockhart asked if recent investigations made regarding shoreside whiting vessel activity concerned dumping of codends at sea and Mr. Warrington said yes. Mr. Moore asked if existing electronic monitoring systems (EMS) would detect dumping of codends at sea and Mr. Warrington said he was not sure. This needs to be further explored.

E.3.e Public Comment

Mr. Rick Harris, Pacific Choice Seafoods, Eureka, CA
Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, OR
Mr. Mike Okoniewski, Pacific Seafood, Woodland, WA

E.3.f Council Action: Adopt Final Preferred Monitoring Program (06/12/07; 1:05 pm)

Mr. Melcher moved and Mr. Moore seconded a motion (Motion 4: Agenda Item E.3.f, Supplemental ODFW Motion, June 2007) to adopt Alternative 4 (EMS and Catch Monitors) as presented in the draft EA (Agenda Item E.3.b, Attachment 3) Table 2.1 with the following amendments:

- 1) Third-party shoreside catch monitors (trained by or to NMFS specifications) responsible for all shoreside observation, species composition, fish ticket verification, biological sampling and all other duties and responsibilities defined in the EA for the combination of Data Compliance Monitors, Industry Samplers and Port Biologists.
- 2) The initial shoreside sampling level will be determined by using the current level of program funding for shoreside observation to hire catch monitors. Evaluation of the appropriateness of this level to be conducted using the initial data collected via the program.
- 3) Overages will be reported on fish ticket and abandon to the state. Prohibited species will be donated. State enforcement will track compliance (status quo).

Mr. Melcher clarified that the phrase, "current level of program funding for shoreside observation" should be labeled "program funding". In the ensuing discussion, it was made clear that this part of the motion did not address the source of program funding for shoreside monitoring, which has been funded by the states, but the amount of monies dedicated to monitoring and sampling shoreside whiting catch. Furthermore, the current level of program funding is defined by the amount of money used to support these activities in 2007, which may not be adequate in the long term. Monitoring and sampling using this amount of money will be evaluated after the new shoreside whiting monitoring program is implemented to decide if this level of funding is adequate. Mr. Melcher also clarified that the source of funding this work would be industry.

Mr. Lockhart said he believes catch compliance monitoring and biological sampling should be separate activities done by separate individuals and asked if this feature could be amended in the motion. Mr. Melcher said his intent is to develop an efficient program. State port samplers would be expected to aid in the biological sampling as needed. Currently, some of the industry samplers do all the work described. Ms. Vojkovich asked who is the third party employee doing this work and Mr. Melcher explained this could be a state, federal, or private employee, but not a plant employee. Mr. Lockhart thought if modification #2 carries, there may not be enough funding for data compliance monitors to cover all the plants. Mr. Melcher asked if the current program funding level provides adequate coverage and Mr. Lockhart said no, not all plants are currently sampled. There is an increased estimated cost of about \$12K-\$18K per processor per year. Mr. Lockhart said he was concerned that the current level of funding might limit the program.

Mr. Lockhart moved and Mr. Cedergreen seconded an amendment to Motion 4 to drop amendments 1 and 2 and add guidance that the goal for determining the initial shoreside sampling level would be to match as close as possible the current program funding level, based on an evaluation of the appropriateness of that level.

The discussion of the amendment indicated that there was a basic disagreement between NMFS and some Council members on whether the current level of shoreside whiting catch sampling was adequate. Mr. Lockhart argued it is not, but others argued that hiring three people to do the work of data quality monitoring, catch compliance monitoring, and biological sampling was inefficient. Those against the amendment also stressed that the current level of program funding under the main motion was the initial level of funding and more funding could be requested later if the evaluation of shoreside catch monitoring indicates more monitoring and sampling are needed.

Motion to amend failed (Messrs. Lockhart, Cedergreen, Sones and Ms. Culver voted yes).

Mr. Lockhart added guidance to the main motion that further evaluation of current funding levels will be

done by NMFS to determine if all plants are being covered in the proposed rule. The NMFS will solicit comment on this question in the proposed rule and ask the states for their estimation of state funds used to support shoreside monitoring and sampling. Ms. MacCall explained the shoreside whiting sampler cannot be a NMFS employee if the funding is coming from industry, since this would be illegal.

The main motion carried unanimously on a voice vote.

Dr. McIsaac explained that it was not clear whether Alternative 4a or 4b was recommended in the final Council decision. Mr. Melcher explained the motion intended to move Alternative 4b, except for the status quo alternative concerning catch overage disposition. Mr. Moore, the second to the main motion concurred. The Council was in unanimous agreement on the intent to recommend Alternative 4b.

E.4 Amendment 22: Limiting Entry in the Open Access Groundfish Fishery (06/12/07; 2:06 pm)

E.4.a Agenda Item Overview

Mr. DeVore provided the agenda item overview.

E.4.b Scoping and Alternatives Report

Mr. LB Boydston provided Agenda Item E.4.b, PowerPoint Presentation, available on the Council's website at: http://www.pcouncil.org/bb/2007/0607/E4a_ATT2PPT_Sup.pdf

Mr. Melcher noted there is a participation requirement to keep a B permit under all the action alternatives. He asked if B permits are transferable under the alternatives. Mr. Boydston replied yes, it is implied and certainly not precluded. Mr. Melcher asked if the intent of the C permit is to allow non-groundfish fishermen to land incidental groundfish and Mr. Boydston said yes.

Ms. Culver asked if the definition of nearshore rockfish was from the FMP or from federal regulations and Mr. Boydston said the list of nearshore rockfish is as they are defined in the California and Oregon permit requirements. Those species are shown on page 2 of Agenda Item E.4.a, Attachment 2.

Ms. Culver asked if nearshore permitted vessels can participate in open access fisheries and Mr. Boydston said yes.

Ms. Fosmark asked if a fisherman has a nearshore permit and a B permit under the recommended alternatives, does this mean they have to make a landing using only one of those permits during the calendar year. Mr. Boydston said yes, but the B permit goes away if landings are not made on it during any given year. Therefore, one would have to choose between nearshore fishing and fishing in federal waters.

Ms. Culver asked how many vessels are left under the alternatives without the nearshore vessels and Mr. Boydston said he needed Council guidance on this before doing the analysis.

E.4.c Reports and Comments of Advisory Bodies

GMT Report

Ms. Ames provided Agenda Item E.4.c, Supplemental GMT Report.

Ms. Culver asked for comment on the proposed schedule for this process and how this ties into the other groundfish initiatives that involve the GMT. Ms. Ames replied the GMT did not discuss workload

planning, although they expect to tomorrow under the agenda planning discussions.

Ms. Culver asked for comment on state-specific needs and objectives. Ms. Ames said the GMT recommends a discussion of state-specific goals and objectives relative to fleet size and other desired outcomes. Mr. Lockhart thought the recommended purpose and needs in the Mr. Boydston's presentation seemed to cover the bases. He was not sure state-specific purpose and need statements are necessary.

Ms. Fosmark asked if the GMT reviewed the NMFS Report on NEPA considerations and Ms. Ames said GMT members reviewed the report but did not discuss it.

EC Report

Mr. Warrington provided Agenda Item E.4.c, Supplemental EC Report.

Mr. Moore asked if the EC had any concern with the language allowing nearshore species to be taken in federal waters without a federal permit. Mr. Warrenton said there is no problem with this as long as they have a state nearshore permit. This is currently allowed in salmon management. Mr. DeVore said landing requirements in California and Oregon prohibit landing any nearshore species without a state nearshore permit.

GAP Report

Mr. Gerry Richter along with Messrs. Kenyon Hensel and Daniel Platt provided Agenda Item E.4.c, Supplemental GAP Report.

Ms. Vojkovich noted the GAP was recommending a fourth alternative. What is meant by a needed analysis of a range of values both in dollars and poundage from 1994-2006? Mr. Hensel said the GAP is trying to determine the least stringent criteria that would cut the fleet to an ideal size in one action. Ms. Vojkovich asked if a data display is needed of the percentage of the fleet landing different amounts of fish in 100 lb bins and Mr. Hensel said yes. Ms. Vojkovich asked what is meant by multi-year landings to determine initial and long term fleet size objectives. Mr. Hensel replied a 1994-2006 landings matrix would help the GAP decide their recommendations for an ideal fleet size. Chairman Hansen asked if there is a recommended fleet size and Mr. Platt said the GAP acknowledges the fleet is very diverse. Fleet size changes as other opportunities increase or decrease. The GAP needs all that background information to decide ideal fleet size.

Ms. Fosmark noted the GAP is recommending inclusion of 2006 data in the analysis, which she thought was a good idea. Recent participation has shifted catches to nearshore species. Deeper water opportunities have been relatively minimal in the past few years. Ms. Fosmark asked Mr. Platt what percentage of the fleet in his port are primarily fishing in groundfish open access and he said about 50% of the fleet in his port.

Mr. Lockhart asked why the current proposal fails to meet the individual states' purpose and need as the GAP maintains? Mr. Richter said that was the feeling of the Oregon representatives on the GAP.

Mr. Moore asked for an explanation of the discard effects currently occurring with nearshore permits and Mr. Richter said deeper nearshore permitted fishermen are discarding a lot of shelf species.

Mr. Moore said professional fishermen in the last 20 years participate in many different fisheries. He asked if it is the GAP's intention to try to include these fishermen in the qualifying criteria for a B permit and Mr. Platt said yes.

Mr. Moore asked why the GAP is recommending permit transferability and Mr. Hensel said it was so they

could make money when retiring from the fishery.

Ms. Vojkovich asked if the public comments from John Law were compelling to the GAP and Mr. Richter said the GAP did not discuss those comments.

WDFW Report

Ms. Culver provided Agenda Item E.4.c, Supplemental WDFW Report.

Ms. Vojkovich noted there is mention of nearshore participants in many instances in the WDFW report. How does removing the nearshore permits from this process meet Washington state's purpose and need for a federal action? Ms. Culver replied that Washington does not have a nearshore commercial fishery. Counting landings of nearshore species to qualify for a federal permit puts Washington fishermen at a disadvantage.

Mr. Melcher asked Ms. Culver if there are minimum landing requirements built into the CDFG alternatives as well as transferability. Ms. Culver said there are minimum landing requirements across all the alternatives in the report, but she is not sure about transferability.

NMFS Report

Mr. Lockhart provided Agenda Item E.4.a, NMFS Report.

Ms. Culver asked if there will be another NMFS scoping session after a final range of alternatives is decided and Mr. Lockhart said he didn't think so. Ms. Culver asked about the process after the Council decides a final preferred alternative with an Environmental Assessment (EA) and Mr. Lockhart said NMFS needs to give the Regional Administrator an early call on whether an EA or an Environmental Impact Statement (EIS) is needed.

E.4.d Public Comment

Mr. Daniel Platt, Salmon Trollers Marketing Association, Fort Bragg, CA
Mr. Jim Basler, open access fisherman, CA
Mr. Bill James, open access fisherman, Keizer, OR
Mr. Kenyon Hensel, Hensel's, Crescent City, CA
Mr. Josh Churchman, limited entry fixed gear fisherman, Bolinas, CA
Mr. Ed Ewing, commercial fisherman, Morro Bay, CA
Mr. William Daspit, PSMFC economist, Seattle, WA

E.4.e Council Action: Initial Recommendations for Developing Alternatives

Ms. Vojkovich said the state of California is not asking to remove nearshore species from the FMP nor is the state asking for authority to do all management of nearshore species. The ideas presented this week were recommended in the past by industry and managers. She recommended asking Mr. Boydston about the difficulties in analyzing some of the recommended alternatives. She said she was concerned with the complexity of trying to determine state-specific purposes and needs. She asked Mr. Boydston what he recommended in a basic open access permitting program. Mr. Boydston said the group he worked with to develop recommended alternatives collectively agreed to come forward with simplified alternatives. They had considered sub-area endorsements (i.e., north of 36° N latitude for sablefish and north and south of 40°10' N latitude for rockfish), but this became overly complex and could cause an imbalance in the fishing opportunities by fishing area. If alternatives are state-specific, we might need to have state area sablefish allocations for instance. This makes the analysis more complex and adds greatly to the workload.

Ms. Culver said WDFW is not recommending sub-area endorsements for sablefish. There are some species, such as black rockfish, with state-specific harvest guidelines. We need to keep sight of state goals and objectives in the analysis and discussion, since each state has implemented different nearshore management strategies. Mr. Boydston said taking the nearshore species out of the mix in this initiative may contribute to accommodating state goals and objectives. Ms. Culver asked if removing the nearshore vessels from the analysis meant removing the vessels with state nearshore permits. Mr. Boydston said nearshore-permitted vessels' catch histories would be removed from the analysis. However, he needs Council guidance on this issue before that is done. Ms. Culver said this concerned her since Washington does not have a nearshore commercial fishery. How are catches of Oregon and California vessels with nearshore permits accounted for in the analysis? Mr. Boydston clarified that the analysis would not be done by removing vessels with nearshore permits, but by removing their catch histories of nearshore species. Any California or Oregon nearshore permit holder would use their landings of non-nearshore species to qualify for a B permit. Mr. Melcher sought further clarification by posing the following scenario and asking if it is truly stated: Oregon state nearshore permit holders with no catch history of non-nearshore groundfish species would not qualify for a B permit. Mr. Boydston said that was true, but they could qualify to incidentally land some groundfish using a C permit. That is, B permits would be specified for a directed groundfish fishery and C permits for an incidental groundfish fishery.

Mr. Moore referred to Table 6 in Agenda Item E.4.a, Attachment 2 and asked if the 781 total vessels in the 2006 directed open access fishery were individual vessels with at least one landing of federal groundfish in 2006 and Mr. Boydston said yes. Mr. Moore asked if the total open access vessels in 2006 (958) from Table 5 included open access vessels with directed and incidental groundfish landings and Mr. Boydston said yes.

Mr. Lockhart asked Mr. Boydston how landings are accounted for when removing the nearshore species in qualifying for the B permit and Mr. Boydston said landings estimates do not come from the permits database but from fish tickets.

Mr. Moore asked if nearshore-permitted vessels in 2006 are included in the 781 vessels on Table 6 and Mr. Boydston said yes.

Ms. Vojkovich moved and Mr. Thomas seconded a motion (Motion 5) to adopt the range of alternatives contained in Agenda Item E.4.a, Attachment 2 with the following changes: 1) add an alternative without use it or lose it provisions (i.e., no need to land groundfish against a B permit to renew the permit); 2) add GAP alternative 4 in Agenda Item E.4.c, Supplemental GAP report; 3) change range of dates to qualify for a B permit to April 1998- September 2006; and 4) nearshore species' landings not counted for qualifying for a B permit. As part of her motion, anyone having a state nearshore permit can still land state nearshore species caught in federal waters.

Ms. Vojkovich explained nearshore fisheries are currently dominant in the open access groundfish fishery. Shortening the time frame for qualifying for a federal B permit without counting nearshore species' landings should identify the fishermen with a real stake in open access who are still participating in the fishery.

Mr. Moore asked if the fleet size alternatives (different fleet size goals) were still in and Ms. Vojkovich said yes. Ms. Culver asked if B permits were transferable and Ms. Vojkovich stated she would rather not allow transferable permits, but she is not wedded to non-transferability.

Ms. Culver made a motion, seconded by Mr. Cedergreen, to amend the main motion to include alternatives 1 and 2 in the Supplemental WDFW Report. The amendment also includes an alternative for full transferability of federal B permits.

Ms. Culver explained the Washington open access fleet targets sablefish and WDFW likes the current fleet size in Washington. This decision process time line is aggressive, so proposing a phasing in of some of these measures may be important, which is the reason for WDFW alternative 1. Ms. Vojkovich said she didn't understand the need for these extra alternatives. Ms. Culver explained the only target species in the open access fishery off Washington are sablefish and dogfish, while the fishery further south targets some shelf and slope rockfish. Therefore, the Washington fleet may be at a disadvantage for qualifying for a B permit. Ms. Vojkovich voiced concern that proliferation of alternatives will delay this process. She believes the range of alternatives in the original motion will tease out some of these issues. The Council can decide the need for other alternatives in September.

Mr. Lockhart asked if there is a geographic restriction in the motion and Ms. Culver said no.

The amended motion carried (Messrs. Lockhart and Thomas, and Ms. Vojkovich voted no).

Mr. Lockhart asked if the two options recommended by the EC (C permits for incidental groundfish catches and allowing nearshore permit holders to take nearshore species in federal waters) are included in the main motion and Ms. Vojkovich said yes.

Motion 5 passed.

Ms. Vojkovich thanked Mr. Boydston and the state staffs who put this package together. California will host focus group meetings this summer to talk about this. There will also be a posting of these materials on the CDFG web site.

E.5 Preliminary Review of Exempted Fishing Permits (EFPs) for 2008

E.5.a Agenda Item Overview (06/13/07; 1:26 pm)

Mr. DeVore provided the agenda item overview.

Mr. Thomas informed the Council that he would be recusing himself from the vote on the EFP proposal submitted by the RFA (Agenda Item E.5.a, Attachment 4). Ms. Fosmark informed the Council that she would be recusing herself from the vote on the EFP proposal submitted by Mr. Steven A. Berkeley (Agenda Item E.5.a, Supplemental Revised Attachment 2).

E.5.b Agency and Tribal Comments

None.

E.5.c Reports and Comments of Advisory Bodies

GMT Report

Ms. Kelly Ames provided Agenda Item E.5.c, Supplemental GMT Report.

Mr. Moore asked if there was yield available for EFP bycatch caps in 2008 bycatch scorecard projections and Ms. Ames said the GMT did not review available yields in 2008.

Mr. Moore asked if there was enough sablefish yield in the Conception area to accommodate the ED/TNC EFP. Mr. Burden answered the Conception area sablefish OY in 2008 is 211 mt and it is expected at least 130 mt would be taken in this EFP.

Ms. Vojkovich noted the GMT was not recommending the Churchman EFP without revision and stated

they do not have time to review a revised application. In the RFA EFP, there is also a request to revise the gear, yet it is recommended if revised. What is the difference between these EFPs? Ms. Ames answered the RFA proposal has an area-specific component while the Churchman EFP does not.

GAP Report

Ms. Heather Mann provided Agenda Item E.5.c, Supplemental GAP Report.

Mr. Moore noted that two of the EFP applications were revised this week. He asked if the GAP reviewed both the original and revised EFP applications and Ms. Mann said yes.

Ms. Vojkovich asked about the GAP concerns with the Churchman EFP and Ms. Mann stated the GAP believes they know how to more selectively harvest chilipepper rockfish.

Mr. Lockhart asked how the GAP concluded the TNC EFP does not provide new information and Ms. Mann said cooperatives are not unique nationally and have been tested in other areas.

E.5.d Public Comment

Mr. Rick Algert, Morro Bay Harbor Master, Morro Bay, CA

Mr. Rod Fujita, Environmental Defense, Oakland, CA

Mr. Michael Bell, Natural Resources Defense Council, San Luis Obispo, CA

Mr. Ed Ewing, Morro Bay, CA

Mr. Josh Churchman, fisherman, Bolinas, CA

Ms. Kate Bonzon, Environmental Defense, Oakland, CA

Mr. Jim Martin, Recreational Fishing Alliance, Fort Bragg, CA

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

Mr. Tom Ghio, Ghio Fish Company, Santa Cruz, CA

Mr. Gerry Richter, B & G Seafoods, Santa Barbara, CA

E.5.e Council Action: Adopt Preliminary Recommendations for EFPs

Ms. Vojkovich moved and Mr. Lockhart seconded a motion (Motion 9) to put forward all four submitted EFP applications as shown in Agenda Item E.5.a, Attachment 1, Supplemental Revised Attachment 2, Supplemental Revised Attachment 3, and Attachment 4 for further refinement, further analysis, and consideration for final adoption at the November Council meeting.

Ms. Vojkovich said, in combination, the GMT and GAP recommended all four EFPs, although they also recommended revisions for each. The GMT and GAP also identified the need to collect more fishery information from these EFPs. Mr. Lockhart said he supported the motion. Each EFP has some merits and some problems. This action will give the applicants time to work out these problems. If they are not fixed, they can be eliminated in November. Mr. Anderson said the Churchman EFP application needs at least three revisions (no bait, caps for some species, and a minimum weight to bottom leader distance). The refinements need to be communicated to the applicants. Mr. DeVore said he would do so.

Mr. Moore asked if NEPA coverage is needed for an EFP and Ms. McCall said there may be a need to do a tiered analysis or conclude the potential impacts were already covered in a previous NEPA analysis. The EFP applicants need to know there may be some delay.

Mr. Moore moved and Mr. Cedergreen seconded a motion to amend motion 9 to not accept the TNC/ED EFP as shown in Agenda Item E.5.a, Supplemental Revised Attachment 3.

Mr. Moore said he was very concerned with the volumes of fish needed in this EFP and the effect on

directed fisheries in the Conception area. With a 211 mt sablefish OY, the EFP could exceed the OY on its own under option 1 and most of the OY under option 2. No EFP has had such a high impact. Ms. Vojkovich said this is an issue she believes needs to be fixed in the application. Mr. Cedergreen said he shares Mr. Moore's concerns and the Morro Bay problem is not solved with this EFP. Mr. Anderson said he has been a long time proponent of trawl gear switching. He would also like to explore the efficacy of a cooperative arrangement after trawl rationalization. However, he has serious concerns with the TNC EFP application and the details that need to be ironed out. A lot of work is needed and he is concerned with GMT and GAP workload. He is also concerned with providing fishing opportunities to non-permitted fishermen in this EFP. The intent of the TNC EFP is good, but the timing and approach are not.

Mr. Lockhart said there are many details to work out in the TNC EFP application, but they are not insurmountable. He disagrees with the GAP statement that infers all cooperatives are alike. This is different and regional fishing associations (RFAs) may be needed in the future to transition fishing communities to a new management regime after trawl rationalization. The information from this EFP application could help us develop criteria to form RFAs. Therefore, he is against the motion to amend Motion 9. Ms. Vojkovich said she agrees with Mr. Lockhart. California south of Mendocino is very different from the north and it is expected that the management regime there may go through many changes in the near future. The TNC EFP attempts a different way of managing fishery resources and fishermen. Mr. Anderson asked if the primary purpose of the TNC EFP is to decide criteria for forming RFAs and Mr. Lockhart said yes. Ms. Vojkovich reminded the Council that the TNC EFP application has a provision to use electronic monitoring. Mr. Moore said he agrees with many of the comments made by Mr. Lockhart and Ms. Vojkovich. However, these potential benefits could be attained in other ways. There are too many problems with this EFP. Mr. Melcher said he agrees with comments made on both sides of this issue. He believes all four EFPs should go forward, but many refinements are needed in each.

Dr. McIsaac asked, as a point of procedure, whether the two recused Council members are allowed to vote on the amendment since it deals with only one EFP in which they have no personal interest. Ms. McCall said they are allowed to vote on the amendment, but not the main motion.

The amendment to Motion 9 failed on a roll call vote with Messrs. Sones, Melcher, Thomas, Warrens, Anderson, Lockhart, and Ms. Vojkovich voting against the amendment.

The main motion passed with Mr. Moore voting against the motion and Mr. Thomas and Ms. Fosmark abstaining from the vote.

E.6 Stock Assessments for 2009-2010 Groundfish Fisheries

E.6.a Agenda Item Overview (06/13/07; 4:01 pm)

Mr. DeVore provided the agenda item overview.

E.6.b Scientific and Statistical Committee Report

Mr. Robert Conrad provided Agenda Item E.6.b, Supplemental SSC Report.

Mr. Lockhart asked if the widow rockfish update was suitable for management decision-making and Mr. Conrad replied the SSC will do a review in September after the catch data are fixed. The SSC will therefore have a recommendation in September. Dr. McIsaac asked if there is a chance the widow rockfish assessment result will change much after revision and Mr. Conrad said no, other model runs were made indicating very little change.

Mr. Anderson asked how the revisions in the cowcod update assessment led to a conclusion that the Terms of Reference were not followed and Mr. Conrad stated the SSC based that conclusion on the criterion that the model results were dramatically different. Mr. Anderson asked if error corrections led to the dramatic change and Mr. Conrad said yes, especially how selectivity was specified in the assessment. Mr. Anderson asked if the rationale for changing a natural mortality rate as in the yelloweye update would not lead to this conclusion and Mr. Conrad responded not if the assessment result did not dramatically change.

Mr. Anderson asked if a full cowcod assessment can be prepared in time for the mop-up panel and Mr. Conrad said yes and potentially in time for the darkblotched STAR panel in mid-July.

Mr. Anderson asked for an explanation of the SSC statement that a new natural mortality rate of 0.043 for yelloweye is consistent with the old assessment with a natural mortality rate of 0.036. Mr. Conrad said the statement should have read the model result is consistent.

Mr. Moore expressed concern that the shortbelly assessment did not follow the STAR panel process and the precedent this sets. Mr. Conrad agreed and said the SSC prefers a proper STAR panel process.

Ms. Vojkovich said she was confused about how to use the shortbelly assessment results and Mr. Conrad said it is up to Council how this assessment should be used. It is not necessarily an SSC recommendation to use the assessment. The SSC recommendations concern how it should be used if it is desirable to use this result. Dr. McIsaac noted there is no firm recommendation on how to determine shortbelly harvest specifications. Mr. Moore asked if the GMT and Council should consider this assessment in recommending harvest specifications the same way a NMFS Technical Memorandum might be used to inform a decision and Mr. Conrad said this is a gray area since it is out of the process. Dr. McIsaac thought in this unfortunate situation, the recommendation is to use the assessment to set OY.

Mr. Anderson asked if there were two black rockfish assessments and Mr. Conrad said yes. Ms. Vojkovich asked, if the southern black rockfish assessment is recommended by the mop-up panel, do both the northern and southern black rockfish assessments come to the Council in November? Mr. Conrad responded the northern black rockfish assessment will be considered in September and the southern black rockfish assessment in November.

E.6.c Reports and Comments of Advisory Bodies

None.

E.6.d Public Comment

None.

E.6.e Council Action: Approve Stock Assessments

Mr. Anderson moved and Ms. Vojkovich seconded a motion (Motion 10) to approve and endorse the following full and updated stock assessments for Council decision making for the next biennial groundfish management cycle: sablefish, longnose skate, English sole, Pacific ocean perch, and yelloweye rockfish.

Mr. Anderson said these assessments have all gone through the STAR panel review process, were reviewed by the SSC, and recommended to the Council by the SSC for use in management decision-making. Mr. Moore assumed that the widow update was left out of the motion because of the need for future work in September and Mr. Anderson confirmed that assumption.

Motion 10 passed.

Mr. DeVore asked about the shortbelly rockfish assessment since the Council motion was silent to it. Should we take the SSC guidance on how to use shortbelly assessment results? Mr. Anderson said he did not have all the information on shortbelly, but from his perspective, this assessment did not follow the Council review process. While he is not suggesting the assessment wasn't well done, he is not recommending formal adoption of the assessment until additional information comes forward and until he has had a chance to understand what this assessment is suggesting. Mr. DeVore said we will have to resolve this issue before November.

Mr. Anderson cautioned the Council not to recommend too many assessments to the mop-up STAR panel. Dr. McIsaac said the precaution the Council could take now is to reserve the first week of October for a mop-up panel as scheduled and try to do the additional mop-up reviews in the summer. Mr. Lockhart asked Dr. Clarke to speak to this issue. Dr. Clarke said we could try to schedule another review panel in August, but since the cowcod assessment is close to completion, the SSC felt it could be reviewed by the darkblotched review panel, which is currently scheduled in mid-July. She added there is no potential to schedule an additional STAR panel with CIE reviewers. Dr. McIsaac summarized that the cowcod review will be attempted in mid-July in association with the darkblotched assessment review and we will plan the mop-up panel for the first week of October.

E.7 Consideration of Inseason Adjustments

E.7.a Agenda Item Overview (06/13/07; 5:05 pm)

Mr. DeVore provided the agenda item overview.

E.7.b Report of the Groundfish Management Team (GMT)

Ms. Kelly Ames provided Agenda Item E.7.b, Supplemental GMT Report. Mr. Merrick Burden was on hand to help answer questions.

Mr. Moore asked why Ms. Ames removed the last sentence from the section of the GMT statement concerning Pacific whiting bycatch caps and Ms. Ames said that was done because the GMT did not discuss a recommendation for Pacific whiting.

Mr. Moore explained that darkblotched rockfish impacts are needed by the limited entry bottom trawl fleet in the fall to target petrale sole. Is there a chance that we may run out of darkblotched by this fall? Mr. Burden explained the March Council action to move the fleet offshore to reduce canary rockfish impacts increased uncertainty, which may increase our risk of early darkblotched OY attainment. Mr. Moore asked if precaution is warranted and Mr. Burden said the GMT did not discuss this. He personally recommends more precaution.

Dr. McIsaac asked why inseason actions are recommended for an August 1 implementation when past June Council actions were implemented by July 1. Ms. Ames deferred to NMFS and Ms. de Reynier explained regulatory streamlining has ironically resulted in a delayed NMFS process. Chairman Hansen asked if actions can be implemented by mid-July and Ms. de Reynier explained that NMFS cannot decrease limits mid-period.

Mr. Myer asked if there is generally higher bycatch in the early whiting season and Mr. Burden replied that has been the pattern in recent years. He was not sure if this was due to the availability of whiting early in the season.

Mr. Melcher asked if a regulatory streamlining delay has implications for inseason actions recommended

for other FMP species such as salmon and Mr. Lockhart said this does not affect the process for salmon. Mr. DeVore expressed concern that August 1 is mid-period, which may be problematic for some of the recommended inseason adjustments. Mr. Burden said the only problematic recommendation is for the shelf limits in the south for widow-bocaccio-shelf rockfish. He thought a September 1 implementation would work better than August 1 for that inseason adjustment.

E.7.c Agency and Tribal Comments

None.

E.7.d Reports and Comments of Advisory Bodies

Mr. Tom Ancona provided Agenda Item E.7.d, Supplemental GAP Report. Mr. Gerry Richter was on hand to help answer questions.

Chairman Hansen asked if there was adequate GMT-GAP interaction and Mr. Ancona answered through no fault of the GMT and the GAP, there was not enough time to discuss all the issues since both bodies were very busy with a crowded agenda.

EC Report

An oral report was provided by Mr. Dayna Mathews. Based on discussions with the GMT, Mr. Mathews recommends a date certain for implementing inseason actions. Decreasing a trip limit in the middle of a period creates a race for fish.

E.7.e Public Comment

None.

E.7.f Council Action: Adopt Preliminary or Final Recommendations for Adjustments to 2007 Groundfish Fisheries

Mr. Moore moved and Mr. Melcher seconded a motion (Motion 11) to adopt the following inseason commercial fishery adjustments as shown in Agenda Item E.7.b, Supplemental GMT Report:

- increase the open access sablefish daily-trip-limit fishery weekly limit south of 36° N latitude to 800 lbs per week beginning August 1;
- increase the shortspine thornyhead limit in the limited entry fixed gear fishery south of 34°27' N latitude to 3,000 lbs per two months in period 4;
- implement a combined widow-bocaccio-shelf rockfish limit in the limited entry fixed gear fishery between 34°27' N latitude and 40°10' N latitude of 500 lbs per month beginning September 1;
- move seaward boundary of trawl RCA between Cascade Head and the Columbia River to 200 fm beginning August 1;
- increase the longspine thornyhead limits for large footrope trawls north of 40°10' N latitude to 25,000 lbs per two months beginning in period 4 for the remainder of the year;
- increase the Dover sole limits for limited entry groundfish trawls south of 40°10' N latitude to 80,000 lbs per two months beginning in period 4 for the remainder of the year;
- increase the chilipepper rockfish cumulative limit for small footrope trawls south of 40°10' N latitude to 800 lbs per month beginning August 1.

Mr. Anderson asked for a friendly amendment to change the period 4 implementation dates to August 1, which was accepted by the maker and the seconder of the motion.

Motion 11 with the friendly amendment carried unanimously on a voice vote.

E.8 Amendment 21: Intersector Allocation

E.8.a Agenda Item Overview (06/14/07; 8:08 am)

Mr. DeVore provided the agenda item overview.

E.8.b Recommendations of the Groundfish Allocation Committee (GAC)

Mr. DeVore referred to Agenda Item E.8.b, GAC Report and summarized the GAC's intersector allocation recommendations starting on page 9.

Mr. Moore asked if the GAC recommendation to analyze four trawl sectors in the intersector allocation process presupposes a decision on the number of trawl sectors in the trawl rationalization program. Mr. DeVore replied no, the analysis will simply stratify the data in the analysis for four sectors, but we are not asking for a decision on the number of trawl sectors in this process.

Mr. Myer asked if reserves (i.e., yield buffers) are included in the analysis as set-asides. Mr. DeVore said no, reserve amounts need to be defined for analysis.

E.8.c Agency and Tribal Comments

None.

E.8.d Reports and Comments of Advisory Bodies

GAP Report

Mr. Dan Waldeck provided Agenda Item E.8.d, Supplemental GAP Report.

Ms. Vojkovich asked what does the term "recreational fisheries without long-term allocations" mean and Mr. Waldeck responded these would be set-asides for incidental catch in recreational fisheries.

GMT Report

Ms. Kelly Ames provided Agenda Item E.8.d, Supplemental GMT Report.

Ms. Vojkovich asked for an explanation of the GMT recommendation regarding delaying allocation of cowcod, bocaccio, canary and yelloweye. She was unaware that this was a GAC recommendation as stated in the GMT report. Ms. Ames said that was the GMT's interpretation of the GAC report. Mr. DeVore said the preliminary intersector allocation alternatives 5-8 in Agenda Item E.8.a, Attachment 2, concern long term allocations for overfished species. The GAC did not recommend removing all those alternatives from the analysis, so it can be inferred that delaying an allocation decision for those species was not recommended by the GAC. Ms. Vojkovich said this must therefore be a misinterpretation of the GAC recommendation by the GMT.

Ms. Vojkovich asked about the effects of differential regulations by sectors as stated in the GMT report. Ms. Ames said the example the GMT discussed was yelloweye and how landings in recreational and commercial hook-and-line fisheries are prohibited, but a small landing limit is allowed in the limited entry trawl fishery to be able to land some of the unavoidable bycatch of yelloweye in that fishery. Mr. DeVore said, depending on the alternatives adopted today, implications under those alternatives that have a landed catch basis will be compared to those with a total catch basis. Regulatory-induced discard, which does

vary by sector, can be explored in that comparison. Ms. Vojkovich asked if there would be a display of the regulations by sector in the EIS and Mr. DeVore said yes. Mr. Anderson asked if there is a need to address regulatory discards, discard mortalities, and the constraints imposed by managing low yields that affect access to target species in the analysis and Ms. Ames replied yes.

E.8.e Public Comment

Mr. Peter Huhtula, PMCC, Astoria, OR
Mr. William Daspit, economist, Seattle, WA

E.8.f Council Action: Adopt Alternatives for Analysis

Ms. Vojkovich recommended a discussion of the set-asides and reserves question. Mr. Myer said enough yield needs to be set aside to cover research and other non-directed fishing activities that cause mortality. Perhaps options that set 2%, 5%, and 10% reserves could be analyzed as buffers against uncertainty and unforeseen impacts. Mr. Anderson said he was struggling with the reserve concept. Research set-asides are straight-forward and we need to calculate set-asides for EFPs. Tribal set-asides are not clear cut. Do we use historical catches to analyze tribal set-asides? Perhaps if we had a category of incidental catches that are not specific to incidental open access we could accommodate the reserve question. What about allocations of dogfish where there is a high incidental catch? For some species, setting aside yield for non-directed fishing activities is not straight-forward. He hopes to discern which species need a reserve set-aside in the analysis.

Mr. Melcher noted the GAC had a recommendation to first do trawl allocations. The other sectors would be allocated later and reserves could be lumped into the non-trawl catches at this stage. Ms. Fosmark pointed out many incidental open access fisheries catch groundfish and these catches should be set aside. Mr. Cedergreen noted reserve yield could be used by any sector to cover any unforeseen events, but we need to define this better. Mr. Anderson said that Mr. Melcher's comments help. If we assume that our fishery mortality data includes all fishing-related mortalities, there are still some species, such as dogfish and arrowtooth flounder, where we do not have accurate accountability. A set-aside of available yield may be more important for this category of species.

Ms. Vojkovich said the GAC's recommended focus is on trawl allocation at this point. Given this, how do we deal with recreational EFPs that are trying to access species not normally caught in recreational fisheries? How do we allocate such species when deciding a future management regime that might be much different than status quo? Nonetheless, she agrees with the reserve concept and thought perhaps analyzing a reserve range of 1-50% of available yield might be appropriate at this stage.

Mr. Myer asked what happens if research catches are larger than projected? Such catch overages could be covered with a reserve yield. Mr. Moore noted salmon fishermen catch hake and such incidental catches need to be accounted for. It may be easier to categorize species that need a reserve and those that do not need a reserve. He questioned whether a reserve is needed for EFPs. With a set allocation, it's possible to use part of a sector's allocation to cover an EFP that is specific to that sector. With a 50% reserve, do we even need to allocate?

Mr. Cedergreen thought the Council should consider starting out conservatively with larger set-asides (i.e., reserves) and allocate from the set-aside as yield is needed. Mr. Lockhart's recollection of the importance of the reserve concept was to help prevent catch overages in one sector from reducing or eliminating fishing opportunities in other sectors. If a reserve is not needed, it could be allocated back to directed fisheries using a prescribed allocation formula. Staff may get a good idea of the need for and the magnitude of buffers (i.e., reserves) in analyses. Ms. Fosmark remarked that salmon trollers were no longer able to keep groundfish with the implementation of RCAs; therefore, landings do not reveal actual catches. Perhaps after license limitation in the open access sector, we will better understand that sector's

allocation needs. Mr. Myer added a reserve does not have to be in place for the entire year. Yield could be released toward the end of the year to directed fisheries.

Mr. Anderson referred to the table depicting preliminary intersector allocation alternatives recommended by the Council in November 2006 (Agenda Item E.8.a, Attachment 2) and moved, with Mr. Myer's second, a motion (Motion 12) to adopt intersector allocation alternatives for analysis as follows:

- status quo allocations;
- alternative 1 with allocations for four limited entry trawl sectors and all other sectors combined using 2003-2005 total catch percentages;
- alternative 2 with allocations for four limited entry trawl sectors, as well as the limited entry fixed gear, directed open access, and recreational sectors using 2003-2005 total catch percentages;
- alternative 3 with allocations for four limited entry trawl sectors and all other sectors combined using 1995-2005 landed catch percentages;
- eliminate alt 4;
- alternative 5 with allocations for four limited entry trawl sectors and all other sectors combined using 2003-2005 total catch percentages;
- eliminate alternative 6;
- alternative 7 with allocations for four limited entry trawl sectors and all other sectors combined using 1995-2005 landed catch percentages;
- eliminate alternative 8;
- set-asides to be determined for projected research, EFPs, and buffers (i.e., reserves);
- 5%, 15%, and 25% buffers (i.e., reserves);
- tribal fishery impacts in the analysis should use the current set-asides for sablefish and whiting, and the most recent tribal catches for other species (further government to government discussions will occur to pursue formal tribal allocations). Projected tribal catches by species will be considered as set-asides in the analysis;
- develop a framework process for future allocation of species not immediately allocated (i.e., for overfished species in alternatives 5 and 7).

Mr. Anderson further explained his motion by clarifying that alternative 2 is the only one where all sector allocations are analyzed. Alternative 3 gives a retrospective look at sector catch percentages. A range of set-asides could be species-specific, but does not account for tribal catches (i.e., don't include tribal catches in set-asides). The framework process would treat species close to being rebuilt differently than those with extended rebuilding periods.

Ms. Vojkovich asked if analyzing total catch percentage alternatives and landed catch percentage alternatives will aid us in understanding sector-specific regulatory-induced discards and Mr. Anderson said yes. This analysis should be informative for making the allocation decision and for setting reserve amounts. Species with more uncertain catch histories may need a larger reserve. Ms. Vojkovich asked if the term incidental would therefore be broader in scope and Mr. Anderson said yes.

Ms. Vojkovich asked which period represents the most recent tribal catches and Mr. Anderson replied the most current tribal catch projections would be used as an initial proxy in analysis. He believed that this level of tribal harvest would be a good place to start the analysis.

Mr. Anderson further clarified that the framework process for allocating species not immediately allocated should focus on trawl-dominant overfished species predicted to be rebuilt relatively soon.

Mr. Moore asked if the tribal sliding scale allocation formula for whiting should be considered the current tribal set-aside for that species in the analysis and Mr. Anderson said yes. Mr. Moore asked if the reserve set-aside range would cover all the set-asides and Mr. Anderson said it should cover all incidental catches

and set-asides except tribal catches. Mr. Moore noted that those alternatives using 1995-2005 catch percentages will have a mix of total and landed catches and asked if this is needed? Mr. Anderson thought the analysis of catch percentages over that period may be informative to understand how things have changed over time and what account for those changes. He explained any particular time period will not necessarily be the basis for the decided allocation, but might inform an eventual decision. Mr. Moore noted over that time period, there were whiting allocation decisions made in 1996, a tribal whiting allocation in 1997, and this could be a big workload. Mr. DeVore said the effect of annual regulations on a sector's landed catch will be taken into account in the analysis. He thought these were reasonable alternatives to analyze.

Mr. Melcher noted the GAC recommended removing alternatives 4 and 8, but they also recommended the most recent 2007 scorecard be presented in November when a preferred alternative is decided. He would like to compare 2007 catch projections from the scorecard in this analysis.

Mr. Lockhart asked for an explanation of the requested development of a framework for overfished species and Mr. Anderson stated the allocation framework would be developed for just the trawl-dominant overfished species (i.e., darkblotched, widow, and Pacific ocean perch).

Mr. DeVore said the request for a November 2007 scorecard cannot be accommodated in November because the most recent scorecard that will be available for the November briefing book will be the one developed by the GMT in September. Mr. Anderson said he would accept the September 2007 scorecard in analysis, but he eventually wants the November 2007 scorecard in the DEIS. Ms. Vojkovich asked if this scorecard would be the basis for another alternative or should it be considered a useful analytical tool? Mr. Anderson said the scorecard would be used for analytical purposes only.

Mr. Anderson told Mr. DeVore that there is a need in the analysis to look at differences in mortality rates for discarded species. Mr. DeVore said that detail will be put into the analysis. Ms. Vojkovich asked if the request for the 2003-2005 discard mortality estimates from the NWFSC to fill the data gaps in the total catch alternatives 1 and 5 is included in the motion. Mr. DeVore said that request will be made if the motion passes.

Motion 12 carried on a unanimous voice vote.

E.9 Amendment 20: Trawl Rationalization Alternatives (Trawl Individual Quotas and Cooperatives)

E.9.a Agenda Item Overview (06/14/07; 10:35 am)

Mr. Jim Seger provided the agenda item overview through a PowerPoint presentation (Agenda Item E.9.a, Supplemental PowerPoint Presentation) and summary of Agenda Item E.9.a, Attachment 2. Dr. Ed Waters summarized the results of Agenda Item E.9.a, Supplemental Attachment 4 (Supplemental Quantitative Analysis of Qualification and Allocation Rules).

Mr. Merrick Burden provided a PowerPoint on preliminary discussion (Agenda Item E.9.a, Supplemental PowerPoint Presentation 2) and analysis of overfished species management constraints in a rationalization program (Agenda Item E.9.a, Supplemental Revised Attachment 5).

E.9.b Recommendations of the GAC

Mr. Seger summarized the GAC Report (Agenda Item E.8.b, GAC Report, page 2).

E.9.c Agency and Tribal Comments

None.

E.9.d Reports and Comments of Advisory Bodies

Ms. Mann provided Agenda Item E.9.d, Supplemental GAP Report.

Ms. Ames provided Agenda Item E.9.d, Supplemental GMT Report (this report was based on area management). She also spoke to Agenda Item E.9.d, Supplemental GMT Report 2.

Dr. Bob Conrad provided Agenda Item E.9.d, Supplemental SSC Report.

Mr. Seger summarized Agenda Item E.9.d, Supplemental TIQC Report (highlighting the recommendations on Page 9).

Mr. Dayna Matthews provided Agenda Item E.9.d, Supplemental EC Report.

E.9.e Public Comment (06/14/07; 2:16 pm) – Vice Chairman Ortmann

Mr. Joe Bersch, Supreme Alaska Seafoods, Seattle, WA
Mr. James P. Walsh, Pacific Seafood Group, Seattle, WA
Mr. Jim Caito, Caito Fisheries, Fort Bragg, CA
Mr. Bruce Prenguber, Globalwise (for West Coast Seafood Processors Association), Portland, OR
Mr. Ralph Brown, fisherman, Brookings, OR
Mr. William Daspit, economist, Seattle, WA
Ms. Johanna Thomas, Environmental Defense, Oakland, CA
Mr. Mike Okoniewski on behalf of Rick Harris, Pacific Seafoods, Eureka, CA
Mr. Peter Huhtula, PMCC, Astoria, OR
Mr. Tom Libby, Pt. Adams Packing, Hammond, OR
Mr. Mike Okoniewski, Pacific Seafood, Woodland, WA
Mr. Matt Lund, Ocean Beauty, Seattle, WA
Mr. Allen Kimball, Trident Seafoods, Seattle, WA
Mr. Richard Carol, Ocean Gold Seafoods, Westport, WA
Ms. Laura Pagano, NRDC, San Francisco, CA
Mr. Stuart Nelson, consultant, Canada
Mr. Kurt Cochran, F/V Marathon, Siletz, OR
Mr. Brent Paine, United Catcher Boats, Seattle, WA
Mr. Mike Stone, United Catcher Boats, Seattle, WA
Ms. Donna Parker, Arctic Storm Management Group, Seattle, WA
Mr. Brad Pettinger, Oregon Trawl Commission, Astoria, OR
Mr. Steve Hughes, United Catcher Boats, Seattle, WA

E.9.f Council Action: Refine Alternatives for Analysis

Dr. Hanson moved (Motion 13) to adopt the alternatives contained in Agenda Item E.9.a Attachment 2, with the following modifications:

- in Section A-2.1.3 (page 23) maintain Option 2 (equal sharing of the buyback permit QS pool);
- in Section A.2.2.1 (page 25), maintain element 6 on a minimum holding requirement and encourage the GMT to explore this area further;
- eliminate adaptive management (item 4 of Section A.2.4 and A-3 adaptive management (page 29));

- in footnote t (page 32) increase the own-or-control accumulation limit options for the shoreside whiting sector to 10%, 15%, and 25% and eliminate reference to the 50% rule for ownership affiliation for the mothership sector, as requested by industry;
- under movement between motherships (page 41) strike option b (the option allowing vessels to move between motherships without participating in the non-co-op fishery) ;
- under co-op formation and structure (page 44) replace the third paragraph with two options, as recommended on page 5 of the TIQC Report.

With respect to maintaining Option 2 in Section A-2.1.3, Dr. Hanson noted that he reached this recommendation based on data that had been developed since the GAC meeting at which the recommendation to drop Option 2 had been developed. Mr. Anderson seconded the motion.

Mr. Moore moved to amend Motion 13, by dropping the third item in Section A-2.4 (page 29) and, in the first paragraph under shoreside sector co-op formation and structure (page 44), replacing “date range to be determined” with “single year 2001, single year 2000, and range of years 2000-2003 inclusive” as recommended in E.9.d, Supplemental Public Comment 4. Mr. Frank Warrens seconded the amendment to Motion 13. With respect to dropping item 3 of A-2.4, Mr. Moore noted testimony that Congressional action would be required and this cannot be presupposed. The amendment passed. Mr. Anderson voted no.

Ms. Vojkovich moved to amend Motion 13 by reinserting A-3 adaptive management as described on page 29, and item 4 in A-2.4 (page 29). Mr. Melcher seconded the amendment. Ms. Vojkovich commented that the range in the alternatives should be broad until analysis has been provided. The adaptive management provision can (1) help respond to transitional issues and provide incentives to reduce bycatch through different fishing practices, new gear designs, etc.; (2) help address some community issues such as maintaining infrastructure and drawing fishermen into a port to establish port capacity; and (3) provide an “insurance mechanism” to deal with uncertainty. The QP will flow through the LE fleet, therefore the amount of the allocation designated for this program will not go unused. At this time, the alternative should cover all sectors, however, if the analysis shows that this creates a problem or does not serve its intended purposes with respect to the whiting fleet, that can be changed. This program may also serve agency public trust responsibilities that go beyond the needs of the fishing fleet.

Mr. Moore moved to amend Ms. Vojkovich’s amendment by modifying the first phrase of the adaptive management section (Section A-3, page 29) by replacing “In each of the first 10 years of the program” with “in each year of the program.” Mr. Warrens seconded the amendment. Mr. Moore stated he was not certain he would support adaptive management and expressed concern about the number of provisions being added for analysis. Nevertheless, he believed that the 10-year sunset provision was too short, particularly in light of the testimony indicating that a similar program in Canada is going strong and of continued utility after 10 years. Mr. Lockhart concurred. Dr. Hanson, expressed concern that the program would impose up to a 10% tax on the industry that would not necessarily fall equally on everyone, that when the set aside is reallocated out to the fishers some will get less while others get more, and that the allocation process may require a two to three meeting process and involve multiple types of incentive programs. Mr. Lockhart disagreed with characterizing the program as a 10% tax, since some, most, or all of the 10% will flow back to the fishermen. With respect to process, while Mr. Lockhart was concerned with the burden that might be associated with some of the incentive programs that had been suggested, there were also some that might be relatively simple to implement and not require revision during every management cycle (for example bycatch reduction incentives). It was noted that Dr. Hanson’s comments applied more to Ms. Vojkovich’s motion than Mr. Moore’s. Mr. Moore’s amendment passed.

On Ms. Vojkovich’s amendment, Mr. Myer said he would vote no because the tax should not be on the whiting industry especially if it is not specified that the amounts withheld go back into the sector from which it came. Ms. Vojkovich’s amendment passed. Dave Ortmann and Dale Myer voted no.

Mr. Anderson noted that on page 44 the main motion included 3 different landing history periods that would replace the “date range to be determined” and no basis had been provided for the range of dates. He noted his opposition to the amendment to the motion was based on the lack of information on the implications of the ranges provided. Mr. Moore noted that the alternatives had been developed through an industry process and at this time he did not have more information on the rationale for the range.

Motion 13 passed.

Dr. Hanson moved (Motion 14), that the Council

Move forward for analysis the recommendations provided in the following sections of the Supplemental TIQC report (E.9.c):

- “Provide Options for Management of Bycatch Pools” (page 2, applies to IFQ alternative)
- “Apply Bycatch Pools Only to At-sea Sectors Under the Three Sector Option” (page 2, applies to IFQ alternative)
- “Move Forward With Consideration of Electronic Logbooks and Split Loads (A-2.3.1)” (page 3, applies to IFQ alternative)
- “Allow Separation of the Whiting Co-op Endorsement from the Permit” (page 5, applies to co-op alternative).

And, adopt the following recommendations from the GAC Report, E.8.b:

- Bring back for consideration an option that would establish in advance the mechanism for creating or shifting the boundary of area specific quota shares (page 3)
- Move forward with analysis of the proxy species/bycatch approach for allocating overfished species and request GMT and SSC review (page 4)
- Develop options for reallocation of QS when species are rebuilt or declared overfished (page 4)

Mr. Lockhart seconded Motion 14.

Mr. Anderson moved to amend Motion 14 to include the recommendations of the GMT (supplemental GMT Report 2).

- Analyze an alternative that includes a minimum holding requirement for constraining overfished species with a specific area component as well as an opportunity to provide for pooling.
- Analyze an alternative, specific to the directed Pacific whiting fishery, that issues IFQs for whiting but not for overfished species. Allow overfished species to be managed in a pool, accessible by all whiting sectors or as a pool for each whiting sector.
- Analyze an adaptive management proposal, consistent with the goals of the fishery management plan.
- Analyze the allocation of Pacific halibut bycatch quota based on a bycatch rate with depth and latitude divisions.
- Analyze allocating overfished species based on a bycatch rate (proxy species allocation).

Mr. Cedergreen seconded the amendment to Motion 14. Mr. Anderson noted that some had already been picked up in previous motions but he wanted to make sure they were all in.

Mr. Moore moved to amend Mr. Anderson’s amendment by incorporating the TIQC recommendation to extend time for the coverage of catch when a fisherman is within the QP carryover limits (page 3 of Supplemental TIQC, Report E.9.c). Mr. Myer seconded the amendment. Mr. Moore’s motion to amend passed.

Mr. Anderson’s amendment passed.

Mr. Anderson, noted that he would not move to amend the motion but that he does concurs with GMT Report E.9.c which recommends in part that the TIQ program incorporate area management tools

currently in use and continue to pursue data and research informing spatial management.

Mr. Seger asked whether Dr. Hanson's intent was to put the provisions on splitting loads and electronic logbooks back into the program or to pursue them in a separate process? Dr. Hanson said it could be a separate process but that the intent is that they be in place when the program is implemented, this was general guidance as provided to cleanup the options. Motion 14 passed as amended.

Dr. Hanson moved and Ms. Vojkovich seconded Motion 15 (Agenda Item E.9.e, Supplemental Motion) and requested a response by November at the latest, ideally September. Mr. Lockhart noted time constraints and workload may limit NOAA GC's ability to respond. Ms. McCall noted that legal issues relative to the alternatives had been under discussion and guidance provided but that more definitive answers had not been provided because the alternatives were still in flux. They are looking at the whole program, and in particular the co-op proposals, to determine whether the needed authority exists under the MSA and whether there are non-MSA issues of concern, such as anti-trust. She asked about the need for formal written response and commented on the degree of internal review that would be required for such a response. She also noted that she would have posed questions differently from the way they were presented in Dr. Hanson's motion. Dr. Hanson noted that this guidance will be important, whether or not it was a formal written response. He asked that a response be provided for the September meeting and advice provided at that time as to whether some of the questions should be asked differently or whether other questions should be asked. Motion 15 passed.

With respect to Mr. Daspit's Optimum Species-Harvesting Unified Allocation (OSHUA) plan, and his concern about the absence of GMT response, Mr. Anderson noted the GMT takes their workload guidance from the Council. Additionally, Mr. Anderson noted he had reviewed the OSHUA plan very carefully, that some components are being picked up in the alternatives going forward for analysis, and that other components are not worthy of moving ahead. He thought there are some innovative pieces that have merit and may be included as part of future management strategies.

E.10 Final Consideration of Inseason Adjustments (if Needed)

E.10.a Agenda Item Overview (06/15/07; 8:10 am)

Mr. DeVore provided the agenda item overview.

E.10.b Report of the GMT

Ms. Kelly Ames provided Agenda Item E.10.b, Supplemental GMT Report.

Ms Culver asked if a start date of August 1 is proposed and Ms. Ames said yes. Ms. Culver asked how long these DTL limits would continue and Ms. Ames said they would continue until the GMT recommends a change.

E.10.c Agency and Tribal Comments

None.

E.10.d Reports and Comments of Advisory Bodies

GAP Report

Mr. Gerry Richter provided a brief oral report on behalf of the GAP. The GAP concurred with the GMT recommendation and thanked the GMT for reconsidering this inseason adjustment.

Chairman Hansen asked what DTL limit increase would trigger a significant effort shift to the Conception area and Mr. Richter responded this limit increase is minor and would occur later in the season. Therefore, this adjustment is not believed to result in a significant effort shift to the south.

E.10.e Public Comment

None.

E.10.f Council Action: Adopt or Confirm Final Adjustments to 2007 Groundfish Fisheries

Mr. Moore moved and Ms. Culver seconded a motion (Motion 16) to adopt a sablefish trip limit of 350 lbs per day, or one landing of 1,050 lbs per week, for the open access fishery in the Conception Area (south of 36° N latitude) beginning August 1 as presented in Agenda Item E.10.b, Supplemental GMT Report.

Motion 16 carried on a unanimous voice vote.

E.11 Amendment 15: American Fisheries Act Issues

E.11.a Agenda Item Overview (06/15/07; 8:16 am)

Mr. Burner provided the agenda item overview. Mr. Myer pointed out that on page 11 of the draft EA (Agenda Item E.11.b, Attachment 1) the following editorial changes need to be made to reflect the motion passed in April:

- For motherships (two alternative definitions for analysis) as:
 - having ~~caught and processed~~ received at least 1,000 mt of Pacific whiting in any one qualifying year; or
 - having ~~caught and processed~~ received at least 1,000 mt of Pacific whiting in any one qualifying year subsequent to December 31, 1996.

E.11.b Alternatives Analysis Report

Ms. Gway Kirshner and Ms. Kelly Ames explained Agenda Item E.11.b, Supplemental ODFW Report and Agenda Item E.11.b, Supplemental Attachment 4.

Mr. Lockhart reviewed a table in Agenda Item E.11.a, Supplemental NMFS Report, showing a list of vessels registered for use with both West Coast groundfish limited entry permits and AFA permits; and a draft timeline for Federal implementation of Amendment 15.

Mr. Lockhart read Agenda Item E.11.b, Attachment 3, NMFS Report, on analytical needs under the National Environmental Policy Act. He noted the NMFS report was generated by a new internal NMFS process. One result of the internal NMFS scoping process is a recommendation that the alternatives for Amendment 15 be analyzed by an EA rather than an EIS and he stressed the importance of developing a strong record and clear purpose and need statement.

E.11.c Reports and Comments of Advisory Bodies

Ms. Ames provided Agenda Item E.11.c, Supplemental GMT Report. Mr. Dan Waldeck provided Agenda Item E.11.c, Supplemental GAP Report.

E.11.d Public Comment

Mr. Craig Cochran, F/V Bay Islander, Newport, OR
Mr. Dan Waldeck, Pacific Whiting Conservation Cooperative, Portland, OR
Mr. Mike Hyde, American Seafoods, Seattle, WA
Mr. Brent Paine, United Catcher Boats, Seattle, WA
Mr. Chris Garbrick, F/V Mark I, Seattle, WA
Mr. Mark Cooper, Cooper Fishing, Inc., Toledo, OR
Mr. Joe Bersch, Supreme Alaska Seafoods, Seattle, WA
Mr. Richard Carroll, Ocean Gold Seafoods, Westport, WA

E.11.e Council Action: Adopt AFA Alternatives for Public Review

Mr. Melcher moved and Mr. Warrens seconded a motion (Motion 17) to adopt Agenda Item E.11.e, Supplemental ODFW Motion.

**MOTION: OREGON DEPARTMENT OF FISH AND WILDLIFE SUPPLEMENTAL
REPORT ON THE AMENDMENT 15 DRAFT ENVIRONMENTAL ASSESSMENT**

The Oregon Department of Fish and Wildlife (ODFW) has reviewed the Purpose and Need Statement and the proposed alternatives limiting participation in the Pacific whiting fishery contained in the Amendment 15 Draft Environmental Assessment (Agenda Item E.11.a, Attachment 1). ODFW offers the following recommendations:

Review the proposed action and the purpose and need for such action

ODFW recommends adopting Purpose and Need Statement 2, as contained in Agenda Item E.11.b, Supplemental ODFW Report, Table 1, adding the specificity of implementation prior to the 2008 Pacific whiting fishery. The recommended Purpose and Need Statement is as follows:

“The proposed action is to develop conservation and management measures to protect the west coast non-tribal Pacific whiting fishery and the participants in the fishery from adverse impacts caused by the AFA or by any fishery cooperatives in the directed pollock fishery and non-AFA vessels; specifically vessels with no sector-specific historical participation in the Pacific whiting fishery with the goal of implementing the recommended measures prior to the start of the 2008 Pacific whiting fishery.”

This purpose and need statement, specific to the Pacific whiting fishery and encompassing both AFA and non-AFA-permitted vessels is consistent with the Magnuson-Stevens Act requirements and it fulfills the Council’s goal of preventing conservation and socio-economic harm in the fishery. This protection is needed as a stop-gap measure to maintain consistency in the fishery and is intended to be in place until such time as a program to rationalize the fishery is implemented.

Review the range of alternatives and modify as necessary

The alternatives adopted at the April 2007 Council meeting do not address non-AFA-permitted participation in the Pacific whiting fishery. To address this portion of the fishery, and to meet the Purpose and Need Statement recommended previously, ODFW recommends the following range of alternatives be included for analysis (Table 1):

Table 1. Proposed alternatives for analysis in the Amendment 15 Environmental Assessment.

Alternative 1 (No action) Status quo	Alternative 2A (2005 season) Historical sector-specific participation	Alternative 3A (2006 season) Historical sector-specific participation
Do not limit participation in the Pacific whiting fishery	January 1, 1994 – January 1, 2006 for catcher vessels, catcher-processors and motherships	January 1, 1994 – January 1, 2007 for catcher vessels, catcher-processors and motherships
	2B (2005 season) Sector Allocation Date	3B (2006 season) Sector Allocation Date
	December 31, 1996 – January 1, 2006 for catcher-processors and motherships	December 31, 1996 – January 1, 2007 for catcher-processors and motherships

Mr. Melcher noted that based on the Council's earlier discussions and public record regarding the temporary rule limiting participation in the current Pacific whiting season, it seems clear that the scope of the action considered under Amendment 15 should be broadened to include all vessels, not just those permitted under the AFA and therefore he ruled out Purpose and Need Statement 1. Additionally he ruled out Purpose and Need Statement 3 because, based on public comment, he felt there was no imminent risk of vessels entering the non-whiting groundfish trawl fishery and that Purpose and Need Statement 2 would adequately address such concerns.

Mr. Melcher stated the choice of qualifying years was made to be consistent with earlier Council action and that he did not include the definitions of significant participation in the motion to be consistent with the temporary rule issued by NMFS to limit participation in the 2007 season.

Mr. Moore asked if the motion's reference to the Pacific whiting fishery specifically meant the directed Pacific whiting fishery. Mr. Melcher confirmed his intent was to only consider landings in the directed fishery and not those in any other fishery such as incidental landings in other groundfish trawl fisheries.

Mr. Moore asked about the narrowing of the alternatives as presented in the ODFW Report. Mr. Melcher felt the range of alternatives in the motion adequately met the purpose and need for the action and that the qualifying dates in the omitted alternatives were tied to control dates the Council implemented in response to the AFA and because the proposed action has been broadened to all vessels, he was not compelled to include them.

Mr. Myer stated he and some during public comment felt strongly about defining significant historic participation and moved to amend the main motion to include the previously corrected definitions beginning on the bottom of page 11 of the EA (Agenda Item E.11.b, Attachment 1) as listed below. Mr. Cedergreen seconded the amendment.

"Significant historic participation" is defined:

- For catcher/processors (two alternative definitions for analysis) as:
 - a. having caught and processed at least 1,000 metric tons (mt) of Pacific whiting in any one qualifying year; or
 - b. having caught and processed at least 1,000 mt of Pacific whiting in any one qualifying year subsequent to December 31, 1996.
- For motherships (two alternative definitions for analysis) as:
 - a. having received at least 1,000 mt of Pacific whiting in any one qualifying year; or
 - b. having received at least 1,000 mt of Pacific whiting in any one qualifying year subsequent to December 31, 1996.
- For catcher vessels in the shore-based or mothership fishery (two alternative definitions for analysis) as:
 - a. having landed at least 500 mt of Pacific whiting in any one qualifying year; or
 - b. having landed at least 1,000 mt of Pacific whiting in any one qualifying year .

Mr. Myer stated that defining significant historic participation is an important part of the proposed motion and that the analysis of these definitions will be greatly benefited by analyses already being conducted under the trawl rationalization process.

Mr. Lockhart asked how inclusion of these definitions better addresses the purpose and need statement in the main motion. Mr. Myer noted that in 1997 regulations were implemented that divided the fishery into the three sectors and, in addition, that action provided a definition of a mothership and prohibited vessels acting as catcher/processors from crossing sectors and participating in the shoreside or mothership sector. Mr. Myer felt that without defining historic participation, the door could be opened to allow vessels to cross sectors again even though their historic participation levels in some sectors is quite small. Including definitions of significant participation in the alternatives would allow the Council to consider additional constraints on the fishery and stay consistent with current regulations.

Ms. Vojkovich asked Mr. Myer if these participation levels are to be applied to both time periods or just for the time periods beginning in 1994? Mr. Myer said it would be best if it was applied to all time periods to give us the broadest analytical results for decision making.

Mr. Burner asked for clarification on the necessity of the “b” alternative definitions under the catcher/processor and mothership definitions because, unlike the alternatives approved in April, the alternatives in the main motion include varying start dates for the alternative qualifying periods. Mr. Myer agreed the “b” sub-options are unnecessary.

Mr. Melcher confirmed with Mr. Myer that his motion includes the historic participation definitions as presented for the catcher vessel sector.

Mr. Moore asked if adequate data exists to analyze participation levels for catcher/processors and motherships in the earlier years of the proposed qualifying periods (1994-1996). Mr. Lockhart said the data after 1996 is better data than what is available for the earlier years. Mr. Moore asked if the lower quality data could result in excluding or including participants based on poor information. Dr. Freese said there is information available for all of the vessels that participated since 1994. The data quality issues mostly involve the catcher vessels in the mothership sector resulting in estimates of total catch for the early years that differ by about 1 to 2 percent. Dr. Freese did not think the data issues would effect an analysis of who does and does not meet the participation criteria.

Mr. Moore asked if including the historic participation definitions significantly adds to the analytical burden or the required timeframe given the data issues. Mr. Lockhart said the easy part is working with the existing database and finding out which vessels meet this participation criteria. He said the analysis would get more complicated due to data limitations as additional analyses are requested.

Mr. Melcher asked if the analysis of these participation definitions is easier for the catcher/processors and the motherships than for the catcher vessels? Dr. Freese reported the analysis is equally difficult for all three sectors.

Dr. Hanson noted that Mr. Myer's amendment included the participation definitions for the catcher vessel sector and an amendment would be required to remove them.

Mr. Moore made an amendment to Mr. Myers amendment, to delete the bullet points on page 12 of the EA (Agenda Item E.11.b, Attachment 1) that reference catcher vessels. Mr. Warrens seconded the amendment.

Mr. Moore stated he understands Mr. Myer's concerns, but given the data for the catcher vessels in the earlier years is of poorer quality than for the other sectors he is uncomfortable including catcher vessels. Mr. Moore voiced concern about making decisions on poor quality data and delaying the implementation of this important matter.

Chairman Hansen asked for vote on Mr. Moore's amendment. Ms. Vojkovich voted no. Mr. Moore's amendment passed.

Ms. Culver moved to amend Mr. Myer's amendment to remove suboptions "b" under alternatives 2 and 3 on page 11 of the EA (Agenda Item E.11.b, Attachment 1). Mr. Melcher seconded the amendment to Mr. Myer's amendment.

Chairman Hansen asked for vote on Ms. Culver's amendment. Ms. Culver's amendment passed unanimously.

Chairman Hansen asked for vote on Mr. Myer's amendment. Mr. Myer's amendment passed unanimously.

As a result of these two amendments the motion included the following definitions:

"Significant historic participation" is defined:

- For catcher/processors (two alternative definitions for analysis) as:
 - a. having caught and processed at least 1,000 metric tons (mt) of Pacific whiting in any one qualifying year; or
 - b. ~~having caught and processed at least 1,000 mt of Pacific whiting in any one qualifying year subsequent to December 31, 1996.~~
- For motherships (two alternative definitions for analysis) as:
 - a. having received at least 1,000 mt of Pacific whiting in any one qualifying year; or
 - b. ~~having received at least 1,000 mt of Pacific whiting in any one qualifying year subsequent to December 31, 1996.~~
- ~~For catcher vessels in the shore-based or mothership fishery (two alternative~~

definitions for analysis) as:

- a. ~~having landed at least 500 mt of Pacific whiting in any one qualifying year; or~~
- b. ~~having landed at least 1,000 mt of Pacific whiting in any one qualifying year.~~

Ms. Culver asked for clarification regarding only considering landings in the directed whiting fishery and asked what threshold would be used to differentiate between directed and incidental fisheries. She recalled the cutoff that was used in recent years was 4,000 lbs and in prior years it was 10,000 pounds. She asked if the intent was to use historic, year-specific regulations to determine historic participation in the whiting fishery.

Mr. Melcher said the intent of the motion is to capture the primary directed whiting fishery. He deferred to NMFS on how that is defined. He continued that if there has been changes in the definition over the years, it would be appropriate to consider that in the analysis.

Mr. Lockhart asked Ms. Culver why one value, say 4,000 pounds, could not be used. Ms. Culver explained that if 10,000 pounds was the actual threshold in a qualifying year and the analysis used 4,000 pounds, vessels would qualify for the directed fishery in the analysis of earlier years even though they did not qualify for the directed fishery under the regulations in place for that particular fishing year. Mr. Lockhart agreed the analysis needs to consider year-specific regulations when defining participation in the directed fishery.

Mr. Lockhart asked Mr. Melcher if the intent of the motion would be to only limit participation in the directed fishery or if it was broader than that. Mr. Melcher said his intent is to capture what was done in the temporary rule for 2007 and limit only the directed fishery. Mr. Lockhart confirmed with Mr. Melcher that sector-specific participation is intended to mean a vessel may only qualify to participate in a sector for which it meets the historic qualification criteria, a vessel cannot qualify for one sector based on its history and then cross into another sector for which it has no qualifying history.

Mr. Lockhart asked if it is the Council's intent that this proposed action would be an interim measure until such time a rationalization program for the trawl fleet was implemented. Mr. Melcher stated this proposed action is interim and a rationalization program would supersede this action when and if one is implemented.

Mr. Lockhart referenced the last line in the proposed purpose and need statement regarding the importance of completing this action in time for the 2008 season and asked for some additional discussion of why this could not wait until the outcome of the rationalization efforts was known. Mr. Melcher said we have heard in public testimony today, and at the last several Council meetings, that the whiting fishery is coming under more and more pressure for many reasons, including improving markets. It seems clear, based on testimony from all of the sectors, that there are vessels waiting to see how this Council acts on this matter and waiting to see how fisheries progress in Alaska, with the intent of entering the 2008 fishery if we don't have something in place. The Council felt this way about the 2007 fishery and twice recommended temporary rules be implemented to protect the fishery and the resource. Mr. Melcher believes the Council feels the 2008 season could experience equal or greater problems than those which faced the 2007 season.

Ms. Culver agreed with Mr. Melcher's comments relative to potential problems in 2008. She noted that the importance of completing this action by the 2008 season is evident in the range of alternatives being considered. The purpose and need statement is addressing the goal of completing the action by 2008

which may be preventing us from exploring a broader range of alternatives.

Chairman Hansen asked for a vote on Main Motion 17. Main Motion 17 passed unanimously as amended.

Dr. McIsaac discussed the matter of confidential data and the proposed analysis of the alternatives planned for the summer. An inter-agency workgroup has been established for this and asked the principals of the workgroup if the analyses asked for in the motion could be completed given the timeframe at hand and the confidential nature of some of the requisite data. Mr. Lockhart said he felt the analyses could be done over the summer and stated NMFS will work with NMFS General Council to ensure confidentiality rules are followed and problems are resolved. Regarding the availability of resources, Mr. Lockhart noted the Council now has one additional economist and NMFS Northwest Regional Office has one less. Dr. McIsaac noted the Council did have the pleasure of introducing Mr. Burden earlier in the week and stated Mr. Burden, along with most of the economists in this process, will primarily be working on rationalization issues. Dr. McIsaac further noted there is a possible Oregon candidate and Council staff will continue to explore options for completing the socioeconomic aspects of the analysis. Dr. McIsaac said he would like to leave this meeting with the understanding that those folks on the workgroup will continue work on the EA with the goal of meeting the August deadline for the September briefing book.

Mr. Melcher clarified that Dr. McIsaac's reference to Oregon assistance in the economic analysis would be a hired contractor.

F. Coastal Pelagic Species Management

F.1 NMFS Report (06/13/07; 11:18 am)

F.1.a NMFS Activity Reports

Mr. Mark Helvey provided the report and referenced Agenda Item F.1.a, NMFS Report. Mr. Helvey reported that as of May 23, 2007 the Pacific mackerel fishery had landed 7,500 mt of the 19,345 mt harvest guideline and the Pacific sardine fishery had landed 24,000 mt of the 152,564 mt harvest guideline.

Since the last Council meeting, NMFS has engaged in several regulatory actions. Regarding Amendment 12, the amendment was approved and the letter of approval is included as Agenda Item, F.1.a, Attachment 1. Regarding Amendment 11 covering sardine allocation, the final rule regarding reporting requirements for sea otter interactions has published and is included as Agenda Item F.1.a, Attachment 2.

F.1.b Reports and Comments of Advisory Bodies

None.

F.1.c Public Comment

None.

F.1.d Council Discussion

None.

F.2 Pacific Mackerel Stock Assessment and Harvest Guideline for 2007-2008

F.2.a Agenda Item Overview (06/13/07; 11:22 am)

Mr. Mike Burner provided the agenda item overview.

F.2.b NMFS Report

Dr. Emmanis Dorval provided a PowerPoint presentation on the current Pacific mackerel stock assessment that is available on the Council's website at:

http://www.pcouncil.org/bb/2007/0607/F2b_NMFSPT_Sup.pdf

Mr. Anderson asked about the quality and source of the data used to estimate biomass in the 1920's and 30's. Dr. Dorval stated that fishery and biological data was collected back then by both CDFG and the CalCOFI program. This data is useful for informing the model, but has limitations. Mr. Anderson further noted that the model recommended by the STAT and STAR Panel projects higher biomass levels than other models used in recent years and asked about the STAT's degree of confidence in the new model. Dr. Dorval stated that the STAT believes the new assessment produces the best estimates and noted that recruitment variability in the previous assessments was constrained to values well below those you would expect for a very productive pelagic stock like Pacific mackerel. The STAT and the STAR were in agreement that the recruitment variability in the model should be increased.

Ms. Vojkovich asked if the harvest guideline as presented and calculated using the harvest control rule represents the acceptable biological catch (ABC). Mr. Burner confirmed that the harvest control rule calculates the highest harvest target available for management which also serves as the ABC. The FMP allows the Council to set harvest guidelines at or below the ABC.

F.2.c Reports and Comments of Advisory Bodies

Dr. Bob Conrad provided Agenda Item F.2.c, Supplemental SSC Report. Dr. Andre Punt fielded technical questions.

Mr. Anderson asked about the limited data and the lack of a reliable index of abundance noted in the statement. Dr. Punt stated that of the three indices evaluated by the STAR Panel, the CPFV index informs the early years of the time series and all three have limitations for use in recent years because spotter pilot surveys are diminishing, the CalCOFI survey is not informative about larval production in Mexico where the bulk of production is assumed to occur, and the CPFV index is fishery-dependent and catches relatively few Pacific mackerel. Dr. Punt noted that the biomass estimates in the 1920's are very uncertain, but they do not have direct bearing on the formula for the current recommendations on the harvest guideline.

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

Ms. Vojkovich referenced the CPSMT recommendation that the 2007-08 harvest guideline not exceed 40,000 mt and asked Dr. Herrick if the relationship of harvest guideline to the overall biomass estimate for the 2007-08 fishing season is comparable to last year's management measures. Dr. Herrick stated that

he has not directly compared the two seasons in this way, but in his estimation the relationship of the harvest guideline to the overall biomass effort in the current fishery is similar to that recommended for next season.

Mr. John Royal and Mr. Mike Okoniewski provided Agenda Item F.2.c, CPSAS Report. Mr. Okoniewski added that it is his understanding that upcoming season in Japan is also anticipated to be improved which could limit the marketability of U.S. landings.

Ms Vojkovich noted the fishery has not taken the full harvest guideline in recent years and asked about the discussion within the CPSAS regarding the harvest recommendations for the next season, specifically any speculations on the markets for Pacific mackerel. Mr. Burner recalled the CPSAS discussion regarding markets and availability of Pacific mackerel and stated the value of 40,000 mt is mentioned in the FMP, not as a maximum catch value, but rather as an estimation of what the market can bear. Several CPSAS members felt the 40,000 mt value was outdated and not accurate and discussed harvest guideline recommendations above the 40,000 mt level. The CPSAS noted Pacific mackerel landings are highly variable due to seasonal migrations off-shore, the price of fuel, and the availability of market squid. Because the CPSAS generally felt it is not likely the directed fishery will attain the 40,000 mt and the fact that the Council could release additional fish to the directed fishery as a routine action in the spring, the CPSAS settled on the recommendation of 40,000 mt.

Mr. Royal concluded with an emphasis on the importance of working with Mexico on joint management of Pacific mackerel and noted there are strong indications that the tuna net-pen operations in Mexico are expanding.

F.2.d Public Comment

None.

F.2.e Council Action: Approve Stock Assessment and Harvest Guideline

Ms. Vojkovich moved and Mr. Thomas seconded a motion (Motion 8) to accept the stock assessment for Pacific mackerel as shown in Agenda Item F.2.b, Attachment 1 and adopt an ABC of 71,629 and a harvest guideline for the directed fishery of 40,000 mt for the 2007-2008 Pacific mackerel season beginning on July 1, 2007. Also, provide guidance to NMFS that, in the event the directed fishery reaches 40,000 mt, close the directed fishery and revert to an incidental-catch-only fishery. Under this incidental-catch-only fishery, implement a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS, except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS.

Ms. Vojkovich said she did not think there is a risk associated setting the harvest guideline at 40,000 mt even though there is uncertainty in the new version of the model. Given the performance of the fleet in the past few years, this harvest guideline may appear unnecessary, but the FMP provides guidance in this matter and when the fish are available we have taken over 40,000 mt at least once in the past ten years. Ms. Vojkovich supported the proposed efforts to explore new modeling platforms and methodologies in September with the hopes of improving next years' stock assessment update and future management actions by the Council.

Motion 8 passed.

Ms. Vojkovich noted the issue of the lack of data from Mexico is always in our reports and is discussed

annually. The Council has sent letters to NMFS on this matter and she felt it would be appropriate to convey these concerns to the U.S. Department of State. Specifically, she noted the letter should include recommendations in the STAR Panel report (Agenda Item F.2.b, Attachment 2) particularly the recommendations in Section 5.1 and Section 6.F.

Mr. Helvey said NMFS has had discussions on this issue and is in agreement with the direction given by Ms. Vojkovich.

Mr. Burner said Council staff stated that due to the uncertainty in Pacific mackerel season expectations, he does not, at this time, recommend the Council plan a formal review of the fishery at the March or April 2008 Council meetings. Council and NMFS staff will track the fishery and inform the Council if such a review becomes warranted.

ADJOURN

The 189th Council meeting was adjourned at 2:53 pm on Friday, June 15, 2007.

DRAFT

Council Chairman

Date

DRAFT VOTING LOG
Pacific Fishery Management Council
June 2007

Motion 1: Approve the agenda as shown in Agenda Item A.4, Council Meeting Agenda with the cancelation of the Legislative agenda item.

Moved by: Rod Moore
Motion 1 passed.

Seconded by: Mark Cedergreen

Motion 2: Approve the draft COP (HMS Recommendations to Regional Fishery Management Organizations) as shown in Agenda Item B.2.a, Attachment 1, with the following changes: page 2—first paragraph for recommendations to IATTC—strike “will solicit input from” and insert “will confer with the WPMFC’s Pelagic team”; second paragraph under Recommendation to the IATTC, consistent with revisions provided to staff, which would add language noting that the NMFS SWR Regional Administrator serves as an IATTC Commissioner; also on page two in the following paragraph change the language “inviting the U.S. Commissioners to the June Council meeting” to “forwarding to the U.S. Section through the NMFS SWR Regional Administrator, who usually serves as a Commissioner to the IATTC.”; page—3 same recommendation to replace “will solicit input from” and replace it with “will confer with the WPMFC’s Pelagic team”; page 4—final paragraph—strike “commercial troll fishery for North Pacific albacore tuna” and insert “West Coast commercial fisheries for HMS species”.

The motion includes allowing Council staff to make editorial amendments/changes.

Moved by: Rod Moore
Motion 2 passed.

Seconded by: Frank Warrens

Motion 3: For Developing Biennial (2009-2010) Harvest Specifications and Management Measures, adopt the process and schedule shown in Agenda Item E.2.a, Attachment 1: *Pacific Fishery Management Council and National Marine Fisheries Service Schedule and Process for Developing 2009-2010 Groundfish Harvest Specifications and Management Measures*.

Moved by: Marija Vojkovich
Motion 3 passed.

Seconded by: Roger Thomas

Motion 4: Adopt the following as shown in Agenda Item E.3.f, Supplemental ODFW Motion, June 2007: Alternative 4 (EMS and Catch Monitors) as presented in the draft EA (Agenda Item E.3.b, Attachment 3) Table 2.1 with the following amendments:

1. Third-party shoreside catch monitors (trained by or to NMFS specifications) responsible for all shoreside observation, species composition, fish ticket verification, biological sampling and all other duties and responsibilities defined in the EA for the combination of Data Compliance Monitors, Industry Samplers and Port Biologists.
2. The initial shoreside sampling level will be determined by using the current level of program funding for shoreside observation to hire catch monitors. Evaluation of the

3. Overages will be reported on fish ticket and abandon to the state. Prohibited species will be donated. State enforcement will track compliance (status quo). (Motion intended to reference Alternative 4b, except for status quo alternative concerning the catch overage disposition.)

Moved by: Frank Lockhart Seconded by: Mark Cedergreen
Amendment failed. All voted no except Lockhart, Cedergreen, Culver, Sones.

Motion 5: Adopt the range of alternatives contained in Agenda Item E.4.a, Attachment 2 as presented by Mr. Boydston with the following changes: 1) add an alternative without use it or lose it provisions (i.e., no need to land groundfish against a B permit to renew the permit); 2) add GAP alternative 4 in Agenda Item E.4.c, Supplemental GAP report; 3) change range of dates to qualify for a B permit to April 1998- September 2006; 4) nearshore species' landings not counted for qualifying for a B permit. The motion includes anyone having a state nearshore permit can still land state nearshore species caught in federal waters.

Amendment: Include alternatives 1 and 2 from Agenda Item E.4.c, Supplemental WDFW Report. The amendment also includes an alternative for full transferability of Federal “B” permits.

Motion 6: For RecFIN, endorse a standard average weight computation methodology, with state-specific pooling rules, that result in an average weight that would be used on an annual or biennial basis in recreational catch management.

Motion 7: Adopt a final COP for the Groundfish Essential Fish Habitat Oversight Committee as shown in Agenda Item B.4.a, Attachment 1 with the following modifications: include the changes suggested by the HC to delete reference to EFH and incorporate, under general composition, the addition of an enforcement consultant representative. Include that having some consistency in the membership be a consideration of the Council Chair when making appointments.

Page 2 of 8

Motion 7 passed.

Motion 8: Accept the stock assessment for Pacific mackerel as shown in Agenda Item F.2.b, Attachment 1 and adopt a Pacific mackerel harvest guideline of 40,000 mt for the 2007-2008 season with a ABC of 71,629 mt to begin on July 1, 2007. Also provide guidance to NMFS that, in the event the directed fishery reaches 40,000 mt, NMFS close the directed fishery and revert to an incidental-catch-only fishery. Under this incidental-catch-only fishery, the CPSAS recommends a 45% incidental catch allowance when Pacific mackerel are landed with other CPS, except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS.

Moved by: Marija Vojkovich
Motion 8 passed.

Seconded by: Roger Thomas

Motion 9: Put forward all four submitted EFP applications as shown in Agenda Item E.5.a, Attachment 1, Supplemental Revised Attachment 2, Supplemental Revised Attachment 3, and Attachment 4 for further refinement, further analysis, and consideration for final adoption at the November Council meeting.

Moved by: Marija Vojkovich

Seconded by: Frank Lockhart

Amendment: Remove the TNC/ED EFP proposal as contained in Agenda Item E.5.a, Supplemental Revised Attachment 3 from the main motion.

Moved by: Rod Moore
Amendment failed. Ms. Vojkovich and Messrs. Sones, Melcher, Thomas, Warrens, Anderson, and Lockhart voted no.

Seconded by: Mark Cedergreen

Main Motion 9 passed. Mr. Thomas and Ms. Fosmark recused themselves from the vote. Mr. Moore voted no.

Motion 10: Approve and endorse the following full and updated stock assessments for Council decision making for the next biennial groundfish management cycle: sablefish, longnose skate, english sole, Pacific Ocean perch, and yelloweye rockfish.

Moved by: Phil Anderson
Motion 10 passed.

Seconded by: Marija Vojkovich

Motion 11: Adopt the following inseason commercial recommendations as shown in Agenda Item E.7.b, Supplemental GMT Report:

- increase the open access sablefish daily-trip-limit fishery weekly limit south of 36° N latitude to 800 lbs per week beginning August 1;
- increase the shortspine thornyhead limit in the limited entry fixed gear fishery south of 34°27' N latitude to 3,000 lbs per two months in period 4;
- implement a combined widow-bocaccio-shelf rockfish limit in the limited entry fixed gear fishery between 34°27' N latitude and 40°10' N latitude of 500 lbs per month beginning September 1;

- move seaward boundary of trawl RCA between Cascade Head and the Columbia River to 200 fm beginning August 1;
- increase the longspine thornyhead limits for large footrope trawls north of 40°10' N latitude to 25,000 lbs per two months beginning in period 4 for the remainder of the year;
- increase the Dover sole limits for limited entry groundfish trawls south of 40°10' N latitude to 80,000 lbs per two months beginning in period 4 for the remainder of the year;
- increase the chilipepper rockfish cumulative limit for small footrope trawls south of 40°10' N latitude to 800 lbs per month beginning August 1.
- change the period 4 implementation dates to August 1

Moved by: Rod Moore
Motion 11 passed.

Seconded by: Curt Melcher

Motion 12: For Amendment 21: Intersector Allocation, adopt the following alternatives for analysis, using Agenda Item E.8.a, Attachment 2 to adopt:

- status quo allocations;
- alternative 1 with allocations for four limited entry trawl sectors and all other sectors combined using 2003-2005 total catch percentages;
- alternative 2 with allocations for four limited entry trawl sectors, as well as the limited entry fixed gear, directed open access, and recreational sectors using 2003-2005 total catch percentages;
- alternative 3 with allocations for four limited entry trawl sectors and all other sectors combined using 1995-2005 landed catch percentages;
- eliminate alt 4;
- alternative 5 with allocations for four limited entry trawl sectors and all other sectors combined using 2003-2005 total catch percentages;
- eliminate alternative 6;
- alternative 7 with allocations for four limited entry trawl sectors and all other sectors combined using 1995-2005 landed catch percentages;
- eliminate alternative 8;
- set-asides to be determined for projected research, EFPs, and buffers (i.e., reserves);
- 5%, 15%, and 25% buffers (i.e., reserves);
- tribal fishery impacts in the analysis should use the current set-asides for sablefish and whiting, and the most recent tribal catches for other species (further government to government discussions will occur to pursue formal tribal allocations). Projected tribal catches by species will be considered as set-asides in the analysis;
- develop a framework process for future allocation of species not immediately allocated (i.e., for overfished species in alternatives 5 and 7).

Moved by: Phil Anderson
Motion 12 passed.

Seconded by: Dale Myer

Motion 13: Adopt the alternatives contained in Agenda Item E.9.a Attachment 2, with the following modifications:

- in Section A-2.1.3 (page 23) maintain Option 2 (equal sharing of the buyback permit QS pool);

- in Section A.2.2.1 (page 25), maintain element 6 on a minimum holding requirement and encourage the GMT to explore this area further;
- eliminate adaptive management (item 4 of Section A.2.4 and A-3 adaptive management (page 29));
- in footnote t (page 32) increase the own-or-control accumulation limit options for the shoreside whiting sector to 10%, 15%, and 25% and eliminate reference to the 50% rule for ownership affiliation for the mothership sector, as requested by industry;
- under movement between motherships (page 41) strike option b (the option allowing vessels to move between motherships without participating in the non-co-op fishery) ;
- under co-op formation and structure (page 44) replace the third paragraph with two options, as recommended on page 5 of the TIQC Report.

Moved by: Dave Hanson

Seconded by: Phil Anderson

Amendment: Drop the third item in Section A-2.4 (page 29) and, in the first paragraph under shoreside sector co-op formation and structure (page 44), replacing “date range to be determined” with “single year 2001, single year 2000, and range of years 2000-2003 inclusive” as recommended in E.9.d, Supplemental Public Comment 4.

Moved by: Rod Moore

Seconded by: Frank Warrens

The amendment to the main motion passed. Mr. Anderson voted no.

Amendment: Reinsert A-3 adaptive management as described on page 29, and item 4 in A-2.4 (page 29).

Moved by: Marija Vojkovich

Seconded by: Curt Melcher

Amendment to the Amendment: Modifying the first phrase of the adaptive management section (Section A-3, page 29) by replacing “In each of the first 10 years of the program” with “in each year of the program.”

Moved by: Rod Moore

Seconded by: Frank Warrens

The amendment to the amendment passed.

The amendment to the main motion passed. Messrs. Ortmann and Myer voted no.

Motion 13 passed as amended.

Motion 14: Move forward for analysis the recommendations provided in the following sections of the Supplemental TIQC report (E.9.c):

- Provide Options for Management of Bycatch Pools” (page 2, applies to IFQ alternative)
- Apply Bycatch Pools Only to At-sea Sectors Under the Three Sector Option” (page 2, applies to IFQ alternative)
- Move Forward With Consideration of Electronic Logbooks and Split Loads (A-2.3.1)” (page 3, applies to IFQ alternative)
- Allow Separation of the Whiting Co-op Endorsement from the Permit” (page 5, applies to co-op alternative).

And, adopt the following recommendations from the GAC Report, E.8.b:

- Bring back for consideration an option that would establish in advance the mechanism for creating or shifting the boundary of area specific quota shares (page 3)
- Move forward with analysis of the proxy species/bycatch approach for allocating overfished species and request GMT and SSC review (page 4)
- Develop options for reallocation of QS when species are rebuilt or declared overfished (page 4)

Moved by: Dave Hanson

Seconded by: Frank Lockhart

Amendment: Include the recommendations of the GMT (supplemental GMT Report 2):

- Analyze an alternative that includes a minimum holding requirement for constraining overfished species with a specific area component as well as an opportunity to provide for pooling.
- Analyze an alternative, specific to the directed Pacific whiting fishery, that issues IFQs for whiting but not for overfished species. Allow overfished species to be managed in a pool, accessible by all whiting sectors or as a pool for each whiting sector.
- Analyze an adaptive management proposal, consistent with the goals of the fishery management plan.
- Analyze the allocation of Pacific halibut bycatch quota based on a bycatch rate with depth and latitude divisions.
- Analyze allocating overfished species based on a bycatch rate (proxy species allocation).

Moved by: Phil Anderson

Seconded by: Mark Cedergreen

Amendment to the Amendment: Incorporate the TIQC recommendation to extend time for the coverage of catch when a fisherman is within the QP carryover limits (page 3 of Supplemental TIQC, Report E.9.c).

Moved by: Rod Moore

Seconded by: Dale Myer

The amendment to the amendment passed.

The amendment to the main motion passed.

Motion 14 passed, as amended.

Motion 15: Adopt Agenda Item E.9.e, Supplemental Motion, and request a response by November at the latest, ideally September.

Moved by: Dave Hanson
Motion 15 passed.

Seconded by: Marija Vojkovich

Motion 16: For groundfish inseason adjustment, adopt a sablefish trip limit of 350 lbs per day, or one landing of 1,050 lbs per week, for the open access fishery in the Conception Area (south of 36° N latitude) beginning August 1 as presented in Agenda Item E.10.b, Supplemental GMT Report.

Moved by: Rod Moore

Seconded by: Michele Culver

Motion 16 passed.

Motion 17: Adopt the AFA Alternatives for Public Review as shown in Agenda Item E.11.e, Supplemental ODFW Motion.

Moved by: Curt Melcher

Seconded by: Frank Warrens

Amendment: Include the previously corrected definitions beginning on the bottom of page 11 of the EA (Agenda Item E.11.b, Attachment 1) as listed below:

“Significant historic participation” is defined:

- For catcher/processors (two alternative definitions for analysis) as:
 - a. having caught and processed at least 1,000 metric tons (mt) of Pacific whiting in any one qualifying year; or
 - b. having caught and processed at least 1,000 mt of Pacific whiting in any one qualifying year subsequent to December 31, 1996.
- For motherships (two alternative definitions for analysis) as:
 - a. having received at least 1,000 mt of Pacific whiting in any one qualifying year; or
 - b. having received at least 1,000 mt of Pacific whiting in any one qualifying year subsequent to December 31, 1996.
- For catcher vessels in the shore-based or mothership fishery (two alternative definitions for analysis) as:
 - a. having landed at least 500 mt of Pacific whiting in any one qualifying year; or
 - b. having landed at least 1,000 mt of Pacific whiting in any one qualifying year .

Moved by: Dale Myer

Seconded by: Mark Cedergreen

Amendment: Amend Mr. Myer’s amendment by deleting the bullet points on page 12 of the EA (Agenda Item E.11.b, Attachment 1) that reference catcher vessels.

Moved by: Rod Moore

Seconded by: Frank Warrens

Amendment Passed. Ms. Vojkovich voted no.

Amendment: Amend Mr. Myer’s amendment to remove suboptions “b” under alternatives 2 and 3 on page 11 of the EA (Agenda Item E.11.b, Attachment 1).

Moved by: Michele Culver

Seconded by: Curt Melcher

Ms. Culver’s Amendment Passed.

Main Motion 17 passed as thrice amended.

Motion 18: Approve the report of the Budget Committee as shown in Agenda Item B.7.b, Supplemental Budget Committee Report, including adoption of the two recommendations on page 2 of that report (the recommendations that the Council adopt: 1) the 2007 operational base budget proposed by Dr. McIsaac of \$3,255,454; and 2) a carry over of savings from the 2006 budget year to protect the operational continuity and capacity of the Council in 2008).

Moved by: Roger Thomas
Motion 18 passed.

Seconded by: Marija Vojkovich

Motion 19: Appoint Ms. LEEANNE Laughlin to replace Mr. Steve Wertz on the HMSMT and Ms. Briana Brady to replace Ms. Laughlin on the CPSMT.

Moved by: Marija Vojkovich
Motion 19 passed.

Seconded by: Roger Thomas

Motion 20: Approve the November, March, and April minutes as shown in Agenda Item B.9, Draft November 2006 Council Meeting Minutes; Agenda Item B.9, Draft March 2007 Minutes; and Agenda Item B.9, Draft April 2007 Minutes with the following changes:

In the March 2007 Minutes, page 20, the phrase "Mr. Moore said he intended to vote against the main motion, not out of disrespect, but because of his strong belief the whiting resource is in better shape;" should read "Mr. Moore said he intended to vote against the main motion because of his strong belief the whiting resource is in better shape."

In the April 2007 Minutes, Motion 10, page 22, the portion that says "Mr. Moore moved and Mr. Melcher seconded a motion (Motion 10) to adopt a preliminary range of alternatives for Amendment 15 to the Pacific Groundfish FMP as follows. . ."; should read "Mr. Melcher moved and Mr. Moore seconded a motion (Motion 10) to adopt a preliminary range of alternatives for Amendment 15 to the Pacific Groundfish FMP as follows. . .".

Moved by: Roger Thomas
Motion 20 passed.

Seconded by: Curt Melcher

COUNCIL THREE MEETING OUTLOOK, DRAFT NOVEMBER 2007 COUNCIL
MEETING AGENDA, AND WORKLOAD PRIORITIES

This agenda item requests guidance on the following three matters:

1. The Council three-meeting outlook (November, March, and April).
2. The draft agenda for the November 2007 Council meeting in San Diego, California.
3. Council staff workload priorities for September 17, 2007 through November 9, 2007.

The Council preliminarily reviewed items 1 and 2 above under Agenda Item B.1 on Monday. With the inclusion of any input gathered from that review or other Council actions during the week, the Executive Director will review supplemental proposed drafts of the three items listed above and discuss any other matters relevant to the Council meeting agendas and workload. After considering any reports and comments from advisory bodies and public, the Council is scheduled to provide appropriate guidance for final agenda development and also has the opportunity to identify priorities for advisory body consideration for the November Council meeting.

Council Tasks:

- 1. Provide guidance on potential agenda topics for the next three Council meetings.**
- 2. Provide guidance on the draft agenda for the November 2007 Council meeting.**
- 3. Provide guidance on priorities for Council workload management between the September and November Council meetings.**
- 4. Identify priorities for advisory body consideration at the next Council meeting.**

Reference Materials:

1. Agenda Item B.8.a, Supplemental Attachment 1: Proposed Preliminary Three-Meeting Outlook for the Pacific Council.
2. Agenda Item B.8.a, Supplemental Attachment 2: Preliminary Draft Council Meeting Agenda, November 4-9, San Diego, California.
3. Agenda Item B.8.a, Supplemental Attachment 3: Council Workload Priorities September 17, 2007 through November 9, 2007.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. Council Guidance on Three Meeting Outlook, November Council Agenda, Council Staff Workload, and Priorities for Advisory Body Consideration

Don McIsaac

PFCMC
08/15/07

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

November San Diego, CA (11/4-11/9/2007) Estimated Percent of Standard Floor Time = 148%	March Sacramento, CA (3/10-14/2008) Estimated Percent of Standard Floor Time = 104%	April Seattle, WA (4/6-11/2008) Estimated Percent of Standard Floor Time = 124%
<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Fiscal Matters Interim Appointments to Advisory Bodies MSA Reauthorization Implementation 3 Mtg Outlook, Drft Mar Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items	<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Interim Appt. to Advisory Bodies MSA Reauthorization Implementation 3 Mtg Outlook, Apr Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items	<u>Administrative</u> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Interim Appointments to Advisory Bodies MSA Reauthorization Implementation 3 Mtg Outlook, Drft Nov Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items
<u>Coastal Pelagic Species</u> Pac. Sardine Stk Assmnt & Mackerel Stk Assmnt Methods: Approve Sardine Assmnt & Mackerel Assmnt Methods	<u>Coastal Pelagic Species</u>	<u>Coastal Pelagic Species</u>
<u>Enforcement Issues</u>	<u>Enforcement Issues</u>	<u>Enforcement Issues</u> US Coast Guard Annual Fishery Enforcement Report
<u>Groundfish</u> NMFS Report 2007 Inseason Management (2 Sessions)	<u>Groundfish</u> NMFS Report 2007 Inseason Mgmt (2 Sessions)	<u>Groundfish</u> NMFS Report 2007 Inseason Management (2 Sessions)
Trawl Rationalization: Adopt Alts. to Analyze for DEIS Intersector Allocation: Adopt Preferred Alt for Pub Rev Stock Assessments: Adopt New Assmnts & RB Analyses (including Mop-up) Open Access Limitation: Adopt Preferred Alts for Pub Rev Mgmt Spx for 2009-10: Adopt Prelim Range of ABCs & OYs, & Range of Mgmt Measures (Parts 1 & II) EFPs for 2008: Final Recommendations	Trawl Rationalization: Placeholder to Clarify Alts if Nec. Stock Assessment Planning for 2011-2012 Seasons Pac. Whiting: Adopt Final 2008 Spx & Mgmt Measures, including periodic bycatch limits	Intersector Allocation: Adopt Final Preferred Alt Stock Assessments: Adopt Final TOR, List of Stocks to be Assessed, & Review Schedule Open Access Limitation: Adopt Final Preferred Alt 2009-2010 Mgmt Recommendations: Adopt 1) Preferred ABCs & OYs, & Prelim Revised RB Plns 2) Range of Refined Mgmt Meas. for Pub Rev, & if possible, a Preferred Alt. (Parts I & II)
<u>Habitat Issues</u> No HC Meeting	<u>Habitat Issues</u> Habitat Committee Report	<u>Habitat Issues</u> Habitat Committee Report

Agenda Item B.8.a
Supplemental Attachment 1
September 2007

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

November San Diego, CA (11/4-11/9/2007) Estimated Percent of Standard Floor Time = 148%	March Sacramento, CA (3/10-14/2008) Estimated Percent of Standard Floor Time = 104%	April Seattle, WA (4/6-11/2008) Estimated Percent of Standard Floor Time = 124%
<u>Highly Migratory Species</u>	<u>Highly Migratory Species</u>	<u>Highly Migratory Species</u>
WCPFC Recommendations	NMFS Rpt New EFPs for 2008: Adopt for Pub Rev Yellowfin Overfishing Response: Final Action	NMFS Rpt New EFPs for 2008: Adopt Final IATTC Recommendations
<u>Marine Protected Areas</u>	<u>Marine Protected Areas</u>	<u>Marine Protected Areas</u>
<u>Pacific Halibut</u> Changes to 2008 CSP & Regs: Adopt Final Pacific Halibut Abundance Estimate: Review & Comment	<u>Pacific Halibut</u> Rpt on IPHC Annual Mtg Incidental Catch Regs for 2008: Adopt Options for Public Rev	<u>Pacific Halibut</u> Incidental Catch Regs for 2008: Adopt Final
<u>Salmon</u> Preseason Salmon Mgmt Sched for 2008: Approve 2007 Methodology Review: Adopt Final Changes Mitchell Act EIS: Provide Council Comments	<u>Salmon</u> 2008 Mgmt Measures: Adopt Options for Public Rev & Appt. Hearings Officers KRFC Escapement Shortfall Report: Final Mitchell Act EIS: Provide Council Comments Identify Stocks not Meeting Conserv. Objectives PSC CWT Workgroup Briefing	<u>Salmon</u> 2008 Mgmt Measures: Adopt Final 2008 Methods Review: Process & Prelimin Topics
<u>Information Reports</u> Salmon Fishery Update	<u>Information Reports</u>	<u>Information Reports</u>
<u>Special Sessions</u> Joint Session Mon Night--Trawl Rationalization Joint Session Tue Night--Groundfish Intersector Allocation	<u>Special Sessions</u>	<u>Special Sessions</u>
1 hr =3%		

PRELIMINARY DRAFT NOVEMBER COUNCIL MEETING AGENDA, NOVEMBER 4-9, 2007, SAN DIEGO, CALIFORNIA

	Sun, Nov 4	Mon, Nov 5	Tues, Nov 6	Wed, Nov 7	Thurs, Nov 8	Fri, Nov 9
Day-Time Council Floor Matters	Unscheduled Candidate Items ----- 1) Mitchell Act EIS: Comments (2 hr) 2) Pac Halibut Stock Assessment (1.5 hr) 3) W. Coast Govs' Ocean Health Pln (2 hr) 4) Hard Bycatch Caps in Whiting Sectors (Mtg 1 of 2) (3 hr) -----	CLOSED SESSION (9 AM) CALL TO ORDER (10 AM) 1. Opening (15 min) OPEN PUBLIC COMMENT 1. Comments on Non-Agenda Items (30 min) ADMINISTRATIVE 1. Future Agenda Planning (15 min) GROUNDFISH 1. NMFS Rpt (45 min) PACIFIC HALIBUT 1. Changes to CSP: Adopt Final (45 min) SALMON 1. Preseason Mgmt Sched for 2008: Adopt (15 min) 2. 2007 Methods Rev: Adopt Changes for 2008 (2 hr)	GROUNDFISH 2. Stock Assmnts: Adopt Remaining & Mop-up, & RB Analyses (2 hr) 3. Mgmt Recommendations Part 1: Adopt Range of ABC's & OY's for 2009-10 (2 hr) ----- 4. Open Access Limitation: Adopt Alts. for Pub Rev (4 hr) -----	GROUNDFISH 5. EFPs: Adopt Final for 2008 (2 hr) 6. Intersector Alloc.: Adopt Alts. for Pub Rev (4 hr) 7. Inseason Adjustments, including 2008 Fisheries and Whiting Season Opening Dates (4 hr)	GROUNDFISH 8. Trawl Rationalization: Adopt Alts for Analysis (8 hr)	COASTAL PELAGIC SPECIES 1. Pac Sardine Assmnt & HG, & Mackerel Assmnt Methods: Approve (1 hr) ----- HIGHLY MIGRATORY SPECIES ----- 1. WCPFC Recom (1 hr) ----- GROUNDFISH 9. Final Inseason Adjustments (2 hr) 10. Mgmt Recomd. Part II: Adopt Concepts & Prelim Range of Mgmt Measures (3 hr) ADMINISTRATIVE 2. MSA Reauthorization Implementation (3 hr) 3. Fiscal Matters (30 min) 4. Interim Appts (15 min) 5. Minutes (15 min) 6. 3-Mtg Outlook, Mar Agenda, Workload (30 min)
	5 hr	5 hr 45 min plus 2 hr in Evening	8 hr plus 2 hr in Evening	10 hr	8 hr	11 hr 30 min
Committees	1:00 pm GAP 1:00 pm GMT 1:00 pm TIQC 4:00 pm BC 7:30 pm Chr B	8:00 am GAP 8:00 am GMT 8:00 am SSC 4:30 pm EC	8:00 am EC 8:00 am GAP 8:00 am GMT ----- 8:00 am HMSAS 8:00 am HMSMT ----- 8:00 am SSC ..	----- 8:00 am CPSAS 8:00 am CPSMT ----- 8:00 am EC 8:00 am GAP 8:00 am GMT ----- 8:00 am HMSAS 8:00 am HMSMT -----	----- 8:00 am CPSAS 8:00 am CPSMT ----- 8:00 am EC 8:00 am GAP 8:00 am GMT	8:00 am EC

Council-sponsored evening sessions: Monday Evening 7:00 pm Trawl Rationalization Presentation
 Tuesday Evening 7:00 pm Intersector Allocation Presentation
 Wednesday Evening 6:00 pm Council Reception & Banquet

Agenda Item B.8.a
 Supplemental Attachment 2
 September 2007

COUNCIL WORK LOAD PRIORITIES SEPTEMBER 14, 2007 THROUGH NOVEMBER 9, 2007

(Bolded tasks represent core management programs; lead responsibility for shaded tasks is outside Council staff)

	Salmon	Groundfish	CPS	HMS	Other
ACTIVE	Inseason Mgmt KRFC Over fishing Assessment (mtg on Oct 18-19 (Arcata) Methodology Review Including EFP's	Inseason Mgmt 2009-2010 Biennial Spec. Tasks Trawl IQ Program: Ongoing Analysis of Refined Alts. Intersector Alloc.-- Analyze Alts EFP Review for 2008 Amend. 15 (Whiting Limitation)-- Transmit Preferred Alt to NMFS Open Access Limitations--Prepare Alts for Public Review	2008 Pac. Sardine Stock Assessment. & HG; & Mackerel Assessment Methods		Admin Necessities (Briefing Book, minutes, Newsletter, Website Fiscal Matters, MSA Reauthorization Implementation
				Amend.: Mgmt Regime for HS Longline Fishery	Pacific Halibut Mgmt Changes to 2008 CSP & Regs Stock Assessment Comments
CONTINGENT	MEW Mtg--conf call Oct 2 & late Oct SAS Mtg--conf call Oct STT Mtg--conf call late Oct Method. Rev Mtg--Oct 24-25 (SSC Subcom/STT)	STAR Panel--Oct 1-5 TIQC Mtg--Oct 11-12; at Nov CM? GAC Mtg--Sept 25-27 GMT Mtg--Oct 9-12 & at Nov CM GAP Mtg--at Nov Council Mtg	Sardine STAR--Sept 18- Sept 21 CPSMT Mtg--at Nov CM CPSAS Mtg--at Nov CM	HMSAS Mtg--at Nov CM HMSMT Mtg--at Nov CM WCPFC involvement & IATTC Mtg--Oct 22-24	MSRA Workshop--Sept 25-26 RecFIN Refinements Mtg EC Mtg--at Nov CM BC Mtg--at Nov CM Leg. Com Mtg--? HC Mtg--Oct 15, Pdx SSC Mtg--at Nov CM--3 days?
	Mitchell Act EIS Comment Historical Data Doc Update FMP	Off-Year Science Planning			
DELAYED	Amendments: OCN Coho Matrix SOF Coho Allocation Cons. Objectives: Puget S. Chin. & Coho LCR Coho Sacramento R. Chinook	Whiting Bycatch Controls SAFE Doc drafting Amend. 14--Ownership Limits GF Strategic Plan Formal Review Gear Conversion Alternative Mgmt Approaches Split Deliveries for Trawl Electronic Logbooks for all Trawl	International Mgmt	Planning for Joint WPFMC-PFMC Mtg	Ecosystem-Based Mgmt FMP PacFIN/EFIN issues Communication Plan Economic Data Collection Program

GROUND FISH ADVISORY SUBPANEL COMMENTS ON COUNCIL THREE-
MEETING OUTLOOK, NOVEMBER 2007 COUNCIL MEETING AGENDA, AND
WORKLOAD PRIORITIES

The Groundfish Advisory Subpanel (GAP) had a lengthy discussion regarding the November meeting workload and schedule and has the following comments and requests:

1. Exempted fishing permit packages must be completed and available in the advanced November Council briefing book or the GAP will not consider them.
2. The scorecard should be accurate and up-to-date on Sunday for the start of the GAP meeting.
3. Open Access limitation should be delayed until an early 2008 meeting.
4. Any documents associated with the trawl rationalization and intersector allocation programs should be sent to the GAP on paper – not CD.
5. All GAP members are encouraged to attend the November meeting and if they are unable to attend, they should name an alternate.

The GAP's top priority for the November meeting is the Trawl Rationalization and the Intersector Allocation programs. The GAP's lowest priority for the November meeting is limiting open access. The GAP would like to begin at 10:00 am on Sunday and we would prefer a catered lunch brought in so that we may work through the noon hour.

PFMC
09/14/07

GROUND FISH MANAGEMENT TEAM REPORT ON
COUNCIL THREE-MEETING OUTLOOK, NOVEMBER 2007 COUNCIL
MEETING AGENDA AND WORKLOAD PRIORITIES

The Groundfish Management Team (GMT) reviewed the preliminary three meeting outlook (Agenda Item B.1.a, Attachment 1) as well as the preliminary draft agenda for November (Attachment 2) and discussed workload and timing priorities for the issues listed. Given that the draft agenda as currently outlined is estimated to use 146% of standard floor time, we are concerned that there are too many issues for us to address all of them adequately. After considering mandatory tasks such as 2009-2010 specifications and management measures and inseason adjustments, the GMT discussed and prioritized the other preliminarily scheduled groundfish items. As such we offer the following comments on issues that may be considered lower priority (in decreasing order) or require less input from the GMT.

Whiting Management

The GMT discussed options for better management of the bycatch limits for the 2008 whiting fishery to prevent problems such as a race for fish via a race for bycatch. Such concepts included a pre-specified staggered release of bycatch throughout the season and strategic adjustments to bycatch limits that may occur through inseason actions. Based on conversations with NOAA General Counsel, it appears that a scheduled and staggered release of bycatch may not be possible because it does not appear to be a routine inseason adjustment. However, changing bycatch limits is considered to be a routine inseason adjustment so the Council could choose to implement a relatively small bycatch limit for early in the season, and then readjust the bycatch limit later based on the performance of the fishery during the first several weeks of the season. The GMT will plan to further evaluate approaches for better management of bycatch in the whiting fishery and report back to the Council in November and March.

Trawl Rationalization

The GMT recognizes the importance of analyzing the various issues surrounding rationalization of the trawl fleet and the tight timelines that need to be met. However, given the considerable number of options requiring input, the GMT is requesting guidance on which specific analyses the Council would like the GMT to focus on at the November meeting.

Intersector Allocation

At this time there is inadequate data compiled to fully analyze the implications of some issues (e.g., reallocating overfished species once they are rebuilt). Likewise there are other difficult allocation issues that have yet to be addressed and will likely require extensive discussion. We note that most of these issues are policy decisions, but would like Council guidance on any particular technical aspects that require our attention.

Exempted Fishing Permit (EFP) for 2008

The GMT will review the proposed EFPs to verify that all of the required technical aspects have been adequately addressed. This item is not expected to utilize much GMT time in cases where we have had opportunity to advise the applicants prior to the November meeting. Should any EFP applications require greater attention, the GMT recommends that they be given lower priority in our workload given the above considerations.

Open Access Limitation

The GMT is concerned that they have not had time to discuss this issue and will not have an opportunity prior to November. We are likewise concerned that available data is not adequate to fully analyze all aspects of this issue. Different levels of description and analyses for various segments of the fleet have been developed, and there is concern that not all stakeholders have been fully engaged in the process. Likewise not all states have the same priorities or issues to be addressed in limiting their respective Open Access fleets. Given the importance of this issue, the GMT is concerned that they will not have the time or resources to adequately address the issue and suggest that it be delayed until after the November meeting.

PFMC

09/14/07