FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

This agenda item will appear on the Council floor in two parts. The first time will be on the initial Council meeting day to gather input from the Council, advisory bodies, and the public for discussion and preliminary guidance. The second time will be near the end of the meeting (on Friday) to allow for final input and Council guidance.

Specifically, this item is intended to refine planning on the following matters:

- 1. The Council three-meeting outlook for November 2008, March 2009, and April 2009 (Attachment 1).
- 2. The draft agenda for the November 2008 Council meeting in San Diego, California (Attachment 2) and preliminary agendas for the March and April 2009 meetings (provided in supplemental attachments at the meeting).
- 3. The schedule and staffing for the trawl rationalization hearings in October (Attachment 3).
- 4. Council staff workload priorities through the time of the next Council meeting (provided in a supplemental attachment at the meeting).
- 5. Identification of priorities for advisory body consideration at the next Council meeting.

On Monday, the Executive Director will review the three-meeting outlook (Attachment 1), the November 2008 preliminary proposed Council meeting agenda (Attachment 2), the schedule and staffing assignments for the trawl rationalization hearings, written public comments, and respond to any questions the Council may have regarding these initial planning documents. After hearing any reports and comments from advisory bodies or the public, the Council may provide guidance to staff to help prepare for Part II of the agenda item.

As scheduled on Friday, with the inclusion of any input gathered during the Monday session or other Council actions during the week, the Executive Director will review supplemental proposed drafts of the future meeting agendas, finalize the trawl rationalization hearing assignments, 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 will provide guidance for future agenda development and workload. The Council also has the opportunity to identify priorities for advisory body consideration for the September 2008 Council meeting.

Council Tasks:

Monday:

1. Receive information and provide initial guidance on potential agenda topics for the next three Council meetings and the trawl rationalization hearings in preparation for final guidance for this agenda item on Friday.

Friday:

- **1.** Review supplemental information and provide further guidance on potential agenda topics for the next three Council meetings.
- 2. Provide final guidance on a draft agenda for the November Council meeting.

- 3. Finalize the assignments for the trawl rationalization hearings.
- 4. Provide guidance on Council staff workload.
- 5. Identify priorities for advisory body considerations at the next Council meeting.

Reference Materials:

- 1. Agenda Item C.1.a, Attachment 1: Draft Preliminary Three-Meeting Outlook for the Pacific Council.
- 2. Agenda Item C.1.a, Attachment 2: Draft Preliminary Proposed Council Meeting Agenda, November 1-7, 2008, San Diego, California.
- 3. Agenda Item C.1.a, Attachment 3: Schedule of Trawl Rationalization Amendment Hearings.

Agenda Order:

a. Agenda Item Overview

Don McIsaac

- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. Council Discussion and Guidance on Future Council Meeting Agenda and Workload Planning

PFMC 08/21/08

Draft Preliminary Three-Meeting Outlook for the Pacific Council

(Contingent Items are Shaded and Counted in Time Estimate)

November	March	April
San Diego, CA11/1-11/7/08 (Council Starts 11/2)	Seattle, WA3/5-3/12/09 (Council Starts 3/7)	Millbrae, CA4/2-4/9/09 (Council Starts 4/4)
Estimated Hours of Council Floor Time = 43.0	Estimated Hours of Council Floor Time = 39.5	Estimated Hours of Council Floor Time = 37.8
Administrative	Administrative	Administrative
Closed Session: Open Session Call to Order: Min.	Closed Session: Open Session Call to Order: Min.	Closed Session: Open Session Call to Order: Min.
	Legislative Committee Report	Legislative Committee Report
Fiscal Matters		
Interim Appointments to Advisory Bodies	Interim Appt. to Advisory Bodies	Interim Appointments to Advisory Bodies
3 Mtg Outlook, Drft Mar Agenda, Workload (2 sessions)	4 Mtg Outlook, Draft Apr Agenda, Workload (2 sessions)	3 Mtg Outlook, Draft June Agenda, Workload (2 sessions)
Open Coment PeriodNon-Agenda Items	Open Comment PeriodNon-Agenda Items	Open Comment Period-Non-Agenda Items
Constal Balaria Species	Capatal Delaria Succiae	Constal Balagia Species
Coastal Pelagic Species	COASTAL PEIAGIC Species	Coastal Pelagic Species
Pac. Sardine: Approve Stk Assmnt & Mgmt Measures		
Ecosystem FMP	Ecosystem FMP	Ecosystem FMP
		Ecosystem FMP Planning
Enforcement Issues	Enforcement Issues	Enforcement Issues
	US Coast Guard Annual Fishery Enforcement Report	
<u>Groundfish</u>	<u>Groundfish</u>	<u>Groundfish</u>
NMFS Report	NMFS Report	NMFS Report
2008 & 2009 Inseason Management (2 Sessions)	2009 Inseason Mgmt (2 Sessions)	2009 Inseason Management (2 Sessions)
A-20 Trawi Rationalization. Adopt Final for DEIS	A-20 Hawi Rationalization. Status Rpt	Intersector Allocation: Adopt Final Preferred Alt
	FMP Amendment 22 (Open Access): Adopt Final	
	Preferred Alt. (if not completed in Sept)	
	Pac. Whiting: Coordinate Final 2009 Spx & Mgmt Measures	
	with Pac Whiting Treaty Actions?	
Habitat Issues	Habitat Issues	Habitat Issues
	Habitat Committee Report	Habitat Committee Report

Draft Preliminary Three-Meeting Outlook for the Pacific Council

(Contingent Items are Shaded and Counted in Time Estimate)

November	March	April
San Diego, CA11/1-11/7/08 (Council Starts 11/2)	Seattle, WA3/5-3/12/09 (Council Starts 3/7)	Millbrae, CA4/2-4/9/09 (Council Starts 4/4)
Estimated Hours of Council Floor Time = 43.0	Estimated Hours of Council Floor Time = 39.5	Estimated Hours of Council Floor Time = 37.8
Highly Migratory Species NMFS Rpt Routine Mgmt Meas.(thresher shark): Adopt Final Council Recommendations for WCPFW Mtg	<u>Highly Migratory Species</u> NMFS Rpt NMFS Rpt on Potential Mgmt Options for Albacore	Highly Migratory Species NMFS Rpt Mgmt Recommendations to US Delegation to IATTC High Seas Shallow-set Longline Amendment: Adopt Final Preferred Alternative
Marine Protected Areas	Marine Protected Areas	Marine Protected Areas
	MPA Issues	MPA Issues
Pacific Halibut Changes to 2009 CSP & Regs: Adopt Final Salmon Preseason Salmon Mgmt Sched for 2008: Approve 2008 Methodology Review: Adopt Final Changes	Pacific Halibut Report on the IPHC Meeting Incidental Catch Regs for 2009: Adopt Options for Public Rev Salmon Review 2008 Fisheries & 2009 Abundance Estimates 2009 Mgmt Measures: Adopt Options for Public Rev & Appt. Hearings Officers Identify Stocks not Meeting Consv. Objectives	Pacific Halibut Incidental Catch Regs for 2009: Adopt Final Salmon 2009 Mgmt Measures: Adopt Final (4 agenda items) 2009 Methods Review: Process & Prelimin Topics West Coast Salmon Work Group Rpt Mitchell Act EIS: Provide Council Comments
Information Reports Salmon Fishery Update	Information Reports	Information Reports
<u>Special Sessions</u>	<u>Special Sessions</u>	<u>Special Sessions</u> None

DRAFT PRELIMINARY PROPOSED COUNCIL MEETING AGENDA, NOVEMBER 1-7, 2008, SAN DIEGO, CALIFORNIA

Sat, Nov 1	Sun, Nov 2	Mon, Nov 3	Tue, Nov 4	Wed, Nov 5	Thu, Nov 6	Fri, Nov 7
Advisory Body MEETINGS ONLY	CLOSED COUNCIL SESSION1 PM OPEN COUNCIL SESSION 2 PM 1-4. Open & Approve Agenda (30 min) ADMINISTRATIVE 1. Future Agenda Pln (15 min) OPEN COMMENT PERIOD 1. Comments on Non- Agenda Items (45 min) <u>PACIFIC HALIBUT</u> 1. Changes to 2009 Catch Sharing Plan: Adopt Final (45 min) <u>SALMON</u> 1. 2009 Preseason Salmon Mgmt Schedule: Approve (30 min)	SALMON (CONT) 2. 2008 Methodology Review: Adopt Final Changes for 2009 (1 hr 30 min) <u>HIGHLY MIGRATORY</u> <u>SPECIES</u> 1. NMFS Rpt (45 min) 2. WCPFC Actions: Provide Council Recommendations (1 hr) 3. Routine Mgmt Measures: Adopt Final (3 hr) <u>COASTAL PELAGIC</u> <u>SPECIES</u> 1. STAR Panel 2009 TOR: Adopt for Public Review (1 hr)	COASTAL PELAGIC SPECIES (CONT) 2. Pacific Sardine: Approve Stock Assessment & Mgmt Measures (2 hr) <u>GROUNDFISH</u> 1. NMFS Rpt (45 min) 2. Initial Inseason Changes for 2008 & 2009 (2 hr) 3. Amendment 20- Trawl Rationalization: Adopt Final Preferred Alt for DEIS (3 hr 15 min)	GROUNDFISH 3. Continue Amendment 20 Trawl Rationalization: Adopt Final Preferred Alt for DEIS (8 hr)	GROUNDFISH 3. Continue Amendment 20 Trawl Rationalization: Adopt Final Preferred Alt for DEIS (8 hr)	GROUNDFISH 3. Continue Amendment 20 Trawl Rationalization: Adopt Final Preferred Alt for DEIS (5 hr 30 min) 4. Final Inseason Adjustments (1 hr) <u>ADMINISTRATIVE</u> 2. Minutes (15 min) 3. Fiscal Matters (30 min) 4. Appointments & COP (15 min) 1. Continue Future Agenda and Workload Planning (30 min)
	3 hr 45 min	7 hr 15 min	8 hr	8 hr	8 hr	8 hr
8:00 am GMT 1:00 pm GAP 1:00 pm SSC 3:30 pm BC	8:00 pm GAP 8:00 pm GMT 8:00 am SSC 10:30 am ChB	8:00 am EC 8:00 am GAP 8:00 am GMT 8:00 am SSC	8:00 am EC 8:00 am GAP 8:00 am GMT	8:00 am EC 8:00 am GAP 8:00 am GMT	8:00 am EC 8:00 am GAP 8:00 am GMT	8:00 am EC 8:00 am GAP 8:00 am GMT

Council-sponsored evening sessions: Sunday Evening--6:00 pm Chairman's Banquet

Total Council Floor Time = 43 hr

Agenda Item C.1.a Attachment 2 September 2008

SCHEDULE OF TRAWL RATIONALIZATION AMENDMENT HEARINGS Pacific Fishery Management Council

October 27- 29 2008^{a/}

Date Day/Time	Location	Council Member (Hearing Officer)	State Agency Representative	NMFS	USCG	Staff	Meeting Facility Contact
Oct 27 Monday 2 p.m.	Best Western Agate Beach Inn (2 sections of Ballroom TBD) 3019 N. Coast Highway Newport, OR	Rod Moore	Steve Williams/ Gway Kirchner	Frank Lockhart/ Kevin Duffy	BM1 Brant Soderlund	Merrick Burden Lynn Mattes	Noreen Hadley - Sales 541-265-9411 Tami O'Connor – Catering 800-546-5010
Oct 28 Tuesday 3 p.m.	Washington Dept. of Fish Wild Natural Resources Building 1 st Floor, Room 172 1111 Washington Street NE Olympia, WA 98504	Dale Myer	Phil Anderson/ Michele Culver	Dayna Matthews	Brian Corrigan	Merrick Burden Corey Niles	Michele Culver 360-249-1211
Oct 28 Tuesday 2 p.m.	Red Lion Evergreen Ballroom 1929 Fourth Street Eureka, CA	Dan Wolford	Joanna Grebel	Frank Lockhart	LT Scott Parkhurst	Jim Seger Kit Dahl	Kimberly 707-441-4711
Oct 29 Wednesday 3 p.m.	Holiday Inn Express Riverview 1 and 2 205 West Marine Drive Astoria, OR	Frank Warrens	Steve Williams/ Gway Kirchner	Kevin Duffy	ENS Joe Miller & LTJG Chad Thompson	Heather Brandon Jennifer Gilden	Caroline Wuebben 503-325-6222
Oct 29 Wednesday 3 p.m.	University Inn and Conf Center Sierra Room 611 Ocean Street Santa Cruz, CA	Kathy Fosmark	Marija Vojkovich	Frank Lockhart	LTJG Brittany Steward	Jim Seger Johanna Grebel	Charla 831-466-1252 or 831-426-7100

The Council will also receive public comment at the San Diego, California meeting during the week of November 3-7, 2008. a/

PFMC 9/26/2008

Agenda Item C.1.a

Attachment 3

PROCESS FOR COUNCIL APPROVAL OF REGULATIONS IMPLEMENTING COUNCIL RECOMMENDATIONS ("DEEMING PROCESS")

Section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) speaks to a Council submitting, to the Secretary, proposed regulations which the Council deems necessary or appropriate for the purposes of implementing or modifying a fishery management plan (FMP) or FMP amendment. A recent court case decided that regulations promulgated by National Marine Fisheries Service (NMFS) to implement proposed North Pacific Fishery Management Council (NPFMC) management recommendations contained additional requirements for which there was no evidence the Council had "deemed" the additional requirements necessary or appropriate. As a result, all Councils have been asked to establish a formal process whereby it is clear that the Council has "deemed" all proposed regulations as necessary or appropriate.

Ideally, proposed regulations should be available at the time of the Council's final action and thereby be available for the entire Council to review and approve along with the pertinent management recommendations. However, even if the proposed management recommendations before the Council include draft regulations, the Council's final action often involves changing some portions of the recommendations so that regulations must be further modified. In the Pacific Council forum, the usual convention has been that regulatory language is completed later by NMFS and not brought back to the Council, although there have been exceptions.

Council staff proposes three options for establishing a formal deeming process through an addition to Council Operating Procedure (COP) 1, General Council Meeting Operations. Option 1 would require a scheduled Council meeting agenda item and approval by the full Council. Option 2 would authorize the Council Chairman or Executive Director to review and deem, on behalf of the Council, that the proposed regulations were consistent with the Council action. Option 3 allows the Council to decide at the time of each final action whether to use the process of Option 1 or Option 2, or even some other process that might later emerge as appropriate.

The benefit of Option 1 is that it ensures final proposed regulations will receive a full Council review with opportunity for advisory body comments and has the greatest probability that regulatory language is an exact fit to the Council action. The downsides are that it may (1) significantly delay implementation of the action due to the timing of a later Council meeting and the NMFS process of drafting regulations, or (2) further reduce already limited Council agenda floor time for other important issues. Option 2 avoids the downsides of Option 1 and could result in more timely implementation of some actions. A review delegated to the Chairman or Executive Director might be more expedient and is likely sufficient in most cases. However, it may not have the benefit of a potentially broader review achieved by the full Council and reducing time to implementation would depend on NMFS early submission of the draft regulations to Council staff to allow adequate time to review the regulations on behalf of the Council. Option 3 allows the Council to choose the preferred process based on an assessment of the Council's workload, priorities, and issues at hand at the time of final action.

Attachment 1 displays the options in more detail by displaying Option 3 as it would be embedded within COP 1.

Council Action:

Consider options in Attachment 1 and adopt a formal "deeming" process to ensure all implementing regulations for FMPs or amendments are consistent with Council intent.

Reference Materials:

1. Agenda Item C.2.a, Attachment 1: Example Amendment to Council Operating Procedure 1 General Council Meeting Operations

Agenda Order:

- a. Agenda Item Overview
- b. Agency and Tribal Comments
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. **Council Action:** Adopt a Formal Process for Approving Proposed Regulations Prior to Implementation by NMFS

PFMC 08/18/08 John Coon

EXAMPLE AMENDMENT TO COUNCIL OPERATING PROCEDURE 1 GENERAL COUNCIL MEETING OPERATIONS

Option 3

* * *

Process for Approving Regulations Implementing or Modifying a Fishery Management Plan [Procedure for Implementation of MSA Section 303(c)]

When the Council takes final action on recommendations implementing or modifying a fishery management plan (FMP), the Council's action will include a motion specifying its process to approve ("deem") that the implementing regulations flowing from the action are necessary or appropriate. Generally, the Council motion will take one of two forms as provided below:

- 1) To meet the requirements of section 303(c) of the MSA, the Council requests National Marine Fisheries Service (NMFS) provide the draft proposed regulations for formal Council review prior to final submission to the Secretary and no later than _____ [specify deadline] to ensure they are consistent (necessary or appropriate) with the Council's final recommendations.
- Or
- 2) To meet the requirements of section 303(c) of the MSA, the Council authorizes the Council Chairman or Executive Director to review the draft proposed regulations provided by NMFS prior to final submission to the Secretary and no later than ______ [specify deadline] to ensure that the proposed regulations are consistent (necessary or appropriate) with the Council's final recommendations.

Under #1, above, the full Council would approve the proposed draft regulations under a scheduled agenda item at the next Council meeting following receipt of the draft regulations.

Under #2, above, the Chairman or Executive Director would be authorized to withhold submission of the Council action and/or proposed regulations and take the action back to the Council if, in their determination, the proposed regulations were not consistent with the Council action.

Under either #1 or #2 above: (1) a letter would be transmitted to NMFS to provide a record of the results of the "deeming process"; and (2) any draft regulations that are not 303(c) regulations would be proposed by NMFS under its authority at section 305(d).

* * *

Note: Option 3 combines elements of both Options 1 and 2, as noted in the situation summary for this agenda item. If the Council Adopts Option 1, the COP language would conform to that shown in #1; if Option 2 were selected, the COP would be modified per the language in #2. The

North Pacific Fishery Management Council now utilizes a process like Option 2 in its proceedings.

The specification of a deadline for submission of the proposed regulations for Council deeming is intended to address timely implementation of the recommendations while ensuring adequate time for NMFS to prepare, and the Council to review and approve the draft regulations.

PFMC 8/18/08

UPDATE AND COMMUNICATION OF RESEARCH AND DATA NEEDS

The Pacific Fishery Management Council (Council) continually identifies research and data needs across its fishery management plans (FMPs) through a variety of processes, including stock assessment and fishery management cycles. Council Operating Procedure 12 outlines the Council's process for documenting research and data needs and the schedule for completing and communicating these needs to organizations which may be able to support additional research. At the June Council meeting, the Council adopted a public review draft of the document (Agenda Item C.3.a, Attachment 1). The Council is scheduled to adopt a final document at its upcoming September 2008 meeting in Boise, Idaho.

In January 2007, the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006* reauthorized the Magnuson-Stevens Act (MSA) through fiscal year 2013. Specific to research, data collection, and reporting, the amended MSA added several new provisions and programs, including: 1) a study on the state of science for the integration of ecosystem consideration in fishery management, 2) a Bycatch Reduction Engineering Program, 3) a Cooperative Research and Management Program, 4) a Deep Sea Coral Research and Technology Program, and 5) a requirement under Regional Fishery Management Council Functions, that states the Council shall:

"develop, in conjunction with the scientific and statistical committee, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall establish priorities for 5-year periods; be updated as necessary; and be submitted to the Secretary and the regional science centers of the National Marine Fisheries Service for their consideration in developing research priorities and budgets for the region of the Council."

The Research and Data Needs document, when adopted in its final form by the Council at the September Council meeting, is intended to record and communicate the Council's research and data needs through 2014 to ensure continued well-informed Council decision-making into the future and to fulfill the Council's responsibilities under the reauthorized MSA.

Council Action:

Adopt a Final Research and Data Needs Document.

Reference Materials:

- 1. Agenda Item C.3.a, Attachment 1: Public Review Draft, Research and Data Needs, 2008.
- 2. Agenda Item C.3.a, Attachment 2: National Marine Sanctuary Program (NMSP) Comments.
- 3. Agenda Item C.3.b, Salmon Technical Team Report.
- 4. Agenda Item C.3.c, Public Comment.

Agenda Order:

- a. Agenda Item Overviewb. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. Council Action: Adopt a Final Research and Data Needs Document

PFMC 08/19/08 Mike Burner

Agenda Item C.3.a Attachment 1 September 2008

RESEARCH AND DATA NEEDS

2008

PUBLIC REVIEW DRAFT

DO NOT CITE

PACIFIC FISHERY MANAGEMENT COUNCIL 7700 NE AMBASSADOR PLACE, SUITE 101 PORTLAND, OR 97220 503-820-2280 WWW.PCOUNCIL.ORG

JUNE 2008



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TABLE OF CONTENTS

ACRONYMS AND DEFINITIONS	V
1.0 INTRODUCTION	1
1.1 SCHEDULE OF DOCUMENT DEVELOPMENT AND REVIEW 1.2 DOCUMENT ORGANIZATION 1.3 COMMUNICATION AND COORDINATION	2 3 3
2.0 ECOSYSTEM-BASED FISHERIES MANAGEMENT	5
2.1 INTRODUCTION2.2 HIGHEST PRIORITY ISSUES:2.3 Emerging Issues:	5 6 7
3.0 GROUNDFISH FISHERY MANAGEMENT PLAN	9
 3.1 INTRODUCTION 3.2 DATA ISSUES	9 9 14 16 17
4.0 SALMON FISHERY MANAGEMENT PLAN	
 4.1 INTRODUCTION 4.2 HIGHEST PRIORITY ISSUES	19 19 21 22 23
5.0 COASTAL PELAGIC SPECIES FISHERY MANAGEMENT PLAN	
 5.1 Highest Priority Research and Data Needs 5.2 Continuing Issues 5.3 Emerging Issues 	27 27 30
6.0 HIGHLY MIGRATORY SPECIES FISHERY MANAGEMENT PLAN	
6.1 BACKGROUND 6.2 Highest Priority Issues 6.3 High Priority Issues 6.4 Other Priority Stocks and Issues	33 34 38 39
7.0 ECONOMICS AND SOCIAL SCIENCE COMPONENTS	45
 7.1 Status of the Highest Priority Issues Identified in 2000 7.2 Continuing Issues 7.3 Emerging Issues 	45 46 48
8.0 MARINE PROTECTED AREAS AND ESSENTIAL FISH HABITAT	51
8.1 BACKGROUND 8.2 Priority Research and Data Needs Related to Marine Protected Areas 8.3 Essential Fish Habitat Issues	51 52 52
APPENDIX I - 2007 AND 2008 GROUNDFISH STOCK ASSESSMENT REVIEW PANEL RECOMMENDATIONS FOR FUTURE RESEARCH AND DATA COLLECTION	A-1
APPENDIX II - FOCUS AREAS OF RESEARCH RELATIVE TO THE STATUS OF THE 2004 2005 BROODS OF THE CENTRAL VALLEY FALL CHINOOK SALMON STOCK	AND

ACRONYMS AND DEFINITIONS

Acronym	Definition
ABC	Acceptable biological catch. See below.
acceptable biological catch	The ABC is a scientific calculation of the sustainable harvest level of a fishery and is used to set the upper limit of the annual total allowable catch. It is calculated by applying the estimated (or proxy) harvest rate that produces maximum sustainable yield to the estimated exploitable stock biomass (the portion of the fish population that can be harvested).
ASAP	Age-structured Assessment Program
АТСА	Atlantic Tunas Convention Act
AUV	Autonomous Underwater Vehicle
barotrauma	Physical trauma or injury to a fish due to pressure change. When a fish is rapidly brought from deep water to the surface, the drop in pressure can cause a variety of physical problems, such as severe expansion of the swim bladder and gas bubbles in the blood.
CalCOFI	California Cooperative Oceanic Fisheries Investigations
catch per unit of effort	The quantity of fish caught (in number or weight) with one standard unit of fishing effort. For example, the number of fish taken per 1,000 hooks per day, or the weight of fish, in tons, taken per hour of trawling. CPUE is often considered an index of fish biomass (or abundance). Sometimes referred to as catch rate. CPUE may be used as a measure of economic efficiency of fishing as well as an index of fish abundance.
CCS	California Current System
CDFG	California Department of Fish and Game
coastal pelagic species	Coastal pelagic species are schooling fish, not associated with the ocean bottom, that migrate in coastal waters. They usually eat plankton and are the main food source for higher level predators such as tuna, salmon, most groundfish, and humans. Examples are herring, squid, anchovy, sardine, and mackerel.
coded-wire tag	Coded-wire tags are small pieces of stainless steel wire that are injected into the snouts of juvenile salmon and steelhead. Each tag is etched with a binary code that identifies its release group.
cohort	In a stock, a group of fish born during the same time period.

Acronym	Definition
СОР	Council Operating Procedures
Council	Pacific Fishery Management Council
CPFV	Commercial passenger fishing vessel (charter boat)
CPS	Coastal pelagic species. See above.
CPSAS	Coastal Pelagic Species Advisory Subpanel
CPSMT	Coastal Pelagic Species Management Team
CPUE	Catch per unit of effort. See above.
CUFES	Continuous Underwater Fish Egg Sampler
CWT	Coded-wire tag. See above.
DEPM	Daily egg production method
EBFM	Ecosystem-Based Fishery Management
EEZ	Exclusive Economic Zone. See below.
EFH	Essential fish habitat. See below.
EIS	Environmental impact statement. See below.
El Niño Southern Oscillation	Abnormally warm ocean climate conditions, which in some years affect the eastern coast of Latin America (centered on Peru) often around Christmas time. The anomaly is accompanied by dramatic changes in species abundance and distribution, higher local rainfall and flooding, and massive deaths of fish and their predators. Many other climactic anomalies around the world are attributed to consequences of <i>El Niño</i> .
Endangered Species Act	An act of Federal law that provides for the conservation of endangered and threatened species of fish, wildlife, and plants. When preparing fishery management plans, councils are required to consult with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service to determine whether the fishing under a fishery management plan is likely to jeopardize the continued existence of an ESA-listed species or to result in harm to its critical habitat.

Acronym	Definition
Environmental impact statement	As part of the National Environmental Policy Act (NEPA) process, an EIS is an analysis of the expected impacts resulting from the implementation of a fisheries management or development plan (or some other proposed action) on the environment. EISs are required for all fishery management plans as well as significant amendments to existing plans. The purpose of an EIS is to ensure the fishery management plan gives appropriate consideration to environmental values in order to prevent harm to the environment.
ESA	Endangered Species Act. See above.
essential fish habitat	Those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.
Exclusive Economic Zone	A zone under national jurisdiction (up to 200 nautical miles wide) declared in line with the provisions of the 1982 United Nations Convention of the Law of the Sea, within which the coastal State has the right to explore and exploit, and the responsibility to conserve and manage, the living and non-living resources.
exempted fishing permit	A permit issued by National Marine Fisheries Service that allows exemptions from some regulations in order to study the effectiveness, bycatch rate, or other aspects of an experimental fishing gear. Previously known as an "experimental fishing permit."
Fathom	Used chiefly in measuring marine depth. A fathom equals 6 feet.
FEIS	Final Environmental Impact Statement (see EIS, NEPA).
Fm	Fathom (6 feet)
FMP	Fishery management plan. See above.
FRAM	Fishery Regulation Assessment Model. Typically used for salmon.
FWS	U.S. Fish and Wildlife Service
GIS	Geographic Information System
GLMM	Generalized Linear Mixed Model
GSI	Genetic stock identification

Acronym	Definition
Habitat areas of particular concern	Subsets of essential fish habitat (see EFH) containing particularly sensitive or vulnerable habitats that serve an important ecological function, are particularly sensitive to human-induced environmental degradation, are particularly stressed by human development activities, or comprise a rare habitat type.
НАРС	Habitat areas of particular concern. See above.
Harvest guideline(s)	A numerical harvest level that is a general objective, but not a quota. Attainment of a harvest guideline does not require a management response, but it does prompt review of the fishery.
Highly migratory species	In the Council context, highly migratory species in the Pacific Ocean include species managed under the HMS Fishery Management Plan: tunas, sharks, billfish/swordfish, and dorado or dolphinfish.
HMS	Highly migratory species. See above.
HMS FMP	Highly Migratory Species Fishery Management Plan. This is the fishery management plan (and its subsequent revisions) for the Washington, Oregon, and California Highly Migratory Species Fisheries developed by the PFMC and approved by the Secretary of Commerce.
IATTC	Inter-American Tropical Tuna Commission
IFQ	Individual fishing quota. See below.
IMECOCAL	A program in Baja California concerning small pelagics and climate change.
Incidental catch or incidental species	Species caught when fishing for the primary purpose of catching a different species.
Incidental take	The "take" of protected species (such as listed salmon, marine mammals, sea turtles, or sea birds) during fishing. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.
Individual transferable (or tradable) quota	A type of quota (a part of a total allowable catch) allocated to individual fishermen or vessel owners and which can be transferred (sold, leased) to others.
ISC	International Scientific Committee
ITQ	Individual Transferable (or Tradable) Quota. See above.
КОНМ	Klamath Ocean Harvest Model (for salmon)

Acronym	Definition
LIDAR	Light Detection and Ranging, an active sensor, similar to radar, that transmits laser pulses to a target and records the time it takes for the pulse to return to the sensor receiver.
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act. See below.
Magnuson-Stevens Fishery Conservation and Management Act	The MSFCMA, sometimes known as the "Magnuson-Stevens Act," established the 200-mile fishery conservation zone, the regional fishery management council system, and other provisions of U.S. marine fishery law.
Marine Mammal Protection Act	The MMPA prohibits the harvest or harassment of marine mammals, although permits for incidental take of marine mammals while commercial fishing may be issued subject to regulation. (See "incidental take" for a definition of "take").
Maximum sustainable yield	An estimate of the largest average annual catch or yield that can be continuously taken over a long period from a stock under prevailing ecological and environmental conditions. Since MSY is a long-term average, it need not be specified annually, but may be reassessed periodically based on the best scientific information available.
MMPA	Marine Mammal Protection Act. See above.
MPA	Marine protected areas
MSA	Magnuson-Stevens Fishery Conservation and Management Act. See above.
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act. See above.
MSY	Maximum sustained yield. See above.
National Marine Fisheries Service	A division of the U.S. Department of Commerce, National Ocean and Atmospheric Administration (NOAA). NMFS is responsible for conservation and management of offshore fisheries (and inland salmon). The NMFS Regional Director is a voting member of the Council.
NGO	Nongovernmental organization
NMFS	National Marine Fisheries Service. See above.
NMFS NWFSC	National Marine Fisheries Service Northwest Fisheries Science Center
NMFS NWR	National Marine Fisheries Service Northwest Region

Acronym	Definition
NMFS SWFSC	National Marine Fisheries Service Southwest Fisheries Science Center
NMFS SWR	National Marine Fisheries Service Southwest Region
NMSA	National Marine Sanctuaries Act
NMSP	National Marine Sanctuaries Program
NOAA	National Oceanic & Atmospheric Administration. The parent agency of National Marine Fisheries Service.
ODFW	Oregon Department of Fish and Wildlife
Optimum yield	The amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems. The OY is developed on the basis of the Maximum Sustained Yield from the fishery, taking into account relevant economic, social, and ecological factors. In the case of overfished fisheries, the OY provides for rebuilding to a level that is consistent with producing the Maximum Sustained Yield for the fishery.
OY	Optimum yield. See above.
Pacific States Marine Fisheries Commission	The PSMFC is a non-regulatory agency that serves Alaska, California, Idaho, Oregon and Washington. PSMFC (headquartered in Portland) provides a communication exchange between the Pacific Fishery Management Council and the North Pacific Fishery Management Council, and a mechanism for Federal funding of regional fishery projects. The PSMFC provides information in the form of data services for various fisheries.
PaCOOS	Pacific Coast Ocean Observing System
PFMC	Pacific Fishery Management Council
PNW	Pacific Northwest
PSMFC	Pacific States Marine Fisheries Commission. See above.
Quota	A specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.
RCA	Rockfish Conservation Area (Depends on how it is used)
RFMO	Regional Fishery Management Organization

Acronym	Definition
RMP	Resource management plan. Covers impacts to listed species from activities of state and local governments, under section 4(d) of the Endangered Species Act.
SAFE	Stock assessment and fishery evaluation. See below.
SEM	Scanning Electron Microscopy
Scientific and Statistical Committee	An advisory committee of the PFMC made up of scientists and economists. The Magnuson-Stevens Act requires that each council maintain an SSC to assist in gathering and analyzing statistical, biological, ecological, economic, social, and other scientific information that is relevant to the management of Council fisheries.
SS2	Stock Synthesis 2 – Population assessment program.
SSC	Scientific and Statistical Committee. See above.
STAR	Stock assessment review
STAR Panel	Stock Assessment Review Panel. A panel set up to review stock assessments for particular fisheries. In the past there have been STAR panels for sablefish, rockfish, squid, and other species.
Stock Assessment and Fishery Evaluation	A SAFE document is a document prepared by the Council that provides a summary of the most recent biological condition of species in the fishery management unit, and the social and economic condition of the recreational and commercial fishing industries, including the fish processing sector. It summarizes, on a periodic basis, the best available information concerning the past, present, and possible future condition of the stocks and fisheries managed in the FMP.
TIQ	Trawl Individual Quota
Vessel Monitoring System	A satellite communications system used to monitor fishing activities— for example, to ensure that vessels stay out of prohibited areas. The system is based on electronic devices (transceivers), which are installed on board vessels. These devices automatically send data to shore-based "satellite" monitoring system.
WCGOP	West Coast Groundfish Observer Program
WCPFC	Western and Central Pacific Fisheries Commission
WDFW	Washington Department of Fish and Wildlife
WG	Working Group

1.0 INTRODUCTION

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) includes directives to 1) prevent overfishing, 2) rebuild depressed fish stocks to levels of abundance that produce maximum sustainable yield (MSY), 3) develop standardized reporting methodologies to assess the amount and type of bycatch, 4) adopt measures that minimize bycatch and bycatch mortality, to the extent practicable, 5) describe and identify essential fish habitat (EFH), and 6) assess the impact of human activities, including fishing impacts, on habitat. The MSA also encourages the participation of the fishing industry in fishery research. Additionally, Standard 8 mandates consideration of the effects of fishery management measures on communities. These directives require substantial data collection and research efforts to support Council management of west coast fisheries.

In January 2007, the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006* reauthorized the MSA through fiscal year 2013. The MSA, as amended, retains key features of the *Sustainable Fisheries Act of 1996* while strengthening the Regional Fishery Management Councils, improving fishery management decision making through improved processes and an increased role of science, and increasing U.S. leadership in international fishery management and conservation issues.

Specific to research, data collection, and reporting, the amended MSA added several new provisions and programs, including:

- A study on the state of science for the integration of ecosystem consideration in fishery management, MSA Section 406.
- Bycatch Reduction Engineering Program, MSA Section 316.
- Cooperative Research and Management Program, MSA Section 318.
- Deep Sea Coral Research and Technology Program, MSA Section 408.
- A requirement under Regional Fishery Management Council Functions, MSA Section 302(h)(7), that the Council shall,

"(7) develop, in conjunction with the scientific and statistical committee, multiyear research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall—

(A) establish priorities for 5-year periods;

(B) be updated as necessary; and

(C) be submitted to the Secretary and the regional science centers of the National Marine Fisheries Service for their consideration in developing research priorities and budgets for the region of the Council."

This document, when adopted in its final form by the Council in the fall of 2008, is intended to document and communicate the Council's research and data needs through 2014 thereby fulfilling the Council's responsibilities under MSA Section 302(h)(7).

1.1 Schedule of Document Development and Review

The Council proposes to follow the schedule outlined in the recently approved Council Operating Procedure (COP) 12 (see excerpt below). Council staff and advisory bodies have been revising the current Draft Research and Data Needs document throughout the winter and spring of 2008. Council staff provided a preliminary draft in March 2008 to allow additional time for advisory bodies and the Council to review the document during this busy time of year and provide written comments to the Scientific and Statistical Committee (SSC) and Council staff. At its June 2008 meeting, the Council adopted this draft for public review. Comments from the public and the Council advisory bodies will be accepted up to and at the September 2008 Council meeting in Boise, Idaho when the Council is scheduled to adopt a final document. Written comments received at the Council office by August 20, 2008 will be included in the September Briefing Book.

EXCERPT FROM COUNCIL OPERATING PROCEDURE 12

Contingent upon its overall workload priorities, the Council will strive to develop and maintain relevant documents which display and communicate the Council's research and data needs for 5-year periods using the following schedule of tasks as a standard guide.

Continuous

Year-Round Council staff keeps track of research and data needs as they arise in various forms throughout the year and, as appropriate, advocates for efforts to address Council (such advocacy shall not include the lobbying of Congress).

Five-Year-Update Cycle

- April Council staff presents updated research and data document to the Scientific and Statistical Committee (SSC) and other advisory bodies for review at the April Council meeting. Advisory bodies provide written comments to the SSC. (Item is not on Council agenda).
- June The SSC presents recommended revisions to the Council. Other advisory bodies provide comment to the Council. The Council approves draft documents for public review.
- September After reviewing comments from the public and Council advisory entities, the Council adopts its research and data needs. The document is submitted to National Marine Fisheries Service (NMFS) West Coast regions and centers and the states. The final document is also transmitted to West Coast and National Sea Grant institutions and posted on the Council web page.

Early December Council Chair and staff meet with representatives from NMFS West Coast regions and centers and Pacific States Marine Fisheries Commission (PSMFC) to develop a consensus on high priority initiatives needed to respond to Council needs. Council Chair writes a letter to NMFS to transmit the conclusions from the meeting.

Out-of-Cycle Modifications to the Needs List

If a situation arises that would benefit from an out-of-cycle modification to the documents, the Council may announce its intent to modify the research and data needs document outside the 5-year process and make such a modification at its next meeting.

1.2 Document Organization

This document represents a summary of research and data needed by the Council to implement its responsibilities as defined by the MSA, the Regulatory Flexibility Act, and other pertinent legislation. The document is largely organized according the Council's four fishery management plans (FMPs) with additional sections for economic and social science components and ecosystem-based fishery management (EBFM) and marine protected area (MPA) issues. Because each FMP or management component has a unique Council history and its own issues and data needs, each section is organized in a style best suited for its particular research and data needs. Where appropriate, these sections address continuing issues and identify important emerging issues.

The bulleted list below represents the set of general criteria used to identify the highest priority needs. These criteria were first identified in 2000 and were applied in this most recent exercise as guiding principles rather than explicitly defined rules for developing research and data needs.

- Projects address long-term fundamental needs of west coast fisheries.
- Projects improve the quality of information, models, and analytical tools used for biological assessment and management.
- Projects increase the long-run market competitiveness and economic profitability of the industry.
- Projects contribute to the understanding by decision makers of social and economic implications in meeting biological and conservation objectives.
- Projects provide data and/or information to meet the requirements of the MSA, the Regulatory Flexibility Act, and other applicable laws.

1.3 Communication and Coordination

Following Council adoption September, 2008, the final research and data needs document will be transmitted to many west coast organizations and agencies to broadly communicate Council needs and to solicit research support. Groups to be included in the distribution include, the other seven Regional Fishery Management Councils, Headquarters as well as west coast Regional Offices and Science Centers of National Marine Fisheries Service (NMFS), west coast states, the

Pacific States Marine Fisheries Commission (PSMFC), tribal management agencies, west coast National Marine Sanctuaries (NMS), nongovernmental organizations (NGOs), Sea Grant, and academic institutions.

In December, as time and workload allow, and as scheduled under COP 12, the "Council Chair and staff meet with representatives from NMFS West coast regions and centers and Pacific States Marine Fisheries Commission (PSMFC) to develop a consensus on high priority initiatives needed to respond to Council needs. Council Chair writes a letter to NMFS to transmit the conclusions from the meeting."

2.0 ECOSYSTEM-BASED FISHERIES MANAGEMENT

2.1 Introduction

These suggestions are based on the presumption that ecosystem-based fisheries management (EBFM) would be an evolutionary process rather than a revolutionary process. We also suggest that almost any movement towards EBFM will involve more spatially explicit management, whether through use of MPAs or in recognition of fine scale stock structure and spatial process affecting recruitment. Field and Francis suggest three key elements of an ecosystem-based approach:

- Increasing use of short and long term climate and ocean status, trends, and scenarios for the California Current ecosystem in stock assessments, harvest levels and rebuilding plans.
- Consideration of trophic interactions among species, both fished and unfished, and the associated impacts of fishing on trophic dynamics and ecosystem structure and function.
- The increasing application of new management approaches, including spatial management measures to protect life history characteristics, biodiversity, and complex stock structure.

In November 2006, the SSC and the Habitat Committee held a joint session to begin the task of reviewing the science of EBFM and the application of EBFM principles in other regions, and to consider existing and potential future applications of EBFM in Council fishery management. Of note, the group agreed to a preliminary working definition of EBFM.

"Ecosystem-based fishery management recognizes the physical, biological, economic and social interactions among the affected components of the ecosystem and attempts to manage fisheries to achieve a stipulated spectrum of societal goals, some of which may be in competition."

The definition was originally developed at a July 2006 panel discussion sponsored by PSMFC and was presented in an ensuing paper entitled *Ecosystem Based Fishery Management: Some Practical Suggestions*¹.

Given the broad applicability of ecosystem-based management principles many of the research priorities identified in this chapter are reiterative or closely related to FMP-specific recommendations including salmon ecosystem and habitat needs listed under Section 4.5, groundfish habitat mapping needs in Section 3.4, forage roles and ecosystem interactions for coastal pelagic species (CPS) under Section 5.2.1, spatial socioeconomic information for ecosystem I Section 7.3.3, and habitat based management, and those for MPAs and EFH under Chapter 8. To begin moving towards these objectives and explicitly incorporating habitat and

¹ Muraso et al, 2007, *Ecosystem Based Fishery Management: Some Practical Suggestions*, Canadian Journal of Fisheries and Aquatic Science, 64: 928-939.

climatic factors in our fishery management models, the following data and research priorities are suggested:

2.2 Highest priority Issues:

- Identify ecosystem-related objectives at all levels of assessment and management. This includes stock assessments, habitat analyses, and coastwide and regional ecosystem status reports.
- Identify an approach for evaluating the benefits of various management tools in relation to achieving EBFM management objectives.
- Provide a status of the ecosystem report to the Council annually that includes, but is not limited to, evaluation of oceanographic condition, analysis of system responses to management measures, updated habitat mapping or evaluation, observations of recruitment patterns across species, and changes in trophic dynamics.
- Identify key physical and biological indicators for prediction of salmon early ocean survival and groundfish recruitment, as well as other conditions that are directly applicable to management.
- Collection of indices of ecosystem state (on appropriate temporal and spatial scales, e.g. demarcation points might be Point Conception, Point Año Nuevo, Cape Mendocino, Cape Blanco, Columbia River, Cape Flattery):
 - o upwelling, El Niño, Pacific Decadal Oscillation, Sea Surface Temperature, etc.
 - abundance of key ecosystem process indicators, such as zooplankton and forage fishes
 - o larval and juvenile fish abundance
 - o total annual production and surplus production
 - o species diversity and other measures of ecological health and integrity
 - a measure of ocean acidification and its associated impacts on marine resources and ecosystem structure and function.
- Estimate total catch for target and non target species and their prey and predators.
- Evaluate the effect of fishing on habitat and response of habitat to spatial closures.
- Encourage development of probabilistic ecosystem-based models that incorporate environmental variation and anthropogenic disturbances to establish harvest policies and enable risk assessment for fishing strategies.
- Prioritize these issues according to immediate need and relevance to management, and develop a comprehensive plan to integrate ecosystem-based processes and information into all aspects of assessment, monitoring and evaluation.

2.3 Emerging Issues:

- Develop an approach for interpreting the values for indicators, including the development of thresholds, where appropriate.
- Collect data on distribution and abundance for target and non-target species and their prey and predators on finer spatial scales, following a prioritization exercise that identifies target species in greatest need of finer scale assessment and non-target or target species that may function as indicators of ecosystem condition.
- Estimate total population size of higher level carnivores, including sea birds and marine mammals and estimate forage needs and foraging efficiencies (to provide an estimate of not only their food requirements, but the prey density needed for them to acquire these food resources).
- Provide report on trophic interactions among exploited species and model consequences of fishing at various levels on predators or prey and/or the changes in biomass that may be expected due to major shifts in climate, oceanographic parameters such as acidification, and productivity.
- Use of otolith elemental analysis or genetic fingerprinting to determine origin of benthic juveniles and formulate hypotheses on larval dispersal and stock structure.

7

3.0 GROUNDFISH FISHERY MANAGEMENT PLAN

3.1 Introduction

The focus of this section is on research and data needs to support quantitative stock assessments of groundfish stocks in the FMP. There is an emphasis on 1) continuation of on-going data collection programs that support assessments of stocks that have been already been assessed, 2) improving the quality and representativeness of these data collection programs, 3) new survey and/or sampling techniques to monitor stocks that cannot be surveyed effectively using current methods, and 4) refining stock assessment methods. Consideration is also given to the objective of expanding the number of species being assessed, either by focused research on life history characteristics of unassessed species, expanded data collection, or the development of assessment methods with lower data requirements.

Achieving strategic objectives will require further planning and coordination with longer time horizons. A plan is needed for the development of research and data collection projects rather than a simple list of research and data needs. The plan should include an evaluation of the availability of assessment data for each species in the FMP, and the adequacy of existing surveys to monitor stock abundance trends. The plan should include specific projects as well as mechanisms for coordination and development of an ongoing interagency program for addressing west coast groundfish research and data needs.

3.2 Data Issues

3.2.1 Fisheries Monitoring, Data Collection, and Availability of Data

Develop and implement a coastwide multi-state system for electronic recording of fishticket information and fishery logbooks in consistent form.

An integrated electronic recording system for fishticket and logbook information for the Pacific coast is not yet in place. There has been some progress towards this goal. A pilot project was developed by NMFS Northwest Fisheries Science Center (NWFSC) and tested by the California Department of Fish and Game (CDFG) and one processor in 2004, but this project received no additional funding. Funds for development of an electronic fishticket system for the west coast have been allocated to the Northwest Regional Office for distribution to PSMFC as part of a nationwide NMFS initiative to promote electronic data recording.

This item remains a priority. The present need for real-time estimates of landings and discards is acute, particularly given the increased emphasis on accountability for in-season management measures in the revised MSA. The Groundfish Management Team and NMFS track groundfish catches inseason and attempt to produce close to real-time estimates of landings and discards. An electronic fishticket system would provide real-time landings data that are more precise with all the requisite information captured.

Logbooks are used with fishtickets and west coast Groundfish Observer Program (WCGOP) data to reconcile the total catch by area and determine bycatch rates in association with target species. Logbook data availability can lag by as much as a year, which delays input data to bycatch models and the total catch reconciliation process. Electronic logbooks, like electronic fishtickets, can increase accuracy of critical data needed for good management decision-making. Logbook programs should be developed for other commercial sectors beyond the limited entry trawl fishery.

Develop methods, programs, or analytical tools to quantify amount of groundfish discarded by the various fishing sectors.

WCGOP was established in 2001 to improve estimates of total catch and discard in west coast fisheries. The program deploys over 40 observers, and collects at-sea data from limited entry trawl and fixed gear fleets as well as from open access, nearshore, prawn, and shrimp fleets. Currently, the coverage objective is to maintain, at minimum, 20 percent coverage of the limited entry trawl fleet and fixed gear fleets. WCGOP has made progress in quantifying discard in trawl fisheries and limited entry fixed gear fleets, however, observer coverage of open access fleets is currently being expanded. Improvements are needed in facilitating timely access to the information and data collected by WCGOP. These improvements are necessary to implement Council objectives, and are a high priority. This information would enable analyses to identify areas or fishing strategies in which available target species might be accessed with focused target fishing strategies, or within particular regions, with acceptable impacts on overfished species.

Improve Fishery Monitoring and Data Collection.

For reasons already noted, a fully integrated fishery statistics program is a priority for groundfish management. Data required include fishtickets to census the landed catch, logbooks to document areas of capture, shoreside sampling to estimate species composition of aggregated landings and biological traits of target species, and observer program data to document catch discarded at sea.

- Estimating discards in the recreational groundfish fishery is increasingly important, particularly for non-retention species. Additional data are needed on the number and size of recreational discards.
- The bycatch model used to estimate total discards is an empirical model whose performance should be evaluated on an ongoing basis as more data become available. Refinements to the bycatch model may be needed if model predictions need improvement.
- Information on the size composition of discards was identified as data need for the assessment of sablefish, Dover sole, petrale sole, and English sole. Discards of these species can be significant and are unlikely to correspond to the default assumption that discards have the same size composition as retained catch. In some cases, the size composition of discard provides information about the magnitude of recruiting year classes.
- Use of electronic monitoring of bycatch should be further explored.
- Electronic technologies and methods should be explored to improve the pace of data reporting of observer information as well as fish ticket information.

- Protocols and priorities for biological sampling (lengths and ageing structures) should be evaluated to ensure that sufficient data are being collected to support existing stock assessments and proposed new assessments. Stock Assessment Review (STAR) panels identified significant information gaps in the age and growth information needed for a number of assessments developed in 2007. There is need to optimize the use of available resources (i.e., port samplers) in a way that provides maximum benefit to stock assessments.
- The accuracy and precision of recreational catch and effort estimates for minor fishing modes such as beach and bank anglers, private access sites, and night fishing needs to be investigated.
- Recreational fishery impacts could be better estimated with improved understanding of discard mortality rates, particularly in nearshore waters where the ability to survive barotrauma or hooking or trapping injuries, may vary among species. There may also be long-term physiological effects on reproductive output due to capture and release, which could have stock productivity and management implications. Improved estimates are needed of mortality rates of discarded fish in both recreational and commercial fisheries. If alterative release methods are shown to affect survival, it may be necessary to collect information on how commonly these methods are used.
- Development of fishery independent time series of catch rates and associated composition data using fixed sites and volunteer fishermen properly supervised using standard protocols.
- Cooperative research programs are required under the recently reauthorized MSA and are playing an increasing role in west coast fishery science and management and could be utilized to expand data collection as fishing opportunities have decreased and research needs increased. However, it is critical to design programs and implement the necessary data evaluations and analyses to ensure that ongoing and future cooperative research work can be used in fishery management (i.e., fishery models, stock assessments, etc.) on a timely basis.

3.2.2 Historical Fisheries Data

Reconstruct historical catch histories for groundfish.

Historical catch estimates which are consistent with the best available information and also consistent across species are needed. Particularly problematic are a general lack of comprehensive species composition estimates by gear-type and region.

Several of the 2007 assessments have conducted historical commercial and recreational catch reconstructions. An effort needs to be made to develop a consistent approach to reconstructing catch histories. The ideal outcome would be a single document or database outlining the best reconstructed catch histories for each species (c.f. Rogers (2003) that lists foreign catches) with accompanying uncertainty envelopes. Particular attention should be paid to constructing a coastwide catch history for rockfish.

The California landing receipts on microfilm back to 1950 should be incorporated into the landings database.

3.2.3 Survey Data

Continue to conduct annual comprehensive shelf and slope resource surveys.

An annual slope survey conducted by commercial trawlers was initiated by NMFS NWFSC in 1998. In 2003, the slope survey was extended onto the shelf and is now intended to be a comprehensive annual survey of both shelf and slope groundfish resources along the entire west coast from the Mexican to Canadian border. This expanded survey supplants the Alaska Fisheries Science Center's triennial shelf survey, which was conducted for the final time in 2004.

Resource Assessment Surveys

Given the low estimates of potential yield and the long rebuilding trajectories for many rockfish, particularly yelloweye rockfish and canary rockfish, there is a particular need to supplement existing surveys with means of estimating abundance and biomass trends that have a lesser impact on resources, and that survey habitat not traditionally indexed by trawl surveys.

- Evaluate feasibility of and develop as appropriate alternative survey methodologies for measuring abundance and distribution of groundfish. In recent years, feasibility studies or small-scale surveys have been conducted using Autonomous Underwater Vehicles (AUVs), submersibles, acoustics, towed cameras, light detection and ranging (LIDAR), hook and line gear, and egg and larval sampling. Research should be conducted to evaluate the comparative costs and utility of these alternative survey methods for groundfish assessment.
- Develop a coastwide survey of rockfish populations in untrawlable areas. Fairly low cost non-extractive advanced technologies (i.e., bottom mapping AUV's) are currently available. The use of comprehensive non-extractive methods to assess abundances in areas not well surveyed by the current bottom trawl survey should be developed and evaluated. Continue to explore an acoustical-optical survey as an index of groundfish abundance off southern and central California.
- The continuation and enhancement of the International Pacific Halibut Commission's annual hook-and-line survey as a means to collect yelloweye rockfish data for consideration in the yelloweye rockfish stock assessments is also a high research priority, given the truncation of catch per unit of effort (CPUE) time series from targeted longline and recreational fisheries.
- Maintain California Cooperative Oceanic Fisheries Investigations (CalCOFI) surveys and expand processing of collected samples. Improve survey information for canary and widow rockfish.
- Pilot cooperative industry surveys for canary and widow rockfish hold promise, and should continue.
- Additional attention should be given to evaluating hook and line or longline gear for surveying rockfish populations. The gear is inexpensive, can be standardized across survey platforms, is deployable on a variety of bottom types, and is suitable for cooperative research projects with the fishing fleet. Since most rockfish species are not common and have low productivity, sustainable yields are likely to be low even after overfished species are rebuilt. Only low cost or self-funding survey methods may be viable over the long term given the vagaries of state and Federal funding for fisheries research.
- Tagging programs are a potentially useful source of information on stock trends for nearshore species such as black rockfish. Additional work is needed to develop quantitative priors for tagging catchability when the tagging program is smaller in scale than the stock being assessed. Continuation and/or expansion of tagging programs should consider the scope of the project relative to the area being assessed.
- Accurate bottom substrate maps, including trawlable and untrawlable habitat, are critical to interpretation of survey abundance indices. Efforts should continue to refine habitat maps of Pacific coast continental shelf and slope. Many commercial vessels are now using automated mapping software to augment digital navigation charts with improved bathymetry and bottom substrate information from echosounders. Cooperative research projects to access this information should be considered.
- Investigate the importance of calendar date and other covariates on catch rates from the triennial survey and propose adjustments to account for seasonal and other variation in selectivity/availability.
- Develop genetic methods to identify larval fish in plankton samples for accurate species identification.
- Explore use of genetic tags in population size estimation.

3.2.4 Biology and Basic Life History Data

Biological Information Including Fishery and Productivity Parameters

- Expand research on the basic life history characteristics of unassessed groundfish. There is a particular need for research on nearshore groundfish stocks that are targeted by hook and line fisheries and recreational fisheries. Studies should be specifically designed to estimate basic assessment information, including growth curves, length-weight relationships, age and length-maturity schedules, and longevity. Identify which species in the groundfish FMP are lacking this basic information and develop a timetable for generating this information.
- There is a need for focused relatively short-term biological collections to address acute assessment concerns. An example of this kind of study would be an evaluation of spatial variability in blue rockfish growth. Similar studies are needed for black rockfish and bocaccio, and there are other examples.

- Current harvest policies for rockfish use female spawning biomass or egg production as a metric of reproductive output. Recent laboratory research suggests that the larval survival of black rockfish increases with the age of the spawner, a result that calls into question the current working assumption. At present it is unclear if this is a general characteristic of rockfish reproductive biology. Both fieldwork and laboratory studies are needed to evaluate the importance of maternal age in rockfish reproductive biology. Analysis is needed to assess the effects on current harvest policies.
- Recent genetic research indicates vermillion rockfish and blue rockfish may each represent two distinct but morphologically similar species. Further genetic studies are needed to confirm these findings. These genetic studies should be designed to address management issues, such as differences in spatial distribution, the extent of intermixing, differences in growth, longevity, and maturation schedules between the two species. Other species of rockfish should also be studied for genetic structure.
- Conduct comprehensive gut analysis of groundfish to determine basic trophic interactions. Only piecemeal information is currently available. Comprehensive information will be essential for developing ecosystem assessments for the California Current System (CCS).

3.3 Stock Assessment Issues

Stock Assessment Data Reporting Improvements

Identification of research and data needs is a routine part of the groundfish STAR process. STAR Panels frequently capture these needs in their final reports. The following general data reporting improvements were reiterated in several of the STAR Panel reports from the 2007 assessment reports. Species specific recommendations from 2007 reports are contained in Appendix I.

- Establish a meta database of all data relevant to rockfish stock assessments. The database should include enough detail about the nature and quality of the data that a stock assessment author can make a well informed decision on whether it could be useful for their stock assessment.
- Establish accessible online databases for all data relevant to groundfish stock assessments, so that assessment authors can expeditiously obtain the raw data if required.
- Establish a database for historical groundfish catch histories, "best" guesses and estimates of uncertainty (and processes for updating and revising the database).
- Develop a concise set of documents that provide details of common data sources and methods used for analyzing the data to derive assessment model inputs.
- Routinely produce and present supporting documentation for any derived indices which are included in a stock assessment model (e.g., generalized linear mixed model [GLMM] derived trawl survey abundance indices).

Stock Assessment Modeling

- Develop methods to assess and manage stocks for which data are not adequate to fit agestructured assessment models. Develop harvest control rules and associated procedures to calculate acceptable biological catches (ABCs) and optimum yields (OYs) for these data-poor stocks.
- Develop guidance on use of Bayesian priors in stock assessment models. Priors for survey catchability can be extremely important when the contrast in relative abundance is not sufficient to produce a reliable model estimate of survey catchability. Examples of recent assessments with undetermined survey catchability include sablefish, longnose skate, and longspine thornyhead. A workshop to develop survey catchability priors to use in stock assessment modeling would promote development of suitable analytical techniques and bring together appropriate expertise.
- Develop and evaluate standard methods for jointly modeling age and length data, including choice of distribution, age-reading error, initial variance assumptions, and tuning methods.
- Evaluate how best to account for and report uncertainty in stock assessments. Explore alternative approaches to present uncertainty in a way that facilitates informed decision-making.
- Develop assessment models that appropriately incorporate results from tagging programs and alternative survey methodologies in stock assessment models.
- Conduct simulation testing to evaluate alternative methods to include environment variables in stock assessment. Apply cross-validation techniques when selecting environmental variables to ensure the derived relationships are robust. A full cross-validation should be carried out that includes the variable selection process.
- Evaluate the effect of MPAs on stock assessment and management of groundfish stocks.
- Continue the evaluation of OY control rules, biological reference points, spawner-recruit relationships and harvest policies used to make decisions about ABC and harvest guideline/OY for groundfish. Simulation methods should be used to evaluate the performance of harvest control rules used to determine OY, and to test alternative methods for determining B_{MSY} and F_{MSY} . Harvest policies should be tested to determine whether they are robust to decadal-scale environmental variation and directional climate change.
- Evaluate the statistical properties (i.e., bias, estimability, variance, etc.) of current stock assessment models used for groundfish. Assessment models for groundfish are complex with many estimated parameters, yet often the data used to fit these models are sparse and uncertain. The reliability of model estimates should be tested using simulation procedures.
- Conduct field projects and modeling studies to determine which selectivity assumptions (dome shape vs. asymptotic) are most appropriate for the various groundfish stocks including lingcod and numerous species of rockfish with age structured assessments.

- Current assessment models treat populations as a single unit. Often there are geographic differences in biological and fishery characteristics without compelling evidence that separate stocks exist. Population densities and temporal pattern of fishing mortality also show geographic differences. Meta-population assessment models should be developed for linked populations. Simulation studies should be conducted to evaluate the feasibility of conducting reliable spatially-explicit stock assessments. Such models will be necessary to assess impacts of spatially-explicit management measures now being used by the Council, and likely to be used to a greater degree in the future.
- The use of recreational fishery CPUE in stock assessments has increased, particularly for assessing nearshore species for which there are no other reliable indices of abundance. Although there have been some recent advances in the analytical methods used to derive abundance indices from CPUE data, further work is needed to understand the properties of recreational CPUE data (e.g., method evaluation with simulation data or cross-validation studies). In particular, the effect of management changes and alternative fishing opportunities should be evaluated.
- Many stock assessments utilize artificial boundaries to delineate stocks, in particular those associated with international boundaries. While such assumptions are difficult to avoid in many cases, investigations regarding the implications of stock structure and population connectivity of transboundary resources have been highlighted by review panels as a key research priority in assessments of blackgill, canary, widow, and yelloweye rockfish, as well as in past review panels for other species. Investigations such as genetic methods to provide insights on stock structure, and modeling scenarios that could consider the implications of transboundary stock structure, remain critically important research needs.
- Continuation of joint U.S./Canada technical forums, workshops, and research programs is an important aspect of improving the assessment of transboundary rockfish stocks.

3.4 Habitat Issues

Investigate impact of fishing gear on specific habitats and habitat productivity on the west coast fishing grounds.

A major effort was made to prepare a comprehensive Environmental Impact Statement (EIS) analysis for the EFH amendment to the FMP. The EIS analysis was an integrated Geographic Information System (GIS) analysis that included the first complete substrate map of the Pacific coast, habitat suitability maps for groundfish species, and maps of fishing impact and habitat sensitivity. This analysis was a significant achievement, but a notable shortcoming was the lack of information on fishing impacts specific to Pacific coast habitats. In an extensive literature review, the EIS identified only two Pacific coast studies. One study was anecdotal; the other was an observational study funded by the Monterey Bay NMS and published in 1998. Estimates of habitat sensitivity to fishing gear impact and habitat recovery were obtained from studies in other areas.

Field studies are needed on the effects of fishing on benthic habitats on the Pacific coast. Studies should be conducted in a variety of bottom habitat types, using a variety of gear types. Studies

should focus on short- and long-term effects on benthic communities and bio-geological processes and include specific detailed associations between habitat and the species that rely on them. (The Council and its Advisory Bodies are reviewing all of the groundfish needs for prioritization in September. The Habitat Committee has recommended elevating research on benthic mapping and species associations as a high priority.)

3.5 Pacific Whiting Research

The following research needs were identified in the *Report of the 2008 U.S./Canada Pacific Hake (Whiting) Stock Assessment Review (STAR)*:

- A Management Strategy Evaluation approach is recommended to evaluate whether the current 40-10 harvest control rule is sufficient to produce the management advice necessary to ensure the sustainable use of the Pacific hake stock with its dramatically episodic recruitment. The 40-10 rule assumes that simply reducing catches in a linear fashion as stock biomass declines will be sufficient to guide the fishery back towards the target spawning biomass level. However, with the fishery being dependent upon a single declining cohort just reducing the catch may achieve the status quo but rebuilding will not occur without new recruitment.
- The operating model developed for the Management Strategy Evaluation should evaluate how well the different assessment models recapture true population dynamics. At issue is whether a simpler model such as ADAPT / VPA performs better or worse than a more complex model such as SS2.
- Conduct additional investigations to improve the Pacific whiting acoustic survey. Evaluate the current acoustic target strength for possible biases, and explore alternative methods for estimating target strength. Continue to compare spatial distributions of Pacific whiting across all years and between bottom trawl and acoustic surveys to estimate changes in catchability/availability across years.
- Female Pacific hake grow differently than male Pacific hake and many of the more influential dynamic processes that operate in the fishery are length-based but are currently considered from an age-based perspective (for example selectivity). Future assessment models should explore the need for including both gender- and length-based selection into the dynamics.
- The inclusion of ageing error was found to be influential on the model fit in the assessment model. However, issues with ageing still remain. Further ageing error analyses are required, especially focused on estimating any bias in the ageing. It will be important to conduct a cross-validation of ageing error from the different laboratories conducting the ageing. It is especially important to include otoliths that were read by Alaska Fisheries Science Center (AFSC) staff.
- In light of current acoustic survey information, re-evaluate treatment/adjustment of pre-1995 acoustic survey data and index values. For example, compare the biomass index implied by the area covered by the pre-1995 surveys with the total biomass from the full

area covered by the post-1995 surveys. The difference between these two indices has implications for the magnitude of the survey catchability coefficient prior to 1995.

- There should be further exploration of geographical variations in fish densities and relationships with average age and the different fisheries, possibly by including spatial structure into future assessment models.
- There should be exploration of possible environmental effects on recruitment and the acoustic survey.
- There should be further investigation and resolution of possible under-reporting of foreign catch.

4.0 SALMON FISHERY MANAGEMENT PLAN

4.1 Introduction

In the 2000 Research and Data needs report, three highest priority research and data needs for salmon, along with numerous additional high priority needs, were identified. A brief summary of the three highest priority issues identified in 2000 follows:

- There is increased interest in, and use of, mark-selective fisheries as a management tool to reduce fishery impacts on natural salmon stocks of concern. Successful implementation of selective fisheries will require accurate estimates of non-retention mortalities and more detailed information regarding migration patterns and stock contributions to fisheries.
- Techniques for Genetic Stock Identification (GSI) have advanced to the point that they are a potential management tool. With the establishment of the coast-wide genetic baseline for Chinook, almost 200 stocks can now be identified from a tissue sample. There is currently intense interest in using these techniques for inseason management of weak stock impacts.
- Recent expansion of the listings under the Endangered Species Act (ESA), and the new definition of EFH, expands the Council's concerns with both freshwater and marine habitat in relation to harvest strategies and conservation. In addition, effects of changing climate need to be considered. Many of the production-based models currently in use have unrealistic behaviors at low stock abundance. More realistic models for management strategy evaluations incorporating dynamic habitats need to be developed..

High priority needs are essentially issues continuing from the 2000 document. Other high priority needs associated with hatchery fish are also identified. Emerging issues are concerned with the implementation of GSI methods into fishery management, improved forecasting and modeling of Klamath fall Chinook, and examination of ecosystem and habitat interactions.

All research and data projects listed in this section are considered either "highest priority needs" or "high priority needs" according to their ability to meet the criteria listed in the introduction to this report.

4.2 Highest Priority Issues

4.2.1 Mark-Selective Fisheries

A more accurate assessment of total fishing related mortality for natural stocks of coho and Chinook is needed. The ability of existing management models to predict and assess non-catch mortalities needs to be evaluated and the models modified, if needed.

Fishery management regimes designed to reduce impacts through selective fishing, or nonretention, depend on the accuracy of estimates of non-catch mortality. In recent years, an increasing proportion of impacts of Council fisheries on naturally-spawning stocks have been caused by non-catch mortality as regulations such as landing ratio restrictions and mark-selective retention have been employed. Research using standardized methodologies (e.g., handling, holding, reporting, post-mortem autopsies, etc.), is needed to estimate release mortality, encounter, and drop-off rates associated with gears and techniques that are typically employed in different areas and fisheries. Special attention needs to be paid to mid-term and long-term mortality. Fleet profile data (i.e., fishing technique and gear compositions) are needed to estimate release mortality rates for individual fisheries.

Harvest models have been modified to incorporate non-catch mortality. The selective coho Fishery Regulation Assessment Model (FRAM) has been approved for Council use but the selective Chinook FRAM is still under review. The modified models should work well when exploitation rates are relatively low, but as selective fisheries become more intense these models will tend to underestimate total mortality of the unmarked stocks. This problem could be addressed by using continuous catch equations which would probably require a model of migration patterns. The harvest models become more sensitive to estimates of non-catch fishing mortality as the selective fisheries modeled become more intense. Uncertainty and risk need to be explicitly incorporated into these models as they are developed.

4.2.2 Stock Identification

Advances in GSI, otolith marking, and other techniques may make it feasible to use a variety of stock identification technologies to assess fishery impacts and migration patterns.

The increasing necessity for weak-stock management puts a premium on the ability to identify naturally-reproducing stocks and stocks that contribute to fisheries at low rates. In many instances, the coded-wire tag (CWT) system alone does not provide the desired level of information. The Council encourages efforts to integrate a variety of techniques to address this issue.

Substantial progress has been made on this issue in the past eight years. A coast-wide microsatellite database for Chinook has been developed. A similar database for coho salmon is under development, but needs resources to coordinate efforts for the entire coast. Genetic techniques have improved so that samples can potentially be analyzed within 24-48 hours of arrival at the laboratory. GSI is being used on an inseason basis in Canada to manage coho salmon fisheries off the west coast of Vancouver Island. Studies are underway to evaluate the potential usefulness of real time GSI samples in Chinook management, particularly with Klamath fall Chinook. There are proposals to develop operational alternatives to time-area management using these techniques, in combination with existing CWT marking, mass marking, otolith microchemistry, and other emerging stock identification techniques. These types of studies are now the highest priority for salmon management.

4.2.3 Habitat-based Fisheries Models

The development of probabilistic habitat-based models that incorporate environmental variation and anthropogenic disturbances to evaluate harvest policies and enable risk assessment for different fishing strategies is encouraged.

Overfishing definitions are required to relate to a measure of MSY. MSY for salmon is related to productivity, which varies annually in the freshwater and the marine environments. Techniques for evaluating productivity, or survival, in freshwater and marine habitats are needed

to set appropriate harvest targets and associated conservation guidelines such as escapement floors and overfishing definitions.

Various habitat-based models have been developed, but in general they are not being applied to harvest management. One reason for this is that most of these models are developed to identify limiting factors and evaluate potential habitat restoration measures. Application to harvest management would require refined population dynamic components to these models. There is the potential for using these types of models to evaluate recovery exploitation rates. Other possible contributions could be improved understanding of climate variability and environmental influences on survival and stock productivity. Once satisfactory habitat-based models of population dynamics have been developed, they can be used in management strategy evaluations to simulate alternate management scenarios. This would be a valuable contribution to harvest management, but to become useful, substantial development efforts are needed.

4.3 High Priority Issues

The following high priority items are directly related to the highest priority items described above.

Alternatives to Time-Area Management. The annual planning process for salmon centers on the crafting of intricate time-area management measures by various groups. The feasibility of using alternative approaches (e.g., pre-defined decision rules to establish upper limits on fishery impacts, individual quotas, effort limitation) to reduce risk of error, decrease reliance on preseason abundance forecasts, improve fishery stability, simplify regulations, and reduce management costs needs to be investigated. For instance, the integration of Council preseason planning processes with the abundance-based coho management frameworks under consideration by the Pacific Salmon Commission, and by the State of Washington and Western Washington Treaty Tribes, needs to be developed and evaluated.

Continuous Catch Equations. Because current planning models used by the Council are constructed using simple linear independent equations, interactions between stocks and fisheries within a given time step are ignored. This can result in biased estimates of impacts. Research is needed to investigate the feasibility of recasting the models from discrete to continuous forms, e.g., competing exponential risk catch equations.

Mass Marking. Estimates of mark rates are essential for planning mark-selective fisheries. The accuracy of mark rates at release needs to be evaluated as well as the variability of mark-induced mortalities under operational conditions.

Stock Migration and Distribution. The Council currently employs "single pool" type models (i.e., ocean fisheries operate simultaneously on the entire cohort) for evaluating alternative regulatory proposals. Under certain conditions, such models can produce results that are inconsistent with expectations of biological behavior. For example, if a fishery off Central California is closed to coho fishing for a given time period, the fish that were saved become available to fisheries off the Northwest Coast of Washington in the next time period. Research is needed to determine the feasibility of incorporating explicit migration mechanisms into planning models. In most cases it is not feasible to rely upon coded-wire tagging of natural stocks, particularly those in depressed status, to obtain direct information on patterns of distribution and

exploitation. Alternative stock identification technologies should be explored as a means to collect data necessary for stock assessment purposes. Research is needed to improve our ability to estimate contributions of natural stocks in ocean fisheries and escapement. Potential research areas include 1) association studies to determine the degree to which hatchery stocks can be used to represent the distribution and migration patterns of natural stocks; 2) GSI, DNA, otolith marking, and scale studies; 3) improved statistical methods and models; and 4) basic research on stock distribution and migration patterns.

Limiting Factors. Research is needed to identify and quantify those factors in the freshwater habitat which limit the productivity of salmon stocks. Research should focus on 1) quantifying relationships between habitat factors and salmon production; 2) measuring the quantity and quality of these habitat factors on a periodic basis; and 3) evaluating habitat restoration projects for both short-term and long-term effects. Activities such as water diversions, dams, logging, road building, agriculture, hydroelectric projects, and development have reduced production potential by adversely affecting freshwater conditions. Habitat quality and quantity are crucial for the continued survival of wild stocks.

Explicit Consideration of Uncertainty and Risk. Current planning models employed by the Council are deterministic. Most aspects of salmon management, such as abundance forecasts and effort response to regulations, are not known with certainty. Given the increased emphasis on stock-specific concerns and principles of precautionary management, the Council should receive information necessary to evaluate the degree of risk associated with the regulations under consideration. Research is needed to evaluate the accuracy of existing planning models, characterize the risk to stocks and fisheries of proposed harvest regimes, and to effectively communicate information on uncertainty for use in the Council's deliberations.

Environmental Influences on Survival. Estimates of natural survival and stock distribution in the estuary and ocean, year-to-year, age-to-age, and life-history variability, and relationships to measurable parameters of the environment (i.e., temperature, upwelling, etc.) are needed. Substantial predictive errors in forecasts based on previous year returns and apparent large-scale, multi-stock fluctuations in abundance suggest important large-scale environmental effects. Some work has been done for coho but little is known for Chinook. Included in the information need are long-term and short-term relationships between environmental conditions and fluctuations in Chinook and coho salmon survival, abundance, and maturation rates.

Coast-wide Models. Currently, at least five models are employed to evaluate impacts of proposed regulatory alternatives considered by the Council. A single coast-wide Chinook model would provide analytical consistency and eliminate the need to reconcile and integrate disparate results. Additionally, research is needed to determine the feasibility of combining Chinook and coho into a single model to simplify the tasks of estimating mortalities in fisheries operated under retention restrictions (e.g., landing ratios or non-retention).

4.4 Interaction of Hatchery and Wild Salmon

In addition to the above high-priority items a number of issues related to hatchery/wild salmon interactions are of ongoing interest:

Genetics. Determine the extent to which there may be gene flow between hatchery and wild stocks, and what the likely effect of that gene flow may be on the fitness of wild stocks. A new genetic technique that is being applied to this problem is Full Parental Genotyping. If all mating adults can be captured and genotyped then offspring can be linked to their specific parents. This has great power for identifying the relative success of various hatchery/wild matings, but is limited in practice to relatively small systems and systems where all returning adults can be captured.

Freshwater Ecology. Investigate the ecological effects (competition, predation, displacement) of hatchery fish on natural production in freshwater. All life stages from spawner to egg to smolt may be affected.

Estuary Ecology. Migration timing, habitat utilization patterns, competition for food or space, and predator interactions are areas of interest. Differences between hatchery and natural smolts in these areas could help address the questions of the importance of density-dependent growth and survival and potential negative effects of hatchery releases on natural stock production.

Early Ocean Life-history. Points of comparison between hatchery and wild stocks could include: ocean distribution, migration paths and timing, size and growth, food habits, and survival rates.

Identification of Hatchery Fish. The presence of hatchery fish may interfere with the accurate assessment of the status of natural stocks. This problem may be alleviated by the use of mass-marking, otolith marking, CWTs, genetic marking, or other technologies to estimate the contribution of hatchery fish to fisheries and natural- spawning populations.

Supplementation. Research is needed to investigate the utility of using artificial propagation to supplement and rebuild natural stocks. Guidelines for the conduct of supplementation to preserve genetic diversity and legacy of populations are needed. Special care is needed to ensure that supplementation programs do not unintentionally jeopardize natural runs.

4.5 Emerging Issues

California Central Valley Fall Chinook Management

Ocean fisheries in 2008 off of Oregon and California are severely constrained due to record low forecasts for California Central Valley fall Chinook abundance. Only 59,000 Sacramento River fall Chinook spawners are expected to return in 2008 compared to the objective of 122,000-180,000; about 88,000 returned in 2007. Reasons for the decline are under investigation and further investigation will likely lead to new, high priority research needs in the near future. A list of focus areas for research was submitted to the Council by CDFG at the March 2008 Council meeting (see Appendix II) and is being reviewed by NMFS, the Council, the west coast States, and the Council advisory bodies.

NMFS will convene a scientific forum to consider potential causes of the recent collapse of the Sacramento River fall Chinook salmon stock, and what may be a broader depression of salmon productivity for stocks involved in west coast fisheries from the Sacramento River north to Puget Sound. The approach to investigate the sudden failure of the Sacramento River fall Chinook

stock will be to examine potential factors that could have contributed to the low survival of the 2004 and 2005 brood years (Appendix II)), and attempt to identify possible causative factors.

The approach on questions of broader salmon productivity depression will be to address the issue from the perspective of carrying capacity/productivity degradation by suites of anthropogenic impacts or by climate change effects that have made salmon populations much less resilient and thus more susceptible to precipitous declines like the one occurring in the Sacramento. While ocean conditions may have been the proximate cause in recent years, current populations are vulnerable to precipitous decline from any number of factors. Thus restoring the productivity of various stocks, to the extent feasible, will require a comprehensive approach to address many potential issues.

Genetic Stock Identification

Several emerging issues are related to the high priority assigned to the implementation of GSI technologies in weak stock fishery management. Research tasks and products necessary for this to be successful are:

- Identification of the error structure of GSI samples taken from operating fisheries.
- Development and application of technologies to collect high-resolution at-sea genetic data and associated information (time, location, and depth of capture, ocean conditions, scales, etc.).
- Collection of stock-specific distribution patterns on a coast-wide, multi-year basis analogous to the current CWT data base, but at a higher time-and-space resolution.
- Identification of stock distribution patterns useful for fisheries management and appropriate management strategies to take advantage of these distribution patterns.
- Development of pre-season and in-season management models to implement these management strategies and integrate them with Council management.

Klamath River Fall Chinook Management

Many research and data needs have been identified through the annual salmon management cycles and the methodology reviews relative to Klamath River fall Chinook (KRFC). Some of these research needs have been identified in the past and have recently re-emerged due to current conservation concerns for KRFC salmon. Research and data needs specific to Klamath River salmon stocks can be found in the assessment of factors affecting the low natural area spawning escapements of Klamath River fall Chinook (KRFC) in 2004-2006, which were less than the spawning conservation objective and technically placed this stock in the category of an Overfishing Concern. In June 2008, the Council adopted a rebuilding plan to achieve KRFC management objectives and end the Overfishing Concern. Action called for in the rebuilding plan include changing fishery management objectives, altering hatchery practices, intensifying research, and making habitat improvements. The supporting documents for these Council actions are available by contacting the Council office.

• Review modeling methods for estimating Klamath River Chinook contact rates and catch projections.

- Examine the appropriateness of the September 1 "birth date" for KRFC, and the sensitivity of the Klamath Ocean Harvest Model (KOHM) to changes in the birth date.
- An experimental design for a test fishery to estimate the relative impacts to KRFC in fisheries restricted to nearshore areas.
- Review methods for estimating fall fishery impacts in the KOHM in the annual preseason management process.

Ecosystem and Habitat Issues

Long-term fluctuations in salmon abundance have proven to be difficult to predict and can create significant instability in the conservation, management, and economics of salmon and salmon fisheries. A better understanding of marine and freshwater conditions and their impacts on salmon populations is needed. Recent declines in west coast salmon populations, most notably Sacramento River fall Chinook, serve as a reminder of the volatility of salmon populations over time.

Describe environmental variability in the California Current ecosystem on seasonal to decadal time scales for use in understanding the impact of environmental variability on the distribution and population structure of salmon. This effort is broadly relevant to other species in the Council's FMPs and is closely related to ecosystem research needs identified in Chapter 1.

- Develop tools that describe the environmental state and potential habitat utilization for near-shore anadromous fish.
- Characterize and map the ocean habitats for anadromous species using data from satellites and electronic tags.
- Characterize climate variability in the northeast Pacific and its relation to salmon production.

Pacific Salmon Commission CWT Working Group Report and Action Plan

The Pacific Salmon Commission (PSC) established a CWT Working Group (WG) to develop recommendations for an action plan to correct deficiencies in data collection and reporting throughout the CWT system and to improve analysis of CWT recovery data. The WG reviewed the past performance of the coastwide CWT program, assessed its current status, and developed guidelines to improve the statistical basis for the future program.

The CWT WG identified tasks that would address the CWT-related recommendations of the PSC's CWT Expert Panel Report, which was presented to the Council in March, 2006 and April 2007. The highest priority was to be placed on those tasks that need immediate action. Accordingly, the initial emphasis was to identify options to address current deficiencies in the CWT program.

The Council is supportive of the PSC effort and findings and encourages continued work on the reports research and data recommendations. The full report, "An Action Plan in Response to Coded Wire Tag (CWT) Expert Panel Recommendations. A Report of the Pacific Salmon Commission CWT Workgroup" is available on the PSC website. (www.psc.org/publications_tech_psctechreport.htm)

5.0 COASTAL PELAGIC SPECIES FISHERY MANAGEMENT PLAN

5.1 Highest Priority Research and Data Needs

- Develop new indices of abundance or augment current methods that cover the population range for both Pacific sardine and Pacific mackerel including;
 - 1. A coastwide (Mexico to British Columbia) synoptic survey.
 - 2. Redesigned aerial surveys that include on the water verification of species composition and school size using acoustics and capture techniques such as the pilot project under development by the Pacific Northwest (PNW) sardine industry.
 - 3. Acoustic methods, which are a qualitatively different approach to indexing relative abundance than current methods, are the primary fishery-independent method for obtaining abundance indices for many of the world's major pelagic fish stocks. Acoustic methods have been applied to northern anchovy off California. Acoustic data have the potential to provide information on the relative abundance of the populations of Pacific sardine off southern California and the PNW. Acoustic methods could also be used to provide information on distribution and physical oceanographic (pelagic habitat) information, such as currents, sea surface temperature, chlorophyll, etc.
- Coordinate more timely exchange of fishery catch and biological port samples for age structures for both Pacific sardine and Pacific mackerel in the northern and southern end of their range. In particular, efforts must be made to develop a systematic long term program of data exchange with Mexico.
- Re-evaluate the harvest control rules for both Pacific sardine and Pacific mackerel. Since the establishment of the current MSY-proxy control rule in the CPS FMP more than a decade ago, modeling tools have advanced and more data on CPS has been accumulated. As such, simulation modeling, particularly within the context of a management strategy evaluation (MSE), should be conducted.
- Ageing error for both Pacific sardine and Pacific mackerel should be quantified and incorporated in future assessments. Ageing error and bias need to be quantified by conducting multiple readings on otoliths exchanged between readers and agencies, ideally on a double blind basis.

5.2 Continuing Issues

5.2.1 General CPS Research and Data Needs

• Develop a coastwide (Mexico to British Columbia, Canada) synoptic survey of sardine and Pacific mackerel biomass, i.e., coordinate a coastwide sampling effort (during a specified time period) to reduce "double-counting" caused by migration. The first coastwide, Baja California to British Columbia synoptic survey was completed in April 2006. Hopes are that this will be the first survey in a long time series, possibly within the Pacific Coast Ocean Observing System (PACOOS) framework. The continuance of these synoptic research surveys on an annual basis is necessary to ensure survey results are representative of the entire range of this species (as well as other CPS of concern). Developing and conducting such a survey will necessarily require considerable additions to current budgets, staff, and equipment. Expanded coastwide surveys are planned for 2008. To address seasonal issues and to further explore the possibility of successful spawning in the PNW, the Southwest Fisheries Science Center is planning to conduct two cruises in 2008, one in April and a second in July.

- Gain more information about the status of the CPS resource in the north using egg pumps during NMFS surveys, sonar surveys, and spotter planes. To address these questions, biological information has been collected from NMFS research surveys off the PNW. So far, the PNW research surveys have occurred in July 2003, March and July 2004, and winter 2005. These Southwest Fisheries Science Center-based surveys included sardine acoustic trawl and Continuous Underway Fish Egg Sampler surveys off the coast of Oregon and Washington. The surveys were designed to fill major gaps in knowledge of sardine populations, by measuring the age structure and reproductive rates, and assessing the extent the fishery is dependent on migration and on local production of sardine. The primary objective of the surveys is to accumulate additional biological data regarding the northern expansion of the population into waters off the PNW and ultimately, to include data directly (or indirectly) in ongoing stock assessments of both Pacific sardine and Pacific mackerel.
- Increase fishery sampling for age structure (Pacific sardine and Pacific mackerel) in the northern and southern end of the range. Establish a program of port sample data exchange with Mexican scientists (Instituto Nacional de la Pesca [INP], Ensenada). There has been interest in coastwide management for the Pacific sardine fishery which would entail a more consistent forum for discussion between the U.S., Mexico, and Canada. Recent U.S.-Mexico bilateral meetings indicated willingness from Mexico to continue scientific data exchange and cooperation on research, and engage in discussions of coordinated management. Mexico suggested that the MEXUS-Pacifico Cooperation Program would be a good venue for starting that discussion. In November 2007, the United States hosted the 8th annual Trinational Sardine Forum which resulted in effective exchange of data and ideas on the science and economics of coastwide sardine management. The 9th annual forum is scheduled to occur in the fall of 2008 in Astoria, Oregon.
- Evaluate the role of CPS resources in the ecosystem, the influence of climatic/oceanographic conditions on CPS, and predatory/prey relationships. Increase the use of fishery information to estimate seasonal reproductive output of the stock (e.g., fat/oil content). The Coastal Pelagic Species Management Team (CPSMT) continues to pursue research to evaluate the role of CPS resources in the ecosystem, the influence of climatic/oceanographic conditions on CPS, and define predator-prey relationships. In 2004, the Council directed the CPSMT to initiate the development of a formal prohibition on directed fisheries for krill. This proposed action is in recognition of the importance of krill as a fundamental component of the ecosystem and a primary food source for much of the marine life along the west coast. In March 2006, the Council adopted a complete ban on commercial fishing for all species of krill in west coast Federal waters and made

no provisions for future fisheries. They also specified EFH for krill, making it easier to work with other Federal agencies to protect krill. The Council has also initiated the development of an Ecosystem FMP. The previously discussed ban on krill harvest and harvest set-asides that recognize the important role of CPS and buffer against overfishing have been cited as good starting points for such a plan (see Chapter 8).

- Studies of krill concentrations and CalCOFI larval data in association with annual and intra-annual variations in environmental conditions may provide insights into predator-prey relationships, ocean productivity, and climate change.
- There should be overall greater collaboration with industry in the collection and analysis process for CPS, including Pacific sardine and Pacific mackerel.
- There should be continued support for the newly adopted CPS Observer Program and in particular, bolstering sample sizes (spatially and temporally) to ensure an adequate number of trips are 'observed' to produce statistics that are representative of the fishing fleets at large.
- Improve information on salmon and other bycatch in the CPS fishery. NMFS Southwest Region initiated a pilot observer program for California-based commercial purse seine fishing vessels targeting CPS in July 2004 with hopes of augmenting and confirming bycatch rates derived from CDFG dockside sampling. Future needs of the CPS observer program include: standardization of data fields, development of a fishery-specific Observer Field Manual, construction of a relational database for the observer data, and creation of a statistically reliable sampling plan.

5.2.2 Pacific Sardine

- Growth data for Mexico, southern California, northern California, the PNW and the offshore areas should be collected and analyzed to quantitatively evaluate differences in growth among areas. This evaluation would need to account for differences between Mexico and the U.S. on how birthdates are assigned, and the impact of spawning on growth.
- The timing and magnitude of spawning off California and the PNW should be examined.
- Hypothesis of a single stock structure should be examined using existing tagging data and additional tagging experiments, trace element analysis, and microsatellite DNA markers.
- Biological surveys should include regular systematic sampling of adult sardine for: 1) reproductive parameters for daily egg production method (DEPM); 2) population weight at age; and 3) maturity schedule. Specifically, adults collected from survey trawls must be collected and analyzed more routinely in the future than has been the case in the past.
- Information which could be used in an assessment of the PNW component of a single coastwide population or of a separate PNW stock should be obtained. Synoptic surveys of Pacific sardine on the entire west coast have the potential to provide such information as well as the basic data.

- The Tri-national Sardine Forum and MEXUS-Pacifico (i.e. the NMFS-Instituto Nacional de Pesca Forum) should be utilized to share fishery, survey and biological information among researchers in Mexico, Canada, and the U.S. The long-term benefits of this forum will be greatly enhanced if it can be formalized through international arrangements.
- Assess changes in early life history information from CalCOFI samples to evaluate Pacific sardine response to climate change.

5.2.3 Pacific Mackerel

- A large fraction of the catch is taken off Mexico in recent years. Efforts should continue to be made to obtain total catch, length, age and biological data on a timely basis from the Mexican fisheries for inclusion in stock assessments. Survey data (Investigaciones Mexicanas de la Corriente de California [IMECOCAL] program) should be obtained and analyses conducted to determine whether these data could be combined with the CalCOFI data to construct a coastwide index of larval abundance.
- There is a lack of biological sampling (and catch) data available from Mexico for inclusion in the assessment, which is more critical in recent years when the Mexican catch has been as large as or larger than that of California.
- The maturity schedule was developed more than 20 years ago, and should be re-examined with new data.

5.2.4 Market Squid

- Additional work is required on reproductive biology, including the potential fecundity of newly mature virgin females, the duration of spawning, egg output per spawning bout, the temporal pattern of spawning bouts, the growth of relatively large immature squid, and the growth of mature market squid. Important questions about growth might be addressed through Scanning Electron Microscopy (SEM) studies of statoliths.
- There should be overall greater collaboration with industry in the collection and analysis process for CPS, including market squid.

5.3 Emerging Issues

• Standard data processing procedures should be developed for CPS species, similar to those developed for groundfish species.

5.3.1 Pacific Sardine

Full stock assessments were conducted in 2007 following the three year cycle in the CPS FMP. A new modeling program, Stock Synthesis 2 (SS2) was utilized for Pacific sardine in 2008. Several of the recommendations below came directly from the 2007 assessment review process. Additionally, in response to a decline in forecasted Pacific sardine abundance in 2007 and a desire for more research in the PNW, industry representatives are currently drafting a survey design for an aerial survey or relative Pacific sardine abundance in Washington and Oregon.

- The DEPM method should be extended so that constraints are placed on the extent to which the estimates of P_0 vary over time.
- The data on maturity-at-age should be reviewed to assess whether there have been changes over time in maturity-at-age, specifically whether maturity may be density-dependent.
- The aerial surveys should be augmented to estimate schooling areas and distinguish schools, and the enhanced survey design should undergo rigorous review. Data (e.g. bearing and distance to schools) should be collected which could be used in line transect-type estimation methods. 'Sea-truthing' of the species identification of the aerial surveys will enhance the value of any resulting index of abundance. In addition, aerial surveys should be extended to cover the PNW. Aerial surveys are not only useful for relative abundance estimates, but for studying pelagic habitat utilization.
- Explore the use of PNW surveys (i.e.: NMFS NWFSC; Bob Emmett) as an index of abundance.
- The results of SS2 model runs that treated the egg survey data either as an index of egg production or as an index of spawning biomass did not affect the outcome of the assessment, but estimates of survey selectivity were, unexpectedly, markedly different. SS2 should be adapted to enable indices of egg production and spawning biomass to be fitted simultaneously.
- Noting that there is potential for sardine from different stock subcomponents to recruit to adjacent stock areas, it would be desirable to account for this in the assessment model. To do so requires development of a new assessment model or modification of an existing one. If feasible, SS2 should be amended to include such an enhancement. Further, tagging experiments (or other means to facilitate the estimation of movement rates) should be considered.
- The catch history for the Mexico and southern California fisheries should be examined to estimate the catch from the southern subpopulation. For example, use temperature and/or seasonality to separate catches by subpopulation. Based on the results of this analysis, determine the biological data (length- and conditional age-at-length) by subpopulation. The analysis of subpopulation structure should ideally be conducted in conjunction with a re-evaluation of the current harvest control rule.
- The estimate of the catchability coefficient for the DEPM estimates was 0.4 (for the base model). Analyses should be conducted, for example, based on prior distributions for the factors leading to differences between DEPM estimates and spawning biomass to assess the plausibility of values for DEPM-q of this magnitude.
- Develop an index of juvenile abundance. The indices used in the assessment pertain only to spawning fish. An index of juvenile abundance will enhance the ability to identify strong and weak year-classes earlier than is the case at present.

5.3.2 Pacific Mackerel

Full stock assessments were conducted in 2007 following the three year cycle in the CPS FMP. A new modeling program, SS2 was unsuccessfully applied to Pacific mackerel in 2008. Several of the recommendations below came directly from the 2007 assessment review process. Additional recommendation specific to modeling methodologies can be found in the November 2007 Pacific mackerel STAR Panel report.

- The survey design of the new aerial spotter index should incorporate and adhere to consistent and rigorous protocols. Attempts should be made to estimate school surface area. Also, an aerial spotter survey should be initiated in the PNW in conjunction with industry.
- Examine the disparity between the observed recruitment dynamics (boom-bust) and the underlying spawner-recruit model (uncorrelated recruitment deviations).
- In additional to estimating ageing imprecision and bias for incorporation into assessment models, an age validation study should be conducted for Pacific mackerel. Such a study should compare age readings based on whole and sectioned otoliths and consider a marginal increment analysis.
- The construction of the spotter plane index is based on the assumption that blocks are random within region (the data for each region is a "visit" by a spotter plane to a block in that region). The distribution of density-per-block should be plotted or a random effects model fitted, in which the block is nested within a region to evaluate this assumption (e.g. examine whether certain blocks are consistently better or worse than the average). Overlaying oceanographic data on spotter plane observations may provide information on pelagic habitat utilization to help predict movement patterns and/or for use in stock assessment.
- The data on catches come from several sources which are not well documented. The catch history from 1926-27 to 2006-07 should be documented in a single report.

5.3.3 Market Squid

- The potential use of target egg escapement levels is partly predicated on the assumption that the spawning which takes place prior to capture is not affected by the fishery and contributes to future recruitment. However, since the fishery takes place directly over shallow spawning beds, it is possible that incubating eggs are disturbed by the fishing gear, resulting in unaccounted egg mortality. It is also possible that the process of capturing ripe squid by purse seine might induce eggs to be aborted, which could also affect escapement assumptions.
- The CalCOFI ichthyoplankton collections contain approximately 20 years of unsorted market squid specimens that span at least two major El Niños. This untapped resource might be useful in addressing questions about population response to El Niño conditions.

6.0 HIGHLY MIGRATORY SPECIES FISHERY MANAGEMENT PLAN

6.1 Background

The Council's FMP for highly migratory species (HMS) covers a broad range of species including tunas, billfishes, and sharks. The spatial extent of the Pacific Ocean used as habitat for these species extends well beyond the U.S. Exclusive Economic Zone (EEZ). The HMS FMP recognizes that stock assessment and management of these species cannot be done unilaterally – rather it must be done in conjunction with other nations that exploit these species throughout their range.

In the Pacific Ocean, HMS are managed by two regional fishery management organizations (RFMO) – Inter-American Tropical Tuna Commission (IATTC) and Western and Central Pacific Fisheries Commission (WCPFC) – that together cover the breadth of the Pacific Ocean habitat for the species included in the Council's HMS FMP (Figures 1 and 2). Stock assessments and related research are conducted under the auspices of these RFMO. U.S. scientists (whose affiliations include NMFS, academia, NGOs, and the fishing industry) participate in both RFMO processes.

A third scientific organization – International Scientific Committee (ISC) on Tuna and Tuna-like Species in the North Pacific Ocean provides scientific advice on the status of North Pacific HMS stocks that straddle the 150° W longitude boundary between the RFMOs. Examples of these stocks include North Pacific albacore, Pacific bluefin tuna, swordfish, and striped marlin. The ISC is not an RFMO in that it does not manage HMS international fisheries. Rather, it provides the stock assessments and advice that the RFMOs use to base management decisions for the straddling stocks.

Research and data needs for the Council's HMS FMP have been organized in this chapter by order of priority. These needs cover a range of HMS management issues, from stock assessments to protected species interactions, EFH, and fisheries economics.

For stock assessments, the overarching priority is to permit accurate and timely status determinations and monitoring of trends in population abundance and fishing mortality for all stocks with priority given to stocks that are most important to and most affected by Councilmanaged fisheries. Stock assessments rely on three main categories of data: (1) fishery independent and -dependent surveys or indices of abundance, (2) accounting of total fishing mortality ("fisheries statistics"), and (3) biology and life history characteristics. Thus, in addition to prioritizing stocks in terms of management need, this chapter also identifies priority data gaps for each stock. A comprehensive prioritization would consider these data gaps across the full set of stocks and evaluate which data sources should be added, enhanced, or maintained to produce some optimal level of information. In some cases, it may be desirable to collect information on a stock with relatively lower management priority if higher priority stocks are already being adequately assessed. This balancing of the need to address data poor stocks while also maintaining and improving timeliness and accuracy of assessments for stocks of highest management priority must also take into account the transboundary nature of HMS stocks-as mentioned above, NMFS cannot make status determinations or track catches for most HMS stocks without cooperation from other countries.

Stock assessment priorities will also have to factor in the new annual catch limit (ACL) and accountability measure (AM) requirements. Stocks subject to management under an international agreement are exempted from ACLs and AMs but, under proposed guidelines, will still require estimates of MSY and status determination criteria. The HMS sharks are not managed under an international agreement and include some of the most data poor stocks in the FMP. Thus it may be necessary to give stock assessment priority to sharks of lower management priority (e.g., thresher sharks) in order to meet the ACL requirements.

For additional information on HMS research and data needs consult the HMS SAFE document available on the Council's website. The HMS Management Team is currently revising the document with fishery statistics and stock assessment results from 2007. The Council, the HMS Management Team, and Council staff will coordinate on the update of the HMS SAFE and Council research and data needs as both documents reach finality in the fall of 2008.

6.2 Highest Priority Issues

Research and data needs are identified in this section for the major HMS species and HMS fisheries interactions pertinent to the Council.

6.2.1 North Pacific Albacore

<u>Fisheries Statistics</u>: Timely annual submission of national fishery data to the ISC Albacore WG data manager is critical for producing timely and up-to-date stock assessments. Additional resources are needed to oversee the submission of these data, provide database management, and improve documentation of the entire database system including metadata catalogs. An electronic fish ticket system on the west coast would greatly improve the availability and timeliness of fishery data.

<u>Biological Studies:</u> Biological information is a critical building block for stock assessments. It should be reviewed and updated regularly to capture changes in population parameters if they occur. Unfortunately, this process has not been followed for North Pacific albacore because of limited resources for routine biological studies. Consequently, the stock assessment models used by the ISC Albacore WG rely on a patchwork of biological information that was developed largely in the 1950s and 1960s.

There is a critical need to reassess the biological information and to conduct contemporary studies to update this information. More specifically, there is a critical need to conduct studies on:

- age and growth with the goal of updating growth rates and comparing with older studies,
- reproductive biology with the goal of updating the maturity ogive,
- development of new indices of abundance particularly from fisheries that regularly catch recruitment age albacore (age 1), e.g. the U.S. recreational fishery,

- migration and habitat utilization, with the goal of better informing fishery effort standardization and fishery selectivity/catchability assumptions,
- an examination of whether there are multiple sub-stocks with juveniles having different migratory behaviors (i.e., juveniles from different spawning localities with different migration routes and timetables),
- environmental factors, as they relate to recruitment, growth, maturity, and catchability of albacore; and
- albacore length data through port sampling.

<u>Stock Assessment and Management Studies:</u> Recent stock assessment results as well as fishery developments suggest that the North Pacific stock of albacore is at or fast approaching full exploitation. Demand for more frequent and more precise information on status of the stock and the sustainability of the fisheries is therefore likely to increase. With this in mind, the albacore stock assessment needs improvement in several of its facets:

- investigation of competing assessment models using simulation to ascertain each model's strength and weakness when faced with input data generated from a known albacore-like population,
- simulation studies to assist fishery managers in selecting appropriate biological reference points for albacore,
- investigation of CPUE standardization;
- refinement of the VPA-2Box model (the WG's current assessment model);
- investigation of the applicability of SS2 as an alternative assessment model for albacore;
- evaluation of the utility of formally adding tagging data into the assessment; and
- develop new indices of abundance from fisheries that regularly catch recruitment age albacore (age 1), such as the U.S. recreational fishery.

6.2.2 Swordfish

<u>Fisheries Statistics</u>: The timeliness of data reporting, as outlined above for albacore, is equally important for swordfish.

<u>Biological Studies:</u> All biological studies listed above for albacore are needed for swordfish as well. In addition,

- age and growth data from locally caught fish should be examined, and
- the distribution of swordfish by season and age within the outer portions of the EEZ and high seas should be evaluated.

Stock Assessment and Management Studies: All stock assessment and management studies listed above for albacore are also needed for swordfish. In particular,

• there is a need for additional work on effort standardization.

Economic Studies:

- Explore economic viability of harpoon gear as an alternative to DGN and longline gear for swordfish.
- Research the best options to promote developing and testing novel gear to reduce protected species interactions and increase swordfish catch.

6.2.3 Sharks

Most of the tunas covered in the HMS FMP are being assessed – with varying degrees of completeness and sophistication – on a regular basis. Some of the billfishes – particularly striped marlin and swordfish – are either being assessed or have assessments planned in the near future. On the other hand, stock assessments for sharks have been preliminary at best, and few and far between. Furthermore, comprehensive shark assessments do not appear to be on the near-term planning horizon for the RFMOs or for the ISC. This situation should not be taken to imply that sharks are unimportant. Nor should it be inferred that sharks are less vulnerable to the effects of fishing than are the tunas and billfishes. In fact, because of the key vital rates of most sharks (especially reproductive rates that are lower than those for tunas and billfishes), many shark species are likely to be more vulnerable to overfishing than other HMS.

To understand this *prima fascia* inconsistency (i.e., perhaps more vulnerable but not assessed), it is necessary to understand the nature of the fisheries responsible for most of the catch of sharks over the past several decades. Internationally, these fisheries tend to be either (1) tuna-targeting fisheries that caught sharks as bycatch in their tuna fishing operations and discarded them (without recording numbers or mass) over most of their fishing history; or (2) smaller scale directed shark fisheries that tend not to report shark catches in a manner suitable for stock assessment, e.g. catch reports that aggregate the catch of multiple shark species into a single 'shark' category or do not report the catches at all.

As with the other species covered by the HMS FMP, most shark species cannot be assessed or managed unilaterally by the Council. Some species are highly oceanic with ranges similar to that of tunas (e.g., blue shark). Others are more coastal – with perhaps most of their habitat shoreward of the U.S. EEZ – but exhibit north-south migrations with significant catches in Mexican waters (e.g., thresher sharks). The net effect is that accounting for the total catch of sharks over their entire period (several decades) and areas of exploitation is not possible. Furthermore, there is a paucity of the biological samples needed to characterize the size of animals taken from the fisheries that account for most of the catch. Active biological studies

(age, growth, maturity, food habits, etc.) are ongoing (NMFS, State, and academic researchers) and understanding of the biological characteristics for at least some shark species is probably sufficient for stock assessment purposes. However, without an accurate history of total catch and the corresponding size samples, stock assessment efforts and concomitant management by the Council will be problematic.

The following species-specific research priorities have been identified for the two highest priority sharks because of their importance in U.S. west coast commercial and recreational fisheries:

Common thresher shark:

- stock structure and boundaries of the species and relationships to other populations;
- the pattern of seasonal migrations for feeding and reproduction, and where and when life stages may be vulnerable;
- ageing and growth rates, including comparisons of growth rates in other areas; and
- maturity and reproductive schedules.

Shortfin mako shark:

- distribution, abundance, and size in areas to the south and west of the west coast EEZ; and
- age and growth rates (current growth estimates differ widely).

6.2.4 Interactions with Protected Species and Prohibited Species

More complete catch information and data on interactions with protected and prohibited species are needed for most HMS fisheries. There is inadequate understanding of the fisheries on some HMS stocks that are shared with Mexico (e.g., species composition of shark catches in Mexican fisheries), and inadequate data exchange with Mexico. These fisheries are likely affecting both protected species and prohibited species of fish.

More work is needed to better understand possible impacts of the HMS fisheries on protected species of sea turtles, birds, and marine mammals. For example, there is a need to investigate the hooking survivorship of protected species, such as turtles and seabirds that are caught as bycatch in the HMS fisheries. In addition, fisheries-independent research is required to better understand distribution and habitat use by turtles and to determine the linkages to ecosystem parameters (oceanographic and biological). This includes data on turtle migration seasonality and routes, genetic stock composition of populations by species, and habitat use in order to better understand likely periods of interaction with fisheries and turtle life histories. Development of predictive models that integrate oceanography, ecosystem parameters (e.g., prey distribution), and habitat use of turtles are needed. More work on the sizes and structures of turtle populations by species would also enable improved application of the ESA and other laws and regulations to HMS

fisheries. Continued research on the abundance and distribution of marine mammals is also critical, particularly for HMS fisheries operating within the West Coast EEZ.

Some specific research priorities include:

- Research into habitat use of leatherback turtles and other species of concern to better understand the potential for reducing bycatch. Explore whether hotspots or temperature bands can be identified in near-realtime in order to provide information to fishermen on places with potentially high interaction risks.
- Explore how regulating U.S. Pacific swordfish fisheries affects international trade in swordfish and the potential unintended consequences for protected species interactions in foreign fisheries.
- Conduct a cost benefit analysis of various sea turtle conservation measures (e.g. fishery regulations vs. nesting beach protection).
- Compare bycatch rates of DGN vs. shallow set longline gear for swordfish, both by mining observer data and conducting gear comparison studies in the fishery areas.

6.3 High Priority Issues

6.3.1 Blue shark

As noted in the previous chapter, relatively little assessment and research activity is focused on shark species when compared to the existing work being done on other HMS such as tunas. Blue shark was an important shark species in the California CPFV fishery of the late 1980s, but has steeply declined as a share of the catch in recent periods. Blue sharks are encountered in relatively small numbers in commercial and recreational fisheries coastwide. Two specific research needs identified for blue sharks are to:

- monitor sex and size composition of catches; and
- determine the migratory movements of maturing fish from the EEZ to high seas.

6.3.2 Striped Marlin

<u>Fisheries Statistics</u>: The timeliness of data reporting, as outlined in Section 5.2 for albacore, is equally important for striped marlin and swordfish. Additionally:

• the official striped marlin catch statistics are considerably less well developed than those for albacore, and significant effort is needed to ensure that the total catch from all nations is well estimated.

<u>Biological Studies</u>: All biological studies listed above for albacore are also needed for striped marlin. In addition,

• stock structure for striped marlin in the Pacific Ocean is more uncertain than for other HMS species and several stock structure hypotheses are credible. A synoptic, critical

review of all available information (fisheries data, icthyoplankton data, and genetic studies) is needed to either resolve the issue or at least to reduce the number of credible hypotheses; and

• age and growth data from locally caught fish should be examined.

<u>Stock Assessment and Management Studies:</u> All stock assessment and management studies listed above for albacore are also needed for striped marlin. Specific to striped marlin, there is a need for additional work on effort standardization.

6.3.3 Pacific Bluefin Tuna

<u>Fisheries Statistics</u>: The timeliness of data reporting, as outlined for albacore above, is equally important for bluefin tuna. Additionally,

- the official bluefin catch statistics need further scrutiny, e.g. there are apparent discrepancies between some of the reported catches and the corresponding Japanese import records; and
- increased port sampling of commercial bluefin length frequencies is needed in the Eastern Pacific Ocean, particularly of the fish destined for the pens in farming operations.

<u>Biological Studies:</u> All of biological studies listed above for albacore are also needed for bluefin tuna. In addition,

• there is a need to develop seasonal and perhaps area-based weight-length relationships as the bluefin condition factor appears to vary both seasonally and regionally.

<u>Stock Assessment and Management Studies:</u> All of stock assessment and management studies listed above for albacore are also needed for bluefin tuna. In particular, there is a need for additional work on effort standardization if credible indices of abundance are to become available for bluefin tuna.

6.4 Other Priority Stocks and Issues

6.4.1 Management Unit Species Catch Data

Total catch data are likely inaccurate for most HMS fisheries due to an inadequate at-sea data collection programs, logbook programs, and shoreside sampling programs for west coast fisheries and unreported catch by international fisheries. Catch data needs include:

- Total catch information (including incidental and bycatch) and protected species interactions for surface hook-and-line, purse seine, and recreational fisheries, and additional at-sea sampling of drift gillnet fisheries
- Catch composition data for harpoon gear
- Size composition of bycatch in drift gillnet fisheries
- Condition (e.g., live, dead, good, poor) of discarded catch in all HMS fisheries

Additional work needs to be done to develop ways to adequately sample recreational fisheries, particularly shore-based anglers and private vessels. There is a need to develop methods for sampling private marinas and boat ramps to determine catch, and the level of bycatch and protected species interactions, as well as sample the catch for length and weight of fish caught to convert catches reported in numbers to catches by weight. Better catch and effort estimates are also needed for HMS recreational fishing tournaments, in particular those tournaments focusing on common thresher and mako sharks.

6.4.2 Survivability of Released Fish

Little is known of the long-term survivorship of hooked fishes after release, the effectiveness of recreational catch-and-release methods on big game fishes (pelagic sharks, tunas, and billfishes) and of methods to reduce bycatch mortality in longline fishing. Controlled studies of the survivability of hooked and released pelagic sharks and billfishes are needed to determine the physiological responses to different fishing gears, and the effects of time on the line, handling, methods of release, and other factors. Appropriate discard mortality rates, by species, need to be identified in order to quantify total catch (including released catch). Alternative gears and methods to increase survivability of recreationally caught fish and to minimize unwanted bycatch in fisheries should be identified.

6.4.3 Essential Fish Habitat

There is very little specific information on the migratory corridors and habitat dependencies of these large mobile fish; how they are distributed by season and age throughout the Pacific and within the west coast EEZ, and how oceanographic changes in habitat affect production, recruitment, and migration. Research is needed to better define EFH and to identify specific habitat areas of particular concern (HAPCs), such as pupping grounds, key migratory routes, feeding areas, and where adults aggregate for reproduction. A particularly important need is to identify the pupping areas of thresher and mako sharks, which are presumed to be within the southern portion of the west coast EEZ, judging from the occurrence of post-partum and young pups in the areas (e.g., NMFS driftnet observer data). Areas where pregnant females congregate may be sensitive to perturbation, and the aggregated females and pups there may be vulnerable to fishing.

6.4.4 Stock Assessment Review

Pacific HMS stock assessments are carried out by the RFMOs and by the ISC. The processes used to conduct the assessments and to have them critically reviewed varies considerably across

the organizations and the species being assessed. In none of these cases, however, does the level of critical peer review approach that of the Council's STAR process. This may become an issue for the Council if international management regulations begin to affect U.S. coastal fisheries to a greater extent than they do at present. The Council may want to consider having some member(s) of its SSC participate in these international processes. This will provide the Council with a better perspective on the stock assessments and the ensuing international management advice.

6.4.5 Tropical Tuna Species and Dorado

The commercially important tropical tuna species, namely yellowfin, bigeye, and skipjack tuna, are principally harvested in the EPO by vessels from the Central and Latin American fishing fleets. Although a small West Coast-based US flag purse seine fishery opportunistically harvests these tunas, the US does not have a fleet active in the main EPO fishery at present. The tropical yellowfin, bigeye and skipjack tunas are no longer taken in large numbers by west coast-based commercial fisheries.

The California commercial passenger fishing vessel (CPFV) fleet is the principal U.S. fishery for dorado which are often taken in the Mexican EEZ. Dorado can be a significant portion of the total CPFV annual catch and was the leading species in 2006, followed by yellowfin tuna and albacore tuna. Specific recommendations on dorado research include:

- Determine the stock structure of dorado in the eastern Pacific, and
- The significance of floating objects and other-species associations relative to life history

6.4.6 Pelagic and Bigeye thresher sharks,

These species occur with considerably less frequency than common thresher sharks in U.S. west coast fisheries. It is of interest to Council-managed fisheries how the different ecologies of these species compare with that of common thresher shark.



Figure 1. Area covered by the Inter-American Tropical Tuna Commission (IATTC). The Antigua Convention refers to the recent international treaty that revised the IATTC boundaries.



Figure 2. Area covered by the Western and Central Pacific Fisheries Commission (WCPFC).

7.0 ECONOMICS AND SOCIAL SCIENCE COMPONENTS

7.1 Status of the Highest Priority Issues Identified in 2000

Comparative analysis of limited access and rights-based management programs.

An analysis of these programs is lacking, except for information being developed for the Trawl Individual Quota (TIQ) program.

Baseline descriptions of fishing industry and communities and periodic assessment of fishery status.

Periodic assessments of fishery status are contained in Stock Assessment and Fishery Evaluation (SAFE) documents. Quantitative descriptions of economic status and trends in specific sectors of commercial and recreational fisheries (e.g. commercial harvesters, processors, party/charter boat operators) and in fishing communities are generally limited to basic information such as landings, ex-vessel revenues and fishing effort.

Economic and social analysis of groundfish and salmon harvest and management strategies.

Analyses of harvest and management strategies are lacking in groundfish, salmon, and other fisheries. Bycatch models for selected components of groundfish fishery have been developed and - in some cases (i.e. limited entry trawl) - reviewed. Cost-earnings surveys of limited entry groundfish vessels, open access groundfish vessels and salmon trollers have been completed in recent years that should facilitate such analyses.

Recreational fishery net economic value and angler participation models.

Net economic value and angler participation models are under development for the salmon and groundfish recreational fisheries in the PNW. Development of similar models is underway for California.

Social Data and Socioeconomic baseline profiles of fishing industry and communities.

Socioeconomic profiles for 125 coastal communities significantly involved in west coast and North Pacific fisheries have been published and are posted on the NMFS NWFSC web page.

Annual port-specific profiles of all west coast commercial fisheries are being developed for 1981-2007.

7.2 Continuing Issues

Continuing issues are categorized into two types of activities: data collection/augmentation and model development/analysis.

7.2.1 Data Collection and Augmentation

Economic data needs, as described in the Council's *West Coast Fisheries Economic Data Plan* 2000-2002, are summarized in the following table and augmented to include communities as well as specific fishery sectors. Core data needs pertain to fundamental information relevant to understanding economic behavior and estimating the economic value and impact of fisheries.

Harvesters	Processors	Charter Vessels	Recreational Fishers	Communities
# harvesters, effort by fishery (including AK)	# companies, associated plants and buying stations	# vessels, effort by trip type	# anglers, effort by mode/trip type	Fishery-related businesses in harbor and larger community
Revenue by fishery (incl AK)	Volume of raw product by source (fishery deliveries, imports), revenue and value added	Revenue by trip type		
Variable (trip) and fixed costs	Variable and fixed costs	Variable (trip) and fixed costs	Variable (trip) and fixed costs	Expenditures by fishery-related businesses
Employment and income	Employment and income	Employment and income		Fishery-related employment and income
Vessel characteristics (including harvest capacity)	Processor characteristics (including processing capacity), location of markets and product flows	Vessel characteristics	Angler demographics and socioeconomic characteristics	Community demographics and socioeconomic characteristics

Data are needed to enumerate and quantify the spatial distribution of commercial and recreational fishing trips, processors and buying stations, CPFV operations and other fishery-dependent businesses. Spatial data on fishing trips should include both landing sites and areas fished. Such data are needed to evaluate a range of spatial management issues, including but not limited to marine reserves. Processor files and vessel characteristic files available from the Pacific Fisheries Information Network are probably in need of updating, or at least a thorough check for consistency and accuracy. The processor list, in particular, has many typos that create ambiguities regarding the identity of processors. To facilitate analysis, each processor should be assigned a unique identification code that is standardized across states and that allows each processor to be linked with its associated plants and buying stations.

Currently, landings receipt data do not include a variable measure of fishing effort. Instead, analysts must rely on proxies such as number of vessels or trips, or use logbooks, which are not available for most fisheries. Adding a variable measure of fishing effort, such as days fished per trip would make the fish tickets more useful for economic analysis.

Inclusion of crewmember IDs on landings receipts would greatly facilitate understanding of the economic effects of regulations on this data-poor segment of the commercial fishery.

Bycatch has become a central issue in west coast fisheries management. Groundfish trawl logbooks have been an important tool for analyzing bycatch, and logbook programs have been implemented in fisheries such as market squid. Logbooks are a primary source of information on the spatial distribution of catch and fishing effort and should be considered for other fisheries.

Comprehensive detailed data on recreational fishing effort (anglers as well as trips) are needed to estimate aggregate angler expenditures and associated economic value and impacts. Improvements to existing angler license frames (e.g., complete electronic coverage of the angling population, access to addresses/phone numbers of license holders) would facilitate collection of economic data.

7.2.2 Model Development and Analysis

Analyses relevant to the high priority issues discussed in Section 7.1 are as follows:

- periodic assessment of status of west coast commercial and recreational fisheries including participation, profitability, employment, income, and major management issues,
- evaluation of alternative programs to document and reduce bycatch, bycatch mortality, and effects of gear on habitat with cost-effectiveness and incentive compatibility included among evaluation criteria,
- evaluation of alternative management approaches to increase harvest stability and enhance flexibility of fishery participants, and
- evaluation of alternative capacity management programs including limited entry and dedicated access privileges on fishery participants and fishing communities. Important non-trawl fisheries to consider are open access groundfish and salmon.

In addition, more specific and quantitative analysis is needed to augment existing socioeconomic profiles of fishing communities, including:

- trends in major commercial and recreational fisheries, and factors affecting these trends,
- infrastructure availability and needs (for commercial fisheries, recreational fisheries, other marine resource-related uses),
- financial aspects of infrastructure development and maintenance, and
- indicators of community dependence on fisheries and community well-being and resilience that can be linked to changes in regulations, economic conditions and other relevant factors.

7.3 Emerging Issues

Major regulatory changes have occurred in west coast fisheries in the past five years that warrant retrospective evaluation. Prime examples include the implementation of rockfish conservation areas (RCAs), the groundfish trawl vessel buyback program in 2003, the salmon fishery closures, and the increasing use of MPAs. Also, growing attention is being paid to more holistic approaches to management that focus on the relationship of fisheries to habitat, bycatch, and environmental and domestic/global market conditions, and consider non-fishery activities and values that may be enhanced by ecosystem approaches to management. As above, these needs are divided into two activities: data collection/augmentation, and model development/analysis. While some of the data and modeling needs identified in this section are relevant to social as well as economic issues, the Council report *Social Science in the Pacific Fishery Management Council Process*² provides more complete information on social science needs and can be found on the Council's website (www.pcouncil.org/research/resdocs.html).

7.3.1 Data Collection and Augmentation

Many of the data needs previously identified in Section 6.2.1 are relevant to emerging as well as continuing issues.

To achieve some of the more holistic modeling discussed in Section 6.3.2, fishery data will need to be integrated with data on habitat, environment, market conditions and other human activities. Such integration will likely pose challenges in terms of data availability and lack of standardization in the measurement and temporal/spatial scale of individual data elements. Cooperative data collections that pool resources and expertise of agencies, fishermen and research entities may prove beneficial to all involved.

To facilitate retrospective evaluation of the trawl vessel buyback program, surveys or interviews are needed of individuals and entities that participated in the buyback to determine whether individuals truly departed or remained in the groundfish fishery, or are now participating in other fisheries.

7.3.2 Model Development and Analysis

Retrospective analyses of major recent regulatory changes are needed to determine

² Gilden, Jennifer. July 2005. Social Science in the Pacific Fishery Management Council Process. Pacific Fishery Management Council, Portland, Oregon 97220-1384.
socioeconomic effects of:

- RCAs on commercial and recreational fisheries and fishing communities,
- the trawl vessel buyback program on related fisheries and on fishing communities (including fishery infrastructure),
- the salmon fishery closures, and
- MPAs.

Comprehensive models of CPFV fleet dynamics are needed that reflect the multi-species nature of the fishery, economic incentives of CPFV operators to provide not just fish but a "fishing experience," and adaptations of CPFVs to regulatory, market and environmental conditions. Such models could be used to determine whether CPFV fleet dynamics yield single-species CPUEs that can reasonably be used as an index of relative abundance for that species.

Computable bioeconomic models of fishing effort that are spatial and include effects of ex-vessel prices and climate (e.g. sea surface temperatures, sea level pressure) are needed to predict effects of changes in regulatory, habitat, environmental and market constraints on participation and harvest in the ocean commercial, ocean sport, tribal and in-river sport salmon fisheries.

Models are needed to estimate and manage bycatch in non-trawl fisheries, for different species of concern including marine mammals, birds, sea turtles, and others.

Models are needed to analyze the transition from an open access fleet to a limited entry fleet in terms of regional economic impacts and effects on costs, earnings and harvest capacity of the fleet.

Models are needed to evaluate the economic dependency of coastal communities on fishery and marine resources and the linkages between these industries and the broader regional economy. This type of analysis should be developed to the point of incorporating general equilibrium effects, and linked to participation and bioeconomic factors.

A more holistic perspective is being promoted in marine resource management (e.g. ecosystembased management). In light of this perspective, a characterization is needed of all commercial and recreational fisheries within the California Current Ecosystem, including spatial distribution and identification of behavioral linkages among complementary and substitute fishing activities. In addition, an analytical framework that accounts for dynamic and inter-regional interactions among industries and households would improve estimates of economic impacts, and comparison of costs and benefits among management alternatives. A systematic and critical evaluation of alternative economic models and analytical frameworks should be conducted, perhaps in the context of a workshop.

Stated preference surveys and other non-market valuation techniques could be used to estimate existence or other non-use values associated with threatened and endangered species, ecosystem protection, and stock rebuilding plans. Studies are needed that (1) evaluate the robustness of stated preference responses to the types of information provided in the valuation scenario, (2) determine the extent to which valuation responses differ systematically among socioeconomic groups, (3) evaluate how the "extent of the market" varies according to the nature/scope/location of the good being valued, (4) address aggregation issues that may arise when summations of

valuations across multiple goods yield implausible results, and (5) consider the extent to which non-use values are applicable to fisheries as well as environmental goods.

7.3.3 Ecosystem-Based Management and Habitat

Spatial socioeconomic information by fishery type at a scale useful for ecosystem and habitat based management activities. Almost any socioeconomic question requires spatial information by fishery type. Spatial information is also critical in species/habitat management, for example to determine economic impact of EFH and habitat areas of particular HAPC development and the locating of MPAs, to determine impacts from wave energy development, and to aid siting of aquaculture projects.

8.0 MARINE PROTECTED AREAS AND ESSENTIAL FISH HABITAT

8.1 Background

In 1999, the Council began a two-stage process to consider marine reserves as a tool for managing groundfish. The first part was a "conceptual evaluation" and the second part was to develop alternatives for consideration. The second phase was to be started only if there was a positive result from the conceptual evaluation.

The first phase (Phase 1 Technical Analysis) ran from the spring of 1999 through September 2000. During this phase, a technical analysis³ of marine reserves was prepared and an Ad-Hoc Marine Reserve Committee met to develop recommendations for the Council. Following these efforts, the Council adopted marine reserves as a tool for managing the groundfish fishery.

As part of the first phase, the technical analysis was designed to assist the Council in the conceptual evaluation of the role of marine reserves as a management tool. Four options were developed in considering the implementation of marine reserves. One option was the creation of *"heritage and research reserves."* The analysis concluded that these "heritage and research" types of marine reserves should be viewed as a supplementary management tool.

The types of research included evaluating the impacts of fishing on marine ecosystems relative to effects caused by natural changes and improving estimates of population parameters for harvested species, thereby directly improving management of the fisheries.

The analysis also noted that these types of small reserves may play a valuable role in fisheries management by serving as "*reference or benchmark sites*" which would provide necessary controls for monitoring local trends in populations and ecosystem processes and would be particularly effective as controls for evaluating the effects of fishing activities in nearby unprotected areas.

In 2004, the SSC completed a white paper entitled "Marine Reserves: Objectives, Rationales, Fishery Management Implications and Regulatory Requirements."⁴ This document contains additional recommendations regarding research needs associated with marine reserves and MPAs.

As MPAs and marine reserves are added to state waters and National Marine Sanctuaries, an evaluation of the likely benefits of these actions in the context of current management strategies should be required. Cumulative impacts of closures on fishing effort distribution should be examined, as well as social and economic costs and benefits.

³ Pacific Fishery Management Council. 2001. Marine reserves to supplement management of West Coast groundfish resources. Phase I Technical Analysis. Prepared by R. Parrish, J. Seger, and M. Yoklavich. 62 pp. Portland, Oregon.

⁴ Pacific Fishery Management Council 2004. Marine Reserves: Objectives, Rationales, Fishery Management Implications and Regulatory Requirements. Pacific Fishery Management Council, Portland Oregon, 97220-1384.

8.2 Priority Research and Data Needs Related to Marine Protected Areas

- Identify type and scale of information needed to conduct stock assessments after establishment of marine reserves and evaluate the feasibility and cost of collecting such information.
- Information on the location and type of harvest and effort relative to a proposed marine reserve area is needed in order to begin to evaluate the degree of impact and effectiveness of the creation of marine reserves.
- Research is needed to understand the biological and socioeconomic effects of marine reserves and determine the extent to which ABCs would need to be modified when marine reserves are implemented, over the short-term and long-term.
- Information on advection of eggs and larva and pre-settlement juveniles. Particularly emphasis on differences between areas upstream and downstream of major geographical features.
- Knowledge of when in the life cycle density dependent effects occur is important in the assessment of the effects of marine reserves (as it is in assessing conventional catch management).
- Increased biological and socioeconomic monitoring of existing marine reserves and other areas of restricted fishing in order to gain information on current reserves that might be extrapolated to evaluate the creation of additional reserves on the west coast.

8.3 Essential Fish Habitat Issues

The Council has developed documents that describe and map EFH for CPS, salmon, groundfish, and HMS and has suggested management measures to reduce impacts from fishing and non-fishing activities. The Council may use area closures and other measures to lessen adverse impacts on EFH. Given the Council's intention to review EFH descriptions, designations of HAPCs and fishing impacts on EFH every five years, new data and the tools to analyze those data will be needed.

- Continue development of dynamic spatially-explicit models of habitat sensitivity, fishing impact, and habitat recovery.
- Specifically identify HAPCs: those rare, sensitive, and vulnerable habitats (to adverse fishing and non-fishing effects). Identify associated life stages and their distributions, especially for species and life stages with limited information. Develop appropriate protection, restoration, and enhancement measures.
- Identify any existing areas that may function as "natural" reserves and protection measures for these areas.
- Map benthic habitats within Federal and state waters on spatial scales of the fisheries and with sufficient resolution to identify and quantify fish/habitat associations, fishery effects

on habitat, and the spatial structure of populations. Mapping of the rocky areas of the continental shelf is critical for the identification of the rocky shelf and non-rocky shelf composite EFHs.

- Conduct experiments to assess the effects of various fishing gears on specific habitats on the west coast and to develop methods to minimize those impacts, as appropriate. From existing and new sources, gather sufficient information on fishing activities for each gear type to prioritize gear research by gear, species, and habitat type.
- Explore and better define the relationships between habitat, especially EFH, and stock productivity. Improved understanding of the mechanisms that influence larval dispersal and recruitment is especially important.
- Evaluate the potential for incentives as a management tool to minimize adverse effects of fishing and non-fishing activities on EFH.
- Standardize methods, classification systems, and calibrate equipment and vessels to provide comparable results in research studies and enhance collaborative efforts.
- Develop methods, as necessary, and monitor effectiveness of recommended conservation measures for non-fishing effects. Develop and demonstrate methods to restore habitat function for degraded habitats.

APPENDIX I - 2007 AND 2008 GROUNDFISH STOCK ASSESSMENT REVIEW PANEL RECOMMENDATIONS FOR FUTURE RESEARCH AND DATA COLLECTION

Arrowtooth Flounder

- The arrowtooth flounder catch history should be reconstructed using all available data including catch by gear and by region. The reconstruction should include an envelope of high and low values to set bounds for exploration of alternative catch histories. As has been recommended previously by a variety of STAR Panels, the reconstruction of historical landings needs to be done comprehensively (i.e., with other species) to ensure efficiency and consistency.
- Evaluate the feasibility of a bi-lateral assessment with Canadian scientists, perhaps through the TSC (Technical Subcommittee of US Canada groundfish WG).
- Investigate the importance of calendar date on catch rates from the triennial survey and propose an adjustment, if needed.

<u>Black Rockfish</u>

Northern stock recommendations

- Development of informed priors for tagging and recreational CPUE qs.
- Age validation study
- Reader to reader comparisons are needed between states (Oregon and Washington).

Northern stock recommendations

- Additional work is needed to develop a quantitative prior for tagging catchability. Tagging catchability should be based on analysis of potential black rockfish habitat and the relative abundance of black rockfish throughout the geographic range of the assessment (see Appendix IV to the 2005 cowcod assessment). Continuation and/or expansion of tagging programs should consider the scope of the project the relative to the area being assessed. If the area covered by the project is small relative to the assessed area, the potential to provide useful information for stock assessment is limited. Development of priors for tag catchability should consider uncertainty as well as point estimates.
- Development of a fishery independent time series using fixed sites and volunteer fishers properly supervised using standard protocols. The CPFV dataset consisting of reef-specific CPUE data has been repeatedly identified as most valuable index for monitoring stock trends of nearshore species.
- The Stock Assessment Tam (STAT) excluded a large amount of ageing data because of inconsistencies that made it unsuitable for use in the assessment model. This raises concerns about age reading protocols. Age reader comparisons, both between readers within the same agency and between readers from different agencies, should be a routine part of age reading procedures.

- This assessment was limited by inadequate biological sampling of California component of the recreational and commercial fishery for black rockfish. Recreational fishery length data could not be expanded to landings because strata with large landings were not sufficiently sampled. Age data were unavailable for California, which made it impossible to compare geographic differences in growth. There have been positive steps towards sustainable management of nearshore species off California at the policy level, but the lack of investment in long-term sampling programs for biological data may make it difficult to achieve policy objectives.
- For stocks whose primary assessment index is derived from recreational fishery CPUE, greater consideration should be given to the potential impact of management changes on the ability to assess the stock. Management tools such as bag limit and season closures may have different impacts on CPUE trend data. Each management change, e.g., a bag limit change, potentially reduces the value of fishery-dependent data.

<u>Blue Rockfish</u>

- Further genetic studies are needed to confirm that blue rockfish is two species. The sampling for genetic samples should be designed to address management issues, such as differences in spatial distribution, the extent of intermixing, differences in growth, longevity, and maturation schedules between the two species.
- Development of a fishery independent time series using fixed sites and volunteer fishers properly supervised using standard protocols. The CPFV dataset consisting of reef-specific CPUE data has been repeatedly identified as most valuable index for monitoring stock trends of nearshore species.
- The next assessment should provide documentation of historical blue rockfish catches off Oregon and south of Point Conception. A comprehensive assessment of blue rockfish throughout its west coast range should be considered.
- This assessment was limited by inadequate biological sampling of the California recreational and commercial fishery for blue rockfish. Recreational fishery length data could not be expanded to landings because strata with large landings were not sufficiently sampled. Reliable age data are unavailable for the past 20 years, which made it impossible to evaluate temporal changes in growth or to compare geographic differences in growth. There have been positive steps towards sustainable management of nearshore species off California at the policy level, but the lack of investment in long-term sampling programs for biological data may make it difficult to achieve policy objectives.
- Given the availability of biological samples, studies are needed on spatial and temporal growth patterns of blue rockfish.
- Given the availability of biological samples, studies are needed on reproductive biology of blue rockfish. The apparent higher mortality of male blue rockfish, which is unique among assessed rockfish (female mortality is higher for several shelf and nearshore rockfish species), may also be linked to reproductive biology or behavior.
- The next assessment should provide a detailed justification for the use of fishery CPUE indices as indices of abundance. A detailed descriptive analysis of the data should be provided, with particular attention to annual changes that affect fundamental assumptions.

Further, evaluate the robustness of the method to trip selection criteria and regulatory changes in the fishery.

- Generalized Linear Model (GLM) diagnostics for both binomial and non-zero catch rate regressions should be provided routinely in all assessments that use this technique.
- For stocks whose primary assessment index is derived from recreational fishery CPUE, greater consideration should be given to the potential impact of management changes on the ability to assess the stock. Management tools such as bag limits and season closures may have different impacts on CPUE trend data. Each management change, e.g., a bag limit change, potentially reduces the value of fishery-dependent data.

<u>Bocaccio</u>

- The next assessment of bocaccio rockfish should be a full assessment and should use SS2 or some comparable modeling platform.
- All the bocaccio rockfish data need a critical review and potential revision before being included in the next assessment. Of particular concern are adjustments for bag limit and other management-induced changes, the derivation of length-composition data, and the basis and selection of data sources to include in the assessment. The next assessment document should provide thorough and comprehensive documentation of the data sources and statistical models used in processing the data.
- Assumptions about stock structure and boundaries should be reviewed in light of information on catches of bocaccio rockfish taken off Mexico, Oregon, and Washington.
- The bocaccio rockfish catch history should be reconstructed using all available data including catch by gear and by region. The reconstruction should include an envelope of high and low values to set bounds for exploration of alternative catch histories. The STAR Panel notes that the SWFSC has made significant progress in retrieving detailed historical landings data, which will facilitate catch reconstructions. As has been recommended previously by a variety of STAR Panels, the reconstruction of historical rockfish landings needs to be done comprehensively across all rockfish species to ensure efficiency and consistency.
- Length frequency data, which are collected seasonally, should be modeled accordingly. This could be accomplished within the stock assessment model or externally by converting length-compositions to age-compositions, as has been done in New Zealand (Hicks et al. 2002).
- The new assessment model and data should be configured to explore cohort- and/or yearspecific growth. Again, this could be done within the stock assessment model or externally by converting length-compositions to age-compositions.
- Age-reading of bocaccio otoliths should be pursued.
- Establish a meta-database that provides a comprehensive overview of all relevant data sources and sufficient information to correctly interpret the data.
- Establish an accessible database for rockfish catch histories by species, including envelopes of high and low values for each species to set bounds for exploration of alternative catch histories.
- Relevant raw data, updated in a timely manner, should be readily accessible to assessment authors in online databases that are user-friendly.

- Develop comprehensive descriptive analyses of recreational fisheries and fleets to assist in interpretation of recreational CPUE and length-composition data.
- Develop a concise set of documents that provide details of common data sources and methods used for analyzing the data to derive assessment model inputs.

Canary Rockfish

- Assumptions about stock structure and distributional boundaries should be reviewed in light of information on Canadian/Alaskan catches.
- A catch history should be reconstructed using all available data including catch by gear and by region. The reconstruction should include an envelope of high and low values to set bounds for exploration of alternative catch histories. As has been previously recommended, the reconstruction needs to be done comprehensively across all rockfish species to ensure efficiency and consistency.
- Evaluate the feasibility of a bi-lateral assessment with Canadian scientists, perhaps through the TSC.
- Investigate the importance of calendar date and other covariates on catch rates from the triennial survey and propose adjustments to account for seasonal and other variation in selectivity/availability.

Chilipepper Rockfish

- Reconstruct the chilipepper rockfish catch history using all available data including catch by gear and by region. The reconstruction should include an envelope of high and low values to set bounds for exploration of alternative catch histories. The Panel notes that the SWFSC has made significant progress in retrieving detailed historical landings data, which will facilitate catch reconstructions. As has been recommended previously by a variety of STAR Panels, the reconstruction of historical rockfish landings needs to be done comprehensively across all rockfish species to ensure efficiency and consistency.
- Read chilipepper rockfish otoliths from the triennial and combination bottom trawl surveys to provide better data on the early stages of growth and possible time-variations in growth.
- Explore use of conditional age-at-length data rather than coupled age- and length-composition data.
- Explore time-varying growth as influenced by environmental changes.
- Explore possible spatial structuring of the data and model.
- The next STAT should have full access to raw data from the NWFSC trawl survey.

<u>Cowcod</u>

• Present and consider all available data potentially relevant to abundance trends in recent and historical years (e.g., outfall surveys, CalCOFI data, NWFSC bottom trawl data, observer data, and hook and line survey data). Data for recent and current trends are important in tracking progress towards rebuilding. Historical data may be useful in corroborating trends in CPFV logbook data.

- Enhance modeling procedures for standardizing CPFV data, particularly in representing potential interactions between year and region.
- Provide reviewers with complete sets of model diagnostics for standardized abundance indices based on CPFV and other types of data.
- Conduct additional video surveys to provide direct measures of current cowcod biomass and to facilitate interpretation of the existing video survey data. Ideally, video sampling should be carried out both inside and outside the Cowcod Conservation Areas so that extrapolation to the entire stock is not required.
- Reconstruct the cowcod rockfish catch history using all available data including catch by gear and by region. The reconstruction should include an envelope of high and low values to set bounds for exploration of alternative catch histories. As has been recommended previously by a variety of STAR Panels, the reconstruction of historical rockfish landings needs to be done comprehensively across all rockfish species to ensure efficiency and consistency.
- A preliminary query of the RecFIN database showed a very small number of cowcod in the RecFIN sample data. The Panel recommended that a thorough investigation of these data be prepared for the next assessment of this stock.
- Re-examine the assumption that commercial selectivity at length is the same as maturity at length.
- Conduct a full Bayesian assessment if possible. Cowcod are an ideal potential case because of the simple model structure and uncertainties about key model parameters and data.
- Develop surveys that track trends in abundance of cowcod. The NWFSC bottom trawl shelf and slope surveys should, in particular, be evaluated for cowcod.
- For the historical and recent fisheries, evaluate the relative capacity of fishing fleets and markets for cowcod to determine how much catch might have reasonably been taken during historical periods and whether relatively high fishing mortality rates during the late 1980s are plausible.
- Evaluate the hypothesis that CPFV indices are nonlinear measures of stock biomass.
- Assessment and review work would have been enhanced if the STAT had consisted of more than one person and if more time had been available to carry out the assessment.

Darkblotched Rockfish

- GLMM survey index swept area biomass data for the NWFSC shelf and slope surveys were much higher than simple swept area biomass calculations. Although some differences might be expected, the magnitude and consistency of the differences was surprising. GLMM procedures and models used to standardize the survey data should be checked and differences should be explained.
- Assessment data and background information should be presented clearly and completely before dealing with assessment models and modeling results. Data tables should be distributed at the start of the review.

- Future assessments should include complete sets of model diagnostics for GLMM standardized abundance indices, and other types of model runs.
- Maps showing the spatial overlap of the darkblotched rockfish stock area, surveys, fishing grounds and prime habitat should be provided and considered in interpreting survey data.
- Continued work to characterize effective sample size for length composition and, particularly, conditional age composition data is needed. For example, the procedure used to assign effective sample size initially for darkblotched rockfish was questioned in this assessment.
- Conduct a full Bayesian assessment.
- It would be useful to routinely check model estimates of survey catchability to determine if they imply implausible biomass estimates. This can be done by comparing the prior and posterior for q in a fully Bayesian assessment. Other approaches involve calculating bounds for plausible q values, comparison of model and minimum swept-area biomass estimates from trawl surveys.
- Assessment and review work would have been enhanced if the STAT had consisted of more ٠ than one person and if more time had been available to carry out the assessment.

Longnose Skate

- Re-create catch history (best estimates plus uncertainty) based on fishing effort.
- Investigate anomalous 2004 AFSC triennial survey longnose skate (and possibly other flatfish) catches.
- Ageing (validation) studies and maturation rate studies.
- Continue skate species identification in the fishery.
- Continue discard monitoring.
- Studies to estimate discard rates and discard mortality.

Sablefish

- The sablefish assessment needs a full review (this is not possible during a STAR Panel meeting). Additional resources are required to do this. Personnel with specialist experience and skills should critically review each data source. Model complexity should be simplified to be compatible with the expected information content of the data. The starting point should probably be an age-only model with growth estimated outside the model.
- Age data, in general, and especially for sablefish, intrinsically contains more information on recruitment (and biomass) than length data. Of course, if ageing methods are unreliable, then age frequencies will be also. The existing age frequencies (and model fits) should be critically examined to see if cohorts (at relatively young ages) are being tracked reliably. If they are not, then ageing methods should perhaps be reviewed with consideration given to how representative the age samples are likely to be. If cohorts do track reliably, then priority should be given to ageing any remaining samples.
- The exercise for deriving the prior on q should be redone. All potentially relevant data ٠ sources should be made available to a selected group of participants with appropriate skills

and experience. Ideally, priors would be formed for the entire trawl surveys used in the assessment. The sablefish q-priors could be derived at a more general workshop covering several species.

- The use of environmental variables as recruitment indices is currently fashionable and results do look encouraging. However, the priority for this work is to conduct a full cross validation study on the existing candidates rather than to further refine the candidate environmental indices.
- Continuation of trawl time series is essential for future stock assessments. The NWFSC slope survey has been surveying the whole of the Conception stratum in recent years and this should probably continue. If the full survey results are used to construct a time series then the Conception stratum must be subdivided at Point Conception. A consistent time series, using the full area, could be constructed using a number of methods including a GLM or extrapolation using the ratio of average catch rates north and south of Point Conception. A GLM is probably preferable, especially if there are significant vessel effects.
- Continued sampling of the commercial fishery is necessary and priority should be given to obtaining representative samples (good spatial and temporal coverage for the main fleets).

Pacific Whiting

- The Panel recommends that a Management Strategy Evaluation approach be used to evaluate whether the current 40-10 harvest control rule is sufficient to produce the management advice necessary to ensure the sustainable use of the Pacific hake stock with its dramatically episodic recruitment. The 40-10 rule assumes that simply reducing catches in a linear fashion as stock biomass declines will be sufficient to guide the fishery back towards the target spawning biomass level. However, with the fishery being dependent upon a single declining cohort just reducing the catch may achieve the status quo but it rebuilding will not occur without new recruitment.
- Related to Recommendation 1, the operating model developed for the Management Strategy Evaluation should evaluate how well the different assessment models recapture true population dynamics. At issue is whether a simpler model such as ADAPT / VPA performs better or worse than a more complex model such as SS2.
- Female Pacific whiting grow differently than male Pacific whiting and many of the more influential dynamic processes that operate in the fishery are length-based but are currently considered from an age-based perspective (for example selectivity). The Panel recommends that future assessment models explore the need for including both gender- and length-based selection into the dynamics.
- The inclusion of ageing error was found to be influential on the model fit in the SS2 model. However, issues with ageing still remain. Further ageing error analyses are required, especially focused on estimating any bias in the ageing. It will be important to conduct a cross-validation of ageing error from the different laboratories conducting the ageing. It is especially important to include otoliths that were read by AFSC staff.
- In light of current acoustic survey information, re-evaluate treatment / adjustment of pre-1995 acoustic survey data and index values. For example, compare the biomass index implied by the area covered by the pre-1995 surveys with the total biomass from the full area

covered by the post-1995 surveys. The difference between these two indices has implications for the magnitude of the survey catchability coefficient prior to 1995.

- There should be further exploration of geographical variations in fish densities and relationships with average age and the different fisheries, possibly by including spatial structure into future assessment models.
- There should be exploration of possible environmental effects on recruitment and the acoustic survey.
- There should be further investigation and resolution of possible under-reporting of foreign catch.

APPENDIX II - FOCUS AREAS OF RESEARCH RELATIVE TO THE STATUS OF THE 2004 AND 2005 BROODS OF THE CENTRAL VALLEY FALL CHINOOK SALMON STOCK

This report was originally submitted to the Council by the California Department of Fish and Game and the Council's March 2008 meeting (Agenda Item D.1.b., CDFG Report, March 2008)

Freshwater Biological Focus

- 1) Was the level of parent spawners too low, for natural or hatchery populations?
- 2) Was the level of parent spawners too high, for natural or hatchery populations?
- 3) Was there a disease event in the hatchery or natural spawning areas?
- 4) Was there a disease event in the egg incubation, fry emergence, rearing, or downstream migration phases?
- 5) Was there any disease event during the return phase of the 2 year old jacks?
- 6) Were there mortalities at the time of trucking and release of hatchery fish?
- 7) Was there a change in the pattern of on-site release of hatchery fingerlings compared to trucked downstream release?
- 8) Was there a change in recovery, spawning and/or release strategies during hatchery operations?
- 9) Did thermal marking occur for any hatchery releases? What were the effects of this or other studies (e.g. GSI of parental broodstock)?
- 10) Was there a change in the methodology or operations of the SF Bay net pen 'acclimation' program for trucked hatchery fish?
- 11) Were there any problems with fish food or chemicals used at hatcheries?

Freshwater Habitat Areas Focus

- 1) Were there drought or flood conditions during the spawning, incubation, or rearing phases?
- 2) Was there any pollution event where juveniles were present?
- 3) Was there anything unusual about the flow conditions below dams during the spawning, incubation, or rearing phases?
- 4) Were there any in-water construction events (bridge building, etc.) when this brood was present in freshwater or estuarine areas?
- 5) Was there anything unusual about the water withdrawals in the rivers or estuary areas when this brood was present?
- 6) Was there an oil spill in the estuary when the 2005 brood was present, as juveniles or jacks?
- 7) Were there any unusual temperature or other limnological conditions when this brood was in freshwater or estuarine areas?
- 8) Was there any unusual population dynamics of typical food or prey species used by juvenile Chinook salmon in the relevant freshwater and estuarine areas?
- 9) Was there anything unusual, in the same context as above for juvenile rearing and outmigration phases, about habitat factors during the return of the 2 year olds from this brood?
- 10) Were there any deleterious effects caused by miscellaneous human activities (e.g., construction, waterfront industries, pollution) within the delta and SF bay areas?

11) Was there a change in the recovery of juvenile outmigrants observed in the USFWS midwater trawl surveys and other monitoring programs in the Delta.

Freshwater Species Interactions Focus

- 1) Was there any unusual predation by bird species when this brood was in freshwater or estuarine areas?
- 2) Was there any unusual sea lion abundance or behavior when this brood was in freshwater or estuarine areas?
- 3) Was there any unusual striped bass population dynamics or behavior when this brood was in freshwater or estuarine areas?
- 4) Were northern pike present in any freshwater or estuarine areas where this brood was present?
- 5) Is there a relationship between declining Delta smelt, longfin smelt, and threadfin shad populations in the Delta and CV Chinook survival?
- 6) Was there additional inriver competition or predation with increased hatchery steelhead production?

Marine Biological Focus

- 1) Was there anything unusual about the ocean migration pattern of the 2004 and 2005 broods?
- 2) Was there anything unusual about the recovery of tagged fish groups from the 2004 and 2005 broods the ocean salmon fisheries?
- 3) Has the bycatch in non-salmonid fisheries (e.g., whiting, groundfish) increased?

Marine Habitat Areas Focus

- 1) Were there periods of reduced upwelling or other oceanographic physical conditions during the period of smolt entry into the marine environment, or during the period of marine residence up to the return to freshwater of the jacks?
- 2) Were there any effects to these fish from the 'dead zones' reported off Oregon and Washington in recent years?
- 3) Were plankton levels depressed off California, especially during the smolt entry periods?
- 4) Was there a relationship to an increase in krill fishing worldwide?
- 5) Limnology: temperature, salinity, upwelling, currents, red tide, etc.
- 6) Were there any oil spills or other pollution events during the period of ocean residence?
- 7) Was there any aquaculture occurring in the ocean residence area?
- 8) Was there any offshore construction in the area of ocean residence, for wave energy or other purposes?

Marine Species Interactions Focus

1) Was there any unusual population dynamics of typical food or prey species used by juvenile Chinook salmon in marine areas? (plankton, krill, juvenile anchovy or sardines, etc.)

- 2) Was there an increase in bird predation on juvenile salmonids caused by a reduction in the availability of other forage food?
- 3) Was there an increase of marine mammal predation on these broods?
- 4) Was there predation on salmonids by Humboldt squid?
- 5) Was there increased predation on salmonids by other finfish species (e.g., lingcod)?

Cumulative Ecosystem Effects Focus

- 1) Were there other ecosystem effects?
- 2) Were there synergistic effects of significant factors?

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Agenda Item C.3.a Attachment 2 September 2008

West Coast Region 09 Pacific Street, Bidg 200, Suite K Montercy, CA 93940

August 18, 2008

Dr. Don McIsaac, Executive Director Pacific Fishery Management Council 7700 NE Ambassador Place, Suite 101 Portland, OR 97220-1384

RE: Draft Research and Data Needs Document

Dear Dr. McIsauc: Dor

Please accept comments from the research teams of the West Coast National Marine Sanctuaries (NMS) on the Pacific Fishery Management Council (PFMC) Draft Research and Data Needs document.

We thank the Pacific Fishery Management Council (PFMC) for the opportunity to comment on this draft document and applaud your efforts for expanding considerations and research topics related to ecosystem-based management. The West Coast NMS and ONMS WCR share some of the same questions and concerns of how fish dynamics and fishing activities are interrelated to broader ecosystem processes and relationships.

We encourage the PFMC to use West Coast NMS as sites for appropriate research activities related to habitat, marine protected areas, or non-lethal survey techniques. There are many opportunities to partner and accomplish common research goals among the West Coast NMS and the PFMC. This document in conjunction with the West Coast NMS's status and trends reports called 'Condition Reports' will help us consider joint and integrated research projects when developing our long-term research priorities and annual operating plans. In addition, further opportunities for expanded collaboration are available with the West Coast NMS. Many sites have research panels that advise site managers and our national program's research coordinators meet annually; inviting PFMC experts and scientists to future annual meetings would advance common agendas for research. Collaboration in our research activities should foster increased efficiency and effectiveness to our respective programs.

Sincerely,

William J. Douros. Regional Director West Coast Regional Office

Attachment: ONMS Comments on PFMC Research & Data Needs

Olympic Const National Marine Sanctuary 115 E. Railroad Ave., Ste 301 Port Angeles, WA 98362 Cordell Bank National Marine Sanctuary P O Box 159 Olema CA 94950 Gulf of the Farallones National Marine Souchuary Building 991, Presidio of SF San Francisco, CA 94129 Monterey Bay National Marine Sanctuary 299 Foain Street Monterey, CA 93940 Channel Islands National Marine Sancutary 113 Harbor Way Santa Barbara, CA 93109 Attachment: ONMS Comments on PFMC Research and Data Needs

Comments on PFMC's Research & Data Needs 2008 Document Office of National Marine Sanctuaries. West Coast Region August 18, 2008

- (p. X): please change NMSP National Marine Sanctuary Program to Office of National Marine Sanctuaries (ONMS).
- 2.1 (p.5), 2nd bullet: this is an important topic and the West Coast Sanctuaries endorse a strong emphasis on the study of trophic interactions among species.
- 2.1 (p.5), 3rd bullet: please include the suggestions in italics "The increasing application of new management approaches, including *habitat models* and spatial management measures to protect......active spawning grounds, and complex stock structure."
- 2.2 (p.6): include the following reference, since it has a lot of recommendations similar to this section, Sydeman & Elliott's 'Developing the California Current Integrated Ecosystem Assessment, Module 1: Select Time-Series of Ecosystem State'.
- 2.2 (p.6): 3rd bullet: refer to West Coast National Marine Sanctuaries's status and trends reports called 'Condition Reports'.
- 2.2 (p.6), 5th bullet: demarcation points are a very good idea. We suggest consideration of other influential areas, including Pt Reyes (localized upwelling) and San Francisco Bay (nutrients and upwelling), and areas along the outer coast of Washington such as Cape Alava. Cape Flattery is mentioned and may have merit, though it has a lot of physical influences from the Straits of Juan de Fuca and is very close to the international boundary (Canada already has a 'Line P' that runs just north of this area). Olympic Coast NMS and others (e.g., ORHAB, NMFS) have been conducting oceanographic and biological surveys along both Washington areas for many years (related to pelagic wildlife and HAB surveys). A long-term data collection like CalCOFI lines would be an excellent idea to expand into the Pacific Northwest. Either line would partially transect the Juan de Fuca Eddy, which is an important seasonal oceanographic event, high primary productivity (and HAB site) and a highly productive area for both fisheries and for foraging wildlife.
- 2.3 (p.7). 4th bullet: ensure that adequate ground-truthing is conducted to test the models.
- 3.2.3 (p.12), 2nd bullet: we strongly support developing non-extractive assessments of rockfish in 'untrawlable' areas. We suggest adding a reference to collection of fish-habitat association indices as well (c.g., are rockfish associated more frequently with biogenic habitats on hard-bottom sites or just with hard-bottom leatures?).
- 3.2.3 (p.13). 1st bullet: we recommend a cautionary note be inserted for using this method in areas that may harbor biogenic structures (e.g., coral/sponge communities). The Intergovernmental Policy Council we have established with the four coastal tribes and the state of Washington is also proposing to use long-line gear to assess these areas. Long-line gear can have negative impacts on some biogenic habitats (deep-sea coral and sponge communities). We have a cause for concern of damage to vulnerable biogenic habitat in Olympic Coast NMS (see Brancato et al. 2007), and by extension, for other west coast sanctuaries with vulnerable biogenic habitat.
- 3.2.3 (p.12). 2nd bullet: we encourage the collaboration between NOS/ONMS and NMFS in developing and implementing monitoring strategies that use non-extractive technologies, such as ROV and acoustic surveys.

Attachment: ONMS Comments on PFMC Research and Data Needs

- 3.3 (p.14), 2nd bullet: please include the use of other NOAA web-based programs already established for posting interpreted findings, such as the ONMS West Coast Sanctuary Integrated Monitoring Network (SIMoN).
- 3.4 (p.16): we suggest you include the body of work currently underway by James Lindholm (James Lindholm desumb.edu) and others of California State University at Monterey Bay, studying the impacts and recovery of bottom gear on benthic habitats. His investigations in collaboration with West Coast NMS are still on- going, and draft data are available. Additional Pacific Coast studies may provide beneficial insights, but additional field research is not critically needed to assess the effects of bottom fishing on benthic habitats, since there have been many well documented peer-reviewed publications on these effects around the world (see in part report compilations in AFS 2002; Brancato et al. 2007; Lumsden et al. 2007; NRC 2002). At the very least, this type of research on the Pacific Coast should not preclude management actions before final results are demonstrated. There is a concern that this is a delaying tactic to allow continued bottom fishing in some fragile biogenic habitats, which could result in these biogenic structures being impacted while the research is being conducted. We recommend that if such investigations are conducted, that fishery management zones be enacted based on the precautionary approach, and only opened if no significant impacts are determined.
- 5.1 (p.27): include the assessment of biogenic habitats as nurseries and foraging grounds for juvenile fish, e.g. assessment of drift algae – see citations below Laidig et al. 2007, Reed et al. 1988, Shaffer et al. 1995, and Vandendriessche et al. 2005.
- 5.2.1 (p.29), 1st bullet: we suggest including studies of krill on various scales: studies of krill concentrations have broader management uses, such as quantification of krill on fine-scale level that may be used in the Gulf of the Farallones region, integrated with environmental processes and influences such as localized upwelling and influences from San Francisco Bay nutrient output.
- 8.3 (p52). 4th bullet: we strongly endorse efforts to map benthic habitats to sufficient resolution. This is also a high priority item for the West Coast NMS. West Coast Governor's Agreement, etc. This effort should be well coordinated with ONMS West Coast Regional Office and other mapping institutions to reduce duplication and increase efficiency and effectiveness of data collection.
- 8.3 (p53). 1st bullet: these investigations are always good but they are not critical for the west coast with the amount of published literature that exists world-wide (in many cases the same type of habitat areas, same fishing gear, etc. are found in other regions). At the very least, we suggest referencing that a body of literature exists for this topic area.
- The document demonstrates many instances of issues and data needs shared among the different fishery management plans and research topics. It would be helpful to see these issues and needs reflected in a matrix to determine their relative importance, and priority. Those data needs that are cross-cutting may have more merit and efficiency than those that address an individual fishery management plan alone.

Attachment: ONMS Comments on PFMC Research and Data Needs

References cited

American Fisheries Society. 2002. Symposium on effects of fishing activities on benthic habitats: linking geology, biology, socioeconomics, and management. Nov. 12-14, 2002. Tampa, Florida.

Brancato M.S., C.E. Bowlby, J. Hyland, S.S. Intelmann, and K. Brenkman. 2007. Observations of deep sea coral and sponge assemblages in Olympic Coast National Marine Sanctuary, Washington. Cruise Report: NOAA Ship *McArthur II* Cruise AR06-06/07. Marine Sanctuaries Conservation Series NMSP-07-03. NOAA National Marine Sanctuary Program. Silver Spring, Maryland. 48 pp.

Lumsden, S.E., T.F. Hourigan, A.W. Bruckner, and G. Dorr (eds.). 2007. The State of Deep Coral Ecosystems of the United States. NOAA Technical Memorandum CRCP-3. Silver Spring MD. 365 pp.

National Research Council. 2002. Effects of trawling and dredging on seafloor habitat. National Academy Press, 126 p., Washington D.C.

Sydeman, W.J. and M.L. Elliott. 2008. Developing the California Current Integrated Ecosystem Assessment, Module 1: Select Time-Series of Ecosystem State. Final Report.

Suggested references as background for developing biogenic habitat assessments

Laidig, T.E., J.R. Chess, D.F. Howard. 2007. Relationship between abundance of juvenile rockfishes and environmental variables documented off northern California and potential mechanisms for covariation. Fishery Bulletin, 2007.

Reed, D.C., M. Neushul, and A.W. Ebeling. 1988. Variation in algal dispersal and recruitment: the importance of episodic events. Ecology 58(4): 321-335.

Shaffer, J.A., D.C. Doty, R.M. Buckley, and J.E. West. 1995. Crustacean community composition and trophic use of the drift vegetation habitat by juvenile splitnose rockfish *Sebastes diploroa*. Marine Ecology Progress Series 123: 13-21.

Vandendriessche, S., M. Vinex, and S. Degraer. 2005. Floating seaweed in the neustonic environment: A case study from Belgian coastal waters. Journal of Sea Research 55(2): 103-112.

SALMON TECHNICAL TEAM REPORT ON RESEARCH AND DATA NEEDS

The Salmon Technical Team (STT) met August 14 and 15, 2008 to discuss the research and data needs document. The STT has the following comments:

Item 4.2.1 – Mark Selective Fisheries. A wide range of release mortality rates can be found in the literature reflecting strong dependence of release mortality on local conditions, maturity state, terminal gear, etc. The STT feels that information on sublegal, marked/unmarked encounter rates is more important at this time than additional estimates of release mortality rates.

Item 4.2.2 – Genetic Stock Identification. There is a need for finer stock resolution before genetic stock identification (GSI) can be used for inseason management. For example, there is currently insufficient resolution to distinguish between Klamath fall Chinook and Klamath spring Chinook. Until real time management issues are resolved, the STT feels that GSI should not be a high priority for research and data needs. The STT would like to point out that

- Canada does not generally use GSI on a real time basis for inseason management of Chinook or coho in West Coast Vancouver Island (WCVI) fisheries. Canada does use real time GSI estimates to some degree in northern troll fisheries.
- GSI, like coded-wire-tag (CWT) recovery data, can provide information of stock distribution but not migration patterns.
- GSI may be useful for annual catch limit (ACL) monitoring.

Item 4.3 – Mass marking. Delete the language regarding release mark rates. Mass marking may have an adverse impact on the CWT system.

Item 4.3 - Coast wide model. A coast-wide model may provide benefits over integrating results from separate models; however, the increase in model complexity may out weigh those benefits.

Item 4.4 - Genetics. The current three letter acronym (TLA) is PBT (parentage-based tagging), not full parental genotyping (FPG). The STT recommends the following topics be given a higher funding priority than GSI:

- Basic escapement monitoring (e.g., age and sex determination, carcass surveys, etc.)
- Double index tagging (DIT) of all exploitation rate indicator stocks and electronic sampling for them in all fisheries if mark selective fisheries become widespread.

Item 4.5 GSI. The costs of high resolution GSI sampling may out weigh the benefits to fishery management. Also:

- In the sentence about Klamath River fall Chinook triggering an Overfishing Concern, delete the word "technically".
- Delete the first bullet; the KOHM has been thoroughly reviewed, including a positive review by the Center for Independent Experts in 2006.

Other items to include in the document include:

- Research is needed on monitoring tools for compliance with the ACL provision of the Magnuson-Stevens Reauthorization Act in time for implementation by 2011.
- Disease research including effects on population dynamics of adult and juvenile salmon.
- Development of forecast and harvest models for numerous west coast salmon stocks including Klamath River spring Chinook, California coastal Chinook, Oregon coastal Chinook, Central California coastal coho.
- Investigation of precision and accuracy in abundance forecasts, including examination of forecast models incorporating environmental variables.
- Full cohort reconstruction for all Council managed Chinook and coho salmon stock complexes.

LEGISLATIVE MATTERS

The Pacific Fishery Management Council's (Council's) Legislative Committee (Committee) is scheduled to meet Sunday, September 7th at 3:30 p.m. to review a variety of legislative matters of interest to the Council.

On July 23, 2008, U.S. Senator Barbara Boxer (D-CA) introduced *S. 3314, the National Oceans Protection Act of 2008* (Agenda Item C.4.a, Attachment 1) which has been referred to the Senate Committee on Commerce, Science, and Transportation. S. 3314 aims to implement ecosystem-based principles and several new national and regional ocean governance policies, many recommended by the U.S. Commission on Ocean Policy and the Pew Trust's Pew Ocean Commission. Among other things, S. 3314:

- Codifies the National Oceanic and Atmospheric Administration and its leadership;
- Establishes a National Oceans Policy and Principles, a National Oceans Advisor in the Executive Office of the President, a Council on Ocean Stewardship, and a Presidential Panel of Advisors on Oceans and Climate;
- 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.

S. 3314 is closely related to H.R. 21, the *Oceans Conservation, Education, and National Strategy for the 21st Century Act* introduced in 2007 by U.S. Representative Sam Farr (D-CA) (Agenda Item C.4.a, Attachment 2, in electronic format on the Briefing Book CD and the Council web site). In September 2007, at the request of U.S. Representative Don Young (R-AK), The Committee and the Council reviewed H.R. 21 and the Council approved two letters in response, one expressing a joint position signed by all eight Regional Fishery Management Council Chairs (Agenda Item C.4.a, Attachment 3) and another signed by the Council Executive Director that conveyed Council specific comments (Agenda Item C.4.a, Attachment 4).

The National Marine Sanctuary Act (NMSA) (Agenda Item C.4.a, Attachment 5) was last reauthorized in 2000 with funds appropriated through 2005. On July 17, 2008, U.S. Representative Madeleine Bordallo (D-GU) introduced H.R. 6537, Sanctuary Enhancement Act of 2008 to reauthorize and amend the NMSA including:

- A new finding which states that "scientific research has confirmed the value of protected areas in the ocean, which serve to increase the number, biomass, density, and diversity of living resources both inside and outside the protected areas, maintain ecosystems that are resistant and resilient to a variety of environmental threats such as global climate change, pollution, coastal development, habitat alteration, overfishing, and create spillover export of eggs, larvae, and juvenile and adult fish, shellfish, and plants which can repopulate adjacent areas;"
- A ban on bottom trawling in National Marine Sanctuaries (Sanctuary) without a special permit issued by the U.S. Secretary of Commerce that meets an extensive list of criteria;
- Incorporation of National Marine Monuments into a new National Marine Sanctuary System;

- A repeal of the current moratorium on establishing new National Marine Sanctuaries, a reduction in the time required to publish notice of Sanctuary designations, and an extension of the Sanctuary management plan review schedule from 5 years to 7 years for the initial review and 10 years for subsequent reviews; and
- A rigorous and unique requirement for the review of fishing impacts.

A central NMSA reauthorization issue to the Council is clarification on the authority to regulate fishing activities within National Marine Sanctuaries. H.R. 6537 addresses this issue by moving the issue of fishery regulation within Sanctuaries from NMSA Section 304 regarding Sanctuary designation and implementation to NMSA Section 308 pertaining to regulations. This amendment has some procedural merit, but seems to do little to change or clarify the role of the Regional Fishery Management Councils or address the issue of fishery jurisdiction within Sanctuaries. On this matter, H.R. 6537 appears to fall short of the long standing position of the Council and the Council Coordination Committee (CCC) that was reaffirmed at the May 2008 meeting of the CCC (see Agenda Item C.4.a, Attachment 7, Draft Council Position Statement on NMSA Reauthorization and Related Ecosystem-Based Fishery Management),

Council Action:

Consider the recommendations of the Legislative Committee.

Reference Materials:

- 1. Agenda Item C.4.a, Attachment 1: S. 3314, National Oceans Protection Act of 2008.
- 2. Agenda Item C.4.a, Attachment 2, H.R. 21, Oceans Conservation, Education, and National Strategy for the 21st Century Act (electronic copy only on Briefing Book CD and web).
- 3. Agenda Item C.4.a, Attachment 3: September 18, 2007 letter to U.S. Representative Young from the Eight Regional Fishery Management Council Chairs regarding H.R. 21.
- 4. Agenda Item C.4.a, Attachment 4: October 5, 2007 letter to U.S. Representative Young from the Council Executive Director regarding H.R. 21.
- 5. Agenda Item, C.4.a, Attachment 5: National Marine Sanctuary Act.
- 6. Agenda Item, C.4.a, Attachment 6: H.R. 6537, Sanctuary Enhancement Act of 2008.
- 7. Agenda Item C.4.a, Attachment 7: Draft Council Position Statement on NMSA Reauthorization and Related Ecosystem-Based Fishery Management.

Agenda Order:

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

PFMC 08/18/08

Mike Burner Dave Hanson

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Agenda Item C.4.a Attachment 1 September 2008

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^{110TH CONGRESS} 2D SESSION S.3314

To protect the oceans and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 23, 2008

Mrs. BOXER (for herself, Mr. CARDIN, Mr. LEVIN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To protect the oceans 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 "National Oceans Protection Act of 2008".
- 6 (b) TABLE OF CONTENTS.—The table of contents of

7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purpose.
- Sec. 4. Definitions.
- Sec. 5. Construction.

TITLE I—NATIONAL OCEAN POLICY AND LEADERSHIP

Sec. 101. Purposes.

Sec. 102. National ocean policy and principles.

Subtitle A—National Oceanic and Atmospheric Administration

- Sec. 111. Short title.
- Sec. 112. Establishment.
- Sec. 113. Functions and purposes.
- Sec. 114. Administration.
- Sec. 115. Responsibilities of the Administrator.
- Sec. 116. Powers of the Administrator.
- Sec. 117. Enforcement.
- Sec. 118. Regional capabilities.
- Sec. 119. Intergovernmental coordination.
- Sec. 120. International consultation and cooperation.
- Sec. 121. Report on oceanic and atmospheric conditions and trends.
- Sec. 122. Conforming amendments and repeals.
- Sec. 123. Savings provision.
- Sec. 124. Transition.

Subtitle B—Federal Coordination and Advice

- Sec. 131. National Ocean Advisor.
- Sec. 132. Council on Ocean Stewardship.
- Sec. 133. Membership of Council on Ocean Stewardship.
- Sec. 134. Functions of Council on Ocean Stewardship.
- Sec. 135. Personnel of Council on Ocean Stewardship.
- Sec. 136. National priorities for coordination.
- Sec. 137. Coordination plan.
- Sec. 138. Biennial Report to Congress.
- Sec. 139. Presidential Panel of Advisers on Oceans and Climate.
- Sec. 140. Construction.

TITLE II—REGIONAL COORDINATION AND PLANNING

- Sec. 201. Regional Ocean Coordination.
- Sec. 202. Regional Ocean Partnerships.
- Sec. 203. Regional Ocean Strategic Plans.
- Sec. 204. Regulations.
- Sec. 205. Other authority.

TITLE III—OCEAN SCIENCE, RESEARCH, AND EDUCATION

- Sec. 301. Committee on Ocean Science, Education, and Operations.
- Sec. 302. National Ocean Research Priorities Plan and Implementation Strategy.
- Sec. 303. Ocean Research and Education Advisory Panel.
- Sec. 304. Marine ecosystems research.
- Sec. 305. Ocean Ecosystem Resource Information Systems.
- Sec. 306. Subcommittee on Ocean Education.
- Sec. 307. Ocean and coastal education program.
- Sec. 308. Ocean Science and Technology Scholarship Program.
- Sec. 309. National Oceanic and Atmospheric Administration Office of Education.
- Sec. 310. National ocean awareness media campaign.

TITLE IV—OCEAN AND GREAT LAKES CONSERVATION TRUST FUND AND AUTHORIZATION OF APPROPRIATIONS

Sec. 401. Ocean and Great Lakes Conservation Trust Fund.

Sec. 402. Payments to States.

Sec. 403. Eligibility for funding.

- Sec. 404. Funding procedures.
- Sec. 405. Equitable allocation.
- Sec. 406. Healthy Ocean Stamp.
- Sec. 407. Limitation on use of available amounts for administration.
- Sec. 408. Record keeping requirements.
- Sec. 409. Maintenance of effort and matching funding.
- Sec. 410. Authorization of appropriations.

1 SEC. 2. FINDINGS.

2 Congress makes the following findings:

3 (1) Covering more than $\frac{2}{3}$ of the Earth's sur-4 face, the oceans play a critical role in the global 5 water and carbon cycles and in regulating climate, 6 sustain a large part of Earth's biodiversity, provide 7 an important source of food and a wealth of other 8 natural products, act as a frontier for scientific ex-9 ploration, are critical to national and economic secu-10 rity, and provide a vital means of transportation. 11 The coastal regions of the United States have re-12 markably high biological productivity and contribute 13 approximately 50 percent of the gross domestic 14 product of the United States.

(2) The oceans and the atmosphere are susceptible to change as a direct and indirect result of
human activities, and such changes can significantly
impact the ability of the oceans and atmosphere to
provide the benefits upon which the Nation depends.
Changes in oceanic and atmospheric processes could

affect global climate patterns, ecosystem productivity
 and health, biodiversity, environmental quality, na tional security, economic competitiveness, availability
 of energy, vulnerability to natural hazards, and
 transportation safety and efficiency.

6 (3) Human pressure on ocean resources is dras-7 tically increasing. Fifty percent of the population of 8 the United States lives within 50 miles of the coast. 9 If population trends continue as expected, coastal 10 development and urbanization impacts, which can be 11 substantially greater than population impacts alone, 12 will present serious environmental, energy, and water challenges and increase our vulnerability to 13 14 coastal hazards.

(4) Ocean resources are the property of the
people of the United States, are held in trust for
them by Federal, State, local, and tribal governments, and should be managed in a precautionary
manner to preserve the full range of their benefits
for present and future generations.

(5) A variety of threats and practices have
caused dramatic declines in the health and productivity of coastal and marine ecosystems of the
United States. Among the major threats to marine
ecosystem health are—

1	(A) chemical, nutrient, and biological pol-
2	lution;
3	(B) by catch of nontarget marine species;
4	(C) habitat damage;
5	(D) over fishing and use of destructive
6	fishing practices;
7	(E) unwise land use and coastal develop-
8	ment;
9	(F) invasive species;
10	(G) global climate change; and
11	(H) ocean acidification.
12	(6) These threats are exacerbated by the legal
13	and geographic fragmentation of authority over
14	ocean space and ocean resources.
15	(7) Activities harming coastal and marine eco-
16	systems jeopardize the economies and social struc-
17	ture of coastal communities dependent on these re-
18	sources.
19	(8) While there is a plethora of laws, govern-
20	ment agencies, and programs dealing with coastal
21	resources and ocean resources, activities thereunder
22	are poorly coordinated and do not constitute unified
23	and comprehensive public policy toward the oceans.
24	(9) Improving and coordinating Federal govern-
25	ance will require close partnerships with States, tak-

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ing into account their public trust responsibilities,
 economic and ecological interests in ocean resources,
 and the role of State and local governments in im plementation of ocean policies, and managing use of
 coastal lands and ocean resources.

6 (10) Ecosystem-based management of coastal
7 lands, oceans, and marine resources to protect,
8 maintain, and restore the health of marine eco9 systems requires a partnership between Federal,
10 State, local, and tribal governments.

11 (11) It is the continuing mission of the Federal 12 Government to create, foster, and maintain condi-13 tions, incentives, and programs that will further and 14 ensure the sustainable and effective conservation, 15 management, and protection of the oceans and at-16 mosphere, in order to fulfill the responsibility of 17 each generation as trustee in protecting such re-18 sources and ensuring that such resources will be 19 available to meet the needs of future generations of 20 people in the United States.

(12) To better enable the various levels of government with authority over coastal and ocean
space, coastal resources, and ocean resources to fulfill their public trust responsibilities, a unified national oceans policy that is precautionary in nature

is needed to govern the range of human activities 1 2 that may significantly affect United States ocean 3 waters and ocean resources.

4 SEC. 3. PURPOSE.

5 The purpose of this Act is to secure, for present and future generations of people of the United States, the full 6 range of environmental, economic, educational, social, cul-7 tural, nutritional, and recreational benefits of healthy ma-8 rine ecosystems. 9

SEC. 4. DEFINITIONS. 10

11	In this Act:
12	(1) Administrator.—The term "Adminis-
13	trator" means the Administrator of NOAA.
14	(2) Commission on ocean policy.—The term
15	"Commission on Ocean Policy" means the Commis-
16	sion on Ocean Policy established by section 3 of the
17	Oceans Act of 2000 (33 U.S.C. 857–19 note).
18	(3) COUNCIL ON OCEAN STEWARDSHIP.—The
19	term "Council on Ocean Stewardship" means the
20	Council on Ocean Stewardship established in section
21	132.
22	(4) EXCLUSIVE ECONOMIC ZONE.—The term
23	"Exclusive Economic Zone" means the Exclusive
24	Economic Zone of the United States specified in

1	Presidential Proclamation Number 5030, dated
2	March 10, 1983.
3	(5) FEDERAL WATERS.—The term "Federal
4	waters" means the waters located in the United
5	States Exclusive Economic Zone seaward of the wa-
6	ters under the jurisdiction of a State.
7	(6) MARINE.—The term "marine" includes
8	ocean waters.
9	(7) MARINE ECOSYSTEM HEALTH.—The term
10	"marine ecosystem health" means the capability of
11	a marine ecosystem to—
12	(A) support and maintain a productive and
13	resilient community of organisms that has a
14	species composition, biological diversity, and
15	functional organization comparable to the nat-
16	ural habitat of the region; and
17	(B) provide a range of goods and services
18	to humans and other species at levels and rates
19	comparable to those provided by a similar un-
20	disturbed ecosystem.
21	(8) NATIONAL OCEAN POLICY.—The term "Na-
22	tional Ocean Policy' means the policy set forth in
23	section $102(a)(1)$.
24	(9) NOAA.—The term "NOAA" means the Na-
25	tional Oceanic and Atmospheric Administration.

1	(10) OCEAN; OCEAN WATERS.—The terms
2	"ocean" and "ocean waters" include—
3	(A)(i) coastal waters;
4	(ii) the Great Lakes;
5	(iii) the seabed, subsoil, and waters of the
6	territorial sea of the United States;
7	(iv) the waters of the exclusive economic
8	zone of the United States;
9	(v) the waters of the high seas; and
10	(vi) the seabed and subsoil of and beyond
11	the Outer Continental Shelf marine environ-
12	ment; and
13	(B) the natural resources found in the
14	areas described in clauses (i) through (vi) of
15	subparagraph (A).
16	(11) PERSON.—The term "person" has the
17	meaning given that term by section 1 of title 1,
18	United States Code, but also means any State, polit-
19	ical subdivision of a State, or agency or officer
20	thereof.
21	(12) REGIONAL OCEAN PARTNERSHIP.—The
22	term "Regional Ocean Partnership" means a Re-
23	gional Ocean Partnership established or designated
24	by the Administrator under section 202.

(13) SECRETARY.—Except as otherwise pro vided in this Act, the term "Secretary" means the
 Secretary of Commerce.

4 (14) STATE.—The term "State" means any
5 State of the United States, the District of Columbia,
6 the Commonwealth of Puerto Rico, the Virgin Is7 lands, Guam, American Samoa, or any other Commonwealth, territory, or possession of the United
9 States.

10 SEC. 5. CONSTRUCTION.

11 Except as specifically provided, nothing in this Act 12 may be construed to modify, limit, amend, or repeal any provision of any other law or to limit the authority of a 13 local or State government or the Federal Government to 14 15 establish more stringent standards, requirements, or restrictions within their respective jurisdictions, in order to 16 17 provide greater protection of ocean and coastal waters or resources, than the protection provided under this Act. 18

19 TITLE I—NATIONAL OCEAN

20

POLICY AND LEADERSHIP

21 SEC. 101. PURPOSES.

22 The purposes of this title are—

(1) to set forth a national policy relating to
oceans and atmosphere, and to establish formally
the National Oceanic and Atmospheric Administra-

1	tion as the lead Federal agency concerned with oce-
2	anic and atmospheric matters;
3	(2) to establish in NOAA, by statute, the au-
4	thorities, functions, and powers relating to the con-
5	servation, management, and protection of the oceans
6	and atmosphere that have previously been estab-
7	lished by statute or reorganization plan;
8	(3) to set forth the duties and responsibilities of
9	the Administrator, and the principal officers of the
10	Administrator;
11	(4) to establish a mechanism for Federal lead-
12	ership and coordinated action on national oceanic
13	and atmospheric priorities that are essential to the
14	economic and environmental security of the United
15	States; and
16	(5) to enhance Federal partnerships with State
17	and local governments with respect to ocean activi-
18	ties, including management of ocean resources and
19	identification of appropriate opportunities for policy-
20	making and decision-making at the State and local
21	level.
22	SEC. 102. NATIONAL OCEAN POLICY AND PRINCIPLES.
23	(a) NATIONAL OCEAN POLICY.—
24	(1) IN GENERAL.—It is the policy of the United
25	States to protect, maintain, and restore marine eco-
1 system health in order to fulfill the ecological, eco-2 nomic, educational, social, cultural, nutritional, rec-3 reational, and other requirements of current and fu-4 ture generations of Americans. (2) PRINCIPLES.—The National Ocean Policy 5 6 shall be implemented in accordance with the fol-7 lowing principles: 8 (\mathbf{A}) Policies, programs, and activities 9 should minimize negative environmental im-10 pacts to ocean waters, coastal waters, and 11 ocean resources and be conducted so that by 12 themselves or cumulatively they do not under-13 mine the protection, maintenance, and restora-14 tion of marine ecosystem health. 15 (B) Ocean waters, coastal waters, and 16 ocean resources should be managed to meet the 17 needs of the present generation without com-18 promising the ability of future generations to 19 meet their needs. 20 (C) Ocean waters, coastal waters, and 21 ocean resources should be managed using eco-22 system-based management. 23 (D) The lack of scientific certainty should 24 not be used as justification for postponing ac-25 tion to prevent negative environmental impacts.

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In cases in which significant threats to marine ecosystem health exist, the best of the available science should be used to manage ocean waters, coastal waters, and ocean resources in a manner that gives the greatest weight to the protection, maintenance, and restoration of marine ecosystem health. (E) Policies, programs, and activities rec-

8 (E) Policies, programs, and activities rec-9 ognize the interconnectedness of the land, at-10 mosphere including climate, and oceans includ-11 ing ocean waters, coastal waters, and ocean re-12 sources, and should recognize that actions af-13 fecting one of these, such as the climate, are 14 likely to affect another, such as ocean re-15 sources.

16 (F) Potential uses of ocean waters, coastal
17 waters, and ocean resources should be managed
18 in a way that balances competing uses and does
19 not undermine the protection, maintenance, and
20 restoration of marine ecosystem health.

21 (b) IMPLEMENTATION.—

(1) REQUIREMENT.—To the fullest extent possible and to the extent not inconsistent with other
laws, each Federal agency shall interpret and admin-

1	ister policies, regulations and laws in accordance
2	with the National Ocean Policy.
3	(2) GUIDANCE.—
4	(A) IN GENERAL.—Not later than 1 year
5	after the date of the enactment of this Act, the
6	National Ocean Advisor shall develop and issue
7	guidance, consistent with the National Ocean
8	Policy, for the development of Federal agency
9	regulations to implement the National Ocean
10	Policy.
11	(B) PUBLIC PARTICIPATION.—The Na-
12	tional Ocean Advisor shall provide adequate op-
13	portunity for public comment and review during
14	the development of the guidance under subpara-
15	graph (A).
16	(c) AGENCY ACTIONS.—
17	(1) REGULATIONS.—
18	(A) IN GENERAL.—Within 2 years after
19	the issuance of the guidance under subsection
20	(b)(2), each Federal agency shall issue new or
21	revised regulations to ensure consistency with
22	the National Ocean Policy for any actions un-
23	dertaken, authorized, or funded by the agency
24	that may significantly affect ocean waters,
25	coastal waters, or ocean resources.

1	(B) PUBLIC COMMENT.—The head of each
2	Federal agency shall—
3	(i) publish proposed regulations under
4	this subsection in the Federal Register;
5	and
6	(ii) provide a period for public com-
7	ment of not less than 60 days before final
8	regulations are published under this sub-
9	section.
10	(2) REVIEW.—Within 1 year after the issuance
11	of the guidance under subsection $(b)(2)$, each Fed-
12	eral agency, shall—
13	(A) conduct a review of the existing poli-
14	cies, regulations, and laws that apply to the
15	agency and identify any inconsistencies that
16	preclude the agency from fully implementing
17	the National Ocean Policy; and
18	(B) submit to the Council on Ocean Stew-
19	ardship, the Committee on Natural Resources
20	of the House of Representatives, and the Com-
21	mittee on Commerce, Science, and Transpor-
22	tation of the Senate a report on such review
23	that includes proposals as may be necessary to
24	eliminate such inconsistencies.

Subtitle A—National Oceanic and Atmospheric Administration

3 SEC. 111. SHORT TITLE.

4 This subtitle may be cited as the "Ernest 'Fritz' Hol-5 lings National Ocean Policy and Leadership Act".

6 SEC. 112. ESTABLISHMENT.

7 There is established an agency to be known as the National Oceanic and Atmospheric Administration, which 8 9 shall be the civilian agency principally responsible for pro-10 viding oceanic, weather, and atmospheric services, and 11 supporting research, conservation, management, and edu-12 cation to the Nation. The National Oceanic and Atmospheric Administration established under this Act shall suc-13 14 ceed the National Oceanic and Atmospheric Administration established on October 3, 1970, in Reorganization 15 Plan No. 4 of 1970, and shall continue the activities of 16 that agency as it was in existence on the day before the 17 effective date of this Act. 18

19 SEC. 113. FUNCTIONS AND PURPOSES.

(a) IN GENERAL.—NOAA shall be responsible for the
following functions, through which it shall carry out the
policy of this Act in a coordinated, integrated, and ecosystem-based manner for the benefit of the United States:

(1) Management, conservation, protection, and
 restoration of ocean resources, including living ma rine resources, habitats, and ocean ecosystems.

4 (2) Observation, monitoring, assessment, fore5 casting, prediction, operations, and exploration of
6 oceanic and atmospheric environments including
7 weather, climate, navigation, and marine resources.

8 (3) Research, education and outreach, technical 9 assistance, and technology development and innova-10 tion activities relating to oceanic and atmospheric 11 environments, including basic scientific research and 12 activities that support other agency functions and 13 missions.

(b) TRANSFER OF FUNCTIONS.—There shall be
transferred to the Administrator any authority established
by law that, before the date of the enactment of this Act,
was vested in the Secretary of Commerce and pertains to
the functions, responsibilities, or duties of NOAA under
subsection (a).

20 SEC. 114. ADMINISTRATION.

21 (a) Administrator.—

(1) APPOINTMENT.—NOAA shall be administered by the Administrator, who shall be appointed
by the President, by and with the advice and consent
of the Senate.

(2) COMPENSATION.—The Administrator shall
 be compensated at the rate provided for level III of
 the Executive Schedule under section 5314 of title
 5, United States Code.

(3) QUALIFICATIONS.—The Administrator shall 5 6 have a broad background, professional knowledge, 7 and substantial experience in oceanic or atmospheric 8 affairs, including any field relating to marine or at-9 mospheric science and technology, biological 10 sciences, or engineering, as well as education, eco-11 nomics, governmental affairs, planning, law, or 12 international affairs.

(4) AUTHORITY.—The Administrator shall
carry out all functions transferred to the Administrator by this Act and shall have authority and control over all personnel, programs, and activities of
NOAA.

18 (b) DEPUTY ADMINISTRATOR.—There shall be a Deputy Administrator of NOAA, who shall be appointed 19 by the President, by and with the advice and consent of 20 21 the Senate, based on the individual's professional quali-22 fications and without regard to political affiliation. The 23 Deputy Administrator shall have a broad background, pro-24 fessional knowledge, and substantial experience in oceanic 25 or atmospheric policy or programs, including science, tech-

nology, and education. The Deputy Administrator shall 1 2 serve as an adviser to the Administrator on program and 3 policy issues, including crosscutting program areas such 4 as research, technology, and education, and shall perform 5 such functions and exercise such powers as the Adminis-6 trator may prescribe. The Deputy Administrator shall act 7 as Administrator during the absence or disability of the 8 Administrator or in the event of a vacancy in the office 9 of the Administrator. The Deputy Administrator shall be 10 the Administrator's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code, 11 12 and shall be compensated at the rate provided for level 13 IV of the Executive Schedule under section 5315 of title 5, United States Code. 14

15 (c) Associate Administrator for Ocean Man-AGEMENT AND OPERATIONS.—There shall be an Associate 16 17 Administrator for Ocean Management and Operations of NOAA, who shall be appointed by the President, by and 18 19 with the advice and consent of the Senate. The Associate 20 Administrator for Ocean Management and Operations 21 shall have a broad background, professional knowledge, 22 and substantial experience in oceanic or atmospheric pol-23 icy or programs, and shall perform such duties and exercise such powers as the Administrator shall from time to 24 25 time designate. The Associate Administrator shall be compensated at the rate provided for level V of the Executive
 Schedule under section 5316 of title 5, United States
 Code.

4 (d) Associate Administrator for Climate and 5 ATMOSPHERE.—There shall be an Associate Administrator for Climate and Atmosphere of NOAA, who shall 6 7 be appointed by the President, by and with the advice and 8 consent of the Senate. The Associate Administrator for 9 Climate and Atmosphere shall have a broad background, 10 professional knowledge, and substantial experience in oce-11 anic or atmospheric policy or programs, and shall perform 12 such duties and exercise such powers as the Administrator 13 shall from time to time designate. The Associate Adminis-14 trator shall be compensated at the rate provided for level 15 V of the Executive Schedule under section 5316 of title 5, United States Code. 16

17 (e) CHIEF OPERATING OFFICER.—There shall be a 18 Chief Operating Officer of NOAA, who shall assume the 19 responsibilities held by the Deputy Under Secretary of 20 Commerce prior to the date of the enactment of this Act. 21 The Chief Operating Officer shall be responsible for ensur-22 ing the timely and effective implementation of NOAA's 23 purposes and authorities and shall provide resource, budg-24 et, and management support to the Office of the Adminis-25 trator. The Chief Operating Officer shall be responsible

for all aspects of NOAA operations and management, in cluding budget, financial operations, information services,
 facilities, human resources, procurement, and associated
 services. The Chief Operating Officer shall be a Senior Ex ecutive Service position authorized under section 3133 of
 title 5, United States Code.

7 (f) ASSISTANT ADMINISTRATORS.—There shall be at 8 least 3, but not more than 4, Assistant Administrators of 9 NOAA. The Assistant Administrators shall perform such 10 programmatic and policy functions as the Administrator shall from time to time assign or delegate, and shall have 11 12 background, professional knowledge, and substantial expe-13 rience in 1 or more of the following aspects of oceanic and atmospheric affairs: 14

15 (1) Resource management, protection, and res-16 toration.

17 (2) Operations, forecasting, and services, in-18 cluding weather and climate.

19 (3) Science, technology, and education.

(g) GENERAL COUNSEL.—There shall be a General
Counsel of NOAA appointed by the President upon recommendation by the Administrator. The General Counsel
shall serve as the chief legal officer for all legal matters
that may arise in connection with the conduct of the functions of NOAA.

22

1 (h) Commissioned Officers.—

2	(1) The Administrator shall designate an officer
3	or officers to be responsible for oversight of NOAA's
4	vessel and aircraft fleets and for the administration
5	of NOAA's commissioned officer corps under subtitle
6	B of title II of the National Oceanic and Atmos-
7	pheric Administration Commissioned Officer Corps
8	Act of 2002 (33 U.S.C. 3021 et seq.).
9	(2) The Commissioned Officer Corps of the Na-
10	tional Oceanic and Atmospheric Administration es-
11	tablished by Reorganization Plan No. 4 of October
12	3, 1970, as in effect on the day before the date of
13	the enactment of this Act, is the Commissioned Offi-
14	cer Corps of NOAA established under this Act.
15	(3) All statutes that applied to officers of the
16	Commissioned Officers Corps of NOAA on the day
17	before the date of the enactment of this Act apply
18	to officers of the Corps on and after such date.
19	(4) There are authorized to be on the lineal list
20	of the Commissioned Officers Corps of NOAA not
21	less than 350 officers, plus any additional officers
22	necessary to support NOAA's missions and the oper-
23	ation and maintenance of NOAA's ships and air-

24 craft.

1 (5) The President may appoint, by and with the 2 advice and consent of the Senate, 2 commissioned 3 officers to serve at any one time as the designated 4 heads of 2 principal constituent organizational enti-5 ties of NOAA, or the President may designate 1 6 such officer as the head of such an organizational 7 entity and the other as the head of the commis-8 sioned corps of NOAA. Any such designation shall 9 create a vacancy on the active list and the officer 10 while serving under this subsection shall have the 11 rank, pay, and allowances of a rear admiral (upper 12 half).

13 (6) Any commissioned officer of NOAA who has 14 served under paragraph (5) and is retired while so 15 serving or is retired after the completion of such 16 service while serving in a lower rank or grade, shall 17 be retired with the rank, pay, and allowances au-18 thorized by law for the highest grade and rank held 19 by him, but any such officer, upon termination of 20 appointment in a rank above that of captain, shall, 21 unless appointed or assigned to some other position 22 for which a higher rank or grade is provided, revert 23 to the grade and number the officer would have oc-24 cupied had he not served in a rank above that of captain and such officer shall be an extra number in
 that grade.

3 (i) NAVAL DEPUTY.—The Secretary of the Navy may
4 detail a Naval Deputy to the Administrator. This position
5 shall be filled on an additional duty basis by the Oceanog6 rapher of the Navy. The Naval Deputy shall—

7 (1) act as a liaison between the Administrator
8 and the Secretary of the Navy in order to avoid du9 plication between Federal oceanographic and atmos10 pheric activities; and

(2) ensure coordination and joint planning by
NOAA and the Navy on research, meteorological,
oceanographic, and geospatial information services,
and programs of mutual organizational interest.

15 SEC. 115. RESPONSIBILITIES OF THE ADMINISTRATOR.

16 In addition to administering and carrying out all ac-17 tivities, programs, functions, and duties, and exercising 18 the powers that are assigned, delegated, or transferred to 19 the Administrator by this Act, any other statute, or the 20 President, the responsibilities of the Administrator in-21 clude—

(1) managing, conserving, protecting, and restoring of ocean resources, including—

1	(A) living marine resources (including fish-
2	eries, vulnerable species and habitats, and ma-
3	rine biodiversity);
4	(B) ocean areas (including marine sanc-
5	tuaries, estuarine reserves, and other managed
6	areas);
7	(C) marine aquaculture;
8	(D) the protection of ocean environments
9	from threats to human and ecosystem health,
10	including pollution and invasive species;
11	(E) the sustainable management, beneficial
12	use, protection, and development of coastal re-
13	gions; and
14	(F) the mitigation of impacts of natural
15	and man-made hazards, including climate
16	change;
17	(2) partnering with, and supporting, State and
18	local communities in undertaking management, con-
19	servation, protection, and restoration of ocean re-
20	sources described in paragraph (1);
21	(3) observing, analyzing, processing, and com-
22	municating comprehensive data and information con-
23	cerning the State of—
24	(A) the upper and lower atmosphere;
25	(B) the oceans and ocean resources; and

(C) the Earth and near space environment;
 (4) collecting, storing, analyzing, and providing
 reliable scientific information relating to weather (in cluding space weather), climate, air quality, water,
 navigation, marine resources, and ecosystems that
 may be used as a basis for sound management, pol icy, and public safety decisions;

8 (5) carrying out broadly based data, observing, 9 monitoring, and information activities, programs, 10 and systems relating to oceanic and atmospheric 11 monitoring and prediction, weather forecasting, and 12 storm warning, including satellite-based and insitu 13 data collection and associated services;

14 (6) carrying out weather forecasting, storm 15 warnings, and other responsibilities of the Secretary 16 of Commerce and the National Weather Service 17 under Reorganization Plan No. 2 of 1965, Reorga-18 nization Plan No. 4 of 1970 (as in effect on the day 19 before the date of the enactment of this Act), sec-20 tions 3 and 4 of the Act of October 1, 1890 (15 21 U.S.C. 312 and 313) and the Weather Service Mod-22 ernization Act (15 U.S.C. 313 note), and all other 23 statutes, rules, plans, and orders in pari materia;

24 (7) providing navigation and assessment oper-25 ations and services, including maps and charts for

the safety of marine and air navigation, maintaining
 a network of geographic reference coordinates for
 geodetic control, and observing, charting, mapping,
 and measuring the marine environment and ocean
 resources;

6 (8) developing and improving geodetic and map7 ping methods and studies of geophysical phenomena
8 such as crustal movement, Earth tides, and ocean
9 circulation, including estuarine areas;

10 (9) collecting, disseminating, and maintaining 11 on a continuing basis information relating to the 12 status, trends, health, use, and protection of the 13 oceans and the atmosphere, to all interested parties, 14 including through an integrated ocean observing sys-15 tem and national and regional ecosystem-based in-16 formation management systems;

17 (10) administering, operating, and maintaining 18 satellite and insitu systems that can monitor global 19 and regional atmospheric weather conditions, climate 20 and related oceanic, solar, hydrological, and other 21 environmental conditions, collect information re-22 quired for research on weather, climate, and related 23 environmental matters, and monitor the extent of 24 human-induced changes in the lower and upper at-25 mosphere and the related environment;

(11) collecting, analyzing, and disseminating
environmental information, in support of environmental research and development, including data in
the fields of climatology, atmospheric sciences,
oceanography, biology, geology, geophysics, solar-terrestrial relationships, and the relationship among
oceans, climate, and human health;

8 (12) undertaking a comprehensive, integrated, 9 and ecosystem-based program of oceanic, climate, 10 and atmospheric research related to, and supportive 11 of, the missions of NOAA and which uses research 12 products, new findings, and methodologies to develop 13 the most current scientific advice for ecosystem-14 based management;

15 (13) conducting environmental research and de-16 velopment activities that are necessary to advance 17 the United States oceanic, atmospheric, engineering, 18 and technology expertise, including the development 19 and operation of observing platforms such as ships, 20 aircraft, satellites, data buoys, manned or unmanned 21 research submersibles, underwater laboratories or 22 platforms, and improved instruments and calibration 23 methods, and the advancement of undersea diving 24 techniques;

(14) conducting a continuing program of ocean
 exploration and discovery and conservation of signifi cant undersea resources, including cultural re sources, to benefit, inform, and inspire the people of
 the United States, including communication of such
 knowledge to policymakers and the public;

7 (15) developing and implementing, in coopera-8 tion with other agencies and entities as appropriate, 9 national oceanic and atmospheric education, tech-10 nical assistance, extension services, and outreach 11 programs designed to increase literacy concerning 12 oceanic and atmospheric issues, develop a diverse 13 workforce, and enhance stewardship of oceanic and 14 atmospheric resources and environments;

(16) ensuring the execution and implementation
of national oceanic, atmospheric, and environmental
policy goals through a variety of oceanic and atmospheric programs;

(17) undertaking activities involving the integration of domestic and international policy relating
to the oceans and the atmosphere, including the provision of technical advice to the President on international negotiations involving ocean resources,
ocean technologies, and climate matters;

(18) providing for, encouraging, and assisting
 public participation in the development and imple mentation of oceanic and atmospheric policies and
 programs;

5 (19) conducting, supporting, and coordinating 6 efforts to enhance public awareness of NOAA, its 7 purposes, programs, and activities, and the results 8 thereof, including education and outreach to the 9 public, teachers, students, and ocean resource man-10 agers;

(20) partnering with other government agencies, States, academia, and the private sector, via cooperative agreements or other formal or informal arrangements, to improve the acquisition of data and information and the implementation of management, monitoring, research, exploration, education, and other programs;

(21) partnering with other Federal agencies
and with States and communities to address the
issues of land-based activities and their impact on
the ocean environment;

(22) working with other Federal agencies,
State, tribal, and local governments, and the public
to improve regional coordination and integration and

1	promote ecosystem-based management of coasts,
2	oceans, and the Great Lakes; and
3	(23) coordinating with other Federal agencies
4	that have related responsibilities.
5	SEC. 116. POWERS OF THE ADMINISTRATOR.
6	(a) Delegation.—Unless otherwise prohibited by
7	law or reserved by the Secretary of Commerce, the respon-
8	sibilities of the Administrator may be delegated by the Ad-
9	ministrator to other officials in NOAA, and may be redele-
10	gated as authorized by the Administrator.

(b) REGULATIONS.—The Administrator may issue,
amend, or rescind such rules and regulations as are necessary or appropriate to carry out the responsibilities and
functions of the Administrator. The promulgation of such
rules and regulations shall be governed by the provisions
of chapter 5 of title 5, United States Code.

17 (c) CONTRACTS.—The Administrator may, without regard to subsection (a) or (b) of section 3324 of title 31, 18 19 United States Code, enter into and perform such contracts, leases, grants, cooperative agreements, or other 20 21 transactions (without regard to chapter 63 of title 31, 22 United States Code), as may be necessary to carry out 23 NOAA's purposes and authorities, on terms the Adminis-24 trator deems appropriate, with Federal agencies, instrumentalities, and laboratories, State and local governments, 25

regional and interstate entities, Native American tribes
 and organizations, international organizations, foreign
 governments, educational institutions, nonprofit organiza tions, commercial organizations, and other public and pri vate persons or entities.

6 (d) GIFTS AND DONATIONS.—

7 (1) IN GENERAL.—Notwithstanding section
8 1342 of title 31, United States Code, and subject to
9 such conditions and covenants as the Administrator
10 deems appropriate, the Administrator may accept,
11 hold, administer, and utilize—

12 (A) gifts, bequests, or donations of serv13 ices, money, or property, real or personal (in14 cluding patents and rights thereunder), mixed,
15 tangible or intangible, or any interest therein;

16 (B) contributions of funds; and

(C) funds from Federal agencies, instrumentalities, and laboratories, State and local
governments, Native American tribes and organizations, international organizations, foreign
governments, educational institutions, nonprofit
organizations, commercial organizations, and
other public and private persons or entities.

24 (2) USE, OBLIGATION, AND EXPENDITURE.—
25 The Administrator may use property and services

accepted by NOAA under paragraph (1) to carry out
 the mission and purposes of NOAA. Amounts ac cepted by NOAA under paragraph (1) shall be avail able for obligation by NOAA, and shall be available
 for expenditure by NOAA to carry out the mission
 and purposes of NOAA.

7 (e) FACILITIES AND PERSONNEL.—The Adminis-8 trator may use the services, equipment, personnel, and fa-9 cilities of Federal agencies, instrumentalities and labora-10 tories, State and local governments, Native American tribes and organizations, international organizations, for-11 12 eign governments, educational institutions, nonprofit orga-13 nizations, commercial organizations, and other public and private persons or entities, with the consent of such per-14 15 sons or entities, and with or without reimbursement.

16 (f) INFORMATION.—The Administrator shall provide 17 for the most practicable and widest appropriate dissemina-18 tion of information concerning NOAA, its purposes, pro-19 grams, and activities, and the results thereof, including 20 authority to conduct education, technical assistance, and 21 outreach to the public, teachers, students, and ocean and 22 coastal resource managers.

23 (g) ACQUISITION AND CONSTRUCTION.—The Admin24 istrator may—

(1) acquire (by purchase, lease, condemnation,
 or otherwise), lease, sell, or convey, services, money
 or property, real or personal (including patents and
 rights thereunder), mixed, tangible or intangible, or
 any interest therein; and

6 (2) construct, improve, repair, operate, main7 tain, or dispose of real or personal property, includ8 ing buildings, facilities, and land.

9 SEC. 117. ENFORCEMENT.

10 (a) AUTHORITY.—The Administrator shall have the 11 authority to enforce the applicable provisions of any Act 12 the enforcement of which is, in whole or in part, assigned, 13 delegated, or transferred to the Administrator, and any term of a license, permit, regulation, or order issued pur-14 15 suant thereto. The Administrator may designate any person, officer, or agency to exercise the authority of the Ad-16 17 ministrator under this title.

18 (b) USE OF STATE PERSONNEL.—

19 (1) IN GENERAL.—The Administrator may—

20 (A) utilize by agreement, with or without
21 reimbursement, the personnel, services, and fa22 cilities of any State agency to the extent the
23 Administrator deems it necessary and appro24 priate for effective enforcement of any law for

ignated by the Administrator under paragraph (1)(B)—

9 (A) shall not be deemed to be Federal em-10 ployees (except as provided in subparagraph 11 (D)) and shall not be subject to the provisions 12 of law relating to Federal employment, includ-13 ing those relating to hours of work, competitive 14 examination, rates of compensation, and Fed-15 eral employee benefits, but may be considered 16 to be eligible for compensation for work-related 17 injuries under subchapter III of chapter 81 of 18 title 5, United States Code, sustained while act-19 ing pursuant to such designation;

20 (B) shall be considered to be investigative
21 or law enforcement officers of the United States
22 for purposes of the tort claim provisions of title
23 28, United States Code;

24 (C) may, to the extent specified by the Ad25 ministrator, search, seize, arrest, and exercise

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1 any other law enforcement functions or authori-2 ties described in this title where such authori-3 ties are made applicable by this or other law to 4 employees, officers, or other persons designated 5 or employed by the Administrator; and 6 (D) shall be considered to be officers or 7 employees of the Department of Commerce for 8 purposes of sections 112 and 1114 of title 18, 9 United States Code. 10 (c) COOPERATIVE ENFORCEMENT AGREEMENTS.— The Administrator may enter into cooperative agreements 11 12 with State authorities to ensure coordinated enforcement 13 of State and Federal laws and by such agreements may assume enforcement authority under State law when the 14 15 Administrator and State authorities deem it to be appropriate. When so authorized, the Administrator or the Ad-16 17 ministrator's designee may function as a State law enforcement officer within the scope of the delegation, except 18 that Federal law shall control the resolution of any conflict 19 20 concerning the employee status of any Federal officer 21 while enforcing State law.

22 SEC. 118. REGIONAL CAPABILITIES.

23 The Administrator shall—

24 (1) organize agency activities and programs25 around common ecoregional boundaries identified

1	through a process established by the Council on
2	Ocean Stewardship, based upon recommendations
3	contained in the report of the Commission on Ocean
4	Policy, and coordinated with the Regional Ocean
5	Partnerships, so as to—
6	(A) enhance inter- and intra-agency co-
7	operation;
8	(B) maximize Federal capabilities in such
9	region;
10	(C) develop coordinated, ecosystem-based
11	management and research programs;
12	(D) develop research partnerships with
13	States, Regional Ocean Partnerships, and aca-
14	demic institutions;
15	(E) substantially improve the ability of the
16	public to contact and work with all relevant
17	Federal agencies; and
18	(F) maximize opportunities to work in
19	partnership with States and Regional Ocean
20	Partnerships in order to facilitate ecoregional
21	management and enhance State, Regional
22	Ocean Partnership, and local capacity to man-
23	age issues on an ecoregional basis;
24	(2) work with other Federal agencies, including
25	the Environmental Protection Agency, the United

1	States Fish and Wildlife Service, U.S. Army Corps
2	of Engineers, and State agencies to—
3	(A) encourage similar ecoregional organiza-
4	tion and, if appropriate, colocation of related
5	programs and facilities to achieve goals de-
6	scribed in paragraph (1); and
7	(B) plan and implement ecoregional activi-
8	ties to encourage early cooperation, coordina-
9	tion, and integration across the Federal agen-
10	cies and with relevant State programs, and to
11	assure applicable Federal and State ocean poli-
12	cies; and
13	(3) ensure that NOAA consults with the States
14	and Regional Ocean Partnerships established under
15	section 302, develop regional information programs
16	as recommended by the Commission on Ocean Pol-
17	icy, including—
18	(A) coordinated research strategies;
19	(B) integrated oceanic and atmospheric
20	monitoring and observation activities; and
21	(C) establishment of service centers and
22	coordinators to support development of innova-
23	tive tools, technologies, training, and technical
24	assistance to facilitate the implementation of
25	ecosystem-based management.

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1 SEC. 119. INTERGOVERNMENTAL COORDINATION.

2 (a) Avoidance of Duplicative Requirements.— 3 In administering the provisions of this Act, the Administrator shall consult and coordinate with the head of any 4 5 Federal agency having authority to issue any license, lease, or permit to engage in an activity related to the 6 7 functions of the Administrator for purposes of assuring 8 that inconsistent or duplicative requirements are not im-9 posed upon any applicant for, or holder of, any such li-10 cense, lease, or permit.

(b) AVOIDANCE OF INCONSISTENT AND CONFLICTING
ACTIVITIES AND POLICIES.—To identify and resolve inconsistent or conflicting Federal oceanic and atmospheric
activities and policies, the Administrator shall—

(1) consult and coordinate with the head of any
Federal agency on the activities and policies of that
agency to provide services related to the functions of
the Administrator;

(2) request the head of any Federal agency to
provide clarification and justification of those activities and policies that the Administrator determines
are inconsistent or conflicting with the Administrator's functions; and

(3) issue, as the Administrator deems appropriate, reports to the President, the Council on
Ocean Stewardship, the head of any Federal agency,

and Congress concerning inconsistent or conflicting
 activities and policies of any Federal agency relating
 to oceanic and atmospheric activities, including rec ommendations on how to reconcile inconsistent and
 conflicting Federal oceanic and atmospheric activi ties and policies throughout the Federal Govern ment.

8 (c) CONSULTATION WITH ADMINISTRATOR.—The 9 head of any Federal agency or department, and all other 10 Federal officials, having responsibilities related to the 11 functions of the Administrator shall consult with the Ad-12 ministrator when the subject matter of actions or activities 13 described in this Act are directly involved, to ensure that 14 all such activities are well coordinated.

15 (d) COORDINATION WITH STATES.—The Administrator shall ensure that NOAA programs work with the 16 17 States to encourage early cooperation, coordination, and integration of State and Federal oceanic and atmospheric 18 19 planning programs, including and implementing ecoregional activities. 20

(e) OFFICE OF INTERGOVERNMENTAL AFFAIRS.—
The Administrator shall establish an Office of Intergovernmental Affairs to assist in implementing this section
and to facilitate planning of joint programs between

NOAA line offices and other Federal agencies or depart ments, including the Department of Defense.

3 SEC. 120. INTERNATIONAL CONSULTATION AND COOPERA-4 TION.

5 (a) COOPERATION WITH SECRETARY OF STATE.— 6 The Administrator shall cooperate to the fullest prac-7 ticable extent with the Secretary of State in providing rep-8 resentation at all meetings and conferences relating to ac-9 tions or activities described in this Act in which represent-10 atives of the United States and foreign countries partici-11 pate.

12 (b) CONSULTATION WITH ADMINISTRATOR.—The 13 Secretary of State and all other officials having respon-14 sibilities for agreements, treaties, or understandings with 15 foreign nations and international bodies shall consult with 16 the Administrator when the subject matter or activities 17 described in this Act are involved, with a view to ensuring 18 that such interests are adequately represented.

19 SEC. 121. REPORT ON OCEANIC AND ATMOSPHERIC CONDI-

20 TIONS AND TRENDS.

Not later than 1 year after the date of the enactment of this Act, and biennially thereafter, the Administrator shall, in consultation with relevant Federal and State agencies and departments, submit to Congress a report on(1) the status and condition of the United
 States oceanic and atmospheric environments, in cluding with respect to climate change;

4 (2) current and foreseeable trends in the qual5 ity, management, and utilization of such environ6 ments; and

7 (3) the effects of those trends on the social,
8 economic, ecological, and other requirements of the
9 United States.

10 SEC. 122. CONFORMING AMENDMENTS AND REPEALS.

11 (a) REORGANIZATION PLAN NO. 4.—Reorganization 12 Plan No. 4 of 1970 (15 U.S.C. 1511 note) is repealed. 13 (b) REFERENCES TO NOAA.—Any reference to the 14 National Oceanic and Atmospheric Administration, the 15 Under Secretary of Commerce for Oceans and Atmosphere (either by that title or by the title of the Administrator 16 17 of NOAA), or any other official of the National Oceanic and Atmospheric Administration, in any law, rule, regula-18 tion, certificate, directive, instruction, or other official 19 20 paper in force on the day before the date of the enactment 21 of this Act shall be deemed to refer and apply to the Na-22 tional Oceanic and Atmospheric Administration estab-23 lished in this Act, or the position of Administrator estab-24 lished in this Act, respectively.

1	(c) References to NOAA as Within the De-
2	PARTMENT OF COMMERCE.—
3	(1) NOAA OFFICERS.—Section 407 of the Act
4	entitled "An Act to amend certain provisions of the
5	law regarding the fisheries of the United States, and
6	for other purposes", approved November 14, 1986
7	(Public Law 99–659; 110 Stat. 3739) is repealed.
8	(2) BUREAUS IN NOAA.—Section 12 of the Act
9	of February 14, 1903 (15 U.S.C. 1511) is amend-
10	ed—
11	(A) by striking paragraph (1);
12	(B) by redesignating paragraphs (2)
13	through (6) as paragraphs (1) through (5) , re-
14	spectively; and
15	(C) in paragraph (3), as so redesignated,
16	by inserting a semicolon at the end.
17	(d) Conforming Amendment.—Section 5315 of
18	title 5, United States Code, is amended by striking "As-
19	sistant Secretaries of Commerce (11)." and inserting "As-
20	sistant Secretaries of Commerce (10).".
21	SEC. 123. SAVINGS PROVISION.
22	All rules and regulations, determinations, standards,
23	contracts, certifications, authorizations, appointments,
24	delegations, results and findings of investigations, or other

actions duly issued, made, or taken pursuant to or under

1 the authority of any statute that resulted in the assign-2 ment of functions or activities to the Secretary, the De-3 partment of Commerce, the Under Secretary, the Admin-4 istrator, or any other officer of NOAA, in effect imme-5 diately before the date of the enactment of this Act shall 6 continue in full force and effect after the date of the enact-7 ment of this Act until modified or rescinded.

8 SEC. 124. TRANSITION.

9 (a) EFFECTIVE DATE.—The provisions of this sub10 title shall become effective 2 years from the date of the
11 enactment of this Act.

12 (b) REORGANIZATION.—Not later than 18 months 13 after the date of the enactment of this Act, the Adminis-14 trator, in consultation with the Assistant Administrator 15 for Program Planning and Integration of NOAA, shall 16 submit to Congress a plan and budget proposal that sets 17 forth a proposal for NOAA and program reorganization 18 that—

19 (1) meets the requirements of this title;

20 (2) reflects the recommendations of the Com21 mission on Ocean Policy, particularly with respect to
22 ecosystem-based science and management and addi23 tional budgetary requirements; and

1 (3) provide integrated oceanic and atmospheric 2 programs and services for the benefit of the United 3 States. **Subtitle B—Federal Coordination** 4 and Advice 5 6 SEC. 131. NATIONAL OCEAN ADVISOR. 7 (a) ESTABLISHMENT.— 8 (1) IN GENERAL.—There is established in the 9 Executive Office of the President the position of National Ocean Advisor (referred to in this section as 10 11 the "Advisor"). The Advisor— 12 (A) shall be appointed by the President, by 13 and with the advice and consent of the Senate; 14 and 15 (B) may not be an employee of an agency 16 or department of the United States. 17 (2) COMPENSATION.—The Advisor shall be paid 18 at a rate specified by the President not to exceed the 19 rate payable for level V of the Executive Schedule 20 under section 5136 of title 5, United States Code. 21 (3)QUALIFICATIONS.—The individual ap-22 pointed as the Advisor shall be a person who, as a 23 result of the individual's training, experience, and 24 attainments, is well qualified—

1	(A) to analyze and interpret marine eco-
2	system trends and all relevant information re-
3	lated to such trends;
4	(B) to appraise programs and activities of
5	the Federal Government with consideration of
6	the goals of the National Ocean Policy; and
7	(C) to formulate and recommend actions
8	and decisions to promote marine ecosystem
9	health.
10	(b) FUNCTIONS.—The Advisor shall—
11	(1) advise the President on implementation of
12	this Act, activities of the Council on Ocean Steward-
13	ship, and other matters relating to ocean waters,
14	coastal waters, ocean resources, and maintaining
15	marine ecosystem health;
16	(2) serve as the chair of the Council on Ocean
17	Stewardship;
18	(3) lead efforts to coordinate Federal agency
19	actions to implement the National Ocean Policy;
20	(4) establish a process, in consultation with the
21	Council on Ocean Stewardship, for resolving inter-
22	agency disputes and advise Federal agencies as re-
23	quested regarding the implementation of the Na-
24	tional Ocean Policy; and

1 (5) develop, issue, and revise as needed, the 2 guidance required under section 102(b)(2). 3 (c) STAFFING.— 4 (1) STAFF.—The Advisor may employ such 5 staff as may be necessary to carry out this section. 6 (2) Uncompensated services.—The Advisor 7 may accept, utilize, and terminate voluntary and un-8 compensated services to carry out this section. 9 SEC. 132. COUNCIL ON OCEAN STEWARDSHIP. 10 There is established in the Executive Office of the President a Council on Ocean Stewardship (in this subtitle 11 referred to as the "Council"). 12 13 SEC. 133. MEMBERSHIP OF COUNCIL ON OCEAN STEWARD-14 SHIP. 15 (a) MEMBERSHIP.—The Council shall be composed of at least 3 but not more than 5 members who shall be ap-16 17 pointed by the President to serve at the pleasure of the 18 President, by and with the advice and consent of the Sen-19 ate. 20 (b) QUALIFICATIONS.—Each member of the Council 21 shall be, as a result of training, experience, and attach-22 ments, exceptionally well qualified— 23 (1) to analyze and interpret oceanic and atmos-24 pheric trends and information of all kinds;
1	(2) to appraise programs and activities of the
2	Federal Government in the light of the National
3	Ocean Policy;
4	(3) to be conscious of and responsive to the sci-
5	entific, environmental, ecosystem, economic, social,
6	aesthetic, and cultural needs and interests of the
7	United States; and
8	(4) to formulate and recommend national poli-
9	cies to promote the improvement and the quality of
10	the ocean and atmospheric environments, including
11	as those environments relate to practices on land.
12	SEC. 134. FUNCTIONS OF COUNCIL ON OCEAN STEWARD-
13	SHIP.
13 14	SHIP. (a) Coordination and Advice.—The Council—
13 14 15	SHIP. (a) COORDINATION AND ADVICE.—The Council— (1) shall coordinate oceanic and atmospheric ac-
13 14 15 16	 SHIP. (a) COORDINATION AND ADVICE.—The Council— (1) shall coordinate oceanic and atmospheric activities among the agencies and departments of the
13 14 15 16 17	 SHIP. (a) COORDINATION AND ADVICE.—The Council— (1) shall coordinate oceanic and atmospheric activities among the agencies and departments of the United States, particularly focusing on the National
13 14 15 16 17 18	 SHIP. (a) COORDINATION AND ADVICE.—The Council— (1) shall coordinate oceanic and atmospheric activities among the agencies and departments of the United States, particularly focusing on the National Ocean Policy, while minimizing duplication, includ-
 13 14 15 16 17 18 19 	 SHIP. (a) COORDINATION AND ADVICE.—The Council— (1) shall coordinate oceanic and atmospheric activities among the agencies and departments of the United States, particularly focusing on the National Ocean Policy, while minimizing duplication, including ensuring other ocean-related agencies work to-
 13 14 15 16 17 18 19 20 	 SHIP. (a) COORDINATION AND ADVICE.—The Council— (1) shall coordinate oceanic and atmospheric activities among the agencies and departments of the United States, particularly focusing on the National Ocean Policy, while minimizing duplication, including ensuring other ocean-related agencies work together at the operation, program, and research levels
 13 14 15 16 17 18 19 20 21 	 SHIP. (a) COORDINATION AND ADVICE.—The Council— (1) shall coordinate oceanic and atmospheric activities among the agencies and departments of the United States, particularly focusing on the National Ocean Policy, while minimizing duplication, including ensuring other ocean-related agencies work together at the operation, program, and research levels in cooperation with NOAA;
 13 14 15 16 17 18 19 20 21 22 	 SHIP. (a) COORDINATION AND ADVICE.—The Council— (1) shall coordinate oceanic and atmospheric activities among the agencies and departments of the United States, particularly focusing on the National Ocean Policy, while minimizing duplication, including ensuring other ocean-related agencies work together at the operation, program, and research levels in cooperation with NOAA; (2) shall provide a forum for improving plan-
 13 14 15 16 17 18 19 20 21 22 23 	 SHIP. (a) COORDINATION AND ADVICE.—The Council— (1) shall coordinate oceanic and atmospheric activities among the agencies and departments of the United States, particularly focusing on the National Ocean Policy, while minimizing duplication, including ensuring other ocean-related agencies work together at the operation, program, and research levels in cooperation with NOAA; (2) shall provide a forum for improving planning among such agencies and departments, budget
 13 14 15 16 17 18 19 20 21 22 23 24 	 SHIP. (a) COORDINATION AND ADVICE.—The Council— (1) shall coordinate oceanic and atmospheric activities among the agencies and departments of the United States, particularly focusing on the National Ocean Policy, while minimizing duplication, including ensuring other ocean-related agencies work together at the operation, program, and research levels in cooperation with NOAA; (2) shall provide a forum for improving planning among such agencies and departments, budget and program coordination, administration, outreach,

(3) shall ensure that such agencies and depart ments engaged in oceanic and atmospheric activities
 adopt and implement the principle of ecosystem based management and take necessary steps to im prove regional coordination and delivery of services
 around common ecoregional boundaries;

7 (4) shall review and evaluate the various pro-8 grams and activities of the Federal Government in 9 light of the National Ocean Policy for the purpose 10 of determining the extent to which such programs 11 and activities are effective and contributing to the 12 achievement of such policy and the overall health of 13 the oceanic and atmospheric environment, including 14 marine ecosystems;

15 (5) shall conduct an annual review and analysis 16 of funding proposed for oceanic and atmospheric re-17 search and management in the budgets of such 18 agencies and departments, and provide budget rec-19 ommendations to the President, the agencies, and 20 the Office of Management and Budget to carry out 21 the National Ocean Policy, improve coordination, co-22 operation, and effectiveness of such activities, elimi-23 nate unnecessary overlap, and identify areas of high-24 est priority for funding and support;

1	(6) shall identify progress made by oceanic and
2	atmospheric programs carried out by such agencies
3	or departments toward achieving the goals of—
4	(A) providing more effective protection and
5	restoration of marine ecosystems;
6	(B) improving predictions of climate
7	change and variability (weather), including their
8	effects on coastal communities and the Nation;
9	(C) improving the safety and efficiency of
10	marine operations;
11	(D) more effectively mitigating the effects
12	of natural hazards;
13	(E) reducing public health risks from oce-
14	anic and atmospheric sources;
15	(F) ensuring sustainable use of resources;
16	and
17	(G) improving national and homeland secu-
18	rity;
19	(7) shall promote efforts to increase and en-
20	hance partnerships with States that border a coast
21	or a Great Lake and other non-Federal entities to
22	support Regional Ocean Partnerships and enhanced
23	regional research, resource, hazards, ecosystem-
24	based management, education and outreach, and

3 (8) shall identify statutory and regulatory
4 redundancies or omissions and develop strategies to
5 resolve conflicts, fill gaps, and address new and
6 emerging oceanic and atmospheric issues for na7 tional and regional benefit;

8 (9) shall emphasize the development and sup-9 port of partnerships among government agencies 10 and nongovernmental organizations, academia, and 11 the private sector including regional partnerships;

(10) shall expand research, education, and outreach efforts by all Federal agencies undertaking
oceanic and atmospheric activities;

(11) may establish a Federal Coordinating
Committee on Oceans, chaired by the Chair of the
Council, to carry out the coordination of oceanic and
atmospheric programs and priorities required under
this title; and

20 (12) may establish other ocean-related com21 mittee the Council determines is appropriate.

(b) CONSULTATION.—In exercising its powers, functions, and duties under this subtitle, the Council shall—
(1) consult with the Administrator and with the

25 Presidential Panel of Advisers on Oceans and Cli-

1

mate established under section 139 to ensure input
 from potentially affected States, the public, and
 other stakeholders;

4 (2) work in close consultation and cooperation
5 with the Council on Environmental Quality, the Of6 fice of Science and Technology Policy, the Council of
7 Economic Advisers, and other offices within the Ex8 ecutive Office of the President;

9 (3) utilize the expertise and coordinating the 10 capabilities of the Joint Subcommittee on Ocean 11 Science and Technology of the National Science and 12 Technology Council and any ocean-related commit-13 tees formed under the Council with respect to oce-14 anic and atmospheric science, technology, and edu-15 cation matters, including development of a national 16 research strategy; and

17 (4) utilize, to the fullest extent possible, the 18 services, facilities, and information (including statis-19 tical information) of public and private agencies and 20 organizations and individuals, in order to avoid du-21 plication of effort and expense, and ensure that the 22 Council's activities will not unnecessarily overlap or 23 conflict with similar activities authorized by law and 24 performed by the Administrator or the head of any 25 other agency or department of the United States.

(c) REVIEWS AND REPORTS.—The Council shall 1 2 make and furnish such studies, reports, and recommenda-3 tions with respect to matters of policy and legislation as 4 the President may request. 5 SEC. 135. PERSONNEL OF COUNCIL ON OCEAN STEWARD-6 SHIP. 7 (a) Assistance From Other Agencies or De-8 PARTMENTS.— 9 (1) IN GENERAL.—For the purpose of carrying 10 out the functions of the Council, each agency or de-11 partment of the United States that conducts oceanic 12 or atmospheric activities shall furnish any assistance 13 requested by the Council. 14 (2) FORMS OF ASSISTANCE.—Assistance fur-15 nished under paragraph (1) may include— 16 (A) detailing employees to the Council to 17 perform such functions, consistent with the pur-18 poses of this subtitle, as the Chair of the Coun-19 cil may assign; and 20 (B) undertaking, upon the request of the 21 Chair of the Council, such special studies for 22 the Council as are necessary to carry out the 23 functions of the Council. 24 (3) PERSONNEL MANAGEMENT.—The Chair of 25 the Council shall have the authority to make personnel decisions regarding any employees detailed to
 the Council.

3 (b) EMPLOYMENT OF PERSONNEL, EXPERTS, AND4 CONSULTANTS.—The Council may—

5 (1) employ such officers and employees as may
6 be necessary to carry out the functions of the Coun7 cil under this subtitle;

8 (2) employ and fix the compensation of such ex-9 perts and consultants as may be necessary to carry 10 out the functions of the Council under this subtitle, 11 in accordance with section 3109(b) of title 5, United 12 States Code (without regard to the last sentence 13 thereof); and

14 (3) notwithstanding section 1342 of title 31,
15 United States Code, accept and employ voluntary
16 and uncompensated services in furtherance of the
17 purposes of the Council.

18 SEC. 136. NATIONAL PRIORITIES FOR COORDINATION.

19 The Council, in coordination with the Joint Sub-20 committee on Ocean Science and Technology of the Na-21 tional Science and Technology Council, shall ensure that 22 the Federal agencies conducting oceanic and atmospheric 23 activities give priority attention and develop coordinated 24 Federal budgets, programs, and operations that will mini-

1	mize duplication and foster improved services and other
2	benefits to the United States in the following areas:
3	(1) Prevention, management, and control of
4	nonpoint source pollution, including regional or wa-
5	tershed strategies.
6	(2) An integrated ocean and coastal observing
7	system and an associated Earth observing system.
8	(3) Ecosystem-based management, protection,
9	and restoration of oceanic and atmospheric resources
10	and environments, including management-oriented
11	research, technical assistance and organization of
12	programs, and activities along common ecoregional
12	houndaries
13	boundaries.
13 14	(4) Ocean education and outreach.
13 14 15	(4) Ocean education and outreach.(5) Regionally based coastal land protection,
13 14 15 16	(4) Ocean education and outreach.(5) Regionally based coastal land protection, conservation, maintenance, and restoration.
 13 14 15 16 17 	 (4) Ocean education and outreach. (5) Regionally based coastal land protection, conservation, maintenance, and restoration. (6) Enhanced research and technology develop-
13 14 15 16 17 18	 (4) Ocean education and outreach. (5) Regionally based coastal land protection, conservation, maintenance, and restoration. (6) Enhanced research and technology development on crosscutting areas, including—
 13 14 15 16 17 18 19 	 (4) Ocean education and outreach. (5) Regionally based coastal land protection, conservation, maintenance, and restoration. (6) Enhanced research and technology development on crosscutting areas, including— (A) oceans and human health;
 13 14 15 16 17 18 19 20 	 (4) Ocean education and outreach. (5) Regionally based coastal land protection, conservation, maintenance, and restoration. (6) Enhanced research and technology development on crosscutting areas, including— (A) oceans and human health; (B) social science and economics;
 13 14 15 16 17 18 19 20 21 	 (4) Ocean education and outreach. (5) Regionally based coastal land protection, conservation, maintenance, and restoration. (6) Enhanced research and technology development on crosscutting areas, including— (A) oceans and human health; (B) social science and economics; (C) atmospheric monitoring and climate
 13 14 15 16 17 18 19 20 21 22 	 (4) Ocean education and outreach. (5) Regionally based coastal land protection, conservation, maintenance, and restoration. (6) Enhanced research and technology development on crosscutting areas, including— (A) oceans and human health; (B) social science and economics; (C) atmospheric monitoring and climate change;
 13 14 15 16 17 18 19 20 21 22 23 	 (4) Ocean education and outreach. (5) Regionally based coastal land protection, conservation, maintenance, and restoration. (6) Enhanced research and technology development on crosscutting areas, including— (A) oceans and human health; (B) social science and economics; (C) atmospheric monitoring and climate change; (D) marine ecosystems, marine biodiver-

1	(E) marine and atmospheric hazards, in-
2	cluding sea level rise and geological events; and
3	(F) marine aquaculture.

4 (7) Characterization and mapping of the coastal
5 zone, coastal State waters, the territorial sea, the ex6 clusive economic zone and Outer Continental Shelf,
7 including ocean resources.

8 SEC. 137. COORDINATION PLAN.

9 (a) COORDINATION PLAN.—Not later than 2 years 10 after the date of the enactment of this Act, the Council 11 shall submit to Congress a plan for coordinating activities 12 of each agency or department of the United States related 13 to ocean waters that—

14 (1) is consistent with the National Ocean Pol-15 icy;

(2) designates a lead Federal entity for each existing activity and new activity in Federal waters
and identifies a process for coordination of such activity among such agencies or departments;

20 (3) identifies the process by which such agen21 cies or departments may coordinate with and partici22 pate in the Regional Ocean Partnerships and estab23 lishes Federal regional ocean partnership teams to
24 participate in that process;

1	(4) considers possible consolidation of oceanic
2	or atmospheric programs, functions, services, or re-
3	sources within or among such agencies or depart-
4	ments, if such consolidation would not undermine
5	the National Ocean Policy;
6	(5) includes recommendations prepared for any
7	resources or new authorities that such agencies or
8	departments may need to implement the National
9	Ocean Policy; and
10	(6) includes recommendations prepared under
11	regarding agency ocean budgets and sufficiency of
12	such budgets to carry out the National Ocean Pol-
13	icy.
14	(b) REVIEW AND UPDATE.—The Council shall review
15	and update the coordination plan as needed, but not less
16	frequently than once every 6 years.
17	SEC. 138. BIENNIAL REPORT TO CONGRESS.
18	(a) IN GENERAL.—Not later than 18 months after
19	the date of enactment of this Act, and biennially there-
20	after, the President, through the Council, shall submit to
21	Congress a report on Federal oceanic and atmospheric
22	programs, priorities, and accomplishments which shall in-
23	clude—

1 (1) a comprehensive description of the oceanic 2 and atmospheric programs and accomplishments of all agencies of the United States; 3 4 (2) an evaluation of such programs and accom-5 plishments in terms of the National Ocean Policy 6 and the national priorities identified in section 136, 7 specifying progress made with respect to the goals 8 set out in this title; 9 (3) a report on progress in improving Federal, 10 State, and Regional Ocean Partnership coordination 11 on ocean and atmospheric activities, including co-12 ordination efforts required in this Act; 13 (4) an analysis of the Federal budget allocated 14 to such programs including estimates of the funding 15 requirements of each such agency for such programs 16 during the succeeding 5 to 10 fiscal years; 17 (5) recommendations for remedying deficiencies, 18 and for improving organization, effectiveness, and 19 outreach of Federal oceanic and atmospheric pro-20 grams and services, on a regional and national basis, 21 including support for State and local efforts that le-22 verage public, nongovernmental, and private sector 23 involvement; and 24 (6) recommendations for legislative or other ac-

25 tion.

(b) PRESIDENTIAL TRANSMITTAL.—The President
 shall transmit the biennial report pursuant to this section
 to the President of the Senate and the Speaker of the
 House of Representatives not later than December 31 of
 the year in which such report is due.

6 (c) AGENCY COOPERATION.—Each Federal agency 7 shall cooperate by providing such data and information 8 without cost as may be requested by the Council for the 9 purpose of this section. Each Federal agency shall provide 10 services and personnel on a cost reimbursable basis at the 11 request of the Chair of the Council for the purpose of ac-12 complishing the requirements of this section.

13 SEC. 139. PRESIDENTIAL PANEL OF ADVISERS ON OCEANS 14 AND CLIMATE.

(a) ESTABLISHMENT; PURPOSE.—The President
shall establish a Presidential Panel of Advisers on Oceans
and Climate (referred to in this section as the "Presidential Panel"). The purpose of the Presidential Panel
shall be—

(1) to advise and assist the President and the
Chair of the Ocean Stewardship Council in identifying and fostering policies to protect, manage, and
restore oceanic and atmospheric environments and
resources, both on a regional and national basis; and

1	(2) to undertake a continuing review, on a se-
2	lective basis, of priority issues relating to national
3	oceanic and atmospheric policy (including climate
4	change), conservation and management of ocean en-
5	vironments and resources, and the status of the oce-
6	anic and atmospheric science and service programs
7	of the United States.
8	(b) Membership.—
9	(1) IN GENERAL.—The Presidential Panel shall
10	have at least 20 members appointed by the Presi-
11	dent, in consultation with the National Ocean Advi-
12	sor (who shall serve as an ex officio member of the
13	Presidential Panel). Such members of the Presi-
14	dential Panel shall—
15	(A) be appointed based on their knowledge
16	and experience in coastal, ocean, and atmos-
17	pheric science, policy, and other related areas;
18	and
19	(B) include at least 1 representative
20	from—
21	(i) local governments;
22	(ii) Indian tribes;
23	(iii) the marine science research com-
24	munity;

1 (iv) the marine science education com-2 munity; 3 (v) the commercial fishing sector; 4 (vi) the recreational fishing sector; 5 (vii) the energy development, the ship-6 ping and transportation, and the marine 7 tourism industries; 8 (viii) agriculture, which may include 9 timber; (ix) watershed organizations (other 10 11 than organizations represented under sub-12 paragraph (J)), which may include re-13 source conservation districts; and 14 nongovernmental organizations (\mathbf{x}) 15 (other than organizations represented 16 under subparagraph (I)), including groups 17 interested in marine conservation. 18 (2) CHAIR.—The Chair of the Council on Ocean 19 Stewardship shall co-chair the Presidential Panel 20 with a non-Federal member designated by the Presi-21 dent. 22 (c)APPOINTMENT AND QUALIFICATIONS.—The 23 members of the Presidential Panel shall be appointed by 24 the President for 3-year terms from among individuals

with diverse perspectives and expertise in 1 or more of

1	the disciplines or fields associated with oceanic and atmos-
2	pheric policy, including—
3	(1) marine-related State, tribal, and local gov-
4	ernment functions;
5	(2) ocean and coastal resource conservation and
6	management;
7	(3) atmospheric or oceanic science, engineering,
8	and technology;
9	(4) the marine industry (including recreation
10	and tourism);
11	(5) climate change;
12	(6) atmospheric or coastal hazards; or
13	(7) other fields appropriate for consideration of
14	matters of oceanic or atmospheric policy.
15	(d) VACANCIES.—An individual appointed to fill a va-
16	cancy occurring before the expiration of the term for which
17	the individual's predecessor was appointed shall be ap-
18	pointed only for the remainder of such term. No individual
19	may be reappointed to the Presidential Panel for more
20	than 1 additional 3-year term. A member may serve after
21	the date of the expiration of the term of office for which
22	appointed until the individual's successor has taken office.
23	(e) COMPENSATION.—Each member of the Presi-
24	dential Panel shall, while serving on business of the Com-
25	mission, be entitled to receive compensation at a rate not

to exceed a daily rate to be determined by the President 1 2 consistent with other Federal advisory boards. Federal 3 and State officials serving on the Commission and serving 4 in their official capacity shall not receive compensation in 5 addition to their Federal or State salaries for their time on the Commission. Members of the Presidential Panel 6 7 may be compensated for reasonable travel expenses while 8 performing their duties as members.

9 (f) MEETINGS.—The Presidential Panel shall meet at
10 least twice per year, or as prescribed by the President.
11 (g) REPORTS.—

12 (1) IN GENERAL.—The Presidential Panel shall 13 submit an annual report to the President and to 14 Congress setting forth an assessment, on a selective 15 basis, of the status of the Nation's ocean activities, 16 and shall submit such other reports as may from 17 time to time be requested by the President or Con-18 gress. The Presidential Panel shall submit its annual 19 report not later than June 30 of each year, begin-20 ning 2 years after the date of the enactment of this 21 Act.

(2) COMMENT AND REVIEW BY COUNCIL.—
Each annual report shall also be submitted to the
Chair of the Council on Ocean Stewardship who
shall, in consultation with the Administrator, not

later than 60 days after receipt of such report,
 transmit the Chair's comments and recommenda tions to the President and to Congress.

4 SEC. 140. CONSTRUCTION.

5 Except as explicitly provided, nothing in this subtitle
6 or the amendments made by this subtitle may be con7 strued to modify the authority of the Administrator under
8 any other provision of law.

9 TITLE II—REGIONAL 10 COORDINATION AND PLANNING

11 SEC. 201. REGIONAL OCEAN COORDINATION.

(a) IN GENERAL.—The purpose of this title is to promote coordinated regional efforts to further the implementation of the National Ocean Policy through—

15 (1) the designation of distinct ocean regions;16 and

17 (2) the establishment of Regional Ocean Part18 nerships and the development and implementation of
19 regional ocean strategic plans.

20 (b) OBJECTIVES OF REGIONAL EFFORTS.—Such re-21 gional efforts shall achieve the following:

(1) Provide for more systematic communication,
coordination, and alignment of State and Federal
governmental authorities and programs with the
size, scale, and characteristics of regional marine

1	ecosystems while recognizing regional economic and
2	social patterns.
3	(2) Build on and improve existing regional pro-
4	grams and initiatives and foster the creation of new
5	regional efforts in areas where effective interstate
6	and Federal cooperative efforts are currently lack-
7	ing.
8	(3) Provide for regional and subregional ocean
9	assessments, based on the best available science, to
10	determine status and trends and to provide the in-
11	formation needed to improve management decisions.
12	(4) Identify shared State and Federal priority
13	issues and address them in a collaborative and co-
14	ordinated way based on existing legal authorities.
15	(5) Improve integration of government efforts
16	and maximize government efficiency.
17	(6) Identify and provide data and information
18	needed by the Regional Ocean Partnerships.
19	(7) Provide for opportunities for public input on
20	regional priorities and plans and for improved cit-
21	izen and community stewardship of ocean waters,
22	coastal waters, and ocean resources.
23	(c) Regions.—
24	(1) DESIGNATION.—There are hereby des-
25	ignated the following ocean regions:

1	(A) NORTH PACIFIC OCEAN REGION.—The
2	North Pacific Ocean Region, which shall consist
3	of the coastal zone and watershed areas of the
4	State of Alaska that have a significant impact
5	on coastal waters of the State of Alaska sea-
6	ward to the extent of the Exclusive Economic
7	Zone.
8	(B) PACIFIC OCEAN REGION.—The Pacific
9	Ocean Region, which shall consist of the coastal
10	zone and watershed areas of the States that
11	have a significant impact on coastal waters of
12	the States of Washington, Oregon, and Cali-
13	fornia seaward to the extent of the Exclusive
14	Economic Zone.
15	(C) WESTERN PACIFIC OCEAN REGION
16	The Western Pacific Ocean Region, which shall
17	consist of the coastal zone of the States of Ha-
18	waii, Guam, American Samoa, and the North-
19	ern Mariana Islands seaward to the extent of
20	the Exclusive Economic Zone.
21	(D) GULF OF MEXICO OCEAN REGION
22	The Gulf of Mexico Ocean Region, which shall
23	consist of the coastal zone and watershed areas
24	of the States that have a significant impact on
25	coastal waters of the States of Texas, Lou-

1	isiana, Mississippi, Alabama, and Florida sea-
2	ward to the extent of the Exclusive Economic
3	Zone.

4 (E) CARIBBEAN OCEAN REGION.—The Caribbean Ocean Region, which shall consist of 5 6 the coastal zone and watershed areas of the 7 States that have a significant impact on coastal 8 waters of the Commonwealth of Puerto Rico 9 and the Virgin Islands seaward to the extent of 10 the Exclusive Economic Zone.

11 (\mathbf{F}) SOUTHEAST ATLANTIC OCEAN RE-12 GION.—The Southeast Atlantic Ocean Region, 13 which shall consist of the coastal zone and wa-14 tershed areas of the States that have a signifi-15 cant impact on coastal waters of the States of 16 Florida, Georgia, North Carolina, and South 17 Carolina seaward to the extent of the Exclusive 18 Economic Zone.

19 (G) NORTHEAST ATLANTIC OCEAN RE-20 GION.—The Northeast Atlantic Ocean Region, 21 which shall consist of the coastal zone and wa-22 tershed areas of the States that have a signifi-23 cant impact on coastal waters of the States of New 24 Connecticut, Maine, Massachusetts,

1	Hampshire, and Rhode Island seaward to the
2	extent of the Exclusive Economic Zone.
3	(H) MID-ATLANTIC OCEAN REGION.—The
4	Mid-Atlantic Ocean Region, which shall consist
5	of the coastal zone and watershed areas of the
6	States that have a significant impact on coastal
7	waters of the States of Delaware, Maryland,
8	New Jersey, New York, Pennsylvania, and Vir-
9	ginia seaward to the extent of the Exclusive
10	Economic Zone.
11	(I) GREAT LAKES REGION.—The Great
12	Lakes Region, which shall consist of the coastal
13	zone and watershed areas of the States that
14	have a significant impact on coastal waters of
15	the States of Illinois, Indiana, Michigan, Min-
16	nesota, New York, Ohio, Pennsylvania, and
17	Wisconsin to the extent of the territorial waters
18	of the United States in the Great Lakes.
19	(2) SUBREGIONS.—Each Regional Ocean Part-
20	nership established under section 202 may establish
21	such subregions, or geographically specified manage-
22	ment areas, as necessary for efficient and effective
23	management of region-specific ecosystem issues.
24	(3) COASTAL ZONE DEFINED.—In this sub-
25	section, the term "coastal zone" has the meaning

1	given that term in section 304 of the Coastal Zone
2	Management Act of 1972 (16 U.S.C. 1453).
3	SEC. 202. REGIONAL OCEAN PARTNERSHIPS.
4	(a) IN GENERAL.—
5	(1) ESTABLISHMENT.—Not later than 1 year
6	after the date of the enactment of this Act, the Ad-
7	ministrator, in consultation with the Council on
8	Ocean Stewardship and the appropriate States, shall
9	establish or designate a Regional Ocean Partnership
10	(referred to in this section as a "Partnership") for
11	each of the ocean regions established in section 201.
12	(2) FUNCTIONS.—Each Partnership shall, for
13	the ocean region for which it is established or des-
14	ignated—
15	(A) pursue the objectives set forth in sec-
16	tion 201(b);
17	(B) further the implementation of the Na-
18	tional Ocean Policy; and
19	(C) develop and implement a Regional
20	Ocean Strategic Plan under section 203.
21	(b) EXISTING REGIONAL EFFORTS.—For any ocean
22	region for which a regional ocean governance effort al-
23	ready exists, the relevant coastal States shall work with
24	the Administrator to determine whether the Partnership
25	established or designated for the ocean region should build

upon and expand that effort, or whether the Administrator
 should initiate a new effort.

3 (c) Membership.—

4 (1) FEDERAL REPRESENTATIVES.—Not later 5 than 270 days after the date of the enactment of 6 this Act, the Council on Ocean Stewardship shall 7 designate the agencies and departments of the 8 United States that shall participate in each Partner-9 ship. Among such agencies and departments des-10 ignated for each Partnership, the Council shall in-11 clude such agencies and departments that have ex-12 pertise in ocean and coastal policy, oversee ocean 13 and coastal policy or resource management, or en-14 gage in activities that significantly affect ocean wa-15 ters, coastal waters, or ocean resources. The head of 16 each such agency or department designated by the 17 Council shall select and appoint officers or employ-18 ees of such agency or department to serve as rep-19 resentatives to each Partnership. The Administrator, 20 or designated representative of the Administrator, 21 shall serve as the chairperson of each Partnership. 22 (2) STATE REPRESENTATIVES.—

23 (A) COASTAL STATE REPRESENTATIVES.—
24 Subject to subparagraph (C), the Governor of

1	each coastal State within each ocean region des-
2	ignated under section 201(c) shall—
3	(i) not later than 9 months after the
4	date of the enactment of this Act, inform
5	the Administrator whether or not the State
6	intends to participate in the Partnership
7	for the ocean region; and
8	(ii) if the State intends to participate
9	in such Partnership, not later than 1 year
10	after such date, appoint an officer or em-
11	ployee of the coastal State agency with pri-
12	mary responsibility for overseeing ocean
13	and coastal policy or resource management
14	to that Partnership.
15	(B) NONCOASTAL STATE APPOINT-
16	MENTS.—
17	(i) IN GENERAL.—Not later than 9
18	months after the date of the enactment of
19	this Act, the Governor of each noncoastal
20	State within each ocean region designated
21	under section 301(c) shall notify the Ad-
22	ministrator whether or not the State seeks
23	to participate in the Partnership for the
24	ocean region. The Partnership for that re-
25	gion shall appoint to the Partnership one

1	or more representatives of noncoastal
2	States that notify the Administrator, sub-
3	ject to clause (ii).
4	(ii) Appointments for more than
5	ONE NONCOASTAL STATE.—If more than
6	one noncoastal State notifies the Adminis-
7	trator under clause (i) with respect to a
8	Partnership—
9	(I) the Partnership shall estab-
10	lish a process for nominating and ap-
11	pointing representatives under this
12	subparagraph;
13	(II) the total number of rep-
14	resentatives appointed under this sub-
15	paragraph for the Partnership may
16	not exceed the number of coastal
17	State representatives on the Partner-
18	ship; and
19	(III) in appointing representa-
20	tives to the Partnership, the Partner-
21	ship shall consider the relative impact
22	on the ocean region for which the
23	Partnership must prepare a Regional
24	Ocean Strategic Plan of the waters
25	under each such noncoastal State's ju-

1	risdiction that feed into the ocean re-
2	gion.
3	(C) NORTH PACIFIC REGIONAL OCEAN
4	PARTNERSHIP.—The Governor of the State of
5	Washington-
6	(i) not later than 9 months after the
7	date of the enactment of this Act, shall no-
8	tify the Administrator whether or not the
9	State intends to participate in the North
10	Pacific Regional Ocean Partnership; and
11	(ii) if such State intends to partici-
12	pate in such Partnership, not later than 1
13	year after the date of the enactment of this
14	Act shall appoint to such Partnership an
15	officer or employee of the Washington
16	State agency with primary responsibility
17	for overseeing ocean and coastal policy or
18	resource management.
19	(3) Regional fishery management council
20	REPRESENTATION.—The executive director of each
21	Regional Fishery Management Council with jurisdic-
22	tion in the ocean region of a Partnership and the ex-
23	ecutive director of the interstate marine fisheries
24	commission with jurisdiction in the ocean region of
25	a Partnership shall each serve as a member of the

Partnership, and shall be considered non-Federal

2	representatives for the purposes of paragraph
3	(5)(A).
4	(4) Local government representative.—
5	Each Partnership shall receive nominations and se-
6	lect one representative from a coastal political sub-
7	division to represent the interests of local and coun-
8	ty governments on the Partnership.
9	(5) Additional appointments.—
10	(A) BALANCE.—Each Partnership shall—
11	(i) identify the total number of addi-
12	tional non-Federal representatives within
13	the ocean region of the Partnership nec-
14	essary to ensure that the combined number
15	of non-Federal representatives on the Part-
16	nership equals the number of Federal rep-
17	resentatives on the Partnership; and
18	(ii) identify a process for selecting
19	such non-Federal representatives that, to
20	the maximum extent practicable, assures
21	balanced and broad non-Federal represen-
22	tation.
23	(B) INTERNATIONAL REPRESENTATIVES.—
24	In cooperation with the Secretary of State, each
25	Partnership may foster nonbinding relation-

1	ships with foreign governments, agencies,
2	States, provinces, and other entities as appro-
3	priate, at scales appropriate to the ocean region
4	under the authority of the Partnership, includ-
5	ing by providing opportunities for participation
6	by foreign representatives at meetings of the
7	Partnership, its advisory committees, and other
8	working groups.
9	(d) Steering Committee.—
10	(1) IN GENERAL.—Each Partnership may es-
11	tablish a Steering Committee to provide leadership
12	with respect to the development and implementation
13	of the Regional Ocean Strategic Plan under section
14	203 and to ensure that the goals set forth in such
15	Regional Ocean Strategic Plan are being met within
16	the time lines established by that section.
17	(2) Membership.—The Steering Committee
18	shall include—

19 (A) one representative from each coastal
20 State that appoints a representative to the
21 Partnership; and

(B) one representative from each of not
more 3 Federal agencies or departments that
have jurisdiction over ocean or Great Lakes resources.

1 (e) Advisory Committees.—

2 (1) AUTHORITY.—Each Partnership may estab3 lish and appoint members of advisory committees
4 and working groups as necessary for preparation
5 and implementation of its Regional Ocean Strategic
6 Plan under this title.

7 (2) ADVICE AND INPUT.—Each Partnership
8 shall provide opportunities for citizen and stake9 holder input in the development and implementation
10 of its Regional Ocean Strategic Plan.

11 (f) COORDINATION.—

(1) EXISTING PROGRAMS.—Each Partnership
shall build upon and complement current State,
multistate, and regional capacity and governance
and institutional mechanisms to manage and protect
ocean waters, coastal waters, and ocean resources.

17 (2) INLAND REGIONS.—Each Partnership shall
18 collaborate and coordinate as necessary and appro19 priate with noncoastal States that may significantly
20 impact marine ecosystem health in the ocean region
21 or the Partnership.

22 (g) PROCEDURES.—

(1) IN GENERAL.—Each Partnership shall operate in accordance with procedures established by the
Partnership and approved by the Administrator.

1	(2) REQUIRED PROCEDURES.—The Adminis-
2	trator shall prescribe requirements for approval of
3	procedures under paragraph (1) that at a minimum
4	provide for—
5	(A) transparency in decision making;
6	(B) opportunities for public input and par-
7	ticipation; and
8	(C) the use of advisory committees that
9	may be established under subsection (e).
10	(h) Staff.—
11	(1) HIRING AUTHORITY.—Each Partnership
12	may hire such staff as is necessary to perform the
13	functions of the Partnership.
14	(2) TREATMENT.—Staff hired by a Partnership
15	shall be treated as employees of the Administration,
16	except for any staff that are hired by participating
17	States.
18	(i) Federal Advisory Committee Act.—
19	(1) IN GENERAL.—The Federal Advisory Com-
20	mittee Act (5 U.S.C. App.) shall not apply to Part-
21	nerships, steering committees, or any advisory com-
22	mittee established under this title.
23	(2) COMPLIANCE.—Notwithstanding paragraph
24	(1), each Partnership and each advisory committee
25	of a Partnership shall be appointed and operate in

1	a manner consistent with all provisions of the Fed-
2	eral Advisory Committee Act with respect to—
3	(A) the balance of their membership;
4	(B) provision of public notice regarding
5	their activities;
6	(C) open meetings; and
7	(D) public access to documents created by
8	the Partnerships or advisory committees of the
9	Partnerships.
10	SEC. 203. REGIONAL OCEAN STRATEGIC PLANS.
11	(a) Initial Ocean Region Assessment.—
12	(1) IN GENERAL.—The Administrator, in con-
13	sultation with the Regional Ocean Partnership for
14	an ocean region and other experts, shall, not later
15	than 1 year after the date of the establishment or
16	designation of such Partnership, prepare an initial
17	ocean region assessment of the ocean region in order
18	to guide the development of the Regional Ocean
19	Strategic Plan prepared for such ocean region under
20	subsection (b).
21	(2) CONTENTS.—Each initial assessment shall
22	include a summary of—
23	(A) the ocean region's marine ecosystem
24	health. culture. and economy:

1	(B) existing, emerging, and cumulative
2	threats to marine ecosystem health of the ocean
3	region;
4	(C) indicators that measure marine eco-
5	system health of the ocean region; and
6	(D) important ecological areas within the
7	ocean region.
8	(3) PUBLIC PARTICIPATION.—The Adminis-
9	trator, in consultation with the Regional Ocean
10	Partnership, shall provide opportunities for public
11	input in the development of the assessment and up-
12	dates of the assessment under subsection (c). Such
13	opportunities shall include opportunities for sharing
14	of the latest science and local knowledge regarding
15	the ocean region's ocean waters, coastal waters, and
16	ocean resources using annual public ecosystem fo-
17	rums.
18	(b) REGIONAL OCEAN STRATEGIC PLAN.—
19	(1) REQUIREMENT.—Each Regional Ocean
20	Partnership shall, within 2 years after the comple-
21	tion of the initial ocean region assessment, prepare
22	and submit to the Administrator for review, con-
23	sultation, and approval a Regional Ocean Strategic
24	Plan for adaptive, ecosystem-based management of

United States ocean waters, coastal waters, and

1	ocean resources for the ocean region of the Partner-
2	ship consistent with the National Ocean Policy.
3	(2) CONTENTS.—Each Plan prepared by a Re-
4	gional Ocean Partnership shall—
5	(A) be based on the ocean region assess-
6	ment required under subsection (a) and (c);
7	(B) describe short-term and long-term
8	goals for improving marine ecosystem health in
9	the ocean region covered by the Plan;
10	(C) recommend long-term monitoring
11	measures for important ecological areas within
12	the ocean region covered by the Plan;
13	(D) identify State and Federal priority
14	issues within the ocean region covered by the
15	Plan;
16	(E) describe ecosystem-based management
17	solutions and policies to address the priority
18	issues;
19	(F) describe short-term and long-term in-
20	dicators for measuring improvements in eco-
21	nomic sustainability in the ocean region that re-
22	sult from improved ecological conditions and
23	improved collaboration and coordination among
24	Federal and State agencies;

1	(G) identify research, information, and
2	data needed to carry out the Plan;
3	(H) identify performance measures and
4	benchmarks for purposes of subparagraphs (B),
5	(C), and (E) to be used to evaluate the Plan's
6	effectiveness; and
7	(I) define responsibilities and include an
8	analysis of the gaps in authority, coordination,
9	and resources, including funding, that must be
10	filled in order to fully achieve those perform-
11	ance measures and benchmarks.
12	(3) PUBLIC PARTICIPATION.—Each Regional
13	Ocean Partnership shall provide adequate opportuni-
14	ties for public input during the development of the
15	Plan and any Plan revisions.
16	(c) Updated Ocean Region Assessments.—The
17	Administrator, in consultation with the appropriate Re-
18	gional Ocean Partnership and other experts, shall, within
19	4 years after approval of the Plan and at least once every
20	6 years thereafter, update the initial ocean region assess-
21	ment prepared under subsection (a) to provide more de-
22	tailed information regarding the required elements of the
23	assessment and to include any new information that has
24	become available.

REVISION.—Each approved Regional 1 (d) Plan 2 Ocean Strategic Plan shall be reviewed and revised by the 3 relevant Regional Ocean Partnership at least once every 4 6 years. Such review and revision shall be based on a re-5 cently updated ocean region assessment. Any proposed revisions to the Plan shall be transmitted to the Adminis-6 7 trator for review and approval pursuant to this section. 8 (e) ACTION BY THE ADMINISTRATOR.— 9 (1) REVIEW OF PLANS.— 10 (A) COMMENCEMENT OF REVIEW.—Not 11 later than 10 days after transmittal of a Re-12 gional Ocean Strategic Plan, or any revision to 13 such a Plan, by a Regional Ocean Partnership, 14 the Administrator shall commence a review of 15 the Plan or the revised Plan, respectively. 16 (B) PUBLIC NOTICE AND COMMENT.—Im-17 mediately after receipt of such a Plan or revi-18 sion, the Administrator shall publish the plan 19 or revision in the Federal Register and provide 20 an opportunity for the submission of public 21 comment for a 60-day period beginning on the 22 date of such publication. 23 (C) Requirements for approval.—Be-

fore approving a plan, or any revision to a plan,

24

1	the administrator must find that the plan or re-
2	vision—
3	(i) is consistent with the National
4	Ocean Policy; and
5	(ii) adequately addresses the required
6	elements under subsection (b) of this sec-
7	tion.
8	(D) DEADLINE FOR REVIEW.—Not later
9	than 120 days after the date of the transmittal
10	of a Plan, or a revision to a Plan, the Adminis-
11	trator shall approve or disapprove the Plan or
12	revision by written notice.
13	(2) REGIONAL INFORMATION SYSTEMS.—The
14	Administrator shall, not later than 1 year after the
15	date of the enactment of this Act and in collabora-
16	tion with marine laboratories and academic and
17	other relevant institutions, establish a network of re-
18	gional ocean ecosystem resource information systems
19	for each ocean region—
20	(A) to provide access to geophysical, at-
21	mospheric, oceanographic, and marine biological
22	data, including genetic research, studies, data,
23	maps, and analyses necessary to the under-
24	standing of the ocean ecosystem;
1 (B) from which to draw information for 2 the establishment of policies and priorities re-3 lated to the conservation, use, and management 4 of ocean waters, coastal waters, and ocean re-5 sources; and

6 (C) to provide information of the develop-7 ment and implementation of Plans.

8 (f) IMPLEMENTATION.—Members of a Regional 9 Ocean Partnership shall, to the maximum extent prac-10 ticable, implement a Regional Ocean Strategic Plan that 11 is prepared by the Partnership and approved by the Ad-12 ministrator under this section, consistent with existing 13 legal authorities.

14 SEC. 204. REGULATIONS.

15 The Administrator shall issue such regulations as the
16 Administrator considers necessary to ensure proper ad17 ministration of this title.

18 SEC. 205. OTHER AUTHORITY.

This title may not be construed as superseding or diminishing the authorities and responsibilities, under any
other provision of law, of the Administrator or any other
Federal, State, or tribal officer, employee, department, or
agency.

1	TITLE III—OCEAN SCIENCE,
2	RESEARCH, AND EDUCATION
3	SEC. 301. COMMITTEE ON OCEAN SCIENCE, EDUCATION,
4	AND OPERATIONS.
5	(a) Committee.—The Administrator shall establish
6	a Committee on Ocean Science, Education, and Oper-
7	ations (referred to in this title as the "Committee").
8	(b) Membership.—The Committee shall be com-
9	posed of the following members:
10	(1) The Administrator.
11	(2) The Director of the National Science Foun-
12	dation.
13	(3) The Administrator of the National Aero-
14	nautics and Space Administration.
15	(4) The Under Secretary of Energy for Energy,
16	Science, and Environment.
17	(5) The Administrator of the Environmental
18	Protection Agency.
19	(6) The Under Secretary of Homeland Security
20	for Science and Technology.
21	(7) The Commandant of the Coast Guard.
22	(8) The Director of the Office of Naval Re-
23	search.
24	(9) The Director of the United States Geologi-
25	cal Survey.

1	(10) The Director of the Minerals Management
2	Service.
3	(11) Under Secretary of Agriculture for Re-
4	search, Education, and Economics.
5	(12) The Assistant Secretary of State for
6	Oceans and International Environmental and Sci-
7	entific Affairs.
8	(13) The Director of the Defense Advanced Re-
9	search Projects Agency.
10	(14) The Director of the Office of Science and
11	Technology Policy.
12	(15) The Director of the Office of Management
13	and Budget.
14	(16) The Under Secretary of Education.
15	(17) The leadership of such other agency or de-
16	partment as the chair and vice chairs of the Com-
17	mittee consider appropriate.
18	(c) CHAIR AND VICE CHAIRS.—The chair and vice
19	chairs of the Committee shall be appointed every 2 years
20	by a selection subcommittee of the Committee composed
21	of, at a minimum, the Administrator, the Director of the
22	National Science Foundation, and the Director of the
23	United States Geological Survey. The term of office of the
24	chair and vice chairs shall be 2 years. A person who has

previously served as chair or vice chair may be re appointed.

3 (d) RESPONSIBILITIES.—The Committee shall—

4 (1) serve as a source of advice and support on
5 scientific research, technology, education, and oper6 ational matters, including budgetary analyses;

7 (2) improve cooperation among Federal depart8 ments and agencies with respect to ocean and coast9 al science budgets;

10 (3) review, update, and modify, as necessary
11 the National Ocean Research Priorities Plan and
12 Implementation Strategy referred to in section
13 302(a) and oversee the implementation of such
14 Strategy;

(4) establish interagency subcommittees and
working groups as appropriate to develop comprehensive and balanced Federal programs and approaches to ocean and coastal science issues and
needs;

(5) consult with academic institutions, fisheries,
States, industries, foundations, and other partners
in the conduct of coastal and marine operations, research, and education, and with actual and potential
users of ocean science information in establishing

1	priorities and developing plans for research and
2	technology and education;
3	(6) cooperate with the Secretary of State in—
4	(A) coordinating United States Govern-
5	ment activities with those of other nations and
6	with international research and technology and
7	education; and
8	(B) providing, as appropriate, support for
9	and representation on United States delegations
10	to relevant international meetings; and
11	(7) carry out such other activities as may be re-
12	quired.
13	SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN
13 14	SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN AND IMPLEMENTATION STRATEGY.
13 14 15	 SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN AND IMPLEMENTATION STRATEGY. (a) REVIEW, UPDATE, AND MODIFY.—Not later than
 13 14 15 16 	 SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN AND IMPLEMENTATION STRATEGY. (a) REVIEW, UPDATE, AND MODIFY.—Not later than 2 years after the date of the enactment of this Act, and
 13 14 15 16 17 	 SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN AND IMPLEMENTATION STRATEGY. (a) REVIEW, UPDATE, AND MODIFY.—Not later than 2 years after the date of the enactment of this Act, and not less frequently than once every 5 years thereafter, the
 13 14 15 16 17 18 	 SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN AND IMPLEMENTATION STRATEGY. (a) REVIEW, UPDATE, AND MODIFY.—Not later than 2 years after the date of the enactment of this Act, and not less frequently than once every 5 years thereafter, the Committee shall review, update, and modify, as necessary,
 13 14 15 16 17 18 19 	 SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN AND IMPLEMENTATION STRATEGY. (a) REVIEW, UPDATE, AND MODIFY.—Not later than 2 years after the date of the enactment of this Act, and not less frequently than once every 5 years thereafter, the Committee shall review, update, and modify, as necessary, the National Ocean Research Priorities Plan and Imple-
 13 14 15 16 17 18 19 20 	 SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN AND IMPLEMENTATION STRATEGY. (a) REVIEW, UPDATE, AND MODIFY.—Not later than 2 years after the date of the enactment of this Act, and not less frequently than once every 5 years thereafter, the Committee shall review, update, and modify, as necessary, the National Ocean Research Priorities Plan and Imple- mentation Strategy developed by the National Science and
 13 14 15 16 17 18 19 20 21 	 SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN AND IMPLEMENTATION STRATEGY. (a) REVIEW, UPDATE, AND MODIFY.—Not later than 2 years after the date of the enactment of this Act, and not less frequently than once every 5 years thereafter, the Committee shall review, update, and modify, as necessary, the National Ocean Research Priorities Plan and Imple- mentation Strategy developed by the National Science and Technology Council's Joint Subcommittee on Ocean
 13 14 15 16 17 18 19 20 21 22 	 SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN AND IMPLEMENTATION STRATEGY. (a) REVIEW, UPDATE, AND MODIFY.—Not later than 2 years after the date of the enactment of this Act, and not less frequently than once every 5 years thereafter, the Committee shall review, update, and modify, as necessary, the National Ocean Research Priorities Plan and Implementation Strategy developed by the National Science and Technology Council's Joint Subcommittee on Ocean Science and Technology (referred to in this section as the
 13 14 15 16 17 18 19 20 21 22 23 	SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN AND IMPLEMENTATION STRATEGY. (a) REVIEW, UPDATE, AND MODIFY.—Not later than 2 years after the date of the enactment of this Act, and not less frequently than once every 5 years thereafter, the Committee shall review, update, and modify, as necessary, the National Ocean Research Priorities Plan and Imple- mentation Strategy developed by the National Science and Technology Council's Joint Subcommittee on Ocean Science and Technology (referred to in this section as the "Strategy"). The Committee shall ensure that the Strat-
 13 14 15 16 17 18 19 20 21 22 23 24 	 SEC. 302. NATIONAL OCEAN RESEARCH PRIORITIES PLAN AND IMPLEMENTATION STRATEGY. (a) REVIEW, UPDATE, AND MODIFY.—Not later than 2 years after the date of the enactment of this Act, and not less frequently than once every 5 years thereafter, the Committee shall review, update, and modify, as necessary, the National Ocean Research Priorities Plan and Implementation Strategy developed by the National Science and Technology Council's Joint Subcommittee on Ocean Science and Technology (referred to in this section as the "Strategy"). The Committee shall ensure that the Strategy establishes, for the 10-year period beginning in the

orities for ocean and coastal research, technology, edu cation, outreach, and operations which most effectively ad vance knowledge and provide usable information as the
 basis for policy decisions to—

5 (1) understand, assess, and respond to human6 induced and natural processes of global climate
7 change;

8 (2) improve understanding, public forecasts,9 and warnings and mitigate natural hazards;

10 (3) enhance public safety and efficiency of ma-11 rine operations;

(4) support efforts to protect, maintain, and restore the health of marine ecosystems and to implement ecosystem-based management of United States
ocean waters, including how marine ecosystems function on varying spatial and temporal scales and how
biological, physical, chemical, and socioeconomic
processes interact;

19 (5) implement and monitor the effectiveness of20 ocean and coastal environmental policies;

(6) contribute to public understanding of coastal and global ocean systems and public awareness of
the importance and health of marine ecosystems;

24 (7) respond to environmental changes that af-25 fect human health;

(8) strengthen homeland security and military
 preparedness; and

3 (9) improve understanding of sea level changes,
4 shoreline erosion, and the condition of the beaches
5 in the United States.

6 (b) CONTENT.—The Committee shall ensure that the7 Strategy—

8 (1)describes specific activities required to 9 achieve established goals and priorities including re-10 search and education programs, observation collec-11 tion and analysis requirements, technology develop-12 ment, facility and equipment investments, informa-13 tion management, student support and training, pro-14 fessional certification and training for persons en-15 gaged in fishing and other maritime activities, data 16 stewardship and access, and participation in inter-17 national research and education and other capacity-18 building efforts;

(2) identifies and addresses relevant programs
and activities of the Federal agencies and departments represented on the Committee that will contribute to scientific goals and priorities and set forth
the role of each Federal agency and department in
implementing the strategy;

(3) considers and uses, as appropriate, reports
 and studies conducted by Federal agencies and de partments, the National Research Council, or other
 entities;

(4) makes recommendations for the coordina-5 6 tion of ocean and coastal science activities of the 7 United States with those of other nations and inter-8 national organizations, including bilateral and multi-9 lateral proposals for cooperation on major projects, 10 for improving worldwide access to scientific data and 11 information, and for encouraging participation in 12 international ocean science research and education 13 programs by developing nations;

(5) provides estimates, to the extent practicable,
of Federal funding for ocean and coastal science activities to be conducted pursuant to the strategy;
and

(6) ensures the integrity of ocean and coastalscience and research.

20 (c) ELEMENTS.—The Committee shall ensure that21 the Strategy includes the following elements:

(1) Global measurements on all relevant spatial
and time scales, establishing worldwide observations
necessary to study and assess coastal and global

1	ocean systems and support information needs, in-
2	cluding marine ecosystem health.
3	(2) National ocean partnerships, building part-
4	nerships among Federal agencies, academia, fishing
5	industries, and other members of the ocean and
6	coastal science community in the areas of research,
7	education, data systems, and communication.
8	(3) Marine science facility support, ensuring the
9	procurement, maintenance, and operation of the na-
10	tional oceanographic research fleet and related infra-
11	structure to provide for sustained ocean and coastal
12	observations from insitu, remote, aircraft, and vessel
13	platforms.
14	(4) Focused research initiatives, funding com-
15	petitive research grants to advance understanding of
16	the nature of and interaction among physical, chem-
17	ical, and biological processes of the oceans, including
18	the effect of human activities on such processes.
19	(5) Technology development, supporting devel-
20	opment of new technologies and sensors to achieve
21	strategic and program goals, and development of al-
22	gorithms, analysis methods, and long-term data
23	records for emerging operational sensors.
24	(6) Workforce development, building and main-
25	taining a diverse national ocean science professional

workforce through traineeships, scholarships, fellow ships, and internships.

3 (7) Ocean science education, providing national
4 coordination and support of formal and informal
5 ocean science education programs at all education
6 levels and establishing mechanisms to improve ocean
7 literacy, contribute to public awareness of the impor8 tance and health of marine ecosystems, and create
9 an oceans stewardship ethic among citizens.

10 (8) Professional training, including certification 11 and continuing education programs, for persons en-12 gaged in the harvest, handling, and processing of 13 fish and seafood aboard vessels to assure the highest 14 levels of care are taken to selectively harvest fish 15 from the sea with the minimum impact on habitat 16 to handle fish onboard vessels with techniques that 17 assure the safety and highest quality of fish landed, 18 and improve the safety of vessels and their personnel 19 at sea.

(9) Information management, establishing and
maintaining information systems that promote efficient stewardship, transfer, and use of data, create
globally accessible data standards and formats, and
allow analysis of data from varied sources to

produce information readily usable by policymakers
 and stakeholders.

3 (d) PUBLIC PARTICIPATION.—In developing the 4 Strategy, the Committee shall consult with academic, State, industry, fisheries, and environmental groups and 5 representatives. Not later than 90 days before the chair 6 7 of the Committee submits the strategy, or any revision thereof, to Congress, a summary of the proposed strategy 8 9 shall be published in the Federal Register for a public 10 comment period of not less than 60 days.

11 SEC. 303. OCEAN RESEARCH AND EDUCATION ADVISORY 12 PANEL.

(a) MEMBERSHIP.—The Committee shall maintain
an Ocean Research and Education Advisory Panel (referred to in this section as the "Advisory Panel") consisting of not less than 10 and not more than 18 members
appointed by the chair, including the following:

18 (1) One member representing the National19 Academy of Sciences.

20 (2) One member representing the National21 Academy of Engineering.

(3) One member representing the Institute ofMedicine.

24 (4) One Sea Grant director.

1	(5) Members selected from among individuals
2	representing ocean industries, State governments,
3	tribal governments, academia, fisheries, nongovern-
4	mental organizations, and such other participants in
5	ocean and coastal activities as the chair considers
6	appropriate.
7	(6) Members selected from among individuals
8	eminent in the fields of marine science, marine pol-
9	icy, ocean engineering, or related fields.
10	(7) Members selected from among individuals
11	eminent in the field of education.
12	(b) RESPONSIBILITIES.—The Advisory Panel shall
13	advise the Committee on the following:
13 14	advise the Committee on the following: (1) Revision and implementation of the Na-
13 14 15	advise the Committee on the following: (1) Revision and implementation of the Na- tional Ocean Priorities Plan and Implementation
13 14 15 16	advise the Committee on the following: (1) Revision and implementation of the Na- tional Ocean Priorities Plan and Implementation Strategy.
13 14 15 16 17	advise the Committee on the following: (1) Revision and implementation of the Na- tional Ocean Priorities Plan and Implementation Strategy. (2) Matters relating to national oceanographic
13 14 15 16 17 18	 advise the Committee on the following: Revision and implementation of the National Ocean Priorities Plan and Implementation Strategy. Matters relating to national oceanographic data requirements, ocean and coastal observation
 13 14 15 16 17 18 19 	 advise the Committee on the following: Revision and implementation of the National Ocean Priorities Plan and Implementation Strategy. Matters relating to national oceanographic data requirements, ocean and coastal observation systems, ocean science education and training, and
 13 14 15 16 17 18 19 20 	 advise the Committee on the following: Revision and implementation of the National Ocean Priorities Plan and Implementation Strategy. Matters relating to national oceanographic data requirements, ocean and coastal observation systems, ocean science education and training, and oceanographic facilities including renewal of the national oceanographic facilities including renewal oceanographic facilities inclu
 13 14 15 16 17 18 19 20 21 	 advise the Committee on the following: Revision and implementation of the National Ocean Priorities Plan and Implementation Strategy. Matters relating to national oceanographic data requirements, ocean and coastal observation systems, ocean science education and training, and oceanographic facilities including renewal of the national academic research fleet.
 13 14 15 16 17 18 19 20 21 22 	 advise the Committee on the following: Revision and implementation of the National Ocean Priorities Plan and Implementation Strategy. Matters relating to national oceanographic data requirements, ocean and coastal observation systems, ocean science education and training, and oceanographic facilities including renewal of the national academic research fleet. Any additional matters that the Committee
 13 14 15 16 17 18 19 20 21 22 23 	 advise the Committee on the following: Revision and implementation of the National Ocean Priorities Plan and Implementation Strategy. Matters relating to national oceanographic data requirements, ocean and coastal observation systems, ocean science education and training, and oceanographic facilities including renewal of the national academic research fleet. Any additional matters that the Committee considers appropriate.

1 (1) PUBLIC MEETINGS.—All meetings of the 2 Advisory Panel shall be open to the public, except 3 that a meeting or any portion of it may be closed 4 to the public if it concerns matters or information 5 that pertains to national security, employment mat-6 ters, litigation, or other reasons provided under sec-7 tion 552b of title 5. United States Code. Interested 8 persons shall be permitted to appear at open meet-9 ings and present oral or written statements on the 10 subject matter of the meeting. The Advisory Panel 11 may administer oaths or affirmations to any person 12 appearing before it.

(2) PUBLICATION OF MEETINGS.—All open
meetings of the Advisory Panel shall be preceded by
timely public notice in the Federal Register of the
time, place, and subject of the meeting.

17 (3) MINUTES.—Minutes of each meeting shall 18 be kept and shall include a record of the people 19 present, a description of the discussion that oc-20 curred, and copies of all statements filed. Subject to 21 section 552 of title 5, United States Code, the min-22 utes and records of all meetings and other docu-23 ments that were made available to or prepared for 24 the Advisory Panel shall be available for public in-

1	spection and copying at a single location in the part-
2	nership program office.
3	(4) DISCLOSURES.—
4	(A) Relationship to faca.—The Fed-
5	eral Advisory Committee Act (5 U.S.C. App.)
6	does not apply to the Advisory Panel.
7	(B) PUBLIC AVAILABILITY.—Any product
8	or recommendation made by the Advisory Panel
9	shall be made available to the public and to
10	Congress.
11	(d) FUNDING.—The chair and vice chairs of the Com-
12	mittee annually shall make funds available to support the
12	activition of the Advisory Danal
13	activities of the Advisory 1 anel.
13	SEC. 304. MARINE ECOSYSTEMS RESEARCH.
13 14 15	 activities of the Advisory I anel. SEC. 304. MARINE ECOSYSTEMS RESEARCH. (a) ECOSYSTEM-BASED APPROACHES.—The Admin-
13 14 15 16	 activities of the Advisory I anel. SEC. 304. MARINE ECOSYSTEMS RESEARCH. (a) ECOSYSTEM-BASED APPROACHES.—The Admin- istrator shall work with the Committee to identify research
13 14 15 16 17	 activities of the Advisory I anel. SEC. 304. MARINE ECOSYSTEMS RESEARCH. (a) ECOSYSTEM-BASED APPROACHES.—The Admin- istrator shall work with the Committee to identify research efforts for improving the implementation of this Act by
13 14 15 16 17 18	 activities of the Advisory I anel. SEC. 304. MARINE ECOSYSTEMS RESEARCH. (a) ECOSYSTEM-BASED APPROACHES.—The Administrator shall work with the Committee to identify research efforts for improving the implementation of this Act by informing ecosystem-based management efforts to protect,
13 14 15 16 17 18 19	 activities of the Advisory I anel. SEC. 304. MARINE ECOSYSTEMS RESEARCH. (a) ECOSYSTEM-BASED APPROACHES.—The Administrator shall work with the Committee to identify research efforts for improving the implementation of this Act by informing ecosystem-based management efforts to protect, maintain, and restore marine ecosystem health.
13 14 15 16 17 18 19 20	 activities of the Advisory I anel. SEC. 304. MARINE ECOSYSTEMS RESEARCH. (a) ECOSYSTEM-BASED APPROACHES.—The Administrator shall work with the Committee to identify research efforts for improving the implementation of this Act by informing ecosystem-based management efforts to protect, maintain, and restore marine ecosystem health. (b) MARINE BIODIVERSITY RESEARCH PROGRAM.—
13 14 15 16 17 18 19 20 21	 activities of the Advisory I anel. SEC. 304. MARINE ECOSYSTEMS RESEARCH. (a) ECOSYSTEM-BASED APPROACHES.—The Administrator shall work with the Committee to identify research efforts for improving the implementation of this Act by informing ecosystem-based management efforts to protect, maintain, and restore marine ecosystem health. (b) MARINE BIODIVERSITY RESEARCH PROGRAM.— As part of this effort, the Administrator, in cooperation
 13 14 15 16 17 18 19 20 21 22 	SEC. 304. MARINE ECOSYSTEMS RESEARCH. (a) ECOSYSTEM-BASED APPROACHES.—The Admin- istrator shall work with the Committee to identify research efforts for improving the implementation of this Act by informing ecosystem-based management efforts to protect, maintain, and restore marine ecosystem health. (b) MARINE BIODIVERSITY RESEARCH PROGRAM.— As part of this effort, the Administrator, in cooperation with the National Science Foundation and other Federal
 13 14 15 16 17 18 19 20 21 22 23 	SEC. 304. MARINE ECOSYSTEMS RESEARCH. (a) ECOSYSTEM-BASED APPROACHES.—The Admin- istrator shall work with the Committee to identify research efforts for improving the implementation of this Act by informing ecosystem-based management efforts to protect, maintain, and restore marine ecosystem health. (b) MARINE BIODIVERSITY RESEARCH PROGRAM.— As part of this effort, the Administrator, in cooperation with the National Science Foundation and other Federal agencies represented on the Committee, shall establish and
 13 14 15 16 17 18 19 20 21 22 23 24 	SEC. 304. MARINE ECOSYSTEMS RESEARCH. (a) ECOSYSTEM-BASED APPROACHES.—The Admin- istrator shall work with the Committee to identify research efforts for improving the implementation of this Act by informing ecosystem-based management efforts to protect, maintain, and restore marine ecosystem health. (b) MARINE BIODIVERSITY RESEARCH PROGRAM.— As part of this effort, the Administrator, in cooperation with the National Science Foundation and other Federal agencies represented on the Committee, shall establish and maintain a 10-year interagency research program to as-

abundance of marine organisms in the world's oceans for
 the purposes of—

3 (1) understanding the patterns, processes, and 4 consequences of changing marine biological diversity; 5 (2) improving the linkages between marine eco-6 logical and oceanographic sciences and informing 7 ecosystem-based management efforts so as to pro-8 tect, maintain, and restore marine ecosystem health; 9 (3) strengthening and expanding the field of 10 marine taxonomy, including use of genomics and 11 proteomics; 12 (4) facilitating and encouraging the use of new 13 technological advances, predictive models, and his-14 torical perspectives to investigate marine biodiver-15 sity; 16 (5) using new understanding gained through 17 the program to improve predictions of the impacts of 18 human activities on the health of the marine envi-

ronment, and of the impacts of changes in the ma-rine environment on human well-being; and

(6) enhancing formal and informal outreach
and education efforts through research-generated
knowledge, information, and tools.

(c) PROGRAM ELEMENTS.—The research program
 established under this section shall provide for the fol lowing:

4 (1) Dynamic access to biological data through
5 an ocean biogeographic information system that
6 links marine databases, manages data generated by
7 the program, and supports analysis of biodiversity
8 and related physical and ecological parameters.

9 (2) Integrated regional studies that focus on 10 appropriate scales to support ecosystem-based man-11 agement.

12 (3) Improved biological sensors for ocean ob-13 serving systems.

14 (4) Investment in exploration and taxonomy to15 study little known areas and describe new species.

16 (5) Studies of earlier changes in marine popu17 lations to trace information on biological abundance,
18 distribution, function, and diversity to the earliest
19 historical periods of minimum human impact.

20 (6) Improved predictive capability to enhance
21 the effectiveness of conservation and ecosystem22 based management programs and minimize adverse
23 impacts of human activities and natural processes on
24 United States ocean waters.

1	(d) Scientific Assessment.—The Administrator,
2	through the Committee, shall prepare and submit to the
3	President and the Congress a biennial assessment that—
4	(1) integrates, evaluates, and interprets the
5	findings of the program and discusses the scientific
6	uncertainties associated with such findings; and
7	(2) analyzes current trends in marine and
8	coastal ecosystems, both human-induced and nat-
9	ural, and projects major trends, including marine
10	ecosystem health, for the subsequent decade.
11	SEC. 305. OCEAN ECOSYSTEM RESOURCE INFORMATION
12	SYSTEMS.
13	(a) FINDINGS.—Congress makes the following find-
13 14	(a) FINDINGS.—Congress makes the following find- ings:
13 14 15	(a) FINDINGS.—Congress makes the following find- ings:(1) Conservation and management of the
13 14 15 16	 (a) FINDINGS.—Congress makes the following findings: (1) Conservation and management of the United States ocean waters requires an under-
13 14 15 16 17	 (a) FINDINGS.—Congress makes the following findings: (1) Conservation and management of the United States ocean waters requires an understanding of the ocean ecosystem in order to make
 13 14 15 16 17 18 	 (a) FINDINGS.—Congress makes the following findings: (1) Conservation and management of the United States ocean waters requires an understanding of the ocean ecosystem in order to make knowledgeable decisions regarding the uses of the
 13 14 15 16 17 18 19 	 (a) FINDINGS.—Congress makes the following findings: (1) Conservation and management of the United States ocean waters requires an understanding of the ocean ecosystem in order to make knowledgeable decisions regarding the uses of the oceans, or extractions therefrom, and their effect on
 13 14 15 16 17 18 19 20 	 (a) FINDINGS.—Congress makes the following findings: (1) Conservation and management of the United States ocean waters requires an understanding of the ocean ecosystem in order to make knowledgeable decisions regarding the uses of the oceans, or extractions therefrom, and their effect on other ocean uses and resources.
 13 14 15 16 17 18 19 20 21 	 (a) FINDINGS.—Congress makes the following findings: (1) Conservation and management of the United States ocean waters requires an understanding of the ocean ecosystem in order to make knowledgeable decisions regarding the uses of the oceans, or extractions therefrom, and their effect on other ocean uses and resources. (2) The United States Commission on Ocean
 13 14 15 16 17 18 19 20 21 22 	 (a) FINDINGS.—Congress makes the following findings: (1) Conservation and management of the United States ocean waters requires an understanding of the ocean ecosystem in order to make knowledgeable decisions regarding the uses of the oceans, or extractions therefrom, and their effect on other ocean uses and resources. (2) The United States Commission on Ocean Policy and the President's Ocean Action Plan both
 13 14 15 16 17 18 19 20 21 22 23 	 (a) FINDINGS.—Congress makes the following findings: (1) Conservation and management of the United States ocean waters requires an understanding of the ocean ecosystem in order to make knowledgeable decisions regarding the uses of the oceans, or extractions therefrom, and their effect on other ocean uses and resources. (2) The United States Commission on Ocean Policy and the President's Ocean Action Plan both call for ecosystem-based management of the United

1	(3) Ecosystem-based management will require
2	development of an ocean information system and
3	products representing integration of data useful to
4	management decisions. This information includes
5	terrestrial, aquatic, oceanographic, and biological
6	data to accomplish the following:
7	(A) Serve as a repository of existing infor-
8	mation and new research and data sets as they
9	become available.
10	(B) Help understand relationships of ocean
11	and ecosystem functions and factors affecting
12	oceans and their resources.
13	(C) Provide a foundation upon which to
14	base policies and decisions for conserving and
15	managing the Nation's ocean water and living
16	marine resources.
17	(D) Identify gaps in the knowledge of the
18	Nation's oceans and living marine resources
19	that may serve as a guide in the development
20	of new research priorities.
21	(4) Information generated by ocean monitoring
22	systems, including the National Environmental Ob-
23	servatory Network (NEON), will be more useful if
24	fully integrated into resource information systems
25	developed for ecosystem-based management applica-

tions. Data from these offshore monitoring programs, coupled with other information on ocean and aquatic ecosystems, will provide a basis for understanding natural and anthropogenic environmental variability, including climate change and the resulting impacts on living marine resources.

7 (5) Natural resource information systems have 8 been developed and are presently a successful man-9 agement tool for terrestrial uses, including some Pa-10 cific Coast watersheds, and they should now be ap-11 plied to the aquatic environment to facilitate eco-12 system-based management of the United States 13 oceans.

14 (b) Establishment.—

15 (1) IN GENERAL.—Not later than June 30, 16 2008, the Administrator shall cause to be estab-17 lished a network of regional Ocean Ecosystem Re-18 source Information Systems to act as an organized 19 repository of geophysical, relevant atmospheric, 20 oceanographic, and marine biological data, including 21 genetic research, studies, data, maps, and analyses 22 necessary to the understanding of the ocean eco-23 system, and from which to draw information for the 24 establishment of national policies and priorities re-25 lated to the conservation, use, and management of

the United States ocean waters and the marine re-
sources therein. The Administrator shall coordinate
with current ocean data acquisition and distribution
systems, such as the National Geospatial Data
Clearinghouse, to avoid duplication.
(2) INFORMATION INCLUDED.—Information for
inclusion in each regional Ocean Ecosystem Re-
source Information System may include—
(A) relevant historic or social science infor-
mation that may aid in the understanding of
ocean ecosystems or their management; or
(B) published and unpublished research,
data, and scientifically peer-reviewed analysis,
developed by State agencies, academic or sci-
entific institutions, fishermen's collaborative re-
search programs, and any other reliable and
relevant information sources.
(3) Requirement for peer review.—All
analysis and interpretations of data to explain eco-
system relationships in any regional Ocean Eco-
system Resource Information System shall be sci-
entifically peer reviewed.
(4) AUTHORITY TO CONTRACT.—The Adminis-
trator may contract with other Federal agencies,
State agencies, nongovernmental organizations, uni-

1	versities, or private academic institutions for devel-
2	opment of portions of each regional Ocean Eco-
3	system Resource Information System, provided such
4	work will be open source and the end product will
5	be solely the property of NOAA.
6	(5) Schedule.—The Ocean Ecosystem Re-
7	source Information Systems shall be established and
8	in operation for each region described in section
9	201(c) not later than January 1, 2012.
10	(6) AVAILABILITY.—The system shall be readily
11	accessible at no, or nominal, cost to Congress, all
12	Federal agencies, the States, academic and scientific
13	institutions, and the public through the Internet, li-
14	braries, and such other mediums as may be appro-
15	priate and practical.
16	(c) REQUIRED REGIONS.—Ocean Ecosystem Re-
17	source Information Systems shall be established for the
18	each region described in section 201(c).
19	(d) COORDINATION.—
20	(1) IN GENERAL.—The Administrator in the
21	preparation of the regional Ocean Ecosystem Re-
22	source Information Systems, shall request the co-
23	operation and coordination with the United States
24	Geological Survey, the United States Fish and Wild-
25	life Service, the Minerals Management Service, the

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2 United States Coast Guard, and the United States 3 Navy, together with all NOAA agencies for all un-4 classified information necessary for the development 5 and operation of the systems. The Administrator 6 may request and enter into cooperative agreements 7 with States, universities, or private academic institu-8 tions for access to information necessary or useful 9 for the development and operation of the systems.

10 (2) INTERNATIONAL AGREEMENTS.—The Ad-11 ministrator may enter into agreements with the Gov-12 ernments of Canada, Mexico, or Russia in the prepa-13 ration of a regional Ocean Ecosystem Resource In-14 formation System where an international border of 15 the United States or the coastal waters of the 16 United States abut such country or the territorial 17 waters of such country, for any information or data 18 that may be necessary or useful in the development 19 and operation of such system.

20 SEC. 306. SUBCOMMITTEE ON OCEAN EDUCATION.

(a) MEMBERSHIP.—The Committee shall establish a
Subcommittee on Ocean Education (referred to in this section as the "Subcommittee"). Each member of the Committee may designate a senior representative with expertise in education to serve on the Subcommittee. The Com-

mittee shall select a chair and 1 or more vice chairs for
 the Subcommittee from the membership of the Sub committee.

4 (b) RESPONSIBILITIES.—The Subcommittee shall—

5 (1) support and advise the Committee on mat6 ters related to ocean and coastal education for the
7 purpose of increasing the overall effectiveness and
8 productivity of Federal education and outreach ef9 forts;

10 (2) provide recommendations on education goals
11 and priorities for and implementation of the revised
12 National Ocean Priorities Plan and Implementation
13 Strategy developed under section 302 and guidance
14 for educational investments;

(3) coordinate Federal ocean, coastal, and watershed education activities for students, including
funding for educational opportunities at the undergraduate, graduate, and postdoctoral levels;

(4) identify and work to establish linkages
among Federal programs, such as the National Sea
Grant College Program, and those of States, academic institutions, State Sea Grant programs, museums and aquaria, industry, foundations, and other
nongovernmental organizations;

1 (5) support existing marine, coastal, and Great 2 Lakes education and outreach programs, including 3 those at the State, regional, and local levels; 4 (6) facilitate Federal agency efforts to work 5 with minority-serving institutions, historically Black 6 colleges and universities, and traditionally majority-7 serving institutions to ensure that students of under 8 represented groups have access to and support for 9 pursuing ocean-related careers; 10 (7) promote the establishment of professional 11 certification, training, and continuing education pro-12 grams for persons engaged in fishing or other mari-13 time activities, including partnerships with academic 14 or nongovernmental organizations to carry out such 15 programs; 16 (8) lead development of effective national strat-17 egies with common perspectives and messages for 18 formal and informal ocean and coastal education ef-19 forts; and 20 (9) carry out such other activities as the Com-21 mittee may request.

22 SEC. 307. OCEAN AND COASTAL EDUCATION PROGRAM.

(a) ESTABLISHMENT.—Consistent with the revised
National Ocean Priorities Plan and Implementation Strategy, the Committee, through the Subcommittee, shall es-

1 tablish a national, interagency ocean and coastal education 2 program to improve public awareness, understanding, and 3 appreciation of the role of the oceans in meeting the eco-4 nomic, social, and environmental needs of the United 5 States. To the extent practicable, the interagency program shall utilize and build from existing Federal programs and 6 7 mechanisms for ocean and coastal outreach and education 8 at the State, regional, and local levels.

9 (b) SCOPE.—The national, interagency ocean, and 10 coastal education program shall include formal education 11 activities for elementary, secondary, undergraduate, grad-12 uate, and postdoctoral students, continuing education ac-13 tivities for adults, and informal education activities for 14 learners of all ages.

(c) ELEMENTS.—The ocean and coastal education
program shall use existing interesting science programs
and other appropriate mechanisms and shall, at a minimum, provide sustained funding for the following:

19 (1) A national network of centers for ocean
20 science education excellence to improve the acquisi21 tion of knowledge by students at all levels.

(2) The National Sea Grant College Program'seducation and outreach efforts.

24 (3) A regional education network to support25 academic competition and experiential learning op-

portunities for elementary and secondary school stu dents.

3 (4) Teacher enrichment programs that provide
4 for participation in research expeditions, voyages of
5 exploration, and the conduct of scientific research.

6 (5) Development of model instructional pro-7 grams for students at all levels.

8 (6) Student training and support to provide di9 verse ocean-related education opportunities at the
10 undergraduate, graduate, and postdoctoral levels.

(7) Mentoring programs and partnerships with
minority-serving institutions to ensure diversity in
the ocean and coastal workforce.

14 (8) A network of regional facilities, operated by
15 nongovernmental organizations or academic institu16 tions that provide training and continuing education
17 for persons engaged in fishing or other maritime ac18 tivities, including establishment of criteria for pro19 fessional certification programs in consultation with
20 the fishing industry.

(9) Dissemination of ocean and coastal informa-tion that is relevant for a wider public audience.

23 SEC. 308. OCEAN SCIENCE AND TECHNOLOGY SCHOLAR-

24 Ship program.

25 (a) ESTABLISHMENT.—

1 (1) IN GENERAL.—The Committee shall estab-2 lish a National Ocean Science and Technology Schol-3 arship Program (in this section referred to as the 4 "Program") that is designed to recruit and prepare 5 students for careers in the departments or agencies 6 that are represented on the Committee (in this sec-7 tion referred to as "participating agencies"). The 8 Program shall award scholarships to individuals who 9 are selected through a competitive process primarily 10 on the basis of academic merit, with consideration 11 given to financial need and the goal of promoting 12 the participation of individuals identified in section 13 33 or 34 of the Science and Engineering Equal Op-14 portunities Act (42 U.S.C. 1885a and 1885b).

15 CONTRACTUAL AGREEMENTS.—To carry (2)16 out the Program, participating agencies shall enter 17 into contractual agreements with individuals selected 18 under paragraph (1) under which the individuals 19 agree to serve as full-time employees of the partici-20 pating agency, for the period of time to be deter-21 mined by the participating agency, and stated in the 22 contractual agreements, in positions needed by the 23 participating agency and for which the individuals 24 are qualified, in exchange for receiving a scholarship.

1 (b) ELIGIBILITY CRITERIA.—In order to be eligible 2 to participate in the Program, an individual must— 3 (1) be enrolled or accepted for enrollment as a 4 full-time student at an institution of higher edu-5 cation (as defined in section 101(a) of the Higher 6 Education Act of 1965 (20 U.S.C. 1001(a))) in an 7 academic field or discipline described in the list 8 made available under subsection (c); 9 (2) be a citizen of the United States; and 10 (3) at the time of the initial scholarship award, 11 not be an employee of the department or agency pro-12 viding the award. 13 (c) PROGRAM LISTING.—The Committee shall make publicly available a list of academic programs and fields 14 15 of study for which scholarships under the Program may be used, and shall update the list as necessary. 16 17 (d) APPLICATION.—An individual seeking a scholar-18 ship under this section shall submit an application to a 19 participating agency at such time, in such manner, and 20 containing such information, agreements, or assurances as

21 the participating agency may require.

22 (e) Scholarship Limits.—

(1) ACADEMIC REQUIREMENTS.—The participating agency may provide a scholarship under the
Program for an academic year if the individual ap-

1 plying for the scholarship has submitted to the par-2 ticipating agency, as part of the application required 3 under subsection (d), a proposed academic program leading to a degree in a program or field of study 4 5 on the list made available under subsection (c). 6 (2) TIME LIMITATION.—An individual may not 7 receive a scholarship under this section for more 8 than 4 academic years, unless the participating 9 agency grants a waiver. 10 (3) DOLLAR LIMITATION.—The dollar amount 11 of a scholarship under this section for an academic 12

year shall be established by regulation but may not
exceed the cost of attendance as such cost is determined in section 472 of the Higher Education Act
of 1965 (20 U.S.C. 1087ll).

16 (4) USE OF FUNDS.—A scholarship provided
17 under this section may be expended for tuition, fees,
18 and other authorized expenses as established by reg19 ulation.

20 (5) CONTRACTUAL AGREEMENT.—The partici21 pating agency may enter into a contractual agree22 ment with an institution of higher education under
23 which the amounts provided for a scholarship under
24 this section for tuition, fees, and other authorized

1	expenses are paid directly to the institution with re-
2	spect to which the scholarship is provided.
3	(f) PERIOD OF SERVICE.—
4	(1) IN GENERAL.—The period of service for
5	which an individual shall be obligated to serve as an
6	employee of the participating agency, except as pro-
7	vided in subsection $(h)(2)$, shall be determined by
8	the participating agency as stated in subsection
9	(a)(2).
10	(2) START OF SERVICE.—Except as provided in
11	paragraph (3), obligated service under paragraph (1)
12	shall begin not later than 60 days after the indi-
13	vidual obtains the educational degree for which the
14	scholarship was provided.
15	(3) Deferral.—The participating agency may
16	defer the obligation of an individual to provide a pe-
17	riod of service under paragraph (1) if the partici-
18	pating agency determines that such a deferral is ap-
19	propriate. The Administrator shall prescribe the

tion may be deferred through regulation.

22 (g) Repayment.—

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(1) REQUIREMENT.—Scholarship recipients who
fail to maintain a high level of academic standing,
as defined by the participating agency by regulation,

terms and conditions under which a service obliga-

1 who are dismissed from their educational institutions 2 for disciplinary reasons, or who voluntarily terminate 3 academic training before graduation from the edu-4 cational program for which the scholarship was 5 awarded, shall be in breach of their contractual 6 agreement and, in lieu of any service obligation aris-7 ing under such agreement, shall be liable to the 8 United States for repayment within 1 year after the 9 date of default of all scholarship funds paid to them 10 and to the institution of higher education on their 11 behalf under the agreement, except as provided in 12 subsection (h). The repayment period may be ex-13 tended by the participating agency when determined 14 to be necessary.

15 (2) FAILURE TO COMPLETE SERVICE REQUIRE-16 MENT.—Scholarship recipients who, for any reason, 17 fail to begin or complete their service obligation 18 after completion of academic training, or fail to com-19 ply with the terms and conditions of deferment es-20 tablished by the participating agency pursuant to 21 subsection (f)(3), shall be in breach of their contrac-22 tual agreement. When recipients breach their agree-23 ments for the reasons stated in the preceding sen-24 tence, the recipient shall be liable to the United 25 States for an amount equal to—

1	(A) the total amount of scholarships re-
2	ceived by such individual under this section;
3	plus
4	(B) the interest that would have been ac-
5	crued if such amount was treated as a loan
6	bearing interest at the maximum legal pre-
7	vailing rate, as determined by the Treasurer of
8	the United States, multiplied by 3.
9	(h) CANCELLATION OR WAIVER.—
10	(1) CANCELLATION.—Any obligation of an indi-
11	vidual incurred under the Program (or a contractual
12	agreement thereunder) for service or payment shall
13	be canceled upon the death of the individual.
14	(2) WAIVER.—The participating agency shall by
15	regulation provide for the partial or total waiver or
16	suspension of any obligation of service or payment
17	incurred by an individual under the Program (or a
18	contractual agreement thereunder) whenever compli-
19	ance by the individual is impossible or would involve
20	extreme hardship to the individual, or if enforcement
21	of such obligation with respect to the individual
22	would be contrary to the best interests of the Gov-
23	ernment.

1 SEC. 309. NATIONAL OCEANIC AND ATMOSPHERIC ADMIN-

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ISTRATION OFFICE OF EDUCATION.

3 (a) IN GENERAL.—The Administrator shall conduct, develop, support, promote, and coordinate national edu-4 5 cation activities described in section 307 that enhance public awareness and understanding of the science, serv-6 7 ice, and stewardship missions of NOAA. In planning ac-8 tivities under this section, the Administrator shall consult 9 with the Subcommittee and build upon the educational 10 programs and activities of the National Sea Grant College Program, the National Marine Sanctuaries Program, the 11 National Estuarine Research Reserve System, and Coastal 12 Zone Management programs. Authorized activities shall 13 include education of the general public, teachers, students 14 at all levels, and ocean and coastal managers and stake-15 16 holders. In carrying out educational activities, the Administrator may enter into grants, contracts, cooperative 17 18 agreements, resource sharing agreements, or interagency 19 financing with Federal, State, and regional agencies, 20 tribes, commercial organizations, educational institutions, nonprofit organizations, or other persons. 21

(b) ESTABLISHMENT.—The Administrator shall establish within NOAA an Office of Education to provide
interagency and intra-agency coordination of the education activities of NOAA and to ensure full participation
in the ocean and coastal education program established
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under section 307. The Office of Education shall promote

2 and provide oversight of agency education activities and 3 shall— 4 (1) integrate agency science into high-quality 5 educational materials; 6 (2) improve access to NOAA educational re-7 sources: 8 (3) support educator professional development 9 programs to improve understanding and use of agen-10 cy sciences; 11 (4) promote participation in agency-related sciences and careers, particularly by members of 12 13 under represented groups; 14 (5) leverage partnerships to enhance formal and 15 informal environmental science education; 16 (6) build capability within the agency for edu-17 cational excellence; 18 (7) create and implement effective approaches 19 to disseminate agency products and ocean informa-20 tion to the general public; and 21 (8) encourage public involvement in coastal and 22 ocean stewardship.

23 (c) EDUCATIONAL PARTNERSHIP PROGRAM.—The
24 Administrator shall establish an educational partnership
25 with minority-serving institutions to provide support for

cooperative science centers, an environmental entrepre neurship program, a graduate sciences program, and an
 undergraduate scholarship program.

4 SEC. 310. NATIONAL OCEAN AWARENESS MEDIA CAMPAIGN.

5 (a) IN GENERAL.—The Administrator shall conduct
6 a national media campaign in accordance with this section
7 for the purpose of increasing public awareness and inter8 est in the oceans, through mass media advertising.

9 (b) COORDINATION WITH STATE, REGIONAL, AND 10 LOCAL EFFORTS.—To the extent practicable, the cam-11 paign referred to in subsection (a) shall be conducted in 12 a manner to coordinate with existing State, regional, and 13 local education efforts.

14 (c) USE OF FUNDS.—

(1) IN GENERAL.—Amounts made available to
carry out the campaign referred to in subsection (a)
may only be used for the following:

18 (A) The purchase of media time or space.

(B) Creative and talent costs.

20 (C) Advertising production costs.

21 (D) Testing and evaluation of advertising.

(E) Evaluation of the effectiveness of themedia campaign.

24 (F) The negotiated fees for the winning25 bidder on requests for proposals issued either

1	by the Administrator or a designee for purposes
2	otherwise authorized in this section.
3	(G) Partnerships with community, civic,
4	and professional groups and government organi-
5	zations related to the media campaign.
6	(H) Entertainment industry outreach,
7	interactive outreach, media projects and activi-
8	ties, public information, news media outreach,
9	and corporate sponsorship and participation.
10	(I) Operational and management expenses.
11	(2) Specific requirements.—
12	(A) CREATIVE SERVICES.—In using
13	amounts for creative and talent costs under
14	paragraph $(1)(B)$, the Administrator shall use
15	creative services donated at no cost to the Gov-
16	ernment wherever feasible and may only pro-
17	cure creative services for advertising—
18	(i) responding to high-priority or
19	emergent campaign needs that cannot
20	timely be obtained at no cost; or
21	(ii) intended to reach a minority, eth-
22	nic, or other special audience that cannot
23	reasonably be obtained at no cost.
24	(B) TESTING AND EVALUATION OF ADVER-
25	TISING.—In using amounts for testing and eval-
uation of advertising under paragraph (1)(D), the Administrator shall test all advertisements prior to use in the media campaign to ensure that the advertisements are effective and meet industry-accepted standards. The Administrator may waive this requirement for advertisements

using no more than 10 percent of the purchase of advertising time purchased under this section in a fiscal year and no more than 10 percent of the advertising space purchased under this section in a fiscal year, if the advertisements respond to emergent and time-sensitive campaign needs or the advertisements will not be widely utilized in the media campaign.

15 (C) EVALUATION OF EFFECTIVENESS OF
16 MEDIA CAMPAIGN.—In using amounts for the
17 evaluation of the effectiveness of the media
18 campaign under paragraph (1)(E), the Admin19 istrator shall—

20 (i) designate an independent entity to
21 evaluate annually the effectiveness of the
22 national media campaign based on data
23 from—

(I) public feedback; and

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1	(II) other relevant studies or
2	publications, as determined by the Ad-
3	ministrator, including tracking and
4	evaluation data collected according to
5	marketing and advertising industry
6	standards; and
7	(ii) ensure that the effectiveness of
8	the media campaign is evaluated in a man-
9	ner that enables consideration of whether
10	the media campaign has contributed to in-
11	creasing the ocean literacy of the public
12	and such other measures of evaluation as
13	the Director determines are appropriate.
14	(3) PURCHASE OF ADVERTISING TIME AND
15	SPACE.—For each fiscal year, not less than 77 per-
16	cent of the amounts made available to carry out this
17	section shall be used for the purchase of advertising
18	time and space for the media campaign.
19	(d) Advertising.—In carrying out this section, the
20	Administrator shall devote sufficient funds to the adver-
21	tising portion of the national media campaign to meet the
22	goals of the campaign.
23	(e) PROHIBITIONS.—None of the amounts made
24	available to carry out this section may be obligated or ex-
25	pended for any of the following:

1 (1) To supplant current oceans community-2 based coalitions. (2) To supplant pro bono public service time 3 4 donated by national and local broadcasting networks 5 for other public service campaigns. 6 (3) For partial political purposes, or express 7 advocacy in support of or to defeat any clearly iden-8 tified candidate, clearly identified ballot initiative, or 9 clearly identified legislative or regulatory proposal. 10 (4) To fund advertising that features any elect-11 ed officials, persons seeking elected office, cabinet 12 level officials, or other Federal officials described in 13 schedule C of part 213 of title 5, Code of Federal 14 Regulations (or any similar successor regulation). 15 (5) To fund advertising that does not contain a 16 primary message intended to increase awareness and 17 promote the protection, maintenance, and restora-18 tion of marine ecosystem health. 19 (6) To fund advertising containing a primary 20 message intended to promote support for the media campaign or private sector contributions to the 21 22 media campaign. 23 (f)FINANCIAL AND Performance ACCOUNT-ABILITY.—The Administrator shall cause to be per-24 formed— 25

1	(1) audits and reviews of costs of the media
2	campaign pursuant to section 304C of the Federal
3	Property and Administrative Services Act of 1949
4	(41 U.S.C. 254d); and
5	(2) an audit of the cost of the media campaign
6	described in section 306 of such Act (41 U.S.C.
7	256).
8	(g) Strategic Advisor.—
9	(1) IN GENERAL.—The Administrator shall se-
10	lect a primary outside strategic advisor for the
11	media campaign to be responsible for coordinating
12	donations of creative and other services to the cam-
13	paign, except with respect to advertising created
14	using funds permitted in subsection (c).
15	(2) Selection.—The Administrator shall se-
16	lect the strategic advisor based solely on merit and
17	the demonstrated success and experience of the can-
18	didates. The Administrator may consider the Na-
19	tional Marine Sanctuaries Foundation, the National
20	Fish and Wildlife Foundation, or any other entity
21	for the strategic advisor.
22	(3) ROLE OF STRATEGIC ADVISOR.—The Ad-
23	ministrator shall inform the advisor of the strategic
24	goals of the campaign and consider such advice of

the selected advisor on media campaign strategy.

(h) ANNUAL REPORT.—The Administrator shall sub-
mit to Congress an annual report that describes—
(1) the strategy of the media campaign and
whether specific objectives of the media campaign
were accomplished;
(2) steps taken to ensure that the media cam-
paign operates in an effective and efficient manner
consistent with the overall strategy and focus of the
media campaign;
(3) plans to purchase advertising time and
space;
(4) policies and practices implemented to ensure
that Federal funds are used responsibly to purchase
advertising time and space and eliminate the poten-
tial for waste, fraud, and abuse; and
(5) all contracts entered into with a corpora-
tion, partnership, or individual working on behalf of
the media campaign.
(i) LOCAL TARGET REQUIREMENT.—The Adminis-
trator shall, to the maximum extent feasible, use amounts

made available to carry out this section for media that

focuses on, or includes specific information on, prevention

23 or treatment resources for consumers within specific local

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24 areas.

IV—OCEAN AND GREAT TITLE 1 **CONSERVATION** LAKES 2 AND AUTHOR-TRUST FUND 3 **IZATION** OF **APPROPRIA**-4 TIONS 5

6 SEC. 401. OCEAN AND GREAT LAKES CONSERVATION TRUST

FUND.

7

8 (a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established in the 9 10 Treasury of the United States a fund which shall be 11 known as the "Ocean and Great Lakes Conservation 12 Trust Fund" (referred to in this section as the 13 "Fund"). For each fiscal year beginning after the 14 date of enactment of this Act, the Secretary of the 15 Treasury shall deposit into the Fund the following 16 amounts:

17 (A) OFFSHORE USES.—Amounts received
18 for the payments described in paragraph (2).

(B) HEALTHY OCEAN STAMP.—Amounts
received by the United States from the sale of
a Healthy Ocean Stamp under section 406.

(C) AMOUNTS NOT DISBURSED.—Amounts
that were appropriated to carry out section 402
but not disbursed for such purpose during such
fiscal year.

(D) INTEREST.—All interest earned pursu ant to subsection (b).

3 (2)LEASE PAYMENTS.—The Administrator 4 shall establish by rule, in consultation with the 5 Council on Ocean Stewardship, appropriate forms of 6 payment for any permit or authorization granted for 7 wind, wave, and tidal energy, bioprospecting, carbon 8 sequestration, ecosystem services, and other emerg-9 ing activities in Federal waters excluding fishing and 10 mineral, oil, natural gas, or methane hydrate leas-11 ing, exploration, development, or production. Such 12 payments must be derived only from activities con-13 sistent with the National Ocean Policy and may in-14 clude fees, rents, royalties, cash bonus payments, or 15 other payments.

16 (b) INTEREST.—The Secretary of the Treasury shall 17 invest amounts in the Fund (including interest) in public 18 debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of the Treasury, 19 20 and bearing interest at rates determined by the Secretary 21 of the Treasury, taking into consideration current market 22 yields on outstanding marketable obligations of the United 23 States of comparable maturity. Such invested amounts 24 shall remain invested until needed to meet requirements for disbursement for the programs financed under this
 Act.

3 (c) USE OF FUND.—The Administrator may use
4 amounts available in the Fund to supplement appropria5 tions made pursuant to the authorization of appropriation
6 in section 410.

7 SEC. 402. PAYMENTS TO STATES.

8 (a) IN GENERAL.—The Administrator shall make 9 payments to those coastal States that are eligible for fund-10 ing under section 403, subject to the availability of appropriations under section 410. The total of the amount paid 11 12 each fiscal year to State included in an ocean region de-13 scribed under section 201(c) may not exceed the amount allocated for such ocean region for that fiscal year under 14 15 section 405.

16 (b) REPORT REQUIREMENT.—No payment shall be
17 made to any State under this section until the State has—

(1) agreed to provide such reports to the Administrator, in such form and containing such information, as may be reasonably necessary to enable
the Administrator to perform the duties of the Administrator under this title; and

(2) adopted such fiscal control and fund ac-counting procedures as may be necessary to assure

proper disbursement and accounting for Federal rev enues paid to the State under this title.

3 (c) UNEXPENDED FUNDS.—At the end of each fiscal
4 year, the Administrator shall deposit in the Fund estab5 lished in section 401(a) any amount appropriated pursu6 ant to an authorization of appropriations in section 410
7 but not disbursed to a State under this section.

8 SEC. 403. ELIGIBILITY FOR FUNDING.

9 (a) ELIGIBILITY OF STATE.—A State shall not be eli-10 gible to receive funds under section 402 unless the Admin-11 istrator, in consultation with the appropriate Regional 12 Ocean Partnership, determines that the State is partici-13 pating actively and sufficiently in the development and im-14 plementation of the appropriate Regional Ocean Strategic 15 Plan under section 203.

(b) ELIGIBLE PURPOSES.—A State that receives
funds under this title may only use such funds for purposes of fulfilling the State's obligations and responsibilities—

(1) to provide assistance to the Administrator
in conducting the initial ocean region assessment
under section 203(a) until such assessment is complete in accordance with an approved spending plan
referred to in section 404(c)(2);

(2) to develop a the Regional Ocean Strategic
 Plan under section 203(b) until such Plan is com plete, in accordance with such an approved spending
 plan;

5 (3) to implement a Regional Ocean Strategic
6 Plan approved under section 203(e) in accordance
7 with such an approved spending plan; and

8 (4) to implement other regional efforts to carry 9 out the National Ocean Policy during the 3-year pe-10 riod beginning on the date of the designation or es-11 tablishment of the appropriate Regional Ocean Part-12 nership, in accordance with the applications ap-13 proved under section 404(c).

14 SEC. 404. FUNDING PROCEDURES.

15 APPLICATION.—Each State seeking funding (a) under this title shall submit to the Administrator an appli-16 cation for such funds. Such applications shall be developed 17 in coordination with all coastal agencies for that State and 18 19 existing federally approved coastal management programs 20 (b) APPROVAL.—The Administrator shall approve an 21 application submitted by a State under subsection (a) if, 22 in consultation with the Regional Ocean Partnership, the 23 Administrator—

24 (1) certifies that the State is eligible for fund25 ing under section 403(a);

(2) finds that the activities proposed in the ap plication are part of an approved spending plan sub mitted by the relevant Regional Ocean Partnership
 under subsection (c); and

5 (3) ensures that previous payments under this
6 title made to the State and coastal political subdivi7 sions in the State were used in accordance with sec8 tion 403(b).

9 (c) SPENDING PLANS, BUDGETS, AND OTHER RE10 GIONAL EFFORTS.—

11 (1) Spending plan for implementing re-12 GIONAL OCEAN STRATEGIC PLANS.—Each Regional 13 Ocean Partnership that has participating States that 14 are seeking funding under section 402 shall submit 15 to the Administrator a spending plan for such States 16 for each fiscal year. The total funds requested in the 17 spending plan shall not exceed the amount allocated 18 to the Region by the Administrator under section 19 405 for that fiscal year. In addition to such other 20 requirements as the Administrator by regulation 21 shall prescribe, each spending plan shall include—

22 (A) a list of the States participating in the23 Regional Ocean Partnership;

24 (B) the name of the State agency for each25 State listed in subparagraph (A) that will have

	-
1	the authority to represent and act for the State
2	in dealing with the Administrator for purposes
3	of this title;
4	(C) a description of how funds provided
5	under this title will be used by each partici-
6	pating State to implement the Regional Ocean
7	Strategic Plan; and
8	(D) certification by the governor of each
9	participating State that all the funds provided
10	under this title to the State or a political sub-
11	divisions of the State shall be used for a pur-
12	pose described in section 403(b) and in a man-
13	ner consistent with carrying out the National
14	Ocean Policy.
15	(2) BUDGETS FOR DEVELOPING REGIONAL
16	OCEAN STRATEGIC PLANS AND ASSISTING WITH INI-
17	TIAL REGIONAL OCEAN ASSESSMENTS.—Each Re-
18	gional Ocean Partnership with participating States
19	that are seeking funding under section 402 shall
20	submit an annual budget for approval by the Admin-
21	istrator identifying—
22	(A) a list of the States participating in the
23	Regional Ocean Partnership;
24	(B) the name of the State agency for each
25	State listed in subparagraph (A) that will have

1	the authority to represent and act for the State
2	in dealing with the Administrator for purposes
3	of this title; and
4	(C) the costs under subsection (a) or (b) of
5	section 203 that require financial support from
6	the Administrator.
7	(3) OTHER REGIONAL EFFORTS.—Each coastal
8	State seeking funding for other regional efforts
9	under section $403(b)(4)$ shall submit an application
10	for approval by the Administrator that includes the
11	following:
12	(A) The name of the State agency that will
13	have the authority to represent and act for the
14	State in dealing with the Administrator for pur-
15	poses of this subsection.
16	(B) A description of how funds provided
17	pursuant to this subsection will be used for ac-
18	tivities that further the implementation of the
19	National Ocean Policy.
20	(C) Certification by the Governor of the
21	State that all the funds provided pursuant to
22	this subsection to the State will be used in a
23	manner consistent with the National Ocean pol-
24	icy.

(4) LIMITATION ON OTHER USES.—Not more 1 2 than 50 percent of amounts paid to a State from 3 amounts appropriated pursuant to the authorization 4 of appropriations in section 410(a)(1)(A) may be 5 used by the State to implement other regional ocean 6 governance efforts that further the implementation of the National Ocean Policy as described in the ap-7 8 plication referred to in paragraph (3).

9 (d) PROCEDURE AND TIMING; REVISIONS.—The Ad-10 ministrator shall approve or disapprove in accordance with this subsection each spending plan submitted under sub-11 12 section (b)(1). If a Regional Ocean Partnership first sub-13 mits a plan by not later than 90 days before the beginning of the first fiscal year to which the plan applies, the Ad-14 15 ministrator shall approve or disapprove the plan by not later than 30 days before the beginning of that fiscal year. 16

17 (e) Spending Plan Amendment or Revision.— Any amendment to or revision of the spending plan shall 18 19 be prepared in accordance with the requirements of this 20 section and shall be submitted to the Administrator for 21 approval or disapproval. Any such amendment or revision 22 shall take effect only for fiscal years after the fiscal year 23 in which the amendment or revision is approved by the Administrator. 24

(f) PUBLIC COMMENT.—Before approving or dis approving a spending plan, or an amendment or revision
 to such a plan, the Administrator shall provide for public
 comment on the proposed expenditures in the spending
 plan for the forthcoming year.

6 (g) TIME OF PAYMENT.—Payments to States under
7 this title shall be made not later than December 31 of
8 each year from appropriations made during the imme9 diately preceding fiscal year.

10 SEC. 405. EQUITABLE ALLOCATION.

(a) MAXIMUM AMOUNT AVAILABLE TO EACH OCEAN
REGION.—Of the amounts authorized to be appropriated
by section 410, the Administrator shall determine and allocate to each ocean region described in section 201(c) the
maximum amount of funds that the Administrator may
grant under this title for use in that region, based on the
following weighted formula:

(1) 35 percent of such amount shall be determined based on the ratio of the shoreline miles (as
that term is used in the Coastal Zone Management
Act of 1972 (16 U.S.C. 1451 et seq.)) of the ocean
region to the shoreline miles of all ocean regions.

(2) 65 percent of such amount shall be deter-mined based on the ratio of the coastal population

density of the ocean region to the coastal population
 density of all ocean regions.

3 (b) PAYMENTS TO POLITICAL SUBDIVISIONS.—The
4 governor of a State that receives funds under this title
5 shall use such funds only—

6 (1) for a purpose described in section 403(b)
7 that the State applied for and received the funds; or
8 (2) for awards to coastal political subdivisions
9 of the State, on a competitive basis, for such pur10 poses.

11 SEC. 406. HEALTHY OCEAN STAMP.

(a) IN GENERAL.—In order to afford a convenient
way for members of the public to support efforts to protect, maintain, and restore marine ecosystems, the United
States Postal Service shall provide for a special postage
stamp in accordance with this section.

(b) TERMS AND CONDITIONS.—The issuance and sale
of the stamp referred to in subsection (a) shall be governed by section 416 of title 39, United States Code, and
regulations under such section, subject to the following:

(1) TRANSFERS.—All amounts becoming available from the sale of such stamp shall be transferred
to the Ocean and Great Lakes Conservation Trust
Fund established by section 401 through payments
which shall be made, at least twice a year, in the

1	manner required by subsection $(d)(1)$ of section 416
2	of such title 39.
3	(2) NUMERICAL LIMITATION.—For purposes of
4	applying any numerical limitation referred to in sub-
5	section $(e)(1)(C)$ of section 416 of such title 39,
6	such stamp shall not be taken into account.
7	(3) DURATION.—Such stamp shall be made
8	available to the public over such period of time as
9	the Postal Service may determine, except that such
10	period—
11	(A) shall commence not later than 12
12	months after the date of the enactment of this
13	Act; and
14	(B) shall terminate not later than the close
15	of the period referred to in subsection (g) of
16	section 416 of title 39, United States Code.
17	(c) RULE OF CONSTRUCTION.—Nothing in this sec-
18	tion shall be considered to permit or require that any de-
19	termination of the amounts becoming available from the
20	sale of the stamp referred to in subsection (a) be made
21	in a manner inconsistent with the requirements of sub-
22	section (d) or section 416 of title 39, United States Code.

1SEC. 407. LIMITATION ON USE OF AVAILABLE AMOUNTS2FOR ADMINISTRATION.

3 Of the amounts made available pursuant to this title
4 for a particular activity, not more than 2 percent may be
5 used for administrative expenses of that activity.

6 SEC. 408. RECORD KEEPING REQUIREMENTS.

7 The Administrator, in consultation with the Council 8 on Ocean Stewardship, shall establish such rules regarding 9 record keeping by State and local governments and the 10 auditing of expenditures made by State and local governments from funds made available under this Act as may 11 be necessary. Such rules shall be in addition to other re-12 13 quirements established regarding record keeping and the auditing of such expenditures under other authority of 14 15 law.

16 SEC. 409. MAINTENANCE OF EFFORT AND MATCHING FUND-

ING.

17

18 (a) IN GENERAL.—It is the intent of the Congress in this Act that States not use this Act as an opportunity 19 to reduce State or local resources for the programs funded 20 by this Act. Except as provided in subsection (b), no State 21 22 or local government shall receive any funds under this Act 23 during any fiscal year in which its expenditures of non-24 Federal funds for recurrent expenditures for programs for 25 which funding is provided under this Act will be less than 26 its expenditures were for such programs during the pre-•S 3314 IS

ceding fiscal year. No State or local government shall re ceive funding under this Act with respect to a program
 unless the Administrator is satisfied that such a grant will
 be used to supplement and, to the extent practicable, in crease the level of State, local, or other non-Federal funds
 available for such program.

7 (b) EXCEPTION.—The Administrator may waive the
8 requirements of subsection (a) if the Administrator deter9 mines that a reduction in expenditures—

10 (1) is attributable to a nonselective reduction in 11 expenditures for the programs of all executive 12 branch agencies of the State or local government; or 13 (2) is a result of reductions in State or local 14 revenue as a result of a downturn in the economy. 15 (c) Use of Funds To Meet Matching Require-MENTS.—All funds received by a State or local govern-16 ment pursuant to this Act shall be treated as Federal 17 funds for purposes of compliance with any provision in ef-18 19 fect under any other law requiring that non-Federal funds 20 be used to provide a portion of the funding for any pro-21 gram or project.

22 SEC. 410. AUTHORIZATION OF APPROPRIATIONS.

23 (a) REGIONAL OCEAN STRATEGIC PLANS.—

1	(1) PAYMENTS TO STATES.—There are author-
2	ized to be appropriated to the Administrator for
3	making payments to coastal States under this title—
4	(A) $$40,000,000$ for each of fiscal years
5	2011, 2012, and 2013 for developing a Re-
6	gional Ocean Strategic Plan under subsection
7	(b)(1) of section 203, for assisting the Adminis-
8	trator in conducting an initial ocean region as-
9	sessment under subsection (a) of such section,
10	and for implementing other regional efforts
11	under subsection $(e)(2)$ of such section; and
12	(B) $60,000,000$ for each of fiscal years
13	2014 through 2021 and for implementing and
14	updating Regional Ocean Strategic Plans under
15	subsection (d) of such section.
16	(2) Assessments.—There are authorized to be
17	appropriated to the Administrator \$20,000,000 for
18	each of fiscal years 2011 through 2021 thereafter
19	for purposes of—
20	(A) conducting and updating assessments
21	for the ocean regions described under section
22	203; and
23	(B) supporting efforts by the Regional
24	Ocean Partnerships to develop Regional Ocean
25	Strategic Plans under such section.

1	(3) REGIONAL OCEAN STRATEGIC PLANS.—
2	There are authorized to be appropriated to the Ad-
3	ministrator for allocation, with concurrence of the
4	Council on Ocean Stewardship, for carrying out re-
5	sponsibilities of the Federal Government for develop-
6	ment and implementation of Regional Ocean Stra-
7	tegic Plans under section 203—
8	(A) \$30,000,000 for fiscal year 2014;
9	(B) \$40,000,000 for fiscal year 2015; and
10	(C) $$50,000,000$ for each of fiscal years
11	2016 through 2021.
12	(b) NATIONAL OCEANIC AND ATMOSPHERIC ADMIN-
13	ISTRATION.—
14	(1) Office of education.—In addition to the
15	amounts authorized under the National Sea Grant
16	College Program Act (33 U.S.C. 1121 et seq.), there
17	are authorized to be appropriated to the Adminis-
18	trator \$30,000,000 for each of fiscal years 2009
19	through 2013 for educational activities under section
20	309(b).
21	(2) Educational partnership program.—
22	There are authorized to be appropriated to the Ad-
23	ministrator \$20,000,000 for each of fiscal years
24	2009 through 2013 for educational activities under
25	section $309(c)$.

1 (c) NATIONAL OCEAN AND COASTAL EDUCATION 2 **PROGRAM.**—Of the amounts authorized to be appro-3 priated to NOAA, the Department of the Navy, the Na-4 tional Science Foundation, and the National Aeronautics 5 and Space Administration for fiscal year 2009 through fiscal year 2013, \$25,000,000 from each agency shall be 6 7 available for the ocean and coastal education program 8 under section 307.

9 (d) SCHOLARSHIP PROGRAM.—Of the amounts au-10 thorized to be appropriated to NOAA, the National 11 Science Foundation, the National Aeronautics and Space 12 Administration, and the Department of the Navy for fiscal 13 year 2009 through fiscal year 2013, \$15,000,000 shall be 14 available for National Ocean Science and Technology 15 Scholarships under section 308.

(e) NATIONAL OCEAN AWARENESS MEDIA CAMPAIGN.—Of the amounts authorized to be appropriated to
NOAA, there are authorized to be appropriated to carry
out section 311, \$2,000,000 for each of fiscal years 2009
through 2011.

21 (f) FUNDING FOR MARINE ECOSYSTEM RE-22 SEARCH.—

(1) MARINE ECOSYSTEM RESEARCH.—For development and implementation of the research program under section 302, there are authorized to be

appropriated \$50,000,000 for each of fiscal years
 2009 through 2013.

3 (2) REGIONAL OCEAN ECOSYSTEM RESOURCE
4 INFORMATION SYSTEMS.—For development and im5 plementation of the regional Ocean Ecosystem Re6 source Information Systems under section 305, there
7 are authorized to be appropriated \$25,000,000 for
8 each of fiscal years 2009 through 2013.

9 (g) AMENDMENT TO THE NATIONAL SEA GRANT 10 COLLEGE PROGRAM ACT.—Subsection (a) of section 212 11 of the National Sea Grant College Program Act (33 12 U.S.C. 1131) is amended by adding at the end the fol-13 lowing new paragraph:

"(3) MARINE AND AQUATIC SCIENCE EDUCATION.—In addition to the amounts authorized for
each fiscal year under paragraphs (1) and (2), there
are authorized to be appropriated for marine and
aquatic science education for each of fiscal years
2008 through 2012—

20 "(A) \$6,000,000 in increased funding for
21 the educational activities of sea grant programs;
22 "(B) \$4,000,000 for competitive grants for
23 projects and research that target national and
24 regional marine and aquatic science literacy;

1	"(C) $$5,000,000$ for competitive grants to
2	support educational partnerships under the
3	ocean and coastal education program estab-
4	lished under section 308 of the National Oceans
5	Protection Act of 2008 or other appropriate
6	mechanism; and
7	((D) \$10,000,000 for graduate fellowships
8	and competitive distinguished professorships in
9	marine science.".
10	(h) AVAILABILITY.—Amounts appropriated pursuant
11	to an authorization of appropriations in this section shall
12	remain available until expended.

143

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Agenda Item C.4.a Attachment 2 (On CD and Web Only) September 2008

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 Federal 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 United States. 6 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 ability to fulfill its core missions; and 3 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 generations. 16 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.

(7) Marine, terrestrial, and atmospheric systems are interdependent, requiring that policy, information transfer, and the management of human activities 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-

ture of coastal communities dependent on these re sources.

3 (12) Healthy marine ecosystems provide more
4 goods and services, such as seafood and tourism op5 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.

The purpose of this Act is to secure, for present and future generations of people of the United States, the full range of ecological, economic, educational, social, cultural, nutritional, and recreational benefits of healthy marine 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 to which the United States is granted sovereign 10 11 rights under international law.

(2) COASTAL WATERS.—The term "coastal waters" means the waters within the coastal zone as
defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453), which includes
such waters as bays and estuaries.

17 (3) OCEAN RESOURCES OR COASTAL RE18 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.

(4) COVERED ACTION.—The term "covered action" means any activity affecting United States
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

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

3 (11) MARINE.—The term "marine" includes of
4 or relating to United States ocean and coastal wa5 ters.

6 (12)MARINE ECOSYSTEM HEALTH AND 7 HEALTH OF MARINE ECOSYSTEMS.—Each of the terms "marine ecosystem health" and "health of 8 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 struc19 ture, and distribution supporting its ecological
20 and evolutionary functions and processes; and

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

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

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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
systems.

and/or are especially unique or sensitive marine eco-

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
	•HR 21 IH

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

4 (21) COASTAL POPULATION DENSITY.—The
5 term "coastal population density" means the population 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.

TITLE I—ESTABLISHMENT OF A 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 ma6 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.—

(1) IN GENERAL.—To the fullest extent possible, the policies, regulations, and Public Laws of
the United States shall be interpreted and administered by any Federal agency in accordance with the
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.

(B) Any covered action that may significantly affect United States ocean waters or
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

with the Committee on Ocean Policy, shall issue such reg ulations as are necessary to implement this section of the
 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:

(1) Not less than 180 days prior to taking final
agency action on a covered action, the head of each
Federal agency shall certify whether the action complies with the policy and national standards, and
submit the certification to the Administrator for review.

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.

TITLE II—NATIONAL OCEANIC AND ATMOSPHERIC ADMINIS 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—

(1) act as the nonmilitary Federal agency with
responsibility for providing oversight of all United
States coastal, ocean, and Great Lakes waters and
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 na22 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. (c) FUNCTIONS.—The functions of the Administra-4 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-

1	mission of annual budget requests to the Direc-
2	tor of the Office of Management and Budget;
3	(E) serving as the Department of Com-
4	merce official for all ocean and atmosphere
5	issues with other elements of the Department of
6	Commerce and with other Federal agencies,
7	State, tribal, and local governments, and the
8	public; and
9	(F) such other duties with respect to the
10	Administration as the Secretary may prescribe.
11	(3) Delegation of Authority.—The Admin-
12	istrator may, except as otherwise prohibited by
13	law—
14	(A) delegate any functions, powers, or du-
15	ties of the Administrator to such officers and
16	employees of the Administration as the Admin-
17	istrator may designate; and
18	(B) authorize such successive redelegations
19	of such functions, powers, or duties within the
20	Administration as the Administrator considers
21	necessary or appropriate.
22	(4) PAY.—The Administrator shall be paid at
23	the rate of basic pay for level III of the Executive
24	Schedule under section 5314 of title 5, United
25	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 (\mathbf{g}) CONTINUATION OF SERVICE.—Any individual 13 serving on the effective date of this Act in a position provided for in this Act may continue to serve in that position 14 15 until a successor is appointed under this Act. Nothing in this Act shall be construed to require the appointment of 16 17 a successor under this Act sooner than would have been required under law as in effect before the effective date 18 19 of this Act. 20SEC. 203. NATIONAL WEATHER SERVICE. 21 (a) IN GENERAL.—The Secretary shall maintain 22 within the Administration the National Weather Service.

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

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

6 (1) provides timely and accurate weather,
7 water, climate, tsunami, and space weather fore8 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.

(c) FUNCTIONS.—To accomplish the mission described in section 201(b), and in addition to the functions
described in section 201(c), the functions of the National
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 guid21 ance, forecasts, warnings, and analysis about weath22 er, water, climate, tsunami, and space weather phe23 nomena for the Administration and the public;

(4) providing information to Federal agencies
 and other organizations responsible for emergency
 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.

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

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—

(1) management of domestic and internationalfisheries for increased sustainability;

23 (2) conservation of marine mammals, protected
24 species, coral reefs, and other living marine re25 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

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

3 (11) such other ecosystem-based resource man4 agement functions to serve the mission of the Ad5 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 coast11 al, ocean and Great Lakes information.

(b) FUNCTIONS.—To accomplish the mission described in section 201(b), and in addition to the functions
described in section 201(c), the operations and service
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 global19 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 pub24 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

(11) such other operations and services func tions to serve the mission of the Administration as
 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 sup7 port research and the development of technologies relating
8 to weather, climate, and the coasts, oceans, and Great
9 Lakes.

(b) FUNCTIONS.—To accomplish the mission described in section 201(b), and in addition to the functions
described in section 201(c), the research and development
functions of the Administration shall include—

(1) conducting and supporting research and
technology development to improve the Administration's capabilities to collect, through observation and
otherwise, communicate, analyze, process, and disseminate comprehensive scientific data and information about weather, climate, and the coasts, oceans,
and Great Lakes;

(2) improving ecological prediction and management capabilities through ecosystem-based research
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

such programs and activities on the national, regional,
 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;

(2) informing the public about how the Earth's
climate and related systems may change in the future, based on the best available science;

(3) supporting and partnering with educational
institutions to foster ocean literacy and promote the
ocean workforce, especially minority-serving institutions;

19 (4) support professional development and a pro20 gram for certification of individuals engaged in com21 mercial uses of ocean waters;

(5) create and implement effective approaches
to disseminate agency products and ocean information to the general public, including improving ac-

cess to the Administration's educational resources;
 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 Admin8 istration a Science Advisory Board, which shall provide
9 such scientific advice as may be requested by the Adminis10 trator, the Committee on Commerce, Science, and Trans11 portation of the Senate, or the Committee on Science or
12 on Resources of the House of Representatives.

(b) PURPOSE.—The purpose of the Science Advisory
Board is to advise the Administrator and Congress on
long-range and short-range strategies for research, education, and the application of science to coastal, ocean,
and Great Lakes resource management and environmental
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.

(4) APPOINTMENT.—Members of the Science
Advisory Board shall be appointed as special Government 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-

1	quacy of the environmental data and informa-
2	tion systems of the Administration to—
3	(i) provide adequate capacity to man-
4	age, archive and disseminate environmental
5	information collected and processed, or ex-
6	pected to be collected and processed, by
7	the Administration, including data gath-
8	ered by other agencies that is processed or
9	stored by the Administration;
10	(ii) establish, develop, and maintain
11	information bases, including necessary
12	management systems, which will provide
13	for consistent, efficient, and compatible
14	transfer and use of data;
15	(iii) develop effective interfaces among
16	the environmental data and information
17	systems of the Administration and other
18	appropriate departments and agencies;
19	(iv) develop and use nationally accept-
20	ed formats and standards for data col-
21	lected by various national and international
22	sources;
23	(v) integrate and interpret data from
24	different sources to produce information
25	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 Federal departments and agencies and 5 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 TRANSMITTAL TO CONGRESS.—Not later (2)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 DEVELOP22 MENT.—

(1) CONTENTS.—Not later than 1 year after
the date of enactment of this Act, and once every 5
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.—

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

(2) Nothing in this section shall be construed to
waive any other reporting required of the Administrator 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 enactment of this Act. At least 90 days before each submission
 of the policy to Congress, the Secretary shall publish the
 policy in the Federal Register for a public comment period
 of not less than 60 days. Nothing in this section shall be
 construed to require changes in the policy in effect on the
 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 developing the plan, the Administrator shall consult with in-11 12 terested parties, including the States, academia, industry, 13 conservation organizations, and Administration employees. 14 (b) CONTENT.—The plan, to the greatest extent practicable, shall— 15

- 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 ap21 proaches to management;
- (D) coordination with outside entities, bothnationally and internationally; and

24 (E) needs to expand or downsize employees25 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-
10	omoga with its findings
13	gress with its infaings.
13 14	SEC. 212. FACILITY EVALUATION PROCESS.
13 14 15	 gress with its minings. SEC. 212. FACILITY EVALUATION PROCESS. (a) DEFINITION.—For purposes of this section—
 13 14 15 16 	 gress with its findings. SEC. 212. FACILITY EVALUATION PROCESS. (a) DEFINITION.—For purposes of this section— (1) the term "facility" means a laboratory, op-
13 14 15 16 17	 gress with its findings. SEC. 212. FACILITY EVALUATION PROCESS. (a) DEFINITION.—For purposes of this section— (1) the term "facility" means a laboratory, operations office, administrative service center, or
 13 14 15 16 17 18 	 gress with its findings. SEC. 212. FACILITY EVALUATION PROCESS. (a) DEFINITION.—For purposes of this section— (1) the term "facility" means a laboratory, operations office, administrative service center, or other establishment of the Administration; and
 13 14 15 16 17 18 19 	 gress with its findings. SEC. 212. FACILITY EVALUATION PROCESS. (a) DEFINITION.—For purposes of this section— (1) the term "facility" means a laboratory, operations office, administrative service center, or other establishment of the Administration; and (2) the term "field office" has the same mean-
 13 14 15 16 17 18 19 20 	 gress with its findings. SEC. 212. FACILITY EVALUATION PROCESS. (a) DEFINITION.—For purposes of this section— (1) the term "facility" means a laboratory, operations office, administrative service center, or other establishment of the Administration; and (2) the term "field office" has the same meaning given that term in section 702 of the Weather
 13 14 15 16 17 18 19 20 21 	 gress with its findings. SEC. 212. FACILITY EVALUATION PROCESS. (a) DEFINITION.—For purposes of this section— (1) the term "facility" means a laboratory, operations office, administrative service center, or other establishment of the Administration; and (2) the term "field office" has the same meaning given that term in section 702 of the Weather Service Modernization Act.
 13 14 15 16 17 18 19 20 21 22 	 gress with its infulies. SEC. 212. FACILITY EVALUATION PROCESS. (a) DEFINITION.—For purposes of this section— (1) the term "facility" means a laboratory, operations office, administrative service center, or other establishment of the Administration; and (2) the term "field office" has the same meaning given that term in section 702 of the Weather Service Modernization Act. (b) PUBLIC NOTIFICATION AND ASSESSMENT PROC-
 13 14 15 16 17 18 19 20 21 22 23 	 gress with its findings. SEC. 212. FACILITY EVALUATION PROCESS. (a) DEFINITION.—For purposes of this section— (1) the term "facility" means a laboratory, operations office, administrative service center, or other establishment of the Administration; and (2) the term "field office" has the same meaning given that term in section 702 of the Weather Service Modernization Act. (b) PUBLIC NOTIFICATION AND ASSESSMENT PROCESS.—
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facility of the Administration, unless and until the
 Administrator has followed the procedures required
 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 de12 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 pro19 posed change and provided to the Administrator
20 written findings regarding the proposed change;

21 (C) if the proposed change involves a Na22 tional Weather Service field office, the Adminis23 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

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

4 (c) NATIONAL WEATHER SERVICE MODERNIZA5 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 the Senate, the Administrator shall simultaneously submit 16 17 a copy of the request to the Committee on Science and the Committee on Resources of the House of Representa-18 tives and the Committee on Commerce, Science, and 19 20Transportation of the Senate.

21 SEC. 214. BASELINES AND COST CONTROLS.

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

(1) the term "development" means the phase ofa program following the formulation phase and be-

ginning with the approval to proceed to implementa 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

(4) the term "major program" means an activity approved to proceed to implementation that has
an estimated life-cycle cost of more than
\$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 Representatives and the Committee on Commerce, 5 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

provided for it in the Baseline Report of the 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 notification under subsection (d)(2), the Administrator shall de-19 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 shall— 25

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2

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

(C) a description of, and the projected cost
 and schedule for, a broad range of alternatives
 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 development cost of a program will exceed the estimate provided 14 15 in the Baseline Report of the program by more than 30 percent, then, beginning 18 months after the date the Ad-16 17 ministrator transmits a report under section (e)(1), the 18 Administrator shall not expend any additional funds on the program, other than termination costs, unless the Con-19 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 subsection. If the program is continued, the Administrator 24 25 shall submit a new Baseline Report for the program no

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

4 SEC. 215. OFFSHORE PERFORMANCE OF CONTRACTS FOR
5 THE PROCUREMENT OF GOODS AND SERV6 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.—

(A) Except as provided in paragraph (3),
a contract for the procurement of goods or services that is entered into by the Administrator
may not be performed outside the United
States unless it is to meet a requirement of the
Administration for goods or services specifically
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 enact3 ment of this Act, a report on the contracts and sub4 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 in7 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

(2) the items and their dollar values for which
the Buy American Act was waived pursuant to obligations of the United States under international
agreements.

17 TITLE III—NATIONAL OCEAN 18 LEADERSHIP AND COORDINA19 TION

20 SEC. 301. NATIONAL OCEANS ADVISOR.

21 (a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established in the
Executive Office of the President a National Oceans
Advisor, who shall be appointed by the President, by
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.

(2) The Advisor may accept, employ, and termi nate voluntary and uncompensated services in fur 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—

(1) facilitate interagency coordination on Federal agency covered actions related to United States
ocean waters and marine ecosystem health and the
implementation of this Act;

(2) review and appraise the various programs
and activities of the Federal Government for consistency with the policy and standards set forth in section 101 and make recommendations to the President with respect thereto no later than 18 months
after the date of enactment of this Act;

(3) resolve interagency disputes regarding marine ecosystem health and in particular the implementation 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 necessary to help carry out the functions of the Committee. 11 12 (f) COORDINATION.—The Chair of the Council on 13 Environmental Quality and the National Oceans Advisor shall ensure appropriate coordination of the activities of 14 15 the Committee and other policy coordination structures relating to ocean or maritime issues. 16

(g) FUNDING.—Consistent with applicable law and
subject to the availability of appropriations, the Council
on Environmental Quality shall provide the funding, including through the Office of Environmental Quality and
administrative support for the Committee necessary to implement this section.

23 (h) Staff.—

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

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

3 (2) VOLUNTARY AND UNCOMPENSATED SERV4 ICES.—The Chair may accept, employ, and termi5 nate voluntary and uncompensated services in fur6 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 Act. Each such agency or department may cooperate with 11 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 Code) to the Committee, upon request of the Committee. 15 16 (j) FEDERAL ADVISORY COMMITTEE ACT.—

17 (1) IN GENERAL.—The Federal Advisory Com18 mittee Act (5 App. U.S.C.) shall not apply to the
19 Committee on Ocean Policy, or any of its sub20 committees formed in accordance with section
21 302(e).

(2) COMPLIANCE.—Notwithstanding paragraph
(1), the Committee and its subcommittees shall be
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;

(4) consider possible consolidation of oceanic or
 atmospheric programs, functions, services, or re sources within or among Federal agencies, if their
 consolidation would not undermine policy goals set
 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.

(a) ESTABLISHMENT.—There is established the
Council of Advisors on Oceans Policy (in this section referred to as the "Council"), which shall advise the President, the National Oceans Advisor, and the Committee on
Ocean Policy on policies to protect, maintain, and restore
the health of marine ecosystems on a regional and national
basis.

(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—

(1) be appointed based on their knowledge and
experience in coastal, ocean, and atmospheric
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.

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

6 (3) Large marine ecosystems are biogeographi7 cally distinct ecosystem units and provide an appro8 priate spatial scale for ecosystem-based regional
9 ocean governance.

(4) Because ecosystems do not align with political jurisdictions, regional ocean governance mechanisms must provide for cooperation and collaboration
within and among multiple levels of government, including local, State, tribal, and Federal governments.

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 mon22 itored.

23 (7) Additional funding and other resources are
24 necessary to promote regional coordination and col25 laboration and to implement regional solutions to

current and future ocean and coastal management
 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 appropriate States, in consultation with the Committee on 6 Ocean Policy, shall establish a Regional Ocean Partner-7 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—

(1) provide for more systematic communication,
collaboration, and integration of Federal and State
coastal and ocean environmental and resource management efforts;

16 (2) provide for regional ecosystem assessment
17 and information programs to guide management de18 cisions;

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

(4) provide for the creation of a strategic plan
for and implement adaptive, ecosystem-based management of coastal and ocean resources within ocean
regions, building on and complementing local, State,
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

Proclamation Number 5030, dated March 10, 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

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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 (\mathbf{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

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Proclamation Number 5030, dated March 10, 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

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Proclamation Number 5030, dated March 10, 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 es14 tablish such subregions, or geographically specified
15 management areas, as necessary for efficient and ef16 fective management of region-specific ecosystem
17 issues.

18 (c) Membership.—

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19 (1) FEDERAL REPRESENTATIVES.—

20 (A) IN GENERAL.—Within 90 days after
21 the date of the enactment of this Act, the Ad22 ministrator, in consultation with the Committee
23 on Ocean Policy, shall coordinate representa24 tives of the Federal Government to form each
25 Partnership. Such representatives shall be offi-

88

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

coastal policy or resource management to that Partnership.

(B) 3 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.

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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.

(4) REGIONAL FISHERIES MANAGEMENT COUNCIL REPRESENTATIVE.—The executive director of
each Regional Fishery Management Council having
jurisdiction over the ocean region of a Partnership
shall serve as a voting member of the Partnership,
and shall be considered a non-federal representative
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-

98

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 RE20 GIONAL OCEANS GOVERNANCE.

(a) STUDY REQUIRED.—Not later than 1 year after
enactment of this Act, the Administrator and the Committee on Ocean Policy shall enter into an arrangement
with the National Research Council of the National Academy of Sciences to carry out a study of existing regional

and ecosystem-based approaches to coastal and ocean gov 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 currently9 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 required by subsection (a), the National Research Council 14 15 may develop recommendations it considers appropriate and directly related to the subject matter of the study. 16 It is the sense of the Congress that the National Research 17 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 Pol25 icy, and each of the Regional Ocean Partnerships created

in section 402 by not later than one year after entering
 into the arrangement required by subsection (a), a final
 report on the study that includes all findings, conclusions,
 and recommendations. Upon receipt of the final report,
 each of the Regional Ocean Partnerships shall consider
 and integrate recommendations of the National Research
 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.

(f) RULE OF CONSTRUCTION.—This section shall not
be construed to affect section 402, except to advise on efficient structure and operation of the partnerships for the
most effective ecosystem-based management of resources
as practicable.

(g) FUNDING.—Of the amounts made available to the
National Oceanic and Atmospheric Administration pursuant to the authorization of appropriations, an appropriate
amount shall be available for carrying out the study required by this section.

103

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 systems, including the National Environmental Ob-10 11 servatory Network, will be more useful if fully integrated into resource information systems developed 12 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 man22 agement tool for onshore uses, including some Pa23 cific Coast watersheds, and they should now be ap24 plied to the ocean environment to facilitate eco25 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 repository of geophysical, atmospheric, ganized 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 re17 source information system may include—

18 (A) relevant historic or social science infor19 mation that may aid in the understanding of
20 ocean ecosystems or their management; and

(B) published and unpublished research,
data, and scientifically peer-reviewed analysis,
developed by State agencies, academic or scientific 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.

	107
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-

propriate regional ocean ecosystem resource informa 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.

(e) AUTHORIZATION OF APPROPRIATIONS.—For development and implementation of the ocean ecosystem resource information systems for ocean regions and other
waters under this section, there is authorized to be appropriated to the Administrator \$12,000,000 for each of the
fiscal years 2009 through 2018.

20 SEC. 406. REGULATIONS.

The Administrator shall issue such regulations as the
Administrator considers necessary to ensure proper administration 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.

(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a fund which
shall be known as the "Ocean and Great Lakes Conservation Trust Fund", in this title referred to as the "Fund".
In each fiscal year after fiscal year 2007, the Secretary
of the Treasury shall deposit into the Fund the following
amounts:

24 (1) GENERAL REVENUE.—An amount in each25 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
15 16	anic and Atmospheric Administration for purposes of making payments to coastal States only for car-
15 16 17	anic and Atmospheric Administration for purposes of making payments to coastal States only for car- rying out their responsibilities for developing and
15 16 17 18	anic and Atmospheric Administration for purposes of making payments to coastal States only for car- rying out their responsibilities for developing and implementing Regional Ocean Strategic Plans under
15 16 17 18 19	anic and Atmospheric Administration for purposes of making payments to coastal States only for car- rying out their responsibilities for developing and implementing Regional Ocean Strategic Plans under title IV—
15 16 17 18 19 20	anic and Atmospheric Administration for purposes of making payments to coastal States only for car- rying out their responsibilities for developing and implementing Regional Ocean Strategic Plans under title IV— (A) \$350,000,000 for fiscal year 2008;
15 16 17 18 19 20 21	anic and Atmospheric Administration for purposes of making payments to coastal States only for car- rying out their responsibilities for developing and implementing Regional Ocean Strategic Plans under title IV— (A) \$350,000,000 for fiscal year 2008; (B) \$700,000,000 for fiscal year 2009; and
15 16 17 18 19 20 21 22	anic and Atmospheric Administration for purposes of making payments to coastal States only for car- rying out their responsibilities for developing and implementing Regional Ocean Strategic Plans under title IV— (A) \$350,000,000 for fiscal year 2008; (B) \$700,000,000 for fiscal year 2009; and (C) \$1,000,000,000 for fiscal year 2010
15 16 17 18 19 20 21 22 23	anic and Atmospheric Administration for purposes of making payments to coastal States only for car- rying out their responsibilities for developing and implementing Regional Ocean Strategic Plans under title IV— (A) \$350,000,000 for fiscal year 2008; (B) \$700,000,000 for fiscal year 2009; and (C) \$1,000,000,000 for fiscal year 2010 and each fiscal year thereafter.
 15 16 17 18 19 20 21 22 23 24 	 anic and Atmospheric Administration for purposes of making payments to coastal States only for carrying out their responsibilities for developing and implementing Regional Ocean Strategic Plans under title IV— (A) \$350,000,000 for fiscal year 2008; (B) \$700,000,000 for fiscal year 2009; and (C) \$1,000,000,000 for fiscal year 2010 and each fiscal year thereafter. (2) To the Administrator for allocation, with

for carrying out responsibilities of the Federal Gov ernment for development and implementation of Re gional Ocean Strategic Plans required under title
 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 invest monies in the Fund (including interest), and in any 16 17 fund or account to which monies are transferred pursuant to subsection (b) of this section, in public debt securities 18 with maturities suitable to the needs of the Fund, as de-19 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 remain invested until needed to meet requirements for dis 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 appropria7 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 Committee on Ocean Policy, shall establish such rules regard-18 19 ing recordkeeping by State and local governments and the 20auditing 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.

114

3 (a) IN GENERAL.—It is the intent of the Congress in this Act that States not use this Act as an opportunity 4 5 to reduce State or local resources for the programs funded by this Act. Except as provided in subsection (b), no State 6 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 unless the Administrator is satisfied that such a grant will 14 be so used to supplement and, to the extent practicable, 15 increase the level of State, local, or other non-Federal 16 funds available for such program. 17

(b) EXCEPTION.—The Administrator may provide
funding under this Act to a State or local government not
meeting the requirements of subsection (a) if the Administrator determines that a reduction in expenditures—

(1) is attributable to a nonselective reduction in
expenditures for the programs of all executive
branch agencies of the State or local government; or
(2) is a result of reductions in State or local
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.

115

8 SEC. 505. COMMUNITY ASSISTANCE FORMULA AND PAY-9 MENTS.

10 (a) CONSERVATION PAYMENTS TO COASTAL11 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 the Administrator to perform the duties of the Ad-7 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 IV before the end of the fiscal year in which such 22 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 0.502 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. (B) RECOMPUTATION.—If 1 or more coast-8 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.

(c) PAYMENTS TO POLITICAL SUBDIVISIONS.—In the
case of a coastal State, the Governor of the State shall
hold 50 percent of the State's allocable share, as determined under subsection (b), in a State ocean grants fund.
The Governor or his designee shall award, on a competitive basis, grants to coastal political subdivisions of the

State from the State ocean grants fund only for activities
 relating to the development and implementation of feder ally approved Regional Ocean Strategic Plans that are
 consistent with the standard set forth in subsection
 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.

(a) DEVELOPMENT AND SUBMISSION OF REGIONAL
OCEAN STRATEGIC PLANS.—Each coastal State seeking
to receive grants under this title shall participate in the
development and implementation of Regional Ocean Strategic Plans under title IV.

(b) STANDARD GOVERNING THE EXPENDITURE OF
FUNDS.—All Funds disbursed to coastal States and political 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 standards24 set forth in section 101(b).

(c) SUBMISSION OF SPENDING PLAN.—Each coastal
 State seeking funding under this title shall submit annu ally to the Administrator a spending plan for funds pro vided under this title. In addition to such other require ments as the Administrator by regulation shall prescribe,
 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.

(2) A description of how funds provided under
this title will be used to meet the State's responsibilities to develop and implement the applicable Regional Ocean Strategic Plan.

(3) A description of how the funds provided
under this title will be used by coastal political subdivisions to develop and implement the applicable
Regional Ocean Strategic Plan.

(4) An analysis of how the funds provided
under this title to both coastal States and coastal
political subdivisions will be consistent with the
standard set forth in subsection 506(b).

(5) Certification by the Governor of the coastal
State that all the funds provided under this title to
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.

(3) AMENDMENT OR REVISION.—Any amend-10 11 ment to or revision of the plan shall be prepared in 12 accordance with the requirements of this subsection and shall be submitted to the Administrator for ap-13 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.

(4) PUBLIC COMMENT.—Before approving or
disapproving a spending plan of a State, amendment, or revision to a plan, the Administrator shall
provide for public comment on the State's proposed
expenditures for the forthcoming year.

23 SEC. 507. SPECIAL POSTAGE STAMP.

(a) IN GENERAL.—In order to afford a convenientway for members of the public to support efforts to pro-

tect, maintain, and restore marine ecosystems, the United
 States Postal Service shall provide for a special postage
 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 gov6 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.

(2) NUMERICAL LIMITATION.—For purposes of
applying any numerical limitation referred to in subsection (e)(1)(C) of section 416 of such title 39,
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.

124

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.

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Agenda Item C.4.a Attachment 3 September 2008

















Gulf of Mexico FMC

September 18, 2007

Honorable Don Young 2111 Rayburn HOB Washington, DC 20515

Dear Congressman Young:

Per your August 20, 2007 letter of request to each of the eight regional Council Chairs, we offer the following comments relative to proposed HR21. These comments carry the full support of all eight Regional Fishery Management Councils (Councils). Rather than a Titleby-Title assessment, we believe that stating our comments generally may provide a more useful response. While this legislation appears well-intended, and contains some potentially positive provisions (such as an organic act to formalize NOAA's structure, and a funding mechanism for marine resource management), we cannot support HR21 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 major provisions of HR21 (those which establish multiple layers of bureaucracies with potential regulatory authority over fisheries management) run counter to some of the key provisions of the recently amended Magnuson-Stevens Act, which was the result of several years of discussion and debate around many of the same issues being addressed in HR21.

While we do not directly manage all aspects of the marine environment, the regional Councils authorized under the Magnuson-Stevens Act currently engage in managing not only fisheries, but fishery interactions with habitat, marine mammals and seabirds, coastal communities and associated development, and numerous other aspects of the marine environment that collectively equate to an ecosystem-based management approach. Several of the Councils have developed, or are developing, Fishery Ecosystem Plans (FEPs) for the areas under their jurisdiction. 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 Magnuson-Stevens Act 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. Many of these were detailed in the April 2007 testimony of Mr. Jack Dunnigan, NOAA Assistant Administrator for the National Ocean Service, to the House Subcommittee on Fisheries, Wildlife, and Oceans. Collectively, these initiatives seem to constitute the general intent of HR21 relative to ecosystem-based management, but do so in deliberate, stepwise 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. HR21 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 HR21 can be summarized as follows:

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- 1. The proposed legislation creates several additional layers of bureaucracies and authorities, which could conflict with existing authorities and existing statutes. The recently reauthorized Magnuson-Stevens Act 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 HR21 is already being effected, through efforts of NOAA and the regional fishery management Councils to embrace a broader ecosystem approach to marine resource management. HR21 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 limited agency and Council 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, and create additional litigation fodder.
- 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 Magnuson-Stevens Act. 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 HR21, 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 HR21. 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 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. However, the scope of the proposed coordinated management regime for activities in federal waters must be clarified to ensure that NOAA Fisheries' and Councils' authorities to manage living marine resources will not be diminished under such a 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 HR21 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 proposed legislation. Please contact us if we can be of further assistance.

Sincerely,

¹ John Bundy, Acting Chair North Pacific Fishery Management Council

W. Peter Jensen, Chair Mid Atlantic Fishery Management Council

CON

Sean Martin, Chair Western Pacific Fishery Management Council

Eugenio Pineiro, Chair Caribbean Fishery Management Council

tim Tryphite

John'Pappalardo, Chair New England Fishery Management Council

milik Name

Donald K. Hansen, Chair Pacific Fishery Management Council

Young letter HR21 September 18, 2007 Page 4

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George Geiger, Chair South Atlantic Fishery Management Council

Wayne Swifte

Wayne Swingle, Executive Director Gulf of Mexico Fishery Management Council

CC: Senator Stevens, Senator Murkowski, Senator Murray, Senator Inouye, Senator Akaka, Senator Smith, Senator Wyden, Senator Boxer, Senator Feinstein

Dr. William Hogarth, NOAA Fisheries

Under Secretary, VADM Conrad Lautenbacher Jr., USN (ret.)

Dr. Jim Balsiger, NOAA Fisheries

Senator Cantwell - Senate subcommittees on Oceans, Atmosphere, Fisheries, and Coast Guard Congresswoman Bordallo – House Subcommittee on Fisheries, Wildlife and Oceans

Agenda Item C.4.a Attachment 4 September 2008



Pacific Fishery Management Council

7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384 Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | www.pcouncil.org Donald K. Hansen, Chairman Donald O. McIsaac, Executive Director

October 5, 2007

Honorable Don Young Ranking Republican Member, Committee on Natural Resources United States House of Representatives 2111 Rayburn HOB Washington, DC 20515

RE: PACIFIC FISHERY MANAGEMENT COUNCIL COMMENTS ON H.R. 21

Dear Congressman Young:

Thank you for your request for comments on H.R. 21 the *Oceans Conservation, Education, and National Strategy for the 21st Century Act.* The Pacific Fishery Management Council (Pacific Council) considered your request and reviewed H.R. 21 at our September 10-14, 2007 meeting in Portland, Oregon. The Pacific Council supports the shared position of the eight Regional Fishery Management Councils conveyed to you in the enclosed September 18, 2007 letter on H.R. 21 and also wishes to express a few unique additional comments.

In concert with many of the provisions of H.R. 21, the Pacific Council is supportive of furthering ecosystem-based principles in fishery management. In November 2006, the Pacific Council initiated funding contingent on development of an Ecosystem Fishery Management Plan (EFMP) that will incorporate ecosystem-based fishery management by serving as an "umbrella" plan over our four existing fishery management plans. The Pacific Council envisions the EFMP helping with coast-wide research planning and policy guidance, and creating a framework for status reports on the health of the West Coast's California Current Ecosystem. The plan envisioned by the Pacific Council would advance fishery management by introducing new theories, new scientific findings, and new authorities to the current process without creating additional bureaucracies. In undertaking this endeavor, the Pacific Council is building partnerships with existing authorities including the West Coast States, the National Marine Fisheries Service, the National Marine Sanctuary Program, and the Pacific States Marine Fisheries Commission.

The Pacific Council notes that H.R. 21, like the Magnuson-Stevens Fishery Conservation and Management Act (MSA), imposes higher standards on the monitoring, management, and conservation of internationally-managed species than many foreign fisheries are held to. Revising international fishery management was a focal point of the *Magnuson-Stevens Reauthorization Act of 2006*. The Pacific Council is currently working hard to implement theses and other new provisions of the MSA and feels it is under this authority that international fishery issues are best addressed. The Pacific Council feels duplicity and possible confusion in this area should be actively avoided by H.R. 21.

As you are aware, the lack of adequate funding is a frequent problem in managing our ocean resources and meeting the mandates of our existing laws governing our nation's marine resources. The Pacific Council recommends the U.S. Congress fully fund existing mandates under the MSA before funding the provisions in H.R. 21 that have been identified in the enclosed letter as potential conflicts with MSA.

Thank you again for providing the Pacific Council an opportunity to provide comments on H.R. 21. If you or your staff have any questions about this letter, please contact me or Mr. Mike Burner, the lead Staff Officer on this matter at 503-820-2280.

Sincerely,

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

Enclosure

MDB:rdd

c U.S. Congressman Joe Baca, (D-CA)

- U.S. Congressman Howard L. Berman, (D-CA)
- U.S. Congressman Earl Blumenauer, (D-OR)
- U.S. Congresswoman Madeleine Z. Bordallo, (D-GU)
- U.S. Congresswoman Lois Capps, (D-CA)
- U.S. Congressman Jim Costa, (D-CA)
- U.S. Congresswoman Susan A. Davis, (D-CA)
- U.S. Congressman Peter A. DeFazio, (D-OR)
- U.S. Congresswoman Anna G. Eshoo, (D-CA)
- U.S. Congressman Sam Farr, (D-CA)
- U.S. Congressman Bob Filner, (D-CA)
- U.S. Congressman Elton Gallegly, (R-CA)
- U.S. Congressman Michael M. Honda, (D-CA)
- U.S. Congressman Jay Inslee, (D-WA)
- U.S. Congressman Tom Lantos, (D-CA)
- U.S. Congresswoman Barbara Lee (D-CA)
- U.S. Congresswoman Zoe Lofgren (D-CA)
- U.S. Congresswoman Doris O. Matsui, (D-CA)
- U.S. Congressman Jerry McNerney, (D-CA)
- U.S. Congressman George Miller, (D-CA)
- U.S. Congresswoman Grace F. Napolitano, (D-CA)
- U.S. Congressman Kevin McCarthy, (R-CA)
- U.S. Congresswoman Cathy McMorris Rodgers, (R-WA)
- U.S. Congresswoman Nancy Pelosi, (D-CA)

U.S. Congresswoman Lucille Roybal-Allard, (D-CA)

U.S. Congressman Bill Sali, (R-ID)

U.S. Congresswoman Linda Sanchez, (D-CA)

U.S. Congresswoman Loretta Sanchez, (D-CA)

U.S. Congressman Brad Sherman, (D-CA)

U.S. Congresswoman Hilda L. Solis, (D-CA)

U.S. Congressman Fortney Pete Stark, (D-CA)

U.S. Congresswoman Ellen Tauscher, (D-CA)

U.S. Congressman Mike Thompson, (D-CA)

U.S. Congressman Henry A. Waxman, (D-CA)

U.S. Congresswoman Lynn C. Woolsey, (D-CA)

U.S. Senator Barbara Boxer, (D-CA)

U.S. Senator Maria Cantwell, (D-WA)

U.S. Senator Dianne Feinstein, (D-CA)

U.S. Senator Patty Murray, (D-WA)

U.S. Senator Gordon H. Smith, (R-OR)

U.S. Senator Ron Wyden, (D-OR)

Pacific Fishery Management Council Members

Regional Fishery Management Council Executive Directors

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National Marine Sanctuaries Act

Title 16, Chapter 32, Sections 1431 et seq. United States Code As amended by Public Law 106-513, November 2000

SEC. 301. [16 U.S.C. 1431] FINDINGS, PURPOSES, AND POLICIES; ESTABLISHMENT OF SYSTEM	1
SEC. 302. [16 U.S.C. 1432] DEFINITIONS	2
SEC. 303. [16 U.S.C. 1433] SANCTUARY DESIGNATION STANDARDS	3
SEC. 304. [16 U.S.C. 1434] PROCEDURES FOR DESIGNATION AND IMPLEMENTATION	4
SEC. 305. [16 U.S.C. 1435] APPLICATION OF REGULATIONS; INTERNATIONAL NEGOTIATIONS	
AND COOPERATION	9
SEC. 306. [16 U.S.C. 1436] PROHIBITED ACTIVITIES	9
SEC. 307. [16 U.S.C. 1437] ENFORCEMENT	.10
SEC. 308. [16 U.S.C. 1439] REGULATIONS	. 13
SEC. 309. 16 U.S.C. 1440 RESEARCH, MONITORING, AND EDUCATION	. 13
SEC. 310, 16 U.S.C. 1441 SPECIAL USE PERMITS.	. 14
SEC. 311. [16 U.S.C. 1442] COOPERATIVE AGREEMENTS, DONATIONS, AND ACQUISITIONS	. 15
SEC. 312. [16 U.S.C. 1443] DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES	S
	. 15
SEC. 313. [16 U.S.C. 1444] AUTHORIZATION OF APPROPRIATIONS	. 17
SEC. 314. [16 U.S.C. 1445] U.S.S. MONITOR ARTIFACTS AND MATERIALS	. 17
SEC. 315 [16 U.S.C. 1445a] ADVISORY COUNCILS.	. 18
SEC. 316 [16 U.S.C. 1445b] ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES	. 19
SEC. 317 [16 U.S.C. 1445nt] SHORT TITLE	.20
SEC. 318 [16 [15 C. 1445c] DR. NANCY FOSTER SCHOLARSHIP PROGRAM	.20
DEC. JIGTIO C.D.C. ITTJOLDN. INNINCT TODIEN DOTOMINUM TROOM MILLING AND	

SEC. 301. [16 U.S.C. 1431] FINDINGS, PURPOSES, AND POLICIES; ESTABLISHMENT OF SYSTEM

- (a) FINDINGS.—The Congress finds that—
 - (1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark;
 - (2) certain areas of the marine environment possess conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or esthetic qualities which give them special national, and in some cases international, significance;
 - (3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment; and
 - (4) a Federal program which establishes areas of the marine environment which have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities as national marine sanctuaries managed as the National Marine Sanctuary System will—
 - (A) improve the conservation, understanding, management, and wise and sustainable use of marine resources;
 - (B) enhance public awareness, understanding, and appreciation of the marine environment; and
 - (C) maintain for future generations the habitat, and ecological services, of the natural assemblage of living resources that inhabit these areas.
- (b) PURPOSES AND POLICIES.—The purposes and policies of this chapter are-
 - (1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System;
 - (2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;
 - (3) to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes;
 - (4) to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System;
 - (5) to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas;
 - (6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;
 - (7) to develop and implement coordinated plans for the protection and management of these

areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

- (8) to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and
- (9) to cooperate with global programs encouraging conservation of marine resources.
- (c) ESTABLISHMENT OF SYSTEM.—There is established the National Marine Sanctuary System, which shall consist of national marine sanctuaries designated by the Secretary in accordance with this chapter.

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

As used in this chapter, the term-

- (1) "draft management plan" means the plan described in section 1434(a)(1)(C)(v) of this title;
- (2) "Magnuson-Stevens Act" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);
- (3) "marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law;
- (4) "Secretary" means the Secretary of Commerce;
- (5) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States;
- (6) "damages" includes----
 - (A) compensation for-
 - (i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and (II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or
 - (ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;
 - (B) the cost of damage assessments under section 1443(b)(2) of this title;
 - (C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;
 - (D) the cost of curation and conservation of archeological, historical, and cultural sanctuary resources; and
 - (E) the cost of enforcement actions undertaken by the Secretary in response to the destruction or loss of, or injury to, a sanctuary resource;
- (7) "response costs" means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the

imminent risks of such destruction, loss, or injury, including costs related to seizure, forfeiture, storage, or disposal arising from liability under section 1443 of this title;

- (8) "sanctuary resource" means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary; and
- (9) "exclusive economic zone" means the exclusive economic zone as defined in the Magnuson-Stevens Act; and
- (10) "System" means the National Marine Sanctuary System established by section 1431 of this title.

SEC. 303. [16 U.S.C. 1433] SANCTUARY DESIGNATION STANDARDS

- (a) STANDARDS.—The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that—
 - (1) the designation will fulfill the purposes and policies of this chapter;
 - (2) the area is of special national significance due to—
 - (A) its conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities;
 - (B) the communities of living marine resources it harbors; or
 - (C) its resource or human-use values;
 - (3) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;
 - (4) designation of the area as a national marine sanctuary will facilitate the objectives stated in paragraph (3); and
 - (5) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.
- (b) FACTORS AND CONSULTATIONS REQUIRED IN MAKING DETERMINATIONS AND FINDINGS.—
 - (1) FACTORS.—For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a) of this section, the Secretary shall consider—
 - (A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;
 - (B) the area's historical, cultural, archaeological, or paleontological significance;
 - (C) the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;
 - (D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);
 - (E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and

policies of this chapter;

- (F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;
- (G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;
- (H) the negative impacts produced by management restrictions on incomegenerating activities such as living and nonliving resources development;
- (I) the socioeconomic effects of sanctuary designation;
- (J) the area's scientific value and value for monitoring the resources and natural processes that occur there;
- (K) the feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses; and
- (L) the value of the area as an addition to the System.
- (2) CONSULTATION.—In making determinations and findings, the Secretary shall consult with—-
 - (A) the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;
 - (B) the Secretaries of State, Defense, Transportation, and the Interior, the Administrator, and the heads of other interested Federal agencies;
 - (C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;
 - (D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson-Stevens Act (16 U.S.C. 1852) that may be affected by the proposed designation; and
 - (E) other interested persons.

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

- (a) SANCTUARY PROPOSAL.—
 - (1) NOTICE.—In proposing to designate a national marine sanctuary, the Secretary shall-
 - (A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;
 - (B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and
 - (C) no later than the day on which the notice required under subparagraph (A) is submitted to the Office of the Federal Register, submit a copy of that notice and the draft sanctuary designation documents prepared pursuant to paragraph (2), including an executive summary, to the Committee on Resources of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Governor of each State in which any part of the proposed sanctuary would be located.

National Marine Sanctuaries Act

- (2) SANCTUARY DESIGNATION DOCUMENTS.—The Secretary shall prepare and make available to the public sanctuary designation documents on the proposal that include the following:
 - (A) A draft environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
 - (B) A resource assessment that documents—
 - present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, governmental, or recreational uses;
 - (ii) after consultation with the Secretary of the Interior, any commercial, governmental, or recreational resource uses in the areas that are subject to the primary jurisdiction of the Department of the Interior; and
 - (iii) information prepared in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, on any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary. Public disclosure by the Secretary of such information shall be consistent with national security regulations.
 - (C) A draft management plan for the proposed national marine sanctuary that includes the following:
 - (i) The terms of the proposed designation.
 - (ii) Proposed mechanisms to coordinate existing regulatory and management authorities within the area.
 - (iii) The proposed goals and objectives, management responsibilities, resource studies, and appropriate strategies for managing sanctuary resources of the proposed sanctuary, including interpretation and education, innovative management strategies, research, monitoring and assessment, resource protection, restoration, enforcement, and surveillance activities.
 - (iv) An evaluation of the advantages of cooperative State and Federal management if all or part of the proposed sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.).
 - (v) An estimate of the annual cost to the Federal Government of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education.
 - (vi) The proposed regulations referred to in paragraph (1)(A).
 - (D) Maps depicting the boundaries of the proposed sanctuary.
 - (E) The basis for the determinations made under section 1433(a) of this title with respect to the area.
 - (F) An assessment of the considerations under section 1433(b)(1) of this title.
- (3) PUBLIC HEARING.—No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national

marine sanctuary for the purpose of receiving the views of interested parties.

- (4) TERMS OF DESIGNATION.—The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The terms of designation may be modified only by the same procedures by which the original designation is made.
- FISHING REGULATIONS .- The Secretary shall provide the appropriate Regional Fishery (5) Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.
- (6) COMMITTEE ACTION.—After receiving the documents under subsection (a)(1)(C) of this section, the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the documents. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the documents, either Committee issues a report concerning matters addressed in the documents, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.
- (b) TAKING EFFECT OF DESIGNATIONS.-
 - (1) NOTICE.—In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published.

No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6) of this section. The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless, in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

- (2) WITHDRAWAL OF DESIGNATION.—If the Secretary considers that actions taken under paragraph (1) will affect the designation of a national marine sanctuary in a manner that the goals and objectives of the sanctuary or System cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not certified under paragraph (1) shall take effect.
- (3) PROCEDURES.—In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(6) of this section and paragraph (1) of this subsection—
 - (A) continuity of session is broken only by an adjournment of Congress sine die; and
 - (B) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.
- (c) ACCESS AND VALID RIGHTS.-
 - (1) Nothing in this chapter shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.
 - (2) The exercise of a lease, permit, license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.
- (d) INTERAGENCY COOPERATION.---
 - (1) REVIEW OF AGENCY ACTIONS.—
 - (A) IN GENERAL.—Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Secretary.
 - (B) AGENCY STATEMENTS REQUIRED.—Subject to any regulations the Secretary may establish each Federal agency proposing an action described in subparagraph (A) shall provide the Secretary with a written statement describing the action and its potential effects on sanctuary resources at the earliest practicable time, but in no case later than 45 days before the final approval of the action unless such Federal agency and the Secretary agree to a different schedule.
 - (2) SECRETARY'S RECOMMENDED ALTERNATIVES.—If the Secretary finds that a Federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall (within 45 days of receipt of complete information on the proposed agency action) recommend reasonable and prudent alternatives, which may include conduct of the action elsewhere, which can be taken by the Federal agency in

implementing the agency action that will protect sanctuary resources.

- (3) RESPONSE TO RECOMMENDATIONS.—The agency head who receives the Secretary's recommended alternatives under paragraph (2) shall promptly consult with the Secretary on the alternatives. If the agency head decides not to follow the alternatives, the agency head shall provide the Secretary with a written statement explaining the reasons for that decision.
- (4) FAILURE TO FOLLOW ALTERNATIVE.—If the head of a Federal agency takes an action other than an alternative recommended by the Secretary and such action results in the destruction of, loss of, or injury to a sanctuary resource, the head of the agency shall promptly prevent and mitigate further damage and restore or replace the sanctuary resource in a manner approved by the Secretary.
- (e) REVIEW OF MANAGEMENT PLANS.—Not more than five years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding five years, the Secretary shall evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques and strategies, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this chapter. This review shall include a prioritization of management objectives.
- (f) LIMITATION ON DESIGNATION OF NEW SANCTUARIES.-
 - (1) FINDING REQUIRED.—The Secretary may not publish in the Federal Register any sanctuary designation notice or regulations proposing to designate a new sanctuary, unless the Secretary has published a finding that—
 - (A) the addition of a new sanctuary will not have a negative impact on the System; and
 - (B) sufficient resources were available in the fiscal year in which the finding is made to -
 - (i) effectively implement sanctuary management plans for each sanctuary in the System; and
 - (ii) complete site characterization studies and inventory known sanctuary resources, including cultural resources, for each sanctuary in the System within 10 years after the date that the finding is made if the resources available for those activities are maintained at the same level for each fiscal year in that 10 year period.
 - DEADLINE.—If the Secretary does not submit the findings required by paragraph (1) before February 1, 2004, the Secretary shall submit to the Congress before October 1, 2004, a finding with respect to whether the requirements of subparagraphs (A) and (B) of paragraph (1) have been met by all existing sanctuaries.
 - (3) LIMITATION ON APPLICATION.—Paragraph (1) does not apply to any sanctuary designation documents for—
 - (A) a Thunder Bay National Marine Sanctuary; or
 - (B) a Northwestern Hawaiian Islands National Marine Sanctuary.

SEC. 305. [16 U.S.C. 1435] APPLICATION OF REGULATIONS; INTERNATIONAL NEGOTIATIONS AND COOPERATION

- (a) REGULATIONS.—This chapter and the regulations issued under section 1434 of this title shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—
 - (1) generally recognized principles of international law;
 - (2) an agreement between the United States and the foreign state of which the person is a citizen; or
 - (3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.
- (b) NEGOTIATIONS.—The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.
- (c) INTERNATIONAL COOPERATION.—The Secretary, in consultation with the Secretary of State and other appropriate Federal agencies, shall cooperate with other governments and international organizations in furtherance of the purposes and policies of this chapter and consistent with applicable regional and mutilateral arrangements for the protection and management of special marine areas.

SEC. 306. [16 U.S.C. 1436] PROHIBITED ACTIVITIES

It is unlawful for any person to-

- (1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;
- (2) possess, sell, offer for sale, purchase, import, export, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;
- (3) interfere with the enforcement of this chapter by-
 - (A) refusing to permit any officer authorized to enforce this chapter to board a vessel, other than a vessel operated by the Department of Defense or United States Coast Guard, subject to such person's control for the purposes of conducting any search or inspection in connection with the enforcement of this chapter;
 - (B) resisting, opposing, impeding, intimidating, harassing, bribing, interfering with, or forcibly assaulting any person authorized by the Secretary to implement this chapter or any such authorized officer in the conduct of any search or inspection performed under this chapter; or
 - (C) knowingly and willfully submitting false information to the Secretary or any officer authorized to enforce this chapter in connection with any search or inspection conducted under this chapter; or
- (4) violate any provision of this chapter or any regulation or permit issued pursuant to this

chapter.

SEC. 307. [16 U.S.C. 1437] ENFORCEMENT

- (a) IN GENERAL.—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this chapter.
- (b) POWERS OF AUTHORIZED OFFICERS.—Any person who is authorized to enforce this chapter may—
 - (1) board, search, inspect, and seize any vessel suspected of being used to violate this chapter or any regulation or permit issued under this chapter and any equipment, stores, and cargo of such vessel;
 - (2) seize wherever found any sanctuary resource taken or retained in violation of this chapter or any regulation or permit issued under this chapter;
 - (3) seize any evidence of a violation of this chapter or of any regulation or permit issued under this chapter;
 - (4) execute any warrant or other process issued by any court of competent jurisdiction;
 - (5) exercise any other lawful authority; and
 - (6) arrest any person, if there is reasonable cause to believe that such person has committed an act prohibited by section 1436(3) of this title.
- (c) CRIMINAL OFFENSES.—
 - (1) OFFENSES.—A person is guilty of an offense under this subsection if the person commits any act prohibited by section 1436(3) of this title.
 - (2) PUNISHMENT.—Any person that is guilty of an offense under this subsection—
 - (A) except as provided in subparagraph (B), shall be fined under title 18, imprisoned for not more than 6 months, or both; or
 - (B) in the case of a person who in the commission of such an offense uses a dangerous weapon, engages in conduct that causes bodily injury to any person authorized to enforce this chapter or any person authorized to implement the provisions of this chapter, or places any such person in fear of imminent bodily injury, shall be fined under title 18, imprisoned for not more than 10 years, or both.
- (d) CIVIL PENALTIES.—
 - (1) CIVIL PENALTY.—Any person subject to the jurisdiction of the United States who violates this chapter or any regulation or permit issued under this chapter shall be liable to the United States for a civil penalty of not more than \$100,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.
 - (2) NOTICE.—No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.
 - (3) IN REM JURISDICTION.—A vessel used in violating this chapter or any regulation or permit issued under this chapter shall be liable in rem for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having

jurisdiction over the vessel.

- (4) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order.
- (5) COLLECTION OF PENALTIES.—If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.
- (6) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.
- (e) FORFEITURE.-
 - (1) IN GENERAL.—Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this chapter or of any regulation or permit issued under this chapter shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 1443 of this title. None of those proceeds shall be subject to set-off.
 - (2) APPLICATION OF THE CUSTOMS LAWS.—The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this chapter.
 - (3) DISPOSAL OF SANCTUARY RESOURCES.—Any sanctuary resource seized pursuant to this chapter may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.
 - (4) PRESUMPTION.—For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this chapter or of any regulation or permit issued under this chapter were taken or retained in violation of this chapter or of a regulation or permit issued under this chapter.
- (f) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.-
 - (1) EXPENDITURES.—
 - (A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title

42.

- (B) Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in connection with a violation of this chapter or any regulation or permit issued under this chapter.
- (C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to—
 - (i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;
 - (ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this chapter or any regulation or permit issued under this chapter; and
 - (iii) manage and improve any other national marine sanctuary.
- (2) LIABILITY FOR COSTS.—Any person assessed a civil penalty for a violation of this chapter or of any regulation or permit issued under this chapter, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.
- (g) SUBPOENAS.—In the case of any hearing under this section which is determined on the record in accordance with the procedures provided for under section 554 of title 5, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, electronic files, and documents, and may administer oaths.
- (h) USE OF RESOURCES OF STATE AND OTHER FEDERAL AGENCIES.—The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.
- (i) COAST GUARD AUTHORITY NOT LIMITED.—Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14.
- (j) INJUNCTIVE RELIEF.—If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 1443 of this title, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.
- (k) AREA OF APPLICATION AND ENFORCEABILITY.—The area of application and enforceability of this chapter includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law.

(1) NATIONWIDE SERVICE OF PROCESS.—In any action by the United States under this chapter, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

SEC. 308. [16 U.S.C. 1439] REGULATIONS

The Secretary may issue such regulations as may be necessary to carry out this chapter.

SEC. 309. [16 U.S.C. 1440] RESEARCH, MONITORING, AND EDUCATION

- (a) IN GENERAL.—The Secretary shall conduct, support, or coordinate research, monitoring, evaluation, and education programs consistent with subsections (b) and (c) of this section and the purposes and policies of this chapter.
- (b) RESEARCH AND MONITORING.—
 - (1) IN GENERAL.—The Secretary may—
 - support, promote, and coordinate research on, and long-term monitoring of, sanctuary resources and natural processes that occur in national marine sanctuaries, including exploration, mapping, and environmental and socioeconomic assessment;
 - (B) develop and test methods to enhance degraded habitats or restore damaged, injured, or lost sanctuary resources; and
 - (C) support, promote, and coordinate research on, and the conservation, curation, and public display of, the cultural, archeological, and historical resources of national marine sanctuaries.
 - (2) AVAILABILITY OF RESULTS.—The results of research and monitoring conducted, supported, or permitted by the Secretary under this subsection shall be made available to the public.
- (c) EDUCATION.-
 - (1) IN GENERAL.—The Secretary may support, promote, and coordinate efforts to enhance public awareness, understanding, and appreciation of national marine sanctuaries and the System. Efforts supported, promoted, or coordinated under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries and the System.
 - (2) EDUCATIONAL ACTIVITIES.—Activities under this subsection may include education of the general public, teachers, students, national marine sanctuary users, and ocean and coastal resource managers.
- (d) INTERPRETIVE FACILITIES.-
 - (1) IN GENERAL.—The Secretary may develop interpretive facilities near any national marine sanctuary.
 - (2) FACILITY REQUIREMENT.—Any facility developed under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries by providing the public with information about the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities of the national marine sanctuary.

(e) CONSULTATION AND COORDINATION.—In conducting, supporting, and coordinating research, monitoring, evaluation, and education programs under subsection (a) of this section and developing interpretive facilities under subsection (d) of this section, the Secretary may consult or coordinate with Federal, interstate, or regional agencies, States or local governments.

SEC. 310. [16 U.S.C. 1441] SPECIAL USE PERMITS

- (a) ISSUANCE OF PERMITS.—The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary—
 - (1) to establish conditions of access to and use of any sanctuary resource; or
 - (2) to promote public use and understanding of a sanctuary resource.
- (b) PUBLIC NOTICE REQUIRED.—The Secretary shall provide appropriate public notice before identifying any category of activity subject to a special use permit under subsection (a) of this section.
- (c) PERMIT TERMS.—A permit issued under this section—
 - (1) shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;
 - (2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;
 - (3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and
 - (4) shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

(d) FEES.—

- (1) ASSESSMENT AND COLLECTION.—The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.
- (2) AMOUNT.—The amount of a fee under this subsection shall be equal to the sum of—
 - (A) costs incurred, or expected to be incurred, by the Secretary in issuing the permit;
 - (B) costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and
 - (C) an amount which represents the fair market value of the use of the sanctuary resource.
- (3) USE OF FEES.—Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary—
 - (A) for issuing and administering permits under this section; and
 - (B) for expenses of managing national marine sanctuaries.
- (4) WAIVER OR REDUCTION OF FEES.—The Secretary may accept in-kind contributions in lieu of a fee under paragraph (2)(C), or waive or reduce any fee assessed under this subsection for any activity that does not derive profit from the access to or use of

National Marine Sanctuaries Act

sanctuary resources.

- (e) VIOLATIONS.—Upon violation of a term or condition of a permit issued under this section, the Secretary may—
 - suspend or revoke the permit without compensation to the permittee and without liability to the United States;
 - (2) assess a civil penalty in accordance with section 1437 of this title; or
 - (3) both.
- (f) REPORTS.—Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.
- (g) FISHING.—Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

SEC. 311. [16 U.S.C. 1442] COOPERATIVE AGREEMENTS, DONATIONS, AND ACQUISITIONS

- (a) AGREEMENTS AND GRANTS.—The Secretary may enter into cooperative agreements, contracts, or other agreements with, or make grants to, States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of this chapter.
- (b) AUTHORIZATION TO SOLICIT DONATIONS.—The Secretary may enter into such agreements with any nonprofit organization authorizing the organization to solicit private donations to carry out the purposes and policies of this chapter.
- (c) DONATIONS.—The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this chapter. Donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States.
- ACQUISITIONS.—The Secretary may acquire by purchase, lease, or exchange, any land, facilities, or other property necessary and appropriate to carry out the purposes and policies of this chapter.
- (e) USE OF RESOURCES OF OTHER GOVERNMENT AGENCIES.—The Secretary may, whenever appropriate, enter into an agreement with a State or other Federal agency to use the personnel, services, or facilities of such agency on a reimbursable or nonreimbursable basis, to assist in carrying out the purposes and policies of this chapter.
- (f) AUTHORITY TO OBTAIN GRANTS.—Notwithstanding any other provision of law that prohibits a Federal agency from receiving assistance, the Secretary may apply for, accept, and use grants from other Federal agencies, States, local governments, regional agencies, interstate agencies, foundations, or other persons, to carry out the purposes and policies of this chapter.

SEC. 312. [16 U.S.C. 1443] DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES

(a) LIABILITY .---

- (1) LIABILITY TO UNITED STATES.—Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for an amount equal to the sum of—
 - (A) the amount of response costs and damages resulting from the destruction, loss, or injury; and
 - (B) interest on that amount calculated in the manner described under section 2705 of title 33.
- (2) LIABILITY IN REM.—Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.
- (3) DEFENSES.—A person is not liable under this subsection if that person establishes that—
 - (A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;
 - (B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or
 - (C) the destruction, loss, or injury was negligible.
- (4) LIMITS TO LIABILITY.—Nothing in sections 181 to 188 of title 46, Appendix, or section 192 of title 46, Appendix, shall limit the liability of any person under this chapter.
- (b) RESPONSE ACTIONS AND DAMAGE ASSESSMENT.—
 - (1) RESPONSE ACTIONS.—The Secretary may undertake or authorize all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.
 - (2) DAMAGE ASSESSMENT.—The Secretary shall assess damages to sanctuary resources in accordance with section 1432(6) of this title.
- (c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAMAGES.—
 - (1) The Attorney General, upon request of the Secretary, may commence a civil action against any person or vessel who may be liable under subsection (a) of this section for response costs and damages. The Secretary, acting as trustee for sanctuary resources for the United States, shall submit a request for such an action to the Attorney General whenever a person may be liable for such costs or damages.
 - (2) An action under this subsection may be brought in the United States district court for any district in which—
 - (A) the defendant is located, resides, or is doing business, in the case of an action against a person;
 - (B) the vessel is located, in the case of an action against a vessel; or
 - (C) the destruction of, loss of, or injury to a sanctuary resource occurred.
- (d) USE OF RECOVERED AMOUNTS.—Response costs and damages recovered by the Secretary under this section shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title 42, and used as follows:

- (1) RESPONSE COSTS.—Amounts recovered by the United States for costs of response actions and damage assessments under this section shall be used, as the Secretary considers appropriate—
 - (A) to reimburse the Secretary or any other Federal or State agency that conducted those activities; and
 - (B) after reimbursement of such costs, to restore, replace, or acquire the equivalent of any sanctuary resource.
- (2) OTHER AMOUNTS.—All other amounts recovered shall be used, in order of priority—
 - (A) to restore, replace, or acquire the equivalent of the sanctuary resources that were the subject of the action, including for costs of monitoring and the costs of curation and conservation of archeological, historical, and cultural sanctuary resources;
 - (B) to restore degraded sanctuary resources of the national marine sanctuary that was the subject of the action, giving priority to sanctuary resources and habitats that are comparable to the sanctuary resources that were the subject of the action; and
 - (C) to restore degraded sanctuary resources of other national marine sanctuaries.
- (3) FEDERAL-STATE COORDINATION.—Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A) and (B) in accordance with the court decree or settlement agreement and an agreement entered into by the Secretary and the Governor of that State.
- (e) STATUTE OF LIMITATIONS.—An action for response costs or damages under subsection (c) of this section shall be barred unless the complaint is filed within 3 years after the date on which the Secretary completes a damage assessment and restoration plan for the sanctuary resources to which the action relates.

SEC. 313. [16 U.S.C. 1444] AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to the Secretary-

- (1) to carry out this chapter—
 - (A) \$32,000,000 for fiscal year 2001;
 - (B) \$34,000,000 for fiscal year 2002;
 - (C) \$36,000,000 for fiscal year 2003;
 - (D) \$38,000,000 for fiscal year 2004;
 - (E) \$40,000,000 for fiscal year 2005; and
- (2) for construction projects at national marine sanctuaries, \$6,000,000 for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

SEC. 314. [16 U.S.C. 1445] U.S.S. MONITOR ARTIFACTS AND MATERIALS

(a) CONGRESSIONAL POLICY.—In recognition of the historical significance of the wreck of the United States ship Monitor to coastal North Carolina and to the area off the coast of North Carolina known as the Graveyard of the Atlantic, the Congress directs that a suitable display of artifacts and materials from the United States ship Monitor be maintained permanently at an appropriate site in coastal North Carolina.

- (b) DISCLAIMER.—This section shall not affect the following:
 - (1) RESPONSIBILITIES OF SECRETARY.—The responsibilities of the Secretary to provide for the protection, conservation, and display of artifacts and materials from the United States ship Monitor.
 - (2) AUTHORITY OF SECRETARY.—The authority of the Secretary to designate the Mariner's Museum, located at Newport News, Virginia, as the principal museum for coordination of activities referred to in paragraph (1).

SEC. 315. [16 U.S.C. 1445A] ADVISORY COUNCILS

- (a) ESTABLISHMENT.—The Secretary may establish one or more advisory councils (in this section referred to as an "Advisory Council") to advise and make recommendations to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act.
- (b) MEMBERSHIP.—Members of the Advisory Councils may be appointed from among—
 - (1) persons employed by Federal or State agencies with expertise in management of natural resources;
 - (2) members of relevant Regional Fishery Management Councils established under section 1852 of this title; and
 - (3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.
- (c) LIMITS ON MEMBERSHIP.—For sanctuaries designated after November 4, 1992, the membership of Advisory Councils shall be limited to no more than 15 members.
- (d) STAFFING AND ASSISTANCE.—The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.
- (e) PUBLIC PARTICIPATION AND PROCEDURAL MATTERS.—The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:
 - (1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.
 - (2) Emergency meetings may be held at the call of the chairman or presiding officer.
 - (3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register, except that in the case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register.
 - (4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

National Marine Sanctuaries Act

SEC. 316. [16 U.S.C. 1445B] ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES

- (a) AUTHORITY.—The Secretary may establish a program consisting of—
 - (1) the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries or the System;
 - (2) the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;
 - (3) the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;
 - (4) the authorization by the Secretary of the manufacture, reproduction, or other use of any symbol published under paragraph (1), including the sale of items bearing such a symbol, by official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;
 - (5) the creation, marketing, and selling of products to promote the national marine sanctuary program, and entering into exclusive or nonexclusive agreements authorizing entities to create, market or sell on the Secretary's behalf;
 - (6) the solicitation and collection by the Secretary of monetary or in-kind contributions from official sponsors for the manufacture, reproduction or use of the symbols published under paragraph (1);
 - (7) the retention of any monetary or in-kind contributions collected under paragraphs (5) and (6) by the Secretary; and
 - (8) the expenditure and use of any monetary and in-kind contributions, without appropriation, by the Secretary to designate and manage national marine sanctuaries. Monetary and in-kind contributions raised through the sale, marketing, or use of symbols and products related to an individual national marine sanctuary shall be used to support that sanctuary.
- (b) CONTRACT AUTHORITY.—The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (a) of this section.
- (c) RESTRICTIONS.—The Secretary may restrict the use of the symbols published under subsection (a) of this section, and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.
- (d) PROPERTY OF UNITED STATES.—Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (a) of this section is deemed to be the property of the United States.
- (e) PROHIBITED ACTIVITIES.—It is unlawful for any person—
 - (1) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;

- (2) to represent himself or herself to be an official sponsor absent a designation by the Secretary;
- to manufacture, reproduce, or otherwise use any symbol adopted by the Secretary under subsection (a)(1) of this section, including to sell any item bearing such a symbol, unless authorized by the Secretary under subsection (a)(4) of this section or subsection (f) of this section; or
- (4) to violate any regulation promulgated by the Secretary under this section.
- (f) COLLABORATIONS.—The Secretary may authorize the use of a symbol adopted by the Secretary under subsection (a)(1) of this section by any person engaged in a collaborative effort with the Secretary to carry out the purposes and policies of this chapter and to benefit a national marine sanctuary or the System.
- (g) AUTHORIZATION FOR NON-PROFIT PARTNER ORGANIZATION TO SOLICIT SPONSORS.
 - (1) IN GENERAL.—The Secretary may enter into an agreement with a non-profit partner organization authorizing it to assist in the administration of the sponsorship program established under this section. Under an agreement entered into under this paragraph, the Secretary may authorize the non-profit partner organization to solicit persons to be official sponsors of the national marine sanctuary system or of individual national marine sanctuaries, upon such terms as the Secretary deems reasonable and will contribute to the successful administration of the sanctuary system. The Secretary may also authorize the non-profit partner organization to collect the statutory contribution from the sponsor, and, subject to paragraph (2), transfer the contribution to the Secretary.
 - (2) REIMBURSEMENT FOR ADMINISTRATIVE COSTS.—Under the agreement entered into under paragraph (1), the Secretary may authorize the non-profit partner organization to retain not more than 5 percent of the amount of monetary contributions it receives from official sponsors under the agreement to offset the administrative costs of the organization in soliciting sponsors.
 - (3) PARTNER ORGANIZATION DEFINED.—In this subsection, the term "partner organization" means an organization that—
 - (A) draws its membership from individuals, private organizations, corporations, academic institutions, or State and local governments; and
 - (B) is established to promote the understanding of, education relating to, and the conservation of the resources of a particular sanctuary or 2 or more related sanctuaries.

SEC. 317. [16 U.S.C. 1445NT] SHORT TITLE

This title may be cited as the "The National Marine Sanctuaries Act".

SEC. 318 [16 U.S.C. 1445C] DR. NANCY FOSTER SCHOLARSHIP PROGRAM

(a) ESTABLISHMENT.—The Secretary shall establish and administer through the National Ocean Service the Dr. Nancy Foster Scholarship Program. Under the program, the Secretary shall award graduate education scholarships in oceanography, marine biology or maritime archeology, to be known as Dr. Nancy Foster Scholarships. National Marine Sanctuaries Act

- (b) PURPOSES.—The purposes of the Dr. Nancy Foster Scholarship Program are—
 - (1) to recognize outstanding scholarship in oceanography, marine biology, or maritime archeology, particularly by women and members of minority groups; and
 - (2) to encourage independent graduate level research in oceanography, marine biology, or maritime archeology.
- (c) AWARD.—Each Dr. Nancy Foster Scholarship—
 - (1) shall be used to support graduate studies in oceanography, marine biology, or maritime archeology at a graduate level institution of higher education; and
 - (2) shall be awarded in accordance with guidelines issued by the Secretary.
- (d) DISTRIBUTION OF FUNDS.—The amount of each Dr. Nancy Foster Scholarship shall be provided directly to a recipient selected by the Secretary upon receipt of certification that the recipient will adhere to a specific and detailed plan of study and research approved by a graduate level institution of higher education.
- (e) FUNDING.—Of the amount available each fiscal year to carry out this chapter, the Secretary shall award 1 percent as Dr. Nancy Foster Scholarships.
- (f) SCHOLARSHIP REPAYMENT REQUIREMENT.—The Secretary shall require an individual receiving a scholarship under this section to repay the full amount of the scholarship to the Secretary if the Secretary determines that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship.
- (g) MARITIME ARCHEOLOGY DEFINED.—In this section the term "maritime archeology" includes the curation, preservation, and display of maritime artifacts.

Ι

^{110TH CONGRESS} 2D SESSION H.R.6537

To reauthorize and amend the National Marine Sanctuaries Act to establish a National Marine Sanctuary System, to strengthen and clarify management authorities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2008

Ms. BORDALLO (for herself, Ms. ROS-LEHTINEN, Mr. KILDEE, Mr. FALEOMAVAEGA, Mr. ABERCROMBIE, Mr. FARR, Ms. WOOLSEY, Mrs. CHRISTENSEN, Ms. LEE, Mr. FORTUÑO, Ms. HIRONO, and Mr. KLEIN of Florida) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

- To reauthorize and amend the National Marine Sanctuaries Act to establish a National Marine Sanctuary System, to strengthen and clarify management authorities, 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 "Sanctuary Enhance-5 ment Act of 2008".

1 SEC. 2. REFERENCES.

Except as otherwise expressly provided, whenever in
this Act an amendment or repeal is expressed in terms
of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to such
section or other provision of the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.).

8 SEC. 3. CLARIFICATION OF FINDINGS, PURPOSES, AND 9 POLICIES.

10 (a) FINDINGS.—Section 301(a) (16 U.S.C. 1431(a))
11 is amended—

(1) by redesignating paragraphs (3) and (4) as
paragraphs (5) and (6), respectively, and by inserting after paragraph (2) the following:

15 "(3) the marine environment consists of numer-16 ous ecoregions and ecosystems, the boundaries of 17 which are based on geomorphologic and oceano-18 graphic processes and the distribution of living and 19 nonliving resources in the marine environment;

20 "(4) scientific research has confirmed the value
21 of protected areas in the ocean, which serve to—

22 "(A) increase the number, biomass, den23 sity, and diversity of living resources both in24 side and outside the protected areas;

25 "(B) maintain ecosystems that are resist-26 ant and resilient to a variety of environmental

threats such as global climate change, pollution,
coastal development, habitat alteration, and
overfishing; and
"(C) create spillover and export of eggs,
larvae, and juvenile and adult fish, shellfish,
and plants which can repopulate adjacent
areas;"; and
(2) in paragraph (6) (as so redesignated) by
striking "managed" and inserting "and manages
them, together with marine national monuments,".
(b) Purposes and Policies.—Section 301(b) (16
U.S.C. 1431(b)) is amended to read as follows:
"(b) PURPOSES AND POLICIES.—The purposes and
policies of this title are—
"(1) to identify and designate as national ma-
rine sanctuaries areas of the marine environment
that are of special national significance;
((2) to manage the System with the primary
purpose being the long-term protection and con-
servation of the living and nonliving resources of the
System;
"(3) to include within the System areas that
collectively represent the full range of the Nation's
marine ecoregions, ecological communities and
unique habitats, and diverse maritime heritage re sources;

3 "(4) to provide authority for comprehensive and 4 coordinated protection, conservation, and adaptive 5 management of the System, and the activities there-6 in affecting the System, in a manner that supports 7 ecosystem-based management and recognizes exist-8 ing regulatory authorities and uncertainties in our 9 scientific understanding of the marine environment;

"(5) to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and recover
natural habitats, populations, and ecological processes;

15 "(6) to enhance public awareness, under16 standing, appreciation, and sustainable use of the
17 marine environment, and the natural, historical, cul18 tural, and archeological resources of the System;

"(7) to support, promote, and coordinate scientific research on, and long-term monitoring of, the
resources of the System;

"(8) to the extent compatible with the primary
purpose of resource protection, to allow the regulated public and private uses of the resources of the

System that are not prohibited pursuant to this title
 or other authorities;

3 "(9) to develop and implement coordinated 4 plans for the protection and management of areas in 5 the System with appropriate Federal agencies, State 6 and local governments, Indian tribes, Regional Fish-7 ery Management Councils, and international organi-8 zations, and other public and private stakeholders 9 concerned with the continuing health and resilience 10 of the System;

11 "(10) to create models of, and incentives for, 12 ways to conserve and manage System resources, in-13 cluding the application of adaptive or innovative 14 management techniques, such as the utilization of 15 zoning or other temporal or spatial strategies, in-16 cluding use of marine reserves; and

17 "(11) to cooperate with global programs en-18 couraging conservation of marine resources.".

19 SEC. 4. COMPONENTS AND MISSION OF NATIONAL MARINE
20 SANCTUARY SYSTEM.

21 Section 301(c) (16 U.S.C. 1431(c)) is amended to22 read as follows:

23 "(c) ESTABLISHMENT AND MISSION OF NATIONAL24 MARINE SANCTUARY SYSTEM.—

1	"(1) ESTABLISHMENT.—There is established
2	the National Marine Sanctuary System, which shall
3	be managed by the Secretary through the Office of
4	National Marine Sanctuaries and consist of—
5	"(A) national marine sanctuaries des-
6	ignated by the Secretary in accordance with
7	this title or authorized or established by an Act
8	of Congress; and
9	"(B) marine national monuments.
10	"(2) MISSION.—The mission of the System is
11	to protect, conserve, preserve, restore, and recover
12	the biodiversity, ecological integrity, and cultural
13	legacy of the living and nonliving resources within
14	the System for the benefit of present and future
15	generations.".
16	SEC. 5. AMENDMENTS TO DEFINITIONS.
17	(a) IN GENERAL.—Section 302 (16 U.S.C. 1432) is
18	amended by striking "and" after the semicolon at the end
19	of paragraph (9), by striking the period at the end of para-
20	graph (10) and inserting a semicolon, and by adding at
21	the end the following new paragraphs:
22	"(11) 'Indian tribe' has the same meaning
23	given that term in section 4 of the Indian Self-De-
24	termination and Education Assistance Act (25
25	U.S.C. 450b);

1	"(12) 'marine ecoregion' means a large area of
2	the marine environment that contains a geographi-
3	cally distinct assemblage of natural communities
4	that—
5	"(A) share a large majority of their species
6	and ecological processes;
7	"(B) share similar environmental condi-
8	tions; and
9	"(C) interact ecologically in ways that are
10	critical for their long-term persistence;
11	"(13) 'marine national monument' means a na-
12	tional monument or any portion thereof established
13	by the President pursuant to the Act of June 8,
14	1906 (chapter 3060; 16 U.S.C. 431), popularly
15	known as the Antiquities Act of 1906, that is—
16	"(A) assigned as a management responsi-
17	bility of the Secretary; and
18	"(B) managed as a unit within the System;
19	"(14) 'maritime heritage resource' means any
20	shipwreck or other site or object that is of archae-
21	ological, historical, or cultural significance found in,
22	on, or under the seabed of the marine environment
23	of the United States; and
24	"(15) 'System resource' means any living or
25	nonliving resource of the System that contributes to

1	the conservation, recreational, ecological, historical,
2	educational, cultural, archeological, scientific, or aes-
3	thetic value of the System.".
4	(b) Conforming Amendments.—Such section is
5	further amended—
6	(1) by striking "sanctuary resource" each place
7	it appears and inserting "System resource";
8	(2) by striking "sanctuary resources" each
9	place it appears and inserting "System resources";
10	and
11	(3) in section $302(6)(C)$ (16 U.S.C. 1432) by
12	striking "resources," and inserting "System re-
13	sources;".
13 14	sources;". SEC. 6. LIVING AND NONLIVING RESOURCE CLASSIFICA-
13 14 15	SOURCES;". SEC. 6. LIVING AND NONLIVING RESOURCE CLASSIFICA- TION, IDENTIFICATION, AND INVENTORY.
 13 14 15 16 	sources;". SEC. 6. LIVING AND NONLIVING RESOURCE CLASSIFICA- TION, IDENTIFICATION, AND INVENTORY. Section 303 (16 U.S.C. 1433) is amended by adding
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 13 14 15 16 17 18 19 20 21 22 23 	sources;". SEC. 6. LIVING AND NONLIVING RESOURCE CLASSIFICA- TION, IDENTIFICATION, AND INVENTORY. Section 303 (16 U.S.C. 1433) is amended by adding at the end the following new subsections: "(c) LIVING AND NONLIVING RESOURCE CLASSI- FICATION, IDENTIFICATION, AND INVENTORY.— "(1) IN GENERAL.—The Secretary shall pre- pare an ecological classification of the Nation's ma- rine environment and an identification of maritime heritage resources, and maintain and update such

ecoregions and maritime heritage resources under
 the jurisdiction of the United States.

3 (2)Methodologies and guidelines.— 4 Within 12 months after the date of enactment of 5 this subsection, the Secretary, in consultation with 6 other Federal agencies, coastal states, Indian tribes, 7 Regional Fishery Management Councils and other regional organizations, and other nongovernmental 8 9 scientific, professional, conservation, archaeological, 10 and cultural resource organizations, and other advi-11 sors with relevant expertise and data as the Sec-12 retary considers necessary, shall develop and adopt 13 appropriate methodologies and guidelines for the fol-14 lowing:

"(A) CLASSIFICATION OF ECOREGIONS.—
Classification of specific marine ecoregions, including ecological subunits, and identification of
nationally significant marine resources and biological communities therein, based upon the
best available scientific information.

21 "(B) MARITIME HERITAGE RESOURCE
22 IDENTIFICATION.—Identification of nonliving
23 submerged archaeological, historical, and cul24 tural resources, in a manner that—

"(i) is consistent with other relevant 1 2 Federal and State laws and regulations and utilize to the greatest extent prac-3 4 ticable existing information; and "(ii) allows for the Secretary to with-5 6 hold such information if the public release 7 of such information could threaten or jeop-8 ardize the long-term protection, preserva-9 tion, conservation, or stewardship of any 10 maritime heritage resource. 11 "(3) REPORT.—Within three years after the 12 date of enactment of this section, the Secretary shall 13 submit a report to the Congress that includes— 14 "(A) charts, maps, and other scientific, ar-15 chaeological, historical, hydrographic, geo-16 graphic, ecological, biological, oceanographic, or 17 other information that classify or identify with-18 in the exclusive economic zone, in accordance 19 with the guidelines and methodologies adopted 20 under paragraph (2)— "(i) all marine ecoregions; and 21 22 "(ii) maritime heritage resource areas; 23 "(B) identification of areas of the marine 24 environment of the exclusive economic zone that

could not be classified due to a lack of scientific

1	data necessary to meet the methodology and
2	guidelines developed under paragraph (2)(A);
3	and
4	"(C) other relevant information the Sec-
5	retary considers necessary to identify and de-
6	scribe marine ecoregions and marine heritage
7	resource areas of the exclusive economic zone.
8	"(4) Report Revisions.—The Secretary
9	shall—
10	"(A) provide for the regular review and re-
11	assessment of the classification methodologies
12	and guidelines and identification of marine
13	ecoregions and maritime heritage resource
14	areas; and
15	"(B) based upon new scientific information
16	and analysis, submit to Congress revised re-
17	ports as the Secretary determines necessary.
18	"(d) Site Selection Report and List.—
19	"(1) IN GENERAL.—No later than one year
20	after the date of submittal of the report required
21	under subsection (c), the Secretary, in consultation
22	with other Federal agencies, States, Indian tribes,
23	Regional Fishery Management Councils, academic,
24	scientific, professional or conservation, organiza-
25	tions, and other stakeholders, shall issue a report

1	identifying discrete areas of the marine environment
2	within the territorial waters of the United States
3	that the Secretary may consider for potential des-
4	ignation as marine sanctuaries. The report shall in-
5	clude—
6	"(A) sites representing the spectrum of
7	various classifications of marine ecoregions,
8	subunits, biological communities, and habitats;
9	"(B) sites representing maritime heritage
10	resource areas;
11	"(C) the best available scientific, archae-
12	ological, historical, and other information re-
13	garding the status and condition of marine re-
14	sources that would benefit from designation as
15	a national marine sanctuary; and
16	"(D) a site selection list that identifies and
17	justifies priority sites for active consideration
18	by the Secretary for designation as national
19	marine sanctuaries pursuant to this section and
20	section 304.
21	"(2) UPDATES.—The Secretary shall update
22	the site selection list under paragraph (1)(D) no
23	later than five years after the date of publication of
24	the initial report required under this subsection and
25	every five years thereafter.

1 "(e) System Expansion Goal.—In order to fulfill 2 the purposes of this title, the Secretary shall strive to 3 achieve the goal of including in the System by 2030, that 4 number of sites that will incorporate a full range of the 5 Nation's marine ecoregions and rare and unique marine habitats, and a full range of maritime heritage resource 6 7 areas. The Secretary shall report to the Congress on 8 progress toward this goal, with such explanation as may 9 be necessary and appropriate, no later than January 15 10 of 2011 and of every second year thereafter.".

11 SEC. 7. REVISIONS TO DESIGNATION PROCEDURES.

(a) FISHING REGULATIONS.—Section 304 (16 U.S.C.
13 1434) is amended in subsection (a) by striking paragraph
14 (5) and inserting the following:

15 "(5) FISHING REGULATIONS.—If the Secretary 16 determines that it is necessary to regulate any fish-17 ing activities within a proposed sanctuary to meet 18 the mission of the System and the purposes under 19 this title, the Secretary shall include in the sanc-20 tuary designation documents under paragraph (2) 21 regulations for such activities, that are—

22 "(A) compatible with the purposes of the23 sanctuary;

24 "(B) compatible with the mission of the25 System and the purposes of this title; and

1	"(C) approved or prepared by the Sec-
2	retary in accordance with section 308(b).".
3	(b) DEADLINES.—Section 304 (16 U.S.C. 1434) is
4	amended—
5	(1) in subsection (a)(6), in the second sentence,
6	by striking "forty-five day period of continuous ses-
7	sion of Congress" and inserting "60-calendar-day
8	period";
9	(2) in subsection $(b)(1)$ —
10	(A) in the third sentence, by "30 months"
11	and inserting "24 months"; and
12	(B) in the fifth sentence, by striking
13	"forty-five days of continuous session of Con-
14	gress" and inserting "60 calendar days"; and
15	(3) by striking subsection $(b)(3)$.
16	(c) Effectiveness of Designation.—Section
17	304(b)(2) (16 U.S.C. 1434(b)(2)) is amended by inserting
18	"as unacceptable" after "not certified".
19	(d) Review of Management Plans.—Section 304
20	(16 U.S.C. 1434) is further amended—
21	(1) by striking subsections (c) and (d), and re-
22	designating subsection (e) as subsection (c); and
23	(2) in subsection (c) (as so redesignated)—
24	(A) in the first sentence—

 (\mathbf{A})

1	(i) by striking "five years" the first
2	place it appears and inserting "seven
3	years"; and
4	(ii) by striking "five years" the second
5	place it appears and inserting "ten years";
6	(B) in the first sentence, by inserting "or
7	marine national monument" after "sanctuary";
8	and
9	(C) by amending the second sentence to
10	read as follows: "This review shall include a
11	prioritization of management objectives, and a
12	review, in consultation with the appropriate Re-
13	gional Fishery Management Councils, States
14	and Indian tribes, regarding the impacts of
15	fishing activities on other System resources and
16	the adequacy and effectiveness of fishing regu-
17	lations within the sanctuary or marine national
18	monument.".
19	(e) Repeal of Limitation on Designation of
20	New National Marine Sanctuaries.—Section 304(f)
21	(16 U.S.C. 1434(f)) is repealed.
22	SEC. 8. INTERNATIONAL NEGOTIATIONS.
23	Section $305(b)$ (16 U.S.C. $1435(b)$) is amended by
24	striking "any national marine sanctuary and to promote

the purposes for which the sanctuary is established" and

inserting "any unit within the System and to promote the
 purposes for which the unit is established. In the case of
 a jointly managed Marine National Monument, the Sec retary of State shall also consult with any other Federal
 or non-Federal government agencies and officials that are
 co-trustees for such Marine National Monument.".

7 SEC.9. CLARIFYING PROHIBITED ACTIVITIES AND8STRENGTHENING ENFORCEMENT.

9 (a) PROHIBITED ACTIVITIES.—Section 306 (16
10 U.S.C. 1436) is amended—

(1) by striking paragraph (1) and inserting thefollowing:

13 "(1) destroy, cause the loss of, or injure any
14 System resource managed under law or regulations
15 for a sanctuary or marine national monument;";

16 (2) in paragraph (2) by striking "sanctuary re17 source" and inserting "System resource";

18 (3) in paragraph (3)(C)—

19 (A) by striking "knowingly and willfully";20 and

(B) by inserting after "title" the second
place it appears the following: "or any false information in a report or a permit application
submitted pursuant to regulations adopted
under section 308".

1	(4) by striking "or" after the semicolon at the
2	end of paragraph $(3)(C)$, by striking the period at
3	the end of paragraph (4) and inserting ": or", and
4	by adding at the end the following:
5	"(5) in any area administered as part of the
6	System—
7	"(A) directly discharge into a sanctuary or
8	marine national monument sewage effluent or
9	solid waste resulting from less than secondary
10	treatment, other than—
11	"(i) fish, fish parts, and chumming
12	materials resulting from, and while con-
13	ducting otherwise lawful, fishing activities;
14	or
15	"(ii) biodegradable effluents or mate-
16	rials incidental to vessel use and mainte-
17	nance that comply with otherwise applica-
18	ble Federal standards;
19	"(B) disturb or remove maritime heritage
20	resources;
21	"(C) explore for, lease, develop, produce, or
22	extract mineral resources;
23	"(D) disturb, construct on, or alter the
24	seabed, including—

1	"(i) engaging in bottom trawling in a
2	sanctuary designated before January 1,
3	2009, unless the Secretary has determines
4	that such activity can be conducted in a
5	manner that does not violate paragraph
6	(1); and
7	"(ii) engaging in bottom trawling in a
8	sanctuary designated on or after that date;
9	"(E) release toxic or hazardous materials;
10	"(F) detonate explosives; or
11	"(G) intentionally introduce or release non-
12	native species.".
13	(b) Strengthening Enforcement.—Section 307
14	(16 U.S.C. 1437) is amended—
15	(1) in subsection $(b)(2)$ by striking "sanctuary
15 16	(1) in subsection (b)(2) by striking "sanctuary resource" and inserting "System resource";
15 16 17	 (1) in subsection (b)(2) by striking "sanctuary resource" and inserting "System resource"; (2) in subsection (c)(1)—
15 16 17 18	 (1) in subsection (b)(2) by striking "sanctuary resource" and inserting "System resource"; (2) in subsection (c)(1)— (A) by inserting "(other than a foreign
15 16 17 18 19	 (1) in subsection (b)(2) by striking "sanctuary resource" and inserting "System resource"; (2) in subsection (c)(1)— (A) by inserting "(other than a foreign government or any entity of such a govern-
 15 16 17 18 19 20 	 (1) in subsection (b)(2) by striking "sanctuary resource" and inserting "System resource"; (2) in subsection (c)(1)— (A) by inserting "(other than a foreign government or any entity of such a government)" after "A person"; and
 15 16 17 18 19 20 21 	 (1) in subsection (b)(2) by striking "sanctuary resource" and inserting "System resource"; (2) in subsection (c)(1)— (A) by inserting "(other than a foreign government or any entity of such a government)" after "A person"; and (B) by inserting "knowingly" after "if the
 15 16 17 18 19 20 21 22 	 (1) in subsection (b)(2) by striking "sanctuary resource" and inserting "System resource"; (2) in subsection (c)(1)— (A) by inserting "(other than a foreign government or any entity of such a government)" after "A person"; and (B) by inserting "knowingly" after "if the person";
 15 16 17 18 19 20 21 22 23 	 (1) in subsection (b)(2) by striking "sanctuary resource" and inserting "System resource"; (2) in subsection (c)(1)— (A) by inserting "(other than a foreign government or any entity of such a government)" after "A person"; and (B) by inserting "knowingly" after "if the person"; (3) in subsection (c)(2) by striking "6 months"

1	(4) in subsection (d)(1) by striking " $$100,000$ "
2	and inserting "\$250,000";
3	(5) in subsection $(e)(1)$ by striking "sanctuary
4	resource" and inserting "System resource";
5	(6) in subsection (e)(3) by striking "(3) DIS-
6	POSAL OF SANCTUARY RESOURCES.—Any sanctuary
7	resource" and inserting "(3) DISPOSAL OF SYSTEM
8	RESOURCES.—Any System resource";
9	(7) in subsection $(e)(4)$ by inserting "or System
10	resources" after "sanctuary resources"; and
11	(8) in subsection (j) by striking "sanctuary re-
12	source" each place it appears and inserting "System
13	resource".
14	SEC. 10. CONSOLIDATION OF REGULATIONS.
15	Section 308 (16 U.S.C. 1439) is amended to read as
16	follows:
17	"SEC. 308. REGULATIONS.
18	"(a) IN GENERAL.—The Secretary may issue such
19	regulations as may be necessary to carry out this title.
20	Such regulations may apply to—
21	"(1) a national marine sanctuary;
22	"(2) a marine national monument; or
23	"(3) the System.
24	"(b) FISHING REGULATIONS.—

1 "(1) IN GENERAL.—If the Secretary determines 2 that regulations for fishing activities are necessary 3 for the designation of a new sanctuary or to manage 4 fishing activities within an existing or proposed 5 sanctuary or a marine national monument, if appli-6 cable under the terms of its designation by the 7 President, to protect System resources, the Sec-8 retary shall notify and request the appropriate Re-9 gional Fishery Management Council (in this sub-10 section referred to as the 'Council') to prepare such 11 draft regulations for fishing activities within the 12 boundaries (or proposed boundaries) of such sanc-13 tuary or monument. 14 "(2) ACTION BY THE COUNCIL.— 15 "(A) COUNCIL SUBMISSION.—Within the 16 180-day period beginning on the date of notifi-17 cation by the Secretary, the Council shall sub-18 mit to the Secretary— 19 "(i) draft fishing regulations for the 20 proposed sanctuary or existing sanctuary 21 or marine national monument; or 22 "(ii) a determination that regulations 23 for fishing activities within the proposed 24 sanctuary or existing sanctuary or marine

national monument are not necessary.

"(B) EXTENSION OF DEADLINE.—Upon a written request by the Council, the Secretary may grant one extension of time for the submission under subparagraph (A), if the Secretary determines that exigent circumstances will prevent the Council from completing its work within the period referred to in that subparagraph. The extension shall be for a period that does not exceed 90 days.

10 "(C) COUNCIL PROCEDURE AND STAND-11 ARDS FOR PREPARING DRAFT FISHING REGULA-12 TIONS.—In preparing draft fishing regulations 13 under this section, the Council shall comply 14 with the Secretary's request and utilize estab-15 lished administrative procedures to prepare 16 fishery management plans that are consistent 17 and compatible with the purposes of a proposed 18 national marine sanctuary designation, or the 19 management plans for an existing sanctuary or 20 marine national monuments, as applicable, the 21 mission of the System, and the purposes and 22 policies of this title.

23 "(3) Actions by the secretary.—

24 "(A) TECHNICAL ASSISTANCE.—Upon the
25 request of the Council, the Secretary may pro-

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1	vide technical assistance to the Council to clar-
2	ify and expedite procedures, coordinate reviews
3	with other Federal agencies, and provide sci-
4	entific and technical expertise.
5	"(B) REVIEW OF COUNCIL SUBMISSION.—
6	Within 60 days after receiving a response from
7	the Council in accordance with paragraph (2),
8	the Secretary shall—
9	"(i) determine if the response ful-
10	fills—
11	"(I) the management objectives
12	of the proposed sanctuary or the ex-
13	isting sanctuary or marine national
14	monument;
15	"(II) the mission of the System;
16	and
17	"(III) the purposes of this title;
18	and
19	"(ii) provide in writing to the Council
20	an explanation of the factors that contrib-
21	uted to this determination.
22	"(C) Approval by the secretary.—If
23	the Secretary determines that the Council's re-
24	sponse is sufficient to meet the criteria under
25	subparagraph (A), the Secretary shall accept

1	the Council's draft fishing regulations and issue
2	them as proposed regulations under this title.
3	"(D) DISAPPROVAL BY THE SECRETARY.—
4	If the Secretary determines that the Council's
5	response under paragraph (2) insufficient to
6	meet the criteria under subparagraph (B)(i), or
7	if the Council fails to submit a response in ac-
8	cordance with paragraph (2), the Secretary
9	shall prepare any necessary regulations for fish-
10	ing activities in a proposed sanctuary or exist-
11	ing sanctuary or marine national monument
12	under this title.
13	"(4) Amendments to fishing regula-
14	TIONS.—Any amendments to regulations affecting
15	fishing activities within the System shall be drafted,
16	approved, and issued in the same manner as the
17	original regulations.
18	"(5) Cooperation and consultation with
19	OTHER FISHERY MANAGEMENT ENTITIES.—The Sec-
20	retary and the Councils shall cooperate and consult
21	with other appropriate State fishery management
22	authorities and Indian tribes with rights or respon-

sibilities within a proposed sanctuary or an existingsanctuary or marine national monument at the ear-

1	liest practicable stage when drafting any fishery reg-
2	ulations under this subsection.
3	"(c) Access and Valid Rights.—
4	"(1) PREEXISTING RIGHTS.—Nothing in this
5	title shall be construed as terminating or granting to
6	the Secretary the right to terminate any valid lease,
7	permit, license, or right of subsistence use or access
8	that is in existence on the date of designation of any
9	sanctuary.
10	"(2) EXERCISE OF RIGHTS.—The exercise of
11	rights or authorities within the System under a
12	lease, permit, license, or right is subject to regula-
13	tion by the Secretary consistent with the mission of
14	the System and the purposes of this title.".
15	SEC. 11. RESEARCH AND MONITORING.
16	(a) Research and Monitoring, Generally.—
17	Section $309(b)(1)$ (16 U.S.C. $1440(b)(1)$) is amended—
18	(1) in subparagraph (A)—
19	(A) by striking "sanctuary resources" and
20	inserting "System resources"; and
21	(B) by inserting "or marine national
22	monuments" after "national marine sanc-
23	tuaries'';
24	(2) in subparagraph (B), by striking "sanctuary
25	resources" and inserting "System resources"; and

(3) in subparagraph (C), by striking "resources 1 2 of national marine sanctuaries" and inserting "mari-3 time heritage resources of the System". 4 (b) LIMITATION ON RELEASE OF RESULTS.—Section 5 309(b)(2) (16 U.S.C. 1440(b)(2)) is amended to read as 6 follows: 7 "(2) AVAILABILITY OF INFORMATION.— "(A) AVAILABILITY OF RESULTS.—The re-8

9 sults of research and monitoring conducted,
10 supported, or permitted by the Secretary under
11 this subsection shall be made available to the
12 public, unless such information is protected
13 from public disclosure under any other provi14 sion of law or is withheld pursuant to subpara15 graph (B).

"(B) AUTHORITY TO WITHHOLD CERTAIN 16 17 INFORMATION.—The Secretary may withhold 18 from disclosure to the public information de-19 scribed in subparagraph (A), if the Secretary— "(i) determines that such disclosure to 20 21 the public may result in the destruction, 22 loss of, or injury to any System resource; 23 and

1	"(ii) specifies who may have access to
2	the information for the purpose of imple-
3	menting this title.".
4	(c) Education.—Section 309(c) (16 U.S.C.
5	1440(c)) is amended—
6	(1) in paragraph (1) —
7	(A) in the first sentence, by inserting ",
8	marine national monuments," after "national
9	marine sanctuaries"; and
10	(B) in the second sentence, by striking
11	"national marine sanctuaries and"; and
12	(2) in paragraph (2), by inserting "or marine
13	national monument" after "national marine sanc-
14	tuary".
15	(d) INTERPRETIVE FACILITIES.—Section 309(d) (16
16	U.S.C. 1440(d)) is amended—
17	(1) in paragraph (1) , by inserting "or marine
18	national monument" after "national marine sanc-
19	tuary"; and
20	(2) in paragraph (2)—
21	(A) by inserting "or marine national
22	monument" after "national marine sanctuary";
23	and
24	(B) by striking "the national marine sanc-
25	tuary" and inserting "the System".

AGENCY COOPERATION.

27

3 (a) IN GENERAL.—Section 310 (16 U.S.C. 1441) is
4 amended to read as follows:

5 "SEC. 310. PERMITS.

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6 "(a) IN GENERAL.—The Secretary may allow for the 7 conduct of activities that would otherwise be prohibited 8 by this title, other than activities prohibited under sub-9 paragraph (B), (C), (E), (F), or (G) of section 306(5), 10 or regulations issued under this title through, in accord-11 ance with such regulations, the issuance of—

12 "(1) special use permits for the conduct of con13 cession or commercial-oriented activities dependent
14 on System resources; or

15 "(2) general use permits for other activities.

16 "(b) FINDINGS REQUIRED.—The Secretary may not
17 issue a permit under this section for a proposed activity
18 unless the Secretary finds that—

"(1) the proposed activity is compatible with—
"(A) the mission of the System and the
purposes and policies of this title; and
"(B) the purposes for which the applicable
unit of the System was designated or established;

1 "(2) there is no practicable alternative to con-2 ducting the activity within or over the applicable 3 unit of the System; 4 "(3) the proposed activity will promote sustain-5 able public use and increase public understanding 6 and appreciation of System resources; and "(4) the proposed activity will cause no neg-7 8 ligible or irreversible harm to any System resource. 9 "(c) TERMS AND CONDITIONS.—The Secretary shall impose reasonable terms and conditions on activities con-10 11 ducted under a permit issued under this section to ensure 12 protection of System resources and to fulfill the mission 13 of the System and the purposes and policies under this 14 title. 15 "(d) Special Use Permits.— "(1) IN GENERAL.—A special use permit issued 16 17 under subsection (a)(1)— 18 "(A) shall authorize the conduct of an ac-19 tivity only if that activity is compatible with the 20 purposes for which the sanctuary or marine na-21 tional monument is designated and with protec-22 tion of sanctuary resources or System resource; 23 "(B) shall not authorize the conduct of any 24 activity for a period of more than 5 years un-25 less renewed by the Secretary;

1	"(C) shall require that activities carried
2	out under the permit be conducted in a manner
3	that does not destroy, cause the loss of, or in-
4	jure sanctuary resources or System resources;
5	and
6	"(D) shall require the permittee to—
7	"(i) purchase and maintain com-
8	prehensive general liability insurance, or
9	post an equivalent bond, against claims
10	arising out of activities conducted under
11	the permit; and
12	"(ii) agree to hold the United States
13	harmless against such claims.
14	"(2) TERMS AND CONDITIONS.—The Secretary
15	shall include in a special use permit under sub-
16	section $(a)(1)$ that authorizes the conduct of a spe-
17	cific activity such terms and conditions as the Sec-
18	retary determines to be necessary for access to and
19	use of any sanctuary resource or System resource
20	under the permit.
21	"(3) PUBLIC NOTICE AND COMMENT RE-
22	QUIRED.—The Secretary shall provide appropriate
23	public notice before identifying any category of activ-
24	ity subject to a special use permit under subsection

1	(a)(1), and shall allow for adequate opportunity for
2	public comment on permit applications.
3	"(e) FEES.—
4	"(1) Assessment and collection.—The Sec-
5	retary may assess and collect fees for the conduct of
6	any activity under a permit issued under this sec-
7	tion.
8	"(2) AMOUNT.—The amount of a fee under this
9	subsection shall be equal to the sum of—
10	"(A) costs incurred, or expected to be in-
11	curred, by the Secretary in issuing the permit;
12	"(B) costs incurred, or expected to be in-
13	curred, by the Secretary as a direct result of
14	the conduct of the activity for which the permit
15	is issued, including costs of monitoring the con-
16	duct of the activity; and
17	"(C) an amount that represents the fair
18	market value of the use of the System resource
19	concerned, if applicable in the context of the
20	permitted use.
21	"(3) Use of fees.—Amounts collected by the
22	Secretary in the form of fees under this section shall
23	be used by the Secretary—
24	"(A) for issuing and administering permits
25	under this section; and

1	"(B) for expenses of managing the System.
2	"(4) In-LIEU CONTRIBUTIONS; REDUCTION AND
3	WAIVER.—The Secretary may accept in-kind con-
4	tributions in lieu of a fee under paragraph $(2)(C)$,
5	or waive or reduce any fee assessed under this sub-
6	section for any activity that does not derive profit
7	from the access to or use of System resources.
8	"(f) VIOLATIONS.—Upon violation of a term or condi-
9	tion of a permit issued under this section, the Secretary
10	may—
11	"(1) suspend or revoke the permit without com-
12	pensation to the permittee and without liability to
13	the United States;
14	((2) assess a civil penalty in accordance with
15	section 307; or
16	"(3) both.
17	"(g) REPORTS.—Each person issued a permit under
18	this section shall submit an annual report to the Secretary
19	not later than December 31 of each year which describes
20	activities conducted under that permit and revenues, if
21	any, derived from such activities during the year.
22	"(h) INTERAGENCY COOPERATION.—
23	"(1) REVIEW OF AGENCY ACTIONS.—
24	"(A) IN GENERAL.—Federal agency ac-
25	tions within or outside of a national marine

sanctuary or marine national monument, including private or other non-Federal activities authorized by a Federal license, lease, or permit, that are likely to destroy, cause the loss of, or injure any System resource, are subject to consultation in advance with the Secretary in accordance with regulations issued by the Secretary.

9 "(B) AGENCY STATEMENTS REQUIRED.— 10 Subject to any regulations the Secretary may 11 establish, the head of each Federal agency pro-12 posing an action described in subparagraph (A) 13 shall provide to the Secretary a written state-14 ment describing the action and its potential ef-15 fects on System resources at the earliest prac-16 ticable time, but in no case later than 120 days 17 before the final approval of the action unless 18 such Federal agency and the Secretary agree to 19 a different schedule.

20 "(2) SECRETARY'S RECOMMENDED ALTER21 NATIVES.—If the Secretary finds that a Federal
22 agency action is likely to destroy, cause the loss of,
23 or injure a System resource, the Secretary shall,
24 within 45 days after receiving complete information
25 on the proposed agency action, recommend reason-

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able and prudent alternatives, that can be taken by
the Federal agency in implementing the agency action and that will protect System resources. Such alternatives may include conduct of the action at a
different location or imposition of additional restrictions as considered necessary by the Secretary.

7 "(3) Response to recommendations.—The 8 head of an agency who receives the Secretary's rec-9 ommended alternatives under paragraph (2) shall 10 promptly consult with the Secretary on the alter-11 natives. If the agency head decides not to follow the 12 alternatives, the agency head shall provide the Sec-13 retary with a written statement explaining the rea-14 sons for that decision.

"(4) FAILURE TO FOLLOW ALTERNATIVE.—If 15 16 the head of a Federal agency takes an action other 17 than an alternative recommended by the Secretary 18 and such action results in the destruction of, loss of, 19 or injury to a System resource, the head of the 20 agency shall promptly prevent and mitigate further 21 damage and restore or replace the System resource 22 in a manner approved by the Secretary.".

(b) REGULATIONS.—The Secretary of Commerce
shall issue regulations implementing section 310(h) of the
National Marine Sanctuaries Act, as amended by this sec-

1 tion, by not later than 1 year after the date of the enact-2 ment of this Act.

3 SEC. 13. APPLICATION OF AUTHORITY TO MARINE NA4 TIONAL MONUMENTS AND WITHIN THE SYS5 TEM.

6 (a) COOPERATIVE AGREEMENTS, DONATIONS, AND
7 ACQUISITIONS.—Section 311 (16 U.S.C. 1442) is amend8 ed—

9 (1) in subsection (c), by striking "designating 10 and administering national marine sanctuaries" and 11 inserting "designating sanctuaries and administering 12 sanctuaries and marine national monuments"; and

(2) in subsection (e), by striking "State or
other Federal agency" and inserting "any Federal
agency or instrumentality of the United States, any
State, local government, Indian tribe, territory or
possession of the United States, or any political subdivision thereof, or any foreign government or international organization,".

20 (b) DESTRUCTION OR LOSS OF, OR INJURY TO, SYS21 TEM RESOURCES.—Section 312 (16 U.S.C. 1443) is
22 amended—

23 (1) in the section heading by striking "SANC24 TUARY RESOURCES" and inserting "SYSTEM RE25 SOURCES";

1 (2) by striking "sanctuary resource" each place 2 it appears and inserting "System resource"; (3) by striking "sanctuary resources" each 3 place it appears and inserting "System resources"; 4 5 and 6 (4) in subsection (d)(2)(E), by inserting "or marine national monuments" after "national marine 7 8 sanctuaries". 9 (c) ADVISORY COUNCILS.—Section 315 (16 U.S.C. 1445a) is amended— 10 11 (1) in subsection (a), by inserting "and marine national monuments" after "national marine sanc-12 13 tuaries"; 14 (2) in subsection (c), by striking "For sanc-15 tuaries designated" and inserting "For sanctuaries 16 and marine national monuments designated or oth-17 erwise established"; and 18 (3) in subsection (e)(3), by inserting "or marine national monument" after "national marine sanc-19 tuary". 20 (d) ENHANCING SUPPORT FOR THE SYSTEM.—Sec-21 22 tion 316 (16 U.S.C. 1445b) is amended— 23 (1) in the section heading by striking "NA-TIONAL MARINE SANCTUARIES" and inserting 24 "THE SYSTEM": 25

1	(2) by striking "the national marine sanctuary
2	program" each place it appears and inserting "the
3	System'';
4	(3) in subsection (a)—
5	(A) by inserting "or marine national
6	monuments" after "individual national marine
7	sanctuaries" each place it appears;
8	(B) in paragraph (8), by inserting "and
9	marine national monuments" after "national
10	marine sanctuaries"; and
11	(C) in the matter following paragraph
12	(8)—
13	(i) by inserting "or marine national
14	monument" after "individual national ma-
15	rine sanctuary"; and
16	(ii) by inserting "or monument" after
17	"that sanctuary";
18	(4) in subsection (c), by inserting "or marine
19	national monuments" after "sanctuaries";
20	(5) in subsection (e)(1), by inserting "or marine
21	national monument" after "sanctuary";
22	(6) in subsection (f), by inserting ", marine na-
23	tional monument, or" after "sanctuary"; and
24	(7) in subsection (g)—
25	(A) in paragraph (1)—

1	(i) by striking "the national marine
2	sanctuary system or of individual national
3	marine sanctuaries" and inserting "the
4	System or of individual national marine
5	sanctuaries or marine national monu-
6	ments"; and
7	(ii) by striking "the sanctuary sys-
8	tem" and inserting "the System"; and
9	(B) in paragraph (3)(B) by striking "2 or
10	more related sanctuaries" and inserting ", 2 or
11	more related sanctuaries or marine national
12	monuments, or the System".
13	SEC. 14. AUTHORIZATION OF APPROPRIATIONS.
14	Section 313 (16 U.S.C. 1444) is amended to read as
15	follows:
16	"SEC. 313. AUTHORIZATION OF APPROPRIATIONS.
17	"There are authorized to be appropriated to the Sec-
18	retary—
19	"(1) to carry out this title—
20	"(A) \$60,000,000 for fiscal year 2009;
21	"(B) \$65,000,000 for fiscal year 2010;
22	"(C) \$70,000,000 for fiscal year 2011;
23	"(D) \$75,000,000 for fiscal year 2012;
24	and
25	"(E) \$80,000,000 for fiscal year 2013;

"(2) for construction projects at national ma-1 2 rine sanctuaries or marine national monuments, 3 \$20,000,000 for each of fiscal years 2009, 2010, 4 2011, 2012, and 2013; and "(3) to implement section 303(c) of this title, 5 6 \$5,000,000.". 7 SEC. 15. CONFORMING AMENDMENT TO REFERENCES TO 8 **RENAMED COMMITTEE.** 9 Section 304 (16 U.S.C. 1434) is amended by striking "Committee on Resources" and inserting "Committee on 10 Natural Resources" each place it appears in subsections 11

12 (a)(1)(C), (a)(16), and (b)(2)(A).

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Agenda Item C.4.a Attachment 7 September 2008



Draft Pacific Fishery Management Council Position Statement on National Marine Sanctuary Act Reauthorization and related Ecosystem-Based Fishery Management

Prepared for the May 2008 meeting of the Council Coordination Committee April 29, 2008

The Pacific Fishery Management Council (Pacific Council) continues to support the position that the regulation of fisheries within National Marine Sanctuaries (NMSs) be accomplished under authorities of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and State jurisdictions rather than initiating new fishing regulation authority for individual sanctuaries. Although the Pacific Council is supportive of and shares many of the goals and objectives of the National Marine Sanctuary Program, the Pacific Council has experienced mixed results over the past seven years when coordinating with the National Oceanic and Atmospheric Administration (NOAA) and West Coast NMSs on implementing MSA fishery restrictions to meet these goals.

The Pacific Council has proposed development of an Ecosystem Fishery Management Plan (EFMP) and believes an EFMP will be an effective tool in achieving shared ecosystem-based management goals and objectives of the Pacific Council, National Marine Fisheries Service, and the National Ocean Service within and outside NMS. Initiation of the EFMP awaits dedicated funding.

At its April 2008 meeting, the Pacific Council discussed Federal legislative matters including the reauthorization of the National Marine Sanctuaries Act (NMSA), began a coordination effort with the Monterey Bay National Marine Sanctuary to consider the need for marine protected areas (MPA) within the Sanctuary, and reviewed a draft report on the condition of resources within the Olympic Coast National Marine Sanctuary. During these deliberations, the Pacific Council directed its staff to draft this paper to help forward the issues and positions of the Pacific Council during the Council Coordinating Committee meeting, May 6-9, 2008 in St. Thomas, U.S. Virgin Islands.
National Marine Sanctuaries Act Reauthorization.

Reauthorization of the NMSA is anticipated in the near future and was the subject of a House Subcommittee on Fisheries, Wildlife, and Oceans hearing on November 3, 2007. It is anticipated that NMSA reauthorization bill will be introduced in the near future and the Pacific Council feels a central matter for this reauthorization effort is providing clarification on the authority to regulate fisheries in Federal waters of NMSs.

Pacific Fishery Management Council remains supportive of the position adopted by all eight Regional Fishery Management Councils (RFMCs) at the April 2005 CCC Meeting and feels this position represents a good starting point when addressing future reauthorization of the NMSA.

The Pacific Council believes the essence of the collective Councils' position is that; (1) the infrastructure and expertise for effective fishery management¹ exists in the Council forum and (2) the ecological inter-connections between resources within and outside NMSs necessitates a holistic approach that can be provided by the Council process.

Eight Regional Fishery Management Council Position, April 2005 CCC Meeting

MSA and National Marine Sanctuary Act

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

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

NATIONAL MARINE SANCTUARIES ACT SEC. 302. [16 U.S.C. § 1432] DEFINITIONS

 $^{^{1}}$ *e.g.* a sound scientific foundation for fishery regulation via the Scientific and Statistical Committee (SSC) and other scientific Advisory Bodies, expert stakeholder advise from defined Advisory Bodies, ample public input opportunity, and transparent final policy decision making in a public arena.

As used in this chapter, the term-

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. . .

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

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

(a) Sanctuary Proposal

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

Examples where fishery regulation within NMS worked well.

The Pacific Council participated in the Joint Management Plan Review process for the three NMSs in Central California during 2001 to 2006. During this process, the Cordell Bank National Marine Sanctuary and the Monterey Bay National Marine Sanctuary proposed additional protective measures from fishing activities in Federal waters either within the sanctuaries or within areas proposed for Sanctuary expansion. These marine protected areas were primarily designed to address impacts to benthic habitats from bottom-tending fishing gear and other disturbances. The Pacific Council concurred with the NMSs that these areas were ecologically significant and in 2005, under the sole authority of the MSA, the Pacific Council and NMFS implemented fishery closures for the protection of essential fish habitat that met or exceeded the goals and objectives of the sanctuaries.

Recently, the Pacific Council is encouraged by early coordination efforts with the Monterey Bay National Marine Sanctuary and the Olympic Coast National Marine Sanctuary. At its April 2008 meeting, the Pacific Council and these sanctuaries discussed plans for improved coordination as the Monterey Bay National Marine Sanctuary considers the need for additional marine protected areas and the Olympic Coast Sanctuary completes a status report and begins the early stages of reviewing its Management Plan. The Monterey Bay National Marine Sanctuary indicated they will take into account SSC review of MPA need criteria as well as Pacific Council suggestions for analysis of MPA location considerations. The Olympic Coast National Marine Sanctuary benefitted from SSC and other Advisory Body comments on their status report on the condition of Sanctuary fish resources and habitat.

These examples are considered successes in that the NMSs and the Pacific Council are working closely at early, fundamental stages, fully utilizing the Pacific Council's fishery management infrastructure towards potential consideration of fishery regulations.

An example where fishery regulation within NMS has not worked well.

Beginning in 2001, the Pacific Council coordinated with the State of California and the Channel Islands National Marine Sanctuary (CINMS) on an extension of State MPAs into Federal waters of the Sanctuary. This included both no-take marine reserves and limited-take marine conservation areas within the Channel Islands National Marine Sanctuary (CINMS).

In 2005, under provisions of the NMSA, the Council reviewed the proposed changes to the CINMS Designation Document and considered preparing draft fishing regulations under NMSA for the proposed MPAs. At that time the Council recommended no changes to the CINMS Designation Document preferring to achieve CINMS goals and creating MPAs though the MSA and elected not to forward any proposed fishing regulations for the CINMS under the regulatory authority of the NMSA. In response, NOAA informed the Council of their intent to pursue the proposed MPAs at the CINMS through the NMSA but, encouraged the Council to continue efforts to achieve the same results through its existing MSA authority.

In an effort to protect benthic habitats essential to Pacific Council managed stocks and to meet the goals and objectives of the CINMS, the Council recommended fishery restrictions that would extend the State MPAs into Federal waters creating the desired marine reserves and marine conservation areas. In a letter dated October 19, 2005 the Undersecretary of Commerce for Oceans and Atmosphere, Vice Admiral Conrad Lautenbacher informed the Pacific Council that NOAA was moving forward with the Pacific Council's recommended regulations under MSA to restrict fishing gears that contact the bottom, but NOAA found "no scientific or factual basis" for restricting fisheries in the water column under the authority of the MSA and the Pacific Council's Pacific Coast Groundfish Fishery Management Plan. Closures of the water column fishery were ultimately achieved by adding limited fishery management authority to the CINMS Designation Document and implementing fishery closures through the NMSA.

This action effectively provided fishery regulation authority to the CINMS where none existed previously and where full fishery management infrastructure, expertise and process currently do not exist for active fishery management.

At this time, regulations implementing the no-take marine reserves in the Federal waters of the CINMS are promulgated under both the authority of the MSA (restrictions on bottom fisheries) and the NMSA (fishery closures in the water column). The Pacific Council understands that the fishing regulations promulgated under the NMSA would be rescinded should the Council and NMFS implement regulations under the MSA to restrict both bottom and water column fisheries creating no-take marine reserves. The Pacific Council has initiated the development of an Ecosystem Fishery Management Plan in part to better address the Pacific Council's ecosystem protection goals and to broaden its authority to fishery impacts to all living marine resources (see the next section).

Ecosystem Fishery Management Plan

The Pacific Council has implemented ecosystem-based principles through several existing fishery management actions including a proposed harvest ban on krill fishing, conservative harvest control rules on forage species, implementation of extensive area closures and marine protected areas, and the used of ocean survival indicators in the determination of allowable fishery impacts to coho salmon. The Pacific Council remains supportive of the April 2005 CCC position on ecosystem-based fishery management.

In November 2006, the Pacific Council initiated development of an EFMP. The EFMP is intended to serve as an "umbrella" plan over the four existing fishery management plans (FMPs), helping with coastwide research planning and policy guidance and creating a framework for status reports on the health of the West Coast's California Current Ecosystem. The plan envisioned by the Pacific Council would not replace the existing FMPs, but would advance fishery management under these FMPs by introducing new science and new authorities to the current Pacific Council process.

The authority to manage fishery related impacts across all living marine resources is fundamental to achieving broad ecosystem-based protective measures. It is thought that an EFMP could play an important, long-term role in coordinating the Pacific Council's efforts to protect habitat, regulate fisheries, establish marine protected areas and marine reserves, and minimize bycatch, with the shared goal of preserving the health and productivity of the California Current Ecosystem.

The Pacific Council is currently pursuing the necessary funds to develop an EFMP and believes an EFMP will be an effective tool in achieving shared ecosystem-based management goals and objectives of the Pacific Council, National Marine Fisheries Service, and the National Ocean Service within and outside NMSs.

G:\!master\Fishery Issues\MPAs\Letters\PFMC CCC position paper National Marine Sanctuaries Act Reauthorization.doc

IMPLEMENTATION OF THE MAGNUSON-STEVENS REAUTHORIZATION ACT (MSRA)

The Magnuson-Steven Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) established several new fishery management provisions pertaining to National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) which states, "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." On June 9, 2008, the National Marine Fisheries Service (NMFS) published a proposed rule in the Federal Register to implement the new MSRA requirements and revise the guidelines for National Standard 1. (Agenda Item C.5.b, Attachment 1).

The MSRA and proposed NMFS guidelines introduce new fishery management concepts including overfishing levels (OFLs), annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs) that are designed to better account for scientific and management uncertainty and to prevent and end overfishing. The proposed rule describes the relationship of these new management tools to existing fishery management concepts such as acceptable biological catch (ABC) and optimum yield (OY). These important aspects of the MSRA are required to be implemented by 2011 for most species and by 2010 for those species designated as overfished. It is anticipated the Council will need to amend some or all of its Fishery Management Plans shortly after final NMFS rulemaking to accommodate this MSRA mandated schedule.

The reauthorized MSA calls for the Scientific and Statistical Committee (SSC) of each Regional Fishery Management Council to provide scientific advice in support of fishery management decision making on topics including, ABC, preventing overfishing, maximum sustainable yield, achieving rebuilding targets, stock status and health, bycatch, habitat status, social and economic impacts of management measures, and fishery sustainability. Additionally, the MSRA requires the Council to "establish annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendation of its SSC." To address these new requirements, NMFS has proposed that the Council include a process under its Statement of Organization, Practices, and Procedures that establishes ABC control rules, specifies the advisory bodies responsible for applying the control rule and calculating ABC, and identifies a review process that confirms the SSC's role in recommending the ABC.

The proposed rule also addresses the rebuilding of stocks designated as overfished. The proposed rule would implement the MSRA requirement for the Council, within 2 years of notification of an overfished stock status, to prepare an FMP amendment or fishery regulations to immediately end overfishing and rebuild the stock. In 2005, when it became evident that Congress would soon reauthorize the MSA, NMFS announced its intent to withdraw most of the then proposed revisions to National Standard 1. However, some of the topics from the 2005 proposal are considered in the current revisions, including guidance on establishing the length of time for a rebuilding plan and recommendations on Council actions should a rebuilding plan end while a stock is not rebuilt.

The public comment period on these revised guidelines was originally listed in the proposed rule as closing on September 8, 2008. The June 9th publication of the proposed rule in the Federal

Register fell the same day the Council discussed this issue during its June 2008 meeting, and the September 8th comment deadline would have precluded a detailed review of the materials by the Council or its advisory bodies at the September Council meeting. The Council Executive Director requested an extension of the comment period to allow the Council to fully deliberate the matter at the September Council meeting and respond in writing shortly thereafter. On August 13, 2008, NMFS published a Federal Register notification of an extension of the public comment period to September 22, 2008 (Agenda Item C.5.b, Attachment 2).

Council Action:

Refine Recommendations for Revised Procedures Regarding National Standard 1 Guidelines, including Annual Catch Limits.

Reference Materials:

1. Agenda Item C.5.b, Attachment 1, Proposed rule regarding to implement the new MSRA requirements and revise the guidelines for National Standard 1 (73 *FR* 32562).

2. Agenda Item C.5.b, Attachment 2, NMFS notice of extension of the public comment period for revisions to National Standard 1 guidelines to September 22, 2008 (73 *FR* 47125).

3. Agenda Item C.5.c, Salmon Technical Team Report.

Agenda Order:

- a. Agenda Item Overview
- b. NMFS Report
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. **Council Action:** Refine Recommendations for Revised Procedures Regarding National Standard 1 Guidelines, including Annual Catch Limits.

PFMC 08/14/08

Mike Burner Frank Lockhart and commercial information, we solicit comment from the public, other governmental agencies, the scientific community, industry, and any other interested parties. Title 50, CFR 424.16(c)(3) requires the Secretary of Commerce to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to change the listed status of a species under the ESA. Requests for public hearing must be made in writing (see DATES and ADDRESSES). Such hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. We encourage the public's involvement in such ESA matters.

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing to the best scientific and commercial data available. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 657 F 2d 829 (6th Cir.1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act. (see also NOAA Administrative Order 216 6.)

Executive Order (E.O.) 12866, Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E. O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of these circumstances is applicable to this proposed listing determination. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the Caribbean monk seal formerly occurred, and each will be invited to comment.

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: June 3, 2008.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend 50 CFR part 224 as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531 1543 and 16 U.S.C. 1361 *et seq.*

2. Amend § 224.101(b) by removing the term "Caribbean monk seal (*Monachus tropicalis*);". [FR Doc. E8–12808 Filed 6–6–08; 8:45 am] BILLING CODE 3510–22–5

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 070717348-7766-02]

RIN 0648-AV60

Magnuson-Stevens Act Provisions; Annual Catch Limits; National Standard Guidelines

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA); Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes revisions to the guidelines for National Standard 1 (NS1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action is necessary to provide guidance on how to comply with new annual catch limit (ACL) and accountability measure (AM) requirements for ending overfishing of fisheries managed by federal fishery management plans (FMPs). It also clarifies the relationship between ACLs, maximum sustainable yield (MSY), optimum yield (OY), and other applicable reference points. The intent of this action is to facilitate compliance with requirements of the Magnuson-Stevens Act to end and prevent overfishing, rebuild overfished stocks and achieve OY.

Agenda Item C.5.b Attachment 1 September 2008

DATES: Comments must be received by September 8, 2008.

ADDRESSES: You may submit comments, identified by 0648-AV60, by any of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal: *http://www.regulations.gov;*

• *Fax:* 301–713–1193, Attn: Mark Millikin;

• *Mail:* Mark R. Millikin, National Marine Fisheries Service, NOAA, Office of Sustainable Fisheries, 1315 East-West Highway, Room 13357, Silver Spring, MD 20910 (mark outside of envelope "Comments on Annual Catch Limits proposed rule");

Instructions: All comments received are a part of the public record and will generally be posted to *http:// www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

Copies of the Regulatory Impact Review (RIR)/Regulatory Flexibility Act Analysis (RFAA) for this proposed rule are available from Mark R. Millikin at the address listed above. The RIR/RFAA document is also available via the internet at http://www.nmfs.noaa.gov/ msa2007/catchlimits.htm.

FOR FURTHER INFORMATION CONTACT:

Mark R. Millikin, Senior Fishery Management Specialist, 301–713–2341. SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Overview of Proposed Revisions
- II. Acronyms
- III. Background
- IV. NMFS's Proposed Rule for Further Revisions to NS1 Guidelines in 2005 V. NMFS's Initial Action on MSRA
- Requirements for ACLs
- VI. MSRA Ending Overfishing Requirements VII. Reasons for Overfishing and
 - Expectations for ACLs to Prevent/End Overfishing

- VIII. Definition, Interpretation, and Application of the Term "Fishery" and Its Relevance to ACLs
 - A. Stocks in the Fisherv
 - B. Ecosystem Component Species
 - C. Stocks Identified in More Than One
 - FMP
 - D. Stock Complexes
- IX. Statutory Exceptions to Requirements for ACLs and AMs and Flexibility in Application of the NS1 Guidelines
- X. MSRA Requirements for SSCs Related to
- ACLs
- XI. MSY, OY, and SDC: A Review
- XII. Description of the Relationship of OFL to MSŶ and ACT to OY
- XIII. Definition Framework for OFL, ABC, ACL, and ACT
- XIV. Control Rules
- XV. Sector ACLs, ACTs, and AMs
- XVI. Accountability Measures
- XVII. Summary of Items to Include in FMPs XVIII. Change in Timetable When
- Establishing a Rebuilding Plan
- XIX. Establishing the Length of Time for a Rebuilding Plan
- XX. Action When a Stock's Rebuilding Plan Ends and the Stock Is Not Rebuilt
- XXI. Changes to the definitions of Some Components of MSY
- XXII. Social, Economic and Ecological Factors as They Relate to OY
- XXIII. Scope of This Proposed Action
- XXIV. Republishing Codified Text in Its
- Entirety XXV. Classification

I. Overview of Proposed Revisions

NMFS fulfills the requirements of section 301(b) of the Magnuson-Stevens Act—"The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on national standards, to assist in the development of fishery management plans," with its national standard guidelines that appear at 50 CFR 600.310 through 50 CFR 600.355. NMFS is proposing revisions to the NS1 guidelines to address, among other things, new requirements for fisheries undergoing overfishing, to have ACLs and AMs to end overfishing by 2010, and all fisheries to have ACLs and AMs in place to prevent or end overfishing by 2011, and beyond. A stock or stock complex may not require an ACL and AMs if it qualifies for a statutory exception under the Magnuson-Stevens Act. Other proposed revisions to the NS1 guidelines include: (1) A description of the relationship between MSY, OY, overfishing limits (OFL), acceptable biological catch (ABC), ACLs, and annual catch targets (ACTs); (2) guidance on how to combine the use of ACLs and AMs for a stock to prevent overfishing when possible, and adjust ACTs or ACLs, or both, and AMs, if an ACL is exceeded; (3) allowing for inclusion of ecosystem component (EC) species in FMPs and, in such cases,

guidance for how to classify which stocks are "in the fishery" and which species are ecosystem components; (4) replacing MSY control rules with ABC control rules and replacing OY control rules with ACT control rules; (5) new requirements for scientific and statistical committees (SSC); (6) changing the timeline to prepare new rebuilding plans; (7) revised guidance on how to establish rebuilding time targets; and (8) advice on action to take at the end of a rebuilding period if a stock is not yet rebuilt.

II. Acronyms

- ABC—acceptable biological catch
- ACL—annual catch limit
- ACT—annual catch target
- AM—accountability measures
- ANPR—Advance Notice of Proposed Rulemaking
- B_{msy}—MSY stock size
- EC—ecosystem component species
- **EEZ**—Exclusive Economic Zone
- $F_{msy}\mbox{--}MSY$ fishing mortality rate FMP—fishery management plan
- MFMT—maximum fishing mortality
- threshold
- MSA—Magnuson-Stevens Act
- MSRA—Magnuson-Stevens Fishery Conservation and Management **Reauthorization Act**
- MSST-minimum stock size threshold
- MSY-maximum sustainable yield
- NOI-Notice of Intent
- NS1—National Standard 1
- OFL—overfishing limit
- OY—optimum yield SDC—status determination criteria
- SFA—Sustainable Fisheries Act

SSC—scientific and statistical

- committee
- T_{max}—maximum time allowable for rebuilding a stock
- T_{min}—minimum time for rebuilding a stock
- T_{target}—target time for rebuilding a stock

III. Background

The MSA serves as the chief authority for fisheries management in the U.S. Exclusive Economic Zone (EEZ). Section 301(b) of the MSA requires that "The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans." Guidelines for the national standards are codified in subpart D of 50 CFR part 600. The guidelines for national standards were last revised through a final rule published in the Federal Register on May 1, 1998 (63 FR 24212), by adding revisions to the guidelines for National Standards 1 (optimum vield), 2 (scientific information), 4 (allocations), 5

(efficiency), and 7 (costs and benefits); and adding new guidelines for National Standards 8 (communities), 9 (bycatch), and 10 (safety of life at sea).

The guidelines for NS1 were revised extensively in the final rule published on May 1, 1998, to bring them into conformance with revisions to the MSA, as amended in 1996 by the Sustainable Fisheries Act (SFA). In particular, the 1998 revisions to the NS1 guidelines addressed new requirements for FMPs brought about by SFA amendments to MSA section 304(e) (rebuilding overfished fisheries).

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), which President Bush signed into law on January 12, 2007, included new requirements regarding preventing and ending overfishing and rebuilding fisheries. Therefore, NMFS is proposing revisions to the NS1 guidelines at 50 CFR 600.310, to integrate these new requirements with existing provisions related to overfishing, rebuilding overfished stocks, and achieving optimum yield.

IV. NMFS's Proposed Rule for Further Revisions to NS1 Guidelines in 2005

NMFS published an advance notice of proposed rulemaking (ANPR) in 2003 (68 FR 7492, February 14, 2003), and a proposed rule in 2005 (70 FR 36240, June 22, 2005), in the Federal Register to propose further revisions to the NS1 guidelines. NMFS sought to improve the utility of the 1998 guidelines in assisting the regional fisherv management councils, and the Secretary of Commerce (Secretary) in the case of a Secretarial Amendment or a Secretarial FMP (denoted collectively hereafter as "Councils," as 50 CFR 600.305(c)(11) provides that "Council" includes both the regional fishery management councils and the Secretary when preparing FMPs or amendments), when establishing or revising status determination criteria (SDC) for overfishing and overfished definitions for stocks, and constructing or revising rebuilding plans for overfished stocks.

Although NMFS received many public comments on the ANPR and the 2005 proposed rule, NMFS decided not to pursue publication of a final rule when it learned that Congress was preparing an amendment to the MSA that seemed likely to revise how to manage stocks undergoing overfishing and stocks that need a rebuilding plan. Congress's efforts culminated in passage of the 2006 MSRA.

V. NMFS's Initial Action on MSRA Requirements for ACLs

NMFS published a notice of intent (NOI) to prepare an environmental impact statement (EIS) and commencement of a scoping period for ACLs and AMs in the Federal Register on February 14, 2007 (72 FR 7016), with a comment period ending date of April 17, 2007. NMFS held nine scoping sessions, one associated with each of the eight Regional Fishery Management Councils' meetings and one at NMFS Headquarters in Silver Spring, MD. Comments that NMFS received are contained in "Summary of Comments Received on NMFS Proposal to Develop Guidance on ACLs and AMs, July 2007," that is available at the NMFS Web site: http://www.nmfs.noaa.gov/ msa2007/catchlimits.htm.

The NOI indicated that an environmental assessment or EIS would be prepared for this action. However, NMFS has decided that, for purposes of compliance with the National Environmental Policy Act, a categorical exclusion is appropriate for this action. The proposed action would provide general guidance on ACL and AM and other requirements, but there is considerable diversity in federallymanaged fisheries and FMPs. Thus, any analysis of the environmental, economic, and social impacts of the NS1 guidelines would be highly speculative. Potential environmental, economic, and social impacts cannot be meaningfully analyzed until the Councils apply the guidelines to specific fisheries and FMPs. At that time, the Councils would prepare an EIS or EA, as appropriate.

VI. MSRA Ending Overfishing Requirements

Section 104(a)(10) of the MSRA established new requirements to end and prevent overfishing, including ACLs and AMs. Section 303(a)(15) was added to the MSA to read as follows: "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." ACLs and AMs are required by fishing year 2010 if overfishing is occurring in a fishery, and they are required for all other fisheries by fishing year 2011.

In practical terms, given the time it takes to prepare and implement an FMP amendment, if the status of one or more stocks in a fishery at the end of 2008 is "subject to overfishing," Councils should submit ACL and AM

mechanisms and actual ACLs for that fishery to be effective in fishing year 2010. If overfishing is determined to be occurring in a fishery in 2009, Councils should submit ACL and AM mechanisms and actual ACLs for that fishery to be effective in fishing year 2010, if possible, or in fishing year 2011, at the latest. All fisheries must have ACL and AM mechanisms and actual ACLs by the fishing year 2011, and beyond. The Secretary should amend Secretarial FMPs, to comply with ACL and AM requirements on the same timetable. Section 305(c) of the MSA, which was unchanged by MSRA, also provides authority to the Secretary to promulgate emergency regulations or interim measures necessary to address an emergency or overfishing for any fishery without regard to whether an FMP exists for such fishery.

NMFS recognizes that the phrase, "at a level such that overfishing does not occur" in section 303(a)(15) of the MSA is subject to different interpretations, as reflected in the varying comments received during scoping. On the one hand, the phrase could be interpreted to mean that overfishing is strictly prohibited at any cost. On the other hand, section 303(a)(15) refers to a "mechanism" for setting ACLs, including AMs, which seems to imply a more dynamic process that allows for adjustment of management measures as a fishery is carried out. The only way to ensure absolutely no overfishing occurs is to stop fishing. As long as fishing occurs, there is a chance for occasional instances of overfishing due to scientific uncertainty of data, influence of nonfishing factors, and management uncertainty. Continued overfishing for a period of years (chronic overfishing), presents the greatest danger to the health of fish stocks, and often leads to stocks becoming overfished. NMFS has noted that overfished stocks with chronic overfishing seem to seldom rebuild, whereas overfished stocks that are rarely subject to overfishing have a better chance of rebuilding.

Taking the above considerations into account, NMFS believes that the ACL requirement should be interpreted to provide for some flexibility given scientific and management uncertainty and other factors, but at the same time, must address overfishing and facilitate rebuilding. Chronic overfishing can be prevented by ensuring that the combination of ACLs and AMs decrease the risk of future overfishing each successive time an ACL is exceeded. NMFS thus proposes a performance standard such that if catch of a stock exceeds its ACL more often than once in the last four years (i.e., more often than

25 percent of the time), then the system of ACLs, ACTs and AMs should be reevaluated to improve its performance and effectiveness (see § 600.310(g)(3) in this proposed action). NMFS believes that allowing a higher frequency of the ACL being exceeded would not safeguard enough against overfishing. A Council could choose a higher performance standard (e.g., a stock's catch should not exceed its ACL more often than once every five or six years) for a stock that is particularly vulnerable to the effects of overfishing.

VII. Reasons for Overfishing and Expectations for ACLs to Prevent/End Overfishing

The "NMFS Fourth Quarterly Report for 2007 Status of U.S. Fisheries" indicates that 41 stocks managed by federal FMPs were undergoing overfishing as of December 31, 2007. Stocks become listed as "overfishing" or remain in an overfishing status for a variety of reasons, including:

1. The goal of the FMP may be to end overfishing over several years by gradually reducing fishing mortality rates instead of ending overfishing immediately.

2. Management measures have proven ineffective at ending overfishing (e.g., lack of inseason closure authority for the fishery or management measures are aimed at achieving a target catch that is set too close to the catch amount that results in overfishing, or both).

3. Management measures to address overfishing have not been implemented yet.

4. Recent change in scientific advice (i.e., the Council has not had sufficient time to amend the FMP and no automatic measures exist in the FMP to make necessary adjustments to end overfishing in the subsequent fishing year).

5. Bycatch mortality in other fisheries has not been addressed adequately or is poorly known.

6. Data sufficient to verify whether or not overfishing is occurring are not available, so the existing overfishing determination is retained.

7. International fishing pressure is responsible for the large majority of overfishing.

8. Fishing pressure in state or territorial waters is responsible for the large majority of overfishing, federal action alone is not sufficient to end overfishing, and managers in the various jurisdictions are unable thus far to agree on a concerted approach for preventing overfishing.

NMFS believes that the ACL and AM requirements will address overfishing that results from reasons 1, 2, 3, and 4

above. Better scientific data, along with adequate ACLs and AMs, should enable Councils to prevent overfishing for reasons 5 and 6. Stocks that are undergoing overfishing for reason 7 would be exempt from the ACL requirement (see §§ 600.310(h)(2)(ii) and 600.310(k) of this proposed action for discussion of international fisheries). There may be circumstances where managers in various jurisdictions are unable to agree on an ACL and AMs that would end or prevent overfishing for a fishery described under reason 8. In such cases, these proposed guidelines would require an ACL for the overall fishery, but AMs would be implemented only for the portion of the fishery under federal management authority.

VIII. Definition, Interpretation, and Application of the Term "Fishery" and Its Relevance to ACLs

The MSA, as amended by MSRA, requires that a Council shall develop ACLs "for each of its managed fisheries" (see MSA section 302(h)(6)) and as noted earlier, that each FMP have a mechanism for specifying ACLs "at a level such that overfishing does not occur in the fishery" (see MSA section 303(a)(15)). Consistent with these sections of the MSA, the proposed NS1 guidelines provide that ACLs and AMs are needed for each "fishery" under federal FMP management, unless covered by a statutory exception.

covered by a statutory exception. The MSA defines "fishery" broadly, and this definition did not change with the passage of the MSRA. A "fishery" is "one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics," and "any fishing of such stocks" (see MSA section 3(13) and 50 CFR 600.10). The term "fishery" can mean different things in different contexts. For example, when dealing with biological concepts such as determining a status of overfishing or overfished, the NS1 guidelines generally apply at the "stock or stock complex" level (See, e.g., 50 CFR 600.310(c)(1), (d) (defining MSY and "overfish" with regard to "stock or stock complex") and §600.305(c)(12) (explaining that "stock or stock complex" is used as a synonym for "fishery" in NS guidelines). In other instances, such as managing a fishery for OY, the term "fishery" is viewed more broadly (see 50 CFR 600.310(f) (referring to OY at the "fishery" and not the "stock or stock complex" level)).

Given the broad definition of "fishery," the Councils have had, and continue to have, considerable

discretion in defining the "fishery' under FMPs. Some FMPs include only one or a few stocks whereas others include several or hundreds of species. Looking at existing FMPs, the primary reasons why stocks are included in FMPs are because people seek to harvest them for sale or personal use (i.e., the fish are the target of fishing activity), or they are caught incidentally in the pursuit of harvesting one or more other stocks and could experience overfishing or become overfished without conservation and management measures. These reasons are consistent with the stated purposes of the MSA, which includes the preparation and implementation of FMPs "which will achieve and maintain, on a continuing basis, the optimum yield from each fishery" (see MSA section 2(b)(4)). OY is defined with regard to "the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems" (see MSA section 3(33)).

While the focus of FMPs has been stocks managed for OY, in recent years, some FMPs have included other stocks in an effort to incorporate ecosystem approaches to management. Congress acknowledged this increased attention to ecosystem approaches in the "Findings" section of the Act (see MSA section 2(a)(11) (acknowledging that a number of Councils have demonstrated significant progress in integrating ecosystem considerations under existing authorities of the MSA)). In addition, MSRA added a new section 303(b)(12) that provides that an FMP may "include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations."

NMFS wants to encourage ecosystem approaches to fishery management and believes that clarification of what constitutes the "fishery" would be helpful. As such, NMFS is proposing guidance pertaining to "stocks in the fishery" and "ecosystem component (EC) species," which are described in detail below. The intent of this guidance is to articulate approaches taken under existing FMPs and to provide a framework for thinking about future FMPs and FMP amendments. The Councils would have the discretion to determine, on a case-by-case basis, whether changes in their stock classifications under current FMPs are needed.

A. Stocks in the Fishery

As a default, all stocks currently identified in an FMP are considered "stocks in the fishery." "Stocks in the fishery" would include target stocks (i.e., stocks that fishers seek to catch for sale or personal use, including "economic discards" as defined under MSA section 3(9)), non-target stocks that are retained for sale or personal use, and non-target stocks that are not retained for sale or personal use and that are either determined to be subject to overfishing, approaching overfished, or overfished, or could become so, according to the best scientific information available, without conservation and management measures (see Figure 1 and § 600.310(d)(2) of this proposed action). Stocks and stock complexes in the fishery should have quantitative SDC, MSY, ABC, ACL, and ACT (collectively called "reference points" throughout this section) and AMs (see Table 1 for reference points needed for different types of stocks, and see § 600.310(b)(2)(iv) of this proposed action), although some stocks in the fishery may not require ACLs and AMs if they are covered by a statutory exception (see § 600.310(h)(2) of this proposed action). Hereafter, in these guidelines, "stock" or "stock(s) and stock complex(es)" refer to "stocks in the fishery."

B. Ecosystem Component Species

Beyond the "stocks in the fishery," a Council may, but is not required to, include EC species in an FMP. Such species would include non-target fish species that are not considered part of the "fishery" but rather species with which the fishery may occasionally interact (i.e., catch) (see § 600.310(d)(5) of this proposed action). A Council may choose to include EC species for purposes of incorporating ecosystem approaches to fishery management, data collection, etc. Identification of EC species must be done through an FMP amendment process (see § 600.310(d) of this proposed action). Such species are appropriate to consider when addressing specification of OY and conservation and management measures for the fishery (see MSA sections 3(33) (referring to taking into account the marine ecosystems in OY definition), and 3(5) (referring to avoiding irreversible or long-term effects on fishery resources and the marine environment and ensuring multiplicity of options)). Because EC species are not considered to be "in the fishery," specification of reference points, ACLs, and AMs are not required (see Table 1). However, a Council should consider

measures for the fishery to minimize bycatch and bycatch mortality of EC species consistent with National Standard 9, and to protect their associated role in the ecosystem. NMFS is especially interested in the public's comments on the appropriate criteria for classification of EC species.

C. Stocks Identified in More Than One FMP

If a stock is identified as part of more than one "fishery," Councils should choose which FMP will be the "primary FMP" in which management objectives, SDC, and other reference points for the

stock are established. In most cases, the primary FMP for a stock will be the one in which the stock is identified as a target stock. Other FMPs in which the stock is identified as part of a fishery should contain management measures consistent with the primary FMP for the stock.

Figure 1. Proposed Classification of stocks in an FMP



TABLE 1.—REFERENCE POINTS, ACCOUNTABILITY MEASURES, AND CONTROL RULES THAT WOULD BE REQUIRED OR RECOMMENDED

Reference points, accountability measures, and control rules	Stocks and stock complexes in a fishery (excluding those with an approximate 1 year life cycle and those managed under international fishery agreements)	Stocks and stock complexes in a fishery that have a life cycle of approximately 1 year	Stocks and stock complexes in a fishery managed under an international fishery agreement ³	Ecosystem component species ⁴
MSY ¹ SDC ¹ (e.g. MFMT ² , MSST ²) OY ¹	 At the stock, stock complex, or fishery level. 	 At the stock, stock complex, or fishery level. 	<pre></pre>	N/A N/A N/A
OFL ²	R	R	R	N/A
ABC ¹	✓	✓	R	N/A
ACL ¹	✓	Only if "subject to overfishing"	R	N/A
AMs ¹	✓	Only if "subject to overfishing"	R	N/A
ACT ²	✓	Only if "subject to overfishing"	R	N/A
ABC control rule ²	✓	✓	R	N/A
ACT control rule ²	 	R	R	N/A

¹ MSA requirement.

² For consistency with the NS1 Guidelines.

⁴ Not required by MSA, but an option provided in the NS1 Guidelines.

Legend:

 \checkmark = Yes, this is applicable. ABC = Acceptable Biological Catch.

ACL = Annual Catch Limit.

AM = Accountability Measures. MFMT = Maximum Fishing Mortality Threshold.

MSST = Minimum Stock Size Threshold.

MSY = Maximum Sustainable Yield. N/A = Not Applicable. OFL = Overfishing Limit. OY = Optimum Yield. R = Recommended. SDC = Status Determination Criteria.

D. Stock Complexes

"Stock complex" means a group of stocks in an FMP that are sufficiently similar in geographic distribution, life history, and vulnerability to the fishery that the impacts of management actions on the stocks in the complex is similar (see §600.310(d)(8) of this proposed action). Stock complexes may be comprised of: (1) One or more indicator stocks, each of which has SDC and ACLs, and several other stocks; (2) several stocks without an indicator stock, with SDC and an ACL for the complex as a whole; or (3) one or more indicator stocks, each of which has SDC and management objectives, with an ACL for the complex as a whole (this situation might be applicable to some salmon species).

For stock complexes, the SDC measured on a stock complex-wide basis or for an indicator stock should satisfy the MSA's requirements to prevent overfishing and achieve OY for a fishery. Vulnerability of stocks to the fishery should be evaluated when determining if: (1) A particular stock complex should be established or reorganized; (2) a particular stock should be a member of a stock complex; or (3) a stock complex should be reorganized. Indicator stocks are stocks selected as a representative for a stock complex because they have known determinations regarding SDC, and known values for MSY and OY, and can form the basis for an MSY and OY for the combinations of stocks in a complex. Although it is common for the indicator stock for a stock complex to be the most abundant stock, if an indicator stock is less vulnerable than other stocks in the complex, the management measures should be more conservative to protect the more vulnerable stocks from overfishing.

IX. Statutory Exceptions to Requirements for ACLs and AMs and Flexibility in Application of NS1 Guidelines

The MSRA provides two statutory exceptions to the ACL and AM requirements under MSA section 303(a)(15) (see MSRA section 104(b) (adding two exceptions under a MSA section 303 note); see also § 600.310(h)(2) of this proposed action). First, MSA section 303(a)(15) "shall not apply to a fishery for species that have a life cycle of approximately 1 year

unless the Secretary has determined the fishery is subject to overfishing of that species" (see MSRA section 104(b)(2)). NMFS interprets "fishery for species" to be a stock. In addition, NMFS interprets "a life cycle of approximately 1 year" to mean that the average length of time it takes for an individual to produce a reproductively active offspring is approximately 1 year, and that the individual has only one breeding season in its lifetime. While stocks that qualify for the 1-year life cycle exception would not need to have ACLs and AMs, such stocks should still have SDC, MSY, OY, ABC, and an ABC control rule.

Second, MSA section 303(a)(15) shall take effect in 2010 and 2011, as discussed earlier, "unless otherwise provided for under an international agreement in which the United States participates" (see MSRA section 104(b)(1)). It is not clear to what the text "unless otherwise provided for" is referring. NMFS has considered several possible interpretations of this text in light of other provisions in MSRA, including the new international overfishing provisions in MSA section 304(i). Prior to MSRA, fisheries managed under international agreements in which the United States participates (referred to in this action as ''international fisheries'') were subject to MSA section 304(e) requirements regarding overfishing and rebuilding. However, in many of these fisheries, the United States could not unilaterally end overfishing or rebuild the stocks. New MSA section 304(i) and other MSRA provisions acknowledge the increasing problem of international overfishing and the challenges of establishing conservation and management measures at the international level. Given Congress's recognition of the increasing problem of international overfishing and the complexities of international negotiation, NMFS believes that the ACL exception should apply to fisheries that are subject to management under international agreements in which the United States participates. Applying ACLs or AMs only to the U.S. portion of the catch would not effect rebuilding or end overfishing, would potentially disadvantage U.S. fishermen with respect to foreign fishermen, and could weaken U.S. negotiating positions at international fora in which it participates.

Apart from the statutory exceptions, NMFS recognizes that there are limited circumstances that do not fit the standard approaches to specification of reference points and management measures set forth in the proposed revisions to the NS1 guidelines. These include, among other things, conservation and management of ESAlisted species, harvests from aquaculture operations, and stocks with unusual life history characteristics (e.g., Pacific salmon, where the spawning potential for a stock is spread over a multi-year period). For fisheries where ESA-listed species are incidentally caught, the ESA recovery plan would be a significant driver for setting management objectives, including ACLs, for the fishery. For aquaculture, once managers address status of broodstock taken from the wild (i.e., whether overfishing is occurring and/or whether the stock is in need of rebuilding), then the levels of harvests from an aquaculture facility would not necessarily need to focus on ending or preventing overfishing or rebuilding stocks. In these circumstances, Councils may propose alternative approaches for satisfying the NS1 requirements of the Magnuson-Stevens Act other than those set forth in these guidelines. Councils should document their rationale for any alternative approaches for these limited circumstances in an FMP or FMP amendment, which will be reviewed for consistency with the Magnuson-Stevens Act.

For a fishery in a federal FMP that has a large majority of harvest in state or territorial waters, the fishery should have ACL that takes into account the overall status of the stock, whether in state or federal waters or beyond. However, NMFS recognizes that AMs could only be applied to the portion of the fishery under federal jurisdiction. Given the jurisdictional issue, one approach proposed is that the overall ACL could be divided into a federal portion (federal-ACL) and a state portion (state-ACL). AMs would then be triggered when the federal-ACL was reached or projected to be reached (see further explanation in "Accountability Measures" section below).

X. MSRA Requirements for SSCs Related to ACLs

The MSRA added new requirements for SSCs in the MSA. New section

302(g)(1)(B) of the MSA states that an SSC for each Regional Fisherv Management Council "shall provide its Council ongoing scientific advice for fishery management decisions, including 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." New section 302(g)(1)(E) provides that "The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of the fishery." In addition, new section 302(h)(6) provides that each Regional Fishery Management Council is required to "develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g)."

NMFS recognizes that there is variability in the peer review processes and involvement of SSCs amongst the various Councils. In addition, the above statutory sections could be subject to different interpretations. While MSA section 302(h)(6) refers generally to "fishing level recommendations," section 302(g)(1)(B) refers to recommendations for ABC and MSY, among other things, and section 302(g)(1)(E) refers generally to "scientific information." Further, the text provides for advice from the SSC but also refers to peer review processes, leaving open a question about the role and relationship between the two. NMFS believes that clear processes for implementing these provisions are important in order to ensure that Councils get the information needed to establish ACL mechanisms, prevent confusion in the decision making process, and ensure general consistency in approaches taken.

For purposes of setting ACLs, a critical piece of scientific advice that Councils will need will be the ABC. Taking this into account, and considering the new requirements in light of existing SSC, Council, and peer review processes, NMFS proposes that the Councils establish a process that could be included in their Statement of Organization, Practices and Procedures (see § 600.115) which will: Establish an ABC control rule, identify the body that will apply the ABC control rule (i.e., calculates the ABC), identify the review process that will verify the resulting

ABC, and confirm that the SSC recommends the ABC to the Council. For Secretarial FMPs or FMP amendments, agency scientists or a peer review process would provide the scientific advice to establish ABC. For fisheries managed under international agreements in which the United States participates (referred to in this action as "international fisheries"), stock assessments are conducted through international scientific bodies that may include U.S. and non-U.S. scientists. While the United States promotes fishery conservation and management principles as embodied in the MSA (see, e.g., MSA section 102(c)), it cannot guarantee that international actions will be consistent with the Act or NS1 guidelines. Thus, an ABC as defined in these guidelines would not be required for international fisheries.

For stock and stock complexes required to have an ABC, NMFS recommends that each Council should establish an ABC control rule (see §600.310(f)(4) of this proposed action) based on scientific advice from its SSC. The process of establishing an ABC control rule could also involve science advisors or the peer review process established under MSA section 302(g)(1)(E). Stock assessment scientists, a plan development team, or other designated body would then apply the ABC control rule. If a peer review process is established it should investigate the technical merits of stock assessments and other scientific information used by the SSC. For example, a peer review process (e.g., Stock Assessment Review Panel) could validate the ABC calculation and then pass their results to the SSC. Ultimately. the SSC should make the formal ABC recommendation to the Council. For Council-managed fisheries, the peer review process is not a substitute for the SSC, and should work in conjunction with the SSC.

XI. MSY, OY, and SDC: A Review

MSY, OY, and SDC are concepts described in the current NS1 guidelines, and MSRA did not effect changes to the MSA that would require changes to these concepts. The following sections provide a review of MSY, OY, and SDC and an explanation of the relationship between them and the proposed guidance on ACLs and other requirements.

MSY is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions and fishery technological characteristics. Any estimate of MSY depends on the population dynamics of

the stock and the characteristics of the fisheries (e.g. gear selectivity). MSY stock size (B_{msy}) is the long-term average size of the stock or stock complex, measured in terms of spawning biomass, or other appropriate measure of the stock's reproductive potential, that would be achieved by fishing at F_{msv}. OY is the amount of fish that will provide the greatest overall benefit to the Nation, while preventing overfishing, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems. OY is prescribed on the basis of the MSY from the fishery, as reduced by relevant economic, social or ecological factors. In the case of an overfished fishery, OY provides for rebuilding to a level consistent with producing MSY in such a fishery. In NS1, use of the phrase, ''achieving, on a continuing basis, the optimum yield from each fishery" means producing, from each stock, stock complex or fishery a long-term series of catches such that the average catch is equal to OY, overfishing is prevented, the long term average biomass is near or above B_{msy}, and overfished stocks are rebuilt in as short a time as possible as specified in MSA section 304(e)(4). OY might be established at the stock or stock complex level, or for a fishery comprised of stocks, many of which have their own ACL and ACT (e.g., groundfish of the Gulf of Alaska and groundfish of the Bering Sea and Aleutian Islands).

Section 3(34) of the MSA states that "overfishing" and "overfished" mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis. To reduce confusion and conform to usage of those terms in other fisheries worldwide, in the current NS1 guidelines, NMFS interpreted these terms so that "overfished" pertains to the biomass of the stock or stock complex, and "overfishing" pertains to a rate or level of removal of fish from the stock or stock complex. The current NS1 guidelines also provide for SDC, which are quantifiable factors for determining whether a stock or stock complex is overfished or if overfishing is occurring. An overfished definition consists of a measure of stock abundance called the minimum stock size threshold (MSST), below which a stock's or stock complex's capacity to produce MSY on a continuing basis is jeopardized. Overfishing of a stock or stock complex occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality, called the

maximum fishing mortality threshold (MFMT), above which the stock's or stock complex's capacity to produce MSY on a continuing basis is jeopardized or annual catch exceeds a stock's or stock complex's OFL. MSRA made no changes to the MSA that would necessitate different interpretations of these terms or different approaches to these concepts.

XII. Description of the Relationship of OFL to MSY and ACT to OY

National Standard 1 establishes the relationship between conservation and management measures, preventing overfishing, and achieving OY from each stock, stock complex or fishery. The following sections describe in detail NMFS' proposed guidance on ACLs and other new requirements. Among other things, the proposed guidance introduces new terms—overfishing limit (OFL) and annual catch target (ACT)which are not set forth in the MSA but which NMFS believes would be helpful to implement the statutory requirements. As an overview, OFL is an annual amount of catch that corresponds to the estimate of MFMT applied to a stock or complex's abundance; MSY is the long-term average of such catches. The current NS1 guidelines define overfishing with regard to MFMT, which is a rate of fishing. The use of OFL would provide another method for measuring overfishing by allowing the comparison of a stock or stock complexes' annual catch to its OFL; if catch exceeds OFL, overfishing is occurring. It is recommended that ABC would be set below OFL to take into account the scientific uncertainty in the estimate of OFL.

ACL would be the limit that triggers AMs, and ACT would be the management target for the fishery. Management measures for a fishery should, on an annual basis, achieve the ACT and prevent the ACL from being exceeded. The long-term objective is to achieve OY through annual achievement of ACT.

XIII. Definition Framework for OFL, ABC, ACL, and ACT

The MSRA does not define ACLs, AMs, and ABC, and there are many different ways in which these terms can be defined. The voluminous comments that NMFS received during scoping reflects the wide range of possible interpretations and approaches. For example, some commenters felt that ACL should be considered a target catch level and others felt it should be a limit that should not be approached or reached. Many commenters suggested,

in general, that a buffer be implemented between management targets and limits in order to prevent overfishing and account for uncertainty. Over the past year, NMFS spent considerable time reviewing different interpretations of the ACL requirement in light of MSA sections 303(a)(15), 302(h)(6), and 302(g) and other sections of the MSA, and taking into consideration the current NS1 guidelines, previously proposed changes to those guidelines, existing FMPs and FMP amendments, scientific and management roles in the decision making process, and public comment. Based on this review, NMFS proposes the following definitions for ACL, AM, and ABC, and also for ACT and OFL:

1. Overfishing limit (OFL) means "the annual amount of catch that corresponds to the estimate of MFMT applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish." See § 600.310(e)(2)(i)(D) of this proposed action.

2. Acceptable biological catch (ABC) means "a level of a stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and should be specified based on the ABC control rule." See \S 600.310 (f)(2)(ii) of this proposed action.

3. Annual catch limit (ACL) means "the level of annual catch of a stock or stock complex that serves as the basis for invoking accountability measures." See § 600.310(f)(2)(iv) of this proposed action.

4. Annual catch target (ACT) means "an amount of annual catch of a stock or stock complex that is the management target of the fishery. A stock or stock complex's ACT should usually be less than its ACL and results from the application of the ACT control rule. If sector-ACLs have been established, each one should have a corresponding sector-ACT." See §§ 600.310(f)(2)(v) and (f)(6) of this proposed action.

5. Accountability measures (AMs) means "management controls that prevent ACLs or sector-ACLs from being exceeded (inseason AMs), where possible, and correct or mitigate overages if they occur." See § 600.310(g) of this proposed action.

As proposed in this action, the relationship between the above terms would be OFL≥ABC≥ACL≥ACT (see Figure 2). Because a primary goal of the MSA, and management responsibility of NMFS and the Councils, is to end and prevent overfishing, rather than account for it after it occurs, NMFS believes that a good approach to management is to have OFL>ABC and ACL>ACT. The ABC is lower than the OFL to address scientific uncertainty in the estimate of OFL, and ACT is lower than the ACL to address uncertainty in the accounting for catch and in the degree to which management measures can control catch to the target level.

OFL is an annual amount of catch that corresponds to the estimate of MFMT applied to a stock or complex's abundance, and MSY is the long-term average of such catches. NMFS proposes that OFL be the upper bound of ABC, but that ABC should usually be reduced from the OFL to account for scientific uncertainty in the estimate of OFL. For overfished stocks, ABC must also be set to reflect the annual catch that is consistent with the rebuilding plan for that stock. Therefore, if a stock is being managed under a rebuilding program, its ABC should be lower during some or all stages of rebuilding than when the stock is rebuilt. The ABC will be set on the basis of the ABC control rule.

The proposed guidelines would have the Councils set the ACL as a level of catch specified for a stock or stock complex each year that cannot exceed its ABC. If a stock or stock complex's catch exceeds its ACL, AMs will be invoked as specified in the FMP. The ACL may typically be equal to the ABC and setting the ACL provides an opportunity to divide the total ACL into sector-specific ACLs. As noted above, the purpose of the ACT is to address management uncertainty. The ACT would be the target catch of a stock or stock complex that a fishery is managed to attain and should generally be less than the stock or stock complex's ACL. "Catch" includes fish that are retained for any purpose, as well as mortality of fish that are discarded (see §600.310(f)(2)(i) of this proposed action). Therefore, for fisheries where bycatch estimates are not available in a timely enough manner to manage annual catch, targets may be specified for landings, so long as an estimate of bycatch is accounted for such that total of landings and bycatch will not exceed the stock's or stock complex's ACL. For a stock with sufficient inseason data monitoring, the fishery for that stock would be closed in time to prevent the ACL from being exceeded.

NMFS notes that when it published an initial notice about ACLs, ACT was not a parameter used when exploring the concept of how to make ACLs and AMs operational. At that time, NMFS suggested an initial approach of OFL>ABC≥ACL with ACL as the target catch that management measures should try to attain. Under that approach, if catch of a stock reached the OFL, its fishery would be closed. During the scoping period, NMFS received some public comments expressing concern about the use of an ACL as a management target as opposed to a "limit." Also, the framework contained in this proposed rule provides for better separation between scientific uncertainty in estimating OFL (i.e., a recommendation that ABC be lower than OFL), and management uncertainty and OY factors indicating that an ACT be lower than the ACL.

Figure 2: Relationship between OFL, ABC, ACL and ACT (see discussion of the ABC and ACT

control rules below).



XIV. Control Rules

Control rules are harvest strategies that specify how a stock's or stock complex's catch will be modified in response to one or more factors, particularly estimated stock size. The current NS1 guidelines include MSY control rules which are "limit" control rules and OY control rules which are "target" control rules. For any stock, the limit control rule results in a higher amount than the target control rule for a given stock abundance. Because of the new MSA requirement for annual catch limits to end and prevent overfishing for stocks in a fishery, NMFS proposes that MSY control rules be replaced by ABC control rules and become the new limit control rule, and OY control rules be

replaced by ACT control rules and become the new target control rule. This would align the control rules more directly with the new requirement to specify an ABC and an ACL for stocks in the fishery (see earlier discussion in the preamble for the relationship between OFL and MSY, and between ACT and OY).

ABC and ACT control rules should be developed for each stock when possible. For stock complexes, ABC and ACT control rules should be developed for each indicator stock or for the stock complex as a whole. ACTs should be set with the intention that they typically will be achieved. A stock's or stock complex's ACT control rule should result in lower target catches than the ABC control rule would, for all levels of a stock's or stock complex's abundance.

In the proposed revisions to NS1 guidelines, an ABC control rule is a specified approach to setting the ABC for a stock or stock complex as a function of the scientific uncertainty in the estimate of OFL. An ACT control rule is an approach to setting the ACT for each stock and stock complex such that the risk of exceeding ACL due to management uncertainty (ability to control catch and variability in catch data) is an acceptably low level. Both control rules are designed to reduce the risk that overfishing will occur.

For rebuilding stocks, the ABC, ACL, and ACT should be set at lower levels than for rebuilt stocks because two objectives are combined. First, overfishing should not occur; and second, rebuilding at a rate commensurate with the stock's rebuilding plan should occur. This means that, for a rebuilding stock, a lower target fishing mortality rate may be needed to accomplish rebuilding, in addition to avoiding overfishing (i.e., ACL and ACT are lower than they would be if the stock was rebuilt).

XV. Sector ACLs, ACTs, and AMs

A Council may decide, but is not required, to divide the ACL into sector-ACLs. "Sector" for purposes of the NS1 guidelines means a distinct user group to which separate management strategies and catch quotas apply. Examples of sectors could include the commercial sector, recreational sector, or various gear groups within a fishery. It is up to each Council to decide how to designate sectors, if any. If sector-ACLs are established, sector-AMs and sector-ACTs must be developed for each sector-ACL. In cases where states cooperatively manage a stock, it is possible that a sector ACL could be further subdivided in order to establish "subsector" ACLs and ACTs for various states to align with current management of catch limits or quotas in the state fisheries. The system of ACLs and AMs must be effective and equitable and protect the stock as a whole from overfishing. The sum of a stock's sector-ACLs must not exceed the stock's ACL. If sector-ACLs and sector-AMs are established, additional AMs at the stock level would also be appropriate. A sector must be closed inseason if timely catch data indicates its ACL has been reached. If a sector does not have timely inseason fisheries data, or has a history of annual overages, then a Council should establish a large enough difference between a sector's ACT and ACL to improve the probability that the sector-ACL and the stock's ACL are not exceeded.

XVI. Accountability Measures

AMs are management controls implemented for stocks such that exceeding the ACL or sector-ACL is prevented, where possible, and corrected or mitigated if it occurs (see § 600.310(g) of this proposed action). AMs include: (1) Those that are applied inseason and designed to prevent the ACL from being reached; (2) measures applied after the fishing year that are designed to address the operational issue that caused the ACL overage, ensuring it does not happen in subsequent fishing years, and, as necessary, address any biological harm to the stock; and (3) those based on

multi-year average data which are still reviewed and applied annually (see discussion below). AMs should address and minimize both the frequency of overages and the magnitude of an overage. AMs should be designed so that if an ACL is exceeded, specific adjustments are effective in the next fishing year, or as soon as possible, with explanation of why more timely adjustment is not possible.

If timely inseason fishery catch data are available for a stock, Councils should ensure their FMPs contain inseason closure authority as an AM to prevent a stock's ACL from being exceeded. Where fishery catch data are not timely enough to implement inseason AMs, the ACT should be adjusted downward from the ACL to account for the increased management uncertainty and the delayed ability to implement AMs.

 \hat{A} "multiyear plan" as referenced in section 303(a)(15) of the MSA is a plan that establishes harvest specifications or harvest guidelines for each year of a time period greater than one year. Because "multiyear plans" establish ACLs and ACTs for more than one year at a time, they should include AMs that provide if an ACL is exceeded in one year, then a subsequent year's harvest specification (including ACLs and ACTs) could be revised (see § 600.310(f)(5)(i) of this proposed action).

Some fisheries have highly variable annual catches and lack reliable inseason or annual data on which to base AMs. If there are insufficient data upon which to compare catch to ACL, either inseason or on an annual basis, a Council could base AMs on comparison of average catch to average ACL over a three-year moving average period or, if supported by analysis, some other appropriate multi-year period (see § 600.310(g)(4) of this proposed action). As a performance standard, if the average catch exceeds the average ACL more than once in the last four years, then the ACL, ACT and AM system should be re-evaluated to improve its performance. The initial ACL and management measures should incorporate information from previous years so that AMs based on average ACLs can be applied from the first year.

If a stock is in a rebuilding plan and its ACL is exceeded, the AMs should include overage adjustments that reduce the ACL in the next fishing year by the full amount of the overage, unless the best scientific information available shows that a reduced overage adjustment is sufficient, or no adjustment is needed to mitigate the effects of the overage. This AM is important to increase the likelihood that the stock will continue to rebuild.

As discussed earlier, stocks and stock complexes in federal FMPs that have a large majority of harvest in state or territorial waters should have an ACL that takes into consideration the overall status of the stock. However, federal management would be limited to that portion of the fishery under federal jurisdiction. Options for AMs that a Council could consider for stocks or stock complexes caught mostly in state or territorial waters would include, but are not limited to: (1) Close the EEZ when the federal portion of the ACL is reached, or (2) close the EEZ when the overall stock or stock complex's ACL is reached. The AMs should ensure that federal managers are doing as much as possible to end and prevent overfishing. When stocks are co-managed by federal, state, tribal, and/or territorial fishery managers, the goal should be to develop collaborative conservation and management strategies, and scientific capacity to support such strategies, to prevent overfishing of shared stocks and ensure their sustainability.

XVII. Summary of Items To Include in FMPs

This section provides a summary of items that Councils should include in their FMPs and FMP amendments in order to address ACL, AM, and other aspects of the proposed NS1 guidelines. Some items are specific to new MSRA provisions. Others were required prior to MSRA, but are included here so as to be comprehensive. Councils may review their FMPs to decide if all stocks are "in the fishery" or whether some fit the category of "ecosystem component species" and amend their FMP as appropriate. If they do not establish EC species through an FMP amendment, then all stocks in an FMP are presumed to be "in the fishery." For all stocks and stock complexes that are in the fishery, the Councils should evaluate and describe the following items in their FMPs and amend the FMPs, if necessary, to align their management objectives to end or prevent overfishing (see § 600.310(c) of this proposed action): (1) MSY and SDC, (2) OY at the stock, stock complex or fishery level, (3) ABC control rule, (4) ACLs and mechanisms for setting ACLs and possible sector-specific ACLs in relationship to the ABC, (5) ACT control rule, (6) AMs and AM mechanisms, and (7) stocks and stock complexes that have statutory exceptions from ACLs or fall under limited circumstances which require different approaches to meet the ACL requirements (e.g., ESA-listed

stocks and harvests from aquaculture facilities).

The Councils should evaluate the extent to which their FMPs comply with requirements to define MSY and OY for stocks in the fishery, and the reasons that OY is reduced from MSY (see §600.310(e)(3)(iv) of this proposed action). An overall objective of management of federal fisheries under the MSA is to conserve fishery resources so as to prevent overfishing and achieve OY (see sections 2(a)(6) and 2(b)(4) of the MSA). OY is based on MSY for a fishery, as reduced for economic, social, or ecological reasons (see section 3(33)(B) of the MSA). Therefore, it is important that all FMPs have MSY and OY prescribed correctly.

FMPs should contain a description of fisheries data for the stocks, stock complexes, and ecosystem component species. The sources of fishing mortality, such as commercial catch (both landed and discarded), recreational catch, and bycatch in other fisheries should be listed in the FMP for each fishery, along with a description of the data collection and estimation methods used to quantify total catch mortality in each fishery. The description of the data collection methods used to monitor the fishery should include information on the frequency that those data are collected and updated and the scope of sampling coverage for the fishery. In addition, the FMP should describe how those data are used to determine the relationship between total catch at a given point in time and the ACL for a stock or stock complex.

FMPs should explain issues related to shared jurisdiction of stocks (if any), and the degree to which ACLs and AMs established by the Councils will ensure that overfishing does not occur on the stock as a whole.

NMFS is aware that existing FMPs may use terms that are similar to. associated with, or may be equivalent to ABC, ACL, ACT, and AM in many fisheries for which annual specifications are set for different stocks or stock complexes. NMFS' preference is that, as Councils revise their FMPs, they use the same terms as set forth in the NS1 guidelines as finalized. However, given the longstanding use of terms under certain FMPs, if changing terminology could cause confusion, Councils could opt to retain existing terminology and explain in a proposed rule how the terminology and approaches in the FMPs are consistent with those set forth in the NS1 guidelines.

Councils should amend their FMPs to provide explicit narrative of how the FMP objectives and annual management measures will work with ACLs and AMs. All stocks and stock complexes should have an annual or multiyear specification process for stocks managed in a fishery. An annual or multiyear specification process for setting or adjusting ACLs provides a timely, consistent method that the public and stakeholders can understand, and that provides an opportunity for public comment. Such a process could also provide a method for assigning an ACL, ACT, and AM to a "stock having a life cycle of approximately one year" that is undergoing overfishing.

XVIII. Change in Timetable When Establishing a Rebuilding Plan

The MSA provides that the Secretary shall annually identify stocks and stock complexes that are overfished or approaching a condition of being overfished; notify the appropriate Council at any time when a stock or stock complex is determined to be overfished; and notify the appropriate Council when adequate progress is not being made under existing FMPs, FMP amendments, or regulations (see MSA sections 304(e)(1), (2), and (7)). MSRA did not change these identification and notification provisions but revised the timing of Council actions. Currently, the Councils have 1 year to prepare an FMP, an FMP amendment, or proposed regulations (see MSA sections 304(e)(3) and 304 note (Effective Date for Subsection (c)). Beginning July 12, 2009, the Councils have 2 years from the date of an identification or notification to prepare and implement an FMP, an FMP amendment, or proposed regulations "to end overfishing immediately in the fishery and to rebuild affected stocks * * * or to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition" (see MSA section 304(e)(3), as revised by MSRA section 104(c)). To facilitate timely implementation of actions under revised section 304(e)(3), the Councils should submit an FMP, an FMP amendment, or proposed regulations within 15 months of an identification or notification under this section. This will provide the Secretary with 9 months to implement the measures, if approved (see §600.310(j)(2)(ii) of this proposed action).

While MSA section 304(e)(3) provides for two years for a Council to prepare and implement an FMP, FMP amendment, or proposed regulations, as discussed earlier, MSA section 303(a)(15) has a separate requirement for FMPs and ACLs that is effective in fishing year 2010 for fisheries determined to be subject to overfishing and in fishing year 2011 for all other fisheries. Thus, as of 2010 and beyond, for a stock and stock complex determined to be overfished and experiencing overfishing, a Council needs to take measures consistent with MSA section 303(a)(15) that address overfishing while the rebuilding plan is under development.

XIX. Establishing the Length of Time for a Rebuilding Plan

NMFS proposes clarifying guidance for calculating the target time to rebuild (T_{target}) in rebuilding plans for stocks (see § 600.310(j)(3)(i)(E) of this proposed action), based on experiences with FMPs since the last NS1 guideline revisions. The purpose of this clarification is to emphasize that the rebuilding time must be "as short as possible," taking several factors into account (see MSA section 304(e)(4)(A)(i). Establishing the T_{target} should be based on the minimum time for rebuilding a stock (T_{min}), and factors described in §600.310(j)(3) of this proposed action with priority given to rebuilding in as short a time as possible. T_{target} shall not exceed the maximum time allowable for rebuilding (T_{max}) and should generally be less than T_{max}.

XX. Action When a Stock's Rebuilding Plan Ends and the Stock Is Not Rebuilt

Many rebuilding plans for overfished stocks under section 304(e) of the MSA were initiated in 1998, or later, and some of those plans are reaching the end of their rebuilding periods such that a stock is no longer overfished, but not rebuilt. NMFS does not have explicit guidance in the NS1 guidelines to describe what a Council should do under such circumstances. Therefore, NMFS proposes that if a stock reaches the end of its rebuilding plan period and it is not yet determined to be rebuilt, then the rebuilding F should not be increased until the stock has been demonstrated to be rebuilt (see §600.310(j)(3)(ii) of this proposed action). If the rebuilding plan was based on a T_{target} that was less than $T_{\text{max}},$ and the stock is not rebuilt by T_{target} , rebuilding measures should be revised if necessary, such that the stock will be rebuilt by T_{max} . If the stock has not rebuilt by T_{max} , and the rebuilding F is greater than 75 percent of MFMT, then the rebuilding F should be reduced to no more than 75 percent of MFMT until the stock has been demonstrated to be rebuilt.

XXI. Changes to the Definitions of Some Components of MSY

NMFS is proposing changes to the definitions of some components of MSY. The purposes of these changes are to improve some portions of the MSY related definitions and to further clarify how MSY is estimated. The definition of MSY in the NS1 guidelines would remain the same for the most part but the phrase "and fishery technological characteristics (e.g., gear selectivity) and the distribution of catch among fleets' would be added to the end of the definition (see § 600.310(e)(1)(i)(A) of this proposed action). The purpose of this change is to acknowledge that MSY also depends upon gear selectivity (age at entry) and the catch performance of the fishery, which can depend on the relative proportion of catch between different fleets with differing fishing characteristics. The definition of MSY stock size would be changed in two places. Currently, the guidelines state that "MSY stock size means the longterm average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate units that would be achieved under a MSY control rule in which the fishing mortality rate is constant." In the proposed guidelines (see §600.310(e)(1)(i)(C) of the proposed action), NMFS clarifies that "other appropriate units" means an 'appropriate measure of the stock's reproductive potential." NMFS also replaces the statement that "the fishing mortality rate is constant" with "Fmsy. NMFS also added a definition for MSY fishing mortality rate (Fmsv) (see §600.310(e)(1)(i)(B) of the proposed action), which was lacking in the current guidelines. MSY fishing mortality "is the fishing mortality rate that, if applied over the long term, would result in MSY."

XXII. Social, Economic and Ecological Factors as They Relate to OY

NMFS proposes additional guidance to better describe social and ecological factors, and minor revisions to the economic factors as they relate to setting OY for a stock (see § 600.310(e)(3)(iv) of this proposed action). The revisions to the social factors describe fisheryrelated indicators and non-fishery related indicators that should be considered when OY needs to be reduced for a stock or stock complex.

XXIII. Scope of This Proposed Action

NMFS received voluminous comments during its scoping comment period for ACLs and AMs, including proposals to strengthen guidance on ecosystem considerations when setting ACLs and AMs. While NMFS has carefully considered all comments received, it will not be able to include all proposed NS1 revisions in this action. These proposed revisions to the NS1 guidelines will address primarily the need to have ACL and AM mechanisms and ACLs and AMs in place such that ACLs end overfishing in 2010, for stocks undergoing overfishing, and prevent overfishing for all other stocks beginning in 2011.

NMFS intends to withdraw most of the proposed revisions to the NS1 guidelines that were published in 2005 in a separate withdrawal of a proposed rule action. A few of the topics from the 2005 rule are considered in this action, such as: (1) Establishing the length of time for a rebuilding plan; (2) action to take when a stock is not determined to be rebuilt at the end of its rebuilding plan; and (3) the definition of several components of MSY. Other proposed revisions considered in the 2005 proposed NS1 guidelines and suggested during the comment period for this action will be considered by NMFS for possible inclusion in subsequent revisions to the NS1 guidelines.

XXIV. Republishing Codified Text in Its Entirety

For clarity and convenience of the reader, this proposed rule would revise § 600.310 in its entirety. The following describes the changes to § 600.310 that are being proposed.

In the proposed revisions to § 600.310, paragraph (b)—*General*, would be revised to contain a general outline of information provided by the NS1 guidelines. Current paragraph (b) only contains a brief summary of the relationship between MSY and OY.

Current paragraph (c)—*MSY* is revised and redesignated paragraph (e)(1).

Current paragraph (d)(1)—*Definitions,* is revised and redesignated paragraph (e)(2)(i).

Current paragraph (d)(2)— Specification of status determination criteria, is revised and redesignated paragraph (e)(2)(ii).

Current paragraph (d)(3)— Relationship of status determination criteria to other national standards is revised, redesignated paragraph (l) and renamed, "Relationship of National Standard 1 to other national standards."

Current paragraph (d)(6)—*Exceptions,* is revised, redesignated paragraph (m), and renamed, "*Exceptions to requirements to prevent overfishing.*"

Current paragraph (e)—Ending overfishing and rebuilding overfished stocks, is revised and redesignated paragraph (j)—Council actions to address overfishing and rebuilding for stocks and stock complexes in the fishery.

Current paragraph (f)—OY is redesignated paragraph (e)(3).

Revised paragraphs with much different content include: Paragraph (c)—Summary of Items to Include in FMPs Related to NS1, paragraph (d)— Classifying stocks in an FMP, and paragraph (f)—Acceptable Biological Catch, Annual Catch Limits, and Annual Catch Targets.

New paragraphs that contain new content not covered in the current NS1 guidelines include: (g) Accountability measures, (h) Establishing ACL and AM mechanisms in FMPs, (i) Fisheries data, and (k) International overfishing.

XXV. Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be significant for purposes of Executive Order 12866. NOAA has prepared a regulatory impact review of this rulemaking, which is available at: http://www.nmfs.noaa.gov/ *msa2007/catchlimits.htm.* This analysis discusses various policy options that NOAA considered in preparation of this proposed rule, given NOĀA's interpretation of the statutory terms in the MSRA, such as the appropriate meaning of the word "limit" in "Annual Catch Limit," and NOAA's belief that it has become necessary for Councils to consider separately the uncertainties in fishery management and the scientific uncertainties in stock evaluation in order to effectively set fishery management policies and ensure fulfillment of the goals to end overfishing and rebuild overfished stocks.

NOAA invites the public to comment on this proposal, the supporting analysis, and its underlying interpretation of the analytical requirements of the MSRA. In particular, NOAA seeks comment on: The appropriate interplay of the OFL, ABC, ACL and ACT; whether the Council's experience with MSY and OY would readily translate into these new concepts; whether the ACT and ACT control rules, as proposed, would be effective tools in managing fisheries at risk; the degree to which Councils should have the flexibility to specify stringent AMs to prevent the ACL from

being exceeded in lieu of setting an ACT and ACT control rules; and the expected burden of these analytical requirements, both in terms of time and resources.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed revisions to the NS1 guidelines, if adopted, would not have any significant economic impact on a substantial number of small entities, as follows:

I certify that the attached proposed action issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) will not have any significant economic impacts on a substantial number of small entities, as defined under the Regulatory Flexibility Act. The proposed action would revise the National Standard 1 (NS1) guidelines at 50 CFR 600.310.

The proposed revisions to the NS1 guidelines provide guidance on how to address new overfishing and rebuilding and related requirements under MSA sections 303(a)(15), 304(e), and other sections. Pursuant to section 301(b) of the Act, the NS guidelines do not have the force and effect of law. Regional Fishery Management Councils (Councils) and the Secretary of Commerce would use the NS1 guidelines when developing or amending FMPs to implement annual catch limits (ACLs) and accountability measures (AMs) and to take necessary actions to rebuild overfished fisheries. ACL and AM requirements under section 303(a)(15) of the Magnuson-Stevens Act are effective in fishing year 2010, for stocks undergoing overfishing and in fishing year 2011, for all other fisheries. NMFS believes that revisions to the NS1 guidelines will assist the Councils and the Secretary in addressing new MSA requirements, ensure greater consistency in approaches to ending overfishing and rebuilding stocks, increase efficiency in reviewing actions and tracking annual management performance, and improve communication between NMFS and the Councils.

Because the NS1 guidelines are general guidance and there is considerable diversity in the different federally-managed fisheries, potential economic impacts of the guidelines are highly speculative. As the Councils and/ or the Secretary apply these guidelines to specific fisheries, they will develop FMPs, FMP amendments, or other regulatory actions that will be accompanied by environmental, economic, and social analyses prepared pursuant to the Regulatory Flexibility Act, National Environmental Policy Act, and other statutes.

NMFS has identified a total of 59,823 commercial vessel permit holders and 18,486 headboat and charter boat vessel permits. A total of 26,074 recreational permits exist for Atlantic highly migratory species (HMS). Operator permits are estimated at 6,636 and dealer permits were estimated at 7,550. However, it is important to note that in most cases each vessel possesses permits for several fisheries (multiple vessel permits). As such, the total number of vessel permits

(commercial, headboat and charter boat, and HMS recreational) grossly overestimate the actual number of vessels that are operating in these fisheries. All vessels included in the total vessel permits for each fishery are considered to be small entities for the purposes of the Regulatory Flexibility Act analysis. As a result, NMFS does not believe that these proposed revisions to the NS1 guidelines would place a substantial number of small entities at a disadvantage as compared to large entities or that it would reduce profit significantly. The NS1 guidelines would provide general guidance on ending and preventing overfishing and rebuilding fisheries, leaving considerable discretion to the Councils and the Secretary to consider alternative ways to accomplish these goals consistent with the NS, other provisions of the Magnuson-Stevens Act, and other applicable law. Therefore, an IRFA has not been prepared for this action.

These proposed revisions to the NS1 guidelines do not contain any new recordkeeping or reporting requirements subject to the Paperwork Reduction Act. When the Councils and the Secretary develop FMPs, FMP amendments, or other regulatory actions per the Magnuson-Stevens Act and NS1 guidelines, such actions may include new proposed collection-of-information requirements. In the event that new collection-of-information requirements are proposed, a specific analysis regarding the public's reporting burden would accompany such action. NMFS is not aware of any other relevant federal rules that may duplicate, overlap or conflict with the proposed rule.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 3, 2008.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Section 600.310 is revised to read as follows:

§ 600.310 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the U.S. fishing industry.

(b) *General.* (1) The guidelines set forth in this section describe fishery management approaches to meet the objectives of National Standard 1 (NS1), and include guidance on: (i) Specifying maximum sustainable yield (MSY) and OY;

(ii) Specifying status determination criteria (SDC) so that overfishing and overfished determinations can be made for stocks and stock complexes that are part of a fishery;

(iii) Preventing overfishing and achieving OY using a system of limits and targets, incorporation of scientific and management uncertainty in control rules, and adaptive management using annual catch limits (ACL) and measures to ensure accountability (AM); and

(iv) Rebuilding stocks and stock complexes.

(2) Overview of Magnuson-Stevens Act concepts and provisions related to NS1—(i) MSY. The Magnuson-Stevens Act establishes MSY as the basis for fishery management and requires that: The fishing mortality rate does not jeopardize the capacity of a stock or stock complex to produce MSY; the abundance of an overfished stock or stock complex be rebuilt to a level that is capable of producing MSY; and OY not exceed MSY.

(ii) *OY*. The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's conservation and management objectives, achieving a fishery management plan's (FMP) objectives, and balancing the various interests that comprise the greatest overall benefits to the Nation. OY is based on MSY as reduced under paragraphs (e)(3)(iii) and (iv) of this section. The most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing.

(iii) ACLs and AMs. Any FMP which is prepared by any Council shall establish a mechanism for specifying ACLs in the FMP (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 (Magnuson-Stevens Act section 303(a)(15)). Subject to certain exceptions and circumstances described in paragraph (h) of this section, this requirement takes effect in fishing year 2010, for fisheries determined subject to overfishing, and in fishing year 2011 for all other fisheries (Magnuson-Stevens Act section 303 note). "Council" includes the Regional Fishery Management Councils and the Secretary of Commerce, as appropriate (see §600.305(c)(11)).

(iv) Reference points. SDC, MSY, acceptable biological catch (ABC), ACL, and annual catch target (ACT), which are described further in paragraphs (e)

and (f) of this section, are collectively referred to as "reference points."

(v) *Scientific advice.* The Magnuson-Stevens Act has requirements regarding scientific and statistical committees (SSC) of the Regional Fishery Management Councils, including but not limited to, the following provisions:

(A) Each Regional Fishery Management Council shall establish an SSC as described in section 302(g)(1)(A) of the Magnuson-Stevens Act.

(B) Each SSC shall provide its Regional Fishery Management Council recommendations for ABC as well as other scientific advice, as described in Magnuson-Stevens Act section 302(g)(1)(B). The SSC may specify the type of information that should be included in the Stock Assessment and Fishery Evaluation (SAFE) report (see § 600.315).

(C) The Secretary and each Regional Fishery Management Council may establish a peer review process for that **Regional Fishery Management Council** for scientific information used to advise the Regional Fishery Management Council about the conservation and management of the fishery (see Magnuson-Stevens Act section 302(g)(1)(E)). If a peer review process is established, it should investigate the technical merits of stock assessments and other scientific information used by the SSC. The peer review process is not a substitute for the SSC and should work in conjunction with the SSC.

(D) Each Regional Fishery Management Council shall develop ACLs for each of its managed fisheries that may not exceed the fishing level recommendations of its SSC or peer review process (Magnuson-Stevens Act section 302(h)(6)).

(3) Approach for setting limits and targets for consistency with NS1. In general, when specifying limits and targets intended to avoid overfishing and achieve sustainable fisheries, Councils should take an approach that considers uncertainty in scientific information and management control of the fishery. These guidelines identify limit and target reference points which should be set lower as uncertainty increases such that there is a low risk that limits are exceeded as described in paragraphs (f)(4) and (f)(6) of this section.

(c) Summary of items to include in FMPs related to NS1. This section provides a summary of items that Councils should include in their FMPs and FMP amendments in order to address ACL, AM, and other aspects of the NS1 guidelines. As described in further detail in paragraphs (c)(1) through (7) of this section, Councils may review their FMPs to decide if all stocks are "in the fishery" or whether some fit the category of "ecosystem component species" and amend their FMPs as appropriate. If they do not establish ecosystem component species through an FMP amendment, then all stocks in an FMP are presumed to be "in the fishery." Councils should also describe fisheries data for the stocks, stock complexes, and ecosystem component species in their FMPs. For all stocks and stock complexes that are "in the fishery," the Councils should evaluate and describe the following items in their FMPs and amend the FMPs, if necessary, to align their management objectives to end or prevent overfishing: (1) MSY and SDC (see paragraphs

(1) MSY and SDC (see paragraphs (e)(1) and (2) of this section).

(2) OY at the stock, stock complex, or fishery level and provide the OY specification analysis (see paragraph (e)(3) of this section).

(3) ABC control rule (see paragraph (f)(4) of this section).

(4) ACLs and mechanisms for setting ACLs and possible sector-specific ACLs in relationship to the ABC (see paragraphs (f)(5) and (h) of this section).

(5) ACT control rule (see paragraph (f)(6) of this section).

(6) AMs and AM mechanisms (see paragraphs (g) and (h)(1) of this section).

(7) Stocks and stock complexes that have statutory exceptions from ACLs (see paragraph (h)(2) of this section) or which fall under limited circumstances which require different approaches to meet the ACL requirements (see paragraph (h)(3) of this section).

(d) *Classifying stocks in an FMP*—(1) *Introduction.* Magnuson-Stevens Act section 303(a)(2) requires that an FMP contain, among other things, a description of the species of fish involved in the fishery. FMPs include target stocks and may also include nontarget species or stocks. All stocks listed in an FMP or FMP amendment are considered to be "in the fishery" unless they are identified as ecosystem component (EC) species through an FMP amendment process.

(2) Stocks in a fishery. Stocks in a fishery include: Target stocks; nontarget stocks that are retained for sale or personal use; and non-target stocks that are not retained for sale or personal use and that are either determined to be subject to overfishing, approaching overfished, or overfished, or could become so, according to the best available information, without conservation and management measures. Stocks in a fishery may be grouped into stock complexes, as appropriate. Requirements for reference points and management measures for these stocks are described throughoutthese guidelines.(3) "Target stocks" are stocks that

(3) "Target stocks" are stocks that fishers seek to catch for sale or personal use, including "economic discards" as defined under Magnuson-Stevens Act section 3(9).

(4) "Non-target species" and "nontarget stocks" are fish caught incidentally during the pursuit of target stocks in a fishery, including "regulatory discards" as defined under Magnuson-Stevens Act section 3(38). They may or may not be retained for sale or personal use. Non-target species may be included in a fishery and, if so, they should be identified at the stock level. Some non-target species may be identified in an FMP as ecosystem component (EC) species or stocks.

(5) "Ecosystem component (EC) species" are generally not retained for any purpose, although de minimis amounts might occasionally be retained. EC species may be identified at the species or stock level, and may be grouped into complexes. EC species may be included in an FMP or FMP amendment for any of the following reasons: For data collection purposes; for ecosystem considerations related to specification of OY for the associated fishery; as considerations in the development of conservation and management measures for the associated fishery; and/or to address other ecosystem issues. While EC species are not considered to be "in the fishery," a Council should consider measures for the fishery to minimize bycatch and bycatch mortality of EC species consistent with National Standard 9, and to protect their associated role in the ecosystem. EC species do not require specification of reference points but should be monitored on a regular basis, to the extent practicable, to determine changes in their status or their vulnerability to the fishery. If necessary, they should be reclassified as "in the fisherv."

(6) *Reclassification*. A Council should monitor the catch resulting from a fishery on a regular basis to determine if the stocks and species are appropriately classified in the FMP. If the criteria previously used to classify a stock or species is no longer valid, the Council should reclassify it through an FMP amendment, which documents rationale for the decision.

(7) Stocks or species identified in more than one FMP. If a stock is identified in more than one fishery, Councils should choose which FMP will be the primary FMP in which management objectives, SDC, and other reference points for the stock are established. In most cases, the primary FMP for a stock will be the one in which the stock is identified as a target stock. Other FMPs in which the stock is identified as part of a fishery should be consistent with the primary FMP.

(8) Stock complex. "Stock complex" means a group of stocks that are sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery such that the impact of management actions on the stocks is similar. Stocks may be grouped into complexes for various reasons, including where stocks in a multispecies fishery cannot be targeted independent of one another; where there is insufficient data to measure their status relative to SDC; or when it is not feasible for fishermen to distinguish individual stocks among their catch. The vulnerability of stocks to the fishery should be evaluated when determining if a particular stock complex should be established or reorganized, or if a particular stock should be included in a complex. Stock complexes may be comprised of: One or more indicator stocks, each of which has SDC and ACLs, and several other stocks; several stocks without an indicator stock, with SDC and an ACL for the complex as a whole; or one of more indicator stocks, each of which has SDC and management objectives, with an ACL for the complex as a whole (this situation might be applicable to some salmon species).

(9) Indicator stocks. An indicator stock is a stock that is used to help manage and evaluate stocks that are in a stock complex and do not have their own SDC. If an indicator stock is used to evaluate the status of a complex, it should be representative of the typical status of each stock within the complex, due to similarity in vulnerability. If the stocks within a stock complex have a wide range of vulnerability, they should be reorganized into different stock complexes that have similar vulnerabilities; otherwise the indicator stock should be chosen to represent the more vulnerable stocks within the complex. In instances where an indicator stock is less vulnerable than other members of the complex, management measures need to be more conservative so that the more vulnerable members of the complex are not at risk from the fishery. More than one indicator stock can be selected to provide more information about the status of the complex. Although the indicator stock(s) are used to evaluate the status of the complex, individual stocks within complexes should be examined periodically using available quantitative or qualitative information to evaluate whether a stock has become

overfished or may be subject to overfishing.

(e) Features of MSY, SDC, and OY that should be identified in FMPs for all stocks and stock complexes in the fishery—(1) MSY. Each FMP should include an estimate of MSY for the stocks and stock complexes in the fishery, as described in paragraph (d)(2) of this section).

(i) *Definitions.* (A) *MSY* is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (e.g., gear selectivity), and the distribution of catch among fleets.

(B) MSY fishing mortality rate (F_{msy}) is the fishing mortality rate that, if applied over the long term, would result in MSY.

(C) *MSY stock size* (B_{msy}) means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate measure of the stock's reproductive potential that would be achieved by fishing at F_{msy} .

(ii) MSY for stocks. MSY should be estimated for each stock based on the best scientific information available (see § 600.315).

(iii) MSY for stock complexes. MSY should be estimated on a stock-by-stock basis whenever possible. However, where MSY cannot be estimated for each stock in a stock complex, then MSY may be estimated for one or more indicator stocks for the complex or for the complex as a whole. When indicator stocks are used, the stock complex's MSY could be listed as "unknown," while noting that the complex is managed on the basis of one or more indicator stocks that do have known, stock-specific MSYs or suitable proxies as described in paragraph (e)(1)(iv) of this section. When indicator stocks are not used. MSY or a suitable proxy should be calculated for the stock complex as a whole.

(iv) Specifying MSY. Because MSY is a long-term average, it need not be estimated annually, but it must be based on the best scientific information available (see § 600.315), and should be re-estimated as required by changes in long-term environmental or ecological conditions, fishery technological characteristics, or new scientific information. When data are insufficient to estimate MSY directly, Councils should adopt other measures of reproductive potential, based on the best scientific information available, that can serve as reasonable proxies for MSY, F_{msy} , and B_{msy} , to the extent possible. As MSY values are estimates

and will have some level of uncertainty associated with them, the degree of uncertainty in the estimates should be identified, when possible, through the stock assessment process and peer review (see § 600.335).

(2) Status determination criteria—(i) Definitions—(A) Status determination criteria (SDC) mean the quantifiable factors, MFMT, OFL, and MSST, or their proxies, that are used to determine if overfishing has occurred, or if the stock or stock complex is overfished. Magnuson-Stevens Act (section 3(34)) defines both "overfishing" and "overfished" to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the MSY on a continuing basis. To avoid confusion, this section clarifies that "overfished" relates to biomass of a stock or stock complex, and "overfishing" pertains to a rate or level of removal of fish from a stock or stock complex.

(B) *Overfishing* (to overfish) occurs whenever a stock or stock complex is subjected to a level of fishing mortality or annual total catch that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(C) Maximum fishing mortality threshold (MFMT) means the level of fishing mortality (F), on an annual basis, above which overfishing is occurring.

(D) Overfishing limit (OFL) means the annual amount of catch that corresponds to the estimate of MFMT applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish. MSY is the long-term average of such catches.

(Ĕ) Overfished. A stock or stock complex is considered "overfished" when its biomass has declined below a level that jeopardizes the capacity of the stock or stock complex to produce MSY on a continuing basis.

(F) *Minimum* stock size threshold (*MSST*) means the level of biomass below which the stock or stock complex is considered to be overfished.

(G) Approaching an overfished condition. A stock or stock complex is approaching an overfished condition when it is projected that there is more than a 50 percent chance that the biomass of the stock or stock complex will decline below the MSST within two years.

(ii) Specification of SDC and overfishing and overfished determinations. SDC must be expressed in a way that enables the Council to monitor each stock or stock complex in the FMP and determine annually, if possible, whether overfishing is occurring and whether the stock or stock complex is overfished. In specifying SDC, a Council should provide an analysis of how the SDC were chosen and how they relate to reproductive potential. Each FMP must specify, to the extent possible, objective and measurable SDC as follows (see paragraphs (e)(2)(ii)(A) and (B) of this section):

(A) *SDC to determine overfishing status.* Each FMP should describe which of the following two methods will be used for each stock or stock complex to determine an overfishing status.

(1) Fishing mortality rate exceeds MFMT. Exceeding the MFMT for a period of 1 year or more constitutes overfishing. The MFMT or reasonable proxy may be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential. The MFMT must not exceed F_{msy} .

(2) Catch exceeds the OFL. Should the annual catch exceed the annual OFL for 1 year or more, the stock or stock complex is considered subject to overfishing.

(B) SDC to determine overfished status. The MSST or reasonable proxy should be expressed in terms of spawning biomass or other measure of reproductive potential. To the extent possible, the MSST should equal whichever of the following is greater: One-half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited at the MFMT specified under paragraph (e)(2)(ii)(A)(1) of this section. Should the estimated size of the stock or stock complex in a given year fall below this threshold, the stock or stock complex is considered overfished.

(iii) Relationship of SDC to environmental change. Some short-term environmental changes can alter the size of a stock or stock complex without affecting its long-term reproductive potential. Long-term environmental changes affect both the short-term size of the stock or stock complex and the long-term reproductive potential of the stock or stock complex.

(A) If environmental changes cause a stock or stock complex to fall below its MSST without affecting its long-term reproductive potential, fishing mortality must be constrained sufficiently to allow rebuilding within an acceptable time frame (also see paragraph (j)(3)(ii) of this section). SDC should not be respecified.

(B) If environmental changes affect the long-term reproductive potential of the stock or stock complex, one or more components of the SDC must be respecified. Once SDC have been respecified, fishing mortality may or may not have to be reduced, depending on the status of the stock or stock complex with respect to the new criteria.

(C) If manmade environmental changes are partially responsible for a stock or stock complex being in an overfished condition, in addition to controlling fishing mortality, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible (see also the guidelines issued pursuant to section 305(b) of the Magnuson-Stevens Act for Council actions concerning essential fish habitat).

(iv) Secretarial approval of SDC. Secretarial approval or disapproval of proposed SDC will be based on consideration of whether the proposal:

(A) Has sufficient scientific merit;

(B) Contains the elements described in paragraph (e)(2)(ii) of this section;

(C) Provides a basis for objective measurement of the status of the stock or stock complex against the criteria; and

(D) Is operationally feasible. (3) Optimum yield—(i) Definitions— (A) Optimum yield (OY). Magnuson-Stevens Act section 3(33) defines "optimum," with respect to the yield from a fishery, as the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be established at the stock or stock complex level, or at the fishery level.

(B) In NS1, use of the phrase "achieving, on a continuing basis, the optimum yield from each fishery" means producing, from each stock, stock complex, or fishery: A long-term series of catches such that the average catch is equal to the OY, overfishing is prevented, the long term average biomass is near or above Bmsy, and overfished stocks and stock complexes are rebuilt consistent with timing and other requirements of section 304(e)(4) of the Magnuson-Stevens Act and paragraph (j) of this section.

(ii) *General.* OY is a long-term average amount of desired yield from a stock, stock complex, or fishery. The long-term objective is to achieve OY through annual achievement of ACT, which is described in paragraph (f) of this

section. An FMP must contain conservation and management measures to achieve OY, and provisions for information collection that are designed to determine the degree to which OY is achieved on a continuing basis-that is, to result in a long-term average catch equal to the long-term average OY, through an effective system of ACLs, ACTs, and AMs. These measures should allow for practical and effective implementation and enforcement of the management regime. The Secretary has an obligation to implement and enforce the FMP. If management measures prove unenforceable—or too restrictive, or not rigorous enough to prevent overfishing while achieving OY-they should be modified; an alternative is to reexamine the adequacy of the OY specification. Exceeding OY does not necessarily constitute overfishing. However, even if no overfishing resulted from exceeding OY, continual harvest at a level above OY would violate NS1, because OY was not achieved on a continuing basis. An FMP must contain an assessment and specification of OY, including a summary of information utilized in making such specification, consistent with requirements of section 303(a)(3) of the Magnuson-Stevens Act. A Council must identify those economic, social, and ecological factors relevant to management of a particular stock, stock complex, or fishery, then evaluate them to determine the OY. The choice of a particular OY must be carefully documented to show that the OY selected will produce the greatest benefit to the Nation and prevent overfishing.

(iii) Determining the greatest benefit to the Nation. In determining the greatest benefit to the Nation, the values that should be weighed and receive serious attention when considering the economic, social, or ecological factors used in reducing MSY to obtain OY are:

used in reducing MSY to obtain OY are: (A) The benefits of food production are derived from providing seafood to consumers; maintaining an economically viable fishery together with its attendant contributions to the national, regional, and local economies; and utilizing the capacity of the Nation's fishery resources to meet nutritional needs.

(B) The benefits of recreational opportunities reflect the quality of both the recreational fishing experience and non-consumptive fishery uses such as ecotourism, fish watching, and recreational diving. Benefits also include the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(C) The benefits of protection afforded to marine ecosystems are those resulting from maintaining viable populations (including those of unexploited species), maintaining adequate forage for all components of the ecosystem, maintaining evolutionary and ecological processes (e.g., disturbance regimes, hydrological processes, nutrient cycles), maintaining the evolutionary potential of species and ecosystems, and accommodating human use.

(iv) Factors to consider in OY specification. Because fisheries have limited capacities, any attempt to maximize the measures of benefits described in paragraph (e)(3)(iii) of this section will inevitably encounter practical constraints. OY cannot exceed MSY in any circumstance and must take into account the need to prevent overfishing and rebuild overfished stocks and stock complexes. OY can be reduced to a value less than MSY based on social, economic, and ecological factors. To the extent possible, the relevant social, economic, and ecological factors used to establish OY for a stock, stock complex, or fishery should be quantified and reviewed in historical, short-term, and long-term contexts. Even where quantification of these factors is not possible, the FMP still must address these factors in its OY specification.

(A) Social factors. Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery (e.g., involvement in fisheries and ability to adapt to change). Consideration may be given to fisheryrelated indicators (e.g., number of fishery permits, number of commercial fishing vessels, number of party and charter trips, landings, ex-vessel revenues etc.) and non-fishery related indicators (e.g., unemployment rates, percent of population below the poverty level, population density, etc.). Other factors that may be considered include the effects that past harvest levels have had on fishing communities, the cultural place of subsistence fishing, obligations under Indian treaties, proportions of affected minority and low-income groups, and worldwide nutritional needs.

(B) *Economic factors.* Examples are prudent consideration of the risk of overharvesting when a stock's size or reproductive potential is uncertain (see § 600.335(c)(2)(i)), satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S. harvested fish. Other factors that may be considered include the value of fisheries, the level of capitalization, the decrease in cost per unit of catch afforded by an increase in stock size, the attendant increase in catch per unit of effort, alternate employment opportunities, and economic contribution to fishing communities, coastal areas, affected states, and the nation.

(C) *Ecological factors*. Examples include impacts on ecosystem component species, forage fish stocks, other fisheries, predator-prey or competitive interactions, marine mammals, threatened or endangered species, and birds. Species interactions that have not been explicitly taken into account when calculating MSY should be considered as relevant factors for setting OY below MSY. In addition, consideration should be given to managing forage stocks for higher biomass than B_{msy} to enhance and protect the marine ecosystem. Also important are ecological or environmental conditions that stress marine organisms, such as natural and manmade changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(v) Specification of OY. The specification of OY must be consistent with preventing overfishing and should be reduced from MSY to account for scientific uncertainty in calculating MSY, and economic, social, and ecological factors such as those described in paragraph (e)(3)(iv) of this section. If the estimates of MFMT and current biomass are known with a high level of certainty and management controls can accurately limit catch to the ACT then OY could be set very close to MSY. To the degree that such MSY estimates and management controls are lacking or unavailable, OY should be set farther from MSY. In order to achieve OY in the long term, catch targets (i.e., ACT) should be set below catch limits (i.e., ACLs) based on the degree of management control so that average catch (or average ACT) approximates OY (see paragraph (f)(6) of this section). If management measures cannot adequately control fishing mortality so that the specified OY can be achieved without overfishing, the Council should reevaluate the management measures and specification of OY so that the dual requirements of NS1 (preventing overfishing while achieving, on a continuing basis, OY) are met.

(A) The amount of fish that constitutes the OY should be expressed in terms of numbers or weight of fish. As a long-term average, OY cannot exceed MSY.

(B) Either a range or a single value may be specified for OY. Specification of a numerical, fixed-value OY does not preclude use of ACTs that vary with stock size or management precision. For example, an ACT control rule (described in paragraph (f)(6) of this section) might prescribe a smaller ACT if there is less management precision.

(C) All catch must be counted against OY, including that resulting from bycatch, scientific research, and all fishing activities.

(D) The OY specification should be translatable into an annual numerical estimate for the purposes of establishing any total allowable level of foreign fishing (TALFF) and analyzing impacts of the management regime.

(E) The determination of OY is based on MSY, directly or through proxy. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or where the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size diminish the meaningfulness of the MSY concept, OY must still be established based on the best scientific information available.

(F) An OY established at a fishery level may not exceed the sum of the MSY values for each of the stocks or stock complexes within the fishery. If OY is specified at a fishery level, the sum of the ACTs for the stocks and stock complexes in the fishery should approximate OY.

(G) There should be a mechanism in the FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(H) Part of the OY may be held as a reserve to allow for factors such as uncertainties in estimates of stock size and domestic annual harvest (DAH). If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(vi) *OY* and foreign fishing. Section 201(d) of the Magnuson-Stevens Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States. The FMP must include an assessment to address the following, as required by section 303(a)(4) of the Magnuson-Stevens Act:

(Å) *DAH.* Councils and/or the Secretary must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(B) *Domestic annual processing* (*DAP*). Each FMP must assess the capacity of U.S. processors. It must also assess the amount of DAP, which is the sum of two estimates: The estimated amount of U.S. harvest that domestic processors will process, which may be based on historical performance or on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and the estimated amount of fish that will be harvested by domestic vessels, but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(C) *Joint venture processing (JVP).* When DAH exceeds DAP, the surplus is available for JVP.

(f) Acceptable biological catch, annual catch limits, and annual catch targets. The following features (see paragraphs (f)(1) through (f)(7) of this section) of acceptable biological catch, annual catch limits, and annual catch targets apply to stocks and stock complexes in the fishery (see paragraph (d)(2) of this section).

(1) Introduction. A control rule is a policy for establishing a limit or target fishing level that is based on the best available scientific information and is established by fishery managers in consultation with fisheries scientists. Control rules should be designed so that management actions become more conservative as biomass estimates, or other proxies, for a stock or stock complex decline and as science and management uncertainty increases. Paragraph (f) of this section describes a three-step approach for setting limits and targets so as to ensure a low risk of overfishing while achieving, on a continuing basis, OY: First, ABC is set below the OFL to account for scientific uncertainty in calculating the OFL; second. ACL is set at an amount not to exceed the ABC: and third. ACT is set at an amount not to exceed the ACL to account for management uncertainty in controlling a fishery's actual catch.

(2) *Definitions.* (i) *Catch* is the total quantity of fish, measured in weight or numbers of fish, taken in commercial, recreational, subsistence, tribal, and other fisheries. Catch includes fish that are retained for any purpose, as well as mortality of fish that are discarded.

(ii) Acceptable biological catch (ABC) is a level of a stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and should be specified based on the ABC control rule.

(iii) *ABC control rule* means a specified approach to setting the ABC for a stock or stock complex as a function of the scientific uncertainty in the estimate of OFL. (iv) Annual catch limit (ACL) is the level of annual catch of a stock or stock complex that serves as the basis for invoking AMs. ACL cannot exceed the ABC, but may be divided into sector-ACLs (see paragraph (f)(5) of this section).

(v) Annual catch target (ACT) is an amount of annual catch of a stock or stock complex that is the management target of the fishery. A stock or stock complex's ACT should usually be less than its ACL and results from the application of the ACT control rule. If sector-ACLs have been established, each one should have a sector-ACT.

(vi) *ACT control rule* means a specified approach to setting the ACT for each stock or stock complex such that the risk of exceeding the ACL due to management uncertainty is at an acceptably low level.

(3) Specification of ABC. ABC may not exceed OFL (see paragraph (e)(2)(i)(D) of this section) and is recommended to be reduced from OFL to account for scientific uncertainty in the estimate of OFL. Councils should develop a process for receiving scientific information and advice used to establish ABC. This process should: Establish an ABC control rule, identify the body that will apply the ABC control rule (i.e., calculates the ABC), identify the review process that will verify the resulting ABC, and confirm that the SSC recommends the ABC to the Council. For Secretarial FMPs or FMP amendments, agency scientists or a peer review process would provide the scientific advice to establish ABC. For internationally-assessed stocks, an ABC as defined in these guidelines is not required.

(i) *Expression of ABC.* ABC should be expressed in terms of catch, but may be expressed in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC.

(ii) *ABC for overfished stocks.* For overfished stocks and stock complexes, a rebuilding ABC must be set to reflect the annual catch that is consistent with the target fishing mortality rates in the rebuilding plan.

(4) *ABC control rule*. For stocks and stock complexes required to have an ABC, each Council should establish an ABC control rule based on scientific advice from its SSC. The process of establishing an ABC control rule could also involve science advisors or the peer review process established under Magnuson-Stevens Act section 302(g)(1)(E). The ABC control rule should clearly articulate how far below the OFL, or OFL proxy, the ABC will be set based on the level of scientific knowledge about the stock or stock complex and the scientific uncertainty in the estimate of OFL. The ABC control rule should take into account uncertainty in factors such as stock assessment results, time lags in updating assessments, the degree of retrospective revision of assessment results, and projections. The control rule may be used in a tiered approach to address different levels of scientific uncertainty.

(5) Setting the annual catch limit—(i) General. ACL cannot exceed the ABC and may be set annually or on a multiyear plan basis. A "multiyear plan" as referenced in section 303(a)(15) of the Magnuson-Stevens Act is a plan that establishes harvest specifications or harvest guidelines for each year of a time period greater than 1 year. A multiyear plan should include ACLs and ACTs for each year with appropriate AMs to prevent overfishing and maintain an appropriate rate of rebuilding if the stock or stock complex is in a rebuilding plan. The AMs specified for a multivear plan should provide that, if an ACL is exceeded for a year, then a subsequent year's harvest specification (including ACLs and ACTs) could be revised.

(ii) Sector ACLs. A Council may, but is not required to, divide an ACL into sector-ACLs. "Sector," for purposes of this section, means a distinct user group to which separate management strategies and separate catch quotas apply. Examples of sectors include the commercial sector, recreational sector, or various gear groups within a fishery. Sector-AMs must be developed for each sector-ACL, and the sum of sector ACLs must not exceed the stock or stock complex level ACL. The system of ACLs and AMs designed must be effective and equitable and protect the stock or stock complex as a whole. If sector-ACLs and AMs are established, additional AMs at the stock or stock complex level would also be appropriate.

(iii) ACLs for State-Federal Fisheries. For stocks or stock complexes that have a large majority of harvest in state or territorial waters, FMPs and FMP amendments should include an ACL for the overall stock that may be further divided. For example, the overall ACL could be divided into a federal-ACL and state-ACL. However, NMFS recognizes that federal management would be limited to the portion of the fishery under federal authority (see paragraph (g)(5) of this section). When stocks are co-managed by federal, state, tribal, and/ or territorial fishery managers, the goal should be to develop collaborative conservation and management

strategies, and scientific capacity to support such strategies, to prevent overfishing of shared stocks and ensure their sustainability.

(6) ACT control rule. For stocks and stock complexes required to have an ACL, each Council should establish ACT control rules for setting the ACTs. The ACT control rule should clearly articulate how far below the ACL the target will be established based on the amount of management uncertainty associated with harvest of a stock or stock complex. For example, the ACT may need to be set further below the ACL in fisheries where inseason monitoring of catch data is unavailable or infeasible, or where AMs are established using a multi-year averaging approach (see paragraph (g)(4) of this section).

(i) Determining management uncertainty. Two sources of management uncertainty should be accounted for in establishing the ACT control rule: Uncertainty in the ability of managers to constrain catch to the ACT and uncertainty in quantifying the true catch amounts (i.e., estimation errors). To determine the level of management uncertainty in controlling catch, analyses should consider past management performance in the fishery and factors such as time lags in reported catch. Such analyses should be based on the best available scientific information from an SSC, agency scientists, or peer review process as appropriate.

(ii) Establishing tiers and corresponding ACT control rules. Tiers can be established based on levels of management uncertainty associated with the fishery, frequency and accuracy of catch monitoring data available, and risks of exceeding the limit. An ACT control rule could be established for each tier and have, as appropriate, different formulas and standards used to establish the ACT.

(7) Relationships of OFL to MSY and ACT to OY. The following (see paragraphs (f)(7)(i) and (ii) of this section) describes the relationships between terms used in ending and preventing overfishing and rebuilding overfished stocks and stock complexes.

(i) *Relationship of OFL to MSY*. OFL is the amount of catch for a particular year that corresponds to the estimate of MFMT applied to a stock or stock complex's abundance, and MSY is the long-term average of such catches. ABC is recommended to be set below OFL to take into account the scientific uncertainty in the estimate of OFL.

(ii) *Relationship of ACT to OY.* Paragraphs (a) and (e)(3) of this section define and describe OY and the goal of preventing overfishing, while achieving on a continuing basis the OY from each stock, stock complex, or fishery. Management measures for a fishery should, on an annual basis, achieve the ACTs and prevent the ACLs from being exceeded. The long-term objective is to achieve OY through annual achievement of ACT.

(g) Accountability measures. The following features (see paragraphs (g)(1) through (5) of this section) of accountability measures apply to those stocks and stock complexes in the fishery.

(1) *Introduction.* AMs are management controls that prevent ACLs or sector-ACLs from being exceeded (inseason AMs), where possible, and correct or mitigate overages if they occur. AMs should address and minimize both the frequency and magnitude of overages and correct the problems that caused the overage in as short a time as possible.

(2) Inseason AMs. Whenever possible, FMPs should include inseason monitoring and management measures to prevent catch from exceeding ACLs. Inseason AMs could include, but are not limited to, closure of a fishery; closure of specific areas; changes in gear; changes in trip size or bag limits; reductions in effort; or other appropriate management controls for the fishery. If final data or data components of catch are delayed, Councils should make appropriate use of preliminary data, such as landed catch, in implementing inseason AMs. Where timely catch data are available for a stock, FMPs should include inseason closure authority to close the fishery on or before the date when the ACL for a stock or stock complex is projected to be reached.

(3) AMs for when the ACL is exceeded. On an annual basis, the Council should determine as soon as possible after the fishing year if an ACL was exceeded. If an ACL was exceeded. AMs should be triggered and implemented as soon as possible to correct the operational issue that caused the ACL overage, as well as any biological consequences to the stock or stock complex resulting from the overage when it is known. These AMs could include, among other things, modifications of inseason AMs or overage adjustments. For stocks and stock complexes in rebuilding plans, the AMs should include overage adjustments that reduce the ACLs in the next fishing year by the full amount of the overages, unless the best scientific information available shows that a reduced overage adjustment, or no adjustment is needed to mitigate the effects of the overages. If catch exceeds the ACL more than once in the last four

years, the system of ACLs, ACTs and AMs should be re-evaluated to improve its performance and effectiveness.

(4) AMs based on multi-year average data. Some fisheries have highly variable annual catches and lack reliable inseason or annual data on which to base AMs. If there are insufficient data upon which to compare catch to ACL, either inseason or on an annual basis, AMs could be based on comparisons of average catch to average ACL over a three-year moving average period or, if supported by analysis, some other appropriate multi-year period. Evaluation of the moving average catch to the average ACL must be conducted annually. If the average catch exceeds the average ACL more than once in the last four years, then the ACL, ACT and AM system should be re-evaluated. The initial ACL and management measures should incorporate information from previous years so that AMs based on average ACLs can be applied from the first year.

(5) *AMs for State-Federal Fisheries.* For stocks or stock complexes that have a large majority of harvest in state or territorial waters, AMs should be developed for the portion of the fishery under federal authority and could include closing the EEZ when the federal portion of the ACL is reached, or the overall stock's ACL is reached, or other measures.

(h) Establishing ACL and AM mechanisms in FMPs. FMPs or FMP amendments should establish ACL and AM mechanisms for all stocks and stock complexes in the fishery, unless paragraph (h)(2) of this section is applicable. If a complex has multiple indicator stocks, each indicator stock must have its own ACL: an additional ACL for the stock complex as a whole is optional. In cases where fisheries harvest multiple indicator stocks of a single species that cannot be distinguished at the time of capture, separate ACLs for the indicator stocks are not required and the ACL can be established for the complex as a whole.

(1) In establishing ACL and AM mechanisms, FMPs should describe:

(i) Timeframes for setting ACLs (e.g., annually or multi-year periods);

(ii) Sector-ACLs, if any (including setasides for research or bycatch);

(iii) AMs and their relationship to ABC and ACT control rules, including how AMs are triggered and what sources of data will be used (e.g., inseason data, annual catch compared to the ACL, or multi-year averaging approach);

(iv) Sector-AMs, if there are sector-ACLs; and

(v) Fisheries data described in paragraph (i) of this section.

(2) Exceptions from ACL and AM requirements—(i) Life cycle. Section 303(a)(15) of the Magnuson-Stevens Act "shall not apply to a fishery for species that has a life cycle of approximately 1 vear unless the Secretary has determined the fishery is subject to overfishing of that species' (as described in Magnuson-Stevens Act section 303 note). This exception applies to a stock for which the average length of time it takes for an individual to produce a reproductively active offspring is approximately 1 year and that the individual has only one breeding season in its life time. While exempt from the ACL and AM requirements, FMPs or FMP amendments for these stocks should have SDC, MSY, OY, ABC, and an ABC control rule.

(ii) International fishery agreements. Section 303(a)(15) of the Magnuson-Stevens Act applies "unless otherwise provided for under an international agreement in which the United States participates" (Magnuson-Stevens Act section 303 note). This exception applies to stocks or stock complexes subject to management under an international agreement, which is defined as "any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party" (see Magnuson-Stevens Act section 3(24)). These stocks would still need to have SDC and MSY.

(3) Flexibility in application of NS1 guidelines. There are limited circumstances that may not fit the standard approaches to specification of reference points and management measures set forth in these guidelines. These include, among other things, conservation and management of ESAlisted species, harvests from aquaculture operations, and stocks with unusual life history characteristics (e.g., Pacific salmon, where the spawning potential for a stock is spread over a multi-year period). In these circumstances, Councils may propose alternative approaches for satisfying the NS1 requirements of the Magnuson-Stevens Act than those set forth in these guidelines. Councils should document their rationale for any alternative approaches for these limited circumstances in an FMP or FMP amendment, which will be reviewed for consistency with the Magnuson-Stevens Act.

(i) *Fisheries data*. In their FMPs, Councils should describe general data collection methods, as well as any specific data collection methods used for all stocks, stock complexes, and ecosystem component species. FMPs should:

(1) List sources of fishing mortality (both landed and discarded), including commercial and recreational catch and bycatch in other fisheries;

(2) Describe the data collection and estimation methods used to quantify total catch mortality in each fishery, including information on the management tools used (i.e., logbooks, vessel monitoring systems, observer programs, landings reports, fish tickets, processor reports, dealer reports, recreational angler surveys, or other methods); the frequency with which data are collected and updated; and the scope of sampling coverage for each fishery; and

(3) Describe the methods used to compile catch data from various catch data collection methods and how those data are used to determine the relationship between total catch at a given point in time and the ACL for stocks and stock complexes that are part of a fishery.

(j) Council actions to address overfishing and rebuilding for stocks and stock complexes in the fishery—(1) Notification. The Secretary will immediately notify a Council whenever it is determined that:

(i) Overfishing is occurring;(ii) A stock or stock complex is

overfished;

(iii) A stock or stock complex is approaching an overfished condition; or

(iv) Existing remedial action taken for the purpose of ending previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress.

(2) *Timing of actions*—(i) *If a stock or stock complex is undergoing overfishing.* FMPs or FMP amendments should establish ACL and AM mechanisms in 2010, for stocks and stock complexes determined to be subject to overfishing, and in 2011, for all other stocks and stock complexes (see paragraph (b)(2)(iii) of this section). To address practical implementation aspects of the FMP and FMP amendment process, paragraphs (j)(2)(i)(A) through (C) of this section clarifies the expected timing of actions.

(A) In addition to establishing ACL and AM mechanisms, the ACLs and AMs themselves should be specified in FMPs, FMP amendments, implementing regulations, or annual specifications beginning in 2010 or 2011, as appropriate.

(B) For stocks and stock complexes still determined to be subject to overfishing at the end of 2008, ACL and AM mechanisms and the ACLs and AMs themselves should be effective in fishing year 2010.

(C) For stocks and stock complexes determined to be subject to overfishing during 2009, ACL and AM mechanisms and ACLs and AMs themselves should be effective in fishing year 2010, if possible, or in fishing year 2011, at the latest.

(ii) If a stock or stock complex is overfished or approaching an overfished condition. (A) For notifications that a stock or stock complex is overfished or approaching an overfished condition made before July 12, 2009, a Council must prepare an FMP, FMP amendment, or proposed regulations within one year of notification. If the stock or stock complex is overfished, the purpose of the action is to specify a time period for ending overfishing and rebuilding the stock or stock complex that will be as short as possible as described under section 304(e) of the Magnuson-Stevens Act. If the stock or stock complex is approaching an overfished condition, the purpose of the action is to prevent the biomass from declining below the MSST.

(B) For notifications that a stock or stock complex is overfished made after July 12, 2009, a Council must prepare an FMP, FMP amendment, or proposed regulations within two years of notification. Council actions should be submitted for Secretarial review within 15 months of notification to ensure sufficient time for the Secretary to implement the measures, if approved. If the stock or stock complex is overfished and overfishing is occurring, the rebuilding plan must end overfishing immediately and be consistent with ACL and AM requirements of the Magnsuon-Stevens Act.

(Č) For notifications that a stock or stock complex is approaching an overfished condition made after July 12, 2009, a Council should take immediate action to reduce the likelihood that the stock or stock complex will become overfished. Otherwise, the stock or stock complex would likely be overfished by the time the two-year timeline to implement management measures expired.

(3) Overfished fishery. (i) Where a stock or stock complex is overfished, a Council must specify a time period for rebuilding the stock or stock complex based on factors specified in Magnuson-Stevens Act section 304(e)(4). This target time for rebuilding (T_{target}) shall be as short as possible, taking into account: The status and biology of any overfished stock, the needs of fishing communities, recommendations by international organizations in which the U.S. participates, and interaction of the

stock within the marine ecosystem. In addition, the time period shall not exceed 10 years, except where biology of the stock, other environmental conditions, or management measures under an international agreement to which the U.S. participates dictate otherwise. SSCs (or agency scientists or peer review processes in the case of Secretarial actions) shall provide recommendations for achieving rebuilding targets (see Magnuson-Stevens Act section 302(g)(1)(B)). The above factors enter into the specification of T_{target} as follows:

(A) The "minimum time for rebuilding a stock" (T_{min}) means the amount of time the stock or stock complex is expected to take to rebuild to its MSY biomass level in the absence of any fishing mortality. In this context, the term "expected" means to have at least a 50-percent probability of attaining the B_{msy}.

(B) For scenarios under paragraph (j)(2)(ii)(A) of this section, the starting year for the T_{min} calculation is the first year that a rebuilding plan is implemented. For scenarios under paragraph (j)(2)(ii)(B) of this section, the starting year for the T_{min} calculation is 2 years after notification that a stock or stock complex is overfished or the first year that a rebuilding plan is implemented, whichever is sooner.

(C) If T_{min} for the stock or stock complex is 10 years or less, then the maximum time allowable for rebuilding (T_{max}) that stock to its B_{msy} is 10 years.

(D) If T_{min} for the stock or stock complex exceeds 10 years, then the maximum time allowable for rebuilding a stock or stock complex to its B_{msy} is T_{min} plus the length of time associated with one generation time for that stock or stock complex. "Generation time" is the average length of time between when an individual is born and the birth of its offspring.

(E) T_{target} shall not exceed T_{max} , should generally be less than T_{max} , and should be calculated based on the factors described in this paragraph (j)(3) with a priority given to rebuilding in as short a time as possible.

(ii) If a stock or stock complex reached the end of its rebuilding plan period and has not yet been determined to be rebuilt, then the rebuilding F should not be increased until the stock or stock complex has been demonstrated to be rebuilt. If the rebuilding plan was based on a T_{target} that was less than T_{max} , and the stock or stock complex is not rebuilt by T_{target} , rebuilding measures should be revised, if necessary, such that the stock or stock complex will be rebuilt by T_{max} . If the stock or stock complex has not rebuilt by T_{max} , and the rebuilding F is greater than 75 percent of MFMT, then the rebuilding F should be reduced to no more than 75 percent of MFMT until the stock or stock complex has been demonstrated to be rebuilt.

(iii) Council action addressing an overfished fishery must allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery.

(iv) For fisheries managed under an international agreement, Council action addressing an overfished fishery must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(4) Emergency actions and interim measures. The Secretary, on his/her own initiative or in response to a Council request, may implement interim measures to reduce overfishing or promulgate regulations to address an emergency (Magnuson-Stevens Act section 304(e)(6) or 305(c)). In considering a Council request for action, the Secretary would consider, among other things, the need for and urgency of the action and public interest considerations, such as benefits to the stock or stock complex and impacts on participants in the fishery.

(i) These measures may remain in effect for not more than 180 days, but may be extended for an additional 186 days if the public has had an opportunity to comment on the measures and, in the case of Councilrecommended measures, the Council is actively preparing an FMP, FMP amendment, or proposed regulations to address the emergency or overfishing on a permanent basis.

(ii) Often, these measures need to be implemented without prior notice and an opportunity for public comment, as it would be impracticable to provide for such processes given the need to act quickly and also contrary to the public interest to delay action. However, emergency regulations and interim measures that do not qualify for waivers or exceptions under the Administrative Procedure Act would need to follow proposed notice and comment rulemaking procedures.

(k) International overfishing. If the Secretary determines that a fishery is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures (or no effective measures) to end overfishing under an international agreement to which the United States is a party, then the Secretary and/or the appropriate Council shall take certain actions as provided under Magnuson-Stevens Act section 304(i). The Secretary, in cooperation with the Secretary of State, should immediately take appropriate action at the international level to end the overfishing. In addition, within one year after the determination, the Secretary and/or appropriate Council shall:

(1) Develop recommendations for domestic regulations to address the relative impact of the U.S. fishing vessels on the stock. Council recommendations should be submitted to the Secretary.

(2) Develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock. Councils should, in consultation with the Secretary, develop recommendations that take into consideration relevant provisions of the Magnuson-Stevens Act and NS1 guidelines, including section 304(e) of the Magnuson-Stevens Act and paragraph (j)(3)(iv) of this section, and other applicable laws. For highly migratory species in the Pacific, recommendations from the Western Pacific, North Pacific, or Pacific Councils must be developed and submitted consistent with Magnuson-Stevens Reauthorization Act section 503(f), as appropriate.

(3) Considerations for assessing "relative impact." "Relative impact" under paragraphs (k)(1) and (2) of this section may include consideration of factors that include, but are not limited to: Domestic and international management measures already in place, management history of a given nation, estimates of a nation's landings or catch (including bycatch) in a given fishery, and estimates of a nation's mortality contributions in a given fishery. Information used to determine relative impact should be based upon the best available scientific information.

(1) Relationship of National Standard 1 to other national standards—(1) National Standard 2 (see § 600.315). Management measures and reference points to implement NS1 must be based on the best scientific information available. When data are insufficient to estimate reference points directly, Councils should develop reasonable proxies to the extent possible (also see paragraph (e)(1)(iv) of this section). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data. SSCs should advise their Councils regarding the best scientific information

available for fishery management decisions.

(2) National Standard 3 (see § 600.320). Reference points should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (also see paragraph (e)(1)(iii) of this section). Also, scientific assessments should be based on the best information about the total range of the stock and potential biological structuring of the stock into biological sub-units, which may differ from the geographic units on which management is feasible.

(3) National Standard 6 (see § 600.335). Councils must build into the reference points and control rules appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors.

(4) National Standard 8 (see \S 600.345). Councils must take into account the importance of fishery resources to fishing communities when specifying OY and an ACT control rule. Also, see paragraph (e)(3)(iv)(A) of this

section for more information on how factors that relate to fishing communities should be considered when reducing OY from MSY.

(5) National Standard 9 (see § 600.350). Evaluation of stock status with respect to reference points must take into account mortality caused by bycatch. In addition, the estimation of catch should include the mortality of fish that are discarded.

(m) Exceptions to requirements to prevent overfishing. Exceptions to the requirement to prevent overfishing could apply under certain limited circumstances. Harvesting one stock at its optimum level may result in overfishing of another stock when the two stocks tend to be caught together (This can occur when the two stocks are part of the same fishery or if one is bycatch in the other's fishery). Before a Council may decide to allow this type of overfishing, an analysis must be performed and the analysis must contain a justification in terms of overall benefits, including a comparison of benefits under alternative management

measures, and an analysis of the risk of any stock or stock complex falling below its MSST. The Council may decide to allow this type of overfishing if the analysis demonstrates that all of the following conditions are satisfied:

(1) Such action will result in longterm net benefits to the Nation;

(2) Mitigating measures have been considered and it has been demonstrated that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur; and

(3) The resulting rate of fishing mortality will not cause any stock or stock complex to fall below its MSST more than 50 percent of the time in the long term, although it is recognized that persistent overfishing is expected to cause the affected stock to fall below its Bmsy more than 50 percent of the time in the long term.

[FR Doc. 08–1328 Filed 6–4–08; 9:34am] BILLING CODE 3510–22–P Issued in Washington, DC on August 7, 2008.

Joseph H. Boardman,

Administrator.

[FR Doc. E8–18714 Filed 8–11–08; 10:00 am] BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 070717348-7766-02]

RIN 0648-AV60

Magnuson-Stevens Act Provisions; Annual Catch Limits; National Standard Guidelines

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA); Commerce.

ACTION: Proposed rule, extension of comment period.

SUMMARY: NMFS extends the public comment period on the proposed rule to revise National Standard 1 (NS1) guidelines, including guidance on how to comply with new annual catch limit (ACL) and accountability measures (AM) requirements for ending overfishing of fisheries managed by federal fishery management plans. NMFS has received various requests to extend the comment period for the proposed rule beyond its current 90-day comment period. The extension of the comment period for another two weeks is intended to ensure that NMFS provides adequate time for various stakeholders and members of the public to comment on the proposed guidance on ACLs and AMs and other proposed revisions to the NS1 guidelines. The comment period ending date is extended from September 8, 2008, to September 22, 2008.

DATES: Comments must be received on or before September 22, 2008.

ADDRESSES: You may submit comments, identified by 0648–AV60, by any of the following methods:

• Electronic submissions: Submit all electronic public comments via the Federal e-Rulemaking portal: *http:// www.regulations.gov*;

• Fax: 301–713–1193, Attn: Mark Millikin;

• Mail: Mark R. Millikin, National Marine Fisheries Service, NOAA, Office of Sustainable Fisheries, 1315 East-West Highway, Room 13357, Silver Spring, MD 20910 (mark outside of envelope "Comments on Annual Catch Limits proposed rule");

Instructions: All comments received are a part of the public record and will be generally posted to *http:// www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

¹ NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

Copies of the Regulatory Impact review (RIR)/Regulatory Flexibility Act analysis (RFAA) for this proposed rule are available from Mark R. Millikin at the address listed above. The RIR/RFAA document is also available via the internet at http://www.nmfs.noaa.gov/ msa2007/catchlimits.htm.

FOR FURTHER INFORMATION CONTACT:

Mark R. Millikin, Senior Fishery Management Specialist, 301–713–2341.

SUPPLEMENTARY INFORMATION: A

proposed rule that covers NMFS' proposed revisions to the NS1 guidelines, including guidance on ACLs and AMs was published in the **Federal Register** on June 9, 2008 (73 FR 32526), with a comment period ending date of September 8, 2008. After receiving several requests to extend the comment period, NMFS has decided to extend it for another two weeks through September 22, 2008.

This action extends the comment period for a proposed rule that the Office of Management and Budget determined to be significant under Executive Order 12866.

Authority: 16 U.S.C 1801 et seq.

Dated: August 8, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E8–18756 Filed 8–12–08; 8:45 am] BILLING CODE 3510–22–S

SALMON TECHNICAL TEAM REPORT ON IMPLEMENTATION OF THE MAGNUSON-STEVENS REAUTHORIZATION ACT

In June 2008, the National Marine Fisheries Service (NMFS) proposed revisions to the National Standard (NS)-1 Guidelines to incorporate guidance on provisions of the MSRA related to ending and preventing overfishing, specifically new requirements for specifying annual catch limits (ACL), accountability measures (AM), and acceptable biological catch (ABC). Pacific salmon are already managed with elements very similar to those identified in the proposed NS-1 Guidelines. In addition, the Guidelines allow for some flexibility in their application and acknowledge that Pacific salmon, specifically, are a case in which flexibility in the application of the Guidelines would be used.

The Magnuson-Stevens Reauthorization Act (MSRA) provides two statutory exceptions to the requirement for ACL and AM: Stocks managed under an international agreement in which the United States participates, and species that have a life cycle of approximately one year. Salmon stocks from the Umpqua River Oregon north are managed under the provisions of the Pacific Salmon Treaty (PST) and thus are likely to fall under the international agreement exemption, subject to review by NMFS General Counsel. Not all stocks managed by the Council are included in the PST; the Salmon Technical Team (STT) requests clarification on the classification of stocks considered exempt from ACL and AM provisions.

Fisheries managed under the PST include some stocks that are harvested in non-PST ocean salmon fisheries, such as Columbia River tule Chinook and Sacramento River fall Chinook. The NS-1 Guidelines should provide sufficient flexibility to manage all salmon stocks and stock complexes in a manner consistent with international agreements to avoid conflicting standards.

North of Cape Falcon, Chinook and coho stocks are already managed under annual quotas. Because these quotas are generally capped by Endangered Species Act (ESA) consultation standards for listed stocks, they are generally well below Maximum Sustainable Yield (MSY) harvest levels, thereby preventing overfishing. Because these quotas are treated as hard limits, they are analogous to ACL.

Stocks that are currently exceptions to the overfishing criteria of the Salmon Fishery Management Plan (FMP) because of low impacts in Council area fisheries may fit into the "ecosystem component" stock category of the proposed guidelines.

Chinook stocks south of Cape Falcon may fall under the proposed NS-1 Guidelines' definition (3) of a "Stock complex": "one or more indicator stocks, each of which has status determination criteria (SDC) and management objectives, with an ACL for the complex as a whole (this situation might be applicable to some salmon species)." Under this scenario, the Council would need to set overall quotas for ocean fisheries. Because of weak stock management and ESA consultation standards, it can be argued that current management is more conservative than MSY. Thus, if catch expectations under current management were set as quotas, they should qualify as ACL. The Council already has authority for AM, and regularly exercises that authority through inseason actions to prevent quotas from being exceeded in fisheries. It would be possible for the Council to implement comparable management mechanisms for non-quota

fisheries south of Cape Falcon, but there is no reason to expect that implementation of these ACL and AM would assure that Overfishing Concerns would not be triggered for stocks not covered by the international agreement exemption. Full quota management would entail the implementation of a new management structure for many salmon fisheries South of Cape Falcon.

The intent of the ACL and AM requirement of the MSRA is to prevent overfishing. In the Salmon FMP, performance of management relative the prevention of overfishing is assessed in terms of meeting conservation objectives on an annual basis. The STT recommends the NS-1 Guideline language recognize that management systems with an acceptable record of success be provided flexibility in meeting the strict interpretation of ACL based management. Before requiring implementation of a new management system, it should first be demonstrated that the current management system is not effective at preventing overfishing or rebuilding stocks that are overfished, and that a new management system would be more effective. For example, the current salmon management system does not have a record of chronically overfished stocks, and when Overfishing Concerns have been triggered, the management system has responded and the stocks have recovered. Changing a management system that is effective and responsive would not be productive.

FISCAL MATTERS

The Council's Budget Committee will meet on Sunday, September 7, 2008, at 2:30 P.M. to consider budget issues as outlined in Ancillary B, Budget Committee Agenda.

The Budget Committee's report is scheduled for Council review and approval on Friday, September 12.

Council Action:

Consider the report and recommendations of the Budget Committee.

Reference Materials:

1. Agenda Item C.7.b, Supplemental Budget Committee Report.

Agenda Order:

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

PFMC 08/14/08

John Coon Jerry Mallet

MEMBERSHIP APPOINTMENTS AND COUNCIL OPERATING PROCEDURES

During this agenda item, the Council will consider changes in advisory body membership, appointments to other forums, and relevant changes in Council Operating Procedures (COP).

Council Advisory Body Appointments

Management and Technical Teams

The Council should take formal action at this meeting to confirm appointment of the nominations listed below for management and technical team positions.

Coastal Pelagic Species Management Team (CPSMT)

The Washington Department of Fish and Wildlife (WDFW) has nominated Ms. Lisa Veneroso to fill the WDFW vacancy on the CPSMT (Closed Session A.1.a, Attachment 1). She would replace Ms. Carol Henry.

Groundfish Management Team (GMT)

The National Marine Fisheries Service (NMFS) Northwest Region has nominated Ms. Sarah McAvinchey to fill the NMFS Northwest Region vacancy on the GMT (Attachment 2).

The Oregon Department of Fish and Wildlife (ODFW) has nominated Ms. Lynn Mattes to fill the ODFW vacancy on the GMT (Closed Session A.1.a, Attachment 3).

Salmon Technical Team (STT)

The NMFS Southwest Fisheries Science Center (SWFSC) has notified the Council of the resignation of Mr. Michael Mohr from the SWFSC position on the STT and nominated Dr. Michael O'Farrell as his replacement (Closed Session A.1.a, Attachment 4).

Habitat Committee (HC)

NMFS has advised the Council that Mr. Eric Chavez will replace Ms. Kori Schaeffer as the designee for Mr. Bryant Chesney in the NMFS regional representative position. No Council action is required.

Other Council Committees

Groundfish Allocation Committee (GAC) Non-Voting

Mr. Steve Barrager has submitted his resignation from the non-voting conservation position on the GAC (Closed Session A.1.a, Attachment 5). The Council Chairman will need to name an interim member to replace him for the October GAC meeting. Following the September

meeting, Council staff will issue a request for nominations for the position so the Council can formally appoint a new member at its November Council meeting.

Vacancies on Permanent Council Advisory Bodies

At the present time, the only vacant advisory body position with no nomination is the Idaho Department of Fish and Game position on the Habitat Committee.

Update on Appointments to Other Forums

Appointments of commissioners and advisors have recently been announced for the Western and Central Pacific Fisheries Commission. The Council's nominees for commissioner (Marija Vojkovich) and advisory committee member (Kit Dahl) were not appointed.

Changes to COP

The Council is expected to take action on COP 22, Groundfish Essential Fish Habitat Review and Modification, under Agenda Item I.2, based on recommendations from the newly formed groundfish Essential Fish Habitat Review Committee (EFHRC). The Council may adopt an amendment to COP 1 under Agenda Item C.2 to formalize a regulation review process.

Council Action:

- **1.** Confirm or provide guidance on appointments to Council advisory bodies and potential COP changes.
- 2. Specific actions are required for: the WDFW position on the CPSMT, GMT positions for the NMFS Northwest Region and ODFW, the SWFSC position on the STT, and the non-voting conservation position on the GAC.

Reference Materials:

- 1. Closed Session A.1.a, Attachment 1: Nomination—WDFW CPSMT Position.
- 2. Closed Session A.1.a, Attachment 2: Nomination—NMFS Northwest Region GMT Position.
- 3. Closed Session A.1.a, Attachment 3: Nomination—ODFW GMT Position.
- 4. Closed Session A.1.a, Attachment 4: Nomination—SWFSC STT Position.
- 5. Closed Session A.1.a, Attachment 5: Resignation—Mr. Steve Barrager, Non-voting GAC Conservation Position.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. **Council Action:** Consider Changes to COP and Appoint New Advisory Body Members as Needed

PFMC 08/21/08

John Coon

Draft Preliminary Three-Meeting Outlook for the Pacific Council

(Contingent Items are Shaded and Counted in Time Estimate)

November	March	April	
San Diego, CA11/1-11/7/08 (Council Starts 11/2)	Seattle, WA3/7-3/13/09 (Council Starts 3/8)	Millbrae, CA4/3-4/9/09 (Council Starts 4/4)	
Estimated Hours of Council Floor Time = 43.5	Estimated Hours of Council Floor Time = 42.3	Estimated Hours of Council Floor Time = 41.8	
Administrative Closed Session; Open Session Call to Order; Min. Fiscal Matters Interim Appointments to Advisory Bodies	Administrative Closed Session; Open Session Call to Order; Min. Legislative Committee Report Interim Appt, to Advisory Bodies	Administrative Closed Session; Open Session Call to Order Legislative Committee Report Interim Appointments to Advisory Bodies	
	MSA Reauthorization Implementation	MSA Reauthorization Implementation	
3 Mtg Outlook, Drft Mar Agenda, Workload (1 session) Open Coment PeriodNon-Agenda Items	4 Mtg Outlook, Draft Apr Agenda, Workload (1 session) Open Comment PeriodNon-Agenda Items	3 Mtg Outlook, Draft June Agenda, Workload Open Comment Period-Non-Agenda Items	
Coastal Pelagic Species STAR Panel 2009 TOR: Adopt for Pub Rev Pac. Sardine: Approve Stk Assmnt & Mgmt Measures	Coastal Pelagic Species STAR Panel 2009 TOR: Adopt Final NEPA & ACL FMP Amendment Proposals	<u>Coastal Pelagic Species</u>	
Ecosystem FMP	Ecosystem FMP	Ecosystem FMP	
		Ecosystem FMP Planning	
Enforcement Issues	Enforcement Issues US Coast Guard Annual Fishery Enforcement Report	Enforcement Issues	
Groundfish NMFS Report 2008 & 2009 Inseason Management (2 Sessions) A-20Trawl Rationalization: Adopt Final for DEIS	Groundfish NMFS Report 2009 Inseason Mgmt (2 Sessions) A-20Trawl Rationalization: Status Rpt	Groundfish NMFS Report 2009 Inseason Management (2 Sessions) A-20Trawl Rationalization: Status Rpt Intersector Allocation: Adopt Final Preferred Alt	
	FMP Amendment 22 (Open Access): Adopt Final Preferred Alt. (if not completed in Sept) Pac. Whiting: Coordinate Final 2009 Spx & Mgmt Meas. with Pac Whiting Treaty Actions?		
	NEPA & ACL FMP Amendment Proposals		
	EFHRC Terms of Reference		
<u>Habitat Issues</u>	Habitat Issues Habitat Committee Report	Habitat Issues Habitat Committee Report	

Draft Preliminary Three-Meeting Outlook for the Pacific Council

(Contingent Items are Shaded and Counted in Time Estimate)

November	March	April	
San Diego, CA11/1-11/7/08 (Council Starts 11/2)	Seattle, WA3/7-3/13/09 (Council Starts 3/8)	Millbrae, CA4/3-4/9/09 (Council Starts 4/4)	
Estimated Hours of Council Floor Time = 43.5	Estimated Hours of Council Floor Time = 42.3	Estimated Hours of Council Floor Time = 41.8	
Highly Migratory Species NMFS Rpt Routine Mgmt Meas.(thresher shark): Adopt Final Council Recommendations for WCPFW Mtg	Highly Migratory Species NMFS Rpt NMFS Rpt on Potential Mgmt Options for Albacore	Highly Migratory Species NMFS Rpt NMFS Rpt on Potential Mgmt Options for Albacore Mgmt Recommendations to US Delegation to IATTC High Seas Shallow-set Longline Amendment: Adopt Final Preferred Alternative NEPA & ACL FMP Amendment Proposals	
Marine Protected Areas	Marine Protected Areas	Marine Protected Areas	
	MPA Issues	MPA Issues	
Pacific Halibut Changes to 2009 CSP & Regs: Adopt Final Halibut Catch Apportionment Status Rpt Salmon Preseason Salmon Mgmt Sched for 2008: Approve 2008 Methodology Review: Adopt Final Changes	Pacific Halibut Report on the IPHC Meeting Incidental Catch Regs for 2009: Adopt Options for Public Rev Salmon Review 2008 Fisheries & 2009 Abundance Estimates 2009 Momt Measures: Adopt Options for Public Rev	Pacific Halibut Incidental Catch Regs for 2009: Adopt Final Salmon 2009 Mgmt Measures: Adopt Final (4 agenda items) 2009 Methods Review: Process & Prelimin Topics	
	& Appt. Hearings Officers	West Coast Salmon Work Group Rpt	
	Identify Stocks not Meeting Consv. Objectives NEPA & ACL FMP Amendment Proposals	Mitchell Act EIS: Provide Council Comments	
Information Reports Salmon Fishery Update	Information Reports	Information Reports	
Special Sessions	Special Sessions	Special Sessions	
PRELIMINARY PROPOSED COUNCIL MEETING AGENDA, NOVEMBER 1-7, 2008, SAN DIEGO, CALIFORNIA

Sat, Nov 1	Sun, Nov 2	Mon, Nov 3	Tue, Nov 4	Wed, Nov 5	Thu, Nov 6	Fri, Nov 7
Advisory Body Meetings Only	CLOSED COUNCIL SESSION1 PM OPEN COUNCIL SESSION 2 PM 1-4. Open & Approve Agenda (30 min) ADMINISTRATIVE 1. Future Agenda Planning (15 min) OPEN COMMENT PERIOD 1. Comments on Non- Agenda Items (45 min) PACIFIC HALIBUT 1. Changes to 2009 Catch Sharing Plan: Adopt Final (45 min) 2. Halibut Catch Apportionment Methodology: Provide Council Guidance (45 min)	 <u>SALMON</u> 2009 Preseason Salmon Mgmt Schedule: Approve (30 min) 2008 Methodology Review: Adopt Final Changes for 2009 (1 hr 30 min) <u>HIGHLY MIGRATORY</u> <u>SPECIES</u> NMFS Rpt (45 min) WCPFC Actions: Provide Council Recommendations (1 hr) Routine Mgmt Measures: Adopt Final (3 hr) <u>COASTAL PELAGIC</u> <u>SPECIES</u> STAR Panel 2009 TOR: Adopt for Public Review (1 hr) 	COASTAL PELAGIC SPECIES (CONT) 2. Pacific Sardine: Approve Stock Assessment & Mgmt Measures (2 hr) GROUNDFISH (CONT) 2. NMFS Rpt (45 min) 3. Initial Inseason Changes for 2008 & 2009 (2 hr) 4. Amendment 20- Trawl Rationalization: Adopt Final Preferred Alt for DEIS (3 hr 15 min)	GROUNDFISH (CONT) 4. Continue Amendment 20 Trawl Rationalization: Adopt Final Preferred Alt for DEIS (8 hr)	GROUNDFISH (CONT) 4. Continue Amendment 20 Trawl Rationalization: Adopt Final Preferred Alt for DEIS (8 hr)	GROUNDFISH 4. Continue Amendment 20- -Trawl Rationalization: Adopt Final Preferred Alt for DEIS (5 hr 30 min) 5. Final Inseason Adjustments (1 hr) ADMINISTRATIVE 1. Minutes (15 min) 2. Fiscal Matters (30 min) 3. Appointments & COP (15 min) 4. Future Agenda and Workload Planning (30 min)
	3 hr 45 min	7 hr 45 min	8 hr	8 hr	8 hr	8 hr
8:00 am GMT 8:00 am HMSMT 1:00 pm SSC 3:30 pm BC	8:00 pm GAP 8:00 pm GMT 8:00 am HMSMAS 8:00 am SSC 10:30 am ChB	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 EC 8:00 am GAP 8:00 am GMT	8:00 am EC 8:00 am GAP 8:00 am GMT	8:00 am EC 8:00 am GAP 8:00 am GMT	8:00 am EC 8:00 am GAP 8:00 am GMT Supplementa

Council-sponsored evening sessions: Sunday Evening--6:00 pm Chairman's Banquet Total Council Floor Time = 43.5 hr

9/12/2008 9:35 AM

Agenda Item C.1.a Supplemental Attachment 5 September 2008

DRAFT PRELIMINARY PROPOSED COUNCIL MEETING AGENDA, MARCH 7-13, 2009, SEATTLE, WASHINGTON

Sat, Mar 7	Sun, Mar 8	Mon, Mar 9	Tue, Mar 10	Wed, Mar 11	Thur, Mar 12	Fri, Mar 13
ADVISORY BODY MEETINGS ONLY	<u>CLOSED SESSION- 1 PM</u> <u>OPEN SESSION2 PM</u> 1-4. Opening Remarks & Approve Agenda (30 min) <u>OPEN COMMENT</u> 1. Comments on Non-Agenda Items (45 min) <u>COASTAL PELAGIC SPECIES</u> 1. STAR Panel 2009 TOR: Adopt Final (1 hr) <u>HABITAT</u> 1. Current Issues (45 min)	ENFORCEMENT ISSUES 1. US Coast Guard Annual Fishery Enforcement Rpt. (1 hr) SALMON 1. Review 2008 Fisheries & 2009 Stock Abundance Estimates (1 hr) 2. Identification of Stocks not Meeting Conservation Objectives (1 hr) 3. Identification of Management Objectives & Preliminary 2009 Management Options (3 hr 30 min) PACIFIC HALIBUT 1. IPHC Annual Meeting Report (30 min) 2. Incidental Catch Regulations in Salmon Troll & Fixed Gear Sablefish Fisheries (30 min)	GROUNDFISH 1. NMFS Report (45 min) 2. Pacific Whiting: Coordinate 2009 Harvest & Mgmt Measures with Whiting Commission (2 hr 30 min) 3. NEPA & ACL FMP Amendments (2 hr) SALMON 4. Recommen- dations for 2009 Mgmt Option Analysis (2 hr 30 min)	SALMON 5. Further Direction for 2009 Mgmt Options (if needed) (45 min) 6. NEPA & ACL FMP Amendments (2 hr) GROUNDFISH (CONT) 4. Consideration of Inseason Adjustments (2 hr) 5. Amendment 22 (Open Access Limitation): Adopt Final (if not completed in Sept.) (3 hr)	GROUNDFISH (CONT) 5. Amendment 22 (Open Access Limitation) Continued: Adopt Final (if not completed in Sept.) (1hr) 6. Amendment 20 Trawl Rational- ization: Status Rpt (3 hr) MARINE PROTECTED AREAS 1. MPA Issues (2 hr) SALMON 7. Adopt 2009 Management Options for Public Review (2 hr) 8. Appoint Hearings Officers (15 min)	 GROUNDFISH (CONT) 7. Final Inseason Adjustments (2 hr) 8. EFHRC Terms of Reference (1 hr 30 min) COASTAL PELAGIC SPECIES (CONT) 1. NEPA & ACL FMP Amendments (2 hr) 2. Legislative Matters (30 min) 3. Membership Appointments (15 min) 4. Approve Minutes (15 min) 5. Future Mtg Agenda Planning & Workload Priorities (30 min)
	4 hr	7 hr 30 min	7 hr 45 min	7 hr 45 min	8 hr 15 min	7 hr
	8:00 am GAP 8:00 am GMT 8:00 am SAS 8:00 am STT 8:00 am SSC 9:00 am LC 10:30 am ChB 4:30 pm EC	8:00 am EC 8:00 am GAP 8:00 am GMT 8:00 am SAS 8:00 am STT 8:00 am SSC	8:00 am EC 8:00 am GAP 8:00 am GMT 8:00 am SAS 8:00 am STT	8:00 am EC 8:00 am GAP 8:00 am GMT 8:00 am SAS 8:00 am STT	8:00 am EC 8:00 am GAP 8:00 am GMT 8:00 am SAS 8:00 am STT	8:00 am EC 8:00 am GAP 8:00 am GMT Suppleme

Council-sponsored evening sessions: *Total Council Floor Time* = 42.25 hr

Chair's Reception on Sunday at 6:00 pm

9/12/2008 9:38 AM

COUNCIL WORK LOAD PRIORITIES SEPTEMBER 15, 2008 THROUGH NOVEMBER 7, 2008 (Bolded tasks represent a core program responsibility; lead responsibility for shaded tasks is outside Council staff)

	Salmon	Groundfish	CPS	HMS	Other
	Inseason Mgmt Methodology Review	Inseason Mgmt 2007-08 SAFE Doc	2009 Pac. Sardine Stock Assessment & Harvest GL	Final Routine Mgmt Meas.	Admin Necessities (Briefing Book, minutes, Newsletter, Website, E-Filing,
ACTIVE		 Trawl IQ Program (A-20): Analyze Alts Inculding Preferred Alt. for Public Review in the Prelim DEIS; & Conduct Public Hearings Open Access Limitations (A-22)Analy Preferred Alt. for EA for Mar Council EFH Review Process TOR 	S, STAR Panel Terms of Reference for 2009 (Ze Action	Amendment: Mgmt Regime for HS Longline Fishery WCPFC & IATTC involvement	Fiscal Matters, etc. MSA Reauthorization Implementation Pacific Halibut Mgmt Proposed Changes to CSP Apportionment Estimation Rev Fixed-Gear Bycatch IR Finalize Res. & Data Doc MPA coordination
	Mtgs: SASconf call Oct STTOct MEWOct Conf Call & Method. Rev MtgOct (SSC Subcom/STT/MEW	Mtgs: GMTat Nov CM GAPat Nov CM GACOct 8-9 Trawl Rationalizaton EFHRCOct or at Nov CM /)	Mtgs: CPSASOct 9 CPSMTOct 8-9 SSC/CPS SubCOct 7-8	Mtgs: HMSASat Nov CM? HMSMTat Nov CM? 3	Mtgs: Halibut WorkgroupLate Sept/Early Oct Leg. ComNone HC?? SSCat Nov CM EC Mtgat Nov CM BCat Nov CM
CONTINGENT	Mitchell Act EIS Review Update FMP Historical Data Doc ACL/NEPA FMP Amendments	ACL/NEPA FMP Amendments	International Mgmt ACL/NEPA FMP Amendments	International HMS Forum involvement WPFMC-PFMC Coord ACL/NEPA FMP Amendments	PacFIN/EFIN issues Ecosystem-Based FMP
DELAYED	Amendments: OCN Coho Matrix SOF Coho Allocation Cons. Objectives: Puget S. Chin. & Coho OR Coastal Chinook	Intersector Allocation EIS GF Strategic Plan Formal Review SSC Bycatch Workshop II	Harvest Control Rule Review International Mgmt	Planning for Joint WPFMC-PFMC Mtg	Ecosystem-Based Mgmt Communication Plan Economic Data September Collection Program

Pacific Fishery Management Council Council Meeting Schedule

2009 DATES	LOCATION
Dates in Briefing Book: March 7-12 Proposed Dates: March 8-13 Advisory Bodies may begin Friday, March 6 Council Session begins Sunday, March 8	Marriott Hotel SeaTac Airport 3201 South 176 th Street, Seattle, WA 98188 206-241-2000
April 4–9, 2009 Advisory Bodies may begin Thursday, April 2 Council Session begins Saturday, Apr 4 No Proposed Change	The Westin San Francisco Airport 1 Old Bayshore Highway, Millbrae, CA 888-627-8404
June 13–18, 2009 Advisory Bodies may begin Thursday, June 11 Council Session begins Saturday, June 13 No Proposed Change	Washington or Oregon
September 12–17, 2009 Advisory Bodies may begin Thursday, Sep 10 Council Session begins Saturday, Sep 12 No Proposed Change	Idaho , California, Oregon, or Washington
October 31-November 5, 2009 Advisory Bodies may begin Thursday, Oct 29 Council Session begins Saturday, Oct 31 No Proposed Change	Hilton Orange County/Costa Mesa 3050 Bristol Street, Costa Mesa, CA 92626 714–540–7000

Proposed 2010 DATES	LOCATION		
March 6–12, 2010 Advisory Bodies may begin Thursday, March 4 Council Session begins Saturday, March 6	California		
April 10–15, 2010 Advisory Bodies may begin Thursday, April 8 Council Session begins Saturday, April 10	Oregon or Washington		
June 12–17, 2010 Advisory Bodies may begin Thursday, June 10 Council Session begins Saturday, June 12	California or Idaho		
September 11–16, 2010 Advisory Bodies may begin Thursday, Sept 9 Council Session begins Saturday, Sept 11	California, Idaho, Oregon, or Washington		
October 30-November 4, 2010 Advisory Bodies may begin Thursday, Oct 28 Council Session begins Saturday, Oct 30	California, Oregon, or Washington		

PFMC 09-12-2008

HABITAT COMMITTEE REPORT ON FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

The Habitat Committee (HC) would like to meet prior to the March meeting to discuss new information on ecosystem management, and progress on models for incorporating ecosystem principles into fishery management. We would like to invite the Scientific and Statistical Committee's Ecosystem-Based Management Subcommittee to join us at this meeting. The HC would hear presentations on a recent California Current ecosystem management workshop convened by Communication Partnership for Science and the Sea (COMPASS) and hear from individuals from the Northwest Fisheries Science Center's Ecosystem Program that are working on these issues. The HC would then prepare a report for the Council's potential April Essential Fishery Management Plan agenda item.

PFMC 09/09/08

Proposed Revision for Option 2:

"The Council deems that regulations implementing this management program/this plan amendment/these specification and management measures—are necessary or appropriate in accordance with 303(c) of the MSA. After NMFS has prepared the regulatory language, the Council authorizes the Executive Director to review the regulations to verify that they are consistent with this Council action, before submitting them to the Secretary on behalf of the Council."

SALMON ADVISORY SUBPANEL REPORT ON UPDATE AND COMMUNICATION OF RESEARCH AND DATA NEEDS

The Salmon Advisory Subpanel (SAS) requests clarification on how prioritization among research and data needs for different Fishery Management Plans is determined. In addition, the SAS has the following comments:

Item 4.2.1 – Mark Selective Fisheries. The SAS agrees with the Salmon Technical Team (STT) that information on sublegal, marked/unmarked encounter rates is more important at this time than additional estimates of release mortality rates.

Item 4.2.2 – Genetic Stock Identification. This topic should be the highest priority for salmon. In particular, development of single nucleotide polymorphisms (SNPs) technology, which could address the need for additional stock resolution, such as, potentially, differences between Klamath fall and spring Chinook, or hatchery and wild stocks. Genetic stock identification (GSI) research is particularly important as there is currently funding available for GSI research.

PFMC 09/08/08

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON UPDATE AND COMMUNICATION OF RESEARCH AND DATA NEEDS

The Scientific and Statistical Committee (SSC) developed recommendations to prioritize Research and Data Needs for Groundfish Management, and reviewed the Office of National Marine Sanctuaries (ONMS) and Salmon Technical Team (STT) comments on the Council's Update and Communication of Research and Data Needs Public Review Draft.

The SSC recommends adding a new section (3.2) to the Groundfish Management Research and Data Needs identifying the following priorities:

1. Continue to conduct annual comprehensive shelf and slope bottom trawl surveys of west coast groundfish.

2. Conduct port sampling for species composition and biological samples at levels needed to support stock assessment and management.

3. Evaluate feasibility of and develop as appropriate alternative survey methodologies for measuring abundance and distribution of groundfish. Develop a coastwide survey of rockfish populations in untrawlable areas.

4. Develop methods to assess and manage stocks for which data are not adequate to fit agestructured assessment models.

5. Develop and implement a coastwide multi-state system for electronic recording of fishticket information and fishery logbooks in consistent form.

6. Continue the evaluation of optimum yield (OY) control rules, biological reference points, spawner-recruit relationships and harvest policies used to make decisions about acceptable biological catch and harvest guideline/OY for groundfish.

7. Evaluate protocols and priorities for biological sampling (lengths and ageing structures) to ensure that sufficient data are being collected to support existing stock assessments and proposed new assessments.

8. Derive historical catch estimates which are consistent with the best available information and also consistent across species.

9. Conduct a Management Strategy Evaluation to evaluate the current 40-10 harvest control rule for Pacific whiting.

10. Establish accessible online databases for all data relevant to groundfish stock assessments.

The SSC reviewed the ONMS comments on the Council's Update and Communication of Research and Data Needs Public Review Draft and developed recommendations for how these comments should be incorporated into the Research and Data Needs. The SSC recommendations are provided as Attachment 1.

The SSC reviewed the STT comments on the Council's Update and Communication of Research and Data Needs Public Review Draft, and concurs with the STT comments except as noted below:

- Item 4.2.2 Genetic Stock Identification (GSI). The SSC recommends that GSI remain a high research priority in the document but also recognizes the importance of the real-time management issues raised by the STT. To address the latter, the SSC recommends the addition of the following sentence to Section 4.2.2: "There is a research need for finer stock resolution with GSI to align stock identification with management units (such as discrimination between Klamath fall Chinook and Klamath spring Chinook)."
- Item 4.3 Mass marking. The SSC recommends that the language referring to release mark rates be retained because mass marking is an ongoing management program.
- Item 4.4 Genetics. The SSC does not recognize that basic escapement monitoring and double index tagging (DIT) are necessarily higher priority than GSI. The DIT recommendation should be added to 4.2.1 Mark Selective Fisheries.
- The SSC supports the remaining bullets recommended by the STT.

SSC Item C.3. Attachment 1:

The SSC reviewed the ONMS comments on the Council's Update and Communication of Research and Data Needs Public Review Draft and developed recommendations for how these comments should be incorporated into the Research and Data Needs.

- 2.1 (p. 5), 3rd bullet: The SSC recommends adding *spawning habitat* to the sentence (but not *habitat models* or *active* spawning habitat).
- 2.2 (p. 6): The SSC has not reviewed the ONMS's suggested reference, and therefore concludes it would not be appropriate to recommend including the reference at this time.
- 2.2 (p. 6), 3rd bullet: The SSC recommends that the Council should consider adding the referenced 'Condition Reports'.
- 2.2 (p. 6), 5th bullet: The SSC recommends adding the following demarcation points: Pt. Reyes, San Francisco Bay, and Cape Alava.
- 2.3 (p. 7), 4th bullet: The SSC does not support adding the ONMS suggestion "ensure that adequate ground-truthing is conducted to test the models." The SSC does not consider full ground-truthing of those models currently feasible.
- 3.2.3 (p. 12), 2nd bullet: The SSC concurs with ONMS suggestion to add reference to collection of fish-association indices as well.
- 3.2.3 (p. 13), 1st bullet: The SSC notes that Section 3.4 Habitat Issues (p. 16-17) and Section 8.3 Essential Fish Habitat (p. 53) already covered this topic (gear damage to biogenic habitats), and does not recommend adding the ONMS suggested language to Section 3.2.3.
- 3.3 (p. 14), 2nd bullet: The bullet referred primarily to accessing raw data, and SSC does not agree with the ONMS recommendation to list the specific web-based programs for posting interpreted findings such as SIMoN.
- 3.4 (p. 16): In the first paragraph of 3.4 Habitat Issues, the SSC recommends adding the specific references for the "anecdotal" study (High 1998) and the "observational" study by the Monterey Bay NMS (Engel and Kvitek 1998). The SSC recommends modifying the first sentence of the 2nd paragraph as follows: "Field studies are needed on the effects of fishing on benthic habitats on the Pacific coast, where these have not yet been implemented."
- 5.1 (p. 27) 1st bullet: The SSC does not see the linkage between the ONMS references and CPS stock assessments; and does not recommend making the ONMS suggested changes.
- 5.2.1 (p. 29) 1st bullet: The ONMS suggestion to include studies of krill on various scales was already covered by 2.3 Emerging Issues for Ecosystem-Based Fisheries Management.
- 8.3 (p. 53), 1st bullet: The SSC recommends modifying the first sentence of this bullet as follows: "Conduct experiments to assess the effects of various fishing gears on specific habitats, including habitat recovery rates, on the west coast and to develop methods to minimize those impacts as appropriate."
- ONMS recommended developing a matrix for issues and needs, cross-cutting FMPs and research topics. The SSC agrees such a matrix would be ultimately useful, but is beyond the scope for this document.

References

- Engel, J. and R. Kvitek. 1998. Effects of Otter Trawling on a Benthic Community in Monterey Bay National Marine Sanctuary. Conservation Biology 12:1204-1214
- High, W.L. 1998. Observations of a scientist/diver on fishing technology and fisheries biology. NOAA, NMFS, AFSC Processed Report 98-01. 47 p.

LEGISLATIVE COMMITTEE REPORT ON LEGISLATIVE MATTERS

The Legislative Committee (Committee) convened at 3:30 p.m. on Sunday, September 7, 2008. In attendance were Committee members Dr. David Hanson (Chair) Mr. Rod Moore (vice chair), Ms. Kathy Fosmark, Mr. Don Hansen, and Mr. Dale Myer. Also present were Council members Mr. Phil Anderson, Mr. Mark Helvey, Mr. Frank Warrens, Mr. Mark Cedergreen, and Mr. Gordy Williams; Council Executive Director Dr. Don McIsaac, Council Deputy Directory Mr. John Coon, Council Staff Officer Mr. Mike Burner, and Ms. Dorothy Lowman, consultant for Environmental Defense.

The Committee reviewed the legislative matters on its agenda and provides the following reviews and recommendations:

H.R. 6537, Sanctuary Enhancement Act of 2008

The Committee focused on the topic of clarification of the authority to regulate fishing activities within National Marine Sanctuaries, a core issue for the Council. H.R. 6537 addresses this issue by moving the issue of fishery regulation within Sanctuaries from National Marine Sanctuary Act (NMSA) Section 304 regarding Sanctuary designation and implementation to NMSA Section 308 pertaining to regulations. The Committee agreed that this change does little to change or clarify the role of the Regional Fishery Management Councils, and the Committee was disappointed that H.R. 6537 failed to include the long standing position and recommended NMSA amendments of the Council and the Council Coordination Committee (CCC) (see Agenda Item C.4.a, Attachment 7, Draft Council Position Statement on NMSA Reauthorization and Related Ecosystem-Based Fishery Management).

The U.S. House Natural Resources Committee, Subcommittee on Fisheries, Wildlife and Oceans, led by Congresswoman Madeleine Z. Bordallo (D-GU), held an oversight hearing on the reauthorization of the National Marine Sanctuaries Act on June 18, 2008. The Committee noted that the Regional Fishery Management Councils were not included in these June hearings and recommends the Council request an invitation to participate should there be additional hearings.

The Committee recommends the Council direct the Executive Director convey these comments to U.S. Senator Gordon Smith (R-OR) who has formally requested Council comments on fishery-related legislative matters and through Mr. Dave Whaley to the U.S. House Subcommittee on Fisheries, Wildlife and Oceans who requested Council input on NMSA reauthorization.

S. 3314, the National Oceans Protection Act of 2008

The Committee briefly reviewed S. 3314 and notes the bill is nearly the same piece of legislation that was introduced in the U.S. House of Representatives as H.R. 21 the *Oceans Conservation, Education, and National Strategy for the 21st Century Act*, legislation the Council and the CCC has previously commented on. The Committee noted that S. 3314 does not include amendments made to H.R. 21 since its introduction, but the Committee does not recommend any further comments on this legislation at this time.

Future Meeting Plans

Because there are no urgent legislative matters anticipated in the near future and due to the heavy workload of the November Council meeting, the Committee recommends scheduling the next meeting for the March 2009 Council meeting.

The Committee adjourned at 4 p.m.

Legislative Committee Recommendations

- 1. Direct the Council Executive Director to send a letter to U.S. Senator Smith and Mr. Dave Whaley, regarding H.R. 6537 that reiterates the CCC position on the authority to regulate fishing within National Marine Sanctuaries and requests Council participation at future Congressional hearings on NMSA reauthorization.
- 2. Schedule the next meeting of the Legislative Committee for the March 2009 Council meeting.

PFMC 09/09/08

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON LEGISLATIVE MATTERS

During the April 2008 meeting of the PFMC on legislative matters, the Highly Migratory Species Advisory Subpanel (HMSAS) expressed serious concerns about a proposed administration bill to implement the Antigua Convention by amending the Tuna Conventions Act of 1950, as amended. [Please refer to agenda item C.2c, HMSAS Report, April 2008.]

This is to strongly request the Council to seek an update on efforts taken by Congress, Department of Commerce, and the Department of State in proposing amendments to the Tuna Conventions Act of 1950, as amended.

PFMC 9/9/08



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August 26, 2008

Agenda Item C.5.a Supplemental Attachment 1 September 2008

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Mr. Mark R. Millikin National Marine Fisheries Service, NOAA Office of Sustainable Fisheries 1315 East-West Highway, Room 13357 Silver Spring, Maryland 20910

Dear Mr. Mil

With this letter, the Gulf of Mexico Fishery Management Council (Council) is providing the following comments on the National Marine Fisheries Service's (NMFS) proposed rule to amend the Guidelines for National Standard 1 (NS1) of the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA).

- 1. The Council recognizes that the Magnuson Stevens Reauthorization Act (MSRA) requires Annual Catch Limits (ACL) and Accountability Measures (AM) for all required Gulf fisheries by 2011. This is an ambitious goal and we will work to meet it, but it is unlikely that we will accomplish this by 2011.
- 2. During 2008, the Council has included ACL and AM in Fishery Management Plans (FMP) for three reef fish species subject to overfishing: Greater Amberjack, Grey Triggerfish, and Gag Grouper. These measures were developed before NMFS' ACL and AM guidelines were available, and we believe they are consistent with these guidelines and will meet the 2010 date required in MSRA.
- 3. During 2007, the Council addressed overfishing in Red Snapper by setting hard quotas for both the recreational and commercial sectors. This management action uses pre-MSRA terminology, but we believe that it complies with the requirement to establish ACL and AM for Red Snapper by 2010.
- 4. The Council supports the guideline that allows some flexibility in the management of ACLs, such that catch levels could be exceeded one year out of every four years (25% of the time) without triggering a reevaluation of the management action.
- 5. The Council supports the guideline that sets out a process for Status Determination Criteria (SDC) to be set for an indicator species and an ACL set for the related complex of data poor stocks.
- 6. The Council supports the guideline that wild brood stock for aquaculture should be addressed if a species is undergoing overfishing or rebuilding, but that harvest from an aquaculture facility need not be subject to management.

Mr. Mark R. Millikin August 26, 2008 Page Two

- 7. The Council disagrees with the guideline that suggests that the Council's Statement of Organization, Practices and Procedures (SOPPs) is the proper place to describe the process for establishing ABC Control Rules, including the role of SEDAR and the SSC. We recommend instead that ABC Control Rules be included in Fishery Management Plans and with the ability to refine management through framework actions.
- 8. Recreational harvest is a large and important component of reef fish and coastal migratory fisheries in the Gulf. We lack timely in-season monitoring data for these recreational fisheries, and it will be difficult to have in-season accountability measures. There will be additional time delays in accountability if Gulf coast states need to implement compatible state regulations. The guidance recommends large buffers between ACL and ACT in these situations of management uncertainty and overages, and we anticipate that lower ACT for the recreational fishing sector will result in economic disruptions. These disruptions will be even greater if AMs are triggered in these recreational fisheries. These many challenges will make management using ACL and AM difficult in Gulf recreational fisheries.

Please accept these as our formal comments on the proposed rule, and if you have any questions, please contact the Council's office. Thank you for the opportunity to comment.

Sincerely,

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Thomas D. McIlwain, Ph.D. Chairman

c: James Balsiger Alan Risenhoover Gulf Council Council Executive Directors Technical Staff

Agenda Item C.5.a Supplemental Attachment 2 September 2008

North Pacific Fishery Management Council

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September 2, 2008

Mr. Mark R. Millikin National Marine Fisheries Service, NOAA Office of Sustainable Fisheries, Room 13357 1315 East-West Highway, Silver Spring, MD 20910

Dear Mark:

Thank you for the opportunity to comment on the proposed rule on revising the guidelines to National Standard 1 to comply with the new requirements for annual catch limits (ACLs) and accountability measures (AMs).

Overall, the North Pacific Fishery Management Council believes that the proposed guidelines are overly prescriptive, and should be simplified and made more flexible. Despite being modeled on NPFMC practices for groundfish management, the proposed guidelines would require that our FMPs be amended to define new terms, add new layers of catch limits/targets, and require preparation of new analyses. Although our two groundfish FMPs may require only minor modifications, our State/Federal BSAI Crab FMP and State/Federal Alaska Scallop FMP would need to be amended to establish control rules for specifying ABC at levels below OFL. We believe that our Salmon FMP meets the alternative approach described in section (h)(3) on page 32545, and thus should be deemed exempt from ACL and AM requirements. We urge you to retain flexibility for stocks with unusual life history characteristics.

We would emphasize that the NPFMC's Scientific and Statistical Committee (SSC) has always provided our peer review process, and the SSC currently has the authority to establish ABCs lower than maximum permissible values calculated by the control rule to address data uncertainty, stock trends, or other factors. The guidelines must continue to provide the SSC with this discretion.

The attached comments on the proposed rule were developed for the Council by a group of SSC and Plan Team members. The Council endorses these recommendations, and appreciates the agency's consideration of these substantive comments as you develop a final rule.

Sincerely,

Si G.ac

Eric A. Olson Chairman

attachment

cc: Dr. James Balsiger

North Pacific Fishery Management Council Technical Comments on the ACL Proposed Rule

Prepared by Pat Livingston (NMFS), Anne Hollowed (NMFS), Terry Quinn (UAF), Bill Clark (IPHC), and Grant Thompson (NMFS).

The proposed guidelines for implementing the provisions of the 2007 MSA language requiring Councils to set annual catch limits (ACLs), annual catch targets (ACTs) and accountability measures (AMs) for all directed fisheries are quite complex. Although these may have been modeled after current practices in the North Pacific Fishery Management Council, the guidelines define these new terms as separate from present management measures such as Total Allowable Catch (TAC), which adds to the complexity. The guidelines call for analyses and studies to be made, some of which would be necessary to include in FMP amendments needed to implement these guidelines. It is highly unlikely that such a complicated system could be put into place by 2011. Here we provide comments on details of these proposed rules that we believe require further clarification or simplification in order to implement.

Simplification of the Guidelines

The most efficient way to facilitate the implementation of these guidelines would be to substantially rewrite them in a more simplified form that reflects the Act's fairly simple intent. One way to rewrite the guidelines would be to:

- retain existing Maximum Fishing Mortality Thresholds (MFMT) and Optimum Yield (OY) specifications
- set Overfishing Level (OFL) equal to the catch corresponding to the MFMT
- set Acceptable Biological Catch (ABC) no higher than OFL, such that if the nominal target was set equal to ABC, the expected catch would be no higher than OFL (using whatever method/criteria the SSC finds to be appropriate, and allowing probabilities to be based on implementation error only)
- set TAC no higher than ABC, such that if the nominal target was set equal to TAC, the expected catch would equal OY (adjusting OY downward if the requirement cannot be met and, again, allowing probabilities to be based on implementation error only).
- Define ACL as the set of terms: OFL, ABC, and TAC
- Specify that AMs are always required, and must be re-evaluated if either catch exceeds OFL in any year or if average catch is significantly different from average OY over the last N years.

Rationale: The Act mentions ACLs only four times (Sec. 302(h)(6), Sec. 303(a)(15), Sec. 305(i)(1)(B)(i), and Sec. 305(i)(1)(C)) and, therein, only briefly. Yet, the proposed rule sets forth an extremely complicated and untested system as the standard for compliance. The Act's provisions pertaining to ACLs are actually fairly simple:

- 1) Each Council must develop ACLs that may not exceed the fishing level recommendations of its SSC or other allowed peer review process (Sec. 302(h)(6)).
- 2) Each FMP must establish a mechanism for specifying ACLs at a level such that overfishing does not occur in the fishery (Sec. 303(a)(15)).
- 3) TAC is a type of ACL (Sec. 305(i)(1)(B)(i) and Sec. 305(i)(1)(C)).

Nowhere does the Act state that ACLs are to be a totally new type of management measure. In fact, the Act goes out of its way to state that TAC, an existing management measure in many FMPs, is a type of ACL, as stated in (3) above. The Act merely requires that each Council establish some system of reference levels in units of catch and that these cannot exceed the corresponding recommendations of its SSC. The SSC's recommendations, in turn, are listed as those pertaining to "acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets" (Sec. 302(g)(1)(B)).

The alternative described above would require extensive revision of the proposed rule, but would result in a much simpler and more flexible set of guidelines that are still fully compliant with the requirements of the Act. In particular, this alternative sets ACLs (with AMs) such that overfishing does not occur and sets TACs such that optimum yield is achieved. If a Council wished to structure its FMPs according to the much more complicated system described in the proposed rule, it could still do so (with some minor nomenclatural changes). However, it seems undesirable to require substantial revision of all FMPs to adopt the complicated structure of the proposed rule, if the requirements of the Act can be fully met more simply and flexibly. Obviously, the description of the alternative system provided above is very concise, and would need to be elaborated upon, if it were adopted. Modification of all FMPs to conform to the proposed rule could be exceedingly costly, both in terms of Council and Agency staff resources and time. This suggests that other Council/Agency priorities will be delayed or simply foregone, absent an infusion of supplemental resources.

Peer review process and the role of the SSC

The proposed rule allows, but does not require, the adoption of a peer review process for the ABC determination. However, it does say that the ACLs for each of its managed fisheries may not exceed the fishing level recommendations of its SSC or peer review process (600.310(b)(2)(v)(C&D)). If a process is adopted, this language implies that the peer review body is to be treated as coequal with the SSC, in that, if the two disagree, the Council must set ABC at the lower of the levels recommended by the two groups. This would certainly be undesirable and perhaps unworkable in the North Pacific Council. Given that the whole peer review process is optional, it would make more sense to allow the Councils to define the role and powers of the peer review body.

Similarly, the calculation of ABC is described in the guidelines (600.310 (f)(3)) as a mechanical process, once an ABC control rule has been adopted. It seems that the role of the SSC is simply to sign off on the calculation (or not), but there appears to be no leeway for recommending an ABC different from the result of the control rule calculation. This would be a major change for the North Pacific Council, where assessment authors, plan teams, and the SSC have all treated the control rule ABC as a reference point, but have been free to recommend a different number given sufficient reason on a case-by-case basis. For this SSC, this has in practice meant recommending an ABC lower than the control rule value. There is some potential for abuse in this exercise of discretion, but it has allowed the SSC to provide sensible and prudent ABC recommendations in a number of cases where there was substantial uncertainty or concern relating to the control rule ABC. In view of the reliance being placed on the SSC in the proposed rule, it seems only reasonable to allow SSCs to continue to exercise some discretion.

The ABC control rule language is overly specific (600.310(f)(4)). This language could create real problems for our SSC, in that the adjustment process for reduction in ABC from its maximum permissible level would have to be "clearly articulated." If a generic statement will suffice, such as "ABC may be reduced due to data uncertainty, recruitment variability, unwelcome trends in population variables, and other factors", then it will not be a problem. But if the mechanism for adjustment must be specified, then the SSC role will be reduced to that of a formula-checker.

The SSC role in providing recommendations with respect to rebuilding targets is unclear (600.310(j)(3)(i)). This paragraph implies a possibly new role for SSCs: "shall provide recommendations for achieving rebuilding targets". What is not clear is whether this occurs in the development of a rebuilding plan or is a new annual responsibility (as one might assume in dealing with the subject of setting annual catch limits).

Classifying stocks in an FMP

This new designation of an ecosystem component species may need some clarification or modification (600.310(d)(2&5)). The North Pacific Council currently manages members of the forage fish group as ecosystem component species, where catch is limited using a catch disincentive (no more than 2% of the landed catch). If forage fish are caught, the NPFMC does not require that they be discarded at sea. Therefore, it is likely that the small amount caught would be delivered to plants where they would be marketed as fish meal. The delivery of small amounts of fish to plants would not be consistent with the definition that EC species are "generally not retained;" nor would it comply with the requirement that the species is not sold.

One recommendation is to delete the phrase, "and non-target stocks that are not retained for sale or personal use and that are either determined to be subject to overfishing, approaching overfished, or overfished, or could become so, according to the best available information, without conservation and management measures." *Rationale:* Non-target stocks that are not retained for sale or personal use are, by the definition of "bycatch" given in Sec. 3(2) of the Act, pure bycatch stocks. There are at least three reasons why it is inappropriate to require pure bycatch stocks to be included in the fishery:

- 1) Such a requirement would go far beyond the requirements of the Act. The Act clearly *does* require that the marine ecosystem, including pure bycatch stocks, be protected. However, the overfishing definitions relate to *maximizing sustainable yield* and do not necessarily correspond to any natural limit pertaining to the overall health of the stock or its associated ecosystem. So long as a pure bycatch stock and its associated ecosystem are healthy, the fact that the bycatch fishing mortality rate exceeds the fishing mortality rate that would maximize sustainable yield is irrelevant to the purposes of the Act.
- 2) Sec. 304(e)(1) of the Act states that *the overfishing definitions are to be applied to the fisheries managed under the respective plan.* If a stock is not part of such a fishery, the overfishing definitions simply do not apply to it, so it is inappropriate to apply those criteria to determine if the stock should be part of the fishery.
- 3) Such a requirement would result in an unwieldy system in which a single stock could ostensibly be "managed" under multiple FMPs. Because the various FMPs might well use very different status determination criteria, this could result in the same stock being determined to be simultaneously "overfished" and "not overfished."

The proposed rule indicates that EC species should be monitored on a regular basis to assess their status and vulnerability. However, it is not clear whether there is any regulatory action required, if the stock status declines and vulnerability increases. Perhaps the document should indicate that each Council should identify criteria for when an EC species should be reclassified as a target or non-target species.

The proposed rule indicates that species or species complexes may be classified as EC species for ecosystem considerations related to specification of OY for the associated fishery. The word "may" indicates that the NPFMC has discretion on what species should be monitored under the ecosystem consideration. However, the revisions to the FMP will need to specify some kind of criterion for inclusion of EC species in their FMPs. An associated problem with this approach is that some EC and non-target stocks that are not retained for sale or personal use might appear in more than one of the NPFMC's FMPs (groundfish, crab, scallop, salmon). This could lead to redundant review and, potentially, conflicting status determination criteria of EC and non-target species vulnerability by the different plan teams.

ACT procedures, management uncertainty, and accountability measures

In the Pacific and North Pacific Councils, a lot of time and effort has been spent over the years in educating the industry and the public about ABC, OFL, and TAC. By now, these quantities are generally understood and quite useful. Layering ACT on top of ACL will probably cause a lot of confusion, not just

about ACT itself, but also about ABC and ACL (600.310(f)(6)). This is not to say that setting an ACT is a bad idea; just that it will carry a real cost in the functioning of the public process in (at least) these two Councils. The question is whether the benefit outweighs the cost, or whether an allowance can be made for management uncertainty (600.310(f)(6)(i)) in some other, simpler way. As currently proposed, the language suggests that Councils will need to perform analyses of management uncertainty, which could be labor-intensive and time-consuming.

It is unclear who, within the Council, will be responsible for the ACT control rule (600.310(c)(5)). Normally it has been the Council that sets a TAC. Will the Council be responsible for specifying exactly how much they will reduce the ACT below ACL ahead of time or does it suffice to specify that ACL is an upper limit for ACT and ACT is an upper limit for TAC? The reasons for having an ACT (from page 32544, item (6)) seem to relate to imperfect in-season management or multi-year AMs, which hardly seems important enough for a new control rule. Why couldn't management imperfections like this be a part of an ACL control rule?

Accountability measures (600.310(g)), as defined in the proposed rule, also present difficulties. As defined, these will require a lot of attention by the Council, in that analyses will have to be done on past performance and also the rules for the specific measures used (single versus multiple year evaluation, correction for overages) will have to be approved at all levels of the Council process.

In addition, some language may need modification (600.310(g)(3)) to be more clear about performance. We recommend adding the phrase "for a given stock or stock complex" after the phrase, "If catch exceeds the ACL" in the last sentence of this section, to make it clear that system performance would be best judged at this level of detail. For example, if a single management system is applied to 25 stocks, and the catch for stock A exceeds the ACL for stock A in year 1, and the catch for stock B exceeds the ACL for stock B in year 4, the wording of the current PR could give the impression that the system is behaving poorly, even though there were only 2 overages out of a possible 100 (= 25 stocks x 4 years).

We also recommend deleting the phrase "to improve its performance and effectiveness" at the end of the same sentence. *Rationale:* There are, at least, three reasons to strike this phrase:

- 1) If OY is being achieved and overfishing is being avoided, it is inappropriate to imply that the system's performance is in need of improvement.
- 2) Use of this phrase here is inconsistent with a similar sentence in $\P(4)$ of the same subsection, where the same requirement is expressed, but this phrase does not appear.
- 3) The phrase does not make sense in this context, because simply *re-evaluating* a system cannot improve its performance or effectiveness (only *changing* a system can do so).

Accountability measures for State-Federal fisheries (600.310(g)(5)) could use further elaboration. It would be useful for the language in this section to be expanded to include fisheries where management had been delegated to the State. This would relieve the NPFMC from the responsibility, for example, of estimating AMs for BSAI crab stocks.

FMP Implementation Issues

Features of Maximum Sustainable Yield (MSY), Status Determination Criteria (SDC), and OY that should be identified in FMPs need revision. In section 600.310(e)(2)(i)(D), we recommend either striking the last sentence or changing it to read, "If MFMT is set equal to a constant FMSY, MSY is the long-term average catch that would result from fishing at the MFMT." We make this recommendation because the current wording in the proposed rule states that MSY is the long-term average of the OFLs. This creates problems, because it precludes any form of the MFMT other than a "constant F" form. This restriction is not required by the Act, and is inconsistent with the present guidelines, as well as with other parts of the proposed rule. For example, section 600.310(e)(2)(ii)(A)(1) states, "The MFMT or reasonable proxy may

be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential." Furthermore, the restriction would require needless changes in many existing FMPs. For example, it precludes a "constant escapement" control rule of the type that is used to manage some salmon fisheries, and it precludes the inflected type of control rule used in management of North Pacific groundfish. Furthermore, even when the MFMT is of the "constant F" form, the sentence in the proposed rule is incorrect, because MSY will equal the long-term average of the OFLs only if the stock is actually fished at the MFMT.

Similarly, in section 600.310(e)(2)(ii)(A)(1), we recommend that the last sentence be deleted. Requiring that MFMT never exceed FMSY, regardless of stock size, is inconsistent with the current guidelines, and would needlessly preclude many control rules that have proven useful; for example, this sentence would preclude use of "constant escapement" control rules for salmon fisheries.

The definition of ABC is overly restrictive (600.310(f)(2)(ii)). We recommend removing the phrase "in the estimate of OFL" from this section. Scientific uncertainty should not be restricted to uncertainty in the estimation of OFL. Such a restriction would make it more difficult to implement other approaches to the incorporation of scientific uncertainty, such as decision-theoretic approaches or any approach that considers scientific uncertainty in other quantities, such as the distribution of long-term yield.

Some sections specify information on data collection methods and sources of fishing mortality to be contained in the FMPs (600.310(i)). There needs to be some clarification about the role of the SAFE Reports in providing this type of information, given the fact that data collection methods and sources of mortality are likely to change over time.

Establishing ACL and AM mechanisms in FMPs (600.310(h)) are identified as being located in the FMP. This would mean a multi-year process to change any measure. Councils should have the ability to framework the mechanisms and establish an annual or multi-year process for making adjustments. The current description is too inflexible.

Specification of OY (600.310(e)(v))

The term scientific uncertainty in this section requires further definition. In addition, the North Pacific Council sets an OY range on the groundfish complex that limits the sum of the TACs across species. This section needs further clarification as to whether this will be permitted or whether the Council would have to define OY for each species or complex.

Finally, we recommend replacing the word "achievement" with the word "specification" in the last sentence of section 600.310(f)(7)(ii) on the relationship of ACT to OY. ACT is supposed to be the nominal target, rather than the actual target, because it is adjusted to account for any systematic management bias. For example, if catches are typically 25% higher than the nominal target, the ACT would have to be set at 80% of OY in order to achieve OY on average.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111-[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of the Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) as follows:

600 Basic Standards for All Mailing Services

* * * * *

602 Addressing

1.0 Elements of Addressing

* * * *

1.5 Return Addresses

* * * * *

1.5.3 Required Use of Return Addresses

The sender's domestic return address must appear legibly on:

[Add new item m to 1.5.3 as follows:]
* * * * *

m. Detached addressed labels (DALs).

4.0 Detached Address Labels (DALs)4.1 DALs Use

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[Revise text of 4.1.2 to require that DALs accompanying saturation mailings of Periodicals or Standard Mail flats be automation-compatible as follows:]

4.1.2 Periodicals or Standard Mail Flats Saturation Mailings

Saturation mailings of unaddressed Periodicals or Standard Mail flats may be mailed with detached address labels (DALs). DALs accompanying saturation mailings of Periodicals or Standard Mail flats must be automation-compatible under 201.3.0. For this standard, saturation mailing means a mailing sent to at least 75% of the total addresses on a carrier route or 90% of the residential addresses on a route, whichever is less. Deliveries are not required to every carrier route of a delivery unit.

* * * *

4.2 Label Preparation

4.2.1 Label Construction

Each DAL must be made of paper or cardboard stock that is not folded,

perforated, or creased, and that meets these measurements:

[Revise item c of 4.2.1 and add new items d and e as follows:]

c. At least 0.007 inch thick except under 4.2.1.d.

d. If more than $4\frac{1}{4}$ inches high or more than 6 inches in length, must be at least 0.009 inch thick.

e. Must have an aspect ratio (length divided by height) between 1.3 to 2.5, inclusive.

4.2.2 Addressing

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[Revise text of 4.2.2 to require a POSTNET or Intelligent Mail barcode with a delivery point routing code as follows:]

The address for each item must be placed on a DAL, parallel to the longest dimension of the DAL, and must not appear on the item it accompanies. The DAL must contain the recipient's delivery address and the mailer's return address. A ZIP+4 code or 5-digit ZIP code is required unless a simplified address format is used. DALs that accompany saturation mailings of Periodicals or Standard Mail flats must include a correct delivery point POSTNET barcode or Intelligent Mail barcode with an 11-digit routing code (see 708.4) except when using a simplified address.

* * * * *

4.2.5 Other Information

In addition to the information described in 4.2.2 and 4.2.4 and an indicium of postage payment, only the following may appear on the front of a DAL:

* * * * *

b. Advertising, under the following conditions:

[Delete item 1 and renumber current items 2 and 3 as new items 1 and 2.]

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if our proposal is adopted.

Neva R. Watson,

Attorney, Legislative. [FR Doc. E8–19803 Filed 8–26–08; 8:45 am] BILLING CODE 7710–12–P DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 071102640-8952-01]

RIN 0648-AQ63

Magnuson-Stevens Act Provisions; National Standard Guidelines

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA); Commerce.

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS withdraws a proposed rule for revisions to National Standard 1 (NS1) guidelines, which was published on June 22, 2005. Instead of going forward with a final rule directly resulting from the 2005 proposed rule, NMFS published a new proposed rule for the NS1 guidelines in the Federal Register on June 9, 2008, to address new provisions enacted in 2007 in the Magnuson-Stevens Fishery **Conservation and Management** Reauthorization Act (MSRA). Because of new requirements for annual catch limits (ACLs) and accountability measures (AMs), among other things, NMFS decided that it was better to proceed with a new proposed rule rather than try to revise a 3–year old action that preceded the MSRA. The new proposed rule provides guidance on ACLs and AMs and other requirements related to overfishing and rebuilding overfished stocks in the National Standard 1 (NS1) guidelines. **DATES:** This proposed rule is withdrawn on August 27, 2008.

FOR FURTHER INFORMATION CONTACT:

Mark R. Millikin, Senior Fishery Management Specialist, 301–713–2341, or via e-mail *mark.millikin@noaa.gov*.

SUPPLEMENTARY INFORMATION: Section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) states that any fishery management plan (FMP) prepared and any regulation promulgated to implement such a plan shall be consistent with the ten national standards described in that section. Section 301(b) states that the Secretary of Commerce should establish advisory guidelines (which shall not have the force and effect of law) based on the national standards to assist in development of FMPs.

The guidelines for national standards of the Magnuson-Stevens Act were last revised through a final rule published in the **Federal Register** on May 1, 1998 (63 50586

FR 24212), which brought them into conformance with the Sustainable Fisheries Act of 1996. The May 1998 final rule revised the guidelines for National Standards 1 (optimum yield), 2 (scientific information), 4 (allocations), 5 (efficiency), and 7 (costs and benefits) and added new guidelines for National Standards 8 (communities), 9 (bycatch), and 10 (safety of life at sea).

National Standard 1 (NS1) states "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.' NMFS considered revising the NS1 guidelines when it published an advance notice of proposed rulemaking in 2003 (68 FR 7492, February 14, 2003), and a proposed rule in 2005 (70 FR 36240, June 22, 2005). NMFS received over 250,000 comments. NMFS reviewed all of the comments, and the majority consisted of one of ten different form letters, expressing concern that: (1) Overfishing is occurring for many stocks, (2) many fish stocks are overfished, (3) oceans and fish stocks are in trouble, and (4) at the rate fish stocks are being depleted, there could be severe impacts on future generations of people who enjoy eating fish. Almost all commenters stated that overfishing should be ended immediately. NMFS decided not to publish a final rule directly related to the 2005 proposed rule when it became clear that Congress was preparing an amendment to the Magnuson-Stevens Act that seemed likely to revise provisions related to overfishing and rebuilding overfished stocks.

On January 12, 2007, President Bush signed into law the MSRA. MSRA revised the Magnuson-Stevens Act by adding section 303(a)(15), which requires that any FMP that is prepared by a regional fishery management council or the Secretary shall: "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." Because of this new requirement to use ACLs and AMs to end/prevent overfishing, NMFS published a proposed rule (73 FR 32526, June 9, 2008) emphasizing new recommendations and requirements related to ACLs and AMs, as well as other issues related to NS1 (especially related to rebuilding overfished fisheries and the concepts of maximum sustainable yield (MSY) and optimum yield (OY)). The 2008 proposed rule also contains guidance about four issues contained in the 2005 proposed rule. The issues covered in the 2005 proposed rule, that are reconsidered in the 2008 proposed rule include: (1) Guidance on how to determine the target time to rebuild a stock; (2) action to take at the end of a rebuilding plan if a stock is no longer overfished, but not rebuilt yet; (3) the definition of several components of MSY; and (4) exceptions to the requirement to prevent overfishing. The four issues listed above contain different wording in the 2008 proposed rule. The remaining issues in the 2005 proposed rule are not covered in the 2008 proposed rule. NMFS priority is to develop guidance on ACLs and AMs and make other related changes in the NS1 guidelines as soon as possible, given the MSRA statutory requirements to use ACLs and AMs to end overfishing in 2010, and prevent overfishing beginning in 2011. Thus, NMFS' new proposed revisions to the NS1 guidelines published in the Federal Register on June 9, 2008 (73 FR 32526) focus on changes needed to address ACLs and AMs and other new MSRA requirements, and NMFS is withdrawing the 2005 proposed rule.

The proposed revisions contained in the 2005 proposed rule that are not addressed in the 2008 proposed rule are not critical to accomplishing the new MSRA requirements related to ending/ preventing overfishing and rebuilding overfished stocks, and include:

• Renaming "minimum stock size threshold" as "minimum biomass limit (B_{lim})";

• Renaming "maximum fishing mortality threshold (MFMT)" as "maximum fishing mortality limit";

• Renaming "overfished" as "depleted";

• Specifying that FMPs may be revised so that species/stocks may be classified as "core stocks" or stocks falling within a "stock assemblage";

• Specifying that B_{lim} should equal one-half of the biomass that produces MSY (B_{msy}) as a default value and clarifying when exceptions greater than or less than the 1/2 B_{msy} value are appropriate for B_{lim} ;

• Revising the maximum rebuilding time horizon formula to remove the discontinuity that results from the formula in the current guidelines;

• Establishing a default value for the target time for rebuilding that equals a time value halfway between minimum time to rebuild (T_{min}) and maximum time to rebuild (T_{max}) ;

• Using MFMT to determine when a stock is rebuilt if the stock's B_{msy} and T_{min} are not known;

• Establishing guidance for how to revise rebuilding plans when a rebuilding plan has not shown adequate progress as described under section 304(e)(7) of the Magnuson-Stevens Act; and

• Revising the current requirement to develop "target" (OY) control rules in addition to limit (MSY) control rules from "may" to "must."

Authority: 16 U.S.C 1801 et seq.

Dated: August 21, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–19874 Filed 8–26–08; 8:45 am] BILLING CODE 3510–22–S

COASTAL PELAGIC SPECIES ADVISORY SUBPANEL REPORT ON IMPLEMNTATION OF THE MAGNUSON-STEVENS REAUTHORIZATION ACT (MSRA)

The Coastal Pelagic Species Advisory Subpanel (CPSAS) and the Coastal Pelagic Species Management Team (CPSMT) held a work session via teleconference on August 19, 2008 to review and discuss the revised National Standard 1 (NS 1) Guidelines proposed by the National Marine Fisheries Service (Agenda Item C.5.b, Attachment 1). The CPSAS recommends that the Council consider the following comments for inclusion in a Council response under the comment period for this proposed Action.

The CPSAS agrees with the CPSMT that the harvest policy found in the Coastal Pelagic Species Fishery Management Plan (FMP) is flexible enough to accommodate the annual catch limit provisions of the MSRA. However, CPSAS members expressed concern that the proposed rule appears to address precautionary management for stocks managed at maximum sustainable yield (MSY) and does not acknowledge, or credit, the precautionary measures already in place for stocks managed below MSY. Industry members believe the proposed rule as drafted is unclear regarding stocks already managed below MSY, and could be interpreted to require yet another layer of precaution that would unnecessarily reduce optimum yield (OY). We recommend that the final rule specify that in cases for FMP stocks where a CUTOFF value is included to prevent overfishing for ecological considerations, or for uncertainty, or additional percentage is set aside to account for incidental catch that acceptable biological catch (ABC), annual catch limit (ACL) and OY should be equivalent, and the annual catch target (ACT) should be the harvest amount of stock for the directed fishery.

The CPSAS concurs with views expressed by all industry members that sardines are now one of the most conservatively managed species in the United States; possibly the world. There is much disagreement amongst most CPSAS members that the present scientific surveys and formulas employed to establish the ABC and harvest guideline accurately measure and account for sardine populations that are presently seen in California, the Pacific Northwest, Canada, and Alaska. The concern of the majority of CPSAS members is that without recognition of the multiple layers of precaution presently built into existing management measures, future interpretation of new regulatory requirements could lead to confusion and complications resulting in further constraints in harvest, thus precluding the fishery from achieving optimum yield. This is after all, still a stated goal of NS 1.

Considering the relationship between the overfishing level (OFL), ABC, ACL and ACT (Figure 2 on page 32534 of the Proposed Rule), a majority of the CPSAS suggest the following interpretation, should apply to the statement in the CPSMT Report:

• From the comprehensive harvest control rule formula (H = (BIOMASS-CUTOFF) x FRACTION x DISTRIBUTION) the estimate of MSY and OFL for sardine in U.S. waters would be the (estimated Spawning Stock Biomass x sliding-scale harvest rate x distribution in U.S. waters). The estimated MSY in U.S. waters is further reduced by (CUTOFF x sliding-scale harvest rate x distribution in U.S. waters) to obtain the ABC in U.S. waters.

- The 150,000 mt CUTOFF is provided to address forage needs, scientific uncertainty, and to prevent overfishing. This cutoff value could be adjusted in the future if needed based on scientific evaluation.
- Also incorporated into the harvest formula is a sliding harvest rate (five percent-15 percent), based on sea surface temperature, addressing environmental variability.
- The distribution term apportions the coastwide ABC amongst waters in the lower U.S., Mexico, Canada, and Alaska.
- For the U.S. fishery the ABC, is the product of the harvest control rule, should be equivalent to the ACL.
- Accountability measures (AM) to address management uncertainty and account for incidental catches, live bait, and future set aside for collaborative research are provided in the percentage allowance subtracted from the ABC/ACL [currently ten percent]. The incidental/research set aside percentage can be adjusted annually if needed. The sardine stock is protected from over-fishing due to the 150,000 mt buffer, the sliding scale harvest rate and the 10 percent set aside for incidental take, live bait, future research and management uncertainty. In light of annual stock assessments and in-season accountability measures, no further buffer should be necessary to protect against overfishing: thus OY should be equivalent to the ABC/ACL.
- The ACT would then represent the portion of the sardine harvest guidelines allocated for directed fishing.

A majority of the CPSAS believe the above scenario realizes the goals of MSRA and NS 1 by protecting against overfishing and maximizes the value of the resource by achieving OY.

Without clarification of how the MSRA applies to stocks managed below MSY, industry fears that the new NS1 regulations could result in further restrictions and legal challenges. Some industry members also wish to point out that the present 2008 sardine HG has precipitated an economic disaster to some in this business.

The CPSAS commends the Pacific Northwest sardine industry for launching and funding a significant effort to develop a collaborative research program, which seeks to establish a second index of abundance that better explains the huge numbers of sardines that fishermen and pilots are seeing from San Pedro to Sitka. Although we must adhere and follow whatever regulatory framework is adopted by NMFS, all but one of the CPSAS strongly believe that any new regulations which could be interpreted to further constrain harvest, or provide a wider venue for litigation, could be the obituary for our industry. We need to be sure we understand all implications for fisheries management, harvest constraints, and the economic consequences to industry, before these new regulations are finalized.

We appreciate the Council's consideration of these concerns.

The CPSAS also agrees with the CPSMT recommendations regarding;

- their interpretation exempting market squid with its sub-annual life cycle from ACL and AM provisions,
- the recommendation for flexibility and a management category for monitored stocks,

- the addition of "depleted" stock status describing a conservation concern triggered by factors other than harvest,
- the recommendation that krill may be deserving of special recognition in the proposed NS-1 guidelines, and that
- the potential for overfishing a CPS stock outside U.S. waters has been a continuing concern in the absence of comprehensive CPS conservation and management.

PFMC 09/09/08

COASTAL PELAGIC SPECIES MANAGEMENT TEAM REPORT ON IMPLEMENTATION OF THE MAGNUSON-STEVENS REAUTHORIZATION ACT (MSRA)

The Coastal Pelagic Species Advisory Subpanel (CPSAS) and the Coastal Pelagic Species Management Team (CPSMT) held a joint work session via teleconference on August 19, 2008 to review and discuss the revised National Standard 1 (NS-1) Guidelines proposed by the National Marine Fisheries Service (Agenda Item C.5.b, Attachment 1). The CPSMT recommends the Council consider the following comments for inclusion in a Council's response under the comment period for this proposed action.

The CPSMT agreed that the harvest policy found in the CPS fishery management plan (FMP) is flexible enough to accommodate the annual catch limit provisions of the Magnuson-Stevens Reauthorization Act (MSRA). Major features of the FMP in this regard include: (1) close monitoring of CPS fisheries to minimize "management uncertainty"; (2) conducting annual stock assessments for actively managed CPS to reduce "scientific uncertainty"; and (3) a general maximum sustainable yield (MSY) control rule that explicitly accounts for the current condition of the stock, the sensitivity of CPS' biomass and productivity to environmental variability, and the important ecological role CPS play in the California Current ecosystem. By including a 'CUTOFF' value to account for forage needs and uncertainty, and a time varying estimate of the MSY exploitation rate (F_{msy}) based on sea surface temperature to account for environmental variability, the control rule provides for management below MSY for actively managed stocks.

In terms of the CPS FMP harvest policy, some additional concerns that the CPSMT has with the proposed NS-1 guidelines relate to: (1) the presence of "monitored" species in the FMP; (2) low biomass unrelated to overfishing; (3) krill as a prohibited species in the FMP; and (4) transboundary conservation and management of CPS.

The CPS FMP contains three "monitored species (stocks)": northern anchovy, jack mackerel, and market squid. Monitored species are either exploited at very low levels or are under state jurisdiction, or both. It is presumed that market squid, a monitored species, would be exempt from annual catch limit (ACL) and accountability measure (AM) provisions due to its sub-annual life cycle. The CPSMT supports the interpretation exempting market squid from ACL and AM provisions.

Monitored species are often data-poor stocks, making the assessment of ACLs and AMs potentially problematic. However, these stocks are not without effective management and the CPS FMP includes mechanisms for elevating these stocks to active management if landings surpass existing annual limits or a conservation concern arises. The CPSMT recommends that the final rule specifically provides ample flexibility in setting annual catch levels and accountability measures for these stocks as long as they remain monitored stocks. In this regard, the proposed NS-1 guidelines may want to formally institute a stock conservation and management category for monitored stocks.

For CPS stocks, low biomass conditions may result from overfishing, unfavorable environmental conditions, or both acting together; therefore the term "overfished" may be misleading. In the CPS FMP, management measures for CPS do not depend on whether low biomass is due to excess fishing or unfavorable environmental conditions, because reductions in fishing mortality are required in either case. Nonetheless, The CPSMT recommends Section 600.310(e)(2) on page 32540 of the *Federal Register* notice (Agenda Item C.5.b, Attachment 1) that pertains to status determination criteria include a "depleted" stock status that describes a conservation concern triggered by factors other than harvest. This is particularly important for CPS populations that can fluctuate substantially in response to cyclical environmental conditions regardless of harvest policy.

Amendment 12 added krill to the CPS FMP and placed it in a third stock category, "prohibited harvest species." This means that the harvest of krill is prohibited in the U.S. west coast exclusive economic zone, and the mandated optimum yield for krill has been set to zero. Because there is no harvest of krill, overfishing cannot occur and krill cannot be overfished. However, because krill can be construed as a stock that is part of the fishery it may be deserving of special recognition in the proposed NS-1 guidelines, or at the least, clarification that this species group is considered "outside the fishery" and not subject to the requirements set for fished stocks.

Pacific coast CPS are transboundary resources that are shared between the U.S., Mexico, and Canada, but for which there is no formal transboundary conservation and fishery management. The potential for overfishing a CPS stock has been a continuing concern in the absence of comprehensive CPS conservation and management, which has heightened lately with increased demand for CPS for use in aquafeeds. In view of the proposed NS-1 guidelines particularly as they pertain to international fisheries (Section 600.310(k) on page 32546 of the *Federal Register* notice) it is all the more imperative that transboundary conservation and management of west coast CPS fisheries is achieved.

PFMC 09/09/08

GROUNDFISH ADVISORY SUBPANEL REPORT ON IMPLEMENTATION OF THE MAGNUSON-STEVENS REAUTHORIZATION ACT (MSRA)

The Groundfish Advisory Subpanel (GAP) heard a presentation from Mr. Mike Burner and Ms. Jennifer Ise on the proposed rule regarding annual catch limits and accountability measures that have resulted from the reauthorization of the Magnuson Act. The GAP believes our current process meets the requirements of the Act and it is the burden of the National Marine Fisheries Service to determine how our current process is not meeting the new requirements of the Magnuson Act. Even with all the new definitions, processes and acronyms presented the GAP believes our system is currently working well and if there are deficiencies in the current system then NMFS should define those for the Council for us to take action.

The GAP believes that the rule should contain language that preserves the flexibility to retain our current process as well as retain our multi-year optimum yield process. In addition the GAP would like to have the management flexibility to consider roll-over provisions for harvest deficits and surpluses as are being contemplated in the trawl rationalization and intersector allocation processes.

The GAP would like to minimize the Fishery Management Plan amendment process and we believe the proposed rule includes another layer of complexity that is not needed on the west coast.

PFMC 9/10/08

GROUNDFISH MANAGEMENT TEAM REPORT ON IMPLEMENTATION OF THE MAGNUSON-STEVENS REAUTHORIZATION ACT (MSRA)

The Groundfish Management Team (GMT) considered the implications of the proposed rule on Implementation of the Magnuson-Stevens Reauthorization Act (MSRA). As noted in the letter from the PFMC staff to the National Marine Fisheries Service (NMFS) dated April 17th, 2008, implementation of annual catch limits (ACLs) and accountability measures (AMs) will not drastically change the structure of the current groundfish management framework. The GMT considered implementation of AMs, organization of species complexes within the Fishery Management Plan (FMP), and establishment of ACLs and AMs.

Definition, interpretation, and application of the term "fishery" and its relevance to ACLs

The proposed rule describes the fishery as target species, non-target species kept for sale or personal use, and overfished non-target species that are not for sale or personal use. Other groundfish stocks may be classified as ecosystem components: species that are not targeted by the fishery but are occasionally caught. Classification of species in the FMP will be necessary to conform to the proposed rule.

The GMT supports the guidelines regarding stock complexes that are similar in distribution, life history, and vulnerability to the fishery. The proposed rule states that the list of species within each complex (e.g. nearshore, shelf, and slope rockfishes) should be evaluated in terms of these criteria. Re-organization of the current stock complexes will require a considerable amount of effort. The team requests that participants in the upcoming NMFS workshop on ACLs for datapoor stocks (scheduled for early 2009) provide guidance on this topic.

Under the proposed rule, if an ACL were exceeded, an overage could roll over into the next year. In a volatile fishery an overage in the ACL could be applied toward the next season and potentially pre-empt the next season before it has begun. In any case, the provision for a rollover of overages to subsequent years will create an impetus for more restrictive regulations to ensure that overages do not occur.

Rebuilding concerns

The proposed rule states that a rebuilding acceptable biological catch (ABC) must be set to match the target fishing mortality rates in the rebuilding plan [600.310(f)(3)(ii)]. Currently, our target fishing mortality rates for rebuilding species correspond to the optimum yield, not the ABC. The team recognizes that this rule may have been suggested based on the east coast management framework. We suggest the following change in the proposed rule: the target fishing mortality rates in the rebuilding plan must be set to match the ACL.

PFMC 9/10/08 10:06 am

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON IMPLEMENTATION OF THE MAGNUSON-STEVENS REAUTHORIZATION ACT (MSRA)

The Highly Migratory Species Advisory Subpanel (HMSAS) has identified that the internationally managed species and the monitored species in the HMS Fishery Management Plan (FMP) are handled differently. Given the information presented, annual catch limits (ACLs) may not be practicable for the international high seas fisheries that encounter monitored or unmanaged species for the following reasons:

- Highly migratory species availability is not consistent from year to year.
- There are barriers to coordination between the harvest managed by different Councils and different nations.
- The unmanaged species are extremely data poor.
- There are limited resources such as money, personnel, or time to accurately identify an ACL on data poor species such as most of the monitored species in the HMS FMP.
- Various international treaties need to be examined to see if the monitored species will be considered managed species under a treaty.

The HMSAS asks the Council to request clarification from National Marine Fisheries Service of how the ACLs will apply to monitored species in the HMS FMP as the HMSAS foresees challenges to implementation of ACLs.

PFMC 9/9/08

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON IMPLEMENTATION OF THE MAGNUSON-STEVENS REAUTHORIZATION ACT

The Highly Migratory Species Management Team (HMSMT) reviewed the rules proposed under the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in 2007 to prevent or end overfishing through the use of annual catch limits (ACLs) and accountability measures (AMs). With respect to the species in the HMS Fishery Management Plan (FMP), the HMSMT has several concerns and considers the language of the proposed rule to be vague on a number of issues.

The HMS FMP contains 13 management unit species, nine prohibited species, and over 50 monitored species. Some species will likely be exempted because they are managed internationally and others may qualify as ecosystem component species. However, in some cases information on population dynamics and stockwide catch is poor, although the U.S. west coast catch is believed to be small relative to stockwide catch. Two species, common thresher and shortfin mako shark, range throughout U.S. and Mexico waters and could conceivably be managed through the use of ACLs and AMs taking the Mexico catch into consideration.

The HMSMT believes the proposed rule language is unclear about which species would be covered under the exception for international agreements, and therefore which HMS FMP species would be covered. For example, convention texts for the Inter-American Tropical Tuna Commission (IATTC) and Western and Central Pacific Fisheries Commission (WCPFC) reference tunas, tuna-like species, and other fish species caught in the fisheries. If interpreted broadly, almost all species in the HMS FMP would be exempted. For clarification, the rule could establish a threshold, such as species for which assessments have been approved by regional fishery management organizations (RFMOs), or for which RFMOs have adopted conservation and management measures.

Also for species under international agreements, it is the HMSMT's understanding that SDC and MSY targets would still be required. However, it is not clear how status determination criteria (SDCs) would be used. There is no guarantee that RFMOs would adopt comparable SDCs. Presumably they would be used for Secretarial determinations that would trigger the process described in MSA section 304(i). Section 600.310(k) provides guidance on interpreting the "relative impact" of domestic fisheries for the purposes of domestic regulations (per Section 304(i)), which would come into play if the adopted SDCs triggered a Secretarial determination. This section references existing domestic and international management measures and the catch, bycatch, and fishing mortality of nations. These criteria seem to state the obvious; the HMSMT recommends that the relative impact guidance more clearly describe that domestic measures need only be reasonably comparable to actions taken by other nations to address fishing mortality.

For stocks or species identified in more than one FMP, the proposed rule states that Councils should choose which FMP will be primary, and in most cases the primary FMP will be the one in which the stock is identified as a target stock. The HMSMT expects that some species (e.g., opah) may be target stocks in FMPs for both the PFMC and WPFMC. Therefore, the HMSMT recommends that the reference to target stock as the criterion for determining a primary FMP be deleted to allow greater flexibility for Councils to jointly determine which, if either, FMP will be

primary. In addition, the HMSMT anticipates that significant coordination and agreement between the councils will be required to establish ABCs, AMs, reference points, control rules, etc. Specifically, for species in more than one FMP, the HMSMT recommends the final rule provide greater clarity regarding:

- How the decision of which FMP is the "primary FMP" will be made.
- The procedures for cooperation between the Councils and their advisory bodies. For example, some mandate for a coordinated set of SOPPs could be required.
- How to select appropriate ACLs and AMs such as something comparable to the sector ACLs and AMs.

In the case of HMS, environmental variability on larger than annual cycles can have a large effect on recruitment. If MSY or SDC targets are set based on a high productivity regime they may not be met over several years during a low productivity regime. Therefore, the HMSMT appreciates the provisions for allowing flexibility in developing ACLs and AMs (e.g., the requirement to keep yields below the ACL in 3 of 4 years, and the possibility of using species complexes in the case of associated species within an ecosystem context).

The proposed rule language in unclear as to whether non-target species that are rarely caught and landed would be considered "in the fishery" and subject to ACLs and AMs or would be "ecosystem component" species that do not require specification of ACLs and AMs. The HMSMT wants to ensure that Councils would have the flexibility to determine what constitutes "de minimus" amounts of species taken, sufficient to trigger the exemption from the ACL and AM requirements.

The HMSMT is concerned about the deadline for having the ACLs and AMs in place: 2010 for species currently experiencing overfishing and 2011 for all other species. The HMSMT was informed that NMFS has convened a group of scientists that will prepare a document containing guidelines in order to assist with the development of ACLs and AMs and how to develop them in the case of data poor species. The documents are expected to be available in 2009. The Council must select an appropriate framework for selecting ACLs and AMs and amend each FMP. The SSC will have to identify acceptable biological catches (ABC), and the HMS advisory bodies will have to provide advice to the Council regarding ACLs and AMs for each relevant species. Furthermore, time will be needed to draft any environmental assessment, environmental impact statement, or biological opinion needed to amend the HMS FMP. Therefore, the HMSMT believes it will be difficult to have ACLs and AMs in place for HMS by 2011. At the least, the Council should develop a draft work plan to comply with the final rule soon after it is adopted, and NMFS should provide the Council with the additional resources necessary to complete the task.

PFMC 09/10/08

SALMON ADVISORY SUBPANEL REPORT ON IMPLEMENTATION OF THE MAGNUSON-STEVENS REAUTHORIZATION ACT

The Salmon Advisory Subpanel (SAS) agrees with the Salmon Technical Team comments regarding ensuring there is sufficient flexibility in the National Standard 1 (NS-1) Guidelines to avoid having different management objectives for the same stock under the Magnuson Stevens Reauthorization Act (MSRA) and the Pacific Salmon Treaty, the Endangered Species Act, or other statutory authority.

The NS-1 Guidelines should also recognize that spawning escapement and exploitation rate /ased management for salmon meets the intent of the MSRA to limit catch and prevent overfishing.

PFMC 09/08/08
SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON IMPLEMENTATION OF MAGNUSON-STEVENS REAUTHORIZATION ACT (MSRA)

The Scientific and Statistical Committee (SSC) reviewed the proposed rule and received a presentation from Ms. Jennifer Ise in joint session with other advisory bodies. The presentation and ensuing discussion clarified several issues and highlighted other areas where more clarification is needed. The SSC has the following comments regarding the proposed rule.

The rule should more explicitly state that the SSC is a technical advisory panel and does not make policy decisions. Policy decisions are made by the Council. The rule should clarify the role of the SSC in determining acceptable biological catches (ABCs), and the procedures it should follow in recommending ABCs to the Council. It is the SSC's understanding that the SSC will determine, through the assessment process, the over fishing limit and the level of scientific uncertainty. The SSC will then apply an ABC control rule, which has been specified by the Council, to determine the ABC. This ABC will then be recommended to the Council. The Council, rather than the SSC, will determine the adjustment to fishing levels to account for uncertainty. This process will continue the important Council procedure of separating policy from science. This process should be made more explicit in the proposed rule.

The development of ABC control rules will require a collaborative process between the Council and SSC. The role of the SSC should be limited to characterizing the levels and types of uncertainty involved in stock assessments.

The proposed rule should specify in more detail what is meant by "scientific uncertainty." This should include the types of uncertainty that should be considered. It would also be helpful for the rule to classify types of uncertainty. This would facilitate the development and implementation of control rules. Different control rules could then be used for different types and levels of scientific uncertainty. The SSC notes if a single or simple control rule is followed, stock assessments that use more data and account for more types of uncertainty may be penalized since they will typically show greater uncertainty than simpler models. It is also noted that under the rule, the SSC will be in the role of choosing a preferred model or scenario when more than one is put forward in a stock assessment. This is another type of uncertainty that will need to be resolved, that may fall outside of the ABC control rule.

The term "ecosystem components" as used in the proposed rule can be misleading since its actual use in the rule is limited to species that are included in a fishery management plan, rather than a full set of ecosystem components. The SSC suggests that a more definitive term be used in the proposed rule. The SSC also notes that the inclusion of these other species in determining fishing levels is optional under the proposed rule.

Salmon will not fit easily into the general definitions and procedures in the proposed rule. However, there is flexibility in the rule that allows the Council to propose alternative approaches (see P. 32545 – *Flexibility in application of NS1 guidelines*). Some of our most successful salmon management is based on exploitation rate control rules. The SSC would like confirmation that exploitation rate targets can serve as annual catch limits. The proposed rule states that the SSC shall provide reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. The proposed rule should clarify this since the SSC's traditional role has been to review materials for the Council.

PFMC 09/09/08

REPORT OF THE BUDGET COMMITTEE

The Budget Committee (BC) met on Sunday, September 7, 2009 and received the Executive Director's Budget Report. The report included a review of the calendar year (CY) 2007 audit, an update of CY 2008 funding, budget and expenditure data for 2008 base operations and the trawl rationalization (TR) program for CY's 2008 and 2009, and expectations for future funding. The following BC members were present:

Mr. Jerry Mallet, Chairman	Mr. Donald K. Hansen
Mr. Phil Anderson	Mr. Mark Helvey/Mr. Frank Lockhart
Dr. Dave Hanson	Mr. Frank Warrens

Absent: None Others Present: Mr. Mark Cedergreen, Ms. Kathy Fosmark, Mr. Dave Ortmann

CY 2007 Audit Report

Dr. John Coon provided a brief overview of the audit report for CY 2007. The auditor's findings for the Council's financial affairs were an unqualified approval with no reportable conditions or material weaknesses.

Update of Funding Received in CY 2008

Dr. McIsaac reviewed the increases in funding available to the Council since the June 2008 Council meeting. With regard to base operations, the Council has received additional funding to help support its peer science review process (primarily STAR Panel stock assessment reviews in 2009) and for support of work on the Highly Migratory Species (HMS) Fishery Management Plan (FMP) Amendment 2 (High Seas Shallow-Set Long line Fishery). The new funding received since June totals \$149,640. No other funding is expected to be received in 2008 for base operations.

With regard to the TR program, the Council received an additional \$20,000 to contract for an analysis of utilizing a fixed-term auction for distribution of individual fishing quotas (IFQ).

Status of CY 2008 Budgets and Expenditures

Dr. McIsaac reviewed the CY 2008 budget and expenditures by major category as of July 31, 2008. He reported that expenditures for base operations are proceeding within normal expectations for the first seven months of the year. With regard to the TR program, Dr. McIsaac reported that due to more meetings than originally planned, the travel and Council member compensation categories have been expended. However, sufficient funds remain in the total budget to cover likely remaining expenditures for CY 2008.

A more detailed assessment of expenditures through year-end will be provided at the November BC meeting.

Preliminary Expectations for Future Funding

Dr. McIsaac reported that there is a great deal of uncertainty about the Federal fiscal year (FY) 2009 budget process and final funding levels given the pending change in administration. It is likely that Congress will pass a Continuing Resolution effective October 1, 2008 which will provide continued Council funding at a portion of the 2008 level. Current speculation is that funding via sequential Continuing Resolutions will continue through at least December 31, 2008, probably well into 2009, and perhaps even the entire FY. A final 2009 Council budget will not be known until after Congress passes, and the President signs, either a new FY 2009 budget or a final Continuing Resolution for FY 2009.

Budget Committee Action and Recommendations

The BC recommends the Council approve:

- 1. The addition of \$149,640 in new funds to the base operations budget to support work in 2009 on the stock assessment peer review process and HMS Amendment 2; and
- 2. The addition of \$20,000 to the CY 2008 trawl rationalization program for a contracted analysis of the fixed-auction concept for IFQ.

PFMC 09/11/08

PROPOSED AMENDMENT TO COUNCIL OPERATING PROCEDURE 1 GENERAL COUNCIL MEETING OPERATIONS

Option 4

(In Response to Council Action during Agenda Item C.2)

* * *

<u>Fishery Regulation Deeming Process</u> [Procedure for Implementing MSA Section 303(c)]

In taking final action on Pacific Fishery Management Council (Council) recommendations to adopt a fishery management plan (FMP) or FMP amendment, or to revise regulations implementing an FMP, the Council is deeming that regulations implementing the recommendations are necessary or appropriate in accordance with Section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). In so doing, the Council implicitly requests the appropriate National Marine Fisheries Service (NMFS) Region complete regulatory language to implement the Council's final action. Unless otherwise explicitly directed by the Council, after NMFS has prepared the regulatory language, the Council authorizes the Executive Director to review the regulations to verify that they are consistent with the Council action before submitting them, along with his determination, to the Secretary on behalf of the Council.

The Executive Director is authorized to withhold submission of the Council action and/or proposed regulations and take the action back to the Council if, in his determination, the proposed regulations are not consistent with the Council action.

* * *

Note: In determining the consistency of the regulations, the normal practice has been for Council staff, team members, and affected state or tribal agency personnel to work with NMFS in assuring the consistency of the regulations with the Council action. The proposed formal deeming process should not change this practice and will assist the Executive Director in making his determination. In cases where the consistency is in question, the Executive Director is expected to work with NMFS to resolve the issues. Returning the regulations to the Council would be a last resort when questions cannot be resolved without involving the whole Council.

PFMC 09/11/08

ENFORCEMENT CONSULTANTS REPORT ON MEMBERSHIP APPOINTMENTS AND COUNCIL OPERATING PROCEDURES (COP)

Members of the Enforcement Consultants (EC) elected a new Chair this week. Deputy Chief Mike Cenci with Washington Department of Fish and Wildlife will assume the duties and responsibilities of EC Chair after September 30, 2008.

PFMC 09/12/08