

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION REPORT ON  
ACTIVITIES OF THE OCEAN POLICY TASK FORCE AND CATCH SHARES TASK  
FORCE

On June 11, 2009, President Obama established an Inter-agency Ocean Policy Task Force (OPTF) charged primarily with bringing forth a comprehensive strategy for coastal and marine spatial planning on a regional level. The OPTF, chaired by the White House Council on Environmental Quality and composed of senior policy-level officials across Federal government agencies, issued an interim report September 10, 2009. The interim report articulated a draft national policy and implementation strategy for a regional public process to regulate marine spatial planning. The West Coast is one of twelve regions where an authoritative body would be established. Council Vice Chairman Dan Wolford attended a public hearing on this matter in San Francisco, California on September 17, 2009 and presented the Council perspective on the interim report. A public comment period for the coastal and marine spatial planning framework and specifics opened December 12, 2009 and closed February 12, 2010. The matter is now before the President for consideration as an Executive Order or other implementation possibilities. Agenda item D.1.a, Attachment 1 is a briefing provided to the Council Coordination Committee on January 14, 2010 by Mr. Sam Rauch, Deputy Assistant Administrator for Regulatory Programs for the National Marine Fisheries Service.

On June 22, 2009, National Oceanic and Atmospheric Administration (NOAA) Under Secretary Lubchenco announced the formation of a Catch Shares Task Force charged with developing a national catch share policy for marine fishery management. Dr. David Hanson was designated as a member of the task force upon nomination by the Pacific Council. A draft Catch Share Policy was issued December 10, 2009 (Agenda Item D.1.a, Attachment 2). The public comment period on the draft policy closes April 10, 2010.

A representative from the NOAA will provide information and an update on the NOAA Ocean Policy Task Force and the recently released draft Catch Share Policy.

Reference Materials:

- a. Agenda Item D.1.a, Attachment 1, NMFS Briefing Presentation on the Ocean Policy Task Force Process.
- b. Agenda Item D.1.a, Attachment 2, Draft NOAA Catch Share Policy.

Agenda Order:

- a. Agenda Item Overview Kerry Griffin/Jim Seger
- b. Reports and Comments of Management Entities and Advisory Bodies
- c. Public Comment
- d. Council Discussion and Comments

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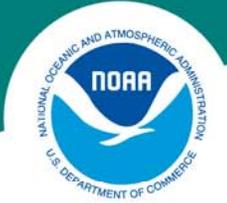
*Science, Service, Stewardship*



# Ocean Policy Task Force and Coastal and Marine Spatial Planning

Sam Rauch  
Deputy Assistant Administrator  
for Regulatory Programs  
January 14, 2010

**NOAA  
FISHERIES  
SERVICE**



## Outline

- **Overview of the Ocean Policy Task Force**
- **Interagency Ocean Policy Task Force Interim Report**
- **Draft Interim Framework for Effective Coastal and Marine Spatial Planning (CMSP)**
- **CMSP Definition and Goals**
- **Assessment of CMSP Capabilities within NOAA**

# NOAA FISHERIES SERVICE



THE WHITE HOUSE  
Office of the Press Secretary

For Immediate Release

June 12, 2009

June 12, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: NATIONAL POLICY FOR THE OCEANS, OUR COASTS,  
AND THE GREAT LAKES

The oceans, our coasts, and the Great Lakes provide jobs, food, energy resources, ecological services, recreation, and tourism opportunities, and play critical roles in our Nation's transportation, economy, and trade, as well as the global mobility of our Armed Forces and the maintenance of international peace and security. We have a stewardship responsibility to maintain healthy, resilient, and sustainable oceans, coasts, and Great Lakes resources for the benefit of this and future generations.

Yet, the oceans, coasts, and Great Lakes are subject to substantial pressures and face significant environmental challenges. Challenges include water pollution and degraded coastal water quality caused by industrial and commercial activities both onshore and offshore, habitat loss, fishing impacts, invasive species, disease, rising sea levels, and ocean acidification. Oceans both influence and are affected by climate change. They not only affect climate processes but they are also under stress from the impacts of climate change. Renewable energy, shipping, and aquaculture are also expected to place growing demands on ocean and Great Lakes resources. These resources therefore require protection through the numerous Federal, State, and local authorities with responsibility and jurisdiction over the oceans, coasts, and Great Lakes.

To succeed in protecting the oceans, coasts, and Great Lakes, the United States needs to act within a unifying framework under a clear national policy, including a comprehensive, ecosystem-based framework for the longterm conservation and use of our resources.

In order to better meet our Nation's stewardship responsibilities for the oceans, coasts, and Great Lakes, there is established an Interagency Ocean Policy Task Force (Task Force), to be led by the Chair of the Council on Environmental Quality. The Task Force shall be composed of senior policy-level officials from the executive departments, agencies, and offices represented on the Committee on Ocean Policy established by section 3 of Executive Order 13366 of December 17, 2004. This Task Force is not meant to duplicate that structure, but rather is intended to be a temporary entity with the following responsibilities:

more

(OVER)





## Ocean Policy Task Force--Overview

- Memo Established an Interagency Ocean Policy Task Force (OPTF):
  - Chaired by the White House Council on Environmental Quality
  - Members are Senior Policy-Level Officials
  - Representation across the Federal Government
  - Terminates once Duties Completed



## Ocean Policy Task Force- Overview

### **OPTF Responsibilities - Within 90 Days:**

#### **— National Policy and Recommendations**

- Ensure protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources
- Enhance sustainability of ocean and coastal economies
- Preserve maritime heritage
- Provide for adaptive management (linked to climate change)
- Coordinated with national security and foreign policy

#### **— Framework for Policy Coordination**

- Ensure integration and coordination across jurisdictional lines in meeting objectives of the national policy

#### **— Implementation Strategy**

- Identify and prioritize a set of objectives to meet the objectives of the national policy



## Ocean Policy Task Force- Overview

### OPTF Responsibilities – Within **180** Days:

#### —Framework for Effective Coastal and Marine Spatial Planning

- Comprehensive
- Integrated
- Ecosystem-Based
- Addresses: Conservation, Economic Activity, User Conflict, and Sustainable use of Ocean, Coastal, and Great Lakes Resources



## Ocean Policy Task Force- Overview

- **Task Force**
- **Working Committee**
- **Subgroups**
  - Policy
  - Coordination Framework
  - Implementation Strategy
  - Public Engagement
  - CMSP Framework
  - CMSP Legal Authorities
  - CMSP Data Integration
  - CMSP Implementation



## Ocean Policy Task Force - Overview

### Public Engagement Process

- 24 Expert Roundtables (+14 CMSP)
  - Stakeholders and Interest Groups
  - State, Local, and Tribal Governments
- 6 Regional Public Meetings
  - Anchorage, Alaska - August 21
  - San Francisco, California – September 17
  - Providence, Rhode Island – September 24
  - Honolulu, Hawaii – September 29
  - New Orleans, Louisiana – October 19
  - Cleveland, Ohio – October 29





## Ocean Policy Task Force – Interim Report

### Document Includes:

- Suggested *National Policy for the Stewardship of the Oceans, Our Coasts, and the Great Lakes*
- *Policy Coordination Framework to Improve the Stewardship of the Oceans, Our Coasts, and the Great Lakes*
- *Draft Strategy for Implementing the National Ocean Policy*



THE WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY

*Interim Report  
Of The  
Interagency Ocean Policy  
Task Force*

*September 10, 2009*





## Ocean Policy Task Force – Interim Report

### **Principles of the National Policy**

- Guided by Stewardship
- Ecosystem-based Management
- Manages and Balances Current and Future Uses
- Supports Disciplinary/Interdisciplinary Science, Research, Monitoring, Modeling, Forecasting, Exploration, and Assessment for Continual Improvement of Understanding
- Develops Improved Awareness of Changing Environmental Conditions
- Enhances Formal and Informal Education
- Demonstrates International Leadership
- Includes Measureable Benchmarks Supporting Stewardship
- Policies, Programs, and Activities Assessed and Conducted within Integrated and Comprehensive Interagency Planning Framework



## Ocean Policy Task Force – Interim Report

**Proposed Policy Coordination Framework** - Modifications to the existing governance structure, including a stronger mandate and direction, and renewed and sustained high-level engagement.

- CEQ and OSTP would lead an interagency National Ocean Council to coordinate ocean-related issues across the Federal Government and the implementation of the National Ocean Policy
- Creation of a Governance Advisory Committee of the National Ocean Council to improve coordination and collaboration with State, tribal, and local authorities, and regional governance structures



## Ocean Policy Task Force – Interim Report

### **Implementation Strategy - Proposed National Priority Objectives:**

#### ***How we do business:***

1. Ecosystem-Based Management
2. Coastal and Marine Spatial Planning
3. Inform Decisions and Improve Understanding
4. Coordinate and Support

#### ***Areas of Special Emphasis:***

1. Resiliency and Adaptation to Climate Change and Ocean Acidification
2. Regional Ecosystem Protection and Restoration
3. Water Quality and Sustainable Practices on Land
4. Changing Conditions in the Arctic
5. Ocean, Coastal, and Great Lakes Observations and Infrastructure



## Ocean Policy Task Force- Interim CMSP Framework

### The Framework

- *Outlines a New Approach to How We Use and Protect the Ocean, Coast, and Great Lakes*
- *Moves us Away From Sector-by-Sector and Statute-by-Statute Decision-Making*
- *Brings Partners Together to Jointly Plan*
- *Places Science-Based Information at the Heart of Decision-Making*
- *Emphasizes Stakeholder and Public Participation*



THE WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY

### *Interim Framework for Effective Coastal and Marine Spatial Planning*

*Interagency Ocean Policy Task  
Force*

December 9, 2009





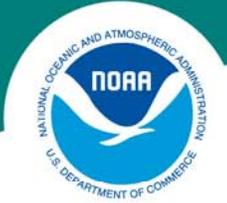
## Ocean Policy Task Force-- Draft CMSP Framework

### **Definition of CMSP:**

—A comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning process, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas.

### **The CMSP Process:**

—Identifies areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental, security, and social objectives.



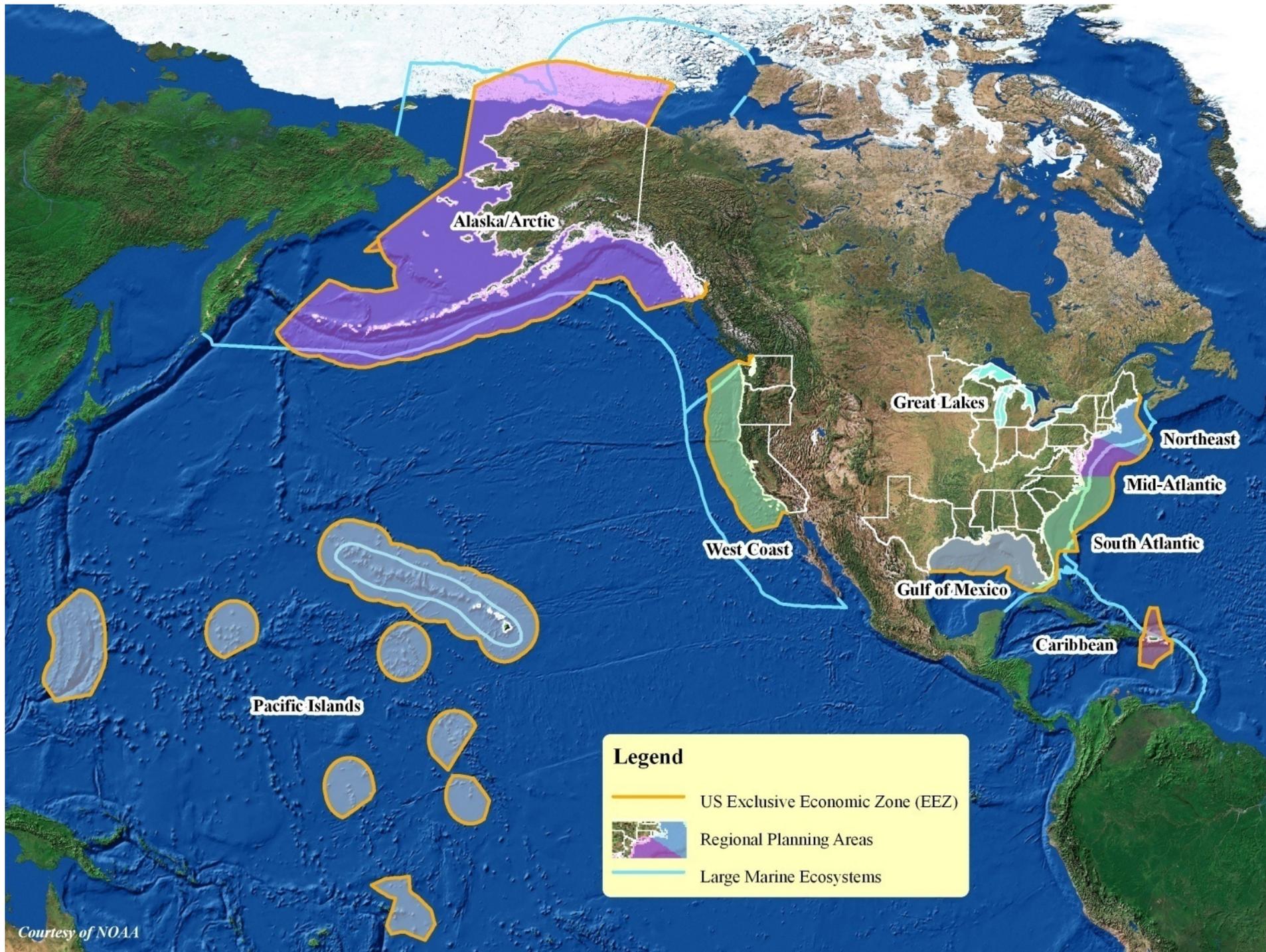
## Ocean Policy Task Force-- Draft Framework

### **Outlines 7 national goals for CMSP that link back to the National Ocean Policy goals with a focus on:**

- Promoting compatibility among uses and reducing user conflicts
- Streamlining and improving the rigor and consistency of decision-making and regulatory processes
- Increasing certainty and predictability in planning

### **Lists 12 Guiding Principles for CMSP that include:**

- Ecosystem-based management
- Stakeholder and public engagement
- Informed by best available science
- Precautionary approach
- Flexibility to accommodate changing conditions





## Ocean Policy Task Force-- Draft Framework

### **Authority for Coastal and Marine Spatial Planning:**

- Existing federal and state statutes authorize agency planning efforts and provide a legal basis to implement CMS plans within these authorities.

### **Development Agreement:**

- An express commitment signed by agencies to work cooperatively to engage in CMSP and develop CMS plans.

### **Adherence and Compliance:**

- Signatories would be expected to adhere to CMS plans within the limits of their statutory and regulatory authorities. If an agency deviates from the plan, it would need to provide advance notice and justification.



## Ocean Policy Task Force-- Draft Framework

### **Essential Elements of the CMSP Process:**

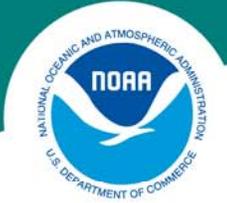
- Identify Regional Objectives
- Identify Existing Efforts that Should Help Shape the Plan throughout the Process
- Engage Stakeholders and the Public at Key Points throughout Process
- Consult Scientists and Other Experts
- Analyze Data, Uses, Services, and Impacts
- Develop and Evaluate Alternative Future Use Scenarios and Tradeoffs
- Prepare and Release a Draft CMS Plan with Supporting Environmental Impact Analysis Documentation for Public Comment
- Create a Final CMS Plan and Submit for NOC Review
- Implement, Monitor, Evaluate, and Modify the NOC-certified CMS Plan



## Ocean Policy Task Force-- Draft Framework

### **Essential Elements of the CMS Plans:**

- Regional Overview and Scope of Planning Area
- Regulatory Context
- Regional Assessment
- Objectives, Strategies, Methods, and Mechanisms for CMSP
- Compliance Mechanisms
- Monitoring and Evaluation Mechanisms
- Dispute Resolution Process

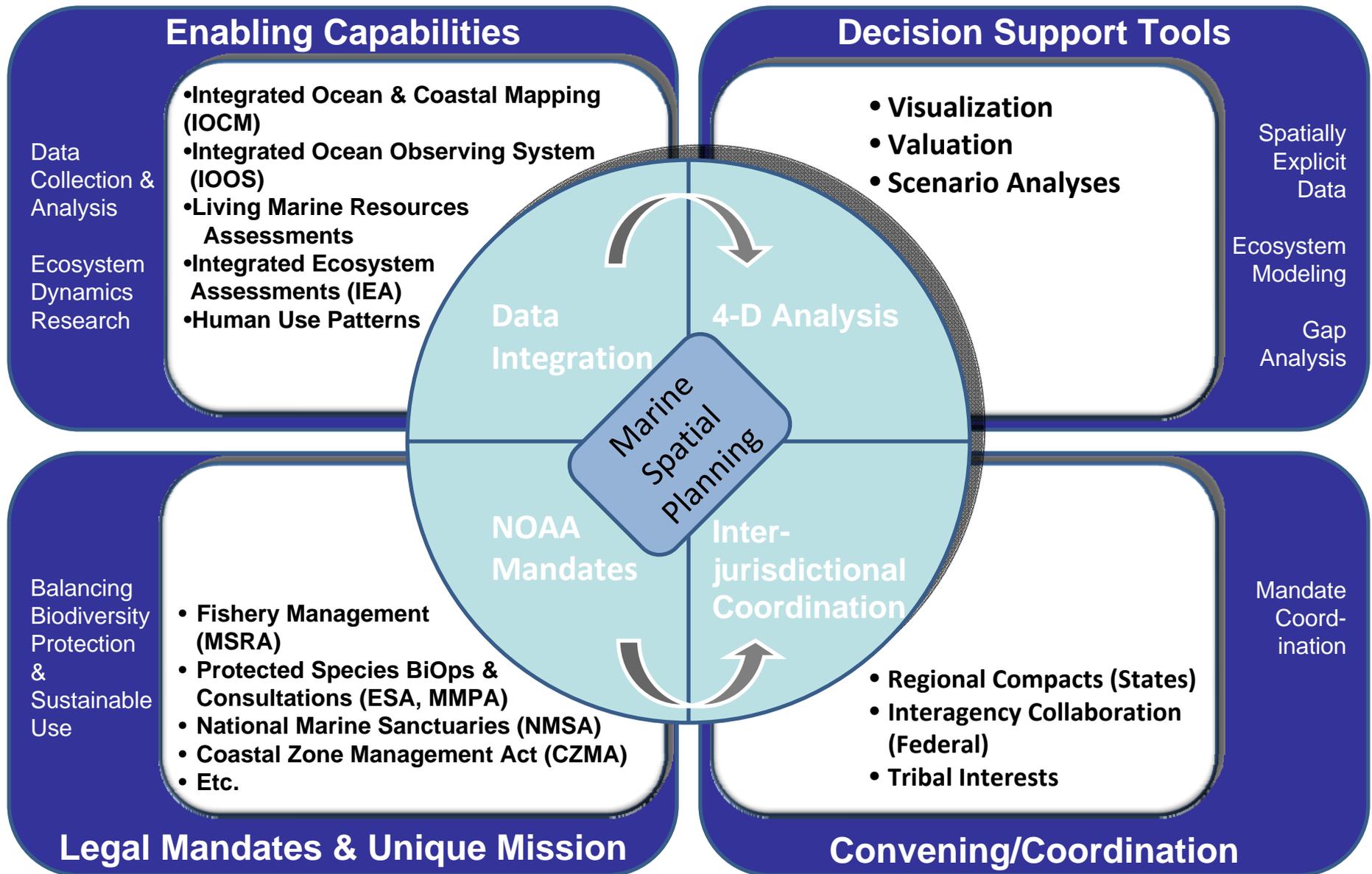


## Ocean Policy Task Force-- Draft Framework

### **Priorities for Financial and Other Support:**

1. Hold a national workshop and simulation exercise.
2. Support the development of regional CMSP including the capacity for regional planning bodies.
3. Improve and integrate the data and information used to inform CMSP and identify additional scientific research to support CMSP.
4. Support public outreach and stakeholder engagement.

# NOAA Capabilities Supporting Marine Spatial Planning





## NOAA Looking Forward

Dr. Lubchenco requested NOAA Ocean Council Executive Committee on CMSP be formed to look at NOAA's role and capabilities

Executive Committee have presented initial findings to NOAA Leadership on CMSP, including;

- NOAA's capabilities, gaps, and priorities
- NOAA structural recommendations for CMSP
- Near-term leadership opportunities

Development of FY 11 and FY 12 NOAA CMSP Budget Initiatives



## Next Steps

### Interim Report

- 30 Day Public Comment Period
- Closed October 2009

### CMSP Framework

- 60 Day Public Comment Period
- Closes Feb 12, 2010

### Final Report for Presidential Consideration





# NOAA NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

UNITED STATES DEPARTMENT OF COMMERCE

## DRAFT NOAA CATCH SHARE POLICY

### EXECUTIVE SUMMARY

#### PURPOSE

In June 2009 President Obama stated this administration is committed to creating an integrated and comprehensive national ocean policy, incorporating ecosystem-based science and management, and emphasizing transparency and participation in our public stewardship responsibilities. Sustainable fisheries are an essential component of that commitment, and catch share programs have proven to be powerful tools to manage fisheries to sustainable levels and improve their economic performance. The draft NOAA policy encourages well-designed catch share programs to help rebuild fisheries and sustain fishermen, communities and vibrant working waterfronts, including the cultural and resource access traditions that have been part of this country since its founding.

#### DEFINITION

*“Catch share” is a general term for several fishery management strategies that allocate a specific portion of the total allowable fishery catch to individuals, cooperatives, communities, or other entities. Each recipient of a catch share is directly accountable to stop fishing when its specific quota is reached. The term includes specific programs defined in law such as “limited access privilege” (LAP) and “individual fishing quota” (IFQ) programs, and other exclusive allocative measures such as Territorial Use Rights Fisheries (TURFs) that grant an exclusive privilege to fish in a geographically designated fishing ground.*

#### CONTEXT

A number of U.S. fisheries are under-performing biologically and economically and require consideration of additional tools to improve management effectiveness. For example, rebuilding U.S. stocks would increase the annual commercial dockside value by an estimated \$2.2 billion (54 percent). Given the challenges facing U.S. fishery managers, the best available science and practical experience support the conclusion that it is in the public interest to encourage and support the evaluation of catch share programs authorized under the Magnuson-Stevens Fishery Conservation and Management Act (MSA)<sup>1</sup>. In addition, Congress, in its 2006 amendments to the MSA<sup>2</sup>, and national experts<sup>3,4</sup> have recognized catch shares are a tool that should be available for use in any fishery, subject to general guidelines for their design.

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<sup>1</sup> The MSA authorizes limited access privilege and individual fishing quota programs at 16 U.S.C. 1853(a).

<sup>2</sup> Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, Pub. L. 109-479.

<sup>3</sup> U.S. Commission on Ocean Policy, 2004. An ocean blueprint for the 21<sup>st</sup> Century. Final Report Recommendation 19-15 says in part “Every federal, interstate and state fishery management entity should consider the potential benefits of adopting such [dedicated access privilege] programs.”

<sup>4</sup> National Academy of Sciences, 1999. Sharing the fish: Toward a national policy on individual fishing quotas. Committee to review individual fishing quotas, Ocean Studies Board, National Research Council, Washington, DC states that “IFQs can be used to address any number of social, economic and biologic issues in fisheries management. Alternative management approaches can achieve some, but not all, of the objectives that can be

## Draft NOAA Catch Share Policy

Catch share programs have been used in the U.S. since 1990 and now include 13 different fisheries from Alaska to Florida managed by six different Councils. Four additional U.S. fisheries are in the process of adopting a catch share program over the next year. Both here and in other countries catch shares have shown they can effectively achieve annual catch limits, reduce the negative biological and economic impacts of the race for fish, and when properly designed can eliminate overfishing and result in safer and more profitable fisheries while also addressing other social objectives. This draft policy provides a foundation for facilitating the wide-spread consideration of catch share fishery management plans while empowering local fishermen to be part of the process.

### GOALS

NOAA's goals are to: help reduce any administrative or organizational impediments to the consideration of catch shares; inform and educate stakeholders of the different options and capabilities of catch share programs; and help organize collaborative efforts with interested Councils, states, communities, fishermen and other stakeholders on the design and implementation of catch share programs.

Catch shares may not be the best management option for every fishery or sector. NOAA will not require the use of catch shares in any particular fishery or sector, but it will promote and encourage the careful consideration of catch shares as a means to achieve the conservation, social and economic goals of sustainable fishery management. To do so, NOAA will seek the program support outlined herein to assist in the design, transition period and operation of catch share management. Catch share programs can help transform fisheries and ensure they are a prosperous and sustainable element of a national strategy for healthy and resilient ecosystems for present and future generations.

### NOAA'S CATCH SHARE POLICY

**To achieve long-term ecological and economic sustainability of the Nation's fishery resources and fishing communities, NOAA encourages the consideration and adoption of catch shares wherever appropriate in fishery management and ecosystem plans and amendments and will support the design, implementation, and monitoring of catch share programs.**

### CATCH SHARE PROGRAM FEATURES

The MSA sets forth a number of criteria for consideration in the design of catch share programs. NOAA recommends Councils follow this guidance and pay particular attention to the following features in designing their catch share programs:

**Specific management goals:** All fishery management programs, including catch shares, should identify specific goals for management.

**Transferability:** Councils should thoroughly assess the net benefits of catch share transferability.

**Review Process:** Councils should periodically review all catch share and non-catch share programs. The intent is to ensure that management goals are specified, measurable, tracked and used to gauge whether a program is meeting its goals and objectives.

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achieved with IFQs....Although the IFQ is no panacea, it deserves a place in the array of techniques that may be needed in any particular fishery management plan."

## Draft NOAA Catch Share Policy

**Distinctions Among Sectors:** No fishery or sector (e.g., commercial or recreational) is obligated to adopt catch shares under this policy. Councils should consider the appropriateness of catch share programs and decide which, if any, sectors may benefit from their use.

**Fishing Community Sustainability:** NOAA encourages Councils to take advantage of the special community provisions in the MSA to help ensure the sustainability of fishing communities, including the preservation of working fishery waterfronts, fishery infrastructure, diverse fishing fleets, and resource access.

**Royalties:** NOAA will assist Councils if and when they determine that it is in the public interest to collect royalties in connection with the initial or subsequent allocations in a limited access privilege program.

### CATCH SHARE PROGRAM SUPPORT

Because of the effectiveness, flexibility and the potential applicability of catch shares to many fisheries, NOAA will provide leadership, technical advice, and other support for the consideration and use of catch share programs. To achieve this end, NOAA will collaborate with its many federal, state and constituency partners to support catch share programs in the following four categories:

**1. Reduce technical and administrative impediments to designing catch share programs.**

NOAA will assist Councils and stakeholders that want to move forward with catch share programs with technical and administrative support to help them design and implement a catch share program, while empowering local fishermen to be part of the process. This includes assisting in research and evaluation of catch share applicability for their particular fishery, resolving outstanding questions on application of the MSA requirements to their proposed design, and organizing a common infrastructure and enforcement protocols to minimize program costs and promote “best practices.”

**2. Provide expertise and related support to assist development of new catch share programs.** NOAA will provide expertise and work with Councils and other partners to adopt and implement catch share programs that are cost effective and meet the Councils’ objectives. This includes providing analytical capacity through staff details and access to external experts, providing tools for assisting fishermen to explore options and evaluate impacts of management alternatives, and facilitating access to other government and private sector programs to support the design and implementation of a catch share option.

**3. Inform and educate stakeholders so that they can best participate in the design and implementation of catch share programs.** NOAA will work with Councils, states and other partners to provide information and training to raise awareness and increase understanding about the advantages and disadvantages of catch share programs; to improve general catch share literacy in communities, including fishermen, regulators and the public; and to increase stakeholder engagement in the policy development and review process.

**4. Coordinate data collection, research and performance monitoring of catch share programs.** NOAA will partner with Councils, states, Interstate Commissions and other collaborators to ensure appropriate monitoring data are collected, relevant research is conducted, and catch share performance metrics are derived to support the consideration, adoption, operation and evaluation of catch share programs.



## **DRAFT NOAA CATCH SHARE POLICY**

### **BACKGROUND AND LEGAL AUTHORITY**

In June 2009 President Obama stated this administration is committed to creating an integrated and comprehensive national ocean policy, incorporating ecosystem-based science and management, and emphasizing transparency and participation in our public stewardship responsibilities. Sustainable fisheries are an essential component of that commitment, and catch share programs have proven to be powerful tools to manage fisheries to sustainable levels and improve their economic performance. The draft NOAA policy encourages well-designed catch share programs to help rebuild fisheries and sustain fishermen, communities and vibrant working waterfronts, including the cultural and resource access traditions that have been part of this country since its founding.

Catch shares designed for federal fisheries are authorized by the Magnuson-Stevens Fishery Conservation and Management Act (MSA).<sup>1</sup> The original MSA was signed into law in 1976. The results of more than three decades of management under MSA represent a significant accomplishment. Yet, some U.S. fisheries are still under-performing biologically and many are under-performing economically and require consideration of additional tools to improve management effectiveness. Rebuilding U.S. stocks would increase the annual commercial dockside value by an estimated \$2.2 billion (54 percent). The policy articulated in this document provides a foundation for facilitating the wide-spread consideration of catch share fishery management plans to help accomplish this improvement while empowering local fishermen to be part of the process.

NOAA's goals are: to help reduce any administrative or organizational impediments to the consideration of catch shares; to inform and educate stakeholders of the different options and capabilities of catch share programs; and to help organize collaborative efforts with interested Councils, states, communities, fishermen and other fishery stakeholders on the design and implementation of catch share programs.

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006<sup>2</sup> included two significant and complementary new provisions that contributed to NOAA's current focus on catch shares:

The first provision required the establishment of a mechanism for specifying annual catch limits (ACL) in most fisheries by 2011. The ACLs place a firm cap on fisheries removals at a level such that overfishing will not occur. Accountability measures were required to accompany the ACL mechanisms.

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<sup>1</sup> Magnuson-Stevens Fishery Conservation and Management Act, codified at 16 U.S.C. 1801 et seq.

<sup>2</sup> Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, Pub. L. 109-479.

## Draft NOAA Catch Shares Policy

The second provision was the elaboration of criteria and guidance supporting a program of limited access privileges (LAP) to help rebuild overfished stocks, reduce overcapacity if it exists, and promote safety, fishery conservation and management, and social and economic benefits. A LAP is a means to distribute and enforce exclusive percentages of an ACL among participants.

Taken together, ACLs and LAPs combine the positive biological benefits of a firm cap on fishery removals with the additional benefits of achieving important economic and social objectives necessary to support sustainable fisheries.

In addition to Congress, other national experts<sup>3, 4</sup> have recognized that catch shares are a tool that should be available for use in any fishery, subject to general guidelines for their design. Catch share programs (which include LAP and individual fishing quotas (IFQ) programs) have been used in the U.S. since 1990 by six different Councils in 13 different fisheries from Alaska to Florida. Internationally, similar programs have been used in hundreds of fisheries. Both here and in other countries catch shares have shown they can effectively achieve annual catch limits, reduce the negative biological and economic impacts of the race for fish, and when properly designed can eliminate overfishing and result in safer and more profitable fisheries while also addressing other social objectives. (For example, where preserving cultural and historic use patterns in a port is a high priority, a catch share program could be designed by a Council to maintain traditional coastal fishing communities comprised of owner-operated fishing fleets.)

Scientific analyses<sup>5</sup> show that fisheries managed with catch shares have demonstrated improved biological and economic performance relative to prior management using traditional tools. Earlier this year, the Joint Ocean Commission Initiative (i.e., the members of the former U.S. Commission on Ocean Policy and the Pew Oceans Commission) issued a statement<sup>6</sup> to the new administration that endorsed the use of innovative, science-based management approaches, including carefully considering, and where appropriate, employing innovative management techniques such as LAPs, catch-share programs and Community and Regional Fishery Associations.

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<sup>3</sup> U.S. Commission on Ocean Policy, 2004. An ocean blueprint for the 21<sup>st</sup> Century. Final Report Recommendation 19-15 says in part “Every federal, interstate and state fishery management entity should consider the potential benefits of adopting such [dedicated access privilege] programs.”

<sup>4</sup> National Academy of Sciences, 1999. Sharing the fish: Toward a national policy on individual fishing quotas. Committee to review individual fishing quotas, Ocean Studies Board, National Research Council, Washington, DC states on p. 5 that “IFQs can be used to address any number of social, economic and biologic issues in fisheries management. Alternative management approaches can achieve some, but not all, of the objectives that can be achieved with IFQs ...Although the IFQ is no panacea, it deserves a place in the array of techniques that may be needed in any particular fishery management plan.”

<sup>5</sup> Sigler., M.F. and C.R. Lunsford, 2001. Effects of individual quotas on catching efficiency and spawning potential in the Alaska sablefish fishery. *Can. J. Fisheries and Aquatic Science* **58**: 1300-1312. Arnason, R. 2005. Property rights in fisheries: Iceland’s experience with ITQs. *Rev. Fish. Biol. Fisheries* 15:(3) 243-264; Newell, R.G., J.N. Sanchirico and S. Kerr. 2005. Fishing Quota Markets, *Journal of Environmental Economics and Management*, vol. **49**: 437-462.

<sup>6</sup> Meridian Institute, 2009. Changing ocean, changing world: ocean priorities for the Obama administration and Congress. Joint Oceans Commission Initiative Report, Washington, DC.

## Draft NOAA Catch Shares Policy

Catch share programs can help transform fisheries and ensure they are a prosperous and sustainable element of a national strategy for healthy and resilient ecosystems for present and future generations. This draft policy provides a foundation for facilitating the wide-spread consideration of catch share fishery management policies to assist in achieving biological sustainability and economic prosperity, while empowering local fishermen to be part of the process.

### **POLICY**

**To achieve long-term ecological and economic sustainability of the Nation’s fishery resources and fishing communities, NOAA encourages the consideration and adoption of catch shares wherever appropriate in fishery management and ecosystem plans and amendments and will support the design, implementation, and monitoring of catch share programs.**

**Definition:** For purposes of this policy, a catch share program is a generic term used to describe fishery management programs that allocate a specific percentage of the total allowable fishery catch or a specific fishing area to individuals, cooperatives, communities, or other entities. It includes more specific programs defined in statute such as Limited Access Privileges (LAP) and Individual Fishing Quotas (IFQ). It also includes Territorial Use Rights Fisheries (TURFs) that grant an exclusive privilege to fish in a geographically designated fishing ground. The recipient of a catch share is directly accountable to stop fishing when its specific share allocation is reached. Definitions of related terms are included in the attached glossary.

The policy is intended to promote a future in which U.S. fisheries resources are managed for the greatest overall benefit to the Nation’s current and future generations and in a manner consistent with the 10 National Standards for fisheries conservation and management. Consistent with existing law, NOAA will not require the use of catch shares in a particular fishery nor are catch shares the best management option for every fishery or sector. However, it is NOAA’s intent to encourage the careful consideration of catch shares as a *possible* choice to best meet the conservation, social and economic goals of fishery management.

In order to “consider” a catch share program, a Council should specify sufficient catch share design characteristics during the scoping and development phase of management plan development or amendment such that stakeholders could understand potential major catch share features such as allocation and transferability, and the impacts that this option will have on their operation. There is no requirement that every fishery management plan (FMP) or amendment must include a final catch share alternative.

### **CATCH SHARE PROGRAM FEATURES**

The consideration of a broad range of management alternatives, including catch shares, is desirable to determine which management approach is best suited for each fishery. Each fishery is different, and catch share programs have a great deal of design flexibility to accomplish a variety of goals. The MSA sets forth a number of criteria for consideration in the design of catch share programs. NOAA recommends Councils follow this guidance and pay particular attention to the following features in designing their catch share programs: (In the following paragraphs,

## Draft NOAA Catch Shares Policy

reference to the Councils also includes the Secretary of Commerce with respect to fishery management plans or amendments for Atlantic Highly Migratory Species).

**Specific management goals:** *All fishery management programs, including catch shares, should identify specific measurable goals for management.* Councils should develop explicit management goals (e.g., eliminate overfishing and race-to-fish or derby fishing behavior; promote more precise catch accounting to meet ACLs; identify bycatch reduction objectives and improved ecosystem functioning; improve socio-economic conditions for fishery participants and/or fishery-dependent communities, etc.) early in the management plan development process. Based on these goals, a uniquely tailored catch share program or alternative can be designed. The specific elements of the program can then be specified to achieve the identified goals as scoping moves forward to preparation of management alternatives.

**Transferability:** *Councils should thoroughly assess the net benefits of allowing transferability of catch shares.* The choice of whether, when and to whom to allow transfers (by sale or lease) of catch shares by initial recipients is one of the many design options to be evaluated and decided by Councils. After the initial allocation decision, it is one of their most significant choices. The majority of catch share programs in place allow at least some degree of transferability. Transferability of shares can: directly affect the ability of the resulting program to respond to any initial allocation anomalies; control future entry and exit to the fishery; help achieve goals for reducing overcapacity and improving economic efficiency; and control the achievement of many other biological, economic and social objectives the Councils may have established. NOAA is committed to providing technical advice and support to the Councils and affected stakeholders in evaluating the transferability option.

**Review Process:** *Councils should periodically review all catch share and non-catch share programs. The intent is to ensure that management goals are specified, measurable, tracked and used to gauge whether a program is meeting its goals and objectives.* The review process is the final stage of the management cycle after setting specific objectives and implementing and monitoring a management plan. The MSA requires Councils to regularly monitor and review the operations of its LAP programs. Once management goals and FMPs are in place, section 303A(c)(1)(G) requires the conduct of a formal and detailed review after 5 years for each LAP program. In addition, the Secretary is required to review on a continuing basis and revise as appropriate the conservation and management measures included in Atlantic Highly Migratory Species plans. However, Councils are not currently required to conduct similar periodic reviews of their non-LAP fisheries. Performance metrics for some of the typical fishery goals may include how fishery stocks responded, what were the impacts on fishing communities, participation and entry into the fishery, what happened to prices, revenues and profits, and how fishery access and participation rates changed after program initiation.

**Distinctions Among Sectors:** *No fishery or sector (e.g., commercial or recreational) is obligated to adopt catch shares under the policy.* Councils should consider the appropriateness of catch share programs and decide which, if any, sectors may benefit from their use. Under the MSA, Councils have the opportunity to consider the possible adoption of catch shares for all fishery sectors; for some sectors; to phase-in their adoption over time; or to not adopt catch shares. Historically, the application of catch shares has focused on the commercial sector of a fishery. If a Council adopts a catch share program for the commercial sector, the MSA does not require catch shares to be adopted in the recreational or any other particular sector of a fishery.

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There may be circumstances where catch shares cannot provide positive net biological, social or economic benefits to all sectors of the fishery, and Councils are free to decide where to adopt catch shares.

It is conceivable that the initial plan for catch shares for one segment of a fishery (e.g., for one species in a multispecies fisheries, or catch shares in the commercial sector but not the recreational sector) could have effects on other segments of the fishery. In instances where such impacts are reasonably foreseeable, Councils and NOAA should evaluate the effects of catch shares on all sectors associated with a fishery, regardless of whether they are in the catch share program. This should be done at the early stage of consideration of catch shares as a management option to allow adaptation in both the catch share and non-catch share program elements to ensure conformance with the MSA.

The allocation of quota among competing segments in a fishery has been one of the most difficult policy decisions for the Councils in the past. National Standard 4 of the MSA requires that any allocation of fishing privileges be fair and equitable. Allocations of quota to recreational, commercial, tribal, aboriginal and subsistence sectors; among gear types within a sector; and reserving quota for reasons of research, conservation, forage and/or scientific and management uncertainty are all decisions currently made by Councils.

Catch shares distribute quota within a sector (e.g., recreational or commercial), as a percentage of the sector allocation. The allocation to a sector can increase or decrease over time, while leaving the percentage quota within that sector stable. Councils should periodically revisit sector allocations based on consideration of conservation issues, economic and social values.

Councils can opt to manage the commercial sector with catch shares and manage the recreational sector by other means; catch share programs can implement whatever distribution of the allowable catch the Councils decide upon subject to MSA requirements. Criteria and schedules to reallocate quota can be directly included in the fishery management plan design, and an unscheduled reallocation can be considered at any time by plan amendment if circumstances warrant.

The granting of catch share privileges to an entity is not made in perpetuity. The MSA defines a LAP as a permit, issued for a period of not more than 10 years, which will be renewed if not revoked, limited or modified. The program can be amended at any time specified by the Council. Regular monitoring and review of catch shares by the Council is expected and a formal and detailed review 5 years after implementation of the program (and at least every 7 years thereafter) is required by statute. The design flexibility, including transferability provisions, associated with catch shares helps ensure that all allocations of allowable catch are fair and equitable, regardless of whether every sector chooses to adopt a catch share for their sector.

The key to success is a thoughtful program design process. A comparative framework is an efficient means to assess different design and implementation choices for management of a particular fishery or sector. A useful starting point for evaluating the pros and cons of different catch share design options can be found in NOAA's technical memorandum on LAPs<sup>7</sup> where it

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<sup>7</sup> Anderson, L.G. and M.C. Holliday (Eds.), 2007. Design and use of limited access privilege programs, NOAA Technical Memorandum F/SPO-86. Silver Spring, MD.

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identifies seven criteria for the evaluation of LAP programs relative to other types of management strategies for a particular fishery. NOAA is committed to working with recreational, commercial and other stakeholder groups to help them assess their options and the advantages and disadvantages of adopting a catch share program for their sector.

**Fishing Community Sustainability:** *NOAA encourages Councils to take advantage of the special community provisions in the MSA to help assure sustainable fishing communities, including the continuation of working fishery waterfronts, fishery infrastructure, diverse fishing fleets, and resource access.* Fisheries have provided the underlying economic, social and cultural fabric of many coastal communities for centuries. However, changing circumstances in fisheries as well as many outside influences are resulting in risks to the sustainability of the fishing community way of life. National Standard Eight of the MSA and section 303A require management authorities to take into account the importance of fishery resources to fishing communities. Section 303A provides unique design options for LAPs that can promote the sustained participation of communities and minimize adverse economic and social impacts of fishery management. NOAA will work in partnership with other federal agencies and coastal states, consistent with the goals of the MSA and each Council's fishery management plan's objectives, to use catch shares to promote sustainable fishing communities, resource access and co-management principles.

To this end, NOAA will help support community-based design and investment in innovative fishery management options. This partnership would include providing technical assistance in the development and submission of community sustainability plans under MSA Section 303A, and providing technical assistance in the creation of fishing community trusts or permit banks to help retain access to fisheries resources by fishermen in local communities.

NOAA will assist communities in planning and adapting to changing economic, environmental and management conditions. Additional capacity and statutory authority may be available from other NOAA line offices, other Commerce bureaus (e.g., Economic Development Administration assistance to communities to develop and implement economic development and revitalization strategies) or other agencies (such as the Small Business Administration to deal with access to capital and business planning expertise). NOAA will also encourage public-private partnerships, and facilitate collaboration with state and local governments, regional economic development districts, public and private nonprofit organizations, and tribal entities to help communities address problems associated with long-term fishery and community sustainability.

**Royalties:** *NOAA will assist Councils if and when they determine that it is in the public interest to collect royalties in connection with the initial or subsequent allocations in a limited access privilege program.* The Nation's fisheries resources are managed in the public trust by NOAA. Many of the Nation's other public resources consumed or used by private individuals are subject to a payment (i.e., resource rental) for their usage (e.g., oil and gas leases, grazing or silviculture on federal lands, usage of federal radio frequency spectrum). To date, the recipients of initial allocations of catch shares have received their allocations based on their historical fishing records; no Council has employed a program to collect resource rent.

Section 303A(d) of the MSA requires the Councils to consider the collection of royalty payments for the initial or any subsequent distribution of LAPs. Any fishery management plan or amendment containing a LAP program should include a description of how this MSA provision

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was addressed. It is important to note that if a Council decides to include a royalty program, the revenues would be deposited in a special fund and can only be expended in the fisheries from which they came. Currently no LAP program collects royalty payments. Many important social, economic and community objectives of a fishery management plan could be funded by royalty payments such as supporting specific goals for research, monitoring, new entrants/small entities, or sustainable fishing communities. Collection and use of royalty payments is one of several options. Initial share allocations/set-asides, adaptive management programs, and loans/subsidies for share purchases are alternatives that can support similar outcomes.

The MSA provides the Councils with a great deal of flexibility to determine the timing, amount and means to collect royalty payments. For example, royalties could be deferred in the initial years of implementation to account for weak economic conditions at a program's outset. Any royalty program must be carefully designed and sized so it does not undermine or offset the biological conservation and economic incentives associated with catch shares. NOAA will assist Councils and stakeholders to provide more specific guidance on royalty program design options where desired, and consult with Councils, states and affected stakeholders on use of any subsequent royalty funds collected.

### **CATCH SHARE PROGRAM SUPPORT**

Because of the effectiveness, flexibility and the potential applicability of catch shares to many fisheries, NOAA will provide leadership, technical advice, and other support for the consideration and use of catch share programs. To achieve this end, NOAA will collaborate with its many federal, state and constituency partners to support catch share programs in the following four categories:

- 1. Reduce technical and administrative impediments to designing catch share programs.** NOAA will assist Councils and stakeholders that want to move forward with catch share programs with technical and administrative support to help them design and implement a catch share program, while empowering local fishermen to be part of the process. This includes assisting in research and evaluation of catch share applicability for their particular fishery, resolving outstanding questions on application of the MSA requirements to their proposed design, and organizing a common infrastructure and enforcement protocols to minimize program costs and promote "best practices."
- 2. Provide expertise and related support to assist development of new catch share programs.** NOAA will provide expertise and work with Councils and other partners to adopt and implement catch share programs that are cost effective and meet the Councils' objectives. This includes providing analytical capacity through staff details and access to external experts, providing tools for assisting fishermen to explore options and evaluate impacts of management alternatives, and facilitating access to other government and private sector programs to support the design and implementation of a catch share option.
- 3. Inform and educate stakeholders so that they can best participate in the design and implementation of catch share programs.** NOAA will work with Councils, states, Sea Grant and its Marine Advisory Service, and other partners to provide information and training to raise awareness and increase understanding about the advantages and disadvantages of catch share programs; to improve general catch share literacy in

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communities, including fishermen, regulators and the public; and to increase stakeholder engagement in the policy development and review process.

- 4. Coordinate data collection, research and performance monitoring of catch share programs.** NOAA will partner with Councils, states, Interstate Commissions and other collaborators to ensure appropriate data are collected, relevant research is conducted, and catch share performance metrics are derived to support the Councils in their consideration, adoption, operation and evaluation of catch share programs

The following sections outline the specific actions that NOAA believes will ensure catch share programs have the highest likelihood of success. NOAA will work diligently with its partners to identify and secure the necessary support to most effectively carry out as many of these activities as possible.

### 1. Reduce technical and administrative impediments

1.1 – Evaluate Catch Share Applicability. Studies of U.S. and foreign fisheries suggest that catch share policies have significant potential for increasing economic returns from fishing and the sustainability of fisheries. The fisheries that have seen the biggest economic gain from catch shares are those where there is the potential for high-end markets (investing in quality) and/or where there are advances in product recovery from eliminating the race-for-fish (e.g., whiting on the west coast). At the same time, not every fishery will ultimately be a suitable candidate for catch shares.<sup>8</sup> The following is a brief list of fishery characteristics indicating where catch shares could be particularly beneficial. The list is not exhaustive, nor does it suggest that if a fishery doesn't have one or more of these indicators that it is not a good candidate for catch shares.

*a. Fishery is overcapitalized* – Overcapitalized fisheries are more likely to have lower economic returns to fishermen than could be achieved through catch shares. A fishery demonstrates excess capacity in the form of larger than necessary fishing fleet size, type or amount of fishing equipment, etc., to harvest the total allowable catch. Generally, historical open access policies lead to race-for-fish or derby conditions, and result in overfishing, overfished stocks and overcapitalized fisheries. If a fishery is overcapitalized, transferable catch shares can result in a more economically efficient fleet size.

*b. Stakeholders are receptive* – Well-informed fishermen who want to pursue consideration of catch shares will improve the likelihood of success of this fishery management option. Enabling stakeholders to evaluate their options by providing complete and unbiased information requires extensive education and outreach. Fisheries where this has taken place are good candidates for consideration. Single species or few sectors in a fishery make management less complex for any choice of strategy/approach. In the near term, catch share application in a phased approach (i.e., species or sector) may be more amenable to stakeholders.

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<sup>8</sup> Whether specific criteria are useful to determine if catch shares are applicable to a fishery was considered in the 1999 National Academy of Sciences study to evaluate individual fishing quotas (IFQs). That study favored the approach that all fisheries that can be managed using a total allowable catch are potential candidates for IFQs. See National Academy of Sciences, 1999. Op.cit.

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c. *Stocks are overfished* – Stocks that have a status of “overfished” or that are experiencing overfishing require a multitude of controls to regulate fishermen behavior. Such fisheries are among those now required to have annual catch limits (ACLs) and rebuilding plans under the MSA. While well-enforced ACLs will limit catches they do not address the destructive impacts of the race for fish. Combining ACLs with the allocation of exclusive privileges to stakeholders can help meet total allowable catch targets, reduce the negative impacts of the race for fish, and promote greater freedom and flexibility in fisherman business decision making than when ACLs are used alone.

d. *Regional/Institutional infrastructure exists* – NOAA Fisheries Service regions with existing catch share management can take advantage of economies of scale in management operations for multiple catch shares in a region, thereby reducing costs to fishermen and taxpayers. The marginal costs for data collection, administration and enforcement can be spread over multiple species or fisheries. Each circumstance must be evaluated on its own merits since the flexibility inherent in catch share program design allows them to be customized to succeed under varying conditions.

e. *Bycatch is significant* – Excessive bycatch is an indicator that catch shares may contribute to a solution. In its 2007 meta-analysis, the Redstone Group<sup>9</sup> analyzed 10 U.S. and British Columbia fisheries managed by LAPs and found seven instances where LAPs contributed to a positive environmental recovery by promoting more selective and efficient fishing practices. There is evidence that IFQs slow the pace of fishing and encourages cooperation and fishermen stewardship that results in positive ecological implications relative to overfishing, bycatch mortality and habitat disturbance.<sup>10</sup> Cooperatives formed under catch share programs (e.g., Gulf of Alaska rockfish pilot program and Bering Sea pollock and non-pollock cooperatives) have also experienced decreased discards as fishermen are able to become more selective and redirect their effort away from areas of undesirable bycatch to avoid prohibited and non-target species. Notwithstanding these benefits, care must be exercised in the design and monitoring phases to prevent or control for any highgrading of fish harvested that may occur under certain conditions.

1.2 – Issue specific policy guidance. The draft NOAA policy lays out high level principles regarding catch shares but does not address specific questions of technical interpretation and applicability raised by implementation of the 2006 MSA amendments. Such questions have been raised by NMFS, Councils, industry and environmental groups on the new LAP provisions of Section 303A. The NMFS Office of Sustainable Fisheries identified a number of these issues during an October 2007 public scoping process and through various Council venues.

There is a need to promote consistent and correct application of the Act. Many issues will be addressed by issuance of informal guidance and the conduct of regional or national workshops. However, there may remain other issues requiring formal notice, public comment and rulemaking, and NOAA will seek input from stakeholders, Councils and NMFS staff to complete this task using a public participatory process.

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<sup>9</sup> Redstone Strategy Group, 2007. Assessing the potential for LAPPs in U.S. fisheries. Report prepared for Environmental Defense, 41pp., Washington, DC.

<sup>10</sup> Griffith, D.R., 2007. The ecological implications of individual fishing quotas and harvest cooperatives. *Frontiers in Ecology and the Environment*. 6(4): 191-198.

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1.3 – Create a common catch share infrastructure. Catch share program designs can be very simple or complex, with costs changing accordingly. Costs for redundant infrastructure may become an impediment to new programs. Given the projected use of catch shares, NOAA and its partners will evaluate a common catch share infrastructure in areas such as issuing allocations and monitoring transfers, information systems to track landings, and enforcement and observer capabilities for monitoring, control and surveillance. NOAA and the Councils will look for economies of scale, efficiencies, and consistency to minimize costs of catch share programs to taxpayers and the industry. This includes looking for ways to exploit technology, policy solutions that include mechanisms to reduce the costs for implementation and operation, and the possible adoption of standards and/or a multi-region infrastructure to support multiple programs.

A means to accomplish this is to organize a temporary infrastructure working group of relevant NOAA, Council, state and industry experts to advise practitioners on the establishment of processes to implement and operate catch share programs. The team would be comprised of experts in information technology, administration and finance, monitoring and enforcement, statistics and survey/data collection design, and observer programs. Its purpose would be to derive infrastructure “best practices” for catch share operations, and then disband upon delivering their report.

One of the challenges facing NOAA is the integration of new catch share programs with multiple FMP requirements across fisheries, some of which will not be managed using catch shares. In some cases, Council, state and international boundaries will be crossed. Integration of plans across several jurisdictions will require special planning and communications efforts between NOAA, Councils, states, Commissions and other management bodies especially during the transition period to a new program.

While each catch share program design will be unique, similar functions such as annual specification of shares, data collection and monitoring, and enforcement need to be performed for any catch share program. A standardized methodology, regionally customizable, should be evaluated and made available where feasible with reusable information technology components and modular designs. Three possible areas to investigate are:

a. *Allocations* – The derivation of initial allocations of privileges and annual computation of an individual’s catch limit each require a quality-controlled record of the process. Each NMFS Region has a different structure and record process for handling allocations. Issuance of standards and best practices would ensure compliance with the many federal record requirements, including procedures governing confidentiality and personally identifiable information, Treasury debt check requirements, and Administrative Record Act archiving standards.

b. *Appeals* – The MSA requires inclusion of an appeals process for administrative review of the Secretary’s decisions regarding initial allocation of limited access privileges [Section 303A(c)(1)(I)]. Fairness in administrative appeals suggests that applicants in LAP programs anywhere in the country should be provided with a consistent set of procedures for the filing and consideration of appeals. Each NMFS Region has had a different structure and process for handling appeals. NOAA plans to evaluate whether a more harmonized approach to

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handling administrative law appeals in LAP programs is warranted, or whether the current, more diversified structure should be retained.

*c. Share registration/transfers/liens* – NMFS was required in Sec 305(h) of the 1996 MSA amendments to create a central registry system for limited access system permits. The purpose was to provide for registration of title to, and interests in, such permits as well as procedures for changes in the registration of title due to involuntary transfers, judicial or non-judicial foreclosures, enforcement of judgments, etc. A number of serious problems blocked completion of this task. While a central registry does not currently exist, transfer and ownership information is still tracked by individual IFQ programs. However, the amount of data collected varies, there is no integration of information across programs, and the mandatory registration or transfer fees are not collected.

Establishing a central registry is still an extremely useful service to provide to fishermen interested in buying, selling, leasing or collateralizing catch shares. However, the authority to require registration and collect registration fees for non-LAP catch shares may need to be examined. NOAA will lead a work group of relevant experts to identify and recommend options for the resolution of the technical, legal, budgetary and potential legislative impediments to establish and operate a central registry for all U.S. catch share programs.

1.4 – Enforcement protocols. The roles and responsibilities for enforcement of fishery management regulations under catch shares requires guidance as more fisheries devolve many aspects of compliance to the recipients of catch shares. Record keeping and reporting requirement choices must be made and appropriate coverage levels determined, including dockside monitors; double entry accounting systems; vessel clearance and prior notice of landings provisions; and usage of vessel monitoring systems and related technologies. Council, NOAA and state policy and enforcement experts will collaborate on a “best practices” guidance effort to advise on the degree to which industry pays for these services and the extent to which an association, community or sector is responsible for the reporting of its membership.

1.5 – Create a model catch share program design process. A model design process would incorporate collaborative sessions in which a group of stakeholders and managers work together to draft a solution to a design problem. Used in combination with public hearings and workshops, a catch share design handbook, and related reference materials and expertise, a formalized design process would outline in checklist-like form a means to explore the necessary steps in creating a catch share design. NOAA will work with Councils, states and stakeholders to create a model catch share program design process. This includes all stages from the setting of objectives to an assessment of the pros and cons and benefits and costs of different operational designs. While such a complex task cannot be reduced to a “cookbook,” history with the MSA operational guidelines and regulatory streamlining processes has shown such guidance improves the completeness and efficiency of the management process.

## **2. Providing expertise and related support**

NOAA wants to encourage Councils to fully consider catch shares when Councils take up fishery management plan amendments. To accomplish this, NOAA will help support the NOAA Fisheries Service regions, Councils, states and stakeholder groups interested in designing and

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implementing a catch share program consistent with the MSA. This includes providing support and expertise to help those fisheries that wish to consider and adopt them.

2.1 – Support for Catch Share Programs. *To support NOAA Fisheries Service regions, Councils, states and stakeholders in considering and developing efficient catch share programs under the MSA, NOAA will work to assist in the design, transition period and operation of catch share management.* Costs for catch share programs include the same operational categories associated with other management strategies, plus some additional design, operational and monitoring costs due to changes in scale. These additional costs arise because all the operational and monitoring activities formerly done only at the fleet-wide level are now conducted for each individual receiving a catch share. While cost recovery will reimburse the public for some of the costs of management, data collection and enforcement, actual costs can exceed the 3 percent cap particularly in the early years of a catch share program and in cases of currently overfished stocks. Design costs (i.e., prior to implementation of a LAP) are also not subject to cost recovery.

Cost recovery can be especially problematic in economically depressed fisheries or for low-valued species. The subject of who pays for these costs may become an impediment to catch share support in the short term. Therefore, government support may be needed for some fisheries to address start-up costs, but the benefits of rebuilt fisheries can outweigh these costs in a relatively short period of time for most fisheries.

Under any structure, NOAA Fisheries Service and Councils will need to design the most efficient programs possible to minimize costs to the participants and the public. This includes promoting common infrastructure capabilities that support multiple catch share programs and spread the costs across multiple fisheries.

2.2 - Incremental costs. *It is NOAA policy to compute and recover only the incremental operating costs associated with LAPs from participants.* Section 303A(e) of the MSA requires cost recovery of the management, data collection and enforcement costs of a LAP. The relevant costs to recover are the incremental costs, i.e., those costs that would not have been incurred but for the LAP program. Conceptually, measuring these costs involves a “with and without” comparison of the cost of running the management program for the specified fishery under the *status quo* regime, relative to the cost of running the management program under the LAP program. The difference is the incremental costs attributable to implementing the LAP program. This approach limits the participant’s costs of adding LAP programs, and minimizes any disincentive to consider catch shares for Councils and their constituents as they evaluate replacing non-LAP programs with LAPs.

2.3 – Identify experts to help Councils and regions. NOAA will establish a pool of NOAA employees and staff from universities, other state, federal and foreign fisheries agencies familiar with catch shares for assignment among Councils and NOAA regional offices engaged in active consideration and design of a catch share program. Using the authorities of the Intergovernmental Personnel Act, National Science Foundation post-doctoral fellows programs and other federal human resource programs, NOAA will actively search and recruit capacity to meet short term needs for catch share expertise in the field.

2.4 – Complete a NOAA nationwide blanket task-order contract. Easy access to outside consultants would be very helpful to help design and implement catch share programs, and

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should be made available to/used by any Council/region. Each Council and NMFS region is separately making use of outside expertise to assist in designing and executing catch share programs. NOAA will negotiate a task-order contract with a variety of vendors and consultants to provide easy access to additional short-term or long-term capacity, potentially at lower costs, without the delays and cost inefficiencies of separate procurement actions.

2.5 – Develop business analysis and decision tools for use by industry. To help evaluate the relative merits of different catch share designs, NOAA will develop easy to use bioeconomic models for fishermen that compute profit/loss or breakeven analyses of different management options. These tools would help answer the question of “What-if” scenarios. This will enable more direct comparison of an individual’s position under different design options as catch share alternatives are discussed. These models could be simple spreadsheet analyses posted on the internet that allow input of different cost and revenue structures and that compare changes in economic performance under various catch share allocations.

2.6 – Support fishermen’s/community groups to help explore and organize fishery management innovations and their accompanying infrastructure to improve the health of marine fisheries, fishing communities and local economies. To this end, NOAA will work with fishing communities on community-based and innovative fishery management options. This partnership could include providing technical assistance in the development and submission of community sustainability plans under MSA Section 303A, and providing assistance to help to develop fishing community trusts or permit banks that retain access to fisheries resources by fishermen in local communities.

2.7 – Promote the wider use of the NMFS Fisheries Finance Program for purchase of quota shares. NOAA will work with Councils and stakeholders during the design and implementation phase of their catch share programs to promote the use of the NMFS Fisheries Finance Program to support the purchase of quota shares. Currently, under MSA Section 303A(g), only two of the 12 catch share programs utilize this capability that was designed to help small vessel owners and first time limited access privilege purchasers.

### **3. Informing and educating stakeholders**

3.1 – Implement a long-term education and outreach strategy. NOAA will coordinate the design and implementation of a communications plan to help ensure the public is aware of NOAA’s draft and final Catch Share Policy, informed of its progress, and engaged in its implementation. Some constituents are unfamiliar with the term “catch shares” others have limited knowledge of the concept and worry about being excluded from their fisheries. There is a great deal of concern about impacts to fishing communities. The objective is to partner with the states, Councils, universities and other constituent service providers, such as the Sea Grant Marine Advisory Service, to provide consistent and regular interaction with stakeholders to communicate authoritative science-based catch share information, fill knowledge gaps, allay fears and misconceptions, and prevent misinformation from spreading.

3.2 – Creation of a virtual information center/information web portal. The objective of creating an authoritative and proactive NOAA source of catch share information is to provide access to best available scientific information. NOAA will create a web-based tool to centralize catch share bibliographies, references, FAQs, referrals to regional expertise, case studies, news and

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information. This information resource will archive theoretical and applied research papers and data, along with real world case study materials in a data warehouse form. Councils, industry members, academia and Congressional staff are some of the projected clients who would contribute to and be served by the site. Videos and related curriculum materials will be produced to assist teachers in schools and universities as well as for statutorily–required new Council member orientations. The virtual information center will host an interactive Q&A function to receive questions and post replies from stakeholders and interested parties on catch shares.

At the NOAA level, several initiatives are necessary to reinforce this effort. There will be an ongoing catch share web presence on the NOAA home page. Materials will be prepared on catch share progress for *NOAA World* and other NOAA publications, and for possible inclusion on the Smithsonian’s Natural History Museum Sant Ocean Hall and regional science museum news tickers and kiosks. NOAA will evaluate production of a “Science on a Sphere” application focusing on global application of catch shares and sustainable fisheries. These efforts will contribute to greater public literacy regarding catch shares and fishery sustainability. Collaboration or partnerships with Councils, states and other entities to prepare and deliver content will pool common resources and avoid duplication of effort.

3.3 – Plan and execute an 18-month schedule of regional workshops and webinars. NOAA will establish a series of programs whereby information about current and pending catch share programs here and abroad is presented and discussed with stakeholders. While a catch share web-portal is important, it is a passive communication approach. NOAA will also actively engage stakeholders and the public directly and at the regional level, working with them in person or electronically on an individual basis on how to consider and develop a catch share program that works for them. These presentations will be prepared and presented in collaboration with Councils, states, academic partners, and industry and sector organizations. NOAA will make efforts in conjunction with these stakeholders to identify and attend appropriate events and venues to ensure broad dissemination of information about catch share programs. The purpose would be tailored to individual audience needs but would utilize case study examples of the pros and cons of various experiences with catch share programs to share with interested parties.

Initial topics being considered for serial workshops around the country include: 1) means to ensure sustainable communities and employment; 2) how to evaluate options for transferability and regulate excessive share formation; and 3) design options for initial allocation of privileges. This last workshop issue would include elements to consider in the decision whether to capture royalties and the means and techniques to accomplish this option.

One of the most important workshop issues under consideration for fishing communities would feature instructions on how to create regional fishing associations and fishing community sustainability plans that satisfy the requirements of the MSA. Related community organizing topics include how to establish fishing community associations that create permit and harvest privilege banks for the benefit of local citizens.

3.4 – Implementation of a NOAA Catch Shares Center of Expertise. To provide the capacity to accomplish the previous tasks, NOAA is exploring the creation of an internal NOAA Center of Expertise (COE) to function as an agency-wide coordination and consulting group. Consisting of a 4-5 person core staff, capacity would be supplemented by staff rotating in and the contracting of external expertise on a demand basis. NOAA would seek support for temporary assignments

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from the various Commerce Department and NOAA leadership development programs and the NOAA Sea Grant Marine Policy Fellow program. With expertise in economics, law and fishery management, the core staff would be recruited anew and/or be filled by existing staff on long term details. In addition, external experts in the university community would be retained on an as-needed contract basis to help as advisors for the development of enabling solutions and to help troubleshoot issues in existing catch share programs.

NOAA's goal is to capitalize on both longstanding and newly-formed expertise in NMFS regions on catch share programs and to avoid "reinventing the wheel" every time a new region or Council considers a new catch share program. The COE would also respond to specific design and/or policy problems from Councils. While COE staff could occasionally be deployed in temporary duty status to assist regions in critical phases of catch share design and implementation, separate temporary or permanent staff resources to the NMFS regional offices and Councils will be necessary to carry out the longer term day-to-day implementation and operational issues. This small staff approach is designed to help keep costs low and levels of expertise high by utilizing a combination of in-house consultation and access on-demand to a newly-formed network of national and global experts on catch share programs.

3.5 – Create a speakers bureau. NOAA will work with Councils and states to identify fishermen who are willing to share their catch share experience with other fishermen and Councils. The volunteers would speak with Councils and fishing communities who wish to hear first hand of experiences with catch shares elsewhere in U.S. fisheries.

To archive this information and make it more widely available, this effort will be linked with the NOAA website "Voices from the Fisheries." The Voices from the Fisheries Database is a central repository for consolidating, archiving, and disseminating oral history interviews related to commercial, recreational, and subsistence fishing in the United States and its territories. Oral history interviews are a powerful way to document the human experience with our marine, coastal, and Great Lakes environments and our living marine resources. Catch share oral history experiences, both positive and negative, can be an important tool for Councils and communities considering their own catch share designs.

### **4. Data, research and performance monitoring**

The data collection, science and research support for MSA fishery management has been a successful highly collaborative partnership of NOAA, Councils, states, Commissions, universities and the fishing industry. Activities to support the consideration and adoption of catch shares will continue to rely heavily on these collaborations. The activities outlined below are based on advancing existing partnerships with Councils, states and the Interstate Commission data programs to establish standards for monitoring and data collection that universally apply regardless of whether a catch share program is the preferred management alternative. All fisheries require accurate and timely catch accounting regardless of management approach. While the scale and scope of monitoring and compliance needs will vary with fishery conditions, catch shares don't have inherent monitoring needs that are unique. In some cases the transition to catch shares has coincided with improvements that have been lacking for years in monitoring and observer programs to support science and management.

## Draft NOAA Catch Shares Policy

4.1 – Establish a nationwide electronic reporting goal for all fisheries. It is NOAA’s goal that all U.S. fisheries managed under the MSA adopt electronic reporting to improve accuracy, timeliness and completeness of reporting. NOAA is mindful that some communities and geographic areas may lack sufficient technology access, have language barriers, or face other challenges to electronic reporting that require special consideration. However, as early as 1998, NOAA identified the elements of a fisheries information system made up of regional electronic reporting programs meeting a commonly agreed upon set of standards. This report to Congress was in response to the 1996 MSA requirements of Section 401(a)-(f). Such a system is not yet implemented. Available funds have supported the research and development phase of a national permit system. The conversion of fisheries statistics programs from paper-based or non-standard regional systems to satisfy an electronic reporting standard will face technical and organizational challenges for NOAA and its many state data collection partners, and will require close collaboration with Councils and respondents.

4.2 – Observer program design. Observers record data at-sea that are not available for recording at dockside, including those events that require independent validation of self-reported data by fishermen. Many of the current observer programs were initiated to monitor compliance with policies and requirements governing interactions and bycatch of marine mammals and protected species. Today, observers support multiple missions of science and research in addition to fisheries and protected resources compliance monitoring. The most challenging elements involve the inter-related issues of coverage/sample size, costs, and who pays those costs (industry versus government), regardless of whether the fishery uses catch shares.

Existing funding models for monitoring vary, but catch share programs are more likely to recover costs associated with monitoring than non-catch share programs. In some of the fisheries currently developing a catch share program, including for Pacific groundfish, fishing participants are expected to take over the costs of monitoring (including on-board observers) after a transition period lasting a few years, as fishery economics improve.

To date, there is little guidance on what level of coverage is “sufficient” for management, catch shares or otherwise. But this question is often raised during a transition to catch shares. NOAA will empanel a temporary work group of NOAA, Council, state and other experts to provide scientifically-based advice and guidance to Councils facing this decision. This advice will include a means to analyze the objectives of the fishery management plan and evaluate the applicability of observers and/or video or other technology solutions, and the ability to recover costs in lower valued fisheries. Moreover, NOAA will lead a collaborative Council, state, industry and stakeholder effort to consider the question of when the industry and when the government should pay for the cost of observers. Such an effort would provide clarity to the fisheries considering catch shares and promote fairness and equity between different fisheries and regions of the country.

4.3 – Catch Shares Market News. In catch share programs where transferability is allowed, the buying, selling and leasing of shares is a common occurrence. In combination with the services provided by a lien registry, access to non-confidential summaries of market prices of share transfers and leases can result in more stable and orderly market functions. Access to authoritative government sources of unbiased market information is commonplace in agriculture and fisheries and has a history going back to the 1937 Agricultural Marketing Act. In addition, internal NOAA use of the confidential price data on share transactions is essential to track and

## Draft NOAA Catch Shares Policy

monitor the economic performance of the fishery, and evaluate the ongoing performance of the catch share program implementation. While non-governmental third parties may establish private trading platforms for limited access privileges, NOAA will work with Councils and the industry to establish data collection programs to collect data on the terms and prices of sales and leases consistent with the confidentiality provisions of the MSA, and provide non-confidential market news data to stakeholders.

4.4 – Conduct catch shares research program. NOAA is committed to carrying out a comprehensive research program on the design, operations and outcomes of catch share programs. The nearly 20 years of NOAA experience with catch share-type management has shown the great diversity of goals, designs and operations such programs can include. For the 13 federal programs currently in place in the U.S., NOAA will widely distribute summaries of their key features and outcomes. There is also a wealth of underutilized scientific literature on catch shares, including the previously referenced National Academy of Sciences IFQ and Community Development Quota studies and the NOAA Technical Memorandum on the design and use of LAP programs. NOAA will use its scientific capacity along with its extensive list of partnerships, cooperative institutes and other researchers to apply biological, economic and socio-cultural research results to the management issues of sustaining U.S. fisheries.

4.5 – Establish relevant performance measures. Determining relevant performance measures for monitoring the outcomes of catch share programs is essential. NOAA is committed to working with Councils, stakeholders, the Department of Commerce, the Office of Management and Budget, and Congress in improving and monitoring useful and relevant performance metrics for all U.S. fishery management policies, not just catch share programs. The derivation of such performance measures will contribute to the Council FMP Review Process described earlier on page three.

Performance measures need to be linked back to the initial objectives in a FMP. Many current FMPs have general and sometimes vague objectives. Objectives for biological, economic and social outcomes should be readily measurable, such as eliminating overfishing and the race-to-fish or derby fishing behavior; promoting more precise catch accounting and reducing scientific uncertainty to meet ACLs; reducing bycatch and improving ecosystem function; improving socio-economic conditions for fishery participants and/or fishery-dependent communities.

Catch shares can result in fishery improvements in many areas but the metrics chosen to monitor performance should not be limited by the availability of data. It is important to ensure in the catch share design stage that share holders will supply relevant data to monitor program performance in return for their allocation. This includes obtaining more specific biological and economic performance data from the participants, in accordance with applicable law governing maintenance of business trade secrets and confidentiality of data. In addition, the social recovery metrics should encompass the broad range of possible social and community impacts. Relevant measures to be considered may include impacts on quality of life, degree of community stability and preservation of cultural values and traditions.

**Table 1. Summary of specific activities proposed to support the consideration of catch share programs under the draft NOAA policy, subject to availability of funds.**

<b>1. Reduce technical and administrative impediments</b>
<ul style="list-style-type: none"> <li>1.1 Provide Councils a list of possible characteristics to evaluate catch share applicability.</li> <li>1.2 Issue policy guidance on the interpretation and consistent applicability of the new limited access privilege section of the Magnuson–Stevens Act.</li> <li>1.3 Create a common catch share infrastructure to minimize costs of catch share programs to taxpayers and the industry in areas such as issuing allocations and monitoring transfers, information systems to track landings, and enforcement and observer capabilities for monitoring, control and surveillance.</li> <li>1.4 Develop best practices for enforcement protocols associated with catch share programs.</li> <li>1.5 Create a model catch share program design process including design of public listening sessions and workshops, a catch share design handbook, and identification of reference materials and expertise.</li> </ul>
<b>2. Providing expertise and related support</b>
<ul style="list-style-type: none"> <li>2.1 Assist in the design, transition and operation of catch share management.</li> <li>2.2 It is NOAA policy to compute and recover only the incremental operating costs associated with LAPs (not the full costs of management) to minimize any disincentive to consider catch shares.</li> <li>2.3 Identify experts and assign them among Councils and NOAA regional offices in active consideration and design of a catch share program.</li> <li>2.4 Complete a NOAA nationwide task-order contract for use by any Council and NMFS region to easily access outside expertise to assist in designing and executing catch share programs.</li> <li>2.5 Develop business analysis and decision tools on the web for use by industry to help evaluate the relative merits of different catch share designs.</li> <li>2.6 Work with fishing communities to develop community sustainability plans, and create fishing community trusts or permit banks.</li> <li>2.7 Promote the wider use of the NMFS Fisheries Finance program for purchase of quota shares.</li> </ul>
<b>3. Informing and educating stakeholders</b>
<ul style="list-style-type: none"> <li>3.1 Implement a long term education and outreach strategy to help ensure the public is aware of NOAA’s Catch Share Policy, informed of its progress, and engaged in its implementation.</li> <li>3.2 Create a virtual information center/web portal to centralize catch share bibliographies, references, Frequently Asked Questions, referrals to regional expertise, case studies, news and information.</li> <li>3.3 Conduct an 18-month schedule of regional workshops and webinars around the country including a focus on: 1) means to ensure sustainable communities and employment; 2) how to evaluate options for transferability and regulate excessive shares; and 3) design options for initial allocation of privileges.</li> <li>3.4 Create an internal Catch Shares Center of Expertise as a coordination/consulting group.</li> <li>3.5 Create a speakers bureau of fishermen willing to share their catch share experiences with other fishermen and Councils.</li> </ul>
<b>4. Data, research and performance monitoring</b>
<ul style="list-style-type: none"> <li>4.1 Establish a nationwide electronic reporting goal for all fisheries regardless of their current status as a catch share program.</li> <li>4.2 Provide scientifically-based advice and best practices guidance to establish observer programs for different catch share designs.</li> <li>4.3 Create a catch shares market news service.</li> <li>4.4 Conduct a catch share research program.</li> <li>4.5 Establish relevant performance measures for monitoring progress.</li> </ul>

# Draft NOAA Catch Shares Policy

## GLOSSARY OF TERMS

### ***Catch Share Program***

Not defined in MSA. A catch share program is a generic term used to describe fishery management programs that allocate a specific percentage of the total allowable fishery catch or a specific fishing area to individuals, cooperatives, communities, or other entities. It includes more specific programs defined in statute such as Limited Access Privileges (LAP) and Individual Fishing Quotas (IFQ). It also includes Territorial Use Rights Fisheries (TURFs) that grant an exclusive privilege to fish in a geographically designated fishing ground. The recipient of a catch share is directly accountable to stop fishing when its specific share allocation is reached.

### ***Dedicated Access Privilege (DAP)***

Not defined in MSA. Defined in the U.S. Commission on Ocean Policy Report as "...a novel form of output control whereby an individual fisherman, community, or other entity is granted the privilege to catch a specified percentage of the total allowable catch." Includes individual fishing quotas (IFQ), individual transferable quotas (ITQ), fishing community quotas, fishing cooperatives, and other geographically based programs that give an individual or group dedicated access to the fish within a specific area of the ocean.

### ***Fishing Community***

[MSA 16 USC 1802(17)] A community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.

### ***Fishing Cooperatives***

Not defined in MSA; defined under the Fishermen's Collective Marketing Act (FCMA) of 1934 (15 USC 521). A group comprised of "persons engaged in the fishing industry as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, that may act together in association, corporate or otherwise."

### ***Individual Fishing Quota (IFQ)***

[MSA 16 USC 1802(23)] A Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 305(i).

### ***Individual Transferable Quota (ITQ)***

Not defined in MSA. An individual fishing quota (IFQ) program where privileges can be transferred subsequent to initial allocations.

## Draft NOAA Catch Shares Policy

### ***Limited Access Privilege***

[MSA 16 USC 1801(26)] A Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person. This includes individual fishing quotas, but does not include community development quotas as described in section 305(i).

### ***Limited Access System***

[MSA 16 USC 1802 (27)] A system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation.

### ***Regional Fishery Association***

[MSA 16 1802(14)] An association formed for the mutual benefit of members to meet social and economic needs in a region or sub-region; comprised of persons engaging in the harvest or processing of fishery resources in that specific region or sub-region or who otherwise own or operate businesses substantially dependent upon a fishery.

### ***Sector Allocation***

Not defined in MSA. An exclusive assignment of some portion of the TAC to a group of two or more individuals holding permits in a fishery that have fulfilled Council eligibility and participation criteria, and have agreed to collaborate, voluntarily and for a specified period of time, in order to achieve a common set of objectives. The group may be organized around a particular gear type, species or geographic area with its purpose being the receipt of an exclusive privilege to fish.

### ***Territorial Use Right Fishery***

Not defined in the MSA. A single fisherman (or firm, organized group, community, etc.) having an exclusive privilege to fish in a geographically designated fishing ground. [Note: Even though the term itself uses the word “right” the catch share programs in this policy are defined in terms of a granting of a privilege, not a property right.]



## Pacific Fishery Management Council

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David W. Ortmann, Chairman | Donald O. McIsaac, Executive Director

DRAFT

March 6, 2010

Dr. Jane Lubchenco, Administrator  
National Oceanic and Atmospheric Administration  
1401 Constitution Avenue, NW, Room 5128  
Washington, DC 20230

Dear Dr. Lubchenco,

The Pacific Fishery Management Council (Council) would like to express its appreciation to Ms. Margaret Spring for her presentation on the draft National Oceanic and Atmospheric Administration (NOAA) Catch Share Policy at the March Council meeting in Sacramento, California. Involvement of the states and Councils in the development of support infrastructure and catch share plans should be an important element of the NOAA Catch Share Policy. The Council was gratified to see the NOAA commitment to the balanced consideration of catch shares and the provision of fiscal and personnel resources adequate to support careful consideration of the appropriate settings and design for such programs. Council members also noted the support expressed in the document for the provision of funds to subsidize the West Coast Groundfish trawl fishery observer costs during the first few transition years of the recently adopted trawl rationalization program (Section 4.2, paragraph 2). On the whole, this policy represents a substantial step forward for a management tool that promises to greatly enhance the value of fishery resources held in trust for the American public. The Council has a few minor comments and concerns for your consideration as you move toward finalization of the NOAA Catch Share Policy.

The draft policy covers four different ways in which NOAA would provide support for a catch share program: reducing technical and administrative impediments; providing expertise; providing information to and educating stakeholders; and coordinating data collection, research, and monitoring. The Council would like to provide the following comments on these sections of the draft policy.

The Council notes that the first section, on removal of impediments, focuses mainly on the creation of new programs to facilitate efficiencies and has little mention the possibility of evaluating NOAA or legislative policy and regulations to determine whether such policies and regulations create impediments or increase the costs of catch share program. For example, while the exact form of the observer program for the West Coast trawl fishery has yet to be determined, based on initial discussions between the Council, the National Marine Fisheries Service (NMFS), and industry, it is our understanding that there may be certain national policies that could result in observer costs higher than necessary to meet the needs for monitoring catch shares.

With respect to the provision of expertise, the Council notes that it is important that experts have both general and detailed knowledge of the fisheries in specific regions. It might be useful to have some experts available that are specialists in each region of the country. These individuals could both help tailor information and presentations to that region and be available to supplement regional staff during peak demand periods in the policy development, approval, and implementation process. There is a relatively long learning curve for fisheries in each region of the country and when peak demand periods are encountered it is often simply not possible to augment staff with anyone who can provide meaningful help within the needed time frame. A cadre of experts with regional knowledge might help address this problem while at the same time enhancing their own level of expertise.

With respect to informing and educating stakeholders, the Council has no direct comments but notes policies related to informing and educating stakeholders in the three other policy sections. One of the keys to success of the Council's recently adopted trawl rationalization program will be the industry's ability to understand the implications of the new program for business planning and to assess appropriate value of catch shares. In this regard, the draft policy document contains two policies of particular importance that the Council would like to emphasize. The first of these is the development of business analysis and decision tools (Section 2.5). While the policy focuses on the use of such tools to evaluate alternative programs, such tools may be very important to industry members trying to determine the appropriate operation and investment (or divestment) strategies once a program is implemented. Closely related to these tools are the development of a centralized lien registry (Section 1.3.c) and the catch share market news (Section 4.3) to enhance market function and reduce the risk in the catch share markets, thereby reducing costs. The Council also notes that the centralized lien registry need not necessarily be nationally centralized but rather there should be no more than one lien registry for each catch share program.

With respect to coordinating data collection, research, and monitoring, the draft policy goes beyond the area of what is needed for catch shares with respect to electronic reporting goals and observer program design. For these policy areas, introductory text notes that the activities outlined are intended to advance needs that will exist "regardless of whether a catch share program is the preferred management alternative" (page 15). Imbedded in the policy for electronic reporting (Section 4.1) is the possible resurrection of a fishery information system policy document from the late 1990s, about which West Coast agencies previously expressed their concerns to both NMFS and Congress, and which never received full funding. The Council notes that any system or standardization with a national scope should, if implemented, fit within state and regional management and data collection systems already in place on the Pacific Coast. Additionally, while there may be some value and advantage gained from the availability of programming and database templates, the Council also encourages NMFS to be open to the possibility of gaining efficiency through the privatization of some data collection and processing functions that might normally reside within the agency (such as the tracking of catch share transfers). Further, the Council expresses its concern that funding made available for catch share programs should not be diverted to development of data programs which to date have not been a priority for the effective execution of regional fishery management policies, except to the extent that such enhancements are needed for the catch share program. The Council also notes that the first paragraph on the observer program (Section 4.2) states that "The most challenging elements of designing an observer program are inter-related issues of coverage/sample size, costs

and who pays for those costs (industry or government), regardless of whether the fishery uses catch shares.” While it is correct that these challenges exist regardless of the presence or absence of the catch share program, the presence and requirements of the catch program have dramatic effect on the inter-relationship of the identified issues.

Finally, the Council is interested in NOAA expectations that might be implied based on the following statements in the draft policy: “. . . it is NOAA’s intent to encourage the careful consideration of catch shares” (page 3); “in order to ‘consider’ a catch share program, a Council should specify sufficient catch share design characteristics during the scoping and development phase of . . . amendment development such that stakeholders could understand potential . . . impacts. . . .” (page 3); “There is no requirement that every . . . amendment must include a *final* catch share alternative” (emphasis added, page 3), and “*Councils should periodically review all catch share and non-catch share programs*” (page 4). Specifically, is NOAA contemplating requiring that each Council initiate scoping for a catch share plan amendment for each of its fishery management plans and sectors within each fishery? We presume not, but rather this would be a matter left to the discretion of each Council. Please advise us if that is not the case.

The Council appreciates this opportunity to review and comment on the draft NOAA Catch Share Policy and looks forward to continued NMFS support in the consideration of West Coast catch share programs.

Sincerely,

David Ortmann  
Chair

JLS:rdd



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With respect to the provision of expertise, the Council notes that it is important that experts have both general and detailed knowledge of the fisheries in specific regions. To be of most value in

furthering the consideration of catch shares experts should develop a detailed working knowledge of local fisheries and management issues through extended assignments to regional offices. These individuals could both help tailor information and presentations to a particular region and be available to supplement regional staff during peak demand periods in the policy development, approval, and implementation process. There is a relatively long learning curve for fisheries in each region of the country and when peak demand periods are encountered it is often simply not possible to augment staff with anyone who can provide meaningful help within the needed time frame. A cadre of experts with regional knowledge might help address this problem while at the same time enhancing their own level of expertise.

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With respect to coordinating data collection, research, and monitoring, the draft policy goes beyond the area of what is needed for catch shares with respect to electronic reporting goals and observer program design. For these policy areas, introductory text notes that the activities outlined are intended to advance needs that will exist "regardless of whether a catch share program is the preferred management alternative" (page 15). Imbedded in the policy for electronic reporting (Section 4.1) is the possible resurrection of a fishery information system policy document from the late 1990s, about which West Coast agencies previously expressed strong concerns to both NMFS and Congress and which was never implemented for this coast. The Council notes that any system or standardization with a national scope should, if implemented, fit within state and regional management and data collection systems already in place on the Pacific Coast. Additionally, while there may be some value and advantage gained from the availability of programming and database templates, the Council also encourages NMFS to be open to the possibility of gaining efficiency through the privatization of some data collection and processing functions that might normally reside within the agency. Further, the Council expresses its concern that funding made available for catch share programs should not be diverted to development of data programs which to date have not been a priority for the effective execution of regional fishery management policies, except to the extent that such enhancements are needed for the catch share program. The Council also notes that the first paragraph on the observer program (Section 4.2) states that "The most challenging elements of designing an observer program are inter-related issues of coverage/sample size, costs and who pays for those costs (industry or government), regardless of whether the fishery uses catch

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The Council appreciates this opportunity to review and comment on the draft NOAA Catch Share Policy and looks forward to continued NMFS support in the consideration of West Coast catch share programs.

Sincerely,

David Ortmann  
Chairman

JLS:rdd

COUNCIL COMMENTS ON PROPOSED REVISIONS TO NATIONAL STANDARD 2  
GUIDELINES—SCIENTIFIC INFORMATION

The National Marine Fisheries Service (NMFS) is proposing revisions to its guidelines for National Standard 2 (NS2) to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). National Standard 2 states that “Conservation and management measures shall be based upon the best scientific information available” [MSA, Section 301(a)]. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) called for an improved use of science in decision making, a stronger role of the Scientific and Statistical Committee (SSC), and the establishment of optional peer review processes for scientific information. In response, on December 11, 2009, NMFS published a proposed rule in the *Federal Register* ([74 FR 65724], Agenda Item D.2.a, Attachment 1) to revise guidelines on criteria for best scientific information available (BSIA) and review processes to ensure its application to fishery management.

The proposed rule closely follows the recommendations of a 2004 report of the National Research Council of the National Academies regarding the evaluation of BSIA on the principles of relevance, inclusiveness, objectivity, transparency, timeliness, verification, validation and peer review. The proposed guidelines recognize the dynamic natural and social complexities in place in fisheries management and are not intended to be overly prescriptive or to prevent flexibility for regional differences.

The proposed rule also provides guidance on the role of the SSC and peer review in fishery management. As stated in MSA section 302(g)(1)(B), each SSC “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.” Further, MSA section 302(h)(6) states that “each Council shall ...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 [a peer review process].” Although the Council has a strong track record of following SSC advice on fishing level recommendations and the use of BSIA, and the Council and the SSC have relied heavily on the effective peer review inherent in the Stock Assessment Review (STAR) process, the Council and its advisory bodies will need to carefully consider the proposed guidelines to ensure the continued use of BSIA in Council decision making.

The SSC is scheduled to review the proposed rule on Friday, March 5 (see SSC Agenda for March 2010) and will likely provide detailed comments to the Council. Comments on the proposed rule are due on Thursday, March 11, 2010, so the Council will need to provide final comments on the proposed rule under this agenda item.

**Council Action:**

**Discuss and Approve Comments on the Proposed Rule.**

Reference Materials:

1. Agenda Item D.2.a, Attachment 1, Proposed rule regarding revised guidelines for National Standard 2 – Scientific Information (74 FR 65724).
2. Agenda Item D.2.b, Supplemental SSC Report.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Management Entities and Advisory Bodies
- c. Public Comment
- d. **Council Action:** Discuss and Approve Comments on the Proposed Rule

Mike Burner

PFMC  
02/18/10

effects on minority and/or low income populations from this proposed rule. EPA believes, however, that this action affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this proposed rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that

are, in general, equally distributed across geographical regions.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Imports, Methyl Chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: December 7, 2009.

**Lisa P. Jackson,**  
*Administrator.*

40 CFR part 82 is proposed to be amended as follows:

**PART 82—PROTECTION OF STRATOSPHERIC OZONE**

1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

**Subpart A—Production and Consumption Controls**

2. Section 82.8 is amended by revising the table in paragraph (a) to read as follows:

**§ 82.8 Grant of essential use allowances and critical use allowances.**

(a) \* \* \*

TABLE I—ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2010

Company	Chemical	2010 quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong .....	CFC–11 or CFC–12 or CFC–114 .....	30.0

\* \* \* \* \*

[FR Doc. E9–29556 Filed 12–10–09; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 600**

[Docket No. 0808041047–9114–02]

RIN 0648–AW62

**Magnuson-Stevens Act Provisions; National Standard 2—Scientific Information**

**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 2 (NS2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) regarding scientific information. This action is necessary to provide guidance on the use of best scientific information available (BSIA) for the effective conservation and management of the nation’s marine living resources. NMFS proposes to modify the existing NS2 guidelines on BSIA and establish new guidelines for scientific peer review to ensure the reliability, credibility, and integrity of the scientific

information used in fishery conservation and management measures. Further, NMFS is proposing to add language to the guidelines regarding the role of the Scientific and Statistical Committees (SSCs) of the Regional Fishery Management Councils (Councils), and the relationship of SSCs to the peer review process. The proposed NS2 guidelines will also clarify the content and purpose of the Stock Assessment and Fishery Evaluation (SAFE) Report and related documents. These actions are necessary to ensure the use of BSIA in the development of fishery management plans and plan amendments, as required by NS2 of the MSA. The intended effect of these actions is to ensure that scientific information, including its collection and analysis, has been validated through formal peer review or other appropriate review, is transparent, and is used appropriately by SSCs, Councils, and NMFS in the conservation and management of marine fisheries. These guidelines are designed to provide quality standards for the collection and provision of biological, ecological, economic, and sociological information to fishery managers, Councils, and the public, while recognizing regional differences in fisheries and their management.

**DATES:** Written comments must be received by March 11, 2010.

**ADDRESSES:** You may submit comments, identified by 0648–AW62, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic comments via the Federal

eRulemaking Portal <http://www.regulations.gov>.

- *Fax:* Attn: William Michaels 301–713–1875.

- *Mail:* William Michaels, NOAA Fisheries Service, Office of Science and Technology, F/ST4, 1315 East-West Highway, Silver Spring, MD 20910.

*Instructions:* No comments will be posted for public viewing until after the comment period has closed. 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 (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.

**FOR FURTHER INFORMATION CONTACT:** William Michaels, 301–713–2363 x136.

**SUPPLEMENTARY INFORMATION:**

**I. Overview of Proposed Revisions to the Guidelines for National Standard 2**

Section 301(a)(2) of the MSA specifies that fishery conservation and management measures shall be based upon the best scientific information available. Section 301(b) of the MSA states that “the Secretary (of Commerce) 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.” The existing national standard guidelines appear at 50 CFR 600.310 through 600.355. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006 included provisions to improve the use of science in decisionmaking, provide a stronger role for Councils’ SSCs, and establish an optional peer review process for scientific information used to advise Councils about conservation and management of fisheries. Therefore, NMFS is proposing revisions to the NS2 guidelines to address these MSA provisions and provide guidance and recommendations on peer review processes. NMFS published an advanced notice of proposed rulemaking (ANPR) in the **Federal Register** on September 18, 2008 (73 FR 54132). NMFS has carefully considered the public comments received in developing this proposed rule.

## II. Major Components of the Proposed Action

### A. Best Scientific Information Available (BSIA)

In 2004, the National Research Council (NRC) of the National Academies examined the application of the BSIA standard in the development of fishery conservation and management measures. The NRC recommended approaches to more uniformly apply the BSIA standard for current and future fishery management actions. The NRC recommendations are available in the NRC (2004) publication entitled “Improving the Use of the ‘Best Scientific Information Available’ Standard in Fisheries Management” (2004, <http://books.nap.edu/openbook.php>).

NMFS proposes that the 2004 NRC recommendations regarding the use of BSIA for fishery management should be incorporated to the extent possible in this proposed revision to the NS2 guidance. The ANPR comments provided a nearly unanimous recommendation that the NS2 guidelines be revised to incorporate the NRC recommendations, and that an overly prescriptive definition of BSIA should be avoided due to the dynamic nature of science. Therefore, as recommended by the NRC, the proposed NS2 guideline revisions are based on the following widely accepted principles for evaluating BSIA: Relevance, inclusiveness, objectivity, transparency, timeliness, verification, validation, and peer review of fishery

management information as appropriate. NMFS also agrees with the comments that the NS2 guidelines should not prescribe a static definition of BSIA because of the dynamic developments inherent in making improvements in scientific information for fishery management.

The availability of scientific information to inform fisheries management varies. Ecosystems and human societies are complex, interacting, dynamic systems that are impacted by multiple factors, including those within the scope of fisheries management. Some fisheries are well studied and have much information from long-term annual research surveys and comprehensive biological, social, and economic fisheries data collection programs. Other fisheries do not have the same breadth of information available. In light of this variability, the proposed NS2 guideline revisions elevate the importance of evaluating the uncertainty and associated risk of the scientific information used to help inform fishery management decisions.

Similarly, the time available to review scientific information and the importance of that information to fishery management decisions are also variable. As a general rule, substantial management alternatives considered by a Council should be peer reviewed, but in some cases, formal peer review may not be possible due to time and resource constraints. For example, Councils may request that a NMFS Science Center provide calculations or analyses used in the development and assessment of fishery management alternatives for area-based or time-based harvest limits. It may be impractical to submit that scientific information to a formal peer review due to time and resource constraints. However, the development of such scientific information should be in accordance with the principles of transparency and openness set forth in this proposed action.

The proposed NS2 guidelines provide guidance that is fundamental for the reliability and integrity of scientific information to be used by NMFS and the Councils to effectively manage and conserve our nation’s living marine resources.

### B. Peer Review Processes

Pursuant to its authority under the Information Quality Act (Pub. L. 106–554, Section 515), the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review (70 FR 2664, January 14, 2005) that establishes minimum peer review requirements for “influential scientific information” disseminated by

Federal agencies. As described in section II.C, a Council’s SSC is responsible for providing ongoing scientific advice to its Council for fishery management decisions. However, section 302(g)(1)(E) of the MSA provides for an optional peer review process: “(T)he 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.” If the Secretary and a Council establish such a process, it will be deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines. This proposed action provides guidance and national quality standards that are widely accepted, which should be followed in order to establish a peer review process per section 302(g)(1)(E). This action provides flexibility to maintain existing peer review processes established by the Secretary and Councils and also clarifies the role of the Councils’ SSCs in the scientific review process.

Section 302(g)(1)(E) peer review processes must be carefully designed to maximize the likelihood of an outcome that is objective, provides useful information, and meets the intent or scope of work of the particular process. This proposed action adopts many of the OMB peer review standards, including balance in the peer review process in terms of expertise, knowledge, and bias; lack of conflicts of interest; independence from the work being reviewed; and transparency of the process. A peer review may take many forms, including individual letter or written review or panel reviews. The amount of time and resources spent on any particular review may depend on the novelty and complexity of the scientific information being reviewed. Peer reviewers who are federal employees must comply with all applicable federal ethics requirements (available at: [http://www.usoge.gov/federal\\_employees.aspx](http://www.usoge.gov/federal_employees.aspx)). Potential reviewers who are not federal employees must be screened for conflicts of interest in accordance with the procedures set forth in the NOAA Policy on Conflicts of Interest for Peer Review subject to OMB’s Peer Review Bulletin (available at: [http://www.cio.noaa.gov/Policy\\_Programs/NOAA\\_PRB\\_COI\\_Policy\\_110606.html](http://www.cio.noaa.gov/Policy_Programs/NOAA_PRB_COI_Policy_110606.html)). The nature and scope of each peer review should be developed and defined prior to the selection of reviewers, to ensure reviewers with the

appropriate expertise and skills are selected.

Peer review processes established by the Secretary and a Council for that Council should not be duplicative and should focus on providing review for information that has not already undergone rigorous peer review. When the Secretary and a Council develop a peer review process per MSA section 302(g)(1)(E), the proposed NS2 guidelines provide that they must publish a notice and brief description of the process in the **Federal Register**, make a complete, detailed description of the process publicly available on the Council's Web site, and update it as necessary.

The proposed NS2 guidelines are not intended to replace or result in the duplication of effective peer review processes that have already been established by NMFS and the Councils, such as the Stock Assessment Review Committee (SARC), Southeast Data Assessment Review (SEDAR), Stock Assessment Review (STAR), and Western Pacific Stock Assessment Review (WPSAR). Section 302(g)(1)(E) provides that the peer review process established by the Secretary and a Council may include existing committees or panels. The aforementioned existing peer review processes (SARC, SEDAR, STAR and WPSAR) may qualify as 302(g)(1)(E) review processes, but the Secretary, in conjunction with the relevant Councils, has not yet made that determination. If such a determination is made, the Secretary will announce the decision in the **Federal Register**.

The impact of the proposed action on current Council peer review practices should be minimal since the proposed peer review standards are consistent with OMB's policy and presently incorporated in the existing peer review processes established by the Secretary and Councils. However, it may be necessary to refine those existing review processes in accordance with these proposed guidelines.

### *C. The Role of the SSC in the Review of Scientific Information*

The proposed NS2 guidelines address several roles of the SSC and/or SSC members: the SSC as scientific advisor to its Council; the SSC as a peer review panel; and SSC members' participation on other peer review panels. With regard to the advisory role, the proposed NS2 guidelines provide that the SSCs are the scientific advisory bodies to the Councils.

Section 302(g)(1)(A) of the MSA mandates that "Each Council shall establish, maintain, and appoint the

members of a scientific and statistical committee to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan." As stated in MSA section 302(g)(1)(B), each SSC "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."

Questions have arisen with regard to the role of the SSC and peer review process under MSA section 302(h)(6). That section states that "each Council shall \* \* \* 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)." A possible interpretation of this section is that a Council could not exceed the fishing level recommendation of either the SSC or peer review process; the lower of the two levels would be the limit. However, NMFS believes that section 302(h)(6) should not be interpreted so as to displace the SSC's role in providing advice and recommendations to the Council. While MSA provides for establishment of peer review processes, such processes are optional, and as noted above, MSA section 302(g)(1)(A)–(B) mandates the types of advice the SSC provides for fishery management decisions. Further, as a practical matter, it is not clear how often an SSC or peer review panel would be generating different fishing level recommendations. The purpose of a peer review process is to ensure the quality and credibility of scientific information, rather than providing a specific result, such as a fishing level recommendation.

To address the above issues, as reflected in section (b)(1)(ii) of the proposed NS2 guidelines, a peer review process per section 302(g)(1)(E) should be conducted early in the scientific evaluation process, in order to provide the SSC with a reasonable opportunity to review the peer review report and make recommendations to the Council. The proposed NS2 guidelines also state that the SSC may provide a recommendation to its Council that is inconsistent with the findings of a peer

review, in whole or in part, but in such cases, the SSC should prepare a report outlining the areas of disagreement and the rationale and information supporting the SSC's determination. The proposed guidelines also state that the SSC should not repeat the peer review process by conducting a subsequent detailed technical review.

With regard to the SSC conducting a peer review of scientific information, the proposed action provides that the SSC's review should be complementary to, and not duplicative of, existing peer review processes established by the Secretary and each Council. Council and SSC members are encouraged to learn about the details in assessments and peer reviews by attending working group and peer review meetings that occur before any formal SSC evaluations of the scientific information are made.

With regard to SSC members, the proposed NS2 guidelines state that an SSC member may participate in the peer review of scientific information when beneficial due to the expertise and regional knowledge of the SSC member, as long as the SSC member meets the peer review quality standards as described in this proposed action. For an SSC member to participate in a peer review, the proposed action requires screening the SSC member as well as all other potential reviewers for conflicts of interest pursuant to NOAA's Policy on Conflicts of Interest for Peer Reviews Subject to OMB's Peer Review Bulletin. That policy limits review of one's own work. Furthermore, this proposed action provides that the review and evaluation of scientific information by the Councils' SSCs should be transparent, and include the recording of minority viewpoints.

Many ANPR comments focused on the evaluation and recommendations of the SSCs on the scientific information for catch-level specifications and pertinent measures of uncertainty; however, these issues were addressed in the recent revisions to the MSA National Standard 1 (NS1) guidelines (74 FR 3178, January 16, 2009).

### *D. SAFE Reports*

The Secretary of Commerce (Secretary) has the responsibility for preparation and review of SAFE reports. The current NS2 guidelines state that the SAFE report is a document or set of documents that provides the Councils with a summary of scientific information, and contain specifications on the contents of SAFE reports. This proposed action would provide further clarification on the purpose and content of the SAFE report. Specifically, it provides guidance on the scientific

information that should be included in the SAFE to enable the SSC to fulfill its role in providing its Council with ongoing scientific advice for fishery management decisions.

ANPR comments suggested that a SAFE report should be a single report; however the proposed action maintains the existing NS2 guidelines language that describes the SAFE as a document or set of documents. This is necessary to provide the Secretary flexibility in the preparation of the SAFE report and accommodates differing regional practices with regard to the SAFE report. These proposed guidelines clarify that the SAFE report should include essential fish habitat (EFH) information, in accordance with the EFH provisions contained in § 600.815(a)(10), as a stand-alone chapter or clearly noted section.

The proposed NS2 guideline revisions contain provisions intended to facilitate the use of information in the SAFE reports and its availability to the Councils, NMFS, and public. For example, the proposed NS2 guideline revisions specify, as recommended by ANPR comments, that SAFE reports or similar documents must be made available by the Council or NMFS on a Web site accessible to the public, and that they include a summary of the information they contain and an index or table of contents of each component that comprises the SAFE report.

The proposed action would amend the existing NS2 guidelines by deleting the recommendation that the SAFE report contain information on safety for the fishery at issue. Safety of life at sea is now addressed in the National Standard 10 guidelines at § 600.355.

#### *E. Fishery Management Plan (FMP) Development*

This proposed action maintains the current NS2 guidelines language on FMP development, with only minor changes to the organization of the text.

### III. References Cited

National Research Council of the National Academies (NRC). 2004. Improving the use of the "best scientific information available" standard in fisheries management. The National Academies Press, Washington, DC 105 pp.; <http://www.nap.edu/openbook.php>.

NOAA Office of the Chief Information Officer & High Performance Computing and Communications. 2006. National Oceanic and Atmospheric Administration Policy on Conflicts of Interest for Peer Review Subject to OMB Peer Review Bulletin. NOAA Memorandum, November 6, 2006; <http://www.cio.noaa.gov/>

#### *Policy Programs/ NOAA\_PRB\_COI\_Policy\_110606.html.*

Office of Management and Budget (OMB). 2004. Final Information Quality Bulletin for Peer Review. Executive Office of the President, Office of Management and Budget, memorandum M-05-03; December 16, 2004.

### Classification

The NMFS Assistant Administrator has determined that this proposed action is consistent with the provisions of the MSA and other applicable law, subject to further consideration after public comment.

This proposed action has been determined to be not significant for purposes of Executive Order 12866.

NMFS has prepared a regulatory impact review of this action, which is available at: <http://www.nmfs.noaa.gov/msa2007/otherprovisions.html>. This analysis describes the economic impact this proposed action, if adopted, would have on small entities of the United States. NMFS invites the public to comment on this proposal and the supporting analysis.

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 NS2 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 2 (NS2) guidelines at 50 CFR 600.315.

The proposed revisions to the NS2 guidelines provide guidance on: use of "best scientific information available;" standards for discretionary peer review processes established by the regional Fishery Management Councils (Councils), in conjunction with the Secretary of Commerce; the role of the Councils' Scientific and Statistical Committees (SSCs) in the review and evaluation of scientific information; and requirements for Stock Assessment and Fishery Evaluation (SAFE) reports. Pursuant to section 301(b) of the MSA, the NS2 guidelines do not have the force and effect of law. Councils and the Secretary of Commerce would use the NS2 guidelines when developing or amending Fishery Management Plans (FMPs) and regulations to implement FMPs and FMP amendments. NMFS believes that revisions to the NS2 guidelines will assist the Councils and the Secretary in addressing new MSA requirements intended to strengthen the role of science in fishery management actions.

When NMFS takes fishery management actions, such actions typically could have impacts on vessel owners and operators and dealers. In this case, the proposed action would provide procedural guidance to the Secretary and Council regarding the development of fishery conservation and management measures. Because the NS2 guidelines are general guidance and focus on scientific information and review processes, they would not have any economic impacts on vessel owners, operators, dealers, or any other entities. The NS2 guidelines leave considerable discretion to the Councils and the Secretary to consider alternative ways to accomplish fishery conservation and management goals consistent with the NS, other provisions of the Magnuson-Stevens Act, and other applicable law. As the Councils and/or the Secretary develop FMPs, FMP amendments, or other regulatory actions, the actions will be accompanied by environmental, economic, and social analyses prepared pursuant to the Regulatory Flexibility Act, National Environmental Policy Act, and other statutes. Therefore, an IRFA has not been prepared for this action.

These proposed revisions to the NS2 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 NS2 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 action.

### List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 7, 2009.

**Steve A. Murawski,**

*Director of Scientific Programs and Chief Science Advisor, 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 600.315 is revised to read as follows:

#### **§ 600.315 National Standard 2—Scientific Information.**

(a) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(1) Fishery conservation and management require high quality and

timely biological, ecological, economic, and sociological scientific information to effectively conserve and manage living marine resources. Successful fishery management depends, in part, on the thorough analysis of this information, and the extent to which the information is applied for evaluating the impact that conservation and management measures will have on living marine resources, essential fish habitat (EFH), marine ecosystems, fisheries participants, fishing communities, and the nation.

(2) Scientific information that is used to inform decision making should include an evaluation of its uncertainty and identify gaps in the information. Management decisions should recognize the biological (e.g., overfishing), ecological, sociological, and economic (e.g., loss of fishery benefits) risks associated with the sources of uncertainty and gaps in the scientific information. Limitations in scientific information may not be used as a justification for delaying fishery management actions.

(3) Information from data-poor fisheries may require use of simpler assessment methods and greater use of proxies for quantities that can not be directly estimated, as compared to data-rich fisheries.

(4) Scientific information includes, but is not limited to, factual input, data, models, analyses, technical information, or scientific assessments. Scientific information can be conveyed through data compiled directly from surveys or sampling programs, or through models that are mathematical representations of reality constructed with primary data. The complexity of the model should not be the defining characteristic of its value; the data requirements and assumptions associated with a model should be commensurate with the resolution and accuracy of the available primary data.

(5) Science is a dynamic process, and new scientific findings constantly advance the state of knowledge. Best scientific information is, therefore, not static and entails developing and following a research plan with the following elements: Clear statement of objectives; conceptual model that provides the framework for interpreting results, making predictions, or testing hypotheses; study design with an explicit and standardized method of collecting data; documentation of methods, results, and conclusions; peer review, as appropriate; and communication of findings.

(6) Principles for evaluating best scientific information must be based on relevance, inclusiveness, objectivity,

transparency and openness, timeliness, verification and validation, and peer review, as appropriate.

(i) *Relevance*. Scientific information should be pertinent to the current questions or issues under consideration and should be representative of the fishery being managed. In addition to the information collected directly about the fishery being managed, relevant information may be available about the same species in other areas, or about related species. For example, use of proxies may be necessary in data-poor situations. Analysis of related stocks or species is a powerful tool for inferring the likely traits of stocks for which stock-specific data are unavailable or are not sufficient to produce reliable estimates. Also, if management measures similar to those being considered have been introduced in other regions and resulted in particular behavioral responses from participants or business decisions from industry, such social and economic information may be relevant.

(ii) *Inclusiveness*. Three aspects of inclusiveness should be considered when developing and evaluating best scientific information:

(A) The relevant range of scientific disciplines should be consulted to encompass the scope of potential impacts of the management decision.

(B) Alternative points of view should be acknowledged and addressed openly when there is a diversity of scientific thought.

(C) Relevant local and traditional knowledge should be acknowledged (i.e., fishermen's empirical knowledge about the behavior and distribution of fish stocks). To the extent possible, an effort should be made to reconcile scientific information with local and traditional knowledge.

(iii) *Objectivity*. Scientific information should use standards for objectivity that prevent non-scientific considerations from impacting on its scientific integrity. The objectivity standards should ensure that information is accurate, reliable, and unbiased, and that information products are presented in an accurate, clear, complete, and balanced manner.

(iv) *Transparency and openness*.—(A) The Magnuson-Stevens Act provides broad public and stakeholder access to the fishery conservation and management process, including access to the scientific information upon which the process and management measures are based. Subject to the Magnuson-Stevens Act confidentiality requirements, the public should have access to each stage in the development of scientific information, from data

collection, to analytical modeling, to decision making. Public comment should be solicited at appropriate times during the development of scientific information. Communication with the public should be structured to foster understanding of the scientific process.

(B) Scientific information products should describe data collection methods, report sources of uncertainty or statistical error, and acknowledge other data limitations. Such products should explain any decisions to exclude data from analysis. Scientific products should identify major assumptions and uncertainties of analytical models. Finally, such products should openly acknowledge gaps in scientific information.

(v) *Timeliness*.—(A) Sufficient time should be allotted to analyze recently acquired data to ensure its reliability and that it has been audited and subjected to appropriate review before it is used to inform management decisions. For those data that require being updated on a regular basis, the temporal gap between information collection and management implementation should be as short as possible, subject to regulatory constraints, and should be explicitly considered when developing conservation and management measures. In particular, late submission of scientific information to the Council process should be avoided if the information has circumvented the review process.

(B) Timeliness may also mean that in some cases, results of important studies or monitoring programs must be brought forward before a study is complete. Uncertainties and risks that arise from an incomplete study should be acknowledged, but interim results may be better than no results to help inform a management decision. Management decisions should not be delayed due to data limitations or the promise of future data collection or analysis.

(C) Historical information should be evaluated for its relevance, to inform the current situation. For example, species' life history characteristics may not change over time, and so remain relevant. Other time-series data (e.g., abundance, catch statistics, market and trade trends) provide context for changes in fish populations, fishery participation, and effort, and therefore provide valuable information to inform current management decisions.

(vi) *Verification and validation*.—Methods used to produce scientific information should be verified and validated to the extent possible.

(A) *Verification* means that the data and procedures used to produce the

scientific information are documented in sufficient detail to allow reproduction of the analysis by others with an acceptable degree of precision. External reviewers of scientific information require this level of documentation to conduct a thorough review.

(B) *Validation* refers to the testing of analytical methods to ensure that they perform as intended. Validation should include whether the analytical method has been programmed correctly in the computer software, the precision of the estimates is adequate, model estimates are unbiased, and the estimates are robust to model assumptions. Models should be tested using simulated data from a population with known properties to evaluate how well the models estimate those characteristics. The concept of validation using simulation testing should be used, to the extent possible, to evaluate how well a management strategy meets management objectives.

(vii) *Peer review*. Peer review is a process used to ensure that the quality and credibility of scientific information and scientific methods meet the standards of the scientific and technical community. Peer review helps ensure objectivity, reliability, and integrity of scientific information. The peer review process is an organized method that uses peer scientists with appropriate and relevant expertise to evaluate scientific information.

(viii) To the extent practicable, substantial fishery management alternatives considered by a Council should be peer reviewed. Factors to consider when determining whether to conduct a peer review and if so, the appropriate level of review, include the novelty and complexity of the scientific information to be reviewed, the level of previous review and the importance of the information to be reviewed to the decision making process. If formal peer review is not practicable due to time or resource constraints, the development and analysis of scientific information used in or in support of fishery management actions should be as transparent as possible, in accordance with paragraph (a)(6)(iv) of this section.

(b) *Peer review process*. The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise about the conservation and management of the fishery (Magnuson-Stevens Act section 302(g)(1)(E)). A peer review process is not a substitute for an SSC and should work in conjunction with the SSC (see § 600.310(b)(2)(v)(C)). This section provides guidance and standards that should be followed in

order to establish a peer review process per section 302(g)(1)(E).

(1) The objective or scope of the peer review, the nature of the scientific information to be reviewed, and timing of the review should be considered when selecting the type of peer review to be used. The process established by the Secretary and Council for each Council should focus on providing review for information that has not yet undergone rigorous peer review, but that must be peer reviewed in order to provide reliable, high quality scientific advice for fishery conservation and management. Duplication of previously conducted peer review should be avoided.

(i) *Form of process*. The peer review process may include or consist of existing Council committees or panels if they meet the standards identified herein. The Secretary and Council have discretion to determine the appropriate peer review process for a specific information product. A peer review can take many forms, including individual letter or written reviews, and panel reviews.

(ii) *Timing*. The peer review should be conducted early in the process of producing scientific information or a work product, to the extent practicable. The timing will depend in part on the scope of the review. For instance, the peer review of a new or novel method or model should be conducted before there is an investment of time and resources in implementing the model and interpreting the results. The results of this type of peer review may contribute to improvements in the model or assessment.

(iii) *Scope of work*. The scope of work or charge (sometimes called the terms of reference) of any peer review should be determined in advance of the selection of reviewers. The scope of work contains the objective of the specific advice being sought. The scope of work should be carefully designed, with specific technical questions to guide the peer review process; it should ask peer reviewers to ensure that scientific uncertainties are clearly identified and characterized, it should allow peer reviewers the opportunity to offer a broad evaluation of the overall scientific or technical product under review, and it must not change during the course of the peer review. The scope of work may not request reviewers to provide advice on scientific policy (e.g., amount of uncertainty that is acceptable or amount of precaution used in an analysis). Such policy considerations are in the purview of the Secretary and the Councils.

(2) *Peer reviewer selection*. The selection of participants in a peer

review must be based on expertise, independence, and a balance of viewpoints, and be free of conflicts of interest.

(i) *Expertise and balance*. Peer reviewers must be selected based on scientific expertise and experience relevant to the disciplines of subject matter to be reviewed, including a balance in perspectives. The group of reviewers that constitute the peer review should have sufficiently broad and diverse expertise to represent the range of relevant scientific and technical perspectives to complete the objectives of the peer review.

(ii) *Conflict of interest*. Peer reviewers who are federal employees must comply with all applicable federal ethics requirements. Peer reviewers who are not federal employees must comply with the following provisions. Peer reviewers must not have any real or perceived conflicts of interest with the scientific information, subject matter, or work product under review, or any aspect of the statement of work for the peer review. For purposes of this section, a conflict of interest is any financial or other interest which conflicts with the service of the individual on a review panel because it:

(A) Could significantly impair the reviewer's objectivity; or

(B) Could create an unfair competitive advantage for a person or organization.

(C) Except for those situations in which a conflict of interest is unavoidable, and the conflict is promptly and publicly disclosed, no individual can be appointed to a review panel if that individual has a conflict of interest that is relevant to the functions to be performed. Conflicts of interest include, but are not limited to, the personal financial interests and investments, employer affiliations, and consulting arrangements, grants, or contracts of the individual and of others with whom the individual has substantial common financial interests, if these interests are relevant to the functions to be performed. Potential reviewers must be screened for conflicts of interest in accordance with the procedures set forth in the NOAA Policy on Conflicts of Interest for Peer Review subject to OMB's Peer Review Bulletin.

(iii) *Independence*. Peer reviewers must not have participated in the development of the work product or scientific information under review. For peer review of some work products or scientific information, a greater degree of independence may be necessary to assure credibility of the peer review process; reviewers should not be employed by the Council or entity that produced or utilizes the product for

management decisions. Peer review responsibilities should rotate across the available pool of qualified reviewers or among the members on a standing peer review panel, recognizing that, in some cases, repeated service by the same reviewer may be needed because of essential expertise.

(3) *Transparency.* A transparent process is one that allows the public full and open access to peer review panel meetings, background documents, and reports, subject to Magnuson-Stevens Act confidentiality requirements. The evaluation and review of scientific information by the Councils and their advisory panels must also be publicly transparent in accordance with the Councils' requirements for notifying the public of meetings. The date, time, location, and terms of reference (scope and objectives) of the peer review should be publicly announced 14 days before the review to allow public comments during meetings. Background documents should be available for public review in a timely manner prior to meetings. Peer review reports describing the scope and objectives of the review, findings in accordance with each objective, and conclusions should be publicly available. Names and organizational affiliations of reviewers also should be publicly available prior to review.

(4) *Publication of the peer review process.* The Secretary will announce the establishment of a peer review process under Magnuson-Stevens Act section 302(g)(1)(E) in the **Federal Register** along with a brief description of the process. In addition, detailed information on such processes will be made publicly available on the Council's Web site, and updated as necessary.

(c) *SSC scientific advice to the Council.* Each scientific and statistical committee 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 (Magnuson-Stevens Act 302(g)(1)(B)).

(1) SSC scientific advice and recommendations to the Councils based on review and evaluation of scientific information must meet the guidelines of best scientific information available as described in paragraph (a) of this section. SSCs may conduct peer reviews, participate in peer reviews, or evaluate peer reviews to provide clear

scientific advice to the Council. Such scientific advice should attempt to resolve conflicting scientific information, so that the Council will not be forced to engage in debate on technical merits. Debate and evaluation of scientific information should be part of the role of the SSC.

(2) SSC members may participate in a peer review when such participation is beneficial to the peer review due to the expertise and institutional memory of that SSC member, or beneficial to the Council's advisory body by allowing that SSC member to make a more informed evaluation of the scientific information. Participation of a SSC member in a peer review should not impair the ability of that SSC member to accomplish the advisory responsibilities to the Council.

(3) If an SSC as a body, or individual members of an SSC, conducts or participates in a peer review, those SSC members must meet the peer reviewer selection criteria as described in paragraph (b)(2) of this section. These guidelines require separate consideration from those of § 600.235, Financial Disclosure for Councils and Council committees. Additionally, when the SSC as a body is conducting a peer review, it should strive for consensus and meet the transparency guidelines for best scientific information available and peer reviews as described in paragraphs (a)(6)(iv) and (b)(3) of this section. If consensus cannot be reached, minority viewpoints should be recorded.

(4) The SSC's evaluation of a peer review conducted by a body other than the SSC should be linked to the extent and quality of peer review that has already taken place. For Councils with extensive and detailed peer review processes (e.g., a process established pursuant to Magnuson-Stevens Act section 302(g)(1)(E)), the evaluation by the SSC of the peer reviewed information should not repeat the previously conducted and detailed technical peer review. However, SSCs must maintain their role as advisors to the Council about scientific information that comes from an external peer review process. Therefore, the peer review of scientific information used to advise the Council, including a peer review process established by the Secretary and the Council under Magnuson-Stevens Act section 302(g)(1)(E), should be conducted early in the scientific evaluation process in order to provide the SSC with reasonable opportunity to review the peer review report and make recommendations to the Council as required under Magnuson-Stevens Act section 302(g)(1)(B).

(5) If the evaluation of scientific information by the SSC is inconsistent with the findings or conclusions of a peer review, in whole or in part, the SSC should prepare a report outlining the areas of disagreement, and the rationale and information used by the SSC for making its determination.

(6) Annual catch limits (ACLs) may not exceed the SSC's recommendations for fishing levels (Magnuson-Stevens Act section 302(h)(6)). The SSC recommendation that is most relevant to ACLs is acceptable biological catch (ABC), as both ACL and ABC are levels of annual catch (see § 600.310(b)(2)(v)(D)). Any peer review related to such recommendations should be conducted early in the process as described in paragraph (c)(4) of this section. The SSC should resolve differences between its recommendations and any relevant peer review recommendations per paragraph (c)(5) of this section.

(d) *SAFE Report.* The term SAFE (Stock Assessment and Fishery Evaluation) report, as used in this section, refers to a public document or a set of related public documents, that provides Councils with a summary of scientific information concerning the most recent biological condition of stocks, stock complexes, and marine ecosystems in the fishery management unit (FMU), essential fish habitat (EFH), and the social and economic condition of the recreational and commercial fishing interests, fishing communities, and the fish processing industries. It summarizes, on a periodic basis, the best scientific information available concerning the past, present, and possible future condition of the stocks, EFH, marine ecosystems, and fisheries being managed under Federal regulation.

(1) The Secretary has the responsibility to assure that SAFE reports are prepared and updated or supplemented as necessary whenever new information is available that requires a revision to the status determination criteria (SDC) or is likely to affect the overfishing level (OFL), optimum yield, or ABC values (§ 600.310(c)). The SAFE report and any comments or reports from the SSC must be available to the Council for making its management decisions for each FMP to ensure that the best scientific information available is being used. The Secretary or Councils may utilize any combination of personnel from Council, state, Federal, university, or other sources to acquire and analyze data and produce the SAFE report.

(2) The SAFE report provides information to the Councils and the

Secretary for determining annual catch limits (§ 600.310(f)(5)) for each stock in the fishery; documenting significant trends or changes in the resource, marine ecosystems, and fishery over time; implementing required EFH provisions (§ 600.815(a)(10)); and assessing the relative success of existing state and Federal fishery management programs. In addition, the SAFE report may be used to update or expand previous environmental and regulatory impact documents and ecosystem descriptions.

(3) Each SAFE report should contain the following:

(i) A description of the SDC (e.g., maximum fishing mortality rate threshold and minimum stock size threshold for each stock or stock complex in the fishery) (§ 600.310(e)(2)), along with information to determine:

(A) Whether overfishing is occurring with respect to any stock or stock complex, whether any stock or stock complex is overfished, whether the rate or level of fishing mortality applied to any stock or stock complex is approaching the maximum fishing mortality threshold, and whether the size of any stock or stock complex is approaching the minimum stock size threshold; and

(B) Any management measures necessary to rebuild an overfished stock or stock complex (if any) in the fishery to a level consistent with producing the MSY in that fishery.

(ii) Information on which to base catch specifications, including the most recent stock assessment documents and associated peer review reports, and recommendations and reports from the Council's SSC on OFL and ABC, preventing overfishing, and achieving rebuilding targets. Documentation of the data collection, estimation methods, and consideration of uncertainty in

formulating catch specification recommendations should be included (see also § 600.310(f)(2)–(4)).

(iii) Information on sources of fishing mortality (both landed and discarded), including commercial and recreational catch and bycatch in other fisheries and description of data collection and estimation methods used to quantify total catch mortality, as required by National Standard 1 (§ 600.310(i)).

(iv) Information on bycatch of non-target species for each fishery.

(v) Review and evaluations of EFH information in accordance with the EFH provisions (§ 600.815(a)(10)), as a standalone chapter or in a clearly noted section.

(vi) Pertinent economic, social, community, and ecological information for assessing the success of management measures or the achievement of objectives of each FMP.

(4) To facilitate the use of the information in the SAFE report, and its availability to the Council, NMFS, and the public:

(i) The SAFE report should contain, or be supplemented by, a summary of the information and an index or table of contents to the components of the report.

(ii) The SAFE report or compilation of documents that comprise the SAFE report and index must be made available by the Council or NMFS on a readily accessible Web site.

(e) *FMP development.*—(1) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again, unless the information

indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

(2) The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 600.320(d)(2) and 600.340(b)).

(3) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within state waters, as well as in the EEZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

(4) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource, marine ecosystem, the fishery, and fishing communities.

(5) The information submitted by various data suppliers should be comparable and compatible, to the maximum extent possible.

(6) FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures consistent with the conditions described in paragraph (d) of this section (SAFE reports). Paragraphs (e)(1) through (e)(5) of this section apply equally to FMPs and FMP amendments.

[FR Doc. E9–29589 Filed 12–10–09; 8:45 am]

BILLING CODE 3510–22–P

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON COUNCIL COMMENTS ON  
PROPOSED REVISIONS TO NATIONAL STANDARD 2 GUIDELINES – SCIENTIFIC  
INFORMATION

The National Marine Fisheries Service is seeking comment on proposed changes to the guidelines on National Standard 2 – Scientific Information of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The Scientific and Statistical Committee (SSC) has emphasized the importance of good science, peer review and evaluation of uncertainty in assessment and management, and generally supports the proposed guidelines and the definitions they provide. Updates to our Terms of Reference (TOR) already reflect the proposed guidelines; for example, we identify and eliminate potential conflicts of interest in the review process. However, we have some concern that ambiguous language in the provision could unintentionally constrain rigorous procedures for review and evaluation of scientific information. Specifically, the recommended restrictions on SSC re-evaluation of peer-review reports seem counter to our current framework for assessment review:

“the SSC should not repeat the peer review process by conducting a subsequent detailed technical review” (pg. 65726, third column)

Our existing process is hierarchical; our TOR specifies SSC leadership and participation in Stock Assessment Review (STAR) Panels, and when necessary, STAR Panel work is re-evaluated in a “mop-up” panel meeting with external peer review. The SSC wants to maintain flexibility to deal with situations which may require additional analysis, for example, following review of the STAR reports by the full SSC. This procedure is complementary, not duplicative, of the STAR Panel process, and assures broad identification of the “best available science.” We recommend deletion or clarification of the referenced language in the proposed rule that may restrict additional SSC evaluation.

PFMC  
03/06/10

## LEGISLATIVE MATTERS

The Pacific Fishery Management Council's (Council's) Legislative Committee (Committee) is scheduled to meet Saturday, March 6th at 9:00 a.m. to review a variety of legislative matters of interest to the Council. Council staff has provided a summary of legislation introduced in the 111<sup>th</sup> U.S. Congress of potential interest to the Council (Agenda Item D.3.a, Attachment 1).

Among the bills to be discussed is H.R. 1080, the *Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2009* and two corresponding bills in the U.S. Senate (S.2870- and S.2871). These bills would strengthen enforcement mechanisms to stop illegal, unreported, and unregulated fishing and would also amend existing legislation by implementing technical corrections regarding U.S. representation to the Western and Central Pacific Fisheries Commission and the process specified under the U.S./Canada agreement on Pacific Whiting. In an April 29, 2009 letter from Council Executive Director, Dr. Donald McIsaac to U.S. Senator Maria Cantwell of Washington (Agenda Item D.3.a, Attachment 2), the Council and the Committee supported the corrections in H.R. 1080.

The Committee may also discuss two other matters on the Council agenda. First, under Agenda Item D.1, the Council is scheduled to hear an update from the National Oceanic and Atmospheric Administration regarding activities of the Ocean Policy Task Force and the Catch Shares Task Force. It is not clear if the Task Force reports stimulate legislation or Executive Orders. The Washington State Legislature has introduced legislation (SSB6350 and HB 3078, Agenda Item D.3.a, Attachment 3) regarding marine special planning, a matter addressed by the Ocean Policy Task Force. Secondly, under Agenda Item D.2 the Council will review revisions to National Marine Fisheries Service guidance on implementing National Standard 2 regarding scientific information in support of fishery management. These revisions are in response to provisions in the 2006 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act and the 2004 recommendations of the National Research Council.

### **Council Action:**

**Consider the recommendations of the Legislative Committee.**

### **Reference Materials:**

1. Agenda Item D.3.a, Attachment 1: Staff Summary of Federal Legislation in the 111th U.S. Congress of Particular Interest to the Pacific Fishery Management Council.
2. Agenda Item D.3.a, Attachment 2: April 29, 2009 letter from Council Executive Director, Dr. Donald McIsaac to U.S. Senator Maria Cantwell of Washington.
3. Agenda Item D.3.a, Attachment 3: Substitute Senate Bill 6350.
4. Agenda Item D.3.b, Supplemental Legislative Committee Report.

Agenda Order:

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

Mike Burner  
Dave Hanson

PFMC  
02/22/10

STAFF SUMMARY OF FEDERAL LEGISLATION IN THE 111<sup>TH</sup> U.S. CONGRESS OF  
PARTICULAR INTEREST TO THE PACIFIC FISHERY MANAGEMENT COUNCIL

This summary is intended as a general overview for discussion purposes. Full text of these bills, additional summary and background information, and current status can be found by entering the bill number in the search engine at the THOMAS web site of the Library of Congress (<http://thomas.loc.gov>). Portions of this report are derived from summaries provided by the Congressional Research Service of the Library of Congress.

**H.R. 1080 - Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2009** *To strengthen enforcement mechanisms to stop illegal, unreported, and unregulated fishing, and for other purposes.*

Introduced February 13, 2009 by Congresswoman Bordallo, Guam. Passed the U.S. House and was referred to the U.S. Senate in September, 2009 (see **S.2871** below).

Amends specified Acts (including the Magnuson-Stevens Fishery Conservation and Management Act [MSA], the North Pacific Anadromous Stocks Act, the Pacific Salmon Treaty Act of 1985, and the North Pacific Halibut Act of 1982) related to commercial fishing and marine resources, to provide for increased cooperation, as well as increased penalties for violations of such acts and increased enforcement and inspection authorities relating to driftnet fishing, illegal, unreported, or unregulated fishing, and bycatch of a protected living marine resource.

Three “other purposes” under H.R. 1080 directly related to Council activity, H.R. 1080:

1. Corrects confusing language in the Western and Central Pacific Fisheries Commission Implementation Act (WCPFCIA) to clarify that the U.S. shall be represented by five U.S. Commissioners, “one of whom shall be a member of the Western Pacific Fishery Management Council, and one of whom shall be a member of the Pacific Fishery Management Council.”
2. Removes unintentional ethics and conflict-of-interest restrictions on U.S. representatives as currently specified in the WCPFCIA and the Pacific Whiting Act of 2006. Under the proposed amendments in H.R.1080, individuals appointed to serve the U.S. through either the Western and Central Pacific Fisheries Commission (WCPFC) or the U.S./Canada Pacific Whiting Agreement “shall not be considered Federal employees except for purposes of injury compensation and tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.”
3. Amends the Pacific Whiting Act of 2006 to specify that the U.S. shall appoint no more than two rather than six scientific experts to the joint technical committee under the U.S./Canada Pacific Whiting Agreement.
4. MSA Section 307 (1)(O) is amended to read “It is unlawful - to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation; or any treaty

or in contravention of any binding conservation measure adopted by an international agreement or organization to which the United States is a party'.”

**S. 2870 - International Fisheries Stewardship and Enforcement Act.** *A bill to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes. Would also implement the Antigua Convention and make the technical corrections listed above as items 1 – 3 under H.R.1080 for the WCPFCIA and the Pacific Whiting Act of 2006.*

Introduced December 10, 2009 by Senator Inouye, Hawaii and referred to the U.S. Senate Committee on Commerce, Science, and Transportation.

- **TITLE IV – Implementation of the Antigua Convention.** The Inter-American Tropical Tuna Commission (IATTC) adopted the Convention for the Strengthening of the [IATTC] (Antigua Convention) in June of 2003 which cannot be fully implemented without U.S. ratification and implementing Federal legislation. S.2870 would implement the Antigua Convention by amending the Tuna Conventions Act of 1950 to, among other things, strengthen enforcement, reduce bycatch, and to specify U.S. representation to the IATTC and its advisory groups. Under this bill, five U.S. Commissioners would be appointed by the President “*among individuals who are knowledgeable or experienced concerning highly migratory fish stocks in the eastern tropical Pacific Ocean, one of whom shall be an officer or employee of the Department of Commerce, one of whom shall be the chairman or a member of the Western Pacific Fishery Management Council, and one of whom shall be the chairman or a member of the Pacific Fishery Management Council. Not more than 2 Commissioners may be appointed who reside in a State other than a State whose vessels maintain a substantial fishery in the area of the Convention.*” Additionally, the IATTC General Advisory Committee would include “*the chair of the Pacific Fishery Management Council's Advisory Subpanel for Highly Migratory Fisheries.*” Members of the General Advisory Committee would receive per diem but no pay and would not have a conflict of interest as they “*shall not be considered Federal employees except for purposes of injury compensation and tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code*”. Regarding the IATTC's Scientific Advisory Committee the bill states that, “*The Secretary [of Commerce], in consultation with the Secretary of State, shall appoint a Scientific Advisory Subcommittee of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations.*”
- **Committee on Scientific Cooperation for the Pacific Salmon Agreement.** Section 11 of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3640) is amended by inserting the following:

*“(c) SCIENTIFIC COOPERATION COMMITTEE- Members of the Committee on Scientific Cooperation who are not State or Federal employees shall receive compensation at a rate equivalent to the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, when engaged in actual performance of duties for the Commission.’.*

**S. 2871 - A bill to make technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act, and for other purposes.** *Only makes the technical corrections listed above as items 1 – 3 under H.R.1080 for the WCPFCIA and the Pacific Whiting Act of 2006.*

Introduced December 10, 2009 by Senator Inouye (HI) and referred to the U.S. Senate Committee on Commerce, Science, and Transportation.

**H.R. 860 - Coral Reef Conservation Amendments Act of 2009,** *To reauthorize the Coral Reef Conservation Act of 2000, and for other purposes.*

Introduced February 4, 2009 by Congresswoman Bordallo, Guam. Referred to the Subcommittee on Insular Affairs, Oceans and Wildlife. Passed the U.S. House in September of 2009 and was referred to the U.S. Senate. Introduced in the U.S. Senate by Senator Inouye, Hawaii, as **S. 2859** on December 9, 2010 and was ordered to be reported without amendment favorably on December 17, 2009 by the Committee on Commerce, Science, and Transportation.

Amends the Coral Reef Conservation Act of 2000 to extend the award of remaining coral reef conservation program grant funds to appropriate projects, including monitoring and assessment, research, pollution reduction, education, and technical support. Authorizes actions to minimize injury to a coral reef or loss of an ecosystem function from vessel impacts, derelict fishing gear, vessel anchors and anchor chains, and unforeseen or disaster-related circumstances as a result of human activities and to stabilize, repair, or restore the reef, including vessel removal and emergency stabilization of the vessel or reef. Deems specified terms (such as "sanctuary resources" and "national marine sanctuary") to include any coral reef that is subject to the jurisdiction of the United States or (subject to state consent) any state, regardless of whether the reef is in a national marine sanctuary.

**H.R. 14 and S.173 – Ocean Acidification,** *To provide for ocean acidification research and monitoring*

Introduced January 8, 2009 in the U.S. Senate by Senator Lautenberg, Florida. Introduced in the U.S. House of Representatives January 6, 2009 by Congressman Baird, Washington. Referred to the House Committee on Science and Technology. No new Congressional action as of February 17, 2010.

Defines "ocean acidification," for this Act, as the decrease in pH of the Earth's oceans and changes in ocean chemistry caused by chemical inputs from the atmosphere, including carbon dioxide. Requires the Joint Subcommittee on Ocean Science and Technology of the National Science and Technology Council to develop a strategic plan for federal ocean acidification research and monitoring that provides for an assessment of ocean acidification impacts on marine organisms and ecosystems and the development of adaptation and mitigation strategies to conserve marine organisms and ecosystems. Directs the Secretary of Commerce to conduct research and monitoring and authorizes the Secretary to establish an ocean acidification program in the National Oceanic and Atmospheric Administration (NOAA) consistent with the strategic research plan.

**H.R. 81 – Shark Conservation Act of 2009**, *To amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.*

Introduced January 6, 2009 by Congresswoman Bordallo, Guam. Passed the U.S. House of Representatives on March 2, 2009. Referred to the U.S. Senate Committee on Commerce, Science, and Transportation on March 3, 2009. Introduced in the U.S. Senate by Senator Kerry, Massachusetts as **S.850** where it was favorably reviewed by the Committee on Commerce, Science, and Transportation. As of February 4, 2010, the bill is awaiting consideration by the full Senate.

Amends the High Seas Driftnet Fishing Moratorium Protection Act to direct the Secretary of Commerce to list a nation in the biennial report on international compliance if the nation's fishing vessels are or have been engaged in fishing activities that target or incidentally catch sharks and the nation has not adopted a shark conservation program that is comparable, taking into account different conditions, to that of the United States, including measures to prohibit removal any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea.

Amends the Magnuson-Stevens Fishery Conservation and Management Act to revise provisions prohibiting the removal of shark fins to make it a prohibited act to: (1) remove any shark fin (including the tail) at sea; (2) have a fin aboard a fishing vessel unless the fin is naturally attached to the carcass; (3) transfer a fin from one vessel to another or receive a fin unless it is naturally attached; or (4) land a fin that is not naturally attached to a carcass or land a carcass without fins naturally attached. Revises the current rebuttable presumption provision concerning shark fins on fishing vessels to create a rebuttable presumption that, if any shark fin (including the tail) is aboard a non-fishing vessel without being naturally attached, the fin was transferred from a fishing vessel in violation.

**H.R. 843 – Amendment to the Marine Mammal Act of 1972**, *To repeal the long-term goal for reducing to zero the incidental mortality and serious injury of marine mammals in commercial fishing operations, and to modify the goal of take reduction plans for reducing such takings*

Introduced February 3, 2009 in the U.S. House of Representatives by Congressman Young, Alaska. Referred to the Subcommittee on Insular Affairs, Oceans and Wildlife. No new Congressional action as of February 17, 2010.

Amends the Marine Mammal Protection Act of 1972 to repeal the long-term goal of reducing to zero the incidental mortality and serious injury of marine mammals in commercial fishing operations. Makes reduction of such incidental mortality and serious injury (but not to any specified percentage) the long-term goal. Requiring that commercial fishermen achieve a zero mortality rate goal for a species or population stock of marine mammals that is equal to or less than 10 percent of the potential biological removal of a given marine mammal species or population stock is unnecessary to achieve that Act's goal of maintaining species and stocks at their optimum sustainable population and penalizes commercial fishermen. Species and populations stocks of marine mammal that have reached historic levels are impeding the recovery of endangered species and threatened species through predation or competition in the

ecosystem. The fundamental principles of ecosystem management are defeated by giving one species a preeminent position in the ecosystem through imposition of a zero mortality rate goal. All persons that interact with marine mammals should seek to reduce and eliminate marine mammal injuries and mortalities through the use of the best equipment and techniques that are economically and technologically feasible.

**S. 532 - Commercial Fishermen Safety Act of 2009**, *A bill to amend the Internal Revenue Code of 1986 to provide a business credit against income for the purchase of fishing safety equipment. Allows commercial fishermen a business-related tax credit for up to 75% of the cost of certain fishing safety equipment. Limits the annual amount of such credit to \$1,500.*

Introduced March 5, 2009 in the U.S. Senate by Senator Collins, Maine. Referred to the Committee on Finance. No new Congressional action as of February 17, 2010.

Another tax incentive bill with fisheries interest is **H.R. 115** that amends the Internal Revenue Code to provide for tax-exempt qualified small issue bonds to finance fish processing facilities. The bill was introduced in the U.S. House in January of 2009 with no Congressional activity reported since.

**Legislation reintroduced in the 111<sup>th</sup> Congress that was the subject of Council and Legislative Committee comments in the 110th Congress**

**S.1255 and H.R. 1584 - Flexibility in Rebuilding American Fisheries Act of 2009,** *Amends the MSA to require fishery management plans, amendments, or regulations for overfished fisheries to specify a time period for ending overfishing and rebuilding the fishery that is as short as practicable (under current law, as short as possible). Modifies the exceptions to the requirement that such period not exceed ten years. Requires consideration, in evaluating progress to end overfishing and rebuild overfished stocks, of factors other than commercial and recreational fishing. Requires, when the Secretary of Commerce extends the period under specified provisions, that the maximum rebuilding time not exceed the sum of the initial ten-year period, the expected time to rebuild the stock absent any fishing mortality and under prevailing environmental conditions, and the mean generation time of the stock.*

**H.R.1584** introduced March 32, 2009, 2009 in the U.S. House of Representatives by Congressman Pallone, New Jersey. Referred to the Subcommittee on Insular Affairs, Oceans and Wildlife. No new Congressional action as of February 17, 2010.

**S.1255** introduced June 11, 2009, 2009 in the U.S. House of Representatives by Senator Schumer, New York. Referred to the Committee on Commerce, Science, and Transportation. No new Congressional action as of February 17, 2010.

**H.R. 21 - Ocean Conservation, Education, and National Strategy for the 21st Century Act,** *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*

Introduced January 6, 2009 in the U.S. House of Representatives by Congressman Farr, California. Referred to the Subcommittee on Insular Affairs, Oceans and Wildlife. No new Congressional action as of February 17, 2010.

**H.R. 223 - Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act,** *To expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, and for other purposes.*

Introduced January 6, 2009 in the U.S. House of Representatives by Congresswoman Woolsey, California. Referred to the Subcommittee on Insular Affairs, Oceans and Wildlife. No new Congressional action as of February 17, 2010.

PFMC  
02/17/10



## Pacific Fishery Management Council

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Donald K. Hansen, Chairman Donald O. McIsaac, Executive Director

April 29, 2009

Senator Maria Cantwell  
Chair, Senate Committee on Commerce, Science and Transportation  
511 Dirksen Senate Office Building  
Washington, DC 20510

Subject: Alternative Legislative Language Provisions for the Western and Central Pacific Fisheries Commission and Pacific Whiting Treaty

Dear Senator Cantwell,

Thank you for your staff's request for a Pacific Fishery Management Council (Pacific Council) perspective on the subject matter. At its April 2009 meeting, the Pacific Council directed me to submit the following comments.

The Western and Central Pacific Fisheries Commission (WCPFC) Advisory Committee is being severely hampered in conducting its business because of the interpretation of Commissioner and Advisory Committee members' status in relation to Federal law. Similarly, we understand implementation of the U.S./Canada agreement on Pacific Whiting (Pacific Whiting Treaty) would be hobbled by effectively neutering the activities of the Joint Management Committee and the Advisory Panel. The current language in legislation creating these advisory committees states that individuals appointed to serve as members shall be considered Federal employees with respect to Federal requirements concerning conflicts of interest (18 U.S.C. 503(d)(2)(b)(ii)(II)). This effectively prevents Commissioner or Committee members to United States (U.S.) delegations to these international fishery management organizations from providing any substantive advice on matters relating to the negotiation of agreements in these forums, because virtually all qualified individuals for these positions have some stakeholder interest in the affected fisheries. Ironically, the basis of their expertise and knowledge that qualifies them for appointment is also the basis for a technical conflict of interest that bars them from participating. We also note that this is the first time such an ethics proviso has been included in legislation establishing advisory groups supporting U.S. delegations to international fisheries management organizations.

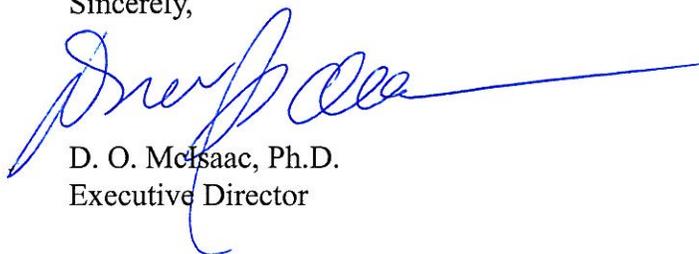
Since being created in 1976 under the Magnuson-Stevens Fishery Conservation and Management Act, Regional Fishery Management Councils, including the Pacific Council, have put the involvement of stakeholders at the forefront of the fishery management process. Councils are advised by a variety of committees; they include not just scientists and fishery managers, but also representatives from a wide range of the interested public, including commercial and recreational fishery participants, conservationist group representatives, and seafood consumers. We believe the Council process allows Federal decision-makers to better understand and take into account the potential effects of regulatory measures on different groups. Further, we believe this is the

kind of participatory government originally envisioned by Senator Warren Magnuson and a key reason for the successful decision making that has taken place at the Pacific Council. We also believe the original intent leading to U.S. involvement in the WCPFC and the Pacific Whiting Treaty was to allow for a similar structure and function: one whereby appointed U.S. citizens express their expert views on how proposed conservation measures developed by the WCPFC or the Whiting Treaty will affect the fish stocks, fisheries and those with interests in the fisheries. Allowing active participation by Commissioner or Committee member appointees would provide the full respective U.S. Delegations with valuable information, analysis, and perspectives to take into account when they negotiate conservation agreements in these forums.

At its April 2009 meeting, the Pacific Council and its Legislative Committee reviewed the *Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2009* (H.R. 1080) as introduced in the U.S. House of Representatives by U.S. Congresswoman Madeleine Bordallo. We would like to convey support for two additional corrections to legislation regarding U.S. involvement in the WCPFC and the Pacific Whiting Treaty that are relevant once the conflict of interest problem is successfully addressed. First, H.R. 1080 would amend the Western and Central Pacific Fisheries Commission Implementation Act to correct confusing language to clarify that the U.S. shall be represented by five U.S. Commissioners, one of whom shall be a member of the Western Pacific Fishery Management Council, and one of whom shall be a member of the Pacific Fishery Management Council. Second, H.R.1080 would amend the Pacific Whiting Act of 2006 with a technical correction that the U.S. shall appoint no more than two rather than six scientific experts to the joint technical committee under the Pacific Whiting Treaty.

We understand that the Committee on Commerce, Science and Transportation is currently considering legislation that would exempt the advisory committees from the provisions in Federal law that currently prevent them from providing advice on fishery management issues. Since the Pacific Council plays an active role in international management of Pacific whiting and highly migratory species, the effective functioning of these advisory committees is important to us. For that reason we applaud your efforts to amend Federal law to allow the committees to effectively function.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. O. McIsaac', with a long horizontal line extending to the right.

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

MDB:kam

cc:

Council Members

S-4518.1

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**SUBSTITUTE SENATE BILL 6350**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Natural Resources, Ocean & Recreation (originally sponsored by Senators Ranker, Hargrove, Jacobsen, Rockefeller, Swecker, Marr, Fraser, Murray, and Kline)

READ FIRST TIME 02/04/10.

1 AN ACT Relating to marine waters planning and management, including  
2 marine spatial planning; reenacting and amending RCW 43.84.092; adding  
3 a new section to chapter 43.21F RCW; adding a new chapter to Title 43  
4 RCW; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) Native American tribes have depended on the state's marine  
8 waters and its resources for countless generations and continue to do  
9 so for cultural, spiritual, economic, and subsistence purposes.

10 (b) The state has long demonstrated a strong commitment to  
11 protecting the state's marine waters, which are abundant in natural  
12 resources, contain a treasure of biological diversity, and are a source  
13 of multiple uses by the public supporting the economies of nearby  
14 communities as well as the entire state. These multiple uses include,  
15 but are not limited to: Marine-based industries and activities such as  
16 cargo, fuel, and passenger transportation; commercial, recreational,  
17 and tribal fishing; shellfish aquaculture; telecommunications and  
18 energy infrastructure; seafood processing; tourism; scientific  
19 research; and many related goods and services. These multiple uses as

1 well as new emerging uses, such as renewable ocean energy, constitute  
2 a management challenge for sustaining resources and coordinating state  
3 decision making in a proactive, comprehensive and ecosystem-based  
4 manner.

5 (c) Washington's marine waters are part of a west coast-wide large  
6 marine ecosystem known as the California current, and the Puget Sound  
7 and Columbia river estuaries constitute two of the three largest  
8 estuaries that are part of this large marine ecosystem. Puget Sound  
9 and the Columbia river are estuaries of national significance under the  
10 national estuary program, and the outer coast includes the Olympic  
11 national marine sanctuary.

12 (d) Washington is working in cooperation with the states of Oregon  
13 and California and federal agencies on ocean and ocean health  
14 management issues through the west coast governors' agreement on ocean  
15 health, and with the government of British Columbia on shared waters  
16 management issues through the British Columbia-Washington coastal and  
17 ocean task force.

18 (e) Washington has initiated comprehensive management programs to  
19 protect and promote compatible uses of these waters. These include:  
20 The development of a comprehensive ecosystem-based management plan  
21 known as the Puget Sound action agenda; shoreline plans for shorelines  
22 around the state; management plans for state-owned aquatic lands and  
23 their associated waters statewide; and watershed and salmon recovery  
24 management plans in the upland areas of Puget Sound, the coast, and the  
25 Columbia river. Data and data management tools have also been  
26 developed to support these management and planning activities, such as  
27 the coastal atlas managed by the department of ecology and the shore  
28 zone database managed by the department of natural resources.

29 (f) For marine waters specifically, Washington has formed several  
30 mechanisms to improve coordination and management. A legislatively  
31 authorized task force formed by the governor identified priority  
32 recommendations for improving state management of ocean resources  
33 through Washington's ocean action plan in 2006. The governor further  
34 formed an ongoing interagency team that assists the department of  
35 ecology in implementing these recommendations. There is an extensive  
36 network of marine resources committees within Puget Sound and on the  
37 outer coast and the Columbia river to promote and support local  
38 involvement identifying and conducting local priority marine projects

1 and some have been involved in local planning and management. Through  
2 the Olympic coast intergovernmental policy council, the state has also  
3 formalized its working relationship with coastal tribes and the federal  
4 government in the management of the Olympic coast national marine  
5 sanctuary.

6 (g) Reports by the United States commission on oceans policy, the  
7 Pew oceans commission, and the joint oceans commission initiative  
8 recommend the adoption of a national ocean policy under which states  
9 and coastal communities would have a principal role in developing and  
10 implementing ecosystem-based management of marine waters. Acting on  
11 these recommendations, the president of the United States recently  
12 formed an interagency ocean policy task force charged with developing  
13 a national ocean policy and a framework for marine spatial planning  
14 that involves all governmental levels, including state, tribal, and  
15 local governments. To further develop and implement such a planning  
16 framework, it is anticipated that federal cooperation and support will  
17 be available to coastal states that are engaged in marine and coastal  
18 resource management and planning, including marine spatial planning.

19 (2) The purpose of this chapter is to build upon existing statewide  
20 Puget Sound, coastal, and Columbia river efforts. When resources  
21 become available, the state intends to augment the marine spatial  
22 component of existing plans and to improve the coordination among state  
23 agencies in the development and implementation of marine management  
24 plans.

25 (3) It is also the purpose of this chapter to establish policies to  
26 guide state agencies and local governments when exercising jurisdiction  
27 over proposed uses and activities in these waters. Specifically, in  
28 conducting marine spatial planning, and in augmenting existing marine  
29 management plans with marine spatial planning components, the state  
30 must:

31 (a) Continue to recognize the rights of native American tribes  
32 regarding marine natural resources;

33 (b) Base all planning on best available science. This includes  
34 identifying gaps in existing information, recommend a strategy for  
35 acquiring science needed to strengthen marine spatial plans, and create  
36 a process to adjust plans once additional scientific information is  
37 available;

1 (c) Coordinate with all stakeholders, including marine resources  
2 committees and nongovernmental organizations, that are significantly  
3 involved in the collection of scientific information, ecosystem  
4 protection and restoration, or other activities related to marine  
5 spatial planning;

6 (d) Recognize that marine ecosystems span tribal, state, and  
7 international boundaries and that planning has to be coordinated with  
8 all entities with jurisdiction or authority in order to be effective;

9 (e) Establish or further promote an ecosystem-based management  
10 approach including linking marine spatial plans to adjacent nearshore  
11 and upland spatial or ecosystem-based plans;

12 (f) Ensure that all marine spatial plans are linked to measurable  
13 environmental outcomes;

14 (g) Establish a performance management system to monitor  
15 implementation of any new marine spatial plan;

16 (h) Establish an ocean stewardship policy that takes into account  
17 the existing natural, social, cultural, historic, and economic uses;

18 (i) Recognize that commercial, tribal, and recreational fisheries,  
19 and shellfish aquaculture are an integral part of our state's culture  
20 and contribute substantial economic benefits;

21 (j) Value biodiversity and ecosystem health, and protect special,  
22 sensitive, or unique estuarine and marine life and habitats, including  
23 important spawning, rearing, and migration areas for finfish, marine  
24 mammals, and productive shellfish habitats;

25 (k) Integrate this planning with existing plans and ongoing  
26 planning in the same marine waters and provide additional mechanisms  
27 for improving coordination and aligning management;

28 (l) Promote recovery of listed species under state and federal  
29 endangered species acts plans pursuant to those plans; and

30 (m) Fulfill the state's public trust and tribal treaty trust  
31 responsibilities in managing the state's ocean waters in a sustainable  
32 manner for current and future generations.

33 NEW SECTION. **Sec. 2.** The definitions in this section apply  
34 throughout this chapter unless the context clearly requires otherwise.

35 (1) "Aquatic lands" includes all tidelands, shorelands, harbor  
36 areas, and the beds of navigable waters, and must be construed to be  
37 coextensive with the term "aquatic lands" as defined in RCW 79.105.060.

1 (2) "Exclusive economic zone waters" means marine waters from the  
2 offshore state boundary to the boundary of the exclusive economic zone,  
3 over which the United States government has primary jurisdiction.

4 (3) "Marine counties" includes Clallam, Jefferson, Grays Harbor,  
5 Wahkiakum, San Juan, Whatcom, Skagit, Island, Snohomish, King, Pierce,  
6 Thurston, Mason, Kitsap, and Pacific counties.

7 (4) "Marine ecosystem" means the physical, biological, and chemical  
8 components and processes and their interactions in marine waters and  
9 aquatic lands, including humans.

10 (5) "Marine interagency team" or "team" means the marine  
11 interagency team created under section 3 of this act.

12 (6) "Marine management plan" and "marine waters management plan"  
13 means any plan guiding activities on and uses of the state's marine  
14 waters, and may include a marine spatial plan or element.

15 (7) "Marine resources committees" means those committees organized  
16 under RCW 36.125.020 or by counties within the Northwest straits marine  
17 conservation initiative.

18 (8) "Marine spatial planning" means a public process of analyzing  
19 and allocating the spatial and temporal distribution of human  
20 activities in marine areas to achieve ecological, economic, and social  
21 objectives. Often this type of planning is done to reduce conflicts  
22 among uses, to reduce environmental impacts, to facilitate compatible  
23 uses, to align management decisions, and to meet other objectives  
24 determined by the planning process.

25 (9) "Marine waters" means aquatic lands and waters under tidal  
26 influence, including saltwaters and estuaries to the ordinary high  
27 water mark lying within the boundaries of the state. This definition  
28 also includes the portion of the Columbia river bordering Pacific and  
29 Wahkiakum counties, Willapa Bay, Grays Harbor, the Strait of Juan de  
30 Fuca, and the entire Puget Sound.

31 NEW SECTION. **Sec. 3.** (1) The office of the governor shall chair  
32 a marine interagency team that is composed of representatives of each  
33 of the agencies in the governor's natural resources cabinet with  
34 management responsibilities for marine waters, including the  
35 independent agencies. A representative from a federal agency with lead  
36 responsibility for marine spatial planning must be invited to serve as  
37 a liaison to the team to help ensure consistency with federal actions

1 and policy. The team must conduct the assessment authorized in section  
2 4 of this act, assist state agencies under section 5 of this act with  
3 the review and coordination of such planning with their existing and  
4 ongoing planning, and conduct the marine management planning authorized  
5 in section 6 of this act.

6 (2) The team may not commence any activities authorized under  
7 sections 5 and 6 of this act until federal, private, or other nonstate  
8 funding is secured specifically for these activities.

9 NEW SECTION. **Sec. 4.** (1) The marine interagency team created in  
10 section 3 of this act must assess and recommend a framework for  
11 conducting marine spatial planning and integrating the planning into  
12 existing management plans. The assessment must include, but not be  
13 limited to, recommendations for:

14 (a) Including a marine spatial component into the Puget Sound  
15 action agenda;

16 (b) Integrating marine spatial planning into management efforts for  
17 the Columbia river estuary, working with the state of Oregon; and

18 (c) Developing a marine management plan containing a marine spatial  
19 component for the outer coast, to be incorporated within the  
20 comprehensive marine management plan authorized under section 6 of this  
21 act.

22 (2) The assessment authorized under subsection (1) of this section  
23 must also:

24 (a) Summarize existing goals and objectives for: Plans in Puget  
25 Sound, the Columbia river estuary, and the outer coast, including the  
26 Puget Sound action agenda; shoreline plans for shorelines around the  
27 state; management plans for state-owned aquatic lands and their  
28 associated waters statewide; and watershed and salmon recovery  
29 management plans;

30 (b) Develop recommended goals and objectives for marine spatial  
31 planning that integrate with existing policies and regulations, and  
32 recommend a schedule to develop marine ecosystem health indicators,  
33 considering the views and recommendations of affected stakeholders and  
34 governmental agencies;

35 (c) Summarize how the existing goals and objectives as well as  
36 recommended goals and objectives are consistent or inconsistent with  
37 those adopted by other states for the west coast large marine

1 ecosystem, and with those goals and objectives articulated in relevant  
2 national oceans policies and the national framework for marine spatial  
3 planning;

4 (d) Identify the existing management activities and spatial data  
5 related to these priorities and objectives and the key needs for  
6 incorporating marine spatial planning into existing statewide plans;  
7 and

8 (e) Provide recommendations on achieving a unified approach to  
9 database management and delivery that would support marine spatial  
10 planning throughout the state.

11 (3) The results of this assessment must be provided to the  
12 appropriate legislative committees by December 15, 2010.

13 (4) This section expires June 30, 2011.

14 NEW SECTION. **Sec. 5.** (1) Concurrently or prior to the assessment  
15 and planning activities provided in sections 4 and 6 of this act, and  
16 subject to available federal, private, or other nonstate funding for  
17 this purpose, all state agencies with marine waters planning and  
18 management responsibilities are authorized to include marine spatial  
19 data and marine spatial planning elements into their existing plans and  
20 ongoing planning.

21 (2) The director of the Puget Sound partnership under the direction  
22 of the leadership council created in RCW 90.71.220 must integrate  
23 marine spatial information and planning provisions into the action  
24 agenda. The information should be used to address gaps or improve the  
25 effectiveness of the spatial planning component of the action agenda,  
26 such as in addressing potential new uses such as renewable energy  
27 projects.

28 (3) The governor and the commissioner of public lands, working with  
29 appropriate marine management and planning agencies, should work  
30 cooperatively with the applicable west coast states, Canadian  
31 provinces, and with federal agencies, through existing cooperative  
32 entities such as the west coast governor's agreement on ocean health,  
33 the coastal and oceans task force, the Pacific coast collaborative, the  
34 Puget Sound federal caucus, and the United States and Canada  
35 cooperative agreement working group, to explore the benefits of  
36 developing joint marine spatial plans or planning frameworks in the  
37 shared waters of the Salish Sea, the Columbia river estuary, and in the

1 exclusive economic zone waters. The governor and commissioner may  
2 approve the adoption of shared marine spatial plans or planning  
3 frameworks where they determine it would further policies of this  
4 chapter and chapter 43.143 RCW.

5 (4) On an ongoing basis, the director of the department of ecology  
6 shall work with other state agencies with marine management  
7 responsibilities, tribal governments, marine resources committees,  
8 local and federal agencies, and marine waters stakeholders to compile  
9 marine spatial information and to incorporate this information into  
10 ongoing plans. This work may be integrated with the comprehensive  
11 marine management plan authorized under section 6 of this act when that  
12 planning process is initiated.

13 (5) All actions taken to implement this section must be consistent  
14 with section 8 of this act.

15 NEW SECTION. **Sec. 6.** (1) Upon the receipt of federal, private, or  
16 other nonstate funding for this purpose, together with any required  
17 match of state funding that may be specifically provided for this  
18 purpose, the marine interagency team shall coordinate the development  
19 of a comprehensive marine management plan for the state's marine  
20 waters. The marine management plan must include marine spatial  
21 planning, as well as recommendations to the appropriate federal  
22 agencies regarding the exclusive economic zone waters. The plan may be  
23 developed in geographic segments, and may incorporate or be developed  
24 as an element of existing marine plans, such as the Puget Sound action  
25 agenda. The chair of the team may designate a state agency with marine  
26 management responsibilities to take the lead in developing and  
27 recommending to the team particular segments or elements of the  
28 comprehensive marine management plan.

29 (2) The marine management plan must be developed and implemented in  
30 a manner that:

31 (a) Recognizes and respects existing uses and tribal treaty rights;

32 (b) Promotes protection and restoration of ecosystem processes to  
33 a level that will enable long-term sustainable production of ecosystem  
34 goods and services;

35 (c) Addresses potential impacts of climate change and sea level  
36 rise upon current and projected marine waters uses and shoreline and  
37 coastal impacts;

1 (d) Fosters and encourages sustainable uses that provide economic  
2 opportunity without significant adverse environmental impacts;

3 (e) Preserves and enhances public access;

4 (f) Protects and encourages working waterfronts and supports the  
5 infrastructure necessary to sustain marine industry, commercial  
6 shipping, shellfish aquaculture, and other water-dependent uses;

7 (g) Fosters public participation in decision making and significant  
8 involvement of communities adjacent to the state's marine waters; and

9 (h) Integrates existing management plans and authorities and makes  
10 recommendations for aligning plans to the extent practicable.

11 (3) To ensure the effective stewardship of the state's marine  
12 waters held in trust for the benefit of the people, the marine  
13 management plan must rely upon existing data and resources, but also  
14 identify data gaps and, as possible, procure missing data necessary for  
15 planning.

16 (4) The marine management plan must include but not be limited to:

17 (a) An ecosystem assessment that analyzes the health and status of  
18 Washington marine waters including key social, economic, and ecological  
19 characteristics and incorporates the best available scientific  
20 information, including relevant marine data. This assessment should  
21 seek to identify key threats to plan goals, analyze risk and management  
22 scenarios, and develop key ecosystem indicators. In addition, the plan  
23 should incorporate existing adaptive management strategies underway by  
24 local, state, or federal entities and provide an adaptive management  
25 element to incorporate new information and consider revisions to the  
26 plan based upon research, monitoring, and evaluation;

27 (b) Using and relying upon existing plans and processes and  
28 additional management measures to guide decisions among uses proposed  
29 for specific geographic areas of the state's marine and estuarine  
30 waters consistent with applicable state laws and programs that control  
31 or address developments in the state's marine waters;

32 (c) A series of maps that, at a minimum, summarize available data  
33 on: The key ecological aspects of the marine ecosystem, including  
34 physical and biological characteristics, as well as areas that are  
35 environmentally sensitive or contain unique or sensitive species or  
36 biological communities that must be conserved and warrant protective  
37 measures; human uses of marine waters, particularly areas with high  
38 value for fishing, shellfish aquaculture, recreation, and maritime

1 commerce; and appropriate locations with high potential for renewable  
2 energy production with minimal potential for conflicts with other  
3 existing uses or sensitive environments;

4 (d) An element that sets forth the state's recommendations to the  
5 federal government for use priorities and limitations, siting criteria,  
6 and protection of unique and sensitive biota and ocean floor features  
7 within the exclusive economic zone waters consistent with the policies  
8 and management criteria contained in this chapter and chapter 43.143  
9 RCW;

10 (e) An implementation strategy describing how the plan's management  
11 measures and other provisions will be considered and implemented  
12 through existing state and local authorities; and

13 (f) A framework for coordinating state agency and local government  
14 review of proposed renewable energy development uses requiring multiple  
15 permits and other approvals that provide for the timely review and  
16 action upon renewable energy development proposals while ensuring  
17 protection of sensitive resources and minimizing impacts to other  
18 existing or projected uses in the area.

19 (5) If the director of the department of fish and wildlife  
20 determines that a fisheries management element is appropriate for  
21 inclusion in the marine management plan, this element may include the  
22 incorporation of existing management plans and procedures and standards  
23 for consideration in adopting and revising fisheries management plans  
24 in cooperation with the appropriate federal agencies and tribal  
25 governments.

26 (6) Any provision of the marine management plan that does not have  
27 as its primary purpose the management of commercial or recreational  
28 fishing but that has an impact on this fishing must minimize the  
29 negative impacts on the fishing. The team must accord substantial  
30 weight to recommendations from the director of the department of fish  
31 and wildlife for plan revisions to minimize the negative impacts.

32 (7) The marine management plan must recognize and value existing  
33 uses. All actions taken to implement this section must be consistent  
34 with section 8 of this act.

35 (8) The marine management plan must identify any provisions of  
36 existing management plans that are substantially inconsistent with the  
37 plan.

1 (9)(a) In developing the marine management plan, the team shall  
2 implement a strong public participation strategy that seeks input from  
3 throughout the state and particularly from communities adjacent to  
4 marine waters. Public review and comment must be sought and  
5 incorporated with regard to planning the scope of work as well as in  
6 regard to significant drafts of the plan and plan elements.

7 (b) The team must engage tribes and marine resources committees in  
8 its activities throughout the planning process. In particular, prior  
9 to finalizing the plan, the team must provide each tribe and marine  
10 resources committee with a draft of the plan and invite them to review  
11 and comment on the plan.

12 (10) The team must complete the plan within twenty-four months of  
13 the initiation of planning under this section.

14 (11) The director of the department of ecology shall submit the  
15 completed marine management plan to the appropriate federal agency for  
16 its review and approval for incorporation into the state's federally  
17 approved coastal zone management program.

18 (12) Subsequent to the adoption of the marine management plan, the  
19 team may periodically review and adopt revisions to the plan to  
20 incorporate new information and to recognize and incorporate provisions  
21 in other marine management plans. The team must afford the public an  
22 opportunity to review and comment upon significant proposed revisions  
23 to the marine management plan.

24 NEW SECTION. **Sec. 7.** (1) Upon the adoption of the marine  
25 management plan under section 6 of this act, each state agency and  
26 local government must make decisions in a manner that ensures  
27 consistency with applicable legal authorities and conformance with the  
28 applicable provisions of the marine management plan to the greatest  
29 extent possible.

30 (2) The director of the department of ecology, in coordination with  
31 the team, shall periodically review existing management plans  
32 maintained by state agencies and local governments that cover the same  
33 marine waters as the marine management plan under section 6 of this  
34 act, and for any substantial inconsistency with the marine management  
35 plan the director shall make recommendations to the agency or to the  
36 local government for revisions to eliminate the inconsistency.

1 (3) Not later than four years following adoption of the marine  
2 management plan under section 6 of this act, the department of ecology,  
3 in coordination with the team, shall report to the appropriate marine  
4 waters committees in the senate and house of representatives describing  
5 provisions of existing management plans that are substantially  
6 inconsistent with the marine management plan under section 6 of this  
7 act, and making recommendations for eliminating the inconsistency.

8 (4) All actions taken to implement this section must be consistent  
9 with section 8 of this act.

10 NEW SECTION. **Sec. 8.** No authority is created under this chapter  
11 to affect in any way any project, use, or activity in the state's  
12 marine waters existing prior to or during the development and review of  
13 the marine management plan. No authority is created under this chapter  
14 to supersede the current authority of any state agency or local  
15 government.

16 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.21F RCW  
17 to read as follows:

18 (1) In addition to the duties prescribed in RCW 43.21F.045, the  
19 department must develop guidance applicable to all state agencies for  
20 achieving a unified state position upon matters involving the siting  
21 and operation of renewable energy facilities in the state's coastal and  
22 estuarine marine waters. The guidance must provide procedures for  
23 coordinating the views and responsibilities of any state agency with  
24 jurisdiction or expertise over the matter under consideration, which  
25 may include federal policy proposals, activities, permits, licenses, or  
26 the extension of funding for activities in or affecting the state's  
27 marine waters. In developing the guidance, the director must consult  
28 with agencies with primary responsibilities for permitting and  
29 management of marine waters and bedlands, including the departments of  
30 natural resources, ecology, transportation, and fish and wildlife, and  
31 the state parks and recreation commission, the Puget Sound partnership,  
32 and the energy facility site evaluation council. The director must  
33 also consult and incorporate relevant information from the regional  
34 activities related to renewable energy siting in marine waters,  
35 including those under the west coast governors' agreement on ocean  
36 health.

1 (2) The director may not commence development of the guidance until  
2 federal, private, or other nonstate funding is secured for this  
3 activity. The director must adopt the guidance within one year of  
4 securing such funds.

5 (3) This section is intended to promote consistency and multiple  
6 agency coordination in developing positions and exercising jurisdiction  
7 in matters involving the siting and operation of renewable energy  
8 facilities and does not diminish or abrogate the authority or  
9 jurisdiction of any state agency over such matters established under  
10 any other law.

11 NEW SECTION. **Sec. 10.** (1) The marine resources stewardship trust  
12 account is created in the state treasury. All receipts from income  
13 derived from the investment of amounts credited to the account, any  
14 grants, gifts, or donations to the state for the purposes of marine  
15 management planning, marine spatial planning, data compilation,  
16 research, or monitoring, and any appropriations made to the account  
17 must be deposited in the account. Moneys in the account may be spent  
18 only after appropriation.

19 (2) Expenditures from the account may only be used for the purposes  
20 of marine management planning, marine spatial planning, research,  
21 monitoring, implementation of the marine management plan, and for the  
22 restoration or enhancement of marine habitat or resources.

23 **Sec. 11.** RCW 43.84.092 and 2009 c 479 s 31, 2009 c 472 s 5, and  
24 2009 c 451 s 8 are each reenacted and amended to read as follows:

25 (1) All earnings of investments of surplus balances in the state  
26 treasury shall be deposited to the treasury income account, which  
27 account is hereby established in the state treasury.

28 (2) The treasury income account shall be utilized to pay or receive  
29 funds associated with federal programs as required by the federal cash  
30 management improvement act of 1990. The treasury income account is  
31 subject in all respects to chapter 43.88 RCW, but no appropriation is  
32 required for refunds or allocations of interest earnings required by  
33 the cash management improvement act. Refunds of interest to the  
34 federal treasury required under the cash management improvement act  
35 fall under RCW 43.88.180 and shall not require appropriation. The  
36 office of financial management shall determine the amounts due to or

1 from the federal government pursuant to the cash management improvement  
2 act. The office of financial management may direct transfers of funds  
3 between accounts as deemed necessary to implement the provisions of the  
4 cash management improvement act, and this subsection. Refunds or  
5 allocations shall occur prior to the distributions of earnings set  
6 forth in subsection (4) of this section.

7 (3) Except for the provisions of RCW 43.84.160, the treasury income  
8 account may be utilized for the payment of purchased banking services  
9 on behalf of treasury funds including, but not limited to, depository,  
10 safekeeping, and disbursement functions for the state treasury and  
11 affected state agencies. The treasury income account is subject in all  
12 respects to chapter 43.88 RCW, but no appropriation is required for  
13 payments to financial institutions. Payments shall occur prior to  
14 distribution of earnings set forth in subsection (4) of this section.

15 (4) Monthly, the state treasurer shall distribute the earnings  
16 credited to the treasury income account. The state treasurer shall  
17 credit the general fund with all the earnings credited to the treasury  
18 income account except:

19 The following accounts and funds shall receive their proportionate  
20 share of earnings based upon each account's and fund's average daily  
21 balance for the period: The aeronautics account, the aircraft search  
22 and rescue account, the budget stabilization account, the capitol  
23 building construction account, the Cedar River channel construction and  
24 operation account, the Central Washington University capital projects  
25 account, the charitable, educational, penal and reformatory  
26 institutions account, the cleanup settlement account, the Columbia  
27 river basin water supply development account, the common school  
28 construction fund, the county arterial preservation account, the county  
29 criminal justice assistance account, the county sales and use tax  
30 equalization account, the data processing building construction  
31 account, the deferred compensation administrative account, the deferred  
32 compensation principal account, the department of licensing services  
33 account, the department of retirement systems expense account, the  
34 developmental disabilities community trust account, the drinking water  
35 assistance account, the drinking water assistance administrative  
36 account, the drinking water assistance repayment account, the Eastern  
37 Washington University capital projects account, the education  
38 construction fund, the education legacy trust account, the election

1 account, the energy freedom account, the energy recovery act account,  
2 the essential rail assistance account, The Evergreen State College  
3 capital projects account, the federal forest revolving account, the  
4 ferry bond retirement fund, the freight congestion relief account, the  
5 freight mobility investment account, the freight mobility multimodal  
6 account, the grade crossing protective fund, the public health services  
7 account, the health system capacity account, the personal health  
8 services account, the high capacity transportation account, the state  
9 higher education construction account, the higher education  
10 construction account, the highway bond retirement fund, the highway  
11 infrastructure account, the highway safety account, the high occupancy  
12 toll lanes operations account, the industrial insurance premium refund  
13 account, the judges' retirement account, the judicial retirement  
14 administrative account, the judicial retirement principal account, the  
15 local leasehold excise tax account, the local real estate excise tax  
16 account, the local sales and use tax account, the marine resources  
17 stewardship trust account, the medical aid account, the mobile home  
18 park relocation fund, the motor vehicle fund, the motorcycle safety  
19 education account, the multimodal transportation account, the municipal  
20 criminal justice assistance account, the municipal sales and use tax  
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22 reserve land account, the pension funding stabilization account, the  
23 perpetual surveillance and maintenance account, the public employees'  
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25 system combined plan 2 and plan 3 account, the public facilities  
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27 health supplemental account, the public transportation systems account,  
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36 employees' insurance account, the state employees' insurance reserve  
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38 investment board commingled trust fund accounts, the state patrol

1 highway account, the state route number 520 corridor account, the  
2 supplemental pension account, the Tacoma Narrows toll bridge account,  
3 the teachers' retirement system plan 1 account, the teachers'  
4 retirement system combined plan 2 and plan 3 account, the tobacco  
5 prevention and control account, the tobacco settlement account, the  
6 transportation 2003 account (nickel account), the transportation  
7 equipment fund, the transportation fund, the transportation improvement  
8 account, the transportation improvement board bond retirement account,  
9 the transportation infrastructure account, the transportation  
10 partnership account, the traumatic brain injury account, the tuition  
11 recovery trust fund, the University of Washington bond retirement fund,  
12 the University of Washington building account, the urban arterial trust  
13 account, the volunteer firefighters' and reserve officers' relief and  
14 pension principal fund, the volunteer firefighters' and reserve  
15 officers' administrative fund, the Washington fruit express account,  
16 the Washington judicial retirement system account, the Washington law  
17 enforcement officers' and firefighters' system plan 1 retirement  
18 account, the Washington law enforcement officers' and firefighters'  
19 system plan 2 retirement account, the Washington public safety  
20 employees' plan 2 retirement account, the Washington school employees'  
21 retirement system combined plan 2 and 3 account, the Washington state  
22 health insurance pool account, the Washington state patrol retirement  
23 account, the Washington State University building account, the  
24 Washington State University bond retirement fund, the water pollution  
25 control revolving fund, and the Western Washington University capital  
26 projects account. Earnings derived from investing balances of the  
27 agricultural permanent fund, the normal school permanent fund, the  
28 permanent common school fund, the scientific permanent fund, and the  
29 state university permanent fund shall be allocated to their respective  
30 beneficiary accounts. All earnings to be distributed under this  
31 subsection (4) shall first be reduced by the allocation to the state  
32 treasurer's service fund pursuant to RCW 43.08.190.

33 (5) In conformance with Article II, section 37 of the state  
34 Constitution, no treasury accounts or funds shall be allocated earnings  
35 without the specific affirmative directive of this section.

1        NEW SECTION.    **Sec. 12.**    Sections 1 through 8 and 10 of this act  
2    constitute a new chapter in Title 43 RCW.

--- END ---

**Congress of the United States**  
**Washington, DC 20515**

February 18, 2010

The Hon. Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Feinstein:

We write in strong support of Chairwoman Grace Napolitano's request that you withdraw your recent draft proposal to legislatively override protections for the threatened and endangered fisheries of the San Francisco Bay-Delta system. We believe that the approach outlined in your draft amendment is inconsistent with your record of pursuing compromise solutions to environmental conflicts, and we urge you not to move forward with the proposed legislation. Simply put, by undermining existing protections, the "Emergency Temporary Water Supply amendment" unveiled last week would drive California's and much of Oregon's salmon to extinction, and it is a severe threat to the thousands of jobs that depend on the fishing industry in the San Francisco Bay Area, Northern California, and across the Pacific Coast.

As you know, the Sacramento River chinook salmon population is lower today than it has ever been. According to the Pacific Fishery Management Council, fewer than 40,000 chinook salmon returned to the river this year, down from more than 750,000 in 2002. This collapse, due in considerable part to excessive water diversions, has had devastating economic consequences for our constituents. The repeated cancellation of the salmon fishing season has led to an estimated 23,000 jobs lost, with significant negative economic effects along the Pacific coast, including adverse impacts to small businesses in the Bay Area, the North Coast of California, and Oregon. Pushing salmon and steelhead populations closer to extinction, which is a certain consequence of legislatively undermining federal protections without any scientific basis, would only exacerbate this economic pain.

Further, we are deeply concerned that the amendment undercuts the multi-stakeholder negotiations over the California state legislature's work last year and the ongoing process to develop a Bay Delta Conservation Plan (BDCP). The state's legislative package was based on the principle that a reliable water supply and a restored natural ecosystem need not be in conflict. By increasing water withdrawals from the Bay-Delta regardless of the effect on threatened and endangered fisheries, your draft amendment risks undoing the agreements that led to this comprehensive plan. Similarly, although we have not endorsed the BDCP, it is very clear that if this amendment goes forward, the BDCP process cannot be considered a legitimate forum in which to make long-term decisions about water policy, meaning the time, energy, and funds expended by the water agencies, governments, and NGOs on the BDCP will have been wasted.

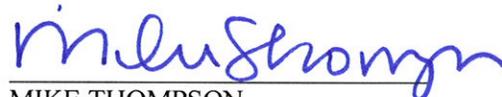
We understand that your proposed amendment is intended to remedy the effect of the ongoing drought on irrigation districts in the western San Joaquin Valley. After all, it is the sustained drought, not environmental protections, that is responsible for the overwhelming majority of water supply cuts in the last few years. Yet even during this drought, according to California's Department of Water Resources, the Westlands Water District, was able to amass more than 990,000 acre-feet of water – 86% of its average annual supply – through transfers, groundwater, and other sources. And a few miles away, the San Joaquin River Exchange Contractors received 100% of their contract supply. Despite the drought, then, it is reasonable to assume that there may be additional opportunities for those with less secure water rights such as Westlands to obtain alternative water

supplies this year, without having to preempt science-based processes or to legislate unsustainable water export levels out of the Bay-Delta. In addition, we are concerned that the proposal to guarantee a supply to certain contractors regardless of environmental consequence would severely undermine the allocations of water under decades of state and federal water law, and create a precedent elsewhere in the West for riders that reallocate water away from statutory and contractual purposes.

Again, we urge you to withdraw the recently announced draft "Emergency Temporary Water Supply amendment" and instead meet with us to work out other solutions that do not put the fishing jobs and economy of the West Coast in jeopardy.

Sincerely,

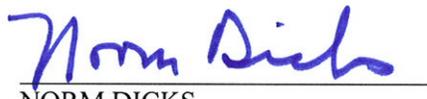
  
GEORGE MILLER  
Member of Congress

  
MIKE THOMPSON  
Member of Congress

  
DAVID WU  
Member of Congress

  
PETER DeFAZIO  
Member of Congress

  
ZOE LOFGREN  
Member of Congress

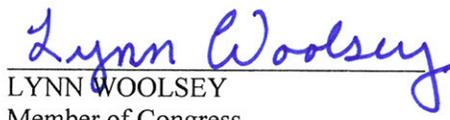
  
NORM DICKS  
Member of Congress

  
EARL BLUMENAUER  
Member of Congress

  
JOHN GARAMENDI  
Member of Congress

  
KURT SCHRADER  
Member of Congress

  
DORIS O. MATSUI  
Member of Congress

  
LYNN WOOLSEY  
Member of Congress

## LEGISLATIVE COMMITTEE REPORT ON LEGISLATIVE MATTERS

The Legislative Committee (Committee) convened at 9:00 a.m. on Saturday, March 6, 2010. In attendance were Committee members Dr. Dave Hanson, (Chair) Mr. Rod Moore (Vice Chair), Pacific Fishery Management Council (Council) Vice Chair Mr. Dan Wolford, Ms. Dorothy Lowman, Mr. Dale Myer, and Mr. Gordy Williams. Also present were Council Deputy Director Dr. John Coon, and Council Staff Officer Mr. Mike Burner.

The Committee reelected Dr. David Hansen and Mr. Rod Moore as Committee Chair and Vice Chair respectively.

### H.R. 1080, Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2009 and S. 2871

These bills would strengthen enforcement mechanisms to stop illegal, unreported, and unregulated fishing and would also amend existing legislation by implementing the following technical corrections regarding U.S. representation to the Western and Central Pacific Fisheries Commission and the appropriate criteria specified under the U.S./Canada agreement on Pacific Whiting. H.R. 1080 passed the U.S. House and was introduced in the U.S. Senate as S.2870 and S.2871 on December 10, 2009 by Senator Inouye (HI) where it was referred to the U.S. Senate Committee on Commerce, Science, and Transportation.

- Correct confusing language in the Western and Central Pacific Fisheries Commission Implementation Act (WCPFCIA) to clarify that the U.S. shall be represented by five U.S. Commissioners, “one of whom shall be a member of the Western Pacific Fishery Management Council, and one of whom shall be a member of the Pacific Fishery Management Council.”
- Amend the WCPFCIA and the Pacific Whiting Act of 2008 to remove unintentional ethics and conflict-of-interest restrictions on U.S. representatives and clarify that individuals appointed to serve the U.S. through either the Western and Central Pacific Fisheries Commission or the U.S./Canada Pacific Whiting Agreement “shall not be considered Federal employees except for purposes of injury compensation and tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.”
- Amend the Pacific Whiting Act of 2008 to specify that the U.S. shall appoint no more than two rather than six scientific experts to the joint technical committee under the U.S./Canada Pacific Whiting Agreement.

In April 29, 2009 before H.R. 1080 passed the U.S. House, Council Executive Director, Dr. Donald McIsaac sent a letter on behalf of the Council to U.S. Senator Maria Cantwell of Washington (Agenda Item D.3.a, Supplemental Attachment 4) conveying support for these important corrections. The Committee continues to support these corrections and recommends the Council Executive Director reiterate this support and urge expediency regarding S. 2871 in a letter to Senator Cantwell in response to a request by her staff at the U.S. Senate Subcommittee on Commerce, Science and Transportation.

## S.1255 and H.R. 1584 - Flexibility in Rebuilding American Fisheries Act of 2009

The species of rockfish the Pacific Council is successfully rebuilding all have a greater than ten-year rebuilding time frame. Therefore, the specific situations these bills would exempt from the ten-year rebuilding requirement do not currently apply to west coast rebuilding efforts. However, the Committee remains supportive of the bill's proposed clarifying language change in MSA Section 304(e)(4)A as follows:

*“For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—*

*(A) specify a time period for rebuilding the fishery that shall*

*(i) be as short as ~~possible~~ practicable, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem;....”*

The Council expressed support for this issue in the 110<sup>th</sup> U.S. Congress through a July 31, 2008 letter to former Oregon Senator Gordon Smith. The Committee recommends the Council Executive Director reiterate these comments during the current 111<sup>th</sup> U.S. Congress through Mr. Dave Whaley to the U.S. House Subcommittee for Insular Affairs, Oceans and Wildlife who has requested Council input on fishery related legislation.

### Emergency Temporary Water Supply Amendment

The Committee reviewed a February 18, 2010 letter to U.S. Senator Feinstein (CA) signed by 11 members of Congress (Agenda Item D.3.a, Supplemental Attachment 4) regarding legislation proposed by Senator Feinstein that may override protection for threatened and endangered fish stocks and fisheries of the San Francisco Bay-Delta system for the purpose of easing the effects of an ongoing drought in the region. This amendment has not been introduced in the U.S. Senate and this amendment has not yet been made public. The Committee shared the concerns of the signatory Congressional members and recommends the Council Executive Director send a letter to Senator Feinstein requesting the specific language of the proposed legislation and clarification on whether or not the amendment would address potential disaster relief for salmon fishermen.

### Future Meeting Plans

Pending Council scheduling and workload planning under Friday's Agenda Item D.6, the Committee anticipates there will be sufficient activity in the U.S. Congress to warrant a Committee meeting at the April Council meeting and supports the proposed meeting time of 2 p.m. Saturday, April 10, 2010 proposed under Agenda Item D.6.a, Attachment 2. Topics for the April Committee meeting include:

**H.R.4363 Offshore Aquaculture** –This bill establishes a regulatory system and research program for sustainable offshore aquaculture in the United States exclusive economic zone, and for other purposes. H.R. 4363 was introduced December 16, 2009 by Congresswoman Lois

Capps (CA) and referred to the U.S. House Subcommittee on Insular Affairs, Oceans and Wildlife. The Council and the Committee have commented on offshore aquaculture legislation from previous Congress sessions. Council staff plans review the current bill and the Council record on this topic and report to the Committee in April.

**S. 2870 - International Fisheries Stewardship and Enforcement Act.** This bill would establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes and would also make the technical corrections listed above as items 1 through 3 under H.R.1080 for the WCPFCIA and the Pacific Whiting Act of 2006. This bill would also implement the Antigua Convention by ratifying the U.S. as signatory to this international agreement and would specify Council representation on the Inter-American Tropical Tuna Commission (IATTC) and its advisory bodies. The Committee recommends this matter be reviewed by the Council's Advisory Bodies for Highly Migratory Species.

**Landscape Conservation Cooperatives (LCC)** – The Department of the Interior has initiated the formation of LCCs which are management-science partnerships that inform integrated resource-management actions addressing climate change and other stressors within and across landscapes. There are two LCCs on the West Coast, the California LCC in the southern and central portions of the state and the North Pacific LCC that runs from Northern California to Southeast Alaska.

#### Public Comment

None.

The Committee adjourned at 9:50 a.m.

#### Legislative Committee Recommendations

- 1. Direct the Council Executive Director to send a letter responding to a request from Senator Cantwell and staff of the U.S. Senate Subcommittee on Commerce, Science and Transportation expressing support for S. 2871.**
- 2. Direct the Council Executive Director to send a letter responding to a request from Mr. Dave Whaley, staff for the U.S. House Subcommittee for Insular Affairs, Oceans and Wildlife, reiterating Council support for S.1255 and H.R. 1584 - Flexibility in Rebuilding American Fisheries Act of 2009.**
- 3. Direct the Council Executive Director to send a letter of inquiry to U.S. Senator Feinstein requesting additional information on the proposed Emergency Temporary Water Supply Amendment.**
- 4. Consider scheduling the next meeting of the Legislative Committee for the April 2010 Council meeting under Agenda Item D.6.**

PFMC  
03/09/10

## APPROVAL OF COUNCIL MEETING MINUTES

The draft minutes for the June 2009 Council meeting are attached for Council Member review and approval.

The full record of each Pacific Fishery Management Council (Council) meeting is maintained at the Council office, and consists of the following:

1. The proposed agenda (available online at <http://www.pcouncil.org/bb/bbarchives.html>).
2. The approved minutes (available online at <http://www.pcouncil.org/minutes/cminutes.html>). The minutes summarize actual meeting proceedings, noting the time each agenda item was addressed and identifying relevant key documents. The agenda item summaries consist of a narrative on noteworthy elements of the gavel to gavel components of the Council meeting and summarize pertinent Council discussion for each Council Guidance, Discussion, or Action item, including detailed descriptions of rationale leading to a decision and discussion between an initial motion and the final vote.
3. Audio recordings of the testimony, presentations, and discussion occurring at the meeting. Recordings are labeled by agenda number and time to facilitate tape or CD-ROM review of a particular agenda item (available from our recorder, Mr. Craig Hess, Martin Enterprises, phone (360) 425-7507).
4. All written documents produced for consideration at the Council meeting, including (1) pre-meeting briefing book materials, (2) pre-meeting supplemental briefing book documents, (3) supplemental documents produced or received at the meeting, validated by a label assigned by the Council Secretariat and distributed to Council Members, and (4) public comments and miscellaneous visual aids or handout materials used in presentations to Council Members during the open session (available online at <http://www.pcouncil.org/bb/bbarchives.html>).
5. A copy of the Council Decision Document. This document is distributed immediately after the meeting and contains very brief descriptions of Council decisions (available online at <http://www.pcouncil.org/decisions/archivedecisions.html>).
6. A copy of Pacific Council News. Refer to the Spring Edition for March and April meetings; the Summer Edition for the June meeting; the Fall Edition for the September meeting; and the Winter Edition for the October-November Council meeting (available online at <http://www.pcouncil.org/newsletters/archivenews.html>).

### **Council Action:**

**Review and approve the draft June 2009 Council meeting minutes.**

Reference Materials:

1. Agenda Item D.4.a, Supplemental Attachment 1: Draft June 2009 Council Meeting Minutes.

Agenda Order:

- a. Council Member Review and Comments
- b. **Council Action:** Approve June 2009 Council Meeting Minutes

Don Hansen

PFMC  
02/23/10

DRAFT MINUTES  
Pacific Fishery Management Council  
199th Session  
Doubletree Hotel Spokane City Center  
322 North Spokane Falls Court  
Spokane, WA 99201

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## **A. Call to Order**

### **A.1 Opening Remarks and Introductions (06/13/09; 9:05 a.m.)**

Mr. Don Hansen, Chair, called the 199<sup>th</sup> meeting of the Pacific Fishery Management Council (Council) to order on Saturday, June 13, 2009 at 9 a.m.

A closed session was held on June 13, 2009 from 8 a.m. to 9 a.m. and again on June 18 from 2 p.m. to 2:30 p.m. to discuss personnel and litigation matters.

### **A.2 Roll Call**

Dr. John Coon, Council Deputy Director, called the roll. The following Council members were present:

Mr. Mark Cedergreen (Washington Obligatory)  
Mr. Brian Corrigan (US Coast Guard, non-voting, designee)  
Ms. Michele Culver (Washington State Official, designee)  
Ms. Kathy Fosmark (California Obligatory)  
Mr. Donald Hansen, Chairman (At-Large)  
Dr. Dave Hanson, Parliamentarian (Pacific States Marine Fisheries Commission, non-voting)  
Mr. Frank Lockhart/Mr. Mark Helvey (National Marine Fisheries Service, Northwest and Southwest Regions)  
Mr. Jerry Mallet (State of Idaho Official)  
Mr. Rod Moore (At-Large)  
Mr. Dale Myer (At- Large)  
Mr. Dave Ortmann, Vice Chairman (Idaho Obligatory)  
Mr. Tim Roth (US Fish and Wildlife Service, non-voting)  
Mr. David Sones (Tribal Obligatory)  
Ms. Marija Vojkovich (State of California Official)  
Mr. Frank Warrens (Oregon Obligatory)  
Mr. Gordon Williams (State of Alaska Official, non-voting)  
Mr. Steve Williams (State of Oregon Official)  
Mr. Dan Wolford (At-Large)

The following Council member was absent from the entire meeting:

Mr. David Hogan (US State Department, non-voting)

### **A.3 Report of the Executive Director**

Dr. John Coon, Deputy Director, provided the Executive Director's report. He briefly identified the five Informational Reports within the briefing book.

#### **A.4 Proposed June Council Meeting Agenda**

##### **A.4.a Council Action: Approve Agenda**

Mr. Rod Moore moved and Mr. Mark Cedergreen seconded a motion (Motion 1) to approve the agenda as shown in Agenda Item A.4, June Council Meeting Agenda. Motion 1 passed unanimously.

#### **B. Open Comment Period**

##### **B.1 Comments on Non-Agenda Items**

###### **B.1.a Management Entity and Advisory Body Comments**

Dr. James Balsiger, Acting Assistant Administrator for Fisheries, addressed the Council at this time. He spoke about actions at the recent Council Coordination Committee (CCC) meeting in Boston and briefed the Council on the Catch Share Task Force which Dr. Jane Lubchenko has established. He referred the Council to the letter (Supplemental Open Comment Period 4) requesting nominations from the regional councils for positions on the task force.

###### **B.1.b Public Comments**

None made at the meeting. There were four items in the briefing book.

###### **B.1.c Council Discussion of Comments as Appropriate**

The Council thanked Dr. Balsiger for his assistance in achieving important Council management objectives and discussed the importance of the catch share program and the regional councils' role in that effort.

#### **C. Habitat**

##### **C.1 Current Habitat Issues (06/13/09; 9:42 a.m.)**

###### **C.1.a Agenda Item Overview**

Mr. Chuck Tracy provided the agenda item overview.

###### **C.1.b Report of the Habitat Committee**

Mr. Stuart Ellis provided Agenda Item C.1.b, Supplemental HC Report.

###### **C.1.c Reports and Comments of Management Entities and Advisory Bodies**

None.

###### **C.1.d Public Comment**

None.

### **C.1.e Council Action: Consider Habitat Committee Recommendations**

No action was requested in the Habitat Committee report to the Council. Council members asked questions or provided brief comments concerning funding for the National Oceanic and Atmospheric Administration (NOAA) Coral Reef Conservation Program, the availability of reports from the symposium on developing ecosystem management plans, and the difficulties and importance of controlling invasive species.

## **D. Pacific Halibut Management**

### **D.1 Proposed Procedures for Estimating Pacific Halibut Bycatch in the Groundfish Setline Fisheries (06/13/09; 10:01 a.m.)**

#### **D.1.a Agenda Item Overview**

Mr. Chuck Tracy presented the agenda item overview.

#### **D.1.b Northwest Fisheries Science Center Report**

Dr. Jim Hastie presented Agenda Item D.1.b, Supplemental NWFSC PowerPoint. He noted that the change from an estimated 25 percent discard mortality rate on Pacific halibut in sablefish setline fisheries to 16 percent was based on the change in the fishery from a derby fishery to a tiered fishery. The 16 percent rate is the same as used in Alaska individual quota fisheries. The anomalous high level of discards in 2006 remained unexplained.

Mr. Steve Williams asked how legal and sublegal mortality estimates would be partitioned from the setline total mortality estimates. Ms. Majewski replied that halibut length measurements were seldom taken by observers because most bycatch was not taken aboard.

Ms. Culver asked how the weight of halibut bycatch was estimated if they were neither weighed nor measured. Ms. Majewski replied the observers made a visual estimate of length, which was then converted to weight using a standard relationship. The length estimates were recorded on paper but not input into the electronic database.

Mr. Steve Williams asked what methods other than reviewing the paper forms were available to estimate individual halibut lengths. Ms. Majewski replied that in the future the database could be modified to accept individual lengths. Dr. Hastie replied it may be possible to look at observed sets with only one halibut recorded and use that data to estimate halibut individual lengths or weights.

Ms. Culver asked if the Northwest Fisheries Science Center (NWFSC) was planning on including fixed gear mortality estimates in the total mortality report or providing separate estimates for fixed gear fisheries. Dr. Hastie replied that for 2009, the former, due to data and analytical limitations.

**D.1.c Reports and Comments of Management Entities and Advisory Bodies (06/13/09; 10:50 a.m.)**

Mr. Gregg Williams International Pacific Halibut Commission (IPHC) reported Area 2A set line bycatch mortality has been accounted for in the halibut stock assessment and in the constant exploitation yield calculations for about 15 years using a fixed value of 25,000 pounds based on a 25 percent discard mortality rate for unobserved derby type fisheries. A difference in mortality rate related to length was not anticipated.

Ms. Culver asked if mortalities estimated for the 2008 trawl fishery and the 2007 setline fishery, provided in late September, would be satisfactory for the IPHC to use in their 2009 management process. Mr. Williams replied yes, that their deadline for data to be incorporated was October 15.

Mr. Moore asked if the proportion of legal and sublegal halibut in the bycatch mortality would affect the assessment and yield determination process. Mr. Williams replied probably not, since it was a relatively small amount.

Mr. Tracy asked if the assumed 25,000 pounds was legal size only. Mr. Williams replied no, the 25,000 pounds was all sizes, but 16,000 pounds of legal size halibut was used in the yield determination process.

Dr. Peter Lawson presented Agenda Item D.1.c, Supplemental SSC Report.

Mr. Bob Alverson presented Agenda Item D.1.c, Supplemental GAP Report.

**D.1.d Public Comment**

Ms. Leesa Cobb, Port Orford Resource Team, Port Orford (POORT), OR

Ms. Culver asked if the POORT proposal was to use directed commercial halibut quota to provide incidental retention in the sablefish setline fishery. Ms. Cobb replied yes.

Ms. Culver asked if the POORT proposal was focused on a specific geographic area. Ms. Cobb replied not until discussions with the State of Oregon were advanced.

**D.1.e Council Action: Review and Provide Guidance on Appropriate Bycatch Estimation Procedures**

Mr. Steve Williams supported use of the 16 percent halibut discard mortality rate for Area 2A setline fisheries based on the change in the way fisheries were conducted. He recommended the anomalous 2006 encounter rate should be investigated to determine the cause and prevent such occurrences in the future, and that length data be incorporated into the observer database in the future to facilitate analysis of proposed fishery modifications such as the POORT proposal.

Ms. Culver moved (Motion 2) that the Council adopt an annual process to submit Pacific halibut bycatch and bycatch mortality estimates for Area 2A fixed-gear and trawl fisheries to the IPHC prior to mid-October, with the understanding that trawl estimates would be based on data from one year previous and fixed gear estimates would be based on data from two years previous. The Council would review the methods and results of the estimates for approval at the September Council meeting. Mr. Dale Myer seconded the motion.

Motion 2 passed unanimously.

## **E. Groundfish Management**

### **E.1 Groundfish Essential Fish Habitat Modifications (06/13/09; 1:02 p.m.)**

#### **E.1.a Agenda Item Overview**

Mr. Tracy presented the agenda item overview.

Ms. Culver asked if the proposals were included in the 2011-2012 biennial groundfish specification process and if adopted, would they still be subject to review under the periodic 5-year review process beginning in 2011. Mr. Tracy replied yes.

#### **E.1.b Report of the EFH Review Committee**

Mr. Brad Pettinger presented Agenda Item E.1.b, EFHRC Report.

Ms. Culver asked if the requested additional information for the Olympic-2 and Grays Canyon proposals was available but not included, or if the information would have to be developed during the process. Mr. Pettinger replied some of the information was available such as trawl track information, other, such as economic information would require additional development.

#### **E.1.c Reports and Comments of Management Entities and Advisory Bodies**

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

Mr. Chuck Tracy read Agenda Item E.1.c, Supplemental SSC Report into the record.

Mr. David Sones presented Agenda Item E.1.c, Supplemental Tribal Comments and referred the Council to Agenda Item E.1.d, Supplemental Public Comment 3 (comments of the Quileute Tribe).

Mr. John Holloway presented Agenda Item E.1.c, Supplemental GAP Report.

Mr. Moore asked why the GAP felt the Eel Canyon merited the interim review process while the Olympic-2/Grays Canyon proposal should be delayed until the periodic 5-year review process. Mr. Holloway replied the Eel Canyon did not appear to affect any sensitive habitat and would result in positive economic impacts.

#### **E.1.d Public Comment**

Mr. Bob Alverson, Fishing Vessel Owners Association, Seattle, WA

Mr. Ben Enticknap, Oceana, Portland, OR (PowerPoint)

Mr. Moore asked why the Grays Canyon proposal included so much area outside the rockfish conservation area (RCA) compared to the Olympic-2 proposal. Mr. Enticknap replied the trawl track information indicated the area was not heavily trawled, and the area potentially held sensitive sponge habitat. In addition, the configuration avoided a doughnut hole around 700 fm.

Ms. Culver asked how the proposal would meet the purpose and needs if it was intended to affect only non-tribal trawl vessels when it appeared there was no non-tribal activity in the areas specified. Mr. Enticknap replied Oceana felt any proposal affecting tribal trawlers should be developed in government to government negotiations between the tribes and the Federal government, not in the Council process.

Ms. Culver asked if Oceana had discussions with non-tribal fishers regarding the proposals. Mr. Enticknap replied Oceana's intent was to have those conversations if the proposal was judged to have sufficient merit to be advanced in the interim review process.

Mr. Lockhart asked how the Oceana proposals would integrate with the Council's objectives for ecosystem management. Mr. Enticknap replied the Grays Canyon proposal addressed an ecosystem that may have been previously unknown. The approach would address specific relationships within the proposal area as opposed to the larger ecosystem view of the California Current large ecosystem. Both approaches should be addressed.

Mr. Steve Williams asked what the urgency was for the Oceana proposals to be included in the interim review process. Mr. Enticknap replied that some habitats in the proposal were currently protected by RCAs, however, the habitats were in need of longer-term protection not provided by the RCA, which could be altered in the biennial specification process. Some areas in the Oceana proposal are currently open to fixed gear bottom contact fishing gear.

#### **E.1.e Council Action: Consider Adoption of Proposed Changes to EFH for Public Review**

Ms. Vojkovich asked how the proposals would fit in with the biennial specification process and what environmental analysis would accompany the proposals. Dr. Coon replied that if the proposals were accepted at the November 2009 Council meeting, the biennial specifications would include alternatives that included the proposed boundary modifications, along with status quo alternatives. Whatever environmental analysis used for the biennial specifications would then cover the essential fish habitat (EFH) proposals.

Mr. Moore asked if the proposals could be considered at the periodic 5-year EFH review process to allow time for additional socio-economic analysis. Dr. Coon replied that is a possible outcome of this process.

Ms. Culver asked if the additional information and analysis identified in the Essential Fish Habitat Review Committee (EFHRC) and Habitat Committee (HC) reports was beyond the scope of information available to the applicants. Mr. Tracy replied the EFHRC noted the need for additional information and analyses, but also recognized that much of the detailed analyses would have to occur during the biennial specification process, although some information may be available to help inform the Council. The EFHRC also requested clarification on the role of NMFS and Council staff in the economic analysis process.

Mr. Lockhart stated the proposals do have merit for further consideration; although a delay may be warranted. A delay would allow the applicants time to gather data, and because fisheries have proceeded for many years without loss of the sensitive habitats identified, the risk was unlikely to be imminent. He recommended the Northwest Region open a dialogue with the Northwest and Southwest Science Centers to acquire the needed data.

Dr. Coon noted the workload associated with the biennial specifications, annual catch limits, and Amendments 21 and 22 were significant and would have to be resolved at the November 2009 Council meeting, when the EFH process was scheduled for final action. Mr. Lockhart noted that the EFH process did not have to be integrated with the biennial specifications process.

Mr. Wolford was interested in seeing the proposal advanced; however, additional justification on the urgency was necessary for including them in the interim review process.

Ms. Culver recommended the proposals not be included in the biennial specification process because of the additional complexity of the analysis. The EFH proposals should be analyzed separately to prevent confusion. Dialogue with the fishing industry was lacking in the current proposals, and should be included as part of the process when they come forward at a later time.

Mr. Lockhart asked if the Council could act to delay a decision until November on what process was appropriate for the proposals. Mr. Tracy replied the current process was structured to make that decision at the November Council meeting while allowing an opportunity for the applicants to provide the requested information in the interim.

Ms. Culver asked what work and information National Marine Fisheries Service (NMFS) would expect to have by November 2009. Mr. Lockhart replied the applicants would have additional time to address the needs identified by the advisory bodies, and NMFS could assist by providing access to existing reports and information that the applicants were not necessarily aware of, but no new analysis was contemplated.

Ms. Culver noted that any additional information for Olympic-2 and Grays Canyon areas would likely be unavailable to the applicants, and would have to come from Council advisory bodies or agencies. Applicant-provided data may not be informative or appropriate, and it would be unfair to make that request of the applicants.

Mr. Moore asked if there was a time frame associated with a motion to table an agenda item. Dr. Hanson replied that it would expire after the next Council meeting, but a motion to postpone could be made with a certain time specified.

Mr. Steve Williams stated that while the proposals had merit, the urgent need to include them in the interim process was not sufficiently established and the Council would not be prepared to deal with the additional information requested by the November 2009 Council meeting. Dr. Coon replied that if the proposals did not accompany the biennial specification process, the next opportunity would be the periodic 5-year review process.

Mr. Moore moved (Motion 3) to postpone this agenda item until no earlier than the September 2010 Council meeting. Mr. Cedergreen seconded the motion.

Mr. Moore noted that delaying the issue would provide the Council time to deal with higher priority items, such as the biennial specifications and trawl individual quotas, before devoting the resources to the EFH issues necessary to make an informed decision.

Mr. Wolford was concerned that Motion 3 would not allow the applicants to respond to the issue of urgency in November 2009. Dr. Hanson replied Motion 3 could be amended to allow a report at the November 2009 meeting. Mr. Moore noted any agenda item could be reconsidered if new information became available.

Ms. Vojkovich was convinced that the urgency to move the proposals forward did not exist, and the Council needed to approach workload issues strategically.

Mr. Sones requested additional time to discuss the issues with Oceana before the proposals were moved forward.

Motion 3 passed unanimously.

Mr. Moore recommended the comments from the advisory bodies be addressed by the applicants prior to the proposals being reconsidered.

At this time Ms. Margaret Spring made comments about her new job. Ms. Ericka Feller will be taking her place.

## **E.2 Proposed Process and Schedule for Developing 2011-2012 Biennial Harvest Specifications and Management Measures (06/13/09; 4:54 p.m.)**

### **E.2.a Agenda Item Overview**

Dr. Kit Dahl provided the agenda item overview.

### **E.2.b Reports and Comments of Management Entities and Advisory Bodies**

None.

### **E.2.c Public Comment**

Ms. Karen Garrison, NRDC, San Francisco, CA

### **E.2.d Council Action: Adopt a Process and Schedule**

Ms. Vojkovich said she was concerned about the workload involved in preparing the harvest specifications and management measures analyses. The schedule (Agenda Item E.2.a, Attachment 1) did not give a clear indication of workload. She is particularly concerned about workload expectations relative to agency staff other than the Council and NMFS. She needs this information in order to have an informed conversation on workload planning under Agenda Item G.5. Dr. Dahl said that from the state perspective the major workload is through the Groundfish Management Team (GMT) since they do a lot of the work on developing and evaluating management measures. However, he didn't foresee more workload under this cycle in comparison to past cycles. He said that at the staff level there will likely be some discussion of what will be required, but didn't foresee this producing any new tasks for the GMT compared to what they have done in the past.

Ms. Vojkovich said her reading of the situation summary suggests a different scenario, given the need to address National Standard 1 guidelines and the risk that the trawl rationalization program will not be implemented on January 1, 2011. She wondered what the resulting workload increase will be. Dr. Coon said it is premature to get into the specifics of workload at this meeting, but he did not expect a lot more products from the GMT. There may be some new issues, but at this meeting we cannot tell you precisely

what changes in workload there may be. In addition, Council and NMFS staff will be looking at possible efficiencies in the process.

Ms. Vojkovich asked if the schedule shown in Attachment 1 is different than what we have been operating under in the past few cycles. Dr. Dahl said it is almost identical to the past schedule except for changing the dates. Referring to Ms. Vojkovich's previous comments, even if trawl rationalization is not implemented in time, the workload would be similar to past cycles; if it is implemented it could reduce the number of management measures that have to be developed for the trawl fishery. Complying with National Standard 1 guidelines (ACLs) is an increased workload issue, but much of that work is addressed under a decision-making process for Amendment 23 rather than biennial harvest specifications.

Ms. Culver agreed with Ms. Vojkovich on needing to assess workload, and additionally state government workload related to the trawl rationalization implementation. Ms. Culver asked what would happen if trawl rationalization was not implemented on January 1, 2011; would we default to the 2010 management measures and adjust them inseason in March 2011? Mr. Lockhart said that unless the Council develops a contingency that is what would occur. Ms. Cooney noted that in 2010 the Council should have a better idea of when trawl rationalization will be implemented and in time to address the issue in the harvest specifications process.

Mr. Sones asked about the workload differences between preparing an Environmental Assessment (EA) versus an Environmental Impact Statement (EIS). Dr. Dahl described the decision process for deciding which type of document to prepare under the Northwest Region's (NWR) Quality Assurance Plan. Mr. Lockhart said the courts generally do not consider workload as a consideration in this decision. Mr. Sones said the Council needs to plan adequate time if an EIS gets triggered.

Dr. Coon said that after adopting the process and schedule in Attachment 1, the Council can make subsequent amendments to it if needed.

Mr. Moore moved (Motion 5) to adopt Agenda Item E.2.a, Attachment 1, "Pacific Fishery Management Council and National Marine Fisheries Service Schedule and Process for Developing 2011-2012 Groundfish Harvest Specifications and Management Measures." Mr. Warrens seconded the motion.

Motion 5 passed unanimously.

Ms. Vojkovich asked if the Council needed to provide guidance on a contingency plan if the trawl rationalization plan is not implemented at the beginning of 2011. Dr. Dahl said, as mentioned in the situation summary and by Ms. Cooney, the Council can make that decision early in 2010 when more is known about trawl rationalization implementation.

Ms. Vojkovich noted a GMT meeting scheduled for October and voiced her concern about having a plan in place in a timely fashion. Mr. Lockhart said he will discuss it further under the trawl rationalization agenda items, but NMFS believes they can get the work done necessary to get the trawl rationalization program implemented by January 1, 2011. He said NMFS will provide more information for Council guidance at the September 2009 meeting.

Ms. Culver said we could decide in September 2010 to fall back to the 2010 management measures for 2011 in the event the trawl rationalization program is not implemented by that time.

### **E.3 Fishery Management Plan (FMP) Amendment 22—Open Access Fishery Limitation**

#### **E.3.a Agenda Item Overview (06/13/09; 3:10 p.m.)**

Mr. LB Boydston provided the agenda item overview regarding consideration of withdrawing the March 2009 Council decision affecting the open access (OA) groundfish fishery and briefed the Council on the four attachments. In response to questions, Mr. Boydston stated that regarding its March decision, the Council could affirm the action, give notice of rescinding it, or do nothing.

Ms. Culver sought clarification about how the registration requirement applies to vessels that only have incidental harvest and only fish in state waters. She did not see where registration of vessels with only incidental harvest was required. Mr. Moore noted that there was a lengthy discussion of that topic in March, but that discussion is not reflected in Attachment 1 (draft March Minutes). [It was later determined that the referenced discussion took place after the motion and was overlooked in providing the minutes in Attachment 1.] In response, Mr. Lockhart stated that their reading of the EA is that registration would be required of all OA vessels that fish for B species groundfish in the Exclusive Economic Zone (EEZ) and would apply the same as the vessel monitoring system (VMS) requirement. The states could choose to apply the regulation to state waters. The overall effect of the proposed regulation would give very little additional information over VMS. It would give preseason information, which could be accomplished in another manner. Alternative 2 was developed before VMS was required so that may explain why it is in the package.

Mr. Moore asked if it is NMFS' opinion that a shrimp vessel operating outside 3 miles would have to be registered to take B species? Same for salmon vessels? Mr. Lockhart responded in the affirmative.

Ms. Culver asked if you now collect pink shrimp and salmon vessel information since they do not have VMS? Mr. Dayna Matthews stated there are no exceptions to the VMS requirement to take Federal groundfish in Federal waters (so yes, information is being collected from these vessels).

#### **E.3.b Reports and Comments of Management Entities and Advisory Bodies**

Mr. Gerry Richter read Agenda Item E.3.b, Supplemental GAP Report.

#### **E.3.c Public Comment**

Mr. Bill Blue, Morro Bay Commercial Fishermen's Association, Morro Bay, CA—supported the March decision.

Mr. Larry Collins, San Francisco Crab Boat Owners Association, San Francisco, CA—supported the March decision and stated rescinding the decision would interrupt business decisions.

Ms. Karen Garrison, NRDC, San Francisco, CA—stated the fishery needed to be capped to prevent an effort shift of former limited entry vessels.

Mr. Tom Ghio, Ghio Fish Company, Santa Cruz, CA—supported maintaining the March Decision.

#### **E.3.d Council Action: Review March Council Action on Limiting the Open Access Fishery**

Dr. Hanson provided an explanation about rescinding motions (06/13/09; 3:49 p.m.). A motion to rescind is like a motion to reconsider, but can be done at a subsequent meeting. If all members are present, a majority vote is needed to reverse the motion. The alternative is to notice consideration to rescind the

motion, but it must be specific. The latter approach does not require all members to be present but requires a majority vote by the members present.

Ms. Culver asked if we can rescind the motion today. Dr. Hanson replied that was not possible since the public notice does not say the motion is up for withdrawal. Mr. Moore asked if we notice today and rescind in September 2009, do we have the previous alternatives before us for reconsideration? Or, do we need to do another two-meeting process?

Dr. Hanson said if you rescind, you will have everything before you that you had at the time of the motion. Ms. Cooney said from a legal standpoint, you could decide not to send a recommendation in or you could develop a new proposal if there is adequate analysis before you.

Mr. Moore asked if we could use the draft EA and public comments to develop a new recommendation. Ms. Cooney said that would be okay if you determine the new proposal is fair.

Mr. Dale Myer asked if we would need to develop a new control date. Mr. Lockhart said you would need to decide if the existing control date is valid considering what has happened.

Chairman Hansen noted it is highly possible that headquarters will send the recommendation back and tell us to start over.

Ms. Culver, in going over the NMFS report, noted it indicated that there wouldn't be much or any information gathered beyond what is currently gathered. She said it would seem that you would gather information such as who would intend to participate in the OA fishery in a given year and some estimate of effort in any given year. She asked Mr. Lockhart if he could describe any workload concerns he had and how it would differ from the workload you do now. Mr. Lockhart said there would be a significant workload--gearing up with a new permitting program (application, review, send out, appeals, annual appeals process potentially) and other items going on that would involve the same people. Although the number of people that have been fishing in OA is at a low level now, there is reason to believe that it might go to a higher level. As far as the information goes, we have a list of permittees, you would still have the list of people fishing and retaining fish in Federal waters using VMS.

Ms. Culver said it seems that other alternatives in the EA would have even greater workload. What is the potential timing of program implementation? Mr. Lockhart said there was a small window of opportunity to work on this; that small window of opportunity is now closed; so the next time he sees it re-opening is 12 months from now – perhaps 18 months.

Mr. Moore stated that it sounds like NMFS does not believe the program adopted in March passes a cost-benefit test. Mr. Lockhart said that based on what he knows now of the program, nothing has really changed and there is a conservation concern which is not addressed. He said anytime there is an OA fishery you are allowing increased effort to access the fishery. Generally, this is almost a universal lesson from other countries in the past decades. This Council is beginning to potentially consolidate through the trawl individual quota (TIQ) program. Those vessels that won't be participating in the TIQ program might go into the OA fishery. The concern is that the OA fishery will be allowing everybody to enter into the fishery.

Ms. Cooney said there are two issues here: (1) the proposal was put into the document before VMS was implemented and never taken out, and (2) the proposal does not give fishery benefits over those achieved

by the VMS program. Mr. Wolford said today's discussion should be about process. At this time, there are numerous tools to achieve conservation.

Ms. Fosmark said the OA fishery has a separate allocation and all we are doing is counting the participants in the fishery. The allocation will be split among many or among few. She is not comfortable with having the decision be reversed and is concerned about people in the future who don't have the ability to buy a permit who would have to fish a lot harder to buy a permit and she does not see that as allowing conservation.

Ms. Culver, in response to Mr. Lockhart's comments, said we do have management measures in this fishery. What draws people into this OA fishery is the trip limits we set. We see effort change constantly as we change the trip limits. We are also approached at almost every Council meeting to consider changes to the daily trip limit (DTL) sablefish fishery. We are seeing that they are not achieving their allocation because it is not economically viable to go fishing. When we increase the trip limits, the effort does increase. In looking at cost-benefits, status quo and Alternative 2 have relatively low cost and the others do not.

Mr. Myer said he had a hard time believing there will be a significant effort shift of limited entry vessels to the OA fishery. Mr. Lockhart said I believe capping effort will have a conservation benefit over status quo. It is one reason we are doing IQs. Fishermen go fishing for a lot of reasons, in part because they like to fish. It is possible they could shift to OA using different gear at a lower cost. Our review shows that a first step to proper fishery management is to cap the fishery. Open access fishing has a greater conservation concern than capping the fishery.

Mr. Sones said he is concerned about the value of permits going up and being out of reach for young fishermen. If we put expired permits into a lottery, I would be more in favor of capping the fishery.

Ms. Vojkovich asked if we do nothing and NMFS denies the proposal, could they tell us to start over or do it themselves? Mr. Lockhart replied that she was correct on both counts, but he is aware of only one case where NMFS did it alone. Based on that response, Ms. Vojkovich concluded we could let this play out and have 12-18 months to figure out where we go next.

In response to questions about workload, Mr. Boydston said if you affirm the March action, it would require considerable amendment to the existing EA and it would be likely that the document would remain dormant until after the September meeting.

Mr. Steve Williams said he is giving notice that he will be making a motion during the administrative matters, Agenda Item G.5, to place on the September agenda an item to consider rescinding or reaffirming our March Council action. Dr. Hanson noted that it would be better to make the motion now, rather than wait until Thursday under Agenda Item G.5.

In response to questions, it was confirmed that under Mr. Steve Williams' proposed motion that in September the Council could change or make the same decision regarding the March decision on the OA fishery.

Mr. Steve Williams moved and Mr. Warrens seconded a motion (Motion 4) to place an agenda item on the September Council agenda to consider rescinding the Council's March OA action. Mr. Steve Williams said the point of his motion is that we need to take action and get on with it.

Mr. Wolford spoke against the motion. He said we have not made a technical case to rescind it and believes it would set a dangerous precedent. If we had violated some standard then he could see rescinding. The analyses Mr. Boydston put together in the EA were outstanding and we made a difficult decision.

Ms. Culver agreed with Mr. Wolford and was unaware that the Council has ever rescinded any motions in the past and believes we don't want to go down that road. If there is a better option to meet our goals, she would like to hear their approach.

Motion 4 roll call vote. Motion 4 failed.

No: Ortmann, Myer, Sones, Cedergreen, Culver, Fosmark, Wolford, Vojkovich, Mallet (9 no)

Yes: Moore, Warrens, Lockhart, Williams (3 yes)

Mr. Boydston summarized by saying this confirms the March action and he will proceed in finishing the EA.

#### **E.4 Fishery Management Plan Amendment 23 – Implementing Annual Catch Limit Requirements (06/14/09; 11:25 a.m.)**

##### **E.4.a Agenda Item Overview**

Mr. John DeVore provided the agenda item overview.

Ms. Vojkovich asked whether future considerations for setting harvest specifications would be evaluated on a “species by species” basis or a “fisheries by fisheries” basis. Mr. DeVore stated the evaluations used for deciding harvest specifications will be done on a “species by species” basis.

Ms. Culver asked if the Council could set annual catch targets (ACTs) in consideration of management uncertainty. Mr. DeVore said management uncertainty is more of a consideration for setting annual catch limits (ACLs). The final rule for National Standard 1 (NS1) guidelines states the ACT should be considered for management systems that do not have an adequate inseason catch monitoring and adjustment mechanism. The current inseason catch monitoring and adjustment mechanism in the groundfish FMP appears to be adequate and we may not need to set ACTs. However, if the Council judges the inseason mechanism is not adequate for a particular stock or stock complex, then setting an ACT would be appropriate.

Ms. Culver thought the buffer between the overfishing limit (OFL) and the ACL would incorporate scientific uncertainty and a further buffer between the ACL and the ACT would incorporate management uncertainty. Mr. DeVore explained the NS1 guidelines contemplate a buffer between the OFL and the acceptable biological catch (ABC) to incorporate scientific uncertainty and a further buffer between the ABC and the ACL would incorporate management uncertainty, socioeconomic considerations, and all the other considerations in our FMP for setting optimum yields (i.e., the ACL is analogous to the current OY specification). The ACT is set lower than the ACL in cases where there is not an adequate inseason adjustment mechanism that would protect a stock from overfishing.

Mr. Moore explained the vulnerability evaluation process is, in part, recommended to be used to categorize stocks by their vulnerability. He asked if this might compel us to change our stock complexes. Mr. DeVore said that there may be other reasons for changing our stock complexes in the future, but he

didn't believe this was a top priority in either the Amendment 23 process nor in the upcoming biennial specifications process.

Mr. Moore said the vulnerability evaluation working group paper mentioned there would soon be more specific guidelines for using vulnerability rankings to help decide control rules from a control rule working group. He asked if that control rule working group paper would be available in time for the Council's Amendment 23 decision and Mr. DeVore said he believes so. In the Scientific and Statistical Committee (SSC) discussion on this topic earlier this week, it was explained this guidance might be available this summer. If so, then the control rule working group report would be included in the September briefing book to aid the Council in developing and deciding Amendment 23 provisions.

#### **E.4.b Reports and Comments of Management Entities and Advisory Bodies**

##### SSC Report

Dr. Martin Dorn provided Agenda Item E.4.b, Supplemental SSC Report.

Mr. Moore said it sounded like a preliminary framework for deciding ABCs will be available in time for deciding these specifications. Dr. Dorn explained that is the goal, but there are some challenges, such as how to decide scientific uncertainty buffers or ABCs for unassessed stocks.

Ms. Vojkovich said she was having difficulty understanding how scientific uncertainty in a stock assessment model might be used to decide an ABC. Dr. Dorn said there would be a larger set of considerations than the amount of scientific uncertainty represented in individual stock assessments. Ms. Vojkovich asked how this would be considered for data-poor stocks. Dr. Dorn said it is not just data-poor stocks, but also unassessed stocks that would be considered. We need to develop a framework for deciding ABC control rules for unassessed stocks. Ms. Vojkovich asked if that approach and methodology would be done in time for finalizing Amendment 23 and Dr. Dorn anticipated this would be needed, but there has been little advancing of thoughts on this approach.

Mr. Lockhart asked about the effectiveness of our current inseason management process and Dr. Dorn said that was discussed some by the SSC and Mr. DeVore. Based on those discussions, it appears that the current mechanisms appear to be working well. However, this needs to be documented and evaluated in this Amendment 23 process.

Ms. Culver asked if we would collectively advance Amendment 23 in time to decide a range of ACLs in November for deciding 2011-12 harvest specifications. Dr. Dorn said that is the expectation but depends on the efficacy and applicability of proposed control rules for deciding ABCs and ACLs.

#### **E.4.c Public Comment**

Ms. Karen Garrison, Natural Resources Defense Council, San Francisco, CA  
Mr. Ben Enticknap, Oceana, Portland, OR

#### **E.4.d Council Action: Guidance on Developing Preliminary Amendment Alternatives**

Mr. Moore moved and Mr. Warrens seconded a motion (Motion 7) to provide three areas of guidance for developing Amendment 23 alternatives: 1) the GMT and Council staff should provide appropriate documentation of the inseason catch monitoring and adjustment process for evaluation; 2) Council staff

should work with the SSC to explain the timeline for getting these control rules developed to synchronize with the biennial specifications process; and 3) advancing ABC control rule considerations for unassessed species needs to be included in this process.

Ms. Culver asked Mr. DeVore what materials and analyses for Amendment 23 considerations might be available for the September and November meetings. Mr. DeVore said he expects that by September we will be able to advance thinking on the scientific uncertainty buffers for both assessed and unassessed species. The SSC Groundfish Subcommittee is proposing a meeting this summer to discuss this issue. Their report and analyses can then be reviewed by the full SSC in September and an SSC report could then be provided to the Council. We can also document the efficacy of our inseason management process and make that available for evaluation. By November, we should be able to evaluate the framework considerations currently in our FMP for deciding optimum yields (OYs) and see if they are applicable for deciding ACLs or whether we might need to enhance those framework provisions. Mr. DeVore said progress will depend on how well the proposed methodologies for deciding ABCs apply. If we cannot get it done by November, we absolutely need to decide these new ABC control rules by April of 2010, since that is when biennial harvest specifications are decided by the Council. It is critical that we synchronize Amendment 23 decision-making with our biennial specifications process.

Ms. Culver said she didn't really hear what we needed for September. Mr. DeVore said there will be some analysis of alternative ABC control rules from the SSC in September. However, he could not commit to providing the evaluation of the inseason adjustment process by September unless the GMT has time to develop that analysis this summer. Ms. Culver asked whether or not we needed to take this up in September or if November would be sufficient. She remarked that annual harvest targets will need to be decided by November to allow state managers time to engage recreational fishery stakeholders.

Ms. Culver moved and Mr. Myer seconded a motion to amend the main motion (Amendment 1 to Motion 7) to prioritize development of ABC control rules (i.e., buffers for scientific uncertainty) for overfished and assessed species so that a range of harvest specifications for these stocks can be decided for public review in November. She also suggested that, rather than the full GMT work on documenting the inseason management process and considerations for management uncertainty, a GMT subcommittee should work with Mr. DeVore and Mr. Burden.

Amendment 1 to Motion 7 carried unanimously.

Mr. Moore recommended staff discuss the September agenda this week before Thursday and recommend how much time would be needed to discuss Amendment 23. Dr. Coon said that would be done. Mr. DeVore said it will be important to plan an Amendment 23 item for the September agenda in order to advance the ABC control rule and decide FMP framework provisions by November.

Mr. Wolford asked where unassessed species might fit in the prioritized tasks contemplated for Amendment 23. He also wondered how we might address ecosystem component species and species that are not in the FMP. Mr. Moore said he was not considering species that are not managed in the FMP under Amendment 23. There are already species that are identified as potential ecosystem component species. Mr. Moore thought determining science-based harvest control rules for species managed in a stock complex may require a "mini assessment" of species that are an important part of the fishery. He thought it wise to prioritize Amendment 23 considerations for overfished and assessed species. Mr. DeVore added Dr. Ralston will be assisting with the analysis and there have been informal discussions about how to address harvest specifications for unassessed species. Mr. DeVore agreed the

priorities in Ms. Culver's motion make a lot of sense, but he still hopes to address ACLs for unassessed species under Amendment 23 in a timely manner.

Motion 7 carried unanimously.

Ms. Vojkovich moved and Ms. Fosmark seconded a motion (Motion 8) to provide guidance to the SSC to keep the ABC control rules as simple and direct as possible.

Ms. Vojkovich said she wants the SSC to tell us when they deviate from hard data to "assumptions" when developing control rules. She was concerned that the vulnerability evaluation process may add layers of uncertainty into the ABC decision. Mr. Moore explained the vulnerability evaluation working group paper recommends against double counting of vulnerability information and that recommendation is compatible with Ms. Vojkovich's motion. Mr. DeVore said the context of the vulnerability evaluation process is that it may be a useful tool for deciding ABCs and ACLs. The SSC is clear that they want to come up with an easily understandable set of ABC control rules that generally applies scientific uncertainty. One possibility is stocks may be generally classified as "data-rich," "data-moderate," and "data-poor" with separate ABC control rules for each classification. The SSC needs to do a bit of thinking on this.

Motion 8 carried unanimously.

#### **E.5 National Marine Fisheries Service Report (06/14/09; 1:30 p.m.)**

##### **E.5.a Regulatory Activities**

Mr. Frank Lockhart provided an update on regulatory activities.

##### **E.5.b Fisheries Science Center Activities (06/14/09; 1:51 p.m.)**

Dr. Elizabeth Clarke provided an update on science center activities which included: groundfish activities, an update of the economic cost earnings survey of the LE fleet; STAR panel presentation; juvenile midwater trawl survey; initiation of the bottom trawl survey; and the acoustic survey for Pacific whiting.

##### **E.5.c Reports and Comments of Management Entities and Advisory Bodies**

Mike Cenci presented Agenda Item E.5.c, Supplemental EC Report.

##### **E.5.d Public Comment**

Mr. Bob Alverson, Fishing Vessel Owners Association, Seattle, WA

##### **E.5.e Council Discussion**

No further discussion.

## **E.6 Part I of Stock Assessments for 2011-2012 Groundfish Fisheries (06/14/09; 2:14 p.m.)**

### **E.6.a Agenda Item Overview**

Mr. DeVore provided the agenda item overview. He explained the action before the Council is whether to formally adopt the assessments or not. The SSC is recommending all the assessments be adopted except for the petrale sole assessment, which is recommended for further review this summer by the SSC before being considered for formal adoption in September. Mr. DeVore explained the GMT is recommending a “point of concern” be established for petrale sole based on the results of the draft assessment, which may compel inseason fishery adjustments later in the year. Ms. Cooney clarified that this point of concern declaration would simply signal Council intent to consider future inseason action if the final assessment result does not vary dramatically from that in the draft assessment.

### **E.6.b Presentation of Petrale Sole and Splitnose Rockfish Assessments**

#### Petrale Sole

Mr. Allan Hicks provided a PowerPoint presentation of the petrale sole stock assessment.

Mr. Moore asked about the survey catchability ( $q$ ) estimate for the NMFS Northwest Fisheries Science Center (NWFSC) survey. Mr. Hicks explained the high catchability estimate of 3.07 for the NWFSC survey is a way to scale the higher estimated biomass in the NWFSC survey to the triennial survey and other data in the assessment. The design of the NWFSC survey trawl net is also considered more efficient for flatfish, including petrale sole. The design of the footrope and the wings of the survey net tend to create more mudding and a higher potential for herding of petrale sole, which would increase catchability as well. Mr. Hicks explained the surveys are relative indices of abundance and the model attempts to match the patterns of abundance rather than using each survey index as an absolute measure of abundance.

Mr. Wolford asked about the equilibrium yield curve and why the distribution is skewed toward lower levels of relative depletion. Past equilibrium yield curves for rockfish typically are skewed to the right with  $B_{MSY}$  at higher levels of depletion. Mr. Hicks explained that the general shape of the curve has much to do with the potential productivity of the stock. The estimated  $B_{MSY}$  is skewed to lower levels of petrale spawning biomass since this is a highly productive stock, with a different life history (less longevity and higher natural mortality rate) and a greater potential productivity than for most rockfish. Flatfish would, in general, exhibit an equilibrium yield curve like that displayed here for petrale sole.

Mr. Anderson asked why there was a change from the previous petrale sole assessment to go to a coastwide assessment. Mr. Hicks said there was no genetic evidence for two separate stocks on the west coast and the assessment team thought they could better capture potential geographic differences in growth rate, etc. by modeling separate fleets by state. Mr. Anderson asked about the depletion rate from the north to the south and whether there were area differences. Mr. Hicks said there were likely different exploitation rates by fleets in the north and the south but he is not sure what the exact fleet-based results are in the assessment.

Mr. Anderson asked why the age data were removed in the 2005 assessment and what was done to allow its use in this assessment. Mr. Hicks said there were apparently serious data conflicts in the 2005 assessment which compelled the SSC to recommend removing these data. Since then, the age data from

the NWFSC survey have been added to the assessment and much work has been done to evaluate and correct ageing errors and bias. These changes have resulted in much less data conflict in the model.

Mr. Anderson asked about the origin of the  $B_{MSY}$  estimate that is 18.9 percent of  $B_0$ . Mr. Hicks said this relates to the high equilibrium yield of petrale sole, which suggests  $B_{MSY}$  occurs at lower stock sizes. The modeling platform (SS3) projects equilibrium yields at various levels of stock depletion to determine the equilibrium yield curve highlighted in Mr. Wolford's earlier question. The model is therefore estimating the most surplus production of the stock would occur at relatively lower levels of spawning biomass.

Mr. Anderson asked about the slide that compared results from this assessment and those done previously and to defend the statement that this assessment result does not vary much from the last one done in 2005. Mr. Hicks showed the slide and explained that in 2005, the last survey point showed an uptick in biomass which is supported in the current assessment that estimated recent biomass peaked in 2005. However, the last three years of surveys since 2005 showed a declining biomass leading to the current assessment result.

Mr. Williams asked about the estimated  $B_{MSY}$  as a recommended target for petrale sole. Mr. Hicks explained the initial biomass ( $B_0$ ) and current biomass are more uncertain estimates than biomass estimates in the interim years. This means that proxy thresholds that relate current biomass to initial biomass are more uncertain than the estimates of  $B_{MSY}$ . Also the  $B_{MSY}$  estimate is robust across widely varying stock-recruitment assumptions lending support for an estimated  $B_{MSY}$  threshold. Additionally, the stock has been harvested close to the estimated maximum sustainable yield (MSY) annually for the last 50 or 60 years. If MSY is much lower than estimated, as inferred under the proxy  $B_{40\%}$  target, the stock would be driven down and the fishery would have likely collapsed. All of these results support an estimated  $B_{MSY}$  target.

### Splitnose Rockfish

Dr. Vladlena Gertseva provided a PowerPoint presentation on the splitnose rockfish stock assessment. There were no questions from the Council on the splitnose assessment.

### **E.6.c Scientific and Statistical Committee Report**

Dr. Martin Dorn provided Agenda Item E.6.c, Supplemental SSC Report.

### Petrale Sole

Mr. Wolford asked about the equilibrium yield curve with estimated  $B_{MSY}$  shifted to the left (i.e., high sustainable yields at low biomass), which seemed extreme. Dr. Dorn explained this is the question raised by the SSC. If steepness were lower, the equilibrium yield curve would shift towards the center, which is more typical. This is why the SSC is recommending further evaluation of steepness and estimates of  $B_{MSY}$ .

Ms. Vojkovich asked about the catch history of petrale relative to estimated MSY and how to interpret that result. Dr. Dorn said one also needs to look at the biomass trend, which has been relatively stable in the last fifty years. The stability of historical catches may reflect the market demand for petrale rather than some sort of biological aspect of the stock.

Ms. Vojkovich asked if it makes a difference in how the model estimates biomass if the catch is targeted or incidental. Dr. Dorn deferred to Mr. Hicks who said stratifying the fleets by state and by winter and summer periods is an attempt to allow these fleets to have different selectivities and different rates of discard. Ms. Vojkovich asked if the model interprets incidental catch, such as bycatch in shrimp trawls, as a biomass index. Mr. Hicks said there was not enough data to model each fishing strategy, such as shrimp trawling, separately in the model. However, discards in bottom trawls is modeled independently to landed catch in the model.

Mr. Moore asked why the SSC was not recommending a mop-up stock assessment review (STAR) panel review for petrale. He wanted to know why the SSC is recommending an SSC Groundfish Subcommittee meeting in August and a September SSC review to finalize the assessment and develop a recommendation for a management target for petrale. Dr. Dorn said this was to allow resolution of the assessment in time for a potential rebuilding analysis to be prepared and reviewed at the mop-up panel if it is needed. Mr. Moore was concerned this might be in violation of the well-vetted STAR process we have. Dr. Dorn said this sensitivity should be taken into account in the SSC-recommended review process.

Mr. Lockhart asked about the concerns raised by the SSC regarding NWFSC survey catchability (q) and the model explorations recommended by the SSC. Dr. Dorn explained the recommended analyses that would put a prior on steepness or survey q may help nudge the model into more plausible results and help understand what is affecting the model given that these parameters, including estimated natural mortality (M), are confounded.

Mr. Hansen asked if the SSC-recommended analyses are provided and reviewed by September, will that obviate the need for a mop-up review of petrale. Dr. Dorn said there may still be a need to review a rebuilding analysis for petrale at the mop-up panel, depending on the August and September SSC reviews.

Mr. Moore asked what happens if more plausible estimates of survey catchability cause the model to not converge. Dr. Dorn said this is an unusual situation and we may ultimately decide to recommend an assessment that has some implausible estimates. Mr. Moore asked if the SSC will be prepared to make a recommendation on the use of the petrale assessment in September and Dr. Dorn said there is always the possibility that the SSC will recommend a further review of the assessment at the mop-up STAR panel.

### Splitnose Rockfish

Mr. Moore asked about the issue of ageing the splitnose otoliths and noted a similar recommendation for petrale sole ageing was made in that assessment. He wanted to know who reads these otoliths and how ageing tasks are prioritized. Dr. Gertseva said there were old ages that need to be re-read according to modern techniques. These otoliths would be read by personnel from the Newport NWFSC lab.

Mr. Lockhart asked about the SSC caution in using the splitnose assessment for setting harvest specifications. Dr. Dorn explained the model is sensitive to assumptions and the data informing the assessment are limited, which implies caution in setting significantly higher ACLs than used currently for managing the stock.

### Canary Rockfish

Mr. Anderson asked about the revised historical California catch estimates and exactly how these catches were revised. Dr. Dorn said there is a draft document that was distributed that explains the methodology used to revise catches. He said that there were many detailed methods used and he was not in the best position to answer the question.

Mr. Anderson asked about the statement that the new updated assessment was not qualitatively different than the full assessment done in 2007. Dr. Dorn said this may have not been the best choice of wording since the revised assessment will affect the rebuilding projections and will probably have a significant effect on the rebuilding plan.

Mr. Anderson said it appeared the most influential change to the assessment was the incorporation of the revised California catch history and Dr. Dorn agreed. The 24 percent less canary caught prior to 1968 revised the estimate of initial biomass and our understanding of the potential productivity of the stock. This resulted in a lower current depletion and a longer projected rebuilding outlook. The catch revisions were intended to have a better estimate of historical catches to be used in all affected assessments. Ms. Vojkovich expressed concerns relating to the catch revision documentation and the lack of review of these methods. Dr. Dorn said there was concern; however, the draft documentation of catch revision methods was distributed and reviewed. Multiple data sets were used and those data were applied to different portions of the California fisheries over time using the best judgment of SWFSC and California Department of Fish and Game (CDFG) scientists who conducted the project. Dr. Dorn said he was not familiar enough with historical California fisheries to explain the details himself, but the concept of a formal catch reconstruction was requested by the SSC and Council and was deemed to be better catch information for assessments by stock assessment teams (STATs) and the SSC.

Mr. Wolford asked if the updated assessments for overfished stocks will also be accompanied with a rebuilding analysis. If so, have these rebuilding analyses been reviewed yet? Dr. Dorn said rebuilding analyses are expected and will be reviewed later in the year during the mop-up panel. The critical aspect of this review is deciding whether we are on track with the rebuilding plan or not. If we are not on track, then there may need to be a re-evaluation and/or revision of the rebuilding plan.

### Darkblotched Rockfish

There were no questions on the SSC recommendations for darkblotched rockfish.

### Pacific Ocean Perch

There were no questions on the SSC recommendations for Pacific ocean perch.

### Cowcod

Ms. Vojkovich asked about the historical catch revisions which lowered the estimated  $B_0$  and partly gave rise to a higher depletion, yet this happened for canary and the current depletion was lower. Dr. Dorn said each assessment is affected differentially by catch revisions despite the effect on estimated  $B_0$ .

Ms. Vojkovich asked what it would take to do a full assessment and what is meant by doing a simple stock projection in lieu of an assessment. Dr. Dorn explained without a survey or any information on stock abundance, a simpler review of catches and projected abundance would suffice.

**E.6.d Reports and Comments of Management Entities and Advisory Bodies (06/14/09; 4:29 p.m.)**

GMT Report

Mr. DeVore read Agenda Item E.6.d, Supplemental GMT Report.

Mr. Moore asked how the points of concern mechanism recommended for petrale sole differs from the more pessimistic canary assessment result. Mr. DeVore explained we have a mechanism for revising the canary rebuilding plan in the specifications process, and the points of concern framework in our FMP is more appropriate for petrale sole, since the stock is not currently managed under a rebuilding plan.

Mr. Anderson asked if the SSC's recommendation for petrale sole means that using an estimated  $B_{MSY}$  target is not recommended or will there be more investigation before an SSC recommendation is made. Dr. Dorn said this is an important consideration and the SSC wants to carefully evaluate the data and assessment result before providing a recommendation. Mr. Anderson asked if that means the SSC intends to do the review and come back to the Council in September with a recommendation on the assessment and a recommendation on whether or not to use an estimated  $B_{MSY}$  as a target and Dr. Dorn said yes.

**E.6.e Public Comment (06/15/09; 8:05 a.m.)**

Mr. Brad Pettinger, Oregon Trawl Commission, Brookings, OR

**E.6.f Council Action: Approve Stock Assessments**

Mr. Anderson moved and Mr. Myer seconded a motion (Motion 9) to adopt the stock assessments for splitnose rockfish, canary rockfish, darkblotched rockfish, Pacific ocean perch, and cowcod for management decision-making.

Mr. Anderson said this motion is consistent with the SSC's recommendations. He noted the need for caution for setting an ACL for splitnose rockfish.

Motion 9 carried unanimously.

Mr. Anderson moved and Mr. Myer seconded a motion (Motion 10) to delay adoption of the petrale sole assessment pending a further review by the SSC. Further, the motion requests the petrale sole STAT incorporate the SSC's recommendations for assessment improvements and explorations.

Mr. Wolford asked if it was his intent to have the Council consider the petrale sole assessment in September and Mr. Anderson said yes. Mr. Wolford asked what the remedy might be if the assessment is not recommended in September and Mr. Anderson said he was not in a position to speculate.

Mr. Steve Williams asked if the SSC review meeting in August would be open to the public and Mr. DeVore said this was an open public process and would be noticed in the *Federal Register* and in a meeting notice that would be distributed by Council staff.

Motion 10 carried unanimously.

Mr. Moore asked about considerations for deciding a point of concern for any of these stocks and whether that should be taken up now or under the inseason agenda item. Mr. DeVore said that decision should be considered under the inseason agenda item and the GMT was prepared to address that issue then.

## **E.7 Consideration of Inseason Adjustments (06/15/09; 8:57 a.m.)**

### **E.7.a Agenda Item Overview**

Mr. Merrick Burden provided the agenda item overview.

### **E.7.b Reports and Comments of Management Entities and Advisory Bodies**

Mr. Robert Jones provided Agenda Item E.7.b, Supplemental GMT Report. Mr. Gerry Richter provided Agenda Item E.7.b, Supplemental GAP Report.

### **E.7.c Public Comment**

Mr. Jeff Short, Oceana, Portland, OR  
Mr. Kevin Dunn, F/V Iron Lady, Astoria, OR

### **E.7.d Council Action: Adopt Preliminary or Final Recommendations for Adjustments to 2009 Groundfish Fisheries**

Council members asked for clarification on the process and timelines regarding the petrale sole point of concern given that the assessment is pending further review and consideration of a new target biomass (see Agenda Item E.6), which will be brought forward at the September Council meeting. Council members were concerned about declaring a point of concern and then later determining such a process was unnecessary given a revised assessment and stock status determination. Ms. Eileen Cooney responded that the Council should provide notice to the public that, based on the information known at this time, a point of concern may be issued for petrale sole. At this meeting, Council should consider the analysis developed by the GMT as the basis for addressing the point of concern. NMFS will use this information to prepare a proposed rule prior to the September Council meeting. At the September meeting, the Council will receive the updated stock assessment and reference points, subsequent GMT analysis, and public input necessary to make a final decision on any point of concern adjustments.

Similar concerns were expressed with regard to the pessimistic canary rockfish stock assessment update, adopted under Agenda Item E.6 and the information presented under Agenda Item E.7.a, Attachment 1: Fishery Management Plan language on inseason adjustments to ABCs and OYs. The canary rockfish rebuilding analysis, which will determine whether the stock is meeting the rebuilding plan goals, will not be reviewed by the Council until September 2009. Ms. Cooney responded that the Council should provide notice to the public that, based on the information known at this time, an adjustment to the OY may be necessary in 2010. If the rebuilding analysis indicates that the stock is on track for rebuilding, no adjustment would be required.

Mr. Anderson moved (Motion 11) to declare a point of concern process for petrale sole and recommends that NMFS develop a proposed rule that reflects the OY adjustments presented in Agenda Item E.7.b, Supplemental GMT report Table 1, Scenario 3 which includes a 400 mt reduction in petrale sole catches for 2009 and a 50 percent reduction in 2010. Mr. Anderson stated that the intent of the action is to avoid overfishing the stock or an overfished declaration in 2011.

Mr. Dale Myer seconded the motion.

Mr. Burden noted that the petrale sole inseason options outlined in Agenda Item E.7.b, Supplemental GMT report only prevent catches from exceeding the currently specified 2009 petrale sole OY. Mr. Burden recommended that the Council consider further adjustments necessary to accomplish the 400 mt reduction as specified in Mr. Anderson's motion. Mr. Anderson instructed the GMT to discuss with industry how to structure the 400 mt reduction for 2009 and return with options under Agenda Item E.9, Final Consideration of Inseason Adjustments.

Motion 11 passed unanimously.

Mr. Rod Moore moved (Motion 12) that NMFS develop a proposed rule which would serve to notice the public that the Council may significantly reduce the 2010 canary rockfish OY in order to meet the rebuilding plan goals, per the Amendment 17 red light process (Agenda Item E.7.a, Attachment 1). The Council will consider additional information from the SSC and GMT at the September and November meetings in order to determine if a reduction is necessary. Mr. Moore requested that during the rebuilding analysis, the SSC explore a range of OY reductions in 2010 that would provide for a less precipitous drop in the OY for 2011.

Mr. Frank Warrens seconded Motion 12.

Motion 12 passed unanimously.

Mr. Phil Anderson recommends that the Council take preliminary action under this agenda item with the expectation that the GMT will return with an updated scorecard and additional analysis under Agenda Item E.9, Final Consideration of Inseason Adjustments.

Mr. Moore moved (Motion 13) to preliminarily adopt the following inseason adjustments outlined in Agenda Item E.7.b, Supplemental GMT Report:

- Adopt Option 2 for the limited entry non-whiting trawl fishery, which includes changes to the petrale sole and sablefish cumulative limits north of 40°10' N. latitude (Table 9), adjustments to the trawl RCA boundary in the north from 75 fm to 100 fm and opening the area North of Cape Alava (Table 10). Also include an increase in the shoreward dover sole cumulative limits north of 40°10' N. latitude, shoreward of the RCA to 60,000 lbs, as outlined in Agenda Item E.7.b, Supplemental GAP Report.
- Adopt GMT Recommendation #4, which increases the limited entry trawl chilipepper rockfish cumulative limit to 12,000 lb/2 months both shoreward and seaward of the RCA in areas south of 40°10' N. latitude for the remainder of the year.
- Adopt GMT Recommendation #5, which changes the seaward non-trawl RCA between the Columbia/Eureka line and Cascade Head from 125 fm to 100 fm for the rest of the year.
- Adopt GMT Recommendation #6, which increases the bimonthly limit for the limited entry sablefish daily trip limit fishery north of 36° N. lat. to 6,000 lb/2 months from July to October.
- Adopt GMT Recommendation #7, which increases the open access sablefish daily trip limit weekly and bimonthly limits to 950 lbs and 2,750 lbs respectively beginning July 1 through the end of the year.
- Adopt GMT Recommendation #8, which increases the California scorpionfish trip limits to 1,200 lb/2 months through the end of the year.

- Adopt GMT Recommendation #9, which modifies the minor nearshore rockfish cumulative limit between 42° N. lat. and 40°10' N. lat. to 7,000 lb/2 months of which no more than 1,200 lb may be species other than black rockfish.

Mr. Warrens seconded Motion 13.

Mr. Burden asked if Mr. Moore was also requesting that the GMT provide revised estimates of the canary rockfish impacts for the recreational fisheries.

In response Mr. Steve Williams offered an amendment (Amendment #1 to Motion 13) to include the inseason recreational estimates, instead of the preseason harvest guidelines, for the canary rockfish impacts listed in the scorecard.

Mr. Warrens seconded the amendment to Motion 13.

Ms. Vojkovich noted that the GMT report said that the GMT was unable to update the projections inseason since the fishery had just started and the majority of the catch was still accruing. Mr. Steve Williams said it was his understanding that we could update the projections at this meeting. Mr. Jones (GMT Chair) clarified that each state has different programs and timelines for gathering data. He suspects that if we were to poll the three states we could get various degrees of updates to those estimates.

Mr. Anderson spoke in opposition to the amendment. He stated that Washington Department of Fish and Wildlife (WDFW) does not have the ability to update the recreational impacts in any meaningful way, given that the season has just begun and that there is a 30 day lag in reporting. Mr. Anderson said he would support adjusting these values based on the projected impacts that were calculated in the 2009-2010 harvest specifications and management measures process (Agenda Item E.7.b, Supplemental GMT Report Table 2), which is lower than the currently specified harvest guidelines. Mr. Anderson stated that this would allow the states to update the scorecard in a meaningful way. Mr. Anderson recommended that we address this issue under Agenda Item E.9, Final Consideration of Inseason Adjustments and requested that the maker and seconder of the amendment withdraw.

Mr. Williams and Mr. Warrens withdrew the Amendment #1 to Motion 13.

Mr. Anderson moved to amend Motion 13 (Amendment #2 to Motion 13) with Option 1 for the limited entry non-whiting trawl fishery, which includes cumulative limit adjustments for sablefish and petrale as well as an adjustment to the trawl RCA from 75 fm to 100 fm, however it does not open the area north of Cape Alava. Mr. Anderson's amendment also removed GMT recommendation #5 from the main motion, which adjusted the non-trawl RCA from 125 fm to 100 fm from the Columbia/Eureka line to Cascade Head.

Mr. Myer seconded the amendment.

Mr. Anderson said that he had concerns about yelloweye rockfish impacts, given that we are in a ramp-down approach. He is not comfortable opening the area north of Cape Alava, given the potential for increased canary and yelloweye rockfish impacts.

Mr. Steve Williams asked Mr. Anderson to further explain his concerns for moving the non-trawl RCA from 125 fm to 100 fm. Mr. Anderson referenced Agenda Item E.7.b, Supplemental GMT report, which

indicates increased yelloweye rockfish impacts of 0.3 mt as a result of the non-trawl RCA adjustment. Mr. Anderson said that we need to rebuild as quickly as possible while taking into consideration the needs of the fishing community. He did not feel that this inseason adjustment passed this test.

Mr. Steve Williams said we have made changes to fisheries that resulted in savings of yelloweye rockfish impacts relative to the OY. Mr. Anderson said he does not view the yelloweye rockfish OY as a target; he views the OY as a ceiling and would like to stay under that ceiling. Mr. Anderson stated that we do not need to access the additional scorecard balance of yelloweye rockfish just because it is available.

Mr. Moore asked Mr. Jones (GMT Chair) to clarify which fisheries and communities would be impacted by adjusting the non-trawl RCA line. Mr. Jones stated that both the limited entry and open access sablefish fisheries would be impacted but he was not entirely sure which communities would be directly impacted.

Amendment #2 to Motion 13 passed unanimously.

Main Motion #13 passed unanimously.

## **E.8 Preliminary Review of Exempted Fishing Permits (EFPs) for 2010 (06/15/09; 1:02 p.m.)**

### **E.8.a Agenda Item Overview**

Mr. DeVore provided the agenda item overview.

### **E.8.b Reports and Comments of Management Entities and Advisory Bodies**

#### GMT Report

Mr. Jones provided Agenda Item E.8.b, Supplemental GMT Report.

Ms. Vojkovich asked if all the EFP applications are addressed in the GMT report and Mr. Jones said yes.

Mr. Moore asked if the GMT addressed the issue of a voluntary observer in the Fosmark EFP and Mr. Jones said no.

Mr. Wolford asked if the EFP bycatch caps were included in a scorecard exercise and Mr. Jones said this will be done in November. Mr. Wolford asked if these caps would be considered for 2010 and Mr. Jones said yes.

Mr. Williams asked for an expansion of the comment that a November review could potentially allow a change of an EFP cap during implementation for those EFPs that run outside a regular calendar year. Mr. Jones said this could be a process used to change an EFP cap if an OY changes enough to compel that consideration.

Mr. Anderson asked about the technical merits of these EFPs and whether the GMT discussed the applicability of EFP results to a fleet-wide opportunity. Mr. Jones said that was discussed for the new EFPs since those discussions had occurred last year for the four repeated EFPs.

Mr. Anderson asked about the Oregon yellowtail EFP and the requested EFP bycatch cap of 2.6 mt of canary and whether that could be translated into a fleet-wide opportunity. Mr. Jones said that was not discussed.

Mr. Wolford noted some of the EFP applications extend beyond the calendar year. He asked whether the projected impacts associated with these EFP activities are for the calendar year or for the duration of the EFP and Mr. Jones said it would be for the duration of the EFP.

Ms. Vojkovich asked if there was a GMT discussion of only having dead yelloweye brought back to the dock under the ODFW-sponsored EFP with live fish discarded and Mr. Jones said that was discussed. There was concern that this could skew the results of the EFP and that a representative sample would not be obtained.

Ms. Fosmark remarked that she would recuse herself from voting on the Fosmark EFP due to a conflict of interest.

### GAP Report

Mr. Tom Ancona provided Agenda Item E.8.b, Supplemental GAP Report.

Ms. Vojkovich asked about the GAP priorities for specific research and which EFPs are characterized as research EFPs since testing gears and strategies can be considered research. Mr. Ancona said the GAP made this distinction for collecting biological samples for research (i.e., the ODFW-sponsored yelloweye EFP).

### **E.8.c Public Comment**

Mr. Michael Bell, The Nature Conservancy, San Luis Obispo, CA  
Mr. Rick Algert, City of Morro Bay, Morro Bay, CA  
Mr. Bill Blue, Morro Bay Commercial Fishermen's Association, Morro Bay, CA  
Mr. Steve Schemblauer, City of Monterey, Monterey, CA  
Mr. Larry Collins, Crab Boat Owner's Association, San Francisco, CA  
Ms. Barbara Emley, San Francisco Fishermen's Cooperative, San Francisco, CA  
Mr. John Holloway, Recreational Fishing Alliance, Portland, OR  
Mr. Wayne Butler, Prowler Charters, Bandon, OR  
Mr. Daniel Platt, STMA, Fort Bragg, CA  
Mr. Bob Ingles, Golden Gate Fishermen's Association, Hayward, CA  
Ms. Kathy Fosmark, F/V Seadler, Pebble Beach, CA

### **E.8.d Council Action: Adopt Preliminary Recommendations for EFPs**

Ms. Vojkovich asked Mr. Lockhart about the EFP permitting process. For the EFP applications that are repeats of those that went through the Council process last year, have they been issued this year? Mr. Lockhart said yes. He will talk with Mr. Ingles to find out why he has not received a permit. Ms. Vojkovich asked what conditions are put on the EFP permit and Mr. Lockhart said all the allowable activities and gear configurations are spelled out in the permit. Ms. Vojkovich asked if the repeated EFPs would get through the NMFS system easier. Mr. Lockhart said that is generally true. However, when there is a change in conditions, such as the change in the canary status, EFP permitting may require more consideration and process. In general, these EFPs should get through more easily. Ms. Vojkovich asked

if there would be any processing of the EFP applications before November and Mr. Lockhart said any of the EFPs preliminarily approved today would get an initial look before November. Actual processing of the EFP application would not occur prior to final approval in November.

Ms. Vojkovich asked Mr. Lockhart about the workload associated with the new EFPs. Mr. Lockhart said the ODFW yelloweye EFP is more straightforward and should be processed more easily since all they are asking for is yelloweye retention. The EFP sponsored by the San Francisco Fishermen's Cooperative would take more work.

Mr. Wolford asked if the change in the EFP sponsored by the Recreational Fishing Alliance and the Golden Gate Fishermen's Association from a 2-hook to a 5-hook configuration would be a big deal and Mr. Lockhart did not think so. Ms. Cooney explained that there is a provision in California state law for a 2-hook configuration, which was the issue in the 2009 EFP. This would have to be worked through.

Ms. Vojkovich explained the premise of the Oregon yelloweye EFP was to retain yelloweye bycatch on charters and asked Mr. Steve Williams if current charter observers could collect that information. Mr. Williams deferred to Ms. Ames who said there are some observers who observe 100 trips per year. It is rare to observe yelloweye and not enough yelloweye are observed to satisfy the collection objective. Ms. Vojkovich said the last yelloweye assessment recommended collection of age and maturity data. The yelloweye STAR report concludes there is sparse data for yelloweye. Would the Oregon catch reconstruction bring to light yelloweye catch patterns? Ms. Ames said they have started the reconstruction with rockfish as the priority. They are attempting to finish this in time for the 2011 assessment cycle. They have not completely mined the historical yelloweye data or uncovered much new data. Ms. Vojkovich asked about the critical data to collect to better inform the yelloweye assessment. There appears to be a need for age and maturity data and wonders how 100 yelloweye caught off Oregon will help the coastwide assessment. Ms. Ames deferred to Dr. Jason Cope but did say ODFW has coordinated this effort with the NWFSC. Dr. Cope said that ageing information is some of the most valuable assessment information to determine recruitment. Also, the Oregon nearshore recreational fleet can be treated as a separate fleet and selectivity of that fishery could be estimated with increased age and length data. Age and length data are some of the top priorities for assessments in general. Ms. Vojkovich asked if all the fleets in Washington, Oregon, and California are modeled and if better information for the Oregon fleet would help the others. Dr. Cope said he will not speak for Dr. Stewart, who is doing the yelloweye assessment; however, this would better inform a coastwide model unless there is evidence of area-specific and differential growth.

Mr. Anderson explained that WDFW has been engaged with the IPHC to collect yelloweye data. An enhanced program in the last three years funded by WDFW has been conducted to bolster yelloweye data. Ms. Ames has also done some of this enhanced work but could not find funds to do this IPHC work this year. This EFP is a low-cost way to get some more data given the need to collect more yelloweye data. The enhanced IPHC survey is targeted on deeper water adult yelloweye and this EFP is targeting younger individuals in shallower water. This may allow an earlier detection of a recruitment signal.

Ms. Vojkovich asked Mr. Lockhart if the Oregon yelloweye EFP could occur in California as well. Could CDFG do the same thing next year despite the lack of an application at this meeting? Mr. Lockhart said this is more of a Council policy call.

Mr. Hansen asked about the EFP process and NMFS workload. Mr. Lockhart said a lot of work went into the 2009 EFPs. The repeat EFPs should go forward more easily and the Oregon yelloweye EFP should be fairly easy. However, addressing the increased yelloweye mortality still needs to be justified.

Dr. Coon responded that Council Operating Procedure (COP) 19 says EFP applications have to come forward in June to be considered in November. Mr. Anderson said this meeting isn't over and maybe a California add-on to collect yelloweye data might be considered. However, all the Council work is time consuming and getting more complicated every year. He recommends caution in adding to staff workload. He is concerned about the canary request in the Oregon yellowtail EFP and the more pessimistic canary outlook needs to be considered before adding to workload to get that EFP implemented in 2010.

Mr. Steve Williams said we should get some data and more information from existing EFPs in November to make a good decision.

Mr. Wolford said three of these proposals (i.e., the EFP sponsored by Mr. Fosmark, the EFP sponsored by the San Francisco Fishermen's Cooperative (SFFC), and the Oregon yellowtail EFP) are similar in that they are attempting to keep gear off the bottom. Additionally, the SFFC proposal is seeking access to the RCA which is more problematic given the canary situation.

Ms. Vojkovich said the NMFS permitting process adds workload and the Council workload going ahead presents conflicts. Providing more fishing opportunities in the future is desirable and the expectation is more EFPs will be coming forward in the future as there are more fishing restrictions. Therefore, we need to prioritize EFPs. Several EFPs are having difficulties getting observers, which causes much process without implementation. She is not sure of the best course at the moment given these conflicts. We may have to think of a different methodology for EFPs.

Mr. Lockhart said the EFP renewals and the Oregon yelloweye EFP may be easy to work through but the San Francisco Fishermen's Cooperative EFP would be very difficult to get through the process.

Mr. Steve Williams moved and Mr. Warrens seconded a motion (Motion 14) to adopt the EFP applications in Attachments 1, 2, 4, 5, and 8 to go forward for consideration in November. This motion would forward all the EFP applications except the one sponsored by the San Francisco Fishermen's Cooperative.

Motion 14 carried (Mr. Anderson voted no, Ms. Fosmark recused).

## **E.9 Final Consideration of Inseason Adjustments**

### **E.9.a Agenda Item Overview (06/16/09 1:28 p.m.)**

Mr. Merrick Burden provided the agenda item overview.

### **E.9.b Reports and Comments of Management Entities and Advisory Bodies**

Mr. Rob Jones provided Agenda Item E.9.b, Supplemental GMT Report.

Mr. Rod Moore asked about the change in canary impacts for the inseason proposal compared to status quo. Prior to inseason action, the impacts for the non-whiting trawl fishery were roughly 16.6 mt. Agenda Item E.9.b, Supplemental GMT Report lists the canary impacts from the preliminarily adopted trawl proposal as 22.1 or 22.6 mt, depending on the action taken for petrale sole. Mr. Moore said he assumes that the additional 6 mt of canary impacts were a result of the change in trawl cumulative limits. Mr.

Jones said that the majority came from the trawl inseason adjustments and model updates. Mr. Burden added that the majority of the impacts were a result of moving the northern trawl RCA from 75 fm to 100 fm.

Mr. Moore asked how the increase in the Dover sole cumulative limits contributed to the canary rockfish impacts. Mr. Burden said that action resulted in a 2 mt increase in canary rockfish. Mr. Moore asked how far the Dover sole cumulative limits would need to be reduced in order to reduce the canary rockfish impacts to 1 mt. Mr. Burden said a 52,500 lb cumulative limit for periods 4, 5, and 6.

Mr. Anderson stated that there were three actions, relative to the non-whiting trawl fishery taken under Agenda Item E.7, Consideration of Inseason Adjustments. The actions were to adjust the trawl RCA boundary from 75 fm to 100 fm, model cumulative limit adjustments for petrale sole, and increase the shoreward Dover sole cumulative limits. Mr. Anderson stated that the Council did not choose the option which opened the area north of Cape Alava due to canary rockfish concerns. He also noted that the Council did not change the non-trawl RCA from the Columbia/Eureka line to Cascade Head from 125 to 100 fm, in large part due to yelloweye and canary rockfish concerns. Mr. Anderson noted that the remaining three actions taken under the non-whiting trawl inseason proposal collectively resulted in a 6 mt increase in canary impacts and asked Mr. Burden to outline the canary impacts by action. Mr. Burden said that the current proposal has a total impact of 22 mt. Two metric tons is a result of the Dover sole cumulative limit increase shoreward of the RCA. The remaining 20 mt impact is 4 mt higher than impacts prior to inseason action. Mr. Burden said that the remaining 4 mt was a result of the RCA adjustment and the increase in the sablefish cumulative limits. Mr. Burden stated that he was unable to separate the RCA adjustment impacts from the sablefish increase at this time.

Mr. Anderson referenced public testimony from Agenda Item E.7.b and other anecdotal information which indicated that there was a graduated pay scale for Dover sole landed above a plant limit. Mr. Anderson asked Mr. Burden if there were a lot of boats achieving the current cumulative limit at 45,000 lbs, given the plant limits. Mr. Burden said that he could not quantify the number of boats or the frequency at which that occurs, but he did know that some boats did attain the limit.

Mr. Moore asked if the adjustments to the petrale sole cumulative limits resulted in fewer canary rockfish impacts. Mr. Burden responded that the change adopted under the routine inseason action to stay within the existing petrale sole OY might have had a slight effect on canary rockfish impacts. However, the adjustments occurred at the time of year when the fishery is operating in deeper waters so the predominant change in overfished species impacts were to darkblotched rockfish and Pacific Ocean Perch.

Ms. Marija Vojkovich noted that the status quo trawl option had yelloweye rockfish impacts of 0.4 mt (Agenda Item E.7.b, Supplemental GMT Report, Attachment 1) and the preliminarily adopted trawl option has impacts of 0.6 mt (Agenda Item E.9.b, Supplemental GMT Report, Table 1). She asked Mr. Burden which component of the trawl proposal resulted in the increased yelloweye rockfish impacts. Mr. Burden said that most of that increase was a result of the increased Dover sole cumulative limits shoreward of the RCA.

Mr. Tommy Ancona provided Agenda Item E.9.b, Supplemental GAP Report.

Mr. Moore asked what type of limits the GAP recommended for petrale in periods 5 and 6. Mr. Ancona said the GMT recommendation was for a 5,000 lb cumulative limit in period 5 and a 2,000 lb limit in period 6. The GAP believes the best time to catch petrale sole is in period 6 and they did not believe there

was sufficient petrale available to catch the cumulative limits proposed for period 5. Mr. Ancona suggested that higher limits in period 6 should be modeled, perhaps flipping the cumulative limits recommended by the team.

Mr. Moore asked if the GAP was recommending a 2,000 lb cumulative limit in period 5 and a 5,000 lb limit in period 6. Mr. Ancona said the GAP is not recommending a specific limit but rather the idea that period 5 levels be set to accommodate incidental catch while period 6 levels should provide for a targeted opportunity.

Mr. Moore asked Mr. Ancona whether the GAP had the opportunity to talk about the petrale sole implications for 2010. Mr. Ancona stated that the GAP is looking at the implications for 2010 but had not had the opportunity to discuss them in any detail; they will have that dialogue in September.

Ms. Kathy Fosmark asked if the GAP had a recommendation on how to balance the canary rockfish numbers in the scorecard relative to the trawl proposal. Mr. Ancona said the GAP did not have a recommendation.

Ms. Vojkovich asked Mr. Ancona to confirm that the GAP is recommending petrale sole reductions for both period 5 and period 6. Mr. Ancona said that is correct.

#### **E.9.c Public Comment**

Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, OR  
Mr. Kevin Dunn, F/V Iron Lady, Astoria, OR

#### **E.9.d Council Action: Adopt or Confirm Final Adjustments to 2009 Groundfish Fisheries**

Mr. Moore asked Mr. Burden whether the GAP recommendation to have higher cumulative limits in period 6 compared to period 5 would have the same petrale sole catch reductions as the GMT recommendation. Mr. Burden said that it was not a straightforward question; there were many issues to consider, like whether the modified RCA (petrale cut-outs) would be in place in period 6. If the petrale cut-outs were in place in period 6, then there would be higher petrale sole catches. Those types of issues would need further analysis.

Mr. Moore stated that under initial inseason action the only increases to cumulative limits were for sablefish and Dover sole. We know that the Dover sole increases had canary impacts of 2 mt and the sablefish increases combined with the RCA from 75 fm to 100 fm resulted in a 4 mt impact to canary. Mr. Burden said that was generally correct. However, the Dover sole increase in period 4 also corresponds with the adjustment in the RCA boundary and is included in that 6 mt impact estimate. Mr. Moore stated that there was an increase in yelloweye rockfish impacts of 0.2 mt, as a result of the Dover sole increase. Mr. Burden said that was correct.

Mr. David Sones asked Mr. Burden about historical catches of petrale sole during period 5. Public testimony indicated that the fleet does not typically attain the period 5 limits and Mr. Sones asked if Mr. Burden could speak to this issue. Mr. Burden said the amount of petrale caught in period 5 varies up and down the coast as a result of the RCA structure and the seasonal migration of petrale sole. Generally, in the north the RCA is more restrictive which limits access to petrale sole grounds. Mr. Burden noted that in the south, the RCA becomes less restrictive, providing more available grounds and the ability to access the cumulative limits.

Mr. Anderson discussed the preliminary actions taken under Agenda Item E.7 Consideration of Inseason Adjustments. Mr. Anderson asked Mr. Burden whether the petrale cut-outs were in place under the preliminary inseason action. Mr. Burden indicated that the petrale cut-outs remained open under the preliminary action, however, in Agenda Item E.9.b, Supplemental GMT Report, the GMT recommends closing the modified RCA in order to slow petrale sole catches.

Mr. Anderson moved (Motion 22) to adopt all inseason actions adopted under Motion 13, as amended (Amendment 2) except that the Dover sole trip limits currently specified in the regulations (45,000 pounds/2 months for periods 3-5 and 40,000 pounds/2 months for period 6) would be maintained. Further, adopt the cumulative limits for petrale sole as outlined in Agenda Item E.9.b, Supplemental GMT Report, which provides for 5,000 pounds in period 5 and 2,000 pounds in period 6 (Table 4) and closes the petrale sole RCA cut-outs in period 6 (Table 5). For the recreational fisheries, update the canary rockfish impacts in the scorecard by a total of 1.2 mt by reducing the WA/OR recreational share by half that amount (0.6 mt) and the CA recreational share by half that amount (0.6 mt). This adjustment should result in a balanced scorecard, such that we are using 100 percent of the canary OY.

Seconded by Mr. Dale Myer.

Mr. Anderson said that the fleet has experienced serious restrictions in an effort to protect canary and yelloweye rockfish and rebuild them as quickly as possible. Under the initial inseason item, the Council chose to keep the area north of Cape Alava closed to trawl fishing in order to reduce both canary and yelloweye rockfish impacts. Further, the Council chose to maintain the current non-trawl RCA from the Columbia/Eureka line to Cascade Head in order to reduce both canary and yelloweye rockfish impacts. Mr. Anderson stated that he did not include the proposed increase to the shoreward Dover sole limits because of the additional impacts to canary and yelloweye rockfish. Mr. Anderson noted the attempt to rebuild as quickly as possible, while taking into consideration the needs of the fishing community, especially in light of the pessimistic canary stock assessment which may affect operations in 2010 as well as the next management cycle (2011/2012).

Mr. Anderson stated that he struggled with the GAP recommendation for petrale sole to switch the period 5 and 6 cumulative limit reductions. He noted that based on Council discussions with the GMT, it does not appear to be a straight swap of petrale sole impacts between the two periods. Mr. Anderson stated that given the available analysis, he was not prepared to adopt anything other than the GMT recommendation at this time.

Relative to the limited entry trawl adjustments, Mr. Moore asked Mr. Anderson if the motion included the sablefish cumulative limit increases and the modifications of the trawl RCA from 75 to 100 fm. Mr. Anderson said yes.

Mr. Moore asked Mr. Burden if the cumulative limit structure proposed under Mr. Anderson's motion would accomplish the 400 mt petrale sole reductions for 2009, as recommended by the Council. Mr. Burden said yes.

Mr. Wolford spoke in support of the motion and noted that the adjustments in the scorecard relative to canary rockfish impacts in the recreational sector should not adversely affect future recreational allocations.

Ms. Marija Vojkovich asked if the motion to adopt petrale sole cumulative limits was specific to the 2009 fisheries. Mr. Anderson said yes.

Ms. Cooney stated that the intent of the motion aligns with the point of concern process for petrale sole and reducing catches in both 2009 and 2010. She indicated that NMFS could use the proposed cumulative limits for petrale sole for consideration in developing the proposed rule for 2010. Mr. Anderson agreed that this approach is consistent with his motion.

Motion 22 passed unanimously.

## **E.10 Fishery Management Plan (FMP) Amendments 20 and 21–Trawl Rationalization and Intersector Allocation – Regulatory Overview and Final Action on Miscellaneous Remaining Issues and FMP Language**

### **E.10.a Agenda Item Overview (06/16/09; 2:40 p.m.)**

Mr. Jim Seger provided the agenda item overview (walked the Council through Agenda Item E.10.a, Attachment 1, Calendar of Activities for Groundfish Fishery Management Plan Amendments 20 and 21 and Agenda Item E.10.a, Attachment 4, Miscellaneous Remaining Issues). In response to a question from Mr. Moore, Mr. Seger said that the Attachment 1 calendar indicated that the bulk of the work on CFAs would occur in 2010 but that the Council might take some preliminary steps at its November 2009 meeting. Dr. Dahl summarized Agenda Item E.10.a, Attachment 3 (Staff Recommendation on Amending the Groundfish FMP to Incorporate the Trawl Rationalization Program).

### **E.10.b Reports and Comments of Management Entities and Advisory Bodies (06/16/09; 3:23 p.m.)**

Mr. Frank Lockhart noted that NMFS intends to combine approval and implementation of Amendment 20 and 21. NMFS and Council staff will work together to do that. They intend to implement the trawl rationalization program (Amendment 20) in three or more rulemakings beginning in the fall. The three pieces will be a data collection rule, an FMP Amendment 20 and 21 approval rule (grand framework rule), and a followup rule that includes the nuts and bolts of the program, including the tracking and monitoring components. He stated that NMFS is announcing today that concerns anyone has about the data should be addressed now and those concerns should be directed to the states since they are the owners of the data. NMFS intends to beta test some data tracking and monitoring components during the summer of 2010; and will provide reports to the Council on the progress of that beta testing.

Mr. Lockhart then read Agenda Item E.10.b, NMFS NWR Report on Miscellaneous Clarifications for Amendment 20: Trawl Rationalization. Mr. Lockhart indicated that the flexibility being requested was very limited in nature and any changes will be vetted with the Council. Mr. Moore asked about the release of the estimates of quota shares (QS) that would be allocated to each permit and noted that it was his understanding that the states had authorized the release of these data. His understanding was that NMFS was holding up the release. Mr. Lockhart noted that NMFS does have some concerns. In particular he noted that the information would be released prior to the start of the program but expressed concern about releasing information now that would be based on a different version of the database as compared to what is used when the QS are ultimately issued. Databases are regularly updated. In other parts of the country, differences between databases have led to an increase in the number of appeals.

Mr. Moore asked where we are in terms of getting the observer program funding and infrastructure in place prior to the individual fishing quota (IFQ) program. Dr. Clarke said funding requests have been made; but there is currently nothing provided in the FY 2010 process that she knew of. Funding in FY 2010 is required to provide time for training, development of the electronic system to monitor in real-time, and to get equipment for observers. If we get funds at the beginning of FY 2010, most of the year would be taken up getting everything organized. There will also be costs in outreach to industry on the handling of retained and discarded catch to allow for observation, and on the precision and turn-around time for the data. There will be similar issues for the landed catch monitoring. To date they have no planning money for this. Because of the overlap between the existing and the new trawl observer program, new money is required to develop the new program (the existing program must be maintained while the new program is being developed). The costs during the development year are estimated at \$3 million. The long-term costs will be less.

Mr. Myer asked whether the cameras that are being put on motherships in the coming year will be replaced with 100 percent observer coverage when Amendment 20 goes into place. Mr. Seger said they're for tracking and monitoring and there is a lot of detail for the IFQ program with respect to monitoring of motherships and catcher-processors, but not for the co-op alternatives. He quoted the language on observer coverage and cameras from the co-op section of the program. Mr. Lockhart said that NMFS had not interpreted the current language as implying that both observers and cameras might be required.

Ms. Fosmark asked about the tracking system and how quickly the landings information will be made available to harvesters. Mr. Lockhart said that while details are being worked out the data turn-around will not be "real time" but that folks will probably have a pretty close idea about the amounts of their landing. The official data will probably not be updated until between a few days and a week after landing.

Mr. Steve Williams asked if in response to the funding requests there had been any indications that the needed funding is going to be available. Mr. Lockhart indicated that they had funding on the regulatory side for 2009 and expected it for 2010. He also noted that given Dr. Lubchenco's support for catch shares he felt the chances for funding was very strong. Chairman Hansen concurred. The challenge is knowing what the costs are. Dr. Clarke noted that efforts were underway to ensure that accurate cost estimates are available.

Mr. Anderson expressed concern that (1) the funding request covers the states and he did not know where they would have gotten the numbers from, (2) the states might have to expend substantial effort addressing potential errors in fish ticket database, and (3) there is not much time to make the contemplated improvements in the fish ticket data system and have them implemented by January 2011. With respect to the fish tickets, Mr. Lockhart stated they had been working with Pacific States Marine Fisheries Commission and were counting on that progress continuing. With respect to the workload entailed in reconciling the database and ticket/logbook data, they would have to talk with the states on how NMFS might best help.

Dr. Steve Freese replied that the states' role and need for funding was not clear at this time. While that is being developed, he has some place-holder estimates and would aim to have a better number by September. Dr. Freese went on to provide more detail on the status of development of an electronic fish ticket system. Mr. Steve Williams had concerns that much work might be needed to get from the pilot to the full implementable program. Dr. Freese said they would assess where they are and come back to the Council in September with a report.

Mr. Lockhart said meeting the January 1, 2011 deadline means we will have to hit several targets in a row, and other people do too. NMFS realizes that this is a very ambitious schedule. He also mentioned that the “deeming” process, under which regulations are brought back to the Council for review, will go on well into 2010.

(06/16/09; 4:08 p.m.)

Ms. Heather Brandon read Agenda Item E.10.b, GAC Report on Trawl Rationalization. Mr. Jones read Agenda Item E.10.b, Supplemental GMT Report. Mr. Ancona read Agenda Item E.10.b, Supplemental GAP Report. Deputy Chief Cenci read Agenda Item E.10.b, Supplemental EC Report.

Mr. Anderson spoke to the issue of the allocation of halibut to cover bycatch in the trawl fishery. The WDFW recommendations were developed with the intent of achieving a reduction in the bycatch and bycatch mortality of halibut, similar to what resulted from the halibut individual bycatch quota (IBQ) established for the Canadian trawl fishery. There are a number of ways that individual trawl vessels might achieve these reductions. In April the Council approved the lesser of 15 percent of the constant exploitation yield (CEY) or 130,000 lbs. With respect to the possibility that the CEY might increase, capping the trawl fishery at 130,000 lbs, Mr. Anderson noted that there was very little correlation between the CEY and total bycatch. With respect to the issue of legals and sublegals, because size at age has dramatically decreased over the decade and most males never get to legal size, they felt that looking at legals and sublegals was the appropriate way to assess bycatch. The 130,000 lbs value is about 15 percent of 870,000 lbs. The 2004-2007 average legal size mortality is 154,000 lbs. At 130,000 lbs, you would not make much progress. However, if you look at the total (legals and sublegals) and leave out one outlier, you find that the 130,000 lb cap represents a 55 percent reduction in bycatch mortality of legal size halibut. Mr. Anderson enumerated a number of methods available to trawlers to achieve such a reduction and noted the importance of individual fishermen accountability for this approach. Individual fishers that do a good job of handling fish on deck and avoid high halibut bycatch areas will benefit.

Council adjourned for the day.

06/17/09; 8:13 a.m.

Dr. Clarke provided a report from the NWFSC. At this point they have not developed a comprehensive sampling plan and still need to talk with industry about what might be the best way to do that. She noted that they did not plan to assess the viability of each individual halibut because the time to do so would increase mortality rates. The individual accountability will come in avoiding taking halibut in the tow. Additionally, the time taken to assess halibut would decrease the viability of other discarded catch such as lingcod.

Mr. Anderson commented that what Dr. Clarke describes meets the intent of what he had in mind. He summarized his understanding that when there is a significant number of fish, observers would take a subsample of fish for that vessel and do a viability estimate on the subsample, but that otherwise there would be an assessment of all halibut. The essential piece is that the mortality rate estimates be provided for each vessel and not aggregated across vessels. Dr. Clarke said she thought that something like that could be done but it should be developed as part of a comprehensive sampling strategy.

Mr. Gregg Williams, IPHC, spoke to Agenda Item E.10.c, Supplemental Public Comment (IPHC). He said the IPHC’s experience has been with the Canadian fishery where they have seen a decline in tow

duration, an increase in the number of exploratory tows, and a reduction in the total halibut bycatch. He said the IPHC would be happy to assist in deliberations and design of putting the observer program together.

Mr. Anderson noted the the program is designed to achieve a 50 percent reduction in halibut mortalities. One of the things we have seen is bycatch mortality rates as high as 73 percent (2007) and the previous 3 years it was in the mid fiftieth percentile. He asked if in the bycatch program they were able to achieve higher survival rates and reduced total bycatch mortality? Mr. Gregg Williams identified the causes of halibut mortality and opportunities for reducing bycatch mortality and responded that the Canadian fishery was able to reduce its mortality rate by about 2/3 (down to 40). Total bycatch was reduced from around 1.7 million lbs down to 250,000-400,000 lbs in each year since the program was implemented.

#### **E.10.c Public Comment**

Mr. Brent Paine, United Catcher Boats, Seattle, WA  
Mr. Steve Hughes, United Catcher Boats, Seattle, WA  
Mr. Joe Bersch, Supreme Alaska Seafoods, Seattle, WA  
Ms. Dorothy Lowman, Environmental Defense Fund, Portland, OR  
Mr. David Jincks, Midwater Trawlers Cooperative, Newport, OR  
Mr. Brad Pettinger, Oregon Trawl Commission, Brookings, OR  
Mr. Mike Story, F/V Pegasus, Warrenton, OR  
Mr. Jim Seavers, F/V Excalibur, Newport, OR  
Mr. Craig Urness, Pacific Seafood Group, Clackamas, OR  
Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, OR

#### **E.10.d Council Action: Adopt Final Preferred Alternative for Remaining Issues and Amendment 20 FMP Language**

Dr. McIsaac announced that after the Council meeting the Council staff will release the preliminary QS estimates to the fleet. These estimates are subject to change. They will be mailed to each permit holder to the the address on file with NMFS.

Mr. Anderson moved (Motion 23) and Mr. Myer seconded a motion (from Agenda Item E.10.d, Supplemental WDFW Motion in Writing) on the following: “**Eligibility to Own:** No person can acquire quota shares or quota pounds other than 1) a United States citizen, 2) a permanent resident alien, or 3) a corporation, partnership, or other entity established under the laws of the United States or any State, that is eligible to own and control a US fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75% citizenship requirement for entities). Any ~~person or~~ entity that owns a mothership that participated in the west coast groundfish fishery during the allocation period and is eligible to own or control that US fishing vessel with a fishery endorsement pursuant to Sections 203(g) and 213(g) of the American Fisheries Act (AFA).”

Speaking to the rationale of the motion, Mr. Anderson noted that this language is consistent with the language developed through our legal counsel. The provision for the mothership and the elimination of the word “person” was vetted through legal counsel and was included in the GAC Report. Motion 23 passed unanimously.

Mr. Anderson moved (Motion 24) the following, seconded by Mr. Myer, again utilizing Agenda Item E.10.d, Supplemental WDFW Motion in Writing, but with an addition: “**Carry-Over Provision:** Each

individual trawl vessel account will be able to carry-over up to 10 percent of the total quota pounds (QP) held in its account during that year. In addition, if the OY goes down substantially carry-over of QP would be reduced by the same percentage as the OY decrease. The 10 percent carryover value may be changed, up or down, through the biennial specifications process.”

Speaking to the motion, Mr. Anderson said this issue is laid out in Agenda Item E.10.a, Attachment 4, page 2 under #1. This feature is important to add to the program for the reasons identified by industry and discussed at the Groundfish Allocation Committee (GAC). There is uncertainty about the appropriate percent that should be used for the carryover and the Council should have the flexibility to change the carryover allowance in the future as experience is gained.

Ms. Vojkovich agreed with Mr. Anderson’s rationale, but was concerned that in the motion the word “substantially” is not defined and, is subject to interpretation. Mr. Lockhart then made an amendment to Motion #24 (Amendment to Motion 24): Add “It is the intent of the Council that the carryover provision, to the extent possible, be implemented consistent with conservation requirements of the Magnuson Stevens Fishery Conservation and Management Act (MSA).” and strike the word “substantially.” Ms. Vojkovich seconded the motion.

Speaking to his motion to amend, Mr. Lockhart identified the potential conflict between the TIQ program and the new requirements of the MSA, in particular with respect to the ACLs. This would clarify that it is the Council’s intent to implement the carryover provision as much as possible up to the 10 percent but still allow NMFS the flexibility to design this. NMFS would come back to the Council under the TIQ program as well as under the harvest specifications process with specific language for review. By striking the word “substantially” it removes uncertainty. Quota pounds (QP) will need to be tracked and making the change for small reductions is as easy as making the change for more substantial reductions. Amendment to Motion 24 passed unanimously.

Main motion 24 passed unanimously.

Mr. Anderson moved and Mr. Myer seconded a motion (Motion 25), utilizing Agenda Item E.10.d, Supplemental WDFW Motion in Writing to adopt the following: “**Dogfish/Other Fish in the IFQ Program Option 2:** Dogfish be included as Part of the Other Fish complex. Other Fish complex would not be included in the IFQ program. If at a future time, Other Fish were added to the IFQ program, QS would be determined using the same catch history criteria as the other IFQ species, unless otherwise specified by a future Council action.”

Mr. Anderson said that since we don’t have a stock assessment for spiny dogfish, including it in the “other fish” category is appropriate. He was concerned that if “other fish” is not part of the IQ program that people would stockpile catch history on those species in order to get a larger quota share if quota shares are granted for that species in the future. To eliminate that worry, we would use the same base period and catch history to make the QS determination of “other fish” if and when they were included as part of the program. Dr. Hanson asked, about the second sentence of the motion, is it the intent that if dogfish was broken out from Other Fish would it be handled differently? Mr. Anderson said that his motion wasn’t specific to whether a species is broken out or whether the whole complex is assigned IFQs. If we want to add another species and/or choose to break it out we could, and this language would apply.

Motion 25 passed unanimously.

Mr. Anderson moved and Mr. Moore seconded a motion (Motion 26), using Agenda Item E.10.d, Supplemental WDFW Motion in Writing, to adopt the following: **“Determining Catch History in the Mothership Whiting Cooperatives:** Determine catch history in the mothership whiting co-op alternative using relative pounds.” The rationale is embodied in the text of page 9, of Agenda Item E.10.a, Attachment 4, the relative pounds measure of history puts a heavier emphasis on more recent landings history in the mothership whiting fishery, consistent with the MSA, and better reflects the distribution of capitol and labor that currently exists in the fishery. Mr. Myer said he will be voting on this and believes he will be able to because it only applies to CVs and he does not have a conflict of interest in that regard.

Motion 26 passed unanimously.

Mr. Anderson moved and Mr. Myer seconded a motion (Motion 27), using Agenda Item E.10.d, Supplemental WDFW Motion in Writing, to adopt the following: **“Trawl Sector Limits for Pacific Halibut and Managing Halibut IBQ in the Trawl Rationalization Program:** The trawl mortality limit for legal and sublegal halibut is set at 15 percent of the Area 2A Total Constant Exploitation Yield not to exceed 130,000 lbs for the first four years of trawl rationalization program, and not to exceed 100,000 lbs beginning in the fifth year of the program. This total bycatch limit may be adjusted through the biennial management process. Halibut IBQ will be based on halibut bycatch mortality, not on total halibut catch.”

Mr. Anderson said this language is consistent with the language in Amendment 21 with two exceptions: Amendment 21 says the change can only be a decrease, this motion takes out the word “decrease”; second the addition that the limit may be adjusted through the biennial management process so we can learn as we go and provide ourselves the flexibility to make modifications if it is necessary to achieve the objectives of the IBQ.

Dr. McIsaac asked if the intent of the last sentence of the motion was that mortality would be on an individual vessel basis? Mr. Anderson concurred. In response to Mr. Lockhart, Mr. Anderson said the trawl mortality limit could be adjusted through any biennial specifications process once the program starts.

Mr. Moore moved and Mr. Warrens seconded an amendment (Amendment #1 to Motion 27) to add, “The intent of the Council is that halibut bycatch mortality would be measured on an individual vessel basis.” This motion was based on discussion with Dr. Clarke and Mr. Williams from earlier in the meeting.

Mr. Lockhart moved to amend Amendment #1 (Amendment #2 to Motion 27) by replacing the word “measure” with the word “estimated.” Ms. Fosmark seconded the amendment.

Amendment #2 passed unanimously. Amendment #1, as amended by Amendment #2 passed unanimously.

Mr. Seger expressed his understanding that if the motion passed that Council staff will make the necessary changes in the language in groundfish FMP Amendment 20 and groundfish FMP Amendment 21 to bring them in line with the motion.

With that, Dr. Hanson moved and Mr. Moore seconded an amendment (Amendment #3 to Motion 27) to revise the following sentence that reads “The trawl mortality limit for legal and sublegal halibut is set at 15% of the Area 2A Total Constant Exploitation Yield not to exceed 130,000 lbs for the first 4 years. . . .” change it to read “The trawl mortality limit for legal and sublegal halibut is set at 15% of the Area 2A

Total Constant Exploitation Yield not to exceed 130,000 lbs **each year for** the first 4 years. . . .". This amendment clarifies that the 130,000 lb amount is an annual amount and does not apply across all four years.

Amendment #3 to Motion 27 passed unanimously. Motion 27 passed unanimously as amended.

Mr. Lockhart moved (Motion 28) that the Council adopt the following sentence from Agenda Item E.10.b, NMFS NW Region Report "It is the Council's intent to provide NMFS sufficient flexibility in the design and implementation of the tracking and monitoring program to achieve the goals and objectives of the trawl rationalization program." Ms. Fosmark seconded the motion. Mr. Lockhart noted that this is referring to the tracking and monitoring program. There are a lot of questions on interactions between the various parts of the program and NMFS will need some flexibility to achieve the goals of the trawl rationalization program. All of these components will come before the Council either informally or formally through the deeming process so the Council will be able to see and comment on any of the components of the tracking and monitoring program.

Mr. Moore stated that as we saw during the development of Amendment 10, sometimes there needs to be discussion before you get to the deeming process because there are operation characteristics of the industry and enforcement and recording needs that need to be sorted out. Therefore he hoped there would be interaction prior to the time of the Council deeming process. Mr. Lockhart said that will be done and they will work closely with the states, industry and the NWFSC.

Motion 28 passed unanimously.

Mr. Moore moved (Motion 29) to adopt the proposed structure of the Fishery Management Plan (FMP) amendment language as shown in Agenda Item E.10.a, Attachment 3, Staff Recommendation on Amending the Groundfish FMP to Incorporate the Trawl Rationalization Program. Mr. Warrens seconded the motion.

A discussion ensued in which there was some uncertainty about the status of the language of Appendix E in relation to the regulations and how Appendix E would be modified with changes in the regulations or Council policy. On that basis, Mr. Moore, withdrew his motion (Motion 29), and suggested that the issue be taken up in the collective wrapup motion at the end of the agenda item on trawl rationalization. The seconder agreed. Motion 29 was withdrawn and not voted on.

## **E.11 Fishery Management Plan Amendment 20–Trawl Rationalization – Final Action on Accumulation Limits and Divestiture**

### **E.11.a Agenda Item Overview (06/17/09; 11:12 a.m.)**

Mr. Seger provided the agenda item overview. (Agenda Item E.11.a, Supplemental Staff PowerPoint).

### **E.11.b Reports and Comments of Management Entities and Advisory Bodies**

Ms. Heather Brandon summarized Agenda Item E.11.b, GAC Report. Mr. Steve Williams summarized Agenda Item E.11.b, Supplemental ODFW Report. Dr. Dorn read Agenda Item E.11.b, Supplemental SSC Report. Mr. Merrick Burden read Agenda Item E.11.b, GMT Report. Mr. Robert Jones read Agenda Item E.11.b, Supplemental GMT Report 2. Mr. Tommy Ancona read Agenda Item E.11.b, Supplemental GAP Report.

**E.11.c Public Comment (06/17/09; 3:09 p.m.)**

Mr. Brad Pettinger, Oregon Trawl Commission, Brookings, OR  
Mr. Steve Scheiblauber, City of Monterey, Monterey, CA  
Mr. Tommy Ancona, Tommy's Marine Service, Fort Bragg, CA  
Mr. Ben Bowman, Food and Water Watch, San Francisco, CA  
Mr. Zeke Grader, PCFFA, San Francisco, CA  
Mr. Shems Jud, Environmental Defense Fund, Lake Oswego, OR  
Mr. Craig Urness, Pacific Seafood Group, Clackamas, OR  
Mr. Tom Libby, Point Adams Packing Company (representing WCSPA), Astoria, OR  
Mr. Andrew Bornstein, Bornstein Seafoods (representing WCSPA), Bellingham, WA  
Mr. Jay Bornstein, Bornstein Seafoods (representing WCSPA), Bellingham, WA  
Mr. Tom Ghio, Ghio Fish Company, Santa Cruz, CA  
Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, OR  
Ms. Erika Feller, The Nature Conservancy, San Francisco, CA  
Mr. Joe Sullivan, The Nature Conservancy, San Francisco, CA

**E.11.d Council Action: Adopt Final Preferred Alternative (06/17/09; 5:10 p.m.)**

Ms. Vojkovich moved (Motion 30) to adopt, from Agenda item E.11.d, Supplemental Motion in Writing (CDFG):

1. Divestiture of non-overfished species quota shares in excess of adopted control limits will be an element of the PFMC's Trawl Rationalization Program.
2. The date through which permit acquisition will be qualified is November 8, 2008. Permits acquired after that date, and the attending catch history, will not be used in calculating a permit holder's quota share (on a species or aggregate basis). This qualifying date only applies to the amount of quota shares above the control limit.
3. The permit holder will be allowed to utilize all of the quota pounds associated with their permits until divestiture is completed.
4. Quota share holders have full flexibility of divesting excess quota shares as long as they follow quota share transfer rules and procedures developed by NMFS for this Trawl Rationalization Program.
5. Divestiture will not require or limit the transfer of a LE [limited entry] trawl permit.
6. The divestiture period is defined as a 24 month period (two years) immediately following the end of the moratorium on quota share transfer.
7. Full divestiture must be completed, and quota share control limits (on a species or aggregate basis) attained by December 31 of the fourth year after implementation of the program.
8. Any quota shares not fully divested by the above date will be revoked and re-distributed on a pro-rata basis to the rest of the shoreside trawl fleet. No compensation will accrue to the divesting QS holder for any revoked shares.
9. For divestiture purposes, those in excess of control caps are held to the control limits even if those limits happen to change after year one of the program.

Ms. Fosmark seconded the motion.

With respect to inclusion of the divestiture option (Item #1), Ms.Vojkovich noted that the GAP is supporting divestiture, that there are individuals that don't know if they are over any of the accumulation

limits, and that there are differing interpretations as to the meaning of the November 2003 control date. Inclusion of a divestiture option will make this program more like many other successful individual quota programs. The qualifying date provided in Item #2 was chosen based on the completion of action on the major elements of the IFQ program at the end of the day on November 7. November 8 aligns with the time period after the action. The last sentence of Item #2 is intended to make it clear that anyone buying a permit after that date is not affected by the date, as long as the amount of QS they would receive is less than the control limit.

With respect to Item #3, Ms. Vjokovich noted that allowing those with excess QS to receive the QP associated with their permits addresses concerns about community stability and the avoidance of major disruption as well as providing supply to the market. Individuals should be able to receive those QP and use them as they would any other QPs issued for QS.

Item #4 addresses questions that had arisen about how people would divest their excess shares, the kind of formulas that would be used, and so forth. It is much easier to allow those with the excess QS to figure out how they need to divest to meet their fishing strategies and arrange for QS purchasers than to have government do it through regulation. This is more administratively efficient and keeps the provision as simple as possible.

Item #5 is just a clarification that this motion is about QS not the LE permits. Item #6 applies the transfer moratorium to all permit and QS holders in order to allow time for the QS market to develop and for people to make decisions. This allows time for everyone to figure out what they are going to do. It also makes it more likely that the Council will have completed its work on community fishing associations (CFAs) and CFAs will have had a chance to form before divestiture must be completed, providing a total of four years for all of these activities to take place.

Items #6, #7 and #8 go together to make sure that divestiture occurs over the two year period with revocation for any excess QS that has not been divested. Item #8 is worded to reinforce the concept that QS are privileges, not rights, and to ensure there is no assumption on the part of the entity holding excess QS that they might be compensated for shares they have not divested of by the end of the divestiture period. Item #9 is included because it is prudent to state that with the start of this program we have established limits and those limits should stay in place with respect to the requirements that individuals divest down to that level.

Mr. Lockhart moved to amend the motion (Amendment #1 to Motion 30) to include after the first sentence of Item #2, "Any such permit acquisition would have to be on file with the NMFS permit office by the end of November 30, 2008." Mr. Moore seconded the amendment. The purpose was to reduce the opportunity for people to say their permit was transferred before November 8, 2008 and that the transfer had just not been filed until later. Amendment #1 to Motion 30 was withdrawn.

Mr. Lockhart moved to amend the motion (Amendment #2 to Motion 30) to include after the first sentence of Item #2, "Any such permit acquisition would have to be on file with NMFS permit office by the end of November 30, 2008" and in the next sentence replace the words "that date" with "after November 8, 2008." Mr. Moore seconded the amendment. Amendment #2 to Motion 30 passed unanimously.

With respect to Item #9, Mr. Seger asked about the intent of applying the provision in the event that the Council decreased a QS control limit, i.e. would QS holders only have to divest down to the original control limit or down to the decreased limit. Mr. Moore commented that in such situations everyone

would have to divest down to the new lower limit. In response to a question from Dr. Hansen it was clarified that if there is an increase in the control limits, those in excess of the limits would have to divest down to the original limit but then could buy back up to the new, higher control limit. Mr. Moore moved Amendment #3 to Motion 30 to change the wording of Item #9 from “even if those limits happen to change” to “even if those limits increase.” Mr. Warrens seconded the amendment. Ms. Vojkovich agreed with the motion because it was her intent for people to divest and not to speculate that there might be an increase. Amendment # 3 was not voted on (replaced by a substitute amendment).

Mr. Anderson made a substitute amendment (Amendment #4 to Motion 30) to change Item #9 to read “For divestiture purposes, persons or entities that hold QS in excess of the control limits established by the Council on 6/18/2009 must divest such excess shares during the 24 month divestiture period identified in item #6 of this motion.” Mr. Cedergreen seconded the amendment.

Mr. Anderson identified that the motion uses consistent terms with respect to the terms “limits and “caps” and “persons” and “entities,” references that persons over limits are held to the limits established at this meeting, and references the 24 month divestiture period provided in the main motion. If we lowered the control limit, it brings another decision point, the required divestitures. That situation can be addressed at the time, if it happens. The June 18, 2009 date references the wrap-up motion that will take in all previous actions by the Council, including the control limits previously adopted by the Council for non-overfished species. Amendment #4 to Motion 30 passed unanimously.

Mr. Lockhart spoke to the fairness and equity of the motion. There are two groups to consider, those that chose to buy permits after 2003 and those that didn't. There is at least some confusion as to what the 2003 control date applies to. He views this as fair to both because those that did buy additional permits after that time are being allowed to partially recapture that investment by being given the QS and QP; and, in fairness to those that did not acquire additional permits because of the control date, those buying additional permits are being required to divest by a time certain. It recognizes the decisions being made by those on both sides of this issue.

Mr. Anderson acknowledged the tough issues and strong feelings about divestiture and use of shares in excess of control limits. He indicated that if things had been static during the long period this program has been under development he might feel differently. However, changes have occurred, not the least of which was the buyback program. The buyback had unintended consequences to certain ports. The business communities of the groundfish industry have tried to mitigate for those consequences, some of those mitigating actions included acquisitions of permits. This is a balance to try to achieve a fair and equitable approach given the things that have occurred over this time period. It gives people the opportunity to divest of investments they made that don't adhere to the limits established by this program and allows them to do it in a way that maintains the stability of fishery dependent communities and fleets.

Mr. Steve Williams supported the motion. There are a number of opinions about other dates that might be better, however, he supports November 8, 2008 as a cut-off date because of the length of time we have worked on this, the changes that have occurred to the program, and November 8, 2008 represents a decision that was made in finality with regard to grandfathering clauses. We don't know exactly why people made their decisions, however, after that date no one would have logically made a decision to purchase permits potentially in excess. With respect to the length of time provided for divestiture, the testimony on what it would take to divest, how difficult that might be, and the amount of work required to divest indicates that the four-year period is appropriate. This is a fair way to allow people to recoup investment in the fishery regardless of why or how they made it.

Mr. Moore moved (Amendment #5 to Motion 30) to change Item #8 from “shoreside trawl fleet” to “shoreside QS holders.” Mr. Warrens seconded the motion. This clarifies that it applies to any QS holder, not just members of the fleet. Amendment #5 to Motion 30 passed unanimously.

Motion 30 passed unanimously as amended.

Mr. Anderson moved and Mr. Steve Williams seconded a motion (Motion 31) to adopt the following for accumulation limits:

1. Confirm the Control and Vessel Limits for all non-overfished species consistent with the preliminary preferred option, as specified in Agenda Item E.11.a, Attachment 1, Table 1 on page 2.
2. Adopt Control Limits for all overfished species consistent with Table F of Agenda Item E.11.b, GMT Report (page 21). Set Vessel Limits equal to the Control Limits. Permit owners may replenish their vessel accounts back to the Control/Vessel Limit, as quota pounds are used. Vessel accounts will be subject to an annual Cumulative Usage Limit set equal to the Vessel Limit percentages identified in Table F (page 21, Agenda Item E.11.b, GMT Report). If widow rockfish is declared rebuilt before initial allocation of QS, set the Vessel Limit equal to 1.5 times the Control Limit.
3. For Pacific halibut, adopt a Control Limit of 5.4 percent and a Vessel Limit equal to the Control Limit. Allow quota pound holders to replenish their vessel accounts up to the vessel limit, as quota pounds are used. Vessel accounts will also be subject to an annual Cumulative Usage Limit of 14 percent.
4. The Council will revisit vessel Cumulative Usage Limits for overfished species and Pacific halibut in the first biennial specifications process after implementation of the trawl rationalization program.

Mr. Anderson said this is a hybrid of the proposals we have heard this week, in particular the proposal by the Groundfish Advisory Subpanel (GAP). He stated his understanding that the control limits set were derived by Mr. Burden’s analysis using our bycatch model and the ratios of target species to overfished species. The vessel limits were derived from looking at the data in Table F of the GMT report and looking at the lightning strikes, tows with substantial numbers of overfished species taken in a single tow. Also, the values proposed for halibut are derived from the same kind of analysis (5.4 percent looking at ratios of target species to halibut); and the 14 percent accumulative usage limit also came from looking at the disaster type tows. In this motion he used a new term: the cumulative usage limits. Vessels would be allowed to replenish their accounts in order to access remaining target species, up to the cumulative usage limit. Under this motion, the vessel limit column on Table F in the GMT report would be relabeled as the cumulative usage limit.

This is different from target species where vessel limits are set above control limits. If vessel limits were set above control limits for overfished species it would give more opportunity for someone to amass QP of overfished species that they did not necessarily need (control limits are based on the ratios needed to access target species). You can only replenish the account if you need it and at the same time it puts an upper limit on the total amount that can be accumulated, consistent with the data we have for the lightning strike situations. The reason the cumulative usage limit is provided, rather than having it open ended as proposed by the GAP, is that if you need to do this more than what is estimated by the model, you are not

being as conservation oriented as you should be. In that situation, you should not be given additional opportunities to replenish your account with overfished species. This keeps a solid conservation message about the expectation that fishers will change their behavior in a way that reduces interactions with overfished species. In response to a question from Mr. Wolford, Mr. Anderson clarified that the Table F values to use would be 8 percent control and 15.4 percent cumulative usage limit for bocaccio and 8 percent control and 11.5 percent cumulative usage limit for cowcod.

Mr. Lockhart appreciated rationale provided by Mr. Anderson on the need to balance flexibility and conservation. He noted that with this approach some fishermen could accumulate up to twice as many overfished species as is required to access the target species control limits. He asked whether there was concern that this might create a target opportunity for overfished species. Mr. Anderson stated he was not concerned that targeting would occur because the values under the control limit were derived looking at the ratio of overfished species needed to take target species. Recognizing that with overfished species the amount of fish is small, while an opportunity is provided to replenish up to that cumulative usage limit, the cost of replenishing the account is very high cost and a big deterrent. It is likely that fishers are not going to want to incur those costs, lowering profits from harvesting the associated target species. There will be substantial incentive for fishers to fish cleanly. Further, there would not be a conservation issue since harvest is controlled through the limited number of pounds available. During further discussion it was clarified that overfished species QP would not be held back at the start of the year.

Mr. Wolford moved Amendment #1 to Motion 31 to adopt for bocaccio a control limit of 13.2 percent and a cumulative usage limit of 15.4 percent; and for cowcod a control limit of 17.7 percent and a cumulative usage limit of 17.7 percent. Ms. Vojkovich seconded Amendment #1 to Motion 31. Mr. Wolford noted that based on previous presentations made to the Council, limits at these levels would not create problems in the functioning of the markets. These values are more consistent with the methods used for other species.

Mr. Lockhart asked Mr. Burden about the nature of the GMT concerns with control limits at the high end of the range for bocaccio and cowcod. Mr. Burden noted that the values were high enough that they were worthy of some pause. The GMT was not unanimous and he could not say with much degree of certainty whether or not those numbers are too high. Mr. Lockhart noted some outliers for darkblotched and asked why truncation was not proposed for that range in a manner similar to what the GMT had proposed for bocaccio and cowcod. Mr. Burden noted that the top of the range of values for darkblotched was not enough to create concern. Mr. Lockhart asked Mr. Wolford if the numbers proposed in his motion gave him any pause with respect to conservation. Mr. Wolford responded that for the control limit the question is what does it take to control the market, and based on previous presentations made to the Council, he did not feel these numbers created a problem in that regard. Ms. Vojkovich noted that for these two species harvest is geographically restricted and taken by only a small number of vessels. Taking a smaller number than what has been required in the past just because we are uncomfortable with the number does not seem like a reasonable approach if we are trying to have people maximize their fishing opportunity. She did not see the justification for using a different method for these southern species just because the method results in a large number, given that the number is below that needed to control the market. Amendment #1 to Motion 31 passed unanimously.

Ms. Vojkovich asked how the end result is different than the approach for target species from a conservation perspective and in relation to the concept of the IQ system and a market-based approach. Mr. Anderson replied there is one fundamental difference between the way this motion deals with overfished species and the way we are dealing with target species. An individual is limited from acquiring additional QP over and above what the analysis suggests they need to access their target species

QS. We are proposing this approach for overfished species so we don't set up a system whereby an individual would acquire overfished species (which are in limited supply) in excess of what they need to prosecute their target species. It prevents banking of unused or unneeded overfished species QP for the purposes of speculating and selling those at premium inseason. There is a ceiling on vessel limits for target species just as there is for overfished species, so, it is not a totally free market system in either case. The reason for those limits is that we want to make sure the fishery doesn't consolidate into a very small number of vessels controlling the entire west coast. However, for overfished species this proposal constrains the potential for individuals to attempt to profit by banking overfished species QP that they do not need but which are going to be needed to prosecute fisheries on targeting species. It doesn't say there isn't opportunity to bank QP even within the limits we have. If someone fishes very cleanly, they will have QP of overfished species they may sell or lease to someone who needs them as the fishery progresses through the year. From a market driven perspective, this is consistent with what we are doing with target species with the exception of limiting the opportunity for banking of QP for a speculative purpose.

Mr. Lockhart said he had been concerned about the lack of an upper limit on the unused QP approach but with that limit in place, those concerns are addressed and in particular his conservation concern about there being "unlimited refills." Specifying that the cumulative limits would be reviewed during the first biennial specifications process after implementation addressed concerns he had about getting it right. This addressed most of his concerns, though not all. This provides some limited flexibility to fishermen without compromising the conservation goals of the program.

Mr. Steve Williams supported the motion. He noted with respect to overfished species the need to balance not being too liberal with having a control limit that will allow people to get their target species. We looked at several control limits and these are about as good as we are going to get. He had been concerned about the open-endedness of the unused QP approach. With the backstop of the cumulative limit, that concern is addressed. This proposal provides a good measure of control up front but at the same time provides flexibility if a problem occurs. The cumulative vessel limit provides a description of what might be needed. It does not automatically allow a fisherymen to jump right to the cumulative annual limit, preventing hoarding. At the same time it allows some acquisition of additional QP that might be needed to access target species. This is as good of a place to start as we are going to find in this process. Item #4 allows us to go back and revisit this as necessary, however, he is hoping that with the unused QP limit and cumulative usage limit we will not have to revisit the issue. The process appears to be fairly straightforward and direct. This is a good hybrid approach that provides the needed conservation.

Ms. Vojkovich noted that as currently specified, the revisitation of this issue was mandatory. She moved to amend (Amendment #2) to change Item #4 to read: "The Council may revisit vessel Cumulative Usage Limits for overfished species and Pacific halibut in the first biennial specifications process after implementation of the trawl rationalization program." Mr. Lockhart seconded Amendment #2 to Motion 31. The amendment changed "will revisit" to "may revisit." Amendment #2 to Motion 31 passed unanimously.

Ms. Vojkovich voiced her support for Motion 31. She has some concerns about bocaccio and cowcod and believes that the limits may have to be reconsidered when we get data in. She understands the need to try to save some people from themselves, and the concern over hoarding, but is hoping that some of the things we think might happen won't happen and eventually we can get into something more simple.

Motion 31 passed unanimously as amended.

Dr. Hanson moved (Motion 32) to adopt the second bolded item contained in Agenda Item in E.11.b GAC Report, dropping “The GAC recommends” so that it states “QP transfers would be allowed only from QS holders to vessels and from one vessel to another.” Mr. Moore seconded the motion. The motion did not include the last bolded sentence. Dr. Hanson noted the rationale provided in the GAC report and the intent to keep QP tied to vessels so there is a maximum likelihood of them being fished. It prevents QP from being held “up on somebody’s shelf.” Because it is transferred to a vessel does not mean it will automatically be used but hopefully it increases the probability. Motion 32 passed unanimously.

Mr. Lockhart asked if it was the Council’s intent to allow risk pools to form; he has heard no one speak against it. He stated it is the General Counsel’s intent that when this program is implemented, to the extent possible, NMFS should allow the formation of these risk pools such that they allow fishermen the flexibility to select strategies that keep them away from overfished species without undermining the effect of accumulation limits. Mr. Moore agreed with the approach and noted that the way these are described, they are voluntary arrangements among QP or QS holders designed to maximize efficiency and the ability to harvest available target stocks without going over accumulation limits and hopefully minimizing the take of overfished species and other species of concern. This sort of efficiency combined with conservation is what the whole IQ program is designed to encourage. Mr. Lockhart indicated that this would be brought back to the Council via the deeming process and the Council would have a chance to review this.

Ms. McCall clarified that the risk pool agreement is one in which two people can enter into an agreement whereby if one person needs some extra QP the other would agree to provide the QP if he has them. She noted that for those kinds of agreements, whether informal or formal, as other considerations or conditions are added to the agreement there is a point at which the agreements begin to become control. You have limits on control but at the same time you want to have an allowance for pooling agreements of this type so long as the agreements do not become control. That is the kind of issue they will try to draft, clarify, and work on during the deeming process. Mr. Moore noted that the Council is not looking at the pools as control, but more as a voluntary cooperative arrangement to meet both efficiency and conservation goals along with the limits that have been set on accumulation. Mr. Steve Williams noted that in the GAC discussions of this issue the key words were “flexibility,” “voluntary,” and “informal.” Ms. Vjokovich stated that her understanding was that they may also be formal arrangements.

## **E.12 FMP Amendment 20 – Trawl Rationalization—Final Action for Adaptive Management Program (06/18/09; 10:16 a.m.)**

### **E.12.a Agenda Item Overview**

Mr. Burden provided the agenda item overview.

### **E.12.b Reports and Comments of Management Entities and Advisory Bodies**

Mr. Corey Niles and Mr. Robert Jones provided the agenda Item overview (Agenda Item E.12.b, Supplemental GMT PowerPoint). Mr. Jones read Agenda Item E.12.b, Supplemental GMT Report. Dr. Martin Dorn provided Agenda Item E.12.b, Supplemental SSC Report. Mr. Tommy Ancona read Agenda Item E.12.b, Supplemental GAP Report.

### **E.12.c Public Comment**

Mr. Shems Jud, Environmental Defense Fund, Lake Oswego, OR  
Ms. Laura Pagano, NRDC, San Francisco, CA  
Mr. Zeke Grader, PCFFA, San Francisco, CA  
Mr. Ed Backus, EcoTrust, Portland, OR  
Mr. Tommy Ancona, Tommy's Marine Service, Fort Bragg, CA  
Mr. Tom Libby, Point Adams Packing Company, Astoria, OR  
Mr. Andrew Bornstein, Bornstein Seafoods, Bellingham, WA  
Mr. Jay Bornstein, Bornstein Seafoods, Bellingham, WA  
Mr. Craig Urness, Pacific Seafood Group, Clackamas, OR (on screen proposal)

### **E.12.d Council Action: Adopt Final Preferred Alternative**

Mr. Lockhart moved and Ms. Vojkovich seconded a motion (Motion 33) that the Council adopt as final action the motion that was adopted preliminarily in April 2009 with one change. This motion is contained in Agenda Item E.12.a, Attachment 1 in the briefing book and the only change is that the blue language which reads "Amendment 1 (passed): include a non pass through option under methods for allocating Adaptive Management Program (AMP) QP to be used in the first or second year (include all objectives)" would be struck.

Mr. Lockhart then spoke to the motion. With respect to goals, he sees that all of the listed goals and objectives should remain unprioritized, recognizing that choices on priorities may be made in the future. The main goal of the adaptive management program (AMP) is to respond to unintended consequences as well as these other objectives. The rest of the motion basically spells out the way to get to a final program; however, he did not think we are ready to design anything up front. Therefore the motion spells out a way to get to a full AMP, phasing it in over time. For the first two years of the program there would be a pass-through, and the AMP QS would be distributed to permit holders in the same way the other 90 percent is distributed. During this time, Council staff will work with states and NMFS to determine the details of the formula for determining community and processor eligibility as well as methods for allocating consistent with additional goals. In years three to five of the program, the formulaic approach developed in the first years would be used to distribute the QS. There was a lot of work by the GMT and public on formulas which might be considered. With respect to the decision making structure, a range of options is left open. The decision on that structure would be made later. One of the main reasons for the pass through is that we have heard a lot of discussion about the infrastructure being in poor shape. Providing this pass through in those years provides the industry an opportunity to recoup from a period of bad years. Also, we need to see how this program is going to work, and by getting all the QP out according to the same formula we are using for QP distributed for QS it will allow fishermen to work with processors in unique ways. It will allow processors to figure out how it will work. Those results may inform us in our ultimate decision making. The final reason for the pass through is workload. This gives us time to see how the program plays out and think about this a little more. There has been discussion about having this sunset but this is left open for additional decision making at the five year review. This does not mean the program should last forever but right now we don't know how long it should last.

Mr. Moore asked about the methods for allocating AMP QP. The GMT came up with several methods in their report and there were suggestions in the public testimony; would the intent be to look at all of these things and more? Mr. Lockhart responded affirmatively. Also, Mr. Moore asked whether the decision making structure beyond those outlined as options in the motion might be considered. Mr. Lockhart

responded that a fairly broad range might be considered. During later discussion, Mr. Lockhart characterized the options as examples.

Mr. Mallet asked about testimony from processors and the fishing community to see a one year pass through. Mr. Lockhart said the reasons for two years of pass through was that it aligns with the biennial specification process and the lack of time to work on it and have it in place for year two. He also questioned making a dramatic change in the second year of a biennial specifications process.

Mr. Anderson moved Amendment 1 to Motion 33 to strike the sentence “QP distributed consistent with the formulas developed during the first two years.” Mr. Cedergreen seconded the amendment. Prior to making the motion, Mr. Anderson indicated that this seemed obvious and did not need to be stated. Amendment #1 to Motion 33 passed unanimously.

Mr. Steve Williams moved Amendment #2 to the motion to begin implementation in year two. Mr. Warrens seconded the amendment. The intent of the amendment is to keep the motion intact but reflect implementation of the program in year two.

Mr. Steve Williams’ main concern in delaying implementation until the third year is that we will not get back to it without some push to accomplish it, momentum will be lost. We also heard public testimony that if we wait until year three of the program it may be too late to address some things, or to address them effectively. Mr. Lockhart said if the Council does or does not go through the process to develop it, it will also take a rulemaking for implementation; if we cannot implement in year two, would it be your intent that the pass-through would continue for year two? Mr. Williams responded affirmatively.

Mr. Lockhart moved to amend the motion so that if the Council is not ready, or the rulemaking supporting Council action is not ready, that the pass-through would continue during year two. Ms. Fosmark seconded the amendment. Mr. Williams responded that the motion would give us outs and there would be no push behind it. Mr. Lockhart withdrew the amendment. The second concurred.

Amendment #2 to Motion 33 failed on a roll call vote (7 yes, 7 no). Voting no were Mr. Sones, Ms. Vojkovich, Mr. Lockhart, Mr. Anderson, Mr. Wolford, Ms. Fosmark, and Mr. Hansen.

Main Motion 33 passed unanimously.

The Council then returned to finish business left undone on Agenda Item E.10.a. Mr. Moore moved (Motion 34) that the Council adopt the amendments to the groundfish FMP as shown in Agenda Item E.10.a, Attachment 3 as modified by Agenda Item E.10.a, Supplemental Attachment 6. Mr. Anderson seconded the motion. After a clarification that this language would not require that the Council move forward with IFQ for other fishery sectors, Motion 34 passed unanimously.

Mr. Frank Warrens and Ms. Kathy Fosmark jointly moved (Motion 35) to have the Council direct staff to draft and submit to NMFS the complete Amendment 20 package of final Council actions, Draft Environmental Impact Statement (DEIS), supporting analyses, and other documents necessary for the approval and implementation of Amendment 20. The Council's final actions which constitute Amendment 20 shall include the final trawl rationalization action taken by the Council in November 2008 and further additions or modifications made during final action in March and April 2009 and under Agenda Items E.10, E.11, and E.12 of the current (June) Council meeting. Staff is authorized to draft, change, and correct the necessary documents to reflect the Council's intent in its adoption of this final

Amendment 20 package. The Council recognizes that NMFS may, if appropriate, implement Amendment 20 in a series of regulations. Motion 35 passed unanimously. Mr. Sones seconded the motion.

Council went into a closed session from 1:35 p.m. until 2 p.m. on June 18, 2009. Discussion on stipends, position description for Don Hansen.

## **F. Highly Migratory Species Management**

### **F.1 Council Recommendations to International Regional Fishery Management Organizations**

#### **F.1.a Agenda Item Overview (06/14/09; 10 a.m.)**

Dr. Dahl provided the agenda item overview.

#### **F.1.b Reports and Comments of Management Entities and Advisory Bodies**

Dr. Stephen Stohs presented Agenda Item F.1.b, Supplemental HMSMT Report. Dr. Stohs added an additional recommendation orally, which is that the U.S. delegation to the Northern Committee consider any conservation recommendations for North Pacific swordfish adopted by the International Scientific Committee for Tuna and Tuna-like Species Plenary (ISC), to be held July 8-20, 2009. Mr. Doug Fricke presented Agenda Item F.1.b, Supplemental HMSAS Report. He also summarized some of the points made in the comment letter included as Agenda Item F.1.a, Supplemental Attachment 3.

#### **F.1.c Public Comment**

Mr. Chip Bissel, American Albacore Association, Seattle, WA  
Mr. Doug Fricke, Washington Trollers Association, Quilcene, WA

#### **F.1.d Council Action: Approve Recommendations on Highly Migratory Species Management to the Northern Committee of the Western and Central Pacific Fisheries Commission**

Chairman Hansen asked Mr. Helvey about whether extending the public comment period on the proposed rule implementing Western and Central Pacific Fisheries Commission (WCPFC) requirements (see Agenda Item F.1.a, Supplemental Attachment 2) was feasible, given that it ended on June 22, 2009. Mr. Helvey said it is possible. Mr. Judson Feder, NOAA General Counsel (GC) also said it was possible, although unlikely.

Mr. Moore recognized that the proposed rule (Agenda Item F.1.a., Supplemental Attachment 2) represented U.S. compliance with the WCPFC but it seemed like the requirements were focused on particular fisheries while other U.S. fisheries were getting swept up in the requirements. He asked Mr. Helvey if that is a fair assessment. Mr. Helvey said the Commission covers all nations fishing on highly migratory species (HMS), rather than focusing on particular gears or vessels. Mr. Moore clarified that he wondered if the requirements were meant to enforce management measures, such as closed areas in the far western Pacific, but also affected a small number of west coast vessels fishing in the Convention area. He wondered if there is a conservation problem related to these relatively small albacore troll vessels. Mr. Helvey said the thought there was some flexibility with regard to the observer requirement, but probably not with respect to VMS.

Ms. Culver recalled the observer coverage plan reviewed by the Council some years ago and noted that there are current regulations for the west coast HMS fleet with respect to observer coverage. She thought that the proposed regulations for WCPFC compliance were in line with the observer coverage plan and regulations.

Following up on Ms. Culver's point, Dr. Dahl noted that under the WCPFC regional observer program as long as the NMFS observer program is compliant, then the existing procedures or level of coverage would continue to apply. Therefore, the current observer coverage plan would likely be rolled into meeting the requirements for the WCPFC.

Mr. Myer noted that the VMS requirements in the proposed rule appeared more lenient than some of the current regulations applicable to west coast vessels. He felt the proposed rule was consistent and written fairly well.

Mr. Cedergreen asked if current rules regarding vessels unable to accommodate observers would apply under the proposed rule. Mr. Helvey said that he thought the proposed rule has that flexibility.

Ms. Vojkovich wanted to remind everybody that the Council has spoken in the past, in September 2008, on the issue of vessel marking requirements.

Ms. Fosmark discussed some of the operational challenges of fishing west of 150° W. longitude and how it would be affected by the observer and VMS requirements in the proposed rule. She asked if all vessels would be required to carry VMS with only those going beyond 150° W. longitude having to turn them on. Mr. Helvey said he thinks at the international level that these types of requirements was the trend. Ms. Fosmark asked if the vessel marking requirement was similar. Mr. Helvey indicated yes.

Mr. Moore asked how closely SWR had worked with the Pacific Islands Regional Office on developing the proposed rule, given that it seemed to focus more on Hawaii-based vessels rather than west coast based vessels. In reviewing the comments received, he thought the two regions should work closely together. Mr. Helvey said the two regional offices do work together, but on this particular rule he did not know specifically what interaction had occurred.

Ms. Vojkovich moved (Motion 6) to have the Council draft a letter to the U.S. delegation attending the next Northern Committee meeting. Relative to Agenda Item F.1.b, Supplemental HMSMT Report, the letter should contain the recommendation #1 for northern albacore, recommendations #1 and 2 for striped marlin, and express our interest/recommendations on stock assessment for northern bluefin tuna. Noting that they may be separate issues related to the WCPFC more generally, she moved to include the recommendations relative to albacore about WCPFC members providing fishing effort information and that the WCPFC participate on the Inter-American Tropical Tuna Commission (IATTC) working group formed to consider definitions of "current levels" of fishing effort. Mr. Helvey seconded Motion 6.

Ms. Vojkovich said that relative to the issues on stock assessment and cooperation between the WCPFC and IATTC, both the Highly Migratory Species Management Team (HMSMT) and Highly Migratory Species Advisory Subpanel (HMSAS) are pretty much on the same page, although the HMSAS did not talk about reference points. The Council has made comments several times before about the need for a striped marlin stock assessment and the need to add striped marlin to the Northern Committee list of stocks. She said she felt the Council didn't need to address the recommendations in the HMSAS report on the proposed rule, given previous discussion.

Mr. Moore asked if Ms. Vojkovich intentionally omitted the second recommendation on North Pacific albacore in the HMSMT Report. Ms. Vojkovich said that was to be addressed in the second part of the letter as outlined in the motion.

Mr. Moore said he was still confused and asked for further clarification. Ms. Vojkovich said all five of the HMSMT's recommendation are included in the motion, she just organized them a little differently.

Mr. Helvey noted that it is a requirement for parties to report their current level of fishing effort at the next Northern Committee meeting.

Mr. Steve Williams asked whether the recommendation made orally by Dr. Stohs with respect to recommendations on swordfish management was included in the motion. Dr. Dahl summarized the HMSMT's discussion about the preparation of a North Pacific swordfish stock assessment and its adoption at the upcoming International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC) Plenary meeting.

Mr. Helvey clarified that the ISC Plenary might develop conservation measures for North Pacific swordfish, based on the stock assessment, and it was the HMSMT's recommendation that these be considered by the U.S. delegation.

Mr. Helvey moved an amendment to the motion to include the HMSMT recommendation regarding swordfish in the motion. Mr. Rod Moore seconded the amendment to Motion 6.

Amendment to Motion 6 passed unanimously.

Motion 6 passed unanimously.

## **G. Administrative Matters**

### **G.1 Membership Appointments and Council Operating Procedures (06/15/09; 3:46 p.m.)**

#### **G.1.a Agenda Item Overview**

Dr. Coon provided the agenda item overview. He also referenced Agenda Item G.1.a, Supplemental Attachment 1.

#### **G.1.b Reports and Comments of Management Entities and Advisory Bodies**

None.

#### **G.1.c Public Comment**

None.

**G.1.d Council Action: Consider Changes to Council Operating Procedures and Appoint Council Chair and Vice Chairs and New Advisory Body Members as Needed**

Mr. Mallet moved and Mr. Moore seconded a motion (Motion 15) to appoint Mr. Dave Ortmann to the position of Council Chair for the 2009-2010 term. For the two Vice Chair positions for the 2009-2010 term: reappoint Mr. Mark Cedergreen, and appoint Mr. Daniel Wolford to his first term as Vice Chair.

Motion 15 passed unanimously.

Mr. Sones moved and Mr. Warrens seconded a motion (Motion 16) to appoint Mr. Roger Bain to the Tribal Fisher position on the GAP to complete the remainder of the 2007-2009 term.

Motion 16 passed unanimously.

Mr. Steve Williams moved and Mr. Cedergreen seconded a motion (Motion 17) to create an ad hoc Salmon Plan Amendment Committee to help develop Amendment 16 to the Salmon FMP which deals with catch control measures and overfishing (Agenda Item G.1.a, Supplemental Attachment 1). Motion 17 passed unanimously. Chairman Hansen appointed those listed in Supplemental Attachment 1 to the committee, with the exception of Ms. Mariam McCall and Ms. Eileen Cooney. Ms. Cooney explained that it is sufficient that NOAA General Council be represented by Ms. Sheila Lynch. At the request of Mr. Steve Williams, the Chairman also appointed Mr. Ron Boyce, Oregon Department of Fish and Wildlife (ODFW), to the committee. WDFW and the Northwest Indian tribes may provide nominees to the Chair at a later time.

Chairman Hansen announced his nomination of Dr. Dave Hanson to NOAA's Catch Shares Task Force and Mr. Jim Seger to the Catch Share Working Group. These are the work groups identified by Dr. Lubchenco at the Boston CCC meeting that have been established to help NOAA facilitate the consideration and adoption of catch shares as a national fishery management strategy.

Ms. Vojkovich asked what the two catch share groups do. Dr. David Hanson said the task force looks at big picture issues for implementing catch shares and their task is to be done by August 1, 2009. The Catch Share Working Group is more technical in nature and will serve over a longer time to advise NMFS on technical aspects of catch shares program, the nominations need to be in by June 22, 2009. Dr. Coon said there is also a CCC catch work group. Ms. Vojkovich was aware that with regard to membership on the task force we are just forwarding a nomination. Dr. Coon said on the second group it was unclear about the selection process. Dr. Hanson said the document does not provide clarification. Ms. Vojkovich asked if there would be input from the Council if they were not selected? Dr. Hanson said my guess is that they will pick one from each coast. If Alaska gets on, he guarantees that he will be working with them to convey our Council's input.

Mr. Lockhart said that both he and Mr. Helvey will do their best to provide communication and liaison as we find out what is going on with the committee participants.

**G.2 Fiscal Matters**

**G.2.a Agenda Item Overview**

Dr. Coon provided the agenda item overview.

**G.2.b Budget Committee Report (06/18/09; 2:31 p.m.)**

Mr. Jerry Mallet read Agenda Item G.2.b, Supplemental Budget Committee Report.

**G.2.c Reports and Comments of Management Entities and Advisory Bodies**

None.

**G.2.d Public Comment**

None.

**G.2.e Council Action: Consider Budget Committee Recommendations**

Mr. Warrens moved and Mr. Moore seconded a motion (Motion 36) to approve the recommendations of the Budget Committee as shown in Agenda Item G.2.b, Supplemental Budget Committee Report. Motion 36 passed unanimously.

**G.3 Proposed Rule on Council Operations**

**G.3.a Agenda Item Overview (06/18/09; 2:36 p.m.)**

Dr. Coon provided the agenda item overview which included staff comments on each of the proposed regulation changes (G.3.a, Attachment 1), the proposed rule (G.3.a, Attachment 2), a proposed draft response letter (G.3.a, Supplemental Attachment 3), and a history of the Council's position on stipend payments (G.3.a, Supplemental Attachment 4). Dr. Coon noted that staff supported most of the proposed regulations which were mainly housekeeping in nature. The issues of concern to staff were: the definitions of advisory panels (which raise definite problems with regard to payment of stipends and the way regional councils use panels); and the lobbying restrictions which are confusing and do not recognize the regional councils' special advisory role under the MSA.

**G.3.b Reports and Comments of Management Entities and Advisory Bodies**

None.

**G.3.c Public Comment**

None.

**G.3.d Council Action: Provide Comments on the Proposed Rule**

Mr. Moore said he is not concerned with the proposed language on lobbying, but has no problem with the recommendation made in the draft letter. He agrees with the recommendation for allowing regional councils to define their panels and who they will pay stipends to. Further, the proposed definitions for advisory panels and fishing industry advisory committee do not comport with the legislative history for establishing those panels.

Mr. Lockhart said that since the letter is to NMFS, he will be abstaining, but is in support of having the Council send the letter.

Dr. Coon said we would anticipate this letter and several similar letters from the other Regional Fishery Management Councils (RFMCs) will cause NMFS to reassess the final rule based on the information they receive. Mr. Steve Williams said it sounds like there is more clarity needed from NMFS before we make final decisions on stipends. Dr. Coon agreed and said he would expect more information will come; but he is not sure how fast NMFS will come back with the proposed rule or changes. In the interim, the Council needs to decide how to handle the stipend funds for SSC members since funds are available. No funds have specifically been made available for advisory panels.

Mr. Mallet, regarding this interim period, asked Mr. Lockhart if he could relay some of our discussion on needing clarity about what we can and cannot do to the appropriate people in NMFS. Mr. Lockhart said he had already put it on his to do list.

Dr. McIsaac asked if there was consensus for the recommendations in the draft letter with the changes discussed. The staff will take the sense of the comments provided in the discussion and include them in the letter to NMFS in time to meet the comment deadline. The Council concurred.

#### **G.4 Approval of Council Meeting Minutes**

##### **G.4.a Council Member Review and Comments (06/18/09; 2:53 p.m.)**

Dr. Coon provided the agenda item overview seeking Council review and approval of Agenda Item G.4.a, Draft March 2009 Council Meeting Minutes. He reported that in the minutes under Agenda Item G.5.d (final action on groundfish Amendment 22, Open Access License Limitation) there was an omission of that part of the Council's discussion following the final motion on that agenda item. He proposed the Council conditionally approve the minutes contained in G.4.a, with the provision that staff would complete the omitted portion and circulate it for Council comment and approval after the Council meeting.

##### **G.4.b Council Action: Approve March 2009 Council Meeting Minutes**

Mr. Moore moved and Mr. Wolford seconded a motion (Motion 37) to conditionally approve the Draft March 2009 minutes with the exception of the missing portion from Section G.5.d. That portion would be emailed to the Council members for their review and approval after the Council meeting. Motion 37 passed unanimously. [Following the Council meeting, the missing portion of the minutes was circulated to Council members for review and incorporated in the final March minutes on July 15, 2009.]

#### **G.5 Future Council Meeting Agenda and Workload Planning**

##### **G.5.a Agenda Item Overview (06/18/09; 2:27 p.m.)**

Dr. McIsaac provided the agenda item overview. He noted that there were two written comments in the briefing book, one from the Coastal Pelagic Species Advisory Panel and one from Mr. Pete Dupuy.

Dr. McIsaac began with a review of the year at a glance (Agenda Item G.5.a, Supplemental Attachment 3) and noted the changes for the September meeting from the previous version. The changes were strike outs of the follow-up on sardine allocation (postpone to November) and the reconsideration of Amendment 22 (permanently postponed). He noted the addition of the Sacramento Biological Opinion and report on the failure of the Sacramento fall Chinook salmon and the addition of an item on ocean

acidification. He also called attention to the November agenda which included an ecosystem plan item as we will definitely receive funding for that this year; and reminded the Council of the September-November process of reviewing advisory bodies and making new appointments for the 2010-2012 term.

Dr. McIsaac reviewed the planner for the September meeting (Agenda Item G.5.a, Supplemental Attachment 4) and noted the changes made since the original briefing book attachment. He asked for input from Council members on the changes and proposed September agenda.

#### **G.5.b Reports and Comments of Management Entities and Advisory Bodies**

Dr. McIsaac provided the Supplemental CPSAS Report which requested that the sardine allocation consideration be postponed to the November Council meeting.

#### **G.5.c Public Comment**

Ms. Erika Feller, The Nature Conservancy (TNC), Monterey, California—Reported TNC was hosting a series of workshops on CFAs, plans to provide a written report on the workshops to the Council for the open comment period in September, and requests the Council follow-up with a CFA agenda item in November.

#### **G.5.d Council Discussion and Guidance on Future Council Meeting Agenda and Workload Planning**

The Council members worked with Council staff and the Executive Director to develop the workload priorities, and September 2009 agenda.

Mr. Moore recommended the Council include CFAs on the November Council agenda if it was at all possible.

Regarding the September agenda, Ms. Yaremko expressed a preference for maintaining the 10 a.m. start on Sundays. Several Council members agreed that, in general, the later start on Sunday was beneficial. Mr. Moore noted that there is no breakfast available at the hotel Sunday morning.

Mr. Wolford questioned the need for the September agenda items on Marine Debris, Ocean Acidification, and Offshore Aquaculture if they were just informational. Perhaps an evening presentation would be better. Chair Hansen noted how he and others had been surprisingly impressed with the marine debris presentation. Mr. Cedergreen noted that the marine debris and ocean acidification items would be presented at the Pacific States Marine Fisheries Commission (PSMFC) meeting just a couple of weeks prior to the Council meeting and several other Council members would be there as well. Mr. Myer noted there were already two evening functions and was not in favor of having more. He noted the difficulty of being alert for the evening sessions given the long week and Mr. Cedergreen and Mr. Hanson concurred in limiting evening presentations. Mr. Steve Williams also noted that the evening time was important for preparing for the next day's agenda items. With regard to start time on Saturday, he would just as soon start at 8 a.m. as he will have to come in the previous evening anyway. Other Council members agreed. Mr. Cedergreen suggested moving the Chairman's briefing back to Friday as nearly all Council members would be there then. Mr. Lockhart suggested the three information items be informational reports rather than agenda items. Ms. Fosmark expressed support for the aquaculture presentation.

Ms. Yaremko said that in looking ahead to 2010 Council meeting planning, they would like to see an attempt be made to go back to starting the advisory body meetings on Monday afternoon and start the Council session on Wednesday afternoon. This would allow some staff workload relief in that they would have the weekend before the Council meeting off. With the current start on Thursday or Friday, staff ends up working through two weeks with no time off.

Ms. Yaremko noted that the four hours for stock assessments may not be enough considering the significance, complexity, and number of assessments.

Dr. McIsaac summarized the input received from the Council members. With regard to the informational items, he would drop the marine debris item, perhaps have a written report for the ocean acidification, but keep the marine aquaculture item. He proposed that it may be possible to have them together early in the week to reduce their impact on the more critical agenda items. He will maintain the late start on Sunday.

With regard to start times and length of days, several Council members expressed a desire to maintain full days and use any reduction in agenda items to delay the start of the Council session to allow more time at home on the weekend prior to the start of the Council meeting.

Council members expressed their appreciation for the contributions and hard work of the outgoing Chairman Donald Hansen, Mr. Frank Warrens, and Ms. Kathy Fosmark.

## **H. Coastal Pelagic Species Management**

### **H.1 Pacific Mackerel Management for 2009-2010 (06/16/09; 8:01 a.m.)**

#### **H.1.a Agenda Item Overview**

Mr. Mike Burner gave the agenda item overview.

#### **H.1.b National Marine Fisheries Service Report**

Dr. Paul Crone provided a PowerPoint presentation.

#### **H.1.c Reports and Comments of Management Entities and Advisory Bodies (06/16/09; 9:09 a.m.)**

Dr. Dorn read Agenda Item H.1.c, Supplemental SSC Report.

Ms. Vojkovich asked for clarification on what the SSC meant when requesting that the Council “take into account” the alternate assessment model run (AB). Dr. Dorn felt that Dr. Crone expressed it best in that model AA should be viewed as a base-case and model AB as a sensitivity analysis for comparison. Model AB was an attempt to better fit the model output to recent data but, the question is whether the methods used at the STAR Panel are the best methods. The intent of the SSC statement is to inform the Council that model AA is appropriate for considering an ABC value, but the SSC recommends that the Council take a precautionary approach when setting harvest levels for the coming fishing season because model AB is a plausible state of nature.

Regarding the SSC recommendations on when to do the next full assessment, Ms. Vojkovich asked for specifics on what the SSC meant by “substantial” increases in landings triggering the next full assessment. Dr. Dorn said it is difficult to quantify and that the SSC felt that the stock would be a candidate for the monitored species category unless landings in the directed fishery increased. Dr. Hamel clarified that the STAR Panel discussed the matter and concluded that landings over the harvest levels prescribed by model AB (~8,000 mt) would warrant a new full assessment that should include a more thorough analysis of the catch per fishing vessel (CPFV) data. He noted that the current assessment presents a high and low value for management, but lacks a middle value. Dr. Hamel added that the assessment could be improved by taking a year off of the assessment cycle to further refine the data.

Mr. Burner clarified for Mr. Moore and the Council that the harvest control rule for Pacific mackerel results in the ABC which is sometimes listed as the harvest guideline because the ABC is also the maximum harvest guideline the Council can recommend.

Mr. Dale Sweetnam read Agenda Item H.1.c, Supplemental CPSMT Report. Ms. Vojkovich asked how the Coastal Pelagic Species Management Team (CPSMT) arrived at 30,000 mt. Mr. Sweetnam noted that the CPSMT considered the advice of the SSC and weighed the two model outcomes and wanted to present a risk-neutral approach that was a mid-point in the range between model run AA and AB. He noted that the error bars for both model runs included values at approximately 33,000 mt. He added that the CPSMT discussed recent landings that averaged 6,000 mt and felt that landings could increase above that level due to recent decreases in Pacific sardine opportunities.

Mr. Mike Okoniewski read Agenda Item H.1.c, Supplemental CPSAS Report. Mr. John Royal joined him at the podium. Mr. Steve Williams asked if the Coastal Pelagic Species Advisory Subpanel (CPSAS) feels that it is likely that landings will increase considerably in the 2009-1010 season. Mr. Okoniewski stated that fisherman have been reporting increased sightings of Pacific mackerel from spotter planes out looking for bonita. Additionally, Pacific mackerel could have been passed over in the recent past due to opportunities for Pacific sardine and market squid; opportunities that have declined recently.

#### **H.1.d Public Comment**

Ms. Diane Pleschner-Steele, California Wetfish Producers Association, Buellton, CA

#### **H.1.e Council Action: Approve Stock Assessment, Harvest Guideline, and Management Measures**

Ms. Vojkovich moved (Motion 18) to adopt the Pacific mackerel stock assessment as shown in Agenda Item H.1.b, Attachment 1. Ms. Fosmark seconded the motion.

Ms. Vojkovich said we have heard considerable concerns from the scientists regarding this assessment although the SSC has recommended to us that it is the best available science. Motion 18 passed unanimously.

Ms. Vojkovich moved (Motion 19) that the Council adopt for the 2009-2010 Pacific mackerel season, an ABC of 55,408 mt and a harvest guideline of 10,000 mt with a 2,000 mt set-aside for incidental catches in other CPS fisheries. Should the fishery attain 8,000 mt, close the directed fishery and revert to an incidental fishery that allows a 45 percent incidental landing allowance when Pacific mackerel are landed with other CPS, except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS. Mr. Wolford seconded the motion.

Ms. Vojkovich spoke to the assessment uncertainty and the bounds for harvest levels presented by the two model runs and recommended by the SSC and their divergent estimates of stock status. She also considered landings over the last 20 years where landings rarely exceeded 20,000 mt and the discussions regarding the likelihood of the 2009-2010 fishery increasing in volume substantially. She noted general agreement and frustration among the STAT and the advisory bodies on the data difficulties for assessing Pacific mackerel including the decline in data sources for informing our understanding of the resource. On the other hand, she did consider the life-history characteristics and resiliency of Pacific mackerel and the industry reports of increasing Pacific mackerel availability and its associate potential for increased landings. She thought given the uncertainty of the current assessment, the Council should likely be looking at recent landings as a guide for harvest policy. This motion is in keeping with landings observed in the last 10 years that average approximately 6,000 mt while providing some room for fishery growth in the coming season by nearly doubling the 6,000 mt to the 10,000 mt in the motion.

Mr. Moore asked if the CPS FMP provides any guidance on whether the 2,000 mt set aside for incidental fisheries is intended for incidental landings within the CPS fleet or is it also intended to cover incidental landings in other non-CPS fisheries such as Pacific whiting. Mr. Burner stated that the CPS FMP is not specific in this regard and that it is his understanding that the 2,000 mt set aside being discussed was envisioned to cover only incidental landings in CPS fisheries. He noted that NMFS would likely be interested in total catch accounting for Pacific mackerel regardless of what fishery it was taken in and that, should the motion pass, there would be a significant buffer between the harvest guideline (HG) and the ABC. In the CPS FMP, the HGs are treated more as a harvest target rather than a hard cap such as the ABC. One mechanism available to NMFS to curtail incidental landings in the CPS fisheries would be to take automatic inseason action to reduce the incidental landing allowance of 45 percent to discourage mixed loads that include Pacific mackerel.

Ms. Vojkovich stated that it was the intent of her motion to only cover incidental landings in the CPS fleet. When reviewing available data, it appears that 2,000 mt should easily address this need, and without data on incidental landings in non-CPS fisheries it is difficult to assess the potential for total incidental landings to exceed 2,000 mt.

Ms. Fosmark spoke in opposition of the motion and in favor of the already conservative harvest strategy proposed by the CPSMT (Agenda Item H.1.c, Supplemental CPSMT Report).

Mr. Helvey said although the current assessment is data-poor, the SSC has endorsed it as the best available science and has recommended ways to address uncertainty. He is concerned that this motion is not based on the available science and said NMFS will be voting against the motion.

Mr. Wolford paraphrased the SSC position and felt that the motion is in keeping with the SSC recommendation to use model AA to set the ABC while considering model AB when setting the harvest guideline. He felt that model AB takes on a great deal of importance when setting the harvest guideline and spoke in favor of the motion.

Mr. Anderson spoke in favor of the motion and strongly disagreed with Mr. Helvey that the motion has no basis. Mr. Anderson reiterated that the assessment and the SSC have provided a range of potential harvest levels and although there is no middle-point provided by the SSC, he felt the harvest levels in the motion did have a basis. He supported Ms. Vojkovich's approach of trying to meet the needs of the fishery while considering the available scientific advice. He felt the Council could argue whether the harvest levels in the motion are the right one or not, but not whether the motion has a basis.

Motion 19 passed on a roll call vote (9 yes, 4 no). Mr. Sones, Mr. Cedergreen, Mr. Anderson, Ms. Vojkovich, Mr. Wolford, Mr. Myer, Mr. Williams, Mr. Mallet, and Mr. Ortmann voted yes. Mr. Moore, Ms. Fosmark, Mr. Helvey, and Mr. Warrens voted no.

Ms. Vojkovich asked for clarification on the schedule for the next Pacific mackerel stock assessment. Mr. Burner said that under the CPS FMP, actively managed species such as Pacific mackerel are assessed annually with full assessments every third year and updated assessments conducted in the interim years. Therefore, we would expect to see updated assessments in 2010 and 2011 and a full assessment in 2012. Ms. Vojkovich, responding to comments from the stock assessment authors, proposed not doing any assessment of Pacific mackerel in 2010 and spending that time working on the research and data needs issues and reviewing the terms of reference. Under this scenario she proposed doing the next full assessment in 2011.

Dr. Crone spoke in favor of the proposal. Mr. Burner recommended the recommendation come in the form a motion as the proposal deviates from adopted protocol.

Ms. Vojkovich moved (Motion 20) to schedule the next full assessment of Pacific mackerel occur in two years (2011) and in the interim, direct the stock assessment team and others work on the data and research needs to improve the next full assessment. Mr. Anderson seconded Motion 20.

Mr. Burner and the Council clarified that under this motion the Council would look to this year's full assessment and other data sources when addressing harvest specification and management measures for the 2010-2011 Pacific mackerel fishery. Motion 20 passed unanimously.

Mr. Helvey asked for clarification on whether attainment of the 2,000 mt set aside would close only CPS fisheries that contact Pacific mackerel or is it the Council's recommendation to close all fisheries that contact Pacific mackerel. Mr. Burner reiterated that in the CPS FMP a HG is a harvest target and that exceeding a HG does not have the same implications as exceeding the ABC, which is overfishing. However, looking forward to full implementation of the reauthorized MSA, you could consider the HG as analogous to an ACL, a harvest value that you would buffer against exceeding by accounting for total catch. There is some tolerance for occasionally exceeding an ACL, particularly if appropriate accountability measures are subsequently adopted. In this case the HG is not set at or even near the ABC or overfishing level.

Mr. Anderson stated that it was his understanding when the motion was being discussed that the 2,000 mt is intended for incidental landings only in CPS fisheries and that although we recognized there is some un-quantified residual amount of Pacific mackerel in other fisheries, the 10,000 mt harvest specifications only addresses CPS fisheries.

Mr. Dale Myer encouraged continued and expanded use of logbooks in CPS fisheries as a means of improving the data that informs assessments. Chairman Hansen noted that logbooks do exist, but their importance to the assessment process is increasing and there could be improved coverage and reporting.

## **H.2 Survey Methodology Review and Exempted Fishing Permit (EFP)**

### **H.2.a Agenda Item Overview (06/16/09; 10:47 a.m.)**

Mr. Burner provided the agenda item overview. It was noted Mr. Tom Jagielo, a co-principal investigator on the EFP and industry representatives Mr. Jerry Thon and Ms. Diane Pleschner-Steele were available should the Council members have any questions.

### **H.2.b Reports and Comments of Management Entities and Advisory Bodies**

Dr. Martin Dorn (along with Dr. Owen Hamel) read Agenda Item H.2.b, Supplemental SSC Report. Ms. Vojkovich asked about the biological sampling, specifically if it is intended to be used in the next assessment. Dr. Dorn noted that biological sampling is planned to occur at the dock and biological samples could be turned around fairly quickly. Dr. Owen Hamel clarified that length composition data would be available in time for the assessment work, but age composition data will take more time and will not likely be ready for this fall's assessment. Dr. Hamel also clarified for Mr. Helvey that this initial survey effort will not provide an index of Pacific sardine biomass at this early stage, but the results have the potential to identify a minimum population level in the 2009 assessment.

Deputy Chief Mike Cenci read Agenda Item H.2.b, Supplemental EC Report. Regarding Enforcement Consultant (EC) concerns about bycatch and the need for observers, Deputy Chief Cenci reported that members of the EC met with the CPSAS and industry representatives did not have any difficulty with the reporting requirements and believe bycatch in the fishery was very low. Mr. Burner clarified that the study proposed under the EFP is not intended to enumerate bycatch and that the sardine landed during the EFP would otherwise be landed in the directed fishery. Therefore, he recommended that unless there is an enforcement concern, bycatch in the EFP should be treated the same as the directed fishery from a conservation or regulatory perspective.

Mr. Sweetnam read Agenda Item H.2.b, Supplemental CPSMT Report. Mr. Sweetnam clarified that the CPSMT support of the EC report was focused on notification and accurate species enumeration more than on full retention. The CPSMT is primarily interested in the information collected on Pacific sardine and is less concerned about bycatch species.

Mr. Royal (along with Mr. Okoniewski) read Agenda Item H.2.b, Supplemental CPSAS Report. Responding to Mr. Helvey, Mr. Okoniewski stated that it is the intent of the industry to continue the survey after 2009 and noted there is Congressional support for this effort and potential grants for future work.

### **H.2.c Public Comment**

Mr. Jerry Thon, Northwest Sardine Survey, LLC, Bellingham, WA. Mr. Thon reported that full retention is not a problem for the survey participants, however, he felt it would not hinder nor improve the focus of the research and he would prefer to see the salmon returned with a chance to survive.

Mr. Tom Jagielo, Tom Jagielo Consulting, Copalis Beach, WA. In response to Ms. Vojkovich that data collection and analysis will be contained within the project and will not require State support, he noted that biological samples will be collected for the purposes of age determination at the Southwest Fisheries Science Center (SWFSC) and that the work will not likely be completed in time for the 2009 assessment.

Ms. Diane Pleschner-Steele, California Wetfish Producers Association, Buellton, CA. Ms. Pleschner-Steele reported that herring are not generally caught in the sardine fishery and to further reduce interactions on herring, which typically stay near shore, fishing will occur outside of three miles.

#### **H.2.d Council Action: Adopt Final EFP Recommendations**

Due to California's conservation concern regarding herring and the pending prohibition on ocean herring landings, Ms. Vojkovich noted that accurate enumeration of herring take, both in the EFP as well as during the directed fishery, will be important in 2009. She understands that herring are present in Monterey Bay in August, creating the potential for interactions with the fishery. She is not recommending any specific requirements at this time, but she stressed the importance of accurate enumeration and timely reporting of any bycatch in the EFP.

Mr. Anderson said that Washington had concerns about potential bycatch issues associated with the sardine fishery back at its inception. Washington conducted a fairly extensive observer program for five years that was most concerned about bycatch of salmon. The survey achieved a 25-27 percent observer coverage rate on the Washington trips. He reported that the fishery operates off the Columbia River, an area where salmon interactions could be high. The observer survey showed low salmon bycatch rates and release mortality for salmon at 60-75 percent. After five years of acceptably low salmon bycatch rates WDFW ended the observation program. The data from this program was instrumental in a favorable NMFS Biological Opinion on salmon bycatch in the fishery.

Mr. Moore moved and Mr. Steve Williams seconded a motion (Motion 21) to approve the "West Coast Sardine Survey Application for Exempted Fishing Permit in 2009" as shown in Agenda Item H.2.a, Attachment 1 and include the pre-fishing notification requirements suggested by the Enforcement Consultants (Agenda Item H.2.b, Supplemental EC Report).

Mr. Moore felt there has been adequate discussion of the matter and he supports going forward with this effort to learn more about the Pacific sardine resource. He supports the EC recommendations regarding pre-fishing notification to ensure compliance and to protect the vessels participating legitimately.

Mr. Anderson spoke in support for the motion and commended the sardine industry for stepping up to the challenge to improve the science for stock assessments; it would not have happened otherwise.

Mr. Moore clarified for Ms. Fosmark that the motion only included the pre-fishing notification portion of the EC report and was silent to the issue of full retention.

Mr. Helvey expressed bycatch concerns, particularly for salmon and mixed CPS loads with herring or anchovy. Mr. Moore noted that it is not the intent of the motion to include full retention or to exempt participants from State regulations in Oregon and Washington that require at-sea sorting and release of salmon. Additionally, log books are required and full catch accounting occurs at the plant.

Ms. Vojkovich said that the discussions she has had with Mr. Helvey have been focused on enumeration and reporting of captured species and noted that the EFP application does not have a detailed description of what data will be collected, when it will be collected, and how it will be reported. A detailed mechanism for data collection and reporting would be helpful.

Mr. Steve Williams suggested a simple requirement for full enumeration of landings by species.

Mr. Helvey agreed with requiring full enumeration of catch and further requested that a full description of the sampling and reporting procedures be developed to ensure that regulators and stock assessment teams are kept abreast of timely information.

Chairman Hansen asked Mr. Jagielo if the existing documentation could be amended as requested. Mr. Jagielo added that the document does have a section on roles and responsibilities. Mr. Ryan Howe will handle the data and the Co-Principal Investigators will be writing the report. Additionally, industry has been in coordination with the stock assessment team and is prepared to work with them to get data delivered as timely as possible. He offered to amend the description of data processing and reporting as necessary.

Ms. Vojkovich was concerned that the data will be entirely collected by industry and she would prefer to include a reporting requirement so that NMFS and the States have access to the information in a timely fashion. Mr. Helvey reported that the terms and conditions of the EFP can be written to include reporting requirements and he welcomed Mr. Jagielo's offer to supply additional details on planned data collection and reporting.

The Council agreed that these data reporting requirements can be transmitted to NMFS as guidance and that they do not need to be included in the motion. NMFS has the final say in what will be required under the EFP.

Motion 21 passed unanimously.

### **ADJOURN**

The Pacific Fishery Management Council meeting adjourned at 3:30 p.m., on Thursday, June 18, 2009.

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Council Chairman

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Date

DRAFT VOTING LOG  
Pacific Fishery Management Council  
June 2009

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

Moved by: Rod Moore

Seconded by: Mark Cedergreen

Motion 1 passed unanimously.

**Motion 2:** Adopt an annual process to submit Pacific halibut bycatch and bycatch mortality estimates for Area 2A fixed gear and trawl fisheries to the IPHC prior to mid-October. With the understanding that the estimates for the trawl fisheries would be based on data from one year ago, and the fixed gear data estimates would be based on data from two years ago. The Council will review the methods and results of the estimates at the September Council meeting.

Moved by: Michele Culver

Seconded by: Dale Myer

Motion 2 passed unanimously.

**Motion 3:** Postpone the EFHRC Agenda Item to not earlier than the September 2010 Council meeting.

Moved by: Rod Moore

Seconded by: Mark Cedergreen

Motion 3 passed unanimously.

**Motion 4:** Place an action item on the September 2009 Council meeting agenda to consider rescinding the open access March 2009 Council meeting action.

Moved by: Steve Williams

Seconded by: Frank Warrens

Motion 4 failed on a roll call vote (9 no, 4 yes). Mr. Ortmann, Mr. Myer, Mr. Sones, Mr. Cedergreen, Ms. Culver, Ms. Forsmark, Mr. Wolford, Ms. Vojkovich, and Mr. Mallet voted no. Mr. Moore, Mr. Warrens, Mr. Lockhart, and Mr. Steve Williams voted yes.

**Motion 5:** For the 2011-2012 biennial groundfish management measures schedule, adopt Agenda Item E.2.a, Attachment 1, "Pacific Fishery Management Council and National Marine Fisheries Service Schedule and Process for Developing 2011-2012 Groundfish Harvest Specifications and Management Measures."

Moved by: Rod Moore

Seconded by: Frank Warrens

Motion 5 passed unanimously.

**Motion 6:** Have the Council draft a letter to the U.S. delegation attending the next Northern Committee meeting. Relative to agenda item F.1.b, Supplemental HMSMT Report, the letter should contain the recommendation #1 for northern albacore, recommendations #1 and 2 for striped marlin, and express our interest/recommendations on stock assessment for

northern bluefin tuna. Noting that they may be separate issues related to the WCPFC more generally, the motion included the recommendations relative to albacore about WCPFC members providing fishing effort information and that the WCPFC participate on the IATTC working group formed to consider definitions of “current levels” of fishing effort.

Moved by: Marija Vojkovich

Seconded by: Mark Helvey

Amdnt: Include the HMSMT recommendation regarding swordfish in the motion.

Moved by: Mark Helvey

Seconded by: Rod Moore

Amendment to Motion 6 passed unanimously.

Motion 6 passed unanimously as amended.

**Motion 7:** Provide three areas of guidance for developing Amendment 23 alternatives: 1) the GMT and Council staff should provide appropriate documentation of the inseason catch monitoring and adjustment process for evaluation; 2) Council staff should work with the SSC to explain the timeline for getting these control rules developed to synchronize with the biennial specifications process; and 3) advancing ABC control rule considerations for unassessed species needs to be included in this process.

Moved by: Rod Moore

Seconded by: Frank Warrens

Amdnt#1: Prioritize development of ABC control rules (i.e., buffers for scientific uncertainty) for overfished and assessed species so that a range of harvest specifications for these stocks can be decided for public review in November. She also suggested that, rather than the full GMT work on documenting the inseason management process and considerations for management uncertainty, a GMT subcommittee should work with Mr. DeVore and Mr. Burden.

Moved by: Michele Culver

Seconded by: Dale Myer

Amendment 1 to Motion 7 carried unanimously.

Motion 7 as amended passed unanimously.

**Motion 8:** For developing Amendment 23 alternatives, provide guidance to the SSC to keep the ABC control rules as simple and direct as possible.

Moved by: Marija Vojkovich

Seconded by: Kathy Fosmark

Motion 8 passed unanimously.

**Motion 9:** Adopt the stock assessments for splitnose rockfish, canary rockfish, darkblotched rockfish, Pacific ocean perch, and cowcod for management decision-making.

Moved by: Phil Anderson

Seconded by: Dale Myer

Motion 9 passed unanimously.

**Motion 10:** Delay adoption of the petrale sole assessment pending a further review by the SSC. Further, request the petrale sole stock assessment team to incorporate the SSC’s recommendations for assessment improvements and explorations.

Moved by: Phil Anderson  
Motion 10 passed unanimously.

Seconded by: Dale Myer

**Motion 11:** Declare a point of concern process for petrale sole and recommend that NMFS develop a proposed rule that reflects the OY adjustments presented in Agenda Item E.7.b, Supplemental GMT Report Table 1, Scenario 3, which includes a 400 mt reduction in petrale sole catches for 2009 and a 50 percent reduction in 2010.

Moved by: Phil Anderson  
Motion 11 passed unanimously.

Seconded by: Dale Myer

**Motion 12:** Request NMFS develop a proposed rule which would serve to notice the public that the Council may significantly reduce the 2010 canary rockfish OY in order to meet the rebuilding plan goals, per the Amendment 17 red light process (Agenda Item E.7.a, Attachment 1). The Council will consider additional information from the SSC and GMT at the September and November meetings in order to determine if a reduction is necessary. Further, request that during the rebuilding analysis, the SSC explore a range of OY reductions in 2010 that would provide for a less precipitous drop in the OY for 2011.

Moved by: Rod Moore  
Motion 12 passed unanimously.

Seconded by: Frank Warrens

**Motion 13:** Working from Agenda Item E.7.b, Supplemental GMT Report, to preliminarily adopt the following inseason items:

- Consider adjustments to petrale and sablefish cumulative limits and RCA boundaries for the non-whiting LE trawl fishery.
- Consider increasing the limited entry trawl chilipepper cumulative limit to 12,000 lb/2 months both shoreward and seaward of the RCA in areas south of 40°10' for the remainder of the year.
- Consider changing the seaward non-trawl RCA between the Columbia/Eureka line and Cascade Head from 125 fm to 100 fm for the rest of the year.
- Consider increasing the bimonthly limit for the LE sablefish DTL fishery north of 36° to 6,000 lb/2 months from July-October.
- Consider an increase in the OA sablefish DTL weekly and bimonthly limits to 950 lbs and 2,750 lbs respectively beginning July 1 through the end of the year.
- Consider increasing California scorpionfish trip limits to 1,200 lb/2 months through the end of the year.
- Consider modifying the minor nearshore rockfish cumulative limit between 42° N. lat. and 40°10' N. lat. to 7,000 lb/2months of which no more than 1,200 lb may be species other than black rockfish.

Moved by: Rod Moore

Seconded by: Frank Warrens

**Amdt #1:** Include the inseason recreational estimates of canary rockfish fisheries.

Moved by: Steve Williams  
Amendment #1 to Motion 13 withdrawn and not voted on.

Seconded by: Frank Warrens



incidental fishery that allows a 45 percent incidental landing allowance when Pacific mackerel are landed with other CPS, except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS.

Moved by: Marija Vojkovich

Seconded by: Dan Wolford

Motion 19 passed on a roll call vote (9 yes, 4 no). Mr. Sones, Mr. Cedergreen, Mr. Anderson, Ms. Vojkovich, Mr. Wolford, Mr. Myer, Mr. Steve Williams, Mr. Mallet, and Mr. Ortmann voted yes. Mr. Moore, Ms. Fosmark, Mr. Helvey, and Mr. Warrens voted no.

**Motion 20:** Schedule the next full assessment of Pacific mackerel to occur in two years (2011) and in the interim, direct the stock assessment team and others work on the data and research needs to improve the next full assessment. It was also clarified that under this motion the Council would look to this year's full assessment and other data sources when addressing harvest specification and management measures for the 2010-2011 Pacific mackerel fishery

Moved by: Marija Vojkovich

Seconded by: Phil Anderson

Motion 20 passed unanimously.

**Motion 21:** Approve the "West Coast Sardine Survey Application for Exempted Fishing Permit in 2009" as shown in Agenda Item H.2.a, Attachment 1 and include the fishing notification requirements suggested by the Enforcement Consultants (Agenda Item E.8.b, Supplemental EC Report).

Moved by: Rod Moore

Seconded by: Steve Williams

Motion 21 passed unanimously.

**Motion 22:** Adopt the following recommendations for final inseason actions for June 2009: all inseason actions adopted under Motion 13, as amended (Amendment 2) except that the Dover sole trip limits currently specified in regulation (45,000 pounds/2 months for periods 3-5 and 40,000 pounds/2 months for period 6) would be maintained. Further, adopt the cumulative limits for petrale sole as outlined in Agenda Item E.9.b, Supplemental GMT Report, which provides for 5,000 pounds in period 5 and 2,000 pounds in period 6 (Table 4) and closes the petrale sole RCA cut outs in period 6 (Table 5). For the recreational fisheries, update the canary rockfish impacts in the scorecard by a total of 1.2 mt by reducing the WA/OR recreational share by half that amount (0.6 mt) and the CA recreational share by half that amount (0.6 mt). This adjustment should result in a balanced scorecard, such that we are using 100 percent of the canary OY.

Moved by: Rod Moore

Seconded by: Dale Myer

Motion 22 passed unanimously.

**Motion 23:** Utilizing Agenda Item E.10.d, Supplemental WDFW Motion in Writing, adopt the following: "**Eligibility to Own:** No person can acquire quota shares or quota pounds other than 1) a United States citizen, 2) a permanent resident alien, or 3) a corporation, partnership, or other entity established under the laws of the United States or any State, that is eligible to own and control a US fishing vessel with a fishery endorsement pursuant to 46

USC 12113 (general fishery endorsement requirements and 75% citizenship requirement for entities).

Any ~~person or~~ entity that owns a mothership that participated in the west coast groundfish fishery during the allocation period and is eligible to own or control that US fishing vessel with a fishery endorsement pursuant to Sections 203(g) and 213(g) of the American Fisheries Act (AFA).”

Moved by: Phil Anderson  
Motion 23 passed unanimously.

Seconded by: Dale Myer

**Motion 24:** Utilizing Agenda Item E.10.d, Supplemental WDFW Motion in Writing, but with a modification from that document, adopt the following: **Carry-Over Provision:** Each individual trawl vessel account will be able to carry-over up to 10 percent of the total quota pounds (QP) held in its account during that year. In addition, if the OY goes down substantially carry-over of QP would be reduced by the same percentage as the OY decrease. The 10 percent carryover value may be changed, up or down, through the biennial specifications process.”

Moved by: Phil Anderson

Seconded by: Dale Myer

Amdt: Strike the word “substantially” in the second sentence and add “It is the intent of the Council that the carryover provision, to the extent possible, be implemented consistent with conservation requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).”

Moved by: Frank Lockhart  
Amendment to Motion 24 passed unanimously.  
Main Motion 24 passed as amended unanimously.

Seconded by: Marija Vojkovich

**Motion 25:** Utilizing Agenda Item E.10.d, Supplemental WDFW Motion in Writing to adopt the following, **“Dogfish/Other Fish in the IFQ Program Option 2:** Dogfish included as Part of the Other Fish complex. Other Fish complex would not be included in the IFQ program. If at a future time Other Fish were added to the IFQ program, QS would be determined using the same catch history criteria as the other IFQ species, unless otherwise specified by a future Council action.”

Moved by: Phil Anderson  
Motion 25 passed unanimously.

Seconded by: Dale Myer

**Motion 26:** Using Agenda Item E.10.d, Supplemental WDFW Motion in Writing, to adopt the following – **“Determining Catch History in the Mothership Whiting Cooperatives:** Determine catch history in the mothership whiting co-op alternative using relative pounds.”

Moved by: Phil Anderson  
Motion 26 passed unanimously.

Seconded by: Rod Moore

**Motion 27:** Using Agenda Item E.10.d, Supplemental WDFW Motion in Writing, adopt the following –  
“**Trawl Sector Limits for Pacific Halibut and Managing Halibut IBQ in the Trawl Rationalization Program:** The trawl mortality limit for legal and sublegal halibut is set at 15% of the Area 2A Total Constant Exploitation Yield not to exceed 130,000 lbs for the first 4 years of trawl rationalization program, and not to exceed 100,000 lbs beginning in the 5<sup>th</sup> year of the program. This total bycatch limit may be adjusted through the biennial management process. Halibut IBQ will be based on halibut bycatch mortality, not on total halibut catch.”

Moved by: Phil Anderson

Seconded by: Dale Myer

Amdt #1: Add “The intent of the Council that halibut bycatch mortality would be measured on an individual vessel basis”.

Moved by: Rod Moore

Seconded by: Frank Warrens

Amdt #2: Amend the amendment to replace the word “measure” with the word “estimated”.

Moved by: Frank Lockhart

Seconded by: Kathy Fosmark

Amendment #2 passed unanimously.

Amendment #1 as amended, passed unanimously.

Amdt #3: Revise the following sentence that reads “The trawl mortality limit for legal and sublegal halibut is set at 15% of the Area 2A Total Constant Exploitation Yield not to exceed 130,000 lbs for the first 4 years. . . .” change it to read “The trawl mortality limit for legal and sublegal halibut is set at 15% of the Area 2A Total Constant Exploitation Yield not to exceed 130,000 lbs **each year for** the first 4 years. . . .”

Moved by: David Hanson

Seconded by: Rod Moore

Amendment #3 to Motion 27 passed unanimously.

Motion 27 passed unanimously as amended.

**Motion 28:** Adopt the following as part of Council Action under Agenda Item E.10.d, “That it is the Council’s intent to provide NMFS sufficient flexibility in the design and implementation of the tracking and monitoring program to achieve the goals and objectives of the trawl rationalization program.”

Moved by: Frank Lockhart

Seconded by: Kathy Fosmark

Motion 28 passed unanimously.

**Motion 29:** Adopt the proposed structure of the amendment language as shown in Agenda Item E.10.a, Attachment 3, Staff Recommendation on Amending the Groundfish FMP to Incorporate the Trawl Rationalization Program. Mr. Warrens seconded the motion.

Moved by: Rod Moore

Seconded by: Frank Warrens

Motion 29 withdrawn, not voted on.

**Motion 30:** From Agenda item E.11.d, Supplemental Motion in Writing (CDFG), adopt:

1. Divestiture of non-overfished species quota shares in excess of adopted control limits will be an element of the PFMC's Trawl Rationalization Program.
2. The date through which permit acquisition will be qualified is November 8, 2008. Permits acquired after that date, and the attending catch history, will not be used in calculating a permit holder's quota share (on a species or aggregate basis). This qualifying date only applies to the amount of quota shares above the control limit.
3. The permit holder will be allowed to utilize all of the quota pounds associated with their permits until divestiture is completed.
4. Quota share holders have full flexibility of divesting excess quota shares as long as they follow quota share transfer rules and procedures developed by NMFS for this Trawl Rationalization Program.
5. Divestiture will not require or limit the transfer of a LE trawl permit.
6. The divestiture period is defined as a 24 month period (two years) immediately following the end of the moratorium on quota share transfer.
7. Full divestiture must be completed, and quota share control limits (on a species or aggregate basis) attained by December 31 of the fourth year after implementation of the program.
8. Any quota shares not fully divested by the above date will be revoked and re-distributed on a pro-rata basis to the rest of the shoreside trawl fleet. No compensation will accrue to the divesting QS holder for any revoked shares.
9. For divestiture purposes, those in excess of control caps are held to the control limits even if those limits happen to change after year one of the program.

Moved by: Marija Vojkovich

Seconded by: Kathy Fosmark

Amdnt #1: Include after the first sentence of Item #2, "Any such permit acquisition would have to be on file with the NMFS permit office by the end of November 30, 2008." Mr. Moore seconded the amendment. The purpose was to reduce the opportunity for people to say their permit was transferred before November 8, 2008 and that the transfer had just not been filed until later.

Moved by: Frank Lockhart

Seconded by: Rod Moore

Amendment #1 to Motion 30 withdrawn, not voted on.

Amdnt #2: Include after the first sentence of Item #2, "Any such permit acquisition would have to be on file with NMFS permit office by the end of November 30, 2008" and in the next sentence replace the words "that date" with "after November 8, 2008."

Moved by: Frank Lockhart

Seconded by: Rod Moore

Amendment #2 to Motion 30 passed unanimously.

Amdnt #3: Mr. Moore moved to amend (Amendment #3 to Motion 30) to change the wording of item #9 from "even if those limits happen to change" to "even if those limits increase."

Moved by: Rod Moore

Seconded by: Frank Warrens

Amendment # 3 was not voted on (replaced by amendment #4).

Amdnt #4: As a substitute amendment to Amendment #3, change Item #9 to read "For divestiture purposes, persons or entities that hold QS in excess of the control limits established by the Council on 6/18/2009 must divest such excess shares during the 24 month divesture period identified in item #6 of this motion."



Moved by: David Hanson

Seconded by: Rod Moore

Motion 32 passed unanimously.

**Motion 33:** Adopt as final action the motion that was adopted preliminarily in April 2009 with one change. This motion is contained in Agenda Item E.12.a, Attachment 1 in the briefing book and the only change is to strike the blue language which reads “Amendment 1 (passed): include a non pass through option under methods for allocating AMP QP to be used in the first or second year (include all objectives).”

Moved by: Frank Lockhart

Seconded by: Marija Vojkovich

Amdnt #1: Strike the sentence: “QP distributed consistent with the formulas developed during the first two years.”

Moved by: Phil Anderson

Seconded by: Mark Cedergreen

Amendment #1 passed unanimously.

Amdnt #2: Begin implementation in year two.

Moved by: Steve Williams

Seconded by: Frank Warrens

Amendment #2 failed on a roll call vote (7 yes; 7 no). Mr. Cedergreen, Mr. Mallet, Mr. Warrens, Mr. Moore, Mr. Ortmann, Mr. Meyer, and Mr. Steve Williams voted yes. Mr. Sones, Ms. Vojkovich, Mr. Lockhart, Mr. Anderson, Mr. Wolford, Ms. Fosmark, and Mr. Hansen voted no.

Main Motion 33 as amended passed unanimously.

**Motion 34:** Adopt the amendments to the groundfish FMP as shown in Agenda Item E.10.a, Attachment 3 as modified by Agenda Item E.10.a, Supplemental Attachment 6.

Moved by: Rod Moore

Seconded by: Phil Anderson

Motion 34 passed unanimously.

**Motion 35:** Have the Council direct staff to draft and submit to NMFS the complete Amendment 20 package of final Council actions, DEIS, supporting analyses, and other documents necessary for the approval and implementation of Amendment 20. The Council's final actions which constitute Amendment 20 shall include the final trawl rationalization action taken by the Council in November 2008 and further additions or modifications made during final action in March and April 2009 and under Agenda items E.10, E.11, and E.12 of the current (June) Council meeting. Staff is authorized to draft, change, and correct the necessary documents to reflect the Council's intent in its adoption of this final Amendment 20 package. The Council recognizes that NMFS may, if appropriate, implement Amendment 20 in a series of regulations.

Moved by: Frank Warrens/Kathy Fosmark

Seconded by: David Sones

Motion 35 passed unanimously.

**Motion 36:** Approve the recommendations of the Budget Committee as shown in Agenda Item G.2.b, Supplemental Budget Committee Report.

Moved by: Frank Warrens

Seconded by: Rod Moore

Motion 36 passed unanimously.

**Motion 37:** Conditionally approve the Draft March 2009 minutes with the exception of the missing portion from Section G.5.d. That portion would be emailed to the Council members for their review and approval after the Council meeting.

Moved by: Rod Moore

Seconded by: Dan Wolford

Motion 37 passed unanimously.

## MEMBERSHIP APPOINTMENTS AND COUNCIL OPERATING PROCEDURES

During this agenda item, the Council has the opportunity to consider issues with regard to changes in the Council Membership Roster, including Council Members, advisory body membership, and appointments to other forums, and also any relevant changes in Council Operating Procedures (COP).

### Council Members and Designees

No appointments or other changes were identified by the Briefing Book deadline.

### Council Member Committee Appointments

No appointments or other changes were identified by the Briefing Book deadline.

### Council Advisory Body Appointments

#### *Scientific and Statistical Committee (SSC)*

No appointments or other changes were identified by the Briefing Book deadline.

#### *Management and Technical Teams*

No appointments or other changes were identified by the Briefing Book deadline. There are currently vacancies in the Ecosystem Plan Development Team (EPDT), Groundfish Management Team (GMT), and Highly Migratory Species Management Team (HMSMT) as described below.

#### Ecosystem Plan Development Team

Initial members for the EPDT were selected in November 2009 and the initial meeting was held in February 2010. The EPDT was established with 13 members as follows:

- 5 members—one from each of four state fishery agencies and a tribal management entity
- 2 members—one from each of the National Marine Fisheries Service (NMFS) Regions
- 5 members from NMFS Fishery Science Centers (at least one with socio-economic expertise)
- 1 member from the National Ocean Service

The Following three positions remain vacant on the EPDT with no current nominations:

- California Department of Fish and Game (CDFG)—one position.
- Idaho Department of Fish and Game (IDFG)—one position.
- Tribal Management Entities—one position.

## Groundfish Management Team

The GMT is authorized to have 11 members as follows:

- 6 members—two from each coastal state fishery management agency
- 2 members—one from each NMFS Fisheries Science Center
- 2 members from the NMFS Northwest Region
- 1 member from tribal management entities

There is an ongoing vacancy for the second Washington Department of Fish and Wildlife (WDFW) position which the agency was unable to fill beginning in early 2009.

## Highly Migratory Species Management Team

The HMSMT is authorized to have 8 members as follows:

- 3 members—one from each coastal state fishery management agency
- 2 members from the NMFS Southwest Fishery Science Center
- 2 members from the NMFS Southwest Region
- 1 member from a regional fishery management organization

There is an ongoing vacancy for the NMFS Southwest Fisheries Science Center (SWFSC) position resulting from the resignation of Dr. Kevin Piner in September 2009.

## *Advisory Subpanels*

No appointments or other changes were identified by the Briefing Book deadline. There are currently vacancies in the Ecosystem Advisory Subpanel (EAP) as described below.

### Ecosystem Advisory Subpanel

Initial members for the EAP were selected in November 2009 and the initial meeting was held in February 2010. The EAP is authorized to have 11 members as follows:

- 9 members—three at-large members for each of the coastal states
- 1 Idaho member
- 1 tribal member

The Following two positions remain vacant on the EAP with no current nominations:

- Idaho at-large—one position.
- Tribal at-large—one position.

## *Enforcement Consultants (EC)*

No appointments or other changes were identified by the Briefing Book deadline.

## *Habitat Committee (HC)*

The Washington Department of Fisheries and Wildlife have named Mr. David Price to fill the WDFW position on the Habitat Committee formerly held by Ms. Teresa Scott (Closed Session A.1.a, Attachment 1).

## *Ad Hoc Council Committees*

Staff suggests the Council review the current ad hoc committees and consider eliminating any that are no longer needed or are outdated. Closed Session A.1.a, Supplemental Attachment 2 (to be provided at the meeting) will list the ad hoc committees and their members with staff comments and recommendations on the status of each committee.

## Appointments to Other Forums

No appointments or other changes were identified by the Briefing Book deadline.

## Changes to Council Operating Procedures

No changes were identified or requested by the Briefing Book deadline.

### **Council Action:**

- 1. Consider general issues with regard to appointments and potential COP changes.**
- 2. Confirm the nomination of Mr. David Price for the WDFW HC position.**
- 3. Provide advice for the following extended vacancies on advisory bodies:**
  - a. CDFG, IDFG, and Tribal positions on the EPDT;**
  - b. Idaho and Tribal at-large positions on the EAP;**
  - c. WDFW position on the GMT; and**
  - d. NMFS SWFSC position on the HMSMT.**
- 4. Review membership and termination of the Council's current ad hoc committees.**

### **Reference Materials:**

1. Closed Session A.1.a, Attachment 1: Nomination of Mr. David Price to the WDFW position on the HC.
2. Closed Session A.1.a, Supplemental Attachment 2: Staff Review of Ad Hoc Council Committees.

### **Agenda Order:**

- a. Agenda Item Overview John Coon
- b. Reports and Comments of Management Entities and Advisory Bodies
- c. Public Comment
- d. **Council Action:** Consider Changes to COP and Advisory Body Appointments as Needed

PFMC  
02/19/10

## FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

This agenda item is intended to refine general planning for future Council meetings and result in adoption of a final Proposed Agenda for the April 2010 Council Meeting. The following attachments are intended to help the Council in this process:

1. An abbreviated display of potential agenda items for the next full year (Attachment 1).
2. A preliminary proposed April 2010 Council meeting Agenda (Attachment 2).

The Executive Director will assist the Council in reviewing the items listed above and discuss any other matters relevant to Council meeting agendas and workload. After considering supplemental material provided at the Council meeting, and any reports and comments from advisory bodies and public, the Council will provide guidance for future agenda development, adopt a proposed April Council meeting agenda, and identify priorities for advisory body consideration at the April 2010 Council meeting.

### **Council Action:**

- 1. Review pertinent information and provide guidance on potential agenda topics for future Council meetings.**
- 2. Provide final guidance on a Proposed Agenda for the April Council meeting.**
- 3. Identify priorities for advisory body considerations at the next Council meeting.**

### **Reference Materials:**

1. Agenda Item D.6.a, Attachment 1: Pacific Council Workload Planning: "Preliminary Year at a Glance Summary."
2. Agenda Item D.6.a, Attachment 2: Preliminary Proposed Council Meeting Agenda, April 8-15, 2010, Portland, Oregon.

### **Agenda Order:**

- a. Agenda Item Overview
- b. Reports and Comments of Management Entities and Advisory Bodies
- c. Public Comment
- d. **Council Action:** Adopt April 2010 Agenda and Provide Guidance on Future Council Meetings and Priorities for Advisory Body Consideration

Don McIsaac

PFMC  
02/18/10

## Pacific Council Workload Planning: Preliminary Year at a Glance Summary

(Number of agenda items, if greater than one, shown within parentheses, placeholder matters shaded)

	<u>April 2010</u> (Portland)	<u>June 2010</u> (Foster City)	<u>September 2010</u> (Boise)	<u>November 2010</u> (Costa Mesa)	<u>March 2011</u> (Vancouver)
<b>CPS</b>	EFPs: Final Recom.	NMFS Rpt Mackerel HG & Meas.  ACL Amd.-Adopt Final		NMFS Rpt Sardine Asmnt & Mgmt Meas.	EFPs: for Pub Rev STAR Panel TOR for Pub
<b>Groundfish</b>	NMFS Report Inseason Mgmt (2)  2011-12 Biennial Mgmt: 1) Final OFL, ABC, & ACL 2) Mgmt Meas. & 16-5: for Pub Rev (2)	NMFS Report Inseason Mgmt (2) Stk Assmnt Pln--2013-14 & TOR--Adopt Final 2011-12 Biennial Mgmt, 16-5 & ACL: Final Prelim EFPs CFA Scoping Rpt	NMFS Report Inseason Mgmt (2)  GF EFH: Plan 2011 Effort  CFA Trailing Amd.: Pub Rev	NMFS Report Inseason Mgmt (2)  Final EFPs CFA Amd: Adopt Final	NMFS Report Inseason Mgmt (2)  Pac Whiting Specs & Meas.
<b>HMS</b>	NMFS Report Albacore Mgmt--Including Basis for Control Date Leatherback Critical Hab ACL Amd.-Pub Rev Draft	NMFS Report Changes to Routine Mgmt 2011-12 Input to WCPFC N. Com ACL Amd.-Adopt Final	NMFS Report Routine Mgmt Changes for 2011-12 for Pub Rev	NMFS Report Routine Mgmt Changes Albacore Mgmt Input to WCPFC	
<b>Salmon</b>	NMFS Rpt 2010 Season Setting (3) 2010 Methodology Rev.	EFH Review Doc for Pub A-16 (ACLs)--Pub Rev	NMFS Rpt 2011 Preseas'n Mgmt Schd 2010 Methodology Rev. A-16 (ACLs)--Final Action	NMFS Rpt 2010 Preseas'n Mgmt Schd 2010 Methodology Rev.--Final EFH Rev: Adopt Final	NMFS Rpt 2011 Season Setting (6) Cons. Obj. Report Sacramento OF Rec.
<b>Other</b>	Habitat Issues Halibut-Incidntl Regs  OCNMS Mgmt Pln Update  USCG Ann. Rpt. Routine Admin (7)	Habitat Issues Halibut Bycatch & Catch Sharing National Mar. Registry Ecosystem FMP Scoping Rept  Routine Admin (8)	Habitat Issues Pacific Halibut (2) NMFS Nat Habitat Improve- ment Assmnt Plan  State Enforcement Rpt Routine Admin (8)	Habitat Issues Pacific Halibut (2)  Ecosystem FMP Development  Routine Admin (8)	Habitat Issues Pacific Halibut (2)  CG Ann Enforcement Rpt Routine Admin (6)
<b>Apx. Floor Time</b>	<b>4.6 days</b>	<b>6 days</b>	<b>4 days</b>	<b>5 days</b>	<b>4 plus days</b>

Agenda Item D.6.a  
 Attachment 1  
 March 2010

**PRELIMINARY PROPOSED COUNCIL MEETING AGENDA, APRIL 8-15, 2010 PORTLAND, OREGON**

Thu, Apr 8	Sat, Apr 10	Sun, Apr 11	Mon, Apr 12	Tue, Apr 13	Wed, Apr 14	Thu, Apr 15
		<p><i>CLOSED SESSION 8:00 AM</i></p> <hr/> <p>OPEN SESSION 9:00 AM</p> <p>1-4. <i>Opening Remarks &amp; Approve Agenda (30 min)</i></p> <hr/> <p>OPEN COMMENT</p> <p>1. <i>Comments on Non-Agenda Items (45 min)</i></p> <hr/> <p>HIGHLY MIGRATORY MGMT</p> <p>1. <i>NMFS Report (1 hr)</i></p> <p>2. <i>A-2 (ACLs): Adopt Preliminary Proposed Alt. for Public Review (1 hr 30 min)</i></p> <p>3. <i>Control Date for Albacore Limited Entry Fishery: Consider Issues &amp; Adopt a Date (2 hr 15 min)</i></p> <p>4. <i>Comments on Critical Habitat Designation for Leatherback Turtles (1 hr)</i></p>	<p>ENFORCEMENT ISSUES</p> <p>1. <i>US CG Annual Fishery Enforcement Rpt (1 hr)</i></p> <hr/> <p>SALMON</p> <p>1. <i>2010 Mgmt Measures: Tentative Adoption for Analysis (3 hr)</i></p> <hr/> <p>PACIFIC HALIBUT</p> <p>1. <i>Incidental Catch Regs in the Salmon Troll Fishery: Adopt Final (30 min)</i></p> <hr/> <p>MARINE PROTECTED AREAS</p> <p>1. <i>Update on OCNMS Management Plan Review (1 hr 30 min)</i></p> <hr/> <p>HABITAT</p> <p>1. <i>Current Issues (45 min)</i></p> <hr/> <p>SALMON</p> <p>2. <i>2010 Methodology Review: Set Process &amp; Select Methods to Review (45 min)</i></p> <p>3. <i>NMFS Report (30 min)</i></p>	<p>GROUNDFISH</p> <p>1. <i>Harvest Specifications for 2011-2012 Fisheries: Adopt Preferred OFLs, ABCs, ACLs, &amp; OYs (4 hr 30 min)</i></p> <hr/> <p>SALMON</p> <p>4. <i>Clarify 2010 Mgmt Measures for Analysis (1 hr)</i></p> <hr/> <p>COASTAL PELAGIC SPECIES</p> <p>1. <i>EFPs: Adopt Final Recommendations (2 hr)</i></p> <hr/> <p>ADMINISTRATIVE</p> <p>1. <i>Legislative Matters (30 min)</i></p>	<p>GROUNDFISH</p> <p>2. <i>Part I of Mgmt Measures for 2011-12: Adopt Preliminary Range of Measures (3 hr)</i></p> <hr/> <p>SALMON</p> <p>5. <i>2010 Mgmt Measures: Adopt Final (2 hr)</i></p> <hr/> <p>GROUNDFISH</p> <p>3. <i>NMFS Report (1 hr)</i></p> <p>4. <i>Inseason Adjustments (2 hr)</i></p>	<p>GROUNDFISH</p> <p>5. <i>Part II of Mgmt Measures for 2011-12: Adopt Preliminary Range of Measures (2 hr)</i></p> <p>6. <i>Final Inseason Adjustments (2 hr)</i></p> <hr/> <p>ADMINISTRATIVE</p> <p>2. <i>Approve Council Minutes (15 min)</i></p> <p>3. <i>Membership Appointments (15 min)</i></p> <p>4. <i>Future Meeting Agenda &amp; Workload Planning (30 min)</i></p>
<b>Fri, Apr 9</b>						
<p>8:30 am HC</p> <p>1:00 pm HMSAS</p> <p>1:00 pm HMSMT</p>						
		8 hr	8 hr	8 hr	8 hr	5 hr
	<p>8:00 am GAP &amp; GMT</p> <p>8:00 am HMSAS</p> <p>8:00 am HMSMT</p> <p>8:00 am SSC</p> <p>2:00 pm LC</p> <p>3:30 pm ChB</p>	<p>8:00 am GAP &amp; GMT</p> <p>8:00 am SAS &amp; STT</p> <p>8:00 am SSC</p> <p>8:00 am TPolGrp &amp; WaTechGrp</p> <p>4:30 pm EC</p>	<p>8:00 am EC</p> <p>8:00 am GAP &amp; GMT</p> <p>8:00 am SAS &amp; STT</p> <p>8:00 am TPolGrp &amp; WaTechGrp</p>	<p>8:00 am EC</p> <p>8:00 am GAP &amp; GMT</p> <p>8:00 am SAS &amp; STT</p> <p>8:00 am TPolGrp &amp; WaTechGrp</p>	<p>8:00 am EC</p> <p>8:00 am GAP &amp; GMT</p> <p>8:00 am SAS &amp; STT</p> <p>8:00 am TPolGrp &amp; WaTechGrp</p>	<p>8:00 am EC</p> <p>8:00 am SAS &amp; STT</p>

**Council-sponsored evening sessions:** Sunday 6 pm – *Chairman’s Reception*

## Pacific Council Workload Planning: Revised Year at a Glance Summary

(Number of agenda items, if greater than one, shown within parentheses, placeholder matters shaded)

	<u>April 2010</u> (Portland)	<u>June 2010</u> (Foster City)	<u>September 2010</u> (Boise)	<u>November 2010</u> (Costa Mesa)	<u>March 2011</u> (Vancouver)
<b>CPS</b>	EFPs: Final Recom.	NMFS Rpt Mackerel HG & Meas.  ACL Amd.-Adopt Final		NMFS Rpt Sardine Asmnt & Mgmt Meas.	EFPs: for Pub Rev STAR Panel TOR for Pub
<b>Groundfish</b>	NMFS Report Inseason Mgmt (2)  2011-12 Biennial Mgmt: 1) Final OFL, ABC, & ACL 2) Mgmt Meas. & 16-5: for Pub Rev (2)  A-20 (TRAT) Reg Deeming	NMFS Report Inseason Mgmt (2) Stk Assmnt Pln--2013-14 & TOR--Adopt Final A-23 (ACL) Adopt Final 2011-12 Biennial Mgmt, & 16-5 (Rbldg Plan) Final Prelim EFPs  A-20 (TRAT) Reg Deeming	NMFS Report Inseason Mgmt (2)  GF EFH: Plan 2011 Effort  CFA Trailing Amd.: Scoping  A-20 Update	NMFS Report Inseason Mgmt (2)   Final EFPs CFA Amd: Further Dev  A-20 Update	NMFS Report Inseason Mgmt (2)     Pac Whiting Specs & Meas.
<b>HMS</b>	NMFS Report Albacore Mgmt--Including Basis for Control Date Leatherback Critical Hab ACL Amd.-Pub Rev Draft	Changes to Routine Mgmt 2011-12 Input to WCPFC N. Com ACL Amd.-Adopt Final	NMFS Report Routine Mgmt Changes for 2011-12 for Pub Rev Sword Fish White Paper	NMFS Report Routine Mgmt Changes Albacore Mgmt Input to WCPFC	
<b>Salmon</b>	NMFS Rpt 2010 Season Setting (3) 2010 Methodology Rev.	Mitchell Act EIS Comnts EFH Review Doc for Pub A-16 (ACLs)--Pub Rev	NMFS Rpt (OF Rpt update) 2011 Preseas'n Mgmt Schd 2010 Methodology Rev. A-16 (ACLs)--Final Action	NMFS Rpt 2010 Preseas'n Mgmt Schd 2010 Methodology Rev.--Final EFH Rev: Adopt Final	NMFS Rpt 2011 Season Setting (6) Cons. Obj. Report Sacramento OF Rec.
<b>Other</b>	Habitat Issues Halibut-Incidntl Regs  OCNMS Mgmt Pln Update  P* Info Session USCG Ann. Rpt. Routine Admin (7)	Habitat Issues Halibut Bycatch & Catch Sharing National Mar. Registry Ecosystem Scoping Rpt  Routine Admin (8)	Habitat Issues Pacific Halibut (2) NMFS Nat Habitat Improve- ment Assmnt Plan  State Enforcement Rpt Routine Admin (8)	Habitat Issues Pacific Halibut (2)  Ecosystem FMP Dev  Routine Admin (8)	Habitat Issues Pacific Halibut (2)    CG Ann Enforcement Rpt Routine Admin (6)
<b>Apx. Floor Time</b>	<b>6 days</b>	<b>7 days</b>	<b>4 days</b>	<b>5 days</b>	<b>4 plus days</b>

Agenda Item D.6.a  
Sup. Attachment 3  
March 2010



## 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  
David W. Ortmann, Chairman | Donald O. McIsaac, Executive Director

### MEMORANDUM

DATE: February 26, 2010  
TO: Don McIsaac  
FROM: Kelly Ames  
SUBJECT: Proposed May Groundfish Allocation Committee Meeting

At its April 2010 meeting, the Council is scheduled to adopt final harvest specifications and a range of management measure alternatives for the 2011-2012 fisheries. Final action is scheduled for the June 2010 Council meeting. A key decision within the management measure alternatives is the two year allocation for overfished species that do not have formal long term allocations under Amendment 21. Specifically, the Council will need to decide trawl and non-trawl allocations as well as within sector allocations for canary rockfish, yelloweye rockfish, bocaccio, and cowcod. Further, the Council will need to adopt a petrale rebuilding plan.

Issues associated with these matters can be quite complex. It would seem efficient to have the Groundfish Allocation Committee hold a working session to develop recommendations on a final preferred alternative and other issues related to the biennial harvest specifications and management measures process for Council consideration at the June meeting. We recommend the Council consider a three-day meeting the week of May 10<sup>th</sup> (first choice) or May 17<sup>th</sup>.

KLA:rdd

## PROPOSED COUNCIL MEETING AGENDA, APRIL 8-15, 2010 PORTLAND, OREGON

Thu, Apr 8	Sat, Apr 10	Sun, Apr 11	Mon, Apr 12	Tue, Apr 13	Wed, Apr 14	Thu, Apr 15
<p>1:00 pm HMSAS 1:00 pm HMSMT</p>	<p><i>CLOSED SESSION 8:00 AM</i></p> <hr/> <p>OPEN SESSION 9:00 AM 1-4. <i>Opening Remarks &amp; Approve Agenda (30 min)</i></p> <hr/> <p>HIGHLY MIGRATORY MGMT</p> <p>1. <i>NMFS Report (1 hr)</i> 2. <i>A-2 (ACLs): Adopt Preliminary Proposed Alt. for Public Review (2 hr)</i></p>	<p>COUNCIL INFO SESSION <i>P* Buffer &amp; Specifications Issues Workshop (2 hr)</i></p> <hr/> <p>OPEN COMMENT 10:00 AM 1. <i>Comments on Non-Agenda Items (45 min)</i></p> <hr/> <p>ENFORCEMENT ISSUES 1. <i>USCG Annual Fishery Enforcement Rpt (1 hr)</i></p> <hr/> <p>COASTAL PELAGIC SPECIES 1. <i>EFPs: Adopt Final Recommendations (2 hr)</i></p> <hr/> <p>MARINE PROTECTED AREAS 1. <i>Update on OCNMS Management Plan Review (1 hr 30 min)</i></p> <hr/> <p>HABITAT 1. <i>Current Issues (45 min)</i></p>	<p>SALMON 1. <i>2010 Mgmt Measures: Tentative Adoption for Analysis (3 hr)</i></p> <hr/> <p>GROUND FISH 1. <i>A-20 (Trawl Catch Shares): Regulatory Deeming (5hr)</i></p>	<p>PACIFIC HALIBUT 1. <i>Incidental Catch Regs in the Salmon Troll Fishery: Adopt Final (30 min)</i></p> <hr/> <p>ADMINISTRATIVE 1. <i>Legislative Matters (30 min)</i></p> <hr/> <p>GROUND FISH 2. <i>Harvest Specifications for 2011-2012 Fisheries: Adopt Preferred OFLs, ABCs, ACLs, OYs &amp; Rebuilding Plans (4 hr 30 min)</i></p> <hr/> <p>SALMON 2. <i>Clarify 2010 Mgmt Measures for Analysis (1 hr)</i></p> <hr/> <p>GROUND FISH 3. <i>Inseason Adjustments (2 hr)</i></p>	<p>GROUND FISH 4. <i>NMFS Report (1 hr)</i> 5. <i>Part I of Mgmt Measures for 2011-12: Adopt Preliminary Range of Measures (3 hr 30 min)</i></p> <hr/> <p>SALMON 3. <i>2010 Methodology Review: Set Process &amp; Select Methods to Review (45 min)</i> 4. <i>NMFS Report (45 min)</i></p> <hr/> <p>GROUND FISH 6. <i>Final Inseason Adjustments (2 hr)</i></p>	<p>GROUND FISH 7. <i>Part II of Mgmt Measures for 2011-12: Adopt Preliminary Range of Measures (3 hr)</i></p> <hr/> <p>SALMON 5. <i>2010 Mgmt Measures: Adopt Final (2 hr)</i></p> <hr/> <p>ADMINISTRATIVE 2. <i>Approve Council Minutes (15 min)</i> 3. <i>Membership Appointments (15 min)</i> 4. <i>Future Meeting Agenda &amp; Workload Planning (30 min)</i></p>
<b>Fri, Apr 9</b>						
<p>8:00 am GMT 8:30 am HC 8:00 am HMSAS 8:00 am HMSMT</p>						
	8hr	8 hr	8 hr	8 hr 30 min	8hr	6 hr
<p>2:30 pm LC 4:00 pm ChB</p>	<p>8:00 am GAP &amp; GMT 8:00 am HMSAS 8:00 am HMSMT 8:00 am SSC</p>	<p>8:00 am EC 8:00 am GAP &amp; GMT 8:00 am SAS &amp; STT 8:00 am SSC 8:00 am TPolGrp &amp; WaTechGrp</p>	<p>8:00 am EC 8:00 am GAP &amp; GMT 8:00 am SAS &amp; STT 8:00 am TPolGrp &amp; WaTechGrp</p>	<p>8:00 am EC 8:00 am GAP &amp; GMT 8:00 am SAS &amp; STT 8:00 am TPolGrp &amp; WaTechGrp</p>	<p>8:00 am EC 8:00 am GAP &amp; GMT 8:00 am SAS &amp; STT 8:00 am TPolGrp &amp; WaTechGrp</p>	<p>8:00 am EC 8:00 am SAS &amp; STT</p>

**Council-sponsored evening sessions:** Sunday 6 pm – *Chairman's Reception*

HABITAT COMMITTEE REPORT ON FUTURE COUNCIL MEETING  
AGENDA AND WORKLOAD PLANNING

The Habitat Committee (HC) received an update of the work that has been accomplished to date on the Western Straits of Juan de Fuca Coho overfishing report. The HC will continue to work on this report and will present the draft to the Council in June, for possible action in September.

PFMC  
03/06/2010