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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

DAVIS WRIGHT TREMAINE LLP

13 PACIFIC DAWN LLC, , OCEAN GOLD)
SEAFOODS, INC., CHELLISSA LLC INC., and)
14 JESSIE’S ILWACO FISH COMPANY,)

15 Plaintiffs,)

16 v.)

PENNY PRITZKER, Secretary of Commerce, in)
17 her official capacity as Secretary of the United)
States Department of Commerce, NATIONAL)
18 OCEANIC AND ATMOSPHERIC)
ADMINISTRATION, and NATIONAL)
19 MARINE FISHERIES SERVICE,)

20 Defendants.)
21)
22)
23)
24)
25)
26)
27)
28)

Case No. 3:13-cv-01419 TEH

**PLAINTIFFS’ MOTION FOR SUMMARY
JUDGMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: November 4, 2013
Time: 10:00 a.m.
Judge: Hon. Thelton E. Henderson
Courtroom: 12

DAVIS WRIGHT TREMAINE LLP

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 4, 2013, at 10:00 a.m. in Courtroom 12 of the above-referenced court located at 450 Golden Gate Ave., 19th Floor, San Francisco, California 94102, the Honorable Thelton E. Henderson, presiding, Pacific Dawn LLC, Ocean Gold Seafoods, Inc., Chellissa LLC and Jessie’s Ilwaco Fish Company (collectively, “Plaintiffs”) will move jointly for summary judgment (the “Motion”) as to all causes of action set forth in their Complaint for Declaratory and Injunctive Relief pursuant to Fed. R. Civ. P. 56(a).

The Motion is based on the grounds that Secretary of Commerce Penny Pritzker,¹ the National Oceanic and Atmospheric Administration (“NOAA”), and the National Marine Fisheries Service (“NMFS”) (collectively, “Federal Defendants”) violated the Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson-Stevens Act”), 16 U.S.C. §§ 1801-84, and the Administrative Procedures Act (“APA”), 5 U.S.C. § 701-706, as a matter of law by maintaining the 2010 regulations that made the important initial allocation of Individual Fishing Quotas (“IFQ”) for Pacific whiting (mothership and shoreside sectors) (the “IFQ Regulations”) in a manner inconsistent with the standards set forth in the Magnuson-Stevens Act and without a rational connection between the action chosen, the facts found, and the guidance in the Magnuson-Stevens Act and related agency regulations. This Court had previously found the 2010 IFQ Regulations to be in violation of the Magnuson-Stevens Act and the APA.

Specifically, Plaintiffs contend Federal Defendants acted unlawfully as a matter of law in refusing to change the IFQ Regulations to include more recent history reflecting dependence on and participation in the fishery and request summary judgment as to each of the issues below:

1. Making initial allocations of IFQ (a) to approximately 34 permit holders who had no recent participation in the fishery after 2003, contrary to the goal of the Fishery Management Plan (FMP) to reduce capacity in the fishery; (b) without taking into account any of the most recent fishing history of eligible and active permit holders after 2003, which the agency has regularly interpreted as demonstrating dependency in other

¹ Penny Pritzker is substituted for Rebecca Blank as Ms. Pritzker has now become the Secretary of Commerce. Secretary Pritzker is being sued in her official capacity.

- 1 IFQ programs; (c) by interpreting and applying the term “dependency” in an arbitrary
2 manner inconsistent with prior agency practice; and (d) providing unreasonable,
3 unsupported, speculative, and arbitrary analysis of the allocation determinations in the
4 new agency record, in violation of the Magnuson-Stevens Act, including 16 U.S.C.
5 §§1853(b)(6) and 1853a(c)(5)(A), and the APA, 5 U.S.C. § 706(a)(A);
- 6 2. Failing to properly consider and credit recent processing history after 2004 for
7 dependent, small, and local whiting shoreside processors despite the changes in the
8 markets for the fishery after 2004, in violation of the Magnuson-Stevens Act, including,
9 16 U.S.C. § §1853(b)(6) and 1853a(c)(5), and the APA, 5 U.S.C. § 706(a)(A);
- 10 3. Failing to properly consider efficiency in designing the initial allocation of IFQ in
11 violation of National Standard 5 of the Magnuson-Stevens Act by allocating IFQ to
12 permit holders who had left the fishery, thereby forcing active participants to lease or
13 buy IFQ from these non-participants and decreasing the efficiency of post-IFQ
14 operations, in violation of the Magnuson-Stevens Act, including 16 U.S.C. §1851(a)(5),
15 and the APA, 5 U.S.C. § 706(a)(A) ;
- 16 4. Failing to minimize costs for those active in the fishery in designing the initial allocation
17 of IFQ in violation of National Standard 7 of the Magnuson-Stevens Act to require that
18 current participants to lease or purchase IFQ from non-participants who left the fishery
19 in 2003 or before, including 16 U.S.C. §1851(a)(7), and the APA, 5 U.S.C. § 706(a)(A);
- 20 5. Failing to take into account the needs of small fishing communities and providing for
21 sustained participation of such communities in the Pacific whiting fishery in violation of
22 National Standard 8 of the Magnuson-Stevens Act, including 16 U.S.C. §1851(a)(8), and
23 the APA, 5 U.S.C. § 706(a)(A); and
- 24 6. Implementing regulations that are arbitrary and capricious, an abuse of discretion and
25 otherwise not in accordance with law in violation of the APA, and basing such
26 regulations on analysis which does not track the relevant factors in the Magnuson-
27 Stevens Act but which is designed more like a legal brief attempting to defend the initial
28 allocation through post hoc rationalization.

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The Motion is based on this Notice, the accompanying Memorandum of Points and authorities, declarations of Burt Parker, Pierre Marchand, Dennis Rydman, Joseph Hamm and James Walsh, the Administrative Record filed in this case, all other papers filed in this case, and all argument and evidence as may be presented prior to or at the hearing of the Motion.

Respectfully submitted,

DATED: July 29, 2013

DAVIS WRIGHT TREMAINE LLP

By : /s/ James P. Walsh
James P. Walsh
Gwen L. Fanger

Attorneys for Plaintiffs

DAVIS WRIGHT TREMAINE LLP

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TABLE OF CONTENTS

1				Page
2				
3	I.	INTRODUCTION AND STATEMENT OF ISSUES.....		1
4	II.	STATEMENT OF FACTS		3
5		A. The Parties		3
6		B. Applicable Provisions of the Magnuson-Stevens Act.....		4
7		1. Initial Allocation of IFQ: Statutory Standards		4
8		2. National Standards: Statutory Guidance		6
9		C. Overview of the Council Process		8
10		D. The 2010 IFQ Regulations: Approved Again Without Change		
11		in 2013		9
12		E. The Pacific Whiting Fishery		10
13		F. Injury to Plaintiffs		12
14	III.	ARGUMENT		13
15		A. Standard of Review		13
16		B. The failure to take into account recent participation and fishing		
17		history after 2003 in the initial allocation of IFQs is inconsistent		
18		with the standards of the Magnuson-Stevens Act		13
19		C. NOAA’s interpretation of the term “dependence” and		
20		application of statutory factors to the issues with respect to		
21		harvesters is arbitrary, inconsistent with agency practice, and		
22		lacks substantial evidentiary support		17
23		D. NOAA’s failure to properly consider and credit recent		
24		processing history after 2004 for dependent, small, and local		
25		shoreside processors despite the changes in the markets for the		
26		fishery after 2004, violates the Magnuson-Stevens Act		20
27		E. The failure to properly consider national standards set forth in		
28		the Magnuson-Stevens Act violates the Magnuson-Stevens Act.....		22
		1. The 2013 IFQ Regulations do not properly consider		
		efficiency as required under National Standard 5		23
		2. The 2013 IFQ Regulations do not properly minimize		
		costs as required under National Standard 7		23
		3. The 2013 IFQ Regulations do not properly consider		
		local community dependence on the fishery as required		
		under National Standard 8		24

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F. The 2013 IFQ Regulations are arbitrary and capricious in violation of the APA 25

IV. REQUESTED RELIEF 25

V. CONCLUSION 25

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Page(s)

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84 F.3d 343 (9th Cir. 1996)..... 17, 20

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622 F. Supp. 2d 1050 (W.D. Wash. 2008)..... 9

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602 F.3d 1125 (9th Cir. 2010)..... 13

Fishing Co. of Alaska v. United States,
195 F. Supp. 2d (W.D. Wash. 2002)..... 9

Flaherty v. Bryson,
850 F.Supp.2d 38 (D.D.C. 2012) 9

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263 F.Supp.2d 346 (D. R.I. 2003)..... 9

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282 F.3d 710 (9th Cir. 2004)..... 9, 13

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753 F.2d 766 (9th Cir. 1985)..... 13

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Pacific Dawn LLC et al. v. Blank,
No. C10-4829 TEH 1

Yakutat, Inc. v. Guitierrez,
407 F.3d 1054 (9th Cir. 2005)..... 16, 17, 20

STATUTES

5 U.S.C. § 706(2) 13

5 U.S.C. § 706(2)(A)..... 13

16 U.S.C. § 1851 22

16 U.S.C. § 1851(a)..... 6

16 U.S.C. § 1851(a)(4) 6

DAVIS WRIGHT TREMAINE LLP

1 16 U.S.C. § 1851(a)(5) 7, 23

2 16 U.S.C. § 1851(a)(7) 7, 23, 24

3 16 U.S.C. § 1851(a)(8) 8, 23, 24

4 16 U.S.C. § 1852 8

5 16 U.S.C. § 1852(a) 4

6 16 U.S.C. § 1852(h) 8

7 16 U.S.C. § 1853 4, 5

8 16 U.S.C. § 1853(b)(6) 14, 15, 19

9 16 U.S.C. § 1853(b)(6)(C) 20, 21

10 16 U.S.C. § 1853(C) 8

11 16 U.S.C. §1853a(5)(A)(ii) 21

12 16 U.S.C. § 1853a(5)(A)(iii) 21

13 16 U.S.C. § 1853a(c)(5) 5

14 16 U.S.C. § 1854(a) 8

15 16 U.S.C. § 1854(b) 8

16 16 U.S.C. § 1855(f) 9

17 16 U.S.C. § 1855(f)(1)(B) 13

18 **OTHER AUTHORITIES**

19 50 C.F.R. 600.305(a)(3) 6

20 50 C.F.R. § 600.305(a)(2) 4

21 50 C.F.R. § 600.305 *et seq.* 6

22 50 C.F.R. § 600.325(a)(1) 6

23 50 C.F.R. § 600.325(c)(3)(i) 18

24 50 C.F.R. § 600.330 23

25 50 C.F.R. § 600.330(b) 7

26 50 C.F.R. § 600.330(b)(2)(i) 23

27 50 C.F.R. § 600.340 23

28

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1 50 C.F.R. §600.340(a)..... 24

2 50 C.F.R. § 600.340(c)..... 8, 24

3 50 C.F.R. § 600.345 23

4 50 C.F.R. §600.345(b)..... 24

5 50 C.F.R. § 600.345(b)(3)..... 8

6 50 C.F.R. §600.352(c)(3)(i), (iv)..... 7

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8 50 C.F.R. § 660.131(a)..... 11

9 50 C.F.R. § 660.131(b)(2)(iii)..... 11

10 50 C.F.R. § 660.131(c)(4) 11, 12

11 50 C.F.R. § 660.140(d)(3)(ii)(B)(2) 5

12 50 C.F.R. § 660.140(d)(8)(iv)(C)(2) and (G)..... 2

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15 68 Fed. Reg. 42613 12

16 74 Fed. Reg. 10189 11, 12

17 75 Fed. Reg. 60868 9, 10

18 78 Fed. Reg. 14259 11

19 78 Fed. Reg. 17340 19

20 78 Fed. Reg. 18879 *passim*

21 78 Fed. Reg. 43125 1

22 Fed. R. Civ. P. 56(a)..... 1

23 Fed. R. Civ. P. 56(c)..... 13

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**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION AND STATEMENT OF ISSUES

Plaintiffs Pacific Dawn LLC (“Pacific Dawn”), Ocean Gold Seafoods, Inc. (“Ocean Gold”), Chellissa LLC (“Chellissa”), and Jessie’s Ilwaco Fish Company (“Jessie’s”) (collectively, “Plaintiffs”) move pursuant to Fed. R. Civ. P. 56(a) for summary judgment on all causes of action alleged in their Complaint for Declaratory and Injunctive Relief (Dkt. No. 1) (“Compl.”) against Penny Pritzker, the Secretary of Commerce, the National Oceanic and Atmospheric Administration (“NOAA” or the “agency”), and the National Marine Fisheries Service (“NMFS”) (collectively “Federal Defendants”). Plaintiffs challenge regulations promulgated under the Magnuson-Stevens Fishery Conservation and Management Act (the “Magnuson-Stevens Act” or “Act”) that implement an Individual Fishing Quota (“IFQ”) program which allocates a limited portion of the year’s available catch to permit holders² in the Pacific whiting fishery (the “IFQ Program”).

In a predecessor case, Plaintiffs Pacific Dawn, Chellissa, and Jessie’s challenged the initial allocation of IFQ for Pacific whiting that was based on history years 1994-2003 for harvesters and 1998-2004 for processors as promulgated in 2010 regulations by Federal Defendants (the “2010 IFQ Regulations”). This Court found that the 2010 IFQ Regulations, which created an IFQ system for the management of Pacific whiting, were arbitrary and capricious in that Federal Defendants failed to take into account more recent history years given the listed factors set forth by Congress in the Act. *See Pacific Dawn LLC et al. v. Blank*, No. C10-4829 TEH (“*Pacific Dawn I*”), Order Granting in Part and Denying in Part Plaintiffs’ and Defendants’ Motions for Summary Judgment, Dec. 22, 2011 (Dkt. 49) (“MSJ Order”). The Court remanded those portions of the 2010 regulations, which involved initial IFQ allocations to harvesting vessels in the shoreside and mothership sectors of the Pacific whiting fishery and to processors in that fishery, for further consideration in light of the MSJ Order and the requirements of the Magnuson-Stevens Act. *Pacific Dawn I*, Order on Remedy, Feb. 21, 2012 (Dkt. 60) (“Remedy Order”).

Following “reconsideration” of the initial allocation of IFQ for Pacific whiting, Federal

² Under the regulations, the “permit holder” is the owner of a vessel registered to a limited entry permit. NOAA is currently seeking to amend its regulations to clarify the proper use of the term in the regulations. 78 Fed. Reg. 43125, 43128 (July 19, 2013).

1 Defendants published a final rule on March 28, 2013. Administrative Record (“AR”) at AR007569³
 2 (78 Fed. Reg. 18879 (Mar. 28, 2013) (“Final Rule”)). After developing a new Administrative
 3 Record and claiming to have reasonably considered all the relevant factors in the Magnuson-
 4 Stevens Act, Federal Defendants nevertheless adopted the Final Rule effective April 1, 2013 that
 5 allocated quota share based on exactly the same basis as the 2010 IFQ Regulations (the “2013 IFQ
 6 Regulations”) and again failed to take more recent history beyond 2003 and 2004 into account. *Id.*
 7 at AR007570 (78 Fed. Reg. at 18880); 50 C.F.R. § 660.140(d)(8)(iv)(C)(2) and (G). Using the
 8 same history, the Final Rule will continue to make IFQ allocations to Pacific whiting harvesters
 9 without regard to the history of actual landings by such harvesters after 2003 and to processors
 10 without regard to any processing history after 2004. Notably, Federal Defendants admit in the new
 11 Administrative Record that, during the reconsideration, NOAA learned that a significant number of
 12 permits allocated IFQ under the original regulations had not participated at all in the shore based-
 13 based and mothership sectors of Pacific whiting fishery (i.e. landed no Pacific whiting using the
 14 permit) after 2003. AR009661 at 9669 (Decision Memorandum Approving the 2013 IFQ
 15 Regulations, March 13, 2013 (“Decision Memo”) at 9).⁴ Despite a regular practice in previous
 16 agency-approved IFQ Programs of requiring actual “present or recent” participation in a fishery in
 17 order to qualify for an initial allocation of IFQ or limited entry permits, Federal Defendants refused
 18 to institute such a requirement even though requested to do so and even though NOAA has more or
 19 less consistently interpreted recent history and participation as evidence of dependence on a fishery.
 20 Moreover, the underlying fishery management plan contains an Objective (#14) that states: “When
 21 considering alternative management measures to resolve an issue, choose the measure that best
 22 accomplishes the change with the least disruption of current fishing practices, marketing
 23 procedures, and the environment.” Sec. 2.1, Pacific Coast Groundfish Fishery Management Plan
 24

25 _____
 26 ³ Citations to the Administrative Record or “AR” reference documents contained in the
 27 Administrative Record lodged by Federal Defendants on May 16, 2013 pursuant to a Notice of
 28 Lodging Administrative Record (Dkt. No. 14). For the Court’s convenience, cited excerpts of the
 Administrative Record are attached as Exhibits (“Exhs.”) to the Declaration of James Walsh
 (“Walsh Decl.”) accompanying this Motion. A copy of the Final Rule, 78 Fed. Reg. 18879 (March
 28, 2013)) (AR007569) is attached as Exh. 1 to the Walsh Decl.

⁴ A copy of the Decision Memo is attached as Exh. 2 to Walsh Decl.

1 for the California, Oregon, and Washington Groundfish Fishery, December 2011 (the “FMP”) at 9.⁵

2 Federal Defendants also refused to alter the initial allocation of IFQ to shore-side processors
 3 based on processing history after 2004 even though NOAA included a recent participation
 4 requirement for such processors in the original regulations. Under the 2010 IFQ Regulations,
 5 NOAA allocated IFQ only to processors “which [have] received deliveries of at least 1 [metric tons]
 6 of whiting from whiting trips in each of any two years from 1998 through 2004.” 50 C.F.R.
 7 § 660.140(d)(8)(iv)(G)(1). Although NOAA learned that marketing practices had significantly
 8 changed (i.e. product form went from surimi to blocks and fillets) and greater fishing experience
 9 moved north off Washington State from Oregon after 2004 and admitted that the original processor
 10 allocations needed to be based on recent participation and dependency, it refused to change the
 11 allocation to benefit those smaller processors who are based in communities in Washington State
 12 who are most dependent on these new markets. AR009661 at 67-68 (Decision Memo at p. 7-8).

13 **II. STATEMENT OF FACTS**

14 **A. The Parties**

15 Plaintiffs are fishing vessel owners and fish processors that participate in the Pacific
 16 Groundfish fishery. Both Pacific Dawn and Chellissa are “harvesters” and permit holders for
 17 fishing in the Pacific Groundfish fishery, including whiting. Declaration of Burt Parker (“Parker
 18 Decl.”) at ¶1; Declaration of Joseph Hamm, at ¶1. Both are eligible to receive IFQ and have
 19 received allocation under the IFQ Program. Parker Decl. at ¶3; Hamm Decl. at ¶4. Pacific Dawn
 20 has participated in the Pacific whiting fishery since the 1980’s and has history through today.
 21 Parker Decl. at ¶3. Chellissa has fished in the Pacific whiting fishery since 1996 through 2010.
 22 Hamm Decl. at ¶2. Neither of their IFQ allocations reflect their more recent fishing history since
 23 2003. Parker Decl. at ¶3; Hamm Decl. at ¶4.

24 Ocean Gold and Jessie’s are both fish processing companies. They are eligible for and have
 25 received initial IFQ as processing entities for use in the Pacific Groundfish fishery. Declaration of
 26 Dennis Rydman (“Rydman Decl.”) at ¶1; Declaration of Pierre Marchand (“Marchand Decl.”) at 1,
 27

28 ⁵ Excerpts from the FMP are attached as Exh. 3 to Walsh Decl. Plaintiffs respectfully request that
 the Court take judicial notice of the FMP, which was not included in the Administrative Record.

1 8. Ocean Gold has depended on the Pacific whiting fishery since 1997. Rydman Decl. at 3. It
 2 presently processes substantial amounts of whiting from the fishery, although its production has
 3 fallen since the rationalization. *Id.* at ¶6. Jessie’s, which also processes a significant amount of
 4 whiting from the fishery, received a quota share does not reflect its more recent history of
 5 processing after 2004, to the present, which includes 14 million pounds in 2005, 18 million pounds
 6 in 2006, 9 million pounds in 2007, and over 6 million pounds in 2008. Marchand Decl. at ¶4, 8.

7 None of the Plaintiffs can be considered speculators who entered the Pacific whiting fishery
 8 after a “control date” was announced in 2003/2004 by adding harvesting or processing capacity to
 9 the fishery. *See e.g.*, Parker Decl. at ¶2, 4; Marchand Decl. at ¶4; and Rydman Decl. at ¶5. Each
 10 simply continued in the Pacific whiting business they each had been in, and were dependent upon,
 11 and responded to market opportunities and the availability of the overall quota for Pacific whiting.
 12 Hamm Decl. at ¶2, 7; Parker Decl. at ¶3, 6; Rydman Decl. at ¶3-4; and Marchand Decl. at ¶8.

13 Defendant Penny Pritzker, the Secretary of the U.S. Department of Commerce, has
 14 responsibility under the Magnuson-Stevens Act for approving fishery management plans and
 15 promulgating related regulations, including the IFQ Program. NOAA, a subunit of the Department
 16 of Commerce has supervisory responsibility over NMFS. NMFS is the federal agency that
 17 administers the fishery management plans for the Pacific Coast Groundfish Fishery, including
 18 whiting, of which the IFQ Program is a part. In addition, the Magnuson-Stevens Act creates
 19 regional councils, in this case the Pacific Fishery Management Council (the “Council”), to assist in
 20 developing fishery management plans and regulations. 16 U.S.C. § 1852(a). But a council does not
 21 possess final statutory decision-making authority and therefore cannot be sued directly. *Id.* at
 22 § 1852(h); 50 C.F.R. § 600.305(a)(2).

23 **B. Applicable Provisions of the Magnuson-Stevens Act**

24 **1. Initial Allocation of IFQ: Statutory Standards**

25 Congress has specified standards for adoption of fishery management plans and
 26 implementing regulations that establish a limited access system. 16 U.S.C. § 1853. As stated in the
 27 statute, these standards have characteristics that are both procedural and substantive. The first
 28 provision is found in the section dealing with discretionary provisions for a fishery management

1 plan. *Id.* at § 1853(b)(6). There are eight categories of factors which the Council or the Secretary
 2 of Commerce must “take into account:” present participation in the fishery; historical fishing
 3 practices in, and dependence on the fishery; the economics of the fishery; the capability of fishing
 4 vessels used in the fishery to engage in other fisheries; the cultural and social framework relevant to
 5 the fishery and any affected fishing communities; the fair and equitable distribution of access
 6 privileges in the fishery; and any other relevant consideration. *Id.* In addition, a new provision was
 7 added in 2007 addressing limited access privilege programs in particular, including a subsection
 8 that addresses the initial allocation of such privileges, such as the quota shares at issue in this case.
 9 *Id.* at § 1853a(c)(5). The provisions relevant here instruct Federal Defendants to:

10 (A) establish procedures to ensure fair and equitable initial allocations, including
 consideration of —

- 11 (i) current and historical harvests;
 12 (ii) employment in the harvesting and processing sectors;
 13 (iii) investments in, and dependence upon, the fishery; and
 14 (iv) the current and historical participation of fishing communities;... [and]
 (B) consider the basic cultural and social framework of the fishery, especially

14 through --

- 15 (i) the development of policies to promote the sustained participation of small
 owner-operated fishing vessels and fishing communities that depend on fisheries, including
 16 regional or port-specific landing or delivery requirements; and
 17 (ii) procedures to address concerns over excessive geographic or other consolidation
 in the harvesting or processing sectors of the fishery;.... 16 U.S.C. §§ 1853a(c)(5).

18 Under the IFQ Regulations for Pacific whiting, a permit holder, once given IFQ, may either
 19 use the permit and IFQ to harvest whiting using a qualified vessel or that permit holder may lease
 20 the IFQ to another qualified permit holder who catches the fish. After two years, anyone with IFQ
 21 may sell it to the highest bidder, subject to limits on the amount a single entity can hold. *See* 50
 22 C.F.R. § 660.140(d)(3)(ii)(B)(2); AR007569 at 85 (78 Fed. Reg. 18879, 18895). Explained another
 23 way, under an IFQ program, a permit holder who uses his or her own IFQ to catch fish has no
 24 fishing entry expense other than the cost of operating the vessel or maintaining a federal license.
 25 However, a permit holder who has to lease or buy IFQ, for example, to fish at a successful level
 26 would take on added leasing and purchase costs that did not exist prior to creation of IFQs. The
 27 cost of leasing or purchasing IFQ, depending on the fishery, can be quite substantial and significant
 28 to a participant’s business. *See e.g.*, Rydman Decl. at ¶9. The Pacific whiting fishery is the most

1 valuable groundfish fishery on the West Coast. Thus, the initial allocation of IFQ is a very
 2 important government allocation crossroads for which Congress mandated careful consideration by
 3 including strict procedural and substantive conditions on the creation of IFQ Programs and initial
 4 allocation of IFQs.

5 2. National Standards: Statutory Guidance

6 The Magnuson-Stevens Act contains ten national standards which provide a framework of
 7 principles that should guide the preparation of fishery management plans, such as plan Amendments
 8 20 and 21 being implemented through agency regulations in this case. 16 U.S.C. § 1851(a). Under
 9 the Act, the agency also has established “advisory guidelines (which do not have the force and
 10 effect of law), based on the national standards, to assist in the development of fishery management
 11 plans” (the “Guidelines”). *Id.* at § 1851(b). NOAA has published the regulatory Guidelines called
 12 for under the Act to assist in applying the national standard to particular issues. *See* 50 C.F.R.
 13 § 600.305 *et seq.* Fishery management plans must be consistent with the National Standards and
 14 reasonably take into account NOAA’s Guidelines. 16 U.S.C. § 1851(a); 50 C.F.R. 600.305(a)(3).
 15 The National Standards and related Guidelines implicated in this case are the following:

16 National Standard 4: Management and conservation measures shall not discriminate
 17 between residents of different states. If it becomes necessary to allocate or assign fishing privileges
 18 among fishermen, such allocation must be fair and equitable, reasonably calculated to promote
 19 conservation, and cannot give any entity an excessive share. 16 U.S.C. § 1851(a)(4); 50 C.F.R. §
 20 600.325(a)(1). The following test applies where, as here, the 2013 IFQ Regulations allocate IFQ (1)
 21 between permit holders who did not engage in the fishery after 2003 and those who remained active
 22 after that date through 2010; (2) between permits holders based on historical harvests prior to 2003
 23 and not the entire history of harvests through 2010; and (3) between processors based on processing
 24 history before 2004 and not the entire history of processing through 2010:

25 (i) *Fairness and Equity.*

26 (A) An allocation of fishing privileges should be rationally connected to the
 27 achievement of OY [optimum yield] or the furtherance of legitimate FMP [fishery
 28 management plan] goals. Inherent in an allocation is the advantaging of one group to
 the detriment of another. The motive for making a particular allocation should be
 justified in the terms of the objectives of the FMP; otherwise, disadvantaged user

1 groups would suffer without cause. For example, an FMP objective to preserve the
 2 economic status quo cannot be achieved by excluding a group of longtime
 participants in the fishery...

3 (B) An allocation may impose a hardship on one group if it is outweighed by
 4 the total benefit received by another group or groups. An allocation need not
 5 preserve the status quo in the fishery to qualify as “fair and equitable,” if a
 6 restructuring of fishing privileges would maximize overall benefits. The Council
 should make an initial estimate of the relative benefits and hardships imposed by the
 allocation, and compare its consequences with alternative allocation schemes,
 including the status quo...

7 (iv) *Other factors.* In designing an allocation scheme, a Council should
 8 consider other factors relevant to FMP’s objectives. Examples are economic and
 9 social consequences of the scheme, food production, consumer interest, dependence
 10 on the fishery of present participants and coastal communities, efficiency of various
 types of gear used in the fishery, transferability of effort to and impact on other
 11 fisheries, opportunity for new participants to enter the fishery, and enhancement of
 opportunities for recreational fishing. 50 C.F.R. §600.352(c)(3)(i), (iv).

12 National Standard 5: Under National Standard 5, “[c]onservation and management
 13 measures shall, where practicable, consider efficiency in the utilization of fishery resources; except
 14 that no such measure shall have economic allocation as its sole purpose.” 16 U.S.C. § 1851(a)(5).
 15 The Guidelines related to National Standard 5 emphasize the importance of considering efficiency
 16 when designing an FMP. 50 C.F.R. § 600.330(b). Under the Guidelines, efficiency is considered to
 17 be the full range of economic inputs required to harvest fish, including labor, capital, interest and
 18 fuel. *Id.* at § 600.330(b)(2). The Guidelines state: “Given a set of objectives [such as the
 19 efficiency of operation under an IFQ Program, a stated objective of Amendment 20], an FMP
 20 should contain management measures that result in as efficient a fishery as is practicable or
 21 desirable.” *Id.* at § 600.330(b)(1), (2). Also, an FMP “should demonstrate that management
 22 measures aimed at efficiency do not simply redistribute gains and burdens without an increase in
 23 efficiency. *Id.* Efficiency is implicated here because the creation of IFQ, a transferable fishing
 24 privilege, allows for lease or sale to other qualified permit holders. For those whose initial IFQ
 25 allocation was below recent harvest experience, the lease or purchase of additional IFQ may be
 26 necessary to support their operations, which creates a new cost of doing business.

27 National Standard 7: National Standard 7 provides that “conservation and management
 28 measures shall, where practicable, minimize costs and avoid unnecessary duplication.” 16 U.S.C.

1 § 1851(a)(7). IFQ programs create new costs of operation that did not exist previously, namely the
 2 added cost of leasing or buying IFQ. The Guidelines state that management measures should not,
 3 however, impose unnecessary burdens on individual fishing operations. 50 C.F.R. § 600.340(c).
 4 The effects of redistributing the burden of additional costs from one sector to another, such as
 5 requiring recent and continuing permit holders in the Pacific whiting to pay IFQ leasing and
 6 purchase costs to those who received IFQ despite having little or no participation in the fishery after
 7 2003, harms those who actively participate in and depend on the fishery by increasing their costs of
 8 doing business. *Id.* at § 600.340(c), (d); *see* Hamm Decl. at ¶7; Marchand Decl. at ¶9; Parker Decl.
 9 at ¶8; and Rydman Decl. at ¶9-10.

10 National Standard 8: Conservation and management measures under National Standard 8
 11 shall “take into account the importance of fishery resources to fishing communities” in order to
 12 provide for sustained participation or those communities and to minimize the adverse economic
 13 impacts on such communities. 16 U.S.C. § 1851(a)(8). Ilwaco and Westport, Washington are
 14 communities that meet the definition of “fishing community” in NOAA Guidelines. 50 C.F.R. §
 15 600.345(b)(3). The Guidelines for National Standard 8 contemplate close analysis where an
 16 allocation system benefits one community over another, as occurred here. The goal is to then
 17 structure the allocation system to minimize those impacts. *Id.* at § 600.345(a)(2).

18 **C. Overview of the Council Process**

19 The regulatory process under the Magnuson-Stevens Act begins with consideration of the
 20 overall management issues in a particular fishery by unique advisory bodies, called regional fishery
 21 management councils, which are tasked to develop fishery management plans from the “bottom-up”
 22 that must adhere to the conservation and management directives in the Magnuson-Stevens Act, and
 23 other applicable law. 16 U.S.C. § 1852. The regional councils then submit proposed FMPs, or
 24 amendments thereto, to NOAA for review. 16 U.S.C. §§ 1852(h), 1853(c), and 1854(a)-(b).
 25 NOAA may either approve, disapprove or partially approve the proposals from the councils based
 26 on the requirements of the Magnuson-Stevens Act and other applicable law. 16 U.S.C. §§ 1854(a)
 27 (NOAA to review and determine consistency with Magnuson-Stevens Act and other applicable
 28 law). If NOAA approves a plan, it then moves on to the rulemaking stage. 16 U.S.C. §§ 1854(b).

1 Once NOAA issues final regulations implementing a fishery management plan, such regulations are
 2 subject to judicial review, if review is requested within 30 days of publication of the final rule. 16
 3 U.S.C. §§ 1855(f); *Oregon Trollers Ass'n v. Gutierrez*, 452 F.3d 1104, 1112-16 (9th Cir. 2006).

4 Federal Defendants may not simply defer to the Council when reviewing a proposed plan or
 5 approach, such as in allocating IFQs, and must conduct an independent review of whether the
 6 allocation complies with the Magnuson-Stevens Act provisions and standards. *Flaherty v. Bryson*,
 7 850 F. Supp. 2d 38, 54 (D.D.C. 2012) (the Act gives NOAA final responsibility for ensuring any
 8 fishery management plan is consistent with the Act's National Standards, and the overall objectives
 9 of the law). Moreover, agency decisions in this regard cannot be made on the basis of pure political
 10 compromise. *Midwater Trawlers Coop. v. Department of Commerce*, 282 F.3d 710, 720-21 (9th
 11 Cir. 2004) (remanding NMFS regulations where the court found that "the rule was a product of pure
 12 political compromise, not reasoned scientific endeavor" as required under the Act.); *Hadaja, Inc. v.*
 13 *Evans*, 263 F. Supp. 2d 346 (D. R.I. 2003) ("hallway compromise" between New York and New
 14 Jersey vessel factions could not be the proper basis for allocation of harvest permit privileges); *see*
 15 *Marchand Decl.* at ¶7; *Parker Decl.* at ¶5. A regulation must therefore be based on an analysis that
 16 rationally concludes, and explains clearly, that a particular allocation meets the objectives and
 17 standards of the Magnuson-Stevens Act. *Arctic Sole Seafoods v. Gutierrez*, 622 F. Supp. 2d 1050,
 18 1061-62 (W.D. Wash. 2008) (NOAA regulations impermissible in light of the statutory language
 19 and purpose and are not supported by a rational basis); *Fishing Co. of Alaska v. United States*, 195
 20 F. Supp. 2d, 1239, 1248 (W.D. Wash. 2002).

21 **D. The 2010 IFQ Regulations: Approved Again Without Change in 2013**

22 In 2010, the Council recommended to NMFS that it allocate IFQ for Pacific whiting to
 23 current permit holders based on their fishing history from 1994 to 2003 for harvesters and from
 24 1998 to 2004 for processors. NMFS issued the final rules adopting the Council's recommendations
 25 and implementing Amendments 20 and 21 for the IFQ program beginning on January 1, 2011. 75
 26 Fed. Reg. 60868 (Oct. 1, 2010). The 2010 IFQ Regulations contained standards and procedures for
 27 issuance of permits and initial allocations of IFQ (based on a catch history possessed by current
 28 permit holders), among other provisions. *Id.* The allocation formulas are based on vessel landings

1 for the trawl vessel sector or processor receipt history for the shoreside sector. The 2010 IFQ
2 Regulations allocated 80 percent of the Pacific whiting IFQ to current vessel permit holders and 20
3 percent of the shoreside harvest allocation to shoreside processors. *Id.* at 60874.

4 Upon remand, Federal Defendants adopted the status quo by implementing the 2013 IFQ
5 Regulations which maintain exactly the same initial allocation of quota shares based on the same
6 qualifying period as the 2010 IFQ Regulations. AR007569 at 70 (78 Fed. Reg. 18879, 18880).
7 Federal Defendants refused to take more recent history beyond 2003 for harvesters and 2004 for
8 processors into account and failed to provide a rational explanation for the failure to do so.
9 Moreover, no recent participation requirement was adopted for harvesters, in contrast to that
10 adopted for processors, which enabled at least 35 permits to receive IFQ even though they were not
11 used in the Pacific whiting fishery after 2003. AR009661 at 69 (Decision Memo at p. 9). These
12 permits are sometimes referred to as “latent permits” because they can be used to bring additional
13 fishing capacity back into the fishery at any time.

14 Just as under the 2010 IFQ Regulations, a fishing vessel must qualify under the prior limited
15 entry permit system for Pacific whiting to obtain IFQ. Under the 2013 IFQ Regulations, if the
16 vessel is properly permitted, a quantity of IFQ is allocated to the permit holder for the vessel based
17 on relative catch history between the years 1994 and 2003, but not its more recent catch history in
18 the years after 2003. This initial IFQ allocation entitles the vessel to catch a percentage of the total
19 amount of Pacific whiting available each year for harvest, an annual harvest quota that is based on
20 conservation principles fundamental to the Magnuson-Stevens Act management program. In
21 addition, IFQ was initially allocated to processing plants located onshore that have a history of
22 processing Pacific whiting in the past, between 1998 and 2004, but, again, not the more recent
23 processing history after 2004. Only entities that possess the proper permits and IFQ allocations
24 may engage in the fishery or process fish from the fishery.

25 **E. The Pacific Whiting Fishery**

26 Although sometimes lumped together with other Pacific Groundfish Fisheries, the Pacific
27 whiting fishery has been separately managed because of its unique components and biological
28

1 features. According to NMFS, Pacific whiting is the most abundant fish stock on the Pacific Coast.⁶
 2 In 2011, fish landings of Pacific whiting were valued at approximately \$53 million. 78 Fed. Reg.
 3 14259, 14261 (May 5, 2013). The fish require unique treatment because of an enzyme that causes
 4 the flesh to deteriorate upon being caught, so rapid processing at sea or onshore is critical to the
 5 success of this fishery. The fishery is also shared with Canada, because of its migratory nature
 6 moving south to north along the coast, and a treaty is in place calling for international joint
 7 management of the fishery. Marchand Decl. at ¶5. Pacific whiting are also subject to a catch-
 8 sharing treaty with Indian tribes in the United States. 78 Fed. Reg. 14259. Typically the whiting
 9 fishing season begins in April each year and ends once the annual quota for each sector is taken,
 10 which usually occurs in the fall. 50 C.F.R. § 660.131(b)(2)(iii).

11 Each year, NMFS issues a volumetric quota for the fishery, split into three sectors: (1)
 12 catcher-processors (large vessels that catch and process their own fish at sea), which operates as a
 13 cooperative; (2) harvest vessels that serve motherships (which only process fish at sea); and (3)
 14 harvest vessels that deliver their fish to shore-side processors. 50 C.F.R. § 660.131(a). Only
 15 vessels with limited entry permits and endorsements for the Pacific whiting fishery may engage in
 16 the fishery, due to the adoption of Amendment 15 to the FMP. *See* 74 Fed. Reg. 10189 (Mar. 10,
 17 2009). Each sector is allocated a portion of the annual quota and that sector is closed once the
 18 section allocation is reached: catcher-processors --- 34 percent; mothership sector --- 24 percent;
 19 and shoreside sector --- 42 percent. AR003035 at 79 (Environmental Assessment and Magnuson-
 20 Stevens Act Analysis, March 2013 (the “EA”) at p. 40)⁷; 50 C.F.R. § 660.55(i)(2). In addition, each
 21 sector is allocated specific bycatch limits for overfished species. 50 C.F.R. § 660.131(c)(4). Once a
 22 bycatch limit is reached, the sector is closed. *Id.* Accordingly, the allocation of IFQ, including
 23 bycatch IFQ, to each sector is highly significant to those who participate in each sector.

24 In 2002, NOAA declared the Pacific whiting fishery “overfished.” Prior to that date, the
 25 Council had begun work on a plan to reduce the number of fishing vessels in the overall groundfish
 26 fisheries (90 different species), including Pacific whiting, due to overcapitalization, meaning the

27 ⁶ *See Pacific whiting*, NOAA

28 http://www.nwr.noaa.gov/fisheries/management/whiting/pacific_whiting.html.

⁷ Excerpts from the EA are attached as Exh. 6 to Walsh Decl.

1 number of permits that had been issued allowed for far more fishing vessel harvest capacity than
 2 necessary to catch each year's quota. AR003035 at 79 (EA at p. 40). A buy-back program was
 3 implemented in 2003 to provide government funds for purchasing "surplus" vessels from those who
 4 held permits but who wanted to exit the fisheries, which began to reduce overcapacity. *Id.* The
 5 buy-back program is paid for by an annual levy on those who remained in the fishery. 68 Fed. Reg.
 6 42613 (July 18, 2003). Further specific restrictions were placed on the Pacific whiting fishery in
 7 2007, prohibiting any vessel from participating that did not have a history of sector-specific
 8 participation in the fishery, to further limit the "race for fish." The Council proposed a "historic
 9 participation requirement, meaning a vessel had to land some Pacific whiting in any one qualifying
 10 year: 1994-2006 for the shoreside section; and 1997-2006 for the mothership and catcher-processor
 11 sectors. AR003035 at 79 (EA at p. 40). Permanent regulations then became effective in 2009. 74
 12 Fed. Reg. 10189, 10189-94 (Mar. 10, 2009) (Final Rule Implementing Amendment 15); 50 C.F.R. §
 13 660.336. Thus, late-arriving speculators were barred from the fishery temporarily in 2007 and then
 14 permanently in 2009. *Id.* Only committed participants with "historic participation" were allowed to
 15 operate in the fishery as of 2010, when NOAA approved and implemented the IFQ Program.

16 In 2004, just two years after the overfishing declaration, NOAA declared that the Pacific
 17 whiting fishery was no longer overfished. AR0003035 at 79 (EA at p. 40). Since 2004, the Pacific
 18 whiting fishery has been well managed and, since 2001, the total harvests have been below
 19 established quotas.⁸ Harvest levels significantly increased starting in 2003 and doubled by 2005
 20 and 2006, then dropped in 2009 before increasing again through 2011. *Id.* at AR003082 (EA at p.
 21 43). As a consequence, those who remained committed to the fishery after 2003 saw their fishing
 22 histories increase yearly because of greater stock availability.

23 F. Injury to Plaintiffs

24 For Plaintiffs, the initial allocation of IFQ that was below the level of operations conducted
 25 during the period 2003 to 2010 has led to a reduced ability to obtain Pacific whiting without paying
 26 leasing costs or purchasing additional IFQ when available. *See* Rydman Decl. at ¶9-10; Hamm

27 _____
 28 ⁸ *See* AR016266 at 16269 attached as Exh. 1 to Parker Decl. (Comments submitted by James Walsh
 on behalf of Plaintiffs, January 30, 2013 at p. 5 citing NMFS: Status of Pacific Hake (Whiting)
 stock in U.S. and Canadian Waters in 2012 (Feb. 29, 2012)).

1 Decl. at ¶4; Parker Decl. at ¶8; and Marchand Decl. at ¶8. Plaintiffs' overall history, and, as a result
 2 their quota share, would have increased significantly had Federal Defendants properly considered
 3 their dependence on the fishery. *See e.g.*, Parker Decl. at ¶6; Marchand Decl. at ¶8; Hamm Decl. at
 4 ¶6; and Rydman Decl. at ¶9. As a consequence, after the issuance of the 2010 IFQ Regulations and
 5 the 20130 IFQ Regulations, each Plaintiff's Pacific whiting fishing or processing operations became
 6 more costly and less efficient. Parker Dec. at ¶8; Hamm Decl. at ¶7; Marchand Decl. at ¶8.
 7 Plaintiffs contend that Congress did not intend an initial allocation of IFQ to give retirement income
 8 to those who were not active in or committed to the Pacific whiting fishery and to have that income
 9 paid for by those remaining in the fishery. *See e.g.*, Parker Decl. at ¶3-4; Marchand Decl. at ¶6.

10 **III. ARGUMENT**

11 **A. Standard of Review**

12 This administrative review case will be resolved on cross-motions for summary judgment
 13 based on the Administrative Record. *Fence Creek Cattle Co. v. U.S. Forest Serv.*, 602 F.3d 1125,
 14 1131 (9th Cir. 2010). Summary judgment should be granted when there is no genuine issue of
 15 material fact. Fed. R. Civ. P. 56(c). Under the APA, a court may set aside NOAA's regulations if
 16 they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law."
 17 5 U.S.C. § 706(2); *Oregon Trollers Ass'n v. Guitierrez*, 452 F.3d 1104, 1116 (9th Cir. 2006). *See*
 18 *also* 5 U.S.C. § 706(2)(A); 16 U.S.C. § 1855(f)(1)(B). Summary judgment, based on the
 19 administrative record, is particularly appropriate to determine a "legal question of whether the
 20 agency could reasonably have found the facts as it did." *Occidental Eng'g Co. v. INS*, 753 F.2d
 21 766, 770 (9th Cir. 1985). If Federal Defendants failed to consider the relevant factors under the Act
 22 and articulate a rational basis for the initial allocation of IFQ, the IFQ Regulations are arbitrary and
 23 capricious and should be set aside. *See Midwater Trawlers Coop. v. Department of Commerce*, 282
 24 F.3d 710, 716 (9th Cir. 2002).

25 **B. The failure to take into account recent participation and fishing history after** 26 **2003 in the initial allocation of IFQs is inconsistent with the standards of the** **Magnuson-Stevens Act**

27 As the Court knows, in allocating IFQ to harvesters in the shoreside and mothership sectors
 28 of the Pacific whiting fishery, the 2010 IFQ Regulations limited the fishing history years to 1994-

1 2003. Following reconsideration of this issue, the agency rubber-stamped the Council's
 2 recommendation not to change the history years, rejecting alternatives that would have incorporated
 3 fishing and processing history through 2010 in the allocation formula. *See* AR009661-90 (Decision
 4 Memo); AR007569-86 (78 Fed. Reg. 18879, 11879-96). Just as significantly, during the
 5 reconsideration, it came to the agency's attention that significant amounts of IFQ had been allocated
 6 to permit holders who had no actual participation in the fishery after 2003, i.e. the permit was not
 7 used to catch and land a single Pacific whiting. As noted in the Decision Memorandum signed by
 8 the Acting Director of the NMFS: "approximately 10.2 percent of quota allocated to 20 shore-
 9 based harvesting permits and 9.6 percent of quota allocated to 14 mothership permits that had no
 10 whiting landings post 2003." AR009661 at 69 (Decision Memo at p. 9).

11 The Magnuson-Stevens Act requires the agency to take into account recent participation in
 12 "the" fishery, i.e. the Pacific whiting fishery and its individual sectors. 16 U.S.C. § 1853(b)(6).
 13 Yet, in Amendment 20 to the Pacific Groundfish FMP, the agency offered the following rationale
 14 for not using recent participation in the initial allocation:

15 While a recent participation requirement might be considered
 16 reasonable and responsive to MSA direction to consider current and
 17 historic participation and to consider investment and dependence, the
 18 likely impacts on the initial QS allocation appear to be minimal with
 19 respect to their impact on the landing history based portion of the
 allocation. AR000001 at 882 (Final Environmental Impact Statement,
 June 2010 ("Final EIS"), Appendix A: IFQ Program Components,
 Sec. A-2.1.2 "Recent Participation" at A-119).⁹

20 In contrast, the Final Regulatory Flexibility Analysis ("FRFA") that accompanied NOAA's
 21 2013 decision documents found that, if the allocation was based on the ending year 2010
 22 ("Alternative 4"), IFQ worth \$3.7 million (based on the recent price of fish), or 17 percent of the
 23 quota, would be transferred away from "status quo" permit holders (i.e., the allocation under the
 24 2010 IFQ Regulations) and distributed to those with greater history in the shore-based fishery.
 25 AR003417 at 29 (FRFA at p. 29).¹⁰ For the mothership sector, use of the 2010 year in Alternative 4
 26 would transfer \$2 million worth of IFQ to permit holders with later history. *Id.* at AR003430

27
 28 ⁹ Excerpts from the Final EIS are attached as Exh. 4 to Walsh Decl.

¹⁰ A copy of the FRFA is attached as Exh. 7 to Walsh Decl.

1 (FRFA at p. 14). These totals underestimate the amounts because applying a recent participation
 2 requirement (e.g. had to land one ton of Pacific whiting in any year after 2003) would no doubt
 3 increase the transfer by eliminating a number of permits (20 in the shore-based fishery holding 10.2
 4 percent of the quota; 14 permits holding 9.6 percent of the quota for the mothership sector) from
 5 being eligible for any IFQ, regardless of the fishing history associated with those permits prior to
 6 2003. AR00661 at 69 (Decision Memo at p. 9). Therefore, instituting a recent participation
 7 requirement and applying later history would eliminate IFQ eligibility for 34 permits and would
 8 result in a major (not minimal) shift in IFQ allocations, contradicting the assessment found in
 9 Amendment 20, above. For each Plaintiff, the shift would be significant to their business. Parker
 10 Decl. at ¶8; Marchand Decl. at ¶9; Hamm Decl. at ¶7; and Rydman Decl. at ¶9-10.

11 NOAA included a recent participation requirement for processors to be eligible to receive
 12 IFQ. AR003035 at 64 (EA, Sec. 2.1.2 at p. 25); 50 C.F.R. § 660.140(d)(8)(iv)(G)(1). To be
 13 eligible, a processor must have received at least one metric ton of Pacific whiting in any two years
 14 from 1998 through 2004. *Id.* During reconsideration of the IFQ allocation, the Council adjusted
 15 this requirement for each of the four options, maintaining the requirement for “recent” participation,
 16 depending on the dates of the history consideration. For example, if the history years were 2000 to
 17 2010, the recent participation period would be 2004 through 2010. *Id.* This requirement was
 18 included in the original 2010 IFQ Regulations because of the issues of “dependency and
 19 involvement” and it substantially reduced the number of those who could apply for IFQ.
 20 AR000001 at 891 (Final EIS, Sec. A-2.1.2.c “Processors (Shoreside)” at A-128).

21 Federal Defendants’ exact justification for not requiring a recent participation requirement
 22 for harvesters that is at least contemporaneous with the year in which the IFQ Program was
 23 instituted is decidedly arbitrary and inconsistent. *See, id.* at AR0000882 (Final EIS at A-119) (“...it
 24 was determined that the harvest history of the vessels that would be screened out by a recent
 25 participation requirement was not significant enough to warrant the costs of developing and
 26 implementing the provision and the resistance likely to be encountered by those screened out”).
 27 NOAA’s discussion of this issue in its decision documents does not comport with the framework of
 28 analysis set forth in the Act or its own Guidelines or practices, including with respect to the original

1 analysis in, and the objectives of, Amendment 20. NOAA now states that the initial allocation of
 2 IFQ to permit holders reflects their “historic participation” (albeit pre-2003) and “current permit
 3 investment” but not actual permit use. AR007569 at 74 (78 Fed. Reg. 18879, 18884).

4 This is a different formulation of the concept of “dependence” than it has applied before,
 5 including in Amendment 20. No balancing analysis of benefits is evident between those who
 6 receive IFQ for non-participation and those who are active but lose IFQ because of the allocation to
 7 non-participants and participants with less history. Consideration of a variety of statutory factors
 8 that intersect on this point is mandatory and Congress did not intend that they be “looked at” and
 9 then ignored. Moreover, giving IFQ to those who, by their objective actions, do not participate in
 10 the fishery and do not appear to be dependent on the Pacific whiting fishery is unfair and makes no
 11 sense because it increases IFQ leasing and purchase costs to other participants and disadvantages
 12 their operations going forward by significant individual amounts. Moreover, instead of achieving
 13 the FMP objective of reducing capacity in the fishery, allocating IFQ to non-participating permit
 14 holders encourages their reentry into the fishery, thereby allowing capacity that had left the fishery
 15 to return, contrary to the goal of Amendment 20 to reduce capacity in the fishery. AR002000 at 03
 16 (Amendment 20 (August 2010), Sec. 6.9.3.1 at p.4)¹¹ (“The program is intended to reduce fishery
 17 capacity, minimize bycatch, and meet other goals of the FMP”).

18 Federal Defendants’ failure to take dependence on the fishery into account also is
 19 inconsistent with NOAA’s practices in other fisheries. For example, NOAA took into account the
 20 historical and recent dependence on the Pacific cod fishery when it cut off the qualifying period one
 21 year before implementing license qualification regulations. *Yakutat, Inc. v. Guitierrez*, 407 F.3d
 22 1054 (9th Cir. 2005). In *Yakutat*, the Ninth Circuit upheld a NOAA decision to exclude 1999 from
 23 a four-year qualifying period for allocating licenses in the Pacific cod fishery *Id.* NOAA had
 24 implemented a licensing program in 2000 based on fishing history between 1995 and 1998. *Id.* at
 25 1063. Under the program, the agencies allocated licenses to boats that caught a certain amount of
 26 fish in any two years between 1995 and 1998. *Id.* at 1057. The owner of the F/V Blue North,
 27 which had caught fish only in 1997 and 1999, challenged the program on the grounds that the

28 _____
¹¹ Excerpts from Amendment 20 are attached as Exh. 5 to Walsh Decl.

1 exclusion of 1999 from the qualifying period violated the Magnuson-Stevens Act by not taking
2 recent participation into account. *Id.* at 1068-69.

3 The Court noted that the purpose of a limited entry program is to “protect fishermen with
4 past dependence on and recent participation in the fisheries.” *Id.* at 1061. The program would deny
5 a permit (and any fishing privileges) to those who might hold a license for Pacific cod but “who
6 [had] not participated at a level that could constitute significant dependence on those fisheries.” *Id.*
7 at 1062. However, the agencies approved these years knowing that the program would decrease the
8 number of participants in the fishery “to ensure the vessels in the sector that had historical and
9 consistent participation . . . would be allowed to continue to participate at a level that reflected what
10 the Council determined to be economic dependence.” *Id.* at 1065.

11 NOAA also considered dependence of those active in the halibut and sablefish fishery when
12 initially allocating quota shares to those participants. *Alliance Against IFQs v. Brown*, 84 F.3d 343
13 (9th Cir. 1996). In *Alliance Against IFQs*, NOAA gave quota shares only to those permit holders
14 who owned or leased vessels and landed sablefish in 1988, 1989, and 1990. *Id.* at 345. In 1990, the
15 council began working on the FMP, which NOAA approved in 1993. *Id.* at 346-347. The council
16 chose those years because it found that actual participation should reflect both dependency and
17 capital investment and not business decisions by those who decided to exit the fisheries. *Id.* at 348-
18 349 (“The motive for making a particular allocation should be justified in terms of the [FMP];
19 otherwise, the disadvantaged user groups or individuals would suffer without cause....”)

20 Unlike their regular practice in other fisheries, Federal Defendants adopted regulations that
21 did not: (1) take into account recent participation in the Pacific whiting fishery or articulate a
22 reasonable basis for giving IFQ to non-participants and disfavoring those who objectively
23 demonstrated their dependence on the fishery; and (2) take into account relevant fishing history
24 after 2003 that also demonstrated greater dependence on the fishery than those with less history.

25 **C. NOAA’s interpretation of the term “dependence” and application of statutory**
26 **factors to the issues with respect to harvesters is arbitrary, inconsistent with**
27 **agency practice, and lacks substantial evidentiary support**

28 Summary judgment as to Plaintiffs’ First Cause of Action is appropriate because Federal
Defendants violated the Act as a matter of law by failing to properly consider and credit fishing

1 history after 2003 in favor of permit-holders with little to no dependence on the fishery at the
 2 expense of harvesters who presently participate in and depend on the fishery for their livelihood.
 3 Compl. at ¶¶ 32-34. In the discussion of the Final Rule, NOAA attempts to find a basis for
 4 allocating IFQ to permit-holders that were not active in the Pacific whiting fishery, after first
 5 admitting that “quota was allocated to some permits that did not actively participate by harvesting
 6 or landing whiting in the whiting fishery in the years between 2004 and 2010.” AR007569 at 73-75
 7 (78 Fed. Reg. 18879, 18883). The agency uses classic sophistry to argue that the impact is de
 8 minimis, contrary to the record evidence with regard to the Pacific whiting fishery.

9 First, NOAA claims that operators in this fishery have some unique “portfolio” of permits
 10 (including for other fisheries or sectors) that somehow transcends the objective fact of non-
 11 participation and, with it, evidence of non-dependence. *Id.* at 7573 (78 Fed. Reg. 18879, 18883).
 12 No real evidence of what this “portfolio” analysis is based on was discussed or cited and it appears
 13 to be the figment of some NOAA employee’s imagination. Moreover, the discussion does not track
 14 at all the analysis factors set forth in the statute or the National Standards or Guidelines.
 15 Specifically, the Guidelines require NOAA, in considering “fairness and equity” to weigh the pros
 16 and cons between those who are given IFQ and those who are disadvantaged. 50 C.F.R.
 17 § 600.325(c)(3)(i). NOAA clearly is attempting to protect these “portfolio” non-participants for
 18 some reason not found in the statute, in particular by focusing on investment in “the permit,” which
 19 is a fishing privilege subject to revocation without compensation at any time. The discussion did
 20 not compare this kind of “investment” to the investment in (and associated risks of) actual fishing
 21 operations by active participants. Moreover, each of those permit-holders who remained active in
 22 the fishery held that same “permit” investment (if it can be called that), plus added value to the
 23 economy and local communities by actually using the permit to produce something.

24 Second, NOAA’s failure to choose a management measure alternative that considered more
 25 recent history runs afoul of FMP Objective 14. Objective 14 provides that “[w]hen considering
 26 alternative management measures to resolve an issue, choose the measure that best accomplishes
 27 the change with the least disruption of current domestic fishing practices, marketing procedures, and
 28 the environment.” Walsh Decl. Exh. 3 (Sec. 2.1, FMP at p. 9). Indeed, allocating IFQ that is not

1 based on present participation disrupts “current...fishing practices” because it provides less IFQ to
 2 those who actively fish and process in the fishery and causes them to either reduce their operations
 3 or buy or lease additional IFQ. Rydman Decl. at ¶9; Hamm Decl. at ¶7; Marchand Decl. at ¶9 and
 4 Parker Decl. at ¶8. NOAA’s claim that maintaining the 2011 allocations in the 2013 IFQ
 5 Regulations is “fair and equitable” because “maintaining status quo would have the least disruption
 6 to the current 2013 fishery...” is based on an incorrect premise. AR009661 at 83 (Decision Memo
 7 at p. 23). The 2013 IFQ Regulations adopt the same history years that NOAA unlawfully adopted
 8 in 2011, when it first implemented the IFQ Program. NOAA’s focus should have been on avoiding
 9 disruption to the fishing practices in 2011 as directed by the FMP.

10 Third, the Act’s limited access privilege provisions are quite clear: the analysis must focus
 11 on “the fishery” and not other fisheries. 16 U.S.C. §§ 1853(b)(6) (repeated use of the term “the
 12 fishery”) and 1853a(c)(5) (similar use of the term “the fishery”). NOAA, however, defined this
 13 dependent “portfolio” permit activity to include those operating in other fisheries who
 14 simultaneously hold more than one permit for the whiting fishery but use only one and hold permits
 15 as “investments.” AR009661 at 69-70 (Decision Memo at p. 9-10). Using this never before applied
 16 “portfolio” analysis as a basis for IFQ allocations is inconsistent with the explicit words of the
 17 statute that focus on “*the* fishery” and emphasize “investments in, and dependence on “*the* fishery”
 18 and not other fisheries.

19 Fourth, without citing any basis in the statute, NOAA has placed inordinate emphasis on the
 20 “control dates” published at the beginning of the regulatory process. AR007569 at 79 (78 Fed. Reg.
 21 18879, 18889). Yet, a control date is not a regulation and is merely notice. *See e.g.*, 78 Fed. Reg.
 22 17340 at 17341 (“notification [of a control date] is intended to promote awareness...and to provide
 23 notice to the public that any current or future accumulation of fishing privilege interests...may be
 24 affected, restricted, or even nullified....”). No one can reasonably rely on a control date, as the
 25 agency appears to believe is appropriate here. *Id.* (“establishment of a control date does not
 26 obligate the Council to use this control date or take any action or prevent the Council from selecting
 27 another control date or imposing limits on permits acquired prior to the control date.”). In fact, the
 28 agency has rewarded those who left the fishery on speculation that, regardless of any fishing

1 activity after 2003, they would not only receive IFQ but also be able to lease or sell it to active
 2 participants. Rewarding speculative behavior that anticipates regulatory change before a regulation
 3 becomes law is objectively unfair to those who pursued their fishing livelihoods in the fishery after
 4 2003 by and contrary to the goals of Amendment 20 and the intent of Congress.

5 Finally, application of the term “dependence” is directly inconsistent with how the agency
 6 has interpreted and applied the term in other limited access programs, notably the programs
 7 discussed above in the *Yakutat* and *Alliance Against IFQs* cases. *See* Sec. III(B) above. The
 8 agency has consistently found that, in general, greater history and active recent participation reflect
 9 dependence on a particular fishery. *See e.g., Yakutat, Inc. v. Guitierrez*, 407 F.3d 1054 (9th Cir.
 10 2005); *Alliance Against IFQs v. Brown*, 84 F.3d 343 (9th Cir. 1996). NOAA even included a recent
 11 participation requirement for IFQ allocations to processors for this fishery, using a similar concept.
 12 *See e.g., AR003035* at 64 (EA, Sec. 2.1.2 at p. 25). Why the agency suddenly changed its practice
 13 to defend allocations in the Pacific whiting to those with no active recent participation and less
 14 fishing history was not explained on any reasonable basis consistent with the objectives of the Act.

15 **D. NOAA’s failure to properly consider and credit recent processing history after**
 16 **2004 for dependent, small, and local shoreside processors despite the changes in**
 17 **the markets for the fishery after 2004, violates the Magnuson-Stevens Act**

18 Plaintiffs are entitled to summary judgment as to their Second Cause of Action because
 19 Federal Defendants failed to take into account the local processors’ active participation in the
 20 Pacific whiting fishery after 2004. Compl. at ¶¶35-37. Similar to the impact on harvesters, the
 21 adoption of the 2013 IFQ Regulations harms processors who have not left the fishery but rather
 22 invested in it and supported it over the years. For reasons described above in Section III(C) relating
 23 to harvesters, NOAA’s interpretation of the term “dependence” also fails with respect to processors.

24 Moreover, the 2013 IFQ Regulations blatantly ignore the economic realities of the Pacific
 25 whiting fishery and improperly fail to take into account the processors’ dependence on it. 16 U.S.C.
 26 § 1853(b)(6)(C). The changes in the Pacific whiting fishery are reflected in the increased
 27 investments by processors who currently participate in the fishery. Over the last ten years, the
 28 Pacific whiting fishery has experienced dramatic changes and become one of the best managed
 fisheries in the nation, if not the world. The changes are the result of the enhanced diversification

1 of product forms, development of new international markets for whiting products, entry of new
 2 processors into the market, and increased ex vessel prices, for example. *See e.g.*, Parker Decl. at ¶7;
 3 Rydman Decl. at ¶4-5. The overall economic stability and value of the fishery has improved for a
 4 greater number of participants. At the same time, the fishery has recovered from its overfished
 5 status. *See e.g.*, AR003035 at 79 (EA, Sec. 3.3.1.2 at p. 40). In addition, the agency admits that
 6 “whiting landings have been shifting northward in recent years (due to fish availability and
 7 investments in ports.”). AR007569 at 71 (78 Fed. Reg. 18879, 18881). Under Alternative 4, eight
 8 percent of the overall quota would be shifted north to Plaintiffs, or two percent of the processor
 9 quota and six percent of the harvester quota. *Id.* Moreover, the agency agrees “that northern
 10 processors may have a greater opportunity to process larger and higher quality fish.” *Id.*

11 The 2013 IFQ Regulations do not take the processors’ support of the fishery into account in
 12 violation of the Magnuson-Stevens Act. 16 U.S.C. § 1853(b)(6)(C) and (E). Processors, like Ocean
 13 Gold and Jessie’s, who presently participate in the fishery have contributed to the improvements in
 14 the fishery over the years and have done so to support the fishery on which they are dependent for
 15 their livelihoods. *See e.g.*, Marchand Decl. at ¶2-4. Processors who are active in the fishery have
 16 spent significant capital to upgrade and expand their processing facilities and add capacity to their
 17 operations as contemplated by the Act, 16 U.S.C. § 1853a(5)(A)(iii); *see e.g.*, Rydman Decl. at ¶4-
 18 5, 10. Their investment in the fishery has in turn benefitted fishing vessels, who have been able to
 19 expand in-line with the processors’ expansion. *Id.* at ¶11. The processors have also been able to
 20 employ increased numbers of workers to run their facilities, which benefits the local communities
 21 that are also dependent on the fishery and should have been considered under the Act, 16 U.S.C.
 22 §1853a(5)(A)(ii). Rydman Decl. at ¶11; Marchand Decl. at ¶3.

23 These activities by processors represent “investments in, and dependence upon, the fishery”
 24 as set forth in the Magnuson-Stevens Act. 16 U.S.C. § 1853a(5)(A)(iii). NOAA explained that:

25 [D]ependence upon the fishery relates to the degree to which
 26 participants rely on the whiting fishery as a source of wealth, income
 27 or employment to financially support their business. Current harvests,
 28 historical harvests, levels of investment over time, and levels of
 participation over time are all aspects of dependence, as they can all
 be connected to the processes that fishers and processors use to
 generate income. AR007569 at 74 (78 Fed. Reg. 18879, 18884).

1 Yet, NOAA does not and cannot explain why it elected to benefit a subset of processors who may
 2 have left the fishery taking their investments, jobs, and support of the fishery with them at the
 3 expense of those processors who have continuously participated in and supported the fishery as
 4 evidenced by their recent history. Rather, NOAA has ignored without justification the investments
 5 of processors who continue to be in the fishery, which reflects their ongoing dependence on the
 6 fishery. NOAA's action in maintaining the status quo without basis unfairly harms these processors
 7 who have long participated in the fishery and continue to do so.¹²

8 Including the later processing history years, which NOAA failed to do, would have enlarged
 9 the initial IFQ allocation to processors, such as Ocean Gold and Jessie's, who have proven their
 10 support of and dependence on the fishery. *See e.g.*, Marchand Decl. at ¶8; Rydman Decl. at ¶3-6,
 11 11. The reduced IFQ allocation, however, forces processors to lease or buy additional IFQ to
 12 maximize their operating capacity. *Id.* at ¶9; Rydman Decl. at ¶9. Thus, NOAA's decision to limit
 13 processing history to the qualifying period of 1998-2004 rather than include more recent history
 14 harms the processors' ability to earn a return on their investments in the fishery through reduced
 15 capacity as well as continue to support the local fishing communities. Marchand Decl. at ¶9-10.
 16 Both Ocean Gold and Jessie's have made significant capital investments that benefitted the fishery
 17 but their ability to fully realize the benefits of those investments is inhibited because of their
 18 reduced IFQ. *Id.* at ¶3; Rydman Decl. at ¶4-5, 11.

19
 20 **E. The failure to properly consider national standards set forth in the Magnuson-Stevens Act violates the Magnuson-Stevens Act**

21 The 2013 IFQ Regulations also violate the Magnuson-Stevens Act because they are
 22 inconsistent with the National Standards set forth in the Magnuson-Stevens Act, 16 U.S.C. § 1851,
 23 and related Guidelines. As explained above in Section II(B)(2), any regulations promulgated to
 24 implement an FMP, "shall be consistent with...national standards for fishery conservation and
 25 management...[,]" including the consideration of efficiency (National Standard 5), the ability to
 26 minimize costs (National Standard 7), and the importance of fishery resources to local, dependent
 27

28 ¹² *See generally*, AR016090 attached as Exh. 1 to Rydman Decl. (Comments submitted by Christopher Kayser on behalf of Ocean Gold, January 29, 2013).

1 communities (National Standard 8). §16 U.S.C. 1851(a)(5), (7), and (8); 50 C.F.R. §§600.330,
 2 600.340, and 600.345. NOAA improperly failed to take these standards into account without
 3 sufficient justification in promulgating the 2013 IFQ Regulations and summary judgment is
 4 appropriate as to Plaintiffs' Third, Fourth, and Fifth Causes of Action.

5 **1. The 2013 IFQ Regulations do not properly consider efficiency as**
 6 **required under National Standard 5**

7 Plaintiffs alleged in their Third Cause of Action that the 2013 IFQ Regulations do not
 8 properly consider the efficiency of the fishery as required by National Standard 5 by failing to
 9 allocate IFQ to those most dependent on and active in the Pacific whiting fishery. Compl. at §41.
 10 National Standard 5 provides that “[c]onservation and management measures shall, where
 11 practicable, consider efficiency in the utilization of fishery resources; except that no such measure
 12 shall have economic allocation as its sole purpose.” 16 U.S.C. §1851(a)(5).

13 Under the Guidelines, management measures aimed at efficiency should “not simply
 14 redistribute gains and burdens without an increase in efficiency.” 50 C.F.R. §600.330(b)(2)(i). Yet,
 15 NOAA allocation of IFQ to non-active permit-holders would have at least three results without any
 16 increasing efficiency and in fact, would decrease efficiency. First, the non-active permit-holders
 17 could return to the Pacific whiting fishery at any time, adding fishing capacity that had been absent
 18 since 2003, contrary to the goal of Amendment 20. Second, the non-active permit-holders could
 19 lease their IFQ to active permit-holders, increasing the cost of harvesting Pacific whiting and
 20 thereby reducing the efficiency of the active fleet. Third, the non-active permit-holders could, at the
 21 appropriate time, sell their IFQ, which also would increase the on-going cost of the active permit-
 22 holders. Federal Defendants did not adequately consider this efficiency issue or make any effort to
 23 minimize the inefficiencies that would result from the initial allocation of IFQ, for example, by
 24 denying IFQ to those who made the economic decision to leave the fishery after 2003.

25 **2. The 2013 IFQ Regulations do not properly minimize costs as required**
 26 **under National Standard 7**

27 In their Fourth Cause of Action, Plaintiffs allege that Federal Defendants did not adequately
 28 consider possible methods of minimizing costs from creation of the IFQ Program. Compl. at ¶¶43-

1 45. Specifically, the 2013 IFQ Regulations violate the Magnuson-Stevens Act because Federal
 2 Defendants' failed to consider the requirement of National Standard 7 that fishery management
 3 measures "shall, where practicable, minimize costs and avoid unnecessary duplication." 16 U.S.C.
 4 § 1851(a)(7); 50 C.F.R. §600.340(a). The Guidelines are clear that management measures "should
 5 not impose unnecessary burdens" on participants or the fishery. 50 C.F.R. §600.340(c). The 2013
 6 IFQ Regulations do just the opposite. Federal Defendants were aware of the fact that IFQ Programs
 7 frequently result in leasing and sale costs to those who require additional IFQ in their on-going
 8 fishing operations. *See e.g.*, AR009661 at 70 (Decision Memo at p. 10). Such costs do not exist
 9 prior to the institution of an IFQ Program. Indeed, Federal Defendants failed to analyze this
 10 question during reconsideration of the method for allocating initial IFQ in the Pacific whiting
 11 fishery. Rather, one method of minimizing costs to active permit-holders in the fishery is to deny
 12 IFQ to those who left the fishery after 2003, thereby making a larger pool of IFQ for those who
 13 depend on the fishery as evidenced by their fishing history and recent participation.

14 **3. The 2013 IFQ Regulations do not properly consider local community**
 15 **dependence on the fishery as required under National Standard 8**

16 As alleged in the Fifth Cause of Action, Federal Defendants did not take into account the
 17 importance of the fishery to local communities as required by National Standard 8. Compl. at ¶¶
 18 47-49. National Standard 8 requires that fishery management measures "shall, consistent with the
 19 conservation requirements (including the prevention of overfishing and rebuilding of overfished
 20 stocks), take into account the importance of fishery resources to fishing communities by utilizing
 21 economic and social data that meet the requirements of paragraph (2), in order to (A) provide for
 22 the sustained participation of such communities, and (B) to the extent practicable, minimize adverse
 23 economic impacts on such communities." 16 U.S.C. § 1851(a)(8). As a result, the Guidelines
 24 direct Federal Defendants to consider "the importance of fishery resources to fishing communities"
 25 when designing an FMP. 50 C.F.R. §600.345(b).

26 Such consideration invariably entails assessing relative dependence of several communities
 27 and taking such dependence into account. Plaintiff Ocean Gold runs its own processing facility
 28 Westport, Washington; Plaintiff Jessie's operates its plant in Ilwaco, Washington. Rydman Decl. at

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1 ¶1, 3; Marchand Decl. at ¶1. Both are highly important to the economic structure of their local
2 fishing communities. Rydman Decl. at ¶11; Marchand Decl. at ¶3. Federal Defendants failed to
3 adequately consider the importance of these communities by not utilizing the most recent
4 processing history between 2004 and 2010 in making initial IFQ allocations.

5 **F. The 2013 IFQ Regulations are arbitrary and capricious in violation of the APA**

6 Summary judgment should be granted as to Plaintiffs’ Sixth Cause of Action that the 2013
7 IFQ Regulations are arbitrary, capricious, an abuse of discretion and otherwise not in accordance
8 with law in violation of the APA. See cases, Section II(C) above. For the reasons above, the 2013
9 IFQ Regulations violate the Act as to the initial allocation of IFQ for Pacific whiting and Federal
10 Defendants did not and cannot articulate a rational basis for failing to take more recent history into
11 account and otherwise properly consider the requirements of National Standards 5, 7, and 8.

12 **IV. REQUESTED RELIEF**

13 Upon summary judgment, Plaintiffs respectfully request that this Court issue a remedial
14 order directing Federal Defendants to bring the initial IFQ allocations into alignment with the
15 Magnuson-Stevens Act. Plaintiffs further request that Federal Defendants be ordered to do so on an
16 expedited basis to be completed by April 1, 2014.

17 **V. CONCLUSION**

18 For the reasons above, Plaintiffs respectfully request that this Court grant summary
19 judgment as to each of their claims alleged in the Complaint that 2013 IFQ Regulations violate the
20 Magnuson-Stevens Act and the APA.

21 Respectfully submitted,

22 DATED: July 29, 2013

DAVIS WRIGHT TREMAINE LLP

23 By : /s/ James P. Walsh

24 James P. Walsh
25 Gwen L. Fanger

26 Attorneys for Plaintiffs, Pacific Dawn LLC, Ocean
27 Gold Seafoods Inc., Chellissa LLC, and Jessie’s
28 Ilwaco Fish Company

Background

On August 1, 2012, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), the Department initiated the first sunset review of the suspended antidumping duty investigation on lemon juice from Mexico.¹ On August 1, 2012, pursuant to section 752 of the Act, the ITC instituted the first sunset review of the suspended antidumping duty investigation on lemon juice from Mexico.² As a result of its review, on June 28, 2013, the Department found that termination of the suspended antidumping duty investigation on lemon juice from Mexico would likely lead to continuation or recurrence of dumping.³ The Department thus notified the ITC of the magnitude of the margins of dumping rates likely to prevail if the suspended investigation were terminated.

On August 1, 2013, the ITC published its determination, pursuant to section 751(c) of the Act, that termination of the antidumping duty suspended investigation on lemon juice from Mexico would not be likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time.⁴

Therefore, pursuant to section 351.222(i)(1)(iii) of the Department’s regulations, the Department is publishing this notice of the termination of the suspended antidumping duty investigation on lemon juice from Mexico.

Scope of the Suspended Investigation

The merchandise covered by the suspended investigation includes certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (e.g., organic or not), processed form (e.g., frozen or not-from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail-sized

containers ready for sale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.

Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this suspended investigation is dispositive.

Termination

As a result of the determination by the ITC that termination of the suspended antidumping duty investigation would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department is terminating the suspended antidumping duty investigation on lemon juice from Mexico. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of termination is September 21, 2012 (i.e., the fifth anniversary of the effective date of publication in the **Federal Register** of the notice of suspension of investigation).⁵ Because the Department is terminating the suspended antidumping duty investigation, the Agreement will also terminate, effective September 21, 2012.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions. These five-year (sunset) reviews and notice are in accordance with section 751(d)(2) the Act and published pursuant to section 777(i)(1) of the Act.

Dated: August 1, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–19068 Filed 8–6–13; 8:45 am]

BILLING CODE 3510-DS-P

⁵ Suspension of Antidumping Duty Investigation: Lemon Juice From Mexico, 72 FR 53995 (September 21, 2007).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Statement of Financial Interests, Regional Fishery Management Councils

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 7, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to William Chappell, (301) 427–8505 or william.chappell@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision and extension of a current information collection).

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Stevens Act) authorizes the establishment of Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such fishery management plans under circumstances (a) which will enable the States, the fishing industry, consumers, environmental organizations, and other interested persons to participate in the development of such plans, and (b) which take into account the social and economic needs of fishermen and dependent communities.

Section 302(j) of the Magnuson-Stevens Act requires that Council members appointed by the Secretary, Scientific and Statistical Committee (SSC) members appointed by a Council under Section 302(g)(1), or individuals nominated by the Governor of a State for

¹ Initiation of Five-Year (“Sunset”) Review and Correction, 77 FR 45589 (August 1, 2012).

² [Investigation Nos. 731–TA–1105–1106 (Review)] Lemon Juice from Argentina and Mexico, 77 FR 45653 (August 1, 2012).

³ Lemon Juice From Mexico: Final Results of Full Sunset Review of the Suspended Antidumping Duty Investigation, 78 FR 38944 (June 28, 2013).

⁴ [Investigation Nos. 731–TA–1105–1106 (Review)] Lemon Juice from Argentina and Mexico, 78 FR 46610 (August 1, 2013).

possible appointment as a Council member, disclose their financial interest in any Council fishery. These interests include harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction, or with respect to an individual or organization with a financial interest in such activity. The authority to require this information and reporting and filing requirements has not changed.

The Secretary is required to submit an annual report to Congress on action taken by the Secretary and the Councils to implement the disclosure of financial interest and recusal requirements, including identification of any conflict of interest problems with respect to the Councils and SSCs and recommendations for addressing any such problems.

The Act further provides that a member shall not vote on a Council decision that would have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interest of other participants in the same gear type or sector of the fishery. However, an affected individual who is declared ineligible to vote on a Council action may participate in Council deliberations relating to the decision after notifying the Council of his/her recusal and identifying the financial interest that would be affected.

Revision: NMFS is in the process of revising the form by adding clearer instructions, providing examples of submissions, and updating the form to provide a more appropriate and intuitive format.

II. Method of Collection

Respondents submit paper forms. Seated Council members appointed by the Secretary, including the Tribal Government appointee and SSC members, must file a financial interest form within 45 days of taking office and must provide updates of their statements at any time any such financial interest is acquired, or substantially changed.

III. Data

OMB Control Number: 0648-0192.

Form Number: NOAA Form 88-195.

Type of Review: Regular submission (request for revision and extension of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 330.

Estimated Time per Response: 35 minutes.

Estimated Total Annual Burden Hours: 193.

Estimated Total Annual Cost to Public: \$128.70 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 2, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013-19006 Filed 8-6-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2013-OS-0170]

Proposed Collection; Comment Request

AGENCY: White House Communications Agency (WHCA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the White House Communications Agency (WHCA) announces a proposed public information collection and seeks public comment on the provisions thereof.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 7, 2013

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the White House Communications Agency (WHCA/WACC/ISD), ATTN: Chris Cothran, 2743 Defense Boulevard, SW Washington, DC 20373-5815.

Title; Associated Form; and OMB Number: DefenseReady; OMB Control Number 0704-TBD.

Needs and Uses: The information collection requirement is necessary to obtain, track and record the personnel security data, training information and travel history within White House Military Office (WHMO) and White House Communications Agency (WHCA).

Affected Public: DoD Contractors, retired military members, and agency visitors.

Annual Burden Hours: 38.

Number of Respondents: 150.

Responses per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are DoD Contractors, retired military members who have

GROUND FISH ESSENTIAL FISH HABITAT REVIEW: SUMMARY OF PROPOSALS RECEIVED AND PROCESS FOR COMPLETION

The Pacific Fishery Management Council (Council) issued a request for proposals to modify provisions of Pacific Coast groundfish essential fish habitat (EFH), with proposals due July 31, 2013. Eight proposals were received, representing a wide substantive and geographic range. Two proposals were from National Marine Sanctuaries (NMS), four were from conservation organizations, one from a commercial fishing-related group, and one was co-sponsored by a NMS and the Washington State Department of Fish and Wildlife. All eight proposals and supporting documentation are available on the Council's ftp site: ftp.pccouncil.org/pub/GF_EFH_Review_2011-2012. The RFP and other primary documents related to the EFH review can be found at <http://www.pccouncil.org/2013/05/25450/rfp-gf-efh-may2013/>. Following is a brief summary of each proposal.

Proposal Summaries

Fishermen's Marketing Association (FMA)

The FMA proposal is to modify the existing bottom trawl closed area known as Eel River Canyon, such that the eastern boundary of the closure would align with the 75 fathom contour. This also aligns with the eastern boundary of the trawl RCA. The proponents state that the existing eastern boundary extends into sandy bottom habitat that is outside of the canyon area. The proposal was considered by the Council in 2008, under an interim proposal process, but the decision was made at that time to forego any EFH changes until the periodic review was completed.

Oceana/Natural Resources Defense Council/Ocean Conservancy (Oceana/NRDC/OC)

Oceana also submitted a proposal in 2008 under an interim proposal process, but on a much more limited scale than the current proposal. As with the Eel River Canyon proposal, the Council chose to forego making any changes to EFH, until the periodic review was completed. The current Oceana/NRDC/OC proposal is to create or modify 66 bottom trawl closed areas, open nine areas to bottom trawling that are currently closed, improve enforcement of EFH Conservation Areas, implement new management measures related to midwater trawl gear in EFH Conservation Areas, improve the identification of major prey species for groundfish, and add all West Coast waters deeper than 3500 meters, as EFH.

Monterey Bay National Marine Sanctuary (MBNMS)

The MBNMS proposal is to create three and modify seven discrete areas that would be closed to bottom trawling (except demersal seine gear), and to open five areas that are currently closed to bottom trawling. The proposal also includes conceptual "Voluntary Management Areas" as a pilot project that would involve voluntary agreements to avoid bottom trawling in three areas; and proposes added enforcement provisions related to location and deployment of trawl gear.

Gulf of the Farallones National Marine Sanctuary (GFNMS)

The GFNMS proposal is to modify one existing bottom trawl closed area and add two additional areas, based on presence of biogenic habitats including rocky reefs and canyons, which are currently included in groundfish EFH descriptions as habitat elements of HAPCs. The proposal offers options for one of the new closed areas to be closed to bottom trawl gear (except demersal

seine), or to all bottom contact gear. The other two areas are proposed as closed to bottom trawl gear (except demersal seine).

Greenpeace

Greenpeace proposes identifying nine submarine canyon areas as EFH, applying protective measures to freeze the existing footprint of fishing activities, and beginning a process to phase out some fishing gear types such as drift gill nets and bottom trawls. In many cases, the proposed canyon areas co-occur with existing HAPCs or other management or Conservation Areas. The nine proposed areas are distributed between the Washington coast and (approximately) Morro Bay, California.

Environmental Defense Fund (EDF)

EDF proposes eliminating the small footprint requirement south of 40° 10'N, Latitude, to provide greater protection to shelf soft bottom habitats. The requirement was designed to decrease effort over rocky reef habitats, but EDF notes that greater impact to soft bottom habitat has been a trade-off. The proposal suggests that rocky reef habitats and species will still be protected because of the risk of catching rebuilding species and exceeding individual quota pounds.

Olympic Coast National Marine Sanctuary (OCNMS) and Washington State Department of Fish and Wildlife (WDFW)

This proposal offers three options for modifying the existing Olympic 2 bottom trawl closed area. All three options include extending the current prohibition on bottom trawl gear to include all bottom contact gear. Option 1 maintains status quo spatial boundaries, while Options 2 and 3 propose expanding the spatial boundaries. The proposal would apply only to non-tribal fisheries.

Marine Conservation Institute (MCI)

The MCI proposes 29 new areas for additional habitat protections. Most are adjacent to existing closed areas, although several are spatially distinct from existing areas closed to various types of bottom fishing gear. Seven areas would be closed to all bottom contact gear 22 of the new areas are proposed to be closed to bottom trawl gear and the proposed closed areas are distributed along the entire West Coast.

Process

The proposals were posted to the Council's ftp site on August 5, 2013, and are available to Council members, Council Advisory Bodies (ABs), and the public who wish to read them. Although groundfish EFH is not on the September agenda, some ABs expressed interest in initiating review of the proposals as soon as possible. Therefore, they have been made available.

The Essential Fish Habitat Review Committee will develop the EFH review Phase 2 Report for consideration by the Council at the November 2013 meeting in Costa Mesa, California. The report will also summarize and offer evaluations of the proposals, and will potentially identify EFH topic areas that were not addressed by any of the proposals. The report will also briefly summarize the new information and data compiled during Phase 1 of the review process and make recommendations to the Council about moving forward with changes to groundfish EFH.

If the Council chooses to make changes to groundfish EFH, it will initiate a fishery management plan amendment process and may use recommendations from the EFHRC, ABs, the public, and the proposals to frame the overall scope of the amendment. Under that scenario, the proposals, the Phase 1 and Phase 2 Reports, the data catalogue, and the National Marine Fisheries Service Synthesis document will provide important resources in establishing alternatives for the Council to consider during the amendment process.

September 2013



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 1315 East-West Highway
 Silver Spring, Maryland 20910

THE DIRECTOR

JUL 18 2013

Dr. Donald O. McIsaac
 Executive Director
 Pacific Fishery Management Council
 7700 NE Ambassador Place, Suite 101
 Portland, OR 97220

RECEIVED

JUL 25 2013

Dear Dr. McIsaac:

PFMC

This letter is to inform you of the final action (RIN 0648-AW62) to amend guidelines for National Standard 2 (NS2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) regarding scientific information.

This action provides guidance on the use of best scientific information available for the effective conservation and management of fisheries managed by federal Fishery Management Plans. It establishes minimum standards for scientific peer review to ensure the reliability, credibility, and integrity of the scientific information used in fishery conservation and management measures. This action also adds new language to the NS2 guidelines regarding the advisory 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. Lastly, the revised NS2 guidelines also clarify the content and purpose of the Stock Assessment and Fishery Evaluation Report and related documents.

The MSA establishes that each Council and the Secretary may establish a peer-review process, and these NS2 guidelines address the protocols for such a process. Each Council and its associated NOAA Fisheries Science Center has developed and is using a peer review process (e.g., SEDAR in Southeast, SAW-SARC in Northeast, and comparable processes elsewhere) that may broadly meet the NS2 guidelines, but some modifications may improve those processes. To ensure that current and planned peer-review processes meet the NS2 guidelines, I would request that you, in conjunction with your Science Center and Regional Office, review the terms of reference for current peer-review processes and, if necessary, make appropriate adjustments with regard to these final National Standard 2 guidelines.

The intended effect of these revisions to the NS2 guidelines is to ensure that scientific information, including its collection and analysis, has been validated through peer review, as appropriate; is transparent to the public; and is used appropriately by SSCs, Councils, and NOAA Fisheries 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 the Councils, while recognizing regional differences between the Councils' organization, practices, and procedures.

THE ASSISTANT ADMINISTRATOR
 FOR FISHERIES



This final action is minimally revised from the proposed action published on December 11, 2009 (74 FR 65724). Changes were made only to clarify the guidelines, as recommended by public comments.

I want to commend the Councils and your Scientific and Statistical Committees for the strong scientific review and transparency processes already in place. This final rule will build upon that great progress and further strengthen the reliability and credibility of scientific information used by NOAA Fisheries.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel D. Rauch III', written in a cursive style.

Samuel D. Rauch III
Deputy Assistant Administrator
for Regulatory Programs,
performing the functions and duties of the
Assistant Administrator for Fisheries

cc: Mr. Dan Wolford, Chair

§ 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, environmental, 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:

(i) Evaluating the potential 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; and

(ii) Identifying areas where additional management measures are needed.

(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.

(3) Information-limited fisheries, commonly referred to as “data-poor” fisheries, may require use of simpler assessment methods and greater use of proxies for quantities that cannot 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 includes data compiled directly from surveys or sampling programs, and 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. Scientific information includes established and emergent scientific information. Established science is scientific knowledge derived and verified through a standard scientific process that tends to be agreed upon often without controversy. Emergent science is relatively new knowledge that is still evolving and being verified, therefore, may potentially be uncertain and controversial. Emergent science should be considered more thoroughly, and scientists should be attentive to effective communication of emerging science.

(5) Science is a dynamic process, and new scientific findings constantly advance the state of knowledge. Best scientific information is, therefore, not static and ideally 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) Criteria to consider when evaluating best scientific information are 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 may be a useful 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 scientific points of view should be acknowledged and addressed openly when there is a diversity of scientific thought.

(C) Relevant local and traditional knowledge (*e.g.*, fishermen's empirical knowledge about the behavior and distribution of fish stocks) should be obtained, where appropriate, and considered when evaluating the BSIA.

(iii) *Objectivity*. Scientific information should be accurate, with a known degree of precision, without addressable bias, and presented in an accurate, clear, complete, and balanced manner. Scientific processes should be free of undue nonscientific influences and considerations.

(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. Public comment should be solicited at appropriate times during the review 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*. Mandatory management actions should not be delayed due to limitations in the scientific information or the promise of future data collection or analysis. In some cases, due to time constraints, results of important studies or monitoring programs may be considered for use before they are fully 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. Sufficient time should be allotted to audit and analyze recently acquired information to ensure its reliability. Data collection methods are expected to be subjected to appropriate review before providing data used to inform management decisions.

(A) For information that needs to be 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 such timing concerns should be explicitly considered when developing conservation and management measures. Late submission of scientific information to the Council process should be avoided if the information has circumvented the review process. Data collection is a continuous process, therefore analysis of scientific information should specify a clear time point beyond which new information would not be considered in that analysis and would be reserved for use in subsequent analytical updates.

(B) Historical information should be evaluated for its relevance to inform the current situation. For example, some species' life history characteristics might not change over time. Other historical data (e.g., abundance, environmental, catch statistics, market and trade trends) provide time-series information on changes in fish populations, fishery participation, and fishing effort that may 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 accuracy and precision of the estimates is adequate, 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 and to correct for known bias to achieve accuracy. 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. The scientific information that supports conservation and management measures considered by the Secretary or a Council should be peer reviewed, as appropriate. 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. Routine updates based on previously reviewed methods require less review than novel methods or data. 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. Other applicable guidance on peer review can be found in the Office of Management and Budget Final Information Quality Bulletin for Peer Review.

(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. 16 U.S.C. 1852(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 Magnuson-Stevens Act 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 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, to the extent practicable, be conducted early in the process of producing scientific information or a work product, so peer review reports are available for the SSC to consider in its evaluation of scientific information for its Council and the Secretary. 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 objectives of the peer review, evaluation of the various stages of the science, and specific recommendations for improvement of the science. 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, as well as to make recommendations regarding areas of missing information, future research, data collection, and improvements in methodologies, and it must not change during the course of the peer review. The scope of work may not request reviewers to provide advice on policy or regulatory issues (e.g., amount of precaution used in decision-making) which are within the purview of the Secretary and the Councils, or to make formal fishing level recommendations which are within the purview of the SSC.

(2) *Peer reviewer selection.* The selection of participants in a peer review should 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. The group of reviewers that constitute the peer review should reflect a balance in perspectives, to the extent practicable, and 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. Potential reviewers who are not federal employees must be screened for conflicts of interest in accordance with the NOAA Policy on Conflicts of Interest for Peer Review Subject to OMB's Peer Review Bulletin or other applicable rules or guidelines.

(A) Under the NOAA policy, peer reviewers must not have any 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: could significantly impair the reviewer's objectivity, or could create an unfair competitive advantage for a person or organization.

(B) 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. For reviews requiring highly specialized expertise, the limited availability of qualified reviewers might result in an exception when a conflict of interest is unavoidable; in this situation, the conflict must be promptly and publicly disclosed. 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.

(iii) *Independence.* Peer reviewers must not have contributed or participated in the development of the work product or scientific information under review. For peer review of products of higher novelty or controversy, a greater degree of independence is necessary to ensure credibility of the peer review process. Peer reviewer responsibilities should rotate across the available pool of qualified reviewers or among the members on a standing peer review panel to prevent a peer reviewer from repeatedly reviewing the same scientific information, recognizing that, in some cases, repeated service by the same reviewer may be needed because of limited availability of specialized expertise.

(3) *Transparency.* A transparent process is one that ensures that background documents and reports from peer review are publicly available, subject to Magnuson-Stevens Act confidentiality requirements, and allows the public full and open access to peer review panel meetings. The evaluation and review of scientific information by the Councils, SSCs or advisory panels must be conducted in accordance with meeting procedures at § 600.135. Consistent with that section, public notice of peer review panel meetings should be announced in the FEDERAL REGISTER with a minimum of 14 days and with an aim of 21 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.

(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 evaluation and 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, 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. 16 U.S.C. 1852(g)(1)(B).

(1) SSC scientific advice and recommendations to its Council are based on scientific information that the SSC determines to meet the guidelines for best scientific information available as described in paragraph (a) of this section. SSCs may conduct 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 need to engage in debate on technical merits. Debate and evaluation of scientific information is the role of the SSC.

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

(3) If an SSC as a body conducts a peer review established under Magnuson-Stevens Act section 302(g)(1)(E) or individual members of an SSC participate in such a peer review, the SSC members must meet the peer reviewer selection criteria as described in paragraph (b)(2) of this section. In addition, the financial disclosure requirements under § 600.235, Financial Disclosure for Councils and Council committees, apply. When the SSC as a body is conducting a peer review, it should strive for consensus and must meet the transparency guidelines under 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 consider 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 a 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 consider the peer review report and make recommendations to the Council as required under Magnuson-Stevens Act section 302(g)(1)(B).

(5) If an SSC disagrees with the findings or conclusions of a peer review, in whole or in part, the SSC must prepare a report outlining the areas of disagreement, and the rationale and information used by the SSC for making its determination. This report must be made publicly available.

(6) Annual catch limits (ACLs) developed by a Council may not exceed its SSC's fishing level recommendations. 16 U.S.C. 1852(h)(6). Per the National Standard 1 Guidelines, the SSC fishing level 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)). The SSC is expected to take scientific uncertainty into account when making its ABC recommendation (§ 600.310(f)(4)). The ABC recommendation may be based upon input and recommendations from the peer review process. Any such 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 the Secretary and the 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. Each SAFE report must be scientifically based with appropriate citations of data sources and information. Each SAFE report 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 ensure that SAFE reports are prepared and updated or supplemented as necessary whenever new information is available to inform management decisions such as status determination criteria (SDC), 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 Secretary and Council for making 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 relevant state and Federal fishery management programs. The SAFE report should contain an explanation of information gaps and highlight needs for future scientific work. Information on bycatch and safety for each fishery should also be summarized. 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 scientific information when it exists:

(i) Information on which to base catch specifications and status determinations, including the most recent stock assessment documents and associated peer review reports, and recommendations and reports from the Council's SSC.

(A) 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)).

(B) Information 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 (§ 600.310(f)(2)). The best scientific information available to determine 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

(C) The best scientific information available in support of 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 sources of fishing mortality (both landed and discarded), including commercial and recreational catch and bycatch in other fisheries and a description of data collection and estimation methods used to quantify total catch mortality, as required by the National Standard 1 Guidelines (§ 600.310(i)).

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

(iv) Information on EFH to be included in accordance with the EFH provisions (§ 600.815(a)(10)).

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

(4) Transparency in the fishery management process is enhanced by complementing the SAFE report with the documentation of previous management actions taken by the Council or Secretary including a summary of the previous ACLs, ACTs, and accountability measures (AMs), and assessment of management uncertainty.

(5) 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. Sources of information in the SAFE report should be referenced, unless the information is proprietary.

(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. Scientific information collections for stocks managed cooperatively by Federal and State governments should be coordinated with the appropriate state jurisdictions, to the extent practicable, to ensure harvest information is available for the management of stocks that utilize habitats in state and federal managed waters. 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 (5) of this section apply equally to FMPs and FMP amendments.

DRAFT FINANCIAL DISCLOSURE REPORT
For Regional Fishery Management Council Voting Members, Nominees and
Members of a Scientific and Statistical Committee

Who needs to file a financial disclosure?

You, because you were nominated by the Governor of a state or appointed by the Secretary of Commerce to serve as a voting member of a Regional Fishery Management Council (Council); or you are a nominee to or a member of a Science and Statistical Committee (SSC).

What is the purpose of a financial disclosure?

The duties and responsibilities of your position require you to file the Financial Disclosure Report to fulfill the requirements of the Magnuson-Stevens Act. The purpose of this report is to assist you and NMFS in avoiding conflicts between official duties and private financial interests or affiliations. You may not vote on any Council decision that would have a significant and predictable effect on a financial interest disclosed in your report. Under penalty of law, please ensure that the information you provide is complete and accurate.

What must I disclose on this form?

The Magnuson-Stevens Act requires the disclosure of any financial interest in harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which a Council has jurisdiction. This also includes employment with an entity that provides consulting, legal, or representational services relating to harvesting, processing, lobbying, advocacy, or marketing activities. You must disclose such financial interest held by yourself; your spouse, minor child, partner; or any organization (other than the Council) in which you are serving as an officer, director, trustee, partner, or employee. This does not include financial interest in State regulated fisheries or interests in entities engaging in scientific fisheries research.

When do I need to file my financial disclosure?

Nominees: This form must be filed by each nominee for Secretarial appointment with the Assistant Administrator by April 15 or, if nominated after March 15, 1 month after nomination by the Governor.

Members: A seated voting member appointed by the Secretary must file this form with the Executive Director of the appropriate Council within 45 days of taking office; and must file an update with the Executive Director of the appropriate Council within 30 days of the time any such financial interest is acquired or substantially changed. All Council members must file this form annually by February 1st regardless of any change in information.

SSC Nominees and Members: Nominees to an SSC must file within 45 days prior to scheduled appointment to the SSC. A member of a SSC must file this form with the Executive Director of the appropriate Council within 45 days of taking office; and must file an update with the Executive Director within 30 days of the time any such financial interest is acquired or substantially changed. All SSC members must file this form annually by February 1st regardless of any change in information.

Questions?

If you have any questions about how to complete this form, please contact your Council Executive Director, NMFS Regional Office or the NOAA General Counsel for your Council.

PENALTIES

Knowing and willful falsification of information required to be reported may subject you to criminal prosecution or subject you to civil penalties. It is unlawful for an affected individual to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required by the Magnuson Stevens Act, or to knowingly vote on a Council decision in violation of this Act. In addition to the criminal penalties applicable, a violation of this provision may result in removal from Council or SSC membership.

FINANCIAL DISCLOSURE REPORT

Nominee or Member's Name (*Print last, first, middle initial*) _____

Name of Council or Committee _____

Type of Appointment (*list Nominee, Annual, or Supplemental*) _____

Instructions

1. Carefully read the questions for Parts 1-3 on the following pages.
2. In Part 1, you must answer "yes" or "no" for each question provided. If you select "Yes," check any applicable financial interest from the list below the question and provide the appropriate detail explaining your selection. If you need more room to provide detail, please attach those pages to this form.
3. In Part 2, you must answer "yes" or "no" for each question provided. If you select "Yes," check any applicable financial interest from the list below the question and provide the appropriate detail explaining your selection. If you need more space to provide detail, please attach those pages to this form.
4. In Part 2, if you select "I have no spouse, partner, or minor children to report on," you may skip the rest of Part 2 and move to Part 3. Answer Part 3, if necessary.
5. Sign and date the form.
6. Submit the completed form to NMFS if a nominee; or to your Council Executive Director if a seated Council member or member of a SSC.

I certify that the statements I have made on this form and all attached statements are true, complete, and correct to the best of my knowledge.

Signature _____

Date (*mm/dd/yyyy*) _____

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The public reporting burden for this information, on this NOAA Form 88-195, is estimated to average XX minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden to the National Marine Fisheries Service, Office of the Chief Information Officer (F/CIO), 1315 East-West Highway, SSMC #3, 3rd Floor, Silver Spring, Maryland 20910.

Public Access to Information

This form, as completed by seated members of the Regional Fishery Management Councils, will be retained by the Council, made available on the Council's websites, and made available for public review at reasonable hours at the Council's Office and at each public hearing or public meeting.

Part 1: Personal Financial Interest

Section 1.1: Assets and Ownership

Question 1.1.1

Do you have any **stock, equity or ownership interest** (whole or partial ownership) in a **company or business** engaged in any of the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list and describe each applicable interest, as indicated above. Please include company or business name and fishery or fisheries of interest.

Question 1.1.2

Do you have **stock, equity or ownership interest** (whole or partial ownership) in any **fishing vessel** engaged in the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list and describe each applicable interest, as indicated above. Please include vessel name, fishery or fisheries of interest and gear type.

Question 1.1.3

Do you have **stock, equity or ownership interest** (whole or partial ownership) in any **other entity** engaged in the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list and describe each applicable interest, as indicated above. Please include entity name and fishery or fisheries of interest.

Question 1.1.4

Do you have **any percentage ownership** in or by a **company or business; or other entity** that provides any of the following services related to any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Lobbying
- Advocacy
- Marketing

Please list and describe each applicable interest, as indicated above. Please include company or business name and fishery or fisheries of interest.

Section 1.2: Employment

Question 1.2.1

Do you have employment with any **company or business** engaged in the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list and describe each applicable interest, as indicated above. Please include beginning date of employment, company or business name and fishery or fisheries of interest.

Question 1.2.2

Do you have employment with a **fishing vessel** engaged in the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list and describe each applicable interest, as indicated above. Please include beginning date of employment, vessel name and fishery or fisheries of interest.

Question 1.2.3

Do you have employment with **any other entity** engaged in the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list and describe each applicable interest, as indicated above. Please include beginning date of employment, entity name and fishery or fisheries of interest.

Question 1.2.4

Do you have employment with **any company or business; or other entity** that provides any of the following services related to any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Lobbying
- Advocacy
- Marketing

Please list and describe each applicable interest, as indicated above. Please include beginning date of employment, entity name and fishery or fisheries of interest.

Question 1.2.5

Do you have employment with **any entity that has a percentage ownership in or by another entity** providing any of the following services, or providing equipment or services essential to harvesting, processing, lobbying, advocacy, or marketing activities, in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Consulting
- Legal
- Representational Services

Please list and describe each applicable interest, as indicated above. Please include beginning date of employment, entity name and fishery or fisheries of interest.

Question 1.2.6

Do you have employment with **an association or organization** whose members include companies, vessels, or other entities engaged in any of the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Lobbying
- Advocacy
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list and describe each applicable interest, as indicated above. Please include beginning date of employment, association name and fishery or fisheries of interest.

Section 1.3: Other Service with an association or organization

Question 1.3.1

Are you **servicing as an officer, director, or trustee** of any organization or association whose members include companies or vessels engaged in any of the following activities in any fishery under the jurisdiction of the Council concerned?

No

Yes

Check all that apply:

- Harvesting
- processing
- Lobbying
- Advocacy
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list and describe each applicable interest, as indicated above. Please include beginning date of service, association name and fishery or fisheries of interest.

Part 2: Financial Interest of Spouses, Partners, and Minor Children

If you have no spouse, partner, or minor children report, check the box below and proceed to Part 3.

- I have no spouse, partner, or minor children to report

Section 2.1: Assets and Ownership

Question 2.1.1

Does your spouse, partner, or minor child have any **stock, equity or ownership interest** (whole or partial ownership) in a **company or business** engaged in any of the following activities in any fishery under the jurisdiction of the Council concerned?

- No
 Yes

Check all that apply:

- Harvesting
 Processing
 Marketing
 Provides equipment essential to any of the above activities
 Provides other services essential to any of the above activities

Please list person and relationship and describe each applicable interest, as indicated above. Please include company or business name and fishery or fisheries of interest.

Question 2.1.2

Does your spouse, partner, or minor child have any **stock, equity or ownership interest** in any **fishing vessel** engaged in the following activities in any fishery under the jurisdiction of the Council concerned?

- No
 Yes

Check all that apply:

- Harvesting
 Processing
 Marketing
 Provides equipment essential to any of the above activities
 Provides other services essential to any of the above activities

Please list person and relationship and describe each applicable interest, as indicated above. Please include vessel name, fishery or fisheries of interest and gear type.

Question 2.1.3

Does your spouse, partner, or minor child have any **stock, equity or ownership interest** in any **other entity** engaged in the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list person and relationship and describe each applicable interest, as indicated above. Please include entity name and fishery or fisheries of interest.

Question 2.1.4

Does your spouse, partner, or minor child have **any percentage ownership** in or by a **company or entity** that provides any of the following services for any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Consulting
- Legal
- Representational Services
- Lobbying
- Advocacy
- Marketing

Please list person and relationship and describe each applicable interest, as indicated above. Please include entity name and fishery or fisheries of interest.

Section 2.2 Employment of Spouse, Partner, or Minor Child

Question 2.2.1

Does your spouse, partner, or minor child have employment with any **company or business** engaged in the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list person and relationship and describe each applicable interest, as indicated above. Please include beginning date of employment, company or business name and fishery or fisheries of interest.

Question 2.2.2

Does your spouse, partner, or minor child have employment with a **fishing vessel** engaged in the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list person and relationship and describe each applicable interest, as indicated above. Please include beginning date of employment, vessel name and fishery or fisheries of interest.

Question 2.2.3

Does your spouse, partner, or minor child have employment with **any other entity** engaged in the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list person and relationship and describe each applicable interest, as indicated above. Please include beginning date of employment, entity name and fishery or fisheries of interest.

Question 2.2.4

Does your spouse, partner, or minor child have employment with **any company or business; or other entity** that provides any of the following services related to any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Lobbying
- Advocacy
- Marketing

Please list person and relationship and describe each applicable interest, as indicated above. Please include beginning date of employment, entity name and fishery or fisheries of interest.

Question 2.2.5

Does your spouse, partner, or minor child have employment with **any entity that has a percentage ownership in or by another entity** providing any of the following services, or providing equipment or services essential to harvesting, processing, lobbying, advocacy, or marketing activities, in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Consulting
- Legal
- Representational Services

Please list person and relationship and describe each applicable interest, as indicated above. Please include beginning date of employment, entity name and fishery or fisheries of interest.

Question 2.2.6

Does your spouse, partner, or minor child have employment with **an association or organization** whose members include companies, vessels, or other entities engaged in any of the following activities in any fishery under the jurisdiction of the Council concerned?

- No
- Yes

Check all that apply:

- Harvesting
- Processing
- Lobbying
- Advocacy
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list person and relationship and describe each applicable interest, as indicated above. Please include beginning date of employment, association name and fishery or fisheries of interest.

Section 2.3: Service with an association or organization by Spouse, Partner, or Minor Child

Question 2.3.1

Does your spouse, partner, or minor child **serve as an officer, director, or trustee** of any organization or association whose members include companies, vessels, or other entities engaged in any of the following activities in any fishery under the jurisdiction of the Council concerned?

- No
 Yes

Check all that apply:

- Harvesting
- Processing
- Lobbying
- Advocacy
- Marketing
- Provides equipment essential to any of the above activities
- Provides other services essential to any of the above activities

Please list person and relationship and describe each applicable interest, as indicated above. Please include beginning date of service, entity name and fishery or fisheries of interest.

Part 3: Information Requested of Other Persons

In the event any of the required information, including holdings placed in trust, is not known to you but is known to another person, you should request that other person to submit the information on your behalf and should report such request in the space below.

Please list person and relationship and describe each applicable interest, as described above. Please include entity name and fishery or fisheries of interest.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

SEP - 4 2013

150413SWR2013SF00016:MH

Via Certified Mail

**NOTICE FOR VESSEL OWNERS/OPERATORS OF
CALIFORNIA THRESHER SHARK/SWORDFISH DRIFT GILLNET
(≥14in. mesh) FISHING VESSELS**

This notice contains essential information for vessel owners or operators participating in the CA Thresher Shark/Swordfish Drift Gillnet (≥14in. mesh) Fishery.

Dear California Drift Gillnet Fishery Participant:

This letter is notification of emergency measures in the CA Thresher Shark/Swordfish Drift Gillnet (≥14in. mesh) Fishery effective September 4, 2013 through January 31, 2014 and of your obligation to carry observers on fishing trips as directed by NOAA's National Marine Fisheries Service (NMFS) or its designated contractor, Frank Orth & Associates.

This fishery is being observed under the following authorities: the Magnuson-Stevens Fishery Conservation and Management Act [50 CFR 660.719], and the Marine Mammal Protection Act [50 CFR 229.7].

Summary of Emergency Measures in Place September 4, 2013

NMFS recently issued temporary regulations (effective September 4, 2013 through January 31, 2014) under Section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to: 1) Immediately close the California thresher shark/swordfish drift gillnet (mesh size ≥ 14 inches) (DGN) fishery if one sperm whale is observed killed or seriously injured in DGN gear off California, and 2) require all DGN fishing vessels to carry a NMFS-trained observer in a 100% observer coverage area (Zone). The Zone covers nearly all areas in the U.S. exclusive economic zone (EEZ) deeper than the 1,100 fathom (fm) (2,012 meter (m)) depth contour. Furthermore, owners/operators of vessels intending to fish with DGN gear will be required to install, activate, carry, and operate a vessel monitoring system (VMS) prior to embarking on a DGN fishing trip during the effective period.



100 Percent Observer Coverage Zone

Drift gillnet (mesh size \geq 14 inches) fishing without a NMFS-trained observer is prohibited in the portion of the California EEZ bounded by lines connecting, in order, the following points:

Point	North lat.	West long.	
A	42°0'0"	125°10'12'	Oregon Border at 1100 fm
B	40°22'12"	124°45'0"	
C	40°22'12"	125°45'0"	
D	38°21'0"	123°52'12"	
E	37°29'24"	123°18'0"	
F	37°29'24"	123°30'36"	
G	37°0'0"	123°30'0"	
H	36°36'0"	122°27'0"	
I	36°16'12"	122°31'12"	
J	35°52'30"	122°16'48"	
K	35°0'0"	121°45'0"	
L	34°54'0"	122°0'0"	
M	34°0'0"	122°0'0"	
N	34°0'0"	121°9'0"	
O	32°21'0"	120°0'0"	
P	31°6'0"	118°45'0"	
Q	30°32'31"	121°52'1"	SW corner of CA EEZ
R	EEZ Western Edge		200nm buffer from the U.S. Pacific Coast Shoreline
S	42°0'0"	129°0'0"	NW border of OR EEZ
A	42°0'0"	125°10'12'	Finish back at Point A

Pre-Trip Notification Requirement

The rule establishes a pre-trip notification requirement for **all DGN fishing trips**. This requirement will assist the observer provider in deploying observers to cover 100 percent of fishing effort in the Zone and ensure representative observer coverage of the DGN fleet outside of the Zone. DGN vessel owners/operators **are required to notify** the NMFS-designated observer provider **at least 48 hours prior to departing on all fishing trips**. Vessel owners/operators must provide their name, contact information, vessel name, port of departure, and estimated date and time of departure to the observer provider. Upon receipt of a pre-trip notification, the observer provider will notify the DGN vessel owner/operator whether their fishing trip has been selected for observer coverage. Frank Orth & Associates is the NMFS-

designated observer provider. Frank Orth & Associates will receive pre-trip notifications at (800) 522-7622 or (562) 427-1822. Pre-trip notifications must be made between 8:00 am and 5:00 pm Pacific time, Monday through Friday.

There are no exceptions to the pre-trip notification requirement. All vessels, observable and unobservable, must comply with this requirement. A vessel's observable status will be made on a trip-by-trip basis.

Any departure made without the 48 hour notification will be immediately referred to the NOAA Office of Law Enforcement.

Safety Requirements

Observers may not depart on a fishing trip aboard a vessel which does not comply with United States Coast Guard (USCG) safety requirements or that does not display a current Commercial Fishing Vessel Safety Examination decal [50 CFR §600.746(b)]. **All vessels carrying an Observer must meet USCG safety requirements and display a current safety decal.** Vessels that do not meet these requirements are deemed unsafe for purposes of carrying an observer and **must correct noted deficiencies prior to departing on a fishing trip** [50 CFR § 600.746(i)].

The vessel operator must allow an observer or NMFS representative to visually inspect any safety equipment or accommodation requirement if requested [50 CFR § 600.746(e)]. Observers, with the vessel operator, are required to complete a pre-trip safety check of the emergency equipment and review the emergency instructions prior to the vessel departing port.

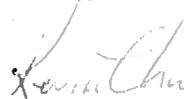
I recommend that you schedule your USCG safety examination soon to allow enough time to prepare your safety gear and to receive your Commercial Fishing Vessel Safety Examination decal before an observer is assigned to your vessel.

If you have questions about these requirements or about the Observer Program, please call Lyle Enriquez at (562) 980-4025 or Charles Villafana at (562) 980-4033, or contact the Observer Program at: National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802-4213.

Enclosures:

- A. Federal Register Notice of Emergency Rule
- B. Map of 100% Observer Coverage Area

Sincerely,



for William W. Stelle, Jr.
Acting Regional Administrator



FEDERAL REGISTER

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September 4, 2013

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit; Fisheries Off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Sperm Whale Interaction Restriction; Final Rule and Notice

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

RIN 0648-BD57

[Docket No. 130802674-3749-01]

Fisheries Off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Sperm Whale Interaction Restriction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: NMFS is issuing temporary regulations under the authority of Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to: implement an immediate closure of the California thresher shark/swordfish drift gillnet (mesh size ≥ 14 inches) (DGN) fishery if one sperm whale is observed killed or seriously injured in DGN gear off California, and require all DGN fishing vessels to carry a NMFS-trained observer from August 15, 2013 to January 31, 2014 in a 100% observer coverage area (Zone). The Zone covers nearly all areas in the U.S. exclusive economic zone (EEZ) deeper than the 1,100 fathoms (fm) (2,012 meters (m)) depth contour. Owners/operators of vessels intending to fish with DGN gear will be required to install, activate, carry and operate a vessel monitoring system (VMS) prior to embarking on a DGN fishing trip after the effective date of this rule.

DATES: This rule is effective September 4, 2013 through January 31, 2014. Comments must be received on or before October 4, 2013.

ADDRESSES: You may submit comments on the temporary rule, identified by NOAA-NMFS-2013-0131 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0131, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
 - *Fax:* 562-980-4047; Attention: Craig Heberer.
 - *Mail:* Craig Heberer, Southwest Regional Office, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802.
- Instructions:* Comments sent by any other method, to any other address or

individual, or received after the end of the comment period, may not be considered a part of NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. 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, or Adobe PDF file formats only.

Requests for copies of documents supporting this rule may be obtained from the Southwest Regional Office, NMFS, 501 W Ocean Blvd., Ste. 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, telephone: 706-431-9440 (#303), fax: 562-980-4047, email: craig.heberer@noaa.gov.

SUPPLEMENTARY INFORMATION: The DGN fishery is managed under the Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The HMS FMP was prepared by the Pacific Fishery Management Council (Council) and is implemented under the authority of the MSA by regulations at 50 CFR part 660.

Background

NMFS takes this action in accordance with the MSA, the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). The ESA requires the Federal government to protect and conserve species and populations that are endangered, or threatened with extinction, and to conserve the ecosystems on which these species depend. The MMPA prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and products into the United States. All marine mammals are protected under the MMPA.

During the 2010-2011 fishing season, a NMFS-trained observer recorded two sperm whales caught in the DGN fishery in U.S. Federal waters near the border with Mexico. One animal was dead when retrieved, the other was seriously injured. Sperm whales are listed as endangered under the ESA and are designated as depleted under the MMPA. In 2004, NMFS issued a biological opinion on the HMS FMP, including the DGN fishery, and an incidental take statement (ITS) for the

FMP. The NMFS Sustainable Fisheries Division engaged in pre-consultation with the NMFS Protected Resources Division upon notice in June 2011 that the takes of two sperm whales during the 2010-2011 fishing season likely exceeded the ITS for the DGN fishery. As a result, consultation was reinitiated in July of 2012, with NMFS completing a biological assessment in September 2012 and a biological opinion in May 2013 (http://swr.nmfs.noaa.gov/mm/Signed_DGN_BiOp_050213.pdf) that included a new ITS pertaining to whale bycatch contingent on the issuance of a MMPA 101(a)(5)(E) permit.

The ESA exempts take of listed marine mammals through the issuance of an ITS only if such take is also permitted by section 101(a)(5)(E) of the MMPA. Without a permit under the MMPA, any incidental, but not intentional, take of ESA-listed marine mammals is not exempt from ESA Section 9 take prohibitions. The potential biological removal (PBR) is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. Given the determination that incidental takes of sperm whales by the DGN fishery during the 2010-2011 fishing season exceeded the PBR for the California-Oregon-Washington stock of sperm whales, the fishery, as currently configured, could not be issued an MMPA 101(a)(5)(E) permit. As a result, the ITS listed in the 2013 biological opinion for the DGN fishery would not exempt the fishery, as currently configured, from ESA Section 9. This situation also presents serious conservation and management problems in the fishery. If mortality and serious injury of the California-Oregon-Washington stock of sperm whales incidental to this fishery continues to exceed PBR, it could have a long-term adverse effect on the marine environment by preventing the California-Oregon-Washington stock of sperm whales from reaching their optimum sustainable population level and existing as a significant functioning element in the ecosystem.

Based on this information, NMFS is issuing short-term measures to reduce interactions with sperm whales during the 2013-14 fishing season in the DGN fishery. These measures for the 2013-2014 fishing season are needed to ensure that any serious injury or mortality to sperm whales in the DGN fishery does not exceed the PBR and to allow the provision of incidental take coverage under the ESA and MMPA for fishermen in the fishery. NMFS

currently has regulations addressing interactions with several species of marine mammals in the DGN fishery. The Pacific Offshore Cetacean Take Reduction Plan (Plan) at 50 CFR 229.31 includes measures (e.g., pingers, net extenders) to reduce serious injury and mortality of marine mammals in the fishery. NMFS reconvened the Pacific Offshore Take Reduction Team (Team) to recommend measures for the 2013–2014 fishing season that reduce risks to sperm whales, in light of their potential biological removal level and the fishery's 2010 takes, such that the negligible impact determination conditions of MMPA 101(a)(5)(E) could be met. The measures in this rule emerged from the two Team meetings that NMFS convened on July 31, 2013, and August 7, 2013 for the purpose of developing recommendations for reducing sperm whale mortality/serious injury in the DGN fishery to below PBR. NMFS intends to convene the Team later this year or in early 2014 to develop long-term measures for reducing sperm whale (and other strategic stocks, as appropriate) mortality and serious injury in the fishery. NMFS would then amend the Plan's regulations pursuant to Section 118 of the MMPA, and advise the Council should an amendment to the FMP be required.

Management Measures Established by This Temporary Rule

Consistent with ESA, MMPA, and MSA requirements, this rule will establish a fixed cap of one serious injury or mortality for sperm whales in the DGN fishery as determined by NMFS. If the cap is met, the DGN fishery will be closed for the remainder of the season (i.e., until January 31, 2014) consistent with this action being a short-term measure. The rule will also establish a "100 percent observer-coverage zone" (Zone) for the 2013–2014 DGN fishing season that is closed to DGN fishing unless the fishing vessel is carrying a NMFS-trained observer. This Zone is specifically defined by latitude and longitude coordinates set out at § 660.713 (f). The Zone covers nearly all areas of the U.S. EEZ that are deeper than the 1,100 fm (2,012 m) depth contour; however, the boundary lines that define the Zone close some areas that are deeper or shallower than the 1,100 fm depth contour. The Zone runs both north and south of Point Conception from the Oregon-California border to the Mexico-California border, generally along the 1,100 fm (2,012 m) depth contour, with the exception of an area seaward of the Santa Lucia Escarpment, and any canyons/basins

shoreward of the main north-south 1,100 fm (2,012 m) depth contour (regardless of depth) to facilitate monitoring and enforcement. Vessels that are not carrying a NMFS-trained observer may not conduct DGN fishing in the Zone. Vessels not carrying observers will need to take precautions in setting and retrieving nets when fishing proximate to the Zone to ensure vessels remain shoreward of the boundary. This restriction is being implemented because NMFS long term survey data indicate that on average 90 percent of research vessel sightings of sperm whales in the California Current occurred in waters deeper than 2,000 m. Additionally, observer records indicate that only one interaction between the DGN fishery and sperm whales occurred in waters shallower than 1,100 fm since 1990; and this interaction was adjacent to the 1,100 fm depth contour.

Implementation

Vessel Monitoring System

Owners/operators of vessels intending to fish with large-mesh DGN gear will be required to have installed, activate, carry and operate vessel monitoring system (VMS) units that are type-approved by NMFS during the period of the DGN emergency rule. Owners and operators of vessels in the DGN fishery must: (1) Obtain a NOAA Office of Law Enforcement (OLE) type-approved mobile transceiver unit and have it installed on board the DGN fishing vessel in accordance with the instructions provided by NOAA OLE. You may obtain VMS installation and operation instructions from the NOAA OLE Northwest Division by calling 888–585–5518; and (2) activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a DGN fishing trip, and receive confirmation from NOAA OLE that the VMS transmissions are being received before participating in the DGN fishery. Instructions for submitting an activation report may be obtained from the NOAA, OLE Northwest Division office by calling 888–585–5518. An activation report must be submitted to NOAA OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

Activation Reports

If you are a vessel owner who must use VMS and are activating a VMS transceiver unit for the first time or reactivating a VMS transceiver unit following a reinstallation of a mobile transceiver unit or change in service provider, you must fax NOAA OLE

(206–526–6528) an activation report that includes: Vessel name; vessel owner's name, address and telephone number, vessel operator's name, address and telephone number, USCG vessel documentation number/state registration number; if applicable, the permit number the vessel is registered to; VMS transceiver unit manufacturer; VMS communications service provider; VMS transceiver identification; identification of the unit as primary or backup; and a statement signed and dated by the vessel owner confirming compliance with the installation procedures provided by NOAA OLE.

Transferring Ownership of VMS Unit

Ownership of the VMS transceiver unit may be transferred from one vessel owner to another vessel owner if all of the following documents are provided to NOAA OLE: A new activation report, which identifies that the transceiver unit was previously registered to another vessel; a notarized bill of sale showing proof of ownership of the VMS transceiver unit; and documentation from the communications service provider showing proof that the service agreement for the previous vessel was terminated and that a service agreement was established for the new vessel.

Transceiver Unit Operation

Operate and maintain the mobile transceiver unit in good working order continuously, 24 hours a day throughout the duration of the emergency rule. The mobile transceiver unit must transmit a signal accurately indicating the vessel's position at least once every hour, 24 hours a day, throughout the duration of the emergency rule. Once a vessel remains in port for seven days or more, position reporting is required at least once every four hours; however, the mobile transceiver unit must remain in continuous operation at all times. Once the vessel leaves port, the position reporting frequency must resume to at least once every hour, 24 hours a day.

When aware that transmission of automatic position reports has been interrupted, or when notified by NOAA OLE that automatic position reports are not being received, contact NOAA OLE by calling 888–585–5518 and follow the instructions provided. Such instructions may include manually communicating the vessel's position to NOAA OLE or returning to port until the VMS is operable.

After a fishing trip during which interruption of automatic position reports has occurred, replace or repair the mobile transceiver unit prior to the vessel's next fishing trip. Repair or

reinstallation of a mobile transceiver unit or installation of a replacement, including change of communications service provider, shall be in accordance with the instructions provided by NOAA OLE and require the same certification. Make the mobile transceiver units available for inspection by NOAA OLE personnel, USCG personnel, state enforcement personnel or any authorized officer. Ensure that the mobile transceiver unit is not tampered with, disabled, destroyed, operated, or maintained improperly. Pay all charges levied by the communication service provider as necessary to ensure continuous operation of the VMS transceiver units.

Declaration Reporting Requirements

The operator of any vessel fishing with large mesh DGN gear (mesh size ≥ 14 inches) for thresher shark/swordfish must provide NOAA OLE with a declaration report before the vessel leaves port on a trip in which the vessel is used to fish in U.S. ocean waters between 0 and 200 nm offshore of California. Gear code declarations are made by calling NOAA OLE NW Division at 888-585-5518.

The operator of a vessel fishing with DGN gear must provide a declaration report to NOAA OLE prior to leaving port on the first trip in which the vessel meets the requirement to install, activate, carry and operate a vessel monitoring system (VMS) unit. The vessel operator must send a new declaration report before leaving port on a trip in which a gear type that is different from the gear type most recently declared for the vessel will be used. A declaration report will be valid until another declaration report revising the existing gear declaration is received by NOAA OLE. During the period of time that a vessel has a valid declaration report on file with NOAA OLE, it cannot fish with a gear other than a gear type declared by the vessel. Declaration reports will include the vessel name and/or identification number, gear type to be used, and whether or not an observer will be present on the fishing trip. Upon receipt of a declaration report, NMFS will provide a confirmation code to confirm that a valid declaration report was received for the vessel. Vessel owners or operators must retain the confirmation code to verify that a valid declaration report was filed and the declaration requirement was met.

Vessels fishing with DGN gear may declare more than one gear type. If a vessel fishing with DGN gear has an observer on board, the vessel may fish with declared gear types seaward of the

eastern boundary of the Zone (generally, in areas seaward of the 1,100 fm (2,012 m) depth contour). However, if a vessel fishing with DGN gear does not have an observer on board, the vessel may only fish with declared gear types shoreward of the eastern boundary of the Zone (generally, in areas shoreward of the 1,100 fm (2,012 m) depth contour). The following gear type declaration codes are available for the thresher shark/swordfish DGN fishery: Open access highly migratory species line gear (Gear Code 66 for Tuna); and other gear (Gear Code 69 for DGN or harpoon).

Pre-Trip Notification

This rule establishes a pre-trip notification requirement for all DGN fishing trips. This requirement will assist the observer provider in deploying observers to cover 100 percent of fishing effort in the Zone and ensure representative observer coverage of the DGN fleet outside of the Zone. DGN vessel owners/operators will be required to notify the NMFS-designated observer provider at least 48 hours prior to departing on all fishing trips. Vessel owners/operators must provide their name, contact information, vessel name, port of departure, and estimated date and time of departure to the observer provider. Upon receipt of a pre-trip notification, the observer provider will notify the DGN vessel owner/operator whether their fishing trip has been selected for observer coverage. Frank Orth & Associates is the NMFS-designated observer provider. Frank Orth & Associates will receive pre-trip notifications at (800) 522-7622 or (562) 427-1822. Pre-trip notifications must be made between 8:00 a.m. and 5:00 p.m. Pacific time, Monday through Friday.

Fishery Closure Procedures

In the event of a serious injury or mortality to a sperm whale, as determined by NMFS, during DGN fishing operations, the fishery will be closed through January 31, 2014. NMFS will notify vessel owners/operators of a DGN fishery closure by VMS communication to the fleet stating when nets may no longer be deployed. Notification will also be made in the **Federal Register**, by postal mail, and a posting on the NMFS regional Web site.

NMFS publishes this emergency action for implementing these short-term management measures for 180 days, the maximum allowed without an extension, under MSA. NMFS does not expect the Zone to adversely impact the DGN fleet, because vessels without observers have flexibility to fish shoreward of the eastern boundary of the Zone (roughly, the 1,100 fm (2,012

m) depth contour) to make up for lost fishing opportunities inside the Zone should an observer be unavailable.

NMFS' policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS' policy guidelines further provide that emergency action is justified for certain situations where it would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. NMFS has determined that the issue of setting a cap of one serious injury/mortality for sperm whales, the exclusion of DGN fishing in the Zone without observers, and the VMS requirement meets the three criteria for emergency action for the reasons outlined below.

The emergency results from recent, unforeseen events or recently discovered circumstances. NMFS' decision to not issue an MMPA 101(a)(5)(E) permit for sperm whales in the DGN fishery in its current configuration and close to the August 15 start date of the fishery in nearshore waters presents an unforeseen event and therefore warrants emergency action. The agency was poised to issue the permit prior to requesting public comments and then revised its anticipated course during the decision-making process based on new information that indicated that take of sperm whales in the fishery exceeded PBR.

This situation also presents serious conservation and management problems in the fishery. Serious injury or mortality of sperm whales at a level above PBR poses problems to the marine environment. Without issuance of a MMPA 101(a)(5)(E) permit, fishermen that incidentally seriously injure or kill any sperm whales during DGN fishing operations would not have incidental take coverage exempting the fishermen from take prohibitions under the ESA, predicated on MMPA requirements. This emergency action essentially establishes short-term measures for the

fishery, with the provision that one sperm whale interaction resulting from DGN fishing operations that has been determined by NMFS to be one serious injury or mortality would immediately close the fishery through January 31, 2014. Sperm whale interactions with the DGN fleet are rare, with sperm whale bycatch observed six times (10 animals) in over 8,300 net sets since 1990. According to NMFS' Southwest Fisheries Science Center (SWFSC) scientists, published data, and recorded depths of observed takes in the DGN fishery, sperm whales are more likely to occur in waters deeper than 1,100 fm (2,012 m). This emergency action would require 100 percent observer coverage of DGN vessels fishing in the Zone (generally, seaward of the 1,100 fm (2,012 m) depth contour running both north and south of Point Conception) and therefore, would increase the likelihood of observing any sperm whale interactions and determining the resulting condition of the animal.

The emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. The Team has the authority to develop management recommendations to NMFS to address sperm whale interactions, but this process would not promptly address sperm whale protection for the upcoming fishing season. There is no other action that NMFS can take through the normal rulemaking process that would enable the agency to implement the short-term management measures in time to reduce the risk of sperm whale mortality/serious injury in the DGN fishery to below PBR for the current DGN fishing season. An emergency action enables NMFS to monitor effort for the current fishing season in areas where sperm whales are most likely to occur. Therefore, the urgency to protect sperm whales through a final rule outweighs the value of providing prior public comment.

Classification

The Assistant Administrator for Fisheries, NOAA, (AA) has determined that this emergency action to promulgate temporary regulations under the authority of section 305(c) of the MSA is necessary to respond to efforts for reducing serious injury/mortality to sperm whales in the DGN fishery and is consistent with the MSA, ESA, MMPA, and other applicable laws. The rule may be extended for a period of not more

than 186 days as provided under section 305(c)(3)(B) of the MSA.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds good cause to waive prior notice and opportunity for advanced public comment. Prior notice and opportunity for advanced public comment would be contrary to the public interest, as delaying action intended to reduce serious injury/mortality to sperm whales in the DGN fishery would increase the likelihood of exceeding PBR for the California-Oregon-Washington stock of sperm whales as established under the MMPA.

The AA finds good cause under 5 U.S.C. 553(b)(B) that it is contrary to the public interest and impracticable to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest.

Closing the exclusive economic zone off California to fishing in waters seaward of the 1,100 fm (2,012 m) depth contour to unobserved DGN vessels and setting a limit of one serious injury/mortality to sperm whales interacting with DGN gear provides for sperm whale protections. NMFS' long term research vessel sightings of sperm whales in the California Current indicate that 90 percent of sightings occurred in waters deeper than 1,100 fm (2,012 m). Further, NMFS' analyses of DGN observer data indicate that an average of approximately 13 percent of total annual DGN fishing occurred in the Zone in years 2009 through 2011. NMFS' SWFSC scientists have suggested that reducing spatial overlap of fishing effort and sperm whale habitat may be an effective means to reduce the risk of sperm whale bycatch. There is no action that NMFS can take through the normal rulemaking process that would enable NMFS to implement the requirement for observer monitoring of DGN vessels in the Zone and the cap of one sperm whale serious injury/mortality for the DGN fishery to reduce the bycatch risk of this species. This emergency action enables NMFS to keep the fishery operating while avoiding unnecessary adverse biological and economic impacts. Therefore, the urgency to protect sperm whales through a final rule outweighs the value of providing prior public comment. Although this action is being implemented without notice and request for advanced public comment, NMFS is seeking public comment on this rule for purposes of assessing the need to extend the rule or to identify

other possible measures for long-term management.

For these same reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the AA finds good cause to waive the full 30-day delay in effectiveness for this rule. It would be contrary to the public interest if this rule does not become effective immediately, because the DGN fishery prohibition to fish beyond of 75 nautical miles of shore is no longer in effect from August 15 through the following January 31 which coincides with swordfish becoming more prevalent in the California Current. Without this emergency rule, NMFS would not provide 100 percent observer coverage in an area (the Zone) with higher concentrations of sperm whales and close the fishery in the event that there is one serious injury or mortality to a sperm whale in the DGN fishery. These measures are needed to provide adequate protections for sperm whales during the 2013–2014 DGN fishing season. For these reasons, there is good cause to waive the requirement for delayed effectiveness.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

This rule has been determined to be not significant for purposes of Executive Order 12866. A Regulatory Impact Review was completed and is available upon request from the NMFS, Southwest Region (see ADDRESSES).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 28, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 660.713, paragraph (f) is added to read as follows:

§ 660.713 Drift gillnet fishery.

* * * * *

(f) *Sperm whale take mitigation measures.* (1) Drift gillnet (mesh size ≥ 14 inches) fishing without a NMFS-

trained observer is prohibited in the portion of the California EEZ bounded

by lines connecting, in order, the following points:

Point	North lat.	West long.	
A	42°0'0"	125°10'12'	Oregon Border at 1100 fm.
B	40°22'12"	124°45'0"	
C	40°22'12"	125°45'0"	
D	38°21'0"	123°52'12"	
E	37°29'24"	123°18'0"	
F	37°29'24"	123°30'36"	
G	37°0'0"	123°30'0"	
H	36°36'0"	122°27'0"	
I	36°16'12"	122°31'12"	
J	35°52'30"	122°16'48"	
K	35°0'0"	121°45'0"	
L	34°54'0"	122°0'0" ...	
M	34°0'0"	122°0'0" ...	
N	34°0'0"	121°9'0" ...	
O	32°21'0"	120°0'0" ...	
P	31°6'0"	118°45'0"	
Q	30°32'31"	121°52'1"	
R	EEZ Western Edge	200nm buffer from the U.S. Pacific Coast Shoreline.
S	42°0'0"	129°0'0" ...	NW border of OR EEZ.
A	42°0'0"	125°10'12'	Finish back at Point A.

(2) As soon as practicable following determination by the Regional Administrator that one serious injury to, or mortality of, a sperm whale has resulted from drift gillnet fishing during the period of this emergency rule, the Regional Administrator will contact the fleet via VMS communication and provide the effective date and time that all fishing by vessels registered for use under a drift gillnet permit are prohibited from swordfish fishing until January 31, 2014. Coincidental with the VMS communication, the Regional Administrator will also file a closure notice with the Office of the Federal Register for publication; notify all permit holders by postal mail, and a

post a notice on the NMFS regional website.

(3) Drift gillnet vessel owners/operators are required to notify the NMFS-designated observer provider at least 48 hours prior to departing on all fishing trips. Vessel owners/operators must provide to the observer provider their name, contact information, vessel name, port of departure, and estimated date and time of departure, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(4) Drift gillnet vessel owners/operators must provide NOAA OLE with a declaration report before the

vessel leaves port on a trip in which the vessel will be used to fish swordfish with drift gillnet gear in U.S. ocean waters between 0 and 200 nm offshore of California.

(5) Drift gillnet vessel owners are required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to swordfish fishing during the period of this emergency rule. Vessel owners/operators shall perform the same requirements consistent with 50 CFR 660.14.

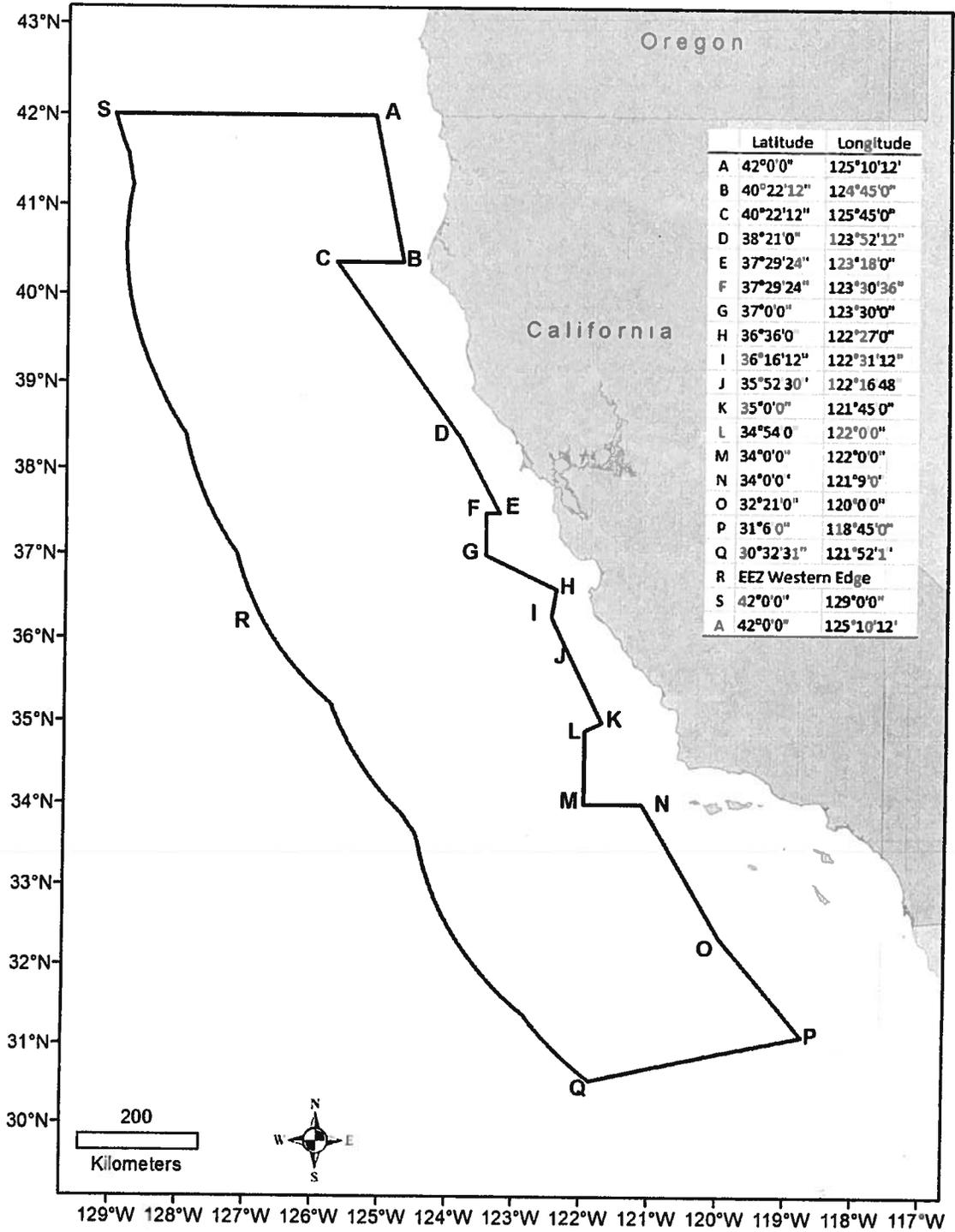
[FR Doc. 2013-21487 Filed 9-3-13; 8:45 am]

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100% Observer Coverage Zone

For CA Thresher Shark/Swordfish Drift Gillnet (≥ 14 in. mesh) Fishery

Effective through January 31, 2014



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Date: Sept. 5, 2013

INTERACTIVE CHART ON STATUS OF U.S. FISH POPULATIONS

To accompany the new report Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States, the National Research Council has released an interactive chart that lets users see which fish species in the U.S. are being overfished and fished sustainably. <http://nas-sites.org/visualization/fisheries/>

FOR IMMEDIATE RELEASE:

Many, But Not All, Depleted Fish Populations Show Signs of Recovery Under Rebuilding Plans That Reduce Fish Harvest

WASHINGTON -- Federal efforts to rebuild depleted fish populations have been successful at reducing fishing pressure on many overfished stocks, and fish stocks have generally increased under reduced harvesting, says a new congressionally requested [report](#) from the National Research Council. However, outcomes have been mixed across fisheries; fishing pressure is still too high for some fish stocks, and others have not rebounded as quickly as plans projected.

Much of the variation in performance reflects a mismatch between the current prescriptions for rebuilding within a limited time frame and the uncertainties inherent in assessing and managing fisheries given data limitations and complex ecosystem dynamics where fishing is only one of many influences on fish populations, the report says. Because climate change and other ecological factors can also drive changes in fish stocks, rebuilding fish populations within a certain timeframe cannot be assured.

The report identifies the following strategies for accommodating these uncertainties that, while still promoting rebuilding, could lessen its short-term economic and social impacts for the fishing industry and communities:

- § Basing rebuilding plans on monitoring and controlling fishing levels, rather than on requiring that fish populations recover to a pre-specified target size within a certain timeframe. This strategy would be less disruptive to the fisheries and less subject to uncertainty.
- § Taking earlier action to avoid overfishing -- imposing gradual limits on fishing when fish populations start to drop rather than waiting until they are overfished. This strategy could help fisheries avoid the stricter limits that come with rebuilding plans.
- § Modifying the "mixed-stock exception" to expand the range of situations to which it could be applied. This strategy could also lessen economic impacts relative to current rebuilding plans, which often limit fishing for other healthy species in the same fishery.

About 20 percent of the U.S. fisheries that have been assessed are overfished, according to a 2012 report by the National Oceanic and Atmospheric Administration (NOAA). In most cases, a fish stock is considered overfished when it has been depleted to half the size associated with producing "maximum sustainable yield" -- in other words, the maximum, sustainable average amount of fish that can be harvested from a fishery in a year.

When fish stocks drop to an overfished level, the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) -- the law that regulates U.S. fisheries -- requires that fishery managers implement plans that will rebuild the fish stocks, in most cases within 10 years. These rebuilding plans usually require significant restrictions on fishing for the depleted species, limits that may also affect fishing for other species in the same complex. Concerned about the economic and social impacts of these restrictions, members of Congress requested that NOAA fund a National Research Council assessment of the rebuilding plans and their associated ecological and economic effects.

The committee that wrote the report reviewed the current set of federally implemented rebuilding plans and their outcomes. In general, restrictions on fishing included in rebuilding plans have led to growth in fish population size, the report says. Of the subset of 55 fisheries assessed by the committee, 10 are rebuilt and 5 show good progress toward rebuilding. Eleven have not shown strong progress in rebuilding but are expected to rebuild if fishing levels remain reduced, and nine continue to experience overfishing. Recent analyses reveal that 20 of the 55 stocks were not actually overfished despite being classified as such -- a finding that reveals the level of uncertainty in assessments of fish stocks and how their perceived status can change as more data become available and assessment methods change over time, the report notes. This uncertainty cuts both ways; though the number cannot be quantified, there is a high probability that some fish stocks that were classified as healthy may actually be overfished.

Much of the variation in performance of rebuilding plans reflects intrinsic limitations in the ability to estimate the size of fish stocks and to set rebuilding targets in the context of complex ecosystems where many factors that affect fish stocks are not predictable or controllable, the report says. This, in part, explains why not all fish stocks rebuild according to the



pre-set timeline generally required in rebuilding plans. For example, current plans depend on predicting how much and how fast fish populations will increase if fishing pressure is reduced to various levels. However, there is much uncertainty about how fast fish populations will grow, given the many environmental factors that can affect population size in addition to fishing.

Fishery managers could use additional management strategies to reduce and accommodate environmental variability and uncertainties of rebuilding. Currently, when rebuilding is going slower than expected, fishery managers may impose ever-stricter fishing limits in an effort to meet that deadline. If these managers could instead keep fishing at a reduced but constant level for a longer period of time, they could rebuild fish stocks while allowing higher harvest levels, alleviating some of the socio-economic impacts on the fishing industry and coastal communities.

The requirement to end overfishing for all stocks in mixed-stock fisheries has protected depleted species but has reduced fishing for healthy fish stocks in the same fishery, the report notes. The MSFCMA has a "mixed-stock exception" that offers a way to maintain fishing for healthy stocks, but it has not been invoked, in part due to the narrow range of situations under which it can be applied and also because of the complexity of the issue it is meant to address. The mixed-stock exception could be modified to expand the range of situations to which it could be applied, subject to assurances that the less productive species are not driven to unacceptably low levels, the report says.

Fishery managers can also work to avoid overfishing and rebuilding plans altogether by taking action earlier, the report says. Applying prompt but gradual controls on fish harvesting as the estimated size of fish stocks falls below the Maximum Sustainable Yield level could lower the likelihood that the fish stock will become overfished, and stricter limits may not be needed.

The study was sponsored by the National Oceanic and Atmospheric Administration. The National Academy of Sciences, National Academy of Engineering, Institute of Medicine, and National Research Council make up the National Academies. They are private, nonprofit institutions that provide science, technology, and health policy advice under a congressional charter. Panel members, who serve pro bono as volunteers, are chosen by the Academies for each study based on their expertise and experience and must satisfy the Academies' conflict-of-interest standards. The resulting consensus reports undergo external peer review before completion. A committee roster follows.

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RSS feed: <http://www.nationalacademies.org/rss/index.html>
Flickr: <http://www.flickr.com/photos/nationalacademyofsciences/sets>

Pre-publication copies of **Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States** are available from the National Academies Press on the Internet at <http://www.nap.edu> or by calling 202-334-3313 or 1-800-624-6242. Reporters may obtain a copy from the Office of News and Public Information (contacts listed above).

###

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National Research Council study finds rebuilding timelines for fish stocks inflexible, inefficient

WASHINGTON (Saving Seafood) September 6, 2013 -- A new study from the National Research Council of the National Academies, "Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States," examines the ability of US fisheries management to reduce overfishing. Among other conclusions, the study, currently in pre-publication, finds that current stock rebuilding plans, which are based on eliminating overfishing within a specified time period, are not flexible enough to account for uncertainties in scientific data and environmental factors that are outside the control of fishermen and fisheries managers. It concludes that basing rebuilding on a timeline diminishes consideration for the socioeconomic impacts of the rebuilding plans.

The study was originally requested by Senator Olympia Snowe and Congressman Barney Frank in 2010, [who wrote to NOAA](#) asking them to fund the National Research Council's work. The following are excerpts taken from pages 179 and 181 of the report:

The tradeoff between flexibility and prescriptiveness within the current legal framework and MFSCMA guidelines for rebuilding underlies many of the issues discussed in this chapter. The present approach may not be flexible or adaptive enough in the face of complex ecosystem and fishery dynamics when data and knowledge are limiting. The high degree of prescriptiveness (and concomitant low flexibility) may create incompatibilities between singlespecies rebuilding plans and EBFM. Fixed rules for rebuilding times can result in inefficiencies and discontinuities of harvest-control rules, put unrealistic demands on models and data for stock assessment and forecasting, cause reduction in yield, especially in mixed-stock situations, and de-emphasize socio-economic factors in the formulation of rebuilding plans. The current approach specifies success of individual rebuilding plans in biological terms. It does not address evaluation of the success in socio-economic terms and at broader regional and national scales, and also does not ensure effective flow of information (communication) across regions. We expand on each of these issues below and discuss ways of increasing efficiency without weakening the rebuilding mandate.

...

The idea of a simple fixed rule for determining the maximum number of years for rebuilding is, in principle, an effective way to ensure rebuilding occurs at a reasonable pace, but also can create inefficiencies in practice. Having a rule for determining the maximum time horizon associated with acceptable rebuilding plans clearly reduces the possibilities for delaying fishing reductions into the

future.

However, there are also disadvantages to fixed rules for specifying the maximum time for rebuilding. First, problems may be associated with the specific formulation of the rule. The 10-year rule presently in place uses TMIN to determine a minimum possible rebuilding time; this is useful as it takes account of initial stock condition and expected productivity. However, the way the rule determines TMAX has a discontinuity at 10 years (see Fig. 4.1), which can lead to discontinuities in target dates for recovery (10 years to many decades) with potentially only small changes in estimates of stock size from assessments.

Second, a fixed maximum time for rebuilding also hinders the consideration of socioeconomic tradeoffs, especially when the range of acceptable rebuilding periods (i.e., from TMIN to TMAX) is narrow. The allotted rebuilding time can lead to substantial increases in rebuilding costs if the incremental additional costs from rebuilding are sensitive to the rebuilding schedule. As described in Chapter 6, it is sometimes possible for modest changes in a rebuilding schedule to have non-trivial effects on net social benefits; such adjustments are often precluded under current requirements. Abrupt changes in management measures can have real economic and social impacts on communities, and influence the perceptions and attitudes of stakeholders and managers.

Finally, a fixed time to rebuilding can also be problematic when rebuilding is faster or slower than expected, causing over-reaction and misinterpretation of the causes. Rebuilding faster than expected can lead to pre-mature demands to lessen rebuilding measures and therefore the rate of rebuilding. Delays in rebuilding, on the other hand, can lead to severe reductions in target fishing mortality in an effort to achieve the rebuilding target by the pre-specified date. The reasons for rebuilding occurring slower than expected include unexpectedly low recruitment, an ecosystem change, or failure to reduce fishing mortality due to imprecise or inaccurate science, or to catches exceeding desired levels (fishing mortality is higher than the target level). When recruitment is below expectations (e.g., due to unfavorable environmental conditions), a control rule based on maintaining fishing mortality at some fraction of FMSY may be more efficient than one that forces ever more severe controls to try to keep rebuilding on schedule; such a control rule could be formulated to ensure achievement of the goals of rebuilding as more favorable conditions return.

When discussing the goals and design of rebuilding plans in the future, the benefits and costs of introducing more flexibility in determining the time to rebuild should be considered so that new scientific information and socioeconomic tradeoffs can be more fully accounted for in rebuilding and community mitigation. Determining when and how within the rebuilding process to introduce additional flexibility that properly accommodates biological and socio-economic factors is a challenge. Experience from other countries (Chapter 3) indicates that legal mandates that are similarly strong in demanding reductions in fishing mortality as in place now in the U.S., but that allow greater flexibility in setting the time horizon for rebuilding can be effective. A caveat to the applicability of the international examples is that there are other aspects of the fishery management systems, such as the role of industry interests in decision-making, that differ among countries, which make direct comparisons difficult.

[Read the full study from the National Research Council](#)

[View an interactive chart from the National Research Council on overfishing over the past 30 years](#)

[Read a press release on the study from the National Academies](#)

[Read Saving Seafood's coverage of the letter written by Sen. Snowe and Congressman Frank requesting that NOAA fund the National Research Council's study](#)



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Supplemental Information Report 7
September 2013

STATUS REPORT OF THE 2013 OCEAN SALMON FISHERIES OFF WASHINGTON, OREGON, and CALIFORNIA.

Preliminary Data Through August 31, 2013.^{ai}

Fishery and Area	Season Dates	Effort Days Fished	CHINOOK			COHO ^{b/}		
			Catch	Quota	Percent	Catch	Quota	Percent
COMMERCIAL								
Treaty Indian ^{c/}	5/1-6/30	474	30,904	26,250	118%		Non-Retention	
	7/1-9/15	488	16,391	20,493	80%	43,578	47,500	92%
Non-Indian North of Cape Falcon ^{d/}	5/1-6/30	1,492	24,035	29,300	82%		Non-Retention	
	7/1-9/17 ^{e/}	972	16,834			5,956	10,220	58%
Cape Falcon to Cape Alava	9/7-9/17 ^{f/}	NA	NA	21,300	79%	NA	4,264	NA
Cape Falcon - Humbug Mt.	4/1-8/29	5,074	63,721	None	NA		Non-Retention	
	9/4-10/31	NA	NA	None	NA		Non-Retention	
Humbug Mt. - OR/CA Border	4/1-5/31	13	50	NA	NA		Non-Retention	
	6/1-6/30	112	1,560	4,000	39%		Non-Retention	
	7/1-7/31 ^{g/}	316	3,821	4,782	80%		Non-Retention	
	8/1-8/29 ^{h/}	148	1,250	2,714	46%		Non-Retention	
	9/16-9/27	NA	NA	1,000	NA		Non-Retention	
OR/CA Border - Humboldt S. Jetty	5/1-5/10	182	2,696	3,000	90%		Non-Retention	
	6/1-9, 11 ^{i/}	156	2,905	3,352	87%		Non-Retention	
	7/15-7/21 ^{j/}	157	2,405	2,547	94%		Non-Retention	
	8/1-8/3 ^{k/}	112	1,993	1,692	118%		Non-Retention	
	9/16-9/30	NA	NA	6,000	NA		Non-Retention	
Humboldt S. Jetty - Horse Mt.				Closed				
Horse Mt. - Pt. Arena	5/22-5/31	254	4,416	None	NA		Non-Retention	
	6/1-8 & 21-30	818	27,184	None	NA		Non-Retention	
	7/15-7/31	1,568	69,018	None	NA		Non-Retention	
	8/1-8/29	736	10,229	None	NA		Non-Retention	
	9/1-30	NA	NA	None	NA		Non-Retention	
Pt. Arena - Pigeon Pt.	5/1-5/31	1,709	54,625	None	NA		Non-Retention	
	6/1-8 & 21-30	1,048	40,194	None	NA		Non-Retention	
	7/15-7/31	671	19,120	None	NA		Non-Retention	
	8/1-8/29	509	5,358	None	NA		Non-Retention	
	9/1-30	NA	NA	None	NA		Non-Retention	
Pt. Reyes-Pt. San Pedro	10/1-4, 7-11 & 14-15	NA	NA	None	NA		Non-Retention	
Pigeon Pt. - U.S./Mexico Border	5/1-5/31	1,584	14,029	None	NA		Non-Retention	
	6/1-8 & 21-30	651	8,867	None	NA		Non-Retention	
	7/15-7/31	491	3,457	None	NA		Non-Retention	
	8/1-8/29	87	407	None	NA		Non-Retention	
	9/1-30	NA	NA	None	NA		Non-Retention	
RECREATIONAL								
U.S./Canada Border - Queets River ^{l/}	5/10-11, 17-18, 6/22-28	1,868	465				Non-Retention	
Queets River - Leadbetter Point ^{m/}	6/8-22	5,382	1,699	8,000	35%		Non-Retention	
Leadbetter Point - Cape Falcon ^{n/}	6/8-21	1,108	634				Non-Retention	
U.S./Canada Border - Cape Alava	6/29-9/22 ^{o/}	13,359	5,790	4,900	118%	6,267	8,200	76%
Cape Alava-Queets River ^{p/}	6/29-9/22 ^{o/}	3,354	2,045	1,650	124%	2,510	2,990	84%
	9/28-10/13	NA	NA	50	NA	NA	50	NA
Queets River - Leadbetter Pt.	6/23-8/31 ^{o/p/}	25,774	10,943	20,300	54%	15,588	29,140	53%
	9/6-9/30 ^{q/}	NA	NA	NA	NA	NA	NA	NA
Leadbetter Pt.-Cape Falcon	6/22-8/31 ^{r/}	25,941	7,144	9,900	72%	18,810	38,380	49%
	9/1-9/30 ^{s/}	NA	NA			NA	N/A	N/A
Cape Falcon - Humbug Mt.	3/15-10/31	43,315	15,253	None	NA		Non-Retention	
Cape Falcon to OR/CA Border	7/1-31	Included Above		NA	NA	6,580	10,500	63%
Cape Falcon to Humbug Mt. ^{t/}	9/1-30	Included Above		NA	NA	NA	19,580	NA
Humbug Mt. - OR/CA Border (OR-KMZ)	5/1-9/8	16,322	9,615	None	NA		Included Above	
OR/CA Border - Horse Mt. (CA-KMZ)	5/1-9/8	28,502	32,501	None	NA		Non-Retention	
Horse Mt. - Pt. Arena (Ft. Bragg)	4/6-11/10	15,374	9,501	None	NA		Non-Retention	
Pt. Arena - Pigeon Pt. (San Francisco)	4/6-11/10	57,596	53,921	None	NA		Non-Retention	
Pigeon Pt. - U.S./Mexico Border (Monterey)	4/7-10/6	29,265	10,172	None	NA		Non-Retention	

TOTALS TO DATE (through 8/31)	Effort			Chinook Catch			Coho Catch		
	2013	2012	2011	2013	2012	2011	2013	2012	2011
TROLL									
Treaty Indian	962	1,042	849	47,295	52,584	34,346	43,578	21,383	6,897
Washington Non-Indian	2,186	1,852	2,007	39,292	34,463	26,560	5,713	1,887	2,548
Oregon	5,941	4,397	3,079	71,979	47,234	28,523	243	73	381
California	10,733	12,321	6,218	266,903	198,737	67,891	0	0	0
Total Troll	19,822	19,612	12,153	425,469	333,018	157,320	49,534	23,343	9,826
RECREATIONAL									
Washington	70,888	63,954	65,181	26,857	31,500	28,309	39,283	25,646	31,086
Oregon	65,535	46,583	33,659	26,731	13,702	3,387	10,472	8,881	11,446
California	130,737	132,336	77,313	106,095	113,155	41,469	0	107	307
Total Recreational	267,160	242,873	176,153	159,683	158,357	73,165	49,755	34,634	42,839
PFMC Total	286,982	262,485	188,306	585,152	491,375	230,485	99,289	57,977	52,665

- a/ Inseason estimates are preliminary.
- b/ Non-Indian coho fisheries prior to Septemer are mark-selective. Non-mark-selective recreational fisheries occur in September, see the regulations for details.
- c/ Treaty Indian preliminary date through Sept. 3. Effort is reported as landings. Chinook summer quota of 26,250 reduced on an impact neutral basis by 5,757 fish.
- d/ Numbers shown as Chinook quotas for non-Indian troll and rec. fisheries North of Falcon are guidelines not quotas; only the total Chinook allowable catch is a quota.
- e/ 14,700 preseason Chinook quota plus rollover from the spring season of 4,600 plus 2,000 Chinook as converted from a 3,200 Chinook trade from the rec. fishery. Preseason coho quota of 14,220 minus transfer of 4,000 the recreational fisheries.
- f/ Coho quota is apprcimate as reduced by preliminary August catch and as adjusted by a transfer of 4,000 to the recreational fishery.
- g/ 3,000 preseason chinook quota plus impact neutral roll-over from June of 1,782 in the Humbug Mt. to OR/CA border commmerical troll fishery.
- h/ 2,000 preseason chinook quota plus impact neutral roll-over from July of 714 in the Humbug Mt. to OR/CA border commmerical troll fishery.
- i/ 3,000 preseason chinook quota plus impact neutral roll-over from May of 352 in the OR/CA border to Humboldt South Jetty commmerical troll fishery.
- j/ 2,000 preseason chinook quota plus impact neutral roll-over from June of 547 in the OR/CA border to Humboldt South Jetty commmerical troll fishery.
- k/ 1,500 preseason chinook quota plus impact neutral roll-over from July of 192 in the OR/CA border to Humboldt South Jetty commmerical troll fishery.
- l/ Mark-selective fishery for Chinook
- m/ 7,780 preseason quota plus a transfer of 420 coho from the non-Indian commercial troll fishery.
- n/ 1,890 preseason quota plus a transfer of 1,100 coho from the non-Indian commercial troll fishery.
- o/ 27,660 preseason quota plus a transfer of 1,480 coho from the non-Indian commercial troll fishery.
- p/ 23,500 preseason quota plus less a transfer of 3,200 Chinook to the non-Indian commercial troll fishery.
- q/ Coho quota will be remainder of the 29,140 mark-selective coho quota converted to an impact equivalent non-mark-selective coho quota (not yet avail.).
- r/ 37,380 preseason quota plus a transfer of 1,000 coho from the non-Indian commercial troll fishery.
- s/ 19,570 coho remainder of the 38,380 mark-selective coho quota converted to an impact equivalent non-mark-selective coho quota of (not yet avial.).
- t/ 16,000 preseason quota plus 3,580 impact equivalent roll-over from the July Cape Falcon to OR/CA border mark-selective recreational coho fishery.

PFMC

09/11/13