

## MAGNUSON-STEVENSON ACT REAUTHORIZATION PRIORITIES AND OTHER LEGISLATIVE MATTERS

The Legislative Committee (LC) will meet Friday, March 7 to discuss a draft version of a Magnuson-Stevens Act (MSA) reauthorization bill, and to review recent relevant legislation.

### MSA Reauthorization Status

In December, the Representative Doc Hastings released a House Natural Resources Committee (HNRC) discussion draft of an MSA reauthorization bill (Agenda Item J.1.a, Attachment 1). Council staff has compared the discussion draft to the priorities developed by the Council, and the 128 findings from the Managing Our Nation's Fisheries 3 conference, in Agenda Item J.1.a, Attachment 2.

The Council Coordination Committee will meet February 19 and 20 in Washington, D.C., and will discuss the HNRC draft bill; results of their discussions will be available at the March Council meeting. Perspective from the Western Pacific Fishery Management Council on the discussion draft are provided here (Agenda Item J.1.a, Attachment 3).

On January 30, 2014, Council Executive Director Donald McIsaac provided testimony before the Senate (U.S. Senate Committee Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard), which is developing a separate MSA bill. Dr. McIsaac's verbal and written testimony are attached (Agenda Item J.1.a, Attachments 4 and 5). Senate staff indicate that a discussion draft of the Senate bill may be released in early spring.

Additional reference materials include a November 12, 2013 letter from the Executive Director to Rep. Doc Hastings and Senator Mark Begich with the Council's priorities regarding MSA reauthorization, as directed by the Council (Agenda Item J.1.a, Attachment 6).

At the Council's November meeting, the Council discussed the content of detailed fact sheets on the Council's top six MSA reauthorization priorities. Due to staff workload, these fact sheets are targeted for completion in June.

Regarding Council action on MSA reauthorization at this meeting, there does not appear to be an immediate need for the Council's position on the HNRC draft bill at the time of briefing book preparation. The LC and the Council are scheduled to discuss the House and Senate draft MSA bills in June, when both bills are likely to be available for comparison.

### Current Legislation

Council staff has provided a summary of legislation introduced in the 113<sup>th</sup> U.S. Congress (Agenda Item J.1.a, Attachment 7) for potential review at this meeting. The Council has currently not received any request for comment on these bills.

**Council Action:**

**1. Consider the Legislative Committee report and recommendations.**

Reference Materials:

1. Agenda Item J.1.a, Attachment 1: House MSA Reauthorization Bill Discussion Draft.
2. Agenda Item J.1.a, Attachment 2: Staff Analysis of House Discussion Draft.
3. Agenda Item J.1.a, Attachment 3: Western Pacific Fishery Management Council Perspectives on Discussion Draft.
4. Agenda Item J.1.a, Attachment 4: Verbal Testimony of Dr. Donald McIsaac.
5. Agenda Item J.1.a, Attachment 5: Written Testimony of Dr. Donald McIsaac.
6. Agenda Item J.1.a, Attachment 6: Letter to Congress on Council MSA priorities.
7. Agenda Item J.1.a, Attachment 7: March 2014 Staff Summary of Federal Legislation.
8. Agenda Item J.1.b, Supplemental Legislative Committee Report.

Agenda Order:

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

PFMC  
02/14/14

[DISCUSSION DRAFT]

113TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen, and for other purposes.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

M. \_\_\_\_\_ introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Strengthening Fishing  
5 Communities and Increasing Flexibility in Fisheries Man-  
6 agement Act”.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise specifically provided, whenever in  
3 this Act an amendment or repeal is expressed in terms  
4 of an amendment to, or repeal of, a provision, the ref-  
5 erence shall be considered to be made to a provision of  
6 the Magnuson-Stevens Fishery Conservation and Manage-  
7 ment Act (16 U.S.C. 1801 et seq.).

8 **SEC. 3. FLEXIBILITY IN REBUILDING FISH STOCKS.**

9 (a) GENERAL REQUIREMENTS.—Section 304(e) (16  
10 U.S.C. 1854(e)) is amended—

11 (1) in paragraph (3)(A), by inserting before the  
12 semicolon the following: “, except that in the case of  
13 a highly dynamic fishery the Council (or the Sec-  
14 retary, for fisheries under section 302(a)(3)) may  
15 phase-in the rebuilding plan over a 3-year period to  
16 lessen economic harm to fishing communities”;

17 (2) in paragraph (4)—

18 (A) in subparagraph (A)(i), by striking  
19 “possible” and inserting “practicable”;

20 (B) by amending subparagraph (A)(ii) to  
21 read as follows:

22 “(ii) may not exceed the time the  
23 stock would be rebuilt without fishing oc-  
24 ccurring plus one mean generation, except  
25 in a case in which—

1           “(I) the biology of the stock of  
2 fish, other environmental conditions,  
3 or management measures under an  
4 international agreement in which the  
5 United States participates dictate oth-  
6 erwise;

7           “(II) the Secretary determines  
8 that the cause of the stock being de-  
9 pleted is outside the jurisdiction of the  
10 Council or the rebuilding program  
11 cannot be effective only by limiting  
12 fishing activities;

13           “(III) the Secretary determines  
14 that one or more components of a  
15 mixed-stock fishery is depleted but  
16 cannot be rebuilt within that time-  
17 frame without significant economic  
18 harm to the fishery or cannot be re-  
19 built without causing another compo-  
20 nent of the mixed-stock fishery to ap-  
21 proach a depleted status;

22           “(IV) the Secretary determines  
23 that recruitment, distribution, or life  
24 history of, or fishing activities for, the  
25 stock are affected by informal

1 transboundary agreements under  
2 which management activities outside  
3 the exclusive economic zone by an-  
4 other country may hinder conservation  
5 efforts by United States fishermen;  
6 and

7 “(V) the Secretary determines  
8 that the stock has been affected by  
9 unusual events that make rebuilding  
10 within the specified time period im-  
11 probable without significant economic  
12 harm to fishing communities;”;

13 (C) by striking “and” after the semicolon  
14 at the end of subparagraph (B), by redesign-  
15 ating subparagraphs (B) and (C) as subpara-  
16 graphs (C) and (D), and by inserting after sub-  
17 paragraph (A) the following:

18 “(B) take into account environmental con-  
19 dition including predator/prey relationships;”;  
20 and

21 (D) by striking the period at the end of  
22 subparagraph (D) (as so redesignated) and in-  
23 serting “; and”, and by adding at the end the  
24 following:

1           “(E) specify a schedule for reviewing the  
2 rebuilding targets, evaluating environmental im-  
3 pacts on rebuilding progress, and evaluating  
4 progress being made toward reaching rebuilding  
5 targets.”;

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

7           “(8) A fishery management plan, plan amend-  
8 ment, or proposed regulations may use alternative  
9 rebuilding strategies, including harvest control rules  
10 and fishing mortality targets.

11           “(9) A Council may terminate the application of  
12 paragraph (3) to a fishery if the Council determines  
13 that the fishery is not depleted, by the earlier of—

14           “(A) the end of the 2-year period begin-  
15 ning on the effective date a fishery management  
16 plan, plan amendment, or proposed regulation  
17 for a fishery under this subsection takes effect;  
18 or

19           “(B) the completion of the next stock as-  
20 sessment after such determination.”.

21           (b) EMERGENCY REGULATIONS AND INTERIM MEAS-  
22 URES.—Section 305(c)(3)(B) (16 U.S.C. 1855(c)(3)(B))  
23 is amended by striking “180 days after” and all that fol-  
24 lows through “provided” and inserting “1 year after the  
25 date of publication, and may be extended by publication

1 in the Federal Register for one additional period of not  
2 more than 1 year, if”.

3 (c) **AUTHORITY TO PHASE-IN REBUILDING.**—Section  
4 304(e)(3)(A) (16 U.S.C. 1853(e)(3)(A)) is amended by in-  
5 serting before the semicolon the following: “, except that  
6 for a fishery for which chronic overfishing has not oc-  
7 curred and for which an immediate end to overfishing will  
8 result in significant adverse economic impacts to fishing  
9 communities, the Secretary may authorize a Council to  
10 phase in fishing restrictions over a continuous period of  
11 not more than 3 years”.

12 **SEC. 4. MODIFICATIONS TO THE ANNUAL CATCH LIMIT RE-**  
13 **QUIREMENT.**

14 (a) **FLEXIBILITY FOR COUNCILS.**—Section 302 (16  
15 U.S.C. 1852) is amended by adding at the end the fol-  
16 lowing:

17 “(m) **CONSIDERATIONS FOR MODIFICATIONS TO AN-**  
18 **NUAL CATCH LIMIT REQUIREMENTS.**—

19 “(1) **CONSIDERATION OF ECOSYSTEM AND ECO-**  
20 **NOMIC IMPACTS.**—In establishing annual catch lim-  
21 its a Council may consider changes in an ecosystem  
22 and the economic needs of the fishing communities.

23 “(2) **LIMITATIONS TO ANNUAL CATCH LIMIT**  
24 **REQUIREMENT FOR SPECIAL FISHERIES.**—Notwith-

1 standing subsection (h)(6), a Council is not required  
2 to develop an annual catch limit for—

3 “(A) an ecosystem component species;

4 “(B) a fishery for a species that has a life  
5 cycle of approximately 1 year, unless the Sec-  
6 retary has determined the fishery is subject to  
7 overfishing; or

8 “(C) a stock for which—

9 “(i) more than half of a single-year  
10 class will complete their life cycle in less  
11 than 18 months; and

12 “(ii) fishing mortality will have little  
13 impact on the stock.

14 “(3) RELATIONSHIP TO INTERNATIONAL EF-  
15 FORTS.—Each annual catch limit shall take into ac-  
16 count—

17 “(A) management measures under inter-  
18 national agreements in which the United States  
19 participates; and

20 “(B) informal transboundary agreements  
21 under which management activities by another  
22 country outside the exclusive economic zone  
23 may hinder conservation efforts by United  
24 States fishermen for a species for which any of

1 the recruitment, distribution, life history, or  
2 fishing activities are transboundary.

3 “(4) AUTHORIZATION FOR MULTISPECIES COM-  
4 PLEXES AND MULTIYEAR ANNUAL CATCH LIMITS.—  
5 For purposes of subsection (h)(6), a Council may es-  
6 tablish—

7 “(A) an annual catch limit for a stock  
8 complex; or

9 “(B) annual catch limits for each year in  
10 any continuous period that is not more than  
11 three years in duration.

12 “(5) ECOSYSTEM COMPONENT SPECIES DE-  
13 FINED.—In this subsection the term ‘ecosystem com-  
14 ponent species’ means a stock of fish that is a non-  
15 target, incidentally harvested stock of fish in a fish-  
16 ery, or a nontarget, incidentally harvested stock of  
17 fish that a Council or the Secretary has deter-  
18 mined—

19 “(A) is not subject to overfishing, ap-  
20 proaching a depleted condition or depleted; and

21 “(B) is not likely to become subject to  
22 overfishing or depleted in the absence of con-  
23 servation and management measures.”.

1 (b) ANNUAL CATCH LIMIT CAP.—Section 302(h)(6)  
2 (16 U.S.C. 1852(h)(6)) is amended by striking “fishing”  
3 and inserting “overfishing”.

4 **SEC. 5. DISTINGUISHING BETWEEN OVERFISHED AND DE-**  
5 **PLETED.**

6 (a) DEFINITIONS.—Section 3 (16 U.S.C. 1802) is  
7 amended—

8 (1) in paragraph (34), by striking “and ‘over-  
9 fished’ mean” and inserting “means”; and

10 (2) by inserting after paragraph (8) the fol-  
11 lowing:

12 “(8a) The term ‘depleted’ means, with respect  
13 to a stock of fish, that the stock is of a size that  
14 is below the natural range of fluctuation associated  
15 with the production of maximum sustainable yield.”.

16 (b) SUBSTITUTION OF TERM.—The Magnuson-Ste-  
17 vens Fishery Conservation and Management Act (16  
18 U.S.C. 1801 et seq.) is amended by striking “overfished”  
19 each place it appears and inserting “depleted”.

20 (c) CLARITY IN ANNUAL REPORT.—Section  
21 304(e)(1) (16 U.S.C. 1854(e)(1)) is amended by adding  
22 at the end the following: “The report shall distinguish be-  
23 tween fisheries that are depleted (or approaching that con-  
24 dition) as a result of fishing and fisheries that are depleted  
25 (or approaching that condition) as a result of factors other

1 than fishing. The report shall state, for each fishery iden-  
2 tified as depleted or approaching that condition, whether  
3 the fishery is the target of directed fishing.”.

4 **SEC. 6. TRANSPARENCY AND PUBLIC PROCESS FOR SCI-**  
5 **ENTIFIC AND MANAGEMENT ACTIONS.**

6 (a) **SCIENTIFIC ADVICE.**—Section 302(g)(1)(B) (16  
7 U.S.C. 1852(g)(1)(B)) is amended by adding at the end  
8 the following: “Each scientific and statistical committee  
9 shall develop such scientific advice in a transparent man-  
10 ner and allow for public involvement in the process.”.

11 (b) **MEETINGS.**—Section 302(i)(2) (16 U.S.C.  
12 1852(i)(2)) is amended by adding at the end the following:

13 “(G) Each Council shall make available on the  
14 Internet Web site of the Council—

15 “(i) to the extent practicable, a live broad-  
16 cast of each meeting of the Council, and of the  
17 Council Coordination Committee established  
18 under subsection (l), that is not closed in ac-  
19 cordance with paragraph (3); and

20 “(ii) audio, video (if the meeting was in  
21 person or by video conference), and a complete  
22 transcript of each meeting of the Council and  
23 the Scientific and Statistical Committee of the  
24 Council by not later than 30 days after the con-  
25 clusion of the meeting.



1 “the National Environmental Policy Act of 1969 (42  
2 U.S.C. 4321 et seq.),” after “the Regulatory Flexi-  
3 bility Act (5 U.S.C. 601 et seq.)”.

4 **SEC. 7. LIMITATION ON FUTURE CATCH SHARE PROGRAMS.**

5 (a) CATCH SHARE DEFINED.—Section 3 (16 U.S.C.  
6 1802) is amended by inserting after paragraph (2) the fol-  
7 lowing:

8 “(2a) The term ‘catch share’ means any fishery  
9 management program that allocates a specific per-  
10 centage of the total allowable catch for a fishery, or  
11 a specific fishing area, to an individual, cooperative,  
12 community, sector, processor, or regional fishery or-  
13 ganization established in accordance with section  
14 303A(c)(4), or other entity.”.

15 (b) CATCH SHARE REFERENDUM PILOT PRO-  
16 GRAM.—

17 (1) IN GENERAL.—Section 303A(c)(6)(D) (16  
18 U.S.C. 1853a(c)(6)(D)) is amended to read as fol-  
19 lows:

20 “(D) CATCH SHARE REFERENDUM PILOT  
21 PROGRAM.—

22 “(i) The New England, Mid-Atlantic,  
23 South Atlantic, and Gulf of Mexico Coun-  
24 cils may not submit a fishery management  
25 plan or amendment that creates a catch

1 share program for a fishery, and the Sec-  
2 retary may not approve or implement such  
3 a plan or amendment submitted by such a  
4 Council or a secretarial plan or amendment  
5 under section 304(c) that creates such a  
6 program, unless the final program has  
7 been approved, in a referendum in accord-  
8 ance with this subparagraph, by a majority  
9 of the permit holders eligible to participate  
10 in the fishery. For multispecies permits in  
11 the Gulf of Mexico, any permit holder with  
12 landings from the fishery being considered  
13 for the catch share program within the 5-  
14 year period preceding the date of the ref-  
15 erendum and still active in fishing in the  
16 fishery shall be eligible to participate in  
17 such a referendum. If a catch share pro-  
18 gram is not approved by the requisite num-  
19 ber of permit holders, it may be revised  
20 and submitted for approval in a subse-  
21 quent referendum.

22 “(ii) The Secretary shall conduct a  
23 referendum under this subparagraph, in-  
24 cluding notifying all permit holders eligible

1 to participate in the referendum and mak-  
2 ing available to them—

3 “(I) a copy of the proposed pro-  
4 gram;

5 “(II) an estimate of the costs of  
6 the program, including costs to par-  
7 ticipants;

8 “(III) an estimate of the amount  
9 of fish or percentage of quota each  
10 permit holder would be allocated; and

11 “(IV) information concerning the  
12 schedule, procedures, and eligibility  
13 requirements for the referendum proc-  
14 ess.

15 “(iii) For the purposes of this sub-  
16 paragraph, the term ‘permit holder eligible  
17 to participate’ does not include the holder  
18 of a permit for a fishery under which fish-  
19 ing has not occurred in 3 of the 5 years  
20 preceding a referendum for the fishery un-  
21 less sickness, injury, or other unavoidable  
22 hardship prevented the permit holder from  
23 engaging in such fishing.

24 “(iv) The Secretary may not imple-  
25 ment any catch share program for any

1 fishery managed exclusively by the Sec-  
2 retary unless first petitioned by a majority  
3 of those eligible to participate in the fish-  
4 ery.”.

5 (2) LIMITATION ON APPLICATION.—The amend-  
6 ment made by paragraph (1) shall not apply to a  
7 catch share program that is submitted to, or pro-  
8 posed by, the Secretary of Commerce before the date  
9 of enactment of this Act.

10 (3) REGULATIONS.—Before conducting a ref-  
11 erendum under the amendment made by paragraph  
12 (1), the Secretary of Commerce shall issue regula-  
13 tions implementing such amendment after providing  
14 an opportunity for submission by the public of com-  
15 ments on the regulations.

16 **SEC. 8. DATA COLLECTION AND DATA CONFIDENTIALITY.**

17 (a) USE OF ELECTRONIC MONITORING.—

18 (1) IN GENERAL.—The Secretary of Commerce  
19 shall, in conjunction with the Councils and the Pa-  
20 cific States Marine Fisheries Commission and by not  
21 later than the end of the 6-month period beginning  
22 on the date of the enactment of this Act—

23 (A) develop objectives, performance stand-  
24 ards, and regulations to govern the use of elec-

1           tronic monitoring for data collection and moni-  
2           toring purposes; and

3                   (B) provide an opportunity for the fishing  
4           industry to comment before the regulations are  
5           finalized.

6           (2) LIMITATION ON ENFORCEMENT USE.—Reg-  
7           ulations under this subsection shall not include pro-  
8           visions authorizing use of electronic monitoring for  
9           law enforcement.

10           (3) ACTION BY COUNCILS.—If the Secretary  
11           fails to develop such regulations within the period  
12           referred to in paragraph (1), each Council may, in  
13           compliance with paragraphs (1)(B) and (2)—

14                   (A) issue regulations that establish such  
15           standards and implement electronic monitoring  
16           programs for fisheries under the jurisdiction of  
17           such Council that are subject to a fishery man-  
18           agement plan; and

19                   (B) implement plans to substitute elec-  
20           tronic monitoring for human observers, if—

21                           (i) electronic monitoring will provide  
22           the same level of coverage as a human ob-  
23           server; and

24                           (ii) standards for electronic moni-  
25           toring are in effect.

1 (b) VIDEO AND ACOUSTIC SURVEY TECH-  
2 NOLOGIES.—The Secretary shall work with the Regional  
3 Fishery Management Councils and nongovernmental enti-  
4 ties to develop and implement the use pursuant to the  
5 Magnuson-Stevens Fishery Conservation and Manage-  
6 ment Act (16 U.S.C. 1801 et seq.) of video survey tech-  
7 nologies and expanded use of acoustic survey technologies.

8 (c) CONFIDENTIALITY OF INFORMATION.—

9 (1) IN GENERAL.—Section 402(b) (16 U.S.C.  
10 1881a(b)) is amended—

11 (A) by redesignating paragraph (3) as  
12 paragraph (6), and resetting it 2 ems from the  
13 left margin;

14 (B) by striking so much as precedes para-  
15 graph (6), as so redesignated, and inserting the  
16 following:

17 “(b) CONFIDENTIALITY OF INFORMATION.—

18 “(1) Any information submitted to the Sec-  
19 retary, a State fishery management agency, or a  
20 Marine Fisheries Commission by any person in com-  
21 pliance with the requirements of this Act, including  
22 confidential information, shall be exempt from dis-  
23 closure under section 552(b)(3) of title 5, United  
24 States Code, except—

1           “(A) to Federal employees and Council em-  
2           ployees who are responsible for fishery manage-  
3           ment plan development, monitoring, or enforce-  
4           ment;

5           “(B) to State or Marine Fisheries Commis-  
6           sion employees as necessary for achievement of  
7           the purposes of this Act, subject to a confiden-  
8           tiality agreement between the State or commis-  
9           sion, as appropriate, and the Secretary that  
10          prohibits public disclosure of confidential infor-  
11          mation relating to any person;

12          “(C) to any State employee who is respon-  
13          sible for fishery management plan enforcement,  
14          if the State employing that employee has en-  
15          tered into a fishery enforcement agreement with  
16          the Secretary and the agreement is in effect;

17          “(D) when required by court order;

18          “(E) if such information is used by State,  
19          Council, or Marine Fisheries Commission em-  
20          ployees to verify catch under a catch share pro-  
21          gram, but only to the extent that such use is  
22          consistent with subparagraph (B);

23          “(F) to a Council or State, if the Secretary  
24          has obtained written authorization from the  
25          person submitting such information to release

1 such information to persons for reasons not  
2 otherwise provided for in this subsection, and  
3 such release does not violate any other require-  
4 ment of this Act; or

5 “(G) if such information is required to be  
6 submitted to the Secretary for any determina-  
7 tion under a catch share program.

8 “(2) Any information submitted to the Sec-  
9 retary, a State fisheries management agency, or a  
10 Marine Fisheries Commission by any person in com-  
11 pliance with the requirements of this Act, including  
12 confidential information, may only be used for pur-  
13 poses of fisheries management and monitoring and  
14 enforcement under this Act.

15 “(3) Any observer information, and information  
16 obtained through a vessel monitoring system or  
17 other technology used on-board for enforcement or  
18 data collection purposes, shall be confidential and  
19 shall not be disclosed, except—

20 “(A) in accordance with the requirements  
21 of subparagraphs (A) through (G) of paragraph  
22 (1);

23 “(B) when such information is necessary  
24 in proceedings to adjudicate observer certifi-  
25 cations; or

1           “(C) as authorized by any regulations  
2           issued under paragraph (6) allowing the collec-  
3           tion of observer information, pursuant to a con-  
4           fidentiality agreement between the observers,  
5           observer employers, and the Secretary prohib-  
6           iting disclosure of the information by the ob-  
7           servers or observer employers, in order—

8                   “(i) to allow the sharing of observer  
9                   information among observers and between  
10                  observers and observer employers as nec-  
11                  essary to train and prepare observers for  
12                  deployments on specific vessels; or

13                   “(ii) to validate the accuracy of the  
14                  observer information collected.

15           “(4) The Secretary may enter into a memo-  
16           randum of understanding with the heads of other  
17           Federal agencies for the sharing of confidential in-  
18           formation to ensure safety of life at sea or for fish-  
19           eries enforcement purposes, including information  
20           obtained through a vessel monitoring system or  
21           other electronic enforcement and monitoring sys-  
22           tems, if—

23                   “(A) the Secretary determines there is a  
24                  compelling need to do so; and

1           “(B) the heads of the other Federal agen-  
2           cies agree—

3                   “(i) to maintain the confidentiality of  
4           the information in accordance with the re-  
5           quirements that apply to the Secretary  
6           under this section; and

7                   “(ii) to use the information only for  
8           the purposes for which it was shared with  
9           the agencies.

10           “(5) The Secretary may not provide any vessel-  
11           specific or aggregate vessel information from a fish-  
12           ery that is collected for monitoring and enforcement  
13           purposes to any person for the purposes of coastal  
14           and marine spatial planning under Executive Order  
15           13547.”; and

16                   (C) in paragraph (5), as so redesignated,  
17           in the second sentence by striking “or the use,”  
18           and all that follows through the end of the sen-  
19           tence and inserting a period.

20           (2) DEFINITIONS.—Section 3 (16 U.S.C. 1802)  
21           is further amended—

22                   (A) by inserting after paragraph (4) the  
23           following:

24                   “(4a) The term ‘confidential information’  
25           means—

1 “(A) trade secrets;

2 “(B) proprietary information; or

3 “(C) commercial or financial information  
4 the disclosure of which is likely to result in  
5 harm to the competitive position of the person  
6 that submitted the information to the Sec-  
7 retary.”; and

8 (B) by inserting after paragraph (27) the  
9 following:

10 “(27a) The term ‘observer information’ means  
11 any information collected, observed, retrieved, or cre-  
12 ated by an observer or electronic monitoring system  
13 pursuant to authorization by the Secretary, or col-  
14 lected as part of a cooperative research initiative, in-  
15 cluding fish harvest or fish processing observations,  
16 fish sampling or weighing data, vessel logbook data,  
17 vessel- or fish processor-specific information (includ-  
18 ing any safety, location, or operating condition ob-  
19 servations), and video, audio, photographic, or writ-  
20 ten documents.”.

21 (d) INCREASED DATA COLLECTION AND ACTIONS TO  
22 ADDRESS DATA-POOR FISHERIES.—Section 404 (16  
23 U.S.C. 1881c) is amended by adding at the end the fol-  
24 lowing:

1 “(e) USE OF THE ASSET FORFEITURE FUND FOR  
2 FISHERY INDEPENDENT DATA COLLECTION.—

3 “(1) IN GENERAL.—

4 “(A) The Secretary, subject to appropria-  
5 tions, may obligate for data collection purposes  
6 in accordance with prioritizations under para-  
7 graph (3) a portion of amounts received by the  
8 United States as fisheries enforcement pen-  
9 alties.

10 “(B) Amounts may be obligated under this  
11 paragraph only in the fishery management region  
12 with respect to which they are collected.

13 “(2) INCLUDED PURPOSES.—The purposes re-  
14 ferred to in paragraph (1) include—

15 “(A) the use of State personnel and re-  
16 sources, including fishery survey vessels owned  
17 and maintained by States to survey or assess  
18 data-poor fisheries for which fishery manage-  
19 ment plans are in effect under this Act; and

20 “(B) cooperative research activities to im-  
21 prove or enhance the fishery independent data  
22 used in fishery stock assessments.

23 “(3) DATA-POOR FISHERIES PRIORITY LISTS.—

24 Each Council shall—

1           “(A) identify those fisheries in its region  
2 considered to be data-poor fisheries;

3           “(B) prioritize those fisheries based on the  
4 need of each fishery for up-to-date information;  
5 and

6           “(C) provide those priorities to the Sec-  
7 retary.

8           “(4) DEFINITIONS.—In this subsection:

9           “(A) The term ‘data-poor fishery’ means a  
10 fishery—

11           “(i) that has not been surveyed in the  
12 preceding 5-year period;

13           “(ii) for which a fishery stock assess-  
14 ment has not been performed within the  
15 preceding 5-year period; or

16           “(iii) for which limited information on  
17 the status of the fishery is available for  
18 management purposes.

19           “(B) The term ‘fisheries enforcement pen-  
20 alties’ means any fine or penalty imposed, or  
21 proceeds of any property seized, for a violation  
22 of this Act or of any other marine resource law  
23 enforced by the Secretary.

24           “(5) AUTHORIZATION OF APPROPRIATIONS.—

25           There is authorized to be appropriated to the Sec-

1       retary for each fiscal year to carry out this sub-  
2       section up to 80 percent of the fisheries enforcement  
3       penalties collected during the preceding fiscal year.”.

4   **SEC. 9. COUNCIL JURISDICTION FOR OVERLAPPING FISH-**  
5       **ERIES.**

6       Section 302(a)(1) (16 U.S.C. 1852(a)) is amended—

7           (1) in subparagraph (A), in the second sen-  
8       tence—

9           (A) by striking “18” and inserting “19”;

10          and

11           (B) by inserting before the period at the  
12       end “and a liaison to represent the interests of  
13       fisheries under the jurisdiction of the Mid-At-  
14       lantic Fishery Management Council”; and

15           (2) in subparagraph (B), in the second sen-  
16       tence—

17           (A) by striking “21” and inserting “22”;

18          and

19           (B) by inserting before the period at the  
20       end “and a liaison to represent the interests of  
21       fisheries under the jurisdiction of the New Eng-  
22       land Fishery Management Council”.

1 **SEC. 10. GULF OF MEXICO COOPERATIVE RESEARCH AND**  
2 **RED SNAPPER MANAGEMENT.**

3 (a) REPEAL.—Section 407 (16 U.S.C. 1883), and the  
4 item relating to such section in the table of contents in  
5 the first section, are repealed.

6 (b) REPORTING AND DATA COLLECTION PRO-  
7 GRAM.—The Secretary of Commerce shall—

8 (1) in conjunction with the States, the Gulf of  
9 Mexico Fishery Management Council, and the char-  
10 ter and recreational fishing sectors, develop and im-  
11 plement a real-time reporting and data collection  
12 program for the Gulf of Mexico red snapper fishery  
13 using available technology; and

14 (2) make implementation of this subsection a  
15 priority for funds received by the Secretary under  
16 section 2 of the Act of August 11, 1939 (commonly  
17 known as the “Saltonstall-Kennedy Act”) (15 U.S.C.  
18 713e–3).

19 (c) COOPERATIVE RESEARCH PROGRAM.—The Sec-  
20 retary of Commerce—

21 (1) shall, in conjunction with the States, the  
22 Gulf of Mexico and South Atlantic Fishery Manage-  
23 ment Councils, and the commercial, charter, and  
24 recreational fishing sectors, develop and implement a  
25 cooperative research program for the fisheries of the  
26 Gulf of Mexico and South Atlantic regions, giving

1 priority to those fisheries that are considered data-  
2 poor; and

3 (2) may, subject to the availability of appropria-  
4 tions, use funds received by the Secretary under sec-  
5 tion 2 of the Act of August 11, 1939 (commonly  
6 known as the “Saltonstall-Kennedy Act”) (15 U.S.C.  
7 713c–3) to implement this subsection.

8 (d) STOCK SURVEYS AND STOCK ASSESSMENTS.—  
9 The Secretary of Commerce, acting through the National  
10 Marine Fisheries Service Regional Administrator of the  
11 Southeast Regional Office, shall for purposes of the Mag-  
12 nuson-Stevens Fishery Conservation and Management Act  
13 (16 U.S.C. 1801 et seq.)—

14 (1) develop a schedule of stock surveys and  
15 stock assessments for the Gulf of Mexico Region and  
16 the South Atlantic Region for the 5-year period be-  
17 ginning on the date of the enactment of this Act and  
18 for every 5-year period thereafter;

19 (2) direct the Southeast Science Center Direc-  
20 tor to implement such schedule; and

21 (3) in such development and implementation—

22 (A) give priority to those stocks that are  
23 commercially or recreationally important; and

24 (B) ensure that each such important stock  
25 is surveyed at least every 5 years.

1 (e) USE OF FISHERIES INFORMATION IN STOCK AS-  
2 SESSMENTS.—The Southeast Science Center Director  
3 shall ensure that fisheries information made available  
4 through research funded under Public Law 112–141 is in-  
5 corporated as soon as possible into any fisheries stock as-  
6 sessments conducted after the date of the enactment of  
7 this Act.

8 (f) STATE SEAWARD BOUNDARIES IN THE GULF OF  
9 MEXICO WITH RESPECT TO RED SNAPPER.—Section  
10 306(b) (16 U.S.C. 1856(b)) is amended by adding at the  
11 end the following:3(11) (16 U.S.C. 1802) is amended by  
12 inserting before the period the following: “and the seaward  
13 boundary of a coastal State in the Gulf of Mexico is a  
14 line 9 miles seaward from the baseline from which the ter-  
15 ritorial sea of the United States is measured”.

16 “(3) Notwithstanding section 3(11), for the purposes  
17 of managing the Gulf of Mexico red snapper fishery, the  
18 seaward boundary of a coastal State in the Gulf of Mexico  
19 is a line 9 miles seaward from the baseline from which  
20 the territorial sea of the United States is measured”.

21 **SEC. 11. NORTH PACIFIC FISHERY MANAGEMENT CLARI-**  
22 **FICATION.**

23 Section 306(a)(3)(C) (16 U.S.C. 1856(a)(3)(C)) is  
24 amended—

1 (1) by striking “was no” and inserting “is no”;

2 and

3 (2) by striking “on August 1, 1996”.

4 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

5 Section 4 (16 U.S.C. 1803) is amended—

6 (1) by striking “this Act” and all that follows  
7 through “(7)” and inserting “this Act”; and

8 (2) by striking “fiscal year 2013” and inserting  
9 “each of fiscal years 2014 through 2018”.

10 **SEC. 13. ENSURING CONSISTENT MANAGEMENT FOR FISHERIES THROUGHOUT THEIR RANGE.**

11  
12 (a) IN GENERAL.—The Magnuson-Stevens Fishery  
13 Conservation and Management Act (16 U.S.C. 1801 et  
14 seq.) is amended by inserting after section 4 the following:

15 **“SEC. 5. ENSURING CONSISTENT FISHERIES MANAGEMENT  
16 UNDER OTHER FEDERAL LAWS.**

17 “(a) NATIONAL MARINE SANCTUARIES ACT AND AN-  
18 TIQUITIES ACT OF 1906.—In any case of a conflict be-  
19 tween this Act and the National Marine Sanctuaries Act  
20 (16 U.S.C. 1431 et seq.) or the Antiquities Act of 1906  
21 (16 U.S.C. 431 et seq.), this Act shall control.

22 “(b) FISHERIES RESTRICTIONS UNDER ENDAN-  
23 GERED SPECIES ACT OF 1973.—To ensure transparency  
24 and consistent management of fisheries throughout their  
25 range, any restriction on the management of fishery re-

1 sources that is necessary to implement a recovery plan  
2 under the Endangered Species Act of 1973 (16 U.S.C.  
3 1531 et seq.) shall be implemented—

4           “(1) using authority under this Act; and

5           “(2) in accordance with processes and time  
6 schedules required under this Act.”.

7       (b) CLERICAL AMENDMENT.—The table of contents  
8 in the first section is amended by inserting after the item  
9 relating to section 4 the following:

“Sec. 5. Ensuring consistent fisheries management under other Federal laws.”.

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
All 128 findings are listed in column B. Items identified by Council staff as "legislative" issues, as opposed to Best Practices or National Standard Guideline issues, are bolded. Underlines priorities are addressed in the House draft.				
<b>Session 1: Improving Fishery Management Essentials</b>				
1 Consider multi-year minimum stock size thresholds and Annual Catch Limit (ACL) framework			No	
1a <u>Phase in ACL changes</u>			Yes	Councils would be required to end overfishing immediately in the fishery and to rebuild affected stocks of fish, except that in the case of a highly dynamic fishery (not defined), a Council (or Secretary) may phase-in the rebuilding plan over a 3-year period to lessen economic harm to fishing communities [page 2 lines 11-16], except that for a fishery for which chronic overfishing has not occurred and for which an immediate end to overfishing will result in significant adverse economic impacts to fishing communities, the Secretary may authorize a Council to phase in fishing restrictions over a continuous period of not more than 3 years [page 6 lines 3-11]. <i>The Pacific Council has used a "ramp-down" strategy in the past and this would strengthen the legal basis for doing so.</i>
1b Constrain large inter-annual changes in ACLs	(3)(A)	Yes ("don't chase noise") (see #22). Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as highest priority.	No	
1c Do not base overfished determination on single year estimate			No	
2 <u>Allow and provide guidance for using the mixed stock exemption</u>			Yes (see below)	
3 Use management strategy evaluation to evaluate the performance of harvest control rules			No	

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
4 Provide better guidance on setting ACLs for transboundary stocks where no international treaty exists and only US removals are known			No	
<i>Related issue added in House discussion draft (ACL exceptions)</i>			Yes	In establishing annual catch limits a Council may consider changes in an ecosystem and the economic needs of the fishing communities.
<i>Related issue added in House discussion draft (ACL exceptions)</i>			Yes	A Council is not required to develop an annual catch limit for an ecosystem component species; a fishery for a species that has a life cycle of approximately 1 year (unless it is subject to overfishing); a stock for which more than half of a single-year class will complete their life cycle in less than 18 months, and fishing mortality will have little impact on the stock.
<i>Related issue added in House discussion draft (ACL exceptions)</i>			Yes	A Council may establish an annual catch limit for a stock complex; or annual catch limits for each year in any continuous period that is not more than three years in duration.
<i>Related issue added in House discussion draft (electronic monitoring)</i>			Yes	Within 6 months after passage of the Act, the Secretary, the Councils and the PSMFC shall develop objectives, performance standards, and regulations to govern the use of electronic monitoring for data collection and monitoring purposes (with comment from the fishing industry). This does not include electronic monitoring for law enforcement. If the Secretary does not do this within 6 months, the Councils may do so for their fisheries, and implement plans to substitute electronic monitoring for human observers, if it provides the same level of coverage, and if standards are in effect. (Pages 15-17). <i>This may help the Council's efforts in developing electronic monitoring.</i>
<b>Different tools and strategies for managing recreational fisheries</b>				
5 Eliminate hard quotas managed in-season for recreational stocks. Adjust pre-season input controls (e.g., bag limits, seasons) to stay within ACL (based on numbers of fish, not poundage)			No	

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
6 Manage with long-term mortality rates for more stability (e.g. eliminate wide fluctuations in catch limits)			Partly	<i>Sec. 304 109-479(8) allows rebuilding plans that establish harvest control rules based on a long term mortality rate. However, this does not prevent wide fluctuations in catch limits since a new assessment could provide a vastly different estimate of exploitable biomass which could result in a wide fluctuation in catch limits when applying the established mortality rate.</i>
<i>Assessments and Data-Poor Stocks</i>				
7 Prioritize assessment of target stocks over non-target stocks			No	
8 Set minimum data quality standards for stock assessment*			No	
9 <b>Do not require ACLs for data-poor stocks*</b>	§ 303	Yes, related: "Explore more flexibility for data-poor species where the precautionary approach limits information on stock performance under higher catch rates." Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as highest priority.	No, but see below (MONF finding 10)	
10 <u>Improve data-poor assessment methods</u>			Related	Each Council must identify "data-poor" fisheries in their region, prioritize them based on the need for up to date information, and provide this to the Secretary. A data-poor fishery is defined as one that has not been surveyed in the preceding 5-year period; for which a fishery stock assessment has not been performed within the preceding 5-year period; or for which limited information on the status of the fishery is available for management purposes. (pages 23-25)

	ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
11	Consider default buffer (e.g., 75% maximum fishing mortality threshold)			No	
12	More than one indicator species in a complex leads to better estimate of stock status			No	
Topic 2: Rebuilding Program Requirements and Timelines					
13	<b><u>Revise rebuilding time requirements*</u></b>	304(e); (4)(A)(ii)	Yes. (Fix the ten-year rebuilding requirement dilemma; address "rebuilding as soon as possible" problems.) Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as highest priority.	Yes	In general, rebuilding plans would need to rebuild the stock in the amount of time that it would take to rebuild without any fishing, plus one mean generation of the stock.
13a	<b><u>Always set <math>T_{MAX}</math> equal to <math>T_{MIN}</math> plus one mean generation</u></b>			Yes	<i>Most Council rebuilding plans involve long-lived stocks that are already exempt from the 10 year time frame.</i>
13b	<b><u>Set exploitation rates less than <math>F_{MSY}</math> and rebuilding will occur naturally over time</u></b>			No	
14	<b><u>Refine and include the mixed stock exception in MSA; harvest of one species at its optimal level may result in overfishing another stock, only if strict criteria are met*</u></b>		Yes. ("Include a viable mixed stock exception"). Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as lower priority.	Yes	Rebuilding may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation, <b>except when one or more components of a mixed-stock fishery is depleted but cannot be rebuilt within that timeframe without significant economic harm to the fishery</b> , or cannot be rebuilt without causing another component of the mixed-stock fishery to approach a depleted status... (pages 2-4).
15	<b><u>Stocks later determined to have never been overfished should no longer be subject to rebuilding requirements</u></b>	§304 (e)	Yes. Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as highest priority.	Yes	A Council may end its rebuilding effort (109-479) if the Council determines that the fishery is not depleted either two years after an FMP, amendment, or proposed regulation takes effect, or upon completion of the next stock assessment after such determination, whichever comes first (page 5, lines 7-20).

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
<p>16 <b><u>Replace the term “overfished” with “depleted” (status may not be due to excessive fishing)*</u></b></p>		<p>Yes. ("Replace the term “overfished” with “depleted” to account for non-fishing causes of stock size below minimum stock size threshold") (Sept 2013; LC Nov 2013). Included in letter to Congress as lower priority.</p>	<p>Yes</p>	<p>The discussion draft change the term “overfished” to “depleted” throughout the Act (Page 9, lines 16-19). “The term ‘depleted’ is defined as when “the stock is of a size that is below the natural range of fluctuation associated with the production of maximum sustainable yield.” “Overfishing” continues to mean “a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.” <i>It should be noted that the definition of "depleted" included in this draft considers anything below the natural fluctuation of MSY as “depleted;” the current definition of “overfished” considers anything below the minimum stock size threshold as overfished. This puts everything that is in the current “precautionary zone” into depleted status, triggering rebuilding plans. House staff has been made aware of this issue but if it is not addressed the Council may need to make a formal comment.</i></p>
<p><i>Related issue in House discussion draft</i></p>			<p>Yes</p>	<p>Rebuilding may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation, except when the stock has been affected by unusual events that make rebuilding within the specified time period improbable without significant economic harm to fishing communities.</p>
<p><i>Related issue in House discussion draft</i></p>			<p>Yes</p>	<p>Rebuilding must take into account environmental conditions, including predator/prey relationships. (Page 4, lines 18-20)</p>
<p>Modify MSA to provide flexibility</p>				
<p>17 <b><u>Establish a standardized process for reviewing rebuilding progress</u></b></p>			<p>Yes</p>	<p>Rebuilding plans must specify a schedule for reviewing the rebuilding targets, evaluating environmental impacts on rebuilding progress, and evaluating progress being made toward reaching rebuilding targets. (Page 5, lines 1-5). <i>The Council already does this during the biennial specifications process.</i></p>

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
17a <b>Maintain an existing rebuilding plan when minor changes occur in estimated <math>T_{TARGET}</math></b>			No	<i>This is not addressed specifically in the MSA but is a subject of any National Standard Guidelines interpreting the act.</i>
18 <b><u>Address social and economic issues (e.g., “possible” to “practicable”)*</u></b>	(4)(A)(i)	Yes ("clarify criteria regarding needs of fishing communities"); "Address social and economic issues such as ‘possible’ to ‘practicable’ in MSA section 304(e)(4)(A)(i)."Identified as priority by Council (Sept 2013) and LC (Nov 2013)	Yes	The time period for rebuilding the fishery that shall be as short as <b>practicable [not possible]</b> , taking into account the status and biology of any depleted stocks of fish, the needs of fishing communities, etc. (Page 2, lines 18-19). <i>This change from “possible” to “practicable” would allow more flexibility to the Council.</i>
19 <b>Extend annual species exemption to short-lived species</b>			No	
20 <b><u>Allow a transboundary exemption when a significant proportion of the stock is outside U.S. jurisdiction</u></b>			Yes	Rebuilding may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation, <b>except when the cause of the stock being depleted is outside the jurisdiction of the Council</b> , or the rebuilding program cannot be effective only by limiting fishing activities... (or when) recruitment, distribution, or life history of, or fishing activities for, the stock are affected by informal transboundary agreements under which management activities outside the EEZ by another country may hinder conservation efforts by US fishermen... (pages 2-4). <i>This could be helpful if the U.S. enters into informal transboundary agreements with Canada or Mexico on sardines or groundfish species.</i>

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
21 Increase the frequency and quality of stock assessments and rebuilding analyses and incorporate ecosystem dynamics; recognize limitations of science			Does call for consideration of ecosystem factors, but not necessarily in stock assessments	
22 Don't chase noise: Assessments and projections will always be uncertain; develop smoothing strategies to provide stability	(3)(A)	Yes. Included in letter to Congress as highest priority. (See 1b)	No	<i>This is not addressed specifically in the MSA but is a subject of any National Standard Guidelines interpreting the act.</i>
23 Utilize management strategy evaluation tools to evaluate stock rebuilding approaches			No	
24 <u>Develop harvest control rules that incorporate rebuilding provisions; early investments increase the probability of success</u>			Related	A fishery management plan, plan amendment, or proposed regulations may use alternative rebuilding strategies, including harvest control rules and fishing mortality targets.
<b>Topic 3 International Fisheries Management: Leveling the Playing Field</b>				
<b>International Cooperation and Assistance:</b>				
25 Help developing countries build fishery management and enforcement capacity			No	
26 Support immediate adoption of appropriate target and limit reference points by RFMOs			No	
27 E-NGOs should continue to leverage compliance with RFMO conservation measures (e.g. through supply chains)			No	
<i>Related issue added in House discussion draft</i>			Yes	Each annual catch limit shall take into account management measures under international agreements; and informal transboundary agreements under which management activities by another country may hinder conservation efforts by US fishermen for transboundary stocks.
<b>Combating IUU Fishing:</b>				
28 <b>Increase support for at-sea and in port monitoring and enforcement</b>		Included in letter to Congress as lower priority.	No	

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
29 <b>Broaden trade sanctions domestically and within RFMOs to address non-compliance</b>			No	
30 <b>Implement stricter imported seafood labeling requirements in the US market</b>		Identified as priority by Council (Sept 2013) and LC (Nov 2013)	No	
31 <b>Ratify Port State Measures Agreement</b>			No	
32 <b>Amend MSA to change “vessels” to “vessel” in the IUU certification section</b>	§ 609 (d)	Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as lower priority.	No	
33 Promote measures to reduce overcapacity:			No	
33a Fishery rationalization (e.g., catch shares)			No	
33b Restrict national subsidies for fuel and vessel construction			No	
33c Limit vessel numbers by RFMO member states			No	
34 <b>Consider a national sustainable seafood certification program*</b>			No	
35 RFMOs should consider transfer effects when developing conservation and management measures			No	
36 RFMOs should adopt measures that reward compliance (e.g. quota allocations)			No	
<i>Related issue added in House discussion draft (enforcement penalty funds)</i>			Yes	Subject to appropriations, the Secretary may direct 80% of fishery enforcement penalty funds collected during the preceding fiscal year toward data collection (fishery survey vessels used to survey or assess data-poor fisheries; cooperative research), but only in the fishery management region in which they are collected.
Communication and Stakeholder Engagement:				

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
37 Improve communication among US delegations across tuna RFMOs (e.g. WCPFC, IATTC, ICCAT)			No	
38 Maximize participation of fishermen and other stakeholders in US RFMO delegations			Related	Every Council, "to the extent practicable," must provide a live broadcast of each Council meeting (available on the internet), and of the CCC meeting (apart from closed sessions). (It appears that an audio broadcast is sufficient). Calls for audio, video, and a complete transcript of every Council and SSC meeting to be posted on the web within 30 days after the meeting. (Pages 10-11, lines 11-5). <i>This would increase Council workload.</i>
<b>Session 2: Advancing Ecosystem-Based Decision Making</b>				
39 <u>Evaluate ecosystem productivity change</u>			Partly	
40 Evaluate effectiveness and utility of closed/fixed areas			No	
41 Engage across disciplines and increase coordination between NMFS, Councils, Science Centers, stakeholders, other governmental agencies			No	
42 Increase reliance on industry while shifting councils' role in evaluating effectiveness			No	
43 <u>Consider broad range of ecosystem services</u>			Partly	
44 <u>Build capacity throughout the fishery management system to use new tools to advance ecosystem-based decision-making</u>			Partly	
45 Establish ecosystem SSC at the council level.			No	
46 <u>Invest in ecosystem-based management (i.e., advancing scientific models, training staff ) and identify and remove impediments to the transition from single species to ecosystem based management</u>			Partly	

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
<i>Related issue in House discussion draft</i>			Yes	"Ecosystem component species" means a stock of fish that is a nontarget, incidentally harvested stock of fish in a fishery, or a nontarget, incidentally harvested stock of fish that a Council or the Secretary has determined is not subject to overfishing, approaching a depleted condition or depleted; and is not likely to become subject to overfishing or depleted in the absence of conservation and management measures. (Pages 6-8)
<b>Assessing Ecosystem Effects and Integrating Climate Change</b>				
47 Address the root causes of climate change as MSA is a limited tool and addresses mainly symptoms			No	
48 Increase coordination between and across jurisdictions to address changing species distribution and ecosystem change (regional councils, states, and international)			No	
<b>Precautionary and Adaptive Management</b>				
49 Flexibility to respond to spatial, allocative and distributional effects of climate change				
50 <b><u>Address rebuilding requirements when environmental conditions may be a predominate factor in a stock's decline</u></b>	§ 304(e)	Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as lower priority.	Yes	Rebuilding may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation, except when the biology of the stock of fish, other <b>environmental conditions</b> , or management measures under an international agreement in which the US participates dictate otherwise... (pages 2-4)
51 Assess barriers to adaptation (fishing communities and fish stocks)			No	
52 <b>Utilize a precautionary approach for developing/emerging fisheries</b>			No	
53 <u>Recognize and manage in response to ecosystem productivity change</u>			Partly	

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
54 Develop a comprehensive national plan and tools which facilitate development of regional management strategies			No	
55 Incorporate environmental trigger mechanism to initiate management action/measure			No	
56 Evaluate effectiveness and utility of closed/fixed areas			No	
57 Modify reference points as climate changes (precautionary vs. recalibrating MSY)			No	
<b>58 ESA: Base listings on actual trends rather than projected trends of climate change</b>			No	
59 Assess the efficacy of the National Ocean Policy as a vehicle to address climate change			No	
<b>Integrated Ecosystem Assessments (IEAs)</b>				
60 Integrate IEAs and all component models into management process			No	
61 Derive less data and resource intensive tools for use in management process			No	
62 Develop ecosystem models, tools and assessments at a regional level that:			No	
61a Synthesize existing data from non-fishing sources and incorporate socio-economic as well as ecosystem parameters			No	
62b <u>Respond to changing parameters</u>			Partly	
62c Predict future ecosystem states			No	
62d Provide short- and long-term guidance			No	
62e Account for cumulative impacts of climate change			No	
63 Develop decision support tools that allow councils to develop responses to a wide range of uncertainty (such as MSE)			No	
<b>Topic 2 Forage Fish Management</b>				

	ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
64	No changes to MSA are necessary to sustainably manage forage fish			No	No mention of forage fish in the House version.
65	<b>Establish a new national standard to ensure adequate forage base</b>			No	
66	<b>Require explicit consideration of the impact of forage fish to the ecosystem and fishing communities to inform OY and ACL decisions</b>			No	
67	<b>Prohibit new forage fisheries until scientific and management evaluation are conducted</b>			No	
68	Define forage at the regional council level			No	
69	Use threshold harvest control rules to adopt ecologically- based reference points			No	
70	<u>Implement real time data collection to inform adaptive management</u>			Encourages electronic monitoring	
71	Require scientists to provide managers with an index of key forage species abundance			No	
72	<b>Establish an ecosystem SSC at the council level</b>			No	
73	<u>Invest in ecosystem-based fisheries management</u>			Partly	
	<b>Best Practices</b>				
74	Improve inter-jurisdictional collaboration and coordination on forage fish management.			No	
75	Use meta-analysis/global studies and rules of thumb as a starting point in discussions for forage fish management or as a guide in data poor situations			No	
76	Advance tools and develop methodologies to:			No	
76a	evaluate tradeoffs between uses of forage			No	

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
76b Account for the needs of predators when doing stock assessments and ACLs;			Does discuss predators, but not in this context	
76c estimate the varying and complex economic value of forage fish;			No	
76d measure localized depletion; and			No	
76e evaluate effects of climate change on forage			No	
<b>Topic 3 Integrating Habitat Considerations: Opportunities and Impediments</b>				
77 <b>Consider a national standard for habitat: “Minimize adverse impacts on essential fish habitat to the extent practicable”</b>	§ 301(a)	Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as lower priority.	No	House draft does not discuss EFH.
78 Build partnerships to achieve landscape and ecosystem level habitat improvements			No	
79 Improve understanding of relationships between habitat and productivity to support identification and evaluation of tradeoffs			No	
80 Resolve status of artificial substrates with regard to EFH designation			No	
81 <b>Establish a timeline for improving the scientific basis for designation of EFH for key species and habitats</b>			No	
82 Maintain and strengthen the EFH designation process by developing objectives and metrics for successful habitat protection			No	
83 <b>Define “essential” habitat more broadly</b>			No	
84 Shift interpretation of EFH from single-species to multispecies and ecosystem focus			No	
85 Set measurable conservation objectives and utilize a “common currency” to evaluate adverse and cumulative impacts			No	

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
86 Identify priority habitats that benefit fisheries, focus habitat research			No	
87 <b>Provide guidance on “minimize to the extent practicable adverse impacts...caused by fishing” and consider relationship to OY</b>			No	
88 <b>Strengthen EFH consultation process and ensure compliance with and effectiveness of existing laws and recommendations</b>			No	
89 Develop a long-term, standardized process for monitoring and evaluating habitat to establish a baseline, assess long term impacts, and support rapid response to non-fishing habitat impacts			No	
90 Provide tools other than spatial closures for addressing adverse impacts from fishing			No	
<p>Session 3 Providing for Fishing Community Stability Topic 1 Recreational and Subsistence Fishery Connections</p>				
91 <b><u>Idea to be replicated/expanded: Scientists can learn much more from fishing community via greater use of cooperative research. This promotes buy-in, empowers fishermen, and can be more cost-effective</u></b>			Does encourage cooperative research	
92 Fishermen want to be involved with data analysis as well—provides legitimacy to the process and helps build trust			See above	
93 <b><u>Councils and NMFS need new creative communication strategies &amp; investments to reach, engage, and support underrepresented fishermen's participation in process</u></b>			Yes (see below)	
94 Goals specific to each sector and stakeholder group need identification, early in the process, to customize development of a suite of fishery management strategies			No	
95 Allocations are not 'permanent' - need to be more proactive in routine review and modification as needed. Decisions should be left to the regions, and creative solutions may result from constructive dialog between sectors			No	

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
96 Recreational and subsistence considerations need higher priority in fishery management policy choices, AND in other policy arenas that affect fisheries (e.g., alt. energy)			No	
97 <b>Define subsistence fishing in the MSA, and expand recognition of tribes and indigenous people engaged in subsistence fishing</b>			No	
98 Qualitative information vs. quantitative – need more thought/guidance on how to utilize both in fishery management decisions			No	
99 <b>Need better data - Target ledger-type submissions and other data collections as condition of access/use of a public trust resource</b>			No	
Topic 2 Integrating Community Protection, Jobs Emphasis, and Domestic Seafood Quality Assurance				
100 Create, modify and promote financial tools and training to support small and community-based borrowers (e.g., NOAA Fisheries Finance Program, CA Fisheries Fund)			No	
101 <b>Resolve institutional impediments to fisheries commerce (e.g., Establish central registry to facilitate lending; Improve aquaculture permitting process)</b>			No	
102 Link ecosystem-based management scales to fisheries management and governance (e.g. Revise National Standard 3 (Management Unit))			No	
103 <b>Link fishery participation to stewardship obligation</b>			No	
104 Need policy statement on devolving governance			No	
105 <b>Preserving the past is not always the best path forward</b>			No	
106 <b>Diversify Council management actions to accommodate differences between small &amp; large-scale operators (e.g., mobility of fleet, business models, supply needs)</b>			No	

	ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
107	<b>Anchor quota in communities (Utilize ecosystem-based management, Community Fishing Associations)</b>			No	
108	<u>Devolve more responsibilities and accountability to communities and industry, engage in science via cooperative research</u>			Partly	
109	Elevate and promote best practices; become a learning organization (e.g. State examples, Fisheries Improvement Projects, National Fish & Wildlife Foundation funded projects)			No	
110	<b>Modify Council process to improve participation of small-scale and community sectors</b>			No	
111	<u>Cooperative research results needs to be more fully incorporated into management</u>			Partly	
112	<b>Recognize certification of U.S. fisheries that meet the 10 MSA national standards</b>			No	
113	<b>Need end-end streamlined regulatory process for aquaculture</b>			No	Does not discuss aquaculture.
114	Wild harvest and aquaculture, more similar than different, both needed to meet supply needs, attain economic objectives			No	
Topic 3 Assessment and Integration of Social and Economic Tradeoffs					
115	<b>MSA needs to incentivize response to challenges, population growth, climate change, globalization, and budget cuts</b>			No	
116	<b>MSA needs to complement other ocean users and relevant statutes that affect fisheries management, such as ESA, Clean Water Act</b>			No	
117	Give full consideration to impacts from other uses/users for marine resources (non-fisheries)			No	
118	<b>MSA should explicitly promote use of adaptive management approaches, particularly for data-poor species where the precautionary approach limits information on stock performance under higher catch rates</b>			No	

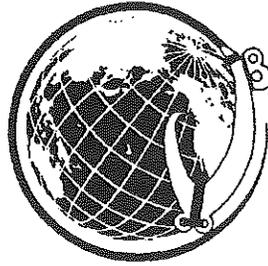
ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
119 <b>Need to define, ID sideboards &amp; metrics of elements of OY; redefine OY/MSY relationship to no longer be one- direction, and social, economic and non-economic values could allow OY to be above MSY</b>			No	
120 <b>Expand socioeconomic analysis requirements to include economic value and non-market value quantification</b>	§ 402	Identified as priority by Council (Sept 2013) and LC (Nov 2013)	No	
121 Trade-off analysis requires giving higher priority than other disciplines for acquiring additional capacity in social scientists including anthropologists, sociologists, and economists at Councils, regional offices and/or externally			No	
122 Facilitate cooperation and partnerships with states, local governments, and other agencies			No	
123 Improve engagement with competing sectors in scoping process			No	
124 Develop mitigation plans to reduce impacts on communities due to management actions			No	

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
125 <u>Reform MSA confidentiality provisions, access to data from public trust resource users while protecting sensitive information</u>		Yes ("Explore options to improve access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis") (Sept 2013). Included in letter to Congress as lower priority.	Yes	Any information submitted to a Council or other management agency, including confidential information, is exempt from disclosure except to Federal and Council employees who are responsible for FMP development, etc.; to State or Marine Fisheries Commission employees (doing their work); to state employees responsible for FMP enforcement, if an agreement is in place; when required by a Court order; if such information is used by managers to verify catch under a catch share program; if the person has provided written authorization; if the information is required under a catch share program. Provides for similar confidentiality of observer and VMS information. In addition, the Secretary may not provide any vessel specific or aggregate vessel information from a fishery that is collected for monitoring and enforcement purposes to any person for the purposes of coastal and marine spatial planning under Executive Order 13547. (All from page 18, line 8, to page 21, line 15). <i>This would clarify the use of confidential data.</i>
Allocations				
126 <b>MSA mandate for Councils to consider review of recreational and commercial allocations every {x} years after scoping allocations based on a set of objective guidelines</b>			No	Does not discuss allocation.
127 NOAA standardized methods on how to review allocations			No	
128 Improve NOAA support for allocation reviews (contracted analysts/economists)			No	
Other Priorities Identified by the Council				

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
<p><b>Include a carryover exception to allow annual catch limits (ACLs) to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided there is a finding from the SSC that such a carryover provision will have negligible biological impacts (Sept 2013)</b></p>	§303(a)	Yes. Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as highest priority.	No	<i>This may need to be addressed in the next version of the National Standard Guidelines</i>
<p><b>Designate one Commissioner seat on Inter-American Tropical Tuna Commission for the Pacific Council (Sept 2013)</b></p>		Yes. Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as lower priority.	No	
<p><b><u>Better align and streamline the National Environmental Policy Act &amp; MSA section 304(i)</u></b></p>	§ 304(i)	Yes. Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as highest priority.	Yes	Compliance with the MSA will fulfill NEPA requirements. Any fishery management plan, amendment to such a plan, or regulation implementing such a plan that is prepared in accordance with applicable provisions of sections 303 and 304 of this Act shall be considered to satisfy, and to have been prepared in compliance with, the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) by the Secretary.
<p><b>Provide flexibility in requirements and qualifications for observers.</b></p>	§ 401	Yes. Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as highest priority.	No	
<p><b><u>Make a distinction between “overfishing” (a measure of fishing rate) and “overfished” (a measure of abundance)</u></b></p>		Yes. Identified as priority by Council (Sept 2013) and LC (Nov 2013). Included in letter to Congress as lower priority.	Related	Calls for the Status of Stocks report to distinguish between fisheries that are depleted (or approaching that condition) as a result of fishing, and fisheries that are depleted (or approaching that condition) as a result of factors other than fishing. The report shall state, for each fishery identified as depleted or approaching that condition, whether the fishery is the target of directed fishing. (Pages 9-10, lines 20-3)

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
Other House Discussion Draft Items				
<u>Endangered Species Act</u>			Yes	To ensure transparency and consistent management of fisheries throughout their range, any restriction on the management of fishery resources that is necessary to implement a recovery plan under the Endangered Species Act of 1973 (16 U.S.C 1531 et seq.) shall be implemented—(1) using authority under this Act; and (2) in accordance with processes and time schedules required under this Act. <i>This language regarding the Endangered Species Act comports with the practices already followed in the Pacific Council region.</i>
<u>Survey technologies</u>			Yes	The Secretary will work with the Councils and NGOs to develop video survey technologies and expanded use of acoustic survey technologies.
<u>Catch shares</u>			Yes	Defines ‘catch share’ as any fishery management program that allocates a specific percentage of the total allowable catch for a fishery, or a specific fishing area, to an individual, cooperative, community, sector, processor, or regional fishery organization established in accordance with section 303A(c)(4), or other entity. (Page 12, lines 5-14)
<u>National Marine Sanctuaries Act</u>			Yes	In case of conflict between the MSA and NMSA, the MSA shall control. <i>This change is one that the Pacific Council has supported for several years.</i>
<u>Other minor on non West Coast-related changes</u>				Each Council shall develop annual catch limits for each of its managed fisheries that may not exceed the <u>over</u> fishing level recommendations of its scientific and statistical committee. <i>Current National Standard Guidelines are more restrictive saying an ACL cannot exceed an ABC, which is less than the overfishing level.</i>
				Calls for a transparent public process for SSCs.
				Makes minor changes to the makeup of the New England and Mid-Atlantic Councils.

ORIGINAL MONF FINDING	RELEVANT MSA SECTION	COUNCIL PRIORITY?	IN HOUSE DISCUSSION DRAFT?	DISCUSSION DRAFT LANGUAGE AND NOTES
				Requires a referendum for any new catch share program in New England, Mid-Atlantic, South Atlantic, and Gulf regions.
				Emergency regulations remain in effect for not more than 1 year after publication in the Federal Register, but may be extended for an additional period of not more than 1 year (rather than 180 days) (pages 5-6, lines 21-2).
				Changes made to Gulf of Mexico jurisdiction.
				Changes made to the Gulf of Mexico red snapper fishery, monitoring of the fishery, etc.
				Does not add any national standards, and makes no changes other than replacing "overfished" with "depleted" in NS8.



**Western  
Pacific  
Regional  
Fishery  
Management  
Council**

Agenda Item J.1.a  
Attachment 3  
March 2014

January 31, 2014

David Whaley  
Senior Staff for Fisheries & Ocean Policy/Subcommittee  
on Insular Affairs, Oceans and Wildlife Committee on Natural Resources  
269 Ford House Office Building  
Washington, D.C. 20515

Dear Dave:

I am writing in response to your December 19, 2013 email requesting comments on the discussion draft of the House reauthorization draft of the Magnuson Stevens Act. The Council staff comments are attached. We are also attaching our testimony to the Senate Subcommittee.

In addition there are four areas of particular concern to the Western Pacific Council that we have highlighted in our testimony to the Senate Subcommittee. These are as follows:

1. The MSA should direct the Secretary to identify nations that are not compliant with RFMO measures and take steps to impose trade sanctions on those nations in accordance with existing MSA provisions such as 16 U.S.C 1826b "High Seas Driftnet Fisheries Enforcement Act. Non compliance with RFMO measures is in our opinion, a much bigger problem than individual IUU vessels.
2. Prioritize enforcement of US EEZs over foreign EEZs and partnerships, such as the US Coast Guard's foreign ship-rider program. In recent years the USCG has also been patrolling the EEZs of foreign nations in support of their enforcement monitoring. Enforcing our large US EEZ should take precedence over foreign enforcement. In our opinion, this is subtracting from potential detection of illegal foreign fishing in the US EEZs.
3. Re-direct a portion of S-K funds to support fisheries development and cooperative research. In our opinion, the Congressional directive to NMFS to make 60 percent of the entire Saltonstall-Kennedy Act funds available to the Councils and fishing industries to be employed for fishery research and development should be actualized.

4. About 90% of the spatial extent of the marine protected areas (MPAs) listed in the United States are found in the Western Pacific, a grotesque skew by any definition. They are largely the result of the NMSA, Antiquities Act and Presidential Executive Orders. Many of our fisheries are grossly under-utilized and these large scale closures are resulting on a disproportionate burden in our fisheries.

Please let me know if you have any questions or need clarification of our comments on the House MSA draft .

Sincerely



Kitty M. Simonds  
Executive Director



**Statement of Arnold Palacios, Chair,  
Western Pacific Regional Fishery Management Council, before the  
Senate Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard  
January 30, 2014**

Chair and Members of the Senate Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard, on behalf of the Western Pacific Regional Fishery Management Council (Council), thank you for the opportunity to provide this written testimony of the Council's perspectives of the reauthorization of the Magnuson-Stevens Act (MSA).

The MSA is a comprehensive statute that ensures marine resource conservation and strives to promote the Nation's fisheries. In past reauthorizations, and no doubt during this process, Congress will hear that there are "magical" solutions to make fisheries sustainable. However, the Councils have heard it all before in different guises, marine protected areas (MPAs), catch limits, catch shares, etc.; the next "panacea" will be no different than the ones that went before; they may work for some but not for others. Further, our record on fishery conservation, management and sustainability speaks for itself (see Attachments 1 and 2).

The core themed message the Council would like to convey through this testimony is one of loss:

- Loss of fisheries;
- Loss of fishing grounds;
- Loss of culture;
- Loss of perspective; and
- Loss of opportunity.

The Council believes that the solutions to these issues are as follows:

- Restoration of the primacy of the MSA for managing marine fisheries resources: any measures under other statutes that may restrict fishing (Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Marine Sanctuaries Act (NMSA), Migratory Bird Treaty Act (MBTA), Antiquities Act, Executive Orders, etc., should be implemented under the authority of the MSA and in accordance with processes and time schedules required under the MSA.
- Improved funding for the Councils and better allocation prioritization of resources by the National Marine Fisheries Service (NMFS) and the US Fish and Wildlife Service (USFWS) to obtain data on MSA regulated fisheries and on protected species and habitats associated with these fisheries.
- Support for US fisheries in international fishery conventions and the recognition that any restrictive measures to be implemented for US fisheries, such as catch or fishing effort limits, must not disadvantage US fisheries to the benefit of less regulated foreign fisheries.

- Recognition that some fishery resources are grossly underutilized and not contributing to optimum yield (OY) as specified in the MSA, and that any management measures implemented through the MSA or other statutes should not preclude the utilization of these resources at a future date.
- Congressional directive to NMFS to make 60 percent of the entire Saltonstall-Kennedy Act funds available to the Councils and fishing industries to be employed for fishery research and development.

#### **A. Loss of Fisheries**

Fishing is primarily seen as a business, whether commercial for income or pursued for pleasure. It is a major employer and generator of revenue. However, our nation has become so obsessed with overfishing and endangered species conservation that we are sleepwalking while US fisheries are lost, one by one. When the MSA was last reauthorized the United States imported 80 percent of its seafood; now we import 94 percent. This has serious implications for the nation's food security and national security as we become increasingly reliant on imported seafood.

Fisheries play an important role in the food supply and provide a source of protein for millions of people worldwide. A loss of fisheries is a loss of this protein and has to be balanced by production from other sources, particularly land-based proteins. The eminent fishery biologist Professor Ray Hilborn has noted that, if lost fish production is compensated by cutting the rainforest to grow crops or cattle, the total biodiversity consequences will be surely negative.

Nevertheless, the United States continues to bury domestic fisheries under piles of regulations stemming not from not only the MSA, but also the ESA, MMPA, NEPA, NMSA, Antiquities Act, MBTA, Executive Orders, and international tuna convention conservation and management measures (CMMs). The list goes on and on. Further, the Department of Defense has a significant presence in the Western Pacific, with a further major military build-up expected for the Mariana Islands. Activities by the military are already constraining fisheries with further proposed closures of waters used for fishing and navigation.

The bureaucratic burden can be measured by the NEPA documentation for our Pelagic Fisheries Ecosystem Plan (FEP). Where a few pages of commonsense text sufficed in the 1990s, we now draft hefty tomes to accompany even the smallest fishery management measure. Of course it is important to document what we are doing and why, but review and approval of plans and amendments are now unnecessarily tedious, taking two to three years to be approved, so management measures may be obsolete by the time they are implemented.

The 2006 reauthorization required NMFS, in consultation with the fishery management councils, to develop within 12 months of enactment new environmental review procedures. The new procedure would have to integrate MSA and NEPA in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public. In 2013, NMFS issued a policy directive indicating that the processes outlined therein meet the MSA requirement to improve the current process. The Council, however, does not agree that the process envisioned in the directive meets the intent of Congress in the 2006 reauthorization, nor will it reduce paperwork and provide for timely,

concise analysis. What the directive does do, however, is put the burden on the councils to prepare NEPA documents prior to taking final action.

As the public participation process and level of environmental review are largely duplicative between the MSA and NEPA, the Council would be in support of MSA reauthorization language that clearly states that fishery management plans and amendments prepared in accordance with MSA shall be considered in compliance with NEPA.

The Western Pacific is a paradox: the largest of the eight fishery management council areas, encompassing 1.5 million square nautical miles with the total land area of 3,398 square nautical miles (equivalent to about the size Rhode Island) comprising only about 0.2% of the ocean area and containing less than two million people, over half of them living on the island of Oahu (see Attachment 3).

Despite our size we punch above our weight. The Hawaii longline fishery ranks the port of Honolulu consistently within the top 10 fishing ports and often within the top five. It supplies half of the nation's swordfish and 80 percent of the bigeye tuna landed in the United States. Hawaii also consistently ranks within the top 10 states with respect to marine recreational fishery landings and is number one in recreational per-capita landings.

The late Senator Inouye used to emphasize that the islands and islanders are different from the rest of the U.S. His main point was "we don't want more than anyone else we just want different!" Our economies are simple: tourism, military, agriculture and fish. This is why there is specific language in the MSA which states that "*Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth*" (MSA Section 2: 104-297).

We've lost not only a pioneering longline fishery in the Marianas Islands but also the Northwestern Hawaiian Islands lobster fishery and the Northwestern Hawaiian Islands bottomfish fishery. The American Samoa longline fishery, the second largest fishery under Council jurisdiction is on the brink of collapse, due to competition from subsidized foreign fisheries such as China catching the same fish and driving down prices while operational costs for the domestic fleet continue to increase. We are also deeply concerned about the Hawaii longline fishery as its bigeye tuna catch has been reduced by a third due to quota management by an international tuna convention.

The Hawaii longline fishery, along with the American Samoa fishery, is an internationally recognized, iconic fishery for environmentally responsible pelagic longline fishing. Both fisheries have scored greater than 90 percent when evaluated against the United Nations Code of Conduct for Responsible Fisheries, and the American Samoa longline fishery is an important component of the Territory's small and fragile economy.

Many of the measures adopted for these longline fisheries—such as mandatory logbooks, observers, vessel monitoring systems, and measures to reduce seabird, turtles and marine mammal interactions—were landmark measures adopted by the United States in the Pacific and have since been adopted by other fisheries and by the Pacific tuna regional fishery management organizations (RFMOs) (see Attachment 2). However, effective and prudent management

sometimes counts for very little within the highly competitive and politicized international fishery management arena. The American Samoa longline fishery and those of neighboring Pacific Island countries have been driven into bankruptcy by heavily subsidized foreign longline fleets, particularly those from China.

The MSA contains measures that aim to level the playing field for US vessels forced to minimize fish and protected species bycatch. But there is nothing to address the undercutting of US fishing vessels by extensive subsidies to foreign fishing fleets for fishery development, fuel, access fees, low-interest loans, tax breaks and reduced import tariffs.

The MSA must address this if the Nation wants to continue eating fish caught by US vessels in accordance with the MSA and its 10 National Standards. To further expand on this point two examples are presented below that highlight the need to support domestic fisheries and the marginalization of MSA through competing protected species statutes.

### **1. International Tuna Management: Level the Playing Field and Support Domestic Fisheries on International Level**

In the Western Pacific Region, tuna is the largest and most valuable fishery resource. Tuna is considered a highly migratory species (HMS) and is managed internationally within the Pacific by two RFMOs: the Western Central Pacific Fisheries Commission (WCPFC) and the Inter-American Tropical Tuna Commission (IATTC). The United States is a contracting party to both RFMOs. Tuna and other HMS were brought under MSA management in the early 1990s. Since that time the Council has been managing Western Pacific Region tuna fisheries under its Pelagics Fisheries Management Plan (FMP). This was later converted into a FEP, along with the other Council FMPs. As a result of the Pelagics FEP management regime, the Hawaii and American Samoa longline fisheries are among the best managed and most comprehensively monitored longline fisheries in the world.

With HMS stocks, however, sound domestic management does not always lead to success. For example, the American Samoa longline fishery, which lands albacore tuna for processing at local canneries, has largely collapsed due to low catch rates, high operating costs and low ex-vessel prices. The fishery targets South Pacific albacore, which ranges from Australia in the West to Chile in the East. In recent years, Chinese vessels have been catching South Pacific albacore at record levels. These vessels have been operating in the high seas and the exclusive economic zones (EEZs) of South Pacific countries.

If there was a level playing field between these vessels and US vessels operating out of American Samoa, then the fishery would likely not have collapsed—unfortunately there is no parity. Chinese vessels are receiving substantial subsidies for fuel, labor and other expenses, allowing them to operate at much lower costs. When albacore prices drop due to global market forces, US vessels cannot compete with subsidized foreign fleets. This is contributing to the loss of US fisheries. The reauthorized MSA needs to provide the Secretary of Commerce with the ability to level the playing field, either through equivalent subsidies to US fleets, the prevention of foreign subsidies through market access restrictions and/or trade sanctions.

Another critical issue with respect to the lack of parity between US fisheries and foreign fisheries are the stark differences in the level of monitoring, domestic implementation of RFMO measures and enforcement. This is critically important because the US is a good citizen; it diligently monitors its vessels both within the EEZ and high seas, undertakes a public rulemaking process to implement conservation and management measures in regulations and then enforces the regulations and prosecutes violations.

The same cannot be said for most other members of the tuna RFMOs. What is particularly alarming is that the United States agrees on RFMO conservation and management measures that will have substantial economic impacts when applied to US fisheries, while recognizing that other RFMO member fisheries will not be affected due to a lack of compliance monitoring and enforcement.

For example additional cuts for the Hawaii longline fishery were accepted by the United States in December 2013 at the 10<sup>th</sup> Regular Session of the WCPFC. Due to an already reduced quota for bigeye tuna, the Hawaii longline fishery faces closure every calendar year, and in past years (2009 and 2010) was closed from catching bigeye tuna in the Western and Central Pacific Ocean (WCPO). No other longline fleet in the Commission was subject to a similar closure.

The United States strictly enforced measures to the detriment of its fleet (amounting to tens of millions of dollars of lost revenue) while other countries are not subject to similar obligations with respect to the same targeted HMS stocks and flood US markets with unrestricted catch.

The MSA should contain language that would prevent further reduction of US fisheries catch and effort limits if other countries cannot demonstrate compliance with existing international conservation and management measures.

At around 1.5 million square miles, the Western Pacific Region represents the largest portion of the US EEZ. The US Coast Guard District 14 is responsible for conducting fisheries enforcement monitoring in this vast zone; however, available assets are only stationed in Hawaii and Guam. American Samoa, which is centrally located within South Pacific tuna fishing grounds and the only US Territory in the Southern Hemisphere (the US EEZ waters around Baker and Jarvis Islands are also in the Southern Hemisphere), does not have a US Coast Guard Station with deployable patrol assets. American Samoa's post-harvest facilities include the largest US tuna cannery on US soil, and as such is a major fishery hub in the Western and Central Pacific.

As combating illegal, unreported and unregulated (IUU) fishing is a major issue within international fisheries management, the US Coast Guard should homeport patrol vessels or aircraft that could help monitor the US EEZ in the region. The last successfully USCG detected and prosecuted foreign fishing vessel incursion was in 2009. Patrol assets based in American Samoa would also serve an important search and rescue mission, whereas under current conditions, New Zealand assumes first responder responsibilities. American Samoa is home port to about 20 US longline vessels, a dozen US purse seiners and numerous other foreign fishing vessels. On average approximately 700 foreign fishing vessels make port calls in Pago Pago in any given year.

For the past several years, the US Coast Guard has conducted a foreign EEZ shiprider program, where US Coast Guard assets are deployed in foreign EEZs with foreign shipriders to conduct fisheries enforcement of national laws of the host shiprider. While this program likely supports a broader international mission within the region, time spent in the EEZ of other countries takes away from patrols that could be done in the US EEZ including American Samoa and the Pacific Remote Island Areas of Jarvis, Howland and Baker Islands, and Palmyra. The Council urges Congress to direct the USCG to prioritize monitoring of the US EEZ over that of foreign EEZs.

## **2. Protected Species Authorities: Endangered Species Act and Marine Mammal Protection Act Driving MSA Management**

Federal fishery regulations for marine mammal conservation and management may be promulgated under MMPA authority independent of the fishery management council process. Circumvention of the Council process results in inconsistencies and conflicts with FMPs and the MSA National Standards, as well as a loss in public input and transparency.

For example, the recently implemented MMPA False Killer Whale Take Reduction Plan resulted in duplication of protected species workshop requirements in both MMPA and MSA regulations; the existing longline exclusion zone created under the MSA was modified for consistency with the new MMPA regulation without concurrence from the Council. Public input and the transparency of the process were also denied when the Council process was bypassed.

Regulation of federal fisheries outside of the MSA, such as through MMPA, ESA and MBTA, continue to threaten the livelihood of US fishermen and place domestic fisheries at a further disadvantage on the international playing field.

Congress should consider requiring that all fisheries-related marine mammal and other protected species conservation and management measures be promulgated through the MSA process, to ensure such measures are consistent with FMPs and the National Standards.

Limited scientific information on species protected under the ESA and MMPA lead to further unnecessary restrictions on US fisheries. Assessment of fishery impacts on ESA-listed sea turtle populations are dependent on nesting beach trends due to the lack of abundance estimates for the entire population, creating a situation similar to assessing human health conditions by conducting a survey at a maternity ward. New species listings under the ESA have been proposed despite limited data about population trends or vulnerability to threats, as is the case with the proposal to list 82 species of corals. Infrequent stock assessment surveys for marine mammals are producing overly conservative population estimates, leading to an extremely low threshold of allowable take for US fisheries under the MMPA.

In the entire Western Pacific only two MMPA dedicated marine mammal surveys have been conducted around the Main Hawaiian Islands since 2002. The consequence of these data limitations are precautionary approaches to protecting species under the ESA and MMPA while having little true conservation benefits to the species. For example, under MMPA promulgated regulations, two observed interactions with false killer whales within the Hawaii longline fishery in any given year results in the closure of the entire southern portion of the US EEZ around the

Main Hawaiian Islands (110,000 square nautical miles, or 42% of the US EEZ around the MHI). This is indicative of the draconian regulations in the absence of adequate data.

These data limitations for protected species result from questionable allocation of funding resources by NMFS and the USFWS to fulfill data needs to properly manage species under the ESA and MMPA. Yet, the resulting burden of potentially unnecessary regulations or closures is shouldered by US fishermen.

The MSA should direct NMFS and the USFWS to better prioritize allocation of resources to obtain data on protected species and habitats associated with MSA regulated fisheries.

## **B. Loss of Fishing Grounds**

About 90 percent of the MPA areas that have been established in the USA are found in the Western Pacific (see Attachment 4), an unfair skew by any definition. This is also probably the reason that since 2009, NOAA inventories MPAs by numbers per State/Territory rather than spatial extent of MPAs per State/Territory.

Our nation seems to care more about turning Pacific Island coral reefs into giant aquaria, finding spurious reasons to enclose more of our islands in 50-mile zones that ban most fishing activity while trumpeting these places as conservation icons. The banning of fishing in the Northwestern Hawaiian Islands has not made fish more abundant in the Main Hawaiian Islands as promised by the proponents of MPAs.

In the same vein, the closure of fishing in the Northwestern Hawaiian Islands was also supposed to protect monk seals. Ironically, they are crashing to extinction in the Northwestern Hawaiian Islands, where there is no fishing, but thriving in the Main Hawaiian Islands, where fishing abounds. In short, three quarters of the State of Hawaii has been closed to fishing for little to no net gain to the residents of the State. At the same time visitors are not lining up in droves to visit the Northwestern Hawaiian Islands Marine National Monument (MNM), the Marianas Trench MNM in Guam and Commonwealth of the Northern Mariana Islands (CNMI), the Rose Atoll MNM in American Samoa or the Pacific Remote Island Area MNM. Nevertheless, they were sold to the State of Hawaii and US Territories by the Federal government as money-making initiatives that would bring in millions of dollars.

Further, closing fishing grounds means fishermen are subject to greater expense and may have to take greater risks to go fishing. The National Institute for Occupational Safety and Health documented a correlation between increases in fishermen drowning in Guam with the increasing coastal fishery closures (<http://www.wpcouncil.org/wp-content/uploads/2013/02/Guam-MPA-drowning.pdf>). Do fishermen have to accept a greater risk of going bankrupt or dying to pursue their livelihoods?

Ironically, most of the areas that are now Marine National Monuments were already “protected” because of their remoteness as well as through previous existing conservation designations. Now the fishing opportunities they offered are gone, replaced with an army of bureaucrats managing an archipelago of paper parks, where fishers are locked out potentially forever!

The MSA needs to be strengthened such that its authority to manage fishery resources, including the access and rights to operate in EEZ waters by commercial and non-commercial fishing vessels, cannot be superseded by other Federal statutes, such as ESA or MMPA. The following section will provide greater detail on this problem and its effect on OY.

### **1. Ecosystem-Based Fishery Management and Optimum Yield Hampered by Fishery Closures**

MSA Section 406 enhances fishery conservation and management by incorporating ecosystem considerations when managing fisheries. The NMFS Ecosystem Principles Panel in 1999 recommended the development of FEPs. The Council was the first to implement this type of plan in 2004 with its Coral Reef Ecosystem FMP and again in 2009 when it converted its FMPs to archipelagic-based FEPs.

These archipelagic-based comprehensive plans include provisions to consider ecosystem function, integrity, ecological linkages and effects of environmental forcing on managed marine resources. MPAs, MNMs, sanctuaries and “zones where fishing is not permitted” (an MSA term) are just one ecosystem-based management tool. No-fishing zones already exist as a provision in MSA Section 303(b)(2)(A), and fishery closures from other statutes like the Antiquities Act, NMSA and Presidential Executive Orders are in conflict with MSA provisions.

These conflicts stem from closures typically not being time bound and not evaluated or assessed for performance of the closure. MSA provides for a stricter evaluation of the performance of a closure and should be the primary statute that establishes fisheries closed areas regardless of biological, stock-related or diversity conservation purposes.

Monuments and protected areas are also hampering the achievement of OY (MSA Section 301(a)(1)). One of the largest MPAs in the world (Papahānaumokuākea MNM in the Northwestern Hawaiian Islands) shuts itself from commercial bottomfish fishing even though it was deemed sustainable. The loss of these bottomfish fishing grounds does not allow the United States to maximize the economic value of fisheries in the region, thus it will never be able to reach its OY.

This results in a significant economic loss for both the bottomfish industry and the entire State of Hawaii, plus increased imports and a higher seafood trade deficit. Planned closures under the Council process ensure that the economic impacts of these closures are evaluated as dictated by MSA Section 303(b)(2)(C).

Provisions should be added to the MSA to ensure that any marine areas in the United States that are closed to fishing are developed under the MSA.

### **C. Loss of Culture**

The Western Pacific Region is home to many native island people who have fishing as part of their cultural and traditional heritage. These cultures and traditions date back more than 3,000 years, and, as with traditional non-instrumental Pacific Ocean navigation, what is preserved and practiced today is but a fraction of the huge knowledge base amassed from direct experience and empirical observation.

Through its experience of trying to rescue this traditional knowledge, the Council has found that many of the practitioners in Hawaii, American Samoa, Guam and the CNMI are elders who live on the margins of society, functioning without computers, email or even bank accounts. What happens when native cultures disintegrate is well understood. The shelves of college libraries are groaning with the studies of people in the United States who have lost their culture and the social problems this brings in the creation of welfare dependency, spousal/child abuse, alcoholism and substance abuse.

When these cultures are lost, their knowledge of the fisheries is also lost and it's very difficult and sometimes impossible to bring them back. The loss of culture causes a break in the chain of skills and information that passed between generations, resulting in traditions that are gone forever or that must be revived using historical narratives, illustrations and guesswork.

The MSA needs to be strengthened to address the loss of traditional fishing and fisheries in the United States so that the knowledge and practices of indigenous cultures are not lost or destined for museums. Further, Congress should direct NOAA to provide funding to support existing MSA authorities, such as the Community Development Program and the Community Demonstration Project Program, and to recognize and add additional definitions such as customary exchange and subsistence fishing to the MSA.

## **1. The Need for Culturally Appropriate Definitions**

In some parts of the United States, fish is culture. In the Pacific Islands, modernization and rigid Western forms of fisheries management have eroded cultural connections held fast by fishing; connections that revolve around providing food to family, bringing communities together and passing on traditional practices to future generations.

An important aspect of fishing in the US Pacific Islands is the concept of *generalized reciprocity*. Fish are provided to others with no expectation of immediate specific or equivalent return, but rather with an understanding that at some point in the future the needs of the fisherman will be considered by the receiver and/or community in general.

To this end, the Council has recently worked to incorporate this concept and its related issues into its management practices by the defining and implementing of “customary exchange” provisions. In partnership with fishermen and within its advisory body and committee process, the Council has provided the following definition for customary exchange:

*“The non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons, and which may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, food, or fuel, that may be necessary to participate in fisheries in the western Pacific.”*

Congress should amend MSA section 3 to support the implementation of this nationally important concept, describe customary exchange, and provide for its regional adoption based on local needs and practices.

Along those same lines, Pacific Islanders also engage in subsistence fishing, where fishing is conducted to provide food for the family and community. This is an important part of the culture, social cohesiveness and food supply for the people. The Council has already proposed the following definition for subsistence fishing:

*“Fishing undertaken by members of a fishing community in waters customarily fished by that community in which fish harvested are used for the purposes of direct consumption or distribution in the community through sharing in ways that contribute to food security and cultural sustainability of the fishing community.”*

The MSA should accommodate regional practices and norms for regional fishery sectors.

## **2. Provide for Cultural Conservation through the Western Pacific Sustainable Fisheries Fund**

Section 204(e)(7) of the MSA establishes the Western Pacific Sustainable Fisheries Fund (SFF), which since 2010 has received funds from illegal foreign fishing fines and penalties to support projects in the Western Pacific Region. Further, the SFF may also receive funds from private donors such as philanthropic institutions. These funds have been used by the Council to provide for the development of fisheries and the preservation of cultural fishing traditions.

NMFS has determined that the current language of Section 204(e)(7) does not allow earmarking of donations to particular projects. The lack of earmarks may inhibit funding donations from philanthropic institutions unsure how their funds would be used and thus impede the Council’s ability to stop the loss of culture and the loss of fishing in the region.

Congress should amend Section 204(4)(7) to clearly allow donors to earmark funding for a particular Marine Conservation Plan project when contributions are provided to the SFF.

## **3. Make Minor Changes to the Marine Conservation Plans**

Section 204(e) lists several conservation and management objectives to be included in authorized Marine Conservation Plans. Included in the list in paragraph (iv) are grants to the University of Hawaii’s Pacific Island Network. The Pacific Islands Network has ceased to function, so it no longer needs to be included in this section.

Minor changes to the MSA Section 204(e) should be made to remove reference to this Network.

## **D. Loss of Perspective**

All too often in the evolution of MSA, the focus apparently has been on how to further restrict fishing. An obsession with overfishing has led ingenious avenues of litigation over federally managed fisheries. This forces Councils to manage all stocks at limits well below the

maximum sustainable yield (MSY). New complex rules have been designed about peer review, fishery rebuilding plans, essential fish habitat, habitats of particular concern and ecosystem component species; all of which hinder the ability of the Councils to maximize the fisheries and their resources for the betterment of the Nation.

In the Western Pacific, politicians and non-governmental organizations are striving to declare a shark sanctuary in Micronesia, regardless of whether such an initiative is rationale or has popular support or not. However, the entire US EEZ in the Western Pacific is a giant shark sanctuary. There are no dedicated shark fisheries that land sharks on an industrial scale anywhere in the region. The fishery that catches the largest volume of sharks, the Hawaii longline fishery, lets most of them go, and they are released alive.

Nevertheless, this shark sanctuary initiative has led to state and territorial laws banning the possession of shark fins, in direct conflict with the MSA, which contains provisions to safeguard sharks by requiring landings with fins attached. Another fishery opportunity is thus lost for our region. This loss is further compounded as our fisheries have often been the leader in developing fishery mitigation techniques, and a fishery may be able to provide the solution for sustainable shark fisheries. This solution would almost certainly be adopted by, or exported to, other nations, as happened with our approaches to bycatch minimization. Moreover, in the Mariana Archipelago, fishermen have been complaining for decades about fishery losses due to shark depredation.

As noted above, the MSA needs to be strengthened such that its authority to manage marine resources cannot be superseded by any other state or territorial statute that is in conflict with the MSA. A primary objective of the MSA is to achieve OY, with all other objectives subsidiary to this goal. The MSA was structured to provide for regional flexibility, which has been largely lost in its implementation. Three examples of loss of flexibility within the MSA are explained below.

## **1. Annual Catch Limits Flexibility with Respect to Data Poor Stocks**

### **a. Data-Poor Fisheries**

The Western Pacific Region has more than 1,000 insular management unit species. The fisheries that harvest these species are small-scale with multiple gears and multiple landing sites. Scarce biological and demographic information limit conducting stock assessments to determine the status of the species. Without stock assessments for majority of these species, overfishing limits cannot be determined and thus annual catch limits (ACLs) are based on catch-only methods, which are also data poor. Because of the strict mandate for ACLs in the MSA, the Council is forced to comply and develop ACLs that may not meet the intent of the MSA.

ACLs in the Western Pacific region are based on the 75th percentile of catch time series. Exceeding an ACL in any given year, therefore, is unrelated to stock status and does not mean that a stock is being overexploited. ACLs should not be established under such circumstances unless compelling meta-data indicates stock depletion (e.g., traditional and local ecological knowledge, information on changes to habitat, etc.). Alternative methods that do not require reference points should be explored and allowed to be used. The complexity of the small-scale

insular fisheries does not conform to the reference-point based status determination currently being enforced.

More flexibility should be given in the situation where data-poor stocks exist. National Standard 1 is too stringent given the data-limited nature of the Western Pacific fisheries. The Council concurs with the December 18, 2013, draft House Bill regarding defining “data poor stocks” and application to ACLs.

The MSA should distinguish between fisheries that are depleted from as a result of fishing and those that are depleted as a result of factors other than fishing.

The MSA should have exemptions from the ACL requirement for data poor stocks and add provisions for a time frame for which reliable fishery information needs to be obtained in order to remove the stock from a data-poor situation.

#### **b. Fishery Data Collection Improvements**

The Territory Science Initiative, introduced by Congresswoman Madeleine Bordallo in 2013, is a good first step towards initiating the data improvement process. The intent of this initiative is to support data collection projects and efforts in Guam, American Samoa, the CNMI, the US Virgin Islands and Puerto Rico to increase locally based science, build scientific and monitoring capabilities and enhance fisheries science capacity. In order to continue to address the issues for data-poor stocks, these types of initiatives need to continue on a regular basis. The Saltonstall-Kennedy (SK) Grant Program also provides support to data collection, which is allocation via competitive basis on a national level. The Western Pacific is regionally unique in terms of data needs and requirements. Regionalizing the SK allocation and establishing a competitive process within each region would address the region-specific needs.

The Council concurs with the December 18, 2013, draft House Bill regarding the use of asset forfeiture funds to support improvements in fishery independent data collection.

The MSA should include a territorial data collection program with dedicated funding provided to the Territories to improve the amount and quality of fishery data being used for management.

#### **c. Incentive for Coordinated State-Federal Annual Catch Limits**

The biomass of the majority of Western Pacific reef and near-shore fish stocks is within State/Territorial waters. Thus, effective ACLs are contingent upon the State and Territorial governments to collaborate with the Council to establish complementary catch limits across the range of the stock.

An ideal management scenario is exemplified by the Main Hawaiian Islands Deep 7 bottomfish fishery where coordinated management is conducted by the Council, NMFS and the State of Hawaii. Federal and state waters open and close concurrently if/when limits are reached through each agency’s rulemaking process. Funding/staff incentives are needed for the State/Territories to develop complementary catch limits within the State/Territorial waters and to

improve monitoring systems and data for more effective implementation of ACLs and better conservation of fish stocks.

MSA amendments to the ACL mandate should consider providing incentives for States and Territories to develop complementary regulations, including educational initiatives and improved fishery management capacity at the local level.

## **2. Recreational/Non-commercial Fishing**

The way the MSA is currently written and implemented constrains the regional flexibility *that was at the heart* of the 1976 Fishery Conservation and Management Act.

For example, under Section 3(37), recreational fishing is defined as “fishing for sport or pleasure.” This narrow definition in practice is applied to almost all fishing that is not considered to be profit-driven. However, in the Pacific Islands, Alaska, and elsewhere, motivations for fishing can differ and overlap across fisheries. Commercial fishing is driven primarily by profit. Most other fishing is underpinned by a diverse spectrum of social and cultural forces.

It is imperative that the MSA explicitly recognize these motivations. The Council has adopted the term “non-commercial” fishing to capture fishing driven by factors other than the profit motive and refers to recreational fishing as “*fishing undertaken for sport and pleasure, in which the fish harvested, in whole or in part, do not enter commerce or enter commerce through sale or barter or trade.*”

This definition, along with the definitions for subsistence fishing and customary exchange, provides the basis for non-commercial fishing in the Western Pacific Region. These definitions are regionally sensitive and allow for the recognition of the various fishing motivations to be addressed appropriately in management decision-making. However, the Council continues to be constrained by the current inflexible definitions in the MSA.

The MSA should be amended to include regionally appropriate definitions for recreational, subsistence and other non-commercial fishing.

## **3. Mandate that the Cooperative Research Program Funds Regional Council Research Priorities**

The Council and its Scientific and Statistical Committee annually review the performance of its fisheries managed through the FEPs. As part of this annual review, research needs are identified and prioritized for transmittal to NMFS as required by Congress.

Given this effort to coordinate research in the region, Congress should consider requiring the NMFS Cooperative Research Program (CRP) to fund and support projects that are identified by the regional Councils. In addition, the CRP should implement regional solicitations for projects and distribution of grant funds to improve equity in the distribution of funds among the regions and better meet regional research needs and priorities.

## **E. Loss of Opportunity**

The great campaigner for civil rights and social justice Malcolm X said, *“The future belongs to those who prepare for it today.”*

One of the fundamental reasons Congress drafted the MSA has been lost, namely to encourage fishery development, reduce fishery imports and be a more self-reliant nation. Indeed, one of the main goals of the MSA is “to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that OY determinations promote such development in a non-wasteful manner.”

Today, how many of us in the United States have even considered that our fishery resources are under-utilized? Yet our nation continues to import fish from fisheries where it has little to no influence. This Viking-style approach to commerce that conducts careful conservation at home and pillage abroad is unacceptable. We should not be exporting problems offshore to countries that may not have the capacity to effectively manage their share of the global fishery resource.

The United States has agreed to additional US longline bigeye catch limits and limited US purse-seine fishing on the high seas, while other much larger fishing nations with far greater impacts to bigeye tuna remain exempt from these international CMMs. This Council can tell you that fisheries in the US Pacific Islands are free falling, not because of poor management, but because of overly complex management priorities coupled with a lack of mechanisms to maintain participation in an incredibly tough and difficult industry.

## **F. Conclusion**

The United States has some fundamental questions to ask itself: Do we want a US fishing industry? Do we want fish on our dinner tables from American fisheries caught by American fishermen? Or are we about to see more and more fishing vessels up for sale, as our American Samoa longliners are today?

It’s time to take a long hard look at the MSA and the burden that it and other statutes impose on our fisheries. Otherwise, the next time hearings are held for MSA re-authorization, the testimonies may well be eulogies on the death of US fisheries.

**Attachment 1. In order to meet its mission, the Council relies not only upon the 10 MSA National Standards, but also upon the following seven Guiding Principles:**

1. Support quality research and obtain the most complete scientific information available to assess and manage fisheries;
2. Promote an ecosystem approach in fisheries management, including reducing waste in fisheries and minimizing impacts on marine habitat and impacts on protected species;
3. Conduct education and outreach to foster good stewardship principles and broad and direct public participation in the Council's decision making process;
4. Recognize the importance of island cultures and traditional fishing practices in managing fishery resources and foster opportunities for participation;
5. Promote environmentally responsible fishing and the utilization of sustainable fisheries that provide long term economic growth and stability;
6. Promote regional cooperation to manage domestic and international fisheries; and
7. Encourage development of technologies and methods to achieve the most effective level of monitoring control and surveillance and to ensure safety at sea

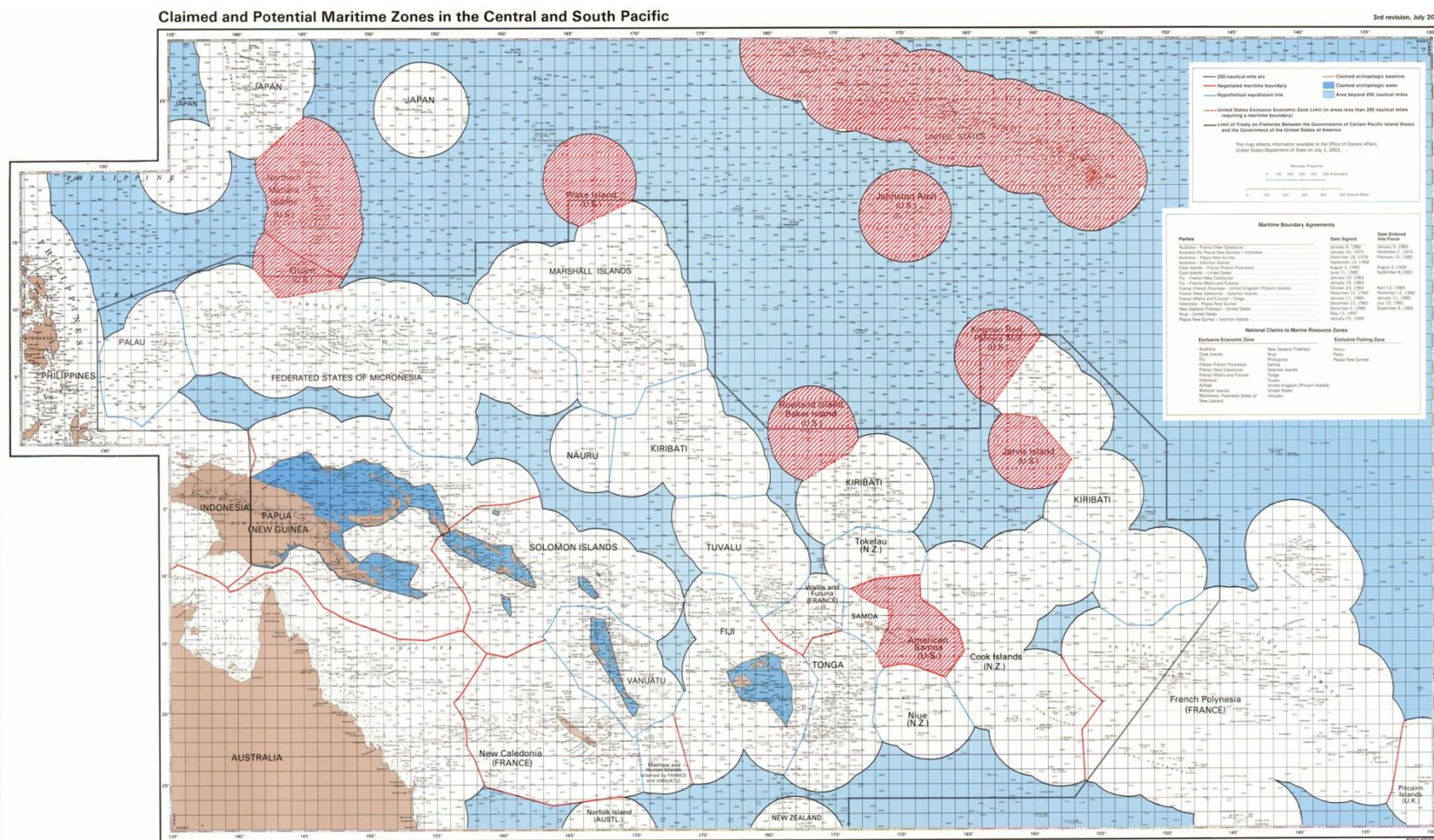
## **Attachment 2: Chronology of Council Achievements**

The Western Pacific Regional Fishery Management Council has led the nation in many areas of fishery management. Here are highlights of some of these “firsts.”

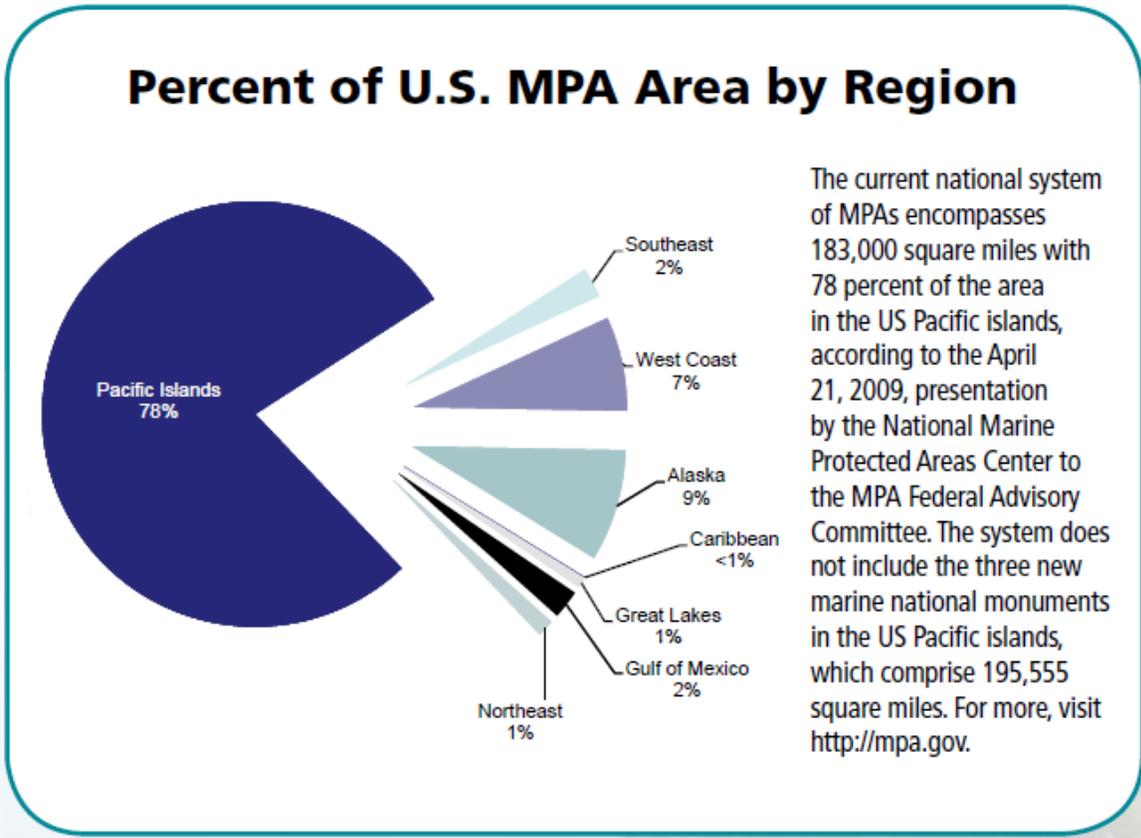
<b>Year Initiated</b>	<b>Measure</b>
	<b>Species Interaction Management</b>
1987	Establish the 50 nm protected species zone in the NWHI to prevent longline fishery and monk seal interactions.
2002	Introduced gear technology to minimize sea bird interactions with pelagic longlines.
2002	Hosted a series of International Fishers Forums to provide longline and other pelagic fishermen an opportunity to learn, exchange ideas, and develop solutions about sea turtle, seabird, marine mammal and shark bycatch.
2004	Required the use of gear technology to minimize sea turtle interactions with pelagic longlines.
2005	Established a Marine Mammal Advisory Committee in advance of the False Killer Whale Take Reduction effort.
	<b>Pioneer Fisheries Management Approaches</b>
1980	Implemented a fishery management plan for deep-water precious corals utilizing harvest quotas a series of area closures for spatial management.
1983	Banned bottom trawling and other potentially destructive and non-selective gear.
1987	Banned drift gillnetting throughout the Region.
1989	Established the Nation’s first vessel-based limited entry program, for the Northwest Hawaiian Islands bottomfish fishery.
1990	Given management responsibility for tuna species.
1991	Introduced fully automated satellite-based vessel monitoring (VMS) in the pelagic longline fishery to support spatial management.
1996	Implemented a risk-based annual harvest limit management regime in the NWHI which limited harvest to only 13% of the exploitable population and 10 percent risk of overfishing.
2001	Implemented the first Ecosystem-based Fishery Management Plan – the Coral Reef Ecosystem Fisheries Management Plan.
2005	Developed a series of ecosystem workshops to integrate the biophysical, social, and policy attributes of fisheries management.
2010	First Council to transition all species-based Fishery Management Plans to place-based archipelagic Fishery Ecosystem Plans.
	<b>International Fisheries Management</b>
1997	Negotiated and implemented, with partners, a new international tuna fishery management organization in the Western and Central Pacific Ocean.
	<b>Protected Species Management</b>
2004	Developed, implemented, and have maintained a comprehensive sea turtle population recovery program.
2004	Convened a series of international conservation workshops for Pacific sea turtles.

<b>Education, Outreach, Communication</b>	
2003	Showcased renowned chefs known for locally-caught regional seafood cuisine.
2006	Developed annual high school summer course on marine science and fisheries management.
2007	Host annual teacher workshops on sustainable fisheries and student symposia on coral reefs and other topical issues in Hawaii and the US Pacific Island territories.
2007	Held an international marine education conference that led to the establishment of an ongoing international marine educators network.
2011	Initiated community workshops and Fishers Forums on coastal and marine spatial planning.
<b>Fisheries Data</b>	
1991	Introduced comprehensive longline fishery logbooks and reporting requirements for pelagic longline vessels.
1991	Deployed full-time observers on pelagic longline vessels.
1998	Hosted the first symposium on Pacific game-fish tournaments.
1998	Used the satellite-based vessel monitoring (VMS) in the NWHI lobster fishery to report daily catches to monitor the annual harvest limit.
2007	Conducted and published a comprehensive study of shark depredation of pelagic longline catches.
<b>Spatial Management</b>	
1980	Implemented a fishery management plan for deep-water precious corals utilizing harvest quotas a series of area closures for spatial management.
<b>Traditional and Indigenous Consideration in Fisheries Management</b>	
2005-ongoing	First Council to use lunar calendars as a means to document traditional and marine resource use in Hawaii and other Pacific Islands
2006	Convened a series of traditional fishery management and marine resource use workshops (Puvalu series).
2007	Fomented a Traditional Knowledge Committee in the National Marine Educators Association.
2012	Coordinated and organized U.S. Pacific Island indigenous communities to be represented at the First Stewards bi-annual climate change symposiums in Washington, DC, which brings together American Indians, Alaskan Natives, and the Hawaiians, American Samoans, Chamorro and Refaluwasch of the US Pacific Islands.
2013	Promoted socio-cultural aspects of non-commercial fishing, such as subsistence fishing and cultural exchange, and implemented them in regulation.

### Attachment 3. Claimed and potential maritime zones (EEZs) of Western and Central Pacific Ocean



**Attachment 4. Percent of US MPAs by Region. Note this figure was created prior to the creation of the Marianas Trench, Pacific Remote Island Area and Rose Atoll Marine National Monumentss, which increased the Pacific Islands MPA percentage from 78% to 90% of the national total.**





January 30, 2014

**Comments from Western Pacific Fishery Management  
Council on the Draft House Bill to amend the MSA to Provide Flexibility for Fishery  
Managers and Stability for Fishermen, and for Other Purposes**

Below are detailed comments from the Western Pacific Fishery Management Council on the draft House Bill to amend the Magnuson Stevens Fishery Conservation and Management Act. The comments and recommendations are presented by section.

**Regarding Section 3: Flexibility in Rebuilding Fish Stocks**

Overall, the Council supports the language proposed in Section 3 to provide flexibility in rebuilding fish stocks. In particular, allowing for a phased-in approach over a three year period is practical and takes into consideration impacts to affected communities. However, further guidance is needed in defining “highly dynamic fishery” as it applies to the use of this phased-in approach.

This Section notes that rebuilding may be contingent on factors beyond the control of the Councils, or in some cases beyond that of the USA with regard to shared trans-boundary stocks. Moreover, it notes that environmental conditions may predicate the rebuilding schedule. The statement in item IV is unclear which refers to “informal trans-boundary agreements under which management activities outside the EEZ by another country may hinder conservation effort by US fishermen”. How do “informal trans-boundary agreements” differ from international agreements which are included in Section (I)?

Finally, Section 3(2)(C), we question the utility of including the “predator/prey relationships” in this sentence as it is only one example of many that may be considered when accounting for “environmental conditions.” We suggest it be removed.

**Section 4: Modifications to the Annual Catch Limit Requirement**

The proposed changes in the Annual Catch Limit (ACL) section of this bill addresses many of the problems faced in implementing ACLs in the Western Pacific Region. Providing the Council the authority and opportunity to consider ecosystem and economic needs of the fishing community in implementing ACLs is a beneficial change to the current MSA text. The Western

Pacific Council provides for similar considerations through an analysis that considers social, economic, ecological and management uncertainty. Consideration should be given to include social and management elements in this section as ecosystem and economic variations are already accounted for. Given the overall underutilized status of fisheries in the Western Pacific Region, this language could be revised to: “In *evaluating the need to establish* annual catch limits, a Council may consider changes in an ecosystem and the economic needs of the fishing community”. This provides the Council flexibility in having to apply ACLs for in fisheries where it may not be appropriate.

With regard to exempting Councils for having to develop ACLs, we suggest adding a third item for fisheries that are currently inactive and will remain inactive in the foreseeable future. Having to specify annual limits for dormant fisheries, such as deepwater shrimp and precious corals in the Western Pacific, unnecessarily consumes Council and NMFS resources.

With regard to the section on “Relationships of International Efforts”, the Council is concerned as those stocks managed through international agreements would now be required to have ACLs established, where currently they are exempt as established through NMFS guidelines.

The Council supports the provisions included addressing multispecies complexes and multi-year catch limits and defining ecosystem component species.

The suggested change to Section 302(h)(6) in striking "fishing" and inserting "overfishing" will result in a technical conflict with the NS1 guidelines. Currently, the *fishing level recommendation* by the SSC is the acceptable biological catch or ABC. The overfishing level is derived from the stock assessment developed by NMFS. Changing fishing to overfishing puts the onus on the SSC to develop its own stock assessment which changes the process on how ACLs are specified. Is this the intended outcome of this provision?

#### **Section 5: distinguishing Between Overfished and Depleted**

The Council supports redefining “overfished” to help distinguish between fisheries that are depleted as a result of fishing versus “depleted” as a result of factors other than fishing. This issue has been a point of contention for our Advisory Panel and fishing communities for many years, as numerous fisheries have been impacted by changes in habitat resulting from coastal development and other non-fishing activities. In particular, the Council looks forward to the NMFS reporting on the status of stocks as a result of this change.

#### **Section 6: Transparency of the Public Process for Scientific and Management Actions**

With regard to increasing transparency of the public process, to the extent practicable this Council has routinely provided for most of the public transparency elements identified in this

section. However, requiring complete transcripts of both the Council and SSC will require additional resources to process this information within the 30 day time frame suggested. At this time, the Council makes available meeting minutes for all Council and SSC meetings on the web, among other documents.

#### **Sec. 314: Compliance with National Environmental Policy Act of 1969**

The Council supports a reauthorized MSA that would allow for MSA fishery management plans, plan amendments, and regulatory amendments to be stand-alone documents that satisfy the requirements of NEPA. This is because the existing MSA/Council process is analogous to the procedures of NEPA with respect to public participation and impact analysis. However, the Council suggests that minor technical modifications to be made to Section 303(a) of MSA to ensure consistency with NEPA such as requiring the consideration of alternatives to the proposed action and requiring a broader-level of environmental review in MSA documents.

#### **Section 7: Limitations on Future Catch Share Programs**

The Council suggests that the use of catch shares also consider regional flexibility in the need for its application to fisheries, particularly the non-commercial/recreational sector. Catch shares are not appropriate for the non-commercial/recreational fisheries sector as new entry opportunities and equal access to a public trust resource are imperative to effectively managing the nation's fisheries resources for the good of all.

#### **Section 8: Data Collection and Data Confidentiality**

Electronic monitoring should be one of many tools considered to facilitate data collection and monitoring when developing fishery management plans or amendments. We support developing objectives and performance standards for this new technology to ensure consistency in its application immediately after passage of the MSA reauthorization. However, mandating the development of regulations for electronic monitoring within this six month period is not appropriate. The implementation of such regulations should be promulgated through the standard regulatory process and not automatically mandated through this top-down approach.

We also have serious concerns regarding prohibiting the use of electronic monitoring for enforcement which contradicts this Council's existing regulations on the use of satellite based vessel monitoring systems on Hawaii longline vessels to monitor area-based closures. These regulations have been in place for nearly 25 years. If Congress wishes to maintain this provision we suggest defining electronic monitoring to not include VMS.

Regarding the new provision to supported "*Increased Data Collection and Action to Address Data-Poor Fisheries,*" the Council supports directing a portion of the fisheries enforcement penalties received by the US to assess data poor fisheries and cooperative research

to improve fishery independent data in stock assessments. However, while this provision is good, it will be important to ensure that it does not conflict with the existing provisions in the MSA that directs enforcement fines and penalties in the Pacific Remote Island Areas to the Sustainable Fisheries Fund or those occurring in the US EEZs surrounding American Samoa, Guam and Commonwealth of the Northern Mariana Islands to their respective local treasuries.

This Council supports the proposed definition for “data-poor fishery” which would include many of the reef fisheries managed in the Pacific Island region.

**Section 9: Council Jurisdiction For Overlapping Fisheries**

[No comments]

**Section 10: Gulf of Mexico Cooperative Research and Red Snapper Management**

[No comments]

**Section 11: North Pacific Fishery Management Clarification**

[No comments]

**Section 12: Authorization of Appropriations.**

[No comments]

**Section 13: Ensuring Consistent Management for Fisheries through their Range**

The Council strongly supports this section recognizing the MSA as the controlling authority over promulgating fishing regulations. In addition to the National Marine Sanctuaries Act and Antiquities Act of 1906, other Acts impacting fisheries should be included such as the Marine Mammal Protection Act, Migratory Bird Treaty Act and the Endangered Species Act.

This Council also strongly supports the provision related to “*Fisheries Restrictions Under the Endangered Species Act of 1973*,” but recommends that the text, “...that is necessary to implement a recovery plan...” be removed. While Section 4 of the ESA relates to rules that may be result from recovery plans, Section 9 of ESA may also result in fishery restrictions through take prohibitions for ESA-listed species. Further, the Council recommends that the text “(1) using authority under this Act; and (2) in accordance with processes and time schedules required under this Act” be modified to read “in accordance with processes established under Section 302 of this Act”. Currently, fishery management measures deemed necessary to protect ESA-listed species are promulgated under Section 305 of the MSA, which bypasses transparent public process intended under MSA.

Verbal Testimony  
of  
Dr. Donald McIsaac, Executive Director  
Pacific Fishery Management Council  
Pacific Council Perspectives on Magnuson-Stevens Act Reauthorization  
Before  
U.S. Senate Committee on Commerce, Science, and Transportation  
Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

January 30, 2014

Chairman Begich and members of the Subcommittee, thank you for the opportunity to testify today.

My name is Donald McIsaac; I am the Executive Director of the Pacific Fishery Management Council. The Pacific Council manages over 160 fish stocks off the coasts of Washington, Oregon, and California.

We were the primary organization responsible for planning the Managing Our Nation's Fisheries 3 conference, held here in Washington, D.C. last May. We were honored to have you, Mr. Chairman, as a featured speaker at that conference—thank you again. As you know, that meeting looked at the successes and challenges of the MSA, drew over 600 attendees with diverse fishery backgrounds and interests and produced 128 findings, or ideas, on improving marine fishery management.

Since the big Conference, the Pacific Council has spent many hours at two Council meetings discussing its priorities on MSA reauthorization. We managed to winnow those 128 findings and a variety of additional ideas down to 16 priorities listed in my written testimony. These represent notable priorities identified at this time, with the reservation for changes in priorities and refinement of positions as the reauthorization process moves forward.

First, I would like to emphasize the point that the Pacific Council believes that the MSA as it currently stands, has been a success. It has worked well to ensure a science-based process that ensures long-term sustainable fisheries while preventing overfishing and mandating rebuilding of depleted stocks. Under the Act, the Pacific Council has ended overfishing in West Coast waters of any and all stocks within one year of detection, has rebuilt seven depleted stocks, and is in the

process of successfully rebuilding eight long-lived stocks that remain depleted—three of which are projected to be rebuilt in the next year. We have implemented a successful groundfish trawl individual quota catch share program that has been held up as a model for programs in other regions for its ability to reduce bycatch and increase economic yield. We annually craft ocean salmon fisheries that accomplish stock-specific conservation goals for a multitude of individual salmon stocks, including many listed under the Endangered Species Act. We have created an ecosystem fishery management plan which we are now in the process of implementing, along with protections for unmanaged forage fish. We are successfully participating in international fisheries organizations to protect highly migratory tuna-like species and the West Coast fisheries that rely on them. The current MSA has been a key driver of these successes. We believe large-scale changes to the MSA are not warranted, and any changes made to the Act should be carefully considered.

Still, there is room for improvement. Despite the effectiveness of the MSA, the Pacific Council believes there are areas that can be refined in order to improve marine fishery management in the United States and internationally.

Of the six higher priority matters in my written testimony, **revising rebuilding time requirements** is a very important one for the Pacific Council. Three improvements can be made:

1. Addressing the discontinuity associated with the 10-year rebuilding requirement. Also known as the “Bermuda Triangle” of rebuilding plan requirements, this provision has been the subject of costly litigation and economic loss to commercial fisheries on the West Coast.
2. Providing direction to not “chase statistical noise” in administering rebuilding plans, but rather deal with true, significant changes in the status of a fish stock.
3. Providing flexibility to properly accomplish **rebuilding as soon as possible while taking into account the needs of fishing communities**, as currently phrased in the Act.

The current MSA requirement to *rebuild as soon as possible, while taking into account the needs of the fishery communities*, has been subject to Court interpretation as nearly ignoring the needs of recreational, commercial, and

tribal fishing communities until such time as they have demonstrated a disastrous state. While fish conservation should trump immediate economic yield when stock productivity is at stake, there is a need for more flexibility for Councils to properly take into account social and economic impacts to communities when reducing catches in a rational stock rebuilding plan. It is important to note the purpose that rebuilding programs are designed for is to ultimately help the same fishery-dependent communities that might be devastated now—if there is not the right balance between proper conservation and the effects on those reliant on robust fisheries.

**Lastly**, let me highlight two of the second tier priorities in my written testimony—both in the area of improving management in international fisheries.

First, we think it is important to designate one Commissioner seat in the Inter-American Tropical Tuna Commission arena to represent the Pacific Council perspective.

The Pacific Council has a dedicated seat in the Western and Central Pacific Fisheries Commission arena, which we feel brings added value to the US delegations when they debate conservation of North Pacific Albacore, the most important tuna species on the West Coast—that happens to have a cross-ocean migration pattern that carries them through some intensive Japanese fisheries. The same kind of participation is important in the international organization dealing with West Coast fish that migrate through southerly fisheries off Mexico, Columbia and Ecuador.

Second, towards improved international cooperation from other countries that may not play by the rules as well as the United States, we feel it is important for the MSA reauthorization process to consider stricter imported seafood labeling requirements in the US market.

Thank you Mr. Chairman, for the opportunity to testify before this Committee.

Written Testimony  
of  
Testimony of Dr. Donald McIsaac, Executive Director  
Pacific Fishery Management Council  
Pacific Council Perspectives on Magnuson-Stevens Act Reauthorization

Before  
U.S. Senate Committee on Commerce, Science, and Transportation  
Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

January 30, 2014

Chairman Begich and members of the Subcommittee, thank you for the opportunity to appear before you to discuss the Pacific Council perspective regarding the Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act.

My name is Donald McIsaac; I am the Executive Director of the Pacific Fishery Management Council. The Pacific Council manages over 160 fish stocks off the states of Washington, Oregon, and California.

The Pacific Council was the primary organization responsible for planning the Managing Our Nation's Fisheries 3 conference, held in Washington, D.C. in May of 2013. We were honored to have you, Mr. Chairman, as a featured speaker at that conference. As you know, that meeting looked at the successes and challenges of the Magnuson-Stevens Act, and drew over 600 attendees with diverse fishery backgrounds and interests. As a result of the discussions held at the conference, attendees produced 128 findings, or ideas, regarding the reauthorization of the MSA. While many of these ideas were not intended for statutory consideration, many were. Within these, some were quite minor, while others were more substantial. The findings are available on the Pacific Council website<sup>1</sup>.

Since the Managing Our Nation's Fisheries 3 Conference, the Pacific Council has spent many hours at two Council meetings discussing its priorities regarding the reauthorization of the MSA. Details of those discussions are available on our website.<sup>2</sup> At our most recent Council meeting in November, we managed to winnow those 128 findings and several additional ideas down to several priorities outlined in this testimony. These represent notable priorities identified at this

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<sup>1</sup> [http://www.managingfisheries.org/2013%20documents/MONF\\_Findings.pdf](http://www.managingfisheries.org/2013%20documents/MONF_Findings.pdf)

<sup>2</sup> For the September Council meeting, see materials under Agenda Item H.1 (<http://www.pccouncil.org/resources/archives/briefing-books/september-2013-briefing-book/#ecoSeptember2013>) and the Decision Summary Document (<http://www.pccouncil.org/wp-content/uploads/0913decisions.pdf>) For the November Council meeting, see materials under Agenda Item I.2 (<http://www.pccouncil.org/resources/archives/briefing-books/november-2013-briefing-book/>) and the Decision Summary Document (<http://www.pccouncil.org/wp-content/uploads/1113decisions.pdf>).

time, with the reservation for additional priorities and refinement of positions as the reauthorization process moves forward.

First, we would like to make the point that the Pacific Council believes that the MSA as reauthorized in 1996 and again in 2006 has been a success. The Act has worked well to ensure a science-based management process that ensures long-term sustainable fisheries while preventing overfishing and mandating rebuilding of depleted stocks. As a result, the Pacific Council has ended overfishing of any and all stocks within one year of detection, has rebuilt seven depleted stocks, and is in the process of successfully rebuilding eight long-lived stocks that remain depleted—three of which are projected to be rebuilt in the next year. We have implemented a successful groundfish trawl catch share program that has been held up as a model for programs in other regions for its ability to reduce bycatch and increase economic yield. We annually craft ocean salmon fisheries that accomplish stock-specific conservation goals for a multitude of individual salmon stocks, including many listed under the Endangered Species Act. We have created an ecosystem fishery management plan which we are now in the process of implementing, along with protections for unmanaged forage fish. We are successfully participating in international fisheries organizations to protect highly migratory tuna-like species and the West Coast fisheries that rely on them. The current MSA has been a key driver of these successes. We believe large-scale changes to the MSA are not warranted, and any changes made to the Act should be carefully considered.

Still, there is room for improvement. Despite the effectiveness of the MSA, the Pacific Council believes there are areas that can be refined in order to improve marine fishery management in the United States and internationally. The Council's priorities for MSA reauthorization are as follows.

### ***Higher Priorities Matters***

#### **Revise rebuilding time requirements.**

- Address the discontinuity associated with the 10-year rebuilding requirement.
- Don't "chase noise" in rebuilding plans (in other words, temper immediate reactions to changes in stock assessments that may merely be statistical "noise," rather than a true signal of significant status change).
- Address problems associated with "rebuilding as soon as possible" in order to properly take into account the needs of fishing communities.

While a strict 10-year rebuilding requirement is appropriate in some situations, focusing on rebuilding in a certain amount of time can also result in overly-restrictive fishery management that is illogically and unnecessarily harmful to fishermen and fishing communities; it is apparent that more flexibility is needed to optimize multiple goals. The 10-year rule, where stock rebuilding must occur within 10 years if possible, can lead to an unsound, discontinuous policy that can

grossly disrupt fisheries for little conservation gain. If a stock can rebuild in 9 years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g. one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild (11 years plus the length of one generation of the species), with obviously less economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.

In addition, uncertainty in stock assessments and rebuilding analyses for overfished stocks has created a situation where seemingly small changes to analytical results can lead to expensive revisions in rebuilding plans and unwarranted consequences to fisheries and fishing communities (“chasing noise”). This disruption is especially problematic when analytical results vary small amounts due to assessment uncertainty, and vary both up and down without changes in true status over time. The current process needs to be revised such that a reasonable threshold exists for stock status changes before significant changes in management approaches are required.

The MSA requirement to rebuild as soon as possible, taking into account the needs of the fishery communities, has been subject to Court interpretation as nearly ignoring the needs of fishing communities until such time as they have demonstrated a disastrous state. Current administration of this requirement necessarily leads to large reductions in catch of directed fishery stocks that are being rebuilt, and can restrict mixed-stock fisheries when the rebuilding stock coexists with healthy stocks. It has been said that a solution may be as simple as changing the word “possible” to “practical.” At any rate, there is a need for threshold clarity so as to allow Councils to properly take into account important social and economic impacts to communities when reducing catches in a rational stock rebuilding plan. It is important to note the purpose that rebuilding programs are designed for is to increase stock sizes to provide for biological stability and the attendant future economic benefits to the same fishery-dependent communities negatively impacted (and may even be required to endure a disaster) by the rebuilding program.

**Explore more flexibility for fishery impacts on data-poor species when the current precautionary approach becomes the bottleneck for healthy mixed-stock fisheries.**

One common management challenge is developing and implementing annual catch limits (ACLs) effectively when the requisite data are lacking, when no data collection program is in place, and/or when major natural fluctuations in stock abundance occur more rapidly than stock assessments can be updated. When less information about a stock is available, or the data are outdated, current requirements call for a Council to set a particularly low ACL compared to the theoretically maximum allowable catch, out of recognition of a higher level of scientific uncertainty. While this is a logical approach in some regards, there is concern it may be overly conservative in some situations. It can lead to severe

economic consequences when a rarely-caught stock about which little is known appears occasionally in a healthy mixed-stock fishery, and a new, highly buffered ACL for this rare stock suddenly requires a large reduction in the catch of healthy species; this situation essentially creates a bottleneck species that closes or substantially reduces an otherwise healthy fishery.

There are times when the best available science is not sound enough for active fishery management decision-making; the current approach for data-poor species may occasionally fall into this situation. Further, the current approach may limit obtaining scientific information on stock performance under higher catch rates.

**Better align and streamline the National Environmental Policy Act (NEPA) & MSA section 304(i).**

While a mandate to include streamlining of the NEPA and MSA processes was included in §304(i) of the 2006 reauthorization of the MSA, it has not yet been addressed. The current process is inefficient, requiring substantial additional work and process to satisfy duplicative NEPA and MSA mandates. This unnecessarily delays implementation of regulations, causes obsolescence of scientific information, and burdens management resources that could be used more efficiently.

**Include a carryover exception to allow ACLs to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided there is a finding from the Scientific and Statistical Committee (SSC) that such a carryover provision will have negligible biological impacts.**

As part of their business planning, fishermen in catch share programs need to know whether they may carry over surplus harvest from one year to the next; deficits are now routinely paid back the next year. In the past, there has not been a consistent policy application on this matter. If the SSC finds that carryover will not adversely affect a fish stock, then it should be explicitly allowed.

**Stocks later determined never overfished should not be held to rebuilding provisions.**

The data and scientific approaches used to determine stock status evolve and improve, and revisions to past stock statuses are common. The best available science used to declare a stock overfished may later be improved and show that the stock was never overfished. In these cases, continuing to manage the fishery under rebuilding plan restrictions may no longer be necessary. However, the MSA does not explicitly exempt stocks from rebuilding plans when it is later determined the stock was never overfished.

For example, in 2000, a stock assessment indicated that widow rockfish on the West Coast were below the minimum stock size threshold (MSST) that triggers an

overfished status designation. Accordingly, the stock was declared overfished and a rebuilding plan put in place. However, subsequent assessments in 2005 and 2007 estimated that the biomass had never dropped below the MSST, and thus the stock had never been overfished. Despite the best available science, uncertainty regarding MSA requirements and the assessment results caused the fishery to remain under a restrictive rebuilding plan until 2013. Continuing to manage widow rockfish under a rebuilding plan, even though the stock was never overfished, resulted in negative social and economic impacts to fishing communities and industry. It also represented a significant expenditure of Council resources to construct and maintain a rebuilding plan, and the new catch share program was unnecessarily complicated by the overfished declaration of widow rockfish and its subsequent rebuilding plan.

### **Provide flexibility in requirements and qualifications for observers.**

Current requirements and qualifications for National Marine Fisheries Service certified observers may be too restrictive regarding formal education and full independence provisions. There have been difficulties in providing a sufficient pool of observers.

### ***Lower Priority Matters***

The Pacific Council has also identified the following lower priority areas that we ask you to take into consideration in drafting new legislation.

- Designate one Commissioner seat on the Inter-American Tropical Tuna Commission to represent the Pacific Council.
- Provide flexibility to address rebuilding requirements when environmental conditions may be a predominant factor in a stock's decline.
- Include a viable mixed-stock exception.
- Replace the term "overfished" with "depleted" to account for non-fishing causes of stock size below minimum stock size threshold.
- Consider a national standard for habitat that can more effectively minimize adverse impacts on essential fish habitat.
- Implement stricter imported seafood labeling requirements in the U.S. market.
- Enhance enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity.
- Improve access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis.
- Amend MSA language to change "vessels" to "vessel" in the illegal, unreported, and unregulated certification section.
- Make a consistent distinction between "overfishing" (a measure of fishing rate) and "overfished" (a measure of abundance).

Thank you again for the opportunity to testify before this Committee.



## Pacific Fishery Management Council

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7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384  
Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | [www.pcouncil.org](http://www.pcouncil.org)  
Dorothy M. Lowman, Chair | Donald O. McIsaac, Executive Director

November 12, 2013

The Honorable Doc Hastings  
United States House of Representatives  
1203 Longworth House Office Building  
Washington, D.C. 20515-4704

The Honorable Mark Begich  
United States Senate  
111 Russell Senate Office Building  
Washington, D.C. 20510-0201

Subject: Priorities regarding the reauthorization of the Magnuson-Stevens Act

Dear Chairman Hastings and Senator Begich:

Thank you for your request for Pacific Fishery Management Council comments on the reauthorization of the Magnuson-Stevens Act (MSA). The Pacific Council believes that the MSA has worked well to ensure a science-based management process that ensures long-term sustainable harvests while preventing overfishing and rebuilding depleted stocks. Under current MSA provisions, the Pacific Council has ended overfishing within one year of it being detected, all depleted stocks have been rebuilt or are on strict rebuilding schedules and showing progress towards the healthy status target, and none of the over 100 fish stocks on the West Coast are experiencing overfishing. The Pacific Council believes large-scale changes to the MSA are not warranted, and any changes made to the Act should be carefully considered.

Despite the demonstrated effectiveness of the MSA, the Pacific Council believes there are areas that can be refined in order to improve marine fishery management in the United States and internationally. Participants at the Managing Our Nation's Fisheries 3 conference held in Washington, D.C. this past May developed 128 "findings" that represented ideas for improving marine fishery management. While many of these ideas were not intended for statutory consideration, many were. Within these, some were quite minor, while others were more substantial. The Pacific Council has heard feedback on these ideas from its Legislative Committee, Scientific and Statistical Committee (SSC), advisory subpanels, technical teams, and the public, and at this time has identified some general priority topics for statutory change. The priorities are listed below in "highest priority" and "lower priority" categories, but are not in priority order within those categories.

## Highest Priority

Please note that the descriptions below are very general and do not represent specific statutory language proposals. The Pacific Council lacked the time to develop more detailed policy statements or proposed statutory language on these issues; however, we plan to do so in the future, assuming the legislative schedule allows.

### *Improve rebuilding requirements for overfished stocks.*

- *Address the discontinuity associated with the ten-year rebuilding requirement.*
- *Don't "chase noise" in rebuilding plans (in other words, temper immediate reactions to changes in stock assessments that may merely be statistical "noise," rather than a true signal of significant status change).*
- *Address "rebuilding as soon as possible" problems associated with properly taking into account the needs of fishing communities.*

The MSA currently requires that rebuilding take as short a time as possible, after due consideration of the effect on fishing communities, with a maximum rebuilding time of 10 years, if biologically possible. Alternatively, for stocks that cannot rebuild in 10 years, rebuilding must occur in the time to rebuild if there were no fishing, plus one generation time. This requirement necessarily leads to large reductions in catch of directed fishery stocks that are being rebuilt, and can restrict mixed-stock fisheries when the rebuilding stock coexists with healthy stocks. However, it is important to note the purpose that rebuilding programs are designed for is to increase stock sizes to provide for biological stability and the attendant future economic benefits to the same fishery dependent communities negatively impacted by the rebuilding program.

While a strict 10-year rebuilding requirement is appropriate in some situations, focusing on rebuilding in a certain amount of time can also result in overly-restrictive fishery management that is illogically and unnecessarily harmful to fishermen and fishing communities; it is apparent that more flexibility is needed to optimize multiple goals. The 10-year rule, where stock rebuilding must occur within 10 years if possible, can lead to an unsound, discontinuous policy that can grossly disrupt fisheries for little conservation gain. If a stock can rebuild in 9 years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g. one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild, and less economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.

In addition, uncertainty in stock assessments and rebuilding analyses for overfished stocks has created a situation where seemingly small changes to analytical results can lead to expensive revisions in rebuilding plans and unwarranted consequences to fisheries and fishing communities ("chasing noise"). This disruption is especially problematic when analytical results vary small amounts due to assessment uncertainty, and vary both both up and down without changes in true status over time.

The MSA requirement to rebuild as soon as possible, taking into account the needs of the fishery communities, has been subject to Court interpretation as nearly ignoring the needs of fishing communities until such time as they have demonstrated a disastrous state. It has been said that a solution may be as simple as changing the word “possible” to “practical.” At any rate, there is a need for threshold clarity so as to allow Councils to properly take into account important social and economic impacts to communities when reducing catches in a rational stock rebuilding plan.

*Stocks that were designated as overfished, and that were then determined never to have been overfished, should not be held to rebuilding provisions.*

The data and scientific approaches used to determine stock status evolve and improve, and revisions to past stock status are common. The best available science used to declare a stock overfished may later be improved and show that the stock was never overfished. In these cases, continuing to manage the fishery under rebuilding plan restrictions may no longer be necessary. However, the MSA does not explicitly exempt stocks from rebuilding plans when it is later determined the stock was never overfished.

For example, in 2000, a stock assessment indicated that widow rockfish on the West Coast were below the minimum stock size threshold (MSST) that triggers an overfished status designation. Accordingly, the stock was declared overfished and a rebuilding plan put in place. However, subsequent assessments in 2005 and 2007 estimated that the biomass had never dropped below the MSST and thus the stock had never been overfished. Despite the best available science, uncertainty regarding MSA requirements and the assessment results resulted in the fishery remaining under a restrictive rebuilding plan until 2013. Continuing to manage widow rockfish under a rebuilding plan, even though the stock was never overfished, resulted in negative social and economic impacts to fishing communities and industry. It also represented a significant expenditure of Council resources to construct and maintain a rebuilding plan, and the new catch share program was unnecessarily complicated by the overfished declaration of widow rockfish and its subsequent rebuilding plan.

*Include a carryover exception for catch share programs to allow annual catch limits to be exceeded in order to carry over surplus and deficit individual quotas from one year to the next, provided there is a finding from a Council’s Scientific and Statistical Committee (SSC) that such a carryover provision will have negligible biological impacts.*

As part of their business planning, fishermen in catch share programs need to know whether they may carry over surplus harvest from one year to the next; deficits are now routinely paid back the next year. In the past there has not been a consistent policy application on this matter. If the SSC finds that carryover will not adversely affect a fish stock, then it should be explicitly allowed.

*Better align and streamline the National Environmental Policy Act (NEPA) and the MSA.*

While a mandate to include streamlining of the NEPA and MSA processes was included in §304(i) of the 2006 reauthorization of the MSA, it has not yet been addressed. The current process is inefficient, requiring substantial additional work and process to satisfy duplicative NEPA and MSA mandates. This unnecessarily delays implementation of regulations and burdens management resources that could be used more efficiently.

*Provide more flexibility in managing “data-poor” or “data-limited” species.*

One common management challenge is developing and implementing annual catch limits (ACLs) effectively when the requisite data are lacking, when no data collection program is in place, and/or when major natural fluctuations in stock abundance occur more rapidly than stock assessments can be updated. When less information about a stock is available, or the data are outdated, current requirements call for a Council to set a particularly low ACL compared to the theoretically maximum allowable catch, out of recognition of a higher level of scientific uncertainty. While this is a logical approach in some regards, there is concern it may overly-conservative. It can also lead to severe economic consequences when a rarely-caught stock about which little is known appears occasionally in a healthy mixed-stock fishery, and a new, highly buffered ACL for this rare stock suddenly requires a large reduction in the catch of healthy species, creating a bottleneck species that closes or substantially reduces an otherwise healthy fishery.

*Provide flexibility in requirements and qualifications for NMFS-certified observers to ensure that a sufficient pool of observers is available.*

Current requirements and qualifications for NMFS certified observers may be too restrictive regarding formal education and full independence provisions. There have been difficulties in providing a sufficient pool of observers that should be addressed.

### ***Lower Priority***

The Pacific Council has also identified the following priority areas that we ask you to take into consideration in drafting new legislation.

- *Designate one Commissioner seat on IATTC Commission to represent the Pacific Council.*
- *Address rebuilding requirements when environmental conditions may be a predominant factor in a stock's decline.*
- *Include a viable mixed-stock exception.*
- *Replace the term “overfished” with “depleted” to account for non-fishing causes of stock size below minimum stock size threshold.*
- *Consider a national standard for habitat that can more effectively minimize adverse impacts on essential fish habitat.*
- *Improve access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis.*

- *Amend MSA language to change “vessels” to “vessel” in the illegal, unreported, and unregulated (IUU) certification section.*
- *Make a consistent distinction between “overfishing” (a measure of fishing rate) and “overfished” (a measure of abundance).*
- *Enhance enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity.*

Thank you again for the opportunity to comment. The Pacific Council appreciates your dedication to improving marine and anadromous fish stocks and fisheries, and the communities that depend on them. Should you or your staff have any questions about the enclosed report or require additional information, please don't hesitate to contact me at any time.

Sincerely,



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

JDG:kma

Cc: Council Members  
Mr. Dave Whaley  
Mr. Jeff Lewis  
Council Advisory Body Members  
RFMC Executive Directors

## STAFF SUMMARY OF FEDERAL LEGISLATION IN THE 113<sup>TH</sup> U.S. CONGRESS

A summary of Federal legislation introduced in the 113<sup>th</sup> Congress is provided below. This summary is intended as a general overview for discussion purposes. Full text of these bills, with background information and current status, can be found at the Library of Congress website (<http://thomas.gov>) or at <http://govtrack.us>. These summaries are primarily from the GovTrack.us website, further summarized by Council staff.

### Most Relevant Bills

#### *H.R. 3964: Sacramento-San Joaquin Valley Emergency Water Delivery Act (NEW)*

- **Introduced by** David Valadeo (R-California) on January 29, 2014; 16 cosponsors.
- **Status:** Passed in the House of Representatives 229-191 on February 5, 2014. On the Senate schedule.
- **GovTrack chance of passage:** 28%

Using the current drought as a basis, this bill would overturn California and Federal water laws in order to provide water for agriculture in the San Joaquin Valley. Among other actions, the bill:

- Strips Endangered Species Act protections for Central Valley Chinook salmon and other endangered species that are required under both California law and Federal law. Directs that the Central Valley Project and State Water Project be operated according to the 1994 Bay Delta Accord, and “such operations shall proceed *without regard to the ESA or any other law*” [staff emphasis] (Section 108(a)).
- Overturns the court-approved San Joaquin River Restoration Settlement Act that, after twenty years of litigation, provided water for the San Joaquin River and salmon (Title II).
- Severely weakens the Central Valley Project Improvement Act (CVPIA), a landmark law that made fish and wildlife a purpose of the Central Valley Project.
- Modifies water contracts for certain contractors to provide significantly more water than they are entitled to under their current contracts.
- Amends the definition of anadromous fish to remove American shad and striped bass.
- Limits protection of salmon and steelhead stocks to those that were present in 1992 (Section 102).
- Extends contracts for 40 years, waives the requirement that an EIS be completed prior to renewal, and upon conversion to repayment contract, contractors only pay for water received (Section 103).
- Expedites environmental review for water transfers and gives 45 days for the Secretary to approve transfers (Section 104).
- Waives measurement requirement for large water districts and strikes the tiered pricing for water use. Striking this section removes conservation efforts put in place by CVPIA (Section 104).

- Creates a ceiling for environmental flows (i.e. (b)2 water) of 800,000 acre-feet, removes consultation of instream flows with the state, and deletes the word “primary” thus putting fish, wildlife, and habitat restoration as a secondary purpose (Section 105).
- Removes funding for environmental purposes in the Restoration Fund, deems environmental mitigation complete by December 31, 2020, and directs the funding for water supply projects like new storage (Section 106).
- Prohibits Federal or state imposition of any condition restricting the exercise of valid water rights in order to conserve, enhance, recover, or otherwise protect any species that is affected by operations of the CVP or SWP, or protect any “public trust value” pursuant to the “Public Trust Doctrine” (Section 108 (b)).
- Mandates that hatchery fish be included in making determinations regarding anadromous fish covered by under the ESA (Section 109).
- Allows compliance under the California Environmental Quality Act to suffice for compliance with NEPA (Section 111). Requires that Reclamation honor rescheduled water (Section 115).
- Overrides current protection for the Merced River under the federal Wild and Scenic Rivers Act (Title V).

The Council commented on a previous iteration of this bill (H.R. 1837) in the 112<sup>th</sup> Congress. While H.R. 3964 varies slightly in several provisions, Section 108 a-b, which repeals states’ rights, remains the same.

The bill is strongly opposed by the State of California (the Governor, Attorney General, Senate delegation, and Natural Resources Agency), the Karuk tribe, and by a wide variety of fishing and environmental groups. A summary by the Senate Natural Resources Committee notes, “If enacted, H.R. 3964 would set an unprecedented standard of state preemption, environmental disregard, and the privatization of a public resource for the benefit of a select few.”

*S 2016: California Emergency Drought Relief Act of 2014 (NEW)*

- **Introduced by** Dianne Feinstein (D-California) on February 12, 2014; three cosponsors (Barbara Boxer, Jeff Merkley, and Ron Wyden).
- **Status:** Referred to the Senate Energy and Natural Resources Committee.
- **GovTrack chance of passage:** 10%

This extensive bill—a Senate alternative to the House bill described above—includes a range of provisions that require Federal agencies to use existing powers to maximize water supplies, reduce project review times and ensure water is directed to users whose need is greatest. The bill does not waive any Federal or state law. It provides \$300 million in emergency funds to be used on a range of projects to maximize water supplies for farmers, consumers and municipalities and provide economic assistance.

Key provisions relevant to fisheries:

- Provides Federal authorization and orders the Interior and Commerce Departments to cooperate with a California Water Resources Board plan to keep the Delta Cross Channel Gates open as long as possible to allow more water to be delivered without endangering

migrating salmon. This action is expected to save thousands of acre feet of water from upstream reservoirs.

- Mandates that Federal agencies use flexibility under existing law to maximize water supplies using Delta pumping while remaining consistent with the biological opinion and the Endangered Species Act.
- Authorizes funding for Federal agencies to develop other water sources, such as groundwater wells and water purchases, for Central Valley Project wildlife refuges so that surface water saved can be used for drinking water and crops.
- Authorizes water planning and management activities to reduce water use in the Klamath Basin.
- Authorizes \$100 million in emergency funds for Department of the Interior projects to rapidly increase water supplies.
- Authorizes \$100 million in emergency assistance for farmers to fund water conservation measures that protect lands and sensitive watersheds, as well as \$25 million in community water conservation projects, and \$25 million for conservation projects by private forest landowners.

Federal agencies consulted in the development of the bill include the Bureau of Reclamation, the Fish and Wildlife Service, the National Marine Fisheries Service, the Federal Emergency Management Agency, the Environmental Protection Agency and the Department of Agriculture. State agencies include the California Resources Agency, the California Water Resources Control Board, the California Department of Water Resources and the California Department of Fish and Wildlife.

*S 1731 and HR 3533: Endangered Species Management Self-Determination Act (NEW)*

- **Introduced by** Rand Paul (R-Kentucky) and Mark Amodei (R-Nevada) on November 19, 2013; two cosponsors of Senate bill.
- **Status:** Referred to the Senate Environment and Public Works Committee and the House Natural Resources Committee.
- **GovTrack chance of passage:** 3% (for both bills)

This Act would reflect a major overhaul of the Endangered Species Act, and would give state governments more sway over land use decisions. Essentially, states would be allowed to opt out of the ESA. In addition, the legislation would require approval of a joint congressional resolution for any new species to be added to the Federal endangered species list, and all added species would be automatically delisted after five years. Further, the bill would require that the U.S. Fish and Wildlife Service compensate any private property owner (at 150 percent of fair market value) if the Federal statute diminishes the value of their land by 50 percent or more.

*S 1784: Oregon and California Land Grant Act of 2013 (NEW)*

- **Introduced by** Ron Wyden (D-Oregon) on December 9, 2013; no cosponsors.
- **Status:** Referred to the Senate Energy and Natural Resources Committee.
- **GovTrack chance of passage:** 12%

This bill would make changes to timber management on 2.1 million acres of Oregon and California Railroad and Coos Bay Wagon Road (O&C) grant land currently managed by the Bureau of Land Management. It is aimed at filling a funding gap caused by the expiration of a Federal safety net for Oregon’s timber-dependent counties. The bill mirrors legislation passed by the House (HR 1526); however, Wyden’s bill provides a higher level of environmental protection to the affected lands.

The legislation divides lands into Forestry Emphasis Areas and Conservation Emphasis Areas. The timber harvest would be doubled to more than 300 million board feet, while legislative protection would be given to old-growth forests. Stream buffers and wildlife protections would be reduced from current protections provided under the Northwest Forest Plan. Existing old growth trees and forests are largely protected under the bill, however forests over a century old could still be logged, and the bill abandons the Northwest Forest Plan goal to restore more old-growth forest to replace what was lost during the last century.

Counties would be guaranteed about 65% of the revenue from increased logging. Conservation organizations and rural interests are both split on their support of the bill.

*S 2028: A bill to amend the law relating to sport fish restoration and recreational boating safety, and for other purposes (NEW)*

- **Introduced by** John “Jay” Rockefeller (D-WV) on February 12, 2014; one cosponsor.
- **Status:** Referred to the Senate Commerce, Science and Transportation Committee.
- **GovTrack chance of passage:** 29%

Apart from the title, there is no additional information available on this bill as of the briefing book deadline.

*HR 3414: Fundamentally Improving Salmon Habitat (FISH) Act (NEW)*

- **Introduced by** Jaime Herrera-Beutler (R-Washington) on October 30, 2013; three cosponsors.
- **Status:** Referred to the House Natural Resources and Transportation & Infrastructure Committees.
- **GovTrack chance of passage:** 6%

This bill is designed to improve efforts to restore salmon habitat in the Northwest. The bill notes that many small habitat restoration projects that fall under the responsibility of the U.S. Army Corps of Engineers have not been undertaken. The FISH Act would designate any salmon restoration projects that cost less than \$2 million as “small” and authorize the U.S. Army Corps of Engineers to administer grants to local lead entities—specifically the Lower Columbia Estuary Partnership, the Tillamook Estuaries Partnership, the Lower Columbia Fish Recovery Board, and the Lower Columbia Fish Enhancement Group, to develop and construct these projects. The goal of providing block grants to groups that are better equipped to handle these projects is to ensure that more salmon restoration can be completed. The bill appears to enjoy bipartisan support.

*HR 3464: Commercial Vessel Discharges Reform Act of 2013 (NEW)*

- **Introduced by** Frank LoBiondo (R-New Jersey) on November 13, 2013; nine cosponsors.
- **Status:** Referred to the House Transportation & Infrastructure Committee.
- **GovTrack chance of passage:** 14%

Currently, starting in December 2014, commercial fishermen, charter and tour boat operators, and owners of other commercial vessels less than 79 feet will have to apply for and receive individual permits from the Environmental Protection Agency (EPA) to discharge from their vessels such things as deck wash, bilge water, and the condensation from air conditioning units. Vessels that operate without these permits could be subject to citizen lawsuits and daily fines that exceed \$32,000 per violation. This bill would amend the Clean Water Act to place a permanent moratorium from these Federal regulations, as well as state regulations, governing incidental discharges from commercial fishing vessels (of any size) and all other commercial vessels less than 79 feet.

The EPA would be required to develop best management practices for discharges that are incidental to the normal operation of a covered vessel. Owners and operators of such vessels would be required to follow these best practices once they were promulgated.

## Other House Bills

Apart from the following bills, none of the House bills described in the summary of legislation provided at the November 2013 Council meeting (<http://tinyurl.com/mj5agdn>) have advanced through Congress.

- *HR 1308: Endangered Salmon and Fisheries Predation Prevention Act.* This bill was reported by committee on November 14, 2013. It is given a 14% chance of passage. (Doc Hastings, R-Washington).
- *HR 3080: Water Resources Reform and Development Act of 2013.* This bill, which authorizes the U.S. Army Corps of Engineers and incorporates the Levee Vegetation Review Act of 2013, has gained 17 cosponsors since the November Council meeting and is given a 67% chance of passage. It has passed both the House and the Senate, and is currently awaiting House approval of the Senate's changes. (Bill Shuster, R-Pennsylvania).
- *HR 4025: Fishing Safety Training and Research Act.* This very short bill amends Title 46, United States Code, to reauthorize and amend the Fishing Safety Training Grant Program and the Fishing Safety Research Grant Program. (William Keating, D-MA).

## Other Senate Bills

None of the Senate bills described in the summary of legislation provided at the November 2013 Council meeting (<http://tinyurl.com/mj5agdn>) have advanced through Congress.

## Less Relevant Bills

Several other bills that are not directly relevant to Council activities, but may be of interest, are listed below.

The following bills were introduced after the November 2013 Council meeting:

- *HR 3848: New York Fair Fishing Act.* Seeks to amend the Magnuson-Stevens Act to add New York to the New England Fishery Management Council. (Timothy Bishop, D-New York.)
- *HR 3994: Federal Lands Invasive Species Control, Prevention and Management Act.* Seeks to improve the control and management of invasive species on Federal lands. (Bob Bishop, R-Utah.)
- *HR 3197/HR 3590: Sportsmen’s Heritage And Recreational Enhancement (SHARE) Act of 2013.* This bill incorporates several acts relating to public target shooting ranges, filming on public lands, polar bear hunting, duck stamps, and other non-fisheries-related issues. Title I, the Hunting, Fishing and Recreational Shooting Protection Act (HR 322/S 1505), amends the Toxic Substances Control Act to allow lead fishing tackle and shooting components. Title VIII, the Recreational Fishing and Hunting Heritage and Opportunities Act, is aimed at ensuring that public lands are available for fishing and hunting. Title IX directs the Gulf States Marine Fisheries Commission to adopt a data collection strategy for the Gulf of Mexico red snapper fishery, and to develop a fishery management plan for Gulf of Mexico red snapper. HR 3590 passed the House on February 5, 2014. (Robert Latta, R-Ohio.)

None of the other “less relevant” bills described in the summary of legislation provided at the November 2013 Council meeting (<http://tinyurl.com/mj5agdn>) have advanced through Congress.

PFMC  
2/14/14



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

February 12, 2014

The Honorable Doc Hastings  
Chairman, House Committee on Natural Resources  
U.S. House of Representatives  
1203 Longworth House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

Thank you for providing the New England Fishery Management Council with a copy of the Magnuson-Stevens Fishery Conservation and Management Act discussion draft dated December 18, 2013. For almost forty years this important statute has led to significant progress in the management of our fisheries resources. We have made considerable strides in improving the status of many stocks, although this has not been without cost. Stringent rebuilding requirements have had negative economic consequences on many fishing communities, and as a result, I am glad to see the emphasis in the document placed on increasing the attention paid to fishermen and their communities while promoting sustainable management.

Our Council reviewed the discussion draft at its meeting in late January and developed comments that we are providing for your information. I want to make it clear that these statements represent the opinions of most Council members but should not be interpreted as being unanimously supported.

There are two overarching issues that we would also like to bring to your attention. First, the statute's conservation approach often ignores the very real limits to the information that science can provide. The recent National Academy of Sciences Report "Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States" referred to this as "...a mismatch between policy makers' expectations for scientific precision and the inherent limits of science because of data limitations and the complex dynamics of ecosystems." For example, the requirement for annual catch limits assumes that we can accurately identify the catch that will give us the biological and economic results that we want, yet there are numerous examples that demonstrate that this is often not the case. Similarly, the requirement to define a fixed rebuilding period assumes that we know current stock size, stock size targets and rebuilding trajectories to a degree of certainty that is rarely met. The Act will be strengthened if changes are made to acknowledge these limitations.

Second, the discussion draft introduces many new terms but does not always clearly define what they mean. For example, rebuilding requirements can be phased in for a “highly dynamic fishery” or “unusual events”. Absent a statutory definition it will be left to NOAA’s National Marine Fisheries Service to define such terms and the results may not be consistent with Congressional intent. Additional guidance may be necessary.

Thank you once again for providing us with the opportunity to review this discussion draft. We look forward to working with you as we strengthen this critical statute and continue to improve fisheries management.

Sincerely,

A handwritten signature in black ink, appearing to read "E.F. Stockwell III". The signature is written in a cursive, somewhat stylized font.

E.F. “Terry” Stockwell III  
Chairman

attachment

# **New England Fishery Management Council**

## **DRAFT Council Comments**

**on**

### **Discussion Draft for Magnuson-Stevens Act Reauthorization**

“Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act”

#### **Section 3: Flexibility in Rebuilding Fish Stocks**

The Council supports provisions providing additional flexibility in rebuilding fish stocks. The discussion draft moves in this direction by modifying the rebuilding period and provides several additional exceptions to the requirement to adhere to this period. It does not, however, adopt the finding of the National Academy of Sciences: “Emphasis on meeting fishing mortality targets rather than on exact schedules for attaining biomass targets may result in strategies that are more robust to assessment uncertainties, natural variability and ecosystem considerations, and less prone to rapid changes in management measures, which have social and economic impacts that may be more severe than more gradual changes.” The Council supports a focus on ending overfishing without regard to a fixed rebuilding time period.

#### **Section 4: Modifications to the Annual Catch Limit Requirement**

This section suffers from a lack of clarity and potential inconsistencies with other sections of the M-S Act. It is not clear if the consideration of ecosystem and economic impacts when setting Annual Catch Limits (ACLs) authorizes a deviation from other requirements of the M-S Act, such as ending overfishing or achieving optimum yield (as currently defined). While the section would authorize specification of an Annual Catch Limit for a “stock complex”, that term is undefined and it is not clear how this provision would interact with requirements to rebuild individual stocks of fish.

#### **Section 5: Distinguishing Between Overfished and Depleted**

The Council supports the use of a term for low stock size that acknowledges that overfishing is just one possible cause for this state. The term “depleted”, however, is used by some management agencies in a different context and may cause confusion.

#### **Section 6: Transparency and Public Process for Scientific and Management Actions**

The Council supports a transparent public process. As such, all Council meetings are currently webcast and recordings of all Council and Scientific and Statistical Committee (SSC) meetings are readily available. Transcripts of Council meetings are not currently prepared due to the cost, but could be prepared with adequate funding. Video recordings of Council and SSC meetings seem unnecessary and expensive and would create issues related to storage of large data files, and collection of video release forms.

The Council supports streamlining the M-S Act and National Environmental Policy Act (NEPA) processes. The goal of NEPA is to provide the information needed for decision makers and the public to evaluate policy choices, but unfortunately this goal has been subsumed by a rigid

adherence to bureaucratic requirements in order to withstand any potential legal challenge. The proposed language in the discussion draft would streamline the fishery management process while still ensuring that decisions are based on careful analyses.

### **Section 7: Limitation on Future Catch Share Programs**

The discussion draft language in this section continues to hamper the Council's ability to use all of the fishery management tools that are available by extending the referendum requirement before implementing any catch share program in New England and other regions. While the Council would prefer this requirement be removed, the discussion draft does reduce the requirement for approval to a majority of permit holders (rather than 2/3), and the Council supports this change. It is not clear if the draft language would prohibit allowing crew members to participate in the vote, and the language on which permit holders could participate lacks clarity.

### **Section 8: Data Collection and Data Confidentiality**

The Council supports increased emphasis on electronic monitoring tools. The draft language, however, reduces the effectiveness and applicability of those tools by prohibiting the use of information collected through electronic monitoring for the purpose of fishery law enforcement.

The draft language on data confidentiality does not appear to improve the ability of the Councils to use fishery data to evaluate management programs.

There is an increasing need for coordination between competing ocean user groups. Marine spatial planning is one way to fill that need. The fishing industry needs to be at the table for those discussions, well prepared with data that supports the industry's need to access specific areas of the ocean and its seabed. The draft language prohibition on using data collected through electronic monitoring in marine spatial planning is short-sighted and will only hurt the fishing industry.

### **Section 9: Council Jurisdiction for Overlapping Fisheries**

The New England and Mid-Atlantic Fishery Management Councils coordinate closely on fisheries issues. Providing Council liaisons the ability to vote will improve that coordination.

### **Section 13: Ensuring Consistent Fisheries Management Under Other Federal Laws**

The Council supports the draft discussion language that would require fishing restrictions adopted within National Marine Sanctuaries to be adopted through the M-S Act process. This is an important and needed clarification.

The Council supports the draft discussion language that would require any fishery management restrictions needed to implement Endangered Species Act recovery plans to be implemented through the M-S Act process.

While not included in the discussion draft, the Council would support the development of a sustainability certification by NMFS that would obviate the need for third-party evaluations.

Testimony of Dorothy Lowman,

Chair of the Pacific Fishery Management Council

on

Pacific Council Perspectives on Magnuson-Stevens Act Reauthorization

Before

U.S. House of Representatives Committee on Natural Resources

“Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act”

Hearing

February 28, 2014

Chairman Hastings, Ranking Member DeFazio, and members of the Subcommittee, thank you for the opportunity to testify before you today regarding the Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

My name is Dorothy Lowman and I serve as the Chair of the Pacific Fishery Management Council (Pacific Council). It is from our experiences of managing over 160 fish stocks off the states of Washington, Oregon, and California under the mandates of the MSA that I offer the Pacific Council’s perspective regarding refinement of this important legislation.

First I would like to be clear that the Pacific Council believes that the MSA as reauthorized in 1996 and again in 2006 has been a success. The Act has worked well to ensure a science-based management process that ensures long-term sustainable fisheries while preventing overfishing and mandating rebuilding of depleted stocks. As a result, the Pacific Council has ended overfishing of any and all stocks within one year of detection, has rebuilt seven depleted stocks, and is in the process of successfully rebuilding eight long-lived stocks that remain depleted—three of which are projected to be rebuilt in the next year. We have implemented a successful groundfish trawl catch share program that has been held up as a model for programs in other regions for its ability to reduce bycatch and increase economic yield. We annually craft ocean salmon fisheries that accomplish stock-specific conservation goals for a multitude of individual salmon stocks, including many listed under the Endangered Species Act. We have created an ecosystem fishery management plan, which we are now in the process of implementing, along with protections for unmanaged forage fish. We are successfully participating in international fisheries organizations to protect highly migratory tuna-like species and the West Coast fisheries that rely on them. The current MSA has been a key driver of these successes. We believe large-scale changes to the MSA are not warranted, and any changes made to the Act should be carefully considered.

That said, after 7 years of managing under the 2006 reauthorized bill, we believe that a few refinements would enhance marine fishery management in the United States and internationally. A number of the Pacific Council priorities for reauthorizations were echoed by others at the Management Our Nation's Fisheries 3 (MONF3) conference which was held in May of 2013. The Pacific Council was the primary organization responsible for planning the MONF3 conference. Findings from the conference can be found on our website, and the final report should be available within a few weeks. At subsequent Pacific Council meetings we have continued to discuss reauthorization of the MSA, and the priorities outlined in this testimony represent the results of our discussions through our last Pacific Council meeting in November. The Pacific Council has not yet had the opportunity to review the discussion draft bill put forth by Chairman Hastings but will do so at our March Council meeting and intends to provide the results of this review to the Committee as soon as possible thereafter.

The Pacific Council's priorities for MSA reauthorization are as follows. These represent notable priorities identified at this time, with the reservation for additional priorities and refinement of positions as the reauthorization process moves forward.

### ***Higher-Priorities Matters***

#### **Revise rebuilding time requirements.**

- Address the discontinuity associated with the 10-year rebuilding requirement.
- Don't "chase noise" in rebuilding plans (in other words, temper immediate reactions to changes in stock assessments that may merely be statistical "noise," rather than a true signal of significant status change).
- Address problems associated with "rebuilding as soon as possible" in order to properly take into account the needs of fishing communities.

We agree with the National Academy of Science that a strict requirement to rebuild within 10 years may eliminate some management responses that could lead to greater social and economic benefits while still assuring that stocks are rebuilt. Focusing on rebuilding in a certain amount of time can result in overly-restrictive fishery management that is illogically and unnecessarily harmful to fishermen and fishing communities; it is apparent that more flexibility is needed to optimize multiple goals. At the same time, care must be taken when providing focused flexibility to assure that we continue our recent successes in rebuilding the stocks upon which our fisheries and fishing communities depend.

The current MSA requires that rebuilding must take place in as short a time as possible, with an maximum of 10 years if biologically possible. This "10-year rule" can grossly disrupt fisheries for little conservation gain. If a stock can rebuild in 9 years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g. one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild

(11 years plus the length of one generation of the species), with obviously less economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.

In addition, uncertainty in stock assessments and rebuilding analyses for overfished stocks has created a situation where seemingly small changes to analytical results can lead to expensive revisions in rebuilding plans and unwarranted consequences to fisheries and fishing communities (“chasing noise”). This disruption is especially problematic when analytical results vary by small amounts due to assessment uncertainty, and vary both up and down without changes in true status over time. The current process needs to be revised such that a reasonable threshold exists for stock status changes before significant changes in management approaches are required.

The MSA requirement to rebuild as soon as possible, taking into account the needs of the fishery communities, has been subject to Court interpretation as nearly ignoring the needs of fishing communities until such time as they have demonstrated a disastrous state. Current administration of this requirement necessarily leads to large reductions in catch of directed fishery stocks that are being rebuilt, and can restrict mixed-stock fisheries when the rebuilding stock coexists with healthy stocks. It has been said that a solution may be as simple as changing the word “possible” to “practical.” At any rate, there is a need for threshold clarity so as to allow Councils to properly take into account important social and economic impacts to communities when reducing catches in a rational stock rebuilding plan. It is important to note the purpose that rebuilding programs are designed for is to increase stock sizes to provide for biological stability and the attendant future economic benefits to the same fishery-dependent communities negatively impacted (and may even be required to endure a disaster) by the rebuilding program.

**Explore more flexibility for fishery impacts on data-poor species when the current precautionary approach becomes the bottleneck for healthy mixed-stock fisheries.**

One common management challenge is developing and implementing annual catch limits (ACLs) effectively when the requisite data are lacking, when no data collection program is in place, and/or when major natural fluctuations in stock abundance occur more rapidly than stock assessments can be updated. When less information about a stock is available, or the data are outdated, current requirements call for a Council to set a particularly low ACL compared to the theoretically maximum allowable catch, out of recognition of a higher level of scientific uncertainty. While this is a logical approach in some regards, there is concern it may be overly conservative in some situations. It can lead to severe economic consequences when a rarely-caught stock about which little is known appears occasionally in a healthy mixed-stock fishery, and a new, highly buffered ACL for this rare stock suddenly requires a large reduction in the catch of healthy species; this situation essentially creates a bottleneck species that closes or

substantially reduces an otherwise healthy fishery.

There are times when the best available science is not sound enough for active fishery management decision-making; the current approach for data-poor species may occasionally fall into this situation. Further, the current approach may limit obtaining scientific information on stock performance under higher catch rates.

**Better-align and streamline the National Environmental Policy Act (NEPA) & MSA section 304(i).**

The Councils have a long history of advocating for more effective reconciliation of the requirements of NEPA and the MSA. We appreciate the opportunity to work with National Marine Fisheries Service in developing a recently completed policy directive that accurately describes our current roles and responsibilities in complying with NEPA process and requirements.

However, inefficiencies remain in the current process, requiring substantial additional work and process to satisfy duplicative NEPA and MSA mandates. This unnecessarily delays implementation of regulations, causes obsolescence of scientific information, and burdens management resources that could be used more efficiently. In some cases, the mismatch of MSA and NEPA timelines also results in alternatives being developed under NEPA after final action has been taken by the Council.

In short, we believe that the mandate to streamline NEPA and MSA processes that was included in §304(i) of the 2006 reauthorization of the MSA has not yet been effectively addressed.

A defining characteristic of fishery management under the MSA is the mandated transparent and participatory process. Given the Council expertise that can be applied in the near future towards revising the MSA to include explicit requirements for a robust environmental impact analysis of a full range of reasonable alternatives, I personally believe it is possible to achieve essential compliance with the intent and purpose of NEPA. If this can be accomplished, making MSA consistent with NEPA in this manner could address current challenges without sacrificing any environmental protections of NEPA and efficiently taking full advantage of the public process provisions of MSA.

**Include a carryover exception to allow ACLs to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided there is a finding from the Scientific and Statistical Committee (SSC) that such a carryover provision will have negligible biological impacts.**

As part of their business planning, fishermen in catch share programs need to know

whether they may carry over surplus harvest from one year to the next; deficits are now routinely paid back the next year. In the past, there has not been a consistent policy application on this matter. If the SSC finds that carryover will not adversely affect a fish stock, then it should be explicitly allowed.

### **Stocks later determined never overfished should not be held to rebuilding provisions.**

The data and scientific approaches used to determine stock status evolve and improve, and revisions to past stock statuses are common. The best available science used to declare a stock overfished may later be improved and show that the stock was never overfished. In these cases, continuing to manage the fishery under rebuilding plan restrictions may no longer be necessary. However, the MSA does not explicitly exempt stocks from rebuilding plans when it is later determined the stock was never overfished.

For example, in 2000, a stock assessment indicated that widow rockfish on the West Coast were below the minimum stock size threshold (MSST) that triggers an overfished status designation. Accordingly, the stock was declared overfished and a rebuilding plan put in place. However, subsequent assessments in 2005 and 2007 estimated that the biomass had never dropped below the MSST, and thus the stock had never been overfished. Despite the best available science, uncertainty regarding MSA requirements and the assessment results caused the fishery to remain under a restrictive rebuilding plan until 2013. Continuing to manage widow rockfish under a rebuilding plan, even though the stock was never overfished, resulted in negative social and economic impacts to fishing communities and industry. It also represented a significant expenditure of Pacific Council resources to construct and maintain a rebuilding plan, and the new catch share program was unnecessarily complicated by the overfished declaration of widow rockfish and its subsequent rebuilding plan.

### **Provide flexibility in requirements and qualifications for observers.**

Current requirements and qualifications for National Marine Fisheries Service certified observers may be too restrictive regarding formal education and full independence provisions. There have been difficulties in providing a sufficient pool of observers.

### ***Lower-Priority Matters***

The Pacific Council has also identified the following lower-priority areas that we ask you to take into consideration in drafting new legislation.

- Designate one Commissioner seat on the Inter-American Tropical Tuna Commission to represent the Pacific Council.
- Provide flexibility to address rebuilding requirements when environmental conditions may be a predominant factor in a stock's decline.

- Include a viable mixed-stock exception.
- Replace the term “overfished” with “depleted” to account for non-fishing causes of stock size below MSST.
- Consider a national standard for habitat that can more effectively minimize adverse impacts on essential fish habitat.
- Implement stricter imported seafood labeling requirements in the U.S. market.
- Enhance enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity.
- Improve access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis.
- Amend MSA language to change “vessels” to “vessel” in the illegal, unreported, and unregulated certification section.
- Make a consistent distinction between “overfishing” (a measure of fishing rate) and “overfished” (a measure of abundance).

Thank you again for the opportunity to testify before this Committee. We look forward to continuing to work with you during the reauthorization of the MSA to make what we believe to be one of the strongest and most effective pieces of legislation governing fishery management in the world even better.

**ASSEMBLY BILL**

**No. 2019**

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**Introduced by Assembly Members Fong and Levine  
(Principal coauthor: Assembly Member Stone)  
(Coauthor: Assembly Member Rendon)**

February 20, 2014

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An act to amend the heading of Article 16 (commencing with Section 8561) of Chapter 2 of Part 3 of Division 6 of, and to amend and repeal Sections 8568, 8568.5, 8573, 8574, 8575, and 8575.5 of, and to amend, repeal, and add Sections 8561, 8563, 8564, 8567, 8569, 8576, 8576.5, 8577, 8579, and 8582 of, and to add Sections 8561.1 and 8561.3 to, the Fish and Game Code, relating to commercial fishing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2019, as introduced, Fong. Commercial fishing: drift gill net shark and swordfish fishery.

(1) Existing law prohibits a person from using or operating, or assisting in using or operating, a boat, aircraft, net, trap, line, or other appliance to take fish or amphibia for commercial purposes unless the person holds a commercial fishing license issued by the Department of Fish and Wildlife. Existing law prohibits the taking of shark and swordfish for commercial purposes with drift gill nets except under a valid drift gill net shark and swordfish permit issued to that person that has not been suspended or revoked and is issued to at least one person aboard the boat, except as provided. Existing law prohibits a person from taking shark and swordfish under a drift gill net permit during certain times of the year and in certain locations. Under existing law, a violation of these provisions is a crime.

This bill would prohibit a person from using a drift gill net to take shark and swordfish for commercial purposes, except as provided. Because a violation of this provision would be a crime, this bill would impose a state-mandated local program. The bill would recast the drift gill net shark and swordfish permit as the shark and swordfish permit and would authorize a person to take shark and swordfish under this permit using only specified methods of take, including hand-held hook and line and handthrust harpoon. The bill would eliminate in the new shark and swordfish fishery provisions the time and area restrictions that existed for the use of drift gill nets for shark and swordfish. The bill would require the department to issue a shark and swordfish permit to a person who actively participated, as defined, in the drift gill net shark and swordfish fishery and who holds a valid drift gill net shark and swordfish permit as of January 31, 2015. The bill would authorize the department to issue a shark and swordfish permit to a person who did not actively participate in the drift gill net shark and swordfish fishery and who holds a valid drift gill net permit as of January 31, 2015, based on specified considerations. The bill would make additional conforming changes. The bill would make these provisions operative on February 1, 2015.

This bill would require the department, through its member on the Pacific Fishery Management Council, to initiate and support an amendment to the Highly Migratory Species Fishery Management Plan to prohibit the use of drift gill nets to target shark and swordfish in the area subject to the oversight of the council.

This bill would provide that the provisions of this act are severable.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The heading of Article 16 (commencing with
- 2 Section 8561) of Chapter 2 of Part 3 of Division 6 of the Fish and
- 3 Game Code is amended to read:

1 Article 16. ~~Drift Gill Net Shark and Swordfish Fishery~~

2  
3 SEC. 2. Section 8561 of the Fish and Game Code is amended  
4 to read:

5 8561. (a) Notwithstanding Section 8394, shark and swordfish  
6 shall not be taken for commercial purposes with drift gill nets  
7 except under a valid drift gill net shark and swordfish permit issued  
8 to that person that has not been suspended or revoked and is issued  
9 to at least one person aboard the boat.

10 (b) A drift gill net shark and swordfish permit shall not be  
11 required for the taking of sharks with drift gill nets with a mesh  
12 size smaller than eight inches in stretched mesh and twine size no.  
13 18 or the equivalent of this twine size or smaller.

14 (c) *This section shall become inoperative on February 1, 2015,*  
15 *and, as of January 1, 2016, is repealed, unless a later enacted*  
16 *statute, that becomes operative on or before January 1, 2016,*  
17 *deletes or extends the dates on which it becomes inoperative and*  
18 *is repealed.*

19 SEC. 3. Section 8561 is added to the Fish and Game Code, to  
20 read:

21 8561. (a) A person may only take shark and swordfish for  
22 commercial purposes under a permit issued pursuant to this section  
23 or under another authorization granted pursuant to this code.

24 (b) The department shall issue a shark and swordfish permit to  
25 a person who meets the following criteria:

26 (1) The person holds a valid drift gill net shark and swordfish  
27 permit as of January 31, 2015, that has not been suspended or  
28 revoked.

29 (2) The person actively participated in the drift gill net shark  
30 and swordfish fishery.

31 (c) (1) The department shall determine whether to issue a shark  
32 and swordfish permit to a person who meets the following criteria:

33 (A) The person holds a valid drift gill net shark and swordfish  
34 permit as of January 31, 2015, that has not been suspended or  
35 revoked.

36 (B) The person did not actively participate in the drift gill net  
37 shark and swordfish fishery.

38 (2) The department shall make the determination described in  
39 paragraph (1) based on the following considerations:

1 (A) Whether issuing the permit would result in overcapacity in  
2 the fishery.

3 (B) Whether issuing the permit would adversely impact natural  
4 resources and wildlife.

5 (d) For purposes of this section, the following terms have the  
6 following meanings:

7 (1) “Actively participate” means to have held a valid drift gill  
8 net shark and swordfish permit that was not suspended or revoked  
9 and to have made landings of shark or swordfish, or both, under  
10 that permit in each year since January 1, 2010.

11 (2) “Drift gill net shark and swordfish permit” means the permit  
12 that was authorized under former Section 8561 until January 31,  
13 2015.

14 (e) This section shall become operative on February 1, 2015.

15 SEC. 4. Section 8561.1 is added to the Fish and Game Code,  
16 to read:

17 8561.1. (a) A person shall only take shark and swordfish under  
18 a permit issued pursuant to Section 8561 in a manner that is  
19 consistent with the methods of take authorized in Section 107 of  
20 Title 14 of the California Code of Regulations, as that section read  
21 on January 1, 2014.

22 (b) A person shall not take shark and swordfish for commercial  
23 purposes with a drift gill net of any mesh size except as provided  
24 in Section 8576.

25 (c) A person holding a permit issued pursuant to Section 8561  
26 may take shark and swordfish using experimental gear if the person  
27 obtains a permit for the use of the experimental gear pursuant to  
28 Section 8606. Notwithstanding subdivision (b) of Section 8606,  
29 the commission shall not issue an experimental permit authorizing  
30 the use of drift gill nets, pelagic longlines, or fishing gear described  
31 in Section 9029 in the shark and swordfish fishery authorized  
32 pursuant to this article.

33 (d) This section shall become operative on February 1, 2015.

34 SEC. 5. Section 8561.3 is added to the Fish and Game Code,  
35 to read:

36 8561.3. The department, through its member on the Pacific  
37 Fishery Management Council, shall initiate and support an  
38 amendment to the Highly Migratory Species Fishery Management  
39 Plan to prohibit the use of drift gill nets to target shark and

1 swordfish in the area subject to the oversight of the Pacific Fishery  
2 Management Council.

3 SEC. 6. Section 8563 of the Fish and Game Code is amended  
4 to read:

5 8563. (a) Except as provided in subdivision (b), the permittee  
6 shall be aboard the vessel and shall be in possession of a valid drift  
7 gill net shark and swordfish permit when engaged in operations  
8 authorized by the permit.

9 (b) A permittee may have any person serve in his or her place  
10 on the permittee's vessel and engage in fishing under his or her  
11 drift gill net shark and swordfish permit for not more than 15  
12 calendar days in any one year, except that a longer period may be  
13 allowed in the event of serious illness. A permittee shall notify the  
14 department's Long Beach office of a substitution of 15 days or  
15 less per calendar year, by certified letter or telegram at least 24  
16 hours prior to the commencement of the trip. Written authorization  
17 for a substitution of greater than 15 days shall be obtained from  
18 the director and shall be given only on the director's finding that  
19 the permittee will not be available to engage in the activity due to  
20 serious illness, supported by medical evidence. An application for  
21 a substitution of greater than 15 days shall be made to the  
22 Department of Fish and ~~Game~~ *Wildlife*, Headquarters Office,  
23 Sacramento, and shall contain such information as the director  
24 may require. Any denial of the substitution may be appealed to  
25 the commission.

26 (c) *This section shall become inoperative on February 1, 2015,*  
27 *and, as of January 1, 2016, is repealed, unless a later enacted*  
28 *statute, that becomes operative on or before January 1, 2016,*  
29 *deletes or extends the dates on which it becomes inoperative and*  
30 *is repealed.*

31 SEC. 7. Section 8563 is added to the Fish and Game Code, to  
32 read:

33 8563. (a) Except as provided in subdivision (b), the permittee  
34 shall be aboard the vessel and shall be in possession of a valid  
35 shark and swordfish permit when engaged in operations authorized  
36 by the permit.

37 (b) A permittee may have any person serve in his or her place  
38 on the permittee's vessel and engage in fishing under his or her  
39 shark and swordfish permit for not more than 15 calendar days in  
40 any one year, except that a longer period may be allowed in the

1 event of serious illness. A permittee shall notify the department's  
2 Long Beach office of a substitution of 15 days or less per calendar  
3 year, by certified letter or telegram at least 24 hours prior to the  
4 commencement of the trip. Written authorization for a substitution  
5 of greater than 15 days shall be obtained from the director and  
6 shall be given only on the director's finding that the permittee will  
7 not be available to engage in the activity due to serious illness,  
8 supported by medical evidence. An application for a substitution  
9 of greater than 15 days shall be made to the Department of Fish  
10 and Wildlife, Headquarters Office, Sacramento, and shall contain  
11 such information as the director may require. Any denial of the  
12 substitution may be appealed to the commission.

13 (c) This section shall become operative on February 1, 2015.

14 SEC. 8. Section 8564 of the Fish and Game Code is amended  
15 to read:

16 8564. (a) When the permittee applies for a drift gill net shark  
17 and swordfish permit, the permittee shall specify the vessel he or  
18 she will use in operations authorized by the permit. Transfer to  
19 another vessel shall be authorized by the department upon receipt  
20 of a written request from the permittee, accompanied by a transfer  
21 fee of one hundred thirty dollars (\$130), as follows:

22 (a)

23 (1) One transfer requested between February 1 and April 30  
24 shall be made by the department upon request and payment of the  
25 fee.

26 (b)

27 (2) Any transfer, except as provided in ~~subdivision (a)~~,  
28 *paragraph (1)*, shall be authorized by the department only after  
29 receipt of proof of a compelling reason, which shall be submitted  
30 with the request for transfer, such as the sinking of the vessel  
31 specified for use in operations authorized by the permit.

32 (b) *This section shall become inoperative on February 1, 2015,*  
33 *and, as of January 1, 2016, is repealed, unless a later enacted*  
34 *statute, that becomes operative on or before January 1, 2016,*  
35 *deletes or extends the dates on which it becomes inoperative and*  
36 *is repealed.*

37 SEC. 9. Section 8564 is added to the Fish and Game Code, to  
38 read:

39 8564. (a) When the permittee applies for a shark and swordfish  
40 permit, the permittee shall specify the vessel he or she will use in

1 operations authorized by the permit. The department shall authorize  
2 transfer to another vessel upon receipt of a written request from  
3 the permittee, accompanied by a transfer fee of one hundred thirty  
4 dollars (\$130), as follows:

5 (1) One transfer requested between February 1 and April 30  
6 shall be made by the department upon request and payment of the  
7 fee.

8 (2) Any transfer, except as provided in paragraph (1), shall be  
9 authorized by the department only after receipt of proof of a  
10 compelling reason, which shall be submitted with the request for  
11 transfer, such as the sinking of the vessel specified for use in  
12 operations authorized by the permit.

13 (b) This section shall become operative on February 1, 2015.

14 SEC. 10. Section 8567 of the Fish and Game Code is amended  
15 to read:

16 8567. (a) The fee for a drift gill net shark and swordfish permit  
17 shall be three hundred thirty dollars (\$330).

18 (b) *This section shall become inoperative on February 1, 2015,*  
19 *and, as of January 1, 2016, is repealed, unless a later enacted*  
20 *statute, that becomes operative on or before January 1, 2016,*  
21 *deletes or extends the dates on which it becomes inoperative and*  
22 *is repealed.*

23 SEC. 11. Section 8567 is added to the Fish and Game Code,  
24 to read:

25 8567. (a) The fee for a shark and swordfish permit shall be  
26 three hundred thirty dollars (\$330).

27 (b) This section shall become operative on February 1, 2015.

28 SEC. 12. Section 8568 of the Fish and Game Code is amended  
29 to read:

30 8568. (a) Drift gill net shark and swordfish permits shall be  
31 issued to any prior permittee who possesses a valid drift gill net  
32 shark and swordfish permit issued pursuant to this section, but  
33 only if the permittee meets both of the following requirements:

34 ~~(a)~~

35 (1) Possesses a valid permit for the use of gill nets authorized  
36 pursuant to Section 8681.

37 ~~(b)~~

38 (2) Possessed a valid drift gill net shark and swordfish permit  
39 during the preceding season and that permit was not subsequently  
40 revoked.

1     **(b)** *This section shall become inoperative on February 1, 2015,*  
2 *and, as of January 1, 2016, is repealed, unless a later enacted*  
3 *statute, that becomes operative on or before January 1, 2016,*  
4 *deletes or extends the dates on which it becomes inoperative and*  
5 *is repealed.*

6     SEC. 13. Section 8568.5 of the Fish and Game Code is  
7 amended to read:

8     8568.5. **(a)** Any person holding a valid drift gill net shark and  
9 swordfish permit on or after January 1, 2000, who did not make,  
10 on or after January 1, 2000, the minimum landings required under  
11 subdivision (c) of Section 8568, as amended by Section 11 of  
12 Chapter 525 of the Statutes of 1998, is eligible for that permit when  
13 that person meets all other qualifications for the permit.

14     **(b)** *This section shall become inoperative on February 1, 2015,*  
15 *and, as of January 1, 2016, is repealed, unless a later enacted*  
16 *statute, that becomes operative on or before January 1, 2016,*  
17 *deletes or extends the dates on which it becomes inoperative and*  
18 *is repealed.*

19     SEC. 14. Section 8569 of the Fish and Game Code is amended  
20 to read:

21     8569. **(a)** The commission may establish conditions for the  
22 issuance of a permit if the person's drift gill net shark and  
23 swordfish permit was revoked during a preceding season or if the  
24 person possessed a valid permit during the preceding season but  
25 did not apply for renewal of his or her permit on or before April  
26 30. The applicant for a permit under this section may appeal to the  
27 director for the issuance of the permit under those conditions.

28     **(b)** *This section shall become inoperative on February 1, 2015,*  
29 *and, as of January 1, 2016, is repealed, unless a later enacted*  
30 *statute, that becomes operative on or before January 1, 2016,*  
31 *deletes or extends the dates on which it becomes inoperative and*  
32 *is repealed.*

33     SEC. 15. Section 8569 is added to the Fish and Game Code,  
34 to read:

35     8569. **(a)** The commission may establish conditions for the  
36 issuance of a permit if the person's shark and swordfish permit  
37 was revoked during a preceding season or if the person possessed  
38 a valid permit during the preceding season but did not apply for  
39 renewal of his or her permit on or before April 30. The applicant

1 for a permit under this section may appeal to the director for the  
2 issuance of the permit under those conditions.

3 (b) This section shall become operative on February 1, 2015.

4 SEC. 16. Section 8573 of the Fish and Game Code is amended  
5 to read:

6 8573. (a) Drift gill nets may be used to take shark and  
7 swordfish under the permit provided in this article, subject to  
8 Section 8610.3 and all of the following restrictions:

9 (a)

10 (1) From June 1 to November 15, inclusive, shark or swordfish  
11 gill nets shall not be in the water from two hours after sunrise to  
12 two hours before sunset east of a line described as follows:

13 From a point beginning at Las Pitas Point to San Pedro Point on  
14 Santa Cruz Island, thence to Gull Island Light, thence to the  
15 northeast extremity of San Nicolas Island, thence along the high  
16 water mark on the west side of San Nicolas Island to the southeast  
17 extremity of San Nicolas Island, thence to the northwest extremity  
18 of San Clemente Island, thence along the high water mark on the  
19 west side of San Clemente Island to the southeast extremity of San  
20 Clemente Island, thence along a line running 150° true from the  
21 southeast extremity of San Clemente Island to the westerly  
22 extension of the boundary line between the Republic of Mexico  
23 and San Diego County.

24 ~~(b)(1)~~

25 (2) (A) The total maximum length of a shark or swordfish gill  
26 net on the net reel on a vessel, on the deck of the vessel, and in the  
27 water at any time shall not exceed 6,000 feet in float line length.  
28 The float line length shall be determined by measuring the float  
29 line, as tied, of all the net panels, combined with any other netted  
30 lines. The existence of holes, tears, or gaps in the net shall have  
31 no bearing on the measurement of the float line. The float line of  
32 any net panels with holes, tears, or gaps shall be included in the  
33 total float line measurement.

34 ~~(2)~~

35 (B) Any shark or swordfish gill net on the reel shall have the  
36 float lines of the adjacent panels tied together, the lead lines of the  
37 adjacent panels tied together, and the web of the adjacent panels  
38 laced together. No quick disconnect device may be used unless  
39 the total maximum length of all shark and swordfish gill nets,  
40 including all spare gill nets or net panels on the vessel and all gill

1 nets or net panels on the net reels on the vessel, on the deck of the  
2 vessel, stored aboard the vessel, and in the water, does not exceed  
3 6,000 feet in float line length as determined under ~~paragraph (1)~~  
4 *subparagraph (A)*.

5 ~~(3)~~

6 (C) Spare shark or swordfish gill net aboard the vessel shall not  
7 exceed 250 fathoms (1,500 feet) in total length, and the spare net  
8 shall be in separated panels not to exceed 100 fathoms (600 feet)  
9 in float line length for each panel, with the float lines and leadlines  
10 attached to each panel separately gathered and tied, and the spare  
11 net panels stowed in lockers, wells, or other storage space.

12 ~~(4)~~

13 (D) If a torn panel is replaced in a working shark or swordfish  
14 gill net, the torn panel shall be removed from the working net  
15 before the replacement panel is attached to the working net.

16 ~~(e)~~

17 (3) Any end of a shark or swordfish gill net not attached to the  
18 permittee's vessel shall be marked by a pole with a radar reflector.  
19 The reflector shall be at least six feet above the surface of the ocean  
20 and not less than 10 inches in any dimension except thickness. The  
21 permittee's permit number shall be permanently affixed to at least  
22 one buoy or float that is attached to the radar reflector staff. The  
23 permit number shall be at least one and one-half inches in height  
24 and all markings shall be at least one-quarter inch in width.

25 ~~(f)~~

26 (b) For the purposes of this article, "shark or swordfish gill net"  
27 means a drift gill net of 14-inch or greater mesh size.

28 (c) *This section shall become inoperative on February 1, 2015,*  
29 *and, as of January 1, 2016, is repealed, unless a later enacted*  
30 *statute, that becomes operative on or before January 1, 2016,*  
31 *deletes or extends the dates on which it becomes inoperative and*  
32 *is repealed.*

33 SEC. 17. Section 8574 of the Fish and Game Code is amended  
34 to read:

35 8574. (a) Drift gill nets with mesh size less than 14 inches in  
36 stretched mesh shall not be used to take shark and swordfish by  
37 permittees operating under a drift gill net shark and swordfish  
38 permit, and the permittee shall not have aboard the vessel or in the  
39 water a drift gill net with mesh size less than 14 inches and more  
40 than 8 inches in stretched mesh.

1 (b) No permittee shall deploy a drift gill net of less than 14-inch  
2 mesh size at the time that the permittee has a shark or swordfish  
3 gill net deployed.

4 (c) *This section shall become inoperative on February 1, 2015,*  
5 *and, as of January 1, 2016, is repealed, unless a later enacted*  
6 *statute, that becomes operative on or before January 1, 2016,*  
7 *deletes or extends the dates on which it becomes inoperative and*  
8 *is repealed.*

9 SEC. 18. Section 8575 of the Fish and Game Code is amended  
10 to read:

11 8575. (a) Drift gill nets used to take shark and swordfish under  
12 the permit provided in this article shall not be used under the  
13 following circumstances:

14 (a)

15 (1) From May 1 through July 31, within six nautical miles  
16 westerly, northerly, and easterly of the shoreline of San Miguel  
17 Island between a line extending six nautical miles west  
18 magnetically from Point Bennett and a line extending six nautical  
19 miles east magnetically from Cardwell Point and within six nautical  
20 miles westerly, northerly, and easterly of the shoreline of Santa  
21 Rosa Island between a line extending six nautical miles west  
22 magnetically from Sandy Point and a line extending six nautical  
23 miles east magnetically from Skunk Point.

24 (b)

25 (2) From May 1 through July 31, within 10 nautical miles  
26 westerly, southerly, and easterly of the shoreline of San Miguel  
27 Island between a line extending 10 nautical miles west magnetically  
28 from Point Bennett and a line extending 10 nautical miles east  
29 magnetically from Cardwell Point and within 10 nautical miles  
30 westerly, southerly, and easterly of the shoreline of Santa Rosa  
31 Island between a line extending 10 nautical miles west magnetically  
32 from Sandy Point and a line extending 10 nautical miles east  
33 magnetically from Skunk Point.

34 (c)

35 (3) From May 1 through July 31, within a radius of 10 nautical  
36 miles of the west end of San Nicolas Island.

37 (d)

38 (4) From August 15 through September 30, in ocean waters  
39 bounded as follows: beginning at Dana Point, Orange County, in  
40 a direct line to Church Rock, Catalina Island; thence in a direct

1 line to Point La Jolla, San Diego County; and thence northwesterly  
2 along the mainland shore to Dana Point.

3 (e)

4 (5) From August 15 through September 30, in ocean waters  
5 within six nautical miles of the coastline on the northerly and  
6 easterly side of San Clemente Island, lying between a line  
7 extending six nautical miles west magnetically from the extreme  
8 northerly end of San Clemente Island to a line extending six  
9 nautical miles east magnetically from Pyramid Head.

10 (f)

11 (6) From December 15 through January 31, in ocean waters  
12 within 25 nautical miles of the mainland coastline.

13 (b) *This section shall become inoperative on February 1, 2015,*  
14 *and, as of January 1, 2016, is repealed, unless a later enacted*  
15 *statute, that becomes operative on or before January 1, 2016,*  
16 *deletes or extends the dates on which it becomes inoperative and*  
17 *is repealed.*

18 SEC. 19. Section 8575.5 of the Fish and Game Code is  
19 amended to read:

20 8575.5. (a) Drift gill nets used to take shark and swordfish  
21 under the permit provided in this article shall not be used in the  
22 following areas:

23 (a)

24 (1) Within 12 nautical miles from the nearest point on the  
25 mainland shore north of a line extending due west from Point  
26 Arguello.

27 (b)

28 (2) East of a line running from Point Reyes to Noonday Rock  
29 to the westernmost point of Southeast Farallon Island to Pillar  
30 Point.

31 (b) *This section shall become inoperative on February 1, 2015,*  
32 *and, as of January 1, 2016, is repealed, unless a later enacted*  
33 *statute, that becomes operative on or before January 1, 2016,*  
34 *deletes or extends the dates on which it becomes inoperative and*  
35 *is repealed.*

36 SEC. 20. Section 8576 of the Fish and Game Code is amended  
37 to read:

38 8576. (a) Drift gill nets shall not be used to take shark or  
39 swordfish from February 1 to April 30, inclusive.

1 (b) Drift gill nets shall not be used to take shark or swordfish  
2 in ocean waters within 75 nautical miles from the mainland  
3 coastline between the westerly extension of the California-Oregon  
4 boundary line and the westerly extension of the United  
5 States-Republic of Mexico boundary line from May 1 to August  
6 14, inclusive.

7 (c) Subdivisions (a) and (b) apply to any drift gill net used  
8 pursuant to a permit issued under Section 8561 or 8681, except  
9 that drift gill nets with a mesh size smaller than eight inches in  
10 stretched mesh and twine size number 18, or the equivalent of this  
11 twine size, or smaller, used pursuant to a permit issued under  
12 Section 8681, may be used to take species of sharks other than  
13 thresher shark, shortfin mako shark, and white shark during the  
14 periods specified in subdivisions (a) and (b). However, during the  
15 periods of time specified in subdivisions (a) and (b), not more than  
16 two thresher sharks and two shortfin mako sharks may be possessed  
17 and sold if taken incidentally in drift gill nets while fishing for  
18 barracuda or white seabass and if at least 10 barracuda or five  
19 white seabass are possessed and landed at the same time as the  
20 incidentally taken thresher or shortfin mako shark. No thresher  
21 shark or shortfin mako shark taken pursuant to this subdivision  
22 shall be transferred to another vessel before landing the fish. Any  
23 vessel possessing thresher or shortfin mako sharks pursuant to this  
24 section shall not have any gill or trammel net aboard that is  
25 constructed with a mesh size greater than eight inches in stretched  
26 mesh and twine size greater than number 18, or the equivalent of  
27 a twine size greater than number 18.

28 (d) Notwithstanding the closure from May 1 to August 14,  
29 inclusive, provided by subdivision (b), a permittee may land  
30 swordfish or thresher shark taken in ocean waters more than 75  
31 nautical miles from the mainland coastline in that period if, for  
32 each landing during that closed period, the permittee signs a written  
33 declaration under penalty of perjury that the fish landed were taken  
34 more than 75 nautical miles from the mainland coastline. The  
35 declaration shall be completed and signed before arrival at any  
36 port in this state. Within 72 hours of the time of arrival, the  
37 permittee shall deliver the declaration to the department.

38 (e) If any person is convicted of falsely swearing a declaration  
39 under subdivision (d), in addition to any other penalty prescribed  
40 by law, the following penalties shall be imposed:

1 (1) The fish landed shall be forfeited, or, if sold, the proceeds  
2 from the sale shall be forfeited, pursuant to Sections 12159, 12160,  
3 12161, and 12162.

4 (2) All shark or swordfish gill nets possessed by the permittee  
5 shall be seized and forfeited pursuant to Section 8630 or 12157.

6 (f) From August 15 of the year of issue to January 31, inclusive,  
7 of the following year, swordfish may be taken under a permit  
8 issued pursuant to this article.

9 (g) *This section shall become inoperative on February 1, 2015,*  
10 *and, as of January 1, 2016, is repealed, unless a later enacted*  
11 *statute, that becomes operative on or before January 1, 2016,*  
12 *deletes or extends the dates on which it becomes inoperative and*  
13 *is repealed.*

14 SEC. 21. Section 8576 is added to the Fish and Game Code,  
15 to read:

16 8576. (a) A drift gill net with a mesh size smaller than eight  
17 inches in stretched mesh and twine size number 18, or the  
18 equivalent of this twine size, or smaller, used pursuant to a permit  
19 issued under Section 8681, may be used to take species of sharks  
20 other than thresher shark, shortfin mako shark, and white shark  
21 during the periods of time from February 1 to April 30, inclusive,  
22 and from May 1 to August 14, inclusive. However, during these  
23 periods of time, not more than two thresher sharks and two shortfin  
24 mako sharks may be possessed and sold if taken incidentally in  
25 drift gill nets while fishing for barracuda or white seabass and if  
26 at least 10 barracuda or five white seabass are possessed and landed  
27 at the same time as the incidentally taken thresher or shortfin mako  
28 shark. A thresher shark or shortfin mako shark taken pursuant to  
29 this subdivision shall not be transferred to another vessel before  
30 landing the fish. Any vessel possessing thresher or shortfin mako  
31 sharks pursuant to this section shall not have any gill or trammel  
32 net aboard that is constructed with a mesh size greater than eight  
33 inches in stretched mesh and twine size greater than number 18,  
34 or the equivalent of a twine size greater than number 18.

35 (b) A shark and swordfish permit issued pursuant to Section  
36 8561 shall not be required for the taking of sharks pursuant to  
37 subdivision (a).

38 (c) This section shall become operative on February 1, 2015.

39 SEC. 22. Section 8576.5 of the Fish and Game Code is  
40 amended to read:

1 8576.5. (a) Thresher shark taken with drift gill nets shall not  
2 have the pelvic fin severed from the carcass until after the shark  
3 is brought ashore.

4 (b) *This section shall become inoperative on February 1, 2015,*  
5 *and, as of January 1, 2016, is repealed, unless a later enacted*  
6 *statute, that becomes operative on or before January 1, 2016,*  
7 *deletes or extends the dates on which it becomes inoperative and*  
8 *is repealed.*

9 SEC. 23. Section 8576.5 is added to the Fish and Game Code,  
10 to read:

11 8576.5. (a) Thresher shark taken with gear authorized pursuant  
12 to Section 8561.1 or taken incidentally with a drift gill net under  
13 a permit issued pursuant to Section 8681 shall not have the pelvic  
14 fin severed from the carcass until after the shark is brought ashore.

15 (b) This section shall become operative on February 1, 2015.

16 SEC. 24. Section 8577 of the Fish and Game Code is amended  
17 to read:

18 8577. (a) Notwithstanding Section 8394, the director may  
19 close the drift gill net shark and swordfish fishery, the swordfish  
20 harpoon fishery, or any area where either or both fisheries are  
21 conducted, if, after a public hearing, the director determines the  
22 action is necessary to protect the swordfish or thresher shark and  
23 bonito (mako) shark resources.

24 ~~The~~  
25 (b) The director shall reopen a fishery or any fishing areas  
26 previously closed pursuant to this section if the director determines  
27 that the conditions which necessitated the closure no longer exist.

28 (c) *This section shall become inoperative on February 1, 2015,*  
29 *and, as of January 1, 2016, is repealed, unless a later enacted*  
30 *statute, that becomes operative on or before January 1, 2016,*  
31 *deletes or extends the dates on which it becomes inoperative and*  
32 *is repealed.*

33 SEC. 25. Section 8577 is added to the Fish and Game Code,  
34 to read:

35 8577. (a) Notwithstanding Section 8394, the director may  
36 close the shark and swordfish fishery, the swordfish harpoon  
37 fishery authorized pursuant to Section 8394, or any area where  
38 either or both fisheries are conducted, if, after a public hearing,  
39 the director determines the action is necessary to protect the  
40 swordfish or thresher shark and bonito (mako) shark resources.

1 (b) The director shall reopen a fishery or any fishing areas  
2 previously closed pursuant to this section if the director determines  
3 that the conditions that necessitated the closure no longer exist.

4 (c) This section shall become operative on February 1, 2015.

5 SEC. 26. Section 8579 of the Fish and Game Code is amended  
6 to read:

7 8579. (a) A permittee shall be subject to the provisions of this  
8 article whenever the permittee is using a drift gill net, unless the  
9 permittee has surrendered his or her permit to the department. A  
10 permittee may surrender his or her permit by notifying the  
11 department’s Long Beach office of his or her intentions by telegram  
12 or certified letter and by sending or delivering his or her permit to  
13 a department office. A permittee may reclaim his or her permit at  
14 any time during regular working hours, if the permit has not been  
15 suspended or revoked.

16 (b) *This section shall become inoperative on February 1, 2015,*  
17 *and, as of January 1, 2016, is repealed, unless a later enacted*  
18 *statute, that becomes operative on or before January 1, 2016,*  
19 *deletes or extends the dates on which it becomes inoperative and*  
20 *is repealed.*

21 SEC. 27. Section 8579 is added to the Fish and Game Code,  
22 to read:

23 8579. (a) A permittee shall be subject to the provisions of this  
24 article whenever the permittee is using a gear authorized pursuant  
25 to Section 8561.1, unless the permittee has surrendered his or her  
26 permit to the department. A permittee may surrender his or her  
27 permit by notifying the department’s Long Beach office of his or  
28 her intentions by telegram or certified letter and by sending or  
29 delivering his or her permit to a department office. A permittee  
30 may reclaim his or her permit at any time during regular working  
31 hours, if the permit has not been suspended or revoked.

32 (b) This section shall become operative on February 1, 2015.

33 SEC. 28. Section 8582 of the Fish and Game Code is amended  
34 to read:

35 8582. (a) The Legislature finds and declares that the intent of  
36 this article is not to permit or encourage the taking of marlin for  
37 commercial purposes.

38 (b) It shall be a misdemeanor for any person operating under a  
39 permit pursuant to this article to sell or possess for sale or personal  
40 use any marlin. In the event a marlin is taken incidentally in a drift

1 gill net, the permittee shall notify the department immediately that  
2 the fish is on the boat. No marlin may be removed from the boat  
3 except for delivery to the department.

4 *(c) This section shall become inoperative on February 1, 2015,*  
5 *and, as of January 1, 2016, is repealed, unless a later enacted*  
6 *statute, that becomes operative on or before January 1, 2016,*  
7 *deletes or extends the dates on which it becomes inoperative and*  
8 *is repealed.*

9 SEC. 29. Section 8582 is added to the Fish and Game Code,  
10 to read:

11 8582. (a) The Legislature finds and declares that the intent of  
12 this article is not to permit or encourage the taking of marlin for  
13 commercial purposes.

14 (b) It shall be a misdemeanor for a person operating under a  
15 permit issued pursuant to this article to sell or possess for sale or  
16 personal use any marlin. In the event a marlin is taken incidentally  
17 with gear authorized pursuant to this article, the permittee shall  
18 notify the department immediately that the fish is on the boat. A  
19 marlin shall not be removed from the boat except for delivery to  
20 the department.

21 (c) This section shall become operative on February 1, 2015.

22 SEC. 30. The provisions of this act are severable. If any  
23 provision of this act or its application is held invalid, that invalidity  
24 shall not affect other provisions or applications that can be given  
25 effect without the invalid provision or application.

26 SEC. 31. No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 the only costs that may be incurred by a local agency or school  
29 district will be incurred because this act creates a new crime or  
30 infraction, eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section 17556 of  
32 the Government Code, or changes the definition of a crime within  
33 the meaning of Section 6 of Article XIII B of the California  
34 Constitution.



State of Washington  
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: 600 Capitol Way N, Olympia, WA 98501-1091 • (360) 902-2200 • TDD (360) 902-2207  
Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

March 5, 2014

The Honorable Doc Hastings  
Chair, Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington, DC 20515

RE: Washington Department of Fish and Wildlife – Initial Comments on the December 18, 2013 “Discussion Draft” proposal to amend the Magnuson-Stevens Fishery Conservation and Management Act

Dear Representative Hastings:

Enclosed please find the Washington Department of Fish and Wildlife (WDFW) comments on the “Discussion Draft” proposal to amend to the Magnuson-Steven Fisheries Conservation and Management Act (MSFCMA). While I represent the state of Washington on the Pacific Fisheries Management Council (PFMC) and the North Pacific Fisheries Management Council (NPFMC), and our comments are derived from our experience in these forums, these comments are reflective of WDFW’s position and not that of either council.

We appreciate the initiative you have taken in leading the needed reauthorization process for MSFCMA. The marine fisheries of the Pacific and North Pacific provide a significant contribution to Washington’s economy and provide well over half of the nation’s supply of seafood. The MSFCMA is the fundamental federal legislation supporting these fisheries; it has served Washington’s fishery dependent economy very well over the decades. The majority of the seafood harvested by Washington fishers and marketed by Washington seafood producers is certified as sustainably harvested, which provides an economic advantage in global as well as U.S. markets, and also contributes a measure of long-term stability in oftentimes unpredictable business climate. As you recognize, the Washington seafood industry has a lot at stake with reauthorization of the MSFCMA.

In preparation for reauthorization, we have had numerous discussions with Washington-based harvesters, processors and representatives from our fishery dependent communities. Our perspective on MSFCMA reauthorization is informed by industry and community perspectives as well as our experience as marine fishery managers. The 2006 MSFCMA reauthorization provided clear improvements for both conservation and management of our marine fisheries; and we are seeing the beneficial results of those changes in our seafood industry as well as the fish stocks themselves. We believe that as currently enacted the MSFCMA continues to offer a diversity of management tools for application on a regional basis. From our experience implementing the 2006 amendments, we believe that careful consideration must be given to new

The Honorable Doc Hastings

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mandates, as they require legal, policy and process development that can consume significant amounts of either Council's time; reducing either Council's ability to achieve other objectives.

Two specific request that we would like you to consider in any proposed MSFCMA reauthorization are:

- 1) Remove the existing sunset date (currently September 30, 2016) contained in P.L. 109-479, sec 302(e), MSA§306 note (16 U.S.C. 1856 note) regarding the AUTHORITY OF STATES OF WASHINGTON, OREGON, AND CALIFORNIA TO MANAGE DUNGENESS CRAB FISHERY. The existing authority has facilitated all three states to work together in managing the Dungeness crab fishery. The great majority of vessels engaged in the fishery operate in both state waters and the Exclusive Economic Zone. Many participate in more than one state's fishery. This provision has allowed each state to effectively implement their limited entry programs, manage their pot limits, and coordinate coastwide decision making in opening the fishery in a manner that ensures the fishery occurs on high quality crab and thereby protecting the consumer and contributing to the economic health of both the harvesters and processors.
- 2) Enforcement Authority – Amend sec 306 regarding STATE JURISDICTION, to expand state enforcement authority over all vessels that fish directly offshore of the territorial sea within the state given boundaries. State officers currently have jurisdiction from 3- 200 miles over vessels registered under the laws of Washington State, but not the vessels of other states (except for vessels participating in the crab fishery).

Finally, given that the reauthorization process has just begun, please consider the WDFW comments as "initial." We would be pleased to engage in further discussion as the draft is further developed.

Thank you for the opportunity to provide these comments. If you have questions, please contact Michele Culver at (360) 249-4628, or Bill Tweit at (360) 902.2723.

Sincerely,



Philip Anderson  
Director

Enclosure

cc: Chuck Bonham, Director, California Department of Fish and Wildlife  
Cora Campbell, Commissioner, Alaska Department of Fish and Game  
Roy Elicker, Director, Oregon Department of Fish and Wildlife  
Randy Fisher, Executive Director, Pacific States Marine Fisheries Commission  
Don McClassac, Executive Director, PFMC  
Chris Oliver, Executive Director, NPFMC  
Michele Culver, WDFW  
Bill Tweit, WDFW  
Jennifer Quan, WDFW

NOTE – COMMENTS ARE DELINEATED BY THE SECTION OF THE “DISCUSSION DRAFT” (BILL) AND THE “THEMES” THOSE SECTIONS APPEAR TO REPRESENT. WITHIN THE TEXT OF THE COMMENTS, REFERENCES MADE TO SPECIFIC PORTION OF THE CURRENT MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT (MSFCMA) PROPOSED FOR AMENDMENT.

### **Section 3**

#### Section 3(a)(1) - Phase-In of the Requirement to End Overfishing and Rebuild Overfished Stocks

We support the proposal to allow phase-in rebuilding plans over three years, mostly impacting the requirement to “end overfishing immediately,” and believe it provides for reasonable flexibility as long as it is accompanied by a strong requirement to rebuild the stock over a responsible timeframe like the one suggested later in Sec. 3 of the Bill.

As a drafting note, we were unsure whether the intent was to have two very similar amendments to Section 304(e)(3)(A) of the statute, or whether there are two different options— Sec. 3(a)(1) and Sec. 3(c) of the Bill. Both make similar changes.

Ideally, the merits of a phase-in would be evaluated on a stock-by-stock basis in light of the full rebuilding picture. That is, by considering how the short-term economic concerns for which the phase-in is being considered compare against other factors like the risk to the stock and a longer-term view of the economic interests of fishing communities and the nation. We believe a three-year phase-in would likely be reasonable in many situations. On the other hand, in other situations a phase-in could be risky or unduly costly when considering the longer-term view. We see these costs and risks as determining the conservation performance of a phase-in more so than factors like a “highly dynamic fishery” or “chronic overfishing.” As currently written, the term “highly dynamic fishery” is undefined and we are unclear of the intent of its use.

#### Section 3(a)(2)(A) - “Practicable” vs “Possible”

On the proposed substitution of “practicable” for “possible” in Sec. 304(e)(4)(A)(i), we would suggest a close look at how the courts have interpreted the current statute as applied to the Pacific Council’s groundfish rebuilding plans, which are now governed largely on judicial interpretations of the current statute.

The “practicable” language has arisen in discussions at the Pacific Council, and our concern has been that the effect on court precedent law would be uncertain and risky. The current subsection (i) is what the Councils look to in choosing and justifying a rebuilding target (“T<sub>target</sub>”) somewhere between the fastest possible rebuilding time (“T<sub>min</sub>”) and the maximum rebuilding time (“T<sub>max</sub>”). It is unclear what factors would be used to determine a “practicable” T<sub>target</sub> or how the T<sub>target</sub> would be determined any differently than is done now. The additional factors the Bill would add are all fashioned as expectations to T<sub>max</sub>. The Pacific Council’s rebuilding plans all have T<sub>target</sub>s that are set considerably earlier than T<sub>max</sub>.

Our view is that many of the judicial interpretations were made on the current MSFCMA rebuilding provisions were arrived at without the benefit of having been given a strong explanation of the science. In our opinion, the courts have perceived rebuilding plans to be opposite of what most at the Pacific Council would call soundly precautionary and science-based. As a result, we have seen rebuilding policy discussions taken away from the original, scientific foundations of the statute and the National Standard 1 Guidelines. We are concerned that the Bill’s proposed change would create more confusion and possibly fail to rectify the shortcomings of current interpretations of the law.

Section 3(a)(2)(ii) - The Maximum Time for Rebuilding and Considerations for Choosing

The Department supports the replacement of the 10 year maximum time for rebuilding with the mean generation time based approach proposed in Sec. 3(a)(2) of the Bill. The best explanation we have seen for the 10 year maximum was that experts had advised Congress before the 1996 Sustainable Fisheries Act amendments that most marine stocks could rebuild within half that time under a fishery closure. This advice, even if accurate for the average stock, does not apply to most of the species the Pacific Council has been rebuilding. Providing a flexible standard tied to the specific biology of each stock would be preferable to a rule tailored to the average stock. The mean generation time approach is a science-based approach for doing this.

Section 3(a)(2)(B)(ii)(1)-(V) - Exceptions

We are concerned about the proposed exceptions to the maximum time to rebuild that the Bill would add at Sec. 304(e)(4)(A)(ii)(I)-(V). We recognize that the Councils may not be able to rebuild particular fish stocks by only controlling fishing under their respective management areas. Environmental conditions, fishing in other jurisdictions, habitat degradation, climate change, etc., can all be important factors in controlling the abundance of a species and its productivity. As currently drafted, the Bill’s proposed exceptions appear as very broad and undefined in the flexibility they may allow. If they are to go forward, there would be the need for extensive interpretation and policy development. Further, as written they also leave open the question of what an acceptable rebuilding time would be if one of the exceptions did apply. Of note, this specific question was a subject of the litigation over the Pacific Council’s groundfish rebuilding plans. We suggest that exceptions to the maximum time should be bounded and constructed to incentivize the best conservation result, which would include long-term economic benefit to fishing communities and the nation as is required by National Standard 1. Without specific boundaries, the burden on Council’s to justify their selected time frame will represent a significant increase in workload.

On a drafting note, we would ask if the “and” after (IV) in the list of exceptions was intended as an “or.” It would be a very rare situation where all the conditions in paragraphs (I)-(V) would apply.

Section 3(a)(2)(B)(ii)(III) - Significant Economic Harm Exception

Within the current MSFCMA, Sec 304(e)(4)(A)(i) provides for an exception to the shortest possible rebuilding time based on “the needs of the fishing communities” and other factors. The judicial interpretation of the “needs of fishing communities” factor is very similar to the Bill’s proposed standard of “significant economic harm.”

To date, the discussions on economic harm, which have occurred at the Pacific Council, have required a significant amount of time and have proven to be out-of-step with what fisheries science and economics can reliably forecast. The ambiguity in the current standard has led to significant disagreements between the Council and NMFS, and concerns that could lead to litigation.

The Bill’s “significant economic harm” standard would be placed in subsection (ii). This would raise the question of how it relates to the “needs of fishing communities” factor in subsection (i). A more wholesale reconsideration of how Sec. 304(e)(4)(A)(i) and (ii) fit together would clearly signal congressional intent on the questions that have been left open by the courts at the Pacific Council.

We would suggest considering a restoration of the original intent behind the mean generation time approach, which was to take a risk-averse approach toward rebuilding within the maximum time to rebuild while considering how to minimize the negative economic impacts on fishing communities during the rebuilding period. Without examples, the difference in what we are suggesting from what exists now and what is being proposed in the Bill may be tough to see. We see the difference as laying in the standard of proof, the administrative workload, and the legal uncertainty that the “economic harm” standard has come to involve. Again, we think the standard of proof has been ambiguous, unrealistic as to what economic analysis and stock assessments can determine, and insufficiently grounded in the long-term view of economics and conservation.

#### Section 3(a)(2)(C) - Schedule for Reviewing Rebuilding Targets

On the Bill’s proposed requirement to specify a “schedule for reviewing rebuilding targets,” it appears that this duplicates the current requirement to review progress of rebuilding plans every two years (and is not repealed in the proposed amendments). A major challenge with rebuilding is changed estimates of stock status and rebuilding forecasts. Further, the data available for updating stock assessments will vary stock by stock. Therefore, the Bill’s proposed provision would allow flexibility to account for stock by stock differences more so than does the current requirement. At the same time, there is little guidance in the Bill, as currently drafted, to guide policy on how frequently reviews should take place.

#### Section 3(a)(3) - Terminating a Rebuilding Plan

We suggest following the best available science—that is terminating a rebuilding plan when the science justifies doing so. Scientifically derived estimates of stock status and abundance can

change substantially from one assessment to another. We have an example at the Pacific Council where a later stock assessment showed that a rebuilding stock had never dropped below the overfished threshold yet remained below the rebuilding target (i.e., a stock can be below the target biomass but not far enough to be below what is referred to as the minimum stock size threshold for declaring overfished status and rebuilding). Because of legal uncertainty, the rebuilding plan was maintained. If the stock had never been declared overfished, the regular science-based harvest policy would have called for a much different harvest rate.

While the Department supports the intent of this section, we would like to express some process concerns about the Bill’s “earlier of” language. It could take a number of years before a new stock assessment becomes feasible. The way we read the “earlier of” language the assessment would have to be conducted with two years of the rebuilding plan going into effect. If it took three years to do a new assessment, and that assessment estimated the stock to have never been depleted, then we do not see why the timing would affect the reasons for continuing to rebuild the stock or not.

#### Section 3(a)(3) - Alternative Rebuilding Strategies

Our interpretation of the Bill’s proposal to allow Councils to use “alternative rebuilding strategies” elicits similar concerns as those raised in regards to rebuilding plans. We assume the suggestion is related to the National Research Council’s recent evaluation of rebuilding. We question how the alternative strategies language in the Bill would relate to the main provisions of Sec. 304(e)(4)(A)(i) and (ii). To elaborate, the Pacific Council uses harvest control rules now, yet they are targeted at rebuilding within the legal timeframes set by subsection (i) and (ii). That is, a harvest control rule is arrived at (matched to a Ttarget) after consideration of economic harm and the “needs of fishing communities” are evaluated.

A message we have heard from fisheries scientists is that the law and policymakers often expect more precision than the science can deliver in rebuilding. In other words, it may be too much to expect rebuilding by a particular year and more reasonable to expect that rebuilding would occur over some range of years if a particular harvest control rule is followed. Likewise, it may be asking too much to focus on identifying the point at which economic impacts reach some level of significance and more in line with the science to rely on a harvest control rule that has a reasonable probability of rebuilding the stock over a broad timeframe, and in doing so, of striking a balance between short- and long-term conservation interests.

Lastly, we think the question of what a reasonable timeframe for rebuilding would be would still be a question with the Bill’s alternative rebuilding strategies language. An alternative harvest strategy, as we understand it, would have to be formulated to achieve some specific policy goals of which rebuilding within a certain timeframe could be one. And as stated above, we think the mean generation time based approach is a reasonable timeframe over which to rebuild a stock.

#### Section 3(b) - Extending the Length of Emergency Regulations

Administrative requirements and environmental analyses can slow the ability of the Councils and NMFS to respond to certain situations. Because of this, we support this provision because we foresee some benefit to extending NMFS’ emergency regulation authority in that it could improve management responsiveness in some situations. Lengthening emergency rule authority, however, is not a substitute for making the regular administrative and analytical requirements in the Magnuson-Stevens Act more nimble than they are currently.

#### **Section 4**

As we understand the Bill’s annual catch limit (ACL) proposed amendments, they will not alter the way ACLs are currently implemented by the PFMC and the NPFMC. We think the ACL process works very well at both the North Pacific and Pacific Councils, and needs no major changes. Our experience with the 2006 reauthorization leads us to be concerned about changes to ACLs that appear ‘neutral’, the reality is that our two Councils were forced to spend significant amounts of time and resources adjusting to changes that were intended to be neutral. We do not, however, understand the intended effect behind recommending a change from “fishing level” to “overfishing level.” The National Standard 1 Guidelines provide a clear framework for applying the current language. In general, we are concerned that these changes may give the Councils flexibility to override the Science and Statistic Committee’s (SSC) advice on science.

#### Section 4(a)(4)(A)-(B) - *Multispecies complexes and multiyear catch limits*

Somewhat consistent with the intent of this Section, the Pacific Council has been working to address the issues with ACLs and keeping catch within yearly limits. There may be specific cases where Councils recognize that catch in any one year might exceed an ACL but then have confidence that over a few year periods the average catch will remain below the average ACL over that period. For many stocks, the scientific advice would say that the goal of preventing overfishing would be achieved if this cumulative/average catch performance is achieved. Yet legal interpretations at the Pacific Council have disallowed some Council recommendations, like the carryover program in the Groundfish catch share program, based on the idea that the ACL requirement prohibits it. Such decisions have been made despite explicit advice from the SSC that the carryover program would not cause a risk of overfishing.

At the Pacific Council, “multi-year” ACLs have been one suggestion for addressing this issue. However, the Bill’s provision on “multi-year” ACLs would not, as we read it, assist with this because it seems to simply allow ACLs to be set for each year in a three-year period. The issue, again, has more to do with the likelihood that catch will exceed those ACLs. Catch may possibly exceed the ACL in one of the three years but then be likely to be under in the other two enough so that the sum of the catch is less than the sum of the ACLs over the three years. For stocks with relatively slow population dynamics, abundance does not fluctuate highly from year to year, and such average performance would be expected to achieve the goal of preventing overfishing.

The benefit of such flexibility is that it avoids unnecessary harm from closing or restricting fisheries unnecessary and may allow other economic and conservation benefits like that underling carryover features in catch share programs. We would only support such flexibility where supported by the science and the SSCs.

We also have questions about the purpose of allowing ACLs to be set on stock complexes. It too has been a topic of discussion at both Councils. The National Standard Guidelines allow ACLs to be set on stock complexes now. The question has been whether the ACL will be adequate to prevent overfishing of each stock in the complex, and in some cases the data has suggest they would not. As with the carryover example just mentioned, the issue involves questions about “average” performance in terms of catch relative to acceptable biological catches. If on average, a stock complex ACL keeps catch of each stock in the complex at appropriate levels, then the Pacific Council SSC has said the stock complex is performing well. If however, catch on average exceeds the acceptable levels for certain stocks, then those stocks may become overfished. The goal of a stock complex ACL should be to prevent overfishing of each stock in the complex.

## **Section 5**

### Section 5(a)-(c) - “Overfished” and “Depleted”

We think the distinction between fishing and other factors for fish populations being at low abundance would be important for public understanding and other reasons. Yet the main effect we see this Section having would come from the “natural range” language in the proposed definition of depleted. We are concerned that it could be an intensive scientific task to define what that natural range would be even for the best studied stocks. There is considerable scientific uncertainty in assessments and forecasts of stock status. Moreover, it is thought that fishing causes increased fluctuation in stock dynamics. And the relative influences of environmental conditions and fishing on stock abundance are difficult to sort for most species. When considering whether a stock needs rebuilding or not, a look at all factors potential causing the decline in abundance and the potential for fishing restrictions to recover the stock is warranted. We are again, however, concerned about the potential ambiguity of the Bill’s language and the scientific feasibility of implementing it for most stocks.

## **Section 6**

### Section 6(a)-(b) - Transparency and Public Process

The Department shares the goal of public transparency at the Councils. We view the Pacific and North Pacific Councils as exemplary in their transparency and efforts to make information available to the public. Both already comply with the core suggestions or spirit of the Bill’s proposed amendments. However, it should be noted that as the process for meeting the requirements in section are difficult to support without additional funding. We also note that

Enclosure: Washington Department of Fish and Wildlife – Initial Comment on the December 18, 2013 “Discussion Draft” proposal to amend the Magnuson-Stevens Fishery Conservation and Management Act

some of the live broadcasting requirements are unlikely to be feasible at all North Pacific Council meetings given some of the remote locations at which they are held.

#### Section 6(c)(1) - Compliance with the National Environmental Policy Act

The Department has been a supporter of better integration of the NEPA’s analytical and procedural requirements with those of the Magnuson-Stevens Act. If done correctly, the analytical and public process requirements of the two statutes very much serve the same purposes. The North Pacific and Pacific Councils have made strides in integrating the two statutes, yet still it is our impression that the statutes are not working together as well as they could. While we are supportive of further integration of the two statutes, given the brevity of the Bill’s proposed language on this topic, we do have concerns with how it would be interpreted and implemented.

The problems we have noticed with NEPA are: (1) the analysis tends to emphasize form over substance, (2) analyses are updated more frequently than the science justifies doing so, (3) connected analyses are not fit together well; and, (4) the review and public process aspects of NEPA can be redundant to those of the Magnuson-Stevens Act and consistently decrease the responsiveness of management. Implementing NEPA’s requirements in a way that recognizes the adaptive management nature of fisheries would resolve these issues.

Lastly, while we would like to see better integration of NEPA and the Magnuson-Stevens Act, and a resultant reduction in the amount of duplicative information provided to the Council and the public, we do not wish to see a lessening in the quality of information provided to the Councils and the public to inform decision-making. The Pacific and North Pacific Councils have used NEPA analysis to advance and broaden the type of information used to understand the ecosystems and economics of fisheries. We would expect that better integration of NEPA with the Magnuson-Stevens Act would continue drawing on interdisciplinary research to benefit conservation and management of fisheries.

#### **Section 7**

##### Section 7(a) - Catch Share Defined

We do not have any concerns with the Bill’s proposed definition of “catch shares” yet have questions on its linkages to Sec. 303A of the statute on “limited access privileges.” The commonly used terminology switched to “catch shares” after the 2006 Amendments, yet the main provisions in the Magnuson-Stevens Act are found within the “limited access privileges” section. We are unsure how the proposed definition would mesh with those existing provisions.

##### Section 7(b)(ii)-(iv) - Catch Share Referendum Pilot Program

The Bill’s proposed catch share referendum provisions would not apply to the Pacific or North Pacific Councils. Yet as a matter of precedent, we are concerned about binding referendums that

only involve permit holders. The role of the Council is to determine whether a catch share program would benefit not just the permit holders but the public interest as a whole. Binding referendums essentially transfer that policy authority to permit holders. We also see some issue in giving all permit holders equal standing because some permit holders participate or may depend on a particular fishery to much different degrees.

## **Section 8**

### Section 8(a)(1) - Electronic Monitoring

On the Bill's electronic monitoring (EM) provisions, we note that electronic monitoring is currently being considered through the Pacific and North Pacific Councils. It has been used and is currently being used in certain fisheries sectors at these Councils. While we generally support the development of objectives, performance standards, and regulations for electronic monitoring, we have serious doubts as to the feasibility of the timeline. We would be concerned about resources being drawn from other initiatives in order to try and meet that timeline. Our experience suggests that implementation and challenges of electronic monitoring will differ fishery by fishery.

### Section 8(a)(2) - Limitations on Enforcement Use

We are extremely concerned with the Bill's proposed limitations on law enforcement use of EM. Law enforcement is a key component of fisheries management. We do not see how EM can work without a good law enforcement program accompanying it, and as written the limitation could apply to EM tools, such as Vessel Monitoring Systems, that have become indispensable law enforcement tools.

### Section 8(a)(3)(A)-(B) - Video and Acoustic Survey Techniques

We support video and acoustic surveys as important tools in fisheries science. Some such surveys are in place now in the Pacific and North Pacific. We would welcome more if resources allowed because there are major gaps in the habitats being surveyed now. Funding availability has limited development of new surveys. Without additional funding resources, we do not see this provision of the Bill having much effect on the surveys NMFS, states, and tribes are able to conduct.

### Section 8(c) - Confidentiality of Information

We see the Bill's proposed definition of confidential information as a beneficial addition to the statute. The Department collects and holds confidential information and works with confidential information collected and held by NMFS and state and tribal partners. In our experience, the standards governing disclosure of information have been unclear. The Bill's proposed definition would provide more guidance on the specifics of what data and analyses should not reveal about fishery participants. We are very concerned about the proposed reduction in distribution of

bycatch information for certain fisheries; this appears to eliminate an important tool in efforts to consistently minimize bycatch of salmon, particularly for chinook stocks that are in need of increased conservation.

At the same time, the Bill would not revise language in the statute requiring data to be aggregated or summarized data in a way that prevents direct or indirect disclosure of “the identity or business” of fishery participants. On the West Coast, this provision is key in determining how fisheries data is released to the public. Without amending this language, data would possibly still be required to be summarized or aggregated even if the raw data would reveal nothing confidential about the “identity or business” of fishery participants. For example, some ports or regions may only have one or two businesses purchasing a particular species of fish. A simple reporting of landings into that port or region could be deemed to indirectly reveal the “business” of those buyers and so would be prohibited. We have seen examples of this where the non-aggregated data could have been helpful to a Council decision and public input and where the release would seem to have little risk of causing harm to those businesses.

At a minimum, we would like to highlight the connection between the “identity or business” standard and the Bill’s proposed definition of “confidential information.” If the intent of the proposed definition is to provide more specific guidance on the type of “business” that may be harmed by the release of fisheries data, then the Bill might consider revisions to the “identity or business” language as well to avoid ambiguity.

#### Section 8(e) - Use of the Asset Forfeiture Fund

We would support giving National Marine Fisheries Service (NMFS) the option to use resources from the asset forfeiture fund to support new data collection activities. We would have some concern if this provision redirected funds away from current activities funded by NMFS, or reduced NMFS Enforcement capabilities.

#### **Section 11**

The NPFMC review of this section recommended that the “when” in the last sentence be changed to a “while.”

#### **Section 13**

##### Section 13 (a)-(b) - Fisheries Management mandates and the Endangered Species Act

We are supportive of clarifying that the Magnuson-Stevens Act is the most appropriate legal framework for fisheries management decisions among the Federal ocean related statutes. We are also supportive of integration of Endangered Species Act imposed management measures on fisheries with the Council process.

DRAFT ENFORCEMENT CONSULTANTS (EC) COMMITTEE STATEMENT ON  
MAGNUSON ACT (MSA) REAUTHORIZATION

The EC reviewed and has concerns about a discussion draft of a House of Representatives bill cited as the “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act.” The EC recommends the Council seek clarity regarding the data confidentiality requirements, particularly as related to electronic monitoring (EM).

The EC’s principle concern surrounds Section 8, sub-paragraph (a), where the draft discussion bill addresses the use of EM. Sub-paragraph (a)(2) states, “Regulations under this subsection shall not include provisions authorizing use of EM for law enforcement.” The EC contends the authority to use all components of an EM system (i.e. VMS, electronic fish tickets and logbooks, camera data, etc) is vital to the successful enforcement of existing West Coast Groundfish regulations. If adopted as drafted, the EC is concerned our ability to effectively and efficiently enforce existing regulations would be greatly compromised.

Additionally, in the “Confidentiality of Information” paragraph of Section 8, the language in sub-paragraph (b)(2) states, “Any information submitted to the Secretary, a State fisheries management agency, or a Marine Fisheries Commission by any person in compliance with the requirements of this Act, including confidential information, may only be used for purposes of fisheries management and monitoring and enforcement under this Act.” This statement appears to be in conflict with subparagraph (a)(2), as the latter quote alludes to the use of EM for enforcement, while the formerly quoted statement indicates the use of EM would not be authorized for law enforcement. The EC believes the Council should seek clarity regarding the intent of the language with regard to the use of EM for enforcement purposes.

The EC urges the Council to consider the above concerns and need for clarification in the preparation of any official correspondence with Congressional members or staff regarding this discussion draft bill.

Per NOAA policy, the NMFS OLE representatives on the EC have abstained from commenting on this proposed legislation.

ENFORCEMENT CONSULTANTS REPORT ON  
MAGNUSON-STEVENSON ACT (MSA) REAUTHORIZATION PRIORITIES AND OTHER  
LEGISLATIVE MATTERS

The Enforcement Consultants (EC) reviewed and has concerns about a discussion draft of a House of Representatives bill cited as the “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act.” The EC recommends the Council seek clarity regarding the data confidentiality requirements, particularly as related to electronic monitoring (EM).

The EC’s principle concern surrounds Section 8, sub-paragraph (a), where the draft discussion bill addresses the use of EM. Sub-paragraph (a)(2) states, “Regulations under this subsection shall not include provisions authorizing use of EM for law enforcement.” The EC contends the authority to use all components of an EM system (i.e. VMS, electronic fish tickets and logbooks, camera data, etc.) is vital to the successful enforcement of existing West Coast Groundfish regulations. If adopted as drafted, the EC is concerned our ability to effectively and efficiently enforce existing regulations would be greatly compromised.

Additionally, in the “Confidentiality of Information” paragraph of Section 8, the language in sub-paragraph (b)(2) states, “Any information submitted to the Secretary, a State fisheries management agency, or a Marine Fisheries Commission by any person in compliance with the requirements of this Act, including confidential information, may only be used for purposes of fisheries management and monitoring and enforcement under this Act.” This statement appears to be in conflict with subparagraph (a)(2), as the latter quote alludes to the use of EM for enforcement, while the formerly quoted statement indicates the use of EM would not be authorized for law enforcement. The EC believes the Council should seek clarity regarding the intent of the language with regard to the use of EM for enforcement purposes.

The EC urges the Council to consider the above concerns and need for clarification in the preparation of any official correspondence with Congressional members or staff regarding this discussion draft bill.

Per NOAA policy, the NMFS OLE representatives on the EC have abstained from commenting on this proposed legislation.

PFMC  
03/10/14

LEGISLATIVE COMMITTEE REPORT ON MAGNUSON-STEVENSON ACT  
REAUTHORIZATION PRIORITIES AND OTHER LEGISLATIVE MATTERS

The Legislative Committee (LC) met on Friday, March 7. The meeting was attended by committee members Dr. David Hanson, Mr. David Crabbe, Ms. Dorothy Lowman, Mr. Dale Myer, Mr. Gordy Williams, Mr. Herb Pollard, and Mr. Dan Wolford; Council Executive Director Dr. Donald McIsaac, and Pacific Council staff Ms. Jennifer Gilden, Mr. Jim Seger, Mr. Mike Burner, and Mr. Don Hansen. Several other people attended the meeting, including Mr. Phil Anderson, Ms. Marci Yaremko, Mr. Rod Moore, Mr. Troy Buell, LCDR Gregg Casad, Ms. Jennifer Quan, Mr. Geoff Shester, Mr. Seth Atkinson, Chris Kubiak, and Ms. Melodie Palmer-Zwahlen (CDFW).

The LC first heard a staff review of recent Federal legislation (Agenda Item J.1.a, Attachment 7). A few bills of note include H.R. 3964, the Sacramento-San Joaquin Valley Emergency Water Delivery Act; S. 2016, the California Emergency Drought Relief Act of 2014; and S. 1731 and H.R. 3533, the Endangered Species Management Self-Determination Act, which are described in more detail in Attachment 7. The Council has not been asked to comment on these bills; however, the LC recommends the Council submit comment on H.R. 3964 using its comments from last year on H.R. 1837 as a basis, if asked, since the two bills are nearly identical.

### **Magnuson-Stevens Act (MSA) Reauthorization**

When the advance Briefing Book materials were being prepared, Council staff did not believe there was an immediate need to comment on the Discussion Draft released by House Natural Resources Committee Chairman Doc Hastings and planned for informational discussion by the LC and Council at this meeting. There is some speculation that a Senate draft will be released in March or April, thus making the June Council meeting a reasonable time for a more comprehensive discussion since both the House and Senate drafts would be available for comparison at that time. However, since that time, the Council has been asked to provide input into the Hastings Discussion Draft (Attachment 1) in the near future.

The LC reviewed the Council staff analysis of the Discussion Draft (Attachment 2), comments of the Western Pacific and New England Fishery Management Councils on the Discussion Draft (Attachment 3 and Supplemental Attachment 8), the draft report from the Enforcement Consultants (Agenda Item J.1.b, Supplemental DRAFT EC Report), and a March 5, 2014 comment letter by the Washington Department of Fish and Wildlife (WDFW) (Agenda Item J.1.a, Supplemental Attachment 11). The LC particularly appreciated the WDFW letter and the presentation of its comments by Phil Anderson. The letter was used to guide much of the LC discussion.

### **Council Letter on the House Discussion Draft**

The LC recommends the Council task the Executive Director with sending a letter to Representative Doc Hastings with specific recommendations on his Discussion Draft. The following points and recommendations are notably brief. Should the Council agree with points made in the attached table, the LC recommends the Council task staff with developing more detailed language in a final letter based on discussion during the Council floor session and the LC discussion as appropriate.

### **Other Issues**

The LC proposes to meet in June to review both the House and Senate draft MSA reauthorization bills, if they are available. This would require a significant time commitment on the part of the LC, and might require a webinar in advance of the Council meeting.

PFMC

03/11/14

## RECOMMENDATIONS ON MATTERS INCLUDED IN THE HOUSE DISCUSSION DRAFT

### Discussion Draft Section 3. Flexibility in Rebuilding Fish Stocks.

Section and page of Discussion Draft	Summary of DD text	Recommendation
Section 3(a)(1 ) Page 2	Except in “highly dynamic fisheries,” Councils may phase in a rebuilding plan over a three-year period to lessen economic harm to communities, and in some situations may phase in ending overfishing over a three-year period.	The LC recommends the Council endorse phasing in rebuilding plans over three years in limited situations, but does not recommend altering the current requirement to end overfishing when it is detected.
Section 3(a)(2)(A) Page 2	Replace “possible” with “practicable”: The time period for rebuilding the fishery... shall be as short as practicable, taking into account the status and biology of any depleted stock...	The LC recommends the Council endorse this change consistent with discussion at prior Council meetings.
Section 3(a)(2)(ii) Page 2	Rebuilding may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation....	The LC recommends the Council endorse the deletion of the ten-year rebuilding time requirement and supports a maximum standard tied to the biology of the fish stock (one mean generation time)
Section 3(a)(2)(B)(ii)(1)-(V) Pages 3-4	Exceptions to rebuilding requirements (several exceptions including mixed-stock fishery, transboundary agreements, biology of the stock, environmental conditions, “unusual events,” etc.)	The LC recommends exceptions due to changing environmental conditions, depletion due to international fisheries outside U.S. control, and a mixed stock exception that would rarely be instituted. The Council does not support broad exceptions that might be exercised frequently or that might weaken incentives to conserve stocks.

Section 3(a)(9) Page 5	A Council may terminate a rebuilding plan if the Council determines the fishery is not depleted (timed at either two years after the plan amendment takes effect, or when the next stock assessment is completed).	The LC recommends language specifying that stocks later determined never overfished should not be held to rebuilding provisions, a matter not specifically addressed by this draft language.
Section 3(b) Page 5	Extends the length of emergency regulations.	The LC recommends supporting this provision.

**Discussion Draft Section 4. Modifications to the Annual Catch Limit Requirement.**

Section 4(a)(4)(A)-(B) Page 8	Authorization for multispecies complexes and multi-year catch limits.	The LC recommends language specifying that a carryover exception allow ACLs to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided there is a finding from the SSC that such a carryover provision will have negligible biological impacts. However, it appears the Discussion Draft language goes beyond achieving this goal, and the LC did not discuss additional language and its ramifications.
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**Discussion Draft Section 5. Distinguishing Between Overfished and Depleted.**

Section 5(a)-5(c) Page 9	The term “depleted” replaces “overfished,” and the annual Status of Stocks differentiates between stocks that are depleted due to fishing and those that are depleted for other reasons.	The LC recommends supporting the change in terminology, consistent with discussion at prior Council meetings. However, the LC does not support the definition of depleted, recommending the same definition currently used for “overfished.”
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**Section 6. Transparency and Public Process for Scientific and Management Actions.**

<p>Section 6(b) Page 10-11</p>	<p>Councils must, to the extent practicable, a) provide live broadcasts of each Council meeting, and b) post audio, video, and a complete transcript of each Council and SSC meeting on the web within 30 days of the meeting.</p>	<p>The LC notes that the Pacific Council already provides live broadcasts of each Council meeting. However, the LC does not support a requirement for video of Council meetings, or posting a broadcast of any type for Council advisory bodies, including the SSC and the more than 20 others convened routinely by the Council.</p>
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<p>Section 6(c)(1) Page 11</p>	<p>Any fishery management plan, amendment, etc., that is prepared in accordance with the MSA shall be considered to satisfy the National Environmental Policy Act (NEPA).</p>	<p>The LC recommends supporting this provision conceptually, but recommends that additional provisions in Section 303 should be required to streamline and ensure that the essential benefits of NEPA are maintained, such as requiring a reasonable range of alternatives and thorough assessment of environmental impacts prior to final Council decision making.</p>
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**Section 8. Data Collection and Data Confidentiality.**

<p>Section 8(a)(1) Page 15-16</p>	<p>Within six months after passage of the Act, the Secretary, Councils and Pacific States Marine Fisheries Commission will develop objectives, regulations, etc. governing the use of electronic monitoring for data collection and monitoring purposes, with comment from the fishing industry; if not accomplished in six months, Councils may establish standards independently.</p>	<p>The LC recommends supporting general electronic monitoring standards, while expressing significant concern that any timeline requirement not inhibit progress currently underway at a Council.</p>
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Section 8(a)(2) Page 16	“Regulations under this subsection shall not include provisions authorizing use of electronic monitoring for law enforcement.”	The LC recommends not supporting this provision. Electronic monitoring and law enforcement are closely related, and it is unclear how this provision would apply to VMS, which is a vital law enforcement tool.
Section 8(b) Page 17	The Secretary shall work with the Councils and NGOs to develop video survey technologies and expanded use of acoustic surveys.	The LC recommends supporting this provision, while noting the need for additional funding to make it effective.
Section 8(c) Page 17-21	Defines confidential information and provides guidance on what data and analyses should not reveal about fishery participants. Reduces distribution of bycatch information for certain fisheries. Does not revise current language requiring data to be aggregated or summarized to prevent disclosure of business or personal identity.  In addition, Section 8(b)(5) [p.21] prohibits the use of vessel-specific or aggregate data for the purposes of marine spatial planning under EO 13547.	The LC recommends no reduction in requirements for data aggregation, or distribution of bycatch information, which is important to the Council decision-making process. The LC recommends improving access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis In addition, the LC is concerned that the prohibition on use of data for marine spatial planning could have unintended consequences in the management arena.
Section 8(e) Page 23	Provides a percentage of the IUU asset forfeiture fund for new data collection activities.	The LC generally recommends supporting this provision, provided that it does not redirect funds away from NMFS priorities.

**Section 13. Ensuring Consistent Management for Fisheries Throughout Their Range.**

Section 13 (a)-(b) Page 29	In case of conflict between the MSA and the National Marine Sanctuaries Act, the MSA shall control; and any restriction on management of fishery resources that is necessary to implement a recovery plan under the Endangered Species Act shall be done under the MSA.	The LC recommends strong support of the MSA and NMSA language. The LC recommends the kind of ESA integration with MSA that has recently occurred in Columbia River tule stock management.
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## **COUNCIL PRIORITIES AND OTHER ISSUES NOT ADDRESSED IN THE DISCUSSION DRAFT**

The LC recommends that the next version of House legislation incorporate the following matters, which were omitted from the Discussion Draft. The LC recommends the following:

- Extending state management authority for the Dungeness crab fishery off the West coast consistent with the recommendations in the Washington letter.
- Expanding state enforcement authority to all vessels that fish directly offshore of the territorial sea within the state given boundaries.
- Revising rebuilding plans should not be required consequent to minor changes in stock status (noise).
- Providing clarity to better allow Councils to consider the needs of fishing communities in developing rebuilding plans, above a “disaster” level.
- Exploring more flexibility for fishery impacts on data-poor species when the current precautionary approach becomes the bottleneck for healthy mixed-stock fisheries.
- Designating one Commissioner seat on IATTC Commission for PFMC.
- Providing flexibility in observer requirements.
- Considering a national standard for habitat: “Minimize adverse impacts on essential fish habitat to the extent practicable”
- Implementing stricter imported seafood labeling requirements in the U.S. market.
- Enhancing enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity.
- Amending MSA to change “vessels” to “vessel” in the IUU certification section.

PFMC  
03/11/14

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON  
MAGNUSON-STEVENSON ACT REAUTHORIZATION PRIORITIES AND OTHER  
LEGISLATION ACTIVITIES

The Highly Migratory Species Advisory Subpanel (HMSAS) is very concerned that the Council has moved forward on the important issue of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) reauthorization without giving the HMSAS a chance to give input on Federal legislation that regulates our fishing opportunity. We are hoping in the future that the Council will allow our Advisory Panel to organize a conference call or some method to advise the Council if funds are not available to bring us to the Council discussion for issues of this importance.

Specifically to the MSFCMA reauthorization, the HMSAS advises that some of the issues from the Western Pacific Fishery Management Council were missed by our Council and are very important to our fishery survival. They are:

- The MSFCMA should direct the Secretary to identify nations that are not compliant with Regional Fishery Management Organization measures and take steps to impose trade sanctions on those nations in accordance with existing MSFCMA provisions such as 16 U.S.C. 1826b “High Seas Driftnet Fisheries Enforcement Act.”
- Prioritize enforcement by government agencies in the U.S. Exclusive Economic Zone and adjacent high seas.
- Redirect a portion of Saltonstall-Kennedy funds to support fisheries development and cooperative research.
- The MSFCMA should contain language that would prevent reductions of US fisheries catch and effort limits if other countries cannot demonstrate compliance with existing international conservation and management measures.
- “All fisheries-related marine mammal and other protected species conservation and management measures be promulgated through the MSFCMA process, to ensure such measures are consistent with Fishery Management Plans and the National Standards.”
- “Restoration of the primacy of the MSFCMA for managing marine resources: any measures under other statutes that may restrict fishing (Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Marine Sanctuaries Act (NMSFCMA), Migratory Bird Treaty Act (MBTA), Antiquities Act, Executive Orders, etc.), should be implemented under the authority of the MSFCMA and in accordance with processes and time schedules required under the MSFCMA.”

The HMSAS has concerns with the following Council “Priority Matters” as identified by Dr. McIsaac’s testimony to the US Senate Committee on January 30, 2014:

- Concerning “Implement stricter imported seafood labeling requirements in the US market,” the HMSAS notes that this issue is better handled by other Federal agencies such as the U.S. Food and Drug Administration and US Department of Agriculture.
- On the “Matter” of the Council having an Inter-American Tropical Tuna Commission designated Commissioner, the HMSAS advises that this issue would be better dealt with through Antigua Convention implementing legislation.

The HMSAS advises that the following matters identified as lower priority by Dr. McIsaac’s testimony are particularly important to the HMS fisherman:

- “Better align and streamline the National Environmental Policy Act (NEPA) & MSFCMA section 304(i).”
- “Provide flexibility in requirements and qualifications for observers” including electronic monitoring so that fishing efforts are not impeded.
- “Amend MSFCMA language to change “vessels” to “vessel” in the illegal, unreported, and unregulated section.”

Lastly, the HMSAS would like the Council to request that the West Coast Region is added to the other US regions that are required to have a fishermen referendum passed by a majority before catch shares are imposed on any particular fishing sector.

PFMC  
03/11/14

# *INTERNATIONAL LAW OFFICES*

## *OF SAN DIEGO*

Agenda Item J.1.d  
Supplemental Public Comment  
March 2014

TELEPHONE

619.232.0954

CELLULAR

619.203.5349

740 NORTH HARBOR DRIVE

SAN DIEGO, CA 92101-5806

*established 1989*

FACSIMILE

619.923.3618

PETER H. FLOURNOY

March 2, 2014

Pacific Fisheries Management Council  
7700 NE Ambassador Place, Ste. 101  
Portland, OR 97220-1384

**Re: Agenda Item J.1.a Attachment 7, March 2014**

Dear Council Members:

The Legislative Committee's Agenda, and the Staff's Summary of Legislation neglects to mention for consideration California Assembly Bill 2019, Introduced by Assembly Member Fong on February 20, 2014. While it is unusual for the Council to comment on State legislation this bill should be thoroughly discussed and a strong letter of objection should be sent by the Council to the State of California. This misdirected bill seeks to ban all drift gillnetting, and not just in California, but in all areas where the Council has jurisdiction.

The Legislative Counsel's Digest of the bill states:

This bill would require the department [of Fish and Wildlife], through its member on the Pacific Fishery Management Council, to initiate and support an amendment to the Highly Migratory Species Fishery Management Plan to prohibit the use of drift gill nets to target shark and swordfish in the area subject to the oversight of the council.

While the swordfish fishery requires commercial fishermen to have State permits, NMFS manages the fishery through the Council with regard to the fisheries interactions under the Marine Mammal Protection Act and the Endangered Species Act. The State's attempt to ban a fishery which is legal under federal law which has occupied this area and pre-empted state law is clearly illegal. The Council needs to discuss this issue and bring to the attention of the Department of Fish and Wildlife and the California Legislature the illegality of this course of action. Thank you for allowing me to comment on this matter,

Sincerely,

s/Peter H. Flournoy  
Peter H. Flournoy

WEBSITE [www.international-law-offices.com](http://www.international-law-offices.com)

EMAIL [phf@international-law-offices.com](mailto:phf@international-law-offices.com)

## APPROVAL OF COUNCIL MEETING MINUTES

The draft September 2013 Pacific Fishery Management Council (Council) meeting minutes are provided for Council review and approval in Agenda Item J.2.a, Attachment 1.

The full record of each Council meeting is maintained at the Council office, and consists of the following:

1. The meeting notice and proposed agenda (agenda available online at <http://www.pcouncil.org/resources/archives/briefing-books/>).
2. The approved minutes (available online at <http://www.pcouncil.org/council-operations/council-meetings/past-meetings/>). The minutes summarize actual meeting proceedings, noting the time each agenda item was addressed and identifying relevant key documents. The agenda item summaries consist of a narrative on noteworthy elements of the gavel-to-gavel components of the Council meeting and summarize pertinent Council discussion for each Council Guidance, Discussion, or Action item, including detailed descriptions of rationale leading to a decision and discussion between an initial motion and the final vote.
3. Audio recordings of the testimony, presentations, and discussion occurring at the meeting. Recordings are labeled by agenda number and time to facilitate tape or CD-ROM review of a particular agenda item (available from our recorder, Mr. Craig Hess, Martin Enterprises, [martinaudio@aol.com](mailto:martinaudio@aol.com)).
4. All documents produced for consideration at the Council meeting, including (1) pre-meeting advance briefing book materials, (2) pre-meeting supplemental briefing book documents, (3) supplemental documents produced or received at the meeting, validated by a label assigned by the Council Secretariat and distributed to Council Members; (4) written public comments received at the Council meeting in accordance with agenda labeling requirements; and (5) electronic material or handout materials used in presentations to Council Members during the open session (available online at <http://www.pcouncil.org/council-operations/council-meetings/past-meetings/>).
5. The Council Decision Summary Document. This document is distributed immediately after the meeting and contains very brief descriptions of Council decisions (available online at <http://www.pcouncil.org/resources/archives/council-meeting-decisions/>).
6. Draft or final decision documents finalized after the Council meeting such as Environmental Impact Statements or Environmental Assessments.
7. Pacific Council News. There are between two and four editions of the Pacific Council News produced each year. The Spring Edition covers March and April Council meetings; the Summer Edition covers the June Council meeting; the Fall Edition covers the September meeting; and the Winter Edition covers the November Council meeting. In some years the

Summer Edition may be combined with the Spring Edition, and/or the Fall Edition Combined with the Winter Edition. The Pacific Council News is available online at <http://www.pcouncil.org/resources/archives/newsletters/>.

**Council Action:**

- 1. Review and approve the draft September 2013 Council meeting minutes.**

**Reference Materials:**

1. Agenda Item J.2.a, Attachment 1: Draft Minutes: 220<sup>th</sup> Session of the Pacific Fishery Management Council (September 2013).

**Agenda Order:**

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

Dorothy Lowman

PFMC  
02/11/14

**DRAFT MINUTES**  
**220th Session of the**  
**Pacific Fishery Management Council**  
**September 12-17, 2013**  
**The Riverside Hotel**  
**2900 Chinden Blvd, Boise, Idaho 83714**

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## **A. Call to Order (September 12, 2013)**

### **A.1 Opening Remarks**

Ms. Dorothy Lowman, Chair, called the 220<sup>th</sup> meeting of the Pacific Fishery Management Council (Council) to order at 8:06 a.m. on Thursday, September 12, 2013. She announced that there would be a closed session held after the regular business concludes this afternoon to discuss litigation and personnel matters.

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

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

Mr. Phil Anderson, (State of Washington Official)  
Mr. William L. "Buzz" Brizendine (At-Large)  
LCDR Gregg Casad (U.S. Coast Guard (U.S. Coast Guard), non-voting designee);  
Mr. David Crabbe (California Obligatory)  
Mr. Bob Farrell (State of California Official, designee).  
Mr. Jeff Feldner (At-Large)  
Dr. Dave Hanson, Parliamentarian (Pacific States Marine Fisheries Commission, non-voting designee)  
Ms. Gway Kirchner (State of Oregon Official, designee)  
Mr. Rich Lincoln (Washington Obligatory)  
Mr. Frank Lockhart (National Marine Fisheries Service (NMFS), Northwest Region designee)  
Ms. Dorothy Lowman, Chair (Oregon Obligatory)  
Mr. Dale Myer (At-Large)  
Mr. David Ortmann (State of Idaho Official, designee)  
Mr. Herb Pollard, Vice-Chair (Idaho Obligatory)  
Mr. Tim Roth (U.S. Fish and Wildlife Service, non-voting designee)  
Mr. David Sones (Tribal Obligatory)  
Mr. Gordon Williams (State of Alaska Official, non-voting designee)  
Mr. Dan Wolford (At-Large)

During the week, the following people were present in their designated seats for portions of the meeting:

Mr. Chuck Bonham (State of California Official); Mr. Troy Buell (State of Oregon Official, designee); Ms. Michele Culver (State of Washington Official, designee); Mr. Bob Turner (NMFS, Northwest Region, designee); and Ms. Marci Yaremko (State of California Official, designee).

Mr. David Hogan (U.S. State Department, non-voting designee) was absent from the meeting.

### **A.3 Executive Director's Report**

Dr. Donald McIsaac briefly reviewed the following informational reports with Council members:

- Informational Report 1: Pacific Dawn II, Motion for Summary Judgment; Memorandum of Points and Authorities in Support Thereof;
- Informational Report 2: *Federal Register* Notice Dated August 7, 2013 Regarding Proposed Information Collection from DOC – Statement of Financial Interests, RMFCs;
- Informational Report 2.1: DRAFT Financial Disclosure Report for RFMC Voting Members, Nominees and Members of a Scientific and Statistical Committee;
- Informational Report 3: Groundfish Essential Fish Habitat Review: Summary of Proposals Received and Process for Completion;
- Informational Report 4: Letter to Dr. McIsaac From Sam Rauch Regarding Final Action to Amend Guidelines for National Standard 2 of the MSA;
- Supplemental Informational Report 5: Notice for Vessel Owners/Operators of California Thresher Shark/Swordfish Drift Gillnet ( $\geq 14$  inches mesh) Fishing Vessels;
- Supplemental Informational Report 6: News Release from the National Academies dated September 5, 2013 “Interactive Chart on Status of U.S. Fish Populations”; and Web Article from Saving Seafood – “National Research Council study finds rebuilding timelines for fish stocks inflexible, inefficient;” and
- Supplemental Informational Report 7: Status report of the 2013 Ocean Salmon Fisheries off Washington, Oregon, and California.

Dr. McIsaac informed the Council regarding the recent record increase in Bonneville Dam adult anadromous fish counts (about 250,000 in one day) and commented on the Council Coordination Committee (CCC) meeting to be held October 23-24 via webinar. The primary CCC agenda item will be a review of the results of the Managing Our Nation’s Fisheries 3 (MONF3) Conference with regard to recommendations for the reauthorization of the Magnuson-Stevens Act (MSA). He also reviewed information regarding North Pacific albacore tuna management and referenced the following Supplemental Attachments:

- Agenda Item A.3, Supplemental Attachment 1: Letter to Michael Tosatto, PIRO, Regarding the Following Report “Pacific Fishery Management Council General Recommendations for the North Pacific Precautionary Management Framework proposed by the Western and Central Pacific Commission Northern Committee;”
- Agenda Item A.3. Supplemental Attachment 2: Pacific Fishery Management Council General Recommendations for the North Pacific Albacore Precautionary Management Framework Proposed by the Western and Central Pacific Commission Northern Committee;
- Agenda Item A.3, Supplemental Attachment 3: Framework for a Precautionary Approach for North Pacific Albacore, Preliminary Draft Proposal, Version U.S. 2; and
- Agenda Item A.3, Supplemental Attachment 4: Draft Northern Committee 9 Results Report.

Dr. McIsaac continued by raising a concern over limiting the November Council meeting to no more than five-and-one-half days. He asked Council members to review the proposed agenda in H.5 with an eye to limiting possible agenda candidates to keep the November meeting within the desired timeframe. He also identified planning for a special workshop just prior to the November Council meeting (October 30) in which a variety of ecosystem modeling experts

would take a look at the groundfish Tier 1 analysis to make sure it adequately covers ecosystem impacts.

Mr. Bob Turner presented Agenda Item A.3, Supplemental NMFS Report: Draft Division Organization Charts of the NMFS West Coast Regional Office.

#### **A.4 Agenda**

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

Mr. Pollard moved and Mr. Lincoln seconded (Motion 1) for the Council to approve the agenda as shown in Agenda Item A.4, Proposed Detailed Agenda (September 11-17, 2013).

Motion 1 carried unanimously.

#### **B. Open Comments**

##### **B.1 Comments on Non-Agenda Items (9/12/2013; 8:33 a.m.)**

##### **B.1.a Reports and Comments of Advisory Bodies and Management Entities**

None.

##### **B.1.b Public Comment**

Agenda Item B.1, Open Comment 1: American Albacore Fishing Association Paper on Biological Reference Points and Harvest Control Rules.

Mr. Brad Pettinger, Oregon Trawl Commission, Brookings, Oregon, asked for Council consultation and review of the trawl fishery management strategy evaluation (MSE) action plan in November for the industry certification process.

Mr. Richard Carroll, Ilwaco Fish Company, Ilwaco, Washington, spoke to problems in maintaining waterway access for small fishing ports such as Ilwaco.

Ms. Melissa Stevens, The Nature Conservancy; Monterey, California, presented Agenda Item B.1, Supplemental Open Comment 2: PowerPoint from TNC, California Central Coast RCA Study.

Mr. Ben Enticknap, Oceana, Portland, Oregon and Mr. Seth Atkinson, Natural Resources Defense Council, San Francisco, California – Agenda Item B.1, Supplemental Open Public Comment 3: Proposal to the Pacific Fishery Management Council to Modify Groundfish EFH Designation, Conservation, and Enforcement.

Mr. Steve Scheiblaue, Harbormaster, Monterey, California, reported on a lack of observers for the trawl fishery based in Monterey that is preventing fishermen from fishing.

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

Mr. Anderson inquired of LCDR Gregg Casad concerning a lack of funding for maintaining the small fishing harbors along the coast – an issue raised by Mr. Carroll in his public testimony with particular attention to Ilwaco. LCDR Casad agreed to explore the issue with the appropriate U.S. Army Corps of Engineers (USACE) representatives and see if they could provide information on this issue for the November Council meeting.

Mr. Crabbe spoke concerning the observer problem noted by Mr. Stephen Scheiblauber and the disparity between the availability of state observers in the halibut fishery and lack thereof in the groundfish trawl fishery. He asked if NMFS could provide any further information with regard to operation of the observer program in the Monterey Bay area.

Mr. Lockhart stated he had no information about the state program of observers for the halibut fishery. However, he was aware of an issue with NMFS observers and the trawl catch shares program that was recognized prior to the implementation of trawl rationalization. Prior to the catch shares program, some vessels had received exemptions from carrying an observer for various reasons. However, this is not possible under the catch shares program. Prior to implementation, meetings and notices were held to advise fishers of this issue. The issue is that the observer has some leeway as to whether or not they view the vessel as safe. Mr. Lockhart thought that this was the issue in this particular case. He also noted the larger economic issue of the higher costs for observers in the smaller ports.

Mr. Crabbe asked if there were additional options that would make it more favorable for observer providers in the Monterey area.

Mr. Lockhart responded that staff are now working on the observer provider rule and it is to be ready early next year so that new providers can come into the program. In response to a question from Mr. Wolford, Mr. Lockhart stated that the rule does not include the issue of observer qualifications. That is a separate and more complex issue that includes restrictions contained in the MSA and other national regulations. However, NMFS and the National Observer Program are looking into that issue.

With regard to a place in the Council's agenda to consider the trawl fishery MSE certification introduced by Mr. Brad Pettinger, Dr. McIsaac stated it would be considered under agenda planning on the last day of the meeting.

## **C. Enforcement**

### **C.1 Tri-State Enforcement Report (9/12/2013; 9:33 a.m.)**

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

Mr. Jim Seger presented the Agenda Item Overview.

#### **C.1.b Tri-State Enforcement Report**

Lt. David Anderson and Sgt. Dan Chadwick presented Agenda Item C.1.b, Supplemental Tri-State Enforcement Report (PowerPoint) with additional remarks from Mr. Bob Farrell.

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

None.

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

None.

#### **C.1.e Council Action: Discussion and Guidance as Needed**

Mr. Anderson recalled some concerns our Council has had with regard to changes in the NMFS Office of Law Enforcement and the Joint Enforcement Agreement (JEA). Those changes were driven primarily by East Coast enforcement concerns. He asked how this situation has progressed over time with regard to the efficiency of our law enforcement.

Lt. Anderson responded that, with regard to Oregon, they have two uniformed officers stationed in Astoria and one in Newport. There have been no negative impacts on the JEA funding. There have been fiscal concerns with the disparity in pay levels between using Federal and state enforcement officers.

Mr. Matthews reported that the enforcement officers have been hired and trained. The task now is to incorporate them into the daily dock and patrol work so that it is complementary to the state patrols. He believes they will be an asset to both state and Federal participation, and the purpose is not to supplant the JEA program.

### **D. Pacific Halibut Management**

#### **D.1 Pacific Halibut Bycatch Estimate (9/12/2013; 10:49 a.m.)**

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

Ms. Kelly Ames presented the Agenda Item Overview.

##### **D.1.b National Marine Fisheries Service Recommendation**

Dr. Jason Jannot presented Pacific Halibut Bycatch Report (PowerPoint) which summarized the following documents:

- Agenda Item D.1.b, WCGOP Report: Pacific Halibut Bycatch in U.S. West Coast Groundfish Fisheries (2002-2012);
- Agenda Item D.1.b, WCGOP Response to SSC: Supplemental Material for SSC Review of the NWFSC Observer Program Annual Report on Pacific Halibut Bycatch in the U.S. West Coast Groundfish Fisheries: Response to 2012 SSC Comments and Suggestions;
- Agenda Item D.1.b, WCGOP Request: Council Request for WCGOP Data;
- Agenda Item D.1.b, Trawl Survey Request: Council request for the NWFSC Bottom Trawl Survey Data; and
- Agenda Item D.1.b, Supplemental WCGOP Data: Supplemental WCGOP Data.

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

Dr. Bob Conrad presented Agenda Item D.1.c, Supplemental SSC Report.

Mr. Brad Pettinger presented Agenda Item D.1.c, Supplemental GAP Report.

#### **D.1.d Public Comment**

None.

#### **D.1.e Council Action: Review and Provide Guidance on the Pacific Halibut Bycatch Estimate for use by the International Pacific Halibut Commission in 2014 Fisheries**

Based on the Scientific and Statistical Committee (SSC) review and conclusion that the science used is appropriate, Mr. Anderson moved and Mr. Myer seconded Motion 2 that the Council provide NMFS with our recommendation to transmit the document, Pacific Halibut Bycatch in U.S. West Coast Groundfish Fisheries (2002-2012), to the International Pacific Halibut Commission (IPHC) with the recommendation that they use it for 2014 planning.

Motion 2 carried unanimously.

Ms. Marci Yaremko commented that it would be helpful if the total catch accounting in the table on page 6 of the report could be partitioned out geographically into the three subareas. She also suggested the Council needed to consider the SSC recommendation that there was not a need to review the estimates annually.

Mr. Anderson suggested that if there hasn't been a significant change in the science or methodology, NMFS could so inform the Council, and there would be no need for the SSC to review it in that particular case. Mr. Lockhart agreed.

#### **D.2 2014 Pacific Halibut Regulations (9/12/2013; 11:27 a.m.)**

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

Ms. Kelly Ames presented the Agenda Item Overview and referenced Agenda Item D.2.a, Attachment 1: 2013 Pacific Halibut Catch Sharing Plan for Area 2A.

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

Mr. Frank Lockhart referenced Agenda Item D.2.b, NMFS Report: Report on the 2013 Pacific Halibut Fisheries in Area 2A. [He noted two corrections in the report: 1) on page 3, in the bulleted sentence near the top and in the table on page 6 for "sablefish incidental" - strike "15587" and replace it with "5823;" and 2) in the table on page 6, under "sablefish incidental," change the percentage taken to 27.2 percent, and change the total catch to 878,072 and percent of quota taken to 88.7 percent.]

Ms. Heather Gilroy presented Agenda Item D.2.b, Supplemental IPHC Report.

Mr. Phil Anderson presented Agenda Item D.2.b, WDFW Report: Washington Department of Fish and Wildlife Report on Proposed Changes to the Catch Sharing Plan and 2014 Annual Regulations and Agenda Item D.2.b, Supplemental WDFW Report 2.

Ms. Lynn Mattes and Mr. Kevin Duffy presented Agenda Item D.2.b, Supplemental SOH Workgroup/Policy Group PowerPoint that combines Agenda Item D.2.b, Workgroup Report: South of Humbug Pacific Halibut Workgroup Preliminary Management

Measures Analysis and Agenda Item D.2.b, Policy Committee Report: Summary of the South of Humbug Pacific Halibut Policy Committee Meeting.

[Council broke from 12:08 p.m. to 1:15 p.m. and, due to a delay in the availability of Agenda Item D.2.b, Supplemental CDFW Report 2, started Agenda Item E.1. Council resumed Agenda Item D.2 at 2:24 p.m.]

Ms. Gway Kirchner presented Agenda Item D.2.b, ODFW Report: Oregon Department of Fish and Wildlife Report on Proposed Changes to the Pacific Halibut Catch Sharing Plan for the 2014 Fishery.

Ms. Marci Yaremko presented Agenda Item D.2.b, CDFW Report: California Department of Fish and Wildlife Report on Proposed Changes to the 2014 Pacific Halibut Catch Sharing Plan; Agenda Item D.2.b, Supplemental CDFW Report 2; and Agenda Item D.2.b, Supplemental CDFW PowerPoint.

Mr. Tom Marking presented Agenda Item D.2.b, Supplemental GAP Report.

Lt. Dave Anderson presented Agenda Item D.2.b, Supplemental EC Report.

### **D.2.c Public Comment**

Agenda Item D.2.c, Public Comment.

Mr. Mark Cedergreen, Ilwaco Charter Association, Westport, Washington.

Mr. Tom Marking, Eureka, California.

### **D.2.d Council Action: Adopt for Public Review Proposed Changes to the 2014 Pacific Halibut Catch Sharing Plan and Annual Fishing Regulations**

Regarding the recreational Pacific halibut fishery, Mr. Anderson moved and Mr. Lincoln seconded Motion 3 that the Council adopt, for public review, the proposed changes for the 2014 Pacific Halibut Catch Sharing Plan (CSP) and regulations as shown in Agenda Item D.2.b, WDFW Report, except for #3 under the Columbia River Subarea, which is replaced by the recommendation in Agenda Item D.2.b, Supplemental WDFW Report 2.

Mr. Anderson noted that the justification for these proposed regulations was pretty well covered during the presentation and is adequate for consideration in the public review. One area that he would particularly like to get public comment on before final action is in regard to using a 30 fathom line from Leadbetter to Falcon without a break. He would like to discuss that more with Oregon.

Ms. Kirchner asked if an alternative of a 40 fathom line would need to be added now or if we can consider it in November. Mr. Anderson thought it best to include it now.

Ms. Kirchner moved and Mr. Feldner seconded Amendment 1 to Motion 3 for the Council to include an alternative for the nearshore fishery proposal (referenced in Agenda Item D.2.b, Supplemental EC Report) from Leadbetter Point to Cape Falcon to reflect a 40 fathom line in the area.

Ms. Kirchner stated that this incorporates the recommendation of the Enforcement Consultants (EC) and allows consideration of such an alternative by the public and for final adoption.

Amendment 1 carried unanimously. Motion 3, as amended, carried unanimously.

Ms. Kirchner moved and Mr. Feldner seconded Motion 4 that the Council adopt, for public review, the proposed changes for the 2014 Pacific Halibut CSP and annual fishing regulations as shown in Agenda item D.2.b, ODFW Report.

Ms. Kirchner stated that the rationale for the motion was covered in the state's presentation and reflects many of the recommendations resulting from public meetings and is ready for further public review.

Motion 4 carried unanimously.

Ms. Yaremko moved and Mr. Wolford seconded Motion 5 that the Council adopt, for public review, the proposed changes for the 2014 Pacific Halibut CSP and annual fishing regulations for 2014 as shown in Agenda Item D.2.b, Supplemental CDFW Report 2.

Ms. Yaremko stated that her earlier presentation covered the rationale for this motion. She reaffirmed that the motion is consistent with the recommendation of the policy committee for a new sport fishery allocation that reduces sport catch in this area to a level of 40-60 percent of the average catch from 2008-2012. Regarding management measures, because no inseason management is proposed for this area, the actual language of the regulations must appear up front as a piece of the CSP. She then presented some supplemental data concerning availability of access and launching facilities for some of the North Coast ports that were factored into the management measures, especially concerning the impacts of block seasonal closures.

Ms. Kirchner asked to have Ms. Heather Gilroy of the IPHC provide more information with regard to their expectations for Council actions south of Humboldt Mountain this year.

Ms. Gilroy stated that the IPHC staff supports the adaptive approach that California and the policy committee are taking which provides for a 40-60 percent decrease in the 2014 sport catch from the five-year average, and after that a reduction of catch to stay within the allocation.

Ms. Kirchner asked if the IPHC would see it as adequate progress if we reduced the catch by 40-60 percent from the five-year average in 2014, but the catch exceeded the allocation.

Ms. Gilroy replied that staff believes the answer is yes. We realize that a lot of work has gone into this and you are working toward a step-wise solution to have the catch be within the allocation after 2014.

Mr. Anderson recounted the issues and process which have brought us to this point in making a decision for future halibut management under a new quota off California. He noted the disparity in the proposal which attempts to reduce the catch, but adds up to more than 100 percent of the available allocation. We can either address the allocation and management issues at one time, or

we can take this step for the management measures for public review, and whatever we adopt is not going to get down to the allocation range. Setting the allocation will come later. Given the conservative quota management in the other areas, there is little risk that going over the proposed new allocation by 5,000 to 6,000 pounds will have any significant conservation effect in this one year. He felt the allocation decision could come later.

Council members proceeded with further discussion which included general agreement on the need to reduce the catch beginning in 2014 and the stepwise approach to bring the catch within the allocation in the long term. However, there was some confusion and disagreement over the proposed changes, including allocation percentages that summed to more than 100 percent and using a range for the California sport allocation. Ms. Yaremko clarified that she supported using a range (1.4 to 2.1 percent) for the California sport allocation at this time.

Ms. Kirchner moved and Mr. Feldner seconded Amendment 1 (to Motion 5) to change the California sport fishery allocation on page 1 under (b) to “1 percent for 2014” and on page 3, under the California subarea, change the wording to “this sport fishery is allocated 1 percent for 2014” and add that “the Council will continue to address South of Humbug issues, including allocation, for potential changes in 2015.”

Ms. Kirchner noted that up to this point we have not had an opportunity to consider alternative allocations and now there is not time to address big allocation issues. She has also heard concern that if we do not address these allocations now they will not be addressed in the near or distant future. To help us move forward, her motion reflects using the 1 percent that comes from Oregon and is time-limited to 2014 which will get public input now and force us to deal with it further for 2015 and beyond. In response to questions, she clarified that her intent in the motion was to deal narrowly with the California allocation issue (not “South of Humbug”) and not to open a discussion of the other sport and commercial allocations.

To clarify the amendment, Mr. Wolford moved and Mr. Brizendine seconded Amendment 1a (to Amendment 1 to Motion 5) to replace “South of Humbug” with “California.”

Amendment 1a carried unanimously. Amendment 1, as amended, carried unanimously. Motion 5, as amended, carried unanimously.

[Council concluded this agenda item at 4:02 p.m. and entered into closed session.]

## **E. Salmon Management**

### **E.1 2013 Salmon Methodology Review (9/12/2013; 1:17 p.m.)**

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

Mr. Mike Burner presented the Agenda Item Overview and introduced:

- Agenda Item E.1.a, Attachment 1: June 12, 2013 Email to the Agencies from Mike Burner Regarding Preliminary Topic Selection; and

- Agenda Item E.1.a, Attachment 2: August 1, 2013 Letter from Dr. McIsaac to Mr. Will Stelle Regarding SRWC.

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

Ms. Marci Yaremko reported on Sacramento River winter run Chinook (SRWC) recovery operations.

Mr. Bob Turner presented Agenda Item E.1.b, Supplemental NMFS Report.

Mr. Mike Burner read the following documents into the Council Record: Agenda Item E.1.b, Supplemental STT Report; Agenda Item E.1.b, Supplemental MEW Report; and Agenda Item E.1.b, Supplemental SAS Report.

Mr. Bob Conrad presented Agenda Item E.1.b, Supplemental SSC Report.

### **E.1.c Public Comment**

None.

### **E.1.d Council Action: Adopt Final Review Priorities and Consider Recommendations for Sacramento Winter Chinook Harvest Control Rules**

Mr. Anderson noted that the Council has identified the key methodology topics for review and that the MEW and STT concur on those which can be completed for the SSC review in October. The Council agreed to let the process continue for inclusion in 2014 management.

Regarding guidance and recommendations on SRWC harvest control rule alternatives, Mr. Wolford encouraged NMFS to proceed with their *Federal Register* (FR) notice in a manner that would allow us to give a response as soon as possible. He asked for, and Mr. Turner agreed to, ensure that the Council was notified when the FR is published.

Mr. Wolford also asked that the information regarding escapement and entrapment of the fish be provided as soon as possible.

Mr. Lincoln expressed concern about the trade-offs of NMFS providing the control rule FR as soon as possible versus ensuring a quality review. Mr. Turner stated there are controversial issues which must be adequately considered and that could determine the completion of the proposed rule.

Mr. Wolford clarified that he was not asking to impose a time certain on the review, only that it proceed as expeditiously as possible.

[Council concluded this agenda item at 2:10 p.m. and resumed with D.2 at 2:20 p.m.]

## **E.2 Fishery Management Plan Amendment 18 – Update of Essential Fish Habitat (EFH) for Salmon (9/13/2013; 8:03 a.m.)**

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

Mr. Kerry Griffin presented the Agenda Item Overview and introduced the following documents:

- Agenda Item E.2.a, Attachment 1: Draft Environmental Assessment and Initial Regulatory Impact Review – Pacific Coast Salmon Plan Amendment 18: Incorporating Revisions to Pacific Salmon Essential Fish Habitat;
- Agenda Item E.2.a, Attachment 2: Draft Appendix A to the Pacific Coast Salmon Fishery Management Plan: Identification and Description of Essential Fish Habitat, Adverse Impacts, and Recommended Conservation Measures for Salmon;
- Agenda Item E.2.a, Attachment 3: Pacific Salmon Amendment 18, Incorporating Changes to Essential Fish Habitat: Overview of Alternatives; and
- Agenda Item E.2.a, REVISED Supplemental Attachment 4: FMP Strikethrough Language.

### **E.2.b Summary of Amendment 18 Alternatives**

Mr. Kerry Griffin and Mr. John Stadler presented Agenda Item E.2.a, Supplemental PowerPoint on Amendment 18: - Update of Essential Fish Habitat (Griffin/Stadler).

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

Mr. Mike Burner presented Agenda Item E.2.c, Supplemental SAS Report.

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

Ms. Jennifer Gilden presented Agenda Item E.2.c, Supplemental HC Report.

Agenda Item E.2.c, Supplemental NMFS Report: Salmon EFH Notice and Comment Rulemaking.

### **E.2.d Public Comment**

None.

### **E.2.e Council Action: Final Adoption of Salmon EFH Updates**

Mr. Bob Turner moved and Mr. Rich Lincoln seconded Motion 6 that the Council select the following set of action alternatives from Table 2-1 of Attachment 3 to Agenda Item E.2.a as the final preferred alternatives: 1B, 2B, 2D, 3B (with the exception of 18060002 (Pajaro)), 3C, 4B, 5B, 6B, 6D, 7B, 8B, 9B-9F, 10B, 10C, 11B, 11C1-11C9, 12B, and 13B (Agenda Item E.2.e, Supplemental NMFS Motion in Writing) with the table summarized in that attachment.

Mr. Turner stated that his motion attempts to provide a starting point for a discussion that will include those alternatives which will be as close as possible to a consensus of the Council family.

Mr. Pollard noted that the motion pretty well lines up with the recommendations of the Habitat Committee (HC) except for C10 (coal export facilities). He asked for clarification from Mr. Turner on that issue.

Mr. Tuner replied that NMFS believes the activities associated with any terminal, including a coal terminal, are otherwise covered in the essential fish habitat (EFH) provisions with the exception of the existence of coal in that facility. NMFS believes we currently do not have the science behind what mitigation measures would be associated with whatever impacts are created with the existence of the coal.

Mr. Anderson moved and Mr. Lincoln seconded Amendment 1 (to Motion 6) to add Lower Crab Creek Hydrologic unit 17020015 to the Chinook salmon freshwater EFH (2B) and to substitute the words “48° N. latitude” for “Cape Flattery” in 7B (Marine & Estuarine EFH).

Mr. Anderson stated that lower Crab Creek (tributary to the Columbia River between Priest Rapids and Wanapum dams) is spawning habitat for Chinook salmon that should be protected. Also, as pink salmon leave Puget Sound, they occupy areas south of Cape Flattery down to the area denoted by 48° N. latitude.

Amendment 1 carried unanimously.

Mr. David Ortmann moved and Mr. Lincoln seconded Amendment 2 (to Motion 6) to strike “six” and replace it with “five” under 3B, Coho Salmon freshwater EFH.

Mr. Ortmann stated that this was just an editorial amendment.

Amendment 2 carried unanimously.

Mr. Feldner expressed concern about not including 11C10 (coal export terminals). He moved and Ms. Kirchner seconded Amendment 3 (to Motion 6) to add 11C10 “coal export terminal facilities” under non-fishing activities that may adversely affect EFH.

Mr. Feldner stated that both the SSC and HC had included 11C10 in their recommendations and it isn’t a huge requirement for someone who is proposing the facilities, and it does have the potential for adversely affecting EFH.

Several Council members spoke in support of the amendment as there would seem to be a fairly direct nexus to pollution of fish habitat with coal dust and it is also currently an issue of concern within the region.

Mr. Turner and Dr. Stadler attempted to clarify NMFS’ concern that they did not have the science to describe the impacts the coal would have on EFH. Dr. Stadler noted that with regard to LNG terminals, they knew that there would need to be certain criteria for the intake and outflow of cooling water. However, they did not have any science-based criteria to place in Appendix A that would describe the probable impacts of the coal in a terminal and the necessary mitigation measures to avoid harm.

Amendment 3 carried, Mr. Turner abstained. Motion 6, as amended, carried unanimously.

### **E.3 Lower Columbia River Double-Crested Cormorant Management Plan (9/13/2013; 9:30 a.m.)**

#### **E.3.a Agenda Item Overview**

Mr. Mike Burner presented the Agenda Item Overview and introduced the following documents:

- Agenda Item E.3.a, Attachment 1: Cormorant EIS e-Newsletter; and
- Agenda Item E.3.a, Attachment 2: Draft Report: Benefits to Columbia River Anadromous Salmonids from Potential Reductions in Predation by Double-Crested Cormorants Nesting at the East Sand Island Colony.

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

Mr. Burner read Agenda Item E.3.b, Supplemental SAS Report.

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

None.

### **E.3.d Council Action: Provide Comments to the U.S. Army Corps of Engineers**

Mr. Pollard stated that it is important that the U.S. Army Corps of Engineers (Corps) receives the Council's comments regarding the Cormorant predation. He noted that the single cormorant colony during the 100-day nesting period accounts for predation of 20 million anadromous smolts. This is a huge impact compared to what benefit we get from other rather extensive habitat improvement efforts. He also noted that this is an impact that didn't exist 40 years ago.

Mr. Roth agreed and was concerned about the timing of the release of the Environmental Impact Statement (EIS) and suggested April might be the right meeting to have the Corps report to us. He recommended a letter to the Corps advising them of our timing needs with regard to commenting on the EIS. Other Council members agreed and spoke of the state efforts in dealing with this issue.

Ms. Lowman confirmed Council consensus that a letter be sent to the Corps describing the importance of this issue to the Council and asking that the comment period extend beyond the April Council meeting.

Mr. Anderson wondered about the status of a NMFS analysis and recommendation in terms of the needed reduction in the number of breeding pairs. Mr. Turner was not aware of the current status, but would find out. Mr. Anderson recommended that the information should be available for the April meeting.

## **F. Habitat**

### **F.1 Current Habitat Issues (9/13/2013; 10:00 a.m.)**

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

Ms. Jennifer Gilden presented the Agenda Item Overview and introduced the following items:

- Agenda Item F.1.a, Attachment 1: Final Letter to the Northwest Power and Conservation Council;
- Agenda Item F.1.a, Attachment 2: Draft Letter to the Bureau of Ocean Energy; and
- Agenda Item F.1.a, Attachment 3: Draft Letter to the Department of Energy.

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

Ms. Fran Recht presented Agenda Item F.1.b, Supplemental HC Report.

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

None.

### **F.1.d Public Comments**

Mr. Brent Paine, United Catcher Boats, Seattle, Washington, presented Agenda Item F.1.d, Supplemental Public Comment.

Mr. Steve Bodnar, Coos Bay Trawlers Association, Coos Bay, Oregon.

Mr. Ralph Brown, Brookings, Oregon.

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

Council discussion started with the proposed letter to the U.S. Department of Energy concerning development of offshore wind energy (Agenda Item F.1.a, Attachment 3).

Mr. Troy Buell spoke in support of the proposed letter and noted its similarity to one previously sent by the State of Oregon. He would also support inclusion of verbage suggested during public comment emphasizing that the user conflicts be identified before site selection. Ms. Yaremko agreed and recommended also including the comments by Mr. Brown that we request the Department of Energy to exam the human and fishery impacts in great detail.

The Council approved sending the letter as drafted and including the suggested comments.

Mr. Crabbe supported going forward with the proposed letter to the Bureau of Ocean Energy Management (Attachment 2) which requests membership on the Oregon Intergovernmental Renewable Energy Task Force and would allow us to weigh in on the taskforce process to mitigate impacts.

Ms. Yaremko disagreed with Mr. Crabbe. She was concerned that the Council should not get weighed down by interacting in local issues that were better handled by the states and others, but should rather respond at a broader, more regional level.

Mr. Anderson requested information on who the current members of the taskforce were. He agreed with Ms. Yaremko that the Council could get hamstrung by membership on too many committees and local issues.

Mr. Myer spoke in favor of the letter and request for taskforce membership. While this particular issue was off Oregon, it was affecting Washington fleets as well. These developments are just the beginning of many conflicts over ocean and coastal developments. If you are not at the table, you are on the menu.

Mr. Buell stated that Oregon has a seat on the taskforce and supports membership by the Council, which he would not see as a conflict. He read a long list of other members, which

includes Federal and state agencies. He noted that the issues and facilities include the Federal waters and may have impacts on the fisheries. They would benefit from the Council having a seat on this taskforce.

No one was aware of any other intergovernmental, renewable energy taskforce for Washington or California.

Ms. Lowman noted that, ideally, the Coastal Marine Spatial Planning Organization would be the umbrella body that the Council could act in. However, that doesn't look like it is getting started in a timely manner. The actions are moving forward and affecting fisheries, which makes it important for the Council to be involved.

Mr. Crabbe reiterated his support for Council participation, given no other venue and considering the potential impact on the coastal pelagic fishery.

Council members discussed the likely involvement that this membership would entail for the Council, who that member might be, and what comments they might be authorized to provide.

Mr. Myer felt it would be more beneficial to provide someone from the Council family who could provide information on the impacts on the fishing fleet.

Mr. Crabbe suggested we obtain more information and table this letter for now. Mr. Buell agreed.

Ms. Yaremko agreed that these local committees are important and thought the issue was how to ensure that the local fishing entities have standing and input on them. The Council's role may be to stress the need for representation and information from the fishing industries.

Mr. Pollard confirmed Council consensus to table this issue, get additional information, and, if necessary, receive a report on this in November.

The Council continued their discussion with concerns about the renegotiation of the U.S.-Canada Columbia River Treaty and the recommendation in the HC Supplemental Report for a letter. It is uncertain as to the exact deadline for comments to the U.S. State Department on this issue. Therefore, the Council decided to have staff communicate the importance of the renegotiation, seek further information on the probable comment deadline, and, if necessary, request that Council comments be considered following our November meeting. If that is not possible, Council staff should communicate that the Council strongly supports the comments of the bordering states with regard to protecting the anadromous fishery resource.

The Council completed its habitat agenda item with a discussion of the Columbia River Biological Opinion information.

Mr. Buell stated that Oregon Department of Fish and Wildlife (ODFW) strongly supports the comments of the HC on the Columbia River Biological Opinion and supports the Council

making comments, though the timing would not allow for Council review at the November Council meeting.

Dr. McIsaac noted that there has only been a cursory review of the biological opinion, and any letter would be very general since there would not be time to develop well-coordinated and comprehensive recommendations for approval by Council members.

Mr. Anderson noted that Washington, Oregon, Idaho, and the tribes would all be responding in detail to the opinion. He suggested that given the lack of time, this would suffice in covering Council concerns better than a brief general letter. Council members agreed.

## **G. Groundfish Management**

### **G.1 National Marine Fisheries Report (9/13/2013; 1:32 p.m.)**

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

Ms. Kelly Ames presented the Agenda Item Overview.

#### **G.1.b Regulatory Activities**

Mr. Frank Lockhart introduced Sarah Biegel, who is working on West Coast Regional NEPA activities.

Mr. Dayna Matthews introduced Agenda Item G.1.b, Supplemental NMFS Report 2: Initial Decision and Order (F/V Risa Lynn).

Mr. Frank Lockhart introduced Agenda Item G.1.b, Attachment 1: *Federal Register* Notices Published since the Last Council Meeting; and Agenda Item G.1.b, Supplemental NMFS Report: Draft Rulemaking Plan for 2013 Groundfish and Halibut.

#### **G.1.c Northwest Fisheries Science Center Activities**

Dr. John Stein and Dr. Michelle McClure presented Agenda Item G.1.c, Groundfish Science Report PowerPoint.

#### **G.1.d Reports and Comments of Advisory Bodies and Management Entities**

Mr. Gerry Richter presented Agenda Item G.1.d, Supplemental GAP Report.

#### **G.1.e Public Comment**

Mr. Jeff Miles, Port Orford, Oregon.

Mr. Dan Platt, Fort Bragg, California.

#### **G.1.f Council Discussion.**

The Council primarily discussed ways of dealing with the ping rate issue, including use of electronic logbooks and potential use of the electronic monitoring system.

## **G.2 Sablefish Permit Stacking Program Review (9/13/2013; 2:47 p.m.)**

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

Mr. Jim Seger presented the Agenda Item Overview (Agenda Item G.2.a, Supplemental Agenda Overview PowerPoint) and introduced:

- Agenda Item G.2.a, Attachment 1: Draft Sablefish Permit Stacking Review Calendar;
- Agenda Item G.2.a, Attachment 2: Possible Advisory Body Structure and Composition;
- Agenda Item G.2.a, Attachment 3: Draft Outline for the Pacific Coast Groundfish Limited Entry Fixed Gear Sablefish Permit Stacking Program Review; and
- Agenda Item G.2.a, Attachment 4: NOAA Catch Share Performance Indicator Series: Pacific Coast Sablefish Permit Stacking Program.

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

Ms. Heather Reed presented Agenda Item G.2.b, Supplemental GMT Report.

Ms. Michelle Longo-Eder presented Agenda Item G.2.b, Supplemental GAP Report.

Mr. Dayna Matthews presented Agenda Item G.2.b, Supplemental EC Report.

### **G.2.c Public Comment**

Ms. Michelle Longo-Eder, F/V Timmy Boy, Newport, Oregon.

Mr. Jeff Miles, Brookings, Oregon.

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

### **G.2.d Council Action: Provide Guidance on Calendar, Process, and Content of Program Review (9/13/2013; 3:59 p.m.)**

Ms. Culver suggested that one option on these issues would be to move the ownership and control issues forward on the schedule in Attachment 1 with a draft Environmental Assessment (EA) that would also serve as the draft sablefish permit stacking program review document. The draft alternatives for public review could be approved in April and final action potentially in June. There would be nothing to prepare for November or March. This would give time for NMFS to have the rulemaking prior to April 2015 when the tier program would start.

Mr. Lockhart responded that Ms. Culver's approach is potentially doable, but not the NMFS preference since it would require two rulemakings. In response to questions, he noted that we are past the 5-year review timeline for this program and need to move forward with it. With regard to what the review requires, it is pretty much a comparison of the goals and objectives of the program with the actual results we have obtained.

Mr. Seger noted some difficulties in completing an analysis for November.

In response to questions, Mr. Seger and Mr. Lockhart confirmed that the Council had taken final action in April 2012 to allow fixed gear and trawl permits on a vessel at the same time (dual permits), combined with an action to clarify that at-sea processing by fixed gear vessels moving

into the trawl fishery through the gear switching program would not be allowed within the auspices of the fixed-gear program.

Before NMFS implements the program, Mr. Lockhart stated they would like to look into whether further analysis is needed with regard to some concerns raised by the EC. This is not an uncommon occurrence and does not necessarily require it to come back before the Council. It is possible that the analysis could be completed by April. Regarding alternatives for the ownership issue, he thought it could be possible to work with Council staff in 2014 to develop a range of alternatives and some analysis for review at the April Council meeting, and then final action could be taken at the June 2014 meeting.

Ms. Culver moved and Mr. Lincoln seconded Motion 7 that the Council approve the review calendar as shown in Agenda Item G.2.a, Attachment 1 with the following changes:

Add the following to the month of April:

- Consider a draft range of alternatives for the ownership and control of the limited entry sablefish tier permit issue as recommended in Agenda G.2.b, Supplemental GAP Report, for public review, with a preliminary analysis for that item and additional analysis to support the Council's decision for allowing trawl and fixed gear permits on a vessel at the same time.

Add to the month of June:

- Adopt a final preferred alternative to address the ownership and control issue of permits.

Ms. Culver stated that the Council has had discussions of the ownership and control issue for sablefish tier permits several times and has tried to find a way to address the problems it causes and move it forward. An example of the problem is that if a permit owner owns only 20 percent of the permit, that permit owner is assigned 100 percent of ownership and control, which then runs into limits on ownership and control. A fix for this would be to attribute the actual amount of ownership to the amount of control, which is what the Council chose to do for the trawl IFQ program. Since that time, the fixed-gear fishery segment has asked for that same assignment of ownership and control. This has also caused problems with vessels involved in gear-switching between fixed gear and trawl. She views these actions as primarily housekeeping items and does not want them to be delayed by a program review which should be kept fairly simple.

Mr. Lockhart clarified that NMFS does not think the issue of allowing a trawl and fixed-gear permit on a vessel at the same time needs to come before the Council again, unless some new issues are raised.

Dr. McIsaac suggested that there may be other alternatives that should be identified early in the process if they can be handled expeditiously and avoid more work later.

Mr. Lockhart stated that the motion does not preclude further discussion of the issue in November, but reiterated that NMFS staff will not be able to do much on this until after December. The motion clearly puts a priority on trying to complete the control and ownership issue by June, which may slow work on the program review. However, it does not preclude moving forward on the program review at the same time.

Motion 7 carried unanimously.

Council members discussed the sablefish permit stacking program review and agreed that there did not seem to be a ground swell for any major changes to the program or any major complaints about how it was achieving its objectives. There did not seem to be a need for forming a special review group at this time and it appears that the review could narrowly focus on whether the program is meeting its stated objectives. If the need arises further down the road, the Council could appoint a review group at that time. Mr. Buell asked that the Council remain open to considering other issues and information in the review, such as the information provided by Mr. Miles in public testimony. Ms. Culver, Mr. Buell, and Mr. Farrell spoke about the need for timely and consistent information in the fishery and the possibilities for using electronic fish tickets.

Mr. Lockhart requested that the Council also include looking further into the issue of MSA cost recovery as one of the items to be brought before the Council in April.

### **G.3 Approve Stock Assessments (9/14/2013; 9:37 a.m.)**

#### **G.3.a Agenda Item Overview**

Mr. John DeVore presented the Agenda Item Overview and introduced the following attachments:

- Agenda Item G.3.a, Attachment 1: Stock Assessment of Aurora Rockfish in 2013;
- Agenda Item G.3.a, Attachment 2: STAR Panel Report for Aurora Rockfish;
- Agenda Item G.3.a, Attachment 3: The Status of Rougheye Rockfish (*Sebastes aleutianus*) and Blackspotted Rockfish (*S. melanostictus*) as a Complex Along the U.S. West Coast in 2013;
- Agenda Item G.3.a, Attachment 4: STAR Panel Report for Rougheye (and Blackspotted) Rockfish;
- Agenda Item G.3.a, Attachment 5: Stock Assessment of Shortspine Thornyhead in 2013;
- Agenda Item G.3.a, Attachment 6: Shortspine Thornyhead STAR Panel Report;
- Agenda Item G.3.a, Attachment 7: Stock Assessment and Status of Longspine Thornyhead (*Sebastolobus altivelis*) off California, Oregon, and Washington in 2013;
- Agenda Item G.3.a, Attachment 8: Longspine Thornyhead STAR Panel Report;
- Agenda Item G.3.a, Attachment 9: Status and Productivity of Cowcod (*Sebastes levis*) in the Southern California Bight, 2013;
- Agenda Item G.3.a, Attachment 10: Cowcod STAR Panel Report;
- Agenda Item G.3.a, Attachment 11: Status of the U.S. Pacific Sanddab Resource in 2013; and
- Agenda Item G.3.a, Attachment 12: Pacific Sanddab STAR Panel Report.

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

Dr. Owen Hamel presented Agenda Item G.3.b, Supplemental SSC Report.

Mr. John Budrick presented Agenda Item G.3.b, Supplemental Report.

Mr. Gerry Richter presented Agenda Item G.3.b, Supplemental GAP Report.

### **G.3.c Public Comment**

Mr. Seth Atkinson, Natural Resources Defense Council, San Francisco, California.

### **G.3.d Council Action: Adopt Final Stock Assessments for Rougheye, Aurora, Shortspine Thornyhead, Longspine Thornyhead, and Cowcod Rockfishes, and Pacific Sanddab**

Ms. Culver moved and Ms. Yaremko seconded Motion 11 that the Council approve the following stock assessments: aurora, rougheye, blackspotted, shortspine thornyhead, longspine thornyhead, and cowcod; and include the recommendation by the SSC relative to the China rockfish, and include in the SSC's review of data-moderate assessments for nearshore rockfish species that they consider having the stock assessments for brown and copper rockfish truncated at 42° N. latitude.

Ms. Culver stated that the supplemental advisory body reports provide strong recommendations for the approval of all of the stock assessments under review, with the exception of the sanddab assessment. The SSC report indicates that the stock assessments represent the best available science to use in the 2015-2016 groundfish management process. There have been considerable discussions at both the June meeting and this meeting, relative to the management of the nearshore rockfish species and the data that were used to inform the data-moderate assessments for China, brown, and copper rockfish. This was in terms of using a CPUE index in one area to inform the status of the stock in other areas. She thought that this is something that is inherent in most of the stock assessments. She noted that we do have examples of where assessments have been truncated due to a lack of data or because the application of a CPUE index for one area to a much larger area may not be appropriate, given the management and fishery differences. She appreciates the SSC's recommendation for China rockfish and believes it warrants further attention. She is glad they will update the Oregon recreational catch data for all three of these assessments. However, the SSC statement indicating that the modeling wasn't attempted in the case of brown rockfish in the north, because no CPUE index could be derived and it is not feasible to conduct assessments for either brown or copper rockfish north of 42° N. latitude, lends weight to having the assessment that has been conducted for those stocks apply south of 44° N. latitude. The SSC indicated there is very little catch of copper and brown rockfish to the north, and the adjustment to the assessment should be minimal.

Mr. Buell expressed concern about using information for an index outside of the area of management.

Mr. DeVore noted that this is not an unusual situation. The SSC looks at the assessments and tries to determine if it is the best available science. The Council would have information to compare the results of the assessments and make a determination in November.

Motion 11 carried unanimously.

Mr. DeVore noted that there was some value for adopting the sanddab assessment for the purpose of understanding the status of the stock.

Ms. Yaremko moved and Mr. Crabbe seconded Motion 12 that the Council adopt the recommendations of the SSC regarding the sanddab assessment contained in Agenda Item G.3.b, Supplemental SSC Report.

Ms. Yaremko appreciated Mr. DeVore bringing this issue to our attention. There was valuable information in the assessment even though it not be used for deciding harvest specifications. It should remain a category three stock.

Motion 12 carried unanimously.

[Council concluded this agenda item at 10:56 a.m. and moved to H.1.]

#### **G.4 Science Improvements for the Next Groundfish Management Cycle (9/15/2013; 8:02 a.m.)**

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

Mr. John DeVore presented the Agenda Item Overview and introduced Agenda Item G.4.a, Attachment 1: STAR Panel Recommendations for Off-Year Science Improvements.

##### **G.4.b Northwest Fisheries Science Center Report**

Dr. Michelle McClure presented Agenda Item G.4.b, Supplemental NWFSC PowerPoint.

##### **G.4.c Reports and Comments of Advisory Bodies and Management Entities**

Ms. Marci Yaremko provided Agenda Item G.4.c, Supplemental CDFW Report.

Dr. Owen Hamel presented Agenda Item G.4.c, Supplemental SSC Report.

Mr. Rob Jones presented Agenda item G.4.c, Supplemental GMT Report.

Mr. Louis Zimm presented Agenda Item G.4.c, Supplemental GAP Report.

##### **G.4.d Public Comment**

Mr. Daniel Platt, Open Access Fisherman, Fort Bragg, California.

##### **G.4.e Council Action: Prioritize and Plan for 2014 Science Improvements**

Ms. Culver moved and Mr. Lincoln seconded Motion 17 that for the off-year science improvements for the next groundfish management cycle, that the Council adopt the recommendations as shown in Agenda Item G.4.c, Supplemental SSC Report relative to priority workshops; from Agenda Item G.4.c, Supplemental GMT Report, include the spatial analysis of exploitation; and support ongoing socio-economic discussions between the Groundfish Management Team (GMT) and SSC.

Ms. Culver stated that there are a lot of really good ideas presented here. However, she wanted to be cognizant of the Northwest Fisheries Science Center's (NWFSC) ability to put on multiple

workshops. The SSC did a good job of identifying the priorities based on the Council discussions. She liked the inclusion of the two items identified by the GMT, which only need further discussions rather than a workshop. She did not add anything from the California Department of Fish and Wildlife (CDFW) report, but would look to California to amend the motion if they would like to include any of those issues.

LCDR Casad asked if the social and economic discussions in the motion would also include National Standard 10 (safety of human life at sea).

Mr. DeVore clarified that the discussion in the motion referred to modeling issues and that the safety of human life at sea would be part of the National Environmental Policy Act (NEPA) Analysis.

In response, LCDR Casad noted the important link between safety and economic performance, and the need to adequately weigh those issues in the analysis of regulatory impacts.

Ms. Yaremko noted that there were a lot of good suggestions in the advisory body input. In addition to any selected here by the Council, she hoped that the stock assessment authors, analysts, and researchers would do what they can to incorporate them into all of their work.

Mr. Wolford moved and Ms. Yaremko seconded Amendment 1 (to Motion 17) to include research into the Cowcod Conservation Areas (CCA) using non-extractive methods to assess the population.

Mr. Wolford stated that the proposed research was recommended in the CDFW and Groundfish Advisory Subpanel (GAP) reports. He noted that while we just saw a cowcod stock assessment which showed a population increase, the assessment also noted that the lack of data was hampering the movement of this stock into a Category I assessment. This stock has a great effect on the California fisheries, especially the recreational fishery, and deserves to move forward with this important research.

The Council discussed the potential impacts of the proposed amendment, including recently-completed science center research, the aspects of extractive versus nonextractive research, and the importance of Council direction on this issue.

Mr. Buell spoke in support of the non-extractive research in the CCA. He noted that there are many other areas up and down the coast where we are not getting good fishery-independent information due to the non-trawlable nature of those habitats and the fact that we only have a trawl survey. Also, there are other stocks in these areas which can constrain the fishery and where non-extractive research would be beneficial. Ms. Yaremko expressed her support for broadening the research beyond the CCA.

Mr. Buell moved and Mr. Feldner seconded Amendment 1a to strike CCA and replace it with “non-trawlable areas” and add “hook-and-line survey methods” after non-extractive.

Amendment 1a carried unanimously. Amendment 1, as amended, carried unanimously.

In response to questions from Mr. Buell, Ms. Culver clarified that the spatial analysis and socio-economic discussion could be less than a full workshop or just discussions with the SSC Subcommittee and members of the GMT. The trans-boundary stocks fall into a different category in which there needs to be further discussion by the GMT and SSC as to the specific questions or objectives they would like to achieve before it would be developed into a workshop.

Ms. Yaremko moved and Mr. Brizendine seconded Amendment 2 (to Motion 17) for the Council to submit all advisory body reports provided to the Council to the NWFSC for consideration by staff.

Amendment 2 carried unanimously.

Ms. Culver reiterated that the intent of the motion is to highlight the Council's "super" priorities for 2014, but also to include all the good ideas in the advisory body statements as worthy of further discussions. She viewed the two discussion items between the SSC and GMT as Council-sponsored items and the priority workshops identified by the SSC as being planned by the fisheries science centers.

Motion 17, as amended, carried unanimously.

#### **G.5 Consideration of Inseason Adjustments (9/14/2013; 8:02 a.m.)**

##### **G.5.a Agenda Item Overview**

Ms. Kelly Ames presented the Agenda Item Overview.

##### **G.5.b Reports and Comments of Advisory Bodies and Management Entities**

Mr. Dan Erickson presented Agenda Item G.5.b, Supplemental GMT Report and Agenda Item G.5.b, Supplemental GMT Report 2.

Mr. Gerry Richter presented Agenda Item G.5.b, Supplemental GAP Report.

##### **G.5.c Public Comment**

Agenda Item G.5.c, Public Comment (email from Mr. Bill James, Salem, Oregon).

Mr. Louis Zimm, San Diego, California.

##### **G.5.d Council Action: Adopt Inseason Adjustments to 2013 Groundfish Fisheries, Including Petrale Sole Carryover**

Mr. Wolford said that he had some concern with the proposed deeper nearshore change that would increase the impact projection on canary rockfish when it appeared that fishery was already going to exceed its canary projection. However, hearing that the change in projection to be over the harvest guideline is largely a result of modeling changes, rather than fishing activity changes, greatly eased his mind and enabled him to be supportive of the change.

Mr. Myer moved and Ms. Culver seconded Motion 8 that the Council adopt the inseason adjustment recommendations of the GMT as shown in Agenda Item G.5.b, Supplemental GMT DRAFT Council Meeting Minutes  
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Report, Table 2, page 4, in Alternative 2 for all three sectors (Limited Entry North, Open Access North, and Open Access South).

Mr. Myer stated that his motion does not threaten any conservation concerns. It is apparent that the numbers will still be under the attainment, and this is what the GAP recommended.

Motion 8 carried unanimously.

Ms. Yaremko moved and Mr. Wolford seconded Motion 9 that the Council adopt the recommendation from Agenda Item G.5.b, Supplemental GAP Report, page 3, to increase to 1,000 lbs for the 2-month period for deeper nearshore rockfish south of 40° 10' N. latitude in Period 6 (November and December).

Ms. Yaremko noted that earlier this morning she had some significant concerns about this proposed adjustment, as the scorecard projected an overage in this sector of a ton. While the full canary attainment is still projected to go under, so we are not at a conservation risk, she still had concerns about exceeding sector allocations. She appreciated the GMT bringing this issue forward, as well as the GAP discussion of the situation and the clarification that canary is not the constraint. She alluded to Mr. Wolford's description that fishing activity is not the reason for the change in impacts. This is the GAP recommendation and she supports it.

Ms. Ames noted that for clarity in the record prior to the vote, this action would be an increase for the limited entry and open access fixed-gear fisheries from 900 to 1,000 lbs for two months.

Motion 9 carried unanimously.

Ms. Culver moved and Mr. Ortmann seconded Motion 10 that the Council recommend NMFS issue 10 percent of the eligible surplus carryover of petrale sole from 2012 to 2013.

Ms. Culver stated that the Council had considerable discussion of this issue at the June meeting and requested that the GMT do a more thorough analysis as to the expectation of petrale sole catch in 2013 and how the issuance of surplus carryover would affect the attainment of the annual catch limit (ACL) in 2013. On page 7 (Item #2) of the GMT analysis, they reference that NMFS has established a policy to not issue surplus carryover when 100 percent of the preceding year's trawl allocation was caught. The trawl allocation in 2012 had been exceeded by 0.3 percent. She noted that in Table 7 on page 9, the GMT displayed that while the trawl allocation had been exceeded by 0.3 percent, the overall total catch and attainment of the ACL was 97.7 percent. The maximum amount of surplus carryover that is eligible to be carried over is 10 percent. With that maximum amount carried over into 2013, the ACL projected attainment is expected to be 97.5 percent. She did not want to debate the merits of exceeding a sector's allocation versus a total, however, it is a factor the Council needs to consider. There is an eligible surplus of 20 mt available for carryover (20 mt is 10 percent of the surplus). That, and the fact that the allocation was exceeded by 0.3 percent, indicates that a few vessels within the trawl sector exceeded their individual quotas while several were under their quotas in order to have a 200 mt surplus. At some point the Council should have a discussion about individuals exceeding their quota that comes with a penalty that requires obtaining quota to cover the

overage while remaining tied up at the dock while in deficit. Additionally, on a cumulative basis, we need to consider the impacts of the actions of those individuals potentially jeopardizing the ability for the entire sector to receive surplus carryover in the following year. The GMT also pointed out in June the reminder from the SSC that the annual catch is expected to vary and the ACL attainment should be looked at on an average basis, not one year independently. In conclusion, she thought that with the 20 mt of carryover that we will still be under our ACL attainment for 2013. In response to a question, she confirmed that the motion is recommending carryover of the full 20 mt surplus and not 10 percent of the 20 mt.

Motion 10 carried, Mr. Lockhart abstained.

[Council concluded this agenda item at 9:18 a.m. and moved to Agenda Item G.3]

## **G.6 Consideration of Trawl Rockfish Conservation Area (RCA) Boundary Modifications (9/15/2013; 9:48 a.m.)**

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

Ms. Kelly Ames presented the Agenda Item Overview.

### **G.6.b Reports and Comments of Advisory Bodies and Management Entities**

Agenda Item G.6.b, Supplemental NMFS Report: *Federal Register* for Proposed Rule Dated September 13, 2013 – Proposed Rule to Implement Revisions to the Boundaries of the RCA That is Closed to Vessels Fishing Groundfish with Bottom Trawl Gear.

Mr. Colby Brady presented Agenda Item G.6.b, Draft EA: Trawl Rockfish Conservation Area Boundary Modifications.

Mr. Rob Jones presented Agenda Item G.6.b, Supplemental GMT Report.

Ms. Heather Mann presented Agenda Item G.6.b, Supplemental GAP Report.

Sgt. Dan Chadwick presented Agenda Item G.6.b, Supplemental EC Report.

### **G.6.c Public Comment**

Agenda Item G.6.c, Supplemental Public Comment (Letter from Midwater Trawlers Cooperative),

Mr. Ben Enticknap, Oceana, Portland, Oregon.

Mr. Steve Bodnar, Coos Bay's Trawlers Association, Coos Bay, Oregon.

Mr. Paul Kujala, F/V Cape Windy, Hammond, Oregon.

Mr. Blair Miner, Fishermen's Marketing Association, Astoria, Oregon.

Mr. Seth Atkinson, Natural Resources Defense Council, San Francisco, California.

Mr. Tom Rudolph, Pew Charitable Trusts, Portland, Oregon.

Mr. Tom Libby, California Shellfish Company, Astoria, Oregon.

Mr. Jeff Lackey, F/V Miss Sue, Newport, Oregon.

Mr. Kevin Dunn, Trawler, Astoria, Oregon.

Ms. Heather Mann, Midwater Trawlers Cooperative, Newport, Oregon.

Mr. Rod Moore, Westcoast Seafood Processors Association, Portland, Oregon.

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

Mr. Pete Leipzig, Fisherman's Marketing Association, McKinleyville, California.

**G.6.d Council Action: Consider Recommendations for Trawl RCA Boundary Modifications for 2013-2014 Groundfish Fisheries (9/15/2013; 1:40 p.m.)**

Ms. Kirchner moved and Mr. Feldner seconded Motion 18 that the Council reconfirms the Final Preferred Alternative (Alternative 1) shown in Agenda Item G.6.b, Draft EA.

Ms. Kirchner stated that the Rockfish Conservation Areas (RCAs) were created to reduce impacts to the overfished species. They were not developed to provide reserves for habitat, nor for any ecological purpose. Additionally, we did not hear in the advisory body reports or from anyone that we should not select Alternative 1. In fact, the GAP was very clear in their support of Alternative 1. Also, the EC identified that Alternative 1 provides for consistent RCAs up and down the coast and simplifies the regulations. Previous evaluations from the GMT showed that impacts to overfished species were not a concern with this alternative. Harvest in 2011 and 2012 did not exceed 50 percent of overfished rockfish species likely to be encountered under this alternative.

Ms. Kirchner continued by saying that the industry, as represented by the GAP and in the public comments, has been clear about the need for this change and in their request for it. The opportunity to access underutilized species such as dover sole, yellow tail, Pacific cod, lingcod, and others were mentioned. Making this change shortens the distance that vessels must travel to harvest underutilized species, and also provides opportunities to target species such as dover sole and other flatfish. She noted that harvest in the trawl fishery in 2011 and 2012 for all non-whiting allocations was extremely low, 24 percent and 29 percent respectively.

Ms. Kirchner noted that the difference between Alternative 1 and Alternative 2 is 534 square miles which, in relation to the marine fishing area, is very small. The GAP gave some good estimates of the benefits that can be achieved with this alternative. She believes the draft EA is a good document and supports this decision. The draft EA says that the area has been largely closed since 2004. However, she believes that is misleading. There has been activity in the area and bottom impacts in this area with both fixed-gear fishing and the annual trawl survey. For the 150 to 200 fathom range, the EA identifies a probable substrate type through the entire area that is 93 percent soft sea bed. For the area from 40°10' N. latitude to 45°46' N. latitude, which some consider the "core" area, soft sea bed amounts to 92 percent of the terrain. Deep mud slope is identified as the primary habitat fished by bottom trawlers outside of the Heceta banks region. For soft bottom substrate, recovery time from bottom trawl impacts was identified to be as little as 0.4 to 1 year and up to 2.8 years for harder substrate. The data utilized to develop this information is the same as that available to the EFH review process, and recent research was used to evaluate these alternatives.

Ms. Kirchner stated that with regard to gear conflicts, the GAP discussed this issue with fixed-gear and bottom trawl participants in attendance and did not identify it as an issue of concern. In public comment we heard that Alternative 1 could even help alleviate gear conflicts by allowing the fishermen to spread out more. Waiting to take action will only delay the realization of economic benefits. Trawlers generally avoid fishing in areas with structure because it ruins their gear and is not cost-effective. They also want to avoid constraining and overfished species. The risk to taking action now is minimal for the habitat, but the benefits to coastal communities could

be great, especially for vulnerable communities that are in the area of concern. Some of these communities in Oregon have suffered negative impacts from the individual trawl quota (ITQ) program which could be somewhat alleviated by the proposed action.

Finally, Ms. Kirchner stated that when developing the rationalization program, we considered what to do with the RCAs. With 100 percent individual accountability, our intent was that the RCAs would not be permanent and could be removed after the IFQ program was well established. She believes that these first two years of the IFQ have proven that the fisherman can access the fish with a reduction of the bycatch and habitat impacts.

Mr. Myer expressed support for the motion, reiterated the role of accountability by fishermen in the IFQ program, and noted the support this action gives toward National Standards 5, 7, and 8. He also noted how this action would help avoid unexpected negative impacts on the fishery from constraining species.

Mr. Sones commented in support of the motion. He noted that establishment of the RCAs was a management measure based on protecting constraining species. It should not be morphed into different purposes that were not intended by the Council. To do so erodes the confidence of the industry and public to which the Council is accountable. Another concern is the assumption that the coral habitats are the ultimate answer to EFH. He is not convinced of that and has not seen enough evidence to show him that they are even relevant to protecting species. He has not seen millions of juvenile fish in these coral areas. He sees a few adult rockfish. He believes the sensitive areas are those near shore, the kelp beds and rocky reefs where the critical life stages bring these fish. Our biggest concerns are agricultural run-off, silt from logging operations, and storm water runoff. These are things we are not even considering. It is important for the tribes to work collaboratively. To do so, there must be trust. Trust is not gained by changing the goal posts and threatening legal action. Alternative 1 is a good option, it is supported by the GAP, and it doesn't raise any conservation concerns.

Mr. Ortmann stated that, similar to the implementation of the IFQ program, industry has willingly supported and moved this program forward at some cost. Rather than delaying the program, he believes it should move forward now and intends to support the motion for Alternative I.

Ms. Culver noted that she did not disagree with most of the comments that have been made in support of the motion regarding the purpose of the RCA and the goals and objectives of the IFQ program and the need to find ways to get additional access to the targeted stocks. However, she has some serious concerns with the analysis in the EA, particularly for Alternative 1.

Ms. Culver moved and Mr. Lincoln seconded Motion 19, as a substitute motion, that the Council adopt Alternative 2 in Agenda Item G.6.b, Draft EA.

Ms. Culver stated that she supports considering RCA changes and favors a strategic approach that supports hot spot closures and RCA review. She agrees that the purpose of RCAs is not to protect EFH. The purpose is to address risk relative to catch and bycatch. She agrees and understands that the IFQ program promotes individual accountability. However, there still a

degree of risk for others in the IFQ sector, and potentially for other sectors as well. The analysis in the EA is lacking, particularly for Alternative 1. Petrale sole isn't mentioned in the affected environment (Chapter 4), is not included in the targeted stocks, and is not included in the overfished stocks. There is a parenthetical under overfished stocks that states it is not included because it is included in targeted stocks, but it is not listed there. In Chapter 3 it is included in the overfished stocks and it is included in the socio-economic analysis as a target species. However, there is no analysis of how petrale sole is being affected. She pointed out what she believed to be additional inconsistencies or lack of analysis for the issues of carryover, RCA boundary adjustments, and non-IFQ species in the fisheries. The analysis includes bycatch rates, but not amounts, and applies them to 2011 and 2012. However, she believes that would not reflect what would happen through the end of 2013 and in 2014. It is misleading due to the fact that the petrale ACL was half of what it is now. She believes that there is a significant difference between the 150 fathom line and the modified 200 fathom line. This was supported by the GAP and public testimony. The GMT and the GAP worked together to determine the modified 200 fathom line with the inclusion of only two petrale hot spots so as not to compromise the line. While she does not believe the RCAs are intended to protect EFH; she believes there is some merit to the fact we are going through a deliberative EFH review process, and there are proposals that could be affected by modifying the seaward RCA boundary. Going with Alternative 1 could affect the ability of some of the EFH closures to achieve their objectives.

Mr. Lincoln spoke in support of the substitute motion and Ms. Culver's rationale for supporting it. He was not compelled that legal action was a threat or that Alternative 2 implies limited economic benefit to the industry. He believes Alternative 2 could be a significant step toward individual accountability. With respect to the habitat connection, he believes there is a potential connection and wants to preserve our opportunities to consider them in the future.

Mr. Crabbe spoke in opposition to the substitute motion. With regard to Ms. Culver's concern about the description of species accountability in the EA, especially petrale sole, he noted that the accountability is still there with the onboard monitoring, including for non-IFQ species. Alternative 1 does not create a new risk. Regarding habitat, he supports the collaborative RCA process, and Alternative 1 doesn't undermine this in any way. He also supports the EFH process, but noted that we are not getting any new information in that process which indicates there is habitat out there that is unknown or not considered in the EA. He believes we can move forward with Alternative 1 without undermining the EFH process.

Mr. Wolford stated that he believes the individual accountability of the IFQ program is overwhelming and he sees no risk to overfished species by either alternative. The only thing that holds weight with him is to weigh the benefit to the fishery in economic returns versus the potential risk to the environment. He believes that there is an economic difference between the alternatives. While no one has put a dollar value it, Mr. Kevin Dunn discussed the opportunity which equates to the area that is open to the fisherman. Alternative 1 opens more area. Mr. Brad Pettinger discussed the importance of the area available for Dover sole, and Mr. Leipzig discussed the issue of quality. This testimony helped quantify the significant economic benefit to the fleet between Alternatives 1 and 2. Balancing that economic benefit with the risk to the habitat, the EA states that the risk is pretty much the same between the two alternatives. The habitat is not virgin habitat and has been fished and is currently fished by longline gear. The

habitat recovery time is probably a year or two at best. The adverse impact of making a mistake and opening an area now that we might close two years later is not fatal. Considering this information, he stated that he would not support the substitute motion.

Ms. Kirchner agreed with the statements by Mr. Crabbe, was supportive of the EFH process, and did not see either of the alternatives degrading that process in any way. She was not supportive of the substitute motion.

Ms. Culver made further comments regarding her concerns for petrale sole, including the aggregation of petrale on their spawning grounds where they are especially vulnerable to the fishery. She noted examples where this risk might cause problems for the entire fishery and carryover for the following year.

Ms. Kirchner noted that fishermen do take these kind of issues into account when they make their decisions to fish, knowing that the regulations allow a carryover of a deficit to the next year.

Substitute Motion 19 failed (Mr. Myer, Mr. Wolford, Mr. Crabbe, Mr. Pollard, Mr. Feldner, Mr. Sones, Mr. Brizendine, Mr. Farrell, Mr. Ortmann, and Ms. Kirchner voted no; Mr. Lockhart abstained).

Motion 18 carried (Ms. Culver and Mr. Lincoln voted no; Mr. Lockhart abstained).

## **G.7 Initial Actions for Setting 2015-2016 Groundfish Fisheries (9/15/2013; 2:43 p.m.)**

### **G.7.a Agenda Item Overview**

Ms. Kelly Ames and Mr. John DeVore presented the Agenda Item Overview and introduced the following attachments:

- Agenda Item G.7.a, Attachment 1: Proposed Overfishing Limits and Potential Acceptable Biological Catches for 2015 and 2016 Groundfish Fisheries;
- Agenda Item G.7.a, Attachment 2: Briefing Paper authored by Dr. André Punt: Management Strategy Evaluation for Rebuilding Revision Rules: A Proof of Concept;
- Agenda Item G.7.a, Attachment 3: Proposed Revisions to COP 9;
- Agenda Item G.7.a, Attachment 4: New Management Measures Process; and
- Agenda Item G.7.a, Supplemental Attachment 5: Update to Tables 4 and 5 (Attachment 1).

### **G.7.b Reports and Comments of Advisory Bodies and Management Entities**

Agenda Item G.7.b, SSC Groundfish Subcommittee Report: SSC Groundfish Subcommittee Statement Regarding a Change in Target SPR Rate for West Coast Elasmobranch Species.

Agenda Item G.7.b, Supplemental GMT Report: GMT Report on the SSC Economics and GF Subcommittees' Reports on Data Models to be Used in the Socioeconomic Analysis for the 2015-16 Groundfish Biennial Specifications Process.

Dr. Owen Hamel presented Agenda Item G.7.b, Supplemental SSC Report.

Ms. Heather Reed presented Agenda Item G.7.b, Supplemental GMT Report 2.  
Mr. Gerry Richter presented Agenda Item G.7.b, Supplemental GAP Report.  
Ms. Marci Yaremko presented Agenda Item G.7.b, Supplemental CDFW Report.  
Mr. Frank Lockhart noted that they have not reached a final agreement with all of the tribes (top of page 3 of the GMT report) and therefore are not yet ready to propose a COP amendment at this time.  
Ms. Michele Culver noted that Washington Department of Fish and Wildlife (WDFW) is considering changes to its recreational regulations, including time-and-area and depth restrictions, season structures, and yelloweye RCAs.  
Mr. Troy Buell noted that regulations considered by ODFW are all listed in the table in the GMT report. However, as suggested by the GAP, they intend to withdraw the regulation allowing crab pots to be fished on groundfish vessels as allowing these vessels to participate in crab fisheries may degrade enforceability of some other state provisions.

### **G.7.c Public Comment**

Agenda Item G.7.c, Public Comment letter from Bill James.  
Mr. Jeff Miles, Fisherman, Port Orford, Oregon.

### **G.7.d Council Action: Adopt Final Overfishing Limits and Preliminary P\*s/Acceptable Biological Catches, Consider New Management Measures and Modifications to Council Operating Procedure 9 (9/15/2013; 4:08 p.m.)**

Ms. Yaremko moved and Mr. Crabbe seconded Motion 20 that the Council adopt the 2015-2016 overfishing limits (OFLs), stock categories, and sigma values recommended by the SSC (Agenda Item G.7.b, Supplemental SSC Report).

Ms. Yaremko stated that the SSC has done a thorough job in its analysis and the report speaks for itself.

Regarding the sigma values, Mr. DeVore clarified that the SSC report cross-references Agenda Item G.7.a, Attachment 1.

Motion 20 carried unanimously.

Ms. Culver moved and Mr. Lincoln seconded Motion 21 that the Council adopt the  $F_{SPR}$  50 percent as the default proxy fishing mortality rate for elasmobranch species managed by the Council as recommended by the SSC, and request that the  $B_0$  workshop in 2014 include a discussion about the  $B_{MSY}$  proxy for elasmobranchs.

Ms. Culver stated that the motion captures the recommendation of the SSC. In our discussion with Dr. Hamel, he indicated that the SSC did not do a data-mining or literature review to explore whether changing the MSY proxy for elasmobranchs was justified at this time, so she would like to have them look at this as part of the  $B_0$  workshop in 2014.

Motion 21 carried unanimously.

Ms. Culver moved and Mr. Lincoln seconded Motion 22 that the Council adopt for 2015-2016 a preliminary range (with updated values for longspine and shortspine thornyhead) of 0.25 and 0.45 for acceptable biological catches (ABCs) for all species for analysis (Agenda Item G.7.a, Supplemental Attachment 5), and the default P\* for 2013-2014 for spiny dogfish, other flatfish, and sablefish.

Ms. Culver stated that her motion represents an adequate range of expectations for management in 2015-2016 and beyond for the Amendment 24 Tier I analysis. Given that the Amendment 24 process might have a default P\*, this would help inform us as to what that could look like.

Motion 22 carried unanimously.

Ms. Lowman noted that the Council was not required to take action regarding COP 9 at this meeting, and asked Ms. Ames for further clarification.

Ms. Ames replied that staff has proposed action on COP 9 at this meeting so that as we move through the biennial process, everyone would know the rules of the road and ensure the new management measures comport with Council action in March 2013. If you are deferring action on COP 9, you should at least clarify how you are defining management measures that are eligible for consideration for this cycle. Further discussion clarified what the two proposed changes in COP 9 were and that the changes would be adopted later under Agenda Item H.4.

Ms. Culver recommended that we include the proposed language changes for COP 9 that are found in the Supplemental GMT Report 2 for adoption under Agenda Item H.4.

The Council discussed and staff clarified what was involved in adopting a prioritized range of new management measures for preliminary analysis, as well as the role of the proposed changes in COP 9 to allow consideration of items that have not previously been in the specifications process. The Council concurred in deferring action on these issues to November.

## **G.8 Consider Stock Complex Aggregations (9/16/2013; 8:29 a.m.)**

### **G.8.a Agenda Item Overview**

Mr. John DeVore presented the Agenda Item Overview.

### **G.8.b Reports and Comments of Advisory Bodies and Management Entities**

Mr. Dan Erickson and Mr. Corey Niles presented Agenda Item G.8.b, Supplemental GMT Report 4 – Summary PowerPoint (Summary of the following GMT Reports: Agenda Item G.8.b, GMT Report 1: Groundfish Management Team Report on Additional Methods that May be Used to Evaluate Alternatives for Stock Complex Reorganization; Agenda Item G.8.b, GMT Report 2: Groundfish Management Team Report on the Classification of Stocks in the Groundfish Fishery Management Plan; Agenda Item G.8.b, GMT Report 3: Groundfish Management Team Report on Port Sampling Surveys; Agenda Item G.8.b, Supplemental GMT Report 5: GMT Report on Restructuring West Coast Groundfish Stock Complexes; Agenda Item G.8.b, Supplemental GMT Report 6: Proposed

Alternatives for Classifying Stocks in the Groundfish Fishery Management Plan; and Agenda Item G.8.b, Supplemental GMT Report 7: GMT Report on Consider Stock Complex Aggregations.

Mr. John DeVore presented Agenda Item G.8.b, Supplemental SSC Report.  
Mr. Dan Erickson presented Agenda Item G.8.b, Supplemental GAP Report.

### **G.8.c Public Comment**

Mr. Brad Pettinger, Oregon Trawl Commission, Brookings, Oregon.  
Mr. Ralph Brown, Fisherman's Marketing Association, Brookings, Oregon.  
Mr. Gerry Richter, Santa Barbara, California.

### **G.8.d Council Action: Consider Analysis of Stock Complex Aggregations Alternatives (9/16/2013; 11:31 a.m.)**

Mr. Buell moved and Ms. Yaremko seconded Motion 23 that the Council defer further consideration of the "in or out of the fishery" question (except for consideration for the other fish complex), restructuring slope rockfish, shelf rockfish, and other flatfish to the 2017-2018 specifications cycle. For the other fish complex, adopt for public review the range of alternatives contained in Agenda Item G.8.b, Supplemental GMT Report 7.

Mr. Buell stated that there was good public testimony about changes in the way the fishery operates to prevent overfishing, which supports that there is not a burning need to change the complexes at this time, other than limiting the alternatives for the other fish complex.

The Council proceeded with considerable discussion about the effects of this motion with regard to which stocks were included in the other fish complex in this motion, how it might not be possible to develop OFLs for some stock complexes in November, and the impact of delaying some of the actions to the 2017-2018 specifications cycle.

Ms. Culver moved and Mr. Lincoln seconded Amendment 1 (to Motion 23) that following "restructuring" strike out "slope rockfish." In the second sentence add "and slope rockfish complexes" after "other fish" (refer to Agenda Item G.8.b, Supplemental GMT Reports 5 and 7).

Ms. Culver stated that consideration of restructuring the stock complexes was originally proposed for the 2013-2014 specifications cycle. However, for many reasons, the Council chose to keep that cycle narrowly focused and delay stock complex considerations to the 2015-2016 cycle. She noted that there has been a lot of work done on the complexes and the GMT has delved into this issue. It is difficult to imagine what more information and consideration we would need to have for the other fish and slope rockfish complexes to make a decision to move forward for this cycle. She believes that from a conservation perspective, the Council does need to consider the changes for this cycle, if any, that are needed with the other fish and slope rockfish complexes. The tables in GMT Supplemental Report 5 relative to slope rockfish show the percent of years we have exceeded the ABCs and OFLs, and needs to be addressed. This is a complex issue, and the GMT has done an outstanding job in creating fairly-structured alternatives.

Mr. Crabbe asked what could be expected in an analysis in November if this amendment passed and if there was sufficient time to respond to that analysis and make any necessary management changes as a result of this amendment.

Ms. Culver stated that she would expect an analysis of these alternatives in November would include any reallocation considerations that were necessary. She plans to include in a subsequent motion some suggestions for management measures and other ways of looking at this.

Mr. Lincoln noted that in November the most logical choice may be no action. However, there have been quite a few discussions today about the various management measures that could be used to address potential overfishing or changes in behavior. He would like to have more analysis before we make a decision to exclude certain stocks.

Mr. Wolford spoke in opposition to the amendment and the motion. While there may be better ways to organize the complexes, at the end of day the tools we have to manage the fish are pretty much the same. Creating new complexes is not going to allow us to do anything different. We have met our obligation.

Ms. Yaremko was in considerable agreement with Mr. Wolford, and spoke in opposition to the amendment. Considering all the work and reports of the GMT, she noted that we have met the obligation of the new National Standard 1 (NS1) guideline. The question regarding slope and shelf rockfish has been answered with regard to whether there is a need to restructure these complexes. The next step is to look at if there is a benefit to restructuring and a need to shift stocks around. She does not believe it is a priority and worth the risk at this time, and could require a disruptive change in the allocations to the fishery. The possible consequences are not worth the risks.

Mr. Lockhart strongly supported the amendment. There are issues beyond the NS1 guideline that NMFS previously identified as conservation problems. While some of those problems are diminished, not all are gone, particularly in the slope complex (e.g., roughey rockfish). The issue is, can we adequately prevent all of the stocks from being caught at too great of a rate in the current complexes. We need to look at that in more detail and fix the problems, regardless of how this is done. The ultimate goal is to ensure we address all of the conservation problems. At this point in time, stopping further work on the slope rockfish complex seems a bit premature. While there could be a no action decision in November, he is not comfortable with making that determination now, based on the information in front of us. Through this amendment we could look at the allocation issues and see if they are necessarily required with all of these options.

Mr. Pollard expressed some concern with the amendment and to some extent supported the position expressed by the California delegation. He noted that the advisory bodies and Council have taken a hard look at the issues, as they were instructed to do, and he does not find compelling reasons to restructure at this time. The compelling reasons were from catches two bienniums ago, and there have been important changes in the fishery since 2011 that make them less of a concern.

Mr. Buell spoke in opposition to the amendment. He addressed the issue of conservation concerns for the stock complexes. GMT Supplemental Report 5, Table 10 identifies the risk of exceeding a coast-wide OFL. It shows there is little risk of any conservation concern for aurora rockfish (based on a new full assessment and other consideration since June). The management measures for blackgill rockfish may not be absolutely effective, but are likely effective based on testimony before the Council. He noted that for roughey rockfish, the projected catches appear to increase the stock size. More information on this may help provide better clarity in the future. While there is some concern about shortraker rockfish (based on a data-poor assessment), information and testimony indicate that much of the biomass of shortraker rockfish is outside the Exclusive Economic Zone (EEZ), and he does not feel it is at an extreme risk of overfishing or of becoming overfished. We also need to consider the recent full assessments of aurora and roughey and how they compare to the data-poor assessments for those species to get some indication of the precision of the data-poor methods. Regarding what more information could be considered, there has been a hard look at this. On questions of “in or out of the fishery” he previously pointed out that there are some potential issues with the retention rate, which is an important consideration. He agrees with many of the comments of the California delegation. There is not a burning conservation need now with overfishing on other fish. Spiny dogfish is very close, but could be considered for individual management.

Ms. Culver noted that we are only taking action for public review. The GMT has produced a substantial amount of material to describe their approach in structuring the alternatives for the Council to consider. While there isn’t enough information here to lead to a final answer about staying with status quo or which alternative to adopt, she is hopeful that the GMT can provide the necessary analysis for the November meeting.

Ms. Yaremko noted that the GMT and SSC reports say nothing about additional information that would be helpful with regard to conservation concerns. She asked Mr. Lockhart to elaborate on what additional analysis he thought would better inform a decision in November.

Mr. Lockhart stated the analysis would be to look at the implications (e.g., any necessary allocation changes) of the options that are before us and how we could manage under the various options. There may be options that do not require re-allocation, but more analysis is needed to make sure. A lot of information has been presented, most of it supplemental at the meeting with a limited time for review. We are not making a final decision now, and some concerns with slope rockfish might be clarified and lead to a more informed decision in November. There probably will not be further analysis regarding the conservation concerns. There is enough information here now to give me conservation concerns (e.g., roughey). The analysis would look at the alternatives, and we may be able to determine something to make the impacts easier. We could still adopt the no action alternative as well.

Mr. Wolford stated that he certainly understood that part of the issue may be in regard to allocation, which we would have to deal with downstream. However, he mostly did not see the value of changing species from one complex to another unless it is better and easier to manage, not that it is just more logical to put it together. If we still have to go through and compare each stock to its OFL individually, then it doesn’t matter which complex the stock is in.

Mr. Feldner stated that if we consider this in November, there is still one big piece of information that we won't have. That is the performance of the fishery. In almost all cases, the trajectory of the catch history has these discontinuities that happened when the IFQ program was implemented. It seems the best science to help us make our decisions wouldn't be until the performance of the fishery is identified in the future. He is inclined to oppose this amendment because we are unlikely to have that information in November.

Amendment 1 failed (Mr. Ortmann, Mr. Wolford, Ms. Yaremko, Mr. Feldner, Mr. Brizendine, Mr. Crabbe, Mr. Pollard, and Mr. Buell voted no).

Mr. DeVore asked for guidance regarding the new species in the other fish complex in this motion.

Referring to GMT Supplemental Report 7, Mr. Buell clarified that the intent of the motion for adding species to the Fishery Management Plan (FMP), or taking them out, or reclassifying them as ecosystem component species, would be limited to those species in the Other Roundfish Alternative 1 (page 7) and the Cartilaginous Alternative I between pages 2 and 3.

Motion 23 carried (Mr. Lockhart, Mr. Wolford, and Ms. Culver voted no).

Mr. Lockhart noted that NMFS would need to look at the record of this action, consult with General Counsel, and report back with the results of that consideration at the November meeting.

Ms. Culver moved and Mr. Lincoln seconded Motion 24 that the Council add an alternative to be considered for 2015-2016 management that would require the use of an excluder device for roughey rockfish for the trawl fishery (all sectors) when fishing seaward of the RCA.

Ms. Culver stated that it is her understanding that some trawl fishermen have been exploring the use of excluder devices on the slope with the intent of excluding roughey rockfish. Also, the GAP indicated they were looking for some management measure alternatives to restructuring complexes. She would like this to be considered as an alternative, and anticipates the GMT would provide additional analysis through the specifications process for comments by the GAP and public and maybe some refinement or other alternatives.

Council members discussed how data from the fishery might be used in a study to assess the effectiveness of the excluders and the role of the GMT.

Ms. Lowman assumed that if this motion passed, the GMT would look at what is available and provide further input for the Council.

Motion 24 carried unanimously.

Ms. Yaremko moved and Mr. Brizendine seconded Motion 25 that, in the biennial specifications process, management entities and advisory bodies continue examining the prospective use of harvest guidelines within a complex to manage harvests of individual species.

Ms. Yaremko stated that there was a significant amount of testimony suggesting the harvest guideline within an overall ACL complex has been shown, at least in the early part of the year with black gill rockfish, to effectively constrain catches of that species while still allowing it to remain within the complex. She encourages its consideration for the 2015-2016 process.

Ms. Culver supported the motion and asked staff to provide information in November that would show where we have used harvest guidelines in the past to manage within the complexes.

Motion 25 carried unanimously.

## **G.9 Trawl Rationalization Trailing Actions Scoping, Process and Prioritization (9/16/2013; 1:43 p.m.)**

### **G.9.a Agenda Item Overview**

Mr. Jim Seger presented the Agenda Item Overview and introduced the following attachments:

- Agenda Item G.9.a, Attachment 1: Trawl Trailing Action Scoping Issue Overview;
- Agenda Item G.9.a, Attachment 2: Trawl Rationalization Regulatory Evaluation Committee Report on Trailing Actions (from 2011); and
- Agenda Item G.9.a, Attachment 3: Trawl Gear Regulation Change Proposals Developed at Trawl Fishery Gear Workshop.

### **G.9.b NMFS Reports**

Mr. Frank Lockhart presented Agenda Item G.9.b, NMFS Report 2: National Marine Fisheries Service Report on the Adaptive Management Program for the Trawl Rationalization Program.

Ms. Jamie Goen presented Agenda Item G.9.b, Supplemental NMFS PowerPoint: Flexibility and Efficiency in Groundfish Trawl Regulations (which incorporated Agenda Item G.9.b, NMFS Report 1: Initial Review of Pre- and Post-Trawl Rationalization Regulations).

### **G.9.c Reports and Comments of Advisory Bodies and Management Entities.**

Mr. Dan Erickson presented Agenda Item G.9.c, Supplemental GMT Report.

Mr. Shems Jud presented Agenda Item G.9.c, Supplemental GAP Report.

### **G.9.d Public Comment**

Agenda Item G.9.d, Public Comment.

Agenda Item G.9.d, Supplemental Public Comment 2.

Mr. Rod Moore, West Coast Seafood Processors Association, Portland, Oregon and Ms. Ana Kujundzic commented on the Adaptive Management Program Proposal.

Mr. Ralph Brown, Fisherman's Marketing Association, Brookings, Oregon.

Mr. Shems Jud, Environmental Defense Fund, Portland, Oregon; Mr. Brad Pettinger, Oregon Trawl Commission, Brookings, Oregon; and Mr. Pete Leipzig, Fishermen's Marketing Association, McKinleyville, California, commented on a comprehensive approach to

RCA modification through a collaborative effort (Agenda Item G.9.d, Supplemental Public Comment 2).

Mr. Mike Okoniewski, Pacific Seafoods, Seattle, Washington, spoke in favor of the GAP Position.

#### **G.9.e Council Action: Prioritize Trailing Actions for the Trawl Rationalization Program**

Mr. Lockhart spoke about the connection between workload and the implementation of trailing actions by NMFS. He suggested we work on completing those items already started and hold off on any new issues until we develop a plan for them next June when the specifications process is off the table.

Ms. Culver expressed appreciation for the GAP's prioritized list of trailing actions that the Council has acted on or is currently considering, as well as the items identified in the NMFS reports and Mr. Lockhart's comments. She thought it would be helpful to have one comprehensive list of all of these trailing actions, including those identified for the specifications process. She noted the proposal for RCAs and thought we need a broad and comprehensive consideration of this issue.

Other Council members agreed with the need to finish those actions which are already started and delay introducing new issues until there has been a thorough listing, review, and prioritization of the remaining trawl trailing actions.

Mr. Seger summarized the guidance for completing current actions and considering a comprehensive plan for new items at the June Council meeting. He asked for clarification on NMFS' position for allowing the risk pools to operate under current regulations and not take up that issue until the five-year review. Mr. Lockhart confirmed that as NMFS' preference.

Mr. Lockhart summarized the schedule for further considerations. He stated that there would be no items for November. The Adaptive Management Program (AMP) would be discussed in March with more analysis. The trawl flexibility package and the other issues would come back in June.

Regarding the AMP consideration in March, Mr. Seger noted that the Council would also need to take up the continuation of the pass-through. It would also be a good time to receive a progress report on implementation of the delayed actions, and any other minor issues that might need follow-up.

Ms. Lowman expressed concern with how long some issues would be delayed if we were just going through another scoping session in June.

Mr. Lockhart responded that he did not want to overpromise, but if possible, they would try to have the trawl flexibility program fleshed out some for June. Mr. Seger indicated that Council staff could use the list in the GAP report to guide any effort that was available for preparation prior to the June meeting.

## **G.10 Electronic Monitoring Scoping (9/17/2013; 7:59 a.m.)**

### **G.10.a Agenda Item Overview**

Mr. Brett Wiedoff presented the Agenda Item Overview and introduced Agenda Item G.10.a, Attachment 1: Information for Public Scoping of Electronic Monitoring of the Pacific Coast Limited Entry Trawl Groundfish Fishery.

### **G.10.b Reports and Comments of Advisory Bodies and Management Entities.**

Mr. Brett Wiedoff presented Agenda Item G.10.b, Supplemental GEMPC Report.

Mr. Brad Pettinger presented Agenda Item G.10.b, Supplemental GAP Report.

Mr. Dayna Matthews presented Agenda Item G.10.b, Supplemental EC Report.

Agenda Item G.10.b, Supplemental NMFS Report.

### **G.10.c Public Comment**

Agenda Item G.10.c, Public Comment from Jiri Nozicka, F/V San Giovanni.

Ms. Sarah McTee, Environmental Defense Fund, San Francisco, California.

### **G.10.d Council Action: Consider Range of Issues and Alternatives for Electronic Monitoring Regulations in the Rationalized Groundfish Trawl Fishery**

Ms. Culver expressed concern that, at some point, we need to discuss the role of the Groundfish Electronic Monitoring Policy Committee (GEMPC). Her impression was that it was not a policy committee. She noted on the bottom of page 1 of the GEMPC Report that it says the committee assumed the West Coast Groundfish Observer's Program (WCGOP) would continue to collect the scientific data at some level of coverage and the fisheries would be monitored for compliance 100 percent of the time through a combination of EM and the continued use of industry-funded observers. She wondered if the science centers and WCGOP have considered how all of this would take place and be coordinated.

Mr. Lockhart replied that these issues have been discussed in some detail with regard to the transition to electronic monitoring (EM). Consistent in these discussions is that WCGOP believes they can maintain a level of coverage that would allow them to meet all of their other requirements for biological sampling, somewhere in the range of 20-30 percent. It is also important to have WCGOP involved in the design of the compliance monitors duties since, if they have any biological sampling duties, it would be designed by the science center. He thinks NMFS can design a monitoring program that is consistent for compliance monitoring and biological sampling as well.

Council members discussed issues with regard to prosecuting violations based on video or EM information which has not yet been put to a court test. They also discussed how monitoring plans might need to be developed to fit differences in individual vessels and how the EM components and observer components had different strengths and weaknesses that will take careful consideration in any program.

Ms. Culver asked Mr. Lockhart if the science center has done an assessment for what the level of coverage would need to be to get biological samples of those rare species such as yelloweye. She believes the reduction in catch under the IFQ program needs to be taken into account and that the current 20 to 30 percent biological sampling might no longer be sufficient.

Mr. Lockhart responded that cataloguing rare events is one of the primary concerns that have been discussed for the program. One thought is that the biological sampling could be augmented by a 100 percent monitoring of the first receivers.

Mr. Crabbe expressed the need to move quickly on this and provide a more workable option for some of the smaller ports such as those in the area of Monterey.

Council members noted the problem of determining viability of halibut.

Ms. Kirchner supported the statements made by Mr. Crabbe. She recommended not narrowing the considerations too much this early in the process. If the EM program were implemented today, she believes the important components would include that it be optional and maximize retention, bearing in mind how that might be a problem with halibut and salmon. She believes electronic log books are a very important component (using data loggers at a minimum) and would include our current capability to capture location and hydraulics data. Again, she would want maximized retention for all species, including the prohibited species, and the least amount of discard possible.

Ms. Culver moved and Mr. Lincoln seconded Motion 37 that, at their October meeting, the GEM committees review the supplemental EC Report and discuss specifically the two recommendations of:

1. A “phased in approach” starting with midwater trawl and fixed gear (FG) in the first phase; bottom trawl as a separate phase; and
2. A data logger system (e logbook) as a component of the EM program.

Also, for the GEM committees to discuss:

1. How maximized retention could be feasible (i.e., provide specific alternatives for what could be discarded); and
2. Limiting tow times to reduce the necessity of safety discards.

And, request the NWFSC to provide a report on how the WCGOP program may move forward with an EM program in place for midwater trawl, fixed gear, and potentially bottom trawl at the November meeting. Specific questions for the WCGOP are:

1. What level of coverage would be needed to meet biological sampling goals, particularly for rare species, such as yelloweye rockfish?
2. What level of coverage would be needed to assess halibut size and viability?

Ms. Culver stated that there has been a lot of good public comment on this issue today. The EC and GEM committees have done good work in developing and reviewing the information and providing their recommendations. We should now move forward with further consideration of EM. She noted that the EC had some good suggestions about developing the program slowly and how the electronic logbook or a data logger system would be helpful as a good first step, regardless of whether or not we implemented an EM program. She also thought it would be good for the committees to discuss how a maximum retention component could be feasible. She was looking for some alternatives for what exactly could be discarded. We still need safety discards, but she also wanted recommendations for how we reduce the need for them, including reducing tow times. The second half of the motion is a request to the science center to provide a report on the WCGOP program and to discuss the biological sampling and halibut viability questions. She clarified that her motion would not preclude consideration of any industry proposals that could be provided at the November Council meeting, nor does it set any priorities or limits on what the committees should consider. While she specifically included looking at tow times as a way to reduce safety discards, the motion does not preclude exploring other options as well.

Motion 37 carried unanimously.

Mr. Lockhart noted that a NMFS Headquarters program for implementing regional EM plans is being developed and could be available for review by the Council before the Council's final decision on its EM program next September.

Mr. Lockhart spoke to a prior discussion of groundfish Amendment 10. He reported that NMFS staff believe they could refine the old draft and provide a regulatory framework to guide further consideration by the GEM committees. A lot of the information is already in regulation under the trawl rationalization program. This should be ready in the next week or two.

[Council concluded this agenda item at 9:49 a.m. and resumed at 10:20 a.m. with H.5]

## **H. Administrative Matters**

### **H.1 Managing Our Nation's Fisheries 3 Conference Follow-ups and Unrelated Legislative Matters (9/14/2013; 11:16 a.m.)**

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

Ms. Jennifer Gilden presented the Agenda Item Overview and the following attachments:

- Agenda Item H.1.a, Attachment 1: Matrix of Findings from the Managing Our Nation's Fisheries 3 Conference;
- Agenda Item H.1.a, Attachment 2: Preliminary Staff Compilation of Possible Magnuson-Stevens Act Reauthorization Priorities for Consideration by the Pacific Council;
- Agenda Item H.1.a, Attachment 3: September 2013 Staff Summary of Federal Legislation;
- Agenda Item H.1.a, Attachment 4: Comparison of 2012 and 2013 Version of REFI Act; and
- Agenda Item H.1.a, Attachment 5: S269 Original with Notations.

### **H.1.b Report of the Legislative Committee**

Ms. Jennifer Gilden presented Agenda Item H.1.b, Supplemental Legislative Committee Report.

### **H.1.c Reports and Comments of Advisory Bodies and Management Entities (9/14/2013; 1:02 p.m.)**

Mr. Scott McMullen presented Agenda Item H.1.c, Supplemental EAS Report.  
Dr. Owen Hamel presented Agenda Item H.1.c, Supplemental SSC Report.  
Mr. Mike Burner presented Agenda Item H.1.c, Supplemental SAS Report.  
Mr. Tim Roth presented Agenda Item H.1.c, Supplemental HC Report.  
Mr. Rob Jones presented Agenda Item H.1.c, Supplemental GMT Report.  
Mr. John Holloway presented Agenda Item H.1.c, Supplemental GAP Report.

### **H.1.d Public Comment**

Mr. Seth Atkinson, Natural Resources Defense Council, San Francisco, California.  
Ms. Heather Mann, Midwater Trawlers Cooperative, Siletz, Oregon.  
Mr. Rod Moore, West Coast Seafood Processors Association, Portland, Oregon.

### **H.1.e Council Action: Identify Priorities for Consideration in Amending the Magnuson-Stevens Act, and Consider Other Legislative Committee Recommendations (9/14/2013; 2:25 p.m.)**

Dr. Hanson moved and Mr. Wolford seconded Motion 13 that the Council adopt the table on pages 3, 4, and 5 of Agenda Item H.1.b, Supplemental Legislative Committee Report as Council priority assignments at this time.

Dr. Hanson stated that we are early in the process and, at this point, we do not have enough definition on any of the issues to know how they will come out. He recognized that some of the other committees may have different recommendations, but his motion will get things started and there will likely be amendments.

Ms. Culver moved and Mr. Feldner seconded Motion 14 (as a substitute for Motion 13) that the Council approve the recommendations of the Legislative Committee (LC) for the buyback loan bills and the international highly migratory species (HMS) fisheries bills as described in Agenda Item H.1.b, Supplemental Legislative Committee Report; and with regard to the Magnuson-Stevens Act (MSA) reauthorization, that the Council and its representatives at the CCC meeting communicate and express the following:

1. In general, the Council views the current MSA as being positive as it provides significant flexibility to the councils to address fishery management issues on a regional basis.
2. Proposed changes to the MSA should be focused on items that necessitate a change to the MSA to resolve, for example, those items currently prescribed in the MSA or that would benefit from clarification in MSA language.
3. As has been expressed, “the devil’s in the details;” as such, it is difficult for the Council to provide many specific changes at this time.

4. Move forward with providing the interpretation and comments of the Legislative Committee, Scientific and Statistical Committee, and Salmon Advisory Subpanel with regard to Items 1, 2, 7, and 24 in the Legislative Committee Report.
5. If Council members or staffs are asked what the Council's views are for items not listed above, then the response should be, "The Council has not developed a position on that."

Ms. Culver stated that her motion referenced parts of the recommendations of the LC, SSC, and SAS. She preferred to start small, focused on items that were previously discussed and have some Council consensus that, as MSA issues, they are problematic and changes could provide some flexibility to our Council. She is open to consideration of amendments for specific items. For each of the items listed in the LC Report, she could support or oppose it, depending on how the legislation is written. It is very difficult to provide a general sense of pro or con on these items without seeing the specific language and how it will affect our fisheries in the Pacific. Under #4 in her motion, she has included a limited number of recommendations from the table in the LC Report. For item 1 (revise the rebuilding time requirements) she favors the SSC interpretation of that item. The ten year requirement is something that we have discussed previously and it is particularly difficult to deal with for our long-lived groundfish species. Item 2 (stocks mistakenly determined to be overfished should not be held to rebuilding plan provisions) has also been discussed and seems to have some consensus. Item 7 (the carryover exception) allows for some needed flexibility and variability for managing the fisheries as long as the SSC determines there are negligible impacts. Finally, item 24, addressed in the LC, SSC, and SAS reports, seeks to replace the term "overfished" with "depleted." She noted there are a lot of items in the reports that would take a long time to develop a position on here today. We would likely need more information to reach a resolution on them.

Regarding #5 in her motion, Mr. Crabbe asked how Ms. Culver saw this agenda item proceeding into the future.

Ms. Culver responded that it was her understanding that the CCC would hold a meeting on October 23 and 24. At that time the CCC would discuss their priority topics for the eight regional councils and the Pacific Council would be expected to present their initial priorities. By including #5 in her motion, she is suggesting that the Pacific Council priorities be identified as those items listed in #4. If we are asked about any other item on the list or any new item, our response at that time would be that we have not yet developed a position on that. In terms of when the Council would take up this agenda item again or how the conversation continues, she expects that as we are asked to comment on specific legislation, or as we know there are going to be specific opportunities to provide some priorities, the Council can decide if we want to have another discussion to consider additions to our list.

Dr. Hanson stated that he thought it was inappropriate to use a motion to direct what Council members can say. He moved and Ms. Kirchner seconded Amendment 1 (to Motion 14) to strike #5.

Mr. Wolford indicated he would support the amendment. He thought #5 would impose too great a limit on the type of productive discussion that should occur in the CCC.

Ms. Culver noted that #5 only limited what could be stated as the official Pacific Council position. It did not prevent individual Council members from expressing their own personal views or positions. She thought it was important to clearly represent the Council's views as a whole. If the amendment passes, she would suggest we take considerably more time to discuss the other items that may come up in later discussions.

Further Council discussion considered some additional aspects of this issue, including agreement that advisory body statements can always be noted as such and that actions of the CCC seeking consensus across all eight councils does not prevent our Council from having other positions.

Mr. Wolford moved and Mr. Brizendine seconded Amendment 2 (substitute for Amendment 1 to Motion 14) to change #5 to read: “. . . then the response should be “While the Council has not developed a position on that, we have had discussions and here are some of the things we have talked about.”

Mr. Wolford stated that the intent here is to clearly indicate that we have not reached a final consensus or taken a vote, but we have had considerable discussion and input from the advisors and public.

After further discussion of the pros and cons and intent of #5 and the amendments, Mr. Wolford withdrew the motion with the consent of the second.

Amendment 1 carried (Mr. Myer and Ms. Culver voted no, Mr. Lockhart abstained).

Mr. Myer noted that regarding the buyback loan bills, we now have a request from Congresswoman Herrera-Beutler's office and may get one from Senator Cantwell. He would like to ensure the Council respond to those requests under this motion. Mr. Pollard confirmed that appeared to be the intent.

Mr. Sones stated he intended to support the substitute motion. However, it felt to him that the motion might be covering two separate questions that might benefit from a separation.

Mr. Brizendine expressed his strong support for creating a seat for the Pacific Council on the Inter-American Tropical Tuna Commission (IATTC).

Ms. Kirchner moved and Mr. Crabbe seconded Amendment 3 (to Motion 14) to add item 27 (IATTC representative from LC Report table) and the issue from Agenda Item H.1.c, Supplemental GAP Report, identified on page 1, that reads “address social and economic issues (e.g., “Possible” to “practicable”) in MSA Section 304(e)(4)(A)(i).

Ms. Kirchner stated that adding item 27 would address and clarify the discussion concerning the items on the list and the other LC recommendations. The issue identified in the GAP report is under item 26. However, she did not want to add item 26, but just the very narrow issue that MSA requires us to rebuild a stock in the shortest time possible taking into account the needs of the fishing communities. That essentially requires us to declare a disaster before we can take those needs into account. By changing “possible” to “practicable,” this more closely reflects the

court rulings that we have had and how this Council operates in taking into account the needs of communities to set the harvest levels.

Amendment 3 carried (Mr. Lincoln voted no, Lockhart abstained).

In response to a request for further clarity on the substitute motion, Council discussion confirmed that the motion does not eliminate items from future consideration, analysis, and prioritization. Ms. Culver noted that the motion (in the second paragraph) speaks to official Council communications at the CCC meeting. If the Council wishes to include other items in the CCC discussions, they should be included in amendments to the substitute motion. Further consideration and next steps for items not included in the substitute motion could be discussed after action on this motion.

Mr. Wolford pointed out the very large number of items that came from the MONF3 Conference and also that there are many items that should be considered that are not MSA issues. He was particularly concerned with regard to changes in the observer qualifications which could be MSA-related, but may not be, and he is not sure how to include it.

Ms. Culver responded that the observer qualifications are in regulations, not in the MSA. However, if Mr. Wolford wanted to include it in what is discussed at the CCC, he should include it in an amendment to the motion.

In thinking about the role of the Chair and Vice Chair at the CCC meeting, Mr. Crabbe noted that his tendency is to not support the motion. He would rather see an amendment to the original motion that says these five items are highest priority—as simple as that. He wants to give the Chair and Vice Chair some flexibility.

Mr. Farrell agreed with Mr. Wolford and Mr. Crabbe concerning the fact that many of the items are not MSA issues and this motion negates the importance of these issues. He would support Mr. Crabbe's suggestion for amending the original motion rather than trying to amend and broaden the very narrow scope of issues in item 4 of the substitute motion.

The Council continued with considerable discussion of how the substitute motion would govern inclusion of a broader array of issues and not limit the Council's future actions. There was considerable confusion and disagreement over this issue.

Substitute Motion 14 failed (Mr. Brizendine, Mr. Farrell, Mr. Crabbe, Mr. Sones, Mr. Ortmann, Mr. Wolford, and Ms. Lowman voted no, Mr. Lockhart abstained).

The Council returned to deliberation on Motion 13 (Hanson/Wolford).

Ms. Culver moved and Ms. Kirchner seconded Amendment 1 (to Motion 13) to remove the items that the Legislative Committee recommends dropping in Agenda Item H.1.b, Supplemental LC Report (items 10, 13, and 15) and also remove items 3, 6, 9, 16, 17, 18, 19, 20, 22, and 26.

Ms. Culver stated that, in general, the items dropped are those which need further analysis, information, and discussion in order to formulate a Council position on whether or not they require changes in the MSA. Item 3, trans-boundary stock rebuilding exception, has been addressed in the past, but the SSC pointed out that it depends on the definition of “trans boundary” stocks, which is not yet clear, and at one time or another could include almost any stock. Regarding item 6, exemption for short-lived species, the SSC again raised the question of how you define “short-lived species.” This needs to be looked at on a species-by-species basis with further guidance from the SSC. Regarding item 9, broadening the authority to address non-compliance with RFMO measures, she was not aware of what authority this was referring to and we need a better understanding of what is proposed here. Ms. Culver raised similar concerns (lack of definition, need for further clarification and development) with the remaining items.

Ms. Kirchner agreed with the items proposed for removal. However, she wished to add additional language from the Supplemental GAP Report and so moved (Amendment 1a). However, because this appeared to be an amendment to the main motion (Motion 13) rather than to Amendment 1, she withdrew the motion prior to a second to allow consideration of Amendment 1.

Mr. Farrell moved and Mr. Crabbe seconded Amendment 2, as a substitute amendment to Amendment 1, to insert after “as” - “well as items outlined by committees under Agenda Item H.1.c and those items contained in Agenda Item H.1.a, Attachment 1 as recommended by Council staff after consultation as potential priority assignments.”

Mr. Farrell stated that rather than using an exclusionary approach to cull down the list of items, he thought there were many items that appeared in the advisory body statements as well as the long list from the MONF3 Conference that should not be discounted without the opportunity to identify them as potential priorities to act on. He appreciated the work by staff and others to vet and reduce the items, but felt strongly that some items were not vetted or accounted for in the Legislative Committee document. In response to questions, he clarified that his motion was intended to capture the entire list of items in the MONF3 report as Council priorities. He did not believe our task was to identify priorities for the CCC. However, he also believes that the advisory body statements provide information that helps further prioritize the items, and such could be communicated to the CCC.

Council members expressed several questions and concerns about the approach offered by Mr. Farrell’s amendment.

Amendment 2 (substitute to Amendment 1 to Motion 13) failed (Mr. Feldner, Mr. Lincoln, Ms. Kirchner, Ms. Culver, Mr. Myer, Mr. Sones, Mr. Ortmann and Ms. Lowman voted no; Mr. Lockhart abstained).

The Council continued with consideration of Amendment 1 (Culver/Kirchner Amendment).

Ms. Culver confirmed that the intent of Amendment 1 does not preclude further discussion and prioritization in the future of any of the items excluded by the Amendment at this time.

Amendment 1 to Motion 13 carried (Mr. Wolford, Mr. Farrell, and Mr. Sones voted no; Mr. Lockhart abstained).

Ms. Kirchner moved and Mr. Feldner seconded Amendment 3 to Motion 13 (as amended by Amendment 1) to include an item 28 that reads “Address social and economic issues (e.g., ‘possible’ to practicable”); MSA Section 304 (e)(4)(A)(i).

Ms. Culver expressed concern about the parenthetical portion of the motion (“possible” to “practicable”). In the GAP statement they are recommending it’s the rebuilding times that should be revised. She is supportive of adding the social and economic issues, but not in changing the rebuilding time.

Ms. Kirchner stated that this issue arose from the 2007/2009 specifications that were challenged by a lawsuit. The opinion in the lawsuit seems to support the idea that to rebuild a stock in the shortest time “possible,” we would need to be in a disaster situation to take into account the needs of the community. Changing the word to “practicable” gives us the flexibility to take into account the fishing community needs in a comprehensive manner, not just under a disaster situation.

Amendment 3 carried (Ms. Culver and Mr. Lincoln voted no; Mr. Lockhart abstained).

Ms. Lowman moved and Ms. Kirchner seconded Amendment 4 (to Motion 13 as amended by Amendments 1 and 3) to include an item 29 to read “better-align and streamline NEPA and MSA Section 304 (i)”.

Ms. Lowman stated that this wasn’t on the list, we haven’t been able to accomplish this, and the Council strongly endorsed it in the past for the CCC comments.

Amendment 4 carried (Mr. Lockhart abstained).

Mr. Wolford moved and Mr. Brizendine seconded Amendment 5 (to Motion 13 as previously amended) to include an item 30 to provide flexibility in requirements and qualifications for observers. This relates to MSA Title IV Fishery Monitoring and Research.

Mr. Wolford stated that this is one of the items that has been spoken to many times and clearly impacts the ability to provide observers in the small boat harbors. We need to make it economically viable for this to happen. We need to have observers with the right qualifications to meet the necessary requirements of the job, but not such high qualifications and requirements that small boat fishermen cannot afford them.

Amendment 5 carried (Mr. Lockhart abstained).

Ms. Culver moved and Mr. Lincoln seconded Amendment 6 (to Motion 13 as previously amended) to include items 1, 2, and 3 from the previous substitute motion (Motion 14) which were:

1. In general, the Council views the current MSA as being positive, as it provides significant flexibility to the councils to address fishery management issues on a regional basis).
2. Proposed changes to the MSA should be focused on items that necessitate a change to the MSA to resolve (i.e., those items currently prescribed in the MSA or would benefit from clarification in MSA language).
3. As has been expressed, “the devil’s in the details;” as such, it is difficult for the Council to provide many specific changes at this time in terms of providing guidance to the CCC.

Ms. Culver stated that she wanted to convey some positive comments with regard to the existing MSA. We are bringing forth a fairly large list of priority changes, and she didn’t want to give the impression that we had a lot of problems with the MSA.

Amendment 6 carried (Mr. Lockhart abstained).

Mr. Farrell moved and Mr. Crabbe seconded Amendment 7 (to Motion 13 as previously amended) to include: “Remove the requirements for three candidate names under MSA Section 302(b)(5).

Mr. Farrell stated that it is difficult for the state agencies to provide three names for consideration to each appointment on the Council.

Council members discussed the fact that this was a completely new item which did not come from the MONF3 Conference and had not been discussed in the Council, or had tribal input. They also questioned if the advisory bodies had considered it. Mr. Crabbe agreed that it may not have been appropriately vetted, and while it may be a priority, it should receive further consideration before the Council decides to move it forward.

Mr. Farrell withdrew Amendment 7 and Mr. Crabbe (the second) agreed.

Motion 13, as amended, carried (Mr. Farrell and Mr. Lincoln voted no; Mr. Lockhart abstained).

Mr. Myer moved and Ms. Kirchner seconded Motion 15 for the Council to send a letter to Congress Member Herrera-Beutler, Senator Cantwell, and any other congressional members that should request input regarding HR. 2646 and S. 1275, including the four bullets on page 1 of Agenda Item H.1.b, Supplemental LC Report.

Mr. Myer stated that we have received a request for comments from Representative Herrera-Beutler, and the bill is very important to the trawl industry. It reduces the interest rate that participants in the IQ program pay for the buyback and other programs. He included S.1275, which is the same as the House Bill. The four bullets in the LC report are essentially the same as in the GAP statement.

Ms. Lowman asked that cost recovery that is coming on line in January also be included in any response. Mr. Myer agreed that cost recovery, for which the GAP gave several good examples of cost in their report, could be part of the guidance if his motion passes.

Motion 15 carried (Lockhart abstained).

Mr. Brizendine moved and Mr. Sones seconded Motion 16 that upon receiving a request for comment that we direct the Executive Director to write a letter to speak to (in support of) HR. 69 and S. 269 stating the Council's interest in this seat (on the IATTC).

Mr. Brizendine stated that this seat and another seat have been suggested and we can make good use of it. We want to make sure we state our interest in this seat rather than having it go to another council.

In response to questions, Dr. McIsaac clarified that this motion was different from item 27 referred to in a previous motion. The present motion involved speaking to the legislation, not to setting an MSA priority for further discussion.

Mr. Gregg Casad noted that the U.S. Coast Guard has been on record in support of these bills in their various forms and to strengthen the IUU regulations.

Motion 16 carried (Mr. Lockhart abstained).

Dr. Hanson noted the request on page 5 of the LC report by the Makah Tribe to consider eliminating the term limit and requirement for three candidate names for the tribal Council position at each appointment. The recommendation of the LC is to solicit information from the public and tribes and discuss this issue at the next Council meeting. He hoped the Council could treat this as guidance rather than needing a formal motion.

Mr. Sones noted that he would be discussing this further with the Northwest Indian Fisheries Commission and Columbia River Inter-Tribal Fish Commission. It isn't an attempt to limit participation. It would allow more than one name, but there are times when it is difficult to have at least three candidates that seek to serve on the Council. It would also mean the tribes are treated more like the states with regard to nominations and term limits.

Mr. Pollard confirmed that this would be guidance to staff to follow through for a request for comments and consideration at the November Council meeting.

[Council concluded this agenda item at 5:32 p.m. and continued with G.4 on 9/15/2013.]

## **H.2 Approval of Council Meeting Minutes (9/16/2013; 6:58 p.m.)**

### **H.2.a Council Member Review and Comments**

Mr. Ortmann asked if there were any corrections to the minutes (Agenda Item H.2.a, Supplemental Attachment 1: Draft April 2013 Minutes: 218<sup>th</sup> Session of the Pacific Fishery Management Council). Council members had none.

## **H.2.b Council Action: Approve Previous Council Meeting Minutes**

Mr. Ortmann moved and Mr. Pollard seconded Motion 28 for the Council to approve the minutes as provided in Agenda Item H.2.a, Supplemental Attachment 1: Draft April 2013 Minutes of the 218<sup>th</sup> Session of the Pacific Fishery Management Council.

Motion 28 carried unanimously.

## **H.3 Fiscal Matters (9/16/2013; 7:00 p.m.)**

### **H.3.a Agenda Item Overview**

Mr. Chuck Tracy presented the Agenda Item Overview.

### **H.3.b Budget Committee Report**

Mr. Chuck Tracy presented Agenda Item H.3.b, Supplemental Budget Committee Report. There were no recommendations for Council action in the report.

### **H.3.c Reports and Comments of Advisory Bodies and Management Entities**

None.

### **H.3.d Public Comment**

None.

### **H.3.e Council Action: Consider Budget Committee Report**

Ms. Lowman commented on the consistency of the Council staff receiving a top rating for the audit report. She especially commended the work of Ms. Patricia Crouse.

Ms. Culver noted that the Council funding for 2013 was cut about 10 percent below the 2012 level and the level of funding for state liaison contracts is also reduced. With the ongoing budget reductions experienced at the state level, she was concerned with the ability of the states to participate in Council activities without additional staff, especially with more ad hoc committees. It is important for the states to be able to participate and help resolve the management issues. She encouraged staff and Council members to get that message to NOAA Headquarters.

Ms. Lowman noted that the hard work of the states and Federal entities in partnership has made our Council strong, and that we are challenged by the erosion of adequate financial support.

## **H.4 Membership Appointments and Council Operating Procedures (9/16/2013; 7:07 p.m.)**

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

Mr. Chuck Tracy presented the Agenda Item Overview and noted Agenda Item G.7.a, Attachment 3: Proposed Revisions to COP 9, which was scheduled for action under this agenda item.

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

None.

#### **H.4.c Public Comment**

None.

#### **H.4.d Council Action: Appoint Individuals to Advisory Bodies and Consider Changes to Council Operating Procedures**

Mr. Myer moved and Ms. Culver seconded Motion 29 that the Council recommends reappointment of Mr. Phil Anderson to the Joint Management Committee for Pacific Whiting (JMC).

Mr. Myer stated that Mr. Anderson has done a great job and should be reappointed to the JMC.

Motion 29 carried unanimously.

Mr. Feldner moved and Ms. Kirchner seconded Motion 30 that Ms. Dorothy Lowman be recommended to the Departments of State and Commerce to fill the United States Commissioner seat to the Western and Central Pacific Fisheries Commission designated for the Chair or a member of the Pacific Fishery Management Council, effective after the completion of the current annual Commission cycle and in such a manner that there is no gap between the current appointment of Ms. Marija Vojkovich and Ms. Dorothy Lowman. The intent of this recommended synchrony is that this Commission seat not be unfilled at any point in time.

Mr. Feldner stated that Ms. Vojkovich has done a good job in this seat. However, she is moving off of the Council, and the person holding the seat must be a member of our Council.

Motion 30 carried (Mr. Lockhart abstained).

Mr. Bonham moved and Mr. Wolford seconded Motion 31 for the Council to appoint a designee from the State of California for those committees currently held by Ms. Vojkovich.

Motion 31 carried unanimously.

Mr. Bonham moved and Mr. Brizendine seconded Motion 32 that the Council appoint Captain Robert Puccinelli to the California Department of Fish and Wildlife seat on the Enforcement Consultants.

Motion 32 carried unanimously.

LCDR Casad moved and Mr. Sones seconded Motion 33 that the Council appoint Lieutenant Cody Dunagan to the U.S. Coast Guard seat on the Enforcement Consultants.

Motion 33 carried unanimously.

Ms. Culver moved and Mr. Myer seconded Motion 34 that the Council appoint Ms. Jennifer Quan to the WDFW seat on the Habitat Committee.

Motion 34 carried unanimously.

Mr. Wolford moved and Mr. Sones seconded Motion 35 that the Council appoint Dr. Andrew Cooper to the vacant at-large seat on the Scientific and Statistical Committee.

Motion 35 carried unanimously.

Ms. Kirchner moved and Mr. Wolford seconded Motion 36 that the Council appoint the following people to seats on the Groundfish Endangered Species Workgroup:

NMFS Protected Resources Division: Ms. Alison Agness

USFWS: Ms. Laura Todd

West Coast Groundfish Observer Program: Dr. Jason Jannot

ODFW: Dr. Caren Braby

CDFW: Ms. Joanna Grebel

WDFW: Mr. Corey Niles

Washington Coast Tribal: Mr. Jonathan Scordino

Fish Taxa Expert: Dr. Richard Gustafson

Sea Turtle Taxa Expert: Dr. Rhema Bjorkland

Marine Mammal Taxa Expert: Dr. Brad Hanson

Seabird Taxa Expert: Dr. Thomas Good

Motion 36 carried unanimously.

Ms. Lowman noted that the Council had discussed COP 9 in Agenda Item G.7 and was not ready to take action on it at this time.

[Council concluded this agenda item at 7:25 pm and reconvened in the morning with G.10]

## **H.5 Future Council Meeting Agenda and Workload Planning (9/17/2013; 10:20 a.m.)**

### **H.5.a Agenda Item Overview**

Dr. Donald McIsaac presented the Agenda Item Overview and introduced the following attachments:

- Agenda Item H.5.a, Attachment 1: Pacific Council Workload Planning: Preliminary Year-at-a-Glance Summary;
- Agenda Item H.5.a, Attachment 2: Preliminary Proposed Council Meeting Agenda, November 1-6, 2013 in Costa Mesa, California;
- Agenda Item H.5.a, Supplemental Attachment 3: Pacific Council Workload Planning: Preliminary Year-at-a-Glance Summary; and
- Agenda Item H.5.a, Supplemental Attachment 4: Preliminary Proposed Council Meeting Agenda, November 1-6, 2013 in Costa Mesa, California.

### **H.5.b Reports and Comments of Advisory Bodies and Management Entities**

Mr. Louis Zimm presented Agenda Item H.5.b, Supplemental REVISED GAP Report.  
Mr. Mike Burner presented Agenda Item H.5.b, Supplemental EAS Report.  
Ms. Kelly Ames presented Agenda Item H.5.b, Supplemental GMT Report.  
Mr. Frank Lockhart presented Agenda Item H.5.b, Supplemental NFMS Report.

### **H.5.c Public Comment**

Mr. Steve Marx, Pew Charitable Trust, Portland, Oregon.  
Ms. Theresa Labriola, Wild Oceans, Leesburg, Virginia.  
Mr. Ben Enticknap, Oceana, Portland, Oregon - discussed the EFH proposal to move forward for the Phase 2 process for the November Council Meeting and the sardine management agenda items.  
Mr. Brad Pettinger, Oregon Trawl Commission, Brookings, Oregon - discussed the Marine Stewardship Council (MSC) Certification Action Plan.

### **H.5.d Council Discussion and Guidance on Future Meeting Agenda and Workload Planning (9/17/2013; 11:36 a.m.)**

Dr. McIsaac suggested the Council discussion start with the MSC Certification Action Plan to see if it would actually need Council consideration in November or could just be handled by staff.

Ms. Kirchner expressed comfort with moving the MSC certification process forward with just a letter drafted by the Council staff. Other Council members felt it was necessary for the Council to deal with it directly if there was something that had not been anticipated during this agenda item. It is likely there will be similar requests for Council comments on the certifications in the future from other parts of the industry.

LCDR Casad noted that the proposed November agenda drops the agenda item for Federal Enforcement Priorities. He stated that this item is an Office of Law Enforcement requirement and the Coast Guard takes great value in and seeks that type of guidance from the Council. He understands why it may not be on the November agenda, but it is troubling to not see it anywhere on the agendas for the following year.

Mr. Lockhart provided some guidance for the GMT regarding the management strategy evaluation. He recommended they restrict their consideration of that issue to work that will help move the 2015-2016 specifications process forward. Regarding the request by the Ecosystem Advisory Subpanel for guidance on moving forward with developing indicators, he indicated NMFS staff will work with the science centers to move that forward.

Regarding the Ecosystem Advisory Subpanel request, Mr. Lincoln thought that required a NMFS lead. As an alternative to having it on the November Council agenda, he suggested that the science centers might be able to host a webinar or something well in advance of their March report.

Mr. Lockhart was open to considering that and will work with Dr. McIsaac on a resolution of how best to proceed.

Mr. Wolford commented on the barotrauma item in March. He expected it was just an update and if so, an information report would be sufficient rather than an agenda item. With regard to the midwater sport fishery proposal, he would like to see that moved forward so that it does not jeopardize the intent for a 2015 start.

Mr. Lockhart responded that the best course of action to ensure implementation of a Council action in the following year is to take final action in April. The latest opportunity is June.

Ms. Kirchner requested that the shading on the midwater sport fishery item in March and April be removed.

Mr. Lincoln noted that a U.S. Army Corps of Engineers contact had been provided by LCDR Casad regarding the need for dredging the channel at the port of Ilwaco. He suggested the Executive Director draft a letter seeking answers to the questions that were raised during open comment at this meeting.

Ms. Yaremko stated that it was very important for the Council to hear a report on the 2013 survey prior to considering the sardine management measures and the issue of the harvest guideline for the six-month period. She would support hearing the NMFS report (in November) before the management measures. One thing that concerns her is the predominance of the groundfish items on each agenda. She believes we need to ensure adequate time for each of our FMPs. With regard to groundfish, she supports the must-do items to complete the specifications and management measure process for 2015-2016. We have put off the EFH for too long and would support moving forward with that. With regard to EM, she is not completely confident that it is a must-do for November, and if we are in a time crunch there doesn't seem to be a risk to delay that item.

Dr. McIsaac thought Ms. Yaremko made a good point in regard to moving the sardine harvest parameter review to March or some other time. If there is a NMFS report on the 2013 survey, that could come before the Council in November and that reduction in agenda could allow for consideration of the Federal Enforcement Priorities Report.

Ms. Lowman stated that to stay on schedule with the EM, it would be essential to have a range of alternatives to work on over the winter months.

Dr. McIsaac spoke to the sablefish permit stacking issues. He suggested noticing the public that the Council would be looking at a selection of all candidate measures to be considered for change, and if that is a light process, we would schedule it in as a phase one effort. If it proves to be a heavier task, we would revert to the prior plan. If we followed this plan, we would request the public to come forward with all of their ideas for changes at the November meeting.

Council members were generally in support of that approach. Mr. Lincoln hoped that we could advise the public that the issues already identified and scheduled for an expedited review need not be resubmitted.

Dr. McIsaac summarized the Council input. He noted the Council staff will look carefully at the MSC certification request. If it is straightforward, staff will draft a letter of support. If it has some unexpected implications, we will consider it for the November agenda. Staff will make contact with the U.S. Army Corps of Engineers concerning the Ilwaco dredging needs. Follow-up with NMFS will include consideration of a webinar, or perhaps an evening program, at the November Council meeting on the forage fish indicators. A barotrauma fact sheet will be added to guide the Council on where we are with regard to this issue prior to the March meeting. Also, we would exchange F.5 (sardine management measures) for the three agenda items we just spoke to, and opening up the sablefish permit stacking without reconsidering the changes already in an expedited review should capture the intent of the Council for agenda planning for the November Council Meeting

## **I. Ecosystem Based Management**

### **I.1 Update List of Fisheries (9/16/2013; 4:17 p.m.)**

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

Mr. Mike Burner presented the Agenda Item Overview.

Ms. Yvonne deReynier presented Agenda Item I.1.a, Attachment 1: Ad hoc Ecosystem Workgroup Report.

#### **I.1.b Reports and Comments of Advisory Bodies and Management Entities**

Mr. Paul Dye presented Agenda Item I.1.b, Supplemental EAS Report.

Mr. John Holloway presented Agenda Item I.1.b, Supplemental GAP Report.

#### **I.1.c Public Comment**

None.

#### **I.1.d Council Action: Final Adoption of Updates to the List of Fisheries**

Mr. Crabbe moved and Mr. Brizendine seconded Motion 26 that the Council adopt the updated List of Fisheries contained in Agenda Item I.1.a, Attachment 1, Ecosystem Workgroup Report, with the addition of the recommendations in Agenda Item I.1.b, Supplemental GAP Report.

Mr. Crabbe stated that this list has been well-reviewed by the advisory bodies and should be ready to adopt.

Ms. Culver moved and Mr. Myer seconded Amendment 1 (to Motion 26) to add at the end of the original motion “do not include crab loop for Dungeness crab fisheries for the State of Washington.” She clarified that crab loop should not be included for either crab fishery in Washington.

Amendment 1 carried unanimously. Motion 26, as amended, carried unanimously.

## **I.2 Unmanaged Forage Fish Protection Initiative (9/16/2013; 4:40 p.m.)**

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

Mr. Mike Burner presented the Agenda Item Overview.

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

Ms. Yvonne deReynier presented Agenda Item I.2.b, Supplemental Ecosystem Workgroup Report.

Mr. Paul Dye presented Agenda Item I.2.b, Supplemental EAS Report.

Mr. Mike Burner presented Agenda Item I.2.b, Supplemental SAS Report.

Mr. Mike Burner presented Agenda Item I.2.b, Supplemental HC Report.

Mr. John Holloway presented Agenda Item I.2.b, Supplemental GAP Report with a change to the document relating to a reference to a Fishery Ecosystem Plan (FEP) rather than an FMP.

Mr. Mike Burner presented Agenda Item I.2.b, Supplemental CPSMT Report.

Mr. Mike Okoniewski presented Agenda Item I.2.b, Supplemental CPSAS Report.

### **I.2.c Public Comment**

Agenda Item I.2.c, Public Comment.

Agenda Item I.2.c, Supplemental Public Comment 2 (Beginning with comment by Greenburger's).

Agenda Item I.2.c, Supplemental Public Comment 2 (Beginning with comment by the Association of Northwest Steelheaders).

Mr. Steve Marx, PEW Charitable Trusts, Portland, Oregon; commented in support of Initiative 1.

Mr. Greg Helms, Ocean Conservancy, Santa Barbara, California, spoke in support of continuation of the protection of unmanaged forage fish.

Mr. Ben Enticknap, Oceana, Portland, Oregon, spoke in support of the commitment to the Forage Fisheries Initiative 1.

Mr. John Ellsworth, Idaho Council of Trout Unlimited, Boise, Idaho, provided comments on Agenda Item I.2.c, Supplemental Public Comment 3, Idaho Council of Trout Unlimited.

Ms. Theresa Labriola, Wild Oceans, Leesburg, Virginia.

Mr. Phil Pirone, Pro-cure Bait Scents, Salem, Oregon.

Mr. Norm Ritchie, Association of Northwest Steelheaders, Portland, Oregon, discussed the forage species.

### **I.2.d Council Action: Provide Guidance on Amending Fishery Management Plans to Protect Forage Species**

Ms. Kirchner moved and Mr. Feldner seconded Motion 27 that the Council adopt the purpose and need statement for public review as shown in Agenda Item I.2.b, Supplemental Ecosystem Workshop Report; and that the Council adopt the following list of species and identify them as species needing additional protection against development of new unmanaged fisheries:

1. Round and thread herring
2. Mesopelagic fishes

3. Pacific sandlance
4. Pacific saury
5. Silversides
6. Osmerid smelts
7. Pelagic squids, with the exception of Humboldt squid.

Additionally, direct the Ecosystem Workgroup to develop alternatives and analysis of options which would prohibit development of new commercial fisheries on these species groups by way of amending one or more FMPs. These species should be analyzed for FMP inclusion as either ecosystem component species or fishery management unit (FMU) species. The analysis shall include descriptions of existing directed commercial fisheries and existing incidental take levels in other commercial fisheries, and recommendations as to which existing FMPs are best suited for amendment. From the Supplemental Ecosystem Workgroup Report, section E, pages 8 and 9, direct the Ecosystem Workgroup to proceed with bullet items 1, 2, 5, and 6.

Ms. Kirchner stated that the draft purpose and need statement of the Ecosystem Workgroup reflects the Council's intent and what they seek to do with this initiative. The seven species in the motion represent species that may not have as much management as others, represent the species that most think of as forage fish, and provide a good starting place for the initiative. We needed to direct the team regarding what species to look at and what components to analyze so that they can come back in the spring with some alternatives. She tried to provide some flexibility so that they could use additional tools as appropriate (e.g., gear requirements, bycatch allowance, etc.). She thinks the numbered (bulleted) items provide a good way to get comments and information from the workgroup. However, she did not feel a workshop is needed. The last bullet (6) requests the workgroup to report to the Council in the spring. When that report comes back, we need to have collaboration between the workgroup and the other teams that oversee the FMPs that may be impacted.

Mr. Lincoln was supportive of the motion and the rationale. He moved and Mr. Myer seconded Amendment 1 (to Motion 27) to include eulachon as item 8 in the list of species.

After further Council discussion, Ms. Kirchner stated she was in agreement with having eulachon on the list and noted that in the original motion eulachon is included as an osmerid smelt.

Mr. Lincoln removed the amendment with consent of the second.

Mr. Wolford asked for further clarification about the other species that were left off of the list that are not managed.

Ms. Kirchner responded that she had focused on the highest priority species. American shad is an introduced species which she feels is not appropriate to protect. With respect to the other two species, they are mostly noted to be in nearshore water. She wanted to focus on the higher-priority species with large biomass that extended well into the EEZ and groups of like species.

In response to a question concerning bullet 2, Ms. Kirchner said she did not think we need to add a person to the workgroup. Someone from the fisheries science centers can provide assistance.

Motion 27 carried unanimously.

[Council concluded this agenda item at 6:58 pm and moved to H.2]

**ADJOURN**

The Council adjourned September 17, 2013 at 12:00 p.m.

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Dorothy Lowman  
Council Chair

Date



**Amndmnt 1:** Amend the motion to reflect on page 1 under (b) allocations, that the California sport fishery receives 1 percent for 2014 and on page 3 (vi) California subarea: the sport fishery subarea is allocated 1 percent for 2014. Also include that the Council will continue to address South of Humbug issues, including allocation, for potential changes in 2015.

Moved by: Gway Kirchner

Seconded by: Jeff Feldner

**Amdmt 1a:** Replace “South of Humbug” with “California.”

Moved by: Dan Wolford

Seconded by: Buzz Brizendine

Amendment 1a carried unanimously. Amendment 1, as amended, carried unanimously. Motion 5, as amended, carried unanimously.

**Motion 6:** Select the following set of action alternatives from Table 2-1 of Attachment 3 to Agenda Item E.2.a as the final preferred alternatives: 1B, 2B, 2D, 3B (with the exception of 18060002 (Pajaro)), 3C, 4B, 5B, 6B, 6D, 7B, 8B, 9B-9F, 10B, 10C, 11B, 11C1-11C9, 12B, and 13B (Agenda Item E.2.e, Supplemental NMFS Motion in Writing) with the table summarized in that attachment.

Moved by: Bob Turner

Seconded by: Rich Lincoln

**Amndmnt 1:** Add Lower Crab Creek Hydrologic unit 17020015 to the Chinook salmon freshwater EFH (2B) and substitute the words “48° N. latitude” for “Cape Flattery” in 7B (Marine & Estuarine EFH).

Moved by: Phil Anderson

Seconded by: Rich Lincoln

Amendment 1 carried unanimously.

**Amndmnt 2:** Strike “six” and replace it with “five” under 3B, Coho Salmon freshwater EFH.

Moved by: Dave Ortmann

Seconded by: Rich Lincoln

Amendment 2 carried unanimously.

**Amndmnt 3:** Add 11C10 “coal export terminal facilities” under non-fishing activities that may adversely affect EFH.

Moved by: Jeff Feldner

Seconded by: Gway Kirchner

Amendment 3 carried (Mr. Turner abstained). Motion 6, as amended, carried unanimously.

**Motion 7:** Approve the review calendar as shown in Agenda Item G.2.a, Attachment 1 with the following changes:

Add the following to the month of April:

1. Consider a draft range of alternatives for the ownership and control of the limited entry sablefish tier permit issue as recommended in Agenda Item

G.2.b, Supplemental GAP Report, for public review, with a preliminary analysis for that item and additional analysis to support the Council's decision for allowing trawl and fixed gear permits on a vessel at the same time.

Add to the month of June:

2. Adopt a final preferred alternative to address the ownership and control issue of permits.

Moved by: Michele Culver  
Motion 7 carried unanimously.

Seconded by: Rich Lincoln

**Motion 8:** Adopt the inseason adjustment recommendations of the GMT as shown in Agenda Item G.5.b, Supplemental GMT Report, Table 2, page 4, in Alternative 2 for all three sectors (Limited Entry North, Open Access North, and Open Access South).

Moved by: Dale Myer  
Motion 8 carried unanimously.

Seconded by: Michele Culver

**Motion 9:** Adopt the recommendation from Agenda Item G.5.b, Supplemental GAP Report, page 3, to increase to 1,000 lbs for the 2-month period for deeper nearshore rockfish south of 40° 10' N. latitude in Period 6 (November and December).

Moved by: Marci Yaremko  
Motion 9 carried unanimously.

Seconded by: Dan Wolford

**Motion 10:** Recommend that NMFS issue 10 percent of the eligible surplus carryover of petrale sole from 2012 to 2013.

Moved by: Michele Culver  
Motion 10 carried (Mr. Lockhart abstained).

Seconded by: Dave Ortmann

**Motion 11:** Approve the following stock assessments: aurora, rougheye, blackspotted, shortspine thornyhead, longspine thornyhead, and cowcod; and include the recommendation by the SSC relative to the China rockfish, and include in the SSC's review of data-moderate assessments for nearshore rockfish species that they consider having the stock assessments for brown and copper rockfish truncated at 42° N. latitude.

Moved by: Michele Culver  
Motion 11 carried unanimously.

Seconded by: Marci Yaremko

**Motion 12:** Adopt the recommendations of the SSC regarding the Pacific sanddab assessment contained in Agenda Item G.3.b, Supplemental SSC Report.

Moved by: Marci Yaremko  
Motion 12 carried unanimously.

Seconded by: David Crabbe

**Motion 13:** Adopt the table on pages 3, 4, and 5 of Agenda Item H.1.b, Supplemental Legislative Committee Report as Council priority assignments at this time.

Moved by: Dave Hanson

Seconded by: Dan Wolford

**Amndmnt 1:** Remove the items that the Legislative Committee recommends dropping in Agenda Item H.1.b, Supplemental LC Report. Remove items 3, 6, 9, 10, 13, 15, 16, 17, 18, 19, 20, 22, and 26.

Moved by: Michele Culver

Seconded by: Gway Kirchner

**Amndmnt 1a:** Include the language in Agenda Item H.1.c, Supplemental GAP Report that reads “address social and economic issues (e.g., “possible to practicable” in MSA Section 304(e)(4)(A)(i)).

Moved by: Gway Kirchner

Seconded by:

Amendment was withdrawn before second.

**Amndmnt 2:** (As a substitute amendment to Amendment 1) Insert after “as” - “well as items outlined by committees under Agenda Item H.1.c, as well as those items contained in Agenda Item H.1.a, Attachment 1 as recommended by Council staff after consultation as potential priority assignments.”

Moved by: Bob Farrell

Seconded by: David Crabbe

Amendment 2 Failed (Mr. Feldner, Mr. Lincoln, Ms. Kirchner, Ms. Culver, Mr. Myer, Mr. Sones, Mr. Ortmann and Ms. Lowman voted no; Mr. Lockhart abstained).

Amendment 1 carried without amendment. Mr. Wolford, Mr. Sones, and Mr. Farrell voted no; Mr. Lockhart abstained.

**Amndmnt 3:** Include an item 28 that reads “Address social and economic issues (eg. ‘possible’ to practicable’); MSA Section 304 (e)(4)(A)(i).”

Moved by: Gway Kirchner

Seconded by: Jeff Feldner

Amendment 3 carried (Ms. Culver and Mr. Lincoln voted no; Mr. Lockhart abstained).

**Amndmnt 4:** Include an item 29 to read “better-align and streamline NEPA and MSA Section 304 (i).”

Moved by: Dorothy Lowman

Seconded by: Gway Kirchner

Amendment 4 carried (Mr. Lockhart abstained).

**Amndmnt 5:** Include an item 30 to provide flexibility in requirements and qualifications for observers. This relates to MSA Title IV Fishery Monitoring and Research.



Moved by: Michele Culver

Seconded by: Jeff Feldner

**Amndmnt 1:** Strike part five of the motion.

Moved by: Dave Hanson

Seconded by: Gway Kirchner

Amendment 1 carried (Mr. Myer and Mrs. Culver voted no; Mr. Lockhart abstained).

**Amndmnt 2:** (Substitute for Amendment 1) Change the wording in #5 so it reads: . . . then the response should be “While the Council has not developed a position on that, we have had discussions and here are some of the things we have talked about.”

Moved by: Dan Wolford

Seconded by: Buzz Brizendine

Amendment 2 was withdrawn with consent of the second.

**Amndmnt 3:** Add item 27 (IATTC representative from table in LC Report) and the issue from Agenda Item H.1.c, Supplemental GAP Report, identified on page 1, that reads “address social and economic issues (e.g., “possible” to “practicable”) in MSA Section 304(e)(4)(A)(i).

Moved by: Gway Kirchner

Seconded by: David Crabbe

Amendment 3 carried (Mr. Lincoln voted no, Mr. Lockhart abstained).

Motion 14 failed (Mr. Brizendine, Mr. Farrell, Mr. Crabbe, Mr. Sones, Mr. Ortmann, Mr. Wolford, and Ms. Lowman voted no, Mr. Lockhart abstained).

**Motion 15:** Send a letter to Congress Member Herrera-Beutler, Senator Cantwell, and any other congressional members that should request input regarding HR. 2646 and S. 1275, including the four bullets on page 1 of Agenda Item H.1.b, Supplemental LC Report.

Moved by: Dale Myer

Seconded by: Gway Kirchner

Motion 15 carried (Mr. Lockhart abstained).

**Motion 16:** Upon receiving a request for comment, direct the Executive Director (to write a letter) to speak to HR. 69 and S. 269 stating the Council’s interest in this seat (on the IATTC).

Moved by: Buzz Brizendine

Seconded by: David Sones

Motion 16 carried (Mr. Lockhart abstained).

**Motion 17:** Regarding off-year science improvements for the next groundfish management cycle, adopt the recommendations as shown in Agenda Item G.4.c, Supplemental SSC Report relative to priority workshops; Agenda Item G.4.c, Supplemental GMT Report (with regard to) spatial analysis of exploitation, (and) support ongoing socio-economic discussions between the GMT and SSC.

Moved by: Michele Culver

Seconded by: Rich Lincoln

**Amndmnt 1:** Include the research into the Cowcod Conservation Area using non-extractive methods to assess the population.

Moved By: Dan Wolford

Seconded by: Marci Yaremko

**Amndmnt 1a:** Strike “Cowcod Conservation Area,” and replace it with “non-trawlable area” and add “hook-and-line survey methods” after non-extractive.

Moved By: Troy Buell

Seconded by: Jeff Feldner

Amendment 1a carried unanimously. Amendment 1, as amended, carried unanimously.

**Amndmnt 2:** All advisory body reports provided to the Council be submitted to NWFSC for consideration by staff.

Moved by: Marci Yaremko

Seconded by: Buzz Brizendine

Amendment 2 carried unanimously. Motion 17, as amended, carried unanimously.

**Motion 18:** Reconfirmed the Final Preferred Alternative (Alternative 1) shown in Agenda Item G.6.b, Draft EA.

Moved by: Gway Kirchner

Seconded by: Jeff Feldner

Motion 18 carried (Ms. Culver and Mr. Lincoln voted no, Mr. Lockhart abstained).

**Motion 19:** Adopt Alternative 2 in Agenda item G.6.b, Draft EA. (Substitute motion to Motion 18).

Moved by: Michele Culver

Seconded by: Rich Lincoln

Motion 19 failed (Mr. Myer, Mr. Wolford, Mr. Crabbe, Mr. Pollard, Mr. Feldner, Mr. Sones, Mr. Brizendine, Mr. Farrell, Mr. Ortmann, and Ms. Kirchner voted no; Mr. Lockhart abstained).

**Motion 20:** Adopt the 2015-2016 OFLs, stock categories, and sigma values recommended by the SSC (Agenda Item G.7.b, Supplemental SSC Report).

Moved by: Marci Yaremko

Seconded by: David Crabbe

Motion 20 carried unanimously.

**Motion 21:** Adopt the  $F_{SPR}$  50 percent as the default proxy fishing mortality rate for elasmobranchs as recommended by the SSC, and that the  $B_0$  workshop in 2014 include a discussion about the  $B_{MSY}$  proxy for elasmobranchs.

Moved by: Michele Culver

Seconded by: Rich Lincoln

Motion 21 carried unanimously.

**Motion 22:** Adopt for 2015-2016 a preliminary range (updated values for longspine and shortspine thornyhead) of 0.25 and 0.45 for ABCs for all species for analysis (Agenda Item G.7.a, Supplemental Attachment 5), and the default P\* for 2013/2014 for spiny dogfish, other flatfish, and sablefish.

Moved by: Michele Culver                      Seconded by: Rich Lincoln  
Motion 22 carried unanimously.

**Motion 23:** Defer further consideration of the “in or out of the fishery” question (except for consideration for the other fish complex), restructuring slope rockfish, shelf rockfish, and other flatfish, to the 2017-2018 specifications cycle. For the other fish complex, adopt for public review the range of alternatives contained in Agenda Item G.8.b, Supplemental GMT Report 7.

Moved by: Troy Buell                              Seconded by: Marci Yaremko

**Amndmnt 1:** Following “restructuring” strike out “slope rockfish.” In the second sentence add “and slope rockfish complexes” after “other fish” (refer to Agenda Item G.8.b, Supplemental GMT Reports 5 and 7).

Moved by: Michele Culver                      Seconded by: Rich Lincoln

Amendment 1 failed (Mr. Ortmann, Mr. Wolford, Ms. Yaremko, Mr. Feldner, Mr. Brizendine, Mr. Crabbe, Mr. Pollard, and Mr. Buell voted no).

Motion 23 carried (Mr. Lockhart, Mr. Wolford, and Ms. Culver voted no).

**Motion 24:** Add an alternative to be considered for 2015-2016 management that would require the use of an excluder device for roughey rockfish for the trawl fishery when fishing seaward of the RCA.

Moved by: Michele Culver                      Seconded by: Rich Lincoln  
Motion 24 carried unanimously.

**Motion 25:** In the biennial specifications process, direct management entities and advisory bodies to continue examining the prospective use of harvest guidelines within a complex to manage harvests of individual species.

Moved by: Marci Yaremko                      Seconded by: Buzz Brizendine  
Motion 25 carried unanimously.

**Motion 26:** Adopt the updated List of Fisheries contained in Agenda Item I.1.a, Attachment 1, Ecosystem Workgroup Report, with the addition of the recommendations in Agenda Item I.1.b, Supplemental GAP Report.

Moved by: David Crabbe                      Seconded by: Buzz Brizendine



**Motion 29:** Recommend reappointment of Mr. Phil Anderson to the Joint Management Committee for Pacific Whiting.

Moved by: Dale Myer

Seconded by: Michele Culver

Motion 29 carried unanimously.

**Motion 30:** Council recommends Ms. Dorothy Lowman to the Departments of State and Commerce to fill the United States Commissioner seat to the Western and Central Pacific Fisheries Commission designated for the Chair or a member of the Pacific Fishery Management Council, effective after the completion of the current annual Commission cycle and in such a manner that there is no gap between the current appointment of Ms. Marija Vojkovich and Ms. Dorothy Lowman. The intent of this recommended synchrony is that this Commission seat not be unfilled at any point in time.

Moved by: Jeff Feldner

Seconded by: Gway Kirchner

Motion 30 carried (Mr. Lockhart abstained).

**Motion 31:** Appoint a designee from the State of California for those committees currently held by Ms. Vojkovich.

Moved by: Chuck Bonham

Seconded by: Dan Wolford

Motion 31 carried unanimously.

**Motion 32:** Appoint Captain Robert Puccinelli to the California Department of Fish and Wildlife seat on the Enforcement Consultants.

Moved by: Chuck Bonham

Seconded by: Buzz Brizendine

Motion 32 carried unanimously.

**Motion 33:** Appoint Lieutenant Cody Dunagan to the U.S. Coast Guard seat on the Enforcement Consultants.

Moved by: Gregg Casad

Seconded by: David Sones

Motion 33 carried unanimously.

**Motion 34:** Appoint Ms. Jennifer Quan to the WDFW seat on the Habitat Committee.

Moved by: Michele Culver

Seconded by: Dale Myer

Motion 34 carried unanimously.

**Motion 35:** Appoint Dr. Andrew Cooper to the vacant at-large seat on the Scientific and Statistical Committee.

Moved by: Dan Wolford

Seconded by: David Sones

Motion 35 carried unanimously.

**Motion 36:** Appoint the following people to seats on the Groundfish Endangered Species Workgroup:

1. NMFS Protected Resources Division: Ms. Alison Agness
2. USFWS: Ms. Laura Todd
3. West Coast Groundfish Observer Program: Dr. Jason Jannot
4. ODFW: Dr. Caren Braby
5. CDFW: Ms. Joanna Grebel
6. WDFW: Mr. Corey Niles
7. Washington Coast Tribal: Mr. Jonathan Scordino
8. Fish Taxa Expert: Dr. Richard Gustafson
9. Sea Turtle Taxa Expert: Dr. Rhema Bjorkland
10. Marine Mammal Taxa Expert: Dr. Brad Hanson
11. Seabird Taxa Expert: Dr. Thomas Good

Moved by: Gway Kirchner

Seconded by: Dan Wolford

Motion 36 carried unanimously.

**Motion 37:** At their October meeting, the GEM committees review the supplemental EC Report and discuss specifically the two recommendations of:

1. A “phased in approach” starting with mid-water trawl and fixed gear in the first phase; bottom trawl as a separate phase; and
2. A data logger system (e logbook) as a component of the EM program.

Also, for the GEM committees to discuss:

1. How maximized retention could be feasible (i.e., provide specific alternatives for what could be discarded); and
2. With regard to allowing safety discards, to explore limiting tow times to reduce the necessity of safety discards.

And, request the NWFSC to provide a report on how the WCGOP program may move forward with an EM program in place for mid-water trawl, fixed gear, and potentially bottom trawl at the November meeting. Specific questions for the WCGOP are:

1. What level of coverage would be needed to meet biological sampling goals, particularly for rare species, such as yelloweye rockfish?
2. What level of coverage would be needed to assess halibut size and viability?

Moved by: Michele Culver

Seconded by: Rich Lincoln

Motion 37 carried unanimously.

## ADVISORY BODY POSITION APPOINTMENTS AND COUNCIL OPERATING PROCEDURES

During this agenda item, the Council has the opportunity to consider Administrative appointment issues with regard to the Council Membership Roster, including Council Members, advisory body membership, and also any relevant changes in Council Operating Procedures (COP) or the Council's Statement of Organization, Practices, and Procedures (SOPP).

### Council Members and Designees

No new resignations, nominations, or other changes were identified by the Briefing Book deadline.

### Standing Council Member Committee Appointments

No new resignations, nominations, or other changes were identified by the Briefing Book deadline.

### Council Advisory Body Appointments

#### *Highly Migratory Species Management Team (HMSMT)*

Mr. Tony Foster, Chairman of the Quileute Tribal Council, has nominated Mr. Kris Northcut to fill the Tribal seat on the HMSMT created at the November 2013 Council meeting (Closed Session A.1.a, Attachment 1).

#### *Salmon Technical Team (STT)*

Ms. Marcie Yaremko has nominated Ms. Melodie Palmer-Zwahlen to replace Ms. Jennifer Simon as the CDFW representative on the STT (Closed Session A.1.a, Attachment 2).

#### *Salmon Advisory Subpanel (SAS)*

Mr. Kent Martin submitted his resignation from the Commercial Gillnet seat on the Salmon Advisory Subpanel (Closed Session A.1.a, Attachment 3). Chair Lowman, in consultation with the Council Members from Oregon, Washington, and the Tribes, has appointed Mr. Greg Johnson to fill the seat on an interim basis during the 2014 preseason planning process, with the intent to fill the seat for the remainder of the 2013-2015 term at the June, 2014 Council meeting. Council Staff will solicit nominations for the seat, along with the California Troll seat, following the April 2014 Council meeting.

#### *Enforcement Consultants (EC)*

Cpt. Jeff Samuels has nominated Lt. Tim Schwartz to replace Lt. Dave Anderson in the Oregon State Patrol seat on the EC (Closed Session A.1.a, Attachment 4).

### *Scientific and Statistical Committee (SSC)*

Mr. Michael Grayum, Executive Director of the Northwest Fisheries Indian Commission, has nominated Dr. Galen Johnson to replace Mr. Bob Conrad as the Tribal Agency representative on the SSC (Closed Session A.1.a, Attachment 5).

### *Habitat Committee (HC)*

Dr. Kim Kratz, NMFS Assistant Regional Administrator, has nominated Dr. John Stadler to replace Mr. Eric Chavez as the NMFS West Coast Region representative on the HC, and to designate Ms. Korie Schaeffer as his alternate (Closed Session A.1.a, Attachment 6).

### *Ad Hoc Lower Columbia Natural Coho Workgroup*

At its November 2014 meeting, the Council directed Council staff to convene an ad hoc LCN Coho work group that includes a representative of the Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, National Marine Fisheries Service, and Tribal governments. The work group would work with the Salmon Advisory Subpanel to build on the existing risk assessment towards development of an alternative harvest matrix for Council consideration in November 2014; this process would be aligned with the 2014 salmon methodology review. The Council Chair will make appointments under this Agenda Item.

## Changes to Council Operating Procedures

No proposed changes to the COPs or SOPPs were identified by the Briefing Book deadline.

### **Council Action:**

#### **1. Consider any appointment and membership issues.**

#### **Reference Materials:**

1. Closed Session A.1.a, Attachment 1: Letter from Mr. Tony Foster nominating Mr. Kris Northcut to the Tribal seat on the HMSMT.
2. Closed Session A.1.a, Attachment 2: Letter from Ms. Marcie Yaremko nominating Ms. Melodie Palmer-Zwahlen to the CDFW seat on the STT.
3. Closed Session A.1.a, Attachment 3: Letter from Mr. Kent Martin resigning from the SAS.
4. Closed Session A.1.a, Attachment 4: Letter from Cpt. Jeff Samuels nominating Lt. Tim Schwartz to the OSP seat on the EC.
5. Closed Session A.1.a, Attachment 5: Letter from Mr. Michael Grayum nominating Dr. Galen Johnson to the tribal agency seat on the SSC.
6. Closed Session A.1.a, Attachment 6: Letter from Dr. Kim Kratz nominating Dr. John Stadler to the NMFS WCR seat on the HC, and Ms. Korie Schaeffer as his alternate.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Consider Changes to Council Operating Procedures and Appointments to Advisory Bodies

Chuck Tracy

PFMC  
02/13/14

## FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

This agenda item is intended to refine general planning for future Council meetings, especially in regard to finalizing the proposed agenda for the April 2014 Council Meeting. The following primary attachments are intended to help the Council in this process:

1. An abbreviated display of potential agenda items for the next full year (Attachment 1).
2. A preliminary proposed April 2014 Council meeting agenda (Attachment 2).

Because of the short time between the March and April Council meetings, agenda planning, logistic arrangements and public notice has been handled in an aggregate manner. The Federal Register notice for the April Council meeting has already been filed, and while it is technically possible to file a revised notice as late as the last day of the March Council meeting, any changes to the proposed April agenda are best if very limited and adding new topics or significantly changing the timing of key agenda items and advisory body meetings can create very awkward difficulties.

The Executive Director will assist the Council in reviewing the proposed agenda materials and discuss any other matters relevant to Council meeting agendas and workload. After considering supplemental material provided at the Council meeting, and any reports and comments from advisory bodies and public, the Council will provide guidance for future agenda development, a proposed April Council meeting agenda, and workload priorities for Council staff and advisory bodies.

### **Council Action:**

- 1. Review pertinent information and provide guidance on potential agenda topics for future Council meetings.**
- 2. Provide final guidance on a proposed agenda for the April Council meeting.**
- 3. Identify priorities for advisory body considerations at the next Council meeting.**

### **Reference Materials:**

1. Agenda Item J.4.a, Attachment 1: Pacific Council Workload Planning: Preliminary Year-at-a-Glance Summary.
2. Agenda Item J.4.a, Attachment 2: Draft Proposed Council Meeting Agenda, April 3-10, 2014 in Vancouver, WA

### **Agenda Order:**

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Discussion and Guidance on Future Meeting Agenda and Workload Planning

Don McIsaac

**Pacific Council Workload Planning: Preliminary Year-at-a-Glance Summary**

(Parenthetical numbers mean multiple items per topic; deletions = ~~strikeout~~; underline = new; shaded items may be rescheduled pending workload priorities )

2/18/14 8:24

	<u>April 5-10, 2014</u> (Vancouver)	<u>June 20-25, 2014</u> (Garden Grove)	<u>September 12-17, 2014</u> (Spokane)	<u>November 14-19, 2014</u> (Costa Mesa)	<u>March 7-12, 2015</u> (Vancouver)	<u>Acronyms</u>
<b>CPS</b>	EFPs: Final Recommendations Sardine Assmnt & Mgmt Meas.	NMFS Rpt  Pacific Mackerel Spex Sardine Methodology Review		NMFS Rpt EFP Notice of Intent for 2015  Method Rev.--Identify Topics		<b>ACL:</b> Annual Catch Limits <b>AMP:</b> Adaptive Management Program <b>BO:</b> Biological Opinion <b>CMSP:</b> Coastal Marine Spatial Planning <b>CPS:</b> Coastal Pelagic Species <b>CSP:</b> Catch Sharing Plan <b>DGN:</b> Drift Gillnet <b>EFH:</b> Essential Fish Habitat <b>EFP:</b> Exempted Fishing Permit <b>FPA:</b> Final Preferred Alternative <b>GF:</b> Groundfish <b>HMS:</b> Highly Migratory Species <b>IEA:</b> Integrated Ecosystem Assessment <b>IPHC:</b> International Pacific Halibut Commission <b>LCN:</b> Lower Columbia Natural <b>PPA:</b> Preliminary Preferred Alternative <b>ROA:</b> Range of Alternatives <b>SAFE:</b> Stock Assessment and Fishery Evaluation Criteria <b>SDC:</b> Status Determination Criteria <b>TOR:</b> Terms of Reference <b>VMS:</b> Vessel Monitoring System
<b>Groundfish</b>	NMFS Report Inseason Mgmt Meth Rev Process Discussion Stock Cmplx FPA Fisheries in 15-16 & Beyond Biennial Spex Adopt FPA Mgmt Measures PPA Sablefish Catch Share Prog. Rev. _Adopt Phase 1 PPA Whiting Spex & Mgmt Meas.  Mid-Water Sport Fishery ROA Elec Monitoring Prog. Developmnt and Preliminary EFP Approval	NMFS Report Inseason Mgmt Initial Stk Assmnt Plan & TORs Fisheries in 15-16 & Beyond Final EFP Approval A-24 & Mgmt Measures FPA Sablefish Catch Share Prog. Rev. Adopt Phase 1 FPA; Scope Phase 2 Issues as Necessary Omnibus Regulation Changes: Prioritization/Scheduling  Mid-Water Sport Fishery FPA Elec Monitoring: Adopt PPA	NMFS Report Inseason Mgmt Adopt Final Stk Assmnt Plan Including Data Mod. Species  Sablefish Catch Share Prog Rev Phase 2 ROA  Omnibus Regulation Changes: Further Consideration  Elec Monitoring: Adopt FPA Initiate EFH Amendment A-19 Eval Rpt; Issue Scoping	NMFS Report Inseason Mgmt  Sablefish Catch Share Prog. Rev. Phase 2 Check-in  Omnibus Regulation Changes: Further Consideration	NMFS Report Inseason Mgmt          Info Report: Rationalized Fishery Report to Congress  Omnibus Regulation Changes: Further Consideration  EFH A-25: ROA	
<b>HMS</b>		NMFS Report US-Canada Albacore Update Update on International Issues Preliminary EFP Approval Scope Routine Mgmt Measure Changes, SDC, & Ref. Pts.	Routine Mgmt Measures ROA	NMFS Report  Update on International Issues  Routine Mgmt Measures FPA	NMFS Report US-Canada Albacore Update Update on International Issues  DGN Monitoring, Mgmt & Alt Gear Rpt	
<b>Salmon</b>	Method Rev: Identify Topics  2014 Season Setting (3) LCN Coho Update	LCN Coho Update Cormorant Mgmt Plan Comments	Method Rev: Adopt Priorities  LCN Coho Preliminary Action	NMFS Rpt Method Rev: Final Approval  2015 Preseason Mgmt Schd LCN Coho Final Recommendation	NMFS Rpt Approve Review (SAFE), Forecasts, SDC, and ACLs 2015 Season Setting (5)	
<b>Other</b>	Routine Admin (9) Habitat Issues Annual USCG Fishery Enf. Rpt P. Halibut: Final Incidental Regs Unmanaged Forage Fish Protection initiative Gulf of Farallones and Cordell Bank NMS Expansion	Routine Admin (11) Habitat Issues NMFS Enforcement Report P. Halibut: CSP Change Scoping  CMSP Update Allocation Review Issues	Routine Admin (11) Habitat Issues Tri-State Enforcement Rpt P. Halibut: CSP Change Alts P. Halibut Bycatch Estimate Unmanaged Forage Fish Protection initiative Atlantis Review Report	Routine Admin (11) Habitat Issues  P. Halibut: Final CSP Changes  Electronic Technology Plan (non-Catch Share)	Routine Admin (10) Habitat Issues  P. Halibut: Prelim Incidntl Regs P. Halibut: IPHC Meeting CA Current Ecosystem Rpt Incl. IEA Rpt	
<b>Apx. Floor Time</b>	<b>5.3 days</b>	<b>5.6 days</b>	<b>4.4 days</b>	<b>3.8 days</b>	<b>4.4 days</b>	

Agenda Item J.4.a  
 Attachment 1  
 March 2014

**DRAFT: PROPOSED PACIFIC COUNCIL MEETING AGENDA, APRIL 3-10, 2014 IN VANCOUVER, WASHINGTON**

Acronyms	Sat, Apr 5	Sun, Apr 6	Mon, Apr 7	Tue, Apr 8	Wed, Apr 9	Thu, Apr 10
<i>BC: Budget Committee</i> <i>ED: Executive Director</i> <i>COP: Council Operating Procedures</i> <i>CPS: Coastal Pelagic Species</i> <i>CPSAS/MT: CPS Advisory Subpanel /Management Team</i> <i>EAS: Ecosystem Advisory Subpanel</i> <i>EC: Enforcement Consultants</i> <i>ED: Executive Director</i> <i>EFP: Exempted Fishing Permit</i> <i>FPA: Final Preferred Alternatives</i> <i>GAP/GMT: Groundfish Advisory Subpanel / Management Team</i> <i>HC: Habitat Committee</i> <i>LCN: Lower Columbia Natural (coho)</i> <i>MEW: Model Evaluation Workgroup (salmon)</i> <i>PPA: Preliminary Preferred Alternatives</i> <i>SAS/STT: Salmon Advisory Subpanel /Technical Team</i> <i>SSC: Scientific and Statistical Committee</i> <i>USCG: United States Coast Guard</i>	<p><b>CLOSED EXECUTIVE SESSION 8 AM</b> Discuss litigation &amp; personnel matters (1 hr)</p> <p><b>A. CALL TO ORDER 9 AM</b> 1-4. Opening Remarks, Roll Call, ED Report, Approve Agenda (30 min)</p> <p><b>B. OPEN COMMENT</b> 1. Comments on Non-Agenda Items (30 min)</p> <p><b>C. ADMINISTRATIVE</b> 1. Approve Council Minutes (15 min)</p> <p><b>D. HABITAT</b> 1. Current Habitat Issues (45 min)</p> <p><b>E. ENFORCEMENT</b> 1. Annual USCG Fishery Enforcement Report (1 hr)</p> <p><b>F. SALMON</b> 1. Tentative Adoption of 2014 Management Measures for Analysis (2 hr 30 min)</p>	<p><b>G. PACIFIC HALIBUT</b> 1. Final Incidental Catch for 2014 Salmon Troll Fisheries (30 min)</p> <p><b>H. GROUND FISH</b> 1. NMFS Report (1 hr) 2. Stock Complex Restructuring Final Action (2 hr 30 min) 3. Implement 2014 Pacific Whiting Fishery under U.S.-Canada Agreement (1 hr) 4. Mid-water Sport Fishery ROA(1 hr)</p> <p><b>F. SALMON</b> 2. Clarify Council Direction on 2014 Management Measures (1 hr) 3. Methodology Review Preliminary Topic Selection (1 hr)</p>	<p><b>H. GROUND FISH</b> 5. Sablefish Catch Share Program Review: Phase 1 PPA (2 hr) 6. Methodology Review Process (1 hr 30 min) 7. Fisheries in 2015-2016 &amp; Beyond: Adopt Biennial Spex FPA (4 hr)</p>	<p><b>F. SALMON</b> 4. LCN Coho Update (1 hr)</p> <p><b>H. GROUND FISH</b> 8. Electronic Monitoring Program Development Including Prelim EFP Approval (3 hr 30 min)</p> <p><b>I. COASTAL PELAGIC SPECIES</b> 1. EFP for 2014: Approve Final (45 min) 2. Sardine Assessment, Spex, and Management Measures (3 hr)</p>	<p><b>F. SALMON</b> 5. Final Action on 2014 Management Measures (2 hr)</p> <p><b>H. GROUND FISH</b> 9. Consideration of Inseason Adjustments (2 hr) 10. Fisheries in 2015-2016 &amp; Beyond: Adopt Management Measures PPA (4 hr)</p>	<p><b>J. ECOSYSTEM</b> 1. Unmanaged Forage Fish Initiative (3 hr)</p> <p><b>C. ADMINISTRATIVE</b> 2. Boundary Expansion of the Gulf of Farallones and Cordell Bank NMS (45 min) 3. Membership Appointments &amp; COPs(15 min) 4. Future Council Meeting Agenda &amp; Workload Planning (1 hr)</p>
<b>Thu Apr 3</b>						
1 pm GMT						
<b>Fri Apr 4</b>	6.5 hr	8 hr	7.5 hr	8.25 hr	8 hr	5 hr
7 am Secretariat 8 am SSC 8 am SAS & STT 8 am GMT 8:30 am HC 11 am MEW 2:30 pm BC 4 pm Chair's Briefing	7 am State Delegations 7 am Secretariat 8 am SSC 8 am SAS & STT 8 am GAP & GMT 3 pm EC 6 pm Chair's Reception	7 am State Delegations 7 am Secretariat 8 am SAS & STT 8 am GAP & GMT As Necessary EC	7 am State Delegations 7 am Secretariat 8 am CPSAS & CPSMT 8 am SAS & STT 8 am GAP & GMT As Necessary EC	7 am State Delegations 7 am Secretariat 8 am CPSAS & CPSMT 8 am SAS & STT 8 am GAP & GMT 1 pm EAS As Necessary EC	7 am State Delegations 7 am Secretariat 8 am STT 8 am GAP & GMT 8 am EAS As Necessary EC	7 am State Delegations 7 am Secretariat 8 am EAS As Necessary EC

Agenda Item J.4.a  
Attachment 2  
March 2014

**Process for Pacific Council Review of Allowable Fishery Impacts to Lower  
Columbia River Natural Coho**

*2014 March Draft*

March 2014 Council Meeting *Sacramento, California*

- Appointment of members to the Work Group
- Discussion of 2014 process in Advisory Body forums
- Development of recommendations for Council consideration at the April, 2014 Council meeting

April 2014 Council Meeting *Vancouver, Washington*

- Work Group Meets
- Council floor session agenda item
  - Review of process to date
  - Agreement on 2014 process expectations
  - Guidance on alternatives and analysis

Intersessional Meeting of the Ad hoc Work Group

- May, 2014

June 2014 Council Meeting *Garden Grove, California*

- Council floor session agenda item
  - Update on progress to date
  - Guidance on alternatives and analysis

Intersessional Meeting of the Ad hoc Work Group

- Late Summer, 2014

September 2014 Council Meeting *Spokane, Washington*

- Council floor session agenda item
  - Update on progress to date
  - Selection of preliminary preferred alternative if possible
  - Guidance on further analysis

Intersessional Meeting of the Ad hoc Work Group and the SSC Salmon Subcommittee

- Potentially in conjunction with the October Methodology Review

November 2014 Council Meeting *Costa Mesa, California*

- Council floor session agenda item
  - Selection of final recommendation to the NMFS for use in 2015 and beyond
  - Consideration of further Council process

**Pacific Council Workload Planning: Preliminary Year-at-a-Glance Summary**

(Parenthetical numbers mean multiple items per topic; deletions = strikeout; underline = new; shaded items may be rescheduled pending workload priorities )						3/13/14 10:57
	<u>April 5-10, 2014</u> (Vancouver)	<u>June 20-25, 2014</u> (Garden Grove)	<u>September 12-17, 2014</u> (Spokane)	<u>November 14-19, 2014</u> (Costa Mesa)	<u>March 7-12, 2015</u> (Vancouver)	<b>Acronyms</b>
<b>CPS</b>	EFPs: Final Recommendations Sardine Assmt & Mgmt Meas.	NMFS Rpt  Pacific Mackerel Spex Sardine Methodology Review	<u>Sardine Harvest Fraction PPA</u>	NMFS Rpt EFP Notice of Intent for 2015 <u>Sardine Harvest Fraction FPA</u> Method Rev.--Identify Topics	EFPs: Final Recommendations	<b>ACL:</b> Annual Catch Limits <b>AMP:</b> Adaptive Management Program <b>CPS:</b> Coastal Pelagic Species <b>CSP:</b> Catch Sharing Plan <b>DGN:</b> Drift Gillnet <b>EFH:</b> Essential Fish Habitat <b>EFP:</b> Exempted Fishing Permit <b>FPA:</b> Final Preferred Alternative <b>GF:</b> Groundfish <b>HMS:</b> Highly Migratory Species <b>IEA:</b> Integrated Ecosystem Assessment <b>IPHC:</b> International Pacific Halibut Commission <b>LCN:</b> Lower Columbia Natural <b>MP:</b> Marine Planning (formerly CMSP) <b>NMS:</b> National Marine Sanctuary <b>NS2G:</b> National Standard 2 Guidelines <b>PPA:</b> Preliminary Preferred Alternative <b>ROA:</b> Range of Alternatives <b>SAFE:</b> Stock Assessment and Fishery Evaluation <b>SDC:</b> Status Determination Criteria <b>TOR:</b> Terms of Reference <b>VMS:</b> Vessel Monitoring System
<b>Groundfish</b>	NMFS Report Inseason Mgmt Meth Rev Process Discussion  Fisheries in 15-16 & Beyond Biennial Spex Adopt FPA Mgmt Measures PPA Stock Cmplx FPA  Sablefish Catch Share Prog. Rev Adopt Phase 1 PPA Whiting Spex & Mgmt Meas.  Mid-Water Sport Fishery ROA  Elec Monitoring Prog. Developm and Preliminary EFP Approval	NMFS Report Inseason Mgmt Initial Stk Assmnt Plan & TORs  Fisheries in 15-16 & Beyond Final EFP Approval A-24 & Mgmt Measures FPA  Sablefish Catch Share Prog. Rev Adopt Phase 1 FPA; Scope Phase 2 Issues as Necessary  Omnibus Regulation Changes: <u>AMP Pass-Thru; Trailing Action Implementation; New Mgmt Measures Priorities Including Mid-Water Sport Fish</u> Elec Monitoring: Adopt PPA	NMFS Report Inseason Mgmt Adopt Final Stk Assmnt Plan <u>Meth Rev Process COP</u>  Sablefish Catch Share Prog Rev Phase 2 ROA  Omnibus Regulation Changes: Further Consideration Initiate EFH Amendment A-19 Eval Rpt; Issue Scoping  Elec Monitoring: Adopt FPA	NMFS Report Inseason Mgmt  <u>Meth Rev Process COP Finalize</u>  Sablefish Catch Share Prog. Rev. Phase 2 Check-in  Omnibus Regulation Changes: Further Consideration	NMFS Report Inseason Mgmt    <i>Info Report: Rationalized Fishery Report to Congress</i>  Omnibus Regulation Changes: Further Consideration  EFH A-25: ROA	
<b>HMS</b>		NMFS Report US-Canada Albacore Update Update on International Issues Preliminary EFP Approval Scope Routine Mgmt Measure Changes, SDC, & Ref. Pts.	<u>Final EFP Approval</u> Routine Mgmt Measures ROA	NMFS Report Update on International Issues  Routine Mgmt Measures FPA	NMFS Report US-Canada Albacore Update Update on International Issues  <u>DGN Monitoring, Mgmt &amp; Alt Gear Rpt</u>	
<b>Salmon</b>	Method Rev: Identify Topics  2014 Season Setting (3) LCN Coho Update	  <u>LCN Coho Update</u> <u>Cormorant Mgmt Plan Comments</u>	Method Rev: Adopt Priorities  LCN Coho Preliminary Action	NMFS Rpt Method Rev: Final Approval  2015 Preseason Mgmt Schd LCN Coho Final Recommendation	NMFS Rpt Approve Review (SAFE), Forecasts, SDC, and ACLs 2015 Season Setting (5)	
<b>Other</b>	Routine Admin (9) Habitat Issues Annual USCG Fishery Enf. Rpt P. Halibut: Final Incidental Regs Unmanaged Forage Fish Protection initiative  Gulf of Farallones and Cordell Bank NMS Expansion	Routine Admin (11) Habitat Issues NMFS Enforcement Report P. Halibut: CSP Change Scoping MP Update Gulf of Farallones and Cordell Bank NMS Expansion <u>Allocation Review Issues</u> <u>VMS Enhancement Consideration</u> <u>NS2G Revision Update/COP</u>	Routine Admin (11) Habitat Issues Tri-State Enforcement Rpt P. Halibut: CSP Change Alts P. Halibut Bycatch Estimate Unmanaged Forage Fish  Protection initiative Atlantis Review Report	Routine Admin (11) Habitat Issues  P. Halibut: Final CSP Changes  Electronic Technology Plan (non-Catch Share) NS2G COP	Routine Admin (10) Habitat Issues  P. Halibut: Prelim Incidntl Regs P. Halibut: IPHC Meeting CA Current Ecosystem Rpt Incl. IEA Rpt	
<b>Apx. Floor Time</b>	<b>5.4 days</b>	<b>5.8 days</b>	<b>5.0 days</b>	<b>4.2 days</b>	<b>4.0 days</b>	

Agenda Item J.4.a  
 Supplemental Attachment 4  
 March 2014

**DRAFT: PROPOSED PACIFIC COUNCIL MEETING AGENDA, APRIL 3-10, 2014 IN VANCOUVER, WASHINGTON**

Acronyms	Sat, Apr 5	Sun, Apr 6	Mon, Apr 7	Tue, Apr 8	Wed, Apr 9	Thu, Apr 10
<p><i>BC: Budget Committee</i>  <i>ED: Executive Director</i>  <i>COP: Council Operating Procedures</i>  <i>CPS: Coastal Pelagic Species</i>  <i>CPSAS/MT: CPS Advisory Subpanel /Management Team</i>  <i>EAS: Ecosystem Advisory Subpanel</i>  <i>EC: Enforcement Consultants</i>  <i>ED: Executive Director</i>  <i>EFP: Exempted Fishing Permit</i>  <i>FPA: Final Preferred Alternatives</i>  <i>GAP/GMT: Groundfish Advisory Subpanel / Management Team</i>  <i>HC: Habitat Committee</i>  <i>LCN: Lower Columbia Natural (coho)</i>  <i>MEW: Model Evaluation Workgroup (salmon)</i>  <i>NMS: National Marine Sanctuary</i>  <i>PPA: Preliminary Preferred Alternatives</i>  <i>SAS/STT: Salmon Advisory Subpanel /Technical Team</i>  <i>SSC: Scientific and Statistical Committee</i>  <i>USCG: United States Coast Guard</i></p>	<p><b>A. CALL TO ORDER 8 AM</b>  <b>1-4.</b> Opening Remarks, Roll Call, ED Report, Approve Agenda (30 min)</p> <hr/> <p><b>B. HABITAT</b>  <b>1.</b> Current Habitat Issues (45 min)</p> <hr/> <p><b>C. GROUND FISH</b>  <b>1.</b> <u>Electronic Monitoring Program Informational Briefing (1 hr 30 min)</u></p> <hr/> <p><b>D. ENFORCEMENT</b>  <b>1.</b> Annual USCG Fishery Enforcement Report(1 hr)</p> <hr/> <p><b>C. GROUND FISH</b>  <b>2.</b> <u>Fisheries in 2015-2016 &amp; Beyond: Updates and Key Decision Points Informational Briefing (1 hr 15 min)</u></p> <hr/> <p><b>E. OPEN COMMENT</b>  <b>1.</b> Comments on Non-Agenda Items (30 min)</p> <hr/> <p><b>F. SALMON</b>  <b>1.</b> Tentative Adoption of 2014 Management Measures for Analysis (2 hr 30 min)</p>	<p><b>G. PACIFIC HALIBUT</b>  <b>1.</b> Final Incidental Catch for 2014 Salmon Troll Fisheries (30 min)</p> <hr/> <p><b>C. GROUND FISH</b>  <b>3.</b> NMFS Report (1 hr)  <b>4.</b> Fisheries in 2015-2016 &amp; Beyond: Adopt Biennial Spex FPA (34 hr 30 min)  <b>5.</b> Implement 2014 Pacific Whiting Fishery under U.S.-Canada Agreement (1 hr)  <b>4.</b> <del>Mid-water Sport Fishery ROA(1 hr)</del></p> <hr/> <p><b>F. SALMON</b>  <b>2.</b> Clarify Council Direction on 2014 Management Measures (1 hr)  <b>3.</b> Methodology Review Preliminary Topic Selection (1 hr)</p>	<p><b>C. GROUND FISH</b>  <b>6.</b> Sablefish Catch Share Program Review: Phase 1 PPA (2 hr)  <del>6.</del> <del>Methodology Review Process (1 hr 30 min)</del>  <b>7.</b> <u>Fisheries in 2015-2016 &amp; Beyond: Stock Complex Restructuring Final Action (42 hr 30 min)</u></p> <hr/> <p align="center"><b>CLOSED EXECUTIVE SESSION 4 PM</b></p> <p>Discuss litigation &amp; personnel matters (1 hr)</p>	<p><b>F. SALMON</b>  <b>4.</b> LCN Coho Update (1 hr)</p> <hr/> <p><b>C. GROUND FISH</b>  <b>8.</b> Electronic Monitoring Program Development Including Prelim EFP Approval (3 hr 30 min)</p> <hr/> <p><b>H. COASTAL PELAGIC SPECIES</b>  <del>1.</del> <del>EFP for 2014: Approve Final (45 min)</del>  <b>2.</b> Sardine Assessment, Spex, and Management Measures (3 hr)</p>	<p><b>F. SALMON</b>  <b>5.</b> Final Action on 2014 Management Measures (2 hr)</p> <hr/> <p><b>C. GROUND FISH</b>  <del>9.</del> <del>Consideration of Inseason Adjustments (2 hr)</del>  <b>9.</b> Fisheries in 2015-2016 &amp; Beyond: Adopt Management Measures PPA (54 hr)</p> <hr/> <p><b>I. ADMINISTRATIVE</b>  <del>1.</del> <del>Boundary Expansion of the Gulf of Farallones and Cordell Bank NMS (1 hr)</del></p>	<p><b>J. ECOSYSTEM</b>  <b>1.</b> Unmanaged Forage Fish Initiative (3 hr)</p> <hr/> <p><b>I. ADMINISTRATIVE</b>  <b>3.</b> Approve Council Minutes (15 min)  <b>4.</b> Membership Appointments &amp; COPs(15 min)  <b>5.</b> Future Council Meeting Agenda &amp; Workload Planning (1 hr)</p>
<b>Thu Apr 3</b>						
<p>1 pm GMT  <u>1 pm LCN Coho WG</u></p>						
<b>Fri Apr 4</b>	8 hr	8 hr	7.5 hr	7.5 hr	7 hr	4.5 hr
<p>7 am Secretariat  8 am SSC  8 am SAS &amp; STT  8 am GMT  8:30 am HC  11 am MEW  2:30 pm BC  4 pm Chair's Briefing</p>	<p>7 am State Delegations  7 am Secretariat  8 am SSC  8 am SAS &amp; STT  8 am GAP &amp; GMT</p> <p>3 pm EC  6 pm Chair's Reception</p>	<p>7 am State Delegations  7 am Secretariat  8 am SAS &amp; STT  8 am GAP &amp; GMT</p> <p>As Necessary EC</p>	<p>7 am State Delegations  7 am Secretariat  8 am CPSAS &amp; CPSMT  8 am SAS &amp; STT  8 am GAP &amp; GMT</p> <p>As Necessary EC  <u>7 pm Bird Predation Discussion</u></p>	<p>7 am State Delegations  7 am Secretariat  8 am CPSAS &amp; CPSMT  8 am SAS &amp; STT  8 am GAP &amp; GMT  1 pm EAS</p> <p>As Necessary EC</p>	<p>7 am State Delegations  7 am Secretariat  8 am STT  8 am GAP &amp; GMT  8 am EAS</p> <p>As Necessary EC</p>	<p>7 am State Delegations  7 am Secretariat  8 am EAS</p>

Supplemental Attachment 4  
Agenda Item J.4.a  
March 2014

GROUND FISH MANAGEMENT TEAM REPORT ON FUTURE COUNCIL MEETING  
AGENDA AND WORKLOAD PLANNING

The Groundfish Management Team (GMT) reviewed the preliminary year-at-a-glance summary ([Agenda Item J.4.a. Attachment 1](#)) and the proposed agenda for the April 2014 Council meeting ([Agenda Item J.4.a. Attachment 2](#)) and provides the following thoughts.

The advanced briefing book deadline for the April Council meeting is March 19, one week after the conclusion of this meeting. Given the short turn-around time, the GMT may be limited in what we have available for the advanced briefing book, specifically in regards to the harvest specifications and management measures. The GMT will prepare as much as possible for the draft environmental impact statement and/or GMT reports for the advanced briefing book, but wanted to inform the Council that some items may not be completed until the supplemental briefing book deadline or while at the April Council meeting.

The April preliminary agenda in the briefing book contained ten groundfish agenda items, several of which are very complex and will likely be time-consuming and labor intensive (e.g., requiring multiple 14+ hour days). The GMT's understanding is that the National Marine Fisheries Service (NMFS) informed the Council that the mid-water sport fishery range of alternatives will not be ready in time for the April or June Council meetings; removing this agenda item from the April groundfish agenda items will assist with the GMT's workload. Nonetheless, the schedule will be taxing for the GMT.

Once again, we provide Table 1 with the agenda items that may require GMT discussion and/or statements. We ask the Council for guidance on priorities on how to best spend our time and efforts, if different from what we have anticipated.

**Table 1. April 2014 Council meeting agenda items that may require GMT input.**

	<b>Groundfish Agenda Items</b>	<b>Council Floor</b>	<b>GMT Statement ?</b>	<b>GMT Priority #</b>
1	NMFS Report	Sun	No	
2	Stock Complex Restructuring Final Action	Sun	Yes	*
3	Implement 2014 Pacific Whiting Fishery	Sun	Maybe	
4	<del>Mid-water sport fishery Adopt ROA</del>	<del>Sun</del>	<del>Likely</del>	
5	Sablefish catch share program review: phase 1 PPA	Mon	Maybe	
6	Methodology review process	Mon	Yes	*
7	Fisheries in 2015-16 & beyond: adopt biennial SPEX FPA	Mon	Yes	*
8	EM program development including prelim EFP approval	Tues	Likely	
9	Inseason	Wed	Yes	*
10	Fisheries in 2015-16 & beyond: adopt management measures PPA	Wed	Yes	*
<b>Non-Groundfish Agenda Items</b>				
	future workload planning	Tues	likely	
<b>Total Potential Statements by the GMT</b>			<b>7-9</b>	
# The Council has final say in priority of Agenda Items, this is what the GMT thinks are the higher priority agenda items, provided to help inform the Council decision.				

PFMC  
03/11/14

**SALMON ADVISORY SUBPANEL REPORT ON FUTURE MEETING AGENDA AND  
WORKLOAD PLANNING**

The Salmon Advisory Subpanel (SAS) reviewed the Process for Pacific Council Review of Allowable Fishery Impacts to Lower Columbia River Natural (LCN) Coho (Agenda Item J.4.a, Attachment 3). The SAS is in general agreement and looks forward to working the LCN Coho Workgroup (Workgroup).

The SAS feels the Council will appoint well qualified individuals to the Workgroup as was the case with the Tule Chinook Workgroup. However, the SAS would like to reiterate our interest in including Mr. Ray Beamesderfer in the Workgroup for at least part of the process. As a consultant, Mr. Beamesderfer was key in the success of the Columbia River tule Chinook process.

The SAS would like the opportunity to flesh out the schedule and process with the Workgroup at the April Council meeting. The SAS would like to discuss the addition of wild Willamette River coho populations to the LCN coho harvest matrix. Lastly, the SAS want to stress that the process should conclude in November 2014 so that the results can be considered by the National Marine Fisheries Service prior to the 2015 season and prior to any review of the status of the LCN coho Evolutionarily Significant Unit under the Endangered Species Act.