

## LITIGATION SETTLEMENT DISCUSSION

In 2012, the conservation group Oceana filed a suit against the National Marine Fisheries Service (NMFS), arguing that Amendment 13 to the Coastal Pelagic Species fishery management plan (FMP) violated the Magnuson-Stevens Act, the Endangered Species Act, the National Environmental Policy Act, and the Administrative Procedure Act. The United States District Court for the Northern District of California issued a decision in that case, which Oceana appealed to the Ninth Circuit Court. Subsequent settlement negotiations resulted in a Settlement Agreement (Agenda Item G.4, Attachment 1) that requires the completion of two significant tasks. First, the Council is expected to conduct a scientific workshop re-examine the Distribution parameter of the Pacific sardine harvest control rule (HCR), and report the results of that workshop at the Council's November 2015 meeting. Second, NMFS must review the minimum stock size thresholds for Pacific sardine, Pacific mackerel, the central and northern subpopulations of northern anchovy, and jack mackerel. NMFS is tasked with reporting the findings to the Council at or before the September 2016 Council meeting.

This agenda item is primarily focused primarily on the Distribution workshop, scheduled for August 17-18, at the Southwest Fisheries Science Center in La Jolla, California. Preliminary preparations for the workshop have been accomplished, including identifying a workshop Chair, dates, location, a draft Terms of Reference (ToR) document with preliminary objective statements, tentative participants, and possible expected outcomes (Agenda Item G.4, Attachment 2). Advisory bodies and the public are asked to consider the draft ToR and provide recommendations to the Council as necessary. The workshop will review the best scientific information available on the Distribution parameter, and is not intended as a review of other aspects of the HCR or sardine harvest management strategy.

The Distribution term in the Pacific sardine HCR is used to estimate the proportion of the northern subpopulation sardine stock that is in U.S. waters, on an average long-term basis. The purpose of the Distribution term, as defined in the FMP, is to prorate the biomass estimate used to calculate U.S. catch levels, in recognition of the fact that some portion of the biomass may exist outside of U.S. waters. It is used to determine an appropriate annual harvest level for the U.S. fishery.

The Council should consider the draft ToR towards a goal of finalizing plans for the August 17-18 workshop. The Council may wish to designate a Council representative to attend the workshop, confirm invited workshop participants and presenters, and provide guidance on other workshop particulars. A workshop report will be included in the advance briefing book materials for the November 2015 Council meeting, in Garden Grove, California, where the Council is scheduled to review the outcome of the workshop and determine if further consideration of revising the Distribution term is warranted. The Council should also discuss any other obligations, prioritizations, or expectations in the settlement agreement, as appropriate.

### **Council Tasks:**

- 1. Consider Draft ToR for the Distribution Workshop.**
- 2. Consider Council Actions and Planning Related to the Settlement Agreement.**

Reference Materials:

1. Agenda Item G.4, Attachment 1: Settlement Agreement.
2. Agenda Item G.4, Attachment 2: Draft Terms of Reference for Distribution Workshop.

Agenda Order:

G.4 Litigation Settlement Discussion

Kerry Griffin

- a. Reports and Comments of Advisory Bodies and Management Entities
- b. Public Comment
- c. **Council Action:** Consider Council Actions and Scheduling Needed in Response to the *Oceana v. Pritzker* Court Settlement Agreement

PFMC

05/22/15