

APPENDIX G4: All letters and e-mails from Regional Fishery  
Management Councils

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From [Mark Millikin <Mark.Millikin@noaa.gov>](mailto:Mark.Millikin@noaa.gov)

Sent Friday, June 1, 2007 11:16 am

To [annual catch limitDEIS <annual.catch.limitDEIS@noaa.gov>](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject [Fwd: Scoping Comments Regarding ACLs and AMs]

From Dan Furlong, April 20, 2007.

----- Original Message -----

**Subject:** Scoping Comments Regarding ACLs and AMs

**Date:** Fri, 20 Apr 2007 16:28:32 -0400

**From:** "Furlong, Daniel T." <dfurlong@mafmc.org>

**To:** Mark Millikin <Mark.Millikin@noaa.gov>, Galen Tromble <Galen.Tromble@noaa.gov>

**CC:** "Jensen, Pete" <wpjensen@aol.com>, "Kray, Eugene"

<sigma58@aol.com>, "Armstrong, James L." <jarmstrong@mafmc.org>, "Coakley, Jessica" <jcoakley@mafmc.org>, "Didden, Jason T." <jdidden@mafmc.org>, "Heaton, Clayton E." <cheaton@mafmc.org>, "Hoff, Thomas B." <thoff@mafmc.org>, "Montanez, Jose L." <jmontanez@mafmc.org>, "Seagraves, Richard J." <rseagraves@mafmc.org>

Following are Mid-Atlantic Fishery Management Council staff comments, and / or concerns, regarding the "Annual Catch Limits (ACL) and Accountability Measures (AM)" provisions of the recently signed MSA Reauthorization Act of 2006.

- Owing to National Standard 1 (Section 301, (a), (1)), there is a potential for a difference to exist between achievement of OY (optimum yield) and specification of ACL. We believe that a Council can stop overfishing, achieve optimum yield, and do so while exceeding an ACL recommendation. The Act is very clear at Section 302, (h), (6), i.e., Each Council shall - ". . . develop annual catch limits that **may** not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process . . ." Our interpretation of "may" is that it is not "must", it is not "shall", it is not "will". Rather, it is "may", as in there may be occasions when one can exceed the recommendation so long as overfishing is not occurring and so long as OY is being achieved.

- Section 302, (h) states that "Each Council shall, in accordance with the provisions of this Act?(6) develop ACLs?that may not exceed the fishing level recommendations of its SSC or the peer review process?" Missing from this language is an implementation time frame. Does the 2010/2011 timeframe related to ACL establishment at Section 303, (a), (15) apply to Section 302, (h), (6)? Or must Section 302, (h), (6) be implemented immediately? We believe that ACLs and related AMs should be implemented as quickly as possible. And, for fisheries experiencing overfishing, such measures must be in place by no later than 2010, and for all others by 2011. In other words, we have some flexibility between now and when the statutory deadlines are imposed.

- In cases where state fisheries continue to be prosecuted following a federal closure, what additional measures or mechanisms will be required to ensure accountability? The Secretary has authority under Section 306, (b), (1), (B) of the Act to supersede state jurisdiction when a state adversely affects a federal FMP, but he has yet to demonstrate the political will to do so. If state landings/mortality occur after federal closure of a fishery, will deductions from future ACLs as part of the new AM requirement be applied to all

participants (particularly a non-complying state) or components of the fishery?

- In terms of the frequency of overfishing that would be tolerated, regulatory stability should be a factor taken into consideration. If the fishery does not exceed the ACL for several years and has had stable operating regulations, then it may not be appropriate to adjust those regulations immediately following a year in which an overage occurs (if the amount of overage is small). Such a reaction could result in drastic changes to fishery operations which are wholly unwarranted as offending year may be a minor perturbation that does not represent the true pattern of performance in that fishery.

- The Mid-Atlantic Fishery Management Council was the first Council to implement an ITQ (Individual Quota Transfer) Fishery Management Plan (FMP), i.e., the Surfclam and Ocean Quahog FMP. We believe that such ITQ programs inherently satisfy the new requirements for accountability measures, and would hope that NMFS does as well.

- What criteria are most important when establishing the marginal difference between ACL and OFL?

- If an OFL and an ACL are established for a stock, and the OFL is not regularly exceeded, are AM measures required for each sector?

- Given the uncertainty of the data used to assess compliance with ACL (especially in data poor fisheries, e.g., scup), we agree that a "tiered" approach with respect to AMs is an appropriate course of action.

- Does the current management system for recreationally prosecuted species under our Council's FMPs, i.e., summer flounder, scup, black sea bass, and bluefish meet the accountability measures contemplated under the new Act? Currently, when such overages occur, the subsequent fishing year's recreational regulations (size, season, possession limits) are generally more restrictive owing to the prior year's overages. However, there are exceptions to this scenario when the targeted fishery's stock has increased due to strong recruitment or other environmental factors that would allow an increase in allocation despite the prior year's overage.

- Do references to the "charter" sector include all "for hire" fisheries (i.e., head and/or party boat)?

- Multiplicative gradient due to the timing of the management response cycle and the management information would be appropriate in determining how frequent review of performance should be conducted. For example, two times the management response cycle and two times the management information. So, if the managers can respond within one year and data are available annually, perhaps a four year review is appropriate. However, if a stock assessment is only available every 3 years, but managers can respond within 1 year, then an 8 year review might be appropriate.

Mark & GALEN:

4/17/07

Re: Buffers -

You might want to consider  
linking magnitude of buffer  
to status of the stock . . . .

e.g. closer the stock is to  
fully rebuilt, smaller the  
buffer.



Vince D'Shea

Oceanfront at 91st Street ■ Ocean City, MD 21842 ■ (410) 524-7777



# North Pacific Fishery Management Council

Stephanie Madsen, Chair  
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April 5, 2007

William Hogarth, Ph.D.  
Assistant Administrator for Fisheries  
NOAA Fisheries  
1315 East West Highway  
Silver Spring, Maryland 20910

Dear Dr. Hogarth:

Thank you for the opportunity to comment on the notice of intent for new requirements to end and prevent overfishing as set forth by the recently reauthorized Magnuson-Stevens Fishery Conservation and Management Act.

At its March meeting, the North Pacific Fishery Management Council received a presentation from Mr. Galen Tromble (NMFS) regarding public scoping for guidance on Annual Catch Limits (ACLs) and Accountability Measures (AMs). The Council and its Scientific and Statistical Committee (SSC) discussed these potential new requirements for the North Pacific FMPs, and we offer the following comments.

As you know, the North Pacific Council's management program using scientifically based annual catch limits was used as a model for the MSA reauthorization language. We sincerely hope that the guidance being developed by NMFS will not inadvertently impact our successful program.

Our primary concern is that the proposed ACLs not conflict with the existing catch limit reference points established in the North Pacific. Specifically, the proposed guidance would establish two reference points: an OFL and an ACL. Yet three reference points are used for management of groundfish fisheries in the North Pacific: OFL, Acceptable Biological Catch (ABC), and Total Allowable Catch (TAC). The SSC sets the OFL and ABC limits, and the Council sets the TAC levels within these constraints. Our regulations define the relationship of these catch levels such that  $TAC \leq ABC < OFL$ . Although fisheries are managed in-season to achieve the TACs without going over these levels, there are instances when the TAC is exceeded. Based on Galen's presentation, it appears that our TAC reference point may be equivalent to ACL, but not necessarily so, depending on how the regulations are written. Additionally, it is unclear how an ABC reference point would be accommodated in the regulations.

The ABC reference point is very important to our management program. It has both biological and management significance. It defines the catch level that if exceeded, could negatively affect recruitment of that species or stock in the short term. The ABC provides an important trigger point that defines the level at which more restrictive measures are implemented to ensure the OFL is not exceeded. Further, it provides a buffer which allows NMFS to issue exempted fishing permits in-season, and still constrain annual catches within the OFL catch limit. NMFS may wish to consider the use of ABCs at part of the national program to end overfishing, or at the very least, should provide allowance for other reference levels not specified by regulations.

Dr. Hogarth  
April 2, 2007  
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We are also concerned about any requirements for ACLs for fisheries jointly managed with the State. The Bering Sea/Aleutian Islands Crab FMP and Alaska Scallop FMP largely delegate management authority to the State of Alaska. For these FMPs, OFLs are established by NMFS and reviewed annually by the SSC and Council, whereas TACs are established solely by the State. It is unclear whether or not ACLs will be an additional federal requirement for these FMPs.

The SSC noted that preparing realistic overfishing definitions for stocks in Tier 6 has been and continues to be a serious problem. These are mostly non-target stocks for which fishing mortality is almost certainly very low, but abundance or catch is not estimable with available data and probably will remain so. The SSC encourages NMFS to consider an alternative method of guarding against overfishing for these cases when drawing up the guidelines. Increased observer sampling or shoreside observer sampling may be needed to more accurately estimate catch of some species currently managed in the 'other species' complex. Detailed suggestions regarding annual catch limit reference points and overfishing definitions were previously provided in our comments on the National Standard 1 Guidelines (see letters dated 8/27/04 and 10/13/05).

We believe that Alternative 3 may be overly and unnecessarily prescriptive, particularly in the context of our fisheries in the North Pacific, and given that we have both ACL and AM measures firmly in place. Alternative 2 seems a more appropriate course of action, though we also believe that serious consideration should be given to Alternative 1 as outlined in the scoping document. We understand that a national level team may be organized to advise NMFS on further development of ACLs and AMs, and we would be very interested in having a member of our staff participate on that team. Once again, thank you for the opportunity to comment on these issues.

Sincerely,



Chris Oliver  
Executive Director

CC: Sue Salveson  
Galen Tromble



## Pacific Fishery Management Council

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April 17, 2007

Mr. Mark Millikin  
National Marine Fisheries Service, NOAA  
1315 East-West Highway  
Silver Spring, MD 20910

Re: Pacific Fishery Management Council Comments on Environmental Review Procedures and National Marine Fisheries Service's Notice of Intent to Prepare an Environmental Impact Statement Analyzing Alternatives for Guidance on Annual Catch Limits, Accountability Measures, and Other Overfishing Provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

Dear Mr. Millikin:

The Pacific Fishery Management Council (Pacific Council) appreciates the opportunity to provide comments to the National Marine Fisheries Service (NMFS) on the proposed range of alternatives for guidance on annual catch limits (ACL) and accountability measures (AM) designed to end overfishing. The Pacific Council remains committed to preventing overfishing and protecting and rebuilding depleted stocks and strongly supports timely and effective implementation of the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006* (MSRA).

At the March 2007 meeting, the Pacific Council reviewed all of the new provisions in the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSA) and prioritized efforts to help implement any new requirements by the legislatively-mandated implementation schedules. At its April 2007 meeting, the Pacific Council focused attention on three new provisions: 1) guidance on annual catch limits and accountability measures designed to end overfishing, 2) consideration of proposals for a new environmental review process for fishery management actions; and 3) implementation of Western Central Pacific Fisheries Commission provisions. The first two issues were the subject of a NMFS sponsored public scoping session and this letter and the enclosed materials are intended to be included as the Pacific Council's scoping comments on these two important matters. The Pacific Council appreciated the efforts of Dr. Rick Methot and Ms. Marian Macpherson and their help in hosting the session and in presenting the scoping issues and responding to questions by the Pacific Council and the public.

### ANNUAL CATCH LIMITS AND ACCOUNTABILITY MEASURES

The Pacific Council currently prevents overfishing by implementing science-based precautionary approaches to both the preseason setting of harvest levels and active fishery monitoring and inseason management mechanisms for many key species within our four fishery management

plans (FMPs). The Pacific Council believes its good record of avoiding overfishing events while rebuilding and protecting critical stocks speaks to the strength of the Pacific Council's current management mechanisms. Therefore, the Pacific Council recommends that the range of alternative performance standards and guidance on annual catch limits and accountability measures analyzed in the draft Environmental Impact Statement include an alternative under which the Pacific Council's current system can operate efficiently and effectively to meet the differing management capabilities and needs of our diverse fisheries. At this early stage of development, the Pacific Council has identified Alternative 2 as presented by Dr. Methot as the alternative that may best meet the requirements of the MSRA while maintaining the necessary flexibility for regional and species-specific implementation.

Prior to the passage of the MSRA, the Pacific Council was actively engaged in revision of National Standard 1 guidelines to help make them an understandable, applicable, and efficient set of requirements for ending overfishing practices and rebuilding depleted stocks while assuring measurable success through regional management flexibility in their implementation. As illustrated in this letter and the enclosed statements from the Pacific Council advisory bodies, a set of very specific performance standards and guidelines will not likely work when strictly applied to the wide range of federally managed fisheries and stocks. This "one size fits all strategy" could be problematic under several of the Pacific Council's FMPs as summarized below and detailed in the enclosed documents.

#### SALMON FISHERY MANAGEMENT PLAN

The Pacific Council's Salmon Technical Team (STT) documented several potential issues with developing ACLs and AMs for salmon. Many salmon stocks managed under the Pacific Council's salmon FMP have spawning escapement objectives rather than catch limits. To achieve conservation objectives the Pacific Council and NMFS manage salmon fisheries through the use of both catch limits or quotas as well as effort limiting measures such as season structure and daily or weekly landing limits. The application and definition of annual catch limits should remain broad enough to include the use of effort controls in addition to catch limits. Because salmon stock origin cannot be determined visually, the impacts of a given fishery, whether limited by catch or effort levels, cannot currently be known inseason. Measuring salmon spawning escapement is a more direct measure of management success and stock-specific sustainability.

Klamath River fall Chinook (KRFC) management is an excellent example of how fishery effort controls and measured spawning escapement provide both catch limitations and accountability measures. Recent KRFC escapements have fallen below conservation objectives for the stock. The Pacific Council has responded with review and revision of fishery modeling methods and precautionary fishery opportunities to quickly end overfishing and meet spawning escapement objectives. The Pacific Council recommends this type of mechanism, with its measurable objectives and subsequent management accountability, should be analyzed as a potential mechanism under the proposed guidelines.

Additionally, due to their migratory nature, many stocks in the FMP experience fishery mortality in ocean and freshwater fisheries outside the Pacific Council's jurisdiction. The Pacific Council



considers these other sources of mortality when establishing annual management measures, but the Pacific Council is not accountable for those fisheries.

Many salmon stocks are exempted from the Pacific Council's FMP because they are of hatchery origin, they are impacted very little in Pacific Council managed fisheries, or they are listed under the Endangered Species Act. The Pacific Council recommends that these exemptions continue under any new ACL and AM provisions, particularly for salmon stocks with catch and accountability measures established by international fishery agreements such as the Pacific Salmon Treaty. Finally, coho and pink salmon stocks are only vulnerable to Pacific Council fisheries for one year of their life cycles and Chinook salmon are predominantly vulnerable during one year. Therefore, salmon life cycles do not lend themselves to catch accountability restrictions the following year and should be considered for exemption.

#### GROUND FISH FISHERY MANAGEMENT PLAN

The Pacific Council's FMP for groundfish management perhaps best fits the proposed model for ACLs and AMs. Under this FMP, the Pacific Council establishes numeric optimum yield (OY) and allowable biological catch (ABC) harvest limits with varying degrees of precautionary approaches as warranted by a stock's status. OYs for species determined to be overfished are very conservative and set to achieve a science-based rebuilding schedule. The harvest control rule for species in a precautionary status (assessed between 25% and 40% of virgin biomass) scales down allowable harvest until the stock reaches optimal sustainable levels. For healthy groundfish stocks, OY is often set at the ABC or overfishing level.

The Pacific Council and NMFS closely monitor groundfish fishery mortality through the active monitoring of inseason landings and expanded observer coverage. Due in part to an intensive inseason management process, overfishing has occurred very rarely since the 1996 reauthorization of MSA. In one instance in 2005, overfishing was occurring on petrale sole, a condition that was remedied with dramatic fishery closures as soon as the problem was identified and inseason regulatory changes could be implemented. Ultimately, the ABC was only exceeded by 0.14 percent or 4 metric tons. As an additional AM, future fishery modeling of petrale sole impacts was refined to deter any reoccurrence.

Of the over 90 groundfish species managed under the FMP, ABC values have been established for only about 25. The remaining species are primarily incidentally landed and usually are not listed separately on fish landing receipts. Information from fishery independent surveys are often lacking for these stocks, because of their low abundance or they are not vulnerable to survey sampling gear. Until sufficient at-sea observer program data are available or surveys of other fish habitats are conducted, it is unlikely that there will be sufficient data to upgrade the assessment capabilities or to evaluate the overfishing potential of these stocks. Therefore, the Pacific Council manages many of these data-poor species as stock complexes and applies precautionary management approaches when setting OYs for the complex. The Pacific Council recommends this approach continue under the new guidelines until such a time as more information on these species becomes available.

The Pacific Council is currently working to rationalize the West Coast groundfish trawl fishery and establish long term fixed species allocations for each sector of the fishery. In the enclosed draft white paper "Managing Yield in a Groundfish Management Regime of Individual Fishing

Quotas, Intersector Allocations, and Stringent Rebuilding Requirements,” Pacific Council staff proposes the setting of multi-year OYs, with carryover provisions under which annual catch underages or overages could be adjusted in subsequent years of a multi-year management period. This management tool has many potential advantages in the management of a limited access privilege program. The Pacific Council strongly recommends that the provisions proposed in the staff white paper and supported by the Groundfish Management Team be included in the analysis for alternative guidelines on ACLs and AMs.

#### HIGHLY MIGRATORY SPECIES FISHERY MANAGEMENT PLAN

The Pacific Council’s FMP for highly migratory species includes two categories, actively managed species and monitored species. All of the actively managed species have a trans-boundary distribution and are the subject of international fishing agreements through Regional Fishery Management Organizations (RFMOs). For most of the species in the HMS FMP numerical harvest limits (harvest guidelines or quotas) have not been established. Furthermore, Pacific RFMOs have by and large not established catch quotas. Like some salmon stocks, catch by domestic fisheries managed under the HMS FMP generally comprises a small portion of the total catch. The Pacific Council recommends that the analysis of alternative guidelines include clear criteria and procedures for determining if international RFMO ACL and AM provisions are adequate for exemption under the MSA. Restricting domestic fisheries to near zero annual catch limits to address overfishing concerns would have almost no impact in ending overfishing on the stock as a whole but could severely disadvantage local fisherman. Additionally, the Western Pacific Fishery Management Council also manages HMS fisheries. Development of ACLs would need to be coordinated with that Council.

The monitored species category of the HMS FMP consists of over 40 species that are usually caught incidentally and are included in the FMP, in part, to track the effectiveness of bycatch reduction strategies. Establishing ACLs and AMs for these relatively data-poor species will be problematic and are of questionable value given how rarely some of the species are encountered and that many of them are non-target species.

#### COASTAL PELAGIC SPECIES FISHERY MANAGEMENT PLAN

The Pacific Council’s FMP for coastal pelagic species (CPS) contains actively managed species, and monitored species and was recently amended to include all species of krill as prohibited harvest species. The FMPs harvest control rules for actively managed species (Pacific mackerel and Pacific sardine) removes a fixed portion of the assessed biomass of these species from harvest consideration to minimize the potential for overfishing and to help ensure a sustainable spawning biomass. Therefore, the definition of an overfished stock is explicit in the harvest control rules as harvestable biomass automatically declines as the stock approaches an overfished state.

Per the CPS FMP, the Council must take action to prevent overfishing if exploitation rates are projected to exceed overfishing levels within two years. Under the CPS FMP, the Council can and does set a harvest guidelines or catch limits below the overfishing level. Often this precautionary approach is intended to prevent overfishing by reserving a portion of the harvestable biomass as an incidental landing allowance for CPS fisheries targeting other species.

Like the HMS FMP, the CPS FMP also contains monitored species. Monitored species are either exploited at very low levels or are under State jurisdiction, or both. It is presumed that market squid, a monitored species, would be exempt from ACL and AM provisions due to its short life cycle. Much like monitored species in the HMS FMP and data-poor stocks in the groundfish FMP, assessing ACLs and AMs for monitored stocks could be problematic.

#### SCIENTIFIC AND STATISTICAL COMMITTEE

The Pacific Council and its Scientific and Statistical Committee (SSC) have developed an active and effective relationship that provides detailed and independent review of the best available science within the Pacific Council process. The Pacific Council and its SSC have raised several questions regarding the SSC's role in establishing annual catch limits under the reauthorized MSA. These concerns are well documented in the enclosed SSC statements. Additionally, like other Pacific Council advisory bodies, the SSC has expressed many of concerns about determining catch accounting control rules for data-poor species or for salmon stocks which are generally managed for escapement.

#### **REVISED ENVIRONMENTAL REVIEW PROCEDURES**

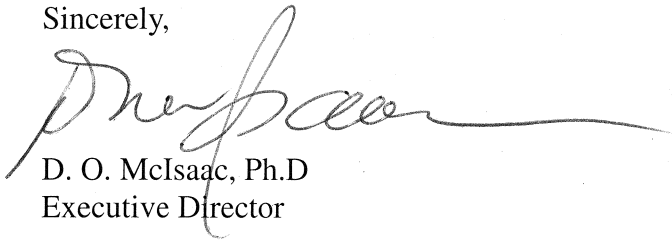
The Pacific Council is supportive of integrating applicable environmental analytical procedures of the National Environmental Policy Act (NEPA) with the procedures for preparation or amendment of FMPs under the MSA with the goal of aligning timelines more closely with FMP processes and reducing paperwork while providing clear and concise analyses for decision makers and maintaining effective public involvement. The Pacific Council reviewed the Council Coordination Committee's (CCC) enclosed February 28, 2007 proposed revised procedure and endorsed this document for use as general initial guidance to NMFS on the matter. The Pacific Council Chairman and Executive Director will provide additional comments and recommendations at the May 2007 CCC meeting in New Orleans, Louisiana. The Pacific Council will continue to work with NMFS and the CCC throughout the development, review, and adoption of revised environmental review procedures.

#### **CONCLUSIONS**

The Pacific Council appreciates the opportunity to comment on the development of these important guidelines. Please consider the comments of this letter as well as the written and oral record from the April 2007 Council meeting and NMFS scoping session as initial Pacific Council recommendations for the development and analysis of alternative guidelines for implementation of ACLs and AMs. The Pacific Council looks forward to further coordination with NMFS as National Standard 1 guidelines and ACL and AM alternatives are further developed and analyzed.

If you or your staff has any questions regarding this letter, please contact me or Mr. Mike Burner, the lead Staff Officer on this matter at 503-820-2280.

Sincerely,



D. O. McIsaac, Ph.D  
Executive Director

MDB:rdd

Enclosures:

1. Relevant Briefing Book Materials, Advisory Body Statements, and full meeting recordings from the April 2007 Council Meeting.

c: (without enclosures)

Council Members

Regional Fishery Management Council Executive Directors

Mr. Samuel D. Rauch, Deputy Assistant Administrator for Regulatory Programs

Mr. Alan Risenhoover, Deputy Director, Office of Sustainable Fisheries

Mr. Adam Issenberg, Deputy Assistant General Counsel for Sustainable Fisheries

Mr. Robert Lohn, NMFS, Northwest Regional Administrator

Mr. Rod McInnis, NMFS, Southwest Regional Administrator

Dr. Usha Varanasi, Science Director, Northwest Fisheries Science Center

Dr. William Fox, Science Director, Southwest Fisheries Science Center

Ms. Eileen Cooney

Dr. John Coon

Mr. Jim Seger

Mr. John DeVore

Ms. Laura Bozzi

Dr. Kit Dahl

Mr. Chuck Tracy

Ms. Jennifer Gilden

## MAGNUSON-STEVENS ACT REAUTHORIZATION IMPLEMENTATION

At its March 2007 meeting, the Council reviewed the Magnuson-Stevens Act (MSA) as amended by the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006*. Implementation of the provisions in the new MSA will involve considerable coordination between the National Marine Fisheries Service and the eight regional councils. The Council directed Council staff to continue working to meet timelines for implementing the new provisions and scheduled three specific items for Council action at the April 2007 Council meeting: (1) the process for establishing annual catch limits (ACLs) and accountability measures (AM); (2) consideration of proposals for a new environmental review process for fishery management actions; and (3) implementation of Western Central Pacific Fisheries Commission provisions.

The reauthorized MSA requires that fishery management plans (FMPs) “*establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.*” Council FMPs are currently being reviewed for consistency with this recommendation. Council staff has provided information to the National Oceanic and Atmospheric Administration (NOAA) regarding existing mechanisms for ACLs and AMs (Agenda Item C.2.a, Attachment 1) and has drafted a staff white paper on groundfish harvest issues associated with individual fishing quotas, intersector allocation, and rebuilding requirements (Agenda Item C.2.a, Attachment 2). If current Council ACLs and AMs are determined by NOAA to be insufficient, Council FMPs may be required to be amended by 2010 for overfished species and 2011 for all other species. NOAA is currently soliciting input on the development of alternative guidelines for ACLs and AMs and has published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) (Agenda Item C.2.b, Attachment 1). The public comment deadline for the NOI has been extended to April 17, 2007. The resulting guidelines are intended to be added to the proposed revision to National Standard 1 Guidelines.

The reauthorized MSA requires the development of revised procedures on environmental review and analysis of fishery management decisions within one year. The Council Coordination Committee (CCC) has submitted a draft proposal intended to integrate applicable environmental analytical procedures of the National Environmental Policy Act (NEPA) with the procedures for preparation or amendment of FMPs (Agenda Item C.2.a, Attachment 3). The goal is to align timelines more closely with FMP processes and reduce paperwork while providing clear and concise analyses for decision makers and maintaining effective public involvement.

The reauthorized MSA also requires that NMFS promulgate new Experimental Fishing Permit (EFP) regulations that “create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits. NMFS is considering “experimental fishing permits” to be synonymous with “exempted fishing permits,” for which national regulations were established in May 1996. Since the March 2007 Council meeting, NMFS has solicited Council comments on EFP provisions in the MSA and the current EFP application and issuance process on the West Coast.

NMFS is holding scoping sessions around the nation, including Council deliberations and public testimony under this agenda item. To facilitate discussion, NOAA has drafted a scoping session handout on ACLs and AMs (Agenda Item C.2.b, Attachment 2), has distributed a request for comments on new environmental review requirements (Agenda Item C.2.b, Attachment 3), and has circulated a timeline for meeting the new MSA provisions for EFP regulations (Agenda Item C.2.b, Attachment 4). These documents and a presentation on ACLs and AMs are posted on a NMFS website on implementation of provisions of the MSA reauthorization ([www.nmfs.noaa.gov/msa2007/](http://www.nmfs.noaa.gov/msa2007/)).

Finally, the Council requested input from its Highly Migratory Species (HMS) advisory bodies regarding implementation of the Western and Central Pacific Fisheries Convention (WCPFC) (Agenda Item C.2.a, Attachment 4). Specifically the Council is interested in recommendations on coordination with Pacific Regional Fishery Management Councils and in determining appropriate Council and West Coast representation. To facilitate focused public comment and Council decision-making, the Council will take this matter up under Agenda Item J.5 where the Council is scheduled to review the Council Operating Procedure covering HMS recommendations to Regional Fishery Management Organizations.

The Council is scheduled to hear a NMFS presentation on ACLs and AMs, review and discuss NMFS and Council staff documents on new MSA provisions, consider the testimony of its advisory bodies and the public, and direct planning on the next steps in implementation. Additionally, the Council may approve formal comments on NMFS plans to prepare an EIS on ACL and AM guidelines, the CCC proposal for environmental review procedures, and revisions to EFP regulations.

### **Council Task:**

**1) Direct Planning and Action on New MSA Requirements, 2) Approve formal comments on ACL and AM guidelines, 3) Approve formal comments on environmental review procedures, 4) Approve formal comments on new EFP regulations, and 5) Plan to discuss U.S. representation to the WCPFC under Agenda Item J.5.**

### **Reference Materials:**

1. Agenda Item C.2.a, Attachment 1, February 8, 2007 memorandum from Mr. Risenhoover regarding Council input to NOAA regarding existing ACLs and AMs.
2. Agenda Item C.2.a, Attachment 2, Council Staff White Paper: *Managing Yield in a Groundfish Management Regime of Individual Fishing Quotas, Intersector Allocations, and Stringent Rebuilding Requirements.*
3. Agenda Item C.2.a, Attachment 3, CCC Draft Proposed for MSA/NEPA Compliance.
4. Agenda Item C.2.a, Attachment 4: WCPFC Excerpt from the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.*
5. Agenda Item C.2.b, Attachment 1, February 14, 2007 Federal Register Notice of Intent to prepare and EIS to analyze alternative guidelines for ACLs and AMs.
6. Agenda Item C.2.b, Attachment 2, NMFS Scoping Session Handout: *ACLs and AMs: Requirements of the 2006 Amendments to the MSA.*
7. Agenda Item C.2.b, Attachment 3, NMFS Request for Comments: *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, Environmental Review Procedures.*
8. Agenda Item C.2.b, Attachment 4, NMFS Timeline for EFP Regulations

### **Agenda Order:**

- a. Agenda Item Overview
  - b. NMFS Comments
  - c. Reports and Comments of Advisory Bodies
  - d. Public Comment
  - e. **Council Action:** Direct Planning and Action on New Requirements as Needed for Timely Implementation
- Mike Burner

PFMC  
03/19/07



## Pacific Fishery Management Council

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February 28, 2007

Mr. Alan Risenhoover  
Deputy Director, Office of Sustainable Fisheries  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

RE: Magnuson-Stevens Fishery Conservation and Management Act Implementation

Dear Alan:

Please note the following in response to your February 5, 2007 memorandum requesting information as a follow-up of the January 10-11, 2007 meeting of Regional Fishery Management Council Chairs and Executive Directors.

### **1. Meeting the New Annual Catch Level Requirements**

In general, the Pacific Council currently prevents overfishing by various precautionary mechanisms in initial harvest level setting, specific to individual fishery management plans (FMPs), bolstered by in-season management for some species. The good Pacific Council track record on overfishing events speaks to the adequacy of these mechanisms. Accountability for overages when they do occur is typically via adjustments in management measures (seasons, trip limits, closed areas, etc.) to reduce fishing power below that of the year of overage to the extent that another overage would not occur. See the attached narratives for the Pacific Council's FMPs for salmon (Attachment 1), highly migratory species (Attachment 2) groundfish (Attachment 3), and coastal pelagic species (Attachment 4). Should your staff have further questions on these attachments, please have them contact Chuck Tracy (salmon), Kit Dahl (highly migratory species), John DeVore (groundfish), or Mike Burner (coastal pelagic species) at the Council office.

### **2. Stipends for SSC and AP and other Committee Members**

The attached spread sheet (Attachment 5) details the information requested in your memo. We interpreted "employed by a federal government or State marine fisheries agency" as full time employment, not partial or contracted employment. We note that if a stipend was granted at half the pay rate of Council Members, the estimated annual cost for the Pacific Council would be just over \$380,000.

### **3. Management Plan Schedule**

We do not have routine reviews of any of our FMPs scheduled prior to 2010. However, we are tracking currently scheduled amendments for the groundfish (5) and highly migratory species (1) FMPs, for specific purposes other than annual catch limit amendments.

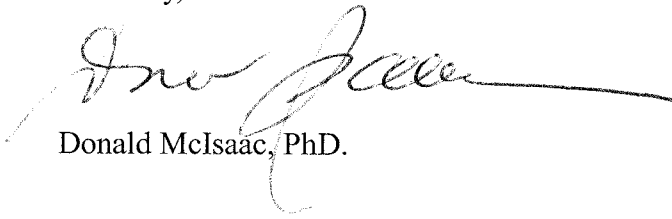
### **4. Training Requirements**

Please see attached emails (Attachments 6 and 7) received in response to your request. Additionally, we received comment that the adequacy of National Marine Fisheries Service funding of Council activities be included as a topic.

### **5. 2007 Training and Orientation for New Council Members**

The weeks of October 22 and October 15 are offered as suggestions for 2007 orientation and training efforts.

Sincerely,



Donald McIsaac, PhD.

cc: Mr. Don Hansen  
Mr. Dave Ortmann  
Dr. John Coon  
Mr. Mike Burner  
Dr. Kit Dahl  
Mr. John DeVore  
Mr. Jim Seger  
Mr. Chuck Tracy  
Mr. Daniel Furlong  
Mr. Paul Howard  
Mr. Robert Mahood  
Mr. Chris Oliver  
Mr. Miguel Rolon  
Ms. Kitty Simonds  
Mr. Wayne Swingle



# **Salmon Fishery Management Plan**

## **Annual Catch Limit**

### **Mechanisms and Measures**

#### ***Mechanisms***

Council area salmon seasons are set using the total allowable ocean harvest determined by conservation and allocation objectives in the fishery management plan (FMP). Conservation objectives have been established for over 40 salmon stocks originating in Council area production regions; unfortunately, estimating the stock composition in the landed catch can not be done visually; therefore, models are frequently used to estimate stock composition in mixed stock salmon fisheries and to constrain fisheries to acceptable impact levels for critical stocks.

For each management area or subarea, the Council has the option of managing the commercial and recreational fisheries for either coho or Chinook using the following methods: (1) fixed quotas and seasons; (2) adjustable quotas and seasons; and (3) seasons only. The Council may also use harvest guidelines within quotas or seasons to trigger inseason management actions which were established in the preseason regulatory process.

The total allowable harvest is based on the expected impacts to the constraining stock(s) associated with projected harvest of all stocks in the time/area management strata. Regulation models are used to estimate impacts for key stocks in Council managed fisheries. The Chinook and Coho Fishery Regulation Assessment Models (FRAM) are multi stock models, while the Klamath Ocean Harvest Model (KOHM) is a single stock model. The Coho FRAM covers the entire Council management area, and includes representations for all key stocks. All coho fisheries in this area are quota managed based on the Coho FRAM projections. The Chinook FRAM covers the area from Cape Falcon, Oregon to the U.S./Canada border and includes representations for Chinook stocks from the Columbia River north. All Chinook fisheries in this area are quota managed based on the Chinook FRAM projections. The KOHM covers the area from Cape Falcon, Oregon to Point Sur, California, but only estimates impacts on Klamath River fall Chinook. Because the KOHM is a single stock model, estimates of total catch are sufficiently accurate only in areas where Klamath River fall Chinook make up a large fraction of the total abundance. Therefore, quota management is generally only used in the Klamath Management Zone (KMZ), between Humbug Mt. Oregon and Horse Mt. California, or to limit catch in data poor management strata.

Quotas provide very precise management targets and work best when accurate estimates of stock abundance and distribution are available, or when needed to ensure protection of depressed stocks from potential overfishing. Quotas are not guaranteed harvests, but rather the maximum allowable harvest which assures meeting the conservation objective of the species or stock of concern. While time and area restrictions are not as precise as quotas, they allow flexibility for effort and harvest to vary in response to abundance and distribution.

## **Measures**

Managers require certain information about the fisheries during the season to control the harvest to meet established quotas and goals. If conditions differ substantially from those expected, it may be necessary to modify the fishing seasons, quotas, or other management measures. The following information is used for inseason management:

- a. harvest of each species by each fishery in each fishing area by day and by cumulative total;
- b. number of commercial troll day boats and trip boats fishing;
- c. estimated average daily catch for both day and trip boats;
- d. distribution and movement of fishing effort;
- e. average daily catch and effort for recreational fishery;
- f. estimates of expected troll fishing effort for the remainder of the season;
- g. information on the contribution of various fish stocks, determined from recovered coded-wire tags, scales, or other means.

Inseason management requires updating information on the fisheries daily. Thus, data will be collected by sampling the landings, radio reports, and telephone interviews.

In general, data necessary for inseason management will be gathered by one or more of the following methods. Data on the current harvests by commercial and treaty Indian Ocean fishermen will be obtained by telephoning selected (key) fish buyers, by sampling the commercial landings on a daily basis, and from radio reports. Data on the current effort of, and harvests by, the recreational fisheries will be obtained by telephoning selected charter boat and boat rental operators and by sampling landings at selected ports. Analyses of fish scales, recovered fish tags, and other methods will provide information on the composition of the stocks being harvested.

The Salmon FMP specifies the following procedures for taking inseason actions:

1. Prior to taking any inseason action, the Regional Director will consult with the Chairman of the Council and the appropriate State Directors.
2. As the actions are taken by the Secretary, the Regional Director will compile, in aggregate form, all data and other information relevant to the action being taken and shall make them available for public review during normal office hours at the Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, Washington 98115.
3. Inseason management actions will become effective by announcement in designated information sources (rather than by filing with the Office of the Federal Register [OFR]). Notice of inseason actions will still be filed with the OFR as quickly as possible.

The following information sources will provide actual notice of inseason management actions to the public: (1) the U.S. Coast Guard "Notice to Mariners" broadcast (announced over Channel 16 VHF-FM and 2182 KHZ); (2) state and federal telephone hotline numbers specified in the annual regulations and (3) filing with the *Federal Register*. Identification of the sources will be incorporated into the preseason regulations with a requirement that interested persons periodically monitor one or more source. In addition, all the normal channels of informing the public of regulatory changes used by the state agencies will be used.

4. If the Secretary determines, for a good cause, that a notice must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

Accountability is assured during the annual preparation of the Stock Assessment and Fishery Evaluation document and the preseason planning documents for upcoming seasons. Quota overages in the previous season are noted and the cause identified. Total allowable catch overages are fairly rare in Council area salmon fisheries, although exceeding individual stock impact expectations occur more frequently. For constraining stocks the target impact level is expected to be exceeded 50% of the time, assuming an unbiased model. However, if the model appears to have a consistent bias, or if results fall outside the observed range, a review is conducted and necessary adjustments are made. Adjustments are usually associated with input data for the models, such as the years included in parameter estimates.

## Highly Migratory Species Management Plan Annual Catch Limit Mechanisms and Measures

*Mechanisms to specify annual catch limits in the highly migratory species (HMS) fishery management plan (FMP), implementing regulations or annual specifications to prevent overfishing. Measures to ensure accountability such as but not limited to control rules or default measures.*

The default control role in the HMS FMP is to set optimum yield (OY) (or an OY proxy) equal to maximum sustainable yield (MSY) (or proxy) for species not considered vulnerable. For vulnerable species the OY (or proxy) is set to 75% of MSY (or proxy). Vulnerability of species can stem from many reasons, and any species that has been depleted to 50% below  $B_{MSY}$  (for the logistic production model, to 25% of unfished level  $B_0$ ) that is incapable of recovering back to that  $B_{MSY}$  level within 10 years (with fishing removed) is to be considered vulnerable in this FMP. The productivities (potential per capita rates of population increase  $r$ ) of such species would have to be 5% or less per year, assuming recovery time is determined by a linear compensatory increase in  $r$  with population decline (logistic model). Only the sharks among the Management Unit Species (MUS), including common thresher, are likely to have such low rates and long recovery times, and they are therefore considered vulnerable by this criterion. Vulnerable OYs are also appropriate for other fish species for other reasons of stock health concern.

The Council may adopt or modify any harvest guidelines, quotas or other management measures annually based on information provided in the Stock Assessment and Fishery Evaluation (SAFE) Report. The Regional Administrator will implement through rulemaking any necessary and appropriate harvest guidelines or other management measures based on the SAFE Report recommendations from the Council and the requirements contained in the FMP. (see 50 CFR 660.709)

Initial harvest guidelines established in the FMP apply to the shortfin mako shark and thresher shark. A harvest guideline if surpassed calls for review of the stock/population and its fishery. The purpose is to alert the Council to the possibility that catches under its jurisdiction are at or near a particular target level.

Most HMS are widely distributed and harvest by West Coast-based vessels represents only a small fraction of total fishing mortality out of the overall range of the species, and any unilateral action, such as a reduction in the US West Coast harvest or effort, would not have significant biological effect on the stock. However, in some cases unilateral action may be warranted. Otherwise the Council may make recommendations for action to the appropriate Regional Fishery Management Organization through National Marine Fisheries Service and the Department of State.

## **Mechanisms Used to Meet Annual Groundfish Catch Limits on the West Coast**

The Pacific Fishery Management Council (Council) uses a variety of mechanisms to meet annual catch limits (ACLs) (all sources of fishing-related mortality are counted against ACLs) for groundfish that are intended to prevent overfishing. These mechanisms include precautionary reductions to acceptable biological catch (ABC); precautionary management measures such as depth-based closed areas or Groundfish Conservation Areas (GCAs), precautionary trip limits, bag limits, seasons, and gear configurations; established harvest guidelines and bycatch caps; and periodic inseason adjustments to management measures.

The precautionary reductions to ABCs are made in cases where (1) stocks are quantitatively assessed with biomasses estimated to be below that which supports maximum sustainable yield (MSY), (2) stocks are not quantitatively assessed, but appear to have a declining biomass trend based on catch or catch per effort trends, (3) stocks have data-poor assessments, and (4) stocks are quantitatively assessed with biomasses estimated to be at or above that which supports MSY, but co-occur with overfished stocks. Annual catch limits are managed to prevent overfishing by updating projections of total catch through the year using landings and discard mortality estimates and adjusting management measures accordingly. Fixed bycatch caps and harvest guidelines are also specified by fishing sector with automatic regulatory actions, such as fishing closures and GCA adjustments when they are attained inseason. All of these mechanisms have worked in concert to prevent overfishing, except in rare circumstances of unexpected effort shifts of a magnitude significant enough to prevent timely fishery adjustments. While there are no forcing mechanisms in the fishery management plan or federal regulations that automatically adjust harvest specifications or management measures following an instance of overfishing, Council practice has been to specify more precautionary management measures the following season to prevent those rare management miscues.

## Coastal Pelagic Species (CPS) Fishery Management Plan (FMP)

### Mechanisms the Pacific Council uses to prevent overfishing of CPS:

The Annual Catch Limit (ACL) for Actively Managed species (Pacific sardine, and Pacific mackerel):

- The maximum ACL is calculated using species specific Maximum Sustained Yield (MSY) Harvest Control Rules. The Harvest Control Rules are applied to biomass estimates resulting from annual stock assessment updates reviewed and approved by the Scientific and Statistical Committee. Every three years, full assessments are completed and reviewed by both the SSC and a Stock Assessment Review Panel before harvest recommendations go before the Pacific Council.
- Within an ACL the Pacific Council implements a harvest guideline or quota that may be at or below the recommended ACL. Landings are monitored throughout the fishing season and directed harvest is prohibited if landings are projected to meet or exceed harvest specifications before the end of the season. At such time, predetermined incidental harvest provisions are implemented to ensure incidental landings in other CPS fisheries do not result in overfishing of the species of concern.

The Annual Catch Limit for Monitored species (northern anchovy, jack mackerel, and market squid):

- Northern anchovy and jack mackerel landings are relatively low and ACL is determined by a default MSY Harvest Control sets ACL for the entire stock (U.S., Mexico, Canada, and international fisheries) equal to 25% of the best estimate of the MSY catch level. AS with actively managed species, inseason landings are closely monitored.
- The market squid fishery operates on an annual landings cap. The MSY Control Rule for market squid is based on evaluating (throughout a fishing season) levels of egg escapement associated with the exploited population. The estimates of egg escapement are evaluated in the context of a “threshold” that represents a minimum level that is considered necessary to allow the population to maintain its level of abundance into the future (i.e., allow for “sustainable” reproduction year after year). The fishing mortality ( $F_{MSY}$ ) that results in a threshold level of egg escapement of at least 30% will be used initially as a proxy for MSY. However, it is important to note that the level of egg escapement will be reviewed on an intermittent basis as new information becomes available concerning the dynamics of the stock and fishery, to ensure that the proposed threshold meets its objective as a long-term, sustainable biological reference point for this marine resource. The market squid fishery operates within the constraints of currently adopted regulations as dictated by the California Department of Fish and Game (e.g., annual landings cap, weekend closures, closed areas) and NMFS, as long as egg escapement is equal to, or greater than, the threshold value. In the event that egg escapement is determined to be below the 30% threshold for two successive years, then a point-of-concern would be triggered under the FMP’s management framework and the Council could consider moving market squid from Monitored to Active management status.

## **Mechanisms the Pacific Council uses to Ensure Accountability:**

### Pacific Council CPS Harvest Control Rule

The general form of the MSY control rule utilized for West Coast CPS fisheries was designed to continuously reduce the exploitation rate as biomass declines. The general formula used is:

$$H = (\text{BIOMASS}-\text{CUTOFF}) \times \text{FRACTION}$$

H is the harvest target level, CUTOFF is the lowest level of estimated biomass at which directed harvest is allowed and FRACTION is the fraction of the biomass above CUTOFF that can be taken by the fishery. BIOMASS is generally the estimated biomass of fish age 1+ at the beginning the season. The purpose of CUTOFF is to protect the stock when biomass is low. The purpose of FRACTION is to specify how much of the stock is available to the fishery when BIOMASS exceeds CUTOFF. It may be useful to define any of the parameters in this general MSY control rule so that they depend on environmental conditions or stock biomass, as is currently done with Pacific sardine. In such cases, the MSY control rule depends explicitly on the condition of the stock or environment.

The general MSY control rule for CPS is useful for CPS that are important as forage and for protecting stocks from overfishing or from becoming overfished. If the CUTOFF is greater than zero, then the harvest rate (H/BIOMASS) declines as biomass declines. By the time BIOMASS falls as low as CUTOFF, the harvest rate is reduced to zero. The CUTOFF provides a buffer of spawning stock that is protected from fishing and available for use in rebuilding if a stock becomes overfished. The combination of a spawning biomass buffer equal to CUTOFF and reduced harvest rates at low biomass levels means that a rebuilding program for overfished stocks may be defined implicitly. Moreover, the harvest rate never increases above FRACTION. If FRACTION is approximately equal to  $F_{\text{MSY}}$ , then the MSY control rule harvest rate will not exceed  $F_{\text{MSY}}$ . In addition to the CUTOFF and FRACTION parameters, a maximum harvest level parameter (MAXCAT) is established for Pacific sardine and is used to guard against extremely high catch levels due to errors in estimating biomass to reduce year to year variation in catch levels, and to avoid overcapitalization during short periods of high biomass and high harvest. MAXCAT also prevents the catch from exceeding MSY at high stock levels and spreads the catch from strong year classes over a wider range of fishing seasons.

### Additional Pacific Council Accountability Measures in the CPS FMP

Overfishing occurs in the CPS fishery whenever catch exceeds acceptable biological catch (ABC) and overfishing is approached whenever projections indicate that fishing mortality or exploitation rates will exceed the ABC level within two years. The definition of an overfished stock is an explicit part of the MSY control rule for CPS stocks. Under the CPS FMP the Pacific Council must take action to eliminate overfishing when it occurs and to avoid overfishing as exploitation rates approach overfishing levels. Per the MSY Harvest Control Rules, ACL would automatically reduce as biomass declines but the Pacific Council may take additional action if overfishing levels are approached by setting the ACL below the harvest levels allowed under the MSY Harvest Control Rules to ensure overfishing levels are avoided.

PACIFIC FISHERY MANAGEMENT COUNCIL

Committee Name	Number of members who meet stipend criteria (A)	Number of meetings / year (B)	Average length of meeting (in days) (C)	Total number of work days (=A*B*C)
Ad Hoc CPS Tribal Allocation Committee	2	1	1	2
Ad Hoc Full Retention Committee	1	0	0	0
*Ad Hoc Groundfish EFH Review Committee	12	3	2	72
Ad Hoc Groundfish EFH EIS Oversight Committee	2	1	3	6
Ad Hoc Groundfish Habitat Technical Review Committee	6	0	0	0
Ad Hoc Multi-year Management Committee	0	0	0	0
Ad Hoc Groundfish Strategic Plan Implementation Oversight Committee	2	0	0	0
Ad Hoc Groundfish Strategic Plan Implementation Oversight Committee Open Access Conversion Subcommittee	7	1	2	14
Ad Hoc Groundfish Trawl Individual Quota Committee	15	3	2	90
Ad Hoc Highly Migratory Species Management Committee	1	0	0	0
Ad Hoc Marine Protected Area Committee	6	0	0	0
Ad Hoc Observer Implementation Committee	2	0	0	0
Ad Hoc Salmon Amendment Committee	8	7	1	56
Ad Hoc Shore-based Whiting Amendment Workgroup	3	0	0	0
Ad Hoc Trawl Individual Quota Analytical Team	0	0	0	0
Ad Hoc Trawl Individual Quota Enforcement Group	0	0	0	0
Ad Hoc Trawl Individual Quota Independent Experts Panel	5	1	2	10
Ad Hoc Vessel Monitoring System Committee	7	0	0	0
*Ad Hoc Committee To Be Named	12	3	2	72



# PACIFIC FISHERY MANAGEMENT COUNCIL

Committee Name	Number of members who meet stipend criteria (A)	Number of meetings / year (B)	Average length of meeting (in days) (C)	Total number of work days (=A*B*C)
*Ad Hoc Committee To Be Named	12	3	2	72
Coastal Pelagic Species Advisory Subpanel	10	3	2	60
Groundfish Advisory Subpanel	20	5	5	500
Groundfish Allocation Committee	9	2	2	36
Groundfish Management Team	1	9	4	36
Habitat Committee	8	5	1	40
Highly Migratory Species Advisory Subpanel	12	3	2	72
Model Evaluation Workgroup	3	2	1	6
Salmon Advisory Subpanel	15	5	4	300
Salmon Technical Team	1	7	4	28
Scientific and Statistical Committee	5	5	2	50
<b>TOTAL</b>				1522
Mclsaac/CCED AB Chart.xls				

From Rod Moore <seafood@attglobal.net>

Sent Tuesday, February 20, 2007 3:47 pm

To 'Carolyn Porter' <Carolyn.Porter@noaa.gov>

Subject RE: Council Member Training and Orientation

Carolyn - I've been at two of the training sessions, once as a participant and once as a presenter. On the whole, I think NMFS - or more accurately, their contractor - has done a very good job in trying to bring a diverse group of people up to speed over the course of a couple of days.

Since MSFCMA is changing and management is becoming even more science-driven, I agree with the commenters that emphasis should be placed on understanding stock assessments and how they relate to management. You need to understand how you arrived at the bottom line before you start trying to adjust it.

I disagree with giving Robert's Rules a high priority. Copies of Robert's are available in any bookstore; this isn't something that needs to be taught in a national class.

Similarly, I would not emphasize specific regional issues (NWHI for example); I would, however, suggest that some discussion be given over to the interaction of the Councils with National Marine Sanctuaries. Every Council but the North Pacific has at least one Sanctuary in its waters; people need to understand how they interact.

Please feel free to pass these comments on to Alan.

>}}}}> >}}}}> <:((((<  
Rod Moore  
West Coast Seafood Processors Association  
1618 SW 1st Ave., Suite 318  
Portland, OR 97201  
503-227-5076

From SwordsTuna@aol.com

Sent Tuesday, February 20, 2007 1:09 pm

To Carolyn.Porter@noaa.gov

Subject Re: Council Member Training and Orientation

The orientation list covers almost everything. But, one item that may need attention is socioeconomic needs and affects to management, even though National Standard 1 always takes precedence. There is some confusion on fairness of resource management

where in particular to share the resource among the groups.

Kathy Fosmark

**Managing Yields in a Groundfish Management Regime of Individual Fishing Quotas, Intersector Allocations, and Stringent Rebuilding Requirements  
Potential Mechanisms Designed to Avoid Overharvest  
and Optimize Sector Fishing Opportunities**

**An Issue Paper Developed by Council Staff for the Pacific Fishery Management Council's  
Consideration in April 2007**

**(NOTE: suggested analyses and key questions for consideration are noted in this document  
in *bold italics*)**

***Introduction***

The Pacific Fishery Management Council (Council) is considering a trawl individual quota (TIQ) program for rationalizing the limited entry trawl groundfish fishery. Concurrently, the Council is considering an allocation of the available harvest of managed groundfish stocks and stock complexes to each of four different non-tribal sectors of the West Coast groundfish fishery: limited entry trawl, limited entry fixed gear, directed open access (i.e., vessels commercially targeting groundfish without a federal permit), and recreational<sup>1</sup>. This intersector allocation process supports development of a TIQ program, where trawlers will need a set allocation of species to manage their fishery using individual transferable quotas and/or fishing cooperatives, as well as other Council objectives such as bycatch reduction and a more stable management regime.

The reauthorized Magnuson Stevens Act includes a new provision to end overfishing once it is detected. Overfishing is defined in federal regulations as a realized harvest rate in excess of that which produces maximum sustainable yield (MSY). In terms of absolute harvest of West Coast groundfish stocks, this would equate to a total catch in excess of the acceptable biological catch (ABC). In the Pacific Council process, precautionary management measures and frequent inseason adjustments to ongoing fisheries are used to stay within specified ABCs and OYs. While occurrences of overfishing groundfish stocks on the West Coast have been rare using this process, there have been recent instances of overfishing. Significant uncertainty in current catch monitoring systems has led to unanticipated occurrences of overharvest (i.e., harvest in excess of sector catch limits and/or sector catch projections) in recent years in both commercial and recreational fisheries. These reasons and the need to protect fishing sectors from premature closures due to catch overages in other sectors compel consideration of a different management framework.

***Challenges to Managing Low Yields with Intersector Allocations***

The Council has identified the four non-tribal groundfish fishing sectors for consideration of set allocations of groundfish species and complexes. The Council proposes set-asides of needed yields to account for the unavoidable, incidental groundfish bycatch in non-groundfish and tribal fisheries and total mortalities accrued in research activities. These set-asides would be deducted from the allowable harvest before intersector allocations are made. There is a high likelihood

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<sup>1</sup> Tribal allocations may be pursued in a separate government-to-government process and treated as a yield set-aside in the analyses in the intersector allocation EIS.

that very low yields of the most constraining groundfish stocks will be available to groundfish fishing sectors once this management regime is implemented. Implicit in this process is that each sector would be responsible for maximizing their fishing opportunities while not overharvesting their allocated quotas of groundfish. Each sector has unique challenges to overcome that depend on the sector's ability to avoid constraining species and the relative uncertainty of their catch monitoring systems.

#### Limited Entry Trawl Management Challenges

Current fishing opportunities for the limited entry non-whiting trawl sector are most constrained on the shelf by the bycatch of canary, bocaccio (south of 40°10' N latitude), and widow rockfish; and on the slope north of 38° N latitude by darkblotched rockfish and Pacific ocean perch. Gear restrictions, depth-based rockfish conservation area (RCA) and essential fish habitat area closures, and trip limits are used to target healthy species while minimizing bycatch. At-sea observers track discards in this fishery with about 25% of the trips sampled under the West Coast Groundfish Observer Program (WCGOP).

The whiting-directed trawl sectors are most constrained by canary, darkblotched, and widow rockfish. Fixed allocations of whiting and hard bycatch caps for the three most constraining rockfish species are used to target whiting while minimizing bycatch. Attainment of the hard bycatch caps during the primary whiting season triggers closure of the non-tribal sectors even if sector whiting allocations have not been caught. Unlike the non-whiting trawl fleet, whiting vessels are exempt from RCA restrictions, but are subject to specific Chinook salmon conservation area closures adjacent to the mouths of the Klamath and Columbia rivers. Further depth-based area closures are implemented inseason if Chinook salmon bycatch approaches critical levels as determined in a consultation process pursuant to the Endangered Species Act. The at-sea fleets (catcher vessels delivering to motherships, and catcher-processor vessels) have 100% at-sea observation requirements. Whiting vessels delivering to shoreside plants are required to fully retain and deliver all their catch. Electronic monitoring is contemplated for the shore-based whiting sector to ensure maximum retention of catches.

Due to catch monitoring uncertainty and other facets of the current management regime, none of the trawl fleets are without risk of exceeding their harvest guidelines and/or allocations. The whiting fleets, which receive almost real time reports of their total catch, are at risk of attaining the bycatch cap for an overfished species before achieving their annual whiting quotas. The non-whiting trawl fleet is at greater risk of exceeding their allocations due to greater variance of catch estimates since only about a quarter of the fleet is sampled at any one time under the WCGOP. There is also a lag of about two months for receiving landings information from fish tickets, and an even longer lag for receiving trawl logbooks; both streams of data are needed to reconcile observer data and provide final trawl catch estimates.

While the limited entry trawl fleets are observed at-sea more frequently than any other West Coast fishing sector, fishing opportunities are still compromised by random "disaster" tows, i.e., significantly large catches of a constraining species. Disaster tows are unpredictable and rare events. ***[Determine frequency and magnitude of disaster tows in the various trawl sectors from the WCGOP]***. Depth-based management is currently the most effective strategy for reducing bycatch. Seasonally variable trip limits and selective trawl gear configurations also contribute to bycatch reduction. In spite of these measures, the fleets are still hampered by overcapacity and uncertain fishing prospects due to unpredictable disaster tows. Therefore, to achieve mandated economic and conservation objectives, the Council is considering rationalizing

the limited entry trawl sector using individual transferable quotas and/or a cooperative system, enabling vessels to combine quotas, risks, and profits.

Under the contemplated trawl rationalization system, quota pounds would be allocated and could be transferred between vessels. Vessels could no longer fish once their allocation of quota pounds for a target or bycatch species is exhausted. More quota pounds would need to be purchased to cover any deficits before that vessel could again go fishing. This mechanism should reduce bycatch given a strong economic incentive for fishermen to more carefully and selectively prosecute their fishery. However, the risk of sector catch overages (i.e., catches exceeding the sector's annual allocation of a given species) would not be entirely eliminated since a single disaster tow of a more constraining species (e.g., canary rockfish) could easily be large enough to exceed the sector's allocation and adversely affect further fishing opportunities for that sector and possibly other sectors as well. (The worst case scenario is a disaster tow or series of tows that are sufficiently large to risk exceeding the species' OY or ABC and prematurely closing the IFQ fishery). Furthermore, the availability of quota to cover catch overages may be scarce. It is also possible that the demand for quota pounds of the most constraining stocks may drive the price of this quota up to a point where it is not economically feasible to continue fishing. These inherent risks are not fully mitigated with a TIQ management system.

#### Limited Entry Fixed Gear Management Challenges

Current fishing opportunities for the limited entry fixed gear sector are most constrained on the shelf by canary and yelloweye coastwide, bocaccio south of 40°10' N latitude, and cowcod south of 34°27' N latitude. Depth-based RCA closures and seasonally varying trip limits are used to target healthy species while minimizing bycatch. At-sea observers track discards in this fishery, although the fleet is observed at less than a 25% rate under the WCGOP. *[Determine the current WCGOP sample rate].*

The primary target groundfish species for the limited entry fixed gear sector are nearshore species, which are managed using limited entry state permits in California and Oregon (there are no nearshore commercial fisheries allowed in Washington waters), sablefish, and slope rockfish. Fixed gears are particularly effective at targeting rockfish in high relief, rocky habitats. The management measures most often used to manage harvest in this sector are trip limits and specification of the non-trawl RCA. There is very little information to justify seasonally varying the boundary lines of the non-trawl RCA due to the lack of a logbook program and other area/season-specific catch information. Therefore, the non-trawl RCA has been static since its inception and its configuration is likely to remain unchanged given the very low harvest rates allowed for canary and yelloweye rockfish in their respective rebuilding plans. This fact also limits further fishing opportunities for this sector. Any liberalization of management measures in the latitudes and depths these species are distributed increases the risk of exceeding harvest guidelines and quotas allocated to this sector.

### Open Access Management Challenges

Current fishing opportunities for the directed open access sector are most constrained on the shelf by canary and yelloweye coastwide, bocaccio south of 40°10' N latitude, and cowcod south of 34°27' N latitude. Depth-based RCA closures and seasonally varying trip limits are used to target healthy species while minimizing bycatch. At-sea observers track discards in this fishery, although the fleet is observed at a very low rate under the WCGOP, especially south of 40°10' N latitude. *[Determine the current WCGOP sample rate north and south of 40°10' N latitude].*

Like the limited entry fixed gear sector, the primary target groundfish species for the directed open access sector are nearshore species, sablefish, and slope rockfish, and the same types of management measures are used for this sector. However, trip limits for the directed open access sector are typically much less than those for the limited entry fixed gear sector. Beginning sometime in 2007, any open access vessel landing groundfish species on the West Coast will be required to carry a vessel monitoring system (VMS) to ensure compliance with the RCA closure.

The directed open access sector is at great risk of exceeding specified harvest guidelines and quotas primarily due to the lack of effort controls and the paucity of at-sea observations of discards in the sector. Effort is currently controlled by varying the trip limits and, most frequently, the daily or weekly limits in the daily-trip-limit (DTL) sablefish fishery. This strategy is, at best, an inexact instrument for controlling open access effort. The Council is currently contemplating a limited entry scheme for the directed open access fishery, whereby any vessel catching and retaining groundfish in federal waters would be required to have a federal permit. This process is at too early a stage to predict fleet size, qualification criteria for a federal permit, or any of the effects of implementing a limited entry system for this sector.

### Recreational Management Challenges

Current fishing opportunities for recreational groundfish fisheries are most constrained by canary and yelloweye rockfish coastwide, bocaccio south of 40°10' N latitude, and cowcod south of 34°27' N latitude. Seasons, bag and size limits, and depth-based closures are used to manage recreational groundfish catch. Retention of cowcod, canary, and yelloweye rockfish is prohibited coastwide to prevent targeting. A small bocaccio bag limit is specified in California to reduce discards and accommodate unavoidable bycatch. State and federal harvest guidelines are set for many of the harvestable stocks. Federal harvest guidelines are also specified for canary and yelloweye rockfish to control the amount of discard mortality allowed for the sector. Automatic management actions, such as season and/or depth-based closures, are invoked when it is projected that these federal harvest guidelines will be prematurely attained.

Recreational catch monitoring is based on stratified, random creel surveys in each state and the resulting mortality estimates for the sector are highly variable. Discard estimates are particularly uncertain since they are primarily based on angler interviews, with unobserved estimates of the magnitude and species composition of discards. There is an at-sea observer and mandatory logbook program for Commercial Passenger Fishing Vessels (CPFVs or charterboats) in California; total mortality estimates for this fleet are therefore more precise. The precision of overall recreational catch projections is compromised by this uncertainty and the highly variable nature of effort. Angler effort is hard to predict since it is influenced by the relative abundance of various target species, weather, and competing fishing and non-fishing activities. These factors contribute to a high risk of recreational fisheries exceeding harvest guidelines and quotas.

*[Determine recreational groundfish sample rates by state and mode. Variance of catch estimates- landings and discards- by state and mode? ]*

### Tribal Management Challenges

There are four tribes that fish groundfish (Makah, Quileute, Hoh, and Quinault), all located in Washington. Current fishing opportunities are most constrained by canary and yelloweye rockfish. Of the four tribes, only the Makah Tribe fishes with trawl gear. Therefore, the Makah tribal fishing opportunities could also be constrained by darkblotched rockfish and Pacific ocean perch. The Makah Tribe requires full retention of groundfish and has an at-sea observation program to monitor compliance and provide area-specific bycatch information to the rest of the fleet. The Makah observer program targets a sample rate of 15% of all trips on a monthly and annual basis.

While tribal fishing activities are not subject to RCA restrictions, they are restricted to their usual and accustomed fishing areas, which are limited to discrete areas off the central and northern Washington coast. Two of the most constraining stocks on the West Coast, canary and yelloweye rockfish, are most abundant off the northern Washington coast within the usual and accustomed fishing areas of the Makah, Quileute, and Hoh tribes. Conducting tribal fisheries in areas where the most constraining stocks occur poses a significant risk of exceeding tribal sector allocations for those species.

### ***Potential Mechanisms Designed to Avoid Overharvest and Optimize Sector Fishing Opportunities***

There are a variety of mechanisms currently used by the Council to avoid overharvest and optimize fishing opportunities, such as buffers, bycatch caps, and sideboards. Other mechanisms, such as multiyear OYs and carryover provisions, are not currently used by the Council to achieve these objectives, but are posed for Council consideration to meet the challenges of managing harvest under a system of fixed sector allocations and trawl individual quotas.

#### Buffers

Buffers are residual yields at the beginning of a season not anticipated to be caught by any directed fishery. The Council often specifies management measures that are not expected to catch the entire OY of a given species. Any left over yield is reserved as a buffer to be used by any sector or dedicated to a given sector if catch is higher than anticipated. Buffers are particularly useful for managing total catch in a sector when catch accountability is highly uncertain. In theory, the higher the catch uncertainty of a given stock, the larger the buffer should be. As catch data is collected inseason, reducing annual catch uncertainty over the course of a season, fishing opportunities may be enhanced by reducing the buffer to allow higher mortality that is still within a specified annual catch limit or OY. This management strategy tends to break down when catch uncertainty is very high and time runs out in the season before management measures can be adjusted to achieve but not exceed OYs. Therefore, the risks and benefits of buffer management need to be constantly weighed to achieve mandated conservation and economic objectives.



### Bycatch Caps

Bycatch caps are yield set-asides of species specified for a sector that, when attained, would trigger closure of a fishery. Bycatch caps are currently used on the West Coast to manage groundfish bycatch in whiting-directed trawl fisheries and, in most cases, approved exempted fishing permit (EFP) activities. The non-tribal whiting sectors are currently managed with bycatch caps for canary, darkblotched, and widow rockfish. When these caps are projected to be attained, the non-tribal whiting fishery automatically closes even if whiting quotas have not yet been attained. Bycatch caps specified for approved EFPs are used to close fishing activities by a participating vessel or vessels when they are attained. (EFP bycatch caps are often specified for individual vessels and all participating vessels on a monthly and/or annual basis). Bycatch caps are allowed under the groundfish FMP, but they have not yet been used more extensively.

Bycatch caps are often very small yield set-asides that require almost real-time reporting of total catch to be effective. Therefore, management using bycatch caps is compromised when sector catch accountability is poor. In such cases, there is an increased probability of a sector's catch overage co-opting fishing opportunities for other sectors, especially when the stock's OY is low.

### Sideboards

Sideboards are very much like bycatch caps, but with perhaps more flexibility. A sideboard is a catch threshold that, when attained, would trigger an automatic action to reduce or eliminate mortality of that species. Such automatic actions include adjustment of RCAs, implementation of new regulations seaward or shoreward of the RCA, and/or trip limits. For instance, if a canary rockfish sideboard was specified and attained inseason in the non-whiting trawl fishery, the automatic action could be closure of all areas shoreward of the trawl RCA. Such an action would eliminate further catch of canary rockfish while still allowing opportunities to fish on the slope for flatfish and species in the Dover sole-thornyheads-sablefish (DTS) complex. While such an action may adversely affect vessels incapable of fishing in deep water, other vessels in the fleet would retain some fishing opportunity.

### Carryover Provisions and Multiyear Optimum Yields

The use of buffers, bycatch caps, and sideboards are all effective strategies for reducing bycatch, but they alone will not eliminate the risk of exceeding sector quotas and OYs for some species. If each sector is ultimately responsible for limiting its bycatch, there would be less risk of one sector's overharvest compromising fishing opportunities for other sectors. An incentive/disincentive mechanism may be needed to change fishing behaviors to more selectively harvest healthy target species, while avoiding species of concern. Such a mechanism is managing constraining stocks with carryover provisions and multiyear OYs.

Carryover provisions would allow a transfer of yield surpluses or deficits of some species at the sector level (or permit/co-op level under a TIQ program) from one year to the next. Sector accounts would be settled by the end of the prescribed multiyear OY period. Management risk of exceeding a sector bycatch limit in any one year could then be spread over a longer period. Any one sector, or trawl vessel/co-op under a TIQ program, could consider a management strategy in the first year of a multiyear OY period and, if the annual bycatch target was exceeded, could adopt more conservative management measures in following years. This reduces the risk that management miscues might pre-empt future fishing opportunities for that or other sectors, and promotes more precautionary and selective fishing practices.

Stock life history characteristics should be considered when determining an appropriate multiyear OY period. Faster growing stocks with shorter mean generation times and fewer age classes should probably be managed with shorter OY periods. The most constraining rockfish stocks on the West Coast (i.e., cowcod, canary, and yelloweye rockfish) have many age classes in their populations and might be better managed with longer OY periods. Factors such as mean generation time and recruitment variability may be important considerations in selecting a risk-averse multiyear OY period.

Another consideration in determining the length of a multiyear OY period and implementing a carryover of sector or vessel yield surpluses and deficits is how this strategy could be managed across a period when new assessments are being approved for management use. Currently, all the overfished species are assessed every other year (i.e., as frequently as possible under the biennial management regime) to understand whether progress has been made in rebuilding these species. Other stocks may also potentially be assessed during a multiyear OY period. This begs the question of whether a carryover mechanism can work when an OY changes as a result of a new assessment partway through a multiyear OY management period. One possible solution may be to carry over yield surpluses and deficits based on the proportion of the OY this surplus or deficit represents. For instance, if a sector exceeds its previous year's quota by 10% and a new assessment of that stock resulted in a change to the OY, the new quota for that sector would be reduced by the proportion of the sector's previous catch overage (i.e., 10% of the OY) applied to the new OY. *[SSC: Are there any adverse biological stock effects managing groundfish species under such a mechanism?]*

Managing OYs over a longer period may also be more responsive to new mandates in the Magnuson-Stevens Act to end overfishing. While current Council practices have led to few incidents of overfishing in recent years, spreading overfishing risk over a longer period may reduce the frequency of overfishing. The Council and NMFS may need to pose these considerations when developing new National Standard 1 Guidelines interpreting the re-authorized Magnuson-Stevens Act. The groundfish FMP and current groundfish rebuilding plans would need to be amended to accommodate multiyear OYs.

## **DRAFT Proposed 'Revised Procedure' for MSA/NEPA Compliance**

**(February 28, 2007 draft as proposed by the subcommittee of the Council  
Coordination Committee (CCC))**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) was recently amended with explicit direction to the Secretary of Commerce to “revise and update agency procedures for compliance with NEPA”. Moreover, the revised MSA specifically states that such procedures “shall integrate applicable environmental analytical procedures, including time frames for public input, with the procedures for preparation and dissemination of FMPS, plan amendments, and other actions taken or approved pursuant to this Act (the MSA)...”, and that “the updated agency procedures promulgated in accordance with this section shall be the sole environmental impact assessment procedure for FMPs, plan amendments, regulations, or other actions taken or approved pursuant to this Act (the MSA)”. The revised procedure proposed herein envisions a single environmental review procedure, and a single environmental impact assessment (EIA), that pertains to all FMPs, amendments, or regulations promulgated through the regional fishery management council (RFMC) process under MSA. The distinction between an environmental assessment (EA), and environmental impact statement (EIS) becomes moot, as does the determination of ‘significance’. This is because the single environmental assessment procedure (EIA) will be the same for any actions taken under MSA, and will generally be designed consistent with the higher standards typically associated with preparation of an EIS, in order to better ensure compliance with the underlying intent of NEPA. While it is envisioned that the level of analysis will be dictated by the issue at hand and the information at hand, this approach allows for the development of some tiers, related to the significance of the action (no impact, minor impact, major impact, for example), which may be created to frame the range of alternatives and necessary level of analysis.

It is proposed that the appropriate way to achieve this revised procedure is to develop a new NOAA Administrative Order (AO) which would be specific to fisheries actions under the MSA. NOAA and possibly CEQ regulations would be amended as necessary to reflect the application of this revised procedure. This new AO will specify the procedures to be used to integrate the environmental impact assessment (EIA) of proposed fishery management actions within the existing MSA process, in a manner which meets the NEPA requirements, and thereby achieve functional equivalency relative to the NEPA statute. The MSA process will be the vehicle for promulgating all fisheries actions, but will include measures necessary for NEPA compliance, as well as requirements of all other applicable Acts and Executive Orders, all incorporated into a single document. This Order would not affect any other existing regulations, Orders, or Acts, including the existing AO216-6, as it pertains to other NOAA line offices, which are promulgated under authorities other than the MSA.

### **Philosophy of proposal:**

1. All actions approved or taken pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) must comply with the National Environmental Policy Act (42 USC 4321-4347).
2. MSA actions, under this approach, need not necessarily comply with *existing* CEQ regulations (40 CFR 1500-1508), which govern the procedural provisions of the Act (NEPA). However, *new CEQ regulations may need to be developed* to reflect the new AO.

3. NOAA's environmental review procedures for implementing NEPA (NAO 216-6) must be replaced or rewritten with new procedures specifically for MSA actions, in the form of a new Administrative Order, but which include key CEQ regulatory provisions.
4. The single analytical process will be based on development of an environmental impact assessment (EIA), rather than make any distinction between an EA or EIS (and there is no need to determine whether 'significant' effects on the quality of the human environment will occur). The higher standard of the EIS model will be the default, though range of alternative and level of analysis would depend on the issue at hand and the information at hand. Some definition of tiers (no impact, minor impact, major impact, for example) may be included to frame the analytical requirements.
5. The Secretary cannot comply with timelines specified in the MSA, if the NEPA process commences only upon receiving the Council's proposed plan. Therefore, to implement the provisions of PL109-479, that the NEPA and MSA timeframes be consistent, the Council FMP development process (MSA) needs to be the primary vehicle for identifying alternatives and conducting the requisite analyses. The EIA (NEPA document) will be incorporated within the overall MSA analytical document.

### Solution

- Develop a single environmental impact assessment (EIA) procedure to be used for all MSA actions.
  - Categorical exclusions for actions that have no environmental impact may still be utilized.
- Proposed Procedure will replace the CEQ regulations and NAO 216-6 as procedure for complying with NEPA for MSA actions.
  - Procedure will capture the substance of the CEQ regulations regarding analytical content and opportunities for public review and input.
  - Procedure will modify NAO 216-6 procedure to replace CEQ/NOAA's public involvement and notice requirements with the MSA public involvement procedure.
- Procedure and sample analytical format **attached**.
- Proposed new administrative order will specify the detailed new procedures.

#### Changes to CEQ regulations:

- Amend CEQ regulations as necessary to state that 40 CFR Parts 1500-1508 will not apply to actions approved or taken pursuant to the MSA (or revise with regulations which mirror the new procedures).
- For MSA actions, the newly developed, integrated procedure defined here will be the functional equivalent of the provisions of NEPA as implemented by CEQ regulations.
- Issue revised CEQ regulations consistent with provisions in the new AO.

#### Changes to NAO 216-6:

- Amend NAO 216-6 to state that administrative order does not apply to actions approved or taken pursuant to the MSA.
- Issue new administrative order and/or procedural regulations, as appropriate, specifying procedure for satisfying NEPA compliance for MSA actions (as contained in the new AO).
- RFMCs should be identified as partners in preparing the EIA to satisfy NEPA procedures.
- Remove references to fishery actions from NAO 216-6.

## Changes to the Operational Guidelines for the Fishery Management Process

- Revise to incorporate process as described.

### **Practical effects of proposed process**

- The Council shall complete a scoping process to identify the range of reasonable alternatives to accomplish the Council's management objective and to identify the issues which should be examined to evaluate the merits of those alternatives. In completing the scoping process, the Council shall solicit public comment.
- After completing the scoping process, the Council shall identify a reasonable range of reasonable alternatives to accomplish the Council's objectives. The Council shall explain its reasons for selecting those alternatives and for rejecting any other alternatives which may have been identified in the scoping process.
- After selecting the range of reasonable alternatives, the Council shall evaluate the ecological, social, economic, health, aesthetic and cultural effects of each alternative on the affected environment. The Council shall also evaluate the cumulative impact on the environment of each such alternative. In developing the required analyses, the Council shall solicit public comment regarding the effects of each alternative.
- After completing the evaluation provided for above, the Council shall review the analysis and may select a preferred alternative, or combination of alternatives, to accomplish the Council's objective. The Council shall explain the purpose of, and need for, the action and the reasons for selecting the alternative adopted by the Council. The Council shall solicit public comment on the analysis and the alternatives, including the preferred alternative if identified.
- After considering the analysis and public comments, the Council shall select a preferred alternative for recommendation to the Secretary for approval pursuant to the MSA. The submittal package to the Secretary shall include the necessary environmental analyses (EIA) required pursuant to 40 C.F.R. Part 1500 (*or the necessary revised regulations*).
- The Secretary shall review the FMP and NEPA documents (EIA) to determine if the requirements of MSA and NEPA have been satisfied. If not, the Secretary shall disapprove the FMP or FMP amendment. Practically, the EIA and other analyses would be evaluated concurrently and jointly throughout the development process by both the Council and appropriate NMFS personnel, to ensure that MSA, NEPA, and other requirements have been satisfied.

## New process

Steps in MSA-NEPA analytical process		<b>MINIMUM</b> timeline to be specified in procedure
RFMC initiates analysis	<ul style="list-style-type: none"> <li>- develops purpose and need</li> <li>- develops alternatives</li> </ul>	1 <sup>st</sup> RFMC meeting (may take several meetings to refine problem statement and alternatives depending on complexity and controversy of analysis)
Public input	<ul style="list-style-type: none"> <li>- scoping commences with RFMC/NMFS action to initiate analysis</li> <li>- public notice of proposed analysis in RFMC agenda, and in RFMC newsletter/ website</li> <li>- public comment invited as written letters to RFMC or oral testimony at RFMC meeting</li> </ul>	
Initial Review Draft	<ul style="list-style-type: none"> <li>- RFMC/NMFS prepare draft analysis that addresses MSA, NEPA and other analytical requirements (see outline)</li> <li>- may be distributed at or before RFMC meeting, depending on size and complexity of analysis; RFMCs/NMFS should try to circulate document 14 days before start of meeting (mailing, website)</li> </ul>	before/at 2 <sup>nd</sup> RFMC meeting
RFMC reviews IR draft, approves for public review	<ul style="list-style-type: none"> <li>- RFMC will consider scoping comments (on the purpose and need and the alternatives) and comments on the draft document</li> <li>- RFMC will approve draft for public review (perhaps following staff alterations to the document)</li> </ul>	2 <sup>nd</sup> RFMC meeting  (may also take multiple meetings and iterations of draft before document is ready to be released for public review)
Public Review Draft distributed <i>(functional equivalent of CEQ Draft EIS)</i>	<ul style="list-style-type: none"> <li>- mailed to RFMC, any affected agencies, or interested persons who have requested document</li> <li>- public notice of availability announced in RFMC agenda (published in FR); posted on RFMC website</li> </ul>	distribution to occur a minimum of 23 days before first day of meeting at which final action is scheduled
Public comment	<ul style="list-style-type: none"> <li>- public comment accepted as written letters to RFMC or oral testimony at RFMC meeting</li> </ul>	minimum 23 days  (RFMC/NMFS may specify a longer comment period or an end date for accepting written letters)
RFMC Final Action	<ul style="list-style-type: none"> <li>- RFMC will consider public comments</li> <li>- RFMC will respond appropriately to issues raised in public comment</li> <li>- RFMC decision on recommended action</li> </ul>	3 <sup>rd</sup> RFMC meeting  (RFMC may request further analysis in response to public comment before they are ready to take final action)
Secretarial Review Draft <i>(functional equivalent of CEQ Final EIS)</i>	<ul style="list-style-type: none"> <li>- Document will include RFMC/NMFS response to written public comment on the public review draft</li> <li>- NMFS will follow existing procedure to check document for legal compliance (NEPA and other laws)</li> </ul>	after 3 <sup>rd</sup> RFMC meeting
Transmission to SoC/HQ	<ul style="list-style-type: none"> <li>- RFMC transmits Secretarial Review Draft to Secretary</li> <li>- ?NMFS files document w/ EPA as Final EIS</li> </ul>	begins 90 day approval timeline
SoC decision on amendment	<ul style="list-style-type: none"> <li>- SoC concurrently signs Record of Decision</li> </ul>	within 90 days of transmission

## Sample Format for Analytical Document Supporting Fishery Action Under MSA

### Title page

*(equates to CEQ 'cover sheet')*

- Identify title of analysis; responsible agencies; contact person with contact information; designation of draft, public review draft, etc; one paragraph abstract; date by which comments must be received

### Table of Contents

### Table of Figures and Tables (as appropriate)

### List of Acronyms and Abbreviations (as appropriate)

### Summary

- Identify objectives or purpose of action *(equates to CEQ 'issues to be resolved')*
- Identify alternatives and brief comparison of impacts under the alternatives (summary table often works well) *(equates to CEQ 'major conclusions')*
- In Secretarial Review Draft, describe RFMC's recommended action, identify how factors were balanced among alternatives to enter that into the decision, identify environmentally preferable alternative, and state whether all practicable means to avoid or minimize environmental harm from recommended alternative have been adopted, or why not
- In Secretarial Review Draft, include areas of controversy including those raised by the public

### Problem statement

*(equates to CEQ 'need for action')*

### Purpose or objectives of action

### Alternatives for proposed action

- explore range of reasonable alternatives
- include a no action alternative (defined as status quo)
- identify the preferred action if possible
- if appropriate discuss why alternatives may have been eliminated from detailed study (this discussion may instead be appropriate in an appendix)

### NEPA effects analysis (as appropriate)

- environmental consequences of the alternatives (including direct, indirect, and cumulative effects, and describing any adverse environmental effects which cannot be avoided should the proposal be implemented)
- discuss affected environment as necessary to understand environmental consequences

### EO 12866, Regulatory Impact Review analysis (as appropriate)

- description of the affected fishery
- economic analysis of the expected effects of each alternative relative to the baseline

### Analysis of consistency of action with MSA, National Standards

### Regulatory Flexibility Act analysis (as appropriate)

- description and estimate of the number of small entities affected by the proposed action
- estimate of the economic impacts on small entities

### EO 12898, Environmental Justice analysis (as appropriate)

- assess whether there are disproportionately high and adverse human health or environmental effects on a minority population, low-income population, or Indian tribe from the proposed action

### List of preparers, list of agencies/persons consulted

### List of those to whom analysis is distributed (for the Public Review Draft)

### References, Index (as appropriate)

### Appendices (as appropriate)

## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>Notice of Intent</b>	--	1501.7	5.02d (p.15)	
		- agency shall publish NOI in FR	- agency shall publish NOI in FR	- No NOI. Differs from CEQ regulations.
			- NOI shall include proposed action and alts, logistics of scoping process, contact info for RPM	
			- NOI initiates formal scoping process - written and verbal comments must be accepted during identified comment period - 30 day min formal comment period from date of NOI	- no 'formal' comment period. Scoping commences at time when Council initiates an analysis and determines draft alternatives - written comments will be considered by RFMC at any time; opportunity for oral comments during RFMC meetings - at minimum, public has 23 days to comment as analysis will be announced on agenda, which is published in FR
		- publish retraction if EIS does not go ahead	- RFMC newsletter announces if analysis does not go forward	
<b>Scoping</b>	--	1501.7	4.01w (p.9), 5.02d (p.15)	
		- agency shall invite participation	- solicit comprehensive public involvement and interagency and Indian tribal consultation	- RFMC/NMFS will solicit public comment on proposed analysis in RFMC newsletter and on website
		- agency shall eliminate from study issues that are not significant		- RFMC will consider comments and revise problem statement and alternatives accordingly
		- agency may hold scoping meetings	- scoping may be satisfied by meetings, or request for comment on documents; or discussion papers	- RFMC meetings will provide opportunity for public input



## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>EIS content</b>	102(C)	1502.10	5.04b (p.19)	<ul style="list-style-type: none"> <li>- include all these elements in analysis, as well as other requirements of MSA and other laws/ executive orders</li> <li>- <i>see sample document format for a fishery action analysis</i></li> </ul>
	<ul style="list-style-type: none"> <li>Include:</li> <li>- environmental impact of proposed action</li> <li>- adverse environmental impacts of proposal</li> <li>- alts</li> <li>- relationship between local short-term uses of environment and long-term productivity</li> <li>- irreversible/ irretrievable commitments of resources of proposal</li> </ul>	<ul style="list-style-type: none"> <li>- cover sheet</li> <li>- summary</li> <li>- TOC</li> <li>- purpose/need</li> <li>- alts</li> <li>- affected environment</li> <li>- environmental consequences (to include all elements required by statute)</li> <li>- list of preparers</li> <li>- circulation list</li> <li>- index</li> </ul>	<ul style="list-style-type: none"> <li>- cover sheet and TOC</li> <li>- purpose/need</li> <li>- summary</li> <li>- alts</li> <li>- affected environment</li> <li>- environmental impacts of proposed action and alts including cumulative impacts</li> <li>- circulation list and list of those consulted</li> <li>- index and appendices as appropriate</li> </ul>	
<b>Draft EIS</b>	--	1502.9		<ul style="list-style-type: none"> <li>- RFMC/NMFS will prepare a Public Review Draft of the analysis that will satisfy to extent possible the requirements established for final statements in 102(C)</li> </ul>
		<ul style="list-style-type: none"> <li>- draft statements shall satisfy to extent possible the requirements established for final statements in 102(C)</li> </ul>		

## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>Filing and Distribution of Draft/ Final EIS</b>	102(C)	1506.9, 1502.19	5.04c (p.20)	<ul style="list-style-type: none"> <li>- EPA filing requirements will only apply to Secretarial Review Draft (functional equivalent of CEQ Final EIS). No NOA for Draft EIS. Differs from CEQ regulations.</li> </ul>
	<ul style="list-style-type: none"> <li>- [final] statement shall be made available to President, CEQ, and public</li> </ul>	<ul style="list-style-type: none"> <li>- file statement with EPA, who will give to CEQ (counts as President)</li> <li>- distribute to affected and interested parties at same time as EPA</li> </ul>	<ul style="list-style-type: none"> <li>- preliminary review of D/FEIS by NEPA coordinator 1 week before package is submitted so changes can be incorporated</li> <li>- NEPA review package (D/FEIS and transmittal memos) to NEPA coordinator for clearance signatures min. 5 days before filing with EPA</li> </ul>	
<b>Comments on Draft EIS</b>	--	1506.10, 1503.1	5.04c.6	<ul style="list-style-type: none"> <li>- Public Review Draft will be available for a minimum of 30 days before RFMC final action. Differs from CEQ regulations.</li> <li>- RFMC/NMFS will consult with affected Federal, State and local agencies and Indian tribes (some of whom are represented on RFMC)</li> <li>- RFMC/NMFS will request comments from public and specifically any persons or organizations who express interest</li> </ul>
		<ul style="list-style-type: none"> <li>- comment period for DEIS is minimum 45 days from NOA</li> </ul>	<ul style="list-style-type: none"> <li>- date of NOA determines start of review period</li> <li>- public comment period on DEIS is min. 45 days</li> </ul>	
		<ul style="list-style-type: none"> <li>- agency shall request comments of appropriate Federal, State and local agencies, Indian tribes, affected public and organizations</li> </ul>		

## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>Final EIS</b>	--	1503.4	5.04c6	
		- all comments or summaries thereof must be attached to FEIS regardless of merit	- must include all substantive comments or summaries of comments received during the public comment period of the draft EIS	- RFMC/NMFS will include all written comments on the Public Review Draft in Secretarial Review Draft (functional equivalent of CEQ Final EIS)
		- agency must assess comments individually and collectively, and respond appropriately (5 ways)	- comments must be responded to in an appropriate manner	- RFMC will consider all comments, written and oral, on both drafts and respond appropriately
		- must state response in FEIS		- RFMC response to written comments will be included in the Secretarial Review Draft
<b>Record of Decision</b>	--	1505.2, 1506.10	5.04c.7	
		- agency shall prepare a concise public record of decision	- ROD will be made available through appropriate public notice (but not necessarily FR)	- RFMC will include recommendation to Secretary of Commerce on the MSA action as part of the Secretarial Review Draft
		ROD shall: - state the decision - identify all alternatives, including the environmentally preferable alternative, and how factors were balanced to enter into the decision - state whether all practicable means to avoid or minimize envtl harm from selected alt have been adopted, or why not		- RFMC will address these elements in its recommendation
		- no decision may be recorded until later of 90 days after NOA for DEIS or 30 days for NOA of FEIS	- ROD may not be recorded until min 30 days from NOA for FEIS	- NEPA analysis (EIA) will be submitted with MSA action, and ROD will be finalized along with SOC decision on MSA action

## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>Termination</b>	--	--	5.01c, 5.04c.8	<ul style="list-style-type: none"> <li>- proposed MSA action, including NEPA analysis (EIA), may be terminated at any stage</li> <li>- RFMC newsletter announces if analysis does not go forward</li> </ul>
			<ul style="list-style-type: none"> <li>- environmental review process may be terminated at any stage</li> <li>- termination must be announced in the FR and explained in writing to EPA</li> <li>- for supplemental NEPA documents, must notify CEQ if process stops after draft SEIS but before final</li> </ul>	
<b>Public Involvement</b>	--	1506.6	5.02b (p.13)	<ul style="list-style-type: none"> <li>- public involvement keystone of RFMC process – MSA requires regular, open meetings; timely public notice of time, place, and agenda of meetings; interested persons may present written or oral comments</li> <li>- RFMC meetings/agendas noticed in FR, documents available on RFMC websites (or by request)</li> <li>- RFMC meetings held regularly</li> <li>- public invited to comment on any RFMC agenda item</li> </ul>
		<ul style="list-style-type: none"> <li>- agencies shall make diligent efforts to involve the public in preparing and implementing NEPA procedures</li> </ul>	<ul style="list-style-type: none"> <li>- RPMs must make every effort throughout process to encourage participation of affected Fed, State, local agencies, Indian tribes, and interested persons</li> </ul>	
		<ul style="list-style-type: none"> <li>- agencies shall provide public notice of hearings/mtgs, documents</li> <li>- in cases of national concern notice to include publication in the FR</li> </ul>	<ul style="list-style-type: none"> <li>- RPM must provide public notice of NEPA hearings/mtgs, documents</li> </ul>	
		<ul style="list-style-type: none"> <li>- hold hearings/mtgs where appropriate</li> <li>- solicit appropriate info from public</li> </ul>	<ul style="list-style-type: none"> <li>- public involvement may be solicited through hearings/mtgs and through comments as appropriate</li> </ul>	
<b>Agency Responsibility</b>	--	1506.5	2.02 (p.3)	<ul style="list-style-type: none"> <li>- procedure should reflect that RFMCs are partners in preparing NEPA analyses and complying with NEPA procedures</li> </ul>
		<ul style="list-style-type: none"> <li>- EIS shall be prepared directly by or by a contractor selected by the lead agency, or by a cooperating agency</li> </ul>	<ul style="list-style-type: none"> <li>- NOAA NEPA coordinator will review and provide final clearance for all NEPA envtl review documents</li> <li>- a designated RPM will carry out specific proposed actions in the NEPA process</li> </ul>	

## NEPA Compliance in Implementation of Fishery Actions Under MSA

NEPA Process – Environmental Impact Statement				Proposed MSA EIA approach
	NEPA Statute	CEQ Regulations	NOAA NEPA procedures (216-6)	
<b>Categorical Exclusion</b>	--	1508.4	5.05, 6.03d.4	
		- category of actions which do not individually or cumulatively have a significant effect on the human environment and which therefore require neither an EA nor an EIS	- actions that individually and cumulatively do not have the potential to pose significant effects to the quality of the human environment - examples given	- same as NOAA procedure
<b>Emergency Actions</b>	--	1506.11	5.06	
		- when emergency circumstances require an agency to take action with significant environmental impact without observing these regulations, the agency should consult with CEQ	- if timelines associated with EIS limit attaining the objectives of the emergency action, the NEPA Coordinator may consult with CEQ about alternative arrangements for NEPA compliance	- same as NOAA procedure

## SALMON TECHNICAL TEAM REPORT ON MAGNUSON-STEVENS ACT REAUTHORIZATION IMPLEMENTATION

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) amended National Standard 1 of the Magnuson-Stevens Act to require that fishery management plans “establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures of accountability.” Exemptions from this requirement are provided for species having a life cycle of approximately 1 year, and in cases where the annual catch limits (ACLs) and accountability measures (AMs) are otherwise provided for under an international agreement.

The National Marine Fisheries Service has interpreted the ACL to mean a specified target amount of measurable landings and discard mortality removed from a stock (or stock complex) each year, and that the ACL must be set at a level that overfishing does not occur.

The intent of the ACL/AM requirement of MSRA is to prevent overfishing. The Salmon Technical Team has identified a number of potential issues related to the development of ACLs and AMs for salmon stocks:

1. Overfishing for Chinook and coho stocks included in the Pacific Coast salmon FMP is defined in terms meeting conservation objectives. These objectives are generally expressed in terms of annual spawning escapement, not in terms of catch. The STT believes that providing adequate spawning escapement is a more direct measure of management success than can be provided by the monitoring of catch.
2. The stock origin of fish cannot be determined visually in ocean fisheries. This means that the only limits that could currently be set would be at a “stock complex” level by species. Implementation of a systematic coastwide genetic stock identification (GSI) monitoring program could potentially provide the ability to monitor catch at a finer scale, but there are currently stocks identified in the FMP that cannot be discriminated on a genetic basis.
3. Many of the salmon stocks identified in the FMP are excepted from the overfishing provisions of the FMP by virtue of being listed as threatened or endangered under the Endangered Species Act, stocks of hatchery origin, or stocks for which impacts in Council area fisheries are low. As explained in the FMP, the Council defers its conservation objectives to the ESA consultation standards for listed stocks because they meet the intent of overfishing provisions of the MSA. Hatchery stocks are excepted from the FMP overfishing provisions because meeting hatchery goals is not considered to be a conservation issue, and stocks with low exploitation rates in Council fisheries are excepted because manipulation of fishery impacts by the Council

would not be likely to have a measurable impact on the status of the stocks. The relation between the ACL/AM provisions of the MSRA and these excepted stocks is unclear.

4. Many of the stocks covered by the Pacific Coast salmon FMP are also managed under the provisions of the Pacific Salmon Treaty (PST). The PST places limits on fishery impacts on these stocks and contains accountability measures, and may thus exempt these stocks from the ACL/AM provisions of the MSRA.
5. Coho (and pink) salmon are only vulnerable to Council area fisheries during the final year of their life, and the majority of fishery impacts on Chinook salmon typically occur in the same year that they would mature and leave the ocean to spawn. Large interannual variability in year class strength and this relatively brief window of vulnerability to fisheries contributes to high interannual variability in the allowable catches in Council fisheries, and leads to dynamics similar to those of annual species which are exempt from the ACL/AM requirements. Because of the life history characteristics of salmon, AMs should focus on reasons why ACLs may have been exceeded rather than compensating for high catch in one year by reducing catch in the next.

## GROUND FISH MANAGEMENT TEAM REPORT ON MAGNUSON-STEVENSONS ACT REAUTHORIZATION IMPLEMENTATION

The Groundfish Management Team (GMT) reviewed the issue paper developed by Council staff regarding potential mechanisms designed to avoid overharvest and optimize sector fishing opportunities (Agenda Item C.2.a, Attachment 2). The GMT agreed that the approaches outlined in the paper warrant further analysis to evaluate their suitability for inclusion in the Council's management toolbox. The GMT focused their discussion on the issues of multiple year Optimum Yields (OYs) and carryover provisions. Sector-specific multi-year OYs and carryover provisions might, for example, facilitate individual roll-over of quota pounds in a trawl individual quota program, provide more opportunity to mitigate for "disaster" tows, as well as provide some protection against intersector pre-emption. However, such provisions might limit management flexibility in balancing the bycatch scorecard across sectors, or could result in greater harvest constraints at the conclusion of a multi-year OY, potentially resulting in fishery closures for extended periods. These benefits and costs, as well as other complexities associated with this approach, could be explored further in the 2009-2010 SPEX EIS.

Presently, acceptable biological catches (ABCs) and OYs for some species are set at an aggregated complex level (e.g., other flatfish). The current level of information does not support stock assessments for individual species within these complexes. The GMT would consider a requirement for Annual Catch Limits (ACLs) for individual species within the Groundfish Fishery Management Plan that do not have enough data to support stock assessments to be unfeasible. The GMT recommends that ACLs be set at the complex level for these species, with periodic review of the status of individual species within these complexes to determine if change is warranted. The GMT also suggests that the Council consider, possibly as part of a future harvest policy workshop, investigation of stock complex or assemblage assessments to better address groups of data-poor species. Another approach would be to use data-rich species as indicators for management for data poor species with similar life histories and habitat associations.

The GMT notes that the ABCs and OYs currently employed in groundfish management, and the associated precautionary approaches, meet the revised Magnuson-Stevens Act's ACL requirements for most groundfish species. One area where the current process might need to be revised to meet new ACL requirements would be for species that have been assessed to be above  $B_{40}$ , since OYs for those species are set equal to their ABCs. However, if complete inseason data are provided in a timely manner (e.g., in a trawl IQ program) and management can respond quickly (e.g., the whiting fishery), then it may be feasible to set the OY equal to the ABC. A de facto "buffer" already exists for species below  $B_{40}$  as a result of the Council's existing precautionary harvest adjustments. Otherwise, the GMT is pleased to note that the Pacific Council is ahead of the nationwide curve.

### GMT Recommendations

- Analyze multi-year OYs for use in the TIQ program and/or intersector allocation.
- Set ACLs at the complex level until species specific information becomes available.
- Examine mechanisms to prevent overfishing in cases where OYs are set equal to ABCs.
- Forward Alternative 2 for setting ACLs and AMs to the Secretary for consideration as the preferred alternative (C.2.b, Attachment 1).



## GROUND FISH ADVISORY SUBPANEL REPORT ON MAGNUSON-STEVENS ACT REAUTHORIZATION IMPLEMENTATION

The Groundfish Advisory Subpanel (GAP) had a thorough discussion regarding implementation of Magnuson-Stevens Fishery Conservation and Management Act issues with an emphasis on items significant to the Pacific Fishery Management Council. The GAP has specific comments on the following:

1. Role of the Scientific and Statistical Committee (SSC)
2. National Environmental Policy Act (NEPA) process
3. Annual Catch Limits and Accountability Measures
4. Mandatory buffers
5. Multi-year optimum yields (OYs) and carry-over provisions
6. Stipends

### Role of the SSC

The GAP recommends that the PFMC's SSC maintain the advisory role it has fulfilled in the past. The SSC should continue to provide the Council ongoing scientific advice for fishery management decisions, including (1) recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield, achieving rebuilding targets; and (2) reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. With respect to OYs, the GAP recommends that the SSC provide an appropriate range of OY alternatives to the Council and that the Council makes the ultimate policy decisions on catch levels. The GAP also believes that an emphasis on the economic and social impacts of regulations should be pursued more aggressively by the SSC.

### NEPA Process

The GAP believes that the current protocol for public involvement in the decision-making process is sufficient and provides ample opportunity for stakeholder involvement.

### Annual Catch Limits and Accountability Measures

The GAP believes that annual catch limits and accountability measures are accomplished with the current OY system and that over the years the Council has utilized some form of annual catch limits with accountability measures routinely in the fishery management process. For example, OYs are currently set to prevent overfishing. Accountability measures, such as the 40-10 rule, seasons, trip limits, bag limits, rockfish conservation areas (RCAs) and other tools are routinely used to ensure catch levels do not exceed the OY.

### Mandatory Buffers

The GAP does not support a mandatory buffer system. The GAP believes that buffers should be considered on a species by species basis as appropriate. The GAP recognizes that "buffers" are already incorporated in our current management through catch monitoring and that data poor stocks are generally managed in a more precautionary way utilizing buffers. For example, OYs for stocks in the precautionary zone are set below ABC. When appropriate, buffers should continue to be established through the annual specifications process.

### Multi-year OYs and Carry-over Provisions

The GAP believes this approach should be analyzed and included in the tool box for use as appropriate. The GAP recognizes that there may be some unknown biological issues associated with this type of approach, but believes that these impacts should be further explored in NEPA analyses when annual specifications are decided.

The GAP is cognizant of problems with being able to access up-to-date harvest data, including, but not limited to, recreational harvest data in some areas, and how the delay in data acquisition could effect both the establishment of OYs and inseason adjustments. The GAP believes that setting a multi-year OY would provide the most flexibility for managers and harvesters, and would help avoid the types of problems that are addressed in Agenda Item C.2.a, Attachment 2 such as:

- One sector's overharvest pre-empting fishing opportunities for another sector;
- The current management system that relies on uncertain catch monitoring is more prone to overfishing; and
- The current management system thwarts fishermen's efforts to explore strategies to fish more selectively to reduce bycatch. Multi-year OYs and carryover provisions would allow individual fishermen and fishery sectors to manage risk over a longer period and to explore more sustainable fishing practices.

### Stipends

Stipends for advisory panels are now authorized in the MSA. The GAP recommends the Council seek funding for this.

PFMC

04/03/07

## **Highly Migratory Species Management Team Statement on the Implementation of Annual Catch Limits and Accountability Measures in the Magnuson-Stevens Act Reauthorization**

The Pacific Fisheries Management Council's (Council) Highly Migratory Species Management Team (HMSMT) briefly reviewed and discussed the development of National Standard 1 Guidelines to implement Annual Catch Limits (ACLs) and Accountability Measures (AMs) as required by the Magnuson-Stevens Reauthorization Act (MRSA) and discussed under Agenda Item C.2 at the April 2007 Council meeting. The HMSMT notes that P.L. 107-479, sec. 104(b) states that ACLs/AMs shall be established "unless otherwise provided for under an international agreement in which the United States participates..." Given the migratory nature and trans-boundary distribution of the 13 Management Unit Species (MUS) actively managed under the HMS Fishery Management Plan (FMP), the MUS are subject to management agreements under Pacific Regional Fishery Management Organizations (RFMOs), including the Inter-American Tropical Tuna Commission (IATTC) and the Western and Central Pacific Fisheries Commission (WCPFC). The HMSMT recommends that the National Standard 1 Guidelines include criteria and clear-cut procedures for determining when the terms of international agreements and resolutions are sufficient to substitute for the requirement to develop ACLs and AMs.

The HMSMT has a number of concerns related to the application of ACLs/AMs to HMS MUS managed under the Pacific Council's HMS FMP. First, catch by U.S. fisheries managed under the HMS FMP generally comprises a small portion of the total regional catch, ranging from less than 1 percent (tropical tunas, for example) to a maximum of about 15 percent for North Pacific albacore. The bulk of the remaining catch is made by commercial fishing vessels from other nations.

It is our understanding from the presentation by Rick Methot under Agenda Item C.2 that all sources of fishing mortality would need to be accounted for in the computation of ACLs. Obviously, the Council (or the U.S.) could not unilaterally establish ACLs for the fractional catch of each nation. Effectively, an ACL could only be applied to the U.S. portion of the catch, which presumably would be determined based on recent catch estimates for the FMP-managed U.S. fisheries. However, two HMS FMP stocks, Pacific-wide bigeye tuna, and Eastern Pacific Ocean yellowfin tuna, have been declared subject to overfishing by the Secretary of Commerce. As already noted, the estimated U.S. catch of these species is a very small fraction of the total estimated regional catch; if the U.S. unilaterally set the ACL at 0, or as indicated by section 304(i)(2)(A) set the ACL relative to the impact of U.S. fishing vessels, this would have almost no effect in ending overfishing while potentially severely disadvantaging U.S. West Coast-based HMS fisheries. More generally, the U.S. could be severely disadvantaged by unilaterally setting an ACL while similar constraints are not placed on those nations making the bulk of HMS catches. Those fisheries principally responsible for current overfishing may not be held accountable while U.S. fisheries would be constrained with little effect on stock status. In this regard, it should be noted that in general national quotas have not been

established and assigned by either the IATTC or the WCPFC (the exception being quotas established by the IATTC for bigeye tuna caught by large scale longline vessels).

Similarly, some of the stocks managed under the HMS FMP are also managed under the Western Pacific Council's Pelagics FMP. However, since domestic quotas or harvest guidelines have not been established for these stocks, allocation amongst the fisheries managed under the Councils' respective FMPs has not been an issue. Presumably, the two Councils would need to establish something like the "sector ACLs" discussed by Dr. Methot. This will require a higher level of coordination between the two councils than has heretofore been the case. The HMSMT recommends that the National Standard 1 Guidelines should include criteria for two or more Councils to establish consistent ACLs without disadvantaging their respective fisheries.

Second, the Guidelines should clarify whether biological reference points, upon which the Overfishing Level (OFL) would be based, should be established unilaterally and solely under our FMP or adopted domestically pursuant to their identification and agreement upon at the international level. In 2005 National Marine Fisheries Service (NMFS) requested that the HMSMT develop biological reference points for MUS managed under the HMS FMP; subsequently NMFS indicated it would be preferable if biological reference points were first adopted by the appropriate RFMO, and based on any such agreement, incorporated into the HMS FMP. If this latter policy is adopted, establishing an OFL would be contingent in part on action at the regional level. If the former, the biological reference points and related OFLs could be inconsistent with any subsequent action at the regional level.

Third, the HMS FMP includes two categories of species, actively managed species and monitored species. The latter comprises some 49 species that have been caught in FMP fisheries in the past, may not be managed under any other framework, or are of special concern due to unique biological characteristics. Monitored species are incidentally caught in HMS FMP fisheries, often discarded as bycatch, and are principally included in the management unit to track the effectiveness of bycatch reduction measures and any other federal or state management measures for these species. Many, if not most, of these species are caught in non-U.S. fisheries where there is little or no documentation of catch. This could make it very difficult to account for all sources of fishing mortality and compounds the problems discussed above with unilaterally establishing ACLs for domestic catches. Furthermore, in many cases there is little or no information on stock structure for these species. Thus, even if foreign catch information became available it could be difficult to determine whether such catches should be assigned to a single stock or, in terms of population dynamics, to separate stocks that should be managed separately with a related parsing of the ACL. The HMSMT recommends that these outstanding and critically important issues be considered when formulating the National Standard 1 Guidelines.

Fourth, implementation of ACL's also presents a challenge for determining when an ACL has been reached in-season and how to provide adequate and timely notice to fishery participants. It should be noted that the catch of some HMS species are relatively

rare events in terms of overall catch in some fisheries, for example, tuna catches in the West Coast recreational fisheries. Current recreational fishery monitoring programs were not designed to adequately track HMS catches for in-season management purposes.

Fifth, there are several HMS MUS (e.g., dorado (mahi-mahi)), whose stock status are not monitored on a regular basis by the RFMO's or any other fishery management body. Setting ACL's for these species without regular stock assessment outputs would be highly problematic.

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON COUNCIL  
OPERATING PROCEDURE FOR MAKING HIGHLY MIGRATORY SPECIES  
RECOMMENDATIONS TO REGIONAL FISHERY MANAGEMENT ORGANIZATIONS

Memorandum of Understanding

The Highly Migratory Species Advisory Subpanel (HMSAS) reviewed the draft Memorandum of Understanding (MOU) in conjunction with the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSA) and recommends that the MOU be amended to allow for broader and more balanced stakeholder representation on the Western and Central Pacific Fisheries Commission (WCPFC) Advisory Committee. Specifically, the HMSAS is concerned that the MOU is biased towards the Western Pacific region. As such, HMSAS advises the Council to amend Section V.C of the MOU to: (1) designate an additional seat for the Chair of the Pacific Fishery Management Council's HMSAS; and (2) replace the seat for one Pacific Council area albacore troll fishery representative with two or three commercial-at-large fisheries representatives from the Pacific region. Likewise, the three seats allocated to representatives of the Western Pacific longline, troll, and hook and line fisheries should be re-designated more generally as two or three commercial-at-large fisheries seats.

Council Operating Procedures

The HMSAS also reviewed the draft Council Operating Procedure (COP) document which is designed to facilitate coordination and communication of management advice between the Regional Fishery Management Councils and the Regional Fishery Management Organizations (RFMOs) that operate in the Pacific. Attached to this report and incorporated by reference is a red-line version of the draft COP document.

Magnuson-Stevens Act Reauthorization

The HMSAS submits these initial comments with regard to annual catch limit accountability measures under Agenda Item J.5. These comments apply equally and should be considered along with other comments on Agenda Item C.2. HMSAS members expressed the following concerns:

- (1) Does Section 104(b) of the reauthorized MSA exempt HMS fisheries that are managed internationally from the Council's jurisdiction (Section 303(a)(15)), and thus is the Council responsible or able to establish annual catch limits?
- (2) If HMS fisheries are not exempt from Section 303(a)(15), then are they exempt due to the current measures of the IATTC & WCPFC qualifying as measures "provided under international agreement?"

The HMSAS would like clarification about how these new provisions of the Magnuson-Stevens Act will affect this Council's authority to set regulations for U.S. HMS fisheries, and if that new authority will, in some way, disadvantage U.S. vessels relative to the fleets of other nations.

LEGISLATIVE COMMITTEE REPORT ON THE MAGNUSON-STEVENS ACT  
REAUTHORIZATION IMPLEMENTATION

The Legislative Committee reviewed four general issues under this agenda item and offers the following comments.

Annual Catch Limits – The Committee discussed various methods of complying with the new requirements for Councils to establish annual catch limits for each fishery that ensure overfishing does not occur in the fishery. After looking at the history of fisheries management by the Council since the 1996 amendments to the Act, the Committee could only find one instance in which overfishing had occurred (petrale sole in 2005) and that problem was corrected as soon as it was discovered. The Committee further determined that the Council had several precautionary management systems in effect, including but not limited to the harvest control rule for groundfish, precautionary optimum yield (OY) settings for highly migratory species (HMS) and coastal pelagic species (CPS), and conservation controls for salmon. Finally, the Committee noted that the Council is proceeding with a groundfish intersector allocation and a trawl individual quota (IQ) plan, both of which would add accountability. The Committee therefore recommends that that Council document these controls to prevent overfishing, submit them to NMFS as evidence that the Pacific Fishery Management Council is already complying with the law, and urge NMFS not to enact additional regulations or guidelines that would affect the Council's successful program.

Environmental Review – After discussion with Dr. McIsaac on the work being done by the Council Coordinating Committee, the Legislative Committee recommends that the Council endorse the Coordinating Committee's proposal.

Experimental Permitting Process – The Legislative Committee notes that the Council has already adopted an extensive science-based review process for exempted fishing permits. The Committee recommends that the Council provide this process to NMFS and request that implementing regulations reflect how our process operates.

PFMC  
04/03/07

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON MAGNUSON-STEVENSON  
ACT REAUTHORIZATION IMPLEMENTATION

The Scientific and Statistical Committee (SSC) discussed issues pertaining to Magnuson-Stevens Act (MSA) reauthorization implementation as they relate to the role of the SSC in the Council process. The SSC also discussed particular issues regarding the implementation of annual catch limits (ACLs) and accountability measures (AMs).

The SSC's March 2007 report to the Council on this topic is still relevant. As such, it is attached to this report.

From the SSC's point of view, the stocks currently managed under Council FMPs that have biologically-based control rules governing harvest (e.g., the principal groundfish stocks and sardine) may already have sufficient precautionary characteristics to meet the reauthorized MSA requirements, such as ACLs, AMs and buffers. However, many Council stocks are managed through control rules that are not biologically based (e.g., minor rockfish species). While it may be desirable to manage all species with control rules, the large number of stocks involved and the data-poor nature of the assessments make this impractical for all stocks. Furthermore, salmon are generally managed for escapement, rather than using explicit catch accounting control rules. Managing for spawning biomass is generally appropriate, and is arguably closer to the management goal.

Even with substantial additional funding, it is unlikely explicit catch accounting control rules can be developed for all stocks managed under Council FMPs. The SSC suggests it may be prudent for NMFS to fully consider these factors when creating the National Standards needed to implement the reauthorized MSA.

PFMC  
04/03/07



SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON REVIEW AND PLANNING  
FOR IMPLEMENTATION OF NEW REQUIREMENTS RESULTING FROM  
REAUTHORIZATION OF THE MAGNUSON-STEVENSON ACT

The Scientific and Statistical Committee (SSC) discussed new provisions of the 2006 Magnuson-Stevens Conservation and Management Reauthorization Act (MSRA) as they relate to the role of the SSC in the Council process. The SSC has a number of questions regarding these provisions:

Provision: “The Council shall establish annual catch limits for each managed fishery that may not exceed the fishing level recommendations of its SSC” (MSA 302(h)(6), p. 51)

The Pacific Council has maintained a clear distinction between scientific analysis and advice and policy decisions, with the SSC taking the lead on the science. With regard to coastal pelagic and groundfish catch limits, the SSC’s role has been to review the harvest control rule and the stock assessments that are fed into the control rule. The Council’s role has been to establish annual catch limits, which (for groundfish) involves taking into consideration the decision table showing harvest levels associated with high, medium, and low levels of risk to the stock. While not mandated by the SSC, it has generally been Council practice not to exceed the risk-neutral level of harvest indicated by the control rule.

If the “fishing level recommendations” that the SSC is expected to provide under the MSRA are intended to be numeric catch limits, this will be a major deviation from Council practice, as it will require the SSC to make policy decisions. This raises several issues: (1) Is the SSC supposed to establish catch limits strictly on the basis of biological considerations? If so, this will be tantamount to an implicit policy decision to disregard ecosystem and socioeconomic issues in setting catch limits. (2) What types of information would the SSC be required to consider in establishing catch limits? For instance, would the SSC consider results of a regulatory analysis and take input from advisory bodies and the public? If so, then what is the role of the Council with regard to setting catch limits? If not, does this leave the Council and NOAA Fisheries Service vulnerable to claims of procedural violations under the National Environmental Policy Act (NEPA) and the Magnuson Act?

Provision: “The SSC shall provide recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, socioeconomic impacts of management measures, sustainability of fishing practices (MSA 302(g), pp 49-50).

Clarification is needed with regard to SSC responsibilities entailed by this provision. For instance, does this responsibility pertain to all species (including salmon and highly migratory species)? In terms of “preventing overfishing” and “achieving rebuilding targets”, is the SSC supposed to set numeric bycatch levels associated with rebuilding? If

so, then the same issues raised above with regard to the SSC setting of catch limits would apply here as well.

Does the requirement that the SSC “provide” reports on stock and habitat status, bycatch, socioeconomic impacts of management measures and the like mean the SSC will “produce” these reports. If so, given the Council’s practice of separating analysis from review, who will review the SSC’s production of these reports?

The SSC also discussed pending efforts by NOAA Fisheries Service to integrate NEPA requirements with fishery regulatory requirements in such a way as to streamline the management process. Given that rationale for the biennial groundfish management and assessment cycle was the cumbersome nature of the regulatory process, would such streamlining reduce the time lag between groundfish management actions and the stock assessments on which they are based?

PFMC  
03/06/07

From [Mark Millikin <Mark.Millikin@noaa.gov>](mailto:Mark.Millikin@noaa.gov)

Sent Friday, June 1, 2007 11:19 am

To [annual catch limitDEIS <annual.catch.limitDEIS@noaa.gov>](mailto:annual.catch.limitDEIS@noaa.gov)

Cc

Bcc

Subject [Fwd: Re: WP council breakout sign in sheet]

From Marcia Hamilton, March 27, 2007.

----- Original Message -----

Subject: Re: WP council breakout sign in sheet

Date: Tue, 27 Mar 2007 08:51:17 -1000

From: Marcia Hamilton <Marcia.Hamilton@noaa.gov>

To: Mark Millikin <Mark.Millikin@noaa.gov>

References: <46032090.9060803@noaa.gov> <46091AD7.E16CEE39@noaa.gov>

Sure, I think I said that although many of our fisheries are known by single-species/group titles (e.g. swordfish, tuna) - they are in fact multi-target fisheries for which incidental (non-target) species are an important component of their revenue. These include mahimahi, ono, opah, marlins and other species. There is not much bycatch (i.e. discards) as most fish caught is marketable and/or edible.

Another important factor is that many vessels (esp. the large fleet of vessels under 40') use more than one gear type in a trip/season/year. So again, one part of their activity (e.g. bottomfishing) is a very important of their annual fishing operation which could involve trolling on the way out to a bottomfishing spot or trolling in the summer and bottomfishing in the winter.

I hope that is the comment you were thinking of!

Marcia

PS - I think it would be very helpful if the NS1/ACL discussion and guidelines could uniformly maintain the MSA definition of bycatch as fish that are discarded and not retained for sale or consumption. This is the definition we use, we refer to non-target catch as incidental catch. Folks have gotten confused when alternative definitions have been used by NMFS at times.

Mark Millikin wrote:

> Thanks very much, Marcia. Could you please repeat your comment and example related to the incidental

> catch in the Western pelagic fisheries?

>

Mark

>

> Marcia Hamilton wrote:

>

>  
>> Hi Mark,  
>> Vera mentioned that you didn't get a copy of the sign in sheet for your  
>> breakout session so I've attached a scanned copy. Please let me know if  
>> you have questions.  
>> Marcia  
>>  
>> -----  
>> Name: NS1 breakout session sign in sheet.pdf  
>> NS1 breakout session sign in sheet.pdf Type: Portable Document Format  
(application/pdf)  
>> Encoding: base64  
>> Download Status: Not downloaded with message  
>>  
>  
> --  
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