

Executive Director's Report

October Council member training and CCED meeting

NOAA Fisheries is hosting an interim Council Chair and Executive Director (CCED) meeting later this month (October 24-26) in Washington D.C., along with a new Council member orientation to be held concurrent with the CCED meeting. Several of our new members will be attending, as well as myself and the Council Chair and Vice-Chair. The orientation sessions will cover a number of basic Council operational topics. Major topics of discussion at the CCED meeting will include budget issues and MSA reauthorization issues. I will report to the Council in December on major outcomes of this meeting.

Update on Magnuson-Stevens Act reauthorization

Magnuson-Stevens Act (MSA) reauthorization has been percolating over the summer! Council Chair Stephanie Madsen testified in July at field hearings held by the U.S. House of Representatives, Subcommittee on Fisheries and Oceans (that testimony was included in a Council mailing), and it looks like I will be testifying at another hearing on October 27 also being held by the House Subcommittee. Other hearings, possibly by the Senate Commerce Committee, are being discussed but have not been formally scheduled.

We also have received two draft bills over the summer, one from the Senate Commerce Committee and one from the Administration. Comments were requested on the Commerce draft and I provided comment in early September (Item B-1(a)). As you may note, oral testimony and written comment from myself and the Chair on the major issues closely reflect the consensus recommendations from our March fisheries conference in D.C., as well as the consensus positions of the eight regional Councils from our May CCED meeting. I anticipate we will be discussing many of the specifics in the Administration bill later this month at the interim CCED meeting with NOAA. It is still unclear how soon a bill could actually be passed. I will update you once again in December.

AP appointment

Council Chair Stephanie Madsen made the interim appointment of Simon Kinneen to the Advisory Panel for the remainder of 2005, to fill the opening created by Eric Olson's appointment to the Council. Council SOPPs allow the Chair to make such appointments, contingent upon approval by the Council. AP appointments are typically discussed in Executive Session, one of which is scheduled for Friday of this week (where we will also receive a report from KPMG summarizing our biennial audit of Council grants and finances). Mr. Kinneen's resume' and statement of interest, as well as our letter approving his appointment, are contained under B-1(b).

Plan Team membership

The Council needs to review and approve two appointments to the groundfish Plan Teams. The State of Alaska is nominating Dr. Kenneth Goldman to replace Bill Bechtol, and the State of Washington is nominating Tien-Shui (Theresa) Tsou to fill the seat previously occupied by Farron Wallace. Their resumes and nomination letters are attached as B-1(c). The SSC has reviewed their nominations and will provide a recommendation to the Council.

Freezer longline sector buyback

In June Mr. David Little provided the Council a report on the status of the voluntary, industry funded buyback being proposed for the freezer longline sector. He is once again on hand to provide the Council an update on this program.

NS 1 guidelines

Revised national guidelines for National Standard 1 were published by NMFS in July, with an extended comment period ending October 22. I requested a subgroup of our SSC to once again review the proposed guidelines and provide their comments. These have been reviewed by the entire SSC at this meeting and are being finalized. They are consistent with previous comments developed by our SSC, with some modifications and additions based on the latest rule. My suggestion is that I forward these comments to NMFS before the October 22 deadline on behalf of the Council, as we have done in previous iterations of this issue. We can provide you a final version of the SSC comments at this meeting, so that Council members have a chance to look them over this week and give me any feedback before I forward them on behalf of the Council.

Shell Oil public workshop

Representatives from Shell Oil Co. will be making a presentation on a proposed OCS five-year plan relative to development in the North Aleutian Basin/Bristol Bay area. This may be of interest to many in the fishing industry, as they will be soliciting public comment on this five-year plan. This will be on Thursday, October 6 starting at 11:00 am here in the Hilton Hotel (room to be determined). B-1(d) is a copy of a recent ppt presentation to the Resource Development Council for your reference.

SSC operations per Information (Data) Quality Act

As I alerted you in June, the OMB guidelines for implementing provisions of the Information Quality Act (IQA) will require independent peer review of certain information (science, data, analyses, etc) disseminated by the agency, including information originating in, or going through, the Council process. The peer review requirements will relate to any information deemed to be Influential Scientific Information (ISI), or Highly Influential Scientific Information (HISI), which triggers additional requirements. At this time it appears that there are no HISI issues in our region, but there are a few that will likely qualify as ISI and will therefore be subject to the requirements. NMFS staff will provide the Council a briefing on information thus far identified as ISI (which they also conferred with Council staff on recently) as part of this report, but it is clear that the SAFE documents and some of the associated information will qualify as ISI. The only other item identified at this time is the pending 18 month review for the crab rationalization program (90/10 split, arbitration aspects, crew shares, etc). Apparently OMB will have the final say as to what constitutes ISI, or HISI. It is likely that some things not on the list now will make the list once they are further defined, such as the GOA rationalization EIS.

In previous discussions we noted the potentially significant impacts to our process, in terms of timing, logistics, and expense that could occur if we have to commission independent peer review processes to comply with these guidelines. Therefore, I have been working with NMFS staff to develop some (primarily) procedural changes to our SSC operations in an effort to have our SSC deemed as the independent peer review process necessary for compliance. I have discussed this with the SSC Chairman over the summer, and earlier this week with the entire SSC, and will report to you at this meeting on their views of the suggested changes. I believe that ultimately the Council would need to review these proposed changes and, if acceptable, approve them as changes to our SOPPs, so that I can attempt to get them as fully implemented as possible prior to our December meeting. The draft discussion paper which outlines the proposed changes is provided under B-1(e). An initial draft of conflict of interest provisions

is under B-1(f). Unfortunately most of the details, including details on the conflict of interest provisions, are not yet finalized and we likely cannot sign off on the proposed procedural changes until we see the specifics. This iteration is intended to give the Council and SSC a preview as to what we would likely need to do, recognizing that some of the details need further resolution between now and December.

Below are listed the main steps that will likely be required, annotated with my initial comments (prior to discussion with the full SSC) in *italics*:

- Post biographical information for each SSC member on the Council website that describes the expertise, experience, skills, and diversity of the SSC membership;

Not a problem.

- Include a brief statement along with the biographical information that describes any real or perceived conflicts of interest;

Probably not a problem, depending on further specificity on an adapted NAS policy (see below).

- Consider allowing a scientific or professional society to nominate individuals or a pool of nominees for one or more “at-large” members on the SSC;

Our SSC already contains several ‘at large’ seats, and anyone can be nominated annually for membership on the SSC. I would argue that we do not need to adopt this provision. If OMB determines that we must adopt such a provision, then I would recommend that we specify stringent conditions (such as cannot be affiliated with any industry or NGO organization), that we would solicit through a scientific organization such as AFS, and that the appointment be on a temporary, issue-specific basis (i.e., for review of the specific information deemed to be ISI).

- Adopt or adapt the NAS policy for evaluating conflicts of interest;

Initial discussions with SSC members familiar with the NAS policy identifies some concerns with this provision. Some SSC members may be reluctant, for example, to publish their entire list of publications, pending research, or funding situations for all research when the ISI in question may only be peripherally related or not at all related. This will be a critical aspect of the provisions. On a positive note, the provisions are being drafted to allow federal (NOAA) members to continue to serve as ISI reviewers through the SSC.

- Consider a system for recusal for those instances where an SSC member clearly cannot meet the Bulletin’s conflict of interest standards;

Not a problem. Likely a rare situation.

- Remind NMFS employees serving as SSC members to review Federal ethics requirements prior to reviewing ISI;

Not a problem.

- Require NMFS employees serving on the SSC to submit a statement addressing the NAS criteria described on p.6-7 of this paper;

Not a problem.

- Encourage the SSC to document a procedure for conducting regular rotation of members on ISI subcommittees;

While all SSC members participate in review of all pertinent information and analyses (whether ISI or not), standard practice is to identify a subgroup of SSC members as lead reviewers for the various items on their agenda. These members formulate initial review comments which are then reviewed and approved by SSC consensus. I believe our current process satisfies the intent of the rotation provision.

- Adapt the SSC minutes into a peer review report according to the criteria on p.7-8 of this paper and post the report on the Council website;

I believe we can accommodate this provision with minimal disruption.

- Provide a time and method for public comment prior to, during, or immediately following the panel review, include all comments in the peer review report, make any peer review materials available to the public and provide written responses to any public comments in the peer review report;

This provision may be the most onerous of the proposed changes. While the current SSC process allows public comment, and all materials are available to the public, it is not standard practice to directly respond to each and every public comment in the SSC minutes. However, the minutes often contain relevant responses implicitly. While SSC discussions may need to ensure that they have more explicitly addressed the public comments, I believe that the relevant staff for each pertinent ISI issue will need to take on the burden of summarizing public comments, developing the specific response from the SSC discussion and minutes, and organizing that into a separate section of the final SSC report. I believe we can work with the SSC on this to satisfactorily address the intent of this provision.

- Ensure that all information circulated prior to official dissemination bears the appropriate pre-dissemination disclaimer described on p.8-9 of this paper;

This is a lengthy disclaimer to put on every page of very large documents (and seems like a senseless waste of paper), but since no font size is specified I believe we can do so without sacrificing too many trees.

- Review potential ISI on a semiannual basis in conjunction with a Council meeting.

In discussions with NMFS staff, we suggest that we would review potential ISI information on an as-needed basis, which may be more or less than a semiannual basis.

Detailed Comments from the North Pacific Fishery Management Council on the Commerce Committee MSA draft:

Section 102 – Regional Fishery Management Councils

p. 7-9: We support the additional language regarding the use of SSCs, and making the SSC process satisfy the requirements of the Information (Data) Quality Act. It would be very helpful to clarify that federal employees (some of whom are critical members of the NPFMC SSC) can participate in this SSC review process (contrary to some provisions of the Data Quality Act).

Regarding the establishment of TACs, it is probably more appropriate to reference ABCs as the limit point (we often set TACs below ABC, in some cases equal to ABC, but at times the TAC may be slightly exceeded due to management realities, such as estimation of amounts of a particular species necessary as bycatch in other directed fisheries).

Regarding pay for SSC members, there remain concerns that (1) fairness with regard to agency SSC members, and (2) overall perception possibly created by paying SSC members for scientific advice. Also, it is unclear who makes the determination as to whether such a stipend will be paid.

Regarding Council training, we generally support development of a more specific Council training program, but not as a condition of voting.

p. 10: Regarding notice of meetings, we support the proposed changes (notification of meetings via means that will result in wide publicity, not newspaper), but also encourage language that will no longer require publication in the Federal Register of meeting notices (very few people read the Federal Register for notice of Council and committee meetings – our web-site and newsletters are the primary source for public to track council meeting notices and other council related information).

p. 11-13: Council coordination committee – looks great, but please make sure the language allows that coordination committee to close portions of their meetings (as each Council can now do individually) to discuss administrative or legal (litigation) matters. That is found in part 3 of section 302(i).

Section 103 – Environmental review

The proposed language, under which the Secretary and CEQ would establish an integrated process for NEPA compliance, may allow for an improvement in the current process; however, it may not. If this approach is taken, it is critical that the Councils also be involved in developing this process. **We believe this is one of the most critical aspects of the pending MSA reauthorization, and we continue to strongly support**

the language as adopted by the 2005 national fisheries conference and by all eight of the Regional Councils, which adds critical NEPA aspects to the MSA, and thereby makes the MSA serve as the functional equivalent with regard to NEPA requirements. Suggested language in this regard has been previously provided.

Section 104 - Provisions affecting limited access privileges

Generally, the Council believes this is a necessary tool for fisheries management, including the authority to allocate privileges to a wide variety of stakeholders. We further believe many of the specifics (including initial allocations and other key program elements) need to be left to the discretion of the regional councils to address unique aspects of the fisheries and regions in which the fisheries occur. More specific comments, section by section, follow:

p. 16 – Sec. 106(1) – although this provision deletes the provision that expressly prohibits collection of economic data from processors, those data may only be collected for conservation and management purposes, which is typically a limited purpose (not usually including the social issues that the Council is interested in). **Generally we support collection of economic and other information, but stress the need for clear confidentiality restrictions on that information.**

p. 19 – Sec. 303(b)(2) – this provision and others authorize community participation (suggesting the community government) – nothing is provided for an *entity that represents* one or more communities (see more detailed comments in community section below).

p. 19 – Sec. 303(b)(2)(A)(iii) – this seems to require current subsistence or commercial fishing to be eligible as a fishing community (see more detailed comments in community section below).

pp. 18-19 – Sec. 303(b)(2)(A)(ii) – requires submission of a community sustainability plan – *probably need more definition on what is a sustainability plan.*

p. 19 – Sec. 303(b)(2)(B) – This suggests that historic participation is what is important in including communities in the program – *not clear if it is current or historic participation or both that matter when including communities in programs.*

p. 20 - Sec. 303(b)(3)(A) – One issue with this section is whether harvest shares can be allocated to processors - allocation of fishing privileges needs to consider processing employment, historic harvesting, investments in and dependence on the fishery, and historic community participation. *Should be clear as to whether harvest shares can be allocated to processors.*

p. 20 – Sec. 303(b)(3)(B) – set asides of initial and secondary allocations for “entry level” and small scale fishing permitted – *need to clarify definition of “secondary allocation”.*

p. 21 – Sec. 303(b)(3)(D)(i) – caps must be set as percent of “total limited access privileges” under the program – *this appears to be a bit different from what we do in most cases (often is percent of sector or percent of the species), though it is not entirely clear what is meant by ‘total access privileges’, and we would rather maintain our current practice of setting caps with greater Council flexibility.*

p. 21 – Sec. 303(b)(3)(E) – a program is required to “minimize geographic consolidation of processing” – *at an extreme, this could imply many more locations for processing than is practicable.*

p. 21 – Sec. 303(b)(3)(F) – according to this all programs must authorize “vessels owners, fishermen, crewmembers, communities and others that substantially participate in the fishery” to hold or be issued privileges” – ***Two critical issues here (a) difficult to determine what is meant by ‘substantially participate’, and (b) Councils should have discretion to allocate to all these sectors – suggest changing ‘must’ to ‘may’.***

p. 22-3 – Sec. 303(b)(4)(D) – these provisions require a petition of “a group of fishermen, constituting at least a third of those actively engaged in participation in fishery” for the Council to initiate a plan amendment for a rationalization program – *this is a pretty steep standard, especially considering that “fishermen,” “actively engaged in participation in,” and “fishery” would need to be specifically defined. In any case, we do not support requirement for petition, or referendum, for Council to initiate a limited access program.*

p. 26– Sec. 303(c)(1) – *it is not clear what is authorized here – using the definition of limited access privilege, it appears to authorize only programs that create privilege to process specific poundages of fish – this is different from the associations created by the Gulf of Alaska rockfish program and Gulf rationalization program. Also, fishery associations are not defined – it is assumed these are AFA and rockfish type processor/cooperative associations, but it is not clear.*

p. 26-7 – Sec. 303(c)(1)(B) – *to establish processor privileges we must meet a very high threshold – the privileges must (under (ii)) be “necessary to protect fishing communities, maintain historic harvester and processor balance in the fishery, and ensure economic stability in the harvesting and processing sectors. Also, (under (iii)) the privileges must not result in “price-fixing or any other anticompetitive practices” – by their nature these privileges may be construed as anticompetitive – they reduce competition for landings. We must also have (under (iv)) sufficient economic data to develop such a program”. The hurdle we may never be able to get over is that (under (v)) the program must be “necessary to address impacts to the processing sector that cannot be mitigated by other means.” This could be very difficult to ‘prove’.*

p. 27 - Sec. 303(c)(1)(G) – *a requirement for inclusion of waste reduction and increased utilization could be problematic, particularly if fisheries have already been addressed with previous requirements.*

p. 29 - Sec. 303(c)(3)(E) - all programs must authorize “communities, processors and others that substantially participate in the fishing and processing sectors” to hold or be issued privileges – *again, this is a broad list of recipients, will be difficult to define, and Councils should be given the option to allocate to each of these sectors.*

p. 30 - Sec. 303(c)(3)(F) – this provision excludes foreign processors from holding privileges – uses AFA ownership and control standard. *This could be a problem in fisheries where major, long-standing processing capacity has foreign ownership.*

P. 34 – Cost Recovery – we support cost recovery for limited access programs; *however, the current language in the draft is very open-ended and we recommend consideration of some cap level (currently it is 3%).*

Provisions specifically related to community aspects

Throughout, the Act references that access privileges can be acquired by ‘fishing communities’. It may be necessary to specify that privileges can be allocated to ‘an entity representing a fishing community’. All of our current and proposed programs allocate to an entity representing a community that is specified in regulation. Language in the draft could be construed such that the privileges can only be given to the community itself—which could be interpreted as limited to the ‘government’ of that community, and not a non-profit or fishing association, etc. set up for that specific program purpose. Adding ‘entity’ broadens it sufficiently. There are several places where this occurs in the draft.

P. 19 - Provisions (i) – (iv) seem to specify minimum criteria for communities participating in a limited access privilege program, and then (ii) allows the Councils to develop even more restrictive criteria. But my interpretation is that communities would at LEAST have to meet (i) – (iv). In specific, (ii) appears to limit the Councils to create criteria for eligible communities—you could not just pick community X and Y and Z to be part of a program.

(iii) appears to mean Councils could only allow communities in a program that had commercial or subsistence fishing within the Council’s management area. It doesn’t seem to limit it to communities with commercial fishing in the management area relevant to the specific limited access privilege program being created, however, you would just have to have some fishing in the BSAI or GOA.

Subsistence fishing is not defined; in the Act or in Federal regulations, with the exception of the halibut subsistence definition in 50 CFR 300.61.¹ Subsistence fishing is commonly defined differently from ‘personal use’ fishing (as defined in salmon) and definitely from ‘recreational’ fishing. So I would make sure that the intent was to constrict the Council to create programs for only those communities with commercial or subsistence fishing. (e.g., If we create a charter halibut IFQ program and include a community set-aside program – to be eligible a community would have to have commercial or subsistence fishing?)

¹ *Subsistence halibut* means halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade.

In addition, under (iii), it says 'consist of residents who conduct commercial or subsistence fishing.' It seems this could be interpreted as communities with residents who are currently conducting fishing operations as of the date of the program... This may be limiting to very small communities in AK whose resident fishing activity is dependent on 2 or 3 people, weather, an open processor—they may not have any residents fishing this year, but they fished the last ten.

As far as (iv)—probably need to define what a 'community sustainability plan' is. It doesn't seem to necessarily have to be about fishing. I would interpret this as a plan that must be submitted by a community, after it has been determined eligible for some specific program at final action. It would be another part of an entity's 'application for qualification' that is submitted to NMFS to represent a specific community.

(B) mandates what the participation criteria for communities can be based on. On one hand, it seems broad enough that the Council could justify almost any set of criteria used. We consider all those things when we develop a program in general. On the other hand, NMFS encourages the use of objective criteria as much as possible, in order to be able to apply it correctly and have it hold up to appeals. Thus, we commonly use population and proximity to the fishery as our main, if not only criteria, with some landings threshold to show 'dependence' or 'use' of the fishery at issue. The criteria above is mandated, and yet very subjective. Even NOAA HQ social science program has spent years and hasn't yet defined what 'dependence on the fishery' means and how to determine it in each region. I'm not sure we could create objective criteria that would meet (B). We took this out of several analyses (most recently, Gulf rationalization) because of this issue.

P. 20 – It is unclear what is meant by a 'secondary harvesting privilege'.

Section 107: The provisions in Section 107 could be construed as very broad and not requiring more than we currently do. Generally, these provisions give more weight to communities to receive initial allocations, and emphasize 'historic participation', 'sustained participation', and 'dependence on the fishery' by eligible communities to a much greater extent than the current MSA. This could be narrowly construed as limiting Councils to only making communities eligible that have historic and sustained participation in the same (usually recent) time period that is being used to make the initial allocations to individuals. However, I think that there continues to be room for interpretation, and that the time period considered to determine 'historic participation', 'sustained participation', and 'dependence on the fishery' could legitimately be a longer duration and meet the letter of the Act. For instance, to some, historic participation for a community could mean they harvested cod heavily 50 years ago, even if more recently they've harvested only salmon and halibut. The time period considered continues to drive the meaning and effect of all of the limited access privilege programs.

Section 112, P. 43 – Western Alaska CDQ Program: While the recently passed transportation bill (*Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for User, H.R. 3, 109th Cong., Title X, Subtitle B, Sec. 10206 (2005) (enacted)*) included provisions clarifying the communities eligible for the CDQ Program that are effectively the same as the language under (i) and (ii) above, I think there are reasons to include a specific MSA amendment to add this clarification. Otherwise it won't be obvious when reading the MSA, since it would only be in a stand alone transportation bill.

However, the language above seems to only ADD the clarifying language, and does not remove the eligibility criteria currently in the MSA under 305 (i)(1)(B)(i) – (vi). I don't know why we wouldn't want to be as clear as possible, by striking the eligibility criteria currently in the MSA and using only (i) and (ii) above to designate eligible communities. By

continuing to have the eligibility criteria in the MSA, it looks as if you could be eligible by meeting the criteria OR by being on the lists identified in (i) and (ii). **This is not consistent with the transportation bill, which said that you are only eligible if you are on the lists; effectively, no new communities could enter the program at a later date.**

Other sections of the draft bill:

We have no specific comments on other sections of the draft bill at this time.

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AUG 11 2005

N.P.F.M.C.

420 L Street, Suite 310
Anchorage, AK 99501
August 11, 2005

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, Alaska 99501

Dear Ms. Madsen,

I am writing to express my interest in serving on the Advisory Panel to the North Pacific Fishery Management Council.

My background in fisheries is fairly diverse. I grew up in Nome, Alaska, where I graduated from high school. Summer employment through college was with the Alaska Department of Fish and Game working on various field projects. I received my Bachelor of Science Degree in Fisheries Biology from the University of Alaska Fairbanks in 1999, with much of my fisheries coursework taken from the University of Washington, Seattle. In early 2000, I was hired by the Norton Sound Economic Development Corporation (NSEDC) as an intern to work in the CDQ Harvest Management Program, as well as the Salmon Rehabilitation and Enhancement Program. One of my first assignments was to go through the North Pacific Observer Training Center's groundfish observer course. After completing this training, I worked for three months as a National Marine Fisheries Service groundfish observer on various boats in the Bering Sea, Aleutian Islands, and Gulf of Alaska. When my contract with NMFS was completed, I returned to NSEDC where I've been employed since.

I have a wide range of duties at NSEDC as the Fisheries Research and Development Director, including overseeing all of our in-region fisheries research projects, managing the local CDQ crab and halibut fisheries, as well as participating in the federal fishery management processes at the Council level. My work on the Marine Conservation Alliance and Foundation boards as Vice-President and President, respectively, has also allowed me to integrate well with other members of the industry and I feel that I work well with most on varying issues.

Thank you for your consideration for my appointment to the AP. Please feel free to contact me if you have any questions.

Sincerely,



Simon Kinneen

Encl.: Resume

Simon Kinneen
P.O. Box 351
Nome, Alaska 99762
simon@nsdc.com

Education:

University of Alaska Fairbanks
Bachelor of Science Fisheries Biology, December 1999
Phi Kappa Phi Honor Society

Additional coursework at **University of Washington, Seattle, 1999**
Gained practical experience in:

Various Trawling Methods
Electrofishing
Habitat Restoration
Hatchery Practices

Juvenile Salmonid Research
Species Identification Via Dichotomous Key
Otolith Removal and Analysis

Additional training through **University of Alaska Anchorage, 2000**
North Pacific Groundfish Observer Training

Flight Training
Private Pilot License
1998- **Winfield Flight School-Fairbanks AK**
Instrument Rating
2000- **Airman Flight School, Norman, OK**
Commercial Training
2002- **Take Flight Alaska, Anchorage AK**

Nome-Beltz High School
Diploma 1994

Committee Work:

North Pacific Research Board – Advisory Panel

One of eleven initial members of the Advisory Panel to the North Pacific Research Board, with the charge of providing input on science planning and research funding in the North Pacific, Bering Sea, and Arctic Ocean.

Norton Sound Research and Restoration Steering Committee

One of seven steering committee members tasked with development of research and restoration plan associated with salmon disaster in the Norton Sound, and the appropriation of a five million dollar grant designated by Congress for this purpose.

Norton Sound/Bering Strait Regional Planning Team

Representative to the RPT, responsible for plan development and amendment, review of private nonprofit hatchery permit applications and recommendations to the commissioner, and review and commenting on proposed permit suspensions or revocations by the commissioner.

Marine Conservation Alliance

Board member and officer (Vice-president) of the Marine Conservation Alliance, tasked with promoting the conservation and sustainable use of marine resources in the North Pacific for present and future generations by supporting sound science and improved public understanding of critical issues, and to support science-based policy that protects the marine environment and the North Pacific fishing community.

Marine Conservation Alliance Foundation

Board member and officer (President) of the Marine Conservation Alliance Foundation, a non-profit group whose goals include the preservation of the North Pacific marine environment through debris clean-up projects, the promotion of research, and educational programs.

North Pacific Marine Science Foundation

Board member of the North Pacific Marine Science Foundation, whose mission includes the promotion of research dedicated to understanding the interaction between marine life and fisheries.

Alaska Oceans Seas and Fisheries Research Foundation

Board member, tasked with promoting a greater understanding and prudent utilization of the oceans, seas and fisheries surrounding Alaska through research.

Job Experience:

Norton Sound Economic Development Corporation

Title: Fisheries Research and Development Director

March 2000-Present

Duties: Norton Sound Fisheries Research and Development - Director
Plan/Coordinate NSEDC salmon restoration/research projects
Plan/Coordinate NSEDC fisheries development projects
Work cooperatively with various state, federal and regional organizations to conduct projects
Supervision of employees, including NSEDC Fisheries Biologist and technicians
Arrange contracts with private researchers for cooperative projects

CDQ Harvest Management- Assistant Manager

Manage in-region CDQ halibut and crab fisheries
Work with local fishermen in their fishing efforts
Coordinate with NMFS and ADF&G in management efforts
Monitor CDQ fisheries throughout season
Work with other CDQ groups, the State and Federal governments for allocation transfers
Work with fishing partners to conduct fisheries

Attend Fisheries Meetings, prepare and deliver testimony:

North Pacific Fishery Management Council
Alaska Board of Fisheries
International Pacific Halibut Commission

National Marine Fisheries Service

Title: Groundfish Observer

April-July 2000

Duties:

Work and live on commercial fishing boats
Collect, record, and report biological information concerning fishing catch and composition
Monitor vessels for compliance with specific fishery, marine mammal, and pollution regulations
Collect biological specimens for use in research

Alaska Department of Fish and Game

Title: Fish and Wildlife Technician II

Summers 1994-99

Duties:

Egg Takes	Fish Counting Tower Work
Seining	Lake Fertilization
Genetic Sampling	Incubation Facility Construction
Pathology Sampling	Aerial Surveying for Incubation Sites
Smolt Project (Abundance estimates)	Habitat Restoration
Crab Fishery Observer	Riverboat Operation and Maintenance
Limnological Sampling	

University of Alaska Fairbanks

Title: Student Assistant III- Animal Caretaker

September-December 1999

Duties:

Feed and care for caribou, geese, ground squirrels and other native animals
Facilities maintenance

University of Alaska Fairbanks

Title: Resident Assistant

September-June 1997, September-December 1998

Duties:

Supervise 150 students in residence hall
Supervise staff of 6 attendants

Conduct hall meetings
Write annual reports

Biographical Information:

Born Fairbanks, Alaska December 14, 1975

Raised in Nome, Alaska

Hobbies:

Flying

Dog Mushing (Iditarod 1994, Junior Iditarod 1991-93)

Outdoor Activities (Hunting, Fishing, Hiking, Boating)

Team Sports (Hockey, Softball, Basketball)

Other Honors:

1986 Alaska State Spelling Bee Champion

1991 Junior Iditarod Rookie of the Year

1993 Junior Iditarod Humanitarian Award For Outstanding Dog Care

1993-94 Who's Who in American High Schools

STATE OF ALASKA

FRANK H. MURKO AGENDA B-1(c)
OCTOBER 2005

DEPARTMENT OF FISH AND GAME

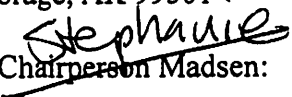
OFFICE OF THE COMMISSIONER

P.O. BOX 25526
JUNEAU, AK 99802-5526
PHONE: (907) 465-4100
FAX: (907) 465-2332

August 29, 2005

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Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501 -


Dear Chairperson Madsen:

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SEP 1 2005

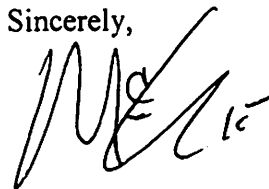
N.P.F.M.C.

I hereby nominate Dr. Kenneth J. Goldman to the Gulf of Alaska Groundfish Plan Team to replace William Bechtol, who resigned from state service in January, 2005.

Dr. Goldman has recently assumed the Central Region groundfish research biologist position for the Division of Commercial Fisheries, and has oversight of groundfish and shellfish research and related issues in Lower Cook Inlet and Prince William Sound. Although Ken has only been with the department a short time, he has extensive experience with marine fishery stock assessment, and has previously worked with regional and international fishery advisory groups. This includes an appointment to the IUCN shark specialist group, and assisting Jane DiCosimo at NPFMC with elasmobranch fishery management issues. I am sure that he will be a valuable asset to the GOA plan team.

Thank you for your consideration of this request.

Sincerely,



McKie Campbell
Commissioner

Curriculum Vitae

Personal Information:

Name: Kenneth James Goldman
Date of Birth: 1-25-63
Current Address 122 W. Danview Ave., #4, Homer, AK 99603.

Current Position:

Central Region Groundfish and Shellfish Research Biologist
Address: Alaska Department of Fish and Game
3298 Douglas Place
Homer, Alaska 99603
Phone: (907) 235-8191; Fax: (907) 235-2448
Email: ken_goldma@fishgame.state.ak.us

Education:

Ph.D. Fisheries Ecology - College of William and Mary, School of Marine Science, Virginia Institute of Marine Science - August 2002.
M.A. Biology - San Francisco State University - May 1996.
B.S. Biology (Marine Biology-Limnology)- San Francisco State University, Magna Cum Laude - January 1993.

Previous Work Experience:

Assistant Professor of Biology and Marine Science Jackson State University, Department of Biology, Jackson, MS 39272
Aug. 2003 - June 2005
Studied physiological ecology, fisheries biology and management of marine animals, mostly teleost and elasmobranch fishes. Conducted studies on age and growth, demography, movement patterns and behavioral ecology. Also involved in research focusing on the effects of physiological stress on gamefishes from angling and commercial fishing.

Postdoctoral Scholar & Lecturer California State University Long Beach, Long beach, CA
Aug. 2002 - July 2003 Dr. Chris Lowe, supervisor (562) 985-4918
Studied the behavioral responses and survivorship of California sheephead to post-release angling and commercial trapping stress. Taught Ecology and Environmental Science courses, and advised undergraduate and graduate students.

Research Assistant Virginia Institute of Marine Science, Gloucester Pt, VA
Jun. - Sep. 1996 - Aug. 2002 Dr. John Musick, major advisor/supervisor (804) 684-7317
Longlining for sharks in the Chesapeake Bay and coastal waters of Virginia gathering catch data, and tagging.

Seawater Technician Department of Biology, San Francisco State University, San Francisco, CA. Dr. Tom Neisen, supervisor (415) 338-6387
Sep. 1994 - May 1996
Animal husbandry of tropical, temperate, and boreal freshwater and marine organisms.
Aquarium system design, construction, and maintenance.
Collecting animals for display and study purposes.

Aquatic Biologist Calif. Acad. of Sci., Steinhart Aquarium, San Francisco, CA
Jun. 1990 - May 1996 Dr. John McCosker, supervisor (415) 750-7249
Animal husbandry of tropical, temperate, and boreal freshwater and marine organisms

Aquarium system design, construction, and maintenance
Construction of aquatic and terrestrial displays as assistant to aquarium preparator
Collecting animals for display purposes
Captive propagation project involving endangered winter run Chinook salmon

Publications:

Invited Book Chapters and Papers

- Goldman, K.J.** and J.A. Musick. In press. Biology and Ecology of the Salmon Shark, *Lamna ditropis*. In: Sharks of the Open Ocean. E.K. Pikitch and M. Camhi, eds. Blackwell Scientific, 2005.
- Goldman, K.J.** 2004. Age and Growth of Elasmobranch Fishes. pp. 97-132. In: Elasmobranch Fisheries Management Techniques. J.A. Musick and R. Bonfil, eds. Asia Pacific Economic Cooperation, Singapore, 370 pp. (electronic version available at <http://www.flmnh.ufl.edu/fish/organizations/ssg/EFMT2004.htm>).
- Cailliet, G.M. and **K.J. Goldman**. 2004. Age Determination and Validation in Chondrichthyan Fishes. pp 399-447. In: The Biology of Sharks and Their Relatives. J. Carrier, J.A. Musick and M. Heithaus, eds. CRC Press, Boca Raton, FL.
- Carlson, J.K., **K.J. Goldman** and C.G. Lowe. 2004. Metabolism, Energetic Demand and Endothermy. pp 203-224. In: The Biology of Sharks and Their Relatives. J. Carrier, J.A. Musick and M. Heithaus, eds. CRC Press Boca Raton, FL.
- Lowe, C.G. and **K.J. Goldman**. 2001. Thermal and bioenergetic telemetry of elasmobranchs: bridging the gap. In: T.C. Tricas and S.H. Gruber, eds. The Behavior and Sensory Biology of Sharks and Rays: State of the Art and Future Direction. American Elasmobranch Society Symposium, Special Volume in Honor of Dr. D.R. Nelson. Env. Biol. Fish. 60:251-266.
- Goldman, K.J.**, S.D. Anderson, J.E. McCosker, and A.P. Klimley. 1996. Temperature, swimming depth, and movements of a white shark (*Carcharodon carcharias*) at the South Farallon Islands, California. pp 111-120. In: Biology of the white shark *Carcharodon carcharias*. A.P. Klimley and D.G. Ainley eds. Academic Press, San Diego, CA.

Papers

- Goldman, K.J.** and J.A. Musick. In press. Growth and maturity of salmon sharks in the eastern and western North Pacific, with comments on back-calculation methods. Fish. Bull.
- Burgess, G.H., L.R. Beerkircher, G.M. Cailliet, J.K. Carlson, E. Cortés, **K.J. Goldman**, R.D. Grubbs, J.A. Musick, M.K. Musyl and C.A. Simpfendorfer[†]. In Press. A comment on measuring the decline of shark populations in the northwest Atlantic Ocean and Gulf of Mexico: are the apparent declines in sharks real? ([†]Authors are alphabetic with no indication of seniority.). Fisheries (AFS).
- Weng, K.C., A. Landiera, P.C. Castilho, D.B. Holts, R.J. Schallert, J.M. Morrisette, **K.J. Goldman**, and B.A. Block. In Press. Warm sharks in polar seas: satellite tracking from the dorsal fins of salmon sharks. Science.
- Goldman, K.J.**, S.D. Anderson, R.J. Latour and J.A. Musick. 2004. Homeothermy in adult salmon sharks, *Lamna ditropis*. Env. Biol. Fish. 71:403-411.
- Goldman, K.J.** 2002. Aspects of age, growth, demographics and thermal biology of two Lamniform shark species. Ph.D. dissertation. College of William and Mary, School of Marine Science, Virginia Institute of Marine Science. 220 pp.

- Anderson, S.D. and **K.J. Goldman**. 2001. Temperature measurements from salmon sharks, *Lamna ditropis*, in Alaskan waters. *Copeia* 2001:794-796.
- Goldman, K.J.**, and S.D. Anderson. 1999. Space utilization and swimming depth of white sharks, *Carcharodon carcharias*, at the South Farallon Islands, central California. *Env. Biol. Fish.* 56:353-366.
- Goldman, K.J.** 1997. Regulation of body temperature in the white shark, *Carcharodon carcharias*. *J. Comp. Physiol. B.* 167:423-429.
- Anderson, S.D., and **K.J. Goldman**. 1996. Photographic evidence of white shark movements in California waters. *California Fish and Game* 82(4):182-186.

Assessments and Reports

- Courtney, D.L., S. Gaichas, J. Boldt, **K.J. Goldman**, and C. Tribuzio. 2004. Sharks in the Gulf of Alaska, Eastern Bering Sea, and Aleutian Islands. Appendix, pp. 1009-1074. *In: Stock assessment and fishery evaluation report for the Bering Sea and Aleutian Islands.* North Pacific Fishery Management Council, 605 W 4th Ave, Suite 306, Anchorage, AK 99501-2252. †
- Boldt, J., **K.J. Goldman**, B. Bechtol, C. Dykstra, S. Gaichas, and T. Kong. 2003. Sharks and shark bycatch in Alaska State and Federal waters. *In: Ecosystems Considerations for 2004.* Pat Livingston, ed. North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252. †
- Goldman, K.J.** 2002*. *Alopias vulpinus*. *In: IUCN 2004. 2004 IUCN Red List of Threatened Species.* IUCN, Gland, Switzerland and Cambridge, UK. <www.redlist.org>.
- Goldman, K.J.** 2001. Sharks and shark bycatch in Alaska State and Federal Waters. *In: Ecosystems Considerations for 2002.* Pat Livingston, ed. North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.
- Goldman, K.J.** and B. Human. 2000*. *Lamna ditropis*. *In: IUCN 2004. 2004 IUCN Red List of Threatened Species.* IUCN, Gland, Switzerland and Cambridge, UK.
- Goldman, K.J.** 1998. Demographic analysis for sand tiger sharks and dusky sharks. Part 3. *In: VIMS Shark Ecology Program, J.A. Musick, J. Gelsleichter, R.D. Grubbs, and K.J. Goldman.* Appendix SB-IV-13. NOAA/NMFS Shark Evaluation Workshop, June 1998. Panama City, FL, 3pp. †

*Will also appear in:

- Fowler, S.L., Camhi, M., Burgess, G.H., Cailliet, G.M., Fordham, S.V, Cavanagh, R.D., Simpfendorfer, C.A. and Musick, J.A. In press. Sharks, rays and chimaeras: the status of the chondrichthyan fishes. IUCN SSC Shark Specialist Group. IUCN, Gland, Switzerland and Cambridge, UK. 2005.

Other Articles

- Goldman, K.J.** 1997. White shark research: Unlocking the jaws of fear. Introduction by K. Racz. *In: Hydrosphere.* Newsletter of the Farallones Marine Sanctuary Association about the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries. 1997, Vol. 3, 3p. †

(† = not peer reviewed)

Manuscripts in preparation:

Papers

- Goldman, K.J.**, S. Branstetter and J.A. Musick. In preparation. A re-examination of the age and growth of sand tiger sharks, *Carcharias taurus*, in the western North Atlantic. *Env. Biol.*

Fish. Special Volume from symposium of the American Elasmobranch Society, July 2005.
K.J. Goldman and J.K. Carlson, eds.

Cailliet, G.M., W.D. Smith, H.F. Mollet and **K.J. Goldman**. In Preparation. Chondrichthyan growth studies: an updated review, stressing terminology, sample size sufficiency, validation, and curve fitting. Special Volume from symposium of the American Elasmobranch Society, July 2005. K.J. Goldman and J.K. Carlson, eds.

Goldman, K.J., E. Cortés and J.A. Musick. In preparation. Demographic analyses of salmon sharks in the eastern and western North Pacific Ocean. Trans. Amer. Fish. Soc. Will be sent in summer 2005.

Goldman, K.J. E. Cortés and J.A. Musick. In preparation. Demographic analysis of sand tiger sharks, *Carcharias taurus*, in the western North Atlantic, based on new life history parameters. Mar. and Freshwater Res. Will be sent in summer 2005.

Anderson, S.D. and **K.J. Goldman**. In preparation. Surface oriented behaviors of salmon sharks. Copeia. Will be sent in summer or fall 2005.

Assessments and Reports

Goldman K.J. In preparation. *Lamna ditropis*. IUCN Shark Specialist Group North and Central America Regional Red List Workshop June 2004.

Goldman, K.J., R.D. Grubbs and J.A. Musick. In preparation. *Carcharias taurus*. IUCN Shark Specialist Group North and Central America Regional Red List Workshop June 2004.

Goldman, K.J., S. Kohin, T. Trejo and M. Perez. In preparation. *Alopias vulpinus*. IUCN Shark Specialist Group North and Central America Regional Red List Workshop June 2004.

D.A. Ebert and **K.J. Goldman**. In preparation. *Somniosus pacificus*. IUCN Shark Specialist Group North and Central America Regional Red List Workshop June 2004.

S.V. Fordham, S.L. Fowler, R. Coelho and **K.J. Goldman**. In preparation. *Squalus acanthias*. IUCN Shark Specialist Group North and Central America Regional Red List Workshop June 2004.

Presentations:

July 2004 - The use of back-calculation for the determination of size-at-age in sharks: which method is most appropriate? Peer reviewed and accepted poster presentation at the World Otolith Conference. Townsville, Queensland, Australia. Coauthors: Dr. John K. Carlson and Ivy Baremore.

July 2004 - Fisheries Biology and Physiological Ecology of Salmon Sharks. Invited speaker; Mississippi State University, Starkville, MS.

May 2004 - Growth and maturity of salmon sharks in the eastern and western North Pacific, with comments on back-calculation methods. Annual meeting of the American Elasmobranch Society, Norman, OK.

May 2004 - Examining Precision and Bias in Age Assessment and Back-calculation Methods. Invited speaker; University of Florida, Gainesville, FL.

May 2003 - Behavioral responses and survivorship of California sheephead to post-release angling stress. Annual meeting of the Southern California Academy of Sciences, California State University Northridge.

July 2002 - Homeothermy in adult salmon sharks, *Lamna ditropis*. Annual meeting of the American Elasmobranch Society, Kansas City, MO.

- November 2001 - Two presentations on "White sharks and their kin". Invited speaker; Science Museum of Minnesota, Minneapolis, MN.
- July 2001 - Growth dynamics of female salmon sharks in the eastern and western North Pacific: a spatially structured population?
AND: Regulation of body temperature in the salmon shark, *Lamna ditropis*. Annual meeting of the American Elasmobranch Society, Penn. State University.
- May 2001 - General biology and thermal physiology of salmon sharks, *Lamna ditropis*, in Alaskan waters. Invited speaker; National Marine Fisheries Service Panama City Lab, Panama City FL.
- June 2000 - Distribution, segregation, and the potential for variable growth rates in the salmon shark, *Lamna ditropis*, in the western and eastern North Pacific. Annual meeting of the American Elasmobranch Society, La Paz, Baja, Mexico.
- June 1997 - Photographic identification of white sharks, *Carcharodon carcharias*, and evidence of movements in California waters. Annual meeting of the American Elasmobranch Society, University of Washington, Seattle, WA.
- June 1996 - Swimming depth and space utilization of white sharks, *Carcharodon carcharias*, at the South Farallon Islands, California. Annual meeting of the American Elasmobranch Society, New Orleans, LA.
- February 1996 - Biology of the white shark. Conservation Symposium at the Monterey Bay Aquarium, Monterey, CA.
- November 1995 - White shark research at South Farallon Islands. Invited speaker; Virginia Institute of Marine Science, Gloucester Point, VA.
- April 1995 - White shark research at South Farallon Islands. Invited speaker; University of California, Santa Cruz, CA.
- April 1995 - White shark research in California. Invited speaker; Moss Landing Marine Laboratories, Santa Cruz, CA.

Teaching:

Courses Taught at Jackson State University: August 2003 to Present

- Biology 111 - General Biology I (3 units) - Introductory biology course for majors.
- Biology 112 - General Biology II (3 units) - Introductory course for biology majors.
- Biology 114 - Introduction to Marine/Environmental Science (2 units) - Introductory course on the marine and environmental sciences for biology majors.
- Biology 304 - Marine Science (2 units) - Introduction to oceanography. Includes an overview of areas and specialties within the marine sciences.
- Biology 390 - Seminar in Biology (1 unit) - General seminar for biology majors.
- Biology 423/523 - Ecology (3 units) - Combined upper division biology course for biology majors (Bio 423) and graduate course (Bio 523).
- Biology 423/523 Lab- Ecology Lab (1 units) - Combined upper division biology laboratory course for biology majors (Bio 423) and graduate students (Bio 523).

Courses Taught at California State University Long Beach: August 2002 to July 2003

- Biology 350 - General Ecology (3 units) - Upper division biology course for biology majors.
- Biology 100 - Biology and the Human Environment (3 units) - Non-majors course.

Courses Taught at Virginia Institute of Marine Science: January to May, 1997 to 2002

Taught lectures on physiology and ecology of fishes in MS 666 graduate ichthyology course.
Teaching Assistant for lab of MS 666 graduate ichthyology course.

Courses Taught at San Francisco State University, CA Academy of Sciences, etc.:

December 1991 to May 1996

Taught classes on marine biology topics for the Junior Academy, Education Department, California Academy of Sciences, kids 9 - 16 years old.

Taught classes on marine biology topics for the Adult Education Section, Education Department, California Academy of Sciences.

Lectured on sharks for "Biology Forum", a 3-day seminar series for high school teachers held (annually) by the Education Department, California Academy of Sciences.

Lectured on sharks (once each year) at San Francisco State University for Dr. Tom Niesen's Marine Ecology class.

Lectured on sharks (once each semester) at City College (San Francisco, CA) or Merritt College (Oakland, CA), for Jim Grass, Professor of biology.

Lectured and gave presentations at dive and surf clubs, schools (k-12), and community functions throughout the San Francisco Bay area.

Graduate Student Mentoring:

Committee Chair

Cynthia Rickis. Jackson State University; M.S. Thesis Project: Population estimates and public attitudes concerning black bears (*Ursus americanus luteolus*) in St. Catherine Creek National Wildlife Refuge. Graduated summer 2005.

Committee Member

Kristy Forsgren. California State University Long Beach; M.S. Thesis Project: Growth rates of the weedy sea dragon, *Phyllopteryx taeniolatus*. Major Professor, Dr. Christopher G. Lowe. Graduated spring 2005.

Vasile Alexandru Suchar. Jackson State University; M.S. Thesis Project: The influence of environmental factors on the population growth of the marine rotifer *Colurella dicentra*. Major Professor, Dr. Paulinus Chigbu. Graduated summer 2005.

Loraine Hale. California State University Long Beach; M.S. Thesis Project: Age and growth of the round stingray, *Urolophus halleri*, at Seal Beach, California. Major Professor, Dr. Christopher G. Lowe. Graduated summer 2005.

Kenneth Brookins. Jackson State University; M.S. Thesis Project: Age and growth of bottlenose dolphin, *Tursiops truncatus*, in Mississippi and adjacent Gulf of Mexico waters. Expected graduation: summer 2007.

Bryan Fedrick. Jackson State University; M.S. Thesis Project: Impacts of Aquatic Snakes on Catfish Fry in Commercial Ponds of the Mississippi Delta. Expected graduation: Spring 2007.

Grants Awarded:

Dec. 2004. California Sea Grant, University of California, San Diego: \$5,000 for partial support of symposium entitled Age and growth of chondrichthyan fishes: new methods, techniques, and analyses: A tribute to Dr. Gregor M. Cailliet. Symposium in July 2005 at the annual meeting of the American Elasmobranch Society. Kluwer Academic Publishers will publish proceedings in a special volume of Environmental Biology of Fishes. Drs. Kenneth J.



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

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

September 26, 2005

RECEIVED
SEP 28 2005
N.P.F.M.C.

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

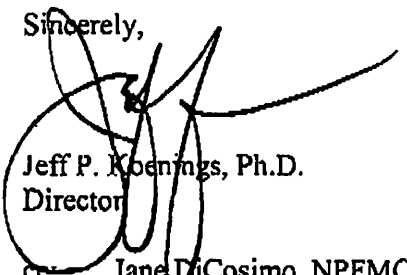
Dear Ms. Madson: 

I am pleased to nominate Tien-Shui Tsou as the Washington State Department of Fish and Wildlife's representative on the Bering Sea/Alcutian Islands Groundfish Plan Team and the Gulf of Alaska Groundfish Plan Team.

Dr. Tsou is the Department's lead Marine Fish Research Scientist within our Fish Program. She has assisted with the drafting of coastal groundfish stock assessments and has participated in the Pacific Fishery Management Council's Stock Assessment and Review (STAR) Panel process. Dr. Tsou is also directly involved in the planning of oversight of marine fish research projects off the coast and within Puget Sound.

If you have any questions regarding this nomination, please contact Mr. Phil Anderson, Special Assistant for Intergovernmental Resource Management, at 360.902.2720.

Sincerely,


Jeff P. Koenings, Ph.D.
Director

cc: Jane DiCosimo, NPFMC
Phil Anderson, WDFW
Morris Barker, WDFW
Bill Tweit, WDFW
Theresa Tsou, WDFW

CURRICULUM VITAE

Tien-Shui Tsou

Fish & Wildlife Research Scientist II

Marine Fish Science Unit Lead

Fishery Program

Washington State Department of Fish and Wildlife

600 Capitol Way N.

Olympia, WA 98501

(360) 902-2855

tsoutt@dfw.wa.gov

Job Duties Principle responsibilities: identifying critical scientific questions and leading research projects; conducting stock assessments; designing and evaluating fisheries dependent and independent surveys; analyzing survey data; performing marine ecosystem modeling; characterizing variability in marine fish communities and their physical environments; constructing computer models of fish populations to assess the effects of species interactions, environmental variability, and exploitation on population productivity; providing scientific, statistical, and sampling design advises to staff; and production of technical reports and scientific papers.

Education

2000 – Ph.D., Biological Oceanography, Graduate School of Oceanography, University of Rhode Island, Narragansett, RI. Dissertation: "Multispecies modeling of the Georges Bank fish community."

1990 – M.S., Biological Oceanography, Institute of Oceanography, National Taiwan University, Taipei, Taiwan. Thesis: "The comparison of general linear model and Honda's method for standardizing CPUE for south Atlantic albacore fisheries."

1988 – B.S., Zoology, Department of Zoology, National Taiwan University, Taipei, Taiwan.

Work Related Training

May 2002 "Trophic Modeling of Fishery Ecosystems: A Training Course Using Ecopath with Ecosim" by Dr. Carl Walters and Dr. Villy Christensen, Tallahassee, Florida

Feb. 2002 "Multivariate Statistical Analysis and Interpretation of Assemblage Data from Environmental Studies, using PRIMER for Windows (v5)" by Dr. K. R. Clarke, St. Petersburg, Florida

May 2000 "Neural and Adaptive Systems" by Dr. Neil R. Euliano, Orlando, Florida

Pertinent Publications

Wallace, F.R., *T.S. Tsou*, and T.H. Jagielo. 2005. Status of the Yelloweye rockfish (*Sebastes ruberrimus*) off the U.S. west coast in 2005. Pacific Fishery Management Council.

Tsou T.S. and R.E. Matheson. 2002. Seasonal changes in the nekton community of the Suwannee River estuary and the potential impacts of freshwater withdrawal. *Estuaries* 25(6b):1372-1381.

Tsou, T.S. and J.S. Collie. 2001. Estimating predation mortality in the Georges Bank fish community. *Canadian Journal of Fisheries and Aquatic Science* 58:908-922.

Tsou, T.S. and J.S. Collie. 2001. Predation-mediated recruitment in the Georges Bank fish community. *ICES Journal of Marine Science* 58: 994-101.

Tsou T.S. and S.Y. Yeh. 1991. Studies on selection of standard years and abundance trends of the South Atlantic albacore based on 1967-1988 Taiwanese longline fishery data. *International Commission for the Conservation of Atlantic Tuna. SCRS/90/048*: pp.123-127.

Yeh S.Y., H.C. Liu, and *T.S. Tsou*. 1990. Assessment of the South Atlantic albacore resource by using surplus production models, 1967-1988. *International Commission for the Conservation of Atlantic Tuna. SSCRS/89/044*: pp. 236-240

Manuscript in Review/Preparation

Tsou, T.S. and F.R. Wallace. 2005. Rebuilding analysis of the yelloweye rockfish for 2005. Pacific Fishery Management Council.

Tsou, T.S. and J.S. Collie. An adaptive management framework for the multispecies fishery on Georges Bank. In review.

Tsou, T.S., R.E. Matheson, Jr., and D.L. Leffler. Nekton community structure of the Little Manatee River and climate changes. In preparation.

Tsou, T.S. and D.L. Leffler. Harmful algal bloom and abundances of juvenile fish abundances in Tampa Bay, Florida. In preparation.

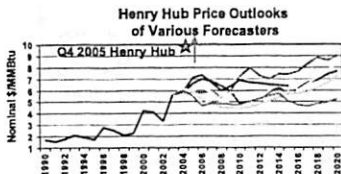
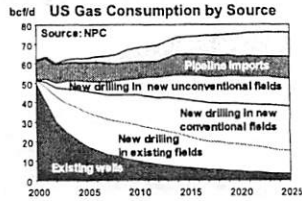
Recent Presentations

- Eisenhardt, E., *T.S. Tsou*, and F.R. Wallace. 2005. Evaluating Bycatch correlation with target species catch in the groundfish trawl fishery off Washington. American Fisheries Society 2005 annual meeting. Anchorage Alaska.
- Palsson W., *T.S. Tsou*, G. Gargmann, R. Buckley, J. West, M.L. Mills, and R. Pacunski. 2005. The status of rockfish populations in Puget sound, Washington. American Fisheries Society 2005 annual meeting. Anchorage Alaska.
- Heagey, R.F., *T.S. Tsou*, and S. Kupschus. 2002. Size specific salinity preference of some ecologically and economically important species in Tampa Bay. American Fisheries Society, Florida Chapter annual meeting.
- Tsou, T.S.* 2001. Seasonal changes in the fish community of lower Suwannee River and the potential impacts of freshwater withdraw on the fish community. Estuarine Research Federation 16th biannual meeting, St. Petersburg, Florida.
- Tsou, T.S.* 2001. A preliminary study of the impacts of fresh water inflow on the Suwannee river estuary community. American Fisheries Society 2001 annual meeting, Phoenix Arizona.
- Tsou, T.S.* 2001. An adaptive management framework for the multispecies fishery on Georges Bank. American Fisheries Society 2001 annual meeting, Phoenix Arizona.

Shell Exploration & Production

North American Gas Fundamentals

- ✓ Mature basins in U.S. and Canada in steep decline
- ✓ Heavy reliance on GoM
- ✓ Foreign LNG imports may not meet demand gap
- ✓ High current prices creating economic hardship for end users



Shell Exploration & Production

Alaska: The OCS 2007-12 Five Year Plan Request for Public Comment

Presentation to the
Resource Development Council
September 21, 2005

Shell Exploration & Production

The Importance of the OCS to the U.S.



- OCS delivers 30% of domestic oil production and 23% of domestic gas production
- MMS Resource Estimates:
✓ 76 BBO and 406 TCF technically recoverable in the OCS
- ✓ GoM and Alaska dominate
- ✓ 85% of OCS under withdrawals

- Alaska OCS:
✓ No National Marine Sanctuaries
- ✓ Beaufort Sea – selected withdrawals
- ✓ Chukchi Sea – selected withdrawals
- ✓ Bristol Bay – Congressional withdrawal removed, Presidential withdrawal remains in effect
- ✓ 25 BBO and 122 TCFG (MMS)

"85% of what is known as the Outer Continental Shelf (OCS) [is] off-limits to oil and gas production. Now is the moment to reverse this policy..." – Wall Street Journal, September 2, 2005

Shell Exploration & Production

Shell seeks comment on the 2007-12 OCS Plan in support of increased acreage access and key lease sales

Shell believes:

- ✓ OCS development is in the U.S. national interest as a means of energy supply diversification, economic development, and revenue generation
- ✓ OCS oil and gas development has an outstanding safety and environmental performance record
- ✓ OCS development should be done within a strong regulatory framework that protects the environment
- ✓ OCS development should incorporate revenue sharing with local communities
- ✓ The Alaska OCS is an important potential future source of U.S. energy supply, and given the long lead times for development must proceed expeditiously with key lease sales in the 2007-12 OCS Plan

Shell Exploration & Production

Consumer Support for Increased OCS Access

"Approximately 85 percent of all federally controlled coastal waters are currently off limits to energy production. These off-limit areas, which were established 24 years ago, reflect an entirely different energy scenario than exists today.... We believe that it is in the national interest for Congress to immediately remove these production barriers to provide new sources of energy." – Industrial Energy Consumers of America, Sept. 8, 2005, Letter to Speaker of the House Dennis Hastert

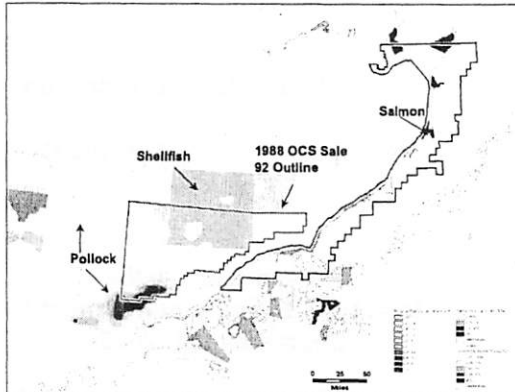
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| <ul style="list-style-type: none"> ADM-Comstock, Inc. Ag Processing, Inc. AK Equipment and Controls, Inc. Al Products and Chemicals, Inc. Alvin Steel Treating Aluminum Corporation Alloy Refractories Company American Chemistry Council American Floor Manufacturers Association American Forest and Paper Association American Gas Association American Iron and Steel Institute American Public Gas Association Artisan Gas Consumers, Inc. Atlanta, Inc. Associated Builders & Contractors Associated Water Contractors, Inc. Appalachian Wood Treating, Inc. BAF Corporation Battell Plastics Co., Inc. Carpal & Hug Institute Celastrol Corporation Chemtura, Inc. Chatham Paper and Paper, LLC Comcast Energy Consumers Alliance for Affordable Natural Gas Dart Container Corporation DeLuxe Corporation Durham Wood Treating Company, Inc. East Coast Paper Corporation The Dow Chemical Company | <ul style="list-style-type: none"> East Ltd Heat Treat, Inc. Eastern Chemical Company Executive Energy Services, LLC The Fenwick Institute Fornace Plastics Corporation Gallo Industrial Plastics, Inc. Georgia Pacific Corporation Georgia American Corporation Grain Processing Corporation Guardian Industries Corp. Harvard Consolidated Schools Heat Treating Services High Sierra Plastics Huachipa Corporation Industrial Energy Consumers of America INCC Corporation Industrial Heater Corp. International Paper INSCO Enterprises, Inc. ISO Poly Films, Inc. Jordan Plastics Solutions Kaiser-Craft Plastics Products Kanaco LP Corporation Karmath's Foods, Inc. Lynfield Chemical Company Mapquest Heat Treating, Inc. Mass Wholesale Corp. Melroe, Inc. Melt Treating Institute MesaMachinco Corporation Mitsunori Monsanto Company | <ul style="list-style-type: none"> The Timken Company Tosco Engineering Consulting Services, Inc. Tru-Turn Machine Services, Inc. United Shelters United Steel Steel Universal Dynamics Wagner Plastics Company, Inc. WCI Steel Walworth, Inc. Wesco Corporation Willy Incorporated Wishway Minerals Co., Inc. Wisco Products Group REX Materials Group Roadway Foods, Inc. The Rubberworks Institute Rubin & Ross R.J. Ransick Tobacco Company RohmBach (367,000 Sensor Citizens) Roumex, Inc. Royce Associates Sabson, LLC Sole Plastics, Inc. Steel North America St Corporation Steel Business & Engineering Council The Society of the Plastics Industry, Inc. Stewart, Inc. Steel Manufacturers Association Tanaco Steel Company Terra Industries |
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Shell Exploration & Production

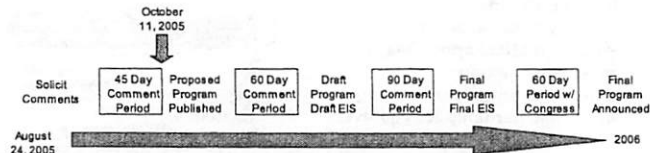
Alaska Five Year Plan Comment Objectives

- Maintain regular lease sales in the Beaufort Sea
- Hold regular lease sales in the Chukchi Sea
- Hold a lease sale in small area in the North Aleutian Basin with strong environmental regulatory regime:
 - ✓ Stringent discharge policy
 - ✓ State of the art oil spill response
 - ✓ Early consultation/conflict avoidance mechanisms
 - ✓ Seasonal operating restrictions as needed
 - ✓ Mitigation measures for unavoidable conflicts and compensation to cover losses
- Enact revenue sharing from the OCS with local communities in the Budget Reconciliation Bill

Oil and Gas and Fishing Areas



The 2007-2012 OCS Five Year Plan



NEWS FROM THE OFFICE OF
SENATOR LISA MURKOWSKI
 United States Senate

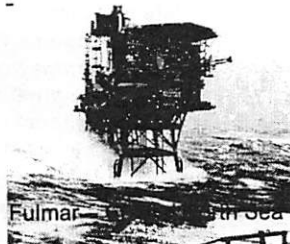
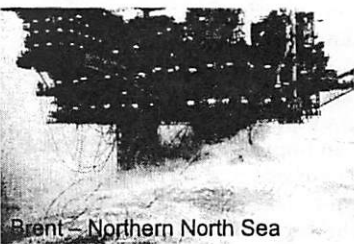


"Now is the time for Alaskans to clearly express themselves as to whether they support or oppose future oil or gas-only leasing in federal waters. This is when your current views will count." – Senator Lisa Murkowski, August 24, 2005

Severe Weather Comparison

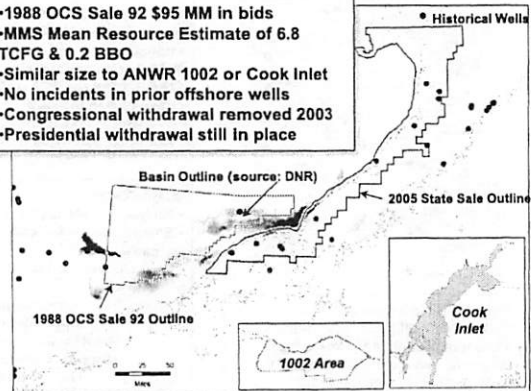


"100 yr data"	E C Canada	North Sea	Cook Inlet	Bristol Bay
Signif wave ht - ft	41	51	30	40
Max wave ht - ft	77	94	65	75
Max wind - mph	107	110	80	81 +
Min air temp - deg F	14	19	12	12
Current - mph	5.1	2.0	7.0	4.5
Water depth - ft	92	456	62	164



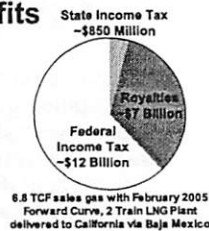
North Aleutian Basin Potential

- 1988 OCS Sale 92 \$95 MM in bids
- MMS Mean Resource Estimate of 6.8 TCFG & 0.2 BBO
- Similar size to ANWR 1002 or Cook Inlet
- No incidents in prior offshore wells
- Congressional withdrawal removed 2003
- Presidential withdrawal still in place

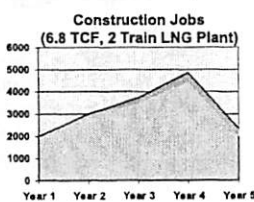
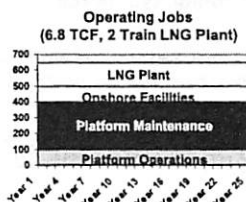


North Aleutian OCS Benefits

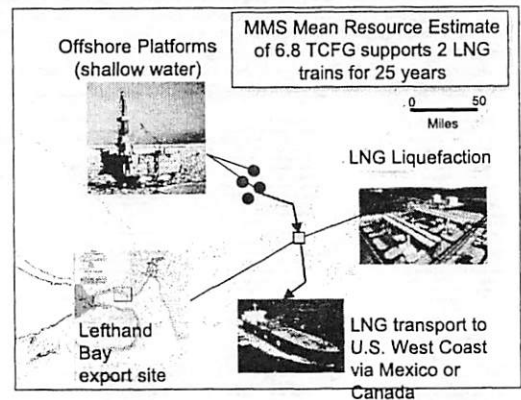
- ✓Direct jobs
- ✓Taxes
- ✓Royalties
- ✓Construction/fabrication work
- ✓Revenue sharing (if passed)
- ✓Local source of fuel and energy
- ✓Improved Search and Rescue



6.8 TCFG sales gas with February 2005 Forward Curve, 2 Train LNG Plant delivered to California via Baja Mexico



North Aleutian Basin LNG



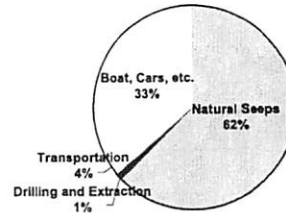
The Norwegian Offshore Experience: Oil and Fish Good Neighbors for 40 Years

- Offshore oil and gas since 1965
- #8 world oil producer (3.3 mmb/d)
- #10 world fish producer
- 58-80 degrees north latitude
- A major future exporter of oil and LNG to the U.S. from the Barents
- Principles of co-existence:
 - ✓ Environmental and social impact assessment
 - ✓ Zero discharge policy
 - ✓ Early consultation
 - ✓ Seasonal restrictions
 - ✓ Safety improvements through shared emergency response
 - ✓ Compensation to cover losses



Oil in the Sea

Sources of Petroleum in North American Waters
(sources: National Research Council, MMS, and NAS)

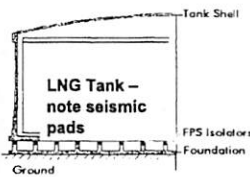
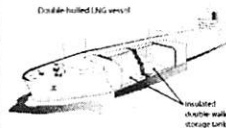


- 76 million gallons of oil introduced into the sea each year in North America
 - ✓ 29 million gallons by human activities
 - ✓ 47 million gallons seep naturally
- No platform spills greater than 1,000 bbl in last 15 years anywhere in the OCS

Offshore oil and gas development is one of the safest industrial activities in the U.S.

Bristol Bay – LNG and Seismicity

Shell LNG Facilities in Seismic Areas					
Location	Plant size	Trains	Start up	Tankage	Seismic zone
Country	Mtpa	No	year	km3	
Australia	4.4	2	1989	280	Mid
Australia	2.5	1	1992	0	Mid
Oman	6.4	2	2000	240	Mid
Australia	4.2	1	2004	0	Mid
Oman	3.4	1	2006	240	Mid
Russia	9.5	2	2007	200	Mid
Japan	Storage	150+	73 - 03	12,000+	High



Comment Preferences

- Support to lease all or part of former Sale 92 area, with specific support for continuing the evaluation of the North Aleutian Basin through the environmental impact statement process
- Support for strong regulatory system
 - ✓ Stringent discharge policy
 - ✓ State of the art oil spill response
 - ✓ Early consultation/conflict avoidance mechanisms
 - ✓ Seasonal operating restrictions as needed
 - ✓ Mitigation measures for unavoidable conflicts and compensation to cover losses
- Support for revenue sharing with local communities
- 2 additional comment periods after this initial call for comments & 1 congressional comment period
- Comment directly to MMS with copies to Governor, Congressional Delegation & State/Local representatives

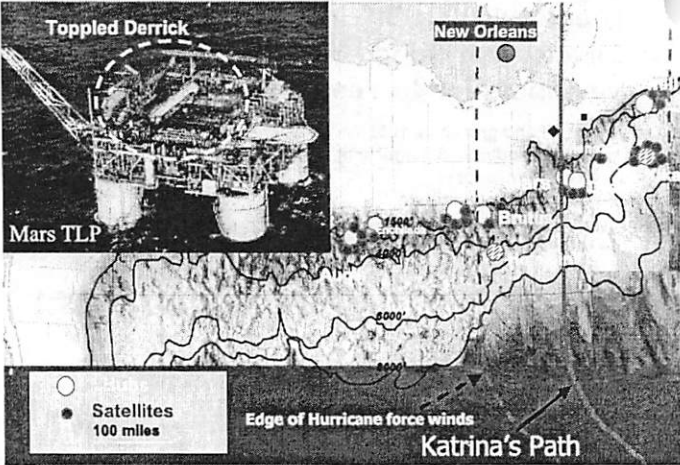
Cook Inlet Experience

- ✓ 6 major fields
- ✓ 40 years of safe production
- ✓ Significant benefits to Alaska economy (jobs, taxes, royalties, gas for Anchorage)
- ✓ 1.3 BBO cumulative production
- ✓ 3.3 TCFG cumulative production
- ✓ Only LNG export from U.S.



Back-up Slides

Hurricane Katrina



The Use of the Scientific and Statistical Committee (SSC) to Conduct Peer Review in Compliance with the Information Quality Act (IQA) and the OMB Peer Review Bulletin

Bubba Cook
Fishery Management Specialist
NMFS, Alaska Region
June 6, 2005

Introduction

Congress passed the Information Quality Act (IQA; formerly known as the Data Quality Act or "DQA") as a two-paragraph appropriations rider in 2000 that was designed to ensure the quality of information disseminated by federal agencies.¹ The IQA amends the Paperwork Reduction Act and implements a series of new requirements devised to improve the "quality, objectivity, utility, and integrity" of scientific information disseminated by federal agencies, particularly that used as a basis for regulatory decisions.² The Office of Management and Budget (OMB) is the executive agency charged with implementing and ensuring compliance with the IQA.

OMB interprets the IQA to include a broad grant of authority to implement additional measures to achieve the stated goals of the IQA.³ Due to the lack of legislative debate, hearings, or discussion regarding the IQA, little basis exists to dispute OMB's authority claims.⁴ In December 2004, OMB issued the Peer Review Bulletin (Bulletin), which imposes mandatory peer review for those information products disseminated from federal agencies that are defined as "influential scientific information (ISI)" or "highly influential scientific assessments (HISA)."⁵ Among other features, the Bulletin establishes minimum standards, transparency requirements, and an opportunity for public input regarding peer review. It is important to note,

¹ Sidney A. Shapiro, *OMB's Dubious Peer Review Procedures*, 34 Environ. Law. Rep. 10064 (2004) Representative Jo Ann Emerson (R-8th MO) sponsored the IQA at the request of Jim Tozzi, a former OMB-official who combined familiarity of the regulatory process with substantial ties to risk-producing industries including the tobacco, plastics, and paper industries. Congress passed the IQA in the 2001 appropriations bill sandwiched between a property acquisition appropriation for the Gerald R. Ford Museum and a provision relating to the non-foreign area cost-of-living allowances.

² 44 USCS § 3506(b) (2001).

³ *Supra* note 1 at 10065. (OMB's authority to require peer review absent a Congressional charge to do so remains questionable and potentially judicially challengeable. The IQA does not explicitly require or authorize peer review. Further, Congress explicitly rejected the imposition of peer review a few years earlier after due consideration and debate, making it difficult to reconcile OMB's peer review requirements with the will of Congress.)

⁴ Wendy E. Wagner, *The "Bad Science" Fiction: Reclaiming the Debate Over the Role of Science in Public Health and Environmental Regulation*, 66 Law and Contemporary Problems 63, 79-80 (2003)(While the appropriations bill was discussed extensively by Congress, no legislative debate, hearing, or discussion regarding the IQA occurred and little evidence exists suggesting that anyone in Congress besides the provision's sponsors even knew of the Act's existence.)

⁵ Final Information Quality Bulletin for Peer Review, 70 Fed. Reg. 2664, 2666 (January 14, 2005)(OMB cites the IQA, Executive Order 12866, and the President's Constitutional authority to supervise the Executive Branch as authorities that support the Bulletin.)

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however, that the Bulletin applies only to scientific information disseminated to the public, not policy choices made based on that information. Furthermore, only information designated ISI or HISA and disseminated by federal agencies is subject to the Bulletin's peer review requirements.

This paper addresses the Peer Review Bulletin and its associated requirements with respect to the North Pacific Fishery Management Council (Council) process and the Scientific and Statistical Committee (SSC). The purpose of this paper is to provide suggestions to the Council and SSC to ensure the SSC's eligibility as an appropriate peer review body for conducting peer review of ISI.

Highly Influential Scientific Assessments

OMB defines HISAs as "a scientific assessment that: (1) could have a potential impact of more than \$500 million in any year (numeric criteria); or (2) is novel, controversial, or precedent-setting or has significant interagency interest (narrative criteria)."⁶ Due to the apparent infrequency of an information product reaching the level of HISA classification and the Bulletin's requirement for formal, external peer review of HISAs, NMFS, Alaska Region (Region) concluded that peer review of HISAs must be left exclusively to an external peer review body.⁷ The Council appeared to concede this determination at the Council's April 2005 meeting. External peer review bodies include the Center for Independent Experts (CIE), currently used by NMFS for formal, external peer review, and the National Academy of Sciences (NAS).

Based on the Region's and Alaska Fisheries Science Center (AFSC) interpretation of the numeric and narrative criteria provided, no HISAs have been identified at this time. Potential examples of HISAs produced by NMFS may include EA's, EIS's, and the SAFE documents.⁸ Although the Region and AFSC have identified no HISAs at this time, some may arise in the future. Furthermore, NMFS Headquarters, Department of Commerce (DOC), and OMB may independently determine that a scientific assessment meets the criteria for HISA throughout the review process.

Influential Scientific Information

OMB defines ISI as "scientific information that the agency reasonably can determine will or does have a clear and substantial impact on important public policies or private sector decisions."⁹ Virtually all NMFS and Council disseminations apart from minor exceptions for

⁶ *Id* at 2672.

⁷ See Summary of Public and Agency Comments on Proposed Bulletin on Information Quality and Peer Review, Including Responses by OMB, available at http://www.whitehouse.gov/omb/info/peer_review_comment.pdf p.14, (April 15, 2004)(OMB estimates only about one or two dozen HISAs in a given year, government-wide.).

⁸ See *supra* note 5 at 2666.

⁹ *Id* at 2668. ("Scientific assessment" means an evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information... This definition excludes opinions, where the agency's

press releases, individual correspondence, and expressions of opinion are included in the definition of scientific information.¹⁰ However, only a small subset of scientific information rises to the level of ISI, i.e., information which the agency can reasonably determine will or does have a clear and substantial impact on important public policies or private sector decisions.

In response to an information request intended to provide input for the Department of Commerce's peer review website according to the requirements of the Bulletin, the Region recently submitted two items to NMFS Headquarters as ISI. The Region initially determined that only the upcoming Bering Sea EFH NEPA analysis and the Crab Rationalization 18-month Review warranted classification as influential. The Region reasoned that these two scientific information products could have a "clear and substantial impact on important public policies or private sector decisions." The Bering Sea EFH analysis of alternatives to further mitigate fishery impacts on Bering Sea EFH could be expected to result in significant impacts on current methods and practices used by the regulated industry in the Bering Sea fisheries, depending on the scientific determinations of the analysis. Likewise, the Region determined that the economic analysis underlying the 18-month review could have a substantial impact on the new Crab Rationalization fisheries. The Region considered many other forthcoming scientific information products when addressing the ISI standard, but concluded that all other potential candidates failed to meet the standard.

The AFSC also submitted the following items to NMFS Headquarters it considered to be ISI under the Bulletin including:

- Gulf of Alaska (GOA) Groundfish SAFE reports (multiple stocks)
- Bering Sea-Aleutian Islands (BSAI) Groundfish SAFE reports (multiple stocks)
- Ecosystem Considerations Appendix to the Groundfish SAFE
- Economics SAFE report
- Marine Mammal Stock Assessment Reports (SARs)

The Region and AFSC identified relatively few scientific information products that would qualify as ISI. Nonetheless, as scientific information products become available or as any scientific analysis matures, the Region and the Council may need to assess whether the information falls within the ISI definition. Furthermore, similar to HISAs, NMFS Headquarters, Department of Commerce (DOC), and OMB may independently determine that a scientific assessment meets the criteria for ISI throughout the review process.

presentation makes clear that an individual's opinion, rather than a statement of fact or of the agency's findings and conclusions, is being offered.)

¹⁰ *Id.* ("Scientific information" means factual inputs, data, models, analyses, technical information, or scientific assessments related to such disciplines as the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, or physical sciences, including any communication or representation of knowledge such as facts or data, in any medium or form, including textual numerical, graphic, cartographic, narrative, or audiovisual forms.)

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Influential Scientific Review by the SSC

This section provides suggestions intended to ensure the SSC's eligibility as an appropriate peer review body for ISI under the Bulletin. The suggestions in this paper also are meant to build on the current process for scientific review conducted by the SSC's.¹¹ However, the following suggestions are not requirements, and the Council and SSC may reject or accept the suggestions. Moreover, while these suggestions will help bolster the case for use of the SSC as the appropriate peer review body for ISI, currently there is no guarantee that NMFS HQ, DOC, or OMB might decide at any time that the SSC does not qualify. However, if the Council and SSC choose not to accept and implement the following suggestions, OMB would likely reject the SSC's participation as the peer review body for ISI under the Bulletin.

Selection of Reviewers

The Bulletin states that peer reviewers shall be selected based on expertise, experience, and skills, including specialists from multiple disciplines, as necessary.¹² The Bulletin also suggests that the group of reviewers shall be sufficiently broad and diverse to fairly represent the relevant scientific and technical perspectives and fields of knowledge.¹³ Most would agree that the current composition of the SSC exceeds these standards. However, clearly expressing the expertise, experience, skills, and diversity as part of the transparency measures discussed below would help further justify the SSC as a qualified peer review body. Therefore, the Region recommends posting a biographical information page on the Council website expressing the expertise, experience, skills, and diversity of the SSC membership. Additionally, the website should be cited or recreated in summary with each peer review report described below.

The Bulletin also recommends that agencies consider requesting that the public, including scientific and professional societies, nominate potential reviewers.¹⁴ One or more "at large" members nominated for participation on the SSC could satisfy this recommendation. Although the nomination and selection of an individual to serve as a regular member of the SSC could assist in the general perception of independence on the SSC, the Bulletin only suggests the nomination of participants with respect to peer review of ISI. The nomination of an SSC peer review participant by the general public would likely require a significant procedural infrastructure. Therefore, nomination of SSC peer review participants by the general public would likely prove more onerous than helpful and is not suggested. However, the nomination of an SSC peer review participant or pool of nominees by a scientific or professional society such as the American Fisheries Society (AFS) or the American Association for the Advancement of Science (AAAS) could improve the perception of diversity and perspective on the SSC. Nomination of an SSC peer review participant or pool of nominees by a scientific or professional

¹¹ David Witherell, *Use of Scientific Review by the Regional Fisheries Management Councils: The Existing Process and Recommendations for Improvement*, Briefing Materials for the Conference on Fisheries Management in the United States, Washington, D.C. (2005).

¹² *Supra* note 5 at 2670.

¹³ *Id.*

¹⁴ *Id.* at 2670,71.

society could also be used to support the Bulletin's recommendation that agencies invite reviewers with competing views to encourage a sharper more focused review. Therefore, the SSC and Council should consider allowing a scientific or professional society to nominate individuals or provide a pool of nominees for one or more "at large" seats as peer review participants to meet the requirements of the Bulletin.

Conflicts of Interest

The Bulletin sharply focuses on the issue of conflicts of interest within peer review bodies. Thus, this issue appears to be of most concern to OMB and potentially the most difficult to confidently implement according to Bulletin standards.

Conflict or the mere perception of conflict, within a scientific peer review body can diminish public confidence in or even discredit the peer review body and its recommendations. The Bulletin provides a "benchmark standard" stating that a conflict of interest means "any financial or other interest that conflicts with the service of an individual on the review panel because it could impair the individual's objectivity or could create an unfair competitive advantage for a person or organization."¹⁵ This standard contemplates a very high bar for conflict of interest.

The Bulletin provides explicit direction for dealing with conflict of interest with respect to NMFS scientists serving on the SSC. The Bulletin asserts that NMFS or the Council shall ensure that those reviewers serving as federal employees comply with federal ethics requirements.¹⁶ The Bulletin also recommends that NMFS or the Council adopt or adapt the National Academy of Sciences (NAS) policy for committee selection of non-government peer reviewers with respect to evaluating the potential for conflicts arising from such issues as: (1) investments; (2) agency, employer, and business affiliations; and (3) grants, contracts, and consulting income.¹⁷ The NAS policy provides a detailed description of measures necessary to prevent conflict, or the appearance of conflict, with regard to non-federal employees.

The Bulletin provides a general recommendation associated with the relationship of conflicts to transparency. This general recommendation directs NMFS and the Council to consider publicly disclosing a reviewer's real or perceived conflict of interest to improve transparency.¹⁸ This could be accomplished through the website providing the background of SSC members. However, if the Council chooses to disclose those real or perceived conflicts, it must inform SSC members affected by that disclosure prior to selection for peer review of ISI.

¹⁵ *Id* at 2671.

¹⁶ *See e.g.* 18 U.S.C. § 208; 5 C.F.R. Part 2635 (2004). *See also* the Office of Government Ethics, <http://www.usoge.gov/home.html>, for additional information on the applicable federal ethics requirements.

¹⁷ National Academy of Sciences, "Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports," May 2003: Available at: <http://www.nationalacademies.org/coi/index.html>.

¹⁸ *Supra* note 5 at 2671.

The Region recommends that the Council, in collaboration with the SSC, adopt or adapt the NAS policy for evaluating conflicts of interest associated with conducting ISI peer review under the Bulletin. The Region, AFSC, and Council should also remind NMFS employees serving as SSC members to review the federal ethics requirements prior to conducting peer review of ISI. In rare instances where an SSC member clearly cannot meet the Bulletin's conflict of interest standards, the Region recommends that the SSC consider a system for recusal.

Independence

The Bulletin explicitly prohibits individuals who participated in the development of a work product from participation in peer review of that work product.¹⁹ The Bulletin provides more general recommendations for rotation of peer reviewers and participation of employees of the agency or office producing the document.²⁰ Most importantly, the Bulletin recommends that individuals employed by NMFS or the Council *generally* should not be selected as peer reviewers.²¹ However, the Bulletin does not expressly prohibit agency scientists from participating in peer review of agency science, unless it rises to the level of a HISA. This recommendation is based on the NAS policy, which more explicitly outlines circumstances where a government employee might be barred from participation. According to the NAS policy, a NMFS employee may serve as a member of a peer review committee reviewing a NMFS product provided the following requirements are met:

- (1) The service of the individual on the committee must be based on the unique scientific or technical expertise which the individual brings to the committee;
- (2) The individual must not be involved in any way within the agency in any deliberative or decision-making process or any policy-making or similar process relating to the study or other activity or the expected or intended results of the study or other activity; and
- (3) Service by the individual must be specifically determined during the committee appointment process to not compromise, or appear to compromise, the independence or objectivity of the particular study or other activity in which the committee is engaged.²²

The NAS policy further explains that typically employees meet the above requirements, unless they are senior government officials or government officials in policymaking positions.²³ Given the limited pool of eligible peer reviewers, it would be impractical, if not impossible, to find enough individuals willing to participate in peer review outside the realm of NMFS scientists. Moreover, the Bulletin suggests that the choice of reviewers requires a case-by-case analysis. Thus, the Region believes that the continued use of NMFS scientists on the SSC for ISI review is reasonably justified based on the limited pool of reviewers and the specific expertise of NMFS scientists provided they meet the other requirements of the Bulletin.

¹⁹ *Id* at 2670.

²⁰ *Id.*

²¹ *Id.*

²² *Supra* note 15 at 6.

²³ *Id.*

The Bulletin also recommends that the agency should make an effort to rotate peer review responsibilities across an available pool of qualified reviewers, recognizing that in some cases repeated service by the same reviewer is needed because of essential expertise.²⁴ The Region and Council have initially determined that the current rotation on the SSC is sufficient to meet the demands of the Bulletin. However, the Region believes that the rotational requirement can be more specifically met in the following way. First, the Bulletin establishes no minimum number requirement for peer reviewers for ISI. Second, not all SSC members would be required to participate in every peer review of ISI. Provided the other requirements of the Bulletin are met, the SSC could conduct internal rotation for peer review of ISI. For instance, the SSC could select 5 of its members for each ISI peer review to achieve a standard rotation in which no member would serve on more than 1 out of every 3 ISI peer reviews. In those instances where a member's expertise is essential for an issue, they could be allowed to participate in a more frequent rotation.

The Region recommends that NMFS scientists serving on the SSC should continue to be allowed to serve on the SSC, but should submit a statement addressing the three criteria outlined by the NAS policy above if they intend to review ISI under the Bulletin. Additionally, if the SSC chooses to more specifically meet the rotational requirement, the SSC should document a procedure for conducting regular rotation of membership on "ISI subcommittees."

Choice of Peer Review Mechanism

The Bulletin instructs that the choice of peer review mechanism for ISI be based on the novelty and complexity of the information to be reviewed, the importance of the information to decision making, the extent of prior peer review, the expected costs and benefits of review, and the factors regarding transparency explained below.²⁵ The peer review mechanism can include letter reviews or panel reviews. OMB prefers panels because they "tend to be more deliberative than individual letter reviews and the reviewers can learn from each other." Therefore, the current panel style operation of the SSC should adequately meet the requirements of the Bulletin for the choice of peer review mechanism and the Region recommends that no changes or additional measures are necessary at this time.

Transparency

The Bulletin directs NMFS or the Council to instruct peer reviewers to prepare a report that describes the nature of their review and their findings and conclusions.²⁶ Additionally, the Bulletin directs that the peer review report shall either include a verbatim copy of each reviewer's comments (with or without specific attributions) or represent the views of the group as a whole, including any disparate and dissenting views. Furthermore, the Bulletin requires NMFS to disclose the names and organizational affiliations of the reviewers in the report.

²⁴ *Supra* note 5 at 2670.

²⁵ *Id* at 2669.

²⁶ *Id* at 2671.

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The current SSC process should be able to adapt to the transparency requirements for conducting peer review of ISI by making minor modifications. The SSC regularly prepares minutes for the Council as part of its existing procedures. The SSC could modify those minutes to be used as the “report” suggested by the Bulletin. To adapt the minutes into a formal ISI report, the SSC should:

- (1) State the charge provided by NMFS or the Council regarding the objectives of the peer review;
- (2) Clearly and succinctly describe the nature of the scientific peer review;
- (3) Include the findings and conclusions of the review as a separate section;
- (4) Represent the views of the group as a whole, including any disparate and dissenting views or negative public comments; and
- (5) Include the names and organizational affiliations of the reviewers on a separate page.

When complete, the peer review report should also be posted on the Council website.

Public Participation

The Bulletin recommends public comment as an important part of ensuring a scientifically strong and credible peer review product.²⁷ One of the methods the Bulletin proposes for conducting peer review includes an opportunity to provide oral comments before a peer review panel or providing written comments to the peer reviewers. This Bulletin requirement can easily be met by adapting the current SSC and Council process to allow for the oral or written comments prior to, during, or immediately following the panel review by the SSC. The SSC should include these comments in the final peer review report and is encouraged to summarize and respond to any public comments on the peer review. Therefore, the Region recommends that the SSC should announce a time and method for public comment when the ISI panel discussion is scheduled, make the peer review materials available to the public, include all comments in the final peer review report, and provide written responses to any public comments in the peer review report.

Other Considerations

Pre-dissemination Disclaimers

For information deemed ISI and distributed for the purpose of peer review, the Council or NMFS must include the following disclaimer on every page of the draft information product being reviewed during the peer review process:

“THIS INFORMATION IS DISTRIBUTED SOLELY FOR THE PURPOSE OF PRE-DISSEMINATION PEER REVIEW UNDER APPLICABLE INFORMATION QUALITY GUIDELINES. IT HAS NOT BEEN FORMALLY DISSEMINATED BY NMFS. IT DOES NOT REPRESENT AND SHOULD

²⁷ *Id.*

NOT BE CONSTRUED TO REPRESENT ANY AGENCY DETERMINATION OR POLICY.”²⁸

Particularly in cases where ISI is relevant to specific policy or regulatory deliberations, this disclaimer must appear on each page of the draft report.

Furthermore, draft ISI circulated outside NMFS or the Council (i.e. information presented at scientific conferences or distributed to colleagues) must include the following disclaimer:

“THE FINDINGS AND CONCLUSIONS IN THIS REPORT (PRESENTATION) HAVE NOT BEEN FORMALLY DISSEMINATED BY NMFS AND SHOULD NOT BE CONSTRUED TO REPRESENT ANY AGENCY DETERMINATION OR POLICY.”²⁹

For ISI developed by non-Federal agencies, but sponsored by NMFS or the Council (i.e. State of Alaska, Northern Economics, etc.), the information product must include the following disclaimer:

“THE FINDINGS AND CONCLUSIONS IN THIS REPORT ARE THOSE OF THE AUTHOR AND DO NOT NECESSARILY REPRESENT THE VIEWS OF THE FUNDING AGENCY.”³⁰

Early Assessment

The Region, the AFSC, the Council, and the SSC should work collaboratively to identify information that might potentially qualify as ISI. Because of the procedural requirements associated with ISI, it is important to identify potential candidates as early as possible in the process. The Region recommends reviewing potential ISI on a quarterly basis in conjunction with the Council at a Council meeting. This deliberation could occur as part of the Council process itself, or as a separate meeting.

Conclusions

The consequences of not following the recommendations contained herein could result in the disqualification of the SSC or its members as peer reviewers for ISI under the Bulletin. This could result in substantial delays in the development and processing of regulatory actions recommended by the Council and may require additional efforts to construct an additional peer review infrastructure. Therefore, the Region recommends adopting these suggestions if the Council wishes to use the SSC as the peer review body for information designated ISI.

²⁸ *Id* at 2668.

²⁹ *Id.*

³⁰ *Id.*

In summary, the Region recommends that the Council and the SSC take the following steps to ensure the SSC's eligibility as an appropriate peer review body:

- Post biographical information for each SSC member on the Council website that describes the expertise, experience, skills, and diversity of the SSC membership;
- Include a brief statement along with the biographical information that describes any real or perceived conflicts of interest;
- Consider allowing a scientific or professional society to nominate individuals or a pool of nominees for one or more "at-large" members on the SSC;
- Adopt or adapt the NAS policy for evaluating conflicts of interest;
- Consider a system for recusal for those instances where an SSC member clearly cannot meet the Bulletin's conflict of interest standards;
- Remind NMFS employees serving as SSC members to review Federal ethics requirements prior to reviewing ISI;
- Require NMFS employees serving on the SSC to submit a statement addressing the NAS criteria described on p.6-7 of this paper;
- Encourage the SSC to document a procedure for conducting regular rotation of members on ISI subcommittees;
- Adapt the SSC minutes into a peer review report according to the criteria on p.7-8 of this paper and post the report on the Council website;
- Provide a time and method for public comment prior to, during, or immediately following the panel review, include all comments in the peer review report, make any peer review materials available to the public and provide written responses to any public comments in the peer review report;
- Ensure that all information circulated prior to official dissemination bears the appropriate pre-dissemination disclaimer described on p.8-9 of this paper;
- Review potential ISI on a semiannual basis in conjunction with a Council meeting.

National Oceanic and Atmospheric Administration
Policy on Conflicts of Interest
For Peer Review Subject to OMB's Peer Review Bulletin

Introduction

In December of 2004 the White House Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review (Bulletin) establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Public Law 106-554), is intended to enhance the quality and credibility of the federal government's scientific information, and applies to influential scientific information disseminated on or after June 16, 2005.

The Bulletin directs federal agencies to adopt or adapt the National Academy of Sciences (NAS) policy for committee selection with respect to evaluating conflicts of interest¹ when selecting peer reviewers who are not federal government employees². The National Oceanic and Atmospheric Administration (NOAA) has adapted the NAS conflict of interest policy as set forth below.

Conflict of Interest Policy

It is essential that peer reviewers of NOAA influential scientific information or highly influential scientific assessments not be compromised by any significant conflict of interest. For this purpose, **the term "conflict of interest" means any financial or other interest which conflicts with the service of the individual because it (1) could significantly impair the individual's objectivity or (2) could create an unfair competitive advantage for any person or organization.** Except for those situations in which NOAA determines that a conflict of interest is unavoidable and promptly and publicly discloses the conflict of interest, no individual can be appointed to review documents subject to the OMB Bulletin if that individual has a conflict of interest that is relevant to the functions to be performed.

General Principles

Involves an Interest

The term "conflict of interest" means something more than individual bias. There must be an *interest*, ordinarily financial, that could be directly affected by the work of the peer reviewers.

¹ The NAS Policy on Committee Composition and Balance and Conflicts of Interest can be found at: <http://www.nationalacademies.org/coi/index.html>

² Peer reviewers who are federal employees must comply with applicable federal ethics requirements.

Conflict of interest requirements are objective and preventative. They are not an assessment of one's actual behavior or character, one's ability to act objectively despite the conflicting interest, or one's relative insensitivity to particular dollar amounts of specific assets because of one's personal wealth. Conflict of interest requirements are objective standards designed to eliminate certain specific, potentially compromising situations from arising, and thereby protect the individual, NOAA, and the public interest. The individual, the other peer reviewers, and NOAA should not be placed in a situation where the findings and conclusions of a review could be reasonably questioned, and perhaps discounted or dismissed, simply because of the existence of conflicting interests.

Applies Only to Current Interests

The term "conflict of interest" applies only to *current interests*. It does not apply to past interests that have expired, no longer exist, and cannot reasonably affect current behavior. Nor does it apply to possible interests that may arise in the future but do not currently exist, because such future interests are inherently speculative and uncertain. For example, a pending formal or informal application for a particular job is a current interest, but the mere possibility that one might apply for such a job in the future is not a current interest.

Potentially Affects the Interests of Others

The term "conflict of interest" applies not only to the personal interests of the individual but also to the *interests of others* with whom the individual has substantial common financial interests if these interests are relevant to the functions to be performed. Thus, in assessing an individual's potential conflicts of interest, consideration must be given not only to the interests of the individual but also to the interests of the individual's spouse and minor children, the individual's employer, the individual's business partners, and others with whom the individual has substantial common financial interests. Consideration must also be given to the interests of those for whom one is acting in a fiduciary or similar capacity (e.g., being an officer or director of a corporation, whether profit or nonprofit, or serving as a trustee).

Covers a Broad Range of Financial Interests

The term "conflict of interest" as used herein ordinarily refers to *financial* conflicts of interest. In assessing potential conflicts of interest in connection with an individual's service as a peer reviewer, particular attention will be given to the following kinds of *financial interests* if they are relevant to the functions to be performed:

- Employment relationships (including private and public sector employment and self-employment).
- Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, and serving as an expert witness in litigation).
- Stocks, bonds, and other financial instruments and investments including partnerships.

- Real estate investments; patents, copyrights, and other intellectual property interests.
- Commercial business ownership and investment interests.
- Service provided in exchange for honorariums and travel expense reimbursements.
- Research funding and other forms of research support.
- Financial ties to entities regulated by NOAA, other stakeholders and NOAA itself.

Access to Confidential Information

The opportunity to have access to confidential information during the course of a peer review of NOAA influential scientific information or of a highly influential scientific assessment, if abused or misused, may confer an unfair competitive advantage. If an individual during the course of participating in a peer review for NOAA obtains and uses, or intends to use, confidential information not reasonably available to the public for the individual's own direct and substantial economic benefit, such conduct constitutes a conflict of interest. The same rule applies if the individual discloses, or intends to disclose, such information (albeit lawfully) to other individuals or to organizations in such a manner that a direct and substantial economic benefit may be conferred on such individuals or organizations. These restrictions do not apply to information once it has entered the public domain.

In some situations – for example, access to classified information, medical records, etc. – special limitations on access to and use of such information will be imposed. Substantial legal penalties may apply for noncompliance. In addition, an individual employed by or associated with a particular organization or enterprise should not be given access to proprietary information of a competitor or potential competitor unless appropriate safeguards have been established that reasonably protect the interests of all parties. Otherwise, such access may create an unfair competitive advantage, as well as possible liability for improper disclosure and use.

Limits Reviews of One's Own Work

It is not uncommon for individuals serving as peer reviewers to find that their own published and professional work, in common with others in the field, is part of the technical basis and literature for the information being reviewed. This ordinarily would not constitute a conflict of interest. However, an individual should not serve as a peer reviewer when a critical review and evaluation of the individual's own work, or that of an immediate supervisor, is the central purpose of the review, because that would constitute a conflict of interest, although such an individual may provide relevant information to the peer reviewers.

Public Statements and Positions

An individual may have become committed to a fixed position on a particular issue through public statements (e.g., testimony, speeches, interviews), through publications (e.g., articles, books), through close identification or association with the positions or perspectives of a particular group, or through other personal or professional activities. This would ordinarily constitute a potential source of bias but not a conflict of interest.

However, in situations where there is some significant, directly related interest or duty of the individual – e.g., where the individual is currently president of a professional society that espouses the same fixed position on the issue – the situation may constitute a conflict of interest.

Implementation of this Conflict of Interest Policy

Requires Background Information and Confidential Conflict of Interest Disclosures

To address questions of conflict of interest, individuals selected to perform peer review of NOAA information products subject to the OMB Bulletin are required to submit certain background information and information regarding conflicts of interest to NOAA (or the entity commissioned by NOAA to manage the peer review process) for review. NOAA has developed a “Background Information and Confidential Conflict of Interest Disclosure” form for this purpose.

The disclosure of relevant information is a *continuing obligation* for the duration of the peer review process for which the “Background Information and Confidential Conflict of Interest Disclosure” form was prepared. If during an individual’s period of service as a peer reviewer it becomes apparent to the individual that there has been a change in the information disclosed, or that there is new information that needs to be disclosed, such information must be reported promptly to NOAA.

Except as otherwise provided herein, specific conflict of interest information obtained by NOAA from the “Background Information and Confidential Conflict of Interest Disclosure” form, from amended disclosures, and from the public and other sources will be held in confidence by NOAA. Such information will not be released by NOAA except with the approval of the individual to whom the information pertains, unless release is required by law.

Requires Public Notice

For peer reviews of information subject to the OMB Bulletin, NOAA will disclose the names of the reviewers and their affiliation in a report of findings and conclusions prepared by the peer reviewers. The report will be posted on the Department of Commerce Information Quality web site (http://www.osec.doc.gov/cio/oipr/info_qual.html). For peer review of highly influential scientific assessments, the report will also include the credentials and relevant experiences of each peer reviewer. Reviewers shall be notified in advance regarding the extent of disclosure and attribution planned by the agency.

For peer reviews that are subject to Section 15 of the Federal Advisory Committee Act (FACA), NOAA will provide public notice -- of the names and brief biographies of individuals that NOAA appoints or intends to appoint to serve as peer reviewers -- on a NOAA web site that is linked to the Department of Commerce Information quality web site [insert site]. NOAA will also provide a reasonable opportunity for the public to comment on appointments subject to FACA before they are made or, if NOAA

determines that such prior comment is not practicable, in the period immediately following the appointment.

Uses Background Information to Make Determinations on Conflicts of Interest

Information obtained from the “Background Information and Confidential Conflict of Interest Disclosure” forms and from other sources, including the public, will be used by NOAA in addressing and resolving questions of conflict of interest. Except for those situations in which the agency determines that a conflict of interest is unavoidable and promptly and publicly discloses the conflict of interest, no individual can be appointed to serve (or continue to serve) as a peer reviewer for NOAA of information subject to the OMB Bulletin if the individual has a conflict of interest that is relevant to the peer review to be performed.

A particular individual’s conflict of interest may be determined to be unavoidable if, for example, the individual’s qualifications, knowledge, and experience are particularly valuable to the peer review in question and the agency is unable to identify another individual with comparable qualifications, knowledge, and experience who does not also have a conflict of interest. NOAA bears the burden of establishing that no other individual lacking any conflict, but bearing comparable qualifications, knowledge, and experience, exists.

Emergency Evacuation Procedures

In the event of an emergency, please remain calm and follow instructions from hotel staff, Security and emergency personnel.

FIRE:

In the event that the hotel would need to be evacuated due to a fire, the fire alarm will sound. The fire alarm consists of a continuous whooping sound, emanating from various speakers throughout the hotel, and strobes that will also continuously flash. There will also be a voice recording with instructions on how to properly evacuate.

EARTHQUAKE:

In the event of an earthquake, please move carefully to the most secure and stable area you can find. The best areas to take cover are:

- Next to a wall, curled up with arms covering your head and neck.
- Under a table, holding onto the table so it does not move away from you.
- In a doorway, holding the door open so that it does not shut on you.
- **DO NOT GO OUTSIDE IN AN EARTHQUAKE!!!**

MEDICAL EMERGENCY:

In the event of a medical emergency go to the closest in house telephone and dial "66." This call will go to the Emergency Operator and has precedence over all other calls in the hotel. The Emergency Operator will request pertinent information from you concerning your emergency. The Emergency Operator will then dispatch Security to your location for assistance. **DO NOT CALL 9-1-1.** The decision to call emergency authorities will be made and handled by Security.

If you have any other questions regarding safety or security in the hotel, please call 7157 from an in house telephone or dial "0" and the operator will connect you to Security.

FREEZER LONGLINE CONSERVATION COOPERATIVE

*641 West Ewing Street
Seattle, WA 98119
Telephone (206) 284-1162
Fax (206) 283-5089*

August 1, 2005

Secretary Carlos M. Gutierrez
Office of the Secretary
Room 5516
U.S. Department of Commerce
14th & Constitution Ave. NW
Washington, DC 20230

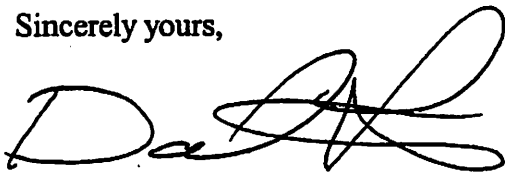
Dear Mr. Secretary:

In accordance with HR 4818, the Consolidated Appropriations Act, 2005, we are submitting a capacity reduction plan for the freezer longline fleet which operates in the Bering Sea and Aleutian Islands. The enclosed documents describe our plan for effecting a capacity reduction and we would appreciate a prompt review.

Although the Act does not require approval of the Secretary prior to commencement of the auction which is described in this plan, we believe it would be beneficial to receive your comments beforehand.

Please visit our website at www.freezerlonglinecoop.org. Please do not hesitate to contact me if you have any questions.

Sincerely yours,



David Little
President

Encl.

- * Executive Summary
- * Fishing Capacity Reduction Proposed Plan
- * Fishing Capacity Reduction Contract (Exhibit A)
- * Capacity Reduction Plan Agreement (Exhibit B)

Freezer Longline Conservation Cooperative

Longline Catcher Processor Subsector Capacity Reduction Plan

Executive Summary

Introduction. Section 219 of the FY 2005 Appropriations Act (the "Act") establishes the BSAI Catcher Processor Capacity Reduction Program to reduce the capacity of various nonpollock catcher processor subsectors operating in the Bering Sea ("BS") and Aleutian Islands ("AI," collectively the "BSAI"). The Act appropriates funding to establish a loan authority of up to \$36,000,000 to accomplish a capacity reduction program proposed by the longline catcher processor subsector as defined in the Act (the "Longline Subsector"). The proposed reduction plan must be approved by the Secretary of Commerce and by referendum of 2/3 of the members of the Longline Subsector.

Overview. Participation in the capacity reduction program is open to any member of the Longline Subsector. Each member of the Longline Sector will receive a notice of the FLCC capacity reduction plan and enrollment documents by certified mail. The FLCC capacity reduction plan is essentially divided into four phases: enrollment, bid selection, plan submission and, after approval by referendum, implementation. Participation in the capacity reduction plan is open to all members of the Longline Subsector and only LLP Licenses and other assets voluntarily submitted for removal from the Longline Subsector shall be subject to reduction. Because there exist what are commonly referred to as "latent licenses" within the Longline Subsector which the FLCC membership desires to remove from the subsector, latent LLP Licenses need not be associated with a vessel for inclusion as assets to be reduced under the capacity reduction program. Fees for repayment of the loan which funds the capacity reduction program will be collected from the LLP License holders who continue operations in the Longline Subsector after implementation of the capacity reduction program.

Enrollment. Members of the Longline Subsector may enroll in the capacity reduction program at any time prior to the closing of bid selection. Enrollment is accomplished by executing a Capacity Reduction Plan Agreement (a "Plan Agreement") and submitting specified supporting documents evidencing an applicant's status as a member of the Longline Subsector (an "Enrollment Package"). Each of the supporting documents will be reviewed by Tagart Consulting (the "Auditor") for strict compliance with the Plan Agreement requirements. The Plan Agreement becomes effective when 70% of the members of the Longline Subsector have submitted an Enrollment Package certified by the Auditor as complying.

Bid Selection. Once the Plan Agreement becomes effective, the bid selection process begins. A Bid is a binding offer to sell to the FLCC or its assigns, the assets identified in the Bid, and may not be withdrawn once entered, unless it is rejected during the selection process.

Essentially, during the bid selection process, Members will alternate on a weekly basis between Submission Periods and Ranking Periods. During any Submission Period, a Member may offer its LLP License(s) and vessel(s) for inclusion in the capacity reduction program. During each Ranking Period, Nonbidding Members may rank the Bids submitted during the prior Submission Period. At the end of each Ranking Period the Auditor will tabulate and post on a website the results of the Bid rankings up to a total bid price of \$36,000,000. Those Bids ranked within the \$36,000,000 are Selected Bids, those that are not ranked within the \$36,000,000 are Rejected Bids, with the Rejected Bids being voided and no longer binding on the offering member(s). Once the Bid rankings are posted, a new Submission Period begins with the process repeated until 2/3 of the Nonbidding Members call for a Closing Vote. If 2/3 of the Nonbidding Members accept the Selected Bids proposed in the Closing Vote, the Selection Process terminates. If not, the Selection Process resumes with a new Submission Period.

Plan Submission. After the Selection Process is complete, the FLCC shall develop a capacity reduction program in compliance with applicable laws and regulations for submission to the Secretary of Commerce. Such program shall include the LLP Licenses and other assets selected by the bidding process as the assets to be purchased in the reduction program without auction and provide for repayment over a thirty year term. The FLCC shall also give notice of the capacity reduction plan to the North Pacific Fisheries Management Council as required by the Act.

Implementation. After referendum approval of the capacity reduction program, the capacity reduction program will be implemented. The FLCC shall assign its rights to purchase the assets identified in the Ranked Bids. In addition, repayment of the loan will begin by collection of annual fees collected from the LLP License holders operating in the Longline Subsector after implementation of the capacity reduction program. The amount of such fee shall be calculated on an annual basis as: the principal and interest payment amount necessary to amortize the loan over a thirty year term, divided by the Longline Subsector Pacific cod ITAC allocation in pounds, provided that the fees shall not exceed five percent (5%) of the average ex-vessel production value of the Longline Subsector.

Disputes. The Plan Agreement provides for an expedited dispute review process by means of utilizing an expedited review process by pre-selected counsel and, if necessary, binding arbitration before JAMS.

Costs. FLCC shall bear the costs of developing and submitting the capacity reduction plan by means of special assessment of its members.

Fishing Capacity Reduction Proposed Plan

1. Introduction.

Section 219 of HR 4818, the Consolidated Appropriations Act, 2005 (the "Act"), sets forth requirements for plans to reduce fishing capacity in four subsectors of the non-pollock groundfish fishery in the Bering Sea/Aleutian Islands. Each subsector, as defined in the Act, may, after notice to the North Pacific Fisheries Management Council, submit to the Secretary of Commerce a capacity reduction plan. Such notice was given during the June 2005 meeting of the North Pacific Fisheries Management Council meeting. The freezer longliner catcher processor subsector intends to submit a qualifying capacity reduction plan during the fall of 2005.

The Secretary, under the Act, is authorized to approve a capacity reduction plan if such submitted plan--

- (A) is consistent with the requirements of section 312 (b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)) except—
 - (i) the requirement that a Council or Governor of a State request such a program set out in paragraph (1) of such subsection; and
 - (ii) the requirements of paragraph (4) of such subsection;
- (B) contains provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by a catcher processor subsector and that may provide for the assessment of such fees based on methods other than ex-vessel value of fish harvested;
- (C) does not require a bidding or auction process;
- (D) will result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and
- (E) permits vessels in the catcher processor subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.

The applicable requirements of section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act state that the [plan]--

- (1)(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;
- (B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan--

- (i) will prevent the replacement of fishing capacity removed by the [plan] through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and
 - (ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and
- (C) is cost-effective and capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936.

(2) The objective of the [plan] shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay--

(A) the owner of a fishing vessel, if such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing, and if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the owner relinquishes any claim associated with the vessel and permit that could qualify such owner for any present or future limited access system permit in the fishery for which the [plan] is established; or

(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the [plan] was established.

(3) Participation in the [plan] shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

2. Subsector Information.

The freezer longliner catcher processor subsector is composed of 44 limited license permits ("LLP"). Among these 44 LLP's, 39 are assigned to active vessels and five latent LLP's are not assigned to active vessels. The plan described below is expected to reduce this capacity by five to seven vessels, including vessels that could otherwise be added to the fleet.

The freezer longliner catcher processor fleet harvests Pacific cod as its primary volume, with a portion of the fleet targeting on Greenland turbot as well. Permitted by-catch is also retained, although the values of this by-catch are not significant. Harvest volumes and values for the years 2000 through 2005 are shown below:

Freezer Longline Catcher Processor Subsector

	2000	2001	2002	2003	2004	2005
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(projected)

Harvest - mt

Pacific cod	85,106	96,237	89,398	93,412	95,422	92,000
Greenland turbot	3,895	2,596	2,261	2,495	1,492	1,500

Price/lb (round)

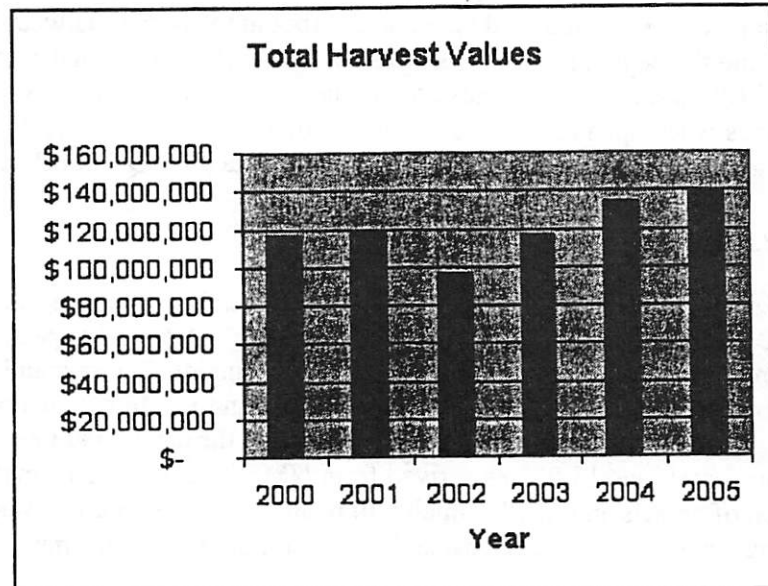
Pacific cod	0.57	0.54	0.47	0.54	0.62	0.66
Greenland turbot	1.15	0.50	0.85	0.98	1.04	1.29

Harvest value

Pacific cod	\$106,947,042	\$114,569,648	\$ 92,631,651	\$111,206,500	\$130,428,935	\$133,864,526
Greenland turbot	9,875,044	2,861,597	4,236,949	5,371,265	3,419,220	4,270,900

Total

	\$116,822,086	\$117,431,245	\$ 96,868,600	\$116,577,765	\$133,848,155	\$138,135,426
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The freezer longliner catcher processor subsector is currently capable of catching approximately 161,000 mt per year, based on average harvest rates over the last five years, if season date and quota restrictions were not in effect. Over this same period, the average harvest has been 91,915 mt per year, reflecting a current subsector harvest capacity of approximately 175% of the average harvest over the last five years. If the five latent LLP's were to be assigned to active vessels, the excess harvest capacity would increase to 198%.

3. Current Management System.

The freezer longliner catcher processor subsector fisheries are managed by National Marine Fisheries Service under the direction of the North Pacific Fisheries Management Council. Total allowable catch levels are set annually, with allocations by subsector set in accordance with Amendment 64 to the Fishery Management Plan ("FMP"). The Council is now in the process of defining a new allocation amendment to the FMP, and this amendment is expected to be enacted in 2006.

Under Amendment 67 to the FMP, vessels are required to have a LLP with appropriate endorsements in order to fish different fisheries and to use different gear types. There are 39 permanent and transferable LLP's and five temporary and non-transferable permits which allow catching and processing of Pacific cod with longline gear. Two of the five temporary permits are all eligible for conversion to permanent and transferable LLP status, as reported by NMFS, and it is believed that the holders of these permits are willing and able to take the necessary action to accomplish the conversion.

The fishing season for the freezer longliner catcher processor subsector begins with open access Pacific cod quota which is allocated to the "A" season on January 1st. This "A" season quota normally is harvested by early March. Some of the vessels of the subsector then fish black cod, halibut and Greenland turbot in the period between the end of the "A" season and the beginning of the "B" season for Pacific cod, which starts on August 15th. The "B" season normally ends around the end of November or early December. At times when open access quotas for Pacific cod are not available, some vessels of the subsector harvest community development quota ("CDQ") for Pacific cod.

4. Capacity Reduction.

The freezer longliner catcher processor subsector members propose to conduct a "reverse" auction, commencing sometime during late summer, 2005, and expected to conclude during the fall of 2005. See Fishing Capacity Reduction Contract and Capacity Reduction Plan Agreement, attached as exhibits A and B. In conducting the "reverse auction", the subsector members will have available the catch histories associated with the vessels and LLP's, as derived from NMFS records. This method will result in a selection of vessels and LLP's which will result in the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. Upon

acceptance of the auction results by two-thirds of the members who will remain in the subsector after completion of the capacity reduction, the subsector members would then immediately submit to the Secretary, after further notice to the North Pacific Fisheries Management Council, the Fishing Capacity Reduction Contracts executed by the vessel owners and holders of LLP's. These contracts will bind the vessel owners and permit holders to sell their vessels and LLP's for the prices included in the submitted contracts. Since the subsector members will have determined prior to submission of the contracts which vessels and LLP's are to be purchased, the submitted contracts will not contain a bidding or auction process and these contracts will be in compliance with the Act. Also, in accordance with the Act, the plan will require that (1) the vessels purchased will either be scrapped or will be subjected to title restrictions; and (2) permits purchased will be surrendered, all in accordance with the requirements of section 312 (b) of the Magnuson-Stevens Fishery Conservation and Management Act.

It is difficult to predict the number of vessels and LLP's that will be included in the plan, but subsector members have estimated that the total will be between five and seven, relating to approximately 12,400 to 17,400 mt of harvest capacity for Pacific cod per year, based on an assumption of 39 active vessels and a total harvest by the subsector of 92,000 mt. This level of capacity removal represents between 13.5% and 18.9% of that total harvest level.

5. Repayment Plan.

Using volumes of Pacific cod and Greenland turbot harvested by the freezer longline catcher processor subsector between 2000 and 2004, projections of harvest for 2005, and average sales prices which were derived from industry records, total annual harvest values range from \$116 million to over \$138 million. See page 3. This subsector harvests other non-pollock species, but the values are not significant.

The plan that will be submitted by the freezer longline catcher processor subsector will propose that a fee be paid by all members of the subsector for all round pounds of Pacific cod and Greenland halibut harvested each year. The plan will stipulate that NMFS will calculate the repayment amount per pound each year, with such amount calculated to amortize the balance of the capacity reduction loan over the remaining life of the loan. Such calculation for the each year will be based on the total harvest quotas allocated to the subsector for Pacific cod and Greenland halibut for such year as of the preceding December. For example, an annual payment of \$2,341,852 would be required to amortize in initial balance of \$36,000,000 over 30 years. Assuming that the quota for 2006 for Pacific cod and Greenland halibut totaled 80,500 mt, the 2006 repayment fee would be \$0.0131956 per round pound. As stipulated by the Stevens-Magnuson Fishery Conservation and Management Act, the repayment may not exceed 5% of the ex-vessel value of the fish harvested from the fishery. The above example payment, \$2,341,852, is less than 2% of the harvest value projected on page 3.

In the unlikely event that the above repayment method does not repay the loan at the

**Fishing Capacity Reduction Proposed Plan
Page 6 of 6**

end of 30 years, the loan term shall be extended for a period which will allow full repayment.

In accordance with the Act, the Secretary shall implement rules to collect the repayment fees as determined by NMFS and such rules will provide for payment by the subsector members on a quarterly basis.

6. Summary.

The plan will comply with the applicable requirements of the Stevens-Magnuson Fishery Conservation and Management Act as follows:

(1)(A) The proposed capacity reduction will result in a total capacity that will slow the pace of the fishing, thus reducing waste and by-catch, as well as helping to improve the safety of the fishery.

(B) The proposed plan is consistent with the applicable Federal fishery management plan, and such Federal fishery management plan provides for (i) a moratorium on new entrants and restricts increases in vessel length and (ii) a total allowable catch.

(C) The proposed plan is cost-effective and historical and projected catches indicate that the remaining subsector will be capable of repaying the capacity reduction loan and related interest in full, without exceeding 5% of the projected harvests values.

(2) The proposed plan provides for approval of remaining members of the subsector. In giving approval, these members, who select the vessels and LLP's to be reduced, will seek to remove the maximum amount of capacity for the least cost, given that such members will be responsible for re-payment. Also, consistent with the Act, this plan requires the scrapping of vessels or revocation of fishing rights.

(3) The proposed plan calls for voluntary offers from subsector members; it does not require any member to offer his vessel or LLP for sale. The proposed plan does require that after approval by the Secretary and ratification as required by the Act, compliance by all participants is mandatory.

EXHIBIT A

FISHING CAPACITY REDUCTION CONTRACT: BERING SEA AND ALEUTIAN ISLANDS LONGLINE CATCHER PROCESSOR SUBSECTOR

THIS AGREEMENT, (the "Reduction Contract") is entered into by and between the party or parties named in section 40 of this document entitled, "Fishing Capacity Reduction Bid Submission Form," as the qualifying bidder and as the co-bidder (if there is a co-bidder) (collectively the "Bidder") and the United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division ("NMFS"). The Reduction Contract is effective when NMFS signs the Reduction Contract and, thereby, accepts the Bidder's offer.

WITNESSETH:

Whereas, § 219, Title II, Division B of the Consolidated Appropriations Act, 2005, December 8, 2004 (the "Act") authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea/Aleutian Islands non-pollock groundfish fishery as set forth in the Act;

Whereas, the longline catcher processor subsector (the "Longline Subsector") is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act;

Whereas, the Freezer Longline Conservation Cooperative (the "FLCC") has developed and is submitting to NMFS concurrently with this Reduction Contract a capacity reduction plan for the Longline Subsector (the "Reduction Plan");

Whereas, the term "Reduction Fishery" is defined by Reduction Plan as the longline catcher processor subsector of the BSAI non-pollock groundfish fishery;

Whereas, the Reduction Plan's express objective is to permanently reduce harvesting capacity in the Reduction Fishery.

Whereas, NMFS implements the Reduction Plan pursuant to § 219 of the Act as well as 16 U.S.C. §1861a (b)-(e) (as excepted by the Act, including *inter alia*, any requirement that the Reduction Plan include a bidding or auction process) and other applicable law;

Whereas, NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs, portions of which are applicable to the Reduction Plan, (50 CFR § 600.1000 et seq.);

Whereas, NMFS can implement the Reduction Plan only after giving notice to all members of the Longline Subsector of the Reduction Plan pursuant to §219(3)(b) of the Act and approval of the Reduction Plan by referendum of the Longline;

Whereas, this Reduction Contract is submitted by Bidder and the FLCC as an integral element of the Reduction Plan and is expressly subject to the terms and conditions set forth herein, the framework regulations and applicable law;

NOW THEREFORE, for good and valuable consideration and the premises and covenants hereinafter set forth, the receipt and sufficiency of which the parties to the Reduction Contract hereby acknowledge, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and are expressly incorporated herein by this reference.
2. Contract Form. By completing and submitting the Reduction Contract to NMFS the Bidder hereby irrevocably offers to relinquish its Reduction Fishing Interests. If NMFS discovers any deficiencies in the Bidder's submission to NMFS, NMFS may, at its sole discretion, contact the Bidder in an attempt to correct such bid deficiency. "Reduction Fishing Interests" means all of Bidder(s) rights, title and interest to the Groundfish Reduction Permit, Reduction Permit(s), Reduction Fishing Privilege and Reduction Fishing History as defined in this Reduction Contract.
3. Groundfish Reduction Permit. Bidder expressly acknowledges that it hereby offers to permanently surrender, relinquish, and have NMFS permanently revoke the valid non-interim Federal License Limitation program groundfish license issued pursuant to section 679.4(k) of title 50, Code of Federal Regulations (or successor regulation) endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pcod, and hook and line gear identified in section 40 below as well as any present or future claims of eligibility for any fishery privilege based upon such permit (the "Groundfish Reduction Permit").
4. Reduction Permit(s). Bidder hereby acknowledges that it offers to permanently surrender, relinquish, and have NMFS permanently revoke any and all federal fishery licenses, fishery permits, and area and species endorsements issued for any vessel named on the Groundfish Reduction Permit as well as any present or future claims of eligibility for any fishery privilege based upon such permit (the "Reduction Permits").
5. Reduction Fishing Privilege. If a vessel is specified in section 40 below (the "Reduction Vessel"), Bidder hereby acknowledges that Bidder offers to relinquish and surrender the Reduction Vessel's fishing privilege and consents to the imposition of federal vessel documentation restrictions that have the effect of permanently revoking the Reduction Vessel's legal ability to fish anywhere in the world as well as its legal ability to operate under foreign registry or control—including the Reduction Vessel's: fisheries trade endorsement under 46 U.S.C. §12108; eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. §808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the privilege otherwise to ever fish again anywhere in the world (the "Reduction Fishing Privilege"). If the Reduction Vessel is not a federally documented vessel, the Bidder offers to promptly scrap the vessel and allow NMFS whatever access to the scrapping NMFS deems reasonably necessary to document and confirm the scrapping.
6. Reduction Fishing History. Bidder surrenders, relinquishes, and consents to NMFS' permanent revocation of the following Reduction Fishing History (the "Reduction Fishing History"):

- a. The Reduction Vessel's full and complete documented harvest of groundfish, and
 - b. For any documented harvest of the Reduction Vessel whatsoever, including that specified in section (6.a)), any right or privilege to make any claim in any way related to any fishery privilege derived in whole or in part from any such other and documented harvest which could ever qualify any party for any future limited access system fishing license, permit, and other harvest authorization of any kind; but without prejudice to any party who before submission of this bid may have for value independently acquired the fishing history involving any such documented harvest.
7. Halibut, Sablefish and Crab IFQs Excluded. Notwithstanding any other provision of this Reduction Contract, no right, title and/or interest to harvest, process or otherwise utilize individual fishing quota ("IFQ") quota share in the halibut, sablefish and crab fisheries pursuant to 50 CFR §§ 679 and 680 shall be included among Bidder's Reduction Fishing Interests.
8. Representations and Warranties. Bidder represents and warrants that, as of the date of submission of this Reduction Contract, Bidder is:
 - a. the holder of record, according to NMFS' official fishing license records, of the Groundfish Reduction Permit and the Reduction Permit(s),
 - b. the Reduction Vessel's owner of record, according to the National Vessel Documentation Center's official vessel documentation records, and
 - c. fully and legally entitled to offer and dispose of hereunder, full and complete rights to the Reduction Vessel's full and complete Reduction Fishing History necessary to fully and completely comply with the requirements of section 6 hereof.
9. Bid Amount. NMFS' payment to Bidder in the exact amount of the amount set forth by Bidder in section 40 below is full and complete consideration for the Bidder's offer.
10. Additional Bid Elements. Bidder shall include with its bid an exact photocopy of the Reduction Vessel's official vessel documentation or registration (i.e., the certificate of documentation the U.S. Coast Guard's National Vessel Documentation Center issued for federally documented vessels or the registration a State issues for State registered vessels) and an exact photocopy of the Groundfish Reduction Permit and all Reduction Permit(s). The Bidder shall also include with the bid all other information required in this Reduction Contract and otherwise comply with Reduction Contract requirements.
11. Use of Official Fishing License or Permit Databases. Bidder expressly acknowledges that NMFS shall use the appropriate, official, governmental fishing license or permit database to: determine the Bidder's address of record; verify the Bidder's qualification to bid; determine the holder of record of the Groundfish Reduction Permit and Reduction Permit(s); and verify the Bidder's inclusion in the bid of all Reduction Permit(s) associated with the Reduction Vessel and required to be offered in the Bid.
12. Use of National Vessel Documentation Center Database. Bidder expressly acknowledges that NMFS shall use the records of the National Vessel Documentation Center to determine the

owner of record for a federally documented Reduction Vessel and the appropriate State records to determine the owner of record of a non-federally documented Reduction Vessel.

13. Bidder to Ensure Accurate Records. Bidder shall, to the best of its ability, ensure that the records of the databases relevant to sections 11 and 12 hereof are true, accurate, and complete.

14. Submissions Are Irrevocable. The parties hereto expressly acknowledge as the essence hereof that the Bidder voluntarily submits to NMFS this firm and irrevocable offer. The Bidder expressly acknowledges that it hereby waives any privilege or right to withdraw, change, modify, alter, rescind, or cancel any portion of the Reduction Contract and that the receipt date and time which NMFS marks on the Reduction Contract constitutes the date and time of the offer's submission.

15. Bidder Retains Use. After submitting a bid, the Bidder shall continue to hold, own, or retain unimpaired every aspect of any and all LLP License(s) and or vessels set forth on a Bid included as Reduction Fishing Interests, until such time as: NMFS notifies the Bidder that the Reduction Plan is not in compliance with the Act or other applicable law and will not be approved by NMFS; notifies the Bidder that the referendum was unsuccessful; NMFS tenders the reduction payment and the Bidder complies with its obligations under the Reduction Contract; or NMFS otherwise excuses the Bidder's performance.

16. Acceptance by Referendum. NMFS shall formally notify the Bidder in writing whether the referendum is successful, which written notice shall constitute acceptance of the Reduction Contract. Bidder expressly acknowledges that NMFS' formal acceptance of the Reduction Contract forms a binding contract enforceable against, and binding on, the Reduction Contract parties in accordance with the terms and conditions herein.

17. Reduction Contract Subject to Federal Law. The Reduction Contract is subject to Federal law.

18. Notice to Creditors. Upon NMFS' bid acceptance notice to the Bidder, the Bidder agrees to notify all parties with secured interests in the Reduction Fishing Interests that the Bidder has entered into the Reduction Contract.

19. Referendum. Bidder acknowledges that the outcome of the referendum of the Reduction Plan is an occurrence over which NMFS has no control.

20. Unsuccessful Referendum Excuses Performance. An unsuccessful referendum excuses all parties hereto from every obligation to perform under the Reduction Contract. In such event, NMFS need not tender reduction payment and the Bidder need not surrender and relinquish or allow the revocation or restriction of any element of the Reduction Fishing Interest specified in the Reduction Contract. An unsuccessful referendum shall cause the Reduction Contract to have no further force or effect.

21. Bidder Responsibilities upon Successful Referendum. Upon NMFS' notifying the Bidder that the referendum was successful and that NMFS had accepted the Reduction Contract, Bidder shall immediately become ready to surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests.

22. Written Payment Instructions. After a successful referendum, NMFS shall tender reduction payment by requesting the Bidder to provide to NMFS, and the Bidder shall subsequently so provide, written payment instructions for NMFS' disbursement of the reduction payment to the Bidder or to the Bidder's order.

23. Request for Written Payment Instructions Constitutes Tender. NMFS' request to the Bidder for written payment instructions constitutes reduction payment tender, as specified in 50 C.F.R. 600.1011.

24. Bidder Responsibilities upon Tender. Upon NMFS' reduction payment tender to the Bidder, the Bidder shall immediately surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests. The Bidder must then return the original of its Groundfish Reduction Permit and Reduction Permit(s) to NMFS. Concurrently with NMFS' reduction payment tender, the Bidder shall forever cease all fishing for any species with the Reduction Vessel and immediately retrieve all fishing gear, irrespective of ownership, previously deployed from the Reduction Vessel.

25. Reduction Vessel Lacking Federal Documentation. Upon NMFS' reduction payment tender to the Bidder, the Bidder shall immediately scrap any vessel which the Bidder specified as a Reduction Vessel and which is documented solely under state law or otherwise lacks documentation under federal law. The Bidder shall scrap such vessel at the Bidder's expense. The Bidder shall allow NMFS, its agents, or its appointees reasonable opportunity to observe and confirm such scrapping. The Bidder shall conclude such scrapping within a reasonable time.

26. Future Harvest Privilege and Reduction Fishing History Extinguished. Upon NMFS' reduction payment tender to the Bidder, the Bidder shall surrender and relinquish and consent to the revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate), of any claim in any way related to any fishing privilege derived, in whole or in part, from the use or holdership of the Groundfish Reduction Permits and the Reduction Permit(s), from the use or ownership of the Reduction Vessel (subject to and in accordance with the provisions of section 6 hereof), and from any documented harvest fishing history arising under or associated with the same which could ever qualify the Bidder for any future limited access fishing license, fishing permit, and other harvest authorization of any kind.

27. Post Tender Use of Federally Documented Reduction Vessel. After NMFS' reduction payment tender to the Bidder, the Bidder may continue to use a federally documented Reduction Vessel for any lawful purpose except fishing, fish tendering or fish processing and may transfer—subject to all restrictions in the Reduction Contract, other applicable regulations, and the applicable law—the vessel to a new owner. The Bidder or any subsequent owner shall only operate the Reduction Vessel under the United States flag and shall not operate such vessel under the authority of a foreign country. In the event the Bidder fails to abide by such restrictions, the Bidder expressly acknowledges and hereby agrees to allow NMFS to pursue any and all remedies available to it, including, but not limited to, recovering the reduction payment and seizing the Reduction Vessel and scrapping it at the Bidder's expense.

28. NMFS' Actions upon Tender. Contemporaneously with NMFS' reduction payment tender to the Bidder, and without regard to the Bidder's refusal or failure to perform any of its Reduction Contract duties and obligations, NMFS shall: permanently revoke the Bidder's Groundfish Reduction Permit and Reduction Permit(s); notify the National Vessel Documentation Center to permanently revoke the Reduction Vessel's fishery trade endorsement; notify the U.S. Maritime

Administration to make the Reduction Vessel permanently ineligible for the approval of requests to place the vessel under foreign registry or operate the vessel under a foreign country's authority; record in the appropriate NMFS records that the Reduction Fishing History represented by any documented harvest fishing history accrued on, or as a result of the Reduction Vessel and the Reduction Vessel (subject to and in accordance with the provisions of section 6 hereof), the Groundfish Reduction Permit, and the Reduction Permit(s) which could ever qualify the Bidder for any future limited access fishing license, fishing permit, or other harvesting privilege of any kind shall never again be available to anyone for any fisheries purpose; and implement any other restrictions the applicable law or regulations impose.

29. Material Disputes to be Identified. Members of the public shall, up until NMFS receives the Bidder's written payment instructions, be able to advise NMFS in writing of any material dispute with regard to any aspect of any accepted Reduction Contract. Such a material dispute shall neither relieve the Bidder of any Reduction Contract duties or obligations nor affect NMFS' right to enforce performance of the Reduction Contract terms and conditions.

30. Reduction Payment Disbursement. Once NMFS receives the Bidder's written payment instructions and certification of compliance with the Reduction Contract, NMFS shall as soon as practicable disburse the reduction payment to the Bidder. Reduction payment disbursement shall be in strict accordance with the Bidder's written payment instructions. Unless the Bidder's written payment instructions direct NMFS to the contrary, NMFS shall disburse the whole of the reduction payment to the Bidder. If the qualifying bidder bids with a co-bidder, both the qualifying bidder and the co-bidder must approve and sign the written payment instructions.

31. Reduction Payment Withheld for Scrapping or for Other Reasons. In the event that a Reduction Vessel which is not under federal documentation must be scrapped, NMFS shall withhold from reduction payment disbursement an amount sufficient to scrap such vessel. NMFS shall withhold such sum until the vessel is completely scrapped before disbursing any amount withheld. If NMFS has reason to believe the Bidder has failed to comply with any of the Reduction Contract terms and conditions, NMFS shall also withhold reduction payment disbursement until such time as the Bidder performs in accordance with the Reduction Contract terms and conditions.

32. Bidder Assistance with Restriction. The Bidder shall, upon NMFS' request, furnish such additional documents, undertakings, assurances, or take such other actions as may be reasonably required to enable NMFS' revocation, restriction, invalidation, withdrawal, or extinguishment by other means (as NMFS deems appropriate) of all components of the Reduction Contract's Reduction Fishing Interest in accordance with the requirements of the Reduction Contract terms and conditions, applicable regulations and the applicable law.

33. Recordation of Restrictions. Upon the Reduction Fishing Privilege's revocation, the Bidder shall do everything reasonable necessary to ensure that such revocation is recorded on the Reduction Vessel's federal documentation (which the National Vessel Documentation Center maintains in accordance with federal maritime law and regulations) in such manner as is acceptable to NMFS and as shall prevent the Reduction Vessel, regardless of its subsequent ownership, from ever again being eligible for a fishery trade endorsement or ever again fishing. The term "fishing" includes the full range of activities defined in 16 U.S.C. §1802.

34. Reduction Element Omission. In the event NMFS accepts the bid and the Bidder has failed, for any reason, to specify in the Reduction Contract any Groundfish Reduction Permit, non-

Groundfish Reduction Permit(s), Reduction Vessel, Reduction Fishing History, or any other element of the Reduction Fishing Interest which the Bidder should under Reduction Contract, applicable regulations and the applicable law have specified in Reduction Contract, such omitted element shall nevertheless be deemed to be included in the Reduction Contract and to be subject to the Reduction Contract's terms and conditions; and all Reduction Contract terms and conditions which should have applied to such omitted element had it not be omitted shall apply as if such element had not been omitted. Upon the Bidder discovering any such omission, the Bidder shall immediately and fully advise NMFS of such omission. Upon either NMFS or the Bidder discovering any such omission, the Bidder shall act in accordance with the Reduction Contract, applicable regulations and the applicable law.

35. Remedy for Breach. Because money damages are not a sufficient remedy for the Bidder breaching any one or more of the Reduction Contract terms and conditions, the Bidder explicitly agrees to and hereby authorizes specific performance of the Reduction Contract, in addition to any money damages, as a remedy for such breach. In the event of such breach, NMFS shall take any reasonable action, including requiring and enforcing specific performance of the Reduction Contract, NMFS deems necessary to carry out the Reduction Contract, applicable regulations and the applicable law.

36. Waiver of Data Confidentiality. The Bidder consents to the public release of any information provided in connection with the Reduction Contract or pursuant to Reduction Plan requirements, including any information provided in the Reduction Contract or by any other means associated with, or necessary for evaluation of, the Bidder's Reduction Contract if NMFS finds that the release of such information is necessary to achieve the Reduction Plan's authorized purpose. The Bidder hereby explicitly waives any claim of confidentiality otherwise afforded to catch, or harvest data and fishing histories otherwise protected from release under 16 U.S.C. §1881a(b) or any other law. In the event of such information release, the Bidder hereby forever fully and unconditionally releases and holds harmless the United States and its officers, agents, employees, representatives, of and from any and all claims, demands, debts, damages, duties, causes of action, actions and suits whatsoever, in law or equity, on account of any act, failure to act or event arising from, out of, or in any way related to, the release of any information associated with the Program.

37. Oral Agreement Invalid. The Reduction Contract, any addendums to section 40 hereof, and enclosures of photocopies of licenses, permits required under section 40, contain the final terms and conditions of the agreement between the Bidder and NMFS and represent the entire and exclusive agreement between them. NMFS and the Bidder forever waive all right to sue, or otherwise counterclaim against each other, based on any claim of past, present, or future oral agreement between them.

38. Severable Provisions. The Reduction Contract provisions are severable; and, in the event of any portion of the Reduction Contract is held to be void, invalid, non-binding, or otherwise unenforceable, the remaining portion thereof shall remain fully valid, binding, and enforceable against the Bidder and NMFS.

39. Disputes. Any and all disputes involving the Reduction Contract, and any other Reduction Plan aspect affecting them shall in all respects be governed by the federal laws of the United States; and the Bidder and all other parties claiming under the Bidder irrevocably submit themselves to the jurisdiction of the Federal courts of the United States and/or to any other Federal administrative body which the applicable law authorizes to adjudicate such disputes.

40. Reduction Fishing Interests Identification.

a. Completion and Submission. The Bidder must fully, faithfully, and accurately complete this section 40 and thereafter submit the full and complete Reduction Contract to NMFS in accordance with the Reduction Contract. If completing this section requires inserting more information than the places provided for the insertion of such information allows, the Bidder should attach an addendum to the Reduction Contract: includes and identifies the additional information, states that the addendum is a part of the Reduction Fishing Interests Identification portion of the Reduction Contract, states (as a means of identifying the Reduction Contract to which the addendum relates) the NMFS license number designated on the Reduction Contract's Groundfish Reduction Permit, and is signed by all persons who signed the Reduction Contract as the Bidder.

b. Bidder Information.

1) Bidder name(s). Insert in the place this subsection b(1) provides the name(s) of the qualifying bidder and of the co-bidder (if there is a co-bidder), and check the appropriate column row for each name listed.

Each name the Bidder inserts must be the full and exact legal name of record of each person, partnership, corporation or other business entity bidding. If any Reduction Fishing Interest element is co-owned by more than one person, partnership, corporation or other business entity, the Bidder must insert each co-owner's name.

In each case, the qualifying bidder is the holder of record, at the time of Bidder's execution of this Reduction Contract, of the Groundfish Reduction Permit and the Reduction Permit(s). A co-bidder is not allowed for either the Groundfish Reduction Permit or the Reduction Permit(s). If the qualifying bidder is also the owner or record, at the time of bidding, of the Reduction Vessel, the qualifying bidder is the sole Bidder. If, however, the owner of record, at the time of bidding, of the Reduction Vessel is not exactly the same as the qualifying bidder, then the different owner of record is the co-bidder; and the qualifying bidder and the co-bidder jointly bid together as the Bidder.

<u>BIDDER NAME(S)</u> If qualifying bidder or co-bidder consists of more than one owner, use one row of this column to name each co-owner. If not, use only one row for qualifying bidder and one row for any co-bidder.	Check appropriate column below for each name listed in 1st column.	
	Qualifying bidder	Co-bidder (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

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2) Bidder address(s) of record. Insert in the place provided in this subsection b(2) the qualifying bidder's and the co-bidder's (if there is a co-bidder) full and exact address(s) of record, and check the appropriate column row for each address listed.

<p align="center"><u>BIDDER ADDRESS(S)</u></p> <p>If qualifying bidder or co-bidder consists of more than one owner, use one row of this column for address of each co-owner. If not, use only one row for qualifying bidder and one row for any co-bidder.</p> <p><i>Always use the same row order as is Bidder name table above (i.e. address (1) is for name (1), address (2) is for name (2), address (3) is for name (3), etc.</i></p>	<p align="center">Check appropriate column below for each name listed in 1st column.</p>	
	<p>Qualifying bidder</p>	<p>Co-bidder (if any)</p>
(1)		
(2)		
(3)		
(4)		
(5)		

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3) Bidder business telephone number(s). Insert in the place this subsection b(3) provides the qualifying bidder's and the co-bidder's (if there is a co-bidder) full and exact business telephone number(s), and check the appropriate column row for each number listed.

<p align="center"><u>BIDDER TELEPHONE NUMBER(S)</u></p> <p>If qualifying bidder or co-bidder consists of more than one owner, use one row of this column for telephone number of each co-owner. If not, use only one row for qualifying bidder and one row for any co-bidder.</p> <p><i>Always use the same row order as is Bidder name table above (i.e. telephone number (1) is for name (1), telephone number (2) is for name (2), telephone number (3) is for name (3), etc.</i></p>	<p align="center">Check appropriate column below for each name listed in 1st column.</p>	
	<p align="center">Qualifying bidder</p>	<p align="center">Co-bidder (if any)</p>
(1)		
(2)		
(3)		
(4)		
(5)		

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4) Bidder electronic mail address(s) (if available). Insert in the place this subsection b(4) provides the qualifying bidder's and the co-bidder's (if there is a co-bidder) full and exact electronic mail address(s), and check the appropriate column row for each address listed.

<u>BIDDER ELECTRONIC MAIL ADDRESS(S)</u> If qualifying bidder or co-bidder consists of more than one owner, use one row of this column for e-mail address of each co-owner. If not, use only one row for qualifying bidder and one row for any co-bidder. <u>Always use the same row order as is Bidder name above (i.e. e-mail address (1) is for name (1), e-mail address (2) is for name (2), e-mail address (3) is for name (3), etc.</u>	Check appropriate column below for each name listed in 1 st column.	
	Qualifying bidder	Co-bidder (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

c. LLP license number for Groundfish Reduction Permit. Insert in the place is subsection c provides the full and exact license number which NMFS designated on the LLP license which the qualifying bidder specifies as the Groundfish Reduction Permit. Attach with the Reduction Contract an exact photocopy of such license.

LLP LICENSE NUMBER SPECIFIED AS BID'S GROUND FISH REDUCTION PERMIT

d. License number(s) for Reduction Permit(s). Insert in the place this subsection d provides the fishery(s) involved in, and the full and exact license number(s) with NMFS designated on the license(s) which the qualifying bidder specifies in the Reduction Contract as the Reduction Permit(s). Enclose with the Reduction Contract an exact photocopy of each such license.

LICENSE NUMBER(S) AND FISHERY(S) OF LICENSE(S) SPECIFIED AS REDUCTION PERMIT(S)	
License Number(s)	Fishery(s)

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e. **Reduction Fishing History.** For all Reduction Fishing History insert in the place provided the chronological and other information with each column heading therein requires. The information required does not include any actual landing data. Any bidder whose Groundfish Reduction Permit whose issuance NMFS based on the fishing history of a lost or destroyed vessel plus a replacement vessel must insert information for both vessels. Any bidder whose Groundfish Reduction Permit whose issuance NMFS in any part based on acquisition of fishing history from another party must insert information regarding such catch history.

NAMES(S) AND OFFICIAL NUMBER OF REDUCTION VESSEL AND NAME(S) AND OFFICIAL NUMBER(S) OF ANY VESSEL FROM WHICH FISHING HISTORY WAS ACQUIRED	FOR EACH REDUCTION VESSEL IN 1 ST COLUMN: FROM/TO DATE OF EACH FISHING HISTORY BIDDER POSSESSES	FOR EACH FISHING HISTORY IN 2 ND COLUMN	
		License No. of each Groundfish Reduction Permit and Reduction Permit(s) associated with each vessel involved	If Reduction Vessel acquired fishing history from another party, name of party, manner in which acquired, and date required
(1)			
(2)			
(3)			
(4)			
(5)			

f. Reduction Vessel. Insert the full and exact name and official number which the National Vessel Documentation Center designated for the Reduction Vessel which the qualifying bidder or the co-bidder (if there is a co-bidder) specifies in the Reduction Contract, and check the column appropriate for the vessel's ownership of record. Enclose with the Reduction Contract an exact photocopy of such vessel's official certificate of documentation.

REDUCTION VESSEL		Check appropriate ownership column below	
		Qualifying bidder	Co-bidder (if any)
Official Name	Official Number		

g. Bid Amount. Insert in the place this subsection g provides the Bidder's full and exact bid amount, both in words and in numbers.

BID AMOUNT (U.S. DOLLARS)	
In words	In numbers

h. Reduction Contract signature.

In compliance with the Reduction Contract, applicable regulations and the applicable law, the Bidder submits the Reduction Contract as the Bidder's irrevocable offer to NMFS for the permanent surrender and relinquishment and revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate) of the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Fishing Privilege, and the Reduction Fishing History—all as identified in the Reduction Contract or as required under applicable regulations, or the applicable law.

The Bidder expressly acknowledges that NMFS' acceptance of the Bidder's offer hereunder and NMFS' tender, following a successful referendum, of a reduction payment in the same amount specified above (less any sum withheld for scrapping any Reduction Vessel lacking federal documentation or for any other purpose) to the Bidder shall, among other things, render the Reduction Vessel permanently ineligible or any fishing worldwide, including, but not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under United States flag, and shall impose or create other legal and contractual restrictions, impediments, limitations, obligations, or other provisions which

restrict, revoke, withdraw, invalidate, or extinguish by other means (as NMFS deems appropriate) the complete Reduction Fishing Interest and any other fishery privileges or claims associated with the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Vessel, and the Reduction Fishing History—all as more fully set forth in the Reduction Contract, applicable regulations, and the applicable law.

By completing and signing the Reduction Contract the Bidder expressly acknowledges that the Bidder has fully and completely read the entire Reduction Contract. The Bidder expressly states, declares, affirms, attests, warrants, and represents to NMFS that the Bidder is fully able to enter into the Reduction Contract and that the Bidder legally holds, owns, or retains, and is fully able under the Reduction Contract provisions to offer and dispose of, the full Reduction Fishing Interest which the Reduction Contract specifies and the applicable regulations, and the applicable law requires. Any person or entity completing the Reduction Contract and/or signing the Reduction Contract on behalf of another person or entity, expressly attests, warrants, and represents to NMFS that such completing and/or signing person or entity has the express and written permission or other grant of authority to bind such other person or entity to the Reduction Contract's terms and conditions. The Bidder expressly attests, warrants, and represents to NMFS that every co-owner of the Bidder necessary to constitute the Bidder's full and complete execution of the Reduction Contract has signed the Reduction Contract. The Bidder expressly attests, warrants, and represents to NMFS that the Bidder: fully understands the consequences of submitting the completed Reduction Contract of which it is apart to NMFS; pledges to abide by the terms and conditions of the Reduction Contract; and is aware of, understands, and consents to, any and all remedies available to NMFS for the Bidder's breach of the Reduction Contract or submission of a bid which fails to conform with the Reduction Contract, applicable regulations and the applicable law. The Bidder expressly attests, warrants, and represents to NMFS that all information which the Bidder inserted in the Reduction Contract is true, accurate, complete, and fully in accordance with the Reduction Contract, other applicable regulations and the applicable law.

IN WITNESS WHEREOF, the Bidder has, in the place provided below, executed the Reduction Contract) either as a qualifying bidder bidding alone or as a qualifying bidder and a co-bidder (if there is a co-bidder) jointly bidding together, in accordance with the requirements specified above, and on the date written below. The Reduction Contract is effective as of the date NMFS accepts the Bidder's offer by signing the Reduction Contract.

The qualifying bidder and the co-bidder (if there is a co-bidder) must each sign the Reduction Contract exactly as instructed herein. Each co-owner (if there is a co-owner) of each qualifying bidder or co-bidder (if there is a co-bidder) must also sign the Reduction Contract exactly as instructed herein. A notary public must, for each person or entity signing on behalf of the Bidder, complete and sign the acknowledgement and certification provision associated with each such person or entity's signature.

- 1) Qualifying Bidder's and co-bidder's (if there is a co-bidder) signature(s) and notary's acknowledgement(s) and certification(s).

BIDDER'S SIGNATURE AND NOTARY'S ACKNOWLEDGMENT AND CERTIFICATION.

If qualifying bidder or co-bidder consists of more than one owner, use one row of 1st column for each co-owner's signature. If not, use only one row for qualifying bidder and one row for co-bidder (if any).

Always use same Bidder row order as in Bidder name table in section 50.b(1) above (i.e. signature (1) is for name (1), signature (2) is for name (2), signature (3) is for name (3), etc.)

<u>BIDDER SIGNATURE</u> (1) Sign. (2) Print: (a) signer's name, (b) signer's title (if signing for corporation or other business entity), and (c) signing date	Check appropriate column for each signature in 1 st column		<u>Notary Signature</u> (1) Sign. (2) Print: (a) name, (b) signing date, (3) date commission expires, and (4) state and county. Each notary signature attests to following: "I certify that I know or have satisfactory evidence that the person who signed in the 1 st column of this same row is the person who appeared before me and: (1) acknowledged his/her signature; (2) on oath, stated that he/she was authorized to sign; and (3) acknowledged that he/she did so freely and voluntarily."
	Qualifying Bidder	Co-Bidder (if any)	
(1)			
(2)			
(3)			
(4)			

2) United States of America's signature.

United States of America,
Acting by and through the Secretary of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service,
Financial Services Division

By: _____ Dated: _____
Michael L. Grable, Chief
Financial Services Division

EXHIBIT B

Capacity Reduction Plan Agreement

This Capacity Reduction Plan Agreement is entered into by and among the undersigned members of the longline catcher processor subsector as defined in Section 219 of the FY 2005 Appropriations Act (the "Act") (collectively "Subsector Members" and individually a "Subsector Member") and the Freezer Longline Conservation Cooperative (the "FLCC").

RECITALS

- A. The Act establishes the BSAI Catcher Processor Capacity Reduction Program to reduce the capacity of various nonpollock catcher processor subsectors operating in the Bering Sea ("BS") and Aleutian Islands ("AI," collectively the "BSAI").
- B. As more fully set forth below, the parties to this agreement wish to develop and submit to the Secretary of Commerce (the "Secretary") a capacity reduction plan for the longline catcher processor subsector pursuant to Section 219(e) of the Act.

NOW, FOR VALUABLE CONSIDERATION, and in reliance on the foregoing, the parties agree as set forth below.

AGREEMENT

1. **Basic Agreement.** Subject to the terms of this agreement, the parties wish to develop and submit to the Secretary a voluntary capacity reduction plan for the longline catcher processor subsector (the "Longline Subsector") in compliance with Section 219(e) of the Act, 16 U.S.C. § 1861a, 50 CFR §§ 600.1000, et seq, and other applicable regulations, (a "Reduction Plan"). The Reduction Plan's express objective is to permanently reduce harvesting capacity in the longline catcher processor subsector of the BSAI non-pollock groundfish fishery (the "Reduction Fishery") by removal of Reduction Fishing Interests. No right, title and/or interest to harvest, process or otherwise utilize individual fishing quota ("IFQ") quota share in the halibut, sablefish and crab fisheries pursuant to 50 CFR §§ 679 and 680 shall be included as Reduction Fishing Interests.
2. **Capitalized Terms and Definitions.** Capitalized terms used in this agreement shall have the meaning specified in Exhibit A, which definitions shall be incorporated as if herein written. Other terms are defined in the text of this agreement and throughout this agreement those terms shall have the meanings respectively ascribed to them.
3. **Organization of Agreement.** To facilitate the organization and presentation of this agreement pursuant to which the Reduction Plan is to be developed and submitted to the Secretary, this agreement is organized into the following three major sections with miscellaneous sections following thereafter:
 - a. Qualification and Enrollment of Subsector Members;
 - b. Selection of Fishing Capacity to be Removed by the Reduction Plan; and
 - c. Submission of Reduction Plan.

The descriptive headings of the several sections contained in this agreement are included for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

4. Qualification and Enrollment of Subsector Members.

a. Distribution. A copy of this agreement, including exhibits, shall be mailed to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, P. cod and hook and line gear, as determined by the Auditor from the NMFS online LLP License database (the "Database") as of August 1, 2005, regardless of whether the LLP License is indicated in the Database as noninterim and transferable or otherwise.

b. Application. Any person, regardless of whether having received the mailing described above, may apply as a Subsector Member, by submitting the documents identified below:

- 1) Fully executed counterpart of this agreement;
- 2) Photocopy of the LLP License(s) on which Subsector Member's eligibility is based;
- 3) Unless applying as the holder of a Latent License, a photocopy of Federal Fisheries Permit for the vessel(s) which the LLP License(s) is attached on the date this agreement is signed by the Subsector Member;
- 4) Unless applying as the holder of a Latent License, a photocopy of the Certificate of Documentation ("COD") for the vessel(s) to which the LLP License(s) is currently attached; and
- 5) Executed Application Form (in the form attached hereto as Exhibit B and as published on the FLCC's website) which shall set forth whether the qualifying LLP License is a Latent License and identify the individual(s) authorized to execute and deliver Bids and Bid Ranking Ballots on behalf of the Subsector Member.

c. Examination By Auditor.

1) In General. Each application will be submitted to the Auditor. The Auditor will examine the applications for completeness and inconsistencies, whether on the face of the documents or with the Database. Any application which is incomplete or which contains inconsistencies shall be invalid. The Auditor will notify by e-mail any applicant of the basis for Auditor's finding an application invalid. An applicant must cure such basis for invalidity prior to the Auditor accepting an application as valid and enrolling the applicant as a Subsector Member.

2) Interim LLP Licenses. If an LLP License is interim and/or nontransferable, the applicant's enrollment shall be accepted as a Subsector Member and may fully participate in the Selection Process. However, any posting of a Bid submitted with respect to such LLP License shall note the status of such LLP License until Subsector Member submits to Auditor a letter from NMFS RAM division confirming that it is

within the Subsector Member's control to cause the qualifying LLP License to be issued as noninterim and transferable upon withdrawal of all applicable appeals.

d. Enrollment Period. Applications, and the curing of invalid applications, will be accepted until the Selection Process is completed.

e. Effective Date. The Effective Date of this agreement shall be ten (10) days after written notice is sent by the Auditor to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, P. cod and hook and line gear, as determined by the Auditor from the Database advising that the number of Subsector Members exceeds seventy percent (70%) of the members of the Longline Subsector as determined by the Auditor from the Auditor's examination of the Database.

f. Notice. All notices related to the effective date of this agreement shall be sent by the Auditor via registered mail.

g. Withdrawal. A Subsector Member, unless such Subsector Member is a Current Bidder or Selected Bidder, may terminate this agreement at any time with respect to that Subsector Member by giving ten (10) days written notice to the Auditor via e-mail. Withdrawal of a Subsector Member shall not affect the validity of this agreement with respect to any other Subsector Members. Once effective, this agreement shall continue in full force and effect regardless of whether subsequent withdrawals reduce the number of Subsector Members below that are required to effectuate this agreement. Attempted withdrawal by a Current Bidder or Selected Bidder shall be invalid, and such Bid shall remain a binding, irrevocable Bid, unaffected by the attempted withdrawal.

5. Selection of Fishing Capacity to be Removed by Reduction Plan. The fishing capacity removed by the Reduction Plan will be the fishing capacity associated with all LLP licenses and all federal fishery licenses, fishery permits, and area and species endorsements issued for a vessel, or any vessel named on LLP Licenses purchased through the Reduction Plan which are voluntarily offered in Bids made by bidding Subsector Members and as selected by the non-bidding Subsector Members, up to an aggregate amount of Thirty Six Million Dollars (\$36,000,000) as set forth in this section 5.

a. Overview. The Selection Process will begin upon the Effective Date of this agreement. The Selection Process will alternate on a weekly basis between (1) Submitting Periods, during which Subsector Members may submit Bids of fishing capacity Subsector Members wish to include in the Reduction Plan; and (2) Ranking Periods, during which non-bidding Subsector Members will rank the submitted Bids.

b. Bids.

1) Binding Agreement. A Bid from a Subsector Member shall be a binding, irrevocable agreement by a Subsector Member to sell to the Secretary the LLP Licenses and all other federal fishery licenses, fishery permits, and area and species endorsements issued for any vessel named on an LLP License identified thereon for the price set forth on the Bid contingent on such Bids being a Selected Bid at the closing of the Selection Process. Once submitted, a Bid may not be revoked or withdrawn while that Bid is a Current Bid or Selected Bid. A Bid that is submitted by a Subsector Member, but is not a Selected Bid during the subsequent Ranking,

shall be deemed to be terminated and the Subsector Member shall have no further obligation with respect to performance of that Bid.

2) Bid Content. All Bids submitted to the Auditor shall include the following information: LLP License number; license LOA; the license area, gear and species endorsements; a summary of the P. cod catch history for the calendar years 1995 – 2004; and the offered price. The Bid shall also state whether a vessel is currently named on the LLP License and as such will be withdrawn from the fisheries if the Bid is selected for reduction in the Reduction Plan. If so, the Bid shall identify such vessel by name, official number, and current owner. In addition, the Bid shall provide a summary of the P. cod catch history for the calendar years 1995 – 2004 of the vessel to be retired from the fisheries. All summary catch histories included in Bids shall be calculated utilizing both the weekly production report and best blend methodology and shall separately state for each methodology the P. cod catch in metric tons and as a percentage of the overall catch for the longline catcher processor subsector on an annual basis for each of the required years. If the vessel stated to be withdrawn from the fisheries is not owned by the LLP License owner of record, the Bid shall be countersigned by the owner of record of the vessel. A Bid offering a Latent License shall state on the Bid Form that the offered LLP License is a Latent License. The Bid Form shall also include a comment section for any additional information that Bidders wish to provide to the Subsector Members concerning the Bid.

3) Prequalification of Bids. A Subsector Member may submit a Prequalification Bid to the Auditor at any time prior to the Opening Date. A Prequalification Bid shall contain all elements of a Bid, except that a price need not be provided. The Auditor will notify the Subsector Member submitting a Prequalification Bid as to any deficiencies as soon as practicable. All details of a Prequalification Bid shall be kept confidential by the Auditor.

c. Submitting a Bid.

1) Bid Submission. Commencing on the first Tuesday following the Opening Date and during all Submission Periods until the Selection Process is closed, any Subsector Member may submit a Bid. All Bids are to be on the applicable form provided on the FLCC website, executed by an Authorized Party and submitted to the Auditor by facsimile. Any Subsector Member may submit a Bid during any Submission Period, even if that Subsector Member has not submitted a Bid in any previous Submission Period. If a Subsector Member holds more than one LLP License, such Subsector Member may, but is not required to, submit a Bid for each LLP License held during a Submission Period.

2) Submission Periods. The initial Submission Period shall commence at 9:00 a.m. on the Tuesday following the Opening Date and end at 5:00 p.m. on the Friday of that week. Subsequent Submission Periods shall commence at 9:00 a.m. on the first Tuesday following the preceding Ranking Period and end at 5:00 p.m. on the Friday of that week.

3) Validity of Bid. The Auditor shall examine each Bid for consistency with the Database and information contained in the enrollment documents. If, in the

opinion of the Auditor, there is an inconsistency in the information contained in the Bid, any of the elements required of a Bid pursuant to section 5.b.2) above are missing, or the Auditor does not receive the original Bid Form before the Bids are to be posted pursuant to section 5.d below, the Auditor shall notify the bidding Subsector Member by e-mail that the Bid is nonconforming as soon as practicable after discovering the basis of invalidity. The Subsector Member may submit a revised, conforming Bid prior to the close of that Submission Period or, in any subsequent Submission Period. Only one Bid may be submitted with respect to an LLP License during a Submission Period. In the event a Subsector Member submits more than one Bid with respect to an LLP License during a Submission Period, the first Bid received by the Auditor shall be binding and irrevocable and any subsequent Bids shall be deemed invalid.

4) Warranty. By submitting a Bid, Bidding Subsector Member, warrants and represents that the Bidding Subsector Member has read and understands the terms of this agreement, the Bid, the Fishing Capacity Reduction Contract in the form attached hereto as Exhibit C, has had the opportunity to seek independent legal counsel regarding such documents and/or agreements and the consequences of submitting a Bid.

d. Posting Bids.

1) Current Bids. For each Bid received during a Submission Period, the Auditor shall post on the Website no later than 5:00 p.m. on the following Tuesday all of the details of such Bid as set forth on the Bid Form. In addition, the Auditor shall post a summary by year of the prior nine (9) year's catch history in total round weight equivalents and percentage of Longline Subsector ITAC harvested for any vessel that is included in the Bid. If the Subsector Member (or vessel owner, if other than the Subsector Member) was a member of the FLCC when an analysis of the FLCC's membership's catch history was performed by the Auditor, the Subsector Member (or vessel owner, as the case may be) expressly authorizes release of the catch history summary information previously prepared for that Subsector Member or vessel owner by the Auditor.

2) Posting Order. Bids shall be posted on the Website by the Auditor in alphabetical order of the Bidding Subsector Member's name.

3) Questions as to Bid. The Auditor shall respond to no questions from Subsector Member regarding Bids except to confirm that the posting accurately reflects the details of the Bid. If a Bidding Subsector Member notices an error in a Bid posting on the Website, such Subsector Member shall notify the Auditor as soon as practicable. The Auditor shall review such notice, the posting and the original Bid. If an error was made in posting the Auditor shall correct the posting as soon as practicable and notify the Subsector Members via e-mail of the correction. In the event such an error is not discovered prior to Ranking, a Bidding Subsector Member shall be bound to the terms of the submitted Bid, not the terms of the posted Bid.

4) Archive. The Auditor shall maintain on the Website an archive of prior Bids posted, which shall be available for review by all Subsector Members.

e. Ranking.

1) Eligibility. Each Subsector Member that has not submitted a Bid during the preceding Submission Period, or whose vessel is not included as a withdrawing vessel in a Bid during the preceding Submission Period (a "Nonbidding Subsector Member"), may submit to the Auditor a Ranking Form during a Ranking Period. With respect to Ranking, a Subsector Member that holds more than one LLP License may participate in the Ranking process for each non-bidding LLP License. However, Subsector Members are cautioned that on this "one license equals one vote" procedure may not be applicable to the actual Longline Subsector referendum conducted by the Secretary. A request for clarification of the referendum voting procedure has been submitted to NOAA General Counsel and any clarification received will be distributed to the Subsector Members.

2) Ranking Period. The initial Ranking Period shall commence immediately after the Bids from the preceding Submission Period have been posted and end at 5:00 p.m. on the Friday of that week. Subsequent Ranking Periods shall commence immediately after the Bids from the preceding Submission Period have been posted and end at 5:00 p.m. on the Friday of that week.

3) Ranking Form. Prior to each Ranking Period, the Auditor will post a Ranking Form on the Website in pdf file format. Each eligible Subsector Member wishing to rank the current Bids shall rank the Bids on the Ranking Form numerically in the Subsector Member's preferred order of purchase, with the Bid that Subsector Member would most like to have accepted ranked number one (1), and subsequent Bids ranked sequentially until the Bid that the Subsector Member would least like to see accepted is ranked with the highest numerical score. A Subsector Member wishing to call for a Closing Vote shall, in lieu of ranking the Current Bids, mark the Ranking Form to accept the current Selected Bids and close the Selection Process. To be valid, the Ranking Form must rank each Current Bid listed on the Ranking Form or, if applicable, be marked to call for a Closing Vote. Ranking Forms shall be submitted by sending a completed Ranking Form, signed by an Authorized Party, to the Auditor by facsimile prior to the end of the Ranking Period. A Subsector Member is not required to rank the Bids during a Ranking Period or call for a Closing Vote.

4) Validity of Subsector Member Ranking. The Auditor shall examine each Ranking Form for completeness and authorized signature. Any incomplete Ranking Form(s) shall be invalid, and shall not be included in the Rankings of the Current Bids. The Auditor shall notify the Subsector Member of the reason for declaring any Ranking Form invalid as soon as practicable. A Subsector Member may cure the submission of an invalid Ranking Form by submitting a complying Ranking Form if accomplished before the end of the applicable Ranking Period.

f. Ranking Results.

1) Compiling the Rankings. The Auditor shall compile the results of the Ranking Forms by assigning one point for each position on a Ranking Form. That is, the Bid ranked number one (1) on a Ranking Form shall be awarded one (1) point, the Bid ranked two (2) shall receive two (2) points, and continuing on in this manner until

all Bids have been assigned points correlating to its ranking on each valid Ranking Form. The Bid with the least number of total points assigned shall be the highest ranked Bid, and the Bid with the greatest total points assigned shall be the lowest ranked Bid.

2) Posting Rankings. The Auditor shall post the results of the compilation of the Ranking Forms on the Website in alphabetical order based on the Bidding Subsector Member's name no later than 5:00 p.m. on the Monday following the Ranking Period. Those Bidding Subsector Members whose Bids are posted shall be "Selected Bidders" and their Bids shall be "Selected Bids." Those Bidding Subsector Members whose Bids are not posted shall be "Rejected Bidders."

3) No Details. The Auditor shall post the highest ranking Bids that total Thirty Six Million Dollars (\$36,000,000) or less. Other than the name of the Bidding Subsector Member and the amount of the Bid, the Auditor shall not post any details of the compilation of the Ranking Forms.

4) Selected Bidders. Selected Bidders may not withdraw or modify their Bids unless in subsequent rankings their Bids no longer are within the highest ranking Bids and they become Rejected Bidders.

5) Rejected Bidders. The Bid of a Rejected Bidder is terminated and the Rejected Bidder is no longer bound by the terms of its Bid. A Rejected Bidder may, at its sole discretion, resubmit the same Bid, submit a revised Bid, or elect not to submit a Bid, during any subsequent Submission Period until the Selection Process is closed.

6) Ties. In the event there is a tie with respect to Bids which results in the tied Bids exceeding Thirty Six Million Dollars (\$36,000,000), the tied Bids and all Bids ranked lower than the tied Bids shall be deemed to be rejected and the Rejected Bidders may, at their option, submit a Bid in a subsequent Submission Period.

7) Archive. Auditor shall maintain on the Website an archive of prior Bid Rankings as posted over the course of the Selection Process, which shall be available for Subsector Member review.

g. Closing. The Selection Process will close when Subsector Members, who collectively constitute two-thirds (2/3) of the Nonbidding Subsector Members of the Longline Subsector as determined by the Auditor, affirmatively vote to accept the Selected Bidders as the Bids on which to submit the Reduction Plan to the Secretary.

1) Call for Vote. A Closing Vote will held when: (a) two-thirds (2/3) of the Nonbidding Subsector Members submit Ranking Forms electing to accept the Selected Bidders and close the Selection Process; and (b) there are no unresolved Protests or Arbitrations. The Auditor shall notify all Subsector Members by e-mail and posting a notice on the Website as soon as practicable that a Closing Vote is to be held. Such notice shall state the starting and ending dates and times of the voting period, which shall be not less than three (3) nor more than seven (7) calendar days from the date of such notice. A voting period shall commence at 9:00 a.m. on Monday and end at 5:00 p.m. on the Friday of that week.

2) **Voting.** No less than three (3) calendar days prior to the voting period, the Auditor will post a Ballot on the Website in pdf file format. Each eligible Subsector Member wishing to vote shall print out the Ballot, cast its vote either in favor of or opposed to accepting the currently Selected Bids and submit a completed and signed Ballot to the Auditor by facsimile prior to the end of the Voting Period.

3) **Ballot Verification.** The Auditor shall examine each submitted Ballot for completeness and authorized signature. Any incomplete Ballot shall be void, and shall not be included in the voting results. **The Auditor shall not notify the Subsector Member of an invalid Ballot.**

4) **Voting Results.** As soon as practicable after voting closes the Auditor shall post the results of the Vote. If the affirmative votes are sufficient to close the Selection Process, the Bids of the Selected Bidders approved in the acceptance vote shall be the basis for the Reduction Plan submitted to the Secretary. If the affirmative votes are not sufficient to close the Selection Process, the selection will resume with the next Submission Period commencing 9:00 a.m. on the Tuesday following the posting of the voting results.

5) **Notification to Secretary.** Upon closing of the Selection Process, FLCC shall notify the Secretary in writing of the identities of the Selected Bidders and provide to the Secretary certified copies of the Selected Bids, the fully executed Capacity Plan Agreement and Application submitted by the Selected Bidder.

6. **Submission of Reduction Plan.** Upon completion of the Selection Process, the Subsector Members shall submit to the Secretary the Reduction Plan which shall include the provisions set forth in this section 6.

a. **Capacity Reduction.** The Reduction Plan shall identify as the proposed capacity reduction, without auction process, the LLP Licenses as well as the vessels and the catch histories related to the LLP Licenses, and any other fishing rights or other assets associated with the LLP Licenses included in the Selected Bids.

b. **Loan Repayment.**

1) **Term.** As authorized by Section 219(B)(2) of the Act, the capacity reduction loan authorized by the Act shall be amortized over a thirty (30) year term. Subsector Members acknowledge that in the event payments made under the Reduction Plan are insufficient to repay the actual loan, the term of repayment may be extended by the Secretary until the loan is paid in full.

2) **Interest.** The loan amount shall bear interest pursuant to 46 USC App. § 1279g(b).

3) **Payment.** Pursuant to Section 219(e)(2)(B) of the Act, repayment shall be based on a cents per pound basis of the round weight equivalent of all products produced by vessels engaged in the Longline Subsector following the implementation of the Reduction Plan without regard to product type. The amount of such fee shall be calculated on an annual basis as follows: the principal and interest payment

amount necessary to amortize the loan over a thirty (30) year term, divided by the Longline Subsector P. cod ITAC allocation in pounds, provided that the fees per pound shall not exceed five percent (5%) of the average ex-vessel production value of the Longline Subsector as determined by NMFS. For purposes of calculating a vessel's payment amount, P. cod discarded or used for bait shall be deemed to be products, with fees assessed thereon.

4) Collection. The LLP License holder of the vessel harvesting P. cod in the post-capacity reduction plan Longline Subsector shall be responsible for self-collecting the repayment fees owed by that LLP License holder. Fees shall be submitted to NMFS no later than January 31 of the calendar year following the year for which fees were collected.

c. Agreement with Secretary. Each Selected Bidder, and vessel owner if not the Subsector Member, that has submitted a Selected Bid shall complete and deliver to the FLCC for inclusion in the Reduction Plan submitted to the Secretary, a fully executed agreement Fishing Capacity Reduction Contract in the form attached hereto as Exhibit C. Any and all LLP License(s) and or vessels set forth on a Selected Bid shall be included as Reduction Fishing Interests in such Fishing Capacity Reduction Contract.

7. Review/Disputes. The Subsector Members acknowledge and agree that time is of the essence in developing and implementing a Reduction Plan. Accordingly, the Subsector Members agree that they shall be limited to, and bound by the decisions rendered in, the review, protest and arbitration process set forth in this section 7. Any dispute or controversy between or among Subsector Members not brought pursuant to the provisions of, and not brought within the time limits provided in, this agreement shall be deemed to have been waived by Subsector Member(s).

a. Compliance with FLCC Bylaws. By motion unanimously accepted by the members of the FLCC on February 21, 2005, the members of the FLCC approved the FLCC's development of a capacity reduction program in compliance with the Act (the "Motion"). The Subsector Members acknowledge that the implementation of this dispute resolution provision, and any dispute arising under this agreement, are within the scope of developing the capacity reduction program as approved in the Motion and, as such, are not in conflict with Section 4.7 of the Bylaws of the FLCC which requires action of the FLCC to be approved by unanimous vote of the membership.

b. Scope of Auditor's Examination. The Auditor's examination of submitted applications, Bids, Prequalification Bids and Rankings shall be solely ministerial in nature. That is, the Auditor will verify whether the documents submitted by Subsector Members are, on their face, consistent with each other and the Database, in compliance with the requirements set forth herein, and, signed by an Authorized Party. The Auditor may presume the validity of all signatures on documents submitted. The Auditor shall not make substantive decisions as to compliance (e.g., whether an interim LLP License satisfies the requirements of the Act, or whether a discrepancy in the name appearing on LLP Licenses and other documents is material).

c. Review. A Subsector Member may request FLCC Counsel to review any decision of the Auditor by submitting via e-mail a written notice of protest to the Auditor and FLCC Counsel no later than seventy-two (72) hours after the Auditor's decision. Such notice shall state with particularity the basis for the protest. No formal process shall be established for

the review. In evaluating the review request, FLCC Counsel may gather such evidence as he/she deems necessary to evaluate the matter, including interviewing the protesting Subsector Member (at which interview the protesting Subsector Member may be represented by counsel) and/or any other person with information relative to the protest, and obtain such third party opinions as FLCC Counsel deems reasonably necessary. FLCC Counsel shall issue a written determination of the review to the requesting Subsector Member and the Auditor no more than forty-eight (48) hours after receiving the request. If it is not possible for sufficient facts, data or documents to be obtained by FLCC Counsel within such time, FLCC Counsel shall advise the requesting Subsector Member and requesting Subsector Member may either agree to a mutually agreeable extension of time for FLCC Counsel to gather such information, or elect to proceed to arbitration.

d. Arbitration. Any dispute or controversy between the parties arising out of or relating to this agreement and/or the performance of the acts contemplated herein, shall be determined by binding arbitration in Seattle, Washington under the Arbitration Rules before a single arbitrator selected pursuant to Rule 15 of the Arbitration Rules. If the matter being arbitrated is not a direct dispute between or among Subsector Members, the FLCC shall be the designated party to respond to arbitration of the dispute or controversy under the direction of the then elected FLCC officers and represented by FLCC Counsel. Judgment on the award rendered by the arbitrator shall be binding, final and nonappealable and may be entered in any state or federal court located in Seattle, Washington. Unless the arbitrator determines otherwise, each party shall bear one-half of the costs of the arbitration proceeding.

e. Conflicts. Subsector Members acknowledge that FLCC officers and FLCC Counsel may have actual or apparent conflicts of interest with respect to dispute resolutions. Accordingly, in the event of such actual or apparent conflict of interests, the following provisions shall apply.

1) FLCC Officers. No FLCC officer shall direct the FLCC's response, position, role or action with respect to a dispute with any Subsector Member in which such FLCC officer owns, directly or indirectly, an interest, or has contracted to acquire, directly or indirectly, an interest.

2) FLCC Counsel. In the event that any Subsector Member seeking review of a decision by the Auditor and/or arbitration under this agreement is a current client of Bauer Moynihan & Johnson LLP, the firm of Mundt MacGregor LLP shall serve as FLCC Counsel with respect to that matter. If such Subsector Member is a current client of both Bauer Moynihan & Johnson LLP and Mundt MacGregor LLP, the officers of FLCC shall select counsel to represent the FLCC in that matter.

8. Fees/Costs. All fees and costs incurred with the consent of the FLCC, including without limitation Website development and hosting charges, Auditors fees, legal fees and expenses, in developing and submitting the Reduction Plan shall be borne by the FLCC. In addition, the FLCC shall represent the Longline Subsector in the event of arbitration brought by a Subsector Member in which there is no identifiable opposing Subsector Member.

9. Enforcement//Specific Performance. The parties hereto agree that the opportunity to develop and submit a capacity reduction program for the longline catcher processor subsector under the terms of the Act is both unique and finite and that failure of a Selected Bidder, and vessel

owner, if not a Subsector Member, to perform the obligations provided by this agreement will result in irreparable damage to the FLCC, the Subsector Members and other Selected Bidders. Accordingly, the parties hereto expressly acknowledge that money damages are an inadequate means of redress and agree that upon the failure of Selected Bidder, and vessel owner if not a Subsector Member, to fulfill its obligations hereunder that specific performance of these obligations may be obtained by suit in equity brought by the FLCC in any court of competent jurisdiction without obligation to arbitrate such action as may otherwise be required pursuant to section 7 above.

10. Miscellaneous.

a. Time/Holidays. All times related to the Selection Process shall be Seattle local time. In the event that any date occurring within the Selection Process is a federal holiday, the date shall roll over to the next occurring business day.

b. Termination. If the requisite number of Subsector Members have not enrolled by December 31, 2005, all applications will be deemed to have been withdrawn, and this agreement shall be of no further force or effect. This agreement shall automatically terminate if no vote of acceptance is completed by December 31, 2006. This agreement may be terminated at any time by written notice from fifty percent (50%) of Subsector Members.

c. Choice of Law/Venue. This agreement shall be construed and enforced in accordance with the laws of the state of Washington without regard to its choice of law provisions. The parties submit to the exclusive personal jurisdiction of the United States District Court located in Seattle, Washington, with respect to any litigation arising out of or relating to this agreement or out of the performance of services hereunder.

d. Incorporation. All executed counterparts of this agreement, Application Forms and Bids constitute the agreement between the parties with respect to the subject matter of this agreement and are incorporated herein as if fully written.

e. Counterparts. This agreement may be executed in multiple counterparts and will be effective as to signatories on the Effective Date. This agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute the same agreement, whether or not all parties execute each counterpart. The facsimile signature of any party to this agreement shall constitute the duly authorized, irrevocable execution and delivery of this agreement as fully as if this agreement contained the original ink signatures of the party or parties supplying a facsimile signature.

This agreement is executed this _____ day of _____, 2005 and shall become effective on the Effective Date as defined herein.

By: _____
Its: _____

Exhibit A
Definitions

- a. "Act" means Section 219 Public Law No. 108-447.
- b. "Arbitration Rules" means the then current edition of the JAMS Comprehensive Rules & Procedures, amended or supplemented, as the case may be, to provide that, unless by mutual agreement of all parties to an arbitration: (1) the arbitration hearing shall occur within sixty (60) days of the commencement of the arbitration; and (2) no party to an arbitration shall be granted extensions for complying with any deadline set forth in the Arbitration Rules or by the arbitrator which cumulatively exceed seven (7) calendar days.
- c. "Authorized Party" means the individuals authorized by Subsector Members on the application form to execute and submit Bids, Rankings, protests and other documents and/or notices on behalf of Subsector Member.
- d. "Auditor" means Jack V. Tagart, Ph.d., d/b/a Tagart Consulting.
- e. "Bids" means a binding offer from a Subsector Member to sell its LLP, right to participate in the fisheries, the fishing history associated with such LLP, and any vessel set forth on the Bid Form submitted by Bidder pursuant to the terms of this agreement.
- f. "Current Bidder" means a Bidding Subsector Member that has submitted a Bid to the Auditor during any submission period and, with regard to such Bid, Bidder has not become a Rejected Bidder. The term "Current Bidder" includes Selected Bidders.
- g. "FLCC Counsel" means Bauer Moynihan & Johnson LLP or other counsel as selected pursuant to section 7.e.2) above representing the FLCC in any review or arbitration under this agreement.
- h. "Latent License" means a LLP License which was not attached to a vessel at the time a Bid is submitted.
- i. "LLP License" means a Federal License Limitation program groundfish license issued pursuant to 50 C.F.R. § 679.4(K) or successor regulation that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for BS or AI catcher processor fishing activity, C/P, P. cod and hook and line gear.
- j. "Opening Date" means the first Monday following the Effective Date set forth in section 4.e of this agreement.
- k. "Person" includes any natural person(s) and any corporation, partnership, limited partnership, limited liability company, association or any other entity whatsoever, organized under the laws of the United States or of a state.
- l. "Ranking Form" means the form posted by the Auditor pursuant to section 5.e.3).
- m. "Reduction Fishing Interests" shall have the meaning ascribed thereto in the Fishing Capacity Reduction Contract attached hereto as Exhibit C.

- n. "Rejected Bid" means a Bid that has been through one or more Rankings and is not a Selected Bid following the latest Ranking Period, with respect to which the Bidding Subsector Member's obligations have terminated pursuant to sections 5.b.1) and 5.f.5).
- o. "Selection Process" means the process set forth in section 5 of this agreement for selecting the fishing capacity to be removed by the Reduction Plan.
- p. "Website" means the internet web site developed and maintained on behalf of the FLCC for implementation of the Selection Process described herein.