

## Executive Director's Report

### Kudos to Arne Fuglvog

Most of you know by now that one of our Council members, Arne Fuglvog, was named Highliner of the Year by National Fisherman. The article noted not only Arne's successful fishing operations, but his long-term involvement in, and contributions to, the arena of fisheries politics and management. That includes being president of Petersburg Vessel Owners Association, a board member of United Fishermen of Alaska, a member of numerous Council Committees, an AP member, and of course, a current Council member. Congratulations Arne! Congratulations are also due to Dan Hanson, captain of the Arctic Fjord, for achieving 2003 Highliner status.

### And to Kaja Brix

Major congratulations are also in order to Ms. Kaja Brix, who was just selected to head up the Protected Resources Division at the Alaska Region, following Mike Payne's move back east - Assistant Regional Administrator for Protected Resources is the official title, I believe. Kaja started in the Sustainable Fisheries Division in 1992 before moving to the PR Division. Looks like we'll be seeing her around Council meetings once again. Congratulations Kaja and best of luck in the new job.

### DC conference

Thanks to all of you who participated in or attended the 'Managing our Nation's Fisheries' Conference in Washington, DC last month. You all helped make the conference a success. For those of you who did not attend, the event was successful enough that you will probably get another chance, maybe in 2005! We had some great panel discussions, regional presentations from around the country, and some wonderful keynote speakers, including a particularly high-energy, opening speech from Senator Ted Stevens. The next step is compilation of the conference proceedings, which we hope to have completed within a couple months.

### Pollock co-op reports and agreements

Regulations implementing the American Fisheries Act (AFA) call for pollock co-ops to submit draft year-end reports, and co-op agreements for the upcoming year, to the Council by December 1 of each year. Over the past couple years we have reserved review of these reports and agreements until February, noting that few changes have occurred in the co-op agreements, and that the year-end reports will be more complete in February. That is why you do not see this on the December agenda. We do have draft reports available for those who would like to see them prior to the February meeting.

## NMFS Social Science Survey

NOAA Fisheries is going to conduct a national survey of employment in the commercial harvest and recreational charter sectors of the fishing industry in 2004. The purpose of the survey is to provide estimates of the number of people employed in the fishing industry for each region and the nation, in both Federal and State waters. This information will be used to help NOAA, the regional Councils, state agencies, and the public understand the potential economic effects of proposed changes in the commercial and recreational fisheries. The survey will be mailed to a sample of vessel owners and/or captains beginning in February 2004. Your voluntary cooperation in this survey is appreciated and will help contribute to better analyses. No confidential information will be released or published. An announcement of the survey and an example survey are provided under B-1(a).

## SSL Panel for Experimental Areas

Under Steller sea lion related actions in October, we discussed the recommendation from the Council's Committee to issue an RFP, or appoint a scientific panel, to evaluate and suggest an approach to conducting an adaptive management experiment to test effects of fishing on SSL. This was the key recommendation from the National Academy of Science study completed last year. After further discussions among Council and Agency personnel, and the Chair of the Council's Committee, we are recommending to proceed with appointment of a 'Blue Ribbon Panel', rather than issue an RFP. I have earmarked up to 75k from our SSL funding to cover this potential project. We will need Council approval to move forward, either at this meeting or in February, but I would like to discuss specific panel membership further with Dr. DeMaster and others before proceeding.

## Evening Events

It's been a busy week already for evening sessions, and tonight there will be a seminar hosted by UAA on Effects of Fishing on Habitat, featuring some of the reports from last year's national conference in Florida. Dr. Gordon Kruse will present findings from the National Research Council's report on trawling and dredging, and Dr. Jon Heifetz will present a summary of the Alaska Fisheries Science Center's research to date. See flyer under B-1(b). That will be from 7:00 pm to about 9:00 pm in the AP meeting room. Women's Fisheries Network (WFN) is also hosting a fundraiser tonight at the Anchorage Museum (7<sup>th</sup> and C Street), from 7:00 pm to 10:00 pm, with John Sabella's documentary "A Century of Fish" showing at 8 pm. Admission is \$30 and you also get to see Sue, the largest T-Rex ever discovered. See their flyer under B-1(c). Tomorrow night the Council's Fur Seal Committee will meet at 6:30 pm, also in the AP meeting room.

## Information (Data) Quality Act comments

In October I alerted you to the proposed guidelines from OMB regarding the Information (Data) Quality Act, and the implications for independent review of data, information, and analyses in our process. Under B-1(d) I have again included the Proposed Bulletin, and initial comments from NOAA Fisheries Alaska Region. I have begun drafting a set of Council comments, but I want to get our SSC comments, and hopefully NOAA Fisheries HQ comments, before I complete a draft. I

suggest we revisit this issue later this week, perhaps on Sunday, so that you can review a complete set of comments. Monday the 15<sup>th</sup> is the deadline for comments!

### Executive Sessions later this week

We have scheduled an Executive Session for Friday at lunchtime, to discuss 2004 SSC and AP appointments. Dr. Marasco would like to discuss SSC structure with the Council and he will be in town through Friday. I had also planned for a Finance Committee meeting this week, but given that our final budget numbers for 2004 are not available, I would like to postpone this until February where I can review the status of all of our grants and their attendant budget plans.

### PNCIAC Appointments

Following the October meeting, where we solicited for 2004 SSC and AP nominations, I forgot to also solicit for nominations to the Council's Pacific Northwest Crab Industry Advisory Committee (PNCIAC), which occurs every two years. My intent would be to do so following this meeting, and have the Council make appointments in February for the 2004/2005 terms.

### NEPA training in January

NOAA Fisheries is sponsoring a training session on the National Environmental Policy Act (NEPA) for the North Pacific Fishery Management Council family. It will be January 15 and 16, 2004, (from 8:00 to 4:30 on Thursday and Friday), in the Dillingham Room, Hilton Anchorage, Anchorage, Alaska. The instructors are Drs. Larry Canter and Sam Atkinson of Environmental Impact Training assisted by Tamra Faris, the Alaska Region NEPA Coordinator. All have previous experience working with the North Pacific Fishery Management Council. A complete course agenda and biographies of the instructors are posted at <http://www.fakr.noaa.gov/analyses/nepatraining.htm>

The target audience includes all Council members, Council committee members: the Advisory Panel, Scientific and Statistical Committee, Essential Fish Habitat Committee, Fur Seal Committee, etc. Public members are invited too -- Fishing industry representatives, fishing community representatives, environmental group representatives, and any interested non-governmental organization representative. The material will be geared to users and reviewers of NEPA documents. (Council staff and Agency staff, the preparers of your NEPA documents, are offered more extensive NEPA training in separate sessions and different locations.)

No charge for the class, however, pre-registration is required. Please e-mail Tamra Faris ([tamra.faris@noaa.gov](mailto:tamra.faris@noaa.gov)) or phone (907)586-7645 with your name, address, phone, and e-mail address. The Hilton Anchorage is offering a special \$80 per night room rate for any attendees that want to stay there. 1-800-245-2527 specify NOAA Fisheries NEPA Conference.

### Preliminary IPHC Catch Limits

B-1(e) is a news release from the IPHC announcing the staff recommendations for 2004 halibut catch limits. They are nearly the same as for 2003 (an overall limit of 73.69 vs 74.92 in 2003), with a

slight increase in 3A and a slight decrease in 3B. The Commission will meet January 20-23 in Juneau, Alaska to determine final catch limits.

### Deep Sea Coral Protection Act

For your information, B-1(f) is a recently introduced bill in Congress (S.1953) which, among other things, would designate 'Coral Management Areas' within which mobile bottom-tending gear would be prohibited. The bill specifies a number of initial designations, including five in Alaska waters that appear to correspond to recently discovered areas of coral formations. It also lays out a process for identifying other areas based on NMFS observer or logbook data, coral and sponge bycatch data (collection of which would be required by NMFS), research, and an annual NRC data review. I have not examined the bill in great detail, or discussed it with agency staff, but wanted to make you aware of it.

### Travel claims

As it is near year-end accounting time, please submit any outstanding travel claims, and claims for this meeting, as soon as possible. Thanks!

### Korean Delegation

Thursday at 1:00 pm we will take a few minutes to greet a delegation from Korea, who will describe for the Council the Pacific Rim Conference being hosted in Korea next year.

# National Survey of Employment in Marine Commercial and Recreational For-Hire Fisheries

## What Information Do We Need?

We want to learn how many people work on commercial fishing and for-hire vessels throughout the United States. National employment figures are important information on any industry. Fishing is no exception

## How Will We Use the Information?

The information will be used to help NOAA Fisheries, the management councils, state agencies, and the interested public understand the potential economic effects of proposed regulations on commercial and for-hire fishermen in the commercial and recreational fisheries, and on fishing communities. These analyses are required by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and Executive Order 12866.

Your information will make it possible for NOAA Fisheries to estimate the number of people employed in the industry for the regions and the nation. NOAA Fisheries hasn't published nation wide estimates of employment for many years because it hasn't collected this kind of information for the whole country for a long time. This information is essential for characterizing and tracking the magnitude of the commercial and for-hire recreational harvest sectors.

## How Will The Information Be Collected?

A short survey will be mailed to vessel owners and/or captains beginning in February 2004. Each owner or captain who gets drawn in the sample will be asked to report the number of crew employed on an average trip in each fishery in which they participated in 2003, as well as the number of days per two month period that they fished per fishery. Any vessel that 1) holds a federal or state permit or license, and 2) participated in fishing activity in either state or federal waters in 2002 or 2003 may be contacted to participate.

## What Will the Survey Look Like?

You can see an example of the survey on the back of this flyer. The survey will be printed in six languages including English, Spanish, Portuguese, Sicilian Italian, Vietnamese, and Korean.

## Who Will Use This Information?

The results of this research will be used by NOAA Fisheries (National Marine Fisheries Service), the fishery management councils, state agencies, industry, and all interested citizens.

## Information Confidentiality

No confidential information will be released or published.

## For more information contact:

Susan Abbott-Jamieson  
NOAA Fisheries, Office of Science and Technology  
1315 East-West Hwy SSMC3 #12609  
Silver Spring, MD 20910  
PH (301) 713-2328  
[Susan.Abbott-Jamieson@noaa.gov](mailto:Susan.Abbott-Jamieson@noaa.gov)



NOAA Fisheries

**SAMPLE SURVEY**

**INTRODUCTION:** We are interested in learning how many people work on commercial fishing and for-hire vessels throughout the United States. At this time it is not possible to calculate an accurate employment figure because no one has collected the necessary information in a consistent way. Yet when fishing regulations are proposed, it is critical to understand how many fishermen might be affected. To estimate how many people are employed in the Nation's fisheries, we need to know how many crew worked on each fishing vessel throughout the year, and how many days a vessel spent fishing in each fishery.

**INSTRUCTIONS:** First, write down the names of each fishery you fished in 2003 in the first column. Next, write in your best estimate of average crew size per trip (including the captain) for each two-month interval in which you operated in each fishery and the number of days in which you fished in each fishery. Please be sure to identify all fisheries that you operated in during each two-month interval. Below is an example to see what a completed form might look like.

When you have completed the survey, please return the form in the prepaid envelope provided. Please note that you have been randomly selected from a list of vessels registered or licensed to fish in federal or state waters. All information provided will be treated as confidential in accordance with NOAA Administrative Order 216-100, "Confidentiality of Fishery Statistics."

Thank you in advance for your time and assistance.

**EXAMPLE FILLED IN:**

FOR 2003 (write in the name of each fishery)	Jan / Feb		Mar / Apr		May / June		July / Aug		Sept / Oct		Nov / Dec	
	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)
Summer Flounder					3	10	3	20				
Bluefin Tuna	2	20	2	30								
Gulf Shrimp									1	10	1	20

If your vessel was not used for fishing in 2003, please check here  and return this survey in the enclosed prepaid envelope.

**COMMERCIAL FISHING EMPLOYMENT SURVEY**

FOR 2003 (write in the name of each fishery)	Jan / Feb		Mar / Apr		May / June		July / Aug		Sept / Oct		Nov / Dec	
	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)	Average Crew Size per trip	Days at-sea (include days fished, search and steaming time)

If you are interested in receiving survey results, please check here

**Informational meeting:**

**Impacts of Bottom Trawling on North Pacific Marine Habitats:  
Current Research Results**

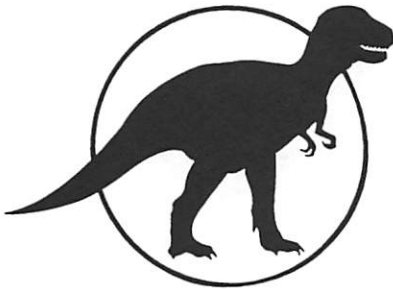
Research related to impacts of fishing on bottom habitats will be presented at a public evening session in Anchorage, on Wednesday, December 10. Findings from the National Research Council's report on trawling and dredging impacts on fish habitat will be presented by Dr. Gordon Kruse, University of Alaska Fairbanks, School of Fisheries and Ocean Sciences. Dr. Jon Heifetz, National Marine Fisheries Service, will present a summary of the Alaska Fisheries Science Center's research to date on the effects of fishing on the ocean bottom.

The presentations will be followed by discussion. This is an opportunity for dialogue with researchers currently involved in this issue. The University of Alaska Marine Advisory Program/Alaska Sea Grant is sponsoring the evening session.

Wednesday, December 10, 7 to 9 pm  
Dillingham/Katmai Room, Anchorage Hilton Hotel

For more information, contact Paula Cullenberg at [anpjc@uaa.alaska.edu](mailto:anpjc@uaa.alaska.edu)  
or call 274-9691

# WFN ALASKA CHAPTER 2003 FUNDRAISER “An Evening of Contrasts”



**T-REX:  
EXTINCT!**



**ALASKA FISHING  
INDUSTRY: ALIVE  
and EVOLVING  
AFTER MORE THAN A  
CENTURY!**

Where: Anchorage Museum (7th and C street)

When: Wednesday, Dec. 10, 7 to 10 PM

Admission \$30. Buffet and no-host bar

**SEE Sue, the largest T-rex in N. America**

**VIEW** John Sabella's documentary

**“Centuries of Fish”** (showing at 8:00 PM).

Thanks to contributors Alaskan Leader Fisheries, Aleutian Spray Fisheries, Blue North Fisheries, Frontier Alaska,



to March 24, 2003. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated July 2, 2003. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated July 22, 2003. In its response, the Licensee contended the violation may have been based on false information; therefore, the violation may not have occurred. The Licensee also requested full mitigation of the proposed civil penalty.

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of \$5,500 within 30 days of the date of this Order, in accordance with NUREG/BF-0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional

Administrator, NRC Region III, 891 Warrenville Road, Lisle, IL 60532-4351. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov).

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and
- (b) Whether, on the basis of such violation, this Order should be sustained.

Dated this 5th day of September, 2003.  
For the Nuclear Regulatory Commission.

James G. Luehman,  
Deputy Director, Office of Enforcement.  
[FR Doc. 03-23899 Filed 9-12-03; 8:45 am]  
BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on September 29-30, 2003, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting on September 30, 2003 may be closed to public attendance to discuss Electric Power Research Institute (EPRI) proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Monday, September 29, 2003—8:30 a.m. until the conclusion of business  
Tuesday, September 30, 2003—8:30 a.m. until the conclusion of business

The purpose of this meeting is to review progress by the Office of Nuclear Regulatory Research in the area of high burnup fuels and other fuel-related research, to understand industry activities associated with the "Robust Fuel Program," and to hear the experience of industry related to crud deposits on reactor fuels. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, EPRI, and other interested persons regarding these matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (telephone 301-415-8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 9, 2003.  
Sher Bahadur,  
Associate Director for Technical Support,  
ACRS/ACNW.  
[FR Doc. 03-23401 Filed 9-12-03; 8:45 am]  
BILLING CODE 7590-01-P

## OFFICE OF MANAGEMENT AND BUDGET

### Proposed Bulletin on Peer Review and Information Quality

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: OMB requests comments on a proposed bulletin under Executive Order No. 12866 and supplemental information quality guidelines. As part of an ongoing effort to improve the quality, objectivity, utility, and integrity of information disseminated by the Federal Government to the public, the Office of Management and Budget (OMB), in coordination with the Office of Science and Technology Policy

(OSTP), proposes to issue new guidance to realize the benefits of meaningful peer review of the most important science disseminated by the Federal Government regarding regulatory topics. The proposed bulletin would be issued under the authority of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658); 44 U.S.C. 3504(d)(1), 3506(a)(1)(B); Executive Order No. 12866, as amended. Part I of the Supplementary Information below provides background and the request for comments. Part II provides the text of the proposed bulletin.

**DATES:** Interested parties should submit comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the address shown below on or before December 15, 2003.

**ADDRESSES:** Due to potential delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic comments may be submitted to:

*OMB\_peer\_review@omb.eop.gov*. Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395-7245. Comments may be mailed to Dr. Margo Schwab, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10201, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Dr. Margo Schwab, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10201, Washington, DC 20503 (tel. (202) 395-3093).

**John D. Graham,**  
*Administrator, Office of Information and Regulatory Affairs.*

**SUPPLEMENTARY INFORMATION:**

**Part I—Background and Request for Comment**

A "peer review," as used in this document for scientific and technical information relevant to regulatory policies, is a scientifically rigorous review and critique of a study's methods, results, and findings by others in the field with requisite training and

expertise. Independent, objective peer review has long been regarded as a critical element in ensuring the reliability of scientific analyses. For decades, the American academic and scientific communities have withheld acknowledgement of scientific studies that have not been subject to rigorous independent peer review. Peer review "has been an essential part of the American science scene and one of the reasons why American science has done so well." Columbia University Provost Jonathon R. Cole (quoted in Abate, Tom, "What's the Verdict on Peer Review?" 21st Century, volume 1 (No. 1), Spring 1995, Columbia University); *see also* GAO Report, Peer Review Practices at Federal Science Agencies Vary, at 1 (March 1999) ("To help ensure the quality and integrity of the research, U.S. science has traditionally relied on independent reviews by peers.").

Independent peer review is especially important for information that is relevant to regulatory policies. Agencies often develop or fund the science that underlies their regulations, and then oversee the peer review of those studies. Unless the peer review is conducted with genuine independence and objectivity, this can create at least the appearance of a conflict-of-interest. For example, it might be thought that scientists employed or funded by an agency could feel pressured to support what they perceive to be the agency's regulatory position, first in developing the science, and then in peer reviewing it. Scientists with a financial interest in the subject matter of a study (e.g., ties to a regulated business) face a similar issue. Given that genuinely independent and objective peer review can provide a vital second opinion on the science that underlies federal regulation, the peer review of such information should be carried out under proper and clearly-articulated procedures.

Scientists and government officials have recognized the importance of peer review in regulatory processes:

- Joint Presidential/Congressional Commission on Risk Assessment and Risk Management: "Peer review of economic and social science information should have as high a priority as peer review of health, ecological, and engineering information." Risk Assessment and Risk Management in Regulatory Decision-Making, vol. 2, at 103 (1997).

- The National Academies' National Research Council: "[B]enefit-cost analysis should be subject to systematic, consistent, formal peer review." Valuing Health Risks, Costs, and Benefits for Environmental Decision Making, at 207 (1990).

- Congress' General Accounting Office: "Peer review is critical for improving the quality of scientific and technical products \* \* \*." GAO Testimony Before the House Subcommittee on Energy and Environment, Committee on Science, at 8 (Mar. 11, 1997).

- Sally Katzen, Former Administrator of OIRA: Scientific inferences "should pass muster under peer review by those in the same discipline, who should have an opportunity for such review to ensure that the underlying work was done competently and that any assumptions made are reasonable." Testimony Before the Environment, Energy, and Natural Resources Subcommittee of the House Committee on Government Operations (Feb. 1, 1994).

In addition, many bipartisan legislative proposals have supported independent, external peer review. See, e.g., S. 343, the "Comprehensive Regulatory Reform Act of 1995;" S. 1001, the "Regulatory Procedures Reform Act of 1995;" S. 291, the "Regulatory Reform Act of 1995;" H.R. 1022, the "Risk Assessment and Cost-Benefit Act of 1995." In 1999, for instance, a bipartisan coalition (including Senators Frist and Daschle, among many others) proposed to require agencies to conduct genuinely independent and transparent peer reviews of their most important risk assessments and cost-benefit analyses. See S. 746, the "Regulatory Improvement Act of 1999."<sup>1</sup>

Existing agency peer review mechanisms have not always been sufficient to ensure the reliability of regulatory information disseminated or relied upon by federal agencies. While most agencies have policies that require or encourage peer review, they do not always conduct peer review according to their own policies—even for major rulemakings. Indeed, an agency Inspector General recently found that although one agency had issued extensive agency peer review policies and mandates, "[t]he critical science supporting the [agency's] rules was often not independently peer reviewed. Consequently, the quality of some science remains unknown." EPA OIG, Science to Support Rulemaking, at ii (Nov. 15, 2002) (emphasis supplied).

Even when agencies do conduct timely peer reviews, such reviews are sometimes undertaken by people who

<sup>1</sup> This legislative proposal was sponsored by a bipartisan coalition of 21 Senators, including Senators Levin, Thompson, Daschle, Frist, Moynihan, Voinovich, Stevens, Rockefeller, Abraham, Breaux, Roth, Robb, Cochran, Lincoln, and Enzi.

are not independent of the agencies, or are not perceived to be independent. Simply put, the agency proposing or supporting a regulation or study may not always be the best entity to commission or supervise its own peer review. Nonetheless, some agencies sometimes use their own employees to do peer reviews—a practice forbidden by other agencies' peer review manuals. See, e.g., Agency for Toxic Substances & Disease Registry Peer Review Policy (Mar. 1, 1996) (peer review is "by outside (not ATSDR expert scientists)"); DOJ, Office of Juvenile Justice & Delinquency Prevention, Peer Review Guideline at 1 ("Peer review is \* \* \* by experts from outside the Department"). As the National Academies' National Research Council has explained:

External experts often can be more open, frank, and challenging to the status quo than internal reviewers, who may feel constrained by organizational concerns. Evaluation by external reviewers thus can enhance the credibility of the peer review process by avoiding both the reality and the appearance of conflict of interest.

Peer Review in Environmental Technology Development Programs: The Department of Energy's Office of Science and Technology 3 (1998) ("NRC Report").

The American Geophysical Union has likewise recognized that "real or perceived conflicts of interest" include the review of papers "from those in the same institution." AGU, Guidelines to Publication of Geophysical Research (Oct. 2000). Congress did the same in the Superfund legislation by providing that reviewers should not have "institutional ties with any person involved in the conduct of the study or research under review." 42 U.S.C. 9604(i)(13).

When an agency does initiate a program to select outside peer reviewers for regulatory science, it sometimes selects the same reviewers for all or nearly all of its peer reviews on a particular topic. While this may be appropriate in limited circumstances, more often it could lead an observer to conclude that the agency continually selected the peer reviewers because of its comfort with them. This hardly satisfies the purposes and principles underlying independent peer review. Thus, the National Academies' National Research Council has stressed that even "standing panels should have rotating membership terms to ensure that fresh perspectives are regularly replenished." NRC, Scientific Research in Education 138.

It is also important to understand the relationship of the peer reviewers with the agency, including their funding

history. A peer reviewer who is financially dependent on the agency, or at least hopes to profit financially from other dealings with the agency, may not always be completely independent, or appear truly independent. One agency's Inspector General has encouraged the agency to do a better job of "consistently inquir[ing] whether peer review candidates have any financial relationship with [the agency]." EPA OIG Report No. 1999-P-217, at 10 (1999). Medical journals have similarly recognized the possibility that the receipt of significant funding from an interested entity can lead to bias, or the perception of bias, on the part of a reviewer. See "Financial Associations of Authors," *New England Journal of Medicine*, vol. 346, 1901-02 (2002); Philip Campbell, "Declaration of Financial Interests," *Nature*, vol. 412, 751 (2001). But while some federal agencies are becoming more sensitive to peer reviewers' financial ties to private interests, most have not been as focused on reviewers' ties to the agency itself. See, e.g., Food & Drug Administration Guidance on Conflict of Interest for Advisory Committee Members, Consultants & Experts (Feb. 2000); National Institutes of Health Center for Scientific Review, Review Procedures for Scientific Review Group Meetings (Oct. 24, 2002).

In addition to selecting independent and qualified peer reviewers for regulatory science, it is also essential to grant the peer reviewers access to sufficient information and to provide them with an appropriately broad mandate. In the past, some agencies have sought peer review of only narrow questions regarding a particular study or issue. While the scope of peer reviewers' responsibilities will necessarily vary by context, peer reviewers must generally be able to render a meaningful review of the work as a whole. As one agency's peer review handbook explains, a good charge to the peer reviewers is ordinarily one that both "focuses the review by presenting specific questions and concerns" the agency is aware of, and also "invites general comments on the entire work product" so as to ensure that the peer review is not hemmed in by inappropriately narrow questions. EPA Science Policy Council, Peer Review Handbook, § 3.2.1 (2d ed. 2000).

Even when an agency solicits a comprehensive and independent peer review of regulatory science, the results are not always available for public scrutiny or comment. While a non-transparent peer review may be better than no peer review at all, public scrutiny of at least a summary of the

peer reviewers' analyses and conclusions helps to ensure that the peer review process is meaningful and that the agency has fairly considered the peer reviewers' conclusions. Simply put, openness enhances the credibility of the peer review of regulatory science.

For these reasons, the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration have required that peer reviewers' reports and opinions be included in the administrative record for the regulatory action at issue. See Endangered & Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities, 59 FR 34,270 (July 1, 1994). The Agency for Toxic Substances and Disease Registry further requires that final research reports "consider all peer review comments," and that the "reasons for not adopting any peer reviewer's comment should be documented." Agency for Toxic Substances & Disease Registry Peer Review Policy at 5.

While the peer review policies described above promote independent and transparent peer review, experience has shown that they are not always followed by all of the federal agencies, and that actual practice has not always lived up to the ideals underlying the various agencies' manuals. In the National Science and Technology Policy, Organization, and Priorities Act of 1976 (Pub. L. 94-282), Congress called on OSTP to serve as a source of scientific and technological analysis and judgment for the President with respect to major policies, plans, and programs of the Federal Government. Pursuant to the 1976 Act, OSTP has evaluated the scale, quality, and effectiveness of the federal effort in science and technology, and has led interagency efforts to develop and to implement sound science and technology policies.

The President and the Congress have also granted OMB the authority and responsibility to address agency peer review practices. Executive Order 12866, issued in 1993 by President Clinton, specifies in section 1(b)(7) that "[e]ach agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, or other information concerning the need for, and consequences of, the intended regulation." The Executive Order further requires OMB to provide guidance to the agencies regarding regulatory planning. See *id.* section 2(b).

Similarly, the Paperwork Reduction Act requires the Director of OMB to "develop and oversee the implementation of policies, principles, standards, and guidelines to \* \* \*

apply to Federal agency dissemination of public information," and specifies that agencies are "responsible for \* \* \* complying with the \* \* \* policies established by the Director." 44 U.S.C. 3504(d)(1), 3506(a)(1)(B). In the Information Quality Act, Congress further specified that OMB's guidelines should "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." Pub. L. 106-554, section 515(a).

#### Proposed Guidance

OMB's current information quality guidance encourages but does not require peer reviews, and identifies general criteria that agencies should consider when they conduct such reviews. See Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 FR 8,452, 8,454-55, 8,459-60 (Feb. 22, 2002). To best serve the President's policy of improving our federal regulatory system and the quality and integrity of information disseminated by the federal agencies, OMB, in coordination with OSTP, now proposes to ensure that agencies conduct peer reviews of the most important scientific and technical information relevant to regulatory policies that they disseminate to the public, and that the peer reviews are reliable, independent, and transparent. This notice seeks comment on the following proposed guidance, which would take the form of an OMB Bulletin, would supplement (but not replace) OMB's information quality guidelines pursuant to the Information Quality Act, Pub. L. 106-554, section 515(b), and would also serve as guidance pursuant to the Paperwork Reduction Act, 44 U.S.C. 3504(d), and Executive Order 12866. OIRA will consult with OSTP in implementing this Bulletin as it relates to the peer review process.

Many agencies already have extensive peer review requirements. This guidance would supplement those requirements for the peer review of "significant regulatory information," which is scientific or technical information that (i) qualifies as "influential" under OMB's information quality guidelines and (ii) is relevant to regulatory policies. This category does not include most routine statistical and financial information, such as that distributed by the Census Bureau, the Bureau of Labor Statistics and the

Federal Reserve. Nor does it include science that is not directed toward regulatory issues, such as most of the scientific research conducted by the National Institutes of Health and the National Science Foundation. It is also limited to the peer review of *studies* to be disseminated, as opposed to applications for grants. In order to avoid duplication of effort, we have also exempted information that has already been adequately peer-reviewed from the peer review requirements of this Bulletin. Finally, OMB has excluded some categories of information, such as national security information, and some types of proceedings, such as individual adjudications and permit applications, from the scope of this Bulletin. The Bulletin also recognizes that waivers of these requirements may be required in some circumstances, such as when court-imposed deadlines or other exigencies make full compliance with this Bulletin impractical.

This Bulletin requires peer review of the category of "significant regulatory information" described above. It also articulates specific requirements for the peer review of "significant regulatory information" that the agency intends to disseminate in support of a major regulatory action, that could have a clear and substantial impact on important public policies or important private sector decisions with a possible impact of more than \$100 million in any year, or that the Administrator of OIRA determines to be of significant interagency interest or relevant to an Administration policy priority. Such an impact can occur whether or not a federal rulemaking is envisioned or considered likely to occur, in part because information might influence local, state, regional, or international decisions. For this category of especially important information, whose reliability is paramount, agencies must take care to select external peer reviewers who possess the requisite experience and independence from the agency. The agencies must also provide the peer reviewers with sufficient information and an appropriately broad charge. The agency must then publicly respond to the peer reviewers' written report, and make other appropriate disclosures.

In addition to setting forth basic peer review procedures, this guidance also elaborates on the reporting requirements of Executive Order 12866 and the Information Quality Act. Pursuant to these authorities, agencies already provide OMB with information regarding upcoming regulatory initiatives and information quality issues. In doing so, each agency should make sure to identify: studies that will

be subject to the peer review requirements of this Bulletin; the agency's plan for conducting the peer review; and correction requests filed by members of the public regarding the quality of information disseminated by the agency. These reporting requirements will permit the public, OMB, and OSTP to monitor agency compliance throughout the peer review process.

Finally, this Bulletin provides that each agency that receives a non-frivolous administrative correction request challenging the agency's compliance with the Information Quality Act must promptly post the request on its Internet website or forward a copy to OIRA and, if requested, consult with OIRA regarding the request. This consulting requirement will assist OMB in discharging its responsibility under the Information Quality Act to monitor the quality of information disseminated to the public. Together with the peer review and reporting requirements discussed above, it should also give the public reasonable assurance that the most important regulatory science disseminated by the federal government comes with indicia of reliability.

#### Additional Requests for Comment

OMB seeks comments from all interested parties on all aspects of this proposed Bulletin and guidelines. In particular, OMB seeks comment on the scope of this Bulletin. As explained above, this proposal covers significant regulatory information, with some exceptions. It may be that the overall scope of this Bulletin should be reduced or enlarged, or that fewer or more exceptions should be made.

OMB also seeks comment on whether some provisions of this proposal should be strengthened, modified, or removed. While the bipartisan legislative proposal discussed above required all peer reviewers to be independent of the agency, this proposal leaves open the possibility that agency employees could serve on peer review panels in certain circumstances. This proposal also identifies circumstances that raise questions about the independence of peer reviewers (e.g., agency employees and agency-supported research projects), but it does not flatly preclude the selection of peer reviewers who raise some of those concerns. Members of the public are welcome to comment on whether these provisions strike the appropriate balance between safeguarding the fact and appearance of impartiality, on the one hand, and ensuring that qualified peer reviewers will not be precluded from service

based on unnecessarily stringent conflict-of-interest requirements, on the other. OMB is especially concerned about the government's need to recruit the best qualified scientists to serve as peer reviewers.

For this reason, OMB also seeks comment on whether any of the provisions of this proposal would unnecessarily burden participating scientists or discourage qualified scientists from participating in agency peer reviews. Specifically, OMB seeks comment on whether peer reviewers' disclosure requirements should be limited to a specific numbers of years, perhaps to activities occurring during the previous five or ten years, instead of extending back indefinitely. More generally, OMB seeks suggestions regarding how agencies can encourage peer-review participation by qualified scientists.

In addition, OMB seeks comment on whether agencies should be permitted to select their own peer reviewers for regulatory information. Although some observers may favor a system whereby a centralized body would appoint peer reviewers or supervise the details of the peer review process, OMB is not proposing such a system. Within the broad confines of this guidance, the agencies would retain significant discretion in formulating a peer review plan appropriate to each study. It is, however, arguable that an entity outside of the agency should select the peer reviewers and perhaps even supervise the peer review process. The latter approach might lend the appearance of greater integrity to the peer review process, but could be unduly inefficient and raise other concerns.

Finally, OMB seeks comment from the affected agencies on the expected benefits and burdens of this proposed Bulletin. OMB believes that most agencies usually submit the types of studies covered by this Bulletin to at least some peer review. As a result, while this Bulletin should improve the quality of peer reviews, it may not impose substantial costs and burdens on the agencies that they are not already incurring. OMB seeks comment on this and all other aspects of this proposed Bulletin.

## Part II—Proposed OMB Bulletin and Supplemental Information Quality Guidelines

### Section 1. Definitions

For purposes of this Bulletin and guidance:

"Administrator" means the Administrator of the Office of Information and Regulatory Affairs.

"Agency" has the meaning ascribed to it in the Paperwork Reduction Act, 44 U.S.C. 3502(1).

"Dissemination" has the meaning ascribed to it in OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 FR 8,452, 8,460 (Feb. 22, 2002) ("OMB's Information-Quality Guidelines").

"The Information Quality Act" means Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658).

"Major regulatory action" means the type of significant regulatory action that is defined in Section 1(f)(1) of Executive Order 12866 and is not exempt from the requirements of that Order.

"Regulatory information" means any scientific or technical study that is relevant to regulatory policy.

Information is relevant to regulatory policy if it might be used by local, state, regional, federal and/or international regulatory bodies.

"Significant regulatory information" means regulatory information that satisfies the "influential" test in OMB's Information-Quality Guidelines.

"Study" refers broadly to any research report, data, finding, or other analysis.

### Section 2. Peer Review of Significant Regulatory Information

To the extent permitted by law, agencies shall have an appropriate and scientifically-rigorous peer review conducted on all significant regulatory information that the agency intends to disseminate. Agencies need not, however, have peer review conducted on studies that have already been subjected to adequate independent peer review. For purposes of this Bulletin, peer review undertaken by a scientific journal may generally be presumed to be adequate. This presumption is rebuttable based on a persuasive showing in a particular instance. In addition, agencies need not have peer review conducted on significant regulatory information that relates to national defense or foreign affairs, or that is disseminated in the course of an individual agency adjudication or proceeding on a permit application.

During the planning of a peer review for significant regulatory information, the agency should select an appropriate peer review mechanism based on the novelty and complexity of the science to be reviewed, the benefit and cost implications, and any controversy regarding the science. Depending on these factors, appropriate peer review mechanisms for significant regulatory

information can range from review by qualified specialists within an agency (if they reside in a separate agency program) to formal review by an independent body of experts outside the agency. The experts may be selected by the agency or an outside group.

### Section 3. Additional Peer Review Requirements for Especially Significant Regulatory Information

If significant regulatory information is subject to the peer review requirements of Section 2 of this Bulletin and (i) the agency intends to disseminate the information in support of a major regulatory action, (ii) the dissemination of the information could otherwise have a clear and substantial impact on important public policies or important private sector decisions with a possible impact of more than \$100 million in any year, or (iii) the Administrator determines that the information is of significant interagency interest or is relevant to an Administration policy priority, then, to the extent permitted by law, the agency shall have a formal, independent, external peer review conducted on the information. The peer review shall proceed in accordance with the following guidance:

**Selection of Peer Reviewers:** Peer reviewers shall be selected primarily on the basis of necessary scientific and technical expertise. When multiple disciplines are required, the selected reviewers should include as broad a range of expertise as is necessary. When selecting reviewers from the pool of qualified external experts, the agency sponsoring the review shall strive to appoint experts who, in addition to possessing the necessary scientific and technical expertise, are independent of the agency, do not possess real or perceived conflicts of interest, and are capable of approaching the subject matter in an open-minded and unbiased manner. Factors relevant to whether an individual satisfies these criteria include whether the individual: (i) Has any financial interests in the matter at issue; (ii) has, in recent years, advocated a position on the specific matter at issue; (iii) is currently receiving or seeking substantial funding from the agency through a contract or research grant (either directly or indirectly through another entity, such as a university); or (iv) has conducted multiple peer reviews for the same agency in recent years, or has conducted a peer review for the same agency on the same specific matter in recent years. If it is necessary to select a reviewer who is or appears to be biased in order to obtain a panel with appropriate expertise, the agency shall ensure that

another reviewer with a contrary bias is appointed to balance the panel.

**Charge to Peer Reviewers:** The agency shall provide to peer reviewers an explicit, written charge statement describing the purpose and scope of the review. The charge shall be appropriately broad and specific to facilitate a probing, meaningful critique of the agency's work product. Peer reviewers shall be asked to review scientific and technical matters, leaving policy determinations for the agency. This must be clearly stated and adhered to during the peer review process so the review is based solely on the science being evaluated. In addition, the agency shall be careful not to divulge internal deliberative information to the peer reviewers. The charge should generally frame specific questions about information quality, assumptions, hypotheses, methods, analytic results, and conclusions in the agency's work product. It should ask reviewers to apply the standards of OMB's Information-Quality Guidelines and the agency's own information quality guidelines. Where reviewers are expected to identify scientific uncertainties, they should generally be asked to suggest ways to reduce or eliminate those uncertainties.

**Information Access:** The agency shall provide peer reviewers sufficient information to enable them to understand the data, methods, analytic results, and conclusions of the material to be peer reviewed, with due regard for the agency's interest in protecting its deliberative processes. Reviewers shall be informed of the reproducibility and other quality guidelines issued by OMB and federal agencies under the Information Quality Act. If the document is a formal regulatory analysis, reviewers should be briefed on the content of OMB's guidelines for regulatory analysis. If aspects of the agency's work are likely to be controversial, reviewers should be provided relevant background information on those potential sources of controversy.

**Opportunity for Public Comment:** The agency shall provide an opportunity for other interested agencies and persons to submit comments. The agency shall ensure that such comments are provided to the peer reviewers with ample time for consideration before the peer reviewers conclude their review and prepare their report.

**Peer Review Reports:** The agency shall direct peer reviewers of the regulatory information—individually or often as a group—to issue a final report detailing the nature of their review and their findings and conclusions. The peer

review report shall also disclose the names, organizational affiliations, and qualifications of all peer reviewers, as well as any current or previous involvement by a peer reviewer with the agency or issue under peer review consideration. If there is a group report, any partial or complete dissenting statements should be included with the group's final report. The agency shall also provide a written response to the peer review report(s) explaining: The agency's agreement or disagreement with the report(s), including any recommendations expressed therein; the basis for that agreement or disagreement; any actions the agency has undertaken or proposed to undertake in response to the report(s); and (if applicable) the reasons the agency believes those actions satisfy any concerns or recommendations expressed by the report(s). The agency shall disseminate the final peer review report(s) and the agency's written statement of response in the same manner that it disseminates the work product that was reviewed. All of these written materials should be included in the administrative record for any related rulemakings.

**Consultation with OIRA and OSTP:** Agencies shall consult with OIRA and OSTP concerning the sufficiency of their planned peer review policies. Upon request, an agency should discuss with OIRA how the agency plans to review a specific document covered by the Bulletin and whether such a plan is sufficient. This consultation is understood to serve as one of the pre-dissemination quality procedures envisioned by the Information Quality Act.

**Certification in Administrative Record:** If an agency relies on significant regulatory information subject to the requirements of this section in support of a major regulatory action, it shall include in the administrative record for that action a certification explaining how the agency has complied with the requirements of this Bulletin and the Information Quality Act with respect to the significant regulatory information at issue.

#### Section 4. Peer Review Procedures

##### a. Federal Advisory Committee Act

When considering selection of an outside panel of peer reviewers for regulatory information subject to the requirements of this Bulletin, an agency should assess the treatment of such a panel under the Federal Advisory Committee Act, and may retain a firm to oversee the peer review process with instructions to comply with principles

consistent with those set forth in this Bulletin. See *Byrd v. EPA*, 174 F.3d 239 (D.C. Cir. 1999) (holding that peer review panels selected and supervised by outside consultants are not governed by the Federal Advisory Committee Act, 5 U.S.C.S. App. II §§ 1-15). Although such a firm can be engaged to oversee multiple peer review processes for an agency, the agency shall ensure that the firm itself possesses independence (and the appearance of independence) from the agency.

##### b. Agency Guidelines

Based on this supplement to OMB's information quality guidelines, each agency shall supplement or amend its own information quality guidelines to incorporate the requirements of Sections 2 and 3 herein on a prospective basis, except that an agency need not amend its guidelines if there is no reasonable likelihood that the agency will disseminate information covered by the requirements of Sections 2 and/or 3 of this Bulletin. In addition to incorporating these requirements, agencies should have specific guidelines as to what entanglements with agencies or affected businesses are so significant as to preclude an individual's participation as a peer reviewer, irrespective of other factors. Agency guidance should also address the following additional aspects of the peer review process, as well as any other matters they wish to address: the protection of confidential business information; any other needs for confidentiality in the peer review process (including any privacy interests of peer reviewers); and any types of information regarding the peer reviewers that should be publicly disclosed in addition to the information identified in Section 3 of this Bulletin (potentially including prior service as an expert witness, sources of personal or institutional funding, and/or other matters that might suggest a possible conflict of interest or appearance of a conflict of interest).

##### c. Waiver

The Administrator may waive some or all of the peer review requirements of Sections 2 and/or 3 of this Bulletin if an agency makes a compelling case that waiver is necessitated for specific information by an emergency, imminent health hazard, homeland security threat, or some other compelling rationale. As appropriate, the Administrator shall consult with the Director of OSTP before deciding whether to grant a waiver.

**Section 5. Interagency Work Group on Peer Review Policies**

The Administrator will periodically convene a meeting of an interagency group of peer review specialists and program managers, including the OSTP Associate Director for Science. The group may make recommendations regarding best peer review practices and may recommend other steps to expedite and improve agency processes.

**Section 6. Reports on Agency Peer Reviews**

Each agency shall provide to OIRA at least once each year:

- A summary description of any existing, ongoing, or contemplated scientific or technical studies that might (in whole or in part) constitute or support significant regulatory information the agency intends to disseminate within the next year; and
- The agency's plan for conducting a peer review of such studies under the requirements of this Bulletin, including the identification of an agency contact to whom inquiries may be directed to learn the specifics of the plan.

In order to minimize the paperwork involved, agencies should include this information in one of the periodic reports they submit to OMB under Executive Order 12866 or the Information Quality Act.

**Section 7. Correction Requests Under the Information Quality Act**

The Information Quality Act requires OMB to issue guidance concerning administrative mechanisms by which members of the public may seek to obtain correction of information maintained and disseminated by an agency. See Pub. L. 106-554, section 515(b)(2)(B). OMB must also monitor the agencies' handling of such correction requests. See id.(C).

In order to improve OMB's ability to assess the quality of information disseminated to the public and the adequacy of agencies' request-handling processes, an agency shall, within seven days of receipt, provide OIRA with a copy of each non-frivolous information quality correction request. If an agency posts such a request on its Internet website within seven days of receipt, it need not provide a copy to OIRA.

Upon request by OIRA, each agency shall provide a copy of its draft response to any such information quality correction request or appeal at least seven days prior to its intended issuance, and consult with OIRA to ensure the response is consistent with the Information Quality Act, OMB's government-wide Information Quality

Guidelines, and the agency's own information quality guidelines. The agency shall not issue its response until OIRA has concluded consultation with the agency. OIRA may consult with OSTP as appropriate if a request alleges deficiencies in the peer review process.

**Section 8. Interagency Comment**

Interagency comment can assist in identifying questions or weaknesses in scientific and technical analyses. As part of its consideration of peer reviews, information quality correction requests, or major regulatory actions, OIRA may exercise its authority to request comment from other agencies. OIRA may make such comment public, or direct that it be included in the Administrative Record for any related rulemakings. Interagency comment may be conducted in addition to peer review, or may comprise the peer review required by Sections 2 and/or 3 of this Bulletin if it is conducted in accordance with the requirements of this Bulletin.

**Section 9. Effective Date and Existing Law**

The requirements of this Bulletin apply to information disseminated on or after January 1, 2004. The requirements are not intended to displace other peer review mechanisms already created by law. Any such mechanisms should be employed in a manner as consistent as possible with the practices and procedures laid out herein. Agencies may consult with OIRA regarding the relationship of this Bulletin with preexisting law.

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**PENSION BENEFIT GUARANTY CORPORATION**

**Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal**

**AGENCY:** Pension Benefit Guaranty Corporation.  
**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates

are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**DATES:** The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in September 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in October 2003.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-377-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:**

**Variable-Rate Premiums**

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in September 2003 is 5.31 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between October 2002 and September 2003.

For premium payment years beginning in:	The required interest rate is:
October 2002 .....	4.76
November 2002 .....	4.93
December 2002 .....	4.96
January 2003 .....	4.92
February 2003 .....	4.94
March 2003 .....	4.81
April 2003 .....	4.80
May 2003 .....	4.90
June 2003 .....	4.53
July 2003 .....	4.37

**A Discussion of Office of Management and Budget (OMB) Implementation  
Guidelines for the Information Quality Act**

**September 30, 2003**

**Sustainable Fisheries Division, Alaska Region  
National Marine Fisheries Service  
Juneau, Alaska**

OMB proposes to issue new guidance to support accomplishment of “genuinely independent and objective” peer review in the regulatory process in an effort to improve the quality, objectivity, utility, and integrity of information disseminated by the federal government to the public. OMB requests comments on the implementation of Section 515 of the Information Quality Act (P.L. 106-554) through the OMB Peer Review and Information Quality Guidelines Bulletin (hereinafter Bulletin). Items of particular concern taken up in some detail below include:

- *To the extent NOAA Fisheries is obligated to comply with the OMB guidelines, they must be integrated directly into the draft operational guidelines being developed under the Regulatory Streamlining Project (RSP).*
- *OMB must have some accountability for timely review and response time necessary to fulfill the role it has envisioned for itself under the draft guidelines so as to not hold agencies hostage during the rulemaking process.*
- *OMB must more adequately address logistical difficulties such as potential contracting and payment involved in executing external peer review.*

The following discussion provides initial comments to OMB’s proposed guidance in relation to NOAA Fisheries’ current guidance. Issues revealed in the draft bulletin and questions of perceived inconsistencies are taken up in answering the specific questions posed by OMB.



## I. Is the scope of the Bulletin appropriate/adequate?

The scope of the Bulletin depends on how OMB defines the covered scientific, financial, or statistical information. OMB's proposal covers "significant regulatory information," qualified by several exceptions. OMB defines "significant regulatory information" as scientific or technical information that (i) qualifies as "influential" under OMB's information quality guidelines and (ii) is relevant to regulatory policies. According to OMB, "influential means the agency expects that information in the form of analytical results will likely have an important effect on the development of domestic or international government or private sector policies or will likely have important consequences for specific technologies, substances, products or firms." However, OMB's definition contrasts with the current interpretation provided by NOAA, which states "[influential] means information which is expected to have a genuinely clear and substantial impact, at the national level, on major public policy and private sector decisions." OMB arguably provides a more adequate scope in its proposal by allowing for the recognition of "important" effects on "domestic" policies rather than the more restrictive "clear and substantial impact" on the "national level." The design of the fishery management system in the United States depends on regional decisions and regional science, thus making necessary the recognition of regional, not national, impacts. The use of the word "domestic" more adequately represents the regional focus of fisheries management.<sup>1</sup> The Magnuson-Stevens Fishery Conservation and Management Act further emphasizes the importance of regional application of science and policy. Additionally, the volatile nature of fisheries science almost never allows the determination of "clear and substantial impacts." Consequently, OMB's definition of "significant regulatory information" provides the more appropriate initial breadth necessary to achieve adequate peer review consistent with the Information Quality Act.

OMB recommends exceptions to the peer review requirements including routine statistical and financial information such as Census Data, non-regulatory science such as that conducted by the NIH and NSF, applications for grants, science previously peer reviewed according to Bulletin standards, and information sensitive to national security. Additionally, the Bulletin recognizes waivers may be required in certain circumstances where court imposed deadlines or other exigencies make full compliance impractical. A good example of where a waiver might be applied in relation to fisheries management includes Inseason Management of exploited fish stocks, which often requires quick decisions to open or close a fishery based on the latest available data. The broad brush applied by OMB to applicable exceptions once again contrasts with NOAA's approach to the exceptions. In its guidance, NOAA provides a laundry list of exceptions explicitly

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<sup>1</sup> Black's Law Dictionary defines "domestic" as "of or relating to one's own jurisdiction <in Alaska, a domestic corporation is an Alaskan one>." *Black's Law Dictionary*, 500 (1999).

exempting a number of items from the peer review requirements including third party information and archival or library holdings. In the context of fisheries management, the exceptions recommended by OMB likely provide adequate breadth to cover any necessary exceptions required, including those explicitly listed by NOAA.

In order to qualify for peer review, information must not only be “significant,” but must also be “relevant” to regulatory policies. The Bulletin currently describes relevance as “information that might be used by regulatory bodies.” The current definition of “relevant” is too overbroad and ambiguous because it includes information that “might be” and is not actually used in regulatory decisions. Black’s Law Dictionary defines relevant as “logically connected and tending to prove or disprove a matter in issue.”<sup>2</sup> The use of the Black’s definition or something similar in the Bulletin will further clarify the intent and application of the Bulletin consistent with the Information Quality Act.

To ultimately be subject to peer review, the information must be “disseminated,” meaning information is distributed to the public. This means that only information already distributed or information that will be distributed to the public, which an agency bases its regulations on, is subject to the peer review requirements. If the intent of peer review is to ultimately enhance the credibility of information on which agencies base their opinions, the definition of dissemination should be expanded to include more than just the science the agency chooses not to withhold. Understandably, certain information must be withheld based on confidentiality or when information must be verified before release. Nonetheless, clandestine decisions invite skepticism, and skepticism invites lawsuits. Consideration of a more liberal definition may provide more credibility to agency decisions and potentially result in fewer legal challenges under the “arbitrary and capricious” standard.

In Section 2, the charge to peer reviewers presents the appropriate approach to describing the purpose and scope of the review. Agencies must limit peer reviewers to determinations of the science underlying the policy, not the policy itself. However, constraining a private reviewer to a federal bureaucratic process probably goes further than necessary and limits the objectivity OMB is trying to achieve. Therefore, a requesting agency should *recommend* that a peer reviewer follow the Information Quality Guidelines, but should never *require* it.

**II. Do the provisions of the Bulletin safeguard the fact and appearance of impartiality while ensuring qualified peer reviewers are not precluded from service based on unnecessarily stringent conflict-of-interest requirements?**

Several problems exist within the bulletin regarding the appearance of impartiality. First, Section 2 fails to define “scientific journal.” Many scientific journals are privately

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<sup>2</sup> *Black’s Law Dictionary*, 1292 (1999).

funded or receive significant funding from private interests. Therefore, the agency implies bias if it simply defers to the fact that the information has already been peer reviewed in a scientific journal. The allowance for a rebuttable presumption simply presents an opportunity for continuous challenges against this ambiguous provision.

Second, the exemption from peer review of information presented in the course of agency adjudication implies bias. Whether in the course of a legal or administrative challenge, information presented as part of agency adjudication, especially new information regarding endangered species, often most needs the validation of independent peer review to appear impartial. Exempting previously unreviewed information from peer review requirements could exhibit the greatest form of bias by relying on unconfirmed information from a single source in a potentially far-reaching legal decision. Disregarding bias, the lengthy process required for peer review may preclude its inclusion in an adjudicative setting that often demands efficiency. However, if an agency "springs" a study midstream in adjudication absent any validation outside its own, practically speaking, it will undoubtedly be perceived as bias.

Lastly, Section 2 fails to define an adequate method for the selection of appropriate peer review mechanisms such as internal review by the agency or external review by an independent panel. Undoubtedly, allowing the agency to select its own experts inherently presents the appearance of bias. OMB recommends using the very subjective qualitative criteria of novelty, complexity, and controversy to select peer review mechanisms. Using such qualitative terms to determine whether the agency conducts an internal or external review may imply a bias. OMB should develop a more quantifiable and less subjective method for deciding whether qualified specialists within the agency or an independent outside body of experts conduct the peer review.

Section 3 provides a number of problems as well. First of all, a process that allows a non-random selection process inherently implies bias, regardless of the limitations you place on the selectors. To appear completely impartial, some form of random selection should occur from a pre-established pool of candidates selected by an external committee. OMB's selection process for peer reviewers provides 4 factors for determining whether an individual satisfies the broad criteria of scientific and technical expertise, independence from the agency, no real or perceived conflicts of interest, and the capability of approaching the subject matter in an open-minded and unbiased manner. The factors used to identify the criteria of reviewers includes whether the individual: (i) has any financial interest; (ii) advocated a position on the specific matter at issue in recent years; (iii) is subject to substantial direct or indirect funding; or (iv) has recently conducted multiple reviews for the agency or has recently conducted a review on the same specific matter for an agency. However, the Bulletin fails to suggest whether the factors are dispositive, weighted in any manner, or how they will be consistently applied. The ambiguity of the application of the factors and criteria precludes any possibility of

them being unnecessarily stringent. The only unambiguous provision of the section states that if it is necessary to select a reviewer who is or appears to be biased the agency shall ensure that another reviewer with a contrary bias is appointed to balance the panel, which clearly supports the appearance of impartiality. Consequently, OMB should give more attention to the method by which the guidelines select reviewers, particularly in reference to Section 2, if it wishes to ensure the appearance of impartiality in the peer review process as a whole.

In Section 4, the Bulletin recommends the retention of an outside firm in the selection of an external panel of peer reviewers to ensure the independence and appearance of independence of the reviewers. The Bulletin states that hiring an outside firm is consistent with the Federal Advisory Committee Act. However, OMB provides no additional guidelines for the firm selection process. If the agency pays the firm, an implied appearance of bias exists. OMB should explain how a peer review management firm may be hired by an agency while achieving the requisite independence in order to safeguard the appearance of impartiality.

### **III. Do any of the provisions of this proposal unnecessarily burden participating scientists or discourage qualified scientists from participating in agency peer reviews?**

The largest potential deterrent to participation by scientists consists of the imposition of a rigid bureaucratic process to the peer review process. The intent of peer review consists of the effort to provide a free, unbiased, and open-minded evaluation of scientific processes absent inflexible rules of evaluation. Therefore, as stated previously, the requirement of Section 3 of the Bulletin should state that a requesting agency should *recommend* that a peer reviewer follow the Information Quality Guidelines, but should never *require* it.

OMB should also recognize that scientists are busy people. OMB should neither assume nor expect that private, industry, or academic scientists will be at the agency's beck and call for peer review. Moreover, OMB should recognize the impracticality of imposing a heavy-handed mandate on selected outside interests to conduct a peer review on their own time. If reviewers spend time on an agency review request they likely lose money from their daily operations. With that said, OMB should recognize that some form of compensation might be required to encourage peer reviewers to participate. Compensation, of course, contradicts some of the provisions of the Bulletin that attempt to alleviate the appearance of bias in the selection of peer reviewers. However, without some form of standardized compensation, peer review may both unnecessarily burden participating scientists and discourage potential reviewers from participating. OMB

should explore compensatory incentives that encourage scientists to participate, but simultaneously do not present a continued revenue stream to those scientists.

Furthermore, OMB should consider an anonymity provision to encourage peer review. Peer review never occurs in a vacuum and is subject to influence regardless of where or when it occurs. For instance, a particular decision or opinion expressed by a scientist in an agency peer review could affect their future funding from other sources and frustrate the intent of the peer review process by affecting the outcome of their decision. OMB might consider a confidentiality provision geared toward controversial issues or at the request of the reviewer. This provision might allow the identification of the institution or organization and status/rank/title of the reviewer to establish credibility of the review, but not the actual name the reviewer. Without an anonymity provision, controversy and its potential effects may deter some reviewers from participating in peer review of controversial issues.

OMB seeks disclosure from peer reviewers regarding any advocacy position they may hold regarding a given issue. Disclosure requirements add to the transparency of the process and should be required. Since disclosure adds to the transparency of the process, and therefore the validity, the disclosure requirements should extend back indefinitely. The "contrary bias" provision of Section 3 requires that the agency must balance bias in the peer review. Limiting the time period that may be observed to determine bias frustrates eliminating the appearance of bias by allowing a reviewer who expressed bias 10 years and 1 month ago to be selected where they would not have been selected had they expressed the same bias less than 10 years ago. This may further prevent the appointment of a "contrary bias" on the peer review panel, thus exhibiting the appearance of bias. However, OMB should develop criteria providing a weighted scale for determining bias of disclosed information to prevent the appearance of arbitrary peer selections by agencies. In general, the indefinite disclosure provision should neither encourage nor discourage potential peer reviewers as long as the agency adequately applies the "contrary bias" provision. Therefore, OMB should not restrict the disclosure requirements to a specific number of years.

#### **IV. Should Agencies be permitted to select their own peer reviewers for regulatory information?**

Ideal peer review consists of an open process where peers in specific or related disciplines critique a particular scientific study or series of studies as a passive observer absent external influences. The most effective method that achieves "ideal" peer review emulates the notice and comment process and consists of broadcasting the information to an infinite audience that allows individuals to volunteer their independent peer reviews without any compensation other than the notion that they have benefited science and

society. However, creating another administrative process equivalent and parallel to the notice and comment process presents an unduly burdensome proposal. Agencies can hope that peer reviewers will volunteer with altruistic intentions, but that will be unlikely or at least uncommon. Therefore, peer review of agency science requires some selection or appointment process.

OMB should provide explicit attention to the allowable methods of peer review panel selection to meet the goal of apparent impartiality. Direct appointment of peer reviewers by the agency inherently implies bias. On the other hand, even an agency that directly appoints the centralized body that selects its peer reviewers may be perceived simply as "the wolf guarding the foxes that are guarding the henhouse." In an agency such as NOAA Fisheries, which already suffers from the external perception of bias due to the makeup of the Fishery Management Councils, the selection process of peer reviewers imperatively requires distance from the agency. Although OMB does not propose such a system, NOAA Fisheries would benefit from the appointment of peer reviewers by an independent centralized body wholly organized and funded by a separate agency.

By distancing the agency from the peer review selection process the agency achieves the appearance of impartiality and the subsequent credibility given to independently reviewed studies. In any event, the agency should at least appoint an independent entity, possibly a contractor, outside the agency to supervise the peer review process in accordance with the guidelines. Consequently, OMB should provide additional guidance on how agencies should conduct selection of an independent authority to monitor peer review consistent with the requirements of the Information Quality Act.

#### **V. What are the benefits and burdens of the proposed Bulletin?**

The Bulletin goes to great lengths to present the appropriate measures for ensuring accountability and impartiality. However, OMB provides no indication of how long this process should take. In many contexts rulemaking already requires enormous amounts of time and resources. Particularly with economically sensitive systems such as those employed in fisheries management, agencies must operate on restricted timelines. Given the comprehensive nature of the guidelines suggested by OMB, the potential for protracted rule development exists. An additional prolonged process for verifying peer review serves to create a larger burden on the administrative process and more inefficiency in rulemaking.

Numerous provisions increase the potential regulatory burden on the agency. The Bulletin proposes the inclusion of all peer review materials in the administrative record for all related rulemakings, thus requiring additional analysis by the agencies to support their decisions. Additionally, in Section 8, OIRA reserves the authority to request comment from other agencies, thus leaving open the possibility of other agencies holding

one agency's administrative process hostage for an indefinite period. Furthermore, OMB mandates an opportunity for public comment on peer review, requiring additional time and resources. OMB should suggest specific and reasonable timelines for the conduct and completion of the peer review process to ensure that the process is not cursory, but also is not overly burdensome on the agency.

## VI. Supplementary Comments

Section 4 of the Bulletin presents an important issue regarding peer review of information used by NOAA Fisheries in the rulemaking process. Much of the information used by NOAA Fisheries involves scientific and statistical data considered confidential or private under a number of statutes.<sup>3</sup> Therefore, most of the peer review requirements under Section 2 and 3 become inapplicable. Absent the requirements under Section 2 and 3, the peer review requirements under the Bulletin become nothing more than an administrative paperwork exercise. OMB should express explicitly how it intends to provide meaningful peer review in light of restrictive confidentiality requirements.

Waiver of the requirements of some or all of the provisions of Section 2 and 3 of the Bulletin provides some relief for rulemakings subject to time constraints. OMB suggests that if an agency makes a compelling case based on an emergency, imminent health hazard, homeland security threat, or *some other compelling rationale*, the Administrator of OIRA may grant a waiver upon mandatory consultation with the Director of OSTP. Presumably, some of the rulemakings conducted by NOAA Fisheries fall within the compelling rationale due to their time sensitive nature such as the Inseason Management measures mentioned previously. However, the Bulletin does not indicate any detail as to the process by which waiver is to occur. For instance, the Bulletin fails to indicate whether the consultation or the rationale behind the resultant decision must be published. Certainly, publishing the waiver and its rationale will alleviate the appearance of impropriety and supports the "transparency" efforts of the Information Quality Act, but stands to place an additional administrative burden on the agency. Moreover, the Bulletin fails to indicate any timeline associated with the waiver process leaving open the possibility that OMB or OIRA may hold an agency "hostage." Therefore, OMB should explain the details of the waiver provision including time constraints and whether the consultation and decision must be published.

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<sup>3</sup> See Magnuson-Stevens Fishery Conservation and Management Act, Freedom of Information Act, Privacy Act, Marine Mammal Protection Act, South Pacific Tuna Act, and Trade Secrets Act.

Additional questions arise as to information access. OMB mandates that agencies provide peer reviewers sufficient information to enable them to understand the data, methods, analytic results, and conclusion of the material for peer review. The primary question centers on the definition of "sufficient." How far back in the scientific process must the agency allow the reviewer to go to make its determination? In the case of synthesized or interpreted data must the raw data also be supplied? OMB should adequately address these questions.



## *News Release*

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DEC - 3 2003

P.O. Box 95009, SEATTLE, WASHINGTON 98145-2009

**N.P.F.M.C**

December 3, 2003

### **Preliminary IPHC Staff Catch Limit Recommendations: 2004**

In making catch limit recommendations for 2004, staff has considered the results of the analytic assessment, changes in the commercial and survey indices used to monitor the stock, the implications of separate male and female assessments, and an appropriate harvest strategy. Consideration of all of these elements and, the latter two in particular, lead us to recommend caution in setting catch limits for 2004.

Commercial catch rates in 2003 improved or were stable with those of 2002 in Areas 2A through 3A, with a notable increase in Area 3A (Fig.1). Those in the western Areas 3B and 4 continued their decline of recent years. In all of these western areas, commercial CPUE has been declining since 2000 and in the case of Areas 4C and 4D, for longer periods. The coherence of CPUE changes in these latter two areas is consistent with the staff's view that Areas 4C/D/E comprise a single stock management unit. However, with the exception of Area 4C, the commercial CPUE in regulatory sub areas of Area 4 is near the long-term average value.

In contrast, the IPHC setline survey CPUE values decreased in 2003 in all regulatory areas. The declines in Areas 2C and 3A are from higher CPUE values seen in 2002, and are now similar to the CPUE observed in 2001. Western area survey CPUE values continued to show declines similar to the commercial CPUE values.

The major changes in the stock assessment for 2003 are the development of a sex-specific model for the stock with a length-specific selectivity to estimate age-specific selectivity, and the first analytical estimates of abundance for Areas 3B, 4A, and 4B. Previously, the sexes have been combined in the IPHC stock assessment but the change in halibut growth rates over the past decade and the consequent effect on the selectivity of fish by age has prompted the staff to separate the sexes for assessment.

The Conditional Constant Catch (CCC) policy, outlined at the 2003 IPHC Annual Meeting, will be recommended to the Commission for adoption and use in the management of the Pacific halibut stock. The CCC policy uses a ceiling harvest rate and a ceiling (or cap) on total removals as a means to stabilize harvest over longer periods.

#### **Catch Limit Recommendations**

The analytic stock assessment has been conducted on a sex-specific basis for the first time. Our recommendations have been developed in consideration of the differences in selectivity of males and females from previous estimates, which have been determined by this work, and the use of an appropriate harvest rate (0.25) for such a change.

The staff recommendations totaling 73.69 million pounds are presented in Table 1. The Area 2A recommendation includes all removals (commercial, treaty Indian, sport) allocated by the Pacific Fishery Management Council's Catch Sharing Plan. For the first time, the Area 2B catch limit recommendation includes totals for the commercial and sport fisheries. The Department of Fisheries, Canada will allocate the adopted catch limit between the sport and commercial fisheries.

The Area 3A estimated exploitable biomass for 2003 increased considerably over the previous year but we believe some caution is required before this estimate should be adopted. Accordingly, we are recommending

that the catch limit for Area 3A be increased by only 50 percent of the potential increase. The stock assessment indicates lower biomass in Area 3B and we recommend using this estimate.

We are concerned that the productivity of the Bering Sea halibut is less than that of the Gulf of Alaska and more southerly areas. Accordingly, we recommend continuation of a 0.20 exploitation rate for this area until either the results of a recent tagging experiment or continued application of the analytic model indicate a higher rate is appropriate.

*These recommendations, along with public and industry views on them, will be considered by IPHC Commissioners and their advisors at the IPHC Annual Meeting in Juneau, Alaska, during January 20-23, 2004. These recommendations are preliminary and may be updated for the Annual Meeting, as final data are included in the assessment, but are not expected to change significantly.*

*Proposals concerning changes to changes to catch limits should be submitted the Commission by December 31, 2003. Catch limit proposals are available on the Commission's web page (<http://www.iphc.washington.edu/halcom/default.htm>) or from the Commission's office. Additional details about the Annual Meeting can also be found on the web page.*

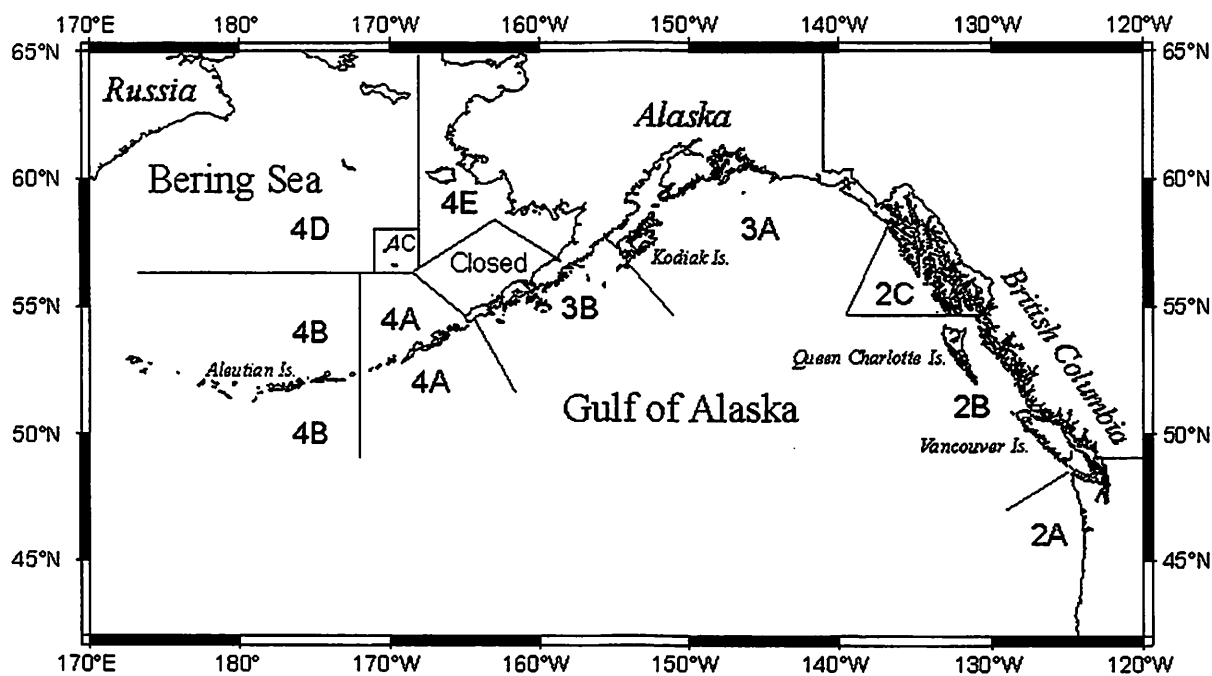
**Table 1. 2003 setline catch limits and staff recommended catch limits for 2004, by IPHC regulatory area (million lbs, net weight).**

Regulatory Area	2003 Setline Catch limit	2004 Staff Recommended Setline Catch Limit
2A <sup>a</sup>	1.31	1.30
2B <sup>b</sup>	11.75	12.53
2C	8.50	9.03
3A	22.63	25.56
3B	17.13	15.60
4A	4.97	3.47
4B	4.18	2.81
4CDE <sup>c</sup>	4.45	3.39
<b>Total</b>	<b>74.92</b>	<b>73.69</b>

<sup>a</sup> includes sport, tribal and commercial fishery

<sup>b</sup> includes sport and commercial fishery for 2004

<sup>c</sup> Individual catch limits for Areas 4C, 4D, and 4E are determine by North Pacific Fishery Management Council catch sharing plan



**Figure 1. International Pacific Halibut Commission Regulatory Areas.**

108TH CONGRESS  
1ST SESSION

# S. 1953

To protect deep sea corals and sponges, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 25, 2003

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To protect deep sea corals and sponges, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Deep Sea Coral Protec-  
5 tion Act".

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Complex seafloor habitats created by struc-  
9 ture-forming organisms including deep sea corals  
10 and sponges are essential to numerous fish species,  
11 including commercially and recreationally targeted

1 species, which rely on such complex habitats for  
2 spawning, food, and shelter from predation. For ex-  
3 ample, more than 1,300 species live among lophelia  
4 coral reefs in the Northeastern Atlantic Ocean.

5 (2) Deep sea corals typically exhibit slow  
6 growth, extreme longevity, and highly patchy dis-  
7 tribution, predominately along continental margins,  
8 seamounts, undersea canyons, and ridges.

9 (3) Living organisms, such as deep sea corals  
10 and sponges, that create complex habitat have not  
11 been adequately studied for the potential benefit to  
12 society or for the ecological importance that such or-  
13 ganisms provide to fish species and other forms of  
14 marine life.

15 (4) Some deep sea corals have a growth ring  
16 structure that provides a living record of changes in  
17 water temperature and other information that can  
18 be used to track global climate change over time.

19 (5) Deep sea corals are a future source of new  
20 biomedical compounds for the pharmaceutical and  
21 biotechnical industries.

22 (6) The exceptional diversity, uniqueness, and  
23 vulnerability of deep sea corals necessitates that the  
24 mapping and conservation of such species be given  
25 a high priority.

1           (7) There is national and international recogni-  
2           tion of the importance of deep sea coral habitats.  
3           The European Union, New Zealand, Canada, and  
4           Norway have prohibited the use of fishing gear that  
5           employs mobile bottom-tending fishing gear in some  
6           areas where deep sea coral exist. Further, several of  
7           the Councils have taken action to protect the fragile  
8           habitat of deep sea corals.

9           (8) Deep sea coral habitats are subject to grow-  
10          ing human pressures, particularly as a result of the  
11          rapid spread of deep sea trawl fisheries into new re-  
12          gions and new grounds, aided by the development of  
13          navigational, fish-finding, and other technologies.

14 **SEC. 3. POLICY.**

15          It is the policy of the United States to protect deep  
16          sea corals and sponges, including protecting such orga-  
17          nisms that are found in the continental margins, canyons,  
18          seamounts, and ridges of the world's oceans, and the habi-  
19          tats of such organisms from damage from gear and equip-  
20          ment used in commercial fishing, particularly mobile bot-  
21          tom-tending gear.

22 **SEC. 4. DEFINITIONS.**

23          In this Act:

24           (1) **CORAL MANAGEMENT AREA.**—The term  
25          “Coral Management Area” means an area des-

1       ignated as a Coral Management Area under this  
2       Act.

3               (2) COUNCIL.—The term “Council”, unless oth-  
4       erwise specified, means 1 of the Regional Fishery  
5       Management Councils established by section 302 of  
6       the Magnuson-Stevens Fishery Conservation and  
7       Management Act (16 U.S.C. 1852).

8               (3) DEEP SEA CORAL ECOSYSTEM.—The term  
9       “deep sea coral ecosystem” means living species of  
10      deep sea corals and sponges, consisting of both reef-  
11      like structures or thickets, and other species of orga-  
12      nisms associated with the deep sea coral habitats,  
13      and the nonliving environmental factors that affect  
14      species of deep sea corals and sponges, that together  
15      function as an ecological unit in nature.

16              (4) DEEP SEA CORALS AND SPONGES.—The  
17      term “deep sea corals and sponges” means the spe-  
18      cies—

19                      (A)(i) in the family Stylasteriidae that are  
20                      without symbiotic algae;

21                      (ii) in the phylum Cnidaria and in—

22                              (I) the subclass Octocorallia, other  
23                              than in the order Pennatulacea; or

1 (II) the subclass Hexacorallia, includ-  
2 ing the orders Scleractinia,  
3 Corallimorpharia, and Antipatharia; or

4 (iii) in the phylum Porifera that are  
5 sponges; and

6 (B)(i) that occur in regions of the exclusive  
7 economic zone that are not subject to the juris-  
8 diction of a Council that is the—

9 (I) South Atlantic Fishery Manage-  
10 ment Council;

11 (II) Gulf of Mexico Fishery Manage-  
12 ment Council;

13 (III) Western Pacific Fishery Man-  
14 agement Council; or

15 (IV) Caribbean Fishery Management  
16 Council; or

17 (ii) that occur at depths of at least 50 me-  
18 ters in regions of the exclusive economic zone  
19 that are subject to the jurisdiction of a Council  
20 that is the—

21 (I) South Atlantic Fishery Manage-  
22 ment Council;

23 (II) Gulf of Mexico Fishery Manage-  
24 ment Council;



1 (III) Western Pacific Fishery Man-  
2 agement Council; and

3 (IV) Caribbean Fishery Management  
4 Council.

5 (5) EXCLUSIVE ECONOMIC ZONE.—The term  
6 “exclusive economic zone” has the meaning given  
7 that term in section 3 of the of the Magnuson-Ste-  
8 vens Fishery Conservation and Management Act (16  
9 U.S.C. 1802).

10 (6) MOBILE BOTTOM-TENDING FISHING  
11 GEAR.—The term “mobile bottom-tending fishing  
12 gear” means any fishing gear that uses a piece of  
13 gear that drags along the ocean floor, including  
14 dredges, beam or otter trawls, or pelagic trawls that  
15 contact the ocean floor.

16 (7) SECRETARY.—The term “Secretary” means  
17 the Secretary of Commerce.

18 **SEC. 5. PROHIBITION ON THE USE OF MOBILE BOTTOM-**  
19 **TENDING FISHING GEAR IN CORAL MANAGE-**  
20 **MENT AREAS.**

21 Mobile bottom-tending fishing gear may not be used  
22 in any area designated as a Coral Management Area.

23 **SEC. 6. CORAL MANAGEMENT AREAS.**

24 (a) INITIAL DESIGNATIONS.—

1 (1) ALASKA DEEP SEA GARDENS.—Each area  
2 bounded by a circle with a radius of 3 nautical miles  
3 and a center at each of following points is des-  
4 ignated as a Coral Management Area:

5 (A)  $51^{\circ}58'13''$  N. x  $176^{\circ}49'53''$  W.

6 (B)  $51^{\circ}54'25''$  N. x  $177^{\circ}24'35''$  W.

7 (C)  $51^{\circ}50'53''$  N. x  $179^{\circ}49'54''$  W.

8 (D)  $51^{\circ}24'02''$  N. x  $179^{\circ}01'38''$  W.

9 (E)  $51^{\circ}50'45''$  N. x  $179^{\circ}49'28''$  W.

10 (2) OTHER DESIGNATIONS.—Each area bound-  
11 ed by the following coordinates is designated as a  
12 Coral Management Area:

13 (A) OCEANOGRAPHER CANYON.— $40^{\circ}30'$  N.  
14 x  $68^{\circ}11'$  W.,  $40^{\circ}10'$  N. x  $68^{\circ}10'$  W., and  
15  $40^{\circ}10'$  N. x  $68^{\circ}00'$  W.

16 (B) LYDONIA CANYON.— $40^{\circ}36'$  N. x  
17  $67^{\circ}45'$  W.,  $40^{\circ}15'$  N. x  $67^{\circ}45'$  W., and  $40^{\circ}15'$   
18 N. x  $67^{\circ}35'$  W.

19 (C) OCULINA REEFS.—

20 (i)  $27^{\circ}30'$  N. x  $80^{\circ}$  W.,  $28^{\circ}30'$  N. x  
21  $80^{\circ}$  W., and the 183 meter contour.

22 (ii)  $28^{\circ}30'$  N. x  $80^{\circ}$  W.,  $28^{\circ}30'$  N. x  
23  $80^{\circ}03'$  W.,  $28^{\circ}29'$  N. x  $80^{\circ}$  W., and  
24  $28^{\circ}29'$  N. x  $80^{\circ}03'$  W.

- 1 (iii) 28°17' N. x 80° W., 28°16' N. x 80° W., 28°17' N. x 80°03' W., and 28°16' N. x 80°03' W.
- 2
- 3 (D) LOPHELIA/ENALLOPSAMMIA REEFS.—
- 4 (i) 31° N. x 79°50' W., 31° N. x 79°30' W., 30°20' N. x 80°10' W., 30°20' N. x 79°45' W., and 29°00' N. x 79°30' W.
- 5
- 6
- 7 (ii) 30°20' N. x 80°10' W., 30°20' N. x 79°30' W., 29° N. x 79°30' W.
- 8
- 9
- 10 (iii) 29° N. x 79°45' W., 29° N. x 79°30' W., and 28° N. x 79°45' W., 28° N. x 79°45' W., and 28° N. x 79°30' W.
- 11
- 12
- 13 (iv) 31°55' N. x 79°20' W., 31°55' N. x 79° W., 31°35' N. x 79°25' W., and 31°35' N. by 79° W.
- 14
- 15 (v) 32°12' N. x 77°45' W., 32°12' N. x 77°20' W., and 31°30' N. x 77°20' W.
- 16
- 17 (vi) 32° N. x 77°10' W., 32° N. x 77°10' W., and 31°48' N. x 77°10' W.
- 18
- 19 (E) BEAR SEAMOUNT.—39°52' N. x 67°30' W., 39°58' N. x 67°50' W., and 39°52' N. x 67°50' W.
- 20
- 21
- 22
- 23
- 24
- 25

1 (b) AREAS IDENTIFIED THROUGH FISHING  
2 RECORDS.—The Secretary shall designate as a Coral  
3 Management Area any area that is located within the ex-  
4 clusive economic zone for which records of commercial  
5 fishing trips maintained by the National Marine Fisheries  
6 Service do not demonstrate that the area has been fished  
7 using mobile bottom-tending gear during the 3-year period  
8 ending on November 1, 2003.

9 (c) TERMINATION OF DESIGNATION.—

10 (1) IN GENERAL.—The Secretary may deter-  
11 mine that an area or part of an area that is des-  
12 igned as a Coral Management Area pursuant to  
13 subsection (b) shall no longer be designated as a  
14 Coral Management Area if—

15 (A) the deep sea corals and sponges in  
16 such area have been mapped by the National  
17 Oceanic and Atmospheric Administration;

18 (B) a Council recommends to the Secretary  
19 that such area no longer be designated as a  
20 Coral Management Area;

21 (C) the Secretary determines that the use  
22 of mobile bottom-tending fishing gear in such  
23 area would cause only minimal and temporary  
24 damage to deep sea corals and sponges located  
25 in such area; and

1 (D) the use of mobile bottom-tending fish-  
 2 ing gear in such area is not prohibited by any  
 3 other provision of law.

4 (d) PUBLICATION.—The Secretary shall publish  
 5 in the Federal Register a description of any area  
 6 that the Secretary—

7 (A) designates as a Coral Management  
 8 Area under this Act; or

9 (B) determines shall no longer be des-  
 10 ignated as a Coral Management Area under  
 11 subsection (c).

12 **SEC. 7. MONITORING OF CORAL BYCATCH.**

13 (a) REQUIREMENT FOR MONITORING.—The Sec-  
 14 retary shall monitor fishing within the exclusive economic  
 15 zone in a manner that is adequate to identify the quantity  
 16 of all deep sea coral and sponge bycatch caught and the  
 17 location in which the bycatch was caught. The monitoring  
 18 shall include—

19 (1) evaluating bycatch data; and

20 (2) identifying areas in which the rate of by-  
 21 catch of deep sea corals and sponges indicate the  
 22 presence of a deep sea coral ecosystem.

23 (b) CORAL MANAGEMENT AREA.—Not later than 60  
 24 days after identifying an area described in subsection

1 (a)(2), the Secretary shall designate such area as a Coral  
2 Management Area.

3 (c) REPORT.—

4 (1) REQUIREMENT.—Not less frequently than  
5 once each calendar year, the Secretary shall prepare  
6 a report that summarizes the data collected during  
7 the monitoring carried out under this section. The  
8 report shall include a description of any area that  
9 the Secretary designates as a Coral Management  
10 Area pursuant to subsection (b).

11 (2) PUBLICATION.—Notice of the availability of  
12 each report required by paragraph (1) shall be pub-  
13 lished in the Federal Register.

14 **SEC. 8. RESEARCH.**

15 (a) REQUIREMENT FOR RESEARCH.—The Secretary  
16 shall direct the Under Secretary for Oceans and Atmos-  
17 phere to carry out a comprehensive program to explore,  
18 research, identify, and map deep sea corals and sponges  
19 that includes an annual research strategy that compares  
20 areas open to mobile bottom-tending gear with areas des-  
21 ignated as Coral Management Areas.

22 (b) DESCRIPTION OF RESEARCH.—The comprehen-  
23 sive program described in subsection (a) shall include—

24 (1) creating maps of the locations of deep sea  
25 coral ecosystems; and

1           (2) conducting research related to deep sea corals and sponges and the habitats of deep sea corals and sponges, including—

2                   (A) the natural history;

3                   (B) taxonomic classification;

4                   (C) ecological role; and

5                   (D) the benefits of such species and habitats.

6           (c) CORAL MANAGEMENT AREA.—Not later than 60 days after the date on which the Secretary determines that an area has a deep sea coral ecosystem based on the research conducted under this section, the Secretary shall designate such area as a Coral Management Area.

7           (d) REPORT.—

8                   (1) REQUIREMENT FOR REPORT.—Not less frequently than once each calendar year, the Secretary shall prepare a report that summarizes the annual research strategy the findings of the program carried out under this subsection. The report shall include a description of any area that the Secretary designates as a Coral Management Area pursuant to subsection (c).

9                   (2) PUBLICATION.—Notice of the availability of each report required by paragraph (1) shall be published in the Federal Register.

1 **SEC. 9. ANNUAL DATA REVIEW.**

2 (a) **REQUIREMENT FOR ANNUAL REVIEW.**—Not less  
3 frequently than once each calendar year, the Chair of the  
4 National Research Council shall review all available data  
5 related to deep sea corals and sponges. Such data shall  
6 include data—

7 (1) related to the monitoring carried out under  
8 section 7;

9 (2) related to the research carried out under  
10 section 8; and

11 (3) obtained from any Federal agency under  
12 subsection (b).

13 (b) **DATA FROM FEDERAL ENTITIES.**—The head of  
14 any Federal agency that holds information related to the  
15 ocean floor, including information related to the habit of  
16 deep sea corals and sponges, shall, upon request, furnish  
17 such information to the Chair of the National Research  
18 Council.

19 (c) **RECOMMENDATIONS.**—

20 (1) **IN GENERAL.**—Not later than 30 days after  
21 completing the annual review required by subsection  
22 (a), the Chair of the National Research Council shall  
23 submit to the Secretary a recommendation that any  
24 area identified as a deep sea coral ecosystem in such  
25 annual review be designated as a Coral Management  
26 Area.



1 (2) PUBLICATION.—Notice of the availability of  
2 each recommendation submitted to the Secretary  
3 under paragraph (1) shall be published in the Fed-  
4 eral Register.

5 (d) REVIEW OF RECOMMENDATIONS.—

6 (1) PROPOSED RULE.—Not later than 10 days  
7 after receiving a recommendation pursuant to sub-  
8 section (c)(1), the Secretary shall publish in the  
9 Federal Register a proposed rule to designate any  
10 recommended area as a Coral Management Area.

11 (2) COMMENT PERIOD.—The Secretary shall  
12 accept comments on any proposed rule published  
13 under paragraph (1) for 30 days after the date of  
14 the publication of such proposed rule.

15 (3) FINAL DETERMINATION.—Not later than 60  
16 days after the publication of such proposed rule, the  
17 Secretary shall designate the area recommended  
18 under subsection (c)(1) as a Coral Management  
19 Area unless the Secretary finds no rational basis for  
20 the recommendation.

21 **SEC. 10. PENALTIES AND ENFORCEMENT.**

22 (a) CIVIL PENALTIES.—The civil penalties set out in  
23 section 308 of the Magnuson-Stevens Fishery Conserva-  
24 tion and Management Act (16 U.S.C. 1858) shall apply

1 to a person who is found by the Secretary to have violated  
2 the prohibition in section 5.

3 (b) CRIMINAL OFFENSES.—

4 (1) PROHIBITED ACTS.—It is unlawful for any  
5 person—

6 (A) to refuse to permit any officer author-  
7 ized to enforce the provisions of this Act (as  
8 provided for in subsection (d)) to board a fish-  
9 ing vessel subject to such person's control for  
10 purposes of conducting any search or inspection  
11 in connection with the enforcement of this Act  
12 or any regulation, permit, or agreement issued  
13 pursuant to this Act;

14 (B) to forcibly assault, resist, oppose, im-  
15 pede, intimidate, or interfere with any such au-  
16 thorized officer in the conduct of any search or  
17 inspection described in subparagraph (A);

18 (C) to resist a lawful arrest for any act  
19 prohibited by this Act;

20 (D) to interfere with, delay, or prevent, by  
21 any means, the apprehension or arrest of an-  
22 other person, knowing that such other person  
23 has committed any act prohibited by this Act;

24 (E) to knowingly and willfully submit to a  
25 Council, the Secretary, or the Governor of a

1 State false information regarding any matter  
2 that the Council, Secretary, or Governor is con-  
3 sidering in the course of carrying out this Act;  
4 or

5 (F) to forcibly assault, resist, oppose, im-  
6 pede, intimidate, sexually harass, bribe, or  
7 interfere with any observer on a vessel under  
8 this Act, or any data collector employed by the  
9 National Marine Fisheries Service or under  
10 contract to any person to carry out responsibil-  
11 ities under this Act.

12 (2) PUNISHMENT.—A person is guilty of an of-  
13 fense if such person commits any act prohibited by  
14 paragraph (1). Such offense is punishable by the  
15 punishments set out in section 309(b) of the Magnu-  
16 son-Stevens Fishery Conservation and Management  
17 Act (16 U.S.C. 1859(b)).

18 (c) CIVIL FORFEITURES.—Any fishing vessel (includ-  
19 ing its fishing gear, furniture, appurtenances, stores, and  
20 cargo) used, and fish (or the fair market value thereof)  
21 taken or retained, in any manner, in connection with or  
22 as a result of the commission of a violation of the prohibi-  
23 tion in section 5 (other than such a violation for which  
24 the issuance of a citation is sufficient sanction) shall be  
25 subject to the civil forfeiture provisions set out in section

1 310 of the Magnuson-Stevens Fishery Conservation and  
2 Management Act (16 U.S.C. 1860).

3 (d) ENFORCEMENT.—The provisions of this Act shall  
4 be enforced by the officers responsible for the enforcement  
5 the Magnuson-Stevens Fishery Conservation and Manage-  
6 ment Act as provided for in subsection (a) of section 311  
7 of the Magnuson-Stevens Fishery Conservation and Man-  
8 agement Act (16 U.S.C. 1861). Such officers shall have  
9 the powers and authorities to enforce this Act as are pro-  
10 vided in such section.

11 **SEC. 11. INTERNATIONAL PROTECTIONS FOR DEEP SEA**  
12 **CORALS AND SPONGES.**

13 The President is authorized to permit the Secretary,  
14 in consultation with the Secretary of State, to work with  
15 appropriate foreign entities to develop the data necessary  
16 to identify areas located in international waters that would  
17 benefit from additional protection for deep sea corals and  
18 sponges.

19 **SEC. 12. REPORT TO CONGRESS.**

20 (a) REQUIREMENT.—On the date that is 3 years  
21 after the date of enactment of this Act, and every 3 years  
22 thereafter, the Secretary shall submit to Congress a report  
23 on the activities undertaken to carry out the provisions  
24 of this Act.

1 (b) CONTENT.—The reports required by subsection

2 (a) shall include a description of—

3 (1) the activities carried out to protect and  
4 monitor deep sea corals and sponges; and

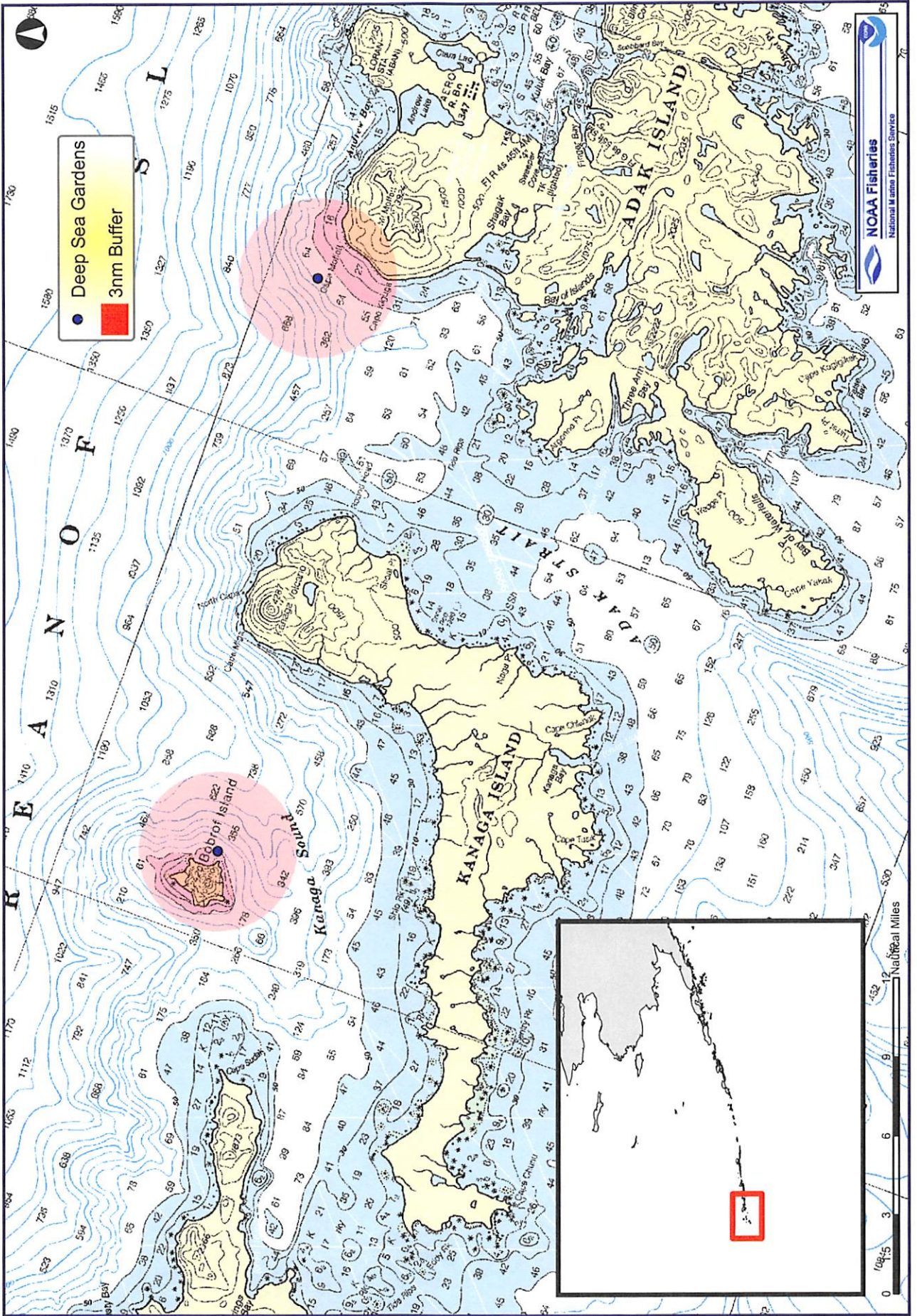
5 (2) any area designated as a Coral Management  
6 Area.

7 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

8 There is authorized to be appropriated \$50,000,000  
9 for each fiscal year to carry out the provisions of this Act.

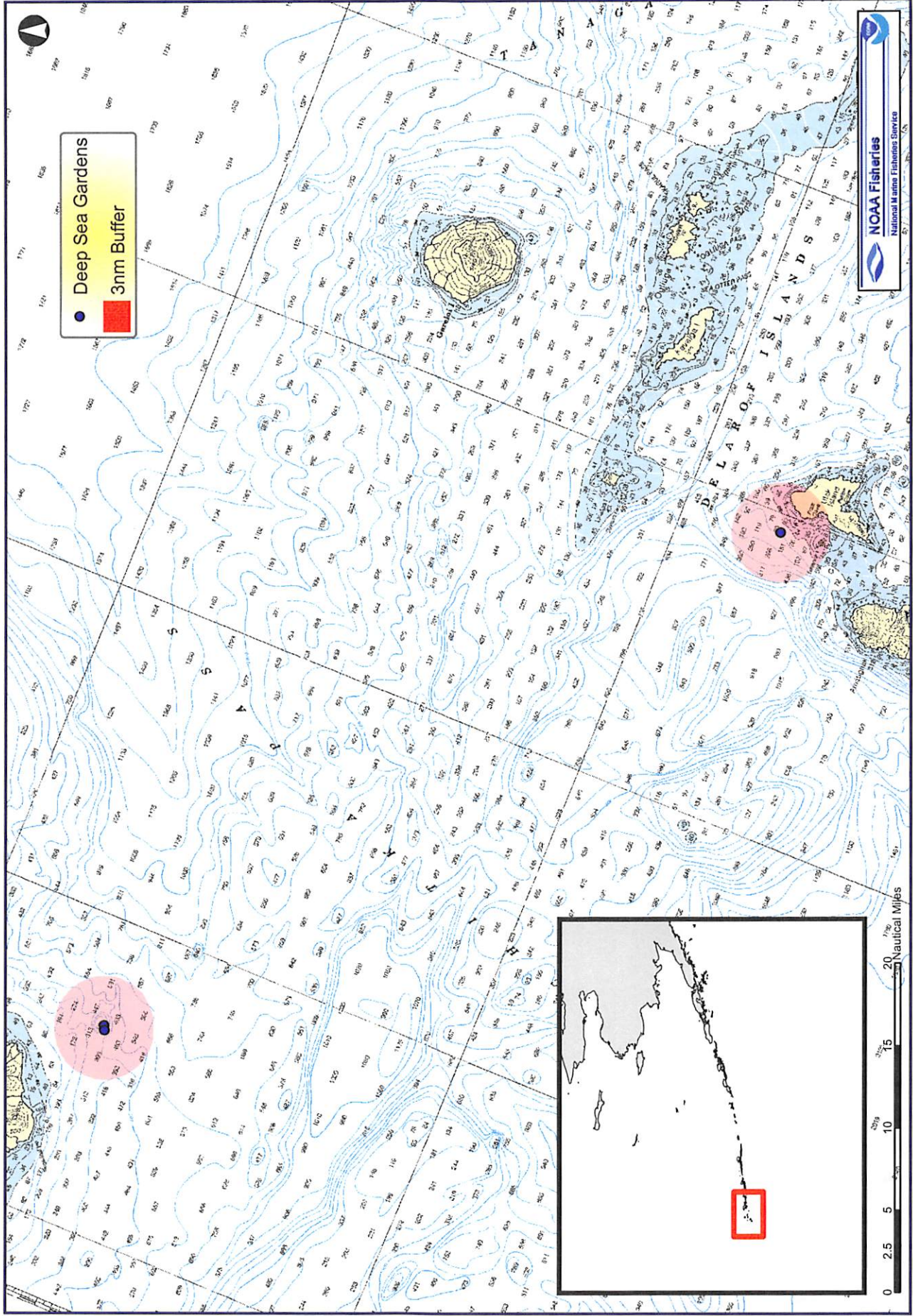
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# Lautenberg (S.1953) Alaska Deep Sea Gardens



NOAA Fisheries  
National Marine Fisheries Service

# Lautenberg (S.1953) Alaska Deep Sea Gardens



**Subject: Re: Council Meeting and Seabird Mortality****Date:** Fri, 28 Nov 2003 10:06:28 -0900**From:** Chris Oliver <Chris.Oliver@noaa.gov>**To:** Gerald Winegrad <gww@abcbirds.org>**CC:** Bill Wilson <Bill.Wilson@noaa.gov>, "David.witherell" <David.witherell@noaa.gov>, Sue Salveson <Sue.Salveson@noaa.gov>, "smadsen@pspafish.net" <smadsen@pspafish.net>

Mr. Winegrad:

Thank you for your continued concerns over seabird incidental catch issues. While seabird bycatch is not on our December meeting agenda, and cannot be added at this time, we do expect an update from NMFS on status of the regulations previously adopted. They are in the final stages of rulemaking on this issue and we expect a final rule in early 2004. We expect these regulations to further reduce incidental catch of seabirds.

Regarding observer coverage, we are also in the process of developing major structural changes to the observer program, which may include the ability to extend coverage to vessels under 60 feet and/or to halibut vessels. This could provide some ability to gather enhanced information on seabird interactions, as well as numerous other fishery related information. As part of this process, we are also evaluating potential technological approaches to catch and bycatch monitoring, including use of video technologies. We will have a preliminary report on progress of this initiative in December, though such a report would not focus specifically on seabird issues.

Please be assured that incidental catch of seabirds is a serious issue, for the Council and the longline fishing industry. We have taken significant steps already and look forward to implementation of the new avoidance regulations.

Sincerely,

Chris Oliver

Gerald Winegrad wrote:

Dear Chris: On behalf of the American Bird Conservancy, we write to note that the Council does not have the issue of seabird bycatch on its upcoming December 8-12 meeting agenda despite the fact that NMFS has failed to adopt regs the Council recommended two years ago. I called your office on Monday, 24 November to discuss this. Longline mortality in the North and Central Pacific has led to the new IUCN Red Book listing of the Laysan as a species Vulnerable to extinction, for the first time. The Laysan Albatross is on the U.S. FWS List of Birds of Conservation Concern List and the North American Waterbird Conservation Plan lists this species as of High Conservation Concern. The Black-footed Albatross has been raised to globally endangered status in Threatened Birds of the World under the IUCN Red Book listing system, again due to longline fishing mortality. The Short-tailed Albatross is already a U.S. federally listed endangered species, with a population of perhaps 1,750 birds. Mortality has continued of these albatrosses and other seabirds during the pendency of these regs From 1993 through 2001, 138,859 seabirds were killed just in the Alaskan longline groundfishery, including 1,902 Black-footed Albatrosses, 5,972 Laysan Albatrosses, and 12 endangered Short-tailed Albatrosses and no new regulations requiring improved avoidance measures have been adopted since 1997. **THE COUNCIL SHOULD ACT TO ASSURE THAT EFFECTIVE AVOIDANCE MEASURES, INCLUDING A MORE BROAD-SCALE USE OF FREE PAIRED STREAMER LINES, ARE REQUIRED ON MOST ALASKAN LONGLINERS AND THAT NEW REGS ARE PROMPTLY**



**ADOPTED.**

Regulations have been delayed for years while tens of thousands of seabirds have been killed, including Federally Endangered Short-tailed Albatrosses and the other two globally listed Albatrosses. NMFS delayed any improvements in the current ineffective regs pending the Melvin et al. study, *Solutions to Seabird Bycatch in Alaska's Demersal Longline Fisheries* (October 2000). The study strongly recommended that paired streamer lines be used on all Alaskan longline vessels and that these devices could cheaply eliminate all albatross and other seabird mortality except for Short-tailed Shearwaters. These are being given free to all Alaskan longliners who want them under a FWS grant program. The NPFMC twice has recommended improved regs, once in early 1999 and again in December 2001. No new regs improving required seabird avoidance measures have been adopted since the original regs in 1997. There are pending regs published in the Federal Register on February 7, 2003. Only certain vessels over 55' would be required to use the most effective avoidance measure, paired streamer lines.

We suggest that:

All Alaskan longline vessels over 35' shall be required to have in place two streamer lines while setting lines, unless the vessel owner certifies that deployment of two streamer lines is not practical and demonstrates such to a NMFS observer or other NMFS fishery official. If exempted, the vessel shall deploy a single paired streamer line where possible, or another towed deterrent if not, and shall use line weights or weighted lines sufficient to sink the line at a rate of 0.3 meters per second. This rate is required in certain southern ocean fisheries. However, all vessels over 55' in length shall use paired streamer lines during line setting.

**II. THE COUNCIL SHOULD ACT TO ASSURE THAT OBSERVER COVERAGE IS REQUIRED ON BOARD PACIFIC HALIBUT VESSELS.**

There has been documentation of the killing of an Endangered Short-tailed Albatross in the Pacific halibut fishery in the past. On October 1, 1987 a halibut vessel in the Gulf of Alaska at 59° 27.71' N, 145° 53.27' W. killed a Short-tailed Albatross. As yet there is no observer coverage on board Alaskan Pacific halibut vessels or any other reliable system to collect valid data on seabird bycatch. Such data collection is required in the National Marine Fisheries Service (NMFS) adopted U.S. National Plan of Action for Seabirds and was urged in the 1999 U.S. FWS Biological Opinion for Short-tailed Albatrosses.

This major fishery set over 25 million hooks from 1,694 vessels in 2000. The assessment of this fishery for seabird bycatch was to be completed under the U.S. NPOA-Seabirds by February 2003. No such assessment has been done. Instead studies on what needs to be done have been completed, and a camera study was completed on the water but results have been delayed for nearly a year. The Council and NMFS still has no idea on how many seabirds are killed in this major fishery and whether kills include the Endangered Short-tailed Albatross.

We suggest that such coverage be required on at least 80% of all vessels over 60' in length, and perhaps 15% coverage on vessels from over 26' to 60'.

I hope you will make sure this issue is discussed and dealt with at the Council meeting. Thank you.

Gerald W. Winegrad, Vice President for Policy  
American Bird Conservancy  
1834 Jefferson Place, NW  
Washington, DC 20036  
202-452-1535  
VISIT OUR WEB SITE AT <<http://www.abcbirds.org>>



T-274 P.001/01 DECEMBER 2003  
Supplemental  
**UNITED STATES DEPARTMENT OF  
National Oceanic and Atmospheric Administration**  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668

December 5, 2003

**RECEIVED**  
DEC - 5 2003

**N.P.F.M.C**

Ben Enticknap  
Alaska Marine Conservation Council  
Box 101145  
Anchorage, Alaska 99510

Dear Mr. Enticknap:

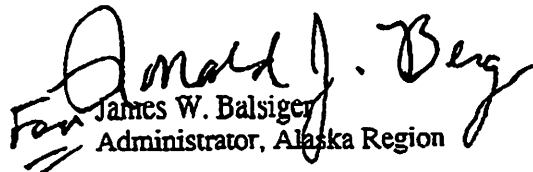
Thank you for your letter expressing concern about the North Pacific Fishery Management Council's decision to make "rarity" a mandatory criterion for all Habitat Area of Particular Concern (HAPC) proposals. The Essential Fish Habitat (EFH) regulations encourage Councils to identify specific types or areas of habitat with EFH as HAPCs based on one or more of four considerations: the importance of the ecological function provided by the habitat; the extent to which the habitat is sensitive to human-induced environmental degradation; whether, and to what extent, development activities are, or will be, stressing the habitat type; and the rarity of the habitat type (50 CFR 600.815(a)(8)). A Council may prioritize amongst the four considerations, as appropriate, so emphasizing rarity is not inconsistent with the regulatory guidelines.

You noted that the Council did not provide any guidance for determining what constitutes a rare habitat type. In the preamble to the EFH regulations, the National Marine Fisheries Service (NMFS) responded to a public comment seeking a regulatory definition of "rarity" in the context of HAPCs. NMFS disagreed that a regulatory definition was needed, and suggested that "Councils consider as rare those habitats that are less common than other habitats in a particular geographic area" (67 FR 2358). While that response admittedly does not provide much new guidance, the intent was to provide flexibility for Councils to account for the degree of rarity of a habitat type, and to consider relative rarity along with the other three regulatory considerations.

NMFS and Council staff have conferred regarding the most appropriate way to apply the Council's decision for rarity to be a mandatory criterion for HAPCs. Absent further guidance from the Council, staff will evaluate each HAPC proposal's rationale for meeting the "rarity" consideration, and will not reject any proposal that provides a reasonable explanation for why the specific habitat should be considered rare (unless of course there are other major problems with a proposal unrelated to rarity of the habitat). The Plan Teams, Scientific and Statistical Committee, and Advisory Panel may comment on the rarity of the habitat included in any of the HAPC proposals they review, and ultimately the Council will decide, based on rarity and all other pertinent considerations, which proposals warrant detailed analysis.

Thank you for your continued interest in the evaluation of potential HAPCs.

Sincerely,

*For*   
James W. Balsiger  
Administrator, Alaska Region

cc: North Pacific Fishery Management Council





## Alaska Marine Conservation Council

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December 3, 2003

Chris Oliver, Executive Director  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

Dr. James Balsiger  
Regional Director, NMFS Alaska Region  
PO Box 21668  
Juneau, AK 99802-1668

RECEIVED  
DEC - 3 2003

N.P.F.M.C.

RE: Criteria for Habitat Areas of Particular Concern

**Rare: Seldom found or occurring, very uncommon.** Oxford American Dictionary

Dear Dr. Balsiger and Mr. Oliver:

Upon review of the North Pacific Fishery Management Council action on Habitat Areas of Particular Concern (HAPC) in October 2003, I was disappointed to see that the Council made rarity "a mandatory criterion for all HAPC proposals." The EFH Final Rule clearly does not elevate the importance of any of the four considerations for identifying HAPCs, nor does it specify that more than one criterion must be met. By making rarity a mandatory criterion, the Council is changing the standards from those published in the regulations. This mandatory criterion puts an unjustified burden on the public submitting HAPC proposals and it may prevent managers from designating the most important areas of essential fish habitat as HAPC, simply because the habitat is not uncommon.

The Council adopted the rarity criterion without any discussion of what constitutes a rare habitat type and without any guidelines for making this determination. Furthermore there was no justification for why this criterion necessitates elevated importance over the other three equally important considerations defined in the Final Rule. It appears to be an arbitrary decision without any positive attributes.

Since the Council will soon be receiving proposals for Habitat Areas of Particular Concern, it would be beneficial if some clarity were given to this mandatory criterion. I would appreciate your input on how this criterion will be applied during the review of HAPC proposals. Thank you for your time.

Sincerely,

Ben Enticknap  
Fisheries Project Coordinator

**SEVENTH NORTH PACIFIC RIM FISHERIES CONFERENCE**  
**Opportunities and Strategies**  
*Busan, Korea*  
May 18 – 20, 2004

**Day 1: Overview of Fisheries Resources of the North Pacific**

Welcoming address by Host Country (Minister of Maritime Affairs and Fisheries, ROK)

Opening remarks by Korean and US Co-Chairs (**Deputy Minister Deok-Bae Park, Dr. William Hogarth**)

Introduction (theme) paper for this conference:

*Overview of Fisheries Resources of the North Pacific Ocean — Opportunities and Strategies*

- Raise issues about opportunities and strategies in the North Pacific
- No solution is presented in this talk

*Presentations by Founding Countries, Invited Countries and Fisheries Organizations*

- 1. National Presentations** of the founding countries
- 2. Other Invited Countries** — Vietnam, Indonesia, Thailand, North Korea, Australia, New Zealand, others
- 3. Invited Organizations** — FAO, other Regional Organizations

**Day 2: Maintaining Sustainable Fisheries**

Theme presentation: - Raise issues regarding the sustainability of fisheries.

- No solution is presented in this talk

*Presentations by Founding Country Representatives - (country participation optional)*

- 1. Science and Research**
- 2. Management** – Harvesting strategies: TAC Systems, IFQs, Protected areas, Overcapacity, Ecosystem, etc.
- 3. Compliance and Enforcement** – VMS, Observers, IUU Fishing, Role of regional management organizations (summary of rules and regulations) in the North Pacific Ocean.

**Day 3: Future of the Fishing Industry**

Theme Presentation: - Overview of the Fishing Industry (economic, social, administrative, political, legal, etc.)

- No solution is presented in this talk

*Presentations by Founding Country Representatives - (country participation optional)*

- 1. Markets and Marketing**
  - Consumer Preference and Product Development
  - Eco-labeling and other certifications
  - Influence of Aquaculture
- 2. Legal and Institutional issues**
  - Trade and Barriers to trade
  - Contract law
- 3. Panel Discussion on Harvesting opportunities –**
  - Realistic fishing opportunities and strategies, including the introduction of technical steps for resuming fisheries in other jurisdictional waters.
  - Other topics

**Sponsors:**

Ministry of Maritime Affairs and Fisheries  
National Fisheries Research and Development Institute, MOMAF  
Korea Deep Sea Fisheries Association  
Pacific Rim Fisheries, Alaska Pacific University



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