

## Executive Director's Report

### Update on CCED meeting

The Chairs, Vice-Chairs, and Executive Directors of the eight regional fishery management councils met in Dana Point, California in April for our 2005 annual Council Chairs and Executive Directors (CCED) meeting. The meeting covered a number of national level issues, and was attended by a number of the NOAA Fisheries leadership (including Bill Hogarth, Rebecca Lent, Jack Dunnigan, Steve Murawski, and from our region Doug DeMaster, Jim Balsiger, and Sue Salvesson), but focused primarily on Magnuson-Stevens Act reauthorization issues and ecosystem initiatives. Item B-1(a) is a copy of the consensus recommendations resulting from the discussions. You will see that many of them track very closely with the findings of the main conference panel from our 'Managing Fisheries' Conference held in Washington D.C. last March. I understand that various MSA reauthorization bills are being drafted, including an Administration bill, and we are hopeful that the recommendations from the CCED meeting will be seriously considered in the mix.

### AFS meeting update

Remember that the 135<sup>th</sup> annual meeting of the American Fisheries Society is being held in Anchorage this year, September 11-15. Item B-1(b) is a summary of the necessary details, but please see their website at [www.wdafs.org/anchorage2005](http://www.wdafs.org/anchorage2005), or talk to Bill Wilson who is General Chairman for the conference.

### Managing Fisheries – Empowering Communities Conference

The communities conference held in Anchorage on April 21 – 23 was a great success, attended by about 150 Alaskan coastal community representatives; commercial, subsistence, and charter fishermen; and both State and Federal policy makers. The organizers greatly appreciate the level of participation and the many speakers that helped to make the conference a success. We received many positive evaluations, with emphasis on the continued need to provide a forum for community residents to discuss issues and concerns with a diverse range of decision makers and participants. Thanks also to the Gulf of Alaska Coastal Communities Coalition, NSEDC, CBSFA, and APICDA for providing a wonderful reception. Alaska Sea Grant will be publishing the proceedings of the conference toward the end of the summer. Summaries of the presentations and group discussions, as well as the conference evaluation form, are currently available on the website at <http://www.uaf.edu/seagrants/Conferences/fish-com/agenda.html>.

### Crab CDQ overage/underage issue

In previous Council meetings the issue was raised of whether after the fact transfers would be allowed in the crab CDQ fishery to deal with overages/underages. This past spring ADF&G brought proposal #420 to the Board of Fish which would prohibit such transfers in regulations - they already prohibit them as a matter of policy and through the Commissioner's permit. Federal regulations defer these management measures to the State (see attachment B-1(c) for a summary of the regulations and options). An FMP amendment would be required to transfer this authority back to the Council/NMFS, and clarify aspects of crab CDQ management, and similarly an FMP amendment would be required to allow for overages/underages in the crab IFQ fisheries under crab rationalization, if the Council wished to make such a change. NMFS, Council, and ADFG staff met via teleconference on May 23 to discuss this issue and determined that the most appropriate resolution at this time is for the State to confer internally and determine how best to resolve the CDQ

overage/underage question, via authority of the State/Board of Fish, taking into account how the fisheries might change under the rationalization program.

#### Information for June 2006 meeting

Our June 2006 meeting will be in Kodiak, Alaska (followed by the October meeting in Unalaska/Dutch Harbor). We have booked the Best Western Kodiak Inn basically entirely, with a room list including all Council, AP, and SSC members. Given that will fill most of the available rooms, other meeting attendees will likely need to start looking at alternative hotels.

#### Reception tonight

Starting at about 6 pm, and going to about 8 pm, we are having a reception at the Glacier Express lodge up on the mountain, to honor the departure of two Council members - Hazel Nelson and Dennis Austin. There will be plenty of hors d'oeuvres and a no-host bar. Everyone is invited and the tram ride is free! Several industry associations pitched in to sponsor this event, including PSPA, APA, NPLA, UCB, Groundfish Forum, FVOA, MCA, and HSCVA (if I left anyone out I'll try to recognize you tonight!) so please join me in extending our collective thanks to them.

#### Ecosystem, Enforcement, and Non-target Species Committees

These three Council committees met earlier in the week and will be reporting during the week on relevant agenda items.

#### Plan Team Nominations

The State of Alaska has nominated Dr. Jie Zheng for the Council's Scallop Plan Team, to replace Doug Woodby (who is now on the SSC), NOAA Fisheries has nominated Dr. Dan Lew (economist) to fill a vacancy on the BSAI Groundfish Plan Team, as well as Dr. Ward Testa from the National Marine Mammal Lab to replace Beth Sinclair on the GOA Groundfish Plan Team. The nomination letters and CV's are included under B-1(d). The SSC will review the nominations this week and the Council should confirm these nominations at this meeting so they can be prepared to participate in upcoming plan team meetings.

#### Report on non-pollock buyback program

As part of the Consolidated Appropriations Act of 2005, legislation in the 108<sup>th</sup> Congress authorized development of fishing capacity reduction programs in non-pollock groundfish catcher/processor sectors. Part of that legislation requires each catcher/processor subsector to provide notice to the Council prior to submitting their plan to the Secretary of Commerce for approval. Consistent with the requirement to notify the Council of industry organized buyback programs, Dave Little is on hand to provide a report on a proposed plan for the longline catcher/processor subsector. Item B-1(e) is a written summary provided by Mr. Little. Item B-1(f) is a legal opinion from NOAA GC addressing some of the questions posed by the Council relative to the capacity reduction program.

**REGIONAL FISHERY MANAGEMENT COUNCIL CHAIRS  
AND EXECUTIVE DIRECTORS MEETING  
APRIL 26-29, 2005**

**DECISIONS SUMMARY**

**MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT  
(MSA) REAUTHORIZATION AND ASSOCIATED LEGISLATION**

The Council Chairs developed new positions on nine issues relative to potential reauthorization of the MSA. The Council Chairs also reviewed positions developed at the 2001 Council Chairs and Executive Directors (CCED) meeting and eliminated those that were either superseded by the current positions or have become obsolete. Positions developed at the 2002 CCED meeting were reaffirmed, noting that while they were specifically directed at reauthorization legislation proposed in 2001 in H.R. 4749, the position concepts are still valid. A composite, separate document details MSA reauthorization positions developed at this meeting and the positions that stand from prior CCED meetings.

**BUDGET ISSUES**

The Council Chairs and the National Marine Fisheries Service (NMFS) scheduled two interim CCED meetings with a principal purpose of discussing budget planning issues. The first meeting is scheduled for October 25-26, 2005 to include a discussion of the fiscal year (FY) 2007 Administration Request budget. The second meeting is scheduled for January 25-26, 2006 with a primary purpose of discussion the FY 2006 Regional Fishery Management Council (RFMC) line item and supplemental funding from other line items. Both meetings are to be held in the Washington, DC area and hosted by NMFS, as has been the case for interim CCED meetings in recent years.

The RFMCs will participate in another NOAA Planning, Programming, Budgeting, and Execution System (PPBES) budget development process for the FY 2008-2012 period. Mr. Galen Tromble will be the lead contact for NMFS and will coordinate process details in the near future.

**OCEAN COMMISSION REPORT: PRESIDENT'S U.S. OCEAN ACTION PLAN**

The RFMCs will receive an update on the U.S. Ocean Action plan during the October 25-26, 2005 interim CCED meeting.

**ECOSYSTEM MANAGEMENT APPROACHES**

The RFMC Chairs and NMFS agreed to continue participation in the workgroup consisting of representatives from four RFMCs and NMFS that have been charged with developing guidelines to ecosystem approaches to management. The work to date was received as a significant advancement, but there was no consensus among RFMC Chairs for specific recommendations for guidelines at this time.

## **COUNCIL MEMBER TRAINING**

The RFMC Chairs recommend pursuing a modified Option 3 as presented in Agenda Item G, Attachment 2, which included (1) initial orientation for new Council members by individual Councils and a two-day NMFS orientation program (both to occur within one month of the August 11 initial appointment date for new Council members), and (2) continued training from a rotating curriculum of current topics, which would be modified annually.

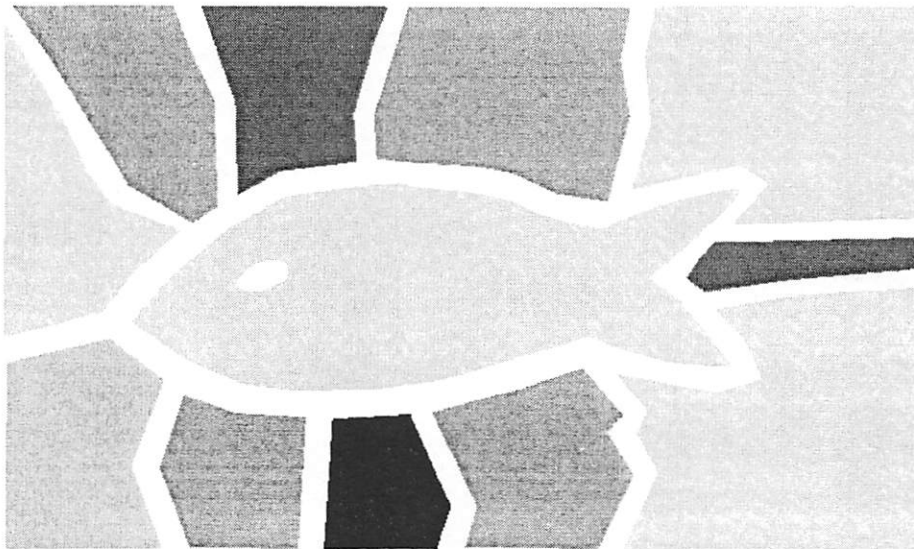
## **NEXT CCED MEETING**

The Mid-Atlantic Fishery Management Council will host the next CCED meeting during the week of May 22, 2006 in New York City, New York or other appropriate venue.

PFMC  
05/12/05

**Positions of the Regional Fishery Management Council  
Chairs on Reauthorization of the Magnuson-Stevens  
Fishery Management and Conservation Act**

April 28, 2005



## **Preface**

The 109<sup>th</sup> Session of Congress is currently underway and it is anticipated that reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) will be addressed during this Congress. Regional Fishery Management Council (RFMC) input on MSA reauthorization has been requested by U.S. Senators Ted Stevens (R, Alaska), Daniel Inouye (D, Hawaii), Gordon Smith (R, Oregon), and Olympia Snowe (R, Maine), as well as U.S. Representative Wayne Gilchrist (R, Maryland). At the annual meeting of the RFMC Chairs and Executive Directors in Dana Point, California on April 27 – 28, 2005, the collective RFMC Chairs considered various issues associated with MSA reauthorization towards the purpose of developing consensus positions, including previous positions developed in 2001 and 2002.

This document describes the RFMC Chairs' positions on the nine issues developed at the referenced meeting. This document also contains the Council Chairs' positions from 2001 and 2002, as updated on the basis of a review for relevance and consistency with the 2005 positions to insure that any 2005 positions supercede and take precedence over any potential conflicts with prior positions. The Chairs adopted these positions, with the understanding that positions on outstanding relevant issues would be forthcoming at some point in the future.

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## **Issue 1: Dedicated Access Privileges (Individual Fishing Quotas, Community Quotas, Area-Based Quotas, and Fishing Cooperatives)**

### ***Preamble***

A reauthorized MSA shall include comprehensive authority to develop dedicated access privilege programs, generally referred to as individual quotas (IQs), but also referred to as area-based quotas, community quotas, fishing cooperatives, allocation systems, or share-based programs.

No later than 18 months after reauthorization, the Secretary of Commerce (Secretary), in consultation with RFMCs, should develop National Guidelines consistent with the recommendations in this document for the establishment of allocation systems, including, but not limited to, IQs, community quotas, and cooperatives. However, the development of these National Guidelines shall not prevent the adoption of a new IQ program or compromise existing IQ programs while the guidelines are under development. Guidelines shall not be applied retroactively, although existing programs may be subject to periodic review and revision by RFMCs as appropriate.

### ***Criteria for Allocation***

The initial allocation of interests under an IQ program shall be consistent with existing National Standard 4. The RFMCs shall consider the interests of those who rely on the fishery, including vessel owners, processors, communities, and fishing crews. An IQ program may include provisions to protect these interests. However, goals of the IQ program should also be to create market-based programs and conserve the resource.

### ***Conservation***

IQ programs should include incentives to reduce bycatch and discards and to promote conservation wherever possible, consistent with existing National Standard 9.

### ***Limitation on Interests and the Duration of IQ Programs***

Shares under an IQ program must have tenure sufficient to support and facilitate reasonable capital investment in the fishery; however, any shares allocated under the program shall be a privilege, which may be revoked without compensation to the holder.

IQ program duration shall be at the individual RFMC's discretion without required sunset.

### ***IQ Program Review***

Periodic, comprehensive review of IQ programs shall be required to assess the extent to which the program is meeting original goals and objectives and to assess the social and economic ramifications to program beneficiaries.

### ***Quota Transfers***

Appropriate provisions governing transferability, which may include permanent and temporary transfers, shall be subject to limitations consistent with the social objectives of the program and shall be determined by individual RFMCs.

### ***Excessive IQ Shares and Quota Accumulation Limits***

The IQ program allowance should include limits on shares, including caps on holdings of a person or use of shares by a person or a single vessel. However, such limitations shall be determined on a program-by-program basis by the individual RFMCs.

### ***Referenda of IQ Programs***

Referenda shall not be a mandatory requirement for Secretarial approval of an IQ program. RFMCs may, however, establish requirements for referenda for individually tailored IQ programs.

### ***IQ Program Cost Recovery Fees***

IQ programs should include an allowance for the collection of fees to offset management and monitoring costs, including state costs. However, the collection of fees should not exceed 3% of the exvessel value and should take into consideration existing industry-born costs for observers.

### ***Enforcement, Monitoring, and Data Collection***

IQ programs should include provisions for effective monitoring and enforcement of the goals and objectives under the program.

## **Issue 2: Competing Statutes**

### ***MSA and National Environmental Policy Act***

Following the addition of critical provisions to MSA sections 302, 303, and 305, thereby making MSA fully compliant with the essential intent of National Environmental Policy Act (NEPA), reauthorized legislation should specify MSA as the functional equivalent of NEPA and exempt from NEPA in the same manner as the MSA is exempt from the Federal Advisory Committee Act (FACA). Areas to be addressed include analyzing a full assessment of environmental impacts, a range of reasonable alternatives, cumulative effects, and the extent of analysis on effects to the human environment, as well as a comprehensive public participation process. The specific proposed amendment language is as follows:

SEC. 302 [16 U.S.C. § 1852] REGIONAL FISHERY MANAGEMENT COUNCILS CONTENTS OF FISHERY MANAGEMENT PLANS

(i) PROCEDURAL MATTERS.

**(7) Prior to a Council submitting a fishery management plan, plan amendment or proposed regulations to the Secretary as described in Section 303, a Council shall prepare a fishery impact statement that shall**

**(a) include a range of reasonable alternatives;**

**(b) specify and assess likely direct and cumulative effects of each alternative on the physical, biological and human environment, including**

**(i) participants in the fisheries and fishing communities affected by the plan, amendment, or regulation and**

**(ii) participants in fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council representatives of those participants;**

**(c) be considered in draft forms during at least two Council meetings; and**



**(d) be made available to the public in draft form at least 10 days prior to the date of final Council action.**

**A final fishery impact statement shall be submitted to the Secretary coincident with a final recommendation.**

SEC. 303 [16 U.S.C. § 1853] CONTENTS OF FISHERY MANAGEMENT PLANS

(a) REQUIRED PROVISIONS.

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

...

(9) include a fishery impact statement of the plan or amendment (in the case of a plan or amendment thereto submitted to ~~or prepared by~~ the Secretary after October 1, 1990~~2005~~) which will assess, specify, and describe the likely effects, if any, of the conservation and management measures ~~on~~ **as described in Section 302 (i) 7. Fishery management plans prepared by the Secretary shall conform to the requirements of Section 302 (i) 7.**

~~(A) participants in the fisheries and fishing communities affected by the plan or amendment; and~~

~~(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council representatives of those participants;~~

SEC. 305 [16 U.S.C. § 1855] OTHER REQUIREMENTS AND AUTHORITY

...

(e) EFFECT OF CERTAIN LAWS.—

**(1)** The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive Order Numbered 12866, dated September 30, 1993, shall be complied with within the time limitations specified in subsections (a), (b), and (c) of section 304 as they apply to the functions of the Secretary under such provisions.

**(2) Any plan or amendment or regulation developed under sections 302, 303, and 304 of this act, is deemed to be in compliance with the National Environmental Policy Act.**

***MSA and National Marine Sanctuary Act***

Fishery management authority in national marine sanctuaries (NMS), for all species of fish as defined in the current MSA, shall be under the jurisdiction of the RFMCs and the Secretarial approval process described in the current MSA. This authority shall not be limited to species of fish covered by approved fishery management plans (FMPs), but shall include all species of fish as defined in the current MSA and shall cover the full range of the species in the marine environment. Prior to reaching decisions on the management regulations affecting fishing in NMS waters, a RFMC shall give full consideration of the responsibilities, goals, and objectives of individual NMS and any specific recommendations of the NMS.

In addition to the proposed changes in the MSA above, the RFMCs also recommend the National Marine Sanctuaries Act be amended to achieve jurisdictional clarity as follows:

**NATIONAL MARINE SANCTUARIES ACT**  
SEC. 302. [16 U.S.C. § 1432] DEFINITIONS

As used in this chapter, the term-

...

(8)"sanctuary resource" means any living or nonliving resource of a national marine sanctuary, excluding fish and Continental Shelf fishery resources under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1811), that contributes to the conservation, recreational, ecological, historical, education, cultural, archaeological, scientific, or aesthetic value of the sanctuary; and

SEC. 304. [16 U.S.C. § 1434] PROCEDURES FOR DESIGNATION AND IMPLEMENTATION

(a) Sanctuary Proposal

...

(5) **FISHING REGULATIONS-**The appropriate Regional Fishery Management Council shall prepare fishing regulations for any fish and Continental Shelf fishery resources within a sanctuary in accordance with section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1852). The Secretary shall review the proposed fishing regulations in accordance with section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1854), and other applicable statutes. Regional Fishery Management Councils shall cooperate with the Secretary and other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practical stage in drafting any sanctuary fishing regulations. Preparation of fishing regulations under this section shall constitute compliance with section 304(d) of this Act. Fishing in compliance with regulations prepared under this section shall not constitute a violation of this Act.

*MSA and Freedom of Information Act*

The MSA should be amended to clarify the confidentiality of observer data relative to the Freedom of Information Act (FOIA); i.e., unless otherwise authorized (as in 402(b)(1)(E) for example), prohibit the release of non-aggregated observer data. Other information such as that generated by electronic monitoring devices (VMS or video cameras, for example) should be afforded similar protection.

State law enforcement officials under a cooperative enforcement agreement with NOAA should be provided access to information and data gathered by the vessel monitoring system (VMS) operated by the National Marine Fisheries Service (NMFS) Office of Law Enforcement, and such information should be allowed for use in prosecutions of state and federal law violations.

The U.S. Coast Guard should be provided access to VMS data for enforcement and homeland security purposes unless otherwise arranged by agreement between agencies for enforcement, homeland security, and maritime domain awareness programs.

### **Issue 3: Integration of Science in the Fishery Management Process**

#### ***Separation of Conservation and Allocation Processes***

Final determinations of necessary scientific fishery parameters should be made within the RFMC management process and not in separate, distinct bureaucracies.

Councils shall adopt acceptable biological catches (ABCs) within limits determined by their Scientific and Statistical Committees (SSCs) (or appropriate scientific body) and shall set total allowable catches (TACs) and/or management measures, such that catch would be at or below ABC.

#### ***Structure and Function of SSCs***

The specific structure of the SSC should be based on the policy of each Council consistent with the overall guidance of the MSA.

RFMCs should retain appointment authority for SSCs and establish terms to meet their standard administrative processes.

SSC members should not be subject to any limit to the number of terms they may serve.

When possible, the SSC should meet concurrently with Council meetings and at the same locale.

Opportunity should be provided for regional or national SSC meetings where members from different regions could discuss best practices and seek to identify analytical and research needs.

#### ***Best Scientific Information Available***

Each Council's SSC shall peer review fundamental analyses needed for fishery management, including such matters as stock assessments, fishery impact models, and projection methodologies. For purposes of compliance with the Data (Information) Quality Act and attendant Office of Management and Budget guidelines, the MSA shall constitute the SSCs as an appropriate alternative review mechanism for influential and highly influential information. The SSC shall make a determination of the best available scientific information prior to Council decision-making and provide the Council with an assessment of the soundness of the scientific conclusions and the uncertainty of the science. The Council will consider the soundness of the data, levels of certainty, and socioeconomic factors when developing catch limits and/or management measures.

Best scientific information available determinations include the social and economic sciences, as well as the physical and biological sciences.

#### ***Need for Independent Review***

There should be an independent peer review of scientific information and processes used by each Council at appropriate intervals determined by the Council. Such reviews should not be limited to stock assessments, but could also extend to socioeconomic and other types of models and analyses used by the Council.

### ***Use of Default Mechanisms***

Default measures that close fisheries entirely until science and management integration standards are met should not be used. Emergency and interim rules may be extended as necessary to address delays in the use of best available science, miscellaneous violations of National Standard 1, or other such potential concerns.

### ***Making Research Relevant***

SSCs should develop research priorities and identify data and model needs for effective management.

### ***Other***

NMFS should be provided with the support to dedicate more resources to stock assessments and socioeconomic impacts.

## **Issue 4: Ecosystem Approaches to Management**

### ***Overall Conclusions for Ecosystem Approaches***

Ecosystem-based management is an important tool for enhancing fisheries and the ecosystems on which they depend.

The RFMCs and NMFS should work collaboratively to pursue an ecosystem approach to fisheries involving all stakeholders, managers, and scientists.

The RFMCs endorse a preference for the use of currently available tools in implementing ecosystem-based management and the resources and funding necessary to better engage those tools.

RFMCs and NMFS regions need to maintain the flexibility to manage regional fisheries. The concept of "national standardization" is incompatible with the need for ecosystem approaches to reflect regional differences.

A holistic approach is a realistic approach only with collaboration among RFMCs and NMFS, partner agencies, and stakeholders.

### ***Regional Ecosystem Planning and the Role of Regional Ocean or Ecosystem Councils***

The RFMCs do not support separate ecosystem councils, but do support establishment of regional coordinating bodies comprised of regional authorities/jurisdictions and public expertise to address non-fisheries management issues.

### ***Technical Requirements for an Ecosystem Approach to Fisheries***

The RFMCs and NMFS should (1) identify, prioritize, and develop weighting for ecosystem characteristics as recommended by the SSC at the *Managing Our Nation's Fisheries II* conference (including human characteristics and reference points and performance indicators to measure progress, future monitoring, and research) and (2) inventory current ecosystem projects.

To develop successful ecosystem management, the approach must progress in a deliberate, evolutionary, and iterative process.

### ***Science Limitations***

A lack of data should not limit our ability to adopt a realistic ecosystem management approach.

Additional funding is needed to enhance ecosystem data collection and model development. The goals and objectives of any ecosystem management approach must match the reality of available information, the reality of budget limitations, and the evolutionary nature of the process.

The first priority should be to focus on improvements that can realistically be accomplished in the short term, using and improving on our current management tools, existing data sets, and knowledge, recognizing models and available data will differ by region.

### ***Incorporating Ecosystem Planning in FMPs***

Councils should develop ecosystem-based management documents for fisheries.

Ecosystem-based FMPs should be a fundamental, first order goal for each Council or region.

If an overarching fishery ecosystem plan is developed, it should provide general guidance to FMP development.

### ***Process for Developing Ecosystem-Based Goals and Objectives***

Broadly defined national level objectives should be developed, followed by regionally defined goals and objectives.

A steering committee comprised of Council and NOAA participants in each region or large marine ecosystem should provide recommendations on the process of developing goals and objectives.

### ***Development of National Guidelines for an Ecosystem Approach to Fisheries***

National Guidelines should provide general guidance, recognizing the diversity of ecosystems, and not be technical in nature. It is noted that many of the pitfalls in the development of national guidelines for essential fish habitat [EFH] and the complexities of overfishing can be avoided.

Guidance should help Councils and NMFS to use tools available under MSA and other mandates, to evaluate the potential for ecosystem-based management in each region, and address differences among regions.

### ***Elements of an Ecosystem Approach to Fisheries that should be Codified in the MSA***

Great caution should be applied in considering amendments to the MSA that include any specific requirements. More specifically, the RFMC are wary of strict regulations and guidelines that will require Councils to produce new FMP amendments across the board (as occurred with new elements in the 1996 Sustainable Fisheries Act), rather than building an ecosystem approach into existing management practices.

Noting the current MSA allows for ecosystem-based management, the RFMCs do not believe it is necessary to amend the MSA to address ecosystem management. Instead, it is recommended that

regional guidance be developed to help Councils move forward with an increased level of sophistication.

### **Issue 5: Rebuilding Time Frame**

The RFMCs recommend MSA Section 104-297 (e)(4)(A)(ii) be deleted as follows to address the problems associated with the arbitrary 10-year rebuilding time boundary:

- (2) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—
  - (A) end overfishing within one year, and specify a rebuilding period that shall—
    - (i) be as short as possible, taking into account the status, mean generation time, and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and
    - (ii) ~~not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;~~
  - (B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and
  - (C) for fisheries managed under an international agreement, reflect traditional participation in the fishery relative to other nations, by fishermen of the United States.

### **Issue 6: Governor's Nomination of Council Members**

The RFMCs recommend no change in the process for nominating Council members.

### **Issue 7: FACA and Council Chairs Meetings**

The RFMCs recommend amending § 302 of the MSA (16 U.S.C. § 1852) by adding subsection (k) as follows.

SEC. 302 [16 U.S.C. § 1852] REGIONAL FISHERY MANAGEMENT COUNCILS

#### **(k) COMMITTEE OF COUNCIL CHAIRS.**

- (1) There shall be established a Fishery Management Council Committee of Chairs, consisting of the Chairs, Vice Chairs and Executive Directors of each of the Regional Fishery Management Councils identified in subsection (a)(1), and, in each case, selected under subsection (e)(2), of this section.**
- (2) The Committee of Chairs shall meet at a minimum annually, to discuss national policies and issues related to, and the effectiveness of implementation of, this Act and the relationship of these matters to other applicable laws.**
- (3) Council Members authorized to receive compensation and expenses under subsection (d)**

of this section shall also receive such for meetings of the Committee.

(4) The requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2) shall not apply to the Committee of Chairs, however, the requirements for Councils under subsection (i)(2) of this section shall apply to the Committee of Chairs.

### **Issue 8: Bycatch Reporting Requirements**

The RFMCs recommend the following revision to section 303 (a) (11):

to the extent practicable establish a standardized-reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, ~~to the extent practicable and~~ in the following priority—

- (A) minimize bycatch; and
- (B) minimize the mortality of bycatch which cannot be avoided.

### **Issue 9: National Saltwater Recreational License**

There should be no federal saltwater recreational license. States should be encouraged to maintain or institute licenses.

## APPENDIX A

### Recommendations of the 2001 Regional Fishery Management Council Chairs Regarding Magnuson-Stevens Fishery and Conservation and Management Act Reauthorization Issues

Originally adopted May 23, 2001. Revised and readopted April 28, 2005 May 3, 2005

At the 2005 Council Chairs and Executive Directors (CCED) meeting, the Regional Fishery Management Council (RFMC) Chairs reaffirmed a number of positions associated with reauthorizing the Magnuson-Stevens Fishery Conservation and Management Act (MSA) that were originally developed at the 2001 CCED meeting. Other 2001 positions were either updated or deleted as obsolete. The 2001 recommendations are listed below, first as a group of "Highest Priority Issues" and then as "Other Significant Issues." Other than these two groupings, no relative priorities were assigned.

#### Highest Priority Issues

- Section 3(29) and Section 304(e)...Redefine Overfishing  
The Council Chairs believe that there are a number of problems related to maximum sustainable yield (MSY)-based definitions of overfishing. For example, data deficiencies may lead to inappropriate calculations of MSY, that in turn skew overfishing definitions. Ultimately, this could lead to unnecessary social and economic dislocation for fishermen who are subject to measures that are tied to stock rebuilding schedules skewed by unrealistic overfishing definitions. We would like to work with the Congress in seeking solutions to our concerns as the re-authorization process proceeds.
- Section 303(a)(7)...Essential Fish Habitat  
The Sustainable Fisheries Act (SFA) required Councils to identify and describe essential fish habitat (EFH), but gave little direction on how to designate EFH. The EFH definition, i.e., "those waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity," allows for a broad interpretation. The EFH Interim Final Rule encouraged Councils to interpret data on relative abundance and distribution for the life history stages of each species in a risk-averse manner. This led to EFH designations that were criticized by some as too far-reaching. "If everything is designated as essential then nothing is essential," was a common criticism. The Council Chairs believe that the current definition and descriptions of EFH serve a very useful purpose in the consultation process between NMFS and agencies that are responsible for permitting or carrying out proposed development projects in the marine environment. Those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity are all habitats of importance to each fishery stock, and the range of each stock from egg to maturity is overlapped by the ranges of hundreds of other stocks. The Council Chairs do, however, endorse the concept of using habitat areas of particular concern (HAPCs) as the next step in describing areas of EFH critical to certain life history stages for each stock, as proposed in the two Senate bills drafted in 2000. For years



a number of Councils have established HAPCs to protect pristine coral reef habitats and spawning aggregation sites.

- Section 313(a): see also Section 403...Observer Program  
The Council Chairs reaffirm their support for discretionary authority to the Councils to establish fees to help fund observer programs. This authority would be the same as granted to the North Pacific Council under Section 313 for observers, but not necessarily limited to use of ex-vessel value as the basis in setting fees.
- Endangered Species Act (ESA)/Marine Mammal Protection Act (MMPA)  
The Council Chairs recommend that the Councils be identified, for purposes of consultation, as being action agencies under the ESA and the MMPA, thereby being able to participate in the development of biological opinions.

ESA and MMPA considerations are playing an increasingly significant role in Council fishery management activities. The NMFS has stated that Councils “have a critical role in management of federal fisheries” and “must be aware of effects of proposed fishery management actions on listed species”. However, NMFS and NOAA/GC have determined that the Councils are not federal action agencies; therefore, they are not included in the consultation process.

By foreclosing the opportunity to participate in the consultation process, NMFS and NOAA/GC have made it virtually impossible for Councils to meaningfully address their responsibilities under MSA, ESA, and MMPA.

Therefore, the Council Chairs recommend that the MSA be modified to specify that the Councils are deemed to be action agencies for purposes of formal consultation under ESA and MMPA.

- Section 304(a) and (b)...Coordinated Review and Approval of Plans and their Amendments and Regulations  
The SFA amended Sections 304(a) and (b) of the MSA to create separate sections for the review and approval of fishery management plans (FMPs) and amendments, and for the review and approval of regulations. Accordingly, the approval process for these two actions now proceeds on separate tracks, rather than concurrently. The SFA also deleted the 304(a) provision allowing disapproval or partial disapproval of an amendment within the first 15 days of transmission. The Council Chairs recommend modification of these provisions to include the original language allowing concurrent approval of FMPs, amendments and regulations, and providing for the initial 15-day disapproval process. The Councils would also like the ability to resubmit responsive measures rather than having to submit a complete FMP or amendment as is now required by subsection (4) of Section 304(a).

### Other Significant Issues

- Section 302(d)...Council Member Compensation  
The MSA should specify that Council-member compensation be based on the General Schedule that includes locality pay associated with the geographic locations of the Councils’

offices. This action would provide for a more equitable salary compensation. Salaries of members serving in Alaska, the Caribbean, and Western Pacific are adjusted by a COLA. The salary of the federal members of the Councils includes locality pay.

- Section 302(f)(4) and (7)...Receipt of Funds from any State or Federal Government Organization

Currently Councils can receive funds only from the Department of Commerce, NOAA or NMFS. The Councils routinely work with other governmental and non-governmental organizations to support research, workshops, conferences, or to procure contractual services. In a number of cases, complex dual contacts, timely pass-throughs, and unnecessary administrative or grant oversight are required to complete the task. The Councils request a change that would give them authority to receive funds or support from local, state, and other federal government agencies and non-profit organizations. This would be consistent with Section 302(f)(4) that requires the Administrator of General Services to provide support to the Councils.

- Section 302(i)(3)(A)(ii)...Review of Research Proposals

The MSA should be amended to include a provision for the Councils to close meetings to the public for the purposes of reviewing research proposals. Some of the Councils now provide and administer funding to researchers and fishermen for data collection and other research purposes. The proposals submitted to the Councils for funding may contain proprietary information that the submitters do not want to make public for various reasons. It will be in the best interests of this process for the Councils to have the ability to close meetings to consider these proposals.

- Section 303(b)...Regulating Non-Fishing Activities of Vessels

The Council Chairs recommend that Section 303(b) of the MSA be amended to provide authority to Councils to regulate non-fishing activities by vessels that could adversely impact fisheries or EFH. One of the most damaging activities to such habitat is the anchoring of large vessels near HAPCs and other EFH (e.g., coral reefs, etc.). When these ships swing on the anchor chain deployed in 100 feet of water, 10 to 20 acres of bottom may be plowed up by the chain dragging over the bottom. Regulation of this type of activity by the Councils should be authorized.

- Section 303(b)(7)...Collection of Economic Data

The MSA specifies the collection of biological, economic, and socio-cultural data to meet specific objectives of the MSA, and requires the fishery management councils to consider this information in their deliberations. However, Section 303(b)(7) specifically excludes the collection of economic data, and Section 402(a) precludes Councils from collecting "proprietary or confidential commercial or financial information." The NMFS should not be precluded from collecting such proprietary information so long as it is treated as confidential information under Section 402. Without this economic data, multi-disciplinary analyses of fishery management regulations are not possible, preventing NMFS and the Councils from satisfying National Standard 2: "...conservation and management measures shall be based upon the best scientific information...", National Standard 8: "...to the extent practicable, minimize adverse economic impacts...", and other requirements of the MSA and the Regulatory Flexibility Act (RFA).

The Council Chairs recommend resolution of these inconsistencies by amending the MSA to eliminate the restrictions on the collection of economic data. Amending Section 303(b)(7) by removing "other than economic data" would allow NMFS to require fish processors who first receive fish that are subject to a federal FMP to submit economic data. Removing this current restriction will strengthen the ability of NMFS to collect necessary data, and eliminate the appearance of a contradiction in the law requiring economic analyses while simultaneously prohibiting the collection of economic data necessary for such analyses.

- Section 303(d)(5) and Section 304(d)(2)...Establishment of Fees

The Council Chairs are opposed to the imposition of fees that are not regional in nature and established by the Councils. However, we do support the National Academy of Science's recommendation that Congressional action allow the Councils maximum flexibility in designing IFQ systems and allow flexibility in setting the fees to be charged for initial allocations, first sale and leasing of IFQs.

- Section 305(c)(2)(A)...NMFS Regional Administrator Emergency or Interim Action Vote

For the purpose of preserving the Secretary's authority to reject a Council's request for emergency or interim action, each NMFS Regional Administrator currently instructed to cast a negative vote even if he/she supports the action. While we recognize the extreme sensitivity in recommending a change to the voting responsibilities of our partners in the NMFS, we certainly do not wish to appear to be disparaging the Regional Administrator in any way. However, the Council Chairs believe that Congressional intent is being violated by this policy. We suggest a modification to the MSA as follows (new language in bold):

(A) the Secretary shall promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by unanimous vote of the members (**excluding the NMFS Regional Administrator**) who are voting members, requests the taking of such action; and ...

- Section 312 (a)...Fisheries Disaster Relief

Purpose: to make available fishery disaster relief funds for fisheries being closed, or severely curtailed as a result of judicial decisions.

Amendment: We suggest modifying Section 312 of the Act as follows (new language in bold):

(a)...

(1) At the discretion of the Secretary or at the request of the Governor of an affected state or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of

(A)...

(B)...

(C)...

**(2) or closures imposed by a court to a fishery** [Redesignate paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5)]

Revise new paragraph (3) as follows (new language in bold): Upon the determination under paragraph (1) **or (2)** that there is a commercial fishery failure, **or a judicial closure of the fishery** the Secretary...

- Section 402(b)(1) and (2)...Confidentiality of Information

Section 402 replaced and modified former Sections 303(b) and (e). The SFA replaced the word “statistics” with the word “information”, expanded confidential protection for information submitted in compliance with the requirements of an FMP to information submitted in compliance with any requirement of the MSA, and broadened the exceptions to confidentiality by allowing for disclosure in several new circumstances.

The following draft language clarifies the word “information” in 402(b)(1) and (2) by adding the same parenthetical used in (a), and deletes the provision about observer information. The revised section would read as follows (additions in bold);

(b) CONFIDENTIALITY OF INFORMATION -

- (1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act **that would disclose proprietary or confidential commercial or financial information regarding fishing operations, or fish processing operations** shall be confidential information and shall not be disclosed, except...
- (2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement under this Act **that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations**, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).

- Bycatch Issues

There appears to be an inconsistent definition of bycatch, depending on geography. In the Atlantic, highly migratory species harvested in “catch and release fisheries” managed by the Secretary under 304(g) of the MSA or the Atlantic Tunas Convention Act are not considered bycatch, but in the Pacific they are. We suggest that highly migratory species in the Pacific, managed under a Western Pacific Council FMP and tagged and released alive under a scientific or recreational fishery tag and release program, should not be considered bycatch. Note that there also is an inconsistency between the MSA definitions of bycatch and the NMFS Bycatch Plan. The NMFS definition is much broader and includes marine mammals and birds as well as retention of non-target species. The Council Chairs prefer the MSA definition.

- Section 302(i)(2)(c)...Notification of Meetings

The Council Chairs recommend that this section be modified to read: “notice of meetings be submitted for publication in local newspapers in the major fishing ports, or by other means that will result in wide publicity”. Other means such as press releases, direct mailings, newsletters, e-mail broadcasts, and web page updates of activities and events, including Council meetings are far more effective in communicating with our target audience than a legal notice in a local newspaper.

- Section 302(a)(1)(D) Caribbean Council

The Council Chairs request that Section 302(a)(1)(D) of the MSA be amended by inserting "Navassa Island," before "the Virgin Islands".

## APPENDIX B

### RECOMMENDATIONS OF THE REGIONAL FISHERY MANAGEMENT COUNCIL CHAIRMEN ON THE REAUTHORIZATION OF THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

(Based on draft Bill H.R. 4749 dated May 16, 2002, 12:30pm)

*Originally adopted May 31, 2002. Revised and re-adopted April 28, 2005*

The following is a description of proposed changes to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) under H.R. 4749 and the positions agreed upon by the Chairmen of the eight Regional Fishery Management Councils during their annual meeting May 28-31, 2002, in Sitka, Alaska.

#### SECTION 3: REPORT ON OVERCAPITALIZATION

**Recommendations:** This section should be revised to require Secretarial consultation with the Councils in preparation of the overcapitalization report. Also, in subsection (b) page 3, line 6, after the word "financing" add ", government-funded buybacks or other available means."

#### SECTION 4: BUYOUT PROVISIONS

(Page 3, line 12 through page 4, line 4). Current language provides that the Secretary can only embark on a buyout program if a Council or "the Governor of a State for fisheries under State authority" requests such a program. The proposed language changes the provision so that the Secretary can engage in a program without the request of a Council or Governor, but the Council or Governor may request such a program if they so wish.

**Recommend** that current language of the MSA be retained. The Chairmen believe that the Secretary should have the concurrence of the Council or a Governor in order to develop a buyout program.

Page 4, line 5 through page 5, line 11. The current language of the Act means that a vessel being bought out must surrender the applicable permit for which the buyout is intended. The proposed language means that all permits authorizing participation in any U. S. fishery must be permanently surrendered and the holder of a permit that does not currently own a fishing vessel shall be prohibited from engaging in a buyout program (eliminates old section 312(b)(2)(B)).

**Recommend support for the proposed language.** The proposed language seems to better reflect the intent that all capacity be removed, without being shifted into another fishery. The Chairmen believe that buyouts should apply to all fisheries, whether or not they have been identified as overcapitalized.

#### SECTION 5: DATA COLLECTION

(Page 5, lines 17-20). The Secretary shall develop a recreational catch data program "...through the use of information gathered from State-licensed recreational fishermen."

**The Chairmen recommend that data from recreational fishermen be included even if a State does not have a marine recreational fishing license.**

**The Chairmen strongly support better, more timely, collection of data to better meet current management needs, e. g. real time data for implementation of fishery management plan provisions.**

**Economic Data from processors.** Page 6, line 9 through Page 7, line 2. Proposes the Secretary prepare a report to Congress regarding economic data from processors.

**Recommendation:** The Chairmen do not feel that the requirement for a report, alone, should be all that is adopted in this reauthorization. Councils cannot meet current needs under NEPA, Magnuson, etc. without access to data that describes the full range of the fisheries. The current prohibition prevents councils from being able to evaluate processor sector involvement in the fisheries. **In 2001, the Chairmen recommended the elimination of prohibitions on collecting economic data from processors. The Chairmen reaffirm their support for this position.** [See attached Chairmen's recommendations for the 2001 CCED meeting]

## **SECTION 6: ECOSYSTEM-BASED MANAGEMENT**

The Chairmen agree that management based on ecosystem principles and ecosystem-wide information will be an important component of future fisheries management planning but sufficient information does not exist to embark on development of such plans at this time. Councils now include ecosystem-based information and ecosystem management principles and considerations in fishery management plans, to the extent they can do so. The effect of management on fishery-based communities is extremely important and ecosystem-based management should consider this factor. Improvements in science and the plan development process are clearly warranted and will come with time but adoption of ecosystem-based management now or in the near future is problematic given our current state of knowledge. The councils should lead in the effort to integrate ecosystem management principles into fishery management plans through the existing FMP amendment process..

For the current reauthorization, the Chairmen recommend that only subsection (b) "Authorization of Research" and subsection (c) "Definitions and Criteria for Management" should be included in this reauthorization and the other subsections should be deferred to a future reauthorization process. The Chairmen believe that subsection (a) is redundant to other provisions of the Act, and that it is premature to develop pilot programs (subsection (e)) because of the current lack of data. The Chairmen further recommend that subsection (c) be revised (Page 8, lines 1-2, "In General") to state:

"The Secretary **and the Councils** shall—(A) create a definition for "ecosystem" and for "marine ecosystem"; and..."

Unlike the SFA amendments for such things as EFH, where NMFS only consulted with the Councils in the promulgation of implementing rules, this will emphasize that the Councils must be full and equal partners in developing definitions and criteria for management based on ecosystem management principles and ecosystem-wide information.

**Recommend that subsections (a), (d), (e) and (f) not be adopted in the current reauthorization.**

**Recommend** that subsection (b) "Authorization of Research" be included in the current reauthorization.

**Recommend** that subsection (c) be included in the current reauthorization with the revision in (1) stating "The Secretary and the Councils shall—(A) create a definition for "ecosystem" and for "marine ecosystem"; and ....."

**Recommend** that subsections (b) and (c) of Section 6 "Ecosystem-Based Management" be enacted only if Congress provides substantive new funding to NMFS, the Councils and the States to engage in the research and development of an ecosystem-based management system.

#### **SECTION 7: OBSERVERS**

**Recommend support** (workload problems notwithstanding).

#### **SECTION 8: OVERFISHING**

(Page 11, lines 12-16). This proposal raises a substantive concern. Currently, definition 3(29) of the Act aggregates "overfishing" and "overfished" within the same definition. In attempting to clarify two different (although related) words, the proposal substantively changes the current interpretation of the word "overfished" with respect to the national standard guidelines adopted by the NMFS.

The proposed language would define an overfished stock as one with a size "below the natural range of fluctuation associated with the production of maximum sustainable yield." It is unclear what the "natural range of fluctuation" would be or who would decide that term. Arguably, depending on the level of precision (confidence) one wished to achieve, the "natural range" could produce virtually any number. Conservative individuals could push for a small confidence interval around the estimate meaning "overfished" would be almost equal to Bmsy. A more liberal interpretation would produce a larger confidence interval and a lower "low end" of the natural range (i. e. "overfished" would represent a biomass level much lower than Bmsy). One can just imagine the arguments over this distinction, and therefore this definition should be based on the observed range of fluctuations rather than the natural (i.e., theoretical) range of fluctuations.

The NSGs appear to define an overfished stock as one for which the stock size is less than ½ of the Bmsy "minimum biomass threshold." This is less subjective than the proposed language although still rather constraining on the councils' flexibility to adopt regionally-specific reference points.

**Recommend:** The Council Chairs support separating 'overfishing' and 'overfished' definitions, but have no further specific recommendation at this time.

The proposed addition of the words "due to overfishing" means that a stock that is not building biomass due to environmental factors but is being exploited at a level of mortality that does not jeopardize the capacity of the fishery "to produce the maximum sustainable yield on a continuing basis" would not be considered overfished. Effectively, managers would have done everything possible (maintaining an appropriately low fishing mortality rate) but the stock has not responded due to environmental factors.



Page 11, line 21 through Page 12, line 5. This provision separates, as a reportable distinction, whether a stock is “overfished” due to fishing, or due to other causes. **Recommend support:** Consistent with the proposed language (Page 11, line 21-Page 12, line 5), we believe the definition of ‘overfished, however it is eventually determined, clarifies that that condition is ‘due to overfishing,’ consistent with that section.

**Additionally, the Chairmen are concerned about interpretations by some parties of the current language regarding rebuilding requirements [Sec. 304(e)(4)(B)]. For example, in recent litigation on the east West Coast regarding groundfish, plaintiffs are focusing on both the terms both the terms ‘as short as possible,’ and ‘not to exceed 10-years’ as required mandates, regardless of the conditional language or the interpretive NSCs in place. The Chairmen’s concern is that ten years may not be appropriate for some species, and respectfully request that language be included in the Act reinforcing the conditional language in Sect. 304(e)(4)(B)(i) and a firm boundary to the maximum allowable rebuilding time frame, such as currently contained in the NSG on this matter.**

#### SECTION 9: BYCATCH

Subsection (a) (Page 12, line 7) proposes to add the word “seabirds” to the definition of regulatory discards. We do recognize the need to protect seabirds and reduce mortality, but question whether placement of seabirds at this place in the definitions actually serves the purpose intended. **Therefore, until clarity is gained on this proposal, the Chairmen recommend against the proposed change.**

Subsection (b), page 12, lines 10-22. Mandates a time-certain establishment of (and the beginning of implementation of) a standardized bycatch reporting methodology. Also provides an exception in the event such a method cannot be established or implemented within the year. H. R. 4749 modifies this exception by adding “...and the Secretary shall take appropriate action to address those reasons.” The general section seems to be an appropriate inducement to proceed, while not locking the Councils or NMFS into another impossible mandate. However, the new clause in the exception means the Secretary alone is responsible for reconciling the deficiencies obstructing establishment and implementation. The Chairmen believe the Councils should play an equal role in this reconciliation.

**Recommend support, with the following added language.** The Chairmen believe the new exception should be revised at subsection (b)(2), page 12, lines 21-22 to state that;

“...the reasons why, and the Secretary **and the Council** must reconcile...”

Charitable Donations. Page 12, line 23. Provides for charitable donations of dead bycatch that, under specified conditions, cannot otherwise be avoided. The Chairmen recognize the advantage of such a proposal but also acknowledge the enforcement and administrative burdens the concept may create. **The Chairmen offer no opinion at this time.**

New Section 408, “Gear Development” Page 13, line 14. This creates a new Section 408 titled “Bycatch Reduction Gear Development” in the early Gilchrest Draft but changed to “Gear Development” in H. R. 4749. Two differences between the Gilchrest draft and H. R. 4749 are that the language for Grant Authority has changed slightly (“...subject to available appropriations...”) and in addition to grant funding being used to minimize bycatch, it can also be used to minimize adverse fishing gear impacts on habitat areas of particular concern. While this

change seems beneficial in Section 408, note the ramifications later when considering the newly-proposed definition of 'habitat area of particular concern.'

This section must be viewed carefully. It is an attractive proposal but the activity must be properly funded. New subsection (e) adds "Authorization of Appropriations" in the amount of \$10,000,000 per year. This is much appreciated by the Chairmen but, of course, the funding has to get through the appropriations approval process and the proposal appears to be intended to fund only grants to entities other than NMFS, the Councils and the States. NMFS, Councils and the States need to be funded in this work if the program is to provide useful products.

**Recommend: The Chairmen recommend that new Section 408 be enacted only if the Congress provides substantive new funding to NMFS, the Councils and the States and for research and development grants to engage in the research necessary to develop, or justify modifications to, fishing gear that will help minimize bycatch to the extent practicable.**

#### SECTION 10: FISH HABITAT RESEARCH AND PROTECTION

Page 16, lines 7-21. Focuses conservation on those habitats for which sufficient information exists to be effective, or fishing activities for which the Council determines that the effects jeopardize the ability of the fishery to produce MSY on a continuing basis. This appears to be a useful attempt to direct limited resources towards the most important aspects of the EFH issue. H.R. 4749 adds to the required provisions of FMPs a provision to "minimize to the extent practicable adverse effects on habitat areas of particular concern caused by fishing." This seems acceptable until one reads the newly-proposed definition of 'habitat area of particular concern' in H.R. 4749.

H.R 4749 adds a new definition of habitat area of particular concern as follows:

- (46) The term 'habitat area of particular concern' means any discrete habitat area that is essential fish habitat and that—
- (A) provides important ecological functions;
  - (B) is sensitive to human-induced environmental degradation; or
  - (C) is a rare habitat type.

This seems to mean that, once a discrete area is identified as essential fish habitat, any area that meets the tests in (A), (B) or (C) is automatically defined as a habitat area of particular concern, invoking some of the other mandatory measures that councils believe should be discretionary. The Chairmen wonder who decides whether an area meets the criteria in (A), (B) and (C)?

**The Chairmen do not believe that such a specific definition is warranted. Effectively, it creates the same concerns that surfaced after passage and implementation of the SFA, e.g., EFH, in practical application (although not original intent), was defined as "everywhere."**

**The Chairmen recommend support of Section 10 only if the definition of habitat area of particular concern is modified as follows, or deleted.**

- (46) The term 'habitat area of particular concern' means any discrete habitat area that is a subset of essential fish habitat critical to spawning, breeding, feeding or growth to maturity and that a Council, or the Secretary for any plan developed by the Secretary, has so designated in a fishery management plan or plan amendment.**

The Chairmen support authority for the Councils to determine what constitutes an 'adverse impact.'

**SECTION 11: DEMONSTRATION PROGRAM FOR OYSTER  
SANCTUARIES AND RESERVES**

The Chairmen have no comment on this issue.

**SECTION 12: INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS**

The Chairmen have a number of recommendations to offer on this section but will depart from line-by-line analysis in favor of several broad recommendations. **The Chairmen recommend lifting the moratorium [see attached previous recommendations], with the following comments and recommendations:**

1. Any IFQ developed by a Council should only be able to be terminated by that Council through a fishery management plan or plan amendment.
2. There should be no mandatory referenda to approve initiation of, or to ratify final approval of, a plan or plan amendment containing an IFQ. Essentially, the Chairmen believe that the existing council process is the appropriate forum for consideration, development and approval of such plans.
3. The issue of processor shares of individual quotas should be determined by the Council developing the plan. The implications of this issue will vary by region.
4. The ten-year sunset/review provision should be eliminated. The Councils do not support statutory sunset dates, but do support periodic review. The Councils can change or eliminate their IFQ plans as necessary by plan amendment.
5. On the issue of fees, the Council developing the plan should establish the fees, the NMFS should collect the fees, and use of the fees should be only for the FMP for which the fees were collected.
6. The Councils reaffirm their position that IFQs are not property rights and termination of a program does not constitute a taking.

**SECTION 13: COOPERATIVE EDUCATION & RESEARCH.**

The Council Chairmen have no comment on this issue.

**NOTE: On page 32, lines 10-11, "New England Fisheries Science Center" SHOULD read, "Northeast Fisheries Science Center."**

**SECTION 14: HIGHLY MIGRATORY SPECIES.**

The Council Chairmen have no comment on this issue.

**SECTION 15: PROHIBITED ACTS.**

The Council Chairmen have no comment on this issue.

**SECTION 16: MEMBERSHIP OF FISHERY MANAGEMENT COUNCILS**

Page 33, line 23. This proposal would add New York to the member states of the New England Council. This is a regional issue on which the Chairmen have chosen not to offer a collective

opinion. The Mid-Atlantic Council supports the proposal. The New England Council believes there is a better way to address the issue. Both Councils are encouraged to pursue their views individually.

Page 34, Line 4. Additional Secretarial member. The Chairmen are uncertain what has prompted this proposal and note a technical error. H.R. 4749 makes substantive changes to the Gilchrest draft. The Gilchrest draft stated such member could not be directly employed or substantively compensated by the commercial, charter, or recreational fisheries. This seemed to leave open choices from academia, environmental organizations, or government. H.R. 4749 removes these qualification criteria, changes numbers of members, and cites an incorrect subsection as the authorizing subsection for how the appointments shall be made. (Section 302(b)(6) is the subsection that authorizes the Secretary to remove an appointed council member for just cause).

**Recommend that this provision not be adopted** because it unnecessarily adds to membership without a clear purpose. This adversely impacts both organizational efficiency and administrative costs.

The Chairmen believe that the appropriate way for knowledgeable and experienced citizens to become members of a Regional Fishery Management Council continues to be to have the Governors of the States include them on their nomination lists.

#### SECTION 17: MISCELLANEOUS AMENDMENTS

**The Chairmen believe the proposed language does not substantively add to the effectiveness of the Act and respectfully request that such language changes not be adopted.**

#### SECTION 18: FOREIGN FISHING

The Council Chairmen have no comment on this issue.

#### SECTION 19: DRIFTNETS

The Council Chairmen have no comment on this issue.

#### SECTION 20: SOURCES FOR DATA IN FISHERIES RESEARCH

**Recommend support.** Adds clarity that fishery-dependent as well as fishery-independent data sources should be used.

#### SECTION 21: MISCELLANEOUS FISHERY PROTECTIONS IN FISHERY MANAGEMENT PLANS

The Chairmen believe the proposed addition of a new paragraph (13) to section 303(b) is redundant [see section 303(b)(2)] and furthermore does not substantively add to the effectiveness of the Act. As alluded to in Section 17, such language may assist those who seek reinforcement in litigation. Again, believing that this is counterproductive to effective fishery management, the **Chairmen respectfully request that such language not be adopted.**

#### SECTION 22: COOPERATIVE MARINE EDUCATION AND RESEARCH PROGRAM

While the Chairmen believe support and funding for marine education and research is worthwhile, The Secretary can enter into such cooperative agreements without this section being passed. The Chairmen believe the list of included research items is too limiting and may constrain the funding of other appropriate areas of research. **Consequently, the Chairmen oppose Section 22 in its current limited form.**

### **SECTION 23. AUTHORIZATION OF APPROPRIATIONS**

**Recommend that the requirements of the SFA in 1996, and any new mandates under a 2002 reauthorization bill be adequately funded by the Congress.** The Chairmen respectfully request that, if the Congress wishes to require more attention be paid to these issues, then the Congress must provide sufficient funding. Staffs within State and Federal agencies and the regional Councils are "fully exploited." There is no "free time" to fill with new mandates; in fact, we need funding to cover the "old mandates" enacted in 1996.

### **American Fisheries Society to Convene in Anchorage September 11-15**

The American Fisheries Society will convene its annual meeting in Anchorage September 11-15, 2005. The Council is helping to sponsor this event and several staff has key roles in organizing the meeting. This will be the American Fisheries Society's 135<sup>th</sup> annual meeting and the second time they have met in Alaska. This year's theme is "Creating a Fisheries Mosaic – Connections Across Jurisdictions, Disciplines, and Cultures". Bill Wilson is General Chairman, and he has working with him about 50 Alaskan biologists helping to make arrangements for this meeting. There have been about 1800 papers submitted to the Program Committee, and as a result this may be the largest meeting AFS has ever held. More than 2000 people are expected to register. The papers will be given in about 50 symposia, several contributed papers sessions, and two 2-day poster sessions. There will be up to 18 concurrent sessions, including a session organized by Jane DiCosimo and sponsored by the Council and the Marine Conservation Alliance on groundfish fisheries in the North Pacific; Council Chair Madsen will moderate a portion of that all-day symposium. The Alaska Sea Grant Program is convening with AFS its annual Wakefield Fisheries Symposium, this year featuring the biology of Pacific rockfishes. The meeting will feature a Plenary session Monday morning, a trade show, and several social events including a welcoming seafood social on Sunday September 11 and a grilled Copper River red salmon and reindeer stew off-site social at the Alaska Native Heritage Center Wednesday evening. Meeting events will be held in the Egan Convention Center and the Performing Arts Center, both connected by a sky bridge. Some events also will be in the Anchorage Hilton Hotel, the meeting's headquarters. Room blocks at the Hilton, Captain Cook, and Howard Johnson are reserved at special AFS rates, but are filling rapidly. Check the meeting's web site for more information at [www.wdafs.org/anchorage2005](http://www.wdafs.org/anchorage2005) or contact Bill Wilson if you have questions.



# American Fisheries Society 135th Annual Meeting Anchorage, Alaska September 11-15, 2005

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The AFS 2005 Program Committee is pleased to present the following list of 50 Symposia to be held in Anchorage this coming September. For information about a specific symposium, please contact the organizer(s) directly.

Please note that excellent Symposia and Contributed Paper sessions are scheduled for all four days of the meeting, so make your plans to stay for the entire meeting. Monday morning will kick off with an exciting Plenary session. Then there will be 16 concurrent sessions on Monday afternoon, Tuesday, Wednesday, and 18 concurrent sessions on Thursday through 5:40 PM. Keep checking back to this web site for updated symposia details and specifics on scheduling.

We are looking forward to a fantastic program and appreciate everyone's great help in pulling this together.

### Online Registration is now available!

Symp #	Symposium Title	Sponsor(s)	Organizer	E-mail
1	<u>Biology, Assessment, and Management of Pacific Rockfishes (Lowell Wakefield Fisheries Symposium)</u>	Alaska Sea Grant College Program, Wakefield Endowment, University of Alaska Foundation	Sherri Pristash <a href="http://www.uaf.edu/seagrant/Conferences/symposia.html#rockfish">http://www.uaf.edu/seagrant/Conferences/symposia.html#rockfish</a>	<a href="mailto:fyconf@uaf.edu">fyconf@uaf.edu</a>
2	<u>Partnerships for a Common Purpose: Cooperative Fisheries Research and Management</u>	Sea Grant and many others	Alesia Read Emory Anderson	<a href="mailto:aread@fisheries.org">aread@fisheries.org</a>
3	<u>Recent Advances in Hydroacoustic Assessment of Fish Populations in Marine and Riverine Environments</u>		Debby Burwen Suzanne Maxwell Dan Urban	<a href="mailto:debby_burwen@fishgame.state.ak.us">debby_burwen@fishgame.state.ak.us</a> <a href="mailto:suzanne_maxwell@fishgame.state.ak.us">suzanne_maxwell@fishgame.state.ak.us</a>
4	<u>Modeling the capacity of Pacific salmon production</u>	WDAFS, SFF, Wild Salmon Center	Hal Michael Eric Knudsen	<a href="mailto:dan_urban@fishgame.state.ak.us">dan_urban@fishgame.state.ak.us</a> <a href="mailto:MICHAHHM@dfw.wa.gov">MICHAHHM@dfw.wa.gov</a>
5	<u>Elasmobranch research in the Northeast Pacific</u>		Jack Musick Ken Goldman	<a href="mailto:ericknudsen@gci.net">ericknudsen@gci.net</a> <a href="mailto:kenneth.j.goldman@jsums.edu">kenneth.j.goldman@jsums.edu</a>

				<a href="mailto:jmusick@vims.edu">jmusick@vims.edu</a>
6	<u>Using Video Technology for Fisheries Applications</u>	Kachemak Bay Research Reserve (ADF&G-SF) NOAA/NURP - West Coast & Polar Regions Undersea Research Center	*Ted Otis Brad Harris	<a href="mailto:ted_otis@fishgame.state.ak.us">ted_otis@fishgame.state.ak.us</a> <a href="mailto:bharris@umassd.edu">bharris@umassd.edu</a>
7	<u>Fisheries, Fishermen, and Fishing Communities: Socioeconomic Perspectives on the West Coast, Alaska, and Hawaii</u>	AFS Socioeconomics Section	John C. Whitehead	<a href="mailto:whiteheadjc@appstate.edu">whiteheadjc@appstate.edu</a>
8	<u>Geographic Information System and Geospatial Analyses in Fisheries Research and Management</u>	Computer Users Section	William L. Fisher Jeff Waldon Fred Janssen Stuart Shipman	<a href="mailto:wfisher@okstate.edu">wfisher@okstate.edu</a> <a href="mailto:fwixchg@vt.edu">fwixchg@vt.edu</a> <a href="mailto:fred.janssen@tpwd.state.tx.us">fred.janssen@tpwd.state.tx.us</a> <a href="mailto:sshipman@dnr.in.gov">sshipman@dnr.in.gov</a> <a href="mailto:bak3@cornell.edu">bak3@cornell.edu</a>
9	<u>The theory and practice of aquatic stewardship education</u>	Sport Fishing and Boating Partnership Council	Barb Knuth Bill Siemer Andy Loftus Carl Richardson	<a href="mailto:wfs1@cornell.edu">wfs1@cornell.edu</a> <a href="mailto:aloftus501@aol.com">aloftus501@aol.com</a> <a href="mailto:crichardso@state.pa.us">crichardso@state.pa.us</a>
10	<u>Science Bridging Five Nations: The Bering-Aleutian Salmon International Survey</u>	International Fisheries Section, Genetics Section	Jim Seeb Jack Helle Kate Myers	<a href="mailto:jim_seeb@fishgame.state.ak.us">jim_seeb@fishgame.state.ak.us</a>
11	<u>Habitat--what is it, how is it measured, and how do fish assemblages respond to it?</u>	AFS Water Quality Section, The International Association of Fish and Wildlife Agencies	Lou Reynolds* Bob Hughes	<a href="mailto:Reynolds.louis@epa.gov">Reynolds.louis@epa.gov</a> <a href="mailto:hughes.bob@epa.gov">hughes.bob@epa.gov</a>
12	<u>Applications of Bayesian Statistical Methods to Fisheries</u>		Steve Fleischman Milo Adkison Hal Geiger Noble Hendrix	<a href="mailto:steve_fleischman@fishgame.state.ak.us">steve_fleischman@fishgame.state.ak.us</a> <a href="mailto:milo.Adkison@uaf.edu">milo.Adkison@uaf.edu</a> <a href="mailto:Hal_Geiger@fishgame.state.ak.us">Hal_Geiger@fishgame.state.ak.us</a> <a href="mailto:nhendrix@r2usa.com">nhendrix@r2usa.com</a>



13	<u>Ocean Ecology of Salmon in Western North America: Regional Comparisons</u>	Marine Fisheries Section	Churchill Grimes	<a href="mailto:Churchill.grimes@noaa.gov">Churchill.grimes@noaa.gov</a>
14	<u>MPAs: Fitting the Pieces into the Fisheries Mosaic</u>	National Fisheries Conservation Center	Suzanne Iudicello	<a href="mailto:suzanneiudicello@rushmore.com">suzanneiudicello@rushmore.com</a>
15	<u>Advances in Telemetry: Opportunities and Challenges for Fisheries and Aquatic Ecology</u>		David Smith Michael Millard	<a href="mailto:david_r_smith@usgs.gov">david_r_smith@usgs.gov</a> <a href="mailto:mike_millard@fws.gov">mike_millard@fws.gov</a>
16	<u>The Influence of Dams on River Fisheries</u>		Shawn Alam Don Jackson Susan O'Brien Clark Hubbs Jesse Trushenski	<a href="mailto:shawn_alam@ios.doi.gov">shawn_alam@ios.doi.gov</a> <a href="mailto:susan.obrien@ferc.gov">susan.obrien@ferc.gov</a> <a href="mailto:djackson@cfr.msstate.edu">djackson@cfr.msstate.edu</a> <a href="mailto:hubbs@mail.utexas.edu">hubbs@mail.utexas.edu</a>
17	<u>Ecological Significance of Marine Forage Species</u>	Marine Fisheries Section (AFS) and American Institute of Fisheries Research Biologist (AIFRB)	Nancy Wallace Douglas S. Vaughan Matthew Cieri Steve Meyers Erik Williams,	<a href="mailto:Doug.Vaughan@noaa.gov">Doug.Vaughan@noaa.gov</a> <a href="mailto:Matthew.Cieri@state.me.us">Matthew.Cieri@state.me.us</a> <a href="mailto:Steve.Meyers@noaa.gov">Steve.Meyers@noaa.gov</a> <a href="mailto:Erik.Williams@noaa.gov">Erik.Williams@noaa.gov</a>
18	<u>Innovative approaches in managing North Pacific groundfish fisheries</u>	Marine Conservation Alliance	Jane DiCosimo	<a href="mailto:Jane.DiCosimo@noaa.gov">Jane.DiCosimo@noaa.gov</a>
19	<u>The future of conservation genetics: integrating molecular and quantitative genetic approaches</u>	AFS Genetics Section, National Marine Fisheries Service, Northwest Fisheries Science Center	Jeff Hard Paul Moran	<a href="mailto:jeff.hard@noaa.gov">jeff.hard@noaa.gov</a> <a href="mailto:paul.moran@noaa.gov">paul.moran@noaa.gov</a>
20	<u>Salmon 2100 Project</u>		Bob Lackey Denise Lach	<a href="mailto:lackey.robert@epa.gov">lackey.robert@epa.gov</a> <a href="mailto:denise.lach@oregonstate.edu">denise.lach@oregonstate.edu</a>

21	<u>Ecology and Management of North American Prairie Streams</u>		Robert G. Bramblett Keith Gido	<a href="mailto:bbram@montana.edu">bbram@montana.edu</a> <a href="mailto:kgido@ksu.edu">kgido@ksu.edu</a>
22	<u>Catch-and-Release Science and Its Application to Conservation and Management From the laboratory to the field: practical applications of physiological and performance indicators in fish</u>	AFS Fish Management Section	Julie Meka Steve Cooke	<a href="mailto:julie_meka@usgs.gov">julie_meka@usgs.gov</a> <a href="mailto:scooke@interchange.ubc.ca">scooke@interchange.ubc.ca</a>
23	<u>Fluvial Geomorphology and Fish Habitat Symposium Behavioral perspectives in fish conservation and management</u>	AFS Physiology section	Matthew G. Mesa Brian R. Beckman	<a href="mailto:matt_mesa@usgs.gov">matt_mesa@usgs.gov</a> <a href="mailto:brian.beckman@noaa.gov">brian.beckman@noaa.gov</a>
24	<u>Small-scale spatial variation in the population biology of fishes: examples, implications, and management concerns</u>		Michael D. Porter Tamara M. Massong	<a href="mailto:mporter@uc.usbr.gov">mporter@uc.usbr.gov</a> <a href="mailto:tmassong@uc.usbr.gov">tmassong@uc.usbr.gov</a>
25	<u>Written communications: writing and reviewing papers for fisheries journals</u>		Joseph J. Parkos III David H. Wahl	<a href="mailto:parkos@uiuc.edu">parkos@uiuc.edu</a> <a href="mailto:d-wahl@uiuc.edu">d-wahl@uiuc.edu</a>
26	<u>Ecology and Taxonomy of Freshwater and Diadromous Sculpins</u>		Doug DeVries Robert Allman	<a href="mailto:Doug.Devries@noaa.gov">Doug.Devries@noaa.gov</a> <a href="mailto:Bob.Allman@noaa.gov">Bob.Allman@noaa.gov</a>
27	<u>Behavior and ecology of stream salmonids: individuals, populations, and communities</u>		Donna L. Parrish* Katie Bertrand Martha Mather	<a href="mailto:Donna.Parrish@uvm.edu">Donna.Parrish@uvm.edu</a> <a href="mailto:Bertrand@ksu.edu">Bertrand@ksu.edu</a> <a href="mailto:mather@forwild.umass.edu">mather@forwild.umass.edu</a>
28	<u>Ecology and Taxonomy of Freshwater and Diadromous Sculpins</u>		Susan B. Adams David A. Schmetterling	<a href="mailto:sadams01@fs.fed.us">sadams01@fs.fed.us</a> <a href="mailto:dschmetterling@state.mt.us">dschmetterling@state.mt.us</a>
29	<u>Influence of Offshore Platforms on Marine Fish Ecology</u>	US Department of the Interior, Minerals Management Service	Jack Piccolo Nick Hughes	<a href="mailto:ftjip1@uaf.ed">ftjip1@uaf.ed</a> <a href="mailto:ffnfh@uaf.edu">ffnfh@uaf.edu</a>
30	<u>New Uses of Acoustic Tags in Fisheries Research</u>		Ann Scarborough Bull	<a href="mailto:ann.s.bull@mms.gov">ann.s.bull@mms.gov</a>
31			Bruce Ransom* John E. Ehrenberg	<a href="mailto:bransom@htisonar.com">bransom@htisonar.com</a>

32	<u>Crustacean Fisheries Science and Assessment</u>		Dave Secor Tom Miller Gordon Kruse	<a href="mailto:secor@cbl.umces.edu">secor@cbl.umces.edu</a> <a href="mailto:miller@cbl.umces.edu">miller@cbl.umces.edu</a> <a href="mailto:gordon.kruse@uaf.edu">gordon.kruse@uaf.edu</a>
33	<u>National and International Challenges and Lessons Learned on Fish Management Chemicals</u>	AFS Task Force on Fishery Chemicals; CWE Properties; Prentiss Inc.; Turner Enterprises	Brian Finlayson* Rosalie (Roz) Schnick	<a href="mailto:bfinlays@ospr.dfg.ca.gov">bfinlays@ospr.dfg.ca.gov</a> <a href="mailto:RozSchnick@centurytel.net">RozSchnick@centurytel.net</a>
34	<u>Invasive Species in Large River Systems</u>		Jill Hardiman* Tim Counihan	<a href="mailto:jhardiman@usgs.gov">jhardiman@usgs.gov</a> <a href="mailto:tim_counihan@usgs.gov">tim_counihan@usgs.gov</a>
35	<u>Second International Burbot Symposium</u>	WDAFS, Fisheries Management Section AFS	Vaughn L. Paragamian Matt Evensen	<a href="mailto:iwaite@usgs.gov">iwaite@usgs.gov</a> <a href="mailto:vparagam@idfg.state.id.us">vparagam@idfg.state.id.us</a> <a href="mailto:matt_evensen@fishgame.state.ak.us">matt_evensen@fishgame.state.ak.us</a>
36	<u>Why is sustainability so difficult? - Understanding and Addressing Impediments to Conserving Aquatic Resources</u>		Dave Cannon	<a href="mailto:dcannon4kna@aol.com">dcannon4kna@aol.com</a>
37	<u>Native Participation in Fisheries Management: Past and Present</u>		Dolly Garza Russ Jones	<a href="mailto:ffdag@uaf.edu">ffdag@uaf.edu</a> <a href="mailto:rjones@island.net">rjones@island.net</a>
38	<u>The evolution and ecology of biocomplexity as a key to fisheries sustainability</u>		Lorenz Hauser Lisa Seeb Jim Seeb Jeff Olsen	<a href="mailto:lhauser@u.washington.edu">lhauser@u.washington.edu</a> <a href="mailto:lisa_seeb@fishgame.state.ak.us">lisa_seeb@fishgame.state.ak.us</a> <a href="mailto:jim_seeb@fishgame.state.ak.us">jim_seeb@fishgame.state.ak.us</a> <a href="mailto:jeffrey_olsen@fws.gov">jeffrey_olsen@fws.gov</a>
39	<u>POST- The Pacific Ocean Shelf Tracking Network: Description &amp; Results from the 2004-05 Demonstration Phase</u>	Census of Marine Life	Peggy Tsang David Welch	<a href="mailto:peggy.tsang@vanagua.org">peggy.tsang@vanagua.org</a> <a href="mailto:david.welch@kintamaresearch.org">david.welch@kintamaresearch.org</a>

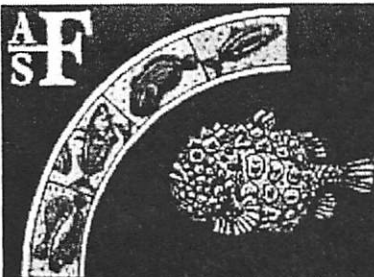
40	<u>Stock Enhancement of Non-salmonid Marine Species In North America: Status and Challenges</u>		R.J. Rhodes* D. B. Kent	<a href="mailto:rhodesr@mrd.dnr.state.sc.us">rhodesr@mrd.dnr.state.sc.us</a> <a href="mailto:DKent@hswri.org">DKent@hswri.org</a>
41	<u>Stream and Watershed Restoration: Planning, Prioritizing, and Monitoring</u>		Phil Roni <sup>1</sup> (Main Contact) Barry Baldigo <sup>2</sup> Tim Beechie <sup>1</sup> Ashley Steel <sup>1</sup> Keith Nislow <sup>3</sup>	<a href="mailto:phil.roni@noaa.gov">phil.roni@noaa.gov</a>
42	<u>Historical and Cultural Importance of Alaska Fisheries</u>	Fisheries History Section, Native Peoples Fisheries Section	Steve Klein Randy Jackson	<a href="mailto:Steve_klein@fws.gov">Steve_klein@fws.gov</a>
44	<u>Conservation and Recovery of North America's Imperiled Freshwater Fauna &amp; Ecosystems</u>		Shawn Staton* Becky Cudmore Noel M. Burkhead	<a href="mailto:statons@dfo-mpo.gc.ca">statons@dfo-mpo.gc.ca</a> <a href="mailto:cudmoreb@dfo-mpo.gc.ca">cudmoreb@dfo-mpo.gc.ca</a> <a href="mailto:noel_burkhead@usqs.gov">noel_burkhead@usqs.gov</a>
46	<u>Fishery Management - The Roles of Science and Ecosystem Based Management</u>	Institute of Social and Economic Research, University of Alaska Anchorage	Dr. Gunnar Knapp Tom Gemmell,	<a href="mailto:afgpk@uaa.alaska.edu">afgpk@uaa.alaska.edu</a> <a href="mailto:tomgemmellmca@ak.net">tomgemmellmca@ak.net</a>
47	<u>Selectivity and Catch Performance of Commercial and Survey Gears</u>		Pingguo He* Joseph DeAlteris Chris Glass Russell Brown	<a href="mailto:pingguo.he@unh.edu">pingguo.he@unh.edu</a> <a href="mailto:jdealteris@uri.edu">jdealteris@uri.edu</a> <a href="mailto:glasscw@manomet.org">glasscw@manomet.org</a> <a href="mailto:Russell.Brown@noaa.gov">Russell.Brown@noaa.gov</a>
49	<u>The New State Comprehensive Wildlife Conservation Strategies: Aquatic/Fisheries Components</u>	Fish Administrators' Section, Fish Management Section	Tim Hess Jeff Koenings	<a href="mailto:Tim_Hess@fws.gov">Tim_Hess@fws.gov</a> <a href="mailto:koenijpk@dfw.wa.gov">koenijpk@dfw.wa.gov</a>
51	<u>Fishing for the Future: Managing Fisheries and Aquatic Ecosystems using a Business Paradigm</u>	Michigan State University, Department of Fisheries and Wildlife; Michigan Sea Grant; Center for Agriculture	William Taylor Stacy Lischka *Lois Wolfson,	<a href="mailto:taylorw@msu.edu">taylorw@msu.edu</a> <a href="mailto:lischkas@msu.edu">lischkas@msu.edu</a> <a href="mailto:wolfson1@msu.edu">wolfson1@msu.edu</a>

and Natural  
Resources;  
Great Lakes  
Fishery  
Commission;  
Sport Fishing  
and Boating  
Partnership  
Council

52	<u>Connections Between Economic Growth and Fish Conservation</u>	AFS Water Quality Section	Brian Czech* Bob Hughes	<a href="mailto:brianczech@juno.com">brianczech@juno.com</a> <a href="mailto:hughes.bob@epa.gov">hughes.bob@epa.gov</a>
57	<u>Fisheries and the Integrated Ocean Observing System</u>		Phil Mundy	<a href="mailto:mundy@qci.net">mundy@qci.net</a>
58	<u>Sockeye Salmon Ecology, Evolution, Life History, and Management -- A Special Poster Symposium</u>		Carol Ann Woody	<a href="mailto:carol_woody@usgs.gov">carol_woody@usgs.gov</a>

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Last Updated: May 23, 2005*



# American Fisheries Society 135th Annual Meeting Anchorage, Alaska September 11-15, 2005

Registration

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### Registration Prices

Member Type	Fee (U.S.)
AFS Member	\$295 (\$395 after August 5)
Non-AFS Member	\$450 (\$550 after August 5)
Retired AFS Member	\$150
Student Member (fax or send photocopy of student ID)	\$95
Student Non-Member	\$125
One Day Registration	\$150 per day
Guests	\$35 per guest per social
Western Division AFS Business Luncheon	\$10

### Workshops and Continuing Education

see [Continuing Education](#) section for description of workshops or click on link for description of individual course.

fees coming soon

**Workshop**

**Fee (U.S.)  
student-member-nonmember**

<u>Using MCMC in WinBUGS and Python to fit random effects and hierarchical models</u> (laptop required)	80-100-120
<u>Radio telemetry for freshwater fisheries studies</u>	60-80-100
<u>Hydroacoustic tools for fish and habitat assessment</u> (field trip included)	145-165-185
<u>Thrive, not just survive, a HOT public meeting</u>	40-60-80
<u>Conflict resolution skills for natural resource professionals</u>	40-60-80
<u>Use of the Fishery Analysis Simulation Tool (FAST) to model the dynamics of exploited fish populations</u> (laptop required)	80-100-120 software required - \$75
<u>Choosing the appropriate biotelemetry technology for aquatic research</u>	60-80-100
<u>Writing for publication: The dos and don'ts for successful publishing</u>	80-100-120
<u>An introduction to ecological modeling and programming using AD Model Builder</u> (laptop required)	155-175-195
<u>Leadership regardless of position: you don't have to be a chief to have influence</u>	60-80-100
<u>Basic GIS techniques for fisheries biologists</u>	100-150-200
<u>Advanced GIS techniques for fisheries biologists</u>	150-200-250

Alaska Native Cultures 80-100-120

AFS leadership principles workshop – It's not just for officers Free

"Lessons Learned" student colloquium: A workshop for students attending professional conferences Free

"Addressing issues of diversity in fisheries science" student colloquium Free

### Activities

see the Activities Section for descriptions of Activities or click on link for description of individual event.

<b>Activity</b>	<b>Fee (U.S.)</b>
<u>Spawning Run</u>	\$15
<u>Kenai Fjords National Park Wildlife &amp; Glacier Cruise on Alaska Railroad</u>	\$225
<u>Kenai Fjords National Park Wildlife &amp; Glacier Cruise via motorcoach</u>	\$175
<u>Guided Walking Tour of Downtown Anchorage</u>	\$17
<u>Alaska Zoo and Grizzly Junction Tour</u>	\$60
<u>Portage Glacier Sightseeing and Alyeska Ski Resort Tram Ride</u>	\$87
<u>Eagle River Nature Center Guided Naturalist Hike and visit to Eagle River art gallery/coffeehouse</u>	\$58
<u>Bird Watching Tour of Anchorage Bowl</u>	\$75
<u>Kenai River Restoration and Guided Fishing Tour</u>	\$175



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*Last Updated: May 18, 2005*

NMFS's Response to a Question about Management of the  
Crab Community Development Quota Fisheries

Prepared by: Sally Bibb  
May 24, 2005

Question: Do NMFS regulations at 50 CFR 679.30, prohibiting transfers to cover CDQ overages, apply to the crab CDQ fisheries?

Answer: No, for the following reasons.

NMFS's Current Interpretation of FMP and Regulations about Crab CDQ

Crab CDQ allocations were initially implemented in 1998 under Amendment 5 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. In the proposed rule (62 FR 43866, August 15, 1997), NMFS described management of the crab CDQ fisheries as follows:

*Under the proposed multispecies CDQ program, NMFS would be responsible for monitoring and enforcing the groundfish and halibut CDQs. The State of Alaska (State) would be responsible for monitoring and enforcing the crab CDQs under authority contained in the FMP for the Commercial King and Tanner Crab Fisheries in the BS/AI.*

In the final rule for the crab rationalization program (70 FR 10174, March 2, 2005 and a later correction), NMFS again described that management of crab CDQ is deferred to the State of Alaska under the crab FMP, as follows:

*Community Development Quota Program and Community Allocations*

*Community Development Quota Program. The CDQ Program is to be expanded to include the Eastern Aleutian Islands golden king crab fishery and the Western Aleutian Islands red king crab fishery. In addition, the CDQ allocations in all crab fisheries covered by the Program are increased from 7.5 to 10 percent of the TAC. The increase will not apply to the CDQ allocation of Norton Sound red king crab because this fishery is excluded from the Program. The crab CDQ fisheries will be managed as separate commercial fisheries by the State under authority deferred to it under the FMP. The State will establish observer coverage requirements, State permitting requirements, and transfer provisions among the CDQ groups. It also will monitor catch to determine when quotas have been reached, enforce any penalties associated with quota overages, and monitor compliance with the requirement that CDQ groups must deliver at least 25 percent of their allocation to shore-based processors.*

*Crab harvested under the CDQ allocations (except Norton Sound red king crab) are subject to some of the Federal requirements that apply to all crab fisheries under the Program including permitting, recordkeeping and reporting, a vessel monitoring system, and the cost recovery fees.*

Summary of the status quo, as NMFS interprets it:

1. The crab FMP does not include many details about the crab CDQ allocations or management of the crab CDQ fisheries. Improvements could be made, but they would require the Council to approve an FMP amendment to make these clarifications.
2. Allocation of crab among the CDQ groups is a category 1 measure under the crab FMP and is the responsibility of NMFS and the Council. The CDQ allocation process described in 50 CFR part 679 is initiated through the submission of allocation recommendations to the Council and NMFS by the State of Alaska. (This process is not described in the crab FMP).
3. Management of the crab CDQ fisheries are deferred to the State of Alaska under the crab FMP. Nothing in NMFS regulations at 50 CFR part 679 direct the State about how to manage the crab CDQ fisheries. Specifically, the provision at 679.30(e) that state that "NMFS will not approve transfers to cover overages of CDQ or PSQ" does not apply to crab CDQ. It applies only to groundfish, halibut, and PSC species.
4. The Council requested NMFS to analyze a proposal to allow transfers to cover overages. NMFS will give an update on this analysis at the June meeting - we hope that the revised initial review draft will be completed for the October 2005 Council meeting, but progress on this analysis will depend on how much staff time is required this summer for the CDQ allocation process and assistance to the State's blue ribbon panel.
5. The current CDQ fisheries management analysis addresses only groundfish CDQ and PSQ and not halibut CDQ or crab CDQ. If the Council wants to include crab CDQ in this analysis, it would have to direct staff to expand the scope of this analysis. If the current analysis is expanded to cover crab CDQ transfers and overages, this would require an FMP amendment. Such an FMP amendment would be complex because it would require clarification of all elements of the crab FMP with respect to management of the crab CDQ fisheries and the division of responsibilities between NMFS and the State.

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

07 ✓  
AGENDA B-1(d)  
FRANK H. MURKOWSKI JUNE 2005

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

April 14, 2005

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

*Stephanie*  
Dear Chairperson Madsen:

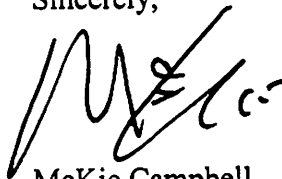
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APR 18 2005  
N.P.F.M.C.

I am pleased to nominate Dr. Jie Zheng to the North Pacific Fisheries Management Council's Scallop Plan Team, to replace Dr. Doug Woodby who resigned to avoid conflict with his Scientific and Statistical Committee membership.

Dr. Zheng was recently promoted to the position of statewide shellfish Fisheries Scientist for the Division of Commercial Fisheries, and provides guidance for Alaska Department of Fish and Game's shellfish research programs, including scallops. He has worked for the department for 15 years as a shellfish biometrician, and has extensive experience with stock assessment issues. Dr. Zheng's resume is enclosed. I am sure that he will be a valuable asset to the scallop plan team.

Thank you for your consideration of this request.

Sincerely,



McKie Campbell  
Commissioner

Enclosure

cc: Doug Mecum, Director, Division of Commercial Fisheries, ADF&G

# CURRICULUM VITAE

**Jie Zheng**

**April 2005**

## OFFICE:

Jie Zheng, Fisheries Scientist I  
Division of Commercial Fisheries  
Alaska Department of Fish and Game  
P. O. Box 25526  
Juneau, AK 99802-5526  
Phone: 907-465-6102  
Fax: 907-465-2604  
Email: jie\_zheng@fishgame.state.ak.us

## CURRENT RESEARCH INTERESTS

Fisheries Management, Population Dynamics, Stock Assessments, Population Modeling

## EDUCATION

1994, Ph.D., Fisheries and Biometry, University of Alaska Fairbanks, USA  
1988, M.S., Fisheries, University of Alaska Juneau/Fairbanks, USA  
1982, B.S., Marine Fisheries, Zhanjiang Fisheries College, PRC

## HONORS AND AWARDS

Meritorious Service Award of the American Fisheries Society, Alaska Chapter, 2002.  
Fisheries Research Award, Alaska Department of Fish and Game, 1995.  
Natural Resources Fellowship, University of Alaska, 1990-1993.

## RESEARCH EXPERIENCE

April 2005:

Fisheries Scientist I, Alaska Department of Fish and Game.

Subject: Statewide shellfish population dynamics research, length-based modeling, crab stock assessments, and evaluation of crab management strategies in Alaska.

May 2001 – March 2005:

Biometrician III, Alaska Department of Fish and Game.

Subject: Length-based modeling, population dynamics, crab stock assessments, and evaluation of crab management strategies in Alaska.

November 1995 – April 2001:

Biometrician II, Alaska Department of Fish and Game.

Subject: Length-based modeling, crab stock assessments, and evaluation of crab management strategies in Alaska.

July 1992 – October 1995:

Biometrician I, Alaska Department of Fish and Game.

Subject: Crab abundance estimation and evaluation of crab management strategies in Alaska.

March 1991 - June 1992:

Biometrician I, Alaska Department of Fish and Game.

Subject: Threshold estimation and evaluation for herring stocks in Alaska.

July - August 1993-1997, June - September 1992, July – September 1991 and June - September 1990:

Research Associate, University of Alaska Fairbanks.

Subject: In-season forecast of pink salmon runs in S.E. Alaska.

September - December 1990:

Biometrician I, Alaska Department of Fish and Game.

Subject: Salmon bycatch estimation in groundfish fisheries in the Bering Sea/Aleutian Islands region and the Gulf of Alaska.

February - May 1990:

Graduate Intern, Alaska Department of Fish and Game.

Subject: Shrimp length frequency data analysis, computer programming and mapping.

Ph. D. Graduate Research Assistant, University of Alaska Fairbanks.

Subject: Research harvest data model, phase I. Alaska brown bear.

October 1988 - January 1990:

Ph. D. Graduate Research Assistant, University of Alaska Fairbanks.

Subject: Fisheries threshold management system design and evaluation.

July - August 1989:

Ph. D. Graduate Research Assistant, University of Alaska Fairbanks.

Subject: In-season forecast of pink salmon runs in northern SE Alaska and acoustic target strength

measurement of pink salmon.

June 1987 - September 1988:

Graduate Research Assistant, University of Alaska Fairbanks.

Subject: In-season abundance estimates of pink salmon in Cross Sound, AK

September 1986 - December 1987:

Graduate Research Assistant, University of Alaska Juneau.

Subject: Auke Bay ecosystem modelling.

August 1985 - August 1986:

Visiting Scientist, University of British Columbia, Canada.

Subject: Population dynamics and stock assessment of Wanshan spring *Decapterus maruadsi* in northern South China Sea.

## REFEREED PUBLICATIONS

Zheng, J. and G.H. Kruse. *MS*. Recruitment variation of eastern Bering Sea crabs: climate-forcing or top-down effects? Submitted to *Progress in Oceanography*.

Zheng, J. *In press*. Estimates of natural mortality for crab stocks: data-limited situations for every stock? Alaska Sea Grant Symposium Proceedings.

Zheng, J. 2003. Uncertainties of natural mortality estimates for eastern Bering Sea snow crab, *Chionoecetes opilio*. *Fisheries Research* 65:411-425.

- Zheng, J. and G.H. Kruse. 2003. Stock-recruitment relationships for three major Alaskan crab stocks. *Fisheries Research* 65:103-121.
- Zheng, J. and G.H. Kruse. 2002a. Assessment and management of crab stocks under uncertainty of massive die-offs and rapid changes in survey catchability. Pages 367-384 *In* A.J. Paul, E.G. Dawe, R. Elner, G.S. Jamieson, G.H. Kruse, R.S. Otto, B. Sainte-Marie, T.C. Shirley, and D. Woodby (eds.). *Crabs in Cold Water Regions: Biology, Management, and Economics*. University of Alaska Sea Grant, AK-SG-02-01, Fairbanks.
- Zheng, J. and G.H. Kruse. 2002b. Retrospective length-based analysis of Bristol Bay red king crabs: model evaluation and management implications. Pages 475-494 *In* A.J. Paul, E.G. Dawe, R. Elner, G.S. Jamieson, G.H. Kruse, R.S. Otto, B. Sainte-Marie, T.C. Shirley, and D. Woodby (eds.). *Crabs in Cold Water Regions: Biology, Management, and Economics*. University of Alaska Sea Grant, AK-SG-02-01, Fairbanks.
- Zheng, J., G.H. Kruse and D.R. Ackley. 2001. Spatial distribution and recruitment patterns of snow crabs in the eastern Bering Sea. Pages 233-255 *In* G.H. Kruse, N. Bez, A. Booth, M.W. Dorn, S. Hills, R.N. Lipcius, D. Pelletier, C. Roy, S.J. Smith, and D. Witherel (eds.). *Spatial Processes and Management of Fish Populations*. University of Alaska Sea Grant, AK-SG-01-02, Fairbanks.
- Kruse, G.H., L.C. Byrne, F.C. Funk, S.C. Matulich and J. Zheng. 2000. Analysis of minimum size limit for the red king crab fishery in Bristol Bay, Alaska. *North American Journal of Fisheries Management* 20: 307-319.
- Zheng, J. and G.H. Kruse. 2000a. Recruitment patterns of Alaskan crabs in relation to decadal shifts in climate and physical oceanography. *ICES Journal of Marine Science* 57: 438-451.
- Zheng, J. and G.H. Kruse. 2000b. Rebuilding probabilities under alternative rebuilding strategies for eastern Bering Sea Tanner crabs. *Alaska Fishery Research Bulletin* 7: 1-10.
- Zheng, J. and G.H. Kruse. 1999. Evaluation of harvest strategies for Tanner crab stocks that exhibit periodic recruitment. *Journal of Shellfish Research* 18(2):667-679.
- Zheng, J. and G.H. Kruse. 1998. Stock-recruitment relationships for Bristol Bay Tanner crab. *Alaska Fishery Research Bulletin* 5(2): 116-130.
- Zheng, J., G.H. Kruse and L. Fair. 1998. Use of multiple data sets to assess red king crab, *Paralithodes camtschaticus*, in Norton Sound, Alaska: A length-based stock synthesis approach. Pages 591-612 *In* *Fishery Stock Assessment Models*, edited by F. Funk, T.J. Quinn II, J. Heifetz, J.N. Ianelli, J.E. Powers, J.F. Schweigert, P.J. Sullivan, and C.-I. Zhang, Alaska Sea Grant College Program Report No. AK-SG-98-01, University of Alaska Fairbanks.
- Zheng, J., G.H. Kruse and M.C. Murphy. 1998. A length-based approach to estimate population abundance of Tanner crab, *Chioneocetes bairdi*, in Bristol Bay, Alaska. Pages 97-105 *in* G.S. Jamieson and A. Campbell, editors. *Proceedings of the North Pacific symposium on invertebrate stock assessment and management*. Canadian Special Publication of Fisheries and Aquatic Sciences 125.
- Zheng, J., M.C. Murphy and G.H. Kruse. 1998. Abundance estimation for St. Matthew Island blue king crab using survey and commercial catch and effort data. Pages 575-590 *In* *Fishery Stock Assessment Models*, edited by F. Funk, T.J. Quinn II, J. Heifetz, J.N. Ianelli, J.E. Powers, J.F. Schweigert, P.J. Sullivan, and C.-I. Zhang, Alaska Sea Grant College Program Report No. AK-SG-98-01, University of Alaska Fairbanks.
- Zheng, J. and O.A. Mathisen. 1998. Inseason forecasting of southeastern Alaska pink salmon abundance based on sex ratios and commercial catch and effort data. *North American Journal of Fisheries Management* 18: 872-885.

- Zheng, J., M.C. Murphy and G.H. Kruse. 1997a. Analysis of the harvest strategies for red king crab, *Paralithodes camtschaticus*, in Bristol Bay, Alaska. *Canadian Journal of Fisheries and Aquatic Sciences* 54: 1121-1134.
- Zheng, J., M.C. Murphy and G.H. Kruse. 1997b. Alternative rebuilding strategies for the red king crab *Paralithodes camtschaticus* fishery in Bristol Bay, Alaska. *Journal of Shellfish Research* 16: 205-217.
- Zheng, J., M.C. Murphy and G.H. Kruse. 1997c. Application of a catch-survey analysis to blue king crab stocks near Pribilof and St. Matthew Islands. *Alaska Fishery Research Bulletin* 4(1): 62-74.
- Zheng, J. 1996. Herring stock-recruitment relationships and recruitment patterns in the North Atlantic and Northeast Pacific Oceans. *Fisheries Research* 26: 257-277.
- Zheng, J., M.C. Murphy and G.H. Kruse. 1996. A catch-length analysis for crab populations. *Fishery Bulletin* 94: 576-588.
- Zheng, J., M.C. Murphy and G.H. Kruse. 1995a. A length-based population model and stock-recruitment relationships for red king crab, *Paralithodes camtschaticus*, in Bristol Bay, Alaska. *Canadian Journal of Fisheries and Aquatic Sciences* 52: 1229-1246.
- Zheng, J., M.C. Murphy and G.H. Kruse. 1995b. Updated length-based population model and stock-recruitment relationships for red king crab in Bristol Bay, Alaska. *Alaska Fishery Research Bulletin* 2(2): 114-124.
- Zheng, J. 1994. Threshold management strategies for exploited fish populations. Ph.D. thesis, University of Alaska Fairbanks, Fairbanks, Alaska. 203 pp.
- Murphy, M.C., W.E. Donaldson and J. Zheng. 1994. Results of a questionnaire on research and management priorities for commercial crab species in Alaska. *Alaska Fishery Research Bulletin* 1: 81-96.
- Zheng, J., F.C. Funk, G.H. Kruse and R. Fagen. 1993. Evaluation of threshold management strategies for Pacific herring in Alaska. Pages 141-166 *In* G. Kruse, D.M. Eggers, R.J. Marasco, C. Pautzke, and T.J. Quinn II [ed.] *Proceedings of the International Symposium on Management Strategies for Exploited Fish Populations*. Alaska Sea Grant College Program Report 93-02, University of Alaska Fairbanks, Fairbanks, Alaska.
- Zheng, J., T.J. Quinn II and G.H. Kruse. 1993. Comparison and evaluation of threshold estimation methods for exploited fish populations. Pages 267-290 *In* G. Kruse, D.M. Eggers, R.J. Marasco, C. Pautzke, and T.J. Quinn II [ed.] *Proceedings of the International Symposium on Management Strategies for Exploited Fish Populations*. Alaska Sea Grant College Program Report 93-02, University of Alaska Fairbanks, Fairbanks, Alaska.
- Quinn II, T.J., R. Fagen and J. Zheng. 1990. Threshold management policies for exploited populations. *Canadian Journal of Fisheries and Aquatic Sciences* 47: 2016-2029.
- Zheng, J. 1988. Hydroacoustic information system for dynamic management of pink salmon fisheries in S.E. Alaska. Master thesis, University of Alaska, Juneau, Alaska. 156 pp.
- Zheng, J. and C.J. Walters. 1988. Population dynamics and stock assessment of Wanshan spring *Decapterus maruadsi* (T. & S.) in South China Sea. *Fisheries Research* 6: 217-231.

## TECHNICAL REPORTS AND CONFERENCE PAPERS

- Vining, I. and J. Zheng. 2004. Status of king crab stocks in the eastern Bering Sea in 2003. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 4K04-XX, Kodiak.



- Zheng, J. and D. Pengilly. 2003. Evaluation of alternative rebuilding strategies for Pribilof Islands blue king crabs. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 5K03-10, Juneau.
- Zheng, J. 2003. Evaluation of alternative harvest strategies for Bristol Bay red king crabs. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 5K03-04, Juneau.
- Vining, I. and J. Zheng. 2003. Status of king crab stocks in the eastern Bering Sea in 2002. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 4K03-03, Kodiak.
- Zheng, J., S. Siddeek, D. Pengilly and D. Woodby, 2002. Overview of recommended harvest strategy for snow crabs in the eastern Bering Sea. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 5J02-03, Juneau.
- Vining, I. and J. Zheng. 2001. Status of king crab stocks in the eastern Bering Sea in 2001. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 4K01-56, Kodiak.
- Zheng, J. and G.H. Kruse. 2000a. Overview of stock assessment and recommended harvest strategy for St. Matthew Island blue king crabs. Alaska Department of Fish and Game, Regional Information Report 5J00-06, Juneau, Alaska.
- Zheng, J. and G.H. Kruse. 2000b. Status of king crab stocks in the eastern Bering Sea in 2000. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 5J00-09, Juneau.
- Zheng, J. and G.H. Kruse. 1999. Overview of population dynamics and recommended harvest strategy for Tanner crabs in the eastern Bering Sea. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 5J99-04, Juneau.
- Zheng, J. and G.H. Kruse. 1999. Status of king crab stocks in the eastern Bering Sea in 1999. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 5J99-09, Juneau.
- Zheng, J., G.H. Kruse and M.C. Murphy. 1998. Status of king crab stocks in the eastern Bering Sea in 1998. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report 5J98-06, Juneau.
- Zheng, J. 1997. Stock-recruitment relationships and recruitment patterns for forage fishes. *in* Proceedings of the International Symposium on Forage Fishes in Marine Ecosystems. University of Alaska Fairbanks, Alaska Sea Grant Program Report 97-01, Fairbanks, Alaska. In press.
- Zheng, J., G.H. Kruse and M.C. Murphy. 1997. Stock status of king crabs in the Eastern Bering Sea in 1997. Alaska Department of Fish and Game, Regional Information Report 5J97-13, Juneau, Alaska. 20 pp.
- Kruse, G.H., F.C. Funk and J. Zheng. 1996. Were Alaskan red king crabs overfished? Pages 295-300 *in* Proceedings of the International Symposium on Biology, Management, and Economics of Crabs from High Latitude Habitats. University of Alaska Fairbanks, Alaska Sea Grant Program Report 96-02, Fairbanks, Alaska.
- Mathisen, O.A., J. Zheng, M. Jaenicke, D. Courtney and E. Farley. 1996. Forecasts of 1997 pink salmon runs to SE Alaska. University of Alaska Fairbanks, JC-SFOS 96-07, Juneau, Alaska. 14 pp.
- Zheng, J., G.H. Kruse and M.C. Murphy. 1996a. Stock status of Bristol Bay red king crabs in 1996. Alaska Department of Fish and Game, Regional Information Report 5J96-12, Juneau, Alaska. 11 pp.
- Zheng, J., G.H. Kruse and M.C. Murphy. 1996b. Comparisons of abundance estimation methods for red king crabs in Bristol Bay and Kodiak. Pages 283-294 *in* Proceedings of the International

- Symposium on Biology, Management and Economics of Crabs from High Latitude Habitat. University of Alaska Fairbanks, Alaska Sea Grant Program Report 96-02, Fairbanks, Alaska.
- Zheng, J., M.C. Murphy and G.H. Kruse. 1996. Overview of population estimation methods and recommended harvest strategy for red king crabs in Bristol Bay. Alaska Department of Fish and Game, Regional Information Report 5J96-04, Juneau, Alaska. 37 pp.
- Mathisen, O.A., J. Zheng, M. Jaenicke, D. Courtney and E. Farley. 1995. Forecasts of 1996 pink salmon runs to SE Alaska. University of Alaska Fairbanks, JC-SFOS 95-06, Juneau, Alaska. 11 pp.
- Mathisen, O.A. and J. Zheng. 1994. Changing sex ratios during spawning migration of pink salmon in Southeast Alaska. Pages 137-145 in Proceedings of the 16th Northeast Pacific Pink and Chum Salmon Workshop. Alaska Sea Grant Program Report 94-02, Fairbanks, Alaska.
- Mathisen, O.A., J. Zheng and M. Jaenicke. 1993. Forecasts of 1994 pink salmon runs to SE Alaska. University of Alaska Fairbanks, JC-SFOS 93-05, Juneau, Alaska. 11 pp.
- Funk, F. and J. Zheng. 1992. Age-structured analysis of Prince William Sound herring. Alaska Department of Fish and Game, Division of Commercial Fisheries, Regional Information Report No. 5J92. Juneau, Alaska.
- Mathisen, O.A., J. Zheng and M. Jaenicke. 1992. Forecasts of 1993 pink salmon runs to SE Alaska. University of Alaska Fairbanks, JC-SFOS 92-06, Juneau, Alaska. 9 pp.
- Zheng, J. and O.A. Mathisen. 1990. In-season forecast of pink salmon abundance in Southeastern Alaska in 1988. Pages 88-90 in P.A. Knudsen [ed.] Proceedings of the 14th Northeast Pacific Pink and Chum Salmon Workshop. Washington State Department of Fisheries, Olympia, Washington.
- Mathisen, O.A. and J. Zheng. 1989. Industry sponsored pink salmon investigation in SE Alaska: Annual report, 1988. Juneau Center for Fisheries and Ocean Sciences, University of Alaska Fairbanks, Juneau, Alaska. 47 pp.
- Bledsoe, L.J. and J. Zheng. 1988. Auke Bay ecosystem model, version 1.1: Primary production, euphausiids, copepods and larval pollock. Pages 639-667 in Annual APPRISE Report. University of Alaska Fairbanks, SFOS APP87-100, Fairbanks, Alaska.
- Bledsoe, L.J. and J. Zheng. 1987. Design for Auke Bay ecosystem model (ABES). Pages 413-447 in Annual APPRISE Report. University of Alaska Juneau, UAJ SFS-8702, Juneau, Alaska.
- Mathisen, O.A., M.C. Macauley and J. Zheng. 1987. Acoustic monitoring of pink salmon (*Oncorhynchus gorbuscha*) in southeastern Alaska. Presented in International Symposium on Fisheries Acoustics, June 22-26, 1987, Seattle, Washington, USA, paper # 84, and University of Alaska Juneau, UAJ SFS-8707, Juneau, Alaska. 30 pp.
- Mathisen, O.A., P. Petursson and J. Zheng. 1987. In-season abundance estimates of pink salmon, *Oncorhynchus gorbuscha*, in outer Icy Strait and Dixon Entrance in 1986. University of Alaska Juneau, UAJ SFS-8701, Juneau, Alaska. 25 pp.
- Mathisen, O.A., P.H. Poe and J. Zheng. 1987. In-season abundance estimates of pink salmon, *Oncorhynchus gorbuscha*, in outer Icy Strait in 1987. University of Alaska Fairbanks, UAF JCFOS-8721, Juneau, Alaska. 29 pp.

## REFEREEING

*Alaska Fishery Research Bulletin*  
*Canadian Fisheries and Oceans, PSARC working papers*  
*Canadian Journal of Fisheries and Aquatic Sciences*  
*Fishery Bulletin*  
*Fisheries Research*  
*NOAA Technical Memorandum*

*North American Journal of Fisheries Management*  
*Reviews in Fisheries Science*  
*SARSIA, University of Bergen and the Institute of Marine Research*  
*University of Alaska Sea Grant*



**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE**

Alaska Fisheries Science Center  
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**APR 26 2005**

**RECEIVED**  
APR 23 2005  
**N.P.F.M.C.**

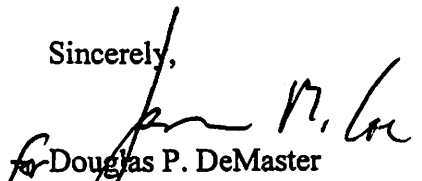
Chris Oliver  
Executive Director  
North Pacific Fisheries Management Council  
605 West Fourth Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Dear Chris,

This letter is to confirm the nomination of Dan Lew as a member of the North Pacific Fishery Management Council's Bering Sea Plan Team.

Dan Lew is an economist with the Resource Ecology and Fisheries Management Division of the National Marine Fisheries Service, at the Alaska Fisheries Science Center in Seattle. Dr. Lew's research has focused on the valuation of natural resources and amenities, and he is currently conducting a large study to value the public's willingness to pay for Steller sea lion protection measures. Dr. Lew has also worked to examine the public's preferences on issues related to recreational angling and water quality, and has excellent training in natural resource management. Dr. Lew is one of the leading non-market valuation economists within NMFS, and his background and skills will serve as a valuable asset in the plan team process.

Sincerely,

  
Douglas P. DeMaster  
Science & Research Director  
Alaska Region



Curriculum Vitae  
**DANIEL K. LEW**  
Alaska Fisheries Science Center  
NOAA Fisheries

(206) 526-4252

Dan.Lew@noaa.gov

---

**EDUCATION**

**Ph.D., *Agricultural and Resource Economics*, UC Davis (September 2002)**

Dissertation: *Valuing Recreation, Time, and Water Quality Improvements Using Non-Market Valuation: An Application to San Diego Beaches*

**Master of Science, *Agricultural and Resource Economics*, UC Davis (December 1997)**

**Bachelor of Science, *Environmental Policy Analysis and Planning*, UC Davis (June 1995)**

**PROFESSIONAL EXPERIENCE**

**Industry Economist, Alaska Fisheries Science Center, NOAA Fisheries. 2003 – present.**

**Post-Doctoral Researcher, Department of Agricultural and Resource Economics, UC Davis, 2003.**

**Instructor, Department of Environmental Science and Policy, University of California at Davis, 2002:**  
*Environmental Policy Analysis.*

**Academic Research Associate, Office of Water Programs, California State University, Sacramento, 2001 – 2002.**

**Post-Graduate Researcher, Department of Agricultural and Resource Economics, UC Davis, 1998 – 2000.**

**Teaching Assistant, Department of Agricultural and Resource Economics, UC Davis, 1997 and 1999.**

**Post-Graduate Researcher, Department of Civil and Environmental Engineering, UC Davis, 1996 – 1997.**

**Research Assistant, Department of Agricultural and Resource Economics, UC Davis, 1995 – 1996.**

**PAPERS AND WORKS IN-PROGRESS**

Lew, Daniel K. and Douglas M. Larson. "Valuing a Beach Day: Economic Values of Beach Recreation in San Diego County." In progress.

Lew, Daniel K. and Douglas M. Larson. "Accounting for Stochastic Shadow Values of Time in Discrete-Choice Recreation Demand Models." *Journal of Environmental Economics and Management*, in-press.

Larson, Douglas M. and Daniel K. Lew. "Measuring the Utility of Ancillary Travel: Results from a Study of Recreation Demand." *Transportation Research Part A*, 39(2-3): 237-255, 2005.

Lew, Daniel K. and Douglas M. Larson. "Valuing Recreation and Amenities at San Diego County Beaches." Forthcoming, 2005, *Coastal Management*, 33(1): 71-86, 2005.

Lew, Daniel K. and Douglas M. Larson. "Do Follow-Up Valuation Questions Affect Willingness to Pay? Empirical Evidence from Beach Water Quality Valuation." Working paper.

Larson, Douglas M. and Daniel K. Lew. "Clean Water in California: What is it Worth?" *Agricultural and Resource Economics Update*, Summer 2001, University of California, Davis, 4(4): 3-6.

Lew, Daniel K., Douglas M. Larson, and Yuko Onozaka. "The Public's Willingness to Pay for Clean Water in California." Working paper, March 2001.

Larson, Douglas M. and Daniel K. Lew. "Measuring Individual-Specific Shadow Values of Time." Working paper, April 2001.

Kalman, Orit, Jay R. Lund, Daniel K. Lew, and Douglas M. Larson. "Benefit Cost Analysis of Stormwater Quality Improvement for Ballona Creek, California." *Environmental Management*, 26(6): 615-628, 2000.

Larson, Douglas M. and Daniel K. Lew. "Valuing Time Onsite and in Travel in Recreation Demand Models." *Proceedings of the Western Regional Research W-133 Conference in Kauai, Hawaii*, February 2000.

Larson, Douglas M., Daniel K. Lew, and John B. Loomis. "Are Revealed Preference Measures of Quality Change Benefits Statistically Significant?" *Proceedings of the Western Regional Research W-133 Conference in Tucson, Arizona*, February 1999.

## PRESENTATIONS

"The Economic Value of Steller Sea Lion Protection." Presentation at the NOAA Fisheries Economics and Social Sciences Workshop, New Orleans, October 26-28, 2004.

"Economic Valuation of Recreation and Stormwater Quality Improvements at San Diego County Beaches." Invited presentation for the Office of Water Programs, California State University, Sacramento, April 7, 2003.

"The Economic Value of Beach Recreation in San Diego County." Invited presentation at the Coastal Economics Workshop, University of Southern California, Los Angeles, California, February 24, 2003.

"Jointly Estimating Recreational Choices and the Shadow Value of Leisure Time." Presented at the World Congress of Environmental and Resource Economists, Monterey, California, June 24-27, 2002.

"The Public's Willingness to Pay for Improving California's Water Quality: Preliminary Results." Presented at the Western Regional Research W-133 Conference in Miami, Florida, February 2001.

"Valuing Time Onsite and in Travel in Recreation Demand Models." Presented at the Western Regional Research W-133 Conference in Kauai, Hawaii, February 2000.

"Multi-Purpose Trip Valuation in Recreation Demand Models: Some Methodological Approaches." Selected paper presented at the American Agricultural Economics Association Annual Meeting in Nashville, Tennessee, August 1999.

"Are Revealed Preference Measures of Quality Change Benefits Statistically Significant?" Presented at the Western Regional Research W-133 conference, Tucson, Arizona, February 1999.

"Some Implications of the Two-Constraint Joint Recreational Choice Demand Model." Selected paper presented at the American Agricultural Economics Association Annual Meeting in Salt Lake City, Utah, August 1998.

## PROFESSIONAL AFFILIATIONS

- Western Economics Association International
- Association of Environmental and Resource Economists

## OTHER ACTIVITIES

- Reviewer for North American Journal of Fisheries Management, 1999
- Reviewer for ASCE Journal of Water Resources Planning and Management, 1999



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE

Alaska Fisheries Science Center  
7600 Sand Point Way N.E.  
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Seattle, Washington 98115-0070

April 26, 2005

Mr. Chris Oliver  
Executive Director  
North Pacific Fishery Management Council  
605 West Fourth Avenue, Suite 306  
Anchorage, Alaska 99501-2252



Dear Mr. Oliver:

This is a letter of recommendation for Dr. J. Ward Testa to replace Ms. Beth Sinclair on the GOA Groundfish Plan Team. I have known Ward for over 20 years. I believe he would be an excellent addition to the GOA Plan Team. Ward's background is quantitative ecology. He has considerable experience working on pinniped-fishery interactions in the North Pacific and Bering Sea. From my experience, Dr. Testa is an exceptional team player. He works well in groups, is willing to speak out, and generally is highly regarded as someone who can contribute.

Ward's recent research focus has been on the understanding the primary factors in determining the species composition of prey utilized by Steller sea lions. He has considerable interest and now experience in the assessment of marine fish populations using acoustic techniques. He is considered a world expert on the ecology and population dynamics of pinnipeds.

Dr. Testa's scientific credentials and professional experience regarding this assignment are excellent. He has over 50 peer-reviewed publications (a majority of which are first authored). His Ph.D. and Master's Degree are from the University of Minnesota (1986 and 1982, respectively) in the Ecology and Behavioral Biology Department. His undergraduate degree is from the University of Alaska (1975). He has worked on resource assessment in Alaska since 1986.

I have no reservations in recommending Dr. Testa for this position. If you have any questions regarding this recommendation, please contact me at your convenience.

Sincerely,

*Doug DeMaster*

Douglas P. DeMaster, Ph.D.  
Science and Research Director  
Alaska Region



# CURRICULUM VITAE

## J. WARD TESTA

National Marine Mammal Laboratory  
Alaska Fisheries Science Center-NOAA  
c/o Biological Sciences Department  
University of Alaska Anchorage  
3211 Providence Drive 99508-4614  
Anchorage, AK 99508-4614  
(907) 786-1350 (w)  
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## EDUCATION

Ph.D. University of Minnesota (1986), M.S. (1982)  
MAJOR: Ecology & Behavioral Biology  
MINOR: Statistics  
ADVISOR: Donald B. Siniff  
B.S. (cum laude) University of Alaska (1975)  
MAJOR: Biology

## EXPERIENCE

2002- RESEARCH WILDLIFE BIOLOGIST, National Marine Mammal Laboratory,  
National Marine Fisheries Service; Duties: research on Steller sea  
lions and northern fur seals with emphasis on population dynamics and  
ecology.  
1994-2002 RESEARCH WILDLIFE BIOLOGIST, Alaska Department of Fish and Game,  
Anchorage; Duties: research on moose in south-central Alaska with  
focus on population ecology, predation and nutritional constraints to  
population growth.  
1990-93 RESEARCH ASSISTANT PROFESSOR, Institute of Marine Science, University  
of Alaska, Fairbanks  
1986-1990 RESEARCH ASSOCIATE, Institute of Marine Science, University of  
Alaska, Fairbanks, AK

## PROFESSIONAL MEMBERSHIPS AND ACTIVITIES

Certified Senior Ecologist, Ecological Society of America  
Certified Wildlife Biologist, The Wildlife Society  
Member: American Society of Mammalogists, British Ecological Society, Society for Marine Mammalogy, Ecological  
Society of America, The Wildlife Society  
Member, 1992-94, Scientific Committee on Antarctic Research (SCAR), Group of Specialists on Southern Ocean Ecology

## GRANTS AND CONTRACTS

1992-95 National Science Foundation/Division of Polar Programs:  
Physiological and behavioral development of Weddell seal pups;  
a three-year study of pup development and dispersal. (\$594,000)  
1992-93 Office of Naval Research: Technical workshop on statistical  
approaches to the analysis of diving data from archival  
recorders (\$29,000)



- 1989-92 National Science Foundation/Division of Polar Programs: Dispersal and diving behavior of Weddell seals determined by satellite telemetry; a three year study of over-winter diving behavior and movements of Weddell seals using satellite-linked depth recorders attached to seals. (\$305,319)
- 1988/89 National Science Foundation/Division of Polar Programs: Synchrony in population parameters of Antarctic seals; a comparison of life history traits among three populations of Weddell seals. (\$64,256)

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### **References**

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## Freezer Longline Conservation Cooperative

### Longline Catcher Processor Subsector Capacity Reduction Plan

#### Executive Summary

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

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

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

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

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

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

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

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

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

## Capacity Reduction Plan Agreement

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

### RECITALS

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

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

### AGREEMENT

1. Basic Agreement. Subject to the terms of this agreement, the Members wish to develop and submit to the Secretary a voluntary capacity reduction plan for the longline catcher processor subsector (the "Longline Subsector") in compliance with Section 219(e) of the Act, 16 U.S.C. § 1861a, 50 CFR §§ 600.1000, et seq, and other applicable regulations, (a "Reduction Plan").
2. Capitalized Terms and Definitions. Capitalized terms used in this agreement shall have the meaning specified in Exhibit A, which definitions shall be incorporated as if herein written. Other terms are defined in the text of this agreement and throughout this agreement those terms shall have the meanings respectively ascribed to them.
3. Organization of Agreement. To facilitate the organization and presentation of this agreement pursuant to which the Reduction Plan is to be developed and submitted to the Secretary, this agreement is organized into the following three major sections with miscellaneous sections following thereafter:
  - a. Qualification and Enrollment of Members;
  - b. Selection of Assets to be Removed by the Reduction Plan; and
  - c. Submission of Reduction Plan.

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

4. Qualification and Enrollment of Members.

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

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

- 1) Fully executed counterpart of this agreement;
- 2) Photocopy of the LLP License(s) on which Member's eligibility is based;
- 3) Unless applying as the holder of a Latent License, a photocopy of Federal Fisheries Permit for the vessel(s) which the LLP License(s) was/were attached in the 2004 calendar year;
- 4) Unless applying as the holder of a Latent License, a photocopy of the Certificate of Documentation ("COD") for the vessel(s) which the LLP License(s) was/were attached in the 2004 calendar year; and
- 5) Executed Application Form (in the form attached hereto as Exhibit B) which shall set forth whether the qualifying LLP License is a Latent License, representing and warranting that the qualifying LLP License is noninterim and transferable or that it is within the Member's control to cause the qualifying LLP License to be issued as noninterim and transferable upon withdrawal of all applicable appeals, and identifying the individual(s) authorized to execute and deliver Bids and Bid Ranking Ballots on behalf of the Member.

c. Examination By Auditor.

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

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

- d. Enrollment Period. Applications, and the curing of invalid applications, will be accepted until the Selection Process is completed.
- e. Effective Date. The Effective Date of this agreement shall be ten (10) days after written notice is sent by the Auditor advising all Members that the number of Members exceeds seventy percent (70%) of the members of the Longline Subsector as determined by the Auditor from the Auditor's examination of the Database.
- f. Notice. All notices related to enrollment and the effective date of this agreement shall be sent by the Auditor via e-mail to the e-mail address provided by the Member at enrollment.
- g. Withdrawal. A Member, unless such Member is a Current Bidder or Selected Bidder, may terminate this agreement at any time with respect to that Member by giving ten (10) days written notice to the Auditor via e-mail. Withdrawal of a Member shall not affect the validity of this agreement with respect to any other Member.
5. Selection of Assets to be Removed by Reduction Plan. The assets removed by the Reduction Plan will be those assets voluntarily offered in Bids made by bidding Members and as selected by the non-bidding Members, up to an aggregate amount of Thirty Six Million Dollars (\$36,000,000) as set forth in this section 5.
- a. Overview. The Selection Process will begin upon the Effective Date of this agreement. The Selection Process will alternate on a weekly basis between (1) Submitting Periods, during which Members may submit Bids of assets Members wish to include in the Reduction Plan; and (2) Ranking Periods, during which non-bidding Members will rank the submitted Bids.
- b. Bids.
- 1) Binding Agreement. A Bid from a Member shall be a binding agreement by a Member to sell to the FLCC, or to the Secretary as the FLCC's assignee, the assets identified thereon for the price set forth on the Bid. All Bids shall be contingent on receipt of the Bid amount no more than sixty (60) days from approval of a referendum of the Longline Subsector pursuant to Section 219(e)(3) of the Act. Once submitted, a Bid may not be withdrawn while that Bid is a Selected Bid. A Bid that is submitted by a Member, but is not a Selected Bid during the subsequent Ranking, shall be deemed cancelled and the Member's obligations with respect to that Bid shall terminate.
- 2) Bid Content. All Bids submitted to the Auditor shall include the following information: LLP License number; license LOA; the license area, gear and species endorsements; a summary of the P. cod catch history for the calendar years 1995 – 2003; and the offered price. The Bid shall also state whether a vessel will be withdrawn from the fisheries if the Bid is selected for reduction in the Reduction Plan. If so, the Bid shall identify such vessel by name, official number, and current owner. In addition, the Bid shall provide a summary of the P. cod catch history for the calendar years 1995 – 2003 of the vessel to be retired from the fisheries. All summary catch histories included in Bids shall be calculated utilizing both the weekly production report and best blend methodology and shall separately state for



each methodology the P. cod catch in metric tons and as a percentage of the overall catch for the longline catcher processor subsector on an annual basis for each of the required years. If the vessel stated to be withdrawn from the fisheries is not owned by the LLP License owner of record, the Bid shall be countersigned by the owner of record of the vessel. A Bid offering a Latent License shall state on the Bid Form that the offered LLP License is a Latent License. The Bid Form shall also include a comment section for any additional information that Bidders wish to provide to the Members concerning the Bid.

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

c. Submitting a Bid.

1) Bid Submission. Commencing on the first Tuesday following the Opening Date and during all Submission Periods until the Selection Process is closed, any Member may submit a Bid. All Bids are to be submitted to the Auditor by e-mail, with an original Bid Form (in the form attached hereto as Exhibit C) executed by an Authorized Party, to follow by U.S. mail post marked no later than one (1) day after submission of the e-mail Bid. Any Member may submit a Bid during any Submission Period, even if that Member has not submitted a Bid in any previous Submission Period. If a Member holds more than one LLP License, such Member may, but is not required to, submit a Bid for each LLP License held during a Submission Period.

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

3) Validity of Bid. The Auditor shall examine each Bid for consistency with the Database and information contained in the enrollment documents. If, in the opinion of the Auditor, there is an inconsistency in the information contained in the Bid, any of the elements required of a Bid pursuant to section 5.b.2) above are missing, or the Auditor does not receive the original Bid Form before the Bids are to be posted pursuant to section 5.d below, the Auditor shall notify the bidding Member by e-mail that the Bid is nonconforming as soon as practicable after discovering the basis of invalidity. The Member may submit a revised, conforming Bid prior to the close of that Submission Period or, in any subsequent Submission Period.

d. Posting Bids.

1) Current Bids. For each Bid received during a Submission Period, the Auditor shall post on the Website no later than 5:00 p.m. on the following Tuesday all of

the details of such Bid as set forth on the Bid Form. In addition, the Auditor shall post a summary by year of the prior nine (9) year's catch history in total round weight equivalents and percentage of Longline Subsector ITAC harvested for any vessel that is included in the Bid. If the Member (or vessel owner, if other than the Member) was a member of the FLCC when an analysis of the FLCC's membership's catch history was performed by the Auditor, the Member (or vessel owner, as the case may be) expressly authorizes release of the catch history summary information previously prepared for that Member by the Auditor.

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

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

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

e. Ranking.

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

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

3) Ranking Form. Prior to each Ranking Period, the Auditor will post a Ranking Form on the Website in pdf file format. Each eligible Member wishing to rank the current Bids shall rank the Bids on the Ranking Form numerically in the Member's preferred order of purchase, with the Bid that Member would most like to have accepted ranked number one (1), and subsequent Bids ranked sequentially until the Bid that the Member would least like to see accepted is ranked with the highest

numerical score. A Member wishing to call for a Closing Vote shall, in lieu of ranking the Current Bids, mark the Ranking Form to accept the current Selected Bids and close the Selection Process. To be valid, the Ranking Form must rank each Current Bid listed on the Ranking Form or, if applicable, be marked to call for a Closing Vote. Ranking Forms shall be submitted by sending a completed Ranking Form, signed by an Authorized Party, to the Auditor by facsimile prior to the end of the Ranking Period. A Member is not required to rank the Bids during a Ranking Period or call for a Closing Vote.

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

f. Ranking Results.

1) Compiling the Rankings. The Auditor shall compile the results of the Ranking Forms by assigning one point for each position on a Ranking Form. That is, the Bid ranked number one (1) on a Ranking Form shall be awarded one (1) point, the Bid ranked two (2) shall receive two (2) points, and continuing on in this manner until all Bids have been assigned points correlating to its ranking on each valid Ranking Form. The Bid with the least number of total points assigned shall be the highest ranked Bid, and the Bid with the greatest total points assigned shall be the lowest ranked Bid.

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Loan Repayment.

1) Term. As authorized by Section 219(B)(2) of the Act, the capacity reduction loan authorized by the Act shall be amortized over a thirty (30) year term.

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

3) Payment. Pursuant to Section 219(e)(2)(B) of the Act, repayment shall be based on a cents per pound of the round weight equivalent of all products produced by vessels engaged in the Longline Subsector following the implementation of the Reduction Plan. The amount of such fee shall be calculated on an annual basis as follows: the principal and interest payment amount necessary to amortize the loan over a thirty (30) year term, divided by the Longline Subsector P. cod ITAC allocation in pounds, provided that the fees shall not exceed five percent (5%) of the average ex-vessel production value of the Longline Subsector as determined by NMFS. For purposes of calculating a vessel's payment amount, P. cod discarded or used for bait shall be deemed to be products, with fees assessed thereon.

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

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

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

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

whether a discrepancy in the name appearing on LLP Licenses and other documents is material).

c. Review. A Member may request FLCC Counsel to review any decision of the Auditor by submitting via e-mail a written notice of protest to the Auditor and FLCC Counsel no later than seventy-two (72) hours after the Auditor's decision. Such notice shall state with particularity the basis for the protest. No formal process shall be established for the review. In evaluating the review request, FLCC Counsel may gather such evidence as he/she deems necessary to evaluate the matter, including interviewing the protesting Member (at which interview the protesting Member may be represented by counsel) and/or any other person with information relative to the protest, and obtain such third party opinions as FLCC Counsel deems reasonably necessary. FLCC Counsel shall issue a written determination of the review to the requesting Member and the Auditor no more than forty-eight (48) hours after receiving the request. If it is not possible for sufficient facts, data or documents to be obtained by FLCC Counsel within such time, FLCC Counsel shall advise the requesting Member and requesting Member may either agree to a mutually agreeable extension of time for FLCC Counsel to gather such information, or elect to proceed to arbitration.

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

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

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

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

8. Fees/Costs. All fees and costs incurred with the consent of the FLCC, including without limitation Website development and hosting charges, Auditors fees, legal fees and expenses, in developing and submitting the Reduction Plan shall be borne by the FLCC. In addition, the FLCC

shall represent the Longline Subsector in the event of arbitration brought by a Member in which there is no identifiable opposing Member.

9. Miscellaneous.

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

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

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

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

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

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Exhibit A  
Definitions

- a. "Act" means Section 219 Public Law No. 108-447.
- b. "Arbitration Rules" means the then current edition of the JAMS Comprehensive Rules & Procedures, amended or supplemented, as the case may be, to provide that, unless by mutual agreement of all parties to an arbitration: (1) the arbitration hearing shall occur within sixty (60) days of the commencement of the arbitration; and (2) no party to an arbitration shall be granted extensions for complying with any deadline set forth in the Arbitration Rules or by the arbitrator which cumulatively exceed seven (7) calendar days.
- c. "Authorized Party" means the individuals authorized by Members on the application form to execute and submit Bids, Rankings, protests and other documents and/or notices on behalf of Member.
- d. "Auditor" means Jack V. Tagart, Ph.d., d/b/a Tagart Consulting.
- e. "Bids" means a binding offer from a Member to sell its LLP, right to participate in the fisheries, the fishing history associated with such LLP, and any vessel set forth on the Bid Form submitted by Bidder pursuant to the terms of this agreement.
- f. "FLCC Counsel" means Bauer Moynihan & Johnson LLP or other counsel as selected pursuant to section 7.e.2) above representing the FLCC in any review or arbitration under this agreement.
- g. "Latent License" means a LLP License which was not attached to a vessel during the 2004 calendar year.
- h. "Opening Date" means the first Monday following the Effective Date set forth in section 4.e of this agreement.
- i. "Ranking Form" means the form posted by the Auditor pursuant to section 5.e.3).
- j. "LLP License" means a Federal License Limitation program groundfish license issued pursuant to 50 C.F.R. § 679.4(K) or successor regulation that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for BS or AI catcher processor fishing activity, C/P, P. cod and hook and line gear.
- k. "Person" includes any natural person(s) and any corporation, partnership, limited partnership, limited liability company, association or any other entity whatsoever, organized under the laws of the United States or of a state.
- l. "Selection Process" means the process set forth in section 5 of this agreement for selecting the assets to be removed by the Reduction Plan.
- m. "Website" means the internet web site developed and maintained on behalf of the FLCC for implementation of the Selection Process described herein.



JUNE 2005



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
P.O. Box 21109  
Juneau, Alaska 99802-1109

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N.P.F.M.C.

April 25, 2005

MEMORANDUM FOR: Chris Oliver, Executive Director  
North Pacific Fishery Management Council

THROUGH: Lisa L. Lindeman  
Alaska Regional Counsel *Lisa Lindeman*

FROM: Lauren M. Smoker  
Attorney-Advisor *Lauren M. Smoker*

SUBJECT: Responses to Council Question 1 Concerning the BSAI Non-Pollock Groundfish Fisheries

This memorandum responds to Question 1 in your letter of December 29, 2004, requesting legal guidance on several issues concerning the statutory provisions for the BSAI non-pollock groundfish fishery and the BSAI Catcher Processor Capacity Reduction Program (hereinafter referred to as the "Capacity Reduction Program") that are included in the Department of Commerce and Related Agencies Appropriations Act, 2005, which is included in Public Law No. 108-447 (hereinafter referred to as the "Act"). We have previously provided responses to Questions 4.b and 6. We have not fully developed responses to the remaining questions. We will provide those to you as soon as possible.

**Council Question 1:** Section 219(a)(1) of the Act defines the AFA Trawl Catcher Processor subsector as "the owners of each catcher/processor listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (16 U.S.C. 1851 note)." However, section 208(e) paragraph (21) of the American Fisheries Act (AFA) includes "any catcher/processor not listed in this subsection and determined by the Secretary to have harvested more than 2,000 metric tons of the pollock in the 1997 directed pollock fishery and determined to be eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary, . . ." Given that the Act's definition of the AFA Trawl Catcher Processor subsector includes only paragraphs (1) through (20) of section 208(e) of the AFA and not paragraph (21), please clarify:



- a. Whether those vessels that qualify for the BSAI pollock fisheries under paragraph (21) of section 208(e) are precluded from participating in the Capacity Reduction Program and the non-pollock groundfish fishery as AFA vessels.

**NOAA GC response:** Section 219(g)(1) of the Act states that “Only a member of a catcher processor subsector may participate in — (A) the catcher processor sector of the BSAI non-pollock groundfish fishery;<sup>1</sup> or (B) the fishing capacity reduction program authorized by subsection (b).” The Act does not define the phrase “catcher processor sector” in section 219(g)(1)(A), but section 219(a)(3) of the Act defines the phrase “catcher processor subsector” as:

- (1) the AFA trawl catcher processor subsector;
- (2) the non-AFA trawl catcher processor subsector;
- (3) the longline catcher processor subsector; and
- (4) the pot catcher processor subsector.

The Act defines the AFA trawl catcher processor subsector as “the owners of each catcher/processor listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (16 U.S.C. 1851 note).” The statutory language used to define the AFA trawl catcher processor subsector is quite clear and unambiguous and does not appear to be unreasonable or illogical in its operation. Given the clear language of the Act, the AFA trawl catcher processor subsector includes only the owners of the vessels listed in section 208(e)(1) through (20) of the AFA and excludes all others. The owner of any trawl catcher processor vessel that qualifies for participation in the BSAI pollock fishery under section 208(e)(21) of the AFA is not within the AFA trawl catcher processor subsector as defined by the Act. Therefore, the owners of AFA section 208(e)(21) vessels are not members of the AFA trawl catcher processor subsector and are precluded from participating in the Capacity Reduction Program and the catcher processor sector of the BSAI groundfish fishery as members of the AFA trawl catcher processor subsector.

- b. Whether those vessels that qualify for the BSAI pollock fishery under paragraph (21) of section 208(e) of the AFA would qualify for the non-AFA trawl catcher processor subsector (provided that they meet the harvest requirements defined by the Act for that sector).

**NOAA GC response:** For purposes of participation in the Capacity Reduction Program as well as the catcher processor sector of the BSAI non-pollock groundfish fishery, section 219(a)(7) of

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<sup>1</sup>The Act at section 219(a)(8) defines “non-pollock groundfish fishery” as “target species of Atka mackerel, flathead sole, Pacific cod, Pacific Ocean perch, rock sole, turbot, or yellowfin sole harvested in the BSAI.” By way of comparison, component 1 of Amendment 80 currently identifies the target species to be included in the non-AFA trawl catcher processor sector allocation as Atka mackerel, flathead sole, Aleutian Islands Pacific Ocean perch, rock sole, and yellowfin sole.

the Act defines the non-AFA trawl catcher processor subsector as “the owner of each trawl catcher processor – (A) that is not an AFA trawl catcher processor; (B) to whom a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher processor fishing activity has been issued; and (C) that the Secretary determines has harvested with trawl gear and processed not less than a total of 150 metric tons of non-pollock groundfish during the period January 1, 1997, through December 31, 2002.” Council Question 1.b focuses on the interpretation of the first criterion in section 219(a)(7)(A) and whether the owners of those vessels that qualify for the directed pollock fishery under section 208(e)(21) of the AFA are *not* AFA trawl catcher processors for purposes of the Act.

In responding to this Council question, the first step in statutory interpretation is to discern the “plain meaning” of the statutory language.<sup>2</sup> Rules of statutory interpretation provide that words, not defined by the statute, are to be interpreted as taking their ordinary, contemporary, common meaning<sup>3</sup> unless the ordinary meaning fails to fit the statutory text.<sup>4</sup> Additionally, “[t]he plain meaning of a particular statutory provision is not determined by considering language of that provision in isolation; rather, determining the plain meaning of a statutory provision requires considering the provision at issue in the context of the statute as a whole.”<sup>5</sup>

If the meaning of the statute is plain, i.e. the language is clear and unambiguous on its face,<sup>6</sup> “admits of no more than one meaning,”<sup>7</sup> and “is not unreasonable or illogical in its operation,”<sup>8</sup>

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<sup>2</sup>*Caminetti v. U.S.*, 242 U.S. 470, 485 (1917) (“the meaning of the statute must, in the first instance, be sought in the language in which the act is framed”). See also, Sutherland Stat. Construction § 46:01 (6<sup>th</sup> Ed).

<sup>3</sup>*A-Z Intern. v. Phillips*, 323 F.3d 1141, 1146 (9<sup>th</sup> Cir. 2003).

<sup>4</sup>*Johnson v. U.S.*, 120 S.Ct. 1795, 1804 n. 9 (2000) (rule of construction prefers the ordinary meaning of statutory terms, but uncommon sense of term may be relied on when the ordinary meaning fails to fit the text and when the realization of clear congressional policy is in tension with the result that customary interpretive rules would deliver).

<sup>5</sup>*Patenaude v. Equitable Life Assurance Society of the U.S.*, 290 F.3d 1020, 1025 (9<sup>th</sup> Cir. 2002). See also *U.S. v. Maria-Gonzalez*, 268 F.3d 664, 668 (9<sup>th</sup> Cir. 2001) (to determine whether the language of a statute is plain and unambiguous, court considers that language as well as the “context and design of the statute as a whole”); *Alabama Power Co. v. U.S. EPA*, 40 F.3d 450, 454 (D.C. Cir. 1994) (to determine whether Congress has unambiguously expressed its intent, court applies traditional tools of statutory interpretation to text at issue as well as to the language and design of statute as whole).

<sup>6</sup>Sutherland Stat. Construction § 45:02 (6<sup>th</sup> Ed).

<sup>7</sup>*McCord v. Bailey*, 636 F.2d 606, 614-15 (D.C. Cir. 1980).

<sup>8</sup>Sutherland Stat. Construction § 46:01 (6<sup>th</sup> Ed).

then the statute “need not and cannot be interpreted by a court”<sup>9</sup> and “the sole function of the courts is to enforce it according to its terms.”<sup>10</sup> The result is that a “clear and unambiguous” statutory provision generally is one having a meaning that is not contradicted by other language in the same act.<sup>11</sup>

“Only statutes that are of doubtful meaning are subject to the process of statutory interpretation.”<sup>12</sup> Ambiguity exists “when a statute is capable of being understood by reasonably

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<sup>9</sup>Sutherland Stat. Construction § 45:02 (6<sup>th</sup> Ed); *Barnhart v. Sigmon Coal Co.*, 122 S.Ct. 941, 950, 956 (2002) (the inquiry ceases in a statutory construction case if the statutory language is unambiguous and the statutory scheme is coherent and consistent; Courts must presume that a legislature says in a statute what it means and means in a statute what it says there; when the words of a statute are unambiguous then this first canon is also the last: judicial inquiry is complete).

<sup>10</sup>*Caminetti v. U.S.*, 242 U.S. 470, 485 (1917); *see also*, Sutherland Stat. Construction § 46:01(6<sup>th</sup> Ed); *Atlantic Mutual Ins. Co. v. Comm. of Internal Revenue*, 118 S.Ct. 1413, 1417 (1998) (in construing statute, court and administrative agency must give effect to unambiguously expressed intent of Congress); *Freytag v. Comm. of Internal Revenue*, 111 S Ct. 2631, 2636 (1991) (When Supreme Court finds terms of statute unambiguous, judicial inquiry should be complete except in rare and exceptional circumstances).

<sup>11</sup>Sutherland Stat. Construction § 46:05 (6<sup>th</sup> Ed).

<sup>12</sup>Sutherland Stat. Construction § 45:02 (6<sup>th</sup> Ed). *See also*, *Villegas-Valenzuela v. I.N.S.*, 103 F.3d 805, 809 (9<sup>th</sup> Cir. 1996) (language of statute controls where it is not ambiguous or unconstitutional); *Idaho First Natl Bank v. Comm. of Internal Revenue*, 997 F.2d 1285, 1289 (9<sup>th</sup> Cir. 1993) (task of resolving meaning of statute begins with language of statute itself and if language is unambiguous and literal application does not conflict with intentions of drafters, plain meaning should prevail); *Montero-Martinez v. Ashcroft*, 277 F.3d 1137, 1141 (9<sup>th</sup> Cir. 2002) (if the language used in a statute has a plain and unambiguous meaning, court’s inquiry must cease); *County of L.A. v. Shalala*, 192 F.3d 1005, 1012-13 (D.C. Cir. 1999) (court initiates statutory analysis by first asking whether Congress has directly spoken to the precise question at issue. If, after exhausting the traditional tools of statutory construction, the court of appeals ascertains that Congress’ intent is clear, that is the end of the matter; but if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the administrative agency’s answer is based on a permissible construction of the statute.); *Harper v. U.S. Seafoods L.P.*, 278 F.3d 971, 975 (9<sup>th</sup> Cir. 2002) (if the language of a statute is clear, a court looks no further than that language in determining the statute’s meaning; the only exception to this rule would be for absurd or impracticable consequences).

well-informed persons in two or more different senses.”<sup>13</sup> In these situations, agencies are permitted to develop a reasonable interpretation of a term or phrase.<sup>14</sup>

Congress used the phrase “AFA trawl catcher processor” in section 219(a)(7)(A) but did not define this phrase in the Act.<sup>15</sup> However, the lack of a statutory definition does not necessarily mean that the phrase is therefore ambiguous and subject to agency interpretation.<sup>16</sup> In such instances, as explained above, the ordinary or common meaning of an undefined word or phrase is to be applied in the context of the statute as a whole unless the ordinary meaning fails to fit within the statutory text as a whole.

There is sufficient support within the AFA and NOAA Fisheries regulations implementing the AFA to conclude that, prior to passage of the Act, the common meaning of the phrase “AFA trawl catcher processor” was any vessel that is authorized by section 208(e) of the AFA to participate in the directed pollock fishery, including those vessels that qualify under section 208(e)(21) of the AFA. Section 208 of the AFA is entitled “Eligible Vessels and Processors” and subsection 208(e) is entitled “Catcher/Processors.” Additionally, NOAA Fisheries regulations implementing the AFA define the phrase “AFA catcher processor” as “a catcher processor permitted to harvest BSAI pollock under 679.4(l)(2).”<sup>17</sup> Under section 679.4(l)(2), NOAA Fisheries issues AFA catcher processor permits to all of the vessels that qualify under section

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<sup>13</sup>Sutherland Stat. Construction § 45:02 (6<sup>th</sup> Ed). See also, *DeGeorge v. U.S. Dist. Court for Cent. Dist. of California*, 219 F.3d 930, 939 (9<sup>th</sup> Cir. 2000) (a statute is ambiguous if it gives rise to more than one reasonable interpretation); *Local Joint Exec. Board of Culinary/Barenders Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1157 (9<sup>th</sup> Cir. 2001) (if alternative readings of a federal statute are possible, court determines whether one construction makes more sense than the other as a means of attributing a rational purpose to Congress); *Brown v. Gardner*, 115 S.Ct. 552, 555 (1994) (ambiguity is a creature not of definitional possibilities but of statutory context); *U.S. ex rel Findley v. FPC-Boron Employees' Club*, 105 F.3d 675, 681 (D.C. Cir. 1997) (if ambiguity persists, court must construe ambiguous term in statute to contain that permissible meaning which fits most logically into the body of both previously and subsequently enacted law).

<sup>14</sup>See *Chevron U.S.A., Inc. V. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45 (1984) (holding that if statute is silent or ambiguous with respect to specific issue, agency’s interpretation of statute must be upheld if agency’s construction of statute is permissible and not arbitrary, capricious, or “manifestly contrary to the statute”).

<sup>15</sup>Section 219(a)(7)(A) is the only place in the Act where the phrase “AFA trawl catcher processor” appears.

<sup>16</sup>*AFL-CIO v. Glickman*, 215 F.3d 7, 10 (D.C. Cir. 2000) (lack of statutory definition does not render a term ambiguous, but, instead, it simply leads a court to give the term its ordinary, common meaning. See also, *Engine Manufacturers Association v. U.S. EPA*, 88 F.3d 1075, 1088 (D.C. Cir. 1996) (if statute clearly requires particular outcome then mere fact that statute does so implicitly rather than expressly does not mean that it is silent for purposes of *Chevron* analysis).

<sup>17</sup>50 CFR 679.2.

208(e), including vessels that qualify under AFA section 208(e)(21). These regulatory provisions were in effect during the development of the Act and its passage.<sup>18</sup>

While this pre-Act common meaning of the phrase “AFA trawl catcher processor” still applies in the context of the AFA and the directed pollock fishery, the pre-Act common meaning should not be applied to the phrase used in section 219(a)(7)(A) because it fails to fit the statutory text of the Act. As explained in NOAA GC’s response to Council Question 1.a., the AFA trawl catcher processor subsector is defined by the Act to be only those vessels listed in paragraphs (1) through (20) of section 208(e) of the AFA. The Act’s definition of the “AFA trawl catcher processor subsector” clearly and unambiguously excluded any AFA catcher processor that qualified under section 208(e)(21) from the subsector, although it is clear that those vessels remain eligible AFA catcher processors for purposes of the AFA. Congress was aware that there are vessels that qualify for the directed pollock fishery under section 208(e)(21) of the AFA and could have included all of the catcher processor vessels that are eligible under section 208(e) of the AFA in the Act’s definition of “AFA trawl catcher processor subsector.” Including all of the vessels that are eligible in paragraphs (1) through (21) of section 208(e) of the AFA would have applied the pre-Act ordinary meaning of “AFA trawl catcher processor” into the Act. Instead, Congress chose to exclude AFA section 208(e)(21) vessels from the Act’s definition of AFA trawl catcher processor subsector and more narrowly defined which AFA trawl catcher processors would continue to be considered AFA trawl catcher processors in the non-pollock groundfish fishery. Congress could have used its prior definition of AFA trawl catcher processor in the Act and chose not to do so. It is evident from the exclusion of section 208(e)(21) vessels in the Act’s definition of the AFA trawl catcher processor subsector that Congress did not intend to incorporate wholesale all of the vessels that are considered AFA trawl catcher processors for purposes of the directed pollock fishery as AFA trawl catcher processors for purposes of the non-pollock groundfish fishery. The language in the Act suggests that Congress purposely decided to have a slightly different group of vessels as AFA trawl catcher processors in the catcher processor sector of the non-pollock groundfish fishery than the group of vessels that are AFA trawl catcher processors in the directed pollock fishery. Therefore, to apply the pollock fishery’s common meaning of AFA trawl catcher processor to section 219(a)(7)(A) for purposes of the non-pollock groundfish fishery would not be consistent with the full statutory language of the Act.

If the pre-Act common meaning is not applied, the meaning of the phrase “AFA trawl catcher processor” in section 219(a)(7)(A) still must be discerned. For the reasons explained below, the plain meaning of the phrase “AFA trawl catcher processor” as used in section 219(a)(7)(A) of the Act likely means those trawl catcher processors that are identified in paragraphs (1) through (20) of section 208(e) of the AFA.

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<sup>18</sup>The final rule implementing section 679.4(l) was published in the Federal Register on December 30, 2002 (67 FR 79692).

First, as explained above, it is clear from the statutory language used in the Act that the Act redefined what vessels are to be considered AFA trawl catcher processors for purposes of the Act and the non-pollock groundfish fishery through its explicit definition of the AFA trawl catcher processor subsector. Congress implicitly identified the universe of AFA trawl catcher processors for purposes of the Act and the non-pollock groundfish fishery when it explicitly and exclusively identified the vessels that comprise the AFA trawl catcher processor subsector. Because the Act specifically identifies only those vessels listed in AFA section 208(e)(1) through (20) as being within the AFA trawl catcher processor subsector, the Act implicitly defines the phrase “AFA trawl catcher processor” as those 20 vessels. No other meaning for the phrase “AFA trawl catcher processor” is apparent from the statutory language of the Act.

Second, such an interpretation applies a plain meaning that appears to be consistent with and not contrary to the intentions of Congress, and does not appear to result in unreasonable, absurd, illogical, or impracticable consequences. The legislative history for section 208(e)(21) of the AFA states that the section was intended to “allow a small number of catcher/processors (perhaps as few as one) to continue to harvest the relatively small amount of pollock they harvested in the past **while relying primarily on other fisheries.**” (Emphasis added.)<sup>19</sup> Section 208(e)(21) of the AFA acknowledges the participation of vessels in the directed pollock fishery while at the same time recognizing that those vessels primarily participate in non-pollock fisheries. Furthermore, different definitions of AFA trawl catcher processor can co-exist harmoniously because they apply to separate and distinct fisheries. Whereas the AFA is applicable to participation in the directed pollock fishery, the Act is applicable to participation in the catcher processor sector of a completely different fishery, the non-pollock groundfish fishery. A vessel that is an AFA trawl catcher processor for purposes of the directed pollock fishery, and not an AFA trawl catcher processor for purposes of the catcher processor sector of the non-pollock groundfish fishery does not appear to create a conflict with Congressional intent or produce an unreasonable, absurd, illogical, or impracticable consequence.

Third, the legislative history is silent in regards to the interpretation of the phrase in section 219(a)(7)(A). While it is evident from the statutory language that the phrase certainly includes vessels listed in paragraphs (1) through (20) of section 208(e) of the AFA, there is nothing in the legislative history that indicates Congress’ intent to exclude vessels that qualify for the directed pollock fishery under section 208(e)(21) of the AFA from participation in the catcher processor sector of the BSAI non-pollock groundfish fishery or the Capacity Reduction Program. Instead, the floor statements made in support of section 219 reflect Congress’ intent to include active and latent participants<sup>20</sup> and to provide each subsector, rather than Congress, with the ability to make the initial determinations as to what capacity will be removed from the non-pollock groundfish fishery.<sup>21</sup>

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<sup>19</sup>144 CONG. REC. S12,779 (daily ed. Oct. 21, 1998).

<sup>20</sup>151 CONG. REC. S11,747-48 (daily ed. Nov. 20, 2004) (statement of Sen. Murray).

<sup>21</sup>*Id.*, at S11,748.

Given the above, the plain meaning of the phrase “AFA trawl catcher processor” as used in section 219(a)(7)(A) of the Act means those vessels identified in paragraphs (1) through (20) of section 208(e) the AFA. Consequently, vessels that qualify for the directed pollock fishery under section 208(e)(21) of the AFA are not AFA trawl catcher processors for purposes of the Act and therefore satisfy the first criterion in section 219(a)(7)(A) for qualification in the non-AFA trawl catcher processor subsector.

cc: NOAA GC  
GCF