


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: September 29, 1998

SUBJECT: Sustainable Fisheries Act

ESTIMATED TIME 1 HOUR

ACTION REQUIRED

Status report on compliance with provisions of SFA.

BACKGROUND

The Sustainable Fisheries Act of 1996 imposed many new requirements on all eight councils including ours. Many of these provisions have deadlines of October 11, 1998, and we are progressing well in meeting them. Progress is summarized in item C-6(a).

**North Pacific Fishery Management Council:
Meeting Requirements of the Sustainable Fisheries Act of 1996
Progress by September 29, 1998**

Introduction

The Sustainable Fisheries Act of 1996 (SFA) added many new requirements to the Magnuson-Stevens Fishery Conservation and Management Act. Some apply to all regional fishery management councils. Some are specific to the North Pacific Council (the Council). The following report summarizes actions by the Council to meet the new requirements. The lead for responding to the requirements may be the Council or NMFS. On most issues, there is shared responsibility for completing the job by the required deadline. All page references are to the red copy of the Magnuson-Stevens Act, NOAA Technical Memorandum NMFS-F/SPO-23, December 1996.

Section 3: Definitions (pp. 4-11)

SFA added twelve new definitions (e.g. bycatch, economic discards, essential fish habitat, fishing communities, individual fishing quotas, overfishing, regulatory discards, etc.) and revised several others, most notably optimum yield (OY), which now cannot exceed maximum sustainable yield (MSY). NMFS reviewed the Council's fishery management plans (FMPs) and regulations and found that, except for "individual fishing quota", none of the definitions was contained in the FMPs or regulations. Therefore, NMFS notified the Council by letter on February 20, 1997, that no revisions were needed. It was noted that OY is defined in the groundfish plans as a numerical range, which is still consistent with the new definition in the SFA. Although the OY definitions themselves may not need revision, the Council is reviewing the numerical range of each OY to ensure it does not exceed MSY. Progress on this review and revision is explained below in reference to Section 303(a)(3).

Section 302(e,i,j): SOPP Update to Reflect New Procedures (pp. 51-56)

The SFA revised several Council procedures relating to the transaction of business, procedural matters, and disclosure of financial interest and recusal. The Council approved revisions to its Standard Operating Practices and Procedures on February 7, 1997. The revised SOPP was submitted to NMFS on February 12, 1997.

Status: Council action completed; awaiting NMFS publication of SOPPs. Further revisions may be needed if administrative handbook is revised.

Section 303(a): New Required Provisions of FMPs (pp. 58-60)

There are new fishery management plan requirements that relate principally to five areas: (1) essential fish habitat; (2) overfishing and stock rebuilding; (3) bycatch reporting and minimization, (4) recreational and charter sector descriptions and allocations, and (5) fishery impact statements as they relate to fishing communities. Additionally, Section 303(a)(3) on specifying MSY and OY, though unchanged, must be considered to ensure that OY does not exceed MSY. Conforming plan amendments must be submitted by October 11, 1998 (see PL 104-297, sec. 108(b), M-S Act Section 303 note at top of p. 64).

Status: See individual amendments below.

Section 303(a)(3) OY and MSY Specification (p. 58)

The SFA did not amend this section directly, but by definition OY now must not exceed MSY (Section 3(28), p. 9). Thus, each FMP OY must be examined and revised if necessary to conform with the new definition. In June 1998 the Council approved OY changes as amendment 7 to the BSAI crab FMP, and amendments 6 to the salmon and scallop FMPs. All three FMPs defer management to the State of Alaska. The amendment packages were submitted to the NMFS Regional Office on June 25, 1998. Hopefully, they will be ready for transmittal for Secretarial review by the October 11, 1998 deadline.

Additionally, the Council approved amendments 56 to the GOA and BSAI groundfish FMPs in June 1998. They will redefine overfishing and acceptable biological catch, but will not revise MSY and OY, which are numerical ranges in each plan. The amendments were submitted to the Region on June 25, 1998. Hopefully, they will be ready for transmittal for Secretarial review by the October 11, 1998 deadline. Further revisions of OY and MSY will be not be considered by the Council until after the overfishing definitions have completed Secretarial review.

Status: Council action completed on crab, salmon, and scallops; awaiting Secretarial review. Council may need to consider relationships of groundfish optimum yields to maximum sustainable yields, pending the outcome of Secretarial review of the groundfish overfishing definitions. Status reports will be given at future meetings.

Section 303(a)(7): Essential Fish Habitat (p. 59)

Councils are required to describe and identify essential fish habitat (EFH) based on the NMFS guidelines established under Section 305(b)(1)(A). NMFS published EFH guidelines as an Interim Final Rule on December 19, 1997. In June 1998, the Council approved amendments to its five fishery management plans, Gulf of Alaska (GOA) groundfish, Bering Sea and Aleutian Island (BSAI) groundfish, BSAI king and Tanner crab, scallops, and salmon. The latter three plans defer management to the State of Alaska. The Council also described EFH for various non-plan species such as herring, halibut, forage fish, and GOA crab. The amendment packages will be submitted to Secretarial review ahead of the October 11, 1998 deadline.

The second new EFH requirement is to minimize to the extent practicable adverse effects on EFH caused by fishing. The Council already has enacted many measures such as closed areas to certain gears, mainly directed at controlling bycatch of crab, halibut, herring and salmon in the groundfish fisheries. To varying degrees, they also reduce the impact of fishing on EFH. Over the summer, the Council called for proposals relating to Habitat Areas of Particular Concern. Six were received. In October the Council will decide which should go forward for analysis. Those proposals will be finalized in June 1999 for implementation in 2000.

Status: Council action completed on EFH amendments; awaiting submission to Secretarial review. Council will consider proposals for habitat areas of particular concern in October 1998.

Section 303(a)(10): Overfishing (p. 59)

This provision requires addition of overfishing criteria, measures to prevent overfishing, and if necessary, measures to rebuild stocks identified as approaching overfished or are overfished. NMFS initially reported on overfished stocks to Congress on September 30, 1997. No North Pacific Council stocks were identified as overfished. In June 1998, the Council approved new definitions of overfishing for five FMPs: salmon, scallop, BSAI crab, BSAI groundfish, and GOA groundfish to conform to the National Standard guidelines published in the Federal Register on May 1, 1998. The plan amendments were submitted to NMFS for review on June 25.

1998, and should begin Secretarial review ahead of the October 11, 1998 deadline. Under the new definitions, it is likely that BSAI C. bairdi Tanner crab, and possibly BSAI Bogoslof pollock, will be listed as overfished. The Council will begin developing rebuilding plans as necessary, though technically it has up to one year to submit rebuilding plans after formal notification of overfishing by NMFS under Section 304(e).

Status: Council action complete; awaiting Secretarial review.

Section 303(a)(11): Bycatch Reporting and Minimization (p. 60)

The Council has implemented many measures to restrain and reduce bycatch and bycatch mortality of non-groundfish species in the groundfish fisheries over the past twenty years. However, to further comply with the new mandate in this section, the Council in summer 1997 circulated a special call for proposals aimed at reducing bycatch. Responses were reviewed by the Council in September 1997, and the following proposals (with proposer identified) were chosen for further analysis:

1. Ban on-bottom trawling for pollock in the BSAI (Alaska Marine Conservation Council);
2. Lower chinook bycatch limit in trawl fisheries from 48,000 to 36,000 salmon, and implement other measures to reduce chinook bycatch (Yukon River Drainage Fisheries Association);
3. Create an individual vessel checklist program, similar to harvest priority, and provide for a reward fishery (Alaska Marine Conservation Council);
4. Create a halibut mortality avoidance program (Groundfish Forum); and
5. Reevaluate halibut discard mortality and implement quick release mechanisms such as grid sorting (United Catcher Boats)

The bottom trawling ban in proposal 1 was approved by the Council in June 1998 and sent to the Region for review on June 25, 1998 as amendment 57 to the BSAI groundfish FMP. Proposal 2 will be reviewed initially by the Council in October 1998, and final action is scheduled for December. Details of the remaining three proposals are being developed further by a special committee which briefly reported to the Council in June 1998. Another status report is scheduled for October 1998. The Council believes the above actions, combined with existing bycatch management measures satisfy the new requirements of the SFA, though it will consider fully any new proposals that may help to better address the bycatch issue.

Concerning bycatch reporting, NMFS and the Council believe that observer reports, as applied through the blend system, provide sufficiently accurate information on bycatch in the groundfish fisheries to meet the new requirements of the SFA, though there still are concerns over the accuracy of chinook salmon bycatch data in BSAI pollock fisheries. To address those concerns, the Council in April 1998 added options to the analysis of chinook bycatch reductions that could increase observer coverage to 100% on vessels over 60 ft in length when fishing in areas known for high bycatch, and provide for vessel monitoring systems on vessels fishing for pollock. The Council also is reviewing the accuracy of basket sampling for salmon and other measures to ensure accurate enumeration of catch.

The scallop, BSAI crab, and salmon plans defer management to the State of Alaska. The scallop fisheries are monitored with observers. The main bycatch of concern in the scallop fishery is crab, and the scallop plan contains provisions to close fisheries when crab bycatch caps are reached. Crab bycatch is closely monitored by the State of Alaska to determine mortality, size frequency, shell-age, and injuries. Additionally, halibut bycatch and discarded scallop bycatch are monitored closely through the at-sea observer program. Bycatch information is being added to the scallop fishery management plan along with the definitions of overfishing, MSY and OY,

as part of amendment 6 which the Council approved in June 1998. Additional bycatch mitigation measures are not being contemplated for the scallop fishery.

The crab FMP designates bycatch measures as category 3 measures which are deferred to the State of Alaska. The State has an extensive observer program for crab and has adopted seasons, escape rings, biodegradable panels, mesh size, and maximum entrance size requirements to reduce bycatch and associated mortality of non-target crab in the directed crab pot fisheries. These measures complement Council efforts to reduce crab bycatch in other fisheries, and are consistent with National Standard 9, which states that conservation and management measures shall, to the extent practicable, minimize bycatch, and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. Bycatch information on the crab fisheries is summarized in the crab FMP. Additional bycatch mitigation measures are not being contemplated by the Council for the BSAI crab FMP.

The salmon FMP covers a multitude of salmon fisheries managed directly by the Alaska Department of Fish and Game or through the Pacific Salmon Commission. Management decisions take into account the mixed stock nature of the fisheries which often is the basis for heated allocational disputes. Aside from recognizing the mixed stock nature of the fisheries, the Council is not contemplating any additional measures concerning bycatch or bycatch mitigation in the salmon fisheries. The Council is working on measures to control bycatch of salmon in the Bering Sea and Aleutian Islands groundfish fisheries as noted above, but not on bycatch measures for the directed salmon fisheries.

Status: Council action completed on bottom trawl ban and awaiting Secretarial review. Additional actions on chinook bycatch reduction and individual vessel incentives will be considered in October 1998. Other proposals to reduce bycatch may be analyzed also.

Section 303(a)(5,12-14): Recreational and Charter Fisheries Descriptions and Allocations (pp. 59-60)

The only significant recreational fishery under direct Council management is for halibut. That fishery has no fishery management plan. It is managed biologically by the International Pacific Halibut Commission, and the Council has authority over allocative and limited entry issues. Even though there is no formal fishery management plan, many of the types of data required by the SFA were presented in the analysis performed on the halibut charterboat industry, completed in 1997. Future analyses on recreational halibut issues will include to the extent available the types of information identified in Section 303(a)(5, 12-14).

Status: Future analyses will incorporate this information as necessary and appropriate.

Section 303(a)(9)(A): Include Fishing Communities in Fishery Impact Statements (p. 59)

The Council already incorporates information on affected fishing communities in its fishery management plan amendment analyses as appropriate, and will continue to do so, particularly when fishery allocations are considered.

Status: Future analyses will contain this kind of community information to the extent that information is available.

Section 303(d)(4): North Pacific Loan Program (pp. 63, 67, and 120)

Development of a North Pacific Loan Program is guided by three new provisions added by the SFA. Uncodified section 108(g) on p. 120 compels the North Pacific Council to recommend, by October 1, 1997, a loan program to guarantee obligations for sablefish and halibut IFQ purchases by entry level and small boat fishermen. The guarantees shall be based on a fee program developed in accordance with Section 304(d) on p. 67, and funds allocated as provided in Section 303(d)(4) on p. 63.

The Council took final action in recommending a loan program in September 1997. The process was then put on hold pending resolution of several issues, most notably the availability of funds to implement the program, and uncertainty in NMFS and NOAA GC regarding the appropriate form of the submittal package, more specifically whether an FMP amendment and/or implementing regulations would be required. Some of these issues were resolved by March 1998, and the Council wrote to NMFS on March 9, 1998, formally requesting agency action to implement the loan program. On March 26, 1998, NMFS wrote to the Council approving the loan program and stating that no further action was required by the Council to implement the program. On May 27, 1998, NMFS published a formal announcement of availability of federal assistance for the loan program. The application period was June 10- 24, 1998, and all loan funds for FY1998 must be committed by September 30, 1998. Under the current arrangement, the loan program is supported by special appropriations, unrelated to any fee program. For 1998 the Congress appropriated \$100,000 to provide NMFS with credit authority for \$5 million in loans. During the June application period, 409 applications were submitted requesting \$45.3 million in loans. Available funds will cover only about 50 of the applicants, most being from Washington and Alaska.

The fee program is being developed by NMFS and will be implemented in 1999 or 2000 (see Section 304(d)(2) below). To base the loan program on the fee program, when implemented, may require additional action by the Council to amend its FMPs for groundfish and regulations for halibut (which has no FMP). NMFS and NOAA GC need to provide guidance to the Council on further actions. The Senate appropriations mark for FY 1999 has another \$100,000 to support \$5 million in loans.

Status: Council action complete; NMFS has commenced loan program on the basis of appropriated funds. Further loans will depend on additional appropriations or implementation of the fee program. (See below)

Section 304(d)(2): Fees on IFQ/CDQ Programs (p. 67)

This section directs NMFS to establish fees up to 3% on IFQs and community development quotas (CDQs). NMFS is preparing the fee program as a secretarial amendment to the groundfish FMPs. In April, the Council established a committee to work with NMFS on further development of the fee program. The comment period for the proposed rule originally was to be scheduled to overlap the Council's October 1998 meeting in Seattle. Implementation alternatives include January 1 or later in 1999, or January 1, 2000. NMFS wrote to the Council on June 2, 1998 stating that the CDQ and IFQ fee programs needed to be separated for implementation purposes so that the IFQ fee program could be in place by March 15, 1999. As of late September, the proposed rule had not been published.

Status: Council action has been completed using a committee to advise NMFS on structure of the fee program. Fee program now awaiting implementation by NMFS.

Section 305(i): Community Development Program (pp. 78-80)

This section requires the Council to establish CDQ programs for groundfish and crab in the Bering Sea and Aleutian Islands. The Council already had approved a multispecies CDQ program in June 1995 along with provisions for a groundfish and crab license limitation program. The amendment package was submitted for secretarial review on June 3, 1997 as amendment 39 to the BSAI groundfish plan, amendment 41 to the GOA groundfish plan, and amendment 5 to the BSAI crab plan. The amendments were formally approved by NMFS on September 12, 1997. The CDQ programs will be implemented by NMFS on October 1, 1998. In June 1998, the Council approved continuation of the pollock CDQ program to meld it with the multispecies CDQ program. It was forwarded on July 22, 1998, to begin Secretarial review as amendment 45 to the BSAI groundfish plan. The proposed rule was published on September 3, 1998. The amount of the pollock CDQ, 7.5%, may need to be increased to 10% if pending legislation regarding S. 1221 passes Congress.

Status: Council action complete. MSCDQ programs will start October 1. Final approval for pollock CDQs is pending. Final percentage may need adjustment if S. 1221 becomes law.

Section 313(f, i): Four-Year Reduction in Economic Discards and Report on Full Retention (p. 103, 105)

Section 313(f) requires the Council to submit measures to reduce economic discards for a period of not less than four years. The Council has complied by submitting amendments 49 to the BSAI and GOA groundfish FMPs, requiring full retention of pollock and Pacific cod in all groundfish fisheries beginning in 1998, and adding full retention of BSAI rock sole and yellowfin sole and GOA shallow-water flatfish in 2003. These amendments were approved by NMFS on September 3, 1997 for the BSAI and on October 29, 1997 for the GOA, and implemented on January 1, 1998. They will reduce economic discards of groundfish very significantly from pre-1998 levels. At this time there are no plans to develop such measures for other Council FMPs, all of which have significantly less discards than the groundfish fisheries and defer significant management to the State of Alaska.

Section 313(i) requires the Council to report to the Secretary by October 1, 1998, on the advisability of requiring full retention and utilization. It must address projected impacts of such requirements on the fishery and describe any full retention/utilization requirements already implemented. Because the Council has required full retention and utilization of certain groundfish species since January 1998, the report will emphasize the first-year performance and lessons learned. The Council will consider the scope and timing of the report in October.

Status: Council action complete, with exception of the report to the Secretary this fall or just after the first of the year.

Section 313(g): Bycatch Reduction Incentives (p. 104)

The Council may submit a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates. Though Section 313(g) is discretionary, the Council has tasked a committee to develop a vessel bycatch allowance system to place the onus for responsible fishing at the individual vessel level. It will report in October.

Status: Council action pending.

Section 313(h): Total Catch Measurement (p. 104)

This section requires the Council by June 1, 1997 to submit measures to ensure total catch measurement in each fishery under its jurisdiction to ensure accurate enumeration, at a minimum, of target species, and economic and regulatory discards. By January 1, 1998, the Council and Secretary were required to submit a plan to Congress to allow for weighing, including recommendations to assist processors and processing vessels in acquiring necessary equipment, unless the Council determines such weighing is not necessary for total catch measurement.

The Council and NMFS already have a long history of providing for total catch measurement in North Pacific fisheries. For the groundfish fisheries, catch reporting is based on weekly processor reports, observer reports, and NMFS' blend system that estimates catch over the entire fishery. Fish delivered ashore are weighed and observed at the processing station. For the offshore catcher processor and mothership fleet, catch is measured volumetrically and transformed into catch weight using various algorithms and density coefficients. The Council and NMFS have been working together since the early 1990's to improve catch estimation and reporting, beginning with the comprehensive observer program approved in 1989 and implemented in 1990.

By 1992, the observer program had been up and running for two years, the Council had just finished addressing the extremely contentious issue of allocations of pollock between the inshore and offshore sectors, and the first CDQ program had been approved for pollock in the BSAI. In resolving the inshore-offshore issue, significant debate centered on how much pollock each sector harvested and how much pollock and other species were discarded. Attention focused on the ability of then current catch measurement and reporting systems to provide accurate data. Thus, in January 1992, the Council commenced a special initiative to further improve catch information, by requesting development of a regulatory amendment that would require accurate estimation and reporting of total catch by species, either by weighing or volumetric measurements, and installation of communications systems capable of daily interactive reporting of harvest and observer data. By April 1993, the amendment had been prepared, and in June 1993, the Council took final action, recommending that catcher-processors in the pollock CDQ fisheries carry two observers and provide certified receiving bins for use in volumetric estimates of the catch, or provide tamper-proof scales to weigh all fish prior to sorting and discard. NMFS implemented regulations on May 16, 1994 requiring CDQ pollock vessels to either provide certified bins for volumetric estimates of catch or scales to weigh catch.

In a separate initiative in October 1994, the Council approved a requirement for all processors in the directed pollock fishery to weigh all pollock harvest on a scale, intending that the program be implemented within two years. Various technical problems arose in finding scales that performed accurately at sea and in finding scale inspectors that would ensure accurate performance by the scales once installed. The Council was briefed periodically by NMFS in 1995 on development of scale requirements and NMFS published an advanced notice of proposed rulemaking on February 20, 1996, stating its intent to require weighing of all fish on pollock processing vessels. In April 1996, NMFS informed the Council that certified scales would be needed before the new multispecies CDQ program, passed by the Council in June 1995, could be implemented.

In February 1997, NMFS emphasized once again to the Council that certified scales would be needed before the multispecies CDQ program could commence. NMFS described the funding that would be needed to commence such a program. In response, the Council wrote to NOAA on February 13, 1997, urging funding for the certified scale program so that the new CDQ programs could commence. NMFS published a proposed rule on June 16, 1997 that responded to comments received on the February 20, 1996 advanced notice. It established the ground rules for testing and certifying scales and performance and technical requirements in an At-Sea Scales Handbook, but did not require specific processors or vessels to use certified scales. NMFS then notified industry and the

Council again that it would require certified scales in the multispecies CDQ fisheries that were scheduled to begin late in 1998. On February 4, 1998, a final rule was published establishing testing and certification procedures. Those catcher processors that intend to operate in the multispecies groundfish CDQ fisheries later in 1998 must have certified scales and NMFS accepted proposals beginning in April 1998.

In direct response to the new Section 313(h) requirements, the Council in June 1997 requested a report from NMFS on the accuracy and precision of groundfish catch reporting, and from the Alaska Department of Fish and Game (ADF&G) on salmon, crab and scallops. ADF&G and NMFS reported to the Council in February 1998. ADF&G concluded that its harvest enumeration methods for all scallop, salmon, crab, and groundfish species managed under FMPs were adequate to meet the requirements of the Magnuson-Stevens Act. NMFS presented a detailed report on groundfish reporting and several recent studies of their catch estimation procedures. The Council's Scientific and Statistical Committee (SSC) received a full-day presentation in February 1998 on NMFS catch and bycatch estimation. The SSC commended NMFS for its work to improve catch estimation and to document protocols and procedures, and then encouraged further work in that direction. The SSC provided specific recommendations for further improvements, but concluded in general that "...existing measures for observer, reporting, and monitoring requirements provide for a reasonable system of total catch and bycatch estimation. In many respects, the system in place is better than any found around the world." The SSC stated its intent to review catch estimation each February.

The Council then proceeded to take three actions in February 1998. First, it moved to initiate an analysis for a plan amendment for catch monitoring measures in the pollock and yellowfin sole fisheries in the BSAI with an analysis of two options: a certified bin program and a scale program. In recognition of limited availability of NMFS personnel to conduct the analysis, the Council did not set a deadline, but noted that although a fully developed amendment would not be prepared in the near future, the Council would need to report to Congress on this new initiative and work underway. Second, the Council requested NMFS to prepare a matrix of current measures used in each fishery and a framework plan to improve total catch estimation over time, and report back at a future meeting as staff availability allowed. Third, the Council asked NOAA General Counsel to provide a legal opinion on whether the Council was meeting the requirements of SFA.

Status: Council action complete, except for ongoing analysis of catch measurement and refinements in future years. SSC will review annually each February.

Appendix: Russia Report (p. 120)

By September 30, 1997, the Council was required to submit to Congress a report describing the institutional structures in Russia pertaining to stock assessment, management, and enforcement for fishery harvests in the Bering Sea, and recommendations for improving coordination between the U.S. and Russia in managing and conserving Bering Sea resources of mutual concern. The report, entitled "Russian Far East Fisheries Management", was submitted on September 30, 1997.

Status: Council action complete.