

Executive Director's Report

Regional Operating Agreement

I have previously mentioned to you the ongoing coordination meetings between our staff and staff of the NMFS Regional Office (including NOAA GC and ADF&G staff). The objective is to identify and enhance 'best practices' and improve our regulatory process to the extent practicable, including the analytical process, respective roles and expectations, and the review and rulemaking process. Ultimately, the goal is to achieve a situation where rulemaking and implementation takes less than one year for actions approved by the Council! Our most recent joint staff meeting was January 6-8 in Juneau, Alaska. Related to this effort is a request from NMFS HQ (stemming from the 2012-2013 Inspector General's review of the fisheries rulemaking process) for each region to sign a regional operating agreement with their Council(s). The original target date for completion of these agreements was December 2013, but we did not meet that goal due to the ongoing staff coordination meetings noted above, which were delayed by the government shutdown last fall.

Attached is a DRAFT regional operating agreement (ROA), for signature by the Regional Administrator and the Council (Chair and ED). Per the guidance from the IG report, this ROA is intended to document existing (or planned) processes in our region, and to provide a clear understanding of the roles, responsibilities, and obligations between the Councils and their respective NMFS Regional Offices. The primary interface is the Office of Sustainable Fisheries, but the process necessarily involves other NMFS line offices and agencies as well. Again, the primary purpose of this document is to identify and clarify existing processes, rather than reinvent any wheels. However the DRAFT ROA does place a renewed emphasis on the Action Planning process, something we have done on an 'ad hoc' basis in the past, but now wish to emphasize in a more formal nature to improve our analyses, our communication, and our process overall. As such, I believe this draft reflects a fair characterization of the respective roles and responsibilities in that context, and clarifies our mutual expectations in that regard. If the Council agrees, we will finalize this ROA for our Region and pass that on to HQ.

Magnuson-Stevens Act reauthorization

On December 19, the House Committee on Natural Resources, Chaired by Doc Hastings, released a discussion draft for the reauthorization of the MSA (**attached**), titled "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act". This draft bill is now the subject of review and discussion, including a number of hearings being scheduled by both the House Committee on Natural Resources and the Senate Commerce Committee, subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard. A House Committee hearing is scheduled for February 4, with invited speakers including Mr. Rick Robbins (Chair of the Mid-Atlantic Fishery Management Council) and Dr. Mark Fina with U.S. Seafoods. A Senate Subcommittee hearing was held January 30, focusing on west coast and western Pacific

perspectives, at which Dr. Don McIsaac (ED for the PFMFC) testified. A Senate Subcommittee hearing is now tentatively scheduled for February 27 to focus on North Pacific perspectives, and we will likely be requested to provide testimony from the NPFMC at that hearing on February 27. We will likely be invited to provide specific comments on the draft Hastings bill, as well as any other input we deem appropriate.

We have also been asked to provide input on a couple of other venues related to MSA reauthorization (and likely more to come): (1) on Tuesday afternoon, February 11, the Center for Sustainable Fisheries is hosting a public workshop on MSA reauthorization issues here at the Renaissance Hotel in the South Room. Information on that workshop was distributed to you last month, and is also **attached** here for your reference. They have taken fairly specific positions on various portions of the draft Hastings bill (please refer to their links in the attachment), and are hopeful that representatives from the Council and from the fishing industry, and other public, are able to participate in this presentation and discussion; (2) the University of Washington, Bevan Series on Sustainable Fisheries, and other sponsors are holding a two-day symposium, April 24-25, examining MSA reauthorization issues, with a focus on west coast and Alaska perspectives, within a National context. **Attached** is a one-page flyer for this symposium, with a more detailed agenda and website soon to be released. I am among the steering committee members for this symposium, and tentatively on the speaker list along with Dr. Don McIsaac.

Regarding the draft Hastings bill, the following is a section-by-section summary of the provisions of that bill, and my initial thoughts and reactions to each section (*in italics*):

Rebuilding plans

Changes to section 304(e), starting on p. 92:

1. Allows phase in to end overfishing, following overfished determination, over 3 years (instead of ‘immediately’) to lessen economic harm to fishing communities.
2. Requires the council to select a time period for rebuilding that is as short as ‘practicable’ instead of ‘possible’.
3. Rebuilding plan currently must include a target to rebuild the stocks in no more than 10 years. The amendments lengthen that timeframe to ‘the time the stock would be rebuilt without fishing occurring plus one mean generation’, and adds language to specify a schedule for reviewing the rebuilding targets and evaluating environmental impacts on rebuilding progress.
4. Allows an FMP to use alternative rebuilding strategies including harvest control rules and fishing mortality targets, and allows the Council to remove the FMP or regulations for rebuilding a stock if the Council determines that the fishery is not depleted by the earlier of: two years after implementation, or the completion of the next stock assessment after such determination.

These provisions provide flexibility to address stock rebuilding schedules and are consistent with our general comments from MONF3 in which the NPFMC is not opposed to incorporating such flexibility.

Emergency Regulations and Interim Measures

Changes to section 305(c), p. 99:

Allows for emergency rules to be in effect for one year (as opposed to 6 months) and can be extended by another year (as opposed to 6 more months) if the public has had a chance to comment and the Council is pursuing means to address the problem permanently.

This provision does not appear to pose any problems and could be beneficial, given the time required to develop and promulgate permanent regulations.

Modifications to the ACL requirement

Add new provisions to Section 302, modifications to ACL requirements, p. 73:

1. Would allow Councils, in establishing ACLs, to consider ecosystem changes and the economic needs of the fishing communities.
2. Explicitly states that Councils do not have to develop ACLs for:
 - An ecosystem component species (*see definition below in #5*)
 - A fishery for a species with a life cycle of one year unless its subject to overfishing
 - A stock for which more than half of a single year class will complete their life cycle in less than 18 months and fishing will have little impact on the stock.
3. Each ACL must take into account management measures under international agreements with the US; informal transboundary agreements under which management by another country outside the EEZ may hinder US conservation efforts for a transboundary species.
4. A council may establish: an ACL for a stock complex; or ACLs for each year in any continuous period up to 3 years.
5. Defines ecosystem component: a nontarget stock that is incidentally harvested that the council and SOC determines is not subject to, or likely to be subject to, overfishing.
6. Changes Section 302(h)(6) such that Councils must develop ACLs for each of its managed fisheries that may not exceed the overfishing level (rather than the fishing level) recommended by its SSC.

Similar to the rebuilding provisions, these additions appear to provide greater flexibility with regard to setting of annual catch limits. Major change is that Councils would be allowed to set ACLs at the OFL level, rather than the ABC level identified by the SSC. These changes would provide greater flexibility, which is consistent with our general MONF3 positions, and would not likely change the way the NPFMC sets ACLs because we have been using the ABC as our 'cap' for decades.

Distinguishing between overfished and depleted

Changes to section 3 (definitions), p. 10:

1. Strikes the term 'overfished' from section (34) and adds the new term 'depleted' (8), which is defined as the stock is of a size that is below the natural range of fluctuation associated with maximum sustainable yield.
2. Amends entire MSA to strike 'overfished' anywhere it appears, and replace with term 'depleted'.
3. Amends section 304(e)(1) (rebuilding fisheries). This section currently requires that the SOC shall report annually to Congress and the Councils on the status of fisheries that are overfished or

are approaching a condition of being overfished (now 'depleted'). This section is amended to state that this report by the SOC shall distinguish between fisheries that are depleted as a result of fishing versus factors other than fishing. The report shall also state whether the fishery has directed fishing.

These changes would address some of the difficulty with the current use of the term 'overfished', including situations where a stock was previously considered 'overfished' when in fact no(directed) fishing was occurring on the stock (PBKC for example). Conversely, 'overfished' is a more definitive metric, and there may be difficulty defining "the natural range of fluctuation" for some stocks under the 'depleted' definition. As defined, the term 'depleted' appears to create a less rigorous standard than the term 'overfished'. In either case, OFLs will still be established so these changes do not appear to create harm relative to NPFMC interests, and could help in situations where fishing is not contributing to an overfished (or depleted) stock status.

Transparency and Public Process

Changes to section 302, starting on p. 66.

1. Requires that the SSC develops advice in a transparent manner and allows for public involvement.
2. Requires, to the extent practicable, live broadcast, through our website, of Council meetings, and of the CCC meetings, with the exception of executive sessions.
3. Requires audio and video (if the meeting was in person or by video conference) and full transcripts of each meeting of the Council and the SSC which must be posted on the website within 30 days of the meeting.
4. All of the above must be made available, by the Secretary, to the public in archive form.

SSC process already allows for transparency and public involvement. Council and CCC meetings are already broadcast live through web/internet. Council meetings are also audio recorded and the full, easily searchable audio records are available to the public and archived. SSC meetings are captured with detailed written minutes. Requiring video recording and full transcription of Council and SSC meetings is unnecessary, expensive overkill (particularly in this time of fiscal constraints), and provides no meaningful benefit above and beyond what we already do.

Compliance with NEPA

Addition of a new section 315 (which may be a misprint, should have said section 321?):

Any FMP or regulation that is prepared in accordance with sections 303 and 304 of the MSA is considered to satisfy NEPA, specifically section 102(2)(C), which is the requirement that the federal government provide a detailed statement about the environmental impacts, alternatives, etc (the NEPA analysis).

This change would essentially exempt fishery management actions from NEPA and make the MSA the primary Act with respect to promulgation of fishery management plans and regulations. The analytical requirements of MSA, in combination with other applicable laws, provide for ample treatment of environmental and other impacts. Would not adversely affect level of environmental analyses, but would

significantly streamline process and review of fishery management actions, would reduce costs, and would likely reduce litigation avenues to challenge fishery management actions. May need to verify that this would in fact remove NEPA obligation, and would need to remove section 109-479 which was the previous (from 2006 reauthorization), and still uncompleted, attempt to reconcile NEPA and MSA

Limitations on Future Catch Share Programs

1. Defines the term ‘catch share’ in section 3: “Any fishery management program that allocates a specific percentage of the TAC for a fishery, or a specific fishing area, to an individual, cooperative, community, sector, processor, or regional fishery organization established under 303A(c)(4), or other entity
2. Modifies the referendum provisions to establish new catch share programs for New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico councils.

This makes it clear which allocational structures are considered to be ‘catch shares’, including sector allocations. However, it does not specifically equate them to LAPP programs, nor does it specify that such programs are intended to be subject to the specific LAPP provisions of the Act. The only other place the term ‘catch share’ is used is in the provisions for data confidentiality (below). It does clarify that the four east coast Councils will be subject to additional referendum requirements prior to establishment of a ‘catch share’ program, and this language is included under the LAPP section of the Act. Presuming that (1) ‘catch share’ programs are not necessarily subject to all of the LAPP provisions, and (2) that the referendum requirements apply only to the four east coast Councils, these changes would not appear to affect North Pacific management initiatives.

Data Collection and Data Confidentiality

Data collection (EM)

1. Adds a section requiring that the SOC, in conjunction with Councils and PSMFC, **must** develop objectives, performance standards, and regulations to govern the use of electronic monitoring for data collection and monitoring, and allow for the ‘fishing industry to comment’ before they are finalized. This is required no later than 6 months after enactment of the Act.
2. Explicitly states that regulations under this section shall not include provisions authorizing use of EM for law enforcement.
3. If the SOC fails to act, the Councils **may** issue regulations that establish such EM standards for fisheries under their jurisdiction, and implement plans to substitute EM for observers if: EM will provide the same level of coverage as an observer, and standards for EM are in effect.
4. Expansion of the use of video survey technologies and acoustic survey technologies.

The 6-month timeline to develop objectives, performance, standards, and regulations is very short and likely unrealistic (especially if that timeline is meant to be inclusive of the opportunity for public comment on the regulations). The prohibition on the use of EM for law enforcement would severely restrict the Council’s flexibility in crafting EM regulations, and likely constrain the effectiveness of any EM application (as one example, it would appear to preclude compliance monitoring for retention requirements on trawl (or other) vessels). Regarding the third point above, substituting EM for observers, it may be difficult to define what is meant or implied by the term ‘will provide the same level of coverage as an observer’; however this clause is discretionary for the Council.

Confidentiality

5. Removes Section 402(b)(2)(A) from the MSA (p. 153); i.e., the following would be deleted:

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—
(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;”

The removal of this provision would appear to disallow the ability to disclose bycatch information, such as salmon bycatch, which is used to identify ‘poor performers’. This seems counter to the NPFMC’s policy intent and goals with regard to bycatch reduction.

6. Modifies 402(b)(1)(F) on p. 152, one of the current exceptions to the prohibition on disclosing confidential information, as follows:
(F) to a Council or State, when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

This modification could be interpreted to prevent disclosure of observer information to anyone other than the Council or State, such as Seastate, or other private management entities, which is necessary to manage salmon bycatch at the cooperative and individual vessel levels. This would appear to run counter to the Council’s policy intent and goals with regard to bycatch reduction.

7. Generally states that any information submitted to the Council and SOC, including observer data or VMS data, is confidential except for the types of exemptions that we would expect. Explicitly states that it may be provided to federal and Council staff, state or marine fisheries commission staff (not just for enforcement purposes), to verify catch under a **catch share program**, or if such information is required to be submitted to the SOC for any **determination** under a catch share program.

This means that ongoing federal rulemaking defining what falls under the purview of a ‘determination’ is still relevant. It may be prudent to define the term ‘determination’ the same as is suggested in the current proposed rule on confidentiality. It also states that confidential information can only be provided to the Council (not staff) if the SOC has obtained a release (which I understand is not different than the current situation).

8. Explicit prohibition on providing vessel specific or aggregate vessel information from a fishery that is collected for monitoring and enforcement to any person for the purposes of coastal and marine spatial planning.

While the intent of this prohibition seems clear, it may be difficult to define, or contain, “the purposes of coastal and marine spatial planning”; i.e., it could be released to and used for many purposes, many of which could be indirectly related to, or described as, coastal and marine spatial planning.

9. Provides a definition of ‘confidential information’ in section 3 (definitions) to mean: trade secrets; proprietary information; or commercial or financial information the disclosure of which is likely to result in harm to the competitive position of the person that submitted the information to the SOC. It also defines ‘observer information’ (and includes EM in that definition).

The use of the phrase ‘likely to result in harm’ seems subjective and may be difficult to quantify. Other aspects of this particular provision do not appear to create harm to Council interests.

Increased data collection and actions to address data poor fisheries

10. Section 404 (Fisheries Research, p. 156) is amended to add that the SOC can use a portion of funds (up to 80%) collected as US enforcement penalties for data collection purposes in the region in which they were collected. These purposes explicitly **include the use of state staff, resources, and survey vessels to survey and assess data-poor fisheries** for which FMPS are in effect. It can also fund **cooperative research** activities to improve or enhance fishery independent data used in stock assessments.
11. Each Council shall identify its data-poor fisheries and prioritize those based on the need of each for updated information (and provide this to the SOC).
12. Adds a definition for ‘data-poor fishery’: a fishery that hasn’t been surveyed and a stock assessment completed in the preceding 5 years; or for which limited information on the status is available for management.

This section contains some obvious tradeoffs – using penalty funds as proposed could result in hardship to an already financially constrained Enforcement Division (which currently uses these funds to support various enforcement and investigative cases), which could be detrimental to the Council’s overall management objectives. On the other hand, allowing these funds to be used, by states and within cooperative research structures, to enhance stock assessments for data-poor fisheries, is a positive aspect of this provision. It is unclear who will determine, and how, how much of the “up to 80%” will be used for these purposes – clarity on this aspect may help assess whether this provision represents a positive or negative step from the perspective of the NPFMC. In any case, it is imperative that such funds only be used in the region in which they are collected, and that nothing in this provision detracts from ongoing, critical stock assessments.

North Pacific Fishery Management Clarification

Amends section 306(a)(3)(C) under State Jurisdiction to change one of the circumstances in which a state may regulate a fishing vessel outside the boundaries of the State to read:

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there ~~was no~~ **is no** fishery management plan in place ~~on August 1, 1996~~, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this Act is approved and implemented for such fishery.

This should remedy the potential loophole identified during the salmon FMP revisions in 2012 that allowed for unregulated salmon fishing in the west areas the Council removed from the FMP. Currently,

while unlikely, a vessel could commercial fish in those areas of the EEZ, without being licensed with the state, if they come up from the lower 48 and never enter state waters (and fish in the EEZ only). Substitution of the term 'while' for 'when' in the last sentence may provide further clarity.

Authorization of Appropriations

Section 4 (p. 12) is amended to remove reference to previous years and appropriate \$396,875,000 for each fiscal year 2014 through 2018.

Ensuring consistent fisheries management under other federal laws

Adds new section to clarify that (1) in the case of any conflict between the MSA and the National Marine Sanctuaries Act, or the Antiquities Act of 1906, the MSA shall control; and (2) any restriction on the management of fishery resources that is necessary to implement a recovery plan under the ESA must be implemented using the authority under the MSA and in accordance with the processes and time schedules required under the MSA.

Actual effect of these additions is unclear, but on the surface they make sense. (1) above could help head off what happened in the Hawaiian Islands, designation of a large area as a national monument with attendant fishing restrictions. (2) above would appear to place MSA in a lead position for promulgation of fishing regulations, but does not appear to dilute the authority of the ESA to require such restrictions.

Interim Council Coordination Committee meeting

The interim meeting of the CCC will be held later this month, February 19-20, at the Holiday Inn Capitol in Washington, D.C., with myself, Chairman Olson, Vice-Chair Henderschedt, and David Witherell in attendance. Agenda items (see **attached**) include a budget status update and outlook; update on NEPA policy directive; ESA workgroup update; MAFAC seafood certification process; national EM workshop report; review of NMFS fisheries allocation review process; revisions to operational guidelines; and MSA reauthorization issues. The annual CCC meeting will be hosted by the Mid-Atlantic Fishery Management Council, May 13-15, in Virginia Beach, Virginia.

Deep Sea coral research update

Attached is a short summary of fieldwork conducted in year 2 of NOAA's three-year field research program in the Alaska region for deep sea coral and sponges, as part of the Alaska Coral and Sponge Initiative (AKCSI). Ten projects are included in the initiative, which include: developing a coral habitat map for the GOA and AI, and a geologically interpreted substrate map for Alaska; investigations of Primnoa corals in the Gulf of Alaska; estimation of the effects of commercial fixed gear fishing on coral and sponge using underwater cameras; and measurements of oxygen and pH and increased collections of coral and sponge specimens from the summer bottom trawl surveys. The AKCSI is intended to result in management products that can be of utility to the Council, for example in the annual Ecosystem Assessment, the AI Fishery Ecosystem Plan, or the 2015 5-year EFH review.

North Pacific Research Board panel nominations

The NPRB is soliciting for nominations to both its Science Panel (4 vacancies upcoming this June) and to its Advisory Panel (3 vacancies upcoming this June). The call for nominations is **attached**, with a deadline of February 28, and more information can be found on their website (www.nprb.org).

Alaska Fisheries Science Center surveys

The AFSC is engaged in two surveys related to ongoing Council management issues: (1) an interview survey, to be conducted this spring, of crab fishery participants aimed at gaining a better understanding of issues surrounding active participation, crew compensation, and lease rates in the BSAI crab fisheries (see **attached** flyer); and, (2) a more comprehensive social survey related to the GOA trawl fisheries, to help identify and analyze issues (pre and post implementation, for example) associated with the Council's current management initiative for the GOA trawl fisheries (still being finalized). Amber Himes and Marysia Szymkowiak from the AFSC are on hand to provide the Council with a briefing on these surveys and to answer any questions you may have.

Staff news

Some very big congratulations are in order for Dr. Diana Stram – last year she applied for (with my blessing and support), and has now been awarded, a prestigious Fulbright Scholarship, through the Council for International Exchange of Scholars. Diana's Fulbright Scholarship will take her to the University of Concepcion in Chile during the late spring and early summer of 2015, where she will collaborate with Dr. Billy Ernst with both a research and teaching component to her scholarship. Her teaching component will include a weekly seminar on U.S. fisheries management and periodic topic-based workshops on both U.S. and Chilean current fisheries issues. The research component will include an extensive comparative analysis of key fisheries management provisions guiding U.S. and Chilean management processes. One of the outcomes of this scholarship will be development of issue-specific teaching modules for dissemination to U.S. and Chilean teachers and managers. Congratulations Diana!!!

And, congratulations to a number of NMFS staff who recently received the NOAA 2014 Bronze Medal Award – the Alaska Fisheries Science Center and the Alaska Regional Office collectively received this award “for the design and implementation of a restructured, industry-funded observer program to promote effective management of North Pacific marine fisheries”. Congratulations to everyone for this great effort.

Events this week

The Council is holding its Bering Sea Canyons workshop on Monday afternoon, February 3 in the Northwest Room.

On Wednesday evening, February 5, beginning at 6 pm an industry-sponsored reception is being held in the Madison Ballroom and is open to all.

On Thursday evening, February 6, beginning around 5:30 pm (or shortly after the Council recesses for the day) representatives from the NMFS groundfish observer program/RACE division will make a presentation (here in the South Room) on survey work being done with electronic monitoring, and how that links to the use of EM for observer applications. The presentation- “Innovative camera applications for assessment surveys and electronic monitoring” – will be followed by Q&A for all interested persons. Development of new camera-based systems, methods, and tools are critical for collecting scientific data to inform management. A new camera system developed at the Alaska Fisheries Science Center greatly improves the functionality and addresses many of the issues previously identified with EM systems. This system provides the ability to not only monitor fisheries with cameras, but to automatically collect length measurements. This system incorporates technology and applications developed by Kresimir Williams (NMFS) for the CamTrawl system. The presentation will provide a demonstration of these technologies.

On Monday afternoon, February 10, we will hold our community fishing association (CFA) workshop as requested by the Council last October, here in the South Room. We will have representatives from the east and west coast here to discuss their experiences with permit banking and general efforts to ‘anchor fishing quota in communities’. More detail on this workshop, and the invited presenters, is provided under Agenda item F.

On Tuesday afternoon, February 11, the Center for Sustainable Fisheries will be holding a public workshop on MSA reauthorization issues, also here in the South Room (details provided above).

And a reminder that the SSC will be joining the Council for lunch today (Wednesday, February 12).

Granicus training

A representative and trainer will be here from Granicus, the software behind our new agenda format. We will be having a short training for the Council (and AP and SSC as available) and public right after this ED report, and the representative will be available for questions throughout the morning and during lunch. The training will cover both the online portion of our agenda (npfmc.legistar.com) and the ipad app, iLegislate. Many of you have already been using this successfully, as you might have noticed a lot less paper on the table.

Additionally, our website has undergone some changes, and it is now www.npfmc.org. New information is highlighted in the "spotlight" areas of our website, and all the meeting information, documents, and motions, is linked to the online agenda. As always, if you have questions or need to find a specific item, feel free to call our office.