

EXECUTIVE DIRECTOR'S REPORT

CCC meeting

An interim Council Coordination Committee (CCC) meeting was held in mid-January in Washington, D.C. where the Chairs, Vice-Chairs, and Executive Directors of all eight Councils met with NOAA Fisheries leadership to discuss budgets and several other issues of national importance. This year's primary CCC meeting will be hosted by the NPFMC in May, here in Anchorage. At our recent meeting we received good news overall regarding Council budgets, with an increase of about 15% above 2009 funding levels. We anticipate this funding level to be maintained in 2011 and beyond, and I will be hiring one or two additional staff in the very near future.

We spent considerable time discussing the draft Framework for Coastal and Marine Spatial Planning (CMSP) from the Interagency Ocean Policy Task Force. The CCC agreed to write a comment letter (Item B-1(a)) expressing our general support of improved CMSP, but also expressing several significant concerns with the Framework as drafted. The NPFMC may wish to provide additional comments on its own behalf. The Council's Aleutian Islands Ecosystem Plan Team and its Ecosystem Committee discussed this issue at their recent meetings and will be providing a report to the Council with their recommendations for a comment letter more specific to Alaska issues. Comments are due February 12 (day after tomorrow!) so we would need to take that portion of their report, and finalize comments, under this agenda item.

NOAA Fisheries leadership also indicated that they will once again be taking up the NEPA issue; i.e., revisiting the MSA mandate for a revised NEPA compliance process for fisheries actions, including consultation with the Council for Environmental Quality and the Councils. They anticipate a national workshop at some time in the near future to kick this off again, and I expect this to once again be a big item on our radar screen throughout this year.

The CCC also discussed the potential for a Managing our Nation's Fisheries III conference at some point later this year, or early next year. Depending on the outcome of some of the major national initiatives currently being developed, the timing for such a conference may once again be very ripe. The Chair and I would of course be very interested in other Council members' perspectives on a potential national conference of this nature.

Comments on Draft Catch Share Policy

In December 2009 NOAA released a draft national policy encouraging the use of 'catch shares' as a primary fishery management tool, with a comment period ending April 10, 2010. Council staff have been reviewing the policy document and drafting comments for Council consideration. Given the April 10 deadline, I request that the Council provide us some additional time to complete draft comments, and either circulate them for your review in the coming weeks, or bring them back to you at our April meeting for your approval.

National Standard 2

A proposed rule was issued December 11, 2009 which proposes revisions to the guidelines for National Standard 2, regarding 'best scientific information' and 'peer review processes' (Item B-1(b)). Our SSC is reviewing this rule at this meeting and will provide their recommendations to the Council. The comment period ends March 11, 2010. In addition to SSC comments on this issue, I think it is important for the

Council to comment in at least one specific area – that is the ability of our SSC to serve as the primary peer review process in satisfaction of the requirements of the Information Quality Act, as was intended by recent MSA amendments (Section 302(g)(1)(E)). It is not clear to me that the proposed rule properly characterizes that MSA provision relative to the overall peer review issue, and it seems to imply that each Council must establish some peer review process in addition to its SSC.

NBSRP meeting

As the Council is aware, the Alaska Fisheries Science Center is developing a scientific research plan for the Northern Bering Sea Research Area (NBSRA) to study the effects of bottom trawling on the benthic community. The primary goals of the plan would be to use the research area to investigate the effects of bottom trawling on bottom habitat, and provide information to help with developing future protection measures in the NBSRA for crab, marine mammals, endangered species, and the subsistence needs of western Alaska communities. The AFSC and Council are holding a public meeting on February 24-25, 2010, at the Anchorage Chamber of Commerce Conference Room, 1016 W 6th Ave, Suite 304, in Anchorage. The purpose is to hear from subsistence fishing communities adjacent to the NBSRA, to help delineate areas of subsistence harvest or critical habitat of marine species in the NBSRA, understand the nature of subsistence activities, register concerns about the impact of commercial bottom trawling, and collect ecological knowledge of the NBSRA. Flyers with more information are available on the table outside of the Council meeting room, and attached here as Item B-1(c).

AMEF meeting

The AMEF met on January 25, 2010, in Anchorage. Items of discussion included agency coordination on the Arctic, responses to the Coastal and Marine Spatial Planning Framework, and the Council's progress in considering nominations to the national MPA framework. The agenda and meeting summary are included for your reference under Item B-1(d).

Some well deserved kudos

There are a few recent publications I would like to highlight that deserve recognition. The first is a recent issue of '*Current – The Journal of Marine Education*', which was a special issue entirely devoted to featuring the U.S. Regional Fishery Management Councils. This was an excellent summary of the Councils, their role in fisheries management, and their accomplishments and special thanks goes to Issue Editors David Witherell, Sylvia Spalding (WPFMC), and Jennifer Gilden (PFMC) for leading this effort for the Councils. Copies have been distributed to the Council family already, and we have additional copies on hand for interested public.

David also helped organize, and develop the report for, the November 2009 Second National SSC Workshop, hosted by the CFMC. He also attended the workshop, along with NPFMC SSC members Pat Livingston, Franz Mueter, and Keith Criddle. The report from that workshop has been posted on the all-Council website (www.fisherycouncils.org), and will be distributed to you as soon as we get it back from the printers.

And, I want to bring to your attention a recent American Fisheries Society publication, by Drs. Diana Stram and Jim Ianelli, titled '*Eastern Bering Sea Pollock Trawl Fisheries: Variation in Salmon Bycatch over Time and Space*'. This publication was distributed in a recent Council mailing. Nicely done Diana and Jim!

April Council meeting

Please be reminded that our April Council meeting, at the Anchorage Hilton, is a bit off kilter in that the Council will begin on Thursday the 8th, with the SSC and AP starting on Tuesday the 6th, in order to not conflict with Easter Sunday. And, Gail has instructed me to remind you all (Council, AP, SSC, and agency staff) that you need to either CONFIRM or CANCEL your hotel room as soon as possible after she sends out the room list for the meeting. We do not know which specific day you intend to arrive, or whether you might be staying at an alternative hotel, so it is really important that you do this. This goes for all Council meetings.



January 25, 2010



Dr. Jane Lubchenco, Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW, Room 5128
Washington, DC 20230



Dr. Lubchenco:

{We wish to make you aware of the following comments which were submitted to the White House Council on Environmental Quality via their comment website, and respectfully request your assistance in following through on these comments as the CMSP Framework is finalized.}



Please consider the following comments from the Council Coordination Committee (CCC), consisting of the Chairs, Vice-chairs, and Executive Directors of the eight Regional Fishery Management Councils (Councils) regarding the proposed Interim Framework for Coastal and Marine Spatial Planning (Framework). The CCC met recently with NOAA Fisheries leadership and reviewed the draft Framework prior to developing these collective comments. The Councils, created in 1976 by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), are responsible for the development and maintenance of fishery management plans (FMPs) and regulations for waters within the U.S. Exclusive Economic Zone (EEZ), subject to review and approval by the Secretary of Commerce.

The Councils, as executive agencies of the Department of Commerce and direct partners with NOAA Fisheries in the management of our Nation's fisheries resources, are responsible not only for management of fishing activities directly, but also develop plans and regulations which may indirectly affect other activities. These include establishment of spatially-based marine managed areas developed by each Council which restrict, or prohibit, fishing activities to protect habitat, reduce interactions with marine mammals or seabirds, address bycatch concerns, or address other management issues. Many of these closure areas are considered to be marine protected areas (MPAs) by the MPA Center and are being considered for inclusion in the National System of MPAs.

The CCC applauds the efforts of the Administration to develop a more comprehensive approach to coastal and marine planning, and we realize that fisheries management is only one of the many critical aspects to be considered. However, given that a substantial portion of the scientific and other information to be assembled under the draft Framework is already under the purview of the Councils and NOAA Fisheries, and given that the processes envisioned under the draft Framework are already successfully in place under the purview of the Councils and NOAA Fisheries, it is imperative to explicitly recognize these roles and include them in the draft Framework.



New England
Fishery Management Council



Gulf of Mexico FMC

The Framework states that CMS plans would be developed using a regional approach by National Ocean Council (NOC) established regional planning bodies. While the draft Framework specifically recognizes Federal, State, regional governance structures, and tribal representation (including Native or indigenous communities) on the regional planning bodies, it does not specify which Federal and State agencies, nor does it even mention the Councils. The CCC discussed the need to have Federal and State fisheries management agencies at the table in the development of CMS plans, as well as each regional Council. **We strongly urge that the next iteration of the Framework, or any potential Executive Order implementing the Framework, explicitly list the Councils, NOAA Fisheries, and relevant State fisheries agencies as members and signatories of the regional planning bodies.**

A related primary concern is whether the implementation of the proposed Framework could effectively supercede the existing authorities of the Councils under the Magnuson-Stevens Act. The Framework states that "*CMSP processes would be carried out consistent with and under the authority of existing statutes...and that CMSP is not intended to supercede them....*" However, the Framework also implies, at various places, that individual 'agencies' would be required to work within their respective authorities to comply with the plans developed by the regional planning bodies (or justify why they are not doing so), thereby implying an indirect regulatory authority. The draft Framework also states that "*State and Federal agencies would also be expected to formally incorporate relevant components of the CMS plan into their ongoing operations or activities consistent with existing law*". Further, in the particular case of the Councils, it is unclear of their standing relative to the term 'agencies'. Finally, the draft Framework makes reference (page 23) to enforcement of "*CMSP related laws*". If no regulatory authority is vested within the CMS plans, then it is unclear what is meant by this phrase. **We recommend that the Framework more explicitly clarify the relationship of the CMS plans to existing regulatory processes and authorities, and ensure it does not undermine or impair successful processes already in place.**

The CCC has previously gone on record opposing legislation which would create large, new bureaucratic processes which have the potential to undermine, or be redundant to, existing, successful regulatory processes such as that epitomized within the Magnuson-Stevens Act. The draft Framework describes a very large and ambitious process for development of the regional CMS plans, and associated data and other scientific information, which will necessarily interact with existing authorities and which will subsume enormous resources to compile. We urge that the Framework clarify these authorities, particularly as they relate to the RFMCs, and specify the resources necessary to fully develop the CMS plans as envisioned. **It appears possible that the development of the centralized CMS plans could override, or subsume, the expertise, authority, and decision making processes of individual agencies, including the Councils. We believe that the Administration should consider a more limited approach, such as developing more generalized policy guidance for CMSP rather than the detailed, centralized plans as envisioned.**

In addition to the primary concerns described above, we offer the following more specific comments:

- Regional planning bodies would consist of Federal, State, tribal, local authorities, and regional governance structures – given the potentially large number of entities involved (particularly in order to accommodate numerous tribal, Native, or indigenous communities), it will be very difficult to appoint a regional planning body of a small enough size to operate effectively. **The Framework should be more explicit about the composition of the regional planning bodies, and the process for appointing these bodies.**

- The Framework calls for the regional planning bodies to investigate, assess, forecast, and analyze an enormous body of information and data (page 15), comprising virtually every known body of scientific information potentially available. However, the Framework does not identify the resources, or lead agency, expected to compile this vast array of information. It is highly unlikely that the

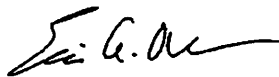
members of the regional planning bodies themselves have the wherewithal to undertake this task. There is concern on the part of the CCC that financial and human resources under NOAA Fisheries (and the Councils) will be diverted from their current mission in order to fulfill this ambitious undertaking. **We recommend that the Framework directly address the human and financial resources necessary to accomplish these tasks.**

- Following the compilation of this baseline information, the Framework calls for the preparation of a draft CMS plan "*with supporting environmental impact analysis, including alternatives...for appropriate public review and comment*". Similar to the point above, the CCC is concerned with regard to the resources necessary to compile these analyses. The CCC also questions whether this would either implicitly or explicitly be a NEPA process, which is typically associated with a 'federal action'. If no direct regulatory authority is associated with these plans, then is it necessary to go through a NEPA process prior to approval? **We recommend further clarification regarding the process for approval of CMS plans.**

- NOAA, and the Councils, are currently engaged in a process to identify and list Marine Protected Areas in the National MPA inventory. We believe that the Framework should clarify the relationship between this process and the CMS plans. For example, does CMSP dictate how MPAs will be designated, or do designated MPAs factor into the larger CMS plans? And, who makes that determination? **We recommend that the Framework directly address and clarify this relationship.**

We appreciate the opportunity to comment on this important initiative, and stand ready to assist in its development. However, we also recognize the enormity of the tasks outlined in the draft Framework and caution against the potential deterioration of existing ocean and fisheries management processes in order to accomplish the ambitious objectives of the Framework. **We believe that existing processes, such as the Council process under the Magnuson-Stevens Act, can be effectively leveraged to facilitate the success of this initiative, and we urge that the Framework recognize and rely upon those processes.**

Sincerely,



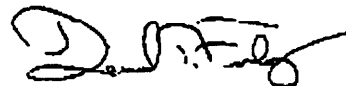
Eric A. Olson
Chair, NPFMC



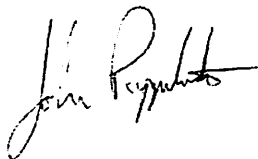
Chris Oliver
Executive Director, NPFMC



Richard B. Robbins, Jr.
Chair, MAFMC



Daniel T. Furlong
Executive Director, MAFMC



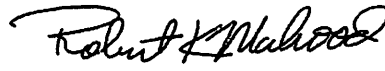
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Paul J. Howard
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Robert K. Mahood
Executive Director, SAFMAC



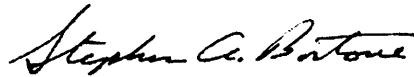
Eugenio Piñeiro-Soler
Chair, CFMC



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Robert Shipp
Chair, GMFMC



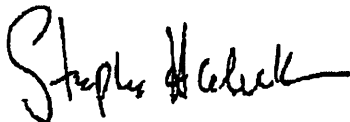
Steve Bortone
Executive Director, GMFMC



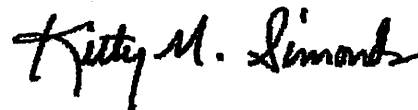
David Ortmann, Chair
Chair, PFMC



Donald McIsaac
Executive Director, PFMC



Stephen Haleck
Chair, WPFMC



Kitty M. Simonds
Executive Director, WPFMC

CC: Mr. Sam Rauch
Ms. Monica Medina

effects on minority and/or low income populations from this proposed rule. EPA believes, however, that this action affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this proposed rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that

are, in general, equally distributed across geographical regions.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Imports, Methyl Chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: December 7, 2009.
Lisa P. Jackson,
Administrator.

40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

Subpart A—Production and Consumption Controls

2. Section 82.8 is amended by revising the table in paragraph (a) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

(a) * * *

TABLE I—ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2010

Company	Chemical	2010 quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong	CFC-11 or CFC-12 or CFC-114	30.0

* * * * *
[FR Doc. E9-29556 Filed 12-10-09; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 0808041047-9114-02]

RIN 0648-AW62

Magnuson-Stevens Act Provisions; National Standard 2—Scientific Information

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA); Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes revisions to the guidelines for National Standard 2 (NS2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) regarding scientific information. This action is necessary to provide guidance on the use of best scientific information available (BSIA) for the effective conservation and management of the nation's marine living resources. NMFS proposes to modify the existing NS2 guidelines on BSIA and establish new guidelines for scientific peer review to ensure the reliability, credibility, and integrity of the scientific

information used in fishery conservation and management measures. Further, NMFS is proposing to add language to the guidelines regarding the role of the Scientific and Statistical Committees (SSCs) of the Regional Fishery Management Councils (Councils), and the relationship of SSCs to the peer review process. The proposed NS2 guidelines will also clarify the content and purpose of the Stock Assessment and Fishery Evaluation (SAFE) Report and related documents. These actions are necessary to ensure the use of BSIA in the development of fishery management plans and plan amendments, as required by NS2 of the MSA. The intended effect of these actions is to ensure that scientific information, including its collection and analysis, has been validated through formal peer review or other appropriate review, is transparent, and is used appropriately by SSCs, Councils, and NMFS in the conservation and management of marine fisheries. These guidelines are designed to provide quality standards for the collection and provision of biological, ecological, economic, and sociological information to fishery managers, Councils, and the public, while recognizing regional differences in fisheries and their management.

DATES: Written comments must be received by March 11, 2010.

ADDRESSES: You may submit comments, identified by 0648-AW62, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic comments via the Federal

eRulemaking Portal <http://www.regulations.gov>.

- **Fax:** Attn: William Michaels 301-713-1875.

- **Mail:** William Michaels, NOAA Fisheries Service, Office of Science and Technology, F/ST4, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: William Michaels, 301-713-2363 x136.
SUPPLEMENTARY INFORMATION:

I. Overview of Proposed Revisions to the Guidelines for National Standard 2

Section 301(a)(2) of the MSA specifies that fishery conservation and management measures shall be based upon the best scientific information available. Section 301(b) of the MSA states that "the Secretary (of Commerce) shall establish advisory guidelines

(which shall not have the force and effect of law), based on national standards, to assist in the development of fishery management plans." The existing national standard guidelines appear at 50 CFR 600.310 through 600.355. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006 included provisions to improve the use of science in decisionmaking, provide a stronger role for Councils' SSCs, and establish an optional peer review process for scientific information used to advise Councils about conservation and management of fisheries. Therefore, NMFS is proposing revisions to the NS2 guidelines to address these MSA provisions and provide guidance and recommendations on peer review processes. NMFS published an advanced notice of proposed rulemaking (ANPR) in the *Federal Register* on September 18, 2008 (73 FR 54132). NMFS has carefully considered the public comments received in developing this proposed rule.

II. Major Components of the Proposed Action

A. Best Scientific Information Available (BSIA)

In 2004, the National Research Council (NRC) of the National Academies examined the application of the BSIA standard in the development of fishery conservation and management measures. The NRC recommended approaches to more uniformly apply the BSIA standard for current and future fishery management actions. The NRC recommendations are available in the NRC (2004) publication entitled "Improving the Use of the 'Best Scientific Information Available' Standard in Fisheries Management" (2004, <http://books.nap.edu/openbook.php>).

NMFS proposes that the 2004 NRC recommendations regarding the use of BSIA for fishery management should be incorporated to the extent possible in this proposed revision to the NS2 guidance. The ANPR comments provided a nearly unanimous recommendation that the NS2 guidelines be revised to incorporate the NRC recommendations, and that an overly prescriptive definition of BSIA should be avoided due to the dynamic nature of science. Therefore, as recommended by the NRC, the proposed NS2 guideline revisions are based on the following widely accepted principles for evaluating BSIA: Relevance, inclusiveness, objectivity, transparency, timeliness, verification, validation, and peer review of fishery

management information as appropriate. NMFS also agrees with the comments that the NS2 guidelines should not prescribe a static definition of BSIA because of the dynamic developments inherent in making improvements in scientific information for fishery management.

The availability of scientific information to inform fisheries management varies. Ecosystems and human societies are complex, interacting, dynamic systems that are impacted by multiple factors, including those within the scope of fisheries management. Some fisheries are well studied and have much information from long-term annual research surveys and comprehensive biological, social, and economic fisheries data collection programs. Other fisheries do not have the same breadth of information available. In light of this variability, the proposed NS2 guideline revisions elevate the importance of evaluating the uncertainty and associated risk of the scientific information used to help inform fishery management decisions.

Similarly, the time available to review scientific information and the importance of that information to fishery management decisions are also variable. As a general rule, substantial management alternatives considered by a Council should be peer reviewed, but in some cases, formal peer review may not be possible due to time and resource constraints. For example, Councils may request that a NMFS Science Center provide calculations or analyses used in the development and assessment of fishery management alternatives for area-based or time-based harvest limits. It may be impractical to submit that scientific information to a formal peer review due to time and resource constraints. However, the development of such scientific information should be in accordance with the principles of transparency and openness set forth in this proposed action.

The proposed NS2 guidelines provide guidance that is fundamental for the reliability and integrity of scientific information to be used by NMFS and the Councils to effectively manage and conserve our nation's living marine resources.

B. Peer Review Processes

Pursuant to its authority under the Information Quality Act (Pub. L. 106-554, Section 515), the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review (70 FR 2664, January 14, 2005) that establishes minimum peer review requirements for "influential scientific information" disseminated by

Federal agencies. As described in section II.C, a Council's SSC is responsible for providing ongoing scientific advice to its Council for fishery management decisions. However, section 302(g)(1)(E) of the MSA provides for an optional peer review process: "(T)he Secretary and each Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of the fishery." If the Secretary and a Council establish such a process, it will be deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines. This proposed action provides guidance and national quality standards that are widely accepted, which should be followed in order to establish a peer review process per section 302(g)(1)(E). This action provides flexibility to maintain existing peer review processes established by the Secretary and Councils and also clarifies the role of the Councils' SSCs in the scientific review process.

Section 302(g)(1)(E) peer review processes must be carefully designed to maximize the likelihood of an outcome that is objective, provides useful information, and meets the intent or scope of work of the particular process. This proposed action adopts many of the OMB peer review standards, including balance in the peer review process in terms of expertise, knowledge, and bias; lack of conflicts of interest; independence from the work being reviewed; and transparency of the process. A peer review may take many forms, including individual letter or written review or panel reviews. The amount of time and resources spent on any particular review may depend on the novelty and complexity of the scientific information being reviewed. Peer reviewers who are federal employees must comply with all applicable federal ethics requirements (available at: http://www.usoge.gov/federal_employees.aspx). Potential reviewers who are not federal employees must be screened for conflicts of interest in accordance with the procedures set forth in the NOAA Policy on Conflicts of Interest for Peer Review subject to OMB's Peer Review Bulletin (available at: http://www.cio.noaa.gov/Policy_Programs/NOAA_PRB_COI_Policy_110606.html). The nature and scope of each peer review should be developed and defined prior to the selection of reviewers, to ensure reviewers with the

appropriate expertise and skills are selected.

Peer review processes established by the Secretary and a Council for that Council should not be duplicative and should focus on providing review for information that has not already undergone rigorous peer review. When the Secretary and a Council develop a peer review process per MSA section 302(g)(1)(E), the proposed NS2 guidelines provide that they must publish a notice and brief description of the process in the **Federal Register**, make a complete, detailed description of the process publicly available on the Council's Web site, and update it as necessary.

The proposed NS2 guidelines are not intended to replace or result in the duplication of effective peer review processes that have already been established by NMFS and the Councils, such as the Stock Assessment Review Committee (SARC), Southeast Data Assessment Review (SEDAR), Stock Assessment Review (STAR), and Western Pacific Stock Assessment Review (WPSAR). Section 302(g)(1)(E) provides that the peer review process established by the Secretary and a Council may include existing committees or panels. The aforementioned existing peer review processes (SARC, SEDAR, STAR and WPSAR) may qualify as 302(g)(1)(E) review processes, but the Secretary, in conjunction with the relevant Councils, has not yet made that determination. If such a determination is made, the Secretary will announce the decision in the **Federal Register**.

The impact of the proposed action on current Council peer review practices should be minimal since the proposed peer review standards are consistent with OMB's policy and presently incorporated in the existing peer review processes established by the Secretary and Councils. However, it may be necessary to refine those existing review processes in accordance with these proposed guidelines.

C. The Role of the SSC in the Review of Scientific Information

The proposed NS2 guidelines address several roles of the SSC and/or SSC members: the SSC as scientific advisor to its Council; the SSC as a peer review panel; and SSC members' participation on other peer review panels. With regard to the advisory role, the proposed NS2 guidelines provide that the SSCs are the scientific advisory bodies to the Councils.

Section 302(g)(1)(A) of the MSA mandates that "Each Council shall establish, maintain, and appoint the

members of a scientific and statistical committee to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan." As stated in MSA section 302(g)(1)(B), each SSC "shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices."

Questions have arisen with regard to the role of the SSC and peer review process under MSA section 302(h)(6). That section states that "each Council shall * * * develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g)." A possible interpretation of this section is that a Council could not exceed the fishing level recommendation of either the SSC or peer review process; the lower of the two levels would be the limit. However, NMFS believes that section 302(h)(6) should not be interpreted so as to displace the SSC's role in providing advice and recommendations to the Council. While MSA provides for establishment of peer review processes, such processes are optional, and as noted above, MSA section 302(g)(1)(A)-(B) mandates the types of advice the SSC provides for fishery management decisions. Further, as a practical matter, it is not clear how often an SSC or peer review panel would be generating different fishing level recommendations. The purpose of a peer review process is to ensure the quality and credibility of scientific information, rather than providing a specific result, such as a fishing level recommendation.

To address the above issues, as reflected in section (b)(1)(ii) of the proposed NS2 guidelines, a peer review process per section 302(g)(1)(E) should be conducted early in the scientific evaluation process, in order to provide the SSC with a reasonable opportunity to review the peer review report and make recommendations to the Council. The proposed NS2 guidelines also state that the SSC may provide a recommendation to its Council that is inconsistent with the findings of a peer

review, in whole or in part, but in such cases, the SSC should prepare a report outlining the areas of disagreement and the rationale and information supporting the SSC's determination. The proposed guidelines also state that the SSC should not repeat the peer review process by conducting a subsequent detailed technical review.

With regard to the SSC conducting a peer review of scientific information, the proposed action provides that the SSC's review should be complementary to, and not duplicative of, existing peer review processes established by the Secretary and each Council. Council and SSC members are encouraged to learn about the details in assessments and peer reviews by attending working group and peer review meetings that occur before any formal SSC evaluations of the scientific information are made.

With regard to SSC members, the proposed NS2 guidelines state that an SSC member may participate in the peer review of scientific information when beneficial due to the expertise and regional knowledge of the SSC member, as long as the SSC member meets the peer review quality standards as described in this proposed action. For an SSC member to participate in a peer review, the proposed action requires screening the SSC member as well as all other potential reviewers for conflicts of interest pursuant to NOAA's Policy on Conflicts of Interest for Peer Reviews Subject to OMB's Peer Review Bulletin. That policy limits review of one's own work. Furthermore, this proposed action provides that the review and evaluation of scientific information by the Councils' SSCs should be transparent, and include the recording of minority viewpoints.

Many ANPR comments focused on the evaluation and recommendations of the SSCs on the scientific information for catch-level specifications and pertinent measures of uncertainty; however, these issues were addressed in the recent revisions to the MSA National Standard 1 (NS1) guidelines (74 FR 3178, January 16, 2009).

D. SAFE Reports

The Secretary of Commerce (Secretary) has the responsibility for preparation and review of SAFE reports. The current NS2 guidelines state that the SAFE report is a document or set of documents that provides the Councils with a summary of scientific information, and contain specifications on the contents of SAFE reports. This proposed action would provide further clarification on the purpose and content of the SAFE report. Specifically, it provides guidance on the scientific

information that should be included in the SAFE to enable the SSC to fulfill its role in providing its Council with ongoing scientific advice for fishery management decisions.

ANPR comments suggested that a SAFE report should be a single report; however the proposed action maintains the existing NS2 guidelines language that describes the SAFE as a document or set of documents. This is necessary to provide the Secretary flexibility in the preparation of the SAFE report and accommodates differing regional practices with regard to the SAFE report. These proposed guidelines clarify that the SAFE report should include essential fish habitat (EFH) information, in accordance with the EFH provisions contained in § 600.815(a)(10), as a stand-alone chapter or clearly noted section.

The proposed NS2 guideline revisions contain provisions intended to facilitate the use of information in the SAFE reports and its availability to the Councils, NMFS, and public. For example, the proposed NS2 guideline revisions specify, as recommended by ANPR comments, that SAFE reports or similar documents must be made available by the Council or NMFS on a Web site accessible to the public, and that they include a summary of the information they contain and an index or table of contents of each component that comprises the SAFE report.

The proposed action would amend the existing NS2 guidelines by deleting the recommendation that the SAFE report contain information on safety for the fishery at issue. Safety of life at sea is now addressed in the National Standard 10 guidelines at § 600.355.

E. Fishery Management Plan (FMP) Development

This proposed action maintains the current NS2 guidelines language on FMP development, with only minor changes to the organization of the text.

III. References Cited

National Research Council of the National Academies (NRC). 2004. Improving the use of the "best scientific information available" standard in fisheries management. The National Academies Press, Washington, DC 105 pp.: <http://www.nap.edu/openbook.php>.

NOAA Office of the Chief Information Officer & High Performance Computing and Communications. 2006. National Oceanic and Atmospheric Administration Policy on Conflicts of Interest for Peer Review Subject to OMB Peer Review Bulletin. NOAA Memorandum, November 6, 2006; <http://www.cio.noaa.gov/>

Policy Programs/ NOAA_PRB_COI_Policy_110606.html.

Office of Management and Budget (OMB). 2004. Final Information Quality Bulletin for Peer Review. Executive Office of the President, Office of Management and Budget, memorandum M-05-03; December 16, 2004.

Classification

The NMFS Assistant Administrator has determined that this proposed action is consistent with the provisions of the MSA and other applicable law, subject to further consideration after public comment.

This proposed action has been determined to be not significant for purposes of Executive Order 12866.

NMFS has prepared a regulatory impact review of this action, which is available at: <http://www.nmfs.noaa.gov/msa2007/otherprovisions.html>. This analysis describes the economic impact this proposed action, if adopted, would have on small entities of the United States. NMFS invites the public to comment on this proposal and the supporting analysis.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed revisions to the NS2 guidelines, if adopted, would not have any significant economic impact on a substantial number of small entities, as follows:

I certify that the attached proposed action issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) will not have any significant economic impacts on a substantial number of small entities, as defined under the Regulatory Flexibility Act. The proposed action would revise the National Standard 2 (NS2) guidelines at 50 CFR 600.315.

The proposed revisions to the NS2 guidelines provide guidance on: use of "best scientific information available;" standards for discretionary peer review processes established by the regional Fishery Management Councils (Councils), in conjunction with the Secretary of Commerce; the role of the Councils' Scientific and Statistical Committees (SSCs) in the review and evaluation of scientific information; and requirements for Stock Assessment and Fishery Evaluation (SAFE) reports. Pursuant to section 301(b) of the MSA, the NS2 guidelines do not have the force and effect of law. Councils and the Secretary of Commerce would use the NS2 guidelines when developing or amending Fishery Management Plans (FMPs) and regulations to implement FMPs and FMP amendments. NMFS believes that revisions to the NS2 guidelines will assist the Councils and the Secretary in addressing new MSA requirements intended to strengthen the role of science in fishery management actions.

When NMFS takes fishery management actions, such actions typically could have impacts on vessel owners and operators and dealers. In this case, the proposed action would provide procedural guidance to the Secretary and Council regarding the development of fishery conservation and management measures. Because the NS2 guidelines are general guidance and focus on scientific information and review processes, they would not have any economic impacts on vessel owners, operators, dealers, or any other entities. The NS2 guidelines leave considerable discretion to the Councils and the Secretary to consider alternative ways to accomplish fishery conservation and management goals consistent with the NS. other provisions of the Magnuson-Stevens Act, and other applicable law. As the Councils and/or the Secretary develop FMPs, FMP amendments, or other regulatory actions, the actions will be accompanied by environmental, economic, and social analyses prepared pursuant to the Regulatory Flexibility Act, National Environmental Policy Act, and other statutes. Therefore, an IRFA has not been prepared for this action.

These proposed revisions to the NS2 guidelines do not contain any new recordkeeping or reporting requirements subject to the Paperwork Reduction Act. When the Councils and the Secretary develop FMPs, FMP amendments, or other regulatory actions per the Magnuson-Stevens Act and NS2 guidelines, such actions may include new proposed collection-of-information requirements. In the event that new collection-of-information requirements are proposed, a specific analysis regarding the public's reporting burden would accompany such action. NMFS is not aware of any other relevant Federal rules that may duplicate, overlap or conflict with the proposed action.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 7, 2009.

Steve A. Murawski,

Director of Scientific Programs and Chief Science Advisor, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 600.315 is revised to read as follows:

§ 600.315 National Standard 2—Scientific Information.

(a) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(1) Fishery conservation and management require high quality and

timely biological, ecological, economic, and sociological scientific information to effectively conserve and manage living marine resources. Successful fishery management depends, in part, on the thorough analysis of this information, and the extent to which the information is applied for evaluating the impact that conservation and management measures will have on living marine resources, essential fish habitat (EFH), marine ecosystems, fisheries participants, fishing communities, and the nation.

(2) Scientific information that is used to inform decision making should include an evaluation of its uncertainty and identify gaps in the information. Management decisions should recognize the biological (*e.g.*, overfishing), ecological, sociological, and economic (*e.g.*, loss of fishery benefits) risks associated with the sources of uncertainty and gaps in the scientific information. Limitations in scientific information may not be used as a justification for delaying fishery management actions.

(3) Information from data-poor fisheries may require use of simpler assessment methods and greater use of proxies for quantities that can not be directly estimated, as compared to data-rich fisheries.

(4) Scientific information includes, but is not limited to, factual input, data, models, analyses, technical information, or scientific assessments. Scientific information can be conveyed through data compiled directly from surveys or sampling programs, or through models that are mathematical representations of reality constructed with primary data. The complexity of the model should not be the defining characteristic of its value; the data requirements and assumptions associated with a model should be commensurate with the resolution and accuracy of the available primary data.

(5) Science is a dynamic process, and new scientific findings constantly advance the state of knowledge. Best scientific information is, therefore, not static and entails developing and following a research plan with the following elements: Clear statement of objectives; conceptual model that provides the framework for interpreting results, making predictions, or testing hypotheses; study design with an explicit and standardized method of collecting data; documentation of methods, results, and conclusions; peer review, as appropriate; and communication of findings.

(6) Principles for evaluating best scientific information must be based on relevance, inclusiveness, objectivity,

transparency and openness, timeliness, verification and validation, and peer review, as appropriate.

(i) *Relevance.* Scientific information should be pertinent to the current questions or issues under consideration and should be representative of the fishery being managed. In addition to the information collected directly about the fishery being managed, relevant information may be available about the same species in other areas, or about related species. For example, use of proxies may be necessary in data-poor situations. Analysis of related stocks or species is a powerful tool for inferring the likely traits of stocks for which stock-specific data are unavailable or are not sufficient to produce reliable estimates. Also, if management measures similar to those being considered have been introduced in other regions and resulted in particular behavioral responses from participants or business decisions from industry, such social and economic information may be relevant.

(ii) *Inclusiveness.* Three aspects of inclusiveness should be considered when developing and evaluating best scientific information:

(A) The relevant range of scientific disciplines should be consulted to encompass the scope of potential impacts of the management decision.

(B) Alternative points of view should be acknowledged and addressed openly when there is a diversity of scientific thought.

(C) Relevant local and traditional knowledge should be acknowledged (*i.e.*, fishermen's empirical knowledge about the behavior and distribution of fish stocks). To the extent possible, an effort should be made to reconcile scientific information with local and traditional knowledge.

(iii) *Objectivity.* Scientific information should use standards for objectivity that prevent non-scientific considerations from impacting on its scientific integrity. The objectivity standards should ensure that information is accurate, reliable, and unbiased, and that information products are presented in an accurate, clear, complete, and balanced manner.

(iv) *Transparency and openness.*—(A) The Magnuson-Stevens Act provides broad public and stakeholder access to the fishery conservation and management process, including access to the scientific information upon which the process and management measures are based. Subject to the Magnuson-Stevens Act confidentiality requirements, the public should have access to each stage in the development of scientific information, from data

collection, to analytical modeling, to decision making. Public comment should be solicited at appropriate times during the development of scientific information. Communication with the public should be structured to foster understanding of the scientific process.

(B) Scientific information products should describe data collection methods, report sources of uncertainty or statistical error, and acknowledge other data limitations. Such products should explain any decisions to exclude data from analysis. Scientific products should identify major assumptions and uncertainties of analytical models. Finally, such products should openly acknowledge gaps in scientific information.

(v) *Timeliness.*—(A) Sufficient time should be allotted to analyze recently acquired data to ensure its reliability and that it has been audited and subjected to appropriate review before it is used to inform management decisions. For those data that require being updated on a regular basis, the temporal gap between information collection and management implementation should be as short as possible, subject to regulatory constraints, and should be explicitly considered when developing conservation and management measures. In particular, late submission of scientific information to the Council process should be avoided if the information has circumvented the review process.

(B) Timeliness may also mean that in some cases, results of important studies or monitoring programs must be brought forward before a study is complete. Uncertainties and risks that arise from an incomplete study should be acknowledged, but interim results may be better than no results to help inform a management decision. Management decisions should not be delayed due to data limitations or the promise of future data collection or analysis.

(C) Historical information should be evaluated for its relevance, to inform the current situation. For example, species' life history characteristics may not change over time, and so remain relevant. Other time-series data (*e.g.*, abundance, catch statistics, market and trade trends) provide context for changes in fish populations, fishery participation, and effort, and therefore provide valuable information to inform current management decisions.

(vi) *Verification and validation.*—Methods used to produce scientific information should be verified and validated to the extent possible.

(A) *Verification* means that the data and procedures used to produce the

scientific information are documented in sufficient detail to allow reproduction of the analysis by others with an acceptable degree of precision. External reviewers of scientific information require this level of documentation to conduct a thorough review.

(B) *Validation* refers to the testing of analytical methods to ensure that they perform as intended. Validation should include whether the analytical method has been programmed correctly in the computer software, the precision of the estimates is adequate, model estimates are unbiased, and the estimates are robust to model assumptions. Models should be tested using simulated data from a population with known properties to evaluate how well the models estimate those characteristics. The concept of validation using simulation testing should be used, to the extent possible, to evaluate how well a management strategy meets management objectives.

(vii) *Peer review*. Peer review is a process used to ensure that the quality and credibility of scientific information and scientific methods meet the standards of the scientific and technical community. Peer review helps ensure objectivity, reliability, and integrity of scientific information. The peer review process is an organized method that uses peer scientists with appropriate and relevant expertise to evaluate scientific information.

(viii) To the extent practicable, substantial fishery management alternatives considered by a Council should be peer reviewed. Factors to consider when determining whether to conduct a peer review and if so, the appropriate level of review, include the novelty and complexity of the scientific information to be reviewed, the level of previous review and the importance of the information to be reviewed to the decision making process. If formal peer review is not practicable due to time or resource constraints, the development and analysis of scientific information used in or in support of fishery management actions should be as transparent as possible, in accordance with paragraph (a)(6)(iv) of this section.

(b) *Peer review process*. The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise about the conservation and management of the fishery (Magnuson-Stevens Act section 302(g)(1)(E)). A peer review process is not a substitute for an SSC and should work in conjunction with the SSC (see § 600.310(b)(2)(v)(C)). This section provides guidance and standards that should be followed in

order to establish a peer review process per section 302(g)(1)(E).

(1) The objective or scope of the peer review, the nature of the scientific information to be reviewed, and timing of the review should be considered when selecting the type of peer review to be used. The process established by the Secretary and Council for each Council should focus on providing review for information that has not yet undergone rigorous peer review, but that must be peer reviewed in order to provide reliable, high quality scientific advice for fishery conservation and management. Duplication of previously conducted peer review should be avoided.

(i) *Form of process*. The peer review process may include or consist of existing Council committees or panels if they meet the standards identified herein. The Secretary and Council have discretion to determine the appropriate peer review process for a specific information product. A peer review can take many forms, including individual letter or written reviews, and panel reviews.

(ii) *Timing*. The peer review should be conducted early in the process of producing scientific information or a work product, to the extent practicable. The timing will depend in part on the scope of the review. For instance, the peer review of a new or novel method or model should be conducted before there is an investment of time and resources in implementing the model and interpreting the results. The results of this type of peer review may contribute to improvements in the model or assessment.

(iii) *Scope of work*. The scope of work or charge (sometimes called the terms of reference) of any peer review should be determined in advance of the selection of reviewers. The scope of work contains the objective of the specific advice being sought. The scope of work should be carefully designed, with specific technical questions to guide the peer review process; it should ask peer reviewers to ensure that scientific uncertainties are clearly identified and characterized, it should allow peer reviewers the opportunity to offer a broad evaluation of the overall scientific or technical product under review, and it must not change during the course of the peer review. The scope of work may not request reviewers to provide advice on scientific policy (e.g., amount of uncertainty that is acceptable or amount of precaution used in an analysis). Such policy considerations are in the purview of the Secretary and the Councils.

(2) *Peer reviewer selection*. The selection of participants in a peer

review must be based on expertise, independence, and a balance of viewpoints, and be free of conflicts of interest.

(i) *Expertise and balance*. Peer reviewers must be selected based on scientific expertise and experience relevant to the disciplines of subject matter to be reviewed, including a balance in perspectives. The group of reviewers that constitute the peer review should have sufficiently broad and diverse expertise to represent the range of relevant scientific and technical perspectives to complete the objectives of the peer review.

(ii) *Conflict of interest*. Peer reviewers who are federal employees must comply with all applicable federal ethics requirements. Peer reviewers who are not federal employees must comply with the following provisions. Peer reviewers must not have any real or perceived conflicts of interest with the scientific information, subject matter, or work product under review, or any aspect of the statement of work for the peer review. For purposes of this section, a conflict of interest is any financial or other interest which conflicts with the service of the individual on a review panel because it:

(A) Could significantly impair the reviewer's objectivity; or

(B) Could create an unfair competitive advantage for a person or organization.

(C) Except for those situations in which a conflict of interest is unavoidable, and the conflict is promptly and publicly disclosed, no individual can be appointed to a review panel if that individual has a conflict of interest that is relevant to the functions to be performed. Conflicts of interest include, but are not limited to, the personal financial interests and investments, employer affiliations, and consulting arrangements, grants, or contracts of the individual and of others with whom the individual has substantial common financial interests, if these interests are relevant to the functions to be performed. Potential reviewers must be screened for conflicts of interest in accordance with the procedures set forth in the NOAA Policy on Conflicts of Interest for Peer Review subject to OMB's Peer Review Bulletin.

(iii) *Independence*. Peer reviewers must not have participated in the development of the work product or scientific information under review. For peer review of some work products or scientific information, a greater degree of independence may be necessary to assure credibility of the peer review process; reviewers should not be employed by the Council or entity that produced or utilizes the product for

management decisions. Peer review responsibilities should rotate across the available pool of qualified reviewers or among the members on a standing peer review panel, recognizing that, in some cases, repeated service by the same reviewer may be needed because of essential expertise.

(3) *Transparency.* A transparent process is one that allows the public full and open access to peer review panel meetings, background documents, and reports, subject to Magnuson-Stevens Act confidentiality requirements. The evaluation and review of scientific information by the Councils and their advisory panels must also be publicly transparent in accordance with the Councils' requirements for notifying the public of meetings. The date, time, location, and terms of reference (scope and objectives) of the peer review should be publicly announced 14 days before the review to allow public comments during meetings. Background documents should be available for public review in a timely manner prior to meetings. Peer review reports describing the scope and objectives of the review, findings in accordance with each objective, and conclusions should be publicly available. Names and organizational affiliations of reviewers also should be publicly available prior to review.

(4) *Publication of the peer review process.* The Secretary will announce the establishment of a peer review process under Magnuson-Stevens Act section 302(g)(1)(E) in the *Federal Register* along with a brief description of the process. In addition, detailed information on such processes will be made publicly available on the Council's Web site, and updated as necessary.

(c) *SSC scientific advice to the Council.* Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices (Magnuson-Stevens Act 302(g)(1)(B)).

(1) SSC scientific advice and recommendations to the Councils based on review and evaluation of scientific information must meet the guidelines of best scientific information available as described in paragraph (a) of this section. SSCs may conduct peer reviews, participate in peer reviews, or evaluate peer reviews to provide clear

scientific advice to the Council. Such scientific advice should attempt to resolve conflicting scientific information, so that the Council will not be forced to engage in debate on technical merits. Debate and evaluation of scientific information should be part of the role of the SSC.

(2) SSC members may participate in a peer review when such participation is beneficial to the peer review due to the expertise and institutional memory of that SSC member, or beneficial to the Council's advisory body by allowing that SSC member to make a more informed evaluation of the scientific information. Participation of a SSC member in a peer review should not impair the ability of that SSC member to accomplish the advisory responsibilities to the Council.

(3) If an SSC as a body, or individual members of an SSC, conducts or participates in a peer review, those SSC members must meet the peer reviewer selection criteria as described in paragraph (b)(2) of this section. These guidelines require separate consideration from those of § 600.235, Financial Disclosure for Councils and Council committees. Additionally, when the SSC as a body is conducting a peer review, it should strive for consensus and meet the transparency guidelines for best scientific information available and peer reviews as described in paragraphs (a)(6)(iv) and (b)(3) of this section. If consensus cannot be reached, minority viewpoints should be recorded.

(4) The SSC's evaluation of a peer review conducted by a body other than the SSC should be linked to the extent and quality of peer review that has already taken place. For Councils with extensive and detailed peer review processes (e.g., a process established pursuant to Magnuson-Stevens Act section 302(g)(1)(E)), the evaluation by the SSC of the peer reviewed information should not repeat the previously conducted and detailed technical peer review. However, SSCs must maintain their role as advisors to the Council about scientific information that comes from an external peer review process. Therefore, the peer review of scientific information used to advise the Council, including a peer review process established by the Secretary and the Council under Magnuson-Stevens Act section 302(g)(1)(E), should be conducted early in the scientific evaluation process in order to provide the SSC with reasonable opportunity to review the peer review report and make recommendations to the Council as required under Magnuson-Stevens Act section 302(g)(1)(B).

(5) If the evaluation of scientific information by the SSC is inconsistent with the findings or conclusions of a peer review, in whole or in part, the SSC should prepare a report outlining the areas of disagreement, and the rationale and information used by the SSC for making its determination.

(6) Annual catch limits (ACLs) may not exceed the SSC's recommendations for fishing levels (Magnuson-Stevens Act section 302(h)(6)). The SSC recommendation that is most relevant to ACLs is acceptable biological catch (ABC), as both ACL and ABC are levels of annual catch (see § 600.310(b)(2)(v)(D)). Any peer review related to such recommendations should be conducted early in the process as described in paragraph (c)(4) of this section. The SSC should resolve differences between its recommendations and any relevant peer review recommendations per paragraph (c)(5) of this section.

(d) *SAFE Report.* The term SAFE (Stock Assessment and Fishery Evaluation) report, as used in this section, refers to a public document or a set of related public documents, that provides Councils with a summary of scientific information concerning the most recent biological condition of stocks, stock complexes, and marine ecosystems in the fishery management unit (FMU), essential fish habitat (EFH), and the social and economic condition of the recreational and commercial fishing interests, fishing communities, and the fish processing industries. It summarizes, on a periodic basis, the best scientific information available concerning the past, present, and possible future condition of the stocks, EFH, marine ecosystems, and fisheries being managed under Federal regulation.

(1) The Secretary has the responsibility to assure that SAFE reports are prepared and updated or supplemented as necessary whenever new information is available that requires a revision to the status determination criteria (SDC) or is likely to affect the overfishing level (OFL), optimum yield, or ABC values (§ 600.310(c)). The SAFE report and any comments or reports from the SSC must be available to the Council for making its management decisions for each FMP to ensure that the best scientific information available is being used. The Secretary or Councils may utilize any combination of personnel from Council, state, Federal, university, or other sources to acquire and analyze data and produce the SAFE report.

(2) The SAFE report provides information to the Councils and the

Secretary for determining annual catch limits (§ 600.310(f)(5)) for each stock in the fishery; documenting significant trends or changes in the resource, marine ecosystems, and fishery over time; implementing required EFH provisions (§ 600.815(a)(10)); and assessing the relative success of existing state and Federal fishery management programs. In addition, the SAFE report may be used to update or expand previous environmental and regulatory impact documents and ecosystem descriptions.

(3) Each SAFE report should contain the following:

(i) A description of the SDC (e.g., maximum fishing mortality rate threshold and minimum stock size threshold for each stock or stock complex in the fishery) (§ 600.310(e)(2)), along with information to determine:

(A) Whether overfishing is occurring with respect to any stock or stock complex, whether any stock or stock complex is overfished, whether the rate or level of fishing mortality applied to any stock or stock complex is approaching the maximum fishing mortality threshold, and whether the size of any stock or stock complex is approaching the minimum stock size threshold; and

(B) Any management measures necessary to rebuild an overfished stock or stock complex (if any) in the fishery to a level consistent with producing the MSY in that fishery.

(ii) Information on which to base catch specifications, including the most recent stock assessment documents and associated peer review reports, and recommendations and reports from the Council's SSC on OFL and ABC, preventing overfishing, and achieving rebuilding targets. Documentation of the data collection, estimation methods, and consideration of uncertainty in

formulating catch specification recommendations should be included (see also § 600.310(f)(2)–(4)).

(iii) Information on sources of fishing mortality (both landed and discarded), including commercial and recreational catch and bycatch in other fisheries and description of data collection and estimation methods used to quantify total catch mortality, as required by National Standard 1 (§ 600.310(i)).

(iv) Information on bycatch of non-target species for each fishery.

(v) Review and evaluations of EFH information in accordance with the EFH provisions (§ 600.815(a)(10)), as a standalone chapter or in a clearly noted section.

(vi) Pertinent economic, social, community, and ecological information for assessing the success of management measures or the achievement of objectives of each FMP.

(4) To facilitate the use of the information in the SAFE report, and its availability to the Council, NMFS, and the public:

(i) The SAFE report should contain, or be supplemented by, a summary of the information and an index or table of contents to the components of the report.

(ii) The SAFE report or compilation of documents that comprise the SAFE report and index must be made available by the Council or NMFS on a readily accessible Web site.

(e) *FMP development*.—(1) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again, unless the information

indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

(2) The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 600.320(d)(2) and 600.340(b)).

(3) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within state waters, as well as in the EEZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

(4) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource, marine ecosystem, the fishery, and fishing communities.

(5) The information submitted by various data suppliers should be comparable and compatible, to the maximum extent possible.

(6) FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures consistent with the conditions described in paragraph (d) of this section (SAFE reports). Paragraphs (e)(1) through (e)(5) of this section apply equally to FMPs and FMP amendments.

[FR Doc. E9-29589 Filed 12-10-09; 8:45 am]
BILLING CODE 3510-22-P



Alaska Fisheries Science Center
NATIONAL MARINE FISHERIES SERVICE - NOAA FISHERIES



**Northern Bering Sea Research Area Research Plan
Community and Subsistence Workshop**

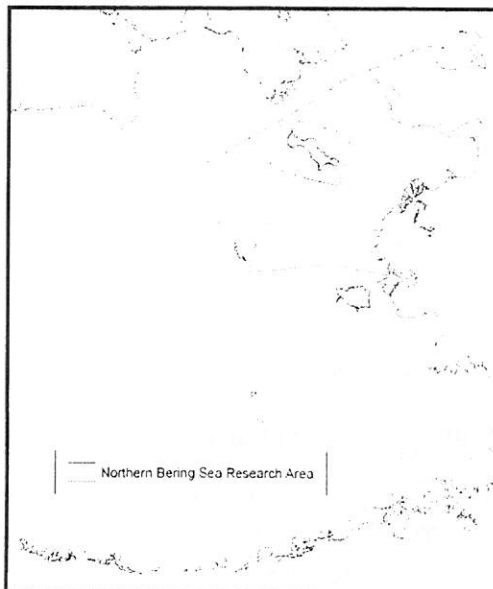
February 24 - 25, 2010

**Anchorage Chamber of Commerce Conference Room
1016 West Sixth Avenue, Suite 304, Anchorage, AK**

The Alaska Fisheries Science Center (AFSC), at the request of the Council, is developing a scientific research plan for the Northern Bering Sea Research Area (NBSRA) to study the effects of bottom trawling on the benthic community. The NBSRA was established by the Council, became effective in 2008, and is currently closed to bottom trawl fishing. The primary goals of the plan would be to use the research area to investigate the effects of bottom trawling on bottom habitat, and provide information to help with developing future protection measures in the NBSRA for crab, marine mammals, endangered species, and the subsistence needs of western Alaska communities.

Purpose of workshop

Communication with local communities is necessary to ensure their interests are represented in enacting policies and managing resources in the NBSRA. The purpose of this meeting is to gather input from subsistence fishing communities for the development of the NBSRA research plan. The purpose is to delineate areas of subsistence harvest or habitat of marine species in the NBSRA, understand the nature of subsistence activities, register concerns about the impact of commercial bottom trawling, and collect ecological knowledge of the NBSRA. The workshop is open to the public.



For more information on the research plan outline and schedule, visit our website:
http://www.fakr.noaa.gov/npfmc/current_issues/ecosystem/NBSRA.htm

Or contact:

Dr. Cynthia Yeung, Alaska Fisheries Science Center, project lead, cynthia.yeung@noaa.gov

Diana Evans, North Pacific Fishery Management Council, diana.evans@noaa.gov

Nicole Kimball, North Pacific Fishery Management Council, nicole.kimball@noaa.gov

Melanie Brown, National Marine Fisheries Service, melanie.brown@noaa.gov

(See a draft agenda for the Community and Subsistence Workshop on the back of this flyer.)

Northern Bering Sea Research Area Research Plan Community and Subsistence Workshop

Anchorage Chamber of Commerce Conference Room, 1016 West Sixth Avenue, Suite 304
(corner of 6th Ave & K Street in downtown Anchorage)

AGENDA

Wednesday, February 24 8:30 am – 4:30 pm

8:30 - 9 AM COFFEE

I. Introduction

II. Overview of NBSRA concept and planning (AFSC)

- Establishment of the NBSRA *Melanie Brown, National Marine Fisheries Service, Alaska Region*
- Research planning *Cynthia Yeung, Alaska Fisheries Science Center*
- Current scientific knowledge
 - Managed species
 - Crabs *Dan Urban, Alaska Fisheries Science Center*
 - Ice-associated seals *Mike Cameron, NOAA National Marine Mammal Laboratory*
 - Walrus *Jonathan Snyder, US Fish and Wildlife Service*
 - Seabirds *Tamara Zeller, US Fish and Wildlife Service*

BREAK

- Bottom trawling
 - Trawl surveys *Bob Lauth, Alaska Fisheries Science Center*
 - Gear modifications *Craig Rose, Alaska Fisheries Science Center*
 - Trawl impact studies *Bob McConnaughey, Alaska Fisheries Science Center*

12 - 1 PM LUNCH

III. Comments and questions on the morning's topics (open)

IV. Subsistence activities and traditional knowledge (communities)

- Overview of communities by representatives
- Open dialogue with community members
 - Descriptions of communities
 - *populations, economy, activities, culture and traditions*
 - Information to aid research and management planning
 - *species distributions / habitats; harvest methods, effort and catch; ecological observations*

Thursday, February 25 9 am – 12 pm

V. Open Discussion on Community Concerns

- Possible topics:
 - Ecology
 - Critical habitats
 - Potential impacts of bottom trawling
 - Management and economic considerations
 - Research priorities
 - Ecosystem monitoring
 - Partnership and cooperation in research and management
 - Communications and outreach
 - Timing for future comment/feedback
 - NBSRA Research Plan schedule

Alaska Marine Ecosystem Forum Meeting

North Pacific Research Board conference room
1007 W 3rd Ave, Suite 100, Anchorage, AK
January 25, 2010 1-5pm

DRAFT Agenda 1/22/2010

Introductions

Agency briefings

- opportunity for each agency to address AMEF (max. 10 minutes)
 - What are the principal marine ecosystem issues each agency is facing? Are there any new opportunities for coordination or collaboration? Please highlight any new activities or updates since our last meeting in June 2009.

Specific issues

- Arctic research and management actions
 - What is each agency planning or doing in the Arctic? NPRB and the US Arctic Research Commission are interested in potentially using the AMEF as a venue for coordinating with the member entities about work in the Arctic
- National Coastal and Marine Spatial Planning Framework
 - How are the agencies responding to the national framework?
- Nomination of Alaska sites to the national system of marine protected areas
 - Update from North Pacific Fishery Management Council and other agencies about plans to nominate sites to the national system, and evaluate the 'avoid harm' provision for existing sites
- Update on the Chukchi Monitoring and Assessment Program Survey
 - *Doug Dasher, DEC*
- Status of Aleutian Islands risk assessment (*tentative*)

Next steps

- Planning for AMEF – tentative goals for 2010-2012
 - revisit meeting frequency

Alaska Marine Ecosystem Forum

MEETING SUMMARY

January 25, 2010, 1-4:30 pm
Conference room, North Pacific Research Board, Anchorage, AK

The following member agencies attended the meeting. Underlined participants represented their agency.

Environmental Protection Agency (EPA)
Marcia Combes, Director, Alaska
Operations Officer

National Marine Fisheries Service (NOAA Fisheries)
Jon Kurland, Acting Deputy Regional
Administrator
Amy Holman, Regional Coordinator,
NOAA Alaska Regional Collaboration
Team

North Pacific Fishery Management Council (NPFMC)
Chris Oliver, Executive Director
Diana Evans, Fishery Analyst

Minerals Management Service (MMS)
Cathy Coon, Marine Biologist,
Environmental Studies Section

National Park Service (NPS)
Debora Cooper, Associate Regional
Director for Resources

Bureau of Land Management (BLM)
Gary Reimer, Field Manager, Anchorage
Field Office

Other participants:

North Pacific Research Board (NPRB)
U.S. Arctic Research Commission

Francis Wiese, Science Director
Cheryl Rosa, Deputy Director

17th Coast Guard District (CG)
Shane Montoya, USCG D17 Plans and
Force Readiness

Alaskan Command
Jerome Montague, Tribal Affairs / Natural
Resources Advisor

U.S. Army Corps of Engineers (COE)
Michael Salyer, Chief, Environmental
Resources Section

Department of Fish and Game (DFG)
Stefanie Moreland, Extended Jurisdiction
Program Manager

Department of Environmental Conservation (DEC)
Doug Dasher, Director, Alaska Monitoring
and Assessment Program

Department of Natural Resources (DNR)
Randy Bates, Director, Division of Coastal
and Ocean Management

Introductions

Marcia Combes, as Chair of the AMEF, opened the meeting and attendees introduced themselves.

Agency briefings

Each agency present at the meeting gave a brief update on activities of interest with respect to the Aleutian Islands or other Alaska marine ecosystems. Some agencies provided handouts, which are attached to this summary.

Jon Kurland, NMFS (handout attached)

Mr Kurland provided an update on major issues. NOAA received stimulus funding for habitat restoration through the Recovery Act, and four proposals were funded in Alaska. NMFS has implemented the new Arctic Fishery Management Plan, which prohibits all commercial fishing in Arctic waters until sufficient information is available to support fishing. NOAA is also developing a strategic plan for the agency's role and priorities for the Arctic, with an internal draft scheduled for the end of April.

Regarding protected species listing, NMFS has determined that ESA listing is not warranted for the two populations of spotted seals in Alaska, although a southern population off China and Russia should be listed as threatened, due to a decline in sea ice. Status reviews for ringed and bearded seals are underway, and listing determinations will be prepared by fall 2010. NMFS has also published a Critical Habitat designation for Cook Inlet beluga whales, for which the public comment period ends in March. A final designation will occur in the fall.

Michael Salyer, USCOE

Mr Salyer noted that within the Civil Works division, the Corps has three primary missions in Alaska: navigation, flood control, and environmental mitigation. As a water resources agency, a primary issue is water level increase. Much of their work occurs in the AI, mostly small ports and navigation improvements, but there are some ongoing cultural projects (for examples, graveyards being relocated). Engineers are working on how to measure climate change. There is not a lot going on for the Corps in the Arctic, but there are some studies for navigation improvement in western Alaska, and some flood control work in the interior. A few ecosystem restoration studies are presently ongoing, but there is room for growth in this area. In response to a question, Mr Salyer noted that the Corps gets involved in projects when there is either sponsor interest or congressional direction.

Francis Wiese, NPRB

The NPRB funds marine research throughout Alaska. The Board is comprised of stakeholders (the NPFMC, ADFG, USCG, NGOs, and also industry). NPRB has funded 230 or so projects in its history, through its annual funding cycle, and at any time has about 100 projects ongoing. Recently, NPRB has focused on Integrated Ecosystem Research Plan (IERP). The first was started for the Bering Sea in 2007 (in collaboration with the National Science Foundation), for a duration of 6 years, in order to address big climate and full system issues. The project includes

climate scenarios, fishery management implications, subsistence/lifestyle implications, and everything in between. The NPRB is just starting to figure out an implementation plan for the GOA IERP, which will be smaller in scope (about \$10 million in funding), and 5 years in duration. The GOA IERP will kick off later this year. Mr Wiese's intention is then to focus more on the Arctic. In general, about 60% of NPRB funds go to Bering Sea projects, 30% to the GOA, and 10% to the Arctic (mainly because not as many proposals are submitted for the Arctic). At the last Alaska Marine Science Symposium, the NPRB hosted a workshop with Molly McCammon (AOOS) and the various research entities in the Arctic, to figure out what is happening/ ought to happen with respect to Arctic research. The NPRB is poised to play two roles with respect to Arctic research: coordination, and also provision of some funding towards Arctic projects (although the scope of funding is still likely to be less than that devoted to the Bering Sea and GOA).

Cheryl Rosa, U.S. Arctic Research Commission

The U.S. Arctic Research Commission directs funding on the Arctic. It has no funding of its own, but it passes along recommendations to Congress and the President about what work to fund. The Commission works with stakeholders and rural communities to figure out what is worthwhile to research. The Commission will be publishing a 5-year goal plan in the near future (early February 2010; it will be available online at <http://www.arctic.gov/>). Several issues within the publication are related to the offshore marine environment: climate change/environmental change; oil spills/response; climate change and ocean acidification; the Arctic Marine Shipping Assessment report and its recommendations; Arctic human health (pollutants on food sources); co-management (e.g., of marine mammals); and access issues (trying to improve access for scientific work in places like Russia; trying to pave better relationships with Russian Far East). Identified research topics include: arctic fisheries, autonomous unmanned system, sea ice modeling, and others. All of the goals were developed through feedback from people like those in this group (researchers and stakeholders). Ms Rosa expects the goals report to be valuable resource.

Shane Montoya, USCG

LCDR Montoya noted that the USCG is coming up to their third summer of expanding operations in the Arctic. The overall goal is to figure out what works in the Arctic, in order to be better prepared when the time comes that the USCG will need to have a higher profile in the Arctic. Among other things, the USCG will be looking to see whether an icebreaker can be used for oil spill response in the Arctic. A joint exercise with Canada has recently started for the Arctic, looking at pollution response (similar work has been done around Dixon Entrance in the past). The USCG has been involved in response to some oil spills recently; it is clear that response works much better when everyone in the response team is on the same page, knows each other, and is acting in accordance to a similar plan.

Also, several topics at the Alaska Forum on the Environment will address climate change, pollution response, and strategies for adapting to climate change for rural communities in the US or Canada. LCDR Montoya can be contacted for further information on these sessions. Can provide more information if anyone is interested.

Chris Oliver, NPFMC (handout attached)

Mr Oliver identified issues that are both high on the Council radar screen but also of interest to the AMEF. Several ambitious initiatives that are coming out of Ocean Policy Task Force, which the Council is tracking, but these will be addressed later in meeting. The Council is doing a review of essential fish habitat (EFH) specifications for managed fish species, for which a five-year review is required in regulation. Mr Oliver does not anticipate that there will be any major changes, but there will likely be minor adjustments to the description and distribution of EFH for managed species. The Council is also involved in the development of a research plan for the Northern Bering Sea Research Area, which is currently closed to bottom trawling, although at some point limited trawling may be allowed in the future. The Council is hosting a workshop in late February to gather information on subsistence use in the area.

One of the biggest items on the Council agenda is Steller sea lions (SSL). In 2001, the Council implemented a sweeping array of time and area closures to deal with fishery interactions with the endangered western population of SSLs. The population does not appear to be recovering in some areas, so NMFS is preparing another Biological Opinion on the Alaska fisheries, with a draft due out in March. Preliminary indication is that some of the fisheries may incur another jeopardy or adverse modification finding, so further adjustments may be needed to management measures. The Council is also working on a chum salmon bycatch package. Although the pollock fishery itself is a very clean fishery (98% pollock), one of the bycatch species is salmon. Chinook bycatch caps were adopted last year, and the Council is now working on chum (although this is a lesser profile species).

Deb Cooper, National Park Service

The NPS has a Pacific Ocean Parks Strategy which addresses coastline parks for the Alaska and western regions. In Alaska, these include (but are not limited to) Glacier Bay, Kenai Fjords, Klondike, Sitka, Katmai, Lake Clark, Wrangell St Elias, Cape Krusenstern, and Bering Land Bridge. Representatives from all the regional parks got together at a workshop last October, to develop an implementation plan to tier off the regional strategy. They looked at implementing priorities with partners and adjoining management agencies.

The NPS is preparing to hire an Alaska Oceans and Coastal coordinator, and the region is working on a position description and list of primary duties. The position should be out in four or five months. It will be helpful to have the staffing resources for the NPS to be a more active participant in Alaska conservation and marine resources issues. There are staff involved in these issues in southeast Alaska, but virtually no one in the Arctic parks. At a recent Department of Interior retreat, which was attended by Jeff Mow, superintendent of the Kenai Fjords national park, the issue of ocean planning came up repeatedly, and there was a lot of discussion about the need to make the link between ocean issues and climate change (in response to the President's message).

Gary Reimer, BLM

Mr Reimer noted that BLM is generally an upland agency, but deals with some marine issues down by Sitka, and is involved with some subsistence issues there with herring. The Bering

Glacier is a research interest for BLM, as they own extensive land holdings around the glacier. They have an older partnership for research, and were beginning to have a fairly good run of data on the glacier. The challenge is to keep funding that project (last year, they couldn't operate because of funding constraints). Mr Reimer also noted that BLM is starting a land use plan for a project on the north slope, and also that the agency has ten million acres on the upper Kuskokwim, and is interested in partnering with others on research.

Cathy Coon, MMS (handout attached)

Ms Coon noted that MMS has completed their Arctic multisale EIS, to support lease sales in 2010 in the Beaufort and Chukchi Seas. They are also doing an EIS for the Northern Aleutian Basin (NAB), for the expected sale date at the end of 2011. The NAB lease sale is highly controversial, and there has been some question as whether there may be a delay in the lease sale date.

MMS has supported a fair amount of research in the Arctic. During the recent Alaska Marine Science Symposium, Ms Coon hosted an evening workshop, primarily on Chukchi fish research. The discussion became broader, however, to talk about Arctic collaboration, and many agencies attended. Two ideas emerged: to organize a multi disciplinary, special publication in a well known journal as a plan for publishing Arctic research, e.g. in 2014, as a carrot for researchers. Second, while there are lots of plans for long-term projects, there is a need to focus on what is going to happen in the short term. The group decided to have a short list of plans, which would maybe allow for sharing of vessel time.

Jerome Montague, Alaskan Command

The EIS for navy training in the GOA for the next 10 years is being finished up. Public meetings were held last week, and will be this spring and summer too. A number of limited operating experiments are underway to evaluate projecting climate change 20 years hence, in terms of what might require a different make up of the military in Alaska. For example, would Alaska need a navy base, or are the airports sufficient. Also there is an administrative aspect, as currently the world is divided up into combatant commands that come together in the Arctic. If a war were to occur in the Arctic, it would involve all combatant commands, so is there a need for an Arctic combatant command.

Dr Montague also noted that the Alaskan Command is participating in a Native cultural training course from 3-5 March, and there are still some spots available if anyone from other agencies wants to attend.

Doug Dasher, DEC

As part of DEC's 10 year plan, they have adopted EPA's probabilistic sampling procedure to assess large regional water bodies, which involves surveys in individual estuaries to represent the total population. Surveys started with southcentral Alaska, looking at, among other things, water quality, benthic sediment conditions, fish trawl information, in order to understand biodiversity and contaminants. Surveys of the Aleutian Islands were in 2006-7, and the last of the taxonomic work has been completed on intertidal and nearshore areas. DEC has intertidal reports from Attu

to Dutch Harbor, on sites that were sampled. Final quality control is underway, and the report should be out by end of the year. The methodology included both probabilistic sampling and also targeted sampling, for example in harbors and areas that may have pollutant problems.

There is also a national water quality monitoring assessment plan that EPA, USGS, and NOAA are working on. The plan includes a coastal element for Norton Sound, Kuskokwim Bay, Glacier Bay, and others. Site sampling has occurred in those areas, to compare with what's being done in the lower 48. The intent is to develop an overall national monitoring plan, for agencies and states to use for the future. The State of Alaska is not involved in that effort, but it has the potential to impact Alaska.

Stefanie Moreland, ADFG

Ms Moreland noted that the number one issue for ADFG is currently ocean acidification. The agency is working to coordinate with UAF and the AFSC acidification plan (which is currently unfunded), in order to understand issues of acidification on shellfish. From a fishery management point of view, ADFG is interested in being involved in research to understand impacts on shell formation. These issues are likely to affect the North Pacific first, because the undersaturated water is closer to the surface here than anywhere else. ADFG is still trying to decide where appropriate sites would be for putting monitoring instruments on buoys. ADFG is also working on trying to add another component to the research plan, to sample small crab, as an idea for small research projects.

Some work has come out of the State's Subcabinet on Climate Change, and it is an incentive for ADFG to develop a draft plan the agency to meet needs of climate change. This is being worked on internally. In the Arctic, the agency has been working since 2008 to conduct a salmon research study for north slope drainages, include a traditional and ecological knowledge component. Species presence and abundance is being tracked, and also juveniles. This project is thought to be a good project as an indicator for overall climate change. Also, the agency is working to better understand the distribution of salmon caught as bycatch in the pollock fishery. Hopefully there should be results soon.

Marcia Combes, EPA

Ms Combes also selected a subset of items that would be of interest to the AMEF. From a local perspective, EPA is finding itself most busy with permitting and the regulatory framework for which EPA is responsible in Alaska, and specifically the outer continental shelf work. EPA works with tribes as well as agencies. For 10 years the agency has been funding tribes to develop a local environmental capacity in their communities. Over that time, tribes have come to find EPA more accessible, so government to government work really comes more into play, especially with permitting on the outer continental shelf. In the Arctic, the issues are of high stakes, and there are challenges on all sides of the issue which must be addressed. EPA is involved in the Chukchi and Beaufort, but also in the North Aleutian Basin. The agency is being petitioned heavily to require zero discharge for all oil and gas exploration activities. That is not currently a regulatory standard for EPA, and has not applied in Alaska before now, but there is a lot of interest in doing so. EPA issues air and water permits, and the agency is getting ready to reissue permits for surface water discharge in the Arctic (it used to be a single permit for the

Arctic, but is now being split into separate permits for the Chukchi and Beaufort). In Cook Inlet, the general permit issued a couple of years ago is in litigation. But EPA is also looking at all permits in place in the area, with an eye towards the beluga whale critical habitat designation. There are a number of regulatory permitting compliance issues with some of activities in Cook Inlet, the platforms and also the Tesoro refinery in Kenai.

Stepping back from local issues, EPA is working with the new administration to highlight what is unique about the Arctic, and work in Alaska in general. Ms Combes has been getting the attention of the new administration people and a number of folks on the Ocean Policy Task Force, and has spent a lot of time back in DC. EPA is waiting for funding picture to become more clear (likely next month), and as funding decisions are made, it is likely they will be doing more to support ocean policy. With respect to climate change, the EPA is doing more to regulate air pollutants (greenhouse gas emissions), although that is opposed by Alaska's senior senator. But Ms Combes' staff are also trying to consider climate change in their everyday responsibilities. At the State level, the Subcabinet is getting ready to forward recommendations to the Governor. EPA has tried to participate in that process at the stakeholder level, but is also interested to see what the State identifies in terms of priorities (e.g., communities most at risk from erosion, or how should we be focusing limited resources).

Arctic resource and management actions

Mr Wiese began the discussion by noting that currently, research is not coordinated. There are a number of different groups of people doing research in the Arctic (e.g., academic institutions from the lower 48, NSF, MMS and industry stakeholders), and there does not appear to be a lot of interaction among them. For example, there is a State of the Arctic meeting occurring on March 16-19, which is taking place in Miami, FL. NPRB is trying to help coordinate these groups to represent a more coordinated approach.

NPRB has funded an Arctic Synthesis Project (Project 505, final report available online), which is a survey of published information available on the Arctic, but which does not include information available from industry, or grey literature from agencies. NPRB and AOOS organized a workshop, last year, which brought together many of the relevant research entities in Alaska, to further develop a common plan for the Arctic. Mr Wiese suggested that a plan to move forward could be to reconvene another workshop to define core issues, and bring these back to the AMEF to share that discussion. This could occur over the next 6-7 months,

The group agreed that the Arctic seems like a good topic for focusing the AMEF, to keep people informed about what is going on in these various arenas, given the AMEF's charter for coordination and information sharing. Ms Combes noted that available information on the Arctic is changing and evolving rapidly, especially as the administration is focusing on the Arctic. The group discussed the role of the North Slope Science Initiative (NSSI) in research coordination, but noted that at least in the past, the focus of the NSSI has been terrestrial. Mr Kurland noted that the most recent NSSI plan does address some marine issues.

Alaska Monitoring and Assessment Program - Chukchi

Mr Dasher reported that funding is in place for a field program for surveys in the Chukchi for 2010-2012. This program is intended to link to the overall probabilistic survey of water quality

and nearshore areas that has been started in other parts of the State. Mr Dasher provided a powerpoint handout, which is attached to these minutes and which summarizes some of the project design parameters.

DEC is looking for partnerships to complete this work, in terms of logistics, people, money, and vessel time. In the past, they have worked with NOAA and UAF. Within DEC, they are also trying to plan to integrate this survey with ongoing terrestrial work on the north slope and the northern coastal plain. DEC is still planning exactly where the survey should go, in order to prioritize the areas where there is the most need.

Coastal and Marine Spatial Planning

Mr Kurland described the purpose of the national Coastal and Marine Spatial Planning (CMSP) framework, which is meant to be place-based rather than activity-based, and is intended to integrate plans among various entities for activities in ocean coastal areas, identify synergies, conflicts, and provide a mechanism for resolving conflicts. The public comment period for the document ends on February 12. Ms Holman reported on a workshop that was held at the recent Alaska Marine Science Symposium, discussing this issue. Various speakers participated in panel discussions, and participants also provided comments. A similar workshop is planned to occur during the Alaska Forum for the Environment. Ms Holman intends to rite up the notes from the workshops, and submit them as public comments on the framework.

It was noted that there was opposition to the framework voiced by Native groups at the workshop, primarily related to a lack of clarity in the document about how the process will work, how stakeholders will be involved, and effects on subsistence uses. On the other hand, given the amorphous nature of the document, there was support for the general premise that some kind of marine spatial planning is a good way forward. The difficulty relates to who will have authority in this arena, and how to weigh subsistence needs over industrial needs. Another issue that was captured in the workshop was that the coastal and marine use is a dynamic situation, and cannot just be considered in horizontal space, but any planning must also take into account vertical space in the oceans, and the changing situation over time as resources move about. Also, many of the examples where marine spatial planning has been used elsewhere focus on conservation objectives, but one of the primary objectives for Alaska is also resource exploitation.

Mr Oliver reported that the NPFMC has submitted a joint comment letter with the other seven regional fishery management councils nationwide, which identifies a number of concerns with the framework, primarily that the framework is likely to create a large bureaucratic structure without clear authority. Specifically, concerns include: a lack of clarity about who would participate in the regional planning bodies overseeing CMSP; developing the plans will require resources from existing agencies, thus diverting staff from their current jobs; and that the task of analyzing and evaluating all information with regard to every activity in the oceans seems dauntingly ambitious and unrealistic. The State also indicated that they intend to submit comments on the framework, and that they are unlikely to be supportive. Several of the Federal agencies noted that they are waiting to see what comes out after the public review. Ms Combes noted that this should probably be an ongoing agenda item.

Nomination of Alaska sites to the national system of marine protected areas (MPAs)

Mr Oliver reported that the Council is considering whether to move forward with nominating any or all of its fishery closure areas to the national MPA list. The Council has a number of concerns about the process, many of which were aired at the last AMEF meeting in June 2009. A main concern is the definition of the 'avoid harm' provision. Mr Oliver noted that all agencies have an obligation to meet the 'avoid harm' provision for any agency's MPAs (there are currently four designated in Alaska). In December, the Council heard that NOAA is in the process of developing guidance on this provision. Is the 'avoid harm' provision restricted to the specific resources that are being protected under the MPA? At present, the Council has the authority to change fishery closure areas if conditions warrant, and there is a concern that that authority may be diminished if the closure is nominated to the national list. Mr Bates echoed this issue with respect to the State's concerns with the national MPA process as well.

Ms Cooper had earlier noted that the only current NPS MPA is Glacier Bay; although there was some discussion about nominating other Alaska national parks, those nominations have been withdrawn.

Status of AI risk assessment

This agenda item was postponed until the next AMEF meeting. A handout was distributed, however, identifying that the Phase A Draft Vessel Traffic and Spill Report is now available for review, at <http://aleutiansriskassessment.com/>.

Next steps

Ms Combes posed the question of whether the AMEF continues to be a useful forum. The group discussed the issue, and agreed that it is useful to have a forum for information exchange, and to hear what other agencies are working. It is also especially useful to have a forum to discuss big national issues that are being discussed, both to get different perspectives, and to ensure that these issues are on everyone's radar screen. Additionally, Ms Combes noted that it is helpful for the Federal agencies to hear the local Alaska perspective, and be able to pass that back along to those at headquarters.

Ms Combes noted that the Arctic has been identified at this meeting as a topic for focus in the future. The group suggested that although it is useful to be identify a focus, to make sure that the right agency people attend the meeting, it is also helpful to be flexible, and responsive to the issues of the day. The question was raised as to whether information sharing for the agencies has more of a science or policy focus, and that clarity about this aspect may be helpful in setting the agenda.

The group discussed, particularly with relation to discussions on the Arctic, whether to consider expanding the group to involve local stakeholders. At the same time, it was noted that at the AMEF's inception, there was a long discussion about this issue, and it was decided to limit the group to those with Federal and State jurisdiction, because the question of which groups to include becomes difficult when there are so many local interests. The AMEF has a non-

advocative, disinterested role of information sharing, and to involve interested parties may change the tone and role of the group.

Summer 2010 (between June and August) was identified as the timeframe for the next meeting. Possible agenda topics include further discussion of coordinated work in the Arctic, an update on marine spatial planning, and the status of the AI risk assessment. Specifically for the Arctic, a suggested agenda item was an inventory of all the different groups or symposia addressing Arctic issues, and how the AMEF agencies fit into these different fora, to identify who is involved where, and where the data gaps might be.

North Pacific Fishery Management Council

Eric A. Olson, Chairman
Chris Oliver, Executive Director



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Dr Jane Lubchenco, Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW, Room 5128
Washington, DC 20230

February 10, 2010

Dr. Lubchenco:

{We wish to make you aware of the following comments which were submitted to the White House Council on Environmental Quality via their comment website, and respectfully request your assistance in following through on these comments as the CMSP Framework is finalized.}

The North Pacific Fishery Management Council (Council) concurs with comments submitted by the Council Coordination Committee, consisting of the Chairs, Vice-chairs, and Executive Directors of the eight Regional Fishery Management Councils regarding the proposed Interim Framework for Coastal and Marine Spatial Planning (Framework). In addition, the Council offers the following additional comments on the draft Framework.

Many of the ideas encompassed in marine spatial planning are positive, and the Council and NOAA Fisheries are already engaged in pursuing many such initiatives. The Council has established an extensive system of protected areas for habitats of particular concern, endangered species, and ecologically sensitive areas. Additionally, the Council has developed a Fishery Ecosystem Plan for the Aleutian Islands, which identifies spatial relationships in the Aleutian Islands ecosystem, and considers not only the effects of the various fisheries which operate in the ecosystem area, but also interactions of other marine activities such as marine shipping, energy development, and military activities. The Council was also instrumental in setting up the Alaska Marine Ecosystem Forum, which brings together all Federal and State agencies in Alaska with jurisdiction over marine activities, to improve coordination and collaboration among these agencies.

The Council agrees with the regional approach that is being suggested in the draft Framework. In Section IX, Alaska is identified as a single region, although the Framework indicates that there would be flexibility to develop sub-regional CMS plans. As the Council has previously iterated in many different contexts, the Alaska ecosystem areas are so diverse, physically, biologically, and socially, that considering them as a single system does not allow for meaningful management. However, the Council does agree that having a single regional planning body for Alaska would be advisable, which would provide a centralized point for management agreements and decision making among agencies. At the same time, the ability to further subdivide within the Alaska region to develop plans for each ecosystem area would be critical in order to assemble the appropriate expertise for each area, engage appropriate stakeholders, and appropriately identify regional objectives and information.

The decision making Framework identified in the report presupposes that management agreements will be reached among the Federal, State, and tribal partners that are to be constituents of the regional planning bodies. The management agreements are integral to the implementation of any measures put forward in

the CMS plan. The Framework does not address what would happen if any of the non-Federal partners are not willing to participate at all in the outlined process, however.

The Framework highlights throughout the importance of a regional approach to implementing marine spatial planning. Should disagreements occur among agencies, however, dispute resolution would be handled by the National Ocean Council in Washington, DC (Section IX, page 18). This effectively removes the seat of power from the regions to Washington, D.C., which is inappropriate for a planning initiative that is intended to be regionally focused, ecosystem-based and reflective of the needs of regional stakeholders.

The process that is envisioned in the Framework is likely to be expensive, and will require much in the way of staff and resource effort on the part of various agencies in order for it to be implemented. The Council agrees that the goals of marine spatial planning are worthwhile, but the governance ideas that are proposed in the Framework seem more likely to slow down the process for achieving marine spatial planning, rather than propel them forward, especially given progress that has already been achieved in Alaska.

Sincerely,

Eric A. Olson, Chair

Enforcement Committee Minutes

February 9, 2010

Benson Hotel

Portland, Oregon

Committee present: Roy Hyder (Chair), CAPT Mike Cerne, Sherrie Myers, Martin Loefflad, Sue Salvesson, Ken Hansen, Garland Walker, Brad Robbins, Steve Bear, and Jon McCracken (Staff)

Others present: Sally Bibb, Jane DiCosimo, Heather Gilroy, Mike Adams, Chris Oliver, Jeff Samuel, Susan Auer, Mike Cenci, Ray Reichl, Lt. Sverre Aas (Norwegian Coast Guard), Burke Waldron, Ryan DeTorres, Jay Ginter, Bill Tweit, David Polushkin, and Frank Miles.

C-1 Halibut/Sablefish IFQ Program

Sherrie Myers presented an overview of the Office of Law Enforcement (OLE) report on preliminary assessment and enforcement issues associated with the IFQ proposals submitted to the Council for consideration. A summary of that report relevant to those proposals posing enforcement concerns is provided below. These comments are considered to be preliminary. As proposals are developed for analysis, the Committee may have additional comments.

Proposal #1 – Allow retention of coincidentally caught halibut during BS sablefish fishing

New charts are recommended to identify where halibut retention would be allowed (area that overlaps Area 4A with the BS and AI sablefish management areas). New regulations that would identify the latitude and longitude where halibut retention would be allowed are necessary. NOAA Enforcement would also need to provide feedback on location restrictions and may require that the vessel be transmitting with a VMS transmitter. A regulatory amendment would be required with respect to the differences in the VMS clearance requirements for Area 4 halibut (as found in the Annual IPHC regulations) and BSAI sablefish (as found in Section 679). Halibut fishermen have to call the data clerks "within 72 hours before fishing," while sablefish fishermen have to call the data clerks "at least 72 hours prior to fishing".

Additional issues that should be considered with this proposal include gear conflicts, creation of a new halibut fishery, redistribution of catch by gear, fish quality and potential for future requests for expansion to winter cod fisheries.

This proposal could create a targeted pot halibut fishery. The Council will need to make clear how much halibut bycatch caught in pots would need to be retained – i.e. full retention, MRA's, etc.

Proposal #2 – Allow pots in GOA SE Sablefish fishery

This proposal would require an at-sea enforcement component (surface and/or aerial) in the GOA Southeast Outside to ensure adherence to areas opened and closed to longline or pot gear, and prevent halibut retention in pot gear while targeting sablefish. NOAA Enforcement does not have at-sea enforcement resources and would rely on the US Coast Guard and/or the State of Alaska Wildlife Troopers for the at-sea enforcement component. This type of enforcement work is within the scope of the Joint Enforcement Agreement (JEA) between NOAA OLE and the Alaska

Wildlife Troopers but is not currently addressed in an Annual Operations Plan. The Wildlife Troopers may be able to provide the at-sea enforcement resources needed, however, there would be a cost in terms of additional JEA funds or the reallocation of at-sea days from another fishery or mission to enforce this fishery. Some combination of VMS, electronic logbooks and observer requirements would also greatly enhance NOAA's ability to enforce any provisions adopted under this proposal and should be included for consideration in an analysis of enforcement measures.

If the Council recommends that this proposal is forwarded for analysis, staff also recommends expanding the proposed action to require distinctive marking of buoys by gear type for all groundfish fisheries.

Proposal #7 – Exempt D class vessels delivering less than 500 lbs of halibut IFQ to provide 1 hour notice of delivery

The committee does not support exempting vessels under 26 feet from Prior Notice of Landing (PNOL) filings. There are several important reasons for maintaining this requirement. The original intent and primary purpose of the PNOL was to allow Enforcement the opportunity to monitor an offload. The Council has recognized the importance this regulatory tool for Enforcement in the past. The original PNOL requirement was 6 hours. Enforcement supported reducing it to the current 3 hours because this generally permitted a reasonable amount of lead time for notification of the impending landing and the requisite travel time to access many (but not all) ports. Reducing the PNOL requirement for vessels less than 26 feet LOA to one hour would inhibit Enforcement's ability to monitor offloads effectively. Under the best of circumstances, a mere 60 minutes is too constrained, even for ports on the road system.. The problem is exacerbated when the offload port is not accessible by road, the PNOL notification to an officer is rarely immediate, the travel time is rarely short, and it typically takes time for the officer to locate the reporting vessel. In addition, the IPHC plans to begin sampling on offloads of less than 1,000 pounds. IPHC port samplers (who also utilize PNOL's to meet landings) would also have difficulty sampling these offloads under a one-hour PNOL constraint, for the same reasons stated above.

Many small day-boat halibut fishermen have complied with the PNOL by calling in their PNOL prior to leaving town to go fishing. In addition, Registered Buyers often make the PNOL on the fishermen's behalf. The PNOL information is easily updated if the fisherman's circumstances change. Today's communications capabilities with cell phones and satellite phones, in addition to marine radios that are carried by the vast majority of fishermen, enable these notifications to be made in accordance with the existing regulation.

The Office of Law Enforcement frequently addresses fishermen's concerns over arriving prior to their offload time and fish quality concerns, by authorizing early offload waivers. While early offload waivers are not guaranteed, Enforcement determines the appropriateness of this on a case-by-case basis. It is essential that we preserve Enforcement's ability to monitor offloads by ensuring that PNOLs provide adequate time to respond to landing sites.

Between 3/22/2009 to 10/12/2009, 85 vessels less than 26' LOA made 275 landings at various ports around the State. 2009 landing data are not yet available, but in 2008 and 2007, 1,570 and 2,074 landings of 500 pounds or less were made by vessels under 26 feet. While the volume of fish landed during these offloads varies, the number of landings indicates this is a meaningful sector amongst the IFQ halibut fleet.

Enforcement Concerns Related to Proposals Submitted in February

Proposal #1 - FV Magabite – Trailing of fish to landing site

The Committee is not in favor of this proposal that would allow the transport of fish on a catcher vessel via trailer to the buyer. This proposal would reverse a correction to the regulations that were identified by NMFS as necessary to enforce the IFQ program. Ron Antaya (OLE) and Jessie Gharrett (RAM) reported that the proposed allowance was an enforcement loophole that existed when the IFQ program was first implemented. The regulations were revised in the first few years of the IFQ program to define an IFQ offload because some smaller catcher vessels were trailed with IFQ fish onboard and offloaded upon arrival at a new location. Section 679.2 now defines an IFQ offload (see below). The regulations were revised to identify when the offload occurred specifically to close that loop hole. Between March and September 2009, 84 distinct vessels in the less than 26 ft LOA category made 275 IFQ landings. Tom Meyer (AKGC) reported that under the Administrative Procedures Act, any regulation that overlooks a material fact (i.e., enforcement) would be legally vulnerable. This proposal would make locating and monitoring an offload very difficult and would represent a significant compromise for enforcement. It would also make it difficult for IPHC to meet vessels during offloads to sample.

A number of Registered Buyers have established viable operations in remote locations using the benefits of technology (laptop computers, cell cards, portable printers) to allow them to make landings in compliance with the current regulations.

Section 679.2. IFQ landing means the unloading or transferring of any IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish or the removal from the water of a vessel containing IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof.

Section 679.5 (2) IFQ Landing.

- (i) Remain at landing site. Once the landing has commenced, the IFQ permit holder, the IFQ hired master permit holder, or the CDQ hired master permit holder, and the harvesting vessel may not leave the landing site until the IFQ halibut, IFQ sablefish, or CDQ halibut account is properly debited (see § 679.40(h)).*
- (ii) No movement of IFQ halibut, CDQ halibut, or IFQ sablefish. The offloaded IFQ halibut, CDQ halibut, or IFQ sablefish may not be moved from the landing site until the IFQ Landing Report is completed through eLandings or other NMFS-approved software and the IFQ permit holder's or CDQ permit holder's account is properly debited (see § 679.40(h)).*
- (iii) Single offload site.*
 - (A) IFQ halibut and CDQ halibut. The vessel operator who lands IFQ halibut or CDQ halibut must continuously and completely offload at a single offload site all halibut onboard the vessel.*
 - (B) IFQ sablefish. The vessel operator who lands IFQ sablefish must continuously and completely offload at a single offload site all sablefish onboard the vessel.*

Proposal #2 - APICDA and CBSFA, increase halibut vessel IFQ cap in Area 4;

Proposal #3 - GOAC3, allow CQEs to participate in the federal loan program; and

Proposal #2 - ACDC, allow Adak to be an AI CQE community.

Staff noted potential inconsistencies relative to the current Gulf of Alaska CQE program. Jessie Gharrett identified that for effective enforcement or accountability, proposed geographic delivery

requirements for IFQ derived from community-held QS would require that this IFQ be accounted for on a separate permit because all "like" IFQ currently is comingled on a permit. The geographic delivery requirement makes the IFQ a different type with different use provisions. The Council would need to identify who would be responsible if the IFQ was used improperly (i.e., lessee, non-profit entity, community, or a combination)?

D-3(b) Review new area closure options for chum salmon bycatch alternative

Sally Bibb provided an overview of the discussion paper on alternatives for chum salmon bycatch area closures. The Committee discussed at length some monitoring and enforcement issues potentially associated with use of ICAs. The committee recommends that the Council request NMFS and NOAA GC to provide an assessment of potential monitoring, enforcement, and ancillary issues that have been raised with the current exemption from triggered closures by ICA participants under Amendment 84. Since we have the opportunity and advantage of using Amendment 84 as a "case study" related to the use of ICAs, it seems prudent to consider these issues in the development of alternatives and address them in any analysis of future alternatives that use an ICA based exemption to modified chum salmon area closures under the new proposed program.

The Committee also expressed concerns regarding options which would require that salmon PSC be monitored in many small areas which would trigger respective area-specific closures. Committee members believed monitoring salmon PSC within each of these 20 small areas pose significant PSC estimation issues for NMFS for catcher vessels and could result in higher likelihood of inaccurate reporting of area of harvest for all sectors. Monitoring closure of these small areas is possible with VMS if sufficient resources are available to review VMS data in a timely and consistent manner.

It was also noted that a system of bycatch management that includes a large number of discreet small areas that could conceivably be open to some vessels within a sector, closed to others, which could also change over time with transferability provisions is overly complex and certainly not lend itself to real time at-sea monitoring.

The potential impacts of fine scale bycatch management on observers was discussed. It was noted that the industry may have higher demands for observer data than the agency. For example, ICA's may allocate salmon bycatch to individual catcher vessels. The individual vessel may need to know salmon bycatch numbers for each tow whereby current practice is to census the entire delivery at the shore plant. This is due to the fish handling practices when handling large volumes. In practice, thorough at-sea sorting of salmon is impossible on most pollock catcher vessels. Tension may result from the inability to obtain accurate tow by tow salmon bycatch counts. The subsequent dockside census may place vessels over their salmon allocations. If multiple areas were fished on the trip, it would be impossible to identify which area the salmon in the delivery came from. Last, there is increased potential for corruption because of the high value of pollock and the direct dependence on observer data to monitor the limiting salmon.

C-6 GOA Rockfish Program

The Committee recommends that VMS requirements for the entry level non trawl fishery should be assessed as an option. The current suite of elements and options exempt this fishery from VMS and thus hampers effective monitoring and enforcement of area specific catch limitations being considered for the Rockfish Program.

Potential Agenda Items for April 2010 Committee meeting:

- Freezer long cooperative discussion paper
- GOA Tanner crab bycatch
- GOA salmon bycatch