AGENDA B-1
APRIL 2004

Executive Director's Report
April 2004

New staff member

Please join me in welcoming Peggy Kircher to the Council staff, who is taking over the position recently vacated by Shannon Vivian. Peggy previously worked for the Council for 10 years, from 1981-1991, then worked for 10 years for LGL Alaska Research Associates. Welcome back to the Council Peggy!

Vice-Admiral Barrett visiting

Most of you know Vice-Admiral Thomas Barrett of the U.S. Coast Guard, who is on hand this morning, and would like to address the Council during the Coast Guard report. Welcome back to Alaska Admiral! I also understand that Captain Rich Preston is retiring, and that this will be his last meeting with us. Best wishes Rich, and thanks for all you have done for the Council and the fishing industry off Alaska.

U.S. Ocean Commission Report

The anxiously awaited report from the President's U.S. Ocean Commission is scheduled to be out April 20. We had hoped it would be out in time for our annual Council Chair/ED meeting in mid-April so that we could discuss among all the Councils. In talking with Commission staff, I learned that they may set up a meeting or teleconference to allow such a discussion, sometime in May. If the comment period ends prior to our June Council meeting, we will not have an opportunity as a Council to discuss the report and provide comments, so you may wish to think about how best to provide comment from our Council, perhaps through your Chair and Executive Director. Item B-1(a) is a letter from all the Councils which was submitted following Admiral Watkins' comments at our national fisheries conference last fall.

RSP Update

Under B-1(b) I have included a copy of the most recent draft of operational guidelines for the regulatory streamlining process (RSP). This is from NOAA Fisheries Headquarters and represents a new way of doing business for NOAA and the Councils. Essentially, it formalizes a process for review and sign-off of regulatory actions at several stages of development, all designed to 'front load' the review and approval of plan and regulatory amendments, whether implemented through an EIS or EA/RIR/IRFA. This RSP process has significant implications for the Council process, and our staff, and other Council staff, have met twice with NOAA HQ and Region staff since last August to review and comment on these guidelines. Serious concerns remain with these guidelines from my perspective, and we will be discussing them later this month with the other Councils and NOAA Fisheries leadership at our annual Council Chair/ED meeting. I will update you in June on the results of those discussions. In the meantime I encourage you all to read this document to get a flavor of the potential implications to our process.

Fall Fisheries Conference by NOAA

Our November 2003 fisheries conference in Washington, D.C. was so successful that NOAA Fisheries is ramping up for another one this fall! Item B-1(c) is an announcement of a fisheries conference that NOAA is planning for October 18-20. Direct involvement by the Councils in planning and organizing this conference will likely be minimal, but we are tentatively planning another conference for the spring of 2005,

which would have a primary focus on Magnuson-Stevens Act reauthorization issues, depending on timing of reauthorization. Further discussions on the spring 2005 conference will occur at our annual Chair/ED meeting later this month, and I will keep you apprised.

Magnuson-Stevens Act Reauthorization issues

Regarding MSA reauthorization, Item B-1(d) is a summary of various pieces of legislation introduced over the past two years which could affect MSA reauthorization. I compiled this summary for the annual Council Chair/ED meeting with NOAA leadership later this month, and thought it might be a useful reference for Council members (full copies with all attachments available upon request!). At some point this year you may want to reactivate your MSA reauthorization Committee to consider these and other legislative initiatives.

Minister of Icelandic Fisheries in June

I have been contacted by representatives for Iceland's Minister of Fisheries, who will be in the Pacific Northwest area with a delegation during our June Council meeting. I agreed to allow the Minister and his delegation some time on our agenda, during the B reports on the first day of our meeting, to introduce their delegation and address the Council.

Mini-grants for mega-fauna

Item B-1(e) is an announcement from the National Whale Conservation Fund for mini-grants ($2,000-$20,000) available to any U.S. citizen to explore ideas or methods that have a strong likelihood of reducing death or serious injury to whales caused by entanglements.

Seabird seminar

On Thursday evening, after the conclusion of our Council meeting for the day, Ms. Kim Dietrich will present a short seminar on factors affecting incidental take of seabirds in longline fisheries. The longer version of this seminar, based on Kim's graduate research, is being presented to a group of agency researchers this week in Anchorage. All interested persons are encouraged to attend.

Statement from International Bering Sea Forum

For your information, Item B-1(f) is a letter to the Council announcing a statement calling for action on bottom trawling in the Bering Sea. In summary, it calls for increased enforcement of existing regulations prohibiting bottom trawling, additional research on impacts, and identification of areas where bottom trawling should be limited. Attached to the letter is a description of the Forum, their mission, and membership.

Oceana petition to NOAA

On March 24 Oceana filed a petition to the Secretary of Commerce requesting "*immediate (Secretarial) rulemaking to protect deep-sea coral and sponge habitats in the United States*" by taking a number of specific actions. Item B-1(g) is a copy of the news release and petition - page 4 lists the specific actions being requested. On page 25, the petition argues that "*the benefits for addressing impacts through emergency rules outweigh the value of advance notice, public comment, and the deliberative consideration of the impacts on participants through normal rulemaking.*" FYI.

Fur Seal EIS update

We wanted to update you on recent events relative to the Fur Seal EIS process, drafting of the Fur Seal Conservation Plan, and potential involvement of our Fur Seal Committee. Item B-1(h) is a letter from NMFS on these issues, and Kaja Brix is available to provide further detail for the Council.

REGIONAL FISHERY MANAGEMENT COUNCILS

North Pacific Council
Pacific Council
Western Pacific Council
New England Council
Mid-Atlantic Council
South Atlantic Council
Gulf Council
Caribbean Council

December 30, 2003

Admiral James D. Watkins (Ret.)
Chairman
Commission on Ocean Policy
1120 20th Street NW
Washington, DC 20036

Re: Marine Fishery Governance and the Concept of Separating Science from Management in the Regional Fishery Management Council Process

Dear Admiral Watkins:

Thank you for speaking at the recent national conference *Managing Our Nations Fisheries - Past, Present, and Future.* At the conference during a discussion of the merits of the concept of separating science from allocation and other fishery management activity, you stated there was serious consideration of a recommendation for institutional change from the status quo on this matter, but noted the Ocean Commission's recommendations had not been finalized. We would like to take this opportunity to encourage the Commission take a closer look at the issue of separating science from management in the eight Regional Fishery Management Councils (RFMCs).

Specifically, this letter describes our perspective on three points that we ask the Commission seriously consider prior to making a final recommendation on this important policy topic.

- The stated need for further separation of science from management is faulty.
- There are practical problems with institutionally separating science from management.
- A recommendation to achieve adequate separation within the existing RFMC framework.

The stated need for further separation of science from management is faulty.

A two-pronged argument has been provided as the basis for separating science from management at the RFMC level. The first claims that the Councils have a track record of exceeding the allowable catch determined by a rigorous scientific process, to the detriment of conservation. The second claims that a conflict of interest by voting Council members directly causes the setting of allowable catch levels higher than those recommended by scientific advisors. We

submit that the first reason is false, or at least an exaggeration of fact. With regard to the second reason, we are not aware of any evidence in the voting records showing federally appointed members bloc-voting against the government seats on the Councils to achieve an exceedance of scientifically determined catch levels. These claimed reasons are not only faulty, they also demonstrate a lack of recognition of the separation of science and management that currently characterizes most Council decision making. Further, the existing Magnuson-Stevens Fishery Conservation and Management Act (MSA) details U.S. Secretary of Commerce review safeguards that are entirely capable of preventing the alleged problems.

As an example of the exaggeration aspect of the stated problem, a recent Pew Trust funded report[1] released in November 2003 claimed that Councils "...raise the size of the catch – to the detriment of conservation."[2] This report uses king mackerel in the Gulf of Mexico Fishery Management Council (GFMC) forum as a general example, and the 1992-1993 king mackerel fishery as a "good example" of how RFMCs compromise conservation goals to set more generous fisheries. While it is true the GFMC adopted catch quotas higher than the mid point of the acceptable biological catch (ABC) range in most years from 1986-1999, they have never set an allowable catch level above the ABC in any year since 1986.[3] Further, there is no mention in the Eagle et al. report of the uncertainties in the scientific recommendations, nor the fact that king mackerel populations have shown a steadily increasing trend since the late 1980s and are now above the overfishing and overfished thresholds. The Eagle et al. report also insinuates as proof that such examples are widespread, that (1) there are many stocks that have been designated as overfished across all RFMCs, and (2) that "NOAA does not claim that *any* of these stocks have been rebuilt to a level at which it can produce its MSY."[4] (emphasis added). The fact that there were 20 stocks that were rebuilt to the MSY level between 1997 and 2002[5], and an additional 2 in 2003, is in sharp contrast to the claim in the Eagle et al. report that there have

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1/ Eagle, J., S. Newkirk, and B. H. Thompson Jr. Taking Stock of the Regional Fishery Management Councils. PEW Trust funded report released November 12, 2003.

2/ Eagle, et al., p. 2 and elsewhere in the report.

3/ Although in 1992-1993, the GFMC added 259,000 pounds to the commercial allocation of its previously set TAC of 7.8 million pounds, the quota was still well within the stock assessment range of 4.0-10.79 million pounds (see Table 1 of the 2002 Mackerel Stock Assessment Panel Report). Moreover, it appears that in Figure A on p. 15 of the Eagle et al. report (for the years 1992 through 1995) the authors erroneously represent the mid point of the ABC range as the ABC high point.

4/ Eagle, et al., p. 18-19.

5/ NOAA report to Congress. *Status of Fisheries in the United States*. April, 2002.

been none. Further, the report skirts the obvious logic gap that there are other reasons than Councils "...ignor(ing) the recommendations of the fishery scientists."[6] that have caused fish stocks to be classified as overfished. Rather, a common cause in recent years for many overfished determinations has been revisions to the scientific assessment of current stock status and the acknowledgment that scientific advice in prior years lead to overly generous quotas.[7] Inferences that there is a serious problem – serious enough to warrant congressional action – with Councils chronically setting higher catch levels than scientifically advised, is not true, or *at least* a blunt exaggeration of selected historical examples.

The claim of adverse conflicts of interest of certain seats on RFMCs causing conservation problems is not new, and can be presented in theoretical generalizations and simplistic soundbites such that a naive observer might be led to believe it to be true. However, proof that it causes a RFMC to compromise conservation would be vote logs; that is, a voting record showing Council members with something to personally gain from higher catch levels carrying a successful vote over those with nothing to personally gain that supported a lower harvest level as advised by science advisors. While we have not reviewed every Council vote since 1977, we are not aware of any such activity. The conflict of interest argument is faulty because cause and effect has not been shown.

Several things motivate against such bloc voting actually happening. First, there is a large proportion of government seats in each RFMC, filled by government officials with no direct financial relationship to the fishery. Second, the diversity between and among sport and commercial fishing industry representatives promotes against bloc voting on controversial issues. Also, the federally appointed non-government Council members are respected individuals

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6/ Eagle, et al., p. 19

7/ In the case of West Coast groundfish, for example, the recent flurry of overfished designations for six rockfish species, lingcod, and Pacific whiting were generally the result of new scientific assessments that revised stock size and/or productivity downward and also indicated that allowable catches had been too high in earlier years, even though they had been set based on the best scientific information of the day. (Pacific Fishery Management Council. *The Council Family, Managed Fisheries, Current Issues, and Plans for the Future.* Prepared for the Conference *Managing Our Nations Marine Fisheries - Past, Present, and Future.* November 2003.) As another example, the Northwestern Hawaiian Islands lobster stocks have been managed using the best science available. In the 1980s, a dynamic production model developed by NMFS scientists was used to manage the fishery and provide input for a fishery harvest guideline. Unfortunately, the model was too simple and did not account for the effects of lobster recruitment from oceanic regime shifts, and the lobster population was severely depleted. Subsequent harvest models developed by NMFS generated much more conservative harvest guidelines, with only a ten percent risk of overfishing the stock.

nominated by the State Governors and selected by the U.S. Secretary of Commerce, and have shown integrity in voting for the long term sustainability of the fisheries. As a typical example, at the last Pacific Council meeting, federally appointed non-government Council members voted with the government representatives on the Council to close sport and commercial groundfish fisheries coastwide, in response to reaching the catch limit much earlier than expected. An additional reason the stated need for institutionally separating science from management is faulty is the mechanism in the MSA for Department of Commerce review and approval of Council actions. These reviews are comprehensive and lengthy, encompassing legal, policy and technical aspects. In the event there has been a Council action that is improper with regard to following strong scientific advice, or insufficiently precautionary when the science is uncertain, the Department of Commerce has the final say, and should not approve the Council action.

There are practical problems with separating science from management

There are times when hard scientific facts are clear and there are times when a scientific perspective on a key fishery management issue is soft, due to lack of data, inadequacies of analytical tools, and other reasons. In these cases where the science is weak and a decision is needed at that moment in time, completely separating science and policy decisions can be difficult. For example, the scientific advisors to the Pacific Council concluded that an estimate for a discard rate in a West Coast trawl fishery was not calculable based on data, but it was greater than the zero value in use at the time. They recommended that determination of this value was a policy decision best made by Council members based on anecdotal accounts, common sense, and their experience with the fishery. Based on this advice, the Council selected a generic rate that was used until observer data could provide direct estimates. With an institutional separation between science and management, how would that decision have been made? Another example entails situations where the scientific advisors present a broad range of equally probable estimates to be used to manage a fishery (not a point estimate and a probability range, but rather a range of equally probable values). The practical solution to this problem is a policy decision that takes into account the advice of people in the fishery and the general public about the full range of trade-offs involved in such a decision – the exact thing the RFMC were designed to accomplish. There are other examples where scientific input on conservation and allocation decisions seem inseparable from a practical standpoint, such as establishing the boundaries for closed areas or Marine Protected Areas (MPAs) or choosing between various bycatch reduction measures.

If there was a complete separation of science and management, how would recommendations based on weak science be distinguished from those based on strong science? Would such separation be only for stock size estimates and allowable catch quantities, or would it run the full scientific advice gamut through MPA boundaries to seemingly minutia issues such as the use of barbed or barbless hooks and their effect on total allowable catch? Would purely scientific fishery data be used in developing quota estimates, or would other factors be considered? How

would considerations of other factors, such as socioeconomic impacts to fishery dependent communities, be weighted?[8] Would precautionary adjustments be included in the base science, and if so, to what degree? Would such decision making be conducted in a public forum? How would the historic and local knowledge of fishery participants be heard and considered in the scientific process? Would the final decision maker on such quasi-scientific, quasi-policy matters face the people effected by the decision and be subject to their logical challenges? These are some of the questions that reveal the genuine practical problems associated with an institutional separation of science and management.

A recommendation to achieve adequate separation within the existing RFMC framework.

At the national conference, there was discussion about the pattern of Councils characteristically following the advice of their scientific advisors when given reliable and current scientific information. There was speculation that this was correlated with strong Scientific and Statistical Committees (SSC) that meet in open sessions at the Council Meetings to provide final scientific advice to Councils. There was also speculation that the greatest concerns about separating science from management occurred in situations where there was no functional SSC or one that rarely met and not at Council meetings.

There are many current examples of strong SSC mechanisms that demonstrate successful integration of science and management. For example, the North Pacific Council, with a notably strong SSC and scientific advice development process, has never adopted a quota or catch level higher than the SSC recommendation. There are other examples of strong SSCs and Councils with a track record of following the advice of its scientific advisors.[9] In these situations, the

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8/ The Commission should be advised that scientific information for the social sciences is usually not available or very limited. In the RFMC fora, this has frequently necessitated defining these social issues from Advisory Panel statements, the public testifying before the Council, and the knowledge of the Council members who participate in the fisheries. Despite the fact this is anecdotal information, it is often the best available information.

9/ For example, the Pacific Council, with an SSC constituted of scientists from three Regional Fishery Science Centers, four state governments, tribes, academia, and the private sector, also has four specialized, fishery specific teams of advisory scientists. As another example, the Western Pacific Council's SSC has a strong international membership, including four scientists from Australia, the Secretariat of the Pacific Community in New Caledonia, the IATTC, and French Polynesia. Other members have worked extensively in the international realm of Pacific tuna fishery management, and are recognized experts in their respective fields. These Councils also have a track record of following the recommendations of their scientific advisors.

SSCs meet at Council Meetings, in open meetings that typically have public comment periods. Several of the Councils have three levels of scientific review of important stock assessments: the initial assessment, stock assessment panels that provide an independent scientific peer review function, and a subsequent review by the Council's SSC. Many say these Council structures provide for the proper degree of separation of science and management: strong initial scientific contributions, an independent review, a robust SSC final review, all done in an open, transparent process.

Therefore, we recommend:

- The Ocean Commission not recommend generically separating the scientific considerations in marine fishery management from the RFMC process.
- The Ocean Commission consider recommending strengthening the SSC composition and role in all RFMCs along the lines of the successful Council models that currently exist.
- We are opposed to a mechanism whereby all SSC members would be appointed by a National Marine Fisheries Service central authority.

In closing, we urge the Ocean Commission to make recommendations on this matter that do not throw the baby out with the bath water. If, in the past, there has been a problem with one or two Councils, once in a while, a significant revamping of the whole system is not called for. Overfished stocks have been rebuilt. Rebuilding plans are showing progress for others still listed as overfished. Healthy fish stocks are being managed wisely. The vagaries of nature and our understanding of it will always result in some level of uncertainty, no matter what system is in place. While the RFMC process may not be perfect and there is still considerable progress to be made, the process and the management results are improving. We feel the call to separate science from management in the RFMCs is unwise and should not be included in the Ocean Commission final recommendations.

Should you or the Ocean Commission staff have any questions on this matter, please don't hesitate to contact any of us. Dr. Donald McIsaac at the Pacific Council has been designated as the lead contact on these issues.

Sincerely,

D. O. McIsaac, Ph.D.
Executive Director, Pacific Council

Chris Oliver
Executive Director, North Pacific Council

Kitty Simonds
Executive Director, Western Pacific Council

Wayne Swingle
Executive Director, Gulf Council

for Miguel Rolon
Executive Director, Caribbean Council

Paul Howard
Executive Director, New England Council

Daniel Furlong
Executive Director, Mid-Atlantic Council

Robert Mahood
Executive Director, South Atlantic Council

DOM:rdd

c: Council Chairs and Vice Chairs
Dr. Bill Hogarth
Dr. Rebecca Lent
Mr. Jack Dunnigan
Dr. Michael Sissenwine
Ocean Commission Members
Regional Administrators
Regional Science Center Directors
Representative Wayne Gilchrest
Senator John McCain
Representative Richard Pombo
Senator Olympia Snowe

STRAWMAN OPERATIONAL GUIDELINES

For Development and Implementation of Fishery Management Actions

January 8, 2004

OPERATIONAL GUIDELINES: For Development and Implementation of Fishery Management Actions

Table of Contents

I. Introduction

A. Statement from the Assistant Administrator

[Reserved]

B. Structure of the Operational Guidelines

Parts I and II of these Operational Guidelines provide background and oversight on the philosophy of the guidelines and the structure of the process. Parts III and IV provide the substance of the guidelines describing the quality-based, outcome oriented approach being taken; identifying checks on the process; and delineating standards for assessing adequacy of process and analyses.

C. Purpose and Objectives

These Operational Guidelines (OGs) provide an approach for integrating the many statutory mandates that apply to the development of fishery management actions. Consistent with our efforts under the Regulatory Streamlining Project (RSP), the approach taken in the OGs addresses problems with "unnecessary delays, unpredictable outcomes, and lack of accountability" and moves us towards the application of "standardized practices" to "improve the quality and efficiency of regulatory decisions and raise the likelihood of success in litigation" (S. RPT 107-42).

These guidelines are based on the concept of "frontloading," which requires active participation of Council and key agency staff (e.g., Sustainable Fisheries, Protected Resources, Habitat Conservation, Economists, Social Scientists, and General Counsel) at the early stages of fishery management action development – a "no surprises" approach. The goal is to ensure that all significant legal and policy issues will be identified early in the process.

The objective of these guidelines is to facilitate development and implementation of fishery management actions under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).[1] A related goal is to facilitate development of more concise documentation. While these guidelines have been tailored to fit the MSA fishery management process for council-developed actions, the underlying principles have broad applicability, and we will apply to other agency actions as appropriate.

The preparation, review, approval and implementation of fishery management plans and the attendant rules and regulations under the MSA is, by its very nature, a complex process in which the Councils and the Secretary have distinct, yet overlapping roles. In most instances, the issues presented are controversial, politically charged, and difficult to analyze. In addition, a variety of other applicable laws impose even more analytical and procedural requirements on an already complex system. NOAA Fisheries, with direction from Congress, initiated the Regulatory Streamlining Project to improve the way the agency and the Councils integrate the multiple mandates governing fisheries management; increase efficiency in designing and implementing fishery management measures; and improve overall the decision-making process. The ultimate intent of streamlining is to ensure that the process is done correctly the first time. This implies:

- Legal and policy requirements will be identified and considered earlier in the process so that they may be dealt with more expeditiously ("frontloading"). The frontloading process should help ensure that potential problems are identified early and are not allowed to become real problems in later stages of review and implementation.

- The Operational Guidelines will provide clear and consistent articulation of critical requirements while allowing regional staff flexibility to work with their Councils to achieve overall objectives for frontloading and the development of quality documentation of their decision making process.

[1] The term "fishery management actions" should be interpreted broadly to include a wide range of activities taken pursuant to the MSA, including proposed and final rulemakings, Fishery Management Plans with no implementing regulations, and other substantive actions by the agency that promulgate or are expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, and advance notices of proposed rulemaking.

- Quality control and assurance activities will ensure that requirements are being met, and that, if problems arise, they do not recur.

- Timely inputs and review by staff will occur as early as possible in the process.

- The accountability of Councils and NOAA Fisheries regional staffs will be enhanced when they follow the standards and requirements set forth in the Operational Guidelines.[2]

- NOAA Fisheries Headquarters offices will be involved early in substantive discussions that have implications for consistency with national policies and guidance, develop new guidance as needed and make it available via the web, facilitate the processing of decision documents, and conduct training and quality assurance.

These guidelines identify requirements and standards, while allowing maximum flexibility for the Councils and NOAA Fisheries regional staffs to design implementation procedures that are most effective in their particular contexts. These guidelines focus on the fishery management plan/regulation process and completely supercede the Operational Guidelines prepared in 1997.

D. Philosophy and Approach

1. Fishery management decisions must be supported by documentation that adequately provides for the basis of a decision under the existing legal requirements.

2. The respective decisions of the Councils and NOAA Fisheries are sufficiently interrelated that they ought to be supported by the same record. Thus, the guidelines focus on collaborative efforts by Council and NOAA Fisheries staff to develop the documentation that supports their decisions.

3. Consistent with the objective of emphasizing the roles of Councils and NOAA Fisheries regional staff, the approach is to raise, analyze and properly deal with all issues as soon as they can be anticipated. These guidelines identify the basic documents that are required at Regulatory Critical Control Points (RCCPs), and require a determination that the process and documents support and provide a rational basis for decision-making and are legally sufficient at that stage for the process to move forward. Details regarding how each Council and NOAA Fisheries regional office address their particular implementation of procedures to achieve this sufficiency will be left to them to develop collaboratively through Regional Operating Agreements (ROAs).

> *An RCCP is a step in the decision-making process at which critical decisions are made that could ultimately affect approvability of the action. The number of RCCPs applicable to an action varies depending on the NEPA and MSA requirements that apply to that action. The full list of steps and RCCPs for each type of action is set forth in Table A.*

4. All relevant NOAA and DOC reviewers will participate early in the process to ensure that their concerns are raised at a point in the process where they can be addressed in such a way that progress is not delayed or halted later. In short, as a general rule, the intent is to avoid sequential reviews and encourage concurrent input to decisions at the earliest stage possible.

[2] NOAA Fisheries Regional Staffs include both the Science Center staff and the Regional Office staff.

5. Councils and NOAA Fisheries Regional staffs will each undertake an annual joint planning process. This process should provide a forum for identifying and prioritizing upcoming needs and actions. Any issues with national policy implications will be raised to NOAA Fisheries Headquarters for early guidance.

6. Councils and NOAA Fisheries Regional Offices will enter into written ROAs that specify responsibilities and steps that will be taken to prepare documentation for fisheries conservation and management decisions.

II. Overview of Processing Fishery Management Actions

A. General Principles

1. **Use of the NEPA Process as an Umbrella.** The National Environmental Policy Act (NEPA) process will provide the basis for implementing regulatory streamlining. NEPA requires the incorporation of all of relevant factors into fisheries conservation and management decisions, it prescribes an open process for identifying issues and considering a range of alternatives, it provides for review and participation by affected States and Indian tribes, and it promotes effective public review and input. Council on Environmental Quality (CEQ) Regulations for Implementation of NEPA require agencies to integrate the NEPA process with other planning and regulatory compliance requirements (such as the consultation requirement under Section 7 of the ESA, and consistency determinations under the CZMA). This integration must occur at the earliest possible time to ensure that planning and decisions take into account environmental values reflected in these other laws and regulations, avoid delays later in the process, and prevent potential conflicts with alternatives and mitigation methods required by other laws. The NEPA document does not replace other applicable requirements, such as the Regulatory Impact Review (RIR) which is prepared in compliance with EO 12866, or the Preliminary Regulatory Economic Evaluation (PREE) prepared in compliance with the Regulatory Flexibility Act. Rather, NEPA's process provides a venue for addressing all applicable requirements.

2. **Frontloading.** All relevant reviewing parties will participate early in the process to ensure that all significant legal and policy issues are identified to the extent practicable. Prior to key decision points at RCCPs, draft documents will be circulated to all regional, science center, GC, and Council staff in key responsibilities, as well as Headquarters Staff (HQS) as appropriate, for review and comment.

> *The term HQS refers to Headquarters staff who will be expected to review and/ or clear an action. Specifically, HQS include the NOAA Office of Strategic Planning (OSP); the Office of the General Counsel (GC); the NOAA Fisheries Assistant Administrator for Fisheries (AA); the Offices of Sustainable Fisheries (OSF), Habitat Conservation (HC), and Protected Resources (PR); the Office of Law Enforcement (OLE); and the Department of Commerce Office of General Counsel (DOC OGC), as applicable.*

3. **Collaboration in the Preparation of Documents.** Beginning at the earliest planning stage (Phase I, described below at II.B.), it is essential that the staffs of the Councils and the NOAA Fisheries Regional Offices collaborate in the preparation and drafting of documents. It should not be assumed that either the Councils or the Regional Offices have a particular responsibility for doing all of the staff work for any given required document. How this happens in each Council/Region pairing will be established by an operating agreement between the Council and the Regional Office.

4. **Regional Operating Agreements with Councils.** Individual needs and variations among regions should be accommodated while ensuring adequacy of process and documentation nationwide. There is a need for a clear understanding of roles, responsibilities, and obligations among all parties who

have a role in ultimately clearing an action. Therefore, each region will develop ROAs with its individual Councils via the Executive Directors that set forth the procedures and review/clearance processes it will use to ensure the preparation of adequate and complete documents.

5. **Coordination with NOAA Fisheries Headquarters.** The regions shall ensure that NOAA Fisheries Headquarters offices have the opportunity to consider and provide input to decisions from the earliest stages. NOAA Fisheries Headquarters will track decisions as they progress and will be expected early in the process to advise the regional offices of national policy concerns. In addition they will facilitate the consideration of decisions in process by other Headquarters reviewers (NOAA and DOC). A formal Communication Protocol will be established to facilitate such coordination.

> *Communication Protocol: NOAA Fisheries HQ will establish a protocol to ensure good communication between the regions and Headquarters on all actions. The protocol will specify how and when the AA should be advised of issues relating to actions, as well as prioritizations of actions made pursuant to the joint planning process. The protocol will also establish steps that HQ will take to facilitate movement of actions*

6. **Council Action/NOAA Fisheries Advisory Statements.** Decisions at RCCPs, either by Councils or NOAA Fisheries officials, will not be made unless the documentation and process required to support that decision is adequate and complete. In some instances, the Regional Administrator will be required to concur that documentation is sufficient to support decision making or issue an Advisory Statement indicating that the documentation is adequate and complete prior to the Council's taking action. These requirements are described in greater detail in section III, below.

> *Advisory Statements are letters to a Council from the RA indicating that the relevant documentation and process are adequate and complete for that step and that all necessary reviewers have been consulted. The Advisory Statement requires a determination of legal sufficiency by the Regional GC before its transmission to the Council.*

7. **Determinations Must be Logically Supported by the Facts and Analyses in the Record.** Determinations regarding an action's legal and programmatic sufficiency must be supported by the underlying analyses. This applies to both substantive conclusions and determinations regarding procedural sufficiency.

8. **Cohesive Coherent Documentation.** Documents to support decisions must be clearly written and easily understandable by the public. Clear and concise writing will facilitate development of a clear and complete record and will ensure the development of enforceable regulations.

9. **Expedited Approval and Implementation Process, Benefits of Conformance.** Adherence to agency guidance on standards for analytical documents will expedite the approval and implementation process. Documentation that does not adhere to agency guidance (e.g., requires additional analysis or consideration of additional issues) will not be able to be processed in an expedited manner. To the extent that Councils and NOAA Fisheries staff comply with the procedures outlined below, fishery management actions will benefit from more timely review, approval, and implementation; higher likelihood of approval; and decreased risk of litigation. In some circumstances, adherence to these guidelines may enable NOAA Fisheries to approve an FMP or amendment earlier than day 95 (i.e, between days 61 and days 95). In addition, adherence to these guidelines will ensure greater accountability of NOAA Fisheries and GC staff charged with reviewing Council documents and providing timely advice.

10. **Concurrent Reviews.** These reviews are encouraged throughout the process of developing documentation. Sequential reviews delay the decisions from moving forward in a timely manner. As a part of the Regulatory Streamlining process, NOAA Fisheries is developing electronic, web-based systems for posting on the agency intranet draft documents that are being developed to support decisions. Access to these draft documents will facilitate early concurrent reviews.

B. Phases of FMP/Rulemaking

There are four basic phases to the development and implementation of any fishery management. Whether an action is a rule or an FMP, whether it will be supported by an EA, an EIS, or a CE, it is developed through the following four phases: (1) Phase I, Planning and Scoping; (2) Phase II, Preparation; (3) Phase III, Council Final Action; and (4) Phase IV, Secretarial Review and Implementation. Each of these phases involves one or more sequentially numbered steps that are set forth in Table A.

Phase I – Phase I is the planning and scoping phase. It contains up to two steps: the initiation of scoping, and a decision about which level of NEPA analysis to undertake initially. It is important to note that the term "scoping" has a legal meaning under NEPA, and that NEPA applies certain requirements to NEPA scoping. Because NEPA scoping is similar to MSA requirements for early public notice, these guidelines use the term "scoping" to refer to the broad range of activities that may take place in the initial stages of identifying a need for management and developing alternative solutions. As part of the scoping process, regulatory analysis and information collection requirements are examined and preliminary estimates may be made of the costs and benefits of regulations. Concerns of affected States, including potential CZMP impacts, and Indian tribes are identified and public participation is encouraged. Consideration of potential impacts relating to the ESA, MMPA, and social impacts of the FMP also begins. Informal scoping activities can take place as part of informal early planning in Step 1. However, if a decision is made to publish a Notice of Intent (NOI) to prepare an environmental impact statement, even if the purpose of publishing the notice is to solicit input on the appropriateness of an EIS, certain legal requirements will be triggered. Once such a decision is made, the action will be considered to fall within Step 2, "Initial Determinations," and require an Action Plan.

Phase II – Phase II is the document development phase. It generally contains up to four steps, but may require up to seven steps if there is a need for EFH or ESA consultation. Step 3 consists of general frontloading activities and communications and results in the development of preliminary draft analytical documents to serve as a basis for selection of a preferred alternative and the Council's adoption of the draft analyses for public review at Step 4. If the preferred alternative would trigger the need for an ESA or EFH consultation, then such consultations must take place on the preferred alternative, underlying analyses must be revised as necessary, and the Council may need to take another vote to select a preferred alternative based on the revised analyses. These Operational Guidelines generally require the identification of a preferred alternative for all types of actions. However, in limited instances where there do not appear to be significant environmental or economic issues, the RA in consultation with GC may waive this requirement.

Once the draft analyses have been completed, they should be circulated for public review. When an EIS is being prepared, publication of the DEIS for public comment is mandatory. Circulating the draft EA or CE for public comment is encouraged.

Phase III – During Phase III, the Council takes its final actions to select and recommend management measures to NOAA Fisheries. There are two steps in this phase: (1) the Council's vote to adopt an FMP or regulatory amendment, followed by (2) staff work to prepare the

recommendation for Secretarial review. Prior to the Council's vote, draft documents must be reviewed by the RA, GC, and other necessary staff and must be complete and legally sufficient to support decision-making. The analytical work must be complete prior to the Council's vote; however, some additional tasks may remain to be completed after the vote. For instance, an ROA may provide for Council staff to prepare the CZMA letters, finalize regulatory text, or perform other tasks to finalize the Council's recommendation. The degree of complexity of a recommended measure could affect the amount of time necessary to finalize a package. For instance, if regulatory text has not been completed, or must be revised, after the Council's final vote, a significant amount of time could be necessary to complete this task. This type of timing issue should be factored, to the extent possible, into the Action Plan at step 2. Note that parts of Phase III and Phase IV may occur simultaneously in that any remaining Council responsibilities necessary to prepare the recommendation package for formal submission may be completed at the same time that agency staff complete their own responsibilities necessary to prepare the Council's recommendation for formal submission.

Phase IV – During Phase IV, the Secretary reviews, and approves or disapproves the Councils' recommendations. This phase encompasses the full range of agency activities necessary to package, review, and conduct proposed and final rulemaking on recommended fishery management measures. After the Council has completed its recommendation, agency staff complete their responsibilities necessary to prepare the Council's recommendation for formal submission. This step may occur simultaneously with Step 8, during which Council staff make final preparations for formal submission. As in step 8, it is important to note that the degree of complexity of a recommended measure could affect the amount of time necessary to final a package for review. NOAA Fisheries initiates formal public review of the Council's proposed measures by publishing in the Federal Register the Notice of Availability (NOA) of an FMP/FMP amendment and/or the proposed rule to implement the Council's recommendation. At this step, NOAA Fisheries also files the FEIS with the EPA. For FMPs and FMP amendments NOAA Fisheries must publish the Notice of Availability (NOA) of the FMP immediately (within 5 days) for a 60-day comment period. Within 30 days of the close of the comment period, the agency must approve, partially approve, or disapprove the Council's recommendation. NOAA Fisheries will send a letter to the appropriate Council notifying it of the official start date of the Secretarial review period. After reviewing public comment received on the NOA and/or proposed rule and on the FEIS, the RA makes his/her decision regarding approval/ disapproval of the action to the AA, and the AA determines whether to concur. The final step for implementing the approved final rule is to send it to the Office of the Federal Register for publication.

C. Roles

This section describes the general roles of various parties involved in preparation and implementation of fishery management actions. Additional details regarding specific responsibilities for analysis, drafting, and review, including provisions for assuring appropriate coordination between HQ and regional offices and ensuring consistent interpretation and application of national policies, should be specified in the ROAs and Communication Protocol.

- **The Councils** are responsible under the MSA for the preparation of fishery management plans. The Councils initiate most of the documentation to support fishery conservation and management decisions, and collaborate with the NOAA Fisheries Regional Offices.

- **The NOAA Fisheries Regional Staffs** are responsible for working with Council staff to develop adequate and complete documentation, coordinating comments from HQ and regional staff such that the agency presents a unified message pursuant to procedures set forth in the ROA and Communication Protocol, advising NOAA Fisheries Headquarters of decisions being made, and

forwarding documentation to headquarters. The RA will provide advisory statements confirming the adequacy and completeness of process and documentation as provided in these guidelines, or elevate to HQ any issue preventing the issuance of an advisory statement, including any issue preventing a determination of legal sufficiency.

- **The NOAA Fisheries Science Centers,** in addition to working as part of the NOAA Fisheries Regional Staffs described above, and working as part of the team cooperating with the Councils, in some instances, the Science Centers make certifications regarding certain requirements, including overfishing definitions and the use of the best available scientific information. The specific responsibilities of each Science Center are specified in the Region's ROAs, as described above.

- **At NOAA Fisheries Headquarters**, the AA is responsible for (1) deciding whether to concur in the RA's decision regarding approval of Council-recommended FMPs/amendments; (2) deciding whether to approve final rules; (3) determining that the appropriate environmental impact review, EIS, or FONSI has been completed for the action; and (4) resolving with NOAA/GC Headquarters any issues elevated to HQ as preventing a determination of legal sufficiency. Within Headquarters, the Office of Sustainable Fisheries (OSF) will track Regional Council and NOAA Fisheries FMP activities; consult with and advise regions on the national policy implications of decisions; package and forward regional documents to the NOAA Fisheries leadership; and facilitate communications to resolve problem issues raised during headquarters or NOAA/DOC/OMB reviews.

- **NOAA GC** will advise the Councils and NOAA Fisheries Regional Offices, through the NOAA GC Regional Offices, throughout the process of developing documentation and making and reviewing decisions. GC Regional Offices will provide legal advice to the RA confirming the adequacy and completeness of process and legal sufficiency of documentation as provided in these guidelines, or elevate to NOAA/GC Headquarters any issue preventing such a determination of legal sufficiency. NOAA GC will also provide legal advice, through GC/F, to NOAA Fisheries leadership as appropriate, and will provide final approval for legal sufficiency of regulatory packages requiring clearance from NOAA Headquarters or DOC/GC. NOAA GC Headquarters will also work with NOAA Fisheries Headquarters to resolve legal issues elevated from the regions.

- **NOAA's NEPA Coordinator**, in the Office of Strategic Planning, Program Planning and Integration (PPI/OSP), reviews and provides final clearance for all EISs and FONSIs. Additionally, the NOAA NEPA Coordinator is responsible for filing EISs with the Environmental Protection Agency and signing all transmittal letters that disseminate NEPA documents for public review.

III. Regulatory Critical Control Points and Checks

These OGs combine outcome-oriented guidance on requirements at various stages in the decision-making process with quality control checkpoints to ensure that standards are being met. As a first step, the OGs identify the relevant steps in the process, then identify those steps at which critical decisions must be made that could ultimately affect the approvability of a fishery management action, i.e., RCCPs. The full range of steps are set forth in Table A, in section IV. The OGs require checks at certain RCCPs to ensure that frontloading is occurring and that documentation and process are adequate and complete to support decision making at the following steps: Step 2, the initial determination of which NEPA document to prepare; Steps 4, and 4(c) if relevant, Council Identification of Preferred Alternative and Adoption of a DEIS; Step 7, Council vote to recommend agency action; and Step 9, the step at which the RA prepares a decision memo to begin Secretarial review.

This section of the OGs provides detailed information about terminology and requirements relevant to the RACCP system and its checks.

A. Terminology and Concepts.

1. **Regulatory Critical Control Points (RCCPs).** An RCCP is a step in the decision-making process at which critical decisions are made that could ultimately affect approvability of the action. The number of RCCPs applicable to an action varies depending on the NEPA and MSA requirements that apply to that action. For an FMP with an EIS, there are 16 steps, and potentially 3 additional substeps if ESA or EFH consultations are necessary, 10-11 of which are RCCPs. In contrast, other actions, such as those for which a Categorical Exclusion is asserted, may have only nine steps, six of which are RCCPs. The full list of steps and RCCPs for each type of action are delineated in Table A.

2. **Checks.** At steps 2, 4, 4(c)(if applicable), 7, and 9, the OGs require one of the following types of checks to ensure that the necessary procedural steps have been completed and the documentation and analyses are sufficient to allow the process to proceed. These checks take the form of written documentation from the RA and are described in greater detail below.

   a. **Step 2, Action Plan.** Step 2 for all types of actions is the "Initial Determination" of how to proceed with identification of management alternatives and analysis of environmental impacts. At this step, the decision is made as to what type of NEPA analysis should be initiated. These guidelines require a written product at this step, called an "Action Plan." The Action Plan must describe the problem to be addressed and the objective to be met, indicate what type of NEPA analysis will initially be undertaken, include an estimated timeline to implementation taking into account the possible need to reconcile differences and all relevant timing requirements (e.g., APA), describe a reasonable range of alternatives, provide an estimate of staff resource requirements (if practicable), identify the participants assigned to the FMAT, and include a checklist of other applicable laws indicating which are likely to raise issues that will need to be addressed, and, if possible, an initial plan for ensuring they are addressed. The other applicable laws that are most likely to be relevant include the following: MSA, ESA, MMPA, EFH, RFA, APA, Executive Orders 12866 and 13272 (Economic Impacts), Executive Order 13132 (Federalism), PRA, CZMA, and the DQA. Some fishery management actions may also be subject to additional laws, such as Indian Treaty Rights. The specific laws applicable to a particular fishery management action can only be identified on a case-by-case basis.

      The Action Plan is a preliminary document, not intended to constrain the development or revision of alternatives and/or analysis. It is likely that the range of alternatives may change as the process progresses and public participation occurs. The acceptability of such changes will be evaluated at subsequent RCCPs. The RA must concur in the Action Plan, and Regional GC must determine it to be legally sufficient, before activity can progress.

      The RA's concurrence and the Regional GC's review must be in writing, and, like the Advisory Statements required for other RCCPs, the RA's concurrence indicates that all necessary reviewers have been consulted. In some instances, concurrence may be subject to the caveat that the RA still needs to consult with certain parties, and may need to revoke or revise the concurrence.

   b. **Steps 4, 4(c)), and 7, Advisory Statements.** At steps 4, 4(c)), and 7, the RA must provide an "Advisory Statement," in the form of a letter to the Council indicating the relevant documentation and process are adequate and complete for that step and that all necessary reviewers have been consulted. The ROAs and the Communication Protocol will specify

procedures for ensuring that all necessary parties have participated. The Advisory Statement requires a written determination of legal sufficiency from the Regional GC before its transmission to the Council. Timing is a factor here – in order for the RA to sign an Advisory Statement, he/she must have draft documents available for review to circulate to all relevant reviewers sufficiently in advance of planned Council action. Advisory Statements serve several important functions in RSP: (1) they ensure that concerns are raised at the points in the process where they can be addressed and corrected; (2) they make agency reviewers accountable for raising issues early in the process; (3) they help prevent unexpected outcomes and/or delays at the end of the process; and (4) they ensure that decisions reflect regional and national policy, thereby achieving consistency.

c. **Step 9, RA's Decision Memorandum.** The RA's Decision Memorandum to initiate Secretarial review will serve to certify that the analyses as presented by the Council support the final decision and were reasonably considered by the Council in accordance with the procedures and requirements in the Operational Guidelines. The Decision Memo requires a written determination of legal sufficiency from the Regional GC before its transmittal to the AA. If the documentation does not fully reflect the action the Council took, that concern should be conveyed to the Council.

3. **Other Applicable Law.** Various laws, administrative orders, and other directives must be addressed in context of fishery management action development, approval, and implementation. The relevant other applicable laws, some of which provide for specific consultative roles for States and Indian Tribes, may include the MSA, ESA, MMPA, EFH, RFA, APA, Executive Orders 12866 and 13272 (Economic Impacts), Executive Order 13132 (Federalism), PRA, CZMA, Indian Treaty Rights, and the DQA. At each RCCP, all relevant applicable law should be considered, and issues relevant to the particular RCCP identified, considered, and addressed.

4. **Fishery Management Action Team (FMAT).** The FMAT is an interdisciplinary group that consists of core agency and Council staff, and others as necessary, who work on a particular action from the beginning. To the extent practicable, members of the team should be specified in the action plan for each action. The team should include representatives of each division of the agency that has a significant issue to address and that will be involved in review and implementation of the ultimate action, and should include or coordinate with HQS, described in greater detail below, as appropriate. The Action Plan will set forth the list of participants on the FMAT. Additional HQS will participate as specified in the Communication Protocol described below.

5. **Headquarters Staff (HQS):** The term HQS refers to Headquarters staff who will be expected to review and/or clear an action. Specifically, HQS includes the NOAA Office of Strategic Planning (OSP) and Office of the General Counsel (GC); the NOAA Fisheries Assistant Administrator for Fisheries (AA) and Offices of Sustainable Fisheries (OSF), Habitat Conservation (HC), and Protected Resources (PR); the Office of Law Enforcement; and the Department of Commerce Office of General Counsel (DOC OGC), as applicable.

6. **Regional Operating Agreements (ROA).** Each region will enter into written Operating Agreements with its Council/s delineating specific roles and responsibilities necessary to conform with these OGs. The provisions of the ROAs must be sufficient to ensure compliance with the applicable requirements. The ROAs should also specify the roles of the Science Centers and may address interactions with Regional GC. If an existing Operations Plan explains the role of the Science Center, the ROA may simply reference the existing plan. The ROA should also address timing issues associated with the need to provide draft documents with sufficient lead time to allow for quality review and comment.

7. **Communication Protocol.** NOAA Fisheries HQ will establish a protocol to ensure good communication between the regions and Headquarters on all actions. The protocol will specify how and when F should be advised of issues relating to actions, as well as prioritizations of actions made pursuant to the joint planning process. The protocol will also establish steps that HQ will take to facilitate movement of actions through HQ review. Each HQ office that has responsibility for ensuring national consistency on fishery management activities is encouraged to develop protocols with its regional counterparts to set forth procedures for ensuring early involvement, providing opportunities for review, and communicating about how issues have been resolved. In addition, NOAA Fisheries may wish to develop a Communication Protocol for communicating on issues and decisions with States, interstate commissions, and Indian Tribes that share management responsibility for affected resources.

B. Standards for Assessing Adequacy of Content

NOAA Fisheries currently relies on the following guidance documents that provide standards of adequacy for relevant applicable laws:

• OFR:	Document Drafting Handbook, OFR; Preparation of FR Documents, 1995;
• CZMA:	NOS regulations at 15 CFR. part 930;
• DQA:	May 5, 2003, NMFS Section 515 Pre-dissemination Review Guidelines, NOAA's Information Quality Guidelines, October 1, 2002.
• ESA:	ESA Consultation Handbook; ESA CFR regulations (50 CFR 402.01 et seq.).
• MSA:	National Standards Guidelines (63 FR 24212, May 1, 1998); EFH Final Rule (67 FR 2343, Jan. 17, 2002);
• NEPA:	CEQ Regulations; NAO 216-6;[3]
• RFA, EO 12866:	Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000); GCF Guidance on EO 12866 compliance (Macpherson memo, 2/10/98).
• MSA:	National Standards Guidelines (63 FR 24212, May 1, 1998); Social science guidelines; EFH Final Rule (67 FR 2343, Jan. 17, 2002).
• DQA:	NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003; NOAA Information Quality Guidelines, Oct. 1, 2002.

C. Standardized Format, Templates, and Examples

OSF will develop and maintain a website that contains a comprehensive set of templates and examples of documents.

[3] In addition to the published regulations, CEQ has developed a variety of guidance documents to assist drafters in preparing environmental analyses. Guidance on issues such as assessing cumulative impacts and addressing environmental justice requirements, among other topics, are available via the CEQ website at http://ceq.eh.doe.gov/nepa/nepanet.htm.

IV. Table A

Table A: Master OG Table

Unless otherwise noted, the procedures set forth below apply to all Council-initiated actions. Certain requirements may not apply to actions taken directly at the agency level. If a requirement applies only to a certain type of action depending on its level of NEPA analysis or status as an FMP versus regulatory amendment, such distinction will be noted.

STEP/RCCP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	OUTPUTS	COMMENT
Phase I: Planning and Scoping						
1	Early Planning (optional)[4]	All: • Council • RA/RO Staff • OSF Director signature on NOI	All: • Document Drafting Handbook, OFR • Preparation of *Federal Register* (FR) Documents, 1995 • MSA public meeting requirements		All: • Notice of public meetings	Early input from affected States and Indian tribes should be solicited/encouraged. *If the decision is made to publish an NOI, even as an early planning document, proceed to step 2 before publishing. (The NOI is the first step in develop-ment of an EIS. Therefor, the NOI should be reviewed for adequacy and completeness, and appropriate parties assembled on the FMAT before publishing).
2 (RCCP)	Initial Determination	All: • FMAT (includes Council, GC, and Regional staff as appropriate) • Consultation with HQS[5] • Council (approves final action plan) • RA (concurs in final action plan) • OSF Director signature on NOI	All: • CEQ Regulations • NAO 216-6 • Document Drafting Handbook, OFR • Preparation of *Federal Register* (FR) Documents,1995	All: • RA concurs in final action determined to be legally sufficient by Regional GC] prior to initiating drafting NOI, DEIS, EA, RIR/PREE. EIS: • 30-day minimum comment period on Notice of Intent	All: • Action Plan[6] EIS: • NOI • Scoping Summary Report	

[4] The Early Planning step is an optional step that can precede the decision on what type of NEPA analysis to undertake. While the decision to engage in various types of pre-planning is optional, if these activities are undertaken, some of them involve legal requirements that must be met as set forth in this table.

[5] The term HQS refers to Headquarters staff who will be expected to review and/or clear an action. Specifically, HQS include the NOAA Office of Strategic Planning, Program Planning and Integration (PPI/OSP); the NOAA Office of the General Counsel (GC); the NOAA Fisheries Assistant Administrator for Fisheries (AA) and Offices of Sustainable Fisheries (OSF), Habitat Conservation (HC), and Protected Resources (PR); the Office of Law Enforcement (OLE); and the Department of Commerce Office of General Counsel (DOC OGC).

[6] The Action Plan needs to be in writing and concurred in by the RA. The Action Plan must describe the problem to be addressed and the objective to be met, indicate what type of NEPA analysis will initially be undertaken, include an estimated timeline to implementation taking into account the possible need to reconcile differences and all relevant timing requirements (e.g., APA), describe a reasonable range of alternatives, provide an estimate of staff resource requirements (if practicable), identify the participants assigned to the FMAT, and include a checklist of other applicable laws indicating which are likely to raise issues that will need to be addressed, [and, if possible, an initial plan for ensuring they are addressed]. The other applicable laws that are most likely to be implicated include the following: MSA, ESA, MMPA, EFH, RFA, APA, Executive Orders 12866 and 13272 (Economic Impacts), Executive Order 13132 (Federalism), PRA, CZMA, and the DQA. Some fishery management actions may also implicate additional laws, such as Indian Treaty Rights. The laws applicable to a particular fishery management action must be identified on a case-by-case basis.

STEP/RCCP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	OUTPUTS	COMMENT
Phase II: Preparation of the Action						
3	Frontloading/ Communication activities	• FMAT • HQS as appropriate			Preliminary analysis (DEIS, EA, CE)	
4 **RCCP**	Identification of preferred alternative/ Adoption of draft analysis	All: • FMAT (includes Council, GC, and Regional staff as appropriate) • Consultation with HQS • Council (approves) EIS: • RA (concurrence)	All: • CEQ Regulations • NAO 216-6, National Standards Guidelines (63 FR 24212, May 1, 1998) • Social science guidelines • Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000) • EFH Final Rule (67 FR 2343, Jan. 17, 2002) • ESA Consultation Handbook • ESA regulations, 50 CFR 402.01 et seq. • NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 • NOAA Information Quality Guidelines, Oct. 1, 2002	All: • Advisory Statement, determined to be legally sufficient by Regional GC,[7] must be available to Council prior to decision *This means that draft documents must be available with sufficient lead time to allow review, and clearances if necessary.	All: • Advisory Statement, determined to be legally sufficient by Regional GC. • Documentation "adequate and complete" to support decision • Draft NEPA document (DEIS, EA or CE) • DFMP or Draft reg. amendment to the extent practicable • PREE • Draft RIR • Draft regulatory text (to the extent practicable or necessary) • Science Center certification as applicable • EFH consultation • DQA Predissemination review form signed at regional level	Proceed to 4(a) if the preferred alternative is subject to ESA/EFH consultation requirements. If not, then proceed to step 5. *EA/CE: For EAs/CEs, this step may occur simultaneously with Council recommendation of agency action (at step 7) if appropriate.
(a)	ESA/EFH consultations on preferred alternative	All: • Regional Staff • Consultation with HQS • FWS (if appropriate)	• EFH Final Rule (67 FR 2343, Jan. 17, 2002) • ESA Consultation Handbook • ESA regulations, 50 CFR 402.01 et seq.		• Preliminary Biological Opinion (PBO). • Completed EFH consultation • EFH conservation recommendations	
(b)	Revise analysis as necessary based on consultations	All: • FMAT (includes Council, GC, and Regional staff as appropriate) • Consultation with HQS	All: • CEQ Regulations • NAO 216-6, National Standards Guidelines (63 FR 24212, May 1, 1998) • Social science guidelines • Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000)			

[7] "Advisory Statements" are in the form of a letter to the Council indicating that the relevant documentation and process are adequate and complete for that step and that all necessary reviewers have been consulted. Because an Advisory Statement requires a determination of legal sufficiency, issues preventing the determination of legal sufficiency also prevent issuance of the Advisory Statement.

STEP/RCCP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	OUTPUTS	COMMENT
(c) RCCP	Revote on preferred alternative as necessary	All: • FMAT (includes Council, GC, and Regional staff as appropriate) • Consultation with HQS • Council (approves) EIS: • RA (concurrence)	All: • CEQ Regulations • NAO 216-6, National Standards Guidelines (63 FR 24212, May 1, 1998) • Social science guidelines • Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000) • EFH Final Rule (67 FR 2343, Jan. 17, 2002) • ESA Consultation Handbook • ESA regulations, 50 CFR 402.01 et seq. • NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 • NOAA Information Quality Guidelines, Oct. 1, 2002	All: Advisory Statement, determined to be legally sufficient by Regional GC, must be available to Council prior to decision *This means that draft documents must be available with sufficient lead time to allow review, and clearances if necessary.	All: • Advisory Statement, determined to be legally sufficient by Regional GC. • Documentation "adequate and complete" to support decision • Draft NEPA document (DEIS, EA or CE) • DFMP or Draft reg. amendment to the extent practicable • PREE • Draft RIR • Preliminary Biological Opinion (PBO) • Draft regulatory text (to the extent practicable or necessary) • Science Center certification as applicable • EFH consultation and recommendations • DQA Predissemination review form signed at regional level	

STEP/RCCP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	OUTPUTS	COMMENT
5	File DEIS w/EPA EA/CE: n/a	EIS: • RA, RO Staff • OSF (document facilitation) • NOAA SP • F	EIS: • EPA filing standards • Examples Package • CEQ Regulations	EIS: • 45-day minimum comment period • File with EPA by 3:30 Friday, the week prior to publishing • At least 90 days must pass after publication of DEIS before agency can decide on final action	EIS: • Memo from F to NOAA PPI/OSP • Memo from NOAA PPI/OSP to EPA • "To All Interested Parties" Memo • EPA publishes NOA on DEIS in FR	
6	Public Comment on DEIS	EIS: FMAT and/or Council Staff EPA	EIS: • CEQ Regulations • NAO 216-6	EIS: Comment period on DEIS must be at least 45 days	EIS: • Public Hearings/Meetings/Written Comments • FR notices advising public of meetings	EIS: If EPA rates the DEIS at a "3" (inadequate), then a new DEIS must be prepared and circulated for public comment.
	EA/CE: Optional	EA/CE, if opted: FMAT and/or Council Staff	EA/CE, if opted: • CEQ Regulations • NAO 216-6	EA/CE, if opted: n/a	EA/CE, if opted: • Public Hearings/Meetings/Written Comments • FR notices advising public of meetings	

STEP/RCCP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	OUTPUTS	COMMENT
Phase III: Council Final Action						
7 (RCCP)	Council Adoption of FMP or Reg. amendment	All: • Council/Staff • RA, RO Staff • HQS (consult as appropriate) • Public Comment at meeting	All: • CEQ Regulations • NAO 216-6 • National Standards Guidelines • Social science guidelines • Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000) • EFH Final Rule (67 FR 2343, Jan. 17, 2002) • ESA Consultation Handbook • ESA regulations, 50 CFR 402.01 et seq. • NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 • NOAA Information Quality Guidelines, Oct. 1, 2002	All: Advisory Statement, determined to be legally sufficient by Regional GC, must be available to Council prior to adoption. *This means that draft documents must be available with sufficient lead time to allow review, and clearances if necessary.	EIS or EA: • Advisory Statement, determined to be legally sufficient by Regional GC: Documentation adequate and complete to support decision • Preliminary Final NEPA document (either preliminary final EIS or draft EA) with summary of comments and responses thereto • PREE • Draft RIR • Preliminary Biological Opinion, if preferred alternative subject to ESA section 7. • Draft regulatory text (to the extent practicable or necessary) • Responses to completed EFH consultation CE: All of the above except with a CE memo signed by RA with cc: to OSP rather than DEIS or EA.	All: "Adequacy and completeness" must be judged based on a case-by-case basis. In some cases, "completeness" may require preparation of draft regulatory text. If inadequacies are identified, including issues that prevent the determination of legal sufficiency, action must stop until corrected, and issues must be elevated for resolution. EA: If Draft EA does not support FONSI, an EIS must be undertaken.
8	Council Completion of recommendation package	All: • Council/Staff • RA, RO Staff • GC		All: Steps 8 and 9 may begin simultaneously Note that complex requirements may take more time to finalize for submission.	All: • Final FMP or Reg. amendment • Identification of APA issues and/or prepare Proposed Rule • CZMA letters For proposed rules only: • Draft IRFA or Draft RFA certification • Draft RIR	

STEP/RCCP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	OUTPUTS	COMMENT
Phase IV: Secretarial Approval						
9	Completion of Decision Package	All: • Council Staff • RO Staff • GC • HQS (as appropriate) • Regs unit, if possible	All: • CEQ Regulations • NAO 216-6 • National Standards Guidelines (63 FR 24212, May 1, 1998) • Social science guidelines • Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000) • EFH Final Rule (67 FR 2343, Jan. 17, 2002) • ESA Consultation Handbook • ESA regulations, 50 CFR 402.01 et seq. • Document Drafting Handbook, OFR • Preparation of FR Documents, 1995 • GCF Guidance on EO 12866 compliance (Macpherson memo, 2/10/98) • Examples Package • NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 • NOAA Information Quality Guidelines, Oct. 1, 2002	All: EO 12866: • GCF submits listings to DOC/OMB the first Wednesday of the month • OMB gets 10 days to object to significance determination • 90 days to complete review of significant rules • If subject to ESA consultation, PR has 45 days from submission of request to confirm PBO PRA: OMB gets 90 days to complete review CZMA-states get 90 days to respond to consistency determination As early as possible, draft Proposed Rule should be sent to regs unit CE: OSP must receive copies of CEs within 3 months.	All: • Decision Memo and determinations , determined to be legally sufficient by Regional GC. • Certification of Overfishing Definition, if applicable • Science Center Certifications as applicable • Draft F to DOC OGC [approval] memo for package • Draft NOAA GC memo • Draft OSF to SBA memo, if applicable • E.O 12866 Submission Form, if applicable • Congressional Review Act (major/not major) • PRA document (SF 83-I) • DQA Predissemination review form signed at regional level Proposed rules only: • IRFA or RFA certification • RIR • SBA transmittal	All: RA must determine that final decision as presented is supported by final analysis and is complete, adequate and consistent with Council decision. If RA determination is negative, action stops until corrective measures are take, e.g., may have to do SDEIS and take more comment. *For actions subject to formal ESA consultation, a letter to PR must request confirmation of the preliminary BO

STEP/RCCP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	OUTPUTS	COMMENT
10 (RCCP for FMP)	Begin M-S Act Secretarial Review Reg. Am: n/a	FMP: RA/RO Staff	FMP: Examples Package	FMP: Transmit Date Begins MSA timelines	FMP: Establish Transmit Date: • Letter to Council • RA to OSF memo transmitting NOA on FMP	
11 (RCCP)	Publication of NOA (FMP), Proposed Rule File FEIS	EIS: HQS, NOAA SP, EPA EA: HQS, NOAA SP CE: HQS Proposed Rule: Regs unit	EIS: • EPA filing Standards • Examples Package EA/CE: • Examples Package Proposed Rule: • Document Drafting Handbook, OFR • Preparation of FR Documents, 1995	FMP: • NOA on FMP must publish within 5 Days of Transmittal • Publication of NOA starts 90 day clock (60 days of comment, decision on FMP within 30 days CPE) Proposed Rule: • 15-60 day comment period on PR (30 days recommended) • Final Rule to issue within 30 days CPE on Proposed Rule EIS: The 30-day cooling off period of FEIS must be completed prior to the AA's decision on theFMP or final rule, whichever comes first.	All: Fax copy of Federal Register to designated contact in State/Tribal offices EIS: • F to NOAA PPI/OSP memo • NOAA PPI/OSP to EPA memo • "To All Interested Parties" Memo • NOA of FEIS published in FR by EPA	

STEP/RCCP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	OUTPUTS	COMMENT
12 (RCCP)	FMP: RA Decision to approve/ disapprove FMP Reg. Am: RA Decision to approve/ disapprove final rule.	All: • RA, RO Staff • Consult as necessary with HQS	All: Examples Package • NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 • NOAA *Information Quality* Guidelines, Oct. 1, 2002	FMP: Final Decision Memo, determined to be legally sufficient by Regional GC, on FMP and NEPA document must be signed by Day 95/30 days after CPE on NOA of FMP Reg. Am: No final action until CZMA time has tolled Final Rule due out within 30 days CPE on Proposed Rule	FMP: • Decision Memo and Determinations, determined to be legally sufficient by Regional GC. • NEPA document as approved by RA • Final BO, if applicable Reg. Am/EIS: • Decision Memo and Determinations, determined to be legally sufficient by Regional GC. • Final Rule - includes responses to public comments • NEPA document as approved by RA • Final BO, if applicable • FRFA or certification • DQA Predissemination review form signed at regional level • Issues Advisory if applicable Reg. Am/EA: • All of the above, and • Draft FONSI Memos (F to PPI/OSP; "To All Interested Parties" memo)	NOTE: The RA's approval of the EA/FONSI is not the final determination of FONSI - that authority has not been delegated.

STEP/RCCP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	OUTPUTS	COMMENT
13 (RCCP)	FMP: AA concurrence on RA Decision to approve/ disapprove FMP. Reg. Am: AA concurrence on RA Decision to approve/ disapprove final rule. EIS/EA: AA sign final NEPA document (ROD or FONSI)	All: HQS	All: CEQ regs and NAO 216-06	FMP: Day 95 or before; No final action until CZMA time has tolled or State concurrence received w/EIS: • At least 90 days after NOA (DEIS) • At least 30 days after NOA (FEIS) w/EA: • Decision Memo, determined to be legally sufficient by Regional GC, and Rod or FONSI Must be signed by Day-95/30 days after CPE on NOA of FMP w/CE: • Day 95 or before Reg. Am: • No final action until CZMA time has tolled or State concurrence received • Final Rule due out within 30 days CPE on Proposed Rule w/EIS: • At least 90 days after NOA (DEIS) • At least 30 days after NOA (FEIS)	All: AA signed concurrence EIS: ROD EA: PPI/OSP concurrence on FONSI	

STEP/RCCP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	OUTPUTS	COMMENT
14 (RCCP)	FMP: RA decision on final rule to implement FMP Reg. Am: n/a	FMP: • RA, RO Staff • Consult as necessary with HQS	FMP: • Examples Package • Document Drafting Handbook, OFR • Preparation of FR Documents, 1995 • NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 • NOAA Information Quality Guidelines, Oct. 1, 2002	FMP: Final Rule due out within 30 days close of comment period on Proposed Rule No final action until CZMA time has tolled	FMP: • Decision Memo and Determinations on final rule, determined to be legally sufficient by Regional GC, to F recommending promulgation of the Final Rule • F to DOC OGC [approval] memo • F to NOAA GC [approval] memo • Final Rule - includes responses to public comments • FRFA/RFA certification • DQA Predissemination review form signed at regional level • Issues Advisory if applicable	FMP: Steps 14 and 15 may be compressed with steps 12 and 13 *If final NEPA document was signed at FMP approval, decision package on Final Rule must also address NEPA to ensure the previous determination is still applicable.
15 (RCCP)	AA concurrence on final rule to implement FMP Reg. Am: n/a	FMP: HQS		FMP: No final action until CZMA time has tolled FMP/EIS: • At least 90 days after NOA (DEIS) • At least 30 days after NOA (FEIS)	• AA signed concurrence	FMP: Steps 14 and 15 may be compressed with steps 12 and 13 *If final NEPA document was signed at FMP approval, decision package on Final Rule must also address NEPA t to ensure the previous determination is still applicable.
16 (RCCP)	Publication of Final Rule, or notice of agency decision on FMP, in FR	All: • SF5 and RA/RO Staff as appropriate • OFR	All: • Document Drafting Handbook, OFR • Preparation of FR Documents, 1995	All (Final rule only): • 30-day cooling off period unless waived under APA • Publish within 30 days CPE on Proposed Rule	All: Fax copy of Federal Register to designated contact in State/Tribal offices All (Final Rule Only): Submit Rule to Congress (Cong. Review Act) • Letters to Congress • Published final rule • small entity compliance guide FMP only: • Letter to Council	

-----Original Message-----
From: Robert C Hansen [mailto:Robert.C.Hansen@noaa.gov]
Sent: Tuesday, March 16, 2004 9:38 AM
To: Robert C Hansen
Subject: National Conference on the Future of the Nation's Living Marine Resources

NATIONAL CONFERENCE ON THE FUTURE OF THE NATION'S LIVING MARINE RESOURCES

The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NOAA Fisheries) will hold a national conference to coincide with discussions regarding the President's Oceans Commission Report, to be released in coming weeks. The world's oceans are facing increasing pressure as more and more people seek to utilize these vast, but limited resources. NOAA is a world leader in ocean and atmosphere science and stewardship, and it is our goal to extend and improve that leadership in areas that will benefit America and our ocean management partners throughout the world. NOAA Fisheries is scheduling a national conference to confront the significant issues we all face.

WHAT: National Conference

WHEN: October 18 - 20, 2004

WHERE: The national meeting will be held in Washington, D.C. Further details will follow.

DISCUSSION TOPICS: The national conference will focus on four main areas:

. Aquaculture
. Recreational fishing
. Commercial fishing
. Ecosystem management

Media Note: NOAA Fisheries, working with an independent contractor, is developing a set of four white papers to help focus public discussion on these four important areas. We will be announcing the meeting location and releasing the white papers for public review in May.
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Agenda Item F(4)

Overview of Proposed Revisions to Magnuson-Stevens Act and other laws related to fisheries, 108th Congress
(Prepared March 2004 by NPFMC staff for discussion at the 2004 Council Chair/ED meeting)

Congressman Gilchrest's bill

In the 107th Congress, Wayne Gilchrest (R-MD) introduced H.R. 4749, a comprehensive MSA reauthorization bill, and is planning to re-introduce this bill in the 108th Congress. There are provisions in this bill to address several major issues and provide clarification to a number of smaller issues. Major provision of the bill include a requirement for ecosystem-based fishery management plans, modification of the EFH research and conservation and HAPC definition, establishment of Chesapeake By oyster sanctuaries, criteria for IFQ programs (including referendum, program renewal, annual fees, prohibition on IPQ except for NPFMC), a prohibition on the sale of recreationally caught fish, an additional seat for NY on the NEFMC, and establishment of a Highly Migratory Species bycatch mortality reduction research program. Relative to the requirement for ecosystem-based fishery management plans, the bill would require the Secretary to identify one fishery from the east coast and one from the west coast, and develop and implement ecosystem-based fishery management plans for those fisheries. The bill would also require the Secretary to report to Congress on overcapitalization, data collection programs, ecosystem-based management, needs for a national observer program, overfishing, bycatch reduction, highly migratory species, and standards for best scientific information. A section-by-section analysis is attached. The Council Chairmen provided extensive comments on this draft legislation last year (*also attached*).

Senator Snowe's bill

Senator Olympia Snow (R-ME) recently released a working draft of a bill (February 2004) to reauthorize MSA. The bill seeks to make a number of changes, most notably changes in the definition of overfishing and associated rebuilding requirements, additional criteria for IFQ programs (10 year renewal, referendum, 5 year NRC review,etc.), establishment of a national cooperative research program, and a requirement that Councils develop at least one Fishery Ecosystem Plan. An increase in MSA appropriations to $400 million per year. A section-by-section summary of the Snow bill is attached.

Congressman Young's bill

Congressman Don Young (R-AK) introduced H.R. 3645 (November 2003), which would amend the MSA to address several key issues. The essential fish habitat (EFH) definition would be refined to be only marine waters of the EEZ with discrete, unique benthic structures that are critical to spawning and production. Rebuilding time lines would be extended to account for multispecies fisheries, or fisheries outside of a Council's jurisdiction. FMPs and amendments prepared under MSA would be deemed in compliance with NEPA. The BSAI crab rationalization plan would be adjusted to specifically allocate processing quota shares to one company (Blue Dutch LLC). Existing communities participating in the Alaska CDQ program would be deemed eligible, and the pollock allocation would be increased to 12% of the total. Lastly, the bill would require the President to report on the relative annuity payments for Canadian and US employees of International Pacific Salmon and Halibut Commissions.

Deep Sea Coral Protection Act

Senator Lautenberg (D-NJ) introduced S. 1953, the "Deep Sea Coral Protection Act", and it was referred to Committee on Commerce, Science, and Transportation. This legislation was developed to provide additional protection and research on deep sea coral. Deep sea corals and sponges would be defined by family, phylum, class and order. The definition specifically does not include sea whips, but does include horny corals, sea raspberries, and all sponge species. Further, the definition includes only corals located in the EEZ under the jurisdiction of the NEFMC, the MAFMC, and NPFMC, and in waters greater than 50 meters of the EEZ under the jurisdiction of the SAFMC, GMFMC, WPFMC, and CFMC. Trawling and dredging would be prohibited in coral management areas (initially designated as coral gardens in AI, Oceanographer Canyon, Lydonia Canyon, Oculina Reefs, Lophelia Reefs, and Bear Seamount, and all areas where no trawling or dredging occurred during 2000 through 2003). The areas can be 'un-designated' if they have been mapped by NOAA, along with other criteria. Monitoring of fisheries for coral and sponge bycatch is required, and if this bycatch occurs, areas would be designated as coral management areas. NOAA will be required to initiate a research and mapping program for corals and sponges; any areas found to have a deep sea coral ecosystem would be designated as a coral management area. The Secretary will be annually required to report on data collection and research programs. Further, the National Research Council will be required to annually review the data collected and recommend any additional areas to be designated as coral management areas. Penalties and enforcement provisions are included. Every 3 years, the Secretary must report to Congress on the activities conducted under this Act. An annual appropriation of $50 million to carry out the provisions of the Act.

Senator Collins' Bill

Senator Collins introduced S.482 in February 2003, cited as the "Fisheries Science and Management Improvement Act of 2003". This bill focused on: defining 'best available scientific information'; peer review of stock assessments; observer program provisions; defining habitat areas of particular concern, and making HAPC the primary focus of EFH provisions; redefining overfishing terminology and requirements; adding cumulative impact assessment to National Standard 8; and, specifying that compliance with sections 303 and 304 of the MSA constitutes compliance with NEPA. Status of this Bill is unclear.

Senator Kerry's Bill

In July 2002, Senator Kerry introduced legislation cited as the "Fisheries Management Modernization and Improvement Act of 2002". This was a comprehensive piece of legislation covering a number of issues. That Bill, along with section-by-section comments from the NEFMC (Paul Howard) and the NPFMC (Chris Oliver), is attached. Also, a subsequent (shorter) version of a bill was introduced in October 2002 by Senators Kerry and Snowe. Current status of these Bills is unclear.

List of Attachments: Draft Bill language, summaries, and comments

Item A: Section-by-section analysis of H.R. 4749 (Gilchrist)

Item B: Full text of H.R. 4749

Item C: Council Chairmen's comments on H.R. 4749 from June 2002

Item D: Section-by-section summary of February 2004 Snowe Bill

Item E: Full text of February 2004 Snowe Bill

Item F: Full text of H.R. 3645 (Young)

Item G: Full text of S.1953 (Deep Sea Coral Protection Act)

Item H: Memo from Alaska Regional Administrator to HQ RE Alaska coral areas (under S.1953)

Item I: Full text of S.482 (Collins Bill from February 2003)

Item J: Full text of Kerry Bill from July 2002

Item K: Full text of Kerry/Snowe Bill from October 2002

Item L: NEFMC comments on July 2002 Kerry Bill

Item M: NPFMC comments on July 2002 Kerry Bill

National Whale Conservation FundFishing Gear Mini-Grants

Programa special project of the National Fish and Wildlife Foundation and the National Oceanic and Atmospheric Administration (NOAA Fisheries)

Purpose The National Whale Conservation Fund (NWCF) was established to support research, management, conservation and education/outreach activities related to the conservation, and recovery of whales. The NWCF is a special project of the National Fish and Wildlife Foundation (NFWF), a not-for-profit 501(c)(3) organization established by Congress in 1984. The Foundation operates the Fund under the direction of the National Whale Conservation Fund Advisory Council, a panel of conservation leaders and representatives of cooperating entities. The "Fishing Gear Mini-Grants" program will fund projects that have a strong likelihood of reducing death and/or serious injury to large whales due to entanglements in fishing gear, and are consistent with applicable regulations pertaining to the Maguson Act, Endangered Species Act, and the Marine Mammal Protection Act. This program provides competitive seed grants ($2,000 - $20,000) to creative and innovative proposals that seek to work with industry to significantly diminish whale entanglements in fishing gear.

Guiding Philosophy and Mission The *National Whale Conservation Fund* seeks to foster the conservation and recovery of large whales by supporting innovative research, management and education projects of high quality and promise. NWCF actively seeks to form new partnerships with corporations, organizations, and individuals to leverage NWCF's resources sufficiently to meet its aggressive conservation goals.

Who is eligible to apply? Any U.S. citizen is eligible to receive assistance for an idea or method that has a strong likelihood of reducing death and/or serious injury to whales caused by entanglements. For those ideas or methods that involve at-sea time, the applicant must have all necessary local, state, and federal permits to conduct their fishing practices.

What kinds of gear proposals will be accepted? Proposals for the following grant-types may be submitted:

- *Idea Grants:* Grants that enable a person(s) to develop an idea into a process or object.
- *Pilot Grants:* Grants that enable a person(s) to construct a prototype from their idea or concept and carry out field-testing at sea on individual or multiple participating fishing vessels.

While this grant program focuses on two areas of emphasis, the overarching goal of the program is to address large whale mortality and/or serious injury from gear entanglement, with priority given to those projects that work with the industry toward useable solutions.

How do I apply?

- Submit the downloadable application form found at the bottom of this page or contact the NFWF or NOAA Fisheries contacts listed below to have a copy sent to you. This document should be three to four pages in length and will also serve as your contract should your project be selected.
- The downloadable application packet includes application instructions and tips for writing a competitive proposal.

What are the funding limitations for this grants program? NWCF will not fund:

- Political advocacy, boycotts or litigation
- Indirect or unallocated expenses.

When are proposals due? This call for proposals covers **two** different project cycles with the following deadlines as funding is available:

- April 1 - with final funding decisions by May 31
- September 1 - with final funding decisions by October 31

Proposals must be received at the NFWF address below via email, fax, by hand or through the mail, no later than the above dates. Proposals can be submitted throughout the year. Proposals received after April 1, will be reviewed in September, proposals received after September 1, will be reviewed in the subsequent project cycle.

When will I hear about the status of our proposal? A letter indicating your projects competitiveness after the first stage of review will be sent out 21 days after the deadline. Notification letters of final funding decisions for all remaining projects will be sent out 60 days after each deadline.

Who can I contact with Questions? The *National Whale Conservation Fund - Fishing Gear Mini-Grants* program is a collaborative effort between the National Fish and Wildlife Foundation and the NOAA Fisheries. For further information, please contact:

Michelle Pico at the NFWF, 1120 Connecticut Avenue, N.W., Suite 900, Washington, DC 20036Phone: (202) 857-0166; Fax: (202) 857-0162; Email: pico@nfwf.org or Sal Testaverde, Ph.D at NOAA Fisheries, 1 Blackburn Dr., Gloucester, MA 01930Phone: (978) 281-9328 ext. 6502; Email: salvatore.testaverde@noaa.gov

Downloadable Forms:

Application Form - Grant requests $5,000 or below Application Form - Grant requests over $5,000

Standard Terms and Provisions

International Bering Sea Forum

March 11, 2004

Stephanie Madsen
Chair, North Pacific Fisheries Management Council
605 West 4th Ave.
Anchorage, Alaska 99801

Dear Ms. Madsen,

On behalf of the International Bering Sea Forum, we would like to announce the release of a statement calling for action on bottom trawling in the Bering Sea. The International Bering Sea Forum, a coalition of Russian and U.S. citizen experts from the Bering Sea region, are calling for additional scientific research into the impacts of bottom trawling in the Bering and for identification of key habitat where bottom trawling should be limited. The Forum also calls for intergovernmental efforts among the U.S. and Russia to develop a system of zoning in the Bering Sea that restricts bottom trawling in areas designated as "sensitive habitat."

Forum members worry that the Bering Sea, a globally important habitat for marine life and an important fishery, is experiencing significant ecological changes that concern many Bering Sea residents and scientists internationally. Simultaneously, Forum members point out that indigenous peoples and local communities in Russia and the United States are dependent upon the ecological well-being and the stability of Bering Sea resources for their health, quality of life, sustainable livelihoods and cultures.

The International Bering Sea Forum, founded in August 2003, is an independent, non-governmental body of scientists, indigenous leaders, environmentalists, and fishermen from both the U.S. and Russia committed to sustainable management of the Bering Sea. The Forum was founded in the belief that the Bering Sea is a global treasure and that international cooperation is crucial to ensure its long-term sustainability. We have enclosed a list of Forum members.

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The International Bering Sea Forum is coordinated by Pacific Environment, a non-governmental organization based in San Francisco, California that protects the living environment of the Pacific Rim.

We would appreciate hearing from you about your response to this initiative. The International Bering Sea Forum would be pleased to collaborate with your agency to implement this important initiative, and we look forward to these discussions. Thank you for your attention.

Sincerely,

Walter Parker
Chairman of International Bering Sea Forum
3724 Campbell Airstrip Road
Anchorage, Alaska 99504
Phone: (907) 333-5189
Fax: (907) 333-5153
E-mail: wbparker@gci.net

David Gordon
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International Bering Sea Forum

Statement of the International Bering Sea Forum Regarding Bottom Trawling Activity in the Bering Sea

WHEREAS the Bering Sea, the third largest sea and a globally important habitat for marine life and an important fishery, is experiencing significant ecological changes that are of concern to many Bering Sea residents and scientists internationally; and

WHEREAS indigenous peoples and local communities in Russia and the United States are dependent upon the ecological wellbeing and the stability of resources in the Bering Sea for their health, quality of life, sustainable livelihoods and cultures; and

WHEREAS Russia and the United States are the two countries that exercise the greatest amount of sovereign jurisdiction over territorial areas of Bering Sea and are the most directly able to influence the management of the Bering Sea using their sovereign rights; and

WHEREAS reliable scientific evidence indicates that the current set levels of bottom trawling activity in the Bering Sea are harmful to marine life and that the intensity of trawling will impact future marine life and habitat due to long term significant damage to those habitats; and

WHEREAS the Forum understands that maximally sustainable fishing practices in the Bering Sea hold economic importance to Russia and the United States, to indigenous peoples, to local communities, and for the development of international trade; and

WHEREAS the Forum is aware that other historically important marine habitats and fisheries throughout the world have been "mismanaged" in that over-fishing and habitat damage led to dramatic declines in marine species populations as well as ecological and economic duress in human ecosystems dependent on the condition of marine life; and

WHEREAS the International Bering Sea Forum, comprised of individual citizen representatives from Russia and the United States, with expertise in marine conservation, science, governance, indigenous rights, and local & international community development, has considered and discussed opportunities and challenges relating to fisheries management in the Bering Sea;

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NOW THEREFORE BE IT RESOLVED that the members of the International Bering Sea Forum, hereby call on the U.S. and Russian governments through ongoing bilateral negotiations to agree to support further scientific research on bottom trawling in the Bering Sea, including identification and impacts on essential fish habitat, especially in regions accessed by indigenous groups for traditional natural resource use, and to develop a system of zoning in the Bering Sea that restricts bottom trawling in areas designated as "sensitive habitat"; and

THEREFORE BE IT RESOLVED that the International Bering Sea Forum calls upon governments for increased enforcement of existing regulations restricting the use of bottom trawling, which would require increased enforcement budgets to ensure that this occurs; and

THEREFORE BE IT RESOLVED that the Forum calls for the development and signing of an improved intergovernmental agreement and active cooperation in the regulation and enforcement of bottom trawling restrictions nationally and internationally; and

BE IT FURTHER RESOLVED that the International Bering Sea Forum will establish a "Fishing Gear Monitoring Committee" to follow up on the recommendations of this general statement and to further research the impact of present bottom trawling and other fishing gear regulations and practices as well as other regulatory policies that impact commercial fishing and fishing gear in both Russia and the United States. In addition, the Committee will seek opportunities for encouraging restriction, as necessary, of current bottom trawling practices based on scientific studies. The Forum acknowledges the essential role of the indigenous people of Alaska and Russia, welcomes the steps taken by those people with the goal of cooperation in the conservation and management of marine life in the Bering Sea region, and desires to ensure their full involvement in the implementation and enforcement of any agreement that is made.

AND FINALLY, BE IT UNDERSTOOD that the International Bering Sea Forum is a private, non-governmental entity, whose members serve as individual representatives and do not represent the organizations with which they are affiliated.

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International Bering Sea Forum

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The International Bering Sea Forum

The International Bering Sea Forum is an international, non-governmental network comprised of representatives from Bering Sea communities, indigenous leaders, NGOs, policy makers, scientists, fishermen and other interested parties that are committed to the sustainable management of the Bering Sea.

The four primary goals of the Forum are to:

1. Share information, foster greater international collaboration and promote greater understanding of the importance of Bering Sea protection across political boundaries;
2. Advocate for the protection of the Bering Sea environment and the species that depend upon the Bering habitat for their survival;
3. Promote the sustainable livelihood of local communities that depend upon the resources of the Bering Sea, including coastal communities, indigenous communities and local family fishermen; and
4. Foster greater international relations and increased understanding of key issues among the multitude of Bering Sea stakeholders.

Forum members are committed to working cooperatively to ensure the ecological and human health of the Bering Sea region. The International Bering Sea Forum is not an attempt to influence or replace the existing jurisdictional authority of one country over another, but rather is a non-governmental entity without regulatory authority. The Forum is a step toward promoting greater civil society understanding and involvement in seeking positive solutions, across sectors and across borders.

The Forum will proactively engage in public information and outreach within countries that rely upon the Bering Sea. The Forum will seek to bring greater attention to the importance of the Bering Sea region and the need to understand and manage the Bering Sea habitat. The Forum will also seek to identify and encourage meritorious international projects that promote the protection of the Bering Sea as well as improve the livelihoods of local communities that depend upon the Bering Sea.

The Forum will rely upon sound scientific information and on traditional native knowledge in reaching determinations. It will spend the majority of its time engaging in outreach to the public and to Bering Sea Stakeholders, sharing information across international borders, and promoting greater international understanding and communication.

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International Bering Sea Forum Members

Russian Federation Representatives

Tatyana Borisova, *Petropavlovsk-Kamchatskiy, Kamchatka*
Alexander Evstifeev, *Commander Islands*
Artur Maiss, *Vladivostok, Primorsky Krai*
Igor Mikhno, *Anadyr, Chukotka*
Robert Moiseev, *Petropavlovsk-Kamchatskiy, Kamchatka*
Gennady Smirnov, *Anadyr, Chukotka*
Lyubov Tayan, *Anadyr, Chukotka*
Nina Zaporotskaya, *Petropavlovsk-Kamchatskiy, Kamchatka*
Konstantin Zgurovsky, *Vladivostok, Primorsky Krai*

United States Representatives

Vera Alexander, *Fairbanks, Alaska*
Xan Augerot, *Portland, Oregon*
Ben Ellis, *Anchorage, Alaska*
Victoria Gofman, *Anchorage, Alaska*
Pete Hendrickson, *Dutch Harbor, Alaska*
Ole Lake, *Anchorage, Alaska*
Larry Merculieff, *Anchorage, Alaska*
Henry Mitchell, *Anchorage, Alaska*
Walter Parker, *Anchorage, Alaska*
Whit Sheard, *Anchorage, Alaska*
Mark Spalding, *Washington, DC*
Fran Ulmer, *Juneau, Alaska*
David Gordon, *San Francisco, California* (Non-voting Member)

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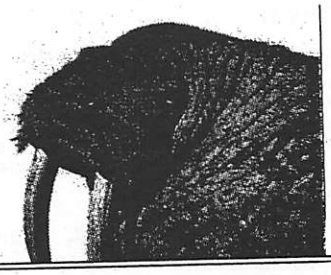
BERING SEA

Coalition pushes U.S., Russian management

ALASKA



Coalition seeks to protect Bering Sea

■ **OCEAN:** International group wants U.S., Russia to co-manage area.

By DOUG O'HARRA
Anchorage Daily News

Alarmed about overfishing, poaching, pollution and ecosystem shifts in the Bering Sea, an international coalition of scientists, managers and community leaders has formed to push the United States and Russia to work together managing what may be the most productive marine area on Earth.

The 22 members of the International Bering Sea Forum will marry scientific data with traditional Native knowledge, while gathering reports from regular people who wrest a living from the ocean on both sides of the border, organizers said Tuesday.

ON THE Web

■ **FOR MORE** about the coalition of scientists, managers and community leaders, visit **www.beringsea forum.org**

The fish and mammals of the Bering Sea "don't use political boundaries," said executive director Catriona Glazebrook, speaking during a telephone press conference from the group's offices at Pacific Environment in Oakland, Calif. "They move freely from one side to the other, so any type of management or lack of management will impact

The 13 American members of the group include Vera Alexander, dean of the School of Fisheries and Ocean Sciences at the University of Alaska Fairbanks; Native activist Larry Merculieff of the Bering Sea Council of Elders; and former Alaska Lt. Gov. Fran Ulmer, from the North Pacific Anadromous Fish Commission.

Members also represent environmental groups, scientific boards and local governments. The nine Russian members include the mayor of

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BERING: *International forum to study ecosystem*

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the Commander Islands, located beyond the end of Alaska's Aleutian Chain, and officials and scientists.

The group plans to take stands on fisheries and ecosystem issues, then push both the U.S. and Russian governments to manage the sea together with an eye toward protecting resources for future generations. An initial project this fall will be to develop a network for small villages in both countries to communicate ideas.

Helping Russian biologists and the people living in the isolated communities of the Bering Sea coast will be a priority, said forum member Walter Parker, who represents the North Pacific Research Board.

"There are a lot of good scientists working in the Russian Far East," Parker said. "They don't have many resources, but they have the ability to do the job."

"I think there's still a real nagging sense that their entire quality of life and what makes them distinct from the rest of Russia is eroding," added Xan Augerot, a scientist with the Oregon-based Wild Salmon Center. These people don't see the profits from industrial fishing and offshore oil exploration, yet live with the consequences. "So there is a real sense of urgency from our Russian colleagues."

The forum has come together amid growing global urgency over the damage done to the world's oceans.

The Bering Sea might seem blessed as pristine, still producing more than half the seafood consumed in the United States while feeding millions in the Far East. Yet the ecosystem has been shifting. Some species, such as Steller sea lions, are crashing.

Last spring, Canadian researchers reported in Nature that overfishing had wiped out 90 percent of the ocean's top predatory fish and reduced stocks to alarmingly low levels in virtually every sea. A month later, the Pew Ocean Commission concluded that overfishing threatened more than 36 percent of wild fish populations, and raised alarms about industrial development, climate change, invasive species and pollution.

In that global context, the Bering Sea might seem blessed as pristine, still producing more than half the seafood consumed in the United States while feeding millions in the Far East. Yet the ecosystem has been shifting. Some species, such as Steller sea lions, are crashing. Yet jellyfish have spread so thickly at certain times that fishermen started calling one area along the Alaska Peninsula "the slime bank."

"The newest thing that I'm hearing from scientists is this could be a sign of declining habitat," Glazebrook said.

With other questions about fishing practices, industrial pollutants from other parts of the globe, shrinking sea ice and widespread poaching in Russian waters, the forum wants the two federal governments to work closely.

"We'll try to get the state department to seriously consider an international treaty t[illegible] overs all aspects and not just fishing," Parker said.

■ Daily News reporter Doug O'Harra can be reached at do'harra@adn.com.

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OCEANA CONTINUES THE BATTLE TO PROTECT THE PACIFIC'S DEEP-SEA CORALS FROM DESTRUCTIVE BOTTOM TRAWLING

Washington, DC -- Today Oceana petitioned the U.S. Secretary of Commerce to comprehensively protect, for the first time, deep-sea coral and sponge areas in U.S. ocean waters by locating and closing known and potential coral and sponge areas to destructive bottom trawling fishing.

"This is a true emergency. Oceana is seeking this protection because destructive trawling gear is destroying deep-sea coral reefs and gardens at an alarming rate," said Dr. Michael Hirshfield, Oceana's vice president for North America and chief scientist. "We think it's outrageous that the federal government's idea of taking care of this problem is to allow continued destructive trawling rather than requiring action to protect these vulnerable deep-sea locations."

Bottom trawling or dragging is the most widespread human threat to deep-sea coral communities. Current federal regulations allow deep-sea draggers to mow down corals, sponges, and other living seafloor animals with fishing gear that can weigh well in excess of ten tons. Under these government rules, millions of pounds of this rich living habitat are ripped from the sea floor every year by bottom trawlers.

As scientists learn more about corals and sponges, it is evident that this destruction by bottom trawling may not recover in our lifetime, if ever. Earlier this year, 1,136 scientists from around the world signed a letter that called for protection of deep-sea coral and sponge ecosystems because they provide habitat for countless species of marine wildlife, nurseries for many commercially valuable fish, and promise for new medicines. These scientists presented the letter in February at the Seattle meeting of the American Association for the Advancement of Science.

Deep-sea corals occur off all the American coasts and scientists discover more every year. From New England to Florida to Alaska, scientists have located many dense masses of beautiful deep-sea corals and sponges which are some of the oldest and richest marine ecosystems on earth.

In the Pacific, corals are well documented from the Bering Sea of Alaska to California's Baja Peninsula. The dense coral gardens of the Aleutians are home to fish, sea stars, crabs, snails, shrimp, and other undersea life. In Washington, gorgonian corals including red tree, bamboo and black corals, along with other vulnerable deep-ocean habitat are found off the Olympic Coast National Marine Sanctuary.

-more-

Astoria Canyon off Oregon is home to a variety of corals and sponges and other marine life including thousands of sea cucumbers, Dover and rex sole, sablefish, shrimp, skates, and anemones. Hecata Bank and Daisy Bank are home to rich seafloor life including black corals and vase sponges. These areas host yellowtail and young rockfish schools made up of hundreds and even thousands of fish.

Off the coast of California, the continental shelf, slope, and canyons are scattered with deep-sea corals. Hydrocorals, gorgonian corals, and black corals are found in high densities in the Channel Islands, Monterey Bay, the Gulf of the Farallones off San Francisco, and the continental slope off Northern California. Hydrocorals and gorgonian sea fans are commonly seen by divers in Southern California. These corals provide shelter for a variety of sea life, including rockfish, crabs, garibaldi, and many others. Some of these corals may be older than the towering redwoods on the adjacent land.

"This petition asks our government to save these rainforests of the deep," said Dr. Hirshfield. "Oceana is going to use every available means to protect these biologically rich and complex areas on the deep-sea floor so we can have healthy, productive oceans."

Under current law, the Commerce Department is supposed to protect deep-sea corals and sponges because of their value to America's fisheries and because of the immediate threats to ocean health from destructive trawling gear. As demonstrated by Oceana's regional fishery management proposals, it is possible to maintain vibrant fisheries while still protecting this important ocean habitat.

In addition to ensuring that deep-sea corals and sponges in U.S. territorial ocean waters are protected from destructive trawling, Oceana's petition also calls for the federal government to put strict limits on the amount of corals and sponges fishermen are allowed to catch in the course of continuing fisheries, and to enhance monitoring systems for boats fishing in areas where corals and sponges are known or suspected to exist. The petition also asks for the necessary increases in enforcement and penalties to prevent deliberate destruction of deep-sea corals and sponges. Finally, the petition requests the Commerce Department initiate and fund additional research to identify, protect and restore damaged deep-sea corals and sponges.

Federal law requires the U.S. fishery management councils to develop management plans that protect ocean habitat essential to a healthy fishery. Oceana continues to work through this process at the regional level. However, it takes years to finalize each plan and, notwithstanding limited actions by two councils, not one of the nation's eight fishery councils has yet adopted a comprehensive plan that protects deep-sea corals and other essential fish habitat. As this process drags on, bottom trawling continues to decimate corals and sponges. As articulated in Oceana's petition, the Secretary of Commerce has both the authority and responsibility to halt this destruction.

David Allison, director of Oceana's Stop Destructive Trawling campaign, points out, "deep-sea corals and coral gardens are not just about the fish we eat. They are a vibrant, beautiful and valuable legacy for all Americans."

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March 24, 2004

The Honorable Donald L. Evans
Secretary
United States Department of Commerce
14th Street and Constitution Avenue, NW
Room 5851
Washington, D.C. 20230-0001

Re: Rulemaking Petition to Protect Deep-Sea Coral and Sponge Habitat

Dear Secretary Evans:

Marine scientists are discovering extraordinary, fragile, and ecologically-important colonies of deep-sea corals and sponges in nearly every region of the United States' exclusive economic zone (EEZ). Researchers report that these deep-sea coral and sponge colonies support entire ecosystems of fish and invertebrates, including commercially-managed species. The high diversity of marine life in some of these coral and sponge ecosystems is comparable to shallow, warm-water, coral reef ecosystems. Many of these colonies are truly ancient, growing for many hundreds and even thousands of years.

As these communities are comprised of long-lived, slow-growing organisms, they are especially vulnerable to destructive fishing practices like the use of bottom-tending mobile fishing gear[1] (bottom trawling) that damage and destroy these sensitive biological systems (NRC 2002). These ancient and slow-growing communities are not protected adequately under existing fishery management plans (FMPs), nor would they be under pending rulemakings that do not take into account the most recent scientific data. Ongoing efforts to designate essential fish habitat (EFH) are proceeding so slowly that without immediate protection, many of these sensitive habitats will suffer irreparable harm.

In light of recent scientific discoveries about the nature and extent of deep-sea coral and sponge habitats, and the immediate threats they face, existing law requires you to take strong steps to protect these habitats from destructive fishing practices. Accordingly, Oceana requests, pursuant to 5 U.S.C. §553(e), that the Department of Commerce, through the National Marine Fisheries Service (NMFS), initiate immediate rulemaking to

[1] "Bottom-tending mobile fishing gear" includes dredges, beam and otter trawls, and other mobile fishing gear that is dragged along the ocean floor.

protect deep-sea coral and sponge habitats in the United States' EEZ by taking the following measures:

1. Identify, map, and list all known areas containing high concentrations of deep-sea coral and sponge habitat;[2]
2. Designate all known areas containing high concentrations of deep-sea coral and sponge habitat both as EFH and "habitat areas of particular concern" (HAPC) and close these HAPC to bottom trawling;
3. Identify all areas not fished within the past three years with bottom-tending mobile fishing gear, and close these areas to bottom trawling;
4. Monitor bycatch to identify areas of deep-sea coral and sponge habitat that are currently fished, establish appropriate limits or caps on bycatch of deep-sea coral and sponge habitat, and immediately close areas to bottom trawling where these limits or caps are reached, until such time as the areas can be mapped, identified as EFH and HAPC, and permanently protected;
5. Establish a program to identify new areas containing high concentrations of deep-sea coral and sponge habitat through bycatch monitoring, surveys, and other methods, designate these newly discovered areas as EFH and HAPC, and close them to bottom trawling;
6. Enhance monitoring infrastructure, including observer coverage, vessel monitoring systems, and electronic logbooks for vessels fishing in areas where they might encounter high concentrations of deep-sea coral and sponge habitat (including encountering HAPC);
7. Increase enforcement and penalties to prevent deliberate destruction of deep-sea coral and sponge habitat and illegal fishing in already closed areas; and
8. Fund and initiate research to identify, protect, and restore damaged deep-sea coral and sponge habitat.

Oceana is prepared to assist you in carrying out these measures in any way it can.

I. Federal Law Requires the National Oceanic and Atmospheric Administration (NOAA) to Identify and Protect Essential Fish Habitat and Habitat Areas of Particular Concern

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires fishery management plans prepared by the Secretary and Regional Fishery Management Councils to identify essential fish habitat and habitat areas of particular concern. EFH is defined as "waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." 16 USC §1802(10). HAPC are areas that: (1) provide important ecological functions; (2) are sensitive to human-induced environmental

[2] "Deep-sea coral and sponge habitat" includes all habitat containing high concentrations of either deep-sea coral or deep-sea sponges or both.

degradation; (3) are stressed by development activities; or (4) are a rare habitat type. 50 CFR §600.815(a)(8).

A. National Oceanic and Atmospheric Administration's Duties to Identify Essential Fish Habitat

The Magnuson-Stevens Act requires that FMPs prepared by Fishery Management Councils or the Secretary "describe and identify essential fish habitat based upon guidelines established by the Secretary ..., minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of EFH." 16 USC §1853(a)(7).

The Magnuson-Stevens Act defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." 16 USC §1802(10). For the purposes of this definition:

> 'Waters' include aquatic areas and their associated physical, chemical and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; 'substrate' includes sediment, hard-bottom, structures underlying the waters, and associated biological communities; 'necessary' means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and 'spawning, breeding, feeding, or growth to maturity' covers a species' full life cycle.

50 CFR §600.10. Therefore, waters or substrate necessary to fish for spawning, breeding, feeding, or growth to maturity must be identified as EFH by NMFS or the Councils, and adverse effects on such habitat caused by fishing must be minimized to the extent practicable.

B. NOAA's Duties to Identify Habitat Areas of Particular Concern

NOAA guidelines provide that:

> FMPs should identify specific types or areas of habitat within EFH as habitat areas of particular concern based on one or more of the following considerations: (i) the importance of the ecological function provided by the habitat, (ii) the extent to which the habitat is sensitive to human-induced environmental degradation, (iii) whether, and to what extent, development activities are, or will be, stressing the habitat type, (iv) the rarity of the habitat type.

50 CFR §600.815(a)(8). Therefore, NMFS or the Councils must identify and designate HAPC within EFH if such areas meet one or more of the four criteria listed in 50 CFR §600.815(a)(8).

II. NOAA's Duties to Evaluate the Effects of Fishing on EFH and HAPC and Minimize Adverse Effects

It is not enough merely to identify EFH and HAPC. NOAA must also ensure that FMPs evaluate the adverse effects of fishing on EFH and minimize and mitigate such adverse effects. The evaluation should consider the effects of each fishing activity on each type of habitat found within the EFH, any adverse effects on EFH, and the cumulative effects of multiple fishing activities on EFH. The evaluation should also give "special attention" to adverse effects on HAPC and identify for possible designation as HAPC "any EFH that is particularly vulnerable to fishing activities." 50 CFR §600.815(a)(2)(i).

FMPs must also "minimize to the extent practicable adverse effects (on EFH) from fishing, and identify other actions to encourage the conservation and enhancement of such habitat." 16 USC §1853(a)(7). NOAA guidelines require the Councils to "prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature." 50 CFR §600.815(a)(2)(ii).

Therefore, NMFS and the Councils must identify EFH that is particularly vulnerable to fishing activities for possible designation as HAPC; evaluate adverse effects of fishing on EFH, giving special attention to adverse effects on HAPC; and minimize to the extent practicable adverse effects of fishing on EFH.

III. Areas of Coral and Sponge in Regions Across the Country

Deep-sea coral and sponge communities are found throughout the United States' EEZ. The following gives a short overview of known coral and sponge cover in regions off the mainland United States. Additionally, pinnacles and seamounts are rare and exceptional formations that are essential fish habitat rich with the formation of living seafloor such as corals and sponges. We have sufficient data and information about certain areas, including some seamounts and pinnacles, of particular sensitivity, diversity, and rarity, to designate and protect the areas immediately. These areas, identified in Appendix 1, should be given priority for protection from bottom trawling. The locations of additional unexplored seamounts and pinnacles in Alaskan waters are listed in Appendix 2. As these types of areas have been identified as frequently harboring concentrations of corals and sponges, they should be closed until such time as research has been completed to determine whether they warrant long-term protection as HAPC. It should be noted, however, that neither list is meant to be exhaustive. They simply set forth examples of the types of known areas that exist around the United States that should be given priority when considering HAPC designation.

A. Alaska

Scientists estimate that more than 100 deep-sea coral and sponge species are found in the waters of the North Pacific off Alaska, at least 34 of which are corals (Heifetz 2000). Some areas are so tightly packed with different corals, sponges and other marine life that they have been named "coral gardens" and the "Garden of Eden" (NOAA 2002a).

In the Bering Sea most corals are found on the slope at the edge of the continental shelf and in canyons, but an array of other seafloor habitats also enrich this fertile ocean ecosystem. On the shelf, soft corals, sponges, and other deep-sea invertebrates provide living structure on an otherwise barren seafloor.

The 1600 km volcanic Aleutian Island chain between Alaska and Russia is the longest archipelago in the world. Some of the most nutrient-rich water from the bottom of the Pacific Ocean flows through the rocky passes between the islands on its way to the Bering Sea and Arctic Ocean. The unique combination of rich nutrients and underwater volcanoes has created some of the most diverse and abundant coral habitat left on Earth, with density and diversity comparable to that of coral reefs in the tropics (Stone and Malecha 2003).

The Alexander Archipelago in the Gulf of Alaska contains complex seafloor with abundant red tree corals (*Primnoa* spp.[3]), a variety of sponges, and anemones. Red tree corals can grow two meters high and seven meters wide, can live for hundreds of years, and provide shelter for a wide variety of fish and other marine life (Krieger and Wing 2002). Sea whip groves and coral gardens off Kodiak Island are home to a variety of rockfish, king crab, and other important species. The rich continental slope dives deep to the Aleutian Trench in the western Gulf. Seamounts, or underwater mountains, are scattered throughout the Gulf of Alaska and contain dense coral gardens far out at sea.

Figure 1 depicts known coral and sponge distribution in Alaskan waters, based on NMFS trawl surveys and observer data. Figures 2a-g show the locations of six coral gardens off the Aleutian Islands that were proposed by NMFS for HAPC designation on January 9, 2004. Examples of available research on coral and sponge habitat off Alaska are listed below.

- Freese, J.L. 2003. "Trawl-induced damage to sponges observed from a research submersible." Marine Fisheries Review 63:3 7-13.
- Heifetz, J. 2000. "Coral in Alaska: Distribution, abundance, and species associations." Manuscript presented at the First International Symposium on Deep-sea Corals, Dalhousie University, Halifax, July 30 - August 2, 2000.
- Krieger, K.J. 2001. "Coral (Primnoa) impacted by fishing gear in the Gulf of Alaska." In Willison, J.H., J, Hall, S.E. Gass, E.L.R. Kenchington, M. Butler and

[3] The abbreviation "spp." indicates that the name of a genus has been given, and that there are multiple species within the genus.

P. Doherty, 2001. "Proceedings of the First International Symposium on Deep-Sea Corals." Ecology Action Center.

- Krieger, K.J. and B. Wing 2002. "Megafauna associations with deepwater corals (*Primnoa* spp.) in the Gulf of Alaska." Hydrobiologia 471: 83-90.
- NMFS (National Marine Fisheries Service) 2003. Draft Programmatic Supplemental Groundfish Environmental Impact Statement for Alaska Groundfish Fisheries, September 2003, Tables 3.5-158 and 4.1-8. http://www.fakr.noaa.gov/sustainablefisheries/seis/intro.htm.
- NOAA 2002a. Ocean Explorations: Exploring Alaska's Seamounts. Log at http://oceanexplorer.noaa.gov/explorations/02alaska/logs/jul15/jul15.html.
- Malecha, *et al.* 2002 (DRAFT). "Living substrate in Alaska: Distribution, abundance and species Associations." Manuscript submitted at the Symposium on Effects of Fishing Activities on Benthic Habitats, Tampa, Florida, November 12-14, 2002.
- Stone, R.P. and Malecha, P.W. 2003. "Deep-Sea Coral Habitat in the Aleutian Islands of Alaska." Oral Presentation given at the Second International Symposium on Deep-sea Corals, Erlangen, 2003.

B. Pacific

Scientists have found at least 100 different species of coral along the Pacific shelf and slope from the Bering Sea to Baja, including bamboo, bubblegum, red tree, and black corals (Etnoyer and Morgan 2003). Several underwater islands lie in the deep-waters beyond the California continental shelf. On the largest of these, the Davidson Seamount, scientists using submersibles have found densely packed biological communities consisting mainly of large gorgonian corals and sponges (NOAA 2003).

In the Pacific Northwest, deep underwater canyons like Astoria Canyon, where the Columbia River meets the ocean, are home to a variety of coral and sponge habitats. Hecata Bank off the Oregon coast is a hotspot for black corals. The Olympic Coast National Marine Sanctuary off Washington is also home to a variety of gorgonian corals and other vulnerable fish habitats. Puget Sound contains hydrocorals scattered throughout its various inlets and islands. These complex habitats provide homes for commercially important and overfished species like rockfish.

Submersible dives over the rocky banks along the continental shelf of Oregon in 1987-1990 revealed high abundances of sponges. The ridge-boulder habitat of Heceta Bank provides a solid substrate for a very even distribution of vase sponges. The researchers noted spectacular schools of yellowtail and juvenile rockfish associated with this habitat, comprising hundreds or even thousands of individuals. Daisy Bank consists largely of boulder-cobble habitat, upon which the sponges are even more common and larger (some a meter tall) than at Hecata. This habitat supports rosethorn, sharpchin, and pygmy rockfish, as well as lingcod and juvenile rockfish (Hixon *et al.* 1991, Figure 3).

Off the coast of California, the continental shelf, slope, and canyons are scattered with deep-sea corals. Hydrocorals, gorgonian corals, and black corals are found in high densities in the Channel Islands, Monterey Bay, the Gulf of the Farallones off San Francisco, and the continental slope off Northern California. Hydrocorals and gorgonian sea fans are commonly seen by divers in Southern California. These corals provide shelter for a variety of sea life, including rockfish, crabs, garibaldi, and many others. Some of these corals may be older than the towering redwoods on the adjacent land.

Figures 4 and 5 show coral and sponge occurrence along the Pacific Coast of North America, based on data from NMFS trawl surveys, observer programs (in Alaska), and submersible dives. Examples of available research on coral and sponge habitat in the Pacific are listed below.

- Etnoyer, P and L. Morgan 2003. "Occurrences of habitat forming deep-sea corals in the Northeast Pacific Ocean: A report for NOAA's Office of Habitat Protection." Marine Conservation Biology Institute.
- Hixon, M.A., Tissot, B.N., and W.G. Pearcy 1991. "Fish assemblages of Rocky Banks of the Pacific Northwest." OCS Study MMS 91-0052. Pacific OCS Region, Minerals Management Service.
- Monterey Bay Aquarium Research Institute seabed mapping program, at http://www.mbari.org/data/mapping/seamounts/davidson.htm .
- NMFS 2003b. Unpublished data from RACEBASE, NMFS' trawl survey database.

C. Northeast and Mid-Atlantic

Seventeen species of stony coral have been found in the waters from the Gulf of Maine to Cape Hatteras, 71 percent of which lie in waters deeper than 1000 m (Cairns and Chapman 2001). Red tree and bubblegum corals are common on the Northeast Peak of Georges Bank and on gravel substrate in the Gulf of Maine (Watling and Auster 2004).

Twenty five species of hard and soft coral have been found in the canyons and slope south of Georges Bank (Watling and Auster 2004). In particular, Oceanographer and Lydonia Canyons on Georges Bank harbor many species of coral (Figure 7). The steep sides and hard walls of these canyons have traditionally proven difficult to fish with mobile bottom gear, but improved mechanical, electronic, and fiber technologies could result in the expansion of trawl fisheries into these areas.

Bear Seamount, the westernmost peak of the New England Seamount chain, rises up from the continental slope southeast of Lydonia Canyon. One of four of the peaks in this chain that is located within the United States' EEZ, it rises from a depth of 2000-3000 m to a generally flat summit at around 1100 m below the surface of the North Atlantic. Recent dives on Bear Seamount have discovered various gorgonians including

Paragorgia sp.[4], bamboo coral (*Keratoisis* sp.), and hard corals such as *Caryophyllia ambrosia* and *Flabellum alabastrum*. The fauna associated with Bear Seamount are highly diverse (at least 214 species of invertebrates and 203 species of fish have been discovered so far), and other New England seamounts may also harbor a high diversity of macro-organisms (Moore *et al.* 2002). Indeed, NOAA's 'Mountains in the Sea' exploration in the summer of 2003 discovered corals on Kelvin and Manning Seamounts, the latter so diverse that the lead scientist, Dr Les Watling, noted a greater "coral diversity than I've seen before on any single dive, and that includes Hawaii" (NOAA 2003).

Figures 6 and 7 show the regional scale distribution of known octocorals (previously Alcyonaria) off the northeast United States.

Examples of available research on coral and sponge habitat in the Northeast and Mid-Atlantic are listed below.

- Auster, P.J. 2002. "An underwater tour of oceanographer canyon" CDROM National Undersea Research Center, University of Connecticut, Avery Point.
- Cairns, S.D. and R.E. Chapman 2001. "Biogeographic affinities of the North Atlantic deep-water Scleractinia." In Willison, J.H., J, Hall, S.E. Gass, E.L.R. Kenchington, M. Butler and P. Doherty, 2001. "Proceedings of the First International Symposium on Deep-Sea Corals."
- Moore, J.A., Vecchione, M., Collette, B.B., and R. Gibbons 2002. "The fauna of Bear Seamount (New England Seamount chain), and the presence of "natural invader" species." Paper presented at ICES 2002 Annual Science Conference summarizing the results of cruise DE02-06. CM 2002/M:25.
- NOAA 2003. Ocean Explorations: Mountains in the Sea. Ship's log and other details available at http://oceanexplorer.noaa.gov/explorations/03mountains/welcome.html
- Watling, L, and P.J. Auster 2004 in press. "Distribution of Deepwater Alcyonacea off the Northeast Coast of the United States". Presented at the Second International Symposium on Deep-Sea Corals, Erlangen, 2003.

D. Southeast

Deep-sea corals have been found from between 70 to 1300 meters deep on the outer continental shelf and upper slope in Southeast United States waters (Reed 2002a). Extensive *Lophelia* reefs are being explored off Cape Lookout in North Carolina at 400-500 meters, but there are hundreds of larger unexplored *Lophelia* reefs off the coasts of South Carolina, Georgia, and Florida (Sulak pers.comm.). In 2002, scientists discovered a huge *Lophelia* reef 140 km off the coast of Jacksonville, Florida, roughly 1.6 by 4 km

[4] The abbreviation "sp." is used after a genus name to indicate that the genus, but not the particular species of the specimen, has been identified.

in area, and 150 meters high (NOAA 2002c). There are believed to be 40,000 *Lophelia* mounds covering 360 square km in the vicinity of the reef (Paull *et al.* 2000). Sponges, corals, sea plumes, and other animals have been found covering one area explored at 600 meters (NOAA 2002d).

The deep-sea reefs of *Oculina varicosa*, the ivory tree coral, found in this region are unique in the world (Koenig 2001). Deep-water banks rich with *Oculina varicosa*, *Lophelia pertusa*, *Enallopsammia profunda*, and other live coral and sponge colonies off the coasts of Florida, Georgia, and South Carolina are described and mapped in Reed (2002a).

Figures 8 and 9 show some known locations of corals off the Southeast United States, including *Oculina*, *Lophelia*, and *Enallopsammia*. Examples of available research on coral and sponge habitat in the Southeast are listed below.

- Koenig, C.C. 2001. "Oculina Banks: Habitat, fish populations, restoration, and enforcement." Report to the South Pacific Fishery Management Council December 2001.
- NOAA 2002. Ocean Explorations: Islands in the Stream 2002. Ship's log and more details available at http://oceanexplorer.noaa.gov/explorations/02sab/welcome.html.
- Paull, C.K., A.C.Neumann, B.A. am Ende, W. Ussler III, N.M Rodriguez 2000. "Lithoherms on the Florida-Hatteras slope." Marine Geology 166: 83-101
- Reed, J.K. 2002a. "Comparison of deep-water coral reefs and lithoherms off southeastern USA." Hydrobiologia 471: 57-69.
- Reed, J.K. 2002b. "Deep–water Oculina coral reefs of Florida: biology, impacts, and management." Hydrobiologia 471: 43-55.
- Sulak, K. pers. comm. Presentation to the House Oceans Caucus and NMFS March 14 2003, background materials. Available upon request.

E. Gulf of Mexico

Ancient coral reef structures dot the outer continental shelf off Mississippi, Alabama, and West Florida. Although the original reefs are gone, lush forests of soft corals, black corals, sponges, sea-lilies, and deep-sea stony corals still flourish on the steep pinnacles. Despite the discovery of deep-sea corals in the Gulf of Mexico well over a hundred years ago, our knowledge of their distribution and abundance is poor.

In a recent review article, Schroeder *et al.* (in press) document all known locations of the hard stony corals *Lophelia pertusa* and *Madrepora oculata* in Gulf waters deeper than 200 meters. Both species have been found in waters between 200-850 meters in the Northern Gulf of Mexico (Figure 10). These species appear to be particularly concentrated off the coasts of Louisiana, Mississippi, and Alabama, though the dearth of known coral sites in other areas may reflect lessened research efforts in those areas rather

than fewer corals. Some coral areas have been visibly damaged by trawls, longlines, and anchors (Sulak pers. comm.).

Examples of available research on coral and sponge habitat in the Gulf of Mexico are listed below.

- NOAA 2002b. Ocean Explorations: Gulf of Mexico. Ship's log and more details available at http://oceanexplorer.noaa.gov/explorations/02mexico/logs/oct18/oct18.html.
- Schroeder, W.W., Brooke, S.D., Olson, J.B., Phaneuf, B., McDonough III, J.J. and P. Etnoyer, in press. "Occurrence of deep-water *Lophelia pertusa* and *Madrepora oculata* in the Gulf of Mexico." In, 'Deep-Water Corals and Ecosystems', Freiwald, A. and Roberts, M.J. eds., Springer Publishing, Heidelberg. Proceedings of the 2nd International Symposium on Deep-Sea Corals, Sept 8-13, Erlangen, Germany.
- Sulak, K. pers. comm. Presentation to the House Oceans Caucus and NMFS March 14, 2003, background materials. Available upon request.

IV. Deep-Sea Coral and Sponge Habitats Satisfy the Definition of EFH

Deep-sea coral and sponge species found throughout the country are often associated with other seafloor habitat-forming animals like anemones, crinoids, and bryozoans. Whether solitary, in small communities, or in large reef-like complexes, these species serve important ecological functions by acting as complex structural habitat to fish, invertebrates, and other species living in the deep-sea. Therefore, these deep-sea coral and sponge habitats meet the definition of EFH as "waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity" under 16 USC §1802(10) and 50 CFR §600.10.

A. Deep-Sea Coral and Sponge Habitats Are EFH Because They Are "Waters" and "Substrate"

Deep-sea coral and sponge habitats meet the definition of "waters" because they are "aquatic areas and their associated physical, chemical and biological properties [are] used by fish" *(see*, e.g., Reed 2002a, Reed 2002b, Fossa *et al.* 2002, Krieger and Wing 2002). More fundamentally, they are also "substrate", because they are "hard-bottom, structures underlying the waters, and associated biologically communities" pursuant to 50 CFR §600.10.

B. Deep-Sea Coral and Sponge Habitats Are EFH Because They Are Necessary to Fish for Spawning, Breeding, Feeding or Growth to Maturity

Deep-sea coral and sponge habitats are "necessary" because they "support a sustainable fishery and the managed species' contribution to a healthy ecosystem," satisfying the

definition set forth at 50 CFR §600.10. Fish are attracted to coral communities to enhance their feeding opportunities, to hide from predators, and for their use as nursery areas (Husebo *et al.* 2002, Krieger and Wing 2002). These functions are crucial to individual species' survival and the long-term sustainability of fish populations and fisheries.

In the North Pacific, rockfish, Atka mackerel, walleye pollock, Pacific cod, Pacific halibut, sablefish, flatfish, crabs, and other economically important fish and shellfish species inhabit areas of deep-sea coral, sponge, and other habitat-forming structures. In Alaska, flatfish are commonly found around sea squirts and bryozoans; cod are found around sea anemones, sea pens, and sea whips; rockfish and Atka mackerel are found around sponges; crabs are found around sea squirts; and other commercial fish species such as sablefish and skates are found around sea pens and sea whips (Malecha *et al.* 2002). Eighty-three percent of the rockfish found in one study were associated with red tree coral in the Gulf of Alaska (Krieger and Wing 2002). Studies have found flatfish, walleye pollock, and Pacific cod commonly caught around soft corals in Alaska (Heifetz 2002). Juvenile and adult species of rockfish, sea stars, nudibranchs, crinoids, basket stars, crabs, shrimp, snails, anemones, and sponges use the coral polyps of deep-sea gorgonian coral in the North Atlantic and North Pacific for food throughout their life cycle (Krieger and Wing 2002).

In the waters off Florida, the dense and diverse Oculina Banks community supports large numbers of fish, forming breeding grounds for gag and scamp grouper, nursery grounds for young snowy grouper, and feeding grounds for many other valuable fish including bass, other groupers, jacks, snappers, porgies, and sharks. Large populations of the commercially important squid, *Illex oxygonius*, have also been observed spawning on these reefs (Reed 2002b).

Deep-sea coral and sponge reefs host dense invertebrate communities, upon which diverse populations of fish species feed. *Lophelia* reefs, associated with large habitat forming invertebrates, such as massive sponges and gorgonians, support high levels of marine-invertebrate biodiversity and commercially-valuable fish populations. Researchers found that commercially-valuable fish species aggregate on deep-sea *Lophelia* coral reefs in Norway, and that fish caught in coral habitats tended to be larger than fish caught in non-coral habitats (Husebo *et al.* 2002).

Because deep-sea coral and sponge habitat in regions throughout the country are waters and substrate, and are necessary to fish for many crucial functions, coral and sponge habitats meet the definition of EFH set forth at 16 USC §1853(a)(7) of the Magnuson-Stevens Act.

V. Deep-Sea Coral and Sponge Habitats Should Be Identified for Possible Designation as HAPC

Deep-sea coral and sponge habitats are exceptionally vulnerable to fishing activities, in particular the destructive effects of bottom trawling and other bottom-tending mobile gears. *See* Section VI. C and D, *infra pp14-17.* All FMPs must contain an evaluation of the potential adverse effects of fishing on EFH and "should identify for possible designation as HAPC any EFH that is particularly vulnerable to fishing activities." 50 CFR 600.815(a)(2)(i). Therefore, deep-sea coral and sponge habitat should be identified for possible designation as HAPC.

VI. Deep-Sea Coral and Sponge Habitats Satisfy the Definition of HAPC

Deep-sea coral and sponge habitats satisfy the definition of habitat areas of particular concern. NOAA has already designated some deep-sea coral and sponge habitat as HAPC in the North Pacific and South Atlantic. Moreover, coral and sponge habitats also satisfy all four criteria set forth at 50 CFR §600.815(a)(8), because they: (1) provide important ecological functions; (2) are extremely sensitive to human-induced environmental degradation; (3) are stressed by development activities; and (4) are a rare habitat type.

A. Deep-Sea Coral and Sponge Habitats Are Recognized as HAPC by NOAA

Deep-sea coral and sponge habitat have been designated by NOAA as HAPC in the North Pacific and off the coast of Florida. In recognizing the importance of coral and sponge habitat in the North Pacific, NOAA has stated that, "coral, sponges, and other living substrata in waters off Alaska already are classified by NOAA Fisheries as Habitat Areas of Particular Concern deserving of special protection because of their importance as habitat and their vulnerability to human impacts." Letter from Dr. William Hogarth, Assistant Administrator of Fisheries, NOAA, to Jim Ayers (Sept. 9, 2002). *See* 64 Fed. Reg. 20216 (Apr. 26, 1999). The Oculina Banks, off the coast of Florida, are also designated as HAPC. 49 Fed. Reg. 29607 (July 23, 1984) (codified at 50 CFR pt. 638, consolidated into 50 CFR pt. 622); 59 Fed. Reg. 27242 (May 26, 1994) (designating the Oculina Experimental Closed Area).

Alaska and the Oculina Banks are arguably the best studied regions of the EEZ with respect to deep-sea corals. It is no coincidence that the better understanding of the communities in these areas has resulted in the realization of their importance both economically and ecologically. NOAA must act quickly to not only designate, but also to protect, known coral and sponge areas in these and other regions as HAPC, and identify and protect other areas for potential HAPC designation before these areas are destroyed.

B. Deep-Sea Coral and Sponge Habitats Provide Important Ecological Functions

Coral species create communities of complex habitats that support extremely high levels of species richness and biological diversity (Reed 2002a, Freiwald 2002), and therefore

provide important ecological functions, such as feeding, breeding, and protection. Therefore, they satisfy the first HAPC criterion. 50 CFR §600.815(a)(8)(i).

Deep-sea coral communities often exhibit high levels of species diversity and contain great numbers of managed species. *Lophelia* provides habitat for animals such as sponges, anemones, bryozoans, gorgonians, worms, fish, mollusks, and crustaceans (Rogers 1999). Scientists have recorded more than 1300 species living on or in *Lophelia* reefs in the northeast Atlantic (Roberts *et al.* 2003). The *Lophelia* reefs on the western edge of the Blake plateau, off the coast of South Carolina and Georgia, support large populations of massive sponges and gorgonians in addition to smaller, less studied macroinvertebrates (Reed 2002a). On the western edge of this plateau, there is an abundance of hydroids, soft corals, echinoderms, actinaria, and ophiuroids. Such diversity, comparable in numbers to some shallow water reefs and seen also in the Oculina Banks (Reed 2002a), is also one reason that the reefs are important feeding, breeding, and nursery grounds for commercially important fish populations.

Deep-sea corals' complex structure serves as important habitat for protecting both juvenile and adult fish. Ten megafaunal groups have been associated with *Primnoa* spp., a deep-water gorgonian coral found in the North Atlantic and North Pacific that grows in a branching tree reaching some 3 meters from the seabed. Organisms including rockfish, sea stars, nudibranchs, crinoids, basket stars, crabs, shrimp, snails, anemones, and sponges use coral habitat for protection as well as food. Diverse species of shrimp, crabs, and rockfish also seek protection among the coral and coral polyps. Shortraker, rougheye, and redbanded rockfish have been documented beneath the corals, while sharpchin and juvenile yelloweye rockfish were among corals, and dusky rockfish were sighted above the corals (Krieger and Wing 2002).

Research has demonstrated that the destruction of deep-sea coral and sponge communities may alter the ecosystems in which they thrive. For example, researchers in the North Pacific have identified *Primnoa* spp. as both important habitat and a source of prey species for fish and invertebrates. The removal of or damage to the *Primnoa* communities may affect the populations of associated species, especially at depths greater than 300 meters, where species depend on *Primnoa* almost exclusively (Krieger and Wing 2002). On a larger scale, because *Primnoa* are important components of the deep-water ecosystem, the removal of these slow-growing corals could cause long-term changes in associated megafauna (Krieger and Wing 2002).

Additionally, researchers have found that species diversity is about three times higher on *Lophelia* reefs in the Northeast Atlantic than in the surrounding soft bottom habitat (UK Biodiversity Group 1999). Extensive *Lophelia* reefs have also recently been discovered in deep-waters in the Gulf of Mexico and off North Carolina (Sulak 2003). Studies show that anthropogenic alteration of a significant portion of *Lophelia* communities may dramatically change the distribution of species diversity along the whole shelf and slope (Fossa *et al.* 2002).

These examples demonstrate that deep-sea coral and sponge communities provide important ecological functions, and therefore constitute HAPC under 50 CFR §600.815(a)(8)(i). They are essential, indeed irreplaceable, components of their ecosystems, upon which thousands of fish and invertebrates depend for feeding, breeding, and protection. If these communities are disrupted or destroyed, the ecological services that they provide will vanish.

C. Deep-Sea Coral and Sponge Habitats Are Extremely Sensitive to Human-Induced Environmental Degradation

Deep-sea coral and sponge habitat are extremely sensitive to human-induced environmental degradation, satisfying the second HAPC criterion set forth at 50 CFR §600.815(a)(8)(ii).

Heavy fishing gear, like bottom trawls, directly kills corals, breaks up reef structure, or buries corals through increased sedimentation (Rogers 1999). Coral not directly destroyed can be killed by infections through wounds in coral tissue (Fossa *et al.* 2002).

Until recently, the biology and ecology of deep-sea corals has been largely unknown, primarily because the corals are found out of sight of humans and in ocean habitats where scientific research is difficult. However, as new threats from trawling emerge, scientists have begun to examine coral and sponge species and the communities they support. Because deep-sea corals are extremely slow growing and build fragile, complex structures, physical alteration of their environments can be extremely harmful and long lasting. Researchers have documented that bottom-tending mobile fishing gear can destroy deep-sea corals with a single trawl (Krieger 2001), and that the recovery of these communities may take hundreds or even thousands of years (Fossa *et al.* 2000 and see information on coral longevity/growth rates below).

A 2001 report on cold-water corals from the Advisory Committee on Ecosystems for the International Council for the Exploration of the Sea stated that the loss of structure-forming organisms caused by bottom trawling may be permanent and can lead to an overall loss of habitat diversity. This loss, in turn, can lead to the local loss of species and species assemblages dependent upon the biological structures. The report further explained that even if the features remain in a fragmented form, the viability of species populations may be compromised (ICES 2001).

The long-lived and slow-growing characteristics of cold-water coral reefs make them especially vulnerable to human-induced degradation (ICES 2001). ,Specific examples are described below.

- *Oculina varicosa* has an estimated average growth rate of about 1.6 cm a year. At this rate a 1.5 meter high colony may be nearly 100 years old. The *Oculina* reefs

off the coast of central eastern Florida, with a maximum height of 25 meters, are estimated to have a minimum age of 1,526 years (Reed 2002a).

- *Lophelia pertusa* has a growth rate of 4-25 mm a year (Rogers 1999). Off Norway, a dying *Lophelia* reef, about 10 meters thick, was estimated to be between 526 and 2,500 years old (Reed 2002a). It would take hundreds of years to build a colony 5-6.5 meters in diameter, and thousands of years to build a reef structure 10-33 meters thick. Thus, recovery of these communities to regain their ecological functions would take in the order of hundreds to thousands of years (Fossa *et al.* 2002).

- *Primnoa* spp. has a life span of more than 100 years, with a growth rate of approximately 13 mm per year in Alaska (Andrews *et al.* 2002). In 1998, using isotope dating, researchers estimated a 5 cm diameter specimen was about 500 years old (Heikoop *et al.* 1998, cited in Krieger 2001).

- *Paragorgia arborea*, found on both coasts of North America, has been estimated to grow for at least 300-500 years in New Zealand waters (Tracey *et al.* 2003).

- *Keratosis sp.*(bamboo coral), found off the Pacific coast of North America, has been estimated to reach 100-500 years old in New Zealand and Australian waters (Tracey *et al.* 2003).

- The longevity of two other reef-building deep-water corals, *Madrepora oculata* and *Enallopsammia rostrata*, ranges from 200-6000 years (New Zealand waters) and 600-5000 years (North Sea) (Tracey *et al.* 2003). *E. rostrata* is found associated with *Lophelia* reefs in United States waters (Reed 2002a), and *M. oculata* is found in deep waters in the Gulf of Mexico (Schroeder et al. in press).

Sponge communities, often associated with deep-sea corals in the North Pacific, are also extremely sensitive to human-induced degradation from bottom trawling. Sponges can suffer immediate declines through direct removal and further reductions in population densities due to delayed mortality. The damage caused to sponges on the continental shelf break may persist for extended periods of time (Freese 1999). Due to their longevity and slow growth, coral and sponge habitats are extremely sensitive to human-induced environmental degradation and therefore constitute HAPC under 50 CFR §600.815(a)(8)(ii).

D. Deep-Sea Coral and Sponge Habitats Are Stressed by Development Activities

Deep-sea coral and sponge habitats are stressed by development activities such as bottom trawling. Therefore, they satisfy the third HAPC criterion. 50 CFR §600.815(a)(8)(iii). The expansion of fishing fleets into deep-sea environments for the first time has drastically increased anthropogenic threats to deep-sea ecosystems. Deepwater trawlers

now operate to depths of 2,000 meters (Freiwald 2002), and use new technologies, more powerful engines, and gear such as rockhoppers that allow fishing in areas that were once avoided or inaccessible (Koslow *et al.* 2001). In fact it is precisely because fish species aggregate around them that deep-sea coral and sponge habitats are targeted and at risk from destructive fishing practices (Dr Jason Hall-Spencer, quoted in Clarke 2002). Fishermen know that areas with deep-sea corals are good fishing grounds (Fossa *et al.* 2002, and Breeze 1997), and set their gear for different species of fish depending upon the type of coral in the area (Lees 2002).

In fact, destructive fishing practices are the most widespread anthropogenic threat to deep-sea coral and sponge communities. Deep-sea coral and sponge habitats are increasingly imperiled as bottom-tending mobile fishing gear, such as bottom trawls and dredges, flatten these sensitive communities and move further offshore onto the continental slope and into deep-sea canyons, and onto seamounts. The National Academy of Sciences recently found that living habitats such as coral and sponge communities are among the most heavily damaged and the slowest to recover from trawling (NRC 2002).

Bottom trawling and dredging have caused severe mechanical damage to deep-sea *Lophelia* reefs in the Northeast Atlantic, hard-bottom habitats off the Southeastern United States, and deep-water seamounts off New Zealand and Tasmania (Fossa *et al.* 2002, Hall-Spencer *et al.* 2001, Reed 2002b, Koslow *et al.* 2001). In Alaskan waters, NMFS estimates that over one million pounds of deep-sea corals and sponges were removed annually during1997-99 from the seafloor by commercial fishing; more than 90 percent by bottom trawlers (NMFS 2003a).

Research in the Gulf of Alaska demonstrates that a single pass of a bottom trawl can displace boulders and remove or damage large epifaunal invertebrates (Krieger 2001). In addition, the use of bottom trawls with rollers and tickler chains can decimate fragile corals like *Oculina* (Reed 2002b).

After fishing gear is dragged through deep-sea communities, corals not crushed or buried may be harmed indirectly by the disturbance. Corals still standing may have cuts in their tissues that can lead to microbial infections (Fossa *et al.* 2002). Increased sediment loads from the pass of a bottom trawl or dredge can impede the growth of the coral, kill it by smothering, or prevent recolonization by coral larvae (Reed 2002b). All of these indirect impacts reduce coral health.

Bottom trawls are not the only fishing gear that damages deep-sea corals. Longline gear, consisting of miles of fishing line with attached lines to hooks or pots, and gillnetting gear anchored on the bottom with heavy weights, have been observed snagging, covering and damaging deep-water coral (Sulak 2003, Fossa *et al.* 2002). Anchors dropped and dragged along the seafloor can destroy coral communities, as they have done in fragile *Oculina* coral communities (Reed 2002b). Similarly, fishing traps placed on or near the

reefs risk damaging hard and soft corals, while weighted bottom longline and hook and line gear, targeting deep-water species, may entangle corals and break fragile branching species. Researchers in submersibles have witnessed fishing lines entangled over deep-water *Oculina* reefs (Reed 2002b). Fewer than 30 years after the discovery of the unique *Oculina* coral banks off the coast of Florida, fewer than 20 acres of intact reef habitat remains (Koenig 2001).

For these reasons, deep-sea coral and sponge habitats are stressed by development activities, especially bottom trawling, and therefore constitute HAPC under 50 CFR§600.815(a)(8)(iii).

E. Deep-Sea Coral and Sponge Habitats Are Rare Habitat Types

At least some deep-sea coral and sponge habitats are rare habitat types. Therefore, they satisfy the fourth HAPC criterion. 50 CFR §600.815(a)(8)(iv).

The Oculina Banks in the Atlantic off Florida are thought to be unique (Koenig 2001). Deep-water coral reefs and other potential hard-bottom communities not associated with chemosynthetic communities appear to be very rare in deep-water in the Gulf of Mexico (MMS 2000).

Complete, fine-scale maps of deep-water coral habitat in most United States waters are not yet available. However, broad-scale substrate mapping has been completed for much of the East Coast continental shelf and slope. As one of the habitat requirements of most deep-sea corals is a hard substrate, we can use these broad-scale substrate maps as proxies for the maximum likely deep-water coral coverage in the map area. Figure 11 shows the rarity of hard substrates based on broad-scale sampling off the Atlantic Coast (Poppe and Peloni, 2000, in NRC 2002). Of course, deep-water corals have many other habitat requirements (such as specific ranges in temperature, salinity, current flow), so our proxy will almost certainly overestimate the amount of coral, possibly by a very large margin.

For these reasons, at least some deep-sea coral and sponge habitats are rare habitat types, and therefore constitute HAPC under 50 CFR§600.815(a)(8)(iv).

* * *

NOAA has already recognized deep-sea coral and sponge habitat as HAPC in the North Pacific and the Oculina Banks. Other deep-sea coral and sponge habitat also meet the definition of HAPC under NOAA guidelines because they provide important ecological functions, are extremely sensitive to human-induced environmental degradation, are stressed by development activities such as destructive fishing practices, and are a rare habitat type. 50 CFR §600.815(a)(8)(i)-(iv).

VII. The Secretary Must Protect Deep-Sea Coral and Sponge Habitat Designated as EFH and HAPC

As shown above, deep-sea coral and sponge habitats are waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity, and therefore constitute EFH under 16 USC §1802(10). *See supra* pp.10-11, section IV. Deep-sea coral and sponge habitats also constitute HAPC under 50 CFR §600.815(a)(8), because they provide important ecological functions, are extremely sensitive to human-induced environmental degradation, are stressed by development activities like bottom trawling, and are (at least some of them) rare. *See supra* pp.12-18, section VI. Deep-sea coral and sponge are also "particularly vulnerable to fishing activities" within the meaning of 50 CFR §600.815(a)(2)(i). *See supra* pp.14-17, section VI.C-D. Therefore, the Secretary must take action to identify and protect deep-sea coral and sponge habitat. Moreover, because deep-sea corals and sponges are "fish" within the definition of the Magnuson-Stevens Act, they must be protected for their own sake.

A. The Magnuson-Stevens Act Requires NOAA to Identify and Protect EFH/HAPC

The Magnuson-Stevens Act requires that FMPs not only describe and identify EFH/HAPC, but also that FMPs "minimize to the extent practicable adverse effects on such habitats caused by fishing." 16 USC §1853(a)(7). FMPs must evaluate the potential adverse effects of fishing on EFH, including the cumulative effects of multiple fishing activities, giving "special attention" to adverse effects on HAPC. 50 CFR §600.815(a)(2)(i). The Councils, and the Secretary in the Councils' absence, "must act to prevent, mitigate, or minimize any adverse effects from fishing on EFH/HAPC to the extent practicable, if there is evidence that fishing activities adversely affect EFH in a manner that is more than minimal and not temporary in nature." 50 CFR §600.815(a)(2)(ii).

Numerous studies show that fishing practices are destroying deep-sea coral and sponge habitats that are hundreds or thousands of years old. *See supra* pp.14-17, section VI.C-D. Therefore, the adverse effects of fishing on coral and sponge habitats are "more than minimal and not temporary in nature" and must be prevented, mitigated, or minimized. 50 CFR §600.815(a)(2)(ii).

To address the adverse impacts on EFH, FMPs "should identify a range of potential new actions that could be taken ... and adopt any new measures that are necessary and practicable." 50 CFR §600.815(a)(2)(ii). "Adverse effects" are defined as "any impact which reduces quality and/or quantity of EFH," including "physical disruption." *Id.* §600.810(a). NOAA must assist the Councils in identifying adverse impacts to EFH/HAPC and actions to ensure the conservation and enhancement of EFH/HAPC for each FMP. *Id.* §600.815(b).

Options for managing adverse effects on EFH/HAPC include, but are not limited to, "prohibitions on fishing activities that cause significant damage to EFH," *id.* §600.815(a)(2)(iv)(A), "closing areas to all fishing or specific equipment types," and "designating zones for use as marine protected areas to limit adverse effects of fishing practices on certain vulnerable or rare areas/species/life stages, *such as those areas designated as habitat areas of particular concern*," *id.* §600.815(a)(2)(iv)(B) (emphasis added). The most effective way for NOAA to ensure that deep-sea coral and sponge EFH/HAPC are protected from destructive fishing practices is by closing such areas to bottom trawling.

Furthermore, it should be noted that the duty to minimize adverse effects on EFH does not require proof of effects on the productivity of managed species. Consideration of the productivity of commercial species should not be required when creating provisions to minimize adverse effects on EFH. This consideration is not set out in the statute or in the regulations and is counter to the published preamble to the EFH final rule (67 FR 2354) which states, "It is not appropriate to require definitive proof of a link between fishing impacts to EFH and reduced stock productivity before Councils can take action to minimize adverse fishing impacts to EFH to the extent practicable. Such a requirement would raise the threshold for action above that set by the Magnuson-Stevens Act." Requiring a link to productivity is anti-precautionary and establishes an unrealistic data requirement that would result in little to no habitat protection due mainly to the paucity of this type of data. Deep- or cold-water corals and sponges are a good example of the importance of following the original text of the regulations. Their geographic and bathymetric locations tend to make studying them particularly difficult, and so data on their importance specifically to managed fish species is still being collected.

B. The Protection of EFH/HAPC Is Practicable

NOAA must protect deep-sea coral and sponge EFH/HAPC, because measures to minimize the adverse effects of fishing on these habitats are practicable. In considering whether measures to minimize the adverse effects of fishing on essential fish habitat are "practicable," the guidelines provide that:

> Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries and the nation, consistent with national standard 7. In determining whether management measures are practicable, Councils are not required to perform a formal cost/benefit analysis. 50 CFR §600.815(a)(2)(iii).

National Standard 7 provides that "conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." 16 USC §1851(a)(7). The costs of closing deep-sea coral and sponge habitat to bottom-tending mobile fishing gear are minimal, especially in view of the long-term benefits, and the measures

requested to protect these habitats are not duplicated in other processes. In fact it is the lack of protection for these habitats that necessitates the filing of this petition.

Considering their importance to many marine species, including commercially valuable species (*see supra* pp.4-10 and 12-14, sections III and VI.B), the long term benefits likely far outweigh any short-term costs of protecting coral and sponge HAPC. These long-term benefits far outweigh Closing coral and sponge habitats that are infrequently fished to destructive fishing practices, such as bottom trawling, imposes little costs to the industry, especially in view of fishing industry claims that vessels do not frequently fish in coral and sponge habitat *(see*, e.g., Jerry Schill, Executive Director of the North Carolina Fisheries Association Inc. quoted in "Trawling blamed for loss of corals", A8 Final Edition, Washington Times, July 15, 2003, and John Gauvin, Director of the Groundfish Forum, speaking at the Symposium On Effects Of Fishing Activities On Benthic Habitats: Linking Geology, Biology, Socioeconomics And Management, Tampa, Florida, November 14, 2002 <is there a transcript avail.?).

Closing coral and sponge HAPC that are more frequently fished also has long-term benefits that outweigh short-term costs, because fisheries outside coral and sponge areas benefit from the protection of essential fish spawning, breeding, and feeding areas. Such protected areas have demonstrated spill-over effects that benefit adjacent commercial and recreational fishing (Roberts 2001, Gell and Roberts 2003).

The practicability of closing deep-sea coral and sponge habitats to bottom-tending mobile fishing gear has also been demonstrated by the recent adoption of similar measures in other jurisdictions. For example, the Norwegian Ministry of Fisheries closed an area of more than 1000 square km at Sula in 1999. Since then, the ministry has closed four other reef areas to fishing. The latest, Tisler reef on the Norway/Sweden border, was discovered in the summer of 2002, and closed in June 2003. The European Commission announced that it has also closed deep-sea coral areas on the Darwin Mounds, off the coast of Scotland, to bottom trawling gear on August 21, 2003. In addition, New Zealand has protected 19 seamounts from trawling as part of its ongoing research program.

The legislative history of the Magnuson-Stevens Act recognizes that by using "practicable," Congress established a very strong mandate, one synonymous with the mandate to avoid or minimize bycatch where "possible." *See, e.g.,* 141 Cong. Rec. H10,225 (Statement of Rep. Farr) (daily ed. Oct. 18, 1995). *See also* Black's Law Dictionary 1172 (6th ed. 1991) (defining "practicable" as "that which may be done, practiced, or accomplished; that which is performable, feasible, possible.").

Case law shows that "impracticability" is a rigorous test. As noted in the regulations, and confirmed in the courts, the term "practicable" rejects a cost-benefit standard in which mere economic cost can be the basis for rejecting an alternative. *See American Textile Mfrs. Inst., Inc. v. Donovan*, 452 United States 490, 514 (1981) (interpreting use of "practicable" synonym "feasible"). Therefore, even if the agency's analysis determines

that a habitat-protection measure is more costly in the short- and long-term, that alone is not a sufficient basis to reject a measure as impracticable. *Id.* at 514 ("Congress was fully aware that the Act would impose real and substantial costs of compliance on industry."); *United Steelworkers of America, AFL-CIO-CLC v. Marshall*, 647 F.2d 1189, 1265 (D.C. Cir. 1980) (citation omitted) (a standard is not economically infeasible because it is "financially burdensome" or even if it "threatens the survival of some companies within an industry"). *See also Friends of Boundary Waters Wilderness v. Thomas*, 53 F.3d 881, 885 (8th Cir. 1995) ("feasible" means physically possible.) *But cf. Conservation Law Foundation v. Evans*, 2004 WL 350626 at * 5 (1st Cir. 2004) ("We think by using the term "practicable" Congress intended rather to allow for the application of agency expertise and discretion in determining how best to manage fishery resources.").

Case law from other statutes confirms that the agency must make a very strong showing to conclude that a measure is impracticable. The term "practicable" is used in the Clean Water Act to require conservation measures to be taken unless the benefit is "wholly out of proportion to the costs . . . ." *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1045 n.52 (D.C. Cir. 1978); *see also Rybachek v. EPA*, 904 F.2d 1276, 1289 (9th Cir. 1990); *Association of Pacific Fisheries v. EPA.*, 615 F.2d 794, 805 (9th Cir. 1980). The Endangered Species Act requirement to take certain actions "to the maximum extent practicable," does not give the agency "unbridled discretion;" rather it "imposes a clear duty on the agency to fulfill the statutory command to the extent that it is feasible or possible." *Fund for Animals v. Babbitt*, 903 F. Supp. 96, 107 (D.D.C. 1995), *opinion amended per settlement agreement by* 967 F. Supp. 6 (D.D.C. 1997).

The plain language of the Magnuson-Stevens Act, its legislative history, NOAA's own regulations, and case law interpreting the term "practicable," all show NOAA's paramount duty to protect coral and sponge habitat by designating such areas as EFH/HAPC and closing it to bottom trawling and other destructive fishing practices.

C. Deep-Sea Coral and Sponge Habitat Must Be Protected for Its Own Sake

The Secretary is required by law to protect deep-sea coral and sponge habitat for its own sake, even if the Secretary does not act on the abundant evidence that deep-sea coral and sponge habitat is crucial for many other organisms in the marine ecosystem. Under the Magnuson-Stevens Act, the term "fish" means "all . . . forms of marine animal and plant life other than marine mammals and birds." 16 USC §1802(12). The term "fishery" means, *inter alia* "one or more stocks of fish." *Id.* §1802(13). Thus corals and sponges are fish that constitute fisheries within the meaning of the Act.

If the Secretary does not protect coral and sponge habitat through existing FMPs, the Magnuson-Stevens Act requires the Secretary and the Councils to promulgate FMPs specifically for the protection of corals and sponges. The Act directs each regional council to prepare a fishery management plan for "each fishery under its authority that

requires conservation and management." 16 USC §1852(h). "[C]onservation and management "refers to all . . .measures . . . which are required to . . . maintain . . . any fishery resource . . . and are designed to ensure that . . . irreversible or long-term adverse effects on fishery resources and the marine environment are avoided." *Id.* §1802(5). As this petition makes clear, measures are needed to maintain coral and sponge habitat and prevent irreversible adverse effects. *See supra* pp.12-18, section VI. If those measures are not promulgated in existing FMPs, the Councils are required to issue coral and sponge-specific FMPs, pursuant to §1852(h). If the Councils do not fulfill their obligation, then the Secretary must step in pursuant to his statutory authority. *Id.* §1854(c).

If coral and sponge FMPs are promulgated, the FMPs must designate coral and sponge habitat as EFH/HAPC for the corals and sponges themselves. The Magnuson-Stevens Act requires the Secretary to protect structure-forming habitat essential for all fish, and it could not be more clear that corals and sponges create their own substrate which is "necessary ... for spawning, breeding, feeding or growth to maturity." *Id.* § 1802(10) *(See supra* pp.10, sections IV and V).

In sum, there is abundant evidence for the Secretary to protect coral and sponge habitats as EFH and HAPC for many other species. Furthermore, there is an even more direct argument for protecting these habitat-forming organisms, because they form their own EFH/HAPC. Therefore, the Magnuson-Stevens Act requires the Councils and the Secretary to promulgate coral and sponge FMPs to protect coral and sponge habitats if these habitats are not protected in other FMPs.

VIII. Actions Requested

The Secretary of Commerce, acting through NOAA, is authorized to act in emergencies to prevent serious damage to fishery resources or habitat. 16 USC § 1855(c)(1), and 62 Fed. Reg. 44421 (August 21, 1997). Deep-sea coral and sponge EFH/HAPC is in imminent peril from bottom trawling and other destructive fishing practices. Therefore the Secretary must act immediately under his emergency authority to designate and protect deep-sea coral and sponge habitat from bottom trawling. The Secretary is also authorized to permanently protect deep-sea coral and sponge EFH/HAPC if the Councils fail to adopt permanent protections. 16 USC §1854(c)(1)(A)-(C). Since the Councils are failing to take actions to protect these sensitive and vital habitats, the Secretary must also prepare FMP and FMP amendments to identify and protect deep-sea coral and sponge habitat as EFH/HAPC where the Councils have failed to adopt permanent protections.

Emergency regulations can only remain in effect for two-180 day periods, 16 USC §1855(c)(3)(B). Therefore, the Secretary should allow regional councils to initiate rulemakings to permanently protect deep-sea coral and sponge habitats. To provide sufficient notice and comment to adopt FMPs or amendments to protect EFH/HAPC permanently, before the expiration of the emergency rule, the Secretary must give the

Councils the opportunity to submit FMP amendments within 9 months of the promulgation of the emergency rule. *See* 16 USC §1854(c)(1)(A). If the Councils fail to act within 9 months of the promulgation of the emergency rule, the Secretary must immediately issue his own proposed amendment to protect coral and sponge habitat, so that there is no lapse in protection that could allow these special areas to be devastated by destructive fishing activities. *See* 16 USC §1854(c)(4) and (7).

A. The Secretary Must Use His Emergency Authority to Designate and Protect Deep- Sea Coral and Sponge Habitat as EFH and HAPC

There is an urgent need for the Secretary of Commerce to act immediately to designate and protect deep-sea coral and sponge habitat as EFH and HAPC pursuant to his emergency authority under 16 USC § 1855(c)(1), and 62 Fed. Reg. 44421 (August 21, 1997). The Magnuson-Stevens Act authorizes the Secretary to act in emergencies "without regard to whether a fishery management plan exists for such fishery." *Id.* Normal rulemaking procedures would leave these recently-discovered, vital, and vulnerable resources at-risk indefinitely. Therefore the Secretary must immediately use his emergency powers to protect these resources while they still exist.

NOAA guidelines define emergencies as situations that: (1) result from recent, unforeseen events or recently discovered circumstances; (2) present serious conservation or management issues; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberate consideration of the impacts on participants. 62 Fed. Reg. 44422 (August 21, 1997). Emergency actions are justified if the time it takes to complete notice-and-comment would result in substantial damage or loss to a living marine resource, habitat or fishery, and the emergency action is needed to prevent "serious damage to the fishery resource or habitat." *Id.* The emergency protection of coral and sponge habitat from bottom trawling and other destructive fishing practices is warranted under the Magnuson-Stevens Act and each of the criteria set forth at 62 Fed. Reg. 44421 (August 21, 1997).

1. The Secretary May Adopt Emergency Rules to Address "recent, unforeseen events or recently discovered circumstances." Criteria 1 under 62 Fed. Reg. 44422 (August 21, 1997).

Scientists have only recently discovered the existence of many deep-sea coral and sponge habitats, and the continued damage to these habitats from fishing gear has also only recently been discovered. Thus, the Councils were largely unaware of the existence of these important habitats when developing FMPs. Recent and unfolding discoveries of deep-sea coral and sponge communities and the advent of new technologies that threaten the destruction of these communities, has created an emergency that requires immediate action by the Secretary *(see*, e.g., Goad 2002, Heifetz 2002, NOAA 2002a, 2002b, 2002c, NOAA 2003 Ocean Explorations in New England, Alaska, and the Gulf of Mexico, Sulak 2003).

With new technology, larger boats, and roller and rockhopper gear, fishermen have dramatically expanded the amount and types of habitats bottom trawled (Freiwald 2002, Koslow *et al.* 2001). Over the past decade, bottom trawling has directly affected about 600,000 square km of seafloor habitat off the United States (NRC 2002), an area larger than the state of California. Action is urgently needed to prevent these proliferating activities from destroying extremely valuable and long-lived coral and sponge communities.

NOAA is currently preparing five regional EFH EISs required by the Court's ruling in *American Oceans Campaign v. Daley*, 183 F. Supp. 2d 1 (2000), and pursuant to schedules laid out in a series of Joint Stipulations developed by the parties to the litigation and entered by the court. Oceana and the other plaintiffs are participating actively in those public processes. These processes have already advanced to the draft EIS stage without having had the opportunity to take into account the new data on deep-sea corals and sponges. Most of these processes have timetables that would not easily allow the EISs and resulting rules to take into account this newly-understood need to protect these special deep-sea habitats. Moreover, rules adopted to protect deep-sea coral and sponge EFH/HAPC, if they come out at all, are unlikely to take effect sooner than 2005-2006 (see, e.g., HAPC designations for the NPFMC EFH EIS not due earlier than 2006, 68 Fed. Reg. 50120, August 20, 2003). It is imperative, therefore, that the Secretary act immediately under his emergency authority to protect known coral and sponge habitat from destructive fishing practices before these special biological communities are irreparably harmed. As noted in the *AOC v. Daley* ruling, the Councils, and the Secretary in the absence of Council action, "must adopt practical mitigating measures if there is evidence that a fishing practice is having an identifiable adverse effect on EFH." *Id.* at 13. Fishing practices *are* having identifiable adverse impacts on coral and sponge habitat. *See supra* pp.14-17, section VI.C-D. Therefore, the Secretary must protect these sensitive habitats immediately to address "recent, unforeseen events or recently discovered circumstances." 62 Fed. Reg. 44422 (August 21, 1997).

2. The Secretary May Adopt Emergency Rules to Address "serious conservation or management problems" in a Number of Fisheries.

The impact to deep-sea coral and sponge habitat from bottom trawling is a serious conservation and management problem. NOAA estimates that in Alaska alone, over one million pounds of corals and sponges were removed from the seafloor each year between 1997 and 1999, roughly 90 percent by bottom trawlers (NMFS 2003a). This estimate does not even include the damage caused by trawl doors, rockhoppers, and other gear that damage and crush corals and sponges but do not pull them to the surface to be counted by observers. These slow-growing species can take decades or centuries to recover from damage, if they recover at all, eliminating essential habitat for many fish species and reducing biodiversity in critical ocean areas.

The destruction of deep-sea coral and sponge habitat substantially harms fish and ocean resources. Studies show the dependence of fish on *Oculina* and *Lophelia* reefs in the waters off the Southeast United States and the Gulf of Mexico, the dependence of myriad other species on North Pacific coral and sponge communities, the important ecological functions provided by deep-sea coral and sponge habitat, and the serious conservation and management problems posed by destructive fishing practices. *See supra* pp.10-18, sections IV and VI. Therefore the Secretary must use his emergency rulemaking authority to address this "serious conservation or management problem." 62 Fed. Reg. 44422 (August 21, 1997).

3. The Benefits for Addressing Impacts Through Emergency Rules Outweigh the Value of Advance Notice, Public Comment and the Deliberative Consideration of the Impacts on Participants Through Normal Rulemaking.

The threat to coral and sponge habitat is immediate and urgent: just one pass by a bottom trawl can create devastating damage to these sensitive and long-lived species. NOAA guidelines provide that emergency actions may be taken, "where substantial harm to or disruption of the resource, fishery or community would be caused in the time it would take to follow standard rulemaking procedures." 62 Fed. Reg. 44421 (August 21, 1997). The possible consequences of the destruction of these habitats to fisheries and the ocean ecosystem (also, *see supra* pp.10-11, sections IV and V) are so severe that the Secretary must act immediately to protect known coral and sponge habitats through an emergency rule. A full notice-and-comment period can take years, during which time irreplaceable coral and sponge habitat can be irrevocably altered and destroyed. Full rulemaking procedures can be conducted after emergency rules are in place to protect the resource, but it will do little good to have a full notice-and-comment rulemaking to protect habitats that have already been destroyed. Therefore, the benefits of taking immediate action through emergency regulations far outweigh the damage to these sensitive habitats that would occur through a full notice and comment rulemaking process.

Therefore, the Secretary should use his emergency authority to protect known deep-sea coral and sponge habitat from bottom trawling under 62 Fed. Reg. 44421 (August 21, 1997). He may do so without regard to whether the Councils have prepared an FMP. 16 USC§1855(c)(1). The existence of and damage to many of these habitats have been only recently discovered, and action by the Secretary is urgently needed to prevent destructive fishing practices from destroying these important habitats. The destruction of deep-sea coral and sponge habitat is a "serious conservation or management problem," and the benefits for addressing these impacts through emergency regulations far outweigh the value of delaying action through a deliberative rulemaking process. *Id.*

B. The Secretary Should Prepare FMPs and FMP Amendments to Identify and Protect Deep-Sea Coral and Sponge Habitat as EFH/HAPC if Councils Fail to Adopt Permanent Protections

The Secretary must, if necessary, prepare FMPs and FMP amendments to permanently protect deep-sea coral and sponge habitat if the Councils fail to adopt permanent protections. The Secretary, through NOAA, is authorized to prepare an FMP or amendment if: (1) the Council fails to develop and submit to the Secretary within a reasonable period of time a FMP or amendment if a fishery requires conservation and management; (2) the Secretary disapproves or partially disapproves a plan or amendment; or (3) the Secretary has the authority to prepare a plan or amendment under the Magnuson-Stevens Act. 16 USC §1854(c)(1)(A)-(C). If the Secretary prepares a plan or amendment under these provisions, he must prepare regulations to implement the plan or amendment, consult with other federal agencies, conduct public hearings, provide for public notice and comment, and submit the plan or amendment to the appropriate Council for consideration and comment. 16 USC §1854(c)(1-7).

The Secretary should notify the Councils that they have an immediate duty to commence rulemakings to make the protections in the Secretarial emergency rule permanent. In order to avoid a lapse in protection that might allow destructive fishing practices to irreparably harm coral and sponge habitat, the Secretary should coordinate his activities and the activities of the Councils so that Council FMP amendments will become effective at the expiration of the emergency rule period. In addition, if the Councils fail to timely submit FMP amendments, to ensure there is no lapse in protection, the Secretary must be prepared to immediately issue his own permanent rule to ensure continuing protection.

IX. Conclusion and Specific Actions Requested

The Secretary must designate and protect deep-sea coral and sponge EFH/HAPC under his authority to act in emergency situations, and/or where the Councils have failed to conserve and manage a fishery. Emergency action by the secretary is warranted here because the importance of coral and sponge habitats to fisheries and marine ecosystems, and the relatively recent discovery of these habitats and threats to their existence by bottom-tending mobile fishing gear, constitute a serious conservation and management problem as provided under 16 USC §1855(c)(1), and 62 Fed. Reg. 44421 (August 21, 1997).

The Secretary is also authorized to notify the Councils to immediately commence preparing a FMP or amendment to make permanent the protection of known coral and sponge habitat, and to identify and protect such habitat as necessary for the conservation and management of fisheries under 16 USC §1854(c)(1). Moreover, because coral and sponge are fish, the Magnuson-Stevens Act also requires regional councils and the Secretary to promulgate coral and sponge FMPs to protect coral and sponge habitat if these habitats are not protected in other FMPs.

A. Summary of Specific Actions Requested

For the reasons noted above, we request the Secretary to act immediately to protect deep-sea coral and sponge habitats by undertaking the following actions:

1. Identify, map, and list all known areas containing high concentrations of deep-sea coral and sponge habitat;
2. Designate all known areas containing high concentrations of deep-sea coral and sponge habitat both as EFH and HAPC, and close HAPC to bottom trawling;
3. Identify all areas not fished within the past three years with bottom-tending mobile fishing gear, and close such areas to bottom trawling;
4. Monitor bycatch to identify areas of deep-sea coral and sponge habitat that are being currently fished, establish appropriate limits or caps on bycatch of deep-sea coral and sponge habitat, and immediately close to bottom trawling areas where these limits or caps are reached until such time as the areas can be mapped, identified as EFH and HAPC, and permanently protected;
5. Establish a program to identify new areas containing high concentrations of deep-sea coral and sponge habitat through bycatch monitoring, surveys, and other methods, designate these newly discovered areas as EFH and HAPC, and close them to bottom trawling;
6. Enhance monitoring infrastructure, including observer coverage, vessel monitoring systems, and electronic logbooks for vessels fishing in areas where they might encounter high concentrations of deep-sea coral and sponge habitat (including encountering HAPC);
7. Increase enforcement and penalties to prevent deliberate destruction of deep-sea coral and sponge habitat and illegal fishing in already closed areas; and
8. Fund and initiate research to identify, protect, and restore damaged deep-sea coral and sponge habitat.

B. Explanation and Description of Actions Requested

1. The Secretary should immediately map and list all known areas containing high concentrations of deep-sea coral and sponge habitat. Many areas known to contain high concentrations of coral and sponge are not being protected because they have not been adequately identified and mapped. The Secretary must act quickly before these areas are destroyed.

2. Once known areas with high concentrations of coral and sponge have been identified and mapped, the Secretary should designate such areas as both EFH and HAPC pursuant to NOAA guidelines, and these HAPC should be closed to bottom trawling. These areas, at a minimum, should include areas reported in the literature cited herein and depicted on maps attached to this petition.

3. The Secretary should identify and close all areas to bottom trawling that have not been bottom trawled within the past three years. Many undisturbed areas

of the United States' EEZ contain pristine coral and sponge habitat precisely because they have not been bottom trawled. Although the Secretary may not know the location of many of these pristine areas, he does have information on where bottom trawling activities are occurring. The Secretary should use this information to identify where no trawling has occurred for at least three years, and close such areas to bottom trawling until they can be mapped, identified, and protected. This closure is a prudent and precautionary measure to ensure that pristine areas are not destroyed by new bottom trawling activities. Moreover, because these are areas that have not been bottom trawled for at least three years, a moratorium on bottom trawling in these areas will cause little if any economic harm.

4. In areas where surveys and reports have not been conducted, and bottom trawling is damaging deep-sea coral and sponge habitat, bycatch should be monitored to determine whether fishing operations are taking coral and sponge. The Secretary should establish appropriate limits or caps on deep-sea coral and sponge bycatch, and immediately close to bottom trawling areas where these limits or caps are exceeded, until such time as these areas can be properly mapped, identified, and permanently protected.

5. Through bycatch monitoring, surveys, and other programs, the Secretary should identify new areas containing high concentrations of deep-sea coral and sponge habitat. The Secretary must designate these areas as EFH/HAPC, and close them to bottom trawling immediately before they can be destroyed.

6. In order to facilitate identification and protection of deep-sea coral and sponge habitat, and to provide assistance to fishing vessels, the Secretary should enhance NOAA's monitoring infrastructure, including improved observer coverage, vessel monitoring systems, and electronic logbooks. Observers on bottom trawling vessels must be increased to levels approaching 100% to monitor bycatch to implement caps and gather data on the identification and location of coral and sponge habitat.

7. It does little good to designate and protect coral and sponge habitat as EFH/HAPC if areas closed to bottom trawling are inadequately enforced or if penalties are inadequate to prevent fishing in these sensitive areas. Therefore, enforcement and penalties must be reassessed to determine if they are adequate to prevent illegal fishing in already closed areas.

8. The Secretary must fund and initiate research to identify, protect and restore damaged deep-sea coral and sponge habitat. Recent studies have been helpful in identifying new areas of coral and sponge habitat. However, more research is urgently needed to discover new areas, and assess the extent, condition and importance of these new areas to fish, fisheries and marine ecosystems.

Thank you for the consideration of this petition.

Sincerely,

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Vice President, North American Oceans

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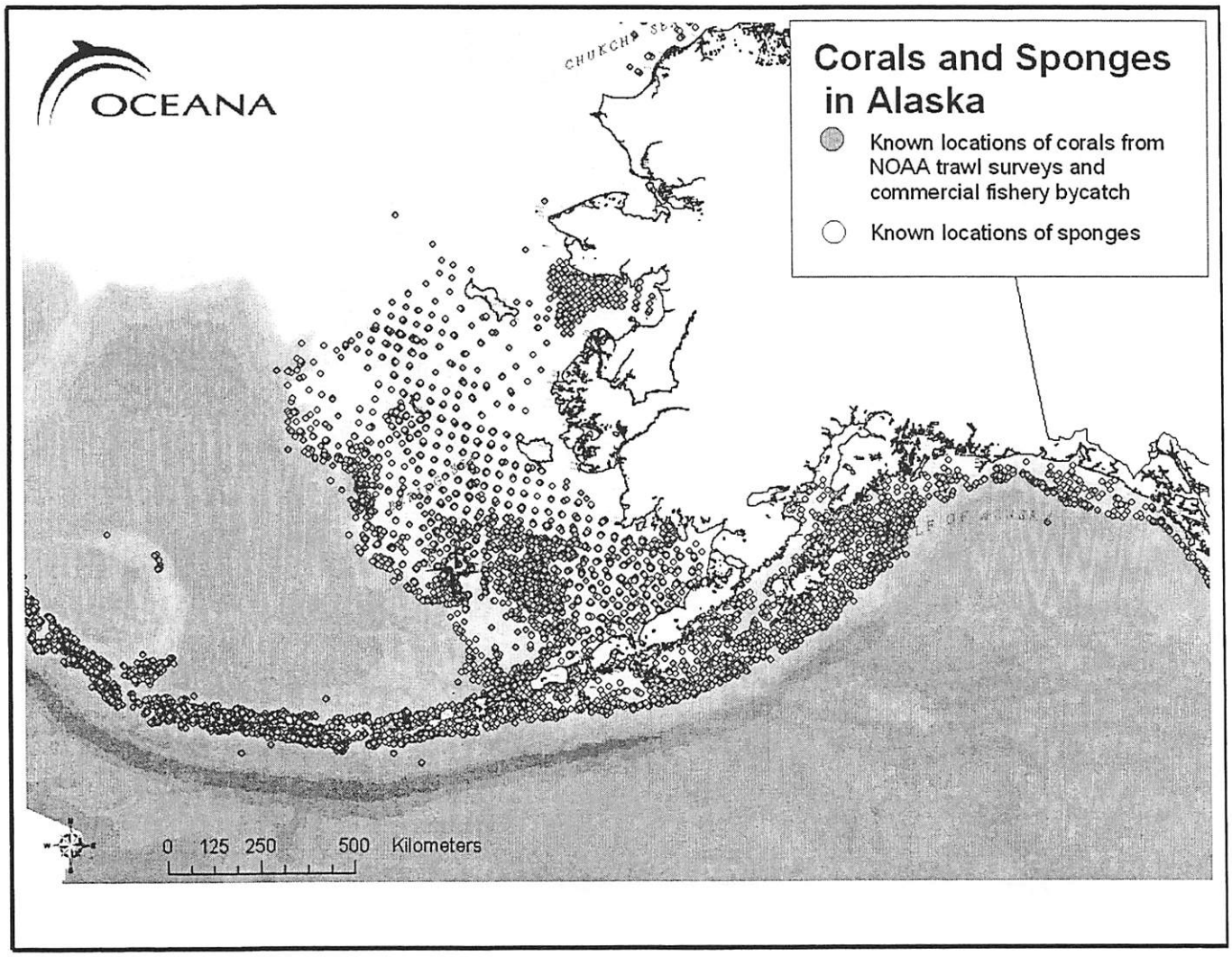
FIGURES

Figure 1: Locations of reported coral and sponge bycatch by bottom fishing on federally observed groundfish vessels and NOAA trawl surveys in Alaskan waters.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA B-1(h)
APRIL 2004

March 22, 2004

Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W 4th Ste 306
Anchorage, AK 99501-2252

Dear Ms. Madsen:

The National Marine Fisheries Service (NMFS) has committed to developing an Environmental Impact Statement (EIS) for the subsistence harvest management of fur seals on the Pribilof Islands. NMFS also committed to providing a draft copy of the EIS for Council review. At this time we are providing the Council with an update on the status of the EIS.

The need for an EIS is related to the regulatory requirement to reauthorize the fur seal harvest on a three year cycle, specifically for the 2003-2005 harvest. During scoping for the EIS we received comments from the people of the Pribilofs that they would like to have an alternative analyzed that would shift the harvest management from a regulatory framework to a co-management framework. In our correspondence with the Council's Fur Seal Committee we indicated that we would produce a draft EIS that examined this option.

It has since become apparent that we would not be able to produce an EIS with such a scope to coincide with the 2004 harvest. As such, we have decided to take a two-tiered approach in our EIS analysis. We will produce two EISs for the fur seal harvest management: 1) an EIS that simply analyzes reauthorization of the harvest under the current regulatory framework, and 2) another EIS that examines the new alternative of shifting the harvest to a co-management framework. The two documents will contain largely similar analyses; however the addition of the co-management alternative will require some time to investigate the procedures for suspending regulations and shifting the harvest framework to co-management. Both of these documents will be consistent with the outline of information indicated in our previous discussions with the Council's Fur Seal Committee. The change in approach is mainly one of procedure, timed to meet the needs of the fur seal harvest in 2004.

NMFS is currently undertaking regional review of the first EIS and will provide a draft to the Council, through its Fur Seal Committee, for review shortly after the Council's April meeting, and prior to the draft being submitted for publication and public comment. The second EIS is on schedule for completion prior to next year's harvest in June 2005. NMFS will also provide a draft of the second EIS for your review once it also has cleared Regional review. NMFS has discussed this revised approach with the Tribal Government of St Paul and received concurrence on this revision.

Thank you for your continued interest in fur seal management.

Sincerely,

Ronald J. Berg for

James W. Balsiger
Administrator, Alaska Region

April 2004

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mar	29 SSC/AP	30 SSC/AP Council/BOF – 1pm	31 SSC/AP/Council	1 AP/Council	2 AP/Council	3 Council
4 Council	5 Council	6 Council	7	8	9	10
11 Easter	12 Annual Chairmen's/ ED mtg (thru 4/16)	13 NEPA Project Leader Training, Seattle (thru 4/15)	14	15	16	17
18	19	20	21	22	23	24
25	26 SSLMC – AFSC, Seattle (thru 4/27)	27 ICC mtg with Russians, DC (thru 4/29)	28	29	30	

May 2004

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2 4th World Fisheries Conference, Vancouver BC (thru 5/6)	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18 7th N. Pac. Rim Fisheries Conf., Busan, Korea (thru 5/20)	19 5th Annual Congress of Arctic Social Studies, Fairbanks (thru 5/23)	20	21	22
23	24	25	26	27	28	29
30	31 *Holiday*					

June 2004

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2 Arctic Research Commission, Fairbanks (thru 6/5)	3	4	5
6	7 SSC/AP Benson Hotel Portland OR	8 SSC/AP	9 SSC/AP	10 AP/Council	11 AP/Council PWSSC, Cordova (thru 6/12)	12 AP/Council
13 Council	14 Council	15 Council	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

July 2004

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5 *Holiday*	6 NEPA Project Leader Training, Kansas City (thru 7/8)	7	8	9	10
11	12	13	14	15	16	17
18	19	20 NPRB Science Panel mtg, Seattle (thru 7/21)	21	22	23	24
25	26 NPRB Advisory Panel mtg, Anch. (thru 7/27)	27	28	29 NPRB mtg, Juneau (thru 7/30)	30	31

Public Testimony Sign-Up Sheet

and

Other Handouts Received

PUBLIC TESTIMONY SIGN-UP SHEET FOR AGENDA ITEM B-Reports

	NAME (PLEASE PRINT)	AFFILIATION
1	Paul MacGregor	At-Sea Processors Assn. – "3rd wave view"
2	ED LUTTRELL	G.F.F.
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person " to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

handout from Bill W. during B-1

Discussion Paper on Seabird Interactions with Trawl Vessel Gear

Prepared by

Bill Wilson[1]
Kim Rivera[2]
Shannon Fitzgerald[3]
Craig Rose[3]

North Pacific Fishery Management Council
Protected Resources Report No. 2

March 2004

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[2] NOAA Fisheries, Alaska Region, P.O. Box 21668, Juneau, AK 99802
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North Pacific Fishery Management Council

Protected Resources Report No. 2
March 2004

Discussion Paper on Seabird Interactions with Trawl Vessel Gear

Prepared by Bill Wilson (NPFMC), Kim Rivera (NOAA Fisheries, Alaska Region), Shannon Fitzgerald (NOAA Fisheries, Alaska Fisheries Science Center), and Craig Rose (NOAA Fisheries, Alaska Fisheries Science Center)

Background

At its April 2003 meeting, the North Pacific Fishery Management Council (Council) received a report from the U.S. Fish & Wildlife Service (USFWS) about an impending incidental take statement for short-tailed albatross (*Phoebastria albatrus*) in the trawl groundfish fisheries in the Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI). The USFWS and NOAA Fisheries are concerned about the potential incidental take of short-tailed albatross in Alaskan trawl fisheries, particularly those that utilize "third wire" gear for monitoring trawl performance.

"Third wires" are attached to electronic monitoring equipment usually attached to the trawl at the center of the headrope. These wires or cables extend behind the vessel, entering the water some distance astern. That distance depends on factors such as vessel size, towing speed, and depth of net. Other technologies exist that deploy an acoustic receiver on wires astern or alongside the vessel, which are referred to as paravane or netsonde cables. These receive an acoustic signal from the trawl rather than one carried over a wire. Towed acoustic receivers can be replaced by hull mounted receivers. Note, a net monitor cable in Alaskan fisheries can refer to both the "third wire" devices and the acoustic devices. In the several Southern Hemisphere trawl fisheries referenced in this paper, the term net monitor cable typically refers only to "third wire" devices from netsonde gear.

Observations from multiple fisheries suggest that seabirds have difficulty seeing the cable and thus collide with it in the air and on the water. Birds on the wing can hit the cable while in flight, resulting in injury or mortality. Birds on the surface immediately astern may be pinched between the cable and the surface as the cable moves forward with the vessel and rises and falls with swell and wake. As seabirds hit the cable they extend their wings, a very fragile appendage, and the force of the water and the cable wraps the wing around the cable. Unable to retract their wings, they are forced underwater and drown. At times both interactions occur - birds fly into the cable, fall to the surface and become pinched between the cable and the water. Seabird interactions with trawl gear are not limited to the net monitor cable (Weimerskirch et al. 2000, Sullivan and Reid 2002, Wienecke and Robertson 2002, Hooper et al. 2003, Sullivan et al. 2003, Sullivan and Reid 2003, and Sullivan et al. 2004). These same interactions are reported to occur with

trawl warps in other fisheries, and both are exacerbated by continuous discharge of offal. Seabirds can also become entangled in the net as birds attempt to feed from fish in or falling from the trawl itself.

Fishery observers in Alaska trawl fisheries have reported mortalities of northern fulmars (*Fulmarus glacialis*), shearwaters (*Puffinus* spp.), and Laysan albatrosses (*P. immutabilis*) associated with the net monitor cables. While short-tailed albatross interactions with trawl gear have not been observed, they are at risk because their distribution overlaps with trawl fishing effort, they have been observed feeding on offal around trawl vessels, and mortalities of a similar species, the Laysan albatross, have been documented. Since the short-tailed albatross is listed as endangered under the Endangered Species Act (ESA), NOAA Fisheries is required to engage in ESA section 7 consultations with the USFWS for those fishery actions which may affect the listed species.

On September 18, 2003, the USFWS issued two biological opinions (USFWS 2003a, 2003b) on the effects of Alaska groundfish fishing on certain seabird species listed under the ESA. One of the biological opinions is a programmatic opinion on the fishery management plans (FMPs) for the GOA and BSAI groundfish fisheries (USFWS 2003a). The other is a more specific opinion on the total allowable catch (TAC)-setting process for the GOA and BSAI groundfish fisheries (USFWS 2003b). These opinions conclude that the BSAI and GOA groundfish fisheries are not likely to jeopardize the continued existence of the short-tailed albatross or Steller's eider, and are not likely to result in adverse modification of critical habitat for Steller's eiders (critical habitat for short-tailed albatross has not been defined). The TAC biological opinion includes an incidental take statement that establishes a limit of four short-tailed albatrosses every two years in the hook-and-line groundfish fisheries off Alaska, and two short-tailed albatrosses in the trawl groundfish fisheries off Alaska over the time period in which the biological opinion is in effect (this is estimated to be about five years). Associated with this incidental take statement is a non-discretionary term and condition: *The NMFS shall continue to work on developing a safe and reliable means of assessing short-tailed albatross interaction/collision with trawl vessel gear, to: (1) document whether take occurs, and if so, (2) estimate the rate of such take. A report of the interactions between short-tailed albatross and trawl gear shall be submitted to the Service by December 31, 2006.* A description of the net monitor cable used in Alaska fisheries from the USFWS Programmatic Biological Opinion (USFWS 2003a) can be found in Appendix 1.

During the April 2003 Council presentation, reference was made to seabird mortalities from net monitor cables in fisheries outside of Alaska. It was reported that a ban exists on the use of net monitor cables in several Southern Hemisphere trawl fisheries [New Zealand's domestic trawl fisheries, Australia's Heard Island and Macquarie Island trawl fisheries, and trawl fisheries managed by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)]. Some Council members expressed interest in this issue and in particular the scientific background that led to the ban. This paper provides a brief overview of the ban of the net monitor cable in these fisheries and

concludes with a brief reference to work underway in Alaskan fisheries to address the issue of seabird interactions with trawl vessel gear.

Introduction

CCAMLR was established in 1982 as part of the multi-nation Antarctic Treaty system and the approval of the Convention on the Conservation of Antarctic Marine Living Resources. The goal of the Convention is to conserve marine life of the Southern Ocean, but also to allow for rational harvesting of fish and other marine organisms. The Commission manages marine resources within the geographic boundary of the CCAMLR Convention Area (Figure 1) (including whales and seals, which are also covered by other conventions); the Commission is composed of government representatives advised by fishermen, conservationists, scientists, and other users of marine resources in the area.

Several trawl and longline fisheries operate in the CCAMLR area, and thus quotas, seasons, and gear restrictions have been implemented or modified annually by the Commission to manage these fisheries. Since 1991, the Commission has prescribed various seabird avoidance measures for the longline fisheries, some of which served as a model for seabird avoidance measures employed by U.S. vessels in the Alaskan EEZ. The Commission received reports of mortalities of seabirds in various trawl fisheries near the CCAMLR area [squid trawl fishery around the Auckland Island shelf off New Zealand and the icefish trawl fishery on the Kerguelen Shelf (Kerguelen Island, French Territory)]. Much of the concern was for seabird collisions with net monitor cables deployed on some trawlers. This led to a ban on the use of net monitor cables in the trawl fisheries in the CCAMLR area commencing with the 1994-1995 fishing year.

CCAMLR Information on Seabird Interactions with Net Monitor Cables

The Commission meets annually to adopt new measures for the fisheries operating in the CCAMLR Convention Area. In 1991, during its tenth annual meeting in Hobart, Australia, CCAMLR received reports from its Scientific Committee about seabird mortality due to encounters with net monitor cables in trawl fisheries. The Scientific Committee cited three papers (SC-CAMLR-X/BG/4, SC-CAMLR-X/BG/14, and SC-CAMLR-X/BG/18) that provided data on this issue (two are reviewed below, and a third did not address net monitoring gear at all). Little information is available from the fisheries operating in the CCAMLR area on the extent to which seabirds encounter and strike net monitor cables. Note, 'net monitor cable' as used in the CCAMLR reports likely refers to a third wire device from the vessel stern to the trawl. This term does not reference devices using acoustic technology.

Representatives of the French Delegation reported to the Commission on incidental mortalities of seabirds and marine mammals in the fisheries around Kerguelen Island (Duhamel 1991). This report (SC-CCAMLR-X/BG/14) included estimates of mortality to albatrosses and petrels from trawl net monitor cables used in the mackerel icefish fisheries. The report provides some anecdotal comments on seabird mortalities that occurred prior to 1984, stating that the mortality rate was about 2 to 3 individuals per

trawl haul. The mortalities were from collisions of birds with the cable, mainly by black-browed albatrosses and white-chinned, giant, and grey-headed petrels. Duhamel (1991) noted that seabirds following the trawl vessels were unlikely to see the net monitor cable because of its size (6-8 mm), and thus collided with the wire during their feeding activities associated with the trawl fishing activities. Birds with larger wingspans were more susceptible to injury. The report acknowledged that data are not precise because crews are usually occupied with other activities and are "...not disposed to gather this type of data." Duhamel (1991) expressed concern that the mortality to black-browed albatrosses and giant petrels from net monitor cables in the mackerel icefish fishery could be high enough to have a population level effect on these species. The report suggested that prohibition of the use of net monitor cables could positively affect the populations of these seabird species.

The Delegation of New Zealand reported on the incidental mortality to seabirds from the New Zealand subantarctic arrow squid trawl fishery (Bartle 1991a). Soviet vessels under contract to New Zealand conducted this fishery. Eleven observers were deployed on four vessels over 338 days of fishing and 897 trawl hauls in 1989 and 1990. The report (SC-CCAMLR-X/BG/4) noted a concern over the very high mortality (82-93%) of albatrosses that collided and entangled in net monitor cables. The species most affected was the white-capped albatross; 177 of 214 white-capped albatross mortalities were from encounters of birds with these cables. These data also were presented in a scientific paper (Bartle 1991b).

Bartle (1991a) summarized observer reports on how seabirds encountered the net monitor cables. The wire was grey in color and about 7 mm in diameter, making it difficult to see. The wire extended from the top of the gantry to 20 m behind the vessel where it entered the water. As the wire whipped up and down behind the trawl vessel pitching in the swell, albatrosses targeting offal or fish discards in the wake of the vessel were struck by the cable. While some birds were not harmed, others were killed or injured. Dead birds were occasionally retrieved in the trawl net or were wrapped on the wire and accumulated where it attaches to the headline monitor.

Bartle (1991a) speculated that this level of mortality could adversely affect the breeding population of New Zealand white-capped albatross, perhaps driving this species to extinction within 32 years at the mortality rate documented at the time. This report recommended several management options including required reconfiguration of the cable so that it does not extend above the sea surface behind the vessel, or requiring these vessels to fish without net monitor cables (using through-hull transducers instead). Based on this report, New Zealand's Ministry of Fisheries subsequently prohibited the use of netsonde cables in its trawl fisheries in 1992 (N. Smith, pers. comm.).

This information also formed the basis for a net monitor cable prohibition enacted with the opening of the Australian subantarctic trawl fishery around the Heard and MacQuarie Islands in 1996 (S. Kalish, pers. comm.).

CCAMLR Ban on Net Monitor Cables

Although the observations described for the New Zealand squid trawl fishery and the French Kerguelen Shelf fishery were outside of CCAMLR jurisdiction, the Scientific Committee noted that net monitor cables were used in the CCAMLR fisheries on krill, icefish (*Champsocephalus gunnari*), and lanternfish (*Electrona carlsbergi*). Therefore, it was reasonable to conclude that similar seabird mortality was occurring in these fisheries. Further, the Scientific Committee noted that new technology was available at that time which allowed the netsounders to operate by an acoustic link to the vessel, an alternative to the net monitor cables. Further, French researchers reported that once the net monitor cables were removed from nets, mortality of seabirds ended. Based on this cumulative information, the Scientific Committee recommended that the Commission phase out the use of net monitor cables as rapidly as possible (SC-CAMLR 1991a, SC-CAMLR 1991b).

Based on the recommendations of its Scientific Committee, the Commission prohibited the use of net monitor cables in trawl fisheries commencing with the 1994-1995 season (CCAMLR Conservation Measure 30/X) (CCAMLR-X 1991). The Commission required that net monitor cables still in use in the interim (1991 to 1994) would be deployed so as to reduce incidental seabird mortality, and required trawl fisheries to report annually on progress achieved toward phasing out this gear. During this interim period, the Commission recommended to the fishing industry that the net monitor cable be deployed by routing the cable from the aft gantry through a weighted snap block lowered from the stern ramp so the cable would be paid out directly underwater. These vessels were apparently using netsonde-type monitoring devices that sent a signal to the vessel over a third wire. These vessels were able to reconfigure and use acoustic transmission instead, and employ through-hull transducers rather than a towed receiver.

At its annual meeting in 1999, the Commission discussed other operational aspects of trawl fisheries that cause seabird mortalities including waste disposal and deck lighting. During this meeting, the Commission adopted Conservation Measure 173/XVIII which subsumed the Commission's earlier Conservation Measure 30/X. This new Conservation Measure included a continued prohibition of the use of net monitor cables in trawl fishing operations, and added measures prohibiting offal disposal (during gear deployment and hauling) and plastic packaging bands, and minimizing outwardly-directed deck lighting.

Also during its 1999 meeting, the Commission received two reports (WG-FSA-99/26 and 99/72) that discussed seabird interactions with trawl gear. One report (Weimerskirch et al. 1999) documented the mortality of albatrosses and other seabirds (species not specified) from encounters with a net monitor cable on a Ukrainian trawler fishing for Patagonian toothfish and mackerel icefish in the Kerguelin area of the Southern Ocean, an area not covered by the CCAMLR net monitor cable ban. The other report (Robertson and Wienecke 1999) discussed seabird encounters with trawl warp cables.

Summary

Based on observer reports of mortality of seabirds encountering net monitor cables used in some of the trawl fisheries operating near the CCAMLR area, in 1991 the Commission required a ban on the use of net monitor cables in trawl fisheries in the CCAMLR Area. The ban went into effect for the 1994-1995 fishing season in the CCAMLR area. In 1999, this regulation was incorporated into a more broad set of marine resources conservation measures that included the continuation of the ban of net monitor cables. The U.S. concurred with the Commission's recommendations, and a net monitor cable ban is now part of U.S. regulations that affect vessels of, and persons subject to, the jurisdiction of the U.S. for fishing activities in CCAMLR statistical reporting areas 48 and 58 (50 CFR 380.27(b)).

Prohibiting the use of net monitor cables represents one approach to reducing seabird mortalities caused by interactions with trawl vessel gear. In the last several years, research in New Zealand and the Falkland Islands/Malvinas Islands (Sullivan et al 2004) has been undertaken to develop trawl mitigation devices to reduce the number of seabird mortalities caused by seabirds colliding with trawl warp cables. Several different devices (Brady Baffler, warp scarer, tori lines) are being evaluated for effectiveness and manufactured for additional trials. The net monitor cables deployed in some Alaskan groundfish fisheries connect the vessel to a net-mounted trawl sonar device. These devices apparently carry more information to the vessel than netsonde gear, but do not afford vessels the option of an acoustic link between the net and the vessel (see Appendix 1). Scientists from the Washington Sea Grant Program, University of Washington, and NOAA Fisheries are coordinating efforts with the Alaska trawl industry and the New Zealand and Falkland Island/Malvinas Islands researchers to consider potential effective solutions for reducing seabird interactions with Alaska trawl vessel gear. A draft annotated bibliography compiled by the Washington Sea Grant Program of relevant work on seabird mortality occurring during trawl fishing operations is available in Appendix 2.

Acknowledgments

We extend our appreciation to Kim Dietrich and Ed Melvin of the University of Washington Sea Grant Program for providing the annotated bibliography attached to this report and for their thoughtful review and comments on an earlier report draft. We also acknowledge assistance from Stephanie Kalish, Australian Fishery Management Agency, and Neville Smith, New Zealand Ministry of Fisheries, in obtaining information on the domestic fisheries in Australia and New Zealand.

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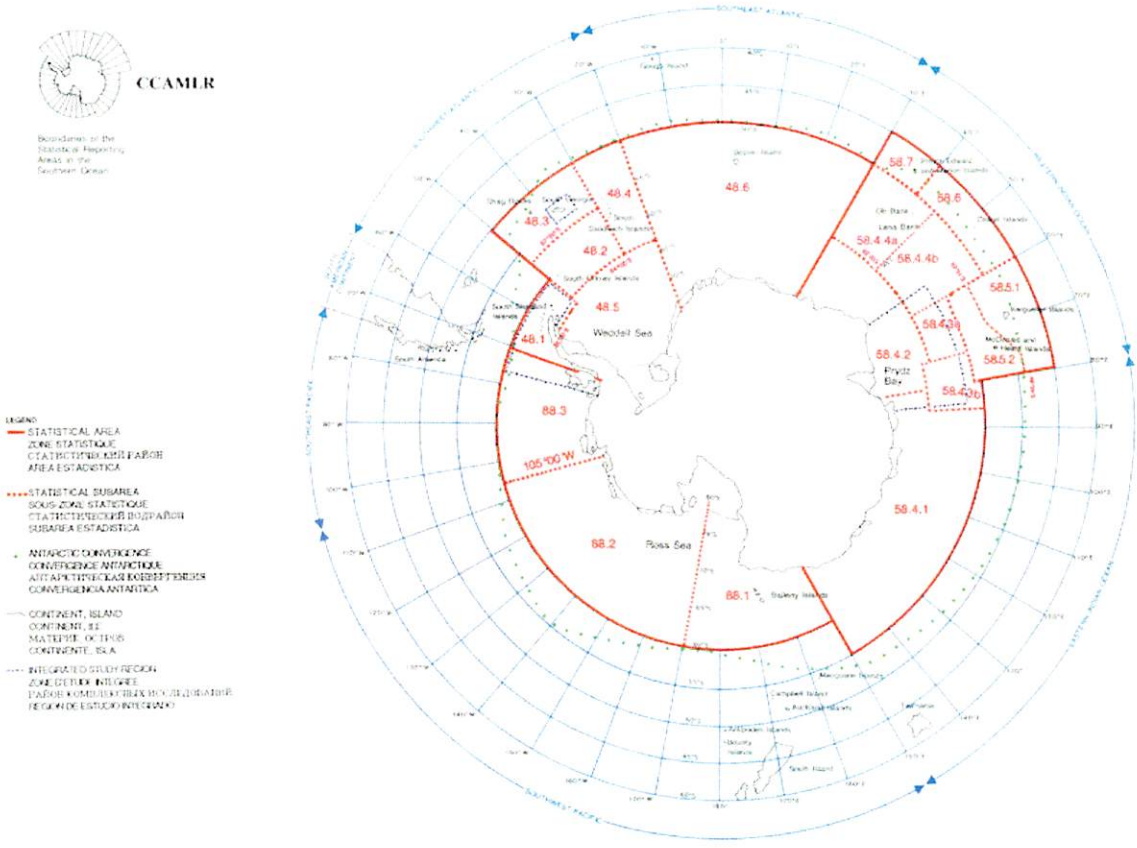
Figure 1. Map of the CCAMLR Convention Area.



(Source: http://www.ccamlr.org/pu/E/conv/map.htm)

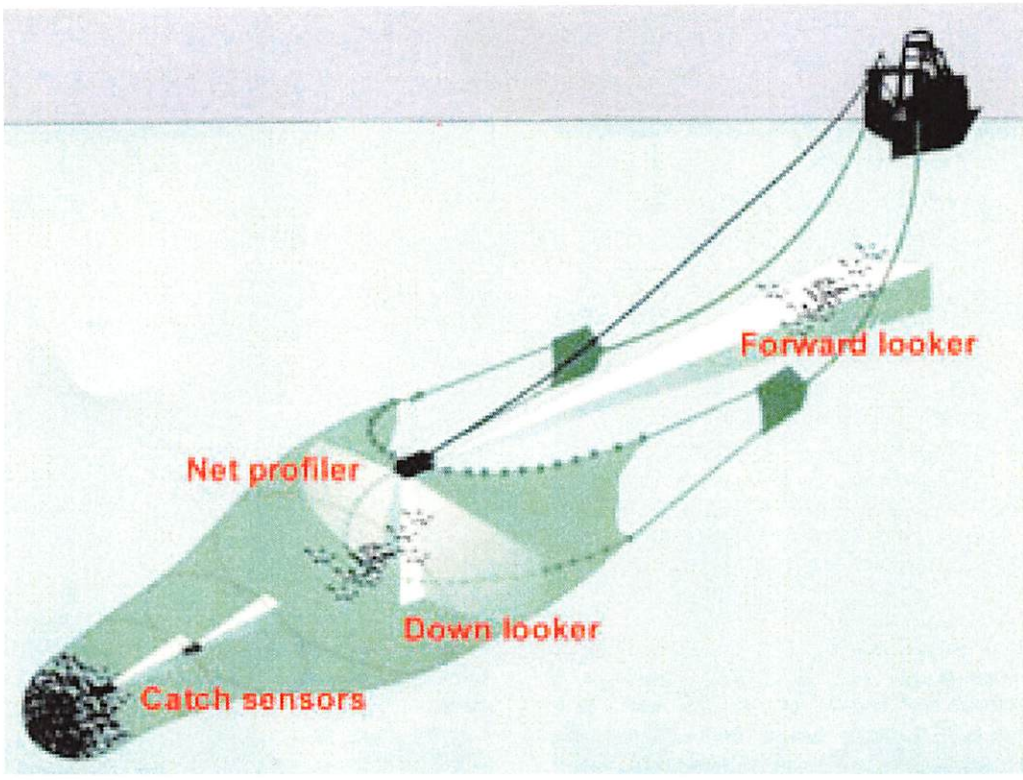


Figure 2. Illustration of trawl sonar and the net monitor cable.
(Source: http://www.wesmar.com/images/trawl2.jpg)

Appendix 1:

A description of the net monitor cable from the US Fish & Wildlife Service Programmatic Biological Opinion (USFWS 2003a).

In some trawl fisheries, equipment mounted on the trawl net sends signals to the vessel to monitor net performance. This is most important in midwater fisheries, but is employed in some bottom trawl fishing applications as well. There are two primary methods for gathering net performance information and sending this information to equipment on the vessel bridge. One method employs an underwater echo sounder on the headrope of the trawl net to determine the height of the headrope above the ocean bottom and the opening depth of the net itself. This system can also detect whether fish pass above or below the echo sounder, thus showing where the fish are in relation to the net in the water column. Fishermen generally refer to this system as either an echo sounder or a netsonde. The signal is sent to the vessel acoustically through the water column, where it is received by a hydrophone that is either a side-deployed towed transducer or one that is mounted to the hull of the vessel. The system rarely, but sometimes, employs a transducer wire towed from the rear of the vessel.

The other system is typically known as trawl sonar (Figure 2). This equipment is also mounted to the headrope and is sometimes referred to as the "suitcase." The system provides information straight up and down, as the echo-sounder does, but it also sweeps side to side and can provide a 360 degree picture of the net, water column, and target fish. This system provides much better information regarding how the net is deployed and saves fishermen a great deal of time and effort because they can either fine-tune the net performance while towing, or realize early on that there is a major problem and bring the gear back to the surface. The trawl sonar is hard-wired to the vessel through a cable typically known as the third wire. Signals sent over this third wire are superior to those sent acoustically, as the third wire carries more information, sends a constant signal, and is not susceptible to disturbance from ambient noise or noise from the vessel itself.

Either system can deploy cables outboard of the vessel. Seabirds attracted to offal and discards from the ship may either strike the hard-to-see cable while in flight, or get caught and tangled in the cable while they sit on the water, due to the forward motion of the vessel. When the cable or third wire encounters a bird sitting on the water, the bird can also be forced underwater and drown. On-board observations of birds (including Laysan albatross) colliding with either of these cables have been made by both researchers and observers. Some birds that strike vessels or fishing gear may fly away without injury, while others may be injured or killed.

The main distinction between the two systems is the different location of the transducer cables and third wires. The netsonde transducer wires are deployed from the side of the ship and can be very close to where offal is discharged.

There, they are not so likely to be hit by flying birds, but very likely to encounter swimming birds. Alternatively, transducer wires can be suspended from relatively long outriggers; this gets them out of the offal discharge area, but puts them more into the birds' flying zone. In contrast, trawl sonar cables (third wires) are deployed from the center of the stern, above the main deck, and can be above the water for longer distances. Thus, they are more likely to intersect the birds' flying zone than the concentration of swimming birds feeding on offal. These differences in location are likely to affect the probability and mechanism of bird strikes.

Appendix 2: A draft annotated bibliography of relevant work on seabird mortality occurring during trawl fishing operations. (Compiled by Kim Dietrich and Ed Melvin, Washington Sea Grant Program, University of Washington, Seattle, WA.)

DRAFT

Annotated bibliography: seabird interactions with trawl fishing operations

Kim Dietrich and Ed Melvin
Washington Sea Grant Program
University of Washington

Seabird mortality occurs most often with cables running from the vessel to the net (net sonde and warps) and with the net itself. Mortality can also occur during vessel collisions. The latter are not included in this bibliography.

SEABIRD-TRAWLER INTERACTIONS (mortality and mitigation)

Bartle, J. A. 1991. Incidental capture of seabirds in the New Zealand subantarctic squid trawl fishery, 1990. Bird Conserv. Int. 1:351-359.

Observers recorded seabird mortalities in squid trawl fishery. 83% (of 279 birds) were recovered from the netsonde cable; remainder entangled in various parts of the net. Average catch rate was 0.263 birds/tow. Proposed that weather and seabird abundance in area may have effect on interaction rates but very little data was collected on interactions while fishing. Suggested that hull-mounted transducers or towed aquaplanes could replace the towed transducer.

CCAMLR. 2003. Summary of observations aboard trawlers operating in the CCAMLR Convention area during 2002/03 season. WG-FSA-03/64, CCAMLR, Hobart.

Vessels fishing in CCAMLR area utilized a number of mitigation measures including streamer lines, acoustic devices, water jets, net weights and net cleaning. Streamer lines appeared effective at preventing warp strikes. Acoustic devices & water jets appeared ineffective.

CCAMLR. 2003. CONSERVATION MEASURE 25-03: Minimisation of the Incidental Mortality of Seabirds and Marine Mammals in the Course of Trawl Fishing in the Convention Area. CCAMLR, Hobart.

Prohibits the use of netsonde cables and offal discharge during setting/hauling. Recommends minimum lighting, cleaning net prior to each deployement and minimize time gear at surface. http://www.ccamlr.org/pu/e/pubs/cm/03-04/25-03.pdf

Crysell, S. 2002. Baffling Birds Brings Benefits. Seafood New Zealand magazine.

Good description (drawings/photos) of Brady bird baffler, a seabird deterrent for trawl vessels.

Hooper, J., D. Agnew, and I. Everson. 2003. Incidental mortality of birds on trawl vessels fishing for icefish in Subarea 48.3. WG-FSA-03/79, CCAMLR, Hobart.

Interaction and mortality data were collected during gear deployment and retrieval on 3 icefish trawl vessels in 2002/03. Net entanglement was the predominant form of mortality. Potential factors influencing catch were day/night, mesh size, net weighting, and a cleaned net. Only the weighting regime and day/night period were significant predictors of the probability of catching a bird during gear deployment and no variables were significant for gear retrieval. Recommended the following:

- All fish be removed from net meshes before re-deploying gear.
- All repairs to net/equipment be done while net is on deck. One large catch event (15 birds) occurred while net was at surface while crew replaced battery in acoustic netsounder.
- No offal discharge during gear deployment or haulback.
- Minimize surface time.
- Deploy paired streamer lines.

Labunski, E., and K. Kuletz. 2001. Observations of seabird interactions with the 'Third-wire' during trawl observations. US FWS, Anchorage, AK. Unpublished Report.

North Pacific groundfish observer logbook notes were summarized for 1993-2001. Seabird interaction observations were opportunistic. 10 of 26 observations (including ~100 individual birds) were interactions with the netsonde cable (or third-wire).

NMFS. 2003. Biological Opinion on the Effects of the Total Allowable Catch (TAC)-Setting Process for the Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI) Groundfish Fisheries to the Endangered Short-tailed Albatross (*Phoebastria albatrus*) and Threatened Steller's Eider (*Polysticta stelleri*). NMFS, Juneau, AK.

Reasonable and prudent measures and terms and conditions – pages 15-19. http://www.fakr.noaa.gov/protectedresources/seabirds/section7/biop0903/esaseabirds.pdf

NMFS. 2003. Ecosystem Considerations for 2004. Ecosystem Considerations for the Stock Assessment and Fishery Evaluation (SAFE) prepared for the North Pacific Fishery Management Council, Anchorage, AK.

Text on incidental catch of seabirds encompasses pages 218 – 228 (with specific reference to trawl on pp. 226 & 228). Mean annual estimates (1998-2002) for catch in trawl gear range from 1,754 – 11,955. Estimates mix several demersal and pelagic trawl fisheries. http://www.fakr.noaa.gov/npfmc/SAFE/SAFE.htm

Sullivan, B. J., and T. Reid. 2002. Seabird interactions/mortality with longliners and trawlers in Falkland Island waters 2001/2002. CCAMLR WG-FSA-02/36, Falkland Conservation, Seabirds at Sea Team, Stanley, Falkland Islands.

Seabird interaction and mortality data were collected on 5 trawlers targeting *Loligo* squid and finfish. The majority of contacts were with the warps when seabirds were on the water and most resulted in no apparent injury. Mortality rates were highly variable by trip (0.12 – 1.0 birds/day) with a total of 16 seabird deaths recorded. The highest rate occurred on a trip with dense aggregations (1000-2000 birds) of seabirds around the vessel for most of the trip. Netsonde cables are not allowed in these fisheries.

Sullivan, B. J., T. A. Reid, L. Bugoni, and A. D. Black. 2003. Seabird mortality and the Falkland Islands trawling fleet. WG-FSA-03/91, CCAMLR, Hobart.

Seabird interaction and mortality data were collected on 7 finfish and squid trawl vessels during 2002/03 season. More than 46,000 contacts were recorded with the warp cable and while birds were on the water (87%). Most resulted in no apparent injury. Few contacts occurred during gear retrieval. A total of 73 birds were documented as dead (70 from warp cable + 3 by paravane cable). Mortality rates were highest during the pre-breeding period and lowest during the egg laying period. Factors influencing interactions included time, area fished and offal discharge.

Sullivan, B. and T. Reid. 2003. Seabird mortality and trawlers in Falkland Island waters 2002/2003. Annual report of the Seabirds at Sea Team, Falkland Conservation. 58p.

As above with more detail and initial information on the performance several deterrents (discharge management, modified streamer). Cable contacts (and probably mortality) influenced by amount and duration of offal discharge, time of year, wind speed & direction relative to towing, sea state as it impacts the vessel pitch.

Sullivan, B. J., T. A. Reid, and P. Brickle. Submitted 2004. Experimental trials to investigate emerging mitigation measures to reduce seabird mortality caused by warp cable strike on factory trawlers.

Tested 3 mitigation devices against a control of no deterrent on a single warp. Seabird mortalities caused by warps higher in the control (0.7 birds/trawl) compared to all treatments: Brady bird baffler (0.14 birds/trawl), Falkland Islands warp scarer (0.06 birds/trawl) and tori lines (0 birds/trawl).

Weimerskirch, H., D. Capdeville, and G. Duhamel. 2000. Factors affecting the number and mortality of seabirds attending trawlers and long-liners in the Kerguelen area. Polar Biology **23**:236-249.

Monitored on 5 trawl vessels targeting toothfish or mackerel icefish. Total number of birds attending trawlers was a function of overcast conditions and time of year. The presence of offal had no significant influence on the number of birds attending the trawlers. More birds were observed during overcast conditions. Mean mortality rate was 0.48 birds/day but much higher on vessels with net sonde cable and targeting the smaller icefish. Petrels were mostly caught in the upper meshes both during setting and hauling. Approximately 1/3 of mortality (17 birds) caused by netsonde cable. Sample size too small to model factors affecting trawl catch rates. http://www.springerlink.com/media/egepulqryhe18clrrvv3/Contributions/U/J/G/L/UJGL1U0FRP6FPLBP.pdf

Wienecke, B., and G. Robertson. 2002. Seabird and seal-fisheries interactions in the Australian Patagonian toothfish *Dissostichus eleginoides* trawl fishery. Fisheries Research **54**:252-265.

One of the first studies quantifying seabird-trawl interactions. Observations were made on 2 trawlers over 4 years. Differentiated between light and heavy contacts at multiple points on the gear. Mortality on warps and in upper mesh of net observed. Mortality not put in the context of a rate per hour or day although a total of 6 birds were documented as dead. Majority of contacts (98%) resulted in no apparent injury. Authors hypothesize that mortality was low due to specific permit conditions such as 1) no netsonde cable; 2) lights must be dim; 3) no discharge except for 'stick water' and 4) warps must be spliced to minimize injury to seabirds.

DRAFT

Yorio, P., and G. Caille. 1999. Seabird interations with coastal fisheries in Northern Patagonia: Use of discards and incidental captures in nets. Waterbirds **22**:207-216.

Described interactions between seabirds and coastal demersal trawlers in Patagonia including species composition of birds attending, description of foraging behavior and quantifying mortality. Observations were done in 5 coastal fisheries (usu. within 15 na mi from shore) during 1994-1996 on board 17 trawlers. Kelp gulls were predominant species attending trawlers followed by black browed albatrosses, shearwater species and white-chinned petrels. Fishing region appeared to have the greatest influence on attendance. Two (2) birds, a Magellanic penguin & Imperial cormorant, were killed in 394 hauls (net mortality). There is no mention of interaction with the trawl warps. Implies the use of discards (and other artificial food sources) may be having a positive effect on Kelp gull populations in Argentina.

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Don't know if this was handed out in Apr 04 (ck?)

HAGINAA KIDUL apicda HELPING TO GROW

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B-1
10:01 am
2/4/04
Larry Cotter

January 30, 2004

Mr. Roy Hyder, Chairman
NPFMC Enforcement Committee
P.O. Box 103136
Anchorage, Alaska 99510

Re: VMS

Dear Mr. Hyder:

I am writing to request the Enforcement Committee's and the Council's assistance in solving a problem that affects one of our vessels and several others. APICDA owns 100% of the F/V *AP4*, a 35 foot combination longline/pot/jig vessel. For one and one-half months we have attempted to purchase VMS equipment so that we can be in compliance with applicable rules and participate in the Pacific cod fishery. We have contacted every vendor, and have been told they have no idea when the VMS equipment will be available. They have also told us there are half a dozen vessels each in Sand Point and King Cove that are on the same wait list. In addition, we understand there is a shortage of parts and associated equipment in Kodiak.

As you are aware, we are not allowed to participate in the Pacific cod fishery without having an approved and operating VMS system on board our vessel. As you may recall, this requirement resulted from Steller sea lion RPAs in an effort to ensure vessels participating in the affected fisheries complied with area closure rules. At the time this rule was being considered, concern was expressed by a number of individuals and entities that there might be shortages of approved VMS equipment and/or breakdowns resulting in lost fishing time and accompanying financial losses to the vessels and companies involved. We were assured this would not be the case.

APICDA owns a software company called OceanLogic. One of OceanLogic's products is a Vessel Verification System, or VVS. The VVS functions similarly to a VMS, except that it does not continuously transmit to a satellite and it is software based instead of hardware based. For these reasons, NMFS Enforcement will not certify our VVS as an acceptable VMS. Be that as it may, our VVS takes a GPS reading every five minutes. This results in an accuracy of 1.1 meters, substantially better than the approved VMS. The VVS is "tamper resistant" to use a NMFS Enforcement phrase, and produces "evidentiary quality" data. NMFS Enforcement has approved the use of our VVS in our Electronic Logbook (the only ELB approved by NMFS in the United States).

We have requested on numerous occasions, and the Council has been very supportive, that our VVS be approved for use as a backup for VMS so that in cases of unavailable or broken VMS equipment vessels are not prohibited from fishing. This request has been rejected by NMFS Enforcement, presumably because no such problem would ever occur and an alternative was unnecessary.

We are not attempting to secure "VMS" status for our VVS. We are simply restating our request that the VVS be approved for use in bona fide circumstances beyond the control of the vessel when VMS is unavailable. We can think of no reason why this would be viewed as unreasonable. Our product is cheap ($250), accurate, and of evidentiary quality. It is also immediately available.

Lost fishing time is a big deal. It is a particularly big deal when it is unnecessary. Not only are we and our crew losing money, we are also losing catch history. We respectfully request your committee and the Council's assistance in this matter as expeditiously as possible.

Sincerely,

Larry Cotter, CEO

Cc: Members, North Pacific Fishery Management Council