

Executive Director's Report

ESTIMATED TIME
1.5 TOTAL HOURS
FOR A/B AGENDA ITEMS

Requesting and Reviewing Proposals

Item B-1(a) is a letter from three Council members requesting a review of our procedures for considering groundfish proposals. I feel it is important to have this review. I did not formally solicit proposals last summer, but during the year since, we have considered twenty-two new actions as summarized in item B-1(b). I need your direction on soliciting proposals this summer for review in September. Item B-1(c) is our policy statement on reviewing proposals.

Groundfish Team Membership Change

Bill Aron has nominated Dr. Anne Hollowed to fill Sandra Lowe's position on the Gulf of Alaska groundfish team while Ms. Lowe is on leave from the agency (item B-1(d)). The SSC will review Dr. Hollowed's qualifications and provide their recommendations to you. A copy of Dr. Hollowed's CV has been provided to the SSC and is available for review upon request.

Summer Meeting

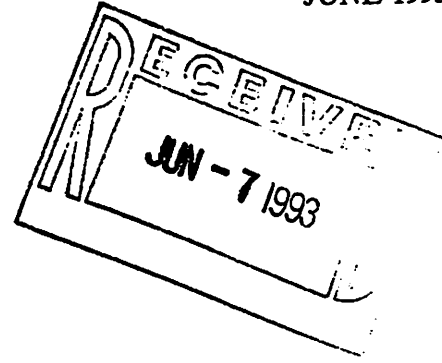
The Council will need to discuss toward the end of this meeting whether or not there is a need to plan a meeting in late July. Here is a list of items that we moved off the June agenda that will come up again in September if there is no meeting in the interim:

1. Observer Program: Implementation plans for observer user fee program and schedule of public hearings.
2. Reauthorization: Review suggested changes to Magnuson Act and comment as appropriate.
3. Groundfish: Initial review of Pribilof closure, GOA rockfish rebuilding, and separate halibut PSC for pelagic trawls and directed fishing standards for all species.
4. Halibut charter boat cap. Consider whether to act on a proposal to limit the halibut catch of the charter boat fleet.

Magnuson Act and Marine Mammal Protection Act Reauthorization

Chairman Lauber, Vice Chairman Alverson, and I attended the Regional Council Chairmen's meeting in San Francisco, May 16-18. I will provide a summary at meeting time. It still is very difficult to discern how much the Magnuson Act will be amended this year. There certainly was not a lot of consensus at the Chairmen's meeting. There was a hearing held on June 9 before the House Subcommittee on Fisheries Management but I have not received any word on how it went. Field hearings are tentatively scheduled for August 12 in Anchorage and August 10 in Portland. Mark-up will occur in September. I will try to keep you posted on Magnuson Act activities over the summer.

There has been movement on the marine mammal front and I hope to have a copy of the latest agreement by meeting time. Dave Hanson and others who have been privy to those negotiations may want to offer comments. Congress's intent is to have something passed and on the President's desk before September 30.



June 4, 1993

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Rick:

We are becoming quite concerned by the apparent relaxation of Council policy regarding the consideration of new proposals and the negative impact this is having on the ability of the Council, staff and NMFS to conduct our priority business in an orderly and timely manner.

A case in point is the inclusion on the June agenda of consideration of a proposal from Alaska Groundfish Data Bank to make the Central Gulf an exclusive registration area for flatfish fishing, with a further suggestion from staff that this proposal be broadened to include all species. Without addressing the merits of this proposal we feel that it is totally inappropriate to be considering such a proposal "out of cycle" without taking into consideration the impact on other high priority management actions already in the system, such as the vessel moratorium amendments or comprehensive rationalization, or other new measures which might be proposed.

Since the April meeting, there has been considerable discussion about the large workload we face for the June meeting. Certain items have had to be slipped to September, others such as crab management are being reduced in scope and a possible July meeting has been under consideration. It seems somewhat inconsistent for us to be concerned on one hand about our heavy workload and then on the other hand be adding new issues.

We strongly request that the additional exclusive registration proposal for the Gulf not be put on the agenda for formal consideration at the June meeting. Instead we ask that we have a general discussion of Council policy on review and action of new management initiatives. Such a discussion is imperative at this time to keep the Council on track with implementation of the moratorium amendments and finalization of comprehensive rationalization within the January, 1996 deadline.

Sincerely,


Walter F. Perceys


Alan E. Millikan


Robert D. Alverson

**Twenty-two
Out-of-Cycle Proposals Initiated from September 1992 to April 1993**

<u>Proposals</u>	<u>Council Action</u>
<u>September 1992 Council Meeting</u>	
Regulatory amendment to add Ugamak Island Steller sea lion rookery to 20-mile trawl closures.	Council approved (for 1993 only).
Kodiak Island Borough - proposal for interim sablefish and halibut management measures.	Council did not pursue.
Rockfish rebuilding (as a result of earlier discussions of EGOA trawl closures requested by ALFA.)	Council directed staff to proceed for research/analysis.
IPHC - Gangion cutting regulations.	Council recommended NMFS proceed with regulatory amendment.
Petersburg Vessel Owner's Assn. - Fair start regulations for longline fishery.	Council recommended NMFS proceed with regulatory amendment.
Alaska Groundfish Data Bank - Delay 2nd Quarter GOA pollock opening.	Council approved for analysis.
Alaska Groundfish Data Bank - Change season opening date from January 1 to January 20. (Later - simultaneous openings.)	Council placed on January 1993 agenda to consider for regular amendment cycle. In January Council decided not to pursue.
Midwater Trawlers Co-op; Alaska Groundfish Data Bank submitted several bycatch proposals.	Council did not address.
NMFS - Review outdated groundfish regulations.	Postponed to January 1993. (Not discussed further)
North Pacific Longline Assn - asked Council to expedite --earlier --request --for --P.--cod allocation.	Council recommended be placed in regular -- amendment cycle.
Council motion made during specifications process to divide Atka mackerel ABC in Aleutians.	Council requested development of an amendment.

Proposals

Council motion to separate Atka mackerel from Other Species in the GOA.

Council amended above motion to include examination of Other Species category to resolve inconsistencies in state and federal management.

December 1992

Mark Kandianis, Kodiak - testimony requesting Council include scallops under groundfish FMPs and a moratorium on entry.

St. Lawrence Island fishermen - Proposal for several halibut regulations.

Highliners Association - trawl mesh proposals.

NMFS - revise directed fishing definition for rockfish.

January 1993

NMFS Enforcement/Coast Guard - extend crab protection zones in GOA to include all trawling.

Midwater Trawlers - Ban on night trawling in BSAI.

Council motion for a VIP alternative to address chinook salmon bycatch.

Council motion to develop 'A' Season Framework

April 1993

NMFS - Regulatory amendment to modify seasonal 20 nm sea lion rookery protection zones. (Expand no-trawl zones around rookeries at Sea Lion Rocks, Akun, Ugamak, Akutan, Agligadak and Seguam Islands to Nov. and Dec.)

Council Action

Council requested development of an amendment.

Council approved the motion.

Subject put on January agenda. In January Council decided to develop plan.

No action - submitted too late for analysis before IPHC annual meeting.

Council asked staff to prepare a regulatory amendment. In April Council decided not to pursue at this time; wait for current research results.

Council asked NMFS to prepare regulatory amendment.

Council requested analysis. In April decided not to pursue.

Council requested more info from staff; put on April agenda for staff availability. In April, Council decided not to pursue.

Council requested analysis.

Council requested analysis.

Council approved for public review.

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Policy on Annual Management Cycles*

The Council has adopted annual schedules for processing proposals and decision making on groundfish, salmon, crab, and halibut. These cycles dictate how the Council will gather and process proposed changes to its plans and regulations, when decision documents will be available for public review, and when final decisions will be made for each fishery. Annual cycles and an example extended cycle for groundfish are displayed in Attachment A and further explained below. In addition, the Council's Policy on Processing Proposals for Changes in Fishery Plans or Regulations (approved in April 1984) should be referenced when a rapid response to an emergency is requested.

Gathering and Processing Proposals. All proposals except those determined to require a rapid response will be processed according to the relevant annual cycle. Deadlines for receiving all proposals, regardless of source, have been established for each fishery, and will be announced in the Council's Newsletter and other public mailings, approximately 30 days in advance. All proposals must conform to the proposal format approved by the Council (Attachment B), available from the Council office.

Council Staff. The Council staff will screen proposals to identify those which do or do not satisfy the Council's criteria (identified in the proposal format) or are questionable and will require special attention of the Plan Amendment Advisory Groups (explained below). The staff will provide reasonable amounts of guidance and assistance to proposers to encourage compliance with Council criteria and standards.

Plan Teams. Upon completion of the Council staff review of proposals, the appropriate plan team will review those satisfying the Council's criteria and those that have been judged as questionable in the staff's preliminary review. The team will provide the following recommendations.

1. Identify proposals that are not necessary because the requested action is already included in the fishery plan or does not require plan amendment.
2. For proposals within the team's area of expertise (e.g., concerning mechanics of plan operation and status of the resource and resource habitat),
 - a. specify alternatives if possible on the basis of the limited information available;
 - b. estimate resources required to prepare amendment proposal documents (manpower specifications, man-hours, etc.);
 - c. identify projects of high priority;
 - d. based on above, recommend assignment to current year cycle or extended cycle.
3. For proposals outside the team's areas of expertise (allocational, socioeconomic, etc.):
 - a. suggest apparent alternatives;

*Approved by the Council in May 1987; revised in June 1990.

- b. identify amounts and sources of relevant information known to be available;
- c. identify recognized problems and difficulties, including information gaps, and help in identifying "reasonable" alternatives.
- d. estimate as well as possible the time required to complete tasks, and external resources needed (i.e., tentative advice as to current year or extended cycle assignment).

During its review the plan team should also assess the technical merits of the proposals against Council goals and FMP objectives, and obtain a preliminary legal review if desirable.

Plan Amendment Advisory Group (PAAG). PAAGs will be established for each fishery plan. The Council Chairman will designate members with the appropriate expertise as follows:

Two Council Members (or three to achieve odd-number membership)
 Two SSC Members
 Two AP Members
One - Two Team Chairmen

Total: Seven - Nine

The PAAG will meet before the Council initially considers the proposals (e.g. September for groundfish) to:

1. Review and validate staff recommendations on whether proposals meet all the criteria in the Council's proposal format, with special attention to those proposals identified as questionable - the exceptions to the rules.
2. Review and discuss team reports and recommendations, and categorize all acceptable proposals tentatively as current year cycle or extended year cycle.
3. Recommend additional alternatives for all proposals, paying particular attention to those not in the team's areas of expertise.
4. Identify those proposals of apparent high priority based on limited information available.
5. Recommend a time schedule and milestones for all extended cycle proposals (normally within the two-year cycle, but with any alternative available for consideration for special reasons of urgency, etc.)

The PAAG will forward its tentative findings on choice of cycles, alternatives to each proposal, assessment of urgency, and identification of problem areas and special needs, along with the plan team report, through the SSC and AP to the Council for its initial consideration of proposals.

Initial Council Consideration. The Council retains sole authority to determine final disposition of all proposals. During the Council's initial review of proposals, they will consider the recommendations of the plan teams, PAAG, SSC and AP and take public testimony as necessary. During its review, the Council may:

1. Choose to further process a proposal, previously judged incomplete, because of special Council interest.

2. **Reject a structurally complete proposal because a majority of the Council does not want to address it.**
3. **Change a proposal's processing cycle recommended by the PAAG, after fully considering team workloads.**

For those proposals placed in an extended cycle, milestones should be clearly stated for the proposal's processing and review.

Council Consideration of Proposals for Public Review. When the Council meets to approve proposed amendments for public review (e.g. April for groundfish), they will have available as complete an analysis as time and team workload, and available data can provide, along with the recommendations of the team, the AP and SSC. The Council will review all proposals before they are sent to public review and retains full latitude to delete proposals in their entirety or add alternatives to existing proposals, provided the new alternatives can be analyzed sufficiently for public review. The Council will attempt to allow for adequate public review of its proposals and supporting documentation, with thirty days expected to be the minimum.

Decision Documents. Analyses of proposed amendments should be based upon the best information available to the team. On rare occasion data may be received late which will have significant bearing on a fishery. Every attempt will be made to incorporate this information as well as information presented to the Board of Fisheries into the Council's decision process where relevant.

It is anticipated that all data and analyses used for decision documents must be reviewed by the appropriate team and the SSC prior to Council action. Cut-off dates based on the annual management cycles must be established for receipt of data and analyses consistent with permitting these reviews. The plan teams should endeavor to provide the SSC at least 30 days for review of all analyses. The SSC will make a recommendation to the Council as to what constitutes the best scientific information available.

It is assumed that peer review will take place within individual agencies. All analyses should be reviewed by the SSC, AP and appropriate plan team. The one exception may be salmon data which become available very late in the management cycle. Products of special Council workgroups will undergo the same review criteria. A preferred alternative is not required for analyses presented to the Council. Late-arriving comments may be incorporated as necessary.

Final Council Decisions on Proposed Amendments. After the public comment period, the Council will make its final decisions on which proposed amendments should be sent to the Secretary of Commerce for consideration and approval. The Council will have before it all decision documents required for review when making its final decisions. The analyses will be as final as possible given time constraints.

The Council may delegate authority to its staff to finalize all documents after the Council makes its final decision. Any substantive changes outside the original range of alternatives sent to public review by the Council must be re-sent to public review with the appropriate supplemental analyses. Draft regulations should be prepared for each significant alternative, time permitting. Should these regulations not be available when the Council makes its final decision as shown in the appropriate plan schedule, the Council will delegate authority to write the regulations to its staff with advice from NOAA-GC and NMFS.

Annual Management Cycles for Groundfish and Halibut*
(Day of month in parentheses)

	<u>Groundfish</u>	<u>Halibut</u>
JULY	(1) Solicit Groundfish Proposals	
AUG	(20) Proposal Deadline. Staff review of proposals.	(15) Solicit Halibut Proposals
SEP	(5) Plan Team Review of Proposals. Plan Amendment Advisory Group (PAAG) review of proposals. Teams prepare preliminary Stock Assessment and Fishery Evaluation (SAFE) Report. <u>Council meeting</u> : Initial consideration of harvest levels and apportionments. Initial review of proposals and direction to teams.	(15) Deadline for Proposals. Team Review. (17) Regulatory Amendment Adv. Group Review.
NOV	Public review of initial harvest and apportionment specifications. Teams update SAFE. Teams develop proposal alternatives. Begin analysis.	Preliminary IPHC meeting.
DEC	<u>Council Meeting</u> : Final determination on harvest level and apportionments.	<u>Council Meeting</u> : Final Action. (20) Forward to Secretary of Commerce (SOC)
FEB	<u>Team</u> : Amendment analysis continues.	(2) SOC prepares Final Rulemaking Notice (FRN).
MAR	30-day Advance review by SSC and AP.	(10) FRN published.
APR	<u>Council Meeting</u> : Send proposals and analysis to public review.	(10) Final rule takes effect along with IPHC rules.
MAY	Public Review.	
JUNE	<u>Council Meeting</u> : Final approval of amendments.	
JULY	Submit to SOC. ¹	

¹ If approved, amendment takes effect in mid- to late November.

*Approved by the Council in June 1990.

Annual Management Cycles for Salmon and Crab*

	<u>Salmon</u>	<u>Crab</u>
JAN	<u>Council</u> : Review post-season report from ADF&G.	<u>START</u> : Proposal deadline. Board sends to public review. <u>Team</u> : Issues identified, work schedules and work assignments. <u>Team</u> : Development of draft decision document.
FEB		<u>Staff</u> : Draft final decision documents to public.
APR	<u>Council</u> : Review status report and any Board or public proposals.	<u>Council</u> : Preferred alternative.
MAY		<u>Team</u> : Draft final decision documents. <u>Staff</u> : Documents available for public review.
JUN		<u>Council</u> : Final decision.
JUL		Submit package to SOC
SEP	<u>Council</u> : Reviews amendments as necessary.	
OCT	Amendment documents to public.	
DEC	<u>Council</u> : Approves amendments for SOC review.	

*Approved by the Council in June 1990.

FROM: ALASKA SCIENCE CENTER

TO: 91P9072712817

JUN 15, 1993 9:56AM AGENDA B-1(d)
JUNE 1993



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Alaska Fisheries Science Center
7600 Sand Point Way NE.
BIN C15700, Building 4
Seattle, WA 98115

JUN 15 1993

Mr. Richard B. Lauber
Chairman
North Pacific Fishery
Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Rick,

Ms. Sandra Lowe has asked to be relieved of her Gulf of Alaska Groundfish Plan Team duties from September 1, 1993 through May 31, 1994. I am nominating Dr. Anne Hollowed to fill Sandra's position while she is on maternity leave. Dr. Hollowed's CV is enclosed.

Sincerely yours,

A handwritten signature in cursive script that reads "Bill".

William Aron
Science and Research Director
Alaska Region

Enclosure

cc: S. Lowe
A. Hollowed



CONSERVATION AND FISHING COMMUNITY FINAL NEGOTIATED
PROPOSAL FOR A
MARINE MAMMAL RESEARCH AND CONSERVATION
PROGRAM TO BE ENACTED THROUGH THE
MARINE MAMMAL PROTECTION ACT REAUTHORIZATION OF 1993

SUBMITTED TO CONGRESS ON BEHALF OF:

Alaska Groundfish Data Bank
Aleutians East Borough
American Factory Trawler Association
American High Seas Fisheries Association
American Seafood Harvesters Association
Animal Protection Institute
Arctic Alaska Fisheries Corporation/Tyson
Seafood Group
Association of Village Council Presidents
Bering Sea Fishermens Association
Blue Water Fishermen's Association
California Abalone Association
California Gillnetters Association
California Urchin Divers Association
California Urchin Producers Association
Center for Marine Conservation
Concerned Area M
Friends of the Sea Otter
Gulf of Alaska Coalition
Kodiak Island Borough
Maine Gillnetters Association
Maine Sardine Council
National Audubon Society
National Fisheries Institute

New England Fishery Management Council
Northwest Indian Fisheries Commission
Pacific Seafood Processors Association
Pacific States Marine Fisheries
Commission
Peninsula Marketing Association
Point Judith Fisheries Cooperative
Association
Sea Urchin Processors Association of
California
Seafreeze LTD
The Associated Fisheries of Maine
The Marine Mammal Center
The National Fishmeal and Oil Association
Trout Unlimited
World Wildlife Fund



John A. Brannon, Ph.D., President
California State University, Long Beach
David J. Burdick, Ph.D., President
University of California, San Diego
The Dow Chemical Company
John M. Hinton, Ph.D., President
Time Inc., Retired
Walter R. Quansam, Ph.D., Chairman
Environmental Resources
Amson Corporation
Robert W. Craig, President
The Keystone Center

MEMORANDUM

TO: INTERESTED PARTIES

FROM: MMPA NEGOTIATING GROUP

SUBJECT: PROPOSAL ADDRESSING SECTIONS OF THE MARINE MAMMAL PROTECTION ACT NEGOTIATIONS RELEVANT TO COMMERCIAL FISHING INTERACTIONS

DATE: June 10, 1993

Enclosed is the Conservation and Fishing Community Negotiated Proposal for a Marine Mammal Research and Conservation Program to be Enacted Through the Marine Mammal Protection Act Reauthorization of 1993. This proposal is the culmination of several months of extensive discussions and work sessions, and is presented for consideration by other key decision-makers interested and involved in policy development surrounding these issues. The content of the proposal is important not only because of the ideas and recommendations contained within the document, but also because of the diversity of perspectives and interests represented by the participants who came together in a good-faith effort to address difficult and often contentious issues that are of common concern. A list of those representatives of the Fishing Community and Conservation Community who have contributed to and support the proposal is also included.

The Negotiating Group reached agreement on several key issues. There were some issues that the participants did not fully address; some of which were decided to be outside the scope of what the Group determined were most pressing and productive to address, and other issues which the Group thought merited further discussion. Included in this latter category are issues surrounding a "nuisance" situation, or situations where intentional lethal takes might be considered, and what formalized process would govern such a determination. Participants of the Negotiating Group decided that given the urgency surrounding the need for a new regime to replace the

MMPA exemption by September 30, the Proposal should be finalized and moved forward without specific language addressing "nuisance" situations. However, the Negotiating Group committed to continuing their discussions regarding these issues and exploring possible areas of agreement, as well as more clearly articulating areas of disagreement. The first meeting convened to address these issues will be held in Washington, D.C. on Tuesday, June 15, 1993, with the hope of producing language on this issue.

The Negotiating Group looks forward to continuing their efforts and broadening the discussions to other decision-makers in order to further the ideas and recommendations outlined in the Proposal, while promoting sound and prudent public policy surrounding incidental takes of marine mammals in the course of commercial fishing.

June 10, 1993

**Conservation and Fishing Community Negotiated Proposal
for a
Marine Mammal Research and Conservation Program
to be Enacted Through the
Marine Mammal Protection Act Reauthorization of 1993**

PREAMBLE

Representatives from the Conservation Community and the Fishing Community began meeting in February to discuss MMPA reauthorization. Formal discussions took place on March 15 & 16; April 5 & 6; April 24, 25, 26 & 27; and May 24 & 26.

This paper represents thought processes of the Negotiating Group from which evolved the management regime to protect all marine mammal stocks that have a record of, or a potential for, interacting with commercial fisheries. Specific population data and incidental lethal take criteria are used to identify those stocks of the most immediate and greatest concern (referred to as "critical stocks"), as well as all stocks for which lethal take is acknowledged, but not immediately critical (referred to as "non-critical" stocks).

The Congress directed the National Marine Fisheries Service (NMFS) to produce a replacement for the Five-Year Interim Exemption Program incorporated into the 1988 MMPA Amendments. In November 1992, NMFS released its "Proposed Regime to Govern Interactions Between Marine Mammals and Commercial Fishing Operations." This agency proposal set fishery-specific caps on lethal takes of marine mammals.

The Conservation Community objected to a number of elements in the proposed regime, including its timing, its complexity and the lack of clear procedural steps for both industry and the public. Further, the Conservation Community pointed out that the agency - proposed regime focused on allocating lethal takes rather than reducing them. Additionally, it was felt that research priorities should be directed, at least in part, to investigating alternative gear and/or fishing techniques to mitigate interaction.

The Fishing Community also objected to many elements of the NMFS regime. The three most serious concerns were uncertainty, allocation of mammal quotas among competing sectors of the industry, and the fact that the fishermen's quota would be automatically reduced to account for lethal takes by other users. Aggravating these concerns was the fear of a quota-based management regime which depended for its accuracy on statistical extrapolations of potential lethal takes throughout all fisheries.

During the recent series of negotiations, the Conservation Community's basic premise was that the MMPA currently imposes, and will continue to impose, a moratorium on taking marine mammals, with the goal of reducing incidental lethal take of marine mammals in commercial fishing operations to insignificant levels approaching zero mortality and serious injury rate. The Fishing Community wanted to avoid a burdensome management regime that applied across-the-board to all fisheries regardless of the known, or presumed, level of its impact on or interaction with marine mammals. It wanted all concerned parties actively involved in the entire process -- from the review of the relevant science to the development of specific management measures. Both sides agreed that limited funding would be a key factor in how much desired scientific and regulatory activity could be undertaken. Therefore the Group started with the working premise that all marine mammal stocks would be afforded protection, and that research and management priorities would be set based on the status of the marine mammal stock and level of lethal take.

The Group set about to develop criteria that would be used to identify, rank by criticality and set priorities on marine mammal stocks which, for a variety of reasons, deserved immediate attention. The cornerstone of the "immediate response" to stocks deemed critical is the agreement that total lethal takes from all sources must be brought below the biological level at which the mammal population sustains itself (taking into account the size of the population and its net recruitment rate). The Group determined that any management regime must be designed to achieve this result as quickly as possible. The intent behind the management system is to recover stocks to OSP and expedite reduction in lethal take to insignificant levels approaching a zero mortality and serious injury rate, and to take aggressive and quick action to avoid the point at which the marine mammal must be listed as "threatened" or "endangered" under the ESA or designated depleted under the MMPA and, additionally, to ensure that fishing interactions do not significantly retard recovery.

The proposed process focuses on incidental mortality of marine mammals in commercial fishing operations. It is intended to replace the present Interim Exemption Program set out in Section 114 of the MMPA. Although there are instances where mortality from other sources is *considered or accounted for*, the negotiators did not intend with this proposal, to replace existing MMPA (or other statutory) regimes for regulating, prohibiting or permitting non-fishing takes of marine mammals. The process is aimed at reducing incidental lethal take rates of marine mammals in commercial fishing operations. The most immediate focus of management actions, especially those pertaining to commercial fishing, is on marine mammal stocks that are in decline or are at low population levels as a result of incidental lethal take by itself or in combination with other sources of mortality.

The Group discussed, but did not address specifically, the issue of abundant marine mammal stocks that interact with fishing operations and that may be at or near OSP. It is the intent of the proposal to direct those issues to the existing (pre-1988) MMPA process for OSP findings, and rulemaking under Sections 103 and 104 of the Act, which provide for incidental lethal takes of marine mammals at or above OSP. All other forms of lethal take now permitted under §§103-104 of the MMPA would be unaffected by the changes here recommended. Moreover, the Group recommends that a workshop of scientists and managers be convened to develop recommendations on how to best make OSP determinations.

With the above background, the Negotiating Group is recommending that the Congress consider the following proposed management system.

GOALS

- In addition to upholding the goals of the MMPA, this proposed process reflects the fundamental principle that we must set priorities and focus attention on those stocks of marine mammals for which existing levels of lethal take are causing species or populations to decline or are significantly impeding their recovery.
- While we will focus initial research and management attention on those critical stocks, the long-term research program examining marine mammal stocks will consider all factors that affect marine mammals, including, to the extent practicable, environmental effects, ecosystem dynamics and broad ecosystem research such as investigations of any predator/prey relationships consistent with Section VII.C.
- Even though the proposal is aimed primarily at how to govern interactions between commercial fishing operations and marine mammals, we agree that the process should include an examination and analysis of all existing data on other human caused mortality. Measures to address non-fishing activities should be part of comprehensive conservation efforts, even if implementation of these measures is within the jurisdiction of an agency other than the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service.

THE OBJECTIVES OF THE PROPOSED PROCESS ARE:

1. To involve all interested parties early in every aspect of research, conservation, and management;

2. To reduce immediately the lethal takes of marine mammals from all sources to a level that allows the recovery of stocks.
3. Within ten years, to reduce incidental mortality rates of marine mammals caused by commercial fishing to insignificant levels approaching zero.

SECTION I. Authorization to Incidentally Lethally take Marine Mammals in the Course of Commercial Fishing Operations

A. General Authorization:

1. The parties agreed that fisheries that incidentally lethally take marine mammals from stocks that are at OSP must go through the pre-1988 process of findings, and general permit or small take permit authorizations as provided in Sections 101(a)(2), 103, 104, and 101(a)(4) respectively.
2. The designation of stocks known not to be at OSP or whose status is unknown will be made as part of the publication of the Secretary's preliminary stock assessment (See Section II).
3. As part of the publication of proposed final rules, the Secretary shall issue a general authorization for the taking of marine mammals in the course of commercial fishing, subject to the following:
 - a. the interacting stock is not at OSP;
 - b. if the stock is designated as critical, the taking shall be subject to the measures outlined in the plan developed by a Conservation Team and approved by the Secretary;
 - c. taking from all other stocks shall be subject to such regulations as the Secretary may provide; and
 - d. the authorization is subject to compliance with the requirement that all incidental lethal takes of marine mammals be reported.
4. In no case does the general authorization permit intentional killing of marine mammals.

B. Authorization to Incidentally Lethally Take Marine Mammals When Fishing Operations May Take Threatened or Endangered Marine Mammals

1. The General Authorization to incidentally lethally take marine mammals (as set forth in Section A above) is a federal action sufficient to trigger §7 consultation once the marine mammal stock is listed as threatened or endangered under the ESA. Once a marine mammal stock is listed under the ESA and the ESA Recovery Team is in place, the MMPA Conservation Team regulatory process shall cease, and the requirement of the ESA shall apply. For marine mammal populations listed under the ESA, this section replaces that portion of Section 101 that denies waiver of the Moratorium for Endangered and Threatened marine mammals. In addition, this regime does not override incidental take requirements applicable to California sea otters established in accordance with Public Law 99-625.
2. The existing Section 9 prohibition on takes under ESA continues to apply for endangered species. Where incidental lethal take of threatened or endangered marine mammals occurs in any fishery, the Section 7 consultative process shall be used to develop the "reasonable and prudent measures" related to fishing. The ESA incidental take statement that stems from the consultation shall apply to fishing.
3. If an ESA Recovery Team is convened for a marine mammal stock that was under the planning of an MMPA Conservation Team, the findings and recommendations of the MMPA Team shall be provided to the ESA Recovery Team for its consideration. If a §7 consultation occurs after there was a MMPA Conservation Team, the agency shall consider the plan developed by the Team. An incidental take statement required by §7 of the ESA may be developed based on the MMPA Conservation Team plan.

SECTION II. Scientific Consultation -- 45 Days from Enactment

The Secretary shall publish a preliminary stock assessment of all marine mammal populations which occur in U.S. waters, developed in consultation with the Marine Mammal Commission, U.S. Fish and Wildlife Service (FWS), affected states, affected Treaty Tribes, fishery management councils, and other scientists (including scientific representatives of affected parties, including conservation and fishing groups). Using the best available data, the assessments shall include estimates of total lethal take, by source, for all marine mammal stocks, and a list of critical and non-critical stocks, and proposed recovery factors for each stock. (It is understood that recovery factors are needed only for species or populations not at OSP).

- A. Preliminary stock assessments shall also include mean population estimates (and accompanying confidence interval and/or coefficient of variation), an estimate of Realistic Minimum Population Estimate, and if available, an estimate of the Annual Net Productivity Rate.¹ The estimates of Realistic Minimum Population and Annual Net Productivity Rate allow a calculation that estimates a removal level that balances mortality and recruitment in a population. This removal level does not provide for recovery, but it may allow maintenance of a population at its current level.
- B. The agency's preliminary stock assessments report shall specify each stock's status as determined using the Decision Matrix in Figure 1. Critical stocks are those stocks identified as Matrix Class 1 and 2 marine mammal stocks. Matrix Class 1 stocks are those animals for which the population is declining or if the trend is unknown, then small, and with high levels of mortality, and levels of mortality

¹. Realistic Minimum Population Estimate (RMPE): The goal of marine mammal stock surveys should be to estimate total abundance and trends for stocks/populations. These estimates, where possible and necessary, will be corrected for factors such as sightability of animals along a track line, total range, and other factors according to accepted wildlife population survey methods and using estimates found in the scientific literature or those generated as part of the survey design. Minimum will reflect the use of the lower bound of a confidence interval or other mechanism to promote assurance that the true population is most likely equal to or greater than the minimum estimate selected.

Annual Net Productivity Rate (ANPR): The percent annual net increment at the maximum net productivity level of a population resulting from additions to the population from reproduction and/or growth less the losses due to natural mortality. If the ANPR is not known for a population, default values for populations at the maximum net productivity level will be used. These values are 2% for cetaceans and sirenians and 6% for pinnipeds and sea otters.

from all sources are considered to be causing the population to decline or significantly impeding its recovery. In addition, Matrix Class 2 stocks are also included in the "critical" list because population size and/or trend combined with levels of lethal take indicate a likelihood that lethal takes may significantly retard recovery or cause decline. The report shall also include all other so-called non-critical stocks which are sustaining varying levels of lethal takes.

- C. The preliminary stock assessments, findings and proposed regulations shall include an explanation of how the assessments, population abundance, lethal take estimates, lists, and recovery factors were derived with an explanation of dissenting views (including their sources), and other regulatory alternatives.
- D. The proposed findings and regulations shall be published in the Federal Register with a 30 day period for public comment and scientific peer review.

FIGURE 1. DECISION MATRIX TO PRIORITIZE STOCKS				
		Total Takes		
Population Trend/Size		Low	Medium	High
Declining, or if Trend Unknown, Then Small		3	2	1
Stable, or if Trend Unknown, Then Moderate		4	3	2
Increasing, or if Trend Unknown, Then Large		5	4	3
Take Criteria	pinnipeds	<1%	1-6%	>6%
	cetaceans	<0.5%	0.5-2%	>2%
Population Estimate	Small	<10,000		
	Moderate	10,000 - 100,000		
	Large	>100,000		

SECTION III. Peer Review

- A. Within one year of enactment, the Secretary shall establish and convene, in consultation with the Marine Mammal Commission, the Secretary of the Interior, the National Academy of Sciences (and interested parties named above), a Scientific Evaluation Working Group. The Working Group may bring in species-specific experts as necessary. It shall:**
- 1. Peer review the stock assessments, population abundance estimates (and accompanying confidence interval and/or coefficient of variation), including the calculation of realistic minimum population estimates, total lethal take estimates, lists of critical and non-critical stocks, recovery factors, and lethal take levels;**
 - 2. Provide guidance on conduct of stock abundance assessment surveys;**
 - 3. Review relevant scientific literature pertinent to marine mammal stock assessments and survey designs;**
 - 4. Receive and consider recommendations on recovery factors and other issues submitted by the Conservation Teams and the Secretary;**
 - 5. As requested by the Secretary, formulate and submit recommendations for management actions to implement the goal of reducing incidental lethal takes to insignificant mortality rates approaching zero for non-critical stocks;**
 - 6. Identify data gaps in the stock assessments and make recommendations on priorities for long-term research. Effort should include investigating and monitoring other environmental changes that may bear on stock status, including research on any predator/prey relationships, toxic pollutants, and other ecosystem issues.**
- B. The Scientific consultation process is intended to apply both to species under the jurisdiction of the U.S. Fish and Wildlife Service (FWS) and the NMFS, and FWS is expected to provide information to NMFS as part of the annual review processes described above. Scientific consultation and the peer review provided by the Scientific Evaluation Working Group is without regard to the legal status (critical, non-critical, depleted, threatened, endangered) of the marine mammal species or agency jurisdiction.**

Scientific consultation and peer review shall occur as data become available, according to Matrix stock priority or upon request by the Secretary.

SECTION IV. Publication of Final Rules -- 90 Days from Enactment

The Secretary shall publish:

- final stock assessments;
- estimates of total lethal take and take by source;
- list of interacting fisheries;
- critical and noncritical stocks;
- a calculation that represents realistic minimum population estimates multiplied by the annual net productivity rate²;
- recovery factors; and
- a calculation of a removal level that takes into account the proposed recovery factor.³ (If the current incidental lethal take is less than the calculated removal level, the calculated removal level used by the Secretary and Conservation Teams shall be reduced to the current incidental lethal take levels.)

SECTION V. Establish and Convene Conservation Teams -- 120 Days from Enactment

The Secretary shall convene Conservation Teams for all critical stocks within 120 days from enactment. These Teams' primary purpose is to review the scientific information for a marine mammal stock or group of stocks within a region and identify problems and mitigation measures that should contribute to moving critical stocks to non-critical status and to develop a conservation plan as specified below. They will fulfill this task and any other tasks they may have, in an advisory capacity to the Secretary. The designation of critical stocks serves not only as a recovery mechanism for stocks where lethal takes are above the calculated removal level (as set forth in Article IV), but also as an early warning system to use mitigation and conservation actions to prevent Matrix 2 stocks from declining to Matrix Class 1, and to keep Matrix Class 1 stocks off the endangered species list. The management approach is tailored to reflect both the nature of the stock and its human interaction and to provide Teams the flexibility to develop recommended measures accordingly.

- A. Convene a balanced Conservation Team the members of which may be drawn from NMFS (for stocks under its jurisdiction), U.S. Fish & Wildlife Service (for stocks under its jurisdiction), Marine Mammal Commission, Fishery Management

². CALCULATION = RMPE x ANPR

³. Calculated Removal Level = RMPE x ANPR x RF
RF = recovery factor

Councils, States, Fishing Community, Conservation Community, Alaska Natives, Treaty tribes, coastal communities with special concerns, academic experts and other user groups as appropriate⁴. It is strongly recommended that the Conservation Teams use a professional facilitator to guide their meetings. Notification of Team meetings shall be published and open to public participation. The Teams are exempt from complying with the Federal Advisory Act. Actions taken by the Teams are advisory in nature and do not require compliance with NEPA or other environmental laws except as part of the Secretary's obligation to satisfy any such laws. The Teams will make every effort to achieve consensus. When consensus is not achieved, dissenting views shall be reported to the Secretary.

B. Conservation Teams

1. It is recognized that if the total of all lethal takes is above the recruitment level it does not allow for population growth. It must be the Team's immediate task to reduce lethal takes below the calculated removal level set forth in Article IV of this proposal.
2. Each Conservation Team will develop a plan which shall establish interim benchmarks to measure actual performance against the goal of reducing incidental fishing mortality to an insignificant rate approaching zero within 10 years.
3. The Conservation Team plan shall include:
 - a. Benchmarks (both in terms of timing and in lethal take rates) by fishery, for reducing total lethal take below the calculated removal level set forth in Article IV.
 - b. Benchmarks by fishery for a long-term strategy to reduce incidental fishing mortality rates to insignificant levels approaching zero (within 10 years, with review after three years). This goal is applicable only to commercial fishing mortality; not subsistence use.

⁴ The negotiators recognize that it is essential to ensure a truly balanced Conservation Team consisting of members whose views and affiliations will not prejudice the prospects for objective analysis of the issues consistent with the purposes and policies of Section 2 of the MMPA. The negotiators intend to work with Committee staff to establish a formula for selecting a balanced Team consistent with these objectives.

- c. If applicable, recommended measures to reduce lethal take from non-fishing sources and identification of the appropriate bodies to undertake possible corrective measures.
 - d. Recommendations of need for agency resources and research to provide a comprehensive examination of other sources of mortality, including, but not limited, to environmental effects and ecosystem dynamics.
4. The Secretary, through his/her delegated representatives on the Conservation Team, shall provide the views of the Government on the plan strategy as it is being developed. As part of his/her participation on the Conservation Team, the Secretary shall provide guidance on measures and elements of a proposed plan that will not disadvantage the marine mammal stock(s) in question and will be consistent with the purposes and policies of the Act.
5. Conservation Teams have discretion to recommend the use of all available tools including but not limited to:
- a. Fishery-specific lethal take limits
 - b. Time/area closures
 - c. Incentive programs for fishermen
 - d. Voluntary measures, including voluntary actions on the part of users to reduce other sources of mortality
 - e. Regulatory compliance
 - f. Permits
 - g. Alternative gear techniques and new technologies
 - h. Education
 - i. Workshops
 - j. Expert skipper panels
 - k. Observer coverage
6. Teams will remain in place until a stock is removed from the critical list, meeting at least annually to review progress.
7. To the extent that the Conservation Team fails to develop a plan pursuant to these statutorily-prescribed deadlines for conservation of critical stocks, the Secretary shall develop proposed regulations and publish a draft plan in accordance with the procedures set forth in Section V. The Secretary may rely upon recommendations and proposed mitigation measures discussed and

considered by the Conservation Team (including majority and minority reports of the Conservation Team participants).

SECTION VI. Response for All Stocks

The period of reauthorization of the MMPA shall be six years. After three years, the Secretary shall institute a review of progress, by stock, towards the goal of reaching within ten years, mortality and serious injury rates of insignificant levels approaching zero. Fisheries which already have achieved and continue to maintain insignificant mortality rate levels approaching zero shall not be required to further reduce their mortality rates. By the time of this review, so called critical stocks should be sustaining significantly declining rates of incidental lethal take levels that are less than the Calculated Removal Level. And, by the time of this review, stocks in all other fisheries which have not already achieved insignificant mortality rate levels approaching zero, should have achieved significantly reduced rates of incidental lethal take of these marine mammal stocks, taking into account population size, trends, and takes (as laid out in the Matrix (Figure 1.) and the calculation of CRL). Unless the Secretary finds that this is the case, the Secretary shall undertake immediate regulatory measures mandating significant reduction in such mortality rates.

SECTION VII. Response for Critical Stocks

- A. Response to Tier 1 Stocks: Matrix Class 1 and Matrix Class 2 Critical Stocks, where total lethal take exceeds the calculated removal rate as set forth in Article IV: (Total time from enactment to implementation = 13 months)
1. Where the total lethal take is conducted primarily by Alaska Natives who have the right to use marine mammals for subsistence under federal law, the Team shall have discretion to analyze the Recovery factor in the calculated removal level (as set forth in Article IV) recommended by the Secretary, and may recommend modifications to enable a longer recovery time based on socio-cultural and economic considerations. Where Native subsistence is the primary source of mortality, the recovery factor decision becomes a policy decision about timing of recovery and the Secretary's action shall reflect the needs of subsistence users.

2. When total lethal take exceeds the calculated removal level (as set forth in Article IV) and commercial fishing contributes significantly to total mortality, the Team may assist in notifying fishermen of the problem and undertaking immediate education to encourage voluntary efforts to reduce lethal take. It is expected that these steps will be taken by Team members rather than by the Team itself. The Conservation Team may also recommend emergency mitigation measures to the Secretary.
3. Within six months from convening, Teams must develop and submit a draft conservation plan to Secretary on how to reduce the total lethal take of the stock, (fishery and/or non-fishery) below the calculated removal level (as set forth in Article IV).
4. Within 60 days of receipt of the draft plan, the Secretary shall develop proposed regulations and publish the plan for a 60-day comment period.
5. 60 days after the close of the comment period, the Secretary shall publish the final plan and any accompanying regulations, and an explanation of where and why the proposed conservation plan differs from the plan recommended by the Team. The Secretary's decision to reject all or portions of a plan shall be subject to review under an Arbitrary and Capricious standard.
6. If the Secretary fails to publish the final plan within the six months from submission by the Team, the Team shall consider the public comments submitted to the Secretary, and shall either submit a revised plan, based on the comments, to the Secretary, or send a notification to the Secretary that the Team does not intend to modify the plan.
7. Conservation Teams and The Secretary will actively monitor progress and make necessary adjustments until the response objective is achieved (lethal take less than the calculated removal level as set forth in Article IV). Once achieved, the critical stock will be redesignated as either Tier 2 or non-critical depending on the level of the reduction in lethal take.

- B. Response to Tier 2 stocks: Matrix Class 2 Critical Stocks, where total lethal take is less than the Calculated Removal Level as set forth in Article IV. (Total time from enactment to implementation, 18 months)**
- 1. Expeditious formation of Conservation Teams.**
 - 2. Verification by the Conservation Team that total lethal takes are below the calculated removal level as set forth in Article IV.**
 - 3. Within 11 months, the Team will develop and submit a draft conservation plan, consisting of the benchmarks listed above in Article V.**
 - 4. Within 60 days, the Secretary shall publish notice of the availability of the plan for a 60-day comment period.**
 - 5. 60 days after the close of the comment period, the Secretary shall publish the final plan and any accompanying regulations, and an explanation of where and why the proposed conservation plan differs from the plan recommended by the Team. The Secretary's decision to reject all or portions of a plan shall be subject to review under an arbitrary and capricious standard.**
 - 6. If the Secretary fails to publish the final plan within the 270 days from submission by the Team, the Team shall consider the public comments submitted to the Secretary, and shall either submit a revised plan based on the comments to the Secretary, or send a notification to the Secretary that the Team does not intend to modify the plan.**
 - 7. Conservation Teams and the Secretary will actively monitor and make necessary adjustments to assure reduction in lethal take and serious injury rate by commercial fisheries to insignificant levels approaching zero. Once achieved, the critical stock will be redesignated as non-critical.**
- C. Conservation Teams for critical stocks should make recommendations for long term research priorities, including broad ecosystem research, such as investigations of any predator/prey relationships.**

SECTION VIII. Response for Non-Critical Stocks (Matrix Class 3-5 stocks)

A. Stock Assessment

- 1. All fisheries interacting with non-critical stocks must move expeditiously to reduce marine mammal takes to insignificant levels approaching zero mortality and serious injury rate.**
- 2. The Scientific Evaluation Working Group shall annually review data on stock assessments, incidental lethal take and serious injury rates, population abundance estimates and accompanying confidence interval and or coefficient of variation, including the calculation of realistic minimum population estimates, recovery factors, calculation of removal level that considers recovery if the population is not at OSP, and lethal take levels, along with any recommendations to reduce incidental marine mammal lethal and serious injury takes.**
- 3. The annual review of the Secretary shall include a review of stock assessment information, levels of incidental lethal and serious injury take, a summary of efforts to reduce lethal take and serious injury, as well as information from the Scientific Evaluation Working Group.**

B. Monitoring Program

- 1. The Secretary has the discretion to initiate a monitoring and/or information gathering program for fisheries and other sources of lethal takes from non-critical stocks. The purpose of such a program shall be to:**
 - a. verify that the stock is non-critical;**
 - b. spot unusual changes in fishing patterns (such as the introduction of new gear, initiation of an experimental fishery, alternative gear, modified existing gear or improved practices);**
 - c. increase understanding of causes and possible reduction of incidental lethal take;**
 - d. gauge progress on reducing incidental mortality and serious injury rates to insignificant levels approaching zero;**
 - e. educate fishermen on ways to reduce incidental lethal take;**
 - f. enforcement of intentional lethal take prohibition under §114; and,**
 - g. verify self-reporting of lethal takes by fishermen.**

2. The Secretary shall allocate available observers among such fisheries consistent with the following priority:
 - a. those fisheries that incidentally lethally take and seriously injure marine mammals designated as being in need of greatest and most immediate reduction in lethal take and serious injury (critical stocks);
 - b. Those fisheries other than those described in (a) in which the greatest incidental lethal take and serious injury of marine mammals occur; and
 - c. any other fisheries identified under this section.
3. Monitoring options include: logbooks/self-reporting; observers and extrapolations of reported lethal or serious injury takes based on effort; alternatives to observers for verification (video, platform, interviews, etc.); and review of data from The Marine Mammal Stranding Program.
4. In order to verify total fishing effort as part of the Secretary's discretionary monitoring program, the Secretary may require submission of effort or other data under existing federal, state, and tribal fishing permits. If a fishing vessel is not required to have a federal, state or tribal permit, the Secretary at his or her discretion may require MMPA permits as a means to make sure that all vessels authorized to fish are included in the determination of total effort and verification of total lethal or serious injury take.
5. Where necessary for the monitoring program, the Secretary has at his discretion the authority to place observers on fishing vessels that can safely accommodate them.
6. In addition to monitoring fisheries, effort should be directed toward investigating and monitoring other environmental changes that may bear on stock status (e.g., periodic tissue sampling for toxic substances).

C. Reporting

1. **Mandatory reporting to NMFS of all lethal takes and serious injury at landing/end of each trip. Federal reporting forms to be marked clearly that reporting of incidental lethal take will not expose vessel to penalty, but the failure to report incidental lethal or serious injury take is subject to penalty. The information shall include the date and approximate time, number and species of any incidental taking of a marine mammal, together with the area in which the incidental taking occurred, the fishing gear used at the time of the incidental taking and the species of fish involved. Any intentional killing of marine mammals is subject to penalty whether reported or not.**
2. **The Secretary's annual report shall provide to the Scientific Evaluation Working Group, for their review and for public comment, data on reported, observed and estimated lethal takes and serious injuries, and periodic stock assessments.**
3. **If reporting or monitoring reveals anomalous mortality levels, the Secretary has authority to implement regulatory measures (such as time/area closures, etc.) The Secretary may convene a Conservation Team for a stock approaching critical status. Any regulations will be proposed through notice and comment rulemaking.**
4. **The annual report by the Secretary shall include a description of efforts to achieve reduction of the incidental mortality and serious injury rate to insignificant levels as soon as feasible but within 10 years; information on current levels of lethal and serious injury take and progress toward the goal with an evaluation of progress after three years.**

SECTION IX. Other

- A. Intentional killing of marine mammals by commercial fishermen is prohibited in this section of the MMPA (§114). Existing Sections 103 and 104 shall govern takes of marine mammals determined to be at or above OSP.**
- B. Deterrence:**
- 1. Commercial fishermen are authorized to use measures that do not cause serious injury to deter marine mammals from damaging their gear or catch or to ensure personal safety, even if the stock is depleted. [Note, Section 101(a)(5) of MMPA needs changing to allow this type of deterrence.] Use of firearms is prohibited. The Secretary shall report to the Congress by the next authorization the results of a study on amount of gear damaged and catch lost through marine mammal interactions.**
 - 2. It is the understanding of the parties that the term "harass" in the definition of "take" does not include citizen use of non-injurious measures to deter marine mammals to protect private or public property or to ensure personal safety, even if the stock is depleted. [Note Section 101(a) (5) of the MMPA needs changing to allow this type of take for threatened/endangered.] Use of firearms is prohibited. The parties agree that the term "harass" includes the intentional feeding or attempting to feed marine mammals in the wild. Feeding marine mammals is harmful because it conditions animals to approach vessels, piers, etc., where there is an increased likelihood that they will become entangled in fishing gear, be struck by vessels, or be shot, poisoned, or fed foreign objects or damage to public and private property. Feeding conditions animals to expect food from people and causes aggressive behavior when food is not offered; 56 Fed. Reg. 11693, 11695 (March 20, 1991).**
 - 3. If NMFS determines that a certain form of deterrence has a significant adverse effect on marine mammals then NMFS shall regulate against such use.**
- C. Treaty rights: "Nothing in this Act is intended to abrogate or diminish existing Indian treaty fishing or hunting rights, and regulation of Native American fishing and hunting activities shall be limited to measures consistent with existing treaty rights."**



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FOR IMMEDIATE RELEASE

FISHERIES, CONSERVATION GROUPS REACH ACCORD ON MARINE MAMMAL PROTECTION PROPOSAL FOR CONGRESS

OLYMPIA, WA (6/17/93) -- Commercial fishermen would no longer be allowed to kill marine mammals damaging their gear or catch under provisions of a proposal submitted to Congress last week by a diverse group of conservation and fishing organizations from throughout the U.S. Under a follow-up proposal negotiated Tuesday, however, nuisance animals -- such as Herschel at the Ballard Locks -- could be lethally removed.

Another provision of the proposal acknowledges existing treaty Indian rights to harvest marine mammals, which should lead to government-to-government negotiations to implement treaty rights to manage and harvest marine mammals. This is especially important to Washington State fishermen because it offers an opportunity for controlling the exploding population of marine mammals that are causing substantial damage to gear and catches.

The groups were asked by Congress to develop a joint proposal to replace certain provisions of the Marine Mammal Protection Act, which is scheduled for reauthorization this summer.

Congressional staff is developing legislative language to implement the proposals developed by the group. Initial hearings on the resulting draft legislation are expected in mid-July.

-end-

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Intentional Lethal Taking of Pinnipeds
(See Figures 1 & 2 for visual explanation of process)

A. Application

1. **Application for Intentional Lethal taking of Pinnipeds identified as habitually exhibiting behavior that cannot otherwise be deterred. — Any person may apply to the Secretary for a permit to intentionally lethally take such pinnipeds, except that this process is not available for species or stocks that are listed as endangered or threatened under the Endangered Species Act, designated depleted under the Marine Mammal Protection Act (MMPA), or identified by the Secretary as critical stocks under MMPA §114.**
2. **The application, using the best available data, shall include at least the following information:**
 - a. **A description of the species and stock of pinniped involved, including population size, population trends, and feeding habits.**
 - b. **If the interaction is with a stock of fish, a description of the species and stock of fish involved in the interaction with the individual pinniped or pinnipeds, including population size, and population trends;**
 - c. **A detailed description of the problem interaction, including the specific location of the interaction, how the interaction is occurring, when it occurs, and how many animals are involved in the interaction;**
 - d. **A demonstration that (1) there are no feasible and prudent alternatives to the proposed lethal taking, and (2) the applicant has taken all possible steps, without success, to remedy the problem interaction;**
 - e. **A description of the environmental costs and benefits associated with the proposed lethal take, including an assessment of other significant contributors to the problem the interaction is believed to be causing, the benefits that the individual pinniped or pinnipeds provide to the fish stock they are interacting with, the value of the affected fishery resource, and the direct and indirect relationships between the pinnipeds and the affected fishery resource; and**

- f. A specification of the expected long-term benefits of the lethal removal of the pinniped or pinnipeds.

B. Secretary's Review of Application

The Secretary shall review the application and determine within 30 days of receipt whether it presents information that in the Secretary's estimation warrants the convening of an Intentional Lethal Taking Task Force. The applicant shall have the burden of providing sufficient evidence for the Secretary to make this determination. In the event the Secretary determines that convening such a Task Force is not warranted, or that the applicant has not produced sufficient evidence to allow him or her to make that determination, he or she shall reject the application. In the event the Secretary determines that the applicant has produced sufficient information and that convening such a Task Force is warranted, he or she shall immediately publish a notice to that effect in the Federal Register, which notice shall request information and comments on the topics contained in the application.

1. Intentional Lethal Taking Task Forces

- a. **Task Force Members.** Intentional Lethal Taking Task Forces shall consist of members appointed by the Secretary, and shall include members drawn from the Secretary's staff, reputable scientists who are knowledgeable about the pinniped-fishery interaction that the application addresses, affected conservation and fishing community organizations, and such other sources as the Secretary deems appropriate.
- b. **Task Force Meetings.** Task Forces shall meet 30 days after the notice in the Federal Register and shall consider the application and the comments provided in response to the Federal Register notice. The Task Force may hear oral testimony at this time.
- c. **Assessment.** The Task Forces shall conduct an assessment of the application and the information received as a result of the Federal Register notice. The assessment shall address all the items set out in §A, above. A Task Force may consider other credible evidence in conducting its assessment. The purpose of the assessment is to determine whether the intentional lethal removal of the individually identified pinniped or pinnipeds is warranted and to recommend non-lethal alternatives or lethal taking in response to the application to the Secretary.

- d. **Task Force's Recommendations.** Within 30 days of its first meeting, a Task Force shall complete its assessment and shall develop a recommendation, subject to the following conditions, as to whether action should be taken on the application and present it to the Secretary.
- (1). In any case a Task Force may recommend that no action be taken or that only non-lethal alternatives be attempted.
 - (2). In recommending an intentional lethal taking the Task Force shall, based on information supplied by the applicant, describe the following:
 - (a). a description of the specific individual or individuals proposed to be lethally taken, including the number of animals, the approximate age and sex of the specific animal or animals, and any natural or other markings or means of identification of the particular individual or individuals;
 - (b). the location, time, and method of the recommended taking, together with the identity of the wildlife management agency which shall have the authority to carry out the taking;
 - (c). criteria for evaluating whether the taking accomplishes the purpose for which it is authorized; and
 - (d). the duration of the authority for the intentional lethal taking.
2. **Secretarial Decision.** Upon receipt of the Task Force recommendation, the Secretary shall immediately publish a notice of the Task Force's recommendation in the Federal Register and shall provide a 30-day comment period on the recommendation. Upon the expiration of the comment period and within 15 days the Secretary shall issue a decision on the application. The Secretary may reject the application, allow the execution of non-lethal alternatives to the proposed lethal taking, or issue a permit for the intentional lethal taking.
3. **Report to the Task Force.** Any party authorized to carry out an

intentional lethal or non-lethal taking under this procedure shall promptly report on its actions to the Task Force.

4. **Task Force's Evaluation of Success or Failure.** The Task Force shall evaluate the success of any lethal or non-lethal takings carried out in response to the application. Depending on the nature of the problem interaction being addressed, the Task Force may need to monitor the situation for two or more years before determining the success or failure of the actions taken. In the event the Task Force concludes that the actions taken are not successful in addressing the problem interaction for which they were proposed, the Task Force may, after conducting a further assessment which includes notice and opportunity for comment, recommend additional actions. In the event the Task Force concludes that the actions taken were successful, they shall so notify the Secretary, who shall close the case and disband the Task Force.

The above was agreed to on June 15, 1993 by representatives of the following organizations: Animal Protection Institute, Center for Marine Conservation, National Fisheries Institute, Northwest Indian Fisheries Commission, Pacific States Marine Fisheries Commission, and the Marine Mammal Center.

**Summary of Issues Discussed at Regional Council Chairmen's Meeting
May 1993**

Conflict of Interest

The main issue discussed at the Chairmen's meeting was the widespread perception that Council members have a conflict of interest. For example, the World Wildlife Fund is studying voting patterns to determine how conflict of interest might be affecting decisions. We spent almost 80% of the meeting discussing the perception and what to do about it. As in many other conferences on reauthorization this year, no one seems to have a very effective approach to address the perception though everyone talks about it.

The NMFS had originally offered a proposed amendment to give lower priority to paid industry representatives when selecting among Council nominees. They dropped this proposal by the time of the Chairmen's meeting. NMFS stated that they were not prepared to say there was an actual problem, and their preference seems to be to let individual Councils address it, through voting procedures, additional disclosure, etc.

After much discussion, the Councils were close to agreement on the following statement concerning conflict of interest:

1. The Magnuson Act creates and allows for a conflict of interest in the voting membership of the Councils.
2. The Councils believe the problem of conflict of interest is more a perception than reality, but recognize it still is a very important issue.
3. The Councils should address the issue on a Council-by-Council basis, not through legislation.
4. At a minimum, all Councils should make disclosure forms available at every FR-noticed meeting (plenary, committee, hearings, etc.).
5. Councils oppose NMFS's proposal to give lower priority to prospective Council nominees that are paid representatives of associations.
6. Councils stand ready to review suggestions from any source on addressing or mitigating the conflict of interest issue.

Issues Noted by Congressional Representatives

Congressional staff present at the Chairmen's meeting indicated that the policy role of the Councils vs NMFS, bycatch in the North Pacific and Gulf of Mexico, waste in North Pacific fisheries, and conflict of interest were issues of note in the upcoming reauthorization. Some staffers felt there would not be a wholesale or sweeping changes to the Act this year, but more fine-tuning such as in 1990 to address specific problems. They commented that few solutions to conflict of interest perceptions had been forthcoming. There is no general consensus on what needs to be changed in the Act. They also noted that the authorization could expire but the Act would still go on.

Legal Counsel

The Councils voted to clarify the Act to enable the Councils to retain their own legal counsel without NMFS approval.

Financing of Fisheries Restoration

NMFS has surfaced a proposal (attached) to finance fisheries restoration in areas where stocks are depleted and a safety net is needed for fishermen so they will not have to fish, but can still sustain themselves if highly restrictive measures are enacted to rebuild the stocks. It was quickly apparent to everyone that this seemed like a plan tailored to the needs of New England fisheries. It also became apparent that few if any other Councils supported such a bailout. The Pacific Council stated that no such provision should be placed in the Act and most agreed that this should be kept separate from the Act which should emphasize conservation and management of the fisheries.

Streamlining the Regulatory Process

The Councils supported blending the requirements of various laws into the Magnuson Act to reduce procedural problems. Also the Councils supported a timeline for review of regulatory amendments that they hoped would be shorter than for plan amendments, but in any case, not longer.

Observer Data Confidentiality

We presented a proposal to enhance the confidentiality of observer generated data which we discussed at our April Council meeting. A copy of our proposal is attached. It was supported by the other Councils, though they wanted it expanded to ensure confidentiality of sea sampler data, marine mammal observer data, as well as our North Pacific Fisheries Research Plan.

Collection of Fees

The Councils supported an extension of fee authority, that we currently have, to the other Councils. Establishment of fees should be accomplished on a regional basis through plans or amendments. Fees must be deposited in a special fund and the monies used specifically for the special management programs for which they were collected. The amendment language must include a cap on fees.

Habitat

The Councils agreed to recommend strengthening habitat provisions of the Act to allow fishery management plans to designate habitat essential in a Council's jurisdiction to achieving OY of a species or species complex. The designation would include important areas as well as specific conditions that must be maintained for fish survival. Project proponents would be required to consult with NMFS on the impacts on species in the FMP, similar to a Section 7 consultation under ESA. All entities receiving federal fishery funding for anadromous fisheries would be required to conduct their activities in a manner consistent with the FMP and Act and require an audit of the above activities.

Emergency Rules

Extend the time limit of emergency rules from 90 to 180 days, with an extension of 180 days.

Section 306 State Jurisdiction

Amend the section to specifically establish and/or clarify the authority of the states to manage species harvested in the EEZ that occur in both the state territorial waters and the EEZ in the absence of a Council FMP, and also amend the section to enable a state, with the concurrence of the appropriate council to establish landing laws or regulations for species landed from the EEZ as well as state waters.

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Recommended Amendment to Magnuson Act

SECTION TO BE AMENDED: Section 303(d). Confidentiality of Statistics.

RECOMMENDATION: Amend Act to maintain confidentiality of information collected by Section 313, North Pacific Fisheries Research Plan.

SUGGESTED LANGUAGE: 303(d) CONFIDENTIALITY OF INFORMATION.--Any information submitted to the Secretary in compliance with any requirement under subsections (a) and (b) or under section 313, including any information reported by an observer under subsection (b)(8) or section 313, shall not be disclosed if disclosure would significantly impair the commercial interests of the person from whom the information was obtained; except--

- (1) to Federal employees and Council employees who are responsible for management plan development and monitoring;
- (2) to State employees pursuant to an agreement with the Secretary that prevents disclosure of such information; or
- (3) when required by court order.

The Secretary shall, by regulation, prescribe such procedures as may be necessary to protect such information from disclosure. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with a requirement under subsection (a) or (b) or Section 313. This provision applies to any such information submitted to the Secretary since March 1, 1977.

[Legislative history would state that the "person" from whom observer information was obtained is the vessel owner, operator, or crew member.]

RATIONALE: Information recorded by observers for a specific vessel and trip must be protected from disclosure. We have a problem in the North Pacific wherein copious information collected by observers on vessel safety conditions, MARPOL violations, and general living conditions onboard a vessel, and other types of information, may be accessible through a Freedom of Information Act request. NMFS and NOAA GC have not given us a firm opinion on the issue, but they have encouraged us to suggest an amendment to the Magnuson Act that would clearly designate observer reports as confidential. This would be particularly important to all Councils if Section 313 is extended to cover other regions of the U.S.

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FINANCING U.S. FISHERIES RESTORATION

STATEMENT OF THE PROBLEM

Increasing demand for fish products and advances in fishing technology have encouraged an explosive growth in fishing power and effort. In many U.S. fisheries, the capacity to catch fish has reached levels far in excess of what is needed to harvest current or long-term potential yields. The resulting pressure has exceeded nature's bounty, and some fish stocks have seriously declined.

The apparent remedy for stock depletion, where overfishing is the cause, is to reduce fishing effort and harvests to allow fish stocks to rebuild. Larger harvests at a lower level of effort would be expected once stocks recover, and restrictions on catch could be eased. Before this occurs, however, smaller harvests could mean financial hardship for producers, and either higher consumer prices for fish products or increasing dependence on imports. Many harvesters and processors can ill afford the sacrifice required to boost future yields. Nor may it be desirable to expose society to the costly shocks of economic dislocation, set the stage for a rise in consumer prices, and add to the burden of an already swollen deficit in the balance of trade for fish products. The problem, then, is to devise an acceptable program to assist the industry through a period of sacrifice in anticipation of future gains for both industry and consumers. In this way, the welfare of society at large is best served.

BACKGROUND

In its annual review of the status and condition of living marine resources, the National Marine Fisheries Service (NMFS) reported that, "Many [fishery] resources are severely depleted as a result of excess fishing."¹ Of 153 species or species groups in the NMFS assessment, 65 or 42% were identified as overutilized. The list includes New England groundfish, Atlantic sea scallops, summer flounder and Gulf of Mexico red snapper, among other valuable species or groups. In keeping with its Federal role as "steward" of the nation's living marine resources, NMFS has declared that its primary goal is to "Rebuild

¹ Our Living Resources: Report on the Status of U.S. Living Marine Resources, 1992. USDC, NOAA, National Marine Fisheries Service, NOAA Tech. Memo. NMFS-F/SPO-2. December, 1992.

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overfished marine fisheries."² Action to rebuild the fisheries is taken under provisions of the Magnuson Fishery Conservation and Management Act (MFCMA). The Act grants the Federal government broad authority to institute the means to conserve³ stocks and promote their "wise use" within an Exclusive Economic Zone (EEZ) that extends out to 200 miles from U.S. coastlines. Regulatory control over fisheries in the EEZ is carried out through Fishery Management Plans (FMPs) that cover various species and species groups. Plans are prepared by regional fishery management Councils and are reviewed and promulgated by the Department of Commerce. There are presently 32 FMPs in effect. They vary in specifics, but in general are built around traditional fishery management practices such as catch quotas, gear restrictions, and seasonal and area closures.

It is evident from the decline in major stocks of fish that strong measures are needed to restore these resources to their full potential. Replenishment of stocks can produce substantial economic benefits over time, but not without significant near term costs.⁴ The biological process of rebuilding is subject to uncertainty and it may take a decade or more for some of the stocks to rebound. This raises questions about who will bear the costs, and who will share in the benefits. The immediate losses would be borne by the producing sector, i.e. the fishers and processors. Consumers have the alternative to purchase substitute products, whereas producers may not have readily accessible production opportunities due to the extent of overfishing.

The success of conservation programs can hinge on winning support from user groups. It is difficult for the Fishery Management Councils, established under MFCMA, or Congress to support such plans if their constituents seriously object. The commercial fishing industry, in particular, is likely to feel threatened by a policy that could undermine its current financial

² "Strategic Plan of the National Marine Fisheries Service: Goals and Objectives." USDC, NOAA, NMFS. January 10, 1991.

³The term "conservation" is used to mean "a public policy which seeks to increase usable supplies of a natural resource by present actions" (Scott, 1972).

⁴A recent example of success in the rebuilding of fish stocks is the case of Atlantic striped bass. The program to replenish stocks in this fishery was carried out through Federal/State cooperation and included compensation for users that were adversely affected in the short run.

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status for a promise of future gains. Initiatives to rebuild fish stocks should therefore include provisions to mitigate any immediate financial burdens that will be imposed on producers. For society at large, it is also essential that a rebuilding assistance program does not constitute a net burden on the national budget, at least in the long run. A form of repayment to offset public costs is therefore required from those who remain in the fishery and are compensated for the financial sacrifice they make in the short term.

PROPOSED ACTION

NMFS proposes to establish a "Recovery Assistance Program" (RAP) through which future gains from enhanced fishery stocks are used to offset the current financial burden imposed on fishers and processors by new conservation measures. The program is designed to alleviate financial stress experienced by producers as a result of programs implemented in various fisheries to rebuild depleted fish stocks. Assistance will be provided during the period stocks are rebuilt and a process will be established for the government to recoup the cost of monetary or other forms of assistance made during the recovery period.

RAP will employ various mechanisms to assist users of the resource to adjust to the new conditions. The specifics of program alternatives will be developed in a series of planning studies. Each study will include a plan with appropriate analysis. Regional planning teams will be selected to carry out the studies, guided by a steering committee that will coordinate the effort, evaluate results and draft final program proposals.

NMFS has identified the following fisheries as good candidates for inclusion in RAP: New England groundfish, summer flounder, Atlantic scallops, Gulf of Mexico shrimp, Gulf of Mexico red snapper, and Pacific ocean perch. The initial study will cover New England groundfish, and this will serve as a pilot study for other programs.

In order to complete its task, the steering committee will require continued assistance from members of the planning teams and other individuals with legal, legislative, tax, and financial expertise. The end product should represent the output from the best blend of skills, creativity, specialized knowledge and experience that can be drawn upon within budgetary constraints.

Upon completion of the planning studies, the steering committee will be responsible for drawing up a NMFS action program. Action can be broken into three parts: (1) What can be done under current mandate and laws? (2) What can be done with

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minor or significant amendments to the Magnuson Act? (3) What can be done only with independent legislation?

PLAN CRITERIA

Planning teams will have considerable leeway in their consideration of alternatives. However, all proposals must meet the following criteria:

- (1) contain a stock recovery plan including benefit cost analysis with appropriate consideration of uncertainty;
- (2) net present value of gains greater than losses;
- (3) minimize Federal costs for short term compensation;
- (4) include a mechanism for the repayment of costs accrued by the Federal government in granting short term assistance to assure that there is no net burden on the Federal budget.

It is not likely that the above criteria can be met without some control on capacity. Fishermen are asked to curtail present activity for compensation that is repaid in the future. The repayment represents a future financial cost which can make them uncompetitive if new entrants are allowed into the fishery. The new entrants are, after all, not repaying the debt. Without some form of capacity control, the "asset" accumulated during stock recovery, from which repayment can be drawn, will be lost to those who will follow and who will not be obligated for any form of repayment. The steering committee, nevertheless, should be open to consider plans that do not include capacity controls, but only if it is clearly demonstrated that capacity restrictions are not an essential element in achieving deficit neutrality.

Where applicable, capacity controls would be in effect at least during the period of stock recovery and repayment of compensation. Examples of forms of control are as follows: limited, but transferable, vessel licenses; limited, transferable fishing day permits; or individual, transferable quota shares valid during the program period.

PROGRAM ALTERNATIVES

In specifying program alternatives, the following alternatives to the status quo of no assistance could be considered, singly or in combination:

- (1) direct loans or loan guarantees coupled with:

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- (a) no limits on entry;
- (b) vessel license moratorium during program period;
- (c) ITQs during program period;
- (2) operating subsidies based on historical catch with repayment through tax on future catches;
- (3) vessel/license buy-back program coupled with vessel moratorium and tax on landings;
- (4) tax relief through credits or deferment based on historical catch coupled with vessel moratorium;
- (5) incentives to move into developing fisheries;
- (6) retraining;
- (7) ownership of access rights during program period through moratorium on additional vessel entry with existing licenses transferable;
- (8) ownership of harvest rights during program period through individual transferable quota shares;

PLANNING ISSUES

Restoring the nation's depleted fishery stocks to their full productive potential will be a complex process that combines the application of good science with economic realities and foresight. Among a probable wide range of issues that will need to be addressed, those that demand particular attention by the steering committee and planning teams are as follows:

- (1) What conditions must be met before a program can be instituted for a particular fishery?
 - a) **The rebuilding plan.** Is a plan in place, or is it required to assume a rebuilding schedule? (The problem involves uncertain recruitment and mortality rates over time, and therefore has significant cost implications).
 - b) **Hardship.** Will the rebuilding plan will cause significant hardship?
 - c) **Production capacity.** Are there provisions for adequate capacity controls, if needed? The plan must address the long term management of the resource to

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achieve a stable, sustainable fishery.

- (2) Who will be eligible for the program?
 - a) Harvesters.
 - b) Processors.
 - c) Other supporting industries.
- (3) What criteria must be met before a participant in the fishery will be eligible for the program?
 - a) Number of years in fishery.
 - b) Percent of income from affected fishery.
- (4) Should the compensation plan cover all or only part of the additional costs to users.
- (5) How is compensation to be disbursed?
 - a) Lump sum.
 - b) Graduated payments over time.
 - c) Amounts scaled to diminished need as stocks recover.
- (6) What are the long run implications?
 - a) Is there assurance that restored levels of stock will be sustained? A system which keeps the industry intact during rebuilding only to have a renewal of overcapacity and overfishing afterwards makes no sense.
 - b) Will the program induce permanent changes in industry infrastructure? Expansion or contraction? Institutional change?
 - c) Will the program retard, promote or have no impact on technological change?
 - d) Will there be changes in the social structure of fishery communities?

RATIONALE FOR ACTION

The restoration of fish stocks represents a promising investment for society. Producers and consumers alike will

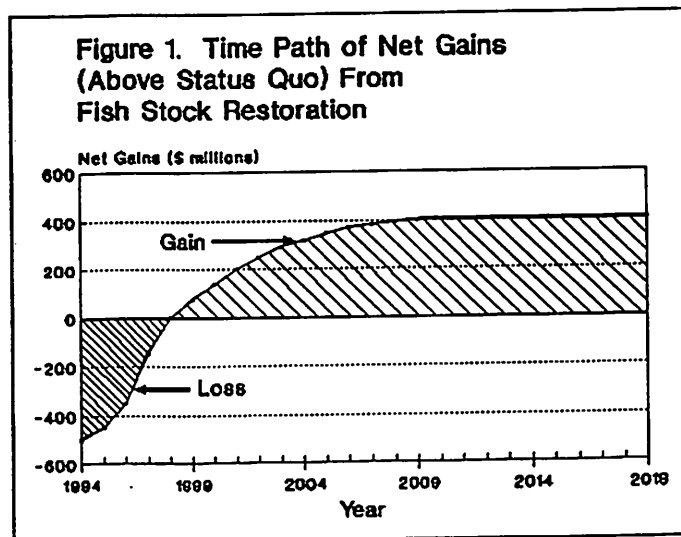
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benefit from an increase in the size of accessible fish stocks. Larger stocks provide the opportunity for fishers and processors to increase productivity, lower costs and realize a favorable return on investment. At the same time, consumers will reap the benefit of greater availability of domestic fish supplies at lower prices. Among the beneficial impacts will be protection for existing jobs, perhaps even an expansion of jobs in a revitalized industry, and expanded opportunities for recreational fishing.

The rebuilding of fish stocks is consistent with society's interest in using the nation's resources wisely. Where stocks are seriously depleted, commercial investment in the capacity to catch fish far exceeds levels necessary for efficient harvesting. Overcapacity can represent a wasteful use of resources that may be used more productively elsewhere. Excess investment in capacity also tends to create political pressures that steer regulatory decisions in a direction away from sound conservation goals and toward overfishing. In the latter case, restoration of overharvested stocks of fish can be obstructed by a broad resolve to continue a system of excessive harvest.

An effective program to restore fish stocks will exact costs in the short run, but the effort is justified provided that there are adequate compensating gains. These gains, in the form of larger stocks, lower production costs, lower consumer prices, higher consumption and less dependency on imports, should be sufficient to compensate today's users so that their financial losses are offset. One can visualize the process of restoring fisheries as generating net gains over time as in Figure 1. The reduction of fishing mortality causes hardships in the first period but, as the stocks rise, the subsequent years show gains. Assuming that the net present value of future gains exceeds the costs, a plan to rebuild the stocks is economically rational. If present users of the fisheries are compensated for short term losses, and the means are devised for some form of repayment to be made from the financial gains of later years, then the plan would be justified on the grounds of equity and



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Federal budget neutrality.

It is in society's interest to keep some level of infrastructure and skills of fishing households and firms intact during the rebuilding process. The specialized skills and capital necessary to the fishing industry, as a rule, have limited alternative uses. Unless institutional mechanisms are created to finance the recovery period, society will bear the costs of bankruptcies and lose the human capital of skilled fishermen. Once stocks are rebuilt, then society would be faced with reinvesting in human skills and capital in order to take advantage of the fisheries. Society could gain by developing a program to avoid this cycle of disinvestment and reinvestment associated with stock rebuilding.

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**Gulf States Marine
Fisheries Commission**

Larry B. Simpson
Executive Director

GULF STATES MARINE FISHERIES COMMISSION

RECOMMENDATIONS FOR

MAGNUSON FISHERIES CONSERVATION AND MANAGEMENT AMENDMENTS

SECTION 306 STATE JURISDICTION

Recommendation: Amend the section to specifically establish and/or clarify the authority of the states to manage species harvested in the EEZ that occur in both the state territorial waters and the EEZ in the absence of a council FMP, and also amend the section to enable a state, with the concurrence of the appropriate council to establish landing laws or regulations for species landed from the EEZ as well as state waters.

Rationale: The Councils, states, interstate marine fisheries commissions have worked together under shared jurisdictions since the inception of the various institutions in a partnership arrangement for management of marine resources. Lately the authority of the partners has undergone some divergent interpretations which cause confusion and less than effective management arrangements for some species. The first part of the recommendation would clearly establish the authorities of each partner under statute to continue to provide the proper management for nearshore species. Actions by the states under a coordinated interstate FMP for species without the need for Federal management by the Councils would be provided for under state authority without requiring costly, time consuming Council management. The fisheries this applies to have historically been considered the purview of the states for management because the majority of the landings have come from state jurisdictional waters. Examples are spotted seatrout, mullet, flounder, black drum, menhaden, etc.

In the second part of the recommendation the Council, attempting to minimize federal regulation on species of stocks shared with the states, have used state rules for allocation by vessel trip limit of a subquota and regulation of other minor fisheries (e.g. live rock) entirely by the affected state through landing laws on state registered vessels. These state rules have been challenged in federal court, with a lower court ruling invalidating one and pending, on the second. An initial court of appeals brief returning it to the lower court suggested all fish in the EEZ should be managed under the Magnuson Act. This would create a serious problem, if subsequently upheld by a higher court, and overtax the ability of the Council system to provide EEZ management for all species not managed under FMPs.

- Member States -

Texas

Louisiana

Mississippi

Alabama

Florida