

## SUMMARY

### Regional Fishery Management Council Chairmen's Meeting May 14-16, 1994 Washington, D.C.

Council Chairmen, Vice Chairmen, and associated Council staffs met on Saturday, May 14, 1994, beginning at 1:00 p.m. The meeting was called to order by Lee Anderson, Chairman of the Mid-Atlantic Fishery Management Council. Various representatives from NMFS and NOAA, and the U.S. Senate and House of Representatives joined the meeting on Sunday and Monday, May 15-16, 1994. The meeting adjourned at 1:00 p.m. on Monday, May 16.

#### Attendees:

##### New England Fishery Management Council

Joe Brancleone, Chair  
Eric Smith, V. Chair  
Doug Marshall, Exec. Director  
Sandy Stone, Adm. Officer

##### Mid-Atlantic Council

Dr. Lee Anderson, Chair  
Anthony DiLernia, V. Chair  
David Keifer, Exec. Director  
Carol Stevenson, Adm. Officer  
Joanna Davis, Exec. Secretary

##### South Atlantic Council

John Floyd, Chair  
Robert Mahood, Exec. Director

##### Gulf of Mexico Council

Thomas Wallin, Chair  
Robert Shipp, V. Chair  
Wayne Swingle, Exec. Director

##### Caribbean Council

Patricia Skov, Chair  
Jose Campos, V. Chair  
Miguel Rolon, Exec. Director

##### Pacific Council

Frank Warrens, Chair  
Peter Leipzig, V. Chair  
Larry Six, Exec. Director

##### North Pacific Council

Richard Lauber, Chair  
Robert Alverson, V. Chair  
Clarence Pautzke, Exec. Director  
Judy Willoughby, Adm. Officer  
Helen Allen, Exec. Secretary

##### Western Pacific Council

Rufo Lujan, V. Chair  
Kitty Simonds, Exec. Director

## NOAA/National Marine Fisheries Service

Rolland Schmitt, Asst. Administrator for Fisheries, NMFS  
Richard Schaefer, NMFS Office of Fisheries Management  
Nancy Foster, NMFS Office of Fisheries Management  
George Darcy, NMFS Office of Fisheries Management  
Margaret Hayes, NOAA Office of General Counsel  
Commander Tom Meyer, NMFS Office of Fisheries Management  
Dick Surdi, NMFS Office of Fisheries Management  
Sally Yozell, NOAA Office of Legislative Affairs  
Alan Risenhoover, NOAA Office of Legislative Affairs  
Gary Matlock, NOAA/NMFS  
Judson Feder, NOAA-GCF

## United States Coast Guard

RADM Richard Applebaum  
RADM Norman Saunders  
CDR Vince O'Shea

## Congressional Staff

Bill Price, House Committee on Merchant Marine & Fisheries, Subcommittee Staff  
Greg Lambert, House Committee on Merchant Marine & Fisheries, Subcommittee Staff  
Rod Moore, House Committee on Merchant Marine & Fisheries, Republican Fisheries Staff  
Penny Dalton, Senate Committee on Commerce, Science & Transportation, Staff  
Dave Whaley, House Committee on Merchant Marine & Fisheries, Republican Fisheries Staff  
Bonnie Bruce, House Committee on Merchant Marine & Fisheries, Republican Fisheries Staff

## Others

Mary Hope, National Research Council  
Alan Guimond, Industry Representative  
Terri A. Cian, CA. Office of Real Estate Appraisers  
Jack Dunnigan, Atlantic States Marine Fisheries Commission

## Agenda

The agenda focused mainly on reauthorization of the Magnuson Act and several Council administrative matters. The Chairmen also received a briefing on other fishery-related legislation, reports on the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the United Nations Conference on Straddling Stocks and Highly Migratory Species, and a presentation on a recent report, "Improving the Management of U.S. Marine Fisheries," by the National Research Council.

## **Administrative Matters**

Ten subjects were submitted for discussion:

- (1) Paying for unused sick and annual leave.
- (2) Workload analysis.
- (3) Designating a single grants management specialist for all Councils.
- (4) Locality pay.
- (5) Standards for Council member removal.
- (6) Establishing standard definitions for marine recreational fishermen/fishing and charter boat vessels.
- (7) Policy on indigenous people.
- (8) Social science research and data collection.
- (9) NMFS E-Mail authorization for the Councils.
- (10) Single-Council designation for Pacific pelagics management.

Following are summaries and recommendations, if any:

(1) Sick Leave

In an April 14, 1994 letter to Regional Councils Rollie Schmitt outlined three options for dealing with payment of unused sick and annual leave upon the separation, retirement or death of Council staff members: (1) NMFS Budget Office maintains two accounts on behalf of Council staff, one for unused sick leave payments, and one for unused annual leave payments; (2) NMFS Budget Office maintains 16 accounts on behalf of Council staff, one for each Council to pay for unused sick leave, and one for each Council to pay for unused annual leave; or (3) Councils maintain two accounts, one for unused sick leave payments, and one for unused annual leave payments. In each case the Council would be responsible for capitalizing the accounts from their annual allocations. The Inspector General and NMFS have indicated they both prefer Option 3.

Councils indicated they prefer that NMFS continue to handle leave pay-outs upon retirement or leaving Councils. Councils have small budgets currently, and any additional funds would be needed for more pressing fishery management matters. The number of retirees is small and it would be easier for NMFS than the Councils to handle the added cost.

If that is not possible, then the Councils prefer to have the ability to set up and manage their own funds (Option 3). Councils stressed that they would require seed money from NMFS to do so. It was pointed out that if Councils had been permitted to handle payment of leave from the beginning, then the accounts would have already been established and funded. Several Councils that have paid out for unused sick or annual leave have found it necessary to leave positions unfilled until funds can be recouped from their administrative budgets. NMFS normally has covered funds necessary for unused annual leave.

Concerning seed money, Dick Schaefer said that NMFS prefers to provide for Council needs through their administrative grants, and that the Councils should start planning to set aside dollars for sick and annual leave pay-outs. He will report Council wishes to Mr. Schmitt, but if that's not a viable option, then the policy in Option 3 would be implemented.

In discussing a uniform Council-wide cap on the number of hours of unused sick leave that would be reimbursable, Councils indicated that the amount of leave compensated should be an individual Council decision.

(2) Workload Analysis

NMFS provided a revised workload analysis based on current and projected activities for each Council, based on input from the NMFS Regional Offices. Most Chairmen expressed opposition to this method of determining funding levels. The points were derived without any input from the Councils and without each Council's perspective on its own workload. Council Chairmen also were concerned with NMFS's plan to deduct \$880,000 for management of Atlantic highly migratory species from the anticipated \$1.5 million increase for Councils for FY 1995. Mr. Schaefer responded that the allocations and the budgets are just draft recommendations and all comments will be taken into consideration.

Chairmen suggested forming a workgroup of Council representatives to work on a more acceptable method of developing the budget allocations. For 1995, however, they unanimously approved the following motion:

**That the Councils receive current levels of funding (1994) as a base, and that the projected \$1.5 million increase (or whatever increase is finally approved) be divided among Councils based on the workload analysis percentages, after deleting the highly migratory species deduction, recomputing the percentages, and dividing that among the Councils.**

A follow-up letter signed by all Council Chairmen will be sent to Mr. Schmitt.

During the next six months the Council representatives will work together to improve the workload analysis formulas to be used in 1996 and beyond, or develop alternative methods for apportioning Council funding. Bob Mahood (SAFMC) offered to arrange the meeting for Council representatives.

(3) Grants Management

At the request of the Councils, the NOAA Grants Office has considered assigning a single grants specialist to serve all Councils to assure consistency and familiarity with Council needs. However, because all grants are processed at the same time, the Grants Office felt that this could lead to missed deadlines if the grants specialist became ill or was unavailable for some other reason. The Grants Office has, however, reorganized into teams with concentrated expertise to be shared among the team members. There will be two grants management specialists, along with a team leader assigned to Councils.

The Councils accepted this arrangement while noting their main concern that the same two persons always handle Council grants so they are familiar with each situation and provide continuity.

(3) Locality Pay

The Federal government has begun providing locality pay adjustments in salaries based on local conditions, including cost of living and typical salaries of non-government employees. This locality

pay program is being implemented nationwide, and is separate and apart from COLA adjustments already established for high-cost areas such as Alaska, Hawaii, and the Caribbean.

Most Councils have moved toward locality pay adjustments for their staffs and Council members. CDR Tom Meyer will report back to the Councils on NMFS programs in establishing locality pay adjustments.

(5) Standards for Council Member Removal

This discussion was requested by the Western Pacific Council because of a recent incident within their Council where the Regional Director's designee initiated motions to remove two Council members because of fisheries violations committed by their corporations or members of their families (but not by the Council members themselves). Their main concern was whether NMFS had an established policy on when they would initiate removal actions, or was it left up to the discretion of the individual Regional Directors. Mr. Schmitten said he would review current procedures and develop policy as necessary on what types of violations or Council member action might compel NMFS to initiate removal proceedings.

It was noted that in the Act a Council must first recommend removal by at least 2/3 vote of voting members before any removal action can proceed to the Secretarial level.

(6) Definition of Marine Recreational vs Commercial Fisherman

In 1991 the MAFAC Recreational Fisheries Subcommittee requested that NMFS provide for the record definitions for marine recreational fishing/fisherman. In 1992 MAFAC reviewed the definition and recommended that NMFS adopt the definitions as agency policy, to be followed later by incorporation into the 602 Guidelines. In a February 17, 1993 memo to Regional Directors, then-Asst. Administrator Fox provided the definitions as informal guidance and requested that the RDs advise Councils of the preferred definitions. At this meeting Council Chairmen were provided with a draft *Federal Register* notice to amend the 602 regulations. Mr. Schaefer said that this is not a high priority and there will be plenty of time for Councils to comment, perhaps at the next Chairmen's meeting.

Dick Schaefer characterized NMFS's determination of recreational versus commercial fishing as, "once you sell a fish, you are no longer a recreational fisherman; if you have received compensation, put it into commerce, then you're a commercial fisherman."

Council Chairmen commented about the unique characteristics of each of their regions. Most already have incorporated some type of definition into their plans. They also stressed the importance of determining appropriate definitions for charter and excursion operations. Mr. Schaefer said they would be working on those distinctions in the future.

(7) Policy on Indigenous People

Kitty Simonds recapped legislation in Congress which would require recognition of indigenous fishing rights within a region when developing fishery regulations. She suggested that NMFS develop a policy similar to that of the Fish and Wildlife Service on co-management by tribes and the ability of tribes to manage fisheries.

The Western Pacific Council asked NMFS to appoint a committee to develop a draft national policy on the role of indigenous peoples in the management and utilization of fishery resources in the EEZ. Mr. Schmitten advised that a national working group has been established by Interior Secretary Babbitt and Commerce Secretary Brown to review the Nation's fisheries policies as they affect the U.S. insular areas. Mr. Schmitten is a member of the working group which held its first meeting in Guam on April 22. Mr. Schmitten pointed out in an April 20, 1994 letter to the Western Pacific Council that various groups do not qualify as Indigenous or Native peoples and stressed the importance of provisions in the Magnuson Act that would apply to all groups with a stake in fisheries management. He has directed NMFS regional offices to ensure that FMPs and amendments contain an evaluation of relevant social and cultural considerations, as well as an assessment of the impacts of management on all users of these resources, including indigenous peoples.

This was an information-only item; Ms. Simonds will keep other Councils informed.

(8) Social Science Research and Data Collection

An update was requested on NMFS' plans to initiate social science research and data collection. Mr. Schaefer said that the agency is getting serious about the need for this kind of data, although its collection with existing dollars and resources may be difficult. Based on regional input, NMFS has begun to prepare initial planning documents and start a program for future budgets.

Clarence Pautzke said that Councils are being called on more often to incorporate this kind of information in their analyses, and are sometimes criticized because it is not sufficient. However, this kind of data is not readily available and its collection is very expensive. He asked whether NMFS will be initiating that type of data collection in the near future.

Mr. Schaefer said it is their intent to start collecting data in FY 95, which will serve as a foundation on which to build better information bases for social analyses. NMFS has added social scientists to its staffs and hopes Councils will consider adding a social scientist to their staffs, too. It was pointed out that this, too, would require additional staff positions and funding, both in the Councils and Regions.

(9) E-Mail

The Western Pacific Council requested a discussion of whether Councils should be able to communicate with NMFS by E-Mail. Mr. Schaefer said there was no official policy at this time, but that he felt it would be a good idea. He will discuss it with Mr. Schmitten and report back to the Councils. He cautioned that all E-Mail transmissions are public record, subject to FOIA requests and the scrutiny of others.

(10) Single-Council Designation for Pacific Pelagics Management

The Western Pacific Council has requested that the Pacific and North Pacific Councils designate the Western Pacific Council as the Council responsible for managing Pacific pelagic fisheries. The North Pacific Council has not yet discussed the issue in a Council meeting. Larry Six noted that his Council has not taken a position yet either, however they are receiving letters from Pacific Coast constituents concerned about the Western Pacific proposal. This issue will probably be resolved by the three Councils this fall.

## **Magnuson Act Amendment Proposals**

Council Chairmen reviewed their previous recommendations from the Chairmen's meeting in San Francisco, and reviewed draft amendment proposals from the minority and majority staffs of the House Committee on Merchant Marine and Fisheries, and received a review of draft proposals from National Marine Fisheries Service. Summaries, comments, and recommendations, if any, are found in Appendix I to this meeting summary.

## **Reports/Presentations**

### Improving the Management of U.S. Marine Fisheries, National Research Council

Mary Hope provided a draft report developed by their Committee on Fisheries. The report was developed for the purpose of recommending changes to the Magnuson Act. The report is not meant to provide specific language changes or to suggest where to find funding, but rather to focus attention on overfishing, institutional structure, quality of fishery science and data, and the ecosystem approach to fishery management. The final report is due out by May 23, 1994 for use during the reauthorization process.

### Briefing on Other Fishery-related Legislation

Rod Moore advised that the Endangered Species Act would not come before Congress this year. The Clean Water Act may, but it is not certain. The Marine Mammal Act has been amended so that observer requirements now apply to both Category 1 and Category 2 fisheries. The designation of categories has been changed slightly; it is no longer a matter of how frequently a fisherman encounters a marine mammal, but how frequently they injure or kill one. The amendment also requires establishment of a scientific review panel for stock assessment on all marine mammal stocks. Stocks designated as "strategic" will require more stringent reviews. Penny Dalton noted that the thrust at this time is to use the limited funds on the most critical species.

### FAO Agreement to Promote Compliance with International Conservation and Management by Fishing Vessels on the High Seas

Maggie Hayes reviewed the agreement which was signed in November, 1993, and will become effective as soon as twenty-five signatures are obtained. The agreement essentially states that each party shall take the measures necessary to ensure that a fishing vessel flying its flag does not engage in any activity that undermines the effectiveness of international conservation and management measures.

### United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks

Ms. Hayes also reported on the above conference, held in March, 1994. The conference resulted in a revised negotiating text which seeks to address the inadequate management of high seas fisheries in many areas due to unregulated fishing, overcapitalization, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases, and lack of sufficient cooperation between States. It was unclear just when a final agreement will be reached.

## **Next Chairmen's Meeting**

The North Pacific Fishery Management Council will sponsor the next Chairmen's meeting, tentatively scheduled for July of 1995.

**Council Chairmen's Meeting  
May 14-16, 1994  
APPENDIX I**

**MFCMA AMENDMENT PROPOSALS**

<b>TOPIC</b>	<b>PAGE NUMBER</b>
Council Composition/Conflict of Interest .....	1
Other Council Procedures .....	3
Overfishing/Recovery Plans .....	4
Observers .....	5
Habitat .....	6
Other Fees .....	7
Bycatch/Waste .....	8
602 Guidelines .....	9
Citizen Suits .....	9
Citizen Petitions .....	9
FMP Implementation .....	10
Overcapitalization .....	11
Allocation .....	11
Gear .....	12
Fisheries Under More Than One Council Jurisdiction .....	12
Best Scientific Information Available .....	13
Other Issues .....	13
Related to the Atlantic Tunas Convention Act .....	14
Foreign Fishing Permits for Transshipment .....	15
Economic Data From Processors .....	15
3-Year Limit on Confidentiality of Statistics .....	15
National Data Collection Program .....	16
Data From Internal Waters Processing Operations .....	16
Assault Against Data Collectors .....	16
Large Scale Driftnets .....	16
Permit Sanctions .....	17
Penalty and Forfeiture Fund .....	17
Pacific Council Seat for Treaty Indian .....	17
Streamlined Fishery Management Plans .....	18

**Summary of proposals and comments submitted by:**

Representative Gilchrest: HR 4404

Fisheries Management Subcommittee Staff (May 5, 1994)  
(House Merchant Marine and Fisheries Committee)

Republican Fisheries Staff (April 25, 1994)

NOAA/NMFS (May 16, 1994)

Council Chairmen's Meeting (May 14-16, 1994)



## **COUNCIL COMPOSITION/CONFLICT OF INTEREST**

### **Gilchrest:**

- At least 25% of the appointed members of each Council must be selected for their fisheries expertise demonstrated by university, environmental organization, or other nonuser group affiliation.
- Violation of conflict of interest provisions is a basis for removing a Council member, financial disclosure must include grandchildren, parents, and siblings, Council members must recuse themselves if conflicted, and conflict of interest could invalidate Council action and cause member to be removed from Council.
- Require roll call votes and submission of tally to Secretary.
- Council members or public can challenge another Council member for violating conflict of interest.
- All FMP/amendments submitted for Secretarial review will be evaluated for conflict of interest.

### **Subcommittee Staff:**

- Add Native American tribal government affiliates and consumer advocates.
- Give least practicable priority to paid representatives of a fishery association unless they are also employed in a commercial fishery.
- Include recusal provisions.
- Councils should be able to take action on Council member removal with a majority vote, rather than 2/3 as currently required by Act.

### **Minority staff:**

- Do not change membership unless requested and supported by all affected Councils.
- Set number of members from each state permanently and delete "at large" seats.
- Do not establish dedicated seats for interest groups, gear types, and Indian tribes.
- Require Councils to establish mandatory recusal procedures and define what constitutes a conflict.

### **NMFS:**

- Dedicate one seat on Pacific Council to a representative from an Indian tribe with federally recognized fishing rights. ("Pacific Council Seat for Treaty Indian")
- Impose the following conflict of interest procedures:
  1. Council member who has a financial interest significantly affected by Council decision may not debate or vote in deliberations except as a member of the public.
  2. Upon request or on his/her own initiative, RD shall make a determination whether individual has a financial interest.
  3. RD may authorize participation if the need for individual's participation outweighs the potential conflict of interest.
  4. Member may submit request to AA to review RD determination.
  5. If Council makes decision before AA review, ruling may not be treated as cause for invalidation of decision.

### **Council Chairmen:**

- Oppose giving lower priority to paid association representatives in making Council appointments, because industry representatives have experience and time to study issues and materials associated with Council decisions.
- Also oppose Gilchrest requirement for 25% of appointed members to have university, environmental or other non-user group affiliation. Governors and the Secretary can nominate and appoint from a broad variety of interests. APs and SSCs also provide input from diverse backgrounds.

**Council Composition/Conflict of Interest, continued**

- Councils oppose mandatory recusal and abstention requirements which would deprive the Council of expertise in debating issues and may even rule out most Council members from voting on certain key issues. The Council Chairmen suggested alternative language to NMFS' procedures presented above:
  1. A Council member may not vote on any FMP, FMP amendment, or regulation proposal which would disproportionately advantage that Council member beyond other individuals participating in a particular fishery.
  2. Upon request of any Council member, a Council shall make a determination whether an individual may have a disproportionate interest in the decision.
  3. Council may authorize participation if the need for the individual's participation outweighs the potential disproportionate interest.
  4. Any interested person with a substantial grievance may submit a request to the Assistant Administrator, within 15 days after the vote, to review the interest in question and the Council action. The AA shall be required to act not later than 30 days after receiving the grievance.

## **OTHER COUNCIL PROCEDURES**

### **Gilchrest:**

- All Council decisions must be recorded through a roll call vote which is to be forwarded to the Secretary with the decision.

### **Subcommittee Staff:**

- Councils should be able to take action on 2/3 vote rather than majority vote.
- Councils should be able to retain independent legal counsel.
- Clarify state jurisdiction issues and differing State and Federal landing laws.

### **Minority Staff:**

- Require that SSCs and APs meet a minimum number of times each year.
- Amend Council compensation rate to reflect new Federal compensation levels.

**NMFS: None**

### **Council Chairmen:**

- Agree with proposal to amend compensation rates to reflect new Federal compensation levels.
- Agree that Councils should be allowed to retain independent legal counsel.
- Oppose the proposed requirement for a minimum number of SSC/AP meetings. This should be left to each Council to determine according to their agenda, the issues being discussed, and budget concerns.
- Oppose the 2/3 vote proposal and the proposal to require roll call votes on all decisions.

## OVERFISHING/RECOVERY PLANS

### Gilchrest:

- Adds overfishing definition and modifies OY definition to prevent overharvesting resource.
- Expands National Standard 2 (best scientific data available) to account for uncertainties in data, provide for ecological needs, and create a margin of safety against overfishing.
- Makes Secretary's Guidelines (602s) mandatory.
- FMPs must have objective definition of overfishing.
- If no FMP, Secretary or Council may adopt interim conservation measures to protect resource for up to one year, but does not replace need for recovery plan.
- Require recovery plan; if Council doesn't prepare one, Secretary must.
- Requires Secretary to prepare plan if mortality exceeds MSY catch by 10% average over 3 years, or ecological integrity compromised, or stock depleted.
- Secretary must publish list of both FMP and non-FMP overfished species, conduct assessments if not available.

### Subcommittee Staff:

- Include 602 Guidelines definition of overfishing.
- Require Secretarial list of overfished species.
- Explicitly define Secretary's role in stewardship of fishery resources.
- Clarify purpose to focus more on conservation and sustainable management.
- Councils must give written response to NMFS when they do not follow 50 CFR 602 Guidelines.
- Require Councils to disclose reasons for ignoring scientific recommendations in developing OY.

### Minority Staff:

- Require each Council to define overfishing as it relates to fisheries under its jurisdiction and amend plans to include definition within specified time.

### NMFS:

- Rebuild depleted stocks to MSY levels; adds "rebuild depleted stocks" to National Standard 1.
- Adds "ensures the rebuilding of depleted stocks to a level consistent with producing the MSY" to definition of Optimum Yield.
- Requires Secretary to report annually to Councils on stocks that are overfished or approaching overfishing.
- After notification, requires Councils to submit FMP, amendment, or proposed regulations to Secretary within 1 year to: prevent overfishing when approaching overfished condition, or to stop overfishing and restore to MSY when overfished.
- Requires Secretary to prepare a FMP or proposed regulations if the Council fails to submit an amendment or proposed regulations.

### Council Chairmen:

- Current overfishing definition in 602 Guidelines is sufficient.
- Council Chairmen and Executive Directors expressed concern over legislating rebuilding programs, saying that overfishing may not necessarily be a result of fishing practices. For instance, the Pacific Council cited Pacific salmon where a significant amount of their mortality is non-fishing mortality.
- Chairmen agreed that all Councils should move toward an ecosystem approach, however a Congressional mandate will only make management more difficult without adequate funding to achieve the desired result. With regard to rebuilding plans, this is best left to each Council to determine for each fishery based on information on the specific fishery and region.

## **OBSERVERS**

### **Gilchrest:**

- Requires observers on all vessels and U.S. processors.
- Establishes fee system and National Fishery Observer Fund to pay for costs of implementing the plan. Vessels/processors would be assessed based on a percentage of wholesale (1% cap), ex-vessel value (2% cap).
- Possible establishment of risk-assessment pool for liability insurance.

**Subcommittee Staff:** No new observer provisions.

**Minority Staff:** No new observer provisions.

### **NMFS:**

- Provide observers with the same lien priority for past-due wages as is currently provided for seamen's liens under admiralty and general maritime law.

### **Council Chairmen:**

- Regarding the Gilchrest amendments, Councils already have the authority to initiate observer plans; not necessary to amend Act.

## HABITAT

### Gilchrest:

- Adds habitat loss language to Findings.
- Defines essential habitat in Act, and includes turtles in definition of "fish."
- Councils may request Secretary to initiate consultation on critical habitat issues.
- Requires all Federal agencies to respond within 45 days in writing to Council/Secretary recommendations on actions affecting habitat.
- Gives Secretary veto power over other Federal agency actions affecting habitat.
- Requires Councils to adopt measures to conserve essential habitat and minimize impacts.
- Requires Secretary to publish annual report on habitat impacts.
- Council can request Secretary to identify essential habitat, possible impact (to be prepared within 12 months).

### Subcommittee Staff:

- No definition recommended.
- Endorses strengthening habitat identification and protection provisions in Act.

### Minority Staff:

- Require Councils to define "essential habitat" and NMFS/USFWS to identify habitat based on each Council's definition.
- Require Councils to adopt conservation/management measures to conserve essential habitat and amend FMP within a specified period of time.

### NMFS:

- Adds a Finding that a national program is needed to provide long-term protection for essential fish habitats.
- Adds a Finding that greatest long-term threat to fisheries is the continuing loss of habitats.
- Adds a Finding that habitat protection can be achieved through direct advocacy in existing Federal procedures.
- Adds a definition of essential fish habitat.
- Requires Councils to annually submit to the Secretary a list of all essential fish habitats for all FMPs in effect.
- FMPs must assess the impact of the fishery on the physical environment, with particular attention to protected species and habitat, and to stocks of naturally spawning anadromous fish in the region.
- FMPs must contain a description of essential fish habitats.

### Council Chairmen:

- Allow for discretionary (rather than obligatory) designation of essential habitat in FMPs.
- If designated in FMP, project proponents would be required to consult with NMFS (similar to ESA Section 7 consultation) on impact on species in FMP.
- Activities by all entities receiving federal funding for anadromous fish would be required to be consistent with FMP and Act; activities would be audited at least biennially.
- Chairmen agreed that Councils need to respond to the need to provide long-term protection for essential fish habitats, but they need the regulatory tools to accomplish this goal, including the additional funding required.

## OTHER FEES

Gilchrest: See "Observers" for recommended fee program.

Subcommittee Staff: No recommendations.

Minority Staff:

- Recommends fees be imposed on ITQ fisheries (at least) with funds to be used for enforcement in the area collected.

NMFS:

- Secretary may establish fees for issuing permits. Fee level shall be fair and equitable to all participants in the fisheries.
- Secretary may establish fees to cover conservation and management costs. Fee levels shall be fair and equitable to all participants.
- Secretary shall establish fees for all IFQ fisheries, not to exceed 3% of value of fish authorized to be taken under IFQs.
- Secretary shall establish fees on exvessel value of all fish upon the first sale within U.S. jurisdiction, not to exceed 1% of value of such fish.
- Secretary can expend funds to:
  - Collect, process and analyze information collected.
  - Place observers on vessels.
  - Conduct scientific research and publish information.
  - Improve enforcement.
  - Educate users and public.
  - Conduct buyout programs in overcapitalized fisheries.

Council Chairmen:

- Allow Councils to establish fees for implementation and maintenance of data collection programs and controlled access systems.
- Fees should be assessed on regional basis through Council plans or amendments and put in a dedicated fund to be used specifically for program for which collected.
- A cap on fees should be set.
- If Secretary imposes fees, a substantial amount of the fees collected in a region should go to that regions' programs and the fees collected from foreign imports could be used wherever needed in that particular budget cycle.
- If Secretary imposes fees, Councils should have input as to the collection and use of the fees.

## BYCATCH/WASTE

### Gilchrest:

- Adds policy to Act to reduce bycatch insignificant levels approaching zero.
- Adds seventh policy: to ensure to the maximum extent practicable that all State and Federal actions are consistent with the conservation and management of fisheries under the Act.
- Defines bycatch as take/harvest of all non-targeted fish/non-fish, all fish discarded/lost, and prohibited target species.
- New National Standard: Conservation and management measures shall reduce bycatch to the lowest level practicable and avoid unnecessary waste of fish.
- Requires FMPs to allow only gear types that minimize bycatch; include bycatch assessment methods, bycatch reduction regulations, specify technology to reduce bycatch.
- Require Secretary to set up a fee/incentive program to minimize bycatch; fees to be used by Councils for bycatch management.

### Subcommittee Staff:

- Define bycatch as in Senator Stevens' bill: "any fish species for which quota is established, but which are not the target species of a fishery in which a fishing vessel is engaged." Councils or Secretary would set bycatch quotas for FMP species, depressed, commercial extinct, or critical stocks, and other stocks deemed necessary by the Secretary.
- Would establish a 2-year bycatch demonstration program to demonstrate prevention methods in operation of high-bycatch fisheries. NMFS would accomplish, report to Congress.
- In preparing FMPs, require Councils to pay attention to bycatch fisheries and develop reduction methods.

### Minority Staff:

- Require Councils to look at conservation/management options to reduce bycatch, waste and highgrading. Council should pay particular attention to fisheries where bycatch is high and develop methods to achieve meaningful reductions.
- Councils should adopt incentive programs, rather than relying on solely punitive measures.
- Not recommending that NMFS impose gear restrictions or mandatory reduction levels.

### NMFS:

- Add National Standard 8 - Minimize incidental catch of non-target resources that results in unnecessary waste.

### Council Chairmen:

- Chairmen favored the bycatch demonstration program.
- Minority Staff recommendations should be included in the discretionary part of Act.
- Recommended the new National Standard 8 should read: "Minimize discard of fisheries resources." Some discards are unavoidable and a cost of doing business. Chairmen feel the real issue is reducing discard mortality.



## **602 GUIDELINES**

### **Gilchrest:**

- Include 602 Guidelines in Act giving them force of law.

### **Subcommittee Staff:**

- Require Councils to provide written response to NMFS if they reject a Guideline.

**Minority Staff:** No recommendations.

**NMFS:** No recommendations.

### **Council Chairmen:**

- The 602 Guidelines already seem to have the force of law and the Secretary can reject any recommendation which does not conform to the Guidelines and National Standards.

## **CITIZEN SUITS**

### **Gilchrest:**

- Allow citizens to sue Secretary/Councils for violations of Act, other non-discretionary duties.
- Courts can award litigation, attorney, expert witness fees to plaintiff.

### **Subcommittee Staff:**

- Allow individuals or groups to sue NMFs for violations of Act (taken from ESA).

**Minority Staff:** No recommendations.

**NMFS:** No recommendations.

### **Council Chairmen:**

- Not necessary. Citizens already have a myriad of ways to have input into the fishery management process.

## **CITIZEN PETITIONS**

### **Gilchrest:**

- Allow any citizen to petition Secretary to take action. If warranted and supported by information provided, Secretary must take requested action. Secretary must rule within 90 days of receipt.

**Subcommittee Staff:** No recommendations.

**Minority Staff:** No recommendations.

**NMFS:** No recommendations

### **Council Chairmen:**

- Not necessary. Same comments as for Citizens Suits.

## FMP IMPLEMENTATION

### Gilchrest:

- Council/Secretary can impose "interim measures" (effective up to 1 year to conserve FMP or non-FMP stocks).

### Subcommittee Staff:

- Extend Secretarial authority to impose emergency rule for 160 days rather than current 90 days; additional 90-day extension to stay the same.
- Councils must give written response to NMFS if they do not follow 50 CFR 602 Guidelines.

Minority Staff: No recommendations.

### NMFS:

- Fisheries Resource/Mgmt Emergencies. Emergency rules concerning resource or management problems may be extended for an additional 270-day period, after the initial 90-day period, provided the public has had an opportunity to comment on the emergency regulation, and the Council is actively preparing an FMP, amendment or proposed regulations to address the emergency.
- Public Health Emergencies. A regulation that responds to a public health emergency may remain in effect until the circumstances that created the emergency no longer exist; requires the public have an opportunity to comment after the regulation is published.

### Council Chairmen:

- Extend authority to impose emergency rule to 180 days, with one 180-day extension. (The Administration's suggestion of 90/270 wouldn't solve the problem. If the first 90 days is extended, there will be fewer instances for the need to extend.) With regard to the recommendation for "interim measures" in the Gilchrest bill, Chairmen indicated that a 180-day emergency rule with possible extension of 180 days would make the interim measure unnecessary.
- Regional Directors should not vote on any emergency action in any fishery. A unanimous vote, without the RD, on emergency actions, would compel the Secretary to act.
- Impose 60-day time limit for Secretarial action on regulatory amendments and require written response detailing reasons, if disapproved. (Mainly, Councils would like some kind of time frame for processing and implementing regulatory actions, similar to FMP amendments.)
- Exempt FMP/amendment from impact analyses required by other applicable law. If exemption not possible, require consistent reviews/time schedules for MFCMA/NEPA. (Facilitate review and approval of amendments by having the MFCMA and NEPA (and other) review periods concurrent.)

## OVERCAPITALIZATION

Gilchrest: No recommendations.

### Subcommittee Staff:

- Require NMFS to conduct feasibility study of recycling fishing vessels for enforcement purposes, as NOAA research vessels and donated to other countries as form of foreign aid.
- Universal licensing of fishing vessels in Section 311 to determine effort levels.

### Minority Staff:

- Require Secretary/Councils to provide report on overcapitalization and recommend solutions, including buyouts, with cost/options for funding; include 10-year forecast of U.S. fishing industry structure.

NMFS: No recommendations.

### Council Chairmen:

- Councils need the tools to deal with overcapitalization, but should not be "required" to take specific actions, i.e., give Councils authority to research and establish buyback programs if they are feasible for the fishery involved. It was suggested that NMFS develop a revolving fund for buyback programs.

## ALLOCATION

Gilchrest: No recommendations.

Subcommittee Staff: No recommendations.

### Minority Staff:

- Give Councils clear authority to use ITQs, CDQs, or other allocation systems, with sufficient guidelines to protect national interests, existing participants, and resource conservation. Congress shouldn't take a position on use.
- Establishment of TACs and allocating fish should not be separated.

NMFS: No recommendations.

### Council Chairmen:

- Agree with both recommendations of the Minority staff.

## **GEAR**

### **Gilchrest:**

- Gear must be evaluated with respect to impact on habitat, bycatch, before being approved for use in FMP fishery.

### **Subcommittee Staff:**

- Require NMFS to publish list of approved gears. Shift burden of proof to industry for financing and testing of new gear types for approval for use.

**Minority Staff:** No recommendations.

**NMFS:** No recommendations.

### **Council Chairmen:**

- Concerned that these restrictions could be a deterrent to research and development of new and possibly more efficient gear. Councils should preserve the right to determine whether to prohibit certain types of gear. A particular gear may be acceptable in one fishery or area and totally inappropriate for another. The ability to apply for experimental permits now exists and, along with Council oversight, can provide for protection yet allow new gears to be tested.

## **FISHERIES UNDER MORE THAN ONE COUNCIL JURISDICTION**

### **Gilchrest:**

- Approve plans by simple majority of all individual voting members combined.
- Secretary's management of highly migratory species in force on July 1, 1993 shall remain so until superseded by Council plans.

**Subcommittee Staff:** No recommendations.

**Minority Staff:** No recommendations.

**NMFS:** No recommendations.

### **Council Chairmen:**

- 3 out of 5 affected Councils recommend return of HMS in Atlantic EEZ to Councils. Those opposed cited budget concerns as the reason to leave authority with NMFS.
- 4 out of 5 affected Councils recommend that actions be approved by a simple majority of voting members of all 5 Councils combined.

## BEST SCIENTIFIC INFORMATION AVAILABLE

### Gilchrest:

- Allows Secretary to disapprove plan if not consistent with best scientific information available presented by scientists during plan development.

### Subcommittee Staff:

- Require Councils to disclose reasons for ignoring scientific recommendations in development of OY.

### Minority Staff:

- Require SSC to meet a minimum number of times per years.
- Do not separate TAC setting and allocations.

NMFS: No recommendations.

### Council Chairmen:

- No action is required. The Secretary can already disapprove actions based on whether or not the best scientific information was utilized. The Gilchrest amendment indicates any scientist, not just members of the Scientific and Statistical Committees, could object to Council recommendations and the Secretary would be compelled to disapprove.

## OTHER ISSUES

### Gilchrest:

- Adds to policy section language of intent to ensure all federal/state actions are consistent with measures authorized under Act.

### Subcommittee Staff:

- Explicitly define Secretarial role in stewardship of fishery resources.
- Clarify purpose to focus more on conservation and sustainable management.
- Establish new oversight committee to review Act process, other applicable law, to streamline review/approval process.

### Minority Staff:

- Technical changes:
  - Use new name for Pacific Marine Fisheries Commission
  - Change scientific names to reflect new classifications
  - Delete requirements for foreign allocations and driftnet reports
  - Examine technic changes recommended by NMFS/GCF
  - Change waiting period on GIFA approval form 60 legislative days to possibly 90 calendar days.

### NMFS:

- Delete need for Secretaries of Commerce and State to submit foreign allocation report to Congress.

### Council Chairmen:

- Limit disclosure of information collected pursuant to the North Pacific Fisheries Research Plan (Section 313) when information is not relevant fishery management information.

## **RELATED TO ATLANTIC TUNAS CONVENTION ACT**

### **Gilchrest:**

- **Require appointment of director of NMFS or his designee as a Commissioner.**
- **Prohibit appointment of persons to the Commission who may have a financial interest or serve in any capacity an organization that has financial interest in catching, harvesting, processing, or marketing activity that is undertaken within any fishery over which the Commission has jurisdiction.**

### **Subcommittee Staff:**

- **PDTs should be established for ICCAT fisheries to allow non-NMFS scientists, environmentalists, and users to participate in drafting management plans.**

**Minority Staff: No recommendations.**

**NMFS: No recommendations.**

**Council Chairmen: No recommendations.**

### **FOREIGN FISHING PERMITS FOR TRANSSHIPMENT**

**NMFS:**

- Provides Secretary authority to approve foreign fishing permit to transship fish products, regardless of the existence of a GIFA.
- Provides for foreign vessels to apply for permit to transship fish products, regardless of the existence of a GIFA. Secretary may approve application if:
  - in the interest of the United States,
  - owner complies with boarding, observer, fee, and other requirements,
  - owner established bonds or financial assurances required by the Secretary.

**Council Chairmen:**

- Chairmen had no recommendation, but stressed the need for NMFS to consider specific requirements in their areas, i.e., vessel tracking systems.

### **ECONOMIC DATA FROM PROCESSORS**

**NMFS:**

- Deletes exemption of processors from reporting economic data. Fish processors who first receive fish will be required to submit data which are necessary for conservation and management.

**Council Chairmen:**

- This information was very specifically exempted from the Act to protect confidential economic data.

### **3-YEAR LIMIT ON CONFIDENTIALITY OF STATISTICS**

**NMFS:**

- Any statistic submitted to the Secretary shall be confidential and not disclosed for three years following the year submitted.
- Exceptions to confidentiality requirement continue to include:
  - Federal employees and Council responsible for FMP developing and monitoring;
  - State employees pursuant to an agreement; and,
  - When required by court order.

**Council Chairmen:**

- Oppose this recommendation. Disclosure of any confidential information, particularly after only three years, could deter fishermen/processors from divulging reliable information. It was also pointed out that States may not be willing to share confidential data if a future release is against their policy.

## **NATIONAL DATA COLLECTION PROGRAM**

**NMFS:**

- The Secretary shall establish by regulation a nationwide mandatory data collection program. The program will:
  - Integrate data collection programs under FMPs into a non-duplicative data collection and management system.
  - Include all species within the geographical area of a Council.
  - Coordinate with other collection programs by the Secretary or States to ensure completeness and avoid duplication.

**Council Chairmen:**

- Councils already have the authority to initiate data collection programs - several have. Most fish are landed within the States' jurisdiction and their data gathering programs should be sufficient. One suggestion was to set national standards for recordkeeping and getting States to agree and comply.

## **DATA FROM INTERNAL WATERS PROCESSING OPERATIONS**

**NMFS:**

- Requires the owner or operator of foreign processor vessels operating in the internal waters of a State to report the tonnage of fish received from U.S. vessels, and the locations from which such fish were harvested.

**Council Chairmen:** No recommendations.

## **ASSAULT AGAINST DATA COLLECTORS**

**NMFS:**

- Prohibits acts to forcibly assault, resist, oppose, impede, intimidate or interfere with data collectors employed by or under contract to NMFS, just as currently prohibited against observers.

**Council Chairmen:** No opposition to the proposal.

## **LARGE SCALE DRIFTNETS**

**NMFS:**

- Expands U.S. enforcement authority against stateless vessels and vessels whose flag state authorizes such enforcement.
- Creates a rebuttable presumption that a vessel in U.S. waters with gear capable of use as a large-scale driftnet is engaged in large-scale driftnet fishing.

**Council Chairmen:** No opposition to this proposal.



## Other NMFS Proposals

### PERMIT SANCTIONS

#### NMFS:

- Provides same judicial oversight for permit sanction as for other civil penalties.
- Provision does not apply to permit suspension for non-payment of penalty or fine.

Council Chairmen: No recommendations or comments.

### PENALTY AND FORFEITURE FUND

#### NMFS:

- Provides that receipts from all natural resource violations under the Magnuson or any other marine resource law can be used for enforcement purposes.

Council Chairmen: There were no recommendations or comments.

### PACIFIC COUNCIL SEAT FOR TREATY INDIAN

#### NMFS:

- Requires one seat appointed to Pacific Council to be from Indian tribe with Federally recognized fishing rights.
- Secretary shall appoint the treaty indian representative as designated by the Secretary of the Interior from a list of at least three individuals submitted by the tribal governments.
- The representative shall serve for a term of three years and may not be reappointed to a consecutive term.
- Representation shall be rotated among the geographic areas involved.

#### Council Chairmen:

- The Chairman of the Pacific Council said he would prefer it not be restricted to one term. If tribal leaders concurred, a member should be able to serve more than one term. There was discussion of whether the Secretary of the Interior should be involved in the appointment process.

## Other NMFS Proposals

### **STREAMLINED FISHERY MANAGEMENT PLANS**

#### Subcommittee staff:

- Include substance of other applicable law such as NEPA, Paperwork Reduction Act, ESA, RFA, etc. in Magnuson Act to streamline the review and approval process.

#### NMFS:

- Reorder and revise Secs 303, 304, 305 in their entirety to reduce size, effort, and attention regarding FMPs, and increase effort, and attention regarding regulations.
- Fishery management plan (10-15 pages) would contain summary of description of fishery, impact of fishery, problems addressed, alternatives, objectives, definition of overfishing, OY/MSY, capacity and utilization, scientific data needed, and essential habitat.
- Regulations would contain management measures, specify pertinent data, weather considerations, permits, closed areas, limit catch, limit gear, State management, limited access, processor data, and observers.
- Councils are encouraged to prepare fishery management plans under the new format to replace existing FMPs. However, any FMP that has not been replaced by 1 year from enactment shall be deemed a plan for purposes of the amended Act. The plan's conservation and management measures shall be deemed deleted from the document.

#### Council Chairmen:

- Chairmen are in favor of increasing efficiency and reducing the time required to implement fishery regulations. There is some concern, however, over the amount of latitude NMFS would have in interpreting Council intent.

Corrected: 6/23/95**COUNCIL CHAIRMEN'S MEETINGS****HOST:****Caribbean Fishery Management Council**

1. October 18-21, 1980 (San Juan)
2. February 25-27, 1987 (Lajas)

**Pacific Fishery Management Council**

1. September 14-15, 1977 (Portland)
2. July 29-31, 1985 (Seattle)
3. May 15-16, 1987 (Portland)
4. October 8-9, 1987 (Seattle)
5. October 7-8, 1988 (San Francisco)

**South Atlantic Fishery Management Council**

1. March 27-28, 1978 (Charleston)
2. January 27-28, 1989 (Charleston)

**Gulf of Mexico Fishery Management Council**

1. January 11, 1977 (Houston)
2. November 3-4, 1983 (Biloxi)
3. February 7-8, 1991 (Tampa)

**Western Pacific Fishery Management Council**

1. October 24-25, 1978 (Kona)
2. November 18-20, 1984 (San Francisco)
3. January 21-23, 1985 (Washington)
4. February 25-28, 1985 (Hilo)
5. January 22-24, 1992 (Kona)

**New England Fishery Management Council**

1. June 4-5, 1981 (Chicago)
2. May 26-28, 1982 (Newport)
3. May 16-18, 1993 (San Francisco)

**Mid-Atlantic Fishery Management Council**

1. June 18-20, 1979 (Valley Forge)
2. March 3-4, 1989 (Washington)
3. May 14-16, 1994 (Washington)

**North Pacific Fishery Management Council**

1. June 22-24, 1981 (Homer)
2. July 29-30, 1988 (Homer)
3. July 10-12, 1995 (Homer)