

North Pacific Fishery Management Council

Eric A. Olson, Chairman
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone (907) 271-2809

Fax (907) 271-2817

Visit our website: <http://www.alaskafisheries.noaa.gov/npfmc>

MEMORANDUM

TO: Council, SSC and AP

FROM: Chris Oliver
Executive Director

DATE: July 22, 2013

SUBJECT: Items of Interest

[Letter from NMFS](#) regarding final action to amend guidelines for National Standard 2

[LOA2013-11](#), issued to the North Slope Borough Department of Wildlife Management for the vessels F/V *Alaska Knight* and R/V *Ukpik*

[Cruise Announcement](#)-SRP # 20 13-8 Bering Aleutian Salmon International Survey (BASIS), Arctic Ecosystem Integrated Survey in the eastern Bering Sea and Chukchi Sea

[Proposed rule](#) for comment on regulations that would implement a catch share plan for the guided sport (charter) and commercial fisheries for Pacific halibut in IPHC Area 2C and 3A

[FR notice](#) of listing determination for ribbon seals

[Council letter](#) to NMFS regarding Fisheries Finance Program

[Council letter](#) to NMFS requesting that the Deep-Sea Coral Research and Technology Program consider additional research on deep-sea corals in the Bering Sea, particularly in the Bering Sea Canyons

[States' Letter](#) to NMFS regarding 12-month finding on petition to Delist Eastern District Population of SSL

[Comment letter](#) to NMFS from Doc Warner's Alaska Fishing on Initial Regulatory Impact review to Revise Federal Definition of Sport Fishing Guide Services

[Comment letter](#) from the Seafood Industry on the Draft Steller Sea Lion EIS

[Comment letter](#) from SEAGO regarding definition of Sportfishing Guide Services

[Comment letter](#) from Tom Evich regarding potential GOA Catch Share Plan

[Article](#): Large Halibut bycatch delivered to Kotzebue

[Article](#): Seafood Coalition asks the National Park Service: What happened to FishWatch?



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE

1315 East-West Highway
Silver Spring, Maryland 20910

THE DIRECTOR

JUL 18 2013

Mr. Chris W. Oliver
Executive Director
North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, AK 99501

Dear Mr. Oliver:

This letter is to inform you of the final action (RIN 0648-AW62) to amend guidelines for National Standard 2 (NS2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) regarding scientific information.

This action provides guidance on the use of best scientific information available for the effective conservation and management of fisheries managed by federal Fishery Management Plans. It establishes minimum standards for scientific peer review to ensure the reliability, credibility, and integrity of the scientific information used in fishery conservation and management measures. This action also adds new language to the NS2 guidelines regarding the advisory role of the Scientific and Statistical Committees (SSCs) of the Regional Fishery Management Councils (Councils) and the relationship of SSCs to the peer-review process. Lastly, the revised NS2 guidelines also clarify the content and purpose of the Stock Assessment and Fishery Evaluation Report and related documents.

The MSA establishes that each Council and the Secretary may establish a peer-review process, and these NS2 guidelines address the protocols for such a process. Each Council and its associated NOAA Fisheries Science Center has developed and is using a peer review process (e.g., SEDAR in Southeast, SAW-SARC in Northeast, and comparable processes elsewhere) that may broadly meet the NS2 guidelines, but some modifications may improve those processes. To ensure that current and planned peer-review processes meet the NS2 guidelines, I would request that you, in conjunction with your Science Center and Regional Office, review the terms of reference for current peer-review processes and, if necessary, make appropriate adjustments with regard to these final National Standard 2 guidelines.

The intended effect of these revisions to the NS2 guidelines is to ensure that scientific information, including its collection and analysis, has been validated through peer review, as appropriate; is transparent to the public; and is used appropriately by SSCs, Councils, and NOAA Fisheries in the conservation and management of marine fisheries. These guidelines are designed to provide quality standards for the collection and provision of biological, ecological, economic, and sociological information to the Councils, while recognizing regional differences between the Councils' organization, practices, and procedures.



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THE ASSISTANT ADMINISTRATOR
FOR FISHERIES



This final action is minimally revised from the proposed action published on December 11, 2009 (74 FR 65724). Changes were made only to clarify the guidelines, as recommended by public comments.

I want to commend the Councils and your Scientific and Statistical Committees for the strong scientific review and transparency processes already in place. This final rule will build upon that great progress and further strengthen the reliability and credibility of scientific information used by NOAA Fisheries.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel D. Rauch III". The signature is fluid and cursive, with a large initial "S" and "R".

Samuel D. Rauch III
Deputy Assistant Administrator
for Regulatory Programs,
performing the functions and duties of the
Assistant Administrator for Fisheries

cc: Mr. Eric Olson, Chair

2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–253 to read as follows:

§ 165.T13–253 Maritime Heritage Festival, St. Helens, Oregon.

(a) *Safety Zone*. The following areas are designated safety zone:

(1) *Location*. All waters of the Columbia River at St. Helens, OR encompassing a 500 yard radius in all directions from the discharge site.

(2) *Enforcement period*. This safety zone is in effect from Saturday July 27, 2013, from 9:45 p.m. to 10 p.m.

(b) *Regulations*. In accordance with the general regulations in 33 CFR part 165, subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative. The Captain of the Port may be assisted by other Federal, State, or local agencies with the enforcement of the safety zone.

Dated: July 2, 2013.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2013–17311 Filed 7–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 0808041047–3587–03]

RIN 0648–AW62

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

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

ACTION: Final rule.

SUMMARY: This final action amends the guidelines for National Standard 2 (NS2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) regarding scientific information. Consistent with the President’s memo on Scientific Integrity (March 9, 2009) and NOAA Administrative Order 202–735D, the revised NS2 guidelines are intended to ensure the highest level of integrity and strengthen public confidence in the quality, validity and reliability of scientific information disseminated by the National Marine Fisheries Service (NMFS) in support of fishery management actions. This action provides guidance on what constitutes best scientific information available (BSIA) for the effective conservation and management of fisheries managed under Federal fishery management plans (FMPs), and adds new language to the NS2 guidelines regarding the advisory role of the Scientific and Statistical Committees (SSCs) of the Regional Fishery Management Councils (Councils) and the relationship of SSCs to the peer review process. The revised NS2 guidelines also clarify the content and purpose of the Stock Assessment and Fishery Evaluation (SAFE) Report and related documents. This action makes modest adjustments to current operating practices; it is intended to ensure that scientific information, including its collection and analysis, has been validated through peer review, as appropriate, is transparent to the public, and is used appropriately by SSCs, Councils, and NMFS in the conservation and management of marine fisheries.

DATES: Effective July 19, 2013.

ADDRESSES: Copies of supporting documents prepared for this final rule, such as the proposed rule and public comments that were received, can be found at the Federal e-Rulemaking

portal: <http://www.regulations.gov> by searching for RIN 0648–AW62.

FOR FURTHER INFORMATION CONTACT: William Michaels by phone 301–427–8155, by FAX at 301–713–1875, or by email: William.Michaels@noaa.gov.

SUPPLEMENTARY INFORMATION:

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I. Overview of Revisions to the NS2 Guidelines

Section 301(a)(2) of the MSA specifies that fishery conservation and management measures shall be based upon the best scientific information available. 16 U.S.C. 1851(a)(2). Section 301(b) of the MSA states that: “the Secretary (of Commerce) shall establish advisory guidelines (which shall not have the force and effect of law), based on national standards, to assist in the development of fishery management plans.” *Id.* 16 U.S.C. 1851(b). The existing national standard guidelines appear at 50 CFR 600.305 through 600.355. In the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2007, Congress added provisions to improve the use of science in decision-making, including a stronger role for Councils’ SSCs in the review of scientific information and providing fishing level recommendations to their Councils, and authorizing the Secretary and Councils to establish a peer review process for scientific information used to advise Councils about conservation and management of fisheries. These revised NS2 guidelines address the above changes in the MSA. The guidelines include guidance on what constitutes BSIA for fishery conservation and management measures, provide standards for scientific peer review, clarify the role of the SSC in the review of scientific information for its Council, expand and clarify the contents of SAFE reports, and emphasize the importance

of the availability and transparency of SAFE reports used in Council decision making.

We published an advanced notice of proposed rulemaking (ANPR) in the **Federal Register** on September 18, 2008 (73 FR 54132), announcing the agency's intent to revise the NS2 guidelines, and received public comments from 24 organizations providing recommendations. The proposed guideline revisions published in the **Federal Register** on December 11, 2009 (74 FR 65724), and were open for public comment for three months, through March 11, 2010. We received comments from 25 organizations and 118 identical email submissions. In general, the public comments were supportive of the need to revise the NS2 guidelines and provided informative recommendations and some editorial clarifications. We address changes made in the final NS2 guidelines in the next section (Section II), and summarize comments received on the proposed guidelines and respond to those comments in Section IV. Response to Comments.

II. Synopsis of Changes Made in the Final Action

This final action does not include substantive changes from the proposed guideline revisions. In response to public comments, changes were made to clarify the guidelines and emphasize the importance of public transparency in peer review of scientific information, as recommended by public comments. Language was added to clarify the following: Scientific information includes both established and emerging science; peer reviewers should not make formal fishing level recommendations, because this is the purview of the SSC; no individual can be appointed to a review panel if that individual has a conflict of interest that is relevant to the functions to be performed; peer reviews that require a greater degree of independence should use rotation of reviewers, recognizing that repeated service by the same reviewer may be unavoidable when there is a limited availability of expertise; SAFE reports should contain an explanation of information gaps and highlight needs for future scientific work; and for stocks managed cooperatively by Federal and State governments, the scientific information used for FMP development should include harvest information from both state and Federal waters. See Section V of this preamble for a detailed description of the changes made to the text of the proposed action.

III. Overview of the Major Aspects of the Final Action

A. Best Scientific Information Available (BSIA)

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

The revised NS2 guidelines adopt, to the extent possible, the 2004 NRC recommendations regarding the production and use of scientific information for fishery management actions. The public comments provided a nearly unanimous recommendation that the NS2 guidelines should be revised to incorporate the NRC recommendations, and that an overly prescriptive definition of BSIA should be avoided due to the dynamic nature of science. Therefore, as recommended by the NRC, the NS2 guideline revisions are based on the following widely accepted criteria for evaluating BSIA: Relevance, inclusiveness, objectivity, transparency, timeliness, verification, validation, and peer review of fishery management information as appropriate. The revised NS2 guidelines do not prescribe a static definition of BSIA because science is a dynamic process involving continuous improvements.

The availability and quality of scientific information to inform fisheries management varies. Ecosystems and human societies are complex, interacting, dynamic systems that are impacted by multiple factors, including those within the scope of fisheries management. Some fisheries are well studied and have much information from long-term annual research surveys and comprehensive biological, social, and economic fisheries data collection programs. Other fisheries do not have the same breadth of information available. In light of this variability, the NS2 guideline revisions elevate the importance of evaluating the uncertainty and associated risk of the scientific information to inform fishery management decisions. The revised guidelines also provide that mandatory management decisions should not be delayed due to limitations in the scientific information or the promise of future data collection or analysis.

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

B. Peer Review Processes

Pursuant to its authority under the Information Quality Act (44 U.S.C. 3516), the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review (70 FR 2664, January 14, 2005) that establishes minimum peer review requirements for "influential scientific information" disseminated by Federal agencies. Section 302(g)(1)(E) of the MSA provides that: "The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of the fishery." 16 U.S.C. 1852(g)(1)(E). If the Secretary and a Council establish such a process, it will be deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines. The revised NS2 guidelines provide guidance and widely-accepted national quality standards that should be followed to establish a peer review process per MSA section 302(g)(1)(E). They also provide flexibility to maintain existing peer review processes established by the Secretary and Councils, and clarify the role of the Councils' SSCs in the scientific review process.

MSA section 302(g)(1)(E) peer review processes must be carefully designed to maximize the likelihood of an outcome that is objective, and provide useful information relative to the intended scope of work. The revised NS2 guidelines adopt many of the OMB peer review standards, including balance in expertise, knowledge, and bias; lack of conflicts of interest; independence from the work being reviewed; and transparency of the peer review process. A peer review may take many forms, including individual letter or written review or panel reviews. Duplication of previously conducted peer review should be avoided. The amount of time and resources spent on any particular review and the degree of independence may depend on the novelty, controversy, and complexity of the scientific information being reviewed. Peer reviewers who are federal employees must comply with all applicable federal ethics requirements (available at: <http://www.oge.gov/>). Potential reviewers who are not Federal employees must be screened for conflicts of interest in accordance with

the procedures set forth in the NOAA Policy on Conflicts of Interest for Peer Review subject to OMB's Peer Review Bulletin (available at: http://www.cio.noaa.gov/service_programs/NOAA_PRB_COI_Policy_110606.html). The nature and scope of each peer review should be developed and defined prior to the selection of reviewers, to ensure that reviewers with the appropriate expertise and skills are selected.

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

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

The impact of this action on current Council peer review practices should be minimal because the peer review standards are consistent with OMB's policy and presently incorporated in the existing peer review processes established by the Secretary and Councils. However, it may be necessary to refine those existing review processes in accordance with these revised NS2 guidelines.

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

The NS2 guidelines address several roles of the SSC and/or SSC members:

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

Section 302(g)(1)(A) of the MSA mandates that: "Each Council shall establish, maintain, and appoint the members of a scientific and statistical committee to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan." 16 U.S.C. 1852(g)(1)(A). As stated in MSA section 302(g)(1)(B), each SSC: "Shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices." *Id.* 16 U.S.C. 1852(g)(1)(B).

Paragraph (c)(6) of the final action, which is substantively unchanged from the proposed action, clarifies that the SSC, and not a peer review process, provides recommendations to a Council for developing annual catch limits (ACLs). MSA section 302(h)(6) states that: "Each Council shall . . . develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g)." 16 U.S.C. 1852(h)(6). A possible interpretation of this section is that a Council could not exceed the fishing level recommendation of either the SSC or optional peer review process established under MSA section 302(g)(1)(E); if both provided recommendations, the lower of the two levels would be the limit. However, section 302(g)(1)(B) requires that each SSC: "Shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield and achieving rebuilding targets . . ." The SSC's acceptable biological catch (ABC) recommendation is the fishing level recommendation that is most relevant for developing an ACL.

As explained in the proposed action, NMFS believes that, when read in conjunction with MSA section

302(g)(1)(A)-(B), MSA section 302(h)(6) does not mean that a peer review process displaces the SSC's role in providing fishing level recommendations and other advice to its Council. A better reading of the two subsections is that they allow for development of fishing level recommendations either through the SSC or a peer review process, but ultimately, it is the SSC that provides final scientific advice to its Council. The purpose of a peer review process is to ensure the quality and credibility of scientific information, rather than directly providing scientific advice to a Council.

As reflected in § 600.315(b)(1)(ii) of the revised NS2 guidelines, a peer review process per MSA section 302(g)(1)(E) should be conducted early in the scientific evaluation process, in order to provide the SSC with a reasonable opportunity to review the peer review report and make recommendations to the Council. Section 600.315(c)(5) states that the SSC may provide a recommendation to its Council that is inconsistent with the findings of a peer review, in whole or in part, but in such cases the SSC should prepare a report outlining the areas of disagreement and the rationale and information supporting the SSC's determination. The revised NS2 guidelines also state that the SSC evaluation of peer review findings should be complementary to the overall scientific review process for the purpose of providing advice to its Council, and the SSC should not repeat a previously conducted technical peer review.

The revised NS2 guidelines state that an SSC member may participate in a peer review established pursuant to MSA section 302(g)(1)(E) when beneficial due to the expertise and regional knowledge of the SSC member, or when such participation would assist the SSC as a whole in its advisory role to the Council. If the SSC as a body or individual members of an SSC participate in a peer review established pursuant to MSA section 302(g)(1)(E), the SSC member(s) must meet the peer reviewer selection criteria as described in paragraph (b)(2) of the guidelines. For an SSC member or the SSC as a body to participate in a peer review, the guidelines require screening the SSC member(s) for conflicts of interest pursuant to NOAA's Policy on Conflicts of Interest for Peer Reviews Subject to OMB's Peer Review Bulletin. That policy prevents review of one's own work. Furthermore, the NS2 guidelines provide that the review and evaluation of scientific information by the Councils' SSCs should be transparent,

and should include the recording of minority viewpoints.

Some public comments focused on the evaluation and recommendations of the SSCs on the scientific information for catch-level specifications and pertinent measures of uncertainty. These issues were addressed in the MSA National Standard 1 (NS1) guidelines (74 FR 3178, January 16, 2009), and may be further refined in a subsequent update of the NS1 guidelines. (See 77 FR 26238, May 3, 2012.)

D. Stock Assessment and Fishery Evaluation (SAFE) Reports

The Secretary of Commerce (Secretary) has the responsibility for preparation and review of SAFE reports. The current NS2 guidelines state that the SAFE report is a document or set of documents that provides the Secretary and Councils with a summary of scientific information. The existing guidelines also contain specifications on the contents of SAFE reports. The revised NS2 guidelines provide further clarification on the purpose and content of the SAFE report. Specifically, they provide guidance on the scientific information that should be included in the SAFE report to enable the SSC to fulfill its role in providing its Council with ongoing scientific advice for fishery management decisions.

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

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

E. Fishery Management Plan (FMP) Development

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

IV. Responses to Comments

NMFS received comments from constituents, regional fishery management councils and the general public on the proposed guideline revisions, and most of the commenters were supportive of the standards proposed for using the best scientific information available and having robust peer review processes. Commenters provided useful recommendations that were carefully considered during development of the final NS2 guidelines.

BSIA Criteria

Comment 1: One commenter stated that the proposed guidelines were lengthy, detailed, and prescriptive regarding what constitutes BSIA and how BSIA should be used. The commenter stated that this prescriptiveness may lead Councils and SSCs to conform to inappropriate or overly restrictive approaches, or open the door to legal challenge based on procedural technicalities.

Response: NMFS disagrees. The revised NS2 guidelines are advisory guidelines that do not have the force and effect of law. In the revised guidelines, NMFS adopted the NRC (2004) recommendations on what constitutes BSIA for improving fisheries management. Most commenters supported the inclusion of language outlining appropriate criteria of relevance, inclusiveness, objectivity, transparency and openness, timeliness, verification and validation, and peer review for evaluating BSIA. Furthermore, the guidelines are consistent with the Information Quality Act and the OMB Peer Review Bulletin requirements for improving the integrity of scientific information. This action is not overly prescriptive and provides sufficient flexibility to adopt new scientific protocols for data collection and analysis; as stated in paragraph (a)(5): “Science is a dynamic process, and new scientific findings constantly advance the state of knowledge.”

Comment 2: One commenter suggested including additional clarification regarding the difference between “established” and “emergent” science as described by the American Fisheries Society and the Estuarine Research Federation (AFS/ERF). Other comments requested clarification of the

language in paragraph (a)(4): “Scientific information includes, but is not limited to, factual input . . .”

Response: NMFS has added language in paragraph (a)(4) that clarifies the difference between “established” and “emergent” science. The AFS/ERF committee was established to consider what determines the best available science for natural resource policies and management, and its 2006 report (Fisheries 31(9):460–465) distinguished “established” science as scientific knowledge derived and verified through the scientific process that tends to be agreed upon without controversy. “Emergent” science was defined as relatively new knowledge that is still evolving and being verified, therefore, potentially controversial because it is open to debate. Therefore, paragraph (a)(4) was revised to emphasize that: “Emergent science should be considered more thoroughly, and scientists should be attentive to effective communication of emerging science.”

Comment 3: Some commenters recommended changing the phrase “best scientific information available” to other phrases such as “best data available,” “best scientific data possible” or “best scientific information possible,” suggesting that the modifiers “best” and “available” might result in a precedence for referring to scientific guesses and poorly done science or disputes over scientific information used in management.

Response: NMFS disagrees because the phrase “best scientific information available” is taken directly from NS2 in the MSA. See 16 U.S.C. 301(a)(2).

Comment 4: One commenter suggested modifying paragraph (a)(1) as follows: “Successful fishery management depends, in part, on the thorough analysis of this information, and the extent to which the information is applied for: (i) Evaluating the impact that conservation and management measures will have on living marine resources, essential fish habitat (EFH), marine ecosystems, fisheries participants, fishing communities, and the nation; (ii) Identifying areas where additional management measures are needed; and (iii) Evaluating the consequences of not taking management actions when and where necessary.”

Response: NMFS agrees to add the language as recommended in (i) and (ii) which conveys important considerations for the success of fishery management. However, the suggested language for (iii) is not accepted because section 302(h) of the MSA requires Councils to prepare an FMP or amendments thereto for each fishery under its authority in need of

conservation and management. Therefore, not taking management action when and where necessary is not an option.

Comment 5: Commenters requested that the revised NS2 guidelines add environmental conditions (e.g., weather modeling) to the types of scientific data considered in marine conservation and management, and should specify that historical information shall include the use of weather (e.g., wind, air temperature, water temperature, and wave height data) and economic conditions (e.g., fuel prices) as all of these have tremendous effect on the fishery participation and effort estimates.

Response: NMFS agrees that environmental information is potentially useful for fisheries management. Ecological information mentioned in paragraph (a)(1) includes interactions of species with their environment, including the physical environment. The guidelines avoid being too prescriptive by not providing an exhaustive list of potential types of scientific information. The term “environmental” was inserted into the following sentence to be more inclusive: “Fishery conservation and management require high quality and timely biological, ecological, environmental, economic, and sociological scientific information to effectively conserve and manage living marine resources.” 50 CFR 600.315(a)(1).

Comment 6: Two commenters noted that there is no consideration of how the BSIA principles enshrined in the MSA should be applied to NMFS in pursuit of its responsibilities under the Endangered Species Act (ESA) or the Marine Mammal Protection Act (MMPA), and the NS2 guidelines should also specify that criteria for BSIA and peer review standards should be applicable to these other statutes.

Response: The National Standards and associated guidelines are specific to fishery management measures developed and promulgated under the MSA. The ESA and MMPA are separate laws with their own implementing regulations and science policies. Changes to those regulations and policies are beyond the scope of this action.

Comment 7: Some commenters suggested that the NS2 guidelines should provide more guidance for NMFS and Councils’ SSCs to address the lack of scientific information, resolve critical data gaps, and specify that investments in time, effort, and funding are required to turn data poor fisheries into data rich fisheries. One commenter recommended that the NS2

guidelines include the statement: “For fisheries that are data poor and require management, every effort should be made to collect data that will increase the certainty of needed management actions.” Another commenter suggested that paragraph (a)(3) should state: “In information-limited situations where simpler tools and assessment methods are warranted, scientific advice should be accompanied by recommendations for prioritizing data-needs in the short and long-term to move the fishery into a higher data category and improve assessment methods.” One commenter also suggested adding, “identification of future research areas and funding priorities” to the end of the list of research-plan elements in paragraph (a)(5).

Response: NMFS did not add the suggested language because the revised guidelines adequately address the importance of the evaluation of uncertainty, identification of data gaps, and assessment of risks associated with limited information when developing fishery management actions. NMFS also believes that funding and priorities for resolving data gaps are best addressed by the peer review and research prioritization processes of the Secretary and Councils.

Comment 8: Some commenters expressed concern about the evaluation of uncertainty and data gaps in scientific information and the effect on SSC and Council decision-making. The commenters reported that their experience thus far indicates that a lack of information merely results in reduced quotas and fishing effort so as not to trigger the annual catch limit (ACL) or accountability measures (AM) thresholds pursuant to MSA requirements. Some recommended that the NS2 guidelines should provide guidance on how uncertainty should be addressed beyond the guidance that is provided in the proposed rule. One commenter recommended a more cautious interpretation of findings where uncertainty is high in order to ensure conservation of data-poor species and provide an incentive to collect the necessary information. Some commenters suggested adding language stating that sources of uncertainty must be considered and accounted for to the maximum extent possible.

Response: The revised NS2 guidelines have sufficient, but not overly prescriptive, language on the importance of addressing uncertainty in scientific information. For example, paragraph (a)(2), states: “Scientific information that is used to inform decision making should include an evaluation of its uncertainty and

identify gaps in the information.” Further guidance for addressing uncertainty is covered in the NS1 guidelines. 50 CFR 600.310(f)(4) and (6).

Comment 9: One commenter suggested that the statement in paragraph (a)(2): “Limitations in scientific information may not be used as a justification for delaying fishery management actions,” presupposes that in the absence of information, management actions should be taken even if there may be compelling reasons for not taking action until more information is known. The commenter recommended that in such circumstances, the NS2 guidelines need to allow for evaluation of a no action alternative in the absence of scientific information and should assess the consequences of action versus no action.

Response: NMFS struck the sentence at issue in paragraph (a)(2) because the concept of not delaying management actions due to limitations in scientific information is adequately addressed in paragraph (a)(6)(v). In response to the comment, the NS1 guidelines identify the need for a precautionary management response in the face of uncertainty, and the lack of data generally suggests the need for more precaution, but not inaction.

Comment 10: One commenter recommended that the NS2 guidelines establish a conservative precautionary default for each FMP in case of delays or problems with scientific information. Specifically, the more dated the scientific information used to support fishery management actions, the more caution should be used in setting the acceptable biological catch (ABC) level when there is uncertainty. NMFS should require the SSCs and Councils to be more conservative in their management decisions and to err on the side of precaution to reduce the risk of overfishing. If a Council delays management action, NMFS must step in and implement this precautionary default.

Response: It is beyond the scope of the NS2 guidelines to address the level of precaution needed to manage fisheries resources. The NS1 guidelines address the need for precaution, including a requirement that scientific uncertainty be taken into account when the SSC makes recommendations to its Council regarding acceptable biological catch (ABC) levels. The role of the NS2 guidelines is to assure that uncertainty is calculated as accurately as possible so that it can be taken into account consistent with the NS1 guidelines.

Comment 11: One commenter recommended an increased focus on economic impacts on coastal

communities in all fishery management decisions, and greater transparency as to how the various factors, including economic considerations, are weighted.

Response: National Standard 8 requires consideration of impacts on fishing communities when developing fishery conservation and management measures. The NS2 guidelines emphasize the importance of high quality and timely social and economic information for evaluating the impact that conservation and management measures will have on fishing communities, as well as living marine resources, essential fish habitat, marine ecosystems, fisheries participants and the nation.

Comment 12: One commenter, noting the increasing complexity of fisheries models, both for stock assessment and for social and economic analyses, recommended adding language in paragraph (a)(4) to reflect that system complexity will inevitably lead to more complex decision making models, especially in ecosystem based management, where stock assessments, social impacts and environmental systems are integrated into a single model or series of inter-connected models.

Response: Although efforts to take into account the full complexity of ecosystems and fisheries may lead to complex models, NMFS disagrees that this would inevitably lead to complex decisions. A range of model complexities, commensurate with data availability and management questions, is anticipated by NMFS to meet the needs of the Councils.

Comment 13: One commenter recommended directing fishery managers to use scientific information at the ecosystem level.

Response: Paragraph (a)(6)(i) of the revised NS2 guidelines directs that an important criteria for evaluating BSIA is its relevance to the current questions or issues under consideration. Thus, the guidelines provide that if it is appropriate for ecosystem level scientific information to be considered or included in a particular analysis, managers should consider such information. Further guidelines are not necessary.

Comment 14: One suggestion was provided to change the term “data-poor” to “information-limited” because even data-rich fisheries can be information-limited and require the use of proxies if certain crucial data are missing or highly uncertain.

Response: NMFS agrees and added the term “information-limited” to paragraph (a)(3) of the revised NS2 guidelines.

Comment 15: One commenter requested clarifying the use of “surveys or sampling programs” to determine if this includes only underwater sampling and fishing catch collections, or whether “survey” also includes non-scientific telephone and dockside questionnaires. The commenter recommended discontinuing the use of phone surveys and instead using information from fishing license applications and species endorsements.

Response: NMFS uses a range of surveys and sampling programs, including phone surveys, to collect scientific data from commercial and recreational fisheries. NMFS surveys that directly gather information from the public or business entities, including phone surveys administered by the NMFS Marine Recreational Information Program, have been reviewed and meet the rigorous OMB standards for survey methodologies employed by the Federal government. See OMB Guidance on Agency Survey and Statistical Information Collections (January 20, 2006).

Comment 16: One commenter questioned using peer review as a criteria for evaluating what constitutes BSIA, stating that external peer review, outside the normal SSC process, should not be a separate and mandatory criteria for determining BSIA, particularly because the use of peer review is discretionary in MSA section 302(g)(1)(E). The commenter recommended that external peer review should be an optional tool, best used in circumstances of significant controversy regarding scientific information. Another commenter recommended changing: “. . . peer review, as appropriate; and communication of findings” in paragraph (a)(5) to: “shall include peer review; and subsequent communication of findings.”

Response: Paragraph (a)(6) of the revised NS2 guidelines does not mandate peer review in all cases, but simply lists peer review as one of many criteria for evaluating BSIA, to be used as appropriate. We believe the guidelines should be flexible, therefore paragraph (a)(5) calls for peer review “as appropriate” as an element of a sound research plan. The revised NS2 guidelines state that the Secretary and Council have discretion to establish a peer review process as provided in section 302(g)(1)(E) of the MSA and that: “peer review should be used when appropriate.”

Comment 17: Paragraph (a)(6) of the proposed guidelines stated that: “Principles for evaluating best scientific information must be based on relevance, inclusiveness, objectivity, transparency

and openness, timeliness, verification and validation, and peer review, as appropriate.” One commenter suggested changing “must” to “should.” Another recommended eliminating “as appropriate” and requested that the SSC should consider peer reviewed scientific information above non-peer reviewed scientific information.

Response: NMFS changed the quoted sentence in the revised guidelines to: “Criteria to consider when evaluating best scientific information available are relevance, inclusiveness, objectivity, transparency and openness, timeliness, verification and validation, and peer review, as appropriate.” The criteria for evaluating BSIA were adopted from the recommendations of the NRC (2004) on the application of BSIA principles in the development of fishery conservation and management measures. In response to the comments above, the change in paragraph (a)(6) was made to emphasize that these are criteria or factors to be considered when evaluating BSIA, not mandatory elements that must be met in all cases.

Comment 18: One commenter objected to the use of a management strategy based on a proxy derived from another geographic area and different species to judge the responses of industry participants or business decisions, and recommended use of socio-economic data from the affected management area. Another commenter requested clarification on how the proxy, related species, and other geographical information could be used in modeling in data poor situations as specified in paragraph (a)(6)(i).

Response: The NS1 guidelines address the use of a proxy or indicator species for specifying maximum sustainable yield (MSY) in data-limited situations. See 50 CFR 600.310(e)(1)(iii) and (iv). Although the use of proxies is acknowledged as a useful tool in data limited situations, NMFS has revised in paragraph (a)(6)(i) the phrase “powerful tool” to “may be a useful tool” in the final NS2 guidelines to ensure proxies are not used unnecessarily.

Comment 19: Commenters supported consideration of relevant local and traditional knowledge (LTK) when evaluating scientific information to support fishery management actions, particularly in data limited situations and for fisheries in regions comprised of diverse indigenous communities with extensive traditional and local ecological knowledge. Commenters recommended specifying that collection of LTK must be consistent with appropriate scientific methods, undergo scientific review, and peer review, which may include indigenous

fishermen and hunters as well as researchers from other relevant disciplines to evaluate the sources and methods of recording LTK. They additionally suggested adding standards and procedures for incorporating LTK into the scientific process to increase Councils' confidence in its use.

Response: NMFS agrees that using LTK in support of fishery management actions is important, and recognizes that there are various ways that LTK can be utilized in the fishery management process, including experiential LTK knowledge from both indigenous and non-indigenous sources. NMFS encourages the development of scientific approaches to collection and evaluation of LTK, but does not believe the NS2 guidelines should prescribe appropriate collection and evaluation of LTK.

Comment 20: With respect to the language in paragraph (a)(6)(ii)(C): "To the extent possible, an effort should be made to reconcile scientific information with local and traditional knowledge," commenters recommended removing "reconcile" because it implies that scientific information must be made consistent with LTK, or vice versa, if there is a discrepancy. The use of "reconcile" could be misconstrued to mean that scientific information needs to be reconciled to conform to LTK information. LTK should not be required to be validated by another form of science for it to be incorporated or factored into a decision.

Response: NMFS agrees and will remove "reconcile" to ensure that LTK information is acknowledged and evaluated along with other scientific information. NMFS agrees that reconciliation of LTK and other information should not be necessary for Councils to consider both types of information. Where the two types of information directly conflict and both have been validated through their respective review processes (SSC and LTK review subcommittee), the Councils should adopt an approach that takes account of the uncertainty inherent in this conflict.

Comment 21: One commenter requested that paragraph (a)(6)(iii) identify what constitutes "non-scientific considerations" and clearly define "standards for objectivity" for scientific information. The commenter suggested that the final NS2 guidelines should describe the process for establishing, documenting, and evaluating compliance with the standard of objectivity.

Response: NMFS agrees that the proposed rule language should be clarified and has revised paragraph

(a)(6)(iii) to read: "Objectivity. Scientific information should be accurate, with a known degree of precision, without addressable bias, and presented in an accurate, clear, complete, and balanced manner. Scientific processes should be free of undue nonscientific influences and considerations." Non-scientific considerations include activities that negate the attributes of scientific standards, such as verification, validation, and approval by scientific review, as indicated in the BSIA section of the guidelines.

Comment 22: Most commenters supported the importance of transparency as specified in the proposed guidelines, while some expressed concern that more public transparency was needed during the scientific peer review and fishery management meetings. One commenter stated the entire review process should be transparent and recommended paragraph (a)(6)(iv)(B) specify all rationale for excluding data from analysis must be clearly explained.

Response: The NS2 guidelines emphasize that vetting of scientific information should be open and public. Moreover, the guidelines are consistent with MSA section 302(i)(2)(A) which provides broad public and shareholder access to the Councils' fishery conservation and management process. See 16 U.S.C. 1852(i)(2)(A). No change was made regarding paragraph (a)(6)(iv)(B) because it already states that: "Scientific information products . . . should explain any decisions to exclude data from analysis."

Comment 23: Two commenters expressed concern that paragraph (a)(6)(iv) suggests that a researcher must allow general public comments on all phases of research design, collection, and analysis. Without technical expertise, the public could not provide constructive comments from an analytical perspective, and the requirement to allow public comment during each stage of the scientific process would be cumbersome and result in delay, inhibit the scientific process, or politicize the research itself. Another commenter recommended requiring public comment on reports of uncertainty, statistical error, data limitations, and decisions to exclude data from analyses.

Response: To address the concern, in paragraph (a)(6)(iv) NMFS struck the text: "the public should have access to each stage in the development of scientific information," and revised the paragraph to read: "Public comment should be solicited at appropriate times during the review of scientific information." The goal of these revised

guidelines is to provide flexibility while emphasizing the importance of both public access to the scientific information used to support fishery management actions and public comment. Transparency of scientific data and analytical methods is a precondition for reproduction by others of the analyses of scientific information as noted in the verification section.

Comment 24: One comment suggested adding after paragraph (a)(6)(iv)(B) a new paragraph as follows: "(C) The reports of the SSC shall contain an analysis of the certainty of the findings and shall clearly state a confidence factor in the validity of the information and analysis in the form of a percentage of the reliability of the information provided."

Response: NMFS does not agree with prescribing that the SSC report uncertainty in a particular way. There are many ways to characterize uncertainty, and there is no way to predetermine a particular level of uncertainty. Transparency regarding uncertainty is adequately addressed in paragraph (a)(2) of the revised guidelines that states: "Scientific information that is used to inform decision making should include an evaluation of its uncertainty and identify gaps in the information."

Comment 25: One commenter requested that the Councils be required to provide adequate time in their decision-making process to have scientific information analyzed and subjected to appropriate review before it is used to inform fishery management decisions, and that NMFS and the Councils establish benchmark stock assessment peer reviews sufficiently far in advance of SSC review and recommendations to its Council. Another commenter suggested changing "must be brought forward" to "may be brought forward" in paragraph (a)(6)(v)(B) on timeliness.

Response: The timing of a Council's decision-making process is not within the scope of the NS2 guidelines. However, NMFS agrees with the second commenter and has changed the language in paragraph (a)(6)(v) to "may be considered for use."

Comment 26: One commenter recommended that paragraph (a)(6)(vi) regarding verification and validation be moved to the Peer Review portion of the guidelines in paragraph (b) because unrealistic demands for validation and verification could be misused to delay action under the guise of requiring more research to validate uncertain information. The commenter believes the methodological considerations with using verification and validation to

evaluate BSIA are better addressed as subordinate points in the peer review section.

Response: NMFS retains the verification and validation section in the BSIA portion of the guidelines because these are important requirements of science that should be undertaken regardless of whether the science is peer reviewed. Verification is used to document scientific data collection and analytical procedures and NMFS routinely publishes sampling procedures for all of its major survey programs. Validation is the requirement to test scientific methodology and is also routinely done independently of peer review. The peer review section focuses on standards for conducting a peer review, such as the form of the review or criteria for selection of reviewers. The terms of reference for a specific peer review can require reviewers to determine if the science has been validated and verified. Paragraph (a)(6)(v) explicitly addresses delay concerns by stating that: "Management decisions should not be delayed due to limitations in the scientific information or the promise of future data collection or analysis."

Comment 27: One commenter suggested editing paragraph (a)(6)(vi)(B) to state: ". . . the accuracy and precision of the estimates are adequate."

Response: NMFS revised paragraph (a)(6)(vi)(B) to include both "accuracy and precision" as important in estimates, and further clarified the importance of accuracy by adding: "Models should be tested using simulated data from a population with known properties to evaluate how well the models estimate those characteristics and to correct for known bias to achieve accuracy."

Comment 28: Paragraph (a)(6)(viii) of the proposed guidelines states: "To the extent practicable, the scientific information that supports substantial fishery management alternatives considered by a Council should be peer reviewed." Some commenters noted that peer review addresses scientific issues. This language implies that the peer review could apply to policy matters, including fishery management decisions, thereby undermining the role of the Councils as primary policy making bodies. One commenter stated that the NS1 guidelines distinguish between the scientific process (determination of overfishing levels (OFL) and ABC) and the management process (determination of ACL, annual catch target, and management measures), and that both processes are interdependent and closely linked. Although the scientific peer review

process is well established, commenters expressed concern that the management process does not currently undergo a similar review process. Another commenter recommended that the NS2 guidelines advise the use of management strategy evaluation (MSE) or alternative technology, to support the peer review of management alternatives. MSE, which involves evaluating the tradeoffs and performance of different management alternatives, is a type of management tool for evaluating management alternatives that produce feedback into the stock assessment process.

Response: To clarify that peer review pertains to scientific information, NMFS has revised paragraph (a)(6)(vii) to read: "The scientific information that supports conservation and management measures considered by the Secretary or a Council should be peer reviewed, as appropriate." In regard to comments suggesting that management alternatives must be reviewed, the choice between management alternatives is a policy decision and is outside the scope of the NS2 guidelines. The intent is not to peer review the Council's management decisions, but rather to ensure, as required by NS2, that conservation and management measures are based on BSIA. To that end, paragraph (a)(6)(vi)(B) provides: "The concept of validation using simulation testing should be used, to the extent possible, to evaluate how well a management strategy meets management objectives."

Peer Review Standards

Comment 29: Many comments supported the inclusion of the current OMB peer review requirements in the NS2 guidance, as appropriate, and the establishment of peer review processes pursuant to MSA section 302(g)(1)(E). Some commenters requested changing the heading of paragraph (b) to "Optional Peer Review" so that the standards apply only to optional peer reviews. Some commenters requested further guidance on when an independent peer review should occur and expressed concern with an "optional" peer review because this could indicate that the Councils, SSCs and agency are disinterested in utilizing this process. Other comments requested more prescriptive language including how or when peer review should be conducted, and by whom, especially when there is significant controversy regarding the scientific information on which fishery management decisions will be based. One commenter emphasized that the NS2 guidelines should require that each Council, working with the Secretary, determine

whether an optional external peer review process is warranted, whereas others opposed the implication that an external peer review may be necessary, stating: "The Council has sole discretion to establish a supplemental peer review."

Response: NMFS does not agree that the peer review section should be titled "optional peer review." MSA section 302(g)(1)(E) and the revised NS2 guidelines adequately convey that this is an optional, not mandatory peer review process. The language in section 302(g)(1)(E) clearly states that: "The Secretary and each Council *may* establish a peer review process for that Council. . ." 16 U.S.C.1852(g)(1)(E) (emphasis added). Thus the Secretary and each Council have the discretion, working together, to establish a peer review process. Under the revised guidelines, the Secretary and Councils have the necessary flexibility to continue to use and improve their existing peer review processes. See response to Comment 36 for factors to consider when determining whether to conduct a peer review, and if so, the appropriate level of review.

Comment 30: Commenters asked for clarification on the SSC's role as an advisory body to the Council and the SSC's participation in a peer review process established pursuant to MSA section 302(g)(1)(E). Some commenters requested that paragraph (b) of the revised guidelines clarify that the SSC is the primary and final peer reviewer for scientific information. One commenter stated that MSA section 302(g)(1)(E) was specifically crafted to allow SSCs to function as the primary peer review panel and that the SSC peer review satisfies the Information Quality Act requirements. Another commenter opposed the use of external peer reviewers, and stated that MSA section 302(g)(1)(E) allows Councils to use their own SSC as an optional peer review process at the discretion of the Council. One commenter stated the guidance in paragraph (b) should be for use only when a Council decides to use an external peer review, and that additional peer reviews beyond the SSC would further lengthen the Council process and should be avoided. Contrary to this, other commenters stated the SSC should not participate in peer reviews, but rather all peer reviews should be independent and external to the SSC process.

Response: MSA section 302(g)(1)(E) gives the Secretary and Councils the discretion to establish a peer review as appropriate, and does not preclude Councils from using their SSCs for peer review. Paragraph (b) of the revised NS2

guidelines: “provides guidance and standards that should be followed in order to establish a peer review process per [MSA] section 302(g)(1)(E).” NMFS does not agree that MSA section 302(g)(1)(E) states that SSC peer review alone satisfies IQA requirements, but rather, that a peer review process established by the Secretary and a Council is deemed to satisfy IQA requirements. NMFS believes that further revision to the guidelines is unnecessary because they are consistent with the MSA and clearly provide that the SSC, as a body or its members, may participate in peer review. The guidelines are clear that this discretionary peer review process is not meant to supplant the role of the SSC.

Comment 31: A commenter requested that the agency clarify whether the Secretary has the authority to veto a decision by a Council to establish a peer review process pursuant to MSA section 302(g)(1)(E), or whether the Council may proceed as it deems appropriate subject to ultimate Secretarial review of the consistency of the FMP with the MSA. The commenter recommended the latter view as the appropriate policy.

Response: NMFS disagrees with the suggested interpretation of MSA section 302(g)(1)(E) because that section clearly states that: “the Secretary and each Council may establish a peer review process for that Council. . . .” The establishment of a peer review process is a joint Secretary-Council activity. NMFS disagrees with the suggestion that the Council may proceed as it deems appropriate, subject to ultimate Secretarial review. It is important to note that joint Secretary-Council establishment of a peer review process does not supplant the Secretarial authority to review consistency of Council fishery management plans, amendments or other actions with the MSA and other applicable law.

Comment 32: Commenters requested further clarification on the text in paragraphs (b)(1), and (c)(4) regarding duplicating or repeating peer reviews. One commenter expressed concern that the paragraphs could potentially restrict the SSC re-evaluation of peer-review reports. Commenters stated that the guidelines should have flexibility to allow for additional analysis within any review process that is complementary and not duplicative.

Response: As discussed in response to comment 30, *supra*, paragraph (b) of the revised guidelines explicitly states that: “A peer review process is not a substitute for an SSC and should work in conjunction with the SSC.” Paragraph (c)(4) of the guidelines provides that the SSC evaluation of peer

review findings should be complementary to the overall scientific review process for the purpose of providing advice to its Council, and the SSC should not repeat a previously conducted technical peer review because of disagreement with peer review findings. NMFS believes that these provisions allow for sufficient flexibility and therefore, no changes were made to paragraphs (b)(1), or (c)(4).

Comment 33: Commenters supported paragraph (b)(4) that specifies: “The Secretary will announce the establishment of a peer review process under [MSA] section 302(g)(1)(E) in the **Federal Register** along with a brief description of the process” while other commenters were concerned that the proposed guidelines do not acknowledge the existing stock assessment review processes (SAW/SARC, SEDAR, STAR and WPSAR) as being consistent with the MSA section 302(g)(1)(E) review process. Two commenters recommended that the Secretary clearly identify which existing Council committees or panels meet the NS2 guideline standards, in order to avoid confusion, prevent duplication and improve the ability of NMFS and the Councils to determine the appropriate type of peer review required for particular information.

Response: The revised guidelines are consistent with the language in MSA section 302(g)(1)(E) that a peer review process established by the Secretary and a Council may include existing committees or panels. However, as with all other processes, in order to be recognized formally as MSA 302(g)(1)(E) processes, the same process as described in (b)(4) of the revised guidelines must be followed, culminating in an announcement of the formal designation in the **Federal Register**. NMFS disagrees that such determinations are made only by the Secretary, thus the guidelines provide for a role for both the Secretary and the relevant Council in making MSA section 302(g)(1)(E) determinations.

Comment 34: One commenter criticized the language in paragraph (b)(1)(iii) of the revised guidelines arguing that policy considerations are in the purview of the Secretary and the Councils. Some commenters suggested that the decisions on all fishery management plans should be peer reviewed. Another commenter requested clarification on “scientific” and “policy” reviews and suggested distinguishing scientific uncertainty as a matter for scientific peer review and risk tolerance as a matter for policy peer review.

Response: NMFS agrees that clarification would be helpful and has revised paragraph (b)(1)(iii) to read: “The scope of work may not request reviewers to provide advice on policy or regulatory issues (e.g., amount of precaution used in decision-making) which are within the purview of the Secretary and the Councils, or to make formal fishing level recommendations, which are within the purview of the SSC.”

Comment 35: Some commenters suggested that the scope of peer reviews should include all stages of the scientific process. One commenter suggested that the guidelines should require all data and science used by NMFS or the Councils be subjected to peer review before being used to inform management decisions.

Response: NMFS agrees that the scope of peer review should include all stages of the scientific process and has clarified in paragraph (b)(1)(iii) that the scope of peer reviews includes “evaluation of the various stages of the science.” NMFS disagrees that all data and science should be peer reviewed because such a requirement would be impractical, not required in all cases, and would cause significant delays in the fishery management process.

Comment 36: Some commenters requested more specificity regarding what types of scientific information must be peer reviewed. One commenter recommended that paragraph (b)(1)(i) be revised not simply to provide the Secretary and Council with discretion to determine appropriate peer review processes, but to require them to identify major products they receive and to establish criteria for determining the appropriate peer review for each. An SSC peer review or other independent form of review should occur when significant revisions are made to a benchmark assessment. Another commenter stated that all benchmark assessments should be subject to a formal external review, and the reviewers must be independent from the science to be reviewed, such as reviewers drawn from the Center for Independent Experts (CIE) or another comparable outside organization.

Response: NMFS believes the revised NS2 guidelines provide sufficient guidance as to the necessity of and appropriate scope of peer review in paragraph (a)(6)(vii). This guidance is adopted from and consistent with the OMB peer review requirements. For peer reviews requiring a greater degree of independence, such as benchmark assessments, the Secretary and Councils routinely use independent reviewers,

including reviewers who are selected through the CIE process.

Comment 37: Commenters supported peer reviews being conducted early in the process of producing scientific information. Some commenters suggested further guidance on the timing of peer review. Another commenter suggested that NMFS and the Councils must provide compelling justification for foregoing established peer review processes.

Response: NMFS understands the importance of and need for conducting timely peer review to ensure that peer review findings are available to an SSC and its Council. NMFS has revised paragraph (b)(1)(ii) of the guidelines to read: “The peer review should, to the extent practicable, be conducted early in the process of producing scientific information or a work product so peer review reports are available for the SSC to consider in its evaluation of scientific information for its Council and the Secretary.”

Comment 38: Two commenters recommended that peer review should be a tool used to review the SSC’s advice, while other commenters stated that the peer review process should be used to inform the Council’s SSC.

Response: NMFS disagrees that peer review should be used to review the SSC’s advice because, as explained in paragraph (a)(6)(vii) of the guidelines: “Peer review is a process used to ensure that the quality and credibility of scientific information and scientific methods meet the standards of the scientific and technical community.” Paragraph (c)(4) correctly states: “peer review of scientific information used to advise the Council, including a peer review process established by the Secretary and the Council under [MSA] section 302(g)(1)(E), should be conducted early in the scientific evaluation process in order to provide the SSC with reasonable opportunity to consider the peer review report and make recommendations to the Council as required under [MSA] section 302(g)(1)(B).”

Comment 39: Paragraph (a)(6)(v)(B) of the proposed guidelines stated that: “Management decisions should not be delayed due to data limitations or the promise of future data collection and analysis.” One commenter suggested revising the text to make clear that peer reviews cannot be used to justify delay of management decisions either, especially if a stock is overfished or subject to overfishing.

Response: NMFS agrees that this is the intent of the text (which was moved to paragraph (a)(6)(v) of the revised guidelines) and revised it to clarify:

“Mandatory management actions should not be delayed due to limitations in the scientific information or the promise of future data collection or analysis.” NMFS also added new text in paragraph (b)(1)(ii) regarding timing of peer reviews. (See response to Comment 37 for explanation.)

Comment 40: A commenter suggested inserting additional text in paragraph (b)(1)(iii) providing that the scope of peer reviews should include findings and recommendations on missing information, future research, data collection, and improvements in methodologies and should also specify the type of expertise and balance of perspective for a review panel.

Response: Paragraph (b)(2)(i) states: “Peer reviewers must be selected based on scientific expertise and experience relevant to the disciplines of subject matter to be reviewed. The group of reviewers that constitute the peer review should reflect a balance in perspectives, to the extent practicable, and should have sufficiently broad and diverse expertise to represent the range of relevant scientific and technical perspectives to complete the objectives of the peer review.” Therefore, NMFS believes that the guidelines sufficiently address expertise and balance of perspective for peer review. NMFS has revised paragraph (b)(1)(iii) to clarify that the scope of work should allow reviewers to make recommendations regarding “missing information, future research, data collection, and improvements in methodologies.”

Comment 41: One commenter suggested revising paragraph (b)(2) to state that peer reviewer selection should be guided by the scope of work which, according to paragraph (b)(1)(iii), should be determined before selecting reviewers.

Response: NMFS believes the final rule has sufficient language to address the commenter’s concern. Section (b)(1)(iii) specifies: “The scope of work or charge (sometimes called the terms of reference) of any peer review should be determined in advance of the selection of reviewers” and paragraph (b)(2)(i) states: “Peer reviewers must be selected based on scientific expertise and experience relevant to the disciplines of subject matter to be reviewed, including a balance in perspectives” to ensure the peer reviewer selection is guided by the scope of work.

Comment 42: One commenter recommended that the “group of reviewers” that constitute the peer review have sufficiently broad and diverse expertise, and should also be representative of all sectors of the resource that are to be effected (e.g.,

commercial interests, charter operators, party/head boat operators, and recreational interests).

Response: NMFS disagrees that scientific peer review must include representatives of all sectors with an interest in the resource. Input from such sectors occurs through the Council advisory panels, not through scientific peer review. The revised guidelines are clear on the peer reviewer qualification requirements of scientific expertise and experience relevant to the disciplines of subject matter to be reviewed, including a balance in perspectives.

Comment 43: One commenter suggested that paragraph (b)(2)(i) on expertise and balance, when read with paragraph (a)(6)(iii) on objectivity, appears to establish a process requiring public hearings and testimony before a group with “a balance in perspectives” that is formed in order to review “substantial fishery management alternatives.”

Response: Peer reviews may require a balance in expertise and perspectives to review science that encompasses various disciplines, but seeking that balance should not involve consideration of non-scientific issues. NMFS provided clarification to show this is not the intent by revising paragraph (a)(6)(vii) to read: “the scientific information that supports conservation and management measures considered by the Secretary or a Council should be peer reviewed” to differentiate between reviewing science products and management actions.

Comment 44: One commenter expressed concern with the NS2 guidelines requiring a “balance of viewpoints” because a single individual would never meet this standard. The commenter recommended that the guidelines be revised to ensure a balance in the quality, number of perspectives, and number of reviewers.

Response: The language in paragraph (b)(2)(i) is not in reference to a single peer reviewer as the commenter suggested, but rather, the peer review body as a whole. NMFS revised the paragraph to clarify this point, as indicated in the response to Comment 40.

Comment 45: One commenter criticized the present peer review system claiming that NMFS controls all aspects of the process and stated that there should be outside or independent review of science used in support of fishery management actions, including data collection and analysis. The commenter stated that peer reviewers are “handpicked” by NMFS in the SEDAR peer review process. Another commenter recommended that members

of the peer review should not include members of the SEDAR, SSC, Advisory Panel, and the Council, thus eliminating potential sources for conflicts of interest.

Response: The final NS2 guidelines provide sufficient guidance to ensure that reviewers meet peer review standards consistent with the OMB's Peer Review Bulletin and the National Academies Policy on Committee Composition and Balance and Conflicts of Interest by specifying in paragraph (b)(2) that: "The selection of participants in a peer review should be based on expertise, independence, and a balance of viewpoints, and be free of conflicts of interest." Paragraph (c)(1) of the guidelines provides that: "SSCs may conduct peer reviews or evaluate peer reviews to provide clear scientific advice to the Council" consistent with MSA section 302(g)(1)(A). See 16 U.S.C. 1852(g)(1)(A). In regard to the comment on SEDAR reviews, the SEDAR reviews include external peer reviewers who are independently selected by a third party, the Center for Independent Experts, to meet rigorous peer review standards.

Comment 46: Comments were generally supportive of the requirement that peer reviewers must not have conflicts of interest and included suggestions for revising paragraph (b)(2)(ii). One commenter suggested that the phrases "real or perceived conflict of interest" and "any financial or other interest" may create ambiguity and the opportunity for inappropriate manipulation of the selection process. Another commenter recommended that the definition of conflicts of interest be further expanded to include advocacy conflict of interest or conflict of interest of a recipient of any consulting agreement, grant, or contract with NMFS. Another recommendation was to revise the text to be more specific about the conditions under which a conflict of interest is unavoidable such as when there is only one qualified reviewer available.

Response: In response to comments, NMFS revised paragraph (b)(2)(ii) to delete "real or perceived," but retained "any financial or other interest." NMFS also revised the text to specify: "For reviews requiring highly specialized expertise, the limited availability of qualified reviewers might result in an exception when a conflict of interest is unavoidable; in this situation, the conflict must be promptly and publicly disclosed." Consulting arrangements, grants and contracts are included as potential conflicts of interest in paragraph (b)(2)(ii)(B). Advocacy activities are adequately addressed in the NOAA Conflict of Interest policy,

which is incorporated by reference into the NS2 guidelines in paragraph (b)(2)(ii).

Comment 47: One commenter stated that the selection of peer reviewers should be based on expertise and qualifications exclusively. Thus, paragraph (b)(2)(iii) should be revised to eliminate "should rotate" and the presumption that past service on a peer review panel is a basis for exclusion from future service.

Response: The guidelines are clear on the importance of expertise and qualifications in the selection of peer reviewers, and the intent of the language on rotation of peer reviewers across the available pool of reviewers is to avoid a situation where a peer reviewer repeatedly reviews his or her scientific contributions from a previous review. Therefore, NMFS disagrees with the request to remove the language regarding rotating reviewers.

Comment 48: Commenters generally agreed that the names of reviewers must be made publicly available. However one commenter suggested the language in paragraph (b)(3), "Names and organizational affiliations of reviewers should be publicly available prior to review" should be revised because of a concern for interference in the selection of independent reviewers. Another commenter requested that the guidelines specify that the peer reviewer selection process be publicly transparent, including the rejection of a potential reviewer based on conflicts of interest.

Response: NMFS agrees that the peer review process should be as transparent as possible, including the public disclosure of the names and affiliations of the reviewers. However, NMFS agrees to remove the text "prior to review" to allow the option to withhold names of peer reviewers prior to review, when necessary. NMFS notes this practice is consistent with the OMB Peer Review Bulletin. NMFS disagrees with the suggestion of requiring public transparency of rejected potential reviewers because this is not required by the OMB peer review guidelines. Additionally, conflict of interest disclosure information for potential reviewers contains sensitive financial information that must be held in confidence.

Comment 49: Most commenters supported the requirement for transparency in the peer review process, but one commenter expressed concern that it is impractical for public participation in all peer reviews. For example, the public could not attend a peer review conducted as an external desk review where a report is sent by

email to the reviewer. Another commenter suggested that the guidelines appear to preclude any individual review, such as a desk review, because the guidelines imply that a review panel meeting is the only acceptable peer review process.

Response: Paragraph (b)(1)(i) specifies: "The Secretary and Council have discretion to determine the appropriate peer review process for a specific information product. A peer review can take many forms, including individual letter or written reviews, and panel reviews." Therefore, a review panel meeting is not the only acceptable peer review process under the revised NS2 guidelines. To ensure transparency of all types of peer reviews, NMFS revised paragraph (b)(3) to read: "A transparent process is one that ensures background documents and reports from peer review are publicly available . . . and allows the public full and open access to peer review panel meetings."

Comment 50: Some commenters requested that the guidelines specify that background documents be made publicly available 30 days prior to a peer review.

Response: NMFS believes that inclusion of a specified number of days would be overly prescriptive because there are various forms of peer review, some of which may require a more expedited timeline. We believe that the guidelines adequately emphasize the importance of timeliness and transparency in peer review.

Comment 51: One commenter suggested that the 14 day advanced notice of a peer review meeting specified in the action should be extended to provide a minimum of a 21 day notice period.

Response: In order to extend the advance notice, NMFS revised the language in paragraph (b)(3) to read: "public notice of the peer review panel meetings should be announced in the **Federal Register** with a minimum of 14 days, and with an aim of 21 days, before the review to allow public comments during meetings."

Role of SSC in the Review of Scientific Information

Comment 52: NMFS received many comments regarding whether or not the SSC should participate in peer review. Some commenters argued that the peer review standards in the revised NS2 guidelines are unnecessary and inconsistent with the role of the SSC to function as the primary and final peer review for scientific information brought before the Council. One commenter requested that the NS2 guidelines be amended to specify that

the SSC functions as the primary peer review panel in all cases unless the Council decides otherwise, and that the SSC should not need to meet the conflict of interest standards in paragraph (b)(2) when conducting peer review. Contrary to this view, other commenters insisted that all peer reviews be independent and external of the SSC, and that SSC members should not participate in peer review. Many commenters expressed support for paragraph (c) on the advisory role of the SSC and participation of the SSC in peer review, and supported clarifying that the peer-review process complements, but does not replace, the role of the SSC to provide ongoing scientific advice to its Council for management decisions.

Response: A primary reason for revising the NS2 guidelines was to clarify the distinction between the advisory role of the SSC to its Council as specified in MSA section 302(g)(1)(B), 16 U.S.C. 1852(g)(1)(B), and the ability of the SSC to assist in peer review, as specified in MSA section 302(g)(1)(A), *id.* § 1852(g)(1)(A). NMFS carefully considered public comments received in response to the ANPR and proposed rule requesting clarification on the distinction between these provisions. The revised guidelines specify that peer review is separate from the SSC's subsequent activity to evaluate scientific information for the purpose of providing advice, such as fishing level recommendation, to its Council. The revisions are also consistent with MSA section 302(g)(1)(E) providing the Secretary and Councils with the discretion to establish a peer review process. NMFS disagrees with comments that the SSC may not assist in peer review, as we believe that view is contrary to the plain language of MSA section 302(g)(1)(A). The revised NS2 guidelines encourage SSC members to participate in a peer review when such participation is beneficial due to the expertise and institutional memory of that SSC member, or beneficial to the Council's advisory body by allowing that SSC member to make a more informed evaluation of scientific information for its Council. The revised guidelines also state that participation of an SSC member in a peer review should not impair the ability of that member to fulfill his or her responsibilities to the SSC. NMFS disagrees with the recommendation that SSC members be completely exempt from paragraph (b)(2) addressing peer reviewer selection, but revised paragraph (c)(3) so that the paragraph (b)(2) requirements only apply when the SSC as a body or individual SSC

members participate in a peer review process established under MSA section 302(g)(1)(E). The revision allows for less formal SSC review of information that is not novel, controversial or influential, such as a routine update of a stock assessment. Peer reviewers, including SSC members, participating in a peer review process established pursuant to MSA section 302(g)(1)(E) must meet the applicable OMB peer review standards as adopted in the revised NS2 guidelines. The revised NS2 guidelines are consistent with MSA section 302(g)(1)(D) which specifies that each SSC member shall be treated as an affected individual for the purposes of paragraphs (2), (3)(B), (4), and (5)(A) of MSA section 302(j). Further details on the conflicts of interest disclosure of SSC members as affected individuals are provided at 50 CFR 600.235. Regarding the comment that the SSC is the final arbiter in the peer review process, we agree that the SSC review is the final step in the overall scientific review process and the SSC should certify that its scientific recommendations for its Council are based on the BSIA. The revised NS2 guidelines do not restrict or impinge on the SSC's responsibilities to its Council.

Comment 53: Some commenters suggested that the SSC's role is advisory and should not invade the province of the Council decision making ability. They stated that the Council shall take into consideration the recommendations of the SSC, any public comment, and peer review findings in decision making.

Response: We agree that the role of the SSC is advisory and the revised NS2 guidelines in no way preclude any Council's consideration of public comments or other information when making decisions. However, the NS2 guidelines encourage all scientific information considered by the Council, including peer reviews, be brought to the Council through its SSC. We also note that pursuant to section 302(h)(6) of the MSA, a Council may not exceed fishing level recommendations of its SSC when establishing ACLs. See the NS1 guidelines (50 CFR 600.310) for further explanation.

Comment 54: Commenters suggested paragraph (b)(2)(iii) could be misinterpreted to indicate that federal and state fishery agency scientists could not serve as SSC members to review data or scientific materials prepared by their respective agencies. One commenter suggested amending the guidelines to prevent SSC members who are state or NMFS employees with unique scientific qualifications from being disqualified on conflict of interest

grounds. A commenter also asked for clarification on whether SSC members, including state or territorial officials, who advance an agenda at odds with Council decisions, should be screened for conflicts of interest.

Response: The guidelines provide that peer reviewers, including the SSC or SSC members who participate in peer review, must satisfy the peer review standards, and federal employees conducting peer review must comply with all applicable federal ethics requirements. The NS2 guidelines are clear regarding SSC participation in peer review and do not impose a blanket prohibition on employees from state or federal agencies, including NMFS, from participating in peer review. For clarity, we agree to remove, "reviewers should not be employed by the Council or entity that produced or utilizes the product for management decisions" in paragraph (b)(2)(iii). This also resolves the ambiguity of the word "entity," which was too vague. Additional details on the conflict of interest disclosure requirements for SSC members are provided at 50 CFR 600.235.

Comment 55: One commenter requested clarification of paragraph (c) by inserting "evaluation" in the title and first sentence to read: "Scientific evaluation and advice to Council" and: "Each scientific and statistical committee shall provide its Council ongoing scientific evaluation and advice for fishery management decisions."

Response: Paragraph (c) quotes MSA section 302(g)(1)(B) verbatim, therefore NMFS did not revise that language in the final guidelines. Moreover, NMFS believes that the SSC's role in evaluating scientific information is adequately addressed in paragraph (c)(1) which states: "Debate and evaluation of scientific information is the role of the SSC."

Comment 56: One commenter requested that the NS2 guidelines include guidance on the SSC process itself, because there is no oversight of the SSC and the SSC process is neither free of bias and conflict, nor amenable to alternative points of view. Other commenters requested the addition of language to address a perception of philosophical bias or advocacy by some SSC members.

Response: NMFS believes that the revised guidelines provide clear guidance on the peer review standards and the SSC's role as scientific advisors to its Council. Pursuant to MSA section 302(f)(6), Councils are required to make available to the public a Statement of Organization, Practices and Procedures (SOPP) in accordance with uniform standards prescribed by the Secretary of

Commerce. (See 16 U.S.C. 1852(f)(6).) The purpose of the SOPP is to inform the public how the Council (including the SSC and advisory panels) operates. (See 50 CFR 600.115.) The Council SOPP provides the best practices and operating procedures for the Council's SSC. Regarding alleged bias and conflict in the SSC process, MSA section 302(g)(1)(D) requires disclosure of SSC members' financial interests, and details on SSC member conflict of interest disclosure are provided at 50 CFR 600.235. Regarding openness of SSCs to alternative points of view, the SSC is comprised of experts from academic, non-governmental, and Federal and state government entities who provide expertise over a range of disciplines needed for informed fishery management decisions.

Comment 57: One commenter requested striking the statement: "the SSC must have a peer review of all of its recommendations" in the proposed guidelines.

Response: This statement does not exist in the proposed guidelines, nor do the guidelines require the SSC recommendations to be peer reviewed. Paragraph (c)(1) states that: "SSC scientific advice and recommendations to its Council are based on scientific information that the SSC determines to meet the guidelines for best scientific information available as described in paragraph (a) of this section."

Comment 58: One commenter suggested replacing "information" with "data" in the paragraph (c)(1) statement: "Such scientific advice should attempt to resolve conflicting scientific information, so that the Council will not need to engage in debate on technical merits."

Response: NMFS did not make the suggested change because the scientific information considered by the SSC is not always strictly data. For example, the SSC often evaluates scientific data, methods, results, and conclusions.

Comment 59: NMFS received several comments on the importance of transparency of the SSC when providing evaluation and advice to its Council; however, some expressed concern that meetings of the SSC were not publicly transparent. One commenter suggested that the NS2 guidelines should bar SSC meetings that are not public, including closed conference call meetings, and stated that some SSCs do not even meet concurrently with Council meetings, thereby preventing input from constituents. Another commenter suggested adding "must" to paragraph (c)(3) to read: "When the SSC as a body is conducting peer review, it should strive for consensus and must meet the

transparency guidelines for best scientific information available and peer reviews as described in paragraphs (a)(6)(iv) and (b)(3) of this section," because it is essential that the SSC, in the capacity of a peer reviewer, be transparent.

Response: The NS2 guidelines clearly state that review of scientific information by the SSC should be transparent and paragraph (c)(3) has been revised as requested. MSA section 302(i)(2) mandates that SSC meetings be open to the public and that timely notice be published in the **Federal Register**. SSC evaluations, findings, and recommendations are documented for Council meetings, which are also open to the public.

Comment 60: One commenter indicated that the SSC (or other Council advisory bodies), when conducting peer review, does not have to meet the high standards of the OMB peer review criteria. It was suggested that, in some instances, decisions on the use of updated stock assessment information have been made by the Councils and their SSCs without prior review by the established stock assessment review processes.

Response: NMFS agrees that the majority of work conducted by the SSC and other advisory bodies are not peer review processes, but rather advisory responsibilities, and the Council's SOPP provides guidance on best practices and operating procedures for the Council's SSC and other advisory bodies. Details on SSC member conflict of interest disclosure are provided at 50 CFR 600.235. Peer reviewers, including SSC members that participate in peer review, are required to satisfy the OMB peer review standards, where applicable. The NS2 guidelines also specify: "For peer review of some work products or scientific information, a greater degree of independence may be necessary to assure credibility of the peer review process." For example, an assessment update may not require the same degree of independence in the peer review process as would a benchmark assessment. NMFS notes that all stock assessment information undergoes some degree of peer review prior to the SSC evaluation for its Council.

Comment 61: A commenter recommended including a requirement for Council approval before any SSC member could be selected for an outside peer review, to mitigate the potential for any real or perceived conflicts of interest for SSC recommendations to its Council.

Response: We do not believe that the recommended revision is necessary. The NS2 guidelines clearly state:

"Participation of an SSC member in a peer review should not impair the ability of that SSC member to accomplish the advisory responsibilities to the Council."

Comment 62: One commenter suggested revising subsection (c)(2) to reflect that, to the extent possible, service on peer review panels should rotate between qualifying SSC members to strive for independence, balance and an absence of potential bias on review panels.

Response: NMFS believes that this recommendation is already adequately addressed in paragraph (b)(2)(iii) of the guidelines, which recommends rotating peer review responsibilities across an available pool of qualified reviewers.

Comment 63: Paragraph (b)(2) states: "The selection of participants in peer review must be based on expertise, independence, and a balance of viewpoints . . ." One commenter recommended removing the implication that the SSC is not itself "balanced" with respect to scientific perspectives. The commenter noted that the SSC includes scientists employed by the states, the Federal government, international commissions, and universities, and questioned whether the SSC members, for example government members, are to be considered as having some "perspective" that needs to be balanced with other perspectives and, therefore, whether additional SSC members must be appointed.

Response: NMFS believes that this is a misinterpretation of the guidelines because the guidelines do not provide any requirements on the selection of SSC as an advisory body to its Council and do not imply that the SSC body is not itself balanced. Paragraph (b)(2) adopts the criteria from the OMB Peer Review Bulletin requiring that the selection of peer reviewers, including SSC members that participate in peer review, be based on expertise, independence, balance of viewpoints, and be free of conflicts of interest.

Comment 64: Commenters requested removing the phrase "conducts or" from the statement in paragraph (c)(3): "If an SSC as a body, or individual members of an SSC, conducts or participates in a peer review, those SSC members must meet the peer reviewer selection criteria."

Response: NMFS revised the statement to read: "If an SSC as a body conducts a peer review established under [MSA] section 302(g)(1)(E) or individual members of an SSC participate in such a peer review, the SSC members must meet the peer reviewer selection criteria as described

in paragraph (b)(2) of this section.” See the response to Comment 52 for additional detail.

Comment 65: One commenter recommended that NMFS and the Councils establish terms of reference requiring SSC members to serve as chairs or facilitators in peer review, a role in which they may serve without having to meet strict qualifying criteria for peer reviewers.

Response: NMFS agrees that it may be beneficial to the Council to have an SSC member serve as a chair during a peer review. The revised NS2 guidelines allow for this and NMFS does not believe additional language is necessary because the Secretary and each Council have the discretion to establish the peer review process, including who should serve as the chair of the review. Paragraph (c)(2) clearly states: “An SSC member may participate in peer review when such participation is beneficial to the peer review due to the expertise and institutional memory of that member, or beneficial to the Council’s advisory body by allowing that member to make a more informed evaluation of the scientific information.”

Comment 66: One commenter requested that paragraph (c)(3) clearly distinguish regular peer review activities of the SSC from official peer reviews which require SSC members participating in the review to meet the peer reviewer standards in paragraph (b)(2).

Response: NMFS agrees and clarified in paragraph (c)(3) that SSC members must meet the peer reviewer selection criteria contained in paragraph (b)(2) when they participate in a peer review established pursuant to MSA section 302(g)(1)(E). See the responses to Comments 52 and 60 for additional detail.

Comment 67: Several commenters expressed support for paragraph (c)(5), which requires that SSC disagreements with peer review findings be documented in a report and made available to their Council and the public. Some commenters requested stronger language to prevent the SSC from freely rejecting the results of any peer review. Other commenters suggested that the scientific advice of the SSC should attempt to resolve conflicting scientific information, and the analysis of conflicts should be reported so that the Council will not be forced to engage in debate on technical merits. The SSC should reconcile the differences between its findings and that of the peer review. One commenter requested an additional 45–60 day period for public review of the peer review report and SSC findings when an

SSC reports disagreements with the findings and conclusions of a peer review. Another commenter supports the idea that the SSC should report its decisions that are inconsistent with a peer review finding, but expressed concern that paragraph (c)(5) implies that a peer review panel is an independent policy and review body with standing equal to that of the SSC or Council.

Response: Paragraph (c)(1) provides appropriate guidance that the SSC’s scientific advice should attempt to resolve conflicting scientific information. Further, paragraph (c)(5) provides that when the SSC disagrees with peer review results, a report must be prepared outlining the areas of disagreement, and the rationale and information used by the SSC for making its determination. Paragraph (c)(5) does not state or imply that a peer review panel has equal standing to that of the SSC and Council; rather, the intent is to ensure transparency in the SSC evaluation of scientific information that is inconsistent with the findings or conclusions of a peer review. NMFS disagrees with the request to require an additional 45–60 day period for public review when the SSC reports disagreements with the findings and conclusions of a peer review because it would significantly delay final Council action on fishery management measures.

Comment 68: One commenter requested that the NS2 guidelines require any additional assessment work requested by the SSC be subject to peer review. The commenter explained that SSCs in some regions have extended stock assessments by requiring additional model runs, which are then incorporated into scientific advice to the Council without further peer review.

Response: NMFS does not agree that the NS2 guidelines should in all cases require peer review of additional work requested by the SSC. When the SSC requests additional work, it should be for the purpose of clarification in the context of a main body of work that has already been reviewed. The need for peer review of additional work will depend upon the novelty, complexity, and potential for controversy. The peer review system can involve existing committees, so it may be acceptable for the SSC to act as reviewers for the added work if any review is needed. It is important that this additional work be documented in the SAFE report or elsewhere so that it becomes part of the public record for fishery management actions.

Comment 69: One commenter expressed concern with language in paragraph (c)(4) that states that the SSC

should, “not repeat the previously conducted and detailed technical peer review,” on the basis this implies that SSC input is not warranted if a peer review is conducted. The commenter recommended adding, “but this provision is not intended to thwart or constrain the scope or depth of SSC comments.”

Response: Paragraph (c)(4) is not intended to constrain the advisory role of the SSC to its Council, but seeks to ensure that a technical peer review is not repeated. A primary role and necessary function of the SSC is to evaluate and provide recommendations on scientific information for its Council, including recommendations on whether the scientific information is adequate or requires further work if deemed inadequate.

Comment 70: Some commenters requested clarification of the roles of the SSC and Council regarding establishment of ABCs and ACLs. One commenter stated that the NS2 guidelines should include a definitive statement that SSCs provide science-based ABCs and Councils set ACLs. Some commenters requested revising the language in paragraph (c)(6) to: “Annual catch limits (ACLs) may exceed the SSC’s recommendations for fishing levels.” Other commenters stated that, once the SSC has set the ABC, the options of the Councils are extremely limited. The NS2 guidelines should clarify that the Councils must have the power and ability to determine the proper limits and regulations based on the recommendations of the SSCs.

Response: The NS1 guidelines provide detailed guidance on compliance with the ACL requirements and clarify the relationship between ACLs, ABC, maximum sustainable yield (MSY), optimum yield (OY) and other applicable reference points. (See generally 50 CFR 600.310.) Those issues are not addressed in the NS2 guidelines. NMFS will not make the suggested revisions to the language in paragraph (c)(6) because doing so would be inconsistent with MSA section 302(h)(6) which states that: “Each Council shall . . . develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g).”

SAFE Report

Comment 71: One commenter requested that the guidelines specify that the SAFE report be a single document, or alternatively provide that the SAFE documents be available in one

place on a Council or NMFS Web site with an index and links to pertinent documents. Most commenters agreed with the SAFE report being a “document or set of documents” and with the new language in paragraph (d)(5)(ii) that the SAFE report: “must be made available by the Council or NMFS on a readily accessible Web site.” Two commenters recommended retaining the current NS2 guidelines language: “Each SAFE report must be scientifically based, and cite data sources and interpretations” and recommended that the Secretary ensure disclosure of the source of any information included in the SAFE report.

Response: While NMFS understands that a single document has certain advantages of convenience to the users, NMFS decided that it is more beneficial to provide the Councils and the Secretary the discretion to choose whether to compile the SAFE report as a single document or set of documents. In response to comments on the proposed guidelines, NMFS has added language in paragraph (d) stating that: “Each SAFE report must be scientifically based, with appropriate citations of data sources and information.” NMFS adds further clarification in paragraph (d)(5)(i): “Sources of information in the SAFE report should be referenced unless the information is proprietary.”

Comment 72: One commenter requested adding “and the Secretary” to the first sentence of paragraph (d) to indicate that the SAFE report is for both the Secretary and Council. Some commenters suggested that the NS2 guidelines should explicitly delegate to NMFS or the Councils the accountability for preparing the SAFE report with support from others as needed.

Response: Paragraph (d) was revised to state that the SAFE report: “provides the Secretary and Councils with a summary of scientific information . . .” The NS2 guidelines explicitly designate responsibility in paragraph (d)(1): “The Secretary has the responsibility to ensure that SAFE reports are prepared and updated or supplemented as necessary . . .” while also providing that: “The Secretary or Councils may utilize any combination of personnel from Council, State, Federal, university, or other sources to acquire and analyze data and product the SAFE report.” The intent is to allow flexibility between the Secretary and Councils in utilizing their resources to compile the SAFE report.

Comment 73: One commenter objected to the language in paragraph (d) because it appears to give NMFS the responsibility to prepare the SAFE

report, making NMFS the final arbiter of what constitutes BSIA for the Councils. It also appears to require that the SAFE report be peer reviewed before it can be considered by a Council, which usurps the SSC’s role of providing scientific advice to the Council. Another commenter requested that each SAFE report, particularly new information, be peer reviewed and that all sources used to compile the SAFE reports should be free of conflicts of interest.

Response: As reflected in paragraph (d), the Secretary of Commerce ultimately has the responsibility under the MSA to determine whether a proposed management action is based on BSIA, because all fishery management actions must be determined to be consistent with all of the MSA national standards, including NS2, as well as other applicable law. While it is expected that the advice provided by SSCs will be based on BSIA, that information, as well as how it is applied, is still subject to Secretarial review and approval before it can be implemented. There is no language in paragraph (d) that implies that the Secretary’s responsibility in regard to the SAFE report undermines the role of the SSC. Peer review of scientific information, including information contained in SAFE reports, and conflict of interest concerns are sufficiently addressed in the peer review section of these revised guidelines. The guidelines are clear that the SAFE report is a compilation of the BSIA products, some of which may have been peer reviewed, to be used by the Secretary, Councils, and the public in developing and reviewing fishery management actions. The SAFE report is an important and useful summary of scientific information for evaluation and recommendations by the SSC for its Council.

Comment 74: One commenter recommended that the NS2 guidelines specify a standard format for SAFE reports, similar to a format of the North Pacific groundfish SAFE reports where individual stock assessments are summarized in an executive summary including relevant information, such as biological reference points and stock status, as well as recommendations for OFLs and ABCs, and the concerns addressed in these recommendations.

Response: NMFS considered requiring a common format for SAFE reports, but recognized that there are significant differences in how the eight Councils and the Secretary conduct their business, including their management schedules, the committees and technical groups involved, how and when they receive scientific information, and the

format in which that information is received. In consideration of those differences and the need to make the SAFE report preparation efficient, NMFS believes that allowing flexibility in the format of the SAFE documents is preferable to requiring a single uniform format.

Comment 75: One commenter requested that the SAFE report include information on safety at sea, as specified in the National Standard 10 guidelines.

Response: Paragraph (d)(2) of the revised NS2 guidelines states that SAFE reports provide “information on bycatch and safety for each fishery.”

Comment 76: Commenters indicated that some regions have not routinely prepared SAFE reports, and requested the SAFE report be updated regularly, on at least an annual basis to ensure consistency with any and all management decisions.

Response: NMFS believes paragraph (d)(1) is sufficiently clear that: “The SAFE report and any comments or reports from the SSC must be available to the Secretary and Council for making management decisions for each FMP” and also states: “The Secretary has the responsibility to ensure that SAFE reports are prepared and updated or supplemented as necessary whenever new information is available to inform management decisions. . .” NMFS disagrees with the recommendation that the SAFE report be updated on at least an annual basis because, in some cases, Council processes may allow for multiyear harvest specifications. NMFS believes allowing the SAFE reports to be prepared periodically is appropriate and consistent with the decision-making schedule to allow for efficiencies and differences in the processes used by different Councils for different fisheries.

Comment 77: One commenter recommended that the text in paragraph (d)(2), “. . . assessing the relative success of existing state and Federal fishery management programs” be revised to “. . . assessing the relative success of existing relevant state and Federal fishery management plans.”

Response: NMFS agrees to insert the word “relevant.” The word “programs” was not changed to “plans” as recommended because not all states have FMPs.

Comment 78: One commenter requested inserting in paragraph (d)(3): “To the extent possible . . .” at the start of “each SAFE report should contain the following” because items to be included in a SAFE report cannot always be calculated for all stocks (e.g., minimum stock size threshold cannot be calculated for data-poor stocks with incomplete catch records).

Response: NMFS agrees with the commenter's concern and revised paragraph (d)(3) as: "Each SAFE report should contain the following scientific information when it exists." NMFS also added to paragraph (d)(2): "The SAFE report should contain an explanation of information gaps and highlight needs for future scientific work."

Comment 79: One commenter requested that the NS2 guidelines require that uncertainty be specified in the SAFE report because the ABC will be set based, in part, on scientific uncertainty. The commenter also requested the guidelines require that the SAFE report include management uncertainty information and relevant recommendations for the Council's consideration in establishing ACLs.

Response: NMFS agrees with the suggestion to include consideration of scientific uncertainty in the SAFE report, and revises the language in paragraph (d)(3)(i)(B) to read "(B) Information on OFL and ABC, preventing overfishing, and achieving rebuilding targets. Documentation of the data collection, estimation methods, and consideration of uncertainty in formulating catch specification recommendations should be included (§ 600.310(f)(2))." The SSC takes into account scientific uncertainty in setting ABC control rules, and the SSC report to the Council should document how the SSC did so.

Comment 80: One commenter requested that the NS2 guidelines require the SAFE report to include definitions for "overfishing" and "overfished" from the NMFS 1998 National Standard 1 Guidelines. Another commenter stated that SAFE reports should include the SSC recommendations for ABC, and must contain the maximum fishing mortality threshold (MFMT), the minimum stock size threshold (MSST), overfishing and overfished status, and rebuilding plans if applicable. Another commenter suggested that the SAFE report contain assessment team recommendations for OFLs and ABCs, including any concerns that went into their recommendations and this information should then be evaluated by the SSC for their Council's catch specification process. Another commenter expressed concern with the requirement that the SAFE report include recommendations and reports of the SSC regarding overfishing levels and ABCs because the SAFE report is published before the SSC evaluation. The SAFE report is reviewed by the SSC as it provides its advice to the Council, and its recommendations occur after the publication of the SAFE report. Therefore, the SSC should publish a

report of its deliberations and make it publicly available on the Council's Web site as part of the official record supporting the Council's recommendations to the Secretary.

Response: NMFS disagrees with the suggestion to require definitions for "overfishing" and "overfished" in the SAFE report because those terms are already defined in the NS1 guidelines. We believe the information on which to base catch specifications and status determinations should be available to the Councils at the time of their decision making process, and therefore, language is added to paragraph (d)(3)(i) that the SAFE report should contain: "Information on which to base catch specifications and status determinations, including the most recent stock assessment documents and associated peer review reports, and recommendations and reports from the Council's SSC." Regarding the comment on the requirement that the SAFE report include SSC reports on overfishing levels and ABCs, NMFS believes this concern is adequately addressed in the NS2 guidelines because the SAFE report can be a document or set of documents, including the report of the SSC findings and recommendations, that are publicly available. The final recommendations and actions of the SSC may be included in an amendment to the SAFE report.

Comment 81: Two commenters expressed concern with the text in paragraph (d)(3): "Each SAFE report should contain . . . (i)(B) Any management measures necessary to rebuild an overfished stock or stock complex . . ." The SAFE report should report progress towards stock rebuilding, but rebuilding plans, including analysis of management alternatives, should be developed through the Council's FMP process with input from advisors and the public.

Response: The revised NS2 guidelines specify that the SAFE report should contain the scientific information needed in support of management measures or rebuilding plan, and the intent was not to include the actual management measures or the full analyses of the alternatives. MSA section 303 requires FMPs and FMP amendments to contain conservation and management measures for fisheries. To clarify this, NMFS has deleted "along with information to determine" from paragraph (d)(3)(i)(A), so it now reads: "A description of the SDC (e.g., maximum fishing mortality rate threshold and minimum stock size threshold for each stock or stock complex in the fishery)." NMFS also revised paragraph (d)(3)(i)(B) to read: "The best scientific information

available to determine whether overfishing is occurring with respect to any stock or stock complex, whether any stock or stock complex is overfished. . ." Paragraph (d)(3)(i)(C) was revised to read: "The best scientific information available in support of management measures necessary to rebuild an overfished stock or stock complex (if any) in the fishery to a level consistent with producing the MSY in that fishery." These changes make clear that the purpose of the SAFE report is to provide the Councils and Secretary with the necessary BSIA to understand the status of the fishery and support their efforts in evaluating management measures and alternatives.

Comment 82: One commenter urged that paragraph (d)(3)(iii) incorporate the Standardized Bycatch Reporting Methodology (SBRM) required by MSA section 303(a)(11), 16 U.S.C. 1853(a)(11), into the SAFE report. The SAFE report also should include information on catch and bycatch, a description of pertinent data collection and estimation methods, and "quantitative estimates" of total mortality.

Response: Paragraph (d)(3)(ii) of the revised NS2 guidelines states that the SAFE report should include: "Information on sources of fishing mortality (both landed and discarded), including commercial and recreational catch and bycatch in other fisheries and a description of data collection and estimation methods used to quantify total catch mortality, as required by the National Standard 1 Guidelines." The NS2 guidelines do not preclude including discard and total mortality estimates into the SAFE report when available. NMFS believes it is inappropriate to require SAFE reports to contain SBRM, as MSA section 303(a)(11) requires that SBRM be established in an FMP.

Comment 83: Two commenters expressed concern that paragraph (d)(3)(v) could be misinterpreted as requiring the relevant evaluations of EFH information to be in the SAFE report. EFH information should be evaluated through Plan Teams, SSC and Council meetings. The frequency of review and revision of EFH components of FMPs is already provided for in 50 CFR 600.815(a)(10), therefore it would be confusing to require additional EFH review as part of the SAFE report. Another commenter indicated that this confusion can be resolved with minor clarification that EFH information may be included by reference and contained in a stand-alone separate document, not just physically merged into the SAFE report.

Response: The NS2 guidelines ensure that a summary of BSIA is available in the SAFE report, including any relevant EFH information. The intent is not to require an additional evaluation of EFH. Therefore, NMFS has deleted “review and evaluations” and “stand-alone chapter” from paragraph (d)(3)(iv) so it now reads: “Information on EFH to be included in accordance with the EFH provisions (§ 600.815(a)(10)).”

Comment 84: One commenter requested language requiring more thorough assessments of marine ecosystems in SAFE reports. Two commenters supported the inclusion of: “Pertinent economic, social, community, and ecological information” in paragraph (d)(3)(vi) and one suggested additional language that explicitly includes ecosystem considerations, such as forage fish impacts and other criteria to determine optimum yield.

Response: NMFS believes that the NS2 guidelines include sufficient language on the scientific information to be included in the SAFE report, including marine ecosystem information. The SAFE report is a summary of existing information, not only on stock status, but on many ecosystem components as well. The language is intended to be broad enough to include all the important considerations in ecological information, including forage fish impacts where relevant.

FMPs

Comment 85: One commenter requested insertion of the language: “BSIA is needed for regulatory amendments in conjunction with a framework FMP, and not just FMPs.”

Response: The proposed edit is not necessary because the MSA national standards apply to all Council actions, not just FMPs.

Comment 86: One commenter requested adding: “If information indicates that drastic changes have occurred in the fishery that require revision of the management objectives or measures, then the FMP process must begin again.”

Response: This is beyond the scope of the guidelines and is unnecessary. Councils have the statutory responsibility for preparing FMPs and amendments to such plans and revising them as appropriate according to sections 302(h) and other provisions of the MSA.

Comment 87: One commenter asserted that the preparation and implementation of an FMP should be delayed until the best scientific data

possible concerning a fishery is complete.

Response: NMFS disagrees and provides in paragraph (e)(2): “The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP.” This is consistent with the NS2 requirement that fishery conservation and management measures be based on the BSIA.

Comment 88: One commenter stated the NS2 guidelines should apply equally to Highly Migratory Species (HMS) managed by NMFS and Council-managed species. The commenter also requested that the guidelines address how scientific advice for HMS is provided to NMFS.

Response: The NS2 guidelines apply to scientific information used by the Councils and NMFS. Scientific information used by NMFS to manage Atlantic HMS undergoes a rigorous and transparent peer review process. No additional HMS-specific provisions are needed in the guidelines.

Comment 89: One commenter suggested that clarification is needed in paragraph (e)(3): “Information about harvest within state waters, as well as in the EEZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise.” The commenter recommended that the NS2 guidelines specify FMP information requirements that may be imposed on fisherman and processors.

Response: Information to be collected from fishermen and processors must be identified in FMPs per MSA section 303(a)(5). Thus NMFS has not revised the NS2 guidelines to require specification of this information. However, NMFS has added a new sentence in paragraph (e)(3) that clarifies: “Scientific information collections for stocks managed cooperatively by Federal and State governments should be coordinated with the appropriate state jurisdictions, to the extent practicable, to ensure harvest information is available for the management of stocks that utilize habitats in state and federal managed waters.”

Comment 90: Four commenters requested that the words “should” or “must” be replaced with the word “shall” through many sections to strengthen the requirements of NS2. Conversely, two commenters noted that MSA section 301(b) provides that the National Standards guidelines are advisory in nature and do not have the force and effect of law, and therefore recommended that NMFS strike all use of the words “must” and “shall” in the NS2 guidelines.

Response: In the NS2 guidelines, “shall” is used only when quoting statutory language directly. “Must” is used instead of “shall” to denote an obligation to act and is primarily used when referring to requirements of the MSA, the logical extension thereof, or other applicable law. “Should” is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary’s interpretation of the MSA, and is a factor reviewers will look for in evaluating a SOPP or FMP. “May” is used in a permissive sense. NMFS notes that the above word usage in the National Standards guidelines is explained at 50 CFR 600.305(c).

V. Changes From Proposed Action (74 FR 65724, Dec. 11, 2009)

Paragraph (a)(1) was revised to clarify that “environmental” scientific information is also important for fishery conservation and management. This introductory paragraph was revised to clarify that successful fishery management not only depends on evaluation of “potential” impact that conservation and management measures will have on living marine resources, but also depends on “(ii) Identifying areas where additional management measures are needed.”

Paragraph (a)(2) was revised by striking the last sentence because similar language is provided in paragraph (a)(6)(v).

Paragraph (a)(3) was revised to expand the term “data-poor fisheries” to “Information-limited fisheries, commonly referred to as ‘data-poor’ fisheries.”

Paragraph (a)(4) was revised by adding: “Scientific information includes established and emergent scientific information. Established science is scientific knowledge derived and verified through a standard scientific process that tends to be agreed upon often without controversy. Emergent science is relatively new knowledge that is still evolving and being verified, therefore, may potentially be uncertain and controversial. Emergent science should be considered more thoroughly, and scientists should be attentive to effective communication of emerging science.” Editorial clarification was also included in the revised language: “Scientific information includes data compiled directly from surveys or sampling programs, and models that are mathematical representations of reality constructed with primary data.”

Paragraph (a)(5) provides a description of science as a dynamic process, and the word “ideally” was added to the statement that: “Best scientific information is, therefore, not

static and ideally entails developing and following a research plan with the following elements” because the ability to achieve all the listed elements is not always possible.

Paragraph (a)(6) was revised to replace “Principles” with “Criteria to consider” to read as: “Criteria to consider when evaluating best scientific information are . . .”

Paragraph (a)(6)(i) was revised to clarify that analysis of related stocks or species for inferring the likely traits of stocks “may be a useful tool” rather than the previously stated “is a powerful tool.”

Paragraph (a)(6)(ii)(B) was revised to clarify “Alternative points of view” as “Alternative scientific points of view.”

Paragraph (a)(6)(ii)(C) was revised to remove “reconcile” and the ambiguity associated with the previous statement: “effort should be made to reconcile scientific information with local and traditional knowledge.” The language now reads: “Relevant local and traditional knowledge (e.g., fishermen’s empirical knowledge about the behavior and distribution of fish stocks) should be obtained, where appropriate, and considered when evaluating the BSIA.”

Paragraph (a)(6)(iii) was revised by striking the first sentence of the paragraph and revising the second sentence from: “The objectivity standards should ensure that information is accurate, reliable, and unbiased, and that information products are presented in an accurate, clear, complete, and balanced manner” to read: “Scientific information should be accurate, with a known degree of precision, without addressable bias, and presented in an accurate, clear, complete and balanced manner.” We also included the statement: “Scientific processes should be free of undue nonscientific influences and considerations” as recommended by the NRC (2004).

In paragraph (a)(6)(iv), the statement: “Subject to the Magnuson-Stevens Act confidentiality requirements, the public should have access to each stage in the development of scientific information, from data collection, to analytical modeling, to decision making” was removed because it is impracticable to solicit public comment during all the stages of development of the science, such as data sampling operations and analytical work. Further revision was made to clarify public comment should be solicited during the “review” of scientific information rather than during the “development” of science.

Paragraph (a)(6)(v) on timeliness was revised by moving paragraph (a)(6)(v)(B) to the beginning of paragraph (a)(6)(v),

and then relabeling paragraph (C) as (B). The last sentence from (B) was moved to be the first sentence in (a)(6)(v), and this phrase: “Management decisions should not be delayed due to data limitations . . .” was revised to: “Mandatory management actions should not be delayed due to limitations in scientific information . . .”

In paragraph (a)(6)(v), the statement: “Sufficient time should be allotted to analyze recently acquired data to ensure its reliability and that it has been audited” was modified for clarification to: “Sufficient time should be allotted to audit and analyze recently acquired information to ensure its reliability.” Further clarification is provided by revising: “Data collection methods are expected to be subjected to appropriate review before used to inform management decisions” to: “Data collection methods are expected to be subjected to appropriate review before providing data used to inform management decisions.” The text of proposed paragraph (a)(6)(v)(B) was revised by changing: “Timeliness may also mean that in some cases results of important studies or monitoring programs must be brought forward” to: “In some cases, due to time constraints, results of important studies or monitoring programs may be considered for use before they are fully completed.”

Paragraph (a)(6)(v)(A) was revised by changing: “For those data that require being updated” to: “For information that needs to be updated. . .” The words “In particular,” were removed. The words “such timing concerns” were added to language that now reads: “subject to regulatory constraints, and such timing concerns should be explicitly considered. . .” Further clarification was added with: “Data collection is a continuous process, therefore analysis of scientific information should specify a clear time point beyond which new information would not be considered in that analysis and would be reserved for use in subsequent analytical updates.”

Paragraph (a)(6)(v)(C) was merged with paragraph (B), and revised for clarity by changing “species’ life history characteristics might not change” to “some species’ life history characteristics might not change.” Another revision changed: “Other time-series data (e.g., abundance, catch statistics, market and trade trends) provide context for changes in fish populations, fishery participation, and effort used, and therefore provide valuable information to inform current management decisions” to read: “Other historical data (e.g., abundance, environmental, catch statistics, market

and trade trends) provide time-series information on changes in fish populations, fishery participation, and fishing effort that may inform current management decisions.”

Paragraph (a)(6)(vi)(B) was revised to clarify the list of validation measures by changing: “the precision of the estimates is adequate, model estimates are unbiased, and the estimates are robust to model assumptions” to: “the accuracy and precision of the estimates is adequate, and the estimates are robust to model assumptions.” The phrase “and to correct for known bias to achieve accuracy” was added to the statement: “models should be tested using simulated data from a population with known properties to evaluate how well the models estimate those characteristics.”

In paragraph (a)(6)(vii) a new sentence was added for additional clarity: “Routine updates based on previously reviewed methods require less review than novel methods or data.” We also provided clarification by revising: “substantial fishery management alternatives considered by a Council” to: “The scientific information that supports conservation and management measures considered by the Secretary or a Council should be peer reviewed, as appropriate.”

Paragraphs (a)(6)(vii) and (viii) were combined into a single paragraph. A new sentence was added to the end of the paragraph: “Other applicable guidance on peer review can be found in the Office of Management and Budget Final Information Quality Bulletin for Peer Review.”

Paragraph (b)(1) was revised by removing “for each Council” from the phrase: “The process established by the Secretary and Council for each Council . . .”

The first sentence of paragraph (b)(1)(i) was revised by moving “to the extent practicable” from the end of the sentence to read: “The peer review should, to the extent practicable, be conducted early . . .” and adding: “so peer review reports are available for the SSC to consider in its evaluation of scientific information for its Council and the Secretary” to the end of the sentence.

Paragraph (b)(1)(iii) was revised by changing: “The scope of work contains the objective of the specific advice being sought” to: “The scope of work contains the objectives of the peer review, evaluation of the various stages of the science, and specific recommendations for improvement of the science.” The language: “as well as to make recommendations regarding areas of missing information, future research,

data collection, and improvements in methodologies” was added to the third sentence of the paragraph. Further clarification was made by revising: “The scope of work may not request reviewers to provide advice on scientific policy (e.g., amount of uncertainty that is acceptable or amount of precaution used in an analysis)” to: “The scope of work may not request reviewers to provide advice on policy or regulatory issues (e.g., amount of precaution used in decision-making) which are within the purview of the Secretary and the Councils, or to make formal fishing level recommendations which are within the purview of the SSC.”

Paragraph (b)(2) on peer review selection was revised by changing a “must” to a “should.”

Paragraph (b)(2)(i) was revised by deleting “including a balance in perspectives” from the first sentence and adding “should reflect a balance in perspectives, to the extent possible” to the second sentence.

Paragraph (b)(2)(ii) was revised by deleting the second sentence and replacing it with the last sentence of this section which was revised to: “Potential reviewers who are not federal employees must be screened for conflicts of interest in accordance with the NOAA Policy on Conflicts of Interest for Peer Review Subject to OMB’s Peer Review Bulletin or other applicable rules or guidelines. “Under the NOAA policy” was added to the beginning of the third sentence and: “Peer reviewers must not have any real or perceived conflicts of interest” was changed to: “peer reviewers must not have any conflicts of interest . . .”

Paragraph (b)(2)(ii)(C) was merged with paragraph (b)(2)(ii)(B). The language: “Except for those situations in which a conflict of interest is unavoidable, and the conflict is promptly and publicly disclosed” was revised to: “For reviews requiring highly specialized expertise, the limited availability of qualified reviewers might result in an exception when a conflict of interest is unavoidable; in this situation, the conflict must be promptly and publicly disclosed.” The last sentence of the paragraph was modified and moved to paragraph (b)(2)(ii) as noted above.

Paragraph (b)(2)(iii) addressing independence in peer review was clarified by revising: “Peer reviewers must not have participated in the development of the work product or scientific information under review” to: “Peer reviewers must not have contributed or participated in the development of the work product or scientific information under review.”

The language: “For peer review of some work products or scientific information, a greater degree of independence may be necessary to assure credibility of the peer review process” was revised for clarity to: “For peer review of products of higher novelty or controversy, a greater degree of independence is necessary to ensure credibility of the peer review process.” The language: “Peer review responsibilities should rotate across the available pool of qualified reviewers or among the members on a standing peer review panel, recognizing that, in some cases, repeated service by the same reviewer may be needed because expertise” was revised for clarity to: “Peer reviewer responsibilities should rotate across the available pool of qualified reviewers or among the members on a standing peer review panel to prevent a peer reviewer from repeatedly reviewing that same scientific information, recognizing that, in some cases, repeated service by the same reviewer may be needed because of limited availability of specialized expertise.”

Paragraph (b)(3) on transparency in peer review was revised from: “A transparent process is one that allows the public full and open access to peer review panel meetings, background documents, and reports, subject to Magnuson-Stevens Act confidentiality requirements” to: “A transparent process is one that ensures that background documents and reports from peer review are publicly available, subject to Magnuson-Stevens Act confidentiality requirements, and allows the public full and open access to peer review panel meetings.” The text: “also be publicly transparent in accordance with the Council’s requirements for notifying the public meetings. The date, time, location, and terms of reference (scope and objectives)” was replaced with: “be conducted in accordance with meeting procedures at § 600.135.” The time period for public notice of a peer review panel meeting was revised by changing the language to: “Consistent with that section, public notice of peer review panel meetings should be announced in the **Federal Register** with a minimum of 14 days and with an aim of 21 days before the review. . .” The words “prior to review” were removed from the statement: “Names and organizational affiliations of reviewers also should be publicly available.”

Paragraph (c)(1) on SSC advice to its Council was revised from: “SSC scientific advice and recommendations to the Councils based on review and evaluation of scientific information must meet the guidelines of best scientific information available” to:

“SSC scientific advice and recommendations to its Council are based on scientific information that the SSC determines to meet the guidelines for best scientific information available.” In the sentence: “SSCs may conduct peer reviews, participate in peer reviews, or evaluate peer reviews to . . .”, the words “participate in peer reviews” were struck because participation in peer review by SSC members is addressed in the paragraph (c)(2). The language: “. . . so that the Council will not be forced to engage in debate on technical merits. Debate and evaluation of scientific information should be part of the role of the SSC” was changed to: “. . . so that the Council will not need to engage in debate on technical merits. Debate and evaluation of scientific information is the role of the SSC.”

The last sentence of paragraph (c)(2) was changed from: “Participation of an SSC member in a peer review should not impair the ability of that SSC member to accomplish the advisory responsibilities to the Council” to: “Participation of an SSC member in a peer review should not impair the ability of that member to fulfill his or her responsibilities to the SSC.”

The first sentence of paragraph (c)(3) was revised from: “If an SSC as a body, or individual members of an SSC, conducts or participates in a peer review, those SSC members must meet the peer reviewer selection criteria as described in paragraph (b)(2) of this section” to: “If an SSC as a body conducts a peer review established under Magnuson-Stevens Act section 302(g)(1)(E) or individual members of an SSC participate in such a peer review, the SSC members must meet the peer reviewer selection criteria as described in paragraph (b)(2) of this section.” The second sentence was changed from: “These guidelines require separate consideration from those of § 600.235 . . .” to: “In addition, the financial disclosure requirements under § 600.235 . . . apply.” When the SSC body is conducting peer review, the word “must” was added to “meet the transparency guidelines.”

In paragraph (c)(4), the statement “SSCs must maintain their role as advisors to the Council about scientific information that comes from an external peer review process” was changed by removing “external” because this statement applies to all peer review rather than only external peer review. The phrase “be linked to” in the first sentence was changed to “consider” and the word “review” was changed to “consider” in the last sentence of the paragraph for clarification.

In the first sentence of paragraph (c)(5), the phrase: "If the evaluation of scientific information by the SSC is inconsistent with" was changed to: "If an SSC disagrees with" and the word "should" was changed to "must" to strengthen the need for the SSC to prepare a report outlining disagreement with peer review findings, and NMFS added: "This report must be made publicly available" to the end of the paragraph.

Paragraph (c)(6) was revised by specifying that ACLs are "developed by a Council." The term "SSC recommendation" was clarified to "SSC fishing level recommendations." "Per the National Standard 1 Guidelines," was added to the beginning of the second sentence. Further clarification was provided by adding: "The SSC is expected to take scientific uncertainty into account when making its ABC recommendation (§ 600.310(f)(4)). The ABC recommendation may be based upon input and recommendations from the peer review process."

Paragraph (d) was revised to clarify that the SAFE report provides scientific information for "the Secretary and the Councils" rather than to only the Councils. The language: "Each SAFE report must be scientifically based with appropriate citations of data sources and information" was also added to this paragraph.

Paragraph (d)(1) was revised for clarification to state that the SAFE report is prepared and updated or supplemented as necessary whenever new information is available: "to inform management decisions such as status determination criteria (SDC), overfishing level (OFL), optimum yield, or ABC values." It previously read: "that requires a revision to the status determination criteria (SDC), or is likely to affect the overfishing level (OFL), optimum yield, or ABC values." Clarification was also made that the SAFE report must be available to "the Secretary and Council" rather than to only the Council.

Paragraph (d)(2) was revised by adding: "The SAFE report should contain an explanation of information gaps and highlight needs for future scientific work. Information on bycatch and safety for each fishery should also be summarized." The word "relevant" was also added to "state and Federal fishery management programs" for further clarification.

The introductory paragraph (d)(3) for the SAFE report information was revised for clarification by adding "scientific information when it exists" to "Each SAFE report should contain the following."

The subsections within paragraph (d)(3) were reordered and renumbered for clarification purposes.

The language in paragraph (d)(3)(i) was moved to paragraph (d)(3)(i)(A), and revised to clarify by removing "along with information to determine."

The language from paragraph (d)(3)(i)(A) was moved to paragraph (d)(3)(i)(B) and revised to clarify by adding: "The best scientific information available to determine."

Paragraph (d)(3)(i)(B) was renumbered as paragraph (d)(3)(i)(C) and revised to clarify by adding: "The best scientific information in support of" and removing the word "any."

In paragraph (d)(3)(ii), the language: "Information on which to base catch specifications and status determinations, including the most recent stock assessment documents and associated peer review reports, and recommendations and reports from the Council's SSC" was moved to paragraph (d)(3)(i) as an introductory sentence to paragraph (d). The remaining language: "on OFL and ABC, preventing overfishing, and achieving rebuilding targets" and: "Documentation of the data collection, estimation methods, and consideration of uncertainty in formulating catch specification recommendations should be included" was moved to paragraph (d)(3)(i)(B). The word "Information" was added before the phrase "on OFL and ABC, preventing overfishing."

Paragraph (d)(3)(iii) was renumbered as paragraph (d)(3)(ii).

Paragraph (d)(3)(iv) was renumbered as paragraph (d)(3)(iii).

Paragraph (d)(3)(v) was renumbered as paragraph (d)(3)(iv), and revised by changing: "Review and evaluation of EFH information in accordance with the EFH provisions (§ 600.815(a)(10))" to: "Information on EFH to be included in accordance with the EFH provisions (§ 600.815(a)(10)). The language "as a standalone chapter in a clearly noted section" was removed because the EFH report tends to be a lengthy document that is included in the SAFE report that is comprised of a set of documents.

Paragraph (d)(3)(vi) was renumbered as paragraph (d)(3)(v), and revised to clarify by changing "success of management measures" to "success and impacts of management measures."

A new paragraph (d)(4) was added. It states: "Transparency in the fishery management process is enhanced by complementing the SAFE report with the documentation of previous management actions taken by the Council and Secretary including a summary of the previous ACLs, ACTs, and accountability measures (AMs), and

assessment of management uncertainty."

Paragraph (d)(4) was renumbered as paragraph (d)(5).

Paragraph (d)(4)(i) was renumbered as paragraph (d)(5)(i), and revised by adding: "Sources of information in the SAFE report should be referenced, unless the information is proprietary."

Paragraph (d)(4)(ii) was renumbered as paragraph (d)(5)(ii).

Paragraph (e)(3) was revised for clarification by adding: "Scientific information collections for stocks managed cooperatively by Federal and State governments should be coordinated with the appropriate state jurisdictions, to the extent practicable, to ensure harvest information is available for the management of stocks that utilize habitats in state and federal managed waters."

VI. References Cited

- National Research Council of the National Academies (NRC). 2004. Improving the use of the "best scientific information available" standard in fisheries management. The National Academies Press, Washington, DC 105 pp.; <http://www.nap.edu/openbook.php>
- NOAA Office of the Chief Information Officer & High Performance Computing and Communications. 2006. National Oceanic and Atmospheric Administration Policy on Conflicts of Interest for Peer Review Subject to OMB Peer Review Bulletin. NOAA Memorandum, November 6, 2006; http://www.cio.noaa.gov/Policy_Programs/NOAA_PRB_COI_Policy_110606.html.
- Office of Management and Budget (OMB). 2004. Final Information Quality Bulletin for Peer Review. Executive Office of the President, Office of Management and Budget, memorandum M-05-03; December 16, 2004.

VII. Classification

The NMFS Assistant Administrator has determined that this action is consistent with the provisions of the MSA and other applicable law.

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the

proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 16, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

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

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. Section 600.315 is revised to read as follows:

§ 600.315 National Standard 2—Scientific Information.

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

(1) Fishery conservation and management require high quality and timely biological, ecological, environmental, economic, and sociological scientific information to effectively conserve and manage living marine resources. Successful fishery management depends, in part, on the thorough analysis of this information, and the extent to which the information is applied for:

(i) Evaluating the potential impact that conservation and management measures will have on living marine resources, essential fish habitat (EFH), marine ecosystems, fisheries participants, fishing communities, and the nation; and

(ii) Identifying areas where additional management measures are needed.

(2) Scientific information that is used to inform decision making should include an evaluation of its uncertainty and identify gaps in the information. Management decisions should recognize the biological (e.g., overfishing), ecological, sociological, and economic (e.g., loss of fishery benefits) risks associated with the sources of uncertainty and gaps in the scientific information.

(3) Information-limited fisheries, commonly referred to as “data-poor”

fisheries, may require use of simpler assessment methods and greater use of proxies for quantities that cannot be directly estimated, as compared to data-rich fisheries.

(4) Scientific information includes, but is not limited to, factual input, data, models, analyses, technical information, or scientific assessments. Scientific information includes data compiled directly from surveys or sampling programs, and models that are mathematical representations of reality constructed with primary data. The complexity of the model should not be the defining characteristic of its value; the data requirements and assumptions associated with a model should be commensurate with the resolution and accuracy of the available primary data. Scientific information includes established and emergent scientific information. Established science is scientific knowledge derived and verified through a standard scientific process that tends to be agreed upon often without controversy. Emergent science is relatively new knowledge that is still evolving and being verified, therefore, may potentially be uncertain and controversial. Emergent science should be considered more thoroughly, and scientists should be attentive to effective communication of emerging science.

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

(6) Criteria to consider when evaluating best scientific information are relevance, inclusiveness, objectivity, transparency and openness, timeliness, verification and validation, and peer review, as appropriate.

(i) *Relevance.* Scientific information should be pertinent to the current questions or issues under consideration and should be representative of the fishery being managed. In addition to the information collected directly about the fishery being managed, relevant information may be available about the same species in other areas, or about related species. For example, use of proxies may be necessary in data-poor situations. Analysis of related stocks or

species may be a useful tool for inferring the likely traits of stocks for which stock-specific data are unavailable or are not sufficient to produce reliable estimates. Also, if management measures similar to those being considered have been introduced in other regions and resulted in particular behavioral responses from participants or business decisions from industry, such social and economic information may be relevant.

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

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

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

(C) Relevant local and traditional knowledge (e.g., fishermen’s empirical knowledge about the behavior and distribution of fish stocks) should be obtained, where appropriate, and considered when evaluating the BSIA.

(iii) *Objectivity.* Scientific information should be accurate, with a known degree of precision, without addressable bias, and presented in an accurate, clear, complete, and balanced manner. Scientific processes should be free of undue nonscientific influences and considerations.

(iv) *Transparency and openness.* (A) The Magnuson-Stevens Act provides broad public and stakeholder access to the fishery conservation and management process, including access to the scientific information upon which the process and management measures are based. Public comment should be solicited at appropriate times during the review of scientific information. Communication with the public should be structured to foster understanding of the scientific process.

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

(v) *Timeliness.* Mandatory management actions should not be delayed due to limitations in the scientific information or the promise of future data collection or analysis. In some cases, due to time constraints,

results of important studies or monitoring programs may be considered for use before they are fully complete. Uncertainties and risks that arise from an incomplete study should be acknowledged, but interim results may be better than no results to help inform a management decision. Sufficient time should be allotted to audit and analyze recently acquired information to ensure its reliability. Data collection methods are expected to be subjected to appropriate review before providing data used to inform management decisions.

(A) For information that needs to be updated on a regular basis, the temporal gap between information collection and management implementation should be as short as possible, subject to regulatory constraints, and such timing concerns should be explicitly considered when developing conservation and management measures. Late submission of scientific information to the Council process should be avoided if the information has circumvented the review process. Data collection is a continuous process, therefore analysis of scientific information should specify a clear time point beyond which new information would not be considered in that analysis and would be reserved for use in subsequent analytical updates.

(B) Historical information should be evaluated for its relevance to inform the current situation. For example, some species' life history characteristics might not change over time. Other historical data (e.g., abundance, environmental, catch statistics, market and trade trends) provide time-series information on changes in fish populations, fishery participation, and fishing effort that may inform current management decisions.

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

(A) *Verification* means that the data and procedures used to produce the scientific information are documented in sufficient detail to allow reproduction of the analysis by others with an acceptable degree of precision. External reviewers of scientific information require this level of documentation to conduct a thorough review.

(B) *Validation* refers to the testing of analytical methods to ensure that they perform as intended. Validation should include whether the analytical method has been programmed correctly in the computer software, the accuracy and precision of the estimates is adequate, and the estimates are robust to model

assumptions. Models should be tested using simulated data from a population with known properties to evaluate how well the models estimate those characteristics and to correct for known bias to achieve accuracy. The concept of validation using simulation testing should be used, to the extent possible, to evaluate how well a management strategy meets management objectives.

(vii) *Peer review.* Peer review is a process used to ensure that the quality and credibility of scientific information and scientific methods meet the standards of the scientific and technical community. Peer review helps ensure objectivity, reliability, and integrity of scientific information. The peer review process is an organized method that uses peer scientists with appropriate and relevant expertise to evaluate scientific information. The scientific information that supports conservation and management measures considered by the Secretary or a Council should be peer reviewed, as appropriate. Factors to consider when determining whether to conduct a peer review and if so, the appropriate level of review, include the novelty and complexity of the scientific information to be reviewed, the level of previous review and the importance of the information to be reviewed to the decision making process. Routine updates based on previously reviewed methods require less review than novel methods or data. If formal peer review is not practicable due to time or resource constraints, the development and analysis of scientific information used in or in support of fishery management actions should be as transparent as possible, in accordance with paragraph (a)(6)(iv) of this section. Other applicable guidance on peer review can be found in the Office of Management and Budget Final Information Quality Bulletin for Peer Review.

(b) *Peer review process.* The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise about the conservation and management of the fishery. 16 U.S.C. 1852(g)(1)(E). A peer review process is not a substitute for an SSC and should work in conjunction with the SSC (see § 600.310(b)(2)(v)(C)). This section provides guidance and standards that should be followed in order to establish a peer review process per Magnuson-Stevens Act section 302(g)(1)(E).

(1) The objective or scope of the peer review, the nature of the scientific information to be reviewed, and timing of the review should be considered when selecting the type of peer review to be used. The process established by

the Secretary and Council should focus on providing review for information that has not yet undergone rigorous peer review, but that must be peer reviewed in order to provide reliable, high quality scientific advice for fishery conservation and management. Duplication of previously conducted peer review should be avoided.

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

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

(iii) *Scope of work.* The scope of work or charge (sometimes called the terms of reference) of any peer review should be determined in advance of the selection of reviewers. The scope of work contains the objectives of the peer review, evaluation of the various stages of the science, and specific recommendations for improvement of the science. The scope of work should be carefully designed, with specific technical questions to guide the peer review process; it should ask peer reviewers to ensure that scientific uncertainties are clearly identified and characterized, it should allow peer reviewers the opportunity to offer a broad evaluation of the overall scientific or technical product under review, as well as to make recommendations regarding areas of missing information, future research, data collection, and improvements in methodologies, and it must not change during the course of the peer review. The scope of work may not request reviewers to provide advice on policy or regulatory issues (e.g., amount of precaution used in decision-making) which are within the purview of the Secretary and the Councils, or to make formal fishing level

recommendations which are within the purview of the SSC.

(2) *Peer reviewer selection.* The selection of participants in a peer review should be based on expertise, independence, and a balance of viewpoints, and be free of conflicts of interest.

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

(ii) *Conflict of interest.* Peer reviewers who are federal employees must comply with all applicable federal ethics requirements. Potential reviewers who are not federal employees must be screened for conflicts of interest in accordance with the NOAA Policy on Conflicts of Interest for Peer Review Subject to OMB's Peer Review Bulletin or other applicable rules or guidelines.

(A) Under the NOAA policy, peer reviewers must not have any conflicts of interest with the scientific information, subject matter, or work product under review, or any aspect of the statement of work for the peer review. For purposes of this section, a conflict of interest is any financial or other interest which conflicts with the service of the individual on a review panel because it: could significantly impair the reviewer's objectivity, or could create an unfair competitive advantage for a person or organization.

(B) No individual can be appointed to a review panel if that individual has a conflict of interest that is relevant to the functions to be performed. For reviews requiring highly specialized expertise, the limited availability of qualified reviewers might result in an exception when a conflict of interest is unavoidable; in this situation, the conflict must be promptly and publicly disclosed. Conflicts of interest include, but are not limited to, the personal financial interests and investments, employer affiliations, and consulting arrangements, grants, or contracts of the individual and of others with whom the individual has substantial common financial interests, if these interests are relevant to the functions to be performed.

(iii) *Independence.* Peer reviewers must not have contributed or participated in the development of the work product or scientific information

under review. For peer review of products of higher novelty or controversy, a greater degree of independence is necessary to ensure credibility of the peer review process. Peer reviewer responsibilities should rotate across the available pool of qualified reviewers or among the members on a standing peer review panel to prevent a peer reviewer from repeatedly reviewing the same scientific information, recognizing that, in some cases, repeated service by the same reviewer may be needed because of limited availability of specialized expertise.

(3) *Transparency.* A transparent process is one that ensures that background documents and reports from peer review are publicly available, subject to Magnuson-Stevens Act confidentiality requirements, and allows the public full and open access to peer review panel meetings. The evaluation and review of scientific information by the Councils, SSCs or advisory panels must be conducted in accordance with meeting procedures at § 600.135. Consistent with that section, public notice of peer review panel meetings should be announced in the **Federal Register** with a minimum of 14 days and with an aim of 21 days before the review to allow public comments during meetings. Background documents should be available for public review in a timely manner prior to meetings. Peer review reports describing the scope and objectives of the review, findings in accordance with each objective, and conclusions should be publicly available. Names and organizational affiliations of reviewers also should be publicly available.

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

(c) *SSC scientific evaluation and advice to the Council.* Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. 16 U.S.C. 1852(g)(1)(B).

(1) SSC scientific advice and recommendations to its Council are based on scientific information that the SSC determines to meet the guidelines for best scientific information available as described in paragraph (a) of this section. SSCs may conduct peer reviews or evaluate peer reviews to provide clear scientific advice to the Council. Such scientific advice should attempt to resolve conflicting scientific information, so that the Council will not need to engage in debate on technical merits. Debate and evaluation of scientific information is the role of the SSC.

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

(3) If an SSC as a body conducts a peer review established under Magnuson-Stevens Act section 302(g)(1)(E) or individual members of an SSC participate in such a peer review, the SSC members must meet the peer reviewer selection criteria as described in paragraph (b)(2) of this section. In addition, the financial disclosure requirements under § 600.235, Financial Disclosure for Councils and Council committees, apply. When the SSC as a body is conducting a peer review, it should strive for consensus and must meet the transparency guidelines under paragraphs (a)(6)(iv) and (b)(3) of this section. If consensus cannot be reached, minority viewpoints should be recorded.

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

302(g)(1)(E), should be conducted early in the scientific evaluation process in order to provide the SSC with reasonable opportunity to consider the peer review report and make recommendations to the Council as required under Magnuson-Stevens Act section 302(g)(1)(B).

(5) If an SSC disagrees with the findings or conclusions of a peer review, in whole or in part, the SSC must prepare a report outlining the areas of disagreement, and the rationale and information used by the SSC for making its determination. This report must be made publicly available.

(6) Annual catch limits (ACLs) developed by a Council may not exceed its SSC's fishing level recommendations. 16 U.S.C. 1852(h)(6). Per the National Standard 1 Guidelines, the SSC fishing level recommendation that is most relevant to ACLs is acceptable biological catch (ABC), as both ACL and ABC are levels of annual catch (see § 600.310(b)(2)(v)(D)). The SSC is expected to take scientific uncertainty into account when making its ABC recommendation (§ 600.310(f)(4)). The ABC recommendation may be based upon input and recommendations from the peer review process. Any such peer review related to such recommendations should be conducted early in the process as described in paragraph (c)(4) of this section. The SSC should resolve differences between its recommendations and any relevant peer review recommendations per paragraph (c)(5) of this section.

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

(1) The Secretary has the responsibility to ensure that *SAFE*

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

(2) The *SAFE* report provides information to the Councils and the Secretary for determining annual catch limits (§ 600.310(f)(5)) for each stock in the fishery; documenting significant trends or changes in the resource, marine ecosystems, and fishery over time; implementing required EFH provisions (§ 600.815(a)(10)); and assessing the relative success of existing relevant state and Federal fishery management programs. The *SAFE* report should contain an explanation of information gaps and highlight needs for future scientific work. Information on bycatch and safety for each fishery should also be summarized. In addition, the *SAFE* report may be used to update or expand previous environmental and regulatory impact documents and ecosystem descriptions.

(3) Each *SAFE* report should contain the following scientific information when it exists:

(i) Information on which to base catch specifications and status determinations, including the most recent stock assessment documents and associated peer review reports, and recommendations and reports from the Council's SSC.

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

(B) Information on OFL and ABC, preventing overfishing, and achieving rebuilding targets. Documentation of the data collection, estimation methods, and consideration of uncertainty in formulating catch specification recommendations should be included (§ 600.310(f)(2)). The best scientific information available to determine whether overfishing is occurring with respect to any stock or stock complex, whether any stock or stock complex is overfished, whether the rate or level of fishing mortality applied to any stock or stock complex is approaching the

maximum fishing mortality threshold, and whether the size of any stock or stock complex is approaching the minimum stock size threshold; and

(C) The best scientific information available in support of management measures necessary to rebuild an overfished stock or stock complex (if any) in the fishery to a level consistent with producing the MSY in that fishery.

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

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

(iv) Information on EFH to be included in accordance with the EFH provisions (§ 600.815(a)(10)).

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

(4) Transparency in the fishery management process is enhanced by complementing the *SAFE* report with the documentation of previous management actions taken by the Council or Secretary including a summary of the previous ACLs, ACTs, and accountability measures (AMs), and assessment of management uncertainty.

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

(i) The *SAFE* report should contain, or be supplemented by, a summary of the information and an index or table of contents to the components of the report. Sources of information in the *SAFE* report should be referenced, unless the information is proprietary.

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

(e) *FMP development*.—(1) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again, unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

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

(3) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within state waters, as well as in the EEZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. Scientific information collections for stocks managed cooperatively by Federal and State governments should be coordinated with the appropriate

state jurisdictions, to the extent practicable, to ensure harvest information is available for the management of stocks that utilize habitats in state and federal managed waters. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

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

ecosystem, the fishery, and fishing communities.

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

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

[FR Doc. 2013-17422 Filed 7-18-13; 8:45 am]

BILLING CODE 3510-22-P



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Alaska Fisheries Science Center
7600 Sand Point Way N.E.
Bldg. 4, F/AKC
Seattle, Washington 98115-0070

July 15, 2013

LETTER OF ACKNOWLEDGEMENT (LOA): 2013-11

Dr. Leandra de Sousa
Biological Oceanographer
North Slope Borough Department of Wildlife Management
P.O. Box 69
Barrow, Alaska 99723

Dear Dr. de Sousa:

This letter acknowledges that you have submitted a scientific research plan for the North Slope Borough (NSB) project Coastal Impact Assistance Program (CIAP) Project #6: Biological and Physical Oceanography of the Chukchi Sea, also referred to as SHELFZ (Shelf Habitat and Ecology of Fish and Zooplankton), dated July 8, 2013, as specified at 50 CFR 600.745. The project will be conducted aboard the vessels *F/V Alaska Knight* and *R/V Ukpik*, in the northeastern Chukchi Sea.

Vessel Name: *F/V Alaska Knight*, call sign: WDD6948
USCG Document # 996921

R/V Ukpik, call sign: WDF7672
USCG Document # 548460

Chief Scientist: Alexei Pinchuk, UAF
Dr. Leandra de Sousa, NSB

Effective Dates: August 17- September 9, 2013

Study Area: Northeastern Chukchi Sea

This LOA is separate and distinct from any permit required by any other applicable law. In order to facilitate identification of your activities as scientific research, you should carry a copy of your scientific research plan and this LOA on board the research vessel while conducting scientific research activities.

Generally, activities conducted in accordance with a scientific research plan



as acknowledged by an LOA are presumed to be scientific research. This presumption may be overcome if it can be shown that an activity does not fit the definition of scientific research activity or is outside the scope of your scientific research plan.

We request that you provide a copy of any cruise report or other publication created as a result of this cruise, including the amount, composition, and disposition of your catch, to:

Dr. Douglas P. DeMaster
Science and Research Director
Alaska Fisheries Science Center
7600 Sand Point Way NE, Bldg. 4
Seattle, WA 98115

While incidental take of marine mammals is not permitted under this LOA, we request that any incidental take of, or injuries or mortalities to, marine mammals during the course of this research be reported within 24 hours to Jon Kurland (jon.kurland@noaa.gov, 907-586-7638) or Robyn Angliss (robyn.angliss@noaa.gov, 206-526-4032).

For information regarding this LOA, contact John Clary at (206) 526-4039; by FAX, (206) 526-4004; or by e-mail at john.c.clary@noaa.gov.



Douglas P. DeMaster
Science and Research Director
Alaska Region

7/15/13

Date

cc:

F/AK – J. Balsiger
F/AKR – J. Hartman
F/AKC – J. Clary
F/AKC1 – G. Fleischer
F/AKC2 – P. Livingston
F/AKC3 - J. Bengtson
F/AKC4 – P. Mundy
F/EN4 - (Juneau), (Anchorage), (Kodiak), (Sitka), (Homer) (Dutch Harbor)
F/SF – E. Menashes
F/IA1 - D. Swanson
USCG D17 - Commander (DRE/PPI)
ADF&G – Office of the Commissioner
NPFMC - C. Oliver

NORTH SLOPE BOROUGH

Department of Wildlife Management

P.O. Box 69

Barrow, Alaska 99723

Phone: Central Office (907) 852-2611 ext. 350

or: (907) 852-0350

FAX: (907) 852 0351

Arctic Research Facility: (907) 852-0352



Dr. Douglas P. DeMaster
National Oceanic and Atmospheric Administration (NOAA)
Science and Research Director
Alaska Fisheries Science Center
7600 Sand Point Way NE, Bldg. 4
Seattle, WA 98115

July 8, 2013

RE: Request for a Letter of Acknowledgement

Dear Dr. DeMaster:

The North Slope Borough Department of Wildlife Management (NSB-DWM) plans to conduct an oceanographic survey in Alaska waters in the northeastern Chukchi Sea in 2013. This survey is part of the CIAP Project #6: Biological and Physical Oceanography of the Chukchi Sea, and is also referred to as SHELFZ (Shelf Habitat and EcoLogY of Fish and Zooplankton).

The NSB-DWM is requesting a Letter of Acknowledgement (LOA) to conduct the work described below in accordance with our scientific research plan. The SHELFZ survey will include two vessels: F/V Alaska Knight and R/V Ukpik. The F/V Alaska Knight will operate in offshore waters (> 20 m depth) and the R/V Ukpik will operate in nearshore waters (< 20 m depth). Beach seines will only be conducted on board of the R/V Ukpik. Both vessels will be collecting data on fish and zooplankton distribution and abundance, water mass properties, fisheries acoustics and fish diet. CTD (Conductivity Temperature and Density) casts will be conducted to collect data on water mass properties, while CalVET (150 μ m) and tucker trawl (505 μ m) nets will be used to collect zooplankton samples. In addition, fisheries acoustics surveys will be conducted using 38 and 120 kHz transducers. Finally bottom trawls and midwater trawls will be used to collect epibenthic and pelagic fishes.

The overall purpose of this study is to concurrently collect baseline data on the nearshore (< 20 m depth) and offshore (> 20 m depth) habitats of fish and zooplankton. This study will contribute to fill the existing the data gaps in the Chukchi nearshore environment and the

transition into the offshore environment. This study is designed for information sharing among all stakeholders in the Arctic Seas, specially the NSB villages, and the data gathered will contribute to baseline information to allow for the analysis and assessment of potential impacts to the ecosystem. A general operations plan of the SHELFZ survey is included as Attachment A. The effective dates of this survey will be during the period of August 17, 2013 through September 9, 2013.

Vessel Identification Information – F/V Alaska Knight
Radio call sign: WDD 6948
USCG document #: 996921

Vessel Identification Information – R/V Ukpik
Radio call sign: WDF 7672
USCG document #: O.N. - 548460

Collection area: NE Chukchi Sea (see map in Attachment A)
Survey fieldwork dates: August 17 – September 9, 2013

If you have any questions or concerns, please contact me at 907-852-0350 or
Leandra.Sousa@north-slope.org

Sincerely,



Leandra de Sousa Ph.D.
Biological Oceanographer
North Slope Borough Department of Wildlife Management

08 July 2013

Attachments:
Attachment A: SHELFZ Cruise plan with Map

cc:
John Clary, NOAA

**ATTACHMENT A
SHELFZ CRUISE PLAN**

Cruise Instruction

Date Submitted: July 8, 2013
Platform 1: F/V Alaska Knight
Platform 2: R/V Ukpik
Project Title: Shelf Habitat and EcoLogY of Fish and Zooplankton (SHELFZ)
Cruise Dates: August 17 to September 9, 2013

PROJECT SUMMARY

The proposed project provides an assessment of the nearshore (< 20 m) and offshore (> 20 m) habitats for fish and zooplankton in the Northeast Chukchi Sea. This study will contribute to fill the existing the data gaps in the Chukchi nearshore environment and the transition to into the offshore environment. This information is required to manage fisheries resources and mitigate the potential effects of oil and gas development and climate change in the U.S. Arctic region.

FUNDING

This study is funded by the Coastal Impact Assistance Program (CIAP) grant F12A F00731 and is administrated by the United States Fish and Wildlife Service (USFWS).

OPERATING AREA

Northeast Chukchi Sea (Figure 1)

The study area is in the Eastern Chukchi Sea. Main transects are ~ 75 km and extend from Point Beltcher to Point Barrow (~ 132 km) covering an area of ~8,580 km².

The sampling design consists of six main transects spaced 26 km apart and five intermediate transects located half-way (13km) between the main transects. Each main transect has five offshore stations and a varying number of nearshore stations. The intermediate transects only cover the nearshore area. Offshore stations are spaced 12 km apart with the first offshore station starting 12 km seaward of the 20 m isobath. Nearshore stations are spaced 4 km apart with the first nearshore station starting 4 km shoreward of the 20 m isobaths, and the last nearshore station ending at the beach. There are 30 offshore stations and 16 nearshore stations located on the main transects. There are 15 nearshore stations located on the intermediate transects. Therefore the survey design consists of 11 transects and 61 stations.

SUMMARY OF OBJECTIVES

1. Collect baseline data on the habitat, abundance, distribution and species composition of zooplankton and fish.
2. Identify similarities and differences between nearshore (< 20 m depth) and offshore (> 20 m depth) zooplankton and fish communities.
3. Specific information needed in order to achieve objectives
 - a. Habitat: Water mass properties (temperature, salinity, depth, density)
 - b. Abundance/Biomass estimates and distribution
 - i. Fisheries acoustics (38 and 120 kHz transducers)
 - ii. Fish
 1. Species, size, age class
 - iii. Zooplankton
 1. Species and size (150 μm and 505 μm)
 - c. Habitat use:
 - i. Associations between fish, water masses and zooplankton abundance/species composition
 - ii. Associations between zooplankton and water masses
 - d. Fish diet:
 - i. Stomach contents
 - ii. Energetics and fatty acid composition/profile of fish (most abundant species)

PARTICIPATING INSTITUTIONS

1. North Slope Borough Department of Wildlife Management (NSB-DWM)
2. National Oceanic and Atmospheric Administration – National Marine Fisheries Service-Alaska Fisheries Science Center (NOAA-NMFS-AFSC)
3. University of Washington (UW)
4. University of Alaska Fairbanks (UAF)

PERSONELL/SCIENCE PARTY

Name (Last, First)	Title	Vessel	Date aboard	Date Disembark	Gender	Affiliation
de Sousa, Leandra	Chief Scientist	R/V Ukpik	8/17	9/9	F	NSB-DWM
Parker-Stetter	Lead Acoustician	R/V Ukpik	8/12	9/11	F	UW
Vollenweider, Johanna	Fisheries Biologist	R/V Ukpik	8/12	9/11	F	AFSC
Neff, Darcie	Fisheries Biologist	R/V Ukpik	8/17	9/9	F	AFSC
Billy Adams	Marine Mammal/Bird Observer	R/V Ukpik	8/17	9/9	M	NSB-DWM
Name (Last, First)	Title	Vessel	Date aboard	Date Disembark	Gender	Affiliation
Pinchuk, Alexei	Chief Scientist	F/V Alaska Knight	8/17	9/9	M	UAF
Logerwell, Elizabeth	Co-Chief Scientist	F/V Alaska Knight	8/17	9/9	F	AFSC
Horne, John	Lead Acoustician	F/V Alaska Knight	8/17	9/9	M	UW
Clark, Roger	Fisheries Biologist	F/V Alaska Knight	8/17	9/9	M	NSB-DWM
Whitehouse, Andy	Fisheries Biologist	F/V Alaska Knight	8/17	9/9	M	AFSC
Buckley, Troy	Fisheries Biologist	F/V Alaska Knight	8/17	9/9	M	AFSC

OPERATIONS

F/V Alaska Knight Schedule (Figure 2)

- 10 August equipment mobilization in Dutch Harbor
- 11-16 August transit to Barrow
- 17 August science staff mobilization to F/V Alaska Knight
- 18 August- 8 September scientific sampling
- 9 September science staff demobilization from F/V Alaska Knight
- 10 - 25 September transit to Dutch Harbor
- 16 September equipment demobilization Dutch Harbor

R/V Ukpik-schedule (Figure 2)

- 12 August equipment Mobilization in Prudhoe Bay
- 12 August partial science staff mobilization (Sandra-Parker Stetter and Johanna Vollenweider)
- 13-15 August gear testing in Prudhoe Bay
- 16 August Transit to Barrow
- 17 August science staff mobilization to R\V Ukpik
- 18 August- 8 September Sampling
- 9 September Demobilization from R\V Ukpik
- 10 September transit to Prudhoe Bay
- 11 September demobilization in Prudhoe Bay

EQUIPMENT

Physical Oceanography

- FastCAT CTD Sensor SBE49 (F/V Alaska Knight)
- SBE 19plus V2 SeaCAT Profiler CTD (R/V Ukpik)

Zooplankton

- CalVET (150 μ m) (F/V Alaska Knight and R/V Ukpik)
- Tucker Trawl (505 μ m) (F/V Alaska Knight and R/V Ukpik)

Fisheries Acoustics

- 38 kHz Simrad transducer (F/V Alaska Knight and R/V Ukpik)
- 120 kHz Simrad transducer (F/V Alaska Knight and R/V Ukpik)

Bottom Trawls

- 83–112 Eastern otter with a 25.3-m (83 ft) headrope, a 34.1-m (112 ft) footrope, and a 3.8 cm small-mesh liner (F/V Alaska Knight)
- Plumb staff beam trawl (PSBT) Net: 4.7 m headrope, 4.6m footrope, 7mm mesh in body, 4mm mesh as codend liner

Midwater Trawls

- Marinovivh Net (F/V Alaska Knight)
- Aluette Net (R/V Ukpik)

Beach Seine

- 37 m long beach seine with variable mesh (outer panels: 10 m of 32 mm mesh; middle panels: 4 m of 6 mm mesh; and bunt panel: 9 m of 3.2 mm mesh). Mesh measurements of outer panels are stretched while intermediate and bunt panels are square mesh measures. The seine tapers from 5 m depth at the center panels to 1 m depth at each end (R/V Ukpik)

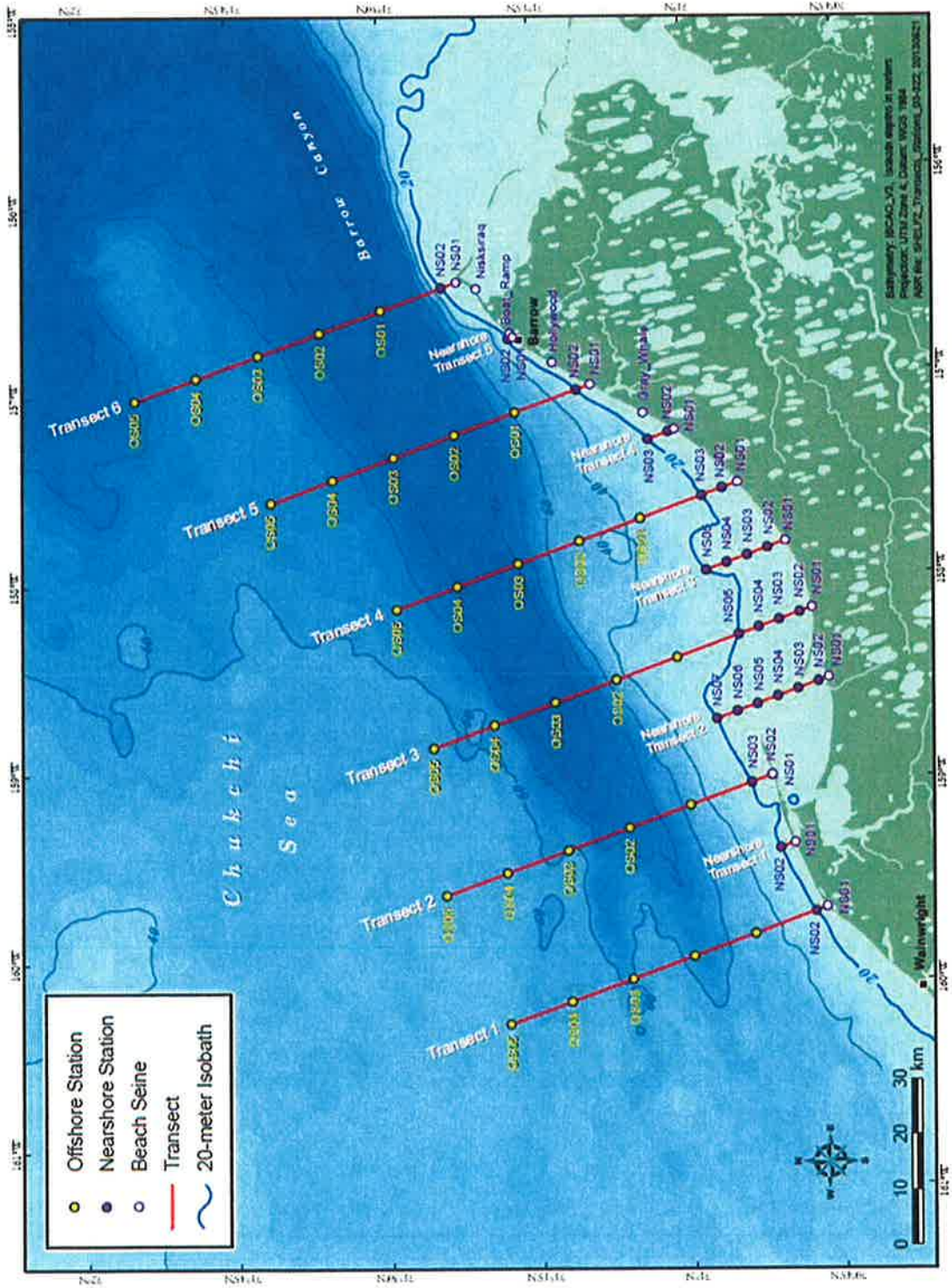


Figure 1: SHELFZ project map showing the study area with transects (red) and station locations



Figure 2: Vessels that will be conducting the SHELFZ survey, R/V Ukpik and F/V Alaska Knight



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service
Alaska Fisheries Science Center
Auke Bay Laboratories
Ted Stevens Marine Research Institute
17109 Point Lena Loop Road
Juneau, Alaska 99801-8344
Fax (907) 789-6094

July 15, 2013

MEMORANDUM FOR: Distribution

FROM: Phillip R. Mundy, Ph.D. *PRM*
Laboratory Director

SUBJECT: Cruise Announcement-SRP # 2013-8
Bering Aleutian Salmon International Survey (BASIS), Arctic
Ecosystem Integrated Survey in the eastern Bering Sea and
Chukchi Sea

Survey area and time line:

Scientists from the Alaska Fisheries Science Center (AFSC) will be conducting oceanographic and trawl surveys in marine waters of the northeastern Bering Sea and Chukchi Sea from August 1 to September 29, 2013.

Vessels and gear:

The chartered fishing vessel *F/V Bristol Explorer* will be used for trawl and oceanographic surveys. It is a 180 foot commercial fishing vessel, constructed of steel (blue), with house forward (white). These surveys will involve the use of trawls fished at the surface and at midwater from August through September.

Vessel contact information:

Vessel: *F/V Bristol Explorer*
Vessel Design: 180 ft trawler, constructed of steel (blue), with house forward (white)
Call sign:
Coast Guard Document Number: 647985
Home Port: Seattle, WA
Vessel Owner: B&N Fisheries in Seattle, WA, Jerry Downing (206) 783-1948
E-mail: jerryd@bnfisheries.net
Vessel Master: Dan Carney
Telephone: 907-350-4350
E-mail: bristol.explorer@amosconnect.com



Research objectives:

The primary objectives of the 2013 BASIS/Arctic EIS pelagic trawl survey in the northern Bering Sea and Chukchi Sea shelf are to: 1) collect baseline fisheries and oceanographic data to enable resource managers to better predict effects of climate and human impacts on ocean productivity and on the ecology of marine and anadromous fish species; 2) assess the distribution, relative abundance, diet, energy density, size, and potential predators of juvenile salmon and marine fish; and 3) evaluate the effect of climate change on the health and status of pelagic fishes.

Scientific personnel:

Ed Farley, Chief Scientist (leg 1), Ed.Farley@noaa.gov (907) 789-6085

Alex Andrews, Chief Scientist (leg 2), Alex.Andrews@noaa.gov (907) 789-6655

Jim Murphy, Chief Scientist (leg 3), Jim.Murphy@noaa.gov (907) 789-6651

Additional information:

Please see the attached Scientific Research Permit SRP # 2013-## For more information on BASIS/Arctic EIS project objectives, sampling localities, and time lines.

Distribution:

F/AKR – J. Balsiger jim.balsiger@noaa.gov
F/AKR – D. Mecum doug.mecum@noaa.gov
F/AKC - J. Clary john.c.clary@noaa.gov
F/AKC - D. DeMaster doug.demaster@noaa.gov
F/AKC - S. Ignell steve.ignell@noaa.gov
F/AKC1 – G. Fleischer guy.fleischer@noaa.gov
F/AKC2 – P. Livingston pat.livingston@noaa.gov
F/AKC3 – J. Bengtson, john.bengtson@noaa.gov
F/AKR2 – G. Merrill glen.merrill@noaa.gov
F/EN4 – R. Antaya, ronald.antaya@noaa.gov
USCG 17 – (P01) –jrccjuneau@uscg.mil

ADF&G:

C. Campbell (Commissioner) cora.campbell@alaska.gov
R. Small (Marine Mammal Coordinator, Wildlife Conservation, Juneau) bob.small@alaska.gov
C. Swanton (Director, Sport Fish, Juneau) charles.swanton@alaska.gov
S. Aspelund (Deputy Director, Commercial Fisheries) sue.aspelund@alaska.gov
J. Regnart (Division Director, Commercial Fisheries, Anchorage) jeff.regnart@alaska.gov
S. Honnold (Westward Region Supervisor, Commercial Fisheries) steve.honnold@alaska.gov
W. Donaldson (Regional Management Coordinator, Kodiak) wayne.donaldson@alaska.gov
H. Fitch (Area Management Biologist, Dutch Harbor) heather.fitch@alaska.gov
M. Stichert (Groundfish/Shellfish Kodiak Area Mgt. Biologist) mark.stichert@alaska.gov
T. Lingnau (Central Region Supervisor, Commercial Fisheries) tracy.lingnau@alaska.gov
K. Goldman (Central Region Shellfish/Groundfish Research Biologist)
ken.goldman@alaska.gov
E. Volk (Salmon Fisheries Scientist, Commercial Fisheries) eric.volk@alaska.gov
J. Menard (Nome Area Management Biologist) jim.menard@alaska.gov
D. Bergstrom (AYK Region Mgt. Supervisor, Commercial Fisheries) dan.bergstrom@alaska.gov
G. Bruce (Assistant Director, Commercial Fisheries) geron.bruce@alaska.gov
C. Siddon (Marine Fisheries Scientist, Commercial Fisheries), chris.siddon@alaska.gov
T. Baker (Central Region, Groundfish/Shellfish Mgt. Coord) tim.baker@alaska.gov
D. Vincent-Lang (Director, Wildlife Conservation, Anchorage) douglas.vincent-lang@alaska.gov
K. Howard (AYK Regional Research Coordinator) kathrine.howard@alaska.gov
J. Conitz (AYK Regional Research Coordinator) jan.conitz@alaska.gov
J. Linderman (AYK Regional Supervisor, Commercial Fisheries) john.linderman@alaska.gov

USFWS - J. Adams (Branch Chief) jeff_adams@fws.gov

BSFA - K. Gillis (Director) karen.gillis@bsfaak.org

NPFMC – C. Oliver chris.oliver@noaa.gov

AST – Sgt. Steve Hall (Juneau) steven.hall@alaska.gov

YRFDA (Yukon River Fishermen's Drainage Association) – J. Klein jill@yukonsalmon.org

EWC (Eskimo Walrus Commission) – V. Metcalf vmetcalf@kawerak.org

NSECD (Norton Sound Fisheries Research & Development) – C. Lean charlie@nsecd.com

S. Morstad (Naknek/Kvichak Area Mgt Biologist) slim.morstad@alaska.gov

P. Salomone (Egegik/Ugashik Area Mgt Biologist) paul.salomone@alaska.gov

T. Sands (Nushagak/Togiak Area Mgt Biologist) tim.sands@alaska.gov

M. Jones (Nushagak/Togiak Asst Area Mgt Biologist) matt.jones@alaska.gov



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

**SCIENTIFIC RESEARCH PERMIT (SRP) # 2013-8
Alaska Fisheries Science Center
Marine Ecology and Stock Assessment - Auke Bay Lab**

Issued to: Douglas P. DeMaster, Science and Research Director
Alaska Fisheries Science Center (AFSC), NMFS
7600 Sand Point Way N.E.
Seattle, WA 98155 - 0070

This SRP authorizes the below named fishing vessel identified in the Scientific Research Plan dated June 17, 2013 (attached), as specified at 50 CFR 600.745, to conduct scientific research in the exclusive economic zone.

Vessel Name: *F/V Bristol Explorer*

Chief Scientists: Alex Andrews, Jim Murphy, and Ed Farley (NOAA/ABL)

Effective Dates: August 1st – September 29th, 2013

Research Area: Bering Sea and Chukchi Sea

This SRP is separate and distinct from any permit required by any other applicable law. In order to facilitate identification of your activities as scientific research, you must carry a copy of your cruise plan and this SRP on board the research vessel while conducting scientific research activities. Generally, activities conducted in accordance with a scientific research plan permitted by an SRP are exempt from applicable regulations. This presumption may be overcome if an activity does not fit the definition of scientific research activity or is outside the scope of your scientific research plan. The planned activities for the BASIS/Arctic EIS survey include collection of acoustic data and surface and mid-water trawl catches to assess pelagic fish biomass; and collection of fish specimens for research on feeding ecology, age, growth, nutritional status and stock structure. Activities outside the scope of your permit that are in violation of the applicable regulations may be subject to sanctions.

For information regarding this SRP, contact Alex Andrews (907) 789-6655, Jim Murphy (907) 789-6651, or Ed Farley (907) 789-6085.

James W. Balsiger, Ph. D.
Administrator, Alaska Region

July 3, 2013



DETERMINATIONS

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

Under the Magnuson-Stevens Act, scientific research activity conducted from a scientific research vessel is not fishing and, therefore, exempt from the requirements of the Magnuson-Stevens Act regulations. Research activity is exempt from any requirements of the Magnuson-Stevens Act as described in the submitted scientific research plans and modified by any requirements of this SRP.

NATIONAL ENVIRONMENTAL POLICY ACT

This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216-6. This action falls within the general categorical exclusion provided for research by that order (6.03.c.3(a)).

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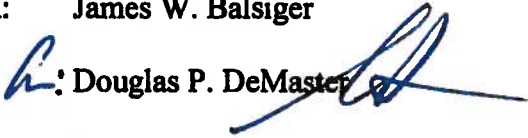
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**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE**

Alaska Fisheries Science Center
7600 Sand Point Way N.E.
Bldg. 4, F/AKC
Seattle, Washington 98115-0070

June 17, 2013

MEMORANDUM FOR: James W. Balsiger
FROM:  Douglas P. DeMaster
SUBJECT: Request for Scientific Research Permit
2013 *F/V Bristol Explorer* pelagic fish survey

I request a Federal Scientific Research Permit for the 2013 Bering Sea (BASIS/Arctic Ecosystem Integrated Survey) pelagic fish survey aboard the *F/V Bristol Explorer*, August 1 – September 29, 2013.

The primary objectives of the 2013 BASIS/Arctic Eis pelagic trawl survey in the northern Bering Sea and Chukchi Sea shelf are to: 1) collect baseline fisheries and oceanographic data to enable resource managers to better predict effects of climate and human impacts on ocean productivity and on the ecology of marine and anadromous fish species; 2) assess the distribution, relative abundance, diet, energy density, size, and potential predators of juvenile salmon, other commercial fish, and forage fish; and 3) evaluate the effect of climate change on the health and status of pelagic fishes.

This research initiative is funded by the Coastal Impacts Assistance Program and Bureau of Ocean and Energy Management.



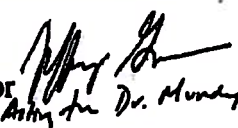


**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

**National Marine Fisheries Service
Alaska Fisheries Science Center
Auke Bay Laboratories
Ted Stevens Marine Research Institute
17109 Point Lena Loop Road
Juneau, Alaska 99801-8344
Fax (907) 789-6094**

June 13, 2013

MEMORANDUM FOR: Douglas P. DeMaster
Science and Research Director

FROM: Phillip R. Mundy 
Laboratory Director *Asst. Dir. Dr. Mundy*

SUBJECT: Request for Scientific Research Permit
BASIS/Arctic EIS: Northern Bering Sea and Chukchi Sea

I request a Scientific Research Permit be issued for the BASIS/Arctic Ecosystem integrated survey on the chartered fishing vessel *Bristol Explorer* in the northern Bering Sea and Chukchi Sea from August 1 through September 29, 2013. Scientists from the Alaska Fisheries Science Center will conduct fisheries and oceanographic research at stations on the eastern Bering Sea and Chukchi Sea shelf. Acoustic data and surface and mid-water trawl rope trawl catches will be used to assess the pelagic fish biomass and collect fish specimens for research on feeding ecology, age, growth, nutritional status, and stock structure. Oceanographic observations will be taken at each station to assess the ecosystem status of the eastern Bering Sea and Chukchi Sea.

Attached is a Scientific Research Plan that describes in detail the activities of the cruise

For information regarding this cruise contact: Alex Andrews (907) 789-6655, Jim Murphy (907) 789-6651, or Ed Farley (907) 789-6085 at TSMRI.

Attachment



Scientific Research Plan

Alaska Fisheries Science Center/Auke Bay Laboratories BASIS/Arctic Eis Cruise Plan for the F/V *Bristol Explorer*, August 1 – September 29, 2013.

Vessel Information:

Vessel: F/V *Bristol Explorer*

Vessel Design: 180 ft trawler, constructed of steel (blue), with house forward (white)

Call sign:

Coast Guard Document Number: 647985

Home Port: Seattle, WA

Vessel Owner: B&N Fisheries in Seattle, WA, Jerry Downing (206) 783-1948

E-mail: jerryd@bnfisheries.net

Vessel Master: Dan Carney

Telephone: 907-350-4350

E-mail: bristol.explorer@amosconnect.com

Survey Dates:

August 1 – September 29, 2013

Ports of Call:

Dutch Harbor August 1

Nome August 20

Nome September 11

Dutch Harbor September 29

Personnel:

Leg	Name	Affiliation
1	Ed Farley ¹	AFSC/ABL
	Wess Strasburger	AFSC/ABL
	Chris Wilson	AFSC/MACE
	Kevin Taylor	AFSC/MACE
	Stacy Vega	UAF
	Tamara Zeller	USFWS
2	Alex Andrews ¹	AFSC/ABL
	Franz Mueter	UAF
	Kevin Taylor	AFSC/MACE
	Noel Sme	UAF
	Wess Strasburger	AFSC/ABL
	Catherine Pham	USFWS
3	Jim Murphy ¹	AFSC/ABL
	Katie Howard	ADFG
	Jared Weems	UAF

	Jeanette Gann	AFSC/ABL
	Katie Howard	ADFG
	Melissa Prechtl	UAF

I -- Chief Scientist

AFSC -- Alaska Fisheries Science Center
ABL -- Auke Bay Laboratories Division
MACE -- Midwater Acoustic Conservation Engineering
UAF -- University of Alaska Fairbanks
ADFG -- Alaska Department of Fish and Game

1. Project Objectives and Rationale:

The primary objectives of the 2013 BASIS/Arctic Eis pelagic trawl survey in the northern Bering Sea and Chukchi Sea shelf are to: 1) collect baseline fisheries and oceanographic data to enable resource managers to better predict effects of climate and human impacts on ocean productivity and on the ecology of marine and anadromous fish species; 2) assess the distribution, relative abundance, diet, energy density, size, and potential predators of juvenile salmon, other commercial fish, and forage fish; and 3) evaluate the effect of climate change on the health and status of pelagic fishes. This research initiative is funded by the Coastal Impacts Assistance Program and Bureau of Ocean and Energy Management.

2. Experimental Design:

The survey will be conducted aboard the chartered fishing vessel, *F/V Bristol Explorer*. Salmon and other pelagic fish will be collected with a midwater rope trawl, model 400/601 made by Cantrawl Pacific Ltd¹ of Richmond, B.C., Canada. The trawl is 198 m long, with hexagonal mesh in wings and body, a 1.2-cm mesh liner in the codend, and a typical spread of 50 m horizontally and 20 m vertically. The trawl will be towed at or near the surface for 30 minutes at speeds approximately 4.5 knots at each station. Stations have been selected as part of a spatially systematic sampling design of the coastal northern Bering Sea shelf, including stations in Norton Sound and the Bering Strait. Additional trawl tows will be conducted as needed to verify species ID of acoustic targets.

Trawl catches will be sorted by species and catch in weight and numbers will be estimated. Standard biological data will be collected from salmon, including: length, weight, sex, condition, and maturity data. Scales, otoliths, genetic tissue samples, and whole fish specimens for laboratory analysis will also be collected from salmon species. Length frequency data and whole fish specimens for laboratory analysis will be collected from other pelagic nekton species. Diet information will be collected from stomachs of trawl caught fish. Sample requests and collections by collaborating scientists will be filled as time permits.

¹ Reference to trade names does not imply endorsement by the National Marine Fisheries Service, NOAA.

Oceanographic data will also be collected at each trawl station. Vertical profiles of salinity, temperature, chlorophyll a fluorescence, light attenuation (beam c), photosynthetic available radiation (PAR) and dissolved oxygen, will be obtained from surface to near bottom depths at each trawl station using a conductivity, temperature, and depth meter (CTD) with ancillary sensors (SBE-911, Sea-Bird Electronics, Inc, Bellevue, WA). Continuous along-track measurements of surface temperature and salinity will be collected using a thermosalinograph (SBE-45 or SBE-21, Sea-Bird Electronics, Inc¹). Water samples for nutrients (N, P, Si), chlorophyll a (total and size fractionated), and phytoplankton will be collected at the surface and below the pycnocline using 5-L Niskin bottles. Zooplankton samples will be collected at each trawl station from surface to near bottom using double oblique bongo (60-cm diameter frame with 505 and 333 micron mesh nets) and 150 micron mesh.

3. Geographical Area of Operation:

The charter will begin in Dutch Harbor, Alaska on August 1, 2013 and end in Dutch Harbor on September 29, 2013 (Table 1). The survey will consist of three legs with two port calls scheduled in Nome on Aug. 20 and Sept. 11. The first leg will sample stations north of 65°N within Chukchi Sea; leg 2 will continue to sample the Chukchi Sea. Leg 3 will sample stations south of 65°N within the northern Bering Sea (Fig. 1).

4. Cruise Schedule:

Table 1. Tentative cruise itinerary for the *F/V Bristol Explorer* pelagic fish survey (BASIS/Arctic Eis) on the northeastern Bering Sea shelf and Chukchi Sea, August 1 – September 29, 2013.

Date	Location/Activity
Aug 1	Dutch Harbor, scientists embark and load sample equipment
Aug 2	Complete loading
Aug 3	Acoustic calibration; leave Dutch Harbor: travel to Bering Strait
Aug 6	Begin Sampling southern Chukchi Sea (leg 1)
Aug 19	Transit to Nome, AK
Aug 20	Port Call Nome
Aug 21	Transit to northern Chukchi Sea (leg 2)
Aug 22	Sample stations in northern Chukchi Sea
Sep 9	Transit to Nome, AK
Sep 11	Port Call Nome
Sep 12	Transit to northern Bering Sea; Begin sampling (leg 3)
Sep 27	Transit to Dutch Harbor
Sep 29	Port Call Dutch Harbor/Offload gear, end survey

5. Catch of Restricted or Managed Species:

A midwater rope trawl (50-m horizontal, 20-m vertical, towed near the surface or midwater) will be used to collect pelagic fish species in the the northern Bering Sea and Chukchi Sea. Based on the previous surveys conducted on the eastern Bering Sea and Chukchi Sea, we anticipate a total fish catch of approximately 8000 kg in trawl catch (Tables 2 and 3).

6. Sponsoring Organization Contact Information:

Douglas P. DeMaster, Science and Research Director
Alaska Fisheries Science Center (AFSC), NMFS
Auke Bay Laboratories
17109 Point Lena Loop Road
Juneau, AK 99801
FAX: (907) 789-6094

7. Principal Investigator/Chief Scientist Contact Information

Ed Farley, Chief Scientist (leg 1), Ed.Farley@noaa.gov (907) 789-6085
Alex Andrews, Chief Scientist (leg 2), Alex.Andrews@noaa.gov (907) 789-6655
Jim Murphy, Chief Scientist (leg 3), Jim.Murphy@noaa.gov (907) 789-6651

Alaska Fisheries Science Center (AFSC), NMFS
Auke Bay Laboratories
17109 Point Lena Loop Road
Juneau, AK 99801
FAX: (907) 789-6094

8. Steller Sea Lion Critical Habitat and Closures

No stations are within designated Steller sea lion critical habitat (Fig. 1)

Table 2. Anticipated catch composition of the F/V *Bristol Explorer* pelagic fish survey in the northern Bering Sea, leg 3: September 12-28, 2013, based on catch composition during the 2012 northern Bering Sea survey.

Common Name	Expected Catch (kg)	Amount Retained (kg)
Pink salmon	3.8	3.8
Chum salmon	168	90
Coho salmon	6.3	5
Chinook salmon	36	30
Walleye pollock	10	10
Arctic cod	222	100
Safron Cod	93	10
Pacific herring	373	30
Capelin	1228	500
Pacific sand lance	1	1
Rainbow smelt	45	40
Slender eelblenny	5	0
Yellowfin Sole	8	0
<i>Chrysaora melanaster</i>	4375	0

Table 3. Anticipated catch composition of the F/V *Bristol Explorer* pelagic fish survey in the Chukchi Sea, legs 1 and 2: August 1 to September 11, 2013, based on catch composition during the BASIS/Arctic Eis 2012 survey in the Chukchi Sea.

Common Name	Expected Catch (kg)	Amount Retained (kg)
Pink salmon	0.4	0.4
Chum salmon	82	20
Chrysaora melanaster	4403	0
Slender eelblenny	0.2	0
Arctic Cod	17	17
Safron Cod	0.3	0.3
Pacific herring	5483	100
Capelin	66	40
Pacific sand lance	0.7	0.7
Shorthorn Sculpin	0.2	0

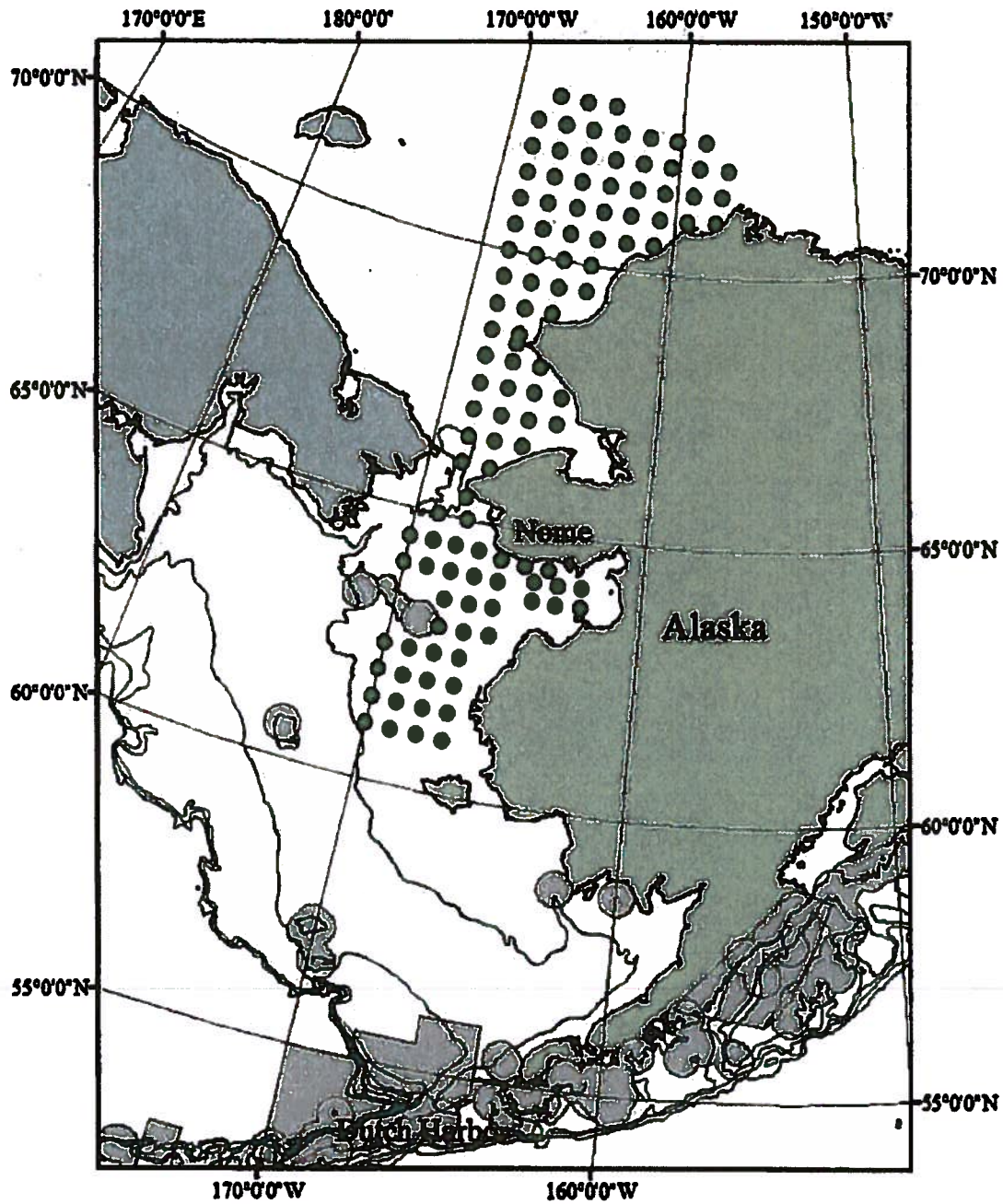


Fig. 1. Station coordinates for the F/V *Bristol Explorer* pelagic fish survey (BASIS/Arctic Eis), August 1 – September 29, 2013. Shaded coastal regions are designated as critical habitat for Steller sea lions.



FEDERAL REGISTER

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June 28, 2013

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

Pacific Halibut Fisheries; Catch Sharing Plan for Guided Sport and Commercial Fisheries in Alaska; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 101027534-3546-01]

RIN 0648-BA37

Pacific Halibut Fisheries; Catch Sharing Plan for Guided Sport and Commercial Fisheries in Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement a catch sharing plan for the guided sport (charter) and commercial fisheries for Pacific halibut in waters of International Pacific Halibut Commission (IPHC) Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). If approved, this catch sharing plan will replace the Guideline Harvest Level program, define an annual process for allocating halibut between the charter and commercial fisheries in Area 2C and Area 3A, and establish allocations for each fishery. The commercial fishery will continue to be managed under the Individual Fishing Quota system. To allow flexibility for individual commercial and charter fishery participants, the proposed catch sharing plan also will authorize annual transfers of commercial halibut quota to charter halibut permit holders for harvest in the charter fishery. This action is necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council.

DATES: Written comments must be received by August 12, 2013.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA-NMFS-2011-0180, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/ #/docketDetail;D=NOAA-NMFS-2011-0180, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

- **Fax:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address and by email to OIRA_Submission@omb.eop.gov or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Julie Scheurer, 907-586-7228.

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- VI. Classification

I. Current Management of the Halibut Fisheries**A. Regulatory Authority**

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The final rule implementing IPHC regulations for the 2013 fishing season was published March 15, 2013, at 78 FR 16423. IPHC regulations affecting sport fishing for halibut and vessels in the charter fishery in Areas 2C and 3A may be found in sections 3, 25, and 28 of that final rule.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary of Commerce is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating, currently the Department of Homeland Security.

The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of subsistence halibut fishery management measures, codified at 50 CFR 300.65, and the guideline harvest level program and limited access program for charter operators in the charter fishery, codified at 50 CFR 300.67. The Council also developed the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773 of the Halibut Act and section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

B. Background on the Halibut Fishery

The harvest of halibut in Alaska occurs in three fisheries—the commercial, sport, and subsistence fisheries. The commercial halibut fishery is a fixed gear fishery managed under an Individual Fishing Quota program. The sport fishery includes unguided and guided anglers. Guided anglers are commonly called “charter” anglers because they fish from chartered vessels. The subsistence fishery allows rural residents and members of an Alaska Native tribe to retain halibut for personal use or customary trade.

The IPHC annually determines the amount of halibut that may be removed from the resource by regulatory area in all Convention waters. The IPHC estimates the exploitable biomass of halibut using a combination of harvest data from the commercial, sport, and subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The IPHC calculates a range of total allowable removals of halibut from all sources in an IPHC regulatory area based on the annual stock assessment and apportionment process conducted by the IPHC. The range of total allowable removals is referred to as the Total Constant Exploitation Yield (CEY) and represents the total removals for that area in the coming year at varying levels of harvest and risk. The Total CEY is expressed in net pounds, which is defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed. The Fishery CEY represents the difference

between the Total CEY and all other removals, including sport, subsistence, bycatch, and waste. The Fishery CEY is the basis for the IPHC’s determination of catch limits for the directed commercial fixed gear halibut fishery. The IPHC considers staff recommendations, harvest policy, and stakeholder input when it determines commercial catch limits.

Pursuant to Article III of the Convention, the IPHC must develop and maintain halibut stocks to levels that will permit the optimum yield for the halibut fisheries. The IPHC addresses this objective through a harvest strategy that is designed to balance the benefits of yield with the risk of spawning biomass dropping below a minimum level. To the extent possible, the IPHC accounts for all sources of fishing mortality within the Total CEY and establishes the commercial fixed gear catch limits only after subtracting waste in the commercial halibut fishery and halibut removals from other non-halibut commercial fisheries and non-commercial uses. Because the IPHC subtracts non-commercial halibut fishery removals (including charter harvest or the guideline harvest level) from the Total CEY, and because the charter fishery harvest increased during the 1990s and early 2000s, the amount of halibut available for the commercial halibut fishery decreased relative to the long-term historic proportion of the fishery available to the commercial fishery. The commercial IFQ halibut fishery therefore views charter harvests in excess of established policies or goals as uncompensated reallocations of fishing privileges.

II. History of Management in the Charter Halibut Fisheries

This section provides an overview of management policies applicable to charter halibut fishing in Areas 2C and 3A. Additional details on the management measures specific to each regulatory area are addressed later in this preamble. Until 2007, harvest restrictions for the charter halibut fisheries were developed by the IPHC. In 1973, the IPHC first adopted halibut sport fishing regulations to provide consistent and uniform halibut sport fishing regulations in all regulatory areas. At that time, the IPHC established that the sport fishing season for halibut would occur from March 1 through October 31, and limited the number of halibut that anglers could retain by imposing a daily three-fish bag limit. From 1984 through 1997, the IPHC required charter vessels to have IPHC licenses. Since the initial three-fish bag limit was established in 1973, the IPHC

has adjusted the bag limit to vary among one, two, and three fish per angler per day. The current bag limit under IPHC regulations is two fish of any size per day unless a more restrictive bag limit applies in Federal regulations. There is not a more restrictive limit currently in effect in Federal regulations for Area 3A, but NMFS has established a more restrictive one-fish bag limit for charter vessels for Area 2C as described in the following section of this preamble.

In 1997, the Council adopted separate guideline harvest levels (GHLs) for the Area 2C and Area 3A charter halibut fisheries. The proposed and final rules implementing the current GHLs were published in the **Federal Register** in 2002 and 2003, respectively (67 FR 3867, January 2, 2002; 68 FR 47256, August 8, 2003). These regulations are codified at 50 CFR 300.65. A more detailed description of GHL management and the Council’s rationale behind such management can be found in the proposed and final rules cited above; a brief description follows.

The GHLs represent pre-season specifications of acceptable annual harvests in the charter halibut fisheries in Areas 2C and 3A. To accommodate some growth in the charter halibut fishery, while approximating historical levels, the Council recommended the GHLs were to be based on 125 percent of the average charter halibut fishery harvest from 1995 through 1999 in each area. For Area 2C the maximum GHL was set at 1,432,000 pounds (lb), or 649.5 metric tons (mt), net weight, and in Area 3A the maximum GHL was set at 3,650,000 lb (1,655.6 mt) net weight. The Council recommended a system of step-wise adjustments to the GHLs to accommodate decreases and subsequent increases in halibut abundance. The Council recommended this system of GHL adjustments to provide a relatively predictable and stable harvest target for the charter halibut fishery. Although the Council had a policy that charter halibut fisheries should not exceed the GHL, the 2003 GHL regulations did not actually limit charter halibut fishery harvests. Rather, the GHL regulations set benchmarks for use in future regulations, and harvest restrictions could be adopted in the year following a year that the GHL was exceeded.

In response to concerns that growth in the charter halibut fishery was resulting in overcrowding in productive halibut grounds, the Council recommended, and the Secretary of Commerce adopted, a limited access program to provide stability for the charter halibut fishery and decrease the need for regulatory adjustments affecting charter vessel anglers. NMFS published a final rule on

January 5, 2010 (75 FR 554), that implemented the charter halibut limited access program (CHLAP) in 2011. This rule capped the number of charter businesses that could operate in Areas 2C and 3A to limit further expansion of the industry.

Under the CHLAP, NMFS initially issued permits to those businesses that historically and recently participated in the charter halibut fishery. The CHLAP also issues a limited number of permits to non-profit corporations representing specified rural communities and to U.S. military morale programs for service members. Beginning February 1, 2011, all vessel operators in Areas 2C and 3A

with charter anglers on board were required to have an original, valid permit on board during every charter halibut vessel fishing trip. Charter Halibut Permits (CHPs) are endorsed for the appropriate regulatory area and, except for military CHPs, the number of anglers catching and retaining halibut on a trip. In October 2012, NMFS published an implementation report for the CHLAP after all interim permits had been adjudicated and resolved. This report is available at http://alaska.fisheries.noaa.gov/ram/charter/chp_review1012.pdf. At the time of publication, a total of 972 charter halibut permits had been issued to 356

permit holders in Area 2C and 439 permit holders in Area 3A. Of these 972 CHPs, 711 are transferable. Transfers of permits allow new entrants into the charter halibut fishery. With the exception of initial recipients of CHPs who meet specified requirements under 50 CFR 300.67, permit-holders are limited to 5 permits.

A. Southeast Alaska (Area 2C)

The Area 2C charter halibut harvest exceeded its GHL every year during 2004 through 2010, despite management measures designed to control charter halibut harvest in this area (Table 1).

TABLE 1—AREA 2C GUIDELINE HARVEST LEVEL AND ESTIMATED CHARTER HALIBUT HARVEST FROM 2004 TO 2013
[Rounded to the nearest 1,000 lb]

Year	Area 2C GHL	Area 2C estimated harvest
2004	1,432,000 lb (649.5 mt)	1,750,000 lb (793.8 mt)
2005	1,432,000 lb (649.5 mt)	1,952,000 lb (885.4 mt)
2006	1,432,000 lb (649.5 mt)	1,804,000 lb (818.3 mt)
2007	1,432,000 lb (649.5 mt)	1,918,000 lb (870.0 mt)
2008	931,000 lb (422.3 mt)	1,999,000 lb (906.7 mt)
2009	788,000 lb (357.4 mt)	1,245,000 lb (564.7 mt)
2010	788,000 lb (357.4 mt)	1,086,000 lb (492.6 mt)
2011	788,000 lb (357.4 mt)	344,000 lb (156.0 mt)
2012	931,000 lb (422.3 mt)	645,000 lb (292.6 mt) *
2013	788,000 lb (357.4 mt)	not available

*Harvest estimate for 2012 is preliminary.

To ensure that the halibut stocks would continue to develop to a level that would allow optimum yield in the halibut fisheries, beginning in 2007 the IPHC and Council have recommended, and the Secretary of Commerce has adopted, a number of regulatory measures in Area 2C to limit charter halibut harvest to the Area 2C GHL. In 2007, NMFS implemented regulations to require that under the two-fish daily bag limit, one of the harvested halibut could not exceed 32 inches head-on length (81.3 cm) (72 FR 30714, June 4, 2007). These regulations were in effect for 2007 and 2008. In 2008, the GHL dropped to 931,000 lb (422.3 mt) in Area 2C and charter halibut harvest was more than double the GHL.

In 2009, the GHL dropped again to 788,000 lb (357.4 mt), prompting NMFS to implement additional restrictions on Area 2C charter anglers: A one-fish daily bag limit superseded the two-fish with maximum size rule, harvest by the charter vessel guide and crew was prohibited, and a line limit equal to the number of charter vessel anglers on board, but not to exceed six lines was implemented (74 FR 21194, May 6, 2009). This rule was challenged by participants in the charter halibut

fishery, and the U.S. District Court for the District of Columbia granted summary judgment in favor of the Secretary of Commerce on November 23, 2009 (*Van Valin v. Locke*, 671 F. Supp 2d 1 D.D.C. 2009). The one halibut per day bag limit for charter vessel anglers remained in effect for Area 2C for the 2009 and 2010 seasons, yet catch still exceeded the GHL by approximately 58 percent in each of these years.

Because NMFS imposed no additional charter restrictions in 2011, the IPHC believed that charter halibut harvest was likely to exceed the 788,000 lb GHL again. As such, the IPHC recommended and the Secretary of State accepted, with the concurrence of the Secretary of Commerce, a daily bag limit for charter vessel anglers in Area 2C of one halibut with a maximum length of 37 inches (94.0 cm) per day (76 FR 14300, March 16, 2011). The 2011 Area 2C charter halibut harvest under the 37-inch maximum length rule was estimated at 344,000 lb, significantly below the GHL of 788,000 lb. The Council determined that it would be appropriate for IPHC to consider alternative management measures to limit charter halibut harvest to the GHL, and requested an analysis

of two options in addition to a maximum size limit for management measures for the 2012 Area 2C charter halibut fishery to limit charter halibut harvest to the 2012 GHL. One alternative management measure was a reverse slot limit, in which anglers may retain fish that are smaller or larger than a specified range of lengths, but must release fish within that range. Another alternative considered was charter halibut fishery closures on selected days of the week.

In December 2011, the Council reviewed the analysis of the range of management measures to limit Area 2C charter halibut harvest to its 2012 GHL (available at www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2012MgmtMeasures2C.pdf) and unanimously recommended that the IPHC implement a reverse slot limit that allowed retention of halibut less than or equal to (under) 45 inches (U45) and greater than or equal to (over) 68 inches (O68) in length. This U45/O68 reverse slot limit would allow the retention of halibut that are less than approximately 32 lb and greater than 123 lb (headed and gutted). At its annual meeting in January 2012, the IPHC reviewed the

Council analysis for charter halibut management measure options and the Council's recommendation. The IPHC unanimously recommended implementing the U45/O68 reverse slot limit for charter anglers in Area 2C for the 2012 halibut fishing season. This recommendation was implemented through the 2012 IPHC annual management measures (77 FR 16740, March 22, 2012).

In November 2012, the preliminary estimate of charter halibut harvest for 2012 was 645,000 lb (292.6 mt), which was below the GHL of 931,000 lb (422.3 mt). In December 2012, the Council undertook the same process it used in December 2011 to consider options for the appropriate Area 2C charter halibut management measures for implementation in 2013. Based on an analysis of charter halibut management options and advice from its advisory committees and the public, the Council recommended a continuation of the status quo charter management measures in Area 2C for the 2013

season. At its annual meeting in January 2013, the IPHC reviewed the Council analysis for 2013 charter halibut management measure options (available at www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2013charterAnalysis_1212.pdf) and the Council's recommendation. Based on the Total CEY, the resulting GHL for Area 2C in 2013 was 788,000 lb (357.4 mt). The IPHC unanimously recommended status quo management (i.e., the U45/O68 reverse slot limit) for charter anglers in Area 2C for the 2013 halibut fishing season, which was implemented through the 2013 IPHC annual management measures (78 FR 16423, March 15, 2013).

B. Southcentral Alaska (Area 3A)

Since the GHL was implemented in 2004, charter anglers in Area 3A have been managed by the same harvest restrictions as unguided anglers, i.e., a two-fish daily bag limit with no size restrictions. Charter halibut harvest in 2004 through 2007 was at or slightly

above the GHL of 3,650,000 lb (1,655.6 mt) in Area 3A (Table 2). Each year from 2007 to 2009, the Alaska Department of Fish and Game (ADF&G) issued an Emergency Order that prohibited charter skipper and crew harvest of all species for the major portion of the season under ADF&G's general authorities to regulate state-licensed sport fishing vessels. From 2010 until 2012, the charter halibut fishery had a two-fish of any size bag limit with no prohibition on skipper and crew harvest. Charter halibut harvest in Area 3A has remained below the GHL since 2008, even after the GHL dropped in 2012 from 3,650,000 lb (1,655.6 mt) to 3,103,000 lb (1,407.5 mt). Table 2 summarizes GHLs and charter halibut harvest in Area 3A since 2004. The IPHC adopted commercial halibut fishery catch limits based on a Total CEY which resulted in a 2013 GHL of 2,734,000 lb (1,240.1 mt) and approved status quo management measures for Area 3A for 2013 (78 FR 16423, March 15, 2013), following the Council's recommendation.

TABLE 2—AREA 3A GUIDELINE HARVEST LEVEL AND ESTIMATED CHARTER HALIBUT HARVEST FROM 2004 TO 2013
[Rounded to the nearest 1,000 lb]

Year	Area 3A GHL	Area 3A estimated harvest
2004	3,650,000 lb (1,655.6 mt)	3,668,000 lb (1,672.8 mt)
2005	3,650,000 lb (1,655.6 mt)	3,689,000 lb (1,673.3 mt)
2006	3,650,000 lb (1,655.6 mt)	3,664,000 lb (1,662.0 mt)
2007	3,650,000 lb (1,655.6 mt)	4,002,000 lb (1,815.3 mt)
2008	3,650,000 lb (1,655.6 mt)	3,378,000 lb (1,532.2 mt)
2009	3,650,000 lb (1,655.6 mt)	2,734,000 lb (1,240.1 mt)
2010	3,650,000 lb (1,655.6 mt)	2,698,000 lb (1,223.8 mt)
2011	3,650,000 lb (1,655.6 mt)	2,793,000 lb (1,266.9 mt)
2012	3,103,000 lb (1,407.5 mt)	2,375,000 lb (1,077.3 mt)*
2013	2,734,000 lb (1,240.1 mt)	not available

* Harvest estimate for 2012 is preliminary.

III. Proposed Catch Sharing Plan (CSP) for Area 2C and Area 3A

A. Overview

In October 2008, the Council adopted a motion to recommend a CSP for the charter and commercial halibut fisheries in Areas 2C and 3A to NMFS. The 2008 Council motion is available at www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/HalibutCSPmotion1008.pdf. The Council intended that the CSP be a comprehensive management program for the charter halibut fisheries in Area 2C and Area 3A. In July 2011, NMFS published a proposed rule for that CSP based on the Council's 2008 preferred alternative (76 FR 44156, July 22, 2011) and received more than 4,000 public comments. The majority of the comments addressed the proposed

allocation percentages and the matrix of charter halibut fishery harvest restrictions that would have been automatically triggered by changes in the annual commercial and charter halibut fisheries' combined catch limits (annual combined catch limits) supported by halibut exploitable biomass. In October 2011, in part due to questions raised in the public comments on the proposed rule, NMFS and the Council decided that further analysis and clarification of provisions of the proposed 2011 CSP were required. In December 2011, the Council requested a supplemental analysis of new information since its 2008 preferred alternative, including an evaluation of the management implications and economic impacts of the proposed CSP at varying levels of halibut abundance.

Based on this new evaluation and additional public input, the Council recommended a revised preferred alternative for the CSP in October 2012. The 2012 Council motion, upon which this proposed rule is based, is available at www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/CSPMotion1012.pdf.

Consistent with the intent of the first proposed CSP in 2011, the Council intends this proposed CSP to address ongoing allocation conflicts between the charter and commercial halibut fisheries. The commercial halibut fishery is subject to defined allocations of individual harvest shares that generally rise and fall with halibut abundance, and the charter halibut fishery, which experienced many years of sustained annual growth, is not

directly subject to limitation with changes in fishery abundance. The commercial IFQ and charter halibut fishery are harvesting a fully utilized resource. The primary objectives of the CSP are to define an annual process for allocating halibut between the charter and commercial halibut fisheries in Area 2C and Area 3A, establish allocations that vary with changing levels of annual halibut abundance and that balance the differing needs of the charter and commercial halibut fisheries, and specify a process for determining harvest restrictions for charter anglers that are intended to limit harvest to the annual charter halibut fishery catch limit.

The CSP allocations would replace the GHL with a percentage allocation to the charter halibut fishery of the annual combined catch limit. The Council also intends to follow the process it used in 2011 and 2012 to specify annual management measures for the charter halibut fishery prior to the upcoming fishing season based on projected harvests and charter catch limits (i.e., currently the GHL). Prior to 2012, restrictions to limit charter halibut harvests to the respective GHLs were implemented either by IPHC regulation in the annual management measures without input from the Council, or by separate NMFS rulemaking after the GHL was exceeded. The pre-season harvest restriction specification process recommended in this proposed rule is intended to limit charter halibut harvest to the target level before an overage occurs, as opposed to an approach that implements management measures several years after the target harvest level has been exceeded.

The pre-season specification of harvest restrictions for charter anglers is consistent with the Council's objective to maintain the charter halibut fishery season length in effect (February 1 through December 31) with no inseason changes to harvest restrictions, even if it appears that the regulatory measures may result in an overage. The Council developed this objective based on committee recommendations and public testimony from charter vessel operators indicating that inseason changes to harvest restrictions would be disruptive to charter operators and anglers. Many charter vessel anglers book fishing trips with operators well in advance of the trip date with an expectation that the harvest restrictions that are effective at the beginning of the fishing season will be in place throughout that season. Management changes to bag or size limits for charter vessel anglers within a fishing season may cause considerable inconvenience for charter anglers and

adverse economic impacts to charter operators if anglers decide to postpone or cancel their charter fishing trip due to a mid-season change in regulations. The potential for inseason management changes also could result in fewer anglers planning charter fishing trips in Alaska, which could have significant long-term adverse economic impacts on charter vessel operators by reducing revenue.

The Council recommended, and NMFS agrees, that the annual CSP catch limits for the commercial and charter halibut fisheries should be determined by a predictable and standardized process utilizing the IPHC's annual management measures. This proposed rule would establish a procedure for determining the commercial and charter halibut fisheries' catch limits for each area. If this proposed rule for a CSP is implemented, the IPHC's annual combined catch limits for 2C and 3A would be apportioned between the annual charter catch limits and annual commercial catch limits in those areas. At its annual meeting, the IPHC would consider the Council's recommendations designed to constrain the charter halibut fisheries in 2C and 3A to their allocated annual catch limits, and would consider the advice of IPHC staff, advisors, and the public. The IPHC would be expected to adopt the catch limits and appropriate management measures as part of the annual IPHC halibut fishery conservation and management regulations. Should the Secretary of State accept the IPHC regulations, with concurrence of the Secretary of Commerce, the approved IPHC regulations would be published in the **Federal Register** as specified by regulations at 50 CFR 300.62. The IPHC annual management measures would remain in effect until superseded by future regulations.

In recent years, this implementation schedule for IPHC annual management measures has occurred after the February 1 season opening date for halibut sport fisheries in Alaska. In most years, the effective date of the IPHC annual management measures has been around March 15. Thus, the period between the February 1 opening of the sport season and the mid-March effective date of the superseding annual management measures has been subject to the previous year's IPHC regulations. This schedule will continue under the proposed CSP unless the IPHC recommends a change to the February 1 opening for the sport fishing season. However, implementation of the annual management measures in March likely does not impact the charter halibut

fishery because there has historically been little or no charter halibut harvest during February 1 through mid-March.

As part of this proposed action, the Council also recommended that ADF&G Saltwater Charter Logbooks be used as the primary data source to estimate the number of halibut harvested in the charter halibut fishery following each charter halibut fishing season and to project the number of halibut harvested in the charter fishery in the following year. Since the mid-1990s, the primary data source to estimate the numbers of halibut harvested in the charter fishery provided to the IPHC and the Council has been the Alaska Statewide Harvest Survey (SWHS). The SWHS is a mail survey that employs stratified random sampling of households containing at least one licensed angler. Survey respondents are asked to report the numbers of fish caught and kept by all members of the entire household, and the data are expanded to cover all households.

The ADF&G Saltwater Charter Logbook is the primary reporting requirement for operators in the charter fisheries for all species harvested in saltwater in Areas 2C and 3A. ADF&G developed the saltwater charter logbook program in 1998 to provide information on participation and harvest by individual vessels and businesses in charter fisheries for halibut as well as other state-managed species. Saltwater charter logbook data are compiled to show where fishing occurs, the extent of participation, and the species and the numbers of fish caught and retained by individual anglers. This information is essential to estimate harvest for regulation and management of the charter halibut fisheries in Area 2C and Area 3A. Since 1998, the saltwater charter logbook design has undergone annual revision, driven primarily by changes or improvements in the collection of fisheries data. In recent years, ADF&G has added saltwater charter logbook reporting requirements to accommodate information required to implement and enforce Federal charter halibut fishing regulations, such as the Area 2C one-halibut per day bag limit and the charter halibut limited access program.

In 2006, ADF&G adopted a number of new measures to improve the quality of saltwater charter logbook data including requiring charter operators to report angler license numbers and the numbers of fish caught per angler, and increasing staff resources to verify the data collected. Following these changes, ADF&G sought to determine whether the quality of logbook data had in fact improved, and whether logbook data

should be used to monitor and manage the charter halibut fishery. In 2008 and 2009, ADF&G presented two evaluations of the logbook data to the Council and the Council's Scientific and Statistical Committee. The reports included comparisons of charter halibut harvest estimates using saltwater charter logbook data and SWHS data. Based on these reports and additional information, the Council determined that the use of saltwater charter logbook data instead of the SWHS offers several advantages. Most important among these advantages is that logbook data are available sooner; they are reported on a weekly basis and partial-year harvest can be summarized by the end of the charter halibut fishing season. In contrast, data from the SWHS are not available until nearly a year after the fishing season has ended. It is important to obtain timely estimates of charter halibut harvest so the performance of management measures relative to the charter catch limits can be evaluated and modified, if necessary, before the next fishing season begins. Additionally, logbook data are intended to provide a complete census of the harvest without recall bias or sampling error that may be present in the SWHS and are therefore thought to be more accurate than SWHS data. NMFS anticipates that if the CSP is approved, i.e., this proposed rule is implemented, ADF&G will report charter halibut harvest to the IPHC and the Council using saltwater charter logbooks as the primary data source for the number of fish harvested.

In order to provide flexibility for individual commercial and charter halibut fishery participants, the Council also recommended that the CSP authorize annual transfers of commercial halibut IFQ as guided angler fish (GAF) to charter halibut permit holders for harvest in the charter halibut fishery. Under the commercial IFQ Program, commercial halibut operators hold quota share (QS) that yields a specific amount of an annual harvest privilege, or IFQ. GAF would

offer charter halibut permit holders in Area 2C or Area 3A an opportunity to lease a limited amount of IFQ from commercial QS holders to allow charter clients to harvest halibut in addition to, or instead of, the halibut harvested under the daily bag limit for charter anglers. Charter anglers using GAF would be subject to the harvest limits in place for unguided sport anglers in that area, currently a two-fish of any size limit in Areas 2C and 3A. GAF harvested in the charter halibut fishery would be accounted for as commercial halibut IFQ harvest.

Except for authorizing commercial halibut QS holders to transfer IFQ as GAF to charter halibut permit holders, the Council did not intend for the CSP to change the management of the commercial halibut fisheries in Area 2C and Area 3A. The directed commercial halibut fisheries in Area 2C and Area 3A are managed under the IFQ Program pursuant to regulations at 50 CFR part 679 subparts A through E. The proposed rule would amend only those sections of the IFQ Program's regulations to authorize transfers between IFQ and GAF and establish the requirements for using GAF.

B. Annual Combined Catch Limit

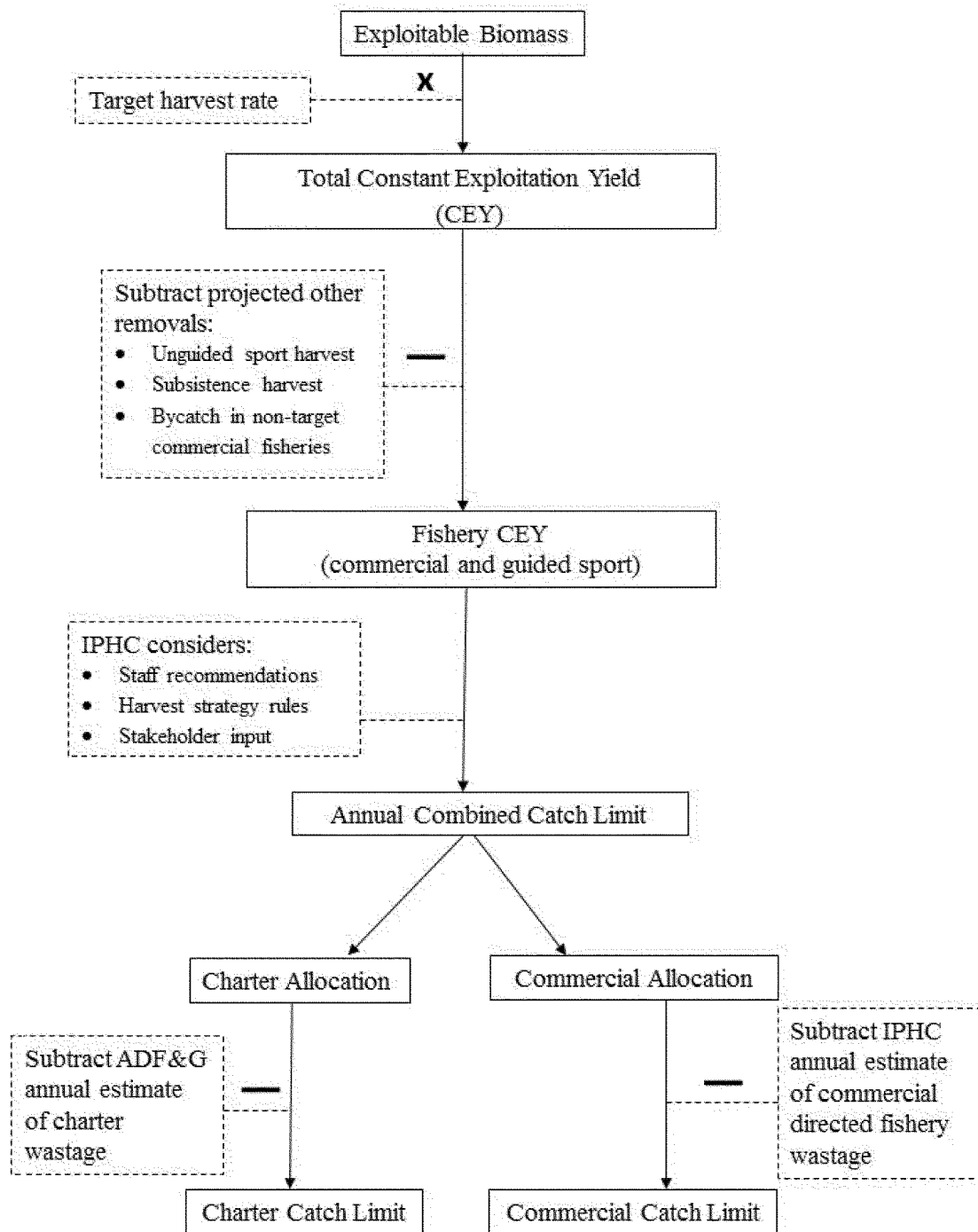
The CSP would change the current process for specifying annual catch limits for the commercial halibut fisheries in Area 2C and Area 3A, and establish a process for specifying annual charter halibut fishery catch limits in Area 2C and Area 3A. The process for specifying annual guided sport catch limits under the CSP would replace the GHF for the charter halibut fisheries in Area 2C and Area 3A. The IPHC currently only specifies annual catch limits for the directed commercial halibut fisheries, and Federal regulations determine the GHF for charter halibut fisheries based on the Total CEY in Area 2C and Area 3A as determined by the IPHC. Under the proposed CSP, the IPHC would specify an annual combined catch limit for Area 2C and for Area 3A at its annual meeting in January. Each area's annual

combined catch limit in net pounds would be the total allowable halibut harvest for the directed commercial halibut fishery plus the total allowable halibut harvest for the charter halibut fishery under the CSP.

NMFS anticipates that the IPHC process for determining the annual combined catch limit would be similar to the process it has typically used in the past for determining annual commercial catch limits. A notable exception is how each fishery's wastage would be deducted from the combined catch limit, as described in the "Calculation of Annual Fishery Catch Limits" section of this preamble. The IPHC would continue to estimate the exploitable biomass of halibut using a combination of harvest data from the commercial, sport, and subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The IPHC would calculate the Total CEY, or the target level for total removals (in net pounds) for that area in the coming year, by multiplying the estimate of exploitable biomass by the harvest rate in that area. The IPHC would subtract estimates of other removals from the Total CEY. Other removals would include unguided sport harvest, subsistence harvest, and bycatch of halibut in non-target commercial fisheries. The remaining CEY, after the other removals are subtracted, would be the Fishery CEY which would be the basis for the IPHC's determination of the annual combined catch limit for Areas 2C and 3A. The IPHC would continue to consider the combined commercial and charter halibut Fishery CEY, staff analysis, harvest policy, and stakeholder input when it specifies the Area 2C and Area 3A annual combined catch limits in net pounds.

The IPHC process for determining annual combined catch limits and commercial and charter allocations and catch limits under the proposed CSP is presented in Figure 1 and described further in subsequent sections of this preamble.

Figure 1. Process for Setting Annual Combined Catch Limits, Charter and Commercial Allocations, and Charter and Commercial Catch Limits for Area 2C and Area 3A Under the Proposed Catch Sharing Plan



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C. Annual Commercial Fishery and Charter Fishery Allocations

Under the CSP, the IPHC would divide the annual combined catch limits into separate annual catch limits for the

commercial and charter halibut fisheries. A fixed percentage of the annual combined catch limit would be allocated to each fishery at most levels of the combined catch limit. The fixed percentage allocation to each fishery

would vary with halibut abundance, with higher allocations to the charter halibut fishery at lower levels of abundance. The charter halibut fishery would receive a fixed poundage allocation at intermediate abundances to

avoid a “vertical drop” in allocation (described further below). The IPHC would multiply the CSP allocation percentages for each area by the annual combined catch limit to calculate the commercial and charter halibut allocations in net pounds.

The CSP allocation method is a significant change from the current guidelines established under the GHL. At moderate to low levels of halibut abundance, the CSP would provide the charter halibut fishery with a smaller poundage allocation than the guideline limits established under the GHL program. Conversely, at higher levels of abundance, the CSP would provide the charter halibut fishery with a larger poundage allocation than the guideline limits established under the GHL program. The Council intended the CSP fishery allocations to balance the needs of the charter and commercial halibut fisheries at all levels of halibut abundance. The Council believes, and NMFS agrees, that the allocation under the CSP provides a more equitable management response to changes in Total CEY, compared to the GHL program.

One of the primary disadvantages of the GHL program is that it is not responsive or adaptable to changes in halibut abundance and fishing effort. For example, the Area 2C GHL was 788,000 lb in 2009. The Area 2C Total CEY declined by approximately 10 percent from 2009 to 2010, but this decline did not trigger a change in the GHL, which remained at 788,000 lb in 2010. Therefore, the commercial halibut fishery IFQ allocations were reduced, but there was no change in the charter halibut fishery GHLs. Conversely, when halibut exploitable biomass increases, the GHL does not allow the charter halibut fishery to fully benefit from this increase. For example, the Area 3A Total CEY increased by approximately 11 percent from 2006 to 2007, but this increase did not trigger a change in the GHL, which was limited to the maximum level of 3,650,000 lb in those years.

Among other options, the Council considered establishing fixed poundage allocations to the charter halibut fishery similar to the guidelines established under the GHL program. However, the Council determined that use of a fixed percentage allocation of the combined catch limit to each fishery under the CSP would result in both the commercial and charter halibut fishery allocations adjusting directly with changes in halibut exploitable biomass. In contrast, in this proposed rule, both fisheries would share in the benefits and

costs of managing the resource for long-term sustainability.

The allocation under the proposed CSP provides a more transparent and equitable management response than the GHL program because unlike the current allocation system, it would use the same method to establish commercial and charter halibut fishery allocations. Under the current management structure, the GHL is calculated directly from the IPHC’s determination of Total CEY, or total allowable removals of halibut from all sources. The commercial halibut catch limit is based on the Total CEY and is also affected by other halibut removals from sport harvest, subsistence harvest, bycatch of halibut in commercial fisheries targeting other species, and wastage in the commercial halibut fishery. As described above in the “Background on the Halibut Fishery” section, the IPHC currently establishes the commercial fishery catch limits only after subtracting these other halibut removals from the Total CEY. Therefore, an increase in other removals directly reduces the amount of halibut available for the commercial halibut fishery. The GHL for the charter halibut fishery is not affected by changes in other halibut removals.

Section 2.5.10 of the EA/RIR/IRFA (see **ADDRESSES**) describes the effects of the current allocation system, in which the proportion of total halibut harvested in the Area 2C and Area 3A commercial halibut fishery has declined and the proportion harvested in the charter halibut fishery has increased. From 2008 through 2012, the Area 2C commercial halibut fishery harvest declined from 60.2 percent to 43.1 percent of the Total CEY, and charter halibut fishery harvest increased from 14.3 percent to 15.9 percent of the Total CEY over the same time period. In Area 3A, commercial halibut fishery harvest decreased from 76.8 percent to 60.3 percent of the Total CEY, and charter halibut fishery harvest increased from 12.6 percent to 15.7 percent of the Total CEY from 2008 through 2012. Thus, while both the GHL and commercial halibut fishery catch limits have declined in recent years, the commercial halibut fisheries have borne larger poundage and proportional reductions under the current allocation system. The Council and NMFS determined that the proposed CSP would stabilize the proportions of harvestable halibut available to the commercial and charter fisheries at all levels of halibut abundance by basing both fishery allocations on the annual combined catch limit.

The Council considered historical and recent catch information when determining the recommended CSP allocation percentages for the commercial and charter halibut fisheries. The Council reviewed average charter halibut harvest estimates for individual years and for different combinations of years ranging from 1999 through 2005. The Council recommended multiple CSP allocation percentages for the commercial and charter halibut fisheries in Area 2C and in Area 3A depending on the combined catch limit set for that area. Combined catch limits would be divided into tiers based on abundance. As described above, at lower levels of abundance the CSP would allocate a higher percentage of the combined catch limit to the charter halibut fishery than it would receive under higher combined catch limits. The Council recommended, and NMFS proposes, higher charter allocation percentages at relatively low abundance levels of halibut to ameliorate the effects of replacing the GHL stair-step benchmark in pounds with a CSP allocation percentage that varies directly with the annual combined catch limit. A higher percentage allocation at lower abundance levels is also intended to keep charter businesses from being severely restricted at times of low halibut abundance.

Section 2.5 of the EA/RIR/IRFA (see **ADDRESSES**) analyzes several alternatives for allocations under the CSP. Under the Council’s preferred alternative for the CSP in Area 2C, the poundage allocation to the charter halibut fishery would have been from 4.8 percent to 32 percent lower than the GHL from 2008 through 2012. For Area 3A, the poundage allocation to the charter halibut fishery would have been from 4.7 percent to 24.5 percent lower than the GHL in Area 2C from 2008 through 2012. The Council acknowledged that reductions in charter halibut fishery catch limits relative to the GHL may reduce demand for charter services and may result in reduced demand for charter services and negative economic impacts for charter operators. Section 2.6 of the EA/RIR/IRFA notes that it is not possible to quantify the effects of the reduction in pounds allocated to the charter halibut fishery under the CSP relative to the GHL. However, the Council noted that from 2008 through 2012, catch limits in the commercial halibut fisheries were reduced by 57.7 percent in Area 2C and by 51.7 percent in Area 3A, which resulted in reduced revenues for participants in the fishery, most of whom are also small businesses

(Section 3.2.2 of the EA/RIR/IRFA, see **ADDRESSES**). In recommending the CSP, the Council faced the challenge of balancing historical harvests, economic impacts to each sector, and the declining status of the halibut stock in both areas, under the proposed range of allocation options. As a result, it is not possible for any allocation under the proposed CSP to make participants in both fisheries whole economically given current halibut abundance levels.

The proposed allocations differ for Area 2C and Area 3A. The Council considered that Area 2C and Area 3A are distinct from each other in terms of halibut abundance trends and charter fishing effort when it selected its preferred alternative. In Area 2C, the main indices of halibut abundance have shown a steady decline in exploitable biomass from high levels in the mid-1990s. While it appears that the rate of decline in the Total CEY in Area 2C has slowed or stopped, halibut abundance continues to remain at historically low levels. From 2004 through 2008, Area 2C charter halibut harvests increased by 41.5 percent, which demonstrated the ability of participants in that fishery to increase capacity to meet angler demand. This rapid growth in the

charter halibut industry in Area 2C, combined with the delay in setting harvest restrictions, made it difficult for managers to set harvest restrictions to avoid exceeding the GHIL, while meeting the Council's objectives of avoiding in-season changes to harvest restrictions and maintaining a traditional season length. Until 2011, no mechanism was in place to implement new charter halibut harvest restrictions in a timely fashion in response to harvests exceeding the GHIL. As a result, the charter halibut fishery in Area 2C exceeded its GHIL each year 2004 through 2010. After considering these factors, the Council recommended, and NMFS proposes, more conservative CSP charter halibut fishery allocations in Area 2C, particularly at low levels of abundance, to accommodate imprecision in managing harvest in a fishery that depends on inseason regulatory stability but that also has exhibited the ability to undertake rapid growth, particularly at current low levels of halibut abundance. The Council also noted that a more conservative charter halibut fishery allocation was appropriate under the CSP because participants in the Area 2C commercial halibut fishery have

experienced significant economic losses in revenue from reductions in catch limits since 2007. While ex-vessel prices for halibut have increased in recent years, the increases have not compensated all revenue losses experienced by the Area 2C commercial halibut fishery (see section 2.3.2 and 2.6 of the EA/RIR/IRFA).

In contrast, while declines in Total CEY in Area 3A have occurred over the last several years, the Total CEY remains the largest of any of the regulatory areas. In addition, following implementation of the GHIL, charter halibut fishery removals in this area did not increase at the rate seen in Area 2C, increasing by just 9 percent from 2004 through 2007. The following sections provide additional details on the proposed CSP allocations for Area 2C and Area 3A.

1. Calculation of Annual Fishery Allocations and Catch Limits—Area 2C

In Area 2C, the proposed charter halibut fishery allocation percentages were based on Alternative 3 of the EA/RIR/IRFA (see **ADDRESSES**). The proposed CSP would establish three allocation tiers for Area 2C (Table 3 and Figure 2).

TABLE 3—AREA 2C PROPOSED CATCH SHARING PLAN (CSP) ALLOCATIONS TO THE CHARTER AND COMMERCIAL HALIBUT FISHERIES RELATIVE TO THE ANNUAL COMBINED CATCH LIMIT (CCL)

Area 2C annual combined catch limit for halibut in net pounds (lb)	Charter halibut fishery CSP allocation (% of annual combined catch limit)	Commercial halibut fishery CSP allocation (% of annual combined catch limit)
0 to 4,999,999 lb	18.3%	81.7%.
5,000,000 to 5,755,000 lb	915,000 lb	Area 2C CCL minus 915,000 lb.
5,755,001 lb and up	15.9%	84.1%.

When the IPHC sets an annual combined catch limit of less than 5,000,000 lb (2,268 mt) in Area 2C, the commercial halibut fishery allocation would be 81.7 percent and the charter halibut fishery allocation would be 18.3 percent of the annual combined catch limit. This percentage allocation was calculated as 125 percent of the average charter halibut harvest in Area 2C from 2001 through 2005 divided by the annual average combined charter and commercial halibut harvests in Area 2C from 2001 through 2005 (17.3 percent) and then adjusted to account for the Council's recommendation to use saltwater charter logbooks as the primary mechanism to estimate charter halibut harvest.

The Council considered smaller percentage allocations to the charter halibut fishery, including an allocation based on the current GHIL formula, which uses a calculation of 125 percent

of the average 1995 through 1999 charter halibut harvest divided by the 1995 through 1999 combined charter and commercial halibut harvests in Area 2C. However, the Council received testimony from Area 2C charter halibut fishery participants that the GHIL had been overly restrictive since it was implemented in 2004, particularly during times of low halibut abundance. These participants requested that the Council base the CSP allocation on higher levels of historical charter halibut harvest to accommodate growth in the fishery since implementation of the GHIL. The Council considered this testimony and the effects on participants in the commercial and charter halibut fisheries, and determined that using 2001 through 2005 average charter halibut harvests for the charter fishery allocation provided an equitable balance for both fisheries. Using these years would provide the

charter halibut fishery with an increase in the proportion of the combined charter and commercial halibut harvests allocated to the charter fishery relative to the GHIL formula. However, in consideration of the effects of an increased charter fishery allocation on commercial halibut fishery participants at low halibut abundance levels, NMFS proposes to base the CSP allocation on 2001 through 2005 charter halibut harvest levels rather than on more recent years in which charter halibut harvests reached historically high levels.

As discussed in Section 1.7.3 of the EA/RIR/IRFA (see **ADDRESSES**), data from the most recent five years of harvest (2006 through 2010) that were available when the Council selected its preferred alternative were used to calculate the average difference between harvest estimates provided by logbooks and the statewide harvest survey

(SWHS). Estimates using saltwater charter logbook data are on average higher than estimates using SWHS data. The Council considered this average difference (5.6 percent) when it recommended its CSP preferred alternative. Without this adjustment factor incorporated into the CSP, the charter halibut fishery would have been held to allocations that were based on charter halibut harvest estimates using SWHS as the primary data source, but would be managed based on charter halibut harvest projections using saltwater charter logbooks as the primary data source.

For the first allocation tier in Area 2C (i.e., a combined catch limit of less than 5,000,000 lb), the adjustment factor was applied to the allocation using the following equation:

$$\text{(CSP allocation} \times \text{adjustment factor)} + \text{CSP allocation} = \text{adjusted CSP allocation}$$

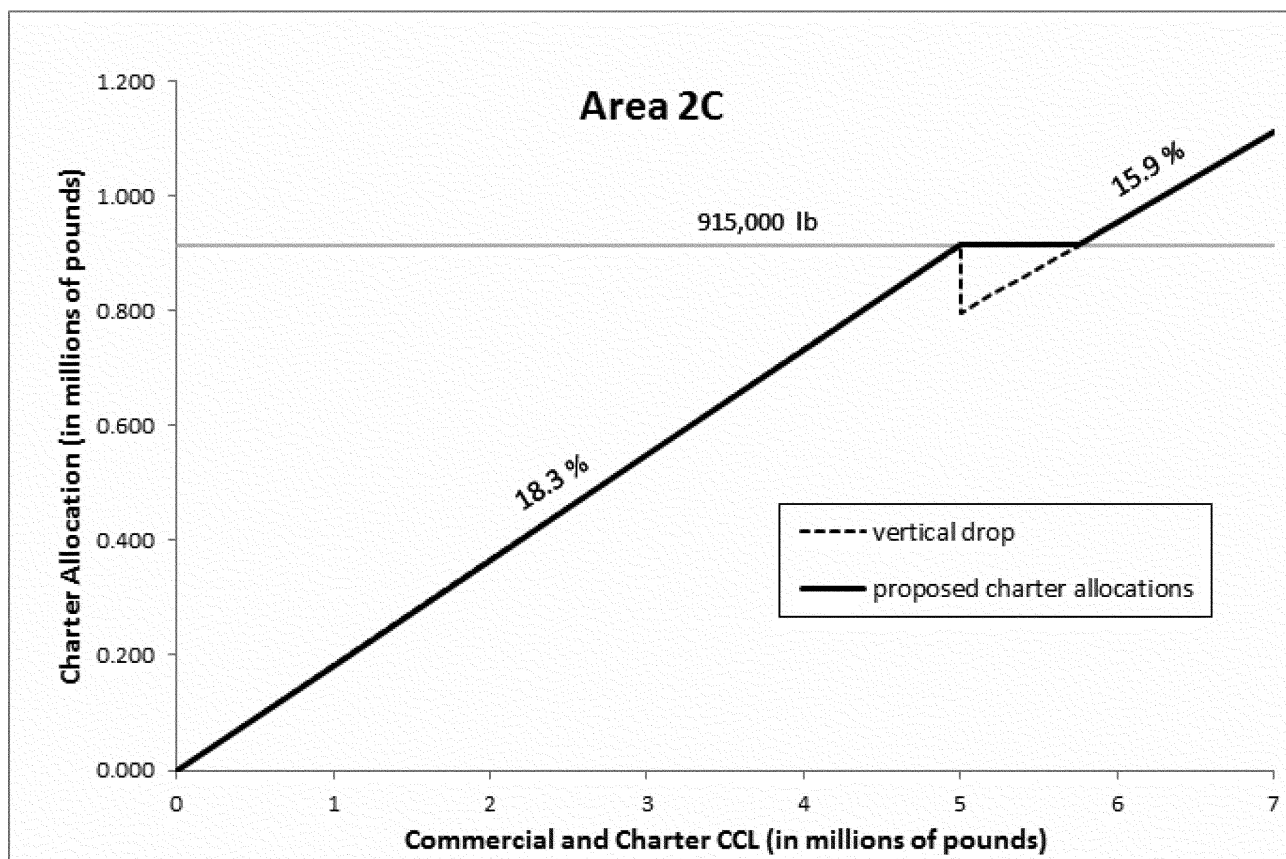
or

$$(17.3\% \times 5.6\%) + 17.3\% = 18.3\%$$

When the IPHC sets the annual combined catch limits at the second tier, between 5,000,000 lb and 5,755,000 lb (2,610.4 mt), the allocation to the charter halibut fishery would be a fixed 915,000 lb (405 mt), to smooth the vertical drop in the poundage allocation that would occur without this adjustment (Figure 2). Without this adjustment, a 1 lb increase in combined catch limit from 4,999,999 lb to 5,000,000 lb would trigger a 2.4 percent drop in the charter allocation, resulting in a significant drop in the poundage allocated to the charter halibut fishery. For example, without the adjustment, if the combined catch limit were set at

4,999,999 lb, the charter allocation would be 18.3 percent or 915,000 lb. However, if the combined catch limit increased to 5,000,000 lb, the charter allocation percentage would be 15.9 percent, or 795,000 lb (360.6 mt). By adding this fixed poundage allocation tier for Area 2C to the proposed CSP, the vertical drop in the allocation is removed. The charter halibut fishery allocation would be fixed at 915,000 lb until the combined catch limit increased to the point where the charter allocation percentage at higher abundance levels would not result in a decrease in poundage allocated to the charter halibut fishery. With the proposed allocation percentages, the poundage allocated to the charter halibut fishery would increase as a fixed percentage at combined catch limits above 5,755,000 lb.

Figure 2. Area 2C Charter Allocations at Varying Levels of the Combined Catch Limit (CCL).



When the CCL is between 0 and 4,999,999 lb, the charter halibut fishery receives 18.3 percent of the CCL. Above 5,755,000 lb, the charter halibut fishery

receives 15.9 percent of the CCL. When the CCL is between 5,000,000 and 5,755,000 lb, the charter halibut fishery would receive a fixed poundage

allocation of 915,000 lb. The dashed line represents the vertical drop in allocation that would occur without the fixed poundage adjustment. The

commercial halibut fishery would be allocated the Area 2C combined catch limit minus the 915,000 lb fixed allocation to the charter halibut fishery.

When the IPHC sets the annual combined catch limit at the third tier, greater than 5,755,000 lb (2,610.4 mt), in Area 2C, the commercial halibut fishery allocation would be 84.1 percent and the charter halibut fishery allocation would be 15.9 percent of the Area 2C annual combined catch limit. This proposed charter halibut CSP allocation percentage was calculated as the 2005 charter halibut harvest estimates divided by the combined 2005 charter and commercial halibut harvests in Area 2C and adjusted to account for the Council's recommendation to use saltwater charter logbooks as the primary mechanism to estimate charter halibut harvest. For the third allocation tier in Area 2C, the adjustment factor was applied to the allocation using the same equation as for the first tier:

$$\text{(CSP allocation} \times \text{adjustment factor)} + \text{CSP allocation} = \text{adjusted CSP allocation}$$

or

$$(15.1\% \times 5.6\%) + 15.1\% = 15.9\%$$

Although the Council considered smaller percentage allocations to the charter halibut fishery, the Council determined, and NMFS agrees, that 2005 charter halibut harvest would be a more appropriate basis at higher levels of halibut abundance for determining the charter halibut allocation percentages under the CSP. The charter halibut harvest in 2005 was the second highest halibut harvest estimated since 1999. The Council determined that at higher levels of abundance, the CSP would provide an allocation to the charter halibut fishery based on a relatively high historical level of harvest and would allow participants to benefit from higher halibut abundance. NMFS agrees that 2005 is an appropriate basis for the charter halibut fishery allocation because it represents a year in which halibut abundance was relatively high in Area 2C. Halibut abundance began to decline in the years following 2005, and as a result, charter halibut fishery harvests increased in proportion to commercial halibut fishery harvests. NMFS agrees with the Council's recommendation for a charter halibut fishery allocation at the highest combined catch limit tier that balances the needs of participants in the

commercial and charter halibut fisheries.

2. Calculation of Annual Fishery Allocations and Catch Limits—Area 3A

In Area 3A, the proposed charter halibut fishery allocation percentages were based on the methodology presented in Section 1.6 of the EA/RIR/IRFA. The Council recommended three different percentages of allocations depending on the level of the combined catch limit, with smaller percentage allocations to the charter halibut fishery as the combined catch limit increases. Consistent with the methodology used in Area 2C to avoid the vertical drops in allocations to the charter halibut fishery as the combined catch limit increases from one percentage allocation to another, NMFS also would establish fixed allocations to the charter halibut fishery for Area 3A. Because there would be two transitions between the three combined catch limit percentage allocations in this area, this proposed rule would add two tiers with fixed poundage allocations to remove the vertical drops. The proposed Area 3A allocation therefore contains 5 tiers (Table 4 and Figure 3).

TABLE 4—AREA 3A PROPOSED CATCH SHARING PLAN (CSP) ALLOCATIONS TO THE CHARTER AND COMMERCIAL HALIBUT FISHERIES RELATIVE TO THE ANNUAL COMBINED CATCH LIMIT (CCL)

Area 3A annual combined catch limit for halibut in net pounds (lb)	Charter halibut fishery CSP allocation (% of annual combined catch limit)	Commercial halibut fishery CSP allocation (% of annual combined catch limit)
0 to 9,999,999 lb	18.9%	81.1%.
10,000,000 to 10,800,000 lb	1,890,000 lb	Area 3A CCL minus 1,890,000 lb.
10,800,001 to 20,000,000 lb	17.5%	82.5%.
20,000,001 to 25,000,000 lb	3,500,000 lb	Area 3A CCL minus 3,500,000 lb.
25,000,001 lb and up	14.0%	86.0%.

For Area 3A, when the IPHC sets the annual combined catch limits at the first tier, less than 10,000,000 lb (4,535.9 mt), the commercial halibut fishery allocation would be 81.1 percent and the charter halibut fishery allocation would be 18.9 percent of the Area 3A annual combined catch limit. These allocation percentages were calculated using the same formula as for Area 2C, i.e., as 125 percent of the average charter halibut harvest in Area 3A from 2001 through 2005 divided by the annual average combined charter halibut and commercial halibut harvests in Area 3A from 2001 through 2005 (15.4 percent). Additionally, the Council recommended that this allocation be increased by 3.5 percent to establish the CSP allocation at the upper end of the target range around the allocation originally proposed in the 2011 CSP (18.9 percent).

The Council determined that this allocation would be appropriate for Area 3A because it provided for a limited increase in allocation relative to the years used as the basis for the GHF by including two (2004 and 2005) of the four (2004 through 2007) years in which charter halibut fishery harvests reached historically high levels. In determining its recommendation for the Area 3A charter halibut fishery allocation, the Council also considered public testimony that the lower poundage allocation under the CSP relative to the GHF at lower levels of abundance would negatively impact angler demand and reduce charter operator revenues (see sections 2.5.8 and 2.5.10 of the EA/RIR/IRFA). The Council considered this information and recommended increasing the Area 3A charter halibut fishery allocation by an additional 3.5 percent at lower levels of abundance. In

developing the CSP, the Council considered including a buffer of 3.5 percent around the charter allocations to account for the imprecision of managing charter halibut fisheries using pre-season specifications of harvest restrictions without in-season adjustments or an early season closure (section 1.6.2 of the EA/RIR/IRFA). While the Council ultimately did not recommend a 3.5 percent buffer for all charter halibut fishery allocations under the proposed CSP, it did determine that it would be appropriate to increase the Area 3A charter halibut fishery allocation by 3.5 percent at lower levels of abundance in order to increase the poundage allocation to levels more consistent with the GHF. This adjustment was recommended because the charter fishery in Area 3A does not have a history of excessive overages and also because the abundance of halibut is

higher. A similar adjustment was not approved for the allocation to the Area 2C charter halibut fishery. The Council chose a more conservative allocation option in Area 2C because of that area's potential for rapid increases in charter harvests and the increased likelihood of exceeding its allocation at low levels of abundance. NMFS agrees that this allocation increase for Area 3A likely would mitigate the negative impact on charter halibut fishery participants of the reduced CSP allocation (in pounds of halibut) relative to the GHL.

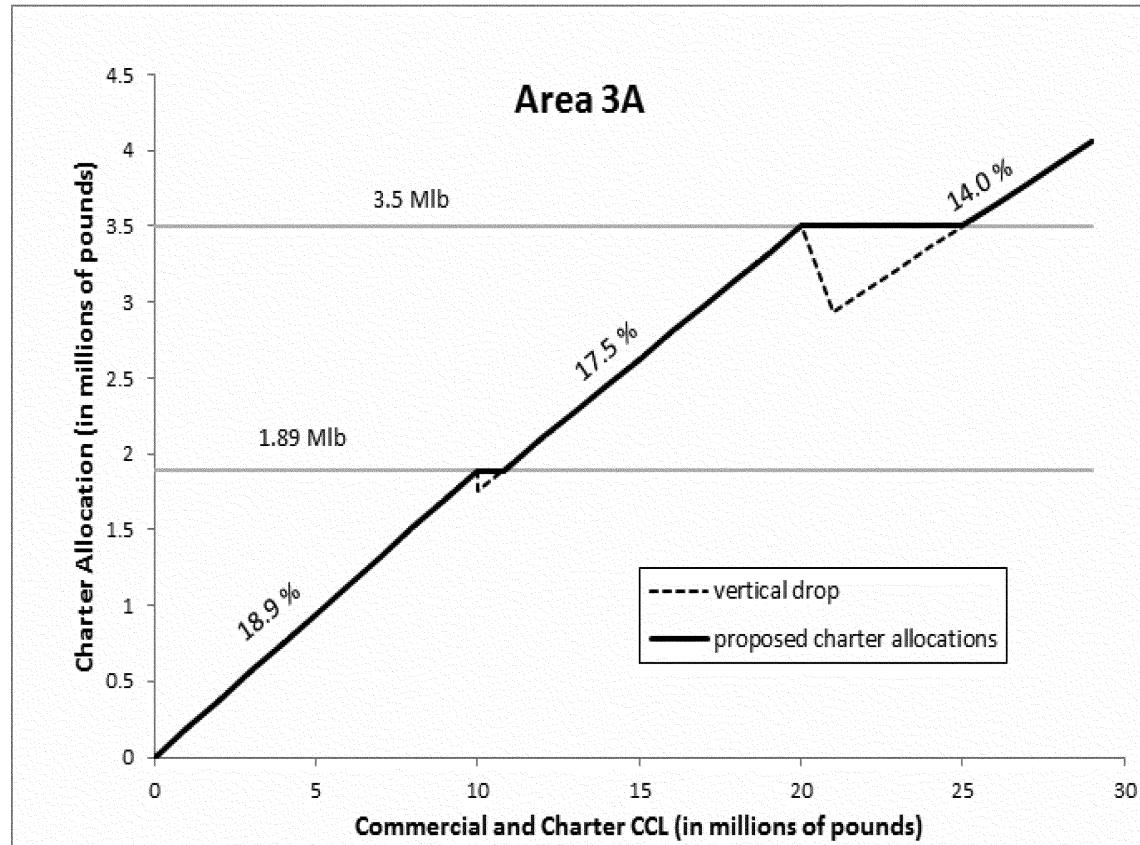
For Area 3A annual combined catch limits between 10,000,000 lb and 10,800,000 lb (4,898.8 mt), the allocation to the charter halibut fishery would be 1,890,000 lb (857.3 mt). The commercial halibut fishery would be allocated the Area 3A combined catch limit minus the 1,890,000 lb fixed allocation to the charter halibut fishery. This allocation tier would ensure that charter halibut fishery allocations would not decrease as the combined catch limit (and commercial catch limit) increased.

At abundances greater than 10,800,000 lb and less than 20,000,000 lb (9,071.9 mt), the allocations in Area 3A would be based on the same methods used to calculate the GHL, i.e., the charter allocation would be 125 percent of the average charter halibut harvest between 1995 and 1999 divided by the annual average combined charter halibut and commercial halibut harvests in Area 3A from 1995 through 1999. The Council and NMFS determined that this allocation to the charter halibut fishery was appropriate because harvest by the Area 3A charter GHL was not overly restrictive at comparable halibut abundance levels. This allocation tier would also include the 3.5 percent upward adjustment from the allocations proposed in the 2011 CSP in order to mitigate the negative impact on charter halibut fishery participants of the lower CSP allocation (in pounds of halibut) relative to the GHL. The resulting allocations would be 82.5 percent of the combined catch limit to the commercial halibut fishery and 17.5 percent to the charter halibut fishery.

When the combined catch limit for Area 3A is set at greater than 20,000,000 lb and less than or equal to 25,000,000 lb (11,339.8 mt), the charter halibut fishery would receive a fixed 3,500,000 lb allocation. This fixed poundage allocation would ensure that charter fishery allocations would not decrease as the combined catch limit (and commercial catch limit) increased. The commercial halibut fishery allocation would equal the combined catch limit minus 3,500,000 lb.

At combined catch limits greater than 25,000,000 lb, the commercial halibut fishery allocation would be 86 percent and the charter halibut fishery allocation would be 14 percent of the Area 3A annual combined catch limit. The Council determined that allocating a larger percentage to the charter halibut fishery would give more to the charter halibut fishery than they could harvest based on available historic harvest data and information on charter business operations received during the development of the CSP (see Section 1.6.7 of the EA/RIR/IRFA for additional detail).

Figure 3. Area 3A Charter Allocations at Varying Levels of the Combined Catch Limit (CCL).



When the CCL is less than 10 million pounds (Mlb), the charter halibut fishery receives 18.9 percent of the CCL. Between 10.8 Mlb and 20 Mlb, the charter halibut fishery receives 17.5 percent of the CCL. When the CCL is greater than 25 Mlb, the charter halibut fishery receives 14.0 percent of the CCL. Two adjustments for vertical drops in allocation are made at intermediate abundance levels as shown.

NMFS would publish the combined catch limits and associated allocations for the charter and commercial halibut fisheries in the **Federal Register** as part of the IPHC annual management measures pursuant to 50 CFR 300.62. Fishery-specific catch limits are calculated by deducting separate estimates of wastage from the commercial and charter halibut allocations, as described in the following section.

D. Calculation of Annual Fishery Catch Limits

Under the proposed CSP, the commercial and charter halibut fisheries would have separate accountability for their discard mortality or "wastage," such that each fishery's wastage would be deducted from its respective allocation to obtain its catch limit. Wastage is currently only estimated for the commercial fishery and includes undersized halibut (regulatory discards) that die after release and halibut of all sizes that die on lost or abandoned gear. Under the current process for setting commercial catch limits, commercial wastage is deducted with other removals from the Total CEY. Through 2012, discard mortality in the recreational fishery has not been included in the other removals for calculating the Fishery CEY for any IPHC regulatory area, because estimates of recreational fishery discards have not been available. Under the proposed CSP, separate fishery accountability for

wastage would not change the allocation percentages for each fishery. Instead, each fishery's allocation would be reduced by an estimate of its wastage to obtain the fishery's catch limits. The processes for estimating wastage by fishery are described below.

Each year the IPHC estimates wastage, or the discard mortality of halibut captured in the commercial fishery that are under the minimum legal size of 32 inches, based on data collected from the IPHC's annual stock assessment survey (available at www.iphc.int/publications/rara/2012/rara2012053_commwastage.pdf). The discard mortality rate is currently estimated to be 16 percent. The amount of halibut wasted on lost or abandoned commercial fixed gear is extrapolated from logbook interview and fishing log data, and represents a small percentage of the total wastage in the fishery. Additional forms of mortality in the commercial fishery that are not currently included in estimates of

wastage may include excess harvest that must be discarded when more gear is set than is needed to obtain fishing limits, and halibut that are damaged by predators and are discarded at sea. The IPHC intends to re-evaluate this approach for estimating wastage in the directed commercial halibut fishery once data on halibut discards from the previously unobserved commercial halibut fleet are available from the restructured North Pacific Groundfish and Halibut Fisheries Observer Program (77 FR 70062, November 21, 2012).

Wastage occurs in the charter fishery as a result of stress or injuries sustained from hooking, hook removal, and handling. Although recreational harvest is routinely estimated, the additional removals of halibut due to catch-and-release mortality are not currently estimated. Discard mortality rates vary with the type of gear used, handling and release methods, water temperature, hook type, and size of the fish, among other factors. NMFS anticipates that ADF&G would generate annual estimates of charter wastage in each area that could then be deducted by the IPHC from the charter allocation to obtain the charter catch limit in each area under this proposed rule.

NMFS proposes that the deduction of wastage from each fishery's allocation to calculate its catch limit promotes the Council's objective for the CSP to determine catch limits for the commercial and charter halibut fisheries using a predictable and standardized methodology for separate accountability. As shown in Figure 1, the basis for the catch limit recommendations, the Fishery CEY, would no longer be reduced only by commercial halibut fishery wastage. Instead, the commercial fishery allocation would be reduced by the commercial halibut fishery's estimated wastage, and the charter fishery allocation would be reduced by the charter halibut fishery's estimated wastage. NMFS proposes that the deduction of wastage from each fishery's allocation promotes conservation because it would encourage better handling of discarded fish to reduce the discard mortality rates and thus increase fishery catch limits.

E. Annual Process for Setting Charter Management Measures

Prior to 2012, charter management measures were recommended by the Council and implemented by NMFS through proposed and final rulemaking, or implemented by IPHC regulations without specific recommendations by the Council. The Council recommended a different approach under the CSP

because it sought a more timely and responsive process to address harvest overages or underages, or changes in halibut exploitable biomass. The Scientific and Statistical Committee (SSC), the Council's primary scientific advisory body, reviewed and endorsed this process for analyzing and recommending charter management measures at its December 2012 meeting.

In 2012 and 2013, charter management measures were implemented to limit the charter halibut fishery to its GHL using the process outlined below. The Council and IPHC have endorsed this same process for setting charter halibut management measures in Area 2C and 3A up to and following implementation of the CSP to limit the charter halibut fishery to its allocation and catch limit under the CSP. The steps in the annual process would continue as follows until modified by the Council or IPHC:

1. In October, the Council's Charter Halibut Management Implementation Committee makes preliminary recommendations of proposed annual management measures for the next year for Area 2C and Area 3A for analysis.

2. In December, the Council's advisory bodies and the public review the analysis of proposed management measures and make final recommendations to the Council.

3. At its December Council meeting, the Council selects the charter halibut management measures to recommend to the IPHC that would most likely constrain charter halibut harvest for each area within its allocation, while considering the economic impacts on charter operations.

4. In January of the next year at its annual meeting, the IPHC considers the Council recommendations and input from its stakeholders and staff. The IPHC then may adopt the Council's recommendation or alternative charter halibut management measures for Area 2C and Area 3A. The IPHC recommends these measures to the Secretaries of State and Commerce consistent with the provisions of the Convention.

5. In March, NMFS publishes in the **Federal Register** the charter halibut management measures for each area as part of the IPHC annual management measures accepted by the Secretary of State with the concurrence of the Secretary of Commerce.

This approach is an improvement over the previous method of setting charter management measures through Federal proposed and final rulemaking often years after an overage had occurred. The current process reduces the delay in implementing regulations to address overages and allows the most

recent halibut stock status and charter fishery data to be used to implement the appropriate measures for the next halibut fishing season. This method for setting charter harvest management measures is likely to limit the charter halibut fishery to its catch limit over time because adjustments to management measures could change in response to harvest overages and underages before the next season begins.

The Council, SSC, IPHC, and NMFS would continue to assess effectiveness of this method of recommending and implementing charter management measures after the CSP is implemented. The SSC provides the Council, NMFS, and the public with scientific and technical reviews of regulatory amendment analyses, stock assessments, and research and data needs for fisheries management in Alaska. The Council expects that any modifications to the process for setting charter harvest restrictions would be reviewed by these entities.

NMFS recognizes that, because the CSP would not change management measures during a sport fishing season, the management measures implemented prior to the start of a sport fishing season may result in harvests that are greater or less than the catch limit. However, the Council anticipates, and NMFS agrees, that over time, halibut harvests by the charter halibut fishery under the CSP would stabilize around the charter halibut catch limits, thereby promoting conservation and management objectives over the long term. The IPHC would continue to account for all removals when determining the annual combined catch limit under the CSP, and IPHC stock assessments would continue to account for charter halibut harvests that unintentionally exceed the fishery's catch limit. Operationally, overages may contribute to a corresponding decrease in the combined charter and commercial catch limit in the following year. Underages would accrue to the benefit of the halibut biomass and all user groups and could result in an increase in the combined catch limit in the following year. The Council determined, and NMFS agrees, that halibut fishery management under the CSP is more responsive to changes in halibut abundance than the GHL program.

Because management measures would be determined annually under the CSP, and implemented as IPHC annual management measures, the Council recommended and NMFS proposes to remove two restrictions from Federal regulations: the one-fish daily bag limit for Area 2C at § 300.65(d)(2)(i); and the line limit at (d)(2)(iii). NMFS anticipates

that under the process described above, daily charter halibut fishery bag limits would be established in the IPHC annual management measures. It is important to note that by removing the one-fish bag limit from Federal regulations, NMFS will be relying on the IPHC annual management measures to implement that bag limit, if necessary. NMFS proposes that a Federal line limit regulation is no longer necessary for three reasons. First, the charter halibut limited access program regulations at § 300.66(s) restrict the number of anglers retaining halibut to the number endorsed on the charter halibut permit being used for that charter fishing trip. Also, U.S. Coast Guard safety regulations limit the number of clients that may be onboard a most charter vessels. Additionally, a line limit for Area 2C is unnecessary because line limits do not directly restrict halibut retention by charter vessel anglers. NMFS proposes to revise a prohibition at § 300.66(m) to reference the IPHC annual management measures for charter halibut fishery gear and harvest restrictions.

F. Other Restrictions Under the CSP

The Council recommended two additional restrictions as part of the proposed CSP. NMFS would implement a prohibition on retention of halibut by skipper and crew on a charter vessel fishing trip. Previously, NMFS published a final rule (74 FR 21194, May 6, 2009) to implement, along with other restrictions, a prohibition on operator, guide, and crew retention of halibut in Area 2C. The proposed CSP would not modify this prohibition in Area 2C, but would implement the same prohibition in Area 3A. As noted in Section 2.3.2 of the EA/RIR/IRFA prepared for the CSP (see **ADDRESSES**), NMFS estimates that prohibiting retention of halibut by operators, guides, and crew reduces charter halibut harvest by approximately 5.5 percent in Area 3A relative to current harvests (see www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2013charterAnalysis_1212.pdf). The Council recommended that NMFS implement this prohibition in the CSP to clarify that only halibut harvested by charter anglers will be counted toward the CSP charter halibut fishery allocation. Charter operators, guides, and crew are not considered charter anglers under current Federal regulations, and NMFS proposes it

would not be appropriate for halibut harvested by these persons to be counted toward the charter halibut fishery harvest. Additionally, halibut harvested by charter operators, guides, and crew are difficult for enforcement agents to distinguish from halibut caught by charter clients.

The Council also recommended, and NMFS proposes, to prohibit individuals who hold both a charter halibut permit and commercial halibut IFQ from fishing for commercial and charter halibut on the same vessel during the same day in Area 2C and Area 3A. This provision would facilitate enforcement, as different regulations apply to charter-caught and commercially caught halibut. This provision would not prevent an individual who holds both a charter halibut permit and commercial halibut IFQ from conducting charter operations and commercial operations on separate vessels on the same day.

NMFS proposes several additional restrictions to facilitate monitoring and enforcement of the CSP. To be consistent with the Council's recommendation to prohibit individuals who hold both a charter halibut permit and commercial halibut IFQ from fishing for commercial and charter halibut on the same vessel during the same day, this proposed rule also would prohibit individuals who hold both a charter halibut permit and a Subsistence Halibut Registration Certificate from using both permits to harvest halibut on the same vessel during the same day in Area 2C and Area 3A. This prohibition would allow enforcement officials and samplers to classify harvest among the charter, subsistence, and commercial halibut fisheries. Allowing multiple types of trips on a vessel in the same day could create uncertainty regarding how to classify and properly account for retained halibut.

To enforce prohibitions on individuals fishing for commercial and charter halibut or for subsistence and charter halibut on the same vessel during the same day in Area 2C and Area 3A, NMFS would require charter vessel operators to indicate the date of a charter vessel fishing trip in the saltwater charter logbook and to complete all of the required fields in the logbook before the halibut are offloaded. These requirements would enable enforcement agents to determine whether that vessel was used on a charter vessel fishing trip that day. Beginning in 2009, charter anglers in

Area 2C were required to sign the saltwater charter logbook to verify the accuracy of the reported catch. This signature requirement was intended to improve the accuracy of charter halibut harvest estimates, and improve the enforceability of a one-fish bag limit (74 FR 21194, May 6, 2009). NMFS proposes to extend the signature requirement to include charter anglers in Area 3A as part of the CSP in the event that additional harvest restrictions are implemented in that area.

IV. Guided Angler Fish (GAF)

A. Overview of GAF

The proposed CSP would authorize supplemental individual transfers of commercial halibut IFQ as guided angler fish (GAF) to qualified charter halibut permit holders for harvest by charter vessel anglers in Areas 2C and 3A. Through the GAF program, qualified charter halibut permit holders may offer charter vessel anglers the opportunity to retain halibut up to the limit for unguided anglers when the charter management measure in place would limit charter vessel anglers to a more restrictive harvest limit. In other words, a charter vessel angler may retain a halibut as GAF that exceeds the daily bag limit and length restrictions in place for charter anglers only to the extent that the angler's halibut retained under the charter halibut management measure plus halibut retained as GAF do not exceed daily bag limit and length restrictions imposed on unguided anglers. For example, the daily halibut retention limit for unguided sport anglers in Area 2C and Area 3A is currently two halibut of any size per calendar day. Assuming this same unguided sport angler retention limit, charter vessel anglers would retain GAF only when the charter halibut management measure for that area limits charter halibut anglers to retaining fewer than two fish of any size per calendar day. The Council recommended this restriction on GAF use to maintain parity between guided and unguided sport halibut retention limits.

Table 5 presents examples of the potential uses of GAF by charter vessel anglers in Area 2C and Area 3A under various potential annual management measures, assuming that unguided sport anglers are subject to the current regulations limiting retention to two halibut of any size per calendar day.

TABLE 5—OPTIONS FOR GUIDED ANGLER FISH (GAF) HARVEST UNDER DIFFERENT ANNUAL MANAGEMENT MEASURES, ASSUMING UNGUIDED ANGLERS ARE ALLOWED TO RETAIN TWO FISH OF ANY SIZE PER DAY

If the annual management measure for charter anglers is a daily bag limit of:	then each charter vessel angler could use GAF to retain:
one halibut of a restricted size (e.g., reverse slot limit of U45/O68).	either one halibut meeting the restrictive size requirement under the charter angler restriction plus one GAF halibut of any size or two GAF halibut of any size.
one halibut of any size	one halibut of any size under the charter angler restriction plus one GAF halibut of any size.
two halibut, of which only one fish may be larger than a maximum size limit. If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.	one halibut of any size under the charter angler restriction plus one GAF of any size.
two halibut of any size	not applicable.

The Council recommended including GAF in the Area 2C and Area 3A CSP to increase operating flexibility for participants in the commercial and charter halibut fisheries. The Council determined, and NMFS agrees, that the GAF program could increase fishing opportunities in the charter fishery for those anglers desiring such an opportunity. The GAF program also would give commercial halibut quota share holders greater flexibility when developing their annual harvest strategies. A person holding halibut QS for an area has harvesting privileges for an amount of halibut (IFQ) that is derived annually from his or her QS holdings in that area and authorized on his or her IFQ permit. The opportunity for annual transfers of IFQ to GAF could benefit some halibut IFQ holders if they receive more revenue from transferring IFQ to GAF than they would receive from harvesting the IFQ themselves. In recommending the CSP preferred alternative, the Council stated its intent to annually review GAF use following implementation. NMFS and the Council intend that the GAF program would allow the charter halibut fishery to increase halibut harvest beyond area annual catch limits specified in the annual management measures up to guided sport catch limits. In addition the GAF program creates a system wherein the charter halibut fishery compensates the commercial halibut fishery for decreases in commercial halibut IFQ harvest.

In this proposed rule, NMFS proposes eligibility criteria, a transfer process, transfer restrictions, and additional reporting requirements to implement the GAF transfer program. These elements are described in the following sections, B through F, respectively.

B. Eligibility Criteria To Transfer Between IFQ and GAF

An IFQ holder is eligible to transfer halibut IFQ as GAF if he or she holds at least one unit of halibut QS and has

received an annual IFQ permit authorizing harvest of IFQ in either the Area 2C and Area 3A commercial halibut fishery. A charter halibut permit holder is eligible to receive IFQ as GAF if he or she holds one or more charter halibut permits in the management area that corresponds to the IFQ permit area from which the IFQ would be transferred.

Holders of military charter halibut permits would also be eligible to receive IFQ as GAF. Military charter halibut permits are issued to U.S. Military Morale, Welfare, and Recreation programs in Alaska that offer charter halibut fishing to service members harvesting in Area 2C or Area 3A. To operate a charter vessel, the U.S. Military Morale, Welfare, and Recreation program would need to obtain a military charter halibut permit by application to NMFS or could purchase a charter halibut permit on the commercial market (see regulations at § 300.67 for additional detail).

Community Quota Entities (CQEs) holding community charter halibut permits are also eligible to receive IFQ as GAF. Regulations at § 300.67(k)(2) list the communities that are eligible to receive community charter halibut permits from NMFS. In addition to community charter halibut permits, a CQE may acquire non-community charter halibut permits by transfer. The final rule implementing the charter halibut limited access program describes community charter halibut permits and the application and eligibility requirements for CQEs to receive community charter halibut permits (75 FR 554, January 5, 2010).

There are several ways in which a CQE in Area 2C or Area 3A that is eligible to receive community charter halibut permits and holds charter halibut permits could be a party to a GAF transaction. CQEs could receive a transfer of GAF for use on a community charter halibut permit or regular charter halibut permit that it holds. Community

Quota Entities that are eligible to hold charter halibut permits also are authorized to hold IFQ under the IFQ Program under regulations established by Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (69 FR 23681, April 30, 2004). Amendment 66 defined CQEs in the Gulf of Alaska, including in Areas 2C and 3A, and authorized those CQEs to receive transferred halibut or sablefish QS on behalf of the community it represents and to lease the resulting IFQ to fishermen who are residents of that community. Thus, a CQE holding IFQ would be eligible to transfer the IFQ as GAF to a holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit if it meets all other proposed GAF transfer requirements at § 300.65(c)(5).

As proposed in regulations at § 300.65(c)(5)(ii)(D), NMFS would approve an application for transfer of IFQ and GAF between an eligible IFQ holder and an eligible holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit if NMFS determines that (1) the transfer would not cause the GAF holder to exceed use limits specified (see “GAF Transfer Restrictions” section below); (2) there are no fines, civil penalties, sanctions, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person or permit; and (3) other pertinent information requested on the application has been supplied. Additionally, in cases where the applicant is both an IFQ and a GAF holder, to approve an application for transfer, NMFS would need to determine that the transfer would not cause the applicant to exceed use limits specified for GAF holders or those for halibut IFQ holders at § 679.42. NMFS would need to make additional determinations to approve a transfer between IFQ and GAF for a CQE. In

addition to the requirements listed above, NMFS would approve the transfer upon making a determination that (1) the CQE applying to transfer IFQ to GAF is eligible to hold and receive IFQ on behalf of a eligible community in Area 2C or Area 3A, as specified at § 300.67(k)(2); (2) the CQE applying to receive GAF from an Area 2C or Area 3A IFQ holder holds one or more community charter halibut permits or charter halibut permits for the corresponding area; and (3) the CQE applying to transfer between IFQ and GAF has submitted a complete annual report(s) to NMFS as required by § 679.5(l)(8).

See the "GAF Transfer Restrictions" section for further discussion on the proposed regulations governing transfers between IFQ and GAF for Community Quota Entities.

C. Process To Complete a Transfer Between IFQ and GAF

1. Application To Transfer Between IFQ and GAF

For transfers between IFQ and GAF, the IFQ holder and charter halibut permit holder receiving GAF would be required to complete, sign, and submit an application to NMFS to transfer halibut in numbers of fish between IFQ and GAF. NMFS would approve the transfer provided that application is complete, both parties are eligible to transfer, and there are no other administrative reasons to disapprove the transfer.

The same application form would be used for transfers of IFQ to GAF and returns of GAF to IFQ. Application forms would be available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov/>. Applications could be submitted by mail, hand delivery, or facsimile. Electronic submissions other than facsimile would not be acceptable because NMFS would require the original signature of the IFQ holder and the charter halibut permit holder. Additionally, unlike emails, fax transmittals give the applicant proof of receipt and protect the confidentiality of business and personally identifiable information. The applicants also would need to attest under penalty of perjury that legal requirements were met and all statements on the application are true, correct, and complete. Neither party would be required to complete a transfer application for an automatic return of unused GAF to IFQ on or around the automatic GAF return date each year. NMFS would not approve an application for transfer between IFQ and GAF after the automatic GAF return date. NMFS may develop an online

system for transfers between IFQ and GAF at a later date.

2. Conversion of IFQ Pounds to Number of GAF

NMFS would issue GAF in numbers of halibut. NMFS would post the conversion from IFQ pounds to a GAF for Area 2C and Area 3A for each fishing year on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. NMFS would post the conversion factor for the current fishing year before the beginning of the commercial halibut fishing season each year. The following paragraphs describe how the conversion factors from pounds of IFQ to number of GAF would be calculated.

NMFS would require that for each GAF transferred from an IFQ holder to a charter halibut permit holder's GAF account, the equivalent number of net pounds of halibut rounded up to the nearest whole net pound would be removed from an IFQ holder's IFQ account. Conversely, CSP regulations would require that for each GAF returned from a charter halibut permit holder's GAF account, the equivalent number of net pounds of halibut IFQ rounded up to the nearest whole net pound would be returned to the IFQ holder's account. The same average net weight would be used for all conversions of IFQ to GAF and returns of GAF to IFQ within a calendar year.

A request for transfer from IFQ to GAF would be made in numbers of fish, or the number of GAF to be transferred to the GAF permit holder. For example, if a charter permit holder requested, and NMFS approved, a transfer of 5 GAF and the conversion factor for that area was 20.7 lb (9.4 kg), then 104 lb (47.2 kg) of IFQ would be debited from the IFQ holder's account for that area as follows: 5 GAF \times 20.7 lb = 103.5 lb (46.9 kg) and rounded up to 104 lb (47.2 kg). In current regulations, NMFS accounts for IFQ in whole net pounds and proposes to continue accounting in whole net pounds for transfers between IFQ and GAF. This method of rounding up to the nearest whole pound results in the fewest conversion errors when GAF are converted back to IFQ, as demonstrated below.

Voluntary and automatic returns of GAF to IFQ would require NMFS to convert unharvested GAF back to net pounds of IFQ. To calculate the number of net pounds of halibut IFQ returned to the IFQ holder, NMFS would multiply the unharvested number of GAF by the conversion factor and round up to the nearest pound. In the example used above, if the parties agreed to a voluntary return of 2 GAF to the IFQ holder, NMFS would return 42 lb (19.1

kg) to the IFQ holder's account (2 GAF \times 20.7 lb = 41.4 lb (18.8 kg) and rounded to 42 lb).

The conversion from IFQ pounds to number of fish for GAF would be based on the average weight of GAF from the previous year as estimated from GAF length data reported to NMFS through the proposed electronic GAF reporting system (see "GAF Reporting Requirements" section of this preamble for additional detail). NMFS anticipates that the average weight of GAF would likely be higher than non-GAF halibut harvested in the charter halibut fishery, particularly if charter halibut fishery management measures include a size restriction. Therefore, NMFS proposes to use average weight estimates for GAF to accurately account for GAF removals. Because average GAF lengths would not be available for the first year of the proposed CSP, NMFS would use the average net weight of a halibut landed in the charter fishery in each area (2C or 3A) during the previous year, if no size limits were in effect, or from the most recent year without a size limit in effect. These average net weights would be based on data collected during ADF&G creel surveys. If no GAF were harvested in a year, the conversion factor would be calculated using this same method as for the first year of the program (i.e., NMFS would use the most recent average weight of charter fish harvested in an area based on ADF&G creel surveys).

3. GAF Permits

Upon completion of the transfer between IFQ and GAF, NMFS would issue a GAF permit to the holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit. The GAF permit would be assigned to the charter halibut permit specified by the GAF permit holder at the time of application. The GAF permit holder could offer GAF for harvest by charter vessel anglers on board the vessel on which the operator's GAF permit and the assigned charter halibut permit are used.

GAF permit holders would be required to hold a sufficient number of GAF for charter vessel anglers to retain halibut in excess of the charter angler limit and up to limits in place for the unguided sport halibut fishery for that area. In other words, charter operators would be required to already possess the GAF prior to the fish being caught, i.e., GAF could not be obtained after harvesting of the fish. The GAF permit holder also would be required to have the GAF permit and the assigned charter halibut permit on board the vessel on which charter vessel anglers retain GAF,

and to present the permits if requested by an authorized enforcement officer. Similar to the requirement that charter halibut permit holders retain their saltwater charter logbooks for two years, GAF permit holders would be required to retain all GAF permits for two years after the date of issuance. GAF permits would need to be available for inspection upon request of an authorized enforcement officer.

At the end of a charter halibut fishing trip in which GAF were retained, the GAF permit holder would be required to electronically report the total number of GAF retained under his or her GAF permit. The GAF permit holder would be required to report on the last day of a multi-day charter halibut fishing trip. NMFS would deduct this number of GAF from the GAF permit holder's account of unused GAF. NMFS proposes to require the GAF permit holder to complete a GAF electronic report by 11:59 p.m. (Alaska local time) upon completion of a charter halibut fishing trip in which GAF were retained to maintain as close to real-time accounting of GAF balances as possible.

On approval of an application for transfer between IFQ and GAF, NMFS would issue a GAF permit to the charter halibut permit holder receiving GAF. A GAF permit would authorize the GAF permit holder to offer GAF to charter vessel anglers and allow charter vessel anglers to retain halibut in excess of the charter halibut harvest restriction, up to the limits on GAF use that are in the proposed regulations at § 300.65(c). GAF could be retained under a GAF permit only if, at the time the GAF are retained, the GAF permit holder's account contained at least the number of retained GAF. All GAF permits would expire at 11:59 p.m. (Alaska local time) on the day prior to the automatic GAF return date. GAF could not be retained by charter vessel anglers after the expiration of GAF permits.

NMFS would issue a revised GAF permit to the GAF permit holder each time during the year that it approved a transfer between IFQ and GAF for that GAF permit. Each GAF permit would be assigned to only one charter halibut permit, community charter halibut permit, or military charter halibut permit in Area 2C or Area 3A. Charter halibut permit holders requesting GAF would be required to specify the charter halibut permit to which the GAF permit would be assigned on the application for transfer between IFQ and GAF. The assignment between a charter halibut permit holder's GAF permit and their specified charter halibut permit, community charter halibut permit, or military charter halibut permit could

not be changed during that year. If charter vessel anglers retain GAF, the GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit would need to be on board the vessel on which the GAF halibut are retained, and available for inspection by an authorized enforcement officer.

The proposed rule also would prohibit GAF, once transferred to a charter halibut permit holder and assigned to their specified charter halibut permit, from being transferred to another charter halibut permit, community charter halibut permit, or military charter halibut permit holder. This prohibition would prevent a charter halibut permit holder from receiving GAF by transfer with the intention of transferring the GAF to another charter halibut permit holder for compensation. The Council and NMFS generally recommend management provisions that encourage holders of harvest privileges to actively participate in the fishery for which they hold the privilege, rather than receiving financial benefits from another person who pays to use those harvest privileges. The Council's recommendation and NMFS' proposal to prohibit GAF permit holders from transferring GAF to another charter halibut permit holder is consistent with this policy objective to require a charter halibut permit holder who receives GAF by transfer to utilize GAF in conjunction with his or her charter halibut permit. In addition, these limitations would ensure that GAF could be accurately debited and tracked, and that GAF is being used only by authorized transferees.

4. Voluntary and Automatic Returns of GAF to IFQ

Returns of unused GAF to the IFQ holder would be authorized using two methods: A voluntary return that could be requested from August 1 through August 31 and that would be completed on or after September 1, and an automatic return 15 days before the end of the commercial halibut fishing season. Based on testimony from commercial and charter fishery participants, the Council recommended a voluntary return of GAF around September 1 to allow the IFQ holder sufficient time to harvest that IFQ before the end of the season (usually in mid-November). NMFS would accept applications for voluntary returns of unused GAF from August 1 through August 31 and NMFS would complete GAF returns on or after September 1. The earliest that NMFS would return

GAF to IFQ is September 1. NMFS would process transfers and returns of IFQ and GAF as soon as possible after the dates stated in Federal regulations. Barring unforeseen circumstances (e.g., computer failure, weather closures, furlough, etc.), NMFS would conduct the transfer on the first business day after the stated transfer date. For example, if September 1 occurred on the Sunday of Labor Day weekend, the transfers would occur the following Tuesday, at the earliest. For this reason, the regulatory text states that transfers would occur "on or after" September 1. This preamble uses the term "return" rather than "transfer" to be consistent with the terminology commonly used by the public during the development of GAF transfer provisions to describe the transfer of GAF to IFQ. Regulations at § 300.65(b)(5) use the term transfer to describe the voluntary and automatic returns of GAF to IFQ. These terms are synonymous.

There would also be an automatic mandatory return of unused GAF 15 days prior to the end of the commercial halibut fishing season. The end of the commercial halibut fishing season is specified in the IPHC annual management measures published by NMFS in the **Federal Register** each year. On and after this automatic return date, unused GAF would no longer be authorized for use in the charter fishery in the current year. Applications for transfer of IFQ to GAF would not be accepted after October 15, to ensure that all GAF transactions are completed before the automatic return date. No application would be required for the automatic return of unused GAF. NMFS would return any remaining unharvested GAF to the IFQ holder from whom it was derived. NMFS recognizes that some GAF permit holders likely would have a balance of unharvested GAF after most charter fishing trips had been completed for the year. Although the charter halibut fishery has typically been open from February 1 through December 31 in recent years, most fishing in the charter fishery occurs from May through August. ADF&G data indicate that approximately 96 percent of charter halibut harvest had occurred by August 31 in either Area 2C or Area 3A. The commercial halibut fishing season typically opens in March and closes in mid-November. Based on this information, NMFS and the Council believe that NMFS should return all remaining unused GAF to the IFQ permit holder 15 days prior to the end of the commercial halibut fishing season because it would not significantly affect charter vessel business operations in

aggregate. Further, this timeline would give the IFQ holder an opportunity to harvest the IFQ before the end of the commercial fishing season for that year. The IFQ holder also may choose to count the IFQ returned from GAF toward an underage for his or her halibut IFQ account for the next fishing year, as specified in regulations at § 679.40(e). On or as soon as possible after the voluntary or automatic GAF return dates, NMFS would convert GAF in number of fish to IFQ in net pounds using the conversion factor for that year and return the converted IFQ to the IFQ holder's account.

D. GAF Transfer Restrictions

Through the GAF program, the Council intended to provide IFQ holders some flexibility in how they use their IFQ, with limitations. The Council recommended and NMFS proposes restrictions on the amount of IFQ that an IFQ holder could transfer as GAF and on the number of GAF that could be assigned to one GAF permit. The restrictions on transfers of GAF are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive share of halibut fishing privileges as GAF. The restrictions on the amount of IFQ that an IFQ holder may transfer are intended to further the goals of the Council and IFQ program for an owner-onboard fishery. The proposed rule would implement the Council's recommendations for three GAF transfer restrictions.

First, IFQ holders in Area 2C would be limited to transferring up to 1,500 lb (680.4 kg) or 10 percent, whichever is greater, of their initially issued annual halibut IFQ for use as GAF. In Area 3A, IFQ holders could transfer up to 1,500 lb or 15 percent, whichever is greater, of their initially issued annual halibut IFQ for use as GAF. NMFS proposes that IFQ holders in Area 3A would be able to transfer up to 15 percent of the IFQ as GAF because IFQ holdings are generally larger in Area 3A than in Area 2C, and restricting Area 3A IFQ holders to leasing up to 10 percent of their IFQ holdings could limit the amount of IFQ available for lease as GAF (section 2.5.12.2 of the EA/RIR/IRFA). Allowing Area 3A IFQ holders to lease 15 percent of their IFQ holdings as GAF would provide Area 3A IFQ holders more flexibility in determining whether to lease IFQ as GAF and could provide more GAF to the Area 3A charter halibut fishery.

The percentage of an IFQ holder's IFQ that is available for transfer would be based on fishable pounds at the start of the fishing year before any other

transfers of IFQ had occurred. Using the start-of-year balance would provide a fixed value on which to base the transfer limits that would allow NMFS and IFQ holders to accurately track the maximum amount of GAF that could be transferred. Second, under this proposed rule, no more than a total of 400 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit that is endorsed for six or fewer anglers. And third, no more than a total of 600 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit endorsed for more than six anglers. A person who holds both halibut IFQ and a CHP and would like to transfer that IFQ to GAF would be subject to the same transfer restrictions. The Council recommended different GAF limits for charter halibut permits to balance the GAF needs of different types of charter operations with its objective to maximize the opportunity for all charter operators to acquire GAF. Because holders of charter halibut permits endorsed for more than six anglers are likely to be larger charter operations, the Council was concerned these larger charter operations would have more financial resources to acquire GAF than smaller operations unless a limit was placed on the number of GAF that could be assigned to a charter halibut permit. NMFS agrees that the proposed limit for assigning GAF to charter halibut permits accommodates the GAF needs of different charter operation types and promotes the Council's objective to offer all charter businesses the opportunity to lease IFQ as GAF.

Commercial halibut IFQ regulations at § 679.42(f)(1)(i) and (ii) also include QS use limits that are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive share of commercial halibut fishing privileges. NMFS determines individual and collective interest in halibut fishing privileges by summing QS used by that person and a portion of any QS used by an entity in which that person has an interest. NMFS considers the person's portion of the QS used by the entity equal to the share of interest the person has in that entity. For example, if an individual uses 50,000 units of Area 2C halibut QS and has a 5 percent interest in a company that uses 750,000 units of Area 2C halibut QS, the amount of Area 2C halibut QS that person would be considered to use for purposes of the limits at § 679.42(f)(1)(i) and (ii) is 50,000 units (his personal holdings) plus 37,500 units (5 percent interest for the 750,000 units in the company using

Area 2C halibut QS). This individual's use of 87,500 units would not exceed the Area 2C QS use limit of 599,799 units.

For purposes of administering the QS use limits at § 679.42(f)(1)(i) and (ii), NMFS proposes to include the QS equivalent of IFQ transferred to GAF in the calculation of a person's QS use. Using the example above, if the QS holder transferred the equivalent of 100 lb (45.4 kg) of IFQ as GAF to a charter halibut permit holder, NMFS would continue to include the QS equivalent of the IFQ transferred to GAF in the calculation of that person's QS use for purposes of the QS use limits at § 679.42(f)(1)(i) and (ii). NMFS proposes this approach because it considers a transfer of IFQ to GAF a use of halibut QS. A transfer of IFQ to GAF would be voluntary, and the halibut QS holder likely would receive a benefit from the transfer according to the terms of the transfer agreement with the charter halibut permit holder receiving GAF. Furthermore, it is possible under the proposed CSP for a person to still use halibut IFQ that was transferred as GAF in the commercial halibut fishery before the end of the commercial fishing season if the GAF were not harvested in the charter fishery, and the IFQ was returned to the QS holder through a voluntary or automatic return as described in the preceding section.

E. Community Quota Entity GAF Transfer Restrictions

Under existing regulations at § 679.41, Community Quota Entities in Areas 2C and 3A may receive quota share by transfer and lease the resulting IFQ to eligible community residents for use in the commercial fishery. This proposed rule would not modify existing regulations on the use of IFQ by CQEs in the commercial fishery. This proposed rule would allow CQEs to transfer the IFQ derived from QS held by the CQE to be used as GAF. This proposed rule would place limitations on how much IFQ could be transferred as GAF depending on whether the GAF was used by a CQE, an eligible community resident, or by a non-resident. In addition, this proposed rule would allow a CQE to receive GAF by transfer.

Under the proposed rule, a CQE holding halibut IFQ in Area 2C or Area 3A would be authorized to transfer that IFQ as GAF. However, the Council recommended that transfers between IFQ and GAF for CQEs be exempt from the limit on the amount of GAF that can be transferred in certain circumstances. NMFS proposes and the Council recommends that any amount of IFQ

which a CQE holds could be leased as GAF to itself, to eligible community residents of the CQE community, or to other CQEs. For example, if the CQE holds IFQ it could transfer that IFQ to GAF, and then assign the resulting GAF to a community halibut permit or charter halibut permit held by the CQE, to an eligible community resident holding a charter halibut permit, or to another CQE holding community charter halibut permits or charter halibut permits. In these cases, the amount of GAF that could be transferred would not be subject to limitations based on the amount of IFQ initially issued to the CQE (i.e., the entire amount of IFQ held by a CQE could be transferred as GAF and assigned to these entities). NMFS believes that exempting CQEs from GAF transfer restrictions in these circumstances would provide a CQE with more flexibility in determining how to utilize its holdings of IFQ, community charter halibut permits, or charter halibut permits. These exemption provisions allow the CQE to determine how to use halibut fishery privileges to maximize benefits for the CQE community and its residents.

If the CQE is transferring IFQ as GAF and assigning that GAF to an individual that is not an eligible community resident, the CQE would be subject to the same limitations as other halibut quota share holders (i.e., up to 10 percent or 1,500 lb of his or her annual Area 2C IFQ, whichever is greater; and up to 15 percent or 1,500 lb of his or her annual Area 3A IFQ, whichever is greater).

NMFS agrees that CQE transfers between IFQ and GAF should be exempt from GAF transfer restrictions in the instances described in the Regulatory Impact Review (see **ADDRESSES**).

Although the Council used the term "eligible community resident" in recommending exemptions to the GAF transfer restrictions for CQEs under the CSP, the term eligible community resident as currently defined at § 679.2 is not directly applicable to the charter halibut limited access program because businesses are expected to hold charter halibut permits, whereas the definition of an eligible community resident refers to an individual. Although a business could consist solely of an individual, it is possible for a business to be a partnership, corporation, or other legal entity. Therefore, NMFS is proposing that "eligible community resident," for purposes of exempting transfers of IFQ to GAF from a CQE to an eligible community resident from GAF transfer restrictions, means that the charter halibut permit holder receiving GAF

from the Community Quota Entity must operate that business out of the community. Current regulations at § 300.67(k)(5) require that every charter vessel fishing trip authorized by a community charter halibut permit must begin or end within the boundaries of the community represented by the CQE holding the permit. The regulations do not require that an eligible community resident of the CQE community use the community charter halibut permit. NMFS is preparing another proposed rule that would further modify the definition of "eligible community resident," but the changes proposed in that rule would not affect the changes proposed here.

NMFS proposes to apply the same requirement for using community charter halibut permits currently applicable to CQEs to the definition of eligible community resident for purposes of IFQ to GAF transfers involving CQEs. The proposed rule would revise the definition of eligible community resident for purposes of IFQ to GAF transfers under the Area 2C and Area 3A CSP. A person (either an individual or a non-individual entity) holding a charter halibut permit would need to either begin or end a charter vessel fishing trip authorized by their charter halibut permit within the boundaries of the community represented by the CQE to qualify as an eligible community resident of that CQE for purposes of IFQ to GAF transfers.

This proposed rule would also allow a CQE to receive GAF directly by transfer from either a CQE or other persons holding GAF. Although any GAF a CQE receives by transfer would be exempt from limits on the amount of IFQ that can be transferred as GAF in the circumstances described above, all transfers of IFQ to GAF in which the IFQ is held by a CQE would be limited by an existing halibut IFQ regulation at § 679.42(f)(6). This regulation specifies that "[n]o individual that receives IFQ derived from halibut QS held by a Community Quota Entity may hold, individually or collectively, more than 50,000 lb (22.7 mt) of IFQ halibut derived from any halibut QS source." As described above, NMFS determines individual and collective ownership interest by summing IFQ held or used by that person and a portion of any IFQ held or used by an entity in which that person has an interest. NMFS considers the person's portion of the IFQ held or used by the entity equal to the share of interest the person has in that entity. For example, if an individual holds or uses 100 lb (45.4 kg) of IFQ and has a 5 percent interest in a company that holds or uses 100 lb of IFQ that was

derived from halibut QS held by a CQE, the amount of IFQ that person would be considered to hold for the IFQ limit calculation at § 679.42(f)(6) is 100 lb (his personal holdings) plus 5 lb (2.3 kg) (5 percent interest for the 100 lb in the company holding IFQ). In this example, this individual's holdings of 105 lb (47.6 kg) would not exceed the IFQ limit of 50,000 lb for purposes of § 679.42(f)(6).

The Council recommended, and this rule proposes, to include GAF derived from halibut IFQ held by a CQE in this individual and collective IFQ holding limit. Hence, the proposed rule would limit an individual receiving either IFQ or GAF derived from IFQ held by a CQE to holding individually or collectively, no more than 50,000 lb (22.7 mt) of halibut IFQ and GAF derived from the IFQ, combined. This proposed rule does not modify existing regulations at § 679.42(f)(6), but this discussion provides notice to the public on how the use caps applicable in this regulation would be calculated. Thus, for an individual that holds GAF derived from IFQ held by a CQE, IFQ derived from QS held by a Community Quota Entity, or both, NMFS would calculate that individual's total halibut IFQ and GAF holdings by (1) multiplying the total number of GAF held individually and collectively by the conversion factor for that year (see "Conversion between IFQ and GAF" section above) to determine the equivalent number of halibut net pounds held, and (2) adding the equivalent number of halibut net pounds held to the total number of IFQ equivalent pounds held individually and collectively by that person.

F. GAF Reporting Requirements

The proposed rule would implement new recordkeeping and reporting requirements for GAF in the ADF&G saltwater charter logbooks, in addition to saltwater charter logbook reporting requirements currently specified at § 300.65(d). It also would require GAF permit holders to record information on the GAF permit; separately report retained GAF by 11:59 p.m. (Alaska local time) on the last day of the fishing trip in which GAF were retained using a NMFS-approved electronic reporting system; and retain the GAF permits for two years.

The ADF&G Statewide Sport Fishing Charter Trip Logbook is the primary reporting requirement for operators in the charter fisheries for all species harvested in saltwater in Areas 2C and 3A. The ADF&G developed the saltwater charter logbook program in 1998 to provide information on actual participation and harvest by individual vessels and businesses in charter

fisheries for halibut as well as other state-managed species. The saltwater charter logbook data are compiled to show where fishing occurs, the extent of participation, and the species and numbers of fish caught and retained by individual anglers. This information is essential for regulation and management of the charter halibut fisheries in Area 2C and Area 3A. In recent years, ADF&G has added saltwater charter logbook reporting requirements to collect information required to implement and enforce Federal charter halibut regulations, such as the Area 2C one-halibut per day bag limit and the charter halibut limited access program.

This proposed rule would continue to require the ADF&G saltwater charter logbook as the primary reporting method for operators in the charter halibut fishery. The CSP would require the person to whom ADF&G issued a saltwater charter logbook to retain and make available for inspection by authorized enforcement personnel the completed original logbooks for two years following the charter vessel fishing trip. This requirement would be necessary to enforce annual management measures and GAF reporting requirements.

Charter guides would be required to mark retained GAF by removing the tips of the upper and lower lobes of the caudal (tail) fin. Additionally, the charter vessel guide would be required to retain the carcass showing caudal fin clips until the halibut fillets were offloaded so that enforcement could verify the length and that the fish was retained as GAF. These measures would aid in the monitoring and enforcement of GAF provisions.

For each charter vessel fishing trip on which charter vessel anglers retain GAF, charter vessel guides would be required to report on an ADF&G saltwater charter logbook (1) the GAF permit number under which the GAF were retained, and (2) the number of GAF retained by each charter vessel angler during the trip. For charter vessel fishing trips completed on a single day, charter vessel guides would be required by Federal regulations to complete these fields in the saltwater charter logbook before any halibut are offloaded or charter vessel anglers disembark from the vessel. For multi-day charter vessel fishing trips, charter vessel guides would be required to complete the GAF reporting requirements in a saltwater charter logbook on board the vessel by the end of each day of the trip. These saltwater charter logbook reporting requirements would facilitate GAF recordkeeping and enforcement of charter vessel angler daily bag and

possession limits. NMFS also would use the GAF reporting fields in the saltwater charter logbook to verify information reported in the electronic GAF reporting system.

NMFS proposes that for each halibut retained as GAF, charter vessel guides would immediately record on the GAF permit the date and total halibut length in inches. This requirement would facilitate on-the-water enforcement and improve the accuracy of the GAF lengths reported electronically to NMFS.

NMFS would use an electronic GAF reporting system to manage GAF accounts and report GAF lengths. Near real-time reporting of GAF landings, and other GAF account and permit information is essential to support participant access to current account balances for account management and regulatory compliance, and to monitor account transfers and GAF landings history. Management personnel need near real-time account information to manage permit accounts, conduct transfers, and assess fees. Enforcement personnel need real-time account information to monitor transfers between IFQ and GAF and monitor compliance with authorized GAF harvests and other program rules.

In the commercial IFQ program, regulations at § 679.5(e) require that Registered Buyers report fisheries landings electronically using a secure, password-protected Internet-based system approved by NMFS. The final steps of the electronic IFQ reporting process generate a time-stamped receipt displaying landings data. Commercial Registered Buyers must print, and along with the individual IFQ fisherman, must sign copies of the receipt, which must be maintained and made available for a specified time period for inspection by authorized NMFS or enforcement personnel. Printing of this receipt indicates the report sequence is complete and the IFQ account(s) has been properly debited.

Under the CSP GAF program, NMFS would also require secure electronic reporting. Multiple technologies may be needed to provide essential services to a GAF fleet that would be widely distributed throughout remote locations in Area 2C and Area 3A. NMFS is proposing an Internet-based reporting system for GAF electronic reporting because that is likely to be the most efficient and convenient method for charter operators to report GAF, given the prevalence of Internet use among the general public.

Although real-time data are necessary for accurate account management, the data requirements for inseason GAF

account management are relatively minor and simple relative to that required for saltwater charter logbooks. GAF permit holders would be required to complete the GAF electronic report before 11:59 p.m. (Alaska local time) on the last day of a charter vessel fishing trip in which a charter vessel angler retained GAF using a GAF permit.

The GAF permit holder would be required to record the following information in the GAF electronic reporting system: (1) ADF&G saltwater charter logbook number in which GAF were recorded; (2) vessel identification number (State of Alaska issued boat registration number or U.S. Coast Guard documentation number) for the vessel on which GAF were retained; (3) GAF permit number used to retain GAF; (4) ADF&G Sport Fishing Guide license number held by the charter vessel guide who certified the ADF&G saltwater charter logbook sheet on which GAF were recorded; (5) total number of GAF caught and retained under the GAF permit number; and (6) total length in inches of each GAF retained. Charter vessel operators using a GAF permit assigned to a community charter halibut permit for a charter vessel fishing trip on which GAF were retained also would be required to report the community or port where the charter vessel fishing trip began and ended.

Upon receipt of an electronic GAF report from a GAF permit holder, NMFS would respond with a confirmation number as evidence that NMFS received the GAF harvest report and the GAF account was properly debited. The GAF permit holder would be required to record this confirmation number on the corresponding GAF permit.

The Council recommended that GAF permit holders landing GAF on private property be required to allow enforcement personnel access to the point of landing. The Council recognized, and NMFS agrees, that enforcing the harvest restrictions and GAF use restrictions may require enforcement staff to search for or inspect halibut retained by all charter vessel anglers in the charter fishery, including charter vessel anglers landing such halibut on private property. Section 773i(b) of the Halibut Act states that any authorized officer may, "at reasonable times, enter and search or inspect, shoreside facilities in which fish taken subject to this subchapter are processed, packed or held."

The Council also recommended that GAF permit holders be required to allow ADF&G and IPHC scientific sampling personnel access to landed halibut on private property owned by the GAF permit holder, in addition to their

normal access in public areas. The Council recommended this element to facilitate monitoring of charter halibut harvest and the collection of scientific information from halibut, primarily GAF, harvested in the charter fishery. NMFS is uncertain about the potential impacts of requiring such access and is not currently proposing this provision. NMFS is considering how best to implement this proposed aspect of the CSP to provide the Council with the requested information to monitor GAF use, and provide the public with predictability regarding the procedural aspects of this provision. NMFS may propose this requirement after further research and consideration of public comments.

G. Cost Recovery for GAF

The Magnuson-Stevens Fishery Conservation and Management Act at section 304(d)(2)(A) requires that cost recovery fees be collected for the costs directly related to the management, data collection, and enforcement of any limited access privilege programs. This includes programs such as the commercial halibut IFQ program, under which a dedicated allocation is provided to IFQ permit holders. Fees owed are a percentage, not to exceed 3 percent, of the ex-vessel value of fish landed and debited from IFQ permits. Each year, NMFS sends fee statements to IFQ holders whose annual IFQ was used; and those holders must remit fees by January 31 of the following year. The fee percentage has rarely exceeded 2 percent of the ex-vessel value of sablefish and halibut landings.

NMFS does not expect allocation of additional funds to support the GAF program other than those derived from IFQ cost recovery fees. Therefore, under the proposed rule, commercial IFQ holders would be responsible for all cost recovery fees on IFQ equivalent pounds harvested for their IFQ permit(s) and also for net pounds transferred and harvested as GAF which originated from their IFQ account(s). NMFS would levy IFQ cost recovery fees on all net pounds of halibut harvested as IFQ in the commercial fishery and as GAF in the charter fishery.

The IFQ permit holders who transfer IFQ to GAF would owe cost recovery fees for those GAF retained in the charter fishery. Fees for unharvested GAF converted back to IFQ equivalent pounds and harvested as commercial IFQ pounds would be assessed fees as commercial landings with value estimated as specified in current regulations at § 679.45. IFQ holders might share these costs with GAF users through contractual agreements, but

those contractual arrangements would not be regulated or reviewed under the provisions of this proposed rule. IFQ and GAF that are not harvested during the year would not be subject to the cost recovery fee. Fish harvested in excess of the amount authorized by a GAF permit, or in excess of allowed IFQ permit overages, would not result in cost recovery fees owed because such overages would be handled as enforcement actions.

NMFS establishes commercial cost recovery fee assessments in November each year. To determine cost recovery fee liabilities for IFQ holders, NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices by month and port (or, if confidential, by port group). NMFS publishes these standard prices in the **Federal Register** each year. For example, NMFS published the 2012 standard ex-vessel IFQ prices in the **Federal Register** on December 4, 2012 (77 FR 71783). NMFS uses the standard prices to compute the total annual value of the IFQ fisheries. NMFS determines the fee percentage by dividing actual total management and enforcement costs by total IFQ fishery value. Only those halibut and sablefish holders who had landings on their permits owe cost recovery fees. The fee owed by an IFQ holder is the computed annual fee percentage multiplied by the value of his or her IFQ landings.

NMFS would also apply standard ex-vessel values computed by area for commercial IFQ harvests to harvest of GAF. The proposed regulations specify that the IFQ permit holder may not challenge the standard ex-vessel value applied to GAF landings by NMFS.

Only "incremental" costs, i.e., those incurred as a result of IFQ management that include a GAF component, are assessable as cost recovery fees. Under the proposed rule, NMFS would determine the cost recovery liability for IFQ permit holders based on the value of all landed IFQ and GAF derived from his or her IFQ permits. NMFS would convert landings of GAF in Area 2C or Area 3A to IFQ equivalent pounds as specified in the "Conversion between IFQ and GAF" section above, and multiply the IFQ equivalent pounds by the standard ex-vessel value computed for that area to determine the value of IFQ landed as GAF. The value of IFQ landed as GAF as based on NMFS' standard prices would be added to the value of the IFQ permit holder's landed IFQ, and the sum would be multiplied by the IFQ fee percentage to estimate the person's IFQ fee liability. Additionally, the costs to develop the regulations, accounting, and reporting systems for

the GAF program would be considered incremental and extensions of the IFQ program and would be submitted for cost recovery. Agency costs related to development of the GAF program in previous years have already been included in the IFQ cost recovery fee assessment, and costs associated with developing the GAF portion of this proposed rule would be submitted for cost recovery.

V. Other Regulatory Changes

This action proposes four additional regulatory changes. These are minor changes that clarify existing regulations, but do not substantively change how the halibut fishery is managed. The first proposed change would clarify the regulations to describe the current process by which the IPHC Area 4 catch sharing plan is promulgated. The Area 4 catch sharing plan was codified in Federal regulations at § 300.65(b) in 1998. The Area 4 catch sharing plan allocates the Area 4 commercial catch limit among Areas 4C, 4D, and 4E. Each year, the Area 4CDE catch sharing plan subarea allocations are applied to the Area 4CDE commercial catch limit recommended by the IPHC and published in the final rule implementing the annual management measures. The proposed regulatory change would clarify the description of this process in § 300.65(b).

The second proposed change would update instructions in regulations at § 679.5(l)(7) for Registered Buyers to complete and submit the IFQ Registered Buyer Ex-vessel Value and Volume Report form. Registered Buyers submit this form to NMFS to report ex-vessel IFQ prices by month and port. These changes would remove unnecessary regulations listing specific information that is already provided on the IFQ Registered Buyer Ex-vessel Value and Volume Report form and IFQ Fee Submission form, and clarify the submission process. NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices to determine cost recovery fee liabilities for IFQ holders.

The third proposed change would clarify regulations at § 679.40 to describe the separate processes for allocating halibut IFQ and sablefish IFQ. The proposed regulations would also clarify that commercial halibut fishery overage adjustments from the previous year will be subtracted from a person's IFQ, and commercial halibut fishery underage adjustments from the previous year will be added to a person's IFQ. Current regulations provide for administrative adjustment of IFQ permits as a result of under- and

overfishing the IFQ the prior year. NMFS applies administrative adjustments at the beginning of each fishing year when annual IFQ accounts are created and IFQ pounds are allocated to QS holders.

The fourth proposed change would revise regulations at § 679.45(a)(4) to update instructions for IFQ permit holders for submitting cost recovery fee payments to NMFS. NMFS proposes to update the fee payment form and instructions to incorporate GAF in the calculation of an IFQ permit holder's cost recovery fee liability.

VI. Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing fishing for halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The Halibut Act at section 773c(a) and (b) provides the Secretary with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This proposed action is consistent with the North Pacific Halibut Act and other applicable laws.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule also complies with the Secretary of Commerce's authority under the Halibut Act to implement management measures for the halibut fishery.

Regulatory Flexibility Act

An initial regulatory flexibility analysis (IRFA) was prepared as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action may be found at the beginning of this preamble. A summary of the IRFA follows. Copies of the IRFA are available from the Council or NMFS (see **ADDRESSES**).

The action would establish a CSP for the commercial and charter halibut fisheries in Area 2C and Area 3A. In addition to establishing allocations to each fishery, the Council's preferred alternative (Alternative 3 for Area 2C and Alternative 4 for Area 3A) would establish a new management system for the charter halibut fishery in these areas. Beginning February 1, 2011, operators of vessels with charter vessel anglers on board were required to have on board the vessel a valid charter halibut permit issued by NMFS. Therefore, the universe of regulated entities for the proposed CSP would be the holders of one or more charter halibut permits in Area 2C and Area 3A. In October 2012, NMFS published an implementation report for the charter halibut limited access program after all interim permits had been adjudicated and resolved. This report is available at http://alaskafisheries.noaa.gov/ram/charter/chp_review1012.pdf. At the time of publication, a total of 972 charter halibut permits had been issued to 356 businesses in Area 2C and 439 businesses in Area 3A. Of these, 372 charter halibut permits in Area 2C and 339 permits in Area 3A are transferable. A charter halibut permit holder may transfer a transferable permit, subject to NMFS approval, to a qualified person at any time. The exact number of businesses that would be regulated by the proposed CSP therefore cannot be determined because some businesses hold CHPs in each regulatory area and may be counted twice, and because permits are continually being transferred, sold, or retired, or additional community charter halibut permits are being issued. As of October 2012, 107 community CHPs had been issued to 20 CQEs, and 7 U.S. Military Morale, Welfare and Recreation Program permits had been issued to 3 permit holders.

The Small Business Administration (SBA) specifies that for marinas and charter or party vessels, a small business is one with annual receipts less than \$7.0 million. The largest of these charter vessel operations, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed because NMFS does not have or collect economic data on lodges necessary to definitively determine total annual receipts. Thus, all charter vessel operations regulated by the proposed CSP would likely be considered small entities, based on SBA criteria, because they would be expected to have gross revenues of less than \$7.0 million on an annual basis.

Regulations that directly regulate entities representing small, remote

communities in Areas 2C and 3A are included in this action. These regulations would authorize holding community charter halibut permits or regular charter halibut permits to use GAF as proposed under the CSP. GAF would offer charter vessel anglers in Area 2C or Area 3A an opportunity to harvest halibut in addition to the halibut harvested under the charter halibut management measure, up to the harvest limits in place for unguided sport anglers in that area. Eligibility for community charter halibut permits required that the community be represented by a non-profit community quota entity approved by NMFS. Of the 22 CQEs that formed, 11 Area 2C communities were eligible and each received 4 halibut community charter halibut permits and 9 Area 3A communities were eligible and each received 7 halibut community charter halibut permits. A maximum of 18 communities in Area 2C and 14 communities in Area 3A are eligible to form CQEs and apply for charter halibut permits at any time. Therefore, there is a maximum of 32 eligible community entities that could be authorized by the proposed action to use GAF. All of these eligible communities would be considered small entities under the SBA definitions.

An IRFA is required to describe significant alternatives to the proposed rule that accomplish the stated objectives of the Halibut Act and other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities.

The status quo alternative (Alternative 1) specifies the GHL as a target amount of halibut that anglers in the charter fishery can harvest in Area 2C and Area 3A. However, charter halibut harvests that exceed the GHL may have a de facto allocation effect of reducing the amount of halibut that may be harvested by the commercial fishery in the following year. Additionally, charter halibut fishery harvests beyond the GHL also can undermine overall harvest strategy goals established by the IPHC for the halibut resource, which affects all users. The primary objectives of the CSP are to define an annual process for allocating halibut between the charter and commercial fisheries in Area 2C and Area 3A, establish allocations that balance the differing needs of the charter and commercial fisheries that vary with changing levels of annual halibut abundance, and specify a process for determining harvest restrictions for charter anglers that are intended to limit harvest to the annual charter fishery catch limit.

The Council considered four alternatives to the status quo for the proposed CSP. The Council selected a different preferred allocation alternative for Area 2C (Alternative 3) than Area 3A (Alternative 4). The Council's preferred alternative incorporated analysis, public testimony, and public comment provided on the first proposed rule for a CSP (76 FR 44156, July 22, 2011). The Council determined that Alternatives 3 and 4 were more likely than the status quo to meet its objective to establish a catch sharing plan for the commercial and charter fisheries by managing the charter halibut fishery to ensure that harvests stay within the fishery's allocated range. The Council also considered the charter halibut fishery's need to have a stable in-season regulatory environment. Management of the charter halibut fishery under the preferred alternatives is intended to ensure that it is given advance notice and predictability with respect to application of management tools (e.g., bag limits, size restrictions) and season length. The preferred alternatives would facilitate the recommended process for recommending and implementing annual management measures for the charter halibut fishery prior to the beginning of the fishing season. NMFS agrees that the annual implementation of the CSP allocations and GAF under the preferred alternatives likely would facilitate management of the charter fishery in a way that is timely and responsive to changes in halibut abundance while providing participants in the charter halibut fishery with advance notice of the charter fishery management measures to be effective in the upcoming season. The other alternatives that were considered are described below.

Alternatives 2 through 5 all recommend for Area 2C and Area 3A the implementation of a catch sharing plan with separate accountability by fishery for wastage, and a program to allow charter operators to lease IFQ from participants in the commercial halibut fishery, called the "guided angler fish" or GAF program. All alternatives include fixed allocation percentages to the charter and commercial halibut fisheries. The Council determined that a fixed percentage allocation best met its objectives with the least impact to affected entities. Additionally, a fixed percentage allocation would be equitable because both the commercial and charter halibut fisheries would have allocations that vary with the abundance of the halibut resource. Thus, both the charter and commercial

halibut fisheries would share in the benefits and costs of managing the resource for long-term sustainability under a combined catch limit.

The main differences among Alternatives 2 through 5 are in how the allocation percentages are calculated. Allocation percentages to the charter halibut fishery are the lowest under Alternative 2 and highest under Alternative 5. Alternative 2 is the 2008 preferred alternative for a catch sharing plan. This alternative included allocation percentages that did not include upward adjustments for the switch from the Statewide Harvest Survey to ADF&G saltwater charter logbooks as the primary data source. Alternative 3 increased the allocations to the charter halibut fishery from Alternative 2 by the adjustment required to account for catch using the saltwater charter logbook instead of the SWHS. Alternative 4 would establish allocations for the charter halibut fishery based on the same methodology used in Alternative 2, plus an additional 3.5 percent of the combined catch limit at levels of combined catch limit less than 20 million pounds. At combined catch limits greater than 25 million pounds, the allocation would be the same as in Alternative 2. And finally, Alternative 5 was based on the allocations in Alternative 3, plus an additional 3.5 percent of the combined catch limit. The Council recommended Alternative 3 for Area 2C and Alternative 4 for Area 3A as its preferred alternative. When considering which charter allocation percentages were most appropriate and equitable for each management area, the Council took into account recent charter halibut harvests adjusted for both the logbook correction and crew harvest.

Alternatives 2 through 5 differ in how annual charter halibut harvest restrictions would be implemented. Alternative 2 contains a pre-determined and fixed set of harvest restrictions that would be triggered automatically under the CSP depending on the combined catch limit determined each year by the IPHC. The other alternatives did not prescribe annual charter harvest restrictions as part of this rule and the CSP. Instead, charter harvest restrictions would continue to be set through a separate annual process of Council recommendations to the IPHC that was first used in 2012 and detailed in the "Annual Process for Setting Charter Management Measures" section of this preamble. The fixed management measures proposed under Alternative 2 were determined to be too rigid and did not give managers enough discretion to modify those measures as needed to best

achieve harvest objectives. The process proposed under Alternatives 3 through 5 was considered more flexible, responsive to the most recent information available on halibut removals, and allowed greater stakeholder input in the selection of annual harvest restrictions.

Projected Reporting and Recordkeeping Requirements

This action would impose new recordkeeping requirements. Applications to transfer between IFQ and GAF would be required to be submitted to and approved by NMFS for each transfer from IFQ to GAF. The application would require information about the IFQ permit holder and the charter halibut permit holder, including each permit holder's contact information, the IFQ permit holder's account from which halibut pounds are to be transferred, and the GAF account to which GAF are to be transferred. NMFS would rely on data already collected through the ADF&G saltwater charter logbooks for additional management and enforcement needs. In addition, CQEs eligible to receive community charter halibut permits would be required to submit information to NMFS (1) on the application for a transfer between IFQ and GAF, and (2) regarding the CQE's activity in an annual report by January 31 of the following year. NMFS would require charter vessel guides to record on the GAF permit the date and length of any GAF halibut caught and kept, immediately upon harvest. NMFS would also require GAF permit holders to report via an online system information about each GAF halibut caught and retained at the end of each fishing trip, and to record the GAF electronic reporting confirmation number on the GAF permit. The proposed recordkeeping and reporting requirements would not likely represent a "significant" economic burden on the small entities operating in this fishery.

Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified other Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Collection-of-Information

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval.

The collections are listed below by OMB control number.

OMB Control No. 0648-0398

Public reporting burden per response is estimated to average 2 hours for the IFQ Permit Holder Fee Submission Form, and 2 hours for the IFQ Registered Buyer Ex-Vessel Value and Volume Report.

OMB Control No. 0648-0575

Public reporting burden per response is estimated to average 4 minutes for ADF&G Saltwater Charter Logbook entry for vessel guide and submittal; 1 minute per angler for angler signatures of ADF&G Saltwater Sport Fishing Charter Trip Logbook; 1 minute to measure each GAF, 1 minute to record GAF lengths on the GAF permit, 4 minutes to enter data into the GAF electronic reporting system, and 1 minute to record the GAF electronic reporting confirmation number on the GAF permit.

OMB Control No. 0648-0592

Public reporting burden per response is estimated to average 1 hour for an Application for Transfer Between IFQ and GAF; and 1 hour for an Application for Transfer Between IFQ and GAF by a Community Quota Entity.

OMB Control No. 0648-0272

The IFQ permit is mentioned in this proposed rule; however, the public reporting burden for the IFQ permit in this collection-of-information is not directly affected by this proposed rule.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, and by email to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This proposed rule is consistent with Executive Order 12962 as amended September 26, 2008, which required Federal agencies to ensure that recreational fishing is managed as a sustainable activity and is consistent with existing law.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 24, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 300 and 679 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773-773k.

■ 2. In § 300.61:

■ a. Add definitions for “Annual combined catch limit”, “Annual commercial catch limit”, “Annual guided sport catch limit”, “Guided Angler Fish (GAF)”, “Guided Angler Fish (GAF) permit”, and “Guided Angler Fish (GAF) permit holder” in alphabetical order;

■ b. Remove the definition for “Guideline harvest level (GHL)”; and

■ c. Revise the definition for “Individual Fishing Quota (IFQ)”.

The additions and revision read as follows:

§ 300.61 Definitions.

* * * * *

Annual combined catch limit, for purposes of commercial and sport

fishing in Commission regulatory areas 2C and 3A, means the annual total allowable halibut removals (halibut harvest plus wastage) by persons fishing IFQ and by charter vessel anglers.

Annual commercial catch limit, for purposes of commercial fishing in Commission regulatory areas 2C and 3A, means the annual commercial allocation minus an area-specific estimate of commercial halibut wastage.

Annual guided sport catch limit, for purposes of sport fishing in Commission regulatory areas 2C and 3A, means the annual guided sport allocation minus an area-specific estimate of guided sport halibut wastage.

* * * * *

Guided Angler Fish (GAF) means halibut transferred within a year from a Commission regulatory area 2C or 3A IFQ permit holder to a GAF permit that is issued to a person holding a charter halibut permit, community charter halibut permit, or military charter halibut permit for the corresponding area.

Guided Angler Fish (GAF) permit means an annual permit issued by the National Marine Fisheries Service pursuant to § 300.65(c)(5)(iii).

Guided Angler Fish (GAF) permit holder means the person identified on a GAF permit.

* * * * *

Individual Fishing Quota (IFQ), for purposes of this subpart, means the annual catch limit of halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the annual commercial catch limit of halibut.

* * * * *

■ 3. In § 300.65, revise paragraphs (b), (c), and (d) to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(b) The catch sharing plan for Commission regulatory area 4 allocates the annual commercial catch limit among Areas 4C, 4D, and 4E and will be adopted by the Commission as annual management measures and published in the Federal Register as required in § 300.62.

(c) Catch sharing plan (CSP) for Commission Regulatory Areas 2C and 3A—(1) General. The catch sharing plan for Commission regulatory areas 2C and 3A:

(i) Allocates the annual combined catch limit for Commission regulatory areas 2C and 3A in order to establish the annual commercial catch limit and the annual guided sport catch limit for the

halibut commercial fishing and sport fishing seasons, pursuant to paragraphs (c)(3) and (4) of this section; and

(ii) Authorizes the use of Commission regulatory areas 2C and 3A halibut IFQ as guided angler fish (GAF) for harvest by charter vessel anglers in the corresponding area, pursuant to paragraph (c)(5) of this section.

(2) *Implementation.* The Commission regulatory areas 2C and 3A CSP annual allocations and guided sport catch limits are adopted by the Commission as annual management measures and published by NMFS in the **Federal Register** as required in § 300.62.

(3) *Annual commercial catch limits.*

(i) The Commission regulatory areas 2C and 3A annual commercial catch limits are determined by subtracting wastage from the allocations in Tables 1 and 2 of this subpart E, adopted by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

(ii) Commercial fishing in Commission regulatory areas 2C and 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 679, subparts A, B, D, and E.

(4) *Annual guided sport catch limits.*

(i) The Commission regulatory areas 2C and 3A annual guided sport catch limits are determined by subtracting wastage from the allocations in Tables 3 and 4 of this subpart E, adopted by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

(ii) Sport fishing by charter vessel anglers in Commission regulatory areas 2C and 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 300, subparts A and E.

(5) *Guided Angler Fish (GAF).* This paragraph (§ 300.65(c)(5)) governs the transfer of Commission regulatory areas 2C and 3A halibut between individual fishing quota (IFQ) and guided angler fish (GAF), the issuance of GAF permits, and GAF use.

(i) *General.* (A) GAF is derived from halibut IFQ that is transferred from a Commission regulatory area 2C or 3A IFQ permit holder's account held by a person who also holds quota share (QS), as defined in § 679.2 of this title, to a GAF permit holder's account for the same regulatory area.

(B) A GAF permit authorizes a charter vessel angler to retain GAF that are caught in the Commission regulatory area specified on a GAF permit:

(1) During the sport halibut fishing season adopted by the Commission as annual management measures and

published in the **Federal Register** as required in § 300.62, and

(2) Subject to the GAF use restrictions at paragraphs (c)(5)(iv)(A) through (K) of this section.

(C) NMFS will return unharvested GAF to the IFQ permit holder's account from which the GAF were derived on or after fifteen calendar days prior to the closing of the commercial halibut fishing season each year, subject to paragraph (c)(5)(ii) of this section and underage provisions at § 679.40(e) of this title.

(ii) *Transfer Between IFQ and GAF—*
(A) *General.* A transfer between IFQ and GAF means any transaction in which halibut IFQ passes between an IFQ permit holder and a GAF permit holder as:

(1) A transfer of IFQ to GAF, in which halibut IFQ equivalent pounds, as defined in § 679.2 of this title, are transferred from a Commission regulatory area 2C or 3A IFQ permit account, converted to number(s) of GAF as specified in paragraph (c)(5)(ii)(E) of this section, and assigned to a GAF permit holder's account in the same management area;

(2) A transfer of GAF to IFQ, in which GAF in number(s) of fish are transferred from a GAF permit holder's account in Commission regulatory area 2C or 3A, converted to IFQ equivalent pounds as specified in paragraph (c)(5)(ii)(E) of this section, and assigned to the same IFQ permit holder's account from which the GAF were derived; or

(3) The return of unharvested GAF by NMFS to the IFQ permit holder's account from which it was derived, on or after 15 calendar days prior to the closing of the commercial halibut fishing season.

(B) *Transfer procedure—*(1) *Application for Transfer Between IFQ and GAF.* A transfer between IFQ and GAF requires Regional Administrator review and approval of a complete Application for Transfer Between IFQ and GAF. Both the transferor and the transferee are required to complete and sign the application. Transfers will be conducted via methods approved by NMFS. The Regional Administrator shall provide an Application for Transfer Between IFQ and GAF on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov/ram/default.htm>. An Application for Transfer Between IFQ and GAF is not required for the return of unharvested GAF by NMFS to the IFQ permit holder's account from which it was derived, 15 calendar days prior to the closing of the commercial halibut fishing season for that year.

(2) *Application timing.* The Regional Administrator will not approve any Application for Transfer Between IFQ and GAF before annual IFQ is issued for each year or after October 15. Applications to transfer GAF to IFQ will be accepted from August 1 through August 31 only.

(3) *Transfer due to court order, operation of law, or as part of a security agreement.* NMFS may approve an Application for Transfer Between IFQ and GAF to return GAF to the IFQ permit holder's account from which it derived pursuant to a court order, operation of law, or a security agreement.

(4) *Notification of decision on application.* (i) Persons who submit an Application for Transfer Between IFQ and GAF to the Regional Administrator will receive notification of the Regional Administrator's decision to approve or disapprove the application for transfer.

(ii) If an Application for Transfer Between IFQ and GAF is disapproved, NMFS will provide the reason(s) in writing by mail, posted on the date of that decision.

(iii) Disapproval of an Application for Transfer Between IFQ and GAF may be appealed pursuant to § 679.43 of this title.

(iv) The Regional Administrator will not approve a transfer between IFQ and GAF on an interim basis if an applicant appeals a disapproval of an Application for Transfer Between IFQ and GAF pursuant to § 679.43 of this title.

(5) *IFQ and GAF accounts.* (i) Accounts affected by either a Regional Administrator-approved Application for Transfer Between IFQ and GAF or the return of unharvested GAF to IFQ on or after 15 calendar days prior to the closing of the commercial halibut fishing season for that year will be adjusted on the date of approval or return. Applications for Transfer Between IFQ and GAF that are transfers of GAF to IFQ that have been approved by the Regional Administrator will be completed not earlier than September 1. Any necessary permits will be sent with the notification of the Regional Administrator's decision on the Application for Transfer Between IFQ and GAF.

(ii) Upon approval of an Application for Transfer Between IFQ and GAF for an initial transfer from IFQ to GAF, NMFS will establish a new GAF account for the GAF applicant's account and issue the resulting new GAF and IFQ permits. If a GAF account already exists from a previous transfer from the same IFQ account in the corresponding management area in that year, NMFS will modify the GAF recipient's GAF

account and the IFQ transferor's permit account and issue modified GAF and IFQ permits upon approval of an Application for Transfer Between IFQ and GAF.

(iii) On or after 15 calendar days prior to the closing of the commercial halibut fishing season, NMFS will convert unharvested GAF from a GAF permit holder's account back into IFQ equivalent pounds as specified in paragraph (c)(5)(ii)(E)(2) of this section, and return the resulting IFQ equivalent pounds to the IFQ permit holder's account from which the GAF were derived, unless prevented by regulations at 15 CFR part 904.

(C) *Complete application.* Applicants must submit a completed Application for Transfer Between IFQ and GAF to the Regional Administrator as instructed on the application. NMFS will notify applicants with incomplete applications of the specific information necessary to complete the application.

(D) *Application for Transfer Between IFQ and GAF approval criteria.* An Application for Transfer Between IFQ and GAF will not be approved until the Regional Administrator has determined that:

(1) The person applying to transfer IFQ to GAF or receive IFQ from a transfer of GAF to IFQ:

(i) Possesses at least one unit of halibut quota share (QS), as defined in § 679.2 of this title, in the applicable Commission regulatory area, either Area 2C or Area 3A, for which the transfer of IFQ to GAF is requested;

(ii) Has been issued an annual IFQ Permit, as defined in § 679.4(d)(1) of this title, for the Commission regulatory area corresponding to the person's QS holding, either Area 2C or Area 3A, resulting from that halibut QS; and

(iii) Has an IFQ permit holder's account with an IFQ amount equal to or greater than amount of IFQ to be transferred in the Commission regulatory area, either Area 2C or Area 3A, for which the transfer of IFQ to GAF is requested.

(2) The person applying to receive or transfer GAF possesses a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the Commission regulatory area (Area 2C or Area 3A) that corresponds to the IFQ permit area from or to which the IFQ will be transferred.

(3) For a transfer of IFQ to GAF:

(i) The transfer between IFQ and GAF must not cause the GAF permit issued to exceed the GAF use limits in paragraphs (c)(5)(iv)(H)(1) and (2) of this section;

(ii) The transfer must not cause the person applying to transfer IFQ to exceed the GAF use limit in paragraph (c)(5)(iv)(H)(3) of this section; and

(iii) There must be no fines, civil penalties, sanctions, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person or permit.

(4) If a Community Quota Entity (CQE), as defined in § 679.2 of this title, submits a "Community Quota Entity Application for Transfer Between Individual Fishing Quota (IFQ) and Guided Angler Fish (GAF)," the application will not be approved until the Regional Administrator has determined that:

(i) The CQE applying to transfer IFQ to GAF is eligible to hold IFQ on behalf of the eligible community in Commission regulatory area 2C or 3A designated in Table 21 to 50 CFR part 679;

(ii) The CQE applying to transfer IFQ to GAF has received notification of approval of eligibility to receive IFQ for that community as described in paragraph § 679.41(d)(1) of this title;

(iii) The CQE applying to receive GAF from a Commission regulatory area 2C or 3A IFQ permit holder holds one or more charter halibut permits or community charter halibut permits for the corresponding area; and

(iv) The CQE applying to transfer between IFQ and GAF has submitted a complete annual report(s) as required by § 679.5(l)(8) of this title.

(E) *Conversion between IFQ and GAF—(1) General.* An annual conversion factor will be calculated to convert between net pounds (whole number, no decimal points) of halibut IFQ and number(s) of GAF (whole number, no decimal points) for Area 2C and Area 3A. This conversion factor will be posted on the NMFS Alaska Region Web site before the beginning of each commercial halibut fishing season.

(2) *Conversion calculation.* The net pounds of IFQ transferred to or from an IFQ permit holder in Commission regulatory area 2C or 3A will be equal to the number(s) of GAF transferred to or from the GAF account of a GAF permit holder in the corresponding area, multiplied by the estimated average net weight determined as follows. For the first calendar year after the effective date of this rule, the average net weight will be estimated for all halibut harvested by charter vessel anglers during the most recent year without a size limit in effect. After the first calendar year after the effective date of this rule, the average net weight will be estimated from the average length of

GAF retained in that area during the previous year as reported to RAM via the GAF electronic reporting system. If no GAF were harvested in a year, the conversion factor would be calculated using the same method as for the first calendar year after the effective date of this rule. NMFS will round up to the nearest whole number (no decimals) when transferring IFQ to GAF and when transferring GAF to IFQ. Expressed algebraically, the conversion formula is: IFQ net pounds = (number of GAF × average net weight)

(3) The total number of net pounds converted from unharvested GAF and transferred to the IFQ permit holder's account from which it derived cannot exceed the total number of net pounds NMFS transferred from the IFQ permit holder's account to the GAF permit holder's account for that area in the current year.

(iii) *Guided Angler Fish (GAF) permit—(A) General.* (1) A GAF permit authorizes a charter vessel angler to catch and retain GAF in the specified Commission regulatory area, subject to the limits in paragraphs (c)(5)(iv)(A) through (K) of this section, during a charter vessel fishing trip authorized by the charter halibut permit, community charter halibut permit, or military charter halibut permit that designated on the GAF permit.

(2) A GAF permit authorizes a charter vessel angler to catch and retain GAF in the specified Commission regulatory area from the time of permit issuance until any of the following occurs:

(i) The amount of GAF in the GAF permit holder's account is zero;

(ii) The permit expires at 11:59 p.m. (Alaska local time) on the day prior to 15 days prior to the end of the commercial halibut fishing season for that year;

(iii) NMFS replaces the GAF permit with a modified GAF permit following NMFS approval of an Application for Transfer Between IFQ and GAF; or

(iv) The GAF permit is revoked or suspended under 15 CFR part 904.

(3) A GAF permit is issued for use in a Commission regulatory area (2C or 3A) to the person who holds a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the corresponding Commission regulatory area. Regulations governing issuance, transfer, and use of charter halibut permits are located in § 300.67.

(4) A GAF permit is assigned to only one charter halibut permit, community charter halibut permit, or military charter halibut permit held by the GAF permit holder in the corresponding Commission regulatory area (2C or 3A).

(5) A legible copy of a GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit appropriate for the Commission regulatory area (2C or 3A) must be carried on board the vessel used to harvest GAF at all times that such fish are retained on board and must be presented for inspection on request of any authorized officer.

(6) No person may alter, erase, mutilate, or forge a GAF permit or document issued under this section (§ 300.65(c)(5)(iii)). Any such permit or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(7) GAF permit holders must retain GAF permit(s) for two years after the end of the fishing year for which the GAF permit(s) was issued and make the GAF permit available for inspection upon the request of an authorized officer (as defined in Commission regulations).

(B) *Issuance.* The Regional Administrator will issue a GAF permit upon approval of an Application to Transfer Between IFQ and GAF.

(C) *Transfer.* GAF authorized by a GAF permit under this section (§ 300.65(c)(5)(iii)) are not transferable to another GAF permit, except as provided under paragraph (c)(5)(ii) of this section.

(iv) *GAF use restrictions.* (A) A charter vessel angler may harvest GAF only on board a vessel on which the operator has on board a valid GAF permit and the valid charter halibut permit, community charter halibut permit, or military charter halibut permit assigned to the GAF permit for the area of harvest.

(B) The total number of GAF on board a vessel cannot exceed the number of unharvested GAF in the GAF permit holder's GAF account at the time of harvest.

(C) The total number of halibut retained by a charter vessel angler harvesting GAF cannot exceed the sport fishing daily bag limit in effect for unguided sport anglers at the time of harvest adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

(D) Retained GAF are not subject to any length limit implemented by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62, if applicable.

(E) Each charter vessel angler retaining GAF must comply with the halibut possession requirements adopted by the Commission as annual

management measures and published in the **Federal Register** as required in § 300.62.

(F) The charter vessel guide must ensure that each charter vessel angler complies with (c)(5)(iv)(A) through (E) of this section.

(G) The charter vessel guide must immediately remove the tips of the upper and lower lobes of the caudal (tail) fin to mark all halibut caught and retained as GAF.

(H) Except as provided in paragraph (c)(5)(iv)(I) of this section, during the halibut sport fishing season adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62, the following GAF use and IFQ transfer limits shall apply:

(1) no more than 400 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit or community charter halibut permit endorsed for six (6) or fewer charter vessel anglers in a year,

(2) no more than 600 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit endorsed for more than six (6) charter vessel anglers in a year; and

(3) In Commission regulatory area 2C, a maximum of 1,500 pounds or ten (10) percent, whichever is greater, of the start year fishable IFQ pounds for an IFQ permit, may be transferred from IFQ to GAF. In Commission regulatory area 3A, a maximum of 1,500 pounds or fifteen (15) percent, whichever is greater, of the start year fishable IFQ pounds for an IFQ permit, may be transferred from IFQ to GAF. Start year fishable pounds is the sum of IFQ equivalent pounds, as defined in § 679.2 of this title, for an area, derived from QS held, plus or minus adjustments made to that amount pursuant to § 679.40(d) and (e) of this title.

(I) The halibut QS equivalent of net pounds of halibut IFQ that is transferred to GAF is included in the computation of halibut QS use caps in § 679.42(f)(1)(i) and (ii) of this title.

(J) A CHP holder receiving GAF from a CQE is subject to § 679.42(f)(6) of this title. For a CHP holder who receives GAF from a CQE, the net poundage equivalent of all halibut IFQ received as GAF is included in the computation of that person's IFQ halibut holdings in § 679.42(f)(6) of this title.

(K) Applicability of GAF use restrictions to CQEs. The GAF use restrictions in paragraph (c)(5)(iv)(H) of this section do not apply if:

(1) A CQE transfers IFQ as GAF to a GAF permit that is assigned to one or more charter halibut permits held by

that CQE or community charter halibut permits held by that CQE;

(2) A CQE transfers IFQ as GAF to another CQE holding one or more charter halibut permits or community charter halibut permits; or

(3) A CQE transfers IFQ as GAF to a GAF permit that is assigned to a charter halibut permit held by an eligible community resident (as defined at § 679.2) of that CQE community, as defined for purposes of the Catch Sharing Plan for Commission regulatory areas 2C and 3A in § 679.2 of this title, holding one or more charter halibut permits.

(d) *Charter vessels in Commission regulatory area 2C and 3A*—(1) *General requirements*—(i) *Logbook submission.* For a charter vessel fishing trip during which halibut were caught and retained on or after the first Monday in April and on or before December 31, Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the ADF&G and postmarked or received no later than 14 calendar days after the Monday of the fishing week (as defined in 50 CFR 300.61) in which the halibut were caught and retained. Logbook sheets for a charter vessel fishing trip during which halibut were caught and retained on January 1 through the first Sunday in April, must be submitted to the ADF&G and postmarked or received no later than the second Monday in April.

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d). The person to whom the Alaska Department of Fish and Game issues the Saltwater Sport Fishing Charter Trip Logbook is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d).

(2) *Retention and inspection of logbook.* The person to whom the Alaska Department of Fish and Game issues the Saltwater Sport Fishing Charter Trip Logbook and who retains halibut is required to:

(i) Retain the logbook for 2 years after the end of the fishing year for which the logbook was issued, and

(ii) Make the logbook available for inspection upon the request of an authorized officer (as defined in Commission regulations).

(3) *Charter vessel guide and crew restriction in Commission regulatory areas 2C and 3A.* A charter vessel guide, charter vessel operator, or crew member may not catch and retain halibut during a charter vessel fishing trip in Commission regulatory area 2C or 3A

while on a vessel with charter vessel anglers on board.

(4) *Recordkeeping and reporting requirements in Commission regulatory area 2C and 3A*—(i) *General requirements*. Each charter vessel angler and charter vessel guide on board a vessel in Commission regulatory area 2C or 3A must comply with the following recordkeeping and reporting requirements, except as specified in paragraph (d)(4)(ii)(C) of this section, by the end of the calendar day or by the end of the charter vessel fishing trip, whichever comes first, unless otherwise specified:

(ii) *Logbook reporting requirements*—(A) *Charter vessel angler signature requirement*. Each charter vessel angler who retains halibut caught in Commission regulatory area 2C or 3A must acknowledge that his or her name, license number (if required), and number of halibut retained (kept) are recorded correctly by signing the Alaska Department of Fish and Game Saltwater Charter Logbook data sheet on the line that corresponds to the angler's information.

(B) *Charter vessel guide requirements*. If halibut were caught and retained in Commission regulatory area 2C or 3A, the charter vessel guide must record the following information (see paragraphs (d)(4)(ii)(B)(1) through (10) of this section) in the Alaska Department of Fish and Game Saltwater Charter Logbook:

(1) *Guide license number*. The Alaska Department of Fish and Game sport fishing guide license number held by the charter vessel guide who certified the logbook data sheet.

(2) *Date*. Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips were taken on the same day. A separate logbook data sheet is required for each calendar day that halibut are caught and retained during a multi-day trip. A separate logbook sheet is also required if more than one charter halibut permit is used on a trip.

(3) *Charter halibut permit (CHP) number*. The NMFS CHP number(s) authorizing charter vessel anglers on board the vessel to catch and retain halibut.

(4) *Guided Angler Fish (GAF) permit number*. The NMFS GAF permit number(s) authorizing charter vessel anglers on board the vessel to harvest GAF.

(5) *Statistical area*. The primary Alaska Department of Fish and Game six-digit statistical area code in which halibut were caught and retained.

(6) *Angler sport fishing license number and printed name*. Before a charter vessel fishing trip begins, record for the first and last name of each paying or non-paying charter vessel angler on board that will fish for halibut. For each angler required to be licensed, record the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number. For youth anglers not required to be licensed, record the word "youth" in place of the license number.

(7) *Number of halibut retained*. For each charter vessel angler, record the total number of non-GAF halibut caught and kept.

(8) *Number of GAF retained*. For each charter vessel angler, record the total number of GAF kept.

(9) *Guide signature*. The charter vessel guide acknowledges that the recorded information is correct by signing the logbook data sheet.

(10) *Angler signature*. The charter vessel guide is responsible for ensuring that charter vessel anglers that retain halibut comply with the signature requirements at paragraph (d)(4)(ii)(A) of this section.

(iii) *GAF reporting requirements*—(A) *General*. (1) Upon retention of a GAF halibut, the charter vessel guide must immediately record on the GAF permit the date that the fish was caught and retained and the total length of that fish as described in paragraph (d)(4)(iii)(D)(6) of this section.

(2) In addition to the recordkeeping and reporting requirements in paragraphs (d)(4)(i) and (ii) of this section, a GAF permit holder must use the NMFS-approved electronic reporting system on the Alaska Region Web site at <http://alaskafisheries.noaa.gov/> to submit a GAF landings report.

(3) A GAF permit holder must submit a GAF landings report by 11:59 p.m. (Alaska local time) on the last calendar day of a fishing trip for each day on which a charter vessel angler retained GAF authorized by the GAF permit held by that permit holder.

(4) If a GAF permit holder is unable to submit a GAF landings report due to hardware, software, or Internet failure for a period longer than the required reporting time, or a correction must be made to information already submitted, the GAF permit holder must contact NOAA Office of Law Enforcement, Juneau, AK, at 800-304-4846 (Select Option 1).

(B) *Electronic Reporting of GAF*. A GAF permit holder must obtain, at his or her own expense, the technology to submit GAF landing reports to the

NMFS-approved reporting system for GAF landings.

(C) *NMFS-Approved Electronic Reporting System*. The GAF permit holder agrees to the following terms (see paragraphs (d)(4)(iii)(C)(1) through (3) of this section):

(1) To use any NMFS online service or reporting system only for authorized purposes;

(2) To safeguard the NMFS Person Identification Number and password to prevent their use by unauthorized persons; and

(3) To accept the responsibility of and acknowledge compliance with § 300.4(a) and (b), § 300.65(d), and § 300.66(p) and (q).

(D) *Information entered for each GAF caught and retained*. The GAF permit holder must enter the following information for each GAF retained under the authorization of the permit holder's GAF permit into the NMFS-approved electronic reporting system (see paragraphs (d)(4)(iii)(D)(1) through (8) of this section) by 11:59 p.m. (Alaska local time) on the last day of a charter fishing trip in which a charter vessel angler retained GAF:

(1) Logbook number from the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook.

(2) Vessel identification number for vessel on which GAF were caught and retained:

(i) State of Alaska issued boat registration (AK number), or

(ii) U.S. Coast Guard documentation number.

(3) GAF permit number under which GAF were caught and retained.

(4) Alaska Department of Fish and Game sport fishing guide license number held by the charter vessel guide who certified the logbook data sheet.

(5) Number of GAF caught and retained.

(6) Lengths of GAF caught and retained. Halibut lengths are measured in inches in a straight line from the anterior-most tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

(7) Community charter halibut permit only: Community or Port where the charter vessel fishing trip began (i.e., where charter vessel anglers boarded the vessel).

(8) Community charter halibut permit only: Community or Port where the charter vessel fishing trip ended (i.e., where charter vessel anglers or fish were offloaded from the vessel).

(E) *Properly reported landing*. (1) All GAF harvested on board a vessel must be debited from the GAF permit holder's account under which the GAF were retained.

(2) A GAF landing confirmation number issued by the NMFS-approved electronic reporting system and recorded on the GAF permit used to record the dates and lengths of retained GAF, as required in paragraph (d)(4)(iii)(A)(1) of this section, constitutes confirmation that the GAF permit holder's GAF landing is properly reported and the GAF permit holder's account is properly debited.

* * * * *

■ 4. In § 300.66:

■ a. Redesignate paragraphs (i) through (v) as paragraphs (j) through (w), respectively;

■ b. Revise paragraph (h) introductory text;

■ c. Add new paragraph (i); and

■ d. Revise newly redesignated paragraphs (n) and (s) through (w).

The revisions and addition read as follows:

§ 300.66 Prohibitions.

* * * * *

(h) Conduct subsistence fishing for halibut and commercial fishing for halibut from the same vessel on the same calendar day, or possess on board a vessel, halibut harvested while subsistence fishing with halibut harvested while commercial fishing or sport fishing, as defined in § 300.61, except that persons authorized to conduct subsistence fishing under § 300.65(g), and who land their total annual harvest of halibut:

* * * * *

(i) Conduct commercial and sport fishing for halibut, as defined in § 300.61, from the same vessel on the same calendar day.

* * * * *

(n) Exceed any of the harvest or gear limitations specified at § 300.65(c)(5) or adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

* * * * *

(s) Be an operator of a vessel in Commission regulatory area 2C or 3A without an original valid charter halibut permit for the regulatory area in which the vessel is operating when one or more charter vessel anglers are on board that are catching and retaining halibut.

(t) Be an operator of a vessel in Commission regulatory area 2C or 3A with more charter vessel anglers on board catching and retaining halibut than the total angler endorsement number specified on the charter halibut permit or permits on board the vessel.

(u) Be an operator of a vessel in Commission regulatory area 2C or 3A with more charter vessel anglers on board catching and retaining halibut than the angler endorsement number specified on the community charter halibut permit or permits on board the vessel.

(v) Be an operator of a vessel on which one or more charter vessel anglers on board are catching and retaining halibut in Commission regulatory areas 2C and 3A during one charter vessel fishing trip.

(w) Be an operator of a vessel in Commission regulatory area 2C or 3A with one or more charter vessel anglers on board that are catching and retaining halibut without having on board the vessel a State of Alaska Department of Fish and Game Saltwater Charter Logbook that specifies the following:

(1) The person named on the charter halibut permit or permits being used on board the vessel;

(2) The charter halibut permit or permits number(s) being used on board the vessel; and

(3) The name and State issued boat registration (AK number) or U.S. Coast Guard documentation number of the vessel.

■ 5. In § 300.67:

■ a. Redesignate paragraphs (i)(2)(v) and (vi) as paragraphs (i)(2)(vi) and (vii), respectively; and

■ b. Add new paragraph (i)(2)(v) to read as follows:

§ 300.67 Charter halibut limited access program.

* * * * *

(i) * * *

(2) * * *

(v) The GAF permit is not assigned to a charter halibut permit for which the GAF account contains unharvested GAF, pursuant to § 300.65 (c)(5)(iii)(A)(3) and (4);

* * * * *

■ 6. Add Tables 1 through 4 to subpart E of part 300 to read as follows:

TABLE 1—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL COMMERCIAL ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT FOR HALIBUT

If the Area 2C annual combined catch limit (CCL) in net pounds is:	then the Area 2C annual commercial allocation is:
<5,000,000 lb	81.7% of the Area 2C CCL.
≥5,000,000 and ≤5,755,000 lb	the Area 2C CCL minus a fixed 915,000 lb allocation to the charter halibut fishery.
>5,755,000 lb	84.1% of the Area 2C CCL.

TABLE 2—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 3A ANNUAL COMMERCIAL ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT FOR HALIBUT

If the Area 3A annual combined catch limit (CCL) in net pounds is:	then the Area 3A annual commercial allocation is:
<10,000,000 lb	81.1% of the Area 3A CCL.
≥10,000,000 and ≤10,800,000 lb	the Area 3A CCL minus a fixed 1,890,000 lb allocation to the charter halibut fishery.
>10,800,000 and ≤20,000,000 lb	82.5% of the Area 3A CCL.
>20,000,000 and ≤25,000,000 lb	the Area 3A CCL minus a fixed 3,500,000 lb allocation to the charter halibut fishery.
>25,000,000 lb	86.0% of the Area 3A CCL.

TABLE 3—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT

If the Area 2C annual combined catch limit for halibut in net pounds is:	then the Area 2C annual charter allocation is:
<5,000,000 lb	18.3% of the Area 2C CCL.

TABLE 3—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT—Continued

If the Area 2C annual combined catch limit for halibut in net pounds is:	then the Area 2C annual charter allocation is:
>5,000,000 and ≤5,755,000 lb	915,000 lb.
>5,755,000 lb	15.9% of the Area 2C CCL.

TABLE 4—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 3A ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT

If the Area 3A annual combined catch limit (CCL) for halibut in net pounds is:	then the Area 3A annual charter allocation is:
<10,000,000 lb	18.9% of the Area 3A annual combined catch limit.
≥10,000,000 and ≤10,800,000 lb	1,890,000 lb.
>10,800,000 and ≤20,000,000 lb	17.5% of the Area 3A annual combined catch limit.
>20,000,000 and ≤25,000,000 lb	3,500,000 lb.
>25,000,000 lb	14.0% of the Area 3A annual combined catch limit.

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 7. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

■ 8. In § 679.2, revise the definitions of “Eligible community resident”, “IFQ equivalent pound(s)”, “IFQ fee liability”, and “IFQ standard ex-vessel value” to read as follows:

§ 679.2 Definitions.

* * * * *

Eligible community resident means:

(1) For purposes of the IFQ Program, any individual who:

- (i) Is a citizen of the United States;
- (ii) Has maintained a domicile in a rural community listed in Table 21 to this part for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country, except that residents of the Village of Seldovia shall be considered to be eligible community residents of the City of Seldovia for the purposes of eligibility to lease IFQ from a CQE; and
- (iii) Is an IFQ crew member.

(2) For purposes of the Area 2C and Area 3A catch sharing plan (CSP) in

§ 300.65(c) of this title, means any individual or non-individual entity who:

- (i) Holds a charter halibut permit as defined in § 300.61 of this title;
- (ii) Has been approved by the Regional Administrator to receive GAF, as defined in § 300.61 of this title, from a CQE in a transfer between IFQ and GAF pursuant to § 300.65(c)(5)(ii) of this title; and

(iii) Begins or ends every charter vessel fishing trip, as defined in § 300.61 of this title, authorized by the charter halibut permit issued to that person, and on which halibut are retained, at a location(s) within the boundaries of the community represented by the CQE from which the GAF were received. The geographic boundaries of the eligible community will be those defined by the United States Census Bureau.

* * * * *

IFQ equivalent pound(s) means the weight amount, recorded in pounds and calculated as round weight for sablefish and headed and gutted weight for halibut for an IFQ landing or for estimation of the fee liability of halibut landed as guided angler fish (GAF), as defined in § 300.61 of this title. Landed GAF are converted to IFQ equivalent

pounds as specified in § 300.65(c) of this title.

IFQ fee liability means that amount of money for IFQ cost recovery, in U.S. dollars, owed to NMFS by an IFQ permit holder as determined by multiplying the appropriate standard ex-vessel value or, for non-GAF landings, the actual ex-vessel value of his or her IFQ halibut or IFQ sablefish landing(s), by the appropriate IFQ fee percentage and the appropriate standard ex-vessel value of landed GAF derived from his or her IFQ by the appropriate IFQ fee percentage.

* * * * *

IFQ standard ex-vessel value means the total U.S. dollar amount of IFQ halibut or IFQ sablefish landings as calculated by multiplying the number of landed IFQ equivalent pounds plus landed GAF in IFQ equivalent pounds by the appropriate IFQ standard price determined by the Regional Administrator.

* * * * *

■ 9. In § 679.4, add paragraph (a)(1)(xv) and revise paragraph (a)(2) to read as follows:

§ 679.4 Permits.

- (a) * * *
- (1) * * *

If program permit type is:	Permit is in effect from issue date through the end of:	For more information, see * * *
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(xv) Guided sport halibut fishery permits:		
(A) Charter halibut permit	Indefinite	§ 300.67 of this title.
(B) Community charter halibut permit	Indefinite	§ 300.67 of this title.
(C) Military charter halibut permit	Indefinite	§ 300.67 of this title.
(D) Guided Angler Fish (GAF) permit	Until expiration date shown on permit	§ 300.65 of this title.

(2) *Permit and logbook required by participant and fishery.* For the various types of permits issued, refer to § 679.5 for recordkeeping and reporting requirements. For subsistence and GAF permits, refer to § 300.65 of this title for recordkeeping and reporting requirements.

* * * * *

■ 10. In § 679.5, revise paragraphs (l)(7)(i) and (ii) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(l) * * *
(7) * * *

(i) *IFQ Registered Buyer Ex-vessel Value and Volume Report—(A) Requirement.* An IFQ Registered Buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Registered Buyer Ex-vessel Value and Volume Report as described in this paragraph (l) and as provided by NMFS for each reporting period, as described at paragraph (1)(7)(i)(E), in which the Registered Buyer receives IFQ fish.

(B) *Due date.* A complete IFQ Registered Buyer Ex-vessel Value and Volume Report must be postmarked or received by the Regional Administrator by October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish.

(C) *Completed application.* NMFS will process an IFQ Registered Buyer Ex-vessel Value and Volume Report provided that a paper or electronic report is completed by the Registered Buyer, with all applicable fields accurately filled in, and all required additional documentation is attached.

(1) *Certification, Electronic submittal.* NMFS ID and password of the IFQ Registered Buyer; or

(2) *Certification, Non-electronic submittal.* Printed name and signature of the individual submitting the IFQ Registered Buyer Ex-vessel Value and Volume Report on behalf of the IFQ Registered Buyer, and date of signature.

(D) *Submission address.* The IFQ Registered Buyer must complete an IFQ Registered Buyer Ex-vessel Value and Volume Report and submit by mail to: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668; by fax to: (907) 586–7354; or electronically at <http://alaskafisheries.noaa.gov>. Report forms are available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at (800) 304–4846, Option 2.

(E) *Reporting period.* The reporting period of the IFQ Registered Buyer Ex-vessel Value and Volume Report shall extend from October 1 through September 30 of the following year, inclusive.

(ii) *IFQ Permit Holder Fee Submission Form—(A) Applicability.* An IFQ permit holder who holds an IFQ permit against which a landing was made must submit to NMFS a complete IFQ Permit Holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal.* A complete IFQ Permit Holder Fee Submission Form must be postmarked or received by the Regional Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Completed application.* NMFS will process an IFQ Permit Holder Fee Submission Form provided that a paper or electronic form is completed by the permit holder, with all applicable fields accurately filled in, and all required additional documentation is attached.

(D) *IFQ landing summary and estimated fee liability.* NMFS will provide to an IFQ permit holder an IFQ Landing and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with paragraph (l)(7)(ii)(E) of this section. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(E) *Revised fee liability calculation.* To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(F) *Documentation.* If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate documentation by the 30th day after the date of such request. Examples of such documentation regarding initial sales transactions of IFQ landings include valid fish tickets, sales receipts, or check stubs that clearly identify the IFQ landing amount, species, date, time, and ex-vessel value or price.

(G) *Reporting period.* The reporting period of the IFQ Permit Holder Fee Submission Form shall extend from

January 1 to December 31 of the year prior to the January 31 due date.

* * * * *

■ 11. In § 679.40, revise the introductory text and paragraph (c)(1) to read as follows:

§ 679.40 Sablefish and halibut QS.

The Regional Administrator shall annually divide the annual commercial fishing catch limit of halibut as defined in § 300.61 of this title and published in the **Federal Register** pursuant to § 300.62 of this title, among qualified halibut quota share holders. The Regional Administrator shall annually divide the TAC of sablefish that is apportioned to the fixed gear fishery pursuant to § 679.20, minus the CDQ reserve, among qualified sablefish quota share holders.

* * * * *

(c) *Calculation of annual IFQ allocation—(1) General.* (i) The annual allocation of halibut IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the annual commercial catch limit as defined in § 300.61 of this title, after adjustment for purposes of the Western Alaska CDQ Program, and that person's QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person's IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person's IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the annual halibut IFQ allocation formula is as follows:

$$IFQ_{pa} = [(fixed\ gear\ TAC_a - CDQ\ reserve_a) \times (QS_{pa}/QS\ pool_a)] - \text{overage adjustment of } IFQ_{pa} + \text{underage adjustment of } IFQ_{pa}$$

(ii) The annual allocation of sablefish IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the TAC of sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska CDQ Program) and that person's QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person's IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person's IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the annual IFQ allocation formula is as follows:

$$IFQ_{pa} = [(fixed\ gear\ TAC_a - CDQ\ reserve_a) \times (QS_{pa}/QS\ pool_a)] - \text{overage adjustment of } IFQ_{pa} + \text{underage adjustment of } IFQ_{pa}$$

* * * * *

■ 12. In § 679.41, add paragraph (a)(3) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

(a) * * *

(3) Any transaction involving a transfer between IFQ and guided angler fish (GAF), as defined in § 300.61 of this title, is governed by regulations in § 300.65(c) of this title.

* * * * *

■ 13. In § 679.42 revise paragraphs (f)(1)(i) and (ii) and (f)(6) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(f) * * *

(1) * * *

(i) *IFQ regulatory Area 2C.* 599,799 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in § 300.61 of this title.

(ii) *IFQ regulatory area 2C, 3A, and 3B.* 1,502,823 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in § 300.61 of this title.

* * * * *

(6) No individual that receives IFQ derived from halibut QS held by a CQE, including GAF as defined in § 300.61 of this title, may hold, individually or collectively, more than 50,000 pounds (22.7 mt) of IFQ halibut, including IFQ halibut received as GAF, derived from any halibut QS source.

* * * * *

■ 14. In § 679.45:

■ a. Revise paragraphs (a)(1) through (3), (a)(4)(i) through (iii), and (b);

■ b. Remove and reserve paragraph (c); and

■ c. Revise the paragraph (d)(2) heading and paragraphs (d)(2)(i)(A) through (C), (d)(2)(ii), (d)(3)(i), (d)(4), (e), and (f).

The revisions read as follows:

§ 679.45 IFQ cost recovery program.

(a) * * *

(1) *Responsibility.* An IFQ permit holder is responsible for cost recovery fees for landings of his or her IFQ halibut and sablefish, including any halibut landed as guided angler fish (GAF), as defined in § 300.61 of this title, derived from his or her IFQ accounts. An IFQ permit holder must comply with the requirements of this section.

(2) *IFQ Fee Liability Determination—*(i) *General.* IFQ fee liability means a cost recovery liability based on the value of all landed IFQ and GAF derived from the permit holder's IFQ permit(s).

(A) Each year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ equivalent pounds landed as IFQ and GAF as part of the IFQ Landing and

Estimated Fee Liability page described at § 679.5(l)(7)(ii)(D).

(B) The summary will include information on IFQ and GAF landings and an estimated IFQ fee liability using the IFQ standard ex-vessel value for IFQ and GAF landings. For fee purposes:

(1) Landings of GAF in IFQ regulatory area 2C or 3A are converted to IFQ equivalent pounds and assessed at the IFQ regulatory area 2C or 3A IFQ standard ex-vessel value.

(2) GAF that is returned to the IFQ permit holder's account pursuant to § 300.65(c) of this title, and subsequently landed as IFQ during the IFQ fishing year, is included in the IFQ fee liability and subject to fee assessment as IFQ equivalent pounds.

(C) The IFQ permit holder must either accept NMFS' estimate of the IFQ fee liability or revise NMFS' estimate of the IFQ fee liability using the IFQ Permit Holder Fee Submission Form described at § 679.5(l)(7)(ii), except that the standard ex-vessel value used to determine the fee liability for GAF is not subject to challenge. If the IFQ permit holder revises NMFS' estimate of his or her IFQ fee liability, NMFS may request in writing that the permit holder submit documentation establishing the factual basis for the revised calculation. If the IFQ permit holder fails to provide adequate documentation on or by the 30th day after the date of such request, NMFS will determine the IFQ permit holder's IFQ fee liability based on standard ex-vessel values.

(ii) *Value assigned to GAF.* The IFQ fee liability is computed from all net pounds allocated to the IFQ permit holder that are landed, including IFQ landed as GAF.

(A) NMFS will determine the IFQ equivalent pounds of GAF landed in IFQ regulatory area 2C or 3A that are derived from the IFQ permit holder's account.

(B) The IFQ equivalent pounds of GAF landed in IFQ regulatory area 2C or 3A are multiplied by the standard ex-vessel value computed for that area to determine the value of IFQ landed as GAF.

(iii) The value of IFQ landed as GAF is added to the value of the IFQ permit holder's landed IFQ, and the sum is multiplied by the annual IFQ fee percentage to estimate the IFQ permit holder's IFQ fee liability.

(3) *Fee Collection.* An IFQ permit holder with IFQ and/or GAF landings is responsible for collecting his or her own fee during the calendar year in which the IFQ fish and/or GAF are landed.

(4) * * *

(i) *Payment due date.* An IFQ permit holder must submit his or her IFQ fee

liability payment(s) to NMFS at the address provided at paragraph (a)(4)(iii) of this section not later than January 31 of the year following the calendar year in which the IFQ and/or GAF landings were made.

(ii) *Payment recipient.* Make payment payable to IFQ Fee Coordinator, OMI.

(iii) *Payment address.* Mail payment and related documents to: Administrator, Alaska Region, NMFS, Attn: IFQ Fee Coordinator, Office of Operations, Management, and Information, P.O. Box 21668, Juneau, AK 99802-1668; submit by fax to (907) 586-7354; or submit electronically through the NMFS Alaska Region Home Page at <http://alaskafisheries.noaa.gov>. If paying by credit card, ensure that all requested card information is provided.

* * * * *

(b) *IFQ ex-vessel value determination and use—*(1) *General.* An IFQ permit holder must use either the IFQ actual ex-vessel value or the IFQ standard ex-vessel value when determining the IFQ fee liability based on ex-vessel value, except that landed GAF are assessed at the standard values derived by NMFS. An IFQ permit holder must base all IFQ fee liability calculations on the ex-vessel value that correlates to the landed IFQ in IFQ equivalent pounds.

(2) *IFQ actual ex-vessel value.* An IFQ permit holder that uses actual ex-vessel value, as defined in § 679.2, to determine IFQ fee liability for landed IFQ must document actual ex-vessel value for each IFQ permit. The actual ex-vessel value cannot be used to assign value to halibut landed as GAF.

(3) *IFQ standard ex-vessel value—*(i) *Use of standard price.* An IFQ permit holder that uses standard ex-vessel value to determine the IFQ fee liability, as part of a revised IFQ fee liability submission, must use the corresponding standard price(s) as published in the **Federal Register**.

(ii) All landed GAF must be valued using the standard ex-vessel value for the year and for the IFQ regulatory area of harvest—Area 2C or Area 3A.

(iii) *Duty to publish list.* Each year the Regional Administrator will publish a list of IFQ standard prices in the **Federal Register** during the last quarter of the calendar year. The IFQ standard prices will be described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and sablefish landings made during the current calendar year.

(iv) *Effective duration.* The IFQ standard prices will remain in effect until revised by the Regional Administrator by notification in the **Federal Register** based upon new information of the type set forth in this

section. IFQ standard prices published in the **Federal Register** by NMFS shall apply to all landings made in the same calendar year as the IFQ standard price publication and shall replace any IFQ standard prices previously provided by NMFS that may have been in effect for that same calendar year.

(v) *Determination*. NMFS will apply the standard price, aggregated IFQ regulatory area 2C or 3A, to GAF landings. NMFS will calculate the IFQ standard prices to reflect, as closely as possible by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided in the IFQ Registered Buyer Ex-Vessel Value and Volume Report as described in § 679.5(l)(7)(i). The Regional Administrator will base IFQ standard prices on the following types of information:

- (A) Landed net pounds by IFQ species, port-group, and month;
- (B) Total ex-vessel value by IFQ species, port-group, and month; and
- (C) Price adjustments, including IFQ retro-payments.

* * * * *

(d) * * *

(2) *Calculating the fee percentage*.

* * *

(i) * * *

- (A) The IFQ and GAF landings to which the IFQ fee will apply;
- (B) The ex-vessel value of that landed IFQ and GAF; and
- (C) The costs directly related to the management and enforcement of the IFQ program, which include GAF costs.

(ii) *Methodology*. NMFS must use the following equation to determine the fee percentage:

$$100 \times (\text{DPC}/\text{V})$$

Where:

“DPC” is the direct program costs for the IFQ fishery for the previous fiscal year, and

“V” is the ex-vessel value determined for IFQ landed as commercial catch or as GAF subject to the IFQ fee liability for the current year.

(3) * * *

(i) *General*. During or before the last quarter of each calendar year, NMFS shall publish the IFQ fee percentage in the **Federal Register**. NMFS shall base any IFQ fee liability calculations on the factors and methodology in paragraph (d)(2) of this section.

* * * * *

(4) *Applicable percentage*. The IFQ permit holder must use the IFQ fee percentage in effect for the year in

which the IFQ and GAF landings are made to calculate his or her fee liability for such landed IFQ and GAF. The IFQ permit holder must use the IFQ fee percentage in effect at the time an IFQ retro-payment is received by the IFQ permit holder to calculate his or her IFQ fee liability for the IFQ retro-payment.

(e) *Non-payment of fee*. (1) If an IFQ permit holder does not submit a complete IFQ Permit Holder Fee Submission Form and corresponding payment by the due date described in § 679.45(a)(4), the Regional Administrator will:

(i) *Send Initial Administrative Determination (IAD)*. Send an IAD to the IFQ permit holder stating that the IFQ permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the IFQ permit holder pursuant to § 679.45(a)(2), is the amount of IFQ fee liability due from the IFQ permit holder. An IFQ permit holder who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(ii) *Disapprove transfer*. Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder in accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS may return unused GAF to the IFQ permit holder's account from which it was derived on or after the automatic GAF return date.

(2) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, as described in paragraph (f) of this section, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid.

(3) If payment is not received on or before the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(f) *Underpayment of IFQ fee*. (1) When an IFQ permit holder has incurred a fee liability and made a timely payment to NMFS of an amount less than the NMFS estimated IFQ fee liability, the Regional Administrator will review the IFQ Permit Holder Fee Submission Form and related documentation submitted by the IFQ permit holder. If the Regional Administrator determines that the IFQ permit holder has not paid a sufficient amount, the Regional Administrator will:

(i) *Disapprove transfer*. Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder in

accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS may return unused GAF to the IFQ permit holder's account from which it was derived 15 days prior to the closing of the commercial halibut fishing season each year.

(ii) *Notify permit holder*. Notify the IFQ permit holder by letter that an insufficient amount has been paid and that the IFQ permit holder has 30 days from the date of the letter to either pay the amount determined to be due or provide additional documentation to prove that the amount paid was the correct amount.

(2) After the expiration of the 30-day period, the Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder in support of his or her payment. If the Regional Administrator determines that the additional documentation does not meet the IFQ permit holder's burden of proving his or her payment is correct, the Regional Administrator will send the permit holder an IAD indicating that the permit holder did not meet the burden of proof to change the IFQ fee liability as calculated by the Regional Administrator based upon the IFQ standard ex-vessel value. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the permit holder. An IFQ permit holder who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(3) If the permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action.

(4) If the IAD is appealed and the final agency action is a determination that additional sums are due from the IFQ permit holder, the IFQ permit holder must pay any IFQ fee amount determined to be due not later than 30 days from the issuance of the final agency action.

(5) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid.

(6) If payment is not received on or before the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

* * * * *

[FR Doc. 2013-15543 Filed 6-27-13; 8:45 am]

BILLING CODE 3510-22-P

2. Entries by Canadian Natural Resources Limited
3. Comparisons to Normal Value
4. Product Comparisons
5. Date of Sale
6. Constructed Export Price
7. Normal Value
8. Allegation of Sales-Below Cost of Production
9. Currency Conversion

[FR Doc. 2013-16576 Filed 7-9-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Role of Tournament Fishing in the Development of Fishery Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 9, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Brent Stoffle, (305) 951-1212 or brent.stoffle@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

The National Marine Fisheries Service (NMFS) proposes to conduct a survey to collect demographic, cultural, economic and social information about those that organize and participate in fishing tournaments in the South Atlantic. The survey also intends to inquire about the industry's perceptions, attitudes and beliefs regarding the relationships between tournament organizations and their participants with the development

of federal fishery regulations. The data gathered will be used to describe the socio-political impact of tournament fishing in the South Atlantic. The information will be used to identify the ways in which people within the tournament culture are affecting fishery policy and identify the means by which information is disseminated and shared among fishermen and administrators associated with fishing tournaments.

II. Method of Collection

The information sought will be collected via in personal interviews and telephone surveys.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Business or other for-profits organizations; individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 3, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013-16542 Filed 7-9-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 1206013117-3579-02]

RIN 0648-XA768

Endangered and Threatened Wildlife; Determination on Whether To List the Ribbon Seal as a Threatened or Endangered Species

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

ACTION: Notice of a listing determination and availability of a status review document.

SUMMARY: We, NMFS, have completed a comprehensive status review of the ribbon seal (*Histiophoca fasciata*) under the Endangered Species Act (ESA). Based on the best scientific and commercial data available, including the Biological Review Team's (BRT's) status review report, we conclude that listing the ribbon seal as threatened or endangered under the ESA is not warranted at this time. We also announce the availability of the ribbon seal status review report.

DATES: This listing determination was made on July 10, 2013.

ADDRESSES: The ribbon seal status review report, as well as this listing determination, can be obtained via the internet at <http://alaskafisheries.noaa.gov/>.

Supporting documentation used in preparing this listing determination is available for public inspection, by appointment, during normal business hours at the office of NMFS Alaska Region, Protected Resources Division, 709 West Ninth Street, Room 461, Juneau, AK 99801. This documentation includes the status review report, information provided by the public, and scientific and commercial data gathered for the status review.

FOR FURTHER INFORMATION CONTACT: Tamara Olson, NMFS Alaska Region, (907) 271-5006; Jon Kurland, NMFS Alaska Region, (907) 586-7638; or Marta Nammack, NMFS Office of Protected Resources, (301) 427-8469.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2007, we received a petition from the Center for Biological Diversity (CBD) to list the ribbon seal as a threatened or endangered species under the ESA, primarily due to concern about threats to this species' habitat from climate change and

resultant loss of sea ice. The Petitioner also requested that critical habitat be designated for ribbon seals concurrently with listing under the ESA. On March 28, 2008, we published a 90-day finding (73 FR 16617) in which we determined that the petition presented substantial information indicating that the petitioned action may be warranted and initiated a status review of the ribbon seal. On December 30, 2008, we published our 12-month finding and determined that listing of the ribbon seal was not warranted (73 FR 79822).

On September 3, 2009, CBD and Greenpeace, Inc. (collectively, "Petitioners") filed a complaint in the U.S. District Court for the Northern District of California challenging our 12-month finding. On December 21, 2010, after considering cross-motions for summary judgment, the Court denied the Petitioners' motion for summary judgment and granted NMFS's cross-motion. The Petitioners filed a notice of appeal of this judgment to the Ninth Circuit Court of Appeals on January 18, 2011.

Information became available since publication of the December 30, 2008, 12-month finding that had potential implications for the status of the ribbon seal relative to the listing provisions of the ESA, including new data on ribbon seal movements and diving, as well as a modified threat-specific approach to analyzing the "foreseeable future" which we used in status reviews for spotted (*Phoca largha*), ringed (*Phoca hispida*), and bearded seals (*Erignathus barbatus*) that we completed subsequent to the ribbon seal status review (75 FR 65239, October 22, 2010; 77 FR 76706 and 77 FR 76740, December 28, 2012). In consideration of this information, on August 30, 2011, we agreed to initiate a new status review and issue a determination on whether listing the ribbon seal as threatened or endangered is warranted and submit a determination to the Office of the **Federal Register** by December 10, 2012. In addition, under the terms of this agreement, following publication of the new listing determination in the **Federal Register**, the Petitioners will file a motion for voluntary dismissal of its appeal of the December 21, 2010, judgment. We announced the initiation of this status review on December 13, 2011 (76 FR 77467). Subsequently, NMFS and the other parties to this agreement agreed to change the 12-month deadline to July 10, 2013.

The 2013 status review report for the ribbon seal (Boveng *et al.*, 2013) is a compilation of the best scientific and commercial data available concerning the status of the species, including

identification and assessment of the past, present, and foreseeable future threats to the species. The BRT that prepared this report was composed of eight marine mammal biologists, two fishery biologists, and a climate scientist from NMFS's Alaska and Southwest Fisheries Science Centers and NOAA's Pacific Marine Environmental Laboratory. The status review report underwent independent peer review by three scientists with expertise in marine mammal biology and ecology, including specifically ribbon seals.

ESA Statutory, Regulatory, and Policy Provisions

Section 3 of the ESA defines a "species" as "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Section 3 of the ESA further defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thus, we interpret an "endangered species" to be one that is presently in danger of extinction. A "threatened species," on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened). Under section 4(a)(1) of the ESA, we must determine whether a species is threatened or endangered because of any one or a combination of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or human-made factors affecting its continued existence. We are to make this determination based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts being made by states or foreign governments to protect the species. In judging the efficacy of protective efforts not yet implemented or not yet shown to be effective, we rely on the joint NMFS and FWS Policy for Evaluating Conservation Efforts When

Making Listing Decisions (68 FR 15100; March 28, 2003).

Two key tasks are associated with conducting an ESA status review. The first is to identify the taxonomic group under consideration; and the second is to conduct an extinction risk assessment which will be used to determine whether the petitioned species is threatened or endangered.

To be considered for listing under the ESA, a group of organisms must constitute a "species," which section 3(16) of the ESA defines to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." The term "distinct population segment" (DPS) is not commonly used in scientific discourse, so the U.S. Fish and Wildlife Service (FWS) and NMFS developed the "Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act" to provide a consistent interpretation of this term for the purposes of listing, delisting, and reclassifying vertebrates under the ESA (61 FR 4722; February 7, 1996). We describe and use this policy below to guide our determination of whether any population segments of this species meet the DPS criteria established in the policy.

The foreseeability of a species' future status is case specific and depends upon both the foreseeability of threats to the species and foreseeability of the species' response to those threats. When a species is exposed to a variety of threats, each threat may be foreseeable over a different time frame. For example, threats stemming from well-established, observed trends in a global physical process may be foreseeable on a much longer time horizon than a threat stemming from a potential, though unpredictable, episodic process such as an outbreak of disease that may never have been observed to occur in the species.

Since completing the 2008 status review of the ribbon seal (Boveng *et al.*, 2008), with its climate impact analysis, NMFS scientists have revised their analytical approach to the foreseeability of threats due to climate change and responses to those threats, adopting a more threat-specific approach based on the best scientific and commercial data available for each respective threat. For example, because the climate projections in the Intergovernmental Panel on Climate Change's (IPCC's) *Fourth Assessment Report* (AR4; IPCC, 2007) extend through the end of the century (and we note the IPCC's *Fifth Assessment Report* (AR5), due in 2014,

will extend even farther into the future), our updated analysis of ribbon seals used the same models to assess impacts from climate change through 2100, which is consistent with the time horizon used in our recent examination of climate change effects for spotted, ringed, and bearded seals. We continue to recognize that the farther into the future the analysis extends, the greater the inherent uncertainty, and we incorporated that limitation into our assessment of the threats and the species' response. Not all potential threats to ribbon seals are climate related, and therefore not all can be regarded as foreseeable through the end of the 21st century. For example, evidence of morbillivirus (phocine distemper) exposure in sea otters has recently been reported from Alaska (Goldstein *et al.*, 2009). Thus, distemper may be considered a threat to ribbon seals, but the time frame of foreseeability of an inherently episodic and novel threat is difficult or impossible to establish. Similarly, factors that influence the magnitude and foreseeability of threats from oil and gas industry activities are difficult to predict beyond a few decades into the future because of dynamic and changing trends in the global oil and gas industry. These are only two examples of many potential threats without clear horizons of foreseeability. Therefore, although it is intuitive that foreseeability varies among threats facing ribbon seals, it is impractical to explicitly specify separate horizons of foreseeability for some of them (i.e., there is no consensus among BRT members, let alone a broader community of scientists).

Faced with the challenge of applying the "foreseeable future" terminology of the ESA to a comprehensive scientific assessment of extinction risk, the BRT opted to evaluate threats and demographic risks on two time frames within the period defined by the horizon of foreseeability for the threats of primary concern, namely those stemming from greenhouse gas (GHG) emissions: (1) the period from now to mid-century, corresponding to the time over which the IPCC considers climate warming to be essentially determined by past and near-future emissions; and (2) the period from now to the end of the century, a period in which sustained warming is anticipated under all plausible emissions scenarios, but the magnitude of that warming is more uncertain. Consideration of threats (and demographic risks) within these two time frames was intended to provide a sense of how the BRT's judgment of all the threats and the level of certainty

about those threats may vary over the period of foreseeability for climate-related threats. We agree with this threat-specific approach, which creates a more robust analysis of the best scientific and commercial data available. It is also consistent with the memorandum issued by the Department of Interior, Office of the Solicitor, regarding the meaning of the term "foreseeable future" (Opinion M-37021; January 16, 2009).

NMFS and FWS recently published a draft policy to clarify the interpretation of the phrase "significant portion of the range" in the ESA definitions of "threatened" and "endangered" (76 FR 76987; December 9, 2011). The draft policy provides that: (1) If a species is found to be endangered or threatened in only a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the ESA's protections apply across the species' entire range; (2) a portion of the range of a species is "significant" if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time FWS or NMFS makes any particular status determination; and (4) if the species is not endangered or threatened throughout all of its range, but it is endangered or threatened within a significant portion of its range, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The Services are currently reviewing public comment received on the draft policy. While the Services' intent is to establish a legally binding interpretation of the term "significant portion of the range," the draft policy does not have legal effect until such time as it may be adopted as final policy. Here, we apply the principles of this draft policy as non-binding guidance in evaluating whether to list the ribbon seal under the ESA. If the policy changes in a material way, we will revisit the determination and assess whether the final policy would result in a different outcome.

Species Information

A thorough review of the taxonomy, life history, and ecology of the ribbon seal is presented in the status review report (Boveng *et al.*, 2013). We provide a summary of this information below.

Description

The ribbon seal is a strikingly-marked member of the family Phocidae that

primarily inhabits the Sea of Okhotsk and the Bering and Chukchi seas. This species gets its common and specific (*fasciata*) names from the distinctive band or "ribbon" pattern exhibited by mature individuals, which consists of four light-colored ribbons on a background of darker pelage. Ribbon seals are medium-sized when compared to the other three species of ice-associated seals in the North Pacific; they are larger than ringed seals, smaller than bearded seals, and similar in size to spotted seals. Ribbon seals have specialized physiological features that are likely adaptations for deep diving and fast swimming, including the highest number and volume of erythrocytes (red blood cells) and the highest blood hemoglobin (oxygen-transport protein in red blood cells) of all seals, as well as larger internal organs than those of other seals.

Distribution, Habitat Use, and Movements

The distribution of ribbon seals is restricted to the northern North Pacific Ocean and adjoining sub-Arctic and Arctic seas, where they occur most commonly in the Sea of Okhotsk and Bering Sea. Habitat selection by ribbon seals is seasonally related to specific life history events that can be broadly divided into two periods: (1) spring and early summer (March-June) when whelping, nursing, breeding, and molting all take place in association with sea ice on which the seals haul out; and (2) mid-summer through fall and winter when ribbon seals rarely haul out and are mostly not associated with ice.

In spring and early summer, ribbon seal habitat is closely associated with the distribution and characteristics of seasonal sea ice. Ribbon seals are strongly associated with sea ice during the breeding season and not known to breed on shore (Burns, 1970; Burns, 1981). During this time, ribbon seals are concentrated in the ice front or "edge-zone" of the seasonal pack ice, to as much as 150 km north of the southern ice edge (Burns, 1970; Fay, 1974; Burns, 1981; Braham *et al.*, 1984; Lowry, 1985; Kelly, 1988). Shustov (1965a) observed that ribbon seals were most abundant in the northern part of the ice front and this north-south gradient has been observed in several other studies as well. Shustov (1965a) also found that ribbon seal abundance increased only with ice concentration and was unaffected by ice type, shape, or form. This is in contrast to most studies which show that ribbon seals generally prefer new, stable, white, clean, hummocky ice floes, invariably with an even surface; it is rare to observe them on dirty or

discolored floes, except when the ice begins to melt and haul-out options are more limited (Heptner *et al.*, 1976; Burns, 1981; Ray and Hufford, 2006). Ribbon seals also seem to choose moderately thick ice floes (Burns, 1970; Fay, 1974; Burns, 1981). These types of ice floes are often located at the inner zone of the ice front and rarely occur near shore, which may explain why ribbon seals are typically found on ice floes far away from the coasts during the breeding season (Heptner *et al.*, 1976).

In most years, the Bering Sea pack ice expands to or near the southern edge of the continental shelf. Most of this ice melts by early summer. However, Burns (1969) described a zone of sea ice that remains in the central Bering Sea until melting around mid-June. Satellite imagery has verified the presence and persistence of this zone of ice and has shown that it is located relatively close to the edge of the continental shelf. Ribbon seals are numerous in this area, which is an extremely productive region that likely provides rich foraging grounds (Burns, 1981). Prey availability could strongly influence whelping locations because females probably feed actively during the nursing period (Lowry, 1985). In spring and early summer, ribbon seals are usually found in areas where water depth does not exceed 200 m, and they appear to prefer to haul out on ice that is near or over deeper water, indicating their preference for the continental shelf slope (Heptner *et al.*, 1976). The seasonal dive-depth patterns of a small sample of ribbon seals monitored by satellite telemetry are consistent with a preference for feeding on the continental shelf slope (National Marine Mammal Laboratory (NMML), unpublished data).

During May and June, ribbon seals spend much of the day hauled out on ice floes while weaned pups develop self-sufficiency and adults complete their molt. As the ice melts, seals become more concentrated, with at least part of the Bering Sea population moving towards the Bering Strait and the southern part of the Chukchi Sea. This suggests that proximity to the shelf slope and its habitat characteristics (e.g., water depth, available prey) become less important, at least briefly around the molting period when feeding is likely reduced.

Although ribbon seals are strongly associated with sea ice during the whelping, breeding, and molting periods, they do not remain so after molting is complete. During summer, the ice melts completely in the Sea of Okhotsk, and by the time the Bering Sea ice recedes north through the Bering

Strait, there are usually only a small number of ribbon seals hauled out on the ice. Significant numbers of ribbon seals are only seen again in winter when the sea ice reforms. The widespread distribution and diving patterns of ribbon seals monitored by satellite telemetry suggest that these seals are able to exploit many different environments and can tolerate a wide range of habitat conditions in mid-summer through winter.

Life History

The rates of survival and reproduction are not well known, but the normal lifespan of a ribbon seal is probably 20 years, with a maximum of perhaps 30 years. Ribbon seals become sexually mature at 1 to 5 years of age, probably depending on environmental conditions.

Whelping in the Bering Sea and northern Sea of Okhotsk occurs on seasonal pack ice over a period of about 5–6 weeks, ranging from late March to mid-May with a peak in early to mid-April (Tikhomirov, 1964; Shustov, 1965b; Burns, 1981), perhaps with some annual variation related to weather and ice conditions (Burns, 1981). The timing of whelping in the southern Sea of Okhotsk and Tartar Strait is not known, but may occur earlier, during March–April (Tikhomirov, 1966). Pups are nursed for 3–4 weeks (Tikhomirov, 1968; Burns, 1981), during which time mothers continue to feed, sometimes leaving their pups unattended on the ice while diving. Most pups are weaned by mid-May, which occurs when the mother abandons the pup (Tikhomirov, 1964). Breeding occurs shortly after weaning.

Ribbon seals molt their coat of hair annually between late March and July, with the timing of an individual's molt depending upon its age and reproductive status (Burns, 1981). Sexually mature seals begin molting around the time of mating, and younger seals begin molting earlier.

Feeding Habits

The year-round food habits of ribbon seals are not well known, in part because almost all information about ribbon seal diet is from the months of February through July, and particularly March through June. Ribbon seals primarily consume pelagic (open ocean) and nektonic (swim near the seafloor) prey, including demersal (dwell near the seafloor) fishes, squids, and octopuses. Walleye pollock (*Theragra chalcogramma*) is a primary prey item, at least during spring, in both the Bering Sea and the Sea of Okhotsk. Other fish prey species found in

multiple studies were Arctic cod (*Boreogadus saida*), Pacific cod (*Gadus macrocephalus*), saffron cod (*Aleginus gracilis*), Pacific sand lance (*Ammodytes hexapterus*), smooth lump sucker (*Aptocyclus ventricosus*), eelpouts, capelin (*Mallotus villosus*), and flatfish species. Several species of both squid and octopus make up a significant part of ribbon seal diets throughout their range. Some studies have also found that crustaceans are an important part of the ribbon seal's diet. Several studies indicate that pups and juveniles mainly feed on small crustaceans and adults primarily consume fish and nektonic prey, like walleye pollock, octopuses, and squids.

Current Abundance and Trends

Ribbon seal abundance estimates have been based on catch data from sealing vessels, aerial surveys, and shipboard observations when seals are hauled out on the ice to whelp and molt. Russian estimates of Bering Sea abundance and trends were determined in the early 1960s from commercial catch data. Aerial survey data were often inappropriately extrapolated to the entire area based on densities and ice concentration estimates without behavioral research to determine factors affecting habitat selection. Very few details of the aerial survey methods or data have been published, so it is difficult to judge the reliability of the reported numbers. No suitable behavior data have been available to correct for the proportion of seals in the water at the time of surveys. Current research is just beginning to address these limitations and no current and reliable abundance estimates have been published.

Aerial surveys were conducted in portions or all of the ice-covered Bering Sea east of the international date line by NMML in 2003 (Simpkins *et al.*, 2003), 2007 (Cameron and Boveng, 2007; Moreland *et al.*, 2008; Ver Hoef *et al.*, 2013), 2008, and 2012. A partial population estimate of 61,100 ribbon seals in the eastern and central Bering Sea (95 percent confidence interval: 35,200–189,300) was derived from the surveys conducted in 2007 (Ver Hoef *et al.*, 2013). Using restrictive assumptions, the BRT scaled this number according to distributions of ribbon seal breeding areas in 1987 (Fedoseev *et al.*, 1988), to produce total Bering Sea estimates ranging from 121,000 to 235,000. Similar scaling based on a range-wide distribution presented by Fedoseev (1973) produced Bering Sea, Sea of Okhotsk, and total-range estimates of 143,000, 124,000, and 267,000, respectively. Based on

application of the 95 percent confidence interval reported by Ver Hoef *et al.* (2013) to the scaled range-wide estimate of 267,000 animals, the total range-wide abundance estimate could be as low as 154,000 or as high as 827,000. Aerial surveys conducted during the spring of 2012 and 2013 in the Bering Sea and Sea of Okhotsk included many sightings of ribbon seals, and preliminary analyses suggest that abundance estimates derived from these data will be higher than those obtained in the more limited survey reported by Ver Hoef *et al.* (2013).

Within the scaled range-wide estimate of 267,000, the Sea of Okhotsk component of about 124,000 is lower than all but one previous estimate for that region, and dramatically lower than the most recent estimates from Russian surveys during 1979–1990, which ranged from 410,000 to 630,000 (Fedoseev, 2000). This difference may reflect a failure of assumptions rather than a population decline. The BRT's estimate for the Sea of Okhotsk was derived from a recent density estimate in the Bering Sea, scaled by a much generalized distribution from the 1960s of seals in the Sea of Okhotsk. The density estimate for the Bering Sea may simply not be applicable to the distribution, and vice versa. Lacking details about the Russian survey methods that produced the larger numbers, and lacking any data on abundance in Russian waters more recent than 1990, the BRT opted to use the smaller number for the Sea of Okhotsk.

The BRT concluded that the current population trend of ribbon seals cannot be determined, but that strong upward or downward trends in the recent past seem unlikely. High rates of sightings in recent surveys, and reports from Alaska Native subsistence hunters (Quakenbush and Sheffield, 2007) that indicate stable or rising numbers, suggest that there has not been a recent dramatic decline.

Species Delineation

Under our DPS policy (61 FR 4722; February 7, 1996), two elements are considered in a decision regarding the potential identification of a DPS: (1) the discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs. If a population segment is discrete and significant (i.e., it is a DPS) its evaluation for threatened or endangered status will be based on the ESA's definitions of those terms and a review

of the factors enumerated in ESA section 4(a)(1).

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) "It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation"; or (2) "It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D)" of the ESA.

With respect to discreteness criterion 1, the BRT concluded, and we concur, that although there are two main breeding areas for ribbon seals, one in the Sea of Okhotsk and one in the Bering Sea, there is currently no evidence of discrete populations on which to base a separation into DPSs (see Boveng *et al.*, 2013 for additional details). As noted above, under the DPS policy, discreteness of a DPS may also be considered based on delimitation by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are notable in light of section 4(a)(1)(D) of the ESA. Ribbon seals occur throughout a vast area of international waters and waters under the jurisdiction of the United States, the Russian Federation, and the State of Alaska. The primary breeding locations are in the territorial seas and exclusive economic zones of the United States and the Russian Federation. There are differences between the United States and the Russian Federation in the control of exploitation, management of habitat, and regulatory mechanisms that influence ribbon seal conservation status. For example, as noted in the threats assessment below, and discussed in more detail in the status review report, measures to control exploitation of ribbons seals appear to be substantially different between the two nations. While commercial hunting for ribbon seals is not allowed in the United States, such harvests are permitted by the Russian Federation. Regulations which govern commercial harvest of ice seals in Russia are over 20 years old and quotas on ribbon seals in Russian waters would allow large harvests. It is thus unclear what regulatory mechanisms are currently in place to ensure that potential commercial harvests remain within sustainable levels. Still, current

commercial harvest levels remain low because of poor economic viability, and unless efforts to develop new uses and markets for seal products are successful, commercial harvest of ribbon seals is unlikely to increase in the near future. As discussed above, downward trends in ribbon seal population abundance in the recent past seem unlikely, which suggests that the differences in management between the United States and the Russian Federation are not significant, and the potential for this to change is uncertain. We find that the differences in management do not rise to a level that provides a sufficient basis to justify the use of international boundaries to satisfy the discreteness criterion of our DPS Policy (i.e., we found that inadequacy of existing regulatory mechanisms does not pose a significant threat to the persistence of the ribbon seal and is not likely to do so in the foreseeable future). In addition, we note that the maritime boundary between the United States and the Russian Federation does not specifically delimit the Sea of Okhotsk breeding area. Rather, this international boundary divides the eastern and central Bering Sea portion of the ribbon seal range (i.e., U.S.) from the western Bering Sea and Sea of Okhotsk (i.e., Russian) portion. In other words, delimitation by international governmental boundaries would place the division in the Bering Sea, where the distribution of ribbon seal breeding areas appears to be continuous and where ribbon seals move routinely without regard to the maritime boundary. We therefore conclude that there are no population segments that satisfy the discreteness criteria of our DPS Policy. Since there are no discrete population segments, we cannot take the next step of determining whether any discrete population segment is significant to the taxon to which it belongs.

Summary of Factors Affecting the Ribbon Seal

The following sections discuss threats to the ribbon seal under each of the five factors specified in Section 4(a)(1) of the ESA and 50 CFR 424. The reader is also directed to section 4.2 of the status review report (Boveng *et al.*, 2013) for a more detailed discussion of the factors affecting the ribbon seal. As discussed above, the data on ribbon seal abundance and trends in abundance are very imprecise, and there is little basis for quantitatively linking projected environmental conditions or other factors to ribbon seal survival or reproduction. Our risk assessment therefore primarily evaluated important habitat features and was based upon the

best available scientific and commercial data and the expert opinion of the BRT members.

A structured approach was used to elicit the BRT members' judgment about the significance of the threats facing ribbon seals (excluding Factor D). The primary threats identified were grouped by each ESA Section 4(a)(1) factor, and each individual threat was scored for its significance, in two components (each on a 5-level scale): (1) extent (portion of the population that would experience reduced survival or reproductive success if the threat condition were to occur), and (2) likelihood of occurrence within a specified time period in the foreseeable future. For many threats, such as oil spills, there are a broad range of plausible extents with little or no consensus about what scenarios are most plausible. Consequently, for such threats, the process of judging significance was often an iterative one in which extent was not always judged before likelihood, and vice-versa. Because of potential differences in the strengths of the threats between the Bering Sea and Sea of Okhotsk, the BRT assigned scores separately for these two portions of the ribbon seal's range.

Each BRT member assigned extent and likelihood scores for each threat for the time period of now to mid-century, and now to the year 2100. Consideration of threats within these two time frames was intended to provide a sense of how the BRT's judgment of all the threats and the level of certainty about those threats may vary over the period of foreseeability for climate-related threats. For the period now to 2100, a threat score was also computed for each threat by multiplying the extent score by the likelihood score. The range of these threat scores was divided into significance categories of "low" (1–4), "moderate" (5–10), "high" (11–15), "very high" (16–20), and "extreme" (21–25). Using the same scale as for the threat scores, each BRT member also considered the individual threat scores in assigning an overall score for each ESA section 4(a)(1) factor (excluding Factor D). These overall factor scores reflect the BRT's judgment about the significance of each factor as a whole, including cumulative impacts. The average score and range of scores among BRT members are reported in the status review report. In this listing determination we summarize the average threat and overall factor scores. Additional details are contained in the status review report.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The main concerns about the conservation status of the ribbon seal stem from the likelihood that its sea ice habitat has been modified by the warming climate and, more so, that the scientific consensus projections are for continued and perhaps accelerated warming in the foreseeable future which could make large areas of habitat less suitable for ribbon seals. A second concern, related by the common driver of carbon dioxide (CO₂) emissions, is the modification of habitat by ocean acidification, which may alter prey populations and other important aspects of the marine environment. A reliable assessment of the future conservation status of ribbon seals, therefore, requires a focus on the observed and projected changes in sea ice, ocean temperature, ocean pH (acidity), and associated changes in ribbon seal prey species. The threats associated with impacts of the warming climate on the habitat of ribbon seals, to the extent that they may pose risks to these seals, are expected to manifest throughout the current breeding and molting range (for sea ice related threats) or throughout the entire range (for ocean warming and acidification) of the ribbon seal.

Effects of Climate Change on Annual Formation of the Ribbon Seal's Sea Ice Habitat

Unlike the Arctic Ocean, where some sea ice is present year round (i.e., multi-year ice), the ice in the Bering Sea and Sea of Okhotsk is seasonal and forms every winter as first-year ice. The main thermodynamic physical influence at high latitudes is the cold and darkness that occurs in winter. Despite the recent dramatic reductions in Arctic Ocean ice extent during summer, the sea ice in the northern Bering Sea and Sea of Okhotsk is expected to continue forming annually in winter for the foreseeable future, with large interannual variations in sea ice extent and duration. The future central Arctic will also continue to be an ice-covered sea in winter, but will contain more first-year sea ice than multi-year ice.

Ice extent in marginal seas such as the Bering Sea is characterized not by summer minima, since these seas have been ice-free in summer throughout recorded history, but rather by winter maxima. Freezing conditions in the northern Bering Sea persist from December through April. Mean monthly maximum temperatures at Nome, Alaska are -3°C or below for all months November through April. Freezing

rather than thawing should still predominate in these months even if a hypothesized $\sim 3^{\circ}\text{C}$ global warming signal is realized. The result is that the seasonal formation of sea ice in the northern Bering Sea and Sea of Okhotsk is substantially decoupled from the summer ice extent in the Arctic Ocean, and is expected to continue annually through the foreseeable future, along with large interannual variations in extent and duration of persistence.

IPCC Model Projections

Comprehensive Atmosphere-Ocean General Circulation Models (AOGCMs) are the major objective tools that scientists use to understand the complex interaction of processes that determine future climate change. The IPCC used the simulations from about two dozen AOGCMs developed by 17 international modeling centers as the basis for the AR4 (IPCC, 2007). The analysis and synthesis of information presented by the IPCC in its AR4 represents the scientific consensus view on the causes and future of climate change. The AR4 used a range of future GHG emissions produced under six illustrative "marker" scenarios from the *Special Report on Emissions Scenarios* (SRES) (IPCC, 2000) to project plausible outcomes under clearly-stated assumptions about socio-economic factors that will influence the emissions. Conditional on each scenario, the best estimate and likely range of emissions were projected through the end of the 21st century. It is important to note that these scenarios do not contain explicit assumptions about the implementation of agreements or protocols on emission limits beyond current mitigation policies and related sustainable development practices.

More recent climate model projection experiments are in progress in preparation for publication of the IPCC's Fifth Assessment Report (AR5) in 2014. However, the AR5 is not yet available. Therefore, the BRT used the modeling results from the AR4 in the status review. Knutti and Sedlacek (2012) found that projected global temperature change from the new models that will be used in the AR5 is remarkably similar to that from those models used in the AR4 after accounting for the different underlying emissions scenarios, and the spatial patterns of temperature and precipitation change were also very consistent. The AOGCMs provide reliable projections because they are built on well-known dynamical and physical principles, and they simulate quite well many large scale aspects of present-day conditions. However, the coarse resolution of most

current climate models dictates careful application on small scales in heterogeneous regions, such as along coastlines.

There are three main contributors to divergence in AOGCM climate projections: large natural variations, across-model differences, and the range in emissions scenarios. The first of these, variability from natural variation, can be incorporated by averaging the projections over decades, or, preferably, by forming ensemble averages from several runs of the same model. The second source of variation, across-model differences, results from differences among models in factors such as spatial resolution. This variation can be addressed and mitigated in part by using the ensemble means from multiple models.

The third source of variation arises from the range in plausible emissions scenarios. Conditions such as surface air temperature and sea ice area are linked in the IPCC climate models to GHG emissions by the physics of radiation processes. When CO₂ is added to the atmosphere, it has a long residence time and is only slowly removed by ocean absorption and other processes. Based on IPCC AR4 climate models, expected increases in global warming—defined as the change in global mean surface air temperature (SAT)—by the year 2100 depend strongly on the assumed emissions of CO₂ and other GHGs, versus natural variations across-model differences (IPCC, 2007). By contrast, global warming projected out to about 2040–2050 will be primarily due to emissions that have already occurred and those that will occur over the next decade. Thus, conditions projected to mid-century are less sensitive to assumed future emission scenarios than are longer-term projections to the end of the century. Uncertainty in the amount of warming out to mid-century is primarily a function of model-to-model differences in the way that the physical processes are incorporated, and this uncertainty can be addressed in predicting ecological responses by incorporating the range in projections from different models. Because the current consensus is to treat all SRES emissions scenarios as equally likely, one option for representing the full range of variability in potential outcomes would be to project from any model under all of the six “marker” scenarios. This can be impractical in many situations, so the typical procedure for projecting impacts is to use an intermediate scenario to predict trends, or one intermediate and one extreme scenario to represent a significant range of variability.

There is no universal method for combining AOGCMs for climate projections, and there is no one best model. The approach taken by the BRT for selecting the models used to project future sea ice in the status review report is summarized below.

Data and Analytical Methods

Many of the anticipated effects of GHG emissions have been projected through the end of the 21st century, subject to certain inputs and assumptions, and these projections currently form the most widely accepted version of the best available data about future environmental conditions. In our risk assessment for ribbon seals, we therefore considered climate model projections through the end of the 21st century to analyze the threats stemming from climate change.

The IPCC model simulations used in the BRT analyses were obtained from the Program for Climate Model Diagnosis and Intercomparison (PCMDI) on-line (at <http://www.pcmdi.llnl.gov/>). Wang and Overland (2009) identified a subgroup of six of these models that met performance criteria for reasonably reproducing the observed magnitude of the seasonal cycle of Northern Hemisphere sea ice extent. Climate models generally perform better on continental or larger scales, but because habitat changes are not uniform throughout the hemisphere, using similar performance criteria, the BRT further evaluated each of these six IPCC models independently on their performance at reproducing the observed seasonal cycle of sea ice extent during April and May in each of four regions—the Sea of Okhotsk, western Bering Sea, eastern Bering Sea, and Chukchi Sea.

All six of the models met the performance criteria for sea ice in the Chukchi Sea and four of the six models met the criteria for the eastern Bering Sea. Only one of the six models was in reasonable agreement with observations for the western Bering Sea; this single model was therefore used to project sea ice in this region with caveats about the reliability as noted below. Due to model deficiencies and the small size of the Sea of Okhotsk region relative to the spatial resolution of the climate models, none of the models met the performance criteria for this region. Instead, for the Sea of Okhotsk, comparison of SAT projections with current climate conditions was considered. Thirteen models, which were selected based on their ability to represent the climate of the North Pacific (Overland and Wang, 2007), were used to project future SATs in the Sea of Okhotsk. Whether future

monthly mean SATs are above or below the freezing point of sea water provides a reasonable indicator of the presence or absence of sea ice. Projections of SATs for the Sea of Okhotsk were considered under both a medium and a high emissions scenario; similarly, model output under both of these emissions scenarios was considered for the other three regions.

While our inferences about future regional ice conditions are based upon the best available scientific and commercial data, we recognize that there are uncertainties associated with predictions based on hemispheric projections or indirect means. We also note that judging the timing of onset of potential impacts to ribbon seals is complicated by the coarse resolution of the IPCC models. For example, in June 2008 the NOAA ship *Oscar Dyson* encountered a field of ice with numerous ribbon and spotted seals near St. Matthew Island in an area where no ice was visible on the relatively high resolution (12.5 km) satellite images of sea ice for that day. Nevertheless, NMFS concluded that the models reflect reasonable assumptions regarding habitat alterations to be faced by ribbon seals in the foreseeable future.

Regional Sea Ice Projections

The projections indicate that within this century there will be no significant ice reductions in the Chukchi Sea in winter through early spring (January to May). A downward trend in ice extent is evident in the Chukchi Sea in June toward the end of the century, by which time the difference between the emissions scenarios becomes a major contributor to the trends. Interannual variability of the model projections is larger in the Chukchi Sea after mid-century. In the eastern Bering Sea, a gradual downward trend in the sea ice extent is apparent over the century in March through May, albeit with a large degree of interannual variability. The average sea ice extent in the eastern Bering Sea during these months is projected to be at 58 percent of the present day value by 2050, and at 37 percent of the present day value by 2075. As discussed above, ice projections were only available for the western Bering Sea from a single model, so the results must be interpreted in the context of possibly large bias and lack of model-to-model variation. Compared with observations, this model overestimated sea ice extent in both March and April, but performed reasonably well for May and June. The model projected a rapid decline in sea ice extent in the western Bering Sea over the first half of this century in

March and April, then relative stability to the end of the century. The model projected that the western Bering Sea will continue to have ice in March and April through nearly the end of the 21st century; however, the average sea ice extent in the latter half of this century in these months is projected to be approximately 25 percent of the present-day extent. The projection for May indicates that there will commonly be years when the western Bering Sea will have little or no ice beyond mid-century. Mapped projections of sea ice concentrations in the two Bering Sea regions indicate that by mid-century and beyond, the Bering Sea can be expected to have essentially no ice during May in some years, and by 2090 May sea ice can be expected only in the northern Bering Sea.

As noted above, none of the IPCC models performed satisfactorily at projecting ice for the Sea of Okhotsk, and so projected SATs were considered relative to current climate conditions as a proxy to predict sea ice extent and duration. The Sea of Okhotsk lies to the southwest of the Bering Sea and thus can be expected to have earlier radiative heating in spring. However, this region is dominated by cold continental air masses and offshore flow for much of the winter and spring. Therefore, the present seasonal cycle of the formation of first-year sea ice during winter is expected to continue annually in the foreseeable future. Based on the temperature proxies, a continuation of sea ice formation or presence is expected for March through the end of this century, though the ice may be limited to the northern portion of this region in most years after mid-century. Conditions for sea ice in April are likely to be limited to the far northern reaches of the Sea of Okhotsk, or non-existent if the projected warming occurs by 2100. Recent climate data indicate that during May, sea ice has warmed to the melting point throughout the Sea of Okhotsk region.

In summary, within the ribbon seal's range large areas of annual sea ice are expected to form and persist through April in most years throughout this century. However, in the Sea of Okhotsk conditions for sea ice in April are likely to be limited to the far northern reaches or non-existent if the projected warming occurs by 2100. In May, ice is projected to continue to occur in the Bering Sea in most years through mid-century, but in the latter half of the century many years are expected to have little or no ice. Sea ice extent in June is expected to be highly variable through mid-century, as it has been in the past, but the models project essentially no ice in

the Bering Sea in June during the latter half of the century.

Potential Impacts of Changes in Sea Ice on Ribbon Seals

In association with a long-term warming trend, there will likely be changes in the frequency of years with extensive ice, the quality of ice, and the duration of its persistence that may impact the amount of suitable habitat in the geographic areas that ribbon seals have preferred in the past. An assessment of the risks posed by these changes must consider the ribbon seal life-history functions associated with sea ice and the potential effects on the vital rates of reproduction and survival. As discussed above, the sea ice regimes in the Bering Sea and Sea of Okhotsk will continue to be subject to large interannual variations in extent and seasonal duration, as they have been throughout recorded history. While there may be more frequent years in which sea ice coverage is reduced, the late-March to early-May period in which the peak of ribbon seal reproduction occurs will continue to have substantial ice for the foreseeable future. Still, there will likely be more frequent years in which the ice is confined to the northern regions of the observed breeding range.

In contrast to harp seals (*Pagophilus groenlandicus*), which are their closest relatives, ribbon seals appear much less closely tied to traditional geographic locations for important life history functions such as whelping and molting. In years of low ice it is likely that ribbon seals will adjust, at least in part, by shifting their breeding locations in response to the position of the ice edge, as they have likely done in the past in response to interannual variability (e.g., Fedoseev, 1973; Braham *et al.*, 1984; Fedoseev *et al.*, 1988), at least in the Bering Sea (this may not be possible in the Sea of Okhotsk, where there is no northern access to higher-latitude ice-covered seas because the sea is bounded to the north by land). For example, observations indicate that extreme dispersal of ribbon seals within their effective range is associated with years of unusual ice conditions. The formation of extensive ice in the Bering Sea and Sea of Okhotsk has been found to result in the occurrence of large numbers of these seals farther south than they normally occur; the reverse is also true (Burns, 1981).

There has not been, however, any study that would verify whether vital rates of reproduction or survival have been affected by these interannual variations in ice extent and breeding. Whelping, nursing of pups, and

maturation of weaned pups could conceivably be impacted in years when the ice does not extend as far south as it has typically in the past, because the breeding areas would be farther from the continental shelf break, a zone that seems to be a preferred foraging area during spring. If these conditions occur more frequently, as is anticipated from projections of future climate and sea ice conditions, reproduction and survival of young would likely be impacted. Lacking relevant data, the most conservative approach is to assume that the population has been at equilibrium with respect to conditions in the past, and that a change such as more frequent breeding farther from preferred foraging habitats will have some impact on vital rates. Even given the uncertainties, we conclude that the anticipated increase in frequency of years with low ice extent in April and May is likely to have some impact on recruitment. The mechanisms for depressed recruitment from increased frequency of years with less ice could include reduced nutrition during the nursing period caused by mothers unable to reach preferred shelf-break foraging areas; pup mortality caused by more frequent failures for mothers to reunite with pups left on the ice during foraging trips; and mortality or reduced condition of maturing weaned pups caused by reduced availability of suitable ice for hauling out.

As discussed above, ribbon seals have an apparent affinity for stable, clean, moderate-sized ice floes that are slightly, but not deeply interior to the pack ice edge. Ice of this type is likely to occur annually in the Bering Sea and Sea of Okhotsk through the middle of this century, but it may more frequently be confined to smaller areas or areas farther north than in the past. It is more difficult to determine whether this type of ice will be relatively more or less available as the amount of ice declines as projected through the latter half of the century. The availability of moderately-thick, stable ice floes could potentially influence ribbon seal demography, particularly in May, via survival rates of weaned pups. Pups spend a great deal of time on the ice during a transition period of 2 to 3 weeks following weaning, presumably developing their capabilities for self-sufficient foraging (Burns, 1981). However, they also enter the water frequently during this period, and therefore may not be particularly sensitive to modest reductions in ice coverage or quality. Thus, although they are likely dependent on ice, weaned pups may not require ice floes that can

persist for weeks to meet their basic haul-out needs. They may, however, be relatively limited in their capability to respond to rapidly deteriorating ice fields by relocating over large distances, a factor that could occur more frequently in the foreseeable future.

Subadult ribbon seals, which molt earlier than adults during March to mid-May, and which are not constrained by habitat requirements for whelping and breeding, may be the least sensitive to the availability and quality of sea ice. For example, in 2007, NMFS research cruises in the Bering Sea encountered subadult ribbon seals in approximately the expected age class proportions. The obvious presence of seals in the subadult age class indicated that catastrophic losses had not occurred in the ribbon seal cohorts produced during the warm years of 2001–2005.

Adult ribbon seals, which are the last to molt, might be expected to be the most sensitive to timing of the ice melt. Tikhomirov (1964) suggested that molting ribbon seals rarely enter the water and that stable ice is critical during this period. The pelage molt of phocid seals is generally thought to be facilitated or enhanced by elevated skin temperatures that can be achieved when hauled out versus in the water (Feltz and Fay, 1966). For example, it has been suggested that the harbor seal (*Phoca vitulina*, a small phocid, similar in size and body composition to a ribbon seal), could not complete its molt entirely in the water at temperatures that the species would normally encounter in the wild (Boily, 1995). Analysis of haul-out records (section 2.6 of the status review report) indicate that individual adult ribbon seals haul out almost continuously for a period of weeks, mostly during mid-May to late June, corresponding to the observed peak in molting. Sea ice coverage in June is expected to be low or absent more frequently in the foreseeable future. The implications of a loss of access to a haul-out substrate during this period are unknown, but they may include energetic costs, reduced fertility, increased susceptibility to skin disorders and pathogens, and possibly increased exposure to any risks from which the hair normally protects a seal (e.g., abrasion from crawling over snow and ice). Many reports of ribbon seals out of their normal range or habitat have been associated with some pelage abnormalities, usually consistent with a disrupted or delayed molt. However, adult ribbon seals may also be less constrained to a specific geographic area or region of the ice pack once breeding is complete, around the onset of the

adult molt (Boveng *et al.*, 2007). They may therefore be capable of considerable shifts in distribution to ensure contact with suitable ice through the molt period, especially in the Bering Sea where there is access through the Bering Strait to the Chukchi Sea, where ice is expected to persist more frequently in June. The ultimate effect of decreased availability of stable platforms for adults to complete their molt out of the water on adult survival rate is currently difficult or impossible to model.

The impacts discussed above on ribbon seal survival and reproduction in years of low ice extent, poor ice quality, or early melting are all of a sort that would not necessarily be significant in any one year; a year of low ice extent seems unlikely to cause widespread mortality through disruption of the adult molt, or increased energetic costs for pups developing their foraging capabilities. Rather, the overall strength of the impacts is likely a function of the frequency of years in which they are anticipated to occur, and the proportion of the population's range over which they would occur. Also, the effects on different age classes might be expected to be correlated, though not always in concert, because they involve ice characteristics at different times in the breeding-molting period; low ice extent during breeding may not always be accompanied by early melting, and vice versa. As above, in the assessment of impacts on reproduction, we conclude that the anticipated increase in frequency of years with low ice extent in April, May, and June is likely to have an impact on survival rates.

The extent to which ribbon seals might adapt to more frequent years with early ice melt by shifting the timing of reproduction and molting is unknown. There are many examples in the scientific literature of shifts in the timing of reproduction by pinnipeds and terrestrial mammals in response to body condition and food availability. In most of these cases, sub-optimal conditions led to later reproduction, which would not likely be beneficial to ribbon seals as a response to earlier spring ice melt. Over the longer term (i.e., beyond the foreseeable future) a shift to an earlier mean melt date may provide selection pressure for an evolutionary response over many generations toward earlier reproduction.

In summary, more frequent future years of reduced spring ice extent or ice quality could result in reduced vital rates of ribbon seal reproduction and survival. These potential impacts are premised on the assumption of a population at equilibrium with

conditions in the recent (cooler) past and the related possibility that changes such as displacement of breeding locations or reduced availability of preferred ice types will have some energetic costs that will ultimately be reflected in vital rates. The age of maturation for ribbon seal females has been very low and pregnancy rates have been high in the recent past (Quakenbush and Citta, 2008), implying that foraging conditions have been favorable, a scenario more likely to reflect population growth rather than equilibrium; if so, there may be some capacity to withstand a reduction in vital rates without incurring an actual population decline. In the absence of relevant data, it is not feasible to estimate quantitatively the magnitude of the anticipated impacts. The significance of demographic risks to the persistence of ribbon seals within the foreseeable future is assessed qualitatively below (see *Demographic Risks Assessment*).

The threats associated with decreases in sea ice habitat that were judged by the BRT to be of high significance include reductions in sea ice habitat suitable for molting in both the Bering Sea and the Sea of Okhotsk; and reductions in sea ice habitat suitable for whelping and nursing, pup maturation, and mating in the Sea of Okhotsk. Reductions in sea ice habitat suitable for whelping and nursing, pup maturation, and mating in the Bering Sea were judged by the BRT to be of moderate significance. We concur with the BRT's assessment.

Impacts on Ribbon Seals Related to Changes in Ocean Conditions

Ocean acidification is an ongoing process whereby chemical reactions occur that lower seawater pH and carbonate saturation due to CO₂ absorption by the ocean. Ocean acidification is likely to affect the ecosystem structure in the ribbon seals' habitats in the foreseeable future. The exact nature of these impacts cannot be predicted, and some likely will amplify more than others. As discussed above, ribbon seals eat a variety of fishes, squids, octopuses, and crustaceans. In addition to interfering with calcification of organisms at lower trophic levels, changes in ocean chemistry can have direct effects on the physiology of marine invertebrates and fish. Among invertebrates, squid are expected to be particularly sensitive to increases in CO₂. These ecosystem responses may have very long lags as they propagate through trophic webs.

Although the ribbon seal's varied diet would appear to confer some resilience

to shifts in prey availability, major disruptions in the amount of productivity reaching pelagic, upper trophic species would be expected to have demographic impacts. Survival of juvenile ribbon seals would be expected to be the most sensitive, as their diet is narrower and more skewed toward invertebrates. Sufficiently large ecosystem shifts that persist more than a few years could also impact adult survival and reproductive rates. The range of potential ecological scenarios, however, is extremely complex and may even include some that could be ameliorative or beneficial to ribbon seals. The vast preponderance of ocean acidification impacts that have been identified, however, seem negative for ribbon seal prey. In the absence of compelling evidence for specific positive effects, the net effect of ocean acidification on ribbon seals is expected to be negative. The threat posed to ribbon seals from decreases in prey density and/or availability due to ocean acidification was judged by the BRT to be of moderate significance in both the Bering Sea and Sea of Okhotsk, and we agree with this assessment.

Changes in ribbon seal prey, anticipated in response to habitat changes resulting from ocean warming and loss of sea ice, have the potential for negative impacts, but these impacts are not well understood. Some changes already documented in the Bering Sea and the North Atlantic Ocean are of a nature that could be ameliorative or beneficial to ribbon seals. For example, warming and decrease in ice extent could increase pelagic productivity in favor of pelagic foraging by ribbon seals. Such ecosystem responses may have very long lags as they propagate through trophic webs. The apparent flexibility in ribbon seal foraging locations and habits may make the threats posed from changes in prey due to ocean warming and loss of ice of lower concern than more direct impacts from changes in sea ice. The BRT judged the threats posed to ribbon seals from decreases in prey density and/or availability due to changes in ice cover and ocean warming to be of moderate significance in both the Bering Sea and the Sea of Okhotsk, and we agree with this assessment.

Summary of Factor A

The BRT judged the threats to ribbon seal persistence from destruction or modification of habitat to be of greater significance than the threats posed from all other factors. Overall, the BRT judged the threats posed under Factor A to be of high significance in the Bering Sea and of very high significance in the Sea of Okhotsk. The BRT concluded that

although it is impossible to project the trajectory of ribbon seal abundance with any certainty, it is likely that the combined effects of diminished sea ice habitat and disrupted prey communities will reduce ribbon seals' vital rates of survival and reproduction gradually throughout the foreseeable future. We agree with the BRT's findings. However, as discussed below, our analysis did not indicate these anticipated impacts on ribbon seal vital rates render the species likely to become an endangered species within the foreseeable future (threatened). Relevant considerations supporting this conclusion include: (1) There is evidence from some recent years with unusual ice conditions that ribbon seals may compensate for changes in sea ice, at least in part, by moving to areas with better ice, at least in the Bering Sea; (2) ribbon seals are known to have a diet that is ecologically and trophically diverse and they are able to forage over a wide range of ocean depths, which should enhance resilience to climate-related changes in prey communities; and (3) individual ribbon seals have the capability to undertake large seasonal movements and shifts between pelagic and pack ice habitats, which may mitigate some anticipated impacts of anthropogenic climate change. The demographic risks to the persistence of ribbon seals within the foreseeable future are considered further below (see *Demographic Risks Assessment*).

B. Overutilization for Commercial, Subsistence, Recreational, Scientific, or Educational Purposes

While commercial hunting for ribbon seals is not allowed in the United States, such harvests are permitted by the Russian Federation. Commercial harvests by Russian sealers have at times been high enough to cause significant reductions in abundance and catch-per-unit-effort. The population apparently rebounded from a period of high harvest in the 1960s. Substantial but lower numbers were harvested for a few years in the early 1990s. Although Russian government quotas were recently put in place that would allow large harvests (~18,000 annually), the actual takes are low because of poor economic viability. There is some effort in Russia to develop new uses and markets for seal products, but unless this effort is successful, the harvest is unlikely to increase in the near future. The numbers of ribbon seals harvested for subsistence use by indigenous hunters in Russia and Alaska are considered insignificant by most researchers, primarily due to the difficulty of accessing the seals in far

offshore ice. Subsistence harvest levels have been low historically in Russia, and the current subsistence harvest is not thought to be a threat to ribbon seals there. Although estimates of subsistence harvest in Alaska are varied, all are low and sustainable relative to the population size. Subsistence harvest levels could potentially increase in the future if ribbon seals are forced to use a reduced and more northerly ice field, which could put them in closer proximity to Alaska Native communities near the Bering Strait. Changes in subsistence or commercial takes cannot be predicted with any certainty at this time. Scientific and educational utilization of ribbon seals is currently at very low levels and is not projected to increase to significant threat levels in the foreseeable future. Overall, the significance of the threats posed to ribbon seal persistence from overutilization were judged by the BRT to be low in both the Bering Sea and the Sea of Okhotsk, and we concur with this finding.

C. Diseases, Parasites, and Predation

A variety of pathogens (or antibodies), diseases, helminthes, cestodes, and nematodes have been found in ribbon seals. The prevalence of these agents is not unusual among seals, but the population impact is unknown. Beginning in July and August 2011, higher than normal numbers of sick and dead ringed seals along the coast of the North Slope of Alaska led to the declaration of an unusual mortality event (UME). Most pinnipeds with UME symptoms were ringed seals from the North Slope, but sick walrus (*Odobenus rosmarus*), spotted seals, and bearded seals were also found on the North Slope and in the Bering Strait region. Only one ribbon seal, a yearling, was reported with UME symptoms. The cause of the UME is still unknown, but additional bacterial and fungal testing and advanced molecular screening for unknown viruses are being conducted in a continuing effort to determine an explanation. There are a couple possibilities that may explain why only one sick ribbon seal was found during this UME. Ribbon seals are primarily pelagic and solitary during the summer and fall months when most of the UME seals were found. Thus, they might not have become sick in the same numbers as other ice seals because disease transmission among individuals may be limited due to their solitary lifestyle. However, it is also possible that many ribbon seals did become sick during the UME, but because they are pelagic they may have died out at sea and not stranded in areas where they could be

counted. There may be an increased risk of outbreaks of novel pathogens or parasites as climate-related shifts in species distributions lead to new modes of transmission. For both the Bering Sea and the Sea of Okhotsk, the BRT judged the potential threats to ribbon seals from increased infection or disease to be of moderate significance, and from an increase in parasites to be of low significance, and we agree with these findings.

There is little or no direct evidence of significant predation on ribbon seals, and they are not thought to be a primary prey of any predators. Polar bears (*Ursus maritimus*) and killer whales (*Orcinus orca*) may be the most likely opportunistic predators in the current sea ice regime, but walrus and sharks could pose a potentially greater risk if reduced sea ice conditions force these species into closer proximity in the future. The BRT judged the significance of the threat posed to ribbon seals from increased predation associated with changes in sea ice cover to be low in both the Bering Sea and the Sea of Okhotsk, and we agree with this assessment.

D. Inadequacy of Existing Regulatory Mechanisms

As noted above in the discussion of Factor A, a primary concern about the conservation status of the ribbon seal stems from the likelihood that its sea ice habitat has been modified by the warming climate and, more so, that the scientific consensus projections are for continued and perhaps accelerated warming in the foreseeable future combined with modification of habitat by ocean acidification and warming water temperatures. Current mechanisms do not effectively regulate GHG emissions, which are contributing to global climate change and associated modifications to ribbon seal habitat. The projections we used to assess risks from GHG emissions were based on the assumption that no new regulation will take place (the underlying IPCC emissions scenarios were all “non-mitigated” scenarios). Therefore, the inadequacy of mechanisms to regulate GHG emissions is already included in our risk assessment, and contributes to the risks posed to ribbon seals by these emissions.

We also note that regulations which govern commercial harvest of ice seals in Russia are over 20 years old and we do not have good information regarding whether regulatory mechanisms are in place to ensure that potential commercial harvests in Russian waters are conducted in a sustainable fashion. As noted above, currently there is some

effort in Russia to develop new uses and markets for seal products, but unless this effort is successful, the harvest is unlikely to increase in the near future. The BRT considered the threat posed to ribbon seal persistence by commercial harvest to be low in both the Bering Sea and the Sea of Okhotsk. We conclude that the data currently available do not suggest that inadequacy of mechanisms to regulate commercial harvest poses a significant threat to ribbon seals.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Although some pollutants are elevated in ribbon seals, there is no conspicuous evidence of toxicity or other significant impacts to the species. Continued and expanded monitoring would be prudent to document any trends in the contaminants of greatest concern.

Oil and gas exploration and development activities may include drilling operations, pipeline construction and operation, seismic surveys, and vessel and aircraft operations. The main issues for evaluating the impacts of exploration and development activities on ribbon seals are the effects of noise, physical disturbance, and potential oil spills produced from these activities. Any negative effects on ribbon seals from noise and disturbance associated with development activities are likely to be minor and localized. Ribbon seals are also highly dispersed during the summer open-water season, so the rate of interactions with seismic surveys would likely be low, and, in any case, seals have not been shown to be significantly impacted by oil and gas seismic surveys. The threat posed to ribbon seals by oil spills will increase if offshore oil and gas development and shipping activities increase across their range as predicted. The potential impacts would be greatest during April–June when the seals are relatively aggregated, and substantially lower during the remainder of the year when they are dispersed in the open water throughout the North Pacific Ocean, Sea of Okhotsk, and Bering and Chukchi seas.

Estimates from observed bycatch in commercial fisheries indicate that less than 200 ribbon seals per year are taken, though mortalities may be under-reported in some fisheries. This level of estimated bycatch of ribbon seals represents less than 0.1 percent of their estimated population. Because there is little or no fishery activity near the widely distributed low densities of ribbon seals when they are associated

with ice, and they are highly dispersed during the remainder of the year, bycatch is unlikely to be a significant threat to ribbon seal populations. For the same reason, competition from fisheries that reduce local abundance of ribbon seal prey is unlikely to be a significant threat to ribbon seal populations. Broad-scale reduction in a commercially-fished, primary prey species could have a significant impact, but the large groundfish fisheries in Alaskan waters are managed to prevent depletion of the stocks; none of those fisheries is in an overfished status.

The extraordinary reduction in Arctic sea ice that has occurred in recent years has renewed interest in trans-Arctic navigation routes connecting the Atlantic and Pacific Oceans via the Northwest Passage and the Northern Sea Route. Climate models predict that the warming trend in the Arctic will accelerate, causing the ice to melt earlier in the spring and resume freezing later in the fall, resulting in an expansion of potential shipping routes and lengthening the potential navigation season. Though few details are available regarding actual shipping levels in the Sea of Okhotsk, resource development over the last decade stands out as a likely significant contributor. It is clear that considerable ship traffic is needed to support present oil and gas operations, primarily off the northeastern coast of Sakhalin Island and the western coast of the Kamchatka Peninsula, with future developments pointing to an ever-growing shipping industry to support the area's energy and minerals commerce. Large-scale commercial fishing, which occurs in many parts of the Sea of Okhotsk, also contributes to ship traffic there.

The most significant risk posed by shipping activities to ribbon seals is the accidental or illegal discharge of oil or other toxic substances carried by ships due to their immediate and potentially long-term effects on individual animals, populations, food webs, and the environment. Shipping activities can also affect ribbon seals directly through noise and physical disturbance (e.g., icebreaking vessels), as well as indirectly through ship emissions and possible effects of introduction of invasive species.

Current and future shipping activities in the Arctic pose varying levels of threat to ribbon seals depending on the type and intensity of the shipping activity and its degree of spatial and temporal overlap with the seals. These factors are inherently difficult to know or predict, making threat assessment uncertain. Ribbon seals are typically reported to be widely distributed in low

densities on sea ice during the spring reproductive season, are likely even more dispersed during the summer and fall open-water seasons, and are not known to congregate in large numbers. Their highly dispersed distribution may help mitigate the risks of localized shipping threats, such as oil spills or physical disturbance, since the impacts from such events would be less likely to affect large numbers of seals. The fact that nearly all shipping activity in the Arctic purposefully avoids areas of ice and primarily occurs during the ice-free or low-ice seasons may also help mitigate the threats of shipping to ribbon seals since this species is closely associated with ice during the whelping, nursing, and molting periods when the seals (especially young pups) may be most vulnerable to shipping impacts. Icebreakers may pose special risks to ribbon seals since they are capable of operating year-round in all but the heaviest ice conditions and are sometimes used to escort other types of vessels (e.g., tankers and bulk carriers) through ice-covered areas. If icebreaking activities increase in the Arctic in the future as expected, the likelihood of negative impacts (e.g., oil spills, pollution, noise, and disturbance) occurring in ice-covered areas where ribbon seals reside will likely also increase. Shipping impacts alone may comprise a low risk to entire populations, but when combined with the effects related to diminishing ice cover, such as increasingly denser aggregations, the impacts may be magnified and may play an important role in affecting the future health of populations.

Overall, the BRT judged the threats posed to ribbon seals from other natural or man-made factors to be of moderate significance in both the Bering Sea and the Sea of Okhotsk. We agree with the BRT's finding.

Demographic Risks Assessment

Threats to a species' long-term persistence are manifested demographically as risks to its abundance; productivity; spatial structure and connectivity; and genetic and ecological diversity. These viability criteria, outlined in McElhany *et al.* (2000), reflect concepts that are well-founded in conservation biology and that individually and collectively provide the most direct indices or proxies of extinction risk. A species at very low levels of abundance and with few populations will be less tolerant to environmental variation, catastrophic events, genetic processes, demographic stochasticity (variability in population growth rates arising from random

differences among individuals in survival and reproduction), ecological interactions, and other processes. A rate of productivity that is unstable or declining over a long period of time can indicate poor resiliency to future environmental change. A species that is not widely distributed across a variety of well-connected habitats is at increased risk of extinction due to environmental perturbations, including catastrophic events. A species that has lost locally adapted genetic and ecological diversity may lack the raw resources necessary to exploit a wide array of environments and endure short- and long-term environmental changes.

The BRT members' assessments of the significance of demographic risks to the persistence of ribbon seals were summarized qualitatively using a numerical scoring system. This scoring system, which was modeled on similar approaches used in other ESA status reviews (e.g., Atlantic Wolffish BRT, 2009; Butler *et al.*, 2009; Cameron *et al.*, 2010; Kelly *et al.*, 2010), was designed to elicit expert judgment about the likelihood that the known and potential threats will impact the species' persistence. Specifically, each BRT member considered the risk that the population may be placed in danger of extinction by demographic problems with abundance, productivity, spatial structure, or diversity, within the next 50 years and the next 100 years, and then assigned a score to each of these demographic risk categories using the following values: 1—very low or zero risk, 2—low risk, 3—medium risk, 4—high risk, and 5—very high risk. The average score and the range of scores were tabulated for each of the four demographic risk categories.

The BRT judged the demographic risks to the persistence of the ribbon seal between now and 2050 to be very low (abundance, productivity, and diversity) to low (spatial structure); and between now and 2100 to be low (abundance, productivity, and diversity) to medium (spatial structure). The medium risk score for demographic problems associated with spatial structure primarily reflects the anticipated direct impacts to ribbon seals stemming from loss of habitat patches and connectivity. We concur with the BRT's findings.

To supplement the demographic risks assessment and express a single, summarized judgment about extinction risk, each BRT member also allocated 10 likelihood points among five time interval categories (now to 2025, 2026 to 2050, 2051 to 2075, 2076 to 2100, and beyond 2100) to indicate his or her judgment about the time until ribbon

seals would reach a population level of 5,000 individuals, representing a hypothetical minimum viable population (MVP). Degree of uncertainty in this judgment is expressed by spreading the points across the time interval categories. In other words, if a member believed that ribbon seals will never decline to 5,000 individuals, or at least not for a very long time, all 10 likelihood points would be allocated to the interval "beyond 2100." Or, if the member believed strongly that ribbon seals will reach that level in the latter half of this century, and it is equally likely to happen in either the time interval "2051 to 2075" or "2076 to 2100," five likelihood points would be allocated to each of those two categories. Thus, this assignment of likelihood points represents the opinion of BRT members as to whether the population may decline below the hypothetical MVP in the specified time intervals based on reasoned expert judgment. The level of 5,000 individuals was selected without regard to specific aspects of ribbon seal life history that would determine the species' MVP size (which are largely unknown). Rather, it was chosen as a value that has been asserted to be useful because of its derivation as the approximate median from a meta-analysis of MVPs for many species (Traill *et al.*, 2007; Traill *et al.*, 2010). We note, however, that some have cautioned about placing confidence in this value (Flather *et al.*, 2011). The BRT members assigned all likelihood points to the three time intervals beyond 2050. Among the eleven BRT members, 0 percent of the likelihood points was ascribed to the combined intervals from now to 2050, four percent was ascribed to the interval 2051 to 2075, 13 percent was ascribed to 2076 to 2100, and 83 percent was ascribed to the period beyond 2100. In other words, the BRT's collective distribution of points among time intervals indicating when the ribbon seal population may decline to a hypothetical MVP was concentrated in the time interval beyond the end of the current century. The range among BRT members in the percentage of likelihood points assigned to the combined time interval categories from now to 2100 was 0 percent (five BRT members) to 50 percent (i.e., 5 points; one BRT member), reflecting the variation in this judgment that results from sparse and uncertain information underlying this assessment (the 5 other BRT members assigned from 1 to 4 points). The BRT's scoring was of course subjective, but it offers an indication of the BRT members' professional judgment that

there is a low near-term extinction risk. We compared the scoring here with the BRT's demographic risk assessment and our evaluation of the ESA section 4(a)(1) factors above and found them consistent.

Conservation Efforts

When considering the listing of a species, section 4(b)(1)(A) of the ESA requires consideration of efforts by any state, foreign nation, or political subdivision of a state or foreign nation to protect the species. Such efforts would include measures by Native American tribes and organizations, local governments, and private organizations. Also, Federal, tribal, state, and foreign recovery actions (16 U.S.C. 1533(f)), and Federal consultation requirements (16 U.S.C. 1536) constitute conservation measures. In addition to identifying these efforts, under the ESA and our Policy on the Evaluation of Conservation Efforts (PECE; 68 FR 15100; March 28, 2003), we must evaluate the certainty of implementing the conservation efforts and the certainty that the conservation efforts will be effective on the basis of whether the effort or plan establishes specific conservation objectives, identifies the necessary steps to reduce threats or factors for decline, includes quantifiable performance measures for monitoring compliance and effectiveness, incorporates the principles of adaptive management, and is likely to improve the species' viability at the time of the listing determination.

At this time, we are not aware of any formalized conservation efforts for ribbon seals that have yet to be implemented, or which have recently been implemented, but have yet to show their effectiveness in removing threats to the species. Therefore, we do not need to evaluate any domestic conservation efforts under the PECE.

NMFS has an agreement with the Ice Seal Committee (ISC) under section 119 of the Marine Mammal Protection Act to conserve and provide co-management of subsistence use of ice seals by Alaska Natives. The ISC co-manages ice seals with NMFS by monitoring subsistence harvest and cooperating on needed research and education programs pertaining to ice seals. NMFS's National Marine Mammal Laboratory is engaged in an active research program for ribbon seals. The new information from research will be used to enhance our understanding of the risk factors affecting ribbon seals, thereby improving our ability to develop effective management measures for the species.

ESA section 4(b)(1)(B) requires us to give consideration to species which have been designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or identified as in danger of extinction, or likely to become so within the foreseeable future, by any state agency or any agency of a foreign nation that is responsible for the conservation of the species. We are not aware of any such special protections or designations, or of any conservation efforts undertaken by foreign nations specifically to protect ribbon seals. Ribbon seals are not afforded any protective measures or special status via the Convention for the International Trade in Endangered Species or the International Union for Conservation of Nature.

Listing Determination

We have reviewed the status of the ribbon seal, fully considering the best scientific and commercial data available, including the status review report. We have reviewed the threats to the ribbon seal, as well as other relevant factors, and given consideration to conservation efforts and special designations for ribbon seals by states and foreign nations. The best available information indicates that the threats posed to the persistence of the ribbon seal from foreseeable future destruction or modification of habitat attributable to climate change are of greater significance than threats from other factors. Although the trajectory of ribbon seal abundance is impossible to project with certainty, it is likely that the effects of diminished sea ice habitat and disrupted prey communities will reduce ribbon seal's vital rates of reproduction and survival gradually throughout the foreseeable future. However, our analysis did not indicate that the ribbon seal is in danger of extinction (endangered) or that the anticipated impacts on ribbon seal vital rates render the species likely to become an endangered species within the foreseeable future (threatened) throughout its range. Relevant considerations supporting this conclusion include: (1) There is evidence from some recent years with unusual ice conditions that ribbon seals may compensate for changes in sea ice, as least in part, by moving to areas with better ice, at least in the Bering Sea; (2) ribbon seals are known to have a diet that is ecologically and trophically diverse and they are able to forage over a wide range of ocean depths, which should enhance resilience to climate-related changes in prey communities; (3) ribbon seals tend to be highly

dispersed and mostly solitary during the ice-free season, which would provide a hedge against localized threats such as oil spills, concentrations of fishery activity, and interactions with shipping; and (4) individual ribbon seals have the capability to undertake large seasonal movements and shifts between pelagic and pack ice habitats, which may mitigate some anticipated impacts of anthropogenic climate change. We therefore find that the ribbon seal does not warrant listing as threatened or endangered throughout its range at this time.

Significant Portion of the Range Evaluation

Under the ESA and our implementing regulations, a species warrants listing if it is threatened or endangered throughout all or a significant portion of its range. In our analysis for this listing determination, we initially evaluated the status of and threats to the ribbon seal throughout its entire range. We found that the consequences of habitat change associated with a warming climate can be expected to manifest throughout the current breeding and molting ranges of ribbon seals, and that the ongoing and projected changes in sea ice habitat are likely to reduce the ribbon seal's vital rates of reproduction and survival gradually through the foreseeable future. However, despite the expectation of a gradual decline, we concluded that the ribbon seal is not endangered nor is it likely to become so within the foreseeable future throughout its range.

The magnitude of the threats posed to the persistence of ribbon seals, including from changes in sea ice habitat, is likely to vary to some degree across the range of the species depending on a number of factors, including where affected populations occur. In light of the potential differences in the magnitude of the threats to specific areas or populations, we next evaluated whether the ribbon seal might be threatened or endangered in any significant portion of its range. In accordance with our draft policy on "significant portion of its range," our first step in this evaluation was to review the entire supporting record for this listing determination to "identify any portions of the range[s] of the [DPSs] that warrant further consideration" (76 FR 77002; December 9, 2011). We evaluated whether substantial information indicated "that (i) the portions may be significant [within the meaning of the draft policy] and (ii) the species [occupying those portions] may be in danger of extinction or likely to become so within the

foreseeable future” (76 FR 77002; December 9, 2011). Depending on the biology of a species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not “significant,” we do not need to determine whether the species occupying that portion is threatened or endangered there; if we determine that the members of a species occupying a portion of its range are not threatened or endangered, we do not need to determine if that portion is “significant.” In practice, a key part of the determination as to whether a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species’ range that clearly would not meet the biologically based definition of “significant,” such portions will not warrant further consideration. Finally, if threats, even though acting only in a portion of the range of the species, would cause the entire species to be threatened or endangered, the conclusion would be that the species is threatened or endangered throughout its range (rather than only in a significant portion of its range).

All of the ESA threat factors assigned scores by the BRT (Factors A, B, C, and E) were judged to be of relatively higher significance in the Sea of Okhotsk than in the Bering Sea, and we concur with this assessment. Therefore, we evaluated whether there is substantial information suggesting that the hypothetical loss of the portion of the species residing in the Sea of Okhotsk would reasonably be expected to increase the demographic risks to the point that the species would then be in danger of extinction, i.e., whether the Sea of Okhotsk portion of the species’ range should be considered “significant.” At present, the numbers of ribbon seals in both the Bering Sea and Sea of Okhotsk portions of the range are on the order of 100,000 or more in each sea basin. As discussed in more detail in the status review report, populations or sub-populations of this magnitude and with the life history characteristics of the ribbon seal are typically immune to demographic risks that are associated with or exacerbated by low abundance, such as year-to-year

environmental fluctuations, loss of diversity, failure of breeding systems, and lack of potential for productivity. The climate related threats facing ribbon seals are expected to increase more or less in parallel between the Bering Sea and Sea of Okhotsk, albeit more quickly in the latter. If ribbon seal numbers in the Bering Sea decrease in the future to levels at which the demographic risks discussed above become significant, then the loss of either the Sea of Okhotsk or the Bering Sea portions would likely place the entire species in danger of extinction. However, at least in the near term, the BRT concluded, and we agree, that the loss of the Sea of Okhotsk portion of the ribbon seal population would not place the remainder, the Bering Sea portion, in danger of extinction (Boveng *et al.*, 2013, section 4.3.3.3). Because the portion of the ribbon seal population residing in the Sea of Okhotsk is not so significant that its hypothetical loss would render the species endangered, we conclude that the Sea of Okhotsk portion does not constitute a significant portion of the ribbon seal’s range. Consequently, we need not address the question of whether the portion of the species occupying the Sea of Okhotsk is threatened or endangered.

Conclusion

Our review of the information pertaining to the five ESA section 4(a)(1) factors does not support the assertion that there are threats acting on the species or its habitat that have rendered the ribbon seal to be in danger of extinction or likely to become so in the foreseeable future, throughout all or a significant portion of its range. Therefore, listing the ribbon seal as threatened or endangered under the ESA is not warranted at this time.

We will continue to monitor the status of the ribbon seal. If conditions change in the future, we will re-evaluate the status of this species to determine whether it should be listed as threatened or endangered under the ESA. Because of the remaining uncertainties regarding the effects of climate change, sea ice cover, and potential Russian harvests, following the 2008 status review of the ribbon seal, this species was added to our Species of Concern list (<http://www.nmfs.noaa.gov/pr/species/concern/>). The Species of Concern list serves to: (1) Increase public awareness about the species; (2) further identify data deficiencies and uncertainties in the species’ status and the threats it faces; and (3) stimulate cooperative research efforts to obtain the information necessary to evaluate the

species’ status and threats. As resources permit, we will conduct further studies of ribbon seal abundance and status. We will evaluate results of these and any other studies that may be conducted and undertake a new status review, if warranted.

References Cited

A complete list of all references cited in this rulemaking can be found on our Web site at <http://alaskafisheries.noaa.gov> and is available upon request from the NMFS office in Juneau, Alaska (see ADDRESSES).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 3, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs.

[FR Doc. 2013-16601 Filed 7-9-13; 8:45 am]

BILLING CODE 3510-22-P

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Meeting.

SUMMARY: The Commodity Futures Trading Commission’s (CFTC) Agricultural Advisory Committee (AAC) is providing notice that it will hold a public meeting on Thursday, July 25, 2013, from 9:00 a.m. to 2:30 p.m., at the CFTC’s Washington, DC, headquarters. The AAC will discuss issues related to customer protection and the Dodd-Frank Wall Street Reform and Consumer Protection Act. The meeting is open to the public with seating on a first-come, first-served basis. Members of the public who wish to listen to the meeting by telephone may do so by calling a domestic toll-free or international toll or toll-free number. The domestic toll-free number, which is listed in this Notice, will connect to a live, listen-only audio feed. The international toll and toll-free numbers will be posted on the CFTC Web site in advance of the meeting. Call-in participants should be prepared to provide their first name, last name, and affiliation. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person below. The public is invited to submit written statements to

North Pacific Fishery Management Council

Eric A. Olson, Chairman
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone (907) 271-2809

Fax (907) 271-2817

Visit our website: <http://www.alaskafisheries.noaa.gov/npfmc>

July 15, 2013

Paul Marx, Division Chief
Financial Services Division (F/MB5)
National Marine Fisheries Service
1315 East West Highway
Silver Spring, MD 20910

Dear Mr. Marx:

During its recent June meeting, the North Pacific Fishery Management Council (Council) was requested by numerous representatives of the North Pacific fishing industry to address a long-standing policy of the agency's Fisheries Finance Program (FFP) which prohibits FFP loans from being issued in instances where such loans would "contribute to the overcapitalization of the fishing industry". The Council agrees with the original, underlying intent of this policy; however, because of the very nature of the management programs currently in place in the North Pacific fisheries, the Council believes that the current policy is in fact outdated and is no longer relevant in the context of 'overcapacity' for which the FFP policy was originally intended. Therefore, the Council strongly encourages that this policy be changed in order to allow these fleets access to the FFP program in order to rebuild and replace vessels, many of which are over 40 years old. Because these fleets are operating in 'rationalized', catch share fisheries, allowing vessel rebuilds or replacements under the FFP will allow for safer, more efficient operations, while not contributing to overcapitalization.

Since full Americanization of the fisheries off Alaska in about 1990, the Council has actively and aggressively pursued capacity limitations in all managed fisheries. The Council has developed and implemented several catch-share programs in the North Pacific that have been successful at addressing overcapitalization:

- In 1995, the Pacific halibut and sablefish fixed gear fisheries transitioned from an open access derby-style fisheries to an individual fishing quota program.
- In 1998, the American Fisheries Act (AFA) was passed by Congress, and implemented by the Council the following year. Under this Act, access to the Bering Sea pollock fisheries was limited to a specific number of qualifying vessels and processors, and a system of fishery cooperatives was put in place which allows the fleet to effectively assign individual vessel catch and bycatch accountability.
- In 2005, a voluntary cooperative program with 100% of the total allowable catches of Bering Sea and Aleutian Island crab resources were allocated through harvest shares, as well as issuance of processor shares among harvesters, processors, and coastal communities.
- Starting in 2007, the Central Gulf of Alaska rockfish program allocated exclusive harvest privileges to a specific group of license limitation program license holders who used trawl gear to target Pacific ocean perch, pelagic shelf rockfish, and northern rockfish.

- In 2008, the Amendment 80 program began allocating a portion of the total allowable catches for Atka mackerel, Pacific ocean perch, and 3 flatfish species (yellowfin sole, rock sole, and flathead sole), along with an allocation of prohibited species catch quota for halibut and crab, to the non-AFA trawl catcher processors (Amendment 80 sector).
- On February 26, 2004, the Freezer Longline Conservation Cooperative was incorporated. The cooperative apportions the sector's share of the available BSAI Pacific cod total allowable catch among its members to eliminate the race for fish that often arises under limited access management.

Due to the recent developments of a limited class of participants, sector allocations, capacity reduction (in the form of the voluntary vessel buyback program), and the cooperative structure for these fisheries, excess capacity in the North Pacific fisheries has been significantly reduced. Under current, catch-share based management, companies are better able to design vessels for their harvesting and processing strategies. These catch-share programs provide an incentive to build new vessels that are safer, more efficient, utilize more of the fish, and are more cost effective. Most importantly, under these management programs, the capacity of a particular vessel is irrelevant to the management of the fishery.

Recently the Council has removed restrictions on the replacement of vessels in many of the catch-share programs for purposes of improving vessel safety and economic efficiency of the North Pacific groundfish fleet. In June 2010, the Council recommended Amendment 80 vessel owners be allowed to replace their vessels to allow for improved vessel safety, economic efficiency, and to meet the international class and load line requirements that would allow for a broader range of onboard processing options. In December 2012, the Council incentivized the replacement of freezer longline vessels with action allowing the maximum length overall to increase. In April 2013, the Council, acting on the Coast Guard Authorization Act of 2010, recommended that AFA vessel owners be allowed to rebuild or replace their vessels for purpose of improving vessel safety and operational efficiencies (including fuel efficiency).

Recognizing the importance of the NMFS Fisheries Finance Program in providing long term financing for the cost of construction or reconstruction of fishing vessels, and the need for continued modernization of the nation's fishing fleet, the Council strongly recommends that the program be expanded to allow for inclusion of vessels operating in these catch-share programs. Expanding the program to include these vessels will improve overall production efficiency and safety, which will provide better utilization of the Nation's fisheries resources, and will do so without contributing to overcapitalization. Thank you for considering our request, and please contact me with any questions you may have on this issue.

Sincerely,



Chris Oliver
Executive Director

CC: Samuel Rauch, Assistant Administrator for NOAA Fisheries
James Balsiger, Regional Administrator, Alaska Region

North Pacific Fishery Management Council

Eric A. Olson, Chairman
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone (907) 271-2809

Fax (907) 271-2817

Visit our website: <http://www.alaskafisheries.noaa.gov/npfmc>

July 16, 2013

Tom Hourigan,
Chief Scientist Deep-Sea Coral Research and Technology Program
NOAA Coral Reef Conservation Program N/OCRM
1305 East West Highway, 10th Floor
Silver Spring, MD 20910-3281

Dear Dr. Hourigan,

I am writing to you on behalf of the North Pacific Fishery Management Council (Council) to request that the Deep-Sea Coral Research and Technology Program (DSCRTP) consider additional research on deep-sea corals in the Bering Sea, particularly in the Bering Sea canyons. The Council has recently initiated an analysis to identify management measures for conserving areas of coral concentrations and associated fish productivity in Pribilof and Zemchug canyons in the Bering Sea. Because of the lack of data on deep-sea coral abundance and distribution in the Bering Sea, the Council requests that the DSCRTP: prioritize additional research to identify and characterize areas of relatively high coral abundance in the Bering Sea slope canyon areas, and support the process of improving predictions from the Alaska Fisheries Science Center (AFSC) coral habitat model and vulnerability analysis using camera drops or similar techniques capable of gathering empirical data. The Council also requests that the DSCRTP use the results of this information to inform longer term research priorities, including refining predictions of coral presence, acquiring information on the characteristics of coral in this area (such as height and density), the role of these corals as habitat for fish, and documenting the presence and degree of fishing gear effects on corals.

The Council feels that these data are essential to providing a long-term management strategy to protect sensitive coral species and habitats while providing opportunity for sustainable fisheries in the Bering Sea. We look forward to working with the DSCRTP as we develop effective and appropriate management measures to protect corals in the Bering Sea canyons.

Sincerely,



Chris Oliver
Executive Director

Cc: Jim Balsiger, Regional Administrator, Alaska Region
Jeanne Hanson, NMFS Alaska Region
Doug DeMaster, Director, AFSC
Chris Rooper, AFSC



July 2, 2013

Dr. Jim Balsiger
Regional Administrator
National Oceanic and Atmospheric Administration
PO Box 21668
Juneau, Alaska 99802-1668

Re: 12-Month Finding on Petition to Delist Eastern Distinct Population of Steller Sea Lion
(*Eumetopias jubatus*)

Dear Dr. Balsiger:

As you know, the Alaska Department of Fish and Game ("Alaska"), in partnership with the Washington and Oregon Departments of Fish and Wildlife (collectively the "States"), has, for quite some time, been deeply involved with the efforts to recover and delist the Eastern Distinct Population Segment of the Steller sea lion ("eDPS SSL"). Most recently, on June 29, 2010, the National Marine Fisheries Service ("NMFS" or the "Service") initiated a 5-year status review of the eDPS SSL under the Endangered Species Act ("ESA"), 16 U.S.C. §§1531-1544, and opened up a public comment period regarding the same. *See* 75 Fed. Reg. 37385 (June 29, 2010). During the comment period, the States submitted two petitions to delist the eDPS SSL.

Unfortunately, no final rule has been issued with respect to those petitions. This letter is intended to solicit information regarding the status of the Service's final rule on the petitions to delist the eDPS SSL and to request a greater degree of communication between the Service and various state agencies regarding the same. The States of Washington and Oregon join in the concerns expressed by Alaska in this correspondence.

In brief, under Section 4 of the ESA, 16 U.S.C. § 1533(b)(3)(A), and 50 C.F.R. § 424.14(a), when a party submits a petition to delist a species the Service must make, to the maximum extent practicable, a finding within 90-days of receipt of a petition as to whether the petition presents "substantial scientific or commercial information" indicating the delisting may be warranted. 50 C.F.R. § 424.14(b).

During this time period, the Secretary must determine whether or not the petitioned delisting action is warranted. 16 U.S.C. § 1533(b)(3)(A); *see also* 50 C.F.R. § 424.14(b)(1). Upon making an initial positive 90-day finding, the Secretary has 12 months from the date of the delisting petition to determine whether it is warranted and if so, to publish the proposed rule delisting the species. *See* 16 U.S.C. § 1533(b)(3)(B)(ii); 50 C.F.R. § 424.14(b)(3)(ii).

Within 12 months from publication of the proposed delisting rule, the Secretary “shall” do one of the three actions: (1) publish a final rule implementing the delisting; (2) publish a notice withdrawing the proposed delisting upon a finding that evidence does not justify the action; or (3) extend the deadline for a final decision by no more than six months after finding “substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data.” 50 C.F.R. § 424.17(a)(1).

Here, the Service made a positive 90-day finding on the delisting petitions, *see* 75 Fed. Reg. 77602 (December 13, 2010), and, on April 18, 2012, published a proposed rule delisting the eDPS SSL as threatened or endangered under the ESA. *See* 77 Fed. Reg. 23209 (April 18, 2012). In particular, the Service found:

- The biological criteria for delisting the eDPS SSL had been met;
- None of the threats evaluated under the five ESA listing factors, individually or cumulatively, were likely to result in the eDPS SSL becoming in danger of extinction within the foreseeable future throughout all or a significant portion of its range;
- The ESA listing factor criteria, as set forth in the eDPS SSL recovery plan, had been met and each recommended action under those criteria had been accomplished;
- Current measures under the Marine Mammal Protection Act and other laws and regulations would continue to provide protection necessary to ensure continued recovery of the eDPS SSL even after delisting occurred.

Though the proposed rule delisting the eDPS SSL was published on April 18, 2012, the Service has not issued a final rule, or otherwise taken any further action with respect to the eDPS SSL, within the 12-month time period prescribed by law.

Due to this inaction, the States are seeking commitment from the Service as to when it will issue its final rule regarding the delisting of the eDPS SSL, and to request greater communication regarding the same. Please note this letter is not intended to serve as a 60-day notice of intent to sue under ESA. Rather, it is intended to encourage an open dialogue between the States and the Service. The recovery of the eDPS SSL is a success story for the species and an example of effective cooperation between state and federal agencies. The States wish to continue this cooperation and hope that this letter will result in greater dialogue between the States and NMFS.

Indeed, the States are mindful that court-imposed deadlines, budget restraints, competing listing and delisting petitions, as well as various other factors, impact the Service’s ability to complete the eDPS SSL rulemaking process. The States appreciate the fact that some delays are likely to occur. However, the issuance of a final rule regarding the delisting petitions is a matter of the utmost importance to the States. Indeed, given the findings in the proposed rule, the States believes there is no reason to further delay issuance of a final rule.

While the States wish to cooperate with the Service, and may be willing to accommodate some degree of delay in the process, we are unwilling to wait indefinitely for the Service to make a final decision. As such, we request the Service provide a date certain for issuance of the final rule on the eDPS SSL delisting petitions.

Dr. Jim Balsiger
July 2, 2013
Page 3

The States would also appreciate more open and direct communication to discuss any and all issues associated with the delisting petitions. Indeed, much of our concern regarding the Service's failure to issue a final rule has been exacerbated by a simple lack of communication.

We look forward to further discussions of this matter with you.

Sincerely,



Doug Vincent-Lang
Alaska Department of Fish and Game



Stephen Williams
Oregon Department of Fish and Wildlife



Bill Tweit
Washington Department of Fish and Wildlife

June 2013

Ms Julie Scheurer
NOAA Fisheries
PO Box 21668
Juneau, AK 99802

Dear Ms Scheurer:

The following are our comments on the May 20, 2013 draft of the **Initial Regulatory Impact Review to Revise Federal Definition of Sport Fishing Guide Services**. We have chosen to comment in five specific areas rather than going paragraph by paragraph through the draft document.

- **Some of the terminology and examples indicate strong bias against the guided sport fishing industry**
- **The newly proposed alternatives will have a large negative impact on data collection pertaining to the sport fish harvest of halibut**
- **The only identified impact of the proposed alternatives are in the enforcement arena and suggested changes would greatly complicate the definitions of what is legal and what is illegal**
- **The proposal to only allow one segment of the guided fishing industry to use IFQ fish is discriminatory**
- **The proposed definitions of Assistance reflect a strong lack of knowledge of the Council in the actual operation of the guided sport fishing industry**

On page 4 of the draft document several **terminology** comments seem to be very bias and misleading concerning guiding, particularly the self-guided sport fishing industry. For example: in paragraph 4 the statement is made that self-guided practices are meant to circumvent fishing constraints. While this may be true in a few instances, most of the self-guided operations were in business many years before the 2009 regulations were put in place and they were using the self-guided business model. Personally, our business has been self-guiding since 1981. It is both bias and untrue to suggest that all self-guided operations are trying to circumvent current regulations.

Also on page 4 of the draft document an extrapolation is made that “over 6,600 anglers may fish for halibut under charter each day.” This is extremely misleading. To reach that number of anglers fishing on a given day, every charter boat would have to be fishing at capacity (6-people-per-boat) and that will never happen. The statement suggests that the charter anglers pose a great threat to the population even though throughout the draft document it is clearly stated that these proposed alternatives are projected to have no measurable impact on halibut stocks.

Data collection on halibut harvest in the sport fishery will clearly suffer under all changes recommended in the draft document. Under current ADF&G guidelines we report 100% of our catch and catch-and-release, by area, in the logbooks. The data collected by creel surveys (SWHS), both in person and by

mail, represent about 5% of the total catch as reported in the draft document. Furthermore, logbooks are assigned to specific providers which largely identify the local areas where fishing occurs. Pages 21 and 22 clearly identify the problems that will occur in data collection.

Does anyone on the Council understand the burden it would place on the businesses to collect logbook data on bare-bones fishing operations. Who will pay for the extra employees required to obtain the data? Currently the data collection process requires our business to employ a person 20 to 30 hours a week just to comply. The intent from the original logbook data collection process was for a 5 to 10 minute process.

In discussing the **Impact** of the proposed Alternatives the draft document details on page 3, paragraph 5 the following:

- Current practice is legal
- No regulatory agency has requested nor recommended Council action
- All sport halibut harvest removals are being estimated
- No specific conservation concern has been identified
- This is a policy concern

The council is focusing on a few small operators of self-guided fishing operators whose harvest is minimal compared to commercial fishermen, subsistence harvests, and charter boat operations. The proposed Alternatives 2 and 3 will have no measurable impact on halibut resources. The draft document repeatedly identifies problems that will be created by both alternatives 2 and 3 that are much more difficult and expensive to resolve than choosing to stay with the status quo.

Most of the small, non-charter boat operators existed before the 2009 regulations and associated limited entry was instituted. Several of those operators qualified for the CHP's based on years of operation. However, Alaska Department of Fish and Game did not require log books; in fact they would not issue them to these operators, until 2006. Therefore, based on the requirement to have filled out log books in either 2004 or 2005 these operations could not qualify even though they were operating businesses. The current situation has resulted because of the failure to recognize the self-guided industry when the CHP system was established. Additionally, when log books requirements were instituted the number of required guide licenses was for the guide boats only and did not reflect the number of boats actually fishing.

The whole issue could have been avoided by recognizing the self-guided industry as part of the charter boat industry in the beginning. How many self-guided fishing operations are there in Alaska? How many in southeast Alaska? Where are they located? Almost all of these operations are located close to communities where they have access to fuel, food, and transportation. Additionally, remote land which will accommodate these small operations is scarce to non-existent. In cities such as Ketchikan, Sitka, and Juneau if anglers want to get out to the good halibut fishing they hire charter boats; they don't use self-guided businesses.

How many self-guided operations in Area 2 use “chase boats”? I know of one such operation in all of SE Alaska. Other operations keep in touch by radio or phone, or occasionally go out to “check” on their guests. Table 6 indicates this whole process is addressing bag limits of two businesses. Is that correct? Page 18, paragraph 4 “Across all years, logbook data indicate that three individual businesses may have routinely offered guide-assisted halibut fishing that did not meet the Federal definition.”

The purpose for allowing use of IFQ’s by Charter Boats is not clearly explained.

Page10 Section 1.3.3 Paragraph 2:

- What is the purpose of allowing limited use of IFQ’s by Charter Boats?
- Is the intent to eventually have halibut to be declared a “commercial” fish and the only way a sport fishing guiding operation can catch halibut is by obtaining part of an IFQ?
- Will the IFQ’s just be leased for a period or can the IFQ be purchase by Sport Fishing guides? If parts can be sold how does this then impact the current guidelines on who can purchase a halibut IFQ (fishing experience parameters must currently be met)? If the IFQ’s cannot be purchased by Sport Fishing guide operations then those owning the IFQ’s will ultimately control portions of the guided sport fishery.
- Will the group of providers currently listed as non-charter boat guides also be allowed to purchase IFQ’s? If the Council adopts Alternative 2, they would need to decide if GAF would be allowed for use on “guide-assisted” vessels. Surely denying access to these permits by the guide-assisted businesses, as suggested by the NMFS staff, would need to be based on some criteria besides personal preference. Why would it even be a consideration not to extend to the charter boats and guide-assisted boats the same privileges?
- How do we interpret the last phrase in this paragraph where it states this is a process for “determining harvest restrictions for charter anglers”? Since the first objective is to allocate between charter and commercial fisheries, and the second is to restrict the charter boat harvest, do we assume the restrictions to the charter boats will be added to the commercial fishery?

Section 1.3.3 Paragraph 5:

- If the new policy would provide a chance for charter boats to circumvent the 1-fish policy by using IFQ quotas then why is there a concern about Alternative 1—Status Quo? As stated on page 3, paragraph 5 this is not a conservation issue.

The discussion on “Assistance” seems to shows a lack of understanding of business operations within self-guided enterprises and difficulty of enforcement. This would be supreme over-regulation as a proposed cure for a simple problem created by other regulation. Are we trying to solve regulation-created problems by adding more regulations?

Alternative 2. Revise and clarify Federal definitions.

Options 1 and 2.

- If the language “by being onboard a vessel with such person” is removed does this mean that anyone who is selling any part of the services or equipment used on that fishing trip is liable for prosecution?
- Does this prohibit a clerk in a store from telling a person, to whom they are selling halibut tackle, where they have been catching halibut and giving them coordinates? The clerk is compensated for helping the angler.

Alternative 2, Option 3, Suboption 1:

- The example of assistance by providing GPS units containing coordinates is unreasonable and probably unenforceable. How could enforcement personnel determine who put coordinates into the GPS, how long they had been in the system, and where the coordinates originally came from? If the handheld GPS were a personal unit and the owner received coordinates from any provider of fishing tackle or information, would the holder still be in violation? If anglers swapped GPS coordinates would they be breaking the law? If anglers posted the coordinates where they had been fishing would they be breaking the law? Would GPS coordinates provided before the “chartered vessel fishing trip” be considered assistance? Would that mean that NOAA, Lowrance, and other organizations, who provide the depth charts and coordinates, also be required to be a licensed guide?
- If self-guided operators discussed fishing locations, while located on their own property and not on the water, and enforcement regulations prohibited such conversations would that be violation of 1st Amendment Rights?
- If a self-guided angler is fishing for salmon using coordinates provided by facility operators and started fishing for halibut using the same coordinates would the operator be subject to legal action?
- How close to a coordinate would an angler need to be to be considered “on” the coordinates?

Option 3,

- The regulations already prevent self-guided operators from being onboard to help anglers capture fish. Would the proposed definition of “assistance” prohibit operators from talking with their guests by phone, by radio, by text, or any other measure once the guests get on the water? How can this be enforced? Are phones and radios going to be tapped and monitored?
- This option specifies that assistance cannot be given during any part of a sport fishing trip. The trip is defined as beginning at the time tackle is put into the water and ending when guests are off-loaded. How can this be reconciled if people are

shown where to fish and then the “guide” leaves before the anglers put their tackle into the water.

1.4.2.3 Option 3: Assistance

- A charter vessel fishing trip for purposes of 33.65(d), 300.66, and 300.67 would seem to preclude most types of “assistance” listed in Table 7.
- The activities listed in Table 7 range from unconstitutional to unenforceable to implementation of a Big Brother society. They clearly point out the difficulties and impossibilities of trying to implement the new option 3 on assistance. It would surely create additional inconsistencies. Table 7, though just a collection of ideas, clearly identified a lack of understanding of how the self-guided businesses operate. Was there a representative of the self-guided industry invited to attend the council meetings and provide input? Is there any intent of the council to visit or gain first-hand knowledge of the industry before they write regulations that will be impossible to implement and enforce? The charter industry is well-understood, the self-guided industry is not.

1.4.1 Alternative 2

- Does this mean on-the-water assistance cannot be given to anglers that are fishing for salmon or other non-halibut species? Is it possible that while fishing for salmon a guide could freely communicate and visit with guest anglers, but the instant they put a halibut line in the water the guide would be restricted in conversation.
- How would we handle a situation where anglers in the same boats were fishing for different species? If several anglers are mooching for salmon and someone else in the same boat is bottom fishing would a guide be in danger of violating policies if he came up alongside and talked with all of them.

Conclusions:

1. **The self-guided sport fishing industry is equal in importance to the charter boat industry and should be recognized and treated as such. The initial CHP criteria may have inadvertently precluded the self-guided sport fishing industry from participating in the CHP process due to the unavailability of logbooks to this industry during qualifying years.**
2. **Alternatives 2 and 3 will either reduce the amount of catch data provided by the guided fishing industry or put a much greater burden on the business owners.**
3. **The impact of Alternatives 2 and 3 on the population of halibut will not be measurable, but the impacts of the businesses and law enforcement will be overwhelmingly negative.**
4. **The purpose of allowing IFQ’s to be used by the guided industry is not clearly explained, and there appears to be no justifiable reason for not allowing both the Charter Boat and Self-Guided industry to use IFQ’s if they are made available.**
5. **There is no clear way to define Assistance. Attempts to do so will create more problems than would be solved.**

One final thought: This whole process reminds one of a person who had a small nail poking up from a board in his dock so he brought in a pile-driver to knock it back down.

Sincerely,

Mark C. Warner, PhD

Mark H. Warner, PhD, MBA

Owners

Doc Warner's Alaska Fishing

(801) 298-8060

(907)-723-8772

July 16, 2013

Via Email to www.regulations.gov and U.S. Mail

James W. Balsiger, Ph.D
Administrator, Alaska Region
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
P.O. Box 21668
Juneau, AK 99802

RE: Comments on Draft Environmental Impact Statement for Steller Sea Lion Protection Measures for Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area

Dear Dr. Balsiger:

On behalf of the signatories below, we submit these comments for consideration and response by NMFS on the *Draft Environmental Impact Statement for Steller Sea Lion Protection Measures for Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area* (“DEIS”) and the accompanying Regulatory Impact Review (“RIR”) and Initial Regulatory Flexibility Analysis (“IRFA”). We are participants in the groundfish fisheries as fishermen, processors, and fishing dependent communities who have been and continue to be directly impacted by the current Steller sea lion mitigation measures. Our members have participated in the North Pacific Fishery Management Council’s (“Council” or “NPFMC”) Steller Sea Lion Mitigation Committee (“SSLMC”) and at numerous Council sessions devoted to the development of Steller sea lion mitigation measures for the fisheries. We have direct interests in maintaining a healthy and diverse North Pacific ecosystem that also includes a sustainable groundfish fishery and vibrant local communities.

This letter first describes our concerns regarding general NEPA compliance and process issues, then provides comments on specific chapters in the DEIS, and finally comments on the economic analysis of alternatives in the RIR.

COMMENTS ON PROCESS AND NEPA COMPLIANCE

I. The DEIS does not provide the public and decisionmakers with the information needed to make a fully informed decision.

A. The DEIS should be revised to disclose the agency's thinking on key controversial issues *prior* to action by the NPFMC.

The DEIS is yet another encyclopedic compilation of details related to the western Distinct Population Segment (“WDPS”) of Steller sea lions (“SSL”) but unfortunately its analyses need substantial revisions in order to meet both NEPA’s requirements and its goal of fostering excellent agency actions. 40 C.F.R. § 1500.1(c) (“The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences”). As discussed in these comments, the DEIS is far from providing straightforward and concise reviews that are proportional to potential impacts and effectively “convey the relevant considerations on the key controversial issues to the public and decisionmakers in a timely manner while rigorously addressing the issues presented.” March 6, 2012 Memorandum from Nancy H. Sutley to Heads of Federal Departments and Agencies, *Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Policy Act* at 1; 40 C.F.R. § 1500.1.

The DEIS does not give the public or the Council a “concise, clear and to the point” statement of NMFS’ thinking and resolution of the most significant and controversial issue: the reasonably foreseeable significant adverse impacts expected from interaction between commercial fisheries and Steller sea lions. *See* 40 C.F.R. § 1500.2. The DEIS repeats the exact failing noted by the U.S. District Court for the District of Alaska and the very reason that the agency has been enjoined to prepare this environmental impact statement. The court found that “NMFS essentially provided some underlying environmental information for comment [in the 2010 EA], but not its conclusions.” *State of Alaska v. Lubchenko*, U.S. District Court for the District of Alaska No. 3:10-cv-00271-TMB, Dkt. 130 at 51-2. Although it consists of hundreds of more pages than the 2010 EA, the same is true of the DEIS.

The DEIS, and the process being followed by NMFS, continues to “hide the ball” from the public and the Council on the major and most controversial issue that should be addressed in this DEIS. NMFS is improperly deferring public presentation of the agency’s conclusions on the key issue of whether there are negative impacts on Steller sea lions to a forthcoming consultation under the Endangered Species Act.¹ The DEIS consequently implicitly assumes that the conclusions and reasoning of the 2010 Biological Opinion will not change. *See, e.g.,*

¹ This point is demonstrated by the memoranda provided to the Council at its June meeting, which document that NMFS is postponing disclosure of the agency’s conclusions on controversial issues until after the Council selects a proposed action. *See* Memorandum from DeMaster to Kurland (May 24, 2013), Memorandum from Balsiger to Olson dated May 28, 2013 and supporting documents (collectively “the June 2013 Memoranda”), included as Exhibit 1.

Section 5.2.2.18. This approach is inconsistent with NMFS' stated plan to perform a new section 7 consultation after the EIS is finalized. Repeating this sequential approach, which is contrary to federal policy and regulations calling for concurrent processes, effectively eliminates meaningful public comment on the agency's conclusions and makes it impossible for the Council to make an informed decision on new mitigation measures. 40 C.F.R. § 1500.2(b)-(d); § 1502.25(a). NEPA demands that agencies provide the public and decisionmakers with the results of an agency's "hard look" at the most significant issues related to the impacts of a proposed action *in advance* of a decision on a proposed action, and we urge NMFS to correct this fundamental defect.

This situation is particularly disappointing in light of the repeated requests from the Council and the public for this information. Throughout this NEPA process, NMFS has ducked responding to comments by the public and Council, as well as independent expert reviews of the key scientific issues at the heart the NEPA impacts analysis.² Although we provided lengthy scoping comments for the EIS, the agency has incorrectly characterized many of our comments as related only to the 2010 Biological Opinion and did not respond to them in its scoping report. We are enclosing those comments here as Exhibit 1, and again request specific responses to all of them. NMFS has similarly failed to adequately respond to repeated requests for more information by the Council. Most significantly, NMFS did not substantially revise the PDEIS before publishing it basically intact as the DEIS, even though the Council passed a motion at its April 2013 meeting asking for substantial revisions.³ NMFS has had numerous occasions to respond to critiques, correct scientific flaws, and provide a meaningful role for the public, the Council, and its own scientific advisors since March 2012 when the court issued its injunction, but has repeatedly done just the opposite by conflating its roles as the action and consulting agency under the ESA, and hiding behind a future ESA consultation.

The lack of transparency in this NEPA process is exacerbated by NMFS' failure in the DEIS to disclose and evaluate new information, including two key pieces of information: (1) continued improvement and growth in the U.S. population of the western DPS, and (2) independent peer reviews which harshly criticize the agency's rationale for the current sea lion mitigation measures (Alternative 1 in the DEIS). NEPA requires not only the use of the best available science, but also mandates that the agency provide "the scientific and analytical basis for the comparisons [of alternatives]." 40 C.F.R. §1502.15. NMFS' methodology and analyses related to its evaluation of the central NEPA issue of potential negative interactions between commercial fisheries and the WDPS of Steller sea lions are

² Although NMFS has solicited public comment on Steller sea lion mitigation measures in other processes, it has not provided specific written public responses to comments other than general statements that it "considered" such comments. For example, NMFS never published specific responses to public comments on the 2010 Biological Opinion. Similarly NMFS has yet to respond to public comments on the 2010 Interim Final Rule—Alternative 1 in the DEIS—even though the public comment period closed on February 28, 2011. *See* 76 Fed. Reg. 2027 (Jan. 12, 2011). Specific written responses by NMFS to these previous comments would have informed this NEPA process and public comment during it.

³ Copies of relevant motions passed by the Council in April and June 2013 are enclosed as Exhibit 2.

exactly what has been roundly and severely criticized by two scientific peer reviews: one conducted by the Independent Scientific Review Panel (“ISRP”) convened by the states of Alaska and Washington and another convened on behalf of NMFS by the Center for Independent Experts (“CIE”). Bernard et al 2011, included as Exhibit 3, Attachment 6; Stokes 2012, included as Exhibit 3, Attachment 5; Stewart 2012, included as Exhibit 3, Attachment 4; Bowen 2012, included as Exhibit 3, Attachment 3. The DEIS brushes aside the conclusions of these seven independent scientists. Although those conclusions directly and substantially relate to the required NEPA analyses, Section 1.9.6 describes the conclusions of the ISRP in three sentences and does not even disclose the conclusions of the CIE review.

It is completely impossible for the public to provide meaningful comments in response to the general statements in section 1.9.6 that NMFS “considered these concerns in this EIS analysis” and “considered the CIE reports in the development of this EIS.” Similarly, Section 1.6 does not disclose the CIE’s criticism of NMFS’ scientific analyses and reasoning, but instead misleadingly implies that the CIE reviewers only questioned the information used in the 2010 Biological Opinion. The DEIS states only that the three independent reports from the CIE “are used to inform this EIS analysis to ensure the best available information is used regarding Steller sea lions and fisheries interactions.” DEIS at 1-11. Yet a review of chapters 2 and 5, described in more detail below, shows that those chapters heavily rely on the findings of the 2010 Biological Opinion without explaining NMFS’ responses to the substantial criticisms contained in the CIE and ISRP reports. This glaring deficiency must be corrected in order to show that the EIS and its conclusions are “supported by evidence that the agency has made the necessary environmental analyses.” 40 C.F.R. § 1502.1.

B. The evaluation of alternatives in the DEIS is inadequate and does not provide a meaningful comparative analysis that allows decisionmakers to choose between them.

NEPA regulations describe the alternatives analysis section as “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. An EIS is to “present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” *Id.* The DEIS does not provide an adequate comparative analysis, nor does it “rigorously explore and objectively evaluate” the alternatives. *Id.* at § 1502.14(a).

Moreover, the alternatives analysis does not comply with the court’s injunction or frame the issues in a manner that cures the deficiencies of the 2010 NEPA analysis. NMFS is evaluating the wrong proposed action in this DEIS by assuming that the measures imposed by the 2010 Interim Final Rule (“IFR”) are the status quo. *See* Section 2.1.1. What it was actually required to do instead by the court’s injunction was to evaluate the implementation of the 2010 Interim Final Rule (“IFR”) (Alternative 1) as the proposed action, the original pre-2011 mitigation measures (Alternative 4) as the “no action” alternative, and then

consider other measures as alternatives to the proposed action (Alternative 1). Had the DEIS proceeded with this structure, it would have put the correct focus on the implementation of the 2010 Biological Opinion and fixed the NEPA compliance problem found by the court. Instead, the skewed and improper analysis in the DEIS does not provide the public and the decisionmakers with an objective evaluation of the impacts of the IFR, and facilitates the agency's evasion of the central and most controversial issues related to the potential interactions between commercial fisheries and Steller sea lions.

1. The process used to develop the range of alternatives was flawed.

As an opening matter, the range of alternatives evaluated in the DEIS may not in fact be all of the possible reasonable alternatives. Here, the Council and the public cannot compile the universe of reasonable alternatives when performance standards by which unacceptable impacts will be determined by the agency are undisclosed and apparently still shifting. This problem has roots in the very beginning of the process NMFS used to identify and develop reasonable alternatives. This process is incorrectly described in the DEIS at Section 1.6. Section 1.6 should be revised to reflect the following events as they occurred.

At the beginning of the process NMFS asked the Council to assist in developing the alternatives to the current mitigation measures (Alternative 1) for analysis. The Council in turn tasked its SSLMC to develop a reasonable range of alternatives, including alternatives that would take into account new information and assist in avoiding another biological opinion with a jeopardy determination. The Committee spent months gathering and reviewing the most recent scientific information and fishery data. The group brought together extensive knowledge of the economic and practical aspects of Aleutian Islands fisheries so that if NMFS could tell the Committee what temporal dispersion of fishing would be less likely to affect Steller sea lions, what prey items were more important in each sub-area, or how far from Steller sea lion terrestrial sites would be sufficient to protect foraging and ensure the amount and type of prey for a sufficient prey field, the Committee could then develop reasonable alternatives that would create fishing opportunities, and mitigate economic impacts as much as possible, within those constraints.

In trying to conduct its business and meet its charge, the Committee requested clear guidance from NMFS regarding the specific ESA-related metrics that NMFS would be using to evaluate fishing effects on Steller sea lions. NMFS refused to provide that information, contending that it could not do so except in the context of a formal consultation under the ESA. The Committee's work consequently was limited to developing recommendations to the Council based on how it thought the agency might eventually interpret the available information on whether and how fisheries are likely to compete with segments of the WDPS of Steller sea lions that might need protection most. The opportunity to develop sea lion mitigation measures that minimized economic impacts was lost because of this process.

In June 2013, after the release of the DEIS, NMFS' Alaska Fisheries Science Center (AFSC) provided a set of memos, draft papers, and one "published" paper in the form of an AFSC

Tech Memo. Those provide some cryptic and largely incomplete information about the science and analytical approaches but none of this allows a stakeholder to provide any concrete comment on the methods used and how the alternatives might be modified to reduce (assumed) impacts on the WDPS.

Meanwhile, the DEIS itself sheds no meaningful light on performance standards for mitigating adverse impacts. Section 1.10.3 lists seven “performance standards” which differ from those in the 2010 Biological Opinion. The only rationale offered for them is that they “reflect concepts that NMFS has traditionally applied to mitigate potential impacts of the groundfish fisheries on Steller sea lions and their critical habitat and have been upheld in court.” DEIS at 1-21. Yet in chapter 5, the comparison of alternatives is almost exclusively a comparison of how much geographic area is open or closed to fishing combined with an assumption that more open areas and more fishing means more adverse impacts on Steller sea lions. *See, e.g.*, Table 5-96. The DEIS further assumes that the only way to avoid negative impacts is to close sea lion critical habitat (and in some instances, areas outside critical habitat) to fishing, and provides analyses that focus on the percentage of critical habitat closed or the percentage of fishing within critical habitat. *See, e.g.*, Section 5.2.2.12; Tables 5-86, 5-89. As explained in more detail below, this simplistic analysis does not provide the reader with any meaningful bases upon which to evaluate and choose between the alternatives.

Eventually the NPFMC, based on recommendations by the Committee and in consultation with NMFS, adopted a set of alternatives that form the basis for Chapter 2 of this DEIS. Because of a lack of clear guidance from NMFS, these alternatives are based on gradients of amounts of fishing and assumed interpretations of what is known scientifically about how fishing may affect Steller sea lions. Throughout this process NMFS refused to provide the Council with the metrics or analysis that might be used to assess the effects of fishing on Steller sea lions. Most importantly, since October 2012 the Council has repeatedly requested that NMFS provide specific responses to the critiques of the 2010 Biological Opinion by the independent scientific peer reviews, believing that this information would be crucial to developing a reasonable range of alternatives, as well as its eventual selection of a preferred alternative. In the end, the NPFMC had to speculate about what a range of reasonable alternatives might be. This issue was repeatedly raised by the NPFMC, including in its comments on the Preliminary Draft EIS (PDEIS) released by NMFS in March 2013. The information requested by the Council and the SSLMC has not been provided in either Chapter 2 or Chapter 5 of this DEIS. *See Exhibit 2.*

2. The DEIS does not comply with 40 C.F.R. § 1502.9(a).

The DEIS is required to disclose and respond to all major points of view on the alternatives but does not do so. 40 C.F.R. § 1502.9(a) requires all major points of view on the environmental impacts of the alternatives to be discussed and disclosed in a draft EIS. Here, Alternative 1 consists of the measures established by the IFR, and the DEIS should have presented and responded to criticism of independent scientific reviews as part of the

alternatives analysis. Those reviewers concluded that the measures in Alternative 1 are unjustified, irrelevant, and have little utility. *See e.g.*, Bowen 2012 at 8 (“[T]here is no reason to expect that the RPAs . . . which will reduce or eliminate fisheries for Atka mackerel and Pacific cod, would have positive effects on SSL population trends in those areas.”); Stewart 2012 at 3, 14; Bernard et al 2011 at 68, 97 (“The evidence shows that RPAs based on restricting fisheries are incapable of causing recovery of sea lion populations.”). Similarly, Alternative 4 consists of the prior mitigation measures established in 2003, and the DEIS should have presented NMFS’ response to those who contend that the measures in Alternative 4 provided adequate mitigation from any potential impacts from fishing.

3. The DEIS must adequately evaluate alternatives using the best available information, including information that does not support NMFS’ conclusions.

As discussed in the following detailed comments, the DEIS does not meet NEPA’s “best science” standards in several crucial respects. Most alarmingly, the DEIS seems to be aimed at documenting a predetermined outcome: a conclusion by NMFS that there are significant adverse impacts on Steller sea lions by the groundfish fisheries and that Alternative 1 is the only alternative that will mitigate those impacts. *See* DEIS at ES-62. This does not meet NEPA’s directive to agencies “to insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” 40 C.F.R. § 1502.24. Neither does it comply with the mandate for environmental impact statements to “serve as a means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” 40 C.F.R. § 1502.2(g).

The most problematic aspect of the DEIS is that it implicitly assumes as a matter of fact that fisheries compete with Steller sea lions in a manner that causes chronic nutritional stress and other adverse impacts. Each of the seven independent scientists who reviewed the 2010 Biological Opinion concluded that the case made for prey competition with fisheries resulting in nutritional stress was weak, and that it was not likely that fisheries were causing nutritional stress in Steller sea lions. Some reviewers even felt that the analyses, methods, and treatment of available scientific information in the 2010 Biological Opinion exhibited a bias towards finding jeopardy and adverse modification under the ESA. By assuming that fishing is adversely competing with sea lions rather than objectively evaluating all available information, including new information that does not support the agency’s previous ESA conclusion, the EIS does not meet the standard of rigorous and accurate scientific analysis.

To the contrary, the public is left with the impression that NMFS’ intention is to counter the independent reviews based on further work that is in various stages of completion. The agency indicated in the June 2013 Memoranda that it intends to attempt to refute the content of the outside reviews, particularly the specifics of technical and methodological issues raised in the CIE and ISRP reviews. In so doing, rather than basing the discussion on peer-reviewed scientific information, NMFS describes a set of unpublished and in-process or soon-to-be-in-process studies, some of which have not even been started. It appears that the agency is developing new theories on how fisheries may affect Steller sea lions without

regard to the weight of scientific evidence in the literature. Rather than fairly evaluating alternative expert opinions, the public is left with the impression that the agency's mind was already made up on the central issue of whether there are in fact reasonably foreseeable significant adverse environmental impacts from fishing--the exact opposite of what NEPA requires.

Furthermore, instead of disclosing in the DEIS the fact that numerous studies since 2000 have looked for and failed to find statistically significant relationships between Steller sea lions and groundfish fishing under previous mitigation measures (Alternative 4), the DEIS inaccurately relies on "data gaps"—e.g., "gaps" that the agency sees because it cannot find a study that supports its hypothesis of chronic nutritional stress caused by prey removals. *See, e.g.*, DEIS at 5-102 to 5-105. An EIS must contain "a reasonably thorough discussion of the significant **probable** environmental consequences" of a proposed action and the alternatives to the action. *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519-20 (9th Cir. 1992) (emphasis supplied). This requires an agency to evaluate what impacts are likely, not to engage in a relentless search for negative impacts in the face of credible scientific information which supports a conclusion that such negative impacts do not exist. *See, e.g., Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 354 n. 17 (upholding CEQ regulation eliminating previous NEPA requirement to analyze the "worst case scenario" and citing with approval CEQ's conclusion that such analysis is not a rational way to cope with problems of uncertainty; noting that "one can always conjure up a 'worst case' scenario by adding an additional variable to a hypothetical scenario."). Unfortunately the "looking for adverse impacts in the absence of indicators of such impacts" approach is exactly the approach taken in chapter 5 and throughout the DEIS. This alone compels substantial revision of Chapters 2 and 5 to provide rigorous and objective information for the public and the Council.

C. The key sections of the DEIS must be revised and recirculated prior to action by the NPFMC in accordance with 40 C.F.R. § 1502.9(a).

Due to these and other failings, this is an instance in which the "draft statement is so inadequate as to preclude meaningful analysis", requiring NMFS to prepare and circulate a revised draft of chapter 2, particularly sections 2.2 and 2.3, and chapter 5 prior to preparation of the final EIS and in time for selection of a proposed action by the Council.⁴ 40 C.F.R. § 1502.9(a). Revisions of these key sections are needed in order to meet NEPA's requirements to "provide a full and fair discussion of significant environmental impacts and . . . inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1. To be clear, we are not asking NMFS in its "action agency" role to make a "consulting agency" jeopardy and adverse modification determination under section 7 of the ESA in a NEPA

⁴ We note that the injunction issued by the district court on March 5, 2012 adopted the schedule proposed by NMFS, which gives the agency a total of nine months to respond to comments on the DEIS (five months to review comments and develop responses and four months to work on responses to the Council and finalize the EIS).

document. What we are asking the agency to do is to comply with NEPA. To do so, NMFS must disclose its thinking as to what are or are not the reasonably foreseeable significant impacts of commercial fishing on sea lions, whether those impacts are beneficial or adverse, which alternatives are expected to adequately mitigate any adverse impacts, and how the agency arrived at those conclusions.

COMMENTS ON DEIS CHAPTERS

II. Comments on Chapter 2

A. General comments.

Chapter 2 describes and compares the alternatives presented in this DEIS. This chapter, along with Chapter 5, was supposed to evaluate the effects on Steller sea lions of these alternatives. Neither Chapter 2 nor Chapter 5 provides the metrics that will be used to assess potential adverse impacts other than the amount of area closed to fishing. The analysis simplistically assumes that fishing negatively affects Steller sea lions, more fishing creates more impacts on sea lions, and therefore more area closed and the greater fraction of critical habitat shut down means more protection for Steller sea lions.

The comparison of alternatives at Section 2.2 rests largely on area closed. Nowhere in Chapter 2 is there any information quantifying the effect of each alternative and its related fishery management measures relative to the amount of prey required by Steller sea lions, the area where the prey are needed, the amount of prey that would then be available to Steller sea lions under alternative scenarios, or any of the other direct effects of the alternatives or the management measures on Steller sea lions and their habitat. Without this information, the analysis leaves it to inference and speculation about whether or not any of the management measures would have any beneficial effect for Steller sea lions, or what a reasonable alternative set of management measures might be. Similarly, without this information, the reader has no ability to compare and contrast alternatives, which is required for informed decision making under NEPA.

Chapter 2, along with Chapter 5, fails to include any of the metrics that might be used in the biological opinion scheduled for completion in early 2014. In order to comply with 40 C.F.R. § 1502.25(a), these analyses should be integrated concurrently “to the fullest extent possible.” Chapter 5 identifies to some extent which methodologies the agency does and does not intend to use from the 2010 Biological Opinion, and provides superficial descriptions of information from incomplete or yet-to-be completed analyses, but there is no clear linkage between even the superficial analyses in Chapter 5 and the evaluation of Alternatives in Chapter 2. The substance that would help the reader evaluate alternatives and make reasoned comments or decisions is absent from the DEIS.

B. The alternatives analysis in Chapter 2 is inadequate.

In the June 2013 Memoranda, NMFS provided some information not provided in the DEIS process about the science and analytical approaches that might be used in a future biological opinion slated for completion in 2014. None of this highly relevant information is incorporated into this DEIS in a manner that clearly describes and quantifies the effects of each of the alternatives on Steller sea lions, their prey and their habitat. Without information on the specific effects of each of the alternatives there is no way the public can review or provide any concrete comment on the methods used to evaluate the alternatives in Chapter 2, or how the alternatives might be modified to reduce (assumed) impacts on Steller sea lions.

For example, the analysis in Chapter 2 fails to review or quantify the effects of ongoing closures of pollock under Alternative 1 with respect to the overall prey field for Steller sea lions. This is also a deficiency with Chapter 5. The Aleutian Islands (“AI”) pollock fishery has been closed both inside and outside of critical habitat for all practical purposes since 1999 in order to address perceived conservation concerns for Steller sea lions. *See* DEIS at 3-38. The DEIS at 2-6 has a discussion of AI pollock management, but neither this discussion, nor the discussion of pollock in Chapter 5 present any data regarding the effect of the closure on pollock stocks or the effect on pollock availability to Steller sea lions as prey. As can be seen in Chapter 3 Figure 3-17, pollock acceptable biological catch (“ABC”) has remained roughly consistent or increased slightly since the closure was implemented. If the fishery were constraining pollock production prior to the closure, a surge in pollock ABC during the closure would be expected. This did not happen. What did happen is that significantly more pollock were available to the Steller sea lion prey field than if a fishery had taken place. Neither Chapter 2, Chapter 3, nor Chapter 5 provide data on the amount of pollock that remained in the water and were available as prey for Steller sea lions (not even an estimate). This information should have been included in order for the reader to weigh the effects of pollock measures under each alternative.

Similarly, the DEIS does not provide an analysis of the effects of Alternative 4 on the availability of prey to Steller sea lions, or why Alternative 4 fails to meet ESA requirements given new information available since the 2010 Biological Opinion was completed. Yet, NMFS has already provided verbal commentary to the NPFMC that strongly indicates that Alternative 4 is unacceptable. To be complete and objective, and in order for the public to provide meaningful comment on each of the alternatives, the DEIS needs to be modified to include NMFS’ analysis of the effects of fishing on Steller sea lions under each alternative. With regard specifically to Alternative 4, NMFS needs to document and quantify the effects of fishing on prey availability under Alternative 4 management measures. There is over a decade of data on which to base an estimate of these effects, but no such analysis is provided. Chapter 2 (and possibly Chapter 5) needs to include this analysis and clearly document how the management measures in Alternative 4 do not provide a sufficient prey field for the WDPS, if that is the agency’s conclusion.

NMFS explains away this lack of analysis in Section 5.2, noting that “insufficient information exists to quantify Steller sea lion population effects with various levels of fishing. The cost of obtaining sufficient information to fill in the current unknowns, given the unprecedented amount of research (\$241 million FY92 to FY11) directed towards understanding the causes of the Steller sea lion decline and lack of recovery, seems out of reach of NMFS.” DEIS at 5-69.

Of course, data do exist regarding the biomass, ABC, and harvest levels for all of the Steller sea lion prey species in the Aleutian Island region. The locations of commercial harvest and critical habitat are also known. Estimates of the amount of prey left in important areas could be made for each alternative, and correlated with what is known about Steller sea lion foraging and nutritional requirements. But Chapter 2 does not include this kind of synthesis, and therefore the DEIS does not provide any meaningful methods to compare and evaluate the efficacy of the alternatives. (See also our comments on Chapter 5 Section 5.2.)

But more importantly, it also raises the question of what metric will be used to evaluate the alternatives in Chapter 2 and Chapter 5 with respect to the single most critical question to be evaluated in this DEIS: what are the effects of fishing on Steller sea lions under each of these alternatives? The DEIS sheds no meaningful light on the indicators that will be used to assess impacts or the performance standards for mitigating potential adverse impacts. Section 1.10.3 lists seven “performance standards” which differ from those in the 2010 Biological Opinion. The only rationale offered for them is that they “reflect concepts that NMFS has traditionally applied to mitigate potential impacts of the groundfish fisheries on Steller sea lions and their critical habitat and have been upheld in court.” DEIS at 1-21.

However, another reason may be inferred from the discussion in Section 5.2.2.1.8 where NMFS acknowledges that of 14 indicators used in the 2010 Biological Opinion to evaluate potential biological manifestations of nutritional stress in Steller sea lions only one, reduced natality, was positively correlated to suggest an effect from nutritional stress. NMFS states that lack of data that support any other indicators of nutritional stress has caused some stakeholders to believe that nutritional stress is not caused by the (then) highly regulated fisheries of the Aleutian Islands. It was exactly the conclusions that NMFS drew from the analysis of the 2010 Biological Opinion that led to the sharp criticisms leveled by the CIE and ISRP (who by definition are not “stakeholders” but independent scientific reviewers commissioned specifically for the purpose by NMFS and the states): that the science does not support the proposition that fishing at the 2010 levels caused nutritional stress and lower natality. This viewpoint, not just a bulleted list of performance standards, should have been disclosed and discussed in the alternatives analysis in the DEIS.

C. Chapter 2 should be revised to include a cumulative impact analysis of all closures affecting the groundfish fisheries.

Section 2.1 describes the alternatives, and Section 2.2 provides a comparison of the alternatives. These sections lack an analysis of each of the alternatives (and their varied

management measures) in conjunction with other existing area and seasonal closures (such as EFH). The DEIS should be revised to provide a cumulative impacts analysis of all of the closures to which the BSAI groundfish fisheries are currently subject, as well as any further closures under each of the alternatives. This would result in the documentation and evaluation in Section 2.1 of the actual amount of area closed and the cumulative impact of these closures on Steller sea lion habitat and prey field under each alternative. Section 2.2 should then include a comparison of these cumulative impacts between alternatives. Given that the only measure currently employed in this DEIS to compare alternatives is the sheer amount of area closed to fishing, this metric at least should be applied consistently across all alternatives and this cumulative closure information should be made available to the public.

III. Comments on Chapter 5

A. General comments.

The most problematic aspect of Chapter 5 is that it assumes, without adequate explanation, that the highly regulated fisheries of the Aleutian Islands compete with Steller sea lions in a manner that causes jeopardy and adverse modification unless the mitigation measures in Alternative 1 are continued. Throughout this chapter the DEIS relies on the information and findings of the 2010 Biological Opinion without responding to the independent peer reviews which criticized its conclusions and methodology. Section 5.1.1 leads off by incorporating the 2010 Biological Opinion and its description of the status of Steller sea lions and their habitat by reference.

Because the analysis in Chapter 5 of the status of the WDPS of Steller sea lions is so heavily reliant on the analysis in the 2010 Biological Opinion, this chapter needs to summarize the Biological Opinion analysis, then clearly report on, and specifically respond to the findings and conclusions of the ISRP and CIE review commissioned by NMFS, which found significant flaws with the analysis and findings of the 2010 Biological Opinion.

Instead of addressing the issues raised by the independent reviewers, and providing an insightful analysis in Chapter 5 with information relevant to evaluating the effects of the alternatives in this DEIS, the agency appears to be in the process of developing analyses for future release to respond to the technical and methodological issues raised by the CIE and ISRP reviews. Furthermore, rather than basing the analysis in Chapter 5 on peer-reviewed scientific information, NMFS describes a set of unpublished and in-process or soon-to-be-in-process studies, some of which have not even been started. This is inconsistent with the standard set by 40 C.F.R. § 1502.24.

At the same time, NMFS expresses the opinion that the ISRP review (which concluded that the preponderance of evidence shows no negative relationship between fishing and Steller sea lion trends) is invalid. DEIS at 5-103. The concern here is that NMFS is taking issue with the ISRP and CIE conclusions without having even presented or evaluated the studies on which they are based, while at the same time basing much of the analysis in Chapter 5 on

incomplete studies or in-house reports that have not been evaluated or peer reviewed. This demonstrates a callous disregard for the scientific process, and certainly calls into question the objectivity of the analysis in Chapter 5 and the agency's compliance with the standard set by 40 C.F.R. § 1502.25(a).

In addition, the draft and final 2010 Biological Opinion were critiqued by the organizations making these comments. Our comments remain pertinent to the analysis in the DEIS, given the heavy emphasis this analysis places on that document and its findings. We are incorporating industry (Marine Conservation Alliance, Adak Community Development Corporation, Alaska Seafood Cooperative, and Groundfish Forum) comments on the 2010 Biological Opinion in these comments as comments on Section 5.2.2.1.9. *See* Exhibit 4. We strongly recommend that an expanded discussion of the findings of the 2010 Biological Opinion and the comments and critiques of it be included in the DEIS discussion in Section 5.2 (particularly 5.2.2.1.9). This section should also include clear and detailed responses from NMFS to the specific comments provided by the independent scientific reviews as well as a response to the comments on the 2010 Biological Opinion made by the public.⁵

B. Section 5.1.1 should provide total population estimates and total population growth trend for the U.S. segment of the WDPS for 2000-2012, and include analyses of population trend and probability of pseudo-extinction.

1. Population Estimates and Trend Analyses.

Section 5.1 of the DEIS should be revised to clearly present information regarding the status of the WDPS of Steller sea lions. This should include a clear description of the status and trend of the total population of the WDPS (including Russia), and a clear description of the status and trend for the total US component of the WDPS. As it is, the document buries or omits some of the most important information needed to assess and understand the status of the WDPS.

Section 5.1 obscures the positive population increases in the total US WDPS since 2000. The DEIS (p. 5-6) provides a total population estimate for the entire WDPS (including Russia) in 2000 (less than 50,000 animals) and for 2011 (79,300 animals), which is an increase of +59% since 2000 (or +5.3% per year 2000-2011). The DEIS masks the positive growth in the total WDPS by omitting the percentage increase in total population of the WDPS 2000-2011 as well as omitting the annual growth rate for the total population of the WDPS. The document should be revised to include this basic information in an easy to read format.

⁵ The Scoping Report discounted or did not respond to many of our scoping comments as being only relevant to the 2010 Biological Opinion. Those comments anticipated that the agency would rely on and incorporate the 2010 Biological Opinion into the DEIS, which is what has occurred. Our scoping comments related to the 2010 Biological Opinion are relevant to the DEIS precisely because of the central role it plays in the DEIS.

Section 5.1 of the DEIS also does not provide a total population or trend estimate for the US component of the WDPS for 2000 to 2011. This is a large omission as the status of the US WDPS is the subject of this entire DEIS. The DEIS provides a population estimate for the total population of the US WDPS in 2011 (52,200 animals) but omits a total population estimate for 2000.

However, the DEIS includes a total WDPS (including Russia) population estimate of 50,000 in 2000, and the DEIS (p. 5-8) and the Recovery Plan (p. I-12) also include that the Russian population declined to 13,000 in the 1990s (50,000 – 13,000 = US WDPS total population 37,000 in 2000).⁶ The best estimate for population growth for the total US WDPS 2000-2011 is then +41% or +3.73% per year (37,000 animals or less in 2000 to 52,200 in 2011) which is omitted from the DEIS. The recovery criteria for down-listing included a US WDPS total population of 53,100 by 2015—where the 2011 total population estimate is 98.3% of that threshold.

The DEIS continues to provide considerable discussion of sub-regional and RCA population trends within the US WDPS, but omits the big picture of the total population growth and trend of the US WDPS as a whole for 2000-2012. The positive growth of the total populations since 2000 in the US WDPS (+41%) and the entire WDPS (+59%) do not support a finding of adverse impacts to the WDPS as a whole.

The CIE reviewers were critical of the presentation of the Steller sea lion population status in the 2010 Biological Opinion that focused on sub-regional trends and not the US WDPS as a whole or the core parts of its range. Stewart 2012 at 9; Stokes 2012 at 11. Yet Chapter 5 of the DEIS continues to focus on sub-regional populations and treats all sub-regions as equally important—whether they are core of the range or not. In contrast, the June 4, 2013 powerpoint presentation by NMFS to the NPFMC (Exhibit 5) states that probability of the US WDPS of reaching the quasi-extinction level in fifty years (2062) is zero. This conclusion should be in the DEIS.⁷

Deficiencies in the DEIS, Chapter 5, are due in part to NMFS' selective reliance on analyses that are not yet completed, or that NMFS refuses to incorporate into the analysis of this DEIS. Information can be gleaned from documents presented to the NPFMC, but not incorporated into the DEIS.

These papers include the draft agTrend paper (Johnson and Fritz, paper in prep) (Exhibit 6), the May 24, 2013 DeMaster memorandum (Exhibit 1), the May 2013 analytic approach memo (Exhibit 1), and the June 4, 2013 DeMaster powerpoint for the NPFMC (Exhibit 5).

⁶ The Recovery Plan (p. I-10) also provides a total US WDPS population estimate in 2001 of 38,206.

⁷ The method to determine this probability is a projection from the 2000-2012 trend for the US WDPS derived from agTrend. However, it is curious that the draft Johnson and Fritz (in prep) paper does not provide a 2000-2012 trend for the US WDPS as a whole. The DEIS includes multiple figures from Johnson and Fritz (in prep) of trend analysis but none include a trend for the total population of the US WDPS as whole.

These papers all refer to the US WDPS population trend as a whole for 2000-2012, but do not provide that same trend.

- **Johnson and Fritz (in prep):** “Although we do not demonstrate it here...we could analyze the trend for the WDPS as whole.” (p.9). The authors deliberately chose not to present the population trend for the US WDPS as a whole for 2000-2012, but instead provided sub-regional trends—of which only one region (the Western Aleutian Islands (“WAI”)) is significantly declining.
- **DeMaster memorandum (5/24/2013):** Provides pseudo-extinction probabilities for sub-regions (p. 2, Table 1 and Figure 1) but does not include a pseudo-extinction probability for the US WDPS as a whole population (or explain whether there is such a thing as extinction by subregion). The memo states at page 4:

“In this Biological Opinion, NMFS intends to produce updated estimates of population persistence for the WDPS **as a whole** and for the sub-regions.” However the following description of the proposed analysis for the Biological Opinion only references the sub-regions, “For the population forecast, NMML will partition the quasi-extinction threshold specified in the 2008 Recovery Plan (N =4743) across 35 rookeries in the WDPS to set a quasi-extinction threshold for each sub-region.”

- **DeMaster Powerpoint presentation (6/4/13):** Slide 20 states that probability of the US WDPS of reaching the quasi-extinction level in fifty years (2062) is **zero**. Trend data is given for WDPS non-pups 1990-2012 (as a whole and by sub-regions) and for WDPS pups 1990-2012 (as a whole and by sub-regions), but there is no trend data provided for the total population of the WDPS as a whole for 1990-2012 or 2000-2012. Any projection or “PVA-like” analysis needs to be based on the total population for the US WDPS—as was the basis of the Goodman PVA analysis (and the source of the quasi-extinction level of 4743 individuals).

Chapter 5 of the DEIS needs to be revised to provide clear and understandable basic information regarding the status and trend of the WDPS. Analyses related to the population trend and projected persistence should also be included in the DEIS to inform the public and provide an opportunity to provide meaningful comment on the DEIS and alternatives. Such information will be critical to decisionmakers such as the NPFMC to inform their decisions in selecting a preferred alternative. The analyses NMFS will incorporate in a future 2014 Biological Opinion must also be included in the DEIS to ensure consistency and guard against a double standard where one standard is used in the EIS for evaluating alternatives and their effect on Steller sea lions and to pick a preferred alternative, versus a different standard used in a future 2014 biological opinion to evaluate the same alternative and its effects. This is necessary to better inform the public in order to solicit meaningful comment and for informed decision making (the NPFMC will not have the benefit of the future biological opinion prior to selecting a preferred alternative).

In addition, the trend analysis (Johnson and Fritz (in prep)) and the forecasted persistence analysis raise a number of questions that should be addressed in Chapter 5. Our comments on Johnson and Fritz (in prep) illustrate the perils of relying on unreviewed work that has not undergone the vetting needed for reliable science:

- **Trend for US WDPS as a whole:** This draft paper examines regional trends in population abundance for the US WDPS for the time period 2000-2012 (using data from 1990-2012 and employing an augmentation method for sites that were not surveyed in all years). The results omit a 2000-2012 trend for the US WDPS as a whole. What is that trend?
- **Non-pup data only:** The results section of the draft paper refers to “populations” and the “WDPS as a whole” implying this exercise is a trend analysis for the total population (pups and non-pups) of the US WDPS and its sub-regions. However, the authors indicate at p. 6 that the only data used are non-pup data: “The data we are using are the counts of non-pups at rookery and haul-out sites in the WDPS.” Is the referenced population only the non-pup population—or is it the total population (pups and non-pups)? If the paper is only using non-pup data then this does not represent the whole or total population and may not accurately reflect population status and trends. The CIE noted that: “The key and simplest index of population status and trends is a count of pups.” Stewart 2012 at 14.
- **Trend for the Cultural Gulf of Alaska (“CGOA”) appears to be inaccurate and does not reflect the growth in pups and non-pups in the CGOA and brings into question the augmentation methodology.** P. 9 (and Table 1) depicts the CGOA trend for 2000-2012 as “relatively stable” and “increasing though not significantly” with a slope rate of 0.87%. However, the highest count of non-pups in 2000-2012 is found in 2011 at 5300 (but with only 47% of the sites surveyed). In 2000, the non-pup count in the CGOA was 4817 (with 100% of sites surveyed). In raw numbers—without any “augmentation” of the 2011 uncounted sites—the CGOA 2000-2012 non-pup counts increased +10% (or +0.9% per year). From the results sections of the draft paper it appears that either the 2011 non-pup count was not “augmented” or omitted or the “augmentation” method is suspect and biased low.

[Source: NMFS to the SSLMC]

Year	CGOA non-pup count	% of sites surveyed
2000	4817	100%
2004	4486	100%
2008	4747	100%
2011	5300	47%

Similarly for pups in the CGOA, the largest count is also found in 2011:

Year	CGOA pup count	Number of sites surveyed
2001/2002	1772 (or 1566)	5 rookeries; 2 haul outs
2003/2004	1660	5 rookeries; 2 haul outs
2005	1753	6 rookeries; 4 haul outs
2009	1948	6 rookeries; 6 haul outs
2011	2264	6 rookeries; 6 haul outs

Using a pup multiplier of 4.5 (as per NMFS DEIS at 5-6), the total population of the CGOA increased +28% to +45% from 2001/02 to 2011 (or +2.78% to +4.45% per year depending on which data source for pup counts in 2001).⁸ With its apparent reliance on non-pups in Johnson and Fritz (in prep), the augmentation method appears to not accurately represent the total population growth in CGOA. Of interest in the CGOA is the decline in pups and non-pups from 2000-2004 followed by steady increases from 2004 to 2011. Coincidentally, the time period in the Holmes modeling study for CGOA ended in 2004. Holmes postulated a low natality rate for the CGOA (and by extension to the entire WDPS). However, from 2004 to 2011, pup counts in the CGOA have increased +36% (or +5.2% per year). Contrary to Holmes, Horning 2012 found no evidence of reduced natality in the CGOA.

- 2012 -2062 projection: Slope:** It is not clear what the regional projections for 2012-2062 in the DeMaster memo and power point presentation are based upon. Are they based on Johnson and Fritz (in prep)? Most of the projections appear to be an extension of the slope of the trend line for 2000-2012 from agTrend (which appears to be non-pups only). What are the variables/factors in the projection? Is it based on non-pup trends only? Does the projection include density dependency or environmental variability? What is the assumption for fishery management measures for 2012-2062? Where is the figure for the 2012-2062 projection of the total US WDPS population (pups and non-pups combined)?
- Non-pup trends and the pseudo-extinction threshold of 4743 individuals:** The probability of risk of extinction analysis in the draft paper uses the pseudo-extinction threshold of 4743 individuals—which is the threshold population size from the Goodman PVA. That PVA was for a total population (pups and non-pups) of the US WDPS as a whole. Accordingly, the pseudo-extinction threshold was also for the total population of the US WDPS as a whole. However, the 2012-2062 projection appears to be based on trend analysis for non-pups only in 2000-2012 (from

⁸ The 2001/02 pup survey report indicates a pup count in the CGOA of 1566 in 2001/02 so the 2001/02 to 2011 population growth in the CGOA could be as high as +45% or 4.5% per year.

agTrend). The use of a total population threshold to evaluate non-pup projections seems to represent dissimilar datasets.

- **2012-2062 projection: Parsing to rookeries (not haul outs):** The draft paper's description of the methodology apportions 50% of the extinction threshold ($0.5 \times 4743 = 2372$ count of total animals) and apportions the 2372 to the six sub-regions based on relative distribution of rookeries. Within a sub-region, the methodology is not clear, but the DeMaster memo (p. 2) provides an average pseudo extinction threshold of 128 per rookery. Within a sub-region, does each rookery get apportioned an equal amount or is it apportioned within a sub-region based on the relative size of the rookery? Since agTrend appears to be based on non-pup trend in 2000-2012, and the projection for 2012-2062 appears to be based on that non-pup trend, why is the apportionment only to rookeries (since non-pups are found at both rookeries and haul outs)? The projection method appears to be moving closer to the PVA model that was rookery based (Winship and Trites 2006) and found no risk of extinction to the WDPS. Wouldn't it be more appropriate to update that PVA rookery-based analysis rather than develop a "PVA-like" analysis (that appears to be based on non-pup trends and may not account for density dependence and environmental variability)?

2. Use of Pup/Non-pup ratios in the DEIS should either be abandoned or consistent with their use in subsequent ESA analyses.

The CIE and ISRP were highly critical of the use of pup to non-pup ratios to represent natality in the 2010 Biological Opinion and particularly the use of these ratios in the determination of jeopardy and adverse modification. *See* Bowen 2012 at 3, 15; Stokes 2012 at 3, 11; Bernard et al 2011 at 46, 47, 84, 90.

The issue of natality is central to understanding factors affecting Steller sea lion population trends and the effect of fishing which in turn is central to understanding the effects of each of the alternatives presented in the DEIS. Chapter 5 needs to be revised to include this information to inform the analyses of alternatives in Chapter 2. However it appears that this information will not be available in the DEIS for the public to review and comment on, nor will it be available to the Council prior to its selection of a preferred alternative.

Chapter 5 makes no reference to pup/non-pup ratios so one might infer that NMFS took the CIE and ISRP criticism to heart. However, that would be a premature conclusion. While the DEIS does not include pup to non-pup ratios, NMFS has stated that the 2014 biological opinion will include an analysis of the "Evaluation of the reliability of pup: non-pup ratios as indices of sea lion reproductive rate" (DeMaster memo 5/24/2013, pp. 2 and 3).⁹

⁹ The DeMaster memo outlines an analysis that will only be included in a future 2014 Biological Opinion that will be a simulation (of sorts) where NMFS is going to artificially hold all variables (other than natality) static to measure reproductive rate (p. 3)—an artificial construct that does not occur in nature.

Given the criticisms of the CIE and ISRP, this exercise appears to be unjustified. Nonetheless, if NMFS is going to use pup to non-pup ratios in the 2014 biological opinion as a yardstick or measure of the potential effects of the proposed action, then this analysis needs to be integrated into the DEIS. Given the number of analyses that are not included in the DEIS but will be in the future biological opinion, it is as if NMFS is preparing one analysis and metric for the public and NPFMC to evaluate the alternatives (the EIS), while using a completely different analysis and metric for the 2014 Biological Opinion. This dual standard is not consistent with NEPA or the direction of the court.

C. The DEIS does not include a comprehensive summary of the statistical studies that directly examine the relationship between fishing and sea lions.

The CIE noted that the most direct way of determining if there is a negative relationship between fishing and SSL is through direct statistical testing, commenting that “the most profitable route to determining whether the action could indeed cause jeopardy is to directly consider the relationship between fisheries and SSL. The studies referenced by Bernard et al and in the BIOP attempt to do that *and need to be encouraged.*” Stokes 2012 at 19 (emphasis supplied). The DEIS does not include or even mention the conclusions of the CIE and ISRP finding no statistically significant associations consistent with harm by fisheries since 2000 (i.e. the heart of the entire EIS). *See also* Bowen 2012 at 6.

The DEIS does not include a meaningful discussion of direct statistical testing or a comprehensive review or analysis of these studies as in Bernard et al 2011 (which included a power analysis). Instead of “encouraging” these studies, the DEIS disparages Bernard et al 2011 (primarily regarding the power analysis) while providing no direct quantitative statistical analysis to support its criticisms. Instead, NMFS improperly proposes to analyze the statistical studies—not in the EIS, but in a future simulation whose “blueprint” has yet to be completed. Demaster memo at 3. As the CIE noted, these statistical studies are the “heart of the risk analysis” (DEIS p. 5-103); therefore, any analysis of these studies needs to be included in the DEIS in order to determine the effects of the proposed action. *See* Bowen 2012 at 7.

The DEIS fails to consider relevant scientific information and is also dismissive of the scientific findings of Bernard et al 2011—but without providing any quantitative statistical rationale. The DEIS does not include an informative synthesis of the description and results of the ten statistical studies (as was concisely done in Table 3.1 of Bernard et al 2011). The DEIS only includes a grocery list (p. 5-103) of studies that examined the relationship between fisheries and SSLs—but without any comprehensive review. The DEIS once again includes a discussion of data issues, but fails to provide any quantitative statistical analysis to support its lack of consideration of the ISRP. *See* Bernard et al 2011 at 25.

The lack of comprehensive review and consideration of these ten studies in the DEIS is inconsistent with NEPA’s standards for rigorous scientific analysis, especially considering that all but one of these studies was available prior to the 2010 Biological Opinion, and all

the studies have been available to NMFS for the DEIS for at least two years. Some have been available since 1989. Other studies were commissioned by NMFS (Calkins 2008), and still received scant review in the DEIS.

The ISRP noted that not finding a statistically significant negative relationship is strong scientific evidence to conclude that there is *no* relationship:

In our opinion collective results of reported statistical studies involving Steller sea lions in the WDPS and groundfish fisheries are not “equivocal”, but are definitive.... Results for years after 2000 are unequivocal. No statistically significant associations consistent with harm by fisheries were found: 100% of the tests resulted in statistical outcomes consistent with groundfish fisheries having had no impact on sea lion demographics. Power analyses in some of those studies and the results themselves show that even weak associations consistent with harm would have been detected had they been present. Without some plausible reason for failing to find any statistical outcomes consistent with negative impacts for the last 10 to 20 years, the statement that “it is not possible ... to conclude that commercial fisheries are not having a significant impact on the recovery ...” is simply wrong.

Bernard et al, 2011 at 25.

The ISRP’s work directly contradicts the conclusion in the DEIS at p. 5-69 that “at this point it is not possible to determine the population level effects to Steller sea lions from the indirect effects of fishing on prey availability through this NEPA analysis...Insufficient information exists to quantify SSL population effects with various levels of fishing.” No statistical relationships of negative effects on SSL populations were found by the ISRP from the indirect effects of fishing since 2000. And as indication of statistical power to detect any effects—16 positive statistical relationships were found.

With the addition of the meta-analysis and conclusions of Bernard et al 2011, the DEIS does not suffer from lack of evidence and insufficient information.¹⁰ The statement on 5-69 in the DEIS is simply wrong and should be corrected.

D. The DEIS does not take a “hard look” at the exposure analysis and provides no meaningful quantification of the degree of potential overlap with fisheries and

¹⁰ The question of appropriate level of statistical power depends on what level of effect is to be detected. Under the ESA, the proposed action must have an appreciable negative effect on the species (not just any level of an effect). If the question under NEPA is to determine if the indirect effect of fisheries on SSL populations is “significant,” then the appropriate level of power is to detect a significant or appreciable effect. If NMFS is trying to detect an extremely small or insignificant effect of fisheries on the WDPS, that may require more statistical power, but in turn begs the question—why would you be looking for insignificant effects? The ISRP determined that an appropriate level of statistical power exists across the range of the studies, estimating that the tests of Calkins 2008 (a NMFS commissioned study) had enough power to detect at least an annual 2% change in non-pup counts related to fisheries. Bernard et al 2011 at 20-21.

Steller sea lions or provide any scientific evidence that fisheries overlap results in competition that has a negative effects on Steller sea lion populations.

With no scientific linkage between prey removal by fisheries and recent trends in Steller sea lion populations, the DEIS in Chapter 5 continues to assert that competition may¹¹ occur if there is overlap between fisheries and Steller sea lions in terms of size of fish, depth, temporal, and spatial overlap. However the DEIS provides no meaningful quantification of the individual and cumulative extent of any potential overlap between fisheries and Steller sea lions. The lack of quantification of the extent of overlap was a repeated criticism of the 2010 Biological Opinion by the CIE, ISRP, and numerous comments from the public.

While this issue (fisheries effect on Steller sea lion prey including overlap) was identified as an area of controversy¹² in the DEIS, Section 5.2 of the DEIS provides little information or a balanced examination of this issue. By failing to meaningfully incorporate the CIE and ISRP reports in the DEIS, the DEIS does not inform and provide the reader with an understanding of the controversy. Merely stating a controversy exists does not address NEPA's requirements nor the court's direction to take a "hard look" at the significant issues related to the impacts of a proposed action *in advance* of a decision on a proposed action.

The DEIS, at Section 5.2.2.1.2 and 5.2.2.1.3, devotes a total of less than one page to size and depth overlap between fisheries. For example, while the importance of cod is specifically identified as an area of controversy, Section 5.2 does not provide a single quantitative reference to the size of cod found in Steller sea lions. Despite numerous other available NMFS documents, Section 5.2 cites only Zeppelin et al (2004) for extent of overlap for size of Atka mackerel and pollock. The DEIS states that the potential overlap between Atka mackerel fisheries and Steller sea lions is "considerable" (DEIS at 5-99). This study (Zeppelin 2004) is based on scat samples from 1998-2000 (with no winter samples from the WAI) and the comparisons are over a very coarse scale (entire range of WDPS aggregated for scat; Eastern Bering Sea ("EBS") and GOA aggregated for fishery length information).

However, more recent and more detailed information is available on the size of Atka mackerel in the AI fishery by area and was presented to the CIE reviewers. The more recent information indicates that the extent of size overlap for Atka mackerel is "considerably" less than stated in Zeppelin. Section 5.2 provides no information on potential extent of overlap with the Pacific cod caught in AI cod fisheries but previous NMFS documents state that the size overlap is as little as 5%, particularly in AI trawl cod fisheries.

In 2006, NMFS Alaska Region asked for assistance on the question of updating overlap of size of prey. In its "Request for assistance on ESA Section 7 consultation," NMFS asked in

¹¹ To illustrate the extent of the DEIS continued reliance on speculation, the DEIS uses the word "may" 1863 times.

¹² "Areas of controversy: Fisheries' effects on Steller sea lion prey, including overlap between fisheries harvesting and Steller sea lion foraging, including importance of Pacific cod in the diet of Steller sea lions." ES-62.

question #24: “Is there size overlap between sea lion diet and fishery catch? Provide length distribution of fishery catch (by season) for pollock, Pacific cod, and Atka mackerel. Update Figure 40b in the 1998 BiOp for pollock, Pacific cod, and Atka mackerel.” NMFS did not complete this task in the response to questions (NMFS 2006b) for the 2010 draft and final Biological Opinion. Nor has NMFS completed this quantitative update for the DEIS despite extensive public comment and scientific criticism. *See* Bowen 2012 at 7, 32; Stokes 2012 at 23; Bernard at xiii, 31.

Despite these pointed criticisms (as well as extensive public comment), the analytic approach laid out by NMFS (May 2013) repeats another non-quantitative “yes/no” exposure analysis (from NMFS 2000 Biological Opinion) and then states at page 6: “From this analysis, NMFS determined that the groundfish fisheries were likely to compete with Steller sea lions for Atka mackerel, Pacific cod, and pollock (NMFS 2000). Given the best available information today, NMFS maintains that the fisheries are likely to compete with Steller sea lions for fish and thus the focus of the 2014 BiOp will be on the fisheries for these three species.”

NMFS’ proposed analytic approach provides no citation to support maintaining its previous conclusion from 2000 and provides no citation as to the “best available information today.” In contrast, Section 5.3.8 of the DEIS (p. 5-205) notes the lack of relationship between fishing and Steller sea lion declines in the adjacent Commander Islands: “Fishery closures were implemented around the Commander Islands in 1958 (Postanovlenie 1958). No high scale commercial fishery occurred in the 30 mile no-fishing zone around the Commander Islands over the past 50 years (V. Burkanov, personal communication, 2012). Although fisheries closures have been implemented, Steller sea lion populations around these islands continue to decline. As of 2011, there has been a clear negative trend in female birth rates and no significant change in survival rates.”

It is also noteworthy that the area with some of the highest Steller sea lion population increases in Russian waters includes the Sea of Okhotsk, which also happens to have one of the world’s largest commercial fisheries including a large pollock fishery (second only to the US Bering Sea pollock fishery). Section 5.3.8 should include information about the fisheries of the Sea of Okhotsk and what restrictions are in place in those waters to protect Steller sea lions and provide foraging areas around rookeries and haul-outs.

As discussed in detail below, Section 5.2 of the DEIS and the analytic approach outlined by NMFS continues a pattern of inferences and speculation by NMFS instead of quantified scientific linkage showing negative effects on Steller sea lion populations from the indirect effects of fishing.

1. *Size of Prey: Pacific cod.*

While the DEIS identifies the importance of Pacific cod in Steller sea lion diet as an area of controversy, Section 5.2 does not include a single reference to the distribution of cod sizes in Steller sea lion scat or the distribution of cod sizes in AI cod fisheries. That information is

available in existing NMFS documents and public comment, and should be included in Chapter 5.

For example, in August 2000, NMFS prepared a draft EA on Interactions between the Pacific Cod Fisheries in the BS, AI and GOA and Steller sea lions (“2000 Draft EA”). On p. 56, the 2000 Draft EA states, “The study also found a mean size of Pacific cod of about 50 cm in Steller sea lion diet.”

On p. 57 in the 2000 Draft EA the following statement is also found, “This yielded a total length range of 30-75 cm with a mean of 50 cm once erosion is taken into account (Figure 31). Therefore, on average, 80% of the Pacific cod eaten by Steller sea lions were approximately 50 cm in length.”

Figure 31 (p. 235) in the 2000 Draft EA includes a bar graph entitled “*Size Distribution of Pacific Cod in Steller sea lion scat using cranial and post-cranial bones, 1994-1998 (January – March)*”. The distribution of lengths from scat shows that 90% were less than 60 cm with a mean of 50 cm (and only one sample greater than 70 cm). The DEIS provides no reference for size of cod in Steller sea lion diet nor includes the NMFS draft p-cod EA in the bibliography.

The Aleutian Islands have larger cod than the Bering Sea. Ormseth et al 2008 (“Summary of biological information regarding differences between Pacific cod in the eastern Bering Sea and Aleutian Islands”) concluded that: “Length at age was significantly higher in the AI than in the EBS for both female and male cod.... This difference is present at all ages. Commercial trawls in the AI catch bigger female and male cod than do trawls in the EBS. From 2004 to 2006, the mode for cod in the EBS occurred at 65-70 cm, while the mode for females in the AI occurred at 80-85 cm. Fish smaller than 50cm were evident in EBS trawls, but were rare in the AI.” This paper by AFSC (Ormseth 2008) is not cited nor included in the DEIS but should be.

Combining the results in the NMFS 2000 cod EA (prey size mean of 50 cm) and the rarity of small cod <50 cm found in the AI (Ormseth), there is very little overlap between cod fisheries and Steller sea lions in the Aleutians. Previous public comment (included as Exhibit 3, Attachment 8) contained observer data that showed that less than 10% of AI trawl cod are less than 60 cm. NMFS 2000 cod EA shows that less than 10% of the cod consumed by Steller sea lions were greater than 60 cm. There is even less overlap between cod fisheries in the WAI/Central Aleutian Islands (“CAI”) and Steller sea lions (below).

Section 7.7 does acknowledge that not only are the cod in the Aleutians larger than the EBS, the largest cod are found in the WAI and CAI (p. 7-23): “As shown in Figure 7-13, larger Pacific cod (fork lengths greater than or equal to 80 cm) tend to be more numerous in the western Aleutian Islands (Areas 542 through 543), while smaller Pacific cod are more numerous in the east (Area 541).” (Referencing Aydin 2010).

However, this reference is found in the DEIS only in Chapter 7 (Ecosystem) and is not included in Chapter 5 in the section on potential competition with fisheries.¹³ The DEIS (p. 7-23) also notes that: “Decreasing fishing on Pacific cod would have little or no, or even potentially deleterious, impacts on increasing prey supply to Steller sea lions.” This conclusion (from multi-species ecosystem modeling in Chapter 7) should also be considered in the discussion of the potential competition between fisheries and Steller sea lions in Chapter 5.

The 2010 Biological Opinion failed to provide any data on the size of cod consumed by either the fishery or Steller sea lions in the Aleutian Islands. And once again, despite extensive public comment and scientific criticism, the DEIS also fails to provide any data on the size of cod consumed by the fishery or Steller sea lions in the Aleutian Islands. Chapter 5 should be revised to include this information.

2. Size of prey: Atka Mackerel.

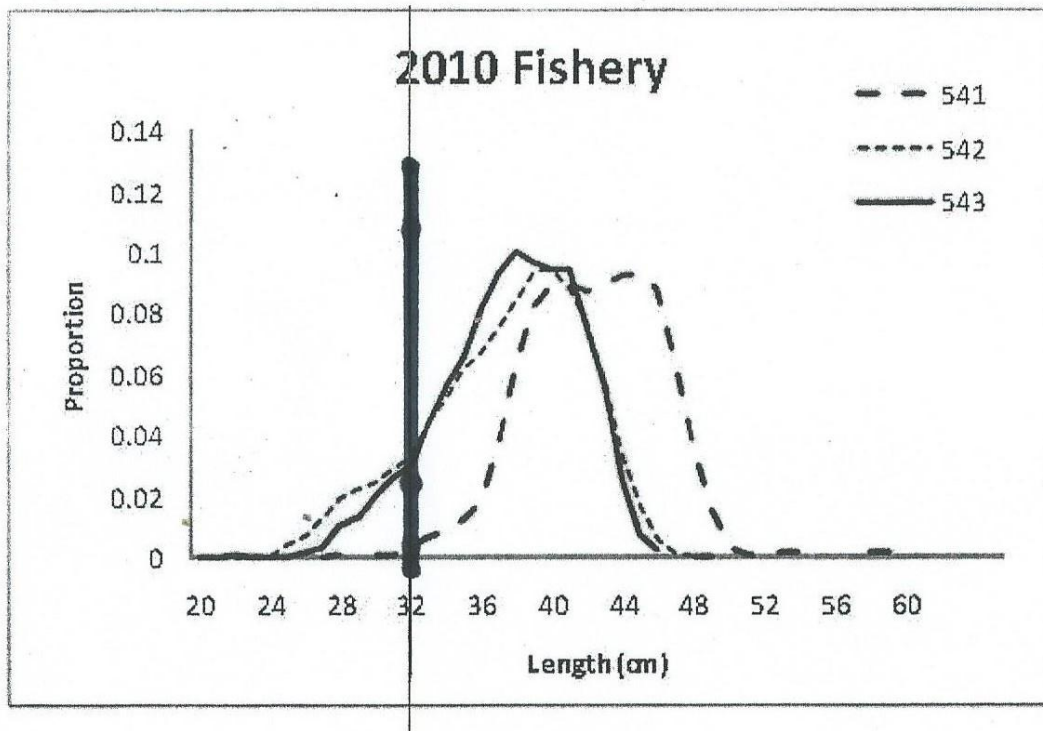
The only reference in Section 5.2 of the DEIS (p. 5-99) to the extent of potential size overlap between Atka mackerel fisheries and Steller sea lion prey is that there is “*considerable overlap (greater than 51%)*” which was attributed to Zeppelin 2004. The sample period for scat collection in Zeppelin (2004) was 1998-2000. The paper refers to length frequencies from scat for Atka mackerel and pollock collected from the Bering Sea and Gulf of Alaska (but does not explicitly reference any scats collected in the Aleutian Islands).¹⁴ However, it is known that no scat samples were collected in the WAI in the winter. In Zeppelin 2004, the time period for length frequencies of fish in Atka mackerel fisheries is also unstated (no time period given), but presumably is pre-2000. More recent information on length frequency in Atka mackerel fisheries is readily available and was presented to the CIE. Exhibit 3, Attachment 8.

While this is not an extent of overlap, it does provide more recent fishery length frequencies at a finer scale than Zeppelin (1998-2000) and indicates that the overlap exists but is significantly less than “considerable” (and certainly less than 51%). In Zeppelin 2004, the mean size of Atka mackerel from otoliths (uncorrected) was 30.3 cm; from all structures (uncorrected) was 30.7 cm; and from all structures (corrected) was 32.3 cm.

Figure 1: Length frequencies for the Aleutian Islands Atka mackerel fishery (from the 2010 SAFE) by area compared to the mean corrected length (32.3 cm) of Atka mackerel found in Steller sea lion scats in 1998-2000 (Zeppelin 2004).

¹³ Figure 7-13 for AI cod also refers to a similar figure for Atka mackerel (biomass distribution by size by AI management areas), however this figure is apparently omitted and is missing in the DEIS.

¹⁴ Zeppelin 2004, p. 513.



The 1998 Biological Opinion provided considerably more information on size length frequency in the Atka mackerel fisheries than that contained in the DEIS (as well as the PDEIS and 2010 draft and final Biological Opinion). Again, applying the mean length of Atka mackerel found in scat from Zeppelin 2004 (32.3 cm) the extent of size overlap with fisheries appears to be minimal in 1996 (Figure 2) and 1997 (Figure 3).

Figure 2: Atka mackerel length frequency distributions from the fishery in the Aleutian Islands, EBS, and GOA in 1996. [1998 Biological Opinion].

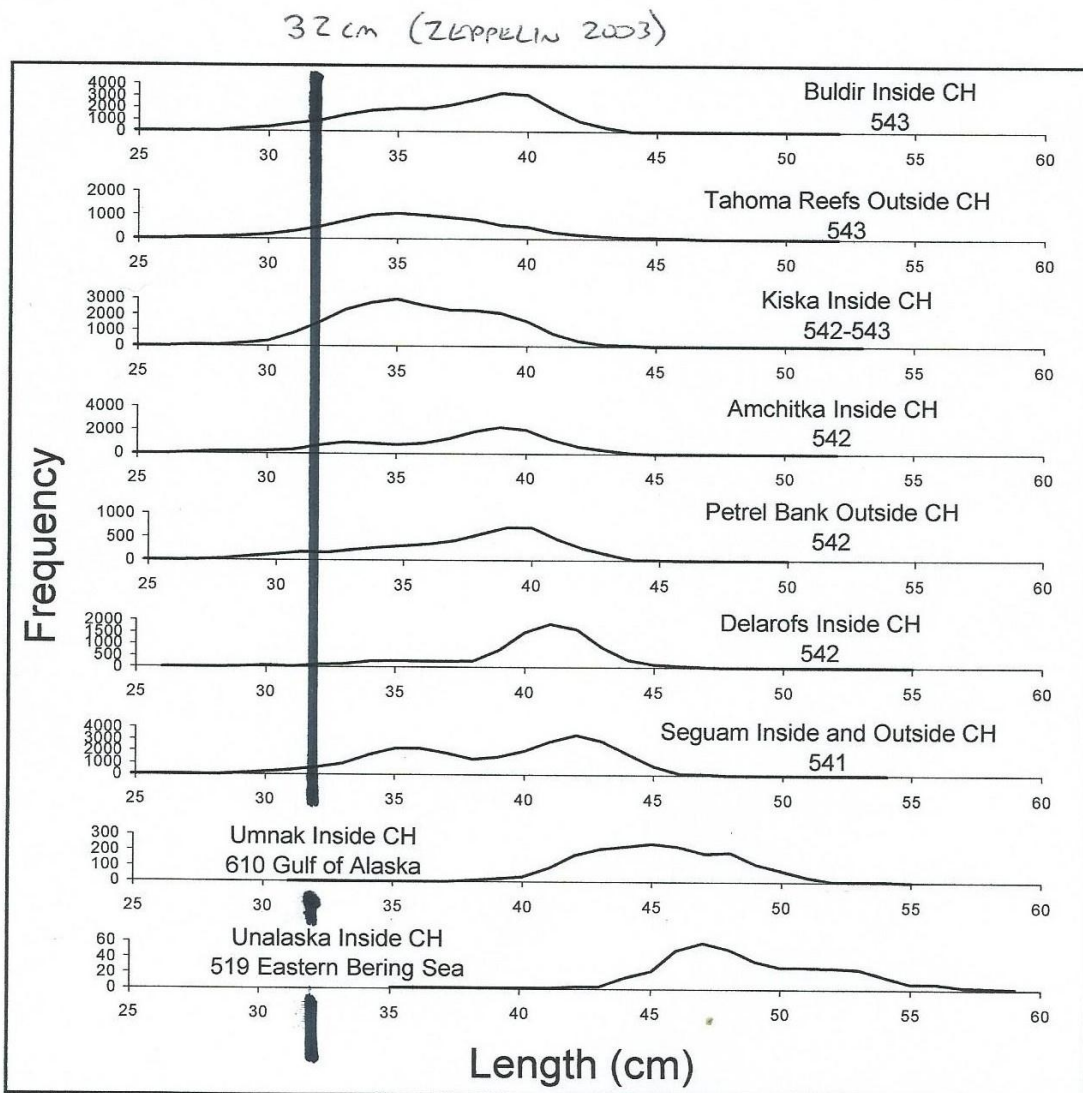


Figure 8a. Atka mackerel length-frequency distributions caught by the fishery at various locations in 1996 from west (top) to east in the Aleutian Islands (top 7 panels), Gulf of Alaska (Umnak Island), and eastern Bering Sea management areas (Unalaska Island). CH=Steller sea lion critical habitat. Numbers 541-543, 519 and 610 are fishery management areas.

Figure 3: Atka mackerel length frequency distributions from the fishery in the Aleutian Islands, EBS, and GOA in 1997. [1998 Biological Opinion].

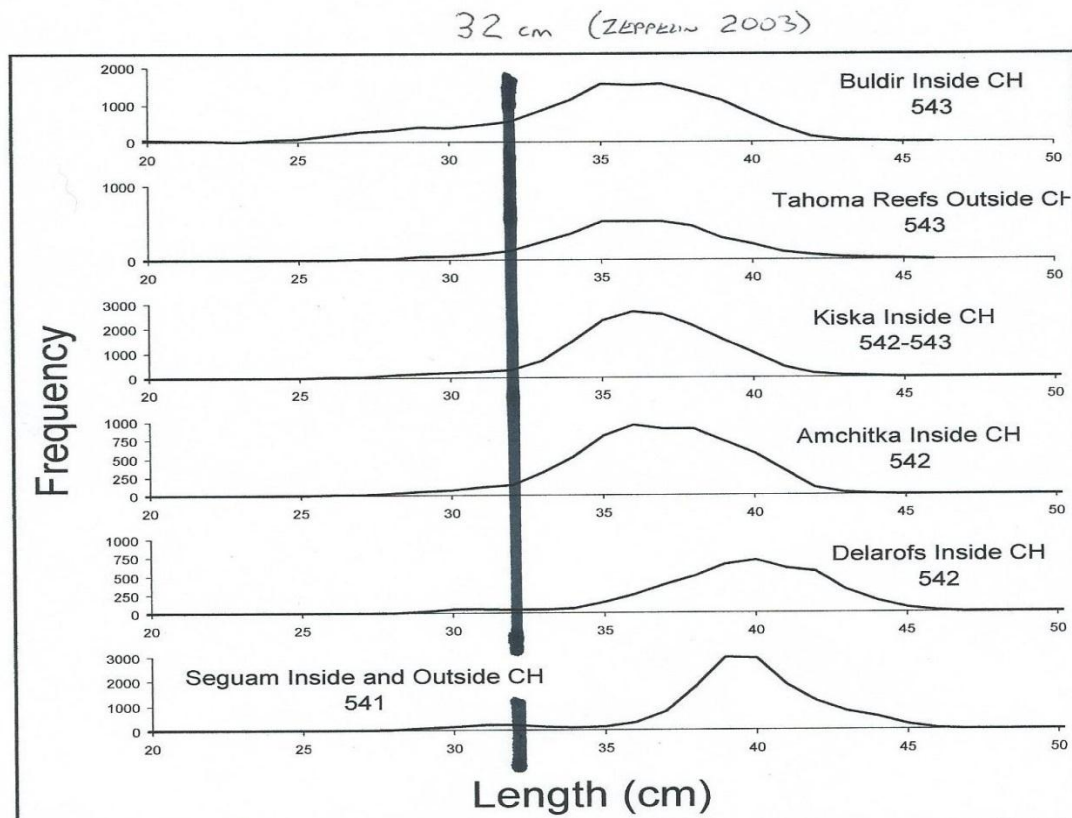


Figure 8b. Atka mackerel length-frequency distributions caught by the fishery at various locations in 1997 from west (top) to east in the Aleutian Islands. CH=Steller sea lion critical habitat. Numbers 541-543 are fishery management areas.

The potential extent of overlap depicted in the 1998 Biological Opinion appears minimal and is considerably less than the 51% found in Zeppelin 2004. The geographic presentation of the fishery length information is considerably more detailed in the 1998 Biological Opinion (by sub-areas within management areas in the AI – both inside and outside critical habitat), while Zeppelin aggregated all the frequency lengths from the Atka mackerel fishery from all areas combined in one figure in a very coarse scale.

In the DEIS, NMFS criticized the forage ratios (p. 5-105), stating that: “the scale of the forage ratios was too coarse” where the forage ratios were calculated by management area in the Aleutians (541, 542, and 543) and critical habitat (“CH”) in the Aleutians, EBS, and GOA.¹⁵ In contrast, NMFS cites Zeppelin 2004—whose scale for fishery lengths and prey

¹⁵ The forage ratios were proposed by NMFS in the draft 2010 Biological Opinion as a rationale for restrictive management measures as the ratios suggested insufficient forage in the Aleutians. However, the ratios were miscalculated in the draft Biological Opinion, and the revised ratios in the final 2010 Biological Opinion found the forage ratio in critical habitat in the Aleutians was the highest of all areas (EBS CH and GOA CH) and higher than all other areas CH combined. The highest forage ratio in the Aleutians is found in the WAI (more than six times the ratio found in the EAI, CH in the EBS, or CH in the GOA). With the revision of the forage ratios, the ratios no longer supported the “belief” by NMFS that the AI was a low production area. Since the

size is the combined EBS and GOA is considerably far coarser than the scale used in the forage ratios. Apparently, NMFS' views on appropriateness of scale are not consistent and "may" depend on the study providing the desired outcome to support the NMFS theory.

The agency chose to abandon the forage ratio analysis (the "forage analysis") that was presented in the draft 2010 Biological Opinion because, upon review, the analysis did not support the jeopardy conclusion of the final biological opinion. NMFS justifies removing the forage ratio analysis from this DEIS because it was questioned by CIE reviewers. In fact, only one reviewer questioned the analysis based on its spatial scale. The other reviewers did not find fault with forage analysis. To the contrary, the Bowen review was critical of NMFS' interest in abandoning its consideration when it did not support the agency's case.

Specifically, Bowen 2012 stated (page 6 and elsewhere): "One approach was to calculate a foraging ratio and to compare forage ratios in areas fished with trends in Steller sea lions. However, when forage ratios did not support the assumed effect, the BiOp dismisses their value. In doing so, the BiOp leaves the impression that the metric simply did not capture the effect that must be there since the Steller sea lion population is declining. An alternative conclusion is that a high forage ratio in an area of Steller sea lion decline suggests that food is not limiting. This alternative was not considered in the BiOp." It seems deceptive to cite the CIE reviews as a reason for abandoning this analysis, especially when the agency has so far declined to provide any response to these reviews.

Additionally, NMFS states that: "Steller sea lions do not consume all size classes [of fish] equally." Yet on that very point the DEIS provides no frequency length distribution of size of prey found in scat for cod, Atka mackerel or pollock. Instead, the DEIS merely inappropriately cites a "personal communication" (p.105). Finer scale information on Atka mackerel fishery lengths has been readily available in previous NMFS documents such as the 1998 Biological Opinion, but NMFS failed to consider all relevant information in the DEIS.

3. Size of prey: Pollock

As with cod and Atka mackerel, the DEIS provides no quantitative overlap of the distribution of frequency lengths found in scat and in the fishery for pollock. Instead, Section 5.1 refers to "considerable" overlap in the pollock fishery (citing Zeppelin 2004). The sole specific reference to the size of pollock found in Steller sea lion scat in the DEIS states (p. 5-36): "Remains of pollock exceeding 70 cm in length have been recovered in Steller sea lion scats (Tollit, Heaslip, and Trites 2004) and (Zeppelin et al. 2004)."

The mean length of pollock found in scat in Zeppelin 2004 using otoliths (uncorrected) was 23.7 cm; using otoliths (with correction factors) was 28.4 cm; using all skeletal structures (uncorrected) was 33.1 cm; and using all structures with correction factors was 39 cm. This skewed presentation of the extreme end of the distribution range in the DEIS does not inform

revised forage ratios no longer supported increased management measures, NMFS in the DEIS now disparages the forage ratios (and NMFS' own methodology).

the reader as to the distribution of the sizes of pollock found in scats (3.7 cm to 70 cm in Zeppelin 2004—with modes of consumed juvenile pollock at 5 cm and 15 cm)¹⁶.

The statement in the DEIS providing the extreme end of the range is akin to describing the heights of human beings by stating “The height of human beings have been found to exceed 8’11 inches” where only one person has been known to be taller than 8’11”.¹⁷ With no other information provided, a reader would assume that 8’11” humans are relatively common. The DEIS similarly presents a tall tale in its selective presentation (and omissions) of size frequency distributions overlap. Once again, the DEIS provides no quantitative distribution of pollock sizes found in scat in the Aleutian Islands and pollock fishery length information from the Aleutians and should be revised to do so.

4. Extent of overlap: Foraging dive depths and fisheries.

The DEIS provides no quantitative comparative distribution of fishing depths (by fishery) and Steller sea lion dive depths. For the most part, the DEIS in Chapter 5 and elsewhere (Chapters 3 and 7) presents dissimilar data sets from which the actual extent of overlap cannot be estimated. Despite public comment requesting proportional distribution of dive depths by Steller sea lions, the DEIS persists in focusing on maximum diving depth (with one exception in Figure 5-13) and maximum dive duration.

Section 5.1 states that juvenile Steller sea lion dives are short and shallow but then adds that juveniles are capable of diving to several hundred meters (p. 5-40) and refers to Table 5-8. Again, the DEIS does not provide a balanced presentation of the available information by quantifying only the extreme end of the range in the text. For example, the DEIS omits that in Table 5-8, for the dive studies in the Aleutians, the mean dive depth for juveniles is respectively: 11 m; 15 m, 11 m; <20 m; 8 m; 13 m; 17 m; 29 m; and 38 m (from Table 5-8).

The DEIS states that juvenile dive duration (p.5-40) can be greater than 13 minutes but again omits that the mean dive duration (minutes) for juveniles in the Aleutians is on average one minute (respectively 0.7 minutes; 0.9; 0.8; 0.7; 0.8; 0.9; 1.1; 1.7; and 2.0 minutes from Table 5-8) all of which indicate that the average juvenile dive is short and shallow (and close to shore, as described below).

Fadely 2005 provided juvenile Steller sea lion dive depth information specific to the Aleutians and the winter season and found that 90% of the dives were less than 100 m in the winter and 95% were within 5 miles of land. Of the 5% of dives greater than 100 m, 100% were within 5 miles of land.

Figure 5-13 does show the proportional distribution of dive depths—but only for adult females. The majority of dives (more than half) are less than 10 meters and 90% are less

¹⁶ P. 513, Zeppelin 2004.

¹⁷ Robert Wadlow, 1918-1940, 8’11.1 feet and 492 pounds

than 100 meters with a mean dive depth of 50 meters (p. 5-40). Yet again the DEIS refers (p. 5-40) to adult females being capable of diving to 300 m for durations greater than 13 minutes. The DEIS fails to include in the text discussion that for studies in the Aleutians, the mean diving depth for adult females are respectively 21 meters and 32 meters. And similarly, the mean dive durations for adult females in the Aleutians are respectively 1.3 minutes and 1.6 minutes (Tables 5-9 and 5-10).

The DEIS does acknowledge that Merrick and Loughlin 1997 found adult female dive depths during breeding season ranged from 10-50 m and that adult female dives in the Aleutians (Seguam) are shorter and shallower than adult female dives in SEAK (Andrews et al 2002).

However in presenting the potential overlap between Steller sea lions dive depths and fisheries (p. 5-99), the DEIS persists in presenting **only** the maximum dive depths of Steller sea lions compared to mean fishing depths—with no presentation of mean dive depths, mean maximum dives depths, or mean duration in the discussion in the text.

For fisheries depth comparison, the DEIS provides the following: For cod trawl, the average fishing depth is given at 137 m; for cod non-trawl the average fishing depth is 125 m; for Atka mackerel is given at 160 m; and the average fishing depth for pollock not given, but a range of 150-400 m is given.

Despite CIE and public comment requesting that NMFS quantify the proportion of potential overlap between fishing depth and Steller sea lion dives, the DEIS does not include any such quantification of the overlap. What the DEIS does provide is non-comparable metrics (such as maximum dive depths compared to average fishery depths). However, the DEIS does provide mean values for Steller sea lion dive depths and fishery depths (expressed below) which indicates the potential overlap between fisheries and dive depths is minimal. The short mean dive durations also confirm that the preponderance of dives in the AI by Steller sea lions are both short and shallow.

Juvenile Steller sea lions in AI: Mean dive depth (meters)	11.7;14.6; 11.8; 11.1; <20; 7.7; 13; 16.6; 29; 38 meters
Juvenile Steller sea lions in AI: Mean dive duration (minutes)	0.7; 0.9; 0.8; 0.7; 0.8; 0.9; 1.1; 1.7; and 2.0 minutes
Adult female Steller sea lions in AI (breeding): Mean dive depth (meters)	21 meters
Adult female Steller sea lions in AI (breeding): Mean dive duration (minutes)	1.3 minutes
Adult female Steller sea lions in AI (non-breeding): Mean dive depth (meters)	31.9 meters
Adult female Steller sea lions in AI (non-breeding): Mean dive duration (minutes)	1.6 and 2.0 minutes
Average depth of Atka mackerel trawl fishery (meters)	160 meters

Average depth of cod trawl fishery (meters)	137 meters
Average depth of cod non-trawl fishery (meters)	125 meters
Depth of pollock fishery (range in meters)	150 – 400 meters.

Chapter 5 of the DEIS should include a quantitative examination of the potential depth overlap between fisheries and Steller sea lions in terms of proportions of dives in depth strata, and proportions of the fishery in depth strata. Further, the telemetry data should also be examined for spatial and temporal overlap with fisheries, and the DEIS should clearly explain the relevance and significance of any overlap found.

E. The DEIS does not adequately disclose NMFS’ current thinking on the “nutritional stress” hypothesis.

Section 5.2.2.18 does not provide an adequate discussion of the agency’s current thinking on “nutritional stress” or provide a response to the severe criticism from the CIE and ISRP of that hypothesis as it was presented in the 2010 Biological Opinion. Instead, without providing any new supporting scientific evidence, the DEIS maintains that fishery induced nutritional stress “may” occur and cites the 2010 Biological Opinion as the basis for that assertion. DEIS at 5-101 and 5-102. At the same time, NMFS indicates in the June 2013 Memoranda that it is going to “build on” the work in the 2010 Biological Opinion for harm to sea lions from nutritional stress due to fishing.

The DEIS identifies nutritional stress and particularly “fishery induced nutritional stress” as an area of controversy. However, the DEIS provides little information on the nature of the controversy but does identify (p. 1-17) that the ISRP panel found: “that the NMFS theory of nutritional stress from competition with fisheries was not well supported.” The ISRP had considerably harsher statements (as did the CIE) regarding the NMFS assertion of fisheries induced nutritional stress: “In our judgment, the fishery-driven, nutritional stress hypothesis proffered by NMFS as an explanation for population declines of Steller sea lions in the western and central Aleutian Islands should be scientifically rejected.” ISRP at 50.

The DEIS provides little discussion of the nutritional stress theory (approximately on pages 5-101 and 5-102) and includes no new scientific evidence to support the much criticized assertion. The DEIS does not respond to the criticisms but instead re-states that nutritional stress from fisheries is still probable and then cites the flawed 2010 Biological Opinion as support: “Steller sea lions may experience nutritional stress in response to reduced availability of prey in portions of critical habitat or other important foraging areas left open to fisheries (see Section 3.1 in NMFS 2010a).”

The DEIS also omits disclosing or responding to the CIE comments on the nutritional stress hypothesis. The CIE reviewers made strong statements that no evidence shows SSLs are currently experiencing any nutritional stress, much less that nutritional stress is due to fishing. *See* Bowen 2012 at 2, 5, 7, 9 (“Therefore, I conclude there is little evidence that SSL

experienced nutritional stress in the past and essentially no evidence that SSL are currently experiencing nutritional stress.”(at 5)); Stewart 2012 at 11, 13 (“This hypothesis remains unsupported.”); Stokes 2012 at 3 (“Evidence for nutritional stress (whether fishery-induced or natural) is very limited and the hypothesis effectively remains conjecture; and the analysis of risks posed by fishing to prey fields is flawed.”); Stokes 2012 at 15, 19.

Despite all these strong and pointed scientific critiques of the nutritional stress theory in the 2010 Biological Opinion, the DEIS persists in presenting this assertion as a probable and likely theory without presenting any new scientific evidence that verifies the hypothesis. This issue alone requires substantial revisions to Chapter 5.

F. The discussion of foraging ratios in the DEIS is inadequate and does not provide the information necessary to assess alternatives. Chapter 5 needs to be modified to include the proposed prey field analysis with recommended improvements.

While the DEIS at 5-104 provides a list of problems NMFS believes are inherent with foraging ratios, the DEIS does not describe the methodology the agency will utilize to look at how fisheries affect prey availability for Steller sea lions. For this reason, we have to assume that the new approach in the AFSC document released at the NPFMC meeting in June entitled “Prey Field Analysis in Support of Bi-op 2014” is where we can learn about what NMFS intends to do in lieu of forage ratios.¹⁸ Exhibit 7.

With only a sketch of the prey field analysis in the AFSC’s June 2013 document, it is impossible to adequately assess how the EIS can provide the analysis necessary for informed decision making. According to NMFS, the upcoming 2014 BiOp will analyze the fundamental question of how the preferred alternative will affect the prey field for Steller sea lions in the Aleutian Islands, but this will be after the fact for this EIS/NEPA process. This analysis needs to be included in the DEIS as part of the methodology used to assess each of the Alternatives and make a reasoned decision when selecting a preferred Alternative. We have identified concerns with the proposed methodology which should be addressed. The new foraging analysis should be incorporated into Chapter 5. These comments are intended to improve the new analysis.

The new AFSC methods as per the June memoranda are narrowly focused only on adjustments to the way the trawl survey data are used to estimate the fraction of groundfish biomass harvested in a given area relative to how much was there and therefore how much is

¹⁸ NMFS has indicated that it will not use foraging ratios contained in the 2010 Biological Opinion to assess how fishing affects prey quantities available to SSL. NMFS now apparently believes that the spatial scale was too large due to the limitations in the survey data and stock assessment biomass estimates and that there was large uncertainty in SSL forage needs and the prey required for efficient foraging. NMFS believes that the assumption that all prey biomass is available to sea lions is not realistic and that sea lions do not consume all size classes equally. The agency no longer believes the inherent assumption that SSL forage in all areas where the biomass is found is valid.

left in the water. This only deals with one narrow aspect of the foraging ratio analysis, which included not only how much fish was left in the water after fishing but how that matched up to the energetic needs of Steller sea lions in the corresponding time/area.

The AFSC now intends to group the summer AI trawl survey data into depth strata. From there it appears they will assess how much of the estimated biomass in each depth strata falls into critical habitat, and then look at how much fish is caught by fisheries by depth strata in relation to the estimated species-specific biomass estimates by depth strata from the trawl surveys. This is essentially a different way of coming up with the harvest rate analysis rate tables found in the draft and final 2010 Biological Opinions.

Atka mackerel and cod are found in fairly narrow depth ranges by both the survey and the commercial fishery. The biomass being removed by commercial fishing out of each depth strata therefore mirror the harvest rate approach done in the final 2010 Biological Opinion except that it would be more refined in terms of spatial scale with the new AFSC methods.

It is critical, however, that the new analysis uses the same rolling average for survey biomass estimates as done in the stock assessments. Individual survey results are highly variable. This will be magnified by focusing on individual depth strata. One criticism of the original forage analysis was the use of a single survey year, which skewed the results.

While subdividing the trawl survey into depth strata helps to address the problem of low spatial resolution of harvest rate estimates, it does not make the trawl survey data inherently better in all regards than using fishery dependent data (a discussion of problems with the use of fishery dependent data is found in the EIS starting on page 5-104). For example, the trawl survey occurs every other year and in the summer only. Atka mackerel and cod tend to school in other seasons, and summer is a time when commercial trawling for these species is least desirable. Further, cod that spawn in the Aleutians may not even be resident to the Aleutian Islands at other times of the year so surveying in the summer could be especially problematic for that species.

Given the limitations to the trawl survey timing, there may be some value in looking at fishery dependent data in addition to the trawl survey data because the fishery dependent data is the only available means to look at biomass estimation at times of year outside of summer. As the AFSC memo points out, the trawl survey has the advantage of towing standardized gear with equipment that also verified the deployment parameters. Fishery-dependent data does not have these characteristics, but NMFS could address some of these shortcomings by communicating directly with fishermen as to the gear and fishing techniques used.

Finally, some component of AI Steller sea lions presumably stay in the Aleutians year round so using the fishery dependent data to look at prey biomass at times of the year when fishing is going on may be a better way to gauge how much prey there is in the months when groundfish are schooled up coincident to when they are fished commercially.

Finally, referencing NMFS' list of problems with forage ratios summarized above, we want to point out that data are available to address the issue of prey size relative to Steller sea lion foraging. NMFS can and should address this by taking a harder look at the available information on size of fish in commercial catches compared to size of fish that occur in Steller sea lion scat. The real issue is where and to what degree the distributions overlap. While scat data will always have inherent limitations, this is not an excuse to ignore its basic utility on the size of prey overlap issue.

If NMFS is going to utilize this prey field analysis in a future Biological Opinion, then this analysis needs to be incorporated into the DEIS in order to provide the public with an opportunity to comment on the methodology used as well as to inform both the public and the Council as they review the alternatives. We are providing the above comments on the analysis as part of our comments on Chapter 5 in order to improve that analysis, integrate it with the related analyses under the ESA, and solicit a response to the specific comments on the prey field analysis methodology. *See* 40 C.F.R §§ 1502.24; 1502.25(a).

G. The DEIS improperly relies on a technical paper “published” in-house for key findings: Sinclair et al. (2013) “Decadal variation in the diet of western stock Steller sea lions.”

The Sinclair et al. paper is frequently cited in Chapter 5. The core of the paper pertaining to the data and analysis of changes in Steller sea lion diet is not really controversial or groundbreaking. However, the paper includes a great deal of speculation about causes for regional Steller sea lion trend differences and completely new theories with questionable scientific support. Further, the paper demonstrates a misunderstanding of current fishery regulations in Steller sea lion areas. A legitimate peer review process would likely have caught the errors and questioned the assumptions.

Instead, the AFSC released the paper as a NOAA Technical Memo. NOAA guidance regarding the use of technical memoranda states as a preface: “The National Marine Fisheries Service’s Alaska Fisheries Science Center uses the NOAA Technical Memorandum series to issue informal scientific and technical publications when complete formal review and editorial processing are not appropriate or feasible.” Whatever made a thorough, outside peer review inappropriate or infeasible we can only speculate in light of the apparent import of this paper to this DEIS.

Overall, the Sinclair paper presents valuable information about changes in Steller sea lion diets. The dietary analyses appear sound, but there are no analyses to support the assertions about the relationship between changes in diet and fisheries management. Nor is there anything in the report to support the speculation about how fishing and fisheries management are responsible for the changes in Steller sea lion diets. An independent analysis should be undertaken that statistically evaluates possible relationships between diet, fishing, climate conditions, and changes in sea lion numbers. It needs to evaluate the relationships in light of the leading hypotheses to explain the decline of Steller sea lions.

Comments on specific components of the Sinclair et al paper are included in Exhibit 8.

Because this paper is so heavily cited in the DEIS we are providing comments on Sinclair et.al. as part of our specific comments on Chapter 5. The specific issues raised in Exhibit 8 should be incorporated into a revised Chapter 5 and responded to in NMFS' response to comments. We further recommend either that the Sinclair paper be significantly revised to address these concerns and then submitted for standard outside peer review and publication, or deleted altogether as support for the conclusions of the EIS. This paper should not be used in the EIS or the upcoming biological opinion unless these steps are taken.

IV. Comments on Chapter 8

A. General comments on the RIR's Economic Analysis of Alternatives.

The Regulatory Impact Review (RIR) uses a "revenues at risk" approach to estimate potential loss of revenues to fishery participants. The way they have done this analysis ignores distinctions between closed areas, prohibitions on retention, and TAC limits. For example, the analysis states that a prohibition of retention of Atka mackerel in Area 543 puts the revenues from those harvests "at risk." Mackerel fishing in western Aleutians AI subarea 543 is closed to directed fishing and any mackerel caught in other directed fisheries (e.g., Pacific Ocean perch) cannot be retained. Had the 2010 regulations not been in place, in 2013, the AI 543 mackerel TAC could have been set at up to 17,100 metric tons ("mt"). But due to the IFR there was no point in doing that so TAC was set at 1,500 mt and if any of that is taken incidentally it cannot be retained. These harvests are not at risk, but are simply lost. The fact that the vessels in the fishery may attempt to offset those losses by catches elsewhere cannot overcome the loss from the prohibition.

Similarly, limiting the TAC in an area to a specific percentage of the ABC such as is currently required for mackerel in AI 542 where TAC cannot be set at more than 47% of ABC, results in a loss because TAC is lower than it would have been in the absence of that limit. For example, in 2013 the mackerel ABC for CAI sub-area is 16,000 mt and absent the Steller sea lions regulations in place could have been set at that amount but instead was set at 520 mt. The analysis should be revised to differentiate circumstances in which revenues are lost through prohibitions on retention and TAC limitations, from those circumstances that put revenues at risk of loss from area closures. Additionally, the analysis should, to the extent feasible, distinguish area closures by their potential to result in either stranded TAC or lower value harvests. These distinctions are made at times, but should be expanded on to the extent possible.

The analysis further confuses the nature of impacts by periodically, incorrectly referring to these losses as a cost. For example, the beginning of section 8.3.3 on p. 8-77 refers to the increase in costs from restricted fishing grounds as the primary effect on the fleet of the Atka mackerel and Pacific cod fishery limitations of the status quo. Losses and costs may occur

simultaneously, but are separate items that have a compounding effect that must be considered. A thorough review of the document needs to be undertaken to correctly distinguish losses from added costs.

The RIR, throughout, emphasizes the potential for vessels that suffer losses because of Steller sea lion measures to recover those losses in other fisheries. Most fisheries in which those opportunities may be sought are very competitive, with either several participants competing for the lease or purchase of any catch shares available in the market (e.g., CDQ fisheries) or with overcapacity in the limited access fishery (e.g., Bering Sea Pacific cod). While the analysis acknowledges these factors to some extent, it also suggests that opportunity exists for participants displaced by Steller sea lion measures to offset much of the losses through these other fishing opportunities. The analysis ignores that these opportunities are less accessible because of the added pressure arising from the Steller sea lions measures, as vessels displaced by Steller sea lion measures will increase fishing pressure where these opportunities arise.

The analysis also ignores the fact that these opportunities would be pursued in the absence of the Steller sea lion measures allowing the analyst to dismiss losses to the fleet from the Steller sea lion measures by citing added catches as offsetting those losses. This characterization is incorrect and leaves readers with a false sense that losses are inconsequential or may be easily overcome by deploying vessels elsewhere. In addition, the analysis downplays the effects of displaced vessels on those vessels that do not participate in fisheries subject to Steller sea lion measures. These vessels are indirectly affected by greater intrusion by vessels that are displaced by the Steller sea lion measures. Productive Bering Sea flatfish and cod fishing grounds were mostly fully subscribed already and shifting a sizable fleet from the Aleutians reduced everyone's efficiency and profitability.

The analysis may also understate the longer term effects of influxes of effort on markets and future opportunities. For example, this year's increase in yellowfin sole harvests have decreased the market for catches. Although these catches may appear to buoy revenues of vessels displaced by Steller sea lion measures, they can have a negative, more lasting effect on future harvest and market opportunities that can be easily overlooked, as it is unlikely to be revealed in annual harvest and production data. While the analysis acknowledges that these effects may exist, its presentation places little emphasis on these effects that can be substantial and have great consequences, particularly for a fleet that is already distressed by TAC reductions and area displacement.

Much of what the analysis suggests can be done to overcome losses by redeployment of vessels constrained by Steller sea lion measures is simply vessels responding to variability in fishery stocks and TACs. These tend to be short-lived fluctuations that would be more correctly characterized as supplemental income for participants able to opportunistically respond to variability. Ignoring this reality leads the analysts to understate losses from the Steller sea lion measures. For example, the analysis overestimates future opportunities in the Bering Sea/Area 541 Atka mackerel fishery. In the first few years after implementation of

the most recent Steller sea lion measures, the TAC in the Bering Sea/Area 541 attracted substantial effort from vessels displaced by the Steller sea lion measures, as well as from other vessels. The analysis largely overlooks circumstances that reduce the opportunity in that area in the future, most importantly the recent decline of the TAC. The analysis thereby overstates the future opportunity to make up for lost revenues from Steller sea lion measures by increased harvests of Atka mackerel in the BS/Area 541. In addition, the analysis seems to assume that the added harvests from the BS/Area 541 fishery would not have been pursued but for the Steller sea lion measures. This assumption is incorrect. The ability to take any advantage of the measures that facilitated Bering Sea mackerel fishing is still predicated on having 541 quota under Amendment 80 allocations so the Bering Sea mackerel regulations should not be viewed as a new fishing opportunity by any means.

The analysis also overlooks an important component for evaluating fishing opportunities of vessels displaced by Steller sea lion measures. Throughout, the analysis fails to even consider the number of vessels that have LLP endorsements that would allow for participation in fisheries outside of those regulated by the Steller sea lion measures. Some vessels may have no opportunity to fish in Gulf fisheries because of a lack of endorsements for participation in those areas or eligibility to fish for flatfish. These numbers are easily accessible and should be included in the analysis. The analysis also largely overlooks the costs of repositioning a vessel for participation in these other fisheries. These costs include both out-of-pocket expenses and lost opportunities in Aleutian Island fisheries. Particularly with respect to Atka mackerel, the analysis suggests that some losses could be offset by topping-off on Atka mackerel incidental catches in Gulf fisheries. While the analysis downplays this potential somewhat, repositioning a vessel for an opportunity to take incidental catches to offset losses from closure of a directed fishery is very unlikely and requires first that the vessel have access to and markets for the basis species needed for these top-off harvests. In addition, the analysis fails to consider management measures likely to be imposed, if a substantial top-off fishery were to develop in the GOA.

The analysis also suggests that catcher processors that lose revenues from Steller sea lion measures may have opportunities outside of fishing and processing, to make up for losses arising from lost fishing opportunities. This suggestion is strictly speculative and unfounded.

The analysis integrates trawl catcher vessels that deliver to motherships with trawl catcher processors to avoid confidentiality issues. This overlap continues throughout analysis of fishing opportunities that could be accessed to offset losses. As a result, the analysis often fails to distinguish the different opportunities of these two different vessel types and that losses to a catcher vessel differ from those of a catcher processors operating as a catcher processor and then again differ from those losses as a catch processor acting as a mothership.

In an attempt to be comprehensive, the analysis seems to devolve into a listing of effects without a coherent synthesis that would allow a reader to understand the overall economic impact of the action on fleets affected by the Steller sea lion measures. For example, even the summary discussion of redeployment of displaced vessels seems to just list other fishing

opportunities (with some qualification of the potential of each opportunity) with little discussion of the overall potential of vessels to successfully pursue those opportunities or the impacts on other fleets that would be subject to this influx of effort. This can be juxtaposed against the assertion (on page 8-87 of the analysis) that operating costs would be lower if the fleet affected by the Steller sea lion measures chooses not to fish. This statement clearly demonstrates the equivocation of the analysis, which seems to bounce from one extreme (lost revenues being made up through added fishing) to the other (reduced costs from not fishing). These assertions should be balanced against their potential to occur, so that the reader has a better sense of probable (not just possible) effects. In many cases, the losses are impossible to recover because of prohibitions on retention or reduced TACs or are unlikely to be recovered because of area closures that prevent or reduce the value of harvests.

The 2010 EA done in support of the Biological Opinion measures in place estimated annual revenue losses of between \$44 million and \$61 million annually. This is a more accurate depiction of the effects of the measures in place than the EIS analysis currently portrays, particularly now that the AI 541 mackerel TAC is down to a more normal level. Revenue losses to mackerel fishermen out west are now at the level of what was described in the 2010 EA because the mackerel TAC is no longer shifted to the east where fishermen can access most of it. As was stated above, the affected Aleutian Islands dependent companies have been able to make up for forfeited revenues in flatfish and other Bering Sea or Gulf of Alaska fisheries beyond what they would normally have done in those fisheries had the Steller sea lion regulations not been in place. The analysis needs to make this clear.

B. Specific comments on Chapter 8.

On p. 8-84, the analysis suggests that the Amendment 80 vessels and motherships fish in the limited access yellowfin sole fishery, which is not the case.

On page 8-85, the analysis states that the development and increase in harvests of Arrowtooth flounder, Kamchatka flounder, and Greenland turbot coincided with the implementation of Amendment 80, and was therefore caused by Amendment 80. If Amendment 80, in fact, caused this change, the causality should be explained. Much of this shift resulted simply from opportunistic fishing choices.

On page 8-85 and 8-86, the analysis suggests that the Amendment 80 fleet expanded catches of Gulf flatfish to “offset costs,” which resulted in excessive use of halibut PSC. The relevance of this comment is unclear, given that the analysis does not seem to have verified that the vessels with increased activity are, in fact, vessels that have historically participated in the Aleutian Islands Atka mackerel and Pacific cod fisheries affected by the Steller sea lion measures. In fact, many A80 vessels that were impacted by the mackerel and cod closures do not even qualify to fish flatfish in the Gulf of Alaska (see Table 39 to Part 679). In addition, the movement would seem to have been in response to lost revenues, rather than costs.

pp. 8-130 - 8-150 – The analysis of Alternatives 2 and 3 in this section is very confusing. The section begins with a comparison of various provisions that would set (or limit) TACs based on ABCs. These TACs are then compared to “Alternative 2 catches,” which seem to be projected catches. The section later goes on to compare these Alternative 2 catches to projections under other alternatives. This ordering creates a few issues for readers. First, the reader must guess the meaning and means of generating “Alternative 2 catches.” Second, the reader must revisit the comparison of the TAC option to the “Alternative 2 catches” to understand how those options compare to other alternatives. Switching the ordering of these discussions would provide a more transparent analysis.

P 8-150 – “The results are not a forecast, but a thought experiment.” This statement does not seem appropriate for an analysis.

P 8-251 – The analysis suggests that allowing retention in area 543 and increasing the TAC available in area 542 will have a negative effect on safety by drawing additional vessels into areas with less fishing density. The analysis should point out that the action could have a positive effect, if vessels that fish in the area fish simultaneously and close to one another. In addition, mothership operations may provide a safety benefit in comparison to isolated catcher processor operations because of the fleet orientation of the mothership operation.

James W. Balsiger, Ph.D.

July 16, 2013

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CONCLUSION

As these comments demonstrate, the central analyses of the DEIS are so inadequate that they preclude meaningful analysis of the comparative impacts of the alternatives by the agency, the public and the Council. Therefore, in accordance with 40 C.F.R. § 1502.9(a), we request that NMFS: (1) revise chapters 2 and 5 to address the issues set out in our comments; and (2) circulate the revised chapters with a thirty-day public comment period. The revised chapters need to be made publically available in time to have the public comment period end prior to the October meeting of the NPFMC. This timeline is achievable and consistent with the deadline set by the court for completion of the EIS process. It is also necessary in order to ensure that the agency's consideration of revisions to Steller sea lion mitigation measures process meets the letter and spirit of NEPA.

Thank you for your consideration of these comments.

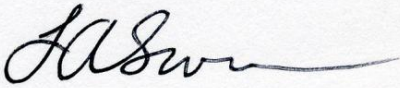
Sincerely,

ALASKA SEAFOOD COOPERATIVE



William Orr, President

THE GROUND FISH FORUM



Lori Swanson, Executive Director

OCEAN PEACE, INC.



Todd Loomis

James W. Balsiger, Ph.D.

July 16, 2013

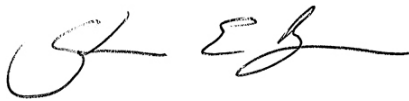
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UNITED STATES SEAFOOD LLC



David Wood, Executive Vice President and General Counsel

PACIFIC SEAFOOD PROCESSORS ASSOCIATION




Glenn Reed, President

ADAK COMMUNITY DEVELOPMENT CORPORATION



Dave Fraser

ALEUTIAN PRIBILOF ISLAND COMMUNITY DEVELOPMENT ASSOCIATION



Larry Cotter

ALEUT CORPORATION



Rudy Tsukada

Enclosures:

- Exhibit 1:
 - Memorandum to Jon Kurland from Doug DeMaster re: Steller sea lion information provided in support of the Steller sea lion/Groundfish Biological Opinion, May 24, 2013
 - NPFMC Letter to Dr. James Balsiger (NMFS) re DEIS, June 24, 2013
 - Analytical Approach for 2014 Groundfish Biop Compiled by the National Marine Fisheries Service Alaska Region Protected Resources Division, May 2013
 - Initial Feedback on the Preliminary Preferred Alternative in the Steller Sea Lion Protection Measures EIS for the Groundfish Fisheries of the Bering Sea and Aleutian Islands, by NMFS Alaska Region Protected Resources Division, May 28, 2013
- Exhibit 2:
 - Council Motion - Agenda Item C-3 Steller Sea Lion EIS, April 5, 2013
 - Council Motion - D-2 Steller Sea Lion Draft EIS, June 2013
 - Council Motion on Steller Sea Lion Mitigation EIS (C-4) December 2012
 - L. Larson letter, on behalf of AKSC, to Olson and Balsiger Re: April 2013 NPFMC Agenda Item C-3, Steller Sea Lion EIS
- Exhibit 3: Letter to Glenn Merrill from various: Comments on scoping and process for the EIS on SSL management measures for the BSAI groundfish fisheries, October 15, 2012
 - Exhibit 3, Attachment 3: W. D. Bowen; Center for Independent Experts Independent Peer Review of the November 2010 North Pacific Groundfish Fishery Biological Opinion, September 5, 2012
 - Exhibit 3, Attachment 4: Stewart; Center for Independent Experts (CIE) External Independent Peer Review on the 2010 Biological Opinion on the Effects of the Federal Groundfish Fisheries and State Parallel Fisheries on listed species in Alaska, including Steller sea lions, September 5, 2012
 - Exhibit 3, Attachment 5: Stokes; Center for Independent Experts (CIE) Independent Peer Review Biological Opinion on the Effects of the Federal Groundfish Fisheries and State Parallel Fisheries on listed species in Alaska, including Steller sea lions
 - Exhibit 3, Attachment 6: ISRP, Bernard; An Independent, Scientific Review of the Biological Opinion (2010) of the Fisheries Management Plan for the Bering Sea/Aleutian Islands Management Areas, October 8, 2011
 - Exhibit 3, Attachment 8: Washington Department of Fish and Wildlife, Alaska Department of Fish and Game presentation: An Independent Scientific Review of the

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Biological Opinion (2010) of the Fisheries Management Plan for the Bering Sea/Aleutian Islands Management Areas, August 1-2, 2012

- Exhibit 4: Letter from David Benton (Marine Conservation Alliance) to Dr. James Balsiger (NMFS) re: Draft Steller Sea Lion Biological Opinion, September 3, 2010
- Exhibit 5: Doug DeMaster presentation: Methodology used to Assess Steller Sea Lion Dynamics and the Ecology in the Biological Opinion, June 4 2013
- Exhibit 6: Devin S. Johnson and Lowell Fritz (in prep), agTrend: An R package for estimating trends of aggregated abundance
- Exhibit 7: Prey Field Analyses in Support of BiOp 2014 (AFSC)
- Exhibit 8: Specific Comments on Sinclair et al 2013

cc w/o enc:

Governor Sean Parnell
Governor Jay Inslee
Senator Mark Begich
Senator Lisa Murkowski
Senator Patty Murray
Senator Maria Cantwell
Congressman Don Young
Congressman Doc Hastings

cc w/ enc:

Mr. Eric Olson, Chair, North Pacific Fisheries Management Council



Eric Olson, Chair
North Pacific Fishery Management Council
Attn: Chris Oliver, Executive Director
604 West 4th Avenue, Suite 306
Anchorage, AK 99501
re: Comments on agenda item D-1a

June 28, 2013

Chair Olson and Members of the Council:

I appreciate the opportunity to comment on the changes in definitions of "sportfishing guide services" and "compensation". I am submitting these comments on behalf of the membership and Board of Directors of SEAGO.

Please accept the attached document as SEAGO's formal written comments on Agenda Item D-1(a).

I, and several SEAGO members, will be in attendance at the October Council to expand upon these comments during the public comment period.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heath E. Hilyard".

Heath E. Hilyard, Executive Director
SEAGO



INTRODUCTION

After reading through the RIR on this issue, SEAGO concurs that current business practices by some operators Area 2C are likely inconsistent with the North Pacific Fishery Management Council's (or "Council") intentions in 50 CFR part 300 pertaining to guided sport fisheries. While we agree those practices may be inconsistent with Council intent, we assert that under current regulation, they are also not expressly prohibited; and as such not subject to enforcement action.

However, we contend that some of the RIR's conclusions about the causality for these disparate business practices are incorrect; and as such, the proposed solutions in Item D1(a) will not satisfactorily address the root of the problem. Several comments in Section 1.2 of the RIR discussion paper (P.3) address two key points—an operator's lack of a current Charter Halibut Permit (CHP), and differential bag limits for Pacific Halibut between the guided and unguided Sportfishing sectors.

SEAGO believes the former assertion has little merit and the problem that Item D1(a) intends to correct is driven largely by the latter assertion – differential bag limits between the guided and unguided sectors. Furthermore, there is an exogenous issue of current economic conditions (nationally and worldwide) that drive angler behavior – I.E. some anglers expressly choose the unguided options this Item intends to address based on a cost-benefit analysis (the potential for more fish for a lesser cost).

SEAGO believes there is a more effective solution to this issue. After extensive discussion among the SEAGO board, which is comprised of a number of highly experienced charter operators, SEAGO has concluded that sector (guided v. unguided) parity in bag limits offers a stronger possibility for correcting the situation.

INEFFICACY OF DEFINITIONAL CHANGES

The discussion paper makes multiple references to the difference between current federal language and that of the State of Alaska sport fish regulations (P.3). SEAGO believes what is lacking in this line of discussion is the differentiation in management authority between the State and federal government. The State of Alaska is capable establishing differing bag limits by residency status—an issue that cannot be legally remedied by a non-resident angler seeking larger bag limits regardless of the manner in which that angler chooses to fish. The federal government is only able to differentiate between the method and means (guided v. unguided) by which a sport angler harvests federally managed fish.

SEAGO was present during the February 2013 meeting in Portland, OR when this item was originally discussed. During the course of the Advisory Panel (AP) deliberations, there were a number of conversations about when "unguided fishing becomes guided". Some of the points mentioned addressed whether an operator could

provide an unguided angler with a pre-programmed GPS unit and whether a “mother-ship” could be present on fishing grounds to observe angler safety and provide assistance, if necessary. While these may be some legitimate concerns, SEAGO believes these continue to be driven, largely, by the disparity in bag limits for the guided and unguided recreational sport fishing sector collectively.

SEAGO contends that the establishment of differential bag limits, rather than the implementation of the CHP, has more to do with this shift in sector harvest.

Further, we believe that this disparity incentivizes more anglers to fish unguided rather than guided. Even if the relative cost were the same, there are a reasonable number of sport anglers who will recognize, and take advantage of, this disparity—as alluded to above, based on an overall cost benefit analysis.

This economic incentive creates a scenario wherein sport anglers look to exploit the differential bag limits, and those who provide sport fishing services (sometimes out of economic necessity) seek out and use loopholes in regulation. We feel strongly that a change in definition will only force some operators and anglers to become more innovative in their respective practices. In short, operators will further adapt to work within the letter of law, rather than within its intent; and a growing number of sport anglers may fish outside the law and/or participate in unsafe fishing practices to take advantage of larger bag limits. While it is generally true that sport fishing with a licensed fishing guide will increase fishing success, it is also generally true that licensed operators also provide a safer fishing experience for recreational anglers.

Summary: A change in definition will not prevent such practices by operators or anglers; it will only serve to force them to become more innovative to circumvent them. Activity contrary to Council intent will likely continue to occur.

STAKEHOLDER PARTICIPATION IN CONSERVATION EFFORTS

As we’ve seen over the last decade, the Commercial sector has taken significant cuts in their harvests resulting in calculable devaluation of IFQ permits. Furthermore, the Council and IPHC have taken a number of measures intended to constrain Charter sector harvest. While some of these measures failed to initially affect such changes, the last 4+ years have produced a suite of measures that have resulted in significant constraints, particularly on the Area 2C charter fleet. The combination of bag limit reductions, elimination of captain and crew fish, the permit moratorium (CHP), and size limitations (maximum size and/or reverse slot) have reduced charter harvest hundreds of thousands of pounds, well within Guideline Harvest Limit (GHL).

These directed fisheries have unarguably participated in the conservation efforts necessary to protect the long-term health of the halibut resource, and SEAGO agrees that these constraints for the respective sectors have come from management necessity. We acknowledge that a debate remains about which sector has been disproportionately harmed by changes in management regimes, however we acknowledge that the Charter and Commercial sectors contributions have been significant.

When reviewing the respective harvests of the guided and unguided recreational sectors in 2012 in Area 2C, the unguided sector harvest exceeded the Charter harvest by approximately 116,000 lbs. or 18%. It is difficult to make a fair comparison for the 2011 harvest between guided and unguided in 2C because the 2C charter

harvest was artificially low as a result of the 37" maximum size limit. It is also difficult to establish a fair trend line for the guided sector between 2011 and 2012 because of that same artificiality. What SEAGO contends is that as long as the current level, or more restrictive, of regulation for the charter sector exists it is highly probable that the harvest for unguided anglers will continue to trend upward.

CONCLUSION

For the reasons mentioned above, of the alternatives available in the current iteration of Agenda Item D(1)a, SEAGO recommends Alternative 1 – Status Quo. While we concur that business models precipitating this action are likely inconsistent with original Council intent, they have been precipitated, largely, by the differentiation in bag limits between the guided and unguided recreational sport fishing sectors in Area 2C.

SEAGO does not possess the scientific resources to recommend what aligned bag limits should be, however we maintain that this disparity has incentivized operators and anglers alike to look for creative alternatives to run profitable businesses and increase personal harvest.

If the Council wanted to adopt a comprehensive solution to this problem, that solution likely is a combination of definitional changes and aligning bag limits between the guided and unguided recreational sectors.



comment letter

1 message

Tom <tomevich@comcast.net>

Thu, Jun 27, 2013 at 8:09 AM

To: Council letters <npfmc.comments@noaa.gov>

June 27, 2013

North Pacific Fishery Management

605 W 4th Avenue, Suite 306

Anchorage, AK 99501-2252

Dear Chairman Olson,

I live in Bellingham Washington and I own and operate a 58' fishing boat that is based in Sand Point, Alaska. I sat in on the Council meeting, June 8th and 9th and listened to most of the public testimony on how to deal with by-catch. With the exception of Green Peace, I don't think I heard any one speak against some sort of Catch-Share plan as a means to reduce by-catch in the Gulf of Alaska. I also heard almost everyone testify to the importance of crafting a plan that would strengthen the health of the communities that a Catch-Share plan would affect. I could not agree more. I also heard, but no one would say out loud, that perhaps the Western Gulf may be dropped from the plan because of the State water issue. The reason is it may be way too difficult to tackle. If the Western Gulf did get dropped from a Catch-Share plan and you continue on with the Central Gulf, you have effectively walked away from any hope of maintaining the economic health of King Cove, Sand Point and the local fishing fleets.

I believe that most of the fleet has invested in excluders and we want to work with John Gruver on developing a more efficient salmon excluder for our horse power, but beyond that, there is not much chance of reducing by-catch or controlling it for that matter. If you want to look at the future, where the Central Gulf and the Bering Sea Pollock are both rationalized and the Western Gulf is the last open access Pollock fishery in the State, then look at what happened in C and D season of last year (2012).

To their credit the Kodiak fleet, in the interest of by-catch control, came up with a voluntary catch share plan. What they failed to do was come up with any sort of side boards for the Western Gulf. The last few years, because fishing has been slower in the 610, compared to 620, there have been a number of Kodiak boats that have come to the Western Gulf after their quota has been caught.

This past C season, 7 new boats were there on the first day. Several of the boats, I had never seen in the area before. I believe that there are between 16 to 18 "local boats" that usually participate in the fall Pollock season, so you will have to agree, that this is a significant increase in effort. There was at least one Bering Sea boat that came with his own tender from a company in Dutch Harbor. This just all added to a "race for fish" and we ultimately ended up going 2,500 Chinook salmon over the cap. This is what the future will look like if the Western Gulf is dropped from any salmon by-catch saving plan.

I would like to, once again, remind the Council, that the local Sand Point and King Cove fleet are 58' combination vessels' that are just not as competitive as the larger Kodiak and Bering Sea trawlers. I am going to repeat, I don't live in Sand Point, but my boat does, and trawling for Pollock and Cod is extremely important to my boat, as it is to the residents of Sand Point and King Cove. We have no markets for flat fish. Our trawl opportunities are for Pollock and Cod only. I want to make one thing perfectly clear, I acknowledge those boats have the right to come and fish in the Western Gulf. I also move around. As a matter of fact I took part in the great Kodiak fish steal this winter. That is what "racing for fish" is all about. But, what I do have a problem with, is some vessel coming and competing with me, who then has the security of their coupons swimming around waiting for them to return. They will then return to their respective home ports with the revenue from the Western Gulf.

I acknowledge that there would be sideboards, but my experience with sideboards, is that no one ends up very happy, and sideboards will do nothing to control by-catch. It's been no secret that, for the most part, the resident fishermen from King Cove and Sand Point have never been too excited about any sort of rationalization, but after being involved in what took place last fall, we now have the Peninsula Fisherman's Coalition.

The rumor, that the Western Gulf may be dropped from a Gulf Catch-Share plan, inspired me to return to Juneau to testify in front of the council and the B.O.F. to impress upon the State that including us, with the Central Gulf in a future catch share plan, was extremely important. Mr. Chairman, you asked me if I had a plan how to include the fish that's caught in State waters with a Federal Catch-Share plan. I sat there like a deer in the headlights. I understand that it is going to be complicated, and to be honest, I did not want to attempt to answer a question that I don't fully understand. We have been down this road before, and I have had enough people, that do understand the complexities, tell us that it can be done. What I would hope is that the Council would explore and then offer options on which the industry would be able to comment. Again, acknowledging the challenge of the Western Gulf State waters, I ask that we continue to be included with the Central Gulf in any future Catch-Share plans.

Thank you for your consideration,

Tom Evich

F/V Karen Evich

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[Home](#) > Kotzebue feasts on large halibut bycatch delivery

Jillian Rogers
July 5, 2013

Locals in Kotzebue and surrounding Northwest Alaska villages got a surprise influx of white fish. No, not sheefish. The Coast Guard delivered 13,000 pounds of halibut bycatch -- fish that otherwise would have gone to waste -- in an effort brought forth by the Washington-based nonprofit SeaShare, and Ocean Beauty Seafoods out of Kodiak.

Since its inception 20 years ago, SeaShare has donated millions of pounds of seafood to various agencies, including food banks, across the country.

"SeaShare has been working hard to reach more Northern Alaska villages," said executive director Jim Harmon from Washington on Friday. "I was disappointed I didn't get to go to Kotzebue. It's such a great community. I wanted to make the handoff to the people who are receiving the fish."

Nana Regional Corp.'s Liz Moore was there when the C-130 Hercules landed with boxes upon boxes of gutted, headed halibut. Moore was recruited to find a crew, divide the fish and facilitate delivery to 10 villages. No small task, especially on a tight deadline.

"We had to move really fast to mobilize people," Moore said Monday. "We don't have a regional food bank."

So locals were enlisted to help unload, sort and reload the fish.

"I really want to stress that this was a partnership between Nana and Maniilaq; we partnered up to get this figured out," Moore said. "We looked at the population of each village and estimated how many pieces of fish would go to each village."

The halibut was divided accordingly between Kotzebue, Deering, Buckland, Selawik, Kiana, Ambler, Kobuk, Shungnak, Noorvik, Noatak and Kivalina. It was then flown to the villages thanks to the generosity of FBX, Ryanair, Era Aviation and Bering Air, said Moore.

The halibut, which was the bycatch from trawlers delivering to Kodiak, was first offered to village elders. Once they were taken care of, fish went to various assisted living facilities including Lake Street House in Kotzebue. It was then doled out to community members.

"People were really excited and they really appreciated it," Moore said. "A lot were asking how to cook it," she added with a laugh.

Moore added that while donations of this nature don't happen very often, especially from Outside

sources, it's not unheard of for the communities to receive contributions now and then.

In 2009, SeaShare donated salmon to Kotzebue and surrounding communities.

Harmon said SeaShare has a goal of working more with rural Alaska villages but the cost of shipping makes it prohibitive. This latest venture was a collaborative effort between SeaShare, Carlile Transport and many other companies, including financial support from ConocoPhillips.

"No one does this for the tax incentive," Harmon said. "They do it because they respect the resource. (Fisheries) really try to avoid bycatch, but they feel they should use everything in the catch. This is a way to give back to the communities."

The Coast Guard was enlisted back in 2009 to make the salmon delivery to Kotzebue, so Harmon contacted them again last week in hopes they'd help out again.

"It took some time, but they were more than willing to do it," she said.

This story first appeared in [The Arctic Sounder](#).^[1]

Source URL: <http://www.alaskadispatch.com/article/20130705/kotzebue-feasts-large-halibut-bycatch-delivery>

Links:

[1] <http://www.thearcticsounder.com/>

Seafood Coalition

"Promoting science-based marine resource conservation and management"

At-sea Processors Association, BASE New England, Blue Water Fishermen's Association, Coalition of Coastal Fisheries, Columbia River Crab Fisherman's Association, Coos Bay Trawlers, Directed Sustainable Fisheries, Florida Keys Commercial Fishermen's Association, Garden State Seafood Association, Long Island Commercial Fishing Association, Midwater Trawlers Cooperative, Monkfish Defense Fund, North Carolina Fisheries Association, Northeast Seafood Coalition, Organized Fishermen of Florida, Pacific Seafood Processors Association, South Carolina Seafood Alliance, Southeastern Fisheries Association, Southern Off-shore Fishermen's Association, West Coast Seafood Processors Association, United Catcher Boats, Western Fishboat Owners Association

Seafood Coalition asks the National Park Service what happened to FishWatch?

July 12, 2013

Last month the U.S. Department of the Interior's National Park Service (NPS) announced that it was now requiring that vendors at all of the food service establishments in its parks, monuments, etc. serve seafood that is certified as sustainable by the Marine Stewardship Council or identified as "green" or "yellow" in reports prepared by the Monterey Bay Aquarium.

The members of the Seafood Coalition applaud the decision of the NPS to require that only sustainable seafood products be served by the vendors it does business with. By definition any permitted commercial fishery in U.S. waters must be sustainable and would therefore qualify for inclusion on NPS menus. We don't understand how the leadership at the NPS in making this decision completely ignored the existence of FishWatch, an existing program of the National Marine Fisheries Service that has been rating U.S. fisheries for several years, while endorsing two private enterprises, one of which is a voluntary eco-labeling program in which many fisheries choose not to participate and the other rates fisheries arbitrarily and randomly based on its own internally developed standard.

Why would the NPS limit its vendors to those whose products are deemed sustainable by outside interests while ignoring Fishwatch, an existing and proven program? To do so is particularly ill conceived considering that the FishWatch program was created by and is administratively part of the agency that manages our nation's fisheries – with the primary management goal of ensuring the sustainability of the fisheries it manages. Beyond that, the agency employs world-class scientists and managers who can provide unbiased reviews of non-U.S. sourced fish products that might be offered by NPS vendors.

But our concerns extend beyond the inherent waste resulting from passing over an existing federal program fully capable of and in fact already providing sustainability certification. As a federal agency, part of the U.S. Department of Commerce, the National Marine Fisheries Service can and will be held to a level of transparency and accountability that is not and will not be possible with similar "private" enterprises. Considering the level to which various ENGOs and the foundations that support them have become adept at swaying public policy in support of their particular agendas, the domestic seafood industry needs the protection that such transparency and accountability will provide.

We don't oppose the NPS, or any federal agency, demanding that any vendors that they deal with provide proof of the sustainability of their products, and we trust that this admirable action on the part of the NPS leadership will be extended to all of its vendors for all of their products (including meats, poultry, dairy, vegetable, and paper or plastic items). However, in the interests of equity and objectivity, a federal sustainability certification program should be allowed as one of the acceptable paths for providing products to federal agencies.

For further information:

On the West coast – Rod Moore (Rod.wcseafood@gmail.com)

On the East Coast – Nils Stolpe (nilsstolpe@cfl.rr.com)

The Seafood Coalition is composed of organizations and companies that represent or participate in commercial fishing and seafood processing as well as organizations that include many of the major suppliers of seafood directly to the American consumer. The Coalition was formed in 2001 to provide a strong, coordinated voice for the seafood industry in promoting science-based marine resource conservation and management in the U.S. and in international arenas. The Coalition is a forum for affected commercial fishing and fish processing interests and seafood suppliers to develop and support policies that improve federal marine resource conservation and management practices. In addition, the Coalition's goal is to foster sustainable development and to strengthen fishing communities along with enhancing the supply of healthy and nutritious seafood for consumers. The membership of the Seafood Coalition represents commercial fishing and fish processing interests in every coastal state from Maine to Texas, from California to Alaska, and in Hawaii as well as seafood suppliers in most interior states. In 2008, U.S. commercial fishermen landed over 8 billion lbs. of seafood. Seafood Coalition members account for the harvesting and/or processing of over three-quarters of those landings.