

North Pacific Fishery Management Council

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

MEMORANDUM

TO: Council, SSC and AP

FROM: Chris Oliver
Executive Director 

DATE: February 22, 2013

SUBJECT: Items of Interest

1. Notice of next step in the Inspector General review of NOAA's Catch Share Programs
2. NOAA/NMFS National Bycatch Reduction Engineering Program – 2012 Call for Proposals
3. Summary of Fisheries Forum - West Coast meeting held in September 2012
4. News Release – World Ocean Council to facilitate industry action on U.S. ocean policy and marine spatial planning
5. Kenai Peninsula Borough Resolution 2013-013 – reduce Chinook salmon bycatch
6. Alaska Journal of Commerce article – Spring test set for Gulf salmon excluders
7. Government Reorganization – Potential benefits and drawbacks of merging NMFS and FWS
8. Federal Register notice of 90-day petition finding to list corals under ESA
9. Federal Register notice of proposed rule for regulations to implement Amendment 41 to the BSAI and Tanner Crabs FMP

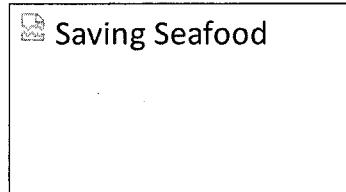
Subject: Commerce Inspector General Begins Review of Catch Share Program

From: Saving Seafood Alerts <alerts@savingseafood.org>

Date: 2/12/2013 11:00 AM

To: chris.oliver@noaa.gov

For a web page version of this alert [click here](#)



Commerce Inspector General Begins Review of Catch Share Programs

February 12, 2013 -- The Office of the Inspector General of the United States Department of Commerce has begun a review of the controls and processes associated with NOAA's catch share programs for commercial fisheries.

This is a continuation of the multiple-phase review of the National Marine Fisheries Service and Fishery Management Councils related to developing rules for the commercial fishing industry.

The objective of this review is to determine the adequacy of controls NOAA has in place to make decisions related to catch share allocations.

[Read the letter from Assistant Inspector General for Audit Andrew Katsaros to NOAA Administrator Jane Lubchenco](#)

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Saving Seafood Contact Information

phone: 202-595-1212

e-mail: info@savingseafood.org

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UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

February 11, 2013

MEMORANDUM FOR: Dr. Jane Lubchenco
Under Secretary of Commerce for Oceans and Atmosphere



Andrew Katsaros
Assistant Inspector General for Audit

SUBJECT: Review of NOAA's Catch Share Programs

In an August 17, 2011, letter to our office, Congressman Barney Frank and John Tierney expressed concerns over the fisheries regulatory process at NOAA, the National Marine Fisheries Service (NMFS), and Fishery Management Councils (FMCs). In response, our office initiated a multiple-phase review of NMFS and FMCs related to developing rules for the commercial fishing industry. We issued our first report on January 16, 2013. As a continuation of that review, we are initiating a review of the controls and processes associated with NOAA's catch share programs.

The objective of our review is to determine the adequacy of controls NOAA has in place to make decisions related to catch share allocations.

We will contact your audit liaison to schedule an entrance conference. In the meantime, if you have any questions about this review, please contact me at (202) 482-7859 or David Sheppard, Regional Inspector General for Audit, at (206) 220-7970. We appreciate the cooperation of NOAA staff during this review.

cc: Samuel Rauch, Acting Assistant Administrator for Fisheries, NOAA
Carrie Selberg, Chief of Staff, Fisheries Regulatory Program, NOAA
Emily Marashes, Acting Director, Office of Sustainable Fisheries, NOAA
Mack Cato, Director, Office of Audit and Information Management, NOAA

**Please note the following
deadline:**

**Letter of Intent:
Friday, May 4, 2012**

**Full Proposals:
Friday, May 25, 2012**

**NOAA / NMFS
OFFICE OF
SUSTAINABLE
FISHERIES**

**National Bycatch
Reduction
Engineering Program**

**2012
Call for Proposals**

**Request for Federal
Assistance (RFA)**



NOAA/NMFS Office of Sustainable
Fisheries
1315 East-West Highway
Silver Spring, MD 20910
(301) 427-8554
Lee.benaka@noaa.gov
[http://www.nmfs.noaa.gov/by_catch/
index.htm](http://www.nmfs.noaa.gov/by_catch/index.htm)

EXECUTIVE SUMMARY

Federal Agency Name(s): National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce

Funding Opportunity Title: National Bycatch Reduction Engineering Program (BREP) - FY2012

Announcement Type: Initial

Funding Opportunity Number: NOAA-NMFS-FHQ-2012-2003362

Catalog of Federal Domestic Assistance (CFDA) Number: 11.472,
Unallied Science Projects

Dates:

Full proposals must be received by 5:00 pm eastern time on May 25, 2012.

Letter of Intent should be sent directly to Derek Orner,
derek.orner@noaa.gov no later than May 4, 2012.

Funding Opportunity Description:

The mission of the National Bycatch Reduction Engineering Program (BREP) is to develop technological solutions and investigate changes in fishing practices designed to minimize bycatch of fish (including sponges, deep-sea corals, and shallow (tropical) corals) and protected species (including marine mammals, sturgeon, seabirds, and sea turtles) as well as minimize bycatch injury and mortality (including post-release injury and mortality).

For FY2012, it is anticipated that approximately \$2,500,000 could be made available for projects that address by-catch research as identified in the Program Priority Section (I.B.1 - I.B.4).

I. Funding Opportunity Description

A. Program Objective

The Magnuson-Stevens Act requires that NOAA's conservation and management measures minimize bycatch to the extent practicable. Bycatch reduction is a top priority for NMFS because bycatch contributes to overfishing, threatens critically endangered species, and can shut down important fisheries, significantly impacting U.S. economic growth. There is a demand for new bycatch reduction engineering products and services from the Regional Fishery Management Councils, which are required to develop management plans that minimize bycatch and habitat impacts. Commercial and recreational fisheries also require improved gear and practices to minimize bycatch and habitat impacts. With new gears, fishermen can increase their fishing opportunities and efficiency through less sorting time and loss of bait. New gears also may increase catch rates for target species.

B. Program Priorities

The NMFS Office of Sustainable Fisheries (OSF) proposes to fund applied projects in the following five high-priority areas:

1. Reduction of protected species bycatch and interactions, specifically sea turtle bycatch in trawl, gillnet, and bottom longline fisheries; Atlantic sturgeon bycatch in trawl and gillnet fisheries; and high-priority marine mammal research needs identified in the False Killer Whale Take Reduction Plan (see <http://www.nmfs.noaa.gov/pr/pdfs/fr/fr76-42082.pdf>), Atlantic Large Whale Take Reduction Plan (see http://www.nero.noaa.gov/prot_res/research/), and Harbor Porpoise Take Reduction Plan (see http://www.nero.noaa.gov/prot_res/research/).
2. Development of improved fishing practices and innovative gear technologies that reduce fish bycatch while maintaining or increasing target catch, including in the California drift gillnet fishery, West

shark fishery.

3. Reduction of post-release mortality and serious injury, including cusk, cod, and haddock in Northeast commercial trap and/or recreational fisheries, crabs in Alaska fisheries, blue and striped marlin in Hawaii-based longline fisheries, and reef fish in Gulf of Mexico recreational fisheries.
4. Development or refinement of innovative technologies to enhance understanding of or reduce bycatch or gear interactions, including deterrent technologies such as illumination electrosensory technologies, and higher frequency (50-100 kHz) pingers for gillnets; gear modifications to reduce bycatch or bycatch mortality in gillnet, trawls, and fixed fishing gear such as bar codes or electronic tagging; video technology, cameras, and passive acoustics to assess marine mammal behavior around fishing gear (e.g. trawls, gillnets); and artificial light to enhance escapement from trawls.

C. Program Authority

Section 316 of the Magnuson-Stevens Fishery Conservation and Management Act, as amended through January 12, 2007 (MSA) requires the Secretary of Commerce, in cooperation with the Councils and other affected interests, and based upon the best scientific information available, to establish a Bycatch Reduction Engineering Program (BREP), including grants, to develop technological devices and other conservation engineering changes designed to minimize bycatch, seabird interactions, bycatch mortality and post-release mortality in federally managed fisheries.

The Secretary is authorized under the Magnuson Fishery Conservation and Management Act, 16 U.S.C 1854e; Fish and Wildlife Coordination Act of 1956, 16 U.S.C 661; National Fisheries Research and Development Program, 15 U.S.C 713c3(d), to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes, and in minimizing damages from overabundant species.

A. Funding Availability

This solicitation announces approximately \$2,500,000 in federal funds that may be available in FY 2012 in award amounts to be determined by the proposals. It is expected that these funds will provide support for 10 - 15 projects at approximately \$50,000 to \$250,000 per project. Funding for subsequent years of work will depend on congressional appropriations, the performance of grantees to successfully conduct activities as determined by the Federal Program Officer through performance reports, site visits, and compliance with award conditions.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

B. Project/Award Period

Proposals should be submitted for one year of funding support. Proposals should clearly identify objectives and products to be completed during that year of activity. Proposals may be considered eligible for renewal beyond the first project period. However, funds will be made available for only up to an 18-month award period and any continuation of the award will depend on submission of a successful proposal subject to identified review process, adequate progress on previous award(s), and available funding to renew the award. No assurance for a funding renewal exists; funding will be at the complete discretion of NOAA.

C. Type of Funding Instrument

Under this solicitation, NMFS/OSF will fund BREP Projects as cooperative agreements. The cooperative agreement has been determined to be the

1. Developing program research priorities;
2. Evaluating the performance of the program for effectiveness in meeting National and/or Regional goals;
3. Monitoring the progress of each funded project;
4. Holding periodic workshops with investigators; and
5. Working with recipients to prepare annual reports summarizing current accomplishment of the BREP.

A. Eligible Applicants

Eligible applicants are individuals (U.S. citizens), institutions of higher education, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

The Department of Commerce/ National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas.

B. Cost Sharing or Matching Requirement

No cost sharing is required under this program, however, the NMFS/OSF strongly encourages applicants to share as much of the project costs as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in kind) and the amount of matching funds will be taken into consideration in the review process. Priority selection will be given to proposals that propose cash rather than in-kind contributions.

C. Other Criteria that Affect Eligibility

Not applicable.

A. Address to Request Application Package

Electronic application packages are strongly encouraged and are available at:
<http://www.grants.gov>.

If the applicant has difficulty accessing Grants.gov or downloading the required forms from the NMFS/OSF website (http://www.nmfs.noaa.gov/by_catch/bycatch_BREP.htm), they should contact

Derek Orner
Office of Sustainable Fisheries
1315 East-West Highway
Silver Spring, MD 20910
derek.orner@noaa.gov

Potential applicants are invited to contact the BREP Coordinator before submitting an application to discuss project ideas in the context of program goals and objectives.

Lee Benaka
Office of Sustainable Fisheries
1315 East-West Highway
Silver Spring, MD 20910
lee.benaka@noaa.gov

B. Content and Form of Application

Application Format

Applicants must submit the following forms during initial submission of the application:

- Application for Federal Assistance (SF-424),
- Budget Information, Non-construction Programs (SF-424A),
- Assurances, Non-construction Programs (SF424B),

Applicants may submit the information typically included on these documents through the <http://www.grants.gov/> website. The Department of Commerce Form(s) CD 511, Certifications Regarding Debarment, Suspension and Other responsibility Matters; Drug

initially submitted with the application.

Proposal format must be in at least a 10 point font and double spaced. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 10 pages. Data management plans and/or access agreements as well as tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations are not included in the 10 page limitation. Appendices may be included but must not exceed a total of 15 pages in length. Appendices may include information such as curriculum, resumes, and/or letters of endorsement. Additional informational material will be disregarded.

In addition to the Federal Forms listed above, proposals must include the following information in the format outlined below.

a. Project summary (1-page limit):

- (1) Organization title.
- (2) Principal Investigator(s) (PI).
- (3) Address, telephone number, and email address of Principal Investigator(s).
- (4) Area of interest for which you are applying (see section I. B.).
- (5) Project title.
- (6) Project objectives for the project period.
- (7) Summary of work to be performed in federal fiscal year 2012 and federal fiscal year 2013 (if applicable).
- (8) Budget Information
 - Total Federal funds requested for federal fiscal year 2012 and federal fiscal year 2013.
 - Cost sharing to be provided from non Federal sources, if any. Specify whether contributions are cash or in kind.
 - Total project cost for federal fiscal year 2012 and federal fiscal year 2013.

b. Project description (10 page limit): Each project must be completely and accurately described. The main body of the proposal should be a clear statement of the work to be undertaken and should include: specific objectives and performance measures for the period of the proposed work and the expected significance; relation to longer-term goals of the PI's project;

Each project must be described as follows:

(1) Identification of problem(s): Describe the specific problem(s) or area(s) of interest to be addressed (see section I.B. above). Specify how the problem(s) or area(s) of interest directly relates to a Program Priority(ies) in section I.B.

(2) Project objectives: Objectives should be simple and understandable; as specific and quantitative as possible; clear as to the "what and when," but should avoid the "how and why", and; attainable within the time, money and human resources available. Projects should be accomplishment oriented and identify specific performance measures.

(3) Project narrative: The project narrative is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective(s).

Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. The project narrative must include a milestone table that summarizes the procedures/objectives that are to be attained in each project month covered. Table format should follow sequential month rather than calendar month (i.e. Project period Month 1, Month 2... versus October, November...).

(4) Data management: (not included in the 10-page limitation _ can be submitted as an appendix.) The proposal must include a plan to make available to the public all data generated from observations, analyses, or model development (primary data) and any secondary (or existing) data used under a cooperative agreement awarded from this solicitation. The data must be available in a format and with documentation such that they may be used by others in the scientific community. Proposals must address plans for sharing data and research

(5) Benefits or results expected: Identify and document the results or benefits to be derived from the proposed activities.

(6) Need for Government financial assistance: Demonstrate the need for assistance. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(7) Federal, state and local government activities: List any programs (Federal, state, or local government or activities, including Sea Grant, state Coastal Zone Management Programs, etc.) this project would affect and describe the relationship between the project and those plans or activities.

(8) Project management: Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

(9) Results from prior NOAA/NMFS support: If any PI or co-PI identified on the project has received support from the NOAA/NMFS in the past 5 years, information on the prior award(s) is required. The following information should be provided:

- (a) The NOAA award number, amount and period of support;
- (b) The title of the project;
- (c) Summary of the results of the completed work, including, for a research project, any contribution to the development of human resources in science/biology;
- (d) Publications resulting from the award (Reprints may be submitted, and are requested, for documentation if applicable);
- (e) Brief description of available data, samples, physical collections and other related research products not described elsewhere; and
- (f) If the proposal is for renewed support, a description of the relation of the completed work to the proposed work.

(11) Project impacts: Describe how these products or services will be made available to the fisheries and management communities.

(12) Education and outreach: How will this project provide a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources? This includes the degree to which the potential users of the results, i.e., industry or state resource managers, have been involved in the planning of the activity, will be involved in the execution of the activity and/or are providing funds, and whether there is a plan to disseminate the results to user groups (including Regional Fishery Management Councils and, if applicable, marine mammal take reduction teams) and the public.

(13) Evaluation of project: The applicant is required to provide a description of project accomplishments and progress towards the project objectives and performance measures at the end of each funding period and in the final report. The application must describe the methodology or procedures to be followed to quantify the results of the project.

c. Total project costs and budget narrative: Total project costs are the amount of funds required to accomplish what is proposed in the Project Description, including cost-share contributions and donations.

Provide a detailed table with narrative to support the requested items or activities (personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs (such as vessel charters), and indirect costs.) Supplies (<\$5,000/item) and equipment (>= \$5,000/item) should be broken out in as much detail as possible. The budget table and narrative submitted with the application should match the dollar amounts on the SF-424 and SF-424A forms. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness.

Please note the following restrictions for salaries and fringe benefits: Funds for salaries and fringe benefits may be requested only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. Hourly rates and projected hours

proposal is competitive.

C. Submission Dates and Times

Institutions are strongly encouraged to submit Letters of Intent to NMFS/OSF by **Friday, May 4, 2012** to aid in planning the review processes and provide potential guidance on permits required (ESA/MMPA). Letters of Intent should be submitted via e-mail to derek.orner@noaa.gov. Information should include a general description of the intended proposal, Endangered Species and/or Marine Mammal permit concerns/permits and approximate budget. Letters of Intent should not exceed 2-pages.

Proposals must adhere to the following provisions and requirements and must be received by 5 p.m. eastern time on **May 25, 2012**. Failure to follow these requirements will result in proposals being returned without review.

Important: All applicants, both electronic and paper, should be aware that adequate time must be factored into applicant schedules for delivery of the application. Electronic applicants are advised that volume on Grants.gov is currently extremely heavy, and if Grants.gov is unable to accept applications electronically in a timely fashion, applicants are encouraged to exercise their option to submit applications in paper format. Paper applicants should allow adequate time to ensure a paper application will be received on time, taking into account that guaranteed overnight carriers are not always able to fulfill their guarantees.

Applications must follow the format described in this document and must be complete. Applicants must identify the specific research priority or priorities to which they are responding. If the proposal addresses more than one priority, it should list first on the application the priority that most closely reflects the objective of the proposals. For applications containing more than one project, each project must be identified individually using the format specified in this section. If an application is not in response to any of the priorities listed in this Announcement, it should so state. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application.

E. Funding Restrictions

1. Indirect Cost Rates

Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

2. Allowable Costs

Funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the project. Allowable costs are determined by reference to the Office of Management and Budget Circulars A 122, "Cost Principles for Nonprofit Organizations"; A 21, "Cost Principles for Education Institutions"; and A 87, "Cost Principles for State, Local and Indian Tribal Governments." Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are "necessary and reasonable."

F. Other Submission Requirements

1. Permits and Approvals

It is the applicant's responsibility to obtain all necessary Federal, State, and local government permits and approvals where necessary for the proposed work to be conducted. If applicable, documentation of requests or approvals of permits must be included in the proposal package.

Most projects involving directed or incidental impacts (i.e. introducing sound into the animal's environment or employing gear that may entangle or injure) affecting marine mammals and animals listed as threatened or endangered species may require permits under section 10 of the ESA (50 CFR 222.307 and 222.308). If an ESA permit covering the proposed activities has already been

funding. If the grant applicant is not the Principal Investigator (PI) or the permit holder, a copy of the authorization to work under the permit and/or a letter of support from the permit holder is required.

For further information on permit requirements and application procedures for federal natural resource permits, contact the NMFS Office of Protected Resources Permits Division (301-427-8401) or see <http://www.nmfs.noaa.gov/pr/permits/>.

Applicants are expected to design their proposals so that they minimize potential adverse impacts on the environment. Applications will be reviewed to ensure that they have sufficient environmental documentation to allow program staff to determine whether the proposal is categorically excluded from further analysis, covered under an existing programmatic analysis, or whether additional analysis is necessary in conformance with requirements of the National Environmental Policy Act (NEPA). For those applications needing further analysis, affected applicants will be informed after the merit review stage and asked to assist by providing any information necessary to complete a draft Environmental Assessment or Environmental Impact Statement.

Failure to obtain other Federal, State, and local permits, approvals, letters of agreement, or failure to provide information necessary to complete environmental analyses where necessary (i.e., NEPA environmental assessments or documentation) may delay the award of funds if a project is otherwise selected for funding.

2. Letters of Intent

Institutions are strongly encouraged to submit Letters of Intent to NMFS/OSF by **Friday, May 4, 2012** to aid in planning the review processes and provide potential guidance on permits required (see Section IV.F.1). Letters of Intent should be submitted via e-mail to derek.orner@noaa.gov. Information should include a general description of the intended proposal (including the priority(ies) it seeks to address), Endangered Species and/or Marine Mammal permit concerns/requirements and approximate budget. Letters of Intent should not exceed 2-pages.

3. Application Submission

submission procedures, contact:

Derek Orner
Office of Sustainable Fisheries
1315 East-West Highway
Silver Spring, MD 20910
derek.orner@noaa.gov

Please refer to important information in submission dates and times above (Section IV.B.4) to help ensure your application is received on time.

Applications submitted in response to this announcement are strongly encouraged to submit via <http://www.grants.gov>. Electronic access to the full funding announcement for this program is also available at this site. If internet access is unavailable, paper applications (a signed original and two copies) may also be submitted to:

Derek Orner
Office of Sustainable Fisheries
1315 East-West Highway
Silver Spring, MD 20910
derek.orner@noaa.gov

No facsimile applications will be accepted.

A. Evaluation Criteria

1. Importance/relevance and applicability of proposal to the program goals (20 points)

This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA. For the BREP, this includes the following questions: Does the project directly relate to a Program Priority in Section B (8 points)? Is the project relevant to NOAA, Regional Fishery Management Council, Take Reduction Team, Endangered Species Act (ESA) Recovery Plan, and/or Biological Opinion fishing practice and gear technology priorities (8 points)? Does the project build on research previously funded by the BREP (4 points)?

2. Technical merit (40 points)

This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. For the BREP, this includes the following questions: Does the applicant demonstrate that the objectives are realistic and can be reached within the proposed project period (10 points)? Is the project design appropriate for addressing the research question (10 points)? Does the project design include a project evaluation that ensures that the goals and objectives of the project will be met (10 points)? Is the participation of U.S. fishermen meaningfully incorporated into the project design (10 points)?

3. Overall qualifications of applicants (10 points)

This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. For the BREP, this includes the following questions: Does the applicant have experience with this or a similar gear technology, and does the applicant show the capability and experience in successfully completing similar projects (5 points)? Does the applicant demonstrate a knowledge and comprehension of the problem, and is the applicant familiar with related work that is completed or on-going (5 points)?

4. Project costs (20 points)

This budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame. For the BREP, this includes the following questions: Does the applicant demonstrate the ability to leverage other resources, and is the nature of the cost share cash or in-kind (5 points)? Is the budget request reasonable and does the applicant justify the proposed budget

proposed project (5 points)?

5. Outreach and education (10 points)

This assesses whether the project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources. For the BREP, this includes the following questions: Does the project involve external sharing and communication through peer-reviewed publication and presentation at scientific symposium and conferences or other public fora (10 points)? This includes the degree to which the potential users of the results, i.e., industry or state resource managers, have been involved in the planning of the activity, will be involved in the execution of the activity and/or are providing funds, and whether there is a plan to disseminate the results to user groups (including Regional Fishery Management Councils and, if applicable, marine mammal take reduction teams) and the public.

B. Review and Selection Process

1. Initial Evaluation of Applications

Once a full application has been received by NMFS/OSF, an initial administrative review is conducted to determine compliance with requirements and completeness of the application.

2. Technical Review

Applications meeting the requirements of this solicitation will undergo an external technical review. Technical review is conducted by a minimum of three independent reviewers. Each reviewer will individually evaluate and score proposals (1-100 points) using the evaluation criteria provided in Section V.A. This review may involve subject matter experts from both NOAA and non NOAA organizations. The technical reviewers' ratings will be used to produce a rank order of the proposals. No consensus advice will be given by the technical reviewers.

3. Review Panel

Following completion of the technical review, NMFS may convene a review panel, including federal and non-federal members, to review the scored proposals and to enhance NOAA's understanding of the proposals. Applicants may be required, in consultation with NMFS, to further refine or modify study

C. Selection Factors

The Federal Program Officer will, in consultation with BREP staff as appropriate, review the ranking of the proposals and make recommendations to the NMFS/OSF Director. The average numerical ranking from the Technical review will be the primary consideration by the NMFS/OSF Director in deciding which of the proposals will be recommended for funding to the NOAA Grants Officer. However, the Director of the NMFS/OSF will select proposals after considering the technical reviews and recommendations of the Federal Program Officer. The NMFS/OSF Director shall award in rank order unless it is justified that a proposal be selected out of rank order based upon any of the following factors:

1. Availability of funding
2. Balance/distribution of funds
 - a. Geographically
 - b. By type of institutions
 - c. By type of partners
 - d. By research areas
 - e. By project types
3. Duplication of other projects funded or considered for funding by NOAA/federal agencies
4. Program priorities and policy factors as set out in Section I.B. and III.B.
5. Applicant's prior award performance
6. Partnerships with/Participation of targeted group
7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to GMD.

D. Anticipated Announcement and Award Dates

Subject to the availability of funds, review of proposals will occur during the 120-days following the date given in this announcement that the proposals are due to the NMFS/OSF.

Funding should begin during fall 2012 for most approved projects. Projects should not be expected to begin prior to October 1, 2012, unless otherwise directed by the Federal Program Officer.

A. Award Notices

Successful applicants will receive notification from the Federal Program Officer that the application has been recommended for funding to the NOAA Grants Management Division. This notification is not an authorization to begin performance of the project. Official notification of funding, signed by a NOAA Grants Officer, is the authorizing document that allows the project to begin. This notification will be issued by e-mail from Grants Online to the Authorized Representative of the project. Unsuccessful applicants will be notified that their proposal was not selected for recommendation. Unsuccessful applications will be kept on file in the Program Office for a period of at least 12 months, and then destroyed.

B. Administrative and National Policy Requirements

The recipients must comply with Executive Order 12906 regarding any and all geospatial data collected or produced under grants or cooperative agreements. This includes documenting all geospatial data in accordance with the Federal Geographic Data Committee Content Standard for digital geospatial data. The Program uses only the existing NOAA Federal financial assistance awards package requirements per 15 CFR parts 14 and 24.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the Federal Register notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Intergovernmental Review

Applications under this program (CFDA 11.472,) are subject to Executive Order 12372, Intergovernmental Review of Federal Programs

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Recipients and sub-recipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

which are seeking NOAA federal funding opportunities.

Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: <http://www.nepa.noaa.gov/>, including our NOAA Administrative Order 216-6 for NEPA, http://www.nepa.noaa.gov/NAO216_6_TOC.pdf, and the Council on Environmental Quality implementation regulations, http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems.)

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comments are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL and CD-346 has been approved by the Office of Management and Budget (OMB) under control numbers 0348-0043, 0348-0044, 0348-0040 and 0348-0046 and 0605-0001. Notwithstanding any other provision of 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.

Executive Order 12866

It has been determined that this notice is not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

C. Reporting

Award recipients will be required to submit financial and performance (technical) reports.

1. All financial reports should be submitted through the NOAA Grants Online system. Reports will be submitted on a semi-annual schedule and must be submitted no later than 30 days following the end of each 6-month period from the start date of the award.
2. Performance Progress Reports must also be submitted to the Federal Program Officer through the NOAA Grants Online system on a semi-annual schedule and must be submitted no later than 30-days following the end of each 6-month period from the start date of the award. Basic information that should be in all report submissions includes the project title, award number, dates of the award period, dates of the reporting period, and the name(s) of the grantee and the principal investigator. Inclusion of media such as photography and statistics (tables, graphs, etc.) to help document programmatic activities in report submissions is also encouraged. Pertinent, captioned photographs of project activities are requested, and may be included within the progress report document.

Semi-annual progress reports should describe the tasks scheduled for

accomplished work. The performance reports must also include documentation of all fish caught by vessels participating in the project, including catch that may or may not be directly applicable to the research subject matter.

The final, comprehensive report should include an "Executive Summary" of the project accomplishments which briefly and succinctly summarizes the final report for website or publication use. Limit this summary to no more than one page. The suggested format for the final report is:

- a. Report title, author, organization, grant number, date
 - b. Executive Summary: a brief and succinct summary of the final report
 - c. Purpose:
 - Detailed description of problem or impediment of fishing industry that was addressed by the project.
 - Objectives of the project.
 - d. Approach:
 - Detailed description of the work that was performed.
 - Project management: list individuals and/or organizations actually performing the work and how it was done.
 - e. Findings:
 - Actual accomplishments and findings.
 - If significant problems developed which resulted in less than satisfactory or negative results, these should be discussed.
 - Description of need for additional work, if any.
 - f. Evaluation:
 - Describe the extent to which the project goals and objectives were attained. This description should address the following: Were the goals and objectives attained? How? If not, why? Were modifications made to the goals and objectives? If so, explain.
 - Dissemination of project results: Explain, in detail, how the project's results have been and will be disseminated.
Additional performance reports may be required to comply with Congressional reporting requirements on an annual basis if the above noted reports are not timely for the congressional report.
3. Publications, Videos, and Acknowledgement of Sponsorship: Publication of the results or findings of the funded award activities in appropriate professional journals, outreach materials, or press releases, and

The recipient is required to submit a copy of any publication to the funding agency, and when releasing information related to a funded project, include a statement that the project or effort undertaken was or is sponsored by NOAA Fisheries Service. The recipient is also responsible for assuring that every publication of material (including Internet sites and videos) based on or developed under an award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following acknowledgement and disclaimer: "This project received funding under award [number] from NOAA Fisheries Service, in cooperation with the Bycatch Reduction Engineering Program. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of NOAA Fisheries."

For further information about BREP, please visit the Bycatch Reduction Engineering Program website at:
http://www.nmfs.noaa.gov/by_catch/bycatch_BREP.htm.

Or contact:

Lee Benaka
Office of Sustainable Fisheries
1315 East-West Highway
Silver Spring, MD 20910
Lee.benaka@noaa.gov

For assistance with forms, application requirements, or submission procedures please contact:

Derek Orner
Office of Sustainable Fisheries
1315 East-West Highway
Silver Spring, MD 20910
derek.orner@noaa.gov.

Subject: 2012 West Coast Forum Summary
From: John Henderschedt <john.henderschedt@duke.edu>
Date: 2/15/2013 10:06 AM
To: John Henderschedt <john.henderschedt@duke.edu>

Dear Colleague,

Please find attached our summary of the West Coast Forum held in Monterey, CA in early September 2012. The topic of the Forum was optimum yield and National Standard 1. The National Marine Fisheries Service's (NMFS) Advanced Notice of Proposed Rulemaking seeking comment on the NS1 implementation guidelines provided a unique backdrop and dimension to this Forum, allowing participants to both explore the challenges of defining and achieving optimum yield and to provide informal feedback to the Agency on ways to address those challenges.

On behalf of the Fisheries Forum team I would like to express our sincere appreciation to all who made this Forum a success. I make special note of the participation and engagement by NMFS, which was key to the success and relevance of the Forum. We look forward to future opportunities to facilitate informed and constructive exchanges between council members and Agency leadership.

The last several months have been a busy and productive time for the Fisheries Forum, and we look forward to working with many of you in 2013. We partnered with the Mid-Atlantic Council to hold a workshop on responsive management of the Longfin and Illex squid fishery in January 2013, and are planning a workshop for the New England Council and its SSC on the development of a harvest risk policy in March 2013. As many of you know, the Fisheries Forum is supporting the councils and Agency in the development of the Managing Our Nation's Fisheries 3 conference and has primary responsibility for the sessions addressing ecosystem-based decision-making. Additionally, we will be taking a "deeper dive" into one of the MONF3 session topics - habitat considerations in sustainable fisheries management - at our 2013 East Coast Forum scheduled for June 26 through 28 (invitation and location to be forthcoming).

The Forum team is putting the finishing touches on a strategic plan that has been under development since last April. While our semi-annual forums remain the keystone of our support for councils and council members, I am very excited about some new directions including expanded support for networking between and among councils and more attention to the unique leadership challenges faced by council members. Outreach is one of our strategic priorities and we intend to keep our community of forum and workshop participants and supporters better informed of our ongoing work.

I hope that you find this summary to be informative and thought-provoking. I welcome you to contact any of us on the Forum team if you have any questions and encourage your input on ways in which the Forum can improve its support of you and your council.

Very best regards,



John Henderschedt
Executive Director

— Attachments: —

Fisheries Forum WCF2012_Summary.pdf

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WEST COAST FORUM 2012
NATIONAL STANDARD 1 & OPTIMUM YIELD

Summary and Discussion Themes

Monterey, CA
September 4-7, 2012

The Fisheries Leadership & Sustainability Forum (“Fisheries Forum”) promotes professional development and continuing education by bringing together fishery managers and experts from a range of disciplines. The Fisheries Forum offers fishery managers opportunities to share experiences, build leadership skills, and enhance their understanding of fisheries law, policy, science, and economics. The semi-annual forums are the cornerstone of the Fisheries Forum’s work and provide members and staff of the regional fishery management councils with access to the latest research and an opportunity to discuss challenges and share success stories across regions. The forums focus on learning from experience and applying knowledge and problem solving skills to real world challenges.

For more information about the forums and to view material from past forums, please visit the [Fisheries Forum website](#).

Introduction: Forum agenda and objectives

The 2012 West Coast Forum (Forum) engaged participants in discussion on the topic of optimum yield (OY) and National Standard 1 (NS1). Through presentations, facilitated discussions and small breakout groups, the Forum agenda encouraged a critical examination of the National Standard 1 mandate, including the challenges and opportunities presented by its implementation. Many of the Forum’s discussions focused on sharing examples of how different councils approach optimum yield, and the broader question of how the objective of achieving optimum yield should guide the way Regional Fishery Management Councils (councils) manage their fisheries.

Throughout the Forum’s discussions, several major themes emerged. Many participants noted that while their councils do not engage in explicit conversations around optimum yield, councils are in fact addressing the considerations associated with optimum yield while exploring management alternatives and making policy decisions. Over the course of two days, optimum yield evolved from its initial characterization as a number to a much broader and more meaningful concept: a strategic vision to guide the entire council process. Forum participants suggested how the achievement of and management toward optimum yield could be facilitated by revisions and clarifications to the NS1 guidelines. Specific suggestions

included: reevaluating the temporal scale for which overfishing is determined, providing additional guidance on the management of multispecies fisheries and stock complexes, and clarifying the application of ecosystem component species classifications.

The Fisheries Forum conducted an extensive scoping process to ground the Forum agenda in operational realities and ensure relevant discussions across council regions. Forum participants included council members and their designees, council executive directors, council staff, state and federal agency representatives and academic experts. The Forum provided participants with an opportunity to:

- Enhance their understanding of NS1 and optimum yield;
- Identify successes and challenges to achieving optimum yield, and examine how different councils have interpreted and implemented NS1;
- Discuss how the NS1 guidelines currently provide a framework to support councils in achieving optimum yield, and where additional support may be needed;
- Explore innovative approaches for evaluating tradeoffs and balancing competing objectives through the council decision making process;
- Build skills to lead their council in structuring and facilitating tradeoff discussions; and
- Exchange ideas and opinions relevant to the Advanced Notice of Proposed Rulemaking to revise the NS1 Guidelines.

The timing of the Forum created a unique opportunity to explore several of the topics identified in the May 2012 Advanced Notice of Proposed Rulemaking (ANPR) to revise NS1 Guidelines. While the discussions at the Forum provided participants with valuable insight and ideas, the Forum discussions and summary document do not represent formal comment on the ANPR.

The following summary is organized chronologically and contains brief summaries of the introductory and tools training presentations as well as an overview of main themes from the rotating breakout groups and facilitated discussions. This summary is not intended as a comprehensive report on the Forum proceedings; rather, it is meant to provide an overview and to capture salient themes from the Forum's discussions. A full list of Forum resources, including the final agenda, is available on our website at: www.FisheriesForum.org

Forum Summary

Setting The Stage: National Standard 1 And Optimum Yield

The Forum began with two introductory presentations to review the current guidance for National Standard 1 and provide a common understanding of the concepts and application of maximum sustainable yield (MSY) and optimum yield.

Maximum Sustainable Yield and Optimum Yield Concepts

Dr. Richard Methot [PDF](#) [Video](#)

National Stock Assessment Coordinator, Office of Science and Technology,
NOAA Fisheries

Dr. Methot reviewed the language of National Standard 1 and the concept of maximum sustainable yield from a theoretical and practical perspective. He discussed the relationship of status determination criteria to MSY and abundance, and the different types of overfishing that can occur as a result of uncertainty and management control. Dr. Methot outlined the differences between catch-based and mortality-based methods to measure overfishing, and the sensitivities of the methods to scientific and management uncertainty. He explained how a probabilistic approach (p^*) can be used in some cases to quantify buffers between targets and limits, and noted the tradeoff between balancing acceptable probability of exceeding overfishing limits and the potential for forgone yield. Dr. Methot concluded his presentation by sharing Management Strategy Evaluation (MSE) simulations as a tool for projecting management outcomes and visualizing optimum yield tradeoffs under different rebuilding scenarios.

Optimum Yield Application

Galen Tromble [PDF](#) [Video](#)

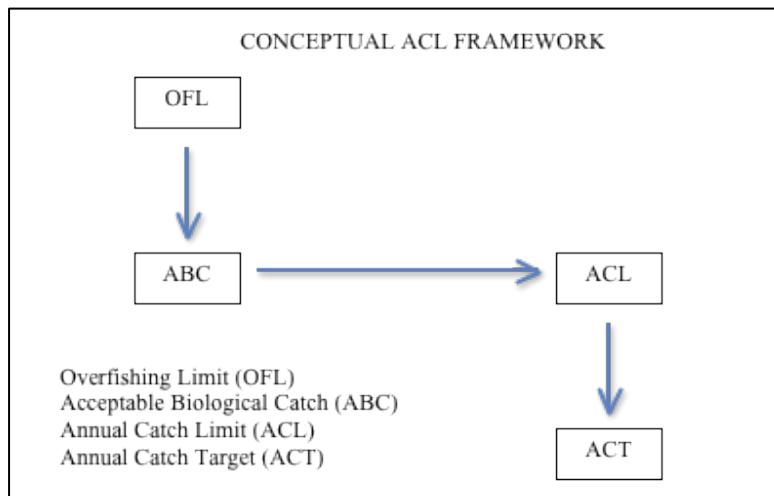
Chief of Domestic Fisheries, Office of Sustainable Fisheries, NOAA Fisheries

Mr. Tromble's presentation focused on the policy and application of optimum yield. Reviewing the original definition of 'optimum' in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), he outlined how the definition has evolved over time and highlighted the factors and considerations involved in determining optimum yield. Councils have utilized a number of different approaches when specifying OY in their fishery management plans (FMPs), such as OY = annual catch limit (ACL), OY= the amount of fish harvested pursuant to current regulations, and OY = zero in instances where the council determined no harvest should occur. Several FMPs define OY with respect to MSY, such as specifying OY as equal to or a percentage of MSY or an MSY proxy, or specifying OY as equal to or a percentage of the yield associated with the fishing mortality rate associated with MSY (F_{MSY}) or an MSY proxy ($F_{MSY\ proxy}$). Mr. Tromble discussed the relationship between the concept of optimum yield and the implementation of ACLs, noting the synergies and challenges in reconciling these two management requirements, and the long-term nature of OY vs. the annual nature of ACLs.

Optimum Yield Across Council Regions

Utilizing the conceptual ACL process as a visual framework, Forum participants shared examples of how and where the considerations associated with optimum yield have been incorporated. These examples highlighted how economic, social and ecological factors come into play throughout the entire ACL process. Participants also shared examples of how the components of ‘greatest overall benefit to the nation,’ as defined in the Magnuson-Stevens Act – food production, recreational opportunities and protection of marine ecosystems – have entered into council decisions. Optimum yield considerations are frequently discussed in context of:

- Allocation decisions, predominately between commercial and recreational sectors;
- Allocation of target and non-target stocks within and across fisheries;
- The role of ecosystem considerations in setting management reference points; and
- Tradeoffs between long-term and short-term social and economic impacts.



Mapping examples of defining and achieving optimum yield to the ACL framework was an illuminating exercise. The relationship between OY considerations and the ACL process was challenging to articulate because considerations of social, economic and ecological factors and the greatest benefit to the nation are not explicitly conducted within the context of optimum yield. In practice, these discussions are often framed around a specific council action or fishery management plan (FMP) amendment rather than discussed with respect to achieving optimum yield. Despite the perceived disconnect between the objective of OY and the ACL process, the shared examples demonstrated that councils are in fact providing significant consideration to OY. However, instead of explicitly addressing OY as a single, prescribed quantity, councils incorporate OY considerations on a continuing basis throughout the council process; OY can, in some cases, be defined as the collective product of many separate policies and management actions.

The Utility of Optimum Yield

Building on the previous session, participants discussed the relationship between optimum yield and the process for specifying ACLs, reflected on where optimum yield fits within the larger management framework, and contemplated how the mandate to achieve optimum yield should guide fisheries management in the future. Below is a description of the major themes of discussion.

Optimum Yield and the ACL Framework

The group's discussion highlighted a lack of clarity regarding the interplay between OY and the ACL framework. Participants suggested that some of this confusion might arise from trying to reconcile the following differences:

- The ACL process is a discrete, systematic process for incorporating scientific and management uncertainty while OY instructs consideration of less tangible goals such as 'greatest overall benefit to the nation';
- The ACL process is applied to specify annual limits while OY is intended to place focus on longer-term goals; and
- The ACL process is applied on a species by species basis whereas the scale for OY may be much broader to include multispecies fisheries and/or ecosystem based management.

Optimum Yield and the Council Process

Several participants proposed that optimum yield warrants application within a broader context, noting that optimum yield in fact spans the entire management process. Almost every action a council takes considers the greatest overall benefit to the nation and/or takes into account economic, social, and ecological factors. It was suggested that perhaps optimum yield is less about a number and more about articulating the rationale for management decisions and balancing multiple, often conflicting objectives. From this vantage point, optimum yield is not an operational component that can be completed but rather a guidepost for the entire management process.

The Future of Optimum Yield

Despite the perceived ambiguity and complexity surrounding optimum yield, Forum participants emphasized its importance as a backbone to the Magnuson-Stevens Act. The group considered how optimum yield can be better integrated into management, and suggested that a prescribed, formulaic approach would likely detract from its utility. Perhaps optimum yield would best serve councils as a platform for evaluating tradeoffs, providing explicit rationale for council decisions and building a stronger administrative record.

Breakout Group Rotations

The Forum featured a series of breakout sessions in which participants explored three common challenges within the context of optimum yield. Each breakout session was structured to encourage innovative thinking across council regions by deconstructing challenges and identifying potential solutions. During the discussion of potential solutions, the group began to consider which ideas may be feasible within the current management framework and which ideas might require regulatory changes or additional guidance. Determining the process for implementing these ideas would require regulatory and legal review, and thus is beyond the scope of this discussion. The following breakout session summaries are not comprehensive in their description, but aim to highlight some of the themes resulting from the group's discussions.

Temporal Flexibility and Optimum Yield

Current NS1 guidelines instruct councils to set management targets and determine a stock's status in the context of a single fishing year. While the Magnuson-Stevens Act requires that catch limits be established on an annual basis, the Act does not specify the time frame on which overfishing is determined. The NS1 guidelines interpret overfishing as occurring when a stock or stock complex is subject to a level of annual harvest that jeopardizes its capacity to produce MSY.

During this breakout session, Forum participants discussed how these temporal constraints inhibit achievement of optimum yield and identified a number of challenges with applying catch limits and status determination criteria on an annual basis. These challenges include:

Stability of catch limits – Establishing ACLs in response to the most recent stock assessments can result in radically fluctuating catch limits. This instability in catch levels can have significant economic and social impacts on stakeholders.

Timeliness of and confidence in data – The annual nature of catch limits necessitates frequent stock assessments. Given resource constraints, frequent scientific assessments are not feasible for most stocks. Basing stock projections on old assessments may increase uncertainty and compound errors.

Alignment of temporal frames – The annual management timeframe is not always aligned with the temporal life history characteristics of a stock, and may not accommodate fluctuations in abundance or differences between year classes.

Management burden – Specifying catch limits on an annual basis presents an administrative burden to councils and limits their ability to respond to other issues and focus on longer-term management.

Multispecies fisheries – Annual catch limits can constrain optimization of catch in multispecies fisheries, and result in underutilization of some stocks.

In response to these challenges, participants identified a number of ideas on how and where temporal flexibility in the management process might improve councils' ability to achieve optimum yield, including:

Average or weight stock assessments – Instead of relying solely on the single most recent assessment to inform Acceptable Biological Catch (ABC), a series of assessments could be incorporated with appropriate weighting. This approach may better represent trends in the stock and buffer against dramatic changes in catch targets.

Smooth ABCs in response to new assessments – Incorporating stepwise adjustments of ABCs in response to new assessments could increase stability for stakeholders through phasing in increases and decreases to the ABC over time.

Incorporate carryover provisions – Carryover provisions could allow for a portion of unused quota to be carried over into the next fishing year, or overages to be subtracted from the next year’s quota as part of an adaptive management strategy rather than as an accountability measure. The ability to transfer quota across fishing years would increase stakeholders’ ability to fully utilize quota and provide flexibility to accommodate variability in catch and effort.

Explore multi-year accountability measures – A multi-year average of catch could be compared to a multi-year average of ACLs as the basis for triggering accountability measures. This expanded temporal frame could provide flexibility and allow for variability in annual catches while still adhering to overall catch limits.

Utilize multi-year specifications – While ACLs must be specified for a single year, setting ACLs for multiple years during a single specification process may increase stability for stakeholders and reduce the administrative burden of annual specification processes. Multi-year specification cycles could potentially employ a constant catch level or fishing mortality rate for particularly stable stocks, or apply progressive uncertainty buffers to account for longer term projections.

Participants acknowledged the tradeoffs associated with applying these approaches and the changes to management structure, FMPs and the National Standard 1 guidelines that might be required for their implementation. In particular, several of the above ideas may require the overfishing definition in the NS1 guidelines to be expanded from its current annual reference to a longer-term approach. Record building and additional legal guidance may also be needed to facilitate the above strategies.

Bycatch and Rebuilding in Multispecies Fisheries

In multispecies fisheries, bycatch of non-target and rebuilding stocks can constrain catch of healthy target stocks. While the Magnuson-Stevens Act instructs councils to minimize bycatch of non-target stocks, stocks within a multispecies complex often overlap spatially and are susceptible to the same gear types. Councils are also required to immediately end overfishing and rebuild overfished stocks. The Act specifies a maximum timeframe of 10 years for rebuilding, or the shortest amount of time possible for stocks that cannot rebuild within 10 years. This often results in significantly reduced ACLs, which can be problematic when the rebuilding stock is encountered as bycatch in healthy targeted fisheries.

During this breakout session, Forum participants discussed the challenges of achieving optimum yield for targeted stocks given bycatch constraints and allowing for the rebuilding of overfished stocks in multispecies fisheries. These challenges include:

Allocation of bycatch quota – Multiple directed fisheries may encounter the same stock; the stock may be targeted in some fisheries and considered bycatch in others. Allocation of bycatch quota requires managers to make tradeoffs between maximizing value, yield or participation, and balancing social and economic consequences. Allocation questions also highlight the challenge of managing complex systems with single species management.

Equity in rebuilding fisheries – During rebuilding, participation and directed effort in the fishery may change to accommodate reductions in quota. Shifting catch histories make it challenging to ensure equitable allocation of the costs and benefits of rebuilding.

Economic consequences of “choke” stocks – Insufficient quota for bycatch and rebuilding stocks may severely constrain the prosecution of healthy, economically important fisheries. Particularly in the case of ‘lightening strike’ bycatch events, a single rare bycatch interaction can result in closure of the targeted fishery and significant financial losses.

Lack of rebuilding success – Despite adherence to rebuilding plans, some overfished stocks are not rebuilding within the anticipated time frame, and continue to constrain catch of healthy stocks. There is a further possibility that overfished stocks may never rebuild to target levels, whether due to conditions of the stock such as a loss of reproductive capacity, or external factors such as climate change.

Incentives and optimization – While there are multiple approaches for limiting fishing mortality of non-target and rebuilding stocks, such as prohibiting possession, requiring full retention and applying bycatch mortality estimates; each can have disadvantages and influence profitability, utilization and fishing behavior, sometimes creating incentives counter to the conservation objective.

The group generated several ideas that may help managers in addressing the above challenges including:

Explore gear modifications – Increasing selectivity of fishing gear could help to reduce bycatch of non-target and rebuilding stocks.

Increase flexibility in annual bycatch limits – Particularly for fisheries where bycatch is infrequent but substantial, a multi year approach that incorporates flexibility around annual bycatch limits would promote better utilization of the targeted fishery.

Utilize market mechanisms – Market mechanisms may promote efficient use of limited bycatch quota to maximize overall yield and/or economic value.

Recalibrate B_{MSY} – To incorporate ecosystem and climate change considerations into rebuilding, revisiting B_{MSY} benchmarks may be useful to inform expectations for rebuilding timelines. Updated B_{MSY} reference points would also inform appropriate status determination criteria against which rebuilding success is measured.

Encourage cooperative approaches – Fishery cooperatives or risk pools may provide insulation from individual risk exposure resulting from a large bycatch event. These cooperative approaches would encourage broader utilization of bycatch-constrained fisheries.

Spatially manage bycatch interactions – Identifying areas of high bycatch occurrence and instituting in-season or responsive area closures may help fishery participants and managers to utilize larger portions of targeted fishery quota within the constraints of limited bycatch quota.

Central to the discussion of challenges and potential solutions were the tradeoffs inherent in managing multispecies fisheries. Forum participants acknowledged that the perception of costs and benefits when making tradeoff decisions are informed by each individual's underlying values. While many of the ideas listed above involve the application of tools already available to councils and stakeholders, some of the ideas may require revisions to the NS1 guidelines and additional guidance.

Data Limited Fisheries and Catch Targets

Many councils manage data poor stocks and are challenged to derive meaningful catch targets and comply with the ACL requirement. In addition to limitations in biological data, managers often lack the social, economic and ecological information necessary to incorporate more nuanced objectives into their management of data poor stocks. During this breakout session, Forum participants discussed the impediments and opportunities for moving toward optimum yield in data limited fisheries.

Forum participants identified several areas where the lack of data for many stocks constrains the potential for achieving optimum yield, including:

Lack of economic and social data – Data poor fisheries often lack the social and economic information necessary to support the full evaluation of management alternatives, particularly within the context of allocation and optimum yield. The small-scale nature of many data poor fisheries also poses challenges of confidentiality in the collection and utilization of socioeconomic data.

Tradeoffs in scale of management – The management of data poor stocks highlights the tradeoffs between managing at the species versus complex level. Without sufficient data to set ACLs for a specific species or stock, many councils aggregate similar stocks and specify ACLs at the complex level. This grouping of stocks can have significant consequences should the catch of a single species trigger accountability measures across the entire complex.

Data poor implications under risk policies – In applying risk policies to specify ACLs, lack of data is often equated with high uncertainty, triggering precautionary management and conservative ACLs. Many data poor stocks are targeted in small scale and subsistence fisheries, and the potential forgone yield associated with a conservative catch limit comes at a cost to these communities.

Reflections of value – Many data poor stocks lack information as a result of their perceived and/or relative value and therefore receive low priority in the allocation of stock assessment resources. These data and value discrepancies complicate tradeoff

decisions and optimum yield discussions, particularly when high value fisheries are constrained by data poor stocks.

Gaps in scientific capacity – The large number of data poor stocks highlights misalignment between the data intensive management system of specifying annual catch limits for all stocks, and our scientific capacity to produce stock assessments.

In response to these challenges, Forum participants contemplated how Councils might extend the discussion of optimum yield to data poor stocks and identified several potential pathways to better position councils in managing data poor stocks toward this objective.

Improve data availability – Although increased data does not necessarily translate into decreased uncertainty, cooperative research, creative data collection approaches, and utilization of research set-asides could improve data availability.

Incorporate and utilize a triage approach – Optimum yield considerations and increased input from stakeholders can be used to prioritize limited data collection resources in a way that provides the biggest return.

Classify Ecosystem Component (EC) species – The designation of EC species has not been used to its full extent due to questions of legal precedent and the need for additional guidance. Revisiting the requirements for EC species, allowing for a continuum of designations, and providing additional guidance would help councils to focus their management efforts on active fisheries.

Re-think the scale of optimum yield – Optimum yield is conceptualized through its relationship to MSY, which is not a compatible reference point for many data poor stocks. De-coupling the concept of optimum yield from MSY may provide better guidance for the management of data poor stocks. Optimum yield may be better applied in relation to trophic level function, ecosystem resilience and on a spatial or regional scale.

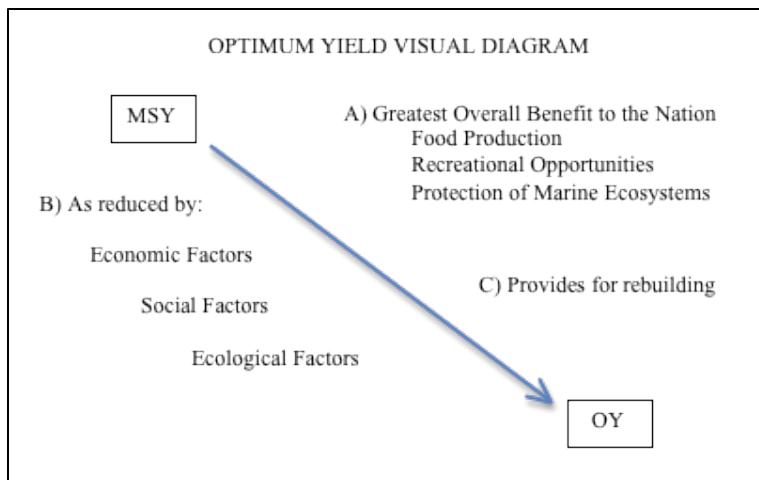
Communicate and coordinate – Improved communication and coordination between councils, SSCs and advisory bodies can help advance discussions of risk policy and optimum yield for data poor stocks. The incorporation of a ‘council/SSC liaison’ position could foster collaboration and strategically maximize the value of the council-science interface.

These discussions highlighted several steps that councils and their management partners could take to improve the management process and encourage better data availability under the current management framework. Participants suggested that councils would benefit from additional guidance regarding the classification of EC species, as well as clarification regarding the appropriate scale for optimum yield within the context of data poor stocks.

Tools Training: Getting to 'optimum'

The mandate to achieve optimum yield from US fisheries is a complex and multi-faceted directive. This concept of 'optimum' is defined under the Magnuson-Stevens Act by its relationship to a number of different considerations. Determining optimum yield for a single stock or multispecies fishery involves balancing multiple objectives and making decisions that involve significant tradeoffs. This

portion of the Forum agenda provided participants with the opportunity to explore the application of tradeoff analysis and structured decision making as tools to support councils in managing toward optimum yield.



Tradeoff Analysis

Dr. Ben Halpern [PDF](#) [Video](#)

Director, Center for Marine Assessment and Planning (CMAP), University of California Santa Barbara

Dr. Halpern presented the concept and application of tradeoff analysis as a tool that can be used to identify tradeoffs and characterize relationships between multiple objectives. Historically used in the field of economics, tradeoff analysis is an emerging tool in marine resource management. In the context of optimum yield, tradeoff analysis can support the council process through:

- a) Mapping potential outcomes across multiple objectives to identify tradeoffs between different management options, and
- b) Characterizing the relationship between objectives and identifying the 'efficiency frontier' to inform the development of management options that provide maximum benefit across objectives.

Tradeoff analysis is not a prescriptive tool; rather, it guides informed decision making through identifying where tradeoffs exist and requiring that these tradeoff decisions be explicit.

Structured Decision Making

Graham Long [PDF](#) [Video](#)

Partner, Compass Resource Management, Ltd.

Mr. Long presented structured decision making as a systematic and transparent approach for incorporating multiple tradeoffs and balancing competing objectives in decision making processes. Structured decision making is a way to translate our

individual, internal decision processes into a collective, explicit decision process. This tool can take many different forms and is designed to reflect the objectives, alternatives and values around a particular decision. Structured decision making can help councils make tradeoff decisions through step-by-step consideration of how different management alternatives achieve differing management objectives, and the relative value of those management objectives. This process encourages participation, makes value judgments and tradeoff decisions explicit, and can be used to document and communicate the decision process.

Forum wrap-up

To conclude the Forum, participants reflected on the presentations and discussions over the last two days and engaged with their colleagues in sharing ideas for advancing discussions around optimum yield. Three of the major themes from this discussion are captured below:

Reflections on the future of optimum yield

Until recently, much of the discussion around National Standard 1 has been focused on the implementation of ACLs; the exploration of where and how optimum yield guides fisheries management is perhaps the second stage of this conversation. In contemplating how the objective of optimum yield might evolve, participants suggested that optimum yield might be most useful as a living, evolving strategic vision that spans the entire management process rather than as a formula or rigidly operationalized benchmark. As each council has a different vision and context for optimum yield, defining and identifying pathways for achieving optimum yield may be better addressed at the council level rather than on a broad national scale.

Making the implicit explicit

While optimum yield is not explicitly prominent within council discussions, optimum yield is inherent in the council process and serves as a foundation for council decisions. Several participants noted that this internalization of optimum yield highlights the need for councils to better communicate with their stakeholders and make explicit the usually implicit role of optimum yield and the vision it represents. By clearly articulating objectives, values and tradeoffs, councils can both improve communication with stakeholders and increase transparency. Forum participants expressed interest in exploring the use of structured decision making as a tool for framing and documenting optimum yield discussions, and building the administrative record to support their decisions.

Collective Momentum

As participants reflected on the Forum's discussions and together considered the pathways forward, a collective momentum was evident among the group. Participants expressed interest in incorporating new tools, continuing these discussions with their councils and working to more clearly articulate their council's vision of optimum yield. In addition to the more concrete ideas on translating ideas into actions, the group expressed enthusiasm for engaging with their colleagues and working together to maximize the value and utility of optimum yield within the context of National Standard 1.



News Release

WOC TO FACILITATE INDUSTRY ACTION ON U.S. OCEAN POLICY AND MARINE SPATIAL PLANNING

World Ocean Council Program Will Develop Coordinated, Pro-active Business Community Involvement in U.S. Ocean Policy and Planning

7 February 2013

The World Ocean Council (WOC) is launching a two-year effort to improve ocean business community understanding, collaboration and participation in U.S. ocean policy and marine spatial planning (MSP) developments.

The WOC program includes:

- Organizing a national business conference on U.S. ocean policy in 2014.
- Developing an ocean business community roster in each of the 9 MSP regions.
- Establishing ocean business leadership fora in 3 of the MSP regions.

Private sector involvement is essential to achieving balanced and lasting outcomes to marine policy and management efforts. For example, without business involvement in MSP - which seeks to guide the intensity and location of uses in an area - there is a significant risk that planning will not fully consider existing and potential economic activities and will miss out on key marine resource, use and ecosystem information held by industry.

Business participation in MSP is critical to ensuring it delivers its proposed benefits to responsible industry operators, such as streamlined permitting.

Although the WOC effort is focused on the U.S., the outputs will be of importance to the ocean business community in other countries and regions where ocean policies and MSP are under development, e.g. Europe, Canada, Australia and elsewhere.

The Sustainable Ocean Summit (SOS) - 22-24 April, 2013, Washington, D.C. - includes an important session on MSP that will provide input to the new WOC program by addressing:

- What is the business case for MSP?
- How can ocean industries ensure they are informed and engaged in a coordinated, pro-active manner?
- What is needed to make sure that MSP reflects the needs and opportunities of industry involvement?

The WOC is recruiting an ocean policy/marine spatial planning program officer. Information is available at: <http://www.oceancouncil.org/site/opportunities.php>

The WOC project on ocean policy and planning in the U.S. is possible thanks to support from the Gordon and Betty Moore Foundation.

About the Sustainable Ocean Summit 2013 (SOS 2013)

The SOS 2013 (22-24 April, 2013, Washington, D.C.) is the only international ocean business community gathering dedicated to industry leadership and collaboration in developing solutions to ocean sustainability challenges. The theme of SOS 2013 is "Oceans 2050 - The Ocean Business Community and Sustainable Seas". This event brings together a wide range of ocean industries, including: shipping, oil and gas, fisheries, aquaculture, tourism, renewable energy (wind, wave, tidal), mining, ports, dredging, cables, pipelines, the maritime legal, financial and insurance communities, and others.

The World Ocean Council is grateful for the support of SOS 2013 Sponsors: [BP International](#), [Battelle Memorial Institute](#), [TOTAL](#), [Ocean Conservancy](#), [Rockefeller & Co.](#), [Heidmar](#), [Louisbourg Seafoods](#) and [SubCtech GmbH](#).

For SOS 2013 information, registration and sponsorship opportunities, [click here](#).

About the World Ocean Council (WOC)

The WOC is the only international, cross-sectoral alliance for private sector leadership and collaboration in "Corporate Ocean Responsibility". Companies and associations worldwide are distinguishing themselves as leaders in ocean sustainability and stewardship by joining the WOC. Members to date include over 60 leadership organizations from a wide range of ocean industries: oil and gas, shipping, seafood, fisheries, aquaculture, mining, renewable energy, ocean technology, maritime law, marine environmental services and other areas. For the current list of WOC Members, [click here](#).

Contact: Paul Holthus, Executive Director **Phone:** +1 (808) 277-9008
email: paul.holthus@oceancouncil.org **Web:** www.oceancouncil.org

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To share this issue of WOC News with others (on Facebook, Twitter, etc), [click here](#).

Introduced by: Haggerty, Johnson, Mayor
Date: 02/05/13
Action: Adopted
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2013-013**

A RESOLUTION URGING THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL TO ADOPT MEASURES THAT REDUCE THE CHINOOK SALMON BYCATCH IN THE GULF OF ALASKA AND BERING SEA TRAWL FISHERIES

WHEREAS, Chinook salmon is the official fish of Alaska and a cultural icon for both native and nonnative Alaskans; and

WHEREAS, Chinook salmon is a significant source of food in both the subsistence and recreational fisheries and a key component of the State's commercial and charter fisheries; and

WHEREAS, on September 12, 2012, the U.S. Secretary of Commerce determined that a commercial fishery failure due to a fishery resource disaster exists for three regions of the Alaska Chinook salmon fishery, including Cook Inlet; and

WHEREAS, economic losses to the State of Alaska for commercial and recreational fisheries alone was over \$34 million, which does not include the significant impacts to subsistence users; and

WHEREAS, closures in the 2012 Cook Inlet setnet fishery caused by low Chinook salmon returns resulted in a sockeye harvest with an ex-vessel value that was about 10 percent of the recent five-year average; and

WHEREAS, the sport fish harvest of late-run Kenai River Chinook was 103 fish, which was 99 percent below the recent five-year average; and

WHEREAS, these same Chinook salmon are caught and discarded in the Pollock fisheries in the Bering Sea and the Gulf of Alaska and other trawl fisheries in the Gulf of Alaska; and

WHEREAS, bycatch by the trawl fleets can be regulated to protect the mortality of this extremely valuable resource; and

WHEREAS, the Chinook bycatch cap in the Gulf of Alaska pollock fishery is set at 25,000 Chinook salmon, which exceeds the ten-year average bycatch in the fishery; and

WHEREAS, the non-pollock Gulf of Alaska trawl fisheries currently operate under no bycatch limit; and

WHEREAS, the North Pacific Fishery Management Council is considering a cap on the non-pollock fisheries in the Gulf of Alaska and is initiating a catch share program for Central Gulf of Alaska trawl fisheries which should reduce bycatch further;

NOW, THEREFORE BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the KPB Assembly urges the North Pacific Fishery Management Council (NPFMC) to adopt and implement management measures that reduce the Chinook salmon bycatch in the Gulf of Alaska (GOA) trawl fisheries by setting new limits.

SECTION 2. That the KPB Assembly urges NPFMC to lower the existing Chinook bycatch limits in the GOA and Bering Sea pollock fisheries to at least half the current limits.

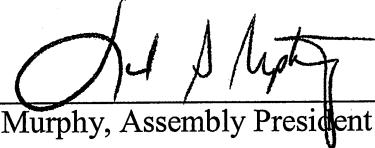
SECTION 3. That the KPB Assembly urges the NPFMC to further reduce Chinook bycatch in any catch share program.

SECTION 4. That the KPB Assembly urges NPFMC to require 100 percent observer coverage in all trawl fisheries in the GOA to provide accurate estimates of bycatch.

SECTION 5. That a copy of this resolution shall be provided to Governor Parnell and all legislators representing the Kenai Peninsula Borough and all members of the North Pacific Fisheries Management Council.

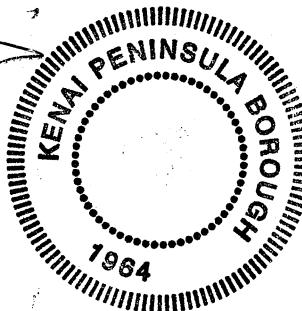
SECTION 6. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 5TH DAY OF FEBRUARY, 2013.



Linda Murphy, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk

Yes:	Haggerty, Johnson, McClure, Pierce, Smith, Tauriainen, Wolf, Murphy
No:	None
Absent:	Smalley

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Spring test set for Gulf salmon excluders

MOLLY DISCHNER, ALASKA JOURNAL OF COMMERCE



PHOTO/COURTESY/ALASKA SEAFOOD MARKETING INSTITUTE

Gulf of Alaska fishermen could receive a new tool to reduce salmon bycatch if gear modification research is successful.

This spring, two trawlers targeting pollock in the Gulf will have an extra piece of gear in the water. The boats will be fitted with the newest version of a salmon excluder, and a recapture net, as part of an effort to adapt the excluders for Gulf use.

John Gauvin from the North Pacific Fisheries Research Foundation, is trying to develop the excluder for Gulf use. Ideally, it will let salmon escape from pollock trawls while keeping the pollock inside.

Currently, salmon and halibut excluders are used in other fisheries.

In the Bering Sea, the excluder is a flapper that is weighted down in the tapered portion of the net, providing a sort of false ceiling.

Craig Rose, from the Alaska Fisheries Science Center, said it works in part because salmon are better swimmers than pollock. AFSC is partnering with Gauvin on some of the science aspects of the research, including sampling design and salmon behavior.

Pollock will swim toward it and get weighed down, while salmon will try to fight it, Gauvin said.

"Think about a salmon stream," Gauvin said. "Think about a rock in a salmon stream. A salmon noses up behind that and uses it as a way to get out of the flow, this thing has dead water above it and so what a salmon will do is it will rise above that."

Then the salmon goes above the flapper, where floats pull the top of the net up to create more room, and if they swim forward, they can leave the net.

"Pollock can go up there, some of them will, but they can't swim forward against the flow," Gauvin said.

Gulf of Alaska trawlers operate differently than their Bering Sea counterparts, so the device must be adjusted before it is deployed there.

The Gulf boats travel at a different speed, and are generally smaller with a lower horsepower and different size nets.

All of those differences mean that replicating the Bering Sea excluder exactly wouldn't leave enough room between the flapper and the end of the net for salmon to fit. So the challenge, Gauvin said, is to find a way to move the flapper forward in the net and find a way to retain the shape that allows salmon to swim, without losing pollock.

Making the excluder work will require testing different flapper locations, different weights and making other adjustments as needed.

During testing, boats will be equipped with recapture nets, to see not only how many chinooks are making it out of the haul, but also to see if any pollock are escaping.

This isn't Gauvin's first attempt at helping with bycatch. He's been trying to keep unwanted fish out of fishermen's nets for about 15 years.

"It's an evolution," he said. "We started doing this work in the Bering Sea."

The Gulf work comes at a time when there's an increasing focus on bycatch.

Gulf of Alaska fishermen are now under a hard cap of 25,000 chinooks divided between the western and central Gulf, and between the early and late seasons. Reaching the limit for chinooks, which are a prohibited species catch, closes down the fishery.

In 2012, the Gulf of Alaska pollock fleet caught an estimated 19,119 chinooks and the western Gulf exceeded its limit in the fall season, the first under the new cap.

The North Pacific Fishery Management Council approved Gauvin's application to test the excluder on Dec. 5, 2012, at the recommendation of both the Scientific and Statistical Commission, and the Advisory Panel.

The council's motion allows Gauvin to solicit two vessels to conduct the research that will be exempted from the regular pollock fishery and hard cap for prohibited species catch. That is necessary so that the research can fully determine how many salmon are excluded from the tow, how many are caught, and how pollock fare.

Gauvin said testing will likely begin in March. The vessels will be chosen by NOAA after applying, and will be used for two field seasons.

Gauvin said that the vessels will hopefully be different sizes, to ensure that the device would work on various Gulf vessels, which range in size from less than 60 feet to 125 feet.

Onboard, one or two sea samplers will help with the experiment, although the crew operating the vessel will also do much of the work. For each tow, the sampler will record the pollock and chinook portions of the catch. Each vessel will do about 12 tows.

There will also be underwater cameras, to see what's happening during the tow.

The Alaska Fisheries Science Center helped design the camera portion of the project, as well as working on other components on the science side of the project.

Jeff Hartman, from Sustainable Fisheries division, Alaska Region, had prepared some of the environmental work for the project, and told the council in December that NMFS had acquired documentation for assessing the project.

The council had to be consulted on the application, however, as part of the process, he said. Hartman said that while the project would not count toward regular fishery limits, the amount of prey it took was not a significant amount, and shouldn't be a problem for protected species, according to assessment work done so far.

Gauvin isn't alone in his work. He has help from the National Marine Fisheries Service — that's Rose and his colleagues — and from the fishermen testing the gear.

Rose said that bycatch reduction is the main place where NMFS has worked on developing new technology for the fishery.

"Bycatch reduction's been the main emphasis, and it's included halibut excluders as well as salmon excluders," he said.

Gauvin has worked on other gear modifications.

The halibut excluder essentially sorts the fish, while the salmon excluder relies on behavior. With each device, Gauvin has to find ways to use fish behavior and sizes to accomplish an end goal with regards to what is in the net, and what isn't.

But he isn't a net guy, he said. His background is in the experimental design side of the project, and he's reliant on others to help with the nets and devices.

That sort of partnership is what is ultimately needed to make a device like the excluder possible.

If the excluder works, Gauvin said it could take a couple years to see it used in the fishery. Eventually, he hopes they'll be a workable option that fishermen want to use, and managers can incentivize. They likely wouldn't be required, just optional.

"Regulating gear is tough," Gauvin said. "(Because) the regulators don't understand the gear and the fishermen do."

Rose agreed. Even defining an excluder in regulations would be difficult, he said.

"The first time we came up with an excluder, if they put that into regulation, then folks aren't going to be able to tweak that and adjust it to make it work better," Rose said.

Ultimately, he said AFSC tries to help develop the technology, and leave it as a tool for fishermen to use.

Molly Dischner can be reached at molly.dischner@alaskajournal.com.

February 2013

GOVERNMENT REORGANIZATION

Potential Benefits and Drawbacks of Merging the National Marine Fisheries Service into the Fish and Wildlife Service



Highlights of GAO-13-248, a report to agency officials

Why GAO Did This Study

NMFS and FWS have primary federal responsibility for managing fish and wildlife. The missions of NMFS and FWS have some broad similarities, which have prompted long-standing questions about whether merging the agencies would improve the efficiency or effectiveness of their programs. This report examines (1) the extent to which NMFS and FWS share key programmatic responsibilities, (2) potential benefits and drawbacks identified by agency officials and stakeholders of merging NMFS into FWS, and (3) potential benefits and drawbacks identified by agency officials and stakeholders of alternative organizational options. To address these issues, GAO reviewed agency documents and conducted 97 semistructured interviews with current and former agency officials and a wide array of the agencies' stakeholders, including organizations representing fishing and conservation interests. GAO performed a content analysis of interview responses.

GAO is not making any recommendations. This report presents information that Congress and the administration could consider in determining whether to reorganize federal fish and wildlife agencies. GAO provided a draft of this report for review and comment to the Departments of Commerce and the Interior. Commerce provided technical comments that were incorporated, as appropriate. Interior did not provide comments.

View [GAO-13-248](#). For more information, contact Anne-Marie Fennell at (202) 512-3841 or fennella@gao.gov.

February 2013

GOVERNMENT REORGANIZATION

Potential Benefits and Drawbacks of Merging the National Marine Fisheries Service into the Fish and Wildlife Service

What GAO Found

While the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) share certain key programmatic responsibilities, they also have programmatic responsibilities unique to each agency. The agencies largely carry out their shared responsibilities independently. For example, both agencies implement the Endangered Species Act, but NMFS generally does so for species found in marine habitats and FWS for species found in fresh water or on land. NMFS and FWS also have responsibilities that are unique to each agency. One of NMFS's unique responsibilities is the federal management of marine fisheries and one of FWS's unique responsibilities is the management of the National Wildlife Refuge System.

Officials and stakeholders identified several potential benefits and drawbacks in a possible merger of NMFS into FWS. In many cases, officials and stakeholders differed in their views, as illustrated by the following:

- One potential benefit is improving the efficiency of implementing the Endangered Species Act. Currently, when a proposed federal project—such as building a road—affects species managed by both NMFS and FWS, both agencies review the project. Some officials noted that in some cases they spend a significant amount of time coordinating their reviews and, in these cases, it would be more efficient if a single agency were implementing the act. Other officials, however, said that having a single agency implement the act may not achieve significant efficiencies, since determining how to best minimize effects of a project on multiple species is time-consuming regardless of whether one or two agencies are involved.
- A potential drawback is how a merger might change decision making for fisheries management. For example, merging the agencies would shift responsibility for approving fishery management plans to the Secretary of the Interior from the Secretary of Commerce, and some officials and stakeholders believed that the Department of the Interior would emphasize conserving fish populations more and consider the economic effects of management decisions on fishing communities less than NMFS does. Others, however, believed a merger would have little overall effect on fishery management. They said that because the framework for managing federal fisheries, including the criteria for evaluating fishery management plans, is established by statute, transferring approval authority to the Secretary of the Interior would not change fishery management decisions.

Officials and stakeholders also identified potential benefits and drawbacks of several alternative organizational options that have previously been proposed—such as moving all of the National Oceanic and Atmospheric Administration (NOAA) into Interior, or creating an overall department of natural resources, or establishing NOAA as a stand-alone agency. For example, moving all of NOAA into Interior could better integrate natural resource management by bringing many aspects of federal land and ocean management under the same department, but it could diminish attention to ocean issues since NOAA would be competing with other Interior agencies for funding. Overall, officials and stakeholders generally said the drawbacks of reorganizing the agencies outweigh the benefits.

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Abbreviations

FWS	Fish and Wildlife Service
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration

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February 14, 2013

The Honorable Ken Salazar
Secretary of the Interior

The Honorable Rebecca Blank
Acting Secretary and Deputy Secretary of Commerce

The missions of the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) have some broad similarities. NMFS—a component of the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce—manages living marine resources, including federal marine fisheries and certain protected species. To help accomplish this mission, NMFS implements federal laws, conserves and restores coastal and marine habitats, and conducts research to support resource management. Similarly, FWS, within the Department of the Interior, conserves, protects, and enhances fish, wildlife, plants, and their habitats by implementing federal laws, protecting and restoring habitats, and conducting research. These similarities have prompted long-standing questions about whether merging the agencies would improve the efficiency or effectiveness of their programs. Since 1970, dozens of proposals to reorganize the agencies have been suggested by Congress, the President, and presidential advisory councils.

Against this backdrop, this report examines (1) the extent to which NMFS and FWS share key programmatic responsibilities, (2) potential benefits and drawbacks identified by agency officials and stakeholders of merging NMFS into FWS, and (3) potential benefits and drawbacks identified by agency officials and stakeholders of alternative organizational options. We prepared this report under the Comptroller General's authority to conduct evaluations on his own initiative. We initiated this work in the 112th Congress at the request of the Ranking Member of the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security; Committee on Homeland Security and Governmental Affairs, who did not return to the 113th Congress.

To determine the extent to which NMFS and FWS share key programmatic activities, we reviewed pertinent laws and agency documents, including strategic plans and budget documents. To obtain additional information about similarities and differences in the agencies' programs, we interviewed agency leadership and officials responsible for

key agency programs. To identify potential benefits and drawbacks of merging NMFS into FWS and alternative organizational options, we conducted 97 semistructured interviews with current and former agency officials and a wide array of the agencies' stakeholders. Current agency officials we interviewed include those with Commerce, Interior, NOAA, NMFS, and FWS. To gain a broader perspective on these issues, we interviewed Secretaries of Commerce and the Interior and heads of NOAA, NMFS, and FWS from each of the two previous administrations. We also interviewed a nonprobability sample of the agencies' stakeholders, selected to represent a wide range of interests and different types of engagement with the agencies. Stakeholders we interviewed included officials from four of the eight regional fishery management councils and from state fish and wildlife agencies, as well as from nongovernmental organizations representing the fishing industry and conservation interests. Appendix I lists the former agency leaders and stakeholders we interviewed. The interviewees provided varied perspectives on the potential benefits and drawbacks of reorganizing the agencies. We performed a content analysis of their responses to our interview questions and identified several broad categories of potential benefits and drawbacks. Because we used a nonprobability sample, the information we obtained from these interviews cannot be generalized to all current and former agency officials and stakeholders. As such, we do not report the number of respondents who identified specific potential benefits and drawbacks; rather we report all issues as identified by "some" officials and stakeholders. To determine the alternative organizational options to discuss in our interviews with officials and stakeholders, we reviewed previous reorganization proposals involving NMFS and FWS and identified the options most commonly proposed.

To obtain regional perspectives on these issues, we conducted site visits to two areas of the country—New England and the Pacific Northwest—meeting with agency officials and stakeholders in Boston, Gloucester, and Hadley, Massachusetts; Portland, Oregon; and Olympia and Seattle, Washington. We selected these locations to provide geographical variation and to obtain additional information about some of the key challenges facing the agencies. For example, we selected New England in part because of recent concerns in that region over NMFS's role in managing marine fisheries and because Atlantic salmon is one of the few species for which NMFS and FWS share Endangered Species Act responsibilities. We selected the Pacific Northwest in part because the presence in many of the region's watersheds of Pacific salmon listed under the Endangered Species Act means that many projects, such as

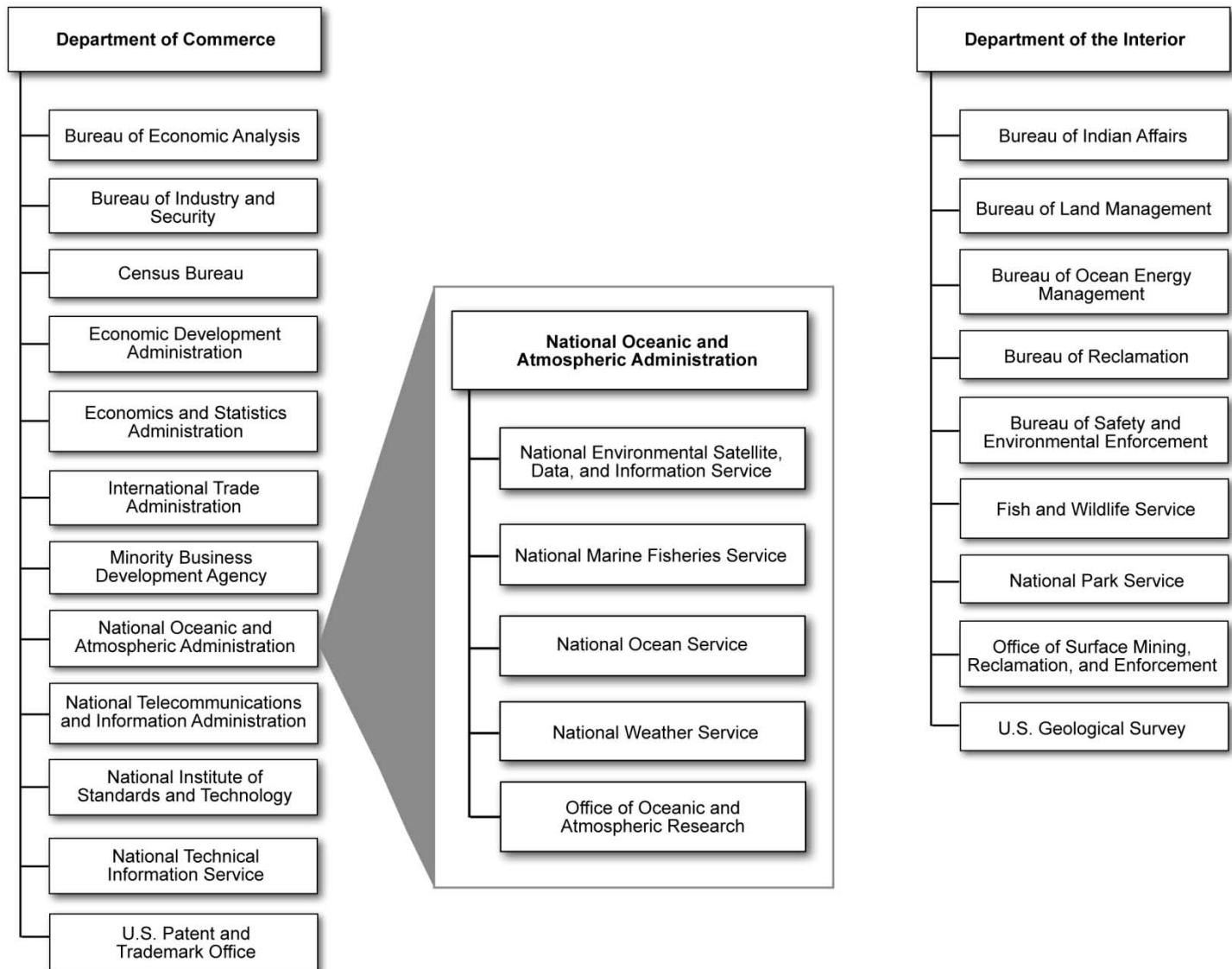
building a road or a dam, may affect species managed by both NMFS and FWS and therefore need to be reviewed by both agencies.

We conducted this performance audit from February 2012 to February 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

In fiscal year 2012, NMFS's budget was approximately \$880 million, which was about 17 percent of NOAA's overall budget. NMFS is the third-largest component of NOAA by budget, after the National Environmental Satellite, Data, and Information Service and the National Weather Service. In fiscal year 2012, FWS's budget was about \$1.5 billion, which was about 13 percent of Interior's overall budget. FWS is the third-largest component of Interior, after the National Park Service and the Bureau of Indian Affairs. Figure 1 lists the component agencies within Commerce and Interior.

Figure 1: Component Agencies within Commerce and Interior



Source: GAO.

NMFS is headquartered in Silver Spring, Maryland, and has over 20 laboratories, regional offices, and other facilities nationwide. NMFS employs a staff of approximately 2,800, including biologists, social scientists, economists, and law enforcement officers. FWS is headquartered in Washington, D.C., and Arlington, Virginia, and has more than 700 management units across the country, including more than 550

national wildlife refuges and 80 field stations.¹ FWS employs approximately 9,500 staff across the country, with expertise in such disciplines as biology, the social sciences, economics, and law enforcement.

Federal fish and wildlife programs have been reorganized several times. The Fish and Wildlife Service traces its roots back to two entities: the U.S. Fish Commission and the Office of Economic Ornithology and Mammalogy. The U.S. Fish Commission was established in 1871 as an independent agency to address a decline in edible fish. In 1903, it became the Bureau of Fisheries and was transferred to the Department of Commerce and Labor; it was later retained as part of the Department of Commerce. The Office of Economic Ornithology and Mammalogy was established as part of the Department of Agriculture in 1886 and renamed the Bureau of Biological Survey in 1905. Its purposes were, among other things, to investigate the food habits, distribution, and migrations of North American birds and mammals in relation to agriculture, horticulture, and forestry. The Bureau of Fisheries and the Bureau of Biological Survey were transferred to the Department of the Interior in 1939² and combined into FWS in 1940;³ both of these moves were achieved by executive order. In 1956, Congress established FWS in statute and divided the agency into two bureaus: the Bureau of Sport Fisheries and Wildlife and the Bureau of Commercial Fisheries. NMFS was established in 1970, when the Bureau of Commercial Fisheries was transferred to the Department of Commerce and made a part of NOAA, a newly established agency.⁴ NOAA was created largely in response to the recommendations of the Stratton Commission, which called for establishment of a new agency to administer the nation's civilian marine and atmospheric programs.

¹FWS's field stations, called ecological services field offices, generally work on activities involving endangered species, migratory birds, and habitat conservation.

²Reorganization Plan No. 2 of 1939, 3 C.F.R. 254 1939, *reprinted in* 5 U.S.C. app. at 73 (2006) *and in* 53 Stat. 1423 (1939).

³Reorganization Plan No. 3 of 1940, 3 C.F.R. 1298 (1940), *reprinted in* 5 U.S.C. 1441 (2006) *and in* 54 Stat. 1231 (1940).

⁴Reorganization Plan No. 4 of 1970, 3 C.F.R. (1970), *reprinted in* 5 U.S.C. app. at 1557 (2006) *and in* 84 Stat. 2090 (1970).

Since 1970, Congress, the President, and presidential advisory councils have put forth dozens of reorganization proposals involving NMFS, FWS, or both. The proposals were generally intended to improve the effectiveness or efficiency of natural resource management; none of them were implemented. These proposals include:

- *Merging NMFS into FWS.* At least two bills have been introduced to move all or part of NMFS into FWS. For example, in 1993, a bill was introduced that would have moved the functions performed by NMFS and other NOAA offices to FWS.⁵ Another bill was introduced 2 years later that would have, among other actions, transferred NMFS's science functions to FWS, enforcement functions to the Secretary of Transportation, and seafood inspection functions to the Secretary of Agriculture.⁶
- *Moving NOAA into Interior.* In 2004, a bill was introduced that would have moved NOAA from Commerce to Interior.⁷ More recently, as a part of a larger initiative to reorganize federal business- and trade-related agencies, the Obama administration in 2012 proposed moving NOAA from Commerce to Interior.
- *Establishing a department of natural resources.* Numerous proposals have been put forth to establish a department housing federal natural resource agencies within a single department. For example, in 1979, the Carter administration proposed creating a new Department of Natural Resources, which would have combined a number of agencies, including NOAA, the Forest Service, and a number of programs from the Department of the Interior.⁸
- *Establishing NOAA as a stand-alone agency.* Other proposals have sought to separate NOAA from Commerce and establish it as a stand-alone agency. For example, in 1983, a bill was introduced to establish

⁵Ocean and Coastal Management Improvement Act of 1993, H.R. 2761, 103rd Cong. (1993).

⁶Department of Commerce Dismantling Act, H.R. 1756, 104th Cong. (1995).

⁷Weather and Oceans Resources Realignment Act, H.R. 4368, 108th Cong. (2004).

⁸Office of Management and Budget, *President's Reorganization Project: Report on Reorganization Study of Natural Resource Functions* (Washington, D.C.: June 1979).

NOAA as an independent agency.⁹ In addition, in 2003, the Pew Oceans Commission proposed establishing an independent ocean agency that would have consolidated many ocean and coastal programs—including those currently located in NOAA, the Environmental Protection Agency, the Department of Agriculture, and the Army Corps of Engineers.¹⁰

- *Other proposals to reorganize certain NMFS and FWS responsibilities.* Other proposals have aimed to reorganize, transfer, or consolidate the agencies' responsibilities in such areas as endangered species management. For example, a 1998 bill proposed eliminating the Secretary of Commerce's role in implementing and enforcing the Endangered Species Act by transferring Commerce's responsibilities under the act to Interior.¹¹ In addition, another proposal, put forth by the American Fisheries Society in 1986, suggested creating a federal fishery agency, which would have consolidated NMFS's and FWS's fishery management functions.¹²

In addition, proposals have also been made to strengthen NOAA's existing organizational structure. For example, in 2004, the U.S. Commission on Ocean Policy recommended creating an organic act for NOAA to codify its mission in law.¹³ Following the commission's recommendations, a bill was introduced proposing to establish an organic act for NOAA, but it did not become law.¹⁴

Theories of organizational change in the federal government have generally had two broad, competing themes, as described in a 2009 GAO

⁹National Oceanic and Atmospheric Administration Organic Act, H.R. 3381, 98th Cong. (1983).

¹⁰Pew Oceans Commission, *America's Living Oceans: Charting a Course for Sea Change* (Arlington, VA: May 2003).

¹¹Endangered Species Consolidation Act, H.R. 4335, 105th Cong. (1998).

¹²American Fisheries Society, "Summary Report and Recommendations on Federal Fisheries Responsibilities," *Fisheries*, vol. 11, no. 4, July-August 1986.

¹³U.S. Commission on Ocean Policy, *An Ocean Blueprint for the 21st Century* (Washington, D.C.: 2004).

¹⁴National Oceanic and Atmospheric Administration Organic Act, H.R. 4607, 108th Cong. (2004).

report.¹⁵ On the one hand, some public administration experts, holding that better coordination occurs among agencies within a single department, have recommended reorganizing government to consolidate agencies with similar functions under one large department. For example, to improve the coordination of domestic security matters in response to the September 11, 2001, terrorist attacks, the Department of Homeland Security was created in 2002, consolidating more than 20 agencies or portions of agencies into one new department. On the other hand, recognizing that some crosscutting issues may affect the interests of multiple agencies, other experts have instead recommended working within existing organizational structures to clarify an agency's mission and align program goals and objectives with that mission. We have previously reported that reorganizations and consolidations can be complex and potentially expensive and that decision makers must balance the benefits and costs of any potential consolidation.¹⁶

NMFS and FWS Share Some Programmatic Responsibilities and Differ in Others

NMFS and FWS share certain key programmatic responsibilities, including protecting endangered and threatened species and marine mammals, along with conserving and restoring fish and wildlife habitat; the agencies are generally responsible for species in different habitat types. The agencies also share certain programmatic responsibilities related to law enforcement, scientific research, aquaculture, and international activities. NMFS and FWS also have programmatic responsibilities that are unique to each agency. One of NMFS's key responsibilities is the federal management of marine fisheries, whereas one of FWS's key responsibilities is the management of the National Wildlife Refuge System. Other differences in the agencies' responsibilities include FWS's role in conserving migratory birds and NMFS's management of a voluntary seafood inspection program.

¹⁵GAO, *Federal Land Management: Observations on a Possible Move of the Forest Service into the Department of the Interior*, GAO-09-223 (Washington, D.C.: Feb. 11, 2009).

¹⁶GAO, *Government Efficiency and Effectiveness: Opportunities for Improvement and Considerations for Restructuring*, GAO-12-454T (Washington, D.C.: Mar. 21, 2012), and GAO, *Streamlining Government: Questions to Consider When Evaluating Proposals to Consolidate Physical Infrastructure and Management Functions*, GAO-12-542 (Washington, D.C.: May 23, 2012).

Protection of Endangered and Threatened Species and Marine Mammals

NMFS and FWS both work to protect, conserve, and recover or enhance species under the Endangered Species Act and Marine Mammal Protection Act, but the agencies are generally responsible for species in different habitat types. The agencies, in a 1974 memorandum of understanding, determined that in general NMFS would take responsibility under the Endangered Species Act for marine species, and FWS would take responsibility for species found in fresh water and on land.¹⁷ Responsibility for implementing the Marine Mammal Protection Act is split as well: NMFS has responsibility for most marine mammals (including whales, dolphins, and seals), and FWS is responsible for a few species—such as manatee, polar bear, and walrus—that are generally found close to land.¹⁸ Implementing these laws is an important part of each agency's responsibilities, accounting for roughly one-third of NMFS's fiscal year 2011 budget and roughly one-fifth of FWS's fiscal year 2011 budget.

The agencies carry out their responsibilities for implementing these acts largely independently from each other, but in some circumstances, the agencies have joint responsibility for a species and work together. Specifically, the agencies have agreed to jointly implement the Endangered Species Act for eight species that spend part of their lives in marine waters and part of their lives in fresh water or on land: Atlantic salmon, Gulf sturgeon, and six species of sea turtle.¹⁹ For each of these eight species, the agencies have developed agreements and processes to define each agency's role in implementing the act. In some circumstances, the agencies are both involved in making decisions, and in others the agencies make decisions independently. For example, a statement of cooperation for managing Atlantic salmon outlines that the agencies will both participate in making any decisions related to updating the status of the species. In contrast, the statement of cooperation also

¹⁷ Authority for managing species under the Endangered Species Act has been delegated by the Secretary of the Interior to the Director of FWS and by the Secretary of Commerce to NMFS's Assistant Administrator for Fisheries.

¹⁸ As of December 2012, FWS manages 1,964 plant and animal species under the Endangered Species Act and 8 species under the Marine Mammal Protection Act. NMFS is responsible for 88 species under the Endangered Species Act and approximately 117 species under the Marine Mammal Protection Act.

¹⁹ In the 1974 memorandum of understanding, NMFS and FWS agreed that they would share jurisdiction for those species that did not clearly fit under the jurisdiction of one agency or the other. They agreed to make these determinations on a case-by-case basis.

lists areas where each agency has its own responsibilities: for example, NMFS is responsible for designating critical habitat, and FWS is responsible for maintaining fish hatcheries.²⁰

In addition, NMFS and FWS have taken steps to coordinate certain aspects of their implementation of the Endangered Species Act and Marine Mammal Protection Act. For example:

- The agencies are working together to identify differences in the agencies' regulations, policies, and guidance related to the Endangered Species Act and are proposing changes to make the agencies' approaches more similar. For example, in August 2012, the agencies jointly published a proposed rule, stating that the agencies are to release the results of their economic impact analyses—required before designating critical habitat for listed species—concurrently with releasing the draft critical habitat designation for public comment.²¹ Under its current approach, FWS conducts the economic impact analysis after it publishes a proposed critical habitat designation for public comment and releases the results of the economic analysis several months later. NMFS follows a process similar to the one in the proposed rule. The revision is intended to align FWS's approach with NMFS's and to bring greater transparency to the overall process of designating critical habitat.
- Similarly, the agencies are developing a joint policy interpreting "significant portion of its range"—a phrase used in the Endangered Species Act's definitions of endangered and threatened species.²² NMFS has never formally interpreted the phrase, and an earlier FWS

²⁰Under the Endangered Species Act, NMFS and FWS must generally designate critical habitat for any species listed as endangered or threatened. Critical habitat includes (1) specific areas occupied by species protected under the act on which are found physical or biological features essential to the conservation of the species and that may require special management considerations or protection and (2) specific areas that may not be occupied by the species at the time it is listed under the act but that are essential for conserving the species.

²¹Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Impact Analyses of Critical Habitat, 77 Fed. Reg. 51,503 (Aug. 24, 2012).

²²The act states that a species is endangered if it is in danger of extinction throughout all or a significant portion of its range; it also states that a threatened species is one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

interpretation was rejected by the courts and subsequently withdrawn. The two agencies recently issued a draft policy interpreting the phrase that, according to the agencies, is consistent with NMFS's existing informal interpretation.²³

- NMFS and FWS joined with an association of state fish and wildlife agencies in 2010 in forming a federal-state Endangered Species Act joint task force, which is examining ways to facilitate effective cooperation among NMFS, FWS, and the states. Among other actions, this task force has formed a working group that is exploring options for improving the consistency of cooperative agreements entered into with states by NMFS and FWS.

Habitat Conservation and Restoration for Fish and Wildlife

NMFS and FWS also both undertake a variety of actions to restore and conserve habitat for the species they are responsible for. The agencies' efforts often focus on different habitat types, NMFS in marine environments and FWS in terrestrial and freshwater environments. Nonetheless, according to NMFS and FWS officials, in some cases, such as on coastlines and in estuaries, both agencies may have responsibilities for the same habitat and may work together to improve habitat for species of interest to both agencies. Because much fish and wildlife habitat is partly or entirely on land that is privately owned, the agencies provide funding and technical assistance to state and local governments and to private, nonprofit, and other entities to conserve and restore habitat. For example, through its Community-Based Restoration Program, NMFS provides approximately \$8 million annually to local partners to restore coastal and estuarine ecosystems; according to agency documents, the program has funded habitat restoration projects in 26 states and enhanced more than 69,000 acres of habitat. In a series of projects under this program, for example, NMFS worked with and provided funds to the Washington Department of Fish and Wildlife and a local government group to protect and restore over 1,000 acres of habitat in Puget Sound for juvenile Pacific salmon. Similarly, FWS's Partners for Fish and Wildlife Program has funded restoration of wetland and upland habitat on nearly 4 million acres of private land; FWS has also helped fund state fish and wildlife agencies to protect and restore habitat for

²³Draft Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species," 76 Fed. Reg. 76,987 (Dec. 9, 2011).

recreation, such as fishing and hunting. According to FWS, over the past 75 years, it has provided about \$14.3 billion to the states for these purposes.

In environments where the agencies' interests intersect—as they do on coastlines and in estuaries—the agencies have sometimes worked together to help other entities conserve and protect habitat, according to agency officials. NMFS and FWS officials told us that habitat restoration projects are often sponsored by state or local agencies and by nongovernmental organizations and that if a project is intended to benefit habitat of interest to both NMFS and FWS, the sponsoring entity will approach both agencies for funding and technical assistance. If both agencies are involved, NMFS and FWS officials at the local level may work together and with the sponsoring agency to determine each agency's role in a project. This arrangement, officials told us, allows a single project to improve habitat for species of interest to both agencies.

NMFS and FWS are also both involved in assessing damages to natural resources for which they are responsible.²⁴ For example, habitat can be damaged by oil spills and releases of other toxic materials, such as mercury and other contaminants. Under the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Water Act; and the Oil Pollution Act, NMFS and FWS conduct a variety of activities, including assessing the damage resulting from such releases.²⁵ For example, after the *Deepwater Horizon* drilling rig explosion in April 2010 and the subsequent oil spill in the Gulf of Mexico, both NMFS and FWS—as well as other federal and state agencies—have been assessing damages to natural resources for which they have responsibility. The agencies' initial assessments led to an agreement, in which one of the responsible parties agreed to provide \$1 billion to fund projects to benefit the natural resources damaged by the spill. The agencies are still assessing damages from the spill, which could lead to additional compensation by responsible parties.

²⁴In addition to NMFS, NOAA's National Ocean Service and Office of General Counsel are also involved in assessing and seeking compensation for damages to natural resources. These resources include land, waters, and species within the agencies' respective jurisdictions.

²⁵Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675 (2006); Clean Water Act, 33 U.S.C. §§ 1251-1387; and Oil Pollution Act, 33 U.S.C. §§ 2701-2761 (2006).

In addition, NMFS and FWS are each involved in addressing the effects of certain types of development on fish and wildlife habitat. For example, hydroelectric dams can affect fish habitat by altering a river's seasonal flow patterns, ability to transport sediment, and temperature. Under the Federal Power Act, the agencies issue license conditions to protect federal lands and prescriptions to assist fish passage on these projects.²⁶ These provisions include requirements for maintaining minimum stream flows or spilling water over dams during certain times of the year to avoid harm to young fish by the dams' turbines. In addition, many federal development projects—such as building a road or a dam—can affect habitat for fish and wildlife species protected under the Endangered Species Act. In such cases, federal agencies carrying out such projects must consult with NMFS, FWS, or both; NMFS and/or FWS may in turn identify measures that the federal agencies can take to mitigate these effects. Similarly, federal projects can also affect habitat important to sustaining fisheries. Under the Magnuson-Stevens Act, federal agencies must consult with NMFS on actions that may adversely affect "essential fish habitat"—habitat necessary to fish for spawning, breeding, feeding or growing to maturity—and NMFS must recommend measures that can be taken by federal agencies to conserve the habitat.²⁷ For example, if the Army Corps of Engineers proposed dredging a river channel to improve navigation, NMFS would review the project to determine if it would have a negative impact on designated essential fish habitat and, if so, would recommend steps—such as a buffer area around certain areas or restricting dredging activities.

Law Enforcement

NMFS and FWS both have law enforcement programs to help protect the resources under each agency's jurisdiction. For example, NMFS enforces fishery regulations because one of that agency's key programmatic responsibilities is federal management of marine fisheries, whereas FWS enforces migratory bird hunting regulations because conservation of migratory birds and their habitats is one of its key responsibilities. FWS also enforces federal laws on the millions of acres of federal lands the agency is responsible for managing. In some cases, the two agencies enforce the same laws, such as the Endangered Species Act. In such cases, the agencies enforce these laws as they apply to the species each

²⁶16 U.S.C. §§ 791-830 (2006).

²⁷16 U.S.C. §§ 1802(10) and 1855(b) (2006); 50 C.F.R. § 600.920 (2012).

is responsible for, which has led to NMFS's enforcing the act predominantly in marine environments and FWS in terrestrial and freshwater environments. FWS also inspects commercial cargo shipments and passengers entering the United States, stationing officers at selected ports and along the border with Canada and Mexico to ensure compliance with laws and treaties regarding wildlife trade; FWS and NMFS officials told us that FWS notifies NMFS when these inspections identify issues related to species of concern to NMFS. NMFS officials told us that the agency does not have a dedicated border presence but that its officers routinely work with U.S. Customs and Border Protection to inspect cargo and passengers entering the United States to enforce compliance with domestic laws and international treaties regarding seafood and wildlife trade for species within the scope of agency jurisdiction.

Scientific Research

NMFS and FWS both conduct scientific research to develop information needed to help the agencies manage many of their programs. For example, among other areas of research, NMFS collects data on the cumulative weight of species caught in marine fisheries in different regions of the country and develops scientific models to estimate the health of fish populations, information NMFS uses to make decisions about how to manage the fisheries. Similarly, among FWS's research activities are efforts to collect and analyze data on the health of migratory bird populations, information it uses to manage hunting.

NMFS's science program is much larger than FWS's. NMFS officials estimated the agency spent approximately \$298 million on scientific activities in fiscal year 2011, almost one-third of its total budget; in contrast, FWS officials estimated the agency spent approximately \$62 million on scientific activities in fiscal year 2011, about 4 percent of the agency's budget.²⁸ The agencies also have structured their scientific research programs differently. NMFS has established an Office of Science and Technology to oversee its science program and six regional science centers, which conduct research to support NMFS's management of fisheries and other marine resources. FWS has integrated its scientific

²⁸NMFS and FWS officials estimated the amount their respective agency spent on scientific research because research is not designated as a separate budgetary line item. FWS's estimate includes approximately \$15 million FWS used to acquire scientific information from the U.S. Geological Survey, a separate agency within Interior that also conducts science that supports FWS management.

research into various programmatic activities, such as the endangered species and migratory bird programs, rather than having a separate science research program.

Aquaculture

NMFS and FWS both have various responsibilities related to aquaculture operations, such as fish and shellfish farms, although other agencies also play an important role. For example, aquaculture in the United States generally occurs in nearshore marine waters or onshore (such as in ponds or tanks), under the jurisdiction of individual states. Nevertheless, aquaculture operations may also need to obtain federal permits: operations that place structures in navigable waters may need to obtain permits from the Army Corps of Engineers, and operations that discharge pollutants into waters of the United States may need to obtain permits from the Environmental Protection Agency.²⁹ NMFS and FWS both consult with the state and federal agencies involved in permitting aquaculture facilities to reduce the effect these facilities have on the fish populations the agencies are responsible for managing. NMFS has a more direct role in relation to offshore marine aquaculture—managing such activities in federal waters, in consultation with stakeholders, under the Magnuson-Stevens Act. NOAA also reports that it is working with stakeholders to develop regulations for aquaculture in federal waters.³⁰ Both agencies also conduct or fund research to develop and improve techniques and equipment that can help advance the aquaculture industry. FWS has a substantial hatchery program as well, operating 72 national fish hatcheries to help, among other purposes, ensure the recovery of threatened or endangered species; restore native fish stocks; and mitigate the effects of federal water development projects, such as hydroelectric dams and irrigation projects. NMFS helps fund some of these hatcheries.³¹

²⁹Under the Clean Water Act, the Environmental Protection Agency may authorize states to issue permits under the act; thus, aquaculture operations may need to obtain these permits from state agencies.

³⁰Federal waters generally extend from 3 to 200 nautical miles offshore, an area known as the Exclusive Economic Zone.

³¹In recent years, NMFS has provided approximately \$16 million annually under the Mitchell Act (16 U.S.C. §§ 755-757 (2006)) to fund hatcheries and other projects, such as irrigation diversion screens, to partially compensate for fish and habitat losses caused by construction of federal dams on the Columbia River. In fiscal year 2012, more than \$3 million of these funds supported FWS hatchery programs.

International Activities	NMFS and FWS both undertake a variety of international activities related to the species they manage. Both agencies work with the Department of State and other federal agencies to administer international treaties related to fish and wildlife. For example, FWS participates in international discussions determining which species warrant protection under the Convention on International Trade in Endangered Species, ³² an international agreement intended to ensure that international trade in certain plants and animals does not threaten their survival. Similarly, NMFS participates in international discussions—for example, through the International Convention for the Conservation of Atlantic Tunas—related to the conservation and management of highly migratory fish stocks. Both agencies also assist other countries, for example by providing technical expertise or funding for projects to protect or enhance wildlife and habitat.
Marine Fisheries	One of the key differences between the agencies is that NMFS is the principal federal agency managing commercial and recreational marine fisheries in federal waters, whereas FWS's role in these fisheries is primarily advisory. Managing these fisheries is a major component of NMFS's programmatic responsibilities, constituting approximately one-fifth of its annual budget. The Magnuson-Stevens Act establishes the framework for managing fisheries in federal waters. Under the act, NMFS and eight regional fishery management councils play critical roles in fishery management. NMFS is a voting member on each fishery management council. NMFS also furnishes data and scientific analyses critical to the fishery management councils' decision making. For example, NMFS's regional science centers assess the health of various fish stocks, information the councils use in setting catch limits. NMFS also has seats on a number of committees established by the councils to examine specific topics, such as scientific information or management of particular fishery sectors. Each fishery management council is responsible for developing a fishery management plan for each fishery in its region that requires conservation and management. ³³ The Secretary of Commerce reviews the plans to determine if they comply with Magnuson-

³²According to NMFS, the agency works with FWS to develop the U.S. position on species protected under the convention for which NMFS has management responsibilities.

³³The Magnuson-Stevens Act defines fishery as “one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics and any fishing for such stocks.”

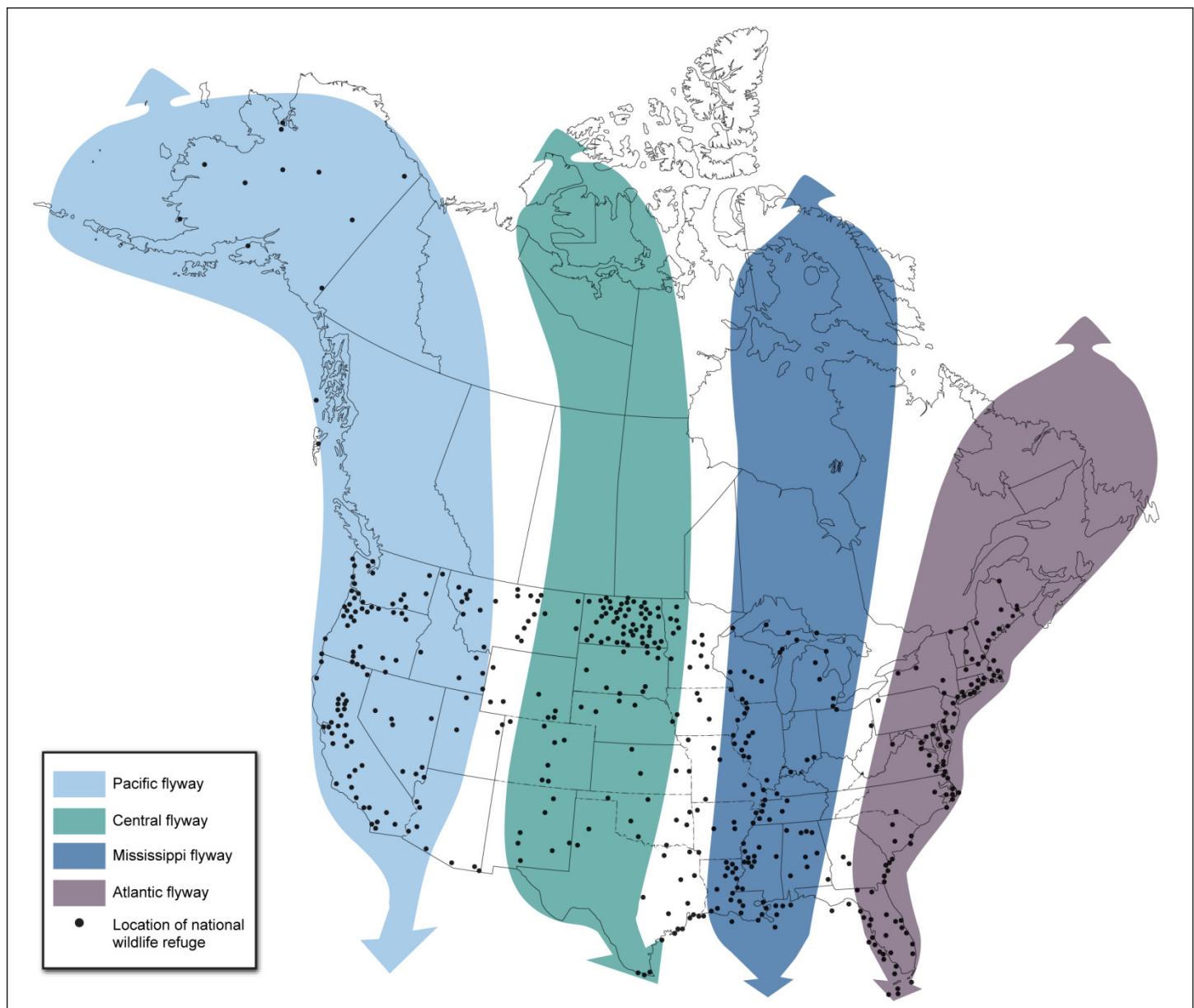
Stevens Act requirements and other applicable law, and, if so, approves them. In contrast, FWS plays primarily an advisory role in federal fishery management. A nonvoting member on the regional fishery management councils, FWS advises the councils on issues such as reducing the impact of fisheries on migratory birds and certain marine mammals. For some of the councils, FWS also sits on advisory committees, such as the habitat committee, which makes recommendations to the council on how to resolve habitat issues.

NMFS and FWS are also involved in supporting certain state coastal fishery programs. Specifically, the Atlantic States Marine Fisheries Commission consists mostly of representatives of the 15 Atlantic coast states, but NMFS and FWS are also voting members. The commission develops and approves fishery management plans—similar to those developed by the regional councils for federal fisheries—for stocks that move, or are broadly distributed, within the waters of two or more states or waters under both federal and state jurisdiction.

National Wildlife Refuge System

Another key difference between NMFS and FWS is that FWS manages the National Wildlife Refuge System, whereas NMFS generally does not have land management responsibilities. FWS has jurisdiction over approximately 150 million acres of fish and wildlife habitat through its management of more than 550 national wildlife refuges in the National Wildlife Refuge System, whose management is one of the agency's core responsibilities and constitutes approximately one-third of its annual budget. Although NMFS also has responsibilities related to habitat, it generally does not directly manage lands or waters specifically for that purpose. The primary purpose of the National Wildlife Refuge System is to provide for the conservation; management; and, where appropriate, restoration of fish, wildlife, and plants and their habitats. The refuge system includes lands and waters representing a full range of habitat types, including wetlands, grasslands, forests, and coastal and marine areas. These areas provide habitat for hundreds of species of birds, mammals, and fish, including more than 250 species listed as threatened or endangered under the Endangered Species Act. For example, more than 200 wildlife refuges have been established specifically to protect breeding or wintering habitat for migratory birds, with many refuges strategically located along migratory bird corridors (known as "flyways") to offer resting and feeding areas to long-distance migrants (see fig. 2). In addition, approximately 180 wildlife refuges protect sensitive oceanic, coastal, and estuarine areas that are critical nurseries for many fisheries.

Figure 2: United States Flyways, with Locations of National Wildlife Refuges



Sources: GAO and FWS; Map Resources (map).

Migratory Birds

In addition to stewardship over the national wildlife refuges, the explicit conservation of migratory birds and their habitats is another key FWS responsibility. The agency monitors and assesses the health of migratory bird populations and evaluates the effects of human and environmental factors on bird population dynamics and distribution. Many migratory birds are hunted, and under the Migratory Bird Treaty Act, FWS is responsible for establishing the length of hunting seasons and limits on the number of birds hunters may take.³⁴ FWS also implements other laws pertaining to migratory birds, including the Fish and Wildlife Conservation Act, the Bald and Golden Eagle Protection Act of 1940, and the Neotropical Migratory Bird Conservation Improvement Act of 2000.³⁵ In addition, FWS provides information to help businesses avert or minimize the impacts on migratory birds of communication towers, wind turbines, and fishing.

Although conserving migratory birds is a key FWS responsibility, NMFS also has a responsibility to reduce the effect of its management actions, in particular those related to commercial fisheries, on migratory bird populations. Specifically, because the actions of many federal agencies can affect migratory bird populations, Executive Order 13186 directs all federal agencies that take actions that have, or are likely to have, a measurable negative effect on migratory birds to develop and implement a memorandum of understanding with FWS to promote the conservation of migratory bird populations.³⁶ NMFS and FWS described their respective responsibilities for migratory birds in a June 2012 memorandum of understanding. For example, one of NMFS's responsibilities is to integrate principles for migratory bird conservation into its fisheries and other management plans and, to the extent practicable, to avoid or minimize the adverse effects of its actions on migratory birds. One of FWS's responsibilities is to inform NMFS and the regional fishery management councils of the potential effects that fishery practices may have on migratory birds and of steps to reduce those effects. The 2006 amendments to the Magnuson-Stevens Act also direct NMFS to establish a program to reduce the number of seabirds accidentally caught in fishing equipment.

³⁴16 U.S.C. §§ 703-719c (2006).

³⁵16 U.S.C. §§ 2901-2912 (2006), 16 U.S.C. §§ 668-668d (2006), and 16 U.S.C. §§ 6101-6109 (2006).

³⁶Exec. Order No. 13,186, 66 Fed. Reg. 3,853 (Jan. 17, 2001).

Fee-for-Service Seafood Inspection

Another difference between NMFS and FWS is that NMFS manages a voluntary seafood inspection program, under which fishing vessels and processors can pay the agency to inspect seafood products and processing facilities. Through this program, NMFS inspects the sanitation of participating vessels and facilities, evaluates the quality and condition of seafood products, and certifies that participating vessels and facilities comply with all applicable food regulations.³⁷ For example, processors can request that NMFS inspect processed seafood products—such as breaded fish sticks—to certify that they contain a specified amount of seafood. This inspection program also facilitates international trade. For example, NMFS can certify that seafood products exported from the United States meet the importing country's requirements and can offer inspection services to foreign processors and importers to help them meet U.S. regulations and requirements, reducing the likelihood of trade shipments being delayed due to questions about their compliance with import requirements. According to a senior program official, approximately 300 facilities contracted with NMFS for seafood inspection services and paid approximately \$26 million for them in fiscal year 2012.

Officials and Stakeholders Identified Several Potential Benefits and Drawbacks in a Possible Merger of NMFS into FWS

The main potential benefits of merging NMFS into FWS that agency officials and stakeholders identified include improving the effectiveness and efficiency of implementing the Endangered Species Act and Marine Mammal Protection Act, better integrating natural resource management, improving habitat conservation and law enforcement programs, and realizing cost savings. Officials and stakeholders also cited potential drawbacks, including the potential for a merger to disrupt marine fisheries management, sever existing connections between NMFS and other NOAA offices, result in transition costs, and broadly disrupt agency programs in the short term. In many cases, however, officials and stakeholders differed in their views, both on whether they saw a potential merger outcome as a benefit or a drawback and on the likelihood and importance of that outcome. Previous GAO work has identified a number of key management practices—including ensuring that top leadership drives a transformation and establishing clear goals to guide the transformation—that could help mitigate the program disruptions and transition costs that inevitably accompany reorganization.

³⁷NMFS does not have oversight responsibility for ensuring the safety of domestic or imported seafood. This responsibility lies with the Food and Drug Administration.

Potential to Improve Implementation of the Endangered Species Act and Marine Mammal Protection Act

A key potential benefit of merging the agencies, some officials and stakeholders said, is that doing so could improve the effectiveness and efficiency of the agencies' implementation of the Endangered Species Act. These officials and stakeholders identified several ways that merging the agencies could yield such possible benefits, including the following:

- *Better protection for jointly managed threatened and endangered species.* According to agency officials, joint management of certain species by NMFS and FWS has in some cases not been as effective as it might be because neither agency has sole responsibility for the overall well-being of the species in question. For example, the agencies have split their responsibilities for managing sea turtles so that NMFS is responsible for the animals while they are in the marine environment, and FWS is responsible for them on land. As we reported in 2012,³⁸ one effect of this division is that the agencies make some decisions affecting turtles, such as authorizing the harassment, harming, or killing of turtles (known as take), without consistently sharing information about their decisions.³⁹ According to sea turtle experts interviewed for that report, each agency may therefore be authorizing sea turtle take without knowing how much its counterpart has authorized, and the combined allowance may be harming threatened or endangered sea turtles and delaying their recovery. According to a former FWS director, it is important for one agency to have responsibility for monitoring cumulative impacts on species to effectively conserve and protect them under the act.
- *Less need for interagency coordination.* Agency officials also noted that in some cases they currently spend a significant amount of time coordinating actions between the two agencies, and in such cases, it could be more efficient if a single agency were implementing the act. For example, for the eight species NMFS and FWS manage jointly under the Endangered Species Act, program officials told us, it takes longer to make some decisions regarding species management because both agencies need to agree. Moreover, if the two agencies

³⁸GAO, *Endangered Sea Turtles: Better Coordination, Data Collection, and Planning Could Improve Federal Protection and Recovery Efforts*, GAO-12-242 (Washington, D.C.: Jan. 31, 2012).

³⁹The Endangered Species Act generally prohibits the “take” of endangered species, where take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19) (2006).

disagree on a course of action, no single decision maker can hear both sides and ultimately make a choice, which, officials said, can lead to months of high-level negotiations to resolve. Similarly, program officials told us it was important that they coordinate the agencies' reviews of projects affecting multiple species, such as building a road or dam, where one or more of the species are managed by NMFS and the other(s) by FWS.⁴⁰ These reviews may direct the project sponsor to take specified measures to mitigate the impact of the project on listed species. Some stakeholders told us that when the agencies do not work together when developing these mitigation requirements, NMFS and FWS may provide project sponsors with conflicting requirements for their projects, requiring the sponsors to go back to the agencies so they can resolve the conflict. NMFS and FWS officials told us they often work with each other to ensure that their mitigation measures do not conflict, but they do not always do so. As a senior NMFS official explained, the agencies may not coordinate with each other when they put a higher priority on meeting deadlines for completing their own reviews over such coordination.

- *Streamlined process for the public.* Some officials and stakeholders told us that having a single agency implementing the Endangered Species Act could also be more efficient and simpler for the public. Aquaculture and timber industry stakeholders we spoke with told us they are frustrated by the requirement to consult separately with each agency if a project affects species managed by both agencies. Some senior agency officials and stakeholders said a significant potential benefit of merging NMFS into FWS is that it could create “one-stop shopping,” where permittees could go to one agency for all their species-related approvals, simplifying and streamlining the permitting process.

Some officials and stakeholders also noted that merging the agencies would likely lead to greater consistency in how the Endangered Species Act and Marine Mammal Protection Act were implemented, which could help ensure that the agencies apply protections under the acts similarly. Officials and stakeholders identified several instances where NMFS and FWS had adopted different regulations, policies, and guidance, which

⁴⁰The Endangered Species Act requires federal agencies to consult with FWS, NMFS, or both agencies when their actions may affect listed species or critical habitat.

may have led to species' receiving different levels of protection based on which agency had jurisdiction over that species, rather than the species' needs. For example:

- FWS has adopted a default rule under the Endangered Species Act that automatically extends certain protections to species listed as threatened that are afforded to species listed as endangered, unless the agency decides otherwise. In contrast, NMFS decides whether to extend such protections on a case-by-case basis.⁴¹ As a result, threatened species managed by FWS automatically receive protections—such as requiring a permit to take the species for research and conservation purposes—not automatically received by threatened species managed by NMFS. For example, a senior NMFS official told us, NMFS often allows the taking of threatened species for these purposes without a permit. Some stakeholders said they believe FWS's approach leads to an “overregulation” of threatened species because these species may be receiving more protections than are biologically necessary. A senior FWS official told us the agency agrees with this assessment for some species and that instead of automatically providing threatened species with the same level of protection as endangered species, it plans to take the individual needs of each threatened species into account when determining the appropriate level of protection, an approach more in line with NMFS's.
- NMFS and FWS have taken different approaches to agreements they sign with states to cooperatively manage species. In accordance with the Endangered Species Act, the agencies can sign cooperative agreements with states that have programs to help conserve threatened and endangered species.⁴² FWS's agreements generally allow state employees to take endangered species without a permit for certain conservation activities they perform in their official duties, such as conducting research. NMFS's state agreements, however, do not allow state employees to take endangered species without obtaining approval. According to a senior NMFS official, NMFS's

⁴¹The Endangered Species Act allows the agencies to extend some required protections for endangered species to threatened species.

⁴²Under section 6 of the Endangered Species Act, FWS and NMFS are authorized to enter into cooperative agreements with states that establish and maintain an “adequate and active” program for the conservation of endangered and threatened species.

approach offers a higher level of protection to species because each instance of take is reviewed and subject to approval or rejection.

- NMFS and FWS authorize take of marine mammals differently in certain circumstances under the Marine Mammal Protection Act. According to FWS officials, the agency tends to authorize incidental take—take that is unintentional but expected—of marine mammals over a 5-year period for some activities, most notably for oil and gas drilling in the Arctic, whereas NMFS officials said they authorize take for similar activities in the Arctic annually.⁴³ FWS officials told us that they believe authorizing these oil and gas activities over a 5-year period provides a more comprehensive picture of the take that may occur of the mammals FWS manages in the area, including polar bears and walruses. These officials also noted that the 5-year approach is more efficient. NMFS officials told us they agreed with this assessment, but they said that authorizing take annually also has advantages: it allows NMFS to conduct a more detailed analysis of the activities expected to affect the marine mammals it manages—primarily whales, dolphins, and seals—in a specific location in a given year. They said that this level of detail is especially important in the Arctic, where offshore oil and gas exploration is not limited to a single area and varies significantly from year to year.

Some officials and stakeholders, however, told us that they did not believe that merging the agencies would substantially improve the agencies' implementation of the two acts. These officials and stakeholders noted that eliminating interagency coordination when evaluating the impact of a proposed project on multiple species may not achieve significant efficiencies. For example, agency officials and stakeholders explained that many projects in the Pacific Northwest affect multiple listed species—including salmon, bull trout, and spotted owls—and determining how to best minimize effects of a project on each of these species and their different habitats is time-consuming regardless of whether one or two agencies is involved. Moreover, some agency officials said they did not believe a merger would make the joint management of species more effective. They said that having two agencies implement the

⁴³Under the act, agency officials may, at the request of citizens seeking to engage in an activity that may result in the incidental take of a marine mammal, issue one of two types of authorization for take that meets certain criteria: (1) a 5-year authorization for any type of incidental take if the take meets certain criteria or (2) a 1-year authorization limited to incidental harassment.

Endangered Species Act provides certain benefits that could be lost if the agencies merged, such as bringing in different perspectives and avoiding “group think” when considering major decisions.

Potential to Better Integrate Natural Resource Management

Officials and stakeholders told us that another potential benefit of merging NMFS into FWS could be better integrated management of natural resources. According to these officials and stakeholders, placing responsibility in a single agency for considering all species living in the interconnected environments from the mountains to the sea may be preferable to splitting responsibility for species between two agencies according to which habitats the species occupy. Some officials and stakeholders explained that a benefit of an integrated fish and wildlife management agency would be that it could better address large-scale environmental challenges, such as climate change, that are likely to affect many ecosystems across the country. Officials and stakeholders provided some examples of how management of natural resources could be better integrated with a merger, including the following:

- *Facilitating an ecosystem approach to natural resource management.* Some agency officials and stakeholders said that a merger could help managers take more of an ecosystem approach and consider the impact of activities on the health of many species and their habitats across a landscape, instead of considering only those species under their agency’s jurisdiction. Some officials cited FWS’s efforts to develop landscape conservation cooperatives—public-private partnerships that promote conservation planning at a landscape scale—as one initiative that could be expanded to more effectively include marine and shoreline habitats. One senior FWS official explained that FWS staff struggle with including these habitats in the cooperatives because responsibility for many of the species found there lies with NMFS. Although NMFS collaborates with FWS in some of these cooperatives, this official said he believes it would be more efficient to manage a comprehensive cooperative under one agency.
- *Promoting a more holistic approach to managing ocean resources.* Interior and FWS officials explained that bringing NMFS to Interior could help the government manage ocean resources more holistically. For example, Interior, through its Bureau of Ocean Energy Management, manages the exploration and development of offshore mineral resources but, according to a senior Interior official, does not manage many of the species affected by offshore oil, gas, and wind energy development. This official told us that having the agencies

responsible for managing both living and mineral marine resources all located within Interior could help the department better mitigate the effects of offshore development. Similarly, some FWS officials noted, FWS has jurisdiction over migratory seabirds but does not manage marine fisheries. Yet practices some of these fisheries employ—including longline fishing—can harm these birds. FWS works with NMFS and the regional fishery management councils to reduce these impacts, but, the officials said, having one agency responsible for protecting migratory birds and managing fisheries could better ensure that the birds' needs are considered when making management decisions for fisheries.

Some officials and stakeholders told us, however, that they do not believe that integrating the agencies would be beneficial. Some stakeholders said that having NMFS responsible for living marine resources and Interior responsible for offshore energy development gives NMFS an independent voice in assessing the impacts of energy development on living resources. Some stakeholders said NMFS's location in Commerce means that if a proposed project would harm living marine resources, NMFS can seek to mitigate the project's effects, or even oppose the project, more easily than if the agency were part of Interior.

Potential to Improve Habitat Conservation Programs

Officials and stakeholders told us that merging NMFS into FWS could help the agencies improve how they prioritize and coordinate their habitat conservation and restoration efforts, which could help ensure that the agencies focus their limited resources on the projects that provide the most benefits. NMFS and FWS habitat program officials told us that although the agencies coordinate their work in several forums, the agencies generally work independently in identifying, selecting, and undertaking habitat projects.⁴⁴ Program officials said that by not working together in habitat types of common interest, such as estuaries and coastlines, the agencies have missed opportunities to identify potential habitat conservation and restoration projects that would provide more overall benefits to fish and wildlife species.

⁴⁴Forums where NMFS and FWS work together to conserve and restore habitat include the National Fish Habitat Partnership and the Estuary Habitat Restoration Council.

Potential to Improve Law Enforcement Programs

Some officials and stakeholders also said that merging NMFS into FWS could improve the effectiveness of the agencies' law enforcement programs. Specifically, officials and stakeholders said that merging the agencies' law enforcement programs, which would bring a larger number of law enforcement officers together under a single agency, could make it easier to mobilize officers to conduct long-term investigations. They noted that some complex investigations may occupy one or more officers for many weeks or months and that it can be difficult to assign officers to such investigations if the agency has a small number of officers in a particular geographic area. Some officials and stakeholders also noted that having a larger number of officers under a single management structure could improve officer safety by making it easier to mobilize additional officers to provide backup when making arrests or serving warrants.

Some other officials and stakeholders, however, questioned the extent to which a merger would benefit the agencies' law enforcement programs. These officials and stakeholders said that both agencies' law enforcement programs are understaffed, given their responsibilities, and that any additional enforcement resources a merger would enable the agencies to direct at certain tasks would be accompanied by directing fewer resources at other tasks. Some officials and stakeholders also noted that although the agencies' law enforcement programs have many similarities, they also have important differences, which limit the potential benefits of merging the programs. A major enforcement responsibility for NMFS, for example, is enforcing fisheries management regulations adopted under the Magnuson-Stevens Act. Officials and stakeholders said that these regulations can be very complex and that it makes sense to have a number of officers dedicated primarily to enforcing them, rather than training all officers on the complexities. Similarly, FWS—in addition to enforcing a variety of federal laws governing the lands and resources in the National Wildlife Refuge System—also works to ensure visitor safety on national wildlife refuges. Given this variety, as well as the geographical isolation of many refuges, officials and stakeholders said that it makes sense to dedicate a number of officers primarily to protecting refuges.

Potential to Realize Cost Savings

Cost savings were also cited as a potential benefit of a merger by some officials and stakeholders. Some of these officials and stakeholders said that likely sources for savings include consolidating the agencies' administrative and support functions—such as budgeting, finance, and human capital—and reducing mid- and high-level management positions, such as program managers, that would potentially be made redundant.

Nevertheless, given the lack of detail about exactly how the agencies would be merged, none of the officials we spoke with offered a concrete estimate of potential cost savings.

Many officials and stakeholders we interviewed, however, told us they believed that few, if any, opportunities exist for significant cost savings. A major reason cited was that although NMFS and FWS have some similar programmatic responsibilities, the agencies' execution of these responsibilities overlaps little, because the agencies mostly work in different habitat types. Simply merging the agencies, therefore, would not consolidate their activities enough to actually reduce costs. Moreover, some officials and stakeholders told us they believe that the agencies are already understaffed and that no obvious opportunities are available to reduce staffing levels without also reducing their on-the-ground activities. Some stakeholders also cautioned that, in their experiences, both government and private-sector proposals to consolidate organizations overestimate the potential long-term cost savings, which often do not materialize. For example, one former state wildlife agency director noted that the proposal for the merger of his state's fish and wildlife agencies projected cost savings that did not ultimately occur.

Potential to Disrupt Fisheries Management

A key potential drawback of merging the agencies, some officials and stakeholders said, is the disruption it could cause to fisheries management, particularly for commercial fisheries. Officials and stakeholders cited a number of ways in which merging NMFS into FWS could potentially disrupt fisheries management, including the following:

- *Disrupting NMFS's work with regional fishery management councils.* NMFS conducts numerous stock assessments and other research that provide key information about the size of fish stocks, among other topics, which the regional councils consider in determining the level of catch to be authorized in a fishery management plan. Some officials and stakeholders said that merging the agencies could interrupt NMFS's ability to provide the needed information. One regional fishery management council member said that even a 1-year disruption in approving fishery management plans would cause problems for the industry.
- *Reducing access to scientific resources needed to manage fisheries.* NMFS's six regional science centers do much of the research and data collection the agency and fishery management councils use in managing fisheries. Officials and stakeholders noted that Interior in

the 1990s consolidated many of its scientific capabilities into a separate agency, the U.S. Geological Survey. These officials expressed concern that if NMFS and FWS merged, Interior could decide to move NMFS's science centers into the Geological Survey too, which they believed could affect the continued availability of basic fisheries management data. Specifically, fisheries managers need scientific data that directly inform management decisions, such as stock assessments to establish catch levels. Officials and stakeholders were concerned that if NMFS's science centers were moved to the Geological Survey, the scientists would be in a separate organization and further removed from fisheries managers, which could make it more difficult for managers to obtain the data they need.

- *Changing decision-making responsibilities.* Some officials and stakeholders, including some stakeholders associated with the commercial fishing industry, said that merging NMFS into FWS would shift responsibility for approving fishery management plans to the Secretary of the Interior rather than the Secretary of Commerce, which they said could change how the federal government balances conservation and economic factors in managing fisheries. Under the Magnuson-Stevens Act, fishery management plans are to "take into account the importance of fishery resources to fishing communities" to provide for the sustained participation of such communities and, to the extent practicable, minimize adverse economic impacts on those communities.⁴⁵ The act, however, does not define what is meant by the phrase "take into account." Officials and stakeholders said they believed that Interior could emphasize conserving fish populations more and consider the economic effects of management decisions on fishing communities less than NMFS does.
- *Causing further industry disruptions.* Officials from nongovernmental conservation organizations emphasized that the fishing industry has recently undergone several important changes and that merging the agencies now could cause further disruptions. For example, the Magnuson-Stevens Act was amended in 2006 to, among other things, require that fishery management plans establish a mechanism for setting annual catch limits, require regional fishery management councils to implement plans to end overfishing immediately, and authorize a type of "catch share" program that restricts access to a

⁴⁵16 U.S.C. § 1851(a)(8) (2006).

fishery.⁴⁶ These steps are intended to both maintain healthy fish populations and strengthen the industry. Conservation stakeholders told us these steps are important to the long-term health of both marine ecosystems and the fishing industry but recognized that the changes—by reducing catch levels in some fisheries and raising concerns about the equity of catch allocations in others—have disrupted the industry in the short term. These stakeholders said that they expect the industry, as well as fish populations, to start benefiting soon from the changes and that a disruption caused by merging the agencies now could delay realizing those benefits.

In contrast, some officials and stakeholders said they believed merging NMFS into FWS could benefit fishery management in certain ways, and others said they believed a merger would have little overall effect on fishery management. Regarding potential benefits to fishery management, some stakeholders said that, in balancing conservation and economic interests, NMFS has tended to favor economic interests, leading to higher catch levels, which have depleted stocks and, ultimately, left fewer fish available for harvest. These stakeholders suggested that putting greater emphasis on conserving fish populations, which they believed could occur if NMFS moved to Interior, would be a positive step. In addition, some stakeholders said that a merger could lead to a better balance between commercial and recreational fishing interests. These stakeholders said that NMFS, perhaps because of its position in Commerce, favors commercial over recreational fishing interests and that FWS has a reputation for working well with recreational interests. Officials and stakeholders who said they believed a merger would have little effect on fishery management pointed out that the staff currently working on fisheries management issues would also work on them if the agencies merged. They also said that because the framework for managing federal fisheries, including the criteria for evaluating fishery management plans, is established by the Magnuson-Stevens Act, transferring approval

⁴⁶According to NMFS, “catch share” is a general term for several fishery management strategies that allocate a specific portion of the total allowable catch to individuals, cooperatives, communities, or other entities. By allocating allowable fish catch ahead of time, catch shares are intended to provide social and economic benefits to the industry, for example, by improving safety, since captains would feel less compelled to fish during dangerous weather; increasing the value of the catch, by reducing the likelihood that a large supply of fish will hit the market at one time; and reducing costs, by reducing the incentive to overinvest in new equipment, since captains would not be competing in a “race for fish,” where they feel they need the best equipment to gain advantage over other captains.

authority to the Secretary of the Interior would not change fishery management decisions.

Potential to Sever Connections between NMFS and Other NOAA Offices

Another key potential drawback cited by some officials and stakeholders is that a merger of NMFS and FWS could sever the connections between NMFS and other NOAA offices. NMFS relies on a variety of services performed by other offices within NOAA to conduct its work. Alternative methods for obtaining those services could be developed, but moving NMFS out of NOAA might affect the efficiency or effectiveness of obtaining them, according to officials and stakeholders. Important connections between NMFS and other parts of NOAA highlighted by stakeholders include the following:

- *Legal services.* NOAA provides legal services to NMFS and the other NOAA offices through its Office of General Counsel. Officials and stakeholders pointed to the important role played by that office in reviewing fishery management plans to ensure they comply with requirements of the Magnuson-Stevens Act and were concerned that moving NMFS out of NOAA could disrupt the review process. If NMFS merged with FWS, its legal services would be provided by Interior's Office of the Solicitor, which does not have experience with the requirements of the Magnuson-Stevens Act. Some officials noted, however, that some of NOAA's lawyers with fishery expertise could be moved to Interior if NMFS merged with FWS, in which case separating NMFS from NOAA's Office of General Counsel could have little effect.
- *Law enforcement.* NMFS's Office of Law Enforcement also supports other NOAA programs, in particular, by enforcing laws and regulations in national marine sanctuaries, which are managed by NOAA's National Ocean Service. NOAA would need to find another way to provide this service if NMFS merged with FWS.
- *Research fleet.* NOAA, through its Office of Marine and Aviation Operations, manages a fleet of ships and aircraft that NMFS and other NOAA offices use for scientific research. According to fleet officials, NOAA could, depending on the agreements reached as part of a merger, continue to provide NMFS access to these assets. The officials noted, however, that demand for access to NOAA's ships and aircraft exceeds their availability and that if NMFS were no longer part of NOAA, it could receive a lower priority for access. Currently, NMFS is a major user of the NOAA fleet, using approximately 50 percent of

ship days. Fleet officials said that if NMFS's access to NOAA's fleet were reduced, NMFS might try to develop its own fleet capacity, which they believed could be less efficient than having a single fleet.

Moreover, according to officials, having NMFS in NOAA makes it easier to identify missions where more than one NOAA office—for example, NMFS and the Office of Oceanic and Atmospheric Research—can use a ship at the same time.

- *Programmatic connections.* Programmatic connections exist between NMFS and other offices within NOAA, in particular the National Ocean Service and the Office of Oceanic and Atmospheric Research. According to some officials and stakeholders, taking NMFS out of NOAA could make it harder for the programs to coordinate activities and research or to share information. The National Ocean Service, for example, is responsible for managing national marine sanctuaries. Fishing is allowed in most sanctuaries, although the National Ocean Service has restricted fishing in some sanctuaries. In such cases, the National Ocean Service works with NMFS and the appropriate regional fishery management council to set fishing restrictions, and some stakeholders said they believed that having both agencies located within NOAA made it easier to resolve issues and reach agreement. The Office of Oceanic and Atmospheric Research sponsors research on a variety of topics relevant to fishery management, such as studying the relationship between fisheries and ecosystems and the potential effects of climate change on fish populations or distribution. The office's National Sea Grant College Program, along with NMFS, also funds a number of fellowships for research on topics, such as stock assessments and resource economics, of direct relevance to NMFS. NMFS officials told us they work closely with the Office of Oceanic and Atmospheric Research to identify opportunities for joint research between Sea Grant fellows and NMFS scientists. Officials told us they were concerned that separating NMFS from the Office of Oceanic and Atmospheric Research would hinder their ability to coordinate research.

Potential to Incur Transition Costs

Another potential drawback mentioned by some officials and stakeholders is that merging the agencies could entail substantial transition costs. Some of these officials and stakeholders, however, also said that the transition costs of a merger would be temporary and do not in and of themselves constitute a reason to avoid reorganizing the agencies. Transition costs would arise in large part because a merger would entail NMFS's changing a number of business and information technology systems, including those related to budgeting, finance, and human

capital. These systems provide information critical to effective management by, for example, accurately tracking expenditures to ensure that funds are appropriately spent. If the agencies merged, NMFS would need to move from systems supported by NOAA or Commerce to systems supported by Interior. Since no specific proposal has been put forward to merge NMFS into FWS, neither Commerce, Interior, nor the Office of Management and Budget has developed detailed estimates of the cost to consolidate the agencies' budgeting, financial, information technology, and other business systems.

Potential to Disrupt Agency Programs in the Short Term

Some officials and stakeholders also said that another potential drawback is that a major reorganization unavoidably disrupts agency programs in the short term. Some officials and stakeholders estimated that such disruptions could last for as long as 5 or 10 years.⁴⁷ As with those who said a merger would result in transition costs, however, some who cited program disruptions emphasized that disruptions are temporary and not necessarily a reason to avoid reorganizing the agencies. These officials and stakeholders said it is more important to take a long-term perspective and determine whether the overall benefits of reorganization outweigh the drawbacks.

Disruptions to agency programs cited by officials and stakeholders include the following:

- In the short term, employees may have less time to direct toward their programs while they may have to move offices, integrate into a new organizational structure, and learn new policies and procedures. In some cases, employees might gain new programmatic responsibilities, which would take time to learn. The stress and uncertainty often accompanying major reorganizations would likely also temporarily take employees' attention away from their programs.
- For many of the agencies' programs, officials would need to review regulations, policies, procedures, and other guidance to identify and

⁴⁷Previous GAO work has noted that the experiences of successful major change management initiatives in large private- and public-sector organizations suggest it can often take at least 5 to 7 years until such initiatives are fully implemented, and the related cultures are transformed in a sustainable manner. See GAO, *Highlights of a GAO Forum: Mergers and Transformations: Lessons Learned for a Department of Homeland Security and Other Federal Agencies*, GAO-03-293SP (Washington, D.C.: Nov. 14, 2002).

resolve any differences between the agencies. For example, as previously discussed, NMFS and FWS currently have different regulations implementing parts of the Endangered Species Act and Marine Mammal Protection Act. If the agencies merge, they may need to adopt a single approach. Similarly, officials said the two agencies' law enforcement programs currently have different protocols—for example, for conducting investigations or collecting and maintaining evidence—which would need to be reconciled. Resolving differences between the agencies' policies and procedures would take time away from running the agencies' programs, both for the staff revising the policies and for the staff who would need to learn the changes.

- The differences in the two agencies' cultures and certain elements of their missions could make it difficult to combine the two staffs into a single agency. Some officials and stakeholders said that employees are committed to their respective agencies' missions and could be slow to embrace any changes, particularly if they felt that part of "their" mission was a lower priority in the combined agency. Other officials and stakeholders, however, said that some employees would believe that merging the agencies would benefit fish and wildlife and would welcome the change. Moreover, others said that employee resistance to change should not be a factor in determining whether to reorganize the agencies and that employees who did not like the change could always leave.

Key Management Practices That Could Help Mitigate Program Disruptions and Transition Costs

GAO has issued numerous reports examining different aspects of reorganizing and improving the efficiency of government (a list of selected GAO products related to these topics is included at the end of this report). This previous work has identified a number of key management practices that could help mitigate program disruptions and transition costs inevitably accompanying reorganization (see table 1). Such key practices include the importance of leadership and of establishing a clear mission and strategic goals to guide the transformation. Some officials and stakeholders we interviewed recognized the importance of incorporating these practices if NMFS were merged into FWS. For example, some emphasized that strong agency leadership would be needed to clearly explain the rationale behind the merger and ease the cultural disruption accompanying reorganization. Strong leadership, they said, could help ensure that employees do not see a merger as creating "winners and losers," fostering internal support for the move and minimizing disruption to agency programs. Some officials and stakeholders said it is also

important to clearly define the problem a reorganization is intended to address and the goals it is expected to achieve.

Table 1: Key Practices Found in Successful Mergers and Organizational Transformations

Ensure top leadership drives the transformation. Leadership must set the direction, pace, and tone and provide a clear, consistent rationale that brings everyone together behind a single mission.
Establish a clear mission and integrated strategic goals to guide the transformation. Together, these define the culture and serve as a vehicle for employees to unite and rally around.
Focus on a key set of principles and priorities at the outset of the transformation. A clear set of principles and priorities serves as a framework to help the organization create a new culture and drive employee behaviors.
Set implementation goals and a timeline to build momentum and show progress from day one. Goals and a timeline are essential because the transformation could take years to complete.
Dedicate an implementation team to manage the transformation process. A strong and stable team is important to ensure that the transformation receives the needed attention to be sustained and successful.
Use the performance management system to define responsibility and assure accountability for change. A “line of sight” shows how team, unit, and individual performance can contribute to overall organizational results.
Establish a communication strategy to create shared expectations and report related progress. The strategy must reach out to employees, customers, and stakeholders and engage them in a two-way exchange.
Involve employees to obtain their ideas and gain their ownership for the transformation. Employee involvement strengthens the process and allows them to share their experiences and shape policies.
Build a world-class organization. Building on a vision of improved performance, the organization adopts the most efficient, effective, and economical personnel, system, and process changes and continually seeks to implement best practices.

Source: GAO.

Officials and Stakeholders Also Identified Several Key Potential Benefits and Drawbacks of Alternative Organizational Options

Moving NOAA into Interior Could Better Integrate Management of Land and Ocean Resources but Might Diminish Attention to Ocean Issues

Officials and stakeholders we interviewed also identified potential benefits and drawbacks of several alternative organizational structures that have previously been proposed, including moving NOAA into Interior, creating a new department of natural resources, and establishing NOAA as a stand-alone agency. Officials and stakeholders also identified potential benefits and drawbacks of keeping the current organizational structure.

Officials and stakeholders said that although merging NMFS into FWS would be a good first step toward better integrating natural resource management and addressing large-scale environmental challenges, moving all of NOAA into Interior could better achieve this integration by bringing even more aspects of federal land and ocean management under the same department. Specifically, officials and stakeholders identified the following potential benefits of improved integration:

- *Addressing land-freshwater-ocean issues more effectively.* Some agency officials and stakeholders said moving NOAA to Interior could allow the federal government to more effectively address issues such as “dead zones” in the Gulf of Mexico;⁴⁸ impacts of offshore energy development; climate change; and other challenges that span land, fresh water, and oceans because NOAA’s other ocean-management-related offices, including the National Ocean Service and the Office of Oceanic and Atmospheric Research, would be included in such a move. For example, FWS officials told us they believe the government could restore fish and wildlife habitat more effectively and efficiently after offshore oil spills if Interior also included the National Ocean Service. This NOAA office plays a significant role, along with FWS, in habitat restoration efforts after such events.

⁴⁸Areas in the ocean where the water has low levels of oxygen dissolved in it are referred to as “dead zones” because most marine life either dies or leaves the area. According to NOAA, the dead zone in the Gulf of Mexico in 2012 was about the size of the state of Delaware.

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- *Better management coordination.* Some agency officials told us that another potential benefit of having the National Ocean Service in Interior is that the agencies could better coordinate the management of marine refuges, monuments, and sanctuaries with management of national wildlife refuges, managed by FWS, and national parks, managed by the National Park Service. The National Ocean Service manages 13 national marine sanctuaries and, in conjunction with FWS, NMFS, and the state of Hawaii, 1 marine national monument. National marine sanctuaries and monuments have some characteristics similar to those of national wildlife refuges and national parks. For example, certain types of disturbance or development—such as disturbing or altering the seabed and developing oil, gas, and mineral resources—are prohibited or regulated in some national marine sanctuaries.
 - *Combining earth-ocean research and data collection.* Some agency officials and stakeholders said it could be beneficial to combine the earth and ocean scientific research currently found in Interior and NOAA under one department. One former agency administrator said it could be beneficial to bring together NOAA and Interior scientists, especially those in NOAA's Office of Oceanic and Atmospheric Research and National Weather Service and Interior's U.S. Geological Survey, to tackle ecological challenges concerning terrestrial, freshwater, and marine natural resource management. Other officials pointed out that the agencies both generate and analyze similar types of data, including (1) location-based data used, for example, to create topographic maps and assess coastal health and (2) seismic data used, for example, in planning responses to earthquakes.⁴⁹ These officials said it could be beneficial to further integrate these efforts.

In addition to improved integration of natural resource management, officials and stakeholders noted other potential benefits of moving NOAA into Interior. Some said they believed that moving all of NOAA to Interior would maintain the key connections between NMFS and the rest of NOAA's offices. Officials and stakeholders also pointed to the similarities that NOAA, as a resource management and science agency, has with Interior, which shares similar missions. A senior Interior official noted that

⁴⁹Location-based, or geospatial, data refers to information linked to specific geographic locations.

Secretaries of the Interior are often fully engaged with science and natural resource management issues, which is generally not the case for Secretaries of Commerce, given that the bulk of Commerce's work consists of business- and trade-related activities. Recognizing this dynamic, some stakeholders said moving NOAA out of Commerce could benefit Commerce, since it would allow the department to focus on its trade and competitiveness mission.

Officials and stakeholders told us that moving NOAA into Interior posed a number of potential drawbacks as well, some of which are similar to the drawbacks of merging NMFS into FWS. Some stakeholders, for example, suggested that moving NOAA to Interior could diminish the attention directed to NOAA's mission of protecting living marine resources and managing marine fisheries. They said that if NOAA were in Interior, it would be competing with Interior's other agencies for budgetary resources, which could lead to less funding for the protection of living marine resources and fisheries, particularly since such protection can conflict with some of Interior's offshore oil, gas, and wind energy development missions. Some stakeholders explained that because NOAA is dissimilar to the rest of Commerce, it does not compete directly with other agencies for funding, as it might if it were part of Interior. In addition, some officials and stakeholders questioned whether portions of NOAA, especially NOAA's satellite program and the National Weather Service, would fit within Interior's mission.

Creating a Department of Natural Resources Could Further Integrate Land and Ocean Resource Management but Could Be a Substantial Implementation Challenge

Some officials and stakeholders told us that if the goal is to fully integrate land and ocean resource management, creating an overall department of natural resources could be the best way to do it. These officials and stakeholders proposed that such a department could include agencies such as the Forest Service, Environmental Protection Agency, and the Army Corps of Engineers' civil works programs,⁵⁰ in addition to agencies within Interior and NOAA, although opinions differed as to the department's exact makeup. Officials and stakeholders said that the benefits of creating a department of natural resources include consolidating science functions from across the government and shifting

⁵⁰An agency within the Department of Defense, the Army Corps of Engineers provides a variety of engineering services through military and civil works programs. The civil works program is responsible for investigating, developing, and maintaining water resource projects.

toward managing natural resources on a large scale. Some officials and stakeholders said creating a department of natural resources could be the best way to achieve significant budgetary and management efficiencies. For example, one former Interior secretary said a large-scale reorganization is needed to truly reduce the cost to the federal government of natural resource management. A senior Interior official noted that it takes a long time to negotiate interagency memorandums of agreement and to process decisions through agency bureaucracies; one department overseeing natural resource decisions would eliminate the need for such coordination. One former Commerce secretary told us the efficiencies achieved by such a reorganization could also improve the public's perception of government overall.

Nevertheless, some officials and stakeholders said a significant potential drawback of creating a department of natural resources is that it could be a substantial implementation challenge, given the number and size of distinct organizational entities that would have to be transformed. Some stakeholders mentioned the creation of the Department of Homeland Security as an example of the difficulties inherent in large transformations, including the length of time necessary to complete them. In our 2011 report on this department, we found that, 8 years after its creation, it had implemented key homeland security operations and achieved important goals, but the department's transformation remained high risk because of continuing management challenges.⁵¹ Some stakeholders also noted that the sheer size of a department of natural resources, with its multiple missions, could make it difficult to manage.

Establishing NOAA as a Stand-alone Agency Could Raise the Profile of Ocean Resources, According to Some, but Could Marginalize the Agency According to Others

Officials and stakeholders we interviewed generally disagreed on the potential effects of establishing NOAA as a stand-alone agency independent from Commerce and other departments. Some stakeholders suggested that such a move could lead to more attention for ocean issues, which, over time, could lead to more funding for addressing ocean management challenges. One former NOAA administrator said that a stand-alone NOAA could provide a strong, independent voice for ocean-related issues as the country grapples with emerging challenges, such as managing deep-sea mining and increasing offshore energy development.

⁵¹GAO, *Department of Homeland Security: Progress Made and Work Remaining in Implementing Homeland Security Missions 10 Years after 9/11*, GAO-11-881 (Washington, D.C.: Sept. 7, 2011).

A member of NOAA's advisory committee for living marine resources noted that establishing NOAA as an independent agency could send a message that oceans are a national priority. Others said establishing NOAA as a stand-alone agency could help direct attention to ocean-based policy, including the National Ocean Policy, and such an agency could be in the best position to execute this policy.⁵² Some stakeholders said it would be very important for the new agency to be included in the President's cabinet, since doing so could provide greater access to high-level budget and policy decision making than if NOAA were made an independent, non-cabinet-level agency. Other stakeholders also noted that this option may be less disruptive than others and that it could confer the same benefits to Commerce as moving NOAA to Interior by allowing Commerce to focus exclusively on its trade and competitiveness mission.

Some other officials and stakeholders, however, told us they believed that making NOAA an independent agency would not yield these benefits, and some said it could be harmful to the agency's mission. For example, some stakeholders expressed concern that NOAA's small size relative to other agencies could limit its ability to obtain sufficient support, as well as sufficient funding, both within the administration and in Congress. For example, one NMFS official described NOAA's budget as "decimal dust" when compared with the other agencies it would be competing with for funds, making it susceptible to budget cuts and weakening its ability to advocate for ocean resources and policy. Some officials and stakeholders said these negative effects would be particularly likely to occur if the new agency did not have a cabinet-level secretary, but others said it could be difficult for NOAA to compete with other agencies and interests even as a cabinet-level agency. In addition, some stakeholders said that Commerce provides certain important services to NOAA, which they would not want to see lost. For example, one fishing industry organization representative said she is concerned that moving NOAA out of Commerce could hurt parts of the industry, pointing out that most of what her sector catches is exported, and the industry has benefited from Commerce's trade policies. Further, some officials and stakeholders said making NOAA an

⁵²In 2010, the President established a national policy to "ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhance the sustainability of ocean and coastal economies, preserve our maritime heritage, support sustainable uses and access, provide for adaptive management to enhance our understanding of and capacity to respond to climate change and ocean acidification, and coordinate with our national security and foreign policy interests." The president also established a National Ocean Council to implement this policy.

independent agency would add to the stovepiping of government that the other reorganization options are trying to counter by integrating agencies. Some of the former agency directors and department secretaries we interviewed said that making NOAA an independent agency would not contribute to streamlining the government. Two former department secretaries said increasing the number of executive agencies makes it more difficult for the President to manage actions of the executive branch as a whole and to hold all the agencies accountable. Moreover, some officials and stakeholders noted that making NOAA an independent agency would not yield some of the key potential benefits that could come with the other reorganization options, such as having a single agency manage similar programmatic responsibilities.

Maintaining the Current Organizational Structure Would Avert Disruptions but Not Better Integrate Resource Management; Interagency Collaboration Could Help the Agencies Work Together More Effectively

Agency officials and stakeholders also identified potential benefits and drawbacks of maintaining the current organizational structure. They cited benefits such as averting the disruption to programs that could accompany a reorganization and the uncertainty of whether a reorganization would achieve its goals. Some stakeholders noted, however, that keeping the current structure would also mean missing an opportunity to better integrate natural resource management. Overall, officials and stakeholders generally said the drawbacks of reorganizing the agencies outweigh the benefits. As a few put it, “The juice is not worth the squeeze.” In contrast to this general view, however, of the 10 former heads of Commerce, Interior, NOAA, NMFS, and FWS we spoke with, 9 of them told us they preferred making some kind of organizational change, although there was no consensus on what the best structure would be.

Some officials and stakeholders suggested that if the current organizational structure is retained, the agencies can still take steps to collaborate more effectively. At the program level, officials and stakeholders said efficiencies in the agencies’ Endangered Species Act and Marine Mammal Protection Act programs can be realized without a merger. For example, some officials and stakeholders said that the agencies could expand their existing efforts to issue joint regulations and policies to ensure that the agencies implement the act in a similar manner. Other officials and stakeholders said that colocating field offices and staff for the agencies’ endangered species programs could foster interagency collaboration and make it easier for the public to work with both agencies. The agencies have already colocated at least three of their field offices, one in California, one in Maine, and one in the state of Washington, where NMFS and FWS staff occupy the same building.

According to agency officials familiar with these colocated offices, the close proximity fosters more conversations and face-to-face contact, which in turn builds relationships and trust. The close relationships have led agency officials to find other efficiencies as well; for example, FWS has placed a staff member in NMFS's Northwest regional office, and that person works on Endangered Species Act reviews on behalf of both agencies. In addition, FWS and NMFS regional officials noted that, in their view, the agencies collaborate better in states with colocated offices than in states where personnel are not as closely located.

We reported in 2012 that a number of interagency collaboration mechanisms, including office colocation, are being used by a variety of federal agencies.⁵³ For example, the Bureau of Land Management and the Forest Service have established more than 30 offices under Service First agreements, where the agencies are colocated, combined, or commingled and where they share resources—including staff, office space, and other materials—to varying extents. FWS also participates in six such colocated offices under Service First agreements with the Bureau of Land Management, the Forest Service, or both. As we reported, certain key features can help colocation and other collaborative efforts be effective, such as clarity of roles and responsibilities (see table 2).

Table 2: Key Features of Interagency Collaborations and Issues to Consider When Collaborating

Key feature	Issues to consider
Outcomes and accountability	Have short-term and long-term outcomes been clearly defined? Is there a way to track and monitor their progress?
Bridging organizational cultures	What are the missions and organizational cultures of the participating agencies? Have agencies agreed on common terminology and definitions?
Leadership	How will leadership be sustained over the long term? If leadership is shared, have roles and responsibilities been clearly identified and agreed upon?
Clarity of roles and responsibilities	Have participating agencies clarified roles and responsibilities?
Participants	Have all relevant participants been included? Do they have the ability to commit resources for their agency?

⁵³GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, GAO-12-1022 (Washington, D.C.: Sept. 27, 2012).

Key feature	Issues to consider
Resources	How will the collaborative mechanism be funded and staffed? Have online collaboration tools been developed?
Written guidance and agreements	If appropriate, have participating agencies documented their agreement regarding how they will be collaborating? Have they developed ways to continually update and monitor these agreements?

Source: GAO.

Agency Comments

We provided a draft of this report for review and comment to the Departments of Commerce and the Interior. Commerce provided technical comments that were incorporated, as appropriate. Interior did not provide comments.

We are sending copies of this report to the Administrator and Assistant Administrator for Fisheries of NOAA, the Director of FWS, the appropriate congressional committees, and other interested parties. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>.

If you have questions about this report, please contact me at (202) 512-3841 or fennella@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix II.



Anne-Marie Fennell
Director
Natural Resources and Environment

Appendix I: Former Agency Officials and Stakeholders GAO Interviewed

We interviewed Secretaries of Commerce and the Interior and heads of the National Oceanic and Atmospheric Administration (NOAA), the National Marine Fisheries Service (NMFS), and the Fish and Wildlife Service (FWS) from each of the two previous administrations:

Bruce E. Babbitt
Secretary
Department of the Interior, 1993-2001

D. James Baker
Administrator
NOAA, 1993-2001

William M. Daley
Secretary
Department of Commerce, 1997-2000

Carlos M. Gutierrez
Secretary
Department of Commerce, 2005-2009

H. Dale Hall
Director
FWS, 2005-2009

William T. Hogarth
Assistant Administrator for Fisheries
NMFS, 2000-2007

Conrad C. Lautenbacher, Jr.
Administrator
NOAA, 2001-2008

Gale A. Norton
Secretary
Department of the Interior, 2001-2006

Jamie Rappaport Clark
Director
FWS, 1997-2001

Roland A. Schmitt
Assistant Administrator for Fisheries
NMFS, 1993-1999

We also interviewed officials from the following agencies and organizations:

American Forest Resource Council
Association of Fish and Wildlife Agencies
Atlantic Coastal Fish Habitat Partnership
Atlantic States Marine Fisheries Commission
At-Sea Processors Association
Center for American Progress
Center for Biological Diversity
Coastal States Organization
Conservation International
Defenders of Wildlife
East Coast Shellfish Growers Association
Endangered Species Act Joint Task Force
Environmental Defense Fund
Federal Law Enforcement Officers Association
Groundfish Forum
Gulf of Mexico Fishery Management Council
Gulf States Marine Fisheries Commission
Joint Ocean Commission Initiative
Marine Fisheries Advisory Committee
Marine Mammal Commission
Massachusetts Department of Fish and Game

Massachusetts Fishermen's Partnership
Massachusetts Office of Coastal Zone Management
National Endangered Species Act Reform Coalition
Natural Resources Defense Council
Nature Conservancy
New England Fishery Management Council
Northeast Consortium
North Pacific Fishery Management Council
Northwest Indian Fisheries Commission
Oceana
Ocean Conservancy
Pacific Fishery Management Council
Pacific Marine and Estuarine Fish Habitat Partnership
Pacific States Marine Fisheries Commission
Puget Sound Partnership
Restore America's Estuaries
Southern Shrimp Alliance
Taylor Shellfish Farms
U.S. Army Corps of Engineers
U.S. Geological Survey, Western Fisheries Research Center
U.S. Institute for Environmental Conflict Resolution
Washington Department of Fish and Wildlife

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Anne-Marie Fennell, (202) 512-3841 or fennella@gao.gov

Staff Acknowledgments

In addition to the individual named above, Stephen D. Secrist, Assistant Director; Eric Bachhuber; Antoinette Capaccio; Ellen W. Chu; Jonathan Dent; Anu Mittal; Leslie Pollock; and Anne Rhodes-Kline made key contributions to this report. Also contributing to this report were Elizabeth Curda and Armetha Liles.

Related GAO Products

Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms. [GAO-12-1022](#). Washington, D.C.: September 27, 2012.

Government Efficiency and Effectiveness: Opportunities for Improvement and Considerations for Restructuring. [GAO-12-454T](#). Washington, D.C.: March 21, 2012.

Streamlining Government: Key Practices from Select Efficiency Initiatives Should Be Shared Governmentwide. [GAO-11-908](#). Washington, D.C.: September 30, 2011.

Department of Homeland Security: Progress Made and Work Remaining in Implementing Homeland Security Missions 10 Years after 9/11. [GAO-11-940T](#). Washington D.C.: September 8, 2011.

Federal Land Management: Observations on a Possible Move of the Forest Service into the Department of the Interior. [GAO-09-223](#). Washington, D.C.: February 11, 2009.

Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies. [GAO-06-15](#). Washington, D.C.: October 21, 2005.

Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations. [GAO-03-669](#). Washington, D.C.: July 2, 2003.

Executive Reorganization Authority: Balancing Executive and Congressional Roles in Shaping the Federal Government's Structure. [GAO-03-624T](#). Washington, D.C.: April 3, 2003.

Highlights of a GAO Forum: Mergers and Transformations: Lessons Learned for a Department of Homeland Security and Other Federal Agencies. [GAO-03-293SP](#). Washington, D.C.: November 14, 2002.

Homeland Security: Critical Design and Implementation Issues. [GAO-02-957T](#). Washington, D.C.: July 17, 2002.

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

[Docket No. 130208645–3645–01]

RIN 0648–XC209

Endangered and Threatened Wildlife; 90-Day Finding on a Petition to List 44 Species of Corals as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list 44 species of corals off Alaska as threatened or endangered under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific or commercial information indicating that the petitioned actions may be warranted.

ADDRESSES: Copies of the petitions and related materials are available online at <http://www.alaskafisheries.noaa.gov/protectedresources/coral/default.htm> or upon request from the Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: John Olson, NMFS Alaska Region, (907) 271–1508; Jon Kurland, NMFS Alaska Region, (907) 586–7638; or Maggie Miller, NMFS Office of Protected Resources, (301) 427–8403.

SUPPLEMENTARY INFORMATION:**Background**

On August 20, 2012, we received a petition from the Center for Biological Diversity to list 44 taxa of coral (42 species, one subspecies and one variant) as threatened or endangered under the ESA. The petition is entitled “Petition to List 43 Coral Species under the Endangered Species Act” but it provides information regarding 44 taxa. We are therefore treating the petitioned action as the listing of 44 taxa. The petitioner also requested that critical habitat be designated for these corals concurrent with listing under the ESA. The petition asserts that synergistic threats of ocean warming, ocean acidification, commercial fisheries, oil spills, and other impacts affect these species. The petition briefly summarizes the description, taxonomy, distribution, and status for each petitioned species. It also describes current and future threats that

the petitioner asserts are affecting or will affect these species.

The 44 taxa included in the petition are: *Arthrogorgia otsukai*, *Arthrogorgia utinomii*, *Fanellia compressa*, *Fanellia fraseri*, *Narella abyssalis*, *Narella alaskensis*, *Narella arbuscula*, *Narella bayeri*, *Narella cristata*, *Plumarella aleutiana*, *Plumarella echinata*, *Plumarella hapala*, *Plumarella nuttingi*, *Plumarella profunda*, *Plumarella robusta*, *Plumarella spicata*, *Plumarella superba*, *Primnoa pacifica* var. *willeyi*, *Primnoa wingi*, *Thouarella cristata*, *Thouarella trilineata*, *Alaskagorgia aleutiana*, *Cryogorgia koolsae*, *Cavernularia vansiocyti*, *Swiftia beringi* (a junior synonym for *Calcigorgia beringi*), *Cryptphelia trophostega*, *Cyclohelia lamellata*, *Errinopora dichotoma*, *Errinopora disticha*, *Errinopora fisheri*, *Errinopora nanneca*, *Errinopora undulate*, *Errinopora zarhyncha*, *Stylaster trachystomus*, *Stylaster ellasotomus*, *Stylaster brochi*, *Stylaster alaskanus*, *Stylaster leptostylus*, *Stylaster campyleucus*, *Stylaster crassiseptum*, *Stylaster parageus*, *Stylaster parageus*, *Stylaster repandus*, *Stylaster stejnegeri*, and *Distochopora borealis*. *Stylaster cancellatus* is also mentioned in the petition but this is a junior synonym for *Stylaster alaskanus*. All 44 taxa are found in waters off Alaska in the Aleutian Islands, Gulf of Alaska, and/or Bering Sea.

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires that, to the maximum extent practicable, within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding as to whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information indicates the petitioned action may be warranted (a “positive 90-day finding”), we are required to commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we are to conclude the review with a finding as to whether the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, a “may be warranted” 90-day finding

does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a species, subspecies, or, for any vertebrate species, a distinct population segment (DPS) which interbreeds when mature (16 U.S.C. 1532(16)). Because corals are invertebrate species, we are limited to assessing the status of species or subspecies of corals. A species or subspecies is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). The ESA requires us to determine whether species are threatened or endangered based upon any of the following section 4(a)(1) factors: the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species’ existence (16 U.S.C. 1533(a)(1)).

Implementing regulations issued jointly by NMFS and the US Fish and Wildlife Service (50 CFR 424.14(b)) define “substantial information” in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. When evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative action recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Court decisions clarify the appropriate scope and limitations of the Services’ review of petitions at the 90-day finding stage in making a determination whether a petitioned

action may be warranted. As a general matter, these decisions hold that a petition need not establish a strong likelihood or a high probability that a species is either threatened or endangered to support a positive 90-day finding.

Decisions under the ESA must be based on the best scientific and commercial data available. We evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. If the petitioner's sources are based on accepted scientific principles, we will accept them and characterizations of the information presented unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioner's assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue, and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the

causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act, will act, or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed, or reasonably likely to be exposed, to a factor, but that the species may respond or may presently be responding in a negative fashion; then we assess the potential significance of that negative response.

Biology of Coral Species

Corals are defined as "animals in the cnidarian class Anthozoa and Hydrozoa that produce either calcium carbonate (argonite or calcite) secretions resulting in a continuous skeleton or as numerous, usually microscopic, individual sclerites, or that have a black, horn-like proteinaceous axis" (Cairns, 2007). All of the petitioned corals belong to the phylum Cnidaria and to the classes Anthozoa or Hydrozoa. The anthozoans are exclusively polypoid (i.e., generally sessile) with no medusoid (i.e., generally free-swimming) stage and include the orders Gorgonacea (gorgonians) and Pennatulacea (sea whips and sea pens). The hydrozoans generally retain both the polypoid and medusoid stages in their life cycle and include the order Anthoathecatae (hydrocorals). To date, 134 unique coral taxa have been found in Alaskan waters (Stone and Rooper, in review) and all are ahermatypic (i.e., non-reef forming) and azooxanthellate (i.e., do not contain symbiotic algae in their tissues). They have a broad distribution in Alaskan waters and are found at depths between 3 and 6,328 meters (m) (Stone and Rooper, in review).

Gorgonians are the most diverse coral group in Alaskan waters with 61 unique taxa from 7 families (Stone and Rooper, in review). They are the most important structure-forming corals in Alaskan waters and generally require exposed, hard substratum for attachment (Stone and Shotwell, 2007). Gorgonians are locally abundant, contagiously distributed, and form both single- and multi-species assemblages (Stone and Shotwell, 2007). They range in depth from 6 to 4,784 m (Stone and Shotwell,

2007). Their skeletal components are composed of aragonite, calcite, high-magnesium calcite, amorphous carbonate hydroxylapatite and there is some evidence that some taxa may have polymorphic skeletons (Cairns and MacIntyre, 1992). Of the 23 gorgonians listed in the petition, 11 taxa are known exclusively from the Aleutian Islands, 5 appear to be endemic to seamounts, 4 are known from the Aleutian Islands and Bering Sea Slope, 1 is known from the western Gulf of Alaska and Aleutian Islands, *Primnoa pacifica* var. *willeyi* ranges throughout Alaskan waters south of the Bering Sea, and *Swiftia beringi* (actually *Calcigorgia beringi*) appears to be broadly distributed from the eastern Gulf of Alaska through the Aleutian Island Archipelago (Stone *et al.*, in preparation).

Sea whips and sea pens have a widespread distribution in Alaskan waters and are represented by 10 taxa in 3 families (Stone and Shotwell, 2007). Several are important structure forming corals and at least three species form extensive groves in soft sediment areas (Stone and Shotwell, 2007). They range in depth from 3 to 2,947 m (Stone and Shotwell, 2007) and their skeletons appear to be composed exclusively of high-magnesium calcite (Stone *et al.*, in preparation). The single pennatulacean listed in the petition is known from one specimen collected in the Aleutian Islands (Williams, 2005).

Hydrocorals have a widespread distribution in Alaska but have not been reported from seamounts and are extremely rare north of the Aleutian Archipelago slope (Stone *et al.*, in preparation). They are represented by 24 taxa in Alaskan waters (R. Stone, unpublished data) and several species are important structure forming corals (Stone and Shotwell, 2007). They form erect or encrusting calcareous colonies and require exposed, hard substratum for attachment. They range in depth from 10 to 2,124 m (Stone and Rooper, in review) and their skeletons may be composed of aragonite, calcite, high-magnesium calcite, amorphous carbonate hydroxylapatite, and there is some evidence that some taxa may have polymorphic skeletons (Cairns and MacIntyre, 1992). Of the 19 hydrocorals listed in the petition, 14 are known only from the Aleutian Islands, 3 are known from the Aleutians Islands region and the eastern Gulf of Alaska, and 2 are known from the Aleutian Islands and the southern Bering Sea (Stone *et al.*, in preparation).

Analysis of Petition

The petition describes factors which it asserts have led to the current status of

these corals, as well as threats which it asserts the taxa currently face, categorizing them under the ESA section 4(a)(1) factors. The petition focuses on habitat threats, asserting that the habitat of the petitioned coral taxa is under threat from several processes linked to anthropogenic greenhouse gas emissions, including ocean acidification, ocean warming, and changes in currents and salinity. The petition also asserts that these global habitat threats are exacerbated by local habitat threats posed by commercial fishing activities, oil and gas exploration and production, and oil spills. Finally, the petition contends that the existing regulatory mechanisms in place are inadequate to address the identified threats to corals.

For each of the petitioned taxa, we evaluated whether the information provided or cited in the petition met the regulatory standard for “substantial information.” We also reviewed other readily available information (i.e., currently within NMFS files) related to the distribution, abundance, and threats to the petitioned taxa.

Information submitted by the petitioner for each of the 44 coral taxa was limited to a brief taxonomic/physical description, geographic and depth distribution information based on the cited literature, a map describing the possible spatial distribution, and a relatively generic status statement. Some distribution descriptions also contained temperature or substrate data. Relatively little species-specific information was presented in the petition or is presently available on the biology, population characteristics, distribution, or status of the 44 individual taxa. The petitioner provided no species-specific information on abundance or trends. The petition states on page 27 that “[t]here are several factors that play an important role in the distribution of Alaska coral species, including nutrient flows and productivity, water temperature, availability of hard substrate, currents and sediment load, and seawater chemistry make-up including salinity and calcium carbonate saturation state.” These statements are not referenced and we are unaware of any research that has been conducted in Alaska to date to support them. The petition continues: “[t]hese factors were not included in the mapping process as they are not readily available, and the specific interactions of these factors to each species’ distribution are unknown.” The petition acknowledges limited available data regarding the distribution, range, abundance, and population trends for the petitioned taxa and relies instead on

relatively generic status statements for each of the petitioned taxa that suggest limited range (endemism) as well as a limited ability of corals to repair damage, adapt to new conditions, or colonize disturbed areas.

Of the 44 petitioned coral taxa, 22 species have been described in just the past decade (14 of those in 2011). These include five species of *Narella* (*N. abyssalis*, *N. alaskensis*, *N. arbuscula*, *N. bayeri*, and *N. cristata*) collected during submersible surveys in 2002 and 2004 and formally described in 2007 (Cairns and Baco, 2007). These are all deep bathyal species and appear to be endemic to Gulf of Alaska seamounts. New species also include two gorgonians (*Alaskagorgia aleutiana* and *Cryogorgia koolsae*) and the small, cryptic pennatulacean *Cavernularia vansyoci* from the Aleutian Islands (Sanchez and Cairns, 2004; Williams, 2005). The latter species is known from only a single specimen. Cairns (2011) published a major revision of the Primnoidae that yielded eight new species that are included in the petition, principally from the Aleutian Islands (*Plumarella aleutiana*, *P. echinata*, *P. hapala*, *P. nuttingi*, *P. profunda*, *P. robusta*, *Thouarella cristata*, *T. trilineata*). All of these species are extremely difficult to differentiate from each other, particularly in the field, and consequently our knowledge of their distribution is largely limited to expertly identified museum specimens. Cairns and Lindner (2011) also performed a major revision of the hydrocorals (Stylasteridae) from Alaskan waters yielding six new species that are included in the petition (*Errinopora dichotoma*, *E. disticha*, *E. fisheri*, *E. undulata*, *Stylaster repandus*, and *S. crassiseptum*). The genera *Errinopora* and *Stylaster* require advanced taxonomic expertise to identify to species in the field or laboratory and consequently our knowledge of their distribution is largely limited to expertly identified museum specimens.

The remaining gorgonians in the petition are somewhat easier to identify in the field, and of those, six (*Arthrogorgia otsukai*, *A. utinomii*, *Fanellia compressa*, *F. fraseri*, *Primnoa pacifica* var. *willeyi*, and *P. wingi*) have been fairly well documented and most have been caught incidentally and repeatedly in bottom trawl surveys that NMFS conducts in the Gulf of Alaska and Bering Sea to assess groundfish stocks. *Plumarella spicata* and *P. superba* are not documented in the NMFS bottom trawl survey. *Swiftia beringi* (actually *Calcigorgia beringi*) is relatively easy to identify in the field

but is relatively uncommon and seldom encountered in the NMFS bottom trawl survey. Of the remaining hydrocorals, *Cryptelia trophostega*, *Cyclohelia lamellata*, *Errinopora nanneca*, *E. zarhyncha*, *Stylaster brochi*, and *S. campyleucus* are relatively easy to differentiate to species level in the field and consequently some information on their distribution is available from the NMFS bottom trawl survey. *Distichopora borealis* has not been documented in the NMFS bottom trawl survey. *Stylaster alaskanus*, *S. ellasotomus*, *S. leptostylus*, *S. parageus parageus*, *S. stejnegeri*, and *S. trachystomus* are very difficult to identify to species and consequently few records are available from any source for these taxa.

The petition presents little information on the past or present numbers, relative abundance, or distribution of the petitioned taxa, which is understandable because for many of the species only scant information exists. As noted above, 22 of the petitioned taxa are new to science in the last decade. For the other 22 petitioned taxa, sampling has been largely opportunistic as bycatch in surveys to assess groundfish stocks using trawl gear that is not designed to sample corals. To supplement information presented in the petition, we reviewed the 38,752 bottom trawl survey data points in our files (available at http://www.afsc.noaa.gov/RACE/groundfish/survey_data/data.htm) for the Aleutian Islands, Bering Sea, and Gulf of Alaska, and found 1,151 tows in which corals were caught incidentally since 1982, including 17 of the petitioned taxa. These data demonstrate a substantially wider distribution for some of these taxa than reported in the petition, both geographically and with regard to depth. We also have information that one of the species listed in the petition as “endemic to the Aleutian Islands, Gulf of Alaska, and Bering Sea,” *Swiftia beringi*, has confirmed occurrences off Washington State. Nevertheless, systematic surveys have not been conducted in Alaska to assess the distribution, abundance, or population trends of these (or other) corals, providing no reliable basis to assess their status. Trawl surveys off Alaska are limited to areas that are relatively flat and not too rough, yet many Alaskan coral species, particularly in the Aleutian Islands, prefer hard substrate with high currents and steep slopes (Woodby *et al.*, 2009) that are not conducive to sampling with a bottom trawl. NMFS and others have conducted coral research in Alaska with other tools

(e.g., submersibles) that has confirmed a much broader depth and geographical distribution and more varied habitat for many Alaskan coral species than previously documented (Stone, 2006; Stone and Alcorn, 2007; Miller *et al.*, 2012). Even these efforts provide an incomplete picture of the population-level status and abundance of these species. Based on our review of the petition and other information available to us, too little survey information exists to conclude that the small number of documented occurrences of the petitioned taxa may equate to a risk of extinction due to low population size. We expect, based on surveys conducted to date, that additional survey effort would result in additional observations of the petitioned taxa in other locations.

We examined each of the threats listed in the petition. Ocean acidification due to anthropogenic carbon dioxide emissions and oceanographic changes resulting from climate change are described in the petition as major threats. NMFS scientists are aware that others have hypothesized that both may produce conditions that directly and indirectly affect cold water corals, yet no empirical studies to date have demonstrated deleterious effects to the petitioned taxa or to similar coral taxa. The petition draws entirely on the results of ocean acidification research conducted on tropical corals and a single cold water coral species (*Lophelia pertusa*). Tropical scleractinian corals and cold water corals are very different animals both physiologically and ecologically. Tropical scleractinian corals are typically hermatypic (reef-building), contain intracellular zooxanthellae (symbiotic photosynthetic dinoflagellates), and inhabit shallow warm waters. *L. pertusa* is a reef building scleractinian predominantly found in the North Atlantic Ocean and is not found in the northern North Pacific Ocean. It is the only cold water coral for which there is species-specific information on the physiological effects of lowered pH (Maier, 2009). The results of that study were contradictory; *L. pertusa* exhibited reduced growth when exposed to lower pH but colonies still showed positive net calcification. Ocean acidification literature generally would lead scientists to expect both reduced growth and negative net calcification, so we find the Maier (2009) study unhelpful for assessing whether the petitioned corals may react negatively to ocean acidification.

The petitioned corals and scleractinian corals (such as the tropical corals and *L. pertusa*) are not closely related and we find no basis to expect

that they would have similar physiological responses to stress. Scleractinians and hydrocorals are related at the Phylum level whereas scleractinians and octocorals (gorgonians and pennatulaceans) are related at the Class level. Most importantly, the biomineralization processes for scleractinians and the petitioned coral groups are entirely different, so it is not appropriate to use the responses of the first group of corals as a surrogate for the latter group. Scleractinians accrete aragonite whereas all gorgonians and many hydrocorals accrete calcite and/or high-magnesium calcite. The biomineralization mechanisms that produce these compounds are very different (Lowenstam and Weiner, 1989). Aragonite is the kinetically favored polymorph of calcium carbonate to precipitate from seawater and scleractinian aragonite crystals are morphologically and chemically similar to aragonites precipitated inorganically (Holcomb *et al.*, 2009). Two factors indicate that scleractinian calcification is more of an inorganic process compared to gorgonians and hydrocorals (including the petitioned taxa) where the organic matrix plays a much more prominent role in calcification. First, scleractinian mineralization is entirely extracellular whereas gorgonian spicules are formed intracellularly. Second, the percent organic matrix in scleractinian coral skeletons is very small (< 1 percent) compared to a very high percentage for gorgonians and hydrocorals (Cohen and Holcomb, 2009).

The literature cited in the petition does not support the petitioned action. For example, the petition states that undersaturation of calcite will affect the growth and repair of both the corals and the plankton that provide the corals' food and nutrient sources and then cites the work by Comeau *et al.* (2010) on pteropods. Drawing inferences based upon effects on pteropods is inappropriate because pteropods are not corals (they are mollusks), belong to an entirely different phylum of animals, and unlike corals are generally free-swimming and pelagic. Similarly, the petition states that shifting currents as the result of climate change may limit nutrients available to the petitioned species. The petition presents no evidence that currents in the areas of the petitioned corals may shift, and no scientific information is available regarding the role water currents play in delivering nutrients to the petitioned taxa. Rather, the petition provides citations from the tropical coral

literature (Coma *et al.*, 2009; Donner, 2009) that are not applicable to cold water corals. The petition states that global climate change and ocean acidification will impair biological and ecological functions of cold water corals, degrade habitat, and actively erode existing coral colonies, yet cites the work by Orr *et al.* (2005) on pteropods and the review by Hoffman *et al.* (2010) which does not provide any direct evidence to support the statement. The Hoffman paper reviews ocean acidification literature for "the responses of key marine calcifiers at the organismal level and extend[s] these observations, where possible, to potential outcomes at the ecosystem level." The review does not provide new information on the petitioned corals, but does state that "some deep-living corals may resist dissolution because tissues protect their carbonate skeletons."

The petition also states that "the petitioned coral species are under severe, pervasive and growing threats from * * * ocean acidification and climate change" and again cites Hofmann *et al.* (2010). Hofmann *et al.* (2010), however, does not mention any of the petitioned corals but rather only specifically discusses the colonial scleractinian, *L. pertusa*, from the North Atlantic Ocean. As noted above, *L. pertusa* is a very different species from the petitioned taxa and we find no basis to infer that the petitioned corals would respond similarly to ocean acidification or climate change. To the contrary, extensive observations made in situ during the last decade indicate that corals in Alaska (including many of the petitioned species) are thriving at depths well below the saturation horizons in the Aleutian Islands (Stone, 2006; Heifetz *et al.*, 2007). Additionally, all stylasterids and octocorals (including all of the petitioned taxa) have external tissue that would insulate the skeleton from acidic water, so they may not be as susceptible to the effects of corrosive seawater as other organisms that lack this tissue coverage (Rudolfo-Metalpa, 2011). In summary, while corals in other parts of the world have come under pressure, including from the effects of climate change and ocean acidification, the little information that exists regarding the petitioned cold water corals is too insubstantial to indicate that they may be threatened by the effects of climate change and ocean acidification.

The information presented in the petition on threats from commercial fishing describes how fishing gear could affect corals, but it understates the degree of conservation provided by the

suite of management measures taken since 2005 to protect corals and other sensitive sea floor habitats in Alaska, which greatly alleviate these threats. On June 28, 2006, NMFS finalized regulations to minimize the effects of fishing on Essential Fish Habitat, including substantial new measures to address concerns about the impacts of bottom trawling on benthic habitat (particularly on coral communities) in the Aleutian Islands and Gulf of Alaska (71 FR 36694). The regulations established the Aleutian Islands Habitat Conservation Area (AIHCA) to prohibit all bottom trawling in the Aleutians outside the historical footprint of the fishery. Over 95 percent of the management area (277,100 square nautical miles (nm^2)) and 60 percent of “fishable depths” are closed to bottom trawling. Additionally, the regulations established six Aleutian Islands Coral Habitat Protection Areas totaling 110 nm^2 with especially high density coral and sponge habitat that were closed to all bottom-contact fishing gear (nonpelagic trawl, dredge, dinglebar, pot, and hook-and-line). The regulations also identified 16 seamounts (mostly in the Gulf of Alaska) as Habitat Protection Areas and similarly closed them to all bottom contact fishing to protect corals and other habitat features. The same regulations closed 10 Gulf of Alaska Slope Habitat Conservation Areas totaling 2,086 nm^2 to bottom trawling and closed 5 Gulf of Alaska Coral Habitat Protection Areas totaling 13.5 nm^2 to all bottom contact fishing. Other substantial closures in the Aleutian Islands, such as the Steller Sea Lion protection measures, further limit the areas open to bottom trawling and therefore protect coral habitat. Preliminary GIS analysis of the NMFS trawl survey data show that in the Aleutian Islands, 30 percent of coral records are located in the AICHA alone, which is closed to bottom trawling. NMFS has also conducted cooperative research with the fishing industry, resulting in gear modifications to trawl sweeps that have been shown to reduce the effects of non-pelagic trawls on benthic invertebrates in the Bering Sea and Gulf of Alaska.

The petition suggests that corals in the Bering Sea canyons remain unprotected from the effects of fishing and asserts that such corals are therefore vulnerable. In 2006 and 2007, the North Pacific Fishery Management Council considered protection measures for submarine canyons but ultimately postponed taking action because scientific information was not available to establish the dependence of managed

fish species on habitat features of the canyons. A 2007 expedition to Zhemchug and Pribilof Canyons led to publication of a paper with new information (Miller *et al.*, 2012). In April 2012 the Council requested that NMFS review and summarize existing and new information on the canyons, their habitat, and fish associations in those areas to assist the Council in determining whether any potential future management actions are warranted. The analysis will include the coral species in the canyons, but there is no indication at this time that corals, including the few petitioned species that are found there, face risks from commercial fishing that may warrant listing the species as threatened or endangered.

With regard to increased shipping and tourism traffic and oil spills that may accompany such increases, the petition asserts that the risk of spills will intensify over time. According to the petition, most traffic to the Bering Sea and Arctic transits Unimak Pass, thereby placing corals in the Aleutian Islands, Bering Sea, and Gulf of Alaska at risk. NOAA has developed the General NOAA Oil Model Environment (GNOME) model to predict the trajectory and weathering of oil spills. Winds, currents, tides, and climatology can all be used as inputs. However, this is a surface trajectory model and a vertical mixing component is not available. Data on currents in the Aleutian Islands are general at best, and the petition’s assertion that the “currents would therefore be likely to transport oily water to cold water coral sites” is unsupported, as there is no research to suggest a mechanism for “likely” transport of oil. Deep water flowing north in the Pacific Ocean encounters the Aleutian Trench where it is forced up onto the Aleutian Trench and into the Bering Sea through the many island passes (Johnson, 2003). Woodby *et al.* (2009) attempted to include currents in modeling coral distribution in the Aleutian Islands, but stated “reliable and high resolution current data were not available for model development due to the general lack of current observations in the central Aleutian Islands.” This statement is true throughout the Aleutians Islands and Alaska. Suchanek (1993) analyzed spill responses in tidal and subtidal environments and included hermatypic corals; however, mechanisms for transport of oil components to depths typical of the petitioned species in Alaska are not discussed. Information presented in the petition related to the Deepwater

Horizon oil spill in the Gulf of Mexico and the effects of oil on Gulf of Mexico deep water corals is not directly relevant in Alaska as the Deepwater Horizon spill occurred at a depth of 1,259 m in an environment vastly different than the Aleutian Islands or other Alaskan waters. Fewer than a dozen exploratory wells have been drilled (and subsequently abandoned) in deep (≤ 100 m) central Bering Sea waters, and there has been no exploratory activity in the Aleutian Islands. No wells have been developed for production and no platforms exist. There is a moratorium on exploration in Bristol Bay until at least 2017. In the Arctic, several wells exist; however, most are developed through human-made drilling islands in shallow water (< 15 m). Exploration in the Chukchi Sea in 2012 was conducted in 50 m of water.

The petition cites recent discoveries of corals in the Chukchi Sea as examples of corals at risk from oil exploration and development. However, the species encountered in that instance was a soft coral, *Gersemia rubiformis*, which is not included in the petition. The petition states that “the density and coverage of cold water corals at the drill site were similar to those observed in tropical coral reefs,” citing a Washington Post newspaper article (Eilperin, 2012), yet the cited article presents no such conclusion. Based on information in our files, the petitioned coral species do not occur north of approximately the Pribilof Islands in the Bering Sea, approximately 600 miles (966 km) south of the site of proposed oil exploration drilling in the Chukchi Sea. The petition does not present substantial information on possible threats from oil exploration or development to the petitioned species in Alaska.

Beginning in 2012, NMFS implemented a 3 year field research program in Alaska as part of NOAA’s Deep Sea Coral Research and Technology Program, which may help to answer some of the unknown questions with regard to corals in Alaska. The goals of the program are to better understand the location, distribution, ecosystem role, and status of deep-sea coral and sponge habitats. Research priorities include determining the distribution, abundance and diversity of deep-sea corals and sponges (and their distribution relative to fishing activity); compiling and interpreting habitat and substrate maps; determining associations of commercially important fish species (especially juveniles) with deep-sea coral and sponge habitats and the contribution of those habitats to

fisheries production; determining the impacts of fishing gears and testing gear modifications to reduce any impacts; determining recovery rates of deep-sea coral and sponge communities from physical disturbance; and establishing a long-term monitoring program to determine the potential effects of climate change and ocean acidification on deep-sea coral and sponge ecosystems. Additionally, NOAA's Ocean Acidification Program is currently analyzing the carbonate mineralogy of Alaskan corals. The mineralogy data will be used in conjunction with species distribution data (depth and geographical) and the present and projected aragonite and calcite saturation horizons in Alaska to predict the effects of ocean acidification on coral resources of the North Pacific Ocean.

Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. We find that the petition does not present substantial information indicating that the requested listing actions may be warranted for any of the 44 petitioned species.

Per 50 CFR 424.14(b)(2)(1), the petition clearly requests that NMFS list 44 taxa of corals as threatened or endangered under the ESA and provides the scientific names for each taxon.

Per 50 CFR 424.14(b)(2)(2), the petition provides a narrative justification for listing but does not present information on the past or present numbers or relative abundance of the petitioned taxa and provides scant information on their distribution. Based on information from the NMFS trawl surveys, the published literature, and museum records, at least 17 of the petitioned taxa have a broader depth and geographical distribution than reported in the petition. Of the 44 petitioned taxa, 22 are new to science in the past decade and have very few recorded observations, and the remaining 22 have been recorded opportunistically as bycatch in fish surveys that are not designed to sample corals. Systematic surveys have not been conducted to assess the distribution, abundance, or population trends for any of the petitioned corals, providing no basis to assess their status. We conclude that too little survey data exist to lead a reasonable person to conclude that the small number of documented occurrences of the petitioned taxa may equate to a risk of extinction due to low population size, either now or in the foreseeable future.

Per 50 CFR 424.14(b)(2)(3), the petition provides little information regarding the status of the species. We have somewhat more information including observations from bycatch in NMFS trawl surveys, but systematic surveys for these corals have not been undertaken. At least 17 of the petitioned taxa have a wider distribution than is reflected in the petition. The threats cited in the petition are ocean warming, ocean acidification, commercial fisheries, oil spills, and oil and gas exploration and development. Information presented in the petition regarding the effects of climate change and ocean acidification on the petitioned taxa is too tenuous or unsupported. Also, information in our files and the published literature (discussed above) suggests that certain corals off Alaska might be more resilient to the effects of ocean acidification than the petition implies, leading us to conclude that there is not substantial information that would lead a reasonable person to believe that the petitioned corals may be threatened with extinction due to the effects of climate change and ocean acidification, either now or in the foreseeable future. Regarding commercial fisheries, the petition discusses general threats from trawling and other bottom contact fishing but fails to provide a complete description of the protective measures that NMFS has implemented, particularly since 2006, to protect extensive areas of sea floor habitat off Alaska; many of the measures were expressly designed to protect corals. While some of the petitioned taxa may well exist in areas that remain open to bottom-contact fishing, due to the extensive fishery restrictions in place to protect coral habitats and the reasonable inference that the petitioned taxa likely have a wider distribution than has yet been documented in the limited surveys conducted to date, we find insufficient information to lead a reasonable person to believe that such fishing threatens those corals with extinction, either now or in the foreseeable future. Regarding oil spills and oil exploration and development, the petition discusses increasing human activity that may result in an increased risk of spills, but does not present substantial information suggesting that the petitioned corals will face exposure to spilled oil that would present a risk of extinction.

Per 50 CFR 424.14(b)(2)(4), the petition includes references and maps, although as noted above, we conclude that overall the petition does not provide substantial information to support its conclusions, and the maps

do not accurately reflect the known distribution of the petitioned taxa (acknowledging that even the known distribution is likely not the complete distribution, since comprehensive surveys have not been undertaken).

References Cited

A complete list of all references 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: February 8, 2013.

Samuel D. Rauch III,

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

[FR Doc. 2013-03475 Filed 2-13-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Final Management Plan and Environmental Assessment for Monitor National Marine Sanctuary: Notice of Public Availability

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public availability.

SUMMARY: NOAA is releasing the final management plan and environmental assessment for Monitor National Marine Sanctuary.

DATE: The final management plan and environmental assessment for Monitor National Marine Sanctuary is now available.

ADDRESSES: To obtain a copy of the final management plan and environmental assessment, contact the Management Plan Review Coordinator, Monitor National Marine Sanctuary, 100 Museum Drive, Newport News, VA 23606; (757) 591-7328; or via email at Monitor@noaa.gov. Copies can also be downloaded from the Monitor National Marine Sanctuary (MNMS) Web site at <http://monitor.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:
Shannon Ricles at (757) 591-7328.

SUPPLEMENTARY INFORMATION:

I. Background Information

On January 30, 1975, the National Oceanic and Atmospheric

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 680**

[Docket No. 110207108-2709-01]

RIN 0648-BA82

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 41 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). If approved, these regulations will amend the Bering Sea/Aleutian Islands Crab Rationalization Program (CR Program) by establishing a process whereby holders of regionally designated individual fishing quota (IFQ) and individual processor quota (IPQ) in six CR Program fisheries may receive an exemption from regional delivery requirements in the North or South Region. The six CR Program fisheries are Bristol Bay red king crab, Bering Sea snow crab, Saint Matthew Island blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, and Pribilof Islands red and blue king crab. Current regulations require that a portion of crab harvested in these fisheries be delivered and processed within the boundaries of the North or South Region. This action is necessary to mitigate disruptions in a CR Program fishery that prevent participants from complying with regional delivery requirements. This proposed action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Written comments must be received no later than 5:00 p.m. Alaska local time (A.l.t.) March 1, 2013.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2011-0032, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2011-0032 in

the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on that line.

- **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.
- **Mail:** Address 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.

• **Hand delivery to the Federal Building:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 41 to the FMP, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), and the Categorical Exclusion prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Impact Statement (EIS), RIR, and Social Impact Assessment prepared for the CR Program are available 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; emailed to OIRA_Submission@omb.eop.gov or faxed to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907-586-7228.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

NMFS published the final rule to implement the CR Program, Amendments 18 and 19 to the FMP, on March 2, 2005 (70 FR 10174). Regulations implementing the FMP and all amendments to the CR Program are at 50 CFR part 680.

The CR Program is a catch share program for nine BSAI crab fisheries that allocates those resources among harvesters, processors, and coastal communities. Under the CR Program, NMFS issued quota share (QS) to eligible harvesters based on their participation during a set of qualifying years in one or more of the nine CR Program fisheries. QS is an exclusive, revocable privilege allowing the holder to harvest a specific percentage of the annual total allowable catch (TAC) in a CR Program fishery.

A QS holder's annual allocation, called IFQ, is expressed in pounds and is based on the amount of QS held in relation to the total QS pool for that fishery. NMFS issues IFQ in three classes: Class A IFQ, Class B IFQ, and Class C IFQ. Three percent of IFQ is issued as Class C IFQ for captains and crew. Of the remaining IFQ, 90 percent is Class A IFQ and 10 percent is Class B IFQ.

NMFS issued processor quota share (PQS) to qualified individuals and entities based on processing activities in CR Program fisheries during a period of qualifying years. PQS is an exclusive, revocable privilege to receive deliveries of a fixed percentage of the annual TAC from a CR Program fishery. A PQS holder's annual allocation is individual processing quota (IPQ). NMFS issues IPQ at a one-to-one correlation between the amount of IPQ and Class A IFQ issued for each CR Program fishery. Class A IFQ must be delivered to a processor holding a matching amount of IPQ; Class C IFQ and Class B IFQ may be delivered to any registered crab receiver.

Regional Delivery Requirements

The CR Program established regional delivery requirements to preserve the

historic geographic distribution of deliveries in the crab fisheries. NMFS assigned a regional designation to QS and PQS for seven of the nine CR Program fisheries. Regional designations of QS and PQS are described, respectively, in § 680.40(b)(2) and (d)(2).

Amendment 41 and this proposed rule would apply to QS and PQS that have a regional designation for the North Region or South Region. NMFS assigned a North Region designation or a South Region designation to the QS and PQS in six CR Program fisheries: Bristol Bay red king crab, Bering Sea snow crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, Saint Matthew Island blue king crab, and Pribilof Islands red and blue king crab. The North Region is north of 54°20' N. latitude. The South Region is south of 54°20' N. latitude.

NMFS also assigned a West Region designation to a portion of the Western Aleutian Islands golden king crab QS and PQS; the remaining QS and PQS in that fishery is undesignated and may be delivered without regional limitation. Eastern Bering Sea Tanner crab QS and PQS, and Western Bering Sea Tanner crab fishery QS and PQS do not have a regional designation. Amendment 41 and this proposed rule would not apply to QS and PQS issued for these fisheries.

Class A IFQ has the same regional designation as the underlying QS. Class B IFQ and Class C IFQ do not have regional designations: the crab harvested under Class B IFQ or Class C IFQ can be delivered to any registered crab receiver. For Class A IFQ with a regional designation, CR Program regulations at § 680.7(a)(2) prohibit a processor from receiving crab in any region other than the region designated on the IFQ permit.

IPQ has the same regional designation as the underlying PQS. CR Program regulations at § 680.7(a)(4) prohibit the use of IPQ to process crab in any region other than the region designated on the IPQ permit.

Environmental or man-made conditions have created obstacles to regional deliveries in every year since implementation of the CR Program. Each year, icing conditions have been an obstacle to delivering crab harvested with North Region IFQ in the North Region. For an entire season, deliveries to a floating processor that served most of the North Region were prevented by a fire that disabled the processor. Whether a delivery is prevented depends on the circumstances, such as the spatial distribution and type of ice, the specific vessel, the location of the

vessel relative to the processing facility, the amount and condition of crab on board, and any factors affecting the willingness of the captain to wait for conditions to change.

Despite these circumstances, participants have met regional delivery requirements in all CR Program fisheries except Western Aleutian Islands golden king crab. Amendment 37, described below, addressed the problems in that fishery. In the North Region, IFQ holders have complied with regional delivery requirements by using their harvesting cooperatives to adjust the timing of crab harvests and using other available IFQ in lieu of North Region IFQ. Such ad hoc responses to severe weather conditions or other circumstances that restrict landings have enabled the participants in the North Region to meet regional delivery requirements; however, these measures have not provided long-term solutions that sufficiently address timeliness, safety, economic efficiency, and other factors.

Western Aleutian Islands golden king crab fishery had suffered from a chronic lack of processing capacity in the West Region. Amendment 37 to the FMP addressed the difficulties of IFQ and IPQ holders meeting the regional delivery requirement in this fishery. Under regulations implementing Amendment 37, eligible participants in the Western Aleutian Islands golden king crab fishery may enter into a contractual agreement and request that NMFS exempt them from regional delivery requirements for West Region Class A IFQ and corresponding IPQ. Upon approval of a completed application, NMFS will exempt holders of West Region Class A IFQ and corresponding IPQ from regional delivery requirements, thereby allowing eligible participants to deliver and receive crab at facilities outside of the West Region. Additional information on Amendment 37 is contained in the final rule (76 FR 35781, June 20, 2011).

Because the conditions that have impeded deliveries within the West Region (e.g., limited, or no, available processing capacity) differ from the conditions impeding deliveries in the North Region (e.g., icing conditions), the Council chose to develop Amendment 41 to respond to the specific delivery conditions in CR fisheries subject to North and South regional designations.

IPQ Use Caps

The CR Program has PQS and IPQ use caps. When the Council recommended the CR Program, it was concerned that excessive consolidation of PQS could reduce competition and reduce

processing in communities where processing had historically occurred. Therefore, the Council created limits on the total amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a single facility. For a complete discussion of the PQS and IPQ use caps, please see the proposed rule for the CR Program (69 FR 63200; October 29, 2004). As discussed below, this proposed rule modifies the CR Program use caps so that NMFS would not count crab delivered pursuant to an exemption toward those caps. This change is necessary to allow IPQ holders and facilities to accept crab for delivery and processing once the crab is subject to an exemption from the regional delivery requirements.

Amendment 41

The Council adopted Amendment 41 to the FMP at its December 2010 meeting. Amendment 41 would promote the safety of human life at sea and mitigate economic harm by allowing participants to receive an exemption from regional delivery requirements in situations where events prevent participants from delivering crab harvested with North Region IFQ in the North Region or South Region IFQ in the South Region.

In recommending Amendment 41, the Council recognized that weather conditions or other natural or man-made circumstances can hinder harvesting activities and restrict access to processing facilities in the North or South Region. Natural or man-made catastrophes could result in lost revenue to harvesters, processors, and communities. Safety risks increase when harvesters attempt to meet regional delivery requirements in inclement weather (e.g., icing conditions) and other potentially unsafe situations. Unforeseen delays in delivering crab could result in deadloss (crab that die before being processed). Harvesters may avoid or delay the harvest of regionally designated IFQ, thereby increasing the potential for unharvested crab or crab harvested later in the fishing season than would have been otherwise required for a given TAC level. Such changes in fishing behavior could result in unused IPQ, increased processing cost, loss of market share, and loss of revenue to remote communities dependent on revenues from crab deliveries and processing.

The Council recognized that the purpose of prohibiting holders of regionally designated Class A IFQ and IPQ from delivering and processing crab outside the designated region is to ensure that each region retains the

economic benefits from deliveries within the region. Therefore, under Amendment 41, the Council recommended an exemption process in which deliveries of regionally designated Class A IFQ outside the region would need to be negotiated among IFQ holders, IPQ holders, and representatives of affected communities. The Council also recognized that any exemption must include requirements for IFQ holders and IPQ holders to make efforts to avoid the need for an exemption and, if an exemption is needed, to limit the amount of IFQ and IPQ that would be subject to an exemption. The Council recommended a process that supports the existing regional delivery requirements while establishing a process to mitigate disruptions in a CR Program fishery that restrict the ability of participants to comply with the delivery requirements.

The Council also recognized the potential for insurmountable administrative difficulties if NMFS specified the conditions for granting an exemption and then determined whether those conditions existed in a particular situation. Therefore, the Council recommended a system of civil contracts among harvesters, processors, and community representatives as the means of establishing the exemption from the regional delivery requirements.

Under Amendment 41, the parties—Class A IFQ holders, IPQ holders, and affected communities—would develop private contractual arrangements that specify when, and under what terms, they could request and receive an exemption from regional delivery requirements in the North or South Region. The contract terms would not be established in the FMP or in regulation. The parties would enter into two private contractual arrangements—a preseason framework agreement and an inseason exemption contract—before the specified IFQ and IPQ would be exempt from the regional delivery requirements. These contracts would govern the roles and responsibilities of the parties to the contract and would establish each party's specific obligations. The goal is that, through the framework agreement process, before the crab season, the parties would plan for adverse conditions and would agree to take actions to reduce the need for an exemption. Then, in the event that these actions were unsuccessful in averting the need for an exemption, the parties would execute an exemption contract. The parties would notify NMFS and certify that they had executed an exemption contract as required by the regulation. The exemption would go into effect the day after NMFS receives

the inseason notice. If any party to a framework agreement or exemption contract believes that any other party did not comply with their contractual obligation, that party could seek redress as a private civil matter.

Overall, the exemption process in the proposed rule seeks to allow fishery participants to respond to an emergency situation during the crab fishing season in accord with ground rules that they themselves established before the season.

Amendment 41 and this proposed rule do not prescribe specific conditions or terms of agreement for the framework agreement or exemption contract. But the Council's Statement of Council Intent should guide the parties in establishing the required contracts. Additionally, section 2.4.2 of the RIR for this action provides background about the range of private arrangements that the Council considered and that the parties could put in the framework agreement and the exemption contract.

The following Statement of Council Intent was included in the Council's December 2010 motion:

The Council intends that exemptions will be developed by agreement of the holders of Class A IFQ, holders of IPQ, and regional/ community representatives. For emergency events of less than 2 million pounds in the aggregate, compensatory deliveries offer the opportunity to restore the landings to a region that are intended in current regulations; therefore no party should unreasonably withhold their agreement or unreasonably restrict the industry's ability to respond to those events. A prerequisite to an exemption will be that the parties have entered a nonbinding framework agreement. It is the Council's intent that this framework agreement will define certain terms of the exemption, including mitigation requirements and a range of terms of compensation, and that the exemption contract describes the conditions under which the exemption is being or would be requested, including mitigation requirements and terms of compensation specific to the exemption being sought. Mitigation would be intended to mitigate the effects on parties that might suffer some loss because of the granting of an exemption. Compensation would be intended to compensate parties for losses arising from the exemption. All framework agreements are expected to contain provisions for a reserve pool. A reserve pool would be intended to provide industry wide, civil contract based delivery relief without regulatory or administrative intervention. Specifically, a reserve pool would be an agreement among holders of IFQ to certain arrangements in the use of their IFQ to reduce the need for exemptions from the regional landing requirement. It is believed that an effective reserve pool must (1) commit each participant in the pool to be bound by its rules; and (2) include not less than 70% of the Class A IFQ held by:

(a) unaffiliated cooperatives and unaffiliated IFQ holders not in a cooperative, in the aggregate; or

(b) affiliated cooperatives and affiliated IFQ holders not in a cooperative, in the aggregate.

Allowing several IFQ holders, IPQ holders, and community/regional entities to be a party to the same framework agreement is intended to streamline negotiations, facilitate the use of reserve pools, and allow for the incorporation of compensatory deliveries (should the parties believe compensating deliveries are appropriate). If an exemption is needed for compensatory deliveries, the process for receiving that exemption shall be the same as the process of affidavits used to make any other exempt deliveries under this action.

The framework agreement would define the steps that the parties would take prior to the crab fishing season to reduce the need for, and amount of, an exemption during the crab fishing year. A framework agreement could include an agreement among IFQ holders, whereby they aggregate a certain percentage of their IFQ to address inseason factors that could otherwise prevent compliance with regional delivery requirements. For example, the framework agreement could prioritize the harvest of North Region Class A IFQ while setting aside a portion of South Region Class A IFQ until the North Region Class A IFQ has been harvested and delivered to matching North Region IPQ. The framework agreement would also address the circumstances that would trigger an exemption. If those circumstances occurred, the framework agreement would describe the steps that the parties would take to mitigate the adverse effects of the exemption. The framework agreement might include steps to compensate the community that was losing the processing, the economic activity from the processing, and the tax revenues from the processing.

However, the Council did not recommend, and this proposed rule does not include, any terms that the parties must include in their framework agreement or exemption contract. The parties to the agreements would determine those terms.

The Proposed Rule

This proposed rule would establish a process by which IFQ holders, IPQ holders, and affected communities could jointly apply for and receive an exemption from regional delivery requirements. This proposed rule would apply to the following crab fisheries: Bristol Bay red king crab, Bering Sea snow crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, Saint Matthew

Island blue king crab, and Pribilof Islands red and blue king crab.

This proposed rule would implement a two-step process for an exemption from regional delivery requirements: A preseason application and an inseason notice of exemption. Both parts of the application would be on one form: the Application for Exemption from CR Crab Regional Delivery Requirements. This application process would allow the parties to apply for an exemption from the regional delivery requirements without extensive administrative review by NMFS. Under this proposed rule, both the preseason application and the inseason notice must be signed by one or more members of the following three groups: (1) Holders of Class A IFQ in a CR Program fishery subject to this proposed rule; (2) holders of the IPQ in a CR Program fishery subject to this proposed rule; and (3) a representative of the affected community.

Preseason Application Process

The preseason application process itself has two parts: (1) The development of a framework agreement by the parties; and (2) the submission of a preseason application to NMFS. During the first part of the preseason process, Class A IFQ holders, IPQ holders, and representatives from affected communities could choose to work together to establish a framework agreement for that crab fishing year. The framework agreement is intended to provide participants in the crab fishery with the flexibility to prepare for, and agree upon, certain aspects of an exemption prior to the start of the crab fishing season. This proposed rule would not require fishery participants to enter a framework agreement; however, a framework agreement would be required for fishery participants to obtain an exemption from the regional delivery requirements in that crab fishing year.

Developing the provisions of a framework agreement preseason should prevent the parties from seeking an exemption for simple convenience as well as provide several benefits to the parties. First, agreement of all parties to a framework agreement should streamline the process for seeking an exemption from the regional delivery requirements inseason. A framework agreement would provide a means for IFQ holders and IPQ holders to quickly obtain an inseason exemption from the regional delivery requirement. Second, the framework agreement could prevent a party or parties from imposing unreasonable terms in the event that an exemption is needed. For example, absent a preseason agreement, an IFQ

holder who is hampered from making a landing due to unsafe icing conditions could potentially be at a disadvantage when negotiating terms of the exemption.

Once the parties establish a framework agreement, the parties would submit the preseason application. A completed preseason application must be received by NMFS by October 15 of the crab fishing year for which the applicants may need an exemption. October 15 is the opening date of the fishing season established by the Alaska Department of Fish and Game for five of the six CR Program fisheries subject to this proposed rule. NMFS notes that the October 15 application deadline is after the August 15 opening of the Eastern Aleutian Islands golden king crab fishery season. However, participants in any of the crab fisheries subject to this rule could submit their application before October 15. Specifically, the participants in the Eastern Aleutian Islands golden king crab fishery could submit their preseason application before August 15.

The applicants would be responsible for ensuring that NMFS receives a complete application package. A complete preseason application would identify the CR program fishery for which the applicants are seeking an exemption. A complete preseason application must be signed by the holders of the IFQ and IPQ that are the subject of the preseason application and by the community representative.

A preseason application also includes an affidavit that the parties submitting the preseason application have signed a framework agreement that: (1) Specifies the CR crab fisheries that are the subject of the framework agreement; (2) specifies the actions that the parties will take to reduce the need for, and the amount of, an exemption; (3) specifies the circumstances under which the parties would execute an exemption contract and receive an exemption; (4) specifies the actions that the parties would take to mitigate the effects of an exemption; (5) specifies the compensation, if any, that any party would provide to any other party; and (6) affirms that the required parties have signed the framework agreement. The parties may include any other mutually agreeable terms in the framework agreement.

NMFS would review each preseason application. If a preseason application was timely and complete, NMFS would approve the application. If a preseason application was not received by October 15, NMFS would deny the application. If NMFS denied a preseason application for any reason, those applicants would

not be eligible for an exemption from regional delivery requirements during the crab fishing year. However, the applicants would have the right to appeal the denial.

If NMFS approves a preseason application, the applicants who submitted the preseason application could make a delivery out-of-region during the crab fishing year if, before the delivery, the applicants took two actions that are specified in the regulation: (1) The applicants executed an exemption contract; and (2) the applicants submitted an inseason notice to NMFS that they are exercising the exemption.

The preseason application process in the proposed rule is consistent with the Council's intent that NMFS only determine whether the applicants have certified to NMFS that they have signed a framework agreement that contains the required elements. The preseason application process would allow the parties themselves to establish the terms of the framework agreement. The preseason application process would allow the affected parties to enter the fishing season knowing the steps that the parties would take to avoid an exemption, the circumstances that would trigger an exemption, the steps they would need to take to obtain an exemption, and any mutually-agreed upon compensatory actions that the parties would take as a result of exercising the exemption.

Inseason Process

If parties to an approved preseason application conclude during the crab fishing year that circumstances have occurred that justify an inseason exemption under the framework agreement, those applicants must do two things to obtain an exemption. They must enter into an exemption contract with each other and they must jointly submit an inseason notice of the exemption to NMFS.

First, the exemption contract: the proposed rule specifies that the parties to an exemption contract must be, at a minimum, one IFQ holder, one IPQ holder, and the representative of the affected community. The parties to an exemption contract may be multiple IFQ holders, IPQ holders, and one or more community representatives. The proposed rule also specifies subjects that must be addressed in the exemption contract: (1) The IFQ amount and IPQ amount, by crab fishery, that is subject to the exemption contract; (2) the circumstances under which the parties are exercising the exemption; (3) the actions that the parties must take to mitigate the effects of the exemption; (4)

the compensation, if any, that any party must make to any other party; (5) whether all required parties have signed the exemption contract. The parties may include any other mutually agreeable terms in the exemption contract.

Second, an inseason notice to NMFS: after the parties execute an exemption contract, the parties would jointly submit an inseason notice to NMFS. The parties would certify to NMFS that the required parties are submitting the inseason notice, namely the holders of the IFQ and IPQ that is the subject of the inseason notice and the community representative eligible to submit an inseason notice of exemption for this IFQ and IPQ. The parties would also certify to NMFS that they have signed an exemption contract that addresses the mandatory subjects in the contract. Each applicant would affirm that all information and claims in the inseason notice are true, correct and complete.

If the parties submit a complete inseason notice to NMFS, the exemption would automatically go into effect the day after submission. The exemption would be in effect only for the IFQ and IPQ specified on the inseason notice. NMFS would post the effective date of the exemption on the NMFS Alaska Region Web site.

Once an exemption is effective, crab harvested with the IFQ specified on the notice could be delivered outside the designated region (North or South) during the rest of the crab fishing year. Once an exemption is effective, crab processed with the IPQ specified on the notice could be processed outside the designated region during the rest of the crab fishing year. Deliveries of crab out-of-region that are not allowed by an exemption would continue to be fishery violations. The regulation has no limit on the number of times in a crab fishing year that applicants with an approved preseason application could submit an inseason notice of an exemption.

The exemption process under Amendment 41 for the North and South Region differs from the exemption process under Amendment 37 for the West Region in four ways. First, under Amendment 37, any person that holds more than 20 percent of the West Region QS or West Region PQS in the Western Aleutian Islands golden king crab fishery must be a party to any request for an exemption from the regional delivery requirements. Persons holding 20 percent or less of either share type have no direct input into the contract negotiations or application. Under Amendment 41, each IFQ holder and each IPQ applies for an exemption. It does not matter how much IFO and IPQ an applicant holds.

Second, an exemption granted under Amendment 37 applies to all West Region IFQ and West Region IPQ in the Western Aleutian Islands golden king crab fishery. Under Amendment 41, an exemption only applies to the IFQ and IPQ that is the subject of a preseason application and an inseason notice.

Third, under Amendment 37, only the IFQ holders and IPQ holders apply for an exemption. Under Amendment 41, the affected community would also apply for an exemption.

Finally, Amendment 37 has only a preseason application and, although the applicants must have entered into a master contract, the regulation does not specify subjects that must be addressed in the contract. Under Amendment 41, the parties enter into both a preseason framework contract and an inseason exemption contract and the regulation specifies subjects that must be addressed in both contracts.

Community Representatives

This proposed rule gives affected communities a role in the exemption process. The proposed rule would require that a representative of the affected community sign the framework agreement, the preseason application, the exemption contract, and the inseason notice. An affected community is the community that holds the Right of First Refusal (ROFR) on designated PQS. In communities holding or formerly holding the Right of First Refusal (ROFR) on designated PQS, the community representative would be the established non-profit eligible crab community (ECC) entity, defined at § 680.2. All these communities have designated EEC entities that NMFS has approved. For the communities of Saint Paul, Saint George, False Pass, and Akutan, the EEC entity is the local Community Development Quota (CDQ) group. For Unalaska, Port Moller, King Cove, and Kodiak, the ECC entity is designated by the municipal government.

NMFS also issued a portion of the PQS for the Bering Sea snow crab fishery and the Saint Matthew Island blue king crab fishery without a ROFR designation (non-ROFR PQS). Saint Paul and Saint George are the only two communities in the North Region that have historically received and processed Bering Sea snow crab and Saint Matthew Island blue king crab. Therefore, they would be the affected communities for the purposes of an exemption from the regional delivery requirements. The Council recommended that the CDQ entities representing Saint Paul (Central Bering Sea Fishermen's Association or CBSFA)

and Saint George (Aleutian Pribilof Island Community Development Association or APICDA) select a single community representative to sign on their behalf, the framework agreement, the preseason application, the exemption contract, and the inseason notice for this non-ROFR PQS. The Council recommended one community representative for non-ROFR PQS to reduce the potential for additional administrative burden that may arise if representatives of both APICDA and CBSFA were required to sign these documents.

Under this proposed rule, APICDA and CBSFA would have 180 days from the effective date of the final rule to inform NMFS in writing that they have designated a single community representative responsible for signing the framework agreement, the preseason application, the exemption contract, and the inseason notice. After publication of the final rule, NMFS would notify APICDA and CBSFA of the deadline to designate a single community representative and provide instructions for informing NMFS of the community representative. The 180-day window should provide adequate time for the two CDQ entities to coordinate their recommendation but not create an undue delay.

The Council did not specify what would happen if APICDA and CBSFA do not designate a single community representative or if they want to revoke a designation in the future. NMFS therefore proposes that if APICDA and CBSFA do not designate a community representative to NMFS by the deadline, then both APICDA and CBSFA would need to sign the documents for the applicable North Region non-ROFR PQS. This provision ensures that both CDQ entities would participate in reaching these agreements if they did not designate a single community representative.

Additionally, NMFS proposes that APICDA or CBSFA may revoke its designation of a community representative by providing written notice to the other entity and to NMFS. If either APICDA or CBSFA revokes its designation of a community representative, then both APICDA and CBSFA would need to sign all documents related to the exemption: the framework agreement, the preseason application, the exemption contract, and the inseason notice. However, if APICDA or CBSFA revoke its designation after October 15, the revocation will not affect the validity of any action taken by the designated community representative pursuant to § 680.4(p) for that crab fishing year.

IPQ Use Caps

This proposed rule would not change existing IPQ use caps; however, it would add exemptions from IPQ use caps when NMFS approves an exemption from the regional delivery requirements. The CR Program at § 680.42(b) limits the amount of IPQ that a single person may hold. Under the proposed rule at § 680.42(b)(7), NMFS would not count crab processed outside the designated region pursuant to an exemption against this limit.

The CR Program at § 680.42(b) also limits how much IPQ an individual facility may use or process. Under the proposed rule at § 680.42(b)(8), NMFS would not count crab processed outside the designated region under an exemption toward the IPQ use cap of the processing facility. It is likely that a facility would likely process crab from outside the designated region through a custom processing arrangement. The receiving processor would likely have little notice to prepare for the delivery. An exemption from the IPQ use caps would help to ensure that a facility would not refuse delivery of the crab to avoid exceeding the facility's IPQ use cap.

NMFS notes that IPQ holders would continue to be subject to the IPQ use caps for all processing that does not occur through an exemption from the regional delivery requirements.

Regional Delivery Exemption Report

This proposed rule includes a reporting requirement to provide NMFS and the Council with the means to assess the exemption in terms of the Council's Statement of Council Intent for Amendment 41. In a crab fishing year when an IFQ holder submits a preseason application for an exemption from the regional delivery requirements, the IFQ holder must also submit an annual Regional Delivery Exemption Report to NMFS by June 30 of that crab fishing year. The Council did not recommend a deadline for submitting the Regional Delivery Exemption Report. To reduce the burden on fishery participants, NMFS is proposing the June 30 deadline to correspond with the end of the crab fishing year and with the deadline for the Eligible Crab Community Organization Annual Report in § 680.5(f).

The proposed rule requires that before IFQ holders submit the Regional Delivery Exemption Report to NMFS, they submit a copy of the report to the community representatives and IPQ holders that also signed the preseason application. NMFS proposes a deadline of June 15 for IFQ holders to take this

action. In response to the IFQ holder's report, community representatives and IPQ holders may choose to submit, respectively, a Community Impact Report or IPQ Holder Report. These reports would offer community representatives and IPQ holders an opportunity to provide the Council and NMFS with their perspectives on the framework agreement and exemption contract and to provide an additional viewpoint to the Regional Delivery Exemption Report.

Under the proposed rule, the annual Regional Delivery Exemption Report must include the following: (1) The amount of IFQ, if any, set aside to reduce the need for, and to limit the extent, or amount of, the exemption; (2) the mitigation measures employed before submitting an inseason notice; (3) the number of times an exemption was requested and used; (4) whether the exemption was necessary; and (5) any impacts resulting from the exemption on the fishery participants and communities that signed the preseason application. NMFS is not proposing similar reporting requirements for the Community Impact Report or IPQ Holder Report because these reports are voluntary. The Regional Delivery Exemption Report, Community Impact Report, and the IPQ Holder Report will provide documentation and transparency needed by the Council and NMFS to evaluate the efficacy of privately administered contracts described in this action.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSEES**). The Council recommended Amendment 41 based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the initial regulatory flexibility analysis (IRFA) section.

Initial Regulatory Flexibility Analysis (IRFA)

An 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 proposed action, why it is being considered, and the legal basis for this proposed action are contained in the **SUPPLEMENTARY INFORMATION** section of the preamble and are not repeated here. A summary of the IRFA follows. Copies of the IRFA are available from NMFS (see **ADDRESSEES**).

The RIR/IRFA prepared for this proposed rule incorporates by reference an extensive RIR/IRFA prepared for Amendments 18 and 19 to the FMP that detailed the impacts of the CR Program on small entities.

Number and Description of Small Entities Regulated by the Proposed Action

The proposed rule would create a process whereby IFQ holders and IPQ holders who enter an agreement with an ECC entity or community representative may apply for and receive an exemption from regional delivery requirements. Estimates of the number of small entities holding IFQ are based on estimates of gross revenues. During the 2009–2010 fishing season, nine entities held IFQ subject to regional delivery requirements; three of these IFQ holders were small entities. In that same season, 14 of the 22 entities that held IPQ subject to regional delivery requirements were small entities. Six small community entities, including two CDQ entities, would be directly regulated by this action.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The Council considered two alternatives; status quo and the proposed action. The status quo is no exemption from the regional delivery requirements. The proposed action is an exemption from the regional delivery requirements. For the proposed action alternative, the Council considered a number of options to improve the functioning of the exemption and minimize adverse impacts on small entities. The Council also considered and eliminated from further considerations several alternatives that the Council determined would have limited the effectiveness of the exemption in achieving its intended purpose.

The analysis shows that the proposed action minimizes the adverse impacts

on small entities from the status quo. All of the directly regulated entities are expected to benefit from this action relative to the status quo alternative because the proposed rule would allow crab to be landed and processed outside the designated region if a circumstance occurs that the directly regulated entities agreed in advance prevents compliance with regional delivery requirements. Allowing for the exemption would potentially reduce deadloss, promote full utilization of the TAC, and improve safety at sea. It is unlikely that any party to the exemption would benefit more than any other because all applicants would have agreed, before the season, to the terms of mitigation and compensation.

The Council considered a number of options to improve the functioning of the exemption and minimize adverse impacts on small entities. The Council considered options that would allow communities benefiting from a ROFR to select a regional representative to act on their behalf rather than the ECC entity. The Council did not choose that option because of the potential difficulties that communities could encounter in selecting the regional representative and because of the additional administrative costs and burdens associated with this option. In addition to providing an expedited administrative process, the approach selected by the Council maintains the original intent of CR Program community protection measures in that it preserves community interests by providing not only a regional linkage for certain PQS, but also a close linkage between certain PQS and the community of origin for that PQS.

The Council also considered and eliminated from further consideration several alternatives during the development of Amendment 41. These alternatives are described in detail in Section 2.2.1 of the analysis for this action (see **ADDRESSES**). Generally, the Council perceived these alternatives as limiting the effectiveness of the exemption in achieving its intended purpose.

The Council considered and rejected alternatives in which NMFS would fully administer regional exemptions by determining whether specific conditions existed to qualify for an exemption from the regional delivery requirement. The Council did not advance these alternatives because the Council viewed them as overly expensive to administer and likely to prevent the exemption process from fulfilling its purpose as described in the Council's purpose and need statement for this action. The Council and NMFS recognized that the

necessary fact finding to make such a determination (e.g., that a specific amount of ice was prohibiting harvesting or delivery of crab in a specific location) would not only delay decision making, but could also be costly. Verification of conditions could be difficult or impracticable due to the remoteness of the location and poor quality of data available.

A factual finding would require NMFS to not only complete an assessment of the event that arguably prevents a delivery, but also of the potential availability of other processing facilities in the region to overcome the barrier to the delivery. These findings would require factual assessments of circumstances in remote areas. Such findings typically require time, which may jeopardize safety in emergencies, and information, which may not be available to NMFS. In addition, the need for administrative review of these findings could result in additional delays. Consequently, the Council elected to pursue alternatives that would not rely on agency administrative discretion. Instead, the affected parties would define the terms under which they would apply for and receive an exemption. This approach also allows the parties flexibility to develop mitigation and compensation requirements that would, in turn, minimize the need for the exemption and, if an exemption is necessary, ensure that the parties potentially harmed by the exemption receive reasonable compensation.

The Council also considered an alternative that would have defined specific exemption criteria in regulation; however, the Council eliminated this alternative because NMFS and the Council recognized that this approach might be overly restrictive and could not be adapted as circumstances might require. The Council also elected not to recommend an alternative that specifically defined compensation because the Council deemed this alternative too prescriptive to effectively balance the competing interests of parties, which are likely to change with the circumstances surrounding the granting of an exemption. Similarly, the Council chose not to advance alternatives that would redesignate IFQ and IPQ to compensate for landings redirected under the exemption because they would be administratively complex given the inability to rollover IFQ from one year to the next.

Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

Recordkeeping and Reporting Requirements

The reporting, recordkeeping, and other compliance requirements would be increased under the proposed rule if parties enter into the agreements and contracts required as part of a completed Application for Exemption from CR Crab Regional Delivery Requirements. This proposed rule adds recordkeeping and reporting requirements necessary to implement Amendment 41, namely submission, prior to the start of the fishing season, of an application and affidavit affirming that IFQ holders, IPQ holders, and community representatives have entered into a framework agreement. A second notice and affidavit affirming that those parties have entered into an exemption contract is required if the parties subject to the framework agreement wish to seek an exemption during the fishing season.

Participation in an Application for Exemption CR Crab Regional Delivery Requirements is voluntary, but would be necessary to deliver crab outside of a designated region when circumstances necessitate an exemption from the regional delivery requirements.

The professional skills necessary to comply with reporting and recordkeeping requirements for small entities impacted by this proposed rule include the ability to read, write, and understand English; the ability to use a personal computer and the Internet; and the authority to take actions on behalf of the designated signatory. Each of the small entities must be capable of complying with the requirements of this proposed rule. Each small entity should have financial resources to obtain additional legal or technical expertise that they might require to advise them concerning the framework agreement or the exemption contract.

IFQ holders that sign a preseason application must also prepare and submit an annual Regional Delivery Exemption Report to the NMFS by June 30. At least 2 weeks prior to submission of the Regional Delivery Exemption Report to NMFS, the IFQ holders must submit a copy of the report to the community representatives and IPQ holders that also signed the preseason application. In response to the Regional Delivery Exemption Report, community representatives may voluntarily submit

a Community Impact Report and IPQ holders may voluntarily submit an IPQ Holder Report.

Collection-of-Information Requirements

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control No. 0648-0514.

Public reporting burden per response is estimated to average 20 hours for the proposed Application for Exemption from CR Crab Regional Delivery Requirements; 5 hours for CDQ Notification of Representative; 20 hours to prepare the Regional Delivery Exemption Report; and 2 hours to complete the Community Impact Report or IPQ Holder Report.

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. Send comments on these, or any other aspects of the collection of information, to NMFS (see ADDRESSES) 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 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.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 25, 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 part 680 as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

- 1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109-241; Pub. L. 109-479.

- 2. In § 680.4, add paragraph (p) to read as follows:

§ 680.4 Permits.

* * * * *

(p) Exemption from regional delivery requirements for the Bristol Bay red king crab, Bering Sea snow crab, Saint Matthew Island blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, and Pribilof Islands red and blue king crab fisheries—

(1) *Apply for an exemption.* Eligible applicants may submit an application to exempt North Region IFQ and IPQ or South Region IFQ and IPQ from the prohibitions at §§ 680.7(a)(2) and (a)(4).

(2) *Identification of eligible applicants.* Eligible applicants are:

(i) *IFQ holders.* Any person holding regionally designated IFQ for Bristol Bay red king crab, Bering Sea snow crab, Saint Matthew Island blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, or Pribilof Islands red and blue king crab, or their authorized representative.

(ii) *IPQ holders.* Any person holding regionally designated IPQ for Bristol Bay red king crab, Bering Sea snow crab, Saint Matthew Island blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, or Pribilof Islands red and blue king crab, or their authorized representative.

(iii) *Community representatives.*

(A) For communities that hold or formerly held the ROFR pursuant to § 679.41(l) of this chapter, the community representative that signs the preseason application, the framework agreement, the inseason notice, and the exemption contract is the ECC entity, as defined at § 680.2.

(B) For North Region Saint Matthew blue king crab PQS and North Region Bering Sea snow crab PQS that was issued without a ROFR, the community representative that signs the preseason application, the framework agreement, the inseason notice, and the exemption contract for Saint Paul and Saint George shall be either:

(1) Both Aleutian Pribilof Islands Community Development Association (APICDA) and the Central Bering Sea Fishermen's Association (CBSFA), or

(2) The community representative that APICDA and CBSFA designate in writing to NMFS by [INSERT DATE 180 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

(i) Either APICDA or CBSFA may revoke the designated community representative by providing written notice to the other entity and to NMFS.

(ii) If either APICDA or CBSFA revokes its designation of a community representative after October 15 of a crab fishing year, the revocation will not affect the validity of any action taken by the designated community representative pursuant to this paragraph (p) for that crab fishing year, including signing the preseason application, the framework agreement, the inseason notice, and the exemption contract.

(3) *Required applicants.* Multiple parties may apply for an exemption; however, a complete preseason application and a complete inseason notice must be submitted by a minimum of one Class A IFQ holder, one IPQ holder, and one community representative.

(4) *Application for an exemption from the CR Program regional delivery requirements—*(i) *Application form.* The application form consists of two parts: A preseason application for exemption and an inseason notice of exemption. The application form is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>) or from NMFS at the address below. NMFS must receive both parts of the application form by one of the following methods:

(A) *Mail:* NMFS Regional Administrator, c/o Restricted Access Management Program, P.O. Box 21668, Juneau, AK 99802-1668; or

(B) *Fax:* 907-586-7354; or

(C) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(ii) *Part I: Preseason application—*

(A) A complete preseason application must be signed by the required applicants specified in paragraph (p)(3) of this section, contain the information specified on the form, have all applicable fields accurately completed, and have all required documentation attached.

(B) Each applicant must certify, through an affidavit, that the applicant has entered into a framework agreement that—

(1) Specifies the CR crab fisheries that are the subject of the framework agreement;

(2) Specifies the actions that the parties will take to reduce the need for, and amount of, an exemption;

(3) Specifies the circumstances that could be an obstacle to delivery or processing under which the parties would execute an exemption contract and receive an exemption;

(4) Specifies the actions that the parties would take to mitigate the effects of an exemption;

(5) Specifies the compensation, if any, that any party would provide to any other party; and

(6) Is signed by the holders of the IFQ and IPQ that are the subject of the framework agreement and by the community representative that is authorized to sign the framework agreement.

(C) Each applicant must sign and date the affidavit and affirm that, under penalty of perjury, the information and the claims provided on the application are true, correct, and complete.

(D) NMFS must receive the preseason application on or before October 15 of the crab fishing year for which the applicants are applying for an exemption.

(1) If a preseason application is submitted by mail, the date of receipt of the preseason application by NMFS will be the postmark date of the application;

(2) If an applicant disputes whether NMFS received a preseason application on or before October 15, the applicant must provide written documentation that was contemporaneous with NMFS's receipt of the application that NMFS received the application by October 15.

(E) If NMFS does not receive a timely and complete preseason application on or before October 15 of a crab fishing year, NMFS will deny the preseason application; those applicants will not be able to receive an exemption for that crab fishing year.

(F) If a preseason application is timely and complete, NMFS will approve the application. If NMFS approves a preseason application for an exemption, the applicants will be able to receive an exemption during the crab fishing year if the applicants comply with the requirements for an inseason notice of exemption specified below at paragraph (p)(4)(iii) of this section.

(G) If NMFS denies a preseason application for any reason, the applicants may appeal the denial pursuant to § 679.43 of this chapter.

(H) NMFS will notify all of the applicants whether NMFS has approved or denied the preseason application.

(iii) *Part II: Inseason notice of exemption—*

(A) A complete inseason notice must:

(1) Identify the IFQ amount and IPQ amount, by CR crab fishery, subject to the exemption;

(2) Contain the information specified on the form, have all applicable fields accurately completed, and have all required documentation attached; and

(3) Be signed by the required applicants specified in paragraph (p)(3) that also signed the preseason application.

(B) Each applicant must certify, through an affidavit, that the applicants have entered into an exemption contract that—

(1) Identifies the IFQ amount and IPQ amount, by CR crab fishery, is subject to the exemption contract;

(2) Describes the circumstances under which the exemption is being exercised;

(3) Specifies the action that the parties must take to mitigate the effects of the exemption;

(4) Specifies the compensation, if any, that any party must make to any other party; and

(5) Is signed by the holders of the IFQ and IPQ that are the subject of the exemption contract and by the community representative that is authorized to sign the exemption contract.

(C) Each applicant must sign and date the affidavit and affirm that, under penalty of perjury, the information and the claims provided on the notice are true, correct, and complete.

(D) NMFS must receive the inseason notice at least one day prior to the day on which the applicants want the exemption to take effect. If an inseason notice is submitted by mail, the date that NMFS receives the inseason notice is not the postmark date of the notice.

(E) The effective date of the exemption is the day after NMFS receives a complete inseason notice. Any delivery of North Region IFQ or South Region IFQ outside the designated region prior to the effective date of the exemption is prohibited under § 680.7(a)(2) and (a)(4). Any processing of North Region IPQ or South Region IPQ outside the designated region prior to the effective date of the exemption is prohibited under § 680.7(a)(2) and (a)(4).

(F) An exemption is effective for the remainder of the crab fishing year.

(5) *Regional delivery exemption report*—(i) Each IFQ holder that signs a preseason application, described in paragraph (p)(4)(ii) of this section, must submit a Regional Delivery Exemption Report to NMFS that includes an explanation of—

(A) The amount of IFQ, if any, set aside to reduce the need for, and the amount of, an exemption;

(B) The mitigation measures employed before submitting an inseason notice;

(C) The number of times an exemption was requested and used;

(D) Whether the exemption was necessary; and

(E) Any impacts resulting from the exemption on the fishery participants and communities that signed the preseason application.

(ii) On or before June 15, IFQ holders must submit a copy of the Regional Delivery Exemption Report to the IPQ holders and community representatives that also signed the preseason application.

(iii) On or before June 30, IFQ holders must submit the Regional Delivery Exemption Report to NMFS at the address in paragraph (p)(4)(i) of this section.

(6) *Public notice of the exemption*. NMFS will post the effective date of an exemption and the Regional Delivery Exemption Reports on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>).

■ 3. In § 680.7, revise paragraphs (a)(2), (a)(4), (a)(7), (a)(8), and (a)(9) to read as follows:

§ 680.7 Prohibitions.

* * * * *

(a) * * *

(2) Receive CR crab harvested under an IFQ permit in any region other than the region for which the IFQ permit is designated, unless:

(i) Western Aleutian Islands golden king crab are received following the effective date of a NMFS-approved exemption pursuant to § 680.4(o), or

(ii) The IFQ permit and IFQ amount are subject to an exemption pursuant to § 680.4(p).

* * * * *

(4) Use IPQ in any region other than the region for which the IPQ permit is designated, unless:

(i) Western Aleutian Islands golden king crab IPQ is used following the effective date of a NMFS-approved exemption pursuant to § 680.4(o), or

(ii) The IPQ permit and IPQ amount are subject to an exemption pursuant to § 680.4(p).

* * * * *

(7) For an IPQ holder to use more IPQ than the maximum amount of IPQ that may be held by that person. Use of IPQ includes all IPQ held by that person, and all IPQ crab that are received by any RCR at any shoreside crab processor or stationary floating crab processor in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest, unless that IPQ crab meets the requirements in § 680.42(b)(7) or § 680.42(b)(8).

(8) For a shoreside crab processor or stationary floating crab processor, that

does not have at least one owner with a 10 percent or greater direct or indirect ownership interest who also holds IPQ in that crab QS fishery, to receive in excess of 30 percent of the IPQ issued for that crab fishery, unless that IPQ meets the requirements described in § 680.42(b)(7) or § 680.42(b)(8).

(9) For any shoreside crab processor or stationary floating crab processor east of 174 degrees west longitude to use more than 60 percent of the IPQ issued in the EAG or WAI crab QS fisheries, unless that IPQ meets the requirements described in § 680.42(b)(8).

* * * * *

- 4. In § 680.42,
 - a. Revise paragraph (b)(1)(ii); and,
 - b. Add paragraph (b)(8) to read as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

* * * * *

(b) * * *

(1) * * *

(ii) Use IPQ in excess of the amount of IPQ that results from the PQS caps in paragraph (b)(1)(i) of this section, unless that IPQ is:

(A) Derived from PQS that was received by that person in the initial

allocation of PQS for that crab QS fishery, or

(B) Subject to an exemption for that IPQ pursuant to § 680.4(p).

* * * * *

(8) Any IPQ crab that is received by an RCR will not be considered use of IPQ by an IPQ holder for the purposes of paragraphs (b)(1) and (b)(2) of this section, if the IPQ is subject to an exemption pursuant to § 680.4(p).

* * * * *

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