

North Pacific Fishery Management Council

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MINUTES

166th Plenary Session NORTH PACIFIC FISHERY MANAGEMENT COUNCIL March 30 – April 5, 2004 Anchorage, Alaska

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FORMAT FOR COUNCIL MEETING MINUTES

Each agenda item will begin with a copy of the original “**Action Memo**” from the Council meeting notebook. This will provide an “historical” background leading up to the current action. This section will be set in a different style font than the actual minutes. Any attachments referred to in the Action Memo will **not** be attached to the minutes, but will be part of the meeting record and available from the Council office on request. Following the Action Memo will be the **reports** of the Scientific and Statistical Committee (SSC) and Advisory Panel (AP) on the subject. Last will be a section describing **Council Discussion and Action**, if any.

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Certified Stephanie Madsen
Stephanie Madsen, Chair

Date December 7, 2005

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**166th Plenary Session
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
March 30 – April 5, 2004
Hilton Hotel
Anchorage, Alaska**

The North Pacific Fishery Management Council met March 30–April 5, 2004 at the Hilton Hotel in Anchorage, Alaska. The Scientific and Statistical Committee met March 29–31, and the Advisory Panel met March 29–April 2 at the same location. The following members of the Council, staff, SSC, and AP attended the meetings.

Council

Stephanie Madsen, Chair
Dennis Austin, Vice Chair
Stosh Anderson
Jim Balsiger/Sue Salvesson
David Benson

John Bundy
Anthony DeGange
Kevin Duffy/Earl Krygier
Arne Fuglvog
Dave Hanson

Roy Hyder for Lindsay Ball
Hazel Nelson
RADM James Underwood/
CAPT Richard Preston
Edward Rasmuson

NPFMC Staff

Chris Oliver, Executive Director
Gail Bendixen
Cathy Coon
Jane DiCosimo
Elaine Dinneford

Diana Evans
Mark Fina
Nicole Kimball
Peggy Kircher
Jon McCracken

Maria Shawback
Diana Stram
Bill Wilson
David Witherell

Support Staff

Lauren Smoker, NOAA-GC
Sue Salvesson, NMFS
Kaja Brix, NMFS
Jeff Passer, NOAA Enf.
Guy Holt, NOAA Enf.
Ken Hansen, NOAA Enf.
Herman Savikko, ADF&G

Matt Eagleton, NOAA
Sally Bibb, NMFS
Steve Davis, NMFS
Jay Ginter, NMFS
John Lepore, NOAA GC
Ben Muse, NMFS
Greg Cashen, DCED

Scott Miller, NMFS
Susan Auer, NOAA GC
Al McCabe, USCG
Phil Smith, NMFS
VADM Thomas Barrett, USCG
Art Nelson, ABOF

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Scientific and Statistical Committee

Keith Criddle	Anne Hollowed	Steve Parker
Steven Hare	George Hunt	Farron Wallace
Mark Herrmann	Gordon Kruse, Vice	Doug Woodby
Sue Hills	Chair	

Advisory Panel

John Bruce, Chair	Duncan Fields	Sandra Moller
Al Burch	Dave Fraser	Kris Norosz
Cora Crome	Jan Jacobs	Eric Olson
Craig Cross	Bob Jacobson	Jim Preston, Co-Vice Chair
Tom Enlow	Teressa Kandianis	Michelle Ridgway
Dan Falvey, Co-Vice Chair	Mitch Kilborn	Jeff Stephan
Lance Farr	Kent Leslie	

Other Attendees

Below is a list of people who signed the attendance register. A list of those who provided public comment during the meeting is found in Appendix 1 to these minutes.

Craig Cross, Aleutian Spray Fisheries	Joe Childers, Juneau
Phillip Lestenkof, Central Bering Sea Fish. Assn.	Arni Thomson, Alaska Crab Coalition
Paul MacGregor, At-Sea Processors Assn	Al Burch, Alaska Draggers Assn
Glenn Reed, Pacific Seafood Processors Assn	Cecil Ramey, Kodiak
Susan Robinson, Fishermen's Finest	Bob Alverson, Fishing Vessel Owners Assn.
Denby Lloyd, ADF&G Kodiak	Pat Carlson, Kodiak Island Borough
Frank Kelty, City of Unalaska	Joy Kyle, Aleutian/Pribilof Island Community
Marcus Alden, Westward Fisheries	Development Assn.
Thorn Smith, North Pacific Longline Assn.	Jeff Stephan, United Fishermens Assn.
Beth Stewart, Aleutians East Borough	Lori Swanson, Groundfish Forum
Whit Sheard, The Ocean Conservancy	Donna Parker, Arctic Storm
Karen Pletnikoff, Aleutian/Pribilof Islands Assn.	Steve Grabacki, Graystar
Heather McCarty, Juneau	Glastmut Fluntke Anchorage
Brent Paine, United Catcher Boats	Mike Szymanski, Fishing Co. of Alaska
Eric Hollis, Fishing Company of Alaska	

A. Call to Order, Approval of Agenda/Minutes of Previous Meeting(s)

Chair Stephanie Madsen called the meeting to order at 8:06 am on Wednesday, March 31, 2004. Chair Madsen announced that there will be a short executive session today at noon on legal matters. Ms. Madsen announced that a Public Hearing on the Environmental Impact Statement for Essential Fish Habitat will begin tonight at 6:00 pm in the Council room. She also reminded the Council to set their clocks ahead on Saturday evening for Daylight Savings Time.

Agenda: The agenda was approved as submitted.

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Minutes of Previous Meetings: The minutes from the April and June 2003 meetings were approved (moved by Arne Fuglvog and seconded by Hazel Nelson). Kevin Duffy requested a correction on the front page of the minutes which continue to show Mr. Duffy as alternate for Frank Rue who is no longer Commissioner of ADF&G. Kevin Duffy was appointed Commissioner in March 2003.

B. Reports

The Council received written reports from the Executive Director (B-1), NMFS Management (B-2), NMFS Enforcement (B-3), U.S. Coast Guard (B-4), ADF&G (B-5), and USFWS (B-6).

DISCUSSION RESULTING FROM REPORTS

Executive Director's Report

Executive Director Chris Oliver welcomed back former USCG representative Vice-Admiral Thomas Barrett, who is on tour in Alaska and along with Admiral James Underwood will address the Council later this morning. Chris also welcomed Peggy Kircher as the new Council staff member taking over the position recently vacated by Shannon Vivian.

Regarding the report from the U.S. Commission on Ocean Policy, Mr. Oliver suggested that the Council may wish to decide how best to comment on the report outside the normal Council meeting since it will not be available until April 20. He also recommended that the Council provide direction to the staff on how to handle inquiries should they be asked for the Council's response. Dennis Austin requested that Council members receive a copy of the report as soon as it becomes available.

Mr. Oliver updated the Council on the Regulatory Streamlining Process (RSP) [notebook item B-1(b)], which would formalize the review and approval process of all regulatory actions by the Councils. It is designed to frontload the plan and regulatory amendment process so once it reaches the point of Council approval, the package and analyses are completed and can quickly get through the Secretarial review process. North Pacific Council staff and other Council staff have met twice since last August with Headquarters and Region staff to review and provide comment on the different versions of the RSP document. Mr. Oliver believes there are still some serious concerns and implications for the Council in terms of how it affects our process, timing, and ability to approve actions. Mr. Oliver believes the RSP could have significant implications for the Council process. It will be a major agenda item later in April at the Council Chairmen's meeting. Mr. Oliver and Chair Madsen encouraged Council members to read the draft RSP in order to understand this would affect the Council's operations.

Mr. Oliver addressed Oceana's petition to the Secretary of Commerce requesting immediate rulemaking to protect deep-sea coral and sponge habitats [item B-1(g)]. He stated this is more than informational and has questions about how this affects the ongoing relationship between EFH and HAPC. This will be taken up during the Council's executive session.

Chris Oliver also pointed out the following other informational items during his report:

- *National fisheries conferences in Washington, DC*—NOAA Fisheries will host a second conference on the Future of the Nation's Living Marine Resources, October 18-20 [item B-1(c)]. There will also be a second Managing Our Nation's Fisheries conference in spring 2005, which will be hosted by the eight regional Councils.

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- *MFCMA Reauthorization Issues*—Item B-1(d) is a summary of legislation introduced over the past two years which could affect Magnuson-Stevens Act reauthorization. Mr. Oliver suggested the Council may wish to reactivate their MSA Reauthorization Committee to consider these and other legislative initiatives.
- *Iceland's Minister of Fisheries* will introduce their delegates and address the Council at the June meeting.
- *National Whale Conservation Fund* has offered mini-grants to any U.S. citizen to explore ideas and methods for reducing death or serious injury to whales caused by entanglements [item B-1(e)].
- *Seabird seminar* will be held Thursday evening following recess of the Council meeting. Kim Dietrich will present the seminar on factors affecting incidental take of seabirds in longline fisheries based on her graduate research.
- *International Bering Sea Forum* provided a written statement [item B-1(f)] to the Council calling for increased enforcement of existing regulations prohibiting bottom trawling, additional research on impacts, and identification of areas where bottom trawling should be limited in the Bering Sea.

Kaja Brix reported on the status of the EIS for subsistence harvest management of fur seals on the Pribilof Islands. The EIS relates to the regulatory requirement to reauthorize the fur seal harvest on a three-year cycle for the 2003-2005 harvest. During scoping of the EIS, people of the Pribilofs requested that NMFS analyze an alternative that would shift the harvest management from a regulatory framework to a co-management framework. However, NMFS determined that this analysis would be more involved and they would not be able to produce an EIS with such a scope to coincide with the 2004 harvest. Therefore, it will be split into two analyses, the first, to ensure there is an analysis done in time for the 2004 harvest; the second will be more involved and take more time, but they hope to have it finalized prior to 2005 harvest.

The first EIS will be available for Council review after this meeting and then published for public comment. It should be finalized sometime this summer. The second EIS will also be available first for Council review, then public comment, and to be finalized prior to the 2005 harvest. Mr. Benson, Chair of the Council's Fur Seal Committee, said the committee is standing by to review the draft analyses. The bulk of the committee's work will be done in the second EIS—the fur seal conservation plan. The Committee will look for ways to coordinate with agency to assist them in that analysis. Chair Madsen asked when the fisheries interaction information will be updated and applied to the analyses. Ms. Brix replied for the first EIS there will be no new information on the fisheries interaction component. This analysis will use the available information which the Council has seen in the Steller Sea Lion documents, which identified the conditionally significant adverse affect to fur seals. If the Council chooses to engage with NMFS on further analyses on fisheries interactions, that would be incorporated into the second analysis and/or into the conservation plan, depending on timing.

Bill Wilson provided a handout of a discussion paper on seabird interactions with trawl vessel gear. The paper is a result of the April 2003 USFWS report to the Council on the impending incidental take statement for short-tailed albatross in the trawl fisheries in the GOA and BSAI. The USFWS reported there was a ban on trawl "third wire" gear in the southern hemisphere and a Council member mentioned interest in looking at more information about the background and scientific reasons for that ban. Mr. Wilson was tasked with gathering this information from Australian and New Zealand fisheries, which took quite some time.

With regard to the "third wire" gear concern, Paul MacGregor testified that the At-Sea Processors Association is currently working with the USFWS in collaboration with Dr. Julia Parrish (University of Washington) and Kim Dietrich (UW graduate student) to investigate ways to evaluate the nature of potential interactions. To date, they have developed observer protocol, deployed two observers on their vessels last August and

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September that made several trips, and gathered data which is currently being evaluated. They hope to develop ways to reduce the chance of birds flying into the wire or boat. Mr. MacGregor stated that Ed Melvin, who is very knowledgeable on the subject of seabird interactions, will be involved in the project, stepping into Dr. Parrish's role. They have also been in contact with industry in South Georgia Islands in the Falklands and Tasmania to exchange information about the kind of techniques they are using—and there are some they've used that are quite encouraging.

NMFS Management (B-2)

Sue Salveson provided brief reports on the status of regulatory actions, their strategy for implementing the BSAI crab rationalization program, and highlights from inseason management. Two reports were provided for Council notebooks: Inseason Management Highlights, 3/27/04 and NMFS Management Report, 3/31/04. Ms. Salveson then presented a PowerPoint on the crab rationalization program.

NMFS Enforcement (B-3)

Jeff Passer introduced Guy Holt as NMFS Enforcement's Vessel Monitoring System (VMS) and IT Leader. A written report was placed in the notebooks. Mr. Holt reported that Enforcement's use of VMS has increased steadily since its inception, and that Agents and Officers are becoming increasingly proficient in the use of the system to prevent and investigate potential violations. The total number of activated units in Alaska is now at approximately 560, which is the largest in the nation. Jeff Passer then provided the remaining NMFS enforcement report.

Stephanie Madsen thanked NMFS Enforcement for the added emphasis on VMS in their report to the Council and requested they continue to do so once or twice a year.

Susan Auer, NOAA, reported to the Council on the pre-sorting case involving the F/V REBECCA IRENE. She stated the vessel owner was charged with violations for interference with observers and failure to minimize halibut bycatch. Ms. Auer explained briefly that the crew members were using pre-sorting techniques to block observers from getting a true sampling and that they had developed procedures to be sure these techniques went smoothly, to fool observers. The reasons given to the crew for presorting were to extend the rocksole and yellowfin sole fisheries in order to get more money. Ms. Auer also noted that those fisheries were extended during the year these violations took place.

John Bundy requested that the Council receive a copy of the Administrative Law Judge's opinion on the F/V REBECCA IRENE violation when it is available. Stephanie Madsen further requested a copy of the NOVA and transcript on this subject.

Dennis Austin noted that he attended the Enforcement Committee meeting and was impressed with the cooperation that exists between the many arms of enforcement (science monitoring, rule adoption, and enforcement). He would like the Council to be proactive in finding ways to understand and quickly respond to problems with the technical enforcement capabilities of regulations the Council sets. Chair Madsen suggested there is an objective in the Programmatic EIS which Captain Preston helped develop that attempts to deal with this issue, and that the Council should look at that during PSEIS discussion to see if it's adequate.

Chris Oliver provided a written Enforcement Committee report for the notebooks. Regarding the request from APICDA to use a VVS system in place of the VMS system as a backup, the Committee was informed by NOAA representatives that the VVS system, while very useful for certain purposes, was not a suitable replacement for VMS for several reasons: (1) it is not standardized relative to tamper-resistance and

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evidentiary aspects; (2) lacks continuous, real-time positioning monitoring capability; (3) it is a data-logging system, rather than a vessel tracking system; and (4) there is no national level, type-approval process in place for VVS as a substitute for VMS. Mr. Oliver said the Committee did not support any changes to approve VVS as a VMS replacement at this time.

U.S. Coast Guard (B-4)

The Council received a brief report from Vice-Admiral Thomas Barrett. He praised the Council for being regarded by national enforcement agencies as a model to follow for resource management. Captain Rich Preston then provided a short report on USCG activities from the period November 1, 2003 through March 15, 2004. A copy of his report was placed in the notebooks.

Chair Madsen presented Admiral Barrett with a long overdue plaque, dated May 2002, in recognition of his past service on the Council.

Captain Richard Preston announced his retirement from the U.S. Coast Guard. This will be his last meeting after serving on the Council for the past three years as alternate for Admiral James Underwood. Captain Preston's relief will be Commander Mike Cerne, who is currently onboard the CG Cutter Storis in the Bering Sea until August. Commander Cerne is well versed in fisheries at both regional and national levels. Commander Greg Busch will be attending the June meeting in the interim.

Captain Preston also announced that this will be the last meeting for Rear-Admiral James Underwood. He will be leaving Alaska to take a position at Coast Guard headquarters in Washington, DC. Admiral Underwood's relief will be Admiral James Olson, whose past experience includes serving as Commanding Officer at air stations in both Sitka and Kodiak.

Chair Madsen presented a plaque to Captain Preston in recognition of three years of participation on the Council. The Council has appreciated his dedication to the conservation and management of the North Pacific fisheries and to the safety of the North Pacific fishing industry. Members thanked Captain Preston and Admiral Underwood for their contributions to the Council process and wished them luck in the future.

ADF&G (B-5)

Herman Savikko presented Alaska Department of Fish and Game's report to the Council and a hard copy was placed in the notebooks. Mr. Savikko briefly reported the status of the current State-managed fisheries for salmon and groundfish. He also announced the availability of a movie showing underwater footage of Pinnacles Marine Reserve near Sitka. The footage was taken from the manned submersible "DELTA" and is available for schools or non-profit organizations.

Ed Rasmuson asked Mr. Savikko if ADF&G knew the amount of amount of troll salmon caught in recreational and subsistence fisheries westward of the Southeast area. Mr. Savikko responded that the winter troll fishery is limited to the area east of Cape Suckling and most of the catch occurs out of Sitka. Mr. Rasmuson replied that he believes there are thousands of fish caught (e.g., the derbies in Homer), and his point is that if we're going to regulate the salmon, then we better find out what recreational and subsistence users are taking. Mr. Savikko explained that the Sport Fish Division conducts port sampling programs, but he didn't believe they operate during winter months.

USFSW (B-6)

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Bill Wilson provided the report in the absence of Doug Burn of USFWS. Mr. Wilson explained the status of the USFWS' proposed listing of the southwest stock (Distinct Population Segment) of northern sea otter as "threatened" under the Endangered Species Act. The proposed rule was filed in February and comments are due by June 10, 2004. The USFWS indicated that there is not a lot of overlap between the EEZ groundfish fisheries and this particular segment, even though there is a lot of fishing activity in the Aleutians. Sea otters are more coastally located and don't feed on the same species harvested in groundfish fisheries. There might be concerns in coastal areas with vessel transit and port activities, but the USFWS is not concerned about the groundfish fisheries. Mr. Wilson did not believe there would be a formal consultation process, but possibly an informal consultation between NMFS and USFWS for clarification.

Dave Benson expressed concern that the final rule would define critical habitat, as it had for Steller sea lions in 1991. At that time, it was indicated that this was just a formality; however, it was discovered 10 years later that it had much greater consequences. Mr. Benson suggested the Council track this issue closely. Chris Oliver stated that this listing would not include any designation of critical habitat, noting the USFWS is gathering comments on a potential future rulemaking that would deal with the critical habitat aspect. Therefore, this would happen in a subsequent process, under a separate rulemaking and comment period.

Chair Madsen indicated that the Council would have the opportunity to comment since the public comment expires two days after the next Council meeting begins. If we wish to submit official comments we can draft those.

C. NEW OR CONTINUING BUSINESS

C-1 Draft Programmatic Supplemental Environmental Impact Statement

ACTION REQUIRED

- (a) Final Action on Groundfish PSEIS
 - (1) Select a Preferred Alternative to be identified in the Final PSEIS, including: (a) policy goals and objectives, and (b) bookends to illustrate the intended implementation of the Preferred Alternative.
 - (2) Approve the public release of the Final PSEIS, and provide any comments on document.
 - (3) Procedure to develop the timeline for addressing management policy actions.
- (b) Final Review of Groundfish FMP Revisions
 - Approve the FMP amendment to modify the management policy and revise the FMPs.

BACKGROUND

(a)(1) Select a Preferred Alternative to be identified in the Final PSEIS, including (a) policy goals and objectives, and (b) bookends to illustrate the intended implementation of the Preferred Alternative.

In June 2003, the Council adopted a Preliminary Preferred Alternative for the PSEIS. This alternative was identified in the revised draft PSEIS published in late August 2003. The Council now needs to finalize their Preferred Alternative. The Preferred Alternative will be identified in the Final PSEIS, and the chosen management policy will be forwarded as an FMP amendment to the Secretary of Commerce. The Preferred Alternative contains two elements: a) a management policy, consisting of a management approach statement and policy goals and objectives; and b) a set of FMP bookends that represent the range of management actions that would implement the policy.

Attached as Item C-1(a)(1)1 is a copy of the Preliminary Preferred Alternative policy language, selected by the Council in June 2003. Item C-1(a)(1)2 is a copy of the bookends of the Preliminary Preferred Alternative. Item C-1(a)(1)3 presents the Preliminary Preferred Alternative in a format that lays out the applicable bookend actions for each objective. A review of the impacts of the Preliminary Preferred Alternative is attached as Item C-1(a)(1)4.

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The public comment period on the 2003 revised draft PSEIS lasted for 70 days, and NOAA Fisheries received over 13,000 comments. These comments are summarized in the draft Comment Analysis Report (draft CAR) that was mailed to you on March 1, 2004, and which is available on the PSEIS website. Many of the comments focused on the Preliminary Preferred Alternative, or suggested other considerations for the Council and Agency's final choice of preferred alternative. Item C-1(a)(1)5 is the section of the draft CAR that summarizes the comments that relate to the identification of a final preferred alternative.

Some of the comments suggested specific language changes to the Preliminary Preferred Alternative. The full text of these comments is included in Attachments C and D to the draft CAR. For the Council's ease of reference, these comments have been superimposed on the Preliminary Preferred Alternative in line/strikeout mode in Item C-1(a)(1)6 (policy) and Item C-1(a)(1)7 (bookends).

Many of the comments supported a substitute preferred alternative, submitted as the Oceans Alternative. The text of this alternative is included as Attachment E to the draft CAR. Although submitted as an independent alternative, the key elements of this alternative have already been analyzed in the 2003 revised draft PSEIS, predominantly in Alternative 4. A staff discussion paper (Item C-1(a)(1)8) on the Oceans Alternative focuses on the question of whether the proposed alternative fits within the range of alternatives analyzed in the PSEIS.

Finally, staff has prepared some other considerations for the Council in finalizing the Preferred Alternative, which are summarized in Item C-1(a)(1)9.

(a)(2) Approve the public release of the Final PSEIS, and provide any comments on document.

The Final PSEIS is scheduled to be published in late May/early June. Staff will report on the changes that have been made to the 2003 revised draft PSEIS, many in response to public comment, in order to prepare the document for final publication. Some of the revisions have resulted in revised analysis of the environmental impacts of the alternatives. Item C-1(a)(2)1 summarizes those areas where the preliminary Final PSEIS differs from the 2003 revised draft PSEIS. Item C-1(a)(2)2 is a policy-level summary of the impacts of the PSEIS alternatives. This table has been updated since the 2003 revised draft.

A copy of the complete preliminary Final PSEIS will be available in binder form during the AP, SSC, and Council presentations. The draft Comment Analysis Report that was distributed in early March will also be finalized following this meeting, and made an appendix to the Final PSEIS.

NOAA Fisheries' intra-agency ESA consultation on the Final PSEIS has concluded that the groundfish fisheries are not likely to have adverse effects on ESA listed species under their management jurisdiction which have not been considered in previous formal Section 7 Consultations. The ESA consultation has further concluded that none of the triggers for re-initiation of consultation have been met. NOAA Fisheries' has requested concurrence from the U.S. Fish and Wildlife Service that formal consultation is not required for listed species under their management jurisdiction. The biological assessment supporting this finding is Appendix O of the Final PSEIS. Correspondence relating to ESA consultation is attached as Item C-1(a)(2)3.

Another element of the Final PSEIS is the identification of the Environmentally Preferred Alternative. NEPA requires that the Record of Decision on an EIS identify the alternative that is the most beneficial to the environment. The identification of this alternative does not mean that NOAA Fisheries or the Council is bound to act on this alternative, all the more so because the criteria for selecting the Environmentally Preferred Alternative specifically excludes consideration of economic and socioeconomic effects. NOAA Fisheries has written the Council a letter (Item C-1(a)(2)4) regarding this identification.

(a)(3) Discuss procedure to develop the timeline for addressing management policy actions.

In previous discussions regarding the implementation of the chosen management policy, the Council has professed its intent to develop a timeline that would schedule the relative start dates of further actions to implement the management policy. In June 2003, NOAA General Counsel provided a memo to the Council addressing questions regarding the nature of the timeline, which is attached here for reference (Item C-1(a)(3)1). The development of the timeline by the Council is currently scheduled for June 2003. In order to prepare for the June agenda item, staff have suggested a sample format for proceeding with the timeline.

The sample format consists of two elements. Item C-1(a)(3)2 represents a 'to do list'. Using the Preliminary Preferred Alternative as an example, the list matches each policy objective with its related bookend actions. The status of each bookend action is also identified. A "✓" indicates that the bookend action is currently in the FMP or in regulations. "P" indicates those actions which are currently the practice of the Council, but which would need an amendment analysis to

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formalize in the FMP or in regulations. "O" indicates that an amendment analysis has been initiated, that the action is ongoing. "A" indicates that the action would require an amendment analysis to be initiated. "R" indicates that initiating action would require the Council to make a recommendation to NOAA Fisheries.

Item C-1(a)(3)3 is a sample timeline, that is currently filled out with ongoing groundfish actions. To develop a timeline for the chosen management policy, the Council could schedule "P" and "A" actions from the 'to do list', and if appropriate, reconsider the schedule of ongoing actions.

(b) Approve the FMP amendment to modify the management policy and revise the FMPs.

The initial implementation of the Preferred Alternative from the Final PSEIS will be an FMP amendment (BSAI 81/GOA 74) to change the management policy section of the two groundfish FMPs. The chosen management policy will be determined by the Council under Agenda Item C-1(a)(1) above. The FMP amendment will also implement housekeeping changes to the FMPs to revise outdated information and improve readability. Chapters 1-5 of the revised FMPs were mailed out on March 22, 2003. The remaining sections have been included in the supplemental folder. A description of the changes between the existing and revised versions of the FMPs is attached as Item C-1(b)1.

The FMP review process has highlighted several sections of the existing FMPs that are brought to the Council's attention in Item C-1(b)2 for the BSAI and Item C-1(b)3 for the GOA. Changes to these sections have not been included by staff in the revised FMPs. However, the Council may wish to include some or all of these changes as part of the April amendment. Where possible, staff has drafted potential amendment language.

AP REPORT (C-1)

The Advisory Panel provided extensive comments on this agenda item (see AP minutes, [Appendix 2](#) for more specific comments).

SSC REPORT (C-1)

The SSC's comments on this agenda item are provided below. A complete set of SSC Minutes are provided as [Appendix 3](#) to these minutes.

Comments on the Preliminary Preferred Alternative C-1(a)(1)1

- The SSC recommends that the general structure of the PPA prominently identify the overall goal of the described management approach. The SSC suggests modifying last sentence of the 2nd paragraph to begin with "Given this intent, the fishery management goal is to provide ...". Further, to aid in clarity, we suggest that the PPA include explicit definitions of the terminology used for "objectives" or "tasks".
- The SSC encourages the Council to review statements in the PPA that relate to the intent for Council actions regarding habitat to ensure that the intent is clear and consistent with the intent of other Council actions related to habitat, e.g., HAPC. As an encompassing statement of Council management policy, the PPA should include the range of actions and interpretations used by the Council. Additional discussion of this issue is included in SSC comments regarding C-2 on HAPC.
- The SSC recommends broadening bullet 4 under "Prevent Overfishing" to read "Conduct periodic reviews of the adequacy of current harvest policies and adopt improvements, as appropriate".
- The SSC concurs with the AP and Staff recommendation for the addition of a bullet to highlight management of non-target species. To accommodate potential changes to management categories identified by NMFS National Standard Guidelines, the SSC encourages the adoption of a statement that will allow flexibility regarding designation of species groups.
- Although recent Congressional legislation has codified the 2 million mt OY cap, the SSC encourages the Council to revisit the rationale behind and calculation of the OY caps. All biological parameters should be subject to periodic review to account for possible changes in environmental conditions, changes in the

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status of fish populations and the status of populations of other species, and to incorporate additional scientific knowledge.

- With reference to task 37, the SSC cautions that “economic impact assessments” only describe the patterns of flow of expenditures and do not characterize the net benefits of alternative actions that might be contemplated by the Council. It is possible to have actions that result in large regional economic impacts and generate negative net benefits. It is also possible to have actions that generate positive net benefits and yet have negligible regional economic impacts. Impact analyses and net benefit assessments are both important for characterizing the economic consequences of alternative actions. Increased data reporting requirements can support both types of analyses.

Comments on the PPA Bookends C-1(a)(1)2

- The SSC recommends changing the phrase “minimize waste”. Because minimizing could be taken to mean reducing waste to zero, “minimize waste” may set an unachievable standard. An alternative statement of this goal might be to “reduce waste to biologically and socially acceptable levels”.
- The SSC cautions against the adoption of any amendment that reduces the responsibility of harvesters and processors to provide detailed timely information required to ensure responsible management of FMP fisheries. Fishery resources are the property of the people of the United States. The management agencies have a trustee responsibility to ensure that these resources are being used in a manner that maintains that the expected flows of use, option, and nonuse benefits. In order to discharge this responsibility and to ensure compliance with federal law and regulation, the management agencies must have access to detailed information on the magnitude, composition, and location of catches as well as detailed information on the costs, revenues, and expenditures associated with fishing and processing.

Comments on the CAR

- The SSC recommends that the CAR and PSEIS be released for public review.
- The SSC commends NMFS for developing a process for summarizing comments to key issues and for developing concise answers to comment.
- The SSC recommends that the CAR be reviewed to ensure that actions taken in response to comments are identified. For example, the CAR should indicate whether the comment was already addressed in a particular section of the document or whether new material was added to the document in specific sections to address the comment (e.g., definition of surplus production).
- The SSC requests that additional clarification be included at the top of page 59 to define the thresholds used to estimate the effect of fishing on marine mammals.

Comments on the timeline C-1(A)3

- The SSC recommends that Staff conduct periodic updates of the PSEIS and FMP and that the schedule for these periodic updates be included on the timeline. Additionally, the recurring HAPC proposal process should be indicated in the timeline.
- The SSC was surprised to see that the timeline included specific tasks from the “bookends”; we understood that they were to serve as illustrations of the range of possible actions that could take place under the policy language of the PPA. Staff explained that these tasks were illustrative of a possible timeline and that the actual timeline developed by the Council could look considerably different. The SSC cautions that the items in the “bookends” should not be treated as a detailed “to do” list for future actions without closer scrutiny.

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Comments on the FMP amendments C-1(b)1

The SSC did not have adequate time to fully review the housekeeping portions of the FMP amendments. Therefore, the SSC recommends that the “housekeeping” FMP amendments be decoupled from those required for approval of the PSEIS. Decoupling would allow more time to review the proposed “housekeeping” changes without affecting the PSEIS timeline. However, if the Council chooses to move all of the FMP amendments forward together, at a minimum, the following issues should be addressed.

- Some finfish species are not governed by the FMP (Page 5 of GOA) and are not mentioned. Some of these finfish species are managed by the State: e.g., black rockfish, lingcod, and pollock in Prince William Sound. The SSC recommends that the jurisdictional authorities be more clearly identified and that lists be included to identify which species are managed by NMFS and which by the State of Alaska. Footnotes may be useful to explain special situations, such as sablefish in inside waters and parallel seasons for Pacific cod. These state-managed fisheries should also be discussed in other appropriate sections, e.g., Chapter 4.
- The SSC recommends that Section 3.10—Council FMP review—be reconciled between the two FMPs. Specifically, bullet 1 of section 3.10.1 in the BSAI plan seems to have been omitted from section 3.10.1 of the GOA plan.

The SSC did not have time to fully review the proposed revised MSY and OY definitions. Nuances in these definitions could have important effects on stock assessments and the harvest control rules. The SSC wishes to have more time to thoroughly review the proposed revisions.

COUNCIL DISCUSSION/ACTION (C-1)

Steve Davis and Diana Evans provided an overview of the Comment Analysis Report (CAR) that summarizes public comment on the PSEIS and NOAA Fisheries’ response to these comments. They also provided a copy of the revised preliminary preferred alternative (PPA) and a summary of changes to the PPA, and a revised amendment document. Lauren Smoker summarized federal actions and what the Council is tasked with accomplishing.

Chair Madsen referred members to documents behind the action memo C-1(a)(1)1 and C-1(a)(1)2, which contain the management approach, the objectives, and the bookends that were identified in June 2003 as the Council’s preliminary preferred alternative. **Kevin Duffy moved to adopt the Advisory Panel’s recommended preliminary preferred alternative, management approach and objectives [item C-1(a)(1)1] and the bookends [item C-1(a)(1)2] with revisions identified in his handout that was distributed to the Council.** The handout (5 pages) is entitled “Council Motion to Adopt Preferred Alternative for the PSEIS,” labeled on the bottom of each page with “AP motion C-1 PSEIS April 2004.” The motion was seconded by Ed Rasmuson.

Mr. Duffy explained his revisions to the motion. His motion in its original form is included as Appendix 4 to these minutes. Council members then proceeded with numerous edits and revisions to the entire motion, accomplished through discussion and amendments that each carried unanimously. The final motion, as amended, carried without objection.

The motion identifies a preferred alternative (PA) that reflects a conservative, precautionary approach to ecosystem-based fisheries management, and communicates a policy direction for the future of the groundfish fisheries. The PA consists of: (1) a management approach statement describing the goals of, and rationale and assumptions behind the alternative; (2) a set of management objectives that complement and further refine the goals set forth in the management approach; and (3) a pair of example FMP “bookends” that illustrate and

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frame the range of implementing management measures for that alternative. A copy of the final motion is included as Appendix 5 to these minutes.

Mr. Duffy, as maker of the motion, provided the following statement of justification.

“While this review was the product of litigation, there was a need to step back and take a good look at program direction, management objectives, the current state of the fisheries, and the future direction of the Council within a comprehensive framework, and I believe we are accomplishing that by moving forward with this preferred alternative.

Public comment. The role of public comment in this process has been very important. NEPA does not dictate protection of the environment, but instead assumes that common sense and good judgment will result in the development of the nation’s resources in a way that minimizes adverse impacts to our environment. This is achieved by requiring an open, public process whereby the responsible government agency, combined with the stakeholders associated with a particular natural resource and development project, all pull together relevant information for use in making decisions.

Comment Analysis Report. As a result of the comment period on the 2003 draft PSEIS, the agency received 13,400 letters of comment, containing 2,557 substantive comments that covered all major issues of analysis within the draft PSEIS. The Agency received comments on harvest management, the TAC setting process, target groundfish species, bycatch, habitat, marine protection areas, marine mammals, seabirds, ecosystem health and management, economic and socioeconomic effects, Alaska native issues, cumulative effects, monitoring and enforcement, research, the range of alternatives, legal compliance, public process, and editorial and document management. The Agency has done an excellent job responding, in detail, to public comments as part of this process. The document in front of us is the second and vastly improved PSEIS we’ve been working on—thousands of pages of analysis. Council and Agency have gone the extra mile in trying not only to meet the court order, but more importantly to develop and implement a stepwise and predictable process of evaluating the fishery management program in its entirety, including cumulative impacts.

NEPA and the analytical approach. There are many data gaps in our knowledge of non-target species and their interaction with the fisheries. NEPA recognizes that there may be incomplete or unavailable information underlying a decision, but this should not forestall decision making. Instead NEPA requires that where the cost of obtaining the incomplete information to be more complete is prohibitive, the EIS should: (1) identify the incomplete and unavailable information, (2) state the information’s relevance to evaluating reasonably and foreseeable significant effects (3) summarize credible scientific evidence about impacts, and (4) apply alternative methods generally accepted by the scientific community. NEPA does not require an exhaustive analysis of every conceivable alternative; rather, the range of alternatives to be considered must only be reasonable to the proposed action. Responsible stewardship and sustainability are essential components of a fishery management policy for the Alaska groundfish fisheries.

The Preferred Alternative identified in the 2003 draft PSEIS prioritizes a cautionary approaches that applies judicious and responsible fishery management practices based on sound scientific research and analysis, proactively rather than reactively. Specific objectives, including conservative harvest quotas, a constraining cap on optimum yield for the Bering Sea Aleutian Islands, improvements in bycatch and incidental catch management, measures to avoid impacts to habitat and marine mammals, while promoting the sustainability of our fishing communities. At the outset of the development of the PSEIS, one of the main difficulties was establishing an analytical approach that could adequately depict and analyze the existing fishery management regime in the North Pacific, while capturing the dynamic and iterative nature of the process, whereby fishery management plans and subsequent regulations are continually being refined and developed. This difficulty was exacerbated by the complexity and interrelatedness of the issues, and the many management measures developed over the years to address those issues. These problems made it extremely difficult for the analysis to portray the issues and choices in the first version of the PSEIS in manner that adequately informed the public and decision makers. The approach in the current version of the PSEIS addresses these concerns.

The Preferred Alternative builds on the existing conservative procedure for determining ABC and annual quotas by formalizing in the FMP some of the precautionary practices currently in use. In addition, modifications and improvements in the preferred alternative are designed to address known data gaps or to

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formally account for uncertainty in our knowledge of stock status. The PA accelerates adaptive precautionary management by increasing conservation measures that provide a buffer against uncertainty, instituting research on and review of existing measures and expanding data collection and monitoring programs. While the current stock trends and simulations demonstrate that the status quo alternative meets the standard for achieving sustainably targeted fisheries. The PA formalizes the process for improving the information necessary for fishery management, reducing bycatch, and addressing incidental catch of non-targeted and prohibited species, and expands the current network of protected areas as a precautionary and proactive approach to provide protection of target and non-target species and their habitat.

The 2003 PSEIS builds on previous studies and undertakes a comprehensive examination of environmental impacts from groundfish fishing under the FMPs and alternatives to them. It concludes that while current practices can be improved, they are effective at building sustainable fisheries in Alaska waters.

The cumulative effects analysis contained in the document complies with both CEQ and EPA guidance regarding the analysis and consideration of cumulative effects. In the analysis, all available relevant and reliable historical data has been used to analyze past cumulative effects. However, since the most reliable data available is also the most recent, the analysis reasonably relies to a great extent on data gathered over approximately the last 20 years with an emphasis where appropriate on the data most recently gathered.

Process and structure of the PSEIS. A policy goal of the Preferred Alternative is to accelerate the existing precautionary management measures through community and rights-based management and ecosystem based management principles. Under this approach, additional conservation and management measures would be taken as necessary to respond to social, economic, or conservation needs, or if scientific evidence indicates that a fishery was negatively impacting the environment. This policy recognizes the need to balance many competing uses of marine resources and different social and economic goals for fisheries management.

The Preferred Alternative before us is a policy statement that successfully articulates guidance to utilize the best scientific information available, is precautionary, takes into account levels of scientific uncertainty, and meets the requirements of MSA and other applicable law for meeting conservation goals while balancing numerous social and economic interests. The Council is increasing its commitment to incorporate an ecosystem-based approach to fishery management. The Preferred Alternative management objectives cover a full spectrum of management concerns and consider all aspects of the North Pacific ecosystem including conservation of forage fish, protection for marine mammals and seabirds, and consideration of marine protected areas as tools to maintain abundance, diversity and productivity. The Preferred Alternative gives the highest priority to management actions that seek to avoid overfishing, decrease bycatch and increase protection to vulnerable habitats. The updated policy statement selected by the Council accurately captures and communicates to the public the Council's intention to ensure continued ecosystem-based decision making in the future. The management approach of the PA as now crafted by the Council articulates the overarching fishery management principles upon which future action will be taken to modify the BSAI and GOA FMPs. There are important management measures currently in place that should receive due consideration on their merit and subsequent analyses. Something we believe is required under NEPA. Many of the current and risk adverse management practices are well designed and flexible enough to deal with future issues. They provide viable future choices to the Council as it deals with specific management measures. Failure to include them as options would diminish the value of the PSEIS as an effective planning document.

The analytical approach in the PSEIS is appropriate and provides the information for decision makers to make fully-informed choices. The analytical bookends were developed in order to provide context and contrast both within alternatives and between the alternatives. They are an important analytical tool that allows analysts to provide information characterizing the range of effects within each alternative and the differences between the alternatives. This reflects an important recognition—that fishery management is an evolutionary process; a process that must continually adjust to new scientific information, changes in social and economic conditions, and new legal mandates. The PSEIS will serve a useful reference tool for stakeholders and fishery managers to evaluate the effectiveness of past actions and to use in the development of future management measures. It will also help to maintain sustainable fisheries and healthy fishing communities, while facilitating further integration of ecosystem-based management principles into the management system through a fair and transparent decision making process in which all stakeholders will have an opportunity to participate. The use of example bookends in the PSEIS to illustrate the possible

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range of management options that might be taken in the future is described in each of the alternatives. It also meets the regulatory intent of 40 CFR 1502.14 which states that the alternative section of an SEIS should present the environmental impacts of the proposal and the alternatives in comparative form thus sharply defining issues and providing a clear basis for choices among options by the decision makers and the public. Through all of our NEPA training, we've been advised that NEPA is not action forcing, at least as far as the selection of the preferred alternative is concerned. NEPA only requires that an analysis of the comparative environmental impacts of various alternatives be available to the decision maker so an informed decision may be made at the time a preferred alternative was selected. In other words, NEPA does not require the selection of the environmentally preferred alternative—only that the environmental impacts of the various alternatives be known at the time a PA is selected. Simply, the policy, goals, and purpose of NEPA are largely directed at process. It is the Magnuson Stevens Act that provides the substantive guidance as far as the selection of a preferred fishery management alternative is concerned.

Range of alternatives in the analysis. The Federal action analyzed in the PSEIS is the ongoing management of the groundfish fisheries in the EEZ off Alaska as authorized by the MSA (via FMPs) and pursuant to NEPA and other applicable statutes and Executive Orders. The FMPs are the overall guiding and planning documents for management of the groundfish fisheries in all their aspects. They establish biological, economic, and social goals for management of the fisheries that are consistent with the MSA, ESA, and other laws, and contain specific management measures for achieving these goals.

The goals and objectives set forth in the BSAI and GOA FMPs embody the overarching fisheries management principles upon which all actions are taken under the FMPs. The goals and objectives are the building blocks upon which the Council and NOAA Fisheries base management measures contained within those FMPs.

I believe that each alternative meets the objectives of the action as set forth in the 2003 draft PSEIS' Statement of Purpose and Need and is therefore reasonable. The alternatives encompass a range of potential fishery management policy directions from less to more environmentally precautionary. The policy statements and objectives that comprise the alternatives provide the fishery management framework within which the NPFMC and NOAA Fisheries will commit to operate and have, to the extent practicable, been designed to comply with all appropriate statutory and other requirements.

The four alternatives analyzed in the 2003 PSEIS reflect the full spectrum of reasonable management policies and illustrative measures. One alternative determined unreasonable and not carried forward was the 'no fishing' policy. The four alternatives carried forward and the Preferred Alternative represent management policies ranging from a very relaxed management regime, with aggressive groundfish catch levels and few controls on bycatch and gear (in Alternative 2), to a highly precautionary management policy where the burden of proof is shifted from the resource to the managers and users of the resource, as embodied in Alternative 4. It is my belief that the range of alternatives is adequate.

Speaking to Alternative 4, the components of the Oceans Alternative are very similar to those suggested in the organizations' comments on the earlier draft of the PSEIS. It is these same components that were used to craft Alternative 4. As a result, the management measures recommended in connection with the Oceans Alternative are either already reflected in the Alternative 4 FMP bookends, or fall within the range of actions that could be considered under the Alternative 4 policy.

National Standards and Other Applicable Laws. The Magnuson Stevens Act requires FMPs and other fishery management measures promulgated under MSA to be consistent with a number of its own provisions, including the 10 national standards as well as with other applicable laws that govern the federal fisheries management process in the U.S. The other applicable laws include NEPA, the ESA, the Marine Mammal Protection Act, and the Administrative Procedures Act. Although one or more of the alternatives may provide more protection for a particular endangered species, all of the alternatives would be in compliance with the minimum requirements of the ESA that federal actions avoid jeopardy and/or adversely modifying the critical habitat of the endangered species in question. Whether a particular FMP and/or a management measure promulgated within are consistent with National Standards is often times determined by the degree of balance maintained between competing and sometimes conflicting goals and objectives. The Magnuson Stevens Act also makes a number of findings and identifies other underlying purposes indicative of the goals and objectives motivating Congress when it adopted the MSA in 1976. These goals and objectives remain in place today and are particularly relevant to the selection of the final preferred alternative in connection with this EIS process. They include findings that U.S. fish stocks represent valuable and renewable natural resources that contribute to the food supply, economy, and overall wealth

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and well being of the country. That development and utilization of the Alaska groundfish resource is necessary to assure that our citizens benefit from the employment, food supply, and revenue that is generated from such fishery. And a statement of purpose to the effect that OY determination should be made in a manner that promotes the development of the bottom fish industry off Alaska is a non-wasteful manner. The analysis in front of us clearly shows the effects and tradeoffs between the alternatives with regard to impacts on ESA species. The discussion of other applicable laws MMPA, and other law the Council must consider is clear and shows the differences between the alternatives.

The Preferred Alternative. This alternative describes a management approach that will accelerate its efforts to employ a precautionary and adaptive approach to ecosystem-based management. The preferred alternative also incorporates a set of revised sample bookends that reflect the range of potential management measures the Council is likely to consider as it pursues its goal of ecosystem-based management.

The preferred alternative confirms the Council's continuing dedication to a conservative, adaptive management system. It confirms the Council's commitment to prevent overfishing, protect seabirds and marine mammals, reduce bycatch and habitat impacts to the extent practicable, and otherwise incorporate ecosystem-based management principles into a management approach that recognizes the need to both promote sustainable fisheries and protect fishery-dependent communities. Such an approach accommodates the MSA's policy of protecting the jobs, food production and other economic activity associated with a viable commercial fishing industry. We believe this is a responsible and realistic approach to the various goals and objectives of the MSA and a reasonable compromise and balance between the competing interests reflected within the 10 National Standards.

The status quo, in terms of this Council, is never static. It is a dynamic environment that we operate in. It is important for us to recognize once again, that the current status quo, in fact is not static. It's an information-driven evolutionary process. The Council has a record that we can be very proud of. The process is science driven, transparent, and conservation always comes first.

The preferred alternative took components from Alternatives 1, 3, and 4, combined them in a manner that promotes healthy stocks, is more proactive on habitat protection, and further accelerates incorporating ecosystem considerations into management decisions. The preferred alternative retains the strong role of science that has long been this Council's tradition. The preferred alternative strengthens the public process and it fosters a transparent and effective regulatory process where all stakeholders will continue to have a meaningful role.

For all of those reasons cited, Madam Chair, I encourage fellow Council members to support the preferred alternative."

Ed Rasmuson moved to approve the release of the Final PSEIS, to be filed with the Environmental Protection Agency and made available to the public. The motion was seconded by Dave Benson and carried without objection. The Council's intent is that the Preferred Alternative be identified in the Final PSEIS analysis. The management approach statement and objectives will be recommended to the Secretary of Commerce as FMP amendments to the BSAI and GOA FMPs, which would update the existing Goals and Objectives sections of the FMPs.

The Council also discussed developing a timeline for implementing the groundfish management policy. The Council approved the sample format provided by staff, for the purpose of facilitating public comment. The document is included with these minutes as Appendix 6 and has been updated to reflect the Council's preferred alternative. The Council also wished to alert the public that it intends to use a similar format to develop the timeline in June.

Stosh Anderson moved to initiate an FMP amendment that would address all the FMP housekeeping issues brought forth in PSEIS document. The motion was seconded by Arne Fuglvog and carried without objection. A draft of the revised FMPs will be available to the Council and the public in late April. The Council indicated that it will review the FMPs in June and may take final action on the revisions at that time.

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C-2 Habitat Areas of Particular Concern (HAPC)

ACTION REQUIRED

- (a) Receive reports on HAPC proposal evaluations
- (b) Draft a problem statement, purpose and need, and alternatives for analysis

BACKGROUND

In October, the Council issued a call for HAPC proposals, using the process outlined in the draft environmental impact statement (EIS) for EFH. The Council's initial HAPC proposal cycle focused on two priorities:

1. Seamounts in the EEZ, named on NOAA charts, that provide important habitat for managed species.
2. Largely undisturbed, high relief, long lived hard coral beds, with particular emphasis on those located in the Aleutian Islands, which provide habitat for life stages of rockfish, or other important managed species that include the following features: (a) sites must have likely or documented presence of FMP rockfish species; and (b) sites must be largely undisturbed and occur outside core fishing areas.

The request for proposals yielded 23 separate proposals. In February, the Council forwarded all of these proposals to the plan teams for review. The plan teams met March 8-9; their report is included as Item C-2(a). The plan teams reviewed the scientific and technical merit of each proposal, and evaluated how each proposal meets the Council's priorities and the HAPC considerations of the EFH Final Rule. The proposals were also evaluated for enforcement and socioeconomic considerations, and a report will be provided at the meeting. Note that the Enforcement Committee is scheduled to discuss the HAPC proposals on Tuesday morning.

The joint stipulation requires that "final regulations implementing HAPC designations, if any, and any associated management measures that result from this process will be promulgated no later than August 13, 2006, and will be supported by appropriate NEPA analysis." To meet this schedule, the Council will need to select final HAPC alternatives for analysis no later than the June 2004 Council meeting. To assist in development of these alternatives, staff has adopted a draft purpose and need section (Item C-2(b)), and has provided a 'strawman' list of possible HAPC alternatives (Item C-2(c)). Note that the 'strawman' has not made any attempt to narrow down the areas proposed for HAPC designation.

At this meeting, the Council will begin the process of refining the alternatives for analysis.

AP REPORT (C-2)

The Advisory Panel provided extensive comments on this agenda item (see AP Minutes, pages 3-6, [Appendix 2](#) to these minutes, for more specific comments).

SSC REPORT (C-2)

The SSC heard staff reports covering the tentative schedule of work and framework for analysis of HAPC alternatives, plan team findings and recommendations on HAPC proposals, social and economic effects of HAPC designations and associated management measures, and HAPC enforcement issues. Additionally, Dr. Bob Stone of NMFS-Auke Bay Laboratory provided a presentation on recent research on coralline habitats in the Aleutian Islands. Areas for study were selected based on the occurrence of coral bycatches. Observations were made from the Delta submersible. Dr. Tom Shirley of the University of Alaska Fairbanks gave a presentation on his deep-sea submersible studies of seamounts in the Gulf of Alaska. The seamount project resulted in detailed maps and unique observations on the distribution of deepwater corals, sponges, and associated invertebrates. Several species of crabs were observed. Juveniles and adults of some species were stratified into narrow depth ranges.

To facilitate the Joint Plan Team review, the analysts organized the 23 HAPC proposals into eight groups based on similarities in habitat type or region. The eight groups include: (a) seamounts and pinnacles; (b)

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deep water canyons; (c) GOA hard corals; (d) AI hard corals; (e) AI hard corals (additional subset); (f) AI marine reserve and AI core bottom trawl areas; (g) AI coral gardens and AI coral and sponge; and, (h) BS soft coral. Following Plan Team review, Council staff pooled proposed sites similar in habitat type or in the same region into conceptual approaches for HAPC alternatives, which were presented. The SSC endorses this conceptual approach and encourages the development of a process where the public is encouraged to nominate sites and provide rationale for the sites nominated. The analysts could then assemble available information about fishing activities, and fishery and non-fishery resources in the region of the site. This would place all of the proposals on a similar footing for review by the joint plan teams. The SSC commends the analysts for their exceptional work and presentation.

Because this is the first review cycle for HAPC proposals, there has been some uncertainty about the process of proposal review, about linkages between the proposals and actionable alternatives to be considered by the Council, and about the structure of analysis of the actionable alternatives.

Issues that have arisen include:

- Some proposals did not respond to the two specific priorities identified by the Council. However, while the Council identified priorities, it did not stipulate that it would only entertain proposals that addressed those priorities.
- Some proposals identified areas for further research rather than areas for immediate permanent restrictions on permissible fishing gear.
- It would have been helpful if the request for proposals had clearly specified whether the request was for HAPC in terms of specific habitat areas or in terms of habitat type.
- The linkage between coral and sponge habitat on seamounts and pinnacles and the long-term productivity of FMP rockfish species is not well-established and is unlikely to become well-established. If it is imperative that there be a clear linkage between HAPC and the productivity of FMP species, it is unclear whether HAPC is an appropriate instrument for protecting areas of habitat that have other interests to the public.
- Because the criteria to be used for rating the proposals were not announced at the time that the proposals were solicited, some of the proposals did not include enough information to be rated for “ecological importance” or “sensitivity”.
- Because “stressed” was not clearly defined, the Plan Teams used a scale of the relative intensity of fishing effort as a proxy for “stressed”. Although the Plan Teams scored most proposals for most of the criteria, the Teams expressed concern that a “high” rating of 3 might infer greater knowledge than is warranted by available data and cautions that the ratings are categorical, thus a rating of 3 should not be interpreted as having three times the weight as a rating of 1.

For the above reasons, the Plan Teams have recommended that the summary tables in the Plan Teams report should not be used to evaluate proposed sites. The SSC concurs.

As noted in the February 2004 SSC minutes “a clear definition must be established for all Council priorities and HAPC considerations”. The Council was deliberate in stating their designated priority areas:

- (1) seamounts in the EEZ, named on NOAA charts, that provide important habitat for managed species, and
- (2) largely undisturbed, high relief coral beds that provide important habitats for managed species.

There remains a need to provide unambiguous definitions of the four HAPC considerations established in the EFH Final Rule: (1) importance of ecological function; (2) sensitivity; (3) stress; and (4) rarity. The SSC

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recommends that the analysts review source material such as the recent NRC report on the effects of fishing on habitat, and consult with appropriate experts to develop concise and unambiguous definitions of the four HAPC considerations as they will be applied in the North Pacific.

The definition of “stress” was particularly troubling for the Plan Teams. The Plan Teams interpreted “stress” to be a measure of “relative disturbance”. If disturbance is interpreted as density of bottom contact fishing, then an effort must be made to numerically evaluate effort by gear for each site in contrast to the spatial distribution of the fishery overall. The SSC recommends that the definition for “stress” include a consideration of the frequency of disturbance, habitat recovery time and how natural and human disturbances influence habitat form and function. A kelp forest, for example, is subject to natural perturbation from storms and biota has adapted to a relatively fast regeneration time in contrast to slow growing corals found in deeper waters.

The SSC requests that the Council clarifies its intentions on several important HAPC issues and that staff include in the EA a clear description of the relevant legislation and Council intentions in these areas. The SSC notes that it may not be possible to motivate the protection of rare and fragile habitats (e.g., habitat found on seamounts and coral gardens) solely on the basis of their linkage to the productivity of managed species. Although no new management measures are required, the Council chose to proceed with HAPC and associated management measures as a precautionary way to address potential effects on habitat. The analysts noted that MSFCMA and EFH regulations (FR 67 preamble page 2354) provide for the authority to protect habitat that is not directly linked to the productivity of managed species. The criteria used in the Plan Team evaluation seemed to emphasize the need for a demonstrable linkage between the proposed HAPC and the productivity of rockfish. The Council should clarify their intent to require demonstration of the importance of dense coralline habitats to the productivity of managed species before any action is taken. The SSC believes that this is a very high standard of evidence and may not be consistent with Council’s precautionary approach. The SSC recognizes that there are high costs and a long time frame required to achieve a scientifically credible understanding between these habitats and fish productivity. The SSC suggests that an evaluation of the efficacy of precautionary measures in sustaining sensitive marine habitats be conducted in the near future. It is anticipated that this type of analysis would assist in identifying the amount of habitat that should be protected and the types of protection measures that would be most effective in sustaining sensitive marine habitats.

Specific Comments about the EA

All proposals advanced for consideration as alternatives should be represented in a consistent manner; either in terms of areas proposed for additional gear restrictions or as areas that are not proposed for additional gear restrictions. We note that proposal 14 was the only proposal expressed on maps, figures and tables in terms of areas not proposed for additional gear restrictions.

Analysis of HAPC proposals should consider cumulative benefits and costs as well as incremental benefits and costs. That is, while it is important to judge the benefits and opportunity costs of protecting specific sites, it is also important to identify the cumulative benefits and cumulative opportunity costs of protecting all sites. In addition to examining the cumulative effects of concurrent actions, it is important to explore cumulative effects of sequential actions.

The review of the opportunity cost of displaced fishing effort should be based on the full history of commercial fishing to account for shifts in fishing effort that follow shifts in the distribution and abundance of targeted stocks. For instance, the long history of red king crab fisheries in the Aleutian Islands is not reflected by the limited data obtained for the recent fishery on Petrel Bank. The review should be based on individual fisheries to highlight effects on individual sectors.

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The potential use value associated with HAPC areas should include a brief discussion of possible opportunities for ecotourism. There should also be a discussion of possible benefits or costs to permitting or prohibiting sport fishing in areas designated HAPC.

The potential for effects on harvest should include a discussion of the potential that HAPC designation could preclude future opportunities to harvest in areas where fishing does not presently occur but may occur in response to changes in regulatory restrictions (e.g., Steller sea lion closure areas), changes in the abundance or spatial distribution of fish populations, or changes in the market demand for currently harvested or unharvested species.

The analysis of potential effects on fishing should include a discussion of the salmon and jig fisheries that occur in the HAPC and a judgment of the potential impacts of those fisheries.

The SSC is concerned that analysis of the potential ecological and economic impacts of HAPC designation has been impaired by lack of access to confidential data on catch magnitude, composition, and location information.

Table ES-3 of the draft socioeconomic analysis and associated text should be revised to replace “significant” with another term (e.g., substantive, non-minimal, possible) to avoid possible confusion with NEPA usage of “significance” or traditional usage of “significance” as a measure of the magnitude of estimated parameters or confidence in the conclusion of hypothesis testing.

COUNCIL DISCUSSION/ACTION (C-2 HAPC)

Cathy Coon outlined a tentative schedule of work and a framework for analysis of HAPC alternatives. Diana Stram reported on the Plan Team’s findings and recommendations following their review of the 23 HAPC proposals received in response to the Council’s initial request for proposals. Scott Miller reported on initial efforts to examine the social and economic effects of HAPC designations and associated management measures. The draft initial report on socioeconomic effects was provided as a supplemental in the notebooks, along with an Errata sheet which was distributed during the meeting for Council review. Chris Oliver summarized the Enforcement Committee’s report on this issue (distributed under notebook item B-3).

Earl Krygier moved to adopt the AP’s Problem Statement and Purpose and Need with changes noted in his handout (following this page). His motion also included recommendations on actions and alternatives for further analysis. The motion was seconded by Ed Rasmuson.

Move that the Council:

- 1) Adopts the AP problem Statement
- 2) Adopts the AP Purpose and Need with one modification (Strike out area should read “...management because they are ecologically important, stressed, susceptible to adverse effects of fishing, and other human activities, and/or rare.”
- 2.5) Strike paragraphs 3 & 4 of “1.1 Need for Action”
- 3) Removes the following proposals from the current analytical package: (See C-2c)
 - * Action 1 (C-2c Page 1) - Alternative 4 (Seamounts below the depth inhabited by FMP species)
 - * Action 3 (C-2c Page 3) - Proposal # 12 and Proposal # 14 – These are the large area that are also under consideration as EFH measures.
 - * Action 4 (C-2c Page 3) all proposals under this action.

Those proposals removed from this current analysis will be placed on hold for further consideration under the next HAPC cycle. These proposals will be considered “alive”, and need not be re-submitted (though it is expected that the submitters would participate in up-dating/revisions of their proposals).

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- 4) Move that the management measures originally linked to the various HACP site based proposals be maintained within the analysis, even if a number of proposals are grouped for analytical approach. Consider research component with any management measure.
- 5) Move that the analysis presents information to evaluate if proposed sites are core areas for any fishery by gear type, and provide an evaluation of the intensity of usage that is used to determine "core fishing areas".
- 6) Some proposals need further industry input to aid in site resolution. Because some stakeholders have indicated concerns on these matters the Council will consider an EFH committee – or technical sub-group meeting to resolve the site area definition issues with associated stakeholders during Staff Tasking at this meeting.
- 7) A specific example of number (6) above is Proposal # 8 which identifies 3 areas of Primnoa abundance that corresponds to some core fishing areas for halibut. In this instance the associated management measures would be receive HACP designation only, with no associated new management measures until stakeholder evaluation and resolution of the proposed site boundaries and where the core fishing occurs.

The Council made numerous changes through motions and discussion. The final motion follows and passed without objection.

The Council adopted the following problem statement on Habitat Areas of Particular Concern (HAPC).

HAPC Problem Statement

Habitat Areas of Particular Concern (HAPC) are site-specific areas of Essential Fish Habitat (EFH) of managed species. Identification of HAPCs provides focus for additional conservation efforts for those habitat sites that are ecologically important, sensitive to disturbance, exposed to development activities, or rare. Based on these considerations, the Council has directed that each HAPC site should meet at least two of these criteria, with one being rarity.

The Council has set the priorities of seamounts and undisturbed coral beds outside of core fishing areas important as rockfish or other species habitat as priority sites for identification as HAPC and for additional conservation measures. Seamounts may have unique ecosystems, contain endemic species, and may thus be sensitive to disturbance. Some deep-sea coral sites may provide important habitat for rockfish and other species and may be particularly sensitive to some fishing activities. The Council intends to evaluate alternatives to designate HAPC sites and take action, where practicable, to conserve these habitats from adverse effects of fishing.

The Council adopted the following draft purpose and need section for the analysis.

1.0 Purpose and Need for Action

The Council recognizes that Essential Fish Habitat (EFH) designations are necessarily broad in scope because of the limited available scientific information about the habitat requirements of managed species. The Council further recognizes that specific habitat areas within EFH may warrant additional management because they are ecologically important, stressed, susceptible to adverse effects of fishing and other human activities, and or rare. HAPC identification provides a way to call extra attention to such habitats and to focus conservation and enhancement priorities within EFH.

1.1 Need for Action

In section 2 of the Magnuson-Stevens Fishery Conservation and Management Act, Congress recognized that one of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Congress adopted specific requirements for fishery

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management plans (FMPs) to identify EFH and minimize to the extent practicable any adverse effects of fishing on EFH. In the regulations implementing the EFH provisions of the Magnuson-Stevens Act, NMFS encourages Councils to identify types or areas of habitat within EFH as HAPCs (50 CFR 600.815(a)(8)). HAPCs provide a mechanism to acknowledge areas where more is known about the ecological function and/or vulnerability of EFH, and to highlight priority areas within EFH for conservation and management.

HAPCs and associated management measures considered by the Council would provide additional habitat protection and further minimize potential adverse effects of fishing on EFH. Such actions are consistent with the EFH EIS because they address potential impacts that are discussed in the EIS, even though the EIS indicates new management measures may not be required under the Magnuson-Stevens Act to reduce those impacts. In effect, through its evaluation of HAPCs, the Council is considering new measures that would be precautionary.

The need for this action also stems from a May 2003 joint stipulation and order approved by the U.S. District Court for the District of Columbia. That agreement reflected the Council's commitment to consider new HAPCs as part of the response to the AOC v. Daley litigation that challenged whether Council FMPs minimize to the extent practicable the adverse effects of fishing on EFH. Under the agreement, final regulations implementing any new HAPC designations and any associated management measures must be promulgated no later than August 13, 2006.

1.2 Purpose of Action

The purpose of this action is to determine whether and how to amend the Council's FMPs to identify and manage site-specific HAPCs. HAPCs identified as a result of this EA would provide additional habitat protection and further minimize potential adverse effects of fishing on EFH. The HAPCs would be subsets of EFH that are particularly important to the long-term productivity of one or more managed species, or that are particularly vulnerable to degradation. The Council may identify HAPCs based on one or more of four considerations listed in the EFH regulations: ecological importance, sensitivity, stress from development activities, and rarity of the habitat type. The Council required that each HAPC site should meet at least two of those considerations, with one being rarity.

The Council established a process for considering potential new HAPCs, which is documented in Appendix J of the draft EFH EIS. While many types of habitat may be worth considering as HAPCs, the Council determined that concrete and realistic priorities should be set to move forward expeditiously with the designation and possible protection of HAPCs. The Council decided that the initial HAPC proposal cycle should focus on two priorities:

1. Seamounts in the EEZ, named on NOAA charts, that provide important habitat for managed species
2. Largely undisturbed, high relief, long lived hard coral beds, with particular emphasis on those located in the Aleutian Islands, which provide habitat for life stages of rockfish, or other important managed species that include the following features:
 - a) sites must have likely or documented presence of FMP rockfish species
 - b) sites must be largely undisturbed and occur outside core fishing areas

Coral areas were selected as a Council HAPC priority because they may be linked with rockfish and other FMP species. Additionally, areas of high density "gardens" of corals, sponges, and other sedentary invertebrates were recently documented for the first time in the North Pacific Ocean and appear to be

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particularly sensitive to bottom disturbance. Some deep sea corals are fragile, long-lived, and slow growing organisms that provide habitat for fish and may be susceptible to human induced degradation or stress.

Seamounts were selected as a Council HAPC priority because they may serve as unique ecosystems. Some FMP species on seamounts may be endemic (exclusive to a particular place) and vulnerable to stress caused by human induced activities. The purpose of this priority is to protect seamounts from potential disturbance from fishing activities, and therefore to ensure the continued productivity of these habitats for managed species.

If the Council identifies HAPCs that include state waters, the Council will relay its concerns to the Alaska Board of Fisheries to suggest appropriate protection of HAPCs under state jurisdiction.

HAPC Proposals

The Council forwards the following analytical package of proposals to be formulated into alternatives by staff such that the Council will review the framework and select final alternatives including sites and management measures, to initiate an Environmental Assessment (EA) during the June, 2004 Council meeting.

The Council directed staff to prepare a preliminary analysis on the selected alternatives to be presented to the Council in June. Within this analysis the management measures originally linked to the various HAPC site based proposals will be maintained. Under staff tasking the Council also directed staff to develop within the framework of alternatives sites and management measures for each alternative as well as hybrids of those sites that had multiple proposals addressing the same area. The Council further directed staff to present a research component with any management measure.

Additionally, the Council directed staff to present information to evaluate if proposed sites are core areas for any fishery by gear type, and provide an evaluation of the intensity of usage that is used to determine "core fishing areas".

****Proposal 8 needs further industry input to aid in the site resolution. Because some stakeholders have indicated concerns on these matters the Council will form a technical sub-group meeting to resolve the site area definition issues with associated stakeholders. The work groups' results will be delivered during staff reports to the Council in June.**

Each alternative will specify the site and management for that HAPC alternative.

Action 1 – Seamounts

Alternative 1: No action (no seamount HAPCs).

Alternative 2: Designate 5 named seamounts in the EEZ off Alaska as HAPCs (Dickens, Geacomini, Patton, Quinn, Welker). Site-specific habitat and species presence/absence data is available for these 5 named seamounts.

Alternative 3: Designate 16 named seamounts in the EEZ off Alaska as HAPCs. Sixteen named seamounts are within less than 3,000m in depth, which is the deepest recorded range of FMP species. Although site-specific habitat and species presence/absence data is available for only 5 of these sites, species composition can be inferred for the 11 unexplored seamounts. (Proposal 4)

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Action 2 – GOA Corals

Alternative 1: No action (no GOA coral HAPCs).

Alternative 2: Designate three sites along the continental slope at Sanak Island, Albatross, and Middleton Island as HAPCs. These sites are identical to proposed closure areas that were delineated in Alternative 5a for the EFH EIS. These areas were proposed based on anecdotal information from trawl captains that the area is likely rockfish habitat and relatively unfished.

Alternative 3: ***Designate four sites at Cape Ommaney, Dixon Entrance, Fairweather Ground (NW Area), and Fairweather Ground (Southern Area) as HAPCs. Site-specific habitat and species presence/absence data is available for these areas. These sites are in areas where concentrations of *Primnoa* were documented using a manned submersible conducting groundfish stock assessments and researching the effects of fishing gear on benthic habitats. During these investigations, rockfish and other managed species were observed in association with high relief corals. Disturbance to these fragile corals was observed *in situ*, including derelict fishing gear contacting the coral. (Proposal 8)

1) Cape Ommaney Site. *Primnoa* sp. (red tree coral) colonies are concentrated on a series of small pinnacles about 28 km west of Cape Ommaney, Baranof Island, Alaska. Red tree coral (*Primnoa* sp.) is located on bedrock and large boulders at depths between 201 and 256 m. Several hundred colonies were observed at this site and many were greater than 1 m in height. Several sections of derelict longline gear were observed at the study site and damage to several colonies was evident. The majority of colonies were attached to the seafloor and undamaged, however.

2) Dixon Entrance Site. In 1997, NMFS/AFSC/Auke Bay Laboratory scientists conducted submersible dives with the DSV *Delta* in two areas of Dixon Entrance where large catches of *Primnoa* sp. coral were collected as bycatch during triennial groundfish surveys. Submersible observations confirmed the presence of a series of dense *Primnoa* sp. concentrations. Additionally, two sites in this area sampled as part of the Auke Bay Laboratory's sablefish stock assessment program have consistently produced the highest incidental long line catches of *Primnoa* sp. coral in the Gulf of Alaska since 1989. Red tree coral is located on scattered large boulders at depths between 150 and 380 m. Several hundred colonies were observed at the submersible sites and 163 colonies have been collected as bycatch at the two survey sites since 1989. Many colonies were greater than 1 m in height. The majority of colonies at the submersible site were attached to the seafloor and undamaged.

3) Fairweather Ground Sites. In 2001, NMFS/AFSC/Auke Bay Laboratory scientists conducted submersible dives with the DSV *Delta* in areas of the Fairweather Grounds where large catches of *Primnoa* sp. coral were collected as bycatch during triennial groundfish surveys. Submersible observations confirmed the presence of a series of dense *Primnoa* sp. concentrations. Red tree coral is located on scattered large boulders at depths between 150 and 200 m. Colonies were observed at the submersible sites and distributed throughout the dive transects. Many colonies were greater than 1 m in height. The majority of colonies at the submersible site were attached to the seafloor and undamaged.

Alternative 4: Alternative 2 plus Alternative 3.

Action 3 – Aleutian Island Corals

Alternative 1: No action (no Aleutian Islands coral HAPCs).

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Alternative 2: Designate six coral garden sites within the Aleutian Islands as HAPCs. In 2002 NMFS submersible dives found high density 'gardens' of corals, sponges and other sedentary invertebrates in the central AI.

Adak Canyon: Large, geologically active submarine canyon on the south end of Adak Strait. Eastern flank of the canyon is rich in corals and other sedentary invertebrates. The area contains a series of small coral gardens on the island arc slope between the 150 m and 300 m contour bathymetry lines. (Proposals 9, 16, 19)

Cape Moffett, the Northern portion off Adak Canyon: Area contains series of small coral gardens on the island arc slope between 150-250 m. (Proposals 11, 16, 19)

Bobrof Island: Area contains series of small coral gardens on the island arc slope between 150-250m. (Proposals 11, 13, 19)

Semisopochnoi Island: Submarine volcano, Amchixtam Chaxsxii, whose summit is at ~115 m, with an overall height of 580 m. Lava flows extend 14 km downslope to the southeast of the volcano. Strong currents were observed. Coral garden habitat exists on the west side of volcano from the summit to a depth of 365 m. NMFS scientists suspect the entire undersea volcano is likely covered with coral garden habitat. Large *Primnoa spp.* colonies present at 365 m indicate that the submarine volcano may not have erupted within the last several hundred years. (Proposals 11, 12, 13, 18, 19)

Great Sitkin: Area contains series of small coral gardens on the island arc slope between 300-365 m. (Proposals 16, 19)

Ulak Island: Area contains series of small coral gardens on the island arc slope between 150-250 m. (Proposals 11, 13, 17, 19)

Alternative 3: Designate Bowers Ridge as an HAPC. North of Petrel Bank in the Aleutian Islands is a unique submerged ridgeline that spans depths from 11m to greater than 3,700 m. This area is designated EFH for several rockfish species. The complex bathymetric features of the ridge provide a physically complex habitat that likely supports undisturbed coral gardens. (Proposals 10, 18)

Alternative 4: Designate 9 sites as HAPCs in the Aleutian Islands (South Amlia/Atka, Cape Moffett, Great Sitkin, Adak South, Kanaga Volcano, and Kanaga, Tanaga and Amatignak/Ulak Islands). Trawl skippers with experience and knowledge of the Aleutian Islands selected these sites because they meet the NPFMC priority for high relief hard coral stands likely to be good rockfish habitat. These areas are mostly considered untrawlable grounds with very rocky substrates, numerous snags, and strong tide changes. (Proposals 15, 16, 17)

C-3 Aleutian Islands Pollock

ACTION REQUIRED

Initial Review of an EA/RIR for amending the BSAI FMP to allocate pollock quota to the Aleut Corporation for an Aleutian Islands Fishery. Approve releasing the EA/RIR for Public Review.

BACKGROUND

During its February 2004 meeting, the Council reviewed recent Congressional action that requires the Council to allocate TAC to the Aleut Corporation for a directed Aleutian Islands pollock fishery. The pollock allocation would be for economic development in Adak. Section 803 of the Consolidated Appropriations Bill, 2004 (HR 2673) and Senator Stevens' floor language on Section 803 are attached as Item C-3(a). The Council also received a report from NMFS that summarized options available for implementing the elements in the Bill, and a report from NMFS and Council staff on the potential

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environmental and socio-economic effects of implementing the Statute as well as cumulative effects considerations. The Council also received comments from the AP and the public.

One of the provisions in the Bill would allow the Council to exceed the BSAI 2.0 million mt OY cap, for the years 2004 through 2008 so that a TAC could be allocated and not affect other fisheries in the fully prescribed BSAI groundfish fisheries. That option was rejected by the Council. Another element in the Bill is the requirement that any action taken does not trigger a formal ESA Section 7 consultation over the endangered Steller sea lion; the Council concurred, and asked its Steller Sea Lion Mitigation Committee to evaluate options for providing an Aleut Corporation pollock fishery on a separate track.

The Council's motion (attached as Item C-3(b)) tasked staff with preparing an EA/RIR/IRFA for an FMP amendment. The Council's intent is to make an initial review of this document at this April meeting, suggest changes in the document that may be necessary, and send it out for public review. The Council intends to take final action at its June 2004 meeting. Under this schedule, the Council is allowing itself sufficient time for the rulemaking and FMP amendment process so that the AI pollock fishery can be authorized for the 2005 fishing season. The schedule the Council selected specifically allows the Council to make decisions on apportioning TAC for this fishery within the normal specifications process this fall.

NMFS and Council staff have prepared an EA/RIR (with a certification that an IRFA is not required) that responds the specific elements in the Council's February motion. A copy of this document was shipped to the Council, SSC, and AP on March 19, 2004. There are five main decisions the Council will eventually need to make in approving the AI pollock fishery. Each of the five decisions has several alternatives, each of which is based on the Council motion and the language in the Bill or in Senator Stevens' floor language.

The following decision points and their alternatives were analyzed:

Elements and Alternatives

- 1.0 Allocation size
 - 1.1 No action: Determine the appropriate Aleutian Islands pollock TAC each year during the annual specifications process.
 - 1.2 For guidance in determining the allocation amount to the AI pollock fishery, the Council shall consider pollock allocations given to the various groups that participate in the CDQ program, in order to recommend a "reasonable amount" of AI pollock to award to the Aleut Corporation and in no case should this amount exceed 40,000 mt.
- 2.0 Allocation mechanism
 - 2.1 No action: no regulatory changes
 - 2.2 The pollock allocation to the AI fishery will be funded by a reduction in the EBS pollock TAC. Any unused pollock TAC from the AI fishery will be rolled back to the EBS pollock TAC. This will occur at the earliest time possible in the calendar year.
 - 2.3 The pollock allocation to the AI fishery will be funded by taking proportional reductions in the TAC amounts from each of the existing groundfish fisheries in the BSAI, without regard to species. Any unused TAC amount, surplus to the needs of the AI pollock fishery, will be rolled back to the fisheries from which it originated in the same proportions (and species). This should occur at the earliest time in the calendar year.
 - 2.4 Option: Exempt the BSAI sablefish IFQ fishery from the proportional reduction
- 3.0 Monitoring vessel activity
 - 3.1 Status quo (this option imposes only those monitoring and enforcement requirements that would be required if there were no change in regulations).
 - 3.2 "Increased monitoring" alternative. This alternative would have several components (not options). These include:
 - 1. Aleut Corp must let the NMFS Alaska Region know which vessels are authorized by it to fish in the Aleutians, and these vessels must carry documentation showing they have such permission;
 - 2. If a catcher vessel authorized by the Aleut Corp fishes in the Aleutians at any time during a trip, all pollock landed by that vessel when the trip ends will be deemed to be Aleutian Islands pollock and debited against the Aleut Corp. quota;
 - 3. AFA requirements extend to catcher-processors and motherships (this extends AFA level observer and scale requirements to CPs under 60 feet and to unlisted AFA vessels);
 - 4. AI pollock may only be delivered to a shore plant with a catch monitoring control plan;
 - 5. The Aleut Corp. will be responsible for keeping its harvests and its agents' harvests within the AI pollock directed fishing allowance.

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- 3.3 "Observer" alternative. All the requirements of Alternative 2 would apply; in addition, under Alt 3 all catcher vessels would be required to have 100% observer coverage.
- 4.0 Small vessels
 - 4.1 No action. Take no steps to delay ability of Aleut Corp. to introduce vessels under 60 feet LOA.
 - 4.2 Defer small vessel participation until a later date 2 (2006) or 5 (2009) years from 2004 to allow for development of a management program.
- 5.0 Economic development report mandate
 - 5.1 No action: do not require an annual report to the Council
 - 5.2 Require an annual report to the Council
 - 5.3 Require an annual report comparable to CDQ reports.

The EA/RIR provides an analysis of each of these elements and alternatives, a cumulative effects analysis, and a Regulatory Impact Review. The Executive Summary of the EA/RIR is attached as Item C-3(c). Several maps of the Aleutian Islands and the historic patterns of pollock catch in the AI subarea are provided under Item C-3(d).

AP REPORT (C-3)

The AP recommends that the EA/RIR for an amendment to the BSAI Groundfish FMP to allow an allocation of AI pollock to the Aleut Corporation be released to the public with the following additions: ***Motion passed 20/0***

- Amplify discussion in the EA on chinook bycatch and implications to other fisheries. ***Motion passed 19/0/1***
- Add an alternative 1.3: The annual allocation to the Aleut Corporation be fixed at ____% of the annual ABC for AI pollock, but will not exceed 40,000 tons.
 - a) 18%
 - b) 36%
 - c) 50%
 - d) 75%
 - e) 100%***Motion passed 12/8***
- 2.2 The pollock allocation to the AI fishery will be funded by a reduction in the EBS pollock **TAC if necessary to remain under the 2.0 million mt OY cap**. Any unused pollock TAC from the AI fishery will be rolled back to the EBS pollock TAC. This will occur at the earliest time possible in the calendar year.
 - 2.3 The pollock allocation to the AI fishery will be funded by taking proportional reductions in the TAC amounts from each of the existing groundfish fisheries in the BSAI, without regard to species **if necessary to remain under the 2.0 million mt OY cap**. Any unused TAC amount, surplus to the needs of the AI pollock fishery, will be rolled back to the fisheries from which it originated in the same proportions (and species). This should occur at the earliest time in the calendar year.***Motion passed 20/0***
- Relative to the pollock harvest levels under the new 1.3 of the EA, quantify rockfish bycatch amounts and implications to MRAs and rockfish target fisheries in the Aleutian Islands. ***Motion passed 14/1/4***
- Add a qualitative discussion of what effect, if any, an allocation to the Aleut Corporation would have on the repayment of loans to the government on pollock as mandated under the AFA. ***Motion passed 13/7.***

A motion to initiate a discussion paper on a trailing amendment that would allow under 60'vessels without current LLPs to fish for other species in the Adak area failed 8/11/1.

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Minority Report:

The minority of the AP supported a trailing amendment to discuss additional fishing opportunities for those vessels under 60' that, by statute, are exempt from LLP requirements in harvesting the Aleut Corporation's allocation of AI pollock. These vessels need additional fishing opportunities to retain their residency in Adak and build the community. The intent of the Aleut Corporation's pollock allocation, as indicated in the floor comments on section 803 of the 2004 Consolidated Appropriations Act, is to build a fishing community in Adak. Additional LLP exemptions for vessels under 60' will further these goals. Signed: Duncan Fields, Kris Norosz, Dan Falvey, Eric Olson, and John Moller.

SSC REPORT (C-3)

The SSC recommends that this document be released for public review after the following suggestions have been addressed.

1. Two market-based options for funding the AI pollock allocation could be included as alternatives that were considered but not analyzed further.

(a) The pollock allocation could be made available through outright purchase of perpetual harvest shares held by AFA vessels. We note, however, that such a purchase would be expensive. For example, the annuity value of 40,000 mt at current market prices and current interest rates is on the order of \$233 million.

(b) Alternatively, it might be possible to fund a portion of the AI pollock allocation as an exchange for forgiveness of a portion of any outstanding balance remaining from the \$75 million AFA loan.

2. Two elements of the significance criteria require attention. The criteria (Table 4.1-1 and 4.1-2) for assessment of impacts of spatial temporal concentration should include language that appears in other direct effects; "such that it jeopardizes the ability of the stock to sustain itself". The criteria used for assessment of impacts on other marine mammals (Table 4.1-10) do not parallel potential impacts on other marine mammals. Some revision of the other marine mammal significance criteria is required particularly with respect to northern fur seals.

3. The EA should highlight the potential implications of adopting the potential boundary between AI and BS pollock stocks at 174° W longitude (see page 13 of the EA and the 2003 SAFE chapter). Adoption of this boundary could affect the catch history relevant to any allocation associated with this amendment.

4. The background section on potential factors influencing the decline of Steller sea lions should include a reference to the cascade hypothesis involving killer whales, recently published in Science. In addition, the EA could acknowledge that the decline in Steller sea lions occurred during the period when the AI pollock fishery was high (see page 104).

5. The gear (e.g. net configuration), fishing method, horsepower, and regions fished by vessels < 60 ft may result in different catch rates of species other than pollock. Thus, it may be inappropriate to extrapolate bycatch rates from larger, observed vessels to those of smaller, unobserved vessels. This may influence the estimates of impacts on prohibited species, rockfish, and non-target species.

6. The EA should address two additional potential impacts to seabirds or marine mammals: the amendment could increase the potential for introducing rats to islands either through shipwrecks or near-shore mooring and the action could increase the rate of gear loss and potential for entanglement of marine mammals (104).

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The SSC notes that the potential impacts on small entities, specifically CDQ communities, of a non-zero allocation of pollock to the AI could be significant (see note 1a, above). Although the present FMP amendment does not specify an allocation and thus does not result in significant RIR/IRFA impacts, the TAC setting process will trigger a need for heightened attention whenever a non-zero TAC is proposed for the AI region, perhaps as soon as this fall.

The SSC supports the requirement for VMS on vessels participating in this fishery. The SSC also notes that one alternative to observer deployment could be a requirement for video monitoring of all vessels. The technology for on-board video recording has improved to the point where it might be possible to implement a video-based system to monitor vessels for at-sea discarding, and to verify no fishing occurred in restricted areas.

We also note that one consequence of Section 803 is that it codifies the 2.0 million ton OY cap. While there is a provision for an exception to the cap during the years 2004-2008, there is no provision for a scientific review of the appropriateness of the cap. This codification of the cap is problematic; all biological parameters should be subject to periodic review to account for possible changes in environmental conditions, changes in the status of fish populations and the status of populations of other species, and to incorporate additional scientific knowledge. The SSC has recommended a review of the OY as a component of the Preliminary Preferred Alternative of the PSEIS.

COUNCIL DISCUSSION/ACTION (C-3)

Bill Wilson and Dr. Ben Muse provided an overview of the need for Council action to address requirements of Section 803 of the Congressional Appropriation Act of 2004. Staff also provided an overview of the initial review draft Environmental Assessment for an amendment to the BSAI FMP to implement the provisions of the Act. Bill Wilson provided a handout of his PowerPoint presentation, along with an addendum to the EA.

The Council's discussions focused on several issues of concern, including:

- the size of the potential allocation to the Aleut Corporation,
- how the allocation to the Aleut Corporation would be "funded",
- how CDQ apportionments would be calculated,
- how the fishery might affect Chinook salmon bycatch caps in the BSAI,
- what level of reporting would be sufficient to track how the Aleut Corporation apportionment is contributing to economic development in Adak,
- whether to consider granting <60 ft vessels LLPs with endorsements allowing trawling for groundfish other than pollock in the AI, and
- how the fishery might participate in the repayment of the \$75 million loan obligation incurred under the AFA Section 207 (fee on BSAI pollock harvested from the directed fishing allowance by the AFA inshore catcher vessels).

Stosh Anderson moved to add two additional alternatives for analysis (below). Dave Benson seconded the motion.

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Add the following additional alternative under Decision 1 (allocation size)

1.3 The Council shall allocate a combined Aleutian Islands ICA and DFA equal to the lesser of the ABC or 40,000 mt. This allocation shall be subject to the 40% "A" season, 60% "B" season allocation required by the SSL protection measures.

Add the following additional alternative under Decision 2 (funding and roll back)

2.5 If possible, the Aleutian Islands DFA is to be funded from the difference between the sum of BSAI species TACs and the BSAI OY cap. No allocation to the Aleutian Islands DFA shall be made from a species TAC unless the difference between the sum of the species TACs and the OY cap is not large enough to fund the Aleutian Islands DFA. If this difference is not large enough to fund the Aleutian Islands DFA, 10% of the allocation to the Aleutian Islands pollock DFA shall be taken from the BSAI rock sole ITAC, 10% from the BSAI yellowfin sole ITAC, and 80% from the EBS pollock ITAC. No later than June 10 (start of the "B" season), unused Aleutian Islands "A" season pollock DFA, and the entire Aleutian Islands "B" season DFA, shall be rolled back to the EBS pollock fishery.

The Council passed a series of motions that modified the list of decision elements and alternatives. The final motion carried without objection. The final list of elements and alternatives follows.

1.0 Allocation size

- 1.1 No action: Determine the appropriate Aleutian Islands pollock TAC each year during the annual specifications process.
- 1.2 For guidance in determining the allocation amount to the AI pollock fishery, the Council shall consider pollock allocations given to the various groups that participate in the CDQ program in order to recommend a "reasonable amount" of AI pollock to award to the Aleut Corporation and in no case should this amount exceed 40,000 mt.
- 1.3 The Council shall allocate a combined AI Incidental Catch Allowance and Directed Fishing Allowance equal to the lesser of the ABC or 40,000 mt. This allocation shall be subject to the 40% A season and 60% B season apportionment required by the Steller sea lion protection measures.
- 1.4 Beginning in 2005, and until changed, the annual AI pollock TAC shall be the lesser of 15,000 mt or 40% of the AI pollock ABC. One hundred percent of the Directed Fishing Allowance shall be available for harvest in the pollock A season.

2.0 Allocation mechanism

- 2.1 No action: no regulatory changes
- 2.2 The pollock allocation to the AI fishery will be funded by a reduction in the EBS pollock TAC if necessary to remain under the 2 million mt OY cap. Any unused pollock TAC from the AI fishery will be rolled back to the EBS pollock TAC. This will occur at the earliest time possible in the calendar year.
- 2.3 The pollock allocation to the AI fishery will be funded by taking proportional reductions in the TAC amounts from each of the existing groundfish fisheries in the BSAI, without regard to species if necessary to remain under the 2 million mt cap. Any unused TAC amount, surplus to the needs of the AI pollock fishery, will be rolled back to the fisheries from which it originated in the same proportions (and species). This should occur at the earliest time in the calendar year.
- 2.4 The pollock allocation to the AI fishery will be funded as described above in Alternative 2.3 but exempting the BSAI sablefish IFQ fishery from the proportional reduction.
- 2.5 If possible, the AI Directed Fishing Allowance (DFA) is to be funded from the difference between the sum of the BSAI groundfish fishery TACs and the BSAI OY cap. No allocation to the AI DFA shall be made from a groundfish fishery TAC unless the difference between the sum of the groundfish fishery TACs and the OY cap is not large enough to fund the AI DFA. If this difference is not large enough to fund the AI DFA, 10% of the allocation to the AI pollock DFA shall be taken from the BSAI rock sole ITAC, 10% from the BSAI yellowfin sole ITAC, and 80% from the Eastern Bering Sea (EBS) pollock

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ITAC. No later than June 10 (start of the B season), unused AI A season pollock DFA, and the entire AI B season DFA, shall be rolled back to the EBS pollock fishery.

3.0 Monitoring vessel activity

- 3.1 Status quo (this option imposes only those monitoring and enforcement requirements that would be required if there were no change in regulations).
- 3.2 "Increased monitoring" alternative. This alternative would have several components (not options). These include:
- 1) Aleut Corporation must let the NMFS Alaska Region know which vessels are authorized by it to fish in the Aleutians, and these vessels must carry documentation showing they have such permission;
 - 2) If a catcher vessel authorized by the Aleut Corporation fishes in the Aleutians at any time during a trip, all pollock landed by that vessel when the trip ends will be deemed to be Aleutian Islands pollock and debited against the Aleut Corporation quota;
 - 3) AFA requirements extend to catcher-processors and motherships (this extends AFA level observer and scale requirements to CPs under 60 feet and to unlisted AFA vessels);
 - 4) AI pollock may only be delivered to a shore plant with a Catch Monitoring Control Plan;
 - 5) The Aleut Corporation will be responsible for keeping its harvests and its agents' harvests within the AI pollock directed fishing allowance.
- 3.3 "Observer" alternative. All the requirements of Alternative 3.2 would apply and would require all catcher vessels to have 100% observer coverage.

4.0 Small vessels

- 4.1 No action. Take no steps to delay ability of Aleut Corporation to introduce to the fishery vessels under 60 feet LOA.
- 4.2 Defer small vessel participation until a later date 2 (2006) or 5 (2007) years from 2004 to allow for development of a management program.

5.0 Economic development report mandate

- 5.1 No action: do not require an annual report to the Council.
- 5.2 Require an annual report to the Council.
- 5.3 Require an annual report comparable to CDQ reports.
- 5.4 At its June 2006 meeting, the Council shall review the AI pollock fishery performance, including information on harvest success, development of a small vessel fleet, and progress toward completion of pollock processing capacity to determine if further adjustments to the AI pollock TAC may be appropriate, in light of Section 803 of the Consolidated Appropriations Act, 2004 and Senator Stevens' floor language. (Alternative 5.4 could be combined with either 5.1, 5.2, or 5.3.)

6.0 Chinook salmon bycatch

- 6.1 No action: AI pollock fishery Chinook salmon bycatch would count against the BSAI Chinook salmon bycatch caps.
- 6.2 Chinook salmon bycatch in the AI pollock fishery would not count against the BSAI Chinook salmon bycatch caps.

The Council requested that staff include in the revised draft document a qualitative discussion of any effects an allocation to the Aleut Corporation may have on repayment of loans to the government on pollock as mandated under AFA. This amendment to the main motion passed 7 to 4 (Benson/Hyder; with Balsiger, Bundy, Duffy, and Rasmuson voting against). The Council chose not to consider changes in the LLP program at this time. The revised draft EA/RIR will be sent out for public review in May, and the Council will take final action at the June meeting.

C-4 GOA Groundfish Rationalization

ACTION REQUIRED

Review Board of Fisheries Report and Discuss State Water Management Issues.

BACKGROUND

The Alaska Board of Fisheries groundfish rationalization committee, or workgroup, has met several times to discuss options for addressing state waters fisheries issues relative to the Council's GOA rationalization initiative. The committee last met in February after the Council's February meeting. The committee submitted its recommendations from that meeting to the Board. The Board, in turn, discussed this issue at its February meeting. A report from the Board to the Council will be provided by Board Chairman Ed Dersham. Recommendations from the Board to the Council and management of State water fisheries will also be discussed at the joint meeting with the Board. Written materials for this agenda will be provided at the meeting.

AP REPORT

The Advisory Panel did not take up this agenda item.

SSC REPORT

The SSC did not take up this agenda item.

COUNCIL DISCUSSION/ACTION (C-4)

Ed Dersham, Vice Chair State of Alaska Board of Fisheries, reported on future management of Gulf of Alaska State water fisheries in coordination with the management of federal water fisheries under the Gulf of Alaska comprehensive rationalization program. **In response to the Board of Fisheries recommendation, Kevin Duffy moved that the Council adopt the following options for analysis concerning allocating a portion of the TAC to State water fisheries (inside of 3 nautical miles):**

- 1) **An amount equivalent to the total annual catch (for each groundfish species/group) from state waters (inside of 3 nm [e.g., parallel and 25% Pacific cod fishery]) by all vessels will be managed directly by the State of Alaska Board of Fisheries as a TAC/GHL equivalent to:**
 - a. **Highest amount taken in state waters by area**
 - b. **Highest amount taken in state waters by area plus 15%**
 - c. **Most recent four-year average harvest from state waters**
- 2) **All catch inside of 3 nautical miles by non-federally permitted vessels fishing the parallel fishery plus all catch under the 25% state water cod fishery and the PWS Pollock fishery remains under the authority of the State of Alaska Board of Fisheries.**
- 3) **Only the catch associated with the 25% state water cod fishery and the PWS Pollock fishery remains under the authority of the State of Alaska Board of Fisheries.**

These provisions will be substituted for the existing provisions concerning allocations to the State waters fisheries in the elements and option for Gulf rationalization.

The motion carried without objection.

C-5 GOA Rockfish Pilot Program

ACTION REQUIRED

Develop alternatives and elements for analysis.

BACKGROUND

In February 2004, the Council first considered the Section 802 of Title VIII of the Consolidated Appropriations Act of 2004, which directed the Secretary of Commerce to develop a rockfish demonstration program for the Central Gulf of Alaska rockfish fisheries in consultation with the Council. At that time, NOAA Fisheries staff presented a discussion paper concerning considerations for implementation of such a program (Item C-5(a)), including the entire text of the legislation. In response to the directive of the legislation, the discussion paper, and public testimony, the Council deferred action on this issue and requested industry stakeholders to propose alternatives and elements that would establish the demonstration program for consideration at this meeting. Since February 2004, industry stakeholders have submitted a proposed alternative with options to establish the demonstration program (Items C-5(b)). If the Council wishes to proceed with the development of this program, alternatives and elements should be defined for the appropriate regulatory analyses.

AP REPORT

The Advisory Panel provided extensive comments on this agenda item (see AP minutes, [Appendix 2](#) to these minutes, or more specific comments).

SSC REPORT

The SSC did not take up this agenda item.

COUNCIL DISCUSSION/ACTION (C-5)

Lori Swanson (Groundfish Forum) and Julie Bonney (Alaska Groundfish Data Bank) presented a management proposal prepared by industry stakeholders for the Central Gulf of Alaska rockfish demonstration program. The industry proposal would establish cooperative programs for both the trawl catcher vessel and trawl catcher processor sectors. LLP holders with targeted landings in the Pacific Ocean perch, Northern rockfish, or pelagic shelf rockfish (i.e., dusky, yellowtail, and widow rockfish) fisheries would be eligible for the program.

Dennis Austin moved to adopt the Advisory Panel's recommendations (see [Appendix 2](#) to these minutes). Dave Benson seconded the motion. **Earl Krygier then moved to amend Mr. Austin's motion by replacing it with his revised version which was handed out.** The motion was seconded by Ed Rasmuson.

The Council made numerous changes to the alternatives and elements for initial analysis, through motions and lengthy discussion. See [Appendix 7](#) to these minutes for the Council's final motion on this agenda item. Initial review is scheduled for June.

The Council also included in its motion a request that staff provide the following information concerning activity of participants eligible for the rockfish program:

- 1) Vessels (by name) that made landings in the CGOA target rockfish fishery from 1996-2002 with current endorsement status;**

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- 2) Estimates of thornyhead and shortraker/rougheye incidental catch requirements in the sablefish, halibut and Pacific cod longline fisheries. The Council recommends using observer and IPHC data;
- 3) Natural divisions in the level of history awarded within each sector (i.e. between vessels with minimal, moderate and high participation);
- 4) For the following fisheries: GOA flatfish (all), AI POP, BSAI other flatfish, BSAI yellowfin sole, BSAI pacific cod, WGOA rockfish, WYAK rockfish; Participation patterns in these fisheries during the month of July by LLP holders who will receive allocations;
- 5) Percentage of total catch, by species complex, in the month of July for each year 1996-2002 by sector
 - GOA: Deep complex=rex sole, deep water flatfish, arrowtooth flounder; Shallow complex=shallow water flatfish, flathead sole
 - BSAI: Other flatfish=rocksole, flathead sole, arrowtooth flounder, Alaska plaice, other flatfish.

The Council adopted the following problem statement:

The present management structure of the CGOA rockfish fishery continues to exacerbate the race for fish with:

- Increased catching and processing capacity entering the fishery,
- Reduced economic viability of the historical harvesters (both catcher vessels and catcher processors) and processors,
- Decreased safety,
- Economic instability of the residential processor labor force,
- Reduced product value and utilization,
- Jeopardy to historical groundfish community stability,
- Limited ability to adapt to Magnuson-Stevens Act (MSA) requirements to minimize bycatch and protect habitat.

While the Council is formulating GOA comprehensive rationalization to address similar problems in other fisheries, a short-term solution is needed to stabilize the community of Kodiak. Kodiak has experienced multiple processing plant closures, its residential work force is at risk due to shorter and shorter processing seasons and the community fish tax revenues continue to decrease as fish prices and port landings decrease. Congress recognized these problems and directed the Secretary in consultation with the Council, to implement a pilot rockfish program. The fishing fleets have had little experience with cooperative fishery management and needs to begin the educational process. For the fishery to be rationalized all aspects of the economic portfolio of the fishery needs to be recognized. To stabilize the fishery economy all the historical players - harvesters (both catcher vessels and catcher processors) and processors need to be recognized in a meaningful way. The demonstration program is designed as a short-term two-year program for immediate economic relief until comprehensive GOA rationalization can be implemented.

The Council directed staff to develop a third alternative for analysis. (The status quo and the industry proposal are the first two alternatives.) The third alternative would be a harvester cooperative program

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that provides processor protection through a license limitation for eligible processors. Under this alternative, participating harvesters would be required to deliver their harvests exclusively to licensed processors. Processors that processed in excess of 250 metric tons of the allocated rockfish species in at least three of the years from 1996 to 2001 would be eligible for a limited entry license.

The Council requested that staff attempt to compile initial data requests for review at the June meeting.

C-6 IR/TU (Amendment 80)

ACTION REQUIRED

Receive progress report on Amendments 80a and 80b.

BACKGROUND

In April 2003, the Council reviewed a discussion paper and decision tree for proposed Amendment 80 that would develop a cooperative structure for the non-AFA trawl CP sector. At that meeting, Amendment 80 was expanded to include alternatives for allocating BSAI groundfish and PSC species among all BSAI fishing sectors. At the June and October 2003 meetings, the Council continued to refine the components and options for Amendment 80a (sector allocations) and 80b (cooperative structure for non-AFA trawl CP sector). At the December 2003 meeting, the Council finalized the components and options for Amendment 80a and 80b for the purpose of analysis. In January 2004, the Council created a problem statement for Amendment 80 and approved alternatives for the purpose of analysis. Currently, the amendment is scheduled for initial review in June 2004, followed by final action in October 2004.

Since January 2004, the analytical team has been preparing the EA/RIR/IRFA for Amendment 80. Given the complex and lengthy processes of preparing the database for Amendment 80, much of the progress on the EA/RIR/IRFA has been in sections where data analysis is not necessary. Sections requiring data analysis will be completed over the next several weeks. NMFS is currently working on the enforcement and monitoring sections of the EA/RIR/IRFA, but these sections will likely not be completed in time for initial review in June.

In the process of working further on the analysis for Amendment 80, staff encountered a few components and options that were ambiguous, inconsistent or required additional clarification. Most of the language issues were able to be cleared up with a simple edit to the components and options. A marked up copy of the components and options is attached as Item C-6(a). For those issues that require Council clarification, staff has prepared a discussion paper highlighting the areas that need to be addressed. The paper is attached as Item C-6(b).

Finally, at the January 2004 meeting, the Council requested staff to provide an analysis of the underutilized threshold option proposed in Component 10 of Amendment 80a. Staff has prepared a discussion paper that overviews the mechanics of the of the underutilized threshold option. Also included in the paper is a brief discussion on some key elements of the component that require further clarification by the Council. The discussion paper is attached as Item C-6(c).

AP REPORT

The AP recommends the Council direct staff to continue to develop Amendment 80A and 80B components and options with suggested changes (below). Further, the AP recognizes the importance of advancing 80A and 80B together to provide the H&G sector tools needed to fully achieve the goals of Amendment 79, and recommends the Council proceed with their development in a linked fashion. ***Motion passed 17/0***

ISSUE 1:

Include staff's recommendation to insert the word 'legal'. ***Motion passed 16/0***

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Expand analysis to include area splits in the BSAI Pacific cod fishery and how that effects LLP endorsements by area and historical fishing patterns. Include solutions allow participants to fish historic fishing patterns.
Motion passed 18/0

ISSUE 2:

Amend option 9.2 and add a new section 9.3 (contingent on combining 80a and 80b):

In suboption 9.2.2, remove suboptions a-e for reductions of PSC apportionments, as they only apply to one suboption for apportionments of PSCs.

Create a new option using the same PSC reduction options, such that the options would apply to any PSC apportionment method selected.

Option 9.3 Select a PSC reduction option from the following that would apply to any PSC apportionment suboption selected in 9.2. PSC reduction options can vary species by species, and sector by sector.

- 9.3.1 Reduce apportionments to 60% of calculated level.
- 9.3.2 Reduce apportionments to 75% of calculated level.
- 9.3.3 Reduce apportionments to 90% of calculated level.
- 9.3.4 Reduce apportionments to 95% of calculated level.
- 9.3.5 Do not reduce apportionments from calculated level.

Motion passed 17/1/1

ISSUE 3:

Strike component 10 and refer it to a recomposed IRIU technical committee for further development.

Motion passed 18/1

ISSUE 4:

Add an option 11.7 for <60' pot and H&L cvs

- a) 96-02
- b) 97-02
- c) 98-02
- d) 99-02
- e) 00-02

Add an option 12.7 for <60' pot and H&L cvs

- a) At least one landing
- b) 5 mt
- c) 10 mt
- d) 20 mt
- e) 50 mt

Suboption 1: Exclude jig vessels and <60' fixed gear CV from minimum landing requirements

Suboption 2: Exclude jig vessels

Motion passed 17/0

Add a component 13 for fixed gear vessels > 60' for Pacific cod

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- Eligibility and participation as determined in the Amendment 67 and the current LLP program.
Motion passed 17/0

Additionally, the AP recommends the following responses to the questions posed by staff in the discussion paper presented to the Council:

1. Amendment 80 is intended to create a license-based program
2. Excessive share caps are intended to do all the following:
 - a. Apply to the legal entity which owns the license
 - b. Limit the holding of history in the fisheries
 - c. Be applied across species, to the total allocation to the sector
 - d. Be applied using the 'individual and collective' rule.

Motion passed 14/0

The AP recommends the Council accept staff corrections on 80B. ***Motion passed 14/0***

SSC REPORT (C-6)

The Scientific and Statistical Committee did not address this agenda item.

COUNCIL DISCUSSION/ACTION (C-6)

The Council received progress reports from Jon McCracken and Mark Fina on Amendment 80a and 80b. The staff pointed out several components and options of the analysis that were inconsistent or needed additional clarification

Roy Hyder moved to approve the recommendations of the AP outlined in their minutes (Appendix 2). Earl Krygier seconded the motion. John Bundy questioned staff as to whether the AP's recommendations addressed all the staff's concerns and Jon McCracken replied that they did.

Arne Fuglvog moved to amend the main motion by revising Component 13 on page 13 of the AP minutes to read:

Add a Component 13 for fixed gear vessels greater than 60 feet for participation in the directed BSAI Pacific cod fishery.

- ***Eligibility is determined by The motion Amendment 67 in the current LLP program.***

Stosh Anderson (?) seconded the motion. The amendment to the motion carried without objection.

Earl Krygier moved to remove the 2nd paragraph under Issue 1 (page 12 of AP minutes) from the analysis and instead request the staff prepare a discussion paper on this topic. Also, we request staff prepare an additional discussion paper on the GRS retention pool concept, which was presented in public testimony from U.S. Seafoods. Both discussion papers would be reviewed at the June meeting. Stosh Anderson seconded the motion. The amendment to the motion carried without objection.

Earl Krygier moved to amend the main motion to reinsert Component 10 under Issue 3 (page 13 of AP minutes) as a placeholder and refer it to a reconstituted IR/IU Technical Committee tasked with preparing recommendations for the June meeting. The motion was seconded by Dave Benson. The amendment carried with one objection (Roy Hyder).

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Arne Fuglvog moved to amend the main motion to request staff prepare a third discussion paper to examine multiple cooperatives as an option for Amendment 80b. The motion was seconded by Ed Rasmuson. The amendment to the motion carried without objection.

The final motion, as amended, carried without objection. It is included as Appendix 8 to these minutes.

The Council also directed staff to prepare three discussion papers for the June Council meeting:

- The first paper would provide an analysis of splitting the BSAI Pacific cod allocation into separate allocations for the BS and AI. The paper will focus on how that split would effect historical fishing patterns and area endorsements issued for the BS and AI. Included in the paper would be options that would allow participants to continue fishing in their historic patterns.
- The second paper would further develop the concept of a groundfish retention pools for the non-AFA trawl catcher processor sector and recommend options for applying retention pools to bridge the implementation gap between Amendment 79 and Amendment 80.
- The third paper would examine the concept of allowing multiple cooperatives to form in the non-AFA trawl catcher processor sector (Amendment 80b).

Additionally, the Council also moved initial review for the amendment package to October 2004, due to the need to further refine the threshold option for underutilized species and to fully review the discussion papers noted above.

C-7 Observer Program

ACTION REQUIRED

- a) Receive Observer Advisory Committee report.
- b) Receive update on analysis to restructure the funding and deployment mechanism in the North Pacific Groundfish Observer Program and provide input as necessary.

BACKGROUND

- a) Receive Observer Advisory Committee report.

The Observer Advisory Committee (OAC) met on March 11-12, 2004 at the Alaska Fisheries Science Center in Seattle. Per direction of the Council in February, the primary purpose of the meeting was to review the current problem statement guiding the analysis to restructure the funding and deployment mechanism in the Observer Program, and recommend any appropriate changes to the problem statement or the suite of alternatives. The OAC was also tasked with addressing additional issues, as explicitly identified in the agenda. The OAC report is provided as Attachment C-7(a). The discussion paper provided to the OAC to facilitate the meeting is Attachment C-7(b).

The proposed amendment would implement a new system in which NMFS would contract directly with observer providers for observer coverage, and this would be supported by a broad-based user fee and/or direct Federal funding. The problem statement, adopted by the Council in February 2003, identifies data quality and disproportionate cost issues resulting from the current program structure. Concerns with the existing program arise from the inability of NMFS to determine when and where observers should be deployed, inflexible coverage levels established in regulation, cost-equity issues among the various fishing fleets, and the difficulty to respond to evolving data and management needs in individual fisheries.

The original suite of alternatives (Alternatives 1-5) was adopted by the Council in April 2003. The primary alternative would apply the new program to all Gulf of Alaska (GOA) groundfish vessels, and additional alternatives add halibut vessels, GOA shoreside processors, and Bering Sea/Aleutian Islands (BSAI) vessels with currently less than 100% coverage requirements. Vessels and processors not covered under the new program would continue to operate under the existing program, whereby vessels contract directly with observer providers (pay-as-you-go).

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The OAC was specifically tasked to explore new alternatives that address the issue of combining the BSAI and the GOA as one comprehensive observer program, including the concept of a direct NMFS contract with observer providers. Part of the impetus for considering a program-wide alternative is NMFS' concern that observer accountability and observer compensation would differ in the BSAI and the GOA if the direct contract system between NMFS and observer providers was only implemented in the GOA. NMFS provided a letter to this effect in February, concluding that effective procedures for addressing observer performance and data quality issues can only be put in place through a service delivery model that provides direct contractual arrangements between NMFS and the observer providers. NMFS thus recommended that the Council include an alternative that would make this change in the observer program governing the fisheries in the GOA and BSAI.

Part of NMFS' concern also stems from a recent agency policy on observer compensation issues, outlined in a memo from NMFS Headquarters [included in Appendix C of the discussion paper in C-7(b)], and discussed at the February 2004 Council meeting. This policy maintains that fisheries observers are eligible for overtime compensation under the Service Contract Act (SCA), the Fair Labor Standards Act (FLSA), and other Acts stipulating wages and benefits for employees contracted by the government. As part of the Council's February 2004 motion, the Council sent a letter to NMFS HQ [included in Appendix B of the discussion paper in C-7(b)] requesting reconsideration of this policy and clarification as to how this policy would affect observer compensation costs under a direct contract approach, as is proposed in the current analysis for the Observer Program in the North Pacific. A response was received on March 8 and is attached to the OAC report. In brief, the letter recognizes the issues identified by the Council and concludes that the agency could not provide a response at this time, due to ongoing litigation in U.S. District Court related to these issues.

Overall, the OAC addressed the major issues requested by the Council, with the understanding that further information on observer compensation issues and the cost implications of NMFS' recent policy are necessary to understand the impacts of any of the existing or new alternatives. The primary recommendations, detailed in the OAC report, include:

- No revisions to the problem statement for the observer program restructuring analysis.
- The addition of two new alternatives (and suboptions) for analysis which include specific BSAI fleets. The committee supported retaining the original five alternatives that apply only to the GOA, resulting in a total of seven alternatives with suboptions.
- The committee did not recommend including a program-wide alternative for all BSAI and GOA vessels and processors.

The OAC also recommended further consideration of a concept proposed during the meeting to mitigate concerns with observer accountability under the current service delivery model. The concept would require a provision in contracts between vessel owners and observer providers to make observer providers responsible for ensuring that observers' conduct and performance meet NMFS' standards, and would allow for immediate removal of the observer if there is a violation of these standards. While the committee did not endorse the exact language provided in the draft contract provision, it did recommend further consideration of the concept by NMFS and NOAA GC. A comprehensive summary of these and other issues discussed at the meeting is provided in the OAC report (Attachment C-7(a)).

b) Receive update on analysis and provide input as necessary.

In light of the uncertainty surrounding observer compensation issues and the related ongoing litigation, a discussion of the schedule may be necessary at this meeting. Staff can continue to work on the analysis and refine the alternatives recommended by the Council. However, at some point, it will be imperative to analyze the costs of observer coverage to the different fleets under a new direct contract system, in the process of defining a fee to fund observer coverage under the various alternatives. This significant element of the analysis cannot be completed until additional guidance is provided regarding observer compensation issues and the NMFS policy discussed previously. NMFS has provided a letter (Attachment C-7(c)) recommending that, pending timely conclusion of the litigation, Council review of the initial draft analysis be scheduled for October 2004.

AP REPORT

The Advisory Panel recommended the Council revise the membership of the Observer Advisory Committee to include adequate representation from the less than 60-foot groundfish, halibut, freezer longliner, and CDQ sectors.

SSC REPORT

The SSC did not address this agenda item.

COUNCIL DISCUSSION/ACTION (C-7)

Nicole Kimball reported to the Council the recommendations of the Observer Advisory Committee (OAC) which was tasked to review the problem statement and alternatives for the analysis to restructure the funding and deployment mechanism in the North Pacific groundfish observer program.

Dr. Balsiger reiterated NMFS' concerns that a program-wide alternative should be analyzed, and made the following motion: **To add an alternative to the analysis that would provide for program-wide service delivery model change to provide agency oversight of observers in all observed GOA and BSAI fisheries through direct contracts between NMFS and observer providers. Under this alternative, funding of observer coverage costs could range from a program-wide fee-based approach to sector-specific funding, which could include payment for daily coverage costs in some sectors and fees in other sectors.** The motion was seconded by Ed Rasmuson.

Arne Fuglvog questioned whether Dr. Balsiger's motion included the breakout of specific BSAI sectors as described in the new alternatives recommended by the Observer Advisory Committee. Dr. Balsiger said it was his intention to include them. For clarification purposes, **Arne Fuglvog moved to amend the main motion to include in the analysis the OAC's recommendations for new Alternatives 6 and 7 and their respective suboptions (listed below).** The motion was seconded by Hazel Nelson and carried without objection.

Alternative 6: GOA groundfish vessels, halibut vessels, GOA-based groundfish processors, BSAI fixed gear catcher vessels and BSAI pot vessels. This alternative expands on Alternative 4 by including BSAI fixed gear catcher vessels (longline, jig, & pot) and BSAI pot catcher processors. Vessels fishing for CDQ that fit into these categories are also included. BSAI-based groundfish processors that take deliveries from vessels participating in the program would have the option to participate in the program.

Alternative 7: GOA groundfish vessels, halibut vessels, GOA-based groundfish processors, all BSAI groundfish vessels under 125', and all BSAI pot vessels. This alternative expands on Alternative 6 by adding BSAI trawl catcher vessels under 125', and BSAI trawl and longline catcher/processors under 125'. Vessels fishing for CDQ that fit these categories are also included. BSAI-based groundfish processors that take deliveries from vessels participating in the program would have the option to participate in the program.

Suboption 7: Include longline and/or non-AFA (H&G) trawl catcher processors >125'. This suboption expands on Alternative 7 by including longline and trawl catcher processors over 125'. Either one or both categories of catcher processors over 125' could be included within this alternative.

Suboption to exclude GOA processors from Alternatives 4-7. GOA shoreside and floating processors are included in Alternatives 4 through 7. This suboption would allow GOA-based shoreside and floating processors to be excluded as a class from any of the alternatives in which they are currently included.

Suboption for annual opt-in/opt-out provision for BSAI-based shoreside and floating processors under Alternatives 4-7. Under Alternatives 4 through 7, BSAI-based inshore and floating processors would participate in the fee collection program and would pay fees for any landings by vessels that are included in the program. However, BSAI-based shoreside and floating processors would not pay

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fees for landings by vessels not included in the program and would not obtain their observer coverage through the program.

Dr. Balsiger's motion, as amended by Mr. Fuglvog, carried without objection.

Council review of the initial draft analysis was rescheduled for October 2004. This was due to litigation constraints on NMFS which has hampered the agency's ability to analyze the total cost of observer coverage to the various fleets under the proposed fee-based program.

C-8 CDQ Program

ACTION REQUIRED

- (a) Receive report on status of BSAI Amendment 71.
- (b) Discuss fishery management issues.

BACKGROUND

(a) Receive report on status of BSAI Amendment 71

Sally Bibb (NMFS) will report to the Council on the issues associated with BSAI Amendment 71, as well as other issues pertaining to the upcoming 2006 - 2008 allocation process and government oversight of the CDQ Program.

In June 2002, the Council approved BSAI Amendment 71, to address policy and administrative issues in the western Alaska CDQ Program. The Council recommended revisions to the CDQ Program under eight issues which fall into four categories: (1) the CDQ allocation process; (2) government oversight; (3) allowance for CDQ groups to invest in non-fisheries economic development projects; and (4) revisions to requirements for quota transfers and alternative fishing plans. All of the issues require regulatory amendments to implement, but only two of the issues (government oversight and non-fisheries projects) have associated FMP amendment text.

NMFS Alaska Region staff have suspended work on a proposed rule that would address all of Amendment 71 in a single rulemaking package, primarily due to concerns that more analysis is needed on new legal issues related to the role of NMFS and the State in oversight of the CDQ Program, and because the next allocation cycle will begin before regulatory revisions can be made effective. NMFS will propose an approach to the Council that will divide the issues in Amendment 71 and allow NMFS to proceed with implementation of some issues while continuing to work on further analysis of the role of the State and NMFS in oversight of the CDQ Program.

The 2006-2008 CDQ allocation process

The current allocations to the CDQ groups expire at the end of 2005. The 2006-2008 CDQ allocation process will be conducted in a manner consistent with the regulatory revisions under Amendment 71. The primary new element in the allocation process is the addition of an administrative appeals process that was recommended by NMFS. The State is willing to voluntarily submit its CDQ allocation recommendations to NMFS prior to the October 15 deadline currently in NMFS's regulations, in order to provide sufficient time for the administrative appeals process. Under this proposal, the 2006-2008 CDQ allocation process will start in October 2004 and conclude by December 31, 2005. NMFS and the State will provide the Council with a more detailed schedule of events for the 2006-2008 CDQ allocation cycle.

The crab rationalization program will add two new crab CDQ allocations to the CDQ Program in 2005: Eastern Aleutian Islands brown (golden) king crab and Adak red king crab. While allocations beyond 2005 will be included in the standard 2006-2008 allocation process, the State of Alaska and NMFS must develop and approve percentage allocations of these crab CDQ reserves among the CDQ groups for 2005. NMFS and the State CDQ Team are proposing to include 2005 allocation recommendations for these two new crab CDQ categories in the 2006-2008 CDQ allocation process.

The role of NMFS and the State in CDQ program oversight

Last fall, the U.S. Fish and Wildlife Service (USFWS) wrote a letter to NMFS concluding that NMFS is taking a Federal action under the Endangered Species Act (ESA) when it approves Community Development Plans (CDPs) and amendments to the plans. The letter is provided as Attachment C-8(a). The USFWS concluded that NMFS is authorizing the economic development projects and, therefore, has a responsibility to consult with the USFWS on these projects

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under the ESA. Since the implementation of the CDQ Program in 1992, NMFS has not considered ESA and NEPA issues in its decisions to approve CDPs and amendments. NOAA General Counsel generally agrees with the USFWS on this conclusion and has advised NMFS that approval and amendment of CDPs likely are agency action subject to the consultation requirements of the ESA

This conclusion on ESA responsibility will likely also lead to the conclusion that NMFS's approval of Community Development Plans and amendments require environmental review under NEPA. These additional responsibilities will require NMFS to conduct some level of environmental review for the CDP as a whole and for any amendments before NMFS can approve those actions. NMFS has not fully evaluated the process that would be required or the agency resources necessary to fulfill these additional responsibilities. However, it is certain that this determination would result in additional review responsibilities for NMFS staff and additional information requirements for the CDQ groups.

These environmental review requirements result from NMFS's regulations that require the CDQ groups to receive prior approval from the State and NMFS before spending money or conducting activities described in the CDP or amendments.

Before expanding its current role, NMFS needs to further examine the extent of its legal responsibilities for environmental review and provide the Council, State, and CDQ groups with an assessment of the impacts on the program and the agencies. NMFS proposes to address these issues as part of the continued analysis of government oversight issues associated with Amendment 71. NMFS recommends that an additional alternative with the following elements be further analyzed in that amendment package:

1. NMFS would continue to review and approve or disapprove the State's recommendations on CDQ allocations;
2. the CDQ groups could be required to submit a CDP as part of the allocation process, but NMFS would not approve or disapprove that plan at the time it approves allocations;
3. NMFS would no longer require the CDQ groups to obtain approval from NMFS for amendments to the plans or approval from NMFS before proceeding with new CDQ projects.

CDQ community eligibility issues

Senator Murkowski recently introduced a bill (S. 2197) in Congress which addresses the issue of eligible CDQ communities. Currently, community eligibility criteria for participating in the CDQ Program is included in the Magnuson-Stevens Act (added in 1996 under the Sustainable Fisheries Act amendments), the BSAI FMP, and in Federal regulations, but the exact wording of the criteria differs among the three documents. Given the rules of statutory construction, the eligibility criteria in the Magnuson-Stevens Act take precedence over the eligibility criteria set forth in Federal regulations (50 CFR 679.2), to the extent there is any conflict between the statutory and regulatory language. A letter challenging the CDQ allocations prompted NMFS to examine this issue, and to initiate the effort, a legal opinion was requested from NOAA GC on whether and where inconsistencies exist between the criteria listed in Federal regulations and that listed in the Magnuson-Stevens Act, as well as how to interpret and apply the statutory criteria for community eligibility.

The legal opinion (NOAA GC, August 15, 2003) concluded that the Federal regulations (and BSAI Groundfish FMP) must be revised to be consistent with the eligibility criteria in the Magnuson-Stevens Act, and only communities that meet that criteria can be listed as eligible communities in regulation and participate in the CDQ Program. The legal opinion further concluded that NMFS must review the eligibility status of each of the 65 communities that have previously been determined eligible by NMFS, either through rulemaking or administrative determination, relative to the eligibility criteria in the statute. At its October 2003 meeting, the Council was provided with a discussion paper outlining the eligibility issues and NMFS' analytical approach to address the existing inconsistencies. NMFS delayed efforts on this analysis, with the understanding that Congressional action to clarify the eligible CDQ communities was likely forthcoming prior to the next allocation cycle.

Senator Murkowski introduced the "CDQ Community Preservation Act" on March 11, 2004. In sum, this bill would clarify the status of the 65 communities currently participating in the CDQ Program as eligible; this includes all communities determined eligible through rulemaking (currently listed in Table 7 to Part 679 of 50 CFR) as well as the subset of communities that was approved by NMFS administrative determination on April 19, 1999. The bill does not preclude new communities from becoming eligible. The proposed bill language is provided as Attachment C-8(b), and the list of 65 eligible communities is provided as Attachment C-8(c).

While NMFS may continue to take action to revise the FMP and Federal regulations to make the eligibility criteria consistent with that in the MSA, Congressional action on this bill would make a re-evaluation of each of the 65 participating communities unnecessary.

b) Discuss fishery management issues.

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NMFS will provide a report to the Council on a proposed analysis to revise the fishery management regulations for the CDQ Program. This analysis was spurred by a concern with the strict quota accountability required for CDQ allocations and the need for more flexibility to respond to changes that occur in the groundfish fisheries through the annual specifications process.

In 2003, NMFS implemented the Council's recommendation to no longer allocate the "other species" CDQ reserve among the CDQ groups because of the potential that the CDQ groups would catch their allocations of "other species" before harvesting their target species. The issue likely will arise again in the next few years with rockfish, as some of the rockfish species groups have been split by species and area in recent years to better manage the individual rockfish species. Splitting quota categories usually results in smaller TACs, smaller CDQ reserves, and smaller allocations to the individual CDQ groups. Some of the rockfish TACs are sufficiently small that individual CDQ groups could be allocated less than one metric ton of a particular rockfish species for the entire fishing year.

Rather than continuing to address the constraints that strict quota accountability places on the CDQ groups on a species by species basis as problems arise, NMFS is recommending that the Council consider alternatives to address this problem. In addition, NMFS will recommend alternatives to provide more flexibility to determine percentage allocations among the CDQ groups in the case that the Council combines groundfish TAC categories by area or species in the annual specifications process.

NMFS is proposing to analyze the following alternatives:

Alternative 1: No action. Continue to establish CDQ reserves for every annual TAC category except squid. All CDQ reserves would be allocated among CDQ groups, with the exception of "other species." The CDQ groups would continue to be prohibited from exceeding any of the CDQ allocations made to the group.

Alternative 2: Modify the annual groundfish specification regulations to allow the Council to recommend each year: (1) which CDQ reserves would be allocated among the groups and which CDQ reserves would not be allocated among the groups, and (2) how to manage new TAC categories created by joining existing TAC categories by species or area among the CDQ groups.

Option 1: Reallocate squid to the CDQ Program and incorporate into this process.

Alternative 3: Amend NMFS regulations to specify which TAC categories would be allocated to the CDQ groups and which TAC categories would not be allocated to the CDQ groups. Any changes to these specifications would have to be made by a subsequent regulatory amendment.

Option 1: Reallocate squid to the CDQ Program and incorporate into this process.

More information about the proposed problem statement and the alternatives is included in the attached summary prepared by Obren Davis (NMFS) (Attachment C-8(d)). NMFS is requesting recommendations from the Council on these and any other alternatives to include in the analysis. The initial draft analysis will be presented to the Council at its June 2004 meeting, with final action in October 2004.

AP REPORT

The Advisory Panel did not take up this agenda item.

SSC REPORT

The SSC did not take up this agenda item.

COUNCIL DISCUSSION/ACTION (C-8)

Sally Bibb, NMFS, provided a report on the status of BSAI Amendment 71.

Dr. Balsiger moved that the Council amend its previous motion adopted in June 2002 on BSAI Amendment 71 to split it into two FMP amendments as follows:

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- **Amendment 71a will address revisions to the purpose of the CDQ Program and the allowance for non-fisheries projects. This FMP and regulatory amendment will move forward as a first priority.**
- **Amendment 71b will address the oversight issues and the CDQ allocation process. Staff will bring additional analysis of the oversight issues back to the Council for initial review at a future Council meeting.**

The Council also recommends that the minor regulatory revisions in Issue 8 (addressing quota transfers and alternative fishing plans) of BSAI Amendment 71 be implemented through a separate regulatory amendment as soon as possible.

The motion was seconded by Earl Krygier and passed without objection.

C-9 National/Regional Bycatch Plans

BACKGROUND

In February we received a report from NOAA Fisheries on the National Bycatch Strategy, and reviewed a draft Regional Implementation Plan for the Alaska region. We provided comments to Dr. Hogarth on aspects of both the National Strategy and the Regional Plan (Item C-9(a)), and received a response earlier this month (Item C-9(b)). There is nothing substantial to report at this time on the Regional Implementation Plan, but we have provided a copy of the funding request relative to this initiative that was forwarded from the Regional Office of NOAA Fisheries (Item C-9(c)), and a brief NMFS discussion paper on the definition of 'bycatch' (Item C-9(d)). This was an issue of significant concern by our Council, and we may wish to provide additional feedback to the agency on this issue.

Also attached (Item C-9(e)) is a brief overview of a recent observer program related workshop held in Seattle.

AP REPORT

The AP did not address this agenda item.

SSC REPORT

The SSC reported that NMFS had revised the draft implementation plan to reflect their concerns on options (including EFPs) for advancing research related to bycatch assessment and management and highlight the relationship between the objectives of the Alaska Region Implementation Plan and the objectives in proposed revisions to the observer program. However, NMFS did not address the SSC's concerns on the inconsistency between the MSFCMA and the National Bycatch Strategy definitions of bycatch with reference to discards. The SSC gave several examples of issues that could arise due to the bycatch definition inconsistency and noted that the implications of these issues relative to their consistency with Council objectives and FMPs should be fully explored.

COUNCIL DISCUSSION/ACTION (C-9)

Chris Oliver summarized the information included under this agenda item and reiterated that the definition of "bycatch" used in the National Bycatch Strategy is still a primary issue of concern to the Council. Dr. Hogarth's letter dated March 5, 2004, stated "this definition is worthy of serious discussion" and he suggested that discussion take place at the upcoming Council Chair and Executive Director's meeting. Mr. Oliver ascertained that these concerns will be discussed further at the April 13-15 national meeting of Council and NMFS leadership.

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Dr. Balsiger distributed a copy of the NMFS Alaska Region's responses to the Council and SSC comments on the draft Bycatch Priority and Implementation Plan.

Following questions from Council members on the NMFS funding requests, Dr. Balsiger explained that the proposals submitted by the Alaska Region and AFSC were in response to a solicitation by the agency for bycatch projects which they had obtained funding for through the National Bycatch Reduction Spending Plan. Dr. Balsiger said they hope to hear more about whether or not these projects will be funded during the national Council Chair/ED meeting next week.

Dennis Austin suggested that a summary of the key issues discussed at the meeting be provided to all councils. Mr. Oliver added that the host Council usually takes minutes and drafts a report of the proceedings. Chair Madsen tasked Mr. Austin with preparing the summary he requested since he will be attending the meeting.

This was an informational item and no action was taken.

D. FISHERY MANAGEMENT PLANS

D-1 Scallop FMP

ACTION REQUIRED

Develop alternatives to modify the license limitation program.

BACKGROUND

At the February 2004 meeting, the Council initiated analysis of possible revisions to the scallop license limitation program (LLP). This proposed analysis would examine modifying or eliminating the 6 foot dredge size gear endorsement. The dredge gear endorsement was approved as part of the original LLP, which was adopted as Amendment 4 to the Scallop FMP and implemented in 2000. This gear restriction may have disproportionate impacts on only one fishery participant, so measures are being evaluated to modify or eliminate this restriction.

The Council requested that staff prepare a discussion paper reviewing the background of the scallop LLP and proposing draft alternatives to modify the current LLP endorsements. This discussion paper is attached as Item D-1(a). At this meeting, the Council will review the background of the LLP and establish alternatives to be examined in an EA/RIR/IRFA for modifying the LLP endorsements. Concurrent with this analysis, staff will update the FMP to better reflect the current status of scallop biology and management.

AP REPORT

The Advisory Panel endorsed the SSC recommendation to initiate an analysis with the alternatives identified.

SSC REPORT

The SSC reviewed the alternatives developed by Council staff to modify gear restrictions in the scallop LLP. The SSC finds the range of alternatives to be adequate and requests that the analysis also include a consideration of potential economic effects on the existing cooperative structure of the fishery.

COUNCIL DISCUSSION/ACTION (D-1)

Dennis Austin moved to adopt the SSC's recommendation to initiate an analysis of the alternatives identified by Council staff, which would include examination of any potential impacts upon the existing cooperative structure in the scallop fishery. Further, the Council adopts the Problem Statement

provided by staff (D-1 Supplemental) with an addition concerning the Scallop FMP. The alternatives and problem statement are listed below.

Alternatives:

Alternative 1: Status Quo. Maintain the current 6-foot dredge restriction endorsement.

Alternative 2: Modify the current 6-foot dredge restriction to allow vessels with the current endorsement to fish in statewide waters outside of Cook Inlet with a maximum of two 10-foot dredges (or two dredges with a combined width of no more than 20 feet).

Alternative 3: Eliminate the current 6-foot dredge restriction such that there are no gear restrictions on any Scallop LLP for fishing in statewide waters outside of Cook Inlet.

Problem Statement:

The current federal LLP limits two license holders to fish with a single 6-foot dredge in federal waters while 7 license holders are allowed to use the full complement of gear (two 15-foot dredges). The Council approved this LLP under Amendment 4 to the federal Scallop FMP, as a means to address excess capacity in the scallop fishery. Since the federal LLP was implemented in 2001, it has come to the attention of the Council that given observer requirements and their associated costs, this gear restriction may create a disproportionate economic hardship to those vessels when fishing outside of state waters. The Council is considering modifying or eliminating this gear restriction on those federal LLP licenses.

Council's addition:

Additionally, the current Scallop FMP does not reflect the most current status of scallop biology & management and revisions are necessary to update the FMP in these regards.

The motion was seconded by Ed Rasmuson and carried without objection. Initial review of the analysis is tentatively scheduled for the June 2004 meeting.

D-2 Staff Tasking

ACTION REQUIRED

Review tasking and provide direction.

BACKGROUND

The list of Council Committees is attached under Item D-2(a). The Steller Lion Mitigation Committee will meet April 26th at the Alaska Fisheries Science Center, and the Fur Seal Committee will be meeting via teleconference in the next month or so, but no date has been set.

Item D-2(b) is a three-meeting outlook, and Item D-2(c) is a summary of current staff tasking. As we discussed in February, a few projects have been delayed or put on hold while the NMFS and Council staff focus on analyzing and implementing Congressionally mandated programs (BSAI crab rationalization, and AI pollock allocation), and other major issues (GOA rationalization, IRIU, Observer Program, HAPC). Some staff time should become available after the April meeting (Jane will be back in our office, and Diana Evans is finishing up with the PGSEIS), so we can begin work on some of the 'back-burner' projects. These projects may include: administrative changes to the halibut subsistence program, repeal of the vessel incentive program, non-target species, SR/RE retention, and IFQ program changes (likely with contract assistance). The Council may want to provide guidance on prioritizing projects for tasking.

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AP REPORT (D-2)

The Advisory Panel recommends the Enforcement Committee or other appropriate committee, be tasked to review the following crab rationalization/crab CDQ issues:

- Catch counting methodology used to deduct quota from a product (will it be after the catch is weighed on certified scale or on observer estimates at sea?)
- Enforcement involvement in transfers to cover overages
- Enforcement involvement in coop transfers of underage
- Scale certification and standard margin of error
- Overage and underage provisions in the crab rationalization program

Motion passed 17/0

SSC REPORT (D-2)

The SSC did not address this agenda item.

COUNCIL DISCUSSION/ACTION (D-2)

The Council discussed several items under staff tasking and recommended the following actions:

1. requested the Executive Director and Chair to participate in the review and comment on the U.S. Commission on Ocean Policy report that is due to be released on April 20,
2. scheduled for June a review of halibut subsistence and halibut/sablefish IFQ alternatives and tasking, and
3. in June, discuss the recommendations of the State Board of Fisheries relative to eligibility in the halibut subsistence program.

E. CHAIR'S REMARKS AND ADJOURNMENT

Chair Stephanie Madsen adjourned the meeting at 12:19 pm on Monday, April 5, 2004.