

HCR

13

<TARGET><BILL>HCR 13</BILL><SUBJECT>HCR
13</SUBJECT><COMM>HFSH27</COMM></TARGET>

ALASKA STATE LEGISLATURE

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Members:
Rep. Johnson, Vice-Chair
Rep. Austerman
Rep. Herron
Rep. Pruitt
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Rep. Miller

HOUSE SPECIAL COMMITTEE ON FISHERIES

SPONSOR STATEMENT FOR HOUSE CONCURRENT RESOLUTION NO. 13 (27-LS0802\A)

The North Pacific Fishery Management Council (NPFMC) is one of eight regional councils established by the Magnuson-Stevens Fishery Conservation and Management Act to oversee management of the nation's fisheries. The North Pacific Fishery Management Council has jurisdiction over the million square mile Exclusive Economic Zone (EEZ) off Alaska. NPFMC manages federal fisheries in Alaska valued at over one billion dollars annually, with primary responsibility for ground fish management in the Gulf of Alaska, Bering Sea, and Aleutian Islands, including cod, Pollock, flatfish, mackerel, sablefish, and rockfish species.

The Council has eleven voting members and four non-voting members. The eleven voting members include the Commissioner of the Department of Fish & Game, Director of the Washington Department of Fish & Wildlife, Director of the Oregon Department of Fish & wildlife, the Alaska Regional Administrator of NOAA Fisheries, five public members appointed by the Governor of Alaska, and two public members appointed by the Secretary from the State of Washington.

Since, it is estimated that 95 percent of rural households consume fish caught for subsistence, and sports fishing contributes over one-hundred and twenty three million dollars annually, their voices are vital to the sustainability of the resource and should be represented at the North Pacific Fishery Management Council. Both sports fish licensees and Alaska subsistence users who have participated in NPFMC meetings have commonly expressed frustration with the lack of opportunity to meaningfully participate in the process, and a lack of representation on the Council. However, allocation of fish in waters managed by NPFMC directly affects the quantity of fish available for harvest by sports fish licensee and subsistence users.

HCR 13 requests that the Governor designate both a sports fish licensee and a subsistence user for a seat on the North Pacific Fishery Management Council. In a state that is home to 3,000 rivers, 3,000,000 lakes and 6,640 miles of coastline, protecting opportunities for sports fishers and subsistence users is vital.

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE HERRON

TO: HCR 13

1 Page 1, line 3:

2 Delete "a subsistence user"

3 Insert "an individual nominated by an Alaska Native organization that represents
4 rural subsistence users"

5

6 Page 1, following line 14:

7 Insert new material to read:

8 "WHEREAS the Pacific Fishery Management Council, whose jurisdiction consists of
9 the exclusive economic zone off the coasts of Washington, Oregon, and California, includes a
10 voting member nominated by a federally recognized Native American tribe; and

11 WHEREAS Alaska's Native peoples have the right under federal law to take, for
12 subsistence purposes, fur seals and other marine mammals, sea birds and other migratory
13 waterfowl, and certain species listed under the Endangered Species Act of 1973, all of which
14 are affected by decisions made by the North Pacific Fishery Management Council, yet the
15 federally recognized tribal governments of those peoples are not represented on the council;
16 and"

17

18 Page 2, lines 16 - 17:

19 Delete "a subsistence user"

20 Insert "an individual nominated by an Alaska Native organization that represents rural
21 subsistence users"

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version HCR 13
 Fiscal Note Number 1
 () Publish Date _____

Identifier (file name) _____ Dept. Affected Governor's Office
 Title Requesting the governor to designate one seat...for a Appropriation 0
sport fish licensee and...for a subsistence user. Allocation _____
 Sponsor House Special Committee on Fisheries
 Requester House Special Committee on Fisheries OMB Component Number _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Jane W. Pierson, Aide,
 Division House Special Committee on Fisheries
 Approved by Representative Steve Thompson, Chair
House Special Committee on Fisheries

Phone 465-3004
 Date/Time 1/25/2012 12:56pm
 Date 1/25/2012

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. HCR 13

Analysis

There are no significant fiscal impacts for the Governor's office associated with this bill.

Larry Cotter Pacific Associates 116 Gold Juneau, AK 99801	3 years 3 years	8/11/86 8/11/89	8/10/89 8/10/92
Joe Demmert, Jr. 2724 4th Avenue Ketchikan, AK 99901	3 years	8/11/80	8/10/83
Oscar Dyson (Deceased) - (wife Peggy) Box 1728 Kodiak, AK 99615	3 years 3 years 3 years	8/11/85 8/11/88 8/11/91	8/10/88 8/10/91 8/10/94
Douglas B. Eaton Box 2871 Kodiak, AK 99615	3 years 3 years	8/11/76 8/11/79	8/10/79 8/10/82
Henry F. Eaton 216 Maple Kodiak, AK 99615	1 year	8/11/76	8/11/77
Ben Ellis Ben Ellis & Company P.O. Box 203 (913 Keystone) Soldotna, AK 99669	to fill remainder of Bob Penney term	1/20/03	8/10/06
Dr. David L. Fluharty School of Marine Affairs University of Washington 3707 Brooklyn NE, HF-05 Seattle, WA 98105	3 years 3 years 3 years	9/7/94 8/11/97 8/11/00	8/10/97 8/10/00 8/10/03
Arne Fuglvog P.O. Box 71 Petersburg, AK 99833	3 years 3 years	8/11/03 8/11/06	8/10/06 8/10/09 (resigned 8/06)
Ronald E. Hegge (wife Kathy) 314 Lansbrook Venice, FL 34212	3 years 3 years	8/11/89 8/11/92	8/10/92 8/10/95

Sara Hemphill 300 Lenora St, #B353 Seattle, WA 98121	3 years	8/11/83	8/10/86
Doug Hoedel 2111 Sorbus Way Anchorage, AK 99508	3 years	8/11/04	8/10/07
Gordon Jensen P.O. Box 264 Petersburg, AK 99833	3 years	8/11/77	8/10/80
Tony Knowles 1146 "S" Street Anchorage, AK 99501	3 years	8/11/88	8/10/91 (Resigned 12/89)
Joe Kyle Pacific Associates 234 Gold Juneau, AK 99801	3 years	8/11/97	8/10/00
Richard B. Lauber (Diane) Pacific Seafood Processors 321 Highland Drive Juneau, AK 99801 (Chair 3/91 – 8/00)	* 3 years 3 years 3 years	1/13/90 8/11/91 8/11/94 8/11/97	8/10/91 (*filled remainder of Tony Knowles' term) 8/10/94 8/10/97 8/10/00
Harold E. Lokken Fishermen's Terminal West Wall Bldg, Rm 232 4005 20th Avenue W. Seattle, WA 98199 (Chairman 10/77 – 9/78) (Vice Chair 10/78 – 8/84)	2 years 3 years 3 years	8/11/76 8/11/78 8/11/81	8/10/78 8/10/81 8/10/84
Stephanie Madsen At-Sea Processors Assn. PO Box 32817 Juneau, AK 99801 (Chair 10/03 – 8/07)	3 years 3 years	8/11/01 8/11/04	8/10/04 8/10/07
Donald L. McKernan (Deceased) Institute of Marine Studies Univ. of Washington, HA-35 Seattle, WA 98105	3 years	8/11/76	8/10/79 (deceased, Spring 1979)

Charles H. Meacham, Sr. P.O. Box 428 Sequim, WA 98382	2 years 3 years	8/11/76 8/11/78	8/10/78 8/10/81
Gerry Merrigan* (voting member) Prowler Fisheries PO Box 1364 Petersburg, AK 99833	3 years	8/11/06*	8/10/09 *Replaced Arne Fuglvog who was reappointed, but resigned August 2006
Henry Mitchell 8054 Sundi Way Anchorage, AK 99502	3 years 3 years 3 years	8/11/84 8/11/87 8/11/90	8/10/87 8/10/90 8/10/93
Hazel Nelson Bristol Bay Economic Development Corporation 2909 Arctic Blvd. Ste 203 Anchorage, AK 99503	3 years	8/11/02	8/10/05
Kevin O'Leary (wife Susan) 4044 Cliffside Rd. Kodiak, AK 99615	3 years 3 years	8/11/95 8/11/98	8/10/98 8/10/01
Robert C. Penney 3620 Penland Parkway Anchorage, AK 99508	3 years	8/11/00	8/10/03 (resigned 10/8/02) Replaced by Ben Ellis for remainder of term
Walter T. Pereyra ProFish International 400 North 34th St, Ste 303 Seattle, WA 98103 (Vice Chair 1994 – ????)	3 years 3 years 3 years	8/11/90 8/11/93 8/11/96	8/10/93 8/10/96 8/10/99
Rudy Petersen North Pacific Fishing, Inc. 4029 21st Ave. W., #201 Seattle, WA 98199	3 years 3 years	8/11/82 8/11/85	8/10/85 8/10/88
John Peterson 6120 E. Calle Alta Vista Tucson, AZ 85715-3101 (Chair 9/88 – 8/89)	3 years 3 years	8/11/84 8/11/87	8/10/87 8/10/90
Ed Rasmuson Attn: Wells Fargo P.O. Box 196127	3 years 3 years	8/11/03 8/11/06	8/10/06 8/10/09 (resigned 12/07)

Anchorage, AK 99519			
Elmer Rasmuson (Deceased) (wife Mary Louise) National Bank of Alaska P.O. Box 600 Anchorage, AK 99510 (Chair 1976 – 1977)	3 years	8/11/76	8/10/79 (resigned 11/77)
Robin Samuelsen (wife Judy) P.O. Box 412 Dillingham, AK 99833	3 years 3 years 3 years	8/11/93 8/11/96 8/11/99	8/10/96 8/10/99 8/10/02
Keith Specking (Vi) P.O. Box 1018 Eagle Point, OR 97524	3 years	8/11/81	8/10/84
Jeffrey R. Stephan (Kathy) United Fishermen's Marketing Assn. P.O. Box 1035 Kodiak, AK 99615	3 years	8/11/82	8/10/85
Clement V. Tillion (Diana) P.O. Box 6409 Halibut Cove, AK 99603 (Chair 1978 – 1983)	1 year 3 years 3 years 3 years	8/11/76 8/11/77 8/11/80 8/11/94	8/10/77 8/10/80 8/10/83 8/10/97
John Winther (Bert) P.O. Box 509 Petersburg, AK 99833	3 years 3 years	8/11/83 8/11/86	8/10/86 8/10/89

PAST Council members	Term	Begin	End
AGENCY REPRESENTATIVES:			
Commissioner Alaska Dept. of Fish and Game P.O. Box 25526 Juneau, AK 99802	Perpetual	8/11/76 7/2/77 1/83 1/91 1/95 1/03 4/03 11/04 8/05 1/07 ? ?	7/1/77 James Brooks 1/83 Ronald Skoog 12/90 Don Collinsworth (Chair 9/89-12/90) 12/94 Carl Rosier/Alts: Clem Tillion, David Benton-12/94 1/03 Frank Rue/Alts: Kevin Duffy 9/00, Earl Krygier 3/03 Kevin Duffy, Acting Commis./Earl Krygier, Alt 10/04 Kevin Duffy, Commissioner/Earl Krygier, Alt 7/05 Doug Mecum, Acting Commis./Earl Krygier, Alt 12/07 McKie Campbell, Commissioner/Earl Krygier, Alt ? Denby Lloyd, Acting Commis./Earl Krygier, Alt. ? Denby Llody/Dave Bedford, Alt pres Denby Llody/Stefanie Mooreland, Alt.
Director, Alaska Region National Marine Fisheries Service P.O. Box 21668 Juneau, AK 99802	Perpetual		4/80 Harry L. Rietz 5/88 Robert W. McVey 1/89 James Brooks, Acting ? Steve Pennoyer 6/00 Jim Balsiger ? Doug Mecum, Acting 4/10 Jim Balsiger
Director Oregon Dept. of Fish & Wildlife 1400 S.W. 5th Avenue Portland, OR 97207	Perpetual	8/11/76 9/86 2/94	81-85 John Donaldson 1/94 Randy Fisher Rudy Rosen 6/97 Jim Greer 7/01- Lindsay Ball/Bob Mace, Alt. <u>Note: Bob Mace served as Alt from 2nd Council mtg thru 6/01 and was V. Chair 10/99-6/01 (retired)</u> 10/01 Roy Hyder, Alternate
Executive Director (<i>non-voting member</i>) Pacific States Marine Fisheries Commission 45 SE 82 nd Drive Gladstone, OR 97027	Perpetual	1976 1983 4/87 2/94-present	1982 John Harville 4/87 Lawrence Six 1/94 Guy Thornburgh/Dave Hanson, Alt Randy Fisher/Dave Hanson, Alt
Office of Deputy Asst. Secretary for Oceans & Fisheries Affairs (<i>non-voting member</i>) Department of State, Room 7820 Washington, DC 20520	Perpetual	9/76 12/76 3/79 12/85	12/76 Lori Nakatsu 2/79 Carl J. Price 12/85 Ray Arnaudo 6/86 Stetson Tinkham

PAST Council members		Term	Begin	End
AGENCY REPRESENTATIVES:				
			9/86	6/89 Robert Ford
			9/89	4/90 Jeff Miotke
			4/90	9/90 A. George Herrfurth
			2/93	2/93 Wm. E. Dilday
			9/96	9/06 Stetson Tinkham
			10/06–present	Amanda Johnson-Miller/Nicole Ricci & Nick Klingersmith, Alts.

PAST Council members		Term	Begin	End
AGENCY REPRESENTATIVES:				
Director Washington Dept. of Fish & Wildlife P.O. Box 43135 Olympia, WA 98504-3135	Perpetual	8/11/76 4/77 6/77 12/86 7/92 6/96 12/98	3/77 6/77 12/86 1/87 8/92	Donald Moos Frank Hau William Wilkerson Joseph Blum Robert Turner/Morris Barker Bern Shanks/Dennis Austin Jeff Koenings/Dennis Austin (V. Chair 9/01-5/05) Jeff Koenings/Bill Tweit Alt, 6/05-pres
U.S. Coast Guard (<i>non-voting member</i>) 17th District P.O. Box 3-5000 Juneau, AK 99802	Perpetual	8/11/76 5/19/78 ? 3/1/84 8/1/86 8/89 8/92	4/19/78 ? 2/29/84 3/84 9/86 9/89 8/92 6/95 6/97 6/99 6/02 6/04 6/06	RADM J.B. Hayes RADM R.A. Duin RADM R. Knapp RADM R. Lucas RADM E. Nelson RADM D.Ciancaglini RADM R. Rufe, Jr. CDR Joe Kyle, Alternate RADM R. Riutta CAPT William Anderson, Alt (to 6/96) CAPT Vince O'Shea, Alt (9/96-6/01) RADM Terry Cross RADM Thomas J. Barrett/O'Shea, Alt. CAPT Richard Preston, Alt (9/01- RADM James Underwood/Preston Alt RADM Jim Olson/CAPT Mike Cerne, Alt (thru 10/06) ADM Gene Brooks/CAPT Cerne, Alt (CDR Lisa Ragone, Alt 11/06-present) ADM Chris Colvin CAPT Mike Cerne CDR Lisa Ragone

PAST Council members	Term	Begin	End
AGENCY REPRESENTATIVES:			
Regional Director (<i>non-voting member</i>) U.S. Fish and Wildlife Service 1011 E. Tudor Rd. Anchorage, AK 99503	Perpetual	8/11/76	? (Jan E. Riffe)
		?	? (Gordon Watson)
		?	? (Keith Shreiner)
		?	3/25/85 (Robert Putz)
		3/26/85	3/85 (Robert Gilmore)
		1/87	? (Walter Steiglitz)
		9/94	9/94 David Allen, Steve Rideout, Alt (5/96 - 6/99 Everett Robinson-Wilson, Alt)
			6/99 D. Alcorn
			9/00 Rowan Gould/Anthony DeGange Alt.
			8/05 Leonard Corin Actg.
			6/06 Tom Melius/Lenny Corin (Alt)
	2/07 Tom Melius/Greg Balogh (Alt)		
	10/08 pres Geoffrey Haskett/Greg Balogh (Alt)		

**STATEMENT OF ORGANIZATION,
PRACTICES, AND PROCEDURES**

*of the
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL*



**605 W 4TH AVENUE, SUITE 306
ANCHORAGE, AK 99501
907-271-2809
www.fakr.noaa.gov/npfmc**

**Draft
June 20, 2008**

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North Pacific Fishery Management Council Statement of Organization, Practices, and Procedures

The North Pacific Fishery Management Council (Council), created by Section 302(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (the Act), hereby publishes a revised Statement of Organization, Practices, and Procedures (SOPP), as required by Section 302(f)(6) of the Act. The SOPPs were originally published on March 1, 1977, and revisions have been adopted by the Council over time. This revised SOPP, which was adopted by the Council at a public meeting in June, 2007, includes changes pursuant to requirements of the recently reauthorized Magnuson-Stevens Act, and other revisions regarding Advisory Panel operations, administrative provisions, and other practices governing Council operations. An additional change was made in June 2008 to modify requirements for AP minority reports. This SOPP shall become effectively immediately, noting that additional changes may be forthcoming, pending additional guidance from NOAA on Magnuson-Stevens Act provisions.

These SOPPs are provided to each member of the Council, its Scientific and Statistical Committee (SSC), and its Advisory Panel (AP). Copies of the SOPP may be obtained by writing the Executive Director, North Pacific Fishery Management Council, Room 306, 605 West Fourth Avenue, Anchorage, Alaska 99501; telephone (907) 271-2809.

1.0 Council Jurisdiction and Functions

The Council's geographic area of authority includes the Exclusive Economic Zone (EEZ) of the Arctic Ocean and Pacific Ocean seaward of Alaska, including the Bering Sea, Aleutian Islands, and Gulf of Alaska. The states of Alaska, Washington, and Oregon are represented on the Council. The Council will:

- A. Prepare and submit to the Secretary of Commerce (Secretary) or his delegate a fishery management plan (FMP) with respect to each fishery requiring conservation and management within the Council's geographic area of authority and such plan amendments as are necessary.
- B. Review and comment on applications for foreign fishing transmitted to the Council under a governing international fishery agreement by the Secretary of State under the terms of the Act.
- C. Prepare comments on any FMP or amendments prepared by the Secretary which are transmitted to the Council under Section 304(c)(4) of the Act.
- D. Conduct public hearings at appropriate times and locations in the Council's membership area, to allow interested persons an opportunity to be heard in the development of FMPs and amendments and with respect to the administration and implementation of the provisions of the Act. When conducting a hearing outside Alaska, the Council will first consult with the Council in that area.
- E. Submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary.
- F. Review on a continuing basis, and revise as appropriate, the assessments and specifications contained in each FMP for each fishery within its geographical area.
- G. Comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any state or federal agency that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction. The Council may comment

on and make recommendations concerning state or federal actions that may affect habitat of other species under its authority.

- H. Develop annual catch limits for each of its managed fisheries that may not exceed the maximum acceptable biological catch level recommendations of its Scientific and Statistical Committee (SSC).
- I. Develop, in conjunction with the SSC, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall establish priorities for 5-year periods; be updated as necessary; and be submitted to the Secretary and the regional science centers of the National Marine Fisheries Service (NMFS) for their consideration in developing research priorities and budgets for the region of the Council.
- J. Prepare regulations for the halibut fisheries, consistent with provisions of the Northern Pacific Halibut Act of 1982. The Act provides that, for the halibut fishery off Alaska, the Council may develop regulations, including limited access regulations, to govern the fishery, provided that the Council's actions are not in conflict with regulations adopted by the International Pacific Halibut Commission.
- K. Conduct any other activities which are required by or provided for in the Act or which are necessary and appropriate to the foregoing functions.

The Council expects to participate in international negotiations concerning any fishery matters under the cognizance of the Council. The Council also expects to be consulted during preliminary discussions leading to U.S. positions on international fishery matters, including the allocation of fishery resources to other nations within its area of authority.

2.0 Council Organization

The Council has eleven voting members and four non-voting members. The eleven voting members include the Commissioner of the Alaska Department of Fish and Game, Director of the Washington Department of Fish and Wildlife, Director of the Oregon Department of Fish and Wildlife, the Alaska Regional Administrator of NOAA Fisheries, five members appointed by the Secretary from the State of Alaska, and two members appointed by the Secretary from the State of Washington.

The four non-voting members include the Alaska Regional Director of the U.S. Fish and Wildlife Service, the Commander of the Seventeenth Coast Guard District, the Executive Director of the Pacific States Marine Fisheries Commission, and a representative of the U.S. Department of State.

Each voting member appointed to a Council must take the following oath of office:

I, _____, a voting member of the Regional Fishery Management Council appointed by the Secretary of Commerce, promise to act as a trustee and steward of our Nation's fishery resources. I will uphold all standards and provisions of the Magnuson-Stevens Fishery Conservation and Management Act; conduct myself at all times according to rules and guidance prescribed by the Secretary; responsibly weigh all information bearing on issues being acted upon by the Council; and vote on such issues with objectivity and fairness. This oath is freely given without mental reservation or purpose of evasion.

2.1 Officers and Terms of Office

A chair and vice-chair are elected from the voting members of the Council by a majority vote of the voting members present and voting. Both serve for one year and may succeed themselves. They are elected at the

first regular Council meeting held after August 11 (election meeting) and their terms of office expire at the next meeting after August 11 of the subsequent year. If the Council terms of either or both of the officers end before a regular election meeting, the Council shall appoint at the next regular Council meeting interim officers to serve until the next election meeting.

The Council Chair, or in his or her absence the Vice Chair, has authority to convene and adjourn meetings and public hearings and designate members of the Council, SSC, and AP to attend meetings and public hearings. The Chair will control meetings and hearings by recognizing speakers and establishing the order of business.

2.2 Designees

The Act authorizes only the principal state officials, the Regional Administrators, and the non-voting members to designate individuals to attend Council meetings in their absence. The Chair of the Council must be notified in writing, in advance of any meeting at which a designee will initially represent the Council member, of the name, address, and position of the individual designated. A designee may not name another designee. However, such officials may submit to the Chair, in advance, a list of several individuals who may act as designee, provided the list clearly specifies who would serve if more than one designee attends. A designee may be elected as Chair or Vice-Chair of the Council, and as Vice-Chair would serve as Chair in the absence of the elected Chair; however, a designee for an elected Chair cannot serve as Chair. Reimbursement of travel expenses to any meeting is limited to either the member or one designee.

2.2.1 Principal state officials and their designees

Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be appointed by a constituent state Governor as the principal state official for purposes of section 302(b) of the Act.

A principal state official may name his/her designee(s) to act on his/her behalf at Council meetings. Individuals designated to serve as designees of a principal state official on a Council, pursuant to section 302(b)(1)(A) of the Act, must be a resident of the state and be knowledgeable and experienced, by reason of his or her occupational or other experience, scientific expertise, or training, in the fishery resources of the geographic area of concern to the Council.

New or revised appointments by state Governors of principal state officials and new or revised designations by principal state officials of their designees(s) must be delivered in writing to the appropriate NMFS Regional Administrator and the Council chair at least 48 hours before the individual may vote on any issue before the Council. A designee may not name another designee. Written appointment of the principal state official must indicate his or her employment status, how the official is employed by the state fisheries agency, and whether the official's full salary is paid by the state. Written designation(s) by the principal state official must indicate how the designee is knowledgeable and experienced in fishery resources of the geographic area of concern to the Council, the County in which the designee resides, and whether the designee's salary is paid by the state.

2.3 Advisory Groups

The Council has established two formal advisory groups: a Scientific and Statistical Committee (SSC) and a Fishing Industry Advisory Panel (i.e., the Advisory Panel, or AP), as mandated in Section 302 (g) of the Act. The Council also maintains Plan Teams for each fishery management plan, and appoints standing and ad hoc committees necessary to advise the Council on particular conservation and management issues.

2.3.1 Scientific and Statistical Committee

The Council shall establish, maintain, and appoint the members of a SSC to assist it in the development, collection, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to the Council's development and amendment of any fishery management plan. The SSC shall provide the Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

Members appointed by the Council to the SSC shall be federal employees, state employees, academicians, or independent experts and shall have strong scientific or technical credentials and experience. Independent experts on the SSC and cannot be employed by an interest group or advocacy group. Each member of the SSC shall be treated as an affected individual for purposes of disclosure and financial interest and recusal provisions for SSC members as specified in the Act. Financial interest disclosures for SSC members will be reviewed annually by the Council prior to appointment, and when updated by an SSC member reporting any substantial changes in financial interest. Financial interest disclosures will be kept on file by the Secretary.

The SSC will provide the peer review process for scientific information used to advise the Council about the conservation and management of the fishery. The review process, which may include existing committees or panels, is deemed to satisfy the requirements of the guidelines issued pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554—Appendix C; 114 Stat. 2763A-153).

The SSC is composed of experts in biology, statistics, economics, sociology, and other relevant disciplines from the federal, state, and private scientific communities and other appropriate sources.

A. Objectives and Duties

As requested by the Council, through the Council Chair or the Executive Director, the SSC shall:

- 1) Provide expert scientific and technical advice to the Council on the development of fishery management policy, fishery management plans and amendments, their goals and objectives, proposed regulations, and criteria for judging plan effectiveness.
- 2) Assist in the identification, development, collection, and evaluation of statistical, biological, economics, social and other scientific information deemed relevant to the Council's fishery management planning, particularly with regard to determining the best scientific data available as required by National Standard 2.
- 3) Advise the Council on preparing comments on any relevant fishery management plan or amendment prepared by the Secretary or Secretary's delegate pursuant to Section 304(c) of the Act.
- 4) Submit to the Council reports deemed appropriate by the Committee or requested by the Council.
- 5) Perform other appropriate duties as may be required by the Council to carry out its functions under the Act.
- 6) Serve as the Council's peer review body for influential scientific information pursuant to requirements of the Information Quality Act (Section 515 of Public Law 106-554) and NOAA information quality guidelines.

B. Members and Chair

The SSC members shall be appointed by, and serve at the pleasure of, the Council. They shall be appointed for one year, and may be reappointed. Vacancies may be filled for the remaining unexpired term. The SSC Chair and Vice Chair shall be nominated by the Committee from among its members and confirmed by the Council for one-year terms.

Each statutory agency designated as a member of the North Pacific Fishery Management Council by the Act may have a member on the Scientific and Statistical Committee. That member may have an alternate, although it is expected that the primary member from an agency will attend meetings of the Scientific and Statistical Committee in person whenever possible. The statutory agency may nominate the alternate for their primary member, notifying the chair of the SSC by letter of that selection. Alternates will be appointed for the same period as the primary member (i.e., one year).

Other Scientific and Statistical Committee members may have an alternate on a case-by-case basis (to be approved by the Council Chair or Executive Director in advance of the next meeting) when the member would be unable to participate for an extended period of time. It is expected that those alternates would be experts in the same field as the member and familiar with the work of the SSC and the Council.

The key requirement in appointing members or alternates is for the Council to maintain the highest level of objective scientific and technical expertise. Members should be able to make unbiased and objective scientific recommendations to the Council. Additionally, SSC members shall maintain high standards of ethical conduct, as detailed in Section 6.

C. Administrative Provisions

The SSC shall meet as a whole, or in part, at the request of the Chair of the SSC, with the approval of the Chair of the Council, as often as necessary to fulfill the SSC's responsibilities, taking into consideration time and budget constraints. It is estimated that the SSC will meet at least five times a year, just before the scheduled Council meetings. The SSC shall hold its meetings in conjunction with meetings of the Council, to the extent practicable. The Executive Director of the Council shall provide such staff and other support as the Council considers necessary for SSC activities, within budgetary limitations.

The agenda for each SSC meeting shall be developed by the SSC Chair in consultation with the Deputy Director or Executive Director. SSC meetings will follow established protocols. Following staff reports, the public will have an opportunity to testify on scientific aspects of an issue prior to SSC deliberations. SSC members shall disclose any potential conflicts regarding a particular topic prior to any discussion of that issue. SSC decisions will be reached by consensus, whenever possible; however if a decision is required and consensus cannot be reached, the opinion of the majority will prevail.

Minutes of the meeting shall reflect the discussion and deliberations that were made during the SSC meeting. The SSC Chair, or designee, will be responsible for reporting the SSC's recommendations to the Council.

SSC members shall serve without compensation, but will be paid their actual travel expenses in performing their duties in accordance with applicable law and Council travel policy. Subject to the availability of appropriations, a stipend may be paid to members of the scientific and statistical committees who are not employed by the federal government or a state marine fisheries agency.

2.3.2 Advisory Panel

The North Pacific Fishery Management Council appoints an Advisory Panel (AP) of recognized experts from the fishing industry and several related fields, and represents a variety of gear types, industry and related

interests as well as a spread of geographic regions of Alaska and the Pacific Northwest having major interest in the fisheries off Alaska.

The Council relies on the AP for comprehensive industry advice on how various fishery management alternatives will affect the industry and local economies, on potential conflicts between user groups of a given fishery resource or area, and on the extent to which the United States will utilize resources managed by the Council's fishery management plans.

A. Size

The AP will consist of 20 members. However, the Council will not necessarily keep all seats filled. This arrangement should allow sufficient flexibility in funding so the Council can invite as necessary other individuals with particular expertise to work with the AP on an ad hoc basis.

B. Qualifications

The Council will give highest priority to the following considerations when selecting AP members:

- 1) Of paramount importance is the demonstrated ability of the candidate to be objective and to consider all aspects of an issue.
- 2) The AP members should be of top quality and caliber and be committed to full and active participation for each meeting during their term.
- 3) The candidate should be considered because of the experience he/she brings to the Council rather than his/her political clout or connection.
- 4) The candidate should be an active, involved member of his/her community and business to ensure the best and most pertinent input into the Council and likewise be responsible and diligent in reporting Council decisions and concerns back to his/her community/business.
- 5) The AP membership should represent a broad geographic spread both for Alaska and the Pacific Northwest. Representation for the three states should be in the same proportions as those of the voting membership of the Council. However, recognizing that issues and priorities will change, the Council cautions that no seat is reserved for a particular area.
- 6) The AP membership should represent a variety of interests within the fishing industry and others with interests in maintaining and managing Council fisheries. While it is hoped that major gear types from the harvesting sector will be broadly represented, as with geographic representation, no particular seat is guaranteed to a gear type or fishery.

Note: It is expected that as the issues and concerns of the Council change and evolve so, too, will the profile of the membership of the AP.

C. Terms

AP members will serve for three-year terms beginning with the first meeting each calendar year. All members will be appointed by and serve at the pleasure of the Council and may be reappointed to two subsequent consecutive terms. Appointments will be staggered to provide for the appointment of 1/3 of the membership of the AP each year. Persons wishing to serve on the Advisory Panel may submit their names with a short resume to the Executive Director who will keep for the calendar year a list of candidates at the Council headquarters. Resumes and requests to serve will not be retained after the annual appointment process. The Council may use this list of candidates in choosing AP members to fill full-year terms or interim vacancies, but may also solicit

individuals not on the list if a particular combination of experience and expertise is deemed desirable. AP members serve at the pleasure of the Council and can be removed by a majority vote of the Council prior to the completion of a full 3-year term. Cause for removal may include, but is not limited to, change in affiliation or status or poor attendance. The Council Chair is authorized to fill interim vacancies on the AP subject to confirmation by the Council at the next regular meeting. Interim appointments are for the remaining unexpired term of the vacancy.

Members of the AP serve without compensation. They may be paid their actual expenses for travel and per diem incurred in the performance of their duties during the days in which the panel is in session. The chair, vice-chair, or the AP member designated to report to the Council may be paid expenses for additional days when necessary and approved by the Council chair. Security clearances for AP members are requested as necessary.

AP members travel reimbursement shall be limited to attendance at formal meetings of the AP, or to the Chair, Vice-Chair, or designee while officially representing the AP with the advance approval by the Executive Director. AP members shall follow the same general travel rules set forth for Council employees. In extenuating circumstances, which must necessarily be related to their fishing or processing activities and with advance notice, the Council chair may authorize travel reimbursement to and from locales other than a AP member's normal home location.

D. Operations

The Chair and Vice-Chair of the AP are nominated for one-year terms by the Panel from among its members and are confirmed by the Council.

The AP meets as a whole, or in part, at the request of the Chair of the AP with approval of the Council Chair, as often as necessary to fulfill the Panel's responsibilities, taking into consideration time and budget constraints. AP members are expected to attend all meetings and participate fully at these meetings including voting on each issue. Poor attendance will be cause for a member being removed. Generally, acceptable absences will be the result of or involve personal emergencies or unavoidable conflicts related to the member's area of expertise.

The AP will set up such workgroups as the Chair of the AP and the Council deem necessary to carry out the Panel's duties. Additional members outside the AP may be added to these workgroups as deemed appropriate by the Council Chair.

The Executive Director, in consultation with the Council Chair, shall assign the agenda topics for the Advisory Panel to discuss at its meetings. These topics will not normally include all items on the Council's agenda, but the AP may consider any topic or issue it deems important to bring to the Council's attention, time permitting and with the concurrence of the Council Chair or Executive Director. The AP members should be given sufficient advance notice of these topics to allow adequate preparation before the meeting.

The AP is expected to conduct meetings in a timely fashion with the objective of presenting AP recommendations to the Council consistent with the Council's order of business. Generally, the panel should utilize Council procedures limiting the time allowed for public testimony and questions by AP members. Should the meeting run behind schedule, the AP Chair will consult with the Deputy Director, Executive Director, or Council Chair to determine priority issues for the AP to address in the time remaining.

The AP Chair or designee will be responsible for reporting the AP's recommendations (AP minutes) to the Council. The AP minutes shall include a record of passed motions and close call votes (even if the motion failed). This report shall include the results of votes taken, including minority reports which are signed by at least 3 of the members voting in the minority at the time of the vote and submitted in writing. All minority

reports consistent with the above standard shall be included in the written AP report to the Council, but not read into the record during the oral report to the Council.

The Executive Director of the Council shall, upon request of the Chair of the AP, provide such staff and other support as the Council considers necessary for AP activities, within budgetary limitations.

2.3.3 Plan Teams

The Council appoints plan teams for each of the major fishery management plans (FMPs). Members of each team are selected from those agencies and organizations having a role in the research and/or management of fisheries. The team should be small enough to work efficiently and effectively but sufficiently large to provide the diverse experience and knowledge needed to cover all aspects of a particular fishery. At a minimum, teams shall be composed of one member from agencies having responsibility for management of the fishery resources under the jurisdiction of the Council. Nominations of these individuals are at the discretion of the agencies. Other individuals may be nominated by members of the Plan Team, Council, SSC or AP. Appointments to the team will be made by the Council with recommendations from the SSC.

Members of the Plan Teams serve without compensation. Non-federal employees may be paid their actual expenses for travel and per diem incurred in the performance of their duties during the days in which the Plan Team is in session. The Plan Team chair, vice-chair, or Plan Team member designated to report to the Council may be paid expenses when necessary and approved by the Executive Director.

The Plan Teams shall review stock assessment information and assist in the preparation of the annual Stock Assessment and Fishery Evaluation (SAFE) documents including formulation of recommendations on annual Acceptable Biological Catch (ABC) levels for groundfish, crab, and scallop species under jurisdiction of the Council. The Teams may also prepare and/or review plans, amendments and supporting analytical documents for the Council, SSC and AP; aggregate and evaluate public/industry proposals and comments; summarize and evaluate data related to the biological, economic and social conditions of the fishery; conduct and evaluate analyses pertaining to management of the fisheries; evaluate the effectiveness of management measures in achieving the plan's objectives; and recommend when and how management measures need to be changed.

These and other provisions concerning the teams are included in each Plan Team's Terms of Reference, which are approved by the Council. The current Terms of Reference for the Groundfish, Crab, and Scallop Plan Teams are attached as Appendix 1, Appendix 2, and Appendix 3, respectively.

2.3.4 Council Committees

The Council may appoint standing and ad hoc committees from among the voting and non-voting members as it deems necessary for the conduct of Council business. The Council Chair may also appoint standing or ad hoc Committees that include industry representatives or other participants to address specific management issues or programs. Compensation and travel expenses for non-Council participants on such Committees will not be provided by the Council.

Notices of Council committee meetings shall comply with the notice requirements specified in Section 3.1. Public comment at committee meetings will be at the discretion of the Council Chair or Executive Director.

3.0 Council Meetings and Hearings

The Council will meet at the call of the Chair or upon request of a majority of the voting members, subject to the general policy outlined in Section 3.5. In fulfilling the Council's responsibilities and functions, the Council

members may meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information, or make decisions regarding material before them. Emergency meetings shall be held at the call of the Chair or equivalent presiding officer. The following guidelines apply with respect to the conduct of business at meetings and hearings of the Council and its SSC and AP:

3.1 Agenda and Notice

The agenda for each Council meeting is drafted by the Executive Director in consultation with the Council Chair. All Council members will have an opportunity to review and comment on a draft agenda before it is released to the public.

Timely notice of each regular meeting, hearing, and each emergency meeting, including the time, place, and agenda of the meeting, shall be provided by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery) except that e-mail notification and website postings alone are not sufficient. Timely notice of each regular meeting shall also be published in the Federal Register. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or such notice must be given at least 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c) of the Act, in which case public notice shall be given immediately.

Drafts of all regular public meeting notices must be transmitted to the NMFS Headquarters Office (Federal Register) at least 23 calendar days before the first day of the regular meeting. Councils must ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings. Drafts of emergency public notices must be transmitted to the NMFS Washington Office; recommended at least 5 working days prior to the first day of the emergency meeting. Although notices of, and agendas for, emergency meetings are not required to be published in the Federal Register, notices of emergency meetings must be promptly announced through the appropriate news media. Requests for disability-related accommodations should be processed in accordance with Department Administrative Order DA 215-10.

3.2 Conduct of Meetings

Each regular meeting and each emergency meeting shall be open to the public. Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings, within reasonable limits established by the Chair. Current Council policy on oral testimony limits individuals to three minutes, and organizations to six minutes, per agenda item. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement. During Council meetings the area adjacent to and behind the Council seating area will be restricted to only Council members and Council/agency staff. The exchange of electronic communication (using laptops, cell phones, or other devices) in the meeting room by Council members is prohibited when the Council is in session.

(1) A majority of the voting members of any Council constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings. Decisions of any Council are by majority vote of the voting members present and voting (except for a vote to propose removal of a Council member, see 50 CFR 600.230 and except where Roberts Rule of Order require a 2/3 majority vote). Voting by proxy is permitted only pursuant to 50 CFR 600.205 (b). An abstention does not affect the unanimity of a vote. At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call

votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.

(2) A roll call vote is required for Council approval or amendment of a fishery management plan (including any proposed regulations), a Council finding that an emergency exists involving any fishery, or Council comments to the Secretary on fishery management plans developed by the Secretary. A final vote may not be taken until the motion before the Council is recorded in written form visible to each Council member present and the public. The written motion, as voted on, must be preserved as part of the record or minutes of the meeting. For a vote on a Council finding that an emergency exists in a fishery, the exact number of votes (for, against, and abstaining) must be preserved as part of the record of the meeting.

(3) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary, including principal state officials raising federalism issues, may submit a written statement of their reasons for dissent. If any Council member elects to file such a statement, it should be submitted to the Secretary at the same time the majority report is submitted.

(4) Parliamentary procedure will be used in the conduct of the meetings. Agreement among Council members can be reached by consensus and non-voting members are expected to take part in all discussions and indicate their opinions on all specific issues. Those matters pertaining to the approval or disapproval of a fishery management plan or amendment, including proposed regulations, or comments for the Secretary on foreign fishing applications, or Secretarially-prepared management plans, require a vote.

(5) At any time when a Council determines it appropriate to consider new information from a state or federal agency or from a Council advisory body, the Council shall provide opportunity for public comment before the Council takes final action on conservation and management measures.

(6) The Council shall adhere to "Mace's Rules" to improve the efficiency of Council meetings. During agency reports at the beginning of each meeting, each Council member shall be limited to two questions per report. During public testimony for a given issue, each Council member will be limited to two questions per testifier. The Chair is granted the authority as necessary to improve the quality of Council debate and enhance the overall efficiency of Council meetings in general.

3.3 Record

Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Council Chair shall verify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.

Subject to the confidentiality procedures established by the Council on January 28, 1986, and the guidelines prescribed by the Secretary pursuant to Section 402(b) of the Act, the administrative record and minutes of each meeting and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council, or the Secretary, as appropriate.

3.4 Closed Meetings

If any meeting or portion is closed, the Council shall provide notice by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery), except that e-mail notification and website posting alone are not sufficient, including in that

notification the time and place of the meeting. Notification is not required regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters.

- (1) A Council, SSC, or AP shall close any meeting, or portion thereof, that concerns information bearing on a national security classification.
- (2) A Council, SSC, or AP may close any meeting, or portion thereof, that concerns matters or information pertaining to national security, employment matters, or briefings on litigation in which the Council is interested.
- (3) A Council, SSC, or AP may close any meeting, or portion thereof, that concerns internal administrative matters other than employment. Examples of other internal administrative matters include candidates for appointment to AP, SSC, and other subsidiary bodies and public decorum or medical conditions of members of a Council or its subsidiary bodies. In deciding whether to close a portion of a meeting to discuss internal administrative matters, a Council or subsidiary body should consider not only the privacy interests of individuals whose conduct or qualifications may be discussed, but also the interest of the public in being informed of Council operations and actions.
- (4) Without the notice required above, a Council, SSC, or AP may briefly close a portion of a meeting to discuss employment or other internal administrative matters. The closed portion of a meeting that is closed without notice may not exceed 2 hours. Before closing a meeting or portion thereof, a Council or subsidiary body should consult with the NOAA General Counsel Office to ensure that the matters to be discussed fall within the exceptions to the requirement to hold public meetings described above. Actions that affect the public, although based on discussions in closed meetings, must be taken in public. For example, appointments to an AP must be made in the public part of the meeting; however, a decision to take disciplinary action against a Council employee need not be announced to the public.

3.5 Frequency and Duration

The Council normally meets five times each year. Each meeting generally lasts from six to seven days and begins on Wednesday of the meeting week. The Council's SSC and AP generally meet concurrently with the Council, starting two days prior to the Council. The specific timing of each meeting shall be coordinated by the Executive Director in consultation with the Chair.

3.6 Location

The Council shall meet at appropriate times and places in any of the constituent states of the Council. Council meetings typically will be held in Alaska, with the exception that one meeting each year will be held in the constituent state of Washington or Oregon, at a ratio of two meetings in Washington for every one in Oregon. Specific meeting locations within each state will be coordinated by the Executive Director in consultation with the Chair.

3.7 Council Member Compensation

Those voting members of the Council who are not employed by the Federal Government or any state or local government shall receive compensation at the daily rate for GS-15 (Step 7) of the General Schedule. Such compensation shall be limited to attendance at formal meetings of the Council (actual meeting days), meetings of standing or ad hoc committees on which the Council member is a designated member, or to the Chair, Vice-Chair, or designee while officially representing the Council or conducting official business of the Council outside of such meetings. Such compensation may be paid on a full day's basis whether in excess of eight

hours a day or less than eight hours a day. "Homework" time in preparation for any meeting, or attendance of any meeting other than specified above, is not compensable nor is travel time to or from such meetings.

The Council Chair must submit to the Regional Office annually a report of Council member compensation authorized. This report shall identify, for each member, amount paid, dates, and location and purpose of meetings attended.

3.8 Council Member Travel

Council members travel reimbursement shall be limited to attendance at formal meetings of the Council, Council member training, meetings of standing or ad hoc committees on which the Council member is a designated member, or to the Chair, Vice-Chair, or designee while officially representing the Council or conducting official business of the Council outside of such meetings. Council members shall follow the same general travel rules set forth for Council employees. In extenuating circumstances, which must necessarily be related to their fishing or processing activities and with advance notice, the Council Chair may authorize travel reimbursement to and from locales other than a Council member's normal home location.

3.9 Council Member Training

Council members shall, within one year after the date on which they were appointed, complete a training course that meets the requirements of the Act. Chair.

3.10 Principles for Stakeholder Involvement

Pursuant to NMFS Policy Directive 30-129 regarding stakeholder participation, the following seven core principles on stakeholder involvement will be used to guide communication strategies and activities. These core principles are:

1. Use an open and clearly defined decision-making process.
2. Make key information readily available and understandable.
3. Actively conduct outreach and solicit stakeholder input.
4. Involve stakeholders early and throughout the decision-making process.
5. Foster responsive, interactive communication between stakeholders and decision-makers.
6. Use formal and informal participation methods.
7. Include all stakeholder interests.

4.0 Employment Practices

This section describes the major employment practices for Council employees. Additional details are explained in the Council's personnel rules. Copies of these rules are given to each new employee.

4.1 Staffing

The Council staff includes an Executive Director, a Deputy Director, and other full and part-time employees as determined necessary to the performance of Council functions consistent within budgetary limitations. The Executive Director is responsible to the Council, and the staff is responsible to the Executive Director.

4.2 Experts and Consultants

As long as funding is available in its budget, the Council may contract with experts and consultants as needed to provide technical assistance not available from NOAA. This includes legal assistance, though a Council must notify the NOAA Office of General Counsel before seeking outside legal advice, which may be for technical assistance not available from NOAA. If the Council is seeking legal services in connection with an employment practices question, the Council must first notify the Department of Commerce's Office of the Assistant General Counsel for Administration, Employment and Labor Law Division. A Council may not contract for the provision of legal services on a continuing basis.

4.3 Detail of Government Employees

The Council may request the detail of other government employees to assist the Council in the performance of its functions.

4.4 Personnel Actions

All staff employees serve at the pleasure of the Council. The Executive Director may be dismissed by a two-thirds (2/3) majority vote of the voting Council members (i.e., 8 of the 11 voting members), and other staff employees may be dismissed by the Executive Director acting for the Council. Dismissals may be made for misconduct, unsatisfactory performance, and/or lack of funds, with reasonable notice to the employee.

No employee of the Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or political party in any national, state, county, or municipal election, or on account of his or her political affiliation.

4.5 Salary and Wages

In setting rates of pay for Council staff, the principle of equal pay for equal work is followed. The annual pay rates for Council staff positions are consistent with the pay rates established for General Schedule federal employees as set forth in 5 USC 5332, and/or the Alternative Personnel Management System for the U.S. Department of Commerce (62 FR 67434), including cost of living (COLA) differentials and the 6% supervisory pay allowance. The NPFMC is using the discretion allowed for in the regulations to adjust pay rates and pay increases based on COLA differentials in Alaska, consistent with the federal payscale, including adjustments necessary to achieve equivalency with federal counterparts. COLA adjustments in pay rates and pay increases are being provided for staff members. No pay adjustment based on geographic location exceeds the equivalent COLA and locality pay adjustments available to federal employees in the same geographic area. Salary increases funded in lieu of life and medical/dental policies are not permitted.

Employees will be entitled to promotions and associated pay raises solely on the basis of merit and performance. The Executive Director, acting for the Council, shall conduct performance reviews at least biennially with each Council employee and will approve promotions and raises based on the employee's performance, length of service, or special accomplishments. Pay raises and performance evaluations for the Executive Director will be accomplished through a review process, at least biennially, involving the Council's Executive Committee. Career development, including formal training, will be supported by the Council, subject to budgetary limitations, when directly beneficial to both the employee and the Council.

A cash award may be provided to employees as an exceptional performance award in recognition of one or more particularly meritorious accomplishments, at the discretion of the Council Chair (for awards to the

Executive Director) and the Executive Director (for awards to other staff). The total amount of an award will not exceed those allowable under current U.S. Department of Commerce guidelines.

In conducting official Council business, Council members and staff generally have the same protection from individual tort liability as federal employees on official actions, and are protected by the federal workmen's compensation statute, by the minimum wage/maximum hour provisions of the Fair Labor Standards Act (FLSA), and by the rights of access and confidentiality provisions of the Privacy Act (PA). Council staff are eligible also for unemployment compensation in the same manner as federal employees. Overtime payments shall be made in accordance with the provisions of the Fair Labor Standards Act (FLSA) 29 USC 201 et. seq.

4.6 Recruitment

Council staff positions must be filled solely on the basis of merit, fitness for duty, competence, and qualifications. The Council is an Equal Employment Opportunity Employer. All employment actions will be free from discrimination based on race, religion, color, national origin, sex, age, disability, sexual orientation, status as a parent, and reprisal.

Except for complaints alleging sexual orientation and a status as a parent, complaints by employees alleging that they may have been discriminated against on the bases listed above, should be processed in accordance with 29 CFR 1614. Employees must contact an EEO Counselor at NOAA's Office of Civil Rights within 45 days of the date of the alleged discrimination.¹ Employees alleging discrimination on the basis of sexual orientation will have their complaints processed in accordance with DAO 215-11. Employees must contact an EEO Counselor at NOAA's Office of Civil Rights within 45 days of the date of the alleged discrimination.

4.7 General Harassment Policy

The Council has a zero-tolerance policy for harassment on the basis of race, religion, color national origin, sex, age, sexual orientation, disability and reprisal. Any employee who believes he or she has been harassed should report the harassment to a supervisor or manager. The supervisor or manager should then follow the steps set forth in Department Administrative Order, DAO 202-955. Any complaints of harassment on the basis of sexual orientation should be handled in accordance with DAO 215-11. The provisions of these DAOs are entirely separate from EEO complaint process, and must be followed whether or not an employee has files an EEO complaint. The Council's Harassment Policy extends beyond staff and includes members of the Council with regard to interactions with staff, and includes conduct of Council members, staff members, and public during the course of official Council meetings, advisory body meetings, or committee meetings.

4.8 Leave

Employees of the Council shall be granted paid leave for holidays, vacations or exigencies, sickness, and civic duties (jury, military reserve obligations) as determined by the Council, and pregnancy, parental, and family leave consistent with the Family and Medical Leave Act of 1993. The accrual and use of leave is explained in the Council's personnel rules. Copies of these rules are given to each new employee.

¹ According to a Legal Opinion dated March 14, 1995, from the U.S. Department of Justice, Office of Legal Counsel, the Fisheries Management Council "..... are covered by the anti-discrimination provisions of Title VII of the Civil Rights Act of 1964 insofar as they apply to employment in the federal government.....". As such, their discrimination complaints are processed in accordance with 29 C.F.R. ' 1614.

4.8.1 Annual Leave

Full-time Council employees shall accrue annual leave at rates not to exceed those for federal employees. Part-time employees accrue leave at the same rate, per hours worked. If the Council so desires, it may credit prior federal, state or local government service for the purpose of determining leave accrual of individual employees. Application of such a policy must be uniform and public.

Employees may carry over up to 240 hours (30 days) unused annual leave from one year to the next. Amounts remaining above 240 hours will be forfeited. Under certain conditions, forfeited annual leave may be restored if it was properly scheduled for use and circumstances beyond the employee's control caused the forfeiture. Approval for this restoration must be obtained from the Council Executive Director or Council Chair, who will refer to the NOAA Personnel Regulations and other source documents for guidance. Lump sum reimbursements not to exceed 240 hours carryover plus current year earnings of unused leave are authorized upon employee separation. Each Council may pay for unused annual leave upon separation, retirement, or death of an employee.

4.8.2 Sick Leave

Full-time Council employees shall accrue sick leave at the rate of two hours per week (13 days per year). Part-time employees may accrue at a percentage of the hours worked compared to 40 hours. Unused sick leave credit may be accumulated without limit. Lump sum payments to the employee upon separation are not authorized. However, distributions of accumulated funds for unused sick leave may be made to the employee upon his or her retirement (defined by PERs retirement rules), or to his or her estate upon his or her death, for up to 100 days of unused sick leave, at the employees current salary rate, subject to budgetary limitations.

One account shall be maintained to pay for unused sick or annual leave as authorized, and will be funded from the Council's annual operating allowances. Funds may be deposited into this account at the end of the budget period if unobligated balances remain. Interest earned on this account will be maintained in the account, along with the principal, for the purpose of payment of unused annual and sick leave only. This account, including interest, may be carried over from year to year. Budgeting for accrued leave will be identified in the "Other" object class categories section of the SF-424A.

In meritorious cases, the Council may advance up to one year's earnings of sick or annual leave when it is reasonably expected that the advanced leave will be repaid by the employee. This must be approved by the Executive Director (designation must be in writing).

4.9 Employee Benefits

The Council shall provide its employees and their legal dependents health insurance coverage and limited life insurance and accidental death and dismemberment coverage through the State of Alaska (Aetna) program. Retirement benefits are realized through Council participation in, and mandatory employee contributions to, the State of Alaska Public Employee System (PERS). Employee participation in a 403(b) plan is optional and at the employees expense. Moving expenses for new employees are authorized, up to limits specified in federal guidelines, subject to budgetary limitations.

5.0 Travel Rules

This section provides rules in addition to the travel rules specified previously for Council, AP, SSC and Plan Team members.

5.1 Limits and Reimbursement

Council members, employees, and members of the AP, SSC and Plan Teams who are not federal employees will be reimbursed for actual travel expenses while on official Council business, including transportation, room, meals, and incidental travel expenses (such as taxi fares, parking, and Council business telephone calls) within reasonable limits, but generally should not exceed the limits established by the federal government. Domestic invitational travel for non-Council personnel may be approved by the Council Chair or Executive Director. Payment for travel by NOAA personnel is not authorized.

Non-federal members of the Council and members of advisory groups and Council staff will be reimbursed for actual expenses incurred in the performance of Council duties. They are not bound by the separate per diem limits for meals and lodging as set forth in the GSA Rules. They are subject, however, to the total reimbursement limits established by the Federal Government for actual expenses, and they must itemize their actual expenses up to the specified limit each day. Lodging and airline receipts are required. The rates are included in the GSA Rules. Federal employees serving in the above capacities are subject to the reimbursement rules of their agencies.

Coach air transportation must be utilized when available, and economy fares are encouraged. Purchased travel via first class air may be authorized in extenuating circumstances subject to pre-approval by the Council Chair or Executive Director. Privately owned vehicles (POVs) may be authorized when other modes of transportation are either unavailable or inconvenient. When a POV is authorized for the convenience of the traveler, the reimbursement costs must not exceed the costs of coach air fare. Accommodations equivalent to other-than-first-class should be utilized in the unlikely event that water vessel transportation is required. When substantial savings can be realized by utilizing rail travel, this mode of transportation should be considered when available and adequate.

5.2 Foreign Travel

- (1) Foreign travel is authorized as described within the NOAA grant, when approved by the Executive Director, as necessary to conduct Council business.
- (2) The Council Chair or his/her authorized representative may approve routine across-the-border travel to Canada for Council members and employees within specified federal rates.
- (3) Foreign invitational travel for non-Council personnel must be approved as described in paragraph (1) of this section. The per diem limits or actual expense requirements described above also are applicable to non-Council personnel traveling at Council expense. Payment for federal personnel from Council funds is not authorized.

6.0 Standards of Conduct

The Council, SSC, and staff shall maintain high standards of ethical conduct. These standards include the following principles:

- A. No employee of the Council, SSC member, or Council member, shall use his or her official authority to act in the name of the Council for the purpose of influencing the result of an election to or a nomination for any public elective office.
- B. No SSC member, Council member, or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, either as a political contribution or a personal emolument any money, or anything of value in consideration of either support, or the use of influence, or the promise

of support, or influence in obtaining a Council decision or for any person, any appointive office, place or employment under the Council.

- C. No employee of the Council, SSC member, or member of the Plan Teams shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties. Council members with a direct or indirect financial interest shall ensure that it does not conflict with the fair and impartial conduct of his or her Council duties.
- D. The Act and federal regulations at 50 CFR 600.235 require that Council nominees, voting members appointed to the Council by the Secretary, and Executive Directors disclose any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the jurisdiction of the individual's Council or of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members, Nominees and Executive Directors of Regional Fishery Management Councils," or such other form as the Secretary, or designee, may prescribe. The report must be filed by nominees for Secretarial appointment before the date of appointment as prescribed by the Secretary. Voting members appointed by the Secretary and Executive Directors must file the report with the Council office before taking office. Individuals must update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed.
- E. All Council members appointed under Section 302(b)(2) must strictly adhere to Section 302(j)(7) regarding disclosure of financial interest and recusal, and Secretarial regulations at 50 CFR 600 regarding rules of conduct and financial disclosure, during any vote taken by the Council. Financial interest disclosures shall be made on forms, which shall be kept on file by the Council and made available on the Internet and for public inspection at the Council office during reasonable hours.

7.0 Financial Management

Each Council's grant activities are governed by OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), OMB Circular A-122 (Cost Principles for Non-Profit Organizations), 15 CFR Part 29b (Audit Requirements for Institutions of Higher Education and other Nonprofit Organizations) which provide uniform administrative requirements applicable to the Council, including standards for financial management, financial reporting, property management, and procurement. The Council will operate in full compliance with these standards and the terms and conditions of the cooperative agreement. (See 5 CFR 1310.3 for availability of OMB Circulars.)

The Council is exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).² As such, the Council is liable for taxes under the Federal Insurance Contributions Act (social security taxes), but not liable for the tax imposed under the Federal Unemployment Tax Act.

7.1 Cooperative Agreements and Contracts

The Council receives funds through cooperative agreements for two basic types of expenditures: administrative (operations) funds to cover general operating expenses such as salaries, office space, utilities,

² This determination was made by the Department of Treasury, IRS, in a letter dated June 4, 2002.

travel, state liaison activities, meeting expenses, etc., and programmatic funds primarily designed to fund contracts generated by the Council for development and amendment of FMPs or FMP-oriented information. Councils may not independently enter into agreements, including grants, contracts, or cooperative agreements, whereby they will receive funds for services rendered. All such agreements must be approved and entered into by NOAA on behalf of the Councils. Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to the NMFS Regional Administrator in accordance with applicable Department of Commerce regulations.

7.1.1 Administrative

The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through the Department, in the budgets of NOAA and NMFS. The Council applies for and receives such funding through the appropriate processes of the NOAA Grants Management Division.

A Cash Receipts and Disbursement Journal with a monthly Summary of Accounts is required as a minimum bookkeeping system for the administrative budget. Each cash disbursement must be approved by the Council Executive Director or Deputy Director. All checks require signatures from two of the following people: Council Executive Director, Deputy Director, or Administrative Officer.

7.1.2 Programmatic

The Council may enter into cooperative agreements with federal agencies, state, and private institutions on matters of mutual interest which further the objectives of the Act.

7.2 Procurement and Contracts

Negotiated and advertised contracts will generally follow the specifications normally characteristic of contracts with public entities (e.g., public announcement, emphasis on competition, change orders, etc.) and will be consistent with the terms of the cooperative agreement.

All procurements must comply with the terms and conditions of the award and OMB Circulars A-110 and A-122. The purchase of all equipment, not previously approved in the award, costing in excess of \$5,000 per unit and having a useful life of more than 1 year, requires the approval of the Regional Program Officer and the Grants Officer. Such approval will be made only after a cost-benefit analysis (system life cost, lease vs. purchase, compatibility, etc.) by the Council demonstrates the economy of the proposed action.

Commodities and services will be procured by means of a document-oriented system, with a receipt, check, or purchase order type document maintained on all transactions. Equipment and supplies available in the General Services Administration will usually be given primary consideration, except where cost-effectiveness and efficiency dictate otherwise. A petty cash fund for over-the-counter purchases will be maintained as necessary in the Council staff office.

7.3 Property Management

An accountability system of all non-expendable items of personal property, with a current market value of greater than \$1,000, will be maintained by means of an inventory system. An annual inventory report will be submitted to the NOAA Grants Officer. Theft will be reported promptly to the appropriate authorities. All non-expendable items over \$1,000 in current market value, will be inventoried. Disposal of surplus will be

performed in accordance with grant provisions. Any item no longer functional may be discarded in any manner deemed appropriate by the Executive Director or Administrative Officer.

7.4 Real Property

The leasing, renting, and acquisition of real property and space will be effected in a manner consistent with customary practices related to contracts with public entities. Real property files will be maintained on all transactions, including litigation, connected therewith.

7.5 Accounting System

(1) The finance and budget control system will be a direct responsibility of the Administrative Officer, who will maintain full cognizance of, and compliance with, all Department of Commerce requirements, pursuant to the Act, Treasury Department (IRS) regulations as well as any applicable local requirements (state, municipal, etc.).

(2) Financial control will be effected by means of a basic document-oriented accrual accounting system, which will include provisions for at least the following: direct labor (salary); indirect labor (employer contributions for FICA, life and health insurance, retirement, and unemployment taxes), travel expenses (transportation and subsistence), transportation of things, rent and utilities, taxes (non-employment), printing, communications, supplies, equipment, contracts, and any appropriate contra-accounts (contract accruals, etc.).

(3) A general ledger, supported by appropriate journals, will be maintained on all obligations and expenses, including appropriate accruals, and will be used to prepare periodic reports for review by the Executive Director, the Council, or Department of Commerce representatives. As a minimum, a complete financial status report should be completed on a monthly basis. The financial management system will be coordinated with the budget management system so that current and projected fund usage can be determined at any time.

(4) A separate payroll register, indicating all applicable expenses and accruals, will be maintained on each member of the Council and the Council staff.

7.6 Audits

Audits will be performed biennially (once every 2 years) by DOC Office of Inspector General or an independent public accountant. NOAA personnel will be invited as appropriate to participate in the audit exit conference.

7.7 Financial Reporting

Reports will be submitted as required by OMB Circular A-110 to summarize total expenditures and federal funds unexpended, and the status of the federal cash received. All financial reports will be kept until audited or approved for disposal by the appropriate Department of Commerce representative.

8.0 Recordkeeping

8.1 Administrative Records for FMPs

(1) The Council and NMFS Headquarters, Regions and Centers collectively are responsible for maintaining records pertaining to the development of FMPs and amendments. In the event of litigation, compilation of an administrative record for a court case will be under the direction of the NOAA General Counsel.

(2) Categories of documents which generally constitute an administrative record include the following:

- (a) Council meeting agendas;
- (b) Minutes of Council meetings;
- (c) Plan Team reports, if any;
- (d) SSC reports;
- (e) AP reports;
- (f) Hearing reports;
- (g) Council reports/recommendations;
- (h) Correspondence relating to the FMP;
- (i) Scoping comments;
- (j) Work plan, if any;
- (k) Discussion papers, if any;
- (l) NEPA documents;
- (m) Regulatory analyses;
- (n) PRA justification;
- (o) Proposed regulations;
- (p) Final regulations;
- (q) Emergency regulations; and
- (r) Notices of meetings (Council, SSC, AP, Team).

8.2 Disposition of Records

(1) The goal of an effective disposition program is annually to destroy at least enough unneeded records to equal the volume of records created, while preserving records having long-term or enduring value because of administrative, legal, scientific, or historical importance.

(2) The Council must consult with NOAA before destroying Council records. Financial records (including time and attendance records) are handled according to the stipulations of OMB Circular A-110. The Council must send records associated with FMPs to the appropriate Region for disposition.

(3) All records and documents created or received by Council employees while in active duty status belong to the Federal Government. When employees leave the Council, they cannot take original or file copies of records with them; to do so violates federal law.

8.3 Permanent Records

The designation of a file as "permanent" means that the records are appropriate for offer to the National Archives when 20 years old, unless otherwise specified. Destruction of permanent records is not authorized. The following are examples of permanent files:

- (1) EIS files: Documents relating to Environmental Impact Statements (EIS) or environmental assessments. Cut-off at end of calendar year when created. Permanent retention; no approved disposition at this time.

- (2) Annual report files: Input for the DOC Annual Reports and related correspondence. Cut-off at end of calendar year when created; permanent.
- (3) Meeting files: Including agendas, minutes, reports, studies and related correspondence. Cut-off at end of calendar year; permanent.

8.4 Privacy Act Records

The Council will maintain in its office, under appropriate safeguards in accordance with the Privacy Act (PA), personnel files on employees, experts and consultants under contract, and advisory group members. Maintenance, protection, handling of requests for information, and disclosure and disposition of PA records will be accomplished as provided for in the Secretarial guidelines and regulations.

8.5 Freedom of Information Act (FOIA)

FOIA requests received by a Council should be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to the NMFS FOIA Official to secure a FOIA number and log into the FOIA system. The Council does not recover costs - payments collected under the FOIA are transferred to the U.S. Treasury. All responsive documents must be reviewed for disclosure on a page-by-page basis, and that originals must be retained in the originating office, while copies must be maintained in accordance with DOC policy. The Region will also obtain clearance from the NOAA General Counsel's Office concerning initial determination for denial of requested information. FOIA requests will be controlled and documented in the Region. The requests should be forwarded to the NMFS FOIA Officer who will prepare the Form CD-244, "FOIA Request and [[Page 57888]] Action Record'," with the official FOIA number and due date. In the event the Region determines that the requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature, along with the "Foreseeable Harm" Memo and list of documents to be withheld, must be cleared through the NMFS FOIA Officer. Upon completion, a copy of the signed CD-244 and cover letter transmitting the information should be provided to the NMFS FOIA Officer and the NOAA FOIA Officer.

8.6 Confidentiality of Statistics

In accordance with Section 302(i)(4) of the Act, as described below, the Council has established policies and procedures applicable to ensure that statistics submitted to the Council by federal or state authorities or voluntarily by private persons remain confidential. All policies and procedures concerning the confidentiality of such statistics must be consistent with relevant federal or state law.

Confidential data will not be disclosed except to authorized users (Council staff or authorized contractors) in accordance with the applicable federal or state rules and policies governing use of the data. All users having access to confidential data shall be informed that the data are confidential and be required to sign a statement of non-disclosure agreeing to all applicable rules governing their handling of the data (including the use, disclosure, maintenance, and return of the data), which shall be kept on file at the Council office. When there is a potential for, or possible appearance of, conflict of interest, access will not be permitted.

To ensure security of confidential data, Council staff employees are required to comply with NOAA Management Directives regarding the policies and procedures governing the use of NOAA computing resources. Briefly, individuals must be accountable for their assigned IDs, passwords, and equipment (e.g., laptops and accessories). Employees should use extra caution when holding confidential data on devices that are transported outside of the Council office. Employees are required to immediately notify the Deputy Director or Executive Director any incidents including unauthorized use of computers, lost, stolen, or missing

hardware such as laptops or removable memory devices.

Appendix 1. Terms of Reference for the Groundfish Plan Teams.

Plan Teams for the Groundfish Fisheries of the Bering Sea/Aleutian Islands and Gulf of Alaska

TERMS OF REFERENCE

(November 2003)

1. **Establishment.** The North Pacific Fishery Management Council (Council) shall establish Plan Teams for the groundfish fisheries of the Bering Sea/Aleutian Islands (BS/AI) and Gulf of Alaska (GOA). The Plan Teams will provide the Council with advice in the areas of regulatory management, natural and social science, mathematics, and statistics as they relate to the groundfish fisheries of the BS/AI and GOA.
2. **Membership.** Plan Team members will be appointed from government agencies and academic institutions having expertise relating to the groundfish fisheries of the BS/AI and GOA. Normally, each Plan Team will include at least one member from the Council staff, the regional office of the National Marine Fisheries Service (NMFS), NMFS' Alaska Fishery Science Center, the Alaska Department of Fish & Game, the Washington Department of Fisheries, the International Pacific Halibut Commission, the University of Alaska, the University of Washington, and other institutions and universities. With the consent of the sponsoring agency or institution, nominations may be made by the Council, the Scientific and Statistical Committee (SSC), the Advisory Panel (AP), or the Plan Teams themselves. All nominations will be subject to approval by the SSC, with the Council retaining final appointment authority. Appointments should reflect the Plan Teams' responsibility to provide advice in the areas of regulatory management, natural and social science, mathematics, and statistics.
3. **Organization.** Each Plan Team will be directed by a chairperson or co-chairs, and may divide some of its responsibilities among work groups organized according to subject matter. A work group may include members from more than one Plan Team. Each work group will be directed by a work group leader.
 - (a) **Rules of order.** In general, rules of order will be informal. Plan Team decisions will be reached by consensus, whenever possible. If a decision is required and consensus cannot be reached, the opinion of the majority will prevail. In representing either Plan Team publicly, the spokesperson will take care to relate Plan Team opinions accurately, noting points of concern where consensus cannot be reached.
 - (b) **Meetings.** Plan Team meetings will be held prior to Council's September and December meetings. The Plan Team chairpersons may call other meetings as necessary. The two Plan Teams may meet either separately or jointly. A draft agenda will be prepared in advance of each meeting by the Council staff in consultation with the respective chairperson or chairpersons, and may be revised by the Plan Team(s) during the meeting. Each agenda will include an opportunity for comments from the general public. Minutes of each meeting will be prepared by the Council staff, distributed to Plan Team members, and revised as necessary at or before the subsequent Plan Team meeting.
 - (c) **Selection of officers.** Officers (Plan Team chairpersons and work group leaders) will be selected at the meeting preceding the September Council meeting or as vacancies arise. The Plan Team chairpersons will be selected for two-year terms. Work group leaders will be selected for one-year terms. There will be no limit on the number of consecutive terms that officers may serve.
4. **Functions.** The Plan Teams' primary function is to provide the Council with the best available scientific information, including scientifically based recommendations regarding appropriate measures for the conservation and management of the BS/AI and GOA groundfish fisheries.
 - (a) **SAFE report.** The Plan Teams compile SAFE reports for the BS/AI and GOA groundfish fisheries on

an annual basis. The SAFE reports provide the Council with a summary of the most recent biological condition of the groundfish stocks and the social and economic condition of the fishing and processing industries. The SAFE reports summarize the best available scientific information concerning the past, present, and possible future condition of the groundfish stocks and fisheries, along with ecosystem considerations/concerns. This includes recommendation of acceptable biological catch and, where appropriate, total allowable catch levels. All recommendations must be designed to prevent overfishing while achieving optimum yield (National Standard 1). All recommendations must also be scientifically based (National Standard 2), drawing upon the Plan Teams' expertise in the areas of regulatory management, natural and social science, mathematics, and statistics. Finally, uncertainty must be taken in account wherever possible (National Standard 6).

(b) **Plan amendments.** The Plan Teams may also play a role in the development and evaluation of amendments to the BS/AI and GOA groundfish fishery management plans.

(i) The Plan Teams may evaluate amendment proposals and forward their recommendations to the Plan Amendment Advisory Group, on which the Plan Team chairpersons serve.

(ii) In addition, the Plan Teams may develop their own amendment proposals.

(iii) Once an amendment proposal has been accepted for consideration by the Council, an analytical team may be assembled by the responsible agencies. Every analytical team should include at least one member from one or both Plan Teams, drawn from the appropriate working group(s), whenever possible.

(iv) Once an amendment analysis has been completed, it may be reviewed by the Plan Teams. The Plan Teams' comments, if any, are then forwarded to the SSC, AP, and Council.

Appendix 2. Terms of Reference for the BSAI Crab Plan Team.

Plan Team for the King and Tanner Crab Fisheries
of the Bering Sea/Aleutian Islands

TERMS OF REFERENCE

(May 2005)

1. Establishment. The North Pacific Fishery Management Council (Council) shall establish a Plan Team for the king and Tanner crab fisheries of the Bering Sea/Aleutian Islands (BS/AI) area. The Plan Team will provide the Council with advice in the areas of regulatory management, natural and social science, mathematics, and statistics as they relate to the king and Tanner crab fisheries of the BS/AI area.
2. Membership. Plan Team members will be appointed from government agencies, academic institutions, and organizations having expertise relating to the crab fisheries of the BS/AI. Normally, the Plan Team will consist of at least one member from the Council staff, the National Marine Fisheries Service (NMFS), the Alaska Department of Fish & Game, the University of Alaska, and other universities and institutions. Alternate members may be assigned to participate in case a member cannot attend a meeting. With the consent of the sponsoring agency or institution, nominations may be made by the Council, the Scientific and Statistical Committee (SSC), the Advisory Panel (AP), or the Plan Team. All nominations will be subject to approval by the SSC, with the Council retaining final appointment authority. Appointments should reflect the Plan Teams' responsibility to evaluate and make recommendations on management, biological, economic and social conditions of the fisheries.
3. Organization. The Plan Team will be directed by a chairperson, and may divide some of its responsibilities among work groups organized according to subject matter. A work group may also include members from the BS/AI groundfish Plan Team. Each work group will be directed by a work group leader.
 - (a) Rules of order. In general, rules of order will be informal. Plan Team decisions will be reached by consensus, whenever possible. If a decision is required and consensus cannot be reached, the opinion of the majority will prevail. In representing the Plan Team publicly, the spokesperson will take care to relate Plan Team opinions accurately, noting points of concern where consensus cannot be reached.
 - (b) Meetings. A minimum of two Plan Team meetings will be held annually in so far as practicable to discuss guideline harvest levels, status and management of the BSAI crab stocks. The timing and scope of meetings, in so far as practicable, will be as follows; a spring meeting will be held with the intention of reviewing the previous year's fishery catch data, the methodology for stock assessment modeling, preliminary stock assessment and any additional issues pertinent to the summer research schedule. A following summer/fall meeting will be held with the intention to discuss the status of stocks. This meeting would be intended to occur prior to the TAC determinations by the state. The fall meeting shall be held at a time that ensures availability of TAC specifications for the allocation of crab resources under crab rationalization. It is understood that this status of stocks meeting does not preclude additional Inter-agency meetings prior to TAC setting. The Plan Team chairperson may call other meetings as necessary. The Crab Plan Team may meet separately or jointly with the BSAI Groundfish Plan Team to discuss areas of joint concern. A draft agenda will be prepared in advance of each meeting by the Council staff in consultation with the chairperson, and may be revised by the Plan Team during the meeting. Minutes of each meeting will be prepared by the Council staff, distributed to Plan Team members, and revised as necessary at or before the subsequent Plan Team meeting. The Chairperson (or designee) will report the Team's finding to the Council.
 - (c) Selection of officers. Officers (Plan Team Chair, Vice Chair and workgroup leaders) will be selected

at the meeting preceding the annual Plan Team meeting or as vacancies arise. The Plan Team Chairperson and Vice Chair will be selected at the annual meeting for two-year terms. It is the intent of the Team that after two years the Vice Chair will succeed as Chair and the following election will be for the position of Vice Chair. This process will continue on a two-year cycle. Work group leaders will be selected for one-year terms. There will be no limit on the number of consecutive terms that officers may serve.

4. Functions. The Plan Teams' primary function is to provide the Council with the best available scientific information, including scientifically based recommendations regarding appropriate measures for the conservation and management of the BS/AI king and Tanner crab fisheries. All recommendations must be designed to prevent overfishing while achieving optimum yield (National Standard 1). All recommendations must also be scientifically based (National Standard 2), drawing upon the Plan Teams' expertise in the areas of regulatory management, natural and social science, mathematics, and statistics. Finally, uncertainty must be taken into account wherever possible (National Standard 6).
 - (a) SAFE report. The Plan Team compiles a SAFE report for the BS/AI king and Tanner crab fisheries on an annual basis. The SAFE report provides the Council with a summary of the most recent biological condition of the crab stocks and the social and economic condition of the fishing and processing industries. The SAFE report summarizes the best available scientific information concerning the past, present, and possible future condition of the crab stocks and fisheries, along with ecosystem concerns.
 - (b) Plan amendments. The Plan Team may also play a role in the development and evaluation of amendments to the BS/AI king and Tanner crab fishery management plan, as well as evaluate amendments to the groundfish fishery management plan that may affect the conservation and management of BS/AI crab resources.
 - (i) The Plan Team may evaluate amendment proposals and forward their recommendations to the Council.
 - (ii) In addition, the Plan Team may develop their own amendment proposals.
 - (iii) Once an amendment proposal has been accepted for consideration by the Council, an analytical team may be assembled by the responsible agencies. Every analytical team should include at least one member from the Plan Team, drawn from the appropriate working group(s), whenever possible.
 - (iv) Once an amendment analysis has been completed, it may be reviewed by the Plan Team. The Plan Team's comments, if any, are then forwarded to the SSC, AP, and Council.
 - (c) Peer Review. The plan team deliberations shall constitute part of the peer review process specified by current OMB policies provided that members directly involved in the production of a scientific product will recuse themselves from the review.

Appendix 3. Terms of Reference for the Alaska Scallop Plan Team.

Plan Team for the Alaska Scallop Fisheries
TERMS OF REFERENCE
(March 2005)

1. **Establishment.** The North Pacific Fishery Management Council (Council) shall establish a Plan Team for the Alaska scallop fisheries and this. The Plan Team will inform provide the Council regarding issues with advice in the areas of regulatory management, natural and social science, mathematics, and statistics as they that relate to the scallop fisheries off Alaska.
2. **Membership.** Plan Team members will be appointed from government agencies, academic institutions, and organizations having expertise relating to the scallop fisheries. Normally, the Plan Team will consist of at least one member from the Council staff, the National Marine Fisheries Service (NMFS), the Alaska Department of Fish & Game, and other universities and institutions as appropriate. Alternate members may be assigned to participate in case a member cannot attend a meeting. With the consent of the sponsoring agency or institution, nominations may be made by the Council, the Scientific and Statistical Committee (SSC), the Advisory Panel (AP), or the Plan Team. All nominations will be subject to approval by the SSC, with the Council retaining final appointment authority. Appointments should reflect the Plan Teams' responsibility to evaluate and make recommendations on management, biological, economic and social conditions of the fisheries.
3. **Organization.** The Plan Team will be directed by a chairperson, and may divide some of its responsibilities among work groups organized according to subject matter. A work group may also include members from the groundfish or crab Plan Team or members with other expertise as necessary. Each work group will be directed by a work group leader.
 - (a) **Rules of order.** In general, rules of order will be informal. Plan Team decisions will be reached by consensus, whenever possible. If a decision is required and consensus cannot be reached, the opinion of the majority will prevail. In representing the Plan Team publicly, the spokesperson, (meaning the chairperson or the chairperson's designee) will take care to relate Plan Team opinions accurately, noting points of concern where consensus cannot be reached.
 - (b) **Meetings.** The Plan Team will meet annually. An annual Plan Team meeting will be held to discuss guideline harvest levels, status and management of the scallop stocks. The Plan Team chairperson may call other meetings as necessary. The Plan Team may meet separately or jointly with the BSAI Crab or Groundfish Plan Teams to discuss areas of joint concern. A draft agenda will be prepared in advance of each meeting by the Council staff in consultation with the chairperson, and may be revised by the Plan Team during the meeting. Minutes of each meeting will be prepared by the Council staff or designee, distributed to Plan Team members, and revised as necessary at or before the subsequent Plan Team meeting. The Chairperson (or designee) will report the Team's findings to the Council.
 - (c) **Selection of officers.** Officers (Plan Team chairperson and work group leaders) will be selected for two year terms at the annual Plan Team meeting preceding the annual Plan Team meeting or as vacancies arise. The Plan Team chairperson will be selected at the annual meeting for a one year term. Work group leaders will be selected for one-year terms. There will be no limit on the number of consecutive terms that officers may serve.
 - (d) **Public participation.** Public participation is encouraged but may be limited due to time or other constraints and participation will be generally informal and at the discretion of the chairperson.

4. **Functions.** The Plan Teams' primary function is to provide the Council with the best available scientific information, including scientifically based recommendations regarding appropriate measures for the conservation and management of the Alaska scallop fisheries and compliance with the FMP, the Magnuson Stevens Act and all applicable federal laws. All recommendations must be designed to prevent overfishing while achieving optimum yield (National Standard 1). All recommendations must also be scientifically based (National Standard 2), drawing upon the Plan Teams' expertise in the areas of regulatory management, natural and social science, mathematics, and statistics. Finally, uncertainty must be taken into account wherever possible (National Standard 6).

(a) **SAFE report.** The Plan Team compiles a SAFE report for the Alaska scallop fisheries on an annual basis. The SAFE report provides the Council with a summary of the most recent biological condition of the stocks and the social and economic condition of the fishing and processing industries. The SAFE report summarizes the best available scientific information concerning the past, present, and possible future condition of the scallop stocks and fisheries, along with ecosystem concerns.

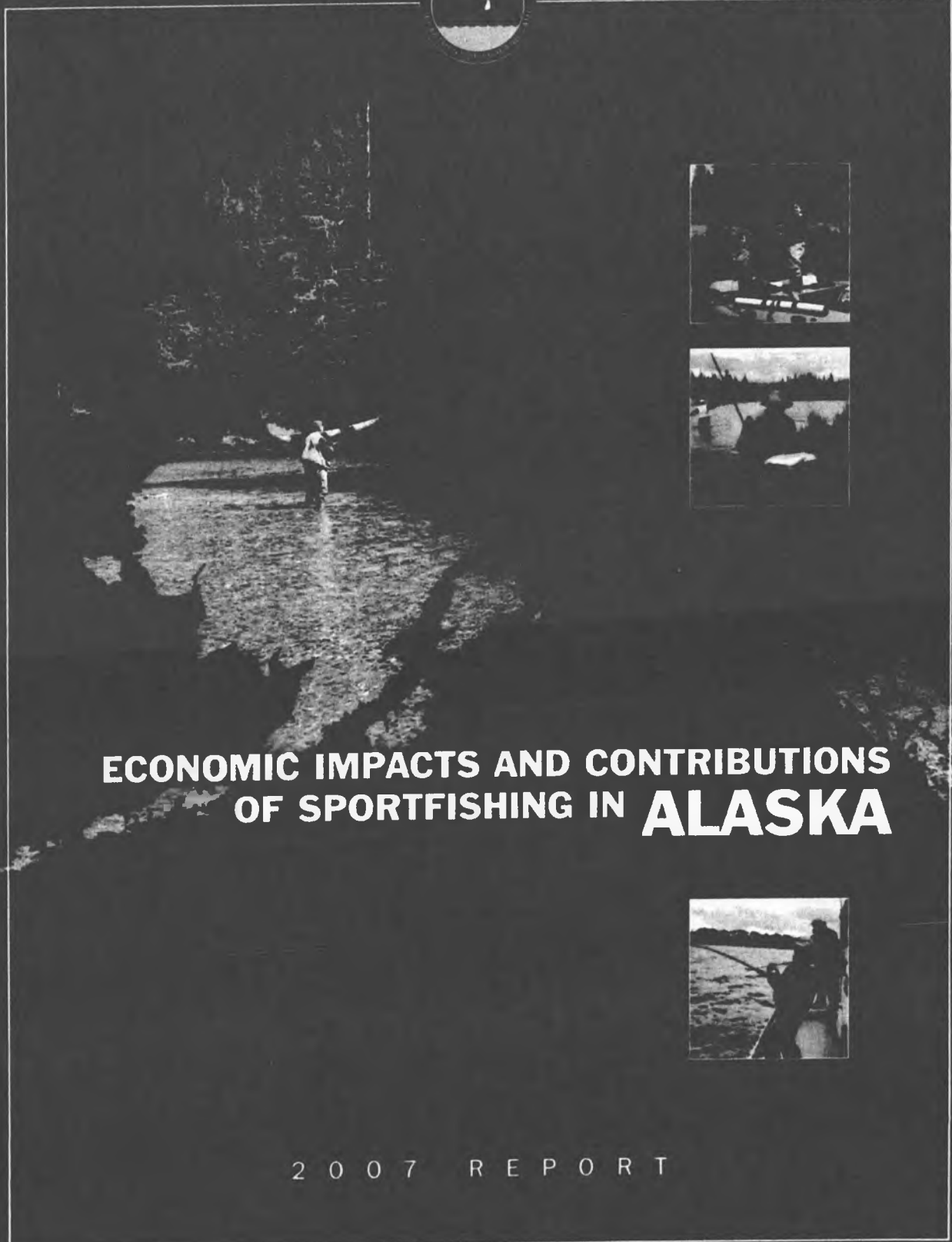
(b) **Plan amendments.** The Plan Team may also play a role in the development and evaluation of amendments to the fishery management plan, as well as evaluate amendments to other management plans that may affect the conservation and management of scallop resources.

(i) The Plan Team may evaluate amendment proposals and forward their recommendations to the Council.

(ii) In addition, the Plan Team may develop their own amendment proposals.

(iii) Once an amendment proposal has been accepted for consideration by the Council, an analytical team may be assembled by the responsible agencies. Every analytical team should include at least one member from the Plan Team, drawn from the appropriate working group(s), whenever possible.

(iv) Once an amendment analysis has been completed, it may be reviewed by the Plan Team. The Plan Team's comments, if any, are then forwarded to the SSC, AP, and Council.



ECONOMIC IMPACTS AND CONTRIBUTIONS OF SPORTFISHING IN **ALASKA**



2 0 0 7 R E P O R T



A Message from the Director

**CHARLIE SWANTON, DIRECTOR
ADF&G, DIVISION OF SPORT FISH**

Alaska supports arguably some of the finest and most diverse sportfishing in the world. These opportunities provide Alaskans with a significant and sustainable source of food, relaxation, and social benefits. Additionally, the money spent by residents and visitors who participate in sportfishing activities produces significant economic benefits to Alaska.

The Division of Sport Fish is committed to providing an array of biological, social and economic information to fishery managers and fishery regulators who plan and evaluate fishery projects and make informed decisions about the management of fishery resources.

This report summarizes a recent effort by the Division to provide estimates of angler spending in Alaska and the contribution it makes to Alaska's economy. The results are based on an extensive statewide study of resident and nonresident anglers who went sportfishing in Alaska during 2007. The report contains estimates of the total expenditures on sportfishing by anglers and estimates of the subsequent economic effects this spending had in terms of employment, wages, salaries and tax receipts.

A key objective of this project was to establish a consistent and repeatable methodology for collecting and reporting estimates of economic contribution in Alaska such that reasonably precise estimates would be routinely available to agency personnel, fisheries decision-makers, and the public.

We hope that you find the following information useful and that it contributes to well-informed decision making.

A handwritten signature in black ink, appearing to read "Charlie Swanton".



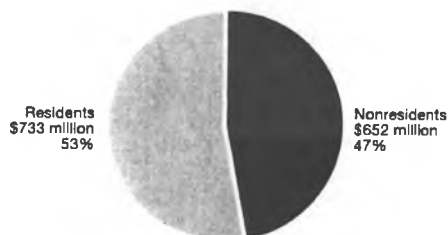
Sportfishing in ALASKA

Sportfishing is an important component of the Alaskan economy. It contributes to the well-being of Alaskans as recreation, as a source of food, and as part of the state's collective economic fabric. In 2007, 190,644 Alaska residents bought a fishing license, along with 284,890 nonresidents.

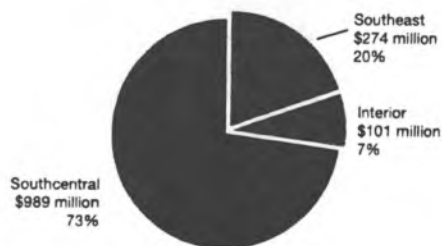
Spending a day fishing with rod and reel usually involves spending at least some money for travel, equipment, and supplies. Because a large number of anglers—both resident and nonresident—spend many days each year enjoying Alaska's diverse fishing opportunities, the annual total of that spending is substantial.

The money spent by anglers in turn helps to support thousands of Alaskan jobs in industries ranging from fishing tackle sales to hospitality and lodging to air taxi and guide services which are an important part of the economy in many of Alaska's local communities. At the same time, angler spending is also creating federal, state and local tax revenues which support local and borough governments and help pay for fisheries management in Alaska.

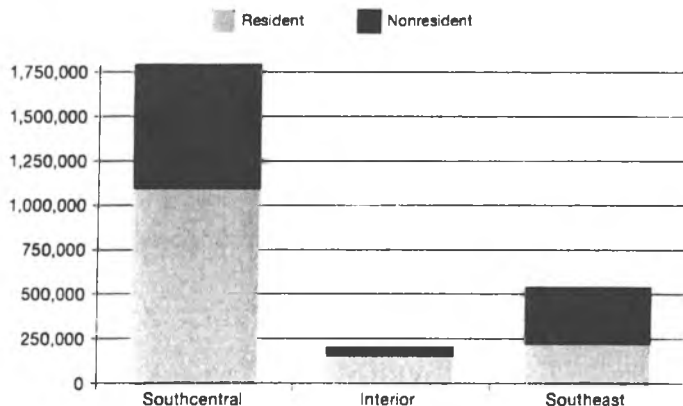
TOTAL SPORTFISHING EXPENDITURES, ALL ANGLERS
\$1.4 billion



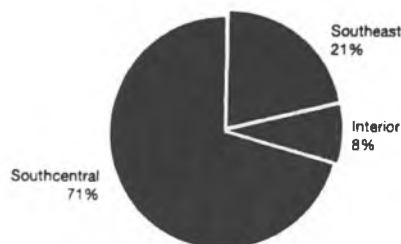
SPORTFISHING EXPENDITURES BY REGION, ALL ANGLERS



DAYS OF SPORTFISHING IN ALASKA BY REGIONS AND RESIDENCY, 2007



DAYS OF SPORTFISHING BY REGION, ALL ANGLERS





Economic Impact vs. Economic Contribution

This project measured and reported the economic impacts and contributions of licensed anglers to Alaska's state and regional economies. The words "impact" and "contribution" are not necessarily synonymous.

Economic impact typically refers to the effects of money being brought in from outside the state or region. It was possible to estimate the total amount of resident and nonresident spending in Alaska as a whole and within specific regions by combining the economic survey results with the ADF&G Statewide Harvest Survey results.

Economic contribution refers to in-state spending by all anglers. In theory, if the dollars spent by resident anglers were not spent on sportfishing, the same money would be spent on other things and would still stimulate economic activity. It isn't possible to accurately predict whether these local dollars would be spent in or outside of Alaska.

This study generated both economic impact estimates (non-resident spending) as well as estimates of the economic contributions of spending by Alaska anglers in 2007.

Economic **IMPACTS** *& Contributions*

The purpose of the study was to obtain current estimates of the economic contribution of sportfishing activities to the Alaska economy and to develop a consistent method for producing such estimates on a regular basis. This project provides a survey-based process that can now be updated periodically at reasonable cost.

For 2007, the year covered by this report, 1,163 resident and 1,807 nonresident surveys were completed by anglers who fished in Alaska. From the survey responses collected, estimates of how much each angler spends per day of fishing and per year on fishing-related equipment were produced. These survey results were combined with the total number of licensed anglers in 2007 and the total days of fishing in Alaska as estimated by the Division's Statewide Harvest Survey. This survey, conducted every year by the Division, tracks annual sportfishing participation and harvest. By combining the economic survey results with the Statewide Harvest Survey results, it was possible to estimate the total amount of resident and nonresident spending in Alaska as a whole and within specific regions of the state.

An economic model was then used to estimate the additional economic effects that angler spending produced within each region of the state. Using the collective dollars spent by anglers, an economic model known as IMPLAN estimated the total jobs, tax revenues and other economic contributions. Regional as well as statewide totals can be determined and are summarized in the following pages. Information on the dollars associated with guided fishing trips and with nonresident fishing is also included. First, here are some statewide highlights.

Total Resident and Nonresident Sportfishing Expenditures, by Category

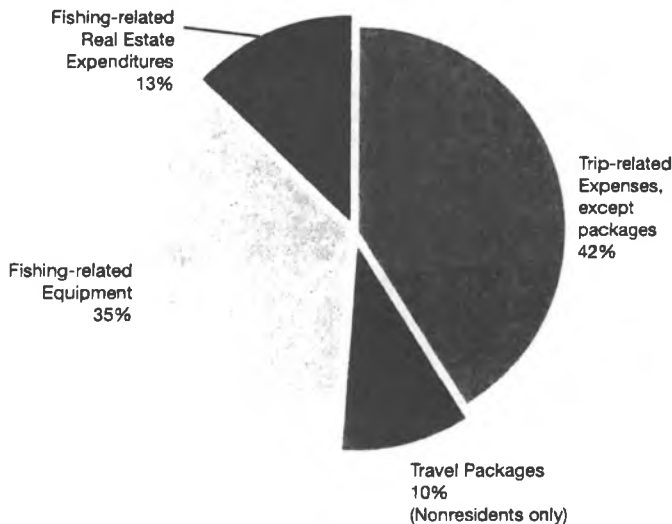
	Resident Anglers	Nonresident Anglers	All Anglers
Licenses and Fees	\$6,627,558	\$16,536,955	\$23,164,513
Trip Expenditures (non-package)	\$219,829,151	\$347,558,929	\$567,388,080
Package Expenditures	n/a	\$137,519,700	\$137,519,700
Equipment Expenditures	\$433,693,104	\$41,385,450	\$475,078,554
Real Estate Expenditures	\$73,139,537	\$109,697,619	\$182,837,156
Total Expenditures	\$733,289,349	\$652,498,723	\$1,385,788,072

Average Per Day Expenditure for Trip-Related Items Only, Including Package Trips

(Lodging, fuel, food, travel packages, etc.)

	Per Day
All Alaska Fishing Combined	\$277.46
Residents Only	\$150.63
Non-Residents Only	\$448.78
Saltwater	
Residents, Unguided	\$162.81
Residents, Guided	\$466.53
Non-Residents, Unguided	\$308.40
Non-Residents, Guided	\$744.03
Freshwater	
Residents, Unguided	\$91.73
Residents, Guided	\$509.56
Non-Residents, Unguided	\$213.24
Non-Residents, Guided	\$790.41

TOTAL ANGLER SPENDING BY CATEGORY



ECONOMIC ACTIVITY, OR MULTIPLIER EFFECT: SUPPORTED BY GUIDED AND UNGUIDED FISHING TRIPS

Trip-related and Package Expenditures*

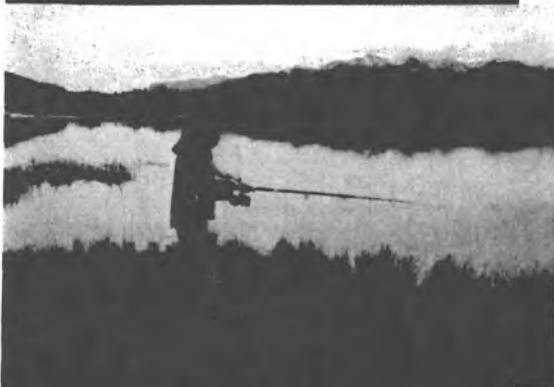


JOBS: SUPPORTED BY GUIDED AND UNGUIDED FISHING TRIPS

Trip-related and Package Expenditures*



*Only trip related expenditures (food, fuel, lodging, etc.) could be divided into guided and unguided portions. It was not possible to divide equipment expenditures in such a manner.



How Economic Effects Occur

While the economic effects of sportfishing occur on a large scale statewide, it's important to note that they happen one angler at a time.

Suppose, for example, that a construction worker in downtown Anchorage decides to go fishing on his day off. He stops after work at the local tackle shop and spends \$250 for a rod and reel along with some line, lures, a knife and cooler. Sandwiches, soda, and ice for the trip come from the local grocery store, and he spends still more money to fill his vehicle with gas on the way home. Very early the next morning, he starts the 150 mile drive out the Seward and Sterling highways to the Kenai River where he'll fish for king or coho salmon.

Meanwhile, the money he left behind goes to work. Some of the money he spent for fishing gear helps to pay the wages of a sales clerk, for example, who in turn spends some that evening at a local restaurant, to buy groceries, or pays his utility bill at the local light and power company. These payments, known collectively as the "multiplier effect", help to support still other jobs as the money our angler spent ripples outward in many directions through the local economy, even to those sectors not directly related to fishing. See page 11 for more definitions.

Regional Economic EFFECTS

Economic effects can be measured regionally and locally as well as statewide. Alaska has several distinct regions, each with its own characteristic sport fisheries that show different patterns in angling participation, spending, and economic effects.

STATEWIDE RESULTS

Alaska is blessed with many world-class freshwater and marine fisheries. In 2007, resident and nonresident anglers spent nearly \$1.4 billion on equipment, boats, and trip-related and other items. Alaska anglers on average spent \$2,914 on sportfishing trip expenses, fishing-related equipment, licenses, and other items in 2007. The actual amount spent per angler varies based on his or her preferred fishing locations, region, and more. Details are available in the technical report (see sidebar on page 8).

As anglers' expenditures exchange hands, economic contributions are generated statewide. In 2007, these contributions amounted to 15,879 jobs, \$246 million in tax revenues and \$545 million in income. Economic output, which is the value of all goods and services produced by businesses as a result of anglers' expenditures, was just over \$1.6 billion.

SOUTHEAST (REGION I)

The so-called Panhandle area extending roughly from Yakutat south-southwest through Juneau and Ketchikan to the British Columbia border is a complex maze of islands, straits, and mountains. The saltwater salmon fishing here is outstanding, although some anglers find steelhead, along with river-resident trout, to be just as appealing.

Total spending by all anglers, resident and nonresident combined, for Southeast Alaska in 2007 was estimated to be \$274 million. The total economic output came to \$295 million, which supported 3,063 jobs and generated \$22 million in state and local taxes.



SOUTHEAST MARINE (SUBREGION)

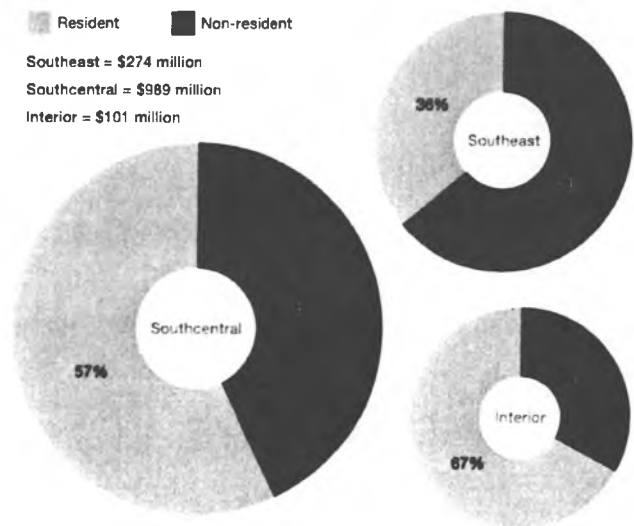
Within southeast Alaska, the popularity of salt-water fishing accounted for almost half of all angler spending. Saltwater anglers in southeast Alaska spent \$132 million of the \$274 million spent on sportfishing in southeast Alaska in 2007, which supported 1,897 jobs and created \$14 million in state and local tax revenues.

SOUTHCENTRAL (REGION II)

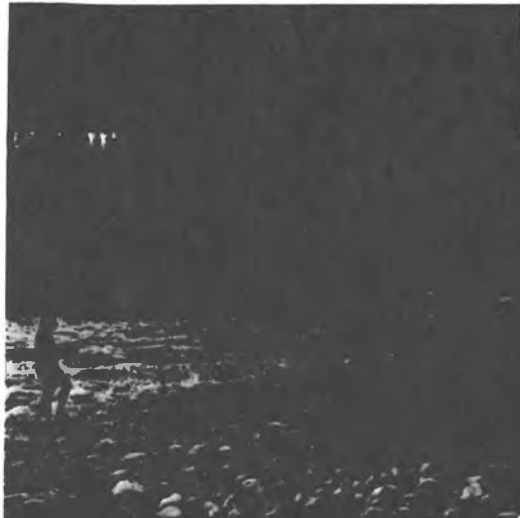
This is by far the most popular angling region in Alaska as measured in total angler days. It includes Prince William Sound, Cook Inlet and the Anchorage area, as well as Kodiak Island and the Bristol Bay area to the west of Cook Inlet. All five salmon species are fished widely here in both salt- and fresh-water, along with halibut and other saltwater species. Trophy rainbow trout in the various Bristol Bay drainages are world-famous.

Anglers spent \$989 million in the Southcentral region in 2007, supporting 11,535 area jobs and creating \$91 million in state and local taxes.

RESIDENT AND NONRESIDENT EXPENDITURES BY REGION



Economic measures reported in this chart are based on regional IMPLAN model outputs using 2007 angler expenditures.



For More Details...

This report is a summary of a 300 page technical report available free from the Alaska Department of Fish and Game, Division of Sport Fish. The complete report presents detailed descriptions of the methods and data sources used in the study, as well as the complete results. Visit www.sf.adfg.state.ak.us/statewide/economics to download a copy in PDF form. You may also contact the Department at (907) 267-2366, or william.romberg@alaska.gov, to request a printed copy of the report.

Regional Economic **EFFECTS** *(cont.)*

COOK INLET (SUBREGION)

Notably, much of Southcentral's economic activity centers around the Cook Inlet area, partly because Anchorage and the Matanuska-Susitna valley are such large population centers with good fishing nearby. The Kenai River, for example, is an easy drive from Anchorage and is widely known among anglers as one of the world's foremost salmon rivers. In addition, there are large sport fisheries for halibut and other groundfish that are accessed from several communities that border Cook Inlet. In the Cook Inlet subregion alone (a subset of Southcentral region), anglers spent about \$733 million in 2007, which supported 8,056 jobs and generated \$55 million in state and local taxes.

INTERIOR (REGION III)

Among anglers, the northern two-thirds of the state could be called the road less traveled. This vast area contains many small communities and sport fisheries located off the road system with fisheries less accessible than places farther south in the state. However, the fishing is none the less exceptional, and in addition to salmon and trout there are fisheries for unique species such as sheefish, arctic char, and burbot, as well as huge northern pike found in the "flats" region of the lower Yukon River.

Angling traffic here is lighter than in other regions of the state but still significant. Total regional spending by all anglers in this region topped \$101 million in 2007 and directly or indirectly supported 923 area jobs and \$7 million in state and local taxes.

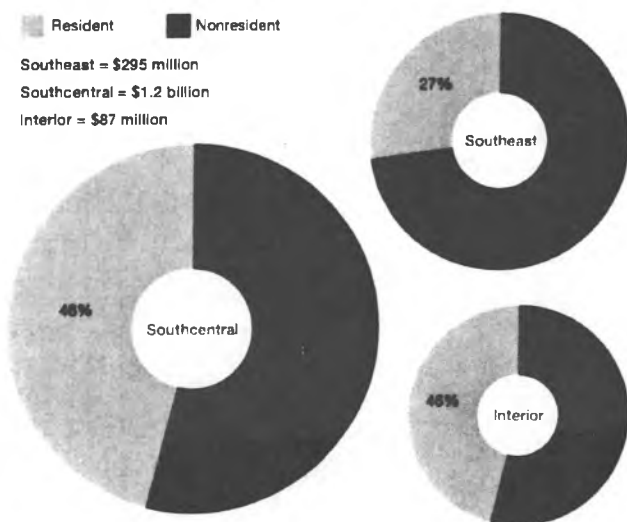


Total Angler Expenditures \$1.4 Billion

RESIDENT AND NONRESIDENT OUTPUT BY REGION

Resident Nonresident

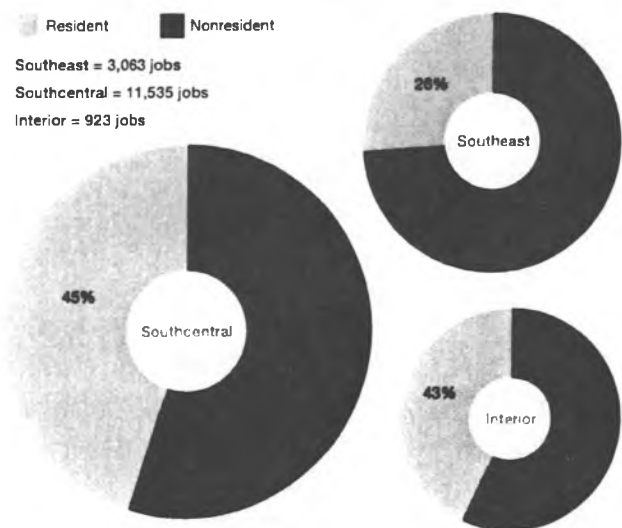
Southeast = \$295 million
Southcentral = \$1.2 billion
Interior = \$87 million



RESIDENT AND NONRESIDENT EMPLOYMENT BY REGION

Resident Nonresident

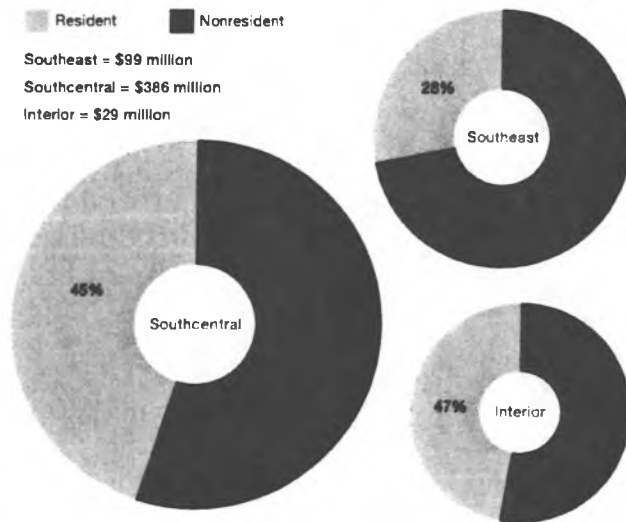
Southeast = 3,063 jobs
Southcentral = 11,535 jobs
Interior = 923 jobs



RESIDENT AND NONRESIDENT INCOME BY REGION

Resident Nonresident

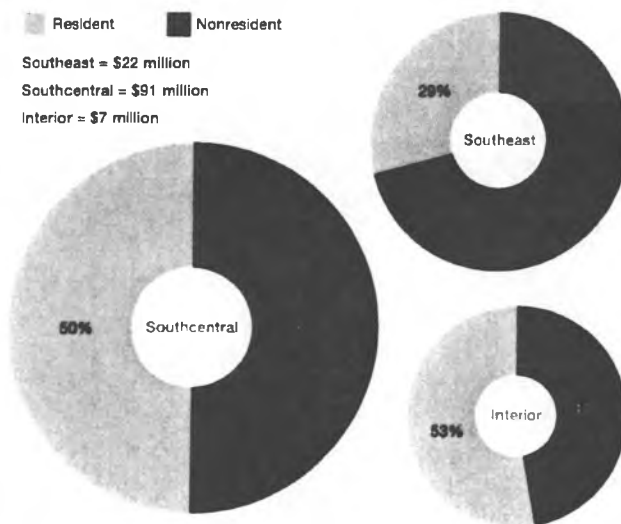
Southeast = \$99 million
Southcentral = \$386 million
Interior = \$29 million



RESIDENT AND NONRESIDENT STATE & LOCAL TAX REVENUES BY REGION

Resident Nonresident

Southeast = \$22 million
Southcentral = \$91 million
Interior = \$7 million



Sportfishing-related Jobs
15,879

Economic measures reported in these charts are based on regional IMPLAN model outputs using 2007 angler expenditures. See page 11 for definitions of terms used on this page.

Economic Contributions of Sportfishing in Alaska, by Residency & Region, 2007

	Resident Anglers	Nonresident Anglers	All Anglers
ALASKA - STATEWIDE RESULTS			
Anglers' expenditures	\$733,289,349	\$652,498,723	\$1,385,788,072
Output	\$668,729,829	\$938,863,856	\$1,607,593,685
Income	\$223,373,937	\$321,882,151	\$545,256,088
Jobs	6,442	9,437	15,879
Tax Revenues	\$107,433,533	\$138,881,701	\$246,315,114
<i>Local & State</i>	\$56,509,573	\$66,632,831	\$123,142,404
<i>Federal</i>	\$50,923,960	\$72,248,870	\$123,172,700
SOUTHEAST REGION			
Anglers' expenditures	\$98,613,993	\$174,890,811	\$273,504,804
Output	\$79,385,025	\$215,874,985	\$295,260,010
Income	\$27,316,008	\$71,825,686	\$99,141,694
Jobs	791	2,273	3,063
Tax Revenues	\$12,227,368	\$31,388,564	\$43,585,932
<i>Local & State</i>	\$6,378,236	\$15,686,783	\$22,063,019
<i>Federal</i>	\$5,851,132	\$15,681,782	\$21,532,913
SOUTHCENTRAL REGION			
Anglers' expenditures	\$580,955,071	\$427,803,048	\$988,558,119
Output	\$534,838,006	\$630,707,507	\$1,165,545,513
Income	\$174,829,988	\$211,833,737	\$386,463,733
Jobs	5,170	6,365	11,535
Tax Revenues	\$86,583,199	\$93,692,068	\$160,255,267
<i>Local & State</i>	\$45,612,530	\$45,187,101	\$90,799,631
<i>Federal</i>	\$40,950,668	\$48,504,967	\$89,455,636
INTERIOR REGION			
Anglers' expenditures	\$67,092,727	\$33,467,910	\$100,560,637
Output	\$40,133,830	\$46,578,879	\$86,712,709
Income	\$13,293,706	\$15,300,176	\$28,583,882
Jobs	399	524	923
Tax Revenues	\$6,710,270	\$8,700,675	\$13,419,145
<i>Local & State</i>	\$3,825,310	\$3,396,831	\$7,222,141
<i>Federal</i>	\$2,884,961	\$3,312,044	\$6,197,005
<p>Output = total economic activity generated by angler spending Income = salaries, wages, employee benefits and proprietors' profits stimulated by anglers Jobs = same as employment, these are the total number of both full-time and part-time jobs supported by angler spending Tax Revenues = the total personal and business tax revenues earned by local, state, and federal government that are generated by angler spending</p>			

Economic Contributions of Sportfishing for Specific Subregions, 2007

	Resident Anglers	Nonresident Anglers	All Anglers
COOK INLET (A SUBREGION OF THE SOUTHCENTRAL REGION)			
Anglers' expenditures	\$457,938,464	\$275,030,511	\$732,968,975
Output	\$413,287,612	\$414,602,226	\$827,889,838
Income	\$138,850,138	\$142,124,416	\$278,774,552
Employment	4,010	4,046	8,056
Tax Revenues	\$67,097,024	\$44,445,496	\$111,542,520
Local & State	\$35,189,444	\$20,091,926	\$55,281,369
Federal	\$31,907,580	\$24,353,570	\$56,261,150
SOUTHEAST REGION - MARINE FISHING ONLY*			
Anglers' expenditures	\$21,288,271	\$110,345,177	\$131,633,448
Output	\$28,244,412	\$138,794,141	\$167,038,552
Income	\$8,132,290	\$44,582,871	\$52,715,161
Employment	301	1,595	1,897
Tax Revenues	\$4,791,024	\$21,577,534	\$26,368,558
Local & State	\$2,713,584	\$11,473,357	\$14,186,941
Federal	\$2,077,440	\$10,104,178	\$12,181,618
<small>Output = total economic activity generated by angler spending Income = salaries, wages, employee benefits and proprietors' profits stimulated by anglers Jobs = same as employment, these are the total number of both full-time and part-time jobs supported by angler spending Tax Revenues = the total personal and business tax revenues earned by local, state, and federal government that are generated by angler spending *The contributions are for trip spending only, including travel packages. It was not possible to allocate equipment and real estate expenditures by type of water fished.</small>			

Definitions of Terms Used in this Report

Angler Expenditures: the dollars spent for the primary reason of sportfishing. Such expenditures include trip-related expenses for fishing (fuel, guide services, lodging, etc.), fishing tackle and other fishing equipment, the portion of ancillary equipment used for fishing that may have multiple uses (e.g., coolers, binoculars), and real estate maintenance and construction expenditures if used primarily for the pursuit of sportfishing.

Total Multiplier Effect (also known as Total Economic Activity): the results (measured in output, income, jobs and taxes) of the total rounds of business and consumer spending stimulated by anglers' original expenditures.

Income: generated as a result of anglers' expenditures, this includes total payroll, including salaries and wages, as well as benefits such as insurance, and retirement benefits paid to employees and business proprietors.

Employment: the total number of both full-time and part-time jobs supported as a result of anglers' expenditures.

Tax Revenues: the total tax revenues earned by local, state and federal governments as a result of anglers' expenditures. All forms of local, state and federal taxes are included.



ACKNOWLEDGEMENTS

Funding for this study was provided by the Alaska Legislature which approved a \$2,718,000 Fish and Game Fund increment and a \$200,000 General Fund increment to the Division of Sport Fish FY 2008 budget. The Division of Sport Fish would like to thank Southwick Associates for their dedicated work on this project as well as the many anglers and guide businesses who participated in this study by providing detailed information on their sportfishing related expenditures in 2007.

Southwick Associates, based in Fernandina Beach, FL, was founded in 1989 to serve state fish and wildlife agencies and the sportfishing and hunting industries. From our north Florida offices, we continue to serve this core group, and now provide economic and business intelligence to many more.



Critical Economic Impacts and Contributions of Sportfishing in Alaska: Summary Report 2007. Alaska Department of Fish and Game, Division of Sport Fish, January, 2009, Anchorage, Alaska.

For more information, contact Bill Romberg, Alaska Department of Fish and Game, (907) 267-2566 or william.romberg@alaska.gov

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ADF&G Division of Sport Fish, Research and Technical Services, 353 Raspberry Road, Anchorage AK 99518 (907) 267-2575

ABSTRACT

In 2006, 1,677 sport fishing businesses and 3,454 guides licensed under the Alaska Department of Fish and Game guide and business registration program, signifying intent to provide sport fishing services in Alaska. The program licensed 1,695 businesses and 3,531 guides in 2007, and 1,659 sport fishing businesses and 3,522 sport fishing guides in 2008. Of the 1,659 sport fishing businesses registered in 2008, 1,525 were combination owner/guide licenses. Based on the 2008 physical addresses of both the businesses and guides, 90% of the businesses were residents of Alaska, and 10% were from other residency strata (defined as nonresidents), 72% of the guides were residents and 28% were nonresidents.

Of the 2,553 saltwater logbooks issued in 2008, 2,089 were activated, and of the 2,538 freshwater logbooks issued in 2008, 1,785 were activated. Of those businesses that submitted logbook information in 2008, 58% offered saltwater services, and 42% offered freshwater guided services. In 2006, logbook records show that 1,368 saltwater vessels were active, 1,409 were active in 2007 and 1,355 were active in 2008. On average during those three years, 55% of the saltwater vessels were active in Southeast Alaska and 45% were active in Southcentral Alaska.

A total of 65,671 saltwater charter trips were conducted in 2006, 67,152 trips in 2007, and 62,006 trips in 2008 statewide. On average, 84% of the saltwater angler days were nonresidents, 12% were residents and 4% were crew, comped fishing or unknown residency. In freshwater, 46,781 trips were taken in 2006, 48,697 in 2007, and 48,501 in 2008. Of the statewide freshwater trips, 90% of the angler days were nonresidents, 8% were residents, and 2% were crew fishing or unknown residency.

Average saltwater salmon harvests between 2006 and 2008 show that coho and king salmon were the predominant species, consisting of 67% and 15% of the harvest respectively statewide. Saltwater bottomfish harvests between 2006 and 2008 show that Pacific halibut were the predominant species with 68% of the total saltwater harvest statewide. Total halibut harvest statewide ranged from 379,473 fish in 2007 to a low of 339,718 fish in 2008. In freshwater, coho salmon were the predominant harvested species, followed by sockeye and then king salmon.

Key words: Sport fishing, guide and business registration, freshwater logbook, saltwater logbook, participation, effort, harvest, sport fishing vessel, Pacific halibut, salmon, bottomfish, Southeast Alaska, Southcentral Alaska

BACKGROUND

The Alaska Department of Fish and Game (ADF&G) Division of Sport Fish (DSF) has operated a program since 1998 to register and license both sport fishing guides and sport fishing guide businesses and to collect information on sport fishing participation, effort, and harvest by saltwater and freshwater guided clients. This report briefly summarizes the approach, history, and results of this program for 2006 through 2008.

GUIDE AND BUSINESS REGISTRATION AND LICENSING

The activities of the guided sport fishing industry in Alaska have significantly increased in recent years with implications to fish allocation and management decisions. Resolution of related issues was hampered by lack of information regarding the industry and its impact on fishery resources in many parts of Alaska. The sport fishing guide and business registration and licensing programs were designed to provide a comprehensive system to better define this diverse industry throughout Alaska. A brief history of the statewide registration and licensing process follows.

Beginning in May 1995 the owner(s) of any business that engaged in sport fish guiding of anglers anywhere in Alaska were required to register their business information, employees acting as sport fishing guides for the business, and listing all vessels used for guiding. In 1997 sport fishing guides were required to register and provide information about the employing business (Dean 2001; Dean and Howe 1999).

In 1998, the Alaska Board of Fisheries (BOF) adopted new statewide sport fishing guide registration regulations and definitions during their February Statewide Finfish meeting in Girdwood, Alaska (5 AAC 75.075: *Sport Fishing Services and Sport Fishing Guide Services; License Requirements; Regulations of Activities*). It should be stressed that this was a registration process, not a licensing process. No fees were required and businesses and guides were allowed to provide services in any area of the state, assuming other regulatory requirements were met. In 1998 ADF&G registered guide businesses and guides and stopped registering charter vessels, because the Commercial Fisheries Entry Commission (CFEC) implemented a licensing program for all vessels to be used for guided sport fishing. From 1998 through 2004, ADF&G continued to register sport fishing businesses and sport fishing guides.

On May 11, 2004, the Alaska Legislature adopted House Bill 452 (HB 452), that established licensing requirements for sport fishing guide business owners and sport fishing guides on a statewide basis. This bill was created to establish minimum professional standards that were required of both freshwater and saltwater sport fish guides and business owners before a license could be obtained. The standards were established to protect consumers and to promote the viability and legitimacy of a professional sport fish guide industry. Businesses providing sport fish guided services were now required to obtain a State of Alaska Occupational Business License and hold liability insurance with a minimum of \$300,000 coverage for all incidents in a year (AS 16.40.260). Licensed sport fishing guides were required (1) to be citizens of the United States, Canada, or Mexico, (2) hold a current first aid card, (3) have a current year Alaska sport fishing license and (4) have a valid U.S. Coast Guard operator's license if they were to operate a motorized vessel in navigable waters. License application forms and the information collected have remained consistent in design from 2006 through 2008 (Appendix A).

LOGBOOKS

In February, 1998 the BOF adopted regulations (5 AAC 75.076) requiring logbooks for saltwater charter vessels statewide. Information on the amounts and locations of charter activity and actual participation and harvest by individual vessels and businesses was needed by the BOF for allocation and management of Chinook salmon *Oncorhynchus tshawytscha*, rockfish *Sebastes* spp., and lingcod *Ophiodon elongatus*, and by the North Pacific Fisheries Management Council (NPFMC) for allocation of Pacific halibut *Hippoglossus stenolepis*. To meet these information needs ADF&G implemented a saltwater sport fishing charter vessel logbook program for DSF Region I, Southeast Alaska (Southeast), and Region II, Southcentral Alaska (Southcentral; Table 1; Figure 1).

In 1999, the NPFMC was considering proposals to limit the guided sport halibut harvest. Their concerns were: (1) that growth in this fishery was reallocating resources away from the individual fishing quota (IFQ) commercial longline fishery, and (2) that in some areas there was overcapitalization and localized depletion of the halibut resource. NPFMC endorsed a two-prong approach to resolve the perceived impact of increased guided charter halibut fishing. The first was establishment of guideline harvest limits (GHL) for International Pacific Halibut Commission (IPHC) Areas 2C and 3A (Figure 2), and the second was a process to establish local area management plans for halibut fisheries in coastal communities.

Since 1998, the logbook design has undergone annual revisions, driven primarily by changes or improvements in the collection of halibut, lingcod and rockfish data through the logbook program, Statewide Harvest Survey (SWHS), and expanded port sampling programs. House Bill

452, adopted in 2004, not only established new licensing requirements, but also established a logbook reporting requirement for all freshwater businesses in addition to the existing saltwater reporting requirements. For various reasons, both technical and policy-based, information on halibut harvests was not collected from 2002 through 2005. The collection of halibut data was resumed in 2006. In addition, the 2006 logbook was redesigned to require reporting of angler license numbers and the harvest and release numbers by angler in an effort to improve reporting and facilitate evaluation of the quality of logbook data (Appendix C).

The data from logbooks are compiled to show where fishing effort occurs, the extent of participation, and the species and numbers of fish kept and released by individual clients. This information is used for regulation and the development and management of fisheries, for project evaluation, and for formulation of department policies and priorities that reflect angler needs, concerns, and preferences. It also provides ADF&G with a tool to promote management of Alaska's resources for sustained yield.

Table 1.—Division of Sport Fish regions and management areas.

Regions	
SE	Southeast Alaska
SC	Southcentral Alaska
AYK	Arctic-Yukon-Kuskokwim
Areas	
Southeast Alaska	
A	Ketchikan
B	Prince of Wales Island
C	Kake, Petersburg, Wrangell, Stikine
D	Sitka
E	Juneau
F	Haines-Skagway
G	Glacier Bay
H	Yakutat
Southcentral Alaska	
J	North Gulf Coast/Prince William Sound
K	Knik Arm Drainage
L	Anchorage
M	Susitna River Drainage
N	West Side Cook Inlet
P	Kenai Peninsula
Q	Kodiak
R	Naknek River Drainage/Alaska Peninsula Area
S	Kvichak River Drainage
T	Nushagak, Wood River and Togiak
Arctic-Yukon-Kuskokwim	
I	Upper Copper River Drainage
U	Tanana River Drainage
V	Kuskokwim River/Kuskokwim Bay Drainages
W	Norton Sound/Seward Peninsula
X	Northwest Alaska
Y	Yukon River Drainage
Z	North Slope/Brooks Range

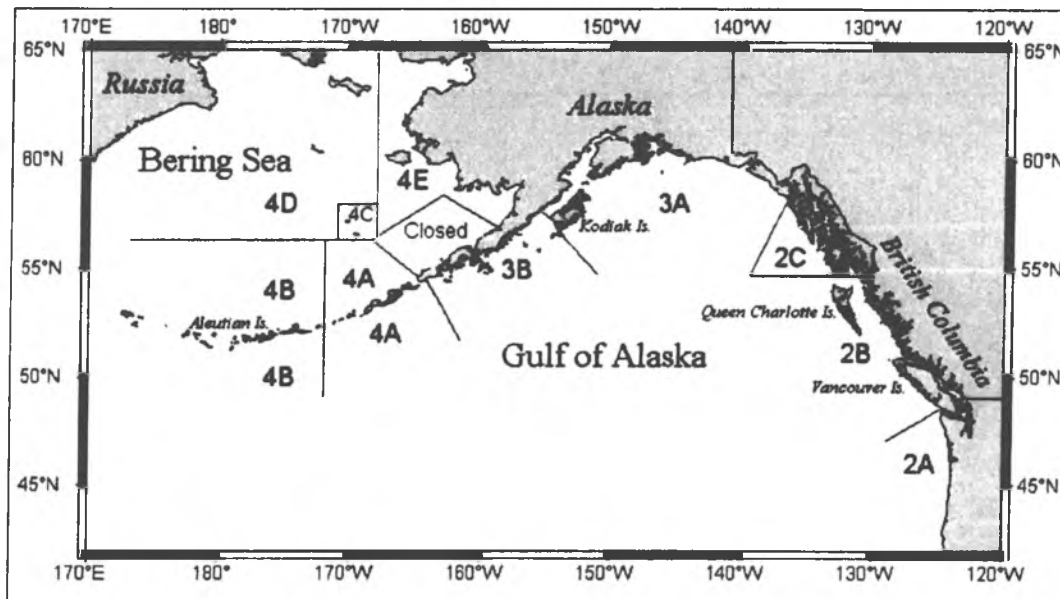


Figure 2.—International Pacific Halibut Commission (IPHC) regulatory areas.

Currently, a logbook record is required for every chartered or guided trip taken with clients, defined as an outing with one group of clients that ends when the clients and their fish (if fish were kept) are offloaded. Each trip is associated with an individual licensed business and guide.

VESSEL REGISTRATION

In addition to establishing a licensing program and statewide freshwater logbook requirement, HB 452 included establishment of a vessel registration program to be conducted by ADF&G as part of the logbook program to monitor the number of vessels used in the guided marine and freshwater fisheries. All boats used in marine or fresh water were referred to as “charter or guide boats” regardless of their size or the manner in which they are used. All vessels used in the charter guide industry were required to be registered with ADF&G. Vessel registration information was collected when logbooks were issued to a business. Registration information included the Department of Motor Vehicles or DMV number or the U.S. Coast Guard vessel documentation number. Upon completion of vessel registration with ADF&G, each vessel was provided with two decals and year tags to indicate that the vessel is used in the guide industry (Appendix B3 and B4). Decals must be applied and visible on both sides of the vessel.

METHODS

GUIDE AND BUSINESS LICENSING

Businesses and guides can be licensed to provide sport fishing guided services if they meet the minimum qualifications specified in regulation (AS 16.40.260 and AS 16.40.270).

During the month of January from 2006 through 2008, the Division of Sport Fish mailed renewal license applications to each sport fishing guide and sport fishing business that was licensed in the previous year. In addition, guides and businesses could obtain a license in person at local

ADF&G offices or through the Internet. The license applications could be used in any of three ways (Appendix A):

- To license a business only,
- To license a guide only,
- To license a combination business and guide (an owner/operator where the owner also conducted the guiding).

The licensing process collected business owner or guide name, permanent mailing information, permanent and inseason phone number if applicable. Additionally, the name of the business, name of the business owner, occupational business license number, insurance company information and insurance binder or policy number and effective dates were required. A guide is required to be a citizen of the United States, Canada, or Mexico, hold a current first aid card and have a current year Alaska sport fishing license along with any tags or permits required for specific fisheries. If a guide planned to operate a motorized vessel on navigable waters with clients on board, the guide was required to have a current U.S. Coast Guard Operator's License and provide that number and expiration date on the license application.

Unique license numbers were assigned according to how licensing occurred. License numbers did not remain the same in subsequent years. If an operator or guide licensed at an ADF&G office, a pre-numbered application was used and that number became the license number for that year. Renewal or internet license applications were randomly assigned numbers by the computer database that processed the information

Once the license applications were reviewed for completeness and accuracy, DSF mailed a wallet-sized license to each guide or business. Those applicants who licensed by going to an ADF&G office received a copy of their license, which allowed them to operate immediately. Those who licensed using the renewal application or by applying through the Internet, were required to wait until they received their license in the mail prior to operating or providing guiding services.

LOGBOOK DATA COLLECTION

A standard statewide saltwater logbook design was used from 2006 through 2008 (Appendix B). The freshwater logbook underwent very few changes between 2006 and 2008. Logbook reporting is a mandatory process governed by regulation (AS 16.40.280). As such, the reporting process was considered to be a census of all charter/guided trips. Logbooks were available and issued from ADF&G area offices located statewide, in addition to vendors located in Valdez and Seward.

Other than a few minor design changes, both the saltwater and freshwater logbooks collected the same information during all three years. Some changes were made to improve or simplify the use of the forms based on operator input, and to improve the capture of client and crew harvest information. Some of the annual design changes in the saltwater logbook were driven primarily by changes or improvements in the collection of halibut and rockfish data, and by requests from the NPFMC for information needed for allocation of halibut. In 2006, both logbooks were redesigned to require reporting of angler license numbers and the harvest and release numbers by angler in an effort to improve reporting and facilitate evaluation of the quality of logbook data. The most significant changes made to the saltwater logbook occurred between 2005 and 2006 (Appendix C).

Changes between the 2005 and 2006 saltwater logbooks included:

- The data page design went from a single page designed to collect information from nine different trips to a data page that collected information from one unique trip per page.
- A section to collect Business and Vessel Information was added. Business and Guide license numbers along with the Alaska Boat Registration number (AK. #) or U.S.C.G. documentation number was recorded on every data page. This information was intended to confirm that the information was associated with the correct business on record, and to validate the vessel registration information.
- A section to collect Trip information was added. Trip information collected the date fished, port or community where clients or fish were off-loaded, total number of clients on the vessel including those that did not fish, targeted species (salmon or bottomfish), primary statistical area fished, maximum number of rods fished, and number of boat hours fished. This design change resulted in more detailed information unique to each trip taken with a group of clients.
- A section to collect Individual Angler and Catch Information was added. In 2006, the collection of halibut information resumed. The new design also required the reporting of individual angler license numbers along with harvest and release numbers by angler in an effort to improve reporting and facilitate evaluation of the quality of logbook data.
- A signature line was added that required the guide who led the trip to sign their name certifying that the information was true and correct to the best of their knowledge.
- A notice statement drafted by the NPFMC was printed within the front cover of the 2006 saltwater logbook. The notice announced that a control date of December 9, 2005 was being established. Those businesses and guides not participating in the Southeast or Southcentral charter halibut industry by this date might not be eligible for future access and/or quota in these fisheries.

No significant changes took place in the freshwater logbook design between 2005 and 2006 (Appendix D).

Changes between the 2006 and 2007 saltwater logbooks include:

- Additional client information was obtained, to indicate if “comped” anglers fished. A “comped” angler was an angler who did not compensate the guide for that charter trip. By including “comped” anglers, the data captured by onsite dockside samplers and data from the logbook census were more comparable, since all anglers on board a charter vessel and their catches were now being counted.
- Vessel AK # or U.S.C.G. documentation numbers were no longer being collected on each data page. The vessel information collected during the logbook assignment to a business on the sign-out sheet was adequate.

No significant changes took place in the freshwater logbook design between 2006 and 2007 (Appendix D).

The changes to the saltwater logbook forms between 2007 and 2008 were in response to requests by the NPFMC in an effort to continue improvement in the collection of halibut information in preparation for a potential IFQ or moratorium program. Changes between the 2007 and 2008 saltwater logbooks include:

- A request to collect information on the port or community where the fishing trip began.
- Indicate the IPHC area fished: 2C, 3A, 3B or 4.
- The collection of the angler's first and last name in addition to the angler license number.
- The number of halibut kept year-to-date (YTD) in IPHC area 2C in anticipation of an annual limit on guided halibut harvest per client. The annual limit was never implemented but this column had already been added and logbooks distributed prior to the decision to not implement an annual halibut limit.
- The signature of an angler on the back side of each trip sheet if that angler kept halibut in 2C as verification of the information provided on the data page.

No significant changes took place in the freshwater logbook between 2007 and 2008 (Appendix D).

Saltwater Logbook Forms

A saltwater logbook consisted of the cover page, schedule of reporting deadlines, one logbook check out sheet to show the business to which the logbook was issued and register the saltwater vessel, a set of instructions for filling out the information on the logbook sheets, and 50 data sheets to record trip information. Data collection on each of the 50 pages consisted of:

- ADF&G business owner license number;
- ADF&G guide license number for the guide leading the trip;
- Date that fishing took place;
- Port or community where fishing began;
- Port or community of off loading,
- Total number of paying clients on the vessel (including those that did not fish, but not including "comped" anglers or crew members that fished);
- Primary statistical area fished while targeting salmon or bottomfish;
- Number of boat hours fished;
- Crew, client, and "comped" angler's current ADF&G sport fishing license or PID (permanent fishing license) number, birthdate of youth anglers under the age of 16;
- First and last name of each client and youth angler;
- Client residency (Alaska resident/nonresident of Alaska);
- A breakdown by fish species kept (and/or released) by each individual angler.

During a saltwater charter trip, the operator must decide if his/her gear or fishing methods are effectively targeting bottomfish, salmon or both. A 6-digit statistical code where most of the fish were caught or targeted is logged for each trip. Statistical maps were provided to the operator upon logbook issuance.

Saltwater species information collected included kept and released information for "large" Chinook (king salmon) 28" and longer and for "small" Chinook (king salmon) less than 28". Also recorded were coho *O. kisutch*, sockeye *O. nerka*, pink *O. gorbuscha*, and chum *O. keta*

ALASKA FEDERATION OF NATIVES

2009 CONVENTION

RESOLUTION 09-01

TITLE: THE PROTECTION OF ALASKA NATIVE SUBSISTENCE ACTIVITIES AND ACCESS TO, AND TAKINGS, OF CUSTOMARY AND TRADITIONAL AND CULTURAL SUBSISTENCE RESOURCES

WHEREAS: Alaska Native peoples developed rich cultures and enduring societies around their spiritual relationship to the land and resources; and

WHEREAS: Our harvest and utilization of natural resources has been the basis of our sustainable economies through thousands of years; and

WHEREAS: Customary and traditional subsistence hunting and fishing is vital to the survival of Alaska Native cultures and our communities' economic well being; and

WHEREAS: The United Nations Declaration on the Rights of Indigenous Peoples supports Indigenous rights to use and manage resources necessary for our food security; and

WHEREAS: The Marine Mammal Protection Act provides for Alaska Native heritage rights for Marine Mammals; and

WHEREAS: Section 4(b) of the Alaska Native Claims Settlement Act of 1971 (ANCSA) extinguished aboriginal hunting and fishing rights; and

WHEREAS: Congress, through the Conference Report accompanying passage of ANCSA, declared its intent and expectation that the Secretary of the Interior and the State of Alaska should protect Alaska Native customary and traditional subsistence activities; and

WHEREAS: Congress enacted Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), which established a priority for rural resident subsistence users on federal lands and reserved navigable waters; and

WHEREAS: ANILCA authorizes the State of Alaska to regulate customary and traditional subsistence harvests on all lands and waters so long as such regulation is in compliance with the mandates outlined in Title VIII of ANILCA; and

WHEREAS: In 1990, the federal government was forced to assume management authority over customary and traditional subsistence activities on federal public lands and waters because the State of Alaska failed to adequately enact a subsistence priority for rural Alaskans; and

WHEREAS: The Federal Subsistence Management Program is a multi-agency effort to provide the opportunity for a subsistence way of life by rural Alaskans on federal public lands and waters while maintaining healthy populations of fish and wildlife; and

WHEREAS: The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board the authority to manage fish and wildlife for subsistence uses on federal public lands and waters in Alaska; and

WHEREAS: The Federal Subsistence Board is the decision-making body that oversees the Federal Subsistence Management Program, and is comprised of the regional directors of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, the U.S. Forest Service, and a chairman appointed by the Secretaries of the Interior and Agriculture; and

WHEREAS: The Federal Subsistence Board membership is now dominated by non-subsistence users and federal employees who lack an appreciation of the significance of traditional subsistence uses, and who have improperly sought to balance the needs of commercial, sport, pleasure and subsistence users, rather than trying to protect Alaska Native access to subsistence resources, as directed by their mandate under Title VIII of ANILCA; and

WHEREAS: The State of Alaska successfully promoted the adoption of a Memorandum of Understanding between the Federal Subsistence Board and the State of Alaska that has seriously undermined Title VIII of ANILCA; and

WHEREAS: The current federal subsistence management scheme has failed to protect traditional subsistence users, and Alaska Natives are finding themselves subject to state citations for traditional subsistence practices that should be protected under Title VIII of ANILCA; and

WHEREAS: Immediate administrative and legislative action is necessary to protect Native traditional subsistence rights and uses;

NOW THEREFORE BE IT RESOLVED by the delegates to the 2009 Annual Convention of the Alaska Federation of Natives that Alaska Federation of Natives shall pursue the following executive and legislative actions to:

1. Seek immediate Congressional oversight hearings in Alaska to be held before the U.S. Senate Committee on Indian Affairs and the House Committee on Natural Resources regarding, access to, and takings of, customary and traditional subsistence resources by Alaska Natives, Alaska Native Corporations, and the federally recognized tribes; and
2. Seek immediate consultation between Alaska Native corporations, federally recognized tribes in Alaska, and the Departments of the Interior, Agriculture and Commerce, to develop recommendations for a new subsistence management

scheme that will protect the traditional subsistence way of life of Alaska Natives and other rural residents, and that will ensure full participation of Alaska Natives in the management scheme; and

3. Seek to replace the Federal Subsistence Board with a federally-chartered or authorized entity whose membership will be comprised of subsistence users rather than federal employees; and
4. Encourage President Obama to issue an Executive Order that advises the Federal Subsistence Board and the Office of Subsistence Management that Title VIII is Indian Legislation enacted under the plenary authority of Congress over Indian Affairs, and that directs the Federal Subsistence Board and Office of Subsistence Management to implement a subsistence management scheme or program in accordance with the Executive Order; and
5. Revoke the 2008 Memorandum of Understanding between the Federal Subsistence Board and the State of Alaska, Department of Fish and Game, and to remove the State's non-voting seat from the Federal Subsistence Board; and
6. Direct the Secretary of the Interior to fully implement his trust responsibility to Alaska Natives, Alaska Native Corporations and the federally recognized tribes, and to direct the employees within the Department of the Interior to honor this relationship; and
7. Direct the Secretary of the Interior to interpret broadly the scope of federal jurisdiction over the management of subsistence resources on public lands and reserved waters, and to extend by regulation the subsistence priority to waters that run through and adjacent to Native allotments and to waters upstream and downstream from federally reserved waters; and
8. Rescind the Federal Subsistence Board's determination that the Organized Village of Saxman; and any other Alaska Native village similarly affected, is not a rural community; and
9. Amend ANILCA to provide for Alaska Native Peoples customary and traditional hunting, fishing and gathering rights Plus Rural subsistence priority;
10. Seek legislation that provides Alaska Native Corporations the authority to opt into a provision ensuring a federally protected customary and traditional hunting and fishing right on corporation lands and associated waters for Alaska Natives associated with the ANCSA corporations, and legislation that allows for the taking of moose and other subsistence resources necessary for the potlatch and other ceremonies; and
11. Advocate for a state and federal Subsistence Support Program in rural Alaska to help offset the drastically increased cost of transportation to harvest subsistence foods; and

12. Amend the Magnuson-Stevens Fishery Conservation and Management Act to include designated voting seats on the North Pacific Fisheries Management Council for federally tribes and/or Alaska Native organizations representing rural subsistence users;
13. Fully fund co-management initiatives and infrastructure to ensure Alaska Native participation in the subsistence management process, and
14. Call for federal resources to be made available for research, protection and enhancement of subsistence resources in Alaska, and;

BE IT FINALLY RESOLVED that the delegates of the Annual Convention of the Alaska Federation of Natives hereby directs the Alaska Federation of Natives that one of the top and ongoing priorities for Alaska Federation of Natives shall be to address this resolution regarding subsistence concerns of all Alaska Natives.

SUBMITTED BY: BOARD OF DIRECTORS OF THE ALASKA FEDERATION OF NATIVES

CONVENTION ACTION: AMENDED AND PASSED



Ken Larson Testimony on
HCR 13: Governor's NPFMC Sport Fish Seat Appointments
5 PM, Thurs, 26 Jan 2012 LIO Testimony or call 1-800-463-5009

House Fisheries Committee: Chair Rep Steve Thompson Vice-Chair Rep Craig Johnson
Rep Alan Austerman, Rp Bob Herron, Rp Scott Kowaski, Rp Bob Miller, Rp Lance Pruitt

THANK YOU MR CHAIRMAN AND MEMBERS OF THE FISHERIES COMMITTEE

I am Ken Larson from North Pole, Alaska, representing myself, and I have owned and operated a small Lodge and Halibut & Salmon Charter business out of Valdez & Ellamar, Alaska since 1993.

I strongly support HCR 13 requesting the governor to designate one seat each on the NPFMC to a sport fish licensee and a subsistence user. I would suggest you amend the language to clarify that the appointees be Alaskan Residents with no previous ties to the Commercial Fishing Industry.

However, since this is a House Concurrent Resolution and non-binding, I am very concerned that it will have little effect on our Governor as he, as well as previous governors have long chosen to disregard the sport fish public's, NOAA, & Dept of Commerce's requests for more equitable, non-COMFish representation on NPFMC. I would rather see this type of language be included in a Bill like HB 20 or SB 24 that will result in a Regulation or Statute requirement.

I have been here in Anchorage all week attending the annual IPHC meeting that will lower 2012 COMFish Halibut Catch Limits to about 33.1 Mlbs, down about 19.3% from the 41.1 Mlbs in 2011. IPHC Scientists are quite concerned that this will not be enough to stem the declining Exploitable BioMass health of the fishery, especially in view of the large By-Catch and Wastage of Halibut in the COMFish Trawl & Longline fleets. The annual By-Catch and Wastage has averaged 13-14 Mlbs/year since at least 2000 and is estimated to be over 10 Mlbs for 2011. For comparison purposes Halibut Sport and Subsistence users caught an estimated 7.5 Mlbs in 2011. Guided Charter fishermen in 2011 caught 388 klbs in SE and 2.84 Mlbs in South Central, substantially under NPFMC's GHL mandate, and their 2012 catch is expected to drop even more. There is not much action contemplated by the COMFish-dominated regulatory agencies to curb the excessive Trawler By-Catch and Wastage problems and it's even starting to concern the Long Liners.

As a result, any help that you can offer on achieving more equitable representation on the governing boards will be appreciated. Thank You

HCR13

From: Melvin Grove (mbgrove@mtaonline.net)
Sent: Thu 1/26/12 4:35 PM
To: KenHotMail Larson (larson_ken@hotmail.com)

Dear Senators, I urge you to attach HCR13 to SB24 and make it a state requirement that the governor pick a sport fishing and subsistence user to the NPMFC. Why? Because when you allow the fox in the hen house you soon lose all egg production and quickly run out of hens. Sound familiar? If you haven't noticed the latest reports, one of our greatest state resources is suffering from a dramatic decline. The irrespective over estimates of halibut abundance allow the commercial sector to over harvest a public resource and we're now seeing a dramatic decline in the average size and harvestable biomass. I believe this has occurred for the same reason you loose hens and eggs. The fox has been eating well, while the farmer's family goes hungry. It's time for the state to put a lock on the hen house door and select more people on the council to act as watch dogs.



TAKING STOCK



OF THE

REGIONAL
FISHERY
MANAGEMENT
COUNCILS



JOSH EAGLE
SARAH NEWKIRK
BARTON H. THOMPSON JR.

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NOTES ON TERMINOLOGY

In recent years, NMFS has begun to call itself NOAA Fisheries. In this report we refer to the agency by its official name of National Marine Fisheries Service, or NMFS.

Congress has amended what is now known as the Magnuson-Stevens Fishery Conservation and Management Act several times since passing it in 1976. In addition, Congress has also twice renamed the law. The law was originally known as the Fishery Conservation and Management Act (or FCMA). Later, in recognition of the contributions of Senator Warren Magnuson, Congress renamed the statute the Magnuson Fishery Conservation and Management Act. In 1996, recognizing the many contributions of Senator Ted Stevens, Congress gave the law its current name. For purposes of simplicity, we generally refer to the law in this report as the “Magnuson-Stevens Act” except when it is used in the context of historical events.

EXECUTIVE SUMMARY

Over a third of the nation's fish stocks currently are overfished (not counting those stocks for which the government has inadequate information to judge their status). These stocks historically supported some of America's most important fisheries: cod, salmon, rockfish, tuna, red snapper, lobster, and blue crab, to list only a few. An essential step in helping these stocks recover is to end the overfishing that has contributed to these fisheries' decline. But overfishing is still occurring in over half of these fisheries.

Few Americans know who manages the nation's fisheries or how management decisions are made. Eight regional fishery management councils play the major role in developing management plans and supporting regulations for each of the coastal fisheries in need of conservation. The Magnuson-Stevens Fishery Management and Conservation Act ("Magnuson-Stevens Act"), which is the main national law in the fisheries field, sets out standards and guidelines for the management plans but leaves the councils with significant discretion in implementing the standards and guidelines. Although the National Marine Fisheries Service (NMFS) within the U.S. Department of Commerce has oversight authority over the regional councils, NMFS in practice seldom rejects the councils' decisions.

This study, which was initiated and supported by The Pew Charitable Trusts, looks in detail at the mandates, constitution, rules, and procedures of the regional councils to determine whether the councils can effectively manage the nation's fisheries. To gain a detailed picture of the councils, we surveyed members of the four councils that manage the country's four most important fishing regions (obtaining a greater than 50 percent response rate), studied in depth how each council resolved a major

fishing management issue, and obtained relevant information from NMFS regarding the councils, including the financial interests of council members. We then measured the councils against the standards for "good governance" found in congressional statutes regulating federal agencies, state fish and game laws, and relevant studies and analyses by political scientists and organizational experts.

Based on this study, we conclude that the councils are unlikely to solve the current problems facing the nation's fisheries for at least three principal reasons. First, the councils have two major responsibilities that, in practice, are in conflict. The councils must limit the number of fish that can be caught to ensure their conservation while also allocating the allowable catch among members of the industry. Because allocating a limited catch among diverse fishing interests is not politically easy, councils face significant pressure to increase the size of fishery quotas and thus the amount of fishing rights that can be apportioned. One of the



easiest ways to reduce the pain of allocating a catch, in short, is to raise the size of the catch — to the detriment of conservation.

Second, the highly homogeneous membership of the councils fails to bring diverse viewpoints to council discussions and decision-making. Prior studies show that groups with diverse viewpoints look at broader information and generally make better decisions. For this reason, Congress requires federal advisory commissions to be “fairly balanced in terms of points of view represented and the functions to be performed by the advisory commission.” The councils, however, are not subject to the Federal Advisory Committee Act, and in each year since 1985 approximately 80 to 90 percent of appointed council members have represented fishing interests. By contrast, national conservation organizations currently have a representative on only one of the councils. Although state fishery

officials and a representative of NMFS also sit on each council, fishing interests still hold a majority of seats on most councils, and the imbalance in council perspectives undercuts effective and creative problem solving.

Finally, council members often face significant potential conflicts of interest in their deliberations and decision-making. For over a century, federal and state governments have prevented regulatory officials from participating in decisions in which they have a conflict of interest. As legislatures have recognized, conflicts of interest can undermine the American commitment to equal treatment of equal claims and undercut effective regulation; even the appearance of a conflict of interest can undermine the integrity of the regulatory process and public confidence in regulatory institutions. The councils, however, are again exempt from the general federal conflict-of-interest standard, and 60 percent of appointed council members have a direct financial interest in the fisheries that they manage and regulate.

Many of the council members whom we surveyed agreed that there are problems with the current system and that these problems should be addressed. More than half of the surveyed council members, for example, reported that environmental interests are underrepresented on the councils. Approximately a third of the respondents also reported that they had felt it unfair in one or more past instances for a fellow council member to participate in a decision in which he or she had a financial interest in the outcome. A similar percentage expressed concern about decisions in which the relatives or friends of voting council members had a financial interest in the outcome.

These are not the only problems undermining the councils’ ability to restore and protect the nation’s fisheries, although they are the most serious. The complex and decen-





tralized system of council decision-making, for example, also discourages broad national participation in deliberations concerning fisheries management. Council members, moreover, generally lack the time and resources needed to master the complex issues before them. Finally, the split in responsibilities between the councils and NMFS removes effective accountability for the status of the nation's fisheries.

Congress did not give careful thought to optimal management institutions when it created the council system in 1976 as part of the original Magnuson-Stevens Act. At the time, Congress was concerned first and foremost with the perception that foreign fishing fleets were catching too many fish off American shores. Thus, the primary purpose of the act was to keep foreign boats out, while providing incentives for U.S. citizens to invest heavily in replacement vessels. In the 1,200-page legislative history of the act, there are only a handful of references to the council system. There are no discussions of any alternatives, no evaluations of the potential advantages and disadvantages of the council system, no studies of whether the council system would be effective at conservation.

Thirty years of experience with the council system suggests that reform is now needed. Although NMFS and the Secretary of

Commerce could help to improve council decision-making by working to ensure greater diversity in council appointments and by tightening current conflict-of-interest regulations, only Congress can provide substantial reform. Council representation and conflicts of interest are two important areas for congressional attention. To ensure the future health of the nation's fisheries, however, Congress should separate the institutional responsibilities for conservation and allocation. Conservation is a national concern and should be the responsibility of a national regulatory body that is subject to the standard rules of good governance and that has both significant scientific expertise and adequate resources. The councils, with their greater local expertise, should remain responsible for allocative decisions within the scope of the national management plan.



INTRODUCTION

A significant fraction of American fisheries are in trouble. According to the federal government, over a third of the nation's known coastal fish stocks are currently "overfished," and almost a quarter are experiencing "overfishing." Twenty percent are both overfished and suffering from overfishing. These troubled stocks include what were once some of the most valuable recreational and commercial fisheries in the United States: cod in New England, flounder in the mid-Atlantic region, snappers and red drum in the Gulf of Mexico, and rockfish off the Pacific coast. The problems have persisted for nearly three decades despite improved laws and the investment of billions of federal dollars in fishery science.

Although multiple factors have contributed to these problems, the composition and rules of the eight regional fishery management councils ("regional councils") that are responsible for regulating the nation's coastal fisheries make effective regulation difficult. The regional councils face immense pressure to permit some or all segments of the fishing industry to catch more fish. Yet fishing interests dominate the councils, robbing the councils of the diverse and robust perspectives needed to withstand pressures and make wise but controversial decisions. The general public plays little role in fishery management. Council members, moreover, face frequent conflicts of interest but are seldom required to recuse themselves. Although scientific uncertainty makes fishery regulation innately difficult, the councils are poorly designed to deal with the difficult problems facing fishery management.

The institutions that regulate our nation's public resources are as important as the substantive laws that say how those resources should be managed. Even highly specific laws leave regulators with significant discretion. Legislatures can-

not predict and address every issue, and they often need to delegate individual management decisions to the expertise of the regulators. The identity of the regulators and the procedures and safeguards that govern their work therefore often determine the effectiveness of the regulatory system.

The U.S. Congress over the years has drawn up a number of general laws designed to promote beneficial regulation by ensuring objective officials, open public participation, and transparency in decision-making. As early as 1863, Congress barred governmental officers or agents from participating in governmental decisions that could benefit them financially.¹ Under the Administrative Procedure Act of 1946, Congress mandated that federal agencies explain their decisions and provide the public with ample opportunity to comment.² In 1972, Congress tried to ensure balanced and public input from advisory boards through the Federal Advisory Committee Act.³ These and similar laws collectively reflect broadly agreed-upon principles of "good government" — broad representation of interest groups, no conflict of interest, and open and active public participation.

Yet the regional councils that regulate fisheries in the waters off the coasts of the United States are exempt from a number of these laws, in part because they technically are not federal agencies. The regional councils are among the most obscure regulatory bodies in the United States. Although virtually everyone knows that the U.S. Environmental Protection Agency protects the country's air and water quality and that the USDA Forest Service manages the country's public forests, few people have ever even heard of the regional councils. Yet the regional councils collectively manage a geographic region larger than the continental United States. And they are responsible for the health of a \$25 billion commercial

fishing industry and an even larger recreational fishing industry. Perhaps most importantly, the regional councils are the trustees for some of the most extensive and important resources held by the American public — the hundreds of species of marine fish that live in the country's coastal waters, and the ecosystems that they inhabit.

The Magnuson-Stevens Fishery Conservation and Management Act (commonly referred to today as the "Magnuson-Stevens Act") divides the jurisdictional waters off the coast of the United States into eight regions, each managed by a separate regional council⁴ (see Box 1). The regional councils prepare fishery management plans for the fish stocks in their regions, subject to oversight by the National Marine Fisheries Service (NMFS) in the U.S. Department of Commerce. The voting members of each council consist of state fisheries officials, various appointed members (most of whom are themselves members of the fishing industry that the councils regulate), and a single representative of the federal government.

As discussed later in this report, four key problems plague the councils. First, by asking councils to decide both how many fish can be caught and how this catch should be allocated among fishermen, the Magnuson-Stevens Act has undermined the odds of effective conservation. The pressure to avoid tough allocation choices encourages councils to shortchange conservation and allow larger catches. Second, councils are dominated by the fishing industry and, as a result, do not enjoy the breadth and robustness of perspectives important for good decision-making. Third, council members who represent the fishing industry face frequent conflicts of interest, which threaten to undermine both balanced decision-making and the public's confidence in the councils. Finally, although NMFS oversees the councils' decisions, its oversight has been deferential

and thus not an adequate answer to the concerns regarding the councils' decision-making.

Our survey of members of four regional councils supports these findings. Nearly all of the council members we surveyed reported flaws in the system, and many respondents pointed to one or more of these four key problems.

KEY FINDINGS:

We identify four reasons why the regional councils are not able to effectively regulate coastal fisheries:

- The councils decide both how many fish can be caught and who can catch them. Because larger catches are easier to divide up among competing fishery interests, the councils' responsibility to allocate catches encourages them to set lax fishery limits, undermining conservation.
- More than 80 percent of the citizens who are appointed to the councils by the Secretary of Commerce represent the fishing industry. Homogeneous groups are less likely to produce well-considered decisions than groups with diverse membership.
- The large number of council members drawn from industry results in ubiquitous conflicts of interest. Yet the conflict of interest rules that apply to the councils are very weak compared to those that apply to other government decision-makers.
- Despite its legal responsibility to carefully oversee the councils, NMFS gives them significant leeway in decision-making.



Box 1:

THE EIGHT REGIONAL FISHERY MANAGEMENT COUNCILS

The eight regional fishery management councils govern an ocean area larger than the continental United States. Of all the councils, the Western Pacific Council manages the largest ocean area, comprising more than 1.5 million square miles. Most of the councils manage sections of the exclusive economic zone bounding the waters of multiple states. The Mid-Atlantic Council, for example, manages an area that borders seven states. The North Pacific Council manages waters off the coast of only one state, Alaska. The Caribbean Council is the only council whose jurisdiction does not border any state's waters.

To manage fisheries, the councils have adopted forty federal fishery management plans that cover more than 900 fish stocks. Some stocks that migrate among the jurisdictions of two or more councils are managed under joint management plans.



North Pacific Council

Western Pacific Council

- Midway Island
- Hawaii
- Palmyra Atoll and Kingman Reef
- Jarvis Island
- Howland and Baker Islands
- Johnston Island
- American Samoa
- Wake Island
- Northern Mariana Islands
- Guam



The map shows the United States divided into six distinct regions, each labeled with a council name. The Pacific Council covers the western half of the continent. The New England Council covers the northeastern corner. The Mid-Atlantic Council covers the area from the Northeast down to the South Atlantic. The South Atlantic Council covers the southeastern part of the United States. The Gulf of Mexico Council covers the southern coastal and inland areas. The Caribbean Council covers Puerto Rico and the U.S. Virgin Islands.

Pacific Council

New England Council

Mid-Atlantic Council

South Atlantic Council

Gulf of Mexico Council

Caribbean Council
Puerto Rico and
U.S. Virgin Islands



A BRIEF HISTORY OF FISHERY MANAGEMENT IN THE UNITED STATES

Direct federal management of the nation's marine fisheries is of relatively recent vintage. Until 1976, states primarily managed the fisheries off the coast of the United States and only to a distance of 3 miles, the extent of their jurisdictional waters. Beyond that narrow border of state waters, fisheries were subject to a "tragedy of the commons" as fishing vessels of multiple nations raced to catch stocks of fish before other nations' vessels fished out the stocks. Congress attempted to change this in 1976 by declaring a fishery conservation zone (FCZ) extending out 200 nautical miles and by establishing a federal system for regulating fisheries in the region between the 3-mile state waters and the end of the FCZ (now known as the exclusive economic zone, or EEZ).⁵ A brief history of the state management of coastal fisheries, however, helps in understanding the current regional councils and their shortcomings.

STATE FISHERY REGULATION: THE STATE COMMISSIONS

In the early 1800s, U.S. marine fisheries were regulated by the states under a hodgepodge of laws restricting fishing gear and by the federal government under trade and ship-licensing laws. Beginning in the late nineteenth century, most states created special commissions to oversee the management of fisheries, including marine fisheries where the states had coastal waters. Indeed, a number of state constitutions mandate the use of fishery commissions. In most cases, the same commission also manages terrestrial wildlife.

In line with the progressive efforts of the late nineteenth and early twentieth centuries, many of these constitutional provisions attempt to ensure that the commissions have the necessary expertise and broad public perspectives to regulate fisheries wisely. Most states require that

gubernatorial appointments to the commissions be confirmed by the state senate, and several states require that appointments include members of different political parties.⁶ Louisiana's constitution provides that, although three of the seven commission members must be coastal residents who are "representatives of the commercial fishing and fur industries," the other four must be "electors from the state at large *other than* representatives of the commercial fishing and fur industries."⁷ State law provides that the Nevada Board of Wildlife Commissioners must include a rancher, a farmer, a person "actively engaged" in wildlife conservation, and a member "who represents the general interests of the public."⁸ The Tennessee Wildlife Resources Commission is required to have at least one member older than sixty years of age, two women, and one "member of a racial minority."⁹

A number of states also explicitly require commission members to have expertise in relevant scientific disciplines or in the management of fish and wildlife.¹⁰ Arkansas requires its commission to include the head of zoology at the University of Arkansas.¹¹ Indiana's Natural Resources Commission includes the president of the Indiana Academy of Science.¹²

The history of the Alaska Board of Fisheries sheds valuable light on the importance of the membership and organization of fishery management agencies. Before Alaska entered the Union as the forty-ninth state in 1959, the federal government managed local fish stocks through the U.S. Department of the Interior. In anticipation of statehood, Alaska's legislature created the seven-member Alaska Fish and Game Commission, and the governor appointed to the commission three commercial fishermen, a sports fisherman, a [fish] processor, a hunter, and a trapper.¹³ Congress was sufficient-



ly concerned whether a board consisting entirely of fishermen, processors, and hunters could effectively manage Alaska's fish and game that it conditioned the handing over of regulatory authority on Alaska's correcting the imbalance. In the Alaska Statehood Act of 1958, Congress specified that the federal government would retain management of Alaskan fisheries until "the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of said resources in the broad national interest."¹⁴

In response to Congress' concern, the Alaska legislature replaced the commission with a Board of Fish and Game to be composed of seven members "having a general knowledge of the fish and game resources of the State and selected without regard to political affiliation or special interest."¹⁵ In 1960, the Secretary of the Interior certified this change, and President Eisenhower transferred regulatory authority to Alaska in 1960. Although separate boards of fisheries and game have since replaced the Board of Fish and Game, Alaska law continues to mandate broad public representation on the boards. Alaska law instructs the governor to "appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership."¹⁶

EARLY FEDERAL REGULATION OF FISHERIES

The federal government first became involved in fishery management in 1870 with the formation of the U.S. Commission on Fish and Fisheries. A year later, Congress instructed the new commission to find out "whether any... diminution of the number of food-fishes of

the coast and the lakes of the United States has taken place; and, if so, to what causes the same is due; and whether any and what protective, prohibitory, or precautionary measures should be adopted."¹⁷ Recognizing that the qualifications of the decision-maker are important, Congress also charged that the commissioner of fish and fisheries should be a civil officer or employee of the government with "proved scientific and practical acquaintance with the fishes of the coast." In the preamble to this legislation, Congress cited worries that "the most valuable food fishes of the coast and the lakes of the United States are rapidly diminishing in number." Management of coastal fisheries, however, remained with the states, and the commission itself focused most of its attention on discovering new stocks of fish, developing innovative fishing technology, and promoting fish sales.¹⁸

The commission underwent multiple transformations over the next century. The commission moved to the Department of Commerce in 1903, becoming the U.S. Bureau of Fisheries. Then, in 1939, the bureau moved to the Department of the Interior, where it subsequently became a division of the new U.S. Fish and Wildlife Service. In deciding that the bureau should be relocated, President Franklin Roosevelt noted that the bureau dealt with "conservation and utilization of the [aquatic] wildlife resources of the country" and thus should be part of the Department of the Interior, the federal agency that "is directly responsible for the administration and conservation of the public domain."¹⁹ Throughout these various moves, however, the bureau's focus remained on research designed to increase the economic wealth of the fishing industry. To most people, the ocean continued to look ripe for exploitation.





In 1966, Congress established a bipartisan Commission on Science, Engineering, and Resources, popularly known as the Stratton Commission, to “formulate a comprehensive, long-term, national program for marine affairs designed to meet present and future national needs in the most effective possible manner.”²⁰ The commission issued its report, titled *Our Nation and the Sea: A Plan for National Action*, in 1969. The commission recommended forming a new federal agency with cabinet-level status that would enjoy comprehensive management authority over the nation’s oceans.

Although the commission was willing for states to continue to be the principal managers of coastal fisheries, it proposed that the new federal agency “be authorized to assume regulatory jurisdiction over endangered fisheries if the States fail to take necessary conservation measures.”²¹

The Stratton Commission emphasized that a “new, strong Federal focus for marine activity is essential to a national ocean effort.” While noting the value of maximizing the productive use of the nation’s fisheries, the commission warned that “there are biological limits on the productivity of individual stocks of fish and shellfish” and that “[s]ensible fisheries management must prevent overexploitation of heavily utilized species.” The commission recognized the political realities that had undermined effective conservation by the states in the past. First, “fishing communities form the constituencies of important elements in State legislatures” and “their desire to maintain the status quo has a strong influence on fishing legislation and on regulations of State agencies.” Second, the desire to protect fishermen from cutbacks clashes with the need to limit catch. The dearth of progressive fishing management, according to the commission, reflected “the pressures on the States to find some way to limit the take from exploited fisheries without excluding any of the participants.”

President Richard Nixon responded to the Stratton Commission by creating the National Oceanic and Atmospheric Administration (NOAA) in the Department of Commerce, rather than a separate cabinet-level agency.²² He also moved federal fishery management from the Department of the Interior to the new National Marine Fisheries Service in NOAA. In its early years, NMFS focused on using grants and technical assistance to encourage and help states to develop more effective management plans for coastal fish stocks.²³

THE BIRTH OF THE FEDERAL COUNCIL SYSTEM

The regional councils date to 1977 and passage that year of the Fishery Conservation and Management Act of 1976 (FCMA). In the FCMA, Congress declared a 200-mile FCZ off the nation’s coasts and established a management system for the fisheries in the newly claimed U.S. waters. The FCMA created the eight regional councils that still govern federal waters today and awarded them primary responsibility for managing the fisheries in their jurisdictions. Most of the congressional debate centered on the legality and wisdom of establishing unilaterally a 200-mile FCZ. Management issues, and in particular the structure and makeup of the new regional councils, received scant congressional attention or thought.²⁴ Congress invented the councils without any prior study or discussion of alternatives and without any analysis of the possible advantages and disadvantages of such a system. There were no similarly structured natural resource management systems in place at the time. And, as Box 2 points out, the system has not been widely emulated since it was created.

The regional council system represented a compromise, forged in the FCMA, between those members of Congress who wanted federal control over fishery management and those



who favored retaining state primacy. Congress gave the states tremendous say in council membership. Except for one representative of NMFS, voting members would be state representatives or members appointed on the recommendation of state governors (or, in the case of the Pacific Council, a tribal representative). NMFS, however, would review and approve the fishery management plans (FMPs) adopted by each council and, in limited settings, write its own management plan. The FCMA also gave NMFS responsibility for enforcing the management plan. In reporting on the legislation, the Senate Commerce Committee described the relationship between the councils and NMFS as one between legislative and executive branches:

The regional Councils are, in concept, intended to be similar to a legislative branch of government. The Councils are afforded a reasonable measure of independence and authority and are designed to maintain a close relation with those at the most local level interested in and affected by fisheries management. The Secretary of Commerce is given authority under the bill to act as the "executive," with ultimate authority to make decisions about management regulations for the entire nation. However, the Secretary's responsibility is by no means intended to be plenary. His duties will be to insure that the Councils are properly constituted; that they operate according to the procedures set forth in the Act; that the management regulations which the Councils recommend are compatible with the national management conservation standards; that such regulations do not conflict with any provision of this Act or other applicable law; and generally that the Councils abide by this Act.²⁵

As indicated in this and other portions of the act's legislative history, Congress did not intend for NMFS to play a strong role in the formulation of management plans or conservation measures. The act effectively limits NMFS' responsibilities to providing the councils with scientific and economic information, making sure that the councils do not exceed their broad legal authority, and implementing and enforcing the plans and measures written by the councils. Moreover, as discussed later in this report, NMFS generally has not attempted to override the decisions of the councils.

Box 2:

HOW DO OTHER COUNTRIES REGULATE FISHERIES?

No nation gives its fishing industry as much authority to make large-scale decisions about fisheries conservation and management as the regional councils enjoy. In most other countries, fishermen play important but advisory roles. Governmental agencies have the final decision-making authority. This is true even in countries such as Iceland, where fishermen make up more than 10 percent of the country's workforce, and Norway, where fisheries make a tenfold greater contribution to gross domestic product than they do in the United States.

In a 1997 study, *Towards Sustainable Fisheries*, the Organization for Economic Cooperation and Development described the roles that fishermen play in various countries' fishery management systems. In most of the twelve countries surveyed, and in the European Union, legislation limits fishermen to a consultative role. Finland, Iceland, Denmark, Norway, France, and New Zealand are all examples of this kind of system. Governments give fishermen, and other interested members of the public, seats on boards that advise agencies on conservation and management measures. But the agencies are the decision-makers.

Only a few countries have systems in which fishermen are given responsibility



anywhere close to the authority they exercise under the council system. Australia's Fisheries Management and Administration Acts of 1991, for example, created a structure similar to that created by the Magnuson-Stevens Act. The federal agency, the Australian Fisheries Management Authority, delegates substantial authority to twelve management advisory committees that are predominantly composed of fishing industry members. The results of this system to date are not encouraging. In 1992, the Australian government classified 25 percent of known stocks as overfished. Today, it reports that 50 percent of the known stocks are overfished.

THE REGIONAL COUNCILS

VOTING MEMBERSHIP

Each of the eight regional fishery management councils consists of seven to twenty-one voting members, including both appointed members and mandatory governmental members (see Box 3). The mandatory governmental members are the regional NMFS administrator and the "principal State official," or his or her designee, with "marine fishery management responsibility" in each of a council's constituent states.²⁶ The regional NMFS administrator is the only voting representative of the federal government on each council. In those regions where NMFS has two regional administrators, NMFS must choose one of the two to serve on the council. Other federal officials, including representatives of the U.S. Coast Guard, the U.S. Fish and Wildlife Service, and the U.S. Department of State, sit on the councils but only as nonvoting members.

The Secretary of Commerce appoints additional voting members to each council from candidates nominated by the governors of each

of the council's constituent states. These appointed members make up a majority of every council's voting members. In three of the councils (Gulf, New England, and Pacific), appointed members constitute almost two-thirds of the voting members. Under the original Senate bill, the president would have made the appointments, with the advice and consent of the United States Senate, from lists submitted by the governors. Senator Warren Magnuson considered this approval process to be an important part of "balanc[ing] the national perspective with that of the individual States."²⁷ The final act, however, favored the less time-consuming approach of having the secretary of commerce make the appointments.

Councils must have at least one appointed member from each constituent state (and, in the case of the Pacific Council, from a local fishing tribe). These are known as the "obligatory" members of a council. Each governor submits a list of at least three names to the secretary of commerce, who then must choose from those

Box 3:

VOTING MEMBERS OF THE PACIFIC COUNCIL

Although the makeup of the various councils varies to some degree, the Pacific Council is fairly typical of the interests and governmental agencies represented. The bulk of appointed members are drawn from the recreational and commercial fishing industries. Some of the industry members are fishermen, while others are employed by fishing industry associations. The state representatives who attend council meetings are rarely, if ever, the head of the relevant state agency. Rather, they tend to be lower-level officials who serve as designees for the agency heads.

Of the nine appointed members of the Pacific Council in June 2003, one

was a commercial fisherman, two were recreational anglers, and two owned recreational fishing businesses. One appointed member worked for a commercial fishing association, while another worked for a recreational fishing association. One member worked for a seafood processing company. Finally, there was a tribal representative who worked as a fisheries manager for the Quinault Indian Nation.

At right is brief biographical information about each of the members. Except for the bracketed information concerning Chairman Radtke, this information came from the council's Web site, www.pcouncil.org.

■ Robert Alverson

Fishing Vessel Owners' Association
Appointed, at-large

Mr. Alverson is Manager and Executive Secretary of the Fishing Vessel Owners' Association and has held this position since 1976. He represents vessel owners who fish for Pacific halibut and sablefish with long-line gear, and he operates the Seattle Fishermen's Exchange which auctions halibut, sablefish, and other groundfish.

■ Ralph Brown

Commercial Fisherman
Appointed, at-large

Mr. Brown is . . . from Brookings, Oregon. . . . He has many years first-hand experience in the fishing industry, including troll, pot, trawl, and processing. He is currently the President of the Fishermen's Marketing Association, a member of the Port of Brookings Harbor Commercial Fishing Advisory Committee, and a member of the Board of Directors for the Oregon Fisheries Congress.

In addition, Mr. Brown is the owner of two 75-foot trawl vessels which participate in the shrimp and groundfish fisheries.

■ James Caito

Caito Fisheries
Appointed, obligatory (California)

Mr. Caito, a [seafood] processor from Fort Bragg, California, is Vice-President of Caito Fisheries, Inc. and a former member of the Council's Salmon Advisory Subpanel. He is currently Chairman of the California Seafood Council, Vice-Chairman of the California Salmon Council, and a member of both the California Fisheries and Seafood Council and the National Fisheries Institute.

■ Mark Cedergreen

Westport Charterboat Association
Appointed, obligatory (Washington)

Mr. Cedergreen . . . participated in the commercial fisheries during the time period from 1964 through 1975, both as a crew member on crab fishing boats and with his own salmon troller. From 1976 through 1996, Mr. Cedergreen owned and operated his own Charter-boat business in Westport.

■ Donald Hansen

Dana Wharf Sportfishing
Appointed, at-large

Mr. Donald Hansen is . . . from Dana Point, California [and] is the Council's Vice Chairman. Mr. Hansen is a life-long participant in marine fisheries off California and has been the owner of Dana Wharf Sportfishing since 1971. He has been the Vice President of the Sportfishing Association of California since 1987 and the President of Dana Point Harbor since 1992.

names. The FCMA specifies that nominees should be "individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned." Before submitting the list of nominees, the governor must, "to the extent practicable," consult with "representatives of the commercial and recreational fishing interests of the State." And, in choosing the appointees from the lists, the Secretary of Commerce must, "to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries." There is no comparable requirement that any appointee represent conservation interests or the public at large.

In addition to the obligatory appointed members, each council has a number of at-large appointed members. The number of at-large

members in each council varies from two (on the Caribbean Council) to six (New England and Mid-Atlantic). Although he is not obligated to do so by the FCMA, the Secretary of Commerce historically has distributed these at-large seats equitably among the states in each council region.

WORK AND RESPONSIBILITIES

The principal job of a regional council is to prepare an FMP for every fishery within its geographical jurisdiction that "requires conservation and management." The FCMA, which is now known more commonly as the Magnuson-Stevens Act, requires each FMP to contain all "conservation and management measures" that are "necessary and appropriate for the conservation and management of the fishery." To guide the councils' development of FMPs, the Magnuson-Stevens Act sets out ten "National Standards." The first standard takes precedence over all other standards and requires the adoption of conservation and management measures

"ALL YOU HAVE TO DO IS LOOK AT THE MAKEUP OF THE COUNCIL AND SEE THE CONFLICT OF INTEREST. IT'S JUST TOO EASY FOR THE POLITICAL SYSTEM TO MESS AROUND WITH THE MAKEUP. I THINK WE NEED A MORE FUNDAMENTAL CHANGE IN THE SYSTEM."

— DR. HANS RADTKE,
FORMER CHAIRMAN OF THE
PACIFIC COUNCIL

■ James Harp

Quinalt Indian Nation
Appointed, obligatory (Tribal)

Mr. Harp is the first person to be appointed to the newly-created tribal seat on the Council. . . . He served as the appointed at-large member from Washington from 1988 to 1997. Prior to his appointment as a voting Council member, Mr. Harp represented the coastal Washington tribes on the Salmon Advisory Subpanel from 1984 to 1988. Mr. Harp holds the position of Fisheries Manager for the Quinalt Indian Nation based in Taholah, Washington.

■ David Ortmann

Appointed, obligatory (Idaho)

Mr. David W. Ortmann [is] a fishery biologist and recreational angler from Coeur d'Alene, Idaho. He served briefly with California Department of Fish and Game and retired from Idaho Department of Fish and Game in 1995. He has been an avid recreational angler since the age of eight and is the author of more than 50 technical fisheries research and management reports.

■ Hans Radtke

Appointed, obligatory (Oregon)

Dr. Radtke is . . . from Oregon, residing in Yachats. . . . Dr. Radtke is a sport fisher and a freelance economist specializing in the relationship between resource-based industries of the Pacific Northwest and regional, state, and national economies. He has worked on a variety of projects, including impact analyses of fishery management alternatives for the Oregon Department of Fish and Wildlife and the Council. [Until June 2003, Dr. Radtke served as chairman of the Pacific Council. However, Dr. Radtke was not reappointed. At that time, he issued a statement regarding the council system. "All you have to do is look at the makeup of the Council and see the conflict of interest," he said. "It's just too easy for the political system to mess around with the makeup. I think we need a more fundamental change in the system."]

■ Roger Thomas

Golden Gate Fishermen's Association
Appointed, at-large

Mr. Thomas is . . . from California. He has been a commercial passenger fishing vessel owner/operator since 1968, fishing primarily for salmon. He is the President of the Golden Gate Fishermen's Association.

■ Phil Anderson

Washington Department of Fish and Wildlife
Mandatory

Mr. Anderson is the designee for Dr. Jeffery Koenings, the director of the Washington Department of Fish and Wildlife. Mr. Anderson joined the Department in 1994. . . . Prior to this position, he was the appointed obligatory Council member from Washington from 1987 to 1994 and served as Vice-Chairman and Chairman during that time. From 1970 to 1994, he was a charter fishing vessel owner/operator and participated in the recreational fisheries for salmon, halibut, groundfish, and albacore. Among other past activities, he was President of the Washington State Charter Boat Association.

■ Neal Coenen

Oregon Department of Fish and Wildlife
Mandatory

Mr. Coenen is the principal designee for Mr. Lindsay Ball, director of the Oregon Department of Fish and Wildlife. (Full bio not available at this time.)

■ Svein Fougner

National Marine Fisheries Service
Mandatory

Mr. Fougner is the designee for Mr. Rod McInnis, Acting Regional Administrator of the National Marine Fisheries Service Southwest Region. Mr. Fougner has worked for National Marine Fisheries Service since 1975 and has been the Assistant Regional Administrator for Sustainable Fisheries in the Southwest Region since 1998.

■ Eric Larson

California Department of Fish and Game
Mandatory

Mr. Larson represents Mr. Robert C. Hight, Director of the California Department of Fish and Game. (Full bio not available.)

■ Jerry Mallet

Idaho Fish and Game
Mandatory

Mr. Mallet is Idaho Fish [and] Game Director Steve Huffaker's designee to the Council. He is a retired Assistant Director for the department. Mr. Mallet served the department from 1956 to 2000.

**THE COUNCILS ENJOY
SIGNIFICANT DISCRETION
IN WRITING FISHERY
MANAGEMENT PLANS.**

to “prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.” Other important provisions of the law require councils to use the “best scientific information available,” to reduce bycatch and bycatch mortality, and to protect essential fish habitat. FMP provisions also must minimize costs “where practicable” and take into account the economic interests of fishing communities, but only to the extent “consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks).” The Magnuson-Stevens Act thus provides a limited role for economics, but not at the cost of avoiding overfishing and ensuring the continuing optimum yield of each fishery.²⁸

The councils have significant discretion in determining the annual “optimum yield” of a fishery. The Magnuson-Stevens Act establishes a ceiling for the optimum yield but provides little additional guidance. Under the act, optimum yield cannot exceed the “maximum sustainable yield” (MSY) of a fishery. A fishery’s MSY is that amount of fish that a stock will “produce” annually when it is at its most productive size. Although often debated, theories developed by fishery science hold that a fish stock will produce its MSY when the population is somewhere between 40 and 60 percent of its pre-fishing level.²⁹ A council is free to reduce optimum yield below MSY if such a reduction can be justified on the basis of “any relevant economic, social, or ecological factor.” However, a council cannot reduce optimum yield to zero based on consideration of these factors, unless it can show that refraining from fishing a species will provide “the greatest overall benefit to the nation.”³⁰

Councils enjoy additional discretion as a result of the scientific uncertainty involved in estimating fish populations and safe catch levels (see Box 4). Scientists have a very difficult time identifying with precision exactly what the MSY of a fishery is. NOAA scientists, who advise the councils on such matters, thus almost always present the councils with a range of possible MSYs. For example, scientists might tell a council that there is an 80 percent chance

that the MSY is between 10 and 25 million pounds annually. This spread provides a council with a large amount of discretion. The council may choose to “set” the MSY of the fishery at any level between 10 million and 25 million pounds. The combination of this scientific discretion and the legal discretion in the Magnuson-Stevens Act gives the councils significant latitude, power, and responsibility.

NMFS must review and approve all FMPs and amendments to the plans. Councils submit their plans or amendments to NMFS, after which there is a sixty-day public comment period. Within thirty days after the comment period closes, NMFS must approve, disapprove, or partially approve the plan or amendment. If NMFS does not act within this period, the plan or amendment automatically goes into effect. If NMFS disapproves or partially approves a plan, the council can submit a revised plan or amendment. During the time that a council is revising a disapproved plan, the status quo established by prior regulations remains in effect. NMFS cannot prepare and adopt its own FMP unless the council does not revise its plan or amendment (or fails to prepare any plan for a fishery that requires conservation and management). Even then, NMFS must ask for the council’s views before finalizing the federal FMP and can never unilaterally create a plan that restricts the number of fishermen who can participate in a fishery.³¹

When a council submits an FMP to NMFS for review and approval, the council also submits proposed regulations implementing the plan. Councils can propose modifications to the regulations at any time. Although NMFS must review the proposals before promulgating the final federal regulations implementing the FMP, NMFS again enjoys only very limited authority to revise the regulations on its own. Once final regulations are in place, the federal government through NMFS and the Coast Guard implements and enforces the regulations.

In response to growing concerns regarding the health of the nation’s fisheries, Congress in 1996 added provisions to the Magnuson-Stevens Act designed to rebuild overfished fisheries. Congress specified that FMPs must pro-

SCIENTIFIC UNCERTAINTY AND COUNCIL DISCRETION

The Magnuson-Stevens Act requires the regional councils to use the “best scientific information available” in making their management decisions. An examination of several case histories, however, shows that councils sometimes ignore the recommendations of fishery scientists. More importantly, the uncertainty inherent in scientists’ estimates of appropriate catch levels gives the councils significant discretion in setting quotas and other management measures. Councils often use this discretion to set lax quotas and management measures that are unlikely in the long run to achieve the Magnuson-Stevens Act’s objectives.

In an earlier paper, two of the authors of this report examined the use of scientific recommendations in the Gulf Council’s management of king mackerel and the Pacific Council’s management of widow rockfish.* Both councils occasionally chose quotas that were higher than the allowable biological catch (ABC) range recommended by NMFS scientists. More importantly, rather than choosing a quota in the middle of the recommended range, the councils almost always chose quotas that were at or near the top of the range, making effective management unlikely.

Figure A, for example, shows the quotas and landings for Gulf king mackerel compared with the range recommended by the NMFS stock assessment panel (SAP). As can be seen, the Gulf Council set quotas that were above the recommended range in five years (1985 and 1992–1995). The council set the quota at or below the midpoint of the range only in 1989 and 1990. In all other years, the council set a quota that exceeded, often by significant amounts, the midpoint recommendation.

As **Figure A** illustrates, setting a high quota within the recommended range makes it very likely that the actual catch level will exceed the scientific recommendation. From 1985 through 1996, the reported landings exceeded the upper end of the recommended range in every year except for 1989 (the only year in which the council set the quota at or below the midpoint of the range). Actual landings, moreover, almost certainly exceeded reported landings as a result of illegal fishing. Implementation of fishery regulations is inevitably imperfect. Fisheries experience “overages,” in which reported catch exceeds quotas, because of imperfect reporting systems and because of political pressure not to close fisheries even after they have met their quotas.

Figure B shows the overages, or “implementation overfishing,” in the Gulf king mackerel fishery for the years studied.

* Josh Eagle and Barton H. Thompson Jr., “Answering Lord Perry’s Question: Dissecting Regulatory Overfishing,” *Ocean and Coastal Management* 46 (2003): 649–679.

FIGURE A: MANAGEMENT OF THE KING MACKEREL FISHERY, 1985–1999

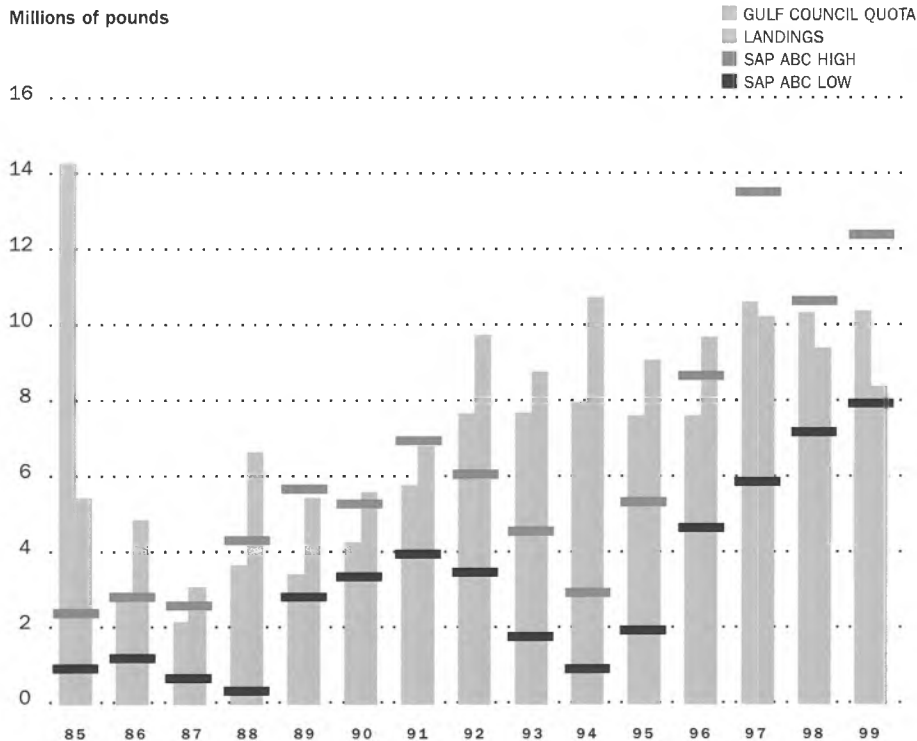
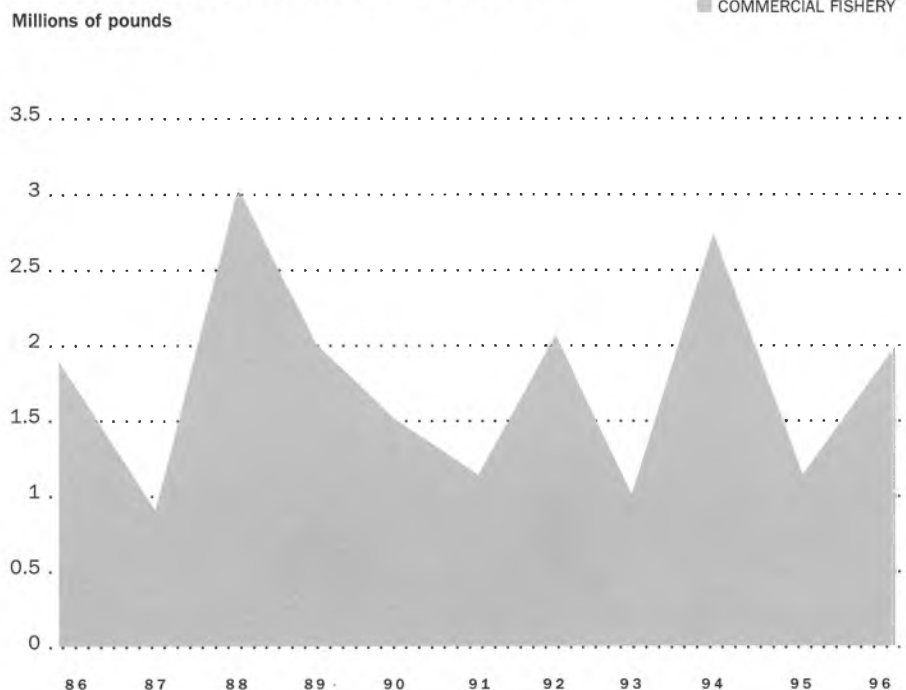


FIGURE B: IMPLEMENTATION OVERFISHING, 1986–1996



vide for the rebuilding of overfished stocks in a time period that is “as short as possible,” taking into account various factors including the status and biology of the fish stock and the needs of fishing communities. Unless the biology of the fish stock, other environmental conditions, or international agreements dictate otherwise, the rebuilding period must not exceed ten years. If a council does not submit a plan within a year of learning that a fishery is overfished, NMFS must submit a federal plan to rebuild the stock. NMFS also must review council FMPs every two years to ensure that they are leading to “adequate progress toward ending overfishing and rebuilding affected fish stocks.”³²

Box 5:

THE ROLE OF COUNCIL ADVISORY COMMITTEES: A CASE STUDY OF THE NORTH PACIFIC COUNCIL AND THE PACIFIC COD FISHERY

Development of an FMP and of yearly quotas is a long and complicated process, involving input from multiple advisory committees. Although committees vary from council to council, the North Pacific Council's annual quota-setting process for Pacific cod provides a valuable illustration.

The Alaska Fisheries Science Center, one of six NMFS regional science centers, starts by preparing and compiling scientific and catch data into a yearly stock assessment for Pacific cod. The center presents the assessments for various Gulf of Alaska groundfish stocks in a draft Stock Assessment and Fishery Evaluation Report (“SAFE Report”). The SAFE Report contains a maximum allowable biological catch (ABC) recommendation, along with a harvest level recommended by the science center's fisheries scientists.

Next, the North Pacific Council's Groundfish Plan Team discusses the SAFE Report, together with the underlying stock assessments. Members of the Plan Team are appointed by the council, and the team consists of NMFS and academic fisheries scientists, council members, the NMFS regional administrator for Alaska, a representative of the Alaska Department of Fish and Game, a representative of the Washington Department of Fish and Wildlife, a rep-

resentative of the International Pacific Halibut Commission, and a representative of the U.S. Fish and Wildlife Service. The Plan Team reviews the various stock assessments and writes a summary chapter for the SAFE Report in which it makes ABC recommendations. The Plan Team then delivers the SAFE Report to the council so that it may set final ABCs and corresponding total allowable catches (TACs) for the fisheries.

The Gulf of Alaska Groundfish SAFE Report and its recommendations go to the North Pacific Council's Advisory Panel (AP), its Scientific and Statistical Committee (SSC), and all council members. The AP, composed of industry and fishing representatives, does not usually make numerical ABC or harvest level recommendations to the council, but instead comments on the socioeconomic impacts of the proposed management measures. The SSC, composed of biologists, economists, statisticians, and social scientists, does make recommendations to the council on ABCs and advises the council on the information contained in the SAFE Report. The SSC is the final step before council action.

The council tentatively sets the preliminary TACs for the following year at the council's September meeting and finalizes the TACs at its December meeting after a public comment period.

Congress also added language in 1996 requiring that the councils take steps to reduce bycatch and address the effects of fishing on ocean habitats. The provisions mandate that the councils reduce these ecosystem effects “to the extent practicable.”³³

ADVISORY COMMITTEES

In making their management decisions, the councils receive advice and support both from fishery scientists in and out of government and from a variety of advisory groups (see Box 5). Scientists at regional NMFS offices typically prepare stock assessments and recommend allowable biological catch levels. Under the Magnuson-Stevens Act, moreover, each council must form a Scientific and Statistical Committee to advise it on catch levels and other scientific issues, as well as a Fishing Industry Advisory Committee to provide the fishing industry's perspective on issues before the council. Each council also is free to form other advisory committees; many have formed panels to advise them on issues ranging from industry operations and market conditions to the design and timing of regulations and emerging environmental concerns. Councils appoint the members to these various advisory groups and may use them to broaden the expertise and perspectives available to the councils. Most socioeconomic panels, for example, include one or two representatives of nonfishing groups. The fishing industry, however, dominates all the nonscientific advisory groups, and the ultimate management decisions remain with council members themselves.

THE RECORD OF THE REGIONAL COUNCILS

Managing a wild fish stock is not an easy task. Scientists often have only limited data on fishing stocks, and models are under constant refinement. Managers therefore must constantly decide on the appropriate degree of conservatism to use in protecting a fishery, and even conservative fishery plans can turn out to have overestimated the health of a stock. Conservatism, moreover, can come at a short-term cost to the local fishing industry and thus frequently con-

fronts political opposition. However, even with these problems recognized, the regional councils' record, as measured by the actual status of the fish stocks that they are responsible for managing, is disappointing.

One reasonable means of evaluating the health of a fish stock would be (1) to compare the current fishing mortality rate with the rate that, in the long run, would achieve the MSY, and (2) to compare the current population size with the population size that would provide the MSY (P_{MSY}). As discussed earlier, the Magnuson-Stevens Act requires councils to ensure that fisheries achieve the MSY on a continuing basis. Scientists also commonly use the MSY as a point for comparison. Where the current fishery catch exceeds the level that would produce MSY on a continuing basis, the fishery suffers from overfishing. Where the current population level is lower than P_{MSY} , the fishery is overfished.

In practice, however, determining the true state of council-managed fisheries is difficult for a number of reasons. First, the United States lacks even basic information about a number of important stocks. There are 932 stocks under federal management in the United States' EEZ, but NMFS has information sufficient to evaluate the full status of about 25 percent of them, slightly more than 230. Of the nearly 700 stocks of "unknown" status, 99 are "major stocks" (defined as stocks with annual landings of more than 200,000 pounds). Nine of the 30 most valuable domestic fisheries are of "unknown" status. Thus, NMFS does not know whether the two most valuable fisheries managed by the councils — pollock and brown shrimp — are overfished or not.³⁴

There also are no independent assessments of the condition of fish stocks in U.S. waters. NMFS reports to Congress each year on the overall condition of U.S. fisheries. In classifying fish stocks, however, NMFS must rely on definitions written by the regional councils. Under the Magnuson-Stevens Act, the councils define the points at which a stock is overfished and at which the mortality exceeds MSY. NMFS must measure the success of the coun-

cils, therefore, using the targets that the councils themselves have set. This might not be a problem if determining overfished and overfishing conditions for a stock of fish were an easy, straightforward, and noncontroversial task. But the scientific uncertainty that surrounds even "known" fish species (i.e., those whose status is known) leaves significant discretion to the decision-maker. Environmental organizations, scientists, and fishermen all have criticized the definitions of "overfished" and "overfishing" adopted for particular fisheries as being either too low or too high. The councils, moreover, have not yet even developed definitions for a large number of stocks, making it impossible to measure their health.

Using the regional councils' own definitions, the state of the fisheries under their jurisdictions is not good. Of the 237 known stocks for which there is sufficient information to evaluate current stock levels, NMFS classifies approximately 36 percent (86) as overfished. Of the 274 stocks for which it can be determined whether overfishing is occurring, about one-quarter (66) are experiencing overfishing. Significantly, 48 stocks — about 20 percent of known stocks — are both overfished and experiencing overfishing, which suggests that effective rebuilding plans either have not yet been implemented or have not taken effect. These numbers are not much better for major stocks, which provide more than 99 percent of all fish — 9 billion pounds in total — caught by U.S. fishermen. Twenty-seven percent of major stocks are overfished, while 24 percent are subject to overfishing.³⁵

There is a sharp difference among the councils in percentages of overfished fisheries and stocks subject to overfishing. As shown in Figure 1, more than 35 percent of the known major stocks in five council regions (New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean) are subject to overfishing. By contrast, only one known major stock in the Pacific region is subject to overfishing and none in the North Pacific region is. About four of every ten major stocks are overfished in the five council regions plagued by overfishing, and 20 percent of known

**TWENTY PERCENT
OF FISHERIES WITH
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major stocks managed by the Pacific Council are. According to the North Pacific and Western Pacific Councils, however, none of their stocks is overfished. These numbers should be viewed with caution, given that the overfished status of 40 percent (25 of 63) of the major stocks managed by those two councils is unknown. Box 6 explores why the North Pacific Council may have been more successful than others.

Although one should be careful in making direct comparisons with statistics from other countries, given the variation in definitions of “overfished” and the reliability of the available data, the United States’ management record is

surprisingly lackluster in light of the nation’s relative success in managing other resources. Indeed, the U.S. record appears to be slightly worse than the average management record for the world as a whole. According to the Food and Agriculture Organization of the United Nations, of the worldwide fish stocks for which information is available, 28 percent are overfished — compared, as noted earlier, with 37 percent of all major and minor fisheries managed by regional councils in the United States.³⁶ This is worrisome because fishery scientists in the United States, particularly those working at NMFS, enjoy a reputation as some of the most sophisticated and accomplished fisheries science

Figure 1. STATUS OF MAJOR STOCKS*

	Major stocks	Major stocks with unknown population level	Known major stocks that are overfished	Cannot be determined if fishing is occurring at a sustainable rate	Known major stocks experiencing overfishing	Known major stocks that are both overfished and experiencing overfishing
NEW ENGLAND COUNCIL (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut)	29	2 (7%)	10 (37%)	6 (21%)	8 (35%)	4 (17%)
MID-ATLANTIC COUNCIL (New York, New Jersey, Delaware, Maryland, Virginia)	11	2 (18%)	4 (44%)	0 (0%)	4 (36%)	3 (33%)
JOINT NE/MA	3	1 (33%)	1 (50%)	0 (0%)	3 (100%)	1 (50%)
SOUTH ATLANTIC COUNCIL (North Carolina, South Carolina, Georgia, Florida [Atlantic coast])	23	5 (22%)	8 (44%)	5 (22%)	9 (50%)	8 (44%)
GULF OF MEXICO COUNCIL (Florida [Gulf coast], Alabama, Louisiana, Mississippi, Texas)	23	14 (61%)	4 (44%)	12 (52%)	4 (36%)	3 (33%)
JOINT SA/GOM	8	2 (25%)	1 (17%)	2 (25%)	0 (0%)	0 (0%)
CARIBBEAN COUNCIL (Puerto Rico and Virgin Islands)	4	2 (50%)	1 (50%)	2 (50%)	1 (50%)	1 (50%)
PACIFIC COUNCIL (Washington, Oregon, California)	62	27 (44%)	7 (20%)	25 (40%)	1 (3%)	1 (3%)
WESTERN PACIFIC COUNCIL (Hawai’i)	13	4 (31%)	0 (0%)	13 (100%)	n/a	n/a
NORTH PACIFIC COUNCIL (Alaska)	50	21 (42%)	0 (0%)	6 (0%)	0 (0%)	0 (0%)
TOTAL	226	80 (35%)	36 (22%)	71 (31%)	30 (19%)	21 (14%)

Source: National Oceanic and Atmospheric Administration, *Status of Fisheries of the United States*, 2002.

*In calculating percentages for the table, the denominator in the second and fourth columns is the total number of major stocks managed. In the third column, the denominator is the number of those stocks for which NMFS has information sufficient to make an “overfished” determination. In the fifth column, it is the number of stocks for which the agency can assess whether or not overfishing is taking place. In the sixth column, the denominator is the number of stocks for which NMFS can make both determinations.

experts in the world. Given the ability of the scientists, one would expect that the United States' management record would be better, certainly not worse, than the worldwide record.

The councils also have not been very successful to date in rebuilding fisheries. NOAA's most recent report on the status of fish stocks claims that a few dozen stocks have improved from "overfished" to "not overfished" since 1997. However, NOAA does not claim that any of these stocks has been rebuilt to a level at which it can produce its MSY. The difference is significant. For example, a stock may be classified as overfished when its population is less than 20 percent of its level prior to fishing (the "unfished level"). A growth in population from 19.5 percent of the unfished level to 20.5 percent of the unfished level will result in the stock being reclassified from overfished to not overfished. But that stock cannot be considered "rebuilt" within the definition of the Magnuson-Stevens Act until such time as it reaches P_{MSY} . So long as stock size is less than P_{MSY} , the fishery is not producing as many fish as it can and potential production is being lost. Although P_{MSY} varies from stock to stock, usually fisheries scientists estimate it to be around 40 to 60 percent of a stock's unfished level. More than 60 percent of the stocks that are currently under council rebuilding plans, moreover, are still experiencing overfishing — suggesting that the councils have not yet adequately addressed the problem (too much fishing) that led to the fisheries becoming overfished in the first place and thus suggesting that rebuilding is unlikely to be successful.³⁷

The record of the councils has not been entirely negative. More than half of the known, managed major species in the U.S. EEZs are not overfished. Moreover, councils on occasion have taken politically unpopular actions to help preserve species at risk. A recent example of an unpopular but biologically warranted decision is the Pacific Council's 2002 closure of rockfish fisheries. Although this draconian measure was necessitated in part by prior Pacific Council management, the council should be given credit for attempting to correct its previous errors.

A neutral observer, however, could not help but see significant room for improvement. If the nation is to protect and restore its vast fishery resources for this and future generations, it must do a better job of managing the fisheries.

Box 6:

EXPLAINING THE POSSIBLE SUCCESS OF THE NORTH PACIFIC COUNCIL

According to NMFS reports, the North Pacific Council leads the way in successful fisheries management. None of its major stocks is currently listed as overfished or subject to overfishing. Many observers do not believe that the North Pacific Council has been as successful as this statistic suggests. First, the "overfished" status of many of the major stocks in the region — including some that support the enormous pollock fishery — is unknown. Critics also point out that the council has presided over the decline of several stocks, including valuable king and tanner crab fisheries, and that North Pacific fisheries discard more than 300 million pounds of bycatch annually. Finally, some conservation groups have criticized the council's management of the pollock fishery and its effects on Steller sea lions. Nonetheless, it is still worth considering the possible reasons why this council, unlike most of the others, seems to be achieving some management success.

Two policies might account for the relative health of North Pacific fish stocks: strict catch limits and a high level of observer coverage. The council pursues strict catch limits in three ways. First, it uses only hard quotas that place a firm limit on how many fish can be caught. Hard quotas, unlike the effort-based regulations favored by many other councils, go a long way toward ensuring that a fishery is closed when the biologically safe amount has been caught. Second, the council consistently follows the advice of science advisors. Unlike other councils (see Box 4), the North Pacific Council has rarely, if ever, set catch limits higher than scientific recommendations on safe catch levels. Finally, the council has adopted conservative caps on the total amount of fish that can be caught even when scientists believe higher catches may be permissible. For example, the council has limited Bering Sea catches of all groundfish to 2 million metric tons. This amount cannot be exceeded, even if the scientists say it

can, unless the council decides in the future to amend the FMP.

Compared with other councils, the North Pacific Council also requires that a high percentage of boats carry independent observers. Observers are valuable to management. They provide reliable information on the amount and kinds of fish that fishing vessels are actually catching. In many regions, observers are not used because they are expensive and because some fishermen see them as an intrusion or as onboard police. The North Pacific Council requires that observers be present on all vessels longer than 60 feet, and it also mandates that the fishing industry pay for this coverage.

People have provided a variety of explanations for why the North Pacific Council has often adopted a more conservative approach. One reason may be council representation. Although the council does not have a member from any environmental organization, for example, at least one council member is active in a local conservation group. In our survey, several members of the council reported that diversity of perspectives aided their deliberations.

The North Pacific Council also may illustrate that history and long-term culture matter. The seeds of the council's approach may have been planted in the first decade and a half of the council's existence. From the passage of the Fishery Conservation and Management Act in 1976 until the late 1980s, foreign fleets dominated EEZ fisheries off Alaska. During this period, the council was extremely conservative in its management, and it faced no domestic political opposition to the imposition of strict conservation measures. In fact, domestic fleets, which were gradually building up their operations, urged the council to limit catches so that there would be an abundance of fish left once the U.S. fleets could operate at full capacity. The council's current approach may well be the fortunate vestige of that earlier era.

THE STUDY

To examine whether the makeup and structure of the regional fishery management councils might be undermining their effectiveness, we conducted a comprehensive study of the operations of four of the eight regional councils: the Gulf of Mexico Council (Gulf Council), the New England Council, the North Pacific Council, and the Pacific Council. We chose these councils because they manage the four most economically important fishing regions in the United States.

We began by visiting each council and conducting an initial survey of the council members' views, both by mail and in person. We also studied in depth how each council evaluated and resolved a major fishing management issue currently before it. Finally, we asked all members of each council, including both voting and nonvoting members, who had not completed an earlier questionnaire to complete a slightly shorter version of the questionnaire. Both questionnaires asked each council member about his or her background and education, the types of information considered in making decisions, the adequacy of the information, opportunities for input into the council's decisions both by the general public and by fishing interests, potential and perceived conflicts of interest, and whether the council member had ever recused himself or herself because of a potential conflict of interest.

The survey results are summarized in the Appendix. We ultimately received responses from more than half of the voting members of the four councils studied. Response rates ranged from a high of almost 80 percent for the Pacific Council to only 24 percent for the Gulf Council (in the latter of which, we were later informed, council members were told that it is generally not advisable to participate in such surveys). If the Gulf Council surveys are excluded from the total numbers, more than 60 percent of the total voting members of the other three councils completed the surveys. Two-thirds of the responses were from appointed members of the councils. Although we sent the surveys to all the members on the four councils, we received completed questionnaires

from only five of the sixteen nonvoting members.

In the remainder of this report, we have tried as much as possible to let the council members speak for themselves. Because we promised the council members anonymity, we do not attribute comments to particular council members. But we have not changed the words used by the council members in their responses to our questions (except occasionally to correct punctuation or spelling or to replace acronyms with complete names). The quotations therefore are an accurate description of how the council members themselves view their institutions and decision-making processes.

Using the federal Freedom of Information Act, we also requested information about the councils from NMFS. We requested copies of the financial disclosure forms that all council members are required to complete and make available to the public; council members are required to disclose their financial interests in fishing or the seafood industry. We also requested information regarding recusals of council members due to financial conflicts of interest. We asked for any written queries sent by council members to NMFS regarding potential conflicts and for NMFS' written opinions, if any, on whether or not recusal was advisable. Finally, we asked for letters sent by NMFS to any council in which the agency fully or partially disapproved of the council's proposed conservation or management measures. NMFS is required to send such a letter to a council if a proposed action is deemed, upon review, to be inconsistent with the national standards or other provisions of the Magnuson-Stevens Act.

PROBLEMS WITH COUNCIL DECISION-MAKING

Although we looked at a number of different issues, four problems with the councils' structure have risen to the forefront. First, by giving the same body responsibility for making both conservation and allocation decisions, the Magnuson-Stevens Act reduces the likelihood of effective

conservation. The pressure to avoid difficult allocation decisions encourages the councils to neglect conservation. Second, councils are dominated by fishing industry representatives and, as a result, do not enjoy the diversity of perspectives necessary for good decision-making. Third, council members representing the fishing industry face frequent conflicts of interest, which threaten both effective decision-making and the public's confidence in the councils. Finally, although NMFS oversees the councils' decisions, its oversight historically has been deferential and is not an adequate answer to the concerns regarding the councils' decision-making.

COMBINING CONSERVATION AND ALLOCATION

Regional fishery management councils must make two difficult and related management decisions. First, councils must decide what size quota or other management controls to impose on a fishery. Scientific uncertainty complicates this task and leaves the councils with significant discretion. As discussed already, scientists often know only a limited amount about the stocks of fish that the councils must manage. As a result, the scientists' recommendations of optimum catch levels are merely best estimates, clouded by uncertainty. As one New England Council member said: "When the scientists give the council advice, the council members know that there's a wide range of probabilities. If they [NMFS scientists] say it's 782, they might say there's a 90% probability that it's somewhere between 325 and 1275; yes it's probably somewhere in there."³⁸ Councils must evaluate the scientific and other information and make their best judgment on what is necessary to rebuild overfished fisheries and sustain fisheries that are currently healthy.

Second, having made their conservation decisions, councils must decide how to allocate the quotas, or any other rights and benefits created by the management regime, among the members of the fishing communities. This task

is never politically easy. Councils often must decide how to allocate a limited quota among diverse fishing interests, all of whom have significant economic and, frequently, social and cultural interests at stake. Councils must decide on the relative claims of commercial and recreational fishermen, small and large fishing interests, longtime fishermen and relative newcomers, varying geographic areas and boat types, and fishermen from different regions, among others.

This pairing of tasks is not inevitable. In theory, the two tasks could be divided between two different decision-makers — one deciding on the appropriate conservation measures (the "conservation decision") and the other allocating quotas or rights among the fishermen (the "allocation decision"). As discussed in our later section on recommendations, we believe the functions should be separated. Under current law, however, the regional councils make both decisions.

Requiring the regional councils to make both conservation and allocation decisions creates significant pressure to adopt higher quotas and less stringent conservation measures. Faced with the painful task of allocating a limited quota among competing fishing interests, councils can reduce the pain only by increasing the

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— NEW ENGLAND COUNCIL MEMBER



size of the quota and thus the amount of fishing rights that can be apportioned. As councils consider the difficult allocation decisions that are down the road, they inevitably are tempted to relax the conservation measures that they otherwise might adopt. And the inevitable scientific uncertainty surrounding the appropriate quota level often makes it easy for councils to succumb to this temptation by abandoning caution and setting lax standards.

The Gulf Council's decision to set a high quota for king mackerel in the early 1990s, despite the mackerel's overfished condition, is

a vivid example of this problem (see Box 7). Not wishing to reduce the bag limits for recreational fishermen, and not willing to reduce the relative quota shares for various classes of commercial fishermen, the council ultimately allowed 9.8 million pounds of mackerel to be caught in the 1992–1993 season — compared with the “total allowable catch” of 6.1 million pounds recommended by the council's Mackerel Management Committee. The ultimate catch had only a 20 percent chance of achieving the fishery's rebuilding goals.

Box 7:

HOW ALLOCATION IMPACTS CONSERVATION: THE GULF KING MACKEREL FISHERY



The 1992–1993 Gulf king mackerel fishery provides several good examples of how the conservation/allocation conflict plays out in actual decisions. The Gulf Council's Mackerel Management Committee recommended an overall quota for that fishing year of 6.1 million pounds.* Based on long-standing council policy, the Gulf Council normally would have allocated 68 percent of the quota (4.2 million pounds) to the recreational fishery and 32 percent (1.9 million pounds) to the commercial fishery.

These numbers, however, presented a political problem for the council. The recreational fishery was managed by “bag limits” — a restriction on the number of fish each recreational fisherman could catch on each fishing trip. The bag limit for any given year equaled the quota (converted to units of ten-pound fish) divided by the estimated number of recreational fishing trips for the year. Because over 280,000 fishing trips were projected

for 1992–1993, the council would have had to set the bag limit at 1.5 fish per person per trip if the recreational quota were set at 4.2 million pounds. Prior to 1992, the bag limit in the king mackerel fishery had been three fish per person per trip. Since it is impossible to catch just half a fish, the council would have had to set the bag limit at only one fish.

Many council members were unhappy with this outcome. They did not want to reduce the bag limit below two fish. A bag limit of two, however, would require giving recreational fishermen a quota of well over 5 million pounds of king mackerel. In the end, the council allocated more fish to the recreational anglers by relaxing conservation. The council set the overall quota at 7.8 million pounds, almost 1 million pounds higher than *even the industry advisory panel had recommended*. This permitted the council to give 5.3 million pounds to the recreational fishery and 2.5 million to the commercial fishery. Estimates made after the 1992–1993 fishing season showed that landings for the recreational fishery that year totaled more than 6.2 million pounds, nearly 50 percent higher than scientific recommendations.

The conservation/allocation conflict was also evident in the management of the commercial fishery that year. When the Gulf Council raised

the recreational quota to accommodate the two-fish bag limit, it was compelled to raise the commercial quota an equal 26 percent in order to maintain the traditional allocation ratio between the two sectors. The resulting 2.5 million pound commercial TAC was allocated between eastern and western zones. The eastern zone, which received 1.73 million pounds, consisted of the Gulf and Atlantic coasts of Florida. The council made no regulatory allocation between these two Florida fisheries. The commercial fisheries in the eastern zone reached 1.73 million pounds by the end of 1992 and were closed on January 13, 1993.

Due to a variety of factors, including a court decision that invalidated several Florida state regulations and bad weather that “muddied the waters, making the detection of fish difficult,” commercial landings of king mackerel in the eastern zone were far higher off the Gulf coast of Florida than they were off the state's Atlantic coast. The fishermen off the Atlantic coast complained to the council that this was not fair because both the weather conditions and the judicial decisions were outside their control. Furthermore, while there had been no formal allocation in the past, “[e]qual sharing of this resource by east [Atlantic] and west [Gulf] coast fisheries is clearly evident in historical landings. Yearly and average landing

estimates for the past 23 years both before and after implementation of Federal quota management indicate that, despite some disproportionate yearly catches, the east/west coast catches trend toward parity.”† Finding a “social and economic emergency,” the council recommended that the Atlantic commercial fishery be reopened to allow for an additional 259,000 pounds of king mackerel to be caught.

In the end, recreational and commercial fishermen caught a total of 9.8 million pounds of king mackerel during the 1992–1993 season, even though the stock already was listed as overfished. By contrast, NMFS scientists had estimated that the quota should be set around 5 million pounds (and no higher than 6.1 million), and the council's own king mackerel committee had recommended that the quota be set at 6.1 million pounds.

According to scientists, there was more than an 80 percent chance that the actual landings of 9.8 million pounds exceeded the “true” allowable biological catch.

* Although the Gulf and South Atlantic Councils jointly manage the Gulf and Atlantic king mackerel fisheries, the Gulf Council has primary decision-making authority with respect to the Gulf fishery, which includes commercial fishing off the east coast of Florida.

† 58 Fed. Reg. 10990 (1993).

LACK OF DIVERSE VIEWPOINTS

Research on decision-making has shown that diverse perspectives are extremely valuable in making effective decisions.³⁹ Groups with diverse perspectives on an issue tend to look at and consider a broader set of information in making their decisions. Researchers have found that, where groups are dominated by a particular group perspective, they look far more at information that is supplied by or accepted by the dominant group (what psychologists call “shared information”) than at other information that may cast doubt on the shared information. One study of group decision-making, for example, found that nondiverse groups discussed 45 percent of the shared information that was available to them but only 18 percent of the other information.⁴⁰

Groups with diverse perspectives also appear to make better decisions. There are several reasons for this. First, diverse groups bring a greater array of experience to the table. In the business field, for example, companies that have diverse business experiences tend to make better acquisition decisions and to pay less for their acquisitions.⁴¹ In addition, members of homogeneous groups tend to reinforce one another’s views. As a result, the group is less likely to challenge traditional viewpoints that are widely held within the group but wrong. This problem is significant enough that social scientists have dubbed it “groupthink.”⁴²

Where commissions or councils make regulatory decisions, the diversity of the group is also important to the democratic validity of the decisions. Fearing that members of well-defined groups often may be predisposed to the views of that group, citizens with different perspectives fear that highly homogeneous groups will not give them a fair hearing. As a result, participation is discouraged, and citizens may end up suspecting even well-grounded decisions.

Legislatures often have recognized the value of including diverse perspectives on governmental boards and commissions. As noted earlier, for example, many states require fish and game commissions to include diverse perspectives. Congress also has mandated diversity in numer-

ous settings. By law, for example, the U.S. Securities and Exchange Commission, the Federal Trade Commission, and the Federal Energy Regulatory Commission must have members from more than one political party.

In 1972, moreover, Congress passed the Federal Advisory Committee Act (FACA) requiring that advisory committees provide broad and diverse perspectives. Under FACA, the membership of an advisory committee must be “fairly balanced in terms of points of views represented and the functions to be performed by the advisory committee.”⁴³ Congress criticized prior advisory commissions that sometimes reflected the view only of the industry being regulated:

When [one advisory committee] met with government officials to consider a proposed national industrial wastes inventory questionnaire, only representatives of the industry were present. No representatives of conservation, environment, clean water, consumer, or other public interest groups were present. This lack of balanced representation of different points of view and the heavy representation of parties whose private interests could influence their recommendation should be prohibited by the provision contained in [FACA].⁴⁴

Although the regional councils are exempt from FACA’s requirements, the diversity requirements speak directly to the value of including broad perspectives on the councils. The regional councils look very much like advisory committees, with one important exception — they make fishery management decisions themselves rather than merely giving advice to NMFS. The fact that the councils are themselves making the key decisions argues even more strongly in favor of ensuring broad perspectives.

So how broad are the perspectives and viewpoints represented on the regional councils? If the councils were responsible only for allocating an overall fishing quota among various groups of commercial and recreational fishing interests, they might score well. As discussed in more detail later in this report, the voting members of the councils reflect a fairly diverse set of

“[STATE DIRECTORS ARE] THE MOST SUSCEPTIBLE TO CONSTITUENT PRESSURES ON A WIDER VARIETY OF ISSUES THAN ANY SINGLE CONSTITUENCY COUNCIL MEMBER WOULD BE.”

—FORMER COUNCIL MEMBER

commercial and recreational fishing interests. Few fishing interests lack a voice on the regional councils.

But the councils provide little diversity of perspective on conservation questions. Most council members are affiliated with or reflect commercial and recreational fishing interests. Virtually none comes from the conservation world or the public at large.

As noted earlier, “appointed members,” who are selected by the Secretary of Commerce from gubernatorial lists, make up a majority of every council. In some councils, almost two-thirds of the voting members are appointed. Appointed members, in turn, are primarily fishing interest representatives. In 2002, 83 percent of all appointed council members represented fishing interests. In total, 47 percent represented commercial fisheries and 36 percent represented recreational fisheries. As shown in Figure 2, these percentages — with the exception of

those for the Caribbean Council — did not vary significantly among councils. Fishery representatives controlled a majority of the votes on four of the eight councils — and almost a majority on the others.

Only 18 percent of the appointed council members in 2001 did not directly work in or represent the fishing industry. Many of these members, moreover, were academic scientists or economists with long-standing affiliations with the fishing industry. Only the New England Council currently includes a representative from a national conservation organization, Environmental Defense. Some of the councils include fishing representatives who are also members of local conservation organizations. The North Pacific Council, for example, includes the owner of a small boat who is also a board member of the Alaska Marine Conservation Council, a local fishery conservation group. In the entire history of the council system, however, only a

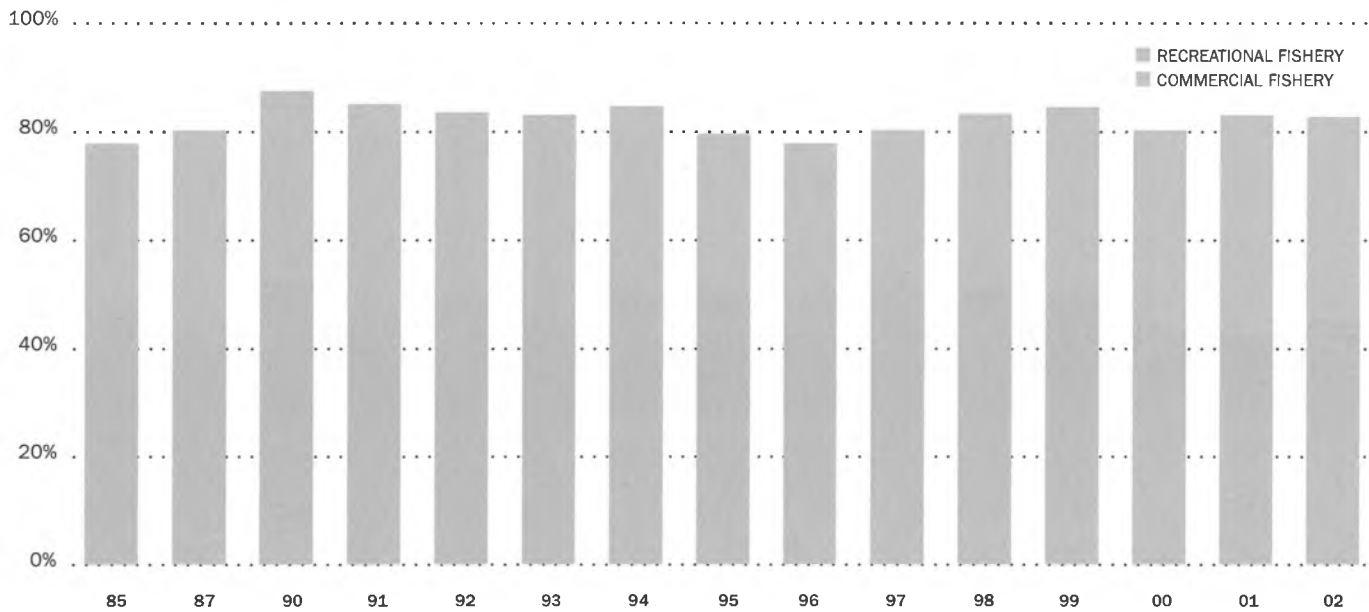
Figure 2. APPOINTED MEMBERS ON EACH COUNCIL 2002

	Total voting members	Appointed members			Voting members who were appointed	Appointed members who were fisheries representatives	Voting members who were fisheries representatives
		Commercial	Recreational	Other			
NEW ENGLAND	18	9	2	1	67%	92%	61%
MID-ATLANTIC	21	6	5	2	62%	85%	53%
SOUTH ATLANTIC	12 *	3	3	1	58%	86%	50%
CARIBBEAN	7	2	1	1	57%	75%	43%
GULF OF MEXICO	17	3	7	1	64%	91%	58%
PACIFIC	14	3	3	2	57%	75%	43%
NORTH PACIFIC	11	4	1	2	64%	71%	45%
WESTERN PACIFIC	13	3	3	2	62%	75%	46%
TOTAL	113	33	25	12	62%	83%	51%

Source: National Oceanic and Atmospheric Administration, 2002 Report to Congress on Apportionment of Membership of the Regional Fishery Management Councils, 2003.

*One appointed seat was vacant in 2002.

Figure 3. REPRESENTATION OF VARIOUS SECTORS OVER TIME

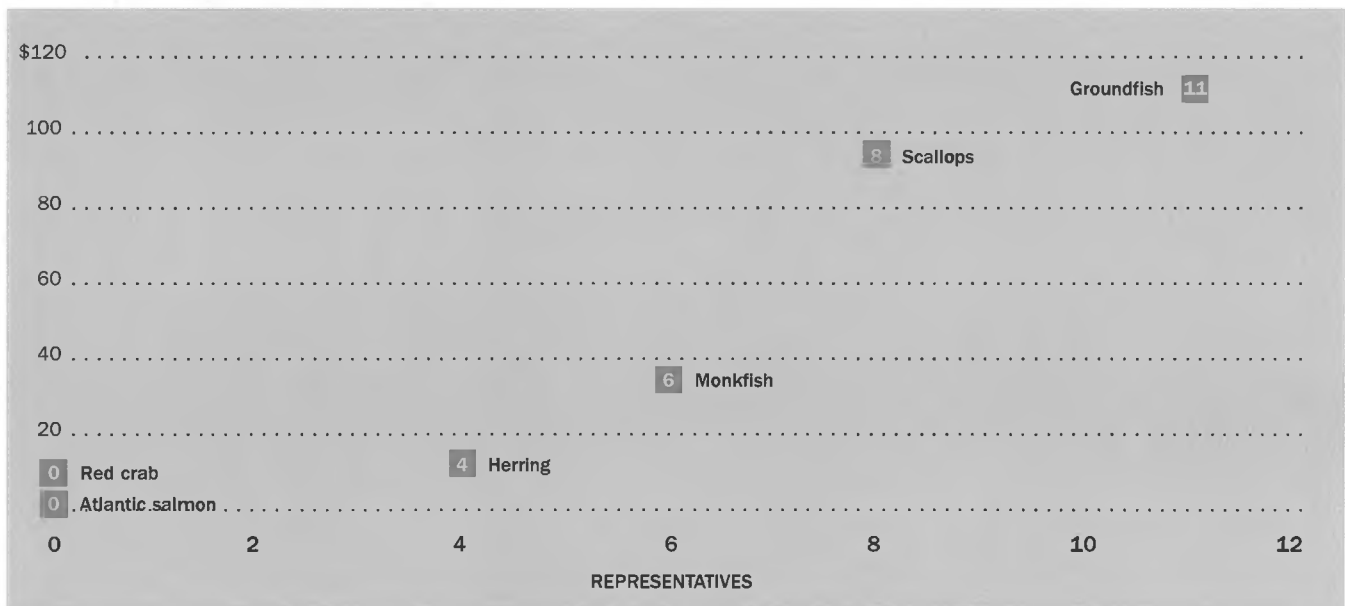


Sources: Cicin-Sain and Knecht, *The Future of U.S. Ocean Policy*, 2000; National Oceanic and Atmospheric Administration, *2002 Report to Congress on Apportionment of Membership of the Regional Fishery Management Councils*, 2003.

Figure 4. NUMBER OF SEATS HELD BY FISHERY REPRESENTATIVES ON THE NEW ENGLAND COUNCIL AS A FUNCTION OF THE ECONOMIC VALUE OF THE FISHERY

Some members represent or participate in more than one fishery.

Value of commercial landings in millions of dollars



Sources: National Oceanic and Atmospheric Administration, *2002 Report to Congress on Apportionment of Membership of the Regional Fishery Management Councils*, 2003; NOAA Fisheries, Division of Fisheries Statistics and Economics, Landings Database, <http://www.st.nmfs.gov/st1/commercial/index.html>.

IN OUR SURVEY, MORE THAN 90 PERCENT OF THE APPOINTED MEMBERS REPORTED THAT THEY WERE APPOINTED TO REPRESENT, AND DID REPRESENT, A PARTICULAR SECTOR OF THE FISHING INDUSTRY.

handful of representatives of conservation groups have served as members.

Since 1985, the percentage of council members who directly work in or represent the fishing industry has ranged as high as 88 percent, never dropping below 78 percent (see Figure 3). Commercial representation among appointed members during the period has varied between 45 and 50 percent, and recreational representation has ranged from 20 to 27 percent of the total. The number of appointed seats held by representatives of a particular fishery can be correlated on some councils with the economic value of that fishery (see Figure 4). Representation of "other" interests throughout the councils has been as low as 12 percent of the total and as high as 22 percent.⁴⁵

Representatives of the fishing industry, of course, are not monolithic, and some see themselves as bringing other perspectives to council meetings. As noted already, one of the fishermen on the North Pacific Council also serves on the board of a local conservation group, and a nonvoting member of the North Pacific Council reported that a "number of council members have a strong conservation ethic." Most appointed members, however, believe that they represent the fishing group from which they are drawn. In our survey, more than 90 percent of the appointed members reported that they were appointed to represent, and did represent, a particular sector of the fishing industry. Many further believed that they represented the interests of particular geographic areas or fishing ports.

State employees who serve as governmental members of the councils also could bring alternative views. Several state representatives noted that they represented the public interest generally (including conservation-oriented interests such as sustainable fisheries), and some emphasized that they were legally required to represent all constituencies. The added diversity, however, is marginal for several reasons. First, many of the governmental members, although they recognize their broader responsibilities to the public, align themselves closely with fishing

interests. Asked whom he represented, for example, one state representative noted that he "directly represent[ed] the fishermen, commercial and recreational," of his state. Nongovernmental council members also reported that governmental representatives often reflected fishing interests. A member of the New England Council, for example, observed that "state directors essentially represent fishing industry participants." One former council member went so far as to suggest that state directors were "the most susceptible to constituent pressures on a wider variety of issues than any single constituency council member would be."

Second, when governmental members try to represent a broader set of public interests (and many do), they almost inevitably balance the interests of their various constituencies. While appointed members feel free to argue for a particular constituency, those governmental members who seek to represent both fishermen and the environment must appear to weigh and reflect the concerns of all constituents. They are thus unlikely to advocate strongly for environmental concerns in the face of strong fishing interests. As a result, they do not bring the diversity of perspectives to the council process needed to ensure that orthodoxy is challenged, other points of view are fully considered, and difficult political decisions are made.

Finally, even if some state representatives bring conservation perspectives to council deliberations, fishing interests still dominate to a degree that undermines effective decision-making. Even groups that include a few minority voices often fall victim to the problem of homogeneity. Debate is most effective when it incorporates a robust, open, and full exchange of different perspectives. Our study, by contrast, found a consistent underrepresentation of environmental views in council deliberations.

Several council members also suggested that the imbalance in council members is remedied in part by broader representation on some of the council advisory committees. While broader representation on these subsidiary bodies is impor-

tant, the panels are not a substitute for balanced councils. Recommendations made by the panels are given to the councils only after they have been approved by majority vote, so the councils do not generally hear multiple perspectives. Ordinarily, moreover, only one or two of the ten or more members of a panel come from outside the fishing industry.

In summary, many of the council members we interviewed believed that the councils did not fully reflect or represent all public constituencies. As one council member put it, the “current ‘architecture’ of the Council system is too ‘coarse’ to be a true and fair multi-party negotiation.” Council members in particular were concerned about the adequacy of environmental representation.

More than half of the respondents, representing all of the four councils surveyed, believed that environmental interests were underrepresented on their councils. Even council members who pointed out that appointees often bring multiple perspectives to the council reported that environmental interests were underrepresented.

POTENTIAL CONFLICTS OF INTEREST

The potential for conflicts of interest heightens the concerns posed by the fishing industry’s dominance of the regional fishery management councils. Advocates of good government often worry that regulated industries may “capture” the agencies that are supposed to regulate them. In a “captured” agency, governmental employees who are sworn to protect the public interest instead protect the interests of the industry.⁴⁶ In the case of the councils, there is no concern about capture because the “agency” itself is composed of industry leaders. The councils cannot be captured by industry because their members are industry members. The question is how seriously council members’ financial interests in fishing and seafood businesses affect the quality of, and the public’s trust in, council decisions.

Avoidance of conflicts of interest has long been a hallmark of good government in the

United States. According to scholars and policy makers, there are several reasons why governments should eschew conflicts.⁴⁷ First, conflicts of interest inherently undermine the American commitment to equal treatment of equal claims. As citizens of the United States, we each expect and demand that the government will treat our interests no differently from those of other citizens. When conflicts of interest exist, however, there is a significant risk that some interests will receive more of a hearing and would be given more weight in the final decision.

Second and relatedly, even conflicts of interest can undermine the integrity of government policy-making institutions. The United States is firmly committed to democratic decision-making processes in which governmental agencies and institutions listen and respond in an open and transparent fashion to differing interests. Potential conflicts of interest open up the possibility of decisions being made not through these democratic processes but through discussions or understandings outside the governmental processes themselves.

Third, conflicts of interest can lead to inefficient regulation. When personal, financial, or relational considerations influence a regulator’s decision, even unconsciously, the regulator is less likely to make the decision that is best for the population as a whole. Potential conflicts of interest, in short, can cloud judgment even

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BLUNTLY PUT IT,
“EVERYONE HAS CONFLICTS.”



CURRENT CONFLICT RULES SET A “VERY HIGH THRESHOLD” THAT IS SELDOM TRIGGERED.

for the regulator who has the best of intentions and has studied an issue extensively.

Finally, potential conflicts of interest can undermine public confidence in governmental institutions. The people’s trust in regulatory agencies such as the regional councils depends on a faith that the institutions are focused on the overall public good rather than on personal gain. When potential conflicts of interest come to light, that trust can be permanently damaged. As a consequence, citizens lose faith in the institutions and are more likely to sue or to ignore the institution’s mandates when they disagree with a decision.

It is important to emphasize that none of these concerns assumes that governmental regulators consciously act on conflicts of interest in order to place themselves in a better financial position. One of the most pernicious aspects of conflicts of interest is that they can undermine effective governance even when a regulator makes the best effort to ignore the conflict and pursue what he or she believes is the public interest. Part of the reason is that it is all too easy for all of us to believe that what is in our own interest is also best for the public at large. We might think we are promoting the public’s best interests when we in fact are advancing our own. Another part of the reason is that the public perception of a conflict of interest having influenced a decision is damaging whether or not the conflict actually did affect the decision.

For all these reasons, both federal and state governments have outlawed conflicts of interest for more than a century. The principal federal prohibition on conflicts of interest within the executive branch imposes criminal liability on any federal officer or employee who participates “personally and substantially . . . through decision, approval, disapproval, recommendation, the rendering of advice . . . or otherwise” in a “ruling or other determination” in which “he, his spouse, minor child, general partner, [or] organization in which he is serving as officer, director, trustee, general partner or employee” has a financial interest.⁴⁸ Although the statute

does not define “financial interest,” the courts have interpreted it broadly as a “real possibility of gain or loss.”⁴⁹

Individual regulatory agencies also have adopted internal rules designed to avoid any potential conflict of interest in their decision-making. The Federal Communications Commission, for example, has long prohibited its officials and employees while they are working for the agency from participating in or having any financial interest in the telecommunications industry.⁵⁰ These prohibitions extend to relatives and business associates of officials and employees as well.⁵¹ The former Interstate Commerce Commission also barred its members and employees from holding any securities or other financial interests in any transportation carriers or other entities that were subject to regulation under the Interstate Commerce Act.⁵² Similar regulations have been adopted by a large number of independent and executive federal regulatory agencies, including the Bureau of Alcohol, Tobacco, Firearms and Explosives,⁵³ the Office of Thrift Supervision,⁵⁴ the Federal Energy Regulatory Commission,⁵⁵ the U.S. Food and Drug Administration,⁵⁶ and the Farm Credit System Insurance Corporation.⁵⁷

MORE THAN 60 PERCENT OF ALL APPOINTED MEMBERS REPORTED HAVING A DIRECT FINANCIAL INTEREST IN FISHERIES THAT THEIR COUNCILS MANAGE AND REGULATE.



When Congress passed the FACA, one of the issues it considered was the advisability of permitting advisory bodies that often include industry representatives to make ultimate decisions. As Congress noted, a “number of committees . . . have been allowed to take on a quasi-decision-making status.”⁵⁸ In Congress’ view this was dangerous, in part because special interest groups might “exert undue influence upon the government through the dominance of advisory committees which deal with matters in which they have vested interests.”⁵⁹ FACA therefore provides that the “function of advisory committees should be advisory only, and . . . all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.”⁶⁰ Congress, in short, did not want committees subject to conflicts of interest to be involved in ultimate decision-making.

Potential conflicts of interests, however, are the rule rather than the exception among appointed members of the regional fishery management councils, who are specially exempted from federal conflict-of-interest laws. To determine the degree of the potential conflict, we examined the financial disclosure forms that council members had filed in the previous six years. These forms show the particular fisheries in which members have financial interests (although they do not disclose the extent of their interests). Not surprisingly, given their backgrounds, more than 60 percent of all appointed members reported having a direct financial interest in fisheries that their councils manage and regulate. This percentage actually understates the potential degree of conflict on the councils because it does not include appointed members who lobbied or otherwise represented fishing industries for financial compensation but who did not participate in the fishery.

Under existing conflict-of-interest rules governing the regional councils, moreover, council members can frequently vote on management decisions even though the decisions

may directly affect their business interest.

Members of the regional councils appear to be the only governmental decision-makers at the federal level who are exempt expressly from criminal liability for conflicts of interest.⁶¹ Under the Magnuson-Stevens Act, a council member is free to vote on a management action unless the action “would have a significant and predictable effect” on his or her financial interests. According to the act, moreover, an action has a “significant and predictable effect” only when the member would enjoy an “expected and substantially disproportionate benefit . . . relative to the financial interests of other participants in the same gear type or sector of the fishery.”⁶² Under NMFS regulations, council members follow a “10 percent rule” in which council members recuse themselves if their interest in the fishery at issue is greater than 10 percent.⁶³ As one council member observed, this is a “very high threshold” that is seldom triggered.

Governmental records indicate that council members seldom formally recuse themselves in practice. To determine how often council members actually recuse themselves from council decisions because of potential conflicts of interest, we asked NMFS for copies of all formal recusals filed by council members. NMFS, in turn, was able to produce documentation of only two recusals since 1997, despite the fact that council members participated in thousands of management decisions during this period of time. Two survey responses referred to voluntary recusals other than those documented by NMFS, suggesting that council members sometimes might recuse themselves or decline to vote without following formal procedures. The survey responses as a whole, however, indicate that even informal recusals are infrequent events. Instead, council members often find reasons to justify voting on issues in which they, family members, or friends have financial stakes (see Box 8).

Council members confirmed in the surveys that conflict-of-interest standards are quite lax. According to one appointed member of the

THE SURVEY RESPONSES AS A WHOLE INDICATE THAT EVEN INFORMAL RECUSALS ARE INFREQUENT EVENTS. INSTEAD, COUNCIL MEMBERS OFTEN FIND REASONS TO JUSTIFY VOTING ON ISSUES IN WHICH THEY, FAMILY, OR FRIENDS HAVE FINANCIAL STAKES.

Gulf Council, members “are required to disclose any and all financial connections we have to industry every year. Once that is done, we are able to vote on any or all matters!” A member of the North Pacific Council reported that he could not imagine any situation in which a council member would recuse himself or herself because of involvement in the fishing industry. “I’m not sure that it would ever happen. I think the system is designed whereby Council mem-

bers representing industry vote their self-interest.” Most council members simply seemed resigned to the existence of conflicts of interest on the councils. As one appointed member bluntly put it, “Everyone has conflicts.”

Council members are themselves concerned about conflicts of interest among the members. As the outgoing chairman of the Pacific Council, Hans Radtke, recently said, “All you have to do is look at the makeup of the Council

Box 8:

IS THERE ANY JUSTIFICATION FOR ALLOWING CONFLICTS OF INTEREST ON THE COUNCILS?

themselves, even if they have a personal interest in the fishery at issue, because members with potential conflicts may have knowledge or expertise of importance to the debate. As one nonvoting member observed, appointed members are on the councils because of their “knowledge and experience.” Or, in the words of another nonvoting member, “members are (or should) be selected on their basis of fishery knowledge and often the member most involved is the one who can make significant contributions to the discussion.” According to these council members, the only issue should be whether council members reveal their potential conflicts. “As long as you know their involvement they may be the expert you need.”

As discussed in Box 11, however, fishermen do not need to vote on fishing measures in which they or friends have financial interests in order to provide their expertise to the management process. Conflicts of interest become troubling only when fishermen are involved in, or vote on, final decisions about management measures that affect them, their family, or friends.

Several other members believed that a council member should not recuse himself, even if his fishing constituency would benefit, because a central purpose of the councils is to ensure that all fishing interests are represented. According to one council member, representing a particular fishery “constituency” inevitably means voting for measures that will benefit friends, neighbors, or clients. Or, in the words of another council member, “Their constituents expect them to stand up for them, which

should be expected.” Again, disclosure was the key to most of these council members. If a council member reports the potential conflict, other council members can take that into account in evaluating their views. In the opinion of several respondents, conflicts of interest always have been present but seldom have influenced decisions.

A variant on this argument is that conflicts of interest are not significant on the councils because fishermen will want to preserve the very fisheries that support them. As one council member observed, the “original concept of the [Magnuson-Stevens] Act was that fishermen would make the ‘right’ decision because they were (1) most knowledgeable, (2) it was in their best interest to do so.”

Other council members suggested that the structure of the councils makes conflicts of interest less troubling than they might first appear. Several council members, for example, suggested that the diversity of fishing interests on the councils reduces the risk that conflicts of interest will undermine the public interest. Fishermen, one council member suggested, are good at pointing out when colleagues are voting their interest rather than good public policy: “There is no one who can cause a red face issue faster than a competitor or someone in a like situation.” The same council member also suggested that the presence of state and federal officials, as well as the occasional appointee from outside the fishing industry, “buffers” the conflicts. One NMFS representative similarly suggested that “there are enough voting members of the Council to balance viewpoints.”

Because council members are often appointed to represent particular fishing interests, several council members suggested that members should recuse themselves only when they would benefit more than other members of the industry. As one governmental member described the issue, the important distinction is the “boundary between [the council member’s] particular fishery need and the needs of all those involved in that fishery. The former may be C of I; the latter is not.” Or, as another council member expressed the difference, only “specific benefits,” not “sectoral benefits,” justify recusal.

As other council members noted, however, these arguments ignore the imbalance in interests represented on the councils. As discussed in the text, conservation interests are not represented on most councils. In answer to the question of whether he thought it was ever “unfair” for another council member to participate in a vote in which he or she had a conflict of interest, one appointed representative replied:

“All the time. Self-interest defined as direct financial interest is much too low an ethical standard. If this were a true multi-party negotiation with all ‘stake holders’ adequately represented at the table, then the self-interest question would tend to balance out in negotiation. However, the current structure is much too ‘coarse’ and it is possible for one sector to economically disadvantage another through coalition building amongst the voting members. Direct financial interest is hidden in management trends over time.”



In our survey, we tried to get a sense of how council members themselves felt about the conflict-of-interest issue. No council member disagreed that potential conflicts pervade the council system. At the same time, council members differed as to what, if anything, ought to be done about conflicts.

Some council members reported that they felt uncomfortable about voting on particular issues but ultimately justified to themselves that it was okay to vote. One of the council members, who was from a commercial fishery, justified voting on the ground that only a small number of commercial representatives sat on the council, so recusal would undermine the commercial voice. Another council member dealt with uncomfortable situations in which a vote would favor friends or former business associates either by not saying much during council debates or by announcing the nature of the potential conflict at the start of discussion so that other council members would know.

A number of council members tried to justify the current lax conflict-of-interest rules. Some argued that council members should not recuse

and see the conflict of interest.”⁶⁴ About a third of those who responded to our survey reported that they had considered it unfair in one or more instances for a fellow council member to participate in a decision because he or she had a financial interest in the outcome. Similarly, one-third believed it had been unfair for a fellow member to vote in light of financial interests held by relatives or friends. Written comments further highlighted the nature of these concerns. One member of the New England Council, for example, reported that “many council members are influenced by impact of decision on selves or friends,” even where there was no technical conflict under the council regulations. One nonvoting council member reported “times when I felt that council members pushed the envelope” and noted that the “current regs are fairly ineffectual.”

Some council members observed that it was difficult for council members to isolate themselves from conflicts of interest and vote the public interest. One state representative put the point well when he said: “There are very few truly objective Council members who aren’t always thinking about impact of rules on their livelihoods. Just human nature. The few Council members who look beyond parochial interests are the real fisheries management heroes and heroines.” Even those council members who wish to take a more public perspective sometimes find it difficult to achieve. According to one commercial fisherman who is a member of a council, although the “culture” of that council is to “strive for the ideal — conservation above constituency,” the “reality is that a few Council members make blatant allocation grabs, and/or lobby shamelessly for a specific constituency — forcing the entire body into a much cruder form of negotiation.” As one member put it: “How could I be expected to vote against my job and my community?”

The participation of fishermen in management decisions involving their fishery also heightens the tension between conservation and allocation described earlier. As one appointed council member related the problem, “Council

members view every decision as allocative. Every member feels his role is to defend his sector.” Council members vote for laxer fishing standards to ensure that their sectors are protected.

One might wonder, however, why representatives of the fishing industry do not worry more about the long-term sustainability of fisheries in making conservation decisions. Industry representatives typically have a short-term interest in high catches, but future employment in the fishing industry depends on sustainable fisheries. Indeed, supporters of the council system frequently argue that fishermen ought to be in charge because their livelihoods depend on the continued existence of healthy fish stocks.

Social scientists have long been interested in whether resource users such as fishermen will favor their short-term or long-term interests when the two interests conflict. Researchers have found that resource users typically resolve the conflict in favor of avoiding short-term sacrifices, for several reasons. First, people are inherently optimistic, particularly if there is any scientific uncertainty regarding the impending tragedy. Resource users believe that gloomy predictions of resource depletion are unlikely to come true, and that, if the predictions do come true, they will find a way to deal with the problem. Second, resource users tend to discount strongly the future benefits of current sacrifices. Trying to weigh the current costs of catching fewer fish against the future benefits of having a sustainable fishery, people focus on the current costs. Third, most people, not just fishermen, will accept significant future risks to avoid even relatively small current losses. People do not like to sacrifice and so will gamble on the future to avoid a current sacrifice. Finally, resource users are slow to blame themselves for the decline of their resource and thus typically are unwilling to support solutions that damage their own interests. All of these cognitive “biases” combined make it very unlikely that most fishermen will support significant catch reductions even where needed to ensure the long-term sustainability of their fishery.⁶⁵

“[THERE WERE] TIMES WHEN I FELT THAT COUNCIL MEMBERS PUSHED THE ENVELOPE AND [THE] CURRENT REGS ARE FAIRLY INEFFECTUAL.”

— A NONVOTING COUNCIL MEMBER

THE QUESTION IS HOW SERIOUSLY COUNCIL MEMBERS’ FINANCIAL INTERESTS IN FISHING AND SEAFOOD BUSINESSES AFFECT THE QUALITY OF, AND THE PUBLIC’S TRUST IN, COUNCIL DECISIONS.

LITTLE EFFECTIVE FEDERAL OVERSIGHT

These various structural problems might not lead to adverse results for U.S. fisheries if NMFS were able to easily police the councils' decisions and substitute its own judgment when needed. Although NMFS in theory enjoys the authority to oversee the councils, the procedures established by the Magnuson-Stevens Act make it difficult for NMFS to execute this authority effectively. NMFS, moreover, does not have the resources, nor perhaps the political clout, to police the councils closely.

NMFS' principal power over the councils, as noted earlier, is its authority to disapprove all or parts of council plans and management measures that are inconsistent with the national standards and other provisions of federal law. Yet the Magnuson-Stevens Act allows NMFS only ninety days in total (including sixty days for public comments and thirty days for review of those comments) in which to decide whether to approve submitted plans. While the exigencies of fishery management dictate as speedy a review as possible, the review period often is too short to permit a thorough and adequate review. If NMFS disapproves all or part of an FMP, moreover, the plan returns to the councils, which enjoy unlimited time to amend and submit a revised plan. In deciding whether to reject a management measure, NMFS therefore must balance the costs of approving an inadequate measure with the possible costs of delaying needed action.

Not surprisingly, NMFS seldom has disapproved submitted FMPs. In order to assess the rate at which NMFS has disapproved council measures, we examined the *Federal Register* for all actions by NMFS since 1980 approving or disapproving an FMP. Because the Magnuson-Stevens Act does not require NMFS to publish such actions in the *Federal Register*, we also used the Freedom of Information Act to request copies of all "Section 304(a)(2) letters" sent by NMFS to the councils in the six-year period between 1997 and 2002. Under section 304(a)(2) of the Magnuson-Stevens Act, NMFS must send

such a letter, explaining its reasoning, to any council whose FMP it rejects or partially accepts.

The two studies show that disapprovals of council management measures are rare. Between 1980 and 2000, NMFS partially disapproved only 62 of approximately 860 proposed plans, amendments, or annual specifications — resulting in a partial disapproval rate of 7 percent.

This figure, moreover, overstates the actual degree to which NMFS disapproves specific council decisions. FMPs can include scores of individual management measures, and partial disapprovals may remand only one or two of these measures. The annual specification for the Pacific groundfish fishery, for example, contains well over 100 management measures: annual catch quotas for more than 100 species of fish, as well as seasonal restrictions, area restrictions, and gear restrictions.

In order to more accurately assess the rate of disapprovals, we therefore examined the rate at which NMFS has disapproved the individual management measures that are contained in each plan, amendment, or specification. For purposes of our study, an "individual management measure" is a provision in a management document aimed at controlling a particular fishing or fish processing activity. Parsing each plan into its individual measures was not simple, and necessarily involved some judgment. We therefore took a conservative approach that erred in favor of finding a high rate of NMFS disapprovals.

Using this conservative approach, we determined that each plan, amendment, or specification during the period studied contained on average approximately twenty individual management measures. We then looked at each NMFS disapproval since 1980 and found that, when it disapproved a plan, NMFS on average disapproved slightly more than one measure each time. In 51 of the 62 cases, NMFS disapproved only one individual management measure. During the study period, therefore, NMFS disapproved at best 0.4 percent of the individual management measures submitted by the councils — or only one in every 250 measures.

“COUNCIL MEMBERS VIEW
EVERY DECISION AS ALLO-
CATIVE. EVERY MEMBER
FEELS HIS ROLE IS TO
DEFEND HIS SECTOR.”

— AN APPOINTED COUNCIL
MEMBER

Formal disapproval of a management measure is not the only way for NMFS to oversee council decision-making. A voting representative from the agency sits on each council. According to one state representative on the New England Council, this seat is quite “powerful” because the NMFS representative can warn a council that NMFS is likely to reject a particular management measure if it is not modified. While the council is not obligated to heed these warnings, such advice may have some effect on the final vote. In practice, however, the low rate of NMFS disapprovals undermines the effect of such a warning on council decisions. In the king mackerel case study (Box 7), for example, the NMFS delegate voted against the proposed quota on the ground that it violated the Magnuson-Stevens Act. The regional administrator later approved this same quota.

In three limited situations, NMFS has the authority to draft federal management plans. As already noted, NMFS can prepare a “secretarial plan” when a regional council fails to write an FMP for a fishery that “requires conservation and management” or does not make changes to a plan that NMFS has not fully approved. NMFS also may write emergency regulations or interim measures for a fishery when “needed to reduce overfishing.” Finally, NMFS is obligated to write a rebuilding plan for a fishery when a council fails to do so within a year of being notified that the fishery is overfished. In the history of the Magnuson-Stevens Act, however, NMFS has rarely used any of this authority to create and implement a plan or management measure over the objection of the regional councils. In each of the three situations, a council must effectively grant NMFS jurisdiction to write a plan by abdicating its primary responsibility.

If NMFS does not effectively oversee council decision-making, what of judicial review? While federal courts are in a position to “disapprove” council actions, judicial oversight is limited. First, courts will not review a council action unless a plaintiff files a lawsuit challenging the legality of the action. And lawsuits are

costly, time-consuming, and complex. To file a lawsuit, plaintiffs must have standing to bring the case, must have significant funding, and must have been closely following the often-complicated administrative proceedings. Plaintiffs are further constrained by time: a plaintiff has only thirty days in which to challenge an NMFS approval. While the number of such lawsuits has increased over the past ten years, there are not nearly enough plaintiffs and resources to review the vast majority of council actions.⁶⁶

Even when a lawsuit is filed, judicial review of the NMFS decision is narrow. Courts will overturn an NMFS decision when it is found to be “arbitrary and capricious.” This is a very unusual finding, and it is reserved for cases in which the agency’s actions are clearly egregious. On the basis of extensive precedent, courts provide great deference to agencies, especially where legislative standards are broad and the science is complicated and uncertain.⁶⁷

Neither NMFS oversight nor judicial review, in summary, is designed as an effective substitute for good decision-making by the councils. Both agency review and judicial review are fail-safe systems designed to catch and remedy the occasional error. They cannot cure the institutional problems that currently plague the councils’ work.

“YOU CAN’T LEGISLATE
AGAINST APATHY.”

— COUNCIL MEMBER



OTHER ISSUES

In addition to the central problems discussed earlier, several other factors undermine the councils' ability to manage the nation's fisheries. First, the council process discourages broad national participation in fishery decisions. Fishery management is complicated, and the process by which decisions are made is often opaque. Decision-making is decentralized, requiring interested members of the public to follow processes in multiple councils, each with slightly different procedures. Even though the general public has opportunities to comment on council decisions by going to council meetings or submitting written comments, the process seems inaccessible to much of the public. The widely held perception that, because of conflicts of interest, the councils are predisposed to discounting views other than those of their fishing constituents further discourages public participation.

A second problem arises from the limited time and resources available for council decision-making. Council members — almost all of whom hold full-time jobs elsewhere — can attend only a handful of short meetings each year, during which they must assimilate a great deal of information and make decisions with significant ecological and economic consequences.

Finally, the council process reduces accountability to the public. While councils make the important management decisions, only NMFS must formally respond to public comments regarding management. Furthermore, the "shared" authority of the councils and NMFS blurs responsibility. Because neither NMFS nor the councils are clearly responsible for management successes or failures, pressure to improve fishery management is diluted.

PUBLIC PARTICIPATION

There are two ways for the public to provide input into council decision-making. First, most council meetings and panel meetings are open to the public. While the councils are not subject to the public participation requirements of either

the Federal Advisory Committee Act or the Administrative Procedure Act, the Magnuson-Stevens Act requires that members of the public be allowed to speak *or* submit written comments at all meetings. Although it is not required, the councils customarily schedule a time at meetings during which members of the public can address the council and the audience. Second, the public can submit written comments during the "notice and comment" period that follows publication of the proposed federal regulations. NMFS is legally obligated not only to publish proposed regulations in the *Federal Register* but also to respond to the public's written comments. In contrast, even though the councils draft the proposed regulations, however, the councils are not obligated to respond to any written comments submitted by the public.

Despite the limitations, almost 70 percent of the council members surveyed believed that the public had an adequate opportunity to provide input into council decisions. According to one governmental member, "There are numerous opportunities for public participation in the Council process. This is one of the most transparent processes I have ever worked under." A state representative similarly noted that council decision-making is a "very open, slow

"A SPECIFIC QUOTA OF SEATS SHOULD BE HELD BY PEOPLE WITHOUT FISHING INTERESTS."

— COUNCIL MEMBER



moving process with tons of paper shipped out to anyone who wants it.” One council member argued that

the Council structure is far more open, for example, [than] the US Forest Service, NPS [National Park Service], BLM [federal Bureau of Land Management] decision processes that are essentially “in-house” with chief of staff and the Superintendent making all the decisions. The Council process exposes this for public scrutiny to a much higher degree than other agency processes. The NMFS must still, after receiving advice at the regional level, process and manage the decision through the normal agency processes. This gives the public more than a double-dip in terms of involvement.

Few of the interviewed council members, however, believed that the public took adequate advantage of existing opportunities to comment on council decisions. In responding to the survey, only 22 percent of council members reported that they believed the public took full advantage of available opportunities. Some council members attributed the low level of public participation to indifference and lethargy. “People who have an interest and want to take the time are involved, those who do not are not involved.” Or, as another council member pithily put it, “You can’t legislate against apathy.” On the basis of our study, however, we believe that other institutional factors are also at work.

While there appear to be sufficient opportunities for the public to become involved in the council process, there are several significant impediments to such involvement. First, the public must actually know about the meetings and be able to get to them. Although fishery management is of national importance, the council system is decentralized, and councils often do not meet in large population centers. Second, the process by which the councils make their decisions is complex and lengthy, involving multiple advisory groups and steps. Unpaid participants find it difficult, to say the least, to follow the complex proceedings carefully enough and for long enough to provide meaningful, specific

input at the correct stages. Third, the fishing industry’s dominance of the councils dissuades participation by those outside the fishing industry. Many members of the public see little reason to participate in a process when the outcome appears to be predetermined or when they believe that their views are likely to be discounted.

A number of the council members who responded to our survey acknowledged the existence of some or all of these problems. According to one appointed council member, it is “often difficult to attend meetings due to costs.” Another council member suggested that the “public is generally mystified by the process” and that the long-drawn-out nature of the process makes it more difficult to participate. One member of the Gulf Council also suggested that the council does not give much weight to public input when it is provided. After reporting that the public finds it difficult to participate because of travel and other costs, the council member continued: “Even more disconcerting, public testimony really doesn’t seem to weigh too heavily with the Council.” For this reason, the council member was not surprised that there was little active public participation.

It is not only members of the general public whose voices sometimes are not heard. Although one of the primary purposes of the councils is to assure fishermen that they have a say in fishing decisions, the system does not necessarily provide it. Several council members reported that fishermen do not participate as fully as they might in council proceedings because, to use the words of one council member, they “do not feel that they’re part of the process.” A number of these council members also reported that they believed that the fishermen “have a legitimate complaint” about the process.

PROCESS AND RESOURCE CONSTRAINTS

In managing the nation’s coastal fisheries, the councils must meet a tight schedule when putting into place the appropriate management measures for the following year. Because underlying scientific and economic information is continuously being updated, the councils must revise management measures accordingly. This schedule can

“SCRAP CURRENT LAW AND PROCESS-RELATED REGS AND START OVER AGAIN. STOP TRYING TO FINE TUNE THE LAST FINE TUNING.”

— COUNCIL MEMBER

“EVEN MORE DISCONCERTING, PUBLIC TESTIMONY REALLY DOESN’T SEEM TO WEIGH TOO HEAVILY WITH THE COUNCIL.”

— COUNCIL MEMBER

“ALL TOO OFTEN, EXTREMELY COMPLEX ITEMS ARE QUICKLY DISCUSSED AND VOTED ON IN AN EFFORT TO GET THROUGH AN AGENDA AS QUICKLY AS POSSIBLE.”

— COUNCIL MEMBER

force the councils to make decisions whether or not they have had ample time to consider them.

Despite the tight regulatory schedule and significant workload, council membership is only a part-time job. Almost all council members hold full-time jobs elsewhere and are able to focus on fishery management only during council meetings. The councils meet four times each year for, at most, a week at a time. This means that council members are working on fishery management for fewer than thirty days each year. Given the complex nature of the decisions that must be made, and the large amounts of economic and scientific information that must be assimilated, the temporal and human resource constraints make it difficult for council members to engage in careful and well-considered decision-making.

Many members agree that they have insufficient time and resources to carry out the responsibilities they are given. In our survey, several members specifically reported that the councils had too much to handle in the short periods of time they met. As a result, councils sometimes had to simplify their analyses. “All too often,” one council member reported, “extremely complex items are quickly discussed and voted on in an effort to get through an agenda as quickly as possible.”

ACCOUNTABILITY

Several council members who participated in our survey worried that the councils were not sufficiently accountable to the public for their management actions. The most specific concern focused on the council’s voting system. As one former council member noted, most councils do not use roll call votes, so the public cannot determine later (or perhaps even at the time) how each council member voted. As a result, the council member concluded, “no one is accountable” for the decisions that are made.

Because of exactly this concern, major federal regulatory agencies such as the Securities and Exchange Commission and the Federal Trade Commission record individual votes for significant actions. When forced to openly record their individual votes, members of a commission or committee may take greater responsibility for and care in their decisions.

The problem of accountability, however, extends beyond the council’s voting method. The division of responsibility between the councils and NMFS also undermines the accountability of both organizations. As discussed earlier, the councils are responsible for writing the management plans and regulations, and NMFS is responsible for reviewing the plans’ consistency with the Magnuson-Stevens Act and for implementing the regulations. This shared responsibility clouds ultimate accountability for failures in fisheries management. When two organizations share responsibility for an action, each of the organizations can blame the other for breakdowns, and neither organization may feel accountable for solving the problems.

Further undermining accountability, the councils’ involvement in fisheries management officially ends after they have submitted proposed plans and regulations to NMFS. This partially shelters the councils from public disapproval of their actions. While the councils must provide for public participation, federal law does not require them to respond formally to public comments on their plans or regulations. NMFS, by contrast, must publish the proposed plans and regulations in the *Federal Register*, collect public comments, and respond to those comments. Members of the public who believe that a plan or regulation violates the Magnuson-Stevens Act may sue NMFS, not the councils. NMFS and other federal agencies, not the councils, are responsible for implementing the plan.

RECOMMENDATIONS

So what should the federal government do in response to the problems that we have outlined? Although some council members argue that the regional councils perform well despite their warts, the United States can and must do far better. Both the serious character of many of the councils' problems and the need to rebuild the nation's fisheries demand more than tinkering at the edges. The councils' balance is seriously askew; potential conflicts of interest are widespread and obvious; visibility and accountability to the American public at large are low. The problems are sufficiently fundamental and obvious that many council members with whom we talked, both voting and nonvoting, both governmental and appointed, reported there is a need for change. As one council member stated when asked which reforms were needed, "Scrap current law and process-related regs and start over again. Stop trying to fine tune the *last* fine tuning." With more than a third of American fisheries in need of rebuilding and over a quarter still being overfished, the nation needs to ensure that it has the most effective system in place to evaluate and manage its fisheries.

The question is how to reform the current management structure. The regional councils, as discussed in the first part of this report, face a variety of different problems. In thinking about reforms, however, the key is to focus on the most significant and basic problems — the tethering of conservation and allocation in a way that places pressure on the councils to relax conservation measures; the narrow perspectives represented on most councils; and the potential conflicts of interest that current law leaves largely unrestrained. If the councils are to be more effective in their conservation mission, reforms must solve these paramount problems. And only Congress can enact the needed reforms.

SEPARATING CONSERVATION AND ALLOCATION

The most important reform would be to separate conservation and allocation decisions, leaving allocation decisions in the hands of the councils but giving responsibility for conservation decisions to a separate governmental entity. As discussed in Box 9, ours is not the

Box 9:

PREVIOUS STUDIES OF THE COUNCIL SYSTEM

Studies of the council system began within a year of the passage of the Magnuson-Stevens Act. In 1977, a report to Congress written by the three interstate fishery management commissions recommended, among other things, that the act be amended to provide for more balanced council membership. Since that time, governmental agencies, scientific and environmental organizations, and academics have conducted more than thirty studies, an average of more than one per year.

In these studies, the most frequently made criticisms of the councils are that (1) they have failed to prevent overfishing; (2) they lack accountability; (3) they do not represent all legitimate interests and viewpoints; (4) they are hindered by ubiquitous conflicts of interest; (5) they favor short-term gains over long-term benefits; that is, they are better at encouraging development than they are at conservation; (6) they do not view themselves as trustees of fisheries resources; (7) they often yield to pressure from fishermen to raise quotas; and (8) they are not particularly well suited to the task of science-based decision-making.

The authors of prior reports have suggested five ways to solve these problems. First, more "environmental representatives" should be appointed to the councils. Second, council members should be subject to stricter conflict-of-interest rules. Third, NMFS should take a more active role in overseeing and reviewing council decision-making. Fourth, the language of the National Standards should be tightened to narrow the councils' discretion in carrying out the conservation mandate of the act. Finally, Congress should take the responsibility of conservation decision-making away from the

councils and give it to a federal agency.

One of the most important studies was the 1986 Calio Report, prepared by eleven fishing experts at the request of Dr. Anthony J. Calio, then administrator of NOAA.* In its principal finding, the Calio Report concluded that fishery management would "be markedly improved by a clear separation between conservation and allocation decisions." When the same entity has responsibility for both decisions, the report found, "the pressures are always to add more effort to serve the interests of more users." The Calio Report therefore recommended that "NOAA set ABCs [allowable biological catches] for regional fisheries at the national level, on the basis of the best scientific information currently available" and using local and regional expertise. NOAA's decision-making would be subject to all the standards of good government, including the procedures of the federal Administrative Procedure Act. The regional councils would then make the allocations, which could not exceed the ABCs.

The Calio Report also concluded that the nomination process for appointed members of the councils, under which governors nominate three people, must be changed "to assure the selection of people who are capable of making knowledgeable, equitable and representative fishery management decisions." The report recommended inviting open nominations by any interested groups or individuals, including governors, within a council's geographic jurisdiction. A nine-member review board would then evaluate the nominees and, for each position to be filled, "certify to the Secretary of Commerce the three best qualified nominees."

* U.S. Department of Commerce, *NOAA Fishery Management Study* (Washington, DC: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, June 30, 1986).

first study to conclude that conservation and allocation decisions should be separated and made by separate governmental agencies. A 1986 study commissioned by the administrator of NOAA (commonly known as the “Calio Report”) reached an identical conclusion, recommending that NMFS set quotas on a national level for regional fisheries and that the

councils then allocate the quotas (or a lower catch level if the councils deemed it appropriate) among local fishing interests.⁶⁸ This recommendation was recently echoed by the Pew Oceans Commission.⁶⁹ We agree with the Calio and Pew Commission reports that conservation and allocation should be separated, although having NMFS set the quotas is only one of several options for relocating responsibility for the conservation decisions. As discussed in the first part of this report, having the councils make both conservation and allocation decisions creates unnecessary pressure to relax conservation standards. Many of the other problems discussed in this report would either disappear or become easier to resolve if the councils were responsible only for allocation decisions. As discussed in Box 10, Alaska’s fishery management has benefited from a similar division of conservation and allocation decision-making between state agencies.

There are no compelling reasons, moreover, why the councils should make conservation decisions. As explained in Box 11, members of the fishing industry can provide useful input into conservation through other mechanisms, without having ultimate authority over conservation decisions. There are compelling arguments, by contrast, for having those individuals with relevant scientific expertise and training in risk assessment and risk management involved in conservation decision-making. There also is a strong case to be made for making conservation decisions at a national, rather than a regional, level. Coastal fisheries are a national resource, and the entire country has an interest in ensuring their sustainability. As discussed earlier, the council system, by decentralizing conservation decision-making, undermines active public participation in fisheries conservation.

The councils, however, could be effective institutions for making allocation decisions. The way in which quotas and other fishing rights are allocated among members of the

Box 10:

THE ALASKA SYSTEM: BENEFITS OF SEPARATING CONSERVATION FROM ALLOCATION

A desire for “home rule” of its fisheries was a driving force behind the Alaska statehood movement. In the Alaska Statehood Act of 1958, Congress conditioned the transfer of fisheries management authority from the federal government on Alaska’s design of an effective system that would conserve the state’s fisheries in a manner consistent with “the broad national interest.”

Alaska eventually developed a system headed today by a board of fisheries. The Alaska Board of Fisheries works with a state agency, the Alaska Department of Fish and Game (ADF&G), to manage Alaska’s fisheries resources from shore out to three nautical miles. The Board of Fish, as it is known, consists of seven members appointed by the governor and confirmed by the legislature. The board’s current membership includes two retired ADF&G employees, two representatives of commercial fishing interests, one processor representative, one sportfishing representative, and one representative of native Alaskan interests.

Under Alaskan law, all the substantive management authority is vested in the Board of Fisheries. The board is responsible for setting quotas, establishing open and closed seasons, and allocating the quota among users. ADF&G’s primary statutory responsibilities are to perform scientific research in support of fisheries management, make management recommendations to the board, and implement and enforce board regulations.

In practice, however, Alaska separates conservation and allocation decision-mak-

ing, with the ADF&G determining the quota and the board then allocating the quota among fishermen. The Board of Fisheries almost always accepts the ADF&G’s conservation recommendations. The board’s deference to the ADF&G in this regard has been so complete that many of the ADF&G’s own personnel are under the impression that it is the ADF&G, not the board, that has formal authority to set catch limits.

The ADF&G’s commissioner, Frank Rue, believes that Alaska’s system is “a model for success” because of the separated functions. According to Rue, “[The board] makes allocation decisions, and the [ADF&G] gives the board information on how many fish are available, tells it what management strategies are possible, and performs in-season management to make sure any surplus resource can be harvested.”*

Rue is correct that the split management system has helped ensure effective conservation. In 2001, the Marine Stewardship Council certified the Alaska salmon fisheries — the source of most of the world’s ocean-caught salmon and the largest employer in the state — as sustainably managed, one of the first fisheries in the world so certified.

* Testimony of Frank Rue to the Alaska House Resources Committee regarding HB 216, April 2, 2001.

fishing community, in most cases, is of far greater regional than national interest and importance. Regional councils, therefore, can enable those with the greatest stake in allocation decisions to participate more effectively in those decisions. Members of the fishing industry, moreover, often have specialized or localized knowledge that makes them well qualified to make many allocation decisions. Reforms are needed to ensure that councils do a fair and effective job of allocation, but, with reforms, councils could be valuable institutions for making allocation decisions.

In separating conservation and allocation, Congress will need to make several decisions. First, what body should be responsible for making conservation decisions? Although NMFS is an obvious candidate, Congress might also consider creating a new institution, such as an interagency scientific panel. The important criteria are that the decision-making be national, with significant scientific expertise and subject to the standard rules of good government. Second, Congress will need to provide some guidance on what constitutes a conservation, rather than an allocation, decision. Many conservation decisions have allocative impacts, and there is thus no bright line between conservation and allocation. The two functions are sufficiently separate, however, that they can be effectively split. In designing a new management system, Congress can draw on the lessons of other effective systems that separate protection and allocation, such as the federal Clean Air Act (see Box 12).

BROADENING COUNCIL REPRESENTATION

Regarding other potential changes, the most commonly recommended change suggested by the council members whom we surveyed was to expand the range of views represented on the councils. Some council members simply suggested, without specifics, that ways be found to represent more nonfishing interests

on the councils. Other council members proposed more concrete changes to council representation. One governmental member, for example, suggested that council votes be split three ways, with commercial, recreational/charter, and environmental/academic interests each getting one-third of the votes. Another suggested that governors "be required to submit more slates of nominees" and that councils have "a specific quota of seats to be held by people without fishing interests." One nonvoting council member suggested that Congress

Box 11:

ENSURING FISHERMEN'S INPUT INTO MANAGEMENT

Fishermen can provide valuable input into fisheries management. Fishermen possess unique knowledge, particularly concerning the business of fishing. Policy makers can and should use this knowledge to make management more efficient, effective, and fair. Further, fishermen's involvement in management can increase the chances of success by creating greater "buy-in" to fisheries regulations. The more familiar fishermen are with the process by which regulations are created, the more likely they will be to support and comply with those regulations. Because fisheries rules are difficult to enforce on the ocean, obtaining the greatest possible buy-in is imperative.

In 1976, fishing interests voiced these rationales in support of giving fishermen the powerful role they have in the regional councils. Since that time, it has become clear that putting fishermen in command of fishery management creates more problems than it solves. However, the rationales do support the involvement of fishermen in a variety of other ways that do not raise the same concerns but generate the same benefits.

In the United States and other countries, fishermen are involved from the outset of the management process in collecting data to be used in management. Most fisheries data come from records of what fishermen actually catch. Other data come from independent studies, many of which are conducted in collaboration with fishermen. Fishermen are also involved in the



review of the stock assessments upon which management measures will be based. For example, the Pacific Council has created what is known as the STAR (stock assessment review) process. STAR panels, composed of fishing industry representatives and outside scientists, review and critique stock assessments that have been developed by NMFS scientists. Decision-makers also can draw on industry advisory panels for input on the socioeconomic impacts of proposed management measures and ways to mitigate these impacts. Finally, fishermen can be involved in the enforcement of management measures. In the British system, for example, fishermen pay for, and take turns manning, the enforcement vessels that patrol for fisheries violations.

might want to “consider a public-at-large seat or a representative from a mainstream conservation group as opposed to an environmental group,” while another nonvoting member suggested replacing a state at-large position with “an environmental type entity.” A third nonvoting governmental member also recommended that Congress “[a]dd a seat for the environmental community.”

If conservation and allocation were split, and councils handled only allocation decisions,

problems of over- and underrepresentation would become less important. But they still would remain an issue. A frequent complaint of the appointed council members who were surveyed was that some fishing interests on their council also were underrepresented.

Broadening the interests represented on the councils remains a crucial and essential reform so long as the councils remain responsible for conservation. In our study, several members of the New England Council, the only council to include a representative of a national conservation organization, emphasized the value of having environmental views included in their conservation discussions and deliberations. As discussed earlier, broader representation is likely to lead councils to consider a wider range of perspectives and to identify and evaluate a more extensive set of options — to “think outside the box.” The public also is more likely to accept the decisions of councils that are more pluralistic.

Comprehensive representation, however, is easier to mandate than to achieve in practice. If federal law required all councils to include an “environmental” representative, for example, would a commercial fisherman who also served on the board of a local conservation organization count? Would the federal government be expected to evaluate the beliefs of prospective appointees or the positions of the organizations to which they belonged? And, if so, how would the federal government determine if an individual or organization was indeed “environmental,” given that there is no agreed-upon litmus test?

Other efforts to ensure that particular agencies or committees include broad perspectives have often been unsuccessful. Alaska, as noted earlier, requires its governor to choose members of the Board of Fisheries “with a view to providing diversity of interest and points of view in the membership.”⁷⁰ Yet studies suggest that environmental interests are

Box 12:

THE CLEAN AIR ACT: NATIONAL STANDARDS AND LOCAL IMPLEMENTATION



(SIPs) that explain how they will meet or maintain these standards. The EPA must approve the SIPs.

Although the EPA determines the national standards, the states enjoy broad discretion in determining how to achieve the standards. This discretion allows states to tailor air quality management measures to maximize economic efficiency. For example, in some regions it may be more practical to invest in mass transportation, while in other regions it may be cheaper to significantly reduce pollution from industrial sources. This discretion allows the states, rather than the federal government, to make allocative decisions about who should bear the burden of paying for emissions reductions.

Just as NMFS provides scientific information and funding to the councils, the EPA supplies technical and financial assistance to the states to aid them in meeting air quality standards. The difference between the two systems is that the Magnuson-Stevens Act allows the councils to set the numeric limits on resource use, while the Clean Air Act requires that such limits be established by the federal government. The rationale behind the use of NAAQS is that healthy air is healthy air in every part of the country. By contrast, the Magnuson-Stevens Act allows each council, within broad national standards, to decide exactly how healthy it wants fish stocks to be.

The Clean Air Act (CAA) provides an example of a regulatory system in which environmental protection decisions are separated from decisions about allocation. The CAA is extremely complex, so only a simplified description is possible here. Under the CAA, the Environmental Protection Agency (EPA) is responsible for determining how clean the nation's air must be in order to protect human health. The EPA sets National Ambient Air Quality Standards (NAAQS), which establish numeric limits (usually expressed in terms of parts per million) on the amount of major air pollutants that can legally be present in the air anywhere in the country. The fifty states are then responsible for ensuring that air within their borders meets the standards established by the NAAQS. The states must write State Implementation Plans

Box 13:

WHAT DO OVERFISHING AND OVERGRAZING HAVE IN COMMON?

Like the Magnuson-Stevens Act, the Taylor Grazing Act (TGA) was enacted to bring previously unregulated areas under federal management and promote conservation in those newly "enclosed" areas. Both laws faced similar challenges from the start. Like fisheries in 1976, rangelands in 1935 were in very poor condition. The federal range had been decimated in the first three decades of the twentieth century by a combination of overgrazing and drought, leading eventually to the tragedy known as the dust bowl. By 1935, only about 16 percent of federal rangelands were in "excellent" or "good" condition, while nearly 40 percent were in "poor" health.

Like fishermen in 1976, ranchers in 1935 were independent-minded, financially dependent on access to natural resources, and unaccustomed to regulation of any kind, working in rugged environments far from Washington, D.C., but not without substantial political muscle on Capitol Hill. In other words, ranchers were in general neither receptive to regulation nor easily regulated. The TGA contained vague conservation standards reminiscent of the National Standards found in the Magnuson-Stevens Act. For example, the TGA required the Department of the Interior "to stop injury to public grazing lands by preventing overgrazing and soil deterioration. . . ."

As initially designed, local branches of Interior's Grazing Service were to implement the TGA. The first director of grazing, Farrington Carpenter, however, felt strongly that users of the federal rangelands should have a strong role in

implementing the TGA. He thus took it upon himself to create an extra-statutory system of institutions he called the Grazing Advisory Boards. (Congress amended the TGA in 1939 to incorporate the concept of advisory boards into the act.) Each grazing district elected a board from among ranchers in the district. These boards were to make recommendations to Interior on conservation and management measures for the district. Although the TGA anticipated that Interior would make the ultimate management decisions in cooperation with stockmen, as well as with state wildlife and land officials, Carpenter's system of boards included only stockmen. State wildlife and land officials were not represented. Carpenter bragged that the Grazing Service followed Grazing Advisory Board recommendations 98.3 percent of the time.

The TGA and the Grazing Advisory Boards made little progress in improving the condition of federal rangelands. In 1936, as noted, only 16 percent of those lands were in "excellent" or "good" condition; by 1975 the figure was still only 17 percent. These numbers did not begin to improve until after the passage of the Federal Land Policy and Management Act (FLPMA) in 1976. FLPMA subjected the Grazing Advisory Boards to the Federal Advisory Committee Act (from which the regional fishery management councils are still exempt) and adopted a new multiple-use standard for managing rangelands. By 1984, more than 36 percent of rangelands were in excellent or good condition, although

60 percent remained in fair or poor condition.

In 1994, Secretary of the Interior Bruce Babbitt eliminated the Grazing Advisory Boards as part of his rangeland reform initiative. A new system of twenty-four Resource Advisory Councils replaced the boards. By regulation, the new councils must have equal representation from three groups: extractive users (ranching, mining, timber, recreation); environmental and cultural interests (environmental groups, archeological groups, wild horse and burro groups); and other interests (state and local government, public-at-large, and academics). The Secretary of the Interior appoints these members upon nomination of governors of affected states.

Mandating broader representation, however, is easier to do on paper than in practice. According to Professor Joseph Feller of Arizona State University, "[F]or most of the five years since its inception, Arizona's BLM-appointed Resource Advisory Council has had no representative from any of the state's environmental organizations, and several of the Resource Advisory Council's members who nominally represent other interests are ranchers or their advocates or associates."* Perhaps as a consequence, the condition of rangelands has not changed very much since 1984. In 2001, BLM reported that 34 percent of inventoried lands were deemed to be in excellent or good condition.

* 31 *Env't. L. Rep.* 10021 (2001).



still underrepresented.⁷¹ In the 1990s, the Department of the Interior tried to reform the boards that controlled grazing policy on the federal public domain and that, like the regional fishery management councils, historically were dominated by industry (see Box 13). Although the reform has broadened the represented viewpoints, observers again believe that industry dominance remains largely unchecked.⁷²

The Federal Advisory Committee Act (FACA) also provides a valuable lesson on the difficulty of ensuring broad representation on governmental bodies. As discussed, one of the main purposes of FACA was to afford inclusive representation on federal advisory groups. FACA therefore requires that the “membership of [an] advisory committee . . . be fairly balanced in terms of points of view represented.”⁷³ No plaintiff, however, has ever successfully challenged the makeup of a federal advisory committee on the ground that its membership is not “fairly balanced.”⁷⁴ Some courts have announced that the issue is “nonjusticiable” — meaning that the courts have decided

that they are ill-equipped to police the requirement and must defer instead to the judgment of the appointing body.⁷⁵

If Congress chooses to address the representativeness of council membership, it would do best either to expand the categories of mandatory governmental members or to change the process by which appointed members are selected. Both approaches are more likely to succeed than would an attempt to specify the political beliefs of some or all council members. Voting governmental representatives on the councils, as described earlier, currently include representatives only of state fishery agencies and NMFS. Congress could expand the viewpoints on the councils by awarding votes also to state and federal agencies with broad environmental mandates, such as state and federal environmental agencies and the federal Fish and Wildlife Service. Although many such agencies do not directly manage fisheries, they generally have extensive experience in evaluating similar scientific information, determining the appropriate levels of protection, and implementing regulations.

In the case of appointed members, moreover, each governor often believes that he or she must use nomination opportunities to choose council members who will strongly support the local fishing industry. If a governor does not do so, other states may gain an important edge in allocation decisions. So long as governors make the nominations and worry about allocation issues, they will have an incentive to nominate fishing industry representatives no matter what guidelines Congress provides.

To achieve a more representative set of appointed members, Congress therefore might want to modify the appointment process. Congress, for example, could require governors to submit lists of nominees much larger





than the current lists of three. A requirement that a governor submit a list of ten people, for example, would increase the chances of citizens outside the industry being nominated and might increase the ability of the Secretary of Commerce to create balanced councils. Congress could also require that some nominations be made by an independent body, such as the National Academy of Sciences, rather than by the governors. The earlier mentioned Calio Report (discussed in Box 9) recommended that a nine-member “review board” collect nominations from interested groups or individuals and then recommend the top three nominees for final selection by the Secretary.

ELIMINATING OR REDUCING CONFLICTS OF INTEREST

In suggesting reforms, a number of council members also focused on the value of eliminating potential conflicts of interest. As discussed earlier, there is no legitimate justification for exempting the regional councils from conflict-of-interest standards that apply to other regulatory agencies and are one of the foundations of good government.

One option would be to prohibit those holding financial interests in regulated fisheries from being appointed to a council, and

to broaden the definition of “financial interests” to include lobbying for members of the fishery. One industry representative, for example, suggested that the law should encourage “people to serve without financial ties but with depth of background.” This option would result in much different-looking councils, although it is unclear whom these disinterested council members would be.

Another option would be to lower the recusal threshold. A nonvoting member suggested that industry members should remain on the councils but be barred from voting “whenever there is economic gain or loss at stake that directly affects (or gives the perception to directly affect) that person’s business or those of friends, family, clients, or close constituents.” While it is possible that such a measure would change voting outcomes, it might also simply result in more frequent “logrolling” behavior — a “you scratch my back and I’ll scratch yours” system.

The choice between these options depends in part on whether councils continue to handle both conservation and allocation decisions or are limited only to allocation. So long as the councils continue to make conservation decisions, limits need to be placed on council membership. Otherwise, as just suggested, “logrolling” could continue to undermine effective conservation measures. If councils make only allocation decisions, stricter recusal rules may adequately deal with the conflict-of-interest problem. But some form of action, either restricting membership or strengthening recusal rules, would need to be taken. Council members who participated in our surveys were as concerned about the effects of conflicts on allocation decisions as they were about their effects on conservation.

“THE LAW SHOULD ENCOURAGE PEOPLE TO SERVE WITHOUT FINANCIAL TIES BUT WITH DEPTH OF BACKGROUND.”

—INDUSTRY REPRESENTATIVE



CONCLUSION: IMPLEMENTING THE NEEDED CHANGES

The regional fishery management councils, as currently structured, are unlikely to solve the problems facing coastal fisheries in the United States. The mixing of allocation and conservation decisions, the relatively uniform perspective of council members, the failure to avoid and regulate conflicts of interest among council members, and various other institutional deficiencies conspire to undercut effective protection of the fisheries. Until these defects are addressed, the nation is likely to remain disappointed in the Magnuson-Stevens Act and worried about the state of the nation's fisheries.

So who can make the needed changes? NMFS and the Secretary of Commerce by themselves can take a number of steps that would help to improve decision-making under the Magnuson-Stevens Act. First, NMFS could tighten the conflict-of-interest regulations. Under the act, a council member must recuse himself or herself if "there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery."⁷⁶ NMFS currently interprets "substantially disproportionate" to mean that a member must own or represent more than 10 percent of a gear type or sector.⁷⁷ A lower threshold would reduce the most direct conflicts of interest.

The Secretary of Commerce also could make a greater effort to improve council diversity. The Secretary could strive to select more diverse candidates from those lists that the governors currently submit. The Secretary, moreover, could work more closely with governors to encourage the governors to submit slates containing nominees with a wider range of perspectives and experience.

Finally, NMFS could improve council decision-making by changing the way in which it communicates scientific information to the councils and by increasing the intensity of its oversight. NOAA science centers and stock assessment panels currently provide most councils with a range of recommended catch levels, giving the councils substantial discretion in setting limits. The science centers and stock assessment panels could reduce that discretion by providing more specific recommendations. NMFS also could hold the councils' decisions to heightened scrutiny under the national standards and other substantive provisions of the Magnuson-Stevens Act.



The Magnuson-Stevens Act, however, limits the ultimate extent to which NMFS and the Secretary of Commerce can solve the deficiencies that this report identifies. The act, for example, explicitly permits



council members to participate in discussions about fishery decisions in which they have a vested financial interest. The act also prohibits NMFS from invalidating decisions

on which conflicted members have voted. And by requiring that all members be chosen from lists submitted by the governors of local states, the act also limits the ability of the Secretary of Commerce to increase council diversity. In choosing appointed members, the Secretary must choose one of the three candidates nominated by the relevant governor. Finally, as discussed earlier in this report, the act also makes it difficult for NMFS to impose a regulation on a council that is not predisposed to accept it.

Thus, Congress must step in and reform the decision-making structure of the Magnuson-Stevens Act if the nation's coastal fisheries are to be protected. As discussed earlier, the most valuable step Congress could take would be to separate

the conservation and allocation decisions that the councils now make. The councils can play a valuable role in allocating fishing rights, but a separate national entity, with strong scientific expertise, should make the initial conservation decisions. Congress should also prescribe tougher conflict-of-interest requirements and provide for greater council diversity. Although these latter changes are essential if the councils continue to make conservation decisions, they also are important to effective allocation decisions. By providing a strong decision-making structure, Congress can turn the vast promise of the Magnuson-Stevens Act into reality and ensure sustainable fisheries for future generations of American fishermen, consumers, and environmentalists.



NOTES

1. Association of the Bar of the City of New York, Special Committee on the Federal Conflict of Interest Laws, *Conflict of Interest and Federal Service* (Cambridge, MA: Harvard University Press, 1960), pp. 42–44.
2. Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.
3. Federal Advisory Committee Act, 5 U.S.C. App. 2 (hereinafter FACA).
4. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et. seq. (hereinafter FCMA).
5. Michael L. Weber, *From Abundance to Scarcity: A History of U.S. Marine Fisheries Policy* (Washington, DC: Island Press, 2002).
6. See, e.g., Cal. Const., art. IV, § 20; Mo. Const., art. IV, § 40(a).
7. La. Const., art. IX, § 7 (emphasis added).
8. Nev. Rev. Stat. § 501.171 (2003).
9. Tenn. Code § 70-1-201 (2003).
10. See, e.g., Mo. Const., art. IV, § 40(a).
11. Ark. Const., amend. 35, § 1.
12. Ind. Code § 14-10-1-1 (2003).
13. Stephen McIntosh Waste, "The Alaska Board of Fisheries: The Structure and Process of Decision-Making" (PhD diss., University of Washington, 1992).
14. Alaska Statehood Act of 1958, § 6(e), 72 Stat. 339.
15. 1959 Stat. Laws of Alaska, ch. 24.
16. Alaska Stat. § 16.05.221.
17. Act of Feb. 9, 1871, 16 Stat. 593.
18. Willis L. Hobart, ed., "Baird's Legacy: The History and Accomplishments of NOAA's National Marine Fisheries Service, 1871–1996," NOAA Technical Memorandum NMFS-F/SPO-18 (Silver Spring, MD: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, December 1995).
19. United States Reorganization Plan #2 of 1939, 4 *Fed. Reg.* 2731 (1939).
20. P.L. 89-454 (1966).
21. United States Commission on Marine Science, Engineering and Resources, *Our Nation and the Sea: A Plan for National Action* (Washington, DC: U.S. Government Printing Office, January 1969).
22. Exec. Order No. 11,564, 35 *Fed. Reg.* 15801 (1970).
23. Weber, *From Abundance to Scarcity*.
24. Senate Committee on Commerce, *A Legislative History of the Fishery Conservation and Management Act of 1976*, 94th Cong., 2nd sess. (1976).
25. United States Congress, *A Legislative History of the Fishery Conservation and Management Act of 1976* (Washington, DC: U.S. Government Printing Office, 1976), p. 684 (hereinafter FCMA Legislative History).
26. FCMA § 302(b), 16 U.S.C. § 1854(b).
27. FCMA Legislative History, pp. 454–55.
28. See *Natural Resources Defense Council v. Daley*, 209 F.3d 747 (D.C. Cir. 2000).
29. 63 *Fed. Reg.* 24212 (1998).
30. 64 *Fed. Reg.* 69989 (1999).
31. FCMA § 304(a), 16 U.S.C. § 1854(a).
32. FCMA § 304(e), 16 U.S.C. § 1854(e).
33. FCMA § 303(a), 16 U.S.C. § 1853(a).
34. National Marine Fisheries Service, *Annual Report to Congress on the Status of Fisheries of the U.S.: 2002* (Silver Spring, MD: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 2003).
35. *Ibid.*
36. Food and Agriculture Organization of the United Nations, *The State of World Fisheries and Aquaculture, 2002* (Rome: Food and Agriculture Organization of the United Nations, FAO Fisheries Department, 2002).
37. National Marine Fisheries Service, *Annual Report to Congress*.
38. Barbara Stevenson, New England Council, quoted at <http://www.habitatmedia.org/tran-stevenson.html>.
39. See, e.g., P. E. Jones and P. H. M. P. Roelofsma, "The Potential for Social Contextual and Group Biases in Team Decision-Making: Biases, Conditions, and Psychological Mechanisms," *Ergonomics* 13, no. 8 (2000):1152; A. R. Flippen, "Understanding Groupthink from a Self-Regulatory Perspective," *Small Group Research* 30, no. 2 (1999):166; Michael A. Hogg and Sarah C. Hains, "Friendship and Group Identification: A New Look at the Role of Cohesiveness in Groupthink," *European Journal of Social Psychology* 28 (1998):323, 337.

40. See Garold L. Stasser et al., "Information Sampling in Structured and Unstructured Discussions of Three- and Six-Person Groups," *Journal of Experimental Social Psychology* 63 (1989):57, 67-78.
41. See Christine Beckman and Pamela R. Haunschild, "Network Learning: The Effects of Heterogeneity of Partners' Experience on Corporate Acquisitions," *Administrative Science Quarterly* 47 (2002):92-124.
42. Irving L. Janis, *Groupthink: Psychological Studies of Policy Decisions and Fiascoes* (Boston: Houghton Mifflin, 1982).
43. FACA § 5(b).
44. H.R. Rep. No. 92-1017.
45. For more analysis of council membership over time, see Thomas A. Okey, "Membership of the Eight Regional Fishery Management Councils in the United States: Are Special Interests Over-Represented?" *Marine Policy* 27 (2003):193-206.
46. Lawrence Lessig and Cass R. Sunstein, "The President and the Administration," *Columbia Law Review* 94, no. 1 (January 1994); Marver H. Bernstein, *Regulating Business by Independent Commission* (Princeton, NJ: Princeton University Press, 1955).
47. Association of the Bar of the City of New York, *Conflict of Interest and Federal Service*, pp. 6-7.
48. 18 U.S.C. § 208(a).
49. *United States v. Gorman*, 807 F.2d 1299 (6th Cir. 1986). See also 5 C.F.R. § 2635 (2003).
50. Association of the Bar of the City of New York, *Conflict of Interest and Federal Service*, p. 80.
51. 47 C.F.R. § 19.735-202 (2003).
52. Association of the Bar of the City of New York, *Conflict of Interest and Federal Service*, pp. 84-85.
53. 5 C.F.R. § 3101.105 (2003).
54. 5 C.F.R. § 3101.109 (2003).
55. 5 C.F.R. § 3401.102 (2003).
56. 5 C.F.R. § 5501.104 (2003).
57. 5 C.F.R. § 4001.103 (2003).
58. S. Rep. No. 92-1098.
59. H.R. Rep. No. 92-1017.
60. FACA § 2(b)(6).
61. House Committee on Merchant Marine and Fisheries, *Conflicts of Interest within the Regional Fishery Management Councils: Hearing before the Subcommittee on Fisheries Management*, 103rd Cong., 1st sess., 1994, p. 2.
62. FCMA § 302(j), 16 U.S.C. § 1852(j).
63. 50 C.F.R. § 600.235.
64. Statement of Hans Radtke, June 27, 2003 (copy on file with authors).
65. Barton H. Thompson Jr., "Tragically Difficult: The Obstacles to Governing the Commons," *Environmental Law* 30 (2000):241.
66. National Academy of Public Administration, *Courts, Congress, and Constituencies: Managing Fisheries by Default* (Washington, DC: National Academy of Public Administration, 2002).
67. See, e.g., *Associated Fisheries of Maine v. Daley*, 127 F.3d 104 (1st Cir. 1997).
68. U.S. Department of Commerce, *NOAA Fishery Management Study* (Washington, DC: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, June 30, 1986).
69. Pew Oceans Commission, *America's Living Oceans: Charting a Course for Sea Change* (Arlington, VA: Pew Oceans Commission, May 2003).
70. Alaska Stat. § 16.05.221.
71. See, e.g., Waste, "Alaska Board of Fisheries," p. 32.
72. Cathy Carlson and Johanna Wald, *Rangeland Reform Revisited* (New York: Natural Resources Defense Council, Center for the Wild West, 2001).
73. FACA § 5(b).
74. Steven P. Croley and William F. Funk, "The Federal Advisory Committee Act and Good Government," *Yale Journal on Regulation* 14 (1997):451, 518.
75. *Public Citizen v. National Advisory Commission on Microbiological Criteria for Foods*, 708 F. Supp. 359, 364 (D.D.C. 1988).
76. FCMA § 302(j), 16 U.S.C. § 1852(j).
77. 50 C.F.R. § 600.235.

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APPENDIX — SUMMARY OF SURVEY RESPONSES

M – Mandatory member
 A – Appointed member
 NV – Non-voting member

1. Do you have formal education in fisheries science or a related field?

PACIFIC						NORTH PACIFIC						NEW ENGLAND				GULF OF MEXICO			
YES			NO			YES			NO			YES		NO		YES		NO	
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A	M	A	M	A
4	3	2	1	4	0	1	3	3	1	0	0	3	5	0	3			2	3
9			5			7			1			8		3		2		3	

2. Do you believe that different Council members represent different constituencies?

YES			NO			YES			NO			YES		NO	
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A
4	7	2	1	0	0	2	3	3	0	0	0	3	7	0	1
13			1			8			0			10		1	

3. How often do you find the scientific information you receive on a fishery to be sufficient for effective and well-informed Council decision-making?

ALWAYS			SOMETIMES NEVER			ALWAYS			SOMETIMES NEVER			ALWAYS		SOMETIMES NEVER	
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A
0	1	0	5	6	2	2	3	2	0	0	1	0	0	3	8
1			13			7			1			0		11	

4. Do you believe that you have been provided with adequate training and other resources to evaluate the scientific information you receive?

ALWAYS			SOMETIMES NEVER			ALWAYS			SOMETIMES NEVER			ALWAYS		SOMETIMES NEVER	
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A
5	4	2	0	3	0	2	3	2	0	0	1	3	3	0	4
11			3			7			1			6		4	

5. How often do you find the economic information you receive on a fishery to be sufficient for Council decision-making?

ALWAYS			SOMETIMES NEVER			ALWAYS			SOMETIMES NEVER			ALWAYS		SOMETIMES NEVER	
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A
0	1	0	5	6	2	0	2	0	2	1	3	0	0	3	8
1			13			2			6			0		11	

6. Do you believe that you have been provided with adequate training and other resources to evaluate the economic information you receive?

YES			NO			YES			NO			YES		NO	
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A
4	6	0	1	1	2	1	3	2	1	0	1	1	5	2	3
10			4			6			2			6		5	

7. Compared with existing opportunities for public input, do you believe that there should be more opportunity for public input, less opportunity for public input, or that existing opportunities for public input are adequate (status quo, or SQ)?

PACIFIC									NEW ENGLAND					
MORE			LESS			SQ			MORE		LESS		SQ	
M	A	NV	M	A	NV	M	A	NV	M	A	M	A	M	A
1	0	0	0	0	0	4	6	2	0	2	1	0	2	6
1			0			12			2		1		8	

NORTH PACIFIC									GULF OF MEXICO					
MORE			LESS			SQ			MORE		LESS		SQ	
M	A	NV	M	A	NV	M	A	NV	M	A	M	A	M	A
0	0	0	0	0	0	2	3	3	0	0	0	0	1	2
0			0			8			0		0		5	

TAKING STOCK

8. Do you believe that the public takes full advantage of the existing opportunities to comment on Council activities?

PACIFIC						NORTH PACIFIC						NEW ENGLAND				GULF OF MEXICO					
YES			NO			YES			NO			YES		NO		YES		NO			
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A	M	A	M	A		
0	3	0	5	3	2	0	1	1	2	2	2	1	1	2	6					1	4
3			10			2			6			2		8							

9. How important are each of the following factors in helping to formulate your decisions on fishery management issues? (1 = most important, 9 = least important.)

Factor Rank

___ Comments from fishermen	___ Comments from environmental groups
___ Comments from other members of the public	___ Opinions of other Council members (specify)
___ Scientific recommendations	___ Personal experience/knowledge
___ Economic impact assessments	

10. Do you believe that the media coverage of your Council's fishery management decisions has been fair to the Council?

PACIFIC						NORTH PACIFIC						NEW ENGLAND				GULF OF MEXICO					
YES			NO			YES			NO			YES		NO		YES		NO			
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A	M	A	M	A		
5	4	1	0	0	0	1	3	3	0	0	0	1	4	2	3					4	0
10			0			7			0			5		5							

11. Do you believe that the fishing community is sufficiently aware of Council activities? If not, what should be done to increase awareness?

PACIFIC						NORTH PACIFIC						NEW ENGLAND				GULF OF MEXICO					
YES			NO			YES			NO			YES		NO		YES		NO			
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A	M	A	M	A		
3	5	0	2	1	2	2	1	3	0	2	0	2	5	1	3					4	1
8			5			6			2			7		4							

12. Do you believe that the general public is sufficiently aware of Council activities?

PACIFIC						NORTH PACIFIC						NEW ENGLAND				GULF OF MEXICO					
YES			NO			YES			NO			YES		NO		YES		NO			
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A	M	A	M	A		
0	4	0	5	3	2	2	1	2	0	2	1	1	1	2	7					2	3
4			10			5			3			2		9							

13. Have you ever felt that it was unfair for another Council member to participate in certain Council deliberations because he or she had a conflict of interest?

PACIFIC						NORTH PACIFIC						NEW ENGLAND				GULF OF MEXICO					
YES			NO			YES			NO			YES		NO		YES		NO			
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A	M	A	M	A		
1	1	1	4	5	1	0	0	3	2	3	0	0	4	3	3					2	2
3			10			3			5			4		6							

14. Have you ever felt that it was unfair for another Council member to participate in certain Council deliberations because his or her friends, neighbors or clients had an interest in the deliberations?

PACIFIC						NORTH PACIFIC						NEW ENGLAND				GULF OF MEXICO					
YES			NO			YES			NO			YES		NO		YES		NO			
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A	M	A	M	A		
0	1	1	5	6	1	0	0	3	2	3	0	0	4	3	2					2	2
2			12			3			5			4		5							

15. Have you ever considered recusing yourself from Council deliberations regarding a fishery in which you were active?

PACIFIC						NORTH PACIFIC						NEW ENGLAND						GULF OF MEXICO							
YES		NO		DON'T FISH		YES		NO		DON'T FISH		YES		NO		DON'T FISH		YES		NO		DON'T FISH			
M	A	M	A	M	A	M	A	M	A	M	A	M	A	M	A	M	A	M	A	M	A	M	A	M	A
0	3	4	3	1	1	0	3	0	0	2	0	1	2	1	5	3	1	0	1	0	1	1	0		
3		7		2		3		0		2		3		6		4		1		1		1			

16. Have you ever considered recusing yourself from Council deliberations regarding fisheries in which your friends, neighbors or clients were active?

PACIFIC						NORTH PACIFIC						NEW ENGLAND				GULF OF MEXICO					
YES			NO			YES			NO			YES		NO		YES		NO			
M	A	NV	M	A	NV	M	A	NV	M	A	NV	M	A	M	A	M	A	M	A		
1	0	N/A	4	7	N/A	0	2	N/A	2	1	N/A	0	2	3	5					2	2
1			11			2			3			2		8							

This appendix summarizes responses to those survey questions that require discrete rather than narrative answers.

ABOUT THE AUTHORS

Josh Eagle is director of the Stanford Fisheries Policy Project and lecturer in law at Stanford Law School. His research focuses on institutions and their role in the sustainable use of natural resources. Mr. Eagle has published articles on the economics of endangered species protection, the economic and ecological relationships between aquaculture and commercial fisheries, and problems and solutions in the regulation of marine fisheries. Prior to coming to Stanford, Mr. Eagle worked as an attorney for both the U.S. Department of Justice and the National Audubon Society. In addition to his law degree, he holds an M.S. degree in forest sciences.

Sarah Newkirk is an independent water law and policy consultant. She earned an M.S. degree in marine environmental science from the State University of New York at Stony Brook and a J.D. degree from Pace University School of Law. She served as law clerk to the Honorable Thomas P. Griesa, U.S. District Judge in the Southern District of New York. Ms. Newkirk was the first Frederick A.O. Schwarz Public Policy Fellow at the Natural Resources Defense Council in New York, where she worked on both marine issues and urban issues such as air and water quality. She was most recently a research fellow with the Stanford Fisheries Policy Project.

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PHOTOGRAPHY

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