



# COUNCIL COORDINATION COMMITTEE 2012

## MINUTES OF THE MEETING

Mauna Lani Bay Hotel, Kohala Coast, Island of Hawaii

May 1 - 3, 2012





**Minutes of the  
Council Coordination Committee  
May 1-3, 2012  
Mauna Lani Bay Hotel  
Hawaii**

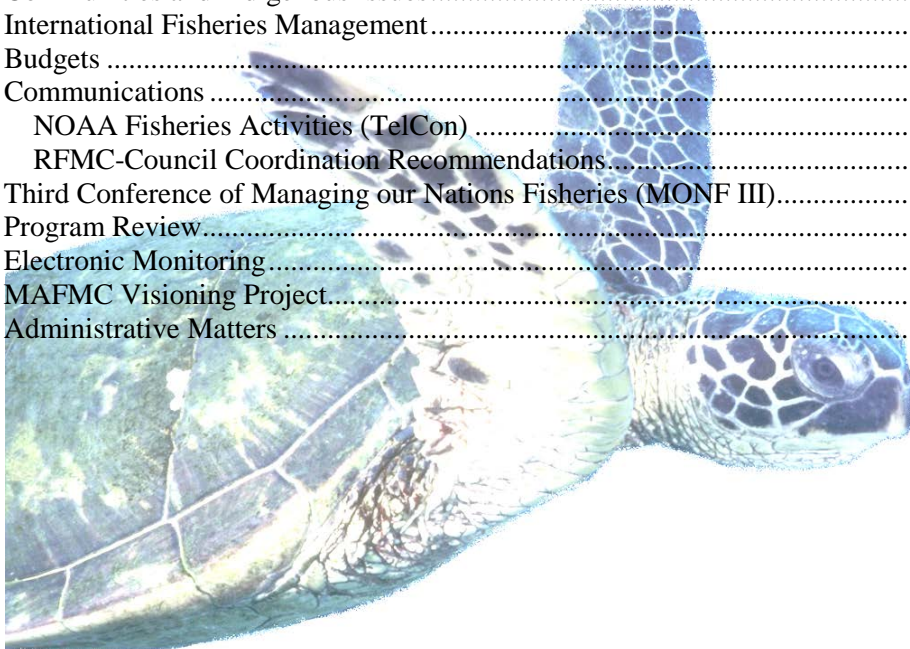




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## **Welcome/Introductions**

Chairman, Manuel Duenas, opened the Council Coordination Committee Meeting (CCC) welcomed participants and introduced the Honorable Daniel Akaka, Jr., Director of the Cultural Affairs at the Mauna Lani Bay Hotel, to provide the opening pule and introductory remarks.

Mr. Akaka, provided a brief overview of the surrounding area known as Kalahuipuaa, where the Hotel is now located. Kalahuipuaa was known for its ancient aquaculture and was considered by royalty as a place for rest, peace and renewal of spirit and energy. Concluding his pule, Mr. Akaka thanked the participants in the CCC for meeting at this location and thanked them for their efforts to sustain the ocean's resources.

### ***Opening Remarks***

CCC Chair Manuel (Manny) Duenas gave his welcoming remarks which focused on over-regulating US fisheries. He touched on the creation and goals of the EEZ and FCMA and subsequent reauthorizations that intended to address bycatch, economic discards, essential fish habitat, fishing communities, optimum yield, overfishing and overfished, the Pacific Insular Area, commercial charter and recreational fishing, and regulatory discards, among other issues.

The 2006 Magnuson-Stevens Reauthorization Act built on the 1996 MSA with provisions to allow the transition of fishery management plans to fishery ecosystems plans, allowed for the implementation of catch shares programs, contained language about equivalent conservation measures or leveling the playing field for US fishermen, and included the implementing legislation for the US membership of the Western and Central Pacific Fisheries Commission. While all of these are laudable achievements, it's also worth noting that the 1996 reauthorization of MSA led to a huge growth in the environmental-NGO community focused on oceans and on fisheries in particular. Following the 1996 reauthorization, the National Marine Fisheries Service and the Councils were faced with an onslaught of NGO law suits. This led to more time and effort on the part of the Councils in drafting fisheries policy in addressing environmental statutes like NEPA, MMPA and ESA, sections of amendments that in the past were a page or two in a document now have practically become the document.

If this was not bad enough, the same NGOs that created a blizzard of law suits have been aggressively pushing conservation agendas that have driven fishermen out of fisheries or put fishery resources beyond the reach of fishermen. The US has a swordfish longline quota in the Atlantic that it can no longer catch; here in Hawaii we have three quarters of the State's nearshore fishery resources in a Marine National Monument, which has now been shown scientifically to provide no net benefits to the Main Hawaiian Island's seafood stocks.

In the 1990s marine protected areas were going to save the world and restore fisheries. In the last decade catch shares were going to control fishing mortality and fishing capacity. In this decade, ecosystem-based fishery management and preserving biodiversity, especially in the event of climate change is the current palliative. It is common to read these days statements like:

“The issue isn’t about food security or about fisheries management; it’s about preserving ecosystems on the planet for the benefit of future generations.”

Duenas raised the question regarding employment trends in fisheries on a national level, both in the industry and in the regulatory agencies. It might be easy to blame the slow strangulation of US fisheries on one political party but we’ve had three Democratic and three Republican Administrations following the 1976 passage of the Magnusson Act. Regardless of who has held office the bureaucratic burden on fishermen has continued to increase. If one of the objectives of this meeting is about ensuring the continuity of US fisheries then we have some serious thinking to do. National fishing industries and domestic fisheries production has been in decline since 2005. Although revenues have generally increased over this period, costs have also increased markedly. For example, the cost of a longline fishing trip from Hawaii has virtually doubled with the increase in fuel price.

Demand for seafood is not likely to decline; indeed every indication is that it is increasing, driven by our shifting population demographics of high fish consumers and the perceived benefits to eating fish and other seafood. That demand will be satisfied from abroad, from less regulated fisheries, in the same way that the domestic demand for manufactured goods in the US is catered for by the economies of East Asia and South America.

He closed by asking if this Council Chairs meeting will become an annual wake for the decline of our domestic seafood industries? That is something to which we should give serious consideration this week. And on a less gloomy note, Duenas greeted CCC participants with Hafa Adai, Aloha, Talofa and welcome to Hawaii.

### ***Message from the Honorable Senator Daniel K. Inouye to the CCC***

*“Aloha, and welcome. I am honored to have been asked to provide the opening remarks for this, the annual Regional Fishery Management Council Coordinating Committee meeting in the great state of Hawaii. Unfortunately, I am not able to be there with you in person, but am nonetheless extremely glad to have the opportunity to greet you and to offer my thanks for your efforts as well as some thoughts as to the road ahead.*

*Let me start by offering my congratulations to you for working to establish Annual Catch Limits (ACLs) for every federally managed stock as required by the Magnuson-Stevens reauthorization of 2006. When we were developing that bill, there were several improvements we viewed as critical, but among the most important was the inclusion of the ACL requirements. These provisions, together with the reliance on scientifically based assessments of stock status, are what allow the U.S. to assert that we have the best managed, and by extension the most sustainable, fisheries in the world. I note the link between management and sustainability because I believe that it is often unappreciated, or perhaps even misinterpreted. This is because sustainable does not just refer to the conservation of the stocks themselves, but also of society's ability to continue to use a shared resource and to ensure that our children may fish as we do.*

*That is a noble challenge and one that, given human nature is not always easy to achieve. Thus, the core genius of the original Act was to deliver this challenge to a public-private partnership; one designed to take advantage of the inherent tensions between conservation and use in order to find a middle path of sustainability. The partnership I refer to is, of course, you the Councils, and the responsibility for finding that middle path is your particular charge. So it is that I am glad to welcome you here for your important work.*

*Your agenda indicates that you will be addressing many important topics and I would like to touch briefly on a few. First, I note that there will be a discussion of Stock Assessment needs. I have been fully supportive of the Administration's requests for enhanced stock assessment support and I also understand that several major stocks are for overdue for assessment. However, I would note that the Pacific has numerous non-major stocks with tremendous cultural import and which support several artisanal and subsistence fisheries.*

*These should not be overlooked as resource allocations are made.*

*Secondly, I understand that these are perilous budget times but I would like to express my disappointment that funding for the Councils was cut in the President's Fiscal Year 2013 budget request. To speak plainly, Council activities have historically been augmented through congressionally directed spending and, over the years, NOAA has become reliant on this support to achieve key mission goals. With the current earmark ban it has become significantly harder to provide Congressional support for even these core functions without attendant support in the President's budget. That is why the Senate Appropriations Committee supports a restoration of Council funding to FY12 levels and I hope that NOAA will consider these factors as it develops future budgets. Finally, I would like to return to the tension I mentioned earlier, between conservation and use.*

*This tension exists not only within the confines of Magnuson-Stevens but also between it and several other important pieces of legislation such as the Endangered Species Act and Marine Mammal Protection Act. It is therefore inevitable that there will be strong differences of opinion when more than one of these mandates is invoked. However, it should always be possible to achieve a constructive outcome so long as everyone involved is truly interested in achieving a balanced solution. This means that it is incumbent on everyone involved, NOAA and the Councils, to be completely transparent with regards to the regulatory process and thoroughly honest and proactive with your constituents. The inherent policy tensions in the various mandates are designed to be constructive so long as there is trust in the process. That trust will falter absent communication, and without trust the tension in the process inevitably becomes destructive to the detriment of the public good. We must, all of us, strive to build trust if we wish to continue to achieve sustainability.*



*Thank you and I wish you all the best in your continued service to our nation and its future generations, who hope to benefit from the bounty of the seas as fully as ours have. Daniel K. Inouye, Honorable Senator.”*

## **Video Message of Welcome from Congresswoman Colleen Hanabusa**

*“I would like to welcome you to the Western Pacific Regional Fishery Management Council's meeting of the Coordination Committee. I should say that you couldn't have picked a more appropriate place than Mauna Lani Bay.*

*Mauna Lani Bay is the home of many of our traditional fishponds. As you go to the ocean and look at the beautiful Pacific Ocean that surrounds this wonderful state you will be able to look upon those fishponds.*

*You know, fishing is a part of us. We, as a state, consume more in terms of seafood than anyplace else in the United States, twice the national average. In addition, we spend twice the amount of money on it.*

*But it also represents an economic base for the State. It is about 664 million a year. In addition to that, there are about 3,700 individual licenses to fish in the State of Hawaii, that's commercial fishing.*

*When you think about Hawaii I'm sure you're struck by our multi-cultural base and the different ethnic backgrounds.*

*Let me tell you, the New Year is not the same in Hawaii without sashimi or poke. So the decisions that you make today and you discuss when you talk about items such as bigeye tuna and what the quotas will be, think about how that affects this very special place called Hawaii.*

*We wish you the best. We hope you have a wonderful meeting.*

*Again, please remember the uniqueness that makes Hawaii, Hawaii.*

*Thank you again for having your Coordination Committee Meeting here in our wonderful state. Mahalo.”*

## **Report from the USCG**

Commander (CDR) Hendrickson, on behalf of Admiral Robert J. Papp, Jr. (Commandant of the Coast Guard) provided the United States Coast Guard (USCG) report to the CCC. He provided 2011 annual vessel boarding statistics whereby the USCG conducted over 5800 domestic boardings nationally, detecting 151 significant violations. This suggests a 97.4 percent compliance rate, which is up by five percent when compared with 2010. USCG domestic boardings in 2011 were three percent higher than in 2010. Of the 151 significant violations,

15 percent were from the Gulf of Mexico shrimp fishery, 12 percent from the Gulf of Mexico reef fish fishery, and 9 percent from the Atlantic sea scallop fishery.

The USCG conducted over 100 non-domestic boardings in 2011, observing 25 violations of international conservation management measures. For EEZ enforcement in 2011, the USCG detected 119 US EEZ incursions by foreign vessels (the USCG standard is 180 or less), of which 22 were actually interdicted, providing an 18.5 percent interdiction rate.

CDR Hendrickson mentioned that the Coast Guard Living Marine Resources Deterrents Study is due out in the spring of 2013 and will be soliciting input from fishermen and fishing industry on that document. He stated that the USCG is currently re-writing the "Ocean Guardian" program document that will be available in mid-2013. In regards to USCG cutter missions and budget cuts, the FY '13 budget is reduced by \$350 million FY '12. This reduction will result in the loss of National Security Cutters 7 and 8, and cutting 1,000 uniformed personnel, which are currently in roles related to legacy Coast Guard assets (i.e. old cutters). CDR Hendrickson ended by stating that the USCG will continue to source their cutters to the most important, nationally strategic mission.

Paul Howard commented that the USCG provides the NEFMC with excellent reports at every Council meeting, including number of boardings, trends in violations, and issues associated with vessel safety. However, in the northeast dockside monitoring is being reduced due to budget cuts and it is unknown who is going to pay for observer coverage costs, so more enforcement is needed in order to be successful. Howard suggested the need to examine the ability of Joint Enforcement Agreements with the states to conduct dockside monitoring. Howard also mentioned that improving the time to prosecute violators needs to improve, citing examples in the northeast of taking 2-3 years to prosecute.

Bob Mahood asked Hendrickson how Fisheries Enforcement ranks in national security.

CDR Hendrickson replied that it depends on who you ask, and it is the case for the Western Pacific. However, at the national level there are a number of different competing demands, probably the biggest emerging competing demand is in the Arctic. As a result of that, there are going to be increased demands for Coast Guard resources at the same time that the USCG is drawing down on some Coast Guard resources.

Mr. Odlin stated that in the northeast, management decisions consider fishing vessel and human safety. The regional USCG office provides an updated report periodically of the age of the fleet and the age of the fishermen, which allows us to gauge success. Does the USCG provide such information on a national level?

CDR Hendrickson indicated that he would pass that request on to USCG headquarters. He ended with stated that the one of the cornerstones of Ocean Guardian, our strategic plan, is enforceable regulatory scheme and that it is critical to put implement enforceable regulations. Secondly, he mentioned another cornerstone as maintaining productive partnerships, and that the USCG appreciates working with the FMCs and NOAA.

# **Council Reports on Status of Implementing Magnuson-Stevens Act Provisions and Other Current Activities of Interest**

## ***New England Fishery Management Council***

Paul Howard, Executive Director of the New England Fishery Management Council, reported on the Council's progress to comply with the mandates described in the Magnuson-Stevens Act:

**Monitoring of stock status:** All Annual Catch Limits (ACLs) and Accountability Measures (AMs) have been implemented for the 38 stocks being managed under nine Fishery Management Plans (FMPs). Fifty ACLs were set for each individual stocks. ACLs for two stocks were exceeded after the first year. Corrective actions was now being taken. Regarding stock status, there was no overfishing for 21 out of 38 stocks, there were 4 unknown, and overfishing was occurring on 13 stocks. In terms of biomass, 23 stocks were not overfished or had been rebuilt. Two stocks were recently assessed as overfished and 13 are still in an overfished state. All of the stocks that are either overfished or subject to overfishing are managed under the Northeast Multi-Species Plan, Groundfish Plan, which has 20 stocks managed as a whole unit (13 of 20 are in trouble).

**Endangered species issues:** There has been growing concerns about MMPA and ESA issues. Reasonable and Prudent Measures had to be developed for sea turtles in the scallop fishery and for the recently listed sturgeon. The northeast will be facing additional issues regarding river herrings which had been the subject of a recent ESA listing petition. Observer coverage has become a challenge due to unstable funding. NMFS paid for the first 2 years of coverage and left it to the Council to address this issue form the future.

**ACLs:** The advent of ACLs resulted in a significant increase in workload for the NMFS Northeastern Fisheries Science Center. Traditional benchmark assessment and assessment updates take three years, and with the amount of ACLs to be monitored, there are not enough resources to maintain scientific standards.

**Administration:** The NEFMC recently had been the subject of Office of the Inspector General (OIG) audit where three issues were dealt with: 1) conflict of interest; 2) interaction with NMFS; and 3) how the New England Council deals with National Standard 8. After the audit is completed, Howard expected new requirements and changes in operations which would require additional staff and further require additional funding. The OIG audit also reviewed the management process in New England. New processes were implemented including instituting online performance indicators of the Council management systems. A visioning exercise was conducted to determine what the five year vision was for ecosystem management and catch shares.

## ***Mid-Atlantic Fishery Management Council***

Richard (Rick) Robins, Council Chair of the Mid-Atlantic Fishery Management Council, provided a brief summary of the activities and Council priorities:

**ACLs:** The Council made some changes in the risk policy related to the specification of ACLs. The ACLs specification was governed by a Tier system that crossed different levels of data quality from data-rich stocks, data-moderate stocks and stocks that were data poor. A major constraining factor in the risk policy for data-poor stocks was ABCs were prevented from increasing in times when there were no estimates of the overfishing limit (OFL). The SSC deliberated and agreed to relieve this constraint, but only in limited circumstances. This provided flexibility to increase ABC in the absence of an OFL where the best available scientific information indicates that the stocks are either stable or increasing. The Council recently set the tilefish specifications to maintain the fishery at a stable level.

**Habitat:** The Council was also initiating a plan to protect deep-sea corals, a first of this type of sensitive habitat work for the Mid-Atlantic with the intention of enhanced coral protection.

**Advisory Panels:** The Council had reconstituted the Advisory Panels (APs). The APs in the Mid-Atlantic were working to variable degrees of success. Some were highly functional and effective while others rarely met and had relatively low levels of participation, and not all effectively engaged. The Council was not in a position to get the best possible advice from the AP. One of the changes made in the quota-setting process last year was to make use of an Advisory Panel Fisheries Performance Report. The Council engages the AP through this process by rigorously going through an assessment exercise characterizing the performance of the fishery over the past year. This becomes an appendix to the quota paper that feeds into the SSC deliberations.

It was also developed jointly with the social scientists from the SSC. That subcomponent of the SSC met face-to-face with the AP. It had staff support and went through the process of evaluating the performance of that fishery. This resulted in a documented review of the factors that influence catch in a given year of the fishery. This was helpful in data-poor situations because it provided additional information to the SSC and, ultimately, to the Council to make informed decisions. The Council had just overhauled the composition of APs and repopulated them. In order for the information to be representative of the fishery, the composition of the AP should be geographically diverse and include the different fishing modalities and sectors.

**Administration:** The Council recently held Listening Sessions during Council meetings related to ongoing changes to Marine Recreational Improvement Project (MRIP) and Bureau of Energy Management (BOEM) initiatives. There were a large number of projects in the Mid-Atlantic concerning wind energy development and related uses of the ocean that are of interest to our stakeholders. The Council was also overhauling its Communications Plan including its website.

**Priorities for 2012:** The Council is currently undertaking its Envisioning Project. The Council had tripled its e-mail distribution list due to the volume of interested parties in the project. The Council conducted a survey and received about 1,300 responses. It also met with hundreds of individuals up and down the coast in the Mid-Atlantic and in Southern New England. The Council was also initiating an Ecosystem Planning Document. This follows the model of the Pacific Council starting out as a Non-regulatory Guidance Document. The Council was also overhauling its Research Set-Aside Program. A programmatic review is currently underway to make improvements in order to focus those resources on research priorities.

**Endangered species issues:** The recent ESA listing of the Atlantic sturgeon was a significant development this Council. This is a fishery resource that interacts with a lot of fisheries in the region, both in the Federal waters and also in the State waters. Many of the large-meshed gill net fisheries may have significant interactions with the sturgeon which had significant implications for fishery management. The Council formed an ad-hoc committee that includes the AP, to work closely with the Regional Office in the Northeast Region to coordinate responses. There had been positive cooperation with the Office of Protected Resources; and the Council was currently moving forward with more discussions related to the Biological Opinions under development. Potentially, there may be a batch Biological Opinion that will cut across a number of different fisheries. The Council had an opportunity to weigh in early in the process in the development of that Biological Opinion.

**Amendment status:** The MAFMC have a number of amendments in progress. Work was ongoing on the Spiny Dogfish Management Plan which will align this plan better with the South Atlantic Fishery Management Council (SAFMC) Management Plan. Both Councils jointly manage this resource. Amendment of the management plan for surf clams and ocean quahogs (now 20 years old) would identify what constitutes an “excessive share”. When it was first developed it was an Individual Transferability Program (ITQ) Program, but there was no definition of “excessive shares”.

There was an ongoing amendment to the squid, mackerel, butterfish FMP that deals with river herring interactions. River herring are a Species of Concern in the region. They appear to be potentially highly depleted, and there were some interactions in fisheries under MAFMC jurisdiction, notably in the mackerel fishery. This amendment will address fishery interactions and also address the monitoring improvements to develop management for this issue. The MAFMC have an amendment for monk fish, developed jointly with New England. This amendment would consider catch share options for the management of that fishery. There was also an amendment to the Black Sea Bass Plan. Black sea bass are managed from North Carolina as a unit stock. The current management plan did not have the tools to manage significant differences in the performance of this fishery on a regional level. The amendment would attempt to establish regional measures and potentially address the recreational sector of this fishery.

MAFMC conducted an allocation analysis aimed to determine the economic implications of the allocation of the scup fishery. The current allocation is 22% to recreational fisheries and 78% to commercial fisheries. Different allocation scenarios were being tested due to the high constraints on the recreational fisheries. Regarding MRIP, Council staff were involved in ongoing improvements in the recreational fishery data collection in the region.

### ***Caribbean Fishery Management Council***

Carlos Farchette, Chairman of the Caribbean Fishery Management Council reported on the activities of CFMC:

**ACLs:** As of February 1, 2012, the 2010 ACLs were implemented in the EEZ for species for which overfishing was occurring and species that were overfished. The 2011 ACLs were also

implemented for all other species. The Council was currently working with the local governments of Puerto Rico and the Virgin Islands to develop compatible measures with the EEZ ACLs. The Advisory Committee, in writing to the Commissioner of the US Virgin Islands, Department of Planning and Natural Resources, approved moving forward with compatible rules. This was followed by Saint Thomas and Saint John Districts who are also moving ahead with their rule making. The Puerto Rico Department of Natural and Environmental Resources staff members have met with the Council and Southeast Regional Office staff to review fishery regulations in place and discuss compatibility among jurisdictions. The local governments of Puerto Rico and the US Virgin Islands, the NMFS Southeast Science Center and Regional Office and the Council were coordinating closely to improve of the data collection, processing and with the objective of real-time ACL monitoring. This work was also conducted with the collaboration of the local fishermen

**Fishery Management Plans:** The Council recently transitioned from a species-specific to an island-specific fishery. Council members unanimously approved moving forward with insular fishery management plans at the 142<sup>nd</sup> Caribbean Council meeting in April. This included management plans for Saint Thomas/Saint John, Saint Croix and Puerto Rico. Option papers had been distributed for review with recommendations for selection of a Preferred Alternative at the 143<sup>rd</sup> Council meeting. This approach to fisheries will allow the Council to respond to each island's resource issues. Although the US Caribbean is a small area, the islands are culturally very different, and so are their fisheries. This is in response to the request by the fishers in the area against a one-size-fits-all approach of the old FMPs.

**Catch Share Program:** The Catch Shares Program for deepwater snapper in Western Puerto Rico ran into difficulties with the fishers who were convinced that it would work for them. The Council and NOAA Fisheries fully supported efforts to explore this management alternative. The Council heard from Saint Croix fishers about their interest in discussing the possibility of a Catch Share Program for spiny lobster and queen conch. As was the case in Puerto Rico, this would be a bottom-up approach that gives ownership of the resources to the fishers.

**Fish Trap Reduction Program and escape vents:** The Virgin Islands Saint Croix District submitted its final draft proposal for a Trap Reduction Program. The Saint Thomas/Saint John District will be submitting their proposal at the next Council meeting. The Council and NOAA Fisheries worked closely with the commercial fishers through the Saint Thomas Fishermen Association and the Saint Croix Fishermen Association on effort reduction in the US Virgin Islands. The program was funded by the Council and led by trap fishers. The plan involves criteria for entry to the fishery, allocations, control dates, transferability, implementing an Appeals Board and enforcement. Additionally, fishers have been working on the design and research on the escape vents to address issues of bycatch in the trap fishery. This research will be the basis for the Council's amendment to the regulations on trap construction.

**International fisheries:** The Caribbean Council was working on Pan-Caribbean management of species since the 1970s. Most recently, staff from the CFMC was appointed to be conveners of two important working groups, queen conch and spawning aggregations, under the United Nations Western Central Atlantic Fisheries Commission (WCAFC). A meeting of experts on queen conch will be convened by the Caribbean Council on May 2012. Scientists, ministers and

fishery managers from Central America and other Caribbean countries will participate at the meeting of the WCAFC Queen Conch Working Group. The goal is to develop better methodologies for data collection and analysis to advise the government on how to work towards sustainability of these important fishery resources. Other meetings will be convened by the Caribbean Council in 2012 and 2014 to continue working and moving forward the strategy for Pan Caribbean management of the marine fisheries resources.

### ***South Atlantic Fishery Management Council***

Bob Mahood presented a summary of activities and priorities for the South Atlantic Fishery Management Council.

**FMP Amendments:** The SAFMC is currently revising some of the ACLs that were implemented in 2011. Snapper/Grouper Amendment 18 was a plan currently under Secretarial Review. This creates some new ACLs along with a new ABC and some ACTs for the black sea bass fishery. It established an Endorsement Program, limited trap effort, and implemented new measures for the recreational fishery. The commercial fishermen were accustomed to fishery closures but not the recreational fishermen. Previous black sea bass measures for the recreational fishery were adjustment of bag and size limits when quotas were exceeded but not full closure of the fishery. Measures in the snapper/grouper Amendment 18 will be revisited to address these issues, although since the fishery had been rebuilding for a number of years, the harvest level are going to remain high and seasons are going to continue to be short.

Amendment 20A is the Recreation Fish ITQ Program. It was approved but not yet implemented. This deals with some of the issues related to ITQs or catch share-type programs. Another amendment was being developed to deal with the speckled hind and Warsaw grouper. This was petitioned by an NGO for ESA listing although NMFS determined that there is no rationale for listing in the 90 day findings. These groupers were not caught often and are considered as incidental catches. There has been no directed fishery for speckled hind for a number of years, and Warsaw Grouper has been closed for the last three years. Prior to that, there was only a one-fish bag limit which could not be traded or sold. This amendment would not allow fishermen to catch deepwater snappers and groupers beyond 240 feet in depth.

Regulatory Amendment 12 for the golden tilefish fishery establishes a new ACL for tilefish and revised some of the recreational provisions in the paybacks. Amendment 18B followed up Regulatory Amendment 12 that addresses the harvest and considers allocations between longlines and the hook-and-line fishery, and allocates the Commercial ACL.

Amendment 6 for Golden Crab is under development with the objective of establishing a Catch Share Program. There were currently only a few fishermen in the fishery due to heavy lobbying efforts on part of a many fishermen in the South Atlantic who were not in favor of catch shares. The Council recently circulated a letter that permitted the fishermen with permits to express their interest in continuing with the Catch Share Program for golden crab.

The Council is currently on the third generation of its comprehensive ecosystem-based amendment, Ecosystem-Based Amendment 3. This addressed a number coral habitat areas and the creation of new MPAs. It designates Habitat of Particular Concern (HAPC) for speckled hind

and Warsaw grouper and modifies the permit data reporting requirements. The main parts of the amendment will address the prohibition of harvest of species beyond the 240-foot depth line. The NGOs have exerted significant pressure to maintain this prohibition until new areas are created to protect these fish.

Shrimp Amendment 9 allows for the simultaneous closure of the Federal waters when the State declares a closure of the white shrimp fishery. White shrimp suffers huge mortalities during the extended winter season every 5 to 9 years. Simultaneous closures would reduce the mortalities from fishing and reduce the total mortality when die-off events occur during extended cold periods.

Mackerel Amendment 19 was undergoing a scoping process. This was a joint Gulf and South Atlantic Amendment. This addresses the selling of bag-limit caught fish and a number of permit issues for that fishery. Mackerel Amendment 20 addressed modifying the boundaries for the migratory Gulf king mackerel.

The Council was also considering a Joint South Atlantic and Gulf Dealer Permit. This amendment synchronizes the catch and selling of fish across common boundary lines.

### ***Gulf Fishery Management Council***

Steve Bortone, Executive Director of the Gulf Fishery Management Council, introduced the Gulf Council and some of its members and their roles.

**Stock status:** The Gulf Council manages 69 species that includes coastal pelagic and benthic species. The Council was undergoing baseline SEDAR assessments that include king mackerel, red snapper, gag grouper and amberjack. The red snapper, greater amberjack, red triggerfish, and gag grouper are currently overfished. The red snapper is not experiencing overfishing.

**FMP amendments:** The GFMC was currently working on the Great Triggerfish Amendment to consider dealer permit requirements. The Reef Fish Amendment aimed to revise the post-season recreational accountability for shallow-water grouper and a framework action for vermilion snapper on Annual Catch Limits.

Other amendments that were under way included:

- Amendment 35 for Greater Amberjack, spiny lobster in conjunction with the South Atlantic Fishery Management Council;
- A regulatory amendment to manipulate the red snapper fall season
- Crew Size amendment, where the Council advocated an increase from crew size of three to four.

**Other issues:** The Limited Access Privilege Program (LAPP) Program was being re-examined after recently being tabled. The Red Snapper IFQ Review has been initiated. Another issue for the Gulf Council included a Crisis Communications Plan which was recently approved. It was a living document. Every time a crisis occurs it has to be revised and was continually evolving. The Council was also looking at the possibility of artificial reefs, particularly oil platforms, as



Essential Fish Habitat. Each of the numerous oil platforms in the Gulf Region provided shelter for various fish assemblages.

The GFMC was conducting an exploratory analysis of the Goliath grouper to determine the status and the level of fishing pressure that the population can sustain. The Council also recently received coral funding and aims to utilize the funds to determine the effects of coral decline on fisheries

The Council was currently looking at the application of ECOPATH, ECOSIM and ECOSPACE models to track environmental changes and how this affects primary productivity. However, it was uncertain how to incorporate these modeling exercises into a management strategy, but this may occur through Coastal Marine Spatial Planning.

Council staff had begun evaluating ecosystem indicators for ecosystem-based management. Ecosystem indicators have to reflect processes and provide signals of events and trends, and be based on some real data. The Council utilized the methodology from a paper titled, Intersection - Union Tests for Characterizing Recent Changes in Smoothed Indicator Time Series. This looks at catch data over time and applies projections on the status of those fisheries. This method may be useful for ecosystem based management, even if the only information available is catch data.

### ***North Pacific Fishery Management Council***

The North Pacific Fishery Management Council provided reports on the following activities:

**Overfishing:** The Council has no overfished finfish stocks in Alaska, but two crab stocks were currently classified as overfished, although there was no fishing on these stocks. This Council was in the process of developing a rebuilding plan for Pribilof blue king crab.

**ACLs:** The North Pacific Council was the last to transmit their ACL amendment package. Part of the reason for the delay was the requirement to spend a considerable amount of time amending their Groundfish Fishery Management Plans to comply with the way this Council has managed this stock for 30 years. The second reason was a unique situation in regard to salmon. The NPFMC has an over-arching Salmon Fishery Management Plan which is designed to prohibit fishing in Federal waters for salmon. The salmon fishery is managed by the State of Alaska. The original interpretation of the National Standard 1 Guidelines indicated that the Council was required to start setting ACLs for all of the different salmon fisheries in Alaska regardless that these stocks are not managed by the Council. Fortunately, the Council made use of the Alternative Approach Clause in the NS1 Guidelines, and were able to successfully argue that the escapement-based management by the State of Alaska, in essence, complies with the spirit and intent if not the letter of the National Standard 1 Guidelines. The Council was continuing to evaluate how to explicitly characterize uncertainty in stock assessments and the ACL requirements. They were also still dealing with factoring into the ACL process fish that are caught by research, for stock assessment purposes and on exempted fishing permits

**Bycatch:** In the case of salmon, the Council's largest fishery—the pollock fisheries—are among the cleanest on the planet with respect to bycatch. Unfortunately, some of the small amount of bycatch comprises salmon, chinook salmon and chum salmon, which are vitally important in

Alaska both for subsistence, for recreational fishing and for some commercial fisheries. Bycatch caps have been implemented for chinook salmon in both the Bering Sea and Gulf of Alaska pollock fisheries. The Council was also evaluating additional caps for other fisheries in the Gulf of Alaska and later this year will be taking action on developing bycatch caps for chum salmon in the Bering Sea pollock fishery.

The Council is also looking at potential reductions in halibut, with prohibited species caps, and bycatch caps for halibut in the Gulf of Alaska trawl fisheries. There is a great deal of scrutiny of the North Pacific halibut fisheries, and the Council recently held a workshop in conjunction with the International Halibut Commission looking at halibut life history and stock assessments. There is a very large halibut biomass, but it's comprised increasingly of small individuals that are below the exploitable 32-inch size. So the exploitable biomass has been steadily reduced down, while at the same time there was an increasing catch over the years by the charter boat sector.

**Catch Shares:** The Council is dealing with final stages of developing a catch sharing plan between the commercial and the charter boat fisheries. The Council was going to implement an annual process whereby the Council develops measures in conjunction with the Halibut Commission to keep the charter sector within their allocation under that Catch Share Plan. As a species, halibut represents a very small fraction of the catch of species managed by this Council. However, it was taking an increasing amount of the Council's time with regard to the allocation, as well as with regard to the bycatch aspect in the Groundfish Fisheries.

**IFQ Programs or Fishery Cooperatives:** Most of the Council's fisheries are "rationalized" to some degree or another, either through limited entry programs, IFQ Programs or fishery cooperatives. The one fishery that is not rationalized is the Groundfish Fishery in the Gulf of Alaska. The Council has gone as far as making sector allocations of Pacific cod. However, with the halibut bycatch issues becoming more prevalent, there was a lot of interest in the groundfish fishing industry to develop a more rational management program that provides the tools to deal with bycatch of halibut as well as salmon.

**Observers:** The North Pacific has the largest observer program in the country with five to six hundred observers putting in over 40,000 observer days each year in the fisheries. The Council is considering a significant restructuring of that program. It was going to impose a landing fee of one and a half percent of ex-vessel value on all landings by all fishermen to pay for the placement of observers. The restructuring would also give the Council and NMFS the flexibility to more appropriately place observers among the different fisheries to maximize the information return from this coverage. NMFS has committed to help the Council with a one-time start-up funding of that program in the first year, as start up costs are close to \$4 million. The observer program costs somewhere between \$15 and 20 million a year and is borne by the fishermen in the North Pacific.

**Stellar Sea Lions:** Stellar sea lions were another big issue with which the Council is going to be dealing in the next year. The western population of stellar sea lions is endangered and since 2001 the Council has had a number of management measures on the different fisheries, all across the Gulf of Alaska, the Bering Sea and the Aleutian Islands. Last year NMFS determined that the Council had to place additional restrictions on some fisheries in the Western and Central

Aleutians to avoid a jeopardy determination in a re-consultation on the Groundfish Fisheries Determination. This was challenged in court by a number of fishing industry groups, as well as by the State of Alaska. The judge ultimately ruled that the measures would stay in place, but that the NMFS had not followed NEPA procedures by not developing an EIS to implement those management measures. Therefore, NMFS was under a court order to develop an Environmental Impact Statement the Council will be engaged in that process. The Council has a Stellar Sea Lion Mitigation Committee to help look at alternatives that might be less burdensome on the fishing fleet, but at the same time still staying below the jeopardy threshold. The Council will be spending a considerable amount of time on this endangered species issue in the next year.

### ***Pacific Fishery Management Council***

The Pacific Fishery Management Council provided a report on the following activities:

**Salmon:** The Council's salmon stocks are up substantially this year. The major runs on the Columbia, the Klamath, and the Sacramento rivers, are all abundant at this time, with near record runs on the Klamath and Sacramento River. There are 800,000-1.2 million fish on those two rivers so the fishery is looking at some really excellent fishing this year. The recreational season has been open for a couple of weeks. The season structure is basically set and constrained by the endangered stocks that comingle with the healthy stocks that are out in the ocean, Consequently, this year the NMFS Office of Protected Resources dictated to the Council what the salmon season would be.

Normally, the Council has to balance the fishing on the Sacramento and Klamath with the other stocks. Management has been almost exclusively about avoiding contact with endangered species. Ocean conditions and freshwater habitat has also been a factor this year. In the recent years, the Council has constrained a lot of the water operations conducted inside the Sacramento Basin and in the delta. That, coupled with a couple of years with high rainfall, contributed to a very successful in-and-out migrations and spawning activities in the rivers.

Good hatchery management has also played a part as the runs are dependent upon both state and federal the hatcheries. The Council and the State have adopted some sound hatchery practices over the years. Moreover, in the last few years they have redoubled the effort to truck hatchery fish around the Sacramento Delta where they traditionally suffered 98 percent mortality as fish passed through that delta system. The hatchery fish are released into acclimation pens in San Francisco Bay and then released back out into the wild. It's a very successful program, but it's very intensive and very expensive. The State is always running out of money, and this was a program about which that the PFMC is always concerned. The federal hatchery is concerned about straying issues and so opts out of the trucking program. Consequently, many of these fish do not survive the trip down the stream to make it to the San Francisco Bay and out into the ocean.

Another concern for the industry is the water management in and around the delta in San Francisco Bay. Recently, Representative Napolitano asked the Council to comment on the science of the impacts of the water operations on salmon and on the the socioeconomic impacts. The Council staff, in particular, Mike Burner, did an excellent job of reviewing that science and making visible the economic impacts of what those operations could mean to salmon fishing.

That report was being cited by other California legislatures as a benchmark assessment. In particular, Congressman Thompson has been citing the report and his press release received a lot of attention. It was hailed by fishermen in the San Francisco Bay area as an excellent analysis and the report was broadly distributed.

Reverse flow of rivers that flow from the mountains downstream to the ocean is a big concern. This happens when pumps in the central valley operate so hard that those rivers flow backwards, away from the ocean, towards the mountains. This causes fish to become confused on how to get to the ocean and they don't survive the path through the delta.

**Barotrauma and Rockfish:** Barotrauma and rockfish has been a constraining issue for the Council. Much scientific research has looked at decompression of fish and whether or not they survive the trip to the surface and back down and how well do they survive.

A fish whose stomach is extruded, the eye are bulged, and passive appears dead. If the fish is thrown back on the surface, it will be incapacitated and will be preyed upon by seagulls and other predators. If the fish is put it back down to its normal depth, the stomach is pulled back in, the eyes return to a normal position and the fish recovers. The science suggests that that fish will survive, both in the short and in the long term.

The Council is holding a workshop to look at best practices and the kind of equipment that will be used to increase the survivability. This includes outreach to anglers about getting fish back down to their regular depths increase their survivability and to provide guidance for management and additional research. This is a partnership with the National Marine Fisheries Service and a group called, Fish Smart. The workshop is timely because in June the Council has included baro-trauma on its agenda. This followed discussions at the last Council meeting where the State of California asked for a survivability credit for observed fish on party boats. The Council decided that they had not had an opportunity to fully vet this process and review all the science it was put on the agenda for this purpose. The results of this workshop will be brought into the June Council meeting

At stake was the ability to allow angler access into deeper waters that have been closed for ten years or so because of impacts to overfished and recovering species. If fishermen can selectively release these recovering species with low mortality, the Council might be able to provide fishing access in these deeper areas, into what is known as the Rockfish Conservation Areas, where fishermen can access healthy, comingled stocks and still not impact the rebuilding plans for these stocks. This issue has lots of potential for getting fishermen back on to some really good fishing areas and to relieve some pressure on the nearshore areas.

**Groundfish Catch Share Program:** In January, the Council finished the first year of its new Catch Share Program after eight years of development. This was a trawl-only Catch Share Program for groundfish, but there is also a sort of non-whiting traditional groundfish fishery and a whiting fishery that are both under this Catch Share Program.

For the non-whiting, landings were down, about 20 percent less than the historical average, but the prices were up. The shoreside revenues and the ex-vessel revenues were up by about 14

percent. Many people were concerned about what would happen to participation by the fleet, but there was only a small decrease in participation, ten fewer vessels than in the year prior to the program, from about 118 down to 108 vessels. The whiting fishery had a very good year. The landings were up by 40 percent and revenues up over 121 percent compared to their average.

One of the goals of the program was to reduce discards. There were some very promising results as there were much higher retention rates, particularly for the rebuilding species. Overall, the discard rate for the fleet with whiting and non-whiting combined was only 1.3 percent. When the large volume whiting catch was discounted, it was 4.8 percent for all of the other species combined.

There were concerns that the catch shares would be reach it constraining species catch limits halfway through the year and the fishery would be shut down. This was not the case. The catch of most of the rebuilding species declined by about two-thirds of that in previous years and a many of the target species declined. In terms of really getting the value out of the fishery, the Council has been trying to balance the amount of the availability of the rebuilding species and still get the target species out.

People were guardedly optimistic about the program as they appreciated the flexibilities that the program gave them. Many of these vessels fish crab and shrimp also and it was a good crab and shrimp year, so they did not have to go quick to get their bimonthly trip limits of groundfish in. They could continue the crab season until it was over and then conduct their groundfish fishing. The overall revenue was up considerably for a number of the vessels when all fisheries were combined.

There was much concern about the cost of the program and what happens when the fleet has to pay for 90 percent of the observer costs, where traditionally the fishery has had a 100 percent observer requirement and was reimbursed by National Marine Fisheries Service. The same per-day amount was also again reimbursed this year. This was supposed to end and by 2015, the fleet is to be paying 100 percent of the observer coverage. In addition, there was a three percent mandated cost recovery, which is scheduled to start next year. The fishermen needed to be maximize their returns from the fishery as well as reduce the costs. As such, the Council was looking into new technologies and electronic monitoring as part of the solution.

The fleet has been working on ways to use excluder devices to look at ways to make their nets more selective and not catch less constraining species and more of their target species. This might require some changes to the gear regulations. There was also a lot of interest in gaining more access to the Rockfish Conservation Zone Areas with individual accountability and the Council has made a few modifications to those boundaries. This would provide information on how well fishermen operate, now that they individually accountable and 100 percent observer coverage and have access to some grounds that have been off limits.

This year landings were up compared to the same period last year. People were getting used to the program and trying to fish. They were also trying to work more cooperatively and develop risk pools so they can try to manage their bycatch within a group. The majority of the shoreside whiting participants have developed a cooperative agreement where they will pool many of their

constraining species and agree to stay out of areas of high risk, with the idea of trying to maximize the whiting harvest with a minimal amount of their constraining species.

One of the issues with which the Council was struggling was the carryover provision of the program which allowed fishermen either to go over their quota pounds for the year by ten percent, and then have it deducted from the next year's quota pounds; or go under and then be able to carry over a maximum of ten percent with the next year. Looking at other programs in the past, the Council felt that it was an important component as it allowed people to have some flexibility, not have to fish right up to the limit and exceed some of their limits.

In this first year, a number of people under-harvested last year so there are a significant number of vessels that have a carryover. This had caused concern with the National Marine Fisheries Service because they're reluctant to allocate more than the Annual Catch Limit. If you take this year's quota pounds and you add in the excess from the carryover, it will exceed the Annual Catch Limit. There was a lot of controversy and concern that the Council understands what it is really trying to manage; i.e. should it be the overfishing limit or the Annual Catch Limit of the constrained species. Moreover were these pounds carried over really this year's pounds or were they last year pounds. This issue that will be important to other fisheries, too, as the Council moves forward in this kind of management.

**Pacific Dawn Case:** The Council mentioned this in January, and relates to the base period in the whiting sector of the groundfish trawl Catch Share Program. The base period had been 1994 to 2003 for the shoreside whiting fishermen and the mothership catcher vessels, and 1998 to 2004 for the shoreside whiting processors. The Council has a control date of 2003 and it was advertised widely that people should not go out and try to buy permits and speculate on the fishery. After 2003, the Council continued its work and finished their Council action in 2008. The National Marine Fisheries Service approved the plan by 2010 and in 2011 the fishery began.

While the individual responsibility for managing this fishery was working well, some individuals did not agree on the base period implying that it violated the Magnuson Act. They argued that control dates were a bad idea and sued the National Marine Fisheries Service over the base period. The judge ruled for the Plaintiffs saying that the Council and the NMFS did not fully consider the years after the control date except for the 2004 provision for processors. He also said that the Council was arbitrary and capricious in selecting a 2004 end of the base period compared to 2003 for the others. The judge, however, did not give a different base period to the plaintiffs as they had requested. The judge remanded the issue back to the Council to fully consider different base periods.

The Council has scheduled a three-meeting process to consider four alternatives to status quo. Three of these alternatives go beyond the control date and one of them even considers the entire decade of 2000, and well after the program was adopted. One alternative uses 2003, a strict control date as an alternative, and one is the status quo. So, the Council was in the process of evaluating these alternatives and conducting a very comprehensive analysis to fully inform Council members. The Council was working with partners at the National Marine Fisheries Service to put together a comprehensive analysis.

The last of the meetings where the Council would take final action on a base period that conceivably could be the same base period or conceivably could be one of these other alternatives, would happen in September and the National Marine Fisheries Service will take a look at that and approve it before the next fishing year.

### ***Western Pacific Fishery Management Council***

The Western Pacific Fishery Management Council provided a report on the following issues:

**Rebuilding Plans:** The Western Pacific only has one stock that's been determined to be overfished, namely Pelagic Armorhead. This stock is fished primarily in international waters at the Emperor Seamount in the northwest of the Hawaiian Islands and Midway Island. A small portion of the Emperor Seamount Chain lies within the US EEZ. There has been a moratorium on harvest since 1986 and that moratorium will continue until 2016. Because there are no other Western Pacific stocks in an overfished state, there are no rebuilding plans in place in the region.

**New management programs:** The Council has been working on a Living Fishery Ecosystem Plan Document. Currently, the Council staff developed some Draft Integrated Amendments and regulatory documents that contain the required NEPA. This idea of the new Living Fishery Ecosystem Plan Document would incorporate updated information and regulations from the amendment into the Fishery Ecosystem Plan. The establishment of a Living Resource Document is ongoing and a pilot project with the American Samoa Fishery Ecosystem Plan is being conducted to see what the problems and issues arise.

**ACLs:** As with other Councils, the implementation of catch limits occupied a great deal of the Western Pacific Council's staff time. There was a distinct absence of NMFS and Pacific Science Center involvement in the ACL specification process, and no stock assessments for the majority of Management Unit Species. This created problems as estimates of overfishing and MSY were unavailable. Current fishery data collection systems are inadequate for many of the stocks within the region and insufficient funding to improve data collection is a problem. Accountability Measures cannot be enforced because there is no real-time monitoring in the fishery, so any in-season fishery adjustments will be unlikely.

**Military Buildup:** One of the problems unique to the Western Pacific, particularly in Guam and the Northern Mariana Islands, are military activities and military buildups. Areas traditionally fished are now bombing ranges. There's been a significant amount of concern about reducing the availability of fishing grounds for fishermen. In addition, the buildup of military on Guam due to the transfer of marines from Okinawa will create increased pressures on some of the fish stocks. Monitoring and collection of data on fishing on the military bases could be problematic. However, the Council has met with the military and there may be ways to work with the military to provide data collection on the bases.

**Shark Finning:** The Council discussed concerns regarding the inconsistency between federal and local shark finning laws. Federal law prohibits the finning of sharks at sea, but a law was passed that prohibits the retention of shark fins in Hawaii. The law was unspecific on whether the fins were attached or not. Therefore, if a shark is brought in and the fins are attached, it could be viewed as being in violation of state law. The Council communicated these concerns

with NOAA GC, but NOAA GC has not given this a high priority because the incidental catch of sharks, which are marketable is quite small.

**Local Fisheries:** Seafood consumption in Hawaii is two times the national average. Fisheries within Council jurisdiction operate on the margins of the world's largest tuna fishery, with 60 percent of the world's tuna catch (2.4 million metric tons) coming out of the Western Pacific, in recent years. The Council spends an inordinate amount of time in attending international meetings having to do with the management of Highly Migratory Species within the Western and Central Pacific Ocean, and Eastern Pacific Ocean.

### **National Marine Fisheries Service**

The National Marine Fisheries Service provided an agency report to the CCC on the following issues:

**Staffing Changes:** NMFS provided a report on staffing changes within the agency, including those in acting positions as well as new hires and retirements. They also provided information on recruitment for positions of the Northeast Regional Administrator, Northeast Science Center Director, Director of the Office of Protected Resources, and the Director of the Office of Habitat Conservation.

**ACLs:** NMFS issued out ACL guidance in 2009. ACLs have been implemented by the Councils and NMFS and this has been a heuristic experience about what worked, what did not, and unanticipated issues. NMFS planned to take a holistic look at the process and determine whether there needs to be changes to account for some of the issues encountered in this process. NMFS published an Advanced Notice of Proposed Rule-making which announces the start of that formal process and stated that they are taking comments on things they should look at in reviewing this.

A number of topics in that Advanced Notice or Proposed Rule-making were listed and the comment period will run from May 3rd to the beginning of August to allow the Councils if they want, to take a look at that to provide NMFS advice through the normal Council process. It's also open if the CCC wanted to provide NMFS advice as well. Some of the topics that NMFS will address in the proposed rule-making are:

- How do you designate stocks in the fishery? We know that there was an issue with Councils having to debate whether a stock really needed an ACL or not, and how that would operate.
- How you deal with overfishing on a single year or multi-year basis? The relationship between ACLs and optimum yield and the mixed stock fisheries exemption.
- How you deal with uncertainty, whether or not the way we've described it is useful or if there are better ways? Within that, how you deal with data-poor stocks?
- How you set control rules?
- Catch accounting.
- How Accountability Measures have worked. There's a vast difference in the way people look at that.
- How we adopt the exceptions. There are some exceptions to the ACL requirements for annual crops or for international stocks. We have a wide range of difference in terms of



how the Councils formally invoked that exception, and whether that needs to be changed.

NMFS is not proposing to change the National Standard 1 Guidelines, but they'd like to have that discussion.

**Recreational Fisheries:** Another issue that NMFS continues to work on is implementing the National Recreational Action Plan through each region and the Regional Recreational Plans. These plans are intended to be updated on an annual basis.

The most significant thing that NMFS has done in the recreational agenda is roll out the Marine Recreational Improvement Program (MRIP). NMFS has done this in the Southeast and the Northeast on the Atlantic seaboard and it has significantly revised the way they look at recreational data. It has caused NMFS to re-analyze how that has been inputted into many stock assessments.

NMFS has not yet fully pulled the trigger and still needs to change the sampling protocol and to sample under the ways that MRIP tells them to sample, and they also need to incorporate it into management decisions. So there's still a ways to go there, but NMFS has made that initial first progress.

**Commercial Fisheries:** On the commercial side, NMFS is engaged in a number of things, including the Secretary of Commerce and the President have talked about leveling the playing field internationally. It is apparent to NMFS that the industry creates a fish product that goes into some consumer shelf right next to a product from a foreign country that doesn't have to deal with all those regulations and is, therefore, cheaper. So our fishermen are at a competitive disadvantage there, and NMFS would like to rectify that situation.

That involves a lot of international work, a lot of work on illegal fishing and unreported fishing. It was something that was in the President's State of the Union address, it is something that the current Secretary of Commerce has taken a personal interest in, and it is something that NMFS is working through a number of international forums on. It is something that you cannot just pull a switch and change, so that's a long-term goal.

**Catch Shares:** In terms of Catch Share Programs, NMFS has 15 Catch Share Programs in the country. They are working on Fact Sheets that highlight the socioeconomic performance of the catch shares as well. NMFS needs to look better at how these Catch Share Program are performing as they are a significant investment of Council time and NMFS resources and quite controversial.

NMFS also needs to look at getting those performance metrics, which are somewhat anecdotal now, or at least diverse, into some sort of comparable metric so that people have a better source from which to make comparisons about those things. These performance measures also need to be common, not just in the catch share program, but elsewhere.

**Communications:** In March NMFS re-launched the FishWatch website as part of its efforts to demonstrate, not just as an informational tool, but also as a tool to represent that the US fisheries

are well managed, that they are sustainable, to put the government behind claims that the U.S. has sustainable fisheries.

There are a number of third-party certifications that have all kinds of various issues and NMFS can't keep up with all of the different ways people want to grade fisheries. NMFS can say that U.S. fisheries, through the Fishery Management Council process, are managed sustainably and responsibly and NMFS can take action where they need to take action and they are in this for the long-term. NMFS dealt with all of the standards, it's clear, it's transparent, they can tell you exactly what they're doing and why they're doing it, and that's not true with every other fishery around the world. Through FishWatch, NMFS has a marketing campaign.

Every year NMFS puts out the Status of the Stocks Report, which gives an essential report card on how many stocks are subject to overfishing or overfished and how we're doing on rebuilding. There's some good news this year in that there has been a record number of stocks rebuilt. This is a significant one in that this is the one that's coming out after the deadline has expired that indicates exactly how we've done in meeting those ACL requirements. Even though we cannot demonstrate yet that overfishing has ended because in many areas you need a stock assessment to do that, NMFS has taken the action to ensure that overfishing will end and has met the congressional deadline on that even with the sort of newest argument in Alaska.

## **Panel Presentation and Discussion: Endangered Species Act Jeopardy Determination in Fisheries Management: Past, Present and Future**

Kitty Simonds, Executive Director of the WPRMC introduced the ESA Jeopardy Panel including the five panel members, and noting how the ESA jeopardy determination process had changed over time and its impacts on both commercial fisheries and the ability of native Pacific Islanders to harvest turtles. The panel was moderated by the NMFS Pacific islands Fisheries Science Center Director, Sam Pooley.

The objectives of the Jeopardy Panel were to review current state of ESA jeopardy determinations, and to consider solutions to improving scientific certainty for ESA policy determinations affecting fishery management

The Jeopardy Panel comprised of the following:

1. Paul Dalzell from the WPRFMC presented a case study on the Hawaii longline fishery consultation history for sea turtles
2. Gina Shultz, NMFS Office of Protected Resources presented a case study of the Gulf of Mexico bottom longline reef fishery and the associated 2009 Biological Opinion for loggerhead turtles
3. Keith Rizzard, MAFAC Chair & St. Thomas University School of Law presented on the endangered species and litigation realities

4. Kevin Stokes, Stokes.net NZ presented on the role of science in making credible policy determinations

5. Sam Rauch, Assistant Administrator for Fisheries, representing NMFS

The issues discussed by the panel included the inconsistency of the ESA consultation process across regions, Council involvement in the consultation process and transparency. It was noted that litigation results in break-down of communication between fisheries and the environmental plaintiffs. Further, the standards for ESA jeopardy determinations changed overtime as a result of litigations. A continuing source of frustration was the lack of evaluation of protected species take against absolute abundance.

Discussion following the Panel presentations started with the question by Jim Odlin of the New England Council about whose role it is to set the jeopardy standard. Sam Rauch indicated that this was the role of NMFS, sometimes in collaboration with the US Fish & Wildlife Service (USFWS). He added that in the case where a jeopardy opinion referred to a fishery, then RFMC could play a role in developing the management response for the reasonable and prudent measures. The same was true in the case where a fishery may be managed through a state agency.

Bob Gill of the Gulf Council disagreed about the case study of the Gulf of Mexico bottom longline reef fishery and the associated 2009 Biological Opinion for loggerhead turtles being a success. Moreover, he noted that there was a serious disconnect between the ESA and MSRA and that fisheries should not be 'managed' through the ESA. Keith Rizzardi stated that the MSRA had to be consistent with the ESA based on the recognition that the ESA is intended to be the last barrier to protect the listed resources from extinction. There will be times when the ESA is going to supersede MRSA, so the challenge is how to work within this dynamic, recognizing that ESA is in some areas taking over the fishery management decisions.

Don McIsaac of the Pacific Council gave an example of a BiOp for Pacific salmon that was conducted through the Council process. This took more time than is usual and included a large range of alternatives (75-80) but the transparency and inclusivity fostered trust on all sides in the process.

Sean Martin of the Western Pacific Council related the problems that the Council and fishing industry in Hawaii had in engaging in the Section 7 process for longline-sea turtle interaction. He noted that in the past the jeopardy call and the incidental take statement process would take place at NMFS Headquarters level without much engagement with the Council or the industry, although that had improved somewhat with the consultation occurring at the Regional level. There was further discussion of the most recent BiOp for the Hawaii longline fishery. Paul Dalzell explained that the climate forcing model produced forecasts which suggested the optimistic trends in a classic population viability analysis would be reversed, and vice versa for leatherbacks. The key environmental forcing signal was the Pacific Decadal Oscillation. Dalzell noted that the author of this analysis, Kyle van Houttan had given a webinar for the SSC prior to completion of the BiOp.

Further discussion of the Hawaii experienced followed. It was noted that in the past the interaction between the fishing industry and the NMFS Office of Protected Resources had been quite adversarial with NMFS refusing to explain through what analytical procedures were used to develop previous BiOps. There was also great dissatisfaction expressed by Kitty Simonds of the Western Pacific Council about the remanding of the BiOp that was drafted to support Amendment 18 to the WPRFMC's Pelagics FEP which removed the effort limits for the Hawaii swordfish longline fishery. No consultation was held with the Council or industry and NMFS simply negotiated this with plaintiffs engaged in litigation over Amendment 18.

Panel member Sam Rauch responded by noting that litigation created these tensions. The Councils is a decision making body that advises on regulations, it is not the fishing industry itself. Further, he noted the difficulties in talking to the fishing industry before discussions were at a certain stage with environmental plaintiffs. Keith Rizzardi stated that this kind of occurrence is typical across the spectrum of environmental law. Ultimately, the department of Justice handled these cases on behalf of the US Government. It may be possible for person or organizations to be an intervener in a case but in the end it will usually come down to what the DOJ and plaintiff lawyers agree on.

The role of the Councils in biological opinions appeared to be inconsistent across the US. The WPRFMC used to have a role in the development of BiOps and more recently had asked to be included the Amendment 18 settlement process but this never happened. However, in Alaska, the NPFMC had been allowed to participate in the settlement negotiations for Stellar sea lions. Sam Rauch noted the absence at the meeting of the DOJ and stated that they set the parameters on how and when these settlement discussions happen.

In comment taken from Dan Rattenbush was the perception that a few or indeed a single observation of an interaction with a protected species could be extrapolated to a whole fishery. Paul Dalzell clarified that NMFS had proposed the elevation of troll fisheries in Hawaii to Category II under the List of Fisheries based on the fallacious assumption that many fishermen trolled in association with dolphin schools. He also added that this was not an ESA issue but an MMPA issue.

Paul Dalzell related the period of great uncertainty faced by the Council and the fishing industry between 1999 and 2004. Over a three year period, the sea turtle jeopardy bar had been lowered significantly but without any supporting scientific information as to why NMFS had adopted this policy change. The change was brought about by litigation. Fortunately a technical solution allowed the reopening of the swordfish fishery and the sea turtle populations are in the main recovering or stable. Still, there had been no explanation to support the shift in jeopardy in the 1990s versus after litigation.

Sam Rauch explained that the difference was the quality and defensibility of the BiOps in the 1990s versus those after 1999, which were much better and withstood legal challenge. Moreover, the environmental plaintiffs adopted a more strategic approach to sea turtle interactions and that turtle takes by individual fisheries could be aggregated and evaluated against what at the time were global turtle populations. As such, the BiOps for fisheries failed to withstand legal

challenge and a more sophisticated approach was required where all turtle takes were accounted for and not just those of a single fishery. He also noted that the new BiOp included transferred market effects for the first time, where swordfish caught by foreign fisheries displaces swordfish caught by Hawaiian vessels if the fishery is shut down.

Kevin Stokes questioned this response since the policy change was not based on any technical data or methodology, and that this was fundamental to the debate on jeopardy and how the standard was set, including issues of transparency and inclusivity.

Rauch responded that it was reasonable to state that NMFS had established an initial jeopardy standard which was rejected by the court requiring the establishment of a second standard for jeopardy. Stokes demurred noting the ability for scientists to advise and give rational advice so that risk treatments can be made. In order to do that, they have to have an internal standard to work with, a performance measure of some kind. If they don't have that in advance, any advice is not risk assessment, it's just general advice.

Rick Robbins of the Mid-Atlantic Council inquired about the flexibility in BiOps for adaptive management where circumstances on which a BiOp is focused change significantly. Sam Rauch responded that adaptive management in BiOp would be including greater uncertainty in future predictions and incur legal vulnerability.

Kevin Stokes related some experiences from New Zealand where adaptive management for sea lions had led to changes in the annual take allowances which had actually closed fisheries. In addition he outlined the decision making co-management process to advise the Fisheries Minister directly on setting quotas and regulations. The Minister was given advice on how to manage fisheries for five years, and for each year briefed and asked if the current management should be kept in place or if the scientists needed to reconsider the management advice. This was much different to the legal risks in US system and how and whether or not to put them in place.

Paul Dalzell noted the high quality of the 2012 BiOp for the Hawaii swordfish fishery but noted that fishery takes were still being evaluated using population simulation models which were always going to be subjective, and not against absolute biomass estimates for turtle populations. Dalzell added that the inclusion of transferred effects in the 2012 BiOp was a significant positive development.

Sam Rauch thought it would be useful for the CCC or MAFAC to investigate the opportunities for involving the Councils in the consultation process and how and when this should be done. Examination of the issue of what is jeopardy was a much more difficult issue. Jeopardy will vary from species to species and its circumstances. He was unsure if there was a useful way to answer this question, and that USFWS also struggled with this issue. He reiterated that the one clear thing that could be worked on is getting the roles and the procedures in place for how NMFS involves the Councils, because it has been very ad hoc over the years.

Kevin Stokes commented that the two issues that stood out in the panel discussions were standard setting and process. If the real problem is with litigation then it may be useful to think how to engage or negotiate with litigants at an early phase to mitigate the possibility of litigation.

On the jeopardy definition, Stokes referred to words such as ‘appreciable’ and ‘reasonable’, and thought these were unhelpful. He agreed with Rauch that jeopardy will differ between species, but it continued to be unclear who was setting those standards for species and which include risk assessments. Stokes suggested that the need for clarity for this process; i.e. how it operates, who conducts it, and the transparency in each case of how results are arrived at was also something to work on.

Keith Rizzardi summarized much of the discussion in the panel session, noting that the debate over standards is, in effect, a debate over law. The question of, what is the definition of jeopardy, was the first threshold of standards. The Fisheries Service established a standard based on the Endangered Species Act but this may be kept in check by the Judiciary, which puts this standard to a reasonableness test. Adaptive management may be a way to tweak definitions and policies to be more explicit about what adaptive management is and give that some greater clarity, which then maybe increases the chances of surviving the legal scrutiny process. There was the need for science to reduce the uncertainties through better population abundance estimates. There was also the importance of stakeholder feedback and greater stakeholder engagement; and greater engagement of the Councils and improving the dialogue that continues between the Councils and NOAA in a litigation environment. As MAFAC Chair, Rizzardi stated that the Councils could engage MAFAC to look at these issues over the next couple of meetings to generate a document and recommendations to NMFS.

Gina Schultz agreed that consultations have to be defensible, but the bottom line of trust or distrust is what complicates the issues. She noted that greater communication between the RFMCs, fisheries and other stakeholders can provide opportunities to build up trust. Avoidance of all litigation is clearly not going to happen, but perhaps litigation can be minimized and most importantly, achieve more defensible consultations.

Paul Dalzell offered some final comments. First he encouraged NMFS to continue to improve the BiOps and strive to achieve evaluation of fishery impacts to turtles against absolute population abundance. He noted that the scale of the achievement of reopening the Hawaii swordfish longline fishery had been properly appreciated by NMFS. NMFS really needed to celebrate the iconic significance of a fishery that had achieved a 90 % reduction of seabird and sea turtle interactions, and was now wrestling with the cetacean interactions.

Sam Pooley thanked the panelists and drew the Jeopardy panel to a conclusion.

CCC Chair Manny Duenas also thanked the panelists and closed the session with remarks on how the protected species statutes such as ESA and MMPA had impacted the lives of native people on the US Pacific Islands.

Several recommendations emerged during the Panel and these included the following:

- Establish RFMC/NMFS/MAFAC Working Group to make recommendations on policy & best practices to effectively & consistently integrate RFMCs in ESA Consultation process
- Integrate RFMCs and committees/advisory bodies
- Identify mechanisms to consistently include Council consultation in negotiated settlements

- NMFS should strive for greater clarity in Biological Opinions by:
  - developing models to evaluate fishery impacts against absolute population abundance
  - Providing better explanations of scientific certainty
  - Improving protected species stock assessments

These were later formulated into the outcome recommendations from the CCC.

## **Administration's activities on CMSP/NOC**

Sam Rauch provided an update on coastal marine and spatial planning. The National Ocean Policy sets out a process for engaging in coastal marine and spatial planning and involves the creation of 9 Regional Planning Bodies, which at the moment do not exist, although the first is soon to be established. The National Ocean Policy dictates that the planning bodies will be made up of federal, state, local, and tribal governmental agencies. Collectively, these groups do not have any extra authority, but are designed to coordinate and engage on marine issues to try to work on issues where we have synergies and to avoid places where there are conflicts.

The latest news is that the Fishery Management Councils are to be invited to join the Regional Planning Bodies, and will be represented by members that hold government seats. This is a reconciliation by the National Ocean Council of the importance of Fishery Management Councils in the process.

Once the planning bodies are formed, they can start to work on developing regional CMSP plans, that are to be stakeholder-driven from the bottom up and science-based. Rauch stated that the National Ocean Council recently released its Draft National Implementation Plan for the National Ocean Policy. The final plan will be available in May 2012.

The National Ocean Council has a new director, Deerin Babb-Brott, who is from New England. In FY 2011, NOAA received an appropriation for grants to be awarded to help facilitate the creation of Regional Ocean Partnerships. NOAA awarded nine grants, totaling \$6.18 million going towards these ROP activities. For FY 2012, \$3.5 million was also appropriated for NOAA ROP grants.

Paul Howard also provided an overview of CMSP. He indicated that the NEFMC has received a letter to identify a member to serve on the Regional Planning Board. Because their representation has to be a federal, state or local government voting official on the NEFMC, it makes it difficult to identify a person if the States pick their pick their Coastal Zone Managers and their Fisheries Officials, which is currently the case. The NEFMC chose the New Hampshire Fisheries Director to represent them because New Hampshire does not have any active plans for projects in the EEZ, as opposed to Massachusetts, Rhode Island, and Maine.

Although the roles of FMCs on these RPBs have yet to be defined, Howard offered that the it should be to protect and preserve the fishing grounds, protect fishing communities and fishery ecosystems and habitat. The FMC representative should ensure that fishermen in their communities have an input in the planning and decision-making process and ensure that the decisions are based on the best available science and not based on politics. A Regional Ocean

Plan will be developed and approved by the NOC and then each individual agency will be tasked to implement that plan.

Eventually, the powers that be will find there will be conflicts with the Magnuson Act and the ocean planning activities. In order to resolve these conflicts there may have to be new legislation to really make this work. Howard ended that with this in mind, he believes that the fishing industry and the FMCs need to work together on the Regional Planning Boards, ensure that Regional Ocean Plans will protect and preserve commercial and recreational fishing, protect our fishing grounds and the health of the ocean ecosystem in our fishing community and that fishing continues to be valued and respected as the most prominent and most broadly distributed human activity in all our regions.

Duenas thanked Howard and Rauch for their presentations.

Chris Oliver asked what part of the NOAA pie does the \$ 6 million in FY 2011 and \$3.5 in FY 2012 comes from?

Sam Rauch answered that money was in NOS' budget, but that it's very difficult to say once you deal with congressional appropriations whether this was sort of new money or what was sacrificed for this money. Some budgets went up and went down within NOAA and within the Administration, but in terms of the Appropriator's mind, who they cut to pay for this or whether they cut anybody, Sam indicated that he did not have that information.

Robins indicated that he thinks the CMSP may improve on the existing BOEM process, but that he shares Howard's concern that potentially the State Directors representing a Council could be faced with an impossible dynamic if the Council's position is in conflict his/her Governor. He wondered if the NOC could provide some flexibility in terms of Council representation.

Rauch responded that this is a work in progress and that the solution that was presented to allow the Councils participate is not without problems, but it does allow their participation. He stated that he has shared the desire for more flexibility to the CEQ, but any change will be slow.

Cunningham asked about what would happen if Congress does not allow any agency to spend money on NOP/CMSP activities?

Rauch responded that it depends on the outcome, but regardless of whether it's funded or not as a federal matter, a number of states are already engaged. It might affect, depending on the language, a federal agency's ability to participate, or more specifically may precludes federal agencies from spending any money in any sort of CMSP activities, meaning no meetings, no use funds, etc.

Howard stated that in New England, the RPB has yet to be established, but ENROC, which is the State body that may assume the duties, has received \$2.3 million, one million from the federal government and 1.3 from Pew. He asked whether the federal RPBs will be able to accept private funding?



Rauch responded that he does not know whether the RPBs will be able to accept non-federal money.

Palacios asked what roles will the Council SSCs play in these Regional Planning Bodies and in the development of CMSP?

Rauch responded that the answer to the question is flexible in that the SSCs could serve a key role in terms of developing CMSP from their knowledge and expertise in terms of the environment and the impacts of the various activities on fish stocks and fishing communities. However, it's going to be up to the Regional Planning Bodies and the Councils as to craft that relationship – whether it be quite extensive or merely providing data.

Oliver questioned the relationship between the RPBs and existing ROPs, and using ENROC as an example, asked when does the hand-off occur between their work and ultimately the RPB, recognizing that membership differs among the two groups?

Howard replied that ENROC has been established for some time and they have an interest to control RPB funding and would like to see ENROC become the RPB for the northeast region, so any sort of hand-off is unclear at this point.

Cupka asked if the role of the SSCs will be defined by the RPBs or by the NOC?

Rauch responded that he'd be surprised if the NOC provided guidance on the role of the SSCs. It's a two-edged issue, whereby the SSCs could be heavily involved, but at the same time the Councils may not want them to be so heavily involved due to other priorities. This issue will be discussed on a region-to-region basis between the Councils and the Regional Planning Bodies. Cupka replied that he continues to have concerns, in that there might be enough time for the SSCs to do both Council and RPB work.

Rauch stated that if that is the concern, then there needs to be a mechanism for the scientific information that the Council believes important to get to the RPB.

Oliver stated that as he understands it, within the RPBs there will advisory bodies that may include SSC members, but but by no means is that going to solely the Council's SSC.

Rauch responded that he thinks it's up to the RPB to determine the relationship, but at this time there's not any directive one way or the other that would force the issue.

Mahood stated that at a past presentation he heard on CMSP, the presenter mentioned that because the SSCs currently fisheries expertise, that the Councils may want to add members to the SSC that would be experts in other fields related to CMSP. Mahood questioned who is talking to NOAA leadership on this issue?

Rauch replied that he does not think the NOC intends to alter the SSCs without, but perhaps more what Oliver was indicating, a body like the SSC which has broader expertise than fisheries.

## Stock Assessments

Rick Methot addressed NMFS stock assessment program. His presentation included the following topic areas:

- Current Assessment Output
- Next Generation Stock Assessments
- Fisheries And The Environment (FATE)
- Advanced Technology
- Use of Best Available Science
- Prioritizing Assessments
- Allocating Resources to support Assessments

Methot showed the number of stocks for which stock assessments have been conducted and how many of these are used in the NMFS Fisheries Stock Sustainability Index (FSSI). He also explained about stock assessments were being increasingly linked with environmental factors through the Fisheries and the Environment (FATE) initiative. Since 2006, 60 FATE projects had been implemented with 36 completed and 24 still ongoing. Future FATE projects included the following:

- Long-term climatic forcing and pelagic nekton in NCC
- Humboldt squid and climate-driven interactions in the CA current
- Stratification and circulation model for stock and ecosystem assessments
- Modeling for the California Current IEA
- Atlantic bluefin tuna abundance indices: Gulf of Mexico
- Climate change and river herring
- El Nino and salmon over the past 50 years
- Hypoxia and the GoMex menhaden fishery
- North Pacific Current and north Pacific albacore tuna in the Northeast Pacific Ocean
- Environmental effects and haddock productivity: Georges Bank

Methot also reviewed the advanced technology approaches that were being explored to improve stock assessments. These included acoustic and optical sensors, various technology platforms such as unmanned aerial and marine vehicles, and electronic monitoring and data entry systems aboard commercial and research vessels.

With respect to National Standard 2 (NS2) and the best scientific information available (BSIA), Methot noted that new guidelines were in preparation and would address BSIA definition, the role of the SSC in BSIA, the complementary relationship between SSC and peer review process, and updated expectations for Stock Assessment and Fishery Evaluation (SAFE) documents

Methot addressed the issues relating to stock assessment prioritization. He noted that various factors played into the prioritization process and these were as follows:

- Fishery importance – value at the national and regional scale

- Ecosystem importance – role of stock in regional ecosystem
- Stock status –degree of fishery impact on the stock
- Stock biology – scale of expected fluctuations
- Assessment history – is upgrade or update needed?

Methot finished by summarizing the NMFS Office of Science and Technology's stock assessment goals for 2012. These included:

- Drafting a prioritization report and priority factors database
- Circulating an approved draft to Councils for comment
- Completion of report
- Distribution of report and database access to Science Centers and Councils to inform and guide their within-region stock assessment prioritization
- Use results to inform allocation of new/existing/reduced funds among regional programs

Paul Howard Commented on the prioritization for stock assessments in mixed stock fisheries such as New England, where stocks were inter-relate across a range of fisheries and which were at different abundances. In particular, stock assessments were needed on the lowest denominator in a mixed stock fishery to ensure that optimum yield could be achieved. There was additional discussion in response to comments by Rip Cunningham on the need for quantitative information on stock status and the quality of assessments in order to set goals and priorities. This included updating the NMFS Stock Assessment Improvement Plan which was now 12 years old.

The problems of 'assessment-resistant' stocks was noted by Rick Robins, especially hermaphrodite species which were proving challenging in the Mid-Atlantic. In addition, there needed to be the development of strategies to deal with assessment failures that required ad-hoc decision making. Some stock assessment models could become overly complex that they could not be used to provide management advice due to uncertainty.

The advent of Annual Catch Limits (ACLs) had increased the burden of what was required for a reliable stock assessment. This in turn led to discussion of data poor stocks. The stock assessment report being drafted by the Office of Science and Technology would include assessment of what new data collection needs to be conducted in order to be able to conduct assessment on data poor stocks. Methot indicated that part of the improvement process would be nationally coordinated regional workshops to seek common solutions to data poor stocks.

There was also discussion of old versus new methodologies and that many of the stock assessments relied on trend analysis of some form. In the case of Hawaii bottomfish, David Itano noted that a great deal of effort was put into looking at the historical data to provide a reliable benchmark against which to evaluate contemporary trends. Methot responded that technological advances meant that it is becoming more realistic to estimate current biomass and use this for assessment than looking at CPUE time series, although having both data streams would be advantageous. Stock assessment prioritization should focus on those stocks for which are being subject to a least a moderate level of fishing pressure.

In response to a question by Manny Duenas about the availability of the Draft Prioritization Report, Methot noted it was a work in progress and that there was as yet no release date. There was also concern expressed by Duenas that in the US Pacific Islands recent reports showed a 90 percent depletion of shark populations around inhabited islands, in the absence of any directed shark fisheries. Such reports that implied fisheries were to blame in the absence of fishing only served to erode the public trust in the science.

Methot explained how funding is allocated to the Science Centers for stock assessments. He stated that a large fraction of the funding is allocated directly to the Centers, and relatively little was reallocated on an annual basis. More recently, NMFS has developed a number of Requests for Proposal Processes of Particular Topics. These included fishery-dependent sampling, advanced technology, the FATE Program, assessment methods and habitats. These are internal competitive processes where proposals come in from all of the Centers and are relatively small projects.

The expanding annual stock assessment budget line, was approaching \$67 million, but this has to be spread around among all of the Science Centers in order to accomplish all of the stock assessment programs. However, there was not enough funding to meet everybody's needs. In the Western Pacific, it was noted by Kitty Simonds that core funding for fisheries data collection has hardly changed in twenty years and remained at about \$850,000, and this was being augmented in 2012 with \$250,000 from the Western Pacific RFMC. With respect to the Western Pacific Simonds observed that funding would be better spent on basic fisheries data collection as opposed to additional research ship time which did not contribute to stock assessments

Methot stated that Centers have experienced increases over the last several years in their core funding. Some of it has gone into supporting more assessment scientists. There have been increases for all Centers in support for biological sampling from the fisheries. However, he repeated that despite the increased level of funding, it was not enough. NMFS was trying to strike a balance between simply just spreading funding between Centers and trying to meet the obvious most important needs. The need for more stock assessments in the Western Pacific was again emphasized, noting that in terms of local assessments only bottomfish had so far been addressed.

It was noted that while stock assessment funding may be increasing, there were shortfalls in other areas were occurring, especially in data collection. Methot noted that this was happening everywhere, that, increases in the expanding annual stock assessment budget line, were matched by reductions in other lines. This was a fundamental challenge for NMFS and that cuts to data collection and monitoring could compromise stock assessments. Six criteria were used to evaluate the priorities for stock assessments that included items such as 'is the stock overfished', how long since the last assessment, value of the fishery etc. This listing procedure could be made available.

Manny Duenas observed that there was a wide gulf between fishermen's' perceptions and what was being reported by scientists. He noted the concern over sharks based on surveys conducted in the Marianas and elsewhere, while Guam fishermen continued to loose catches to shark

depredation. It appeared that NMFS valued fish above people and fishing communities and this was very disheartening.

## **National SSC IV**

Chris Moore referred the CCC meeting to the report of the Fourth National SSC workshop and moved directly onto the Status of the SSC Working Groups. Moore summarized four recommendations that had emerged concerning the National SSC meetings. These were as follows:

1. Formalization of the creation of a National SSC whose membership would be comprised of the eight SSC Chairs or their designees. Technical support for this committee would be provided by personnel from the NMFS Office of Science and Technology and Council staff.
2. Development of Standardized Operating Practices and Procedures which would govern the operations of the National SSC and Terms of Reference to direct its activities.
3. The National SSC to be tasked with the development of a prospectus for proposed working groups, and topics for future National SSC Workshops. These proposals would be reviewed and approved by the CCC as part of the specifications of Terms of Reference, and they could be sponsored by one of the Councils or brought to NMFS for consideration for sponsorship.
4. Membership of national working groups approved by the CCC would be populated based on nominations from each Council's SSC with the maximum of one SSC member per Council and one member from NMFS.

Moore asked if the CCC wanted to endorse proceeding as outlined in the recommendations. He added that the Chair of the working group would be appointed by the National SSC, selected from the working group roster. The working group would submit a final report to the CCC, which would include recommendations to address the Terms of Reference. The final report may be subject to External Peer Review, the level of which would be determined on a case-by-case basis based on agreement between the CCC and NMFS.

Following peer review of the Working Group Report the report will be published as a NMFS Technical Memorandum or other appropriate mechanism such as it meets the requirements for formal National Technical Guidance to the Councils.

Subsequent discussion by the CCC on the National SSC sought to clarify the role of a National SSC with respect to the CCC, and issues such as FACA exemption. There was a suggestion that the National SSC could be a sub-group of the CCC and may require the presence and sponsorship of a CCC member when the National SSC convenes. In this context, it was suggested by Rick Robins that recommendation 3 might contain language that these actions be conducted in consultation with the CCC. There was general consensus on the four

recommendations which were later adopted by the meeting subject to edits reflecting the discussion on this agenda item.

## **Bycatch, Cooperative Research, Habitat, 5-year Council Research Plan: Funding Opportunities and Processes for these Programs**

Alan Risenhoover and Samuel Rauch presented overviews of the different potential sources of funding that may support fisheries management. Alan Risenhoover provided an overview of the By-Catch Reduction Engineering Program. This program aimed to minimize by-catch through gear modification. The priorities of BREP are as follows: 1) reduction of protected species bycatch; 2) improved fishing practices that reduce bycatch; 3) reduction of post-release mortality in all fisheries; 4) innovative technologies to reduce bycatch, such as illumination or higher frequency cleaners for gill nets, and other modifications. The Senate marked in the final appropriations bill \$2.5 million dollars available externally for by-catch work. Although Councils are not eligible to receive this grant (as determined by the Federal Administrative Law Division of Department of Commerce), the Council can collaborate with potential grantees and provide NMFS with inputs on what those priorities should be. The Five Year Research Plans of the Councils would be a good starting point for NMFS to deliberate whether such submitted proposals meet the needs of the Council.

Samuel Rauch provided an overview of the Cooperative Research Program. Cooperative Research is an important element on how NMFS partner with the fishing industry and other stakeholders to collect fundamental fisheries information. The main goal of this Program is to build trust between NMFS and the stakeholders through joint fisheries research by having Council Members believe in the process by being part of the process. NMFS have reasonable Cooperative Research priorities that were established among the Science Centers, Regional Offices, Councils, Commissions, State Agencies, academia and interstate stakeholders under Section 318 of the Magnuson Act which lays out a number of statutory priorities and sets up the program. In addition, the Cooperative Research portfolio corresponds, on a regional basis, to the Councils multi-year, five-year research priority plans, which are set out in Section 302 of the Magnuson Act, which requires there to be these five-year plans. NMFS endeavor to link the two together explicitly.

The funding historically trends for the Cooperative Research Program has been \$18 million in Fiscal Year '10, \$16 million in Fiscal Year '11, \$16 million in '12 and then in '13 in the President's budget NMFS is proposing a budget of \$12 million. A new strategy was implemented in FY'12 where each region received base funding from the main Cooperative Research line item specific for Cooperative Research activities. From that same line item, \$1.5M was allocated for competitive grant proposal submission where each region is allowed to submit five proposals no more than \$300K. This was done due to feedback from OMB that it was not apparent what value NMFS is getting from this program. OMB wanted a much more objective look at the process which was met by undergoing a competitive grant submission process. The proposals are assembled by the Regional Science Centers and the Regional Research Coordinators taking into

account various stakeholder input through a variety of methods explicitly addressing the specific research areas identified in Section 318 on the research priorities.

There were some questions about the objectiveness of the evaluation process and the lack of opportunity for the proponents to clarify questions that rose during the evaluation process. In order to address this issue, more time will be given between the receipt of the reviewer's proposal comments, scoring and the development of the funding recommendations, which would allow the Research Coordinators to go back to the principal investigators for further clarifications or to address specific comments.

Samuel Rauch also reported on the Habitat Program. The Habitat Program aims to address different objectives including Deep Sea Coral Research and Technology Program to funds research on deep sea corals and sponge ecosystems. It was mandated in the Magnuson-Stevens Act developed in consultation with the Council and has been funded at a rate of about 2.5 million a year. It is a multi-year fieldwork currently occurring in the South Atlantic to find and describe deep sea coral habitats and the fish associated with such. The results support the SAFMC's comprehensive Ecosystem-based Amendment Scoping Process and a similar process is being undertaken in the Pacific Council for the groundfish EFH review.

In addition to the coral work NMFS also dedicate funding each year to support strategic investments in strengthening the National EFH Program. These projects are funded through an internal competitive process that provides data, information support refining the EFH Designations and completing the EFH Five-Year Reviews. Through this process NMFS directly supported the ongoing five-year review of Pacific Groundfish EFH, as well as Pacific and North Pacific review of Salmon EFH.

NMFS also work with the Coral Reef Conservation Program to address priority habitats and fisheries needs for the coral reef ecosystem. NMFS recently provided \$90,000 from this program in support of the Pacific Islands Habitat Blueprint Initiative in Guam.

NMFS is also involved in the Commissions on the National Fish Habitat Partnership Initiative. This is an effort to look at habitat support activities on a broad regional scale in a non-regulatory context taking advantage of a number of volunteer organizations whose groundwork complement the regulatory rules. Much of the funding comes through Fish and Wildlife Service

The NOAA Restoration Center has 12 different funding opportunities for habitat restoration projects that are mostly regionally-based and are currently open or will be open in the coming months. The opportunities range from \$15,000 to \$1 million in funding. Eligible applicants are typically nonprofit industry groups, higher education institutions and state or local governments. But there is a potential for Councils work cooperatively with these organizations towards mutually-beneficial habitat-related outcomes.

## **Report on the effective of MPAs for fisheries management**

Paul Dalzell presented on MPAs for fisheries management in the Western Pacific Region. He examined the pros and cons of the following MPAs:

- The Papahānaumokuākea Marine National Monument
- Fagatele Bay National Marine Sanctuary
- West Hawaii MPA Network
- Guam's Marine Reserves
- WCPFC High Seas Pockets closures

He noted that the Papahānaumokuākea Marine National Monument stock piled fish beyond the reach of Hawaii's fishermen and did not appear to be working to preserve monk seals. The Fagatele Bay National Marine Sanctuary was proposed to include additional parts of American Samoa some of which were important fishing grounds. American Samoa reef fish stocks were in good shape due to conventional fishery management measures such as bans on SCUBA spearfishing. The West Hawaii MPA Network had been successful in restoring the abundance of yellow tang which was the main target of the local aquarium fish fishery. Guam's marine reserves on the leeward side of the island had forced fishermen to fish on the windward coast with a subsequent increase in fishermen drowning. The WCPFC High Seas Pockets closures had not markedly reduce bigeye fishing mortality as effort simply moved and increased in the Pacific Islands EEZs.

Bob Mahood asked if any of the MPAs allow for fishing for pelagics. Dalzell elaborated further about the Western and Central Pacific Fishery Commission High Seas Pockets closures. He noted that had been so much discussion about very large-scale pelagic MPAs. There's been even some review articles promoting the implementation of large-scale MPAs for conservation benefits. However, the implementation of these high seas pockets failed to have an impact on bigeye mortality as the fish move and the fishermen move. All of the effort in these pockets simply moved into the surrounding EEZs. Further, political blocks, such as the Pacific Islands Forum Fisheries Agency in the Western Pacific have in the past wanted these areas closed not for conservation reasons, but because it forces effort into their zones and they receive more money.

Bob Mahood presented on Marine Protected Areas and Protected Areas for Coral and other habitat in the South Atlantic. These included:

- Oculina Habitat Area of Particular Concern
- Oculina Experimental Closed Area
- Deepwater Marine Protected Areas
- Deepwater Coral Habitat Areas of Particular Concern (HAPC)

Mahood explained the background to the development of these MPAs. In the early 1990s the Snapper Grouper Plan Development Team offered MPAs as the only viable option for maintaining optimum size, age, and genetic structure of slow-growing, long-lived species over the long-term. The Scientific Review Panel considered the concept of MPAs as a management tool

The Oculina Experimental Closed Area was established between 1994-1998. The Scientific Review Panel concluded that properly designed MPAs, in combination with other management measures, were effective. The Council formed a Marine Reserves Advisory Panel and



Committee. Between 2000 and 2006 Council begins deliberative process involving constituents to explore use of MPAs in the South Atlantic region. The SAFMC advisory panel and committee meeting and public hearings were held to gather input. Subsequently the Council initiated establishment of Coral HAPCs to protect deepwater corals.

Between 2007 and 2009, the Snapper Grouper Amendment 14 to established 8 deepwater MPAs is submitted for review (July 2007) and approved on January 13, 2009, with regulations becoming effective February 13, 2009. A Comprehensive Ecosystem-Based Amendment 1 was submitted for review (October 2009). The Oculina and Deepwater MPAs were classified as “Type II” – permanent closure with some fishing allowed. Fishing for and/or possession of snapper grouper species was prohibited but trolling for pelagics is allowed. Bottom-tending fishing gear was prohibited in Coral HAPCs and fishing for golden crab and royal red shrimp is allowed in designated areas. Vessels were allowed to transit areas with snapper grouper species on board as long as fishing gear is stowed, but the use of shark bottom longline gear is prohibited in the MPAs.

Mahood outlined the current MPA activities being conducted by the MAFMC. These included Comprehensive Ecosystem-Based Amendment 3 addressing the establishment of new or expanding current MPAs to protect speckled hind and Warsaw grouper. The dilemma, however, was how much protection did the current MPAs provide; how many new MPAs were needed to end overfishing; is overfishing occurring—the last assessment was in 1992—and what were the social and economic impacts of MPAs?

The ongoing challenges for MPAs for the SAFMC were distance from shore limiting law enforcement ability and research, and prohibiting only certain types of fishing activity complicates law enforcement. Further, funding to conduct scientific research is very limited and very high densities of invasive lionfish may compromise effectiveness of MPAs

Current research included the provisions of the Snapper Grouper Amendment 13A called for development of an Evaluation Plan for the Oculina Closed Area. This had three components: outreach and education; research, monitoring and assessment; and law enforcement. Funding for research is sporadic so not all objectives have been addressed. Amendment 14 did not include a research and monitoring plan for each MPA. However, it included a list of research, outreach and law enforcement needs.

The NMFS SEFSC Panama City Laboratory conducted research in 2004, 2006, 2007 and 2008, prior to implementation of regulations. These data will be useful in comparing population levels of target species under reduced fishing pressure in the future. The establishment of the currently proposed CHAPCs is based primarily on recent scientific research. Low and high-resolution mapping ROV and Submersible dives. NOAA’s Deep Sea Coral Research and Technology Program was focused on additional research within the proposed CHAPCs in 2010 and 2011

Finally, the Marine Conservation Biology Institute conducted a comprehensive review of federal and state law enforcement assets in the South Atlantic region appropriate to surveillance and monitoring of remote closed areas, and this report is available from the SAFMC

CCC discussion initially focused on enforcement with a comment from Dave Witherell that some of the areas in the South Atlantic seem to be rather small and Mahood had already mentioned that there were already enforcement concerns. Witherell asked how do areas that small get enforced? Elsewhere such as Alaska, to be effective, area closures would need to be a minimum of 25 five square miles. Environmental NGOs such as GreenPeace were suggesting closures of tens of thousands of miles to protect some coral colonies.

Mahood responded that the largest closure in the South Atlantic was 23,000 square miles, and was only a closure to bottom-tending gear, which he thought was enforceable. The fisheries that were occurring adjacent to it can continue as they have historically. However cruise ships over which the Council had no control can drop an anchor right there in the middle of the coral bed. With respect to smaller areas Mahood noted that the SAFMC had received a lot buy in from fishermen that are trying to protect the resource. Mahood was asked if the SAFMC had considered time area closures to protecting spawning stock. Mahood responded that most of their major snapper/grouper species have spawning season closures, some of which overlapped. In addition, there were now fishery closures due to ACLs.

Miguel Rolon noted that in the Caribbean that area closures for spawning stock protection proposed by fishermen and scientists were almost identical. The Caribbean FMC was using MPAs as a management tool to protect fishing aggregation sites. There was concern about the Department of the Interior, having closed big areas in the Pacific were thinking about closing an area south of Saint Thomas and without any public meetings which had upset the fishermen because they could even cruise through that area with gear onboard.

Paul Howard observed that the MPAs established in the Western Pacific were not accomplished by the Council and the perception is there never will be fishing again in these areas. By contrast the MPAs were established by the Council and the fishermen with an expectation that there may be fishing again. The permanency of MPAs was one of the strongest concerns of fishermen once an MPA was established the Council loses flexibility.

Finally, David Witherell noted that the most effective enforcement of MPAs was through VMS.

## **President Obama's Executive Order on Improving Regulation and Regulatory Review; (E.O. 13563)**

Alan Rishenhover provided a presentation on Executive Order 13563 on Improving Regulation and Regulatory Review, which was issued in 2011. He mentioned that the President's statement on improving regulations reflects on the Council process already, in that regulations should protect our environment, promote competitiveness and job creation, rely on best available science, reduce uncertainty, not be burdensome, examine costs versus benefits, ensure that that regulations are accessible, and be written in plain language so that we can understand them. In addition, the EO calls on agencies to promote public participation in an open exchange, which the Council process also already achieves. The EO requires agencies to conduct periodic review of existing significant regulations to ensure that stale regulates don't sit on the books forever. The

EO also requires agencies to report on their regulatory review, which NMFS did at the end of 2011.

In the report, NMFS highlighted three issues: 1) the Regulatory Flexibility Act already requires (Section 610) for ongoing review of significant rules, 2) under the MSA, NMFS has just finished the ACL on all of the Nation's fishery management plans, and 3) looking to improve the regulatory process associated with the Endangered Species Act and working with Fish and Wildlife Service on a issues such as critical habitat, definition of the destruction or adverse modification of critical habitat. NOAA is evaluating the use of web-based delivery of information to the public. Council Advisory Committees and Plan Team are examples of bodies consistently looking to improve regulations and make them more effective. He mentioned that the National Marine Sanctuary Program also looks at its management plans every five years. NOAA is also developing a plain language training session for writing regulations, which some of the Council participated in. NOAA is working on fishing the second report which be available later in 2012.

Simonds asked how the agency will be looking at reducing or avoiding redundancy in federal regulations. Specifically, the Hawaiian Islands Humpback Whale National Marine Sanctuary is going through its management plan review process and will likely be proposing to go towards an ecosystem based sanctuary and add management authority over resources that are already being managed by NMFS, e.g. sea turtles, monk seals, other marine mammals, etc. She asked how does the EO prevents this type management duplication?

Rauch responded that NMFS has not consulted the National Marine Sanctuary Program on this issue. He encouraged the Council to participate in the review process and raise the issue with him directly.

## **Report on Legislation**

Manny Duenas asked Sam Rauch for the report on legislation. He noted that there were three pending pieces of legislation that held particular interest for the Councils, namely : Coastal Marine Spatial Planning (CMSP), Annual Catch Limits (ACL) and the Saltonstall-Kennedy (SK) legislation, returning SK funds to fishermen.

Rauch reported on the Administration position on Legislation. The overall view was that as this was an election year and there would be very little movement of these measures, at least until November. There were a lot of bills being drafted and these could provide a point of discussion and debate. Mr. Rauch offered that there could be a discussion of what these legislative measures might do.

Rauch cited the Fisheries Investment and Regulatory Relief Act introduced by Representative Frank, HR 4208. The Administration saw the bill as a reallocation of funding giving more authority to the Councils over the Fisheries Service's \$109 million operating budget. This would take away the Service's ability to fund certain pots of money as they have in the past.

Language was inserted in the Senate Appropriations bill which dictated that the money could not be funneled to non-fishery service projects, which would mean that funds could not be siphoned off for other NOAA projects. This would have impacts on the total operations funding for NOAA and the fisheries service.

There were a number of other pieces of legislation that affected regulatory flexibility that would alter the way the service approaches stock rebuilding.

The Coastal Jobs Creation Act (HR 594) was introduced by Representative Cologne. It would give the Secretary of Commerce authority to establish Coastal Jobs Creation Grant Program to support cooperative research, recreational fishing registry programs, preservation and restoration of coastal resources, research and monitoring. To some extent, the service already has this authority. This would allow the service some flexibility to ensure that grants awarded are used to create coastal jobs to the maximum extent possible. That's another, different, kind of legislation.

Rauch asked if there were any specific questions that the Committee would like to discuss.

Don McIsaac noted that the positive aspect for the Councils in the SK funding legislation is that it would stabilize funding. How would a recommendation to reallocate SK funding affect NMFS?

Rauch responded that there was \$109 million appropriated in 2012. Of that, \$60 million was allocated for fisheries research and management, \$60 million went to expand stock assessments, \$21 million went to survey and monitoring, and \$11 million went to cooperative research. If Congress decides to send the money SK funds somewhere else the agency would either not fund those activities or try to find a different funding source.

McIsaac asked about specific lines and items in the funding from which the Council received money: NEPA, ACLs, Regulatory streamlining and other miscellaneous categories. Changing the way that the funding was allocated might have many negative repercussions for those program activities.

Rauch responded that the agency would have to significantly reassess the way the agency conducts their business if money to conduct their base programming is not available, though he couldn't comment on what would be done or what it would mean.

Dan Wolford asked in the SK money is appropriated in a lump sum or in categories?

Rauch responded that Congress indicates to the agency how much would be allocated to SK in total. When the budget emerges, Congress gives the agency the top line number and adjusts the accounts. Then Congress goes through each line and tells the agency what they have been appropriated. They always take money out of SK and put it into Operations, Facilities and Research (ORF). There is not a direct correlation to the SK amount but that is how the agency accounts for it.

Rick Robins asked if the allocation is really an internal accounting within the agency's accounting practice and it is not clear what the implications would be of the legislation? If the funding were redirected, it's not clear how it would be made up to the extent that is being allocated—essentially allocating some of those funds to different activities?

Alan Riesenhoover responded that it is an offset from the bottom line budget from the Congressional standpoint, the \$109 million. The agency would then have to execute the money by line item and inform the Congress which line items the agency does them under. If \$109 million was not transferred as an offset to NOAA's budget it would have to be made up with new budget authority or reductions in programs.

Russell Dunn noted that the funding offsets 95% of the line for expanding stock assessments, 100% of the Survey/Monitoring and 100% of Cooperative Research. Sixteen million dollars or nine percent, goes toward fisheries Research and Management. There would be significant impacts if there were a reduction in the amounts allocated.

Duenas sought clarification that this is not on top of money that the agency already receives?

Mr. Rauch responded that the SK Funds are allocated on an annual basis by Congress. That has supplemented the overall NMFS budget. That was one way that Congress had chosen to fund the NMFS through the use of this SK money. There were other general appropriations that also fund NMFS, but this is a directed transfer from one account to another. It was not new money. The money was collected in customs fees and for a number of years has been used for baseline programs.

Mr. Duenas sought clarification that the \$850 million was inclusive of the SK funding. Apparently, Congress is aware of inconsistencies of the use of those funds for other than what was intended under SK.

Mr. Risenhoover responded that the money is transferred from Agriculture into the NMFS appropriation. Each year Congress used a portion of that transfer to offset the NOAA budget. The NMFS budget is funded through the offsets, such as this transfer in appropriations for budget authority from the general fund. So in some years the transfer is \$115 million, Congress would use \$110 million of that to offset NMFS budget. The remaining five million then is put into the SK Program. The SK Program was a grant program that is largely external. NMFS issues an RFP every year with priorities for the use of that funding. Some of that money is used to offset NMFS budget. The difference between the offset and the transfer is the SK Program, and that was used for a variety of things.

Kitty Simonds asked about how the agency will fill in the funding gap if NMFS took more money from OFR. For example, for the Gulf Oil Spill, were there funds that would be made available?

Mr. Rauch responded that that is currently in litigation. BP has spent a large amount of money on immediate response to compensate the agencies for the cost that they have engaged in terms of response activities, and some of that went to NOAA and some of that went to the Fishery

Service. In addition to those immediate response there will still be some outstanding claims. Some of that money has been paid. In addition, there were a number of restoration-type activities that BP has agreed to. There was an early restoration, which is already under way in which BP has funded some projects, basically dealing with restoring dredge tracks for where a dredge boat and oil boats may have dredged up a marsh. BP has also committed to a billion dollars in other early restoration projects in advance of any conclusion to the litigation. Of those billion dollars, about 100 million dollars is controlled by NOAA.

The Federal Government has about \$300 million, which it has some control over. Those monies were supposed to go towards restoration activities. If there was a settlement, there's some flexibility in how the funds may be used. If funding stems from litigation, this money cannot be used to augment the NMFS budget. So a lot of that is supposed to be used for external kinds of issues, and things like that. So it could be that some monitoring activities or other kinds of activities go on there, but not to replace base operations. Also the government is likely to be pursuing a much larger potential pool of money that has yet to be resolved in terms of litigation either through settlement or active litigation.

Larry Simpson commented that in the Gulf they were experiencing problems getting fishery-independent boat time that has historically been used to conduct fishery surveys, due to vessels being used for other priorities.

Rauch cautioned that funding from the disaster should not be used compensate for base funding. However, there were gradations and some of that money was coming to assist in offsetting some of the work that would normally be conducted but in addition, there was great deal more work because of the oil spill.

Duenas called on Chris Oliver to discuss a request from Congress regarding the budget.

Oliver responded that there was a request for a position paper on the budget. There was an interest in if the Councils had any additional comments relative to the CMSP issue, but the discussion moved past that.

## **Litigation**

Kathryn Kempton provided an update on recent significant litigation involving some of the decisions that have come down since the CCC's last litigation update from NOAA General Counsel, which has been a while. The update touched on five significant areas, but focused largely on NEPA because that's something that they have been working on within NOAA General Counsel to make sure their decisions get past court review and are implemented without vulnerability to challenges. NMFS has had three "losers" in the past year on the National Environmental Policy Act (NEPA) which has focused their attention to problems with NEPA. Kempton noted that this is of great significance as a trend because it has been so long since NMFS has had NEPA related losses. In addition to NEPA, Kempton also provided an overview of legal issues related to Annual Catch Limits, catch shares, control dates, and **SBRM**.

Regarding NEPA, three cases were summarized highlighting different issues that have been challenged legally. Overall, most of the challenges probably could have been alleviated with more documentation, and in one case in particular, that there was a remand for more documentation. The first case referred to Flaherty V. Bryson that resulted in a D.C. District Court summary judgment motion that came down against NMFS in March of 2012. In the end, the lack of time to include River Herring and postponing consideration until implementation of the next amendment was deemed unacceptable. The Court took NMFS to task because NMFS as they agreed the approach was reasonable. In the end, it was a negative NEPA outcome for NMFS as the Court cited the EA's total failure to consider the environmental impacts of alternatives to some of the issues.

The next case involved Alaska versus Lubchenco, an Alaska case that came down in January of 2012. The Plaintiffs were the State of Alaska, the Alaska Seafood Corporation, Freezer Longline Coalition, in a consolidated the case. This was about a challenge to a BiOp evaluating the effects of the best available science and Gulf of Alaska groundfish fisheries on stellar sea lions. They also challenged the interim final rule implementing the RPAs in the BiOp. In this case, NMFS had circulated a Draft EA which was incomplete. Circulating a Draft EA is not required but can be beneficial. However, the Court said that NMFS complied with all of the substantive and procedural requirements of the ESA, MSA and the APA. But the failure to prepare the EIS violated NEPA. The BiOP and the fishery management regulations were not vacated, but NMFS had to prepare an EIS in compliance with NEPA procedures, and that means prepare and circulate a Draft EIS for public comments and provide meaningful responses to those comments.

The last NEPA case is regarding the Sea Turtle Conservancy in the Northern District of Florida out of the NMFS Southeast Region that came out in July of 2011. The case was about a Biological Opinion on re-initiation on the expedience of the Incidental Take Statement.

The issue involved the Deepwater Horizon and the intervening spill and how that affected a federal action and whether the federal action was ongoing. The case is instructive as to when an NMFS decision is really final and the bottom line is that the work on this matter was completed prior to the Deepwater spill. Nobody can predict an oil spill of the magnitude of the Deepwater Horizon, but once it happens you must come back and reinitiate consultation once something like that affects your project. Basically, the Record of Decision was approved on March 10th, and then Deepwater spill occurred on April 20th, and the Court considered that the federal action was completed before the Deepwater Horizon spill occurred. The problem was not that in particular, but that the alternatives were not rigorously explored and that we have an obligation to not only rigorously explore but analyze all of the alternatives that are explored.

The baseline that NMFS chose was a no action alternative, which would have been essentially illegal. There have been a couple of cases, not necessarily MSA cases, coming out recently about NEPA and no action being something that's illegal. If NMFS had not put in new rules the currently existing state would have been something that was in violation of several laws. The Court determined that there can be no no-action alternatives that violate any laws. You can analyze what would happen if you violated the law, but that's not a reasonable range of alternatives.

CEQ recently consulted with NOAA General Counsel about this issue as part of a broader training process. The CEQ Senior Counsel informed NMFS that if there is a no action alternative that's illegal, they encourage it be included because if you're being forced into a situation where the law has changed or the law requires an action that may not be in the best interest of the constituency, it should be analyzed as putting that information out there helps legislators see the effects of that law.

Kempton asked for questions regarding the NEPA cases.

Paul Howard, New England Council, commented on the River Herring case noting that the case was handled very well by NOAA. The issues that were raised were not the issues from the Council's standpoint, and he did not recall being asked to provide any information to support that case. Nevertheless, there is no information on River Herring, literally none. They don't know the status of the stock or locations of the fishery which makes it a very data poor fishery and very difficult assess. Additional complications are that it is managed by the State as it's an inshore State fishery and they have no information to share. In accordance with National Standard 9, the Council addressed minimizing all of the bycatch, of which River Herring was one. There are significant implications if the Council is going to take on managing River Herring with ACLs, AMs, which are primarily a State fishery.

Responding to Howard's comments, Kempton and Rauch noted that the Court said they need to look at if this should be included. Also, that on a broader issue, they just published call for comments on National Standard 1 Guidelines which address some the issues raised here regarding ACL, AM, etc. which closes on August 1, 2012.

Continuing, Kempton summarized legal issues regarding ACLs, which basically revolved around the need to use the best available science in determining such limits. She noted the need to show the justification for decision making and not to oversimplify the information. Between the scientific expertise of the Councils and their many committees and advisory bodies and the expertise of NMFS and the review of issues and FMPs, there is a tremendous amount of technical expertise to which the courts will defer if proper documentation supports how conclusions have been arrived.

Kempton provided an overview of a few cases that showed that principle. The City of New Bedford was an Amendment 16 case out of the District Court of Massachusetts that came down in June of 2011. In this case, the Plaintiffs essentially argued that ACLs are overly conservative. The Court looked specifically at NMFS effort, including the Groundfish Assessment Review Amendment by 18 scientists over a year. There were a number of other review issues that the Court looked at and determined that the NMFS and Council did their jobs, reviewed the science that was available to them and, although there was uncertainty, the NMFS is entitled to deference. So the ACLs were not arbitrary.

In *Oceania v. Locke*, NMFS did not fare quite as well in that that was a D.C. District Court case that just came out the end of 2011. This case was a challenge to Amendment 16 to the Northeast Multi-Species FMP. The Court found that Amendment 16 failed to establish adequate Accountability Measures for ensuring compliance with the ACLs for five species. The bottom



line was this Court said that the evidence wasn't enough to persuade the judge that the overall Accountability Measures were going to enforce the ACLs and that that would obviate the need. This particular judge found the action arbitrary and capricious.

Referring back to the River Herring case, the Plaintiffs had attacked the ACLs because essentially they failed to prevent overfishing and that the ACL was not based on the best available science. The Court looked at the path that had been charted, and in this part of the decision the Court found that the Council did properly consider the advice that it was given by its scientific experts and it did look at and acknowledge uncertainty and charted a course forward. The Council went forward with the conservative approach, given the importance of the forage fish, and showed that it could rationally explain the decision that it made, that allowed the Court to uphold that decision based on the best available science. The lesson from this is show that uncertainty has been considered and in some cases weakness can be greater than strength because it has been shown and documented that the problems were thought about.

Kempton touched on Catch Shares and control dates and noted that there will continue to be battles among industry participants and questions whether or not procedural requirements have been satisfied. Referring to a current case involving Pacific Coast Federation of Fishermen's Association v. Locke, there was an MSJ in favor of NMFS. In summary, there was a challenge by three non-trawl fishery organizations challenging the West Coast Trawl Rationalization Program Regulations for initial allocations and the approval of Amendments 20 and 21 to that Pacific Coast Groundfish FMP. The Plaintiffs argued that the amendment violates the MSA because it awards privileges to trawl permit owners instead of Plaintiff members, the nontrawl fishers, who allegedly used more environmentally-friendly gear. They claimed that that decision failed to adhere to requirements for participation by communities in violation of the MSA and that the EIS was inadequate. The Court said no and ruled in favor of NMFS on the MSJ stating the MSA doesn't mandate direct participation of fishing communities in the initial allocation of quota under a LAPP and it also doesn't require that only those who substantially participation in a fishery be permitted to obtain Limited Access Permits.

The Pacific Dawn versus Bryson, Northern District of California, which is a challenge to NOAA's 2010 regulations implementing initial allocations in the West Coast Trawl Rationalization Program. The Court ruled against NOAA for failure to consider current and historical harvest as required by the MSA in establishing the initial allocations.

Kempton responded to Jim Odlin who provided an example of the Council's committee discussing and excluding that discussion for lack of documentation or rationale for inclusion in final documentation. The information may have been documented in the committee, but not carried forward to the final documentation. She did not have firm guidance on that particular scenario but in general it should be noted that the topic was considered and dismissed for various reasons and if needed, consult with the GC to get further guidance.

Paul Howard provided an example on the NEPA issue where a recent external management review of their documents found extreme fault as the documents were too lengthy, technical and that no one could understand them. The recommendation was to simplify the document for public review. The Councils are being pushed and pulled on this issue. The lawyers weighing in

early in the document development process are making the Councils job and the public's understanding very difficult.

Kempton noted that the real tension in this issue. However, from the legal perspective she has never seen a Court overturn a NEPA decision or send a NEPA evaluation back because there's too much technical information in it. Therefore, the tendency is to try to put as much information in there as possible from the litigation risk perspective.

Don McIsaac asked, regarding the Pacific Dawn case, if the legal team only used the EIS and did not use the full meeting records from all the Council, Advisory Panel and other committees that meet on this matter. Kempton was not familiar with the case specifics. McIsaac and Kempton discussed general coordination and agreed that the earlier and better coordination and communication between the Council, NMFS and GC on these issues, the better the results there tends to be. McIsaac encouraged such coordination on all legal actions.

Kempton continued the presentation on legal updates touching on control rules and control dates, particularly, as this seems to be an issue arising more frequently. They have no specific guidance on appropriate lag times between control dates and rules at this time. More guidance may result from court decisions on some substantive issue, should that take place. The current practice seems to be taken a case by case basis. There have been a barrage of challenges, including the Coastal Conservation Association case regarding control date criteria for participation in an IFQ Program in the commercial grouper fishery in the Gulf of Mexico. This case is interesting as couple of other substantive issues, of which one is that the Plaintiff challenged that the Council was doing poor rule-making. The Council is not an agency and can not violate APA. NMFS can violate APA, but not the Council. For that reason, the Court found that publication in the Federal Register of what the control date that NMFS was thinking about was going to be was plenty of notice about what the control date was going to be.

A point that also arose from this case is that the MSA prevents creation of property interest in fishing permits or privileges. They have been seen some "takings" related to when a Council decides that there's a control date that considers cutting off access to a fishery, there is no property interest in those permits.

Plaintiffs have challenged every single National Standard as to compliance. The Court went through and rated all of them saying that NMFS were consistent with all of the National Standards.

Regarding Standard Bycatch Reporting Methodology (SBRM), NMSF had some good news and some bad news. In the Oceania case, provision 303(a)(11) directs that every FMP has to include conservation and management measures to minimize bycatch and bycatch mortality to the extent practicable. To the extent practicable isn't part of the sentence where NMFS is directed to establish the methodology. To the extent practicable applies to reducing or establishing the bycatch situation. The Court said that if you can't -- if you have to depart from your methodology on a case-by-case basis, that is fine, but come up with a methodology and explain carefully what the trigger is going to really be and explain what's going to happen because you departed from your methodology.

Kempton provided an update on Aquaculture litigation. The Kona Blue case, in the District Court of Hawaii, just came down on April 27, 2012. Basically, Plaintiffs sought to invalidate a one-year fishing permit that NMFS had issued under the MSA to Kona Blue Water Farms, which was going to stock, culture and harvest jack in this brass-link meshed cage, these big floating cages in Federal waters off the coast of the Big Island through a demonstration project. For the demonstration project, NMFS prepared a Draft EA and received public comments and approval by the Council and NMFS submitted the Final EA. In this particular case, because of the facts of this particular case, Kona Blue completed the project before Plaintiffs brought the Summary Judgment Motions. Basically, the project was done by the time all of the legal actions got to Court.

Chris Oliver asked Kempton to explain the value of preparing a programmatic EIS versus an EA or EIS. Kempton noted that Programmatic EISs are successfully used by lots of other federal agencies. It's a tool that can be really helpful to set the baseline level of analysis when individual actions are going to tier off of them. It doesn't matter too much to the courts when you do it as long as you're not improperly chopping up sections of the analyses so as to hide the overall effects.

Paul Howard stated that they have a control date for a limited entry system and every two or three years they submit another Federal Register notice re-affirming the use of the seven-year-old control date. Howard asked if that re-affirmation of the date was good practice. Kempton replied that that the concern in that matter is not so much whether the date is being re-affirmed as something that is already out there because the public is charged with notice of anything you put in that Federal Register. It doesn't go away just because it was a while ago. The concern is whether the Court is going to consider that lag time to be reasonable. The Court in the past has held that three and a half years was pushing the bounds of reasonableness with regard to control dates. The Court very specifically avoided reaching that decision in the most recent case and therefore didn't take this out of the Councils' and NMFS' discretion. If one were going to lag for a really long period of time, one would want to be able to demonstrate why that exists, why that action was taken.

Chris Oliver asked if the Chair is planning to take up Steve Bortone's letter at his time under this agenda item. After consulting with Kempton and Bortone, the Chair agreed to take the letter up in the administrative section of the agenda.

Arnold Palacios raised a question regarding the Marine Monument in the Commonwealth. He noted that the Council and Government of the Commonwealth are struggling with the rule-making and the legal opinions that have come down from NOAA and Fish and Wildlife Service regarding customary exchange and the rules that are going to govern the traditional fishing activities allowed in the Island Units of the Marine Monuments in the Northern Marianas. The Council has requested for that legal opinion. Palacios asked if there is any specific or particular reason why that legal opinion cannot be shared with the Western Pacific Council.

Kempton apologized that the subject is a little bit out of her expertise and that if this is something that has not been raised before, she would be happy to communicate this with Adam. However,

that is an issue that is ongoing and that has been discussed back and forth. She clarified if Palacios was asking she could provide an update to those discussions?

Palacios clarified that if Kempton could not provide an update at this time, he would certainly, on behalf of the Council, request Adam get back to the Chairman or the WP Council Executive Director as to why that legal opinion cannot be shared. Kempton apologized again and agreed to do that.

Duenas asked for questions. Hearing none, he asked Kempton to provide an update on conflicting shark legislation that is being promoted throughout the coastal areas regarding shark finning, and its conflict with the federal law on landing. On Guam, they have to remove the fins to land the shark, but in federal law requires the fins to be attached to the shark to land it.

Kempton responded that the answer not going to be clear as there are a number of states, on the East Coast and up and down the Pacific Coast, and the various state legislatures that passed those pieces of legislation. From a NOAA General Counsel perspective, it is an issue that they are working on to resolve those conflicts or perceived conflicts and try to see if there's any way to interpret it, to effectuate the federal law without having to engage in a lot of further rule-making. The bottom line is, yes, there's a problem there and they are thinking really hard about how to deal with it. But they don't have an answer today. Kempton did not confirm there is no legal option on this today.

Simonds added that this is going to be resolved through a lawsuit which will force everyone to get together.

Itano added that in the case of Hawaii, the federal law was there and then the State law came. The State legislators didn't have a clue what was already in place. He asked if there is there a precedence issue, as the federal law was there, and then this other one was done, which could almost be called frivolous because it wasn't well thought out.

Kempton replied that she was not sure that it's within NOAA General Counsel's power to resolve and agreed that there are certainly issues of preemption that are legal issues that are salient. That is the first thing someone would look to, federal law preempt the state law.

## **Marginalization of fisheries management through competing Acts/Authorities (MMPA, ESA Sanctuaries, Monuments)**

Paul Dalzell addressed the marginalization of the WPRFMC through the establishment of monuments and sanctuaries, and by various protected species issues including

- ESA Petitions
- Best Scientific Information Available (BSIA) under the MMPA
- Failure by NMFS to Recognize Species Recovery and Delist Species under the ESA,
- Return to a 'Black Box Approach' in ESA Section 7 Consultations,

- Overly Conservative Measures becoming the Norm in NMFS Decisions Regarding Protected Species Actions
- Arbitrary Implementation of a Migratory Bird Treaty Act (MBTA) Permit for Hawaii Longline Fishery
- Disturbing Trend by NMFS to Marginalize the MSA process Through the Use of Protected Species Statues.

MAFAC Chair Keith Rizzardi focused on the coral reef petition, which in his opinion was going to create huge burden in the future, especially where there are dozens of species, and the ESA approach may have to conduct analyses at the ecosystem level. Overall the analysis in the Endangered Species Act is going to become harder and harder for NOAA. In addition, Manny Duenas observed that the greatest burden from the coral petition would be felt by native peoples in the US Pacific Islands.

Don McIsaac asked about the expansion of the sanctuaries in the Western Pacific. He noted that on the West Coast, the designation documents for the five sanctuaries there explicitly stated that they shall not manage fisheries. Dalzell alluded to a comment from sanctuary staff in Hawaii that they wanted to be involved in fisheries management, by creating no take MPAs, and including more species in sanctuaries activity.

## **Communities and Indigenous Issues**

Mr. Duenas called on Charles Ka`ai`ai to present on Community and Indigenous issues.

Mr. Ka`ai`ai began with a description of the Strong Cities, Strong Communities Executive Order, EO 13602 creating a council of 25 Agency heads to improve the way that the Federal Government engages and supports local communities to augment regional planning. He cited that the regional fishery councils are in a unique position to address this EO for the following reasons:

- The exercise to identify fishing communities in each region addresses the community component of the EO
- Council initiatives to engage the community in making management decisions address the EO
- The Magnuson Act (MSRA) authorizes Council engagement with the communities, identified as the commercial and non-commercial fishing communities
- There are specific authorities in the MSRA that identify communities and describe Council authority and responsibilities for these communities
- The MSRA identifies community development programs for Alaska and the Western Pacific
- NOAA's position that people are part of the ecosystem and the move toward ecosystem-based management of fisheries
- The Western Pacific was engaging communities in the management of fisheries, traditional rights and traditional practices, working with village level management, community level management of resources

- Councils have a responsibility to communities under the Magnuson Act.
- National Standard 8 requires Councils to take into account the importance of fishery resources to fishing communities and to minimize adverse social and economic impacts from regulatory actions.

In the MSA, Section 305 authorizes the Alaska Community Development Program, the Western Pacific Community Development Program, the Western Pacific Marine Education and Training Program. Section 305 also includes the Western Pacific Community Demonstration Project Program, which is a grant program for the Western Pacific indigenous communities.

Communities can be characterized using socioeconomic factors. But there is more information required as in the Western Pacific communities have very complex relationships with the ocean and with the practice of fishing. Fishing for the same species in one community to the next is often conducted differently.

There are other practices that are localized in managing fisheries and fishing for these species. The human dimension in fisheries practice and fishery management is fuzzy. The Council spends a great deal of time in public meetings scoping issues with members of the public, trying to explain what management measures are pending, either from the Council or Federal Government.

The Western Pacific Council is supported in its native and indigenous work by the NMFS Pacific Islands Fisheries Science (PIFSC) Center's Human Dimensions Program. Ka ai ai referred to the work of Dr. Stewart Allen at PIFSC who has conducted a great deal of work that could be potentially useful for the Council. Unfortunately, there were difficulties in getting permission to use some of this work in the development of environmental and management documents and amendments.

Ka ai ai cited the example of FEAT, the Fishery Ecosystem Analysis Tool, which Allen developed using a variety of data sources including census data and fishing permit data. The Council supported FEAT when it was first presented to the Council, and wanted it to be available as a web-based application. However, this is not going to occur. The consequence is most unfortunate since the Council could have at its disposal an excellent tool to analyze Western Pacific fisheries, engage the public, and raise the public understanding of fishery management issues.

Then other aspect of the Council's work with native and indigenous communities, besides describing how they fish, is do they favor regulation? Do communities want to codify their fishing activities in regulations? In many cases regulations are not possible due to the dynamic nature of the fisheries such as seasonal changes, ecosystem shifts and change in the targeted resource. If the Council were to establish a quota or catch limit, how does that measure impact the way the community fishes through the natural cycles of abundance and scarcity? How does that affect the community when their catch composition changes? The Council does not manage everything that is caught, but the Council does manage a part of it, and that can affect the way fishing is conducted. In the Western Pacific the Council reviews measures such as Executive

Orders, but is always guided by MSA and considers how a community will benefit from an action.

Ka ai ai described the Native American Graves Protection and Repatriation Act (NAGPRA), which was an important statute because there were so many indigenous people and indigenous artifacts in the Western Pacific. The Council was also interested in the National Historic Preservation Act (NHPA) with respect to fishing, fishing sites and cultural sites. Native communities are making use of Section 106 Consultation under NHPA, which does not directly affect decision-making but requires that the action agency address issues arising out of the consultation process. This can have the effect of slowing down an action by federal or state government since it must consult with native people on any action that may impact their cultural artifacts or sites.

Ka ai ai noted that this led to the question of discrimination or a justice. He took the example of the Western Pacific Community Development Program (CDP). This was recognition of traditional aboriginal rights in the administration of the MSA, However, to address those rights the native communities first have to qualify based on standards that are created for the general public, then on what defines them as a native person, and constitutes a native community. Then applicants have to qualify through an additional eligibility a criterion that addresses their aboriginal and traditional rights. Unfortunately, the result is to make more cumbersome obtaining a permit or an exemption for practices that they may have been conducting for centuries. Further, there is no determination on the negative impacts of those practices on the environment. If a community wants a native permit or an exemption to regulations to practice, they have to agree to the management rules that the Council implements to qualify on aboriginal eligibility criteria that was created in statute.

Kai ai ai posed the question; are native people just another stakeholder, are they just another kind of community? Other Councils have mechanisms for treaty recognition for native people. In some States there is recognition that native people have a different standing. This becomes more difficult here in the Western Pacific because treaty agreements are not recognized. Although, there were many treaties between the USA and the Kingdom of Hawaii, these are not a generally recognized. Ka ai ai cited the example of the Reciprocity Treaty that has been vacated but the US is not returning Pearl Harbor to the people of Hawaii.

Along with State of Hawaii, the Western Pacific comprises the Northern Mariana Islands, which is in a Commonwealth relationship with the U.S. There are also Guam and American Samoa in a Territorial relationship with the U.S. They all have different ways of recognizing their native people and their relationship with the U.S. This creates mosaic of issues with which the Council has to address under MSRA.

Part of the Council's role was to manage resources to benefit Western Pacific communities. Ka ai ai posed the question if Council actions were indeed really providing direct benefits to Western Pacific communities? Was there a fair allocation of resources? The Council needed to closely scrutinize the effect of its regulations on the native people and native resources.

The March 15 Executive Order 13602 (Establishing a White House Council on Strong Cities, Strong Communities) was supposed to support community participation in resource management, but this was already a Council responsibility. The Council wanted to empower communities and provide for the stability and economic development. The Council primary role was fisheries and fisheries management, but working with the communities included a range of other issues such as, resiliency and ability to respond to disasters.

Ka ai ai considered how the Strong Communities, Strong Cities EO would be implemented. What would the Fishery Management Councils role in this initiative? What would be the roles of the States and Territories? How will NMFS support for this effort? Finally, what resources would be available for this effort?

The Western Pacific Council already maximized its efforts in the community. Any scoping session was likely to cover four or five issues at a time. Ka ai ai finished by posing the a final question, how will the Fishery Management Councils address EO 13602?

Mr. Duenas asked for questions from the Committee.

Paul Howard commented that one of the most difficult jobs of the Council is to allocate resources. Although it may appear that some of these laws may help allocation between one group and another, the bottom line was that it is a difficult task. There may be the growth of a recent offshore large fishing community versus traditional communities and allocation will be very difficult. However, Howard opined that such legal instruments as EO 13602 were not needed to take care of the fishing communities.

Mr. Duenas commented that it was a point well taken.

## **International Fisheries Management**

Rebecca Lent of NMFS International Fisheries presented on leveling the playing field for US fishers: international actions to reduce IUU fishing. Lent was substituting for Russell Smith, who was unable make the presentation.

By definition, IUU fishing is either an expressly illegal activity or, at a minimum, an activity undertaken with little regard for applicable standards. IUU fishers gain an unjust advantage over legitimate fishers; i.e. those who operate in accordance with those standards. In this sense, IUU fishers are "free riders" who benefit unfairly from the sacrifices made by others for the sake of proper fisheries conservation and management.

The reauthorization of the MSRA specified a biennial report to Congress NOAA identifies nations with vessels engaged in IUU fishing, bycatch of protected living marine resources, or shark catch on the high seas. This was a three part process that included identification, consultation and certification. If a nation is negatively certified, its fishing vessels may be denied entry into the United States and the nation may be subject to trade sanctions

U.S. has provided bilateral and regional support in a number of areas to:



- Address IUU fishing and bycatch of protected species
- Strengthen international fishery management organizations
- Build strategic partnerships with other nations
- Develop capacity of other nations to achieve sustainable fisheries and responsible fisheries management

Lent reviewed how IUU was being addressed in international fora including the UN General Assembly, Food and Agriculture Organization, and the tuna Regional Fisheries Management Organization Kobe Process

Finally, Lent outlined various items of legislation and other actions to prevent IUU. These included:

- Port State Measures
- Bilateral Cooperation to Reduce IUU
- U.S.-EU Joint Statement on Efforts to Combat IUU Fishing
- U.S.-Russia Information Sharing Agreement
- Bilateral discussions with Japan, China, Chinese Taipei, Korea, Mexico, Canada

David Itano thanked Rebecca Lent for her presentation and observed that the biggest impediment to the fulfillment of the WCPFC Conservation and Management Measures is noncompliance by other countries. Many countries were not at the point where they're able to monitor their own fleets as they are supposed to do under the treaty. Much discussion in the WCPFC Scientific Committee and in the Commission's regular session deliberating the details of quotas or measures to try to improve stock condition. But these measures were being undermined by the fact that a lot of these quotas aren't being. For example bigeye quota or longline and also other measures were not being enforced upon various fleets because their countries were not even set up yet to do that. The biggest area that the U.S. Government has to keep progressing is equity in compliance with those CMMs and enforcement by their countries on their own fleets.

Lent responded to these comments noting the frustrations felt where the US was assiduous at implementing conservation and management measures, including fishery closures when catch limits were reached. Clearly it was not a level playing field, and capacity building was required.

David Itano stated that the emphasis on IUU was admirable, but this was probably minor compared to the cumulative non-reporting or lack of reporting off fully licensed and legal fishing vessels in the region. Moreover, US fisheries were over-burdened by regulation and monitoring and surveillance which put them at a great disadvantage financially to compete with all of the other fleets. Council Members wanted to see NMFS taking action to really promote US fisheries level the playing field so that US fisheries do not get competed out of the whole fishery.

Kitty Simonds wanted to know if trade sanctions had been implemented under the multi-lateral management process in the past four years?

Lent responded that there have been trade sanctions under the multi-lateral process, particularly under ICCAT. These included bans on imports of bluefin tuna from a couple of key countries that were caught illegally fishing for bluefin. However, under the unilateral process in the United States there have not been trade sanctions. The actual goal of the legislation is not to include trade sanctions, but rather to improve the performance of RFMOs by improving the compliance by Member States. Lent cited the example of actions by Libya and Italy to censure its fishing vessels following US complaints about illegal fishing. She added that it was a possibility the Secretary of Commerce is allowed to recommend to the President trade sanctions, but as of now, under our unilateral approach, there have not been trade sanctions imposed.

Simonds sought clarification about the certification process and which nations had been certified. Have you ever certified a nation? Lent responded that only done one round of certifications had been conducted and they were all positive. NMFS was currently looking at the evidence for the next round of certifications.

Steve Haleck asked about Port State Measures and how would NMFS support the port inspections of the US Territories? Lent responded that this would be a very important part of implementing the Port State Measures Agreement. The important issues for the NMFS OLE staff to develop ensuring that any vessel that's coming into port with a foreign flag will be consistent with the requirements have already in place for vessels. There was the option of having the vessel come in for purposes of inspection and follow-up enforcement and potential seizure, and the option of just refusing port access.

Jim Odlin asked about how the US was supporting to continuation of the U.S. fishing and how the U.S. encouraged other nations to manage and regulate their fisheries and the encouragement on under-utilized species. The example was given of New England where there were under-utilized species, where on Georges Bank haddock, the US fleet had been consistently catching about 10 percent of its quota which shared and jointly managed with the Canadians who for many years have been catching 100 percent of their quota.

Lent noted that this was similar to the US swordfish quota which was similarly managed internationally and the US was consistently under-quota in its landings. With respect to the haddock, Canada was applying pressure to acquire some of the US underutilized quota to give our under-utilized quotas to the Canadians. Among the reasons US fleets were experiencing problems was the regulatory burden imposed on the fleets and issues related to fuel costs. Council Members felt that more could be done by the US to address the under-utilization issue.

Dan Wolford referred to the Pacific albacore treaty currently being renegotiated with Canada. In particular there was a cooperative fishing regime that was in place for many years that at the last negotiation session was not reinstated. Subsequent to this was a great deal of pressure from the Canadian Government to come back to the table and talk. The US has been waiting for proposals from the Canadians and it seems as if they are moving in that direction.

Lent noted that thus was a unique treaty and that there was some high level attention being paid to that both in NOAA Fisheries as well as the State Department.

Manny Duenas commented on the US territorial representation in the US Delegations to RFMOs. Territories were represented by the U.S. on the delegation but during delegation meetings Territories have to agree or follow the US position. However, the US Delegation also includes other groups that can attend US meetings who may be opposed to U.S. policy, yet they're allowed to participate in active discussion on creating U.S. policy in the delegation discussions. NMFS needs to take a closer look as to its policy in actually engaging the Territories and giving them a level playing field in active discussion rather than to keep them as subordinates to the whole exercise.

Dave Itano noted the very strict U.S. Coast Guard requirements that also raise the cost of operating those vessels. These were real costs borne by the industry that other fleets don't have to spend money on. It's simple economics that US vessels are being out-competed because of that. Some countries subsidize their fleets, to a certain extent, in electronics or various things, to make them competitive. Council Members would like to see NMFS do more to help promote US fisheries, and providing assistance to offset these costs that are accrued by the US fleets for doing business.

Lent responded that the costs are higher in a regulated industry. However, there were efforts underway way to standardize some of these safety requirements through the International Maritime Organization as fishing is still the most dangerous occupation in the world. The issue of subsidy was being addressed through the World Trade Organization because subsidies lead to overcapacity which leads to continued problems with managing fisheries. The U.S. Government was trying to make sure that other countries are not subsidizing their fleet because this was inequitable and unfair competition and was just poor fishery management. Lent also referred to NMFS effort through Fish Watch to promote US fisheries, which showed that bthe US has stopped overfishing, was rebuilding stocks. US fish could be purchased safe in the knowledge that products came from well managed fisheries.

Manny Duenas commented on Port State Measures, especially as they apply in the Guam where dock space was limited and which together with Coast Guard and Homeland Security requirements, acted as a disincentive for foreign boats to offload. More bureaucracy through Port States Measures could reduce further the number of port calls on Guam by foreign vessels. NMFS was asked to consider these issues when developing implementing legislation for the Port States Measures

Lent responded that it was helpful to hear these views. Once the implementing legislation was in place, there will be regulatory actions, which will require a NEPA-type analysis that would consider the impacts to communities.

## **Budgets**

The topics covered under this agenda item included the following:

FY2012: Status of Council funding

FY2013: Update

## CCC Position on President's Budget

Alan Risenhoover made the initial presentation on the budget topics, supported by Gary Reisner CFO for Fisheries and Linsey Fullenkamp, the Deputy CFO for NMFS

Risenhoover reviewed the NMFS budget situation in FY 2012 and what were the likely expectations for FY 2013. He began with a review of the NMFS budget which peaked in 2010. Since that time the NMFS budget has been reduced on the order of a little over 12 percent. The President's budget request in 2013 includes a further budget cut. Risenhoover stated that some of his comments on the budget would be ideas on how NMFS can work with the Councils to preserve the budget and then start showing that there is a need for future increases. The President's request reduced funding to approximately the 2009 level, and there had been talk in Congress about reducing as far back as the 2008 level. This would involve cuts of \$50 million below the current level of funding.

The FY 2012 Spend Plan was approved during the week of February 13, 2012. The total amount was \$845 million, while the Conference mark was \$879 million. Across NOAA there was a \$51 million undistributed reduction and NMFS' portion of that reduction was \$24 million. The FY 2012 Spend Plan was approved with a \$40.5 M reduction to Operations, Research and Facilities (ORF) giving \$804.7 million, \$65.0 million for the Pacific Coastal Recovery Fund (PCSRF), \$0.0 million (PAC), and \$25.3 million for Other.

Risenhoover reviewed the 2011 funding for the Councils that was discussed at the January CCC meeting and there were about why there were some zeros in some columns. He explained some of the bracketed numbers in the tabular summary and illustrated this with an example from the Western Pacific Council, which had shown zero dollars for NEPA in January, but in fact \$116,000 was provided to the Council for that. This arose because of the lateness of the appropriation. He continued, that the tabular summary represented the 2012 funding for the Councils. He noted that the SSC stipends and the Council peer review that have traditionally been on the order of \$500,000 have been restored to this level of funding.

Overall in FY 2012, there were some fairly significant reductions in several budget lines. The Councils ended up collectively \$186,000 below where they were in 2011. That's primarily because the NEPA line in 2012 it was cut by about two million. As such, the Councils did not share proportionately in this cut while NMFS did not have the funding to provide for NEPA as in the past. NMFS compensated with funding from different lines to keep the Council bottom line as high as possible. As the NEPA line that was cut by two million NMFS internally cut its NEPA contracts to zero so that they could then shift funding to the Councils.

It was through such mechanisms that helped reduce the amount of reductions that the Councils would have taken if NMFS had adopted proportionately shared cuts with the Councils. NMFS was therefore able to keep additional funding in the Councils in 2012.

Risenhoover turned to the FY 2013 budget. The House mark has a total funding number of \$863 million for Fisheries. This was \$17 million below the FY13 requests, and was a combination of two things. Congress raised the amount of funding for the Pacific Coastal Salmon Recovery

Fund from the request of \$50 million to \$65 million. So there was an increase of \$15 million, but the Operations, Research and Facilities account was reduced by \$32 million reduction. This \$32 million reduction does affect the Councils.

The Senate mark was more optimistic, with total funding \$922 million or \$43 million above the NMFS request. This included \$15 million above the NMFS request for the Pacific Coastal Salmon Reacoverly Fund and \$26 million in the ORF account. This resulted in a budget increase of about \$27 million on FY 2012. When the 2013 budget was examined in detail, fisheries overall had a small reduction. The OAR or the research component had an increase. The NOAA fleet also had a slight increase, as did the Satellite Program.

There was about \$12 million increases included in the President's budget for Fisheries, but this included \$40.7 million in decreases for certain budget lines. NMFS had requested an increase in expanding annual stock assessments. The House funded this increase and added the approximately four to five million dollare. However, the House reduced NMFS survey and monitoring line item by \$2.4 million. Risenhoover noted that net increase for stock assessments was not particularly useful unless funding was maintained for your survey and monitoring.

Risenhoover stated that the Senate provided this funding as well. There was an increase requested for observers in the budget and both the House and the Senate funded that request. This additional \$4 million was included in both marks. The House partially funded \$4.3 million of the five million requested for Fisheries Oceanography and the Integrated Ecosystem Assessments. However, the Senate did not fund this request.

Risenhoover noted the proposal to combine the West Coast Regional Offices, the Northwest and the Southwest Regional Offices and some other activities there listed on the slide, which would have resulted in a \$5 million reduction. However, the House was silent on this, but from the way the House funded those lines, it looked as if they had accepted this proposal. The Senate explicitly accepted the proposal, although they referred to it as combining the West Coast Centers. As such, NMFS needed to get technical clarification on whether they meant the Regions as NMFS had proposed or the Centers, as the Senate suggests.

Risenhoover noted the proposal to close the Sandy Hook Lab and relocation of those staff to other areas. This would have savings for the FY 2014 budget. The House accepted this in that it appears they were silent on it, and it looks like they accepted the President's budget. So NMFS will need clarification on this issue. The Senate explicitly rejected this proposal.

Risenhoover reviewed budget issues related to Habitat, noting that this was a complex mix of a pluses and minuses, including the transfer of the Marine Debris Program from NOS to Fisheries. The House explicitly said no transfer of the Marine Debris Program, and then further reduced the requested by about six million. The Senate seemed to reject this proposal and provided an additional \$7.7 million above the request and restored the Restoration Funding to \$21 million, back to the 2012 and 2011 levels.

Risenhoover noted there was a proposal to reduce NMFS scope of operations in Chesapeake Bay. It included about a \$1 million Administrative savings, moth-balling the Chesapeake Bay

Buoy System and eliminating some grants. The House was silent on this, but based on the funding it provided they seem to accept the proposal. The Senate explicitly rejected this and further indicated that NMFS should transfer the Oxford, Maryland Lab, currently managed by NOS to NMFS.

With respect to the Prescott Grants and the Stranding Network Programs, Risenhoover noted that the proposal from the Administration was to zero the funding for that. The House did not restore this funding, but did include language that the Administration encouraged NMFS to fund the program out of the resources provided. NMFS would need to look if the four million needs to come out of a lower number. The Senate restored the four million in funding and rejected the Administration's proposal.

Risenhoover reviewed the Pacific Coastal Salmon Recovery Fund (PCSRF), for which the Administration had \$50 million. The House and Senate both rejected this, and provided \$15 million. So the PCSF is at 65 million in both the House and the Senate marks.

Turning to the Councils, the Administration proposed a reduction in funding for the Councils, since in recent years additional funds had been provided for ACL implementation which was accomplished in 2012. This resulted in a \$3.2 million proposed reduction for the Councils. The House not only accepted the President's proposal, but reduced the line item containing both the Councils and the Marine States Commissions by an additional \$2.7 million. This would ultimately result in \$1.7 million reduction for the Councils. However, the Senate rejected the Administration's budget with level funding for the Councils and Commissions.

For the FY13 request, the Councils would have been funded at \$20.2 million. The Senate restored the funding for the Councils, which would put them back up at the \$23.3 million level. Under the House budget with an additional \$1.7 million reduction would result in a budget of \$18.4 million, although NMFS had not made any decisions on the House budget. Risenhoover stated that the overall trends for the Councils between FY2010 and FY 2012, Council funding was maintained while the NMFS overall budget reduced by this 10 to 12 percent.

Risenhoover summarized the next steps. There were increases in the President's budget in FY2013, for stock assessments. NMFS needed to begin working with the Councils on what will be the impact of this budget increase. NMFS could then set performance measures, and report on these to NOAA and the Department of Commerce on their likely effects. Council I activities would likely have to be reduced, but NMFS and the Councils needed to be very specific on what those reductions would be. The result may be reductions in council staff; fewer and/or shorter meetings; and less Council activities such as outreach efforts. The effect could be fewer management actions; increased timelines; and less opportunity for stakeholders to participate in the council process. For Councils, this proposed reduction would be applied using the current formula approved by the Councils to allocate their funding.

Chair Duenas opened the floor for discussion.

Gary Reisner commented that the Councils really need to focus on those elements of the House budget that resulted in budget decreases. He thought that the Senate will probably get closer to

the House than the reverse. The other major issue was *the sequester* that could occur in January, which would provide across-the-board cuts of up to 20 percent. He stated that the Councils need to take a serious look at how they would operate at various funding levels below current levels.

Risenhoover asked Reisner to elaborate on *the sequester*.

Reisner stated that when Congress passed the budget deal last year that led to the increase in debt ceiling they provided some immediate reductions in discretionary funding, and then there was this Super Committee that was put together that was supposed to identify a trillion and a half in reductions. That committee couldn't come to consensus and so it never went to the Congress for a vote. Unless Congress can come to agreement on how to provide reductions on the order of 1.5 trillion over ten years, come January there's an automatic sequester. Half of that happens in Defense and National Security and about half of that happens in Domestic Discretionary. At present, a sequester, by definition, is across the board but the exact language is unknown nor is it known how the Administration would operate the sequester.

If it's across the board, that sequester would occur at the Operations, Research and Facility level, for all of the line offices. So there would be some discretion on the part of NOAA to allocate that amongst the various line offices. It was hard to say what ultimately would occur other than to recognize that there may be a 15 to a 20 percent reduction in an overall funding

Risenhoover noted that in his presentation he neglected to mention that the Senate report also suggests that the satellites be moved to NASA. So that may have some implications for NMFS in future planning, as well as executing FY2013.

Don McIsaac mentioned that on the first day of the CCC meeting the Councils had a chance to talk collectively about what was in the briefing book and he summarized the various Council perspectives. He thanked the NMFS leadership on behalf of the Councils for the decision-making on the FY 2012 budget. Level funding the Councils is a positive outcome as there was some active decision-making that had to take place over the course of the winter and through the spring.

With regard to 2013, The Councils appreciated the prompt roll-out in the meeting of February 16th. That was all conducted very quickly and was appreciated, except for the content. Clearly the Councils were disappointed with the \$3.2 million dollar cut. Due to this cut, McIsaac came to the CC meeting expecting to put together a position paper on the President's proposed budget and bounce that off the meeting with regard to Council reaction and the rationale for an alternative.

However, with the House and Senate Subcommittee marks the Councils would not develop any position paper on the President's budget for NMFS response at the meeting McIsaac expected that the Councils will probably be developing a paper that has comments on the President's proposed budget, the Senate mark and the House mark. However, McIsaac stated that the Councils wanted to verbally share their concerns. First, the Council acknowledged that NMFS were 'the messengers' in this process and that this was not the same leadership that was involved when these decisions were made.

The Councils had talked about the most diplomatic way express their disappointment and concerns. McIsaac showed a slide of a fish with baro-trauma which expressed how the Councils felt about the \$3.2 million budget cuts. On February 16th NMFS indicated that the Councils' portion of those other miscellaneous line items and subcategories would be proposed to remain the same. However, now there were some fluctuations. However, the Councils would also note the President's proposed budget includes various increases, including areas that would increase the information brought to the Regional Council processes for use in active fishery management.

McIsaac noted in Risenhoover's the presentation that there was \$4 million for more stock assessments, \$4 million for more observers, \$4 million for integrated ecosystem assessments that would be applied science brought to the Councils for action. The rationale given in February was that the \$3.2 million reduction was relative to additional funding provided for the purpose of preparing FMP Amendments, institutionalizing new ACL provisions of the December 12th, 2007 Reauthorization. Now that all of the Regional Councils have completed all of the necessary FMP amendments the need for the funding had been satisfied and no longer existed.

The Councils' position called for level funding in Fiscal Year 2013 for a couple of different reasons. McIssac stated that the Councils felt the stated rationale for the proposed reduction relative to the ACL requirements did not account for all of the ongoing necessities to implement the new ACL requirements. Just because the FMP amendments are completed, this does not mean that the Councils would all have additional activities necessary for implementation.

He continued that the stated rationale does not account for the expanded expectations for the Councils to process an increased amount of information in the decision-making. With regard to this, increases to IEA, stock assessments, observers, all of those results need to run through the Council process to be implemented. It did not seem congruent when all of these things were funneled into a decision-making process at the Council table that that funnel get cut. It did not appear straightforward to the Councils with regard to the logic that there are cuts to the Council process. Why is there steady staffing in Headquarters and Region areas where the same Magnuson Act regulations would be implemented?

McIsaac illustrated his points further drawing on the example of the Pacific Council. The Pacific Council has five Council meetings a year. Cutting one of those meetings by cutting 15 percent of the money or more would not be congruent with NMFS making significant investments that there will be more information coming to the Councils. The same logic or lack thereof applied to cutting back Council staff and outreach.

McIsaac noted that another point of discussion was the level funding with regard to the NMFS between Fiscal Year 2012 and the proposed amount for Fiscal Year 2013. What actually enacted in FY 2012 is \$895 million and what is being proposed in the President's budget is \$880 million. He concluded that for whole agency things were essentially stable. If all the things that feed into the Magnuson Act from the Council perspective seem stable, it does not seem congruent again for the Council to be cut.

The Councils' recommendation is that the Council funding for 2013 ought to be stable at about \$28.4 million. Council preference is that this be consolidated into a single line item, but the



essence of it is for stable funding. Further, the Council's were aware that planning was being conducted for Fiscal Year 2014 and beyond. The Councils also know NMFS will be dealing with Fiscal Year 2013 as it evolves, up to and after the election through a Congressional Resolution (CR) or a rescission.

The Councils were looking for some consistency in the development of the Council budget and all of the support staff that's active in the Magnuson Act process, and not cutting the Councils, while NMFS funding remains stable or increased.

Larry Simpson asked for a description of the mechanism or the policies or the history of allocating portions of funds on a quarterly or midyear or yearly basis under a continuing resolution that may occur.

Gary Reisner responded that NMFS is authorized under a CR to allocate funds during the period of the CR. NOAA has in the past made its allocations based on a quarterly basis, even if a CR was for two months. The other aspect of a CR is a requirement by Congress not to undermine the prerogatives of Congress in funding. This means anything that could even remotely be considered discretionary should not be funded during the CR period, in particular, grants. NMFS has argued in the past that the grants to the Councils are not discretionary, indeed its the only funding Councils receive. Based on that argument, NMFS had been able provide at least a quarter's worth of funding by the end of the first quarter. Similarly, when CRs had run into the second quarter, NMFS had generally been able to provide at least the second quarter's funding.

NMFS had also looked closely at remaining Council balances in their accounts to see whether they can carry funding forward without getting a full quarterly allocation. But in general, Reisner thought that only time that happened was when NMFS were late when it had renewed the five-year grant process.

Simpson then asked if it was true that NMFS utilized the lower number of the House and the Senate for your basis for a continuing resolution.

Reisner responded that, in general, the way it works is the continuing resolution, itself, will determine at what level NFS was to expend that on an annual basis. In the past, there had not been been House-passed or Senate-passed bills prior to eight or nine years ago. There was always a House-passed or Senate-passed bill, and they would say take the lower of the House, Senate or the President's budget. Where NMFS had adopted a new initiative is when there is a significant difference between the House and the Senate. OMB will often allocate at the lower of whichever of those marks is available. He reiterated that NMFS had not been able give out grants during CR periods nor even to plan for those.

Dave Itano asked the NMFS hierarchy about the future of certain programs, specifically the Pelagic Fisheries Research Program, through which he was funded at the University of Hawaii. This program has supplied the Western Pacific Council with data and information that was necessary to help develop their management policies. He noted that the problem is that the JIMAR Five Year Cooperative Agreement and the UH expires in 2012. Based on this, Itano understood that administratively all PFRP projects have to zero out this fiscal year and funds

could not carry over into the next years. Since the PFRP had been zero funded for research for the last couple of years, it meant that the program will zero down projects. It mean the end of a program which among other things had developed the MULTIFAN stock assessment model by which all the WCPFC stock assessments were accomplished. Itano asked if there were any updates on funding for the PFRP and about the JIMAR agreement.

Mike Tosatto, NMFS Pacific Islands Regional Administrator, responded that PFRP funding had come to the region in three components. Firstly, there was a JIMAR Cooperative Agreement earmarked for a number of years, but this was never institutionalized in the base budget, and had gone away. There was a separate earmark for the PFRP specifically, but again some pieces have been provided elsewhere, but not for the full earmark length. Finally, to fund Joint Institute work and the Joint Institute within both the Center and the Regional Office NMFS used available PPAs to put initiatives into the cooperative institutes. And those historically have been taken out of base funding. The two earmarked amounts did not get transformed into recurrent funding inside the base budget as the Regional Office was formed.

Rip Cunningham asked if there has there been any analysis to determine whether moving the North East Regional Office to Silver Spring actually saves any money?

Sam Rauch did not think so, although NMFS did have to do a report to Congress on this proposal.

Linsey Fullenkamp added that the report has not yet been submitted to Congress, it was still in clearance. But one of the initiatives of the Senate mark language is the incorrectly stated year that the lease in the Regional Office would expire. Fullenkamp understood that the lease would expire in 2023, and there was no clause to get out of the lease. As such savings from moving that office in the near term before the lease expired would not generate savings, in fact it would incur costs.

Manny Duenas stated that the PFRP was extremely important to the Western Pacific Council, and he encouraged NMFS to find the necessary funds for its survival. Perhaps so the SK funding available could be reallocated to this program. Duenas added he was very uncomfortable about the budget cuts. NMFS expected the Council to function properly and the Councils expect NMFS to provide them with the necessary tools and resources. He noted that in the Western Pacific Region, dispersed as it was across the Western and Central Pacific, incurred an onerous travel budget just to hold a regular meeting. So he urged NMFS to be a little more generous with funding.

## **Communications**

### ***NOAA Fisheries Activities (TelCon)***

Rebecca Ferro presented a powerpoint via WebEx on behalf of Laurel Bryant, NOAA Fisheries Office of Communications and External Affairs. The presentation focused on opportunities for collaboration between NOAA Fisheries and the Regional Fishery Management Councils (FMCs). Overviews were given on:

1. The status of the stocks report scheduled to be released on May 9
2. FishWatch website, which is a work in progress
3. Monthly national themes and messages

Ferro finished by highlighting some of the national themes (MMPA 40<sup>th</sup> Anniversary, IUU Fishing, Aquaculture, Recreational Fishing, Habitat Blueprint) and the monthly topics through 2012 that highlighted regional and programs specific activities.

Ferro was complimented on the new look of the website and the content therein. Council members had made comments in previous CCC meetings, in particular, about the Seafood Safety Tab. It was noted that this is now called, Seafood Health and Safety, and that the information on mercury advisories contains renewed with new information. This was beneficial as it encourages people to eat fish and points out the benefits of eating a certain amount of fish for pregnant mothers for natal development,

Ferro thanked Council members for their positive feedback.

### ***RFMC-Council Coordination Recommendations***

Sylvia Spalding presented the recommendation from the RFMC-Council Coordination meeting. These were as follows:

1. Hold a face-to-face Councils communications meeting annually. At the current meeting, Councils shared best practices and discussed ways to improve regional communication. Some items that could be developed at the next meeting include the following.
  - a. Improve effectiveness of the US RFMC website (fisherycouncils.org) as resources allow, e.g., adding videos, content management, social media.
  - b. As this issue concerns individual Councils, in a significant and timely manner, improve regional and national communications coordination between the Councils and NOAA, to ensure accuracy of information as well as recognition of the fishery councils in the management process.
2. Coordinate a solid communication plan/strategy for the NC3 conference, including media news releases after the conference, the lead being the Pacific Council. Plan for a joint Council booth in addition to regional Council booths and a NMFS booth at the conference. Develop a twitter hashtag for the conference.
3. Support the use of social media tools (Facebook, Twitter, YouTube, etc.) at the individual regional fishery management council level.
4. Ensure that each regional Council website is linked the US RFMC website and encourage NOAA Fisheries to do the same.

## 5. Cultivate relationships with Sea Grant regionally and nationally.

Steve Bortone stated he was a proponent in favor of having various RFMC subgroups meeting including the Communications Group meeting and possibly also the Administrative Officers who would have much in common. It was suggested that the CCC meeting could meet every year meet with the Sea Grant group and then the alternative year meet with the other Coordinators during the January meeting in Washington.

Dan Wolford commented on Recommendation 3, and the issue of social media and analyzing the age demographic of who would use it and who would not be using it?

Spalding referred to work by the Pacific Council which employs a lot of social media have been following the demographics. Those using social media were in the 15 to 34 year old age group, for males, and for female 34 to 45year olds.

David Wirtherell noted that in their discussion of using the social media, one of the things that was difficult is for the Executive Directors to grasp is that they're not trying to sell anything. Instead it should be used more as information tool and actually make it more available, especially through Twitter. It may well be worthwhile having Council staff spending time responding to tweets.

Spalding responded that there were tools something on put up on a website and will automatically feed into a FaceBook page Twitter list, and there wre tools that will enable Twitter to be re-tweeted several times during the day to hit different demographics because tweeting is like radio, it's just a constant stream.

Paul Howard agreed with all the recommendations except number 5 pertaining to SeaGrant. He could not see any tangible benefit to our Communications person cultivating relationships with Sea Grant. Rather it would be the reverse; Sea Grant would benefit from this not the Councils

## **Third Conference of Managing our Nations Fisheries (MONF III)**

Don McIsaac presented on the preparations for the third Managing Our Nations Fisheries conference in May 2013. The theme was Advancing Sustainability and the he purpose of this conference is to elevate the discussion of current, developing concepts on the sustainability of United States marine fishery management, towards possible future use in improving contemporary practices. The conference will examine three theme areas of current relevance, each of which focuses on policy, science, and process issues associated with three highly germane topic areas. It is intended that findings that emerge from this national conference regarding advancing sustainable fishery management practices be considered for policy changes in current regulatory approaches or Magnuson –Stevens Act reauthorization legislation, as appropriate.

There were three session themes under which were nested several focus topics as follows

- Improving Fishery Management Essentials

- ACL Science and Implementation Issues, including Managing Data Poor Stocks
- Rebuilding Program Requirements and Timelines; Environmental Review Process Issues (reconciling MSA and NEPA)
- International Fisheries Management: Leveling the Playing Field
- Advancing Ecosystem-based Decision Making
  - Habitat Blueprint Program Implications
  - Forage Species Protection
  - Proper Integration of Climate Change, including Integrated Ecosystem Assessments
- Providing for Fishing Community Sustainability
  - Proper Assessment of Socio-Economic Tradeoffs
  - Integrating Community Protection, Jobs Emphasis, and Food Quality Assurances
  - Recreational and Subsistence Fishery Connections

McIsaac finished his presentation by asking Mark Holliday to comment on the NMFS Habitat Blueprint Program and how it related to MONF III. Holliday stated that NMFS wanted to focus on habitat and improving the integration of habitat conservation and restoration into the fishery management process. This then posed questions about the roles and responsibilities for the Councils now and in the future. Were there legal impediments or are there legal improvements that might be necessary to clarify these roles and responsibilities? What is the scope and the scale of habitat in making fishery management policy decisions? NMFS was looking at a wider spectrum of issues than just ACLs and AMs for specific biological outcomes; it was also looking at some of the limiting habitat issues, whether conserving essential habitat or rebuilding habitats that are essential for juvenile reproduction or stock health, and what are those roles and responsibilities currently, and what are the conflicts and challenges for the future. He finished by noting that not so much as the Habitat Blueprint as much as it is the habitat integration, and those challenges that the Council and NOAA will be facing in the future that need discussion.

There was considerable discussion about the three meeting themes and focus topics by Council Members. Based on these comments, Don McIsaac stated he would edit the session themes and focus topics based on the discussion by Council Members.

## **Program Review**

DOC IG Review of NOAA Fisheries and FMC Fishery Rule-Making Process and Transparency of Process Under MSA)

Kerry Selberg provided an update on the Inspector General's Review of the role of NOAA Fisheries and the Fishery Management Councils and the rule-making process and the transparency of that process and some of the conversations with the Inspector General's Office.

The review began in January 2012 which was initiated through a conference call with the Councils, NMFS and the Inspector General's Office, Todd Zinser. Following that call, a document request was received and NMFS provided a list of all the rules that have been

conducted under Magnuson since 2007 and a series of other related documents. In addition to the document request, NMFS had several meetings and interviews with the IG's office that covered a basic overview of the Magnuson-Stevens Act, overview of the Fishery Management Council appointment process, Council training, recusal processes, membership reports to Congress, and on stock assessments and the peer review process.

The IG conducted four regional office visits to the Northwest, Northeast, Southeast and Southwest. For each of those meetings, they requested the administrative record of about 10 to 15 rules for each office to be available electronically and conducted interviews with staff. They were also able to visit the Gulf and New England Council offices.

Some of the general lines of questioning from the Inspector General included topic related to National Standard 8, Socioeconomic Program at NOAA Fisheries, public engagement and transparency, OMB review of rules, and funding for Councils.

There have been many questions on roles and responsibilities between NOAA Fisheries and the Councils including: mechanisms for coordination; agreements in place; Standard Operating Procedures; type of process that are standardized across the country; and differences between regions and why.

Regarding next steps, NMFS finished the initial document request about six weeks ago and are about complete with the follow-up requests. Selberg stated that the IG has completed this initial phase of interviews at the Regional Offices and the Councils.

She emphasized, for this phase, they've had an opportunity to look into all of the material they have been provided, and that they will likely come back and either visit additional Regional Offices and Councils or go back to some of those offices they've already visited for follow-up visits. In the Entrance Conference call with Todd Zinser, the IG staff talked about the possibility of doing a series of reports or rolling reports instead of one review and one report. They have received no indication on timing.

Rip Cunningham asked if the background material on Council operations was given to IG staff involved in the review or just the top level IG administrators. Selberg said that the material was given a team of seven or eight people who are involved. She was not sure if Todd Zinser saw that material.

Paul Howard noted that the report tracks very closely to the questioning that they received, three basic themes, conflict of interest, National Standard 8 and interaction with the Regional Office.

Chris Oliver stated that there exists the Executive Order 13563, Improving Regulatory Review, legislation from 2006 that mandated a review of the NEPA/Magnuson juxtaposition, which was aimed at regulatory streamlining, legislation now being proposed through the Fishery Investment Regulatory Relief Act that contains a clause about improving regulatory process and the GAO looking at this idea of moving NOAA into the Department of Interior, which has a lot of regulatory process implications. He asked if any discussions have occurred about how all of these various things might intersect at some point.

Sam Rauch responded that some of those items you discussed are just in the proposed stage, and may not come to pass. Others are being dealt with now. There is general criticism concerning

regulatory inefficiency. It is an issue that the various political parties are interested in, so it's not surprising that it is in that context. There is interest from people who care about regulatory efficiency and NOAA's functions, and want to see a decrease in the regulations.

Don McIsaac asked a couple of questions regarding the end process of how this review is completed, given the comments regarding no timeline and rolling reports. McIsaac asked, based on their collective experiences, what the Councils could expect should there be a negative finding, will there be a report that comes out and a period of time to address it?

Rauch responded that this audit branch of the IG is working on making sure that NMFS run efficiently, consistently, and with as open and transparent process as possible. They can find areas in which NMFS can improve that can be very constructive and beneficial to the agency. Rauch envisioned there will be one or a series of reports that will emerge that will make suggestions about how NMFS could improve the regulatory process.

## **Electronic Monitoring**

Don McIssac opened this discussion topic by referencing a Pacific Council background paper that identifies electronic monitoring issues that they're currently dealing with. For example, 100 % percent observer coverage is now required in their whiting fishery, which is borne on the fishing industry and resulting in economic impacts. He wondered if any other Council's had similar a semi-urgent situation in relation to observer coverage and the potential for video monitoring to reduce costs. He asked Ms. Lowman, PFMC Vice Chair, to provide more information on the issue.

Lowman stated that across the country there is an increasing need, in relation to ACL and Catch Share management for accurate, comprehensive and timely monitoring, while budgets are getting tighter. The Pacific Council is initiating a pilot study in mid-2012 would like to draw upon experience with electronic monitoring that has already been done across the country. She stated that NMFS is pulling together some information on a national level, but encouraged Council's to share their experience with electronic monitoring and asked for discussion on the topic.

Holliday responded that NMFS' national effort was recently initiated as a result of the recognition that NMFS was funding a lot pilot programs on electronic monitoring around the country. However, many of these pilots have not become operational and so there is need to understand what are the impediments to making such tools operational. NMFS will be developing 6 papers looking at electronic monitoring issues including use of cameras, electronic logbooks, and other devices that could help improve more cost-effective and a sustainable approach to collecting fishery dependent data from our fisheries.

Simonds asked why the Northwest hake trawl fishery discontinued the use of electronic monitoring in 2011?

Lowman responded that the Pacific Council was at the end of developing a Catch Share Program that requires full or maximized retention and there were a couple of incidents where

cameras didn't work resulting in a compliance concern so the Council recommend 100% observer coverage. Now the Pacific Council is starting to rethink that decision.

Rauch stated that he thinks it important to have a broader discussion that crosses Councils on these issues. He suggested that the CCC consider forming a subcommittee that could help bring the Councils together and participate with NMFS in the process, or if not the CCC then maybe MAFAC.

Oliver asked Holiday when the 6 papers will be completed?

Holiday responded that the papers will be available for distribution in mid-summer 2012.

Wolford stated that important as the discussion continues on these issues that recognition is given to small-boats, different gear types, pots, traps, etc, which have different requirements that make 100 percent observer monitoring difficult and perhaps not cost efficient.

McIsacc stated that he'd be in favor of a CCC subcommittee considering these issues as opposed to delegating it to MAFAC.

Duenas noted no further questions or comments on this topic and moved on to the Mid-Atlantic presentation on Visioning.

## **MAFMC Visioning Project**

Rick Robins presented an update and the preliminary findings on the Mid-Atlantic Council's Visioning and Strategic Planning Project. The MAFMC has rebuilt most Mid-Atlantic stocks. This was a challenging rebuilding process, which led to stakeholder disengagement. The Council was now at a pivotal point in its management history and needed a plan for the future, namely, which aspects of management are effective and which are ineffective? The visioning process would also look at how to improve stakeholder engagement, and what were the Council's goals beyond rebuilding stocks and preventing overfishing?

The process had begun with a series of data gathering exercises which included the following:

- September 2011-February 2012: online surveys (general and species-specific)  
1,253 general survey responses 1,048 species-specific surveys
- 20 small group meetings throughout region
- Interviewed 212 individuals
- Roundtable discussions with stakeholders
- Position Letters
- Received 12 letters from ENGOs, state resource departments, and fishing organizations

The next steps included the completion of the data analysis and presentation of the full report to Council in June 2012. Between June and October 2012, the Council would draft vision and goals based on stakeholder input, and publish draft for public comment. Following this comment



period, the Council would incorporate stakeholder comments and finalize the vision , and develop a strategic plan to achieve vision and goals. Robins summarized the chief concerns of the commercial and recreational fishermen and of the Environmental NGOs that had emerged from this process.

## **Administrative Matters**

Four topics were discussed by the CCC under this agenda items, namely:

- Freedom of Information Act Requests
- Technology – Virtual PH/Scoping vs. Travel
- Professional Liability
- Other Business and next annual CCC Meeting

Steve Bortone opened the discussion by referring to a letter to Adam Issenberg, the Assistant General Counsel for Fisheries (document T18 (1) in the briefing materials). The letter covered issues such as unemployment claims, workers compensation, legal representation, liability insurance, FOIA requests , procurement, harassment of Council staff and external legal guidance. Bortone noted that some of these issues had been touched on during the meeting. However, the response Bortone had received was that Issenberg and his staff were still working on a response to the letter. Bortone stated that the key issue was that the Council's needed a central contact in D.C. within NOAA to handle a lot of the administrative issues that come before the Councils.

He continued by illustrating an issue such as Workers Compensation for which neither the State or Federal government would assume responsibility. Such an issue could easily absorb a year and half to resolve and this was just one issue. Moreover, as new staff come onboard the Councils the issues included in the letter Issenberg resurface again and again.

With respect to FOIA, its been pointed out that strictly speaking, the Councils aren't FOIA-able, however, all of Council records are FOIA-able through the Fishery Service. So the Councils still end up providing all of this material, regardless of the burden this imposes on Council staff. Bortone illustrated this with a recent FOIA request to the GOMFMC for all travel records of all of the staff and all of the Council Members for the past two or three years. This request required many weeks of staff time in response, plus the expenses involved are not reimbursable to our office. Councils would like some recognition of that particular problem and how to handle it in the future.

Bortone continued with another issue when staff are criticized publicly or when the Council Members are libeling staff. There needed to be a procedure in place to deal with this andd be rectified.

Bortone finished by asking the NMFS legal staff talk to him or other GOMFMC staff if they need clarification. He noted that these were long-standing issues and the Council would like them redressed at some time in the near future.

Kathryn Kempson noted that she had been involved in speaking to at least three different divisions of DOC Office of General Counsel (OGC) about how to find processes by which to resolve these concerns. Many of them were not within the purview of NOAA General Counsel and needed referral to the DOC OGC. She understood the frustration of having to go to a number of different contacts, but from the standpoint of actually making progress and updating the process NO GC had made some advances.

Bortone responded that apart resolving from these specific legal issues, there was the general matter of having some central place to which Council concerns could be brought.

Kempton responded that the NOAAGC was addressing these issues on a case-by-case basis. With respect to the Point of Contact, she understood that the CCC brings issues to the attention of Adam Isenberg or his colleagues and they then refer them out to the appropriate source of resolution.

Chris Oliver asked Bortone about the FOIA request concerning travel and if this was a formal FOIA that was filed with the FOIA office, since Councils technically were not FOIA-able.

Bortone alluded to his previous comments that the Councils are FOIA-able through the Fishery Service, which requests the documents from the Council. Council staff are required to provide these materials essentially at no cost.

Oliver continued that the NPFMC spent a lot of time addressing FOIA requests that come to NMFS. Technically Council staff time spent on FOIA requests cannot be levied as it is for people in the Federal Government that are answering FOIA requests. However, the NPFMC responded in the spirit of cooperation, because otherwise NMFS people would have to come to the Council office and find all of the material.

Oliver then sought clarification on the liability insurance issue and asked Bortone to elaborate on this.

Bortone responded that most businesses have liability insurance in case they were sued. The GOMFMC had some examples of this. In these instances, the Department took on the cases but if they do not, what protection do Council staff have? There is federal liability insurance that could be purchased but this was unavailable to Council staff who were not federal employees.

CCC Chair Manny Duenas asked Sam Rauch to summarize the consultation with GAO on moving NOAA to the Department of Interior.

Sam Rauch responded that there were two separate activities in progress related to moving parts of NOAA or all of NOAA to DOI. First, the President had sought permission from Congress to engage in Departmental reorganization and his stated goal is to take the various trade missions, manufacturing supports, job entities within the government and put them in the Commerce Department. The President did not say it in his speech, but in his supporting materials, in order to make room for that he would take NOAA in whole and move it over to DOI.

These discussions continued at a very high level, and NMFS was not involved with these deliberations on this request. As such, NMFS have not been asked to do any active planning about how that would work.

Separate and apart from that, GAO at the request of the Congress has been investigating whether just the Fishery Service should move to Interior to combine in some manner with Fish and Wildlife. NMFS had an Entrance Interview with them, as had the Fish and Wildlife Service, and GAO had been around the country interviewing a number of people about the benefits or disadvantages of such a move. The deadline for a report on this process was as yet uncertain, and Rauch asked Mark Holliday to confirm this.

Holiday stated that the earliest time frame for a draft report would be in the September to October but more likely November, December. GAO were conducting interviews over the course of the summer, both with government officials, outside entities, whether they were partners with NOAA, partners with the Interior Department and trying to come up with a list of implications. It was less of an investigation and more about the pros and cons that would be inherent in a movement of NMFS into the Fish and Wildlife Service, and the factors which Congress would need to consider in making such a decision.

Holiday added that GAO had conducted a previous study on moving the Forest Service into another agency. The result was a list of pros and cons as opposed to taking a specific position to do it or not to do it.

Rauch noted that the only other reorganization issue is within NOAA in the Senate Appropriation mark which proposed taking a part of the satellite program and move it to NASA.

Eric Olsen suggested that the CCC send a request to the Government Accountability Office and ask that they consult with the Council Coordination Committee as this study develops and matures.

Duenas asked staff to note this and incorporate it into the CCC recommendations and outcomes.

Chris Oliver observed that there was a subtle but important distinction between moving either all of NOAA or just NMFS into the Department of Interior or moving NMFS within the Fish and Wildlife Service.

Mark Holliday stated that the charge to the GAO from Congress was to look at moving the National Marine Fisheries Service into the Fish and Wildlife Service. The GAO staff has broadened that to ask the Respondents to give an opinion about some of the other alternatives. Both the Fish and Wildlife Service and NOAA representatives have said that this is outside the scope of the original call for the study. Whether it's a permutation of NMFS into Interior or parts of NOAA as a stand-alone agency were all possible combinations, but they were not part of the original instruction to GAO. As such many of these options were not fully vetted or described yet by either OMB or the President and they felt it was inappropriate for any of the Executive Branch Officials to offer opinions on those. Holiday reiterated that the original instruction to GAO was the movement of NMFS into the Fish and Wildlife Service.

Duenas asked if the CCC needed any further clarification on this topic.

Dan Wolford asked about how the National Marine Sanctuaries Program would be dealt with in this process.

Sam Rauch responded that NMSP was in the National Ocean Service part of NOAA. Under the GAO Review as originally outlined they would stay within NOAA and it would just be the Fishery Service that would leave. Under the President's proposal, NOAA as a whole, which would include the Weather Service, the satellites, the Sanctuaries Program, would all go to Interior as a unit. There are various other permutations, which could do other things and NMFS was not commenting on those.

Paul Howard asked if Fishery Survey vessels were NOS vessels or NMFS vessels.

Rauch responded that Fish Survey vessels all fall within the Office of Marine, Aviation and Operations which is a separate unit within NOAA. The question of their disposition was similar to that for the Sanctuaries Program. If the original proposal was just to move the Fishery Service, they would not move. They could theoretically be contracted for services, but they would not be moved. Under the President's proposal, they would go along with NOAA as a whole.

Duenas turned to the National Standard 1 Guidelines Revisions which was added to the agenda for this meeting as the document had been received while the CCC was in session.

Jim Odlin noted it would be an opportunity for this organization to make some comments on the guideline revisions.

Sam Rauch stated that NMFS had intentionally passed it out two days previously with the intention of soliciting comments either from the CCC, as a body, or from the individual councils. The time frame was established so that every Council could have at least one Council meeting consider the revisions.

Lee Anderson asked Rauch if he would clarify what was being sought by this advanced notice of proposed rulemaking.

Rauch stated that the Councils and NMFS had gone through the first round of the Annual Catch Limits which was a significant task for the Councils and NMFS. The guidelines in the ACLs currently exist within National Standard 1 guidelines. In that process there were things that worked well and there were things that did not. There were things that caused unanticipated problems. NMFS had committed to taking a look at the National Standard 1 Guidelines to see if they should be altered, as ACLs were not a one off process and would need to be re-specified. As such, were there things that could be done to improve the process by altering the guidelines? NMFS was not committing to making any changes, but wanted to start that discussion in an open and transparent process.

Duenas next referred to the CCC recommendations and outcome statements, noting that the Executive Directors had met to achieve consensus on these and that copies were being run for the meeting.

Duenas asked Steve Bortone if the liability issue was to be handled by the Gulf Council alone or did he want a letter from the CCC to NOAA GC about soliciting a response?

Bortone stated that NOAA GC had addressed this and indicated that a response would be forthcoming.

Duenas noted he was still waiting for a response for two years on shark legislation from NOAA GC.

Rip Cunningham asked if Sam Rauch knew when NMFS would appoint a new Regional Administrator is for the Northeast Region.

Sam Rauch responded that he had hoped that an RA would be in place by now but could not commit to predicting when this would be. He also noted that with Jim Lecky's retirement that the advertisement for the position of the Head of the Office of Protected Resources came out on the previous day.

There followed a discussion on the dates and venues for the next CCC meetings, the Chair of which would be Don McIsaac of the Pacific Council. It was agreed that there would be further discussion of this by email, as would any further comments and edits to CCC recommendations and outcomes.

Sam Rauch thanked all of the staff who helped put on the CCC meeting and to thank all of the CCC members for their constructive discussions, and for many Duenas for chairing the meeting.

Rick Robins thanked the meeting for incorporating the concern about the original draft on the ESA issues. He noted the focus on transparency and improving Council integration into the process to try to achieve that consistency.

Rick Methot commented on the National SSC Working Group, noting that NMFS had not yet had chance to thoroughly vet this. He felt that it would be most useful if NMFS was official member of the Steering Committee to smooth interactions with the Service and keep it well connected with the national activities that are happening in the National Marine Fisheries Service.

Don McIsaac sought clarification on Methot's comments.

Methot responded that the recommendation states that technical support for this committee would be provided by personnel from the NMFS Office of Science and Technology. In order to facilitate this, it would require a fairly senior person who would have the stature of the SSC chairs to sit side-by-side with those SSC on this committee. Potentially that could be someone

like the new stock assessment scientist that was currently being recruited. Having someone like this on the steering committee would ease communication.

McIsaac responded that they would be subject as an ex officio member to the same provisions that the rest of the group is with regard to tasks and assignments and would be one more person available to help this committee out.

Duenas asked for any more comments

Steve Bortone thanked Manny Duenas for chairing the CCC meetings in 2012.

Duenas adjourned the meeting.