



NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

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Action Memo

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Agenda Date 4/3/2017

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Dan Hull, Chairman
Chris Oliver, Executive Director

Executive Director's Report (including update on Social Science Strategy Group development, report from the Lenfest Fisheries Ecosystem Task Force, CCC update, Legislation update)

Interim CCC meeting

The Council Coordination Committee (CCC), comprised of the leadership of the eight regional fishery management Councils and NOAA Fisheries, held its interim meeting in late February in Washington, D.C. Mr. Hull, Mr. Tweit, and myself attended on behalf of our Council (Joy Stein attended an ancillary meeting of the Council's Administrative and Finance Officers). The agenda for that meeting is **attached**, and includes a discussion of budget issues; legislation/MSA reauthorization (further discussed below); conflict of interest and recusal (unfortunately nothing has changed in that regard); NS1 guidelines; various science issues (including the stock assessment improvement plan, use of best scientific information available, and stock assessment prioritization); and EBFM 'roadmap' implementation.

With regard to stock assessment prioritization, we recently received a response to our February letter to the agency (**attached**), which generally supports our suggested approach in the North Pacific, and reiterates that the agency does not intend for this process to re-distribute funding and surveys among the different regions. On March 30 we received a letter from Dr. DeMaster (**attached**) which proposes some revisions to their assessment schedule, based upon Plan Team, SSC, and Council input from February, along with a correction to the GOA rex sole assessment frequency and a recommended approach to partial assessments during 'off years'. Related to this, the agency recently released a draft stock assessment improvement plan (SAIP), requesting comments by June 15. They are also in the process of releasing a document on best scientific information available (BSIA). I intend to have both of these items on our June agenda (including SSC review) so that we can consider making comments on them.

With regard to budget issues, we expect to be level funded in 2017, but this is still in somewhat of a state of flux. We will be OK with level funding, given that we still have some amount of carry-over from our previous award, but our ability to get outside consulting help on various projects and analyses will be constrained.

Our annual CCC meeting, being hosted this year by the NEFMC, will be held in Gloucester, Massachusetts during the week of May 15-19. Next year it is our turn to host and we are making arrangements for that 2018 CCC meeting to be held in Sitka, Alaska during the week of May 21-25.

IPHC correspondence

Attached is a March 10 letter from the IPHC which summarizes their actions from their 2017 annual meeting

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in Victoria, BC, including their approval of the Council's recommendations for the 2017 charter halibut management measures in Areas 2C and 3A. Their letter also notes the Council's interest in reviewing the minimum size limit in the directed fisheries, and that they will be further examining this issue during 2017, will be reviewing new analyses at their interim meeting in November 2017, and presenting those analyses to the Council in December 2017. Finally, their letter expresses agreement with the Council's suggestion for a joint meeting in conjunction with our June 2017 meeting in Juneau. Informal discussions among Council and IPHC leadership were held yesterday, April 4, and we will be able to update the Council on those discussions at this time.

JOCI Ocean Action Agenda

In mid-March the Joint Ocean Commission Initiative (JOCI) released their recent report "*Ocean Action Agenda: Supporting Regional Economies and Ecosystems*" (**attached**). This report contains recommendations for the Trump Administration and Congress to consider, based on input from a series of regional ocean leadership 'roundtables' held in 2016. Subject areas are quite broad and include healthy ecosystems, leadership in the Arctic, and sustainable fisheries.

Arctic Encounter Symposium

I have been invited to participate in the 4th annual Arctic Encounter Symposium (invitation letter and draft agenda **attached**), to speak during the April 14 plenary session on 'Future of Fisheries in the High North'. I intend to address basic Council process, the development of our Arctic Fishery Management Plan, and touch on development of our Bering Sea FEP. Doug Mecum (Deputy Regional Administrator Alaska Region) will address recent and anticipated research in this area, as well as general NMFS policy engagement in various Arctic venues. Other speakers at this event include Senator Lisa Murkowski, Senator Dan Sullivan (video address), Congressman Don Young, Lieutenant Governor Byron Mallott, Fran Ulmer, and Mead Treadwell.

Law Enforcement Priorities

This year, OLE will be conducting a 5-year strategic review of NOAA's enforcement priorities. This priority-setting process is used to focus the limited resources of OLE and their state and federal enforcement partners on the most critical enforcement challenges. A copy of the current priority document is **attached**. OLE is requesting our Council's input as they work to craft the new national enforcement priorities for the Alaska Division.

They are looking to list these opposed to the current way it is done by Statutes and High, Medium, and Low. The revised categories they are considering are: Sustainable Fisheries, Protected Resources, IUU Fishing, Wildlife Trafficking, and Seafood Fraud. They are also hoping to develop more operational level actionable priorities versus the current strategic level priorities that were not necessarily specific, and more or less represented a list of requirements and not a short list of top priorities. They are also requesting that we list our priorities recommendations in order of highest to lowest, and are asking for any input by April 30, 2017.

After all the OLE Divisions complete this same process, OLE will post the draft National Priorities: 2018-2022 on the OLE website from June 1 to July 15. Once posted, members of the public will have the opportunity for input via an email mailbox posted on the OLE website for a period of 30 days. The OLE Director has from July 15 to August 15 to finalize the National Priorities with the Assistant Directors and submit the final plan to the AA for Fisheries by August 31.

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OLE personnel are unable to be at this April Council meeting due to a national training commitment, and our Enforcement Committee was not scheduled to meet in April. Therefore, I distributed the materials to our Enforcement Committee members in mid-March, with the hope that they might be able to provide individual input on these priorities, for Council consideration at this meeting (recognizing that we have until the end of April to provide comments). While not an ideal review process, I did not want to miss an opportunity to provide input on these revised Enforcement priorities for the Alaska Region.

Saint Paul Island outreach

Following on previous Council discussions, **attached** is a letter from representatives of Saint Paul formally inviting representatives of the Council to visit Saint Paul Island this summer (later June or early July). At that time the local halibut fishery will be ongoing and provide Council members and staff an opportunity to observe this fishery, and its community ties, firsthand. It is also prime time for viewing seabirds, fur seals, and other aspects of the Pribilof ecology. We are envisioning a couple of Council staff and as many Council members as are interested and able to participate. We should have some additional details for you prior to the end of this Council meeting.

FEP Team

Davin Holen, Coastal Community Resilience Specialist at Alaska SeaGrant, has been nominated as a candidate for the BS Fishery Ecosystem Plan Team. The Team, which was created in December 2016, is a scientific and technical team tasked with preparing the BS FEP, and ensuring that the FEP and its work products meet the Council's management needs and can be integrated into the Council's decision making and management process. Dr. Holen worked with the ADFG Division of Subsistence for 13 years before beginning with SeaGrant last year, where he helps communities develop assessments of and adaptation plans to address stressors of coastal change and coastal hazards. Resume is **attached**.

PNCIAC nomination

Attached are a letter, and associated resume, from the Chairman of the Pacific Northwest Crab Industry Advisory Committee (PNCIAC), requesting the appointment of Tyson Fick, now Executive Director of the Alaska Bering Sea Crabbers, to the position of non-voting Secretary. The PNCIAC is a 'self-organizing' Committee created under the BSAI crab FMP, but membership is determined on a biennial basis by the Council.

Social Science 'Plan(ning) Team'

Following from previous SSC and Council discussions, Council staff committed to organizing an internal working group to develop a 'strawman' terms of reference (TOR) for a potential Social Science 'Plan (or Planning) Team' for Council consideration. The desire for such a group was expressed by the SSC in the context of the Crab Rationalization 10-year review (and in previous reviews), where they suggested the possibility of establishing such a team, in order to "...*discuss program evaluation strategies, refinements in data collection, and analytical methods*". Subsequent discussions have suggested a broader scope for such a team, to address general socio-economic data and analytical issues applicable to not only specific program reviews, but other Council initiatives as well. Relevant to these discussions, the AFSC held a workshop last June to discuss the development of a Human Dimensions SAFE document, which has informed the internal

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working group's development of a strawman for Council consideration.

The internal workgroup at this time consists of Sam Cunningham (Council staff and workgroup lead), Sarah Marrinan (Council staff), Seth Macinko (SSC), Matt Reimer (SSC), Steve Kasperski (AFSC), Rachel Baker (NMFS), and Marysia Szymkowiak (PSMFC). The workgroup is still working on development of a strawman, primarily through individual correspondence among the members (which will continue during this Council meeting), with the intent of having a draft strawman sometime following the April Council meeting. At that time they will convene a more formal meeting of the group to 'finalize' a strawman TOR for Council consideration at our June meeting.

Staff/Council activities

Following the February Council meeting, on Thursday February 9 myself and Kenny Down participated in the Seattle Chamber of Commerce's Alaska Business Forum: Fisheries Update. I provided an overview of the Council process, including major issues we are currently addressing and MSA reauthorization, and Kenny provided an industry perspective on our fisheries, including information on fleet modernization, market considerations, and general fishing operations.

Also on February 9 Jim Armstrong provided a Council overview to the Alaska Forum on the Environment (session on Research, Monitoring, and Tools to Implement Tribal Environmental Protection Goals). On March 15 Jim provided a preliminary overview of the salmon FMP amendment issue to Cordova District Fishermen United, at their March board meeting.

On March 21, Bill Tweit and Steve Maclean participated in the RAC Arctic stakeholder workshop (Resilience and Adaptive Capacity of Arctic Marine Systems Under a Changing Climate), organized by Dr. Franz Mueter et al in Juneau, Alaska (as part of a US/Japan/Norway collaboration). The workshop explored the 'readiness' of Alaska's fishing industry, fishery management, and fishery-dependent communities to respond and cope with expected changes in distribution and abundance of fish around Alaska, and was well attended by a broad range of academic, industry, and NGO representatives.

On March 30 Bill Tweit and other members of the Council's EM Workgroup gave a short panel presentation and group discussion at Comfish in Kodiak. The panel discussed how the Council's EM program is progressing, and how it will develop over the next three to four years, and an opportunity was provided for public comments and questions.

Dr. Stram presented information on our salmon and halibut bycatch management actions to the Yukon-Kuskokwim Regional Advisory Committee (RAC) in late February.

Events this week

EM Proposed Rule Public Hearing - Thursday, April 6th, 6-8pm - On Thursday April 6, from 6 to 8 pm, NMFS will hold a public hearing on the EM proposed rule here at the Hilton Hotel. Under the Magnuson-Stevens Act, the agency is required to hold public hearings in AK, WA, and OR during the public comment period on Observer Program regulations. The Alaska hearing on the EM proposed rule will be held during the Council meeting on Thursday evening, from 6-8pm. Anyone may attend and provide oral or written comment on the proposed rule, to which the agency will respond in the final rule. The other hearings will take place in Seattle, WA on April 18th, at the IPHC office from 10am-12pm, and in Newport, OR on April 19th, from 1-3pm at the

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Hatfield Marine Science Center.

Lenfest Fishery Ecosystem Task Force

Dr. Phillip Levine (University of Washington/Nature Conservancy), and co-Chair of the Lenfest Fishery Ecosystem Task Force, will present on their recent report - '*Building Effective Fishery Ecosystem Plans*'. The Lenfest Ocean Program funds scientific research on policy-related topics and was established in 2004 and is managed by the Pew Charitable Trust. Dr. Levine is also scheduled to provide this report to the Council's Ecosystem Committee. The presentation and background materials are **attached**.

Legislative Update

Regarding the implementing legislation for the North Pacific Fisheries Convention (signed by the President in December 2016), we are still awaiting more information on the anticipated appointment process for Commissioners and Advisory Committee members. When the implementing legislation was signed in December, DOJ raised concerns about Council Chairs being specified as Commissioners representing the U.S. (and legislation specifically instructing a Presidential appointment). Other views have suggested there is a difference of opinion among DOJ, DOS, and NOAA Fisheries about the role of Commissioners on RFMOs. This will be a topic of further discussion at our upcoming May CCC meeting. The next NPFC meeting is scheduled for July 10-14.

In January Senator Murkowski introduced S33, "*Improved National Monument Designation Process Act*", which would require (1) Congressional approval prior to any monument designation; (2) State approval for any part within 100 nautical miles of such State; and (3) compliance with NEPA requirements and analyses (on the House side, Congressman Young has introduced a similar bill - HR222 which has been referred to the House Natural Resource Committee). A previous version of this legislation was introduced in late 2014, and at the Senator's request we commented on that legislation (**attached**), noting that the current process for monument designation does not allow for adequate input from affected parties, and that the proposed legislation would indeed allow for more appropriate input and consideration of impacts, and greatly improve the designation process. In the event that we are asked to comment on this version (S33) I would recommend we simply reiterate our previous comments, and also re-emphasize the potential benefit of explicitly including a Council role in the consultation process for monument designations. I understand there may be hearings scheduled soon on this issue. At our recent interim CCC meeting our Chairman signed onto a CCC letter to President Trump (similar to 2016 CCC letter to previous Administration) reiterating our collective concerns with the existing designation process, summarizing the potential negative impacts of recent monument designations, and highlighting the benefits of the Council process in terms of spatial management of our oceans (**attached**).

For your information, the **attached** Congressional activities report, prepared by the CCC's legislative liaison Dave Whaley, lists some additional bills of interest which have been introduced in this Congress. Among them are HR214 the "*American Fisheries Advisory Committee Act*", introduced by Congressman Young, which would establish five regional committees (with seafood harvesting and processing representation) to assist in the review and awarding of national and regional fisheries research and development grants. HR223, also introduced by Congressman Young, would prohibit the Secretaries of Interior and Commerce from authorizing commercial finfish aquaculture operations in the EEZ except in accordance with a law authorizing such action. The activities report also lists the new membership of various Congressional Committees of immediate interest.

Engaging with the Trump Administration

Following some discussion about engaging with the new Administration and highlighting the importance of the Regional Fishery Management Councils and our relationship with NMFS, the CCC sent a general letter to the new Secretary of Commerce Wilbur Ross (**attached**), providing an overview of the Council process, importance of our fisheries resources, and some very general priorities and recommendations (emphasizing our partnership with NMFS, alignment of priorities, baseline funding, and finding efficiencies in our management and regulatory processes).

MAGNUSON-STEVENS ACT REAUTHORIZATION

Regarding MSA reauthorization, HR200 (**attached**) was introduced by Congressman Young in January of this year, and contains provisions similar to HR1335 which was introduced in a previous Congress and for which we submitted comments in July 2015 (previous comments **attached**). Also **attached** is a section-by-section summary of HR200. Our 2015 comments on HR1335 reiterated our long-standing position that *“the current MSA provides a very successful framework for sustainable fisheries management, and major changes are not necessary at this time. However, we also recognize the need for increased flexibility in some circumstances, and we do not oppose amending the Act to provide for such flexibility, with appropriate cautionary notes”*. HR200 contains provisions very similar to HR1335, primarily focused on flexibility with ACL requirements and stock rebuilding requirements.

At our recent interim CCC meeting we discussed MSA reauthorization generally, and to a lesser extent specific provisions of HR200. Based on those discussions, the CCC has drafted a letter with general comments on MSA reauthorization, similar to the CCC letter sent in 2015. This letter will be sent to members of Congress in the event that the CCC is asked to comment on draft legislation before our next CCC meeting in May. In addition, the CCC’s Legislative Workgroup (including Mr. Hull) will work on a more detailed position paper, describing the range of Council positions on key MSA issues, in anticipation of the CCC being asked for comments after the May CCC meeting. We expect to complete this position paper at our May CCC meeting, which could include comments on specific sections of HR200. A cover letter describing common goals and areas of consensus among the RFMCs would accompany this position paper.

Our Council specifically will very likely be requested to provide comments on HR200 and/or asked to testify at upcoming hearings on MSA reauthorization (likely this fall, but possibly sooner). In anticipation of a Congressional request for our comments on HR200 (or MSA reauthorization generally), and in order to inform our input into the CCC position paper, I have prepared some initial thoughts on each (relevant) section of HR200 based upon our previous positions regarding HR1335, Council and CCC discussions which have transpired over the past year, or new information which has come to bear on these issues. These are provided below (*in italics*) for Council consideration:

Section 4 - Flexibility in stock rebuilding

Major provisions include: replacing the term “possible” with “practicable”; replacing 10-year requirement with timeframe reflecting life history, plus one mean generation, with exceptions; allows consideration of environmental conditions and use of alternative strategies; requires Councils to specify schedules for reviewing rebuilding targets; allows Councils to terminate rebuilding if determination was found to be in error.

Recommendation: Similar to previous comments, support this flexibility, noting 10-year rule may not make sense due to particular circumstances of stock in question.

Section 5 - Modifications to ACL requirements

Major provisions include: allows consideration of ecosystem and economic needs of fishing communities; exemptions for species with short life spans; allows multi-species complexes and multi-year ACL specifications; clarifies ecosystem component species; incorporates international agreements.

Recommendation: Similar to previous comments, support this flexibility, noting ABC still represents upper limit of ACL.

Section 6 - Distinguishing between overfished and depleted

Major provisions include: replace term 'overfished' with 'depleted'; defines term 'depleted' based on biomass rather than fishing rate; requires distinguishing between fisheries that are 'depleted' as a result of fishing versus other factors.

Recommendation: Similar to previous comments, support this distinction, noting that the legislation does not appear to exempt fisheries from rebuilding in cases where 'depletion' is unrelated to fishing.

Section 7 - Transparency and public process

Major provisions include: require website access to audio, video, or written transcripts of all Council and SSC meetings; incorporates NEPA requirements into section 303 (fishery impact statement) of the MSA; requires Councils/NMFS to prepare procedures (regulations or guidelines) to comply with requirements of this new section; establishes modified process for Secretarial review and approval.

Recommendation: Council meetings are already covered - this provision would require us to do similar for SSC (webcast or audio transcription), which is unnecessary given public nature of SSC meetings and detailed nature of SSC minutes - recommend deleting requirement for SSC. Regarding incorporation of NEPA requirements into MSA, this section represents a unique opportunity, as well as some potential challenges - it does reflect long-standing intent of the CCC to streamline regulatory processes, eliminate redundancy, and make the Magnuson-Stevens Act the single guiding Act for fisheries actions; however, as constructed, it may not fully accomplish that intent, and could, at least in the near term, increase and complicate our regulatory process. Some of the pros and cons, and possible remedies, are listed below:

**breadth and scope of environmental, economic, and social impact analysis requirements remain similar to those currently in place (which reflects our intent to subsume NEPA environmental impact within MSA).*

**NEPA is primarily a process statute - bringing these requirements into MSA may also be elevating content requirements, subject to interpretation of paragraph (6) - see following bullet.*

**Councils, subject to approval by the Secretary, will be required to "prepare procedures" to comply with the new fishery impact statement requirements (paragraph 6) - this means development of potentially complex, controversial, interpretive regulations, or at least 'guidelines', which would in essence be determined by NMFS*

and NOAA GC.

**the onus for completion of NEPA requirements technically lies with NMFS (even though our current process attempts to incorporate most of that within the Council process). Under this revised process all of the onus for compliance with the new provisions will lie with the Councils under the MSA process, except for NMFS' final approval authority.*

**We have become quite proficient at the NEPA process (albeit cumbersome), and we have an established track record with regard to litigation of fisheries actions under NEPA. While this section COULD streamline the process, it COULD also create fertile grounds for a new body of litigation on fisheries management actions, based on an as-yet-unwritten set of implementing regulations (pursuant to paragraph (6)), and/or attempting to extend previous NEPA case law to the new MSA process. For example, the term "substantially complete", in reference to a draft fishery impact statement, will likely be a subjective determination unless further defined.*

**To the extent Councils are experiencing timing/delay issues between the time of final Council action and actual transmittal of the package for Secretarial review, this legislation will not directly address or rectify that problem; i.e., even under this legislation, determination of 'adequacy' of the amendment package for transmittal will still be determined by the agency. It is possible this could be addressed through the "procedures" envisioned under paragraph (6), but there is no guarantee of that.*

**This provision will likely be a significant bone of contention and controversy during the reauthorization process.*

In summary, while this section does accomplish the goal of incorporating NEPA intent into the MSA (without diminishing the intent of NEPA or environmental impact analyses), the potential benefit to our process should be carefully weighed against the potential downsides. At least in the near-term, all of the Councils and NMFS would have to spend substantial time and resources developing and negotiating implementing regulations pursuant to paragraph (6) and possibly paragraph (5) (which ultimately have to be approved by the Secretary). Deletion or modification of paragraph (6) may be one option to address these concerns, as the language of the legislation (in paragraph 2) appears to actually be quite sufficiently clear on the nature and extent of analyses required under the revised procedure (i.e. how we fully capture NEPA intent for content). While I believe the Council should support the intent of this section of HR200, any comments we make should include these cautionary notes, particularly given the apparent need (as currently drafted) to develop implementing procedures (regulations?) which will be subject to approval by NMFS.

Section 9 - Report on fee

Major provisions include: require the Secretary to report annually (to Congress and the Councils) on the amount collected from each fishery under a fee program, and detail how the funds were spent.

Recommendation: This is consistent with Council requests for such information and would benefit Council considerations in development of fee programs for LAPP fisheries..

Section 10 - Cooperative Research and management

Major provisions include: require Secretary, in consultation with Councils, to publish a plan for cooperative

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research within one year (and update every 5 years); priority given to expanded use of EM and other technologies.

Recommendation: Similar to previous comments, supporting this provision.

Section 13 - North Pacific Clarification

Major provisions include: Amending section 306(a)(3)(C) to remove the August 1, 1990 date, so that State management is authorized for fisheries not under an FMP.

Recommendation: Similar to previous comments, support this change (recognizing that current court directives could alter the approach for certain salmon fisheries occurring in the EEZ).

Section 14 - Ensuring consistent management for fisheries throughout their range

Major provisions include: in case of any conflict between MSA and National Marine Sanctuaries Act or the Antiquities Act, the MSA shall control; any restrictions of fisheries necessary to implement a recovery plan under the ESA shall be implemented through the MSA.

Recommendation: The intent of this section appears to be to make MSA the controlling Act, but it is unclear how exactly this language would be interpreted, or what the exact net effect(s) would be. It appears, however, to be consistent in intent with the interests of the Council process under MSA, so Councils should support this language's intent.

Section 15 - Limitation on harvest in N Pacific pollock fishery

Major provisions include: Amends American Fisheries Act to allow North Pacific Council to revise pollock harvest limits to not exceed 24%, for any individual, corporation, or entity (current limit is 17.5%).

Recommendation: none, Council policy call.

Section 16 - Recreational fishing data

Major provisions include: creates federal/state partnerships to improve implementation of state data collection programs; requires biennial reports from Secretary to Congress on programs; federal grants to states; requires National Academy of Science to evaluate programs after one year.

Recommendations: this section intended for other U.S. regions, but could provide benefit to North Pacific?

Sections19/20 - Fishery resource disasters

Major provisions include: Secretary shall publish estimated cost of recovery from a disaster within 30 days of declaration of disaster; Secretary shall make decision on disaster request within 90 days after receiving estimate of economic impact from requesting entity.

Recommendation: none.

Section 22 - Subsistence fishing

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Major provisions include: Defines 'subsistence' fishing; adds subsistence fishing to qualifications for appointment to Council seat.

Recommendation: none - does not add any requirements, but highlights subsistence for qualification for appointment.

Section 24 - Arctic CDQ

Major provisions include: requires no less than 10% set aside for CDQ for coastal villages located north and east of the Bering Strait, if Council establishes commercial fishery in Arctic area.

Recommendation: none.

Section 25 - Preference for students in water resource issues

Major provisions include: hiring preference for student working on information collection for marine recreational fisheries.

Recommendation: none.

Section 26 - LAPP program review requirements

Major provisions include: modifies existing review requirements to clarify specific aspects of review.

Recommendation: none, does not appear to substantively alter existing review requirements.

Section 27 - Healthy fisheries through better science

Major provisions include: defines the term 'stock assessment'; requires Secretary to develop plan and schedule for stock assessments for all FMP species within two years; requires guidelines, within one year, for incorporation of stock assessment information from wide variety of nongovernmental sources; "as appropriate" such information will be considered 'best information available', based upon meeting the guidelines; requires 'cost reduction' report, within one year, to assess and compare costs of monitoring and enforcement programs for each fishery (for example, human observers vs. EM)

Recommendation: Support intent of specific plans for stock assessments of all FMP species; express significant caution over designation of various information as 'best scientific information available'; guidelines will be critical to determining what is considered to be best information available; support cost comparison report on monitoring programs.

Section 29 - Alternative fishery management measures

Major provisions include: Grants authority to use alternative measures in recreational fisheries, including extraction rates, mortality targets, and harvest control rules (*presumably* in lieu of ACL requirements?).

Recommendation: No specific recommendation, but seek clarity on intent of this section.

The Council's Legislative Committee met on Monday, April 3, and reviewed these materials. A report of the

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Committee's discussions and recommendations will be available this week for Council consideration.