
Operations Handbook
Discussion Documents

Tuesday, November 6



#7

New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

MEMORANDUM

DATE: October 26, 2007
TO: Council Members
FROM: Paul J. Howard, Executive Director
SUBJECT: Comments from Members on the "*Draft Operations Handbook; Practices and Policies*"

The Council staff received a number of comments on the Draft Operations Handbook that was distributed for review at the September Council meeting, as recommended by the Executive Committee. The following is a list of major issues and suggested edits identified by Council members during their review of the documents.

Minor edits have already been incorporated into the text. The Council should consider the comments below and modify or approve as appropriate on November 6. The policies have been reordered starting with Council operations.

Part of the Council action also will be to delete old policies, at least temporarily if they require very extensive rewrites (example – Aquaculture, see below), or if they are no longer consistent with the MSA reauthorizations and/or current Council practices (examples - Fail-Safe Voting, Multispecies Management Policy, Opening Closed Areas).

EXECUTIVE COMMITTEE

1. Last bullet under *Responsibilities* add: "and the assignment of Council members to committees and designation of committee chairmanships." (*McGee*)

PLAN DEVELOPMENT TEAMS

1. At the end of the *Terms of Reference* section add: "All management alternatives shall incorporate and follow advice provided by the SSC." (*McGee*)

2. At the end of the *Composition* section add: "Members of Council APs may not simultaneously serve on PDTs." (*McGee*)

FMP DEVELOPMENT PROCESS

1. The flow chart tasks the PDT to "recommend allowable catch", a role not listed on page 1, under *PDT Role*, nor in the *Plan Development Team Policy*. (*Preble*). The staff has revised the FMP Development Process and SSC policies to be consistent with the reauthorized MSA, but recommends further discussion of this issue at both the Executive and Council meetings.

ADVISORY PANELS

1A. All AP's should be chaired by a sitting member of the NEFMC. If the chair cannot attend a meeting he/she should arrange for another full Council member to fill in or cancel the meeting. Also, all AP meetings should have a fixed agenda, set and approved by the Council (perhaps through the Executive Committee). APs should address only those items listed on its agendas. *(Preble)*

1B. Also, page 2 under *Meetings*, add: "All AP meetings will have a fixed agenda, set and approved by the Executive Committee. AP activities will address only items on the agenda." *(McGee)*

2. Advisory Panel nominees should be screened for legal problems before provided to the oversight committee for their consideration *(Nelson)*

3. Page 2 first column, paragraph 6, *Terminations*, add: If the a marine resource violation occurred more than three years prior to the application date and the Council determines that violation is egregious and contrary to effective service on the AP, membership may be declined. *(Preble)*

PUBLIC TESTIMONY

The Executive Committee has recommended language that is highlighted on the draft policy and should be discussed by the Council.

SECTOR POLICY

1. Page 3, paragraph 2, delete: "Furthermore, a vessel cannot be in more than one sector in different FMPs in the same year." *(McGee)*

2. Page 3, paragraph 2, delete the sentence that begins: "Furthermore..." *(Preble)*

ENFORCEMENT

Please note the Enforcement Committee is recommending the adoption of a revised Enforcement Policy at this Council meeting. The new policy draws heavily on the version currently in the handbook and is appended to this package. The intent is that the new policy would completely replace the old version unless the Council determines otherwise.

1. Delete the section titled *Effort Control vs. Restricted Quantities* *(McGee)*

AQUACULTURE POLICY

1. The Habitat Committee may not be the right group to update the Aquaculture Policy. Perhaps an ad hoc group including current state directors should be charged with the revisions. *(Nelson)*

2. Yes, have Habitat Committee review this policy. *(McGee)*

**NEW ENGLAND
FISHERY MANAGEMENT
COUNCIL**

**DRAFT Operations
Handbook**

Practices & Policies

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1. Conservation and Management

Purpose

Fishery conservation and management is evolving to include the application of ecosystem-based fishery management principles. To ensure the Council has effective conservation and management programs in place and adheres to sound management practices as it considers and includes ecosystem-based principles in its FMPs, the Council adopted the following policy:

As stewards of New England's valuable fishery resources, we will be judged by both the biological health of our fisheries and by how fair and equitable we are in our allocation decisions.

The New England Fishery Management Council recognizes that allocation is an integral part of its management responsibilities, and that measures which have allocative effects should be open and transparent.

The Council will develop conservation measures and controls that have a high level of certainty that insures they will prevent overfishing, end overfishing and rebuild stocks.

The Council also recognizes that we manage fishermen, not fish, and that allocation measures and controls must have a high level of certainty that insures our conservation requirements are met in a fair and equitable manner.

2. Election of Council Officers

Purpose

Officers of the Council are Chairman, Vice chairman, past Chairman (*if appropriate*) and two or three Executive Committee members. Elections are held at the first regularly scheduled Council meeting after new Council appointments become effective each year. The Council elects officers from among the voting members of the Council. Officers are elected for one year and may be reelected.

Executive Committee

The five members of the Executive Committee will consist of:

- Chairman
- Vice chairman
- Past chairman (for 1 year after service as Chairman)
- 2 or 3 at-large elected members (depending on whether a past chairman is on the committee)

Past Chairman

The past Chairman of the Council will serve as an "*automatic*" member of the Executive Committee for **one year** following his last term as Council Chairman. Thereafter he may be nominated and elected, as are other members of the Committee.

Voting Procedures

A non-voting member of the Council designated by the past Chairman will conduct the election with assistance from other non-voting members. Nominations will not be closed until all who wish to

nominate have done so. A nominee may decline a nomination.

Write-in votes are not permitted.

Offices will be filled in the order of Chairman, Vice chairman and successively, each of the (two or three) Executive Committee members.

Voting will be by secret ballot. The non-voting members will distribute, collect and count ballots. Ballots will be retained by the staff for 30 days before destruction and will be available for examination by voting Council members during that period.

Offices will be filled by a majority of votes for nominated candidates. Write-in votes and abstentions will not be counted in determining a majority.

If three candidates are nominated and none has a majority, the candidate receiving the fewest votes will be dropped from the ballot.

If three candidates are nominated and the low two are tied, all three will be kept on the ballot.

If four or more candidates are nominated and no one has a majority, the person receiving the fewest votes will be dropped; and if the low two are tied, **both** will be dropped from the ballot. If the low three are tied, all four will stay on the ballot.

Repeated Tie Vote

In the event of a repeated tie vote between two candidates, motions from the floor will be accepted for resolving the issue.

3. Executive Committee

General

The Council's five-member Executive Committee consists of the Chairman and Vice-Chairman, the past-year Chairman (if still on the Council) and, as necessary, either two or three members who are elected in the same manner as the Chairman and Vice-Chairman. Officers of the Council are elected for one year terms and may be reelected.

Purpose

The Executive Committee advises and assists the Chairman in all his responsibilities.

In an emergency situation (which does not permit convening the full Council), the Executive Committee may act of behalf of the Council.

Meetings of the Executive Committee may be held at the request of the Chairman between regular Council meetings as necessary.

Responsibilities

The responsibilities of the Executive Committee are to develop policy for

Council consideration and provide guidance on administrative, financial and personnel matters. The Council may delegate specific policy development to the Executive Committee.

The Executive Committee provides the following:

- Assists the Chairman in planning and managing the Council budget; reviews and approves budgets and grant applications; and reviews on a regular basis all Council expenditures.
- Oversees the administration of the Council's employment practices.
- Considers and approves the personnel policy.
- Reviews Standard Operating Policies and Procedures and makes recommendations concerning any changes necessary to facilitate the operation of the Council.
- Provides advice to the Chairman on the appointment of members to the Council's Advisory Panels and Scientific and Statistical Committee.

4. Authority of the Chairman

General

At the first regularly scheduled Council meeting after new Council appointments become effective each year, the Council will elect a Chairman and Vice-Chairman from among the voting members of the Council. These officers are elected for one year and may be reelected.

Responsibilities

The Chairman, or in his absence the Vice Chairman, shall convene and preside over Council meetings.

The Chairman, subject to the authority of the Council, is responsible for the operations of the Council, for committee appointments, authorization of meetings of the Council and its committees and for the financial affairs of the Council. The Chairman may designate Council members to officiate at public hearings.

The Chairman, as delegated by the Council, functions as the Chief Executive Officer with general charge and supervision over and responsibility for the business affairs of the Council. In the name of the Council, the Chairman may enter into and execute contracts and other instruments in the regular course of business. The Chairman may delegate these matters to the Executive Director at his discretion.

The Executive Director is directly responsible to the Chairman for the work of the staff and the day-to-day operations of the Council office.

The Executive Committee advises and assists the Chairman in all his responsibilities.

5. Plan Development Teams

General

The Plan Development Teams (PDTs) provide an expanded pool of expertise for the analysis of data and the provision of information to the Council.

The PDTs also help ensure that Council FMPs, amendments and framework adjustments meet scientific, legal and technical requirements for review and approval.

The responsibilities of the PDTs are:

- To evaluate management proposals with respect to achieving FMP objectives;
- To incorporate SSC recommendations as accepted by the Council into management alternatives
- To provide guidance and assistance, as appropriate, to the Council staff in the development and preparation of FMP and amendment submission documents; and
- To provide plan monitoring, scientific and technical expertise to the Council and its committees and, if appropriate, to the Stock Assessment Workshops.

Process

The PDT will provide options to meet FMP objectives, analysis and relevant data for use by the appropriate oversight committee or Council. The individual members of the PDT will carry out their usual responsibilities to their

parent agencies, but as a group the PDT is responsible to the Council.

Terms of Reference

The oversight committee chairs will provide detailed guidance (terms of reference) to the PDTs. Committees may ask PDTs to evaluate management proposals, develop options to meet FMP objectives, or to provide guidance on a variety of scientific, technical or FMP implementation issues. The terms of reference should clearly identify the management objectives against which management proposals should be evaluated and options developed.

The goal is to direct the PDTs to develop and/or analyze a variety of options consistent with FMP objectives. (See sample format for terms of reference)

PDT chairs will attend meetings of their parent committees to facilitate accurate preparation of written terms of reference, and subsequently will present PDT reports and analyses to the committees or the Council. PDT chairs may designate other PDT members to make special presentations to the committees as appropriate.

In meeting the management objectives specified by the committees, PDTs should consider as broad range of options as possible.

PDT Reports

PDTs will provide reports to the committees in response to the terms of reference.

The PDT reports will provide the committees with options and analyses of options that meet specified objectives.

PDT conclusions and recommendations will reflect the consensus of its members. PDT members must have the chance to review and comment on PDT reports prior to their distribution.

Responsibilities and conduct of work

The PDT Chair will schedule meetings (as far in advance as possible) and coordinate assignments of specific tasks to individuals or subgroups of the PDT. The Chair will distribute all terms of reference prior to PDT meetings.

The PDT Chairs will keep PDT members informed of all Council actions affecting a PDT's area of responsibility. The PDTs may determine whether a particular issue or proposed action warrants their involvement, or whether it is better handled solely by the Council staff.

PDTs are working groups and therefore PDT members are expected to contribute to analyses and documents under development. PDT members are chosen for their scientific and technical capabilities and it is important for them to be as impartial as possible in evaluating management alternatives. To maintain the credibility of the PDT as an impartial body, PDT members should be careful not to become advocates for a particular management approach or a particular interest group.

All FMPs, amendments or major framework adjustments should be developed with the involvement of the PDTs unless delegated to a committee established for a specific purpose, such as the Multispecies Monitoring Committee.

The PDTs should review major components of submission documents, such as draft and final environmental impact statements, economic, social and Regulatory Flexibility Analyses for all FMPs, and major amendments or framework adjustments.

To ensure the most efficient use of PDT resources, as much work as possible will be done before or outside of PDT meetings by circulating and reviewing analyses and documents by mail or electronically.

PDT members should have the full agreement of their agency/employer to allow them to make the appropriate commitment to the PDT process. Expected time commitments should be explicit so that PDTs can depend on members for some minimum amount of contribution.

Conduct of meetings

The purpose of PDT meetings is to direct and review analyses and provide guidance to the Council and its committees.

Committee chairs may attend PDT meetings to provide guidance and clarification when needed. Council members, industry advisors and members of the public also may attend PDT meetings, but may participate in the discussion only at the invitation of the PDT chair.

The purpose of PDTs is to perform analytical and other technical work for the Council; therefore, although the meetings are open to the public, they may not always be given public notice.

Composition

Each plan development team should consist of the following:

- A Chair designated by the Council's Executive Director.
- Up to two members from the NMFS Regional Office, one of whom is responsible for keeping the Regional Administrator and other appropriate NMFS personnel informed of work undertaken, progress, problems encountered, and time tables.
- Up to two members from the NMFS Northeast Fisheries Science Center (NEFSC). Other scientists from the NEFSC may participate in technical sessions or working subgroups of the PDT. Their involvement would be coordinated by the appropriate NEFSC member.
- A designated staff member of the Mid-Atlantic Fishery Management Council.
- A designated representative of the Atlantic States Marine Fisheries Commission.
- Economists, statisticians, anthropologists, sociologists, marine biologists or other scientists from state fisheries agencies and academic institutions. Subject to the availability of funds, expenses for these PDT members will be reimbursed by the Council.
- Other Council staff as appropriate.
- Representation from different organizations does not need to be proportional. However, an effort should be made to include personnel from the states.
- Members of Council committees that task a particular PDT or may not also serve or stand-in for other members on that PDT.

6. Scientific and Statistical Committee

General

The purpose of the Scientific and Statistical Committee (SSC) is to assist the Council in the development, collection and evaluation of statistical, biological and other scientific information relevant to the development and amendment of any fishery management plan (§302).

The SSC will:

- Assist the Council in the development, collection, evaluation, and peer review of statistical, biological, economic, social, and other scientific information relevant to the development and amendment of fishery management plans.
- Provide the Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, by-catch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.
- Provide guidance to ensure that FMPs, amendments and framework adjustments are based on the best scientific information available (National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act);
- Review stock assessment updates as requested through the Stock Assessment Workshop. One or more SSC members will be assigned by the Council to serve on or Chair SAW/SARC committees;
- Upon request, advise the Council on the preparation of comments for any FMP or amendments prepared by the Secretary

or other bodies which are transmitted to the Council pursuant to the Magnuson-Stevens Act;

- Perform other appropriate tasks as may be required by the Council.

Organization

The Executive Director will announce SSC vacancies through the news media, the mail and in other ways he determines appropriate. Interested persons will be required to submit their resumes and other information requested by the Executive Director.

The Executive Director will prepare a list of nominees. The five voting members of the Executive Committee will appoint SSC members on the basis of their expertise in fisheries science, ecology and social sciences.

The SSC will have no less than 15 members with nine members with expertise in fisheries stock assessments, three in fisheries ecology and three in social sciences related to fisheries management. The SSC may call upon additional expertise with the approval of the Executive Director. SSC members will serve for renewable three-year terms.

The SSC will nominate from its members a Chair and Vice Chair who both will be confirmed by the Executive Committee for one-year, renewable terms.

Members may be compensated when funding is available and will be paid for travel expenses in accordance with Council travel policy.

The Executive Committee may appoint additional SSC members on ad hoc basis if

needed to provide the Council additional expertise on a particular issue or question.

The Executive Director will provide staff and other support as necessary.

Procedures

To the extent practicable, the SSC will meet regularly before Council meetings and the SSC chair (or appropriate representative) will attend Council meetings.

The Committee also will meet as a whole, or in part, at the direction of Executive Director with the approval of the Council Chair whenever necessary to fulfill its responsibilities.

7. FMP Development Process

Purpose

To allow for the most efficient use of time, budget and skills of the Council, staff, SSC and PDTs the Council has adopted this procedure to be used in the development of Fishery Management Plans.

Goals

The Council has developed the following goals for improving FMPs:

- Improve the quality of FMPs.
- Improve the clarity of FMPs so members' vote with a clear understanding of the plan and its biological, economic and social impacts.
- Reduce the likelihood of disapproval.
- Enhance the probability of successful implementation of plans.
- Improve public participation and understanding.

Council and Committee Roles

The Council and committees will focus on developing goals, management strategies, providing direction to committees and tracking progress and approving options

PDT Role

The PDT's will be responsible for developing options, doing technical analyses and writing plans based on

the Council's explicit direction, policies and strategies

The PDTs are not independent, but will work with the oversight committees refining options to satisfy Council strategies and achieve management objectives

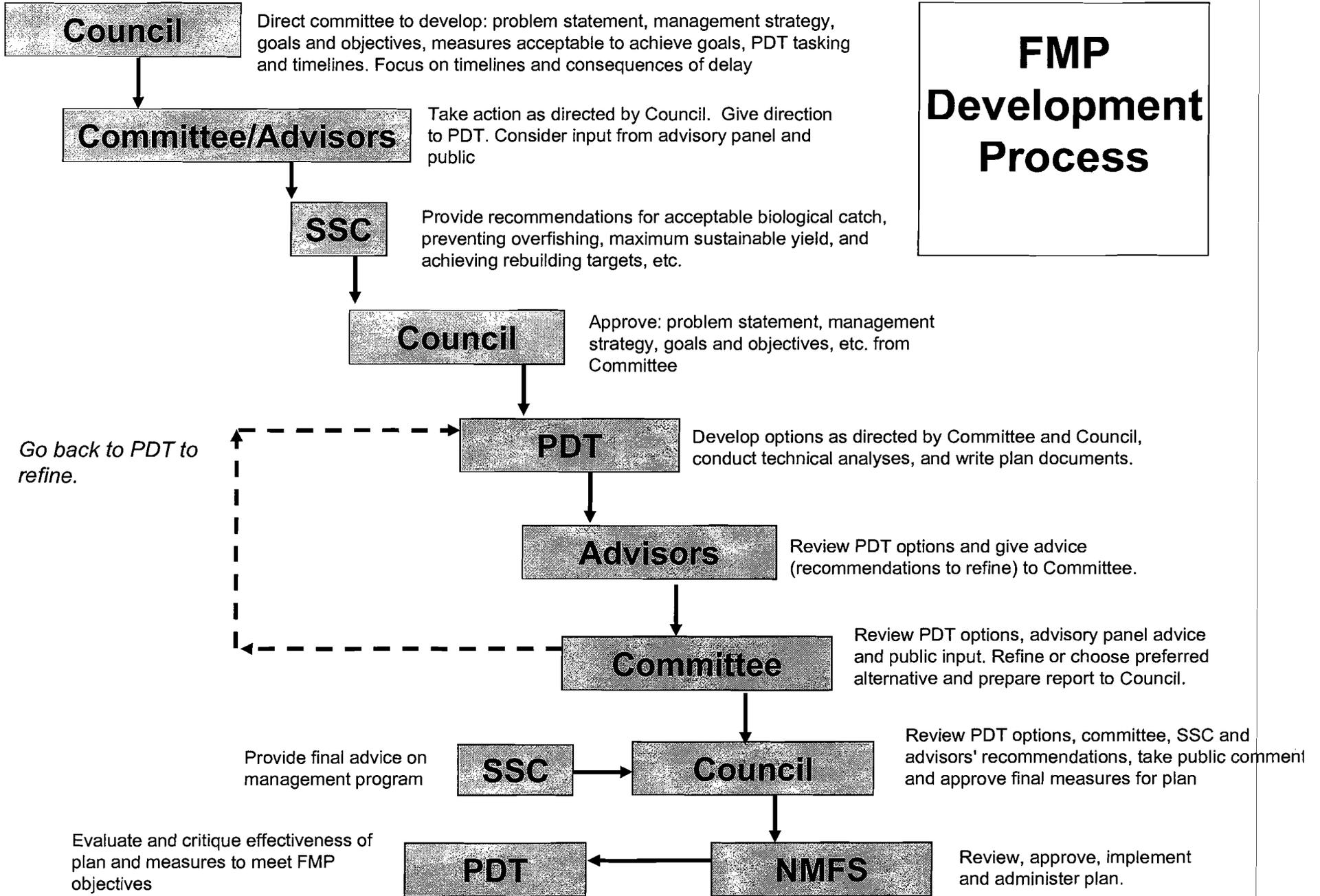
SSC Role

The SSC will:

Assist the Council it in the development, collection, evaluation, and peer review of statistical, biological, economic, social, and other scientific information relevant to the development and amendment of fishery management plans.

Provide the Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

FMP Development Process



8. Minority Reports

General

Council members may register official dissent about any decision of the Council on approved Council actions submitted to the Secretary of Commerce. This policy does not foreclose the expression by Council members of personal opinions or viewpoints on any subject under consideration by the Council.

Any Council member expressing his personal opinion should make it clear that these opinions are those of the individual only. To do otherwise subverts the Council process and conflicts with statutory process prescribed by the Magnuson-Stevenson Act.

Procedure

At the conclusion of the vote on an action to be submitted for Secretarial review, any Council member(s) intending to file a minority report should advise the Chairman.

When a Council member(s) decides that he (they) will file a minority report, he (they) shall advise the Executive Director in writing of this intent. Notice shall be given to the Executive Director no later than thirty (30) days after the Council meeting

during which the decision that is the subject of the dissent was made.

Upon completion and signature of the minority report, a copy will be provided to each Council member. The Executive Committee may comment on the report.

After review and any Executive Committee comment, the minority report will be forwarded to the Secretary of Commerce by the Executive Director. It will be included as part of the administrative record, along with the decision documents approved by the Council.

Staff Support

The Executive Director will not provide staff assistance and facilities for the preparation of a minority report.

9. MAFMC on Voting on NEFMC Oversight Committees

Appointments

Members of the Mid-Atlantic Fishery Management Council (MAFMC) may, in certain cases, be appointed to and vote as members of a New England Fishery Management Council oversight committee. When a significant portion of a stock or stocks of NEFMC-managed species occurs in Mid-Atlantic waters, or when there is a high degree of Mid-Atlantic participation in an NEFMC-managed fishery, the MAFMC may appoint one or more voting members of their Council to serve on and vote as a member of the New England Council's committee for that species, stock or fishery.

The MAFMC also may appoint members to New England Council non-species or ad-hoc committees, with the exception of the Executive Committee.

Currently, there are two joint plans in which these procedures are applicable. The NEFMC has the lead in preparing

the Monkfish Fishery Management Plan jointly with the MAFMC, while the MAFMC leads in the preparation of the Spiny Dogfish Fishery Management Plan.

Alternates

An alternate voting member may be designated for each MAFMC member appointed to an NEFMC committee. If neither the appointed member nor the designated alternate is able to attend a particular committee meeting, the MAFMC may appoint another voting Council member to serve as its representative at that meeting, provided the MAFMC notifies the NEFMC Chairman or Executive Director in writing of this change.

Travel and Compensation

The MAFMC is responsible for reimbursement of all expenses associated with travel and compensation for its members when attending NEFMC meetings.

10. Advisory Panels

Purpose

Council Advisory Panels (APs), which meet the requirements for a fishing industry advisory committee (FIAC) are charged with carrying out the objectives and duties listed below for a specific fishery management plan (FMP) or management problem. The Council may establish or abolish its Advisory Panels as necessary.

General

New England Council APs shall be appointed by and serve at the pleasure of the Council.

When a Council oversight committee determines that an Advisory Panel will facilitate its work in preparing or amending a fishery management plan (FMP) or provide assistance in addressing a special issue or problem, the Council will appoint an AP.

Every fall, each oversight committee reviews its existing advisory panel membership and recommends any changes to the Council's Executive Committee. A maximum of 15 individuals may be appointed to any Advisory Panel.

The Executive Committee provides final approval for membership on all NEFMC Advisory Panels. The three-year term of advisors begins on October 1st or as soon thereafter as possible.

All decisions and recommendations made by an Advisory Panel are consid-

ered to be advisory in nature and are not binding on the Council.

Membership

The Advisory Panels shall be composed of individuals who are either actively engaged in some aspect of the region's commercial or recreational fisheries, or are knowledgeable and interested in the conservation and management of a fishery or group of fisheries that are managed by the Council. Panel membership shall also reflect as broad a cross-section as possible of interests and expertise from the standpoint of geographical distribution, user group representation, and social and economic diversity that generally may be found within the Council's geographical area of concern.

Other Councils may be invited to name advisors to serve as members of a New England Council's Advisory Panel if the FMP, amendment or, problem under consideration extends into the management area of the other Council.

The New England Council will reimburse advisors from the New England region for travel expenses. Advisors from outside New England may be reimbursed by either the New England Council or other Council(s) whom the advisor(s) may represent.

Appointments

At the end of each year of a three-year term, advisors performance and attendance will be reviewed by the

oversight committees and if needed new members will be solicited to fill any vacancies.

Additional advisors could be appointed in response to the creation of a new panel, the addition of members to an existing panel, resignation, or Council action that removes a member.

The Executive Director will solicit applicants through the news media, Council mailing lists, and/or other means deemed appropriate.

The Executive Director will send each candidate a questionnaire to complete and return to the Council or require the candidate to submit a resume to the Council, depending on the nature of the Advisory Panel.

The relevant oversight committee will review the qualifications of the nominees and recommend appointments to the Council Chairman.

Prior to selection, nominees may be subject to an additional level of review by NOAA's Office of Law Enforcement. Advisory Panel membership may be declined if applicants have had a marine resource violation within the last three years.

Terminations

An Advisory Panel member will be replaced at the Council's discretion if he or she:

- Transfers employment or moves to a different location.
- Is absent from two consecutive meetings without giving adequate

notification or reason to the Council Executive Director.

- Appears unable or unwilling to fulfill their obligation as an Advisory Panel member.
- Their area of expertise is no longer required.
- The Chairman, in consultation with the Executive Committee, determines whether an Advisory Panel member should be removed for just cause (e.g., violation of marine resource regulation or felony, conviction, etc.; these examples are not all inclusive.)

Operation

Organization: A chairman for each Advisory Panel will be designated by the oversight committee chairman (with the advice of committee members), reviewed by the Executive Committee and approved by the Council Chairman.

If an oversight committee determines it is necessary, the Advisory Panel may also designate a vice-chairman who will be selected in the same manner as the AP Chairman.

Meetings: Advisory Panels will meet as directed by their oversight committee chairman. They may meet in conjunction with their oversight committee or independently.

Advisory Panel meetings shall be scheduled by the Executive Director, as often as necessary to fulfill the panel's responsibilities, taking into consideration time and budget constraints. Generally, meetings will be

scheduled for one day. Meetings of more than one day must have prior approval from the Council Chairman.

The Advisory Panel Chairman will be given explicit directions and guidance from the Oversight Committee Chairman concerning committee tasks (i.e. prepare comments on draft public hearing document, prepare comments on the scoping document, prepare comments and advise on a specific measure, etc.) Each Advisory Panel meeting shall be open to the public and the conduct of business will be in accordance with the guidelines found on page 66, Committees and Advisory Panels, of the Magnuson-Stevens Fishery Conservation and Management Act (Blue Book).

The chairman of the oversight committee may attend meetings of the Advisory Panel at his or her discretion and will be reimbursed for expenses. Other members of the oversight committee or Council may attend, but will not be reimbursed for expenses.

The Executive Director may provide support as necessary for panel activities within budget limitations and staff availability.

Travel Authorization and Reimbursement

Members of Advisory Panels shall serve with compensation, provided funding is available. Advisors are eligible for reimbursement of travel expenses incurred while attending authorized meetings scheduled by the Executive Director and subject to availability of funds. Instructions for reimbursement can be found in the Council's Policy on ***"Travel Authorization and Reimbursement"***.

11. Meeting Agenda

Purpose

To provide explanation of the Council's procedures concerning preparation of Council meeting agendas, the ability to take action at meetings and public notification requirements.

General

The Council is involved in a public process and therefore makes every effort to keep all affected parties informed about Council activities. To that end, the Council provides as much detail as possible on agendas and is specific when taking action or in addressing highly controversial issues.

The *Federal Register* (FR) serves as the Council's notice of record. Notices must be published for oversight committee, Advisory Panel and Council meetings at least 14 days prior to the meeting date. The Council meeting agenda is also sent to the Council's mailing list. Most of the points discussed below relate only to the Council meeting notice.

Timing

In order to publish the *Federal Register* notice 14 days in advance of meetings, NOAA must receive the agenda at least 23 days before the meeting date. NOAA, prior to publishing the *Federal Register* notice, reviews the document to ensure proper formatting or to address substantive concerns.

Changing FR Notices

The Magnuson-Stevens Act makes reference to the possibility of modifying a Council meeting agenda up to 14 days in advance of the meeting. However, given the length of

time it takes to publish a notice in the *Federal Register*, there is no practical way to make a change in the FR notice once it has been submitted, with the possible exception of making a correction within 24 to 48 hours of submission. Therefore, the 23-day timeframe for *Federal Register* notices is a firm deadline. Changes made this period could delay the meeting notice publication date jeopardize the Council's ability to comply with the 14-day requirement. Council actions then taken at that particular meeting could be subject to legal challenge.

Agenda

The Council will not take action, except in an emergency, if that action is not listed on the published agenda.

The Council's Executive Committee is responsible for developing detailed Council meeting agendas. To ensure that issues or recommendations discussed at committee meetings will in turn be addressed at the next scheduled Council meeting, oversight committee chairmen should schedule committee meetings appropriately.

If an oversight committee has recommendations to be considered by the Council at its next meeting, the committee is advised to meet more than 23 days before the scheduled Council meeting. This will enable the staff to develop an agenda that includes the committee action items. If the committee cannot meet this timetable, the committee chairman is advised to discuss the proposed Council meeting agenda items with Council staff, who will provide advice on the best approach.

12. Community Participation

Purpose

The Council's mandate is to conserve and manage fisheries for the greatest overall benefit of the nation by relying on scientific information and data, as well as the input and participation of fishing communities and the public. To improve community participation in this process, the Council has established the following:

Definition

A fishing community is a social or economic group whose members reside in a specific location and share a common dependency on fishing (commercial, recreational, subsistence), or on fishery-related services and industries, such as boatyards, tackle shops, ice suppliers, etc. Fishing communities include fishing vessels, owners, operators, crew and fish processors that are based in or dependent on those communities.

Effective Participation

The Council believes that trust, honesty, competence and credibility are the keys to developing effective community participation.

The Council will make every effort to support and encourage community participation in the Council process.

Whenever possible, the Council will use community expertise to complement available scientific information in the development of its FMPs.

The Council will:

- Establish and maintain a consistent process.
- Clearly explain its process to all affected parties.
- Clearly define and explain any legal constraints.
- Involve communities from the outset.
- Enlist the help of credible community organizations.
- Seek public input to the extent practicable.
- Consider the interests of all groups equally and fairly.

13. Public Testimony

Oral Comments

Public comments will be allowed at Council meetings on all agenda items requiring final action and on all agenda items at Scientific and Statistical Committee and Advisory Panel meetings.

The Chairman or presiding officer will schedule public comments at an appropriate time during the meeting that is consistent with the orderly conduct business. During the time allocated for each major Council meeting agenda item, the Council Chairman will seek comments from the public. Generally, this opportunity will occur after the Council has discussed the action items and once motions have been made and are under consideration.

Individuals offering oral comments must provide their name and affiliation, and identify the subject of the discussion. Council members may ask questions of individuals addressing the Council.

Limits on comments

The Chairman may defer or limit public comment on Council meeting agenda items on which no final action is being taken to future oversight committee meetings, public hearings and/or to the Council meeting at which final action will be taken. Where constrained by available time, the Chairman or the presiding officer may limit public testimony in a reasonable manner by: a) requesting that individuals avoid duplication of prior testimony; b) requiring persons with similar concerns to select a spokesman; and/or; c) setting a time limit on individual comments.

Written materials

Written comments received at the Council office 72 hours (three working days) before the Council meeting date will be copied and distributed to the Council prior

to the meeting. Anyone unable to provide written comments 72 hours prior to the meeting and wishing Council members to have copies of the written comments or information should provide 35 copies to staff for distribution to members. If distribution to the Council is not essential, submission of a single copy is sufficient for the record.

All written information submitted to the Council must include a statement of the source and date of such information. Any oral or written statement must also include a brief description of the background and interests of the person in the subject of the oral or written statement.

Public input at other meetings

At meetings of the Council's oversight committees or other working groups, the extent of public comment taken will be at the discretion of the Chairman or presiding officer.

Requested Information from the Public When Submitting Oral and Written Statements

In order to better evaluate public comments in both written and oral form, but particularly at Council meetings during decision-making, the NEFMC requests that individuals who speak on behalf of institutions or organizations provide more detailed but brief information before speaking on the record.

Details that would be particularly informative:

1. Interest in the fishery: for example, identify whether the group's interest is in the harvesting and/or processing sector, shore-side support, environmental or fishing community advocacy, or other
2. Number of members and/or fishing permit holders in the organization
3. If the speaker is representing an organization, whether s/he is speaking on behalf of the organization or as an individual
4. Whether the comments provided by the representative reflect a position that has been formally adopted by the organization

Forms are available from the Council office for those who wish to provide this information in advance of Council meetings so they may be kept on file and distributed to members prior to its meetings. Statements kept on file will replace the Council's request for more detailed information during meetings.

The Council hopes this background information will create greater transparency at public meetings and enhance Council decision-making.

14. Habitat

Purpose

Recognizing that all species are dependent on the quantity and quality of their habitat, it is the policy of the New England Fishery Management Council to promote and encourage the conservation, restoration and enhancement of the habitat upon which living marine resources depend.

Objectives

This policy shall be supported by four policy objectives:

1. Maintain and enhance the current quantity and quality of habitats supporting harvested species, including their prey base.
2. Restore and rehabilitate fish habitats which have already been degraded.
3. Create and develop fish habitats where increased availability of fishery resources will benefit society.
4. Modify fishing methods and create incentives to reduce the impacts on habitat associated with fishing.

These objectives are based on ensuring the sustainability of harvested species and optimizing the societal benefits of our marine resources. The Council shall assume an active role in the protection and enhancement of habitats important to marine and anadromous fish.

15. Sector Policy

Definition of “Sector”

A *sector* means a group of persons holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) in order to achieve objectives consistent with applicable FMP goals and objectives.

Formation of Sectors

Each FMP may adopt a sector program through a plan amendment to enable limited access permit holders in the respective fishery to form sectors. In developing a sector program, the responsible species committees should adhere to the policy described in this document. Each committee should also review the Multispecies FMP sector program provisions as a basis for such a program, making modifications as needed to suit the specific fisheries.

In developing a sector program, each species committee should state the objectives of such programs specific to the FMP, and such objectives will be the context for the periodic evaluation of specific sector programs.

Each FMP must identify a single, fixed and permanent baseline for the purpose of sector allocation, but the Council recognizes that there may be reasons for exceptions. In such a situation, the respective species committee should provide the Council with the rationale for adopting multiple, movable or temporary baselines.

Individual species committees should address the question of sector size limitations in the development of their own sector programs but each FMP, with the exception of red crab, should define a minimum sector size by specifying a minimum number of participants, expressed as a number of individuals or percent of permits, in order to ensure accountability among sector members, and not complicate administration or enforcement.

Individual species committees should address the geographic limitations on sectors in development of their sector programs.

Species committees should state which management measures within their respective FMPs could be eligible for exemption under sector programs, and such blanket exemptions would be subject to Council approval in the adoption of the FMP sector program.

Allocation

Individual species committees, in considering sector proposals, must consider bycatch in other fisheries, effort displacement and the impact on common pool (non-sector) vessels and any other relevant factors when allocating TAC.

Sectors will adopt Annual Catch Limits (ACLs) and Accountability Measures (AMs) for species managed under the Sector's FMP(s) and sector shares will be allocated as a percentage of the ACL of the applicable FMP. Species committees should consider stock condition in determining allocation eligibility in a manner consistent with the applicable FMPs. Sectors will adopt measures consistent with ACLs and AMS for each FMP for incidentally caught species.

Discards will not count toward a sector's allocation but discards will count against a sector's shares, unless a sector can provide other accountability for the discards and obtain an exemption. In other words, the calculation of a sector allocation, as a percentage of the total landings, would be based on historic landings only (not discards), but when the TAC is calculated each year, and a sector's catch is monitored against the TAC, both landings and discards will be counted.

Mortality Controls

Any allocation of TAC applied to a sector, when reached, would result in the sector fishery closing. Based on provisions in Multispecies Amendment 13 regarding overages by sector and non-sector vessels: if the sector does

not exceed its assigned share or percentage in a given fishing year, but other sectors or the common pool do, the sector's allocation will not be reduced, if the sector exceeds its annual allocation but others do not, then the sector share will be reduced in the following year, and if all sector and open pool vessels stay within their shares, but the resource condition requires a reduction in catch, then all groups will take reductions. Individual

species committees should address the regulatory response to the situation where both sector and non-sector groups exceed their portion of the total TAC in the FMPs Accountability Measures. Overages of a sector's allocation would be addressed in the annual evaluation and reauthorization process, and that individual species committees should establish the appropriate response for repeated overages, which may include disapproval of an operations plan.

In terms of mortality controls in fisheries not directly impacted by the sector fishery, each FMP sector program should require that sector applicants identify potential redirection of effort as a result of sector operations and propose limitations ("sideboards") if necessary to eliminate any adverse effects of effort redirection.

Administrative, monitoring and other policies

Sectors will be required to report their catch annually consistent with the Multispecies FMP sector reporting requirements, and any additional monitoring requirements should be stated in each sector's Operations Plan and reviewed annually.

Each FMP may allow proposals that request authorization for multi-year operations. If a multi-year sector program is allowed, and if the range of possible changes (e.g., membership and quota) is analyzed in the Environmental Assessment (EA), then a new EA would not need to be prepared each year.

Each FMP may allow transfers of quota among sectors contingent on evaluation of proposals. If any transfers of

TAC between sectors is allowed within an FMPs sector program, those transfers would be on an annual basis, and the sector TACs would be reset each year based on the membership (which might change from year to year). The FMP may also authorize sector managers to request a quota transfer between themselves, and that they may do so any time after the TAC(s) for the fishing year have been finalized. The species committees should develop FMP specific criteria for the approval or disapproval of TAC transfers. If a sector transfers a portion of its TAC to another sector, and then exceeds its remaining portion, the transferred portion would not be affected, but the sector would have its TAC reduced proportionally the following year by the amount of the overage.

Each FMP should state that vessels can only be in one sector within that FMP in any fishing year. Furthermore, a vessel cannot be in more than one sector in different FMPs in the same year.

Each sector is responsible for ensuring that their eligibility criteria are implemented in a fair and uniform manner.

Species committees should adhere to the policy and guidelines described above, and wherever they deviate from these, should provide substantial rationale for such variance to the Council for its consideration and approval.

16. Enforcement Policy

General

During development of a fishery management plan, the Council and its oversight committees are encouraged to be cognizant of the following guidelines to enhance the likelihood of approving effective fishery management programs that accomplish the goals and objectives associated with the action.

Management Measures

FMP Process Development of management measures should include NOAA Enforcement and Coast Guard input at critical junctures, including assisting species committees in the development of Enforcement Assessments for all FMPs. Assessments should include the cost of enforcing management measures, the additional enforcement resources required for new or expanded management measures, and a prioritized listing of any alternatives based on enforceability.

Simple and easy to understand

Complicated management measures are more likely to contain loopholes as the result of confusion over interpretation, and are less likely to withstand legal challenge. Straight-forward requirements that are clear and contain few if any exceptions make it more difficult for intentional violators to evade enforcement. Additionally, frequent changes to rules create confusion among fishermen and enforcement agencies alike. Individuals may successfully avoid prosecution, even after admitting to breaking a rule, because the rule recently changed.

To the extent possible, consideration should be given to consistently similar management measures among the FMP's.

Effort control (i.e., DAS or quotas) versus restricted quantities (trip limits) The groundfish trip limits of the 1970's provided a valuable lesson for fisheries managers. Trip limits created an incentive for some fishermen and dealers to break the law. Fraudulently reported overages skewed fish prices downward, resulting in black market activities and a compromised statistical database. Nighttime landings in a number of New England ports precluded effective patrolling and monitoring by a handful of agents stationed in the major ports.

With the use of effort controls as primary measures to reduce fishing mortality beginning in 1994, the Office of Law Enforcement has maintained high levels of compliance, coupled with successful prosecutions of offenders.

Effective Tools

Closed areas that are clearly defined in large, plain shapes for reasonably long periods with minimal exceptions, exemptions or transiting provisions (except for compelling safety reasons), can provide a sufficient buffer between boundaries and the area to be protected to deter incursions.

Vessel Monitoring Systems (VMS)

The use of VMS in fisheries is an asset to enforcement for monitoring days-at-sea and closed areas. VMS requirements should be considered when developing new plans, with discussions to include the availability of resources to support the proposed programs.

Systems to account for and trace fish throughout the wholesale process

The ability to trace fish enables enforcement to intercept unlawful seafood at various funnel points such as interstate highways, airports and secondary dealers. Required documentation and labeling protects markets, prevents downward price trends, enhances enforcement and protects the consumer.

Appropriate penalties, including permit revocation

for the most egregious offenses. NOAA General Counsel's penalty schedule has been upgraded to effectively address violations; however chronic repeat offenders who can not pay penalties and those who commit egregious crimes should be penalized. In these cases, permit revocation may be appropriate. Illegal activity should preclude them from participating in controlled fisheries or receiving performance-based allocations when that participation or performance was based on illegal activity

Mandatory reporting should remain a requirement in all FMPs. More efficient methods for collection are in use, including electronic catch and dealer reporting, although improvements to these systems are still ongoing.

Enforceability

Staff intensive rules such as trip limits, catch percentages or meat counts or regulations that require monitoring of offloads make effective enforcement difficult. Manpower intensive regulations result in less effective and less consistent enforcement coverage.

Complex or convoluted measures

Multiple gears, exemptions, exceptions, and running clocks are examples of measures that could result in non-compliance. Simplified management programs reduce opportunities for abuse.

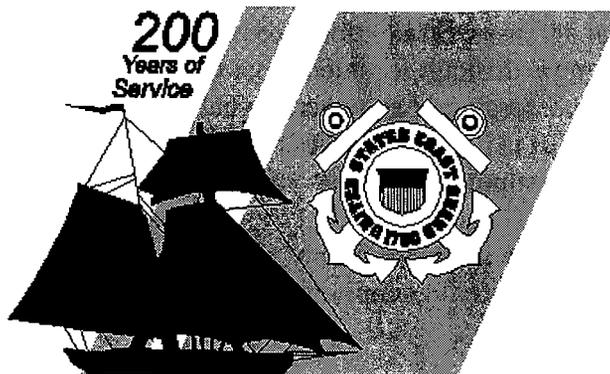
Lack of accountability Marine resources appear in the marketplace as "legal" product -- the result of falsified records, mixing legal and illegal fish or high grading. Traceable products enhance enforcement; protect the resource, the market and consumers.



Enforcement Considerations For Regional Fishery Management Councils

Developed by NOAA Office for Law Enforcement,
NOAA General Counsel for Enforcement and Litigation, and
The U.S. Coast Guard

October 2007



**NOAA OFFICE FOR LAW ENFORCEMENT,
NOAA GENERAL COUNSEL FOR ENFORCEMENT AND LITIGATION
AND
UNITED STATES COAST GUARD**

GUIDANCE FOR EFFECTIVE FISHERIES ENFORCEMENT

Fisheries regulations are constantly being written and most of those in place seem to be in a continual state of change. Fishery Management Council, NMFS Sustainable Fisheries, Protected Resources, and Habitat staffs are tasked with the creation and revision of these regulations. Although involving enforcement personnel in the process is essential, it is difficult to include enforcement on every conference call and at every meeting. With that in mind, the following is provided for consideration by those who are assigned a project which include elements of enforcement.

Before approval and implementation of a Fishery Management Plan (FMP), the following measures are enforcement's advice as it relates to the plan's efficacy. The basis for these principles is the historical experience of over thirty years of enforcing the many and varied regulations promulgated under the Magnuson-Stevens Act on a nationwide basis.

Please note that the information in this paper is intended only as general guidance. Depending on the specific design of any regulatory program, the enforcement tools and strategies used in that program may require mixing or even deviation from the individual enforcement precepts mentioned in this paper. The information contained herein in no way limits NMFS and the Coast Guard's ability to employ the enforcement techniques that it considers most appropriate for accomplishing the goals of a specific regulatory program.

Each Fishery Management Council has a team of enforcement personnel, including NOAA Enforcement, Coast Guard, and State Enforcement, who should be your sounding board for ensuring that the regulations you are proposing are enforceable and will accomplish the desired outcome.

ENFORCEABLE REGULATIONS ARE:

Simple and easy to understand - The more complicated the rule, the higher the likelihood of creating loopholes and legal defenses. Straightforward requirements that are black and white without exceptions make it more difficult for intentional violators and conspirators to evade enforcement. For example, "possession of an undersize halibut on a commercial fishing vessel" is clearly a simple prohibition. It is illegal regardless of where taken or how it was harvested or any other variable, condition or stipulation.

Simple regulations are easier for industry to comply with. Complex regulations result in errors, misunderstandings, and cause industry to simply ignore them.

To the extent possible, consideration should be given to consistently similar management measures amongst the FMPs and regulatory areas, as well as between federal and state waters.

Few as possible - Adding too many control measures frustrate the industry as well as enforcement. Too many regulations allow for more possibilities for mistakes to be made and reports to be forgotten; and it gives more work for enforcement. Reports should be consolidated where possible, and instructions made simple. Regulations sometimes have to be very restrictive, but compliance should be easy for the industry.

Fish is accountable and traceable throughout the wholesale process - The intent of this requirement is for there to be traceability of product wherever found. This enables enforcement to intercept unlawful seafood at various funnel points such as airports and customs borders. With required documentation and labeling, everything could be traced back to the responsible harvester.

Supported by appropriate penalties up to and including permit revocation and criminal charges for the most egregious offenses - The penalty schedule of NOAA General Counsel is constantly evaluated to ensure it is sufficient to effectively penalize civil offenders commensurate with their violations. However, chronic repeat offenders who do not possess resources to pay their fines may warrant permit sanctions or revocations. Those who commit egregious crimes must be punished via criminal sanctions up to the felony level. In these cases, incarceration may be the appropriate avenue of attaining justice. (See PENALTY section below for more on this subject)

REGULATIONS ARE MORE DIFFICULT TO ENFORCE IF THEY ARE:

Man power intensive regulations – Regulations requiring monitoring of offloads are manpower intensive. Enforcement will never have enough manpower to monitor more than a small fraction of the total offloads. This requires constant shifting effort from port to port, while not having adequate resources to properly be pro-active towards serious offenders. Use of technologies such as VMS and electronic logbooks can allow enforcement to monitor remotely, reducing manpower needs.

Complex or convoluted regulations - Regulations such as by-catch limits are nearly impossible to enforce at-sea. Enforcement of these regulations requires monitoring the entire catch during offload. At that time, it is too late for the vessel to do something about any overages it may have. The fisherman must rely on their ability to estimate catch composition at sea to stay in compliance.

Lack of accountability - Fish can become “legal” merely by doctoring the records, without traceable accountability, or the ability to audit. Requiring a paperwork trail to track fish from harvest, to offload, and through the processing and shipping add to good accountability.

Estimates - Regulations requiring a vessel captain to estimate catch, catch composition, and/or discards are difficult to enforce. Using estimates may work just fine for managing a fishery.

However, enforcement cannot prove the false reporting of an estimated weight of a discard, nor can we establish how close an estimate must be before we can cite someone.

Law Enforcement resource intensive - Finally, any new plan or regulation must take into consideration the enforcement resources of the NMFS and the Coast Guard in terms of maximum capable enforcement contacts and investigative effort. Nationwide, enforcement is spread thin, so adding more regulations to enforce, usually means decreasing, or in some cases ceasing, effort in other areas.

PENALTIES

Once regulations are in place, penalties are discussed. The goal of regulatory enforcement agencies is to ensure compliance, whereas prosecution agencies exist to assess responsibility and punish violations. The NOAA Fisheries Office for Law Enforcement (OLE) has both mandates. These two mandates often lead to conflict when we are criticized for not pursuing cases of wrongdoing more aggressively, and then criticized for being too heavy handed when pursuing major civil and criminal violations. OLE works with various NOAA and NMFS divisions, the Fishery Management Councils, NOAA General Counsel, and the U.S. Attorney's Office to determine the appropriate prosecution method for an offense. OLE has one of the most versatile selections of penalties of any agency in the United States. For civil violations, these include verbal warnings, fix-it notices, written warnings, summary settlement fines, as well as monetary penalties permit sanctions, permit suspensions, and permit revocations from NOAA General Counsel. There are also options for hearings with a Civil Administrative Law Judge or with a federal judge in federal civil court. Our goal is to seek the least penalty to gain compliance. If a penalty is too low, it may result in being considered simply the cost of doing business. If a penalty is too high, a person discovering they have committed a civil violation may decide to cover up the error instead of reporting it. Or, they may feel the need to challenge the violation in court, not to claim innocence, but to petition for a lower penalty. For criminal violations, penalties include monetary penalties, home confinement, and/or imprisonment. Criminal investigations and prosecutions are saved for the intentional violators who commit the violation many times, conspire with others, or those who intentionally commit one serious offense where a civil penalty would not be appropriate or adequate.

VESSEL MONITORING SYSTEMS (VMS)

The technological sophistication of the modern fisherman is incredible, and demands equivalent technological applications by law enforcement to ensure that regulations and laws are being adhered to while at sea. VMS allows enforcement to use 21st century technologies to monitor compliance, track violators and provide substantial evidence for prosecution while maintaining the integrity of the individual fisherman's effort. VMS uses electronic transmitters placed on fishing vessels to transmit information about the vessel's position to enforcement agencies via satellite. This position information is used by enforcement to focus limited patrol time on those areas with the highest potential for significant violations. It is critical to recognize that VMS cannot replace at-sea enforcement by aircraft, vessels, and boarding teams, but rather complements existing capability and allows enforcement to target violators, thereby increasing efficiency. VMS is only useful for enforcement of regulations that are location specific, at-sea

boardings are still needed to verify compliance with other regulations, such as net mesh size and prohibited species.

Although not primarily a safety device, VMS may contribute to increased vessel safety. Some VMS transceivers allow constant two-way communication between the vessel and shoreside monitors. If an accident were to occur, the recorded track of the vessel may aid rescue efforts.

Expansion of VMS into additional domestic fisheries would increase the efficiency of enforcement operations by enabling more efficient patrol planning in those fisheries.

OBSERVERS

The NOAA Fisheries Observer Program authorizes NOAA Fisheries employees or contract personnel to embark on fishing vessels in support of an FMP. It is critical to note that observers are NOT enforcement personnel. Rather, they provide fishery managers with more accurate data with which to make management decisions. Maintaining the integrity of unbiased observer data is at the core of effective fisheries management and is a top enforcement priority. Significant violations include failure to carry a required observer, observer harassment, and biasing of samples. NOAA Fisheries regulations establish national safety standards for commercial fishing vessels carrying observers. These regulations require that any commercial fishing vessel, not otherwise inspected, must pass a Coast Guard dockside safety examination before carrying a NOAA Fisheries observer. Further, an observer may conduct an independent review of the fishing vessel's major safety items and may refuse to sail if there are major deficiencies. This is significant because NOAA Fisheries prohibits a vessel required to carry an observer from fishing if an observer is not aboard.

MATRIX of MANAGEMENT MEASURES

The following matrix is designed to help fishery managers and staff better understand the enforcement aspects related to certain management measures. It is important to note that these guidelines address the enforceability of regulations, not necessarily the merits of the regulation. Where it is applicable and important to enforcement agencies, the guidelines address safety, economics and biology considerations.

This matrix allows fishery managers and staff rapidly identify how enforceable a management measure is by at-sea cutter patrols, aircraft patrols, and dockside enforcement. The matrix is supplemented by an analysis defining each management measure, outlines the enforcement advantages and disadvantages of the measure, and then concludes with a recommendation on how to write regulations to make the management measure the most enforceable.

Fishery Management Measure Enforceability Matrix

	Surveillance – Aircraft/Ship/VMS	At-Sea Boarding	Dockside
Limiting Amount/ Percent Landed	No	No	Yes
Limiting Amount/ Percent Onboard	No	Limited	Yes
Prohibiting Retention	No	Yes	Yes
Requiring Retention	Limited	Yes	No
Size Restrictions	No	Yes	Yes
Closed Areas	Yes	Yes	No
Closed Seasons	Limited	Yes	Yes
Gear/Vessel Restrictions	Limited	Yes	Limited
Limited Access Privilege Programs	No	Limited	Yes
Recordkeeping/ Reporting	No	Limited	Yes
Permits	Limited	Yes	Yes

ENFORCEMENT ADVANTAGES AND DISADVANTAGES OF FISHERY MANAGEMENT MEASURES

LIMITING AMOUNT/PERCENT LANDED

Definition:

- This management measure aims to reduce bycatch retention/mortality by limiting the amount or percentage landed.

Advantages:

- Measure acts as an incentive to focus fishing efforts in areas that minimize bycatch if there is some penalty associated with excessive bycatch (i.e. fishery will be closed as a result of reaching a limit).

Disadvantages:

- This is a landing provision, and is difficult to enforce at sea, through either surveillance or boardings. Effectiveness is directly proportional to dockside effort expended.
- High grading may be an issue.

Recommendations:

- Consider prohibitions which regulate areas, seasons, types of gear or types of operations to minimize bycatch.
- Policies should incorporate industry best practices and consider industry recommendations.
- Segregating catch at sea would facilitate enforcement.
- On catcher processor vessels, regulations should prescribe that eventual landing limits shall not be exceeded while at sea. This allows for enforcement at sea as well as dockside. If an at sea boarding determines that the trip limit is met, then the F/V returns to port to preclude further resource degradation/economic advantage.

LIMITING AMOUNT/PERCENT ON BOARD

Definition:

- This management measure aims to reduce bycatch retention/mortality by limiting the amount or percentage of a bycatch species allowed on board a fishing vessel.

Advantages:

- This measure is similar to limiting amount/percentage landing, but allows for at sea enforcement.
- If an at sea boarding determines that the limit/percentage is met, then the fishing vessel returns to port to preclude further retention.

Disadvantages:

- Full and accurate count of catch onboard cannot easily be done at sea during in most fisheries (due to species mixing, loading, icing, safety of boarding party in accessing fish hold at sea, etc.).
- High-grading may be an issue.

Recommendations:

- Regulations should specify how much target species catch is required to justify retention of bycatch species and in what amounts. This is necessary to preclude bycatch species from becoming a targeted catch.
- Consider prohibitions which regulate types of gear or types of operations to minimize bycatch catches. When regulating gear, it is best if the gear types are readily identifiable by aircraft.

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- Policies should incorporate industry best practices and consider industry recommendations.
 - Segregating catch at sea would facilitate enforcement.
 - This provision works best with frozen product.

PROHIBITING RETENTION

Definition:

- This enforcement measure aims to restrict retention by prohibiting the retention of certain species aboard fishing vessels.

Advantages:

- Prohibition violations are easier to document and enforce than regulations that allow a limited percentage to be retained.
- Allows for at-sea enforcement. Once fish are landed, detecting a violation for retention of prohibited species is easy if enforcement is present.

Disadvantages:

- May create an incentive to hide prohibited species from observers or to underreport prohibited species catch if it influences the fishing season.

Recommendations:

- Consider prohibitions which regulate types of gear or types of operations to minimize bycatch catches. When regulating gear, it is best if the gear types are readily identifiable by aircraft.
- Policies should incorporate industry best practices and consider any industry recommendations.

REQUIRING RETENTION

Definition:

- This enforcement measure requires retention of all catch.

Advantages:

- Allows for enforcement during boardings or aircraft/vessel surveillance, as catch discards can be observed from a distance.
- Provides managers with a more accurate picture of the impact of a fishery on target and bycatch species, and allows managers to close the fishery when a limit is landed.

Disadvantages:

- Difficult to enforce shoreside.

Recommendations:

- Policies should incorporate industry best practices and consider industry recommendations.

SIZE RESTRICTIONS

Definition:

- Possession or fish below or above a specified size is prohibited.

Advantages:

- Violations are easy to document and prosecute.

Disadvantages:

- Effectiveness is limited by the amount of processing done at sea.
 - Effectiveness is proportional to the effort expended in dockside checks and at-sea boardings.
- Has potential to be manpower intensive.

- May provide incentive to high-grade.

Recommendations:

- Prohibit processing/filleting at sea for fisheries where size restrictions are used. Measurements should include head and tail intact.
- Require standardized measurement procedures, equipment and techniques by state and federal agencies.
- Maintain same regulations across state and federal boundaries.

CLOSED AREAS

Definition:

- Fishing in a specific geographic area is prohibited.

Advantages:

- Fairly easy to enforce if below recommendations are followed.
- Very easy to monitor with VMS. However, even with VMS cueing, a response asset is generally required to document the violation for prosecution. Aircraft and surface patrols also verify the accuracy of the VMS picture.
- Easy to document presence in the closed area by aircraft and vessel surveillance. It is tougher to document fishing activity without an at sea boarding, depending on the fishery and gear type.

Disadvantages:

- Without VMS, effectiveness is directly proportional to the surveillance effort.

Recommendations:

- Clearly defined areas. Use exact latitude/longitude and straight lines. Avoid simply stating distance offshore, center point and radius, or depth contours.
- Regular shaped areas. In most situations, closed areas are easier to enforce if they are square or rectangle shaped, since it is more clear cut that a vessel is west/east, north/south of an indicated line, and therefore, in or outside a closed area.
- Large closed areas are preferred in most situations. Small closed areas with open areas in between make it easier to cheat by enabling a vessel to quickly enter and exit a closed area. However, if making smaller areas opens fishing grounds, then there may be less incentive to violate the closed area restriction.
- Temporary, short-term closures can be difficult to enforce, as communicating the requirement to the fishing fleet can be challenging.
- If possible, close an area to all activity; limit grand-fathering and other exemptions. Where practical, areas should be closed to all types of fishing as well as transiting fishing vessels.
- If transit is allowed, fishing gear should be stowed and transit must be continuous (i.e. no loitering/stopping). If vessels need to stop/loiter in a closed area, include a requirement to notify enforcement. Stowage requirements must be clearly defined.
- Regulated gear areas are difficult to enforce, because they still require at-sea boardings to verify that fishing vessel is using legal gear in the closed area.

CLOSED SEASONS

Definition:

- Fishing during specific times of the year is prohibited

Advantages:

-
- Large vessel fisheries are easy to monitor since vessels are in port or in other fisheries.
 - Gear intensive fisheries (pots, etc.) are noticeable if a vessel gears up for a trip.
 - The presence of a particular species in the marked during a closed season should be detected if retention is prohibited everywhere.

Disadvantages:

- Small vessel fisheries are more difficult to monitor. Smaller quantities are easier to hide in the market.
- Fisheries with multiple gear types for the same species are especially difficult to enforce if only one gear type has a closed season.

Recommendations:

- See Closed Areas: ensure closures are clearly defined; limit exemptions to the closed season, and dates/times should be defined to the minute.
- Regulations should fully describe what activity is allowed to occur before, during, and after the closure. For example: all gear must be hauled in prior to the closure, gear may not be set prior to the opening. For short duration fisheries, prohibit all fishing with any gear type 72 hours before and after the fishery.
- Monitoring the fishing vessels with VMS during closed seasons can greatly aid enforcement.

GEAR/VESSEL RESTRICTIONS

Definition:

- Specific gear types or gear modifications are prohibited. Gear includes not only the primary methods and tools to harvest the resource, but also includes vessels, horsepower and other such variables. Certain regulatory gear may be required to minimize catch of bycatch species and/or protect certain marine species (i.e., pelagic vs. demersal trawls or protected species avoidance gear).

Advantages:

- Gear is easy to inspect dockside and in most cases, readily visible at sea.

Disadvantages:

- Restrictions on gear employment (i.e. set/trawl depth) are more difficult to enforce. For example, a limitation on amount of fixed gear/hooks is difficult to regulate/enforce.
- Normally gear needs to be inspected at-sea to ensure gear is in compliance while engaged in the act of fishing. This becomes resource intensive as it may require multiple checks at sea and is intrusive; as it may require interrupting fishing operations for the gear to be inspected while at sea, which tends to foster ill will towards enforcement officers.

Recommendations:

- If use is prohibited, then allowing the gear on board should be prohibited.
- Gear restrictions should be standardized across state and federal boundaries.
- Federal and state enforcement officers should develop and use standard procedures, equipment and techniques.

LIMITED ACCESS PRIVILEGE PROGRAMS

Definition:

- These programs delineate a specified amount of particular fish species to be allocated to an individual, a particular vessel, a processor, or a community.

Advantages:

- LAPPs are often praised for their safety benefits. By allowing a quota that can be caught over an extended period of time, fishermen are able to choose when to fish rather than being forced to fish during bad weather based on mandated time periods (e.g. derby fisheries).
- Once an individual fishermen has met their quota, additional fish are treated as prohibited species, as discussed above.

Disadvantages:

- Manpower intensive. LAPPs spread out fishing effort over long periods, requiring increased monitoring and enforcement.
- Individual quota holders have the incentive to underreport their landings throughout the fishing season.

Recommendations:

- Effectiveness depends on monitoring landings.
- Electronic reporting provides real time debiting of an individual's quota account. That is beneficial to enforcement, to the fisherman, and fishery managers. Electronic reporting also decreases reporting errors.
- VMS should be considered for LAPP fisheries.
- If at-sea quota debiting is allowed, the use of certified scales, observers, and video monitoring should be considered to ensure accuracy.

RECORDKEEPING AND REPORTING

Definition:

- A requirement to keep records of specified information on board the vessel. As technology permits, the data from records could be transmitted to managers for decision-making, depending on the fishery and the need for near real-time catch/effort information.

Advantages:

- At-sea boardings can verify the presence and use of logbooks and other records.
- Dockside monitoring of offloads can verify accuracy of catch data.

Disadvantages:

- Full and accurate count of catch onboard is difficult at sea for unprocessed fish, due to species mixing, loading, icing, safety of boarding party in accessing fish hold at sea, etc.

Recommendations:

- Regulations need to identify the time requirements for completing reports and entering data into logbooks (e.g. per set, daily, end of trip). By specifically describing the time requirement, enforcement can better determine whether to focus effort at-sea or shoreside.
- Require a standard logbook format for all federal fisheries.
- Use of electronic reports can simplify enforcement. Electronic reports can be used as a way to provide enforcement near real-time data before or during a boarding. Electronic reporting also reduces reporting errors.

PERMITS

Definition:

- Document which indicates allowable gear type, fishing areas, and/or species which are allowed to be retained.

Advantages:

- Easy to track and identify.
- Revocation or suspension of permit is an effective penalty provision.
- Easy method for enforcement to determine lawful operations.

Disadvantages:

- Permits are largely used by enforcement to identify allowed fishing activity, but the bureaucracy for amending and issuing them creates a system that can be frustrating for fishermen to follow.

Recommendations:

- Require original permits, not copies, to be carried on board the vessel at all times.
- Permit transfers must follow strict guidelines and should require adequate notification to enforcement.
- Standardize permit format across fishery management plans where possible.

17. Herring Joint Ventures and Foreign Fishing Permits

General

The Council annually sets specifications for optimum yield (OY) from the Atlantic herring fishery under the FMP. It also specifies an amount of herring that could be available to joint ventures (JV) and directed foreign fishing (TALFF).

In 2000, while reviewing the first applications for foreign fishing permits, the Council also developed a list of conditions and restrictions that such permits must meet.

Procedure

The Executive Director will review future applications when they are

forwarded to the Council by the Department of State. If the applications are consistent with the specifications, conditions and restrictions set by the Council, the Executive Director will reply with a standard letter without further consultation with the Council. If the application is not consistent with our FMP, the Executive Director will inform the State Department accordingly.

The NMFS will address any allocation issues among applicants.

18. Research Steering Committee

General

The purpose of the Research Steering Committee (RSC) is to assist the Council in identifying and prioritizing regional research needs. It is intended that the committee will provide a mechanism to better integrate management information needs with research efforts and to foster the participation of fishermen in collaborative fisheries science. By appointing Council members, fishermen, scientists and individuals from environmental and academic organizations, and by including National Marine Fisheries Service (NMFS) representatives, the Council seeks to improve fisheries management in New England through the development and dissemination of research priorities and strategies that incorporate stakeholders and fulfill the informational needs of decision-makers. To the extent possible, the committee will strive to improve relationships among the fishing industry, scientific and management groups and the environmental community. Additionally, the committee also will strive to improve understanding and trust of the science-based inputs to the Council decision-making process.

The RSC will:

- Provide recommendations to the Council regarding overarching research priorities which will be reviewed by the committee at least on an annual basis;
- Advise the Council on research-related issues that may be of interest or concern as they relate to fishery management plan development or other resource management concerns;
- Imbedded in the above effort are the following concepts: there is a need to

improve the quality and quantity of information on which to base decisions; there is a need for applied research projects that incorporate the collaboration of fishermen, scientists and other stakeholders in fisheries science; it is necessary to frame the questions that must be answered to guide decision-making;

- Given that cooperative research has become an integral part of fisheries management, the committee will attempt to identify funding sources or mechanisms to address the Council's research priorities and recommend ways to put them into practice; with input from the committee, the Council will communicate its priorities to other organizations in the region, as well as coordinate with other research initiatives
- When funding is available for collaborative research-related projects through NMFS, provide recommendations to the Regional Administrator (RA) concerning the contents of the agency's Requests for Proposals (RFPs);
- Serve on NMFS's evaluation team and review concept papers and final research proposals submitted in response to NMFS RFPs concerning collaborative research; forward recommendations to the agency concerning the approval of final proposals;
- As requested, review both preliminary and final reports on completed projects and provide comments, further guidance and/or recommendations on follow-up activities to the NMFS RA for her consideration;
- Establish a peer, or alternative review

process when appropriate, for the various types of information and reports generated from collaborative or other research projects that are relevant to Council decision-making; this may involve the Council's Plan Development Teams, Scientific and Statistical and/or Social Sciences Advisory Committees, independent experts or the Stock Assessment Workshop process. Procedures should clarify the point at which such reports are available for use by the Council.

- Perform other appropriate tasks as may be required by the Council.

Organization

The Executive Director will announce committee vacancies through the news media, the mail and in other ways he determines appropriate. Interested persons will be required to submit their resumes and other information requested by the Executive Director. The Executive Director will prepare a list of nominees. The Council Chairman will appoint RSC members on the basis of their experience and expertise concerning fishing, fisheries science, research and/or policy.

The RSC will be comprised of no less than twelve members and may call upon additional expertise with the approval of the Executive Director. When the RSC serves as an evaluation team for NMFS for the purpose of reviewing of concept papers and/or research proposals, the agency, in consultation with the Executive Director and the RSC Chairman, also may temporarily augment committee membership for this purpose.

RSC members will be selected in the following manner: four RSC members will be selected from the current body of voting Council members. Others will be selected as follows and serve for renewable two-year terms: one Northeast Fisheries Science Center staff representative, one NMFS Regional Office

representative, two fishery scientists and four fishermen. Two additional committee positions will be reserved for a representative of the conservation community and from academia. Non-Council members will serve without compensation but will be paid for expenses for travel, meals and lodging in accordance with Council travel policy. The Executive Director will provide staff and other support as necessary.

Procedures

The Committee will meet as a whole, or in part at the direction of Executive Director or the Council Chair. The Committee will meet as often as necessary to fulfill its responsibilities subject to time and budget constraints. The RSC will meet at least once annually to identify and prioritize regional research needs and will forward their recommendations to the full Council for approval.

18a. Research Steering Committee

Policy for Incorporation of Research Results into the NEFMC Management Process

Introduction

The Research Steering Committee (RSC), at the request of the New England Fishery Management Council's Executive Committee, developed a policy for the review and incorporation of new research results into the management arena. The Executive Committee's request was based on concerns that various cooperative research programs have funded a large number of projects that have relevance to management. Additionally, other types of external reports may also lack sufficient technical review prior to use in the management process. If results are to be used by managers in decision-making, the Executive Committee determined there should be some mechanism to evaluate the efficacy of the results and direct final reports to appropriate end users.

The Council reviewed and approved an initial draft of this document at its September 2003 meeting, but asked the RSC to provide more detail about the process as well as criteria for channeling projects to end users. They also asked the RSC to expand its discussions to include *all* new research projects that are to be used in making management decisions, not only those generated through cooperative research programs. This iteration of the policy includes those details.

In developing this process, it was the stated intent of the Research Steering Committee to be as constructive as possible in its review of research results and the preparation of advice to the Council as well as researchers. The RSC

also proposes to implement the steps below as a pilot effort in order to address any unforeseen considerations or to further refine the process if necessary.

General

The Council's Research Steering Committee will review final reports for projects funded through the National Marine Fisheries Service's Northeast Cooperative Research Partners Program (NCRPP), the Total Allowable Catch research set-aside programs provided for in the Council's Fishery Management Plans, and the Northeast Consortium, as well as other new research outside of the cooperative programs that may become available to the Council and its Plan Development Teams.

The RSC will provide a review of final reports prior to the use of results in the Council decision-making process. The RSC will identify the applicability of results to management and the appropriate end user of the information in the report. As part of its review, the committee will comment on whether a project has had an adequate technical review, and if not, recommend that one be undertaken. Technical reviews from other institutions may be acceptable.

Technical and contractual reviews of final project reports funded through the NCRPP will remain the responsibility of NOAA Fisheries as required by its grants program. Both NOAA Fisheries and the RSC, however, will communicate the RSC protocols outlined below to potential

applicants for NCRPP funding and to other institutions that fund cooperative and other types of research. This will create an awareness of the Council's need for the RSC management review, as well as a technical review of project results.

A potentially critical element in the management process, the RSC will ensure that an appropriate review of new research results is undertaken before those results and associated conclusions are used in a management action. This could involve several different pathways, depending on the nature of the project. All completed projects will be required to go through a sufficient technical review before results are used in the New England Council's management process.

Project Completed/Final Report Submitted

It is expected that most projects are likely to fall within this category. In these cases, the RSC will review a package consisting of the project abstract (or possibly the full proposal) along with the final report, and either a summary of the technical reviews or the actual text of the review(s).

Based on the committee's discussion and a review of these materials, the RSC will develop comments and/or recommendations on whether the technical review is adequate, project results are applicable to management, whether further work needs to be undertaken to validate results and the likely end user(s). Comments could include recommendations for immediate or future use by the Council and its committees, PDTs, or SSC, suggestions for further investigations, broader field-testing in the form of an experimental fishery, or other course of action.

The RSC also could advise that the information is not appropriate for use in a management context based on the summary of technical reviews, comments by

RSC members, or other rationale related to the efficacy or appropriateness of the project. The committee could elect to forgo the development of comments if it did not feel they are warranted or because of time constraints.

If a project does not have a technical review, or the RSC determines the technical review is not sufficiently rigorous, the RSC will recommend that a technical review take place or channel the completed report to its SSC or other technical group for the review. The RSC will consider projects that have received technical reviews completed by other groups.

A package (including the summary of technical reviews, the RSC comments and a final report) will be prepared by the Council staff and forwarded to the Council and its appropriate oversight committees for use in the management process. The Council and its oversight committees will coordinate any further use of project information. This would include, but is not limited to forwarding a report to its Advisory Panels, Plan Development Teams or other groups.

Example – *Typical projects would be the University of New Hampshire's cod end mesh selectivity study in the Gulf of Maine multispecies trawl fishery or the F/V Kathleen A. Mirarchi's observations of the effects of trawl gear on soft bottom habitats.*

SARC/Peer Review

Projects that fall within this category are generally long-term or unique and would be integrated into the databases used for management. This would include the results of long-term projects such as industry-based resource surveys, study fleet initiatives, the cod tagging program and possibly other projects.

Example – *The Northeast Fisheries Science Center Science, the Massachusetts Division of Marine Fisheries, the School of Marine Science and Technology and Rhode Island Fish and Wildlife, along with fishermen throughout New England are engaged in a project to tag yellowtail flounder in an on-going collaboration to better understand yellowtail movements, mortality and aging. Data will augment Center assessments of this species.*

Responsibilities of Principal Investigators

To ensure the use of the research results for management purposes, PIs will be required to identify project objectives, expected impact on or use in the management process and the end users of their results. Typically this should be stated at the proposal stage, but minimally should be detailed in a final report.

Recognizing that researchers have a proprietary interest in protecting data until publication, at some point yet to be established, all PIs will be asked to provide the raw data on which their research conclusions are based. If these data are intended to be used in a publication, data access should be provided following the publication of research papers. Agreements can be reached to ensure data will be used only in the development of a fishery management plan and not by Council staff or its PDT members for publication purposes.

In all cases if research is to be used by the Council for management purposes, raw data must be accessible to the Council staff and its Plan Development Teams in a readily usable format and accompanied by the relevant analyses and results prior to use in the development of a management action.

Technical Review Criteria

Approved by the NEFMC, September 2004

General

The following was developed by the Council's Research Steering Committee concerning criteria for the technical review of cooperative and other research results that are to be considered in management decision-making. Based on discussion of the issue at the September 14-16, 2004 Council meeting, this list will append this document to its final policy to incorporate research results into fisheries management decision-making.

Levels of technical review that could be deemed sufficient for Council decision-making purposes:

- Publication in a peer-review journal
- Publication in a Federal/State Agency or academic technical report series in which papers are subject to internal peer review
- Review by a peer-review forum such as a SARC, TRAC, SEDAR (Southeast Data, Assessment and Review - SEFSC' stock assessment review process), SSC, SSAC, NRC, etc
- Expedited review by NMFS and/or other appropriately qualified scientists
- Review of the research paper by two or more independent experts, unaffiliated with the PIs (with proof that any review comments provided by the reviewers were subsequently addressed by the PIs). This might pertain to the Center reviews of final reports of state/federal grants and contracts, or to reviews specifically solicited by the PIs themselves from independent scientists.
- Academic dissertations and theses (presuming that the research in these reports have been reviewed for techni-

cal sufficiency and rigor by faculty members).

- A peer-review forum (perhaps a workshop) developed specifically to review/vet draft research reports (this might be something that could be convened under the auspices of the Cooperative Partners Research Initiative or the Northeast Consortium).
- Review by scientists familiar with the research topic area (this is the PDT model in which PDT members assess the technical merits of unvetted research results). The PDT may also recommend an outside review by additional scientists.

Some approaches that would NOT qualify as sufficient to consider a research document as having had a valid technical review might include:

Oral presentation of the research results at a scientific meeting (AFS, ICES, etc).
Publication of an Abstract

Preparation/submission of a Working Paper/Research Document to a Meeting/Working Group at which peer review is not the main objective of the Group (e.g., ICES Working Papers; NAFO Research Documents, ICES ASC Documents; etc) or in which the review is likely to be perfunctory

Additional Comments

There are still gray areas concerning whether analyses generated at PDT meetings or reviews undertaken by those groups receive adequate vetting. Pending experience with this process and further discussion, the committee may modify this document.

Management Review Checklist

The RSC policy concerning the committee's review of final reports for applicability to the management process states that it will develop comments and/or recommendations on whether a technical review is adequate, project results are applicable to management, whether further work needs to be undertaken to validate results and the likely end user(s). Comments could include recommendations for immediate or future use by the Council and its committees, PDTs, or SSC, suggestions for further investigations, broader field-testing in the form of an experimental fishery, or other course of action.

The RSC may advise that the information contained in a given final report is not appropriate for use in a management context based on the summary of technical reviews, comments by RSC members, or other rationale related to the efficacy or appropriateness of the project. The committee also could elect to forgo the development of comments if it does not feel they are warranted or because of time constraints.

If a project does not have a technical review, or the RSC determines the technical review is not sufficiently rigorous, the RSC will recommend that a technical review take place or channel the completed report to its SSC or other technical group for the review. The RSC will consider projects that have received technical reviews completed by other groups and subsequently undertake its own review.

The RSC review may include a presentation by the principal investigators.

Following the RSC review, a package (including the summary of technical reviews, the RSC comments and a final report) will be prepared by the Council staff and forwarded to the Council and its appropriate oversight committees for use in the management process. The Council and its oversight committees will coordi-

nate any further use of project information. This would include, but is not limited to forwarding a report to its Advisory Panels, Plan Development Teams or other groups.

Suggestions for Specific Comments

1. Has there been a sufficient technical review of the project results and, if so, is that information available to the Research Steering Committee?
2. Did the project accomplish all of its stated goals and objectives?
3. Are project deliverables available and formatted for use by the Council and its technical committees?
4. Does the project address an immediate management need or contribute to a long-term strategy to rebuild and sustain stocks?
5. Does the project support past work and/or provide new information?
6. Does it point to a management action not in place now, or offer an innovative solution to a problem?
7. Did the project elucidate other information not specifically stated in the goals and objectives?
8. Is there a need for further work or follow-on research such as wider field-testing?
9. Who is the appropriate end-user and are there recommendations/caveats about how this information should be used?
10. Overall rating based on the above criteria: excellent, very good, good, fair, or poor.
11. Additional comments.

19. Council Member Compensation

Purpose

To define the Council's policy on compensation for Council members, experts and consultants as outlined in the Magnuson-Stevens Fisheries Conservation and Management Act, as amended through October 11, 1996.

General

Voting Council members who are not state, local or federal employees are entitled to receive compensation at the daily rate for GS-15, step 7 of the General Schedule, while actually engaged in the performance of Council duties including travel as assigned by the Council Chairman.

Compensation is paid on a full day basis. The time is compensatory because the individual member is required to expend a significant amount of personal effort that substantially disrupts his/her daily routine to the extent that a work day is lost to the member. Members will not receive compensation unless present at a meeting for at least ½ day.

Homework time in preparation for formal Council meetings is not compensatory.

Authorization

The Executive Director is extended blanket authority to compensate Council members for attendance at regular meeting of the Council and at meetings of committees of which they are members.

Compensation will not be paid for attendance at regular committee meetings of which the Council member is not assigned. Compensation will not be paid to members attending public hearings.

Compensation is authorized if an eligible Council member chairs a public hearing, and when a committee chairman attends an authorized PDT or Advisory Panel meeting. Compensation is also authorized for the designated liaison to Mid-Atlantic Council to attend Mid-Atlantic Council and committee meetings.

Eligible Council members may be authorized for compensation for other activities such as working group sessions of species-oversight and other regular committees of the Council, ad hoc committee meetings, and participation in meetings or Council-related work when members are assigned by the Council Chairman to such activities.

Consultants

Compensation for experts and consultants retained by the Council shall be at the same rate as that paid to Council members unless a different rate is specifically negotiated.

The Council Chairman must authorize the use of experts or consultants. Approval authority in this category may be delegated to the Executive Director at the Chairman's discretion. Requests for authorization of compensation for outside experts may be submitted directly to the Chairman or through the Executive Director.

Limitations

Any requests for compensation for activities that were not properly authorized in advance will be referred to the Executive Committee for consideration before the Chairman makes a decision regarding payments.

Council members are paid under a contractual arrangement; therefore, social security and federal and state income taxes are not withheld from the payment of compensation for services.

Certification

Authorization for compensation will be indicated on the *Travel Authorization* issued for each meeting by placing an asterisk after the name of each person who is entitled to be compensated.

To be eligible for compensation, authorized members must sign the "attendance sheet" which is available at each meeting.

To be paid, members must submit a "Meeting Reimbursement Voucher" which covers claims for both travel and compensation.

20. Travel Authorization and Reimbursement

Purpose

To define the travel reimbursement guidelines outlined in the Magnuson-Stevens Fisheries Conservation and Management Act, as amended through January 12, 2007 as they relate to processing Council travel claims.

General

All voting and non-voting members of the Council, members of the Scientific and Statistical Committee (SSC), Social Science Advisory Committee (SSAC), Council staff, experts and consultants retained by the Council, and members of the Council's Advisory Panels (APs) and Plan Development Teams (PDTs) are eligible to be reimbursed for travel expenses incurred while engaged in authorized Council business.

Employees of the federal government are not eligible for travel reimbursement.

Authorization

Prior authorization is necessary to establish eligibility for reimbursement. Either the Council Chairman or the Executive Director may authorize travel and reimbursement for expenses incurred. A numbered Travel Authorization (TA) form will be prepared by the Council staff and mailed to all authorized individuals prior to each Council meeting, oversight committee meeting, SSC, PDT or Advisory Panel meeting or other approved activity. The authorization will indicate those persons entitled to receive reimbursement. TA's will be routinely issued for the various types of meetings indicated below:

Council Meetings: Voting and non-voting members designated Council staff. SSC

and PDT members and the Chairman of an Advisory Panel will be authorized as needed.

Oversight or Other Regular Committee

Meetings: The Council Chairman, committee members, designated Council staff, and the advisory panel chairman. PDT members may be authorized to receive reimbursement for travel expenses for a specific committee meeting, as needed.

Mid-Atlantic Meetings: The designated liaison to the Mid-Atlantic Council or other Council members designated by the Council Chairman.

Advisory Panel Meetings: Advisory Panel members, designated Council staff and the oversight committee chairman, if necessary.

SSC Meetings: SSC members Council Chairman, Council staff.

Plan Development Team Meetings: PDT members, the oversight committee chairman and Council staff will be authorized to attend PDT meetings.

Additional persons may be authorized reimbursement for expenses according to the guidelines below:

Expert members of working groups that are established with the approval of the Council Chairman may be authorized travel and reimbursement for specific Council, oversight committee or working group meetings.

Consultants: Consultants may be authorized for travel and reimbursement

by the Council Chairman or the Executive Director. Requests for consultant services should be made to either of them.

Public Hearings: A Council member who chairs a public hearing and the Council staff member assigned to attend the hearing will each be authorized for travel reimbursement for attending the hearing(s).

Other Travel: May include seminars, conferences or other meetings if prior authorization by the Chairman or Executive Director is granted.

All Council, committee and working group meetings are open to the public, but only individuals identified on the TA will be reimbursed for travel expense.

General Limitations

Reimbursements are limited to amounts reasonably necessary for the conduct of travel in connection with Council business. Travel must be undertaken using the least expensive means of transportation practicable and appropriate to the nature and purpose of the travel. If an individual elects to use a more expensive mode of transportation, reimbursement will be limited to the least expensive transportation available and the traveler will be responsible for the difference.

If unsure about the lowest cost to travel to a meeting, contact the Council Office for a determination prior to traveling.

The Chairman or the Executive Director will determine applicable limitations in approving each Travel Authorization. Generally this amount will be the cost of lodging, which cannot exceed 150% of the maximum amount allowed by the federal government for the area, plus a maximum of \$40 per day for meals.

Advisors are authorized for up to \$30 per day for meals. *(approved via email from Chairman 6/1/06)*

Reimbursement for meals while on travel to cities outside the contiguous states, including Hawaii, Alaska, Puerto Rico, the U.S. Virgin Islands and Canada will be at the federal level authorized for each area.

Air Travel

Air travel reimbursement is limited to the lowest rate that is appropriate for the specific travel. To obtain the lowest possible fare, individuals traveling under Council authorization are encouraged to allow the Council staff to make their air travel reservations and purchase the tickets. Individuals making their own travel reservations will be reimbursed for only the rate that could have been obtained through the staff.

Foreign Travel

The Chairman or Executive Director shall approve travel across the United States border to Canada or Mexico. All other foreign travel must be approved in advance by the NOAA Regional Office.

Identification: Proper identification is the responsibility of the individual. The Council does not pay for passports or other forms of identification.

A passport is considered the best document for identification. Individuals traveling to Mexico or Canada are encouraged to obtain a passport. Effective 12/3/07, all travel outside the United States will require a Passport. Passport applications or renewal forms can be obtained online at: <http://travel.state.gov/passport/>

Expenses in a 50-mile radius

Lodging expenses are not authorized within a 50-mile radius unless official business requires the individual be available before 6 a.m. or after 8 p.m.

Voucher Preparation

To receive payment, authorized individuals must prepare and submit a *Meeting Reimbursement Voucher*. This form is used to verify meeting attendance, request reimbursement for expenses incurred while attending an authorized meeting and for eligible members to claim compensation.

The Travel Authorization number for each meeting must be noted on the *Meeting Reimbursement Voucher*. A separate voucher must be submitted for each *Travel Authorization*.

Hotel receipts are required in all cases where lodging is claimed. Actual hotel costs are reimbursable within the limits of the total level of actual expense reimbursement set by federal travel regulations. Although receipts for meals, taxis, tolls, parking and other similar expenses are not required, such costs must be itemized. Actual cost of transportation by public carrier, or mileage at the rate of 44.5¢ per mile for use of personal auto, is also reimbursable, as are road tolls and parking fees. Airline, rail, bus or auto rental receipts must be submitted.

Telephone calls directly related to Council business are also reimbursable. Those included on hotel bills should be noted as business related. Claims for reimbursement for Council-related telephone calls placed from home phones must be supported by a copy of the bill.

Non-refundable Expenses: The Council is not responsible for charges resulting from the traveler's failure to cancel a confirmed reservation. Those costs are the responsibility of the individual.

Certification

All claims for reimbursement of travel expenses must be signed by the traveler and submitted to the Council office. Faxed copies of the claims are acceptable.

E-mailed vouchers are accepted; receipts also can be emailed, faxed or mailed to the office.

A voucher must be submitted within six weeks of the meeting date it covers. Forms received after the cut-off date will be reviewed by the Executive Committee and payment may be held until the end of the fiscal year.

Vouchers will be handled promptly. Reimbursement checks will generally be mailed within ten working days from the date received at the Council Office.

All claims are subject to review by the Executive Director for reasonableness and no claims will be approved that are not in accordance with the limitations noted on the Travel Authorization. Any claims considered excessive will be referred to the Executive Committee for disposition.

**Council policies that require updating or are no longer
consistent with Council processes or practices**

Aquaculture – Recommend updating by the Habitat Committee

Aquaculture is encompassed within the Magnuson-Stevens Fishery Conservation and Management Act's broad definition of fishing which includes the catching or taking of fish, the harvesting of fish and any other activity or at-sea operations in support of such activity, and

The NEFMC has an obligation under the Magnuson-Stevens Act to make comment concerning aquaculture projects which may affect fishery habitat; and

Many activities associated with EEZ-based aquaculture cannot be undertaken without modification to certain elements of existing FMPs under the NEFMC's jurisdiction; and

Several federal agencies are involved in reviewing and permitting EEZ-based aquaculture projects although no agency has been delegated lead responsibility for management, and

The NEFMC has the necessary expertise, experience and statutory authority to effectively address the issues attendant to aquaculture development in the EEZ:

The NEFMC recognizes that it has a responsibility to develop management measures that will facilitate EEZ-based aquaculture development, and

It is the NEFMC's policy to encourage biologically and environmentally

sound aquaculture projects and to develop management strategies that maximize opportunities for the aquaculture industry's productive coexistence with the traditional commercial fisheries of the New England region.

Accordingly, the NEFMC will facilitate the aquaculture permitting process through the following policy objectives:

The NEFMC will address those issues that are clearly germane to the Council's fishery management role and will work with other federal agencies involved in aquaculture to identify and minimize or eliminate areas of potential overlap.

The NEFMC will position itself as a point of contact for aquaculture developers, to provide information and federal permit application materials, and to provide recommendations to developers which may help avoid projects or elements of those projects that would otherwise pose conflicts with the Council's management activity.

The NEFMC will seek advice and guidance from representatives of both the aquaculture and fishing industries, the conservation community and other resource management agencies in formulation of aquaculture management strategies so as to minimize or eliminate the potential for user conflicts.

Fail Safe Voting – inconsistent with current Council process

Purpose

The New England Fishery Management Council,

mindful of the extremely complex, social, economic, institutional and biological problems inherent in the management of living marine resources, and

mindful of the differing jurisdictional responsibilities (State, Council, Federal and international) involved and

mindful of its responsibility to deal fairly and competently with the needs of the resources and their several user-groups,

now, therefore, adopts the following operational procedures:

Voting Procedure

No major Council measure which might be considered to adversely affect one or more user-groups in a particular fishery or which might in

any major way impinge upon the jurisdictional responsibilities of other management authorities will be taken to a vote on the same date as that on which the substantive matter was taken under consideration by the Council.

To this end, all future meeting notices and agendas will provide for (1) discussion of inherently controversial matters on day #1 of the meeting, and (2) for the alternatives of (a) a Council vote or (b) continued discussion of the matter on day #2 of the meeting.

In the event that no vote is taken during day #2 of the meeting, the Chairman will appoint a special ad hoc committee to study the matter and to make a report and recommendation at the following Council meeting.

The above procedures may be waived by an assenting vote of 2/3 of the Council members present and voting

Multi-Species Management Policy

Inconsistent with current Council policy and process

Introduction

The policy for the management of the region's multi-species fisheries that emerged in August of 1983 included the following elements:

1. A statement of intent regarding the management of the multi-species fishery containing two basic goals for management:

allow the multi-species fishery to operate and evolve with minimum regulatory intervention, and

adopt initial measures to prevent stocks from reaching minimum abundance levels (or stock conditions).

2. The policy identifies what shall be considered in the management program

- a. minimum abundance levels (or stock conditions) based on an unacceptable risk of recruitment failure;
- b. minimum disruption of the normal behavior of the multi-species fishery;
- c. an emphasis on freedom of choice for participants in the various species fisheries;
- d. avoidance of abrupt economic dislocations;
- e. Acquisition of the best possible data upon which to base fishery management decisions.

3. The Policy defines how the FMP will operate:

- a. initial measures will be based on relevant biologic, social and economic factors and will be designed only to limit the risk of reaching minimum abundance levels (or stock conditions); stocks below their minimum abundance levels (or in an unacceptable condition) may be immediately subject to restorative measures that will be applied in the context of the fishery.
- b. modifications of initial measures are possible if changes (which unexpectedly contribute to a deterioration in stock condition) are demonstrated in the biologic, social or economic design factors;
- c. measures to "restore" a stock which has fallen below its minimum abundance level (or is in an unacceptable condition) will take into abundance level (or is in an unacceptable condition) will take into consideration impacts on other related fisheries.

The terms "stock condition" or "condition" have been purposefully inserted into the discussion to relate the reader more directly to the actual criterion used subsequently in the plan to identify species in need of active management action.

The actual policy statement adopted by the New England Council in August, 1983 and subsequently concurred with by the Mid-Atlantic Council in April, 1984 is given below.

Major Policy

1. The Council shall attempt to provide an environment in which the multi-species fishery can operate and evolve with a minimum of regulatory intervention or restriction of fishery options.

Initial management measures shall be designed to prevent stocks from reaching minimum abundance levels of individual species within species groups included in the management plan with due consideration for the overall multi-species fishery.

2. Initial management measures will be designed on the basis of biological, social and economic factors operating at the time and may be modified only if significant changes in these factors are demonstrated.

3. Minimum abundance level is defined as that level of abundance below which there is an unacceptably high risk of recruitment failure (stock collapse). The Council, in establishing minimum abundance levels, shall not consider economic criteria.

4. Minimum regulatory intervention is defined as the use of measures, which are only intended to limit the risk of reaching minimum abundance levels.

Other Considerations

1. The Council will seek the best possible data upon which to base its management decisions in fulfillment of this policy.

2. The Council shall place an emphasis on freedom of choice for fishermen participating in the various species fisheries so long as those species remain above their minimum abundance levels.

3. Consideration will be given to species not explicitly included in an FMP subject to this policy only if the required measures impact a fishery for those species.

4. If a species within a major group falls below its minimum abundance level, the impact on the fishery for other species within that species group, as well as on other species groups will be considered in efforts to restore the species to an appropriate abundance level.

5. The Council shall attempt to avoid or minimize abrupt economic dislocations in implementing this policy; however, in no event shall continued access by individual fleet sectors, net economic impacts individual fishermen, or impacts on the quality of life be considered in fearing management measures developed consistent with this policy.

Implications

Initial measures would be modified in response to major changes in the biological, social or economic factors operating within a fishery where those changes were judged to be contributory to abundance declining toward minimum abundance levels.

Initial freedom in the fishery might be restricted by adjustments in management measures dictated by a stock decline to the minimum abundance level.

Opening Closed Areas (for Non-Closure Species) now inconsistent with Council policy and practice

Special Conditions for Groundfish Closed Area - The following 2 conditions were established with regard to a closed area policy:

1. the closed area be defined for intent and specific purpose;
2. the closed area measure explicitly describe who is affected and who is excepted, and the duration of the closure.

Opening Closed Areas

The following guidelines are followed for opening closed areas for non-closure species.

Step 1

Industry requests an opening of a closed area. The industry must make the request of the appropriate Committee overseeing its fishery. The "appropriate committee" also may be a committee of the New England Fishery Management Council, MAFMC or ASMFC. *(A request by the scallop industry for access to one of the Georges closed areas will be used as an example after each step).*

Example: The scallop industry requests of the New England Fishery Management Council Scallop Oversight Committee that they be allowed to fish in Groundfish Closed Area #1.

That committee will review the request in the light of the biological and other aspects of the requesting species. *Is there some scallop reason for not considering this request?*

Step 2

If the Committee decides to continue with the request, it forwards it to the appropriate Committee overseeing the Closure species. *The Scallop Oversight Committee would forward the request to the Groundfish Committee.*

The Closure Species committee would review the proposal as brought forward from the requesting species committee. This review will consider the following:

1. The original purpose of the closure. *The committee would not consider opening the closed area during the traditional haddock spawning season.*
2. Potential impact on the closure species. If the proposal is expected to not substantially delay recovery, it should proceed to the next level. *For instance, if it was projected that the impact would be an additional 5 years on a 2-year*

recovery, or if it prevented the FMP for that fishery from meeting National Standard 1 and other Magnuson-Stevens Act requirements that might not be acceptable.

3. Measures to mitigate potential impacts. *Specialized gear, observers, alternate closures, etc.*
4. Economic Impact including potential economic and social benefits and impact across range of users and particular communities.

Step 3

If the closure species committee can adequately address all of the issues and concerns, it should forward its recommendation to the Council to implement through appropriate action.

If the Closure Species committees cannot handle all the requests, the Interspecies Committee should address the issues brought forward by the requesting committees and between the requesting parties to maximize the potential benefits to all.