

U.S. DEPARTMENT OF COMMERCE

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NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION

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MARINE FISHERIES ADVISORY COMMITTEE

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PROTECTED RESOURCES SUBCOMMITTEE

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Wednesday,

February 24, 2010

The Protected Resources Subcommittee convened in the Honolulu Ballroom in the Sheraton Waikiki, 2255 Kalakaua Avenue, Honolulu, Hawaii at 1:00 p.m. Hawaii-Aleutian Standard Time, Catherine Foy, Subcommittee Chair, presiding.

PRESENT:

CATHERINE FOY, SUBCOMMITTEE CHAIR
KEITH RIZZARDI
ANTHONY CHATWIN
TERRY ALEXANDER
PAUL CLAMPITT
RANDY CATES

STAFF PRESENT:

HEIDI LOVETT

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1 P-R-O-C-E-E-D-I-N-G-S

2 (1:23 p.m.)

3 (Due to an unplanned and
4 unannounced relocation of the session, and
5 insufficient time allowed for court reporter
6 to relocate recording equipment, the first two
7 or three minutes were not recorded)

8 MR. RIZZARDI: One of the things,
9 for example, that drove our concern was
10 petition to list 82 species of coral. How is
11 NOAA going to respond to 82 species?

12 MS. FOY: When you did your --

13 MR. RIZZARDI: I did. The initial
14 thing you said was --

15 MS. FOY: I said there were 83
16 species, and we are going to respond to --

17 MR. RIZZARDI: Was you said you
18 were going to respond 82.

19 MS. FOY: Yes.

20 MR. RIZZARDI: But now what you've
21 also done is you've triggered the -- you did
22 the 90-day time frame. So now you have the

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1 one-year time frame, right?

2 MS. FOY: That seems to be issue
3 number two on my thing, potential misuse of
4 ESAs -- you gave an example of the coral
5 research.

6 MR. RIZZARDI: Oh, you're right.
7 Right. So what was issue number one?

8 MS. FOY: Okay. So issue number
9 one, go back, ESA -- and you can see this
10 time. The ESA implementation priorities
11 outline, this was your issue, in the
12 endangered and threatened species listing and
13 recovery priority guidelines that were put out
14 back in 1990 are currently allowing litigation
15 to drive agency priorities and funding
16 allocation.

17 MR. RIZZARDI: Okay.

18 MS. FOY: And you said as a
19 Committee --

20 MR. RIZZARDI: I understand. They
21 tie in.

22 MS. FOY: Okay.

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1 MR. RIZZARDI: The reason for this
2 was the concern about the latter.

3 MS. FOY: Okay.

4 MR. RIZZARDI: So was there a
5 prioritization process. And what NOAA seems
6 to be doing is getting things done so quickly
7 that you basically don't need to do a priority
8 because you're responding. So there is no
9 backlog of species-listing decisions to be
10 made because you're making a decision on 82
11 species. I don't know that we're really going
12 to be able to do fair reviews of 82 coral
13 species as to which ones should and shouldn't
14 in the next 12 months, but --

15 MS. FOY: That was my concern. As
16 far as the 82 species, was that.

17 MR. RIZZARDI: And that was just
18 one example.

19 MS. FOY: Well, any example. I am
20 afraid that people are going to have what I
21 call pat species right off.

22 MR. RIZZARDI: Yes. Exactly.

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1 MS. FOY: You know, the warm
2 fuzzies, the most beautiful; whatever. It
3 doesn't matter based on magnitude of threat,
4 how well they can be recovered or any
5 conflicts. That's not the three things that
6 are driving funding prioritization. We're
7 allowing litigation to provide people that
8 have pet species, their charismatic fauna, to
9 drive where our agency has to put the money.

10 MS. LOVETT: Got you. So it sounds
11 to me like you're asking, do we have and
12 maintain some kind of priority list.

13 MR. RIZZARDI: Priority list.

14 MS. LOVETT: And how is that --

15 MS. FOY: And if not, can we get it
16 in place before litigation becomes a problem
17 that's -- or that --

18 MS. LOVETT: Okay. So that's a
19 little bit clearer request. Maybe we just
20 maybe misunderstood.

21 MS. FOY: That's okay.

22 MS. LOVETT: So that's your

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1 request.

2 MS. FOY: I mean maybe reword the
3 recommendation if that would help.

4 MS. LOVETT: Or just say this is a
5 clarifying explanation for it.

6 MS. FOY: Yes. Yes.

7 DR. CHATWIN: Just for my benefit,
8 let me understand. So if we are successful
9 here and NOAA creates this prioritized list,
10 what do we expect the agency to do in
11 relationship of litigation? Because one of
12 the reasons litigation drives prioritization
13 is because they don't have an option on
14 whether or not to respond to a lawsuit.

15 MS. LOVETT: We have to respond in
16 some fashion.

17 MS. FOY: You have to respond, but
18 should more of the scientific research in
19 dollars and more of the staff time and more of
20 the recovery money be spent on a species that
21 is somebody's pet or should it be spent
22 regarding the criteria of magnitude of threat,

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1 recovery potential and the conflict? That's
2 what we're saying: that the agency's money,
3 the agency's time should be spent based on
4 those three criteria and not on letting
5 litigation drive which species.

6 Am I right, Keith, or am I -- I
7 mean --

8 DR. CHATWIN: So, I guess in an
9 ideal world you would have separate pots of
10 money. The one to respond to litigation and
11 one to attend to your priorities?

12 MS. FOY: Right, right, right.

13 DR. CHATWIN: And that's this one
14 doesn't get --

15 MS. FOY: Well, our hope was that
16 by saying at the beginning, this species as
17 such-and-such of a quantity a quantifiable
18 magnitude of threat, this is the recovery
19 potential and these are the conflicts that
20 arise. Therefore, this much funding will be
21 spent there, that NOAA's lawyers could then
22 say in response to a litigation, this is why

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1 we have spent the money this way and this is
2 why we believe that this is the way it should
3 be because ever litigation is -- it's not
4 bringing money in from outside. It's shifting
5 focus within the agency from one species to
6 another. Not necessarily where it does it
7 most benefit biologically.

8 MS. LOVETT: But it's my
9 understanding, when there's a petition,
10 there's a path of response we have to take and
11 it's one or two. And it's not we're spending
12 our money and we're doing research on these
13 five species and we're not going to deal with
14 your species until next year or the year
15 after.

16 It's -- we have to determine
17 whether the petition is valid.

18 MS. FOY: Right.

19 MS. LOVETT: And if it is valid,
20 whether or not we're going to -- but that, we
21 have I think a certain period of time to
22 determine whether or not we are going to

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1 investigate. If it's a valid enough issue --

2 MS. FOY: Yes.

3 MS. LOVETT: -- we make a
4 determination that, yes, we're going to
5 conduct research to understand whether or not
6 it should be listed.

7 MS. FOY: Right. Right.

8 MS. LOVETT: And we can't not do
9 that. We have to say yes or no to the
10 petition.

11 MS. FOY: Are we talking about --

12 MS. LOVETT: Did I say that
13 correctly?

14 MS. FOY: Are we talking about
15 whether or not it's being listed, Keith, or
16 are we talking about how funding is allocated
17 after the listing?

18 MR. RIZZARDI: Exactly. Look,
19 there are three ways that the funding battle
20 plays out.

21 The first way is mandatory duties.

22 The agency gets sued. You failed to do

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1 something that you were absolutely statutory
2 required to do. You had to do it within 90
3 days, you had to do it within a year. You
4 didn't do it. Go into court, defend, can't
5 really defend, court says, damn it, go do it.
6 Right? Pot of money has to get moved. Your
7 point's right. They have to do it. Okay.

8 Then there's another category of
9 actions that are discretionary: recovery
10 planning, and five-year status reviews and
11 when these things happen. Those cases are
12 failure-to-act cases.

13 MS. FOY: Right.

14 MR. RIZZARDI: Those get into
15 discretionary cases. And then you get into
16 what's called the track defense and the track
17 factors. And one of them, you know, was it
18 reasonable or unreasonable for the agency to
19 have delayed. Did they have good
20 justification for their delay? On those kinds
21 of cases, having a list of priorities and
22 explaining which species you're putting first

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1 and which species you're putting last would
2 make a whole lot of sense.

3 MS. FOY: Yes.

4 MR. RIZZARDI: Then there's the
5 third category which is contempt. The court's
6 pissed at you because you didn't do what it
7 told you to do.

8 MS. LOVETT: We try not to get
9 there. It freezes all --

10 MR. RIZZARDI: Then you at least
11 have -- yes. And NOAA's really much better
12 than the Fish and Wildlife Service about not
13 getting into those.

14 MS. LOVETT: We're really good
15 about following our deadlines when it comes to
16 90 days --

17 MR. RIZZARDI: Sure.

18 MS. LOVETT: -- 120 days, whatever.

19 MR. RIZZARDI: But you're dealing
20 with the new layer, the new types of petitions
21 that are coming in --

22 MS. LOVETT: Sure.

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1 MR. RIZZARDI: -- I think the point
2 we made last meeting was, while NOAA has been
3 good at that in the past, the dynamics are
4 starting to change. And when CBD is filing a
5 petition to list 82 species of coral and then
6 there's another petition to address 400
7 different pesticides that are flowing into
8 estuaries, and to have consultations on them.
9 I mean, pretty soon you're going to start
10 seeing that dynamic shift and the same burdens
11 that are on the Fish and Wildlife Service will
12 start being experienced by NOAA. So having a
13 prioritization of species is at least helpful
14 for the agency to defend itself in how it sets
15 its priorities.

16 MS. LOVETT: And I'm obviously not
17 in the PR office so I can't really answer
18 these questions as successfully as you might
19 have hoped.

20 MR. RIZZARDI: Right.

21 MS. LOVETT: But what I can say is
22 that Jim Lecky, the Director of the office, is

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1 committed to come to the next meeting or have
2 a staff person.

3 MS. FOY: Oh, good. Good.

4 MS. LOVETT: And we told him this
5 early in November. I didn't get to meet with
6 him about all these until more recently. And
7 he's very happy to do that.

8 And so I would recommend that this
9 be worded in such a way that you provide him
10 with a clear picture of what you would like to
11 understand better. So if it's the
12 prioritization -- so my point is this is how
13 I'm interpreting what your needs are. And,
14 again, I'm not --

15 MS. FOY: Let me put a little note
16 in here. We did not expect Jim Lecky to be
17 able to make this meeting. This meeting, to
18 my way of thinking, especially, is set up to
19 deal with the catch shares.

20 MS. LOVETT: Right, exactly. And I
21 explained that to them. And it was kind of
22 too short to --

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1 MS. FOY: Yes. So I'm not expecting
2 you to have all of these issues and have a pat
3 answer for me.

4 MS. LOVETT: Right. No. But it
5 sounds to me that you're wanting to
6 understand: does the agency have an internal
7 sort of prioritization list?

8 MS. FOY: Yes.

9 MS. LOVETT: And if it does, how is
10 that developed. And what kind of activities
11 and resources goes towards moving forward the
12 agency's agenda as far as priorities for
13 endangered and threatened species.

14 MS. FOY: Well, wait, wait, wait.

15 MS. LOVETT: Okay.

16 MS. FOY: I want you to go one step
17 further.

18 MS. LOVETT: Okay.

19 MS. FOY: I want the agency to make
20 this as clear cut and transparent as possible
21 to protect itself from letting litigation
22 drive its programs. I think if you go into

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1 court and say --

2 MS. LOVETT: So, that's a MAFAC
3 recommendation that, I guess is what am I
4 trying to say? I'm not sure how -- I can't
5 answer the transparency question.

6 MS. FOY: Right, right.

7 MS. LOVETT: It sounds like that's
8 already a desire, and my point is what would
9 you like Jim to be able to discuss with you
10 and present that you understand the process
11 from which to make your recommendations? Does
12 that make sense?

13 MS. FOY: It does. And remember,
14 Keith, we had the Fish and Wildlife example we
15 were bringing up. And that's where we got the
16 three criteria just to nail them kind of.

17 MR. RIZZARDI: Yes. I'm not sure
18 where the Federal Register citation came from.
19 So I was just looking that one up. And I'm
20 thinking that might be what you're working
21 with there.

22 MS. FOY: Right.

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1 DR. CHATWIN: So are you saying the
2 Fish and Wildlife Service has a prioritized
3 list?

4 MS. FOY: It does. It has those
5 three criteria --

6 MR. RIZZARDI: It has a set of
7 criteria.

8 MS. FOY: -- that it uses --

9 MR. RIZZARDI: Right.

10 MS. FOY: -- to prioritize its
11 funding.

12 DR. CHATWIN: Really?

13 MS. LOVETT: You're talking about
14 its candidate lists and things like that, or
15 before you even get to --

16 DR. CHATWIN: It has spotlight
17 species.

18 MS. FOY: Mitigation measures and
19 research and that kind of thing.

20 MS. LOVETT: Yes. Yes. Okay.

21 MS. FOY: I mean, we have limited
22 funding.

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1 MR. CATES: Well, can anybody
2 propose the list at any time? How does that
3 happen?

4 MR. RIZZARDI: Yes.

5 MS. LOVETT: A petition can come
6 forward from a group at any time.

7 MS. FOY: Right.

8 MS. LOVETT: And it has to have
9 sufficient evidence for why it's making its
10 petition, why it feels that the particular
11 species is endangered or threatened or should
12 warrant consideration as being threatened or
13 endangered.

14 MS. FOY: Not every petition will
15 be considered for the listing. You have to
16 make the petition and provide support.

17 MS. LOVETT: Support evidence. And
18 the agency can determine it warrants review or
19 it's a no determination, meaning it doesn't
20 warrant the agency's review at the time.

21 MR. CATES: Did that coral one
22 catch everybody by surprise?

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1 MS. LOVETT: Not really.

2 MS. FOY: I can't answer that.

3 MR. RIZZARDI: I'd say, not in the
4 existence of a petition, but yes in the
5 magnitude. The fact that they came up with a
6 petition with 83 species as opposed to a
7 dozen. I mean, you know --

8 MS. FOY: Well, and I was shocked
9 that 82 of those species --

10 MS. LOVETT: Were determined to
11 warrant consideration.

12 MS. FOY: -- were determined to
13 warrant consideration.

14 MR. RIZZARDI: Well, remember, the
15 standard is not whether the species should be
16 listed. The standard is whether the petition
17 has included enough information to justify
18 further review.

19 MS. LOVETT: To justify, exactly.
20 Thank you.

21 MS. FOY: Okay. There we go.

22 MR. RIZZARDI: Right? So NOAA has

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1 not said we think we're going to list 82
2 species.

3 MS. LOVETT: These should be looked
4 at, right. Exactly.

5 MR. RIZZARDI: NOAA has said we
6 think that this petition has raised
7 significant enough issues that we need to look
8 further with respect to these 82 species. And
9 ultimately they may say, well, these 30 we
10 are, and these 52 we're not, you know and that
11 process will play out however it does.

12 The concern we were all raising
13 last meeting was how many more of these
14 petitions are going to come for how many more
15 different varieties of species that are out
16 there. And how is that going to drive NOAA's
17 priorities. And we're trying to get NOAA
18 ahead of the curve --

19 MR. CATES: Absolutely.

20 MR. RIZZARDI: -- to have some sort
21 of defensive strategy for when those petitions
22 come.

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1 MS. LOVETT: And I can't say yes or
2 no to that because I'm not an expert. So I'm
3 saying that I think what you were asking for
4 to understand better is the process.

5 MS. FOY: Yes. Yes. And if we
6 can, somehow help NOAA to get ahead of the
7 curve so that we're not behind the eight ball
8 like we've been numerous times.

9 MS. LOVETT: So, I don't know if
10 you want to draft. Someone else is going to -
11 - I mean he's taking notes.

12 MS. FOY: He's taking notes.

13 MS. LOVETT: You'll draft something
14 as a recommendation.

15 MS. FOY: I'll draft something and
16 run it by Committee members before we make
17 another recommendation.

18 MS. LOVETT: Absolutely.

19 MS. FOY: Let's keep the ball
20 rolling.

21 MS. LOVETT: Yes.

22 MS. FOY: Paul and Terry, please

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1 don't feel like I'm ignoring you. It's not on
2 purpose; I'm trying to face Heidi. If you
3 need my attention, just get me.

4 MR. CLAMPITT: It's fine. No, it's
5 review so far.

6 MS. FOY: Okay. Issue two, Heidi.
7 Why don't I let you get up to speed while I
8 review what we're doing.

9 MS. LOVETT: Well, no. I'm right
10 there. The office at this point in time
11 filed, in particular, that CEQ, the letter
12 from CEQ climate change --

13 MS. FOY: Yes.

14 MS. LOVETT: -- in NEPA would be of
15 interest and provide some background.

16 MS. FOY: And that's in the
17 background briefing for the --

18 MR. CLAMPITT: What CEQ?

19 MS. LOVETT: I'm sorry. The--

20 MR. RIZZARDI: Council for
21 Environmental Quality.

22 MS. LOVETT: -- Council for

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1 Environmental Quality, which is in the
2 President's office.

3 CEQ helps -- well, they essentially
4 oversee and make sure all the federal agencies
5 abide by the NEPA regulations. And if there's
6 any issues that might have any internal
7 conflicts between an agency. I mean, if
8 there's some decision that two different
9 agencies come to different results, it gets
10 elevated to CEQ to help figure out the
11 resolution and what's the government's policy
12 or decision.

13 So your recommendation was request
14 discussion between appropriate D.C. staff and
15 MAFAC Committee. And then report on the status
16 of a new rule following up on the rescission
17 of the Bush ESA regulation.

18 And my understanding is that
19 there's not much that we can say yet about any
20 new rule.

21 MR. RIZZARDI: Is that the
22 rescission of the consultation?

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1 MS. LOVETT: Yes.

2 MR. RIZZARDI: All right. That's
3 done.

4 MS. LOVETT: No. That was done,
5 but you asked what's the follow-up on the
6 rescission of the Bush ESA regulation.

7 MR. RIZZARDI: Right. Right.

8 MS. LOVETT: There were a number of
9 changes put in the ESA, and it was rescinded.

10 MR. RIZZARDI: Right.

11 MS. LOVETT: And there's nothing to
12 report as yet as to what direction the new
13 agency is going to take.

14 MS. FOY: Right.

15 MR. RIZZARDI: Is that issue three
16 or is it two?

17 MS. LOVETT: That's two.

18 MS. FOY: I wonder--

19 MR. RIZZARDI: That's still two,
20 the climate change?

21 MS. LOVETT: Yes. I'm sorry.
22 Because your issue was misuse of the ESA as a

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1 tool for regulating climate change and
2 greenhouse gases.

3 MS. FOY: Right. Right. Now
4 you'll let me take it for a minute.

5 MS. LOVETT: Sure.

6 MS. FOY: There's a letter on the
7 Protected Resources Subcommittee thing that
8 Heidi provided between the CEQ and, help me
9 here. Anyway, they're discussing whether or
10 not NEPA allows regulation of indirect effects
11 regarding release of greenhouse gases, not the
12 ESA. Is that -- but that may be an
13 indication, to my way of thinking, of how the
14 Administration deals with things as far as the
15 ESA. You can speak to that if you, I mean, I
16 see that as a hot --

17 MR. RIZZARDI: No. I mean, I think
18 that's 100 percent correct. The letter went
19 from CEQ to the Senate members saying this is
20 how CEQ thinks we're going to address some
21 climate change concerns.

22 MS. FOY: Right.

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1 MR. RIZZARDI: We're looking at in
2 NEPA context.

3 MS. FOY: Right.

4 MR. RIZZARDI: The issue we were
5 raising still exists: 82 species of coral are
6 potentially going to be listed. Those 82
7 species will now be a mechanism for raising
8 issues and concerns as to climate change, just
9 the same way the polar bear was being used as
10 a proxy for climate change issues. And as a
11 result, when the polar bear was listed, the
12 Fish and Wildlife Service came up with special
13 regs that said, we will not use the polar bear
14 for purposes of evaluating global climate
15 change and emissions from a power plant in
16 Florida to see what the impacts are on polar
17 bears in the Arctic.

18 Right. So now what you're looking
19 at is the same exact dynamic for 82 species
20 for coral --

21 MS. FOY: Right.

22 MR. RIZZARDI: -- and for any other

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1 future species that's coming up on a list.
2 And just as we were looking for NOAA to have
3 some priorities as defensive forward-thinking
4 strategy, so too are we asking what's NOAA
5 thinking about how the ESA is going to be
6 implemented as climate change is more and more
7 one of the key reasons for the listing of the
8 species.

9 MS. LOVETT: Yes.

10 MR. RIZZARDI: When you go through
11 the Federal Register publications, over and
12 over and over --

13 MR. CLAMPITT: No, no, no.

14 MR. RIZZARDI: -- the species
15 designation is based on it.

16 MR. CLAMPITT: And one of the big
17 ones was climate change.

18 MR. RIZZARDI: Yes. Everytime
19 there's a species, a big piece of the analysis
20 is impact to habitat, impact to species
21 populations derived from --

22 MR. CLAMPITT: Right. Right.

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1 Ocean acidification.

2 MR. RIZZARDI: -- changes to ocean
3 acidification. Bingo. Exactly.

4 MR. RIZZARDI: Now recognizing
5 that's a problem, the potential exists for
6 every issue to turn into something that
7 requires consultation as to how ocean
8 acidification is going to be effected and what
9 consequence it has for 82 species of coral.

10 MR. CLAMPITT: Right.

11 MS. LOVETT: Right.

12 MR. RIZZARDI: Or whatever other
13 insert-species-here you want to pick.

14 MR. CATES: Can I ask a question on
15 that? I know I'm walking in and out.

16 I think MAFAC should hear about
17 climate change. I mean, everybody assumes
18 that's based on science's foregone conclusion
19 that there's something we can do about it, and
20 there's a lot of doubt in the air, I would
21 say. And so much money and so much resources
22 being thrown at it. I'm not convinced it's a

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1 real issue that --

2 MS. FOY: Do we need to have Dr.
3 Feely back again? No, it wasn't Dr. Feely
4 that came.

5 MS. LOVETT: It wasn't Dr. Feely
6 that came. I happened to hear him give a
7 talk.

8 MS. FOY: But it was from his lab.

9 MS. LOVETT: But, yes, it was
10 somebody from his lab that came. That or, I
11 guess it's somewhat relevant, it's up to you
12 all. Obviously, the agency has a new climate
13 science services line office. And maybe it's
14 an understanding of the work that they intend
15 to do and how it integrates with the other
16 responsibilities of NOAA as an idea as far as
17 a guest speaker topic.

18 MS. FOY: Depending on where the --

19 MS. LOVETT: The meeting is.

20 MS. FOY: -- meeting is I have a
21 resident expert that --

22 MS. LOVETT: I think that Jim can

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1 talk to this a little bit. I mean, he's --

2 MS. FOY: Jim Lecky?

3 MS. LOVETT: Yes. He explained to
4 me that there was -- the rescission, there's
5 something related to climate impacts that is
6 something that is a responsibility of the
7 agency to look at with respect to potential
8 listings. But I'm not clear exactly on what
9 that was. I forgot if it was mitigation or,
10 you know, direct or indirect impacts, or
11 looking at mitigation. So I really would need
12 to get back with you on what that is. And my
13 notes don't show it right now.

14 MR. RIZZARDI: Timing is important
15 here.

16 MS. LOVETT: Right.

17 MR. RIZZARDI: The next meeting for
18 MAFAC is June.

19 MS. LOVETT: Right.

20 MR. RIZZARDI: And not too long
21 thereafter, there's going to need to be a
22 decision on 82 species of coral which may

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1 require special regs to be published, just as
2 special regs were published for the polar bear
3 that distinguished how climate change was
4 going to be dealt with for polar bears. And I
5 think NOAA is going to be looking at needing
6 to carve out those same distinctions,
7 otherwise construction of a power plant in
8 Miami is going to require consideration of
9 climate change concerns for the various
10 species of coral in the Florida Keys. There,
11 you don't even have the same attenuation
12 arguments that you have with the polar bear.

13 MS. LOVETT: Yes.

14 MR. RIZZARDI: It's much more close
15 in proximity even though it doesn't really
16 make any sense. You know, whatever FPL does
17 with the power plant in Miami is going into
18 the atmosphere, it's so marginal in terms of
19 its impact atmospherically. But does it
20 require you to look because, well, you have
21 geographic proximity? Those are the kinds of
22 issues that are bubbling and that are going to

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1 be facing NOAA in the very near future.

2 DR. CHATWIN: So I'm not following
3 exactly what the agenda is here, what it is
4 that we are trying to advise the agency about.

5 Because I'm thinking, okay, I mean coral is
6 definitely experiencing a lot more bleaching
7 than it ever experience.

8 MR. RIZZARDI: Yes. Absolutely.

9 DR. CHATWIN: And I understand that
10 that isn't because of one power plant in a
11 certain place. But what I'm thinking is okay
12 so we say that the agency -- it sounded like
13 the suggestion was that we say the agency
14 should exclude climate change from the things
15 it should consider if these 82 species get
16 listed, is that what you're saying?

17 MR. RIZZARDI: No, no, no.

18 DR. CHATWIN: Because I'm thinking
19 well what's left then for the agency to work
20 on is fishing. Is that what we want to do, is
21 like --

22 MR. RIZZARDI: We were beyond

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1 fishing. The issue is bigger than fishing.

2 DR. CHATWIN: I know it is, yes.
3 But what I'm hearing is there's one threat
4 that we want to exclude from being considered
5 in the listing.

6 MS. FOY: What we're trying to
7 avoid is doing repeated -- having a large
8 portion of our National Marine Fisheries
9 staff's time, energy and money being focused
10 on reviewing power plants in Iowa regarding
11 its impact on coral in Florida and Hawaii
12 because they emit greenhouse gases. We need
13 to get ahead of the curve because it's headed
14 that way and people are going to be able to
15 start suing NMFS and NOAA because they are not
16 doing that unless we get ahead of it now. Do
17 you understand what I'm saying here?

18 DR. CHATWIN: Yes. But I'm still
19 trying to think -- so what are you preserving
20 those people for?

21 MR. RIZZARDI: To work on fisheries
22 issues as opposed to consultations as to how

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1 an Iowa manufacturing plant is going to affect
2 Florida Keys' corals. I don't think that
3 that's where we want NOAA spending its time.

4 MS. FOY: My point is that the
5 Endangered Species Act was not designed for a
6 global impact to species.

7 MR. RIZZARDI: Right.

8 MS. FOY: But we may be approaching
9 the point now where professional interest
10 groups or NGOs or whatever you want, can
11 litigate under the Endangered Species Act
12 based on climate change and NMFS and NOAA has
13 to respond to that, even though they don't
14 have any regulatory authority over it.
15 They're going to have a large amount of their
16 resources suddenly shifted into just reviewing
17 NEPA documents.

18 MS. LOVETT: Well, there are two of
19 our offices that do that.

20 MS. FOY: Right.

21 MS. LOVETT: The Habitat office.

22 MS. FOY: Right.

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1 MS. LOVETT: And the Protected
2 Resources office. And obviously I mean the
3 agency --

4 MS. FOY: But it's based right now
5 localized effects, Heidi, not on --

6 MS. LOVETT: Oh, I understand.

7 MR. RIZZARDI: Right. Right.
8 Those consultations are on fisheries.

9 MS. FOY: Right.

10 MS. LOVETT: No, they're not
11 fisheries. That's my point. They're not
12 strictly fisheries. When it comes to salmon,
13 it's water.

14 MR. RIZZARDI: Well, that's true.
15 That's right.

16 MS. LOVETT: But when it comes to
17 marine mammals, it's --

18 MR. RIZZARDI: And you know what?
19 Salmon is a perfect example of the big
20 problem. Because, how much of NOAA's
21 resources are being spent on consultations
22 relating to BOR and the water management in

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1 Sacramento to deal with some salmon issues?

2 MS. FOY: And the climate, and
3 whatever else.

4 MR. RIZZARDI: Right. And if you
5 start taking that kind of approach to things
6 and think about what would happen if that same
7 approach was magnified all over the country
8 and you're consulting all over the country on
9 climate change issues for things that are even
10 more removed from fisheries --

11 MS. LOVETT: Well, I just wanted to
12 clarify that a major responsibility of the
13 agency --

14 MR. RIZZARDI: Absolutely.

15 MS. LOVETT: -- for two of our
16 major offices are consultations and
17 particularly for Habitat, you know, we don't
18 have regulatory authority. Agencies just have
19 to respond in writing whether or not they
20 agree or disagree with the consultation
21 recommendations.

22 MS. FOY: Yes.

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1 MS. LOVETT: But the Habitat office
2 would argue, too, that we've gained quite a
3 significant amount of protection based on the
4 consultation process.

5 MS. FOY: Maybe our new
6 recommendation should be that we have a member
7 of the Habitat office come as well and discuss
8 that viewpoint with us at the next meeting
9 with Jim Lecky.

10 MS. LOVETT: Yes.

11 MS. FOY: I mean, that would be my
12 request.

13 I don't disagree with you, Tony,
14 that we do need to have climate change
15 controlled. I just think that the ESA is the
16 inappropriate law to do that and we need a
17 separate climate-change law. But in the
18 absence of that, ESA is going to be --

19 MR. RIZZARDI: And, Tony, from my
20 perspective, I think I'm hearing you having
21 concerns about whether we are saying list the
22 coral or not?

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1 DR. CHATWIN: No, not at all?

2 MR. RIZZARDI: No?

3 DR. CHATWIN: What I'm seeing is,
4 this is how I'm interpreting this, we want to
5 protect the agency resources to its current
6 obligations and so we don't want it consulting
7 on things like power plants in Iowa. That's
8 it, period.

9 My concern is, I go to the next
10 step, if you don't have NOAA thinking about
11 the marine resources and the impacts of other
12 entities, you're left with no one thinking
13 about marine resources and the impact. So
14 that's my concern is have we thought this
15 through?

16 The immediate problem of not
17 wanting the resources to be allocated
18 according to lawsuits; I totally understand
19 that. But I'm just wondering what are we
20 giving up by saying, you know --

21 MR. RIZZARDI: I would say that's
22 what the Climate Service should do.

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1 DR. CHATWIN: There's no one.

2 MR. RIZZARDI: Right. But it's not
3 what the National Marine Fisheries staff and
4 Protected Resources or Habitat should be
5 doing. If Climate needs to do it and if we
6 can get legislation passed to deal with that,
7 great. That's where it should happen. But to
8 spend the time and effort of the handful of
9 biologists who do consultations on fisheries
10 and have them be now charged with solving the
11 problem of global climate change, I don't
12 think that's realistic.

13 So you're right; NOAA needs to
14 think about it. I'm just saying let's put it
15 in the right box. Let's put it in the Climate
16 Services box as opposed to the NMFS box.
17 Right?

18 And then on the climate change,
19 just so I can be on record, I think we should
20 all be careful about how we talk about climate
21 change. I think it's one thing to say that
22 there's great variability over the degree of

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1 climate change. I 100-percent agree. I think
2 it's not correct to say there's no such thing.

3 MR. CLAMPITT: Well, I don't think
4 it's part of the discussion. In other words,
5 so what?

6 MR. RIZZARDI: I agree.

7 MR. CLAMPITT: Whatever way you
8 agree on that, but that has nothing to do with
9 what this discussion is about.

10 MR. RIZZARDI: Right. But I don't
11 want MAFAC being on record as to one way or
12 the other on --

13 MR. CLAMPITT: I agree. I agree 100
14 percent on that.

15 MR. RIZZARDI: -- climate change.

16 MR. CLAMPITT: It's not the venue
17 for that.

18 MR. RIZZARDI: And when the science
19 really --

20 MR. CATES: We've had several
21 meetings where people have stood up and made
22 their presentations and said --

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1 MR. CLAMPITT: That's a good point.

2 MR. CATES: -- in our last meeting.

3 And we all agree that climate change is man-
4 made.

5 MR. CLAMPITT: We don't.

6 MR. CATES: We don't all agree on
7 that.

8 MR. RIZZARDI: No.

9 MR. CATES: I haven't seen --

10 MS. FOY: Now wait a second here,
11 Randy. That's beside the point. It doesn't
12 really matter if it's man-made.

13 MR. CATES: I agree.

14 MS. FOY: What matters is that our
15 ocean pH is changing and that whatever else,
16 and so the impacts are changing.

17 MR. CATES: I agree. Whether we're
18 on record as saying that climate change isn't
19 happening --

20 MS. FOY: Right.

21 MR. CATES: -- I want to make the
22 point that far too often it's insinuated that

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1 we all agree that this is a man-made thing.
2 And that while this money should be spent on
3 climate change, I don't agree with that. I
4 think that we should have a discussion on
5 that, actually.

6 MR. RIZZARDI: Yes.

7 MR. CATES: It's a separate issue.

8 DR. CHATWIN: Exactly. I mean I'm
9 in your camp on that. But what we're talking
10 about here really has nothing to do with that.

11 MR. CATES: I totally agree with
12 you, but I'm commenting because --

13 DR. CHATWIN: I got it.

14 MR. CLAMPITT: I mean, I think you
15 don't have to use the coral example, but you
16 can use what they just did recently with the
17 leatherback turtle off the coast of Oregon,
18 California and Washington. The National
19 Marine Fisheries Service just said that's
20 critical habitat for the leatherback turtle
21 and what are the consequences of that and why
22 was that brought up? I mean, they saw a

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1 leatherback turtle off of Cape Flattery once,
2 and so now that's somehow critical habitat for
3 leatherback turtle. Well, what are the
4 consequences for that? This is exactly what
5 we're talking about.

6 They're going to take that new
7 designation and use it for a lawsuit to maybe
8 stop whatever they think might interfere with
9 leatherback turtles. I mean, I don't think
10 that's what the Endangered Species Act was set
11 up to, you know, somehow get around these
12 resources issues to put a stop to resource
13 use.

14 I don't if that's what this --

15 MR. RIZZARDI: I think the
16 Endangered Species Act was set up as the final
17 backstop to avoid the extinction of a species,
18 period.

19 MR. CLAMPITT: Yes. Right.

20 MR. RIZZARDI: And it is an
21 absolutely blunt instrument. It is a
22 sledgehammer. There's nothing surgical about

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1 it.

2 MR. CLAMPITT: Yes. Right.

3 MR. RIZZARDI: It is you shall
4 stop. You shall not. And if it means that the
5 fishery closes, it means that the fishery
6 closes. And I don't think it was ever a
7 predetermined agenda that we're going to use
8 this as a tool to achieve stopping these other
9 things. I think it was more the other way. It
10 was protect the species at all costs. That's
11 why it was passed.

12 MR. CLAMPITT: Exactly.

13 MR. RIZZARDI: Now the reality is,
14 yes, it gets used and manipulated now by some
15 groups that do have agendas that do want to
16 achieve certain other outcomes and they grab a
17 species that is representative of whatever
18 outcome they want to achieve and they push.
19 And they use the court system and the
20 Endangered Species Act to try to get to that
21 goal.

22 And what I think all of us have

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1 been trying to get at here is let's be defense
2 minded and let's get ahead of that and have a
3 strategy that avoids having our resources
4 spent in the ways we never intended, and
5 having to use our resources in ways that were
6 never intended so that NOAA can keep doing its
7 core mission with respect to fisheries
8 management.

9 MS. FOY: I personally would be
10 open to some legislation about climate change
11 and having the Climate Service respond, as
12 Keith was saying. But I agree with him that I
13 don't think it is properly in the National
14 Fishery Service or NOAA.

15 MS. LOVETT: Well, just as a point
16 of clarification, I believe the official new
17 title is the Climate Science Service, Climate
18 Science and/or Research Service.

19 So I'm not sure it's been designed
20 or intended to be a regulatory type of entity
21 such as the existing NMFS. And, obviously,
22 NOS has some regulatory authority related to

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1 sanctuaries.

2 I think it's more of a
3 consolidation of the research efforts that are
4 at the moment in a few other boxes, so to
5 speak, within NOAA. We've always had a
6 Climate Service within OAR. I think it's just
7 elevating it a little bit and tying in other
8 entities.

9 MS. FOY: To those of you from D.C.
10 and who have different contacts than I do, is
11 there any movement towards any climate
12 legislation?

13 DR. CHATWIN: That's a high
14 priority for CEQ and high property for the
15 new Administration.

16 MS. FOY: Okay.

17 DR. CHATWIN: I mean are they ready
18 this year? Not this year.

19 MS. FOY: Was there any action from
20 --

21 DR. CHATWIN: Last year that -- oh
22 no climate, we're not going to move on

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1 climate. But then this year -- with folks
2 from CEQ and saying this is a high priority
3 for the Administration.

4 MS. LOVETT: Let me just do a time
5 check for you all. It's now 2:00, or close
6 to. You have a few things I can give you a
7 little bit of feedback on.

8 MS. FOY: Okay.

9 MS. LOVETT: It sounds like linking
10 this and the other first issue, that again
11 you're trying to understand the prioritization
12 within NMFS how it both spends under
13 Protective Resources, how it strategizes to
14 get the work done that's on the table in front
15 of it.

16 MS. FOY: Right.

17 MS. LOVETT: Which is
18 consultations, permits, research, your other
19 issues, the recovery plans. Those are all
20 priorities and how does the agency --

21 MS. FOY: Allocate things.

22 MS. LOVETT: -- allocate things is

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1 kind of what I was hearing from the various
2 discussions. And is it being proactive in
3 identifying potentially how new species or
4 species -- I don't know if that's the right
5 word -- but is it being proactive with respect
6 to candidate species? Am I right? Is that
7 what you were saying? You're shaking your
8 head yes, Keith. You know, rather than
9 waiting for a petition to bring forward the
10 name of a particular species, is the agency
11 being proactive in identifying what kind of
12 species need to be looked at for potential
13 listings. That's what I thought I heard
14 earlier.

15 MS. FOY: Potential listings and
16 what's been for funding allocation based on
17 those quantifiable three criteria.

18 MS. LOVETT: Again, though, it
19 sounds like a clear understanding --

20 MS. FOY: Yes.

21 MS. LOVETT: -- so that you can
22 develop recommendations based on your

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1 subsequent discussions --

2 MS. FOY: Right. Yes.

3 MS. LOVETT: -- after you really
4 hear from the horse's mouth how things are
5 done.

6 MS. FOY: Yes.

7 MS. LOVETT: I think is what you're
8 asking for. And so I'm going to help you all
9 and maybe move on to the next one, and then
10 you can come back maybe to this just so you
11 don't run out of time.

12 MS. FOY: Good. Please.

13 MS. LOVETT: Okay. So the next
14 issue was, the issue as stated was scientific
15 efforts of near zero impact and in parenthesis
16 level B harassment, require extensive
17 documentation and effort by both agency and
18 applicant, more than required of general
19 public for same incidental harassment. And
20 you thought it creates disincentives to
21 beneficial research efforts. So the
22 recommendation was to request a discussion

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1 with staff regarding feasibility of further
2 streamlining noninvasive scientific research
3 permitting by developing a standardized permit
4 application for the issuance of incidental
5 take permits or general authorizations.

6 So what I learned related to that
7 is the general authorization is an MMPA permit
8 for level B only. Nothing similar exists for
9 ESA. Oh, you knew that? Okay.

10 And then, of course, they provided
11 a clear link for you all could see the
12 description of the various permits and then
13 you can drill down from the website and get
14 more information about various permits.

15 MS. FOY: So what I heard back from
16 you, Heidi, is that it is not illegal for them
17 --

18 MS. LOVETT: Level B harassment
19 permits are not available for ESA species.

20 MS. FOY: Right.

21 MS. LOVETT: Does that answer your
22 question in that one?

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1 MS. FOY: I think it does, yes.

2 MS. LOVETT: Okay. So I don't
3 think there's anything more streamlining
4 related they can account --

5 MR. RIZZARDI: Why not?

6 MS. LOVETT: Pardon?

7 MR. RIZZARDI: Why couldn't we come
8 up with a streamlined permit application for
9 it.

10 MS. FOY: My understanding was that
11 it was not legal to do that. That there are
12 certain requirements under -- was that not
13 true, Heidi?

14 MS. LOVETT: Okay. Maybe our
15 lawyer in the midst can explain it better than
16 I can.

17 MR. RIZZARDI: There are very clear
18 criteria for getting an instant on the take
19 permit.

20 MS. LOVETT: Right.

21 MR. RIZZARDI: But what also exists
22 in many instances are pre-prepared habitat

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1 conservation plans for a given species to make
2 it very easy for somebody to get that permit.

3 So if you're a single family homeowner and
4 you are going to develop a little parcel land
5 and you are going to impact a scrub jay, you
6 take the prefilled- out HCP, you put in your
7 name and address and a few other pieces of
8 information and you submit that to the Fish
9 and Wildlife Service and you get your
10 incidental take permit for that very small
11 impact as long as you did all the things in
12 that permit application.

13 What came to me was why can't there
14 be a similar process for some species for
15 scientific research through NOAA. And the one
16 that I hear a bunch is sea turtles and
17 manatees.

18 MS. LOVETT: Yes.

19 MR. RIZZARDI: The public can jump
20 in the water and go swim with a manatee and
21 don't need no stinking permit.

22 MS. LOVETT: Right.

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1 MR. RIZZARDI: But the researcher
2 who is trying to do some good work on manatees
3 needs to go through this online MS Word
4 document with 50 different criteria that they
5 fill out.

6 So if we know what's good and we
7 know what's bad, why can't NOAA again get
8 ahead of the curve. Give a pre-prepared
9 document that says do these things, fill out
10 this lesser amount of information, we're going
11 to make this process a little easier for you.
12 If you're doing sea turtle research, you're
13 doing manatee research, your doing sea otter
14 research, you know we want to encourage it.
15 Do these things, here's the pre-prepared
16 application.

17 MS. FOY: Right. I mean even to
18 the point where just background for you guys,
19 it's I'm not allowed to approach in a boat to
20 the same distance as a wildlife viewing
21 operation and watch the sea lions through
22 binoculars to get brand resite information.

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1 Without a scientific permit it requires 25 to
2 30 pages of text.

3 MR. RIZZARDI: And then the Disney
4 scientists complains about the exact same
5 thing for sea turtles.

6 MS. FOY: Yes. Right. You know,
7 the charter boat operators are not required
8 without any permitting at all, it's considered
9 general public. And you know, I would argue
10 that that's a major glitch.

11 MR. CLAMPITT: It's a major glitch.
12 There's a lot of major glitches. That's a
13 good one.

14 MS. FOY: It's done. Permitting
15 requires a vast amount of effort on the part
16 of biologists and it is something that is
17 familiar with the permitting process. That's
18 one of my main marketing skills which are
19 demanded of the job. I'd much rather be out
20 there looking at the sea lions through
21 binoculars than sitting there filling out 30
22 pages worth of permitting and then annual

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1 reports back on exactly how many sea lions I
2 looked at and exactly what their response was
3 to me looking at them. What the GPS locations
4 of each site were.

5 I mean, the reporting back
6 afterwards sometimes just onerous once you
7 have the permit.

8 MS. LOVETT: Well maybe we didn't
9 understand this issue as clearly the way it
10 was written up.

11 MS. FOY: Well, this would be
12 another issue that we could talk about with
13 Jim Lecky.

14 MS. LOVETT: Yes.

15 MR. RIZZARDI: You know, you have
16 very reputable scientists doing the same sea
17 turtle research they've been doing for years.
18 And they've got to fill out a 30 page
19 application.

20 MS. FOY: Yes.

21 MR. RIZZARDI: We want the data.
22 We want them to be doing this research. It's

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1 helpful. It helps with the Fisheries
2 management decision. And why are we making it
3 hard for these folks and creating this
4 additional cost for them when there are ways
5 that we can make this easier?

6 MS. FOY: Okay. So should we move
7 on to the next item before we run out of time
8 here?

9 MS. LOVETT: So number four was
10 there are inconsistent approaches to sea
11 turtle protection in regional fishery
12 regulations. And example was the 2009
13 loggerhead status report indicates increasing
14 risks of extinction. And the recommendation
15 that was officially passed, and I have to make
16 a comment. Because there were like three
17 bullets and one of them was not approved. But
18 I wasn't sure if all three were not approved
19 and it was just a brand new effort --

20 MR. RIZZARDI: No. It was just me
21 going to St. Pete that was not approved.

22 MS. LOVETT: That was the only

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1 thing not approved? Okay.

2 So the recommendation was: To
3 appoint an ah hoc effort to synthesize an
4 understanding of theories explaining declines
5 and threats; statutes seek to ensure
6 consistency in management approaches for all
7 regions, and there's a recommendation for
8 Subcommittee members to work through the
9 Policy office for factfinding on sea turtle
10 protection issues and report back.

11 So the one thing I did know about
12 is the NRC was contracted by NOAA to do a
13 report about sea turtles to assess -- I'm
14 going to be wrong about what they're doing
15 exactly probably. But I think it's to assess
16 both how we make determinations to assess what
17 we're doing in our different regions. In
18 particular, the best methodologies -- I think
19 they're looking for recommendations regarding
20 best methodologies to use for doing stock
21 assessment on sea turtles, which as I
22 understand it are quite different from marine

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1 mammals and definitely different from
2 fisheries. And to provide recommendations
3 back to the agency.

4 And I thought that effort was going
5 to be done by this point in time so a draft
6 might be able to be shared with you. But my
7 understanding now is that they're supposed to
8 be finalizing their work by April or May. So
9 the June/July meeting would be appropriate to
10 -- you know, once we have their report and
11 it's been finalized and approved and whatnot,
12 it will be shared with you. And I'm sure it
13 will actually get at some of these particular
14 issues that you raised in this particular
15 point.

16 MS. FOY: That's good.

17 MS. LOVETT: And then, obviously,
18 the agency will be developing a response as to
19 how it's going to incorporate or adjust or
20 move forward based on the NRC recommendation.

21 MS. FOY: Okay.

22 MS. LOVETT: So that's been a

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1 priority within the agency to such a degree
2 that they've asked for some outside external
3 review to assist in helping lead the way
4 forward.

5 MS. FOY: And that's something that
6 we should expect more on next meeting, too.
7 So let's just, if we can, keep in mind, Keith,
8 since I know this is your baby. Do you mind
9 if we table this one for now since we're
10 running out of time and go quickly--

11 MS. LOVETT: We have a little bit
12 more time.

13 MR. RIZZARDI: Which was five?

14 MS. LOVETT: Five is --

15 DR. CHATWIN: One of the key
16 problems identified in recovery plan of sea
17 turtles is bycatch. And it's a problem not
18 only for the turtles, it's a problem for the
19 industry because there is inadequate
20 information on bycatch rates and stuff like
21 that.

22 And I meant to bring it up on the

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1 discussion of the budget, but I think a
2 question that should be asked is why is there
3 so little money allocated to the national
4 bycatch strategy? Because we hear a lot from
5 industry saying, you know, we need money to do
6 the research to show that we're not actually
7 having impact that we're perceived to have.
8 But there is very limited amount of money
9 available to be able to do that.

10 And the national bycatching budget,
11 the way it works, it's around three million, I
12 think. I mean it's really -- it's divided up
13 into tiny pieces this is for the bycatch
14 strategy for research, there's turtle research
15 that goes straight to the regions. But as far
16 minimizing bycatch, the amount of money
17 available for that work is kind of very low.
18 So that's also something I want to get and
19 have it reported back.

20 MS. FOY: For the next meeting.

21 MS. LOVETT: Okay.

22 MS. FOY: It sounds like we're

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1 going to have a have a turtle expert there.

2 MR. RIZZARDI: Yes, please.

3 MS. FOY: On that same note is the
4 next issue which we felt that there was a lack
5 of overarching guidance for the recovery plans
6 to standardize the downlisting or delisting of
7 species. I was just talking to Kitty a few
8 minutes ago and they're having trouble with
9 that, the green sea turtle here in Hawaii.
10 And it appears to be a distinct population
11 segment, meaning it does not travel outside --
12 this population does no travel outside of the
13 Hawaiian Islands. And is at a point where it
14 should be delisted, but it seems to be there's
15 something holding up the process. So she's
16 concerned about that.

17 And we include with that the
18 recommendation that Paul had that we have an
19 update on the humpback and sperm whale
20 population delisting status.

21 MR. CATES: What we are having
22 seems that there's an agenda not to do the

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1 work.

2 MS. FOY: Yes.

3 MR. CATES: That's it.

4 MS. FOY: Yes. But there should be
5 a standard timeline based on after a staff
6 assessment if the population reaches this
7 standard, then it should follow a logical
8 timeline just like listing is required to
9 follow on a logical timeline.

10 MS. LOVETT: Just like listings are
11 required?

12 MS. FOY: Well, when you have a
13 listing, you have --

14 MS. LOVETT: Yes.

15 MS. FOY: And it's not that way for
16 recovery.

17 MR. CLAMPITT: Well, they're
18 spending all that money on listing and they're
19 not spending any money delisting.

20 MR. CATES: Well, on this I'd like
21 to put something out to the Subcommittee.
22 Because in their response that they gave us on

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1 this issue they included this link to all the
2 recovery plans and it was very revealing to
3 me. Because there were two recovery plans
4 that have been sitting in draft status since
5 2006.

6 MS. FOY: Right.

7 MR. RIZZARDI: So one of them is
8 spin whale, one of them is sperm whale. Public
9 comment's closed. Document was done. I think
10 MAFAC should encourage NOAA to go finish the
11 recovery plans. I mean, there are these two
12 documents and they're done.

13 MS. FOY: Right. Right.

14 MR. RIZZARDI: Please go finish.

15 MS. FOY: Well, that's the problem:
16 There's a lack of overarching guidelines --

17 MR. RIZZARDI: Exactly.

18 MS. FOY: -- to standardize this.
19 There needs to be a standard for downlisting
20 or delisting, and that's lacking. It's
21 lacking.

22 MS. LOVETT: So the one little bit

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1 that I recall learning about this was that
2 recovery plans do take a long time to get
3 them.

4 MS. FOY: Yes, they do.

5 MS. LOVETT: There are no deadlines
6 as to how fast the recovery plan must be
7 completed. So I'm assuming that means there's
8 no statutory deadlines such as there are with
9 listings.

10 MS. FOY: Right. Right.

11 MS. LOVETT: So it is the reverse.
12 There's acknowledgement that a lot
13 of the plan are stale.

14 MS. FOY: Right.

15 MS. LOVETT: And there likely does
16 need to be a better process to keep them up to
17 date.

18 MS. FOY: Right.

19 MS. LOVETT: But as you've all
20 noted yourselves, there's a lot of priorities
21 that this particular office has.

22 MS. FOY: Yes. Right.

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1 MS. LOVETT: So when things are not
2 on a tight schedule such as when you have a
3 petition and you have a deadline that you have
4 to meet to make sure a court doesn't step in
5 and say you've not met your obligation, this
6 is the type of activity that then gets
7 downgraded depending on whether or not there's
8 enough resources, which doesn't mean just
9 money but people as well to do the work.

10 MS. FOY: Right.

11 MS. LOVETT: So that's the reality.

12 MR. CLAMPITT: I know the answer to
13 this, I think. Let's say an industry is going
14 to be shutdown mainly because the process
15 hasn't been completed. It hasn't been
16 completed because they don't have any money.
17 What if the industry wants to put up the money
18 to have NOAA finish the work? I mean is there
19 any --

20 MS. LOVETT: I wish I knew. I
21 mean, there are --

22 MS. FOY: For NOAA that's illegal.

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1 MR. RIZZARDI: Yes, there are
2 restrictions on that.

3 MS. LOVETT: Yes. I don't know if
4 ethically that's legal. But that's a good
5 question to ask.

6 MS. FOY: But then it would be
7 almost like you were coming up for bid, like
8 who wants theirs first.

9 MR. CLAMPITT: Well, you know, I
10 mean you got a \$350 million industry and NOAA
11 won't spent \$2 million to go out and find out
12 how many animals are in the water.

13 MS. FOY: Right. Right.

14 MS. LOVETT: I would suspect that
15 there is creative ways. I mean, obviously
16 that's the whole reason for cooperative
17 research and other things is that that's able
18 to get money. And that's a way for the agency
19 to get more bang for the buck by --

20 MR. CLAMPITT: I would like to know
21 how that money could possibly be --

22 MS. FOY: You need to talk to Randy

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1 Fisher, also known as the North Pacific Tooth
2 Fairy.

3 MS. LOVETT: I've even had projects
4 go through his office before I came to NOAA.

5 MS. FOY: There's one thing that I
6 do know that has been done, Paul, is that you
7 can hire retired stock assessment people.

8 MR. CLAMPITT: We've done that.
9 But, you know --

10 MS. LOVETT: No, I understand.

11 MR. CLAMPITT: -- fisheries are
12 taking a three percent as a --

13 MS. FOY: Catch of recovery costs.

14 MR. CLAMPITT: Of recovery costs,
15 right? Well, how's that -- what if an
16 industry depends on a couple of million more
17 dollars? I mean, can't they take it out of
18 that or pump it up?

19 MS. LOVETT: Yes, I don't --

20 MR. CLAMPITT: Well, just --

21 MS. LOVETT: Anne might be able to
22 answer that one for you.

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1 MR. CLAMPITT: One or the other is,
2 I don't get --

3 MS. LOVETT: I think -- I saw Alan
4 sitting here before and he's stepped away. I
5 think that when monies are recouped via those
6 cost recoveries because of a specific IFQ,
7 those monies have to stay and be used for
8 research and management --

9 MR. CLAMPITT: That's right.

10 MS. LOVETT: -- within that
11 particular fishery.

12 MR. CLAMPITT: And that's what I'm
13 talking about.

14 MS. LOVETT: Okay. So you're
15 saying why couldn't those dollars be used for
16 other research?

17 MR. CLAMPITT: Well, I'll just get
18 to the point. You know we have the sperm
19 whale problem, and really the only problem is
20 how many are there. And nobody can tell you.

21 MS. LOVETT: Right.

22 MR. CLAMPITT: And it's very

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1 efficient to find out. Well, take the three
2 percent out of the halibut and black cod
3 fishery and spend some of it on finding out
4 how many sperm whales there are.

5 MS. LOVETT: Is that a decision in
6 the Council how to use those monies?

7 MR. RIZZARDI: That's a good
8 question.

9 MR. CLAMPITT: Well, no, it's not.

10 MS. FOY: I think that's the
11 decision of the Council, but it can be --

12 MS. LOVETT: No. I think the
13 Council--

14 DR. CHATWIN: The first question is
15 is that money being recovered?

16 MR. CLAMPITT: Oh, yes. Yes, it is.

17 MS. LOVETT: In IFQs it is.

18 DR. CHATWIN: It is being charged?
19 Because I know that the Act creates the
20 ability to do that.

21 MR. CLAMPITT: Oh, no, they're
22 taking it.

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1 DR. CHATWIN: They're taking it?

2 MR. CLAMPITT: Yes. I mean,
3 although they haven't taken the three percent,
4 they're figure out, for instance, how much
5 sablefish they figure, 1.8 percent this year.

6 MS. LOVETT: Right.

7 MR. CLAMPITT: Because they didn't
8 use it. They didn't need. They could take up
9 to three percent.

10 MS. LOVETT: Yes. But I think --

11 MR. CLAMPITT: So they took 1.8.

12 MS. LOVETT: But I get back to the
13 point, I think that's a council decision. And
14 we can check on that how much -- because you
15 just said they took how much, the 1.8.

16 MR. CLAMPITT: 1.8.

17 MS. LOVETT: Who made that
18 decision?

19 MR. CLAMPITT: Oh, that's made by
20 National Fishery Service. This is how much--

21 MS. LOVETT: Oh, okay. So it's our
22 agency. Okay. I take it back then. I'm not

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1 on that track.

2 DR. CHATWIN: You should be able to

3 --

4 MR. CLAMPITT: Yes, take another
5 1.2 and go out there and find out what our
6 impact is on this whale and get us off the
7 hook.

8 MS. LOVETT: I believe that the
9 money can be used for that.

10 MR. CLAMPITT: Yes. You know,
11 we're not the only -- I mean, everyone of
12 these catch share programs are going to have
13 these problems.

14 MS. LOVETT: Yes. But everyone
15 does have cost recovery. It has to be an IFQ
16 and a LAP for having cost recovery.

17 Okay. I'm sorry, I think I read
18 the last bit. So that, for sure, is something
19 that you want to understand better.

20 MS. FOY: Right.

21 MS. LOVETT: And he for sure is
22 able -- already knows that this one is on your

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1 radar screen. Because that was pretty
2 transparent.

3 MS. FOY: One of the issues that
4 was my particular concern, Heidi, that I don't
5 hear being addressed or I'd like somebody to
6 talk to me about is that there is a lack of
7 criteria for saying when a species is eligible
8 for de-listing based what level does the
9 population need to recovery to. Is what
10 historic level --

11 MS. LOVETT: And you don't see that
12 in the existing recovery plans?

13 MS. FOY: I don't see a lack of --
14 of standards.

15 MR. CLAMPITT: It depends on the
16 animal. You know like if you read the sperm
17 whale one, you know they say it's going to be
18 80 years because they've got see a one percent
19 improvement in population over a period of 80
20 years before they're going to say that it's no
21 longer is danger.

22 MS. FOY: Right. But what point do

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1 you go back? Do we go back to pre-rating
2 days, or do we go back to when the population
3 is a viable sustaining population, or do we go
4 back to the point where the environment is --
5 what the carrying capacity is, or how do we
6 define?

7 MR. RIZZARDI: The standard under
8 the ESA is recovery is the point of which the
9 measures required by the Endangered Species
10 Act are no longer necessary.

11 MS. FOY: Okay.

12 MR. RIZZARDI: Right. There's a
13 five part analysis that justifies whether or
14 not a species is listed in the first place.

15 MS. FOY: Right.

16 MR. RIZZARDI: Like habitat and
17 inadequate regulatory measures and disease and
18 predation are the big three that pop up over
19 and over again.

20 If you've eliminated the threats,
21 if you've got an increasing population, you've
22 got a good argument as to whether or not the

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1 measures in the Act are necessary any longer.

2 And at that point even though the population
3 may be smaller, you may have reason to say a
4 delisting is reasonable.

5 MS. FOY: The problem is that they
6 can have, such as in the Steller sea lion
7 issue, well that and you have experts around
8 the table that are violently disagreeing with
9 each other.

10 MR. RIZZARDI: Right. Right. And
11 that's what the whole point of the recovery
12 plan is.

13 MS. FOY: So what standard do we
14 have to hold them to. Well, they're violently
15 disagreeing over recovery.

16 MR. RIZZARDI: What should do that?
17 Right.

18 MS. FOY: And what should be in
19 there.

20 MR. RIZZARDI: But, you know, when
21 it works you get at least some consensus on
22 where's a reasonable population threshold, at

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1 which point you're seeing growth of X and
2 total numbers of Y where you're willing to say
3 okay the measures in this Act are no longer
4 necessary.

5 MR. CLAMPITT: But the important
6 thing -- I mean, well, if you're a natural
7 resource exploiter is -- yes, isn't that a
8 horrible thing. You know, if you can bring
9 this animal from endangered to threatened, you
10 get out of all kinds of problems. I mean, as
11 far as being able to operate. And that
12 threshold, moving from endangered to
13 threatened, is much easier than taking them
14 off, delisting altogether.

15 So if you read the sperm whale
16 report -- I won't belabor that anymore.

17 MS. FOY: Well, my perspective on
18 this is that all of this has a very negative
19 connotation, and that leads back to the next
20 recommendation --

21 MS. LOVETT: Right.

22 MS. FOY: -- is that we won't know

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1 to develop a plan to celebrate their ESA
2 successes. Because the point is we don't do
3 that now. And, you know, it's really -- the
4 Endangered Species Act and FDA have such a
5 negative connotation. They shouldn't. I mean
6 I feel like if we were more on the ball with
7 the delisting and say, look it worked and now
8 we're going to remove a lot of the negative
9 measures, then fishermen and a lot of the
10 public would be more supportive of the fact
11 that it worked.

12 MR. CLAMPITT: Well, there's a lot
13 of success stories out there too if you read
14 through the stuff. But they never quite
15 finish the job.

16 MR. RIZZARDI: Well, good news
17 doesn't make the news.

18 MS. LOVETT: Right. It doesn't
19 make the news.

20 MR. CATES: Humpback whales are
21 fully recovered. They don't want to get them
22 off the list. It potentially interrupts

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1 revenue stream for national humpback whale
2 sanctuary, for example. And they got gobs of
3 money to do research. And if you take it off
4 the delisting, then there goes your funding.

5 MR. RIZZARDI: But even if it's
6 downgraded to threatened and you're able to
7 repeal some of the take rules, then you're
8 still in a better place and there's still
9 something to celebrate and you can still be
10 celebrating the fact that you're achieving
11 recovery targets.

12 You know, one of the things that's
13 amazed me in the last few months is the
14 beating that the Obama Administration is
15 taking for not listing more species. The
16 press releases from the environmental groups
17 are about how the Obama Administration is
18 worse than the Bush Administration in the
19 number of species it has listed for protection
20 under the Endangered Species Act.

21 MR. CATES: It's just a measure of
22 success for the environmentalists.

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1 MR. RIZZARDI: For them the measure
2 of success is more species are in peril of
3 extinction. I mean, the world is upside down.

4 And that's where we need to make sure that
5 some of the good thing about the Endangered
6 Species Act are getting out there and the
7 protections it's offering.

8 MS. LOVETT: So along the line,
9 really quickly, my understanding from the
10 Deputy in the office is that they are right
11 now actually in the beginning process to
12 develop both a strategic plan and a media plan
13 and or communications plan. And, yes, they
14 would definitely welcome input from MAFAC.

15 I think, I asked them, you know, is
16 there something in the area that you can
17 actually -- do you want to have some positive
18 input from as far as you all might probably
19 have a better experience about communicating
20 successes maybe. So anyway, they said yes.

21 And I know from Mark's perspective
22 I think, I mean it's all these things that

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1 you're talking about relate to a strategic
2 plan for the office. So I know that they're
3 going to be ready to discuss where they're at
4 in that process. I mean, they said -- they
5 reported that they're at the beginning part of
6 that process now.

7 So I think we'll need to make a
8 clear list so I haven't lost track of things,
9 unless it's all in our notes, or it will be in
10 your report tomorrow as to what specifically
11 you would like PR to be discussing. Because
12 it seems to me there's a pretty long list of
13 items and just issue points. And it might be
14 the kind of thing that you want as much
15 attention to like catch shares, like a day of
16 looking at these various things, or at least
17 half a day of looking at PR related topics.
18 I'm getting that sense from you all because
19 there's a long list from what I can see.

20 MS. FOY: Yes, I think a day. Yes.
21 Half a day I think would be glossing over a
22 lot of the topics.

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1 MS. LOVETT: So my point is you all
2 need to make that recommendation and make
3 that.

4 MR. CLAMPITT: This Protected
5 Resources is driving the industry. So if we
6 don't get this solved, then we're going to be
7 shutting people out of work.

8 MR. CATES: I agree. We have a
9 huge conflict of interest. We say we manage
10 our fisheries science base when we choose to
11 do the science. But now we have problem when
12 we're choosing not to do the science.

13 MS. LOVETT: Yes.

14 MR. CATES: Because it's a revenue
15 stream for the very agency that you're asking
16 to do the science that would clearly show we
17 should delist it. They don't want to do it
18 because then they lose funding.

19 The whole national monument is
20 upside down. I mean, they're now in meetings
21 -- I've sat in meetings that we need to
22 probably expand into other species because

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1 clearly we're going to lose our revenue. And
2 the numbers are growing. We got to get other
3 species out there. Otherwise we don't --
4 because it brings in other revenue. We want
5 to turtles, we want to add all these other
6 species in the sanctuary because it's more
7 revenue.

8 MS. LOVETT: Well, that's National
9 Ocean Service. So I won't comment. No, I
10 understand. No, I understand. No, no, no, I
11 understand that. I'm just saying that NMFS
12 doesn't direct the request that NOS makes, and
13 NOS doesn't direct their requests that NMFS
14 makes and internally each one develops their
15 priorities and budgets. It moves up to NOAA.
16 And NOAA has to across the board formulate an
17 overall plan. And NOAA has to sell its budget
18 to DOC. We just don't get the budgets we
19 request. Just so you know.

20 In the big scheme of things we also
21 complete against those other agencies within
22 DOC for the budgets that we do try to request.

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1 MR. CATES: And we're advisers to
2 the Secretary of Commerce.

3 MS. LOVETT: Absolutely. No, no,
4 no. I'm not saying you shouldn't that. Yes.
5 I'm just saying --

6 MR. CLAMPITT: I've got a question
7 I'd like to ask.

8 MS. LOVETT: Yes.

9 MR. CLAMPITT: And the one is with
10 the whales.

11 MS. LOVETT: Yes.

12 MR. CLAMPITT: And maybe I'm not
13 being current, I'm trying to read between the
14 lines that one of the reasons why they don't
15 move forward on delisting some of these
16 species is because of the fear that once
17 they'll do then you'll have to go Norway and
18 these other countries when they start hunting
19 them. It gives them a reason to do it.

20 MS. FOY: Now wait, wait, wait.
21 Now U.S. endangered species listing does not
22 really impact --

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1 MS. LOVETT: Right.

2 MR. RIZZARDI: IUCN is still going
3 to have the species listed. There's still
4 going to be CITES issues. You know, just
5 because you take it off the Endangered Species
6 Act, which limits what the feds can do,
7 doesn't necessarily trigger consequences for
8 Japan and its whaling.

9 MR. CLAMPITT: Well, it does in a
10 way because, I mean just in public relations.
11 They say "See, look they're back."

12 MR. RIZZARDI: True. I mean,
13 there's definitely a PR side. But that can
14 still be managed. You know, that's why
15 there's an International Whaling Commission
16 and that's why there's ---

17 MR. CLAMPITT: Well, they're still
18 within 300 miles of the United States coast,
19 so that protects them there.

20 MR. RIZZARDI: Right. And they're
21 still an MMPA.

22 DR. CHATWIN: Is there a standard

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1 in the ESA that assures that delisted species
2 won't trigger a listing in a year or two,
3 something along those lines?

4 MR. RIZZARDI: There's even a
5 requirement that for a certain period of time
6 after delisting you have special monitoring
7 measures in place to make sure that the
8 species doesn't crash, in which case you can
9 go back and quickly relist.

10 DR. CHATWIN: Because I think
11 that's the standard that drives the decisions
12 is everything in place to assure that you're
13 not going to be right back where you are now?

14 MS. FOY: Right.

15 DR. CHATWIN: Once you go ahead
16 with the listing.

17 MS. FOY: Right. Well, is it just
18 the delisting or is delisting and removal of
19 the mitigation measures? Because my
20 understanding is that those may be separate
21 issues.

22 MS. LOVETT: Yes, I'm not familiar

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1 enough to know. I would assume that -- I mean
2 --

3 MS. FOY: I see facial expressions
4 that --

5 MR. RIZZARDI: That's a good
6 question. I don't know the answer.

7 MS. LOVETT: Marine mammals don't -
8 - I mean, I'm not as familiar as MMPA, but
9 it's my understanding obviously there's a lot
10 of marine mammals that are not ESA species. So
11 there's other things that we hold those
12 species on a slightly different pedestal.
13 Because there's a law and whether or not is on
14 the ESA is a little bit different than the
15 requirements of the MMPA.

16 MS. FOY: Right.

17 MS. LOVETT: But I don't know the
18 specificities of those requirement. I'm not
19 that expert. So I don't think that that by
20 removing them from -- it doesn't remove them
21 still from MMPA related obligations if
22 they're not an endangered species. Does that

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1 make sense?

2 MS. FOY: It does. And the case
3 I'm thinking of Steller seal lions, I don't
4 know if you guys have seen the maps. But when
5 the listing came about, there were almost just
6 instantaneous circles on the map, ten mile no
7 approach you know, fishing zones, 20 miles
8 circle zones. And I don't know whether those
9 are tied to ESA and if delisting would mean
10 that those would automatically go away, or
11 whether or not it's something that could be
12 said, okay, we're downlisting them down to
13 threatened to keep the mitigation measures in
14 place, or maybe reevaluate which mitigation
15 measures are working, whether or not it may be
16 possibly -- or haul outs, or maybe it works
17 for some haul outs and not for others.

18 MS. LOVETT: Right.

19 MS. FOY: And so then you
20 reevaluate. But you don't necessarily remove
21 all the mitigation measures because that's,
22 hopefully, what that got you to the point of

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1 having the species recovered.

2 MS. LOVETT: Right. It's a
3 balancing act, I'm sure.

4 MS. FOY: I don't know.

5 MS. LOVETT: That would be a
6 question you could ask.

7 The one thing I will say is this
8 NIC actions before they're public, because I
9 sit in on a priorities meeting each week.

10 MS. FOY: Right.

11 MS. LOVETT: And I'm not going to
12 talk about anything specifically because it's
13 confidential. But as a rule as a whole
14 there's things that come up related to the DPS
15 that distinction population segment. And it
16 seems to me that as a whole science has moved
17 forward enough that rather than just saying
18 the species is endangered or threatened,
19 they're getting much more specific about
20 because the science and information is
21 providing more detail when there are distinct
22 populations. And they are trying to be much

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1 more deliberate in their my agencies trying to
2 be much more deliberate in the designations of
3 threatened versus endangered by understanding
4 these distinction population segments better
5 for a variety of species.

6 So I think that as a whole the
7 agency doesn't rush to say this has to get
8 listed. It really does try to base its
9 decision on science and on the best
10 information that is available. And tries to
11 ensure that the boundaries aren't exceeding
12 what's really required for the species.

13 MS. FOY: Well, we really when you
14 do the Steller sea lions --

15 MS. LOVETT: When the information
16 is there to answer that question.

17 MS. FOY: And a lot of times the
18 information that we gain biologically comes
19 about a result of the -- as Randy was saying,
20 that's where the money goes. So we know a lot
21 more about Steller sea lion foraging, all
22 kinds of things now than we did before the

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1 listing simply because of --

2 MS. LOVETT: We're almost done.

3 It seems like on each one of these
4 major issues there was an interest in more
5 information.

6 MR. RIZZARDI: Absolutely.

7 MS. LOVETT: We have to clarify.
8 Maybe as a Committee if you take your first
9 crack at, you know, what exactly you want to
10 have and I can help within the next day. But
11 after this meeting, you know, scope out a much
12 clearer path so you all get the information
13 you want to hear from Jim Lecky and whoever
14 else.

15 MR. RIZZARDI: Turtles.

16 MS. LOVETT: And turtles. Right.

17 MR. RIZZARDI: I want a turtle
18 person.

19 MS. LOVETT: So that's my point is
20 to make a clear recommendation of what kinds
21 of information you want provided. Obviously
22 these recommendations don't go away that

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1 you've had. But I think -- and I can see if
2 there are things that can be provided before
3 the meeting, all the reports and whatnot.

4 MS. FOY: Right. My suggestion
5 that maybe we open an email dialogue and we
6 just put interested parties on there and then
7 clarify agenda --

8 MS. LOVETT: Right.

9 MS. FOY: -- before the meeting
10 this is what we would like them to address
11 special, any new concerns that come up. That
12 way they've got it.

13 MR. RIZZARDI: If we are going to
14 do turtles --

15 MS. LOVETT: I'm sure we can find a
16 turtle person to come to the meeting.

17 MR. RIZZARDI: But I'm not sure the
18 next meeting is the place to do it since we're
19 talking about Alaska.

20 MS. FOY: Well, they could come to
21 Alaska.

22 MS. LOVETT: Yes.

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1 MR. RIZZARDI: I'm sure they could.

2 MS. LOVETT: Is there anybody in
3 particular you would --

4 MR. RIZZARDI: I just have a
5 feeling you're going to be telling me you're
6 going to be looking for people for Miami
7 Service, or Miami Office or the St. Pete
8 office, or --

9 MS. LOVETT: Headquarters, I
10 presume, actually. Somebody from one
11 particular region is probably not the best
12 person because they may not know enough about
13 other regions specific or the North Atlantic.
14 So I would recommend somebody from the
15 headquarters office who sees everything when
16 it comes up related to these kinds -- I mean,
17 of course, all permits and things I think --
18 well, I shouldn't say that. A bunch of them
19 come through the head office versus the
20 regional office. But I may be wrong on that.

21 MR. RIZZARDI: But I would be happy
22 to have a conversation with the person ahead

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1 of time to hear some issues that we'd love to
2 hear about.

3 MS. FOY: Well, let's do that on
4 email, its agreed to do that.

5 MS. LOVETT: Once there is a date
6 and location, then -- obviously because it's
7 just a balancing act with other people's
8 calendars.

9 MR. RIZZARDI: Okay.

10 MS. LOVETT: I hope I was helpful.

11 (Whereupon, at 2:36 p.m. the
12 Subcommittee meeting was adjourned.)

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