NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

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MARINE FISHERIES ADVISORY COMMITTEE

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ADVISORY COMMITTEE MEETING

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WEDNESDAY
OCTOBER 24, 2012

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The Advisory Committee met in the Ellsworth Room, Silver Spring Civic Building, One Veterans Place, Silver Spring, Maryland, at 10:00 a.m., Keith Rizzardi, Chair, presiding.

MEMBERS PRESENT:

KEITH RIZZARDI, St. Thomas University School of Law, Chair
EDWARD (TED) AMES, Penobscot East Resource Center
JULIE BONNEY, Alaska Groundfish Data Bank, Inc.
COLUMBUS H. BROWN, U.S. Fish and Wildlife Service, Retired
RANDY CATES, Cates International, Inc.
ANTHONY CHATWIN, National Fish and Wildlife Foundation
PAUL CLAMPITT, F/V Augustine
PATTY DOERR, The Nature Conservancy
PHILLIP J. DYSKOW, Yamaha Marine Group, Retired

KEN FRANKE, Sportfishing Association of California
JULIE MORRIS, New College of Florida
GEORGE C. NARDI, GreatBay Aquaculture, LLC
BOB RHEAULT, East Coast Shellfish Growers Association
DAVE WALLACE, Wallace & Associates
PAM YOCHEM, Hubbs-Sea World Research Institute

CONSULTANT TO MAFAC:

RANDY FISHER, Pacific States Marine Fisheries Commission

PRESENT FROM NOAA:

ALEXIS GUTIERREZ
DAVID BERNHART
LAUREL BRYANT
SUSAN BUNSICK
LINDA CHAVES
PAIGE DOELLING
RUSSELL DUNN
TIM HANSEN
MARK HOLLIDAY, Designated Federal Official
HEIDI LOVETT

JIM MCCALLUM
EMILY MENASHES
ALAN RISENHOOVER
STAN ROGERS
KATIE SEMON
GINA SHULTZ
JOSH STOLL

BOB TURNER
BOB WILLIAMS

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

(9:56 a.m.)

CHAIR RIZZARDI: Good morning, everybody. Thank you for getting here early for the subcommittee meetings this morning. I know the Budget and Strategic Planning Committee went well. I hope you guys had an equally productive session with the Certification discussion. And I know we're waiting on a few of the last-minute rec fishery people to get in here, but we're going to get started.

This morning we're going to have our discussion on Vision 2020. Patty has taken the leadership role in helping edit and compile everybody's comments on that. And thank you to everybody who has pitched in along the way.

Based on the edits she's gotten so far, we identified five topics that we're going to cover today. And after we walk through those five if there's need for some

more we can tackle that.

Minor edits you can just work with Patty and Heidi and get those changed. We don't need to discuss the minor edits that aren't changing the scope and content. But the big five topics are catch shares, ACLs, rec fishing, aquaculture and climate.

So over the course of the next couple hours we're going to hone in on those five topics, and I'm going to let Patty lead the team through the discussion. So thanks, Patty.

MEMBER DOERR: So first off, thank you to everybody who participated on the ad hoc working group. I think we wouldn't have the document we have without all of your hard work.

There was a lot of time put into the revised document, and so thank you, everybody, for participating, abiding by my timelines and providing some great recommendations.

For the benefit of the full MAFAC, I wanted to give you a bit, just sort of a quick run-through of what we, the ad hoc working group had done. We took the Vision 2020 document that was last approved, I think, four years ago, three years ago, and changed the structure around a little bit so it flowed by program area and talked about trends and recommendations by program area outlined by the budget.

And so most of the text started out as the original text. It was just sort of rearranged into the appropriate program area, and then there were a couple of program areas that needed new text including protected resources, habitat. I don't think enforcement, but maybe enforcement.

So there was some new language in there, and what you guys have seen via email and what was on the website is the latest version of the document that reflects the latest thinking of the ad hoc working group.

So there's some outstanding questions in terms of language in the five areas that Keith highlighted, but what I want to do today is sort of go through the document, only focus on areas where there is disagreement, and they should be in those five areas that Keith mentioned. Nobody else has brought up another area.

I trust that everybody has read the document coming into the meeting, and has come prepared for either alternative language if you want to see some changes, any recommended deletions, additions.

I have a golden rule when I work on documents like this that if you want to see a language change you have to draft it. Don't ask other people on the committee to try and read your mind and put it down onto paper.

So I trust everybody has read it, and as we go through this again we're only going to focus on areas where there's still outstanding topics to discuss.

For the timeline for this, so everybody gets a sense of what's going to happen, if we can't come to an agreement on a particular area in a reasonable amount of time and depending how the conversation's going, I'm going to recommend a small working group of folks to either email or sit down over dinner and see if you can figure something out, and then we can talk about it tomorrow morning.

We do still have time on the agenda tomorrow morning for this if we need it. I would love to finish up this morning. And then once we are done here with the changes, I will clean it up.

I'm going to work with Heidi to make sure some of the background statistics are correct. We're going to work with, I think we're going to use somebody at NOAA to help us with editing just to make sure we are grammatically correct and we have the typos fixed and the citations all look the same.

And then I'm going to write up an executive summary that will be used, just a one- or two-pager that will also be the handout for the document. It's just going to outline what is in the document. It will mirror it and therefore should not be any different than the document itself.

So that is sort of the overview. Any questions before we dive in? Am I making sense? Okay.

Phil's here. Phil, did Ken have to head out?

MEMBER DYSKOW: Yes. Ken is up on the Hill carving out borders between Mexico and he won't be here until probably after lunch.

MEMBER DOERR: Okay. With the rec fishing stuff depending on how things go, I think I might rely on you and Russ to provide some background on where some of the rec fishing language came from.

Okay, so everybody dive in and do

some work. Oh, we'll start at the beginning.

So as you'll see in the document there are some notes that have initials, P.D., that's me. I'm going to be drafting the executive summary and the introduction, so folks don't have to worry about that.

And all of the edits that were proposed I tried to remember to assign initials to it, to the person who proposed them. It's more as a reminder to those who proposed the changes to speak up and talk about them.

I'm sorry, I forgot about the appendix. You will also see if you go down, Heidi, to the next sort of big block of red. One thing that we are going to do to try and make this document more succinct and tighter is to delete the appendices. It has a lot of great background information but might not necessarily be relevant.

So I mean it's just sort of open for discussion and at this point in time, but

what we did try to do, the members of the ad hoc working group, was to pull up information from the appendices that should be included in the document.

So that is sort of what you see here in red, the front appendix at the end there, to sort of provide that context for the trends and findings. So I'm just going to go through this unless people have concerns about what is there. Speak up. Speak now or forever hold your peace kind of scenario.

(Off the record comments)

MEMBER DOERR: Yes, we're going to go through one at a time. This is just background information about recent landings. Anybody have concerns?

Yes, Ted?

MEMBER AMES: I didn't get my notes to you. I've been having computer problems and I got them resolved just today.

MEMBER DOERR: Okay.

MEMBER AMES: In any case, one of

the real problems that we have with catch shares is the fishing community in general really doesn't have their ducks in a row in terms of understanding how it functions.

And I suggested that catch shares are an economic tool that has led to success in some offshore fisheries but has limited ability to solve ecological problems, and I felt that was needed because using an economic tool to solve ecological problems is pretty tricky. It accomplishes some things but not a lot.

MEMBER DOERR: Did you have a specific spot in which you had --

MEMBER AMES: Yes. Following the last sentence, and I had it after ecosystems, implementation. Yes, I --

MEMBER DOERR: If you can read that again Heidi can type it in and then everybody will be able to see it.

MEMBER AMES: Oh sure. I have it on a thumb drive if that would be any help.

MEMBER DOERR: I think it might be quicker at this point if you read it. If it's just a sentence or two, if you read it out loud --

MEMBER AMES: It's just one sentence. Catch shares are an economic tool that has led to success in --

(Off microphone discussion)

MEMBER AMES: -- has led to success in some offshore fisheries, but has limited ability to solve ecological problems.

(Off microphone discussion)

MEMBER AMES: That's it.

MEMBER DOERR: Julie?

MEMBER BONNEY: Ted, give us an example, please.

MEMBER AMES: Gulf of Maine is just digesting this whole catch share business. And truly, if there was an area that needed consolidation among the larger scale fleet we're one of them, because we had the collapse of our Canadian, access to

Canadian fisheries that really has flattened stocks. What has happened is we have had a very rapid consolidation of the coastal fleet and they've virtually disappeared.

From the early '90s where you had over 5,000 owner-operator, small scale vessels, boats 50 feet or less, today you only have between 200 and 300 in all of New England. At the same time you have an industrial fleet that measured somewheres at that same time of about 250 to 300 boats, and today you have basically the same number.

Now the quantity of fish share is really the issue here. Those 5,000 boats were a real small community, fishing community economic engine. It provided equipment and materials, but it only accounted for 15 percent of the total landings in the groundfish fishery. That has virtually been eliminated.

And in Eastern Maine in particular it has ended up with local depletions that

extend for about 150 miles, where your predator species such as cod and haddock have disappeared today. Even though haddock are recovered on Georges and Western Gulf of Maine, they continue to be collapsed in this incredibly large portion of the Gulf of Maine.

Communities have lost access rights. The area that we work in at Penobscot East, primarily, we have 60 fishing communities all of them smaller scale and about 3,000 full-time commercial fishermen operating there.

And there are no groundfish, active groundfish permits left. There is virtually no quota available to that entire area. And historically that was a coastal shelf fishery for, oh, probably 150 to 250 fishermen. Most of those communities had a few boats that participated.

So basically what is happening for coastal fishermen is that they have lost access rights. Now this sounds oblique, but

what is missing is, the economic problem or the problem of large scale fishing damaging the fishery and TACs and quotas and the rest is a critical issue. It's needed to be done.

In Gulf of Maine it hasn't been done in a way that addresses the ecological problems that have caused the collapse of these fish stocks for such a large area. Some people say it's global warming, yet where approximately 200 miles north of Georges Bank and Mass Bay where there still are these species in incredible abundance.

So we need somehow to make people aware that catch shares isn't a solution to all problems. That there are ecological realities that need to be addressed too.

So I felt simply putting a statement and saying that it didn't address the ecological problems would broaden the perception for perhaps the Council or NOAA down the way.

MEMBER WALLACE: Well, I

understand what Ted said. I'm not sure that this sentence addresses that issue because the lack of fish was not necessarily the, caused by no fishing by the people from Downeast Maine.

But the fact is that if the fishery has a fixed quota that is below MSY and there are no other, and their size limits and what have you, then the catch shares within themselves have no effect on the ecological structure of a fishery.

And so, you know, while I don't really object to the sentence, you know, I don't think that it really fits in. As a principle I don't object to the sentence. I don't know how it really fits into catch shares.

Catch shares is a completely different issue than the ecological, and if they hadn't overfished the stocks in the Gulf of Maine and there hadn't been some ecological changes in the Gulf of Maine there would still

be some fish in the eastern area of Maine, but it was never a huge fishery. By Ted's own admission it was only 15 percent of the total fishery.

So I just see that as an interesting statement that I would probably put somewhere else, and it really needs a whole paragraph if you're going to try to explain it. Thank you.

MEMBER AMES: I have no problem with that. The issue I'm trying to get at is the species that are of value in the groundfish industry in eastern Maine and actually throughout New England are, they are stocks which reproduce, ensure, their nursery stages and juvenile stages are, ensure, and the harvest of them conducted by large vessels has extirpated those species from credible sections of the coast.

It's not the fault of fishermen. Good businessmen have said, well, this is a 35,000 square mile area that we can exploit if

we have the right size vessel. And they did.

And there are others which are the traditional coastal fishery, which is the basis of coastal economics particularly for rural Maine, has basically been put out of business, eliminated from that fishery and others simply because the system has been degraded, because the scale of the fishing effort that is occurring there or that used to occur there is the wrong size.

And if you use catch shares as a cure-all as it's generally perceived by the fishing community today you miss the whole dynamic of what's going on. The reality is 50 percent of the Gulf of Maine has no groundfish whatsoever.

The fishery is limited to maybe a half a dozen boats that continue to fish at a small scale in mid-coast Maine, but you have to go basically to Portland before you have a significant number of boats left.

It's an ecological problem that

needs to be addressed. I thought this was a way to start teasing it out.

CHAIR RIZZARDI: So I'm just going to try to offer some language that I think enhances what Ted has offered. On the "but" clause it would say, "but catch share implementation can be undermined by independent ecological problems such as fishery stock declines associated with changing ocean conditions," so it gives an example of what you're talking about.

It preserves the point, which is catch shares can be successful but they, independent ecological problems can --

MEMBER AMES: I think if you say "independent ecological problems" is better than your earlier --

CHAIR RIZZARDI: My full phrase was, "but catch share implementation can be undermined by independent ecological problems such as fishery stock declines associated with changing ocean conditions."

MEMBER AMES: Okay. Yes.

(Off microphone discussion)

CHAIR RIZZARDI: Catch share implementation can be undermined by independent ecological problems such as fishery stock declines associated with changing ocean conditions. Period.

MEMBER CATES: I have a comment to make as we start diving into this, and it's not related to this. It's not related to this particular issue, but more as I go through the document.

I don't know other than staff and maybe Randy Fisher if anyone was here when we started Vision 2020, but I just wanted to state we had a room full of people similar to this that had very different backgrounds, very different opinions, and it was a long, long process. It was a tough process to get to the document that you're seeing.

I will tell you that almost every word was vetted in the document. A lot of

time was taken to how much information should be on each subject, where the placement of the subject is. So I just caution that as you change the document take that in mind that a lot of good people put a lot of, lot of hard work into this, and it wasn't, I think it was two years maybe, and every word is important.

Every single word in this document and where it is, there's a meaning behind it or there's a reason for it being that way. The document didn't start out this way.

I know this group has its option to make its own mark on it, but as I read through some of the changes that are going to come up, I tell you, it hit me in the na'au, in Hawaiian it's gut, like, oh, this -- so proceed cautiously and take your time and just go through every, you know, be mindful of what was done in the past.

MEMBER DOERR: Is there any more discussion on Ted's suggested addition there?

Paul?

MEMBER CLAMPITT: I haven't had time to digest it, you know. I'm looking at it and most of these things I've seen, and this is new.

I don't think anybody's suggesting that catch shares will solve ecological problems, per se, anyway, other than it can help in by-catch issues if you, you know, aren't throwing fish back, now you're keeping them.

And so my point is, I don't know why it's necessary to put that sentence in there.

MEMBER AMES: I felt that too. But up to the point where you start talking to the fishing community in New England and/or Council members in general, there's a perception that catch shares solves, is a cure-all.

And it's a valuable tool, but it's not a cure-all because it addresses a different suite of factors then do the

ecological measures such as habitat or species diversity, et cetera. That was what I was simply trying to make a point that --

(Off microphone discussion)

MEMBER CLAMPITT: Not a cure-all for anything already so --

(Off microphone discussion)

MEMBER DOERR: Just to provide Ted and others a little bit of background because I'm not sure who all was there, but to build onto Randy's point about the original version of the document, we had extensive discussions about catch shares and the catch share policy that NOAA had put out a couple years ago. We devoted pretty much a whole meeting to it in Hawaii. Hawaii, right?

And so much of the concerns that you have brought up were brought up then and this is the resulting language that you see. So from my perspective, I feel as if your concerns about it not being a cure-all for fisheries management is reflected in there.

And we are attempting to keep this document as tight as possible, and also reflect, and this is just sort of for everybody, reflect the fact that the audience for this is, and this is something to keep in mind, that the audience for this document is the NOAA administrator and the Secretary of Commerce. So just sort of just keep that in mind.

But I just wanted you to know and others to know that there was a big meeting devoted, actually a meeting and a half probably, devoted to developing language on catch shares. And so that gets to Randy's point of a lot of this has been hashed out.

CHAIR RIZZARDI: So I understand, Ted, first meeting, Columbus, first meeting. You're getting thrown into a document that's near the tail end, so that does create some of the dynamic we're dealing with.

Just big picture context and a reminder, the document has been vetted as both

Randy and Patty have articulated. There's been drafts of this floating around since September. The final draft's been out there since the first week of October.

And what I'd really like us to do is as best we can, number one, remember this has evolved over time. We should be cautious in making further amendments. Number two, we've only got a limited amount of time at this meeting. All right, so if you've got specific proposals let's be a laser beam about it and plow forward.

And the third one is, remember that this is a consensus document. It doesn't necessarily mean that you endorse every word in it. Reserve your opposition for things where you're really, really concerned.

You know, there's a concept in consensus development called "standing aside." And if you can stand aside and in good conscience, you don't absolutely oppose it, that's okay. It is a consensus document, it

is not a unanimous document. So just three basic principles.

MEMBER AMES: That being said, if there's serious concern in the group about including that sentence it's fine to amend. My concern I've shared already and I felt that it would be valuable to have it in there simply as a clarification point. But if you feel that issue has been well vetted there, fine.

MEMBER DOERR: Thank you. It looks like Paul is still thinking.

MEMBER CLAMPITT: I'm just reading. It's just that we're adding more time to the document.

(Off microphone discussion)

MEMBER CLAMPITT: I said I didn't have a problem and I'm trying not to repeat myself.

The fact is that, you know, you could put that statement somewhere else in the document as just talking about the ecological

effects, because that's the core in the way I read it of what it's all about. And this is actually talking about just catch shares, and catch shares are an economic tool and everybody recognizes that.

And so I would take it out of this portion of the document. I may put it, an ecological phrase somewhere else in the document like in habitat or one of those places, but that's just my two cents' worth. Thank you.

MEMBER DOERR: So I'm not hearing any major heartburn over this, of re-including this. So if that's the case I'm going to suggest we leave it in and move on. Everybody comfortable? Okay, thank you, Ted.

If we go down to -- I'm sorry, I'm trying to find -- yes, so this is one of the sections that I can't remember if it was Paul or me that recommended pulling this up from the appendix. And this is then the trends and findings section again for sustainable

fisheries to sort of set the stage for the recommendations that are below.

(Off the record comments)

MEMBER DOERR: But again this was from the appendix. Language wasn't changed except for me tightening it. So it is not new. We'll give folks a minute to just refresh your memories since you've read this document already like three times.

Tony?

(Off microphone discussion)

MEMBER DOERR: The last sentence of the first paragraph?

(Off microphone discussion)

MEMBER CHATWIN: So for the record I suggest that we delete the "perverse" out of, or find a substitute way of communicating the negative connotation of a shorter season. It's just that word is kind of weird.

MEMBER DOERR: I'm good with just taking out the word unless anybody can think of a -

(Off microphone discussion)

MEMBER DOERR: Okay, down to the international fisheries management organizations. This was something that Paul had suggested to move up from, and I know this is not on one of the five list so --

MEMBER CATES: Have you left that section already?

MEMBER DOERR: Which section? We can go back. Was there something?

MEMBER CATES: Educate us on what HMS and RF and those --

MEMBER DOERR: Oh, HMS is highly migratory species and --

(Off microphone discussion)

MEMBER DOERR: Yes.

MEMBER CATES: So I guess the point I would have is we don't know where these, and the Secretary of Commerce wouldn't know.

(Off microphone discussion)

MEMBER DOERR: And can you do the

same for HMS?

(Off microphone discussion)

MEMBER DOERR: So again this was pulled up, this was something that Paul thought, I don't mean to, to pull up from the appendix.

MEMBER CLAMPITT: Well, I thought about Ed Ebisui. You know, I was just thinking about Ed Ebisui, and we don't really have anybody here representing the Eastern Pacific at the moment.

And I think this is kind of an important issue for them is the fact that, you know, they're not playing with an even deck out there because there's people from foreign countries that are taking advantage of these highly migratory species and they don't care what the quotas are.

So I thought it was probably not a good idea just to delete the whole thing. You know, we're getting rid of the appendix and I was just thinking, well, this is might be one

item that we might want to save.

MEMBER WALLACE: I agree.

MEMBER DOERR: Any other questions or comments about this paragraph? No, okay.

So then moving down to the recommendations, this is actually when Keith wrote off the list of issues with catch shares. The second bullet was actually the topic that the ad hoc group decided to defer to the full committee. And I believe it was, who was it that originally --

MEMBER CLAMPITT: Me.

MEMBER DOERR: It was suggested, Paul suggested the addition of the sentence that reads, "Any future allocation or quotas should be built into a management plan from the onset," getting to the economic uncertainty.

And so we started some discussions on one of our conference calls about the best way to address sort of the economic uncertainty that comes with potential

reallocation under catch shares. And the alternate language that you see there that starts with "management plan should include provisions," was my attempt at alternative language to address the concern of folks on the phone.

But I will leave it to the folks on the phone to speak for yourself as to what your concerns were.

Dave?

MEMBER WALLACE: Yes, I agreed with Paul on his language and I still think that it's appropriate.

MEMBER DOERR: Julie?

MEMBER MORRIS: Yes, it was Michelle and I who objected to the language because it seemed like it would be really difficult for all future, or any future reallocation of quota to be built into the original management plan.

And so I think Patty's alternative works well for me. It suggests that the

management plan should include provisions that would guide future considerations of reallocation of quota and that there would be a set of criteria that would guide those that could be included in the management plan.

I think that's a far more helpful, I think it is in the spirit of what Paul wanted and would be more helpful and operational.

MEMBER AMES: One of the difficulties we have, and I'm not sure that this addresses it, but one of the difficulties we have is that the groundfish fishery, in particular in the Gulf of Maine for boats 40 foot or in that vicinity, was a seasonal fishery. And diversity in fisheries is how small scale, coastal fishermen survive and they have basically lost access to the fishery.

And I've been hoping that somewhere in this there would be a provision that suggests how new entrants can be

franchised with credible amounts of quota.

The difficulty that exists today is that if you want to buy a permit with quota attached you end up being in a situation where you have to invest half a million dollars that's appropriate for a 60 to 90 foot boat and, you know, that's the bottom line even with a small amount of quota when you're looking for access rights for two or three months out of the year.

It's a valuable niche and we're still trying to sort out how to do it. But if there is some provision in there for recycling or reintroducing access, a mechanism for gaining access into a fishery rather than turning the coastal fleet into tenant fisherman, it would be very helpful.

The situation is, you can pick up a permit and if you want to rent quota, for example, codfish, the rent for a pound of codfish is about $1.50, $1.60, and the ex-vessel value is $2.00 to $2.50 a pound. So

you're really put into a difficult situation. That was all. Entrants.

MEMBER DOERR: I'm viewing that as something slightly different than reallocation. I'm hearing what your comments are about, sort of new entrants and not necessarily reallocation. So can we put that in the parking lot for right now?

Julie and Tony?

MEMBER BONNEY: I guess I'm struggling in terms of it seems like some of the recommendations under the catch share programs are kind of cherry picking some of the allowed provisions out of the Magnuson.

So I view this as the duration of a quota share allocation, you know, so you can have a limited duration or that you can automatically roll over for the next series for a quota share.

So this is basically flagging the idea that if you're going to, what, you can do an Australian drop-through where you meet

certain criteria, and if you meet those criteria then you know for certain what's going to happen with that quota in the next series.

You have the ability to design a program where your share is only good for 15 years and then it lapses and then the Council would have to decide what happens next.

So I think the two sentences say two totally different things to me. One says that you must consider what's going to happen with the quota share when you set out a program and the alternative, so it's basically saying you must consider reallocation when you define a quota share system. That is the alternative language.

While the other language says, if you're going to reallocate you need to tell people up front. So I don't know that they're tradeable, but I don't know what the compromise is.

I think in a catch share program

you need to consider a design that allows for a change in the allocation at some future date, but I don't necessarily believe that you have to do that.

So how you could reword that to try to meet the middle of the road which is, participants need to understand what their asset's going to be in the future, and you need to define that up front when you develop a program.

I'm fine with that, but the way these two things are structured I don't think it meets the middle of the road, and I'm not a big tweaker on language so I don't know who would be the one to come up with kind of a compromise.

But I guess what I'm saying is, yes, I believe that when you design a program you need to think about the durability of the privilege, but not necessarily that you have to do a reallocation sometime down the road.

MEMBER CHATWIN: Thank you. I

favor the alternative language. And just to maybe provide a hand here, when we discussed catch share policy, one of the findings of this committee was that it was important for catch share programs to have explicit consideration of how new entrants would come into the fishery. And I do think that is related to the issue of reallocation of quota. It can be.

So I would just suggest, and I was looking at all the bullets. We don't really have an explicit statement on new entrants in the future, so maybe it would address Ted's concern if we said, "the management should include provisions to consider future reallocations of quota and new entrants to the fishery based on," and again this is a Band-Aid.

We could do a separate bullet for new entrants based on the document that we did for catch shares in Hawaii. We can fish that out. I can look for that. But that was an

important one.

MEMBER CLAMPITT: Well, when these catch share plans are, you know, vetted and worked out at the beginning that's one of the major things that happens right off the bat is, you know, how long is this going to last? Are we going to have reallocation? And that's what goes on now.

But these earlier catch share programs like the one that Dave's been involved in and the one that I've been involved in, the pioneer ones, you know, they've been around for over 20 years, and now all of a sudden there's talk about reallocations.

Some of these people have put tremendous amounts of effort and money into these things and the idea of reallocation at this late date, you know, scares the hell out of everybody involved in those fisheries.

So I don't think we need to get all that complicated here because, you know,

your concerns and his concerns are being vetted now with these programs. I just want to make sure that people know what they have going into it when it happens.

So a simple sentence saying, "future reallocation of quotas should be built into the plan from the onset," really all you need.

MEMBER WALLACE: Well, you know, when you think about the dynamics, and I was highly involved in the first catch share program in the United States. We went through the discussion on new entrants and what have you, and it goes all the way back.

I love to get guys like Ted and ask them the one question and that is, before there was any Fisheries Conservation and Management Act, Ted was around before then, so was I, and I say, how did you get into business?

You got into business, you start off on a deck of a boat and then somehow you

earned enough money so you could buy a boat. So there's never been a free entrance into any fishery in the United States that I'm aware of. Well, maybe there is if you're walking down the beach and you don't have a rake or anything and you're picking up fish. But, you know, then it's just your sweat equity.

But the fact of the matter is, this notion that the programs that were put in place after this was vetted and said, we are not going to mandate changes in how quota shares are going to be transferred other than in the free market, then it becomes priced on that basis.

If there is a question that says your quota is going to expire in five years, then everybody recalculates what they can afford to pay for to have a reasonable return on their investment.

And this notion that after the fact we're going to propose to change the rules is very, very difficult. Paul's

statement says for any new group you put that in, the value of that quota then goes down.

The interesting thing is the little guy gets hurt most in that because if he has a little bit of quota now it's worth less. All those people that you wanted to retire, because this is an industry-funded buyout plan for overcapitalized fisheries. That's what it's for. And, you know, and if you erode it, all you do is just make it less effective. Thank you.

MEMBER DOERR: Heidi, I emailed you a sentence at my attempt to compromise language. So you could pull that up.

(Off microphone discussion)

MEMBER DOERR: Paul is the blue. I am the red.

CHAIR RIZZARDI: I'm not seeing much of a gap between --

(Off microphone discussion)

MEMBER BONNEY: That works for me if you guys want to hear that or do you want

to go with Patty has? Let's see if hers is, fits that.

MEMBER DOERR: Oh, okay. Sorry.

(Off microphone discussion)

MEMBER DOERR: Sure.

CHAIR RIZZARDI: Remember that when we draft this document, this is big picture, national level thinking, and at the regional implementation level there's always going to be devil in the details.

I think either one of those phrases still leaves that notion open. At the end of the day catch shares are implemented by the regional fishery management council with all that effort, you know, scrutinizing each of the individual needs there. And this concept's going to pervade this whole document.

So remember, we're thinking on a big picture scale, and remember there's going to be room for those details to work themselves out.

MEMBER DOERR: Ted?

MEMBER AMES: Yes. The difficulty that confronts Gulf of Maine, smaller vessel fishermen, and I suspect in other areas too is the permits no longer exist. It's been 20 years. The quota is attached to the vessel and the vessels are much larger than the traditional fleet that fishes the coast.

And if there's a pool of quota that's available for purchase that's one thing, but the situation that exists today is that fishermen if they want to attempt to go groundfishing. For example, they have to buy a permit from a boat that's much larger than their own operation.

I'm trying to find a way around it that it creates a pool of quota that can be purchased by this smaller scale fleet to maintain a traditional fishery.

(Off microphone discussion)

MEMBER DOERR: "During the development of a catch share program regional

Councils should consider provisions that address potential future reallocation of the quota and new entrants."

(Off microphone discussion)

MEMBER CLAMPITT: I don't either. You know, it's simple, a little more complicated, more complicated yet.

(Off microphone discussion)

MEMBER DOERR: Anybody have any concerns with Alternative 2 that's up there in green, or yellow? Does that work for you? Does it work for you, Julie?

Okay. Without any major heartburn, I'm going to suggest we go with Alternative 2 and move on. Excellent.

The other two bullets in red in that section came up from the appendix as well. The language should not have been changed. I would have just tightened it.

But there are a lot of recommendations included in the appendices that I thought shouldn't necessarily have been

lost since that is sort of the point of this document is to provide recommendations.

Okay, moving on to the annual catch limits recommendations. So I'm trying to refresh my memory on the annual catch limits discussion. We have two Julies going on. This section with the annual catch limits was a new section. Yes, although you recommended the deletion so I don't know if that was old language.

Does anybody have any concerns with deleting that first bullet? And then the comments over to the right that you can't see is that overfishing levels are set by the SSCs and not NOAA.

Silence means assention, folks, but this is something that was originally in there. No concerns? Okay.

(Off microphone discussion)

MEMBER DOERR: That first sentence would then come out, yes. Yes, just leave it for now.

Down to recreational fishing recommendations. There were a couple of deletions recommended by Michelle who is not here.

But the recreational fishing recommendations were developed by the rec fishing working group that we have that was established a year, year and a half ago, and vetted through them, and this group also saw them at the last meeting.

And unfortunately Michelle isn't here to talk about her recommended deletions, but did anybody -- Paul?

MEMBER CLAMPITT: I differ with her on deleting. She's not here to defend what she wanted to do, but "the fishery management plan should include analysis of quota share transfer between recreational and commercial sectors and should incorporate market mechanisms where appropriate," she wants to get rid of that? I don't agree with her.

We just went through a big allocation fight up in Alaska between the halibut recreational and commercial sectors and it's been pretty brutal for about ten years. And if there would have been something thought about to begin with when the program went through it would have been much less painful. So I just disagree with her on removing that.

MEMBER BONNEY: I guess my only comment on some of these is it's very hardwired. It isn't "could consider" or, you know, so I agree with Paul that you should consider some mechanism to allow quota transfer, but it says, "should include," so you don't really have the wiggle room as the Council that you're going to do it versus looking at it to see if it makes sense.

MEMBER MORRIS: We talked a lot about this in the Gulf fisheries, Gulf of Mexico Management Council, and it's very contested, very controversial. How to do it,

whether to do it.

Market mechanisms are a new tool that hasn't been used a lot in allocation fights or decisions in the Gulf of Mexico, and so to suggest that everyone should include that, I think, is kind of a radical step forward and I'm not sure MAFAC should be taking that step as a recommendation.

It seems like it's something that we've talked a lot about trying in the red snapper fishery, but I don't know if much progress has been made yet in terms of implementing it there. And it's very, very contested, very much not a consensus opinion in a place like the Gulf of Mexico Council.

MEMBER DOERR: Is there anybody else that had a comment on this? Randy?

MEMBER CATES: I agree with Paul. I think it should be left in.

MEMBER DOERR: I'm going to suggest that for now we leave this in here, and then Ken Franke, who's the chair in the

rec fish subcommittee, who couldn't be here this morning to speak to this as well.

And so I'm going to suggest we leave both of those things in, but if we could get Julie and Julie and Ken together with Phil and you guys can talk about softening that so it's not a requirement, and not a "should" but a "could possibly," to see if folks are okay with that.

MEMBER BROWN: Well, I would support what Julie is saying, because if you go back to the catch shares portion, you know, it clearly says that these are tools that some situations may not be used. So forcing the hand of people to using would be inconsistent with what's already in the text.

MEMBER DOERR: I would agree as well. I just think with the chair of that subcommittee not being here, and as he represented the working group, and the chair of the subcommittee not being here, I wanted him to be able to weigh in on it as well.

And so if Julie and Columbus and Julie want to get together with Phil and Ken this afternoon when he gets back, we'll sort of keep this one open. I think it's probably an easy fix. Great.

Russ, yes?

MR. DUNN: I have a couple, two questions really for clarity, for NOAA's interpretation of when this is finalized.

In the first bullet, referring to sale of recreationally caught fish, my question is, how would the committee view for-hire operators given that they are for-profit enterprises?

And in at least one case where certainly an Atlantic HMS, it's the for-hire portion of the fleet that can sell its fish. How does the committee perceive the for-hire, I don't want to use an inflammatory word, but sector of the fishery, portion of the fishery?

MEMBER DOERR: Mark, have we had discussions on that in previous meetings

about, I mean I don't want to get too far off from going through this document and the edits.

DR. HOLLIDAY: So the original 2020 was based on a prior MAFAC discussion about the sale of recreationally caught fish. I think we can go back to the record and find out the extent that it included the for-hire sector.

But there was a discussion at the time, I just don't want to rely on my memory to refresh all of the details of it. So I mean if it's for clarification for NOAA at some point in the future we can research that and get that offline.

MR. DUNN: And I'm not trying to drive it any particular way, I just think as it returns to us if we then, you know, as we begin and try and act upon these that recommendation may be one we need to know how best to or most appropriately to interpret it.

MEMBER DOERR: Randy, and then

Dave.

MEMBER CATES: We did discuss this. If you want to look it up it was at the St. Pete meeting in Florida, and Bill Hogarth was there. And it was a really good discussion and it was one of the rare meetings where the agenda was sparse enough to allow a lengthy discussion. It wasn't a rush thing or anything.

And the question it really came down to is, what is a commercial fisherman? And at the end of the day consensus was if you sell your fish you're a commercial fisherman, plain and simple.

So it did dive in, and if you want to go back in the notes, I'd go back in the minutes and look at that but it was vetted out pretty extensively.

MEMBER DOERR: Dave?

MEMBER WALLACE: If you go off on a head boat and you catch a fish, do you own the fish or does the boat own the fish? If

the boat owns the fish then they're a commercial fisherman and they have to abide by the commercial fisherman rules.

And so, you know, I've fished on charter boats before, and when we caught a fish then whoever caught the fish it's their fish, and then there are recreational fishermen. And I don't think the recreational fishermen should sell their fish because they compete directly with commercial fishermen.

I used to run a commercial fish stock. When we bought recreational fish, very poor quality, not well handled, and they drove the market down for the commercial fisherman. And so I think that we need to have a very clear distinction for all of that.

MEMBER CATES: You're right on that. And when we got discussing that what overlaps into that is HASP rules. And if you're a recreational fisherman and you're selling it, HASP comes in the line and there's laws against, you know, how you handle the

fish and what is supposed to be, traceability and all of that. So there are overarching rules already in place.

MEMBER DOERR: Did you have another question, Russ?

MR. DUNN: I did. In the next bullet, so the first sentence discusses increasing the effectiveness of MRIP and data quality. Then the second sentence goes on to voice a concern that if the data are used improperly.

And the question I have is, is that bullet trying to get really at improper use as the second bullet indicates or at the potential inadequacy of the data?

Is it saying what the committee really intends to or not, is my real question. Because I would view sort of data quality and improper use of the data, I can see the potential link, but sort of I just view them as separate issues. So I'd ask for clarification there.

MEMBER DOERR: Yes. I think this is again a discussion without having Ken here to speak for it because I think he's the person to sort of speak to what that means.

So if we have time, since we have time on the agenda tomorrow morning for this, maybe we can spend 20 minutes on the two rec fishing things, would be my recommendation.

Julie?

MEMBER BONNEY: I am just wondering since Julie and Julie and Columbus are supposed to deal with some of the other issues with rec with Ken, maybe we should just put all these in that category and try to sort it out and come back with, I think it's just clarity of language more than anything else.

MEMBER DOERR: I would agree. Thank you.

MR. DUNN: In the last bullet I think you're missing the word "and" after rec fishing. It just doesn't read quite correctly.

MEMBER DOERR: Thank you.

Okay, so that is rec fishing for now. The next two sections of recommendations in red on rebuilding stocks and the regional fishery management organizations, the international portion, that all came up from the appendices as well.

MEMBER BONNEY: I have a question.

MEMBER DOERR: Julie and Julie.

MEMBER BONNEY: I guess I'm having trouble with the, and this is another rec question, but "NOAA should shift recreational management to be based on number of fish caught in contrast to number of pounds caught."

There again they "could" but I don't know that they necessarily "should." I mean I think there's tradeoffs in either accounting mechanism, so I think it should be softened, so to speak.

MEMBER DOERR: I'll add that to the list. Julie? No.

Any concerns with the text in red there about rebuilding stocks in the international RFMOs? Again they came up from the appendices so this is not new language.

Okay, moving on. Down to, Heidi, bottom of Page 9, for protected resources. Yes. This falls under the climate change category of our list of five.

We had two areas that were still up for discussion. It's this area with ocean acidification and corals, and then towards the end there's a changing oceans section that talks about sea level rise. So it falls under those two areas.

This was new language. The original language, not new. The recommended changes were made to the original language to provide a little bit more clarity.

Paul, then Julie, and then Dave.

MEMBER MORRIS: Actually the 2020 Vision that we were revising didn't have a section on protected resources, so the whole

protected resources is new language that was developed by the subcommittee over the summer. We had just neglected to address protected resources in the earlier versions of 2020. Just wanted to clarify that.

MEMBER DOERR: Thank you.

CHAIR RIZZARDI: I have already been sidebarring on some issues on the protected resources section. I realize it's not the first five. I'll have very specific language that hopefully will be a quick insert and revision to the text for tomorrow. We'll follow up on addition discussion.

MEMBER DOERR: Okay. Paul?

MEMBER CLAMPITT: Well, just my concerns with some of the language is the absolutes is really all it is. It's just, you know, that a lot of this is preliminary studies. They're not very well vetted. It's ongoing.

And, you know, the absolute language, you know, I prefer "may." "Warming

ocean water and acidification pollution and sedimentation "may" place corals at risk." That's my only complaint.

And then I wanted to add, there wasn't a lot of talk in here about sedimentation and, you know, the removal of herbivorous fish, and I wanted to add some of that because that also stresses corals, I think, probably more so than acidification does. And that's just where I'm going with my comments.

MEMBER MORRIS: Yes, Paul made those comments when we had our conference call about this, and so this section was rewritten and referenced to include the references and to talk more about smothering in sedimentation, and herbivorous fish. So this was rewritten to address your concerns, Paul.

MEMBER CLAMPITT: Well, thank you. I appreciate that. On the first sentence, you know, "may" is crossed out. It probably should be after "sedimentation." I don't know

or I would change it. I know sedimentation absolutely places corals at risk. That's a fact, and pollution.

But ocean acidification I think is still a study that is relatively new and I'm not so sure. I read your article by the way that you gave me and there was some things in that that were a little bit sketchy, in my opinion.

MEMBER DOERR: Pam?

MEMBER YOCHEM: That was going to be my only comment is that he had suggested that "may" be added back. But you already said it.

MEMBER CATES: I agree with the comments. The issue is not a foregone conclusion though many try and make it a foregone conclusion. But based on science it's not a foregone conclusion yet. So inserting "may" I think is very appropriate.

MEMBER DOERR: Dave, and then I'm going to ask folks if anybody has heartburn

over inserting "may."

CHAIR RIZZARDI: I'll do it in the interest of compromise, but I'm going to say there's no question that pollution and sedimentation place coral at risk.

MEMBER CLAMPITT: I agree with that.

CHAIR RIZZARDI: I mean it's absolute, so the statement is still true as written. Even if you reject ocean warming and acidification, pollution and sedimentation do place them at risk. So the compound of the four concepts with an "and" is true.

MEMBER DOERR: Paul, then Julie.

MEMBER CLAMPITT: I think just -- written. Now you could, you know, sedimentation and pollution, absolutes. But warming ocean and acidification, I want to see "may."

CHAIR RIZZARDI: Which goes back to the Patty rule, and if you have changes to offer then come in with language.

MEMBER CLAMPITT: I did. I did. I sent it to her and I handed it to her.

MEMBER DOERR: Yes. Heidi has it.

Julie, while Heidi pulls that up?

MEMBER MORRIS: Well, it seems like we have a pattern at MAFAC that anytime we generate a document that tries to talk about climate change, acidification, ocean warming, Randy and Paul say that they don't believe --

(Off microphone discussion)

MEMBER MORRIS: -- is a problem, and so, you know, we have references from well regarded journals like Science and Nature that support these claims, but still we always step back from firmly saying as MAFAC to NOAA that these are real problems, that we need to be anticipating for the future and planning.

And it's very frustrating to be at a group like MAFAC and have our progress, these issues keeping held back by a small number of people who doubt these issues, doubt

these effects, and have an alternative science that supports that.

MEMBER DOERR: Oh my gosh. I do not see the order, and so I'm going to go with Paul, Tony, Bob, Ted, Randy, Dave.

MEMBER CLAMPITT: I've never said that I didn't believe that climate change is happening or that there's a possibility of ocean warming. I'm just saying that I don't like these absolutes. I think there's a lot of studying to be done yet, and I'm not a proponent of catastrophic climate change. I don't think it's going to be catastrophic. That's all.

MEMBER DOERR: Tony?

MEMBER CHATWIN: Thank you. First of all, I'd like to say that I'm really pleased that this language is in here. I think recognizing that tackling all the stresses that may or may not impact coral improves their resilience to other impacts. I think that's a key message that's in there.

I think we don't have to get into a big dispute about whether there's a "may" or "may not" in there. I would personally go with the language that's there.

I would also go with the suggestion by Paul that sort of splits out, I'd have one amendment which is, I think there's no question that warming, warm waters can and do impact coral. There's bleaching events that are associated with temperature.

I mean that, without having to get into the argument of where that comes from, you know, what's driving that warming, if coral's outside of their temperature especially on the high side, they will bleach, and if they are further stressed they'll die.

So either way I don't think we need to have a big debate about this. I think this is good, and if "may" will get consensus I would support it. If we want to separate it, I would support acidification being described as an emerging potential threat to

corals, but I think warming, sedimentation, pollution, those are all proven threats. Thanks.

MEMBER AMES: Very briefly, I agree with Tony and with Julie as well. You have to face reality. There are certain things that do affect corals, and it's been well established, well documented and peer reviewed information about it. And we need to incorporate the reality that these are factors within it. So I agree with where Tony has ended up with.

MEMBER CATES: Well, a couple of comments. I have a whole business that deals with corals. That's part of the work that I do.

I was a general contractor when a Navy ship went aground and destroyed a reef in Hawaii, and I've been general contractor on two other large vessels that destroyed a reef and gone out and repaired the reef. And I work with NOAA scientists and others that,

their field of expertise is in corals.

So I make my comments based on that I've got some background working in, around and trying to repair the corals and what affects them and what doesn't. And I've had a whole career in dealing with science and scientists starting at age 15 training dolphins.

So my point is this, when it comes to global warming or corals or any issue, science should always be questioned. Where I get concerned is when people get upset with people that do question science.

A good scientist is very proud to defend their science, and when you have a body or an organization that criticizes the critiques that's what concerning to me. There's nothing wrong with questioning whatever work that be done. That's what we should be doing and you should verify.

With regards to global warming or ocean acidification there's always this

tendency to jump on the folks that question it, and that's what I find alarming.

So having in the words "may" or "may not" or whatever it is, I don't see anything wrong with that. If it's proven to be true then defend it.

With MAFAC, for those that are new, it was a struggle for years at the request of MAFAC, myself and others, to even get the issue heard. And that was alarming to many that supported the theories of global warming and ocean acidification. Why was it so difficult to get the person to really even present the work, unlike any other issue we've ever dealt with?

So my only point is, whether some field that some of us are always raising as an issue, we should, and all of you should raise, if you have concerns on whatever it is, catch shares or anything, you should raise it and question it. There's nothing wrong with that.

MEMBER DOERR: Thank you. Dave,

and then I'm going to --

(Simultaneous speaking)

MEMBER DOERR: I'm going to make a recommendation to move us forward here.

MEMBER WALLACE: To Ted.

MEMBER AMES: Very briefly, no one's questioning the right or need for challenging information. Certain things like pollution from the Everglades drainage system and its effect on coral has been well established numerous times.

I was on a National Academy of Science study group with Dave here, and that was examined in great detail. The effect is really well established. There are others that are less clear, but my sense is the consensus of scientific opinion on this is that it's happening, and I signed on to it.

And I certainly don't insist that everybody on the planet agrees with that. It's just that after you've reviewed half a dozen papers saying the same thing that are

peer reviewed, then you end up saying, oh, yes. Well, it looks they've found a soft spot in our knowledge about the system. That's all.

I concur very comfortably with your challenge to science, Randy. It's not a problem at all.

MEMBER DOERR: Thank you, everybody. I'm going to make a recommendation in here so we can move forward.

I'm going to, building off of Tony's recommendation of, and Paul's desire to sort of split things out, I will take it upon myself to split out that trend in italics, and talk about ocean acidification as a potential emerging threat to corals, and sort of have everything else as is.

In concept, are folks okay with that? And I'll have specific language tomorrow morning.

CHAIR RIZZARDI: Good. Thank you.

MEMBER DOERR: Does that work?

Okay. Thank you, guys.

Moving on down to habitat. We have a new habitat section here that I hope everybody took the time to read. It focuses on essential fish habitat with two different recommendations about EFH and then the Clean Water Act in relation to wetlands.

Tony, did you want to speak to this at all since it's a new section or just leave it to folks to read it and comment?

MEMBER CHATWIN: Thank you. It is a new section, but I was just going through my MAFAC notes and a lot of the things I said here I said back in 2010 on EFH, so it shouldn't be new to MAFAC.

But the essence of it is, and I would encourage you to read it because in the document the actual words used are important. But the essence is, EFH is a tool that gets NOAA a seat at the table, and the better the information that is used to designate EFH the more effective NOAA can be with using that

tool.

And so all it's calling for is for continued, for the agency, and I'm using words that are not in here, but to invest in EFH so that future EFH designations are using Level 3 and Level 4 information, which ties EFH to productivity of stocks.

I think everybody wins if we have EFH that is designated at that level. There'll be less, I think the EFH designations won't be as expansive as they are now, and they will be more valuable.

I think understanding how habitat ties to productivity will allow fisheries managers to incorporate it or give it credit as a fishery management tool and give habitat protection, give credit as other fishery management tools.

And so that's the spirit but you should read the actual language. And that's that and I'm happy to discuss it.

MEMBER DOERR: Any comments on the

habitat section? Keith?

(Off microphone discussion)

CHAIR RIZZARDI: I'll have it tomorrow morning.

MEMBER DOERR: Okay. Should we move on to aquaculture in the meantime?

CHAIR RIZZARDI: Yes, please.

MEMBER DOERR: Okay. So Keith will --

CHAIR RIZZARDI: And I think it's accepted as friendly. I've already shared --

(Simultaneous speaking)

MEMBER DOERR: Okay. So we may have a couple of additions or changes to the habitat from Keith that we'll look at either when we finish up or tomorrow morning.

MEMBER CHATWIN: And just one other comment. In other places in the document there are references to and recommendations about habitat, and I did not replicate them in this section.

MEMBER DOERR: Which is

appreciated.

MEMBER CHATWIN: Okay. Just so folks know there is habitat in other places.

MEMBER DOERR: Yes. Okay. If anybody has any recommended changes for habitat get it to Tony this morning along with Keith's, and we can take a look at it either when we finish up if we have time or tomorrow morning.

Moving on to aquaculture. This was, I think, the final list of four or five issues we had from the ad hoc calls. This was language, the original aquaculture language from the original Vision 2020 document. Bob made some edits to tighten up the language and then there were additional recommended deletions.

So if we go down to, yes, that section right there. This is in the related trends and findings. Anybody have any comments or concerns on this? We are on Page 14 for those on your computer.

George?

MEMBER NARDI: I don't have any significant changes on the initial edits there that tighten up the sentence. I just want to confirm the last bullet that "'there's no current legislative authority," and I'm assuming, you know, that is correct, so I just want to have that confirmed by NOAA.

I know if the Gulf rules were moved forward and signed then maybe we would, but until that's done I just want to confirm we don't. And then maybe we'll deal with that section before we get down to summary recommendations.

MEMBER DOERR: Mark, if you could provide that clarification, and then Randy.

DR. HOLLIDAY: I am not the aquaculture expert, but I believe that the assessment that you said is correct. It's not in place.

MEMBER DOERR: Randy?

MEMBER CATES: So my understanding

of the situation we're in now is that the Gulf Management Council has asked and implemented an aquaculture and the ability to issue leases.

The administrator agreed to it and basically said that they would draft the rules that the companies would have to abide by, so they've been in a stalled status for several years now.

Now a separate issue that I've had to deal with in the Pacific Islands, Saipan and other areas that are under the U.S. laws and that the federal waters goes all the way to shoreline, are desperately needing aquaculture and requesting it.

West Pac has stated that they believe they have the authority to issue leases or permits and have grown tired of waiting for NOAA to act on that. So I do question, because I've heard two difference of opinion from two different Councils.

One Council said they do have the

authority, the other is saying they have to wait for NOAA to implement the rules. And I am questioning, where are we with that?

DR. HOLLIDAY: So Sam briefly talked yesterday about the goal for 2013 was to get the regulatory framework for the Gulf of Mexico FMP in place. I think the Western Pacific Council, of all councils, have authority to promulgate fishery management plans, only the Secretary of Commerce has rulemaking authority.

So a Council cannot independently implement a rulemaking or a regulatory framework regardless of what their approved FMP says. That's a division of labor between Councils and the Fishery Service.

So what's been lacking is the implementation of the provisions of the fishery management plan for the Gulf of Mexico that have to be promulgated through the Secretary by notice and comment rulemaking.

So it's a subtle distinction, but

I think there is authority for all the Councils to, and that's if they recognized capability of the Councils to undertake aquaculture management in the EEC. And the implementation of what the Council in their approved amendment to the Gulf plan is those regulatory amendments have to be implemented by Commerce.

MEMBER RHEAULT: Just to clarify, we don't have current legislative authority to lease waters, in federal waters, for federally managed species. Yes, the Councils could and yes, NOAA could do rulemaking. Yes, Congress could get back to work and pass legislation.

All sorts of things could happen, but currently there's no legislative authority to grant a lease that would allow a grower to have ownership rights over a federally managed species in federal waters.

And I tried to address your concern about the Pacific. I hope I achieved that in both the recommendations and in the

trends.

MEMBER DOERR: Are we all clarified? Okay. Moving down to the recommendations, most of which were original language with some recommended edits from Michelle who is not here to speak to them, unfortunately.

George and Tony?

MEMBER RHEAULT: Can I just clarify where we're coming from here?

MEMBER DOERR: Yes, please.

MEMBER RHEAULT: The status of what I wrote and what is being crossed out here, so I wrote that we "must prioritize advancement," and I believe that that was Michelle who deleted that.

I wrote that it "would create jobs and support coastal communities." Michelle suggested deleting that. And then Michelle suggests adding that "wild stocks must be protected." And we have disagreement on that because that's already existing law.

And then I wrote that "the U.S. government should prioritize," on the bottom there, and Michelle suggests deleting that. And there we came to loggerheads.

MEMBER DOERR: Just to clarify. This is just the first bullet?

MEMBER RHEAULT: Okay.

MEMBER DOERR: No, I'm asking, or are you talking about all?

(Simultaneous speaking)

MEMBER RHEAULT: -- got all the recommendations on this page and then there's another one, I believe, on the next page, another bunch of them.

MEMBER DOERR: Okay. George, Tony and then Randy.

MEMBER NARDI: I think Bob just said what I was going to say essentially. And I'm going to put to the committee that I suggest we revert to Bob's language and delete, in my opinion, whether it's a motion or comment, I disagree with Michelle's

changes, and I would recommend that either the original language or the language Bob had just described be the language recommended by the committee, is my recommendation.

MEMBER DOERR: Tony, Randy, then Dave. And I think we'll work off the recommendation on the table of George's, to revert back.

MEMBER CHATWIN: So just a question, a clarification question on that. Would that include the last bullet, which is, NOAA should work with lawmakers to craft legislation?

MEMBER NARDI: I didn't get, is that on the next page?

MEMBER CHATWIN: Yes.

MEMBER NARDI: No, right now I'm just on this page.

MALE PARTICIPANT: On just the first two bullets?

MEMBER NARDI: One, two --

MEMBER CHATWIN: Fair enough. I

just think that your statement was to delete all comments. And so I think that last bullet is actually a, I don't know if that's the actual language that should be used, but of all the, it's the one that says, by 2020 we want to have this legislation in place that provides the authority that in the findings we said was missing.

And I think that that's a concrete goal and a visionary statement for 2020. We may want to tweak the language, I'm open to that. But I just think, my question was to the aquaculture subcommittee, is thinking of this as recommendations where we want to see things by 2020.

Statements like, "NOAA should continue to support the development," to me it could be strengthened. What is it you want NOAA to accomplish in this time period with regard to our aquaculture?

And I think that when I read this language I didn't see that in there except for

the one bullet where it talks about actually crafting legislation.

MEMBER DOERR: Randy, then Dave?

MEMBER CATES: A couple of points. The first point is, I'm only going off of what's on the page so if we're going to go ahead let us know.

MEMBER DOERR: Let's start working off of the first --

MEMBER CATES: The first five?

MEMBER DOERR: The first, what you can see on the screen there. The first two.

MEMBER CATES: Okay. So I just want to make sure that we're -- I want to put this in context of what we went through when the original draft came about.

And believe me, there was a room full of people that were not very warm and fuzzy about aquaculture. But as time went on it shifted to the point where very strong language was needed for where this document was going, and the document was going to who

we report to, the Secretary of Commerce, and the need for aquaculture.

So as you go through this and you see some very strong language, please keep in mind that that was on purpose. The committee came to the conclusion that it needed to be because so much misinformation about aquaculture.

Aquaculture was taking a backseat for so long that it needed to be up front and center, and I still think that that needs to be that way today. That's what the MAFAC original members came to the conclusion where it was placed, the language. It may seem heavier than other sectors. There was a purpose for that.

MEMBER DOERR: Dave, then Keith?

MEMBER WALLACE: I agreed with Bob's comments, and I think that that's probably what this document should say. Thank you.

CHAIR RIZZARDI: One of the things

that MAFAC is usually pretty good at as a result of our consensus body is achieving measured language. You know, we usually moderate the really strong stuff, sometimes incorporate alternative perspectives.

The two bullets, I agree with the first bullet. I think the first bullet is fine. There's truth in the second bullet as well. In fact, the second bullet to some extent is already agency policy, if you think about what happens in the Pacific Northwest and the way we have hatcheries and how we try to make sure that the hatchery-bred salmon aren't genetically interfering with the endangered species of salmon that are in the Pacific Northwest.

So maybe there's an opportunity to put some measured language on the second bullet and retain it while at the same time reverting back to the language of the first bullet.

MEMBER DOERR: Are your comments

specifically to these bullets? Okay.

MEMBER CATES: The problem with that is it's a tool that's misused often towards aquaculture. All sectors of fishing, there are already rules and laws in place that do specifically what this says. By having to restate it and restate it throughout, we don't do that in other sectors through our commercial fishing sector, throughout the document.

And this came out in the original part where it was almost like alarm bells going off as the Secretary of Commerce would read the document. So there are already current laws within NOAA that do exactly that.

And the question is, do we have to keep on restating and restating it? And is the purpose of restating it to raise concern for the person that's reading this? And we don't do that throughout the document in other sectors, so that would be my objection to doing that. I have no problem with the

language, but it is not necessary.

MEMBER DOERR: Okay, Randy and then Julie, and then I'm going to make a suggestion for these two bullets and move forward.

MEMBER RHEAULT: I have a suggestion, to finish it.

MEMBER DOERR: I'm sorry.

MEMBER RHEAULT: I'm proposing language here that would say we should continue to enforce the laws that exist that protect wild stocks from genetic pollution. If you want to have that language in there, I just want to hammer home the fact that it's already in law. Thank you.

MEMBER DOERR: Did you want to say something, Mark?

DR. HOLLIDAY: Sometimes I just need to make an intervention because the committee has already endorsed previously the NOAA and DOC aquaculture policies that speak directly to protecting from genetic pollution,

that speak to those things that are red-lined there for creating jobs and supporting coastal communities. That's language that's in the policy for NOAA and the Department.

So I'm just, I want the committee to be consistent when it's choosing to include or not include things, to be consistent with its prior, this was June of last year, decisions about whether or not we felt the policies were valid and, in fact, you helped create the content of the policy.

So it's just an intervention to be mindful of where you come from in supporting previous statements to the --

MEMBER DOERR: Thank you. And that's --

(Off microphone discussion)

MEMBER DOERR: Yes. To move us forward here, I'm going to recommend in the first bullet we retain the original language and delete the MLE.

In regards to the second bullet,

it sounds like we have, are folks okay with taking back out that second bullet? Okay. You can delete, yes, delete the second bullet, and then moving down.

So the second and third bullet, to go back to what Mark just said about staying consistent with what we've previously said, then I would suggest that we also revert back to the original language on the second and third bullet. Paul?

MEMBER CLAMPITT: On the second bullet, the U.S. government should prioritize? I mean we'd all like to have priority.

(Simultaneous speaking)

MEMBER RHEAULT: That was in the existing language from the Vision document 2020, version one.

MEMBER CLAMPITT: Prioritize? I don't think I was involved in that unfortunately, so thank you. I wasn't here then. So just that aquaculture shouldn't get grants, and I'm not suggesting that they

should, I just think that "U.S. government should support aquaculture and grant other financial assistance" would be more appropriate from "prioritize." That's all I'm suggesting.

MEMBER DOERR: Heidi, could you reinsert those two bullets so we can work off of them?

MEMBER DOERR: Thank you. Randy?

MEMBER CATES: Regarding that last bullet point --

MEMBER DOERR: Well, can we stick to the second and third bullet point?

MEMBER CATES: Oh, I thought we were beyond that.

MEMBER DOERR: I'm sorry. Paul has suggested a word change to "prioritize."

MEMBER CATES: Should support. That's specifically what I'm referring to.

MEMBER DOERR: Oh, I'm sorry. I thought you were going down to the last point.

MEMBER CATES: I think the

language should remain as it is. It is already policy within the law. When you go to get financial assistance the highest priority is for aquaculture. And it's a struggle.

It's a real struggle for any aquaculture facility to qualify for financial assistance. I think if the language was taken out it would be virtually nonexistent, the opportunity, because we are a new industry and we're different.

You know, I remember going through the financial loan program through NOAA, and they flat out told me, if you were a longliner this would be an easy case. But only because the language that they had to work off was that it had the highest priority as mandated by Congress that they were able to work through and make it happen. If that's taken out, I think the opportunity would be virtually nonexistent for any venture.

MEMBER DOERR: Any other comments on Paul's suggestion? Do you have any

thoughts on --

MEMBER CLAMPITT: Apparently it isn't getting too much traction, so I'm fine in the, you know, leaving it the way it is.

MEMBER DOERR: Tony?

MEMBER CHATWIN: I hear what Paul is saying. I don't hear him disagreeing that there should be more financing available to aquaculture. It's just the way it's stated as I understand it. Because I could see the rec sector, recreational section of this saying recreational fishing should be prioritized in grant making, then the commercial sector will want the same, right, and I would say habitat should be prioritizing grant making.

So I think that's the issue. It's just inadvertent consequence. So maybe there's a way to say that, well, I don't have specific language yet, but --

MEMBER DOERR: Bob, and then I'll make a suggestion to move forward.

MEMBER RHEAULT: I would just say

that, you know, this is a very young industry and it is in need of support, and that was existing language from the version one of the 2020 and I didn't mess with it. I didn't insert my own feelings on it, but I still think that priority is needed.

MEMBER DOERR: I'm going to suggest we move that to a lunchtime discussion for you guys, and sort of keep it as is right now since I'm not hearing a very strong desire to change it. You guys can talk off line to see if there's another word you want to use besides "prioritize."

CHAIR RIZZARDI: To help with that discussion I just want to suggest that you go back to the aquaculture plan which has a section in it discussing the social and economic benefits of aquaculture, and you can probably mirror some of the language from there and incorporate it here.

MEMBER DOERR: Bob, can you remind me on the last two bullets there? The second

to the last bullet is just sort of tightening up the language and making a clarification.

MEMBER RHEAULT: So again, the red line is Michelle's suggestion to delete my clarification that this can be achieved through existing U.S. laws and regulations.

I guess I don't really have a problem with the alternate language of enforcing existing regulations to meet these goals. It says the same thing.

MEMBER DOERR: Are folks okay with that? Randy?

MEMBER CATES: I'm fine with that. But the first bullet that she took out, I think, should remain in there. I want to make sure I'm on the right place here.

MEMBER RHEAULT: Domestic aquaculture industry?

MEMBER CATES: Yes.

MEMBER RHEAULT: I think that's back.

MEMBER DOERR: It is.

MEMBER CATES: Okay, it's back. Fine.

MEMBER DOERR: And then the recommendation was to include, Tony had recommended to keep Bob's new bullet at the very end.

So just to clarify on the second to the last bullet, we would keep the enforced existing regulations and implement regulations that meet these goals, and then keep the last bullet that Bob has added.

Ted?

MEMBER AMES: I have a little concern on the second bullet because I think Tony's perceptions were on point. Perhaps the U.S. government should consider prioritizing rather than making it such an absolute.

MEMBER DOERR: We were going to have offline conversations over lunch to see if there was better wording for that. So that will remain open.

Tony?

MEMBER CHATWIN: And it's a question really. That last bullet, and from my perspective is one of the most important ones, shouldn't it be the first bullet?

MEMBER RHEAULT: Okay. I support that.

MEMBER DOERR: Excellent.

Okay, moving on. Columbus?

MEMBER BROWN: Before you move to another section, going back to the section where they talk about their trade deficit, it's on Page 14, and it was suggested that they change that language. The --

MEMBER DOERR: Are you in the recommendations? Where are you at? I'm sorry.

MEMBER BROWN: Yes. Page 14, under domestic aquaculture industry.

MEMBER DOERR: Okay, yes.

MEMBER BROWN: Okay, the language is, "our national $10 trillion seafood trade deficit." Well, the trade deficit is not $10

trillion. It's $42 billion.

And if you're talking about the $10 trillion, that's a totally different number. That's our budget deficit. And if you change that number to the seafood deficit then you'll need to get the right number from NOAA to indicate what percentage of the overall trade deficit that represents.

MEMBER DOERR: Thank you. We'll work with NOAA to update that number.

CHAIR RIZZARDI: I just want to double check on the movement of that bullet and where it ended up.

MS. LOVETT: It ended up at the bottom.

(Off microphone discussion)

CHAIR RIZZARDI: I wanted to suggest that it be the second bullet instead of the first, because the first bullet, I think, still remains, "the U.S. should continue to support a domestic, environmentally sound aquaculture industry."

And then the next concept should be, go get legislation that would do that.

(Off microphone discussion)

CHAIR RIZZARDI: The green language simply moves below and becomes an independent second bullet.

(Off microphone discussion)

MEMBER DOERR: It should be, make it the second bullet, total? So it should be after, "the United States must prioritize a domestic, environmentally sound," et cetera.

(Off the record comments)

MEMBER DOERR: Okay, we have until 12:00 or 12:15, Mr. Chairman? I have two different agendas. Okay, we have six minutes. Five minutes to move on down to the second climate change issues. Top of Page 18, Heidi. Right there.

So I'm actually going to recommend something here. Paul and I have been talking about this section of how to have it read in such a fashion that addresses both what

regions are seeing when it comes to changing oceans versus sort of overall and some of the blanket, the direct statements that Paul has spoken to before.

So I will volunteer to work with Paul to have specific changes to this for us to look at tomorrow morning. And as I say that, is there anything else that, any issues people want to raise with this paragraph that Paul and I can consider? None?

FEMALE PARTICIPANT: Give us a little more time.

MEMBER DOERR: Okay. Yes, Tony?

MEMBER CHATWIN: I have a question.

(Off microphone discussion)

MEMBER CHATWIN: Starting with this paragraph. But I'm not sure where in the document to insert this, and I'm happy to have this discussion tomorrow.

But there is, "although great strides have been made in terms of reducing or

eliminating overfishing of the stocks of which the status is known, there is still about 50 percent of the stocks of which the status is unknown."

And I would like to include language, and I can provide it tomorrow, in the appropriate section that calls for NOAA to continue lowering the number of unknown stocks, or the number of stocks of which the status is unknown.

MEMBER DOERR: I think that would probably go into the first section, the Sustainable Fisheries. So at this point from my tally we have a couple of smaller, holdover issues for tomorrow morning.

So in terms of next steps, I will work with Heidi to clean this up as much as possible and send it back around for folks to be able to look at. But we have my list, my tally of issues that folks need to get together on either at lunch, during a break or at the end of the day today.

I'm hoping each of these issues won't take folks a lot of time, just ten minutes of discussion. There's some clarifications and questions in the recreational fishing section, Ken, that we deferred until you were able to join us to provide some guidance as the discussions with the subcommittee and the working group. So I can fill you in on those.

For the ocean acidification and corals, I am going to work to split out that trend of how we talk about the threats to corals and ocean acidification. Paul and I are going to work on the sea level rise.

Tony is going to have some language on unknown status of stocks. Keith has some language on protected resources and habitat. Am I missing anything?

(Off microphone discussion)

MEMBER DOERR: And prioritize, the aquaculture discussion.

Keith?

CHAIR RIZZARDI: Yes, I had one other thing. In the cross cutting area to ocean governance, I've had a sidebar with Tony.

Based on our last meeting, we already came up with as a body a statement on our views about NOAA as the premier ocean agency. And recognizing that the big concept of reorganization is still out there, my thought was that we might be able to tweak our prior statement and incorporate some language on NOAA's primacy in this role.

MEMBER DOERR: That would be great. Julie?

MEMBER MORRIS: During the discussion this morning I received suggestions from both Tony and Keith on rewrites on two of the bullets under protected resources and an additional bullet under protected species, protected resources recommendations. So I've worked that in as a draft and we can look at it tomorrow.

MEMBER DOERR: Thank you. So if everybody who I have flagged can get language, send it to Heidi and me and we will work to incorporate it into the document, and then hopefully by the end of the day have a fresh, clean document for people to look at that only has track changes for this new language that we still need to talk about. Everything else is going to be clean.

So I'm going to again ask and request that everybody make sure you take the time to read it and that it is a document everybody can support when we finish up discussion tomorrow morning.

Keith, Mark, did you guys want to add anything in terms of process or thoughts?

CHAIR RIZZARDI: So for tomorrow we've got subcommittees for Commerce and the ESA group from 8:30 to 9:30.

The Commerce group, I don't know, did you guys finish where you need to be with the development of a plan for -- you will

meet, okay.

So then 9:30 we've got an update on conservation and management from Eric, and at 10:15 we've got a slot for Vision 2020 which is slated for an hour, 45. Well, actually it's more. It's two hours, 15 minutes for final discussion and ratification of Vision. So that's what we'll have left.

So sidebar as much as you can. Get as much of that language clean, let's see if we can work out our compromises and then be able to take that language and we'll have a little over two hours to bang that out.

MEMBER DOERR: Everybody will get gold stars if we can do it in an hour.

MEMBER RHEAULT: I would just like to say thanks to Patty.

(Applause)

MEMBER DOERR: Thank you, guys, for working so hard. Mr. Chair, I'm going to back it over to you. Would you like the gavel?

CHAIR RIZZARDI: No, let's go get lunch.

(Whereupon, the foregoing matter went off the record at 12:02 p.m. and went back on the record at 1:10 p.m.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(1:10 p.m.)

MEMBER MORRIS: Okay, thank you, everybody. We're starting the afternoon session of the Marine Fishery Advisory Committee meeting, and we're going to be focusing for the next couple of hours on Jeopardy and how it interacts with MSA.

Just let me give you a little overview of what we're going to do. We're going to start with an overview of ESA Section 7 and consultations on MSA to introduce that. Then we're going to have three case studies presented, and then after the case studies we'll have some discussion and then we will kind of excuse everybody else except the working group.

You can stay if you want, but the working group is going to have a session at the end of the day starting around 4:30 just to try to distill what's come out of the discussions in the afternoon.

There's a lot of people participating in this session who aren't in the room, so I'd like to give them a chance to introduce themselves so we know who's joining us at a distance. So if you are not in the room and are participating, could you please introduce yourself now? Is there a way to do that?

Okay, so on the phone, is anyone here from the West Pacific Region?

(Off microphone discussion)

MS. VAN ATTA: This is Lisa Van Atta from the Pacific Islands Regional Office of NOAA Fisheries.

MEMBER MORRIS: Lisa?

Okay, anybody else from Western Pacific NOAA staff? And then what about the Western Pacific Fishery Management Council?

MS. ISHIZAKI: Hi, this is Asuka Ishizaki. I'm a Protected Species Coordinator for the Western Pacific Council. Paul Dalzell, who will be presenting, will be here

very shortly.

MEMBER MORRIS: Okay. Mark just pointed out that we're projecting a list of those who are on, but I would like everybody who's on to have a chance to introduce themselves as well.

Okay, anybody here from the North Pacific?

MS. CAMPBELL: This is Cora Campbell. I'm a member of the North Pacific Council and also a commissioner of the Alaska Department of Fish and Game.

MEMBER MORRIS: Welcome, Cora.

Anyone else from the North Pacific Council or the North Pacific NOAA staff? No? And what about Pacific?

MR. WOLFORD: Yes, this is Dan Wolford. I'm the Chairman of the Council.

MEMBER MORRIS: Welcome, Dan. Anyone else?

MR. TRACY: This is Chuck Tracy. I'm the Deputy Director of the Pacific

Council.

MEMBER MORRIS: Welcome, Chuck. Anyone else from the Pacific Council or Pacific NOAA staff?

Is there anyone on from the Gulf of Mexico?

MR. ANSON: This is Kevin Anson, Vice Chairman.

MEMBER MORRIS: Good to hear your voice, Kevin.

MR. ANSON: Nice to hear yours, Julie, thank you.

MEMBER MORRIS: Anyone else from the Gulf Council? And what about the South Atlantic? How about the Mid-Atlantic or New England? Puerto Rico and the Virgin Islands?

Okay, so is that everybody who's listening in at distance has had a chance to introduce themselves, did we miss anyone? Thank you, all.

And then I would like to introduce the members of the working group since we'll

be meeting at the end of the day, and I just wanted everybody to know who the working group members were.

So from MAFAC it's Columbus Brown, Paul Clampitt, Pam Yochem and myself. From National Marine Fisheries Service it's Gina Shultz, David Bernhart, both here on my right, and Marian MacPherson here.

And then from the CCC, the Council Coordinating Council, we have Corky Perret from the Gulf Council, but Kevin Anson is sitting in for him today.

We have Cora Campbell from the North Pacific, Ed Ebisui from the Western Pacific, and he can't be here with us because he's at new council member training session, and then Dan Wolford from the Pacific.

Okay, so we are having this webinar in order to try to work on identifying best practices in the consultations on Section 7 ESA with regional Fishery Management Councils, and we're looking for best

practices.

We're looking for potential areas for improvements in the consultations both in how the buy-ups are written and developed, the types of information and analytical methods, as well as improvements in the process of consultation, better coordination of those processes.

So all of these good people who have prepared background and introductory materials for us today are going to be providing some commentary on those subjects, and our job is to try to identify throughout best practices going forward and ways to improve the process and better coordinate the process.

So with that I'd like to introduce Helen Golde who is the Acting Director of the Office of Protected Resources, and she's going to be assisted by Craig Johnson who's the Protected Resources Fisheries Biologist, and Marian MacPherson who is a Management and

Program analyst with Sustainable Fisheries. So Helen?

MS. GOLDE: Thanks, Julie. I'll be really brief because I want to leave time for Marian and Craig to talk about the nitty-gritty. So I just have a very few introductory remarks.

I think we all know that there's often consternation and confusion around biological opinions that the Fisheries Service does on fisheries management actions.

We, as you all know, I think, are consulting with ourselves in that realm because NOAA Fisheries is the action agency and is proposing to take an action, so the Sustainable Fisheries side and then the Protected Resources side we do a consultation with ourselves.

But obviously the Councils are the ones who have worked long and hard on those proposed plans and so how you all fit in the process is, I think, part of the discussion

here.

So I want to thank everybody for keeping an open mind and sort of thinking about ways that we can move forward collectively and, you know, think creatively about ways to get us all working better together and increase that communication and collaboration there.

I will note that we have some, of course under the Endangered Species Act as well as the Magnuson Act, some legal constraints about what we can and can't do and various timelines and things. And so as the working group moves forward, I encourage you to rely on the Fisheries folks who are on that workgroup to check in on whether things that you're proposing and thinking about are legal.

And we don't have any of our attorneys in that working group purposely to keep that conversation flowing, but I also want to make sure that people don't go down a path that we then shut a door on later and

say, thanks for your hours and hours of hard work of coming up with this idea, but actually we can't legally do that. That's not a good use of anybody's time.

So I look to Gina and David and Marian to sort of keep that check and make sure that we're not going down a road that we legally can't go down.

That said, I really just want to reiterate how much I encourage everybody to think creatively in this process. And then lastly I'll just say, I think, I hope the case studies that have been put together for you all this afternoon are helpful.

They're designed for you to see a few examples of how consultations worked and what was done on consultations on various fisheries management actions. I think there's probably a range of ideas around whether that was good or bad or what could have been improved in those. And when asking questions about those I encourage you all to keep those

questions with the sort of fact based, what did you do this or did you not do this, I don't understand as opposed to getting into the why did you do it this way, this was wrong kind of questions. I want to keep the conversation and get as much information out there and not put anybody on the defensive right away.

So with that, that's really all my opening comments, so I'll turn it to Marian to talk about her perspective from the Fisheries Management standpoint.

MS. MACPHERSON: Thanks, Helen. Thanks for having me. As Helen said, I'm going to try to just simply frame the issues where our constraints under Magnuson come in and where they bump against the ESA in ways that create challenges.

I'm operating under the understanding that you guys all have a pretty high familiarity in level of understanding with Magnuson, but if you have any questions

about what I'm saying just let me know and I'll try to fill in the gaps.

But basically thinking of the fishery management action under the Magnuson Act as the federal action, which is subject of an Endangered Species Act consultation really, you can see from this slide that it's a two-part process.

The recommendation process at the Council level is really where all of the analysis is going into, what's being planned, all the alternatives are being considered. Those are the times when actions can be tweaked and changed.

As it gets into the Secretarial review, the actual agency action, we are going to be constrained by Magnuson Act's timelines and limitations on our discretion, and then there would be the rulemaking following on whatever the decision is at the Secretarial level.

(Off the record comments)

MS. MACPHERSON: Okay, so just to lay out in more detail the requirements at the Secretarial level, Magnuson Act imposes the 95-day timeline, which is a limit. That's a deadline from the date of transmittal when an agency decision has to be made.

If we don't make a decision it's automatically approved on FMPs. And the scope of the review is also limited by the Magnuson Act. We can approve, disapprove or partially approve, but we cannot change what has been recommended to us.

And the criteria for making that approval or disapproval is very narrow as well. The basis for review is to determine whether the recommendation complies with national standards, includes all the required components, complies with other applicable law, and this is very important.

ESA and NEPA are big interactions here for us, and the only reason for disapproval is inconsistency with one of those

requirements so it can't just be we want to have a better idea go into effect.

So again just to lay it out what the statutory and regulatory requirements are under the Endangered Species Act, we have to ensure that what we're doing under Magnuson does not jeopardize a listed species or adversely modify critical habitat.

The timing for Endangered Species Act consultations starts out at 135 but that can be extended. So, you know, looking just at those two timelines, you don't want to start the consultation at the same time you transmit the Magnuson Act action because we would have to decide before the consultation could be completed.

So when do you start your Endangered Species, that consultation? Looking down in the chart at the bottom, consultation cannot begin until a preferred action has been identified and a request for initiation has been submitted. And then that

starts that minimum clock of 135 days.

So looking at the Council process, that's going to be a very late point in the Council process where an action is close enough to final that it's likely to be proposed and a written request for initiation of consultation can occur. This also sets out what triggers the start dates for the Magnuson FMPs and the Magnuson Act regs.

So basically to sum up, these are our conflicts that we have from statutory and regulatory requirements. Section 7 can't begin until there's a proposed action. NOAA has no ability to change the recommendation after the Council process.

So there's a need to be exchanging information early on, earlier than the formal consultation can begin about the potential impacts to listed species so that the Council can recommend actions that don't cause jeopardy and we don't have to make a jeopardy determination during Secretarial review.

And just to let you know, some of you may know this already, this situation is not new to us. We've been aware of it. We've been working on it for a long time. Different ideas have been floated around.

We had draft operational guidelines that came out in 2005 that put out some ideas for dealing with those timing and logical interaction issues, and those are some good ideas. There may be some things that we can work with in there and it may be worth taking a look.

So that said, I'm going to turn it over to Craig who has been working on providing early information, and he's going to talk about some of the practical and logistical constraints in addition to the statutory and regulatory ones I just mentioned.

Do you want this or do you have something up there that --

(Off the record comments)

MR. ANSON: Julie?

MEMBER MORRIS: Yes, who is this?

MR. ANSON: This is Kevin Anson. There's several of us on that are participating via webinar that cannot see any of the slides.

MEMBER MORRIS: Okay, let's see if we can solve that problem on our end.

MR. ANSON: Thank you.

(Off the record comments)

MR. JOHNSON: So I just wanted to briefly go through the Section 7 requirements. And as Marian said, I'm assuming, I was told that people are generally familiar with the requirements of the Endangered Species Act and particularly Section 7.

So I just have a few calibrating slides and then get into some more of the meat of the matter. And this is the purposes of the Endangered Species Act, which is the conservation, first, of the ecosystems on which species depend, and then second, of the

species themselves.

And particularly for us there are two sections that are relevant here. We tend to focus on the jeopardy component of Section 7 which is Section 7(a)(2). But Section 7(a)(1) applies to us as well. It contains a very explicit mandate for any programs under the authority of the Secretary of Interior and Secretary of Commerce.

So because we're consulting on actions that are our own actions, there isn't only the avoidance of jeopardy requirement, there's also the compliance with Section 7(a)(1) that applies as well.

And that requires a showing that we're using our authorities to further the purposes of the Endangered Species Act, which is to conserve the ecosystems and species that depend on those ecosystems.

But the meat of it, and what most people focus on with Section 7 is this requirement. It's the one that creates all

the buzz and most of the litigation and most of the tension, is this fairly simple mandate that obliges each agency, in this case it would be Sustainable Fisheries, if they're taking the action on a fishery, to ensure that that action is not likely to jeopardize the continued existence of threatened species or endangered species or destroy or adversely modify designated critical habitat.

Another piece that's important for anybody deliberating on the jeopardy standard or how it should work is to remember the standards of review. Prior to 1994, Section 7 consultations were reviewed under the standards of the Endangered Species Act.

Since then and it was a case of Bennett v. Spear, a Supreme Court case, they codified the standards of review or the Administrative Procedure Act which are these. They applied the arbitrary and capricious standards of the Administrative Procedure Act, and these four requirements are important

considerations in determining whether or not a consultation has been successful, which is critical for showing in the record, and we end up having to build a fairly extensive record to support these consultations.

In 2001, or by 2001, we had sort of a major meltdown as an agency. We had injunctions against the groundfish fisheries in Alaska, injunctions in Hawaii, injunctions in the North Atlantic with the highly migratory species, and there were about 130 fisheries of various kinds that had gotten entangled with the Endangered Species Act, particularly Section 7.

We had a closing the gap conference, which was an attempt to internally reconcile some of these disputes, and to top it all off, the Senate, in our appropriations language, directed us to kind of come to some more harmonious treatment of Section 7 and Magnuson.

And I was directed to come to a

respond to that and really was to design some transparency and clarity to the consultation. There's a lot of angst associated with the jeopardy standard.

And then Director Hogarth asked me or directed me to propose some approaches for providing some clarity and transparency, some linearity to the process. So this is the results.

The assessment framework that we use and teach, it's not codified as official policy. We haven't amended our regulations for this, but it is codified as policy that's taught to all consulting biologists and action agencies.

And what you see are two shaded boxes. As Marian said, the process for us can't begin until we have some clarity on what's being proposed, what's the action agency planning to do?

And we've had for years attempts to, I think, West Pac at one point wanted to

have us look at something like 16 different possible alternatives in the NEPA document which it's effectively impractical for us to do.

So as Marian captured, a critical point of tension is our process begins once we know what it is we're supposed to be assessing, then we break it into its various parts.

And the second piece, the deconstruction, largely resulted over the disputes over the Alaska groundfish fishery, where in the second round we were required to go back and redo our homework because we had omitted pieces of the larger FMP. So the deconstructing is to make sure we don't lose track of any of the pieces.

Then we have action area exposure response. All of those are things that we didn't have prior to 2001. It was how we went about our consultations was not a linear process. I wouldn't have been able to explain

to you or articulate how we go through the thought process.

By articulating it as we teach it to our staffs, those processes are interactive, they should involve action agencies, applicants, other stakeholders as applicable.

Similarly, the setting up the environmental baseline, the status of the species and cumulative effects, which for us is very different than the meaning the term is given in NEPA. For us it's only the impacts of future state, local, tribal or private activities. These are not future federal activities that are part of that consideration.

The other thing that we do for the boxes that are labeled red, which is the risk sequence, is make certain that the record, that our determinations at any step in that sequence were not unduly influenced by the needs and interests of the action agency or

the applicant or other stakeholders. To show that our analysis and our conclusions at each step was based on biology and not other considerations that in the past have gotten us cross-wise of plaintiffs in court cases.

To break those down and to make those clearer, we've broken them down into a series of steps, a series of propositions that we ask and answer based on evidence.

And this is the sequence for threatened or endangered species beginning, there's an earlier piece that we apply if there's permitting involved. An intentional and purposeful take of threatened or endangered species is what the first one deals with. Generally doesn't apply to most agency actions.

And as you can see here it begins with, are there stressors? It matches very well with the framework that I described a moment ago, and goes through to what you have on the far right side where we're asking is

the question true or false, do we accept this proposition as true or false based on the strength of the evidence, considering evidence for it and evidence against it? Then you have the actions.

The ending, the NLAA that's on the right hand side is for our purpose, it's not likely to adversely affect. Those are actions that we can conclude informally. And we have three different reasons for not likely to adversely effect determinations.

And then the piece that's highlighted in yellow is the main focus of this group where you're asking the jeopardy question, the consideration of the population and species level.

One thing to remember, all of our determinations have to be against the species as it has been listed. We've had challenges in the past where agencies or plaintiffs have argued that we didn't properly base our jeopardy determination on the listed entity,

that we based it on some subcomponent.

The specific cases were in the Atlantic. There was a second one in the Pacific, where the argument was we didn't properly make our jeopardy determination against loggerhead sea turtles and leatherbacks, who at the time were listed globally. That we had instead made the determination against loggerheads and leatherbacks in the Atlantic or the Pacific, not the global listing.

So our determinations, first, of species is referenced to the listed entity whatever it happens to be. Cook Inlet beluga as opposed to all beluga.

And second, our jeopardy determinations have to be against that listed entity. We're asking it at that level. And we have a similar set for critical habitat, which is a shorter list.

For critical habitat these are pure habitat-based analyses. We don't insert

the species. The point of reference for the critical habitat determinations is the value of critical habitat for the conservation of the species.

Another thing to remember for critical habitat as you deliberate, you might be inclined to read the definition of destruction or adverse modification that's in our Section 7 regulations or in the code of federal regulations.

I would recommend you not do that. That definition has been ruled facially invalid since 2001. In each of our opinions we have to explicitly say we're aware that that definition exists, we're not using it. So please, as you deliberate don't use that definition because it's facially invalid.

We've been trying to replace it with a new definition for 11 years and we're still trying, for a variety of reasons. Instead what we use is the value of the designated area for the conservation of the

species which is a recovery test.

What is our probability? What contribution does the habitat make to our ability to bring the species off of the endangered species list? And that's the point of reference. It's a default back to the definitions that's in the Endangered Species Act.

The problem we have with that is for our purposes our point of reference is, what's the value of the area that has been designated? Sometimes it's very high. Sometimes it's very low. We can't add value in consultation. We can only ask, is the action likely to reduce whatever value has been designated?

Generally we think in terms of what is the maximum density of the area that has been designated can sustain indefinitely. It's the equivalent of a carrying capacity type of concept.

There are several errors that

agencies commonly make in consultation. They are listed here. One of the biggest ones and points of tension that we get into with fishery consultations has been not being clear of what exactly is the action we're consulting on.

It's often a moving target and there are often revisions and versions as we go through it, and that can run out our clock fairly well and then it becomes a point of tension between the two programs and the Councils.

There are other components of it. Another piece is that clear articulation that any FMP or planned document, making it clear whether and to what degree those documents have been based on and considered the best scientific and commercial data available. That's another point of tension between our two, of the two programs.

And just to close with the three main points of tension that seem to have

followed consultation on fisheries. The first is the time constraints, as Marian had referred to. The tension between the 90 days for a consultation that can be extended as necessary or appropriate, and the 95-day limit on the FMPs.

The second is, the Councils tend, there's been a push to want sort of fixed targets, the equivalent of PBR-style targets. There's a separate discussion led by the Southwest Fisheries Science Center to develop fixed targets for sea turtles. For example, PBR for sea turtles, whereas -- yes?

(Off microphone discussion)

MR. JOHNSON: Potential biological removal. How many individuals can be removed without affecting the trajectory of the population or its ability to recover.

The problem with consultations is, we're required to consider, our assessments are always context specific and circumstance specific and we're required to update that

context with each new consultation.

And that requires us to consider things like climate change, sources of mortality or reductions in fitness completely unrelated to fisheries. And because of those phenomena it's hard for us to set a fixed target that we can then apply to fisheries.

The third, our differences in burden of proof. Where we've consulted there's been a tendency on the fisheries side to want us to prove that the action is, in fact, likely to jeopardize or destroy or adversely modify designated critical habitat where the statute, the ESA, requires us in consultation to ensure that the action is not likely to jeopardize and not likely to result in destruction or adverse modification.

So another point of tension has been that type 1 versus type 2 error. ESA is all about type 2, of making sure we don't assume there is no effect when, in fact, there is one, whereas the traditional approach is

not to say there is effect when there isn't one. And those are diametrically opposed. Those are at odds with one another. Thank you.

MEMBER MORRIS: Thank you, Craig. We're going to take just a few minutes for questions and then move into the case studies. So Tony?

MEMBER CHATWIN: Thank you very much, Craig, for that. I have a question regarding the critical habitat designation. So the metric that is used is numbers of animal per area?

MR. JOHNSON: It's the density. It's the carrying capacity. It's the potential density that an area can sustain given the quality, quantity and availability of the resources, physical, chemical, biotic resources in the area that's been designated.

MEMBER CHATWIN: And so how do you consider the issue of scale? Because the scale of a critical habitat and the scale of

an action could be quite different.

MR. JOHNSON: Absolutely, yes.

MEMBER CHATWIN: So could you tell us --

MR. JOHNSON: So for those analyses, usually actions are a very site specific. So we may be looking at a fishery just south of, between Bogoslof and Kodiak Island. We would look at that area and subdivide it.

So most critical habitat designations, the Steller's sea lion one being exception, are designated by units. So we have actual units, particular geographic units that are designated. We usually start with those units and work upward to the whole.

Many of the units are actually quite site specific. They would be equivalent to the size of this room so they correspond and track very well with a very site specific action. Others of them are completely nebulous.

So we effectively start with, what is the contribution of a particular site to the unit, and sometimes it's just proportion of the area within the unit that a particular site occurs. If it's five percent we assume that it represents five percent of the value and then work upward from there.

MEMBER MORRIS: Any further questions before we move into the first case study? And is there a way for the people at distance to raise their hand to be called on or just -- everybody ready to move on then?

Okay, then let me introduce Patrick Opay.

(Off microphone comments)

MEMBER MORRIS: It's going to be Lisa Van Atta instead, and she is --

(Off the record comments)

MEMBER MORRIS: Pacific Island Region Endangered Species Branch Chief. Oh, you're right there on the slide, right? And Paul Dalzell, are you both on live with us?

Can you hear us and are you ready to proceed?

MR. DALZELL: This is Paul Dalzell at the Council. I hear you very well, I'm ready to go.

MS. VAN ATTA: Yes, this is Lisa Van Atta. I can hear you as well, thank you.

MEMBER MORRIS: And everybody can see the slides now?

MS. VAN ATTA: Yes.

MEMBER MORRIS: Okay, then please begin.

MS. VAN ATTA: All right. Well, again good afternoon, everybody. This is Lisa Van Atta. I am the assistant regional administrator for the Protected Resource Division in the Pacific Islands Regional office.

So today Paul and I are going to be talking about a case study on the Hawaii based shallow set longline fishery consultation. As you heard, Paul is also on the phone, and I'll give him an opportunity to

introduce himself and give some words of introduction. But quickly while I've got the mic I'd like to provide an overview of our talk.

So NOAA Fisheries developed this presentation in collaboration with the Council staff, but we did want to acknowledge that at times we'll have different viewpoints and that will be acknowledged on the slides.

I want to just thank the Council for this coordination. I think it was a good process and helped us learn a lot about what we could do better in the future.

So I will start with the discussion of the roles in the consultation, and then hand it over to Paul who will discuss some of the history of the longline fishery itself and some background on the consultation of the fishery.

Then we'll open it up for discussion of the questions present in the terms of the reference document, and then end

with some perspectives on the process of both the Council and NOAA's Fisheries viewpoints. We'll take some questions following the presentation.

So with that, Paul, could you please go ahead and introduce yourself and anything you'd like to add before we get started.

MR. DALZELL: Thank you, Lisa. As I said before, this is Paul Dalzell. Good afternoon to everybody there. It's morning here in Hawaii.

I'm the pelagic fisheries biologist, senior scientist with the Western Pacific Council. I've been in that position since 1996, so we've gone through several management measures and biological opinions over that time which are summarized in the presentation.

MS. VAN ATTA: Great, thanks. I'll get started with the role. We thought it was very important to begin by clarifying the

roles in the consultation process.

As Craig touched on, this is important in any consultation, but especially true when it's a consultation that is intra-agency. That is, NOAA Fisheries is consulting on a proposed federal action undertaken by the agency itself, so maintaining the integrity of the process takes on heightened significance.

So we'll talk about here the four different entities that were involved in the consultation processes. Number one is the Council. The Council works with our Sustainable Fisheries division in developing fisheries management plan amendments. That's usually a common trigger for a consultation or a reinitiation of consultation.

The second entity involved is NOAA Fisheries Sustainable Fisheries Division. You'll see that acronym as SFD throughout the slides. This is the action agency in the consultation.

Sustainable Fisheries Division

develops the consultation packet to submit to Protected Resources Division using the information that the Council provides. This can take the form of a NEPA document such as an environmental assessment, environmental impact statement and the like.

The third entity is NOAA Fisheries Protected Resources Division. We are the consulting agency in these types of fisheries management plan consultations. We analyze all the available data and information and we draft the biological opinion.

In this case, the case of the Hawaii based shallow set longline fishery we do have a formal applicant, and that is the Hawaii Longline Association or the industry that's represented. The applicant communicates or provides information to the action agency throughout the consultation process and that indeed happened in this consultation.

So with that I'll hand it over to

Paul to talk a little bit about the history of the longline fishery.

MR. DALZELL: Thank you, Lisa. This fishery is the largest fishery in Hawaii. It was started by Okinawan migrants to Hawaii in 1917. When it originally began it was actually a near-shore fishery, fishing from no further than maybe ten to 20 miles offshore, and it used plastic buoys and bamboo poles and flags to mark the lines. So it became called the flagline fishery.

It reached its peak in about the mid-1950s, after which it began its long, slow decline, and it was eclipsed really by a fleet here in Hawaii, but survival of the fishery in the 1980s when it was discovered to the north of the islands there was a swordfish resource and there was very rapid expansion which would be -- and I'm ready for the next slide -- its actual fleet size peaked in about 1991 with 140-odd vessels, and effort in hooks peaked in 2008 with close to 42 million hooks. Can we

have the next slide?

This then just basically recaps what I've just said. What you can see are the prominent features of the top graph. That is, the very rapid expansion of the fishery in the late 1980s, early 1990s.

Midway through that to the flat section you can see the drop in 2001, which was the closure of the swordfish shallow set segment of the fishery, which would close that segment of the fishery between 2001 to 2004.

And then after 2004, the fishery has been relatively stable in terms of fleet size. We have again another problem of the fish, if you look at the bottom graph, and I'll direct you to look at the top time series there with the triangles. You can see major increase in the volume of hooks being deployed.

So while we had a limited entry program for this fishery, there was an increase in the volume of hooks being set in

the fishery, but these are primarily in the deep set fishery and not so much in the shallow set fishery.

Currently the shallow set fishery volume of hooks is about six percent of the total number deployed annually. Go to the next slide.

This is just to illustrate the problem which we're dealing with and to point out that all pelagic longline fisheries are not the same. I've mentioned shallow setting for swordfish and deep setting for tuna.

And this graphic here shows how the hooks are set for the swordfish. It's very few hooks between the floats. It's in relatively shallow waters or relatively shallow depths down to about 30 meters.

Some of those hooks are within what we call the turtle layer, that is, down to about 50 meters identifying where most of the turtles spend most of their time. In the deep set fishery the hooks are set primarily

below that turtle layer.

So the problem for us was that most of the turtles have been caught in the shallow set fishery but not in the deep set fishery. Go to the next slide.

So this is sort of essentially the consultation and history of the fishery. In 1991 it was recognized that the fishery was taking turtles, there's a biological opinion on file, but it was conducted on the entire fishery and was a no jeopardy finding.

In 1993, again another consultation on the entire fishery, and as in '91, a no jeopardy finding, and the same thing happened again in 1998.

Between 1998 and 2001, there was a period where there was litigation and the suits were brought against the Fishery Service because of the volume of turtle catch. And a new biological opinion was issued at that time along also with a NEPA document, and jeopardy was found for loggerheads, leatherbacks and

green turtles, and the RPMs for the biological opinion recommended closing the swordfish fishery altogether.

So between 2001 and 2004 there was only the deep set fishery operating here in Hawaii. In 2004, following work that had been conducted primarily in the Atlantic, we operationalized some research work using large circle hooks and mackerel type bait, and we were able to reopen the swordfish and incentivize levels of effect.

There was a no jeopardy finding, and there was various, put hard caps in on the swordfish fishery using the idea if the caps were reached, loggerheads or leatherbacks, then the fishery would shut down, which indeed it did in 2006 and 2010 for loggerheads and leatherbacks, respectively.

And 2005 there was an opinion on the deep set fishery and that returned no jeopardy. 2008 was Amendment 18 where we modified the original framework that we put in

place in 2004 for jeopardy, and more recently, 2012, again final bi-op or recent bi-op and no jeopardy finding. Go to the next slide.

Now Amendment 18 to the fishery management plan nullified the shallow set longline fishery management regime that I had previously alluded.

One of the key elements when we reopened the fishery was that we put a cap on efforts in terms of the number of sets. We set that number as a percent of the long-term average prior to the closure of the fishery. That amendment removed that effort limit.

Also at the same time there has been, Amendment 18 was done in conjunction with the development of biological opinion which increased, based upon the modeling work that was conducted by the Science Center, increased the loggerhead ITS from 17 to 46. And we implemented that as the new hard cap in the fishery.

Although the purpose of this

amendment was to provide increased sustainable harvest opportunity for swordfish, it's a result which is not under, it's fished, we think could be sustainably, also attempting to avoid jeopardizing the survival and recovery of the ESA listed species.

If we go down to the next slide.

(Off the record comments)

MR. DALZELL: We've drilled down already in this presentation as to what happened with the 2008 and 2012 biological opinions.

In June 2007, the Council recommended the amendment development in moving forward with removing the hard cap from the, removing the effort limit from the fishery and also including the analysis that was conducted by the Science Center to modify the hard caps.

In August 2008 Sustainable Fisheries Division initiated ESA consultation with Protected Resources Division. October

2008, the biological opinion issued a no jeopardy finding. In March, the Council transmitted Amendment 18, and December of '08 is when the final rule implementing the amendment came into effect.

In January 2011 following litigation, NOAA Fisheries reached a settlement which remanded the 2008 biological opinion. And so where the fishery had been operating for almost a year under new hard caps particularly for loggerheads at 46, and these were then ratcheted back to the original 17.

This settlement agreement was reached between NOAA Fisheries and the plaintiffs, but the Council was not privy to those discussions on the engagement in that process.

In September 2011 the consultation was reinitiated. A new bi-op was issued. Again it was no jeopardy. The ITS was 34 loggerheads and 26 leatherbacks. Again, I

would just say ITS is against it, but in the biological opinion.

June 12th, NOAA Fisheries is requested to Council to take action on the new take limits in the bi-op. Council found that the proposed action consistent with Amendment 18.

This is important because as it will show later in subsequent slides, with Amendment 18 we worked closely with the region in reviewing the facts of the bi-op as we moved forward to developing the amendment.

In the 2012 biological opinion we had a little bit of engagement there, but not as much to say in Amendment 18.

But at the same time, prior to the Council meeting in June, we were asked by the Fisheries Service that the Council had to formally deliberate on and make a recommendation that the new hard caps or the new ITS for leatherbacks and loggerheads would be the new hard caps for the fishery, that

this was consistent with the intent of Amendment 18.

So on October 12th, the final rule for the take limits was issued in the Federal Register. The next slide, please.

(Off the record comments)

MR. DALZELL: If we turn to the tabular summary of the differences between the two processes from the Council's perspective, in 2008 the biological opinion was linked to Amendment 18 involving higher fishing effort in turtle take limits.

In the 2012 bi-op, 2012 biological opinion, this was because the original bi-op was remanded and the take limits were vacated. The settlement required NOAA Fisheries to issue a new bi-op within 135 days, of the loggerhead and the ESA listing final rules, where its standards were changed from protected to endangered.

In the consultation process, Sustainable Fisheries Division initiated the

ESA Section 7 in consultation with PRD, except again initiated the Section 7 consultation with PRD after the loggerhead publication rule under the 2012 situation.

In the 2008 bi-op, coordinations with the Council, Sustainable Fisheries and PRD was very close in developing the final EIS and amendment to ensure consistency between the bi-op and the Council documents as they moved forward. We didn't want a situation where there was inconsistencies in the document.

In the 2012 bi-op there was lack of a typical interaction between Council and SFD due to no new fishery amendments, but whilst there was no new fishery amendments as I've mentioned before, the Council was asked at its June meeting to formally approve, I guess, or to adopt the 2012 ITS numbers for the loggerheads and leatherbacks as hard caps.

And we had to scramble at that time because we were asked to do that just

before the Council meeting. And we did get some updates, were given to the Council through the Sustainable Fisheries Division, and in the 2012 circumstances the PRD they did provide briefings to the Scientific and Statistical Committee and the Council regarding the status of where and how far along the biological opinion was.

And follow this other table there, the final EIS amendment document, it formed the ESA consultation process. In the 2012 bi-op we were one step removed from the development of the bi-op, and SFD consulted with PRD and then communicated to Hawaiian Longline Association who was the applicant.

But to say we were at the Council, but a bit more of a distance from the development of that, the 2012 bi-op as opposed to the 2008 bi-op. Can I have the next slide, please?

The 2008 bi-op, the Sustainable Fisheries Division had shared a draft bi-op

with HLA and discussed its contents of analysis, and then that was relied upon by the Council, so we received a draft bi-op from HLA.

In 2012, Sustainable Fisheries Division shared the bi-op with HLA and discussed its contents of analysis, and again we received a draft bi-op from HLA. SSC reviewed the unpublished model and analyzed the impact of the proposed action early in the process prior to initiation of the consultations.

So we have a very good idea of what the analytical process was going into this 2008 biological opinion, and our SSC was able to list information on its analysis and send it to the SFD, and they were then able to understand what was happening and provide a comment and advice and recommendations.

We did have a webinar for the 2012 bi-op, I think it was in December 2011, on the published component of the climate based

model. But how that model would be used in the biological opinion was not provided.

In the final analysis, the publication to the final rule on Amendment 18 was that rule was published. I have also mentioned that about a year later, the biological opinion that was written with respect to Amendment 18 was vacated.

The Council was required under 2012 to adopt the new sea turtle limits after the bi-op was published, so we had a situation where we were kept at some distance from the development of the bi-op. But at the same time, we were asked to take formal action on the ITS as being the new hard caps.

And we were asked to do this, as I said, it was very late in the stage. We actually had published our Federal Register notice for our agenda, so we had to scramble very quickly to do this as a new item on our Council meeting agenda and to brief the Council members on why we had to do this.

I think that's the last slide I'll be speaking on for, is there one more? I beg your pardon. There's one more.

So how are protected species included for the development of the items of action? Part of the Amendment 18 action involved revising loggerhead turtle hard caps, thus the consideration of protected species or action was central to the fishery management process.

And it has been with the shallow set fishery is, all we've been trying to look at ways we could minimize the interaction with the sea turtles. The fishery management action and environmental impact statement considered the species conservation status, threat to the species, species abundance and impact to the fishery, other species as by-catch.

I think that should, at this point now, I'll hand it over to Lisa.

MS. VAN ATTA: That's right, thank

you Paul. The next slide please. So the question Paul just addressed on these next few were actually from the terms of reference.

That's why the slides are framed this way. We wanted to make sure that we addressed the concerns that came out of that document.

So the next questioned presented was, what information was available on the species and how was it used in the consultation? We actually had quite a lot of information at our disposal as we went through the consultation process.

The shallow set fishery is unique in that it has 100 percent observer coverage. Which means that we are dealing in absolute bycatch numbers, not extrapolation. And that's a really important point.

Compare those to the deep set fishery out here in Hawaii as well, where this about 20 percent observer coverage and therefore requires the agency to make some

extrapolations as to bycatch.

Very different situation then the shallow set. So looking at the table, the information available, first was on fishing effort and interaction information. Again from this observer coverage.

Based on the this coverage we were able to project number of protected species expected to be taken to the fishery. And these were used to calculate the number of protected species captured at bycatch fishery.

Once expected take was calculated, information on the severity of interactions was used to calculate estimated mortality of sea turtles caught in the fishery. New science on the effects of climate change on loggerheads was the basis for a climate forcing model used in this biological opinion.

However that model was not the only information considered in the jeopardy analysis. NMFS does not rely solely on any particular model, but considers the best

available information from all sources in reaching its conclusions in this biological opinion.

Of course we also looked at the published sea turtle literature, recovery plans and status reviews to inform the understanding of population characteristics, threats to species, conservation efforts, environmental baselines and effects of the proposed action on the protected species considered in this consultation.

Next slide. So this is a table which is actually from the biological opinion. You don't need to read all the small print, really the point of this is that it provides an example of how the information on the number of fishing sets and interactions with protective species, was used to calculate estimated annual protected species interaction in this fishery.

Again, because of the 100 percent observer cap coverage, these numbers were used

to develop the amount or extent of take numbers included in the incidental take statement included with the biological opinion. All right, next slide.

So another question that we were asked in the terms of reference. Would additional information have improved the consultation?

I mean I think that's always going to be yes. I don't know of a situation in any of our consultations where we would say, no additional information would not be useful. So we had to answer this question with yes.

As Craig and others alluded to earlier in the start of this discussion, the ESA uses a best available information standard. So we would always prefer to have more information if it were available, but we have to use the information that's available to the agency at the time of the consultation.

So yes, more information would help to reduce some of the uncertainties that

was explicitly acknowledged in the BiOp. For example, turtle population size is based on nesting females, not pure abundance numbers.

The climate model could only be forecast in 25 years because we can not predict the Pacific Decadal Oscillation or PDO beyond that point. Additionally, international fisheries bycatch data is often sparse and not always reliable.

So these are the types of information or data gaps that would have been useful and would improve consultations in the future. Next slide.

So the question on this one is, how did NOAA Fisheries interact with the councils and other in developing RPMs and RPAs? So obviously this was a no jeopardy opinion, so reasonable prudent alternatives does not enter into this discussion.

However, draft reasonable improved measures were indeed shared and discussed with the action agencies of sustainable fisheries

division as well as the applicant of Hawaii Longline Association. We received really good input from both the action agency and the applicant and used that in the development of final RPMs.

Next slide. All right, I'm going to turn it back with Paul, he's going to go through some perspectives from the council on this process. MR. DALZELL: Thank you, Lisa. Again just to reiterate, the council is statutory responsible for federal fishery management policy in the Western Pacific.

So under Magnuson, we develop fishery management plans where we have fishery system plans now. And those plans are then reviewed by NOAA Fisheries and Department of Commerce and then codified in the Code of Federal Regulations.

The 2008 BiOp was developed concurrently with the fishery management plan amendment with the pelagic's plan. And the Council, and as I mentioned previously, the

region and the time center worked very closely as those two processed the amendment and the BiOp together.

We had no role in the federal agreement to re-amend the 2008 file and no council enrollment in the drawing of the 2012 file. But why is this important?

Well, when the statutes are early and responsible agency for developing fishery management policy. We had a situation where the hard cap on loggerheads was changed from 17 to 46. And then through the making of the BiOp was reduced back to 17.

So as a management agency we really need to marginalize that early, the situation was something that was beyond our control and also we were not getting privy to this discussion and the results of the dictation of the 2005. Agency provided input recommendations on the model that was used in the 2008 opinion, well the head of the consultation. But we were limited to review

of the published version of the new model view, the 2012 BiOps.

So we knew this would be the type of model was going to be used, how it was to be used was not something that the accuracy of the council was privy to. The council followed the amendment as it was actually implementing a new Management Act, because of the amendment that was enacted.

So we were told, as we were not happy for not bringing the old amendment to the SFP, the way that we previously done the previous engages of biological opinions was different. But as I mentioned before with the Council, was then formally asked to prove the date limit of the 2012 BiOp, then show consistency with Amendment 18.

And the Government then wanted it done at the 11th hour. And it would have been much easier if he had been engaged in the process of the BiOp so that we could be better prepared to brief councilmen.

And again, the reason for the marginalization of the Council in the 2012 BiOp remains uncertain. We have our prospective and NOAA Fisheries has theirs.

But bottom line is, it needed to be a consistent transparent consultation process involving the Council, regardless of what drives the counted days. At the end of the day they are still the statutorily responsible Federal Fishery Management Agency or organizations that develops the management policy.

Next slide please. Lessons learned in terms of scientific information and analytical methods. To obtain major improvements in data availability of population models all the time, are used in biological opinions at fisheries to supply landmass and environmental impacts.

We're still lacking a robust stock effects with the sea turtles. One of the prime data feeds that goes into a biological

opinion on our nesting beach counts.

That's only really a segment of the turtle population. In fisheries we try to make account of fishes out there and then look at the impact of the fishery relative to how it's been taken away.

We don't have the same kind of population models for sea turtles. And so we base the status of the population on the volume of nesting that's taking place from year to year.

And that's pretty expensive. It matches the third bullet, that demographic that the sea turtles develop robust models for assessing impact.

And the bottom line again, is the threshold for jeopardy to make it clear in terms of what is the true impact to the population of the given action. So what is the impact of, for example, why longline fishery on North Pacific loggerheads and West and Southwest Pacific leatherback turtles,

which are the two primary species, which interact without fisheries?

The impacts of all those things evaluated are based upon nesting these trends and not on the population as a whole. Can I have the next slide please?

So in the biological opinions, this slide essentially summaries the analytical processes used to arrive at jeopardy or no jeopardy opinion. In 1991 and 1993 the entire fisheries were the subject of those two BiOps and again, there was no analytical process that was included to evaluate impact issue.

But in 1998 we set in Honolulu a third set. Again, a simulation model rather then a population model was used in the opinion, and again, there was no jeopardy finding.

In 2001 they had talked again to fly off with only a cod fishery. And two types of models, a Dennis model and matrix

model were used to evaluate the impact of the fishery onset where that returned a jeopardy finding.

The 2004 biological opinion which issued the reopening of the swordfish fishery. And it's not clear what analytical processes were used in that amendment. I do recall that we developed a series of alternatives and I think we had some video conferences on those between NOAA Fisheries and the Council staff.

But we didn't attend the 2005 deep-set fishery because it was a very clear analytical process that was developed by the Pacific Islands Fisheries Science Center here in Honolulu. They called it quasi extinction model and that was applied to the deep-set fishery which turned a no jeopardy and the BiOp was a no jeopardy finding.

The same analytical approach was used in 2008 for the shallow-set fishery. And this was the one where the SFD was also able to convey and provide recommendations on the

model.

And in 2012 the climate forcing PVA model, population liability analysis and then that biological opinion there's an erratic, what was called a classical PVA and then they ran on the used climate forcing. In fact using the Pacific Decadal Oscillation and the forcing agent. And that again turned, resulted in a no jeopardy finding.

Can I get the next slide please. Really to summarize everything up that we've been talking about, with respect to the biological opinions and jeopardy findings, you can see that in the 1991, '93 and '98, essentially the ITS of all turtles in the Hawaii Longline Fishery was actually based primarily on the volume of turtles that was interacting.

But still, there was no jeopardy determination was given for those three BiOps. Then following the litigation, we still are much more conservative in respect to our

approach by the fishery service.

And so the ITS fall in the 2001 BiOp was again, all turtles combined, was about a tenth of what it had been in 1998. And there was a jeopardy finding which resulted in the closure of the shallow-set swordfish fishery.

2004 and subsequent biological opinions all returned no jeopardy findings. But again the ITS began to close the deep and the swallow-set fishery, were a very conservative. But the longline fishery, the shallow-set fishery in Hawaii, which has always been the primary focus, was fortunate in that it was operationalized.

The research that was conducted in the Atlantic with the large circle hooks and mackerel size bait was in such a way that it was able to minimize interactions and was able to function even though the ITS or the number of turtles they could interact with was much more limited. And I shall now turn back to

Lisa for the next five.

MS. VAN ATTA: Thanks. Yes, we're running a little long so we're just going to wrap up with two more slides, which is NOAA Fisheries perspective on the consultation process.

So as I said from the beginning it's important that each party understood its role in this consultation. This is somewhat unique and that the industries did have a significant role through its Applicant status in the Hawaii Longline Fisheries.

We also think that additional communication between the Action Agency Sustainable Fisheries Divisions and the Council could have improved the process of 2012. More dialogue amongst those two parties probably would have been helpful and it's a lesson learned for us in the future.

We did want to acknowledge the communication with the Applicant, again the Hawaii Longline Association, an incorporation

of the Applicant's substantive comments were very useful to process. We think in fact it provided a more robust document at the end.

Development of the BiOps is facilitated by outreach to the Applicant. And incorporation of their comments and engaging them at all meaningful junctures, we thought was very useful and productive.

Finally, this isn't a lesson learned particularly for this biological opinion, but just in general. We think that NOAA Fisheries mostly insured that the complication process and the result of biological opinion is a objective, scientifically sound and legally defensible.

We think this maintains its integrity of the process is beneficial to all parties involved. Especially this highly litigious arena of fishery management actions out here in the Pacific.

Next slide please. And then finally just on the process. While NOAA

Fisheries always uses the best available information, we need to continue to address the information gaps in order to strengthen future analysis.

Paul and I have already touched on those, I won't elaborate. And then we just wanted to make the point again, that we should rely or we do rely on a variety of sources of information and analysis in conducting a consultation.

Models, while useful, are only one of these sources. So just the point is that, yes we spend a lot of time addressing different models that were used, they were used in collaboration with the best available data at our disposal to come up with a very integrated jeopardy analysis and conclusion.

And with that, I think that ends our presentation. And the next slide is just about questions.

MR. LYNCH: All right Lisa, this is Jim Lynch. I'm a representative here for

the West Pac Council Alternative and I just wanted to make a couple comments to close and some of the lessons learned here working with the Council and these issues.

So I think what you're sensing from the Western Pacific Council working on these consultation issues is they consider themselves to be an action agency as that terms defined in the act and in the alternative and applicant. And I think it's a policy decision on the part of NMFS, which it chooses to select for purposes of interacting with councils on Section 7, biological opinions.

There are lots of very good and strong policy reasons why council should be involved early on in the development of a biological opinion. And there should be an opportunity for council staff and NMFS staff and other applicants to work back and forth to develop these documents.

At the end of the day I think what

everybody wants here is the strongest possible document reflecting all the available scientific information. That's the bottom line.

And again, I think the act is flexible enough and the policy certainly are flexible enough to allow the Councils to be treated in that manner. When that has happened, I think the lesson we have learn is that the process works much better, the document is much stronger and all the parties involved have a much clearer understanding of each others' views.

As it currently stands, the West Pac Council has to submit comments on documents through an applicant, through a different applicant that the agency has recognized. Which is just an odd situation in general.

So I think as this work group talks further about these matters, in terms of being more efficient, being more transparent

in how to develop these documents, we would urge this group to consider policy changes or recommendations for policy changes, that can be adopted and to allow councils to play a more integrative role in the consultation process.

MEMBER MORRIS: Okay, thank you. Thank you for that comment and thank you for the presentation. We're going to have just about ten minutes of discussion before we move into the next case study here.

And let me remind those participating in this discussion that we're looking for best practices, we're looking for ways that types of information and methods used in biological opinions can be improved and processes that can be coordinated and carried out in a more coordinated fashion. Keith?

CHAIR RIZZARDI: Hi, this is Keith Rizzardi, thanks to everybody for that great presentation. Paul, missed you in Hawaii,

wish I could be out there with you.

I thought the presentation was interesting in that both you, Paul and you, Lisa, were recognizing that there was an opportunity for better process. And as a law professor I talk all the time about the two basic aspects of legal problems.

And you have a procedural issues and have substantive issues. And what I'm hearing is the parties are all agreeing that procedurally there was an issue. There could have been better coordination.

And it's interesting that NOAA was able to coordinate with the HLA, but less so with the Councils. I'll also point out that on the substantive side that has consequences too.

Because if there is more communication, then there's more sharing of information, there's better data that comes together. The best available information comes closer to reaching consensus on it and

you often times have less controversy over the outcomes that come out.

So just an observation on both the process side and the substance side.

MEMBER MORRIS: Tony?

MEMBER CHATWIN: Thank you, this is Tony Chatwin. Thanks for the presentation. My question goes to methods, I suppose.

I notice the slide where you describe what models were used and the finding of jeopardy or no jeopardy. And it just made me wonder, how is the decision made to employ a given model at a given time and who makes that decision?

MEMBER MORRIS: Is there anyone here who can answer that question or not here, online?

MS. VAN ATTA: Yes, I can answer that, this is Lisa Van Atta. So it is the agency's decision to assess. When we know there's a fisheries management action coming our way, we talk to our fisheries science

center.

And we talk to them about what information they have since the last consultation, any new information on the species or other factors, such in this case, as climate. And we ask them to help develop a model for us that we can use in the consultation. So it is definitely a NOAA Fisheries decision on which models to rely upon.

As I've acknowledged at the CCC meeting in May, our opinions and the models replied upon have improved throughout the years. As new data becomes available, we incorporate that into the models and our process and information evolves throughout time.

I think Sam Rauch at CCC made the point, that litigation has driven us to take a harder look at the information we've reviewed throughout the years and make our model and our biological opinions stronger and

more robust through time. So I think that's the point that was being depicted on Paul's slide. Is that yes, different models were used, but there were good reasons for that evolution thinking by NOAA Fisheries.

MEMBER MORRIS: Marian?

MS. MACPHERSON: Thanks. I have a couple of questions, just real quick. I'm wondering what HLA applied for?

But the bigger question is, you mentioned that one improvement could have been that SFD could have communicated more and, what should they have been communicating about and why didn't they?

MEMBER MORRIS: Okay that's two different questions. So what about the HLA, who were the applicants, what were they applying for? And it seems like that was what was really different in the 2012 case.

MS. VAN ATTA: No, the HLA was applicant in both biological opinions. I'm not probably the best one to explain this, but

HLA did sue the agency to maintain their applicant status and they are applicants under the Endangered Species Act.

They have applicant status. So the Applicant is the Hawaii Longline Association. Applicants are entitled to certain junctures throughout the process.

Applicants can be brought in. One of them is when there is a development of a reasonable and prudent alternative in a jeopardy analysis. We must, by statue and regulation, share a draft of the RPA with the applicant. That's one thing.

The second things is they get a draft of the biological opinion before it is finalized. So we did communicate with the Applicant, HLA, throughout the consultation.

And I'll stop with that point, if Paul or anybody else wants to add to HLA's Applicant status. Maybe Jim Lynch?

MR. DALZELL: We just lost him, Jim is not in the room right now.

MS. MACPHERSON: Okay.

MR. DALZELL: I think the second part to that question, about communication between SFD and the Council. Was that what I was understanding?

MEMBER MORRIS: Yes, that's right.

MS. VAN ATTA: And we can go ahead and answer that because that was on our slide. The point was just that, from my understanding with our discussion with our Sustainable Fishery Division, there wasn't a lot of communication with the Council in either direction.

It wasn't that the Council was calling SFD for an update and it wasn't that SFP was necessarily reaching out to the Council. A lot of the communication went through the Hawaii Longline Association. And we were just making a point.

If there were junctures where the Council felt like they weren't being involved adequately that, that is our conduit. The

Sustainable Fisheries Division, as the Applicant, is always available to them for questions and provide as much information as appropriate as the biological opinion is developed.

MEMBER MORRIS: Okay, any other questions? Again we're looking for best practices and areas for improvement. Tony?

MEMBER CHATWIN: Thanks, Tony Chatwin again. Just a question. I don't know what bin it falls into, but you mentioned in your presentation the type of information that you used and that nesting females is the, I guess the metric that you use, because that's the one that's more readily trackable.

And I'm assuming that if you had more in water information of habitat use by turtles, that would make your job easier? And so I'm wondering, while the process that was described is unfolding, is there a research effort ongoing to improve the information of in water habitat use that could help with

future determinations?

MS. VAN ATTA: Yes, so it's one of our Pacific Island Fisheries Science Centers priorities to do more in water work. To get at just the question you raised, so yes.

MEMBER MORRIS: Okay, are you ready to switch to another case study, is there something else to ask about the Hawaii example?

MS. VAN ATTA: No.

MR. DALZELL: Just wanted to make one last comment, which was that in the 2008 BiOp, the chief drafter of the amendment on our staff communicated directly with the Protected Resources Division staff and not primary through the Sustainable Fisheries Division staff. So there was that communication going on which was absent largely from the 2012 file BiOp.

I would just note that, again I was asked a question the other day. If we had been more personally involved would the

numbers of parties differ there?

I answered no, the party wouldn't. But the fact that we would had held it at some distance from the biological opinion had consequences, because later in the year the advice of, I think our general council, the brief of administrator asked for this Council to take forward action to approve the ITS for the loggerheads and leatherbacks as the new hard caps.

And to agree that it was consistent with the content of Amendment 18. Yes, so --

(Off the record comments)

MR. DALZELL: Yes, I mean what would have happened if the Council hadn't done that? Would that have meant that there would have been legal challenges because we hadn't followed the correct process?

My point though is that again, that we were more marginalized in 2012 and yet we were still expected to have to take some

kind of formal action.

MR. LYNCH: Well and I think Paul, a different way to say that, this is Jim Lynch again, is that the council needs a record for its action under the Magnuson Act just as NMFS needs a record for its Section 7 consultation. That record is very similar and somewhat identical when it comes to these things.

And that I think is another strong policy reason why Councils should be integrated in the development of the BiOp. NMFS is using data generated by the Council. There's a risk of misinterpretation of the data.

We both need strong records that we defend and take action upon. Which is why it makes sense for the Council to just be considered an action agency for the purposes of this action.

And again, I think that's a policy question that this group can make recommendations on. I think that the policies

are out there, they're in the Section 7 handbook, they're in the rights.

There's a standard practice that NMFS has developed and I would venture a guess that the different regions of NMFS treat this issue differently with different Councils. I don't think there is consistent treatment of this and I think this is an opportunity to make the right decision and create a better process than what we've had.

MS. SIMONDS: And let me just add that we were the action agency from the beginning, from '77 until Bill Fox became the head of NMFS. He changed the process.

The Councils would write the letters to the agency where, whether it was NMFS or the Fish and Wildlife Service, and said that we are considering an amendment to such and such and this is our request for consultation. It was as simple as that.

But when Bill came along he decided differently, so he made this policy

change and you know frankly it's not working for us. And so I'm so happy that we're having this committee, this discussion and I hope that things work out well.

MEMBER MORRIS: Okay, well so we've noted those suggestions. Is it okay then to go on with the next case study presentation?

MS. VAN ATTA: Do you mind, this is Lisa Van Atta. Do you mind if I just jump in and just offer one closing comment?

MEMBER MORRIS: Sure.

MS. VAN ATTA: I'll make it fast.

MEMBER MORRIS: Sure.

MS. VAN ATTA: Okay, thanks Kitty, Paul, Jim for those thoughts. I just would like, beside that we believe the difference between the engagement with the council between 2008 and 2012 is that in 2008 we actually had a fisheries management action before the agency. There was an Amendment 18.

And so there was necessarily close

of communication via a sustainable fisheries and protected resources on those amendment documents, those NEPA documents. That was the appropriate juncture and we would foresee that, that would happen in the future with the new amendment.

As described in the presentation in 2012, we didn't have a similar fisheries action that was ongoing to take place. It was in the reaction to the settlement terms that we needed to reinitiate consultation and consider all new information.

So that's why we believe, and it's just a personal prospective, why we believe there was a little bit difference of the way the Council was brought in, in both those consultations.

And then secondly I just wanted to say that the issue Paul brought up and that Jim was discussing, was that the Amendment 18 specified a number of hard caps that were no longer supported after the biological opinion

was remanded. So we needed to make a change and we needed to implement an idea that's consistent with Amendment 18.

So we used Magnuson Act 305(d) process to come up with, to reconcile those two processes. This is really outside the purview of protected resources division and really is more of a Magnuson Act issue.

So I just want to make sure that we understand, here on this call, we're talking about the consultation process and what occurred after the biological opinion was signed, was under the authority of the Magnuson-Stevens Act. So thanks for letting me provide that clarification.

MR. LYNCH: Thanks Lisa, and I think just to kind of summarize from the Councils view. I think somewhat on this is that we do believe we are the action agency, that we are making recommendations for action here and that regardless of the form that you view that action taking, the process will be

better if we have an action agency, consultation agency relationship. Because we won't miss information.

That's our view and we're hopeful that this process that we're going through now will help us all talk through these issues and identify ways to improve and make us more efficient. Because at the end of the day I think we all have a shared interest in making these more defensible and credible documents.

MEMBER MORRIS: Okay, so thank you all for your comments and listening to the discussion. We definitely get the points that you're all making and they will be part of the raw materials that we'll work on in the working group.

And now were are going to move on to the second case study, which has to do the Gulf of Mexico, reef fish fishery. And David Bernhart is in the room with us here and Kevin Anson is on the webinar. So who's going first?

MR. BERNHART: I think I'll start Julie, if that's all right, Kevin?

MR. ANSON: Please, go ahead.

MR. BERNHART: Thanks Kevin. All right, I have technical control here and a microphone, off to a good start. So Kevin and I have split up our presentation a little bit. I'll do most of the background and the NMFS lessons learned and then hand over to Kevin for the Council prospective.

I think our view, perhaps, of some of the limitations will be very similar. But let me try to lay this out. And also I should say thank you to our Pacific Islands colleagues because they done a lot of the background and introductory stuff that I neglected to do, but now can take advantage of the good groundwork that they've laid.

So with that, let me dive in. There we go. My title on the assistant regional administrator for protected resources in the NOAA Fishery Southeast Regional Office,

and I was at the time of this consultation we'll be talking about.

But I guess I want to point out, first of all that this particular case study was not necessarily a typical consultation where protected resources, considerations usually are secondary or a discovery later on in the process. The amendment that was central to this had as, I think its only purpose, addressing sea turtle bycatch in the Gulf reed fish fishery. So it was really the central issue.

And then all of all those roles and responsibilities for consultation, that got laid out in the previous presentation, were definitely all applicable. However we had a few additional roles as well.

SER-PR, throwing in acronyms already, Southeast Region Protected Resources. We provided a high level of staff support to the Council, primarily giving species expertise and also some consultation process

advice, that fed directly into the amendment development to help inform the Council and help inform the amendment and its EIS.

Also we're aware very much of the same kind of role, integrity issues that I think you heard Lisa Van Atta talking about. And so we did try to segregate when we were working on our consultation and when we were working as technical experts giving advice to the Council and try to meet both of those roles without crossing any lines on anything.

So this is the reef fish fishery of the Gulf of Mexico we're primarily going to be talking about, the directed grouper fishery in the western Florida shelf. There is some reef fish fishing in the Western Gulf of Mexico, but it's relatively minor.

It's a mixed commercial and recreational fishery, gag and red grouper are the primary target species. The commercial fisheries uses both bottom longline and vertical line. A lot more small operators in

the vertical line fishery, fewer larger operators in the bottom longline fishery.

And then we primarily were dealing with this amendment with issues in the bottom longline fishery, as I'll talk about, that's where the greatest proportion of the bycatch was. But the scope of our consultations is pretty much always the entire fishery, authorized under an FMP and whatever regulations and whatever proposed fishery management action there may be.

So I'll throw a comment out there early. I think this was an example where it was particularly valuable to be doing this work up front in the council process, in the fishery management amendment process, rather than late in the day. Perhaps as a result of reasonable and prudent measures, a reasonable and prudent alternative that would come out of a consultation.

And I say that because the council is much, much better qualified than I. I

would say that I am not qualified at all to make any of the social kind of decisions on the roles of the different sectors.

As we talked about, most of our focus was on the bottom longline. But the bottom longline, the vertical line and the recreational sectors all take sea turtles and are part of the consultation and are part of the issue.

The other part of the issue is that we had very poor data on the level of interactions between the reef fish fishery and sea turtles. And after some preliminary observer work of Southeast Fishery Science Center report showed that we had much higher levels of sea turtle bycatch in the bottom longline sector.

About 800 turtles over an 18 month period. The existing biological opinion at the time authorized an incidental take of 85 loggerhead turtles over a three year period. So we had an actual observed or extrapolated

from observer data bycatch rate that was many times what the existing biological opinion had been based on.

And then I'll also, I'm going to through a chronology of events, but something that I want to emphasize from the outset is that things went, from my prospective and I think from the council's prospective, very rapidly to resolution in this particular case. So it was September that the science center produced this report, which was significant new information, September of 2008.

And it was in October of 2009 that we issued our final biological opinion and had most of the management measures for the fishery worked out and going into place. So 13 months for the full FMP amendment, development and the consultation and working with brand new data.

And for the Council, a brand new issue. Before this report I'm sure they had not had anywhere on their radar screen that

loggerheads and reef fish was going to be the hot issue.

Here's a little graphic, not showing up very well, but that map of the West Florida shellfish showing the distribution of observed bottom longline set, so you can see that it's out there in, fairly far from shore but still not that deep water 20 to 50 fathoms. And you can see that the observed sea turtle takes are from throughout that area.

This area is known to be a pretty important foraging area for loggerhead turtles. Many, particularly adult or at least the post-nesting females, that have been tracked from West Florida nesting beaches will go out to the type of area and have their foraging grounds out.

And the sea turtles observed bycaught in the bottom longline fishery were relatively large animals or adult animals. So there was concern about their relatively high

reproductive value to the species.

So events started moving pretty rapidly. We had pretty much immediately a request for reinitiation of consultation. The previous biological opinion because of the ITS being exceeded.

And entered disciplinary planning team and IPT, is part of at least our regional operating agreements on how amendments will be developed. So NMFS and Councils staff and the NMFS staff in these typically will be sustainable fisheries, protected resources, economist social scientists and Southeast Fishery Science Center as well.

So the Council went quickly into scoping, dealing with the sea turtle bycatch problem. At the October Council meeting my division notified the Council of the new findings of the ITS exceedance. Discussed ways of potentially reducing bycatch and then also went over the sea turtle bycatch estimates with the council.

And the council immediately decided to begin scoping. Specifically to minimize sea turtle bycatch in the Gulf reef fish bottom longline fishery.

There was also, at that particular Council meeting in October, a number of the environmental NGOs that were participating and quickly got with Council members and industry members to talk about possible ways forward. I think that there was a very deliberate decision on the part of many of those folks in the NGO community, to give the industry and the Council the space to try to work this problem out through the council process and through the amendment.

And the fact that the Council moved immediately at that first meeting to begin scoping gave the environmental community some comfort in that. That said, I think the Council and the fishery service knew that there was certainly a high potential for litigation because of the high levels of take

of loggerhead turtles previously undiscovered.

And then I'll say one more thing, there was at that time loggerhead nesting in Florida and thus the Atlantic had been declining steadily for about a decade. It had dropped about 40 percent.

There were many papers in the referee journals really ringing major alarm bells about the status of loggerheads. And here we had a newly discovered impact from a fishery that was impacting a large number of adult loggerheads. So there were a lot of exclamation points floating above peoples' heads around the room.

In January of 2009, NMFS developed a document that we call a Section 7(a)(2), Section 7(d) analysis. And it's basically something that gives us some record basis for continuing with a previously authorized action, even when there are questions raised about the validity of the biological opinion.

And certainly that was the

situation we were in. We had our 2005 biological opinion with the incidentally take authorized of 85 and we knew we were way above that.

So we did that and then at the January meeting the Council further requested that we publish emergency regulations under Magnuson authority to address sea turtle bycatch while they continued with the permanent amendment development. And that actually, that would go on our May issue.

So in April through June we were working frantically with the science center to bring in additional information. So we got more information on commercial bottom longline and vertical line take estimates.

We looked into also the recreational fisheries for the biological opinion. And this last bullet here is, I'll talk about a bit more in a minute, but we pushed our science center very hard to develop a new loggerhead specific sea turtle

population assessment.

Sort of in response to the question of, when do you use what model? Here's a case study of that.

We all of a sudden had a big problem we needed to address. The Council was interested in doing in it, we wanted to give them quantitative tools, if possible, and none existed.

So the Southeast Science Center worked very rapidly to try to develop that sort of quantitative tool for Councils use and for our use. And at the June Council meeting they made a presentation on their findings and I'll say a little more on that later.

MEMBER MORRIS: So David, that's 15 minutes.

MR. BERNHART: Okay.

MEMBER MORRIS: You intended to use half the time.

MR. BERNHART: Thank you. In May there was, we did in fact do an emergency

rule, closing a large area of the Gulf to re-fish, but it was temporarily limited to that 180 days.

Again the June 2009 Council meeting, we presented that sea turtle population estimate, and that was from the science center, and we from protected resources provided a consultation assessment to the Council. That's something that's in our draft operational guidelines.

And was, I'm not sure if it was quite exactly the sense that's in the guidelines, but what we wanted to do was to be very clear and explicit with the Council. Which was looking at the, the Council was looking at the same information.

Their problem was sea turtle bycatch, or our problem was sea turtle bycatch. We wanted to give the Council as clear an indication as we could of how we would be approaching that information, because in any of these analyses, certainly there are

arguments for alternative approaches to things and we wanted to show them where we thought we would be going.

And I'm going to quickly skip over that next one and explain that a bit later. The Council did refer between that June meeting and this August meeting. They referred the matter to the SSC, which also gave them some recommendations.

Finally at the August 2009 meeting the Council took final action and voted to submit it. And the Council had a suite of measures all directed at reducing sea turtle bycatch. A seasonal area closure, a longline endorsement for vessels with demonstrated landings history above 40,000 pounds annually.

You know that eliminated a lot of the latent effort in more small participants participating in the longline fishery. From my memory I think that reduced about 50 percent of the participants at that level.

They considered many alternative

formulations of all of these. And then also limiting the number of hooks that could be possessed on board and could be fished on bottom longline vessels. In total those measures were anticipated to reduce the sea turtle bycatch and mortality by about 60 percent in the bottom longline sector by itself and by about 50 percent in the combined fishery overall.

So then in September we got a final analysis of exactly those numbers from the sustainable fisheries division to the protected resources division and we had a complete consultation package. Now I'll note, just where we are in the timeline on this, we've already had the DEIS, we've already had comments on the DEIS, we've had a SSC review and the Council has taken final action and voted to submit the amendment.

We developed the biological opinion and finalized it in mid October. Considering the fishery operating under

Amendment 31. And we also had the additional rulemaking, that was the bullet that I skipped over.

We were looking at a situation where the emergency Magnuson rule was expiring. We had final action and the Amendment 31 was working its way through the system, but not going to have completed rulemaking and gone into effect until some time the following year.

And people were concerned about what would happen in the interim period. And so NMFS used it's authority under the Endangered Species Act to go in with an emergency rule to cover that interim period. And we implemented the parts of the area closure from Amendment 31 and the hook closures from Amendment 31.

We didn't think it was prudent or maybe not even within our authority to dive into deciding who gets to participate, which was what that endorsement did.

But that provided some interim protection until the full suite of measures was in place. And there is that.

The biological opinion concluded no jeopardy. And finally we got Amendment 31 published in January and effective, I think, in roughly May of 2010.

We did, throughout this period of time, share as much sea turtle information as we could with the Council. The fourth one, this population assessment, I might want to talk about just a little bit more. That was the hurry up develop a new model that we pushed the Southeast Center to develop.

And I would say that that was a mixed bag. Let's see what my next slide is. That was a mixed bag. We pushed them to do it very rapidly and what they discovered was that there was so much uncertainty in all of the life history data feeding into it that the uncertainty in their final answers was really quite huge.

We had some discussions about, might you narrow that down and probably you could. But I think overall the Council was presented with this potential quantitative tool that was not as useful as anyone would like it to be. And I think that gave a lot of people a lot of cause for concern.

This is one of the particular questions on the terms of reference about involving the Council in RPMs and ITS. There was no involvement in that. We were involved fairly extensively in the development of the fishery management action, but then when it came time to drafting the BiOp and finalizing it, that was all of the Council interaction was behind us.

So are lessons learned on this, I guess number one is the Councils can proceed -- and something that I'd like to emphasize, the Councils do have the authority to specifically address protected species interactions. We don't have to treat this

entirely as sort of an after the fact consideration.

Let's do our fishery management and then leave it to the people writing the biological opinion to figure out what the incidental take is and whether that's a problem or not. In this case it was pretty clear that there was a count problem and the Council moved directly, under Magnuson authority to regulate it.

Number two. When the Councils use this authority, it certainly prevents the situation of having any hard decisions being made by people like myself who may not have the full perspective on the fishery, the participants, the social and allocation issues that are within the Councils prevue, but not really within mine.

And the Council process, which is inherently open, with scoping and NEPA and public comment, is also better suited to arriving at those final decisions than the

biological opinion process which is not inherently open. We're talking about maybe ways that it could be, but inherently it is not.

And then last. I think that, so I think number one and two, that's the positive that I would like to sell, but I think number three that the Council has experience with finfish stock assessments, which often certainly leave a lot to be desired, but I think they were particularly alarmed at the uncertainties and data quality problems for sea turtle stocks assessments and the information available for decisionmaking. Especially important ones.

Okay, and so --

MEMBER MORRIS: So Kevin, David left you five minutes. So please, we'd like to hear from you.

MR. ANSON: I think plenty of time. Thank you David and I will go through these fairly quickly in light of the time

constraints. Just as a primer for everyone, I had joined the Council right around the beginning of this particular ESA action and Amendment 31, so I do not have a lot of long term history from the Council perspective, but anyways I will provide what I have.

And NMFS provided information early in the process, as David had reviewed. However the loggerhead sea turtle stock status information was not provided until the meeting where Amendment 31 was ultimately approved and sent to the Secretary.

And so there was a concerted effort looking back on it in hindsight and reviewing minutes from the meeting. That was concerted effort to try to meet the, I hate to call them demands, but the Council dealing with finfish stock assessments as you all are familiar, has relatively large amounts of data sets.

But they were surprised at how little data was available. But yet NMFS staff

was able to provide some information throughout the ESA process and amendment development.

And the comments as David mentioned, provided by the Council members during the meeting ultimately became the basis for some of the RPMs. Again, they followed with the actual approval of the amendment and so there was not much time to or really necessary for Council to go ahead and review those and provide additional comments. One of the things that was mentioned, however in the RPM, was a specific one. RPM 3, where the science center was going to make a concerted effort to try to address some of those concerns that the Council had mentioned, relative to the data that was provided.

One being robustness, more coverage within the observer programs that formed the bases of determining takes. And then also trying to improve the stock assessment. As David mentioned there were

quite a few inconsistencies or the outcomes that were generated from the stock assessment and stock analysis really left a lot to be desired. Next slide please.

So again, talking a little bit about some of the concerns for the available data. Low observer coverage, less then 2.2 percent. There's lots of variability within the data that was captured in the observer program.

There was some question as to the temporal and spatial coverage of the actual observer trips. And the recommendations from one of the reports made on the initial assessment on takes estimated a three to five percent coverage would be necessary to capture that fishery effectively. So essentially almost a doubling of observer effort was needed.

Although observer and nesting data were the best available as determined by the SSC, the Council preferred a stock assessment

of sea turtles. Which included takes from all anthropogenic sources.

This was one of the issues, I'll mention this on the next slide. But in terms of dealing with jeopardy and again, dealing with finfish stock assessments, the Council has a target number if you will, which it shoots for in trying to develop its management for the various species.

And it really wasn't anything that could help the Council in driving towards specific management measures to avoid jeopardy, when it went through consultation in the BiOp. Again, going back to the data.

The bait size/preference for adult loggerhead turtles. There was information provided from other areas, in other fisheries, that was used as a proxy to try to look at particular management measures that may have been easily implemented and more readily accepted by the fishery.

But there was wasn't much data and

so they were deemed not practicable to try to substitute or try to look at some of these alternatives. Next slide please.

And the Council overall felt the available data was inadequate to effectively address specific issues in the bottom longline component of the fishery. The stock status no longer had sea turtles lack basic lack of history information, which greatly influenced stock projections.

And that was one of the recommendations I guess that was generated from the consultation, is that there wasn't going to be a more concerted effort to try to fill in that information that was determined to be lacking in the stock assessment.

And Council members struggled with, to select action alternatives. Again, to reduce sea turtle bycatch. When NMFS could not provide and it may have been because of the way the act is set up, but they could not provide an estimate of bycatch reduction

needed with the fishery to avoid jeopardy.

So we were kind of left making our best case to shoot for the jeopardy number that was listed in the 2005 biological opinion, was the best advice that we were given to try to reach that number. And it would be helpful if reduction targets were available at the start of the amendment process to guide Council decisions on practical measures, which avoided jeopardy while minimizing impacts to the fishery.

And overall looking, again, we haven't much or I haven't personally had much experience with ESA interactions, with the fisheries we manage.

But certainly from this prospective and with learning more about the Hawaii longline situation from the presentation today, is that I felt like we were more involved or were looking at the subject from an action agency perspective, working hand and hand with the regional office

and the center to try to come up with measures and means that would solve the problems that were inherent with the fishery, as it related to ESA. That's all I have.

MEMBER MORRIS: Thank you, Kevin. We've all been sitting here in hard chairs for quite a while, so I think it's time for a break. But are there a couple comments to make before we break? Keith?

CHAIR RIZZARDI: Thanks, everybody, for these presentations. First I'll say, I'm going back to my model before of process and substance. It seems like the process was a little bit better this time because there was so much up-front coordination and the Council was involved in the formulation of the agency action.

But I'm struck on the substance side. Especially putting back to back with Hawaii. At first the numbers of take here for the same species gave much, much smaller numbers that we were talking about in Hawaii

versus here.

So it kind of leads me to thinking about this. And the first question I have is, is there some effort by NOAA to ensure that there's consistency and coordination across the regions on things like the methods and the models and the numbers of take that are occurring?

And my second question is, are you comparing the amount of take against some sort of global overall number that's then allocated to your different regions?

MEMBER MORRIS: Who would like to respond? David.

MR. BERNHART: I guess I'll take a shot at that. So in terms of, is there an effort to be regionally consistent, yes, very much so.

And Keith I think you remember the pelagic longline issues in the Atlantic, which had even more in common with the Pacific scenario then this bottom longline scenario.

And we tried very hard to coordinate between the East Coast and Hawaii in that circumstance.

There is not a worldwide allocation. I think what there is, is hopefully a consistent application of the kind of approach that Craig laid out of moving through with your particular analysis, with you particular populations that are affected, through his little box assessment structure to get to your jeopardy decision.

Since both of these biological opinions -- we've now separated loggerheads into separate DPSs so we wouldn't be ever comparing the Hawaii to the Western North Atlantic -- but I think that you are leading to a good question of, how do we treat our collective mortality sources versus just looking at the one that's in front of you with a particular fishery management action? And I think that's definitely a place where we have some room for improvement.

MEMBER MORRIS: I've got Tony and then Marian and then Randy.

MEMBER CHATWIN: Well thanks again for a really interesting presentation. I have two questions. One is with regard to the issue of the modeling.

Now we've heard those two different examples. In both cases it sounds like the models have developed as need arises. And I imagine that takes a lot of energy, effort and time. And having gone through these experiences, is it now an effort to do these modeling efforts and population assessments proactively?

MR. BERNHART: I think Lisa spoke to this a little bit in terms of the priorities at Pacific Islands Science Center. I know the Northeast and Southeast Science Centers for the East Coast are discussing this hot and heavy.

I think that the, well and not just them. We had an NRC review of sea turtle

stock assessments and if, I'm probably misquoting it a little bit, but I think one of its primary findings was, we should probably stop messing around developing more models and spend more time collecting the life history data to populate it accurately.

And that has definitely been a high priority. But then there are also in the last couple of years, thanks to some -- and this is just for the East Coast -- thanks to some collaboration between NMFS and Fish and Wildlife Service and Navy and BOEM, we've got a lot more field surveys going.

So in addition to trying to develop demographic birth rates, survival rates, mortalities, age at reproduction, which is what we were lacking for the models here in this reef fish. We're also trying to get those field assessments to strengthen that side of the house.

But to answer your question, I suspect that things will go the way they've

always gone. When we really need to pull all that information together, it will be dictated by whatever the circumstances are. But certainly a lot of effort is underway to address the shortcoming that lead to this.

MEMBER MORRIS: Marian?

MS. MACPHERSON: Thanks, David and Kevin, I really enjoyed the presentation. I really like how proactive it sounded like you guys were.

I'm just wondering what it was like for your staff? Is that something sustainable at the level of PR participation and Council of process? And will you do that continuing on a regular basis or what would you recommend?

MR. BERNHART: Well, for us it was a very intense year. Strictly from the PR side, I think we all viewed it as extremely positive.

I think that we enjoyed working in a collaborative way with the SF side of our

own agency and with providing our expertise to the Council. And seeing them use their tools for endangered species management rather then trying to use Section 7 as some arm-twister after the fact or whatever.

So it was a lot of work, but I think it is kind of the model of how we should try to do it. Now, and I completely agree with all of Kevin's sort of shortcomings items.

But I still think, big picture, this is perhaps the ideal approach. And that's not to say that that is what you would do in every case. But in similar circumstances, I would gladly do it the same way.

MEMBER MORRIS: Randy?

MEMBER CATES: I think I just want to make sure I heard right. If I understood you said that you're looking at the populations in a regional box and not necessarily a global box? Did I misunderstand

that?

MR. BERNHART: Well we do have to make our, as Craig said, we have to make our ultimate jeopardy determination on the species as listed. But Craig also laid it out, first let's look at, alright what's the fate of individuals, what's then the impact on their overall life history.

Okay, maybe you killed one but it wasn't reproductive anyhow, no effect on the overall population. Or maybe your killing a lot of adult females. Let's look at reproduction, let's look at long term trends in that.

Let's say Florida nesting population. If that's not the species, the entity that's listed, then you have to take that analysis to the next step.

Okay if we do this to the Florida loggerheads, what does that mean for the entity that's listed. Which right now is the Northwest Atlantic population.

But at that time was the global population. So if we were real seriously concerned about jeopardy we would have to have gotten to that step.

MEMBER CATES: This has been a major problem in Hawaii with the green sea turtles. The science has not been done. Its been requested to be done for numerous years.

And the argument by the NOAA scientists is that they cannot look at it as a distinct population, but a global population. So even though the green sea turtles in Hawaii are obviously rebounded, they don't even want to look at doing the science on it because they're saying it has to be a global population. And it's been a real battle in Hawaii to the point where now there's a lawsuit over it.

MR. BERNHART: I shouldn't comment on what I don't know, but we did get a delisting petition for DPSs, which is causing us to look at the DPS breakup of green sea

turtles, much like we did for loggerheads. So that's something that's under way, litigation free, but petition driven right now.

MEMBER CATES: And that request first came in 2006 at MAFAC. Why the science hasn't been done and West Pac had requested it, I think in the '90s, and that was where the battle was.

And to the point where there were big meetings in Hawaii and then the Hawaiian Civic Club said, well, we have to threaten to sue to even get the science done. And I just feel that's not a way to really do business.

MEMBER MORRIS: Okay, because of the long session we are going to take a break now. For those of you at distance and everyone else in the room, we'll reconvene in 15 minutes at 3:45 Eastern time.

And we're running about a half hour behind in our schedule, so make good use of your break and come back ready to listen attentively to the next case study.

(Whereupon, the above-entitled matter went off the record at 3:32 p.m. and resumed at 3:44 p.m.)

MEMBER MORRIS: Okay, everybody in the room, if you could take your seats and give your attention to Bob and Dawn, we'll get started on the Lower Columbia River Chinook Salmon Case Study 3.

Okay, who is going first: Bob or Dawn?

MR. TURNER: It's Bob and Dawn and I think Chuck.

MEMBER MORRIS: Oh, Bob's here?

MR. TURNER: Oh, excuse me, yes.

MEMBER MORRIS: Oh, thank you.

MR. TURNER: Yes, sorry. I think so. I think Dawn is in Hawaii and if I'm not mistaken, Chuck Tracy is Dawn's deputy at the Pacific Council and Dan Wolford is the Chair. I hope they'll both chime in anytime they would like.

I'm Bob Turner, I'm the Assistant

Regional Administrator of the Northwest Region for the Salmon Management Division. The Northwest Region has a Salmon Management Division in addition to Sustainable Fisheries and PRD, unlike, I think, any other region in the country.

And actually, as I listen to this discussion, that may become part of the story. I think it's a good thing that we're here, I think.

We've been asked to give this, which is a good story about a new harvest management regime that was put into the Pacific Council Fisheries for North of Cape Falcon. Oh, I think I have to do something different.

This presentation is in two parts, there's a bunch of slides that'll give some of the substance of what we did. I'll try to go through this really quickly. Then there's just a few slides that talk about the process and why, at least we think, and I think the

Council thinks, it was successful.

This is, as I think most of you know, salmon are anadromous, they spawn in fresh water and go out into the ocean. The little map shows you the portion of the Columbia River Basin where Tule Fall Chinook are produced.

It's largely the lower Columbia river. The bulk of the fish are produced in hatcheries that are federally funded by NMFS in the lower river. The colored map is all the sub-basins of the Lower Columbia, the tributaries upon which most of these hatcheries are and where these fish spawn.

They are listed under The endangered Species Act. The fisheries, the PFMC manages the fisheries. The ones that we'll be talking about here are what the Council family calls north of Cape Falcon.

North of Cape Falcon is just at the bottom of this map in Oregon, that's about 200 miles of coastline and the Tule Fall

Chinook migrate out of the mouth of the river down there at the bottom and turn north, generally, and are caught substantially in these fisheries.

This pie chart shows you where Tule Chinook are caught throughout the coast, and it's indicative of what I was just saying, the blue portion is Canada, that's the biggest chunk of them, 40 percent or so.

Ten percent or so are caught in Alaska. The red part is the PFMC-managed ocean fisheries north of Cape Falcon. The river, the Columbia River itself is the 20 percent in green. Or excuse me, the 20 percent in yellow.

And the small slice that you can't even see is in other places, and it's largely tributary catches, is the 1 percent.

This pie chart shows the Pacific Council Fisheries north of Cape Falcon and what is in that fishbowl of Chinook caught north of Cape Falcon, showing that over 50

percent of the Chinook are the Tule Falls Chinook that we're talking about. The other 50 percent come from different places, including Canada, Puget Sound and other stocks from the Columbia River.

So if you combine those two, what you see here is that roughly 30 percent of the Tule Fall Chinook production, that is, in the left half, provides 50 percent of the catch in the PFMC Fisheries and is why the Council focuses a lot on Fall Chinook, because it's very important to their fisheries.

As I mentioned, these fish are listed under the Endangered Species Act. This is the wild component of them over time. This is the hatchery component over time, scale matters in these two graphs.

And in order to kind of equate them, I put them together, roughly. So what you see is the wild component, that's naturally spawning Tule Fall Chinook; the hatchery-bred Fall Chinook are on the bottom.

And it's, the ESA, obviously, is focused on the top part.

Harvest management is focused on the top part. So our harvest, our exploitation rates for Fall Chinook are established based on the impact to the small graph on the top, not the large graph on the bottom.

The Lower Columbia River Tule stocks were listed in '99. We have generally recovery plan in process going on throughout the Northwest for listed populations. Most of them, and the Tule Fall Chinook population is one of the most advanced in terms of development of a recovery plan, of any of the populations listed in the Northwest.

Both Washington and Oregon have components in the recovery plan. They have been rolled together into one plan, and it calls for what is known in the Northwest as an All H solution, which addresses the four major factors that are limiting most salmon

populations' habitat.

Hydropower, Hatcheries, and Harvest. I'm focusing on the Harvesting section just for the sake of history, you saw those pie charts. Prior to listing, the harvest rate on Tule Fall Chinook was as high as 80 percent.

And just prior to listing, it was 49 percent. It had dropped over time. And since listing, this is what the harvest rates have been under a regime that had what we called a fixed harvest rate approach to management.

So we went from 49 percent to 42 to 41 to 37. And in that biological opinion for the 37 percent, we said that in the next year, so the biological thing had stated that if nothing else happened, in 2012, the harvest rate would be 36 percent and we basically were telling people informally that we were going to ride this harvest rate right into the ground if we didn't get together with the

other three H's and start, basically, in this case, improving habitat productivity for this population.

The harvest sector and the Council said, is there not a better way to approach this harvest management regime? And we said, well, let's give it a shot, basically.

Just to go back a step, though, each one of those harvest rate bars was associated with a biological opinion that reached no jeopardy.

That biological opinion is based on what is becoming more and more well known in the Northwest as a population viability analysis. It focuses on four attributes of salmon populations: genetic diversity, geographic diversity, demographics and productivity.

It's very complicated, and as I sort of joked here, it's not a black box, but it's pretty gray. Technical people are comfortable with it. The further away you get

from technical stuff, the less familiar you are with it.

But I think, you know, as we get to the lessons learned, one thing that is true is that, you know, we've had listings in the Northwest for 20 years. We've done a lot of them and that we're data-rich, generally. We're data-rich in particular on Tules. People are comfortable with the fact that we do a lot of modeling, there are a lot of smart people who do this stuff, and when they present it to folks, it's given a considerable amount of credibility.

Whether that's by us, or in this case example, by an independent contractor.

Yes, Dan?

MR. WOLFORD: This is Dan Wolford, if I could jump in here and, you know, this is quite different from the case we just heard about from the Southeast where there was not a clear objective in terms of what was necessary to achieve a no jeopardy condition.

Here we have very clear direction about what we needed to achieve, but from the Council's perspective, we had very little insight into how these numbers came about.

And as a consequence, we were very concerned about where this was going and how these numbers were derived. So that's what led us to ask for this please look for another way, kind of thing.

We were very concerned about where we were going with this.

MR. TURNER: Thanks, and please jump in anytime, Dan or Chuck. So this particular model, incidentally, it was presented along the way to those who were involved in the development of this abundance-based approach by the independent contractor modeler, who was excellent.

And financially supported by the council in every respect. I don't think we would have been successful without that support from the council for the modeling.

But basically, what we were calling for, what the question was, was, could we apply to Tule Fall Chinook something that is emerging in salmon management? I call it an increase in sophistication of harvest management.

Which sort of in the old days, and still today, in some cases, where you manage for a fixed escapement objective of X numbers of fish spawning in a river. That has a lot of problems with it that we don't need to go into.

But basically, if you err, if you make a mistake in management and you were targeting for a fixed escapement goal, it can have very catastrophic effects. The consequences of error in that system are high.

Many harvest regimes for salmon stocks have switched to what's called a fixed exploitation rate, where you're going to take a constant percentage of the fish in any given year, regardless of its abundance. That

moderates the consequences of error.

The third and more sophisticated approach, which is the one we were asking the question whether we could apply here is whether you can have an exploitation rate that varies based on abundance.

And the graph down below shows the difference between the two. It's a little complicated. The purple dashed line is the fixed exploitation rate of 37 percent, which is the last bar in that graph that I showed you before.

That was the old management regime. The question was, could we apply the stair step approach that's in this graph, which is an abundance-based exploitation rate.

And reminding you that the rate is set on the abundance of wild fish. Wild fish are far more difficult, the abundance of wild fish are far more difficult to predict than hatchery fish, that you can't get your hands on them like you can hatchery fish.

You don't know how many go out, it's difficult to tell how many come back. You can't apply math to it very well. So there was a whole bunch of questions that had to be answered technically to determine whether we could make this shift to a different management regime.

But we decided to try. I probably will come back to this process checklist, but because there are steps along the way that are more important than others, but I want to emphasize, there was a two-year effort and involved a lot of people and a ton of interaction between the harvest sector, the technical sector, the National Marine Fishery Service, and the Council itself.

I think I'll go forward a little bit for the sake of time and come back. But one key thing was that, early on, both the Council, the harvest sector, and the national Marine Fishery Service, from an EF brig, wearing our ESA logo, came to the question

with the objective of having what we came to know as a win/win situation where the harvesting sector would see a benefit over a fixed exploitation rate.

So could they, over time, be viewed as harvesting more fish than they would under a fixed exploitation rate at varying run sizes over a course of years.

And secondly, could we reduce the risk of extinction over time by using an abundance-based approach over the fixed exploitation rate? And the reason why that theory is possible, is going back to this stair step, a reduced harvest rate at low abundance gives a bigger conservation boost to the population than you lose at a higher harvest rate at high abundance.

So we were saying, if we can get our paycheck at low abundance, then the harvesters can get their paycheck at high abundance. And the issue becomes, how often over -- and this was modeled, basic modeling

scenario here was 1,000 iterations over a hundred-year period.

So when you come to a conclusion about whether you're going to get an increased risk or a decreased risk, an increase in harvest or a decrease in harvest, that outcome is a result of running that model a thousand times over a hundred years.

So a hundred years of abundance. And this is what the output gets you. So I don't want to dwell on this, but the tiers in this graph are the breakpoints in the population estimate. So the 30 is 30,000 Tule Fall Chinook, Column Number 2 says 30 to 40, that's a run size of 30,000 to 40,000. Column 3, 40,000 to 80,000 and over 80,000. The rates are the harvest rates applied to those tiers and then the number of years out of a hundred that you're likely to fall into those tiers is the frequency.

And then the analysis of the win/win is in the final, couple-three columns

there. The green row is the scenario that was actually selected ultimately. You can see that it's entitled 68H2, which means that there were at least 67 H-somethings before. There were hundreds of scenarios run and analyzed and digested by the folks who made the recommendation to the council and were ultimately considered by the council.

So a couple of things on why, so I'm shifting from, that's the factual situation that led to the consideration of the proposal. I want to go back into why it worked, a little bit.

First of all, going back to the schedule, you'll see back in 2010, the council formed an ad hoc group called the Tule Work Group that was asked the technical question, can it actually be done. Can you predict the abundance of wild Tule Fall Chinook and if so, can you establish a harvest regime?

That work group itself established its own credibility by its membership. So we

had the Northwest Fishery Science Center on that group, a member of the Northwest Fishery Science Center is Chair of the Council's Scientific and Statistical Committee.

My staff, we had two of my staff on it from the Northwest region. The Columbia River tribes were members, Oregon Fish and Wildlife had three members, Washington had two. The Makah Tribe, which has a substation troll fishery in Northwest Washington was on it.

And Chuck was on it from the council staff. But most important, as I mentioned, was Ray Beamesderfer from Cramer Fish Sciences was the modeler for the effort and was terrific at translating the science into the considerations for all the rest of us to think about.

MR. WOLFORD: Yes, Bob, let me just comment on that. There was a lot of council, and as you can see here, the fishery agencies involved there, the credibility of

this work group was just outstanding.

They got us off on the right foot, just incredibly, incredibly well.

MR. TURNER: And that group issued what I have called a user-friendly report. So while it is substantially technical in mature it was very readable and digestible by not just the managers, the council itself, but also the fishing sectors, sport, commercial, tribal, and was well received.

Going back up to the schedule, again, that report came to the council in September, I believe. It went to the Scientific and Statistical Committee. They came back and said, yes, we've looked at it, work's credible. Scientific integrity.

And it also went to what's called the Salmon Advisory Subpanel, which is the harvesting sector of sport, commercial, and tribal part of the council. And Ray Beamesderfer explained the entire analysis modeling effort to them and worked with them

on, worked with the SAS on these multiple scenarios so that the SAS could become comfortable, not only with the data and the scientific integrity, whether the regime could be defensible.

But also, with the outcome on the harvest side of that win/win category. So you see in the green bar row, the analysis led to a 5.9 percent increase in their ability to harvest Tule Fall Chinook over a hundred years.

They also, as you can see, arrived at an option that was a 3.7 percent reduction in risk. The goalpost that was agreed to by the council family was 3.5 percent, with a 3 percent increase in harvest.

As the SAS went through its deliberation, you see they passed over several that met the bar and went beyond the conservation requirements that we had established as sort of what we were looking for.

And that is just totally due credit to them for putting the stake in the ground in wanting to ensure that this effort was perceived as truly a win/win, conservation as well as an increase in harvest.

MR. WOLFORD: Exactly right. And I think one of the reasons that they were able to do that was because of the willingness to open the science to this advisory sub-panel. When Ray Beamesderfer came in and explained what was going on and how he was doing it, the advisors of that panel really came on board with this and was able to embrace the methodology and the goals and objectives.

And I think that enabled them to go to these, to make this thing really work in the end, accomplish something that was beyond just the minimum requirements.

MR. TURNER: So from my perspective, none of this could have been nearly as successful from, at least from a perspective of acceptance by all of the

concerned entities, council, fishers, ourselves, without the significant support of the council itself.

I mentioned financial support, that was certainly important, but it wasn't solely financial. The council took the leadership role in public outreach, being open to convening meetings of its entities, the SSC, the Salmon Advisory Subpanel, et cetera.

It was brought to the council repeatedly, including once in November of 2011 where the entirety of the analysis was presented to the council. And as I mentioned, the support for the modeler.

The Salmon Advisory Subpanel, not to repeat myself, but they took the lead in developing the actual scenario that was presented to the council for its adoption as a win/win solution.

We spent a lot of time, my staff did, I did, with the SAS. It was a really tremendous experience to see them kind of

grapple with the various issues. It was a lot of risk associated with the harvest side of this for them, as well.

They took a leap of faith to adopt this just as we did. And they ultimately did make a strong recommendation to the council, that's a repeat of what it was.

In terms of, because of the context of this meeting is about biological opinions, I haven't gone into great length about the science behind this other than the modeling. But one of the reasons I think we're here is, in preparing for this meeting, I kept stressing that this might be viewed as a good model, but I want to be sure everybody understands, we did not share, nor do we support, nor would we share the biological opinion with the council, nor a draft of it.

And one of the reasons, just one of the reasons, is this schedule. Salmon management in the Northwest starts with the prediction of abundances of the many

populations that are contributing to the fisheries.

Those predictions are not available until about January and February of any particular year. The council's first meeting to seriously consider salmon management for a given year occurs in March where they develop three alternatives for public review and then they immediately return in the first week or two of April to adopt the fishing regimes, which are then, which then begin on May 1.

So we have to, we turn from council action, in this particular case, the council took action on April 6. The fisheries start on May 1. We issued the biological opinion on April 26. There is absolutely no time between April 6 and April 26 for exchange of views about the draft biological opinion.

So to be successful, we, at least I, and our staff currently, we will do anything we can to open up our thinking about

fishing regimes to the council well in advance.

Since about the end of the 1990's, we send a formal letter to the council as early as we can, which turns out to be March, again, explaining to the council what we think, we call it guidance, but it's basically what the ESA criteria for that year will be for all of the listed populations that the council has significant effect upon.

That's about 9 of the 28 populations that are listed in the Northwest. So we have a multi-page letter that says for each one, what the ESA bar is likely to be. Now, we can't definitively say it, because we don't want to be pre-decisional, but the council knows before it sits down at the table in March what our, what we're looking for from an ESA perspective.

And there is, Dan can speak to, better than I, to what the council, how the council grouses or doesn't grouse over that

letter. But the arguments about it occur before the season setting happens.

Because again, this schedule is what we're faced with at the back end of the process.

MR. WOLFORD: Yes, and since you opened the door, let me comment on that. That letter typically causes us great consternation because for the most part, we have not had visibility. Now where did those recommendations come from?

And the process that Bob just described here really opened the door and the window into all the, well, what's going on behind that door? How did these numbers come about? And well, just reduces the anxiety level on the council just orders of magnitude when we understand the framework about what's going on with these recommendations.

What this process really did was put that framework out there for us all to really understand and appreciate.

MR. TURNER: I think, go ahead, Chuck.

MR. TRACY: Yes, so yes, building the framework was, that's just something the council's been interested in a long time and we've had other, we have a manual methodology review process and we do get some exposure to some ESA issues at that time, too.

But this one was the first one that really involved the council and its advisory bodies and its scientific groups from the baseline.

But the key to this one working so well, I think, was not just a quoting of the framework, but getting the industry group, the Salmon Advisory Sub-panel involved. As soon as we determined it was feasible to go ahead with this process.

Because they're the ones that, they had to decide how this worked for them, and they had to decide, you saw those tiers, there are four tiers, if you look there's two

tiers, three tiers, five tiers, but on those bottom tiers, what that means to them is with Canada fishing taking 40 percent of the impact, and other impact necessary for survival federal trust responsibility, those low tier years, some fisherman in the ocean sit on the beach.

So that's, you know, it's important for them to know, you know, how many years are they going to have to sit on the beach? And because salmon populations are sort of auto correlated, it's not just, you know, it's not just 11 percent of the catch and it's usually going to be two or three years in a row to make up that 11 percent of the time.

So that's why it's so important, in this process, to get our salmon advisor involved and to provide policy guidance to the council and to them, in regards to how these tiers are structured, how those really affect their fisheries.

You know, if they're going to sit on the beach, they're going to need some make up time and time to buy abundance. So, you know, what does it take to offset that?

So that's what really made this process so valuable for our fishing industry.

MR. TURNER: Just to emphasize the point that Chuck was making, those exploitation rates that I mentioned are for everybody.

So the Alaska, Canada, PFMC fisheries, the in-river fisheries, all are combined into that one harvest rate that we established. But when it goes down, when that harvest rate goes down, virtually the only place to take the reduction is in the PFMC fisheries.

You can't take it out of Alaska, you can't take it out of Canada. We have a treaty with Canada that doesn't allow that to occur. And while the PFMC catch involves both tribal and non-tribal, most of their harvest

in the ocean is non-tribal.

And it's very difficult for practical matters, to take it out of the river. So a 1 percent reduction, if that were to occur, because of the way these two pie charts interact, 1 percent reduction causes the ocean fishery to lose access to a vastly larger number of other populations that, it's up, and has a very dramatic impact.

And that's why it was particularly concerning to them. I will also say that, as many of you know, the Pacific Council manages fisheries along the west coast, south of Alaska in the U.S. waters. They deal with two regions, the Southwest Region and the Northwest Region.

In the Northwest, both Randy and I have been involved in fisheries management in the Northwest for a long time. I would say because of the need to share information with tribal governments, and because fish are migratory, the notion of opening up the

management box to other people is not foreign.

I mean, it's common, because everybody gets into this mix together and in fact, has to in order to comply with court orders. In order to implement treaty Indian fishing rights.

And so the idea, to me, of letting the council see our laundry from day one to the day end is, I'm a hundred percent comfortable with it. You know, I'm not quite sure that that's, I think that that is a legacy of 20 years of dealing with Indian tribes, frankly.

And so I wouldn't necessarily say that that's true. I wish it was only 20 years. If that's true, I'll swear. So, questions?

MEMBER MORRIS: Okay, questions? Best practices? Areas for improvement? Questions and comments? It seems to me, that in this example, your --

MS. CAMPBELL: This is Cora

Campbell, I have a question.

MR. TURNER: Yes?

MEMBER MORRIS: Cora, go ahead.

MS. CAMPBELL: Oh, thanks, I'm sorry. I thought we had a couple of people talking at once, there. I was just curious if somebody could explain a little bit more of the level of detail that's provided in the letter that's received by the council that talks about sort of annually what the jeopardy bar is.

Because one of the challenges that we faced in the north Pacific is that the council has been asked to be involved in the development of reasonable and prudent alternatives without a clear understanding of what that standard is.

And that's been very challenging for us.

MR. TURNER: Chuck, do you want to answer that from the council's perspective?

MR. TRACY: Sure, I'll take a shot

at that. So the guidance letter this annual guidance letter, for the most part, you know, if there's a biological opinion in play, that summarizes the, you know, the, what's in there. So what's been published, what everybody knows.

Where it comes into play is, when there's a new consultation going on and we each have a biological opinion that's expiring and there's going to be a new opinion and it isn't out yet, that's when it becomes real important, you know, to get that information up front.

So the National Marine Fisheries Service can provide us their best guess or their, you know, where they're leaning or what we ought to consider in terms of meeting conservation objectives in our, when we're formulating our regulations for those stocks that have new information coming, or new computation coming.

So that, you know, that's where it

gets real critical. Again, because of the life history of salmon and, they're short-lived, things change year to year, you know, trying to use the best available information and the most recent constrains our time immensely.

And so it is difficult for the region to get that guidance based on the most recent forecast, most recent statement estimate to the council and it, you know, much in advance. So it, like everything else, comes in March.

And we have that compressed time schedule to deal with.

MR. TURNER: Yes. Well, I would add to that -- I think an observation about organization and lessons learned and why this was successful. In the Northwest region, as I mentioned, that Salmon Management Division writes the guidance letter, which means we are establishing the expectations for jeopardy.

And we do the biological opinion

for the harvest management actions. And we are involved in developing those harvest management actions. So protected research's division is not involved in these efforts at any point along the way.

Now, I have had lots of discussions about how that can make it appear as though we have some conflict of interest. I don't, you know, we're the national marine fishery Service, regardless of how we organize.

So I fundamentally don't agree with that perception. But even if I did, my belief is, the response to a concern about the perception that we are not only, you know, we're our own judge of action, here.

We formulate the action and then we write our own biological opinion, the solution to that is to sunshine the process and let the science stand on its own integrity. And the benefit of doing that is that the relationships that the division has

with the harvesting sector, with the council, are very important.

And the familiarity with the data, again, because we're data-rich and it's a complex management regime, I don't think we have the money to have multiple divisions familiar with enough familiarity to both manage the fishery and be able to write a biological opinion.

It'd be very difficult. And very expensive. So I am a big advocate for, at least in the salmon management arena, for the people who are interact with the council, to be able to explain, in advance, in our guidance letter, in this case, what our goalposts are, and then we'd write the biological opinion in the end.

And because of our familiarity with the subject matter, we're able to get it done in that window of opportunity we have, which is three weeks or less in April between the action adopted by the council and the

issuance of the biological opinion.

MR. WOLFORD: I think the timeline there makes it kind of critical that we kind of all embrace that approach. The guidance letter is sufficiently detailed that we were able to extract from that, measures by which we can assess the various fees and structures and regulations that we consider each year.

Whether that will go through -- and various things, to me, meet the criteria or not, to form fairly objective of criteria out of that guidance level. That's very, very helpful.

MEMBER MORRIS: Other comments or questions? Pam?

MEMBER YOCHEM: I've got a question about how "best" is defined when talking about best available information or best available data. You indicated, for example, that you had the involvement of an independent contractor who was a non-NOAA fishery scientist, funded by somebody other

than NOAA fisheries, as opposed to the data actually coming from NOAA fisheries.

Some other standards that I know are used are things like the Data Quality Act, the Department of Health and Human Services, for evidence-based medicine, ranks peer reviewed science at four levels.

Level One being a controlled, randomized clinical trial and level Four being an observational study with no controls.

And so even though the data are peer reviewed, they further rank, basically, how good they are based on the methods that were used to obtain the publishable result.

So I'm just wondering if, I don't know who would like to weigh in on this, but I'm just wondering how the best is defined.

MR. TURNER: Well, I think in this case, and Chuck may know a better answer than I have here, but first of all, the modeler didn't develop the data. The data is collected by management entities and is housed

by, most of it is housed in the Pacific States Fisheries Management Council databanks or other, and is accessible to everybody.

What Ray Beamesderfer did was use the data in a model. Now the viability modeling is something that I don't think was his model, he may have been using our model. But a viability analysis, what his, what really added value that he brought was in being able to model the harvesting scenarios and translate it into language that the council family could understand and could work with.

But even then, the work was reviewed by the Scientific and Statistical Committee and again, to the credit of Don McIsaac of the council and Chuck, they, I can remember constantly being asked to ensure that NOAA had involved, this is kind of, you talk about turning the coin upside down.

It was the council asking us to ensure we had all of our scientists involved

in the process upfront who would alter weigh in on the biological opinion so that we could surface any concerns that they were going to have early and address them before we sat down and wrote the biological opinion.

And we did exactly that. That was a good point to be raised and we brought in all of the people from NOAA that would have an opinion about the kinds of questions you just asked so that we could address those before the action by the council was taken.

And any of those concerns were addressed before the decision was made.

MEMBER MORRIS: So here's my question again. How did it come to be that the Protected Resources folks weren't involved in the biological opinions for salmon? Is that because it's a fish that's been managed for a long time by the council process and so it just kept being managed that way?

Or where was the decision point that said, you know, this biological opinion

in this particular region for this particular species will be handled by the Salmon Management Division, not the Protected Resources folks?

MR. TURNER: You know, I think it was evolution. There was no decision point made. That's also true in the Northwest region for habitat consultations. In fact, most of the consultations done in the northwest regions are not done by Protected Resources.

Most of the habitat-related actions are done by the Habitat Management Division. The Sustainable Fisheries in the Northwest deals with ground fish to the extent that they do consultations, they will do them.

Protected Resources does, ends up with marine mammals, rockfish, some of the other species that sort of don't fall into ground fish and salmon. And I will, we also have a hydropower division that no other region has because of the Columbia River

federal hydropower system.

And they do the consultations on the hydropower system.

MEMBER MORRIS: Okay, any other --

MR. TRACY: Whether the Columbia river Tule just, you know, is region-wide for many ESUs and for many different actions.

MEMBER MORRIS: Keith?

CHAIR RIZZARDI: I have a question, I guess it affects all the folks who've talked. I'm curious about the way that the regions interact with headquarters and how the PR staff all works together. You know, so we've learned about regional BiOps and there's regional staff and what happens at the national level?

MS. GOLDE: So this is something that is often very confusing to people. And having come into fishery service from another part of NOAA, they, many people even across NOAA don't really understand this, so, and that is, the way the regions are set up, the

regional staff, the Protected Resources regional staff, don't report to us at headquarters.

They report through their regional administrator to Alan and then I report to Alan, so the point where we meet is Alan's desk, which is not to say that we don't talk to each other. We talk to each other often.

And as David mentioned, we try to be consistent across regions in how we think about things. So what we do in headquarters in Gina's division, which is our Section 7 Divisions, is we have some biological opinions on large national issues of national scope that we do in our office and the Office of Protected Resources here in Silver Spring.

And we also provide training, which is one of the primary things that Craig does, is he goes around the country and provides training around the country on how to do biological opinions so that we build that consistency in.

And we also are responsible for national guidance. Now Gina is fairly new in her position. We just split Section 7 off into its own division in headquarters and hired Gina to run that division.

And I know she's been thinking about the kinds of additional guidance that she wants to provide to our consultation staff around the country and do things like, you know, calls periodically to touch base on best practices.

But I can tell you that there's a lot of discussion amongst consultation biologists around the country on things that they, you know, are thinking about. You know, I'll see e-mails comes across that says, hey, I'm doing an analysis on this. Does anybody have some experience thinking about this issue? And if so, how have you addressed it?

So there's certainly a lot of coordination. And one of our roles is to help facilitate that coordination. Does that? I

don't know if you want to add to that at all, Gina?

MS. SHULTZ: Then, I don't think you mentioned the quality assurance, quality control, that we also provide as well. So each year, headquarters reviews the consultations to see that it went through the right process in each region and review a subset of the actual biological opinion.

So we look at the process for all of them, that they went though the right review and signature. And review a subset of the BiOps, in some cases where regions don't do very many. Not like the Northwest, there, it's truly a subset.

Some regions, it's all of the BiOps that they issued that year. We review them and sit down each year and go over what we've found and identify areas where things could potentially be improved.

Or if there are areas where we're seeing, that's where we have the potential, if

we see something inconsistent or different, then we can share that.

CHAIR RIZZARDI: So is there a national template for a biological opinion or a regional template for a biological opinion? When you sit down and you start that process?

MS. SHULTZ: Well, we have, nationally, I mean we, everything, you know, you start with your ESA and our regs and our handbook and guidance, and that all comes out of the national.

And then I don't know that there's a particular template, but really, if you look at the handbook, it pretty much is a template. Does that answer your question?

MS. VAN ATTA: Hi, this is Lisa Van Atta, I just wanted to add one more point that we didn't mention, which is, there's a lot of collaboration and exchange of ideas on the program side, but part of this QA/QC is that all of our consultations, whether they be informal or formal, have to go through a

review chain that involves our office of general council.

And they get together every other week and have calls about the ESA, which involves, a lot of times, biological opinion and questions of consistency on interpretation of statutory terms. So while the program side is coordinating, so is general council.

And then all of our opinions are approved by our regional administrators. So there really is a lot of QA/QC going on in coordination at the different levels.

MEMBER MORRIS: Okay. If there are no more general comments or questions, we'll close this part of the Webinar. We ask those of you who are actually members of the working group to hang on, if you have the time, for kind of a distilling session that the working group will have as soon as the noise in the room quiets down a little bit.

And so any MAFAC members or others who aren't members of the working group who

would like to say, it's been a good day, I've got other things I want to do right now, you're welcome to depart.

And we're going just have a kind of five minute break for things to sort out and then the working group will start a discussion, just try to pull together some of the good ideas that came from today.

Gina?

MS. SHULTZ: Hi, I just wanted to thank everybody for, all the presenters that gave the case studies from the various councils, and/or NMFS offices. Thank you so much. We appreciate that.

MEMBER MORRIS: Right. Kudos from the MAFAC team here as well. Very, clearly you put a lot of effort into making clear presentations, they're very helpful. We hope you will send your PowerPoints to us so we can refer to them in the future.

And we look forward to working with you on these issues as we move forward.

(Whereupon, this matter went off the record at 4:34 and went back on the record at 4:38 p.m.)

MEMBER MORRIS: Okay, are we ready to begin, then? Let's go around one more time and introduce ourselves as working group members, just to kind of remind ourselves who we are. So I'm Julie Morris and I'm a MAFAC member from Sarasota, Florida.

MR. BERNHART: I'm David Bernhart, I'm with NOAA Fishery Southeast Regional Office. I'm the Assistant Regional Administrator for Protected Resources.

MS. SHULTZ: I am Gina Shultz, I'm with NOAA Fisheries headquarters, Protected Resources and I'm Chief of the Interagency Cooperation Division.

MEMBER YOCHEM: Pam Yochem, MAFAC member from San Diego, California.

MEMBER MORRIS: Okay, we're just focusing on the working group members right now.

MEMBER BROWN: I'm Columbus Brown from, retired from the U.S. Fish and Wildlife Service. MAFAC member from Atlanta.

MEMBER CLAMPITT: I'm Paul Clampitt, MAFAC member from Washington state.

MS. MACPHERSON: I'm Marian MacPherson, I work for The Office of Sustainable Fisheries, report into headquarters, but actually live down on the Gulf in Alabama.

MEMBER MORRIS: And Cora and Dawn, are you still with us? Audio?

MRS. CAMPBELL: This is Cora. I'm still here.

MEMBER MORRIS: Great, thank you, Cora?

MR. WOLFORD: Dan Wolford, yes.

MEMBER MORRIS: Or Dan? Sorry, Dan. Great. Okay, so I just wanted to --

MR. LYNCH: Hi there, this is Jim Lynch, and I'm the acting representative for West Pac on this as well for today.

MEMBER MORRIS: great, thank you. So you're sitting in for Ed, right?

MR. LYNCH: Excuse me? I didn't hear you.

MEMBER MORRIS: You're sitting in for Ed. Thanks for reminding me.

MR. LYNCH: Yes, certainly, I'm an alternate for Ed.

MEMBER MORRIS: Great. So I just wanted to go back to our terms of reference, which were distributed prior to the MAFAC meeting, I don't know if all the working group members received them.

But I just wanted to emphasize that the Webinar was supposed to present different case studies in which we would be looking for best practices an considering potential areas for improvement in ESA consultations on MSA fishery management actions.

Related to the types of information and analytical methods used in

biological opinions and how ESA consultation and MSA fishery management processes are coordinated and carried out.

So in this session, we have about a half an hour. I was hoping that we could sort of pool ideas along those lines that came up in the case studies and discussions today and then have some time to figure out what the next steps for the working group might be.

So let's start with what people heard today or what ideas popped for them in terms of best practices or potential areas to do better coordination.

MR. WOLFORD: Well, this is Dan Wolford, let me offer, then couple of things I've heard. One was the matter of the council's SSC. And in various times, the SSC was either was involved, they seemed to be good when it was not involved or where there was data that was withheld from them as an unpublished model in the case of the Hawaiian situation or apparently there was certain data

that was withheld from them in the '12 opinion.

That seemed to be a critical issue about how involved is the council's SSC in this process? The other thing that I thought was pretty clear was, there's, sometimes there is and sometimes there is not a clear statement of objectives about what's the council need to do in order to achieve a no jeopardy condition?

And I think the existence of that criteria was very helpful to us on the Pacific Council and I can see where not having that would be a real impediment to others. So those are the two kind of observations, I think.

MEMBER MORRIS: Thank you, Dan. Other things that struck people today as best practices? Go ahead, Pam.

MEMBER YOCHEM: Well I heard, I think I heard three different approaches that were used for ensuring coordination between

NOAA fisheries and the councils. One or either existing situation or perhaps a recommended situation.

And one was, I guess at one extreme would be a policy change, which would return the situation to where it had been previously where the council has status as an action agency.

And then I heard, I think, from the other, two case stories that there were two sort of voluntary, ad hoc-type of situations that were used.

In the Gulf, there was an IPT, Interdisciplinary Planning Team, made up of NMFS and council members and I can't remember if that was something where there's an MOU established and it's a team that exists sort of all the time or if it's just a case-by-case situation.

And then for the salmon there was the ad hoc work group that was formed that had not only NOAA fisheries and council

representatives, but also state agencies, tribes, and then this outside consultant.

And so that was I took away from it, where there are three very different approaches for coordination between the council and NOAA fisheries.

MEMBER MORRIS: I can answer your question about the IPT. It's a team that works together for the development of all of the fishery management plan amendments in the Gulf Council. So it's just a way to bring council staff together with Southeastern regional NOAA fishery staff in the development of any management action.

MR. BERNHART: But they reformulate per the needs of the particular amendment?

MEMBER MORRIS: Right. Marian?

MS. MACPHERSON: The common theme that I heard was, there were successes when people found ways to share information early, whatever the name or the format that it took

on. And I'd also just like to comment that some of the neat concepts I heard David talking about in the Southeast are similar or are taken from that draft 2005 document that I mentioned.

So that might be another place to mine for ideas.

MR. LYNCH: This is Jim Lynch, just to kind of add a point to the policy change issue. I think there are at least two alternatives for policy change, either considering councils to be action agencies for purposes of these consultation activities, or alternatively, they're considered an applicant and, you know, if NOAA believes there's some strong basis to not consider councils to be action agencies and that this is an internal consultation between fisheries and Protected Resources, which I understand typically has been the thinking.

So I think either of those scenarios would provide sort of more formal

status in how the council and council staff participate in the consultation process, if it's by reviewing draft biological opinions, being involved in the development of reasonable, prudent alternatives in a more integrated way.

So that's, I think, the goal, and I think so there are two, at least two, policy options there for interpretation and I think that's probably what this group should think through a bit more.

MR. WOLFORD: Well, as strange as it might seem, this is Dan Wolford again from the Pacific Council, becoming a formal action agency or an applicant, as you saw in Bob Turner's last slide about the timeframe there, I would have to impose a criteria that would make that timeframe unworkable and while I think we need to have more coordination and more ability to interact, making that a formal thing worries me a little bit in terms of the impact that might have on our schedule.

MR. LYNCH: Yes, I think with all things, I think schedules and, regardless the status of anybody here, schedule is always an issue. And I think one of the things that I think applicants and action agencies do all the time is develop schedules and have, you know, an understanding over, you know, how quickly draft biological opinions will be turned around for review and all those types of things.

So, you know, I think that can be a part of the conversation, you know, when the parties are interacting with each other, but it shouldn't be an impediment to allowing, you know, the improvement of the biological opinions by providing drafts of those documents and working together.

MEMBER MORRIS: Marian?

MR. WOLFORD: Yes, well I certainly agree with that, but the idea that there would be a draft biological opinion created, sent to the council for review,

given, you know, three weeks to review it, get back and comment on it, that would completely take our salmon schedule and make it completely unworkable.

I think the real criteria is for us to work together in advance of that in, you know, perhaps a less formal way.

MR. LYNCH: Yes, I guess, just on the schedule point, I would say that the council, I think, even if it's extended actually into applicant status can always waive that time period if you felt like timing was more important than your opportunity to review. So I don't think it should be mandated, but I have to think that if you're willing to waive it, then you should waive it.

And if you're comfortable with the interactions you had up to the point of a draft opinion, then you do waive it. And there's no reason to have kind of the formality of that review. But, you know, I think typically, I think applicants, it takes

some time to put together a solid draft to actually have a conversation.

And so there will need to be some back and forth and efficiency, I think, just to figure that out.

MEMBER MORRIS: Okay, there's two people in the room who want to speak, so I'm going to recognize them, okay? COURT REPORTER: Was that person John who was speaking?

MEMBER MORRIS: John, you were just speaking, right? The transcript, the guy's keeping track of the transcript is trying to identify your voice.

COURT REPORTER: That was John and Dan?

MEMBER MORRIS: Yes.

COURT REPORTER: Okay.

MEMBER MORRIS: Marian?

MS. MACPHERSON: I just wanted to point out before we go too far down the road of action agency, I'm not sure that that's a complete policy call. Maybe we should look at

the old memos, but before switching to OSF, I used to work in GCF and we used to always get councils dismissed from litigation on the basis that they were not an action agency.

So whatever may have gone under the bridge, we may need to run by GC whether that's a legal possibility.

MEMBER MORRIS: It does seem like in the Gulf of Mexico case study, the council was sort of treated as if they were the action agency, even though they weren't technically he action agency, there was the sense that you were keeping them informed.

I'm not sure if maybe I'm over interpreting that. Keith? You had a comment?

CHAIR RIZZARDI: Well, the first one was covered, which is, if you're cooperating and coordinating while people will waive the timeframes. The second one is on this point about the action agency. I think in the gulf example, it was working with the council upfront and then on the backend there

was, yes, some communication.

But I wouldn't characterize it necessarily as the full-blown treatment that you would get if you were the applicant. I think there probably is some legal review that needs to be undertaken there.

But I think the bigger picture point that everybody's getting is, it's a good idea. And I think if you step back, the more you get the communication on the front end, the less likely you are to be dealing with the litigation on the back end.

And you enhance your process, and as a result, you'll enhance your substance. And that's sort of my big picture theme. I know I'm not formally a member of the working group, I'm sort of stealing my ex officio rights, if I can.

But a few things that struck me today. The better communication theme was heard over and over and over. Staff getting involved up-front with the councils really

seemed to help.

And then soliciting feedback on the RPMs and RPAs seems to be a really big deal, too. And even if you can't formalize that communication to make sure that it always takes place, it would certainly be helpful.

You know, my point about reducing, the risk of litigation remains. And on the substantive side -- so those are sort of my process points -- on the substantive side, I saw the opportunity for some greater clarity on how we make our decisions on the models that are being used for jeopardy, on the checklist that we use for jeopardy.

And I'm seeing that maybe there is an opportunity to do some national-level guidance and for the national office to issue some directives to the regional offices, especially given the way that NOAA is structured.

And I think there's probably, as we dig through this more, we're going to learn

there are more lessons like this. One of the ones that really truck me was the Pacific Northwest and their model being bought into by the stakeholders.

And having this up-front approach where they had stakeholder buy-in to the science, and then the decisions that they're making, and the jeopardy determinations that they're reaching, are based on a model that everybody's already weighed in on and agreed to, which dramatically changes the risks of controversy down the line.

That kind of thing could be embraced at a national scale, put into some national-level guidance, and then implemented at a regional level.

And then another thing I saw, picking up on some of the questions that Tony was asking, it seems like there's an opportunity to take the lessons learned in each of our BiOps and create a feedback loop on the research side of the equation as well.

And to somehow crystallize the process and make it formal. And I'm sure it takes place at an informal level. I mean, you've got a whole bunch of intelligent professionals in a room and they see a problem that pops up in a biological opinion, they have a water cooler conversation and the next thing you know, it's on the research list.

But I see an opportunity to take the gaps that are being overtly identified in the biological opinions, you recognize best available science, you recognize the limitations of your best available science, you've identified, you know, we really need some more information about population of sea turtles in this region, we need some more information about the water habitat of the sea turtles. And then to be able to turn that information over to the folks who are doing the research and to say, hey, here are applied priorities and here are some things that we really need to enhance our outputs on the

Protected Resources side.

MEMBER MORRIS: Paul?

MEMBER CLAMPITT: I hate to go backwards, but I didn't quite catch how the Hawaiian Longline Association became applicant to this. Can somebody explain that to me?

MEMBER MORRIS: Yes, I didn't understand that, either. What is an applicant and how do they --

MS. SHULTZ: Well, I think they sued for applicant status. It's my understanding that they sued for applicant status and the court granted it.

MR. LYNCH: That's right. This is Jim Lynch. So the background there is Hawaii Longline Association, in a challenge to a previous biological opinion, I don't have the slide in front of me, but I believe it was back around 2001 or '02, challenged the way the consultation occurred where Sustainable Fisheries and Protected Resources consulted with each other.

And the Agency's position in that BiOp was that there was no applicant. And that issue was challenged before a federal district court judge in Washington, D.C. and, you know, the ruling in that case was that HLA was an applicant. Because if you read the consultation handbook, you know, they're a group of folks that require the approval of the Agency to actually undertake an action. So it's a pretty broadly-worded definition in the handbook.

So on that basis, the BiOp was remanded back to the Agency and HLA was, you know, given applicant status.

So now we have this odd situation here in this Hawaii fishery where the group of industry vessels is an applicant. The council is not considered an applicant and we comment on draft biological opinions through HLA.

Which, you know, I mean, again, it's kind of an odd situation, but that was the end result of that district court

litigation. I do not believe that in any other council area of the United States, that other fishing groups are considered to be applicants.

I think that's a limited precedent for Hawaii, and NOAA can weigh in on that one, but I think that, you know, certainly, fishing groups could assert that status.

I think one advantage to having the council play a more formal role in the development of biological opinions is if they have that role, then that takes some incentive away from other fishing groups to try to assert similar status in other fisheries.

Not to say that it'll ever happen, but it could, based on that precedent.

MEMBER MORRIS: Who would like to comment on that here in the room? Gina doesn't want to comment? Keith?

CHAIR RIZZARDI: I just wanted to know, from NOAA staff, do you think it's a bad idea or a potentially controversial idea, to

actually overtly amend the regs to formalize that and to allow the council to participate?

Assuming the statute allows it, which I realize we got to make sure with OGC that that's okay. But assuming it does, then it's a regulatory issue.

It seems to me that it's a good idea at first blush, but, I mean, I'm sure there's a reason this hasn't happened to-date.

MS. SHULTZ: I actually wonder what the benefit is. Because I'm looking at the Tule Chinook; there was no applicant status yet. There was information exchange and understanding and buy-in without that. So I'm trying to understand, is the review of the -- and Bob said they did not share the BiOp, nor would they be a proponent of doing so.

It seemed to me, from what I was hearing for the three cases, was the opening up, what information we're using, how we're using it and having a clear understanding, a dialogue on that, was more important than

actually reading the document and reviewing a BiOp.

MR. LYNCH: This is Jim Lynch. You know, one procedure reason why being an applicant or an action agency is helpful is that it cabins the discussion over the development of the draft biological opinion to the group of parties that are involved.

So by granting formal status, either as an applicant or recognizing the Agency as an action agency, they have a seat at the table and you can differentiate those parties form other interested parties and ENGOs, et cetera.

So, you know, while we want to have close interactions, I think we also want to be able to have those interactions in a, you know, candid way, without lots of other parties at the table that may not necessarily have the statutory authority or information that we all do.

MR. BERNHART: Hey, Jim, this is

David Bernhart, I guess I want to ask you about that last bit. So in the hypothetical situation that the council is the applicant and a draft biological opinion is shared with them in the context of their statutory authority for fishery management, how do you cabin that?

I guess I don't think you do. I think you have to have those conversations in your usual public forum and involve and integrate the input from the ENGO as well as the fishermen, as well as staff, et cetera.

Or am I misunderstanding what you were saying?

MR. LYNCH: Well, I think that could certainly be a question. I think something that, I think, the agencies have struggled with is, when you provide a draft document to an applicant, is that document subject to release under the Freedom Of Information Act?

And I think the Agency has taken

the position that it's not. I think relative to the council, you know, certainly the rule-making process that the council goes through is subject to public disclosure and a public process, development of biological opinions is not subject to a public process in the same way.

It's an internal agency process and if the council is considered to be an action agency, then, you know, intra-agency privileges apply under FOIA and the documents wouldn't be subject to release, necessarily.

Now, you know, the agencies that I think have taken different positions on sharing draft BiOps. In some cases, they just decided they're going to share the draft with everybody, and not just limit it to the action agency or an applicant.

In other cases, they've decided they want to keep those conversations internal so that they can allow them to unfold and avoid confusing the public while documents

develop.

So, you know, I think there are some options in there, and what I would say is, I don't know that this group wants to constrain or, you know, dictate how those processes would play out on a case-by-case basis.

Because I think the council and NMFS would want to be able to have those conversations about what the right thing is to do in a certain situation, other than just, you know, waiving, creating a waiver problem that you're always used to sharing drafts and that's the way you're going to do it with the public, right?

I mean, we'd have to be careful about that kind of stuff. So I think the answer to that is, if they're an action agency, certainly they would work on that internally, the Section 7 process is not a public one, developing BiOps, even as an applicant, that's true.

And that's the way it works currently with HLA.

MEMBER MORRIS: So this seems like a rich topic to keep talking about, the pros and cons of this. So it's, I think -- Marian's making really ugly faces, though, so what does she have to say?

MS. MACPHERSON: I don't see how a council could discuss information non-publically.

MR. WOLFORD: Yes, I think the councils would have a really tough time with that.

MR. LYNCH: Well, I guess we'd -- you'd need to review that question closer because I got, you know, they turned it around on NMFS and you had the NMFS avoid discussing publically the elemental draft BiOp with, say, a Bureau of Reclamation or some other federal agency or action agency that's out there.

So, you know, I think there are processes in place that allow for those

conversations to occur. They don't all need to occur in public forums. Certainly the regs, the implementation of it, would need to. Perhaps that's a point that we flag for further conversation or analysis here.

MR. BERNHART: So I'll take a shot at that because I think there's a pretty brief answer to that. When NMFS releases a draft biological opinion to an action agency that requests it, that is considered, you know, a final document. It's not protected by any pre-decisional privilege under FOIA and would be released in a FOIA request.

We don't typically advertise them, host them on the website, anything like that. Although they might be visible in our internet tracking system, but whatever.

And then what distribution the action agency does with them is up to the action agency. Some of them look at them and send us comments and say, thank you very much. And that's it.

Others like FERC, which themselves have record filing requirements, et cetera, our draft BiOps go right up on their public record and comments are flooding in. So the quick answer is yes, the draft BiOps, once transmitted, are public and subject to FOIA.

MR. LYNCH: Well, and I think that, you know, and if that's the case, that's NMFS's position across all agencies, you know, I think then, I don't think from the council, at least the western pacific council's standpoint, that's a problem. I mean, I think the key is trying to be integrated into the development of the final BiOp by reviewing drafts. And if there are parties out there requesting direct drafts, then they're entitled to, I guess to see those, based on your FOIA rule.

So I think the problem has been, that we've seen in the past, is that the development of those BiOps has just been kind of an inconsistent approach. We do think that

we have lots of information to offer and we do think we have special legal status, as Paul said this morning, under Magnuson Act, that just, given our role in the consultation.

So from a policy perspective, it makes sense, and we think you have the discretion to do it and we think it's going to result in a better product. Now all those things, I mean, we just need to understand, if those documents are handed out, where will they go?

And are we prepared to give those things out? You know? That's a related question, I guess.

MEMBER MORRIS: Okay, I'm looking at the clock and we have to be out of the room in 10 minutes, so I want to shift the discussion to next steps. But Columbus, you had a comment you wanted to make before we shifted to next steps?

MEMBER BROWN: I'll just be brief. I think that there are a lot of differences

that I've heard from place to place and I think we have to be very careful about how we approach our approaches in that we don't tie our hands unnecessarily in some areas.

But at the same time, not be too loosey-goosey. What I did here was, each of those scenarios was based upon the local environment that they were working in.

You know, dealing with the Native Americans and their tribal issues are other statutory responsibilities that have to be dealt with. So that makes that case different than the case down in the Gulf of Mexico.

But I do know that if this meeting were, NOAA staff decided tomorrow they needed to go and meet with the Fish and Wildlife Service to further discuss this issue, who jointly share the responsibility of administering the Endangered Species Act, they don't have to put it in a public notice to do it.

They just pick up the phone and do

it.

MEMBER MORRIS: Thanks, Columbus. So back to the, what's the, the Terms of Reference, is that what it's called? It's a great NOAA acronym that I haven't quite mastered yet. This working group has a year, we've been constituted for one year, to come up with findings and recommendations and submit them to the NOAA fisheries Assistant Administrator.

There's a possibility to extend our term of everybody thinks it's necessary, but we're aiming to have a set of findings and recommendations sooner than a year from now. So with that in mind, I think the idea has been floated that we might have a follow-up working group virtual session perhaps in January.

And the next step prior to that seems like it would be some kind of compilation and organizing of the best practices and areas of improvements that came

out of today's discussion and then circulating that so that people could make it a better, more polished list, include items that haven't come up in our conversation, but are important things that we should address.

Not have it be exhaustive, but have it be focused in some way. And then to have another conversation in January about how to move from that initial kind of brainstormed list into a series of findings or recommendations, which are the things that we could all agree on pretty easily and which are the things that are going to take more conversation and more background in order to be able to talk about them in an understanding way.

Does that sound like a workable task for the, between now and January? The meeting in January would be to kind of sort things into, these seem like pretty good ideas to everyone, that we could develop further, and these are things that are contentious or

problematic that we need to talk more about, and dig in more deeply on.

Does that sound workable? Anybody have any suggestions in addition to that between now and January? And Mark, we'd be happy to hear from you as well.

DR. HOLLIDAY: Thanks, Julie. So this is a joint work, the fishery service, MAFAC members and the councils, and so there are a couple of other venues that will be upcoming. The Council Coordination Committee is going to be in January, we have a Managing our Nation's Fisheries conference in May of next year.

So I know budgets are tight for travel, and but I think we should use these windows of opportunity where, at least if there's a critical mass of people together from MAFAC, the Agency and the councils to get together to help continue progress on these things.

And we can try to map out some of

those opportunities for people. The terms of reference that Julie talks about, these were sent out to the council chairs and Emily Menashes's request for membership on this back in October.

But we'll be using, we can use the MAFAC Website to post documents, both the PowerPoints that we saw today and any other documents and reference materials to ensure that all the members of the working group have a place to exchange information and provide that support for the working group.

So I think your strategy of trying to come up with a work plan on how to move forward is a good one and we'll try to facilitate that by providing the support for all the members on the working group to participate as best we can, whether it's other teleconferences, we will be glad to help organize them.

Subsequent webinars, other experts that you want to bring to the table, you can

use our office to help facilitate providing, getting those people and those resources to the project.

MEMBER MORRIS: Thank you, Mark. Now were you sort of raising the possibility that the CCC meeting in January could be a time when there was a kind of split webinar like this with some people in the room and some people from distance?

DR. HOLLIDAY: I'm just suggesting, not, you know, specifically, any one particular meeting, but that's an example of a meeting where there will be a number of people who are on the work group in one place that might be a convenient way to get together versus, I think it's better to have a few people face-to-face and bring other people in by phone rather than try to conduct this entirely by teleconference.

So I'm just suggesting let's be creative and innovative in trying to do that and we'll help you identify what some of those

opportunities might be.

MEMBER MORRIS: Okay, so we'll look into that as a sort of time goal for the January meeting, see if we can have it be somehow around the CCC meeting so at least the CCC members might be able to be there in person and the rest of us --

MR. WOLFORD: I think that's a great idea. Except that the CCC meeting will not be in January, it will be in February.

DR. HOLLIDAY: Yes, until last Friday, the people were still talking about it as in January, but we decided as a group on, last Friday it was February.

MR. WOLFORD: Yes, it's in February.

MEMBER MORRIS: Okay. Well, thank you all.

MR. LYNCH: Hey, another --

MEMBER MORRIS: Yes?

MR. LYNCH: I'm sorry, this is Jim Lynch. I was just going to offer, based on

the council's experience in the Pacific on some of these issues, that it may offer to produce a proposal or white paper, sort of fleshing out some of the issues that we raised, if parties would find that helpful in advance of the January meeting.

So in addition to summarizing some of the issues we discussed here, I think it would be possible to produce a short white paper proposing some of these options and maybe identifying some pros and cons for this group to consider in January.

MEMBER MORRIS: So we're talking about that here a bit at the table. And Gina had a comment?

MS. SHULTZ: Well, I was thinking that the working group should be the one that takes the information we got today and pull that together and come up with some recommendations and we have the councils, are part of that working group, and so they will be a part of, you know, putting that together.

But I don't think we should, yet, start taking additional white papers and information. Maybe after we get the next step, after our next meeting, after we pull the lessons learned and sort of identify some recommendations.

And as we're fleshing that out, that's where we might want to seek some more information from the parties we heard from today or even others we haven't yet.

MEMBER MORRIS: So Jim, we will, I guess I'll take leadership with MAFAC staff on pulling together this first draft of a list of issues that came, practices and issues that came out of today's. And please, you and Ed should both comment on that and if you feel like we haven't captured on that draft list, everybody should comment on that draft list and try to make it as representative of our opinions as possible.

So I wouldn't put a lot of your personal energy into writing a white paper

right now. Please focus on this kind of summary of the meeting document that we'll be sending out for you to review, and let's work on that collaboratively before we spin into more deeply thought-through white papers. Is that okay?

MR. LYNCH: Okay.

MEMBER MORRIS: Great.

CHAIR RIZZARDI: Should we get agenda for the Chairman question on for tomorrow?

MEMBER MORRIS: Yes, we had an agenda time tomorrow scheduled at 8:30 to 9:30 to work on this some more. So the question for the working group is, do we want to try to get together tomorrow at 8:30?

Do you feel like we've made enough progress today that we don't need to reconvene in the morning? Is it complete? Or do you want to talk more in the morning? Dave? David?

MR. BERNHART: I am at your

disposal from St. Pete, so if there is other interest, I'm ready and able.

DR. HOLLIDAY: Just an intervention for, the part on the MAFAC agenda was to make sure that there was sufficient time for the work group to be able to report out back to MAFAC on, the full committee on, what your next steps are.

And if you feel comfortable that it wasn't to provide any more value added to the process of the work group, but to be prepared to come back to MAFAC for the report out session later that afternoon about what the next step would be, so.

But we have a room, we have time, but it's unlikely we'll get people from Hawaii to come by. That wasn't the intent to have people, you know, get up at 4:00 in the morning to participate in a call.

MEMBER MORRIS: Well, I will be here at 8:30 in the morning trying to polish some of what we talked today into a

presentation for MAFAC tomorrow afternoon. And you're welcome to join me, but you're not expected to be here if you have other things you need to do in other places.

Great. So can we, then adjourn? Thank you, everybody.

(Whereupon, the above-entitled matter went off the record at 5:16 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Marine Fisheries Advisory Committee

Before: DOC/NOAA

Date: 10-24-12

Place: Silver Spring, MD

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R. Gross

Court Reporter